BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE TEST CLAIM ON: Penal Code Sections 914, 933, 933.05, and 938.4; Statutes 1996, Chapter 1170; Statutes 1997, Chapter 443; Statutes 1998, Chapter 230; Filed on June 30, 1999; By County of San Bernardino, Claimant.	No. 98-TC-27 ***Grand Jury Proceedings*** STATEMENT OF DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ. ; TITLE 2, CALIFORNIA CODE OF REGULATIONS, DIVISION 2, CHAPTER 2.5, ARTICLE 7 ***(Adopted on June 27, 2002)***

STATEMENT OF DECISION

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

This Decision shall become effective on June 28, 2002.

Paula Higashi

PAULA HIGASHI, Executive Director

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STATEMENT OF DECISION

The Commission on State Mandates (Commission) heard and decided this test claim on May 23, 2002, during a regularly scheduled hearing. Barbara Redding and Mark Cousineau appeared for claimant, San Bernardino County. Susan Geanacou and Sarah Mangum appeared on behalf of the Department of Finance. Allan Burdick appeared on behalf of the California State Association of Counties.

At the hearing testimony was given, 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., article XIII B, section 6 of the California Constitution and related case law.

The Commission approved this test claim by a 6-O vote.

BACKGROUND

Claimant, County of San Bernardino, submitted a test claim alleging a reimbursable state mandate for counties to (1) implement policies and procedures and develop an initial training program for grand jurors; (2) adjust policies and procedures; (3) train new staff; (4) conduct the training program and adjust it for each grand jury; (5) appear before the grand jury to verify the accuracy of findings before releasing them; (6) meet with the grand jury when they are the subject of an investigation; (7) provide suitable meeting rooms and other support; (8) prepare responses to grand jury findings; and (9) submit a copy of the report and responses to the State Archivist.

The claim arises from enactments or amendments to Penal Code sections 914, 933, 933.05, and 938.4; Statutes 1996, chapter 1170; Statutes 1997, chapter 443; and Statutes 1998, chapter 230.

Article I, section 24 of the California Constitution requires one or more grand juries to be drawn and summoned at least once per year in each county. California's grand juries, unlike some other American jurisdictions, act as citizen watchdog groups investigating and reporting

on activities of local government. The grand jury sits for a one-year period and at the end of its tenure issues final reports, including findings and recommendations based on its investigations of the various local governments subject to its jurisdiction. Specifically, the grand jury is authorized to investigate and report on the operations, accounts and records of the county and any city, special district or joint powers agency within the county.' As for school districts, Penal Code section 933.5 has been interpreted to limit the grand jury's investigation (other than into public offenses and misconduct) to the district's financial affairs that affect the assessing and taxing powers of the district.[2] For purposes of this document, these local governments are collectively referred to as "local entities. "

In performing these duties, the grand jury acts independently through its members and committees to examine documents and interview persons. The grand jury's final report is submitted to the presiding judge, and if he or she finds that the report is in compliance with law, the report is submitted to the subject public agencies or officers. The grand jury is a judicial body and an instrumentality of the courts. It is a part of the court by which it is convened and is under that court' s control .[3]

In 1996, 1997, and 1998, the Legislature enacted the test claim legislation that added or amended Penal Code statutes relating to grand jury operations. These changes (1) expand the required response of local entities to a grand jury finding; (2) require appearance of the local entity that is the subject of an investigation for purposes of reading or discussing the findings of the grand jury related to that entity; (3) require the local superior court to ensure the grand jury receives specified training; (4) delete language that excluded grand jury findings on fiscal matters; (5) require a grand jury meeting be held with the local entity that is the subject of the investigation unless the court considers it detrimental; (6) require a county to support grand jury operations and provide a suitable room for its use; and (7) require the county clerk to forward a copy of the grand jury report and public agency responses to the State Archivist.

ANALYSIS & FINDINGS

In order for a statute to impose a reimbursable state mandated program under article XIII B, section 6 of the California Constitution and Government Code section 175 14, the statutory language must direct or obligate an activity or task upon local governmental agencies. If the statutory language does not mandate or require local governments to perform a task, then compliance with the test claim statute is within the discretion of the local entity and a reimbursable state mandated program does not exist.

