



RESPONSE TO DRAFT STAFF ANALYSIS

Chapter 439, Statutes of 1991
Chapter 761, Statutes of 2000
Chapter 493, Statutes of 2002
LAFCO Municipal Services Review Guidelines
LAFCO Municipal Services Review Guidelines Appendices

Claim no. 02-TC-23

Local Agency Formation Commission (LAFCO)

INTRODUCTION:

Test claimant Sacramento Metropolitan Fire District (hereinafter "District") submits the following in response to the Draft Staff Analysis issued by Commission staff on June 28, 2007. Having found that the District is a proper claimant, the Draft Staff Analysis concludes that only part of the program is reimbursable leaving the debate centering around the following issue:

Do the test claim statutes or alleged executive orders mandate a "new program or higher level of service" within the meaning of article XIII B, section 6 of the California Constitution?

Staff answers the above question partially in the negative concluding that, with regard to certain activities, participation in the LAFCO is optional and thus there is no reimbursable state mandate. Staff applies its logic inconsistently and without following the logic to its rational conclusion resulting in the exclusion of certain state-mandated activities from reimbursement. The District takes this opportunity to provide a more balanced picture.

Analysis

1. Staff Fails to Properly Analyze Statutes and Apply Case Law to Support the Finding of a Mandate.

A. The Legislation Mandates the Participation of Two Special Districts.

As thoroughly explained by Staff in its analysis, the law prescribes a particular formula for the members of the Sacramento County LAFCO. Subdivision (d) of Government Code section 56326.5 sets forth that two members must be from special districts as selected by an independent special district selection committee. Staff finds that this is not a mandatory provision upon any particular special district. That is to say, because the statute leaves it open for a committee to determine which districts will participate, there is no mandate. Staff then goes on to apply the rules that govern practical compulsion. Staff's dismissal of the mandate, however, is too hasty; and the discussion of practical compulsion, unnecessary.

In looking at the legislation and its use of the term "shall", there is clearly a mandate that two special districts participate as members of the LAFCO. The issue is whether the fact that the group of districts from which to choose is larger than two negates the mandate. District argues it does not. Even if each district in turn makes the voluntary decision not to participate, eventually some district will be forced to become a member. As President Truman understood, the buck cannot be continually passed; it must stop somewhere. And, when it stops, there lies legal compulsion, not practical compulsion.

Staff extends this analysis by noting that the choice as to which two special districts are members lies in the hands of a committee, thus the voluntary decision of the committee further strains applicability of the mandate. This analysis, however, does not ring true. The use of the committee is merely a mechanism by which the members are selected. The committee is not empowered to force the participation of a special district. and, use of this mechanism does not change the mandatory language of the statute that ensures that two special districts must be members of the LAFCO.

B. Representation on the Selection Committee is Mandated For All.

In the vein as that stated above, the law prescribes the use of a particular committee for the selection of the special district members of the Sacramento County LAFCO. Subdivision (d) of Government Code section 56326.5 sets forth that two members must be from special districts as selected by an independent special district selection committee, which, in turn, is controlled by Government Code section 56332. This section sets forth the constituents of the committee in subdivision (a), stating that the "committee shall consist of the presiding officer of the legislative body of each independent special district...." The subdivision goes on to state the voting rights of these committee members and that a majority constitutes a quorum. Staff points to the word "consist" finding that use of that term does require the participation of the members. Having found no legal compulsion, Staff continues down this precarious path to conclude that there is no practical compulsion to participate since only 34 districts are needed for a quorum. Staff's logic contorts the mandatory language of the statute into a nullity which cannot stand: The law neither does nor requires idle acts.¹

¹ Civil Code section 3532.

This Commission is often faced with the question of whether a jurisdiction has acted, that is, made a voluntary decision to negate the existence of a mandate. Oftentimes, Staff turns to the guidance provided by the Supreme Court in *Kern High School District*², as it has done in this case. And so this Commission is left to contemplate “draconian consequences”³ and “certain and severe ... penalties”⁴. Yet, clearer guidance exists in a more recent Supreme Court decision. In *San Diego Unified School District v. Commission on State Mandates*⁵, the Court instructs the Commission on how to analyze the issue of voluntariness:

