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OPINION	:	No. 83-1009
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of	:	<u>APRIL 24, 1984</u>
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THE CALIFORNIA POSTSECONDARY EDUCATION COMMISSION  
has requested an opinion on the following questions:

1. In performing his duties under Education Code section 94310, subdivision (c), may the Superintendent of Public Instruction require of an institution the identification of each instructor of each course, a transcript, diploma, or other primary evidence of each instructor's stated qualifications, and that each instructor have preparation equivalent to the level and content of the course to be taught?

2. What type of assets of an institution may form the basis for compliance with Education Code section 94310, subdivision (c)?

3. Must the assets of an institution qualifying under Education Code section 94310, subdivision (c), provide sufficient resources to achieve the stated educational objectives of the institution that are multi-year in length?

## CONCLUSIONS

1. In performing his duties under Education Code section 94310, subdivision (c), the Superintendent of Public Instruction may require of an institution the identification of each instructor and a transcript, diploma, or other primary evidence of each instructor's stated qualifications but may not require a list of each instructor's courses or that each instructor have preparation equivalent to the level and content of the courses to be taught.

2. The type of assets of an institution that may form the basis for compliance with Education Code section 94310, subdivision (c), are those that may be reasonably used to fulfill the institution's educational purposes determined on a case by case basis.

3. The assets of an institution qualifying under Education Code section 94310, subdivision (c), must provide sufficient resources to achieve the stated educational objectives of the institution that are multi-year in length.

## ANALYSIS

In general terms, colleges and universities in California may issue degrees and diplomas if they are "accredited" (Ed. Code, § 94310, subd. (a)),<sup>1</sup> their degree programs are "approved" (§ 93410, subd. (b)), they are "authorized" (§ 94310, subd. (c)), or they are exempt from the statutory requirements (§ 94303) of the Private Postsecondary Education Act of 1977 (§§ 94300-94350; hereafter "Act"). (See 62 Ops.Cal.Atty.Gen. 585 (1979); 34 Ops.Cal.Atty.Gen. 98 (1959).)

The questions presented for resolution concern the "authorization" provisions of the Act, specifically the language of subdivision (c) of section 94310. Section 94310 states:

"No institution may issue, confer, or award an academic or honorary degree unless the institution meets the requirements of at least one of the three subdivisions of this section.

"(a) . . . .

"(b) . . . .

"(c) The institution has filed the following affidavits with the superintendent:

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<sup>1</sup> All section references hereafter are to the Education Code unless otherwise specified.

"(1) An annual affidavit of 'full disclosure' describing the institutional objectives and proposed methods of achieving them, the curriculum, instruction, *faculty with qualifications*, physical facilities, administrative personnel, educational recordkeeping procedures, tuition and fee schedule, tuition refund schedule, scholastic regulations, degrees to be conferred, graduation requirements, and financial stability as evidenced by a certified financial statement for the preceding year.

"(2) An affidavit by the president or other head stating that the institution owns, and shall continue to own, *net assets in the amount of fifty thousand dollars (\$50,000) which is used solely for the purpose of education* as stated in paragraph (1) of this subdivision, located within the State of California, and stating that these assets *provide sufficient resources to achieve the educational objectives of the institution. Such assets shall include such real property as buildings and facilities, library materials, and instructional materials, but shall not include other personal property not used directly and exclusively by the institution for the purpose of education.* The affidavit shall be accompanied by a statement from a public accountant showing the value of the interest of the institution therein to be at least fifty thousand dollars (\$50,000) above the unpaid balance on any note secured by a mortgage, deed of trust, or the unpaid balance on a contract of sale.

" . . . .

"Within 90 days of the receipt of the affidavits described in paragraphs (1), (2), and (3) of this subdivision, and prior to granting the initial authorization to operate, *the superintendent shall verify the truthfulness and accuracy of the affidavits* by impaneling a three-member team comprised of one representative which he or she shall select, one representative of the California Postsecondary Education Commission, and one representative selected by but not affiliated with the institution to be inspected. Within 30 days of the receipt of the report from the three-member team, the superintendent shall grant or deny authorization to operate. *Authorization to operate may be denied only if the affidavits are inaccurate.* Authorization to operate may be granted for one year initially and for periods of three years upon each subsequent renewal, subject to payment of an annual fee pursuant to Section 94331. For all affidavits beyond the initial application, *the superintendent may take such steps as may be necessary to verify the truthfulness and accuracy of the affidavits. Filing pursuant to this subdivision shall not be interpreted to mean, and it shall be unlawful for, any institution to expressly or impliedly represent by any means whatsoever, that*

*the State of California, Superintendent of Public Instruction, the State Board of Education, or the Department of Education, has made any evaluation, recognition, accreditation, approval, or endorsement of the course of study or degree.*

" . . . ." (Emphases added.)

