BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

IN RE TEST CLAIM ON: Penal Code Section 148.6; Statutes 1995, Chapter 590; Statutes 1996, Chapter 586; Statutes 2000, Chapter 289; Filed on September 16, 2002, By Santa Monica Community College District, Claimant.	No. 02-TC-09 ***False Reports of Police Misconduct, K-14*** 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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STATEMENT OF DECISION

The Commission on State Mandates (Commission) heard and decided this test claim during a regularly scheduled hearing on January 29, 2004. Keith Petersen appeared on behalf of the claimant, Santa Monica Community College District. Susan Geanacou appeared on behalf of the Department of Finance.

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

On July 5, 2001, the Commission received a test claim filing on behalf of claimant, County of San Bernardino, entitled *False Reports of Police Misconduct* (00-TC-26). On September 16, 2002, the Commission received a test claim filing, *False Reports of Police Misconduct, K-14* (02-TC-09), on behalf of claimant Santa Monica Community College District. Both test claims allege a reimbursable state-mandated program for compliance with Penal Code section 148.6, as added by Statutes 1995, chapter 590, and amended by Statutes 1996, chapter 586, and Statutes 2000, chapter 289. Although the same statutory provisions are involved, these two test claims were not consolidated due to different threshold issues on the applicability of the California Constitution, article XIII B, section 6. As background, the complete text of Penal Code section 148.6 follows:

> (a)(1) Every person who files any allegation of misconduct against any peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, knowing the allegation to be false, is guilty of a misdemeanor.
>
> (2) Any law enforcement agency accepting an allegation of misconduct against a peace officer shall require the complainant to read and sign the following advisory, all in boldface type:

> **You have the right to make a complaint against a police officer for any improper police conduct. California law requires this agency to have a procedure to investigate citizens' complaints. You have a right to a written description of this procedure. This agency may find after investigation that there is not enough evidence to warrant action on your complaint; even if that is the case, you have the right to make the complaint and have it investigated if you believe an officer behaved improperly. Citizen complaints and any reports or findings relating to complaints must be retained by this agency for at least five years.**
>
> **It is against the law to make a complaint that you know to be false. If you make a complaint against an officer knowing that it is false, you can be prosecuted on a misdemeanor charge.**
>
> I have read and understood the above statement.
>
> ____________________________
>
> Complainant

> (3) The advisory shall be available in multiple languages.
>
> (b) Every person who files a civil claim against a peace officer or a lien against his or her property, knowing the claim or lien to be false and with the intent to harass or dissuade the officer from carrying out his or her official duties, is guilty of a misdemeanor. This section applies only to claims pertaining to actions that arise in the course and scope of the peace officer's duties.

Claimant's Position

Claimant alleges that the test claim legislation requires the following reimbursable state-mandated activities:

- establish and periodically update written policies and procedures regarding the requirement to have citizens filing complaints of peace officer misconduct to sign an advisory;
- require each person making a complaint of peace officer misconduct to sign a prescribed advisory;
- transcribe the advisory and make it available in multiple languages;
- train peace officers and personnel on the district's policies and procedures for receiving complaints.

On December 29, 2003 the Commission received extensive claimant comments and case law exhibits in rebuttal to the draft staff analysis. Comments are addressed below, as appropriate.

State Agency's Position

Department of Finance, in comments received October 24, 2002, concluded that although the test claim legislation "may result in additional costs to school districts, those costs are not reimbursable." This conclusion is based in part on the observation that the establishment of

school police departments is undertaken at the discretion of the governing board of a district, thus any costs imposed on a district as a result of employing peace officers are not reimbursable.

COMMISSION FINDINGS

The courts have found that article XIII B, section 6 of the California Constitution[1] recognizes the state constitutional restrictions on the powers of local government to tax and spend.[2] "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."[3] 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.[4] 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.[5]

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.[6] To determine if the program is new or imposes a higher level of service, the test claim legislation must be compared with the legal requirements in effect immediately before the enactment of the test claim

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[1] 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."

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

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

[4] *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.)

