Legal Opinion on State Agency Travel Ban and Compliance by Local Community College Districts
June 29, 2017

The legal inquiry is (1) whether Government Code section 11139.8 (enacted by AB 1887, Statutes of 2016) covers community college districts, which are not specifically listed in Government Code section 11139.8, and (2) whether the statute bans the use of federal funds for purposes of travel to states listed in the statute.

As discussed below, the statute applies to community colleges. Additionally, while the statute does not directly prohibit the use of federal funds, it prohibits state agencies from sponsoring trips to states listed on the travel prohibition, regardless of how those trips are funded (Gov. Code, § 11139.8, subd. (b)(2).)

A court would likely hold community colleges are state agencies for purposes of compliance with Government Code section 11139.8

Courts have held for purposes of Eleventh Amendment immunity, that community colleges are an arm of the state. In doing so, courts consider a number of factors including "whether a money judgment against the entity would be satisfied out of state funds; the degree of funding the entity receives from the state; whether the entity has independent authority to raise funds; the extent of state control over the entity's fiscal affairs; whether the entity performs central governmental functions; whether the entity may sue, be sued, and hold property in its own name; the corporate status of the entity under state law; the degree of autonomy enjoyed by the entity; the entity's immunity from state taxation; and the geographic scope of the entity's operation." (*Kirchmann v. Lake Elsinore Unified School Dist*. (1997) 83 Cal.App.4th 1098, 1106 *Lynch v. San Francisco Housing Authority* (1997) 55 Cal.App.4th 527, 535,.) Construing California law, the Ninth Circuit has held that community college districts are state entities for Eleventh Amendment purposes (*Mitchell v. Los Angeles Community College Dist*. (9th Cir.1988) 861 F.2d 198, 201 ["California state colleges and universities are 'dependent instrumentalities of the state[;]' " District's "budget is made up of funds received from the state's general fund pursuant to a state calculated formula" and "some fees charged by the district's colleges go to the state"], *Belanger v. Madera Unified School Dist*. (9th Cir.1992) 963 F.2d 248, 251 [California school district entitled to Eleventh Amendment immunity because judgment against the school district would be satisfied out-of-state funds and district is state agency that performs central governmental functions]; *Cerrato v. San Francisco Community College Dist*. (9th Cir.1994) 26 F.3d 968, 972 [following *Mitchell*]; see,*Wasson v. Sonoma County Jr. College Dist*. (N.D.Cal.1997) 4 F.Supp.2d 893, 901–902 ["there is nothing in Mitchell or Cerrato to suggest that individual community college districts in California might be treated differently for purposes of the Eleventh Amendment"].) The same conclusion has been reached by a state court with regard to California school districts. (*Kirchmann v. Lake Elsinore Unified School Dist*., *supra*, 1105–1115.) Courts would likely similarly find that community colleges are state agencies under Government Code section 11139.8.

There are also statutes that identify community colleges as state agencies. (see Pub. Res. Code § 40196.3, Gov. Code § 14710.)

While the statute does not directly apply to the use of federal funds, it prohibits state agencies from sponsoring trips to states listed on the travel prohibition, regardless of how those trips are funded (Gov. Code, § 11139.8, subd. (b)(2).)

The legal inquiry also asked whether the statute applies to the use of federal funds. The statute does not specifically mention federal funds. However, the statute states that it restricts state agencies from requiring employees to travel to certain states, and it prohibits state agencies from approving state-funded or state-sponsored travel to those states. Thus, for state agencies, the focus for compliance is on the state to be traveled to and not the funding source, unless the trip falls under one of the listed exceptions which are as follows:

- Enforcement of California law, including auditing and revenue collection.
- Litigation.
- To meet contractual obligations incurred before January 1, 2017.
- To comply with requests by the federal government to appear before committees.
- To participate in meetings or training required by a grant or required to maintain grant funding.
- To complete job-required training necessary to maintain licensure or similar standards required for holding a position, in the event that comparable training cannot be obtained in California or a different state not subject to the travel prohibition.
- For the protection of public health, welfare, or safety, as determined by the affected agency, department, board, authority, or commission, or by the affected legislative office.

In short, unless an exception applies, the District cannot require, fund, or sponsor trips to states falling under the ban.

What States are Currently Listed by the CA. Attorney General as Having Enacted Discriminatory Laws That are Subject to the Travel Restrictions:

Alabama, Kansas, Kentucky, Mississippi, North Carolina, South Dakota, Tennessee, and Texas

The list can be found at https://oag.ca.gov/ab1887

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