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August 11, 2017

The Honorable Themis Klarides  
Republican Leader  
State of Connecticut  
House of Representatives  
Legislative Office Building  
300 Capitol Avenue, Suite 4200  
Hartford, CT 06106-1591

Dear Representative Klarides:

You have asked for an opinion about certain legal questions pertaining to a proposed police training facility in the Town of Griswold. Specifically, you ask (1) whether the requirements under Chapter 297a of the General Statutes relating to priority funding areas apply to the proposed training facility; (2) whether the Department of Administrative Services (DAS) has satisfied the requirement of Conn. Gen. Stat. § 16a-35e that state agencies cooperate with municipalities to ensure programs and activities in rural areas sustain village character; and (3) whether the proposed training facility requires the approval of the State Properties Review Board as part of the State Facility Plan. We conclude that (1) the statutory requirements pertaining to priority funding areas, and in particular Conn. Gen. Stat. § 16a-35d, do not apply to the proposed facility; (2) we have no basis for concluding that DAS has not satisfied the statutory cooperation requirement; and (3) the legislature has expressly authorized the use of bond proceeds for the training facility project even though the proposed training facility is not included in the State Facility Plan.

**Background**

We understand that DAS is proposing to locate a State Police training facility in the Town of Griswold. We further understand that DAS has taken positions on each of the three issues you have raised. First, DAS maintains that the statutes relating to priority funding areas do not apply to state projects, such as the proposed facility here, "where a state agency is developing a facility to carry out its statutory mission." Letter to Hon. Kevin Skulczyk from Commissioner

Melody A. Currey dated May 24, 2017. Second, DAS has indicated that "[t]hroughout this process, communication with the Town of Griswold and other municipalities has been extensive. Public meetings were held in the Towns affected even though such meetings were not required." *Id.* Finally, as to the role of the State Properties Review Board, DAS indicated that capital projects such as this one are not included in the State Facility Plan but have been separately authorized by the General Assembly in bond authorization acts. Letter to Hon. Kevin Skulczyk from Commissioner Melody A. Currey dated Nov. 28, 2016.

**The Applicability of Chapter 297a of the  
General Statutes to the Proposed Facility**

Chapter 297a of the General Statutes addresses the funding of certain projects in "priority funding areas." The question of the applicability of Chapter 297a depends on the interpretation of its statutory language. As with all such statutory questions, a court's "fundamental objective is to ascertain and give effect to the apparent intent of the legislature." *Town of Middlebury v. Connecticut Siting Council*, 326 Conn. 40, 48 (2017) (internal quotation marks omitted). Of particular relevance to the interpretation of Chapter 297a's provisions is the principle that statutes limiting rights are not to be construed as applying to the State unless the legislature expressly or by necessary implication provides otherwise. *State v. Lombardo Bros. Mason Contractors, Inc.*, 307 Conn. 412, 426-27 (2012).

Section 16a-35d of the General Statutes provides that "no state agency, department or institution shall provide funding for a growth-related project unless such project is located in a priority funding area." Conn. Gen. Stat. § 16a-35d(a). Notwithstanding this prohibition, a state agency, with the approval of the Secretary of the Office of Policy and Management (OPM), may provide funding for a growth-related project that is not located in a priority funding area

upon determination that such project is consistent with the plan of conservation and development, adopted under section 8-23, of the municipality in which such project is located and that such project (1) enhances other activities targeted by state agencies, departments and institutions to a municipality within the priority funding area, (2) is located in a distressed municipality, as defined in section 32-9, targeted investment community, as

defined in section 32-222, or public investment community, as defined in section 7-545, (3) supports existing neighborhoods or communities, (4) promotes the use of mass transit, (5) provides for compact, transit accessible, pedestrian-oriented mixed use development patterns and land reuse and promotes such development patterns and land reuse, (6) creates an extreme inequity, hardship or disadvantage that clearly outweighs the benefits of locating the project in a priority funding area if such project were not funded, (7) has no reasonable alternative for the project in a priority funding area in another location, (8) must be located away from other developments due to its operation or physical characteristics, or (9) is for the reuse or redevelopment of an existing site.

Conn. Gen. Stat. § 16a-35d(b). Thus, a state agency may only provide funding for a growth-related project that is not located in a priority funding area if the project is consistent with the local plan of conservation and development and it satisfies one of the nine enumerated criteria. The resolution of the question of § 16a-35d's applicability to the proposed training facility depends on the meaning of the defined terms in these provisions.

