

MINUTES

COMMISSION ON STATE MANDATES TELECONFERENCE MEETING

June 20, 2003

Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, California 95814

City Hall
156 South Broadway, Suite 230
Turlock, California 95380

Present: Chairperson Robert Miyashiro
Representative of the Director of the Department of Finance
Member William Sherwood
Representative of the State Treasurer
Member Sherry Williams
Representative of the Director of the Office of Planning and Research
Member Walter Barnes
Representative of the State Controller
Member John Lazar (via telephone)
City Council Member

Vacant: Local Elected Official
Public Member

CALL TO ORDER AND ROLL CALL

Chairperson Miyashiro called the meeting to order at 9:37 a.m.

HEARINGS AND DECISIONS, PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 7 (action)

APPEAL OF EXECUTIVE DIRECTOR DECISIONS PURSUANT TO CALIFORNIA
CODE OF REGULATIONS, TITLE 2, SECTION 1181, SUBDIVISION (c)

Item 1 Staff Report

Paula Higashi, Executive Director, reported that there were no matters to consider at this hearing.

REQUESTS FOR RECONSIDERATION OF STATEMENT OF DECISION – TEST
CLAIM, PURSUANT TO TITLE 2, CHAPTER 2.5, ARTICLE 7, SECTION 1188.4

Item 2 *Crime Victims' Domestic Violence Incident Reports*, 99-TC-08
County of Los Angeles, Claimant

Penal Code Section 13730 and Family Code Section 6228
Statutes 1984, Chapter 1609 (SB 1472); Statutes 1995, Chapter 965 (SB
132); Statutes 1999, Chapter 1022 (AB 403)

Robert Miyashiro, Chairperson, Commission on State Mandates, Requestor

Camille Shelton, Senior Commission Counsel, presented this item. She stated that this item was a request for reconsideration of the Commission's decision in the *Crime Victims' Domestic Violence Incident Reports* test claim. She noted that the purpose of reconsideration was to allow the Commission to correct its ruling if it was determined that the decision contained an error of law. She added that under the Commission's regulations, five affirmative votes are required to grant the

request for reconsideration and to schedule the matter for hearing on the merits of the request.

Ms. Shelton indicated that the Commission partially approved the test claim for the activity of storing domestic violence incident reports and face sheets for a period of five years. She noted that reconsideration was requested because the decision did not analyze prior law codified in Government Code sections 26202 and 34090, which required cities and counties to maintain all records for a minimum of two years before destruction.

Staff recommended that the Commission approve the request for reconsideration so that the prior law could be addressed. Ms. Shelton stated that if the Commission adopted the staff recommendation, the next step in the process is to issue a draft staff analysis on the merits of the claim, which all affected parties and interested parties may file comments on. A final staff analysis would then be prepared and a hearing scheduled.

Parties were represented as follows: Leonard Kaye, for the County of Los Angeles; and Susan Geanacou, for the Department of Finance. The witnesses were sworn.

Mr. Kaye quoted a paragraph found in the Commission's Statement of Decision dated June 13, 2003, which stated that prior law, Penal Code sections 11107 and 13730, required local law enforcement agencies to provide daily reports on domestic violence incident calls to the Attorney General and the Department of Justice. Penal Code section 13730 was suspended by the Legislature. He argued that under current California law, this was a precise and accurate legal statement, and thus, the duty to prepare domestic violence incident reports is not a mandated activity under Government Code section 17581, which is the statute whereby the Legislature puts a zero in the state budget.

Ms. Geanacou stated her understanding that the issue before the Commission was to consider whether the activity of storing records would be reimbursed for the entire five-year period versus only the additional three years. She recommended that the Commission grant the request for reconsideration so that there could be a full hearing on the merits of the claim.

Member Barnes commented that part of deciding whether or not the matter should be reconsidered is considering the validity of the request. Therefore, he requested the Department of Finance to comment about the basis for the request. He noted that the issue was based on a section dealing with when records can be destroyed versus the issue that the records be stored in a place where they can be retrieved and made available in 48 hours.

