intimate relationship to the public interest and welfare, and specifically to the administration of justice, all of which warrants a greater deference to the governmental interest at stake.

The conclusion, therefore, which is expressly limited to the scope of inquiry, is that no preremoval safeguards must be provided *before* a court interpreter can be removed from the recommended list for violation of the standards of professional conduct.

Opinion No. 81-105—July 2, 1981

SUBJECT: ALTERNATE METHOD OF CONSTRUCTION—A building standards appeals board of a city "independent" of the city's building department may approve alternate methods of construction under the provisions of Health and Safety Code section 17951, but this approval requires a separate review and finding of equivalency for each building project for which the method of construction is proposed.

Requested by: DIRECTOR, DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

Opinion by: GEORGE DEUKMEJIAN, Attorney General
Rodney O. Lilyquist, Deputy

The Honorable I. Donald Terner, Director, Department of Housing and Community Development, has requested an opinion on questions we have rephrased as follows:

1. May a building standards appeals board of a city "independent" of the city's building department approve alternate methods of construction under the provisions of Health and Safety Code section 17951?

2. Does the approval of an alternate method of construction under Health and Safety Code section 17951 require a separate review and finding of equivalency for each building project for which the method of construction is proposed?

CONCLUSIONS

1. A building standards appeals board of a city "independent" of the city's building department may approve alternate methods of construction under the provisions of Health and Safety Code section 17951.

2. The approval of an alternate method of construction under Health and Safety Code section 17951 requires a separate review and finding of equivalency for each building project for which the method of construction is proposed.

ANALYSIS

We are informed that the installation of a plumbing system that is not specifically prescribed in the State Building Standards Code (Cal. Admin. Code, tit. 24) was recently proposed for a hotel renovation project in a Northern California city. After the city's building department disapproved of the proposed alternate method of construction, the decision was appealed to the city's plumbing standards appeals board, an agency of the city "independent" of the building department. The board reversed the department's decision and approved the alternate method of construction for the proposed project.

We are asked two questions with regard to the city's approval procedure: (1) may an agency of the city "independent" of its building department approve an alternate method of construction under the State Housing Law, and (2) does the approval of an alternate method of construction require a separate review and finding of equivalency for each building project for which the method of construction is proposed?

Pursuant to the State Housing Law (Health & Safety Code §§ 17910-17995),[1] the Commission of Housing and Community Development ("Commission") is charged with regulating the construction, alteration, and repair of hotels, motels, apartment houses, and other dwellings throughout the state. (§ 17921.)

The Commission's powers in adopting and enforcing building standards has been generally restricted, however, by the Legislature to that of imposing "substantially the same requirements as are contained in the most recent editions" of specified uniform industry codes as published by designated private organizations. (§ 17922, subd. (a); see 63 Ops. Cal. Atty. Gen. 566, 568 (1980).)

While several "deviations" from these national codes are provided by statute, we are concerned here with the express provisions of subdivision (d) of section 17951. It states:

> "The provisions of this part are not intended to prevent the use of any material, appliance, installation, device, arrangement, or method of construction not specifically prescribed by the State Building Standards Code or the provisions of this part, provided any such alternate has been approved.
>
> "The *building department* of any city or county may approve any such alternate if it finds that the proposed design is satisfactory and that the material, appliance, installation, device, arrangement, method, or work offered is, for the purpose intended, at least the equivalent of that prescribed in the State Building Standards Code or the provisions of this part in performance, safety, and for the protection of life and health.
>
> "The *building department* of any city or county shall require evidence that any material, appliance, installation, device, arrangement, or method of construction conforms to, or that the proposed alternate is at least equivalent to, the requirements of this part, building standards published in the State

[1] All section references hereafter are to the Health and Safety Code unless expressly provided otherwise.

> Building Standards Code, or the other rules and regulations promulgated pursuant to the provisions of this part and in order to substantiate claims for alternates, the building department of any city or county may require tests as proof of compliance to be made at the expense of the owner or his agent by an approved testing agency." (Italics added.)

Subdivision (d) of section 17951 authorizes the "building department" of a city to approve alternate methods of construction. Under the facts we have been given, the city's "building department" disapproved of the proposed alternative, while an "independent" city appeals board reversed the department's decision after making the requisite findings of equivalency. Was the board acting within the scope of the statute's "building department" designation? We conclude that it was.

In interpreting section 17951, we are guided by several well-established principles of statutory construction. The cardinal rule is to "ascertain the intent of the Legislature so as to effectuate the purpose of the law." (*Select Base Materials* v. *Bd. of Equal.* (1959) 51 Cal. 2d 640, 645.) In determining legislative intent, we look first to the words used, giving them their usual and ordinary meaning. (*Moyer* v. *Workmen's Comp. Appeals Board* (1973) 10 Cal. 3d 222, 230.) "Words must be construed in context, and statutes must be harmonized, both internally and with each other, to the extent possible." (*California Mfgrs. Assn.* v. *Public Utilities Com.* (1979) 24 Cal. 3d 836, 844.) Interpretive constructions which render some words surplusage, defy common sense, or lead to mischief or absurdity are to be avoided. (*Fields* v. *Eu* (1976) 18 Cal. 3d 322, 328.)

Applying these principles, we note first that the plumbing appeals board of the city in question is comprised of members qualified by training and experience to knowledgeably review and determine issues of equivalency, performance, and safety of plumbing standards. The apparent purpose of having an "independent" review of a building department decision is to foster objectivity and unbiased fair dealing for those doing business with the city.

