

COMMISSION ON STATE MANDATES

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September 11, 2012

Mr. Jeff Dunn, Chief of Police
City of Kingsburg Police Department
1300 California Street
Kingsburg, CA 93631

Ms. Juliana Gmur
1865 Hernden Avenue, Suite K-44
Clovis, CA 93611

And Interested Parties and Affected State Agencies (See Mailing List)

Re: **Final Staff Analysis and Proposed Statement of Decision and Notice of Hearing**
Reserve Peace Officer Training, 03-TC-15
Penal Code Sections 830.6, and 832.6
Statutes 1977, Chapter 987 et al.
City of Kingsburg, Claimant

Dear Mr. Dunn and Ms. Gmur:

The final staff analysis and proposed statement of decision for the above-named matter are enclosed.

Hearing

This matter is set for hearing on **Friday September 28, 2012**, at 9:30 a.m., in the State Capitol, Room 447, Sacramento, California. Please let us know in advance if you or a representative of your agency will testify at the hearing, and if other witnesses will appear. If you would like to request postponement of the hearing, please refer to section 1183.01(c)(2) of the Commission's regulations.

Special Accommodations

For any special accommodations such as a sign language interpreter, an assistive listening device, materials in an alternative format, or any other accommodations, please contact the Commission Office at least five to seven *working* days prior to the meeting.

Please contact Heidi Palchik at (916) 323-3562 if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Heather Halsey".

Heather Halsey
Executive Director

ITEM 3
TEST CLAIM
FINAL STAFF ANALYSIS
AND
PROPOSED STATEMENT OF DECISION

Penal Code Sections 830.6 and 832.6

As Added and Amended by Statutes 1977, Chapter 987; Statutes 1979, Chapter 987;
Statutes 1980, Chapters 1301 and 1340; Statutes 1982, Chapter 79; Statutes 1983, Chapter 446;
Statutes 1984, Chapter 761; Statutes 1986, Chapter 160; Statutes 1988, Chapter 1482;
Statutes 1989, Chapters 594 and 1165; Statutes 1990, Chapter 1695; Statutes 1991, Chapter 509;
Statutes 1993, Chapters 169 and 718; Statutes 1994, Chapters 117 and 676; Statutes 1993-94
Extra Session, Chapter 26; Statutes 1995, Chapter 54; Statutes 1996, Chapter 1142;
Statutes 1997, Chapter 127; Statutes 1998, Chapter 190; Statutes 1999, Chapter 111;
Statutes 2000, Chapter 287; and Statutes 2001, Chapter 473

Post Administrative Manual, Section B (January 2003 Version)

Filed on September 26, 2003

Reserve Peace Officer Training

03-TC-15

City of Kingsburg, Claimant

This matter was rescheduled from July 27, 2012 to September 28, 2012. Except to reflect the date change, no other revisions were made to this document.

Attached is the proposed statement of decision for this matter. This Executive Summary and the proposed statement of decision also function as the final staff analysis, as required by section 1183.07 of the Commission's regulations.

EXECUTIVE SUMMARY

Overview

This test claim addresses the basic and continuing professional training requirements for reserve peace officers appointed by local law enforcement agencies of cities, counties, special districts, and school districts. According to the Commission on Peace Officer Standards and Training (POST), reserve peace officers are members of society that choose to dedicate a portion of their time to community service by working part-time or as volunteers with law enforcement agencies. These officers perform a number of general and specialized law enforcement assignments and

Reserve Peace Officer Training, 03-TC-15
Final Staff Analysis and Proposed Statement of Decision

work with full-time regular officers to provide law enforcement services. There are approximately 6,200 reserve peace officers in the state.

Since 1977, the Legislature has adopted standards for selection and training of reserve peace officers. The test claim statute, Penal Code section 830.6, provides that a person appointed or designated as a reserve officer is qualified and has the power of a peace officer only when the person meets the qualifications imposed by Penal Code section 832.6. Section 832.6 establishes three levels of reserve peace officers and identifies the training requirements and responsibilities for each level. All training requirements are prescribed and approved by POST. The claimant has also pled Section B of POST's Administrative Manual (PAM) in this test claim. Section 1007(b) of the POST regulations that are contained in Section B of PAM details the training requirements for reserve peace officers. The requirements and responsibilities of reserve peace officers are described below:

- Level I officers assigned to the general enforcement of the laws of the state must complete the basic training course for deputy sheriffs and police officers and the continuing professional training requirements prescribed by POST in order to exercise the powers of a peace officer. The Level I reserve officer may work alone if the officer completes a POST-approved field training program prior to working alone in a general law enforcement assignment.

The duties of a Level I reserve officer includes such duties as investigation of crime, patrol of a geographic area, responding to requests for police services, and performing enforcement actions on a full range of law violations. Generally, the authority of a Level I reserve officer extends only for the duration of the person's specific assignment while on-duty. However, if authorized by a local resolution or ordinance, the power and duties of a "designated" Level I reserve peace officer may be the same as a regular peace officer¹ and extend to any place in the state when making an arrest for any public offense that presents immediate danger to person or property, or involves the escape of the perpetrator.

