

Memorandum

To: Board of Director, Desert Health Care District
From: Carlos Campos, General Counsel
Robert Hargreaves, Special Counsel
Date: January 28, 2015
Re: DHCD: Providing Grants Through the District's Foundation

BACKGROUND

In 1967, Desert Healthcare District (DHCD) created an affiliated non-profit corporation, Desert Healthcare Foundation (Foundation). The Foundation provides health care services to DHCD residents and the surrounding community. The Foundation presently receives funding from DHCD as well as other grant sources. DHCD has provided funds to the Foundation to be distributed as grants to third party non-profits and similar service providers. A primary purpose of transfer of DHCD funds to the Foundation is to leverage grant funding from sources that will not contribute directly to public agencies. In the Foundation, District money is pooled with outside grants to serve the broader Coachella Valley community.

DHCD recently received questions from a board member as to whether grants provided to local non-profits and clinics through the Foundation using funds that include money from DHCD are lawful. The concern presented is whether or not it is permissible for DHCD to provide grants that, when combined with funds from other sources, fund programs that benefit residents throughout the Coachella Valley community, including areas outside of the district's boundaries.

QUESTIONS PRESENTED

1. Can DHCD provide funds to the Foundation to be distributed as grants to service providers?
2. Can the Foundation use DHCD funds in conjunction with other funding sources to provide grants for services throughout the Coachella Valley community, including areas outside the DHCD boundaries?



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SHORT ANSWERS

1. Yes. Health and Safety Code section 32126.5 expressly permits the DHCD to provide grants through the Foundation to non-profit provider groups and clinics already functioning in the community.

2. Yes. The district complies with Section 32126.5. The statute authorizes that grants may be provided to non-profits operating within the community. Here, DHCD funds are targeted to benefit district residents and combined through the Foundation with other funding sources such that the initiatives are aimed to benefit the entire Coachella Valley community.

ANALYSIS

I. Desert Healthcare Foundation

It is our understanding that the Desert Healthcare Foundation is a non-profit corporation originally formed in 1967 to support the activities of Desert Regional Medical Center when it was a nonprofit hospital. The Foundation originally had its own separate board of directors. In 1997, the Directors of the District voted to lease Desert Regional Medical Center to Tenet Health Systems for 30 years. The focus of the Foundation turned to operating several community programs such as The Smile Factory, The Desert Health Car, and The Suzanne Jackson Breast Cancer Fund.

In 2003, the Foundation board was dissolved and the District board assumed responsibility. In 2004 the development and incubation of two health needs programs were added under the Foundation: The Wellness Park and HARC (Health Assessment Resource Center). In 2005 the board of directors gave the direction to spin off all Foundation programs to other nonprofit entities.

In 2012, with the guidance of legal counsel, the Foundation revised its Articles of Incorporation to allow for support of healthcare and wellness services and programs across the entire Coachella Valley. The Foundation is now focused as a fiscal sponsor and incubator of new collaborative projects. A primary purpose of this change has been to leverage grant funding from sources that will not contribute directly to public agencies. In the Foundation, District money is pooled with outside grants to serve the broader Coachella Valley community. Recent examples include:

- Affordable Care Act Implementation in the Coachella Valley: Educate, Enroll, Connect. In partnership with The California Endowment, the program targets Coachella Valley-wide education, outreach and enrollment of the approximately 90,000 residents now eligible for MediCal and Covered California. Funds for this



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program are derived as follows: \$650,000 from DHCD and \$534,924 from The CA Endowment.

- Coachella Valley Health Portal. This initiative was launched to establish a collective fund to develop and promote online access to health information and resources. Funds for this program derive 50% from DHCD and 50% from Palm Springs Mayor Steve Pougnet’s Health & Wellness Festival.
- Ready, Set, Swim – Coachella Valley. Through a collaboration of local healthcare and recreation agencies, youth organizations and city leaders, *Ready Set Swim, Coachella Valley!* was developed to teach third grade students throughout the Coachella Valley the essentials of swimming. Funds for this program derive 50% from DHCD and 50% from Palm Springs Mayor Steve Pougnet’s Healthy Planet, Health You Race

II. DHCD Has the Authority to Provide Grants

DHCD is a local agency of limited powers. As such, DHCD can only act when permitted to do so by statute. (See *Trimont Land Co. v. Truckee Sanitary Dist.* (1983) 145 Cal.App.3d 330, 342.) The most obvious source of DHCD’s powers is The Local Health Care District Law (the “Law”), DHCD’s enabling statute. (See Health & Saf. Code, § 32000 et seq.)

Applicable to this case, one section of the Law expressly authorizes healthcare districts to provide grants to service providers by themselves or through affiliated non-profits. Specifically, Health and Safety Code section 32126.5 provides:

(a) The board of directors of a hospital district or any affiliated nonprofit corporation may do any of the following when it determines that the action is necessary for the provision of adequate health services to communities served by the district:

(1) Enter into contracts with health provider groups, community service groups, independent physicians and surgeons, and independent podiatrists, for the provision of health services.

