

ITEM 4
TEST CLAIM
PROPOSED STATEMENT OF DECISION

Vehicle Code Section 2407.5
Statutes 2001, Chapter 710

Distracted Drivers (01-TC-12)

City of Newport Beach, Claimant

EXECUTIVE SUMMARY

The sole issue before the Commission is whether the Proposed Statement of Decision accurately reflects any decision made by the Commission at the May 27, 2004 hearing on the above-named test claim.¹

Staff Recommendation

Staff recommends that the Commission adopt the Proposed Statement of Decision, beginning on page two, which accurately reflects the staff recommendation on the test claim. Minor changes, including those to reflect the hearing testimony and the vote count, will be included when issuing the final Statement of Decision.

However, if the Commission's vote on Item 3 modifies the staff analysis, staff recommends that the motion on adopting the Proposed Statement of Decision reflect those changes, which will be made before issuing the final Statement of Decision. In the alternative, if the changes are significant, it is recommended that adoption of a Proposed Statement of Decision be continued to the July 2004 Commission hearing.

¹ California Code of Regulations, title 2, section 1188.1, subdivision (g).

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE TEST CLAIM ON:

Vehicle Code Section 2407.5

Statutes 2001, Chapter 710

Filed on March 25, 2002

By City of Newport Beach, Claimant

No. 01-TC-12

Distracted Drivers

PROPOSED STATEMENT OF DECISION
PURSUANT TO GOVERNMENT CODE
SECTION 17500 ET SEQ.; CALIFORNIA
CODE OF REGULATIONS, TITLE 2,
DIVISION 2, CHAPTER 2.5, ARTICLE 7

(Proposed for adoption on May 27, 2004)

PROPOSED STATEMENT OF DECISION

The Commission on State Mandates (Commission) heard and decided this test claim during a regularly scheduled hearing on May 27, 2004. [Witness list will be included in the final Statement of Decision.]

The law applicable to the Commission's determination of a reimbursable state-mandated program is article XIII B, section 6 of the California Constitution, Government Code section 17500 et seq., and related case law.

The Commission [adopted/modified] the staff analysis at the hearing by a vote of [vote count will be included in the final Statement of Decision].

BACKGROUND

A 1997 report published in the New England Journal of Medicine indicated that the use of cellular phones in motor vehicles posed a significant danger to the public, on par with the danger of driving while intoxicated.² This and other reports on the potential dangers of using a cellular phone while driving demonstrated the need for additional research to determine if and how new legislation should address this growing concern.

To this end, the test claim legislation was enacted to require that "[a]ny traffic collision report prepared by a member of the [CHP] or any other peace officer shall include information as to whether a cellular telephone or other driver distraction or inattention is a known or suspected associated factor to the cause of the traffic collision."³ The statute requires that the information be collected and transmitted to the CHP on or before July 1, 2002.⁴ The statute was repealed, effective January 1, 2003.⁵

² Assembly Floor, Analysis of Assembly Bill No. 770 (2001-2002 Reg. Sess.) as amended September 7, 2001, page 3.

³ Vehicle Code section 2407.5, subdivision (a).

⁴ Vehicle Code section 2407.5, subdivision (b).

The purpose of the test claim legislation is data collection to “provide the necessary framework for the state to craft appropriate solutions that will enhance the safety of those persons operating motor vehicles, as well as their passengers and passengers in other vehicles.”⁶

The test claim legislation requires that the information collected be transmitted to the CHP no later than July 1, 2002. The CHP is then required to submit a report to the Legislature and the Governor no later than December 31, 2002.

Claimant’s Position

Claimant alleges that the test claim legislation requires the following reimbursable state-mandated activities:

- Investigate at the scene of each traffic accident to determine if a qualifying distraction was present at the time of the accident.
- Note on the traffic accident report any qualifying distraction determined to be present once the investigation is complete.
- Review each report to obtain the information required to be reported to the CHP and put that information in the required format for transmission to the CHP.

Claimant argues that without providing traffic information data to the CHP, it cannot tabulate and analyze accident reports as required by Vehicle Code section 2408. Claimant commented on the draft staff analysis as discussed below.

State Agency Positions

Department of Finance (DOF), in comments received April 30, 2002, concludes that Vehicle Code section 20008 requires local agencies to prepare reports of traffic collisions that involve an injury or death. Collision reports prepared by local agencies that do not involve an injury or death, however, are done so at the local agency’s discretion. Therefore, DOF contends that costs related to these discretionary reports would not be reimbursable.