- Level II officers must complete the basic training course for deputy sheriffs and police officers prescribed by POST, the continuing professional training requirements prescribed by POST, and any other training prescribed by POST.

Level II officers may perform general law enforcement assignments while under the immediate supervision of a peace officer who has completed the Regular Basic Course. These officers may also work assignments authorized for Level III reserve officers without immediate supervision. The authority of a Level II reserve officer extends only for the duration of the person's specific assignment while on-duty.

¹ A "regular officer" is defined in POST regulations as "a sheriff, undersheriff, deputy sheriff, regularly employed and paid as such, of a county, a police officer of a city, police officer of a district authorized by statute to maintain a police department, a police officer of a department or district enumerated in Penal Code Section 13507, or a peace officer member of the California Highway Patrol." (Cal. Code Regs., tit. 11, § 1001(ff); PAM, p. B-5.)

- Level III officers must complete training required by POST. A Level III reserve officer must be supervised by a Level I reserve officer or a full-time regular officer employed by a law enforcement agency authorized to have reserves.

Level III reserve officers have limited duties that include traffic control, security at parades and sporting events, report taking, evidence transportation, parking enforcement, and other duties that are not likely to result in physical arrests. Level III reserve officers may transport prisoners without immediate supervision.

The number of training hours required by POST for the basic training, field training, and continuing professional training of reserve peace officers is identified and detailed in PAM.

Procedural History

Claimant, City of Kingsburg submitted this test claim to the Commission on September 26, 2003. Based on the filing date of September 26, 2003, the potential period of reimbursement for this test claim begins on July 1, 2002.

The draft staff analysis was issued on May 8, 2012. The claimant has not filed comments on the draft staff analysis. The Department of Finance agrees with staff's findings and recommendation.

Positions of the Parties and Interested Parties

Claimant's Position

Claimant, the City of Kingsburg, states that it is a small city located in the far southern reaches of Fresno County, surrounded by farm lands. Although the need for reserve police officers varies from agency to agency, the claimant has relied heavily for years on the services of "these volunteer employees" in order to provide adequate services to the citizens.

Claimant alleges that training requirements for reserve peace officers imposed by Penal Code sections 830.6 and 832.6, as amended by the test claim statutes, and section B of PAM constitute a reimbursable state-mandated program on local agencies. Specifically, claimant alleges the following:

- Penal Code section 830.6 requires that in order to be a properly qualified reserve peace officer, the conditions set forth in Penal Code section 832.6 must be met, and
- Claimant is practically compelled to hire reserve police officers because it is small and has relied heavily for years upon these volunteer officers to provide adequate police services.

The claimant is requesting reimbursement for the cost of instructors providing continuing professional training and the cost of materials and supplies used for training. Claimant estimates costs incurred over a two year period for 20 reserve officers at \$1,852.00.

Department of Finance's (DOF's) Position

DOF argues that this claim should be denied because local agency participation in POST training programs is optional. Specifically, DOF states that local entities agree to participate in POST

programs and comply with POST regulations by adopting a local ordinance or resolution. The rules that establish minimum standards of fitness and training apply only to local entities that receive state aid. Costs associated with participation in an optional program are not reimbursable state-mandated local costs.

Commission on Peace Officer Standards and Training’s (POST’s) Position

POST states that claimant voluntarily opted to become a participating agency in POST in 1970, when its city council adopted an ordinance agreeing to abide by POST Regulation 1010. However, Penal Code section 13523 limits reimbursement of POST training expenses to full-time employees, therefore training for reserve officers is not refundable under the POST program. POST also notes that several legislative attempts have been made to provide funding for reserve officer training, but no bill that would do this has ever made it out of policy committee. Finally, POST acknowledges that the claimant’s use of volunteer reserve officers results in cost savings for the agency.

Commission Responsibilities

Under article XIII B, section 6 of the California Constitution, local agencies and school districts are entitled to reimbursement for the costs of state-mandated new programs or higher levels of service. In order for local government to be eligible for reimbursement, one or more similarly situated local agencies or school districts must file a test claim with the Commission. “Test claim” means the first claim filed with the Commission alleging that a particular statute or executive order imposes costs mandated by the state. Test claims function similarly to class actions and all members of the class have the opportunity to participate in the test claim process and all are bound by the final decision of the Commission for purposes of that test claim.

The Commission is the quasi-judicial body vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6. In making its decisions, the Commission cannot apply article XIII B as an equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities.²

Claims

The following chart provides a brief summary of the claims and issues raised and staff’s recommendation.

Subject	Description	Staff Recommendation
Penal Code section 830.6	This code section provides that a person appointed or designated as a reserve officer is qualified and has the power of a	<i>Denied:</i> This code section does not require local agencies to perform any activities and, therefore, does not impose a state-mandated program on local law enforcement agencies.

