


**DEPARTMENT OF
FINANCE**
ARNOLD SCHWARZENEGGER, GOVERNOR

915 L STREET ■ SACRAMENTO CA ■ 95814-3706 ■ WWW.DOF.CA.GOV

July 21, 2004

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

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**COMMISSION ON
 STATE MANDATES**

Dear Ms. Higashi:

As requested in your letter of June 2, 2004, the Department of Finance has reviewed the draft staff analysis issued by the Commission regarding the test claim submitted by the Santa Monica Community College District (SMCCD) asking the Commission to determine whether specified costs incurred under Chapter 1568, Statutes of 1982, Chapter 114, Statutes of 1984, Chapter 1038, Statutes of 1988, Chapter 1171, Statutes of 1989, Chapter 595, Statutes of 1999, and Chapter 887, Statutes of 2000 are reimbursable state mandated costs (Claim No. CSM 02-TC-15 "Cancer Presumption").

While our response to a related claim, CSM 01-TC-19, noted that portions of that claim may result in reimbursable State-mandated costs, our earlier analysis of the present claim failed to acknowledge that school and community college districts have absolute discretion as to whether or not to establish police departments, and therefore any costs incurred as a result of their discretionary decision to do so cannot be found to be reimbursable.

Thus we are amending our earlier comments and we now concur with the staff analysis for CSM 02-TC-15, which finds that the proposed activities do not constitute a State-mandated local program because state law does not mandate school districts and community college districts to employ peace officers and firefighters. The recently decided case of *Department of Finance v. Commission on State Mandates (Kern)* (2003) 30 Cal.4th 727, supports this position. Accordingly, we concur with the staff recommendation that the Commission deny the test claim.

SixTen and Associates (SixTen) in its response to the draft staff analysis, argues that school districts and community college districts are included in Labor Code Section 3212.1 since they are authorized by statute to maintain a police department. However, while they are authorized to establish a police department (Education Code Sections 39670 and 72330), school and community college districts are not required to do so. Costs incurred resulting from participation in a discretionary program cannot be found to be reimbursable.

SixTen then comments that *Leger v. Stockton Unified (Leger)* has been misinterpreted related to this test claim. SixTen argues that under the constitutional law provisions of *Leger*, Article 1, Section 26, of the California Constitution mandates that all branches of government are required to comply with the constitutional directive of Article 1, Section 28, and protect both students' and staff's inalienable right to attend campuses which are safe, secure, and peaceful. However, police departments established by school and community college districts are not the only means of providing safe schools and are not statutorily required.

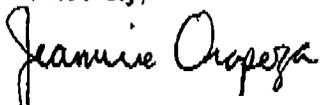
SixTen also suggests a misinterpretation of *Department of Finance v. Commission on State Mandates Kern* (2003) 30 Cal. 4th 727. SixTen argues that a more appropriate reference would be *City of Sacramento v. State of California (Sacramento)* (1990) 50 Cal.3rd 51. In *Kern* the court distinguishes the situation at Kern High School District from the situation in *Sacramento* noting that "...the financial consequences to the state and its residents of failing to participate in the federal plan were so onerous and punitive, -- we characterized the consequences as amounting to 'certain and severe federal penalties' including 'double...taxation' and other 'draconian' measures..." whereas in *Kern*, participation in eight of the nine categorical programs was entirely discretionary. We argue that the *Kern* reference is appropriate because the establishment of police departments by school or community college districts is entirely voluntary, and is not the only method of ensuring safe schools. Therefore, as in *Kern*, the activities undertaken at the option or discretion of the school or community college district do not trigger a state mandate and do not require reimbursement of funds even if a school or community college district is obliged to incur costs as a result of its discretionary decision to establish a police department.

As stated above, although the Legislature has authorized school and community college districts to establish police departments, the Constitution does not require school and community college districts to maintain safe schools through school district police departments independent of the public safety services provided by the cities and counties a school district serves. Therefore any additional costs incurred maintaining a police department cannot be found to be a reimbursable.

