

COMMISSION ON STATE MANDATES

980 NINTH STREET, SUITE 300
SACRAMENTO, CA 95814
PHONE: (916) 323-3562
FAX: (916) 445-0278
E-mail: csminfo@csm.ca.gov



October 18, 2007

Mr. David M. O'Hara
Law Offices of David M. O'Hara
39300 Civic Center Drive, Suite 110
Fremont, CA 94538

Re: Notice of Dismissal of Test Claim Filing
(Cal. Code Regs, tit. 2, § 1183, subd. (i))
Ethics Training Requirements
Government Code sections 53234 and 53235.2;
Statutes 2005, Chapter 700 (AB 1234)
Union Sanitary District, Claimant

Dear Mr. O'Hara:

On September 17, 2007, the Commission on State Mandates (Commission) received a test claim filing on Government Code sections 53234 and 53235.2 (Stats. 2005, ch. 700 (AB 1234)), *Ethics Training Requirements*, by Union Sanitary District. The test claim filing was returned on September 28, 2007, on the ground that that it was not timely filed pursuant to Government Code section 17551, subdivision (c). The test claim was filed more than one year following the effective date of AB 1234, January 1, 2006.

The Commission has received your letter dated October 5, 2007, arguing that the test claim was timely filed pursuant to Government Code section 17551, subdivision (c), since it was filed "within twelve months of incurring increased costs as a result of the statute" Enclosed in your letter is a photocopy of a check made payable to you by Union Sanitary District in the amount of \$22,013.34 for services rendered to prepare the Ethics Training Manual and delivery of ethics training. The check is dated September 21, 2006. You contend that costs were incurred by Union Sanitary District as a result of AB 1234 on September 21, 2006, and that the time to file a test claim for reimbursement of costs as a result of AB 1234 began to accrue on September 21, 2006. Thus, you contend the filing of the test claim on September 17, 2007, was timely.

Upon further review of your letter and test claim filing, and for the reasons described below, we have determined that the Commission does not have jurisdiction to hear Union Sanitary District's claim. Therefore, the test claim filing is dismissed pursuant to the Commission's regulations. (Cal. Code Regs, tit. 2, § 1183, subd. (i).)

Union Sanitary District is Not an Eligible Claimant Under Article XIII B, Section 6

Reimbursement under article XIII B, section 6 is required only when the local agency is subject to the tax and spend limitations of articles XIII A and XIII B, and only when the costs in question can be recovered solely from "proceeds of taxes," or tax revenues. (*County of Fresno v. State of California* (1991) 53 Cal.3d 482, 486-487.)

[A]rticle XIII B does not limit the ability to expend government funds collected from all sources. Rather, the appropriations limit is based on “appropriations subject to limitation,” which consists primarily of the authorization to expend during a fiscal year the “proceeds of taxes.” (§ 8, subd. (a).) As to local governments, limits are placed only on the authorization to expend the proceeds of taxes levied by that entity, in addition to the proceeds of state subventions (§ 8, subd. (c)); no limitation is placed on the expenditure of those revenues that do not constitute “proceeds of taxes.” (*County of Placer v. Corin* (1980) 113 Cal.App.3d 443, 447.)

Section 9 of Article XIII B sets forth specific circumstances wherein the costs in question *are not* “appropriations subject to limitation,” and therefore subvention is not required. One such exclusion to the limitation is found in subdivision (c), which applies to special districts:

Appropriations of any special district which existed on January 1, 1978, and which did not as of the 1977-78 fiscal year levy an ad valorem tax on property in excess of 12 ½ cents per \$100 of assessed value; or the appropriations of any special district then existing or thereafter created by a vote of the people, which is totally funded by other than the proceeds of taxes. (Emphasis added.)

Thus, article XIII B, section 6 does not require reimbursement when the costs are for expenses that are recoverable from sources other than tax revenue; i.e, service charges, fees, or assessments. (*County of Fresno, supra*, 53 Cal.3d at p. 487.) The courts have concluded that although article XIII B, section 6 does not expressly discuss the source of funds used by an agency to fund a program, the historical and contextual context of the provision demonstrates that it applies only to costs recovered solely from tax revenues. (*Redevelopment Agency of the City of San Marcos v. Commission on State Mandates* (1997) 55 Cal.App.4th 976, 987.) A local agency cannot accept the benefits of an exemption from article XIII B’s spending limit while asserting an entitlement to reimbursement under article XIII B, section 6. (*City of El Monte v. Commission on State Mandates* (2000) 83 Cal.App.4th 266, 281-282.)

According to Union Sanitary District’s website,¹ the District receives revenue from four primary sources; “Sewer service charges, capacity fees, other minor operating revenues such as permits, inspections and outside work that we perform in cooperation with other municipalities, and interest earnings on reserve funds.” Its revenue is not funded through “proceeds of taxes,” or property taxes. Moreover, on May 10, 2007, the State Controller’s Office issued its annual report for special districts for fiscal year 2004-2005. The report shows, on page 226, that the revenues and expenditures of Union Sanitary District in fiscal year 2004-2005 were not subject to the appropriations limit of article XIII B of the California Constitution.²

¹ <http://www.unionsanitary.dst.ca.us/financialinfo.htm> (See attached.)

² The State Controller’s *Special Districts Annual Report*, dated May 10, 2007, is attached.

Therefore, since Union Sanitary District is not funded by proceeds of taxes, it is exempt from article XIII B's spending limit. Thus, Union Sanitary District is not a local agency eligible to claim reimbursement under article XIII B, section 6 of the California Constitution.

Accordingly, the test claim filing is dismissed and is hereby returned.

As provided in the Commission's regulations, you 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, subdivision (c).

Please call Camille Shelton, Chief Legal Counsel, at (916) 323-8215 if you have any questions.

Sincerely,

A handwritten signature in black ink that reads "Paula Higashi". The signature is written in a cursive, flowing style.

PAULA HIGASHI
Executive Director

Enc.