In answering the questions presented concerning section 94310, we will apply the usual rules of statutory construction. The primary goal in interpreting a statute is to "ascertain the intent of the Legislature so as to effectuate the purpose of the law." (*Valley Circle Estates v. VTN Consolidated, Inc.* (1983) 33 Cal.3d 604, 608.) In ascertaining legislative intent, we turn first to the language used (*Tracy v. Municipal Court* (1978) 22 Cal.3d 760, 764), giving the words their ordinary and usual meanings (*People v. Belleci* (1979) 24 Cal.3d 879, 884). "Interpretive constructions which render some words surplusage, defy common sense, or lead to mischief or absurdity, are to be avoided." (*California Mfgs. Assn. v. Public Utilities Com.* (1979) 24 Cal.3d 836, 844.) "[E]very statute should be construed with reference to the whole system of law of which it is a part." (*Moore v. Panish* (1982) 32 Cal.3d 535, 541.) Nevertheless, "[i]f the words of the statute are clear, the court should not add to or alter them to accomplish a purpose that does not appear on the face of the statute or from its legislative history." (*California Teachers Assn. v. San Diego Community College Dist.* (1981) 28 Cal.3d 692 698.)<sup>2</sup>

#### 1. "Faculty With Qualifications"

The first question posed is whether in carrying out his responsibilities under subdivision (c) of section 94310, the Superintendent of Public Instruction ("Superintendent") may require of an institution (1) the identification of each instructor of each course, (2) a transcript, diploma, or other primary evidence of each instructor's stated qualifications, and (3) that each instructor have preparation equivalent to the level and content of the course to be taught.

In answering this question, we note the purposes of the Act as set forth in section 94301:

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<sup>2</sup> We recognize that the Education Code presents special problems of statutory interpretation, since it is "complex and obscure; several sections of the code appear to conflict with each other." (*Santa Barbara Federation of Teachers v. Santa Barbara High Sch. Dist.* (1977) 76 Cal.App.3d 223, 228.) Indeed, Justice Kaus has observed in dealing with the predecessor of section 94310, subdivision (c): "Many cases, too sad to recall in detail, have convinced me that large parts of the Education Code are not meant to be understood." (*People ex rel. Riles v. Windsor University* (1977) 71 Cal.App.3d 326, 334, fn. 1 (Conc. and dis. opn. of Kaus, P.J.).)

"It is the intent of this Legislature to encourage privately supported education and protect the integrity of degrees and diplomas conferred by privately supported as well as publicly supported educational institutions.

"It is also the intent of the Legislature to encourage the recognition by tax-supported institutions of work completed and degrees and diplomas issued by privately supported institutions, to the end that students may have equal opportunities for equal accomplishment and ability.

"In the present period, the need for educational services is so great that it cannot be met by tax-supported institutions alone. The contribution of privately supported educational institutions to the preservation of our liberties is essential. The objectives can best be achieved by protecting the integrity of degrees and diplomas issued by such institutions."

We also note the provisions of section 94312 applicable to all authorized institutions:

"All institutions authorized, or approved, under this chapter shall be maintained and operated, or in the case of a new institution, shall demonstrate that it will be maintained and operated, in compliance with all of the following minimum standards:

". . . .

"(h) That the institution makes available to students and other interested persons a catalog or brochure containing information describing the courses offered, program objectives, length of program, *faculty and their qualifications* . . . .

". . . .

"(k) That the institution maintains current records for a period of not less than five years at its principal place of business within the State of California immediately available during normal business hours, *for inspection by the superintendent* or the Attorney General of California, showing all of the following:

"(1) The names and addresses, both local and home, including city and street, of each of its students.

"(2) The courses of study offered by the institution.

"(3) *The names and addresses, including city and street, of its faculty, together with a record of the educational qualifications of each.*

"(4) The degrees or diplomas and honorary degrees or diplomas granted, the date of granting, together with the curricula upon which the diplomas and degrees were based.

". . . ." (Emphases added.)

Both sections 94310 and 94312 require the identification of an institution's faculty members and their qualifications. Neither statute, however, requires such additional information in the affidavits as the list of courses to be taught by each instructor or that each instructor have preparation equivalent to the level and content of the courses to be taught.

