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Date: July 17, 2000

To: Ralph Black
General Counsel

From: Renée Brouillette
Staff Counsel

Subject: Legal Opinion O 00-16

Synopsis: The opinion you requested regarding the definition of "instructional material" as used in Proposition 20, the California State Lottery, Allocation for Instructional Materials is attached.

Action/Date Requested: Review and distribute as necessary.

Contact: Renée Brouillette (916) 445-6272

LEGAL OPINION O 00-16

Issue: We have been asked for a definition of the term "instructional materials" as used in Proposition 20, the California State Lottery, Allocation for Instructional Materials.

Analysis: Government Code Section 8880 et seq., the California State Lottery statutes, do not contain a definition of instructional materials. They do however, state that it is the intent of the Legislature that the California State Lottery Education Fund be used exclusively for instructional purposes not "for acquisition of real property, construction of facilities, financing of research, or any other noninstructional purpose." (Gov. Code, § 8880.5(l).)

Proposition 20, a Legislative Initiative Amendment that passed in the 2000 Primary Election, amended Government Code Section 8880.4 which governs how State Lottery revenues are allocated. The amended Government Code Section 8880.4 earmarks 50% of any increase in the 1997-1998 fiscal year base allocation "to school districts and community college districts for the purchase of instructional materials." (Gov. Code, § 8880.4(a)(2).)

The main argument in favor of Proposition 20, in the Primary Election 2000 Ballot Pamphlet states that funds are needed to purchase "textbooks and other instructional materials." In addition, the 2000 Primary Election Ballot Pamphlet also contains the following instructive language:

"When the voters approved the Lottery in 1984, the California Department of Education strongly recommended that districts use lottery funds for one-time costs such as textbooks, computers and field trips. The Department discouraged the funding of ongoing costs with fluctuating lottery revenues. However, districts continually spend Lottery funds for ongoing costs. This act would create a mechanism to ensure continuous funding for textbooks and instructional materials within the current education lottery revenues." (2000 Primary Election Ballot Pamphlet, Argument in Favor of Proposition 20.)

While the term "instructional materials" is not specifically defined in the text of Proposition 20 nor in the Primary Election 2000 Ballot Pamphlet, a concise and comprehensive definition of instructional materials is found in Education Code Section 60010(h) as follows:

"Instructional materials means all materials that are designed for use by pupils and their teachers as a learning resource and help pupils to acquire facts, skills, or opinions or to develop cognitive processes. Instructional materials may be printed or non printed, and may include textbooks, technology-based materials, other educational materials, and tests." (Ed. Code, § 60010(h).)

While this definition is generally applicable to elementary and secondary school districts, absent any evidence to the contrary, we can assume that for purposes of Proposition 20, the Legislature and voters intended elementary and secondary school districts and community college districts to share a common definition of the term instructional materials. To determine if there is any language to the contrary, we must look to existing community college statutes and regulations.

One such statute, Education Code Section 76365, enables community college districts to require students to provide certain instructional materials at their own expense. This statute also allows districts to sell these materials to students who wish to purchase the required materials from the district. Restricting the scope of this mandate, the law provides that students can be required to provide only those instructional materials that are of "continuing value to the student outside of the classroom setting, including, but not limited to, textbooks, tools, equipment, clothing, and those materials that are necessary for the student's vocational training and employment." (Ed. Code, § 76365.)

Education Code Section 76365 has been implemented by the Board of Governors regulations found in Title 5, California Code of Regulations, Sections 59400-59408. These regulations further narrow the definition of instructional materials covered by Section 76365 by providing that:

- 1) instructional and other materials means only tangible personal property which is owned or controlled by the student, and;
- 2) the regulations only apply to materials that are required as a condition of registration, enrollment etc. (Title 5, Cal. Code Regs., § 59402(a) & (b).)

The items that fall under Education Code Section 76365 and its implementing regulations are certainly within the universe of instructional materials listed in Education Code Section 60010(h). However, the scope of Education Code Section 76365 and its implementing regulations is limited to those mandatory instructional materials that a district may require students to purchase. Therefore, Education Code Section 76365 should be viewed as a fully consistent subset within the universe of instructional materials listed in Education Code Section 60010(h).

While exclusively within the regulatory scheme that governs retention and destruction of records, Title 5, Section 59020 also contributes language defining instructional materials as follows:

"Textbook[s] used for instruction, and other instructional materials, including library books, pamphlets and magazines." (Title 5, Cal. Code Regs., § 59020(b)(4).)

Once again, the language is consistent with the definition of instructional materials contained in Education Code Section 60010(h). However, because of its limited applicability to retention and destruction of records, it should be viewed as a subset of the broad universe of instructional materials contained in Education Code Section 60010(h).

The statutory definitions of instructional materials contained in Education Code Section 67302 are the most comprehensive provided for community college districts. However, they are limited in scope to students with disabilities. Education Code Section 67302 states in pertinent part as follows:

"(1) 'Instructional material or materials' means textbooks and other materials written and published primarily for use by students in postsecondary instruction that are required or essential to a student's success in a course of study in which a student with a disability is enrolled. . . .

(2) 'Printed instructional material or materials' means instructional material or materials in book or other printed form.

(3) 'Nonprinted instructional materials' means instructional materials in formats other than print, and includes instructional materials that require the availability of electronic equipment in order to be used as a learning resource, including, but not necessarily limited to software programs, video disks, and video and audio tapes."

(Ed. Code, § 67302(a)(1), (2), & (3).)

Although Section 67302 is limited to the subject of providing materials in alternate media for students with disabilities, the above definitions of instructional materials are in no way contrary to the definition of instructional materials provided for elementary and secondary school districts in Education Code Section 60010(h). The comprehensive nature of the definitions of instructional materials for disabled students in community college districts indicates that the Legislature did not intend the definition of instructional materials in community colleges to be less broad or inclusive than the definition provided for elementary and secondary school districts.

Finally, a broad definition of instructional materials applicable to community college districts is found in the California Community Colleges Budget and Accounting Manual, 2000 Edition which is incorporated by reference in Title 5, Section 59010. The Budget and Accounting Manual defines expenditures for instructional supplies and materials as follows:

"Expenditures for supplies to be used by students, faculty and other personnel in connection with an instructional program." (Budget and Accounting Manual (2000), p. 4.57.)

Conclusion: We find that the definition of instructional materials contained in Education Code Section 60010(h) is comprehensive in that it contains a list of items that constitute the universe of materials deemed to be instructional. While Education Code Section 60010(h) applies directly only to elementary and secondary school districts, our review of the community college statutory and regulatory authority on the subject of instructional materials revealed no definition which was in any way contradictory to the broad definition provided in Education Code Section 60010(h). Furthermore, we find no evidence that Proposition 20 was designed to apply a definition of instructional materials to community colleges that is different from the one applicable to elementary and secondary school districts. We therefore conclude that the Legislature and the voters intended community college districts and K-12 school districts to

share a common definition of instructional materials for purposes of Proposition 20 and that the applicable definition is contained in Education Code Section 60010(h).