

COMMISSION FOR TEACHER PREPARATION AND LICENSING

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September 5, 1978

78-7910

TO: County and District Superintendents of Schools

FROM: Peter L. LoPresti, Executive Secretary SUBJECT: Attorney General's Opinion on Assignment of
Certificated Personnel

Your attention is called to Opinion No. CV 77-155 of the State Attorney General issued in response to a request from the Commission.

The conclusions reached by the Attorney General may be summarized as follows:

1. Notwithstanding Sections 44258, 44263 and 44264 (of the Education Code) a governing board is not required to obtain the consent of a teacher to be assigned if the assignment is within the scope of the credential under which the teacher, if tenured, obtained tenure; and if probationary, is teaching.
2. The Commission is not empowered to hear and to resolve a dispute between a teacher and a governing board wherein the teacher alleges that the governing board was required to obtain his consent in order to make a certain assignment.
3. The Commission is not empowered to promulgate rules which define and limit the assignment of teachers by governing boards.

The full text of the opinion will be published in the near future in the Official Advance Sheets of the Opinions of the Attorney General; or single copies may be obtained from the Commission.

ATTORNEY GENERAL'S OPINIONS

JULY 1978]

Opinion No. CV 77-155—July 28, 1978

SUBJECT: ASSIGNMENT OF TEACHERS BY GOVERNING BOARD—A governing board is not required to obtain the consent of the teacher to be assigned if the assignment is within the scope of the credential under which the teacher is teaching. Furthermore, the Commission for Teacher Preparation and Licensing is not empowered to hear and resolve disputes between a teacher and a governing board, nor is it empowered to promulgate rules which define and limit the assignment of teachers.

Requested by: EXECUTIVE SECRETARY, COMMISSION FOR TEACHER PREPARATION AND LICENSING

Opinion by: EVELLE J. YOUNGER, Attorney General
Thomas S. Sayles, Deputy

The Honorable Peter L. Lopresti, Executive Secretary of the Commission for Teacher Preparation and Licensing, has requested our opinion as to three questions which may be phrased as follows:

I. Pursuant to Education Code sections 44258, 44263, and 44264, a governing board is required to obtain the consent of the teacher prior to assigning that teacher to certain enumerated teaching assignments; what, if any, teaching assignments do not require the governing board to obtain the consent of the teacher?

II. Is the Commission for Teacher Preparation and Licensing empowered to hear and to resolve a dispute between a teacher and a governing board wherein the teacher alleges that the governing board was required to obtain his consent in order to make a certain teaching assignment?

III. Is the Commission for Teacher Preparation and Licensing empowered to promulgate rules which define and limit the assignment of teachers by governing boards?

It is concluded that:

I. Notwithstanding sections 44258, 44263, and 44264, a governing board is not required to obtain the consent of the teacher to be assigned if the assignment is within the scope of the credential under which the teacher, if tenured, obtained tenure and if probationary, is teaching.

II. The commission is not empowered to hear and to resolve a dispute between a teacher and a governing board wherein the teacher alleges that the governing board was required to obtain his consent in order to make a certain assignment.

III. The commission is not empowered to promulgate rules which define and limit the assignment of teachers by governing boards.

ANALYSIS

A. Relevant Code Sections

The following code sections are relevant to the questions addressed:¹

¹ Unless otherwise noted, all references are to the Education Code.

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Section 44830:

"Governing boards of school districts shall employ for positions requiring certification qualifications, only persons who possess the qualifications therefor prescribed by law. It shall be contrary to the public policy of this state for any person or persons charged, by said governing boards, with the responsibility of recommending such persons for employment by said boards to refuse or to fail to do so for reasons of race, color, religious creed, sex, or national origin of said applicants for such employment."

