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| OPINION | : | No. 83-1110 |
| of | : | <u>MAY 23, 1984</u> |
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THE HONORABLE CLAIR A. CARLSON, COUNTY COUNSEL,
COUNTY OF SANTA CRUZ, requests an opinion on the following question:

Does Government Code section 54776.1(b), which requires a county board of supervisors to fund a Local Agency Formation Commission ("LAFCO") a budget based on "the amount provided in the prior fiscal year", refer to the amount that had been appropriated in the county budget for LAFCO or the amount that LAFCO actually expended during that period?

CONCLUSION

The provision of Government Code section 54776.1(b) that requires a county board of supervisors to fund a LAFCO a budget based on "the amount provided in the prior fiscal year" refers to the amount that board had appropriated for the LAFCO in the county budget for that year.

ANALYSIS

This opinion discusses the meaning of one of the three amounts described in Government Code section 54776.1 with which a county board of supervisors must fund the county Local Agency Formation Commission.

Local Agency Formation Commissions ("LAFCO's") are established in each county pursuant to the Knox-Nisbet Act (Gov. Code, tit. 5, div. 2, pt. 1, ch. 6.6, § 54773 et seq.) to serve as "watchdogs" over "the orderly formation and development of local governmental agencies . . ." (§ 54774) and they thus, among other things, "guard against the wasteful duplication of services that results from indiscriminate formation of new local agencies or haphazard annexation of territory to existing [ones]." (*City of Ceres v. City of Modesto* (1969) 274 Cal.App.2d 545, 553; see also 64 Ops.Cal.Atty.Gen. 633 (1981); 63 Ops.Cal.Atty.Gen. 748 (1980); 63 Ops.Cal.Atty.Gen. 758 (1980); 45 Ops.Cal.Atty.Gen. 82 (1965).) A LAFCO is not a county agency; it executes a part of the functions of state government and is independent of the county. (64 Ops.Cal.Atty.Gen., *supra*, at 633; 45 Ops.Cal.Atty.Gen., *supra*, at 84.) Nevertheless the cost of its operation is a county charge, Government Code section 54776 so providing:

"The board of supervisors shall, in conformance with Section 54776.1 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, the concern of this opinion, then provides for the mechanism of that funding. After amendment in 1982, the section reads as follows:

"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 by Section 54776 during the following fiscal year. The board of supervisors shall provide for the use of the commission during such fiscal year not less than the amount of money equal to any of the following:

"(a) The amount fixed by the commission.

"(b) *The amount provided in the prior fiscal year* increased by the same percentage as the appropriations limit of the county for such fiscal year will be increased from the prior fiscal year.

"(c) The amount determined in (b) plus any additional amount the board deems necessary.

"The county auditor shall audit and allow or reject all claims for expenditures for county charges incurred pursuant to the provisions of this chapter in lieu of, and with the same effect as, allowance or rejection of claims by the board of supervisors." (Emphasis added.)

(§ 54776.1; as amended by Stats. 1982, ch. 436, § 2, p. 2579.)

We are asked the meaning of the second described possible minimum amount for LAFCO funding and particularly whether the phrase "*the amount provided* in the prior fiscal year" refers to the amount the county had budgeted for LAFCO use that year or the amount LAFCO actually then expended. We will conclude that it refers to the former.

Several rules of statutory construction guide us in resolving the issue. First and foremost of course is that we must construe section 54776.1(b) in a manner that is consistent with the Legislature's intention in enacting it, i.e., the legislative purpose for amending the section in 1982. (Cf. *Great Lakes Properties, Inc. v. City of El Segundo* (1977) 19 Cal.3d 152, 163; *Moyer v. Workmen's Comp. Appeals Bd.* (1973) 10 Cal.3d 222, 230; *Select Base Materials v. Board of Equalization* (1959) 51 Cal.2d 640, 645.) That, fortunately, is easily discerned from its history (cf. *California Mfrs. Assn. v. Public Utilities Com.* (1979) 24 Cal.3d 836, 844; *County of San Diego v. Miltoz* (1953) 119 Cal.App.2d Supp. 871, 880) as being an attempt to strike a fair balance between maintaining the independence of LAFCO's to determine their own basic needs and providing county boards of supervisors some degree of flexibility in controlling LAFCO budgets. (See, e.g., Senate Committee On Local Government, Staff Analysis for AB 3432; Senate Democratic Caucus, Precis of AB 3432; Office of Planning and Research, Filed Bill Report on AB 3432 (p. 2); Letter, League of California Cities to Gov. Edmund G. Brown, Jr., dated July 9, 1982, supporting AB 3432; Letter, California Association of LAFCO's to Gov. Edmund G. Brown, Jr., dated June 28, 1982, supporting AB 3432; Letter, Hon. Robert C. Frazee (author of AB 3432) to Gov. Edmund G. Brown, Jr., dated June 30, 1982, recommending signature.)

