

**CALIFORNIA COMMUNITY COLLEGES
CHANCELLOR'S OFFICE**

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March 24, 2004

Paula Higashi, Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

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**COMMISSION ON
STATE MANDATES**

Re: CSM 02-TC-35
Santa Monica Community College District, Claimant
Public Contracts

Dear Ms. Higashi:

As an interested state agency, the Chancellor's Office has reviewed the above-referenced test claim in light of the following questions addressing key issues before the Commission:

1. Do the subject statutes or regulations result in a mandated new program or a mandated higher level of service within an existing program upon local entities within the meaning of section 6, article XIII B of the California Constitution and section 17514 of the Government Code? If so, are costs associated with the mandate reimbursable?
2. Do any of the provisions of Government Code section 17556 preclude the Commission from finding that the provisions of the subject statutes or regulations impose a reimbursable state-mandated program upon local entities?

This test claim ("Claim") alleges mandated costs reimbursable by the state for community college district activities in complying with public contracting requirements. Test Claimant Santa Monica Community College District ("Claimant") alleges that reimbursable mandated costs arise from a variety of Public Contract Code sections, one Business and Professions Code section, and regulations that were adopted by the Board of Governors of the California Community Colleges and that appear in title 5 of the California Code of Regulations.

A number of the provisions that are presented as part of this Claim do not represent reimbursable mandates. Two primary recurring themes govern these provisions.

1. Numerous provisions are optional. Claimant is not required to engage in the conduct but may choose to do so. An optional choice negates the finding of a state mandate.

The California Supreme Court recently addressed the circumstances that will give rise to a mandate for purposes of reimbursement. (*Department of Finance v. Commission on State Mandates*, Kern High School, Real Party in Interest, (2003) 30 Cal.4th 727.) In that case, the Kern High School District sought reimbursement for the costs of preparing notices and agenda items related to certain programs it offered. The Supreme Court found that no mandates exist where a district voluntarily participates in a program.

The California Supreme Court noted that where an entity "elects" to participate in a program, there is no legal compulsion at issue, and therefore, there is no mandated cost: "Accordingly, no reimbursable state mandate exists with regard to any of these programs based upon a theory that such costs were incurred under legal compulsion." (*Id.*, at 745.)

Under *Kern High School*, Claimant's election to participate voluntarily in certain activities renders the conduct optional. If there are costs associated with that optional conduct, it is not compensable as a state mandate because no mandate exists.

2. Several Public Contract Code sections supporting this Claim existed prior to January 1, 1975, as Education Code sections. To the extent any mandates predated January 1, 1975 they are not eligible for reimbursement.

"Costs mandated by the state" do not include costs associated with statutes that were enacted prior to January 1, 1975. (Gov. Code, § 17514.) Statutory requirements that existed before January 1, 1975, cannot be the basis for reimbursement.

A number of provisions that currently appear in the Public Contract Code previously existed in the Education Code. Because the Education Code has been reorganized several times, it is important to trace statutory requirements to their original sources. Some sections that now appear in the Public Contract Code originally resided in the Education Code prior to the 1976 comprehensive code reorganization. Any Public Contract Code sections that originated in the Education Code before January 1975 cannot represent "costs mandated by the state" under Government Code, section 17514.

Claim 1A. Local Agency Public Construction Act, Articles 1 and 2. Public Contract Code, sections 20100 et seq.

In Claim 1A, Claimant refers to the Local Agency Public Construction Act, Articles 1 and 2, for the proposition that the Act requires community college districts "to establish, periodically update and maintain policies and procedures to implement the requirements of the law pertaining to public contracts." (Claim, page 93.) Thereafter, in Claims 1M – 1U. Claimant challenges specific Public Contract Code sections.

We will address Claim 1A by addressing the specific provisions described by Claimant. (See Claims 1M – 1U below.)

Claim 1B. Public Contract Code, section 3300. This section requires public entities to specify what contractor's license is required for a project when it issues a notice inviting bids for a public project.

Because the licensing of contractors is a highly regulated and specialized area, we are uncertain as to whether the identification of the necessary license is a "program" within the state mandate requirements. That is, the California Supreme Court has determined that a "program" carries out a governmental function and must "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* (1987) 43 Cal.3d 46, 56.) To the extent that all owners/builders should determine that a contractor's license is necessary, there would appear to be no unique governmental program at issue. However, the requirement to specify the necessary contractor's license in the bid notice may constitute a mandated cost, although including such information in a bid invitation would appear to involve a de minimus expense.