² *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802.

	peace officer only when the person meets the qualifications in Penal Code section 832.6	
Penal Code section 832.6	This code section establishes three levels of reserve peace officers and identifies the training requirements and responsibilities for each level.	<i>Denied:</i> The plain language of this code section imposes requirements on deputized or appointed reserve or auxiliary officers and on POST, not on local agencies. Therefore, this code section does not impose a state-mandated program on local law enforcement agencies.
POST Administrative Manual, Section B (2 CCR §§ 1000-1083)	The regulations contained in Section B of PAM detail the hourly training requirements for reserve peace officers.	<i>Denied:</i> The sections in PAM addressing reserve peace officer training do not impose a state-mandated program on local law enforcement agencies because local law enforcement agencies are not required to provide or pay for the reserve peace officer training.

Analysis

In order for the test claim statutes and alleged executive order to impose a reimbursable state-mandated program, the statutory language must mandate an activity or task on local government. If the statutory language does not impose a mandate on local government, then article XIII B, section 6 of the California Constitution is not triggered and reimbursement is not required.

In addition, the courts have determined that a reimbursable state-mandated program does not exist when a local entity incurs costs for activities required by the state as part of a program that the local entity “voluntarily” participates, as long as the participation is without legal compulsion and there is no evidence that the entity is practically compelled to participate in the program. Practical compulsion may exist and result in a mandate under article XIII B, section 6, if the state imposes certain and severe penalties (independent of the loss of program funding), such as “double taxation or other draconian consequences” upon a local entity that declines to participate in the program. In such cases, a concrete showing by the claimant of the “certain and severe” penalty or other adverse consequence is required to find that local government may be practically compelled and, thus, mandated under article XIII B, section 6 to incur the increased costs.

In this case, staff finds that the test claim statutes and alleged executive order do not impose a state-mandated program on local law enforcement agencies for the following reasons:

1. Local law enforcement agencies, including cities and counties, are not mandated by the state to appoint or designate reserve peace officers or to provide the required training to reserve peace officers.
 - Local law enforcement agencies, including cities and counties, are not required by state law to appoint or designate volunteer reserve peace officers. The volunteer reserve officers appointed and used by the claimant in this case saves the city resources by not having to hire more full-time regularly employed peace officers. Thus, the claimant, and other local law enforcement agencies that have discretion with respect to the use of reserve peace officers, will make the choices that are ultimately the most beneficial for the agency and its community.
 - Even if it were found that a city, county, or other local entity was practically compelled to appoint reserve peace officers, state law does not require local law enforcement agencies to provide or pay for reserve peace officer training. Rather, the obligation to get trained is on the individual seeking reserve peace officer status and on those individuals seeking to continue their designation or appointment as a reserve officer.
2. School districts, community college districts, and special districts are not mandated by the state to maintain a police department and appoint reserve peace officers.

School districts, community college districts, and special districts do not have the provision of police protection as an essential and basic function and are not legally compelled by the state to comply with new statutory duties imposed with respect to police protection services. Moreover, there is no evidence that the districts, as a practical matter, are required to exercise the authority to maintain a police department and hire peace officers, rather than rely on the general law enforcement resources of a county or city.

Conclusion and Staff Recommendation

Staff finds that Penal Code sections 830.6 and 832.6, as added and amended by the test claim statutes, and the alleged executive order in PAM do not constitute a state-mandated program on local law enforcement agencies and, thus, reimbursement is not required pursuant to article XIII B, section 6 of the California Constitution.

Staff recommends that the Commission adopt the attached proposed statement of decision to deny this 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 this item modifies the proposed statement of decision, staff recommends that the motion to adopt the proposed statement of decision reflect those changes, which would be made before issuing the final statement of decision. In the alternative, if the changes are significant, staff recommends that the Commission postpone this item to the next Commission hearing.

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE TEST CLAIM ON:

Penal Code Sections 830.6 and 832.6 As Added and Amended by Statutes 1977, Chapter 987; Statutes 1979, Chapter 987; Statutes 1980, Chapters 1301 and 1340; Statutes 1982, Chapter 79; Statutes 1983, Chapter 446; Statutes 1984, Chapter 761; Statutes 1986, Chapter 160; Statutes 1988, Chapter 1482; Statutes 1989, Chapters 594 and 1165; Statutes 1990, Chapter 1695; Statutes 1991, Chapter 509; Statutes 1993, Chapters 169 and 718; Statutes 1994, Chapters 117 and 676; Statutes 1993-94 Extra Session, Chapter 26; Statutes 1995, Chapter 54; Statutes 1996, Chapter 1142; Statutes 1997, Chapter 127; Statutes 1998, Chapter 190; Statutes 1999, Chapter 111; Statutes 2000, Chapter 287; and Statutes 2001, Chapter 473;

Post Administrative Manual, Section B (January 2003 Version);

Filed on September 26, 2003,

By City of Kingsburg, Claimant.

Case No.: 03-TC-15

Reserve Peace Officer Training

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

*(Proposed for Adoption:
September 28, 2012)*

STATEMENT OF DECISION

The Commission on State Mandates (Commission) heard and decided this test claim during a regularly scheduled hearing on September 28, 2012. [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 sections 17500 *et seq.*, and related case law.