Consequently, although the board may technically be considered "independent" of the building department in an organizational sense, it is tied to the department in a functional manner and separated only to prevent the appearance of unfairness in the decision-making process. The board could just as easily come within the department's organizational umbrella except for the possible appearance of an "in-house" bias.

Against this rationale for an "independent" building standards appeals board, we have the Legislature's designation of "building department" in subdivision (d) of section 17951. We believe that the designation was a general one and merely reflects the fact that local building codes are handled by the "building department" of a city rather than, for example, the police department. To review "evidence that any material, appliance, installation, device, arrangement, or method of construction conforms to . . . The State Building Standards Code," one would not designate the city's personnel or library departments.

The focus of subdivision (d) of section 17951 is that the alternative method of construction be satisfactory in design and equivalent in performance and safety to that

specifically prescribed in the State Building Standards Code. As long as these tests are met, the Legislature's interests are fully protected. The purpose of the statute is unrelated to the "independence" of a building standards appeals board in making the evaluation and determination. We see no indication that the Legislature intended to restrict cities in the organization of their building departments or in the manner in which building regulation decisions are reviewed and finally determined at the local level.

Accordingly, we believe that the "building department" designation in subdivision (d) of section 17951 includes city officers or boards authorized by local charter or ordinance to review the decisions of the city's building officials. Any city agency responsible for administering and determining the application of building standards, regardless of the name given to the agency at the local level, would be included within the designation "building department" contained in the statute.

In response to the first question, therefore, we conclude that a building standards appeals board of a city "independent" of the city's building department may approve alternate methods of construction under the provisions of section 17951, subdivision (d).

As noted in the analysis of the first question, use of an alternate method of construction under the State Housing Law requires that findings of fact first be made and approval of the installation be given at the local level. The second question presented is whether a separate review, fact determination, and approval are necessary for each proposed installation.

Preliminarily, we note that section 1 of article IV of the Constitution provides in part: "The legislative power of the state is vested in the California Legislature which consists of the Senate and Assembly." Under this constitutional provision, "The Legislature may not abdicate its responsibility to resolve the 'truly fundamental issues' by delegating that function to others or by failing to provide adequate directions for the implementation of its declared policies." (*CEEED* v. *California Coastal Zone Conservation Com.* (1974) 43 Cal. App. 3d 306, 325.)

Assuming, without deciding, that this constitutional limitation is applicable to intergovernmental relations such as state-city (see 43 Ops. Cal. Atty. Gen. 275, 280-281 (1964)), we believe that the provisions of subdivision (d) of section 17951 pass muster. The "truly fundamental issue" of establishing the appropriate building standards has been resolved by the Legislature, with the city only authorized to accept an alternative after making a finding of "equivalency" in implementing the legislative policy decision. Hence, no unlawful delegation may be found. (See *Taylor* v. *Crane* (1979) 24 Cal. 3d 442, 452-453; *People ex rel. Younger* v. *County of El Dorado* (1971) 5 Cal. 3d 480, 507; *Kugler* v. *Yocum* (1968) 69 Cal. 2d 371, 375-377.) The fact that under the statutory provision, a city department may "exercise a judgment of a high order in implementing legislative policy does not confer unrestricted powers" (*CEEED* v. *California Coastal Zone Conservation Com., supra,* 43 Cal. 3d 306, 327), and here the "objective sought to be achieved" appears "depicted with remarkable clarity." (See *People ex rel. S.F. Bay Etc.* v. *Town of Emeryville* (1968) 69 Cal. 2d 533, 546.)

The question remains as to whether the Legislature intended under the statute for a city to review and approve alternate methods of construction on an individual project basis or whether a finding of equivalency may be made applicable to all future projects where the identical alternate method of construction is proposed.

Applying the principles of statutory interpretation enumerated in the discussion of the first question, we believe that a project-by-project review is necessary under the statute's provisions. The key phrase is that an alternate method of construction can be approved if a finding is made "that the proposed design is satisfactory and that the . . . method, or work offered is, for the purpose intended, at least the equivalent of that prescribed in the State Building Standards Code."

Because of the use of the word "design" in the singular (as well as the entire statute being drafted in the singular), the possible unique features of any project vis-a-vis a particular alternate method of construction, and no express indication in the statute of a multiple approval process, it appears that the Legislature contemplated a project-by-project review procedure. Such a conclusion gives the statutory language its ordinary and usual meaning, harmonizes the provisions as a whole, and appears to be a workable solution without the imposition of undue administrative burdens.

We thus conclude in answer to the second question that the approval of an alternate method of construction under section 17951 requires a separate review and finding of equivalency for each building project for which the method of construction is proposed.

Opinion No. 81-208—July 3, 1981

SUBJECT: "COMMON FUND DOCTRINE"—The state is not responsible for a proportionate share of attorney fees and costs for legal proceedings in which the state recovers money through a lien under Government Code section 13966(b) when the crime victim/claimant is the active litigant responsible for the recovery.

Requested by: STATE BOARD OF CONTROL

Opinion by: GEORGE DEUKMEJIAN, Attorney General
Randy Saavedra, Deputy

The State Board of Control has requested an opinion on the following question:

Under the equitable "common fund doctrine" is the state responsible for a proportionate share of attorney fees and costs for legal proceedings in which the state recovers money through a lien under Government Code section 13966(b) when the crime victim/claimant is the active litigant responsible for the recovery?