

Hearing: March 27, 2009

ITEM 19

CHIEF LEGAL COUNSEL'S REPORT New Filings, Recent Decisions, Litigation Calendar

This public session report is intended only as an information item for the public.¹ Commission communications with legal counsel about pending litigation or potential litigation are reserved for Closed Executive Session, per the Notice and Agenda.

New Filings

None.

Recent Decisions

a. *Department of Finance v. Commission on State Mandates*

Third District Court of Appeal, Case No. C0568833

[Reconsideration of Peace Officer Procedural Bill of Rights (POBOR)]

On February 6, 2009, the Third District Court of Appeal filed a published decision in this matter reversing the decision of the trial court and the Commission, finding that school districts and special districts that are permitted by statute to employ peace officers who supplement the general law enforcement units of cities and counties, are not mandated by the state to comply with the POBOR legislation.

b. *California School Boards Association, et al. v. State of California*

Third District Court of Appeal, Case No. C055700

Sacramento County Superior Court, Case No. 06CS01335

[Reconsideration of Brown Act Reform, School Accountability Report Cards, and Mandate Reimbursement; Mandate Reimbursement II]

On March 9, 2009, the Third District Court of Appeal filed a published decision, with findings that (1) pursuant to the separation of powers clause of the California Constitution, the Legislature has no authority to direct the Commission to reconsider or to set aside prior final Commission decisions; and (2) Government Code section 17556, subdivision (f), is unconstitutional with respect to the denial of claims for activities that are “reasonably within the scope of” a ballot measure approved by the voters in a statewide or local election.

The court’s decision directs the superior court to issue a writ of mandate directing the Commission to set aside the decisions on reconsideration that denied reimbursement for the *Open Meetings Act/Brown Act Reform, School Accountability Report Cards, and Mandate Reimbursement Process* programs, and to reinstate the original decisions and parameters and guidelines for those

¹ Based on information available as of March 13, 2009. Release of this litigation report shall not be deemed to be a waiver of any privileged communication or act, including, but not limited to, the attorney-client privilege and the attorney work product doctrine.

programs authorizing reimbursement to local agencies and school districts. The court also remanded the *Mandate Reimbursement Process II* test claim back to the Commission to determine whether the test claim statutes impose a reimbursable state-mandated program, consistent with the court's ruling on Government Code section 17556, subdivision (f).

Litigation Calendar

None.

Cases of Interest

- a. ***Grossmont Union High School District v. California Department of Education***, California Supreme Court, Case No. S170384

This case involves the *Handicapped and Disabled Students* program, which is a mandates program approved by the Commission for counties. Under the program, counties provide mental health services to special education students. When the Legislature appropriated \$1000 in the Budget to counties for their mandate reimbursement, the counties sought and obtained a superior court judgment holding that because this was an unfunded state mandate, the county did not have to provide the services. In response, the Department of Education required local school districts to absorb the cost of the services.

On December 29, 2008, the Third District Court of Appeal issued a published decision, finding that school districts failed to exhaust their administrative remedies with the Commission.

On February 10, 2009, Grossmont filed a petition for review with the California Supreme Court. Grossmont argues that it would be futile to exhaust administrative remedies with the Commission since the costs that Grossmont complains of result from a federal mandate.