

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

Carmel Valley Fire
Protection District, *et al.*,

Mammoth Lakes Fire
Protection District,

Claimants

CSM-4483

Government Code Section 17581

Chapter 459, Statutes of 1990

Chapter 587, Statutes of 1992 (Budget Act of 1992)

Chapter 55, Statutes of 1993 (Budget Act of 1993)

Chapter 139, Statutes of 1994 (Budget Act of 1994)

Identified Mandate:

*Structural and Wildland Firefighter's Safety Clothing
and Equipment (Title 8 Cal. Code of Regulations
Sections 3401 through 3410)*

DECISION

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

This Decision shall become effective on June 27, 1996. IT IS SO ORDERED June 27, 1996.



Kirk G. Stewart, Executive Director
Commission on State Mandates

**BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA**

)	
Carmel Valley Fire	)	CSM-4483
Protection District, <i>et al.</i>,	)	Government Code Section 1758 1
	)	Chapter 459, Statutes of 1990
Mammoth Lakes Fire	)	Chapter 587, Statutes of 1992 (Budget Act of 1992)
Protection District,	)	Chapter 55, Statutes of 1993 (Budget Act of 1993)
	)	Chapter 139, Statutes of 1994 (Budget Act of 1994)
Claimants	)	<i>Identified Mandate:</i> _____
	)	<i>Structural and Wildland Firefighter's Safety Clothing</i>
	)	<i>and Equipment (Title 8 Cal. Code of Regulations</i>
<hr style="width: 20%; margin-left: 0;"/>	)	<i>Sections 3401 through 3410)</i>

PROPOSED STATEMENT OF DECISION

This test claim was heard by the Commission on State Mandates (Commission) on February 6, 1996, in Sacramento, California, during a regularly scheduled hearing.

Mr. William D. Ross appeared on behalf of the claimants, and Mr. Allen II. Sumner, of the Attorney General's Office, appeared on behalf of the Department of Finance (DOF) and the Department of Industrial Relations. Evidence both oral and documentary having been introduced, the matter submitted, and vote taken, the Commission finds:

ISSUE

Do the provisions of Government Code section 1758 1, Chapter 459, Statutes of 1990 (Chapter 459/90), *together with* Chapter 587, Statutes of 1992 (Item 8885-101-001, Category (54) and Provision 4, line (w)); Chapter 55, Statutes of 1993, (Item 8885-101-001, Category (58) and Provision 4, line (uu)); and Chapter 139, Statutes of 1994 (Item 8885-101-001, Category (45) and Provision 4, line (w)), impose a new program or higher level of service in an existing program upon local agencies within the meaning of section 6, article XIII B of the California Constitution and Government Code section 175 14?

BACKGROUND AND FINDINGS OF FACT

The subject matter of this test claim includes Government Code section 17581, Chapter 459/90. This section provides in relevant part:

“(a) No local agency will be required to implement or give effect to any statute or executive order, or portion thereof, during any fiscal year if all of the following apply:

“(1) The statute or executive order, or portion thereof, has been determined by the Legislature, the commission, or any court to mandate a new program or higher level of service requiring reimbursement of local agencies pursuant to Section 6 of Article XIII B of the California Constitution.

“(2) The statute or executive order, or portion thereof, has been specifically identified by the Legislature in the Budget Act for the fiscal year as being one for which *reimbursement is not provided for that fiscal year. For purposes of this paragraph, a mandate shall be considered to have been specifically identified by the Legislature only if it has been included within the schedule of reimbursable mandates shown in the Budget Act and it is specifically identified in the language of a provision of the item providing the appropriation for mandate reimbursements.

“(b) Notwithstanding any other provision of law, if a local agency elects to implement or give effect to a statute or executive order described in subdivision (a), the local agency may assess fees to persons or entities which benefit from the statute or executive order. Any fee assessed pursuant to this subdivision shall not exceed the costs reasonably borne by the local agency.

“.....”

In addition to the foregoing, the subject matter of this test claim includes certain provisions in the Budget Acts pertaining to fiscal years 1992, 1993, and 1994.

