



DEPARTMENT OF JUSTICE
GENERAL COUNSEL DIVISION

April 3, 2002

Steve Marks, Chief of Staff to Governor Kitzhaber
Office of the Governor
State Capitol
Salem, OR 97310

Re: Opinion Request OP-2002-3

Dear Mr. Marks:

This letter responds to your request for advice regarding the county “opt out” provision enacted as part of Senate Bill 1145 (1995). Specifically, you have asked whether counties could withdraw from the SB 1145 state/county community corrections partnership if the Legislative Assembly were to enact a new budget law as part of a budget rebalance plan that reduces ODOC’s line item appropriation for community corrections to reflect a zero adjustment for inflation for the remaining months of the current biennium. We conclude that the counties could not withdraw on the basis of the suggested legislative action.

Discussion

1. Funding of Community Corrections Under SB 1145

In 1995, facing projections of significantly increased demand for state secure facilities to incarcerate offenders sentenced to lengthy mandatory minimum sentences under Measure 11, the Legislative Assembly enacted legislation that had the effect of restructuring statewide community corrections supervision and services. Or Laws 1995, ch 423. As part of that restructuring, the legislation, referred to collectively as SB 1145, established a partnership between the state and counties in which the counties assumed responsibility to provide community-based supervision, sanctions and services for felony offenders on parole, probation or post-prison supervision in exchange for a statutorily-prescribed level of state funding. ORS 423.475 to 423.560.

For the 2001-03 biennium, the Legislative Assembly appropriated \$195,555,286 to ODOC for the purpose of providing community corrections grants to the counties under the SB 1145 grant-in-aid program described in ORS 423.530. Or Laws 2001, ch 631, §1. ODOC officials advise that this appropriation included a 3.5% adjustment for inflation for the current biennium. ODOC officials further advise that none of the remainder of ODOC’s appropriations included an inflation adjustment.

In the second of two special sessions held in February and March of this year, the Legislative Assembly reduced the 2001-03 biennial appropriation to ODOC for community corrections grants to counties by \$1,000,000. Or Laws 2002, ch 2, §1. It is possible that the Legislative Assembly, at a future special session, could further reduce the appropriation for community corrections to reflect a zero adjustment for inflation for the remaining months of the biennium.

In order to advise you in this matter, we must interpret the meaning and legal effect of the SB 1145 county opt out provision in the context of the suggested budget rebalance plan. When interpreting statutes, our task is to discern the intent of the legislature. *PGE v. Bureau of Labor and Industries*, 317 Or 606, 610-612, 859 P2d 1143 (1993) (outlining methodology for interpreting a statute). In doing so, we must first examine the text and context of a statute because the wording of a statute “is the best evidence of the legislature’s intent.” *PGE*, 317 Or at 610. A statute’s context may include other provisions of the same statute and related statutes, *id.* at 610-11, and prior enactments and prior judicial interpretations of that statute and related statutes, *Owens v. Maass*, 323 Or 430, 435, 918 P2d 808 (1996). Only if the intent of the legislature is not clear from the first level of analysis may legislative history be considered. *PGE*, 317 Or at 611.

2. Legislative Discretion to Adjust for Inflation in Determining Current Service Levels

The county opt out provision at issue is codified at ORS 423.483. That statute states:

(1) The baseline funding for biennia beginning after June 30, 1999, is the current service level for the expenses of providing management, support services, supervision and sanctions for offenders described in ORS 423.478(2). At a minimum, each biennium's appropriation must be established at this baseline.

(2) If the total state community corrections appropriation is less than the baseline calculated under subsection (1) of this section, a county may discontinue participation by written notification to the director 180 days prior to implementation of the change. If a county discontinues participation, the responsibility for correctional services transferred to the county, and the portion of funding made available to the county under ORS 423.530 reverts to the Department of Corrections. In no case does responsibility for supervision and provision of correctional services to misdemeanor offenders revert to the department.