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

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

legislation.[7] Finally, the newly required activity or increased level of service must impose costs mandated by the state.[8]

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.[9] 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."[10]

Issue 1: Is the test claim legislation subject to article XIII B, section 6 of the California Constitution for school district claimants?

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 of 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.[11]

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 provides that "[a]ny law enforcement agency accepting an allegation of misconduct against a peace officer" to require the complainant to read and sign a two-paragraph document that advises the individual of the right to make a complaint, and also describes that a misdemeanor charge may be made if a person knowingly lodges a false complaint.

But, school districts and community college districts are not required by state law to maintain a law enforcement agency or employ peace officers. Claimant asserts "a different standard [is]

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[7] *Lucia Mar, supra*, 44 Cal.3d 830, 835.

[8] *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.

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

[10] *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.

[11] *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.

being applied to school districts and community college districts than is applied to counties and cities."[12] The Commission disagrees and finds that unlike counties and cities that are required by the California Constitution to provide police protection, 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 peace 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."[13] 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,"[14] the Constitution does not require school districts to operate police departments or employ peace 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.[15] However, there is no constitutional requirement to maintain safe schools through operating a law enforcement agency and employing peace officers independent of the public safety services provided by the cities and counties a school district serves. 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." 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.][16]

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.

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[12] Claimant's comments on the draft staff analysis, dated December 24, 2003, page 28.

[13] California Constitution, article IX, section 1.

[14] California Constitution, article IX, section 14.

[15] The provision is *not* applicable to community college districts.

[16] *Leger v. Stockton Unified School Dist.* (1988) 202 Cal.App.3d 1448, 1455. (Claimant's comments on the draft staff analysis (p. 3, fn. 6) assert that this block text is not a direct quotation from *Leger*. The passage is accurately cited.)

Moreover, the Legislature does not require school districts and community college districts to employ peace officers. Pursuant to Education Code section 38000:[17]

> [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 peace officers is an entirely discretionary activity on the part of all school districts. Claimant acknowledges this point in written comments dated December 24, 2003:

> The legislature has not directly specified how the constitutional duty to provide safe schools is to be accomplished. They left this decision to local agencies who have first hand knowledge of what is necessary for their respective communities. Whether to satisfy this duty by the utilization of a school district police department or by contracting with another local agency to provide the service is a local decision based upon the historical needs of that community.[18]

Claimant's essential argument is that once a school district has decided to provide a service in a particular manner, in this case providing safe schools by operating a police department, the local determination should not be disturbed, and any mandates that then follow are reimbursable. This analysis does not comport with the case law the Commission must follow when making a mandate determination. 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):

> [I]f a school district elects to participate in or continue participation in any underlying *voluntary* education-related funded program, the district's obligation

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[17] Formerly numbered Education Code section 39670; derived from 1959 Education Code section 15831.

[18] Claimant's comments, page 26.

> to comply with the notice and agenda requirements related to that program does not constitute a reimbursable state mandate. [Footnote omitted.]
>
> We therefore reject claimants' assertion that merely because they participate in one or more of the various education-related funded programs here at issue, the costs they incurred in complying with program conditions have been legally compelled and hence constitute reimbursable state mandates. We instead agree with the Department of Finance, and with *City of Merced, supra,* 153 Cal.App.3d 777, that *the proper focus under a legal compulsion inquiry is upon the nature of claimants' participation in the underlying programs themselves.*[19] [Emphasis added.]

The Court also 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.]

In addition, the Court found:

> … As we explain *post,* part III.A.3.a., however, the underlying program statutes at issue in this case (with one possible exception--see *post,* pt. III.A.3.b.) make it clear that school districts retain the discretion not to participate in any given underlying program--and, as we explain *post,* footnote 22, the circumstance that the notice and agenda requirements of these elective programs were enacted *after* claimants first chose to participate in the programs does not make claimants' choice to continue to participate in those programs any less voluntary.[20]

Likewise, the claimant's local decision to provide its own police department and thus requiring itself to comply with both prior and later-enacted laws impacting the operation of law enforcement agencies does not make compliance with those laws *reimbursable* state mandates.