Prior to its amendment in 1982 (Stats. 1982, ch. 436, *supra*), section 54776.1 simply provided:

"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.)

Upon that language, and that of companion section 54776 as it then read¹, we concluded in 64 Ops.Cal.Atty.Gen. 633 (1981) that a county board of supervisors had *no* statutory authority to disapprove or modify the estimated budget submitted to it by a Local Agency Formation Commission. (64 Ops.Cal.Atty.Gen. 633, *supra*.) The basis for that conclusion was that while section 54776 provided that a board of supervisors furnish the LAFCO with "usual and necessary operating expenses", the Legislature, in mandating the board to provide "the amount of money fixed by LAFCO in its budget estimate", "withdrew from the board of supervisors the power to determine what is necessary and suitable . . . for LAFCO purposes" and vested the determination of that amount in the LAFCO itself. (*Id.*, at 634.)

Thereupon, in response to our opinion (see, e.g., Senate Committee on Local Government, Staff Analysis of AB 3432; Office of Planning & Research, Filed Bill Report on AB 3432; cf., *California Correctional Officers' Assn. v. Board of Administration* (1978) 76 Cal.App.3d 786, 794), the Legislature amended those sections to their present form to provide a county board of supervisors *some* control over a LAFCO budget. (Stats. 1982, ch. 436, *supra*.) Whereas before, absent an unreasonable fixing of its estimated needs by a LAFCO, a county board of supervisors had *no* discretion whatsoever to determine the amount it was to fund the LAFCO as necessary and suitable for its purposes for the fiscal year (64 Ops.Cal.Atty.Gen., *supra*, at 634-635), now at least the board would have a statutory basis to have *some* say in that regard. Thus, under the present statutory scheme the board can determine the LAFCO budget as long as that "provide[s] for the use of the commission" an amount at least equal to the least of the three statutory minima: (a) the amount asked by the LAFCO; (b) the amount provided [the LAFCO] in the prior fiscal year" as adjusted; or (c) the latter plus any additional amount the board deems necessary. (54776.1.) In short LAFCO's estimate of its fiscal needs is no longer the sole determinant of its budgeted resources, unless of course its determination, as alternative (a), would constitute the least of those statutory minimum amounts that a board of supervisors must provide it under the section.

¹ At the time, section 54776 provided:

"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."

It too was amended in 1982. (Stats. 1982, ch. 436, § 1, p. 2579.)

Since the minimum amount of alternative (c) will perforce always be greater than the minimum amount of alternative (b), it becomes crucial to determine what the "bottom" amount founded by the latter alternative would be. Turning to the wording of concern (*People v. Belleci* (1979) 24 Cal.3d 879, 884; *Moyer v. Workmen's Comp. Appeals Bd.*, *supra*, 10 Cal.3d at 230; *Steilberg v. Lackner* (1977) 69 Cal.App.3d 780, 785) we see that with respect to the second possibility of minimum LAFCO funding, a board of supervisors is required to:

" . . . *provide for the use of the commission* during such fiscal year not less than the amount of money equal to . . .

"(b) *The amount provided in the prior fiscal year* increased by the same percentage as the appropriations limit of the county for such fiscal year will be increased from the prior fiscal year."

Two things are noteworthy with respect to the phrase "the amount provided in the prior fiscal year." One, the word "provide[d]" is used in it for the second time in the section, and two, whatever the meaning of the phrase itself, it is used in conjunction with another whereby the amount it sets is modified by a proportional increase in the appropriations limit of the county for the fiscal year. Both aspects are significant in discerning its meaning.