In addition, the required activity or task must constitute a new program or create an increased or higher level of service over the former required level of service. The California Supreme Court has defined the word "program" subject to article XIII B, section 6 of the California Constitution as a program that carries out the governmental function of providing a service to the public, or laws which, to implement a state policy, impose unique requirements on local governments and do not apply generally to all residents and entities in the state. To determine if the "program" is

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[1] Penal Code sections 925- 925a.

[2] *Board of Trustees of Calaveras Unified School Dist. v. Leach* (1968) 258 Cal.App.2d 281.

[3] *People v. Superior Court of Santa Barbara County (1975) 13* Cal.3d 430, 438.

new or imposes a higher level of service, a comparison must be made between the test claim legislation and the legal requirements in effect immediately before the enactment of the test claim legislation. Finally, the new program or increased level of service must impose "costs mandated by the state."[4]

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

In order for the test claim legislation to be subject to article XIII B, section 6 of the California Constitution, the legislation must constitute a "program." The California Supreme Court, in the case of *County of Los Angeles v. State of California',* defined "program" within the meaning of article XIII B, section 6 as a program that carries out the governmental function of providing a service to the public, or laws which, to implement a state policy, impose unique requirements on local governments and do not apply generally to all residents and entities in the state. Only one of these findings is necessary to trigger article XIII B, section 6.[6]

The test claim legislation concerns the program of grand jury services and training. Article I, section 24 of the California Constitution requires one or more grand juries to be drawn and summoned at least once a year in each county. Grand juries act as citizen watchdog groups investigating and reporting on activities of local government. Thus, grand jury services and training in California is a peculiarly governmental function administered by local government as a service to the public. Moreover, the test claim legislation imposes unique requirements upon local governments that do not apply generally to all residents and entities of the state. Therefore, the Commission finds that grand jury services and training constitutes a "program" within the meaning of section 6 of article XIII B of the California Constitution.[7]

Issue 2: Does the test claim legislation impose a new program or higher level of service on local entities within the meaning of article XIII B, section 6 of the California Constitution?

To determine if the "program" is new or imposes a higher level of service, a comparison must be made between the test claim legislation and the legal requirements in effect immediately before the enactment of the test claim legislation. Each portion of the test claim is discussed below.

Local Entity Comments: Statutes 1996, chapter 1170 (Pen. Code, § 933.05, subds. (a) & (b)) requires the local entity responding to a grand jury's finding to either agree with the finding, or disagree in whole or in part with an explanation. The responding entity must report one of the following actions; (1) recommendation implemented; (2) recommendation not yet implemented, but will be in the future, to include a time frame for implementation;

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[4] Article XIII B, section 6 of the California Constitution; *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56; *Carmel Valley Fire Protection Dist. v. State of California* (1987) 190 Cal.App.3d 521, 537; *City of Sacramento v. State of California* (1990) *50* Cal.3d 51, 66; *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 835; Government Code section 17514.

[5] *County of Los Angeles, supra,, 43* Cal.3d 46, 56.

[6] *Carmel Valley Fire Protection Dist., supra,* 190 Cal.App.3d at p. 537.

[7] *Long Beach Unified School Dist. v. State of California.* (1990) 225 Cal.App.3d 155, 172.

(3) recommendation requires further analysis with a timeframe; and (4) recommendation will not be implemented, with an explanation.

Under preexisting law, every elected county officer or agency head for which the grand jury has responsibility is required to comment within 60 days on findings and recommendations pertaining to matters under the control of that county officer or agency head and any agency or agencies which that officer or agency head supervises or controls.' According to the legislative history of chapter 1170, often the comment submitted was "no comment. "[9]

Finance's April 23, 2002 comments concur that the local entity's requirement to respond is a new program or higher level of service.

Thus, by expanding the comment requirement for the responding local entity, the Commission finds this activity constitutes a new program or higher level of service within the meaning of article XIII B, section 6.