The Commission [adopted/modified] the staff analysis to [approve/deny] the test claim at the hearing by a vote of [vote count will be included in the final statement of decision].

Reserve Peace Officer Training, 03-TC-15
Final Staff Analysis and Proposed Statement of Decision

Summary of the Findings

In order for the test claim statutes and alleged executive order to impose a reimbursable state-mandated program, the statutory language must mandate an activity or task on local government. If the statutory language does not impose a mandate on local government, then article XIII B, section 6 of the California Constitution is not triggered and reimbursement is not required.

In addition, the courts have determined that a reimbursable state-mandated program does not exist when a local entity incurs costs for activities required by the state as part of a program that the local entity “voluntarily” participates, as long as the participation is without legal compulsion and there is no evidence that the entity is practically compelled to participate in the program. Practical compulsion may exist and result in a mandate under article XIII B, section 6, if the state imposes certain and severe penalties (independent of the loss of program funding), such as “double taxation or other draconian consequences” upon a local entity that declines to participate in the program. In such cases, a concrete showing by the claimant of the “certain and severe” penalty or other adverse consequence is required to find that local government may be practically compelled and, thus, mandated under article XIII B, section 6 to incur the increased costs.

In this case, the Commission finds that the test claim statutes and alleged executive order do not impose a state-mandated program on local law enforcement agencies for the following reasons:

1. Local law enforcement agencies, including cities and counties, are not mandated by the state to appoint or designate reserve peace officers or to provide the required training to reserve peace officers.
 - Local law enforcement agencies, including cities and counties, are not required by state law to appoint or designate volunteer reserve peace officers. The volunteer reserve officers appointed and used by the claimant in this case saves the city resources by not having to hire more full-time regularly employed peace officers. Thus, the claimant, and other local law enforcement agencies that have discretion with respect to the use of reserve peace officers, will make the choices that are ultimately the most beneficial for the agency and its community.
 - Even if it were found that a city, county, or other local entity was practically compelled to appoint reserve peace officers, state law does not require local law enforcement agencies to provide or pay for reserve peace officer training. Rather, the obligation to get trained is on the individual seeking reserve peace officer status and on those individuals seeking to continue their designation or appointment as a reserve officer.
2. School districts, community college districts, and special districts are not mandated by the state to maintain a police department and appoint reserve peace officers.

School districts, community college districts, and special districts do not have the provision of police protection as an essential and basic function and are not legally compelled by the state to comply with new statutory duties imposed with respect to police protection services. Moreover, there is no evidence that the districts, as a practical matter, are required to exercise the authority to maintain a police department and hire peace officers, rather than rely on the general law enforcement resources of a county or city.

COMMISSION FINDINGS

Claimant

City of Kingsburg, Claimant

Chronology

- 09/26/2003 Claimant, City of Kingsburg, filed the test claim with the Commission on State Mandates (Commission) ³
- 11/07/2003 Commission staff issued a completeness review letter for the test claim and requested comments from state agencies
- 10/28/2003 The Commission on Peace Officer Standards and Training (POST) filed comments on the test claim ⁴
- 12/16/2003 Department of Finance (DOF) filed comments on the test claim ⁵
- 05/08/2012 Draft staff analysis issued ⁶
- 05/29/2012 DOF files comments agreeing with draft staff analysis ⁷

I. Introduction

This test claim addresses the basic and continuing professional training requirements for reserve peace officers appointed by local law enforcement agencies of cities, counties, special districts, and school districts. According to the Commission on Peace Officer Standards and Training (POST), reserve peace officers are members of society that choose to dedicate a portion of their time to community service by working part-time or as volunteers with law enforcement agencies. These officers perform a number of general and specialized law enforcement assignments and work with full-time regular officers to provide law enforcement services. There are approximately 6200 reserve peace officers in the state. ⁸

Since 1977, the Legislature has adopted standards for selection and training of reserve peace officers. The test claim statute, Penal Code section 830.6, provides that a person appointed or designated as a reserve officer is qualified and has the power of a peace officer only when the person meets the qualifications imposed by Penal Code section 832.6. Section 832.6 establishes three levels of reserve peace officers and identifies the training requirements and responsibilities

³ Exhibit A. Based on the filing date of September 26, 2003, the potential period of reimbursement for this test claim begins on July 1, 2002.

⁴ Exhibit B.

⁵ Exhibit C.

⁶ Exhibit D.

⁷ Exhibit E.

⁸ Exhibit F, POST Website, Summary of *Reserve Peace Officer Program*:
<<http://www.post.ca.gov/reserve-peace-officer-program-rpop.aspx>>.

for each level. All training requirements are prescribed and approved by POST. The claimant has also pled Section B of POST's Administrative Manual (PAM) in this test claim.⁹ Section 1007(b) of the POST regulations that are contained in Section B of PAM details the training requirements for reserve peace officers.¹⁰ The requirements and responsibilities of reserve peace officers are described below:

- Level I officers assigned to the general enforcement of the laws of the state must complete the basic training course for deputy sheriffs and police officers and the continuing professional training requirements prescribed by POST in order to exercise the powers of a peace officer. The Level I reserve officer may work alone if the officer completes a POST-approved field training program prior to working alone in a general law enforcement assignment.

