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OPINION	:	No. 84-703
	:	
of	:	<u>OCTOBER 11, 1984</u>
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THE HONORABLE RUBEN S. AYALA, MEMBER OF THE CALIFORNIA STATE SENATE, has requested an opinion on the following question:

May funds raised under the New Prison Construction Bond Act of 1984 be used for the renovation or expansion of California Youth Authority facilities to house youthful offenders who are ordered by the court to be transferred to the Youth Authority pursuant to section 1731.5 of the Welfare and Institutions Code.

CONCLUSION

Funds raised under the New Prison Construction Bond Act of 1984 may not be used for the renovation or expansion of California Youth Authority facilities to house youthful offenders who are ordered by the court to be transferred to the Youth Authority pursuant to section 1731.5 of the Welfare and Institutions Code.

ANALYSIS

Prior to its amendment in 1983, section 1731.5 of the Welfare and Institutions Code permitted a court in most cases to commit persons under 21 who were convicted of public offenses directly to the Youth Authority "[a]fter certification to the Governor." Additionally, section 1731.5 permitted the Director of Corrections, with the approval of the Director of the Youth Authority, to transfer persons under 21 to the authority. Prisoners transferred to the Youth Authority were, however, transferred for purposes of housing and participation in Youth Authority programs, and in other respects remained subject to the jurisdiction of the Director of Corrections and the Board of Prison Terms.

In 1983, section 1731.5 was amended to add two sentences to subdivision (c) thereof, the "transfer" subdivision, to also permit a court, at the time of sentencing a youthful offender, to *require* such a transfer. If the Youth Authority refuses such transfer, the youth is to be returned to the court for resentencing.¹

¹ Section 1731.5, as amended by Statutes of 1983, chapter 701, provides in full as follows. The underscored provisions of subdivision (c) were the only substantive changes to the section made in 1983.

§ 1731.5. (a) After certification to the Governor as provided in this article a court may commit to the authority any person convicted of a public offense who comes within paragraphs (1), (2), and (3), or paragraphs (1), (2), and (4), below:

"(1) Is found to be less than 21 years of age at the time of apprehension.

"(2) Is not convicted of first-degree murder, committed when that person was 18 years of age or older, or sentenced to death, imprisonment for life, imprisonment for 90 days or less, or the payment of a fine, or after having been directed to pay a fine, defaults in the payment thereof, and is subject to imprisonment for more than 90 days under the judgment.

"(3) Is not granted probation.

"(4) Was granted probation and probation is revoked and terminated.

"(b) The Youth authority shall accept a person committed to it pursuant to this article if it believes that the person can be materially benefited by its reformatory and educational discipline, and if it has adequate facilities to provide that care.

"(c) Any person under the age of 21 who is not committed to the authority pursuant to this section may be transferred to the authority by the Director of Corrections with the approval of the Director of the Youth Authority. *In sentencing a person under the age of 21, the court may order that the person shall be transferred to the custody of the Youth Authority pursuant to this subdivision. When the court makes such an order and the Youth Authority fails to accept custody of the person, the person shall be returned to court for resentencing.* The transfer shall be solely for the purposes of housing the

The request for our opinion indicates that since this 1983 addition to section 1731.5 of the Welfare and Institutions Code, "the current trend of these commitments is fast filling up the Youth Authority institutions causing them to expand their facilities to accommodate" such inmates.

We are asked whether funds raised pursuant to the Prison Construction Bond Act of 1984 may be used for the renovation or expansion of Youth Authority facilities to finance this required expansion of facilities. We conclude that they may not be so used.

The New Prison Construction Bond Act of 1984 was approved by the voters at the June 5, 1984, primary election. The text of the act is found in sections 7200 through 7211 of the Penal Code. Section 7200 of the act provides that the "chapter shall be known . . . as the New *Prison* Construction Bond Act of 1984." Section 7202 provides for the creation in the state treasury of "the 1984 *Prison* Construction Fund." Section 7203 provides for "[t]he 1984 *Prison* Construction Committee consisting of the Controller, the State Treasurer, and the Director of Finance." (Emphases added.) Section 7204 provides for the creation of a debt in the aggregate of \$300,000,000 "for the purpose of providing the fund to be used for the object and work specified in Section 7206." (See also § 7210.)