The CHP, in comments received April 24, 2002, agrees with the City of Newport Beach’s estimations of time required to collect distraction information at the scene of an accident, but disagrees with the City’s interpretation that the test claim legislation requires (1) the information to be reported to the CHP separately from the standard monthly forwarding of vehicle accident reports or (2) additional clerical time is necessary to file the reports. Additionally, the CHP notes that the use of form CHP 555 is not required to document collisions, and that property-damage only reports need not be forwarded to the CHP at all.

⁵ See, Vehicle Code section 2407.5, subdivision (g).

⁶ Assembly Floor, Analysis of Assembly Bill No. 770 (2001-2002 Reg. Sess.) as amended September 7, 2001, page 4.

COMMISSION FINDINGS

The courts have found that article XIII B, section 6 of the California Constitution⁷ recognizes the state constitutional restrictions on the powers of local government to tax and spend.⁸ “Its purpose is to preclude the state from shifting financial responsibility for carrying out governmental functions to local agencies, which are ‘ill equipped’ to assume increased financial responsibilities because of the taxing and spending limitations that articles XIII A and XIII B impose.”⁹ A test claim statute or executive order may impose a reimbursable state-mandated program if it orders or commands a local agency or school district to engage in an activity or task.¹⁰ In addition, the required activity or task must be new, constituting a “new program,” or it must create a “higher level of service” over the previously required level of service.¹¹

The courts have defined a “program” subject to article XIII B, section 6, of the California Constitution, as one that carries out the governmental function of providing public services, or a law that imposes unique requirements on local agencies or school districts to implement a state policy, but does not apply generally to all residents and entities in the state.¹² To determine if the program is new or imposes a higher level of service, the test claim legislation must be compared with the legal requirements in effect immediately

⁷ Article XIII B, section 6 provides: “Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the state shall provide a subvention of funds to reimburse such local government for the costs of such program or increased level of service, except that the Legislature may, but need not, provide such subvention of funds for the following mandates: (a) Legislative mandates requested by the local agency affected; (b) Legislation defining a new crime or changing an existing definition of a crime; or (c) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975.”

⁸ *Department of Finance v. Commission on State Mandates* (2003) 30 Cal.4th 727, 735.

⁹ *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81.

¹⁰ *Long Beach Unified School Dist. v. State of California* (1990) 225 Cal.App.3d 155, 174. In *Department of Finance v. Commission on State Mandates*, *supra*, 30 Cal.4th at page 742, the court agreed that “activities undertaken at the option or discretion of a local government entity (that is, actions undertaken without any legal compulsion or threat of penalty for nonparticipation) do not trigger a state mandate and hence do not require reimbursement of funds - even if the local entity is obligated to incur costs as a result of its discretionary decision to participate in a particular program or practice.” The court left open the question of whether non-legal compulsion could result in a reimbursable state mandate, such as in a case where failure to participate in a program results in severe penalties or “draconian” consequences. (*Id.* at p. 754.)

¹¹ *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 835.

¹² *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56; *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 835.

before the enactment of the test claim legislation.¹³ Finally, the newly required activity or increased level of service must impose costs mandated by the state.¹⁴

The Commission is vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6.¹⁵ In making its decisions, the Commission must strictly construe article XIII B, section 6 and not apply it as an “equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities.”¹⁶

Issue 1: Is the test claim legislation subject to article XIII B, section 6 of the California Constitution?

The test claim statute, Vehicle Code section 2407.5, subdivision (a), provides:

Any traffic collision report prepared by a member of the [CHP] or any other peace officer shall include information as to whether a cellular telephone or other driver distraction or inattention is a known or suspected associated factor to the cause of the traffic collision.

Vehicle Code section 2407.5, subdivision (b), requires that the information on whether a cellular telephone or other driver distraction or inattention be collected and transmitted to the CHP on or before July 1, 2002.

The claimant, a city, contends that the test claim statute requires local law enforcement agencies to investigate each traffic accident to determine if a distraction was present, note on the traffic accident report the distraction, and review each report to obtain the information required by the CHP and put that information in a report to transmit to the CHP.

Although the claimant did not specifically allege any reimbursable costs on behalf of counties and school districts, the test claim statute refers generally to “any other peace officer.” Peace officers are defined in Penal Code section 830 et seq., to include peace officers employed by cities,¹⁷ counties,¹⁸ and school districts.¹⁹ Thus, the test claim statute is analyzed below for each type of local governmental entity.

