BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

IN RE TEST CLAIM ON: Labor Code Section 3212.1; Statutes 1982, Chapter 1568; Statutes 1984, Chapter 114; Statutes 1988, Chapter 1038; Statutes 1989, Chapter 1171; Statutes 1999, Chapter 595; Statutes 2000, Chapter 887; Statutes 1999, Chapter 595, Statutes 2000, Chapter 887; Filed on February 27, 2003; By Santa Monica Community College District, Claimant.	No. 02-TC-15 *Cancer Presumption (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 July 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 July 29, 2004. Leo Shaw appeared on behalf of the claimant, Santa Monica Community College District. Thomas Todd 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 to deny this test claim by a vote of 5-0.

BACKGROUND

This case addresses an evidentiary presumption given to certain firefighters and peace officers in workers compensation cases. Normally, before an employer is liable for payment of workers compensation benefits, the employee must show that the injury arose out of and in the course of employment, and that the injury was proximately caused by the employment. The burden of proof is normally on the employee to show proximate cause by a preponderance of the evidence.[1]

The Legislature eased the burden of proving industrial causation for certain public employees that provide vital and hazardous services by establishing a series of

[1] Labor Code sections 3202.5 and 3600. Labor Code section 3202.5 defines preponderance of the evidence as such evidence, "when weighed with that opposed to it, has more convincing force and the greater probability of truth. When weighing the evidence, the test is not the relative number of witnesses, but the relative convincing force of the evidence."

presumptions.[2] In 1982, the Legislature enacted Labor Code section 3212.1, which provided a limited presumption, easing the burden of proving industrial causation for specified firefighters that developed cancer during employment. In 1989, certain peace officers were also given the cancer presumption. In these cases, there was a presumption that the cancer arose out of and in the course of employment, and the employer was liable for full hospital, surgical, and medical treatment, disability indemnity, and death benefits, if the firefighter or peace officer could show that:

- He or she was exposed, while in the service of the department or unit, to a known carcinogen as defined by the International Agency for Research on Cancer, or as defined by the director; and that
- The carcinogen is reasonably linked to the disabling cancer.

Labor Code section 3212.1 further provided that the presumption of industrial causation was disputable and could be controverted by the employer by other evidence that the cancer was caused by non-industrial factors.[3]

Following the enactment of Labor Code section 3212.1, the courts struggled with the employee's burden of proving that the carcinogen was reasonably linked to the cancer. In *Zipton v. Workers' Compensation Appeals Board*[4], the survivors of a firefighter, who died at age 39 of metastatic undifferentiated epithelial cancer, were held ineligible for workers compensation benefits because the nature of the diagnosis made it impossible to reasonably link the carcinogens and the cancer. Metastatic cancer is a secondary cancer growth that migrates from the primary site of the disease to another part of the body. The primary site of the disease was unknown.[5] The court stated the following about the reasonable link requirement:

> While the legislative history reveals an intent on the part of the Legislature to ease the burden of proof of industrial causation by removing the barrier of proximate cause, in application a reasonable link requirement is no less than the logical equivalent of proximate cause. Moreover, we discern that the requirement was precipitated by a fear of financial doom [by self-insured state and local agencies], but that this fear may be unfounded.
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> In summary, it may be that there is no purpose to be served by the reasonable link requirement. If indeed metastatic cancer, primary site unknown, is a common medical diagnosis in cancer cases, and therefore

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[2] See, Labor Code sections 3212, 3212.1 – 3212.7, and 3213.

[3] The courts have described the rebuttable presumption as follows: "Where facts are proven giving rise to a presumption …, the burden of proof shifts to the party, against whom it operates [i.e., the employer], to prove the nonexistence of the presumed fact, to wit, an industrial relationship." (*Zipton v. Workers' Compensation Appeals Board* (1990) 218 Cal.App.3d 980, 988, fn. 4.)

[4] *Zipton, supra,* 218 Cal.App.3d 980.

[5] *Id*. at page 991.

