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OPINION	:	No. 83-801
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of	:	<u>JUNE 12, 1984</u>
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THE HONORABLE WILLIE BROWN, SPEAKER OF THE ASSEMBLY,  
has requested our opinion on the following question.

Does an accreditation conferred upon an out-of-state institution by a "regional accrediting association" recognized by the United States Department of Education other than the Western Association of Schools and Colleges satisfy the requirements of subdivision (a) of section 94310 of the Education Code?

CONCLUSION

Accreditation of an out-of-state institution by a "regional accrediting association" recognized by the United States Department of Education other than the Western Association of School and Colleges does not satisfy the requirements of subdivision (a) of section 94310 of the Education Code.

## ANALYSIS

Section 94310 of the California Private Postsecondary Education Act of 1977 (Ed. Code, pt. 59, ch. 3, § 94300, et seq.) sets forth requirements, in three alternatives, which an educational institution must meet before it may issue academic or honorary postsecondary degrees in California. (§ 94310; cf. § 4302, subds. (f) ("degree"), (l) ("institution").) Our concern herein is with the first alternative, found in subdivision (a) of section 94310, which requires that the institution have been "accredited" by one of certain specified accrediting agencies, to wit (1) a national accrediting agency recognized by the United States Department of Education; (2) the Western Association of Schools and Colleges ["WASC"] or (3) the Committee of Bar Examiners for the State of California. We are asked whether an accreditation of an out-of-state institution by a "regional" accrediting agency recognized by the United States Department of Education other than WASC meets the requirements of the subdivision.<sup>1</sup> We conclude that it does not.

Section 94310, subdivision (a), as amended in 1981 to be effective July 1, 1983, currently provides as follows:

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

"(a) *The institution, which at the time of the issuance of a degree, has accreditation of the institution, program, or specific course of study upon which the degree is based by a national accrediting agency recognized by the United States Department of Education, the Western Association of Schools and Colleges, or by the Committee of Bar Examiners for the State of California. The institution must file with the superintendent an annual affidavit by the administrative head of the institution stating that the institution is so accredited. Institutions authorized to operate under this subdivision may issue diplomas and certificates as well as degrees.*"

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<sup>1</sup> WASC accredits educational institutions in California, Hawaii, Guam, American Samoa and Micronesia (Report of the California Postsecondary Education Commission entitled "Public Policy and Accreditation in California" (March 1984 draft), referred to herein as the CPEC Report, at pp. 8-9). Accreditation of institutions in other states (commonwealths and territories) is done by other accrediting agencies. (See fn. 4, *post.*) When the new amendment to Education Code section 94310(a) was adopted in 1981 there were 32 out-of-state institutions accredited by regional associations operating in California and of that number 11 have since withdrawn from California, five gained accreditation by national accrediting associations, ten applied for state authorization to offer degrees and six sought WASC accreditation for their California activities. WASC granted accreditation to five of the six and denied the other. (CPEC Report, at p. 48.)

(Emphasis added.) (Stats. 1981, ch. 791, at 3073, 3075, § 5; Stats. 1981, ch. 1009, at 4293, 4295, § 7.)

Needless to say, the answer to the question turns on the meaning of the phrase "national accrediting agency recognized by the United States Department of Education" which is now the "eye of the needle" through which the out-of-state institution would pass under section 94310, subdivision (a). To understand its meaning in the subdivision one must first understand the federal schema which is referred to therein, and then the development of the subdivision to its present form. (Cf. *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, fn. 21; *Friends of Mammoth v. Board of Supervisors* (1972) 8 Cal.3d 247, 260-261; *People v. Sand* (1984) 34 Cal.3d 567, 570.)

Various federal enactments which establish programs to provide funds to academic institutions and/or their students (e.g., the Higher Education Act; the Veterans' Readjustment Service Act) usually require, as a prerequisite to eligibility for financial assistance thereunder, that that institutions involved be "accredited" by an agency which has been "recognized" as an "accrediting agency" by the Secretary of Education. (20 U.S.C.A. §§ 3411, 3441; 34 C.F.R. § 603.1; cf. 20 U.S.C.A. §§ 403(b), 1085(b), 1141(a); 42 U.S.C.A. §§ 293a(b), 295h-4(1)(D), 298b(f); 12 U.S.C.A. § 1749c(b); 38 U.S.C.A. § 775(a).)<sup>2</sup> Following statutory mandates, the Secretary periodically publishes a list in the Federal Register of "recognized accrediting agencies"—i.e., those which he determines have met the criteria established by him (34 C.F.R. § 603.6) as being "reliable authorities as to the quality of training offered by educational institutions or programs, either in a geographic area or in a specialized field." (34 C.F.R. § 603.3; cf., *id.*, §§ 603.6, 603.1.) The current list of recognized accrediting agencies (commissions, associations) was published by the Secretary on June 14, 1982. (47/114 Fed. Reg. 25563-25566.) It places the "nationally recognized accrediting agencies that the Secretary has determined to be reliable authorities concerning educational quality" in two categories: *Regional Institutional Accrediting Associations/Commissions* and *National Institutional and Specialized Accrediting Agencies and Associations*. (*Ibid.*)<sup>3</sup> In the former category it