Section 35035:

"The superintendent of each school district shall, in addition to any other powers and duties granted to or imposed upon him:

"(c) Subject to the approval of the governing board, assign all employees of the district employed in positions requiring certification qualifications, to the positions in which they are to serve. Such power to assign includes the power to transfer a teacher from one school to another school at which the teacher is certificated to serve within the district when the superintendent concludes that such a transfer is in the best interest of the district."

Section 44256:

"Authorization for teaching credentials shall be of four basic kinds, as defined below:

"(a) 'Single subject instruction' means the practice of assignment of teachers and students to specified subject matter courses, as is commonly practiced in California high schools and most California junior high schools.

"(b) 'Multiple subject instruction' means the practice of assignment of teachers and students for multiple subject matter instruction, as is commonly practiced in California elementary schools and as is commonly practiced in early childhood education.

"(c) 'Specialist instruction' means any specialty requiring advanced preparation or special competence including but not limited to, reading specialist, mathematics specialist, specialist in special education, or early childhood education, and such other specialties as the commission may determine.

"(d) 'Designated subjects' means the practice of assignment of teachers and students to designated technical, trade, or vocational courses may be part of a program of trade, technical, or vocational education."

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Section 44203:

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“(g) ‘Authorization’ means the designation appearing on the teaching or service credential identifying the areas of instruction or service which the credential holder is permitted to perform.”

Section 44258:

“A teacher who is authorized for single subject instruction may be assigned, with his consent, to teach any subject in his authorized fields at any grade level; preschool; kindergarten and grades 1 to 12, inclusive; or in classes organized primarily for adults, and similarly, a teacher authorized for multiple subject instruction may be assigned, with his consent, to teach in any self-contained classroom; preschool; kindergarten and grades 1 to 12, inclusive; or in classes organized primarily for adults; and similarly, a teacher authorized as a specialist teacher may be assigned, with his consent, to teach in his area of specialization at any grade level; preschool; kindergarten and grades 1 to 12, inclusive; or in classes organized primarily for adults.”

Section 44263:

“A teacher licensed pursuant to the provisions of this article may be assigned, with his consent, to teach any single subject class in which he has 18 semester hours of coursework or nine semester hours of upper division or graduate coursework or a multiple subject class if he holds at least 60 semester hours equally distributed among the four areas of a diversified major set forth in Section 44314. A three-semester-unit variance in any of the required four areas may be allowed. The governing board of the school district by resolution shall provide specific authorization for such assignment. The authorization of the governing board shall remain valid for one year and may be renewed annually.”²

Section 44264:

“Notwithstanding any other provision of law, a person holding a credential issued under the laws and regulations in effect on or before December 31, 1971, authorizing teaching in grades 7 to 12, inclusive, in the secondary schools may be assigned, with his consent, to teach grade 6 in a school composed of grades 6, 7, and 8.”

B. Discussion

I

Courts have interpreted sections 44830 and 35035 as granting the governing board a general power of assignment with respect to certificated employees, in

² Section 44263 is of limited relevance to the discussion herein in that it is expressly limited to assignment “until June 30, 1975.”

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general, and teachers, in particular. In analyzing section 35035, the court in *Centinela Valley Secondary Teachers Assn. v. Centinela Valley Union High Sch. Dist.* (1974) 37 Cal. App. 3d 35, 40, stated:

"This statute provides for the well recognized prerogative of the school administrator to control class assignments. That prerogative is to be exercised for the best interest of the students."

Furthermore, the court stated that:

"The assignment of teachers to classes for which a teacher is certified is entirely within the discretion of the governing board. . . ." (*Id.* at p. 40.)

