

Hearing: November 9, 2010

ITEM 9

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

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

New Filings

1. Cross Petition Filed by Local Agencies in:

County of San Diego, and Cities of Carlsbad, Chula Vista, Coronado, Del Mar, El Cajon, Encinitas, Escondido, Imperial Beach, La Mesa, Lemon Grove, National City, Oceanside, Poway, San Diego, San Marcos, Santee, Solano Beach, and Vista v. Commission on State Mandates, State of California Department of Finance, State Water Resources Control Board, and California Regional Water Control Board San Diego Region, Sacramento County Superior Court Case No. 34-2010-80000604 [Discharge of Stormwater Runoff, Order No. R9-207-000, CSM 07-TC-09]

2. Dismissal Filed in:

Department of Finance v. Commission on State Mandates, et al. Sacramento County Superior Court, Case No. 03CS01432, [Behavioral Intervention Plans, CSM 4464]

Recent Decisions

None.

Litigation Calendar

<u>Case</u>	<u>Hearing Date</u>
<i>County of Santa Clara v. Commission on State Mandates, State Controller's Office, et al., Sacramento County Superior Court, Case No. 34-2010-80000592 [Incorrect Reduction Claim, Handicapped and Disabled Students]</i>	November 19, 2010 (Hearing on demurrer/motion to strike)

¹ Based on information available as of October 28, 2010. Release of this litigation report shall not be deemed to be a waiver of any privileged communication or act, including, but not limited to, the attorney-client privilege and the attorney work product doctrine.

Cases of Interest

a. ***Clovis Unified School Dist., et al. v. State Controller***

Third District Court of Appeal, Case No. C061696

Published Decision issued September 21, 2010 (*Clovis Unified School Dist. v. John Chiang, as State Controller* (2010) 188 Cal.App.4th 794)

(Parties have until November 1, 2010 to file a petition for review with the California Supreme Court)

This case involves a challenge by school districts and community college districts on reductions made by the State Controller's Office to reimbursement claims for several mandated programs. The school districts argue that reductions made on the ground that school districts did not have contemporaneous source documents were invalid. The schools also challenge the Controller's interpretation of offset provisions related to the *Health Fee Elimination* program.

The court held as follows:

1. The contemporaneous source document rule, as applied to the *School District of Choice; Emergency Procedures, Earthquake Procedures, and Disasters; Collective Bargaining; and Intradistrict Attendance* programs for costs incurred in fiscal years 1998-2003, is an unenforceable underground regulation. The rule was not adopted as a regulation in accordance with the APA and the Commission had not incorporated the rule into parameters and guidelines when these claims were filed. The court has directed the issuance of a peremptory writ of mandate that invalidates the Controller's audits to the extent the audits were based on the contemporaneous source document rule. The Controller, however, may re-audit the reimbursement claims based on documentation requirements of the parameters and guidelines and claiming instructions (not using the contemporaneous source document rule).
2. The *Health Fee Elimination* offset rule and the Controller's reductions to these programs are valid. Since the community college districts have the authority to charge for the mandated program, that charge cannot be recovered as a state-mandated cost (citing to *Connell v. Superior Court* (1997) 59 Cal.App.4th 382, 401; Gov. Code sections 17514, 17556). The court stated that its ruling "flows from common sense as well. As the Controller succinctly puts it, 'Claimants can choose not to require these fees, but not at the state's expense.'"

b. ***California School Board's Association v. State of California***

Fourth District Court of Appeal, Case No. D055659

Appeal Filed: July 30, 2009

This case involves a challenge by school districts to the practice of deferring mandate reimbursement payments. Since 2001-2002, the State has been nominally funding certain state mandated school programs and deferring payment of the balance. The trial court found that the State's practice of deferring payment

for state-mandated programs is an unreasonable and unconstitutional restriction on the school districts and county offices of education's constitutional rights under article XIII B, section 6 of the California Constitution. The case is now fully briefed and waiting to be calendared for oral argument.

- c. ***San Diego Unified School District v. John Chiang, as State Controller***
San Diego Superior Court, Case No. 37-2010-00098493-CU-WM-CTL

This lawsuit challenges reductions made by the State Controller's Office on reimbursement claims for fiscal years 1997-1998 through 2003-2004 for the *STAR* (Standardized Testing and Reporting) program. The Commission is not a party to this lawsuit.

The complaint alleges that the Controller's Office commenced an audit of the reimbursement claims after the audit period expired and that the Controller has no authority to audit these claims. The Controller's Office has filed a motion for a judgment on the pleadings, requesting the court to dismiss the lawsuit, on the ground that the school district has not exhausted administrative remedies with the Commission. The motion is scheduled to be heard on January 21, 2011.

- d. ***Fenton Avenue Charter School, Granada Hills Charter High School, Palisades Charter High School, and Vaughn Next Century Learning Center v. John Chiang, as State Controller***, Sacramento County Superior Court, Case No. 34-2010-00088619

This case challenges the Controller's return of reimbursement claims filed by the charter schools on 21 reimbursable state-mandated programs. The Commission is not a party to this action.

The charter schools allege that they are "school districts" within the meaning of Government Code section 17519 and, thus, are eligible to claim reimbursement for state-mandated local programs under article XIII B, section 6 of the California Constitution. The charter schools request that the court declare charter schools to be school districts within the meaning of Government Code section 17519, that the Controller is obligated to accept and fully reimburse charter schools on their claims for reimbursement, and that the Controller's actions are unconstitutional. The charter schools also request a petition for writ of mandate directing the Controller to make full payment on the claims, and an injunction against the Controller to prevent the Controller from returning reimbursement claims filed by charter schools. The Controller has not yet responded to the complaint.