

**RESPONSE TO DEPARTMENT OF FINANCE
BY CITY OF SAN JOSE, TEST CLAIMANT**

Chapter 993, Statutes of 1989

Fire Safety Inspections of Care Facilities

RECEIVED

SEP 17 2002

COMMISSION ON
STATE MANDATES

This is written in response to the submittal by the Department of Finance, dated August 16, 2002.

The Department of Finance claims that the subject test claim is not a reimbursable mandate, because the test claim legislation is applicable to the State Fire Marshal as well, and thus is not unique to local government. The Department of Finance has misconstrued the law, and the fact that this mandate may also be applicable to the State Fire Marshal does not mean it is not a reimbursable mandate claim.

Fire protection is a distinctly governmental function.

"First, fire protection is a peculiarly governmental function. (*County of Sacramento v. Superior Court* (1972) 8 Cal.3d 479, 481 [105 Cal.Rptr. 374, 503 P.2d 1382].) 'Police and fire protection are two of the most essential and basic functions of local government.' (*Verreos v. City and County of San Francisco* (1976) 63 Cal.App.3d 86, 107 [133 Cal.Rptr. 649].) . . . [W]e have no difficulty in concluding as a matter of judicial notice that the overwhelming number of fire fighters discharge a classic governmental function." *Carmel Valley Fire Protection District v. State of California* (1987) 190 Cal.App.3d 521, 537.

The litmus test for whether a statutory provision or executive order constitute a reimbursable state mandate is found in *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46.

"Looking at the language of section 6 then, it seems clear that by itself the term "higher level of service" is meaningless. It must be read in conjunction with the predecessor phrase "new program" to give it meaning. Thus read, it is apparent that the subvention requirement for increased or higher level of service is directed to state mandated increases in the services provided by local agencies in existing "programs." But the term "program" itself is not defined in article XIII B. What programs then did the electorate have in mind when section 6 was adopted? We conclude that the drafters and the electorate

had in mind the commonly understood meanings of the term – programs that carry out the governmental function of providing services to the public, or laws which, to implement a state policy, impose unique requirements on local governments and do not apply generally to all residents and entities in the state.” *County of Los Angeles, supra* at 56.

Contrary to the assertion of the Department of Finance, the test is not whether the same or similar duties are being performed by a state agency, such as the State Fire Marshal.¹ Rather, the issue is whether the statute is one of general application which applies to both public and private entities. There has been no showing, nor can there be such a showing, that the mandated services required of local fire agencies as set forth in the test claim are performed by private entities.

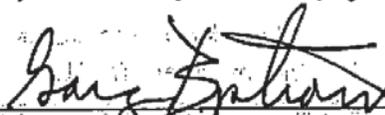
Rather, the test claim requires that local fire departments perform fire safety inspections of all community care facilities, residential care facilities for the elderly, and child day care facilities. This mandate is imposed distinctly upon local fire departments, and NOT public entities. The fact that those facilities which may fall within the jurisdiction of the State Fire Marshal must be inspected by them does not result in a conclusion that this is a law of general application.

Accordingly, the City of San Jose respectfully requests that the subject test claim legislation be found to constitute a reimbursable mandate to the extent that actual costs exceed the statutorily authorized reimbursement, if same is authorized.

CERTIFICATION

The foregoing facts are known to me personally and if so required, I could and would testify to the statements made herein. I declare under penalty of perjury under the laws of the State of California that the statements made in this document are true and complete to the best of my personal knowledge and as to all matters, I believe them to be true.

Executed this 13 day of September, 2002, at San Jose, California, by:



Gary Bystrom, Captain
San Jose Fire Department

¹ Note that there is no evidence presented that the State Fire Marshal actually does conduct the fire safety inspections as alleged by the Department of Finance.

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 September 17, 2002 I served Response to Department of Finance by City of San Jose, Test Claimant, Chapter 993, Statutes of 1989, *Fire Safety Inspections of Care Facilities* 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 State 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 17th day of September, 2002 at Sacramento, California.


Declarant

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

Dr. Carol Berg
Education Mandated Cost Network
1121 L Street, Suite 1060
Sacramento, CA 95814

State Fire Marshal
Chief of Fire Prevention
CDF/State Fire Training
P. O. Box 944246
Sacramento, CA 94244-2460

California State Firefighter's Association
Attention: Executive Director
2701 K Street, Suite 201
Sacramento, CA 95816

State Controller's Office
Division of Accounting and Reporting
Attention: Michael Havey
3301 C Street, Suite 500
Sacramento, CA

League of California Cities
Attention: Ernie Silva
1400 K Street
Sacramento, CA 95815

Mr. Paul Minney
Spector, Middleton, Young & Minney, LLP
7 Park Center Drive
Sacramento, CA 95825

Mr. Keith Petersen, President
SixTen & Associates
5252 Balboa Avenue, Suite 807
San Diego, CA 92117

Mr. Jim Spano
State Controller's Office
Division of Audits
300 Capitol Mall, Suite 518
Sacramento, CA 95814