Although sections 44256 subdivision (a), 44256 subdivision (b), and 44256 subdivision (d) utilize the language "the practice of assignment" and "as commonly practiced in," we do not believe such language was intended to effect a governing board's general power of assignment. This language was intended merely to describe the types of teaching credentials the Commission for Teacher Preparation and Licensing (hereinafter "Commission") is authorized to issue. This conclusion seems inescapable in view of the fact that section 44256 begins by stating that the "authorization for teaching credentials shall be of four basic kinds" as defined in section 44256 subdivisions (a), (b), (c), and (d). Moreover, as defined in section 44203 subdivision (g) the term "authorization" does not relate to the governing board's general power of assignment, but to the areas of instruction which the credential holder is permitted to perform. Lastly, the fact that said language refers to the assignment of teachers and students clearly indicates that these sections were intended to describe the types of teaching credentials and not assignment of credential holders. Accordingly, section 44256 in no way infringes upon a governing board's exercise of its general power of assignment pursuant to sections 44830 and 35035.

There are a myriad of cases which discuss a governing board's general power of teacher assignment and which hold that, unlike the assignment set forth in sections 44258, 44263, and 44264, the governing board is not required to obtain the consent of the teacher to be assigned.

Cullen v. Board of Education (1932) 126 Cal. App. 510, is the oldest case our research revealed discussing the general power of assignment. In *Cullen*, the issue was whether the tenure provisions contained in the Education Code gave permanent status to a teacher employed for more than the number of years required to obtain tenure, where such employment was at different schools operated by the same governing board. The court held that the two assignments constituted one "position" within the meaning of the tenure provisions and petitioner, having served in that "position" for more than the probationary period, had become a permanent employee. Although the teacher had tenure in the aforementioned "position," the court reasoned that the obtaining of tenure does not interfere with

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the governing board's general power of assignment. The court clearly indicated that tenure does not infringe upon the general power of assignment by stating:

"But we should not be understood as holding that this right of tenure guarantees that a teacher must be retained in any particular school or assigned to teach any particular class or classes. This right of tenure is a right which the teacher enjoys to continue in the position or positions to which he has become elected under the statute—i.e., in a position or positions of a rank and grade equivalent to that occupied for the probationary period and to which the teacher has thus become 'elected' under the statute." (*Id.* at p. 513.)

The court in *Cullen* further acknowledged the governing board's assignment prerogative in broad terms by stating:

"But it is wholly immaterial that a teacher may be assigned to duty in one or more schools or school buildings maintained by the school district. The teacher is the employee of the school district; the district is the entity which becomes the employer; the schools are merely instruments of the district. It cannot matter that a district may maintain two or more school buildings, or school groups, which are given separate names or that some classes are conducted before noon, some after noon, and some after sunset. The power of the Board of Education to assign its employees to these various duties is not questioned and when such assignments have been made they must be taken as making up the 'position, or positions' which the Tenure Law applies." (*Id.* at p. 512.)

Despite the court's lengthy discussion in *Cullen* of tenure as it related to the general power of assignment, in *Mitchell v. Board of Trustees* (1935) 5 Cal. App. 2d 64, a tenured teacher utilized the tenure laws to challenge the assignment power of a governing board. In *Mitchell*, the petitioner was a tenured teacher who had been employed to teach "commercial subjects" at Visalia Union High School and Junior College for seven consecutive years. Prior to the commencement of the following school year, the petitioner was informed by the governing board that his services were no longer needed. The petitioner brought an action challenging his dismissal. The lower court ruled, for reasons not relevant to this opinion, in favor of the petitioner and ordered the governing board:

"... to restore and reinstate the petitioner to his position as a permanent teacher of commercial subjects in the high school and junior college. . . ." (*Id.* at p. 67.)

The governing board appealed the lower court's order. In analyzing this case, the appellate court in *Mitchell* echoed the holding in *Cullen v. Board of Education*, *supra*, 126 Cal. App. 510, by stating at page 69 that:

"There is nothing in the tenure of law which interferes with the general power and right of a board of education to assign teachers to

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particular classes and to particular schools in accordance with its judgment and desire reasonably exercised. A teacher, in acquiring a permanent status, does not thereby acquire a vested right to teach any certain class or in any certain school."