The duties of a Level I reserve officer includes such duties as investigation of crime, patrol of a geographic area, responding to requests for police services, and performing enforcement actions on a full range of law violations. Generally, the authority of a Level I reserve officer extends only for the duration of the person's specific assignment while on-duty.¹¹ However, if authorized by a local resolution or ordinance, the power and duties of a "designated" Level I reserve peace officer may be the same as a regular peace officer and extend to any place in the state when making an arrest for any public offense that presents immediate danger to person or property, or involves the escape of the perpetrator.¹²

- Level II officers must complete the basic training course for deputy sheriffs and police officers prescribed by POST, the continuing professional training requirements prescribed by POST, and any other training prescribed by POST.

Level II officers may perform general law enforcement assignments while under the immediate supervision of a peace officer who has completed the Regular Basic Course. These officers may also work assignments authorized for Level III reserve officers

⁹ The POST Administrative Manual (PAM) is a document containing POST regulations and procedures, guidelines, laws, and forms relating to POST programs (Cal. Code Regs., tit. 11, § 1001(z) (PAM, p. B-4).)

¹⁰ California Code of Regulations, title 11, section 1007 (PAM, pp. B-12 through B-15.)

¹¹ Penal Code sections 830.6(a)(1) and 832.6(a)(1).

¹² Penal Code sections 830.6(a)(2), 832.6(a)(1), and 830.1. A "regular officer" is defined in POST regulations as "a sheriff, undersheriff, deputy sheriff, regularly employed and paid as such, of a county, a police officer of a city, police officer of a district authorized by statute to maintain a police department, a police officer of a department or district enumerated in Penal Code Section 13507, or a peace officer member of the California Highway Patrol." (Cal. Code Regs., tit. 11, § 1001(ff); PAM, p. B-5.)

without immediate supervision. The authority of a Level II reserve officer extends only for the duration of the person's specific assignment while on-duty.¹³

- Level III officers must complete training required by POST. A Level III reserve officer must be supervised by a Level I reserve officer or a full-time regular officer employed by a law enforcement agency authorized to have reserves.

Level III reserve officers have limited duties that include traffic control, security at parades and sporting events, report taking, evidence transportation, parking enforcement, and other duties that are not likely to result in physical arrests. Level III reserve officers may transport prisoners without immediate supervision.¹⁴

The number of training hours required by POST for the basic training, field training, and continuing professional training of reserve peace officers is as follows:¹⁵

Level I Reserve Officers	Basic Training – 340 hours from 7/1/99 to 1/18/07; 394 hours beginning 7/1/08 Field Training - 400 hours Continuing Professional Training – at least 24 hours every two years
Level II Reserve Officers	Basic Training – 228 hours from 7/1/99 to 1/8/07; 189 hours beginning 7/1/08 Continuing Professional Training – at least 24 hours every two years
Level III Reserve Officers	Minimum Training – 162 hours from 7/1/99 to 1/18/07; 144 hours beginning 7/1/08

In addition, every school police reserve officer appointed by a K-12 school district on or after July 1, 2000, must complete a 32-hour POST-certified Campus Law Enforcement Course within two years of the date of first appointment.¹⁶

II. Positions of the Parties and Interested Parties

A. Claimant's Position

Claimant, the City of Kingsburg, is a small city located in the far southern reaches of Fresno County, surrounded by farm lands. Although the need for reserve police officers varies from

¹³ Penal Code sections 830.6(a)(1) and 832.6(a)(2).

¹⁴ Penal Code sections 830.6(a)(1) and 832.6(a)(3).

¹⁵ Exhibit F, PAM H-3, 4.

¹⁶ California Code of Regulations, title 11, section 1007(c), section 1081(a)(20) (PAM B-46).

agency to agency, the claimant has relied heavily for years on the services of “these volunteer employees” in order to provide adequate services to the citizens.¹⁷

Claimant alleges that training requirements for reserve peace officers imposed by Penal Code sections 830.6 and 832.6, as amended by the test claim statutes, and section B of PAM constitute a reimbursable state-mandated program on local agencies. Specifically, claimant alleges the following:

- Penal Code section 830.6 requires that in order to be a properly qualified reserve peace officer, the conditions set forth in Penal Code section 832.6 must be met,¹⁸ and
- Claimant is practically compelled to hire reserve police officers because it is small and has relied heavily for years upon these volunteer officers to provide adequate police services.¹⁹

Claimant is seeking reimbursement for the cost of instructors providing continual professional training and the cost of materials and supplies. Claimant estimates that the cost to provide continuing professional training over a two year period for 20 reserve officers is a minimum of \$1,852.00.²⁰

B. Department of Finance’s Position

DOF argues that this claim should be denied because local agency participation in POST training programs is optional. Specifically, DOF states that local entities agree to participate in POST programs and comply with POST regulations by adopting a local ordinance or resolution pursuant to Penal Code sections 13522 and 13510. The rules that establish minimum standards of fitness and training apply only to local entities that receive state aid. Costs associated with participation in an optional program are not reimbursable state-mandated local costs.²¹

C. Commission on Peace Officer Standards and Training’s Position

POST states that claimant voluntarily opted to become a participating agency in POST in 1970, when its city council adopted an ordinance agreeing to abide by POST Regulation 1010. However, Penal Code section 13523 limits reimbursement of POST training expenses to full-time employees, therefore training for reserve officers is not refundable under the POST program. POST also notes that several legislative attempts have been made to provide funding

¹⁷ Exhibit A, Test claim, page 6.