Fiscal Matters in Report: Statutes 1997, chapter 443, deletes the clause "other than fiscal matters" from Penal Code section 933, subdivision (a), so that the grand jury's final report may pertain to fiscal matters. Prior to chapter 443, grand jury reports were not to include findings and reconnnendations on fiscal matters. Claimant states that this results in an additional type of finding (and an increase in the quantity of findings) to which local entities must respond.

Finance originally commented that this does not place a state mandate requirement on the grand jury to specifically include fiscal matters in its findings, since such inclusion is at the grand jury's discretion. Finance's April 23, 2002 comments concur that this is a new program or higher level of service.

The Commission finds that additional local entity responses as a result of the grand jury's inclusion of fiscal matters in its report constitute a new program or higher level of service. If the grand jury makes a finding regarding local entity matters, the local entity must comment on the finding according to the requirements of Penal Code section 933.05, subdivision (a) and (b) (the expanded comment provisions of Statutes 1996, chapter 1170 discussed above). Statutes 1997, chapter 443 enlarges the comment requirement for the responding local entity by expanding the jurisdiction of the grand jury.

Appearance by Subject: Statutes 1996, chapter 1170 authorizes the grand jury to request appearance by the subject local entity to read and discuss the grand jury's findings in order to verify those findings before the report is released (Pen. Code, § 933.05, subd. (d)). There is no penalty for nonappearance.

Under preexisting law, a grand jury may subpoena any witness whose testimony is material in an investigation. [10] Thus, a grand jury was already authorized to summon an affected agency to

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[8] Penal Code section 933, subdivision (c).

[9] Assembly Floor Analysis, Senate Bill No. 1457 (1995 – 1996 Reg. Sess.) page 2.

[10] Penal Code section 939.2.

discuss any matters concerning an investigation. The test claim statute authorized the grand jury to discuss the investigation with the subject under less formal, non-subpoena auspices.

Finance contends that, since either a county board of supervisors or a superior court can create a grand jury, it is a local entity that, in its discretion, can require another local agency to appear for its findings discussion. Thus, Finance concludes these appearances by the subject do not constitute a state mandate, but rather authority for one local entity to impose a requirement on another local entity. Finance's April 23, 2002 comments state the same position, reasoning that the statue provides authority for but does not require the subject of the investigation to participate in a meeting.

The Comrnission finds that the appearance authorized by Penal Code section 933.05, subdivision (d), is not a required activity. It confers authority on the grand jury with which the subject local government entity may choose, in its discretion, not to comply. Because under this statute local entities are not required to appear before the grand jury to discuss and verify the grand jury's findings, the Commission finds this activity is not a new program or higher level of service within the meaning of article XIII B, section 6.

Training: Statutes 1997, chapter 443 adds subdivision (b) of Penal Code section 9 14, which requires the court to provide training for the grand jury addressing report writing, interviews, and the grand jury's scope of authority and responsibility. Preexisting law requires the superior court to give new grand jurors ". . .information as it deems proper . . . as to their duties."[11]

Finance originally commented that chapter 443 is a requirement on the court rather than the local agency. Since trial court funding is a state responsibility,[12] Finance said this is not a reimbursable mandate. Finance's April 23, 2002 comments conclude that training grand jurors is a new program or higher level of service.

Although trial court funding is the state's fiscal responsibility, grand jury expenses and operations are expressly excluded from the definition of "court operations."[13] Expenses of the grand jury are not paid by the courts, but by the general fund of the county in which it sits.[14] Therefore, although chapter 443 reads as a mandate on the court, it effectively requires counties to fund the training because the grand jury is the county's fiscal responsibility. Training is also a new requirement. Therefore, the Connnission finds that training a grand jury that considers or takes action on civil matters (that addresses, at a minimum, report writing, interviews, and the scope of the grand jury's responsibility and statutory authority) is a new program or higher level of service for counties within the meaning of article XIII B, section 6.

Consultation: Chapter 443's training provision discussed above requires "the court, in consultation with the district attorney, the county counsel, and at least one former grand juror"

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[11] Penal Code section 914, subdivision (a).