Moreover, in reversing the lower court's order, the court set forth the parameters within which a governing board may exercise its general power of assignment by stating:

"While a board would have no right to evade the plain meaning of the tenure act by assigning a teacher to a class of work for which he was not qualified, for the purpose of compelling his resignation, it has the power to reasonably change assignments with respect to a permanent teacher so long as the work assigned is of a rank and grade equivalent to that by which the permanent status was acquired and so long as the assignment is one for which the teacher in question is qualified. We think the order here in question should be so modified as to permit the respondent board to assign the petitioner to any class which he was qualified to teach and of a rank and grade similar to the work done by him during his probationary period, whether or not such a class is one in a commercial subject." (*Mitchell v. Board of Trustees, supra*, 5 Cal. App. 2d at p. 69.)

Mitchell held that a governing board had the power to assign a teacher to any position of equivalent rank and grade to that under which tenure was acquired, so long as the teacher is "qualified" to serve in the assigned position. Unfortunately, the court in *Mitchell* did not elaborate upon what is meant by "qualified."

However, the court in *Matthews v. Board of Education* (1962) 198 Cal. App. 2d 748, discussed not only the general power of assignment, but also what a credentialed teacher is qualified to teach. In *Matthews*, a teacher claimed she was a probationary and not a substitute teacher because her assignment to teach was in a school that previously had not been physically in existence. The court held that the teacher was a substitute. Despite there being no question in the case about the type of teaching assignment, the court stated:

"The assignment of teachers to classes for which a teacher is certificated is entirely within the discretion of the governing board. A teacher does not acquire tenure in a particular class or room. She is assigned to duty *within the scope of her certification wherever she is needed in the schools of the district.* (Citations omitted.)" (Emphasis added.) (At p. 754.)

Accordingly, *Matthews* indicated that a teacher, who acquired tenure under a particular credential, is qualified and may be assigned by the governing board to teach anywhere within the scope of the credential under which tenure was obtained.

The governing board's assignment prerogative to assign a tenured teacher to teach anywhere within the scope of the credential under which tenure was acquired

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was also recognized in 41 Ops. Cal. Atty. Gen. 175 (1963). In that opinion, the question was as follows:

"May permanent teachers be transferred without their consent from a regular program of the Salinas Union High School District to the teaching facility at Soledad Correctional Institution located outside the territorial limits but administered by the district's adult school division pursuant to contract with the Director of Corrections?"

The opinion concluded that:

"Teachers who have acquired tenure in the regular day junior and senior high schools of the district may not be transferred without their consent from the regular program of the school district to the program of the correctional institution administered by the district's adult school division. Such transfer may be made, however, of teachers who have acquired tenure in the adult schools of the district." (*Id.* at p. 175.)

Some of the teachers assigned to the penal institution had obtained tenure through teaching in the senior high school and others through teaching in junior high schools. In its analysis, our opinion echoed the case law discussed above in stating the following regarding the general power of assignment.

"The district may legally make the assignments in question only if the position of instructing classes at the institution is a position of an equivalent rank and grade to the position of instructing in a senior or junior school. . . ." (*Id.* at p. 176.)

Moreover, the opinion stated that:

"Notwithstanding that there is no difference in the subject matter taught and the scope of certification, and that the classes are classes of the district, these assignments are to positions different than those in which the teachers in question gained tenure, and accordingly may not be made *without the teacher's consent.*" (Emphasis added.) (*Id.* at p. 176.)

This opinion is consistent with *Beseman v. Remy* (1958) 160 Cal. App. 2d 437, wherein it was held that it was permissible to assign teachers to prison classes which were conducted as part of a junior college district where such teachers had obtained tenure in the junior college district. The opinion merely reiterated the notion that a teacher may be assigned anywhere within the scope of the credential under which tenure was acquired.