(3) As used in this section, “current service level” means the calculated cost of continuing current legislatively funded programs, phased in programs and increased caseloads minus one-time costs, decreased caseloads, phased out programs and pilot programs with the remainder adjusted for inflation as determined by the Legislative Assembly in its biennial appropriation to the Department of Corrections.

By its terms, ORS 423.483 permits a county to withdraw from the SB 1145 state/county community corrections partnership only if the total state community corrections appropriation is less than “the calculated cost of continuing current legislatively funded programs, phased in programs and increased caseloads minus one-time costs, decreased caseloads, phased out programs and pilot programs *with the remainder adjusted for inflation as determined by the Legislative Assembly in its biennial appropriation to the Department of Corrections.*” (Emphasis added.)

a. Text and Context

Under the statutory definition of “current service level” contained in ORS 423.483(3), within the state’s baseline funding obligation it is left to the Legislative Assembly’s discretion to determine the cost of funding statewide community corrections programs and services at current levels through the legislative appropriation process. Without the final clause of ORS 423.483(3) the Legislative Assembly would nonetheless have the authority to account for inflation in calculating a “current service level.”¹ Nothing in the text of the final clause binds the Legislative Assembly to rely upon or adopt any particular inflation index or other economic indicator as a measure of inflation. Under the rules of statutory interpretation, it is necessary to ascribe meaning to all parts of a statute. *See Owens*, 323 Or at 435 (citing general rule of construction in ORS 174.010 that, when construing a legislative enactment, we may not “insert what has been omitted” nor “omit what has been inserted.”). Because the final clause of ORS 423.483(3) provides the Legislative Assembly with no greater authority than it normally holds under the appropriation process, we look for meaning in the direction that the inflation adjustment be in the “biennial appropriation to the Department of Corrections.” The legislature may have intended this language simply to direct where the money for community corrections grants would appear within its appropriations enactments. Alternatively, the phrase may be read to qualify or limit the Legislature’s discretion to set the amount or rate of any inflation adjustment in the community corrections appropriation by tying that determination to the inflation rate or amount established for ODOC corrections programs and services. Because we are unable to conclusively discern the legislature’s intent from our examination of the statute’s text and context, we turn to the second level of analysis, which is to consider the legislative history of ORS 423.483. *See PGE*, 317 Or at 611-12.

b. Legislative History

Following its introduction in the Senate Judiciary Committee, SB 1145 was referred to the Joint Committee on Ways and Means. Most of the substantive work and consideration of the bill took place in the Ways and Means Committee’s Special Subcommittee on Corrections. Legislators and witnesses discussed the subject of what constituted “baseline” funding of state community corrections and the county opt out provision on several occasions during the subcommittee’s consideration of the bill.

During an early subcommittee hearing on proposed amendments to the bill, in response to a question from the Subcommittee Chair, Senator Neil Bryant, Bill Carey of the Department of Corrections explained:

Carey: That section [Section 6 of the proposed A5 amendments to SB 1145] deals with the opt out that people are concerned about for the counties. Unless the state reduces funding below current service level, counties will not have an option to opt out. They are in the partnership as long as we can continue our level of funding as described by current service fund.

Chair Bryant: When it says "with the remainder adjusted for inflation," what type of inflation measure do you use?

Carey: *Mr. Chair, it would be the inflation that the legislature approves in a budget.*

Testimony of Bill Carey, Joint Committee on Ways and Means, Special Subcommittee on Corrections, (SB 1145), May 16, 1995, tape 3, side A, at 214 (emphasis added).