¹³ *Lucia Mar Unified School Dist. v. Honig, supra*, 44 Cal.3d 830, 835.

¹⁴ *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487; *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1265, 1284; Government Code sections 17514 and 17556.

¹⁵ *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551 and 17552.

¹⁶ *City of San Jose v. State of California, supra*, 45 Cal.App.4th at page 1817; *County of Sonoma, supra*, 84 Cal.App.4th at page 1280.

¹⁷ Penal Code section 830.1

¹⁸ *Id.*

¹⁹ Penal Code section 830.32

The threshold issue is whether the test claim statute mandates an activity on local government. A test claim statute may impose a reimbursable state-mandated program if it orders or commands a local governmental entity to engage in an activity or task.²⁰ As analyzed below, the Commission finds that the test claim legislation is subject to article XIII B, section 6 only with respect to county coroners, but not with respect to other local peace officers employed by school districts, cities, and counties.

A. Is the test claim statute subject to article XIII B, section 6 with respect to peace officers employed by school districts and community college districts?

The Commission finds that the test claim statute is not subject to article XIII B, section 6 of the California Constitution with respect to school districts because it does not impose a mandate on school districts and community college districts. School districts and community college districts are not required by state law to employ peace officers.

The California Constitution, article IX, Education, establishes and permits the formation of school districts, including community college districts, and county boards of education, all for the purpose of encouraging “the promotion of intellectual, scientific, moral and agricultural improvement.”²¹ Although the Legislature is permitted to authorize school districts “to act in any manner which is not in conflict with the laws and purposes for which school districts are established,”²² the Constitution does not require school districts to operate police departments or employ school security officers as part of their essential educational function. Article I, section 28, subdivision (c), of the California Constitution does require K-12 school districts to maintain safe schools.

However, there is no constitutional requirement to maintain safe schools through school security or a school district police department independent of the public safety services provided by the cities and counties a school district serves.²³ In *Leger v. Stockton Unified School District*, the court interpreted the safe schools provision as follows:

[H]owever, section 28(c) declares a general right without specifying *any* rules for its enforcement. It imposes no express duty on anyone to make schools safe. It is wholly devoid of guidelines, mechanisms, or procedures from which a damages remedy could be inferred. Rather, “it merely indicates principles, without laying down rules by means of which those principles may be given the force of law.” [Citation omitted.]²⁴

²⁰ *Long Beach Unified School Dist. v. State of California, supra*, 225 Cal.App.3d 155, 174.

²¹ California Constitution, article IX, section 1.

²² California Constitution, article IX, section 14.

²³ Article I, section 28, subdivision (c) of the California Constitution provides “All students and staff of public primary, elementary, junior high and senior high schools have the inalienable right to attend campuses which are **safe**, secure and peaceful.” (Emphasis added.)

²⁴ *Leger v. Stockton Unified School Dist.* (1988) 202 Cal.App.3d 1448, 1455.

Thus, at the constitutional level, the Legislature is only permitted to authorize school districts to act in any manner that is not in conflict with the Constitution.

Moreover, the Legislature does not require school districts and community college districts to employ police officers and security officers. Pursuant to Education Code section 38000:²⁵

[t]he governing board of any school district may establish a security department ... or a police department ... [and] may employ personnel to ensure the safety of school district personnel and pupils and the security of the real and personal property of the school district. In addition, a school district may assign a school police reserve officer who is deputized pursuant to Section 35021.5 to a schoolsite to supplement the duties of school police personnel pursuant to this section. It is the intention of the Legislature in enacting this section that a school district police or security department is supplementary to city and county law enforcement agencies and is not vested with general police powers.

Education Code section 72330, derived from the same 1959 Education Code section, provides the law for community colleges. “The governing board of a community college district may establish a community college police department ... [and] may employ personnel as necessary to enforce the law on or near the campus. ... This subdivision shall not be construed to require the employment by a community college district of any additional personnel.”

In *Department of Finance v. Commission on State Mandates*, the California Supreme Court found that “if a school district elects to participate in or continue participation in any *underlying voluntary* education-related funded program, the district’s obligation to comply with the notice and agenda requirements related to that program does not constitute a reimbursable state mandate.”²⁶ The court further stated, on page 731 of the decision, that:

[W]e reject claimants’ assertion that they have been legally compelled to incur notice and agenda costs, and hence are entitled to reimbursement from the state, based merely upon the circumstance that notice and agenda provisions are mandatory elements of education-related program in which claimants have participated, without regard to whether claimant’s participation in the underlying program is voluntary or compelled.
[Emphasis added.]