Claimants set forth numerous contentions and objections that include:

- Nothing in article XIII B, section 6 empowers the Legislature to revoke or suspend the right, entirely or in particular circumstances, from any member of a class the Constitution expressly protects. The subject legislation is ineffective with respect to claimants’ state mandated costs guaranteed by article XIII B, section 6.
- The Legislature may not duly restrict claimants’ constitutional rights. Each court decision referenced in the DOF submission was discussed, and the claimants conclude that none of them address the constitutionality of the subject legislation as applied to the Title 8 regulations.

- The Fire Protection District Law of 1987, beginning with Health and Safety Code section 13800, does not authorize local fire districts to levy service charges, fees, or assessments sufficient to pay for the Title 8 mandate. Claimants support **this** assertion with a number of declarations.
- **Notwithstanding Government** Code section 17552, the Commission has no jurisdiction and cannot **grant** an adequate remedy' to claimants. Pursuit of any purported administrative remedy before the **Commission** constitutes an idle or futile act since the Commission is precluded by article III, sections 3 and 3 .5, of the state Constitution, from declaring the legislative disclaimers in the State Budget Acts unenforceable or unconstitutional.

Another allegation by claimants was that the **Commission** misstated the issue. They contended that the issue should be whether suspension of the Title 8 regulations violates the California Constitution and California decisional law.

In response, the Commission found that article III, sections 3 and 3 .5, of the California Constitution, preclude the Commission from declaring the legislation in question unconstitutional or unenforceable as applied to claimants. In sum, it is outside the Commission's purview to adjudicate whether the Legislature's enactments of Government Code section 17581 and the three Budget Act provisions are constitutional, i.e., whether these legislative enactments fall within the exclusive jurisdiction of the Legislature. Rather, the Commission's role is to determine whether the provisions of the subject legislation impose a reimbursable state mandated program and, thus, the Commission found that the wording of its issue was appropriate.

Another contention by claimants was that their filing did not fit into the category of either a "test claim" or an "incorrect reduction claim. " The claimants stated that since a test claim was already heard in 1979 on the Title 8 regulations, the matter presently before the Commission is not a test claim, i.e., "the first claim filed with the Commission alleging that a particular statute or executive order imposes costs mandated by the state. " (Government Code section 17521.) In other words, the claimants asserted the focus should be the **appropriateness** of the Legislature suspending a previously determined state mandate, rather than the finding of a new state mandate.

Contrary to the claimants' contentions, the Commission found that their submission on September 5, 1995, was indeed a test claim because the legislation in question (Government Code section 17581, and specific provisions of the 1992, 1993, and 1994, Budget Acts) had *never* been previously presented to the Commission for a determination as to whether this legislation constitutes a state mandated program. Hence, the Commission found that the claimants' filing of September 5, 1995, was the first claim alleging that the instant legislation imposed a reimbursable state mandated program. This is to be distinguished from the test claim on the Title 8 regulations, sections 3401 through 3410, previously heard by the State Board of Control.

Moreover, despite claimants' assertion that this matter was not a test claim, the Commission recognized that the claimants' appellate court pleadings (stemming from the appeal of the two superior court rulings in the Counties of Los Angeles and Mono) characterized the Commission's present proceedings as involving a "Consolidated Test Claim, "

The Commission went on to find that the elements for filing a test claim, as specified in section 1183 of Title 2 of the California Code of Regulations, were satisfied,

Claimants further alleged that the state, through the Controller and Treasurer, reimbursed other similarly-situated local agencies inconsistent with the suspension contained in the subject legislation.

However, the Commission noted that the claimants provided no factual evidence to support their allegation, such as the identity of these alleged local agencies:--- Therefore, the Commission found that there have been no payments made in violation of the suspension, subsequent to the effective date of the Title 8 suspension.

Claimants further asserted that, notwithstanding the purported suspension of the Title 8 regulations, said regulations were still contained in the Code of California Regulations and, hence, not officially rescinded or repealed by the state.