Claim 1C. Public Contract Code, section 6610. This section requires public agencies that invite formal bids for public projects and that require mandatory prebid site visits, conferences, or other mandatory pre-bid meetings, to include the time, date, and location of these visits, conferences or meetings in the notice inviting formal bids.

The obligation to provide notice of visits, conferences, or meetings appears to be conditioned on whether a public agency opts to have such mandatory meetings. Accordingly, associated costs are also optional under *Kern High School* and they are ineligible for reimbursement.

Claims 1D – 1F. Public Contract Code, section 7104. This section requires local public entities with public works projects that involve digging trenches or other excavations below four feet under the surface to include specific provisions in the public works contract. The contractual provisions include requiring the public entity to investigate certain conditions once they are discovered.

Our review suggests that the required contract provision and specific investigative actions may create a mandated cost for entities with such projects.

Claim 1G. Public Contract Code, section 7107. This section governs the disbursement of retention proceeds withheld from any payment by a public entity to the original contractor or withheld from any payment by the original contractor to a subcontractor. The section applies to contracts entered into on or after January 1, 1993.

Civil Code, section 3260.1 relates to construction in general and permits withholding from "the progress payment an amount not to exceed 150 percent of the disputed amount." This is the language Claimant asserts creates a state mandate. (Claim, page 95.) However, it appears that this retention standard is generally applicable, and therefore does not fit within the scope of a "program" as defined in *County of Los Angeles*, supra because no uniquely governmental function is involved. Additionally, the balance of the claimed mandate that relates to a charge of 2% and litigation remedies when a public entity fails to make timely retention payments, lies within the discretion of the district. That is, these costs can be avoided by making timely payments. Under *Kern High School*, a district's decision not to make timely payments is optional, and cannot serve as the basis for a reimbursable cost.

This part of the Claim should be rejected.

Claim 1H. Public Contract Code, section 7109. This section applies to public works contracts awarded after January 1, 1996. The section states that it is the intent of the Legislature that a public entity may undertake certain activities (e.g., establish a program to deter graffiti) if it determines that a project may be vulnerable to graffiti.

Claimant asserts that the section requires it to undertake these activities. However, section 7109 merely states that if a determination of vulnerability to graffiti is made, it is the Legislature's intention (as opposed to a requirement) that entities take action. Both the initial public entity determination and all of the suggested actions are framed as permissive.

This section creates no mandates, and any Claim based on its provisions should be denied.

Claim 1I. Public Contract Code, section 9203. This section prescribes limits on progress payments that may be made on certain contracts that exceed \$5,000. The effect is to prevent full payment until the project is completed.

This section was added by stats. 1990, c. 694. Legislative Counsel's Digest for the underlying bill indicates that "This bill would transfer certain public works contract provisions from the Government Code to the Public Contract Code without substantive change."

We cannot determine from the bill whether section 9203 previously existed in the Government Code or whether its original provisions predated January 1, 1975. If the original provisions predated January 1, 1975, no state mandate can be found. (Government Code, section 17514.) Our greatly reduced resources do not permit a further exploration of early Government Code provisions, but we recommend the Commission's further review.

Claim 1J. Public Contract Code, section 10299. This section authorizes the Director of General Services to enter into master agreements for various services to enhance the state's buying power. The Director may also offer procurement services to school districts, and such districts would be authorized to use the master agreements without competitive bidding.

The section creates no mandates for community college districts. It is the Director of General Services who enters into the master agreements. Participation in the agreements is purely optional. Based on *Kern High School*, supra, such discretionary activities cannot give rise to a mandate claim. In fact, the option to use the master agreements in lieu of competitive bidding should result in savings for participants.

This part of the Claim should be denied.

Claim 1K. Public Contract Code, section 12109. This section allows the Director of General Services to make the services of the Department of General Services available to tax-supported agencies, including school districts.

The section creates no mandates for Claimant because it is not required to use the offered services. Based on *Kern High School*, Claimant's optional choices cannot serve as the basis for a mandate claim.

Any claim based on this section should be denied.

Claim 1L. Business and Professions Code, section 7028.15. This section establishes the misdemeanor of submitting a bid to a public agency without having a required license to perform the proposed work. The section also requires local agencies to verify licensure before awarding a bid.

The requirement to verify licensure appears to create a state-mandated cost.