As required by the Commission's regulations, we are including a "Proof of Service" indicating that the parties included on the mailing list which accompanied your March 12, 2003 letter have been provided with copies of this letter via either United States Mail or, in the case of other State agencies, Interagency Mail Service.

If you have any questions regarding this letter, please contact Pete Cervinka, Principal Program Budget Analyst, at (916) 445-0328 or Keith Gmeinder, State mandates claims coordinator for the Department of Finance, at (916) 445-8913.

Sincerely,



Jeannie Oropeza
Program Budget Manager

Attachment

DECLARATION OF PETE CERVINKA
DEPARTMENT OF FINANCE
CLAIM NO. 02-TC-15

1. I am currently employed by the State of California, Department of Finance (Finance), am familiar with the duties of Finance, and am authorized to make this declaration on behalf of Finance.
2. We concur that the sections relevant to this claim are accurately quoted in the test claim submitted by claimants and, therefore, we do not restate them in this declaration.

I certify under penalty of perjury that the facts set forth in the foregoing are true and correct of my own knowledge except as to the matters therein stated as information or belief and, as to those matters, I believe them to be true.



at Sacramento, CA



Pete Cervinka

PROOF OF SERVICE

Test Claim Name: Cancer Presumption (K-14)
Test Claim Number: 02-TC-15

I, the undersigned, declare as follows:

I am employed in the County of Sacramento, State of California, I am 18 years of age or older and not a party to the within entitled cause; my business address is 915 L Street, 7th Floor, Sacramento, CA 95814.

On July 21, 2004, I served the attached recommendation of the Department of Finance in said cause, by facsimile to the Commission on State Mandates and by placing a true copy thereof: (1) to claimants and nonstate agencies enclosed in a sealed envelope with postage thereon fully prepaid in the United States Mail at Sacramento, California; and (2) to State agencies in the normal pickup location at 915 L Street, 7th Floor, for Interagency Mail Service, addressed as follows:

A-16

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

B-8

State Controller's Office
 Division of Accounting & Reporting
 Attention: Michael Havey
 3301 C Street, Room 500
 Sacramento, CA 95816

E-8

Department of Education
 Fiscal and Administrative Services Division
 Attention: Gerald Shelton
 1430 N Street, Suite 2213
 Sacramento, CA 95814

Education Mandated Cost Network
 C/O School Services of California
 Attention: Dr. Carol Berg, PhD
 1121 L Street, Suite 1060
 Sacramento, CA 95814

Shields Consulting Group, Inc.
 Attention: Steve Shields
 1536 36th Street
 Sacramento, CA 95816

Centration, Inc.
 Attention: Beth Hunter
 8316 Red Oak Street, Suite 101
 Rancho Cucamonga, CA 91730

San Diego Unified School District
 Attention: Arthur Palkowitz
 4100 Normal Street, Room 3159
 San Diego, CA 92103-8363

Cost Recovery Systems
 Attention: Annette Chinn
 705-2 East Bidwell Street, #294
 Folsom, CA 95630

Reynolds Consulting Group, Inc.
 Attention: Sandy Reynolds, President
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 Sun City, CA 92586

Steve Smith Enterprises, Inc.
 Attention: Steve Smith
 One Capitol Mall, Suite 200
 Sacramento, CA 95814

SixTen & Associates
 Attention: Keith Petersen
 5252 Balboa Avenue, Suite 807
 San Diego, CA 92117

Mandate Resource Services
 Attention: Harmeet Barkschat
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 Sacramento, CA 95842

Santa Monica Community College District
Attention: Cheryl Miller
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Santa Monica, CA 90405-1628

Spector, Middleton, Young & Minney, LLP
Attention: Paul Minney
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Sacramento, CA 95825

California Community Colleges
Attention: Mark Drummond
Chancellor's Office
1102 Q Street, Suite 300
Sacramento, CA 95814-6549

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 July 21, 2004, at Sacramento, California.



Jennifer Nelson