[12] Finance cites the Trial Court Reform Act, Statutes 1997, chapter 850.

[13] Government Code section 77003, subdivision (a)(7).

[14] See Penal Code sections 93 1 and 890.1.

to "ensure that a grand jury that considers or takes action on civil matters receives training.. . " Thus, this consultation provision must be considered separately from the training discussed above. There was no preexisting requirement except that cited above to give new grand jurors ". . .information. . . as to their duties. "[15]

Finance originally argued that the requirement to consult on training is a burden solely on the court, since the district attorney, the county counsel, and grand juror are not under a specified requirement to meet and can choose not to provide such consultation. Finance's April 23, 2002 comments concur that consultation is a new program or higher level of service.

The statute says, "the court, in consultation with the district attorney, the county counsel, and at least one former grand juror, shall ensure that a grand jury . . . receives training. "[16] The Cornmission reads the "shall" to apply not only to the court, but also to the local officials mentioned. Therefore, the Commission finds that the requirement to consult with county employees and grand jurors[17] is also a new program or higher level of service for counties within the meaning of article XIII B, section 6.

Meeting with Subject: Statutes 1997, chapter 443 (Pen. Code, § 933.05, subd. (e)) requires the grand jury to meet with the subject of an investigation regarding that investigation unless the court determines the meeting would be detrimental. Prior to chapter 443, the grand jury could request a meeting with the subject before the release of the report (see discussion of Statutes 1996, chapter 1170 above). Finance commented both originally and on April 23, 2002 that the costs associated with this item would be a new program or higher level of service.

The Commission finds that this meeting requirement is a new activity for local entities and thus a new program or higher level of service within the meaning of article XIII B, section 6.

Meeting Room and Support: Chapter 443 (Pen. Code, § 938.4) also requires the superior court to arrange for a suitable meeting room and other support as the court determines necessary for the grand jury. Under preexisting law, the grand jury is merely directed to retire to a private room for inquiry. [18]

Finance originally contended that to the extent that the court provides a room and support from its own budget, the facility and room costs would not be a state mandate but would be funded by the state through trial court funding. Finance's April 23, 2002 position is that providing a meeting room and support is a new program or higher level of service.

As discussed above under "training," grand jury expenses and operations fall outside trial court funding. [19] Thus, whether the court or the county provides a room and support for a grand jury, doing so is the county's fiscal responsibility. [20] Therefore, the Cornmission finds

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[15] Penal Code section 914, subdivision (a).

[16] Penal Code, section 914, subdivision (b).

[17] Grand jurors are paid from the county general fund. Penal Code section 890.1.

[18] Penal Code section 915.

[19] Government Code section 77003, subdivision (a)(7).

[20] Penal Code sections 93 1 and 890.1.

that providing a room and support for a grand jury constitutes a new program or higher level of service for counties within the meaning of article XIII B, section 6.

Finance originally stated that if the grand jury were created by a county board of supervisors pursuant to section 905.5 of the Penal Code, the creation would be at local discretion and the meeting room and support costs would be the responsibility of the appointing county. However, section 905 .5 does not enable a county to create a grand jury. Rather, this section merely authorizes the county to impanel the grand jury to meet during the calendar year rather than the fiscal year. Moreover, each county is required to convene a grand jury at least annually by article I, section 24 of the California Constitution. Thus, Penal Code section 905.5 is not a limitation on this finding.

Copies of Report and Responses: Statutes 1998, chapter 230 (Pen. Code, § 933, subd. (b)) requires the county clerk to forward a true copy of the grand jury report and agency responses to the State Archivist. Preexisting law merely requires a copy of the report be submitted to the presiding judge of the superior court and placed on file with the county clerk.[21] The Commission finds that chapter 230 results in a new program or higher level of service for counties within the meaning of article XIII B, section 6.