Ms. Geanacou stated that, by their terms, Government Code sections 26202 and 34090 require that certain records not be destroyed until two years have lapsed. She explained that this requirement was the same as an affirmative duty to maintain and store those records for two years. While the Statement of Decision authorized a five-year maintenance period, the Department of Finance argued that preexisting law required that the records be retained for two years, and thus, only the three-year incremental period imposed by Family Code section 6228 should be reimbursable. She indicated interest in staff's response to the claimant's assertion regarding the timeliness accessibility requirement relating to the preexisting law in the cited Government Code sections.

Ms. Shelton clarified that a request for reconsideration was a two-step process. If the Commission decides to grant the request, the second stage would be to hear the merits of the request and an analysis of the rules of statutory construction would be done. She indicated that Government Code sections 26202 and 34090 apply to all records, and noted that in case law, the interpretation is that those provisions require that they cannot destroy any record for at least two

years. Those records include the domestic violence incident reports under Family Code section 6228.

Regarding the intent of the statute to make the reports available within a certain time limit, Ms. Shelton stated that there was nothing in the plain language of the statute requiring that records be maintained in any particular fashion. However, she noted that the Commission would determine the most reasonable methods of complying with the statute at the parameters and guidelines phase.

In response to the Department of Finance's comment that the duty not to destroy implies a duty to maintain and keep, Mr. Kaye asserted that there was no evidence in the record that this prima facie threshold has been demonstrated or argued. Also, he argued that there was no legal basis for concluding that there is a mandatory duty to prepare a non-existent record. He reiterated that under Government Code section 17581, the duty to prepare the domestic violence incident report was optional.

Member Barnes commented that an analysis on the issue would be helpful.

Ms. Shelton stated that the claimant's argument regarding the discretionary nature of the report was made before the Commission at the test claim hearing and the Commission disagreed. She added that the 1993 amendment to the Penal Code required that the reports be prepared; however, that 1993 statute has not yet been determined by the Commission to be a mandated activity, and thus, the statute is not suspended and is not discretionary. Also, she added that it was not part of this request for reconsideration.

Chairperson Miyashiro requested clarification regarding the two-step process of reconsideration. Ms. Shelton provided that clarification, noting that section 1188.4 of the Commission's regulations requires this two-hearing process and a super-majority vote. In this case, she stated that the earliest that the merits of the claim could be heard is the September hearing.

Member Williams made a motion to adopt the staff recommendation. With a second by Member Barnes, the motion carried unanimously.

EXECUTIVE DIRECTOR'S REPORT

Item 3 Assembly Special Committee on State Mandates, CSAC Legislative Proposals and July Hearing Agenda

- **Assembly Special Committee on State Mandates.** Ms. Higashi reported that the committee met on June 2 and June 16, and will meet on June 23. She provided an overview of the handouts, including a number of recommendations for structural reform of the mandates process presented by the California State Association of Counties and League of Cities representatives.

Chairperson Miyashiro suggested that Ms. Higashi ensure that the committee staff understands that the Commission's regulations allow a certain time period to elapse between Commission actions to allow enough time for thoughtful and careful analysis and public comment. He also stated that it was important to communicate to the committee that the Commission and its staff are not dragging their heels in making decisions. Ms. Higashi acknowledged that she would make a special effort to ensure that the [workload] data is placed in the proper context.

- *July Hearing Agenda.* Ms. Higashi reviewed the number of potential agenda items for the July hearing and stated that since claimants have been impacted by competing deadlines that the agenda could not be finalized until comments are filed on staff drafts.

PUBLIC COMMENT

Chairperson Miyashiro offered the public an opportunity to comment on the bimonthly meeting schedule.

Carol Berg, with the Education Mandated Cost Network, supported the bimonthly approach, as long as the agenda was full. She noted that the items should be mixed up so that one group's claims are not all heard during the same hearing.

In addition to the Executive Director's report, she noted that the Assembly Special Committee took action at the last hearing to repeal 16 city and county mandates, to suspend one, and to bring two back for further discussion. She stated that it was important that they also repeal the Education Code sections that impose requirements on schools when repealing mandates. Ms. Higashi noted that the problem was that there were two different suspension procedures: Government Code section 17581 for local agencies, and Government Code section 17581.5 for school districts. In the pending Governor's budget, only section 17581 is referenced.

