BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

IN RE TEST CLAIM ON:	NO. CSM -96-365-02
Penal Code Section 832.9, as added and amended by Chapter 1249, Statutes of 1992 and Chapter 666, Statutes of 1995, filed on December 30, 1996,	***Threats Against Peace Officers***
By the County of San Diego, Claimant.	STATEMENT OF DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; TITLE 2, CALIFORNIA CODE OF REGULATIONS, DIVISION 2, CHAPTER 2.5, ARTICLE 7.

DECISION

The attached Statement of Decision is hereby adopted by the Commission on State Mandates as its Decision in the above-entitled matter.

The Decision shall become effective on April 24, 1997.

It is so ordered on April 28, 1997.

Paula Higashi

PAULA HIGASHI, Executive Director

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STATEMENT OF DECISION

Issue: Do the provisions of Penal Code section 832.9, as added and amended by Chapter 1249, Statutes of 1992, and Chapter 666, Statues of 1995, impose a new program or higher level of service upon local governments within the meaning of section 6 of article XIII B of the California Constitution and section 17514 of the Government Code?

This test claim was heard by the Commission on State Mandates (Commission) on April 24, 1997, during a regularly scheduled hearing. Mr. Kevin G. Kennedy, Deputy County Counsel, appeared for the County of San Diego. Mr. Jim Apps appeared for the Department of Finance.

At this hearing, the test claim was submitted, and the vote was taken.

The law applicable to the Commission's determination of a reimbursable state mandated program is Government Code section 17500 et seq. and section 6, article XIIIB of the California Constitution and related case law.

BACKGROUND AND FINDINGS OF FACT

The County of San Diego (claimant) alleges a state mandated cost was created by Chapter 1249/92, requiring local governments to reimburse peace officers for certain moving expenses incurred when relocation becomes necessary because of a verified threat against the life or safety of either the officer or a member of his or her immediate family.

Penal Code Section 832.9, as added by Chapter 1249/92 and amended by Chapter 666/95 reads as follows (underlined text is the 1995 amendment):

"(a) The governmental entity employing the peace officer shall reimburse the moving and relocation expenses of a peace officer, as defined in Section 830, or any member of his or her immediate family residing with the officer in the same household or on the same property when it is necessary to move because the officer has received a credible threat that a life threatening action may be taken against the officer or his or her immediate family as a result of the peace officer' s employment.

"(b) The person relocated shall receive actual and necessary moving and relocation expenses incurred both before and after the change of residence, including reimbursement for the costs of moving household effects either by a commercial household goods carrier or by the employee.

(1) Actual and necessary moving costs shall be those costs that are set forth in the Department of Personnel Administration rules governing promotional relocations while in the state service. The department shall not be required to administer this section.

(2) The public entity shall not be liable for any loss in value to a residence or for the decrease in value due to a forced sale.

(3) Officers shall receive approval of the appointing authority prior to incurring any cost covered by this section.

(4) Officers shall not be considered to be on duty while moving unless approved by the appointing authority.

(5) For a relocation to be covered by this section, the appointing authority shall be notified as soon as a credible threat has been received.

(6) Temporary relocation housing shall not exceed 60 days.

(7) The public entity ceases to be liable for relocation costs after 120 days of the original notification of a viable threat if the officer has failed to relocate.

"(c) As used in this section, "credible threat" means a verbal or written statement or a threat implied by a pattern of conduct or a combination of verbal or written statements and conduct made with the intent and the apparent ability to carry out the threat so as to cause the person who is the target of the threat to reasonably fear for his or her safety or the safety of his or her immediate family.

"(d) As used in this section, "immediate family" means the spouse, parents, siblings, and children residing with the officer. "

THE COMMISSION FINDS:

Penal Code section 832.9, as added by Chapter 1249/92, requires governmental entities employing peace officers to reimburse such employees, or any member of their immediate family residing with the officer, for moving and relocation expenses incurred when a peace officer has received a credible threat' of life threatening action against the peace officer or their immediate family.[2] The 1995 amendment added parameters for reimbursement. The Commission found no prior law requiring such reimbursement.

