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OFFICE OF THE ATTORNEY GENERAL
State of California

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OPINION	:	No. 81-420
of	:	AUGUST 12, 1981
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	:	

THE HONORABLE STEPHEN W. HACKETT, COUNTY COUNSEL,
COUNTY OF NAPA, has requested an opinion on the following question:

What statutory authority does a county board of supervisors have to disapprove or modify the estimated budget submitted to it by a local agency formation commission?

CONCLUSION

A county board of supervisors has no statutory authority to disapprove or modify the estimated budget submitted to it by a local agency formation commission.

ANALYSIS

The Knox-Nisbet Act (Gov. Code, § 54773 *et seq.*)¹ created the Local Agency Formation Commission (“LAFCO”) in each county. The purpose of LAFCO is to encourage “the orderly formation and development of local governmental agencies based upon local conditions and circumstances.” (§ 54774.) “In short, LAFCO is the ‘watchdog’ the Legislature established to guard against the wasteful duplication of services that results from indiscriminate formation of new local agencies or haphazard annexation of territory to existing local agencies.” (*City of Ceres v. City of Modesto* (1969) 274 Cal. App. 2d 545, 553.) This office has concluded in the past that LAFCO is not a county agency, but was created by the state for the purpose of executing a part of the functions of state government. (45 Ops. Cal. Atty. Gen. 82 (1965).) Thus, LAFCO is an agency independent of the county government.

Section 54776 provides:

“The board of supervisors shall furnish the Commission with necessary quarters, equipment and supplies, and the usual and necessary operating expenses incurred by the Commission shall be a county charge.”

Section 54776.1 provides:

“On or before the 10th day of June the Commission shall prepare and transmit to the board of supervisors an estimate of the amount of money needed for the purposes prescribed in section 54776 during the following: fiscal year. *The board of supervisors shall provide for the use of the Commission during said fiscal year the amount of money so fixed by the Commission.* The county auditor shall audit and allow or reject all claims for expenditures incurred pursuant to this chapter in lieu of, and with the same effect as, allowance or rejection by the board of supervisors.” (Emphasis added.)

The question is whether, under these sections, the board of supervisors has authority to modify the estimate of expenses submitted by LAFCO.

In other contexts, a direction of the type appearing in section 54776 is a mandatory duty (*County of Los Angeles v. Bryam* (1951) 36 Cal. 2d 694, 699), but the sufficiency of the quarters and the determination of the “necessary” supplies are

¹All unidentified section references are to the Government Code.

discretionary with the board of supervisors. (*ibid.*; *Lavine v. Jessup* (1958) 161 Cal. App. 2d 59, 65–67.) The courts will not interfere and tell the board of supervisors how to exercise its discretion unless there has been an abuse of that discretion. (*Board of Law Library Trustees v. Board of Supervisors* (1893) 99 Cal. 571, 573.) However, these principles are founded upon state law which leaves to the board the determination of what is suitable (*County of Los Angeles v. Bryam, supra*, 36 Cal. 2d at p. 99; *Simpson v. Hite* (1950) 36 Cal. 2d 125, tion the board is presumed to have regularly performed its official duty. (*Lavine v. Jessup, supra*, 161 Cal. App. 2d at p. 67; Evid. Code, § 664.)

The board of supervisors was not given this same authority by the Legislature in regard to LAFCO. The Legislature expressly provided in the second sentence of section 54776.1 that that board has a mandatory duty (Gov. Code, 514) to provide the amount of money fixed by LAFCO in its budget estimate. The effect of this provision is to withdraw from the board of supervisors the power to determine what is necessary and suitable in regard to LAFCO and to vest that discretion in LAFCO itself. Thus LAFCO has been substituted for the board of supervisors in making the determination of what is necessary and suitable for LAFCO purposes.²

The same legal principles apply to LAFCO in making this determination as applied to the board of supervisors when its power has been litigated. The courts will not tell LAFCO how to exercise its discretion unless there has been an abuse of that discretion. Any party challenging a LAFCO determination has the burden of overcoming the presumption that official duties have been regularly performed.

One can conceive of a situation where a LAFCO acts so arbitrarily or capriciously in making its estimate of the amount of money needed, that the estimate abuses the discretion given LAFCO. In our opinion, in such a case, if the board of supervisors could clearly demonstrate that the estimate was in excess of the amount for necessary expenses as specified by section 54776, then a court would sustain the board's action in refusing to appropriate the amount of money requested. In any court action challenging the board's reduction, the estimate of LAFCO would be presumed correct and the board would have the burden of proving that the amount deducted from LAFCOs estimate is other than

²This intent may be illustrated by the legislative history of AB 1886 introduced in the 1977–1978 session of the Legislature. This bill provided that the board of supervisors by a four-fifths vote may disapprove a LAFCO budget increase over the prior year's budget. The bill died because it was not passed within the time frame necessary in a biennial session. (See Cal. Const., art. IV, § 10.)

for necessary quarters, equipment, supplies, and usual and necessary operating expenses of LAFCO.³

³Section 54776.1 also gives the auditor duties identical to the auditor's duties under section 29741 with regard to expenditures. In this opinion, we are concerned only with the appropriation function, not the expenditure function.