Claims 1M – 1Q. Public Contract Code, section 20101. This section allows public entities to require prospective bidders to provide standardized questionnaires and financial statements. It also allows public entities to adopt and apply a uniform system for rating bidders. Finally, it allows public entities to establish processes for prequalifying bidders.

Because the activities described in section 20101 are permissive, under *Kern High School*, no state mandate is created should Claimant choose to apply the section. Any Claim based on this section should be denied.

Claim 1R. Public Contract Code, section 20102. This section provides that where a public entity prepares plans and specifications for use in a formal or informal bid process but then determines to use day labor, it must still follow the plans and specifications, unless a justification for changes exists.

Claimant appears to argue that when it plans something, its use of those plans becomes a state mandate separate from any requirement to prepare the plans and specifications. First, we believe that all construction projects, not just public works, must be based on plans and following the plans. Accordingly, even if a requirement is found in such a proposition, it is not a requirement placed on local government to serve a governmental function that is different from generally accepted practices.

Second, there is no greater obligation created under this section when an entity opts to perform the work by day's labor rather than bid the project. Claimant would be obligated to follow its plans if it bid the project, so no additional or different obligation is created. Finally, even if an additional or different obligation were created when an entity chooses to use day labor, that obligation arises from the entity's choice. Such a choice would fall under *Kern High School* such that no mandate is created.

For the foregoing reasons, any Claim based on this section should be rejected.

Claim 1S. Public Contract Code, section 20103.5. When federal funds are involved in a contract, prior to making the first payment under the contract, the public agency must ensure that the contractor was properly licensed at the time the contract was awarded.

Business and Professions Code, section 7028.15, cited by Claimant as Claim 1L, requires local agencies to verify licensure before awarding a bid. Accordingly, the requirement of Public Contract Code, section 20103.5 appears to already have been satisfied through actions required under Business and Professions Code, section 7028.15.

Verification of licensure appears to create a mandate. It also appears to be appropriate to ensure that reimbursement is not duplicated when comparable mandates appear in more than one state statute.

Claims 1T – 1U. Public Contract Code, section 20103.6. This section requires local agencies that wish to require architects to indemnify and hold them harmless from liability to include in the request for proposals or bid invitations for architectural design services a disclosure that such a provision is required. If an entity fails to include the disclosure, it is prevented from requiring the indemnification, it may reopen the selection process, or it can reach mutual agreement with the architect for such a provision.

There is no requirement that an indemnification provision be included in the described contract, only that if an entity wants such a provision, it must include notice that such a provision will be required. Seeking indemnification is optional. If Claimant decides to exercise that option, all actions that are attendant to that choice are also optional, and under *Kern High School*, are not reimbursable mandates.

This part of the Claim should be rejected.

Claim 1V. Public Contract Code, section 20103.8. This section appears in Article 1.3 (Award of Contracts). It allows local agencies to require that bids include items that may be added or deducted from the scope of a project. Such a process allows flexibility, depending on the availability of funds at the time of the bid award. If additive or deductive items are included, the local agency must advise potential bidders which of four methods set out in the statute will be used to determine the lowest bid. If the local agency fails to identify a method, the method set out in subdivision (a) must be used.

The choice to require bids to include additions or deductions is in the discretion of the local agency. If the local agency chooses to require such bid elements, it must either notify prospective bidders of the means for determining the low bid, or use a statutorily prescribed method for doing so. These requirements, however, result from the local agency's initial decision to require additive or deductive elements. Once Claimant chooses the option regarding additions or deductions, any related requirements also result from Claimant's choice. Under *Kern High School*, these are not reimbursable mandates.

Any Claim based on this section should be denied.

Claim 1W. Public Contract Code, section 20104. This section appears in Article 1.5 (Resolution of Construction Claims). It provides that the Article applies to public works claims between a contractor and a local agency of \$375,000 or less. The Article does not apply if the public

agency has elected arbitration under other provisions of the Public Contract Code. The plans or specifications must include the provisions of the article or a summary thereof.

As noted in the section, public agencies may choose to proceed under this Article or under the arbitration proceedings. The requirement that the provisions of the article or a summary of those provisions be included in the plans or specifications only becomes a requirement if the public agency chooses to proceed under this article. Under *Kern High School*, options that an entity chooses cannot be the basis of a mandate claim.

Claims 1X – 1AA. Public Contract Code, section 20104.2. This section establishes various timelines for the contractor to present a written contract claim and for the local agency to respond. The section also provides for a meet and confer conference to resolve disputes.

