

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

Test Claim on:

Public Utilities Code Sections 21670 and
21670.1

Chapter 644, Statutes of 1994,
Chapter 66, Statutes of 1995,
Chapter 91, Statutes of 1995.

Filed on December 30, 1995,
By the County of San Bernardino, Claimant.

No. CSM-4507

Airport Land Use Commissions Plans

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

STATEMENT OF DECISION

The attached Statement of Decision of the Commission on State Mandates was hereby
adopted in the above entitled matter on July 31, 1997.

This Decision shall become effective on August 7, 1997.

Date: November 5, 1997

PAULA HIGASHI, Executive Director

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STATEMENT OF DECISION

BACKGROUND AND FINDINGS OF FACT

Issue: Do sections 21670 and 21760.1 of the Public Utilities Code, as amended by Chapter 644, Statutes of 1994 (Chapter 644/94), Chapter 66, Statutes of 1995 (Chapter 66/95) and Chapter 91, Statutes of 1995 (Chapter 91/95), impose a reimbursable state mandated program, within the meaning of section 6, article XIII B of the California Constitution and Government Code section 17514, upon local agencies, by requiring them to establish conventional/regular airport land use commissions (pursuant to section 21670), or to designate alternative procedures to satisfy the state mandated requirement for accomplishing airport land use planning (pursuant to section 21670. 1)?

San Bernardino County, claimant, alleges that the provisions of Public Utilities Code, sections 21670 and 21670. 1, as amended by Chapter 644, Statutes of 1994, Chapter 66, Statutes of 1995, and Chapter 91, Statutes of 1995; impose a new program or higher level of service within the meaning of section 6, article XIII B of the California Constitution.

This test claim was heard by the Commission on State Mandates on February 27, 1997 and June 26, 1997, during regularly scheduled hearings, and was unanimously approved. On July 31, 1997, the Commission unanimously approved the proposed statement of decision, as clarified and presented by Commission staff.

Ms. Marcia Faulkner, County of San Bernardino, and Mr. James Apps, Department of Finance, appeared at these hearings. Evidence both oral and documentary was introduced, the test claim was submitted, and the vote was taken.

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

Public Utilities Code Section 21670, as amended by Chapter 644, Statutes of 1994 reads in relevant part:

"(a) The Legislature hereby finds and declares that:

- (1) It is in the public interest to provide for the orderly development of each public use airport in the state and the area surrounding these airports so as to promote the overall goals and objectives of the California airport noise standards adopted pursuant to Section 21669 and to prevent the creation of new noise and safety problems.
- (2) It is the purpose of this article to protect public health, safety and welfare by ensuring the orderly expansion of airports and the adoption of land use measures that minimize the public's exposure to excessive noise and safety hazards within areas around public airports to the extent that these areas are not already devoted to incompatible uses.

"(b) In order to achieve the purposes of this article, every county in which there is located an airport which is served by a scheduled airline shall establish an airport land use commission. Every county, in which there is located an airport which is not served by a scheduled airline, but is operated for the benefit of the general public, *shall* establish an airport land use commission, except that the board of supervisors of the county may, after consultation with the appropriate airport operators and affected local entities and after a public hearing, adopt a resolution finding that there are no noise, public safety, or land use issues affecting any airport in the county which require the creation of a commission and declaring the county exempt from that requirement. The board ~~may~~ shall, in this event, transmit a copy of the resolution to the Director of Transportation. . . ." [Italics added for emphasis; strikeout and underlining denote Chapter 644/94 amendments.]

The Commission recognized that the foregoing statutory language, by using the term "shall," directs the creation of airport land use commissions in certain specified counties, namely:

- every county, in which there is located an airport which is served by a scheduled airline, and
- every county, in which there is located an airport which is not served by a scheduled airline, but is operated for the benefit of the general public.

The Commission found that *immediately prior* to the enactment of Public Utilities Code section 21670, as amended by Chapter 644/94, the establishment or creation of an airport land use commission was permissive under Public Utilities Code section 21670 of Chapter 59, Statutes of 1993. In sum, the statutory provisions formerly provided that every county, as specified therein, "may" establish an airport land use commission.