Leonard Kaye, with the County of Los Angeles, also supported the bimonthly meetings, but suggested that they be scheduled so that education claims be heard during one part of the day while city and county claims be heard during the another part of the day. He also encouraged the idea of developing unit costs up front.

Juan Sanchez, with the California Department of Education, noted that they were flexible either way as far as the bimonthly meeting schedule.

CLOSED EXECUTIVE SESSION PURSUANT TO GOVERNMENT CODE SECTIONS 11126 and 17526.

To confer with and receive advice from legal counsel, for consideration and action, as necessary and appropriate, upon the following matters pursuant to Government Code section 11126, subdivision (e)(1):

1. *County of San Diego v. Commission on State Mandates, et al.*, Case Number D039471, in the Appellate Court of the State of California, Fourth Appellate District, Division 1. CSM Case No. 01-L-16 [*San Diego MIA*]
2. *County of Los Angeles v. Commission on State Mandates, et al.*, Case Number B156870, in the Appellate Court of the State of California, Second Appellate District. CSM Case No. 01-L-17 [*Domestic Violence*]
3. *County of San Bernardino v. Commission on State Mandates, et al.*, Case Number BS069611, in the Appellate Court of the State of California, Second Appellate District. CSM Case No. 01-L-18 [*SEMS*]
4. *State of California, Department of Finance v. Commission on State Mandates, et al.*, Case Number 02CS00994, in the Superior Court of the State of California, County of Sacramento. CSM Case No. 02-L-01 [*School Bus Safety II*]
5. *San Diego Unified School District v. Commission on State Mandates, et al.*, Case Number S109125, in the Supreme Court of the State of California. CSM Case No. 02-L-02 [*Pupil Expulsions*]

6. *State of California, Department of Finance v. Commission on State Mandates, Kern Union High School District; San Diego Unified School District, County of Santa Clara*, Case Number S109219, in the Supreme Court of the State of California. CSM Case No. 02-L-03 [*School Site Councils*]
7. *County of San Bernardino v. Commission on State Mandates of the State of California, et al.*, Case Number B163801, in the Appellate Court of the State of California, Second Appellate District. CSM Case No. 02-L-04 [*Property Tax Administration*]
8. *San Diego Unified School District and San Juan Unified School District v. Commission on State Mandates, et al.*, Case Number (C044162), in the Appellate Court of the State of California, Third Appellate District. CSM Case No. 02-L-05 [*Physical Performance Tests*]

To confer with and receive advice from legal counsel, for consideration and action, as necessary and appropriate, upon the following matter pursuant to Government Code section 11126, subdivision (e)(2):

- Based on existing facts and circumstances, there is a specific matter which presents a significant exposure to litigation against the Commission on State Mandates, its members and/or staff (Gov. Code, § 11126, subd. (e)(2)(B)(i).)

PERSONNEL

To confer on personnel matters pursuant to Government Code sections 11126, subdivision (a), and 17526.

Discussion and action, if appropriate, on report from the Personnel Sub-Committee.

Hearing no further comments, Chairperson Miyashiro adjourned into closed executive session pursuant to Government Code section 11126, subdivision (e), to confer with and receive advice from legal counsel for consideration and action, as necessary and appropriate, upon the pending litigation listed on the published notice and agenda; and Government Code sections 11126, subdivision (a), and 17526, to confer on personnel matters listed on the published notice and agenda.

REPORT FROM CLOSED EXECUTIVE SESSION

Chairperson Miyashiro reported that the Commission met in closed executive session pursuant to Government Code section 11126, subdivision (e), to confer with and receive advice from legal counsel for consideration and action, as necessary and appropriate, upon the pending litigation listed on the published notice and agenda; and Government Code sections 11126, subdivision (a), and 17526, to confer on personnel matters listed on the published notice and agenda.

ADJOURNMENT

Hearing no further business, and upon motion by Member Williams, Chairperson Miyashiro adjourned the meeting at 10:33 a.m.


 PAULA HIGASHI
 Executive Director