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Received
July 15, 2013
Commission on
State Mandates

July 15, 2013

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Ms. Heather Halsey
Executive Director
Commission on State Mandates
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Re: **Comments on the Request for Reconsideration of Statement of Decision and Parameters and Guidelines for the *California Public Records Act***
Case Nos. 02-TC-10 and 02-TC-51

Dear Ms. Halsey:

The California State Association of Counties submits these comments in response to the draft staff analysis issued in the above-named cases. The Draft Staff Analysis concludes that the courts have made clear that a local agency must be subject to the tax and spend limitations in the California Constitution in order to be eligible for mandate reimbursement. In reaching this conclusion, the Draft Analysis relies in large part on one aspect of a 23-year old court decision, *County of Fresno v. State of California* (1991) 53 Cal.3d 482. That case reviewed the context of Section 6 of Article XIIIB of the California Constitution, and concluded that reimbursement for the cost of a mandate is not required if the local agency is granted fee authority, and may therefore recoup its costs by imposing fees.

The Draft Analysis, however, completely ignores nearly a quarter century of constitutional amendments adopted by the voters since *County of Fresno* was decided, including several relevant changes to the definitions of "tax" and "fee", and the voters' reenactment of Section 6 itself. Since the relevant case law directs us to consider the context of Section 6 of article XIIIB in determining whether mandate reimbursement is required, the Draft Analysis is fundamentally flawed in ignoring these constitutional changes. CSAC therefore urges the Commission to amend the Parameters and Guidelines to take into account existing constitutional restrictions on the use of fees, and find that all special districts that incur costs related to the California Public Records Act (CPRA) mandate are eligible claimants.

1. ***County of Fresno* is not dispositive of the issue pending before the Commission because of subsequent constitutional amendments limiting the use of fees, and because of factual differences between the mandate considered in *Fresno* and the CPRA mandate.**

The *County of Fresno* case dealt with fee authority that the state gave to local agencies specifically for the purpose of paying for a new mandate, but that Fresno County decided not to exercise. This is a far cry from the CPRA mandate, which is required generally on all local agencies and for which no specific fee authority has been granted. In the current case, a local agency, including a special district that does not receive taxes, must pay the cost of the service out of the agency's general funds, whatever the source of those funds.

The CPRA does include fee authority. However, the legislation imposing the mandated activities in question specifically excludes those mandated activities from the fee authority. The line separating the facts in question from the ones decided in the *County of Fresno* case could not be drawn more clearly.

The courts themselves emphasized the *narrow* exception carved by the *County of Fresno* case, as opposed to the broad exception the Draft Analysis contemplates. From *Redevelopment Agency of the City of San Marcos v. Commission on State Mandates* (1997) 55 Cal.App.4th 976, 987:

> In *County of Fresno v. State of California* (1991) [citation], the Supreme Court upheld the facial constitutionality of Government Code section 17556, subdivision (d), which disallows state subvention of funds where the local government is authorized to collect service charges or fees in connection with a mandated program. (Emphasis added.)

Proposition 26 specifically prohibits fee revenue from being used to provide any service but that for which the fee was imposed, and the amount of the fee must not exceed the reasonable costs to the local government of provided that specific service. (Cal. Const., art. XIIIC, § 1, subd. (e).)

In other words, the Draft Analysis proposes that a special district without tax authority must use fee revenue to pay for a service provided to someone other than the fee payer, in this case the person requesting public records, a person who could live in a different state or country entirely. If a special district does so, then under the constitutional definitions approved by voters in Proposition 26, the fee would be unlawful under the California Constitution.

2. Changes to the California Constitution since the cases cited in the Draft Analysis are directly relevant and must be considered in the Parameters and Guidelines.

Since the court rulings in both *County of Fresno* and *Redevelopment Agency of the City of San Marcos v. Commission on State Mandates*, voters have amended the Constitution in ways directly relevant to this matter multiple times, and all of those changes contradict the conclusions of the Draft Analysis. Specifically, the Draft Analysis ignores the effects of voters' enactment of Article XIIIC and Article XII D, voters' subsequent amendment of Article XIIIC, and their re-enactment of parts of Article XIIIB, including Section 6.

Article XIIIC, adopted in 1996 and amended in 2010, further restricts local agency tax authority. Article XIIID, also adopted in 1996, also restricts all assessments, fees, and charges, whether imposed pursuant to state statute or local government charter authority, specifically including user fees and charges for property-related services. Following the adoption of these articles, all types of charges relevant to the discussion at hand carry restrictions on their imposition, including supermajority voter-approval requirements and opportunities for property owners to block their imposition.
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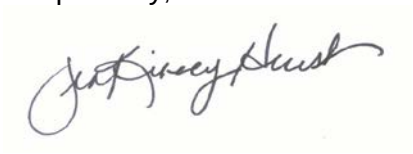
Furthermore, voters subsequently reenacted a strengthened Section 6 of Article XIIIB, making clear that local government use of fees is severely restricted. These enactments

are precisely the sort of constitutional declarations that courts have relied upon in deciding whether reimbursement for mandates are required. (See *Redevelopment Agency of the City of San Marcos v. Commission on State Mandates* (1997) 55 Cal.App.4th 976, 981-982.) A fee-dependent special district cannot raise rates at will to pay for state mandates. It must rely on the will of its electorate or property owners. This restriction directly parallels the kind that was placed on ad valorem property taxes prior to the original adoption of Section 6.

In light of constitutional changes of the last twenty years, the Draft Analysis amounts to an extraordinary expansion of the narrow exceptions to the reimbursement requirements defined by the courts. In doing so, the Draft Analysis would subvert the Constitution's explicit requirement that the state fund its mandates, as well as its insistence that user fees only pay for the direct services they provide in direct proportion to those services.

We therefore request that the Commission amend the Parameters and Guidelines to include all special districts that incur costs related to the mandate as eligible claimants, without limitation.

Respectfully,



Jean Kinney Hurst
Senior Legislative Representative

cc: Dorothy Holzem, California Special Districts Association