The decision of the California Supreme Court interpreting the state-mandate issue is relevant to this test claim. The Commission is not free to disregard clear statements of the California Supreme Court. Thus, pursuant to state law, school districts and community college districts remain free to discontinue providing their own police

²⁵ Formerly numbered Education Code section 39670; derived from 1959 Education Code section 15831.

²⁶ *Department of Finance v. Commission on State Mandates*, *supra*, 30 Cal.4th at page 743.

department and employing peace officers. The statutory duties imposed by the test claim legislation that follow from such discretionary activities do not impose a reimbursable state mandate.

Therefore, the test claim legislation is not subject to article XIII B, section 6 of the California Constitution with respect to school districts because it does not impose a mandate on school districts and community college districts.

B. Is the test claim statute subject to article XIII B, section 6 with respect to peace officers employed by cities and counties?

Does the test claim statute impose a state-mandated activity on city and county peace officers?

Unlike school districts, cities and counties are required by the California Constitution to maintain a police force. Article XI, Local Government, provides for the formation of cities and counties. Section 1, Counties, states that the Legislature shall provide for an elected county sheriff, and section 5, City charter provision, specifies that city charters are to provide for the “government of the city police force.”

Thus, local agency peace officers are required by the test claim statute to include information in “any traffic collision report prepared,” as to whether a cellular telephone or other driver distraction or inattention is a known or suspected associated factor to the cause of the traffic collision. The claimant is requesting reimbursement for preparation of a report for the CHP and investigation of the accident.

The Commission finds, however, that state law does not require local agency peace officers (except county coroners, as discussed below) to prepare traffic collision reports.²⁷ State law only requires local agency peace officers to receive reports from drivers.²⁸ The requirement to report traffic accidents remains with the driver in almost all circumstances, including accidents resulting in bodily injury and death. Vehicle Code section 20008 requires that a report be made within 24 hours when an accident involving

²⁷ For purposes of this analysis, “traffic accident report” is the same as “traffic collision report” or merely “report.” The terms “accident” and “collision” are synonymous. California Highway Patrol, Collision Investigation Manual, February 2003, p. 2-1.

²⁸ If the driver of a vehicle involved in an accident resulting in property damage cannot locate the owner of the vehicle or property, Vehicle Code section 20002, subdivision (a)(2), states:

. . . . The driver . . . shall without unnecessary delay notify the police department of the city wherein the collision occurred or, if the collision occurred in unincorporated territory, the local headquarters of the Department of the California Highway Patrol.

Vehicle Code section 20004, concerning death by traffic accident, states:

[T]he driver . . . shall, without delay, report the accident to the nearest office of the Department of the California Highway Patrol or office of a duly authorized police authority and submit with the report the information required by Section 20003.

bodily injury or death occurs.²⁹ However, section 20008 requires that the “driver of a vehicle ... make or cause to be made a written report of the accident.” It does not require local agency peace officers to do any more than receive the driver’s report. Local agency peace officers are required (1) to forward the accident report to the agency that would be responsible for investigating the accident if the agency receiving the report would not be responsible for investigating it³⁰ and (2) to forward to the CHP before the fifth day of each month all reports received by the local law enforcement agency.³¹ The first provision authorizes the agency with jurisdiction to investigate the accident, while the second merely requires local agency peace officers to forward the drivers’ reports to the CHP.

In the *Department of Finance* case, the court held that the requirements imposed by a test claim statute are not state-mandated if the claimant’s participation in the underlying program is voluntary.³² In the present case, the decision to prepare a traffic collision report is left to the discretion of the local agency. Any statutory duties imposed by the test claim statute that follows from the discretionary local decision do not impose a reimbursable state mandate.³³

Thus, with the exception of the county coroner reports described below, the Commission finds that the test claim statute does not impose a state-mandated program on local agency peace officers because they are not mandated by the state to prepare a traffic collision report.

The only state-mandated report required of local agency peace officers for traffic accidents is found in Vehicle Code section 20011, which imposes the following duty on county coroners:

Every coroner shall on or before the tenth day of each month report in writing to the Department of the California Highway Patrol the death of any person during the preceding calendar month as the result of an accident involving a motor vehicle and the circumstances of the accident.