However, the Commission observed that the requirement to reimburse a peace officer for such costs was affirmed by a decision of the San Diego Superior Court. The October 11, 1996, trial decision held that the county's employee had received verifiable and credible threats on the life and safety of himself and his immediate family, (as defined by Penal Code section 832.9), and was entitled to reimbursement from San Diego County for relocation expenses as allowed under California Code of Regulations sections 599.715, 599.716, and 599.718-19.

Although this test claim was filed by a county, the Commission noted that the test claim statute specifies

its application to "governmental entity employing the peace officer. " Governmental entities employing peace officers (as defined in Pen. Code, § 830) may include cities, counties, school districts, and special districts.

The Commission recognized that the test claim legislation requires local governmental entities to reimburse peace officers for certain costs, and that the test claimant did in fact incur such costs. However, the Commission noted that in ***Lucia Mar,*** the California Supreme Court cautioned that not all increased costs incurred by local government are reimbursable as "costs mandated by the state. " The court recognized that, local entities are not entitled to reimbursement for all increased costs mandated by state law, but only those costs resulting from a new program or an increased level of service imposed upon
them by the state. " ***(Lucia Mar*** *Unified* ***School Dist. v. Honig*** (1988) 44 Cal. 3d at 835 .)

The term "program" has two alternative meanings: "programs that carry out the governmental function
of providing services to the public, ***or*** laws which, to implement a statewide policy, impose unique requirements on local governments and do not apply generally to all residents and entities in the state. "

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[1] "Credible threat" is defined as a verbal or written statement or a threat implied by a pattern of conduct or a combination of any previously mentioned with the intent and apparent ability to carry out the threat to the extent that the person threatened reasonably fears for their safety or that of their immediate family. (Pen. Code, § 832.9, subd. (c).)

[2] Immediate family is defined as the peace officer's spouse, parents, siblings and children, residing with the peace officer. (Pen. Code, § 832.9, subd. (d).)

In order to make a mandate determination, only one of these findings is necessary to trigger reimbursement. (County of *Los Angeles* v. *State* of *California* (January 1987) 43 Cal.3d 46, 56.)

There is no question that police protection is a peculiarly governmental function. (*Verreos v. City and County of San Francisco* (1976) 63 Cal. App. 3d 86, 107, as cited in *Carmel Valley Fire Protection Disk. v. State of California* (Feb. 1987) 190 Cal.App.3d 521, 537. However, the test claim statute does not require governmental entities employing peace officers to provide services to the public. Rather Penal Code section 832.9 requires employers (who are, for the most part, local agencies) to reimburse certain moving costs incurred by their peace officers in a specific situation.

The alternative meaning of "program" is "laws which, to implement a statewide policy, impose unique requirements on local governments and do not apply generally to all residents and entities in the state. " *(County of Los Angeles v. State of California* (January 1987) 43 Cal. 3d 46, 56.) The Commission concluded that this second prong of the Supreme Court's test for new program is the basis to approve this test claim because Penal Code section 832.9 manifests a statewide policy of protecting and assisting peace officers and their immediate families upon receipt of a credible threat. This statewide policy imposes unique requirements on local agencies that do not apply generally to all residents and entities in the state because police protection is primarily a local government function.

CONCLUSION

Therefore, the Commission determines that Penal Code section 832.9, as added by Chapter 249, Statutes of 1992, and amended by Chapter 666, Statutes of 1995, imposes upon local governments, a new program or higher level of service in an existing program, as defined in section 6, Article XIIIB of the California Constitution and section 17514 of the Government Code, by requiring local governmental entities employing peace officers to reimburse such employees, or any member of their immediate family residing with the officer, for moving and relocation expenses incurred when a peace officer has received a credible threat of life threatening action against the peace officer or their immediate family.