As for the repetition of the word "provide", we may take it as a reasonable assumption that the Legislature did not intend to use that significant term in two different senses in the same statute. (*Rosemary Properties, Inc. v. McColgan* (1947) 29 Cal.2d 677, 686; *Santa Clara County Dist. Attorney Investigators Assn. v. County of Santa Clara* (1975) 51 Cal.App.3d 255, 263, fn. 4; *Corey v. Knight* (1957) 150 Cal.App.2d 671, 680; *Coleman v. City of Oakland* (1930) 110 Cal.App. 715, 719.) Thus the way the word "provide" is used the first time in section 54776.1 can give us a clue as to its intended meaning the second time it is used. The first use of the word comes in the phrase "[t]he board of supervisors *shall provide for the use of the commission* during such [i.e., the following] fiscal year not less than the amount of money equal to . . . the following. . . ." There, it is clearly used in the context of the provision of monetary support to an entity by a local governmental agency. In California that is accomplished through the budgetary process, whereby a "comprehensive plan of financial operations embodying *an estimate* of proposed requirements for expenditure [and] appropriations . . . for a given period and the means of financing such requirements" is adopted. (§ 29009, "budget" defined; cf. § 29010, ("budget document").) On or before the tenth of June of each year, each "budget unit" (§ 29011) of local government files an "itemized estimate of anticipated revenues and proposed expenditures" (§ 29040), which are all then tabulated (§ 29060), reviewed (§ 29061) and submitted to the county board of supervisors (§ 29062), which, before July

20 of each year, considers it and, after making revisions, reductions or additions that it seems advisable (§ 29063), approves the tabulation by formal action, upon which it constitutes the *proposed budget* for the period to which it is to apply (§ 29064). The proposed budget documents becomes available for public (taxpayer) review and comment on or before August 10 (§§ 29065, 29066) and a public hearing is held on it on or before August 20. (§§ 29080-29083.) At the conclusion of the hearing (but not later than August 30), after making any revision of, deductions from, or increases or additions to, the proposed budget it deems advisable, the board of supervisors, by resolution, adopts the budget as finally determined. (§ 29088.) That *resolution of adoption* specifies the appropriations for each "budget unit" (§ 29090), and the several amounts of proposed expenditures specified in the resolution "*are thereby appropriated for the various budget units of the county . . . for the period to which the budget is to apply.*" (§ 29092.) In other words, the budget resolution is an authorization by the board of supervisors for its "budget units" to make expenditures and to incur obligations in specific for specific purposes during the fiscal year. (§ 29001 ("appropriations" defined) cf. § 29001.5, "expenditures" defined.) In budgetary parlance then, it is the *appropriation of monies* in a county budget by which a county *provides funds* for the use of the entities for which it is obligated to do so.

Section 54776.1 follows this general budgetary scheme. It requires a LAFCO, on or before June 10 to prepare and transmit to the county board of supervisors "an estimate of the amount of money needed for [its] purposes . . . during the following fiscal year." (Compare § 54776.1 with § 29040.) The board is then required to "*provide for the use of the commission* during such fiscal year" an amount not less than the least of the statutory minima. Given the overall budgetary process of which it is a part, that direction can only be interpreted, following budgetary parlance, as a requirement for the board to make at least one of those amounts available for LAFCO support during the year *through an appropriation in its budget resolution*. Certainly following budgetary procedure, the word can only be seen as referring to an activity which takes place at a specific point in time (to wit, the adoption of the county's budget resolution) and one which moreover takes place *before* the expenditures authorized thereby are made. (Accord, Webster's Third New Internat. Dict. (1971 ed.) at p. 1827: "provide" = to supply what is needed for sustenance or support; to get ready beforehand.) The word "provide" then, when used the first time in section 54776.1, refers to the appropriation of monies in a county's budget to a LAFCO for it to make expenditures and incur obligations during the budget's fiscal year (cf. §§ 29001, 29090, 29092), and not to the subsequent expenditure of those funds by the LAFCO from the county fisc (§ 29001.5).

The word "provide" appears in section 54776.1 again in the phrase in question ("the amount provided in the prior fiscal year") and we assume the Legislature used it in the same sense as before (*Rosemary Properties, Inc. v. McColgan, supra*, 29

Cal.2d 677; *Santa Clara County Dist. Attorney Investigators Assn. v. County of Santa Clara, supra*, 51 Cal.App.3d 255); thus, again it would mean the appropriations made by a county board of supervisors in its budget resolution and not the expenditures made during the year pursuant thereto. Accordingly, the phrase "the amount provided in the prior fiscal year" as used in section 54776.1(b) would refer to the amount of money a county board of supervisors had appropriated to LAFCO for its purposes in the county's budget resolution for that prior year and not the actual amount of money LAFCO might have actually expended during it.