Pursuant to the rules of statutory construction, if the language of a statute is unambiguous, the plain meaning of the language controls, and looking to extrinsic

²⁹ Vehicle Code section 20008, subdivision (a) states:

The driver of a vehicle... involved in any accident resulting in injuries to or death of any person shall within 24 hours after the accident make or cause to be made a written report of the accident to the Department of the California Highway Patrol or, if the accident occurred within a city, to either the Department of the California Highway Patrol or the police department of the city in which the accident occurred.

³⁰ *Ibid.*

³¹ *Ibid.*

³² *Department of Finance, supra*, 30 Cal.4th at page 731.

³³ *Ibid.*

sources to determine the Legislature's intent is unnecessary.³⁴ Coroners are statutorily defined as peace officers.³⁵ Thus, the express language of the test claim statute indicates that the coroner report falls within the meaning of “any traffic collision report prepared by ...[a] peace officer.” The fact that the content of the coroner’s report must include the “circumstances of the accident” indicates that it is the type of accident report within the purview of the test claim statute.

Moreover, statutes are not read in isolation, but are interpreted so as to make sense of the entire statutory scheme.³⁶ Here, section 20011 is under Division 10 of the Vehicle Code, entitled Accidents and Accident Reports, the only division in the Vehicle Code devoted to those topics.³⁷ Because of this placement in the statutory scheme, it is evident that the Legislature intended for the test claim statute regarding “traffic collision reports” to include the coroner’s report. Therefore, based on the plain meaning of section 20011, read in the context of the statutory scheme, the Commission concludes that the coroner peace officer’s report required by section 20011 is a “traffic collision report” within the meaning of the test claim statute.

Accordingly, the Commission finds that the test claim statute imposes a state-mandated activity on county coroners by requiring them to include information in the section 20011 report as to whether a cellular telephone or other driver distraction or inattention is a known or suspected associated factor to the cause of the traffic collision that resulted in death, and to collect and transmit such information to the CHP on or before July 1, 2002.

The Commission further finds that traffic accident investigation, an activity claimed by the City here, is a discretionary activity and is not mandated by the state. In 1976, the Fourth District Court of Appeal decided *Winkelman v. City of Sunnyvale*.³⁸ *Winkelman* involved a lawsuit brought by a motorist against the city, alleging negligent failure of city police to secure the identity of the opposing driver and to properly investigate the accident. The court held that the city police have no duty to investigate traffic accidents. The court stated the following:

Appellant contends that respondent breached a duty of care owed to her. First, appellant asserts that respondent owes a duty toward those involved in auto accidents, to properly and carefully investigate such accidents. That argument is unsound. Police officers have the right, but not the duty, to investigate accidents. [Citing *McCarthy v. Frost* (1973) 33 Cal.App.3d 872.]³⁹

³⁴ *Bonnell v. Medical Bd. of California* (2003) 31 Cal.4th 1255, 1261.

³⁵ Penal Code section 830.35, subdivision (c).

³⁶ *Bonnell v. Medical Bd. of California, supra*, 31 Cal.4th 1255, 1261.

³⁷ The test claim statute is in Division 2, Chapter 2 of the Vehicle Code regarding the CHP, under Article 3, entitled Powers and Duties.

³⁸ *Winkelman v. City of Sunnyvale* (1976) 59 Cal.App.3d 509.

³⁹ *Id.* at page 511.

In 1983, the California Supreme Court decided *Williams v. State of California*,⁴⁰ and relied, in part, on the *Winkelman* case.⁴¹ *Williams* involved an action against the state, alleging that the state highway patrol that arrived on the scene of a traffic accident failed to properly investigate the accident. The court determined that the plaintiff failed to state a cause of action, holding that the state highway patrol has the right, but not the duty to investigate accidents.⁴²

Based on these authorities, the Commission finds that local agency peace officers are not mandated by the state to investigate traffic accidents.

Claimant's comments on the draft staff analysis. Claimant disputes the Commission's findings. The claimant raises the following authorities and makes the following arguments regarding the duty of peace officers to investigate accidents and prepare traffic accident reports.

1960 Attorney General's Opinion

First, claimant disputes the Commission's conclusion regarding a peace officer's duty to investigate accidents. Claimant quotes extensively from a 1960 Attorney General's Opinion (36 Ops. Atty. Gen. 198 (1960)) regarding the CHP's duty to administer and enforce provisions of the Vehicle Code relating to accidents. Claimant argues:

[T]he obligation to investigate vehicular accidents resulting in injury or death is not a voluntary act, but rather is an obligation imposed by virtue of the office created. It is the obligation of police departments and sheriff departments to investigate and arrest those who have committed crimes or public offenses within their respective jurisdictions.