In *Adelt v. Richmond Sch. Dist.* (1967) 250 Cal. App. 2d 149, a teacher challenged the governing board's power to assign a teacher anywhere within the scope of the credential under which the teacher had obtained tenure without the teacher's consent. The teacher's contention was not based upon the tenure laws, but upon section 13462 (1959 Ed. Code). This provision provided that:

"At the expiration of the leave of absence of the employee, he shall,

unless he otherwise agrees, be reinstated in the position held by him at the time of the granting of the leave of absence."

The teacher argued that the "unless he otherwise agrees" language in section 13462 provided that she could not be assigned without her consent to a position other than that which she had previously occupied. The court summarized the teacher's argument as follows:

"The essence of appellant's contention is that, when she returned from her sabbatical leave, she was entitled to teach the fourth grade at Woods Elementary School, i.e., to be reinstated in the specific assignment she had held formerly." (*Id.* at p. 151.)

The court, following precedent, reasoned that:

"There is no dispute that appellant is a duly certificated and tenured elementary school teacher (as opposed to either a secondary school teacher or a junior college teacher, both of which require different certification). By virtue of this certification, appellant is qualified to teach 'in any elementary school, in grades seven and eight of any junior high school . . .'" (*Id.* at pp. 151-152.)

After indicating what the appellant was "qualified" to teach by virtue of the credential she held, the court further stated the following often quoted passage regarding the governing board's general power of assignment:

"Subject only to the requirement of reasonableness, a school district is entitled to assign teachers anywhere within their certificate, according to the needs of the district. Tenure does not bestow on the school teacher a vested right to a specific school or to a specific class level of students within any school. [Citations.]" (*Id.* at p. 152.)

The court concluded that:

"... Section 13462 guarantees that the school teacher will be reinstated in an assignment that is within the scope of the certificate under which the teacher was employed at the time the leave of absence began." (*Id.* at p. 152.)

The court indicated the rationale upon which its decision was based by stating:

"The welfare of school districts demands that they have broad discretion to assign their teachers in the best interests of the school system. Consequently, the courts should not lightly undertake to interfere with the exercise of this discretion, where it is not in conflict with statutory law." (*Id.* at p. 153.)

Based upon the court holding in *Adelt*, a teacher may be assigned, subject to the requirement reasonably, to teach anywhere within the scope of the credential under which the teacher is employed, without the consent of the teacher. It should be

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noted that *Adelt* is particularly significant in that it spoke not only of the assignment of tenured teachers, but also of the assignment of probationary teachers.

In *Finot v. Pasadena City Bd. of Education* (1967) 250 Cal. App. 2d 189, the court indicated what type of assignment, although within the scope of the teacher's credential, was unreasonable, and therefore, impermissible. In that case, a teacher had taught government at a high school. The teacher was reassigned as a home teacher at the same high school. Although the assignment was within the scope of the teacher's secondary credential, it was unreasonable in that:

"Obviously the change in teaching assignment in question was detrimental to him [the teacher] and was solely because of his insistence, on wearing a beard while teaching in a classroom."³ (*Id.* at p. 203.)

It should be noted that all the cases discussed herein were decided prior to the California Legislature enacting section 13129 in 1970, authorizing the assignment of a teacher outside the scope of the teacher's credential with the consent of the teacher. (See § 13129 of the 1959 Ed. Code, added by Stats. 1970.) As discussed below, cases decided after the Legislature enacted section 13129, like those decided before it, hold that pursuant to its general power of assignment, a governing board may assign a teacher anywhere within the scope of the credential under which the teacher is teaching or obtained tenure. (The language contained in § 13129 is now contained in § 44258.)

In *Otto v. Davie* (1973) 34 Cal. App. 3d 570, the petitioner challenged his being reassigned to a teaching position pursuant to court order reversing his termination as a counselor. The petitioner held both a specialist in pupil personnel services credential and a teaching credential. However, the petitioner served his entire probationary period in the district as a counselor or specialist in pupil personnel services. The court reasoned that the "petitioner had gained his tenure as a counselor." Therefore, the court held that:

". . . [P]etitioner should have been reassigned to a 'rank and grade equivalent to that by which the permanent status was acquired' and for which he was qualified, i.e., as a counselor. We therefore conclude the assignment of petitioner was outside the scope of the credential under which he was elected to serve and under which he acquired tenure." (*Id.* at pp. 577-578.)