> results in a pattern of defeating cancer claims of firefighters and police officers by requiring a burden of proof which is medically impossible to sustain, the Legislature may wish to reexamine the reasonable link requirement.[6]

In a case after *Zipton*, the First District Court of Appeal noted that Labor Code section 3212.1 does not provide the same level of presumption enumerated in other presumption statutes. Rather, Labor Code section 3212.1 contained a "limited and disputable presumption."[7] The court also disagreed with the interpretation in *Zipton* that the reasonable link standard was the same as the proximate cause standard. The court held the following:

> We hold that more is required under section 3212.1 than the mere coincidence of exposure and cancer. But a showing of proximate cause is not required. Rather, if the evidence supports a reasonable inference that the occupational exposure contributed to the worker's cancer, then a "reasonable link" has been shown, and the disputable presumption of industrial causation may be invoked.[8]

In 1999, the Legislature amended Labor Code section 3212.1 (Stats. 1999, ch. 595) to address the court's criticism of the reasonable link standard in *Zipton*.[9] The test claim statute, as amended in 1999, eliminates the employee's burden of proving that a carcinogen is reasonably linked to the cancer before the presumption that the cancer arose out of and in the course of employment is triggered. Thus, the employee need only show that he or she was exposed, while in the service of the department or unit, to a known carcinogen as defined by the International Agency for Research on Cancer, or as defined by the director, for the presumption of industrial injury to arise.

The employer still has a right to dispute the employee's claim. But, when disputing the claim, the burden of proving that the carcinogen is not reasonably linked to the cancer has been shifted to the employer. Labor Code section 3212.1, subdivision (d), as amended in 1999, now states the following:

> The cancer developing or manifesting itself in these cases shall be presumed to arise out of and in the course of the employment. This presumption is disputable and may be controverted by evidence that the primary site of the cancer has been established and that the carcinogen to which the member has demonstrated exposure is not reasonably linked to the disabling cancer. Unless so controverted, the appeals board is bound to find in accordance with the presumption.

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[6] *Id.* at page 990.

[7] *Riverview Fire Protection District v. Workers' Compensation Appeals Board* (1994) 23 Cal.App.4th 1120, 1124.

[8] *Id.* at page 1128.

[9] Assembly Floor Analysis on Assembly Bill 539, dated September 8, 1999.

The 1999 test claim statute also specifies that leukemia is included as a type of cancer for which the presumption of industrial injury can apply.

Finally, the 1999 test claim statute retroactively applies the amendments to section 3212.2 to workers compensation claims filed or pending on January 1, 1997. Labor Code section 3212.1, subdivision (e), states that "[t]he amendments to this section enacted during the 1999-2000 Regular Session shall apply to claims for benefits filed or pending on or after January 1, 1997, including, but not limited to, claims for benefits filed on or after that date that have previously been denied, or that are being appealed following denial."

In 2000, the Legislature amended the test claim statute (Stats. 2000, ch. 887) to extend the cancer presumption to peace officers in an arson-investigating unit, as defined in Penal Code section 830.37, subdivisions (a) and (b).

Prior Test Claim Decisions on Labor Code Section 3212.1

In 1982, the Board of Control approved a test claim on Labor Code section 3212.1, as originally added by Statutes 1982, chapter 1568 (*Firefighter's Cancer Presumption*). The parameters and guidelines authorize insured local agencies and fire districts to receive reimbursement for increases in workers compensation premium costs attributable to Labor Code section 3212.1. The parameters and guidelines also authorize self-insured local agencies to receive reimbursement for staff costs, including legal counsel costs, in defending the section 3212.1 claims, and benefit costs including medical costs, travel expenses, permanent disability benefits, life pension benefits, death benefits, and temporary disability benefits paid to the employee or the employee's survivors.

In 1992, the Commission adopted a statement of decision approving a test claim on Labor Code section 3212.1, as amended by Statutes 1989, chapter 1171 (*Cancer Presumption – Peace Officers*, CSM 4416.) The parameters and guidelines authorize reimbursement to local law enforcement agencies that employ peace officers defined in Penal Code sections 830.1 and 830.2 for the same costs approved in the Board of Control decision in the *Firefighter's Cancer Presumption* test claim.