The Act only demands a disclosure of qualifications (for evaluation by prospective students), not an official determination or evaluation of such qualifications by the Superintendent. What is stated in the affidavits must be truthful; the Superintendent's role is to determine "if the affidavits are inaccurate." Indeed, the Legislature has expressly indicated that verification of the accuracy of the affidavits under section 94310, subdivision (c), does not represent "any evaluation, recognition, accreditation, approval, or endorsement of the course of study or degree" by the Superintendent. Hence, evaluating the qualifications of an instructor in terms of the content of the course of study to be taught would be outside the scope of the Superintendent's duties as set forth in the statute.

Finally, as a practical matter, we note that while the identity of faculty members may be known from year to year, the course assignments for each instructor may often not be known until shortly before the instruction begins.

In answer to the first question, therefore, we conclude that in performing his duties under subdivision (c) of section 94310, the Superintendent may require the identification of each instructor and a transcript, diploma, or other primary evidence of each instructor's stated qualifications but may not require a list of the courses to be taught by each instructor or that each instructor have preparation equivalent to the level and content of the courses to be taught.

## 2. "Used Solely for the Purpose of Education"

The second question presented concerns the type of assets that may form the basis for compliance with subdivision (c) of section 94310. We are given a series of examples to analyze. In general we conclude that assets which are reasonably useful in fulfilling the educational purposes of the institution determined on a case by case basis may qualify under the terms of the statute.

Preliminarily, we note that the statute specifies "that the institution owns, and shall continue to own, net assets . . . ." An "institution" may be "comprised of a person, firm, association, partnership, or corporation." (§ 94302, subd. (l).) Accordingly, as long as the asset is owned by the entity comprising the institution, it may be considered for evaluation under the terms of section 94310, subdivision (c).

In 34 Ops.Cal.Atty.Gen. 98, *supra*, we examined the net assets requirement with regard to the predecessor statute of section 94310, subdivision (c). The former statute required that the institution's property be "used exclusively for the purpose of education, of a fair market value of not less than fifty thousand dollars (\$50,000)" (Stats. 1959, ch. 2, § 3) in order to qualify for consideration. Our analysis was as follows:

"Are any of the following types of property susceptible of a use 'exclusively for the purpose of education'?"

"(a) Accounts receivable

"(b) United States bonds and other securities.

"(c) Money in a bank being held until enough money is available to purchase property for a school plant.

"(d) Vacant land.

". . . .

"Construing the exclusive use requisite for purposes of the tax exemption provisions, the courts have insisted that the property for which an exemption is claimed, must itself be physically used and integrated in to the exempt activity, although considerable liberality has been shown in delimiting uses which come within the exempt field. *Y.M.C.A. v. County of L.A.*, 35 Cal.2d 760, 772-776; *Sutter Hospital v. City of Sacramento*, 39 Cal.2d 33, 40.

"If the principles of these cases were applied to the exclusive use requirement in section 29007, subdivision (a), it would appear that only property actively being used in the operation of the school plant could be counted in the requisite \$50,000. However, in applying the exemption provisions to particular instances, while 'profit motive' property might be excluded, a rule of 'strict but reasonable construction' is followed. Thus, in *Cedars of Lebanon Hosp. v. County of L.A.*, 35 Cal.2d 729, 736, it is stated that 'any facility which is reasonably necessary for the fulfillment of a generally recognized function of a complete modern hospital' may be exempt under section 1c of article XIII. Similarly, in *Church Divinity Sch. v. County of Alameda*, 152 Cal.App.2d 496, 502, the court, by analogy, concluded that 'any facilities which are reasonably necessary for the fulfillment of a generally recognized function of a complete modern college' are exempt under article XIII, section 1a. Moreover, the 'strict' element in a 'strict but reasonable' construction is traceable to the fact that exemption laws are strictly construed (*Cedars of Lebanon Hosp. v. County of L.A.*, *supra*, at page 734), and hence would not apply to the instant question. Applying these cases to the requisite use in section 29007, subdivision (a), it would appear that money in a bank held until enough is available to purchase a school plant is closely enough integrated to the 'school purposes' to be counted in the \$50,000, as is money in a bank held for the payment of current educational expenses.

"It should be noted, however, that so far as they turn on 'profit motive' the *Y.M.C.A.* lines of cases should not govern subdivision (a) of section 29007. The people and the Legislature in exempting property from taxation, intended only to exempt property integrated in the exempted activity, from which 'profit motive' property was too far removed. In the instant case, however, the Legislature was concerned with the stability of the corporation issuing diplomas, for which investment property, the fruits of which are devoted to the support of the institution conducted, as well as property incorporated into the physical plant of the institution, would tend to indicate stability.