A "priority funding area" is an area of the state designated as such upon the recommendation of OPM and approval of the General Assembly. *Id.*, §§ 16a-35c(a)(3), 16a-35c(b). It is our understanding that the proposed training facility will not be located in a priority funding area.

A "growth-related project" is defined as

any project that includes (A) the acquisition of real property when the acquisition costs are in excess of two hundred thousand dollars, except the acquisition of open space for the purposes of conservation or preservation; (B) the development or improvement of real property when the development costs are in excess of two hundred thousand dollars; (C) the acquisition of public transportation equipment or facilities when the

acquisition costs are in excess of two hundred thousand dollars; or (D) the authorization of each state grant, any application for which is not pending on July 1, 2006, for an amount in excess of two hundred thousand dollars, for the acquisition or development or improvement of real property or for the acquisition of public transportation equipment or facilities....

Conn. Gen. Stat. § 16a-35c(a)(2).<sup>1</sup>

"Funding" within the meaning of § 16a-35d is defined as including "any form of assurance, guarantee, grant payment, credit, tax credit or other assistance, including a loan, loan guarantee, or reduction in the principal obligation of or rate

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<sup>1</sup> Excepted from the definition of growth-related project are

(i) Projects for maintenance, repair or renovations to existing facilities, acquisition of land for telecommunications towers whose primary purpose is public safety, parks, conservation and open space, and acquisition of agricultural, conservation and historic easements; (ii) funding by the Department of Housing for any project financed with federal funds used to purchase or rehabilitate existing single or multifamily housing or projects financed with the proceeds of revenue bonds if the Commissioner of Housing determines that application of this section and sections 16a-35d and 16a-35e (I) conflicts with any provision of federal or state law applicable to the issuance or tax-exempt status of the bonds or any provision of any trust agreement between the Department of Housing and any trustee, or (II) would otherwise prohibit financing of an existing project or financing provided to cure or prevent any default under existing financing; (iii) projects that the Commissioner of Housing determines promote fair housing choice and racial and economic integration as described in section 8-37cc; (iv) projects at an existing facility needed to comply with state environmental or health laws or regulations adopted thereunder; (v) school construction projects funded by the Department of Education under chapter 173; (vi) libraries; (vii) municipally owned property or public buildings used for government purposes; and (viii) any other project, funding or other state assistance not included under subparagraphs (A) to (D), inclusive, of this subdivision.

Conn. Gen. Stat. § 16a-35c(a)(2).

of interest payable on a loan or a portion of a loan." *Id.*, § 16a-35c(1). The forms of funding included in this definition all are common ways by which the State provides assistance for economic development to non-State entities. *See, e.g.*, Conn. Gen. Stat. §§ 4-66c; 4-66g; 12-217ii to 12-217pp; 32-7g; 32-9i to 32-9j; 32-9o to 32-9t.

Significantly, in crafting the priority funding area statutes, the legislature did not use language that either expressly or by necessary implication demonstrated an intention to make these provisions applicable to projects of the State itself, as opposed to projects of private parties or municipalities for which the State is providing funding. Instead, it speaks only in general terms. Under a longstanding rule of statutory construction, in the absence of language expressly or by necessary implication providing for application to the State, statutory provisions limiting rights are not to be construed as applying to it. *Lombardo Bros.*, 307 Conn. at 426-27; *State v. Shelton*, 47 Conn. 400, 404-05 (1879). For this reason, for example, this Office has consistently opined that development of state owned land is not subject to local zoning regulation in the absence of express statutory language. *E.g.*, A.G. Op. No. 2014-006, 2014 WL 7284325 (Oct. 23, 2014); A.G. Op. No. 86-63, 1986 WL 289176 (Aug. 18, 1986). Thus, applying these principles, a court would likely presume that the legislature would ordinarily demonstrate its intention to impose a general restriction on the State – particularly one involving subjecting the State to local laws or standards – through language that makes clear that the statute applies to state projects.

Although the proposed facility appears to exceed the valuation requirement under the definition of growth-related project – i.e., a land acquisition or development cost of over \$200,000 – that does not end the inquiry. Against the background principal that general statutory language is ordinarily presumed not to apply to the State, the absence of language that expressly or by necessary implication includes state projects weighs heavily in favor of a construction of the statute that excludes a state project such as the proposed training facility from its ambit. *See Lombardo Bros.*, 307 Conn. at 426-27.