Claimant's discussion of peace officer's general duty to investigate crime (upon which the Commission makes no finding) is misplaced. Claimant does not cite any state-mandated requirement to prepare accident reports. Moreover, the courts in *Winkelman* and *Williams*, discussed above, have concluded that peace officers have a right but not a duty to investigate traffic accidents.

Opinions of the Attorney General are often persuasive, but courts are not required to agree with them.⁴³ Thus, the Commission finds that the 1960 Attorney General's Opinion is not controlling here.

⁴⁰ *Williams v. State of California* (1983) 34 Cal. 3d 18.

⁴¹ *Id.* at page 24.

⁴² *Ibid.*

⁴³ *Smith v. Andersen* (1967) 67 Cal.2d 635, 641-642. It is noteworthy that the Attorney General Opinion claimant cites was written by then-Attorney General, Stanley Mosk. Later as a justice, Mosk dissented in the *Williams* opinion regarding the duty of public law enforcement officers. (Mosk concurred with the holding of the case.) Both the *McCarthy* (pp. 874-874) and *Williams* (pp. 28-30) cases distinguished or disagreed with Mosk's opinion on law enforcement's duties

People v. Kroncke

The claimant also cites a statement in *People v. Kroncke*⁴⁴ regarding the duty of the state to determine whether a person involved in an accident engaged in criminal conduct. The claimant argues, based on *Kroncke*, that local law enforcement officers have a duty to investigate and prepare a traffic collision report.

The Commission disagrees with claimant's use of *People v. Kroncke*,⁴⁵ which does not allude to any compulsion⁴⁶ to prepare a vehicle accident report. The *Kroncke* case holds that a driver's duty, as found in the Vehicle Code, to identify himself or herself as the driver involved in an accident does not violate the driver's right against self-incrimination.⁴⁷ *Kroncke* does not address the duty to prepare vehicle accident reports.

Vehicle Code Sections 2407 and 2408

In comments on the draft staff analysis, claimant cites Vehicle Code section 2407, requiring CHP to,

[P]repare and on request supply to police departments, coroners, sheriffs, and other suitable agencies or individuals, forms for accident reports required under this code, which reports shall call for sufficiently detailed information to disclose with reference to a traffic accident the cause, conditions then existing, and the persons and vehicles involved.

Claimant also cites Vehicle Code section 2408, requiring CHP to "tabulate" and authorizing it to "analyze all accident reports and publish annually or at more frequent intervals statistical information based thereon as to the number and location of traffic accidents, as well as other information relating to traffic accident prevention." Claimant states that the CHP cannot fulfill its duty to tabulate and analyze the traffic data unless local peace officers provide the information required by the test claim statute to the CHP.

The Commission disagrees. Vehicle Code section 2407 requires the CHP to produce forms for local use. Neither sections 2407 nor 2408 require local peace officers to prepare accident reports. Local agencies can still comply with sections 2407 and 2408 because CHP's tabulation duties pertain to CHP's own reports, in addition to driver reports forwarded by local agencies pursuant to section 20008, those forwarded by coroners pursuant to section 20011, and any reports that local peace officers, in their discretion, choose to prepare and forward.

Thus, the Commission finds that the claimant's reliance on Vehicle Code sections 2407 and 2408 is misplaced.

⁴⁴ *People v. Kroncke* (1999) 70 Cal. App.4th 1535, 1552.

⁴⁵ *Ibid.*

⁴⁶ "[I]n order for a state mandate to be found, there must be compulsion to expend revenue." *County of Los Angeles v. Commission on State Mandates* (2003) 110 Cal.App.4th 1176, 1189.

⁴⁷ *People v. Kroncke, supra*, 70 Cal. App.4th 1535, 1557.

CHP's Collision Investigation Manual

In comments on the draft staff analysis, claimant describes and quotes extensively from the CHP's *Collision Investigation Manual*, the purpose of which is "to establish policy and uniform procedures for documenting motor vehicle collisions within the framework of SWITRS [Statewide Integrated Traffic Records System] and the Vehicle Code (VC)." (p. ii). In short, the goal of the Manual is to ensure uniform reporting to CHP.

