

SixTen and Associates

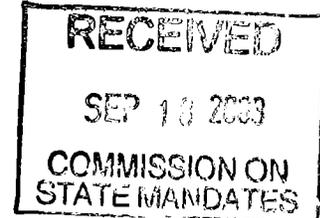
Mandate Reimbursement Services

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September 13, 2003

Paula Higashi, Executive Director
Commission on State Mandates
U.S. Bank Plaza Building
980 Ninth Street, Suite 300
Sacramento, California 95814



Re: Test Claim 02-TC-42
Clovis Unified School District and
Developer Fees

Dear Ms. Higashi:

I have received the comments of Department of General Services (DGS) by the Office of Public School Construction, dated August 11, 2003, and the State Superintendent of Public Instruction (SPI) dated August 11, 2003 to which I now respond on behalf of the test claimant.

None of the objections generated by SPI are included in the statutory exceptions set forth in Government Code Section 17556. DGS cites subdivision (b) of Section 17556 incorrectly. The objections stated additionally fail for the following reasons:

1. The Comments of the DGS and SPI are Incompetent and Should be Excluded

Test claimant objects to the Comments of the DGS and SPI, in total, as being legally incompetent and move that they be excluded from the record. Title 2, California Code of Regulations, Section 1183.02(d) requires that any:

“...written response, opposition, or recommendations and supporting documentation shall be signed at the end of the document, under penalty of perjury by an authorized representative of the state agency, with the declaration that it is true and complete to the best of the representative’s personal knowledge or information and belief.”

The DGS and SPI comments do not comply with this essential requirement.

Furthermore, the test claimant objects to any and all assertions or representations of fact made in the "State School Facility Programs Overview brochure"¹ enclosed by DGS since it has failed to comply with Title 2, California Code of Regulations, Section 1183.02(c)(1) which requires:

"If assertions or representations of fact are made (in a response), they must be supported by documentary evidence which shall be submitted with the state agency's response, opposition, or recommendations. All documentary evidence shall be authenticated by declarations under penalty of perjury signed by persons who are authorized and competent to do so and must be based on the declarant's personal knowledge or information or belief."

Furthermore, these "hearsay" statements do not even come up to the level of hearsay or the type of evidence people rely upon in the conduct of serious affairs. The comments submitted by DGS in the form of brochures, undisclosed to all parties, and any allegations of unsupported facts therein, should be stricken from the record.

2. The DGS Response is Vague and Ambiguous

In the first paragraph of its response, DGS clearly indicates that it intends to respond to Test Claim 02-TC-42, "Developer Fees". Then, in the first paragraph of its first point, it directs its comments to the School Facility Program (SFP)², and then refers to Chapter 12.5 of the Education Code. Developer Fees is based upon Chapter 6 of Part 10.5 of the Education Code. Test claimant is therefore unable to interpret the comments of DGS to enable it to rebut intelligently.

3. Ignoring a Source of Additional Funding is Not an Option

Both DGS and SPI suggest that developer fees are a mere funding option and not mandatory and that districts may choose to finance the construction of school facilities through the use of "district raised funds".

¹ Test claimants additionally object to this "document" because it was not provided to the test claimants.

² Test Claim 02-TC-30 is a test claim based upon "School Facilities Funding Requirements".

Education Code Section 17620, subdivision (a)(1)³ authorizes districts to levy a fee, charge, dedication, or other requirement against any construction within the boundaries of the district, for the purpose of funding the construction or reconstruction of school facilities. This is in addition to other sources of funding. Ignoring a source of funding and, instead passing the costs on to taxpayers is not a prudent choice.

4. Bond Revenues are not Service Charges, Fees or Assessments

DGS offers Government Code Section 17556, subdivision (d)⁴ for the proposition that test claimants are precluded from recovery because the mandated costs can be paid for by local bonds or other revenue sources, including developer fees. Bond revenues and other revenue sources are not "service charges, fees or assessments".

In addition, Section 17556 presupposes the existence of a mandate which is contrary to the state's position. Also, subdivision (d) refers to the levy of service charges, fees and assessments against students, not developers. Finally, the levy of service charges, fees and assessment against students for any aspect of public education would be constitutionally prohibited by Article 9, Section 5, of the California constitution which requires the state to provide free schools.

The responses of the DGS and SPI should be ignored as legally incompetent for their failure to comply with Section 1183.02 of Title 5, California Code of Regulations. In addition, the test claim should be approved as submitted because their comments are both factually and legally incorrect.

³ Education Code Section 17620, added by Chapter 277, Statutes of 1996, Section 3, as amended by Chapter 135, Statutes of 2000, Section 33:

"(a)(1) The governing board of any school district is authorized to levy a fee, charge, dedication, or other requirement against any construction within the boundaries of the district, for the purpose of funding the construction or reconstruction of school facilities, subject to any limitations set forth in Chapter 4.9 (commencing with Section 65995) of Division 1 of Title 7 of the Government Code. This fee, charge, dedication, or other requirement may be applied to construction only as follows:

(A)..."

⁴ Government Code Section 17556, subdivision (d), precludes a finding of mandated costs if the school district has the authority to levy service charges, fees or assessments sufficient to pay for the mandated program or increased level of service.

CERTIFICATION

I certify by my signature below, under penalty of perjury under the laws of the State of California, that the statements made in this document are true and complete to the best of my own personal knowledge or information and belief.

Sincerely,



Keith B. Petersen

C: Per Mailing List Attached

Commission on State Mandates

Original List Date: 7/8/2003

Mailing Information: Completeness Determination

Last Updated:

List Print Date: 07/10/2003

Mailing List

Claim Number: 02-TC-42

Issue: Developer Fees

TO ALL PARTIES AND INTERESTED PARTIES:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.2.)

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Ms. Luisa M. Park
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Sacramento, CA 95814

Tel:
Fax:

DECLARATION OF SERVICE

RE: Developer Fees
CLAIMANT: Clovis Unified School District

I declare:

I am employed in the office of SixTen and Associates, which is the appointed representative of the above named claimant(s). I am 18 years of age or older and not a party to the within entitled matter.

On the date indicated below, I served the attached: letter of September 13, 2003, addressed as follows:

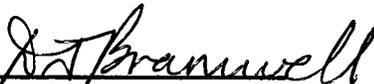
Paula Higashi
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

AND per mailing list attached

FAX: (916) 445-0278

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|--|---|
| <p><input checked="" type="checkbox"/> U.S. MAIL: I am familiar with the business practice at SixTen and Associates for the collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at SixTen and Associates is deposited with the United States Postal Service that same day in the ordinary course of business.</p> | <p><input type="checkbox"/> FACSIMILE TRANSMISSION: On the date below from facsimile machine number (858) 514-8645, I personally transmitted to the above-named person(s) to the facsimile number(s) shown above, pursuant to California Rules of Court 2003-2008. A true copy of the above-described document(s) was(were) transmitted by facsimile transmission and the transmission was reported as complete and without error.</p> |
| <p><input type="checkbox"/> OTHER SERVICE: I caused such envelope(s) to be delivered to the office of the addressee(s) listed above by:</p> <p>_____ (Describe)</p> | <p><input type="checkbox"/> A copy of the transmission report issued by the transmitting machine is attached to this proof of service.</p> <p><input type="checkbox"/> PERSONAL SERVICE: By causing a true copy of the above-described document(s) to be hand delivered to the office(s) of the addressee(s).</p> |

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on 9/16/03, at San Diego, California.


Diane Bramwell