The Commission further found that the creation of airport land use commissions under section 21670 of Chapter 644/94 imposed a new program when compared to Chapter 59, Statutes of 1993 (the legislation in effect immediately before the enactment of the test claim legislation).

Although dating back to 1967¹, the Legislature required the creation and maintenance of airport land use commissions upon every county in which there is located an airport which is served by a scheduled airline, and in 1984², required the same duty upon every county, in which there is located an airport which is not served by a scheduled airline, but is operated for the benefit of the general public, nevertheless, these past requirements do not affect the Commission's finding of a new program with respect to the test claim legislation. To determine whether a new program has been imposed, the test claim legislation is compared with the existing law in effect immediately before the effective date of the test claim legislation. (*Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830.) In essence, the effect of Chapter 59, Statutes of 1993, was to convert the long standing requirement of forming and maintaining airport land use commissions to a permissive standard and, thereby, caused a gap in the continuity of this state obligation during 1993-1994.

However, the Commission found that the development of the comprehensive land use plans itself is *not* a new state mandated program or activity, because those plans have long been required by Public Utilities Code section 21675, and were to have been completed by June 30, 1991 (or June 30, 1992, under specified circumstances), pursuant to Public Utilities Code section 21675. 1, subdivision (a).

Public Utilities Code section 21670. 1, as added by Chapter 644, Statutes of 1994, reads, in relevant part:

"(a) Notwithstanding any other provision of this article, if the board of supervisors and the city selection committee of mayors in the county each makes a determination by a majority vote that proper land use planning can be accomplished through the actions of an appropriately designated body, then the body so designated shall assume the planning responsibilities of an airport land use commission as provided for in this article, and a commission need not be formed in that county.

(b).....

"(c) (1) Notwithstanding subdivisions (a) and (b), and subdivision (b) of Section 21670, if the board of supervisors of a county and each affected city in that county each makes a determination that proper land use planning pursuant to this article can be accomplished pursuant to this subdivision, then a commission need not be formed in that county.

(2) If the board of supervisors of a county and each affected city makes a determination that proper land use planning may be accomplished and a commission is not formed pursuant to paragraph (1) of this subdivision, that county and the appropriate affected cities having jurisdiction over an airport, subject to the review and approval by the Division of Aeronautics of the department, shall do all of the following:

- (A) Adopt processes for the preparation, adoption, and amendment of the comprehensive airport land use plan for each airport that is served by a scheduled airline or operated for the benefit of the general public.
- (B) Adopt processes for the notification of the general public, landowners, interested groups, and other public agencies regarding the preparation, adoption, and amendment of the comprehensive airport land use plans.
- (C) Adopt processes for the mediation of disputes arising from the preparation, adoption, and amendment of the comprehensive airport land use plans.

¹ Public Utilities Code section 21670, Chapter 852, Statutes of 1967.

² Public Utilities Code section 21670, Chapter 1117, Statutes of 1984.

(D) Adopt processes for the amendment of general and specific plans to be consistent with the comprehensive airport land use plans.

(E) Designate the agency that shall be responsible of ³ the preparation, adoption, and amendment of each comprehensive airport land use plan.

(3) The Division of Aeronautics of the department shall review the processes adopted pursuant to paragraph (2), and shall approve the processes if the division determines that the processes are consistent with the procedure required by this article and will do all of the following:

(A) Result in the preparation, adoption, and implementation of plans within a reasonable amount of time.

(B) Rely on height, use, noise, safety, and density criteria that are compatible with airport operations, as established by this article, and referred to as the Airport Land Use Planning Handbook, published by the division, and any applicable federal regulations including but not limited to, Part 77 (commencing with Section 77. 1) of Title 14 of the Code of Federal Regulations.

(C) Provide adequate opportunities for notice to, review of, and comment by the general public, landowners, interested groups, and other public agencies.

(4) If the county does not comply with the requirements of paragraph (2) within 120 days, then the plan and amendments shall not be considered adopted pursuant to this article and a commission shall be established within 90 days of the determination of noncompliance by the division and a plan shall be adopted pursuant to this article within 90 days of the establishment of the commission.

