

DATE: September 13, 1989

TO: M. Blakely, Lieutenant, Special Projects via  
Bob Burgence, Chief of Police, San Diego  
Police Department

FROM: City Attorney

SUBJECT: Applicability of California Code of  
Regulations, Titles 15 and 24

In your memorandum dated September 1, 1989, you state that "the San Diego Police Department is exploring the possibility of contracting with a private entity to operate a temporary misdemeanor pre-arraignment facility." You then ask "whether or not there are any legal ramifications in failing to comply with the minimum standards identified in Titles 15 and 24 of the California Code of Regulations in the design, construction and operation of a temporary misdemeanor pre-arraignment facility." The focus of your inquiry seems to center around the issue of whether or not The City of San Diego would be outside the scope of the statutory provisions governing the construction and operation of local detention facilities.

The short answer to your question is that the controlling statutes do not establish an exemption expressly or by implication. The statutory language in the California Penal Code dictates that the provisions pertaining to the construction and operation of a local detention facility center around the nature of the facility, and not the governmental entity which constructs and/or operates it. However, there is a subtle distinction between being within the scope of a statute and being mandated to act in accordance with its provisions.

Prior to analyzing the substantive issues, it should be noted that the San Diego Police Department is not authorized to contract with a private entity to operate a local detention facility. Any such contract would be executed by the City Manager. Charter of The City of San Diego, section 28.

The minimum standards for the construction and operation of a local detention facility are located in Articles 1 through 14 of Subchapter 4, Title 15 of the California Code of Regulations. The authority to create this body of regulations is derived from the California Penal Code.

Specifically, Penal Code section 6030 states:

(a) The Board of Corrections shall establish minimum standards for local detention facilities by July 1, 1972. The Board of Corrections shall review such

standards biennially and make any appropriate revisions.

(b) The standards shall include, but not be limited to, the following: health and sanitary conditions, fire and life safety, security, rehabilitation programs, recreation, treatment of persons confined in local detention facilities, and personnel training.

Nowhere in Penal Code section 6030 is there a distinction made between local detention facilities constructed and maintained by a city and such a facility constructed and maintained by a county. Rather, the Legislature clearly expressed its desire to avoid such a distinction.

Penal Code section 6031.4, which defines "local detention facility," states:

(a) For the purpose of this title "local detention facility" means any city, county, city and county, or regional facility used for the confinement for more than 24 hours of adults, or of both adults and minors, but does not include that portion of a facility for the confinement of both adults and minors which is devoted only to the confinement.

(b) In addition to those provided for in subdivision (a), for the purposes of this title, "local detention facility" also includes any city, county, city and county, or regional facility, constructed on or after January 1, 1978, used for the confinement,

regardless of length of confinement, of adults or of both adults and minors, but does not include that portion of a facility for the confinement of both adults and minors which is devoted only to the confinement of minors.

(c) "Local detention facility" also includes any adult detention facility that holds local prisoners under contract on behalf of cities, or counties, cities and counties. Nothing in this subdivision shall be construed as affecting the establishment of private detention facilities.

The desire to uniformly apply the minimum standards adopted by the Board of Corrections, regardless of the governmental entity involved is underscored in section 1005, Article 1, Subchapter 4 of Title 15 of the California Code of Regulations,

which states in pertinent part:

Nothing contained in the standards and requirements hereby fixed shall be construed to prohibit a city, county, or city and county agency operating a local detention facility from adopting standards and requirements governing its own employees and facilities; provided, such standards and requirements exceed and do not conflict with these standards and requirements.

The Board of Corrections was created in 1944; five years later, the California Attorney General opined that it had no authority to enforce laws. 14 Ops. Cal. Att'y Gen. 9, 15 (1949). Notwithstanding the increasing amount of mandatory duties imposed upon the board since its creation, "these additional duties, did not however, give the board any enforcement power as to these or any other areas." 63 Ops. Cal. Att'y Gen. 227, 230 (1980).

A finding that the Board of Corrections lacks the power to secure compliance with its regulations raises the issue as to where this power lies. In addressing this issue, the Attorney General stated:

We express no opinion herein as to whether any other state agency or the Attorney General has the authority generally or under any other specific statutes to sue a local entity to compel correction of a life-threatening condition in a local detention facility irrespective of the section 6030 standards.

Id. at 230, n. 3.

While the issue of enforcing the regulations, promulgated under mandate, by the Board of Corrections remains undecided, resolving it may be purely academic. Effective enforcement action must be based on a duty to comply. The Attorney General's office has repeatedly concluded that "although the board is obligated by section 6030 to set minimum standards for local detention facilities, those standards are not mandatory for local entities." Id. at 231.

Although the Board of Corrections does not have enforcement powers and the regulations created by the board do not impose mandatory duties upon local entities, incentive exists to comply with the regulations promulgated by the board.

The basis for incentive to comply is twofold. The first arises out of the desire to avoid liability which could attach based on circumstances springing from an unsafe, unfit or

improperly operated facility. See *Hudler v. Duffy*, (San Diego Superior Court Case No. 404148) and *Armstrong, et al. v. San Diego County Board of Supervisors*, (San Diego Superior Court Case No. 588349).

The second arises out of California Penal Code section 4016.5, which requires the Board of Corrections to reimburse a city or county for costs incurred "from the detention of state prisoners or parolees and parole revocation or proceedings." However, payment of this reimbursement is prohibited to "a county whose jail facility or facilities do not conform to minimum standards for local detention facilities as authorized by Section 6030," unless the county is making reasonable efforts to correct the discrepancies.

By operation of Penal Code section 4022, loss of reimbursement pursuant to Penal Code section 4016.5 could not only apply to the County of San Diego, but also to The City of San Diego if the City were to construct and/or operate its own local detention facility. Section 4022 states in pertinent part, "The designations, county jail and city jail shall be interchangeable, and in such case the obligations to which the county is liable in case of confinement in a county jail, shall become liabilities of the city where such prisoner is confined in a city jail."

The Attorney General has concluded that the standards for construction and operation of local detention facilities are not mandatory on local entities, and even if they were, the Board of Corrections would not be able to force compliance. However, the implied invitation to completely disregard any such regulations promulgated by the board should be met with extreme caution.

The standards promulgated by the Board of Corrections address areas of paramount concern including the safety of the inmates, facility staff and the community, injury to any of which could create liability. Furthermore, there is the potential for loss of reimbursement payments pursuant to Penal Code section 4016.5.

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By

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