

**CALIFORNIA COMMUNITY COLLEGES  
CHANCELLOR'S OFFICE**

1102 Q STREET  
SACRAMENTO, CA 95814-6511  
(916) 445-8752  
HTTP://WWW.CCCCO.EDU



November 18, 2004

**To:** Superintendents and Presidents  
Presidents of Boards of Trustees  
Consultation Council  
Cabinet  
Community College Attorneys  
Chief Business Officers  
Public Information Officers

**From:** Steven Bruckman, Interim General Counsel

**Legal Advisory 04-06**

**Synopsis:** A community college district may use Proposition 39 school bond proceeds to pay the salaries of district employees to the extent they perform administrative oversight work on construction projects authorized by a voter approved bond measure.

Proposition 39, approved in 2000, allows the issuance of bonds for the construction of school facilities if approved by 55 percent of a school or community college district's voters. Since that approval, numerous community college districts have approved significant bond measures. While the bond approvals have been most welcome, the construction projects generate significant administrative oversight work. This is particularly true under Proposition 39 because the law imposes oversight and audit requirements not required for traditional bonds.

The situation is further complicated by the fact that the drafters of Proposition 39 were concerned about bond proceeds being used as teacher and administrator salaries. The law provides that the proceeds shall be used only for facilities "and not for any other purpose, including teacher and administrator salaries and other school operating expenses." Some district legal counsel have advised that this provision prohibits districts from paying the salaries of school district employees who perform administrative oversight on construction projects funded by bonds. The California Attorney General has issued an opinion stating that this is an overly conservative interpretation of the law. Although the Attorney General was specifically addressing school districts, community college districts are subject to the same language and may rely on the analysis.

The Attorney General concluded that:

"the phrase 'the construction, reconstruction, rehabilitation, or replacement of school facilities' embraces project administrative costs, such as monitoring contracts and project funding, overseeing construction progress, and performing

overall project management and accounting that facilitates timely completion of the construction project."

Those expenses that would not exist but for the existence of the construction project may be paid by bond proceeds. This includes expenses related to activities unique to Proposition 39 projects such as annual performance and financial audits.

The Attorney General found that the use of the term "other operating expenses" means that Proposition 39 proceeds may pay costs connected to bond-funded projects that do not involve "regular, ongoing, day-to-day costs associated with maintaining and operating a school." The Attorney General also rejected the argument that the funds could be used to pay outside contractors but not district employees doing similar work. The opinion noted that, in some cases, districts can perform the work more cheaply than contractors and a restrictive interpretation would cost taxpayers more money. The Attorney General found that Proposition 39 could not have been intended to yield such a result.

This common sense interpretation of the law is most welcome as many districts do not have resources outside their bond proceeds to fund work related to construction projects. It should be noted that Attorney General Opinions are not binding on a court of law. However, such opinions, especially when interpreting constitutional provisions of this sort, are accorded substantial deference by courts.

SB:VAR:sj

cc: Fred Harris

Legal Advisory 04-06