"(d) A commission need not be formed in a county that has contracted for the preparation of comprehensive airport land use plans with the Division of Aeronautics under the California Aids to Airport Program (Title 21 (commencing with Section 4050) of the California Code of Regulations), Project Ker-VAR 90-1, and that submits all of the following information to the Division of Aeronautics for review and comment that the county and the cities affected by the airports within the county, as defined by the plans:

- (1) Agree to adopt and implement the comprehensive airport plans that have been developed under contract.
- (2) Incorporated the height, use, as part of the general and specific plans for the county and each affected city.
- (3) If the county does not comply with this subdivision on or before May 1, 1995, then a commission shall be established in accordance with this article.

"(e) (1) A commission need not be formed in a county if all of the following conditions are met:

- (A) The county has only one public use airport that is owned by a city.
- (B) (i) The county and the affected city adopt the elements in paragraph (2) of subdivision (d), as part of their general and specific plans for the county and the affected city.
(ii) The general and specific plans shall be submitted, upon adoption, to the Division of Aeronautics. If the county and the affected city do not submit the elements specified in paragraph (2) of subdivision (d), on or before May 1, 1996, then a commission shall be established in accordance with this article."

In view of the foregoing statutory provisions, the Commission found that when satisfying the Public Utilities Code section 21670 directive to establish an airport land use commission, these specified counties may employ alternative procedures. Upon a determination, by prescribed local officials that the mandatory land use planning functions can be carried out properly, a conventional/regular type of airport land use commission under section 21670 need not be formed.

³ So in chaptered copy

The Commission further found that once a section 21670-type of airport land use commission is not formed, one of the alternative planning approaches from the state approved menu of such planning structures under section 21670.1 *must* be chosen.

The Commission further found that under the law in effect immediately before the test claim legislation, there was no obligation upon counties to establish an airport land use commission under Public Utilities Code section 21670 and, accordingly, no similar obligation to employ alternative procedures to comply with state prescribed requirements for accomplishing airport land use planning. (Former Public Utilities Code section 21670, Chapter 59, Statutes of 1993 and Public Utilities Code section 21670. 1, Chapter 10 1 8, Statutes of 1987.)

Thus, the Commission found that with the enactment of Chapter 644/94, that certain specified counties are *obligated to either* establish conventional/regular airport land use commissions (pursuant to section 21670), or designate alternative procedures to satisfy the state mandated requirement for accomplishing airport land use planning (pursuant to section 21670. 1).

Issue: Does the existence of subdivision (f) of Public Utilities Code section 21671.5, which authorizes an airport land use commission to assess and collect a fee, preclude the Commissions's finding of reimbursable costs mandated by the state?

Section 17556, subdivision (d) of the Government Code provides:

"The [C]ommission [on State Mandates] shall not find costs mandated by the state, as defined in Section 17514, in any claim submitted by a local agency or school district, if, after a hearing, the commission finds that:

“

"(d) The local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service.

Section 21671.5, subdivision (f), of the Public Utilities Code states:

"The [airport land use] commission may establish a schedule of fees necessary to comply with this article. Those fees shall be charged to the proponents of actions, regulations, or permits, shall not exceed the estimated reasonable cost of the service, and shall be imposed pursuant to Section 66016 of the Government Code. Except as provided in subdivision (g), after June 30, 1991, a commission which has not adopted the comprehensive land use plan required by Section 21675 shall not charge fees pursuant to this subdivision until the commission adopts the plan."⁴

⁴ Subdivision (g) permits fees to be charged until June 30, 1992, in the absences of a completed plan, under prescribed circumstances. Section 66016 of the Government Code pertains to fee setting procedures to be followed.

The Department of Finance has pointed to the fee authority of airport land use commissions, as well as their subventions from the Department of Transportation, as bases to find that a county has no reimbursed costs mandated by the state.

The claimant responded that there are not "proponents of action, regulations, or permits" sufficient to charge for the entire cost of airport land use commission activities.

In 1991, the question of airport land use commission fee authority was addressed by the Commission in its revision of the *Airport Land Use Parameters and Guidelines* (CSM-4231). The Commission adopted the following provisions in these parameters and guidelines regarding fee authority under the heading of "Offsetting Savings And Other Reimbursements:"

"PUC section 21671.5, subdivision (f), allows Airport Land Use Commissions to establish fee schedules. Therefore, any fees *chargeable* to a proponent of an action, regulation or permit for reviewing and processing and for providing copies of land use plans as required by PUC section 21675, subdivision (d), must be deducted. " (Emphasis added.)

