

**CALIFORNIA COMMUNITY COLLEGES
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December 30, 2005

Dr. Stan Arterberry, Chancellor
West Valley Mission Community College District
14000 Fruitvale Avenue
Saratoga, CA 95070-5698

Dear Chancellor Arterberry:

I am writing in response to your letter of December 13, 2005, in which you requested our opinion as to whether the West Valley Mission Community College District (WVMCCD) may use a facility located in the Gavilan Community College District (Gavilan CCD) to offer Administration of Justice courses under an instructional services agreement with the Santa Clara County Sheriff's Office (SCCSO). You argue that this is authorized by title 5, section 55230, but for the reasons discussed below we must disagree.

The principle provisions of law governing the ability of a community college district to conduct courses outside its boundaries are title 5, California Code of Regulations, sections 55230, 55231 and 55232. The critical distinction between these provisions is that sections 55230 and 55232 apply to instances in which the district is offering courses to its own residents but needs to use facilities located outside its boundaries. Section 55231 applies where the district seeks to provide courses "primarily for students who are nonresidents of the district."

In your letter you indicate that, "Since the SCCSO is a resident agency in the West Valley-Mission Community College District and is the law enforcement agency for the City of Saratoga, and the proposed instructional program would be training their cadets, we believe using that facility would be appropriate and lawful." We are not certain what you mean when you say that the SCCSO is "a resident agency in the West Valley-Mission Community College District," but this ambiguity is not material because the location of the SCCSO is not relevant to the application of our title 5 regulations. Nor is it material that the students being served will be cadets with the SCCSO.

The only relevant issue is where those students live and, as far as we are aware, those students may live anywhere within the region from which the SCCSO attracts potential employees. In a letter dated December 14, 2005, Santa Clara County Sheriff Laurie Smith confirms this by stating, "The students in question would be new recruits hired by my office as deputies. A typical class of recruits will include residents of the West Valley-Mission Community College District, the Gavilan Community College District, the other community college districts in this county and, often, a small number of recruits who reside in other counties."

Thus, we assume that it is quite possible the courses you propose to offer would primarily serve students who are not residents of the WVMCCD. Were this determined to be the case, then section 55231 would be controlling and the permission of the Gavilan CCD would be required in order to operate the program at the proposed facility within its boundaries.

However, even without knowing definitively the composition of the student body to be served in the proposed program, we can say that section 55230 does not appear to be applicable here. Section 55230 provides, in pertinent part, that,

"The governing board of a community college district may conduct community college classes **and acquire the necessary property and erect the necessary buildings therefor**, outside of the boundaries of the district if all of the following conditions exist . . ."

By contrast, section 55232 provides that,

"The governing board of a community college district may conduct community college classes for students who are residents of the district and utilize **existing facilities necessary therefor outside of the boundaries of the district** if the district is unable to construct adequate facilities within the district because of the failure of the electors of the district to authorize the issuance of bonds for such purpose at an election held for such purpose and if the district is unable to obtain adequate facilities within the district with the funds available to the district for such purpose." (Emphasis added.)

Thus, section 55230 addresses situations where a district seeks to purchase property and construct buildings outside its territory for the purpose of conducting courses at such facilities for its own students while section 55232 describes the circumstances under which a district may use "existing facilities" outside its territory for this purpose.

It might be argued that section 55230 could be construed to address two separate topics: (1) offering courses outside a district and (2) acquiring land and constructing facilities outside the district. Were this the case, then section 55230 would authorize a community college district to use existing facilities outside the district to serve its own students any time adequate "facilities for such instruction are not available either at the location of the principal buildings of the community college, or elsewhere within the district." However, this would render meaningless the more restrictive conditions imposed on use of existing facilities outside the district in section 55232. The rules of statutory construction compel us to avoid such a result and to harmonize all provisions of law whenever possible. Here, we may harmonize sections 55230 and 55232 simply by according section 55230 its plain meaning—that it applies only to situations where a district seeks to provide instruction to its own students, does not have adequate facilities to do so within its boundaries, and

wishes to solve this problem by acquiring land and constructing facilities for that purpose outside its boundaries.

Your proposal involves use of an existing facility in the Gavilan District. Thus, if it primarily serves students who are not residents of WVMCCD, then section 55231 is controlling. On the other hand, if it were shown that the proposed program would primarily serve students of your District, the plan would be governed by section 55232. In that case, you would need to show that you are unable to construct facilities in your District due to the failure of a bond measure and that there are not adequate facilities otherwise available within the District. If you believe these conditions can be satisfied, we recommend you assemble and retain documentation to support that conclusion so you will be in a position to justify your determination should it be challenged by the Gavilan CCD.

I hope you find this information helpful. If you have further questions, you may call me at (916) 445-9328 or Assistant General Counsel Ralph Black at (916) 327-5692.

Sincerely,

Steven Bruckman
Executive Vice Chancellor and General Counsel

SB:RB:sj

cc: Dr. Philip Hartley, President, West Valley College
Steven Kinsella, President, Gavilan College
Laurie Smith, Santa Clara County Sheriff

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