As noted above, for Claim 1W, the provisions of this section depend on the local agency's choice to use this process or an arbitration process. Because all of the requirements of this section flow from an optional selection by the agency between available processes, there is no mandate. Moreover, Claimant has not even made a showing that this process was used.

Claims 1BB – 1CC. Public Contract Code, section 20104.4. This section relates to civil actions pursued under Article 1.5. The Court may submit the matter to nonbinding mediation unless the parties waive mediation. Judicial arbitration may be imposed. Parties may seek a trial de novo following an arbitration award.

As noted above, the application of this section depends on the local agency's choice of process. It is not clear whether nonbinding mediation choices or judicial arbitration affect a local agency differently than nonpublic parties. If Claimant is treated the same as nonpublic parties, no mandate exists. We do not have expertise in this area and do not have the resources to exhaustively research the general question of mediation and judicial arbitration in connection with construction contracts, but the Commission may wish to research this further. We also note that the section prohibits the payment of arbitration fees or expenses from state (or county) funds.

Claim 1DD. Public Contract Code, section 20104.6. This section requires a local agency to pay the legal interest rate on any arbitration award or judgment.

This section does not create an obligation that is confined to Claimant. Payment of the legal rate of interest on unsatisfied judgments generally begins on the date of entry of the judgment, regardless of the status of the party as a public entity. (Code of Civil Procedure, section 685.020.)

Thus, the payment of a legal interest rate on an award or judgment has general application and does not impose "unique requirements on local governments and . . . apply generally to all residents and entities in the state" and thus do not impose a new program or higher level of service upon Claimant. (*County of Los Angeles, supra.*) For that reason, any Claim based on this section should be rejected.

Claims 1EE – 1FF. Public Contract Code, section 20104.50. This section appears in Article 1.7 (Modifications; Performance; Payment). This section requires a local agency to pay interest on outstanding receipts that it fails to pay on time. Generally, if an undisputed receipt is submitted to the local agency, the agency must make at least a progress payment within 30 days.

The payment of its debts within a reasonable time frame should lie within Claimant's ability. If Claimant chooses not to pay within a reasonable time, interest may be imposed. However, it appears that the interest is not a mandate because its payment can be avoided by payment of the obligations. Under *Kern High School*, no mandate is present because the payment of interest is based on Claimant's choice to delay payment.

This part of the Claim should be rejected.

Claim 1GG – 1HH. Public Contract Code, section 20107. This section appears in Article 2 (Schools – State School Building Aid Law of 1949). Claimant asserts that it requires bidders to present their bids under sealed cover and provide security. It also requires a return of security to unsuccessful bidders. Article 2 applies to contracts that are subject to Article 1 of Chapter 4 of Part 10 of Division 1 of Title 1 of the Education Code. (Public Contract Code, section 20105.) The provisions start at section 15700 of the Education Code.

There is no indication that community college districts are subject to sections 15700 et seq. of the Education Code, so they are not subject to section 20107. As indicated in Education Code, section 15701, Director means "the Director of Education for kindergarten and grades 1 to 12, inclusive," and "grade level" is defined in terms of grades up to and including grade 12.

Claims 3E – 3F, below, address a similar provision for community colleges.

Any Claim under this section should be rejected.

Claim III. Public Contract Code, section 22300. This section requires a provision in bid invitations and contracts permitting the substitution of securities. Certain federally financed contracts are not covered.

It appears that requiring additional language in bid invitations and contracts may create a nominal mandate.

Claims 2A-2O pertain to school districts rather than community college districts and are not included in the Claim that was submitted by the Santa Monica Community College District.

Claim 3A. Public Contract Code, sections 20650 et seq. This Claim introduces the portion of the Public Contract Code that applies to community college districts. Section 20650 merely states that the provisions of the article apply to community college districts. Claimant asserts particularized mandated costs under specific sections that appear as Claims 3E through 3M of the Claim, and those sections are addressed in detail below.

Claim 3B-3C. Public Contract Code, section 2000(a) and 20111. These sections address participation by minority business enterprises and women business enterprises in contracts.

There are two reasons for rejecting any Claim based on these provisions.

1. The provisions do not apply to community college districts. Claimant assumes that the addition of the term “school district” to the definition of “local agency” at section 2000(d) means that “community college districts became subject to its provisions. . . .” (Claim, page 78.) Claimant also incorrectly assumes that section 20111 requires community college districts to comply with section 2000.

