

Hearing: September 25, 2009

ITEM 11

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.

Recent Decisions

None.

Litigation Calendar

<u>Case</u>	<u>Hearing</u>
<i>Department of Finance v. Commission on State Mandates, et al.</i> Sacramento County Superior Court, Case No. 03CS01432, [<i>Behavioral Intervention Plans</i>]	December 11, 2009. The hearing date is based on a stipulation of the parties to extend the time for the hearing in order to facilitate a settlement of the case and to allow time for legislation to be enacted (AB 661) to fund the monetary provisions of the settlement.

Cases of Interest

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

Third District Court of Appeal, Case No. C061696

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 Commission is not a party to this action.*** The school districts argue that reductions made on the ground that school districts did not have contemporaneous source documents were invalid.

Trial Court Ruling. On January 2, 2009, the Sacramento County Superior Court (Case No. 06CS00748) issued a clarification of ruling and on February 19, 2009, issued a Judgment and Writ, finding that reductions made by the Controller on the ground that claimants did not have contemporaneous source documents

¹ Based on information available as of September 14, 2009. 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.

if the contemporaneous source document requirement was not in the Commission's parameters and guidelines. The court held that the Controller has no authority to reduce a claim on the ground that a claimant did not maintain contemporaneous source documents to support their claim, absent statutory or regulatory authority to require contemporaneous source documents, or language in the parameters and guidelines requiring it. Pursuant to Government Code section 17558, the Controller's claiming instructions shall be derived from the test claim decision and the adopted parameters and guidelines. Thus, the court granted declaratory relief and a writ of mandate requiring the Controller to set aside the reduction and pay the school district plaintiffs the amounts reduced on two mandated programs (*Collective Bargaining* and *Intradistrict Attendance*) that did not have parameters and guidelines language requiring claimants to maintain contemporaneous source documents. All other contentions of the school districts were denied.

Court of Appeal Filings. Notices of appeal and cross-appeal have been filed by the State Controller's Office, the community college districts, and the school districts, and opening briefs have been filed as summarized below.

- The State Controller's Office appeals the lower court's ruling granting declaratory relief and a writ of mandate to set aside the reduction and pay the school district plaintiffs the amounts reduced on the *Collective Bargaining* and *Intradistrict Attendance* audits. The Controller's Office argues that the application of the contemporaneous source document rule to reimbursement claims on these programs is not a rule of general application such that it could be considered an underground regulation. Rather, the source document rule applies a flexible guideline to determine if costs claimed were actually incurred as required by the Commission's parameters and guidelines. The Controller also argues that the plaintiffs have another proper statutory remedy to address the audit decisions by filing an incorrect reduction claim with the Commission. In the alternative, if the court agrees that the source document rule is an underground regulation with respect to the *Collective Bargaining* and *Intradistrict Attendance* audits, the Controller requests that the case be stayed pending resolution by the Commission on the Controller's request to amend all parameters and guidelines to include the contemporaneous source document language.²
- The school districts filed a cross-appeal challenging the validity of the contemporaneous source document rule. The districts assert that the rule is an "unlawful, underground regulation, void for lack of compliance with the APA, and/or an unlawful retroactive rule affecting new legal consequences for past events." The districts argue that, even though the Commission has not ruled on the issue in an incorrect reduction claim, judicial resolution will provide guidance in the IRC process, and avoid

² Commission staff has scheduled the Controller's requests to amend the parameters and guidelines for hearing beginning October 30, 2009 through March 2010.

multiplicity of piece-meal lawsuits after the completion of the “lengthy IRC process.” The school districts are seeking declaratory relief and a writ of mandate finding that the contemporaneous source document rule constitutes an unlawful, void underground regulation under the APA, and directing the Controller to set aside the audit findings.

- The community college districts filed an appeal, challenging the lower court’s ruling with respect to the *Health Fee Elimination* audits. In addition to arguing that the contemporaneous source document rule is an invalid underground regulation, the community college districts also challenge the audit practice of the Controller to deny the *Health Fee Elimination* claims on the ground that the colleges should have received offsetting savings. The colleges state that “the SCO reduces community college districts HFE Program reimbursable cost claims based on the amount of a student health fee that the districts *could have* charged, *even if* such fees *were not imposed* by the districts, and even though imposition of a fee, or a fee increase based on the Implicit Price Deflator is not required ...” (Emphasis in original.) The community college districts argue that the practice amounts to an underground regulation and are seeking a writ of mandate directing the Controller to set the audit decisions and reductions aside, and barring the application of the practice to retroactive and future claims.

It is anticipated that a hearing date will be scheduled in 2010.