In the instant test claim, based on the administrative record, the Commission noted the county's fee authority under subdivision (f) of Public Utilities Code section 21751.5 is not sufficient to make a finding that no reimbursable costs mandated by the state are associated with the state mandated activities set forth in the test claim. Further, the Commission recognized that the fee authority spelled out in subdivision (f) does not offset all of the costs incurred in performing the state mandated activities set forth in Public Utilities Code sections 21670 and 21670.1.

Late Filing

The Commission observed a late filing from the Department of Transportation (Caltrans) dated July 29, 1997. Caltrans first contended that it is an error for the Commission on State Mandates to make decisions regarding the cost of (re)establishing an Airport Land Use Commission (ALUC) since it is beyond the facts of the test claim submitted by the County of San Bernardino.

The test claim legislation required those counties with an airport served by a scheduled airline, and those counties with an airport not served by a scheduled airline but operated for the benefit of the general public, to either (1) form an ALUC (section 21670); (2) designate a body as the ALUC (section 21670.1, subdivision (a)(1); or (3) not form a commission, but choose an alternative process under section 21670.1, subdivision (c). The test claimant, the County of San Bernardino, chose not to establish, or reestablish, an ALUC. Instead the test claimant chose the alternative process under section 21670.1, subdivision (c).

Although the test claimant chose not to (re)establish an ALUC under section 21670, the Commission found that it was appropriate to address the cost of (re)establishing an ALUC under section 21670. Pursuant to Government Code section 17521 and the *City of San Jose v. State of California* (1996) 45 Cal. App.4th 1802, 1807, the Commission found that the adjudication of a test claim governs all subsequent claims based on the same statute. Therefore, the test claim legislation is not limited to the unique issues

addressed by the test claimant, but is analyzed *as a whole*. Thus, the Commission found that it was appropriate to address the cost of (re)establishing an ALUC under section 21670 even though the test claimant did not choose this approach under the required legislation.

Caltrans next contended that “local land use planning” is not prescribed by sections 21670 or 21670.1 and, thus, such costs should not be included as a reimbursable program. The Commission agreed with this contention finding that the development of the comprehensive land use plan itself is not a new state mandated program or activity since those plans have long been required by Public Utilities Code section 21675.

Finally, Caltrans contended that the County of San Bernardino is requesting duplicative charges and costs for analysis of legislation and workshop attendance not required by the test claim statute. The Commission found that this issue is more appropriately handled under the parameters and guidelines.

CONCLUSION

Based on the foregoing, the Commission approves this test claim and concludes that the provisions of Public Utilities Code sections 21670 and 21670.1, as amended by Chapter 644, Statutes of 1994, and Chapter 66, Statutes of 1995, and Chapter 91, Statutes of 1995, impose a new program or higher level of service in an existing program upon local agencies within the meaning of section 6, article XIII B of the California Constitution and Government Code section 17514 because certain specified counties are *obligated to either* establish conventional/regular airport land use commissions (pursuant to section 21670), or designate alternative procedures to satisfy the state mandated requirement for accomplishing airport land use planning (pursuant to section 21670.1).

Further, the Commission determines that the following are reimbursable state mandated activities:

- Those costs incurred after January 1, 1995, the operative date of the test claim legislation, for the establishment or re-establishment of an airport land use commission, or one of the alternative approaches, pursuant to sections 21670 and 21670.1 of the Public Utilities Code. However, the land use plan required by Public Utilities Code section 21675 is not reimbursable because it was to have been adopted *prior* to the operative date of Chapter 644/94.

Further, the Commission determines that

- The fee authority under subdivision (f) of section 21671.5 of the Public Utilities Code, constitutes an offset against the reimbursement for costs claimed under sections 21670 and 21670.1 of the Public Utilities Code and that shall be reflected in the parameters and guidelines.
- Any state reimbursement of mandated activities determined under this test claim are to be paid from the Aeronautics Account, State Transportation Fund, pursuant to the recommendation of the Department of Finance.