Claimant asserts that “Chapter 538, Statutes of 1988, Section 2, amended Public Contract Code Section 20111 to require school districts, for the first time, to let contracts in accordance with any requirements established by the board pursuant to subdivision (a) of Public Contract Code Section 2000.” (Test Claim, pages 78-79.) Claimant includes a footnote at this point in the Claim to Government Code, section 17519 which defines “school district” to include “community college district.” (Claim, footnote 82.)

However, the definition of “school district” in the cited Government Code section exists solely for the purpose of identifying entities that may file state mandate claims. Although “community college districts” are included in the definition of “school districts” in Government Code, section 17519, community college districts are not usually considered school districts for substantive purposes. Thus, Education Code, section 80 provides “‘Any school district’ and ‘all school districts’ mean school districts of every kind or class, except a community college district.” (Emphasis added.) Under Education Code provisions, community college districts are generally not considered school districts.

It is also clear that the reference to “school districts” in Public Contract Code, section 20111 does not include community college districts. Section 20111 appears in Article 3 of Chapter 1 (Local Agency Public Construction Act) of Part 3 (Contracting by Local Agencies) of Division 2 (General Provisions) of the Public Contract Code. Chapter 1 includes 76 articles. Different articles apply to different public entities. Article 3 applies to School Districts. By contrast, Article 41 applies to Community College Districts; its provisions begin with section 20650. So, a reference to “school districts” in Article 3 does not encompass community college districts that are addressed in Article 41.

The fact that Article 3 does not apply to community college districts is underscored by section 20110. Section 20110 provides: “The provisions of this part shall apply to contracts awarded by school districts subject to Part 21 (commencing with Section 35000) of Division 3 of Title 2 of the Education Code.” Part 21 of the Education Code addresses elementary and secondary education. Community college districts do not award contracts under these Education Code sections.

By contrast, Article 41 of the Public Contract Code begins with section 20650 that provides “The provisions of this article shall apply to contracts by community college districts as provided for

in Part 49 (commencing with Section 81000) of the Education Code.” Part 49 of the Education Code addresses postsecondary education. Community college districts do award contracts under these Education Code sections.

Any Claim made by Complainant on the basis of Public Contract Code, section 20110 should be denied because the provisions do not apply to community college districts.

2. The provisions do not create a mandate. Section 2000(a) provides in pertinent part “. . . any local agency may require that a contract be awarded to the lowest responsible bidder who also does either of the following. . . .” The balance of the language relates to the inclusion of minority business enterprises and women business enterprises in contracts.

The foregoing establishes the provisions as discretionary, because districts are permitted, but not required to follow them. Even if section 2000 applied to community college districts, under *Kern High School*, there would be no mandate because the actions are voluntary.

These sections do not represent reimbursable mandates.

Claim 3D. Public Contract Code, section 2001. This section requires persons making a bid or offering to perform a contract to provide certain information.

As noted above, section 2000 does not apply to community college districts and includes only voluntary provisions. Section 2001 applies to entities that choose to follow section 2000, so its provisions are voluntary as to Claimant and reimbursement is unavailable under *Kern High School*.

Additionally, section 2001 was added by Stats. 1993, c. 1032 (Assembly Bill 340). AB 340 also made it unlawful for a person to knowingly and intentionally provide false information related to his/her status as a minority, woman, or disabled veteran business enterprise. SEC.8 of AB 340 provided: “No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction.”

Government Code, section 17556(g) prohibits a finding of a reimbursable mandate if “the statute created a new crime or infraction, eliminated a crime or infraction, or changed the penalty for a crime or infraction, but only for that portion of the statute relating directly to the enforcement of the crime or infraction.” Accordingly, any costs appear to fall within the provisions of section 17556(g) so as to preclude a claim for state mandated costs.

For the foregoing reasons, any Claim under this section should be rejected.

Claims 3E – 3F. Public Contract Code, section 20651. This section requires letting certain contracts in excess of \$50,000 to the lowest responsible bidder, having bidders for public works contracts of \$15,000 or more be submitted under seal and accompanied by a specified form of security, and returning the security of unsuccessful bidders.

The requirement for competitive bidding was enacted prior to 1967. We lack the resources to trace the provision to its inception. However, as of 1967, districts were required to let contracts for work to be done above \$2500 and for materials or supplies of over \$4000 to be let by competitive bidding. (See former Education Code, section 15951, attached.) The bidding thresholds have increased over the years, but that should not alter the mandate, that originated prior to January 1, 1975, and which therefore cannot serve as the basis for a state mandate. Incidentally, because subdivision (d) requires the Board of Governors to annually adjust the \$50,000 threshold for inflation, the original \$50,000 threshold now stands at \$60,900.