Upon reflection, we agree with the District and amici curiae that there is reason to question an extension of the holding of *City of Merced* so as to preclude reimbursement under article XIII B, section 6 of the state Constitution and Government Code section 17514, whenever an entity makes an initial discretionary decision that in turn triggers mandated costs. Indeed, it would appear that under a strict application of the language in *City of Merced*, public entities would be denied reimbursement for state-mandated costs in apparent contravention of the intent underlying article XIII B, section 6 of the state Constitution and Government Code section 17514 and contrary to past decisions in which it has been established that reimbursement was in fact proper. For example, as explained above, in *Carmel Valley, supra*, 190 Cal.App.3d 521, an executive order requiring that county firefighters be provided with protective clothing and safety equipment was found to create a reimbursable state mandate for the added costs of such clothing and equipment. (*Id.*, at pp. 537-538.) The court in *Carmel Valley* apparently did not contemplate that reimbursement would be foreclosed in that setting merely because a local agency possessed discretion concerning how many firefighters it would employ — and hence, in that sense, could control or perhaps even avoid the extra costs to which it would be subjected. Yet, under a strict application of the rule gleaned from *City of Merced, supra*, 153 Cal.App.3d 777, such costs would not be reimbursable for the simple reason that the local agency’s decision to employ firefighters involves an exercise of discretion concerning, for example, how many firefighters are needed to be employed, etc. We find it doubtful that the voters who enacted article XIII B, section 6, or the Legislature that adopted Government Code section 17514, intended that result, and hence we are reluctant to endorse, in

² *Department of Finance v. Commission on State Mandates (Kern High School Dist.)* (2003) 30 Cal.4th 727.

³ *Id.* at 754.

⁴ *Ibid.*

⁵ (2004) 33 Cal.4th 859.

this case, an application of the rule of *City of Merced* that might lead to such a result.⁶

Staff may point out that they are not using the *City of Merced* case: But is this not the same argument? Just as the Court notes that the jurisdiction can control costs by not hiring firefighters, here the Staff argues that the special districts can control costs by not participating in the LAFCO. As the Court concludes: Such argument is folly. The statute is clear that each presiding officer of an independent special district is a member of the selection committee. As the Court would see it: The intended result being that members would participate in the actions and meetings of the committee. Staff's argument defies both reason and the Supreme Court.

2. The Mandated New Services Did Not Result in a Local-to-Local Shift of Costs.

Government Code sections 56381 and 56381.6 set forth the apportionment of the LAFCO budget to the various entities that lie within each LAFCO's jurisdictional boundaries. Staff explains that, under prior law, the county was responsible for the LAFCO budget costs. Staff, then, dismisses the claim by District that its portion of the LAFCO costs are mandated by noting that the shift in costs comes not from the state, but instead from the county. Such shifting from one local governmental entity to another was found not to be a mandate under *City of San Jose*.⁷ Although Staff got the holding of the case correct, the different set of facts in the instant case makes *City of San Jose* inapplicable.

The court in *City of San Jose* was looking at a statute that reallocated jail booking fees. Prior to the legislation, the county had borne the costs. Under the new statutory scheme, all those who made use of the jail would be charged a fee. The court found that a mere new cost did not merit reimbursement under article XII B, section 6. Indeed, other case law supports this court's analysis; insisting upon a higher level of service to accompany the new cost.⁸ And, unlike the situation faced by San Jose, that is the case here.

As explained by Staff, the scope and authority of LAFCO has been expanding.⁹ Through the Cortese-Knox Local Government Reorganization Act, the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000, and subsequent legislation, the members of LAFCO have been providing an increasing higher level of service. It is these services that have resulted in new costs. Under a strict application of article XIII B, section 6, these costs meet the test and are reimbursable. The fact that this higher level of service and associated costs have been spread amongst many new claimants is not relevant. The legislation required a higher level of service and then established the manner in which the costs from the services are to be paid.

3. Special Districts Must Participate in LAFCO Reviews.

⁶ *Id.* at 485-486.

⁷ *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802.

⁸ *San Diego Unified School District, supra*, at 877.

⁹ See Draft Staff Analysis at 3-8 for a more complete discussion.

As noted above, Staff explains the expanding scope of LAFCO which includes, in Government Code sections 56425 and 56430, the determination of spheres of influence, service reviews and updates that must be performed by LAFCO. Staff counters assertions by District that these statutes result in mandated activities and costs by pointing out that the mandatory language imposes a duty only upon LAFCO. Again, Staff's analysis fails to account for the real world application of the law and the intended result of its creators.