The CHP's *Collision Investigation Manual*, however, recognizes that filing accident reports is not required, as shown by its permissive language, e.g., "[l]ocal agencies *should* investigate or report, in accordance with the provisions of this manual, all collisions ... within the scope of their responsibility" (p. 1-1, emphasis added); and "[a] collision *may* be documented as a report when one or more of the following conditions apply" (p. 1-6, emphasis added). Therefore, the CHP Manual merely contains guidelines and cannot be construed to contain reporting requirements on local agency peace officers.

Hollman v. Warren

Claimant also argues that the draft staff analysis confuses discretion vested in an employee of the state or local entity that creates immunity under Government Code section 820.2 (tort immunity) with the issue of whether the discretion has to be exercised. Claimant provides definitions of discretion, and contends that the fact that an employee is vested with judgment in how the task is to be performed does not mean that there is discretion in whether or not to perform the task at all. Claimant cites *Hollman v. Warren*,⁴⁸ a case concerning the court's power to order peace officers to enforce the Vehicle Code. Claimant argues,

[T]he fact that officers cannot be forced to exercise their discretion regarding the enforcement of the Vehicle Code in a certain manner does not obviate the requirement that such officers enforce the Vehicle Code. Thus, the vesting of discretion in the employees does not mean that the enforcement of the Vehicle Code is voluntary and optional: it just means that the individual officers cannot be compelled to enforce it in a given manner.⁴⁹

The Commission agrees that law enforcement has discretion in the manner of enforcing the Vehicle Code. However, reliance on *Hollman v. Warren* is misplaced because it is limited to the court's power "...to compel the performance of an act which the law specially enjoins"⁵⁰ The law does not compel or enjoin the activity of preparing an accident report. The issue is not whether the local peace officer has power like the court's power to compel the performance of an activity. Rather, the issue is whether local peace officers have a state-imposed requirement to prepare a traffic accident report.

⁴⁸ *Hollman v. Warren* (1948) 32 Cal. 2d 351, 355.

⁴⁹ Claimant's comments on draft staff analysis submitted April 6, 2004, page 10-11.

⁵⁰ Code of Civil Procedure, section 1084.5, subdivision (a); *Hollman v. Warren, supra*, 32 Cal.2d 351, 362-363, dissenting opinion of Edmonds, J.

As discussed above, the Commission finds no legal requirement to investigate traffic accidents or prepare accident reports, except for the duty imposed on the county coroner to prepare a report in cases of death. Nor is there a state-imposed penalty imposed on peace officers for not preparing a traffic collision report. Local agencies that choose to discontinue preparing accident reports, by changing their local policy for example, may do so at any time. Thus, except for county coroners, it is within the local agency's discretion whether or not its peace officers prepare an accident report. A requirement that is incidental to a discretionary activity does not constitute a reimbursable state mandate.⁵¹

Therefore, the Commission finds that, except for county coroners, local agency peace officers are not required to prepare traffic collision reports. Accordingly, the test claim statute imposes a state-mandated activity on county coroners only by requiring them to include information in the section 20011 report as to whether a cellular telephone or other driver distraction or inattention is a known or suspected associated factor to the cause of the traffic collision that resulted in death, and to collect and transmit such information to the CHP on or before July 1, 2002.

Is the mandate imposed on county coroners by the test claim statute a program within the meaning of article XIII B, section 6 of the California Constitution?

In order for the test claim statute to be subject to article XIII B, section 6 of the California Constitution, the statute must constitute a "program," defined as a program that carries out the governmental function of providing a service 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.⁵² Only one of these findings is necessary to trigger article XIII B, section 6.⁵³

The test claim statute concerns the governmental function of reporting driver distraction information to CHP for public safety purposes. Moreover, the test claim statute imposes unique requirements on county coroner peace officers that do not apply generally to all residents or entities in the state. Therefore, the Commission finds the test claim statute constitutes a "program" within the meaning of article XIII B, section 6.

Issue 2: Does the test claim statute impose a new program or higher level of service on county coroners within the meaning of article XIII B, section 6 of the California Constitution?

To determine if the "program" is new or imposes a higher level of service, a comparison must be made between the test claim legislation and the legal requirements in effect immediately before the test claim legislation was enacted.⁵⁴

⁵¹ *Department of Finance v. Commission on State Mandates*, *supra*, 30 Cal.4th 727, 743; *City of Merced v. State of California* (1984) 153 Cal.App.3d 777, 783.