Similarly, as indicated in former Education Code, section 15951, districts were also obligated to have bidders provide security. The forms of security were not specified, but the obligation preexisted 1967 and cannot serve as the basis for a mandate.

Public Contract Code, section 20652 allows community college districts to authorize any public corporation or public agency, such as a city or county, to secure data-processing equipment, materials, supplies, equipment, automotive vehicles, tractors and other personal property for the district using its own procurement system. In such a case, the community college district does not need to engage in competitive bidding. Therefore, assuming that such alternatives are available to Claimant without the need to engage in any competitive bidding process, the choice to do so is voluntary and cannot be the basis of a mandated cost.

Public Contract Code, sections 10298 and 10299 allow for the purchase of materials, supplies, and equipment through the Department of General Services without competitive bidding. Again, to the extent that Claimant chooses to engage in its own competitive bidding processes when it could secure items through alternate means that do not require competitive bidding, the obligations of competitive bidding are voluntarily assumed, and cannot be the basis for a mandated cost claim under *Kern High School*.

No Claim should be based on this section.

Claims 3G-3J, Public Contract Code, section 20651.5. This section describes the use of standardized questionnaires and financial statements for prospective bidders for contracts under section 20651.

This section does not create any mandates. The initial sentence confirms that the use of standardized questionnaires and financial statements is purely optional to the districts: "The governing board of any community college district may require each prospective bidder for a contract, as described under Section 20651, to complete and submit to the district a standardized questionnaire and financial statement. . . ." Only if districts choose to require such forms does the section even apply. Based on *Kern High School*, this section creates no mandate because the conduct is purely voluntary.

Any Claim based on this section should be denied.

Claims 3K-3L, Public Contract Code, section 20657. This section requires districts to retain records of funds expended on its projects. It also permits districts to secure informal bids for smaller projects up to the limits that trigger competitive bidding obligations. If informal bids are secured, notice to contractors must be provided.

The obligation to maintain public documents is a basic obligation of public entities that we do not believe is created by this section.

Public Contract Code, section 20655 also allows districts to make repairs, alterations, improvements, and the like by day labor or by force account so long as the projects do not involve a great expenditure of time. Larger districts with FTES greater than 15,000 may use this option for projects that do not exceed 750 hours or when the cost of materials is not over \$21,000. Accordingly, Claimant is not required to use informal bidding under section 20657 in these instances, and its choice to use competitive bidding cannot support a claim for reimbursement of a state mandate. Because a choice is involved, under *Kern High School*, no mandate is present.

Claim 3M, Public Contract Code, section 20659. This section requires that all contract changes or alterations be in writing.

The requirement for written change orders/alterations predated January 1, 1975, and cannot therefore be the basis of a state mandate. (Government Code, section 17514.) The requirement of section 20659 has remained substantially the same since it was added to the Education Code as section 15963 in 1961. (See former Education Code, section 15963, attached.)

Any Claim based on this section's requirement should be denied.

Claims 4A-4K. California Code of Regulations, sections 59500 et seq. These regulations were adopted by the Board of Governors of the California Community Colleges. Claimant asserts that the regulations create mandates including a requirement to establish and maintain policies, undertaking efforts to provide participation opportunities for minority, women, and disabled veteran business enterprises, contributing to systemwide goals, and assessing the status of its contractors.

The regulations include no mandates because all community college district activities are purely optional. Section 59500 states "However, each district shall have flexibility to determine whether or not to seek participation by minority, women, and disabled veteran business enterprises for any given contract." Section 59505(a) provides in pertinent part "If a district elects to apply MBE/WBE/DVBE goals to any contract . . ." Section 59505(c) provides that "The district may also elect to seek . . ." Any district that chooses not to consider any participation goals has no obligations under the regulations. As provided in *Kern High School*, supra, voluntary activities cannot serve as the basis for mandate claims.

Any Claims based on these regulations should be denied.

We hope the foregoing information is useful to you.

Sincerely,

A handwritten signature in black ink that reads "Frederick E. Harris". The signature is written in a cursive style with a large, decorative initial "F".

FREDERICK E. HARRIS, Assistant Vice Chancellor
College Finance and Facilities Planning