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November 23, 2009

Joseph T. Edmiston, Executive Director
Santa Monica Mountains Conservancy
5750 Ramirez Canyon Road
Malibu, CA 90265

RE: Administrative Services Contract with Mountains Conservation and Recreation Authority

Dear Mr. Edmiston:

In 2004, the Santa Monica Mountains Conservancy (the "SMMC") asked that we review a letter by the Office of State Audits and Evaluations of the Department of Finance (the "Department of Finance") dated March 24, 2004 (the "Management Letter") and that we provide guidance on certain findings. Among the findings that we commented upon was a finding regarding the administrative services contract between SMMC and the Mountains Recreation and Conservation Authority ("MRCA"). You have recently asked us to share our advice on that particular finding again. This letter responds to your request.

The Management Letter's Finding 4 discussed an administrative services contract executed between the SMMC and the MRCA. Pursuant to this contract, the MRCA was to provide services that "according to the Executive Director, could not be provided by existing [SMMC] staff." We address whether this contract comports with the law.

Initially, we note that the Department of Finance asserts that the contract was not an arms-length transaction because the same person — the Executive Director — is responsible for contract administration and performance at both organizations. The Department of Finance states that this arrangement creates a "conflict of interest." In our communications, the Department of Finance clarified that by using the phrase "conflict of interest," it did not intend to imply that the Executive Director had any personal interest in the contract or that he personally benefited in any way from the contract. On the question of whether the contract was an arms-length transaction, we again note that the Department of Finance is not claiming that the structure of the MRCA or its manner of operation is illegal. Thus, the question appears to be whether there is a legal impropriety in this specific contract.

The SMMC's statute provides as follows with regard to contracting for services:

The [SMMC] may . . . [¶]

(b) Contract for professional services required by the [SMMC] or for the performance of work and services which in its opinion cannot satisfactorily be performed by its officers and employees or by other federal, state, or local governmental agencies.

(Pub. Resources Code, § 33211, subd. (b).) Thus, on its face, the SMMC's statute provides for such contracting.

Moreover, in the context of joint powers agencies, the Government Code provides that "[a]ny public agency may enter into agreements with other state agencies pursuant to the provisions of Section 11256." (Gov. Code, § 6514.5.) The Joint Exercise of Powers Act defines "public agency" to include, inter alia, federal and state agencies, local governments, and joint powers authorities. (*Id.* at § 6500.) It also authorizes joint powers authorities to enter into contracts. (*Id.* at § 6508.) Government Code section 11256 provides in relevant part that "[s]ubject to approval of the Director of General Services, state agencies may furnish services, materials or equipment to, or perform work for, other state agencies upon such terms and conditions and for such considerations as they may determine, and subject to such approval, may enter into agreements for such purposes." Thus, Government Code section 6514.5 authorizes joint powers authorities to enter into contracts to provide services to state agencies provided the Director of General Services approves the contract. The SMMC and the MRCA state that the Director of General Services did approve the administrative services contract.

Here, the Department of Finance reports that the Executive Director stated that existing SMMC staff could not furnish the services that the MRCA was to provide under the contract. Assuming that the SMMC Board made this determination, then the contract would be authorized under Public Resources Code section 33211, subdivision (b). We note that the arrangement between the SMMC and the MRCA is similar to the one we analyzed in Opinion No. 99-803. (83 Ops.Cal.Atty.Gen. 8 (2000).) There, Cooperative Personnel Services ("CPS"), a joint powers authority, performed examination, training and management consulting services for its members and for non-members regarding employment of personnel. This office found that having the joint powers authority provide these services to its members and to non-members (pursuant to contracts) was appropriate. Here, the MRCA is providing services pursuant to contract which are similar to those that CPS provided. We can discern no meaningful distinction between the two situations.

The Department of Finance also notes that the contract appears to violate the constitutional provisions dealing with civil service. Generally, the civil service protections in Article VII of the Constitution are a restriction on contracting state activities or tasks to the private sector. (*California State Employees Association v. State* (1988) 199 Cal.App.3d 840,

Joseph T. Edmiston, Executive Director
Santa Monica Mountains Conservancy
November 23, 2009
Page 3

844.) *California State Employees Association* explained that the restrictions on contracting out were not express in the Constitution but rather emanated from the "implicit necessity" for protecting the civil service from dissolution and destruction. (*Ibid.*) However, those restrictions are not without exception, and in Government Code section 19130, the Legislature identified several types of exceptions. In section 19130, subdivision (a), the Legislature permitted contracting out for personal services when those contracts achieve cost savings without having a detrimental effect on the civil service system. (*Id.* at p. 846.) Section 19130, subdivision (b) identifies a number of other situations when contracting for personal services is permissible. Among those situations is subsection (3), which provides that contracting out is permissible if:

The services contracted are not available within civil service, cannot be performed satisfactorily by civil service employees, or are of such a highly specialized or technical nature that the expert knowledge, experience and ability are not available through the civil service system.

(See *California State Employees Association v. State*, *supra*, 199 Cal.App.3d at pp. 851-852)

Public Resources Code section 33211, subdivision (b), appears to mirror section 19130, subdivision (b)(3) in that contracting out for professional services is permitted only when the SMMC's employees or other governmental employees cannot provide the services. If civil service employees cannot provide the services, then contracting with the MRCA to provide those services would not necessarily offend the civil service protections in the Constitution or the Government Code.

Thus, we conclude that the administrative services contract between the MRCA and the SMMC comports with applicable law, as we understand the Department of Finance's objection expressed in its March 24, 2004 letter.

Sincerely,



CHRISTINA BULL ARNDT
Supervising Deputy Attorney General

For EDMUND G. BROWN JR.
Attorney General