On May 27, 2004, the Commission adopted a statement of decision denying a test claim on Labor Code section 3212.1, as amended by Statutes 1999, chapter 595, Statutes 2000, chapter 887 (*Cancer Presumption for Law Enforcement and Firefighters*, CSM 01-TC-19.) The Commission found that the express language of Labor Code section 3212.1 does not impose any state-mandated requirements on local agencies. Rather, the decision to dispute this type of workers compensation claim and prove that the injury is non-industrial remains entirely with the local agency, as it has since Labor Code section 3212.1 was enacted in 1982.

Claimant's Position

The claimant contends that the test claim legislation constitutes a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514. The claimant asserts that school districts and community college districts are eligible to receive reimbursement for the following activities:

- Develop policies and procedures to handle claims by district police officers.
- Pay additional costs of claims caused by the shifting of the burden of proof of the cause of the cancer from the police officer employee to the district.
- Pay additional costs for insurance premiums.
- Training police officer employees to take precautionary measures to prevent cancer on the job.
- Review claims dating back to January 1, 1997, to determine whether the cancer arose out of or in the course of employment.
- Pay previously denied claims dating back to January 1, 1997, for those claims that the district cannot meet the new burden of proof as required by Labor Code section 3212.1.

Position of the Department of Finance

The Department of Finance filed comments on June 10, 2003, concluding that the test claim legislation may create a reimbursable state-mandated program.

COMMISSION FINDINGS

The courts have found that article XIII B, section 6 of the California Constitution[10] recognizes the state constitutional restrictions on the powers of local government to tax and spend.[11] "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."[12] A test claim statute or executive order may impose a reimbursable state-mandated program if it orders or commands a local agency or school

[10] 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."

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

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

district to engage in an activity or task.[13] 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.[14]

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.[15] 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 legislation.[16] Finally, the newly required activity or increased level of service must impose costs mandated by the state.[17]

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.[18] 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."[19]

Issue 1: Are school districts and community college districts eligible claimants for this test claim?

For the reasons provided below, the Commission finds that school districts and community college districts are not eligible claimants for this test claim because the test

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[13] *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.)

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

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

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

[17] *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.

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

[19] *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.

claim statute, Labor Code section 3212.1, does not provide a rebuttable cancer presumption to employees of a school district or community college district.

Labor Code section 3212.1, subdivision (a), lists the employees that are given the cancer presumption. Labor Code section 3212.1, subdivision (a), states the following:

> This section applies to active firefighting members, whether volunteers, partly paid, or fully paid, of all of the following fire departments: (1) a fire department of a city, county, city and county, district, or other public municipal corporation or political subdivision, (2) a fire department of the University of California and the California State University, (3) the Department of Forestry and Fire Protection, and (4) county forestry or firefighting department or unit. This section also applies to peace officers, as defined in Section 830.1, subdivision (a) of Section 830.2, and subdivisions (a) and (b) of Section 830.37, of the Penal Code, who are primarily engaged in active law enforcement activities.

The claimant has not claimed any costs relating to firefighting employees. Declarations from Santa Monica Community College District and Clovis Unified School District, which were filed by the claimant with the test claim, allege costs for district police officers only.[20] In addition, the state has not expressly authorized school districts and community college districts to employ firefighters, and has not mandated that they do so. Thus, there is no evidence in the record that school districts or community college districts employ firefighters that are subject to the test claim statute.

Moreover, based on the plain language of Labor Code section 3212.1, the peace officers employed by school districts and community college districts do not receive the rebuttable cancer presumption enjoyed by peace officers employed by state and local agencies. Labor Code section 3212.1, subdivision (a), expressly provides that the cancer presumption applies to the peace officers defined in Penal Code sections 830.1, 830.2, subdivision (a), and 830.37, subdivisions (a) and (b). These code sections provide the definition for peace officers employed by counties, cities, port district police, the district attorney, the Department of Justice, the California Highway Patrol, the University of California, the California State University, the Department of Fish and Game, the Department of Parks and Recreation, and the Department of Forestry and Fire Protection, the Department of Alcoholic Beverage Control, and the Board of Directors of the California Exposition and State Fair.

Peace officers employed by school districts and community college districts are defined in Penal Code section 830.32.[21] The test claim statute does not expressly apply to peace officers defined in Penal Code section 830.32.

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[20] Exhibit A to Item 9, July 29, 2004 Commission Hearing.