Moreover, the restrictions in § 16a-35d are placed on a state agency's authority to provide funding to non-state recipients, and not to the State's funding of its own projects. In this case, DAS (or the Department of Emergency Services and Public Protection) is not providing "funding" to anyone. Specifically, it is not providing any form of assurance, guarantee, grant payment, credit, tax credit, loan, loan guarantee, principal or interest rate reduction or other assistance to any other party. Rather, it is using state bond proceeds to fund a state project as

specifically permitted by the legislature through the bond authorization. If the legislature had intended to extend § 16a-35d's restrictions to the State's funding of its own projects, the more natural way of demonstrating that intent would have been to restrict state agencies' authority to develop or construct projects outside of priority funding areas. Instead, absent evidence of such intent, the restriction is best understood as limited to funding by a state agency of non-state projects. Courts will not supply additional statutory language through interpretation where the legislature could have easily expressed its intent. *Mayer v. Historic District Comm'n*, 325 Conn. 765, 780 (2017). Limiting the restrictions to agency funding, rather than imposing them directly on agency construction or development of a project, supports an interpretation that § 16a-35d applies to a state agency's funding of projects other than the State's own projects.

The legislative history offers no meaningful evidence of a contrary intent. The limited legislative debate emphasized the need for improving the coordination of development among various levels of government and the effectiveness of state investment. *See, e.g.*, 48 Conn. Senate Proc., pt. 14, 2005 Sess. 4381-84 (June 6, 2005) (remarks of Sen. Coleman). However, it is not necessarily inconsistent with that purpose to exclude the State's own projects that may have their own unique set of public policy considerations. It is therefore inappropriate to infer an intent to include state projects from this generalized statement of purpose. *See Envirotest Systems Corp. v. Comm'r of Motor Vehicles*, 293 Conn. 382, 389-90 (2009).

In light of the absence of statutory language that expressly or by necessary implication includes state projects such as the proposed training facility, we conclude that a court, if presented with the issue, would construe § 16a-35d as excluding such projects.

#### **The Requirement of § 16a-35e Regarding Cooperation with Municipality to Sustain Village Character**

In contrast to § 16a-35d, § 16a-35e of the General Statutes explicitly – or at least by very clear implication – applies to the activities of the state, requiring state agencies cooperate with municipalities. In particular, it provides that "***each state agency, department or institution shall cooperate*** with municipalities to ensure that ***programs and activities*** in rural areas sustain village character." Conn. Gen. Stat. § 16a-35e (emphasis added). However, as discussed below, the statute does not mandate a certain kind or level of cooperation, and we have no reason to believe that DAS failed to adequately cooperate within the mandate of the statute.

It is significant that § 16a-35e uses the rather broad phrase of programs and activities in contrast to § 16a-35d's use of the defined term of growth-related projects. At a minimum, the different language suggests that the reach of § 16a-35e is broader. The legislature's use of different words in the same enactment indicates a different meaning. *Scholastic Book Clubs, Inc. v. Comm'r of Revenue Services*, 304 Conn. 204, 215-17 (2012). The precise meaning of this phrase, however, is not clear. Like § 16a-35d, the statutory language does not expressly refer to programs and activities of the State. Nonetheless, it seems a straightforward reading to interpret § 16a-35e as requiring state agencies to cooperate as to their own programs and activities.<sup>2</sup> We will therefore assume, for purposes of this opinion, that § 16a-35e applies to the proposed training facility.

The statute requires a state agency to cooperate, but does not articulate the form or extent that such cooperation must take. Nor does it provide for a negative consequence for the failure to cooperate. Therefore, it appears the legislature intended to afford state agencies discretion in deciding the nature of the cooperation they will undertake depending on the circumstances of a particular program or activity.

Here, DAS has indicated that "[t]hroughout this process, communication with the Town of Griswold and other municipalities has been extensive. Public meetings were held in the Towns affected even though such meetings were not required." Letter to Hon. Kevin Skulczyck from Commissioner Melody A. Currey dated May 24, 2017. We have no basis, nor has one been suggested to us, for concluding that, assuming § 16a-35e applies to the proposed facility, DAS has not satisfied the statutory cooperation requirement.

#### **State Facilities Plan and State Properties Review Board**

Your final question asks about the role of the State Properties Review Board (Board) in connection with the proposed gun range. In particular, you ask whether the proposed training facility must be included in the State Facility Plan (Plan), which is subject to Board review pursuant to Conn. Gen. Stat. § 4b-23.

