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May 23, 2001

Paul G. Smith, Esq.
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California State Library
Library Courts Building
P.O. Box 942837
Sacramento, CA 94237-0001

RE: Regulations Regarding Use of Applicant's Facilities

Dear Mr. Smith:

This letter provides an informal opinion regarding whether or not the California Public Library Construction and Renovation Board (Board) overseeing the California Reading and Literacy Improvement and Public Library Construction and Renovation Bond Act of 2000 (Library Bond Act or Act) can enact regulations requiring a recipient of bond funds to commit to the operation of a public library facility.

ISSUE PRESENTED

The State Librarian has posed the following question. "Is there a firm basis in the Library Bond Act (see Education Code sections 19998 (a) (7) and 19999 (a)) to require in regulations that grant applicants commit to the operation of the library constructed and/or remodeled with Library Bond Act funds?"

SHORT ANSWER

Yes, the Board has the authority to enact regulations requiring grant applicants to make a commitment that the facility be used as a public library consistent with the Library Bond Act.

BACKGROUND/ ANALYSIS

The Board's Issuance of Regulations in General

Education Code section 19992 provides that the Board shall adopt rules, regulations, and policies for the implementation of the Library Bond Act. State law provides that when a state agency has the authority to adopt regulations to implement the provisions of the statute that such regulations must be consistent, and not in conflict with, the statute and reasonably necessary to effectuate the purpose of the statute.[1] The Supreme Court has ruled that in reviewing the legality of a regulation, the judicial function is limited to determining whether the regulation (1) is within the scope of the authority conferred to the regulator, and (2) is reasonably necessary to effectuate the purpose of the statute. The Supreme Court has also stated that these issues "do not present a matter for the independent judgment of an appellate tribunal; rather, both come to this court freighted with a strong presumption of regularity...."[2] As to the first prong, courts do not defer to the agency to determine whether a regulation lies within the scope of the authority delegated by the Legislature but instead use a standard of "respectful nondeference."[3] However, as to the second prong, the Supreme Court has stated that judicial inquiry is confined to "the question whether the classification is arbitrary, capricious or [without] reasonable or rational basis."[4]

Thus, when reviewing the legality of any final regulation, two issues must be addressed. The first issue is whether the Board has authority to issue such regulations. The second issue is whether the regulation, as written, is reasonably necessary to effectuate the law; i.e., are the regulations rational? This memorandum only addresses the first and more stringent prong, as no final language has yet been proposed.

2000 Library Bond Act Requirements

The Library Bond Act requires that a facility for which grant money was received must be dedicated to public library direct service use for a period of not less than 20 years following completion of the project.[5] The Act further provides that if the building ceases to be used in such

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[1] Gov. Code § 11342.2, and see also, *Mooney* v. *Pickett* (1971) 4 Cal.3d 669, 679.

[2] *Yamaha* v. *State Bd. of Equalization* (1998) 19 Cal.4th 1, 11. (citing to *Wallace Berrie & Co.* v. *State Bd. of Equalization* (1985) 40 Cal.3d 60 internal citations removed.)

[3] *Yamaha* v. *State Bd. of Equalization*, *supra*, 19 Cal.4th 1 fn. 4 at 11.

[4] *Yamaha*, *supra*, at 11 citing *Culligan Water Conditioning* v. *State Bd. of Equalization* (1976) 17 Cal.3d 86 internal quotations removed.

[5] Gov. Code § 19999.

a manner the board may recover monies in a suit filed in superior court.[6] Additionally, the Act requires that funds that are received by a recipient be expended only in connection with public library facilities.[7] Lastly, applications are required to be for library facility projects.[8]

Analysis

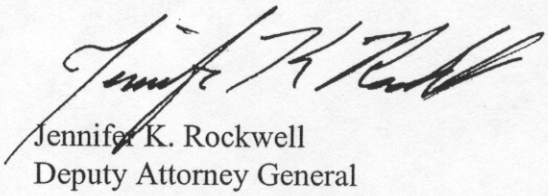
It is clear from the statutes that Library Bond Act bond funds are only to be used in connection with public library facilities and that these facilities are expected to be used for public library purposes for not less than 20 years after the completion of the project. The Act also grants explicit authority to the Board to enact regulations to implement the statute. Thus, the applicants are already bound by statute to use the facility for library purposes for not less than 20 years after the project is completed. Regulations that simply echo that requirement are consistent with the statute and would, therefore, be lawful.

CONCLUSION

The Board has the power to enact regulations in compliance with the Library Bond Act. Therefore, the Board may require applicants to operate a library facility as is already required by statute.

If you have any questions, or would like to discuss this further, please call me at (916) 445-6998.

Sincerely,



Jennifer K. Rockwell
Deputy Attorney General

For BILL LOCKYER
Attorney General

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[6] Gov. Code §19999(c).

[7] Gov. Code § 19989.

[8] Gov. Code § 19993(a).