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September 10, 2014
Commission on
State Mandates

LATE FILING



September 10, 2014

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Ms. Eraina Ortega, Chair
Commission on State Mandates
980 9th Street, Suite 300
Sacramento, CA 95814

Re: **Top Two Candidates Open Primary Act**

Dear Ms. Ortega:

I am writing today on behalf of the California State Association of Counties to respectfully request that the Commission direct its staff to prepare an analysis and initiate proceedings for the "Top Two Candidates Open Primary Act" as lawfully amended by the claimant, Sacramento County.

Sacramento County filed a test claim in June of 2013 and received acknowledgement on July 3 that the claim was complete.

On October 28, 2013, the claimant filed an amendment. A week later, Commission staff rejected the amended test claim. The letter declaring the rejection cites Section 1183(c) of the Commission's regulations, which, the letter says, "requires that all test claims or amendments be filed within the statute of limitations."

However, this regulation directly conflicts with state law, which explicitly allows amendments like the one Sacramento County filed.

The letter declaring the rejection gives a related reason for the action, noting that "the amendment newly identifies specific sections of statutes not pled in the initial test claim filing." Again, state law addresses this issue.

The section of law relevant to this discussion is Government Code Section 17557 (e), which states in its entirety:

A test claim shall be submitted on or before June 30 following a fiscal year in order to establish eligibility for reimbursement for that fiscal year. The claimant may thereafter amend the test claim at any time, but before the test claim is set for a hearing, without affecting the original filing date as long as the amendment substantially relates to the original test claim.

The meaning of this code section is plain and unambiguous. It places only two restrictions on the filing of amendments. First, the claimant must amend the claim before it is set for hearing. Second, the amendment must substantially relate to the original test claim. Outside of those two limitations, the language is very accommodating, saying that the claimant may amend a claim "at any time" and, importantly, "without affecting the original filing date."

Sacramento County's amendment meets all of the requirements of law. The county filed it before the test claim was set for a hearing, and the amendment substantially relates to the original test claim by virtue of being amended by the same bills as the other included code sections (SB 6 of 2009 and AB 1413 of 2012).

Furthermore, the original claim already detailed the activities and costs that the code sections listed in the amended claim required. In fact, the original claim already listed several of the code sections listed in the amended claim, but it did so in a slightly different part of the document. The only difference between the original claim and the amended claim is the actual listing of code sections, yet the current staff analysis avoids any mention of them.

Sacramento County responded to staff's rejection in a January letter asserting their right to file the amended claim, but there is no response from the Commission included in the record. Likewise, the staff analysis does not address why the amended claim that was lawfully filed is not the one before the Commission for consideration.

Therefore, we request that the Commission on State Mandates direct its staff to prepare a new analysis of this claim as lawfully amended by Sacramento County and to bring that amended claim before the Commission for consideration.

Respectfully,



Jean Kinney Hurst
Senior Legislative Representative

Cc: Sacramento County

DECLARATION OF SERVICE BY EMAIL

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 980 Ninth Street, Suite 300, Sacramento, California 95814.

On September 12, 2014, I served the:

California State Association of Counties (CSAC)

Late Comments filed September 10, 2014

Top Two Candidates Open Primary Act, 12-TC-02

Elections Code Sections 13 et al.,

Statutes 2009, Chapter 2 (SCA 4); Statutes 2009, Chapter 1 (SB 6);

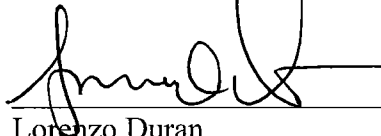
Statutes 2012, Chapter 3 (AB 1413)

Secretary of State's CC/ROV Memorandums #11005, #11125, #11126, and #12059

County of Sacramento, Claimant

State Controller's Office, Requester by making it available on the Commission's website and providing notice of how to locate it to the email addresses provided on the attached mailing list.

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 on September 12, 2014 at Sacramento, California.



Lorenzo Duran

Commission on State Mandates

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COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 8/27/14

Claim Number: 12-TC-02

Matter: Top Two Candidates Open Primary Act

Claimant: County of Sacramento

TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.3.)

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