

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE TEST CLAIM ON:

Business and Professions Code Section 7583.45; Education Code Sections 35021.5, 38001.5, subdivision (b), 39672, subdivision (a), 72330.2, subdivision (a), and 72330.5, subdivision (b); Penal Code Sections 830.32, 832.2, and 832.3; Statutes 1998, Chapters 745 and 746;

Filed on October 3, 2001, and Amended on December 12, 2001,

By San Diego Unified School District,
Claimant.

No. 01-TC-05/01-TC-10

School Safety Officer Training

STATEMENT OF DECISION PURSUANT
TO GOVERNMENT CODE SECTION 17500
ET SEQ.; CALIFORNIA CODE OF
REGULATIONS, TITLE 2, DIVISION 2,
CHAPTER 2.5, ARTICLE 7

(Adopted on January 29, 2004)

STATEMENT OF DECISION

The attached Statement of Decision of the Commission on State Mandates is hereby adopted in the above-entitled matter.

PAULA HIGASHI, Executive Director

Date

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(Adopted on January 29, 2004)

STATEMENT OF DECISION

The Commission on State Mandates (Commission) heard and decided this test claim during a regularly scheduled hearing on January 29, 2004. Arthur Palkowitz appeared on behalf of the claimant, San Diego Unified School District. Susan Geanacou and Matt Aguilera appeared on behalf of the Department of Finance (DOF).

The law applicable to the Commission's determination of a reimbursable state-mandated program is article XIII B, section 6 of the California Constitution, Government Code section 17500 et seq., and related case law.

The Commission adopted the staff analysis at the hearing by a vote of 5-0.

BACKGROUND

In 1997, the Legislature required the Commission on Peace Officer Standards and Training (POST) to review the minimum training and selection standards for peace officers and security officers employed by school districts.¹ In November 1997, POST published its findings in accordance with the statute in a report entitled "Report to the Legislature on School Safety and Professional Standards for School Peace Officers/Security Personnel." In the report, POST stated the following:

There is great variation between school districts concerning the level of professional standards established for their school peace officers. At the low end, many districts opt to meet only statutorily adopted standards, i.e., 96 hours of training pursuant to Penal Code sections 832 and 832.2. At the high end, 22

¹ Penal Code section 13510.6, as added by Statutes 1997, chapter 117.

community college districts and 15 K-12 districts voluntarily participate in the full POST certification (664 hours regular basic plus continued professional training and background and psychological tests).²

POST also stated the following:

Great variations also exists [sic] with respect to the professional standards of school security guards. Whether as school employees or contract personnel, security officers generally wear uniforms and serve in prevention and reporting roles. Unlike school police officers, they do not investigate nor make arrests. There are no state minimum training standards for school security officers who are employees and only nominal for those who are contract security depending upon what safety equipment is possessed.³

The test claim legislation was enacted in 1998 to implement the POST recommendations and to provide standardized training for school police and school security officers who are employed or on contract with a school district or community college district.⁴

Statutes 1998, Chapter 745 – School Security Officers and Reserve Officers

Statutes 1998, chapter 745 of the test claim legislation applies to school security officers and school police reserve officers. Generally, the test claim legislation requires that after July 1, 2000, every school security officer employed by a school district or community college district, who works more than 20 hours a week as a school security officer, shall complete a course of training developed by the Bureau of Security and Investigative Services (BSIS) of the Department of Consumer Affairs. School security officers employed by the district before July 1, 2000, are required to complete the training by July 1, 2002.⁵

In addition, if the school security officer is required to carry a firearm, the officer shall additionally satisfy training requirements specified in the Penal Code.⁶

School security officers are also required to submit to the district fingerprints on forms prescribed by the Department of Justice. The school district or community college district is then required to submit the fingerprints to the Department of Justice. No school security officer shall be employed or shall continue to be employed by the school district or community college district after July 1, 2000, until the fingerprints are submitted to the district and the applicant or employee has been determined not to be a person legally prohibited from employment or prohibited from possessing a firearm.⁷

² Senate Floor Analysis on Senate Bill 1627, dated August 17, 1998, page 4.

³ Senate Floor Analysis on Senate Bill 1626, dated August 17, 1998, page 5.

⁴ Senate Floor Analysis on Senate Bill 1626, dated August 17, 1998; Senate Floor Analysis on Senate Bill 1627, dated August 17, 1998.

⁵ Education Code sections 38001.5, 72330.5.