[21] Penal Code section 830.32 states the following:

> The following persons are peace officers whose authority extends to any place in the state for the purpose of performing their primary duty or when making an arrest pursuant to Section 836 as to any public offense with respect to which there is immediate danger to person or property, or

In response to the draft staff analysis, the claimant contends that that Penal Code section 830.32 is not relevant to the analysis. The claimant argues that Penal Code section 830.1, subdivision (a), a statute that is expressly listed in the cancer presumption test claim statute, defines a peace officer to include school district police officers since it includes in the definition of a peace officer a "police officer of a *district*, including police officers of the San Diego Unified Port District Harbor Police, authorized by statute to maintain a police department." (Emphasis added.) The claimant further argues that Penal Code section 830.32 simply expands the officer's jurisdiction to make an arrest, with regard to any public offense posing an immediate danger to person or property, to any place in the state.[22]

The claimant is misreading these statutes. The word "district" in Penal Code section 830.1 is not expressly defined. However, based on the rules of statutory construction, Penal Code section 830.1 does not define a peace officer to include school district peace officers, as alleged by the claimant.

Under the rules of statutory construction, the courts are required to construe a statute in light of the entire statutory scheme. When two statutes touch upon a common subject, the two statutes must be harmonized in such a way that no part of either statute becomes surplusage. The courts must presume that the Legislature intended every word, phrase, and provision to have meaning and to perform a useful function.[23]

In the present case, both Penal Code sections 830.1 and 830.32 define *different* classes of peace officers and establish their authority. Penal Code section 830.1 was originally added by the Legislature in 1968. Had the Legislature intended to include school district peace officers in Penal Code section 830.1, then its later enactment of Penal Code section 830.32 in 1989, which specifically defines peace officers to include those officers

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of the escape of the perpetrator of that offense, or pursuant to Section 8597 or 8598 of the Government Code. Those peace officers may carry firearms only if authorized and under terms and conditions specified by their employing agency.

(a) Members of a California Community College police department appointed pursuant to Section 72330 of the Education Code, if the primary duty of the police officer is the enforcement of the law as prescribed in Section 72330 of the Education Code.

(b) Persons employed as members of a police department of a school district pursuant to Section 38000 of the Education Code, if the primary duty of the police officer is the enforcement of the law as prescribed in Section 38000 of the Education Code.

(c) Any peace officer employed by a K-12 public school district or California Community College district who has completed training as prescribed by subdivision (f) of Section 832.3 shall be designated a school police officer.

[22] Exhibit E to Item 9, July 29, 2004 Commission Hearing.

[23] *Garcia v. McCutchen* (1997) 16 Cal.4th 469, 476.

employed by school districts and community college districts, would be "surplusage."[24] The court must presume that the Legislature intended Penal Code section 830.32 to have some effect, and that the Legislature did not indulge in an idle act.[25]

This interpretation is consistent with a 2003 Attorney General Opinion, which, in part, defined the authority for community college district police officers.[26] The opinion identifies Penal Code section 830.32 as the statute defining community college police officers as "peace officers" under the Penal Code.[27]

Furthermore, to the extent that there is any conflict between Penal Code section 830.1 and 830.32, the rules of statutory construction require that the more specific statute, Penal Code section 830.32, which defines school district police officers as peace officers, govern the more general statute, Penal Code section 830.1, which defines "district" officers as peace officers.[28]

Finally, the absence of Penal Code section 830.32 in the test claim statute is relevant. The test claim legislation was amended in 1989 to provide specified peace officers with a cancer presumption in workers compensation cases. Penal Code section 830.32 was added by the Legislature to define school district peace officers to the definition of "peace officers" in 1989. It must be presumed that the Legislature was aware of related laws and intended to maintain a consistent body of statutes.[29] Thus, had the Legislature intended to give school district peace officers the presumption provided by the test claim statute, the Legislature would have specifically listed Penal Code section 830.32 in Labor Code section 3212.1.

Therefore, the Commission finds that school districts and community college districts are not eligible claimants for this test claim because the test claim statute, Labor Code section 3212.1, does not provide a rebuttable cancer presumption to employees of a school district or community college district.

