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February 14, 2003

TO: LeBaron Woodyard  
Dean, Academic Affairs and Instructional Resources

FROM: Renée Brouillette *RB*  
Assistant General Counsel

RE: Joint Powers Authority  
**Legal Opinion O 03-04**

Issue

You have asked whether the Southern California Consortium for Community College Television, a Joint Powers Authority (Consortium JPA) of 26 California community college districts, is eligible to apply directly for Proposition 98 grant funds.

Analysis

The Consortium JPA was formed pursuant to The Joint Exercise of Powers Act of Government Code sections 6500<sup>1</sup> et seq., to "develop and provide educational courseware and instructional materials in an economical manner, so that services may be provided to each Member District at less cost than if such services were provided separately." (Consortium JPA, Item 3. Purpose of Agreement (May 9, 2002).)

Sections 6500 et seq. authorize joint powers agreements between two or more public agencies to establish a separate entity for the exercise of powers authorized by law. In that regard, section 6502 provides that pursuant to such an agreement, public agencies may jointly exercise any power that they have individually. Section 6507 provides that the agency created by a joint powers agreement is a public entity separate from the parties to the joint powers authority. Section 6508 enumerates the powers of such public entity, which includes the powers specified in the joint powers agreement and other powers, including, but not limited to the power to make and enter into contracts. Grants issued by the state have long been held to be contracts within the meaning of the Contract Clause of the United States Constitution. (See, *Dartmouth College v. Woodward* (1819) 17 U.S. 518; (58 Ops.Cal.Atty.Gen. 586, 589 (1975).) Therefore the power to

<sup>1</sup> All citations in the 6500 series are to the Government Code.

enter into contracts under the joint powers agreement should be viewed as the same as the power to compete for and enter into grants.

The participating districts in the Consortium JPA may "contract in effect to delegate to one of their number [or a separate agency created by the agreement] the exercise of a power or the performance of an act in behalf of all of them, and which each independently could have exercised or performed." (*The City of Oakland v. Williams* (1940) 15 Cal.2d 542, 549.) The contracting power designated in the Consortium JPA agreement is a California non-profit corporation known as INTELECOM Intelligent Telecommunications and the executive committee of the Consortium serves as the Board of Directors of INTELECOM Intelligent Telecommunications. (Consortium JPA, Item 10. Designated Agency (May 9, 2002).)

In *The City of Oakland v. Williams* the Supreme Court observed that a joint powers agreement "grants no new powers but merely sets up a new procedure for the exercise of existing powers." (*Ibid.*; see also 71 Ops.Cal.Atty.Gen. 266, 267 (1988).) Furthermore, section 6509 provides that the common power "is subject to the restrictions upon the manner of exercising the power of one or more of the contracting parties, which party shall be designated by the agreement."

Section 8 of article XVI of the California Constitution, which was enacted in 1988 by Proposition 98, establishes a minimum funding level for "school districts and community college districts." While the amount of the guarantee varies based on a number of factors, it is clear that Proposition 98 funds are constitutionally earmarked for school districts and community college districts. Thus, community college districts have the power to apply for and/or receive grants and contracts funded with Proposition 98 monies. Likewise under the Joint Exercise of Powers Act of sections 6500 et seq., the Consortium JPA, consisting of 26 community college districts, each of which have the individual contracting power to apply for Proposition 98 grant funds offered by the Chancellor's Office, may exercise that power as a separate public entity and apply for said grant funds.

This is not to say that the result would be the same in all instances. Joint powers agreements may take many forms and our analysis here is limited to those situations where the JPA consists solely of community college districts.

Furthermore, while it is constitutionally permissible to award Proposition 98 funds to a JPA consisting exclusively of community college districts, we do not intend to suggest that the Chancellor's Office is compelled to accept such applications. Each funding source may have its own unique eligibility criteria and the Chancellor's Office may also have discretion to restrict eligibility in some circumstances.<sup>2</sup> Such considerations are unaffected by this analysis.

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<sup>2</sup> We understand that in this case the JPA is interested in applying for funds from the Telecommunications and Technology Infrastructure program. Our review of the language of Provision 21 of Item 6870-101-0001 of the Budget Act of 2003 (Stats. 2002, ch. 379), concerning Schedule (18) of that Item, which funds Telecommunications and Technology Infrastructure grants, does not reveal any requirement which would preclude competition by a JPA consisting exclusively of community college districts. However, the Legislature has the power to determine how Proposition 98 funds are used and could structure any program so as to either permit or restrict distribution of funds to a JPA. (See *California Teachers Association v. Hayes* (1992) 5 Cal.App.4th 1513.)

Conclusion

The Chancellor's Office may permit a JPA consisting exclusively of community college districts to compete for or receive grants funded with monies which are encompassed within the Proposition 98 funding guarantee of section 8 of article XVI of the California Constitution.

RJB:sj

cc: Ralph Black  
Dona Boatright  
Cristina Mora

O 03-04