⁶ *Ibid.*

⁷ *Ibid.*

Similar training and fingerprint requirements are imposed on security guards working on the property of a school district or community college district more than 20 hours per week pursuant to a contract with a private licensed security agency.⁸

Statutes 1998, chapter 745 also requires school reserve officers to complete a course of training approved by POST. The training is required to address guidelines and procedures for reporting offenses to other law enforcement agencies that deal with violence on campus and other school related matters.⁹

Statutes 1998, Chapter 746 – School Police Officers

Statutes 1998, chapter 746 of the test claim legislation applies to school police officers. It requires every school police officer first employed by school districts and community college districts after July 1, 1999, to successfully complete the basic course of training prescribed by POST before exercising the powers of a peace officer. Officers first employed by a district after July 1, 1999, shall complete the course within two years of the date of employment. Officers first employed by a district before July 1, 1999, shall complete the course by July 1, 2002.¹⁰

Statutes 1998, chapter 746 also requires each police chief, or any other person in charge of a local law enforcement agency, who was appointed on or after January 1, 1999, to complete the basic course of training prescribed by POST as a condition of continued employment. The training must be completed within two years of the appointment.¹¹

The test claim legislation also requires every school police officer first employed by a school district or community college district after July 1, 1999, to submit to the district fingerprints on forms prescribed by the Department of Justice. The school district or community college district is then required to submit the fingerprints to the Department of Justice. The school district or community college district is also required to determine if the employee is a person who is not prohibited from employment. If the employee is required to carry a firearm, the Department of Justice is required to determine if the employee is not prohibited from possessing a firearm.¹²

Claimant's Position

The claimant alleges that Statutes 1998, chapter 745 imposes the following reimbursable state-mandated activities on school districts and community college districts:

1. Requiring each school security officer employed by a school district or community college district after July 1, 2000 for more than 20 hours a week to complete a course of training developed by BSIS in consultation with POST.
2. The employee shall submit two copies of his or her fingerprints to BSIS, who will forward one copy to the FBI.

⁸ Business and Professions Code section 7583.45.

⁹ Education Code section 35021.5; Penal Code section 832.2.

¹⁰ Penal Code sections 830.32, 832.3.

¹¹ Penal Code section 832.3.

¹² Education Code sections 39672, 72330.2.

3. If a security officer is required to carry a firearm while performing his or her duties, that school officer shall satisfy the training requirements of section 832 of the Penal Code. Officers employed prior to July 1, 2000 are exempt if they have completed an equivalent course of instruction pursuant to section 832.2 of the Penal Code.

The claimant alleges that Statutes 1998, chapter 746 imposes the following reimbursable state-mandated activities on school districts and community college districts:

1. Requires each school peace officer employed by a school district or community college district after July 1, 1999 to successfully complete a course of training prescribed by POST.
2. Requires each school peace officer employed by a school district or community college district hired before July 1, 1999 be determined to be a person who is not prohibited from being an employee and, if the employee is required to carry a firearm while performing his or her duties to additionally satisfy the training requirements of section 832 of the Penal Code.
3. The employees shall submit to the district one copy of his or her fingerprints on forms prescribed by the Department of Justice.
4. Requires each police chief, or any other person in charge of a local law enforcement agency appointed after January 1, 1999 to complete the basic course of training prescribed by POST for the other peace officers.¹³

The claimant further declares that it has incurred costs for fiscal year 2001-2002 to comply with the test claim legislation as follows: \$20,000 for the cost of course training and \$20,000 for hourly time in attending the training course.¹⁴

Department of Finance Position

In response to the test claim, the Department of Finance stated that it is unable to complete an analysis due to factual errors and representations in the test claim that are not supported by documentary evidence.¹⁵ The Department of Finance stated the following in response to the amended test claim:

- Certain requirements imposed by Chapters 745 and 746, Statutes of 1998 impose requirements on individuals, not districts. Neither bill requires districts to train or pay for training of newly hired staff. Districts may choose to hire applicants who are already POST-certified. If districts choose to hire uncertified staff, their decision is discretionary.

¹³ Claimant's Amended Test Claim.

¹⁴ Declaration of Richard F. Roda, Detective at the Police Department for the San Diego Unified School District, dated September 25, 2001.

¹⁵ Department of Finance letter dated November 14, 2001.

- Chapter 746, Statutes of 1998 makes no such requirement that school peace officers who are required to carry firearms must satisfy the requirements of Penal Code Section 832.¹⁶

COMMISSION FINDINGS

The courts have found that article XIII B, section 6 of the California Constitution¹⁷ recognizes the state constitutional restrictions on the powers of local government to tax and spend.¹⁸ “Its purpose is to preclude the state from shifting financial responsibility for carrying out governmental functions to local agencies, which are ‘ill equipped’ to assume increased financial responsibilities because of the taxing and spending limitations that articles XIII A and XIII B impose.”¹⁹ A test claim statute or executive order may impose a reimbursable state-mandated program if it orders or commands a local agency or school district to engage in an activity or task.²⁰ In addition, the required activity or task must be new, constituting a “new program,” or it must create a “higher level of service” over the previously required level of service.²¹

The courts have defined a “program” subject to article XIII B, section 6, of the California Constitution, as one that carries out the governmental function of providing public services, or a law that imposes unique requirements on local agencies or school districts to implement a state policy, but does not apply generally to all residents and entities in the state.²² To determine if the program is new or imposes a higher level of service, the test claim legislation must be compared

¹⁶ Department of Finance letter dated January 18, 2002.