In summary, the Commission finds the following constitute a new program or higher level of service within the meaning of article XIII B, section 6:

- Providing comments to the grand jury report (Stats. 1996, ch. 1170; Pen. Code, § 933.05, subds. (a) & (b)) and including fiscal matters in the report. (Stats. 1997, ch. 443; Pen. Code, § 933, subd. (a)).
- Providing training and consultation to the grand jury. The training addresses, at a minimum, report writing, interviews, and the scope of the grand jury's responsibility and statutory authority. (Stats. 1997, ch. 443; Pen. Code, § 914, subd. (b)).
- Meeting with the subject of an investigation (Stats. 1997, ch. 443; Pen. Code, § 933.05, subd. (e)).
- Providing a meeting room and support for the grand jury (Stats. 1997, ch. 443; Pen. Code, § 938.4).
- Forwarding copies of the grand jury report and responses to the State Archivist (Stats. 1998, ch. 230; Pen. Code, § 933, subd. (b)).

Issue 3: Does the test claim legislation impose "costs mandated by the state" within the meaning of Government Code sections 17514 and 17556?

In order for the activities listed above to impose a reimbursable, state mandated program under section 6, article XIII B of the California Constitution, two criteria must apply. First, the activities must impose costs mandated by the state.[22] Second, no statutory exceptions as listed in Government Code section 17556 can apply. Government Code section 175 14 defines "costs mandated by the state" as follows:

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[21] Penal Code section 933.

[22] *Lucia Mar Unified School Dist., supra,,* 44 Cal.3d 830, 835. Government Code section 17514.

> . . .any increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, which mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution.

There are two issues raised regarding whether the activities raised by the test claim legislation constitute "costs mandated by the state." First, for two of the activities under Statutes 1997, chapter 443, (grand jury training, and meeting room and other support) the statute says the court or county must absorb the cost from existing resources. Second, Finance maintains that counties that supported Assembly Bill No. 829 (Stats. 1997, ch. 443) should be precluded from obtaining reimbursement pursuant to Government Code section 17556, subdivision (a). These are discussed below.

Costs to be Absorbed: For two of the activities required by Statutes 1997, chapter 443 under which claimant requested reimbursement, the statute says the court or county must absorb the cost from existing resources. Codified as Penal Code section 914, subdivision (c), the court or county is required to absorb the cost of training the grand jury. The court or county is also required to absorb the costs for the activity of arranging for a suitable meeting room and other support as the court determines necessary (Pen. Code, § 938.4). Given this statutory language, the issue is whether these activities result in increased costs mandated by the state under Government Code section 175 14.

Article XIII B, section 6 of the California Constitution requires the state to provide a subvention of funds to reimburse local governments whenever the Legislature or a state agency mandates a new program or higher level of service that result in increased costs for the local governments. Government Code section 17514 was enacted to implement this constitutional provision. The principle of reimbursement was "enshrined in the Constitution to provide local entities with the assurance that state mandates would not place additional burdens on their increasingly limited revenue resources. "[23]

Two cases have held legislative declarations similar to those in chapter 443 unenforceable. In *Carmel Valley Fire Protection District v. State of California,* [24] the court held that "Legislative disclaimers, findings and budget control language are no defense to reimbursement." The Carmel Valley court called such language "transparent attempts to do indirectly that which cannot lawfully be done directly."[25]

Similarly, in *Long Beach Unified School District v. State of California*,[26] the Legislature deleted requested funding from an appropriations bill and enacted a finding that the executive order did not impose a state-mandated local program. The court held that "unsupported legislative disclaimers are insufficient to defeat reimbursement. . . . [The district,] pursuant to

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[23] *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal. App. 4th at 1264.

[24] *Carmel Valley Fire Protection Dist., supra,* 190 Cal.App.3d at p. 521.

[25] *Id.* at p. 541.

[26] *Long Beach Unified School Dist, supra, 225* Cal.App.3d 155.

Section 6, has a constitutional right to reimbursement of its costs in providing an increased service mandated by the state. The Legislature cannot limit a constitutional right. "[27]

Here, the Legislature attempted to limit claimant's reimbursement by inserting language in chapter 443 requiring the county to absorb the costs within existing resources. Training a grand jury and arranging for a suitable meeting room and other support are new activities. There is nothing in the record to suggest that the Legislature repealed other programs, appropriated money for these new activities, or otherwise attempted to mitigate their cost. Therefore, based on the evidence in the record, the Commission finds that the activities of (1) grand jury training and (2) arranging for a suitable meeting room and other support impose costs mandated by the state on counties within the meaning of article XIII B, section 6 and Governrnent Code section 175 14.