¹⁸ Exhibit A, Test claim, page 4.

¹⁹ Exhibit A, Test claim, pages 6-7.

²⁰ Exhibit A, Test claim, page 8. The claimant is not seeking reimbursement for costs incurred for the reserve officer to receive training. The reserve officers appointed by the claimant are not paid a salary. They do receive compensation for purchasing the first uniform, and an annual uniform allowance of \$125. (Exhibit F, California Reserve Peace Officers Association (CRPOA), Member Agency Spotlight, Kingsburg Police Department.)

²¹ Exhibit C.

for reserve officer training, but no bill that would do this has ever made it out of policy committee. Finally, POST acknowledges that the claimant's reserve officers save the agency thousands of dollars annually.²²

III. Discussion

Article XIII B, section 6 of the California Constitution provides in relevant part the following:

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 programs or increased level of service.

The purpose of article XIII B, section 6 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.”²³ Thus, the subvention requirement of section 6 is “directed to state-mandated increases in the services provided by [local government] ...”²⁴

Reimbursement under article XIII B, section 6 is required when the following elements are met:

1. A state statute or executive order requires or “mandates” local agencies or school districts to perform an activity.²⁵
2. The mandated activity either:
 - a. Carries out the governmental function of providing a service to the public; or
 - b. Imposes unique requirements on local agencies or school districts and does not apply generally to all residents and entities in the state.²⁶
3. The mandated activity is new when compared with the legal requirements in effect immediately before the enactment of the test claim statute or executive order and it increases the level of service provided to the public.²⁷
4. The mandated activity results in the local agency or school district incurring increased costs. Increased costs, however, are not reimbursable if an exception identified in Government Code section 17556 applies to the activity.²⁸

²² Exhibit B.

²³ *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81.

²⁴ *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56.

²⁵ *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 874.

²⁶ *Id.* at 874-875 (reaffirming the test set out in *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56.)

²⁷ *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 874-875, 878; *Lucia Mar Unified School District v. Honig* (1988) 44 Cal.3d 830, 835.

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 6.²⁹ The determination whether a statute or executive order imposes a reimbursable state-mandated program is a question of law.³⁰ 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.”³¹

A. The test claim statutes and POST Administrative Manual do not impose a state-mandated program on local law enforcement agencies within the meaning of article XIII B, section 6 of the California Constitution.

In order for the test claim statutes and alleged executive order to impose a reimbursable state-mandated program, the statutory language must mandate an activity or task on local government. If the statutory language does not impose a mandate on local government, then article XIII B, section 6 of the California Constitution is not triggered and reimbursement is not required.

In addition, the courts have determined that a reimbursable state-mandate does not exist when a local entity incurs costs for activities required by the state as part of a program that the local entity “voluntarily” participates, if the participation is without legal compulsion and there is no evidence that the entity is practically compelled to participate in the program.³² Practical compulsion may exist and result in a mandate under article XIII B, section 6, if the state were to impose certain and severe penalties (independent of the loss of program funding), such as “double taxation or other draconian consequences” upon a local entity that declines to participate in the program.³³ In such cases, a concrete showing by the claimant of the “certain and severe” penalty or other adverse consequence is required to find that local government may be practically compelled and, thus, mandated under article XIII B, section 6 to incur the increased costs.³⁴

In this case, the Commission finds that the test claim statutes and alleged executive order do not impose a state-mandated program on local law enforcement agencies.

²⁸ *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.

²⁹ *Kinlaw v. State of California* (1991) 53 Cal.3d 482, 487; Government Code section 17551 and 17552.

³⁰ *County of San Diego, supra*, 15 Cal.4th 68, 109.

³¹ *County of Sonoma, supra*, 84 Cal.App.4th 1265, 1280, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

³² *Kern High School Dist., supra*, 30 Cal.4th 727, 742; see also, *San Diego Unified School Dist., supra*, 33 Cal.4th 859, 884-887 and *Department of Finance v. Commission on State Mandates* (2009) 170 Cal.App.4th 1355, 1362-1366.

³³ *Department of Finance, supra*, 170 Cal.App.4th 1355, 1366.

³⁴ *Department of Finance v. Commission on State Mandates* (2009) 170 Cal.App.4th 1355, 1367.

1. Local law enforcement agencies, including cities and counties, are not mandated by the state to appoint or designate reserve peace officers or to provide the required training to reserve peace officers.