⁵² *County of Los Angeles*, *supra*, 43 Cal.3d 46, 56.

⁵³ *Carmel Valley Fire Protection Dist.* (1987) 190 Cal.App.3d 521, 537.

⁵⁴ *Lucia Mar Unified School Dist. v. Honig*, *supra*, 44 Cal.3d 830, 835.

For a six month period of time, from January 1, 2002, until on or before July 1, 2002, the test claim statute required county coroners to include information in the section 20011 report as to whether a cellular telephone or other driver distraction or inattention is a known or suspected associated factor to the cause of the traffic collision that resulted in death, and to collect and transmit such information to the CHP.

Prior law did not require coroners to include driver distraction information on traffic collision reports, or to collect and transmit such information to the CHP.

Therefore, the Commission finds that the test claim statute constitutes a new program or higher level of service for a county coroner to include on the report required pursuant to Vehicle Code section 20011 information as to whether a cellular telephone or other driver distraction or inattention is a known or suspected associated factor to the cause of a traffic collision that resulted in death, and to collect and transmit such information to the CHP on or before July 1, 2002.

Issue 3: Does the test claim legislation impose “costs mandated by the state” within the meaning of Government Code sections 17514 and 17556?

In order for the activity listed above to impose a reimbursable, state-mandated program under article XIII B, section 6 of the California Constitution, two criteria must apply. First, the activities must impose costs mandated by the state.⁵⁵ Second, no statutory exceptions as listed in Government Code section 17556 can apply. Government Code section 17514 defines “costs mandated by the state” as follows:

[A]ny increased costs which a local agency ... is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, which mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution.

Government Code section 17564 requires that all test claims and reimbursement claims submitted exceed \$1000 in increased costs mandated by the state. Claimant, a city, stated in the test claim that the test claim legislation results in increased costs for local law enforcement in excess of \$1000.⁵⁶ However, there is no evidence in the record to show that county coroners have incurred increased costs mandated by the state of \$1000 as a result of the test claim statute.

Thus, without evidence in the record (which may include either a declaration or sworn testimony) that county coroners have incurred increased costs as a result of the test claim

⁵⁵ *Lucia Mar Unified School Dist., supra*, 44 Cal.3d 830, 835; Government Code section 17514.

⁵⁶ Page 4 of the test claim states that it will cost claimant approximately \$4116 “to discharge the mandate.”

statute, the Commission finds that the record does not support a finding of costs mandated by the state.⁵⁷

CONCLUSION

The Commission concludes that the test claim statute does not impose a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514. In particular, the Commission finds the following:

- The test claim statute is not subject to article XIII B, section 6 of the California Constitution with respect to school districts because it does not impose a state-mandated program on school districts and community college districts.
- The test claim statute is not subject to article XIII B, section 6 of the California Constitution with respect to local agency peace officers that are not county coroners. State law does not require local agency peace officers (except county coroners) to prepare traffic collision reports. Thus, with the exception of the county coroners, local agency peace officers are not mandated by the state to include in any traffic collision report sent to the CHP information about the use of a cellular telephone or other distraction.
- The test claim statute is subject to article XIII B, section 6 of the California Constitution with respect to county coroners. The test claim statute imposes a state-mandated activity on county coroners by requiring them to include in the report required by Vehicle Code section 20011 information as to whether a cellular telephone or other driver distraction or inattention is a known or suspected associated factor to the cause of the traffic collision that resulted in death, and to collect and transmit such information to the CHP on or before July 1, 2002. In addition, the test claim statute constitutes a program within the meaning of article XIII B, section 6.
- The test claim statute constitutes a new program or higher level of service for a county coroner to include on the report required pursuant to Vehicle Code section 20011 information as to whether a cellular telephone or other driver distraction or inattention is a known or suspected associated factor to the cause of a traffic collision that resulted in death, and to collect and transmit such information to the CHP on or before July 1, 2002.
- Without evidence in the record (which may include either a declaration or sworn testimony) that county coroners have incurred increased costs as a result of the test claim statute, the record does not support a finding of costs mandated by the state.

⁵⁷ Orange County, which includes Newport Beach, had 186 traffic fatalities in 2001, the most recent year on CHP's website. (See Exhibit G, 2001 Annual Report of Fatal and Injury Motor Vehicle Traffic Collisions. <<http://www.chp.ca.gov/html/switrs2001.html>> as of May 5, 2002.)