Section 7206, the "purpose provision," then states:

"The moneys in the fund shall be used for the construction, renovation, remodeling, and deferred maintenance of *state correctional facilities*." (Emphasis added.)

inmate and allowing participation in the programs available at the institution by the inmate, who, in all other aspects shall be deemed to be committed to the Department of Corrections and shall remain subject to the jurisdiction of the Director of Corrections and the Board of Prison Terms.

"The Director of the Youth Authority shall have the same powers with respect to an inmate transferred pursuant to this subdivision as if the inmate had been committed or transferred to the Youth Authority either under the provisions of the Arnold-Kennick Juvenile Court Law or subdivision (a).

"The duration of the transfer shall extend until the Director of the Youth Authority orders the inmate returned to the Department of Corrections, the inmate is ordered paroled by the Board of Prison Terms, the inmate's term of imprisonment is completed as otherwise provided by law, or the inmate reaches the age of 25, whichever first occurs."

Other provisions of the act relate to the financial details of issuing and servicing the bonds. Finally, section 7211 provides that "[m]oney in the fund may only be expended for projects specified in this chapter pursuant to appropriation by the Legislature."

It is thus seen that the general thrust of the New Prison Construction Bond Act of 1984 is to finance the construction of *prisons*. However, when the "purpose" provision is reached (Pen. Code, § 7206), the term "state correctional facilities" instead of "state prisons" is used. Thus, the question arises whether the use of the more expansive term "correctional facility" was intended to encompass more than facilities within the "state prison system." These could include facilities under the jurisdiction of the Director of the Youth Authority² as well as those under the jurisdiction of the Director of Corrections.³

We conclude that the intent of the 1984 bond act was to provide funds only for the "state prison system," as administered by and under the jurisdiction of the Department of Corrections. We so conclude primarily from the wording of the act itself, which is directed to "state *prisons*." It is virtually axiomatic that a Youth Authority facility is not a prison. Youths are not committed to the authority for punishment. As stated in section 1700 of the Welfare and Institutions Code, the purpose of the Youth Authority Act "is to protect society from the consequences of criminal activity and to such purpose *training and treatment shall be substituted for retributive punishment . . . directed toward the correction and rehabilitation of young persons who have committed public offenses.*" (Emphasis added.)

Secondly, we have reviewed the "Analysis by the Legislative Analyst" and the arguments to the voters both for and against Proposition 17 which were contained in the voters' pamphlet for the June 5, 1984, primary election. That proposition became the

² It is to be noted that the Budget Act of 1984, in Items 5240-301-724 and 5240-311-724, appropriated \$294,843,000 of the authorized \$300,000,000 to the *Department of Corrections*. We are also informed that the balance of \$5,157,000 is needed to augment the planned projects.

The Budget Act could constitute a legislative interpretation that the 1984 bond act is applicable only to the Department of Corrections. (See, e.g., *Brown v. Superior Court* (1982) 33 Cal.3d 242, 251.)

³ Under section 1760 of the Welfare and Institutions Code, the Director of the Youth Authority may establish and operate:

"(c) Places of confinement, educational institutions, hospitals and other *correctional or segregative facilities*, institutions and agencies, for the proper execution of the duties of the Youth Authority." (Emphasis added.)

The director, however, "is limited in . . . expenditures to funds specifically made available for . . . [authority] use." (Welf. & Inst. Code, § 1750.)

"New Prison Construction Bond Act of 1984."⁴ We found nothing in these materials indicating in the slightest that these funds, if approved, could be used for the construction or rehabilitation of Youth Authority facilities.

Why then, does section 7206 of the bond act, in its "purpose clause," refer to "state correctional facilities" instead of "state prisons"? We believe the answer to this can be found in the fact that the Department of Corrections has under its jurisdiction numerous correctional facilities as part of the "state prison system" (see Pen. Code, § 6082⁵) which are not "prisons" in the sense that the prisons at San Quentin or Folsom are prisons. The Department of Corrections institutions are enumerated in section 5003 of the Penal Code, which states:

"The department has jurisdiction over the following prisons *and institutions*:

[followed by such enumerations]." (Emphasis added.)