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<sup>2</sup> The term "accrediting" means "the process whereby an agency or association grants public recognition to a school, institute, college, university, or specialized program of study which meets certain established qualifications and educational standards, as determined through initial and periodic evaluations. The essential purpose of the accreditation process is to provide a professional judgment as to the quality of the educational institution or program(s) offered, and to encourage continual improvement thereof." (34 C.F.R. § 603.2.) The term "agency" or "association" is defined to mean "a corporation, association, or other legal entity or unit thereof which has the principal responsibility for carrying out the accrediting function: . . ."

<sup>3</sup> The Secretary's list similarly categorized the recognized institutions when the California Private Postsecondary Education Act was adopted in 1977 (42 Fed. Reg. 20507-20509; Apr. 20,

presently lists in essence six "regional" accrediting agencies which accredit *institutions* within particular geographic regions<sup>4</sup>; in the latter category are listed four accrediting agencies which accredit *institutions* without regard to region,<sup>5</sup> and near-70 specialized agencies, associations and commissions which accredit specific institutional programs or degrees nationwide (e.g., the National Association of Schools of *Art* and Design; the National Accrediting Commission of *Cosmetology* Arts and Sciences; the American Dietetic Association (Commission on Accreditation); and the Association of Theological Schools in the United States and Canada. (47 Fed. Reg., *supra*.) Nonetheless, despite some of the accrediting agencies being referred to as "regional institutional accrediting associations and commissions," and some of them being referred to as "national institutional and specialized accrediting agencies and associations," all of the accrediting agencies, associations, and commissions comprise what is known as the Secretary of Education's "list of nationally recognized accrediting agencies and associations." (*Id.*, at p. 25563, 34 C.F.R., § 603.1; cf. 20 U.S.C. § 403(b)(5) ("accredited by a nationally recognized agency").) Thus the question arises as to whether the present reference in section 94310(a) to a "national accrediting agency" recognized by the United States Department of Education refers to *any* institution recognized on the Secretary's "list of nationally recognized accrediting agencies" or just to the "national institutional and specialized accrediting agencies" recognized thereon. We find the answer in the evolution of the subdivision.

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1977) and when it was amended in 1981 (44 Fed. Reg. 4017-4020; Jan. 19, 1979, as revised at 45 Fed. Reg. 16338-16339; Mar. 13, 1980).

<sup>4</sup> The six "regional" accrediting agencies are: the New England Association of Schools and Colleges (6 states; 186 member institutions), the Middle States Association of Colleges and Schools (5 states + D.C.; 460 member institutions), the North Central Association of Colleges and Schools (19 states; 841 member institutions), the Northwest Association of Schools and Colleges (7 states; 135 member institutions), the Southern Association of Colleges and Schools (11 states; 696 member institutions) and the Western Association of Schools and Colleges (2 states (Cal., Hawaii); 247 member institutions.) These associations were similarly listed as "Regional Institutional Accrediting Associations" when the Private Postsecondary Education Act was adopted in 1977 (see 42 Fed. Reg. 20507-20509; Apr. 20, 1977) and when it was amended in 1981 (see 44 Fed. Reg. 4017-4020; Jan. 19, 1979 as revised at 45 Fed. Reg. 16338-16339; Mar. 13, 1980.) (Cf. fn. 3, *ante*.) Technically speaking WASC is not a "regional accrediting agency" under the federal definition of "regional", which is the "conduct of institutional accreditation in *three or more states*." (34 C.F.R. § 603.2.)

<sup>5</sup> The four "nationwide" or "national" institutional accrediting agencies recognized by the Secretary are: The American Association of Bible Colleges, the Association of Independent Colleges and Schools (predominantly organized to educate students for business careers), the National Association of Trade and Technical Schools, and the National Home Study Council.

When California's Private Postsecondary Education Act was first enacted in 1977, the requirement for accreditation found in subdivision (a) of section 94310 was that an institution, program or specific course of study be accredited—

" . . . by a *national or applicable regional accrediting agency recognized by the United States Department of Health, Education, and Welfare, Office of Education, or by the Committee of Bar Examiners for the State of California.*" (Stats. 1977, ch. 1202, § 2; emphasis added.)

In 1981 the subdivision was amended to specifically include the Western Association of School and Colleges as an accrediting agency for its purposes, and the following was made the basis of accreditation thereunder, *until July 1, 1983*:

"[Accreditation] by a national or applicable regional accrediting agency recognized by the United States Department of Education,<sup>6</sup> *the Western Association of Schools and Colleges*, or by the Committee of Bar Examiners for the State of California." (Emphasis added.)