Government Code section 17556, subdivision (a) Exception: Finance's original comments maintain that the counties that supported Assembly Bill No. 829 (Stats. 1997, ch. 443) should be precluded from obtaining reimbursement pursuant to Government Code section 17556, subdivision (a).[28] As discussed, chapter 443 requires the following activities: (1) including fiscal matters in the grand jury's report, (Pen. Code, § 933, subd. (a)), (2) providing training and consultation to the grand jury (Pen. Code, § 914, subd. (b)), (3) meeting with the subject of an investigation (Pen. Code, § 933.05, subd. (e)), and (4) providing a meeting room and support for the grand jury (Pen. Code, § 938.4).

Subdivision (a) of section 6 of article XIII B of the California Constitution[29] precludes reimbursement for "Legislative mandates requested by the local agency affected." Government Code section 17556, subdivision (a), defines a "request by the local agency," and prohibits reimbursement if a claim:

> . . . is submitted by a local agency or school district which requested legislative authority for that local agency . . . to implement the program specified in the statute, and that statute imposes costs upon that local agency.. . requesting the legislative authority. A resolution from the governing body or a letter from a delegated representative of the governing body of a local agency.. . which requests authorization for that local agency . . .to implement a given program shall constitute a request within the meaning of this paragraph.

In support of its contention that section 17556 precludes reimbursement for counties that expressed support for Assembly Bill No. 829, Finance submitted copies of supportin g resolutions from twelve counties that passed them while the bill was pending in the Legislature.[30] Most of these resolutions state their salient points as follows:

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[27] Id. at p. 184.

[28] Finance's April 23, 2002 comments were silent on this issue.

[29] Former Revenue and Taxation Code section 2253.2, a legislative history of which appears below, predated this constitutional provision.

[30] Finance submitted letters and/or resolutions from the following counties: Kings, Lassen, Madera, Merced, Nevada, San Benito, San Bernardino, San Luis Obispo, San Mateo, Solano, Tehama, and Tuolumne. Additionally, support resolutions or letters from the following counties are in the Assembly Bill No. 829 file: Alameda, Glenn, Kern, Los Angeles, Mendocino, Sacramento, Santa Clara, Sonoma, Sutter, and Tulare.

> [1] WHEREAS, it is important that civil grand juries be provided with adequate facilities and training to be better equipped to perform governmental oversight functions; and [2] WHEREAS, the county of . . .is a strong advocate of open communication between and among all county affiliated entities as a way to ensure collaboration with the aim of producing a quality work product; and [3] WHEREAS the county supports all efforts to improve the efficient use of tax dollars by all county affiliated agencies; and [4] WHEREAS the county respects the important role of the grand jury and supports efforts to assist in improving its ability to carry out its duties. THEREFORE, BE IT RESOLVED that the County of ** supports the Civil Grand Jury Training, Communication and Efficiency Act of 1997.[31]

When determining the intent of a statute, the first step is to look at the statute's words and give them their plain and ordinary meaning. Where the words of the statute are not ambiguous, they must be applied as written and may not be altered in any way. Moreover, the intent must be gathered from the whole of a statute, rather than from isolated parts or words, in order to make sense of the entire statutory scheme.[32] The Legislature's intent is best deciphered by giving words their plain meanings.[33] If the statute's meaning is without ambiguity, doubt, or uncertainty, the statutory language controls.[34]

The meaning of Government Code section 17556, subdivision (a) meets this test. A local agency or school district must "request" legislative authority. The verb request means, "to make a request to or of; to ask for."[35] The resolutions and letters from counties make no request, but merely support the bill and/or the concepts therein. The word "support" is not synonymous with "request," and the statute is clear: making a "request" is the governing standard to trigger the exception to reimbursement. The Commission finds that Finance's original argument is incorrect and not supported by the plain meaning of section 17556, subdivision (a); and that the resolutions and letters submitted in support of Assembly Bill No. 829 (Stats. 1997, ch. 443) do not constitute a request within the meaning of section 17556, subdivision (a).