Otto merely restated the holding of cases decided prior to section 13129 being enacted that a credential holder may be assigned without his consent anywhere within the scope of the credential under which he obtained tenure or is employed.

In the more recent case of *Netwig v. Huntington Beach Union High Sch. Dist.* (1975) 52 Cal. App. 3d 530, the petitioner challenged the governing board's power of assignment not by virtue of the tenure laws, but by virtue of section 13439 (see

³ The court held that wearing of a beard was an expression protected by the First Amendment of the United States Constitution.

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1959 Ed. Code). The petitioner had been employed by the governing board as a teacher for eight consecutive years. In the following year, petitioner being also duly credentialed as a counselor, was reassigned to the position of counselor. After serving two years as a counselor, petitioner was terminated as an employee of the governing board. Petitioner's appeal of his termination was successful and the court ordered petitioner reinstated. The governing board notified petitioner that he was being reinstated with backpay and reassigned to a teaching position. Although petitioner did not argue that the tenure laws prevented such a reassignment, he argued that section 13439 precluded the governing board from making such a reassignment. Section 13439 provided:

"If the employee has been suspended pending the hearing, he shall be reinstated within five days after the entry of judgment in his favor, and shall be paid full salary by the governing board for the period of his suspension."

The issue was whether or not section 13439 required the governing board to return the petitioner to the position of counselor rather than reassigning him to a teaching post. The petitioner argued that unless he is not returned to the position of counselor, "for however short a period," he was not being reinstated within the meaning of section 13439. In response to petitioner's argument, the court stated that:

"One of the most basic rules of construction is that a statute should be given the interpretation which yields a reasonable result. [Citations omitted.] It is not to be presumed that the Legislature would command performance of a thoroughly useless act. Requiring School District to return petitioner to his counseling position for a single day after a two-year suspension before reassigning him to a teaching position would be just such a useless act. Accordingly, we hold that Education Code section 13439 does not invalidate petitioner's reassignment."

The court in *Netwig* undoubtedly viewed reinstating petitioner as a counselor a "useless act," because such reinstatement would not prohibit subsequent reassignment of petitioner as teacher pursuant to the general power of assignment. Accordingly, *Netwig* seems to indicate that section 13469, like the tenure laws, does not infringe upon or restrict the general power of assignment.

The case law discussed herein clearly indicates that a teacher without his consent may be assigned by a governing board anywhere within the scope of the credential under which the teacher, if probationary, is teaching or if tenured obtained tenure.

The case law further indicates that neither the tenure laws or reinstatement rights interfere with the general power of assignment. Likewise, it is our view that sections 44258, 44263, and 44264 were not intended to and do not infringe upon a governing board's general power of assignment. On the contrary, these statutes were

intended to expand assignment of a teacher only meets certain. Our construction of statutory construction throw long established appear either by *ex Nat. Home Four.* interpreted by as *Kusior v. Silver* (possible, harmonize true them to give (1960) 54 Cal. 2 of assignment, it to utilize sections doubtedly would

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intended to expand a governing board's power of assignment by permitting the assignment of a teacher outside the scope of his credential where the teacher not only meets certain enumerated requirements, but also consents to the assignment. Our construction of these statutes seems to comport with the well-known rules of statutory construction that it is not presumed that the Legislature intends to overthrow long established principles of law, unless such intention is made clearly to appear either by express declaration or by necessary implication; *Brown v. Memorial Nat. Home Foundation* (1958) 162 Cal. App. 2d 513; that statutes are to be interpreted by assuming that the Legislature was aware of existing decisions, *Kusior v. Silver* (1960) 54 Cal. 2d 603, 618; and that courts must, when reasonably possible, harmonize statutes, reconcile seeming inconsistencies in them, and construe them to give force and effect to all their provisions. (*Hough v. McCarthy* (1960) 54 Cal. 2d 273.) Moreover, in view of the well established general power of assignment, it seems reasonable to conclude that if the Legislature had intended to utilize sections 44258, 44263, and 44264 to infringe upon this power, it undoubtedly would have expressly stated such a drastic change in the law of this state.