(Stats. 1981, ch. 791, p. 3070, 3073, § 4; Stats. 1981, ch. 1099, pp. 4290, 4293, § 6.) Thereafter, however, accreditation was to be by -

" . . . *a national accrediting agency recognized by the United States Department of Education, the Western Association of School and Colleges, or by the Committee of Bar Examiners for the State of California.*" (Stats. 1981, ch. 791, p. 3073, 3075, § 5; Stats. 1981, ch. 1099, pp. 4293, 4295, § 7; emphasis added.)

Reference to accreditation by an "applicable regional accrediting agency" was removed, and we are therefore faced with the prospect of divining the Legislature's intent in that regard. (Cf. *Valley Circle Estates v. VTN Consolidated, Inc.* (1983) 33 Cal.3d 604, 608.) By deleting that phrase did the Legislature mean that an accreditation of an institution by one of the other five "regional" accrediting agencies on the Secretary's list (see fn. 4, *ante*) would no longer suffice to provide the necessary accreditation for the purposes of subdivision (a) or would it still be sufficient as coming from an accrediting agency on the Secretary's list of "nationally recognized accrediting agencies"?

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<sup>6</sup> The functions of the federal Department of Health, Education and Welfare were transferred to the new federal Department of Education in 1979. (20 U.S.C.A. §§ 3411, 3441; Pub.L. 96-88, tit. III, § 301.)

When it adopted the Private Postsecondary Education Act in 1977 with section 94310, subdivision (a), speaking in terms of an accreditation by "a national or applicable regional accrediting agency recognized by the United States Department of Health, Education and Welfare," our Legislature surely had in mind the aforementioned list of accrediting agencies which are approved by the Secretary of [Health,] Education [and Welfare]. As we have seen, at the time the Secretary's list categorized (as it continued to categorize) the acceptable institutions on it as "*Regional* Institutional Accrediting Associations/Commissions" and "*National* Institutional and Specialized Accrediting Agencies and Associations." (See fn. 3, *ante*.) Since subdivision (a) spoke in terms of the same dichotomy of national and regional accrediting agencies, and since it referred to the Secretary's list, it is safe to say that when the Legislature adopted subdivision (a) it had the same categorization of particular institutions in mind as appeared on the Secretary's list. (Cf. *No Oil, Inc. v. City of Los Angeles*, *supra*, 13 Cal.3d at 86, fn. 21; *Friends of Mammoth v. Board of Supervisors*, *supra*, 8 Cal.3d at 260-261.) At the time the present six regional associations/commissions were listed on the Secretary's list as "regional institutional accrediting associations/commission" (see fn. 4, *ante*) and we presume that it was they which the California Legislature subsumed as the "applicable regional accrediting association" in section 94310, subdivision (a). The "applicable" regional association which would accredit a school which would offer degrees through a branch in California would have been the regional association (or commission) which accredited the parent.

In 1981, however, our Legislature amended subdivision (a) to specifically include accreditations by WASC for its purposes and to, after a certain period (January 1, 1983), delete the acceptability for them of accreditations by "applicable regional accrediting agencies." (Stats. 1981, ch. 791, at 3070, 3073, § 4, & 3073, 3075, § 5; Stats. 1981, ch. 1099, at 4290, 4293, § 6, & 4293, 4295, § 7.) The very fact that the Legislature enacted the amendment indicates that it intended to change preexisting law by creating new rights or withdrawing existing ones. (*People v. Valentine*, *supra*; *Abbott v. City of San Diego* (1958) 165 Cal.App.2d 511, 524; *Smith v. Richer* (1964) 226 Cal.App.2d 96, 101; *Subsequent Injuries Fund v. Industrial Acc. Com.* (1963) 59 Cal.2d 842, 844.) We must presume that the Legislature meant what it said in enacting the amendment (cf. *Tracy v. Municipal Court* (1978) 22 Cal.3d 760, 764) and given the provenance of the deleted phrase we can only conclude that the Legislature no longer wished for accreditations by "applicable regional accrediting associations" other than WASC, i.e., the other five regional associations/commissions on the Secretary's list, to suffice to satisfy the requirements of section 94310, subdivision (a), after January 1, 1983. Essentially the Legislature substituted, with a one and one-half year prospective overlay, accreditation by WASC for their accreditation as the means of satisfying the requirements of the

subdivision.<sup>7</sup> This meant that an out-of-state institution which wished to offer degrees in California could no longer rely on an accreditation by its applicable regional accrediting association or commission to satisfy the requirements of the subdivision after that time but instead would have to secure accreditation from WASC to do so.

