

Hearing: May 26, 2011

ITEM 17

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

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

New Filings

None

Litigation Calendar

<u>Case</u>	<u>Hearing Date</u>
1. <i>State of California Department of Finance, State Water Resources Control Board, et al v. Commission on State Mandates, County of Los Angeles, et al.</i> Los Angeles County Superior Court, Case No. BS130730 [<i>Municipal Storm Water and Urban Runoff Discharges</i> (03-TC-04, 03-TC-19, 03-TC-20, and 03-TC-21)]	August 20, 2011
2. <i>State of California Department of Finance, State Water Resources Control Board, et al. v. Commission on State Mandates and County of San Diego, et al.</i> Sacramento County Superior Court, Case No. 34-2010-80000604 [<i>Discharge of Stormwater Runoff</i> (07-TC-09)]	September 9, 2011

Cases of Interest

- a. *California School Boards Association v. State of California*
California Supreme Court, Case No. S191613
Fourth District Court of Appeal, Case No. D055659

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 Commission is not a party to this lawsuit.

On February 10, 2011, the Court of Appeal issued a decision certified for publication and made the following findings:

¹ Based on information available as of May 15, 2011. 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.

1. The State's payment of a nominal amount for a mandate imposed on a local school district, with an intention to pay the remaining cost at an unspecified time, with interest, does not comply with article XIII B, section 6 of the California Constitution and the implementing statutes.
2. If funding for a mandated program is not provided, the Legislature has discretion to suspend the program and make it voluntary for that fiscal year. If the Legislature does not suspend the program, it is then a school district's obligation to seek affirmative relief under Government Code section 17612, subdivision (c). That section states "If the Legislature deletes from the annual Budget Act funding for a mandate, the local agency or school district may file in the Superior Court of the County of Sacramento an action in declaratory relief to declare the mandate unenforceable and enjoin its enforcement for that fiscal year."

Until and unless a court or the Legislature itself has relieved a local government of a statutory mandate, the local government must perform the duties imposed by the mandate, even if the mandate is not funded.

3. The remedy in Government Code section 17612, subdivision (c), is adequate. The remedy in section 17612 is available for nominal funding as well as a complete lack of funding for a determined state mandate.
4. The trial court properly acted within its discretion to deny the schools' request to compel the State to reimburse school districts for the \$900 million in outstanding unreimbursed costs.

The school districts filed a petition for review with the California Supreme Court. The State has opposed the petition.

- b. ***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 State Controller's Office has filed a motion for judgment on the pleadings asking the court to dismiss the claim on the ground that the charter schools have not exhausted their administrative remedies with the Commission. The Controller's Office further argues that there is no legal authority to provide reimbursement since the Commission decided in 2006 that charter schools are not eligible claimants under Government Code section 17519. The hearing on the Controller's motion is scheduled for May 18, 2011.

- c. ***County of Sacramento, et al. v. State of California***, Sacramento County Superior Court, Case No. 34-2010-0090983

This case seeks clarification of the Governor's reduction of funds appropriated by the Legislature in the 2010-2011 Budget Act (Item 8885-295-0001) for the *Handicapped and Disabled Students I and II* and *Seriously Emotionally Disturbed Pupils: Out of State Mental Health Services* programs and veto message indicating that the program is suspended. The Commission is not a party to this action.

The counties seek declaratory and injunctive relief and request an order relieving counties from the mandate.

- d. ***California School Boards Association, et al. v. Arnold Schwarzenegger, et al.***, California Supreme Court, Case No. S191952
Second District Court of Appeal, Case No. B228680

This case is a challenge by school districts on the Governor's reduction of funds for the *Handicapped and Disabled Students programs* and *Seriously Emotionally Disturbed Pupils: Out of State Mental Health Services* and veto message indicating that the program is suspended. The Commission is not a party to this action.

CSBA and the schools sought a petition for writ of mandate, alleging that the Governor's suspension of the program is unconstitutional and violates Proposition 1A, which amended article XIII B, section 6 of the California Constitution to provide that "*the Legislature is required to make an appropriation in the full payable amount or suspend the operation of the mandate.*" CSBA and the schools argued that only the Legislature has the authority to act under Proposition 1A.

On February 25, 2011, the Court of Appeal issued its published decision denying the petition for writ of mandate. The court held as follows:

In this case, the Legislature did not make a zero [dollar] appropriation for the Chapter 26.5 mandate. The Legislature attempted to appropriate the full reimbursement amount necessary, and the Governor exercised his line item veto to eliminate that appropriation, as was his constitutional right. The result is a zero appropriation which, under Government Code section 17581, has the effect of freeing local agencies from the duty to implement the mandate. The Governor's exercise of his veto was not an act of substantive

lawmaking; the veto simply has the substantive effect, due to the operation of a previously enacted statute.

CSBA has filed a petition for review with the Supreme Court. The State has opposed the petition.