"It is our opinion that the satisfaction of the exclusive use requisite is a factual question, the determination of which would have to be made by a court in each case in which there is doubt as to the exclusive character of the use." (*Id.*, at pp. 103-104.)



We believe that our prior analysis may be followed here, since the statutory language has not materially changed. Accordingly, we apply our prior rationale to the specific examples presented for analysis herein.

The first example is of a condominium located 500 miles from the institution's campus and leased by persons who do not themselves use it for educational purposes. We believe that such property may qualify as an asset where it is being held for investment (appreciation) or present or future income to benefit the institution's educational programs. It is no different from a savings account, shares of stock, bonds, or vacant land as previously analyzed in our prior opinion.

It may be argued that real estate holdings should not qualify as assets under section 94310, subdivision (c), since they would not be sufficiently "liquid" to pay for operating expenses if such becomes necessary. The argument must be rejected, however; the statute itself specifically includes real estate as a possible asset and "liquidity" is not a specified statutory goal. Ownership of real estate may demonstrate "stability" so as to assure current students that the programs will continue to exist (the purpose found in our prior opinion for the net assets requirement) as much as a savings account.<sup>3</sup>

A related example presented for consideration is where the condominium is five miles from the college's campus and serves as the residence of the president of the institution. Although no present income may be generated for educational purposes under such circumstances, we believe that the condominium may qualify as an asset where it is held for investment (appreciation), future income, or provided as part of the president's compensation.

In the next example, the institution does not have legal title to the property but rather leases it for educational purposes. It is suggested that the property may not qualify because it is not "owned" by the institution. We disagree. A lessee's interest in real property is an asset which the institution "owns" within the meaning of section 94310. The value of the leasehold is obviously less than ownership of the fee and depends upon the duration and other terms of the lease.<sup>4</sup>

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<sup>3</sup>. We do not believe that the net assets requirement is to serve the purpose of providing a source for the refund of student tuitions should the institution terminate its programs. The Student Tuition Recovery Fund (§§ 94342-94343) is separately funded and available for such a purpose.

<sup>4</sup> The value of such an interest would depend upon such factors as the amount of the initial deposit, the amount of rent, the length of the lease, the cancellation provisions, whether a purchase option is given, which party has the risks (such as damage by fire) and rewards (such as any gain from appreciation in value) of ownership, and a consideration of all obligations under the lease.

The last example is where use of the facilities for educational purposes is "given" cost-free to the institution indefinitely without a formal lease arrangement. In such an arrangement the institution is a tenant at sufferance whom the owner may dispossess at any time. The purpose of the asset ownership requirement is to demonstrate some stability of the institution for the protection of its students. Since the cost free use arrangement provides no assurance of a continuing use of the premises, we conclude that such arrangement does not constitute the premises an asset owned by the institution within the meaning of section 94310.

In general, then, we conclude in answer to the second question that the type of assets of an institution which may qualify under the terms of section 94310, subdivision (c), are those that may be reasonably used to fulfill the institution's educational purposes determined on a case by case basis.

### 3. "Sufficient Resources"

The third question is whether the assets qualifying under subdivision (c) of section 94310 must provide sufficient resources to achieve the institution's stated educational objectives that are multi-year in length. We conclude that they must.

Under section 94310, subdivision (c)(1), an institution is required to state its "institutional objectives and proposed methods of achieving them." If it chooses to have objectives that are multi-year in length, such as a three year program leading to a masters degree in geophysics, the question arises as to the extent of resources the institution must have to obtain authorization from the Superintendent.

We observe first that the \$50,000 net asset requirement is only a minimum standard. Depending on the stated objectives of the institution, an amount exceeding \$50,000 in net assets is required where necessary to "provide sufficient resources to achieve the educational objectives of the institution" as mandated by section 94310, subdivision (c)(2). The "sufficient resources" requirement must be separately verified by the Superintendent.

It may be argued that since the initial authorization period for an institution is one year and a renewal may be from one to three years in length, the sufficient resources requirement should be limited to the period of authorization.

We find no such limitation in the language of section 94310, subdivision (c). The statutory requirements for demonstrating the stability of the institution are reviewed and applied when granting authorization, but the length of the authorization does not itself restrict the mandatory requirements.

We view the net assets requirement as an obligation of and commitment by the institution to its current students that the programs offered will continue to exist for the time specified. (See § 94312, subd. (a).) For example, if the institution declares that a program is three years in length, then the Superintendent's duty is to verify that statement by evaluating the resources available for the program over the entire three year period.

In answer to the third question, therefore, we conclude that the assets qualifying under subdivision (c) of section 94310 must provide sufficient resources to achieve any stated educational objectives of the institution that are multi-year in length.

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