Any doubt as to the correctness of that interpretation or the phrase can be dispelled by viewing the setting in which it is found. Looking at section 54776.1(b) in its entirety we see that it provides for two factors in the equation for calculating the possible minimum amount of LAFCO funding under it -- to wit:

(" . . . the amount provided in the prior fiscal year")

X

(. . . the same % as the appropriation limit of the county for such fiscal year will be increased from the prior fiscal year")

Under the doctrine of *noscitur a sociis*, doubt, if such remain, as to the meaning of the first factor "may be removed and [its] true meaning ascertained by reference to the meaning of [the other factor] associated [with it]." (58 Cal.Jur.3d, *Statutes*, § 31, footnoted citations omitted; see also *Bourland v. Hildreth* (1864) 26 Cal. 161, 182.) We therefore look to the second factor in the equation of section 54776.1 (i.e., the percentage increase of the county's appropriation limit) to shed further light on the meaning of the first (i.e., the meaning of "amount provided in the prior fiscal year").

That particular way of adjusting the possible minimum amount to be provided a LAFCO from its prior year's position was deliberately chosen by the Legislature to equitably account for such factors as population growth and inflation, which would warrant an increase over the amount provided the year before.² The "appropriations limit"

² Compare AB 3432 as introduced on March 12, 1982 (" . . . not less than the amount of money provided to the commission during the previous fiscal year. The board of supervisors, may, in its discretion, provide any additional amounts it deems necessary for the operation of the commission based on, among other factors, inflation and increases in population") with version as amended in the Assembly on April 14, 1982 (" . . . not less than the amount of money equal to . . . (b) the amount provided in the prior fiscal year increased by the same percentage as the appropriations limit of the county for such fiscal year will be increased from the prior fiscal year. . .").

of which it speaks is that imposed on county spending by article XIII B of the California Constitution. Briefly stated, pursuant to section 1 of that article, the appropriation limit for any particular fiscal year placed on county (i.e., what it can "spend") equals its "limit" for the prior year adjusted for changes in the cost of living and population. (65 Ops.Cal.Atty.Gen. 151, 153 (1982).) By essentially incorporating that concept into the equation for calculating possible statutory minimum amount a LAFCO must receive under section 54776.1(b), the Legislature provided a definite and certain reference for ascertaining the needed adjustment to the amount the county provided the LAFCO the year before. (See fn. 2, *ante*.) And by predicating that increase on the same percentage that the county's spending limit would increase, the expense to the county of funding a LAFCO would not vary proportionally from year to year.

Under the formula of article XIII B however, the appropriations limit imposed upon a county's spending is *not* predicated on the amount of its prior year appropriations or perforce on the actual expenditures made pursuant to them. The reason is obvious: it would hardly limit government spending if governmental entities were encouraged, if not forced, to appropriate funds to their yearly appropriations limit and spend the budgeted amounts in their entirety in order to secure favorable limits the following year. Thus under the article, "the limit imposed is based on the *limit* for the prior year and not the actual level of appropriations [or expenditures therefrom] made for that year if lower. [Citation.] 'Thus even if the . . . [local government] appropriations in a given year were held below the level permitted by [1], the appropriation limit for the following year would not be any lower as a result.' [Citation.]" (65 Ops.Cal.Atty.Gen., *supra*, at 153.)

The Legislature has deliberately made the mechanism for adjusting the county's appropriation limit an integral part of the calculus of section 54776.1(b). That mechanism, which decidedly does *not* depend on expenditures the year before, provides ready certainty in determining the necessary increase on spending limits from the year before. We do not believe the Legislature would have incorporated the beauty of its certitude and salutary effect on government spending in one of the factors of the equation of section 54776.1(b) and not in the other on which it works; that would force a LAFCO to spend to the hilt, lest it be penalized the next year for not so doing, and, by introducing a fortuitous variable into the equation for determining the minimum amount under section 54776.1(b), would undermine the objective certainty the other factor of the equation provides. Thus, from the associated formula of section 54776.1(b), we do not believe the Legislature ever intended the calculation of "the amount provided in the prior fiscal year" should depend upon what a particular LAFCO might actually have spent the year before.

Accordingly, we conclude that the minimum alternative amount described in section 54776.1(b) which a county board of supervisors must provide a LAFCO for its use during a fiscal year is based on the amount that the board had appropriated for LAFCO in

its budget for the prior fiscal year and not the amount that the LAFCO may actually have spent during that time.