We are aware of the fact that when the Legislature thus amended subdivision (a) of section 94310 in 1981, it also took the occasion to amend several sister provisions of the Private Postsecondary Education Act that also rely on and accept accreditation by "regional" accrediting agencies other than WASC for evidence of acceptable standards of quality in education to reflect the transfer of functions from the former federal Department of Health, Education and Welfare to the new federal Department of Education that had occurred in 1979. (20 U.S.C.A. §§ 3411, 3441; P.L. 96-88, tit. III, § 301.) Yet when the opportunity was before it, the Legislature did *not* use it to amend those sections further to purge them of *their* reliance on accreditations by regional accrediting associations other than WASC. (Stats. 1981, ch. 1099, § 1, p. 4285 (§ 94302(q)); § 8, p. 4296 (§ 94311(c)); § 9, p. 4299 (§ 94312(l)); § 11, p. 4302 (§ 94330(g).) Thus,

—section 94302, subdivision (q), continued and continues to define "accredited" as meaning "that an institution has been recognized or approved as meeting the standards established by *an accrediting agency recognized by the federal Department of Education . . .* [emphasis added.]";

—section 94311, subdivision (c), continued and continues to provide that "no postsecondary educational institution may offer courses of education leading to educational . . . [or] professional objectives unless [it] . . . has accreditation . . . by a national or *applicable regional accrediting agency recognized by the . . . Department of Education . . .* [emphasis added]";

—section 94312, subdivision (l), continued to make and still makes "accreditation by a national or *applicable regional accrediting agency recognized by the*

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<sup>7</sup> There is no question that the Legislature had the power to prescribe that the substitution take effect on a date when legislative enactments ordinarily become effective. (*People v. Sterling Refining Co.* (1927) 86 Cal.App. 558, 569.) It is not uncommon to use a future effective date in drafting a statute or amendment "to inform persons of [its] provisions . . . before it becomes effective in order that they may take steps to protect their rights and discharge their obligations." (2 Sutherland, *Statutory Construction*, § 33.07.) And its use toward that end in the case of this particular substitution explains what would otherwise appear to be statutory surplusage, to wit, the mention of both WASC *and* applicable regional associations on the Secretary's list. Of course in that regard one could also take the technical position that WASC was then considered to be neither a national nor a regional accrediting agency recognized by the Department of Education, it being neither national in scope nor active in three or more states. (See fn. 4, *ante*.)

*United States* Department of Education . . . evidence of compliance with the minimum standards established by the accrediting or licensing agency, and therefore . . . evidence of compliance with the minimum standards specified in the provisions of . . . section [94312, which it must maintain to operate] [emphasis added]";

—section 94330, subdivision (g), continued to exempt and still exempts "institutions accredited by *an agency recognized by* the United States Department of Education [emphasis added]" from filing certain information in order to operate; and

—section 94343 continued and continues to exempt such institutions from the assessment on prepaid tuition for the Student Tuition Recovery Fund.

For purposes of those sister sections then, an accreditation by a "regional" accrediting agency other than WASC continues to be acceptable, and thus it might not appear to make sense to ascribe to the Legislature the intention of first relying on and accepting such accreditations for the purpose of permitting an institution to do business and offer education courses for educational objectives in California ( 94311, subd. (c)) and accepting such accreditations as evidence that an institution has met California's standards necessary for it to operate (§ 94312, subd. (I)), and then not permitting the institution to offer degrees *because it has been so accredited*. But that result is compelled by the plain meaning of the subdivision seen in the light of its historical development (cf. *Great Lakes Properties, Inc. v. City of El Segundo* (1977) 19 Cal.3d 152, 155; *People v. Belleci* (1979) 24 Cal.3d 879, 884; *No Oil, Inc. v. City of Los Angeles*, *supra*, 13 Cal.3d at 86, fn. 21; *Friends of Mammoth v. Board of Supervisors*, *supra*, 8 Cal.3d at 260-261; *People v. Sand*, *supra*, 34 Cal.3d at 570) and we cannot rewrite the statute under the guise of interpretation (cf. *Vallerga v. Dept. Alcoholic Bev. Control* (1959) 53 Cal.2d 313, 318; *Rowan v. City etc. of San Francisco* (1966) 244 Cal.App.2d 308, 314). Again, we must presume that the Legislature, which in 1981 was very concerned with out-of-state institutions offering degrees in California (cf. § 94310, subdiv. (c), (d)), meant what it said when it amended subdivision (a) (cf. *Tracy v. Municipal Ct.*, *supra*, 22 Cal.3d at 764) even though that might not square exactly with its intentions expressed in other sections of the Education Code. Perhaps Justice Kaus was right in his conviction 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. & dis. opn.).)

Accordingly we conclude that an accreditation conferred upon an out-of-state institution by a "regional accrediting association" recognized by the United States Department of Education other than WASC does not satisfy the requirements of section 94310, subdivision (a).

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