In a later hearing, the subcommittee continued consideration of, and adopted, bill amendments containing a revised definition of "current service level." That definition, which was incorporated in section 6 of the A6 amendments to SB 1145, is the definitional language that ultimately was enacted and is now codified in ORS 423.483(3). The new language that was added to the definition was the phrase, "as determined by the Legislative Assembly in its biennial appropriation to the Department of Corrections." In the subcommittee hearing, Sue Acuff, then a fiscal analyst with the Legislative Fiscal Office who staffed SB 1145 for the subcommittee, explained the intended purpose of the clarifying amendment:

Sue Acuff: Okay, the opt out provisions are still in the bill. The current service level is - becomes - what you use to determine future funding. And that's defined as the calculated cost of continuing current legislatively funded programs, phased in programs and increased caseloads minus one-time costs, decreased caseloads, phased out programs and pilot programs with the remainder adjusted for inflation. *And the A6 amendments clarify the inflation rate is the one - the same as that approved for the Department of Corrections.* And the last part of it there - if the appropriation is less than the resulting calculation the county can give the responsibility back to the state.

Testimony of Sue Acuff, Joint Committee on Ways and Means, Special Subcommittee on Corrections, (SB 1145), June 2, 1995, tape 11, side B, at 451-469 (emphasis added).

Finally, an exhibit referencing the A6 amendments to SB 1145 was presented and received by the subcommittee during its consideration of the amendments.^{2/} That exhibit echoes Ms. Acuff's testimony regarding the intended meaning and purpose of the definitional change to "current service level" incorporated in the A6 amendments:

Establishment of funding baseline and "opt out" provisions.

- The baseline funding for future biennia is established as the current service level for the expenses of providing management, support services, supervision and sanctions for all offenders described in section 9(2) of the act.
- The current service level is defined as the calculated cost of continuing current legislatively funded programs, phased in programs, and increased caseloads, minus one-time costs, decreased caseloads, phased out programs and pilot programs, with the remainder adjusted for inflation.
- *The A6 amendments clarify the inflation rate is to be the same as that approved by the Legislature for the Department of Corrections.*
- If the appropriation is less than the resulting calculation the county can give the responsibility back to the state.

Joint Committee on Ways and Means, Special Subcommittee on Corrections, (SB 1145), June 2, 1995, exhibit entitled "SENATE BILL 1145 – COMMUNITY CORRECTIONS RESTRUCTURE" (emphasis added).

The foregoing legislative history demonstrates that the legislators involved in the Ways and Means subcommittee work on SB 1145 intended that within the state's baseline funding obligation for purposes of the "opt out" provision the legislative determination of the amount of an inflation adjustment in the community corrections appropriation, if any, be the same as that approved by the Legislative Assembly for state corrections programs and services in its biennial appropriation to the Department of Corrections. Although isolated statements of witnesses made in committee are not necessarily indicative of the intent of the entire legislature, in view of the fact that we have found no suggestion, either by a legislator or any witness in committee, that SB 1145 was intended to have any different effect, and because the vast majority of the substantive work and consideration of the bill's provisions took place in the subcommittee in which the witnesses testified and the exhibit was presented, those comments and exhibit are significant. *See Davis v. O'Brien*, 320 Or 729, 740-46, 891 P2d 1307 (1995). We conclude, therefore, that the legislative history supports a construction of the statute that a county may not "opt out" of providing community corrections services when the legislature provides an inflation adjustment in its biennial appropriation to ODOC for community corrections that is at least equal to that provided in its biennial appropriation to ODOC for state corrections programs and services.

3. Conclusion

Because the Legislative Assembly provided a zero inflation adjustment for state corrections programs and services in its 2001-03 biennial appropriation to ODOC, we conclude that the Legislative Assembly may enact a new budget law in a future special session that further reduces ODOC's line item appropriation for community corrections to reflect a zero adjustment for inflation for the remaining months of the current biennium, without triggering the statute's "opt out" provision for counties under ORS 423.483.

Sincerely,

Donald C. Arnold
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General Counsel Division

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¹ This is so because a determination of the "calculated cost of continuing current legislatively funded programs" necessarily includes consideration of whether those costs are projected to be higher or lower in the coming biennium due to inflation.

² It appears from the nature of the exhibit that it was prepared by and presented to the chair and members of the subcommittee by subcommittee staff as a summary of the key policy choices embodied in the proposed amendments and as a guide to moving the amendments for adoption by the subcommittee.