The enumeration includes not only "prisons," but, e.g., "medical facilities," "training facilities" and "[s]uch other institutions and prison facilities as the Department of Corrections or the Director of Corrections may be authorized by law to establish."⁶ Thus,

⁴ These, of course, may be used to aid in interpreting a measure passed by the voters in resolving ambiguities in the measure. (See, e.g., *People v. Privitera* (1979) 23 Cal.3d 697, 709-710.)

Stating the matter in the affirmative, the arguments to the voters indicate that the funds would be used for facilities under the jurisdiction of the Department of Corrections. Thus the ballot pamphlet points out that the 1984 act was designed to provide for a second phase of prison construction following the 1981 Prison Construction Bond Act, and the analysis by the Legislative Analyst contains numerous references to the Department of Corrections and *its* further need for additional space in "the state prison system."

⁵ Section 6082 of the Penal Code provides:

"Reference in this title and in Title 5 of this part to prisons refer to all facilities, camps, hospitals and institutions for the confinement, treatment, employment, training and discipline of persons in the legal custody of the Department of Corrections."

⁶ Section 5003 of the Penal Code provides in full:

"The department has jurisdiction over the following prisons *and institutions*:

- (a) The California State Prison at San Quentin.
- (b) The California State Prison at Folsom.
- (c) The California Institution for Men.
- (d) The California Institution for Women.

in our view, the more expansive term "correctional facilities" was used in section 7206 of the bond act to ensure that all such correctional facilities under the Department of Corrections fell within the scope of the bond act; it was not expanded to include Youth Authority correctional facilities.

Insofar as it might be urged that by placing numerous persons initially committed to the Department of Corrections in a Youth Authority facility, the facility becomes a prison, we refer to the case *Ex Parte Nichols* (1896) 110 Cal. 651. In that case this very point was urged with respect to youths transferred from the state prison system to Preston School of Industry.⁷ As to that suggestion, the court cogently stated:

"... Taking a boy *out* of the state prison and putting him in the school, with the 'benefits and immunities' of its other inmates, is certainly not turning the reform school into a state prison."

(e) The Deuel Vocational Institution.

(f) The California Medical Facility.

(g) The Correctional Training Facility.

(h) The California Men's Colony.

(i) The California Correctional Institution at Tehachapi.

(j) The California Rehabilitation Center.

(k) The California Correctional Center at Susanville.

(l) The Sierra Conservation Center.

(m) The Southern Conservation Center.

(n) The North Coast Conservation Center.

(o) The Medical Correctional Institution.

(p) The Special Security Facility.

(q) Such other institutions and prison facilities as the Department of Corrections or the Director of Corrections may be authorized by law to establish." (Emphasis added.)

⁷ The special act providing for the Preston School of Industry, provided in section 20:

"Sec. 20. Any boy under the age of eighteen years, who is undergoing sentence in any State Prison in this State (except such as are undergoing a life sentence), and who shall be deemed a fit subject for training in the said school, may, upon recommendation of the State Board of Prison Directors, with the approval of the Governor, be transferred to said school for the unexpired period of his sentence, and when honorably discharged from said school, as hereinbefore provided, shall be entitled to such benefits and immunities as are provided for the other inmates of the institution." (Stats. 1889, ch. 103, p. 105.)

Likewise, transferring youthful offenders to Youth Authority facilities pursuant to section 1731.5 of the Welfare and Institutions Code would not, in our view, transmute a facility which is clearly not a state prison into a state prison for purposes of the 1984 bond act.⁸

For the reasons stated above, it is concluded that funds raised under the New Prison Construction Bond Act of 1984 may not be used for the renovation or expansion of California Youth Authority facilities even if the purpose of such renovation or expansion is to house youthful offenders transferred to the Youth Authority from the state penal system pursuant to section 1731.5 of the Welfare and Institutions Code.

⁸ By the same token, it has been held where the *place* of confinement was the controlling factor, and not the purpose of the confinement, that an individual is still in *prison* despite the fact that he may have been transferred there from the Youth Authority. (See, e.g., *In re Branch* (1969) 70 Cal.2d 200; *People v. Petterson* (1968) 268 Cal.App.2d 263; compare, e.g., *In re De La O* (1963) 59 Cal.2d 128.)