

ITEM 17
REQUEST TO AMEND PARAMETERS AND GUIDELINES
FINAL STAFF ANALYSIS

Education Code 67381
Statutes 1998, Chapter 284

Law Enforcement College Jurisdiction Agreements

05-PGA-10 (98-TC-20)

Department of Finance, Requestor

Executive Summary

Education Code section 67381 requires law enforcement agencies of all public colleges and universities and some independent postsecondary institutions to enter into written agreements with local law enforcement agencies. The agreements delineate their respective geographical boundaries for investigating certain violent crimes on campuses. The section further requires the agreements to be posted for public viewing and a copy to be transmitted to the Legislative Analyst.

On April 26, 2001, the Commission on State Mandates (Commission) adopted the Statement of Decision for *Law Enforcement College Jurisdiction Agreements* (98-TC-20, formerly *Campus Safety Plans*.) The Commission found that Education Code section 67381 constitutes a new program or higher level of service and imposes costs mandated by the state within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514 on community colleges. On January 24, 2002, the Commission adopted parameters and guidelines for this program. The parameters and guidelines clarified that any community college was an eligible claimant for this program.

In previous Commission decisions, based on the Supreme Court's holding in *Kern High School Dist.*, school districts were not entitled to reimbursement for activities required by the state when the activities are triggered by the discretionary local decision to employ peace officers. Based on these past decisions, on September 14, 2005, the Department of Finance requested that the *Law Enforcement College Jurisdiction Agreements* program be amended to remove community colleges as eligible claimants for this program.

Staff Recommendation

Staff recommends that the Department of Finance's request to remove community colleges as eligible claimants for the *Law Enforcement College Jurisdiction Agreements* program be denied because the Commission does not have jurisdiction to retry this issue once it made its determination that Education Code section 67381 constituted a state-mandated program for community colleges.

Requestor

Department of Finance

Chronology

- 04/26/01 Commission adopts Statement of Decision
- 01/24/02 Commission adopts Parameters and Guidelines
- 09/14/05 Department of Finance requests that parameters and guidelines be amended
- 09/01/06 Draft staff analysis issued
- 10/11/06 Final staff analysis issued

Summary of the Mandate

Education Code section 67381 requires law enforcement agencies of all public colleges and universities and some independent postsecondary institutions to enter into written agreements with local law enforcement agencies. The agreements delineate their respective geographical boundaries for investigating certain violent crimes on campuses. The section further requires the agreements to be posted for public viewing and a copy to be transmitted to the Legislative Analyst.

On April 26, 2001, the Commission on State Mandates (Commission) adopted the Statement of Decision for *Law Enforcement College Jurisdiction Agreements* (98-TC-20, formerly *Campus Safety Plans*.)¹ The Commission found that Education Code section 67381 constitutes a new program or higher level of service and imposes costs mandated by the state within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514 on community colleges. Accordingly, the Commission approved this test claim for the following reimbursable activities:

- preparing the written agreements, or
- reviewing and modifying existing agreements to conform with section 67381, and
- placing these written agreements in a place of public viewing and transmitting them to the Legislative Analyst.

On January 24, 2002, the Commission adopted parameters and guidelines for this program. The parameters and guidelines clarified that any community college was an eligible claimant for this program.²

Department of Finance's Proposed Amendments

In previous Commission decisions, based on the Supreme Court's holding in *Kern High School Dist.*, school districts were not entitled to reimbursement for activities required by the state when the activities are triggered by the discretionary local decision to employ

¹ Exhibit A.

² Exhibit B.

peace officers. Based on these past decisions, on September 14, 2005, the Department of Finance requested that the *Law Enforcement College Jurisdiction Agreements* program be amended to remove community colleges as eligible claimants for this program.³

Finance states in its request:

Education Code Sections 38000 and 72330 permit K-12 school and community college districts to establish police departments, but do not require it. Therefore, forming a police department is a discretionary activity on the part of these districts, and pursuant to case law and consistent with other Commission decisions regarding school and community college district law enforcement activities, the consequences of participation in a discretionary program cannot be found to be reimbursable.

Staff issued the draft staff analysis on this item on September 1, 2006. No comments were submitted on the draft staff analysis.

Issue: Does the Commission have jurisdiction to retry this issue once it made its determination that *Law Enforcement College Jurisdiction Agreements* constituted a state-mandated program for community colleges?

On April 26, 2001, the Commission determined that the *Law Enforcement College Jurisdiction Agreements* program constituted a state-mandated program for community colleges.

It is a well-settled principle of law that an administrative agency does not have jurisdiction to retry a question that has become final. If a prior decision is retried by the agency, that decision is void. (*Heap v. City of Los Angeles* (1936) 6 Cal.2d 405, 407, where the court held that the civil service commission had no jurisdiction to retry a question and make a different finding at a later time; *City and County of San Francisco v. Ang* (1979) 97 Cal.App.3d 673, 697, where the court held that whenever a quasi-judicial agency is vested with the authority to decide a question, such decision, when made, is res judicata, and as conclusive of the issues involved in the decision as though the adjudication had been made by the court; and *Save Oxnard Shores v. California Coastal Commission* (1986) 179 Cal.App.3d 140, 143, where the court held that in the absence of express statutory authority, an administrative agency may not change a determination made on the facts presented at a full hearing once the decision becomes final.)

The Commission's Statement of Decision became final when it was mailed or served on April 27, 2001. (Cal. Code Regs, tit. 2, section 1188.2, subd. (b).) Therefore, the Commission does not have jurisdiction to retry or change a finding made in the Statement of Decision.

³ Exhibit C.

Staff Recommendation

Staff recommends that the Department of Finance's request to remove community colleges as eligible claimants for the *Law Enforcement College Jurisdiction Agreements* program be denied because the Commission does not have jurisdiction to retry this issue once it made its determination that Education Code section 67381 constituted a state-mandated program for community colleges.