¹⁷ Article XIII B, section 6 provides: “Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the state shall provide a subvention of funds to reimburse such local government for the costs of such program or increased level of service, except that the Legislature may, but need not, provide such subvention of funds for the following mandates: (a) Legislative mandates requested by the local agency affected; (b) Legislation defining a new crime or changing an existing definition of a crime; or (c) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975.”

¹⁸ *Department of Finance v. Commission on State Mandates* (2003) 30 Cal.4th 727, 735.

¹⁹ *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81.

²⁰ *Long Beach Unified School Dist. v. State of California* (1990) 225 Cal.App.3d 155, 174. In *Department of Finance v. Commission on State Mandates*, *supra*, 30 Cal.4th at page 742, the court agreed that “activities undertaken at the option or discretion of a local government entity (that is, actions undertaken without any legal compulsion or threat of penalty for nonparticipation) do not trigger a state mandate and hence do not require reimbursement of funds - even if the local entity is obligated to incur costs as a result of its discretionary decision to participate in a particular program or practice.” The court left open the question of whether non-legal compulsion could result in a reimbursable state mandate, such as in a case where failure to participate in a program results in severe penalties or “draconian” consequences. (*Id.*, at p. 754.)

²¹ *Lucia Mar Unified School District v. Honig* (1988) 44 Cal.3d 830, 835-836.

²² *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56; *Lucia Mar*, *supra*, 44 Cal.3d 830, 835.

with the legal requirements in effect immediately before the enactment of the test claim legislation.²³ Finally, the newly required activity or increased level of service must impose costs mandated by the state.²⁴

The Commission is vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6.²⁵ In making its decisions, the Commission must strictly construe article XIII B, section 6 and not apply it as an “equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities.”²⁶

Issue: Is the test claim legislation subject to article XIII B, section 6 of the California Constitution?

As indicated above, reimbursement under article XIII B, section 6 of the California Constitution is required in the present case only if the state mandates a new program or higher level of service on school districts and community college districts. Although a school district may incur increased costs as a result of the statute, as alleged by the claimant here, increased costs alone are not determinative of the issue whether the statute imposes a reimbursable state-mandated program. The California Supreme Court has ruled that evidence of additional costs alone, even when those costs are deemed necessary by the local agency or school district, do not equate to a reimbursable state-mandated program under article XIII B, section 6.

We recognize that, as is made indisputably clear from the language of the constitutional provision, local entities are not entitled to reimbursement for all increased costs mandated by state law, but only those costs resulting from a new program or an increased level of service imposed upon them by the state.²⁷

Claimant contends that the test claim legislation imposes a mandate on school districts and community college districts to provide the required training to their officers. The Commission disagrees. For the reasons described below, the Commission finds that the test claim legislation is not subject to article XIII B, section 6 of the California Constitution because it does not impose a mandate on school districts and community college districts.

The test claim legislation requires school districts and community college districts that employ school police officers and school security officers, or contract with private security, to (1) ensure that new and existing officers complete the required course of training; (2) obtain fingerprint

²³ *Lucia Mar, supra*, 44 Cal.3d 830, 835.

²⁴ *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487; *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1265, 1284; Government Code sections 17514 and 17556.

²⁵ *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551, 17552.

²⁶ *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817; *County of Sonoma, supra*, 84 Cal.App.4th 1265, 1280.

²⁷ *County of Los Angeles, supra*, 43 Cal.3d at page 54; see also, *Department of Finance v. Commission on State Mandates, supra*, 30 Cal.4th at page 735.

cards from the officers and forward the cards to the Department of Justice; and (3) determine if the employee is a person who is not prohibited from employment.

But, school districts and community college districts are not required by state law to employ police officers or security officers. Unlike counties and cities that are required by the California Constitution to maintain a police force, no such requirement exists for school districts.

Article XI, Local Government, provides for the formation of cities and counties. Section 1, Counties, states that the Legislature shall provide for an elected county sheriff, and section 5, City charter provision, specifies that city charters are to provide for the “government of the city police force.”