For LAFCO to "conduct service reviews of the municipal services provided in the county" and to "comprehensively review all of the agencies that provide...services", it requires the co-operation of those entities. The participation of District in these reviews is not a voluntary act¹⁰: It is mandated upon District as it is upon LAFCO. To hold otherwise is to void the purpose of the law.

Finally, although Staff agrees that Government Code section 56425, subdivision (h) does mandate activities on District with regard to spheres of influence, Staff was silent as to whether this includes the updates that are necessary for the reviews by LAFCO under section 56425, subdivision (f). District requests that this be specifically included as part of its duties under subdivision (h).

CONCLUSION:

Based on the preceding arguments, District urges the Commission to find that the LAFCO program, as set forth above, is a reimbursable state mandate under Article XIII B, section 6 of the California Constitution.

¹⁰ See discussion, *supra*, at section 1.B.

CERTIFICATION

I declare under penalty of perjury under the laws of the State of California that the statements made in this document are true and correct, except as to those matters stated upon information and belief and as to those matters, I believe them to be true.

Executed this 9th day of August, 2007, at Sacramento, California, by:

A handwritten signature in cursive script that reads "David M. Baltzell". The signature is written in black ink and is positioned above a horizontal line.

David M. Baltzell
Assistant Chief
Sacramento Metropolitan Fire District

PROOF 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 is 4320 Auburn Blvd., Suite 2000, Sacramento, CA 95841.

On August 10, 2007, I served:

RESPONSE TO DRAFT STAFF ANALYSIS

Chapter 439, Statutes of 1991

Chapter 761, Statutes of 2000

Chapter 493, Statutes of 2002

LAFCO Municipal Services Review Guidelines

LAFCO Municipal Services Review Guidelines Appendices

Claim no. 02-TC-23

Local Agency Formation Commission (LAFCO)

by placing a true copy thereof in an envelope addressed to each of the persons listed on the mailing list attached hereto, 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 this 10 day of August, 2007, at Sacramento, California.



Declarant

Legislative Analyst's Office
Attention: Marianne O'Malley
925 L Street, Suite 1000
Sacramento, CA 95814

Ms. Susan Geanacou
Department of Finance
915 L Street, Suite 1190
Sacramento, CA 95814

Ms. Ginny Brummels
State Controller's Office
Division of Accounting & Reporting
3301 C Street, Suite 500
Sacramento, CA 95816

Ms. Jesse McGuinn
Department of Finance
915 L Street, 8th Floor
Sacramento, CA 95814

Mr. Leonard Kaye, Esq.
County of Los Angeles
Auditor-Controller's Office
500 West Temple Street, Room 603
Los Angeles, CA 90012

Mr. Robert Miyashiro
Education Mandated Cost Network
1121 L Street; Suite 1060
Sacramento, CA 95814

Mr. Keith B. Peterson, President
Six Ten and Associates
5252 Balboa Avenue; Suite 807
San Diego, CA 92117

Mr. Ernie Silva
League Of California Cities
1400 K Street
Sacramento, CA 95815

Ms. Annette Chinn
Cost Recovery Systems, Inc.
705-2 East Bidwell Street, #294
Folsom, CA 95630

Mr. Steve Shields
Shields Consulting Group, Inc.
1536 36th Street
Sacramento, CA 95816

Mr. David Wellhouse
David Wellhouse & Associates, Inc.
9175 Kiefer Blvd., Suite 121
Sacramento, CA 95826

Ms. Alexandra Condon
California Teacher's Association
6 Red River Court
Sacramento, CA 95831-3036

Mr. Arthur Palkowitz
San Diego Unified School District
4100 Normal Street, Room 3209
San Diego, CA 92103-8363

Mr. Gerald Shelton
California Department of Education
Fiscal & Administrative Services Division
1430 N Street, Suite 2213
Sacramento, CA 95814

Ms. Bonnie Ter Keurst
County of San Bernardino
Office of the Auditor/Controller-Recorder
222 West Hospitality Lane
San Bernardino, CA 92415-0018

Mr. Jim Jagers
P.O. Box 1993
Carmichael, CA 95609

Mr. J. Bradley Burgess
Public Resource Management Group
1380 Lead Hill Blvd., Suite 106
Roseville, CA 95661

Mr. Steve Keil
California State Association of Counties
1100 K Street, Suite 101
Sacramento, CA 95814-3941