- a) Local law enforcement agencies, including cities and counties, are not required to appoint or designate reserve peace officers.

Local law enforcement agencies are not required by state law to appoint or designate volunteer or part-time reserve peace officers. The decision to appoint or designate a reserve peace officer is a local discretionary decision that is not mandated by the state. The plain language of Penal Code section 830.6(a)(2) states that a reserve peace officer may be designated and assigned to the prevention and detection of crime and the general enforcement of the laws “*if authorized*” by a local ordinance or resolution. In this case, the volunteer reserve officers appointed and used by the claimant to provide police protection services saves the city resources by not having to hire full-time regularly employed peace officers. The claimant states the following:

Kingsburg, in needing to afford public safety for three shifts daily for 7 days a week, does not have adequate resources to staff with regular employees, and thus is totally dependent upon reserve officers to meet the public safety requirements of its citizens.³⁵

Thus, the claimant, and other local law enforcement agencies that have discretion with respect to the use of reserve peace officers, will make the choices that are ultimately the most beneficial for the agency and its community.

Although the state does not mandate the use of reserve peace officers, the courts have suggested that when a city or county is mandated by state law to provide police protection services, any new costs required to be incurred by the state that are triggered by the agency’s local decision regarding the number of personnel it hires, may, “as a practical matter,” be eligible for reimbursement. In *Department of Finance v. Commission on State Mandates*, the court addressed the Commission’s decision on the *Peace Officer’s Procedural Bill of Rights* test claim. The legislation at issue in the case required local law enforcement agencies to provide the opportunity for an administrative appeal and other due process procedures for peace officers subject to discipline or adverse action. The court stated the following:

Thus, as to cities, counties, and such [police protection] districts [that have police protection as their essential and basic function], new statutory duties that increase the costs of such services are prima facie reimbursable. This is true, notwithstanding a potential argument that such a local government’s decision is voluntary in part, as to the number of personnel it hires. [Citation omitted.] A school district, for example, has an analogous basic and mandatory duty to educate students. In the course of carrying out that duty, some “discretionary” expulsions will necessarily occur. [Citation omitted.] Accordingly, [the California Supreme Court in] *San Diego Unified School Dist.* suggests additional

³⁵ Exhibit A, Test claim, page 10.

costs of “discretionary” expulsions should not be considered voluntary. Where, as a practical matter, it is inevitable that certain actions will occur in the administration of a mandatory program, costs attendant to those actions cannot fairly and reasonably be characterized as voluntary³⁶

Evidence must be filed, however, to support a finding that a city or county, as a practical matter, is required to appoint reserve peace officers. Although the claimant makes the assertion that a lack of resources has resulted in its dependence on volunteer reserve officers, there has been no evidence to support that argument or a showing that “certain and severe penalties or other draconian consequences” will occur if it fails to appoint reserve officers.³⁷

Accordingly, local law enforcement agencies, including cities and counties, are not mandated by the state to incur any costs resulting from the training requirements imposed by the test claim statutes and PAM, and are not eligible for reimbursement.

- b) Local law enforcement agencies, including cities and counties, are not required to provide or pay for reserve peace officer training.

Even if it were found that a local law enforcement agency was practically compelled to appoint reserve peace officers, state law does not require local law enforcement agencies to provide or pay for reserve peace officer training. Rather, the obligation to get trained is on the individual seeking reserve peace officer status and on those individuals seeking to continue their designation or appointment as a reserve officer.

Penal Code section 830.6(a)(1) specifies in pertinent part the following:

Whenever any *qualified person* is deputized or appointed by the proper authority as a reserve or auxiliary sheriff or city police officer, . . . and is assigned specific police functions by that authority, the person is a peace officer, *if the person qualifies as set forth in Section 832.6.* . . . (Emphasis added.)

Penal Code section 832.6 further requires that reserve peace officers complete the basic and continuing professional training prescribed by POST that is also required for regular officers, and any other training prescribed by POST. Since 1959, POST has been required to adopt rules establishing minimum standards relating to the physical, mental and moral fitness governing the recruitment of local law enforcement officers.³⁸ In establishing the standards for training, the Legislature instructed POST to permit the required training to be conducted at *any* institution

³⁶ *Department of Finance, supra*, 170 Cal.App.4th at page 1367-1368.

³⁷ There is no evidence in the record that claimant or any other local agency could not allocate more resources to hiring regular full-time police officer employees without draconian consequences. Nor is there evidence in the record concerning levels of crime that would occur but for the recruitment of reserve officers.