In contrast, school districts are not required by the Constitution to employ police and security officers. The California Constitution, article IX, Education, establishes and permits the formation of school districts, including community college districts, and county boards of education, all for the purpose of encouraging “the promotion of intellectual, scientific, moral and agricultural improvement.”²⁸ Although the Legislature is permitted to authorize school districts “to act in any manner which is not in conflict with the laws and purposes for which school districts are established,”²⁹ the Constitution does not require school districts to operate police departments or employ school security officers as part of their essential educational function. Article I, section 28, subdivision (c), of the California Constitution does require K-12 school districts to maintain safe schools. However, there is no constitutional requirement to maintain safe schools through school security or a school district police department independent of the public safety services provided by the cities and counties a school district serves.³⁰ In *Leger v. Stockton Unified School District*, the court interpreted the safe schools provision as follows:

[H]owever, section 28(c) declares a general right without specifying *any* rules for its enforcement. It imposes no express duty on anyone to make schools safe. It is wholly devoid of guidelines, mechanisms, or procedures from which a damages remedy could be inferred. Rather, “it merely indicates principles, without laying down rules by means of which those principles may be given the force of law.” [Citation omitted.]³¹

Thus, at the constitutional level, cities and counties are given local law enforcement responsibilities, while the Legislature is only permitted to authorize school districts to act in any manner that is not in conflict with the Constitution.

Moreover, the Legislature does not require school districts and community college districts to employ police officers and security officers. Pursuant to Education Code section 38000:³²

²⁸ California Constitution, article IX, section 1.

²⁹ California Constitution, article IX, section 14.

³⁰ Article I, section 28, subdivision (c) of the California Constitution provides “All students and staff of public primary, elementary, junior high and senior high schools have the inalienable right to attend campuses which are **safe**, secure and peaceful.” (Emphasis added.)

³¹ *Leger v. Stockton Unified School Dist.* (1988) 202 Cal.App.3d 1448, 1455.

³² Formerly numbered Education Code section 39670; derived from 1959 Education Code section 15831.

[t]he governing board of any school district may establish a security department ... or a police department ...[and] may employ personnel to ensure the safety of school district personnel and pupils and the security of the real and personal property of the school district. In addition, a school district may assign a school police reserve officer who is deputized pursuant to Section 35021.5 to a schoolsite to supplement the duties of school police personnel pursuant to this section. It is the intention of the Legislature in enacting this section that a school district police or security department is supplementary to city and county law enforcement agencies and is not vested with general police powers.

Education Code section 72330, derived from the same 1959 Education Code section, provides the law for community colleges. “The governing board of a community college district may establish a community college police department ... [and] may employ personnel as necessary to enforce the law on or near the campus. ... This subdivision shall not be construed to require the employment by a community college district of any additional personnel.”

In addition, Education Code section 35021.5 states that the “governing board of a school district may establish an unpaid volunteer school police reserve officer corps to supplement a police department pursuant to section 38000.”

Thus, statutory law does not require school districts and community college districts to hire police officers, security officers, or reserve officers. Therefore, forming a school district police department and employing police officers and security officers is an entirely discretionary activity on the part of all school districts.

Claimant admits that school districts are not required by state law to employ police officers and security officers.³³ Claimant argues, however, that school districts are legally compelled and, thus, mandated within the meaning of article XIII B, section 6 to provide the additional training.³⁴ The Commission disagrees.

In a 2003 California Supreme Court mandates decision, the Court found (affirming the holding in *City of Merced v. State of California* (1984) 153 Cal.App.3d 777), “if a school district elects to participate in or continue participation in any *underlying voluntary* education-related funded program, the district’s obligation to comply with the notice and agenda requirements related to that program does not constitute a reimbursable state mandate.”³⁵ The court further stated, on page 731 of the decision, that:

[W]e reject claimants’ assertion that they have been legally compelled to incur notice and agenda costs, and hence are entitled to reimbursement from the state, based merely upon the circumstance that notice and agenda provisions are mandatory elements of education-related program in which claimants have participated, without regard to whether claimant’s participation in the underlying program is voluntary or compelled. [Emphasis added.]

³³ Claimant’s comments on Draft Staff Analysis

³⁴ *Ibid.*

³⁵ *Department of Finance v. Commission on State Mandates, supra*, 30 Cal.4th at page 743.

The decision of the California Supreme Court interpreting the state-mandate issue is relevant to this test claim. The Commission is not free to disregard clear statements of the California Supreme Court. Thus, pursuant to state law, school districts and community college districts remain free to discontinue providing their own police department and employing security officers. The statutory duties imposed by the test claim legislation that follow from such discretionary activities do not impose a reimbursable state mandate. Therefore, the test claim legislation is not subject to article XIII B, section 6 of the California Constitution.

CONCLUSION

The Commission concluded that Business and Professions Code section 7583.45, Education Code sections 35021.5, 38001.5, subdivision (b), 39672, subdivision (a), 72330.2, subdivision (a), 72330.5, subdivision (b), and Penal Code sections 830.32, 832.2, 832.3, as added or amended by Statutes 1998, chapters 745 and 746, do not constitute a state-mandated program and, thus, are not subject to article XIII B, section 6 of the California Constitution.