

COMMISSION ON STATE MANDATES

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November 5, 2013

Ms. Renee Bischof
Elections Division Manager
County of Santa Barbara
4440 Calle Real - A
Santa Barbara, CA 93110

And Parties, Interested Parties, and Interested Persons (See Mailing List)

Re: **Notice of Dismissal of Test Claim**
Post Election Manual Tally (PEMT), 10-TC-08
Office of Administrative Law File No. 2008-2009-002E, effective October 20, 2008;
California Code of Regulations, Title 2, Division 7, Chapter 3, Post Election Manual
Tallies Sections 20120, 20121, 20122, 20123, 20124, 20125, 20126 and 20127
County of Santa Barbara, Claimant

Dear Ms. Bischof:

On March 28, 2011, the County of Santa Barbara filed a test claim entitled *Post Election Manual Tally Requirements in Close Contest*¹ with the Commission on State Mandates (Commission). Upon initial review, Commission staff deemed the test claim complete on April 14, 2011 and, for technical purposes, shortened the title to *Post Election Manual Tally (PEMT)*.

Government Code section 17551(c) states that a test claim shall be filed not later than 12 months following the effective date of a statute or executive order, or within 12 months of incurring increased costs as a result of a statute or executive order, whichever is later. With respect to the latter provision, section 1183 of the Commission's regulations states that "within 12 months" of incurring costs means "by June 30 of the fiscal year following the fiscal year in which increased costs were first incurred by the test claimant."

In this case, 12 months after the effective date of the PEMT regulations is October 20, 2009. However, the claimant states that costs were first incurred for this program in November 2008 and that the regulations were intended to be effective for the November 2008 election. Using the latter provision of section 17551(c) triggered by the date an agency first incurs costs, the test claim had to be filed by June 30, 2010, to satisfy the statute of limitations. However, the test claim was filed on March 28, 2011, beyond the statute of limitations in section 17551, whether based on the effective date of the regulations or the date of first incurring costs.

The Commission is a quasi-judicial administrative agency, whose authority is provided solely by statute. Pursuant to Government Code section 17551(b), the Commission's review of a test

¹ On November 2, 2009, the California State Association of Counties (CSAC) and Department of Finance notified the Commission that they would be pursuing a legislatively-determined mandate (LDM) on this program (*Post Election Manual Tally*, 09-LDM-01). On April 5, 2011, the Commission received notice from the Department of Finance that it would no longer be pursuing this LDM.

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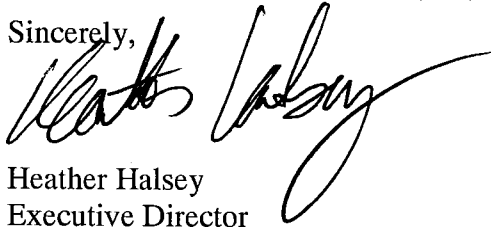
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claim may be had “*only if*” the test claim is filed within the time limits specified in sections 17551(c), 17573, and 17574. Although Commission staff deemed the statute of limitations “tolled as of October 22, 2009” and deemed the test claim subsequently filed as complete, the Commission may not now take jurisdiction because the claim was filed beyond the statute of limitations as a matter of law.²

Accordingly, this test claim is hereby dismissed pursuant to Commission regulations. (Cal. Code Regs, tit. 2, § 1183(i).) As provided in the Commission’s regulations, any party in interest may appeal to the Commission for review of the actions and decisions of the executive director. Please refer to California Code of Regulations, title 2, section 1181(c).

Please contact Heidi Palchik at (916) 323-3562 if you have any questions.

Sincerely,



Heather Halsey
Executive Director

² A completeness review of a test claim is not intended as a legal review, and in fact, does not go through legal review. Completeness reviews are intended only to determine if all of the technical filing requirements of a test claim, as provided in section 1183(d)(e), and (f), of the Commission’s regulations, have been met.