Issue 2: Is the test claim legislation subject to article XIII B, section 6 of the California Constitution?

Assuming for the sake of argument only that Labor Code section 3212.1 applied to peace officers or firefighters employed by school districts and community college districts, the test claim statute is still not subject to article XIII B, section 6 because state law does not

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[24] See footnote 22, ante.

[25] *Sondino v. Union Commerce Bank* (1977) 71 Cal.App.3d 391, 395.

[26] 86 Ops. Cal. Atty. Gen. 112, 113.

[27] *Ibid.*

[28] *Miller v. Superior Court* (1999) 21 Cal.4th 883, 895, where the Supreme Court held that a specific provision relating to a particular subject will govern in respect to that subject, as against a general provision, although the latter, standing alone, would be broad enough to include the subject to which the more particular provision relates.

[29] *Fuentes v. Workers Compensation Appeals Board* (1976) 16 Cal.3d 1, 7.

mandate school districts and community college districts to employ peace officers and firefighters.

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."[30] 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,"[31] the Constitution does not require school districts to operate fire and police departments 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 district fire and police departments independent of the public safety services provided by the cities and counties a school district serves. [32]

In *Leger v. Stockton Unified School District*, the court interpreted the safe schools provision of the California Constitution as declaring only a general right *without* specifying any rules for its enforcement.[33] The claimant argues that the Commission should ignore the portion of the court's ruling that the safe schools provision does not specify any rules because the *Leger* case is a tort case where the plaintiff was seeking monetary damages for the alleged negligent actions of the school district. The claimant further argues that the Commission should follow the *Leger* court's statements that "all branches of government are required to comply with constitutional directives," such as providing a safe school through police services.[34]

But, the claimant is mischaracterizing the court's holding. When interpreting the safe schools provision of the Constitution, the court was applying rules of constitutional interpretation. The court stated the following:

> The following rule has been consistently applied in California to determine whether a constitutional provision is self-executing in the sense of providing a specific method for its enforcement: " 'A constitutional provision may be said to be self-executing if it supplies a sufficient rule by means of which the right given may be enjoyed and protected, or the duty imposed may be enforced; and *it is not self-executing when it merely indicates principles, without laying down rules by means of which those*

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

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

[32] 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.)

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

[34] Exhibit E, Bates pages 175-178, to Item 9, July 29, 2004 Commission Hearing.

> *principles may be given the force of law.'"* [Citations omitted.] (Emphasis added.)[35]

The court further held that the safe schools provision of the Constitution is not self-executing because it does not lay down rules that are given the force of law.

> [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.][36]

Furthermore, the court reviewed the ballot materials for the safe schools provision and found that the provision was intended to be implemented through reforms in criminal laws.[37] For example, the court noted in footnote 3 of the decision that the Legislature implemented the safe schools provision by establishing procedures in the Penal Code by which non-students can gain access to school grounds and providing punishments for violations. The Legislature also enacted the "Interagency School Safety Demonstration Act of 1985" to encourage school districts, county offices of education, and law enforcement to develop and implement interagency strategies, programs, and activities to improve school attendance and reduce the rates of school crime and vandalism.[38] But, as shown below, the Legislature has not implemented the safe schools provision by requiring school districts to employ peace officers and firefighters.

Accordingly, the California Constitution does not require or mandate school districts, through the safe schools provision, to employ peace officers and firefighters.

Finally, although the Legislature authorizes school districts and community college districts to employ peace officers, the Legislature does not require school districts and community college districts to employ peace officers. Pursuant to Education Code section 38000:[39]

> [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

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[35] *Leger, supra,* 202 Cal.App.3d at page 1455

[36] *Ibid.*

[37] *Id.* at page 1456.

[38] *Id.* at page 1456, footnote 3.

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

> 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 2003, the California Supreme Court decided *Department of Finance v. Commission on State Mandates* and found that "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."[40] 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.]

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 are not required by the state to employ peace officers and firefighters. That decision is a local decision.[41] Thus, the activity of disputing a worker's compensation claim filed by a firefighter or peace officer employee flows from the discretionary decision to employ such officers and does not impose a reimbursable state mandate.