(2) Provide assistance or make grants to nonprofit provider groups and clinics already functioning in the community.

(3) Finance experiments with new methods of providing adequate health care.

(b) Nothing in this section shall authorize activities which corporations and other artificial legal entities are prohibited from conducting by Section 2400 of the Business and Professions Code.



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(Emphasis added; see also Health & Saf. Code, § 32121(o) [authorizing districts to establish corporations for the benefit of the district].)

Importantly, Section 32126.5 is not the sole source of potential authority for these grants in the Law. Under Health and Safety Code section 32121(p)(2), DHCD has the authority:

To transfer, for the benefit of the communities served by the district, in the absence of adequate consideration, any part of the assets of the district, including, without limitation, real property, equipment, and other fixed assets, current assets, and cash, relating to the operation of the district’s health care facilities to one or more nonprofit corporations to operate and maintain the assets.

Section 32121(p)(2) imposes substantial procedural and substantive requirements on these transfers. One may argue that Section 32121(p)(2) is actually a limitation on Section 32126.5 so that grants under Section 32126.5 must also comply with the requirements in Section 32121(p)(2). This argument likely fails as Section 32126.5 and Section 32121(p)(2) are independent statutory provisions. As such, they must be interpreted to give effect to each. (*Medical Board v. Superior Court* (2001) 88 Cal.App.4th 1001, 1013.)

Here, one can harmonize Sections 32121(p)(2) and 32126.5. Section 32121(p)(2) applies to transfers of assets “relating to the operation of the district’s health care facilities.” “A health care facility” is generally defined in the Law as “a facility, place, or building that is organized, maintained, and operated for the diagnosis, care, prevention, and treatment of human illness, physical or mental...” (See Health & Saf. Code, § 32000.1.) By contrast, Section 32126.5 applies to grants “necessary for the provision of adequate health services to communities served by the district.” Accordingly, while the requirements of Section 32121(p)(2) apply to asset transfers relating to the operation of tangible DHCD facilities, they do not apply to grants for health services. In those instances, the requirements of Section 32126.5 apply.

Based on this, Section 32126.5 permits DHCD to provide funds to the Foundation to be distributed as grants to “nonprofit provider groups and clinics already functioning in the community.” (Health & Saf. Code, § 32126.5(a)(3).)

II. Grants Targeted to Benefit DHCD residents, Even When Residents of Areas Outside DHCD Boundaries Are Benefited, Are Permissible Under Section 32126.5

As discussed above, Section 32126.5(a)(2) permits DHCD to “[p]rovide assistance or make grants to non-profit provider groups and clinics already functioning in the community.” In doing so, DHCD must determine that “the action is necessary for the provision of adequate health services to communities served by the district.” Based on this, Section 32126.5(a)(2) has a two-prong test: (1) the grant is made to non-profit provider groups and clinics and (2) the recipient is already providing health services in the community served by DHCD.



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Here, there is no dispute that the first prong is met. All grants were provided to non-profits.

Therefore, the critical inquiry concerns the second prong: whether all of the recipients are providing health services in the community served by the DHCD. Essentially, the question raised is whether DHCD has met this second prong because some funds are used by recipients that provide services that benefit residents both within and outside of DHCD.

DHCD has complied with the second prong and therefore did not violate Section 32126.5. In meeting this second prong, the Foundation combines DHCD funds with other funding sources such that DHCD funds remain targeted within the district. Even so, Section 32126.5 only requires that funds be used within the “community” served by DHCD.

“Community” is not defined in Section 32126.5 or the Law. In fact, the Law generally refers to the “district” when discussing its jurisdictional boundaries. (See Health & Saf. Code, § 32121(c) [authorizing districts “[t]o purchase, receive, have, take, hold, lease, use, and enjoy property of every kind and description within and without the limits of the district...”].) Under general principles of statutory construction, “where the Legislature uses a different word or phrase in one part of a statute than it does in other sections or in a similar statute concerning a related subject, it must be presumed that the Legislature intended a different meaning.” (See *Campbell v. Zolin* (1995) 33 Cal.App.4th 489, 497.)

Applying this to our case, “district” and “community” in the Law are presumed to have different meanings. Accordingly, while “district” is limited to the jurisdictional boundaries of the district, “community” is presumably broader. This is an important distinction. Communities are not easily contained within jurisdictional boundaries. Residents of the District work outside the District, and vis-a versa. Residents from throughout the Coachella Valley use Desert Regional Medical Center. And the underlying health issues do not respect jurisdictional boundaries. Accordingly, even assuming that DHCD funds provided services that benefited residents outside of the district, DHCD did not violate Section 32126.5, as long as DHCD funds are primarily targeted to benefit people who reside, work and/or seek health care services within district boundaries.