The decision of the California Supreme Court interpreting the issue of voluntary or compelled underlying programs is highly relevant to this test claim. However, claimant argues *Department of Finance* "was limited by the court to the facts presented."[21] The Commission disagrees and finds that the Commission is not free to disregard clear statements of the California Supreme Court on the grounds that they are dicta. In *Hubbard v. Superior Court* (1997) 66 Cal.App.4th 1163, 1168–1169, the court explains why even a footnote from a California Supreme Court decision cannot be dismissed as dicta:

> The prosecution brushes aside the above language as dicta and an incorrect statement of the law. ¶ … ¶ Mr. Witkin has summarized the distinction between

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

[20] *Id.* at page 743, footnote 12.

[21] Claimant's comments, page 35.

the holding of a case and dictum as follows: "The *ratio decidendi* is the principle or rule which constitutes the ground of the decision, and it is this principle or rule which has the effect of a precedent. It is therefore necessary to read the language of an opinion in the light of its facts and the issues raised, to determine (a) which statements of law were necessary to the decision, and therefore binding precedent, and (b) which were arguments and general observations, unnecessary to the decision, i.e., dicta, with no force as precedents. (Citations.)" (9 Witkin, Cal. Procedure (3d ed. 1985) Appeal, § 783, pp. 753; see also *Trope v. Katz* (1995) 11 Cal.4th 274, 287, 45 Cal.Rptr.2d 241, 902 P.2d 259.)

Footnote 14 of *Izazaga* must be read in connection to the text to which it is appended. … Footnote 14 cannot reasonably be construed as being unnecessary to the *Izazaga* opinion.

Thus, the ruling of respondent court violates the well-known rule articulated in *Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450, 455, 20 Cal.Rptr. 321, 369 P.2d 937. The Court of Appeal, the appellate department of the superior court, and the trial courts are required to follow the "statements of law" of the California Supreme Court. These "statements of law" "... must be applied wherever the facts of a case are not fairly distinguishable from the facts of the case in which ... [the California Supreme Court has] declared the applicable principle of law." (*People v. Triggs* (1973) 8 Cal.3d 884, 106 Cal.Rptr. 408, 506 P.2d 232, 891.)

"*Even if properly characterized as dictum, statements of the Supreme Court should be considered persuasive.* (Citation.)" (*United Steelworkers of America v. Board of Education* (1984) 162 Cal.App.3d 823, 835, 209 Cal.Rptr. 16.) Twenty years ago, Presiding Justice Otto M. Kaus gave some sage advice to trial judges and intermediate appellate court justices: *Generally speaking, follow dicta from the California Supreme Court.* (*People v. Trice* (1977) 75 Cal.App.3d 984, 987, 143 Cal.Rptr. 730.) That was good advice then and good advice now. Unfortunately, this advice was lost upon respondent court. [Emphasis added.]

When the Supreme Court has conducted a thorough analysis of the issues or reflects compelling logic, its dictum should be followed. (*United Steelworkers of America v. Board of Education, supra,* 162 Cal.App.3d at p. 835, 209 Cal.Rptr. 16.) The language of footnote 14 in *Izazaga* was carefully drafted. It was not "... inadvertent, ill-considered or a matter lightly to be disregarded." (*Jaramillo v. State of California* (1978) 81 Cal.App.3d 968, 971, 146 Cal.Rptr. 823; see also *In re Brittany M.* (1993) 19 Cal.App.4th 1396, 1403, 24 Cal.Rptr.2d 57.)

In *Department of Finance,* the Court stated:

We conclude, contrary to the Court of Appeal, that claimants are not entitled to reimbursement under the circumstances presented here. *Our conclusion is based on the following determinations*: First, *we 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 the* notice and agenda *provisions are mandatory elements of* education-related *programs in which claimants have participated, without regard to whether a*

> *claimant's participation in the underlying program is voluntary or compelled.* Second, we conclude that as to eight of the nine underlying funded programs here at issue, claimants have not been legally compelled to participate in those programs, and hence cannot establish a reimbursable state mandate as to those programs based upon a theory of legal compulsion.[22] [Emphasis added.]

Thus, the Court's statements regarding discretion and legal compulsion in finding a reimbursable state-mandated program cannot be dicta, because the conclusion is premised on those assessments. And, as established in *Hubbard*, even if language is properly characterized as dicta, statements of the California Supreme Court are persuasive and should be followed.