In response, the Commission examined the Legislature's procedures pursuant to the provisions of Government Code section 17581 to determine if the such provisions were satisfied in order to no longer cause the Title 8 regulations to be state mandated, i.e., required to be implemented or given effect.

The Commission recognized that the provisions of section 17586 provide that if two of the statutory conditions are satisfied, an identified state mandated program becomes optional. The Commission found that the first condition of section 17581 had been satisfied because the predecessor to the Commission, the State Board of Control, made a final determination that a state mandate was imposed by the Title 8 regulations. (See also *Carmel Valley Fire Protection Dist. v. State of California* (1987) 190 Cal.App.3d 521.)

Further, the Commission found that the second condition of section 17581 had been satisfied. The Budget Acts for fiscal years 1992, 1993, and 1994, specifically identified that the Title 8 state mandate was no longer effective and, therefore, not required to be implemented. An amount of "0" (i.e., no appropriation) was provided for *Structural and Wildland Firefighters' Safety Clothing and Equipment* (8 Cal. Code Regs, Sections 3401-3410 under these three Budget Acts, to wit: 1992 Budget Act, Chapter 587/92 (Item 8885-101-001, Category (54) and Provision 4, line (vv)); the 1993 Budget Act, Chapter 55/93, (Item 8885-101-001, Category (58) and Provision 4, line (uu)); and the 1994 Budget Act, Chapter 139/94 (Item 8885-101-001, Category (45) and Provision 4, line (w)).

Because both conditions under subdivision (a) of section 17581 had been met, the Commission found that local agencies are not mandated to implement the Title 8 regulations. Therefore, local agencies are not obligated, nor under a duty, to carry out the Title 8 regulations.

Consequently, *in the absence of a state mandated program, no reimbursement* is required from the State Treasury to local agencies under the California Constitution (section 6, article XIII B).

Moreover, regarding section 17581, subdivision (b), the Commission found that, in the event a local agency elects or chooses to carry out an identified state mandated program that was suspended, it is within the discretion of such local agency to recover the costs reasonably borne by the agency.

APPLICABLE LAW RELEVANT TO THE DETERMINATION OF A REIMBURSABLE
STATE MANDATED PROGRAM

Government Code section 17500 and following, and section 6, article XIII B of the California Constitution and related case law.

CONCLUSION

In view of all the foregoing, the Commission renders the following determinations and conclusions :

The Commission determines that it has the authority to decide this claim under the provisions of Government Code sections 17500 and 17551, subdivision (a).

The Commission concludes that the Legislature properly followed the statutory scheme described in Government Code section 17581 and, accordingly, the state mandated program (identified in Title 8, California Code of Regulations, sections 3401 through 3410, in each of the Budget Acts of 1992, 1993, and 1994) is no longer effective and not required to be implemented by local agencies during any of the years in question. Moreover, *in the absence of a state mandated program, no subvention of moneys is required* from the State Treasury to reimburse local agencies under the California Constitution (section 6, article XIII B).

Further, should a local agency elect or choose to continue to comply with these Title 8 regulations during the years in question, the Commission concludes that it is within the discretion of the local agency to recover the costs reasonably borne by such agency.

Further, contrary to claimants allegation, the Commission concluded that no payments have been made to any local agencies for implementing the Title 8 regulations during the years in question, because the claimants failed to substantiate or support their allegation by identifying any specific local agencies.

Based on the above, the Commission hereby denies this test claim.

DECLARATION OF SERVICE BY MAIL

I, the undersigned, declare as follows:

I am a resident of the County of Sacramento and I am over the age of 18 years, and not a party to the within action. My place of employment and business address is 1414 K Street, Suite 3 15, Sacramento, California 95814.

On July 3rd, I served the attached *Statement of Decision*, "Carmel Valley Fire Protection District, et al., Mammoth Lakes Fire Protection District," of the Commission on State Mandates by placing a true copy thereof in an envelope addressed to each of the persons listed on the **attached mailing list**, and by sealing and depositing said envelope in the United States mail at Sacramento, California, with postage thereon fully prepaid.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct? and that this declaration was executed on July 3, 1996, at Sacramento, California.



ELSA DELGADO