In response to the draft staff analysis, the claimant contends that staff has misconstrued the *Department of Finance* case. The claimant alleges that the controlling authority on the subject of legal compulsion of a state statute is *City of Sacramento v. State of*

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

[41] The claimant admits that the decision to have a police department and employ peace officers is a local decision. Exhibit E, bates pages 196-197, to Item 9, July 29, 2004, the claimant states the following:

> The people and the legislature has [sic] not directly specified how the constitutional duty to provide safe schools is to be accomplished. They left this decision to local agencies who [sic] have first hand knowledge of what is necessary for their respective communities. It is a local decision.

California.[42, 43] The claimant, however, is mischaracterizing the Supreme Court's holding *Department of Finance*.

In *Department of Finance*, the school districts argued that the definition of a state mandate should not be limited to circumstances of strict legal compulsion, but, instead, should be controlled by the court's broader definition of a federal mandate in the *City of Sacramento* case.[44] In *City of Sacramento*, the court analyzed the definition of a federal mandate and determined 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, even the federal legislation did not legally compel the participation.[45]

The Supreme Court in *Department of Finance*, however, found it "unnecessary to resolve whether [its] reasoning in *City of Sacramento* [citation omitted] applies with regard to the proper interpretation of the term 'state mandate' in section 6 of article XIII B."[46] Although the school districts argued that they had no true choice but to participate in the school site council programs, the court state that, assuming for purposes of analysis only, the *City of Sacramento* case applies to the definition of a state mandate, the school districts did not face "certain and severe penalties" such as "double taxation" and other "draconian" consequences."[47]

Here, even assuming that the *City of Sacramento* case applies, there is no evidence in the law or in the record that school districts would face "certain and severe" penalties" such as "double taxation" or other "draconian" consequences if they don't employ peace officers and firefighters.

Finally, the claimant argues that the staff analysis is arbitrary and unreasonably since it is not consistent with the Commission's prior decisions approving school district peace officer cases, such as the *Peace Officer Procedural Bill of Rights* (CSM 4499).[48] The claimant acknowledges the California Supreme Court's decision in *Weiss v. State Board of Education*, which held that the failure of a quasi-judicial agency to consider prior decisions is not a violation of due process as long as the action is not arbitrary or unreasonable.[49] But, claims that "staff has offered no compelling reason … why mandated activities of district peace officers were reimbursable in previous rulings and

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[42] *City of Sacramento v. State of California* (1990) 50 Cal.3d 51.

[43] Exhibit E, Bates pages 201-205, to Item 9, July 29, 2004 Commission Hearing.

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

[45] *City of Sacramento, supra,* 50 Cal.3d at pages 73-76.

[46] *Id*. at page 751.

[47] *Id*. at pages 751-752.

[48] Exhibit E, Bates pages 199-201, to Item 9, July 29, 2004 Commission Hearing.

[49] *Weiss v. State Board of Equalization* (1953) 40 Cal.2d 772, 777.

now activities of district peace officers are not reimbursable, other than what appears to be a whim or current fancy."[50]

As explained above, the compelling reason is the California Supreme Court's decision in *Department of Finance*, which affirmed the 1984 decision of *City of Merced*, and requires the Commission to determine whether the claimant's participation in the underlying program is voluntary or compelled. All of the previous Commission decisions cited by the claimant were decided before the Supreme Court issued the *Department of Finance* decision.[51]

Therefore, 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.

CONCLUSION

Based on the foregoing, the Commission concludes that school districts and community college districts are not eligible claimants for this test claim because the test claim statute, Labor Code section 3212.1, does not provide a rebuttable cancer presumption to employees of a school district or community college district.

Assuming for the sake of argument only that Labor Code section 3212.1 applied to peace officers or firefighters employed by school districts and community college districts, the Commission further concludes that Labor Code section 3212.1 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.

[50] Exhibit E, Bates page 201, to Item 9, July 29, 2004 Commission Hearing.

[51] *City of Merced v. State of California* (1984) 153 Cal.App.3d 777 was a case brought by the city seeking reimbursement for eminent domain statutes under the former Senate Bill 90, Revenue and Taxation Code, provisions. The claim was not brought pursuant to article XIII B, section 6 of the California Constitution.