Claimant also argues that the controlling case law is the decision in *City of Sacramento v. State of California* (1990) 50 Cal.3d 51.[23] In *Department of Finance*, the California Supreme Court, when considering the practical compulsion argument raised by the school districts, reviewed its earlier decision in *City of Sacramento*.[24] The *City of Sacramento* case involved test claim legislation that extended mandatory coverage under the state's unemployment insurance law to include state and local governments and nonprofit corporations. The state legislation was enacted to conform to a 1976 amendment to the Federal Unemployment Tax Act, which required for the first time that a "certified" state plan include unemployment coverage of employees of public agencies. States that did not comply with the federal amendment faced a loss of a federal tax credit and an administrative subsidy.[25] The local agencies, knowing that federally mandated costs are not eligible for state subvention, argued against a federal mandate. The local agencies contended that article XIII B, section 9 requires clear legal compulsion not present in the Federal Unemployment Tax Act.[26] The state, on the other hand, contended that California's failure to comply with the federal "carrot and stick" scheme was so substantial that the state had no realistic "discretion" to refuse. Thus, the state contended that the test claim statute merely implemented a federal mandate and that article XIII B, section 9 does not require strict legal compulsion to apply.[27]

The Supreme Court in *City of Sacramento* concluded that although local agencies were not strictly compelled to comply with the test claim legislation, the legislation constituted a federal mandate. The Supreme Court concluded that because the financial consequences to the state and its residents for failing to participate in the federal plan were so onerous and punitive, and the consequences amounted to "certain and severe federal penalties" including "double taxation" and other "draconian" measures, the state was mandated by federal law to participate in the plan.[28]

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[22] *Department of Finance v. Commission on State Mandates, supra*, 30 Cal.4th at page 731.

[23] Claimant's comments, pages 32-34.

[24] *Department of Finance, supra*, 30 Cal.4th at pages 749-751.

[25] *City of Sacramento, supra*, 50 Cal.3d at pages 57-58.

[26] *Id.* at page 71.

[27] *Ibid.*

[28] *Id.* at pages 73-76.

The California Supreme Court applied the same analysis in the *Department of Finance* case and found that the practical compulsion finding for a state mandate requires a showing of "certain and severe penalties" such as "double taxation" and other "draconian" consequences. The Court stated the following:

> Even assuming, for purposes of analysis only, that our construction of the term "federal mandate" in *City of Sacramento* [citation omitted], applies equally in the context of article XIII B, section 6, for reasons set below we conclude that, contrary to the situation we described in that case, claimants here have not faced "certain and severe … penalties" such as "double … taxation" and other "draconian" consequences . . .[29]

The Commission finds that there is no evidence of "certain and severe penalties" or other "draconian" consequences here. Requiring those community college and K-12 school districts operating police departments on their campuses to either discontinue their historical practice or to absorb the costs of complying with the new Penal Code statute does not in and of itself impose the kind of "certain and severe penalties" described by the California Supreme Court. Nor does claimant provide adequate evidence that those districts that have opted to operate their own law enforcement agencies are practically compelled to continue to do so in order to provide safe schools.

Thus, pursuant to statutory law, school districts and community college districts are neither legally compelled to initially form their own police departments, nor to continue to provide their own police departments and employ peace officers. That decision is solely a local decision. Pursuant to the California Supreme Court, any statutory duties imposed by Penal Code section 148.6 that follow from such voluntary underlying activities do not impose a reimbursable state mandate. In conclusion, the test claim legislation is not subject to article XIII B, section 6 of the California Constitution for school district peace officer employers, and school districts are not eligible claimants for the test claim statutes.