To summarize, it is our opinion that a government board may assign a teacher, without his consent, anywhere within the scope of the credential under which the teacher, if probationary, is employed or if tenured, obtained tenure.

II

There are no appellate court decisions which squarely address the issue of whether or not the Commission is empowered to hear and resolve a dispute between a teacher and a governing board, wherein the teacher alleged that the governing board was required to obtain the consent of the teacher in order to make a certain assignment.

The Commission is an administrative agency created by statute and, therefore, an agency of limited jurisdiction having no powers other than those granted to it by statute. (*Proctor v. S.F. Port Authority* (1968) 266 Cal. App. 2d 675; *Thal v. County of Santa Cruz* (1962) 204 Cal. App. 2d 651; *People v. Harter Packing Co.* (1958) 160 Cal. App. 2d 264; and *Schilling v. Industrial Acc. Com.* (1920) 47 Cal. App. 190.) We now proceed to examine the statutes pursuant to which the Commission exercises its power.

The Commission was created by the Ryan Act (Ed. Code § 44200 *et seq.*, hereinafter "Act"). The primary function of the Commission relates to the licensing of and development of professional standards for public school teachers in this State. (See § 44225; 54 Ops. Cal. Atty. Gen. 247 (1971).) In order to carry out this function, the Act created the Committee of Credentials (hereinafter "Committee." See § 44242). Section 44243 provides that:

"The Commission may assign to the Committee of Credentials such administrative duties as it may see fit relating to the granting, issuance, suspension, and revocation of credentials and life diplomas, and it shall

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supervise the work of the committee and shall provide statements of policy relative to committee operation and procedures as it deems appropriate to do so."

Although the Act empowers the Commission to adjudicate disputes between certificated employees and the Commission regarding the denial, suspension, or revocation of a credential, (see §§ 44244, 44245, and 44246), the Act does not expressly empower the Commission to hear and resolve a dispute between a credential holder and a governing board with respect to assignment practices of the governing board. A conclusion that the Commission does not have the power to adjudicate such dispute seems inescapable in light of section 44257. Section 44257, in relevant part, states:

"... The commission may prepare appropriate forms and data collection instruments to monitor the implementation of this section, to routinely audit, sample, or otherwise verify conformity in assignment practices within the provisions of this chapter."

With respect to the assignment practices, section 44257 clearly restricts the Commission's power to monitoring such practices by audit, sample, and verification. Accordingly, it is our opinion that the Commission is not empowered to hear and to resolve such disputes.

III

As previously noted, the Commission, as an administrative agency created by statute, possesses only those powers conferred upon it by statute. (See *People v. Harter Packing Co.* (1958) 160 Cal. App. 2d 464.) Moreover, an administrative agency has no authority to enact rules or regulations which alter or enlarge the terms of legislative enactments. *Addison v. Department of Motor Vehicles* (1977) 69 Cal. App. 3d 486; *California Sch. Employees Assn. v. Personnel Commission* (1970) 3 Cal. 3d 139; *Morris v. Williams* (1967) 67 Cal. 2d 733.)

Section 44257 seems to limit the Commission's authority to monitoring assignment practices. Accordingly, if the Commission were to promulgate rules defining and limiting assignment practices, such rules would seem to enlarge and alter the Commission's power with respect to assignment practices. In short, the promulgation of such rules is not permissible in that it is beyond the scope of the Commission's statutory power to monitor assignments by auditing, sampling and verifying.

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