Section 4b-23 of the General Statutes establishes a process for the creation of the Plan. The Plan has a five-year timeframe that is updated every two years

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<sup>2</sup> A snippet of legislative history appears to support such a construction. In describing the purpose of § 16a-35e, Representative Wallace stated: "Section [16a-35e] requires State agencies to work with municipalities to sustain their village character.... [W]e heard that the municipality (sic) felt they had little control over especially State roads and reconstruction, redevelopment in their municipalities." 48 Conn. House Proc., pt. 21, 2005 Sess. 6460-61 (May 27, 2005).

and "shall be used as an advisory document for the leasing of property for use by state agencies and departments and for related capital projects." Conn. Gen. Stat. § 4b-23(d). The preparation of the Plan begins with agencies submitting requests for facility needs to OPM. OPM, after receiving DAS's review, submits a proposed plan to the Board. *Id.*, § 4b-23(a)-(c). The Board provides recommendations on the proposed plan to OPM, which then submits a recommended plan to the General Assembly. *Id.*, § 4b-23(c). After the General Assembly approves the operating and capital budget appropriations, OPM updates the Plan. *Id.*, § 4b-23(d).

Section 4b-23(k) provides that any agency requiring additional facilities that are not included in the Plan may submit a request to OPM. Such a request may be approved by OPM and the Board after OPM has determined that the request is for additional facilities that are "of emergency nature" or the lack of the additional facilities "may seriously hinder the efficient operation of the state.... No action may be taken by the state to lease or construct such additional facilities unless [OPM] makes such a determination." Conn. Gen. Stat. § 4b-23(k).

DAS is responsible for the implementation of the Plan and conducts a study of each proposed facility. *Id.*, § 4b-23(e). DAS reviews and approves each facility plan implementation action and submits to the Board each approved action. The Board reviews DAS's decision and may accept, reject or request modification of the decision. *Id.*

The proposed training facility has not been included in the Plan. Instead, authorization for the proposed training facility has been sought directly from and approved by the legislature in bonding legislation for capital projects. 2012 Conn. Pub. Act No. 12-189, § 2(c)(2); 2013 Conn. Pub. Act No. 13-239, § 100. The training facility project is not unique in this regard. Since 2006, capital projects have not been included in the Plan, but rather have been submitted directly to the legislature in bonding legislation. *See, e.g.*, 2007 Conn. Pub. Act No. 07-6 (June Spec. Sess.); 2009 Conn. Pub. Act No. 09-2 (Sept. Spec. Sess.); 2011 Conn. Pub. Act. No. 11-57; 2014 Conn. Pub. Act. No. 14-98.

Section 4b-23's provisions notwithstanding, the legislature is free to authorize capital projects in this manner. As our Supreme Court has long held, "[o]ne [l]egislature cannot control the exercise of the powers of a succeeding [l]egislature." *Patterson v. Dempsey*, 152 Conn. 431, 439 (1965) (quoting *Preveslin v. Derby & Ansonia Developing Co.*, 112 Conn. 129, 140 (1930); accord *Tomlinson v. Tomlinson*, 305 Conn. 539, 553 (2012)). When the legislature makes an enactment that is in conflict with or contrary to prior

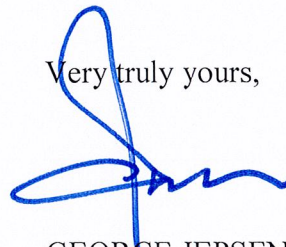


legislation, "[t]he effect is really that of repeal by implication. 'When expressions of the legislative will are irreconcilable, the latest [in time] prevails.'" *Patterson*, 152 Conn. at 439 (quoting *Moran v. Bens*, 144 Conn. 27, 30 (1956)). This is further supported by the rule of statutory construction that specific legislation prevails over the general, with the former treated as an exception to the latter. *Brennan v. Brennan Assocs.*, 316 Conn. 677, 696 (2015); *Tomlinson*, 305 Conn. at 552-53. Because the legislature has chosen to authorize the use of bond funds for the proposed training facility specifically, DAS has the authority to proceed with the project despite it, or any other capital project, not being included in the Plan.

As the project moves forward, however, there will be occasion for Board review. The Board has authority to review real estate acquisitions, Conn. Gen. Stat. § 4b-3(f), and contracts for architects, engineers and other construction-related consultant services for the project. Conn. Gen. Stat. § 4b-23(i).

We trust this is responsive to your inquiry.

Very truly yours,



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