



LATE FILING

RECEIVED
July 1, 2013
COMMISSION ON
STATE MANDATES

July 1, 2013

Ms. Heather Halsey
Executive Director
Commission on State Mandates
980 9th Street, Suite 300
Sacramento, CA 95814

RE: Response to Draft Staff Analysis of Reconsideration Request for Parameters and Guidelines of *California Public Records Act*

Dear Ms. Halsey:

The California Special Districts Association (CSDA), representing over a 1,000 special districts and affiliate organizations, values the opportunity to respond to the draft staff analysis of the reconsideration request of the Parameters and Guidelines for the *California Public Records Act (CPRA)*, 02-TC-10 and 02-TC-51, as adopted April 19, 2013. CSDA appreciates the recognition in the draft staff analysis (dated May 30, 2013) that the term "local government" was erroneously omitted from the Parameters and Guidelines, and we support the Commission on State Mandates taking action to correct the omission. However, we must also express our strong concerns with the analysis' assertion that a local agency's power to levy a fee for service renders it ineligible for reimbursement of state mandated local programs.

The draft staff analysis states that not all special districts are eligible to claim reimbursement under Article XIII A and B of the California Constitution, which establish tax and spend limitations for local agencies. Summarizing, the analysis concludes that reimbursement is not required for expenses that are recoverable from sources other than tax revenue, including service charges, fees and assessments. Therefore, agencies that have fees or assessments as their primary revenue source are not eligible to seek reimbursement for state mandated programs.

Overly Broad Application of Court's Determination

The broad assertion in the draft staff analysis is based on a 1991 court opinion, *County of Fresno v. State of California* (1991) 53 Cal.3d 482 (*County*) and overlooks the specific circumstances that distinguish *County* from the question before the Commission in CSDA's request for reconsideration. Even if the facts and the question before the Court are applicable, as the draft staff analysis concludes, the legal reasoning of the case specifically relies on a reading of the Constitution in its "historical context." Today, this historical context would necessitate the consideration of three significant state Constitutional amendments that passed since the 22 year-old court opinion was offered. These are Proposition 218 (1996), Proposition 1A (2004) and Proposition 26 (2012).

The case of *County* involved a state mandated hazardous materials abatement program for local agencies. This program included a new fee authority expressly for local agencies to levy to recover costs directly related to the mandate in lieu of seeking mandate reimbursement from the state. This is where the mandated program in *County* and the CPRA differ. The CPRA contains no express fee authority for those required duties determined to be reimbursable state mandates. The only permitted charges are limited to the direct cost of duplication and electronic record recovery, pursuant to Government Code Section 6253 and 62539 respectively. Further, the CPRA does not distinguish between "enterprise" and "non-enterprise" districts, or separate between other local agencies based on their primary source of revenue, whether it is from property tax, fees, or surcharges.

California Special Districts Association

1112 I Street, Suite 200
Sacramento, CA 95814
toll-free: 877.924.CSDA (2732)
t: 916.442.7887
f: 916.442.7889
www.csda.net

A proud California Special Districts Alliance partner

Special District Risk Management Authority
1112 I Street, Suite 300
Sacramento, CA 95814
toll-free: 800.537.7790
f: 916.231.4111

CSDA Finance Corporation
1112 I Street, Suite 200
Sacramento, CA 95814
toll-free: 877.924.CSDA (2732)
f: 916.442.7889

It is appropriate that the CPRA does not make this distinction. The benefit of accessing local legislative bodies' public records extends to all interested parties and individuals from any city, county, special district jurisdiction, or state, may request a public record from enterprise districts. The benefit and access is not limited to only the district rate-payers. However, should the staff recommendation be accepted, rate-payers would be forced to subsidize the cost of processing public records requests for other interested parties.

Historical Context of County of Fresno v. State of California Categorically Altered

The Court issued their opinion in *County* 22 years ago. Since then, the historical context of the case has been categorically altered by three voter-approved statewide ballot measures that transformed the landscape on local fee authority and cannot be discounted in review of this matter.

The draft staff analysis cites the intent of Proposition 13 (1978), which offers that special districts with the authority to charge fees should rely on those fees for raising needed revenue due to the lack of availability of property tax revenue after Fiscal Year 1978-79. Since then, however, Proposition 218 (1996) was approved by voters, which no longer allows local agencies to approve fees and assessments at will and without local voter approval.

Later, voters approved Proposition 1A (2004), which also alters the lens through which the *County* decision can be viewed and applied. Proposition 1A readopted and strengthened Section 6 of Article XIII B of the constitution and the state's duty to provide reimbursement for state mandated programs. The proposition made no distinction in the state's fiscal obligation based on local tax and spend authority. Unfortunately, the draft staff analysis maintains that a court opinion issued 13 years before the passage of Proposition 1A can serve as the basis to deny mandate reimbursements claims based on the agency's primary source of revenue.

Finally, Proposition 26 (2012) must also be given consideration because of the sharp distinctions it creates between "taxes," "fees" and other locally levied charges for service. The charge at issue in *County* could well have been characterized as a regulatory "fee" under the *Sinclair Paint* Decision before the passage of Proposition 26. However, the current definition of a "tax" includes "any levy, charge, or exaction" so had Proposition 26 been in place in 1991, the Court in *County* would have been reviewing a tax and further skewed the relevance of its application in the staff draft analysis on eligible CPRA claimants. All three propositions have drastically changed local revenue authority since the decision in *County*, altering the historical context. Therefore, the decision cannot be readily applied to the question before the Commission regarding claimant eligibility for reimbursement based on the "tax and spend" authority of the local agency.

In conclusion, CSDA supports the draft staff analysis recommendation to expand the list of eligible CPRA claimants to include special districts, but we strongly disagree with the exclusion of agencies with the authority to levy fees, or "enterprise" districts. The legal reasoning by the Court in *County* for the hazardous materials abatement mandate is too broadly applied in the analysis and fails to account for the dramatic changes to current local tax and fee authority since the decision. Thank you for your attention to our concerns and please contact me if you or your staff should have any questions at (916) 442-7887.

Sincerely,



Dorothy Holzem
Legislative Representative