³⁸ Penal Code sections 13510, et seq. These standards can be found in Title 11 of the California Code of Regulations.

approved and certified by POST.³⁹ These institutions include colleges, and the requirements for a course certification for basic and continuing professional training provided by these colleges and other institutions are in sections 1052 through 1055 of the POST regulations.⁴⁰ It is true that some local agencies may choose to offer training or payment for training as a recruitment tool. However, other agencies do not and, instead, require proof of the individual's section 832.6 qualification be submitted with applications for reserve peace officer positions.⁴¹

Moreover, the continuing professional training required for reserve peace officers in this case is *not* like other cases involving new training requirements imposed on regularly employed peace officers, where the Commission has approved reimbursement for local law enforcement agencies under article XIII B, section 6.⁴² For *regularly employed officers*, the Federal Labor Standards Act (FLSA) requires the local agency employer to compensate the regular employee for mandatory training if the training occurs during the employee's working hours and, thus, the state's new required training resulted in mandated increased costs to the agency. Reserve officers, however, do not receive regular compensation for the hours worked, are not regularly employed, and do not receive the benefits that the FLSA provides.⁴³ Reserve officers appointed by the claimant are volunteers.

Thus, local law enforcement agencies, including cities and counties, are not mandated by the state to incur any costs resulting from the training requirements imposed by the test claim statutes and PAM. Rather, under state law, local agencies have the following choices: (1) the agency may hire only regularly employed peace officers whose training is reimbursable under the POST program, or (2) require reserve officers to possess the requisite training certifications as a condition of appointment or designation.

2. School districts, community college districts, and special districts are not mandated by the state to maintain a police department and appoint reserve peace officers.

³⁹ Penal Code section 13511.

⁴⁰ PAM, B-31, B-32, where the regulations refer to "college" academies.

⁴¹ See, e.g. San Francisco's and National City's reserve peace officer position announcement flyers, which require applicants to submit proof of completion of the required section 832.6 training with their application for a reserve peace officer position; see also, the SFPD Reserve Peace Officer job announcement flyer, which requires applicants to submit proof of completion of the required training with their applications for a reserve peace officer position. (Exhibit F.)

⁴² See for example, *Sexual Harassment Training in the Law Enforcement Workplace* (97-TC-07).

⁴³ Section 1001(p) of the POST regulations defines "full-time employment" for those employees who are tenured, or have a right to due process in personnel matters, and are entitled to workers compensation and the retirement provisions that other full-time employees of the same personnel classification in the department receive. Section 1001(ff) of the POST regulations defines "regular officer" as "a sheriff, undersheriff, or deputy sheriff, regularly employed and paid as such"

Penal Code section 830.6 identifies the reserve peace officers that are subject to the minimum and continuing professional training requirements. They include reserve officers appointed or designated by cities, counties, school districts, community college districts, and special districts.

Counties and cities are required by the California Constitution to provide police protection and maintain police departments.⁴⁴ The other local law enforcement agencies identified in Penal Code section 830.6 include school districts, community college districts, and special districts that have the statutory authority to maintain police departments, but are not legally required or compelled by state law to do so. For example, Education Code section 38000 provides the statutory authority for school districts to establish a police department as follows:

- (a) The governing board of any school district may establish a ... police department under the supervision of a chief of police, as designated by, and under the direction of, the superintendent of the school district. In accordance with Chapter 5 (commencing with Section 45100) of Part 25, the governing board 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. ... It is the intention of the Legislature in enacting this section that a school district police ... department is supplementary to city and county law enforcement agencies and is not vested with general police powers.

The courts have made it clear that the provision of police protection is a mandatory, essential and basic function of counties and cities. However, school districts, community college districts, and special districts do not have the provision of police protection as an essential and basic function and, thus are not legally compelled by the state to comply with new statutory duties imposed with respect to police protection services.⁴⁵

In order for a school district or special district to be eligible for reimbursement when the state imposes requirements on local law enforcement, the districts must first show that as a practical matter exercising the authority to maintain a police department and hiring peace officers, rather than relying on the general law enforcement resources of a county or city, is the “only reasonable means” to carry out the district’s core mandatory function.⁴⁶ Concrete evidence in the record is required to support this assertion.⁴⁷

In this case, there is no evidence in the record to support a finding that school districts, community college districts, and special districts have been practically compelled by the state to

⁴⁴ Article XI of the California Constitution provides for the formation of cities and counties. Section 1, Counties, states that the Legislature shall provide for an elected county sheriff. Section 5, City charter provision, specifies that city charters are to provide for the “government of the city police force.”

⁴⁵ *Department of Finance v. Commission on State Mandates* (2009) 170 Cal.App.4th 1355, 1367.

⁴⁶ *Id.* at page 1368.

⁴⁷ *Id.* at page 1367.

maintain a police department and appoint or designate reserve peace officers. By law, these districts may rely on the general law enforcement resources that the county and city provide.

Accordingly, school districts, community college districts, and the special districts identified in Penal Code section 830.6 are not mandated by the state to incur any costs resulting from the training requirements imposed by the test claim statutes and PAM, and are not eligible for reimbursement.

IV. Conclusion

The Commission finds that Penal Code sections 830.6 and 832.6, as added and amended by the test claim statutes, and the alleged executive order in PAM do not constitute a state-mandated program on local law enforcement agencies and, thus, reimbursement is not required pursuant to article XIII B, section 6 of the California Constitution.

Commission on State Mandates

Original List Date: 10/3/2003
Last Updated: 6/22/2012
List Print Date: 06/22/2012
Claim Number: 03-TC-15
Issue: Reserve Peace Officer Training

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