Prior Commission Decisions

Claimant also argues that the Commission has previously approved reimbursement for school peace officers, and to change now would be "arbitrary and unreasonable," citing a list of mandate claims: *Peace Officer Procedural Bill of Rights* (CSM-4499, decision adopted Nov. 30, 1999); *Threats Against Peace Officers* (CSM-96-365-02, Apr. 24, 1997); *Health Benefits for Peace Officers' Survivors* (97-TC-25, Oct. 26, 2000); *Law Enforcement Sexual Harassment Training* (97-TC-07, Sept. 28, 2000); *Photographic Record of Evidence* (98-TC-07, Oct. 26, 2000); *Law Enforcement College Jurisdiction Agreements* (98-TC-20, Apr. 26, 2001); and *Sex Offenders: Disclosure by Law Enforcement Officers* (97-TC-15, Aug. 23, 2001.)[30]

Preliminarily, the Commission only specifically referenced school districts as eligible claimants in three of the seven Statements of Decision named by claimant.[31] In the remainder, the determination that school districts were eligible claimants was made in the parameters and

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[29] *Department of Finance, supra,* 30 Cal.4th at page 751.

[30] Claimant comments, pages 29-31.

[31] CSM-4499, CSM-96-365-02 and 98-TC-20.

guidelines and was not supported by any legal analysis or conclusion in the respective Statements of Decision.

Regardless, prior Commission decisions are not controlling in this case. Since 1953, the California Supreme Court has held that the failure of a quasi-judicial agency to consider prior decisions is *not* a violation of due process and does not constitute an arbitrary action by the agency. (*Weiss v. State Board of Equalization* (1953) 40 Cal.2d 772.) In *Weiss*, the plaintiffs brought mandamus proceedings to review the refusal of the State Board of Equalization to issue them an off-sale beer and wine license at their premises. Plaintiffs contended that the action of the board was arbitrary and unreasonable because the board granted similar licenses to other businesses in the past. The California Supreme Court disagreed with the plaintiffs' contention and found that the board did *not* act arbitrarily. The Court stated, in pertinent part, the following:

> [P]laintiffs argument comes down to the contention that because the board may have erroneously granted licenses to be used near the school in the past it must continue its error and grant plaintiffs' application. That problem has been discussed: Not only does due process permit omission of reasoned administrative opinions but it probably also permits substantial deviation from the principle of stare decisis. Like courts, agencies may overrule prior decisions or practices and may initiate new policy or law through adjudication. (*Id*. at 776.)

In 1989, an Attorney General's opinion, citing the *Weiss* case, agreed that claims previously approved by the Commission have no precedential value. Rather, "[a]n agency may disregard its earlier decision, provided that its action is neither arbitrary nor unreasonable [citing *Weiss, supra*, 40 Cal.2d at 777]." (72 Ops.Cal.Atty.Gen. 173, 178, fn. 2 (1989).)

Thus, prior Commission decisions are not controlling here. Rather, the merits of each test claim must be analyzed individually. Commission decisions under article XIII B, section 6 are not arbitrary or unreasonable as long as the decision strictly construes the Constitution and the statutory language of the test claim statute, and does not apply section 6 as an equitable remedy. (*City of San Jose, supra,* 45 Cal.App.4th at pages 1816-1817; *County of Sonoma, supra,* 84 Cal.App.4th at pages 1280-1281.) The analysis in this test claim complies with these principles, particularly when recognizing the recent California Supreme Court statements on the issue of voluntary versus compulsory programs that the Commission must now follow. Claimant correctly asserts that the Commission must have a rational or compelling reason for deviating from prior decisions. Following controlling case law is such a reason. In addition, the Commission followed this same analysis in its most recent decision regarding the issue of school districts as eligible claimants for peace officer test claims.[32]

[32] The Statement of Decision on *Peace Officer Personnel Records: Unfounded Complaints and Discovery* (00-TC-24, 00-TC-25, 02-TC-07, 02-TC-08) was adopted on September 25, 2003. This decision denied reimbursement for two test claims on behalf of school district peace officer employers filed by Santa Monica Community College District.

CONCLUSION

The Commission concludes that Penal Code section 148.6, as added or amended by Statutes 1995, chapter 590, Statutes 1996, chapter 586, and Statutes 2000, chapter 289, is not subject to article XIII B, section 6 of the California Constitution in regard to this test claimant, and thus does not constitute a reimbursable state-mandated program for school districts. No legal determination is made regarding the test claim statutes as they apply to city and county peace officer employers.