If the meaning of a statute cannot be deterrnined from its plan meaning, only then is it correct to refer to its legislative history.[36] For section 17556, even if the meaning were ambiguous on whether local government resolutions that support a bill constitute a request to implement a

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[31] Counties that submitted a resolution that included language different from this are: Alameda (letter of support), Kern (letter of support), Lassen (omitted no. 2 above), Merced (omitted nos. 2 and 3 above), Los Angeles (letter of support), Sacramento (letter of support), San Bernardino (attached an agenda item describing the bill with recommendation to support it, and a memo of support), Santa Clara (letter of support). Some counties submitted more than one letter or resolution.

[32] *County of Los Angeles v. Commission on State Mandates, supra, 43* Cal.3d at *55; Marin Hospital Dist. v. Rothman* (1983) 139 Cal.App. 3d 495, 498-499.

[33] *Roberts v. City of Palmdale* (1993) 5 Cal.4th 363, 375, citing, *Wells Fargo Bank v. Superior Court* (1991) 53 Cal.3d 1082, 1095.

[34] *In re York* (1995) 9 Cal.4th 1133, 1142.

[35] The Merriam-Webster Dictionary (1997) page 627. Even though the plain meaning should be clear, a dictionary definition will sometimes emphasize that clarity.

[36] *In re York, supra,* 9 Cal.4th at p. 1142.

program, its legislative history emphasizes the distinction between requesting and supporting legislation"

Section 17556 originated in Statutes 1977, chapter 1135, also known as Senate Bill No. 90 (1977- 1978 Reg. Sess.), in former Revenue and Taxation Code section 2253 .2.[37] The original bill precluded reimbursement for a "chaptered bill . . .requested by or on behalf of the local agency . . .which desired legislative authority to implement the program specified in the bill." The following year, section 2253.2 was amended by Statutes 1978, chapter 794 (Sen. Bill No. 1490 (1977-1978 Reg. Sess.)). The May 8, 1978 version of Senate Bill 1490 added the definition of request as follows:

> "*For purposes of this paragraph, a resolution from the governing body or a letter from a member or delegated representative of the governing body of a local agency . . . which expresses a desire for and support of legislation to authorize that local agency . . . to implement a given program shall constitute a "request" . . .* " (emphasis added).

However, the June 2 1, 1978 version amended the sentence to be nearly identical[38] to its current form, as follows:

> "For purposes of this paragraph, a resolution from the governing body or a letter from a ~~member or~~ delegated representative of the governing body of a local agency . . . which ~~expresses a desire for and support of legislation to authorize~~ *requests legislative authorization for* that local agency . . .to implement a given program shall constitute a "request". . ." (added italicized text in original).

Rejection of a specific provision contained in an act as originally introduced is most persuasive that the act should not be interpreted to include what was left out.[39] Here, deleting the phrase "expresses a desire for and support of legislation," means that a "request of legislative authorization" should not be interpreted to include an expression of "desire for and support of legislation" because this phrase was left out of the final bill. In other words, the Legislature did not intend to preclude reimbursement for counties or other local entities that support legislation.

Assembly Bill No. 829 was sponsored by the California State Association of Counties (CSAC) as a result of recommendations of a Grand Jury Reform Task Force, which included a wide range of participants, including district attorneys and county counsels.[40] Which county officials participated in the task force, and whether or not they participated on their own initiative or at the behest of their county employers, is outside the record. There is no evidence in the record that individual counties did anything more than express support for Assembly Bill No. 829, which does not trigger the exception under Government Code section 17556, subdivision (a). Further,

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[37] The provisions of Senate Bill No. 90 (1977- 1978 Reg. Sess .) governed the mandates process for the Board of Control, the Commission on State Mandate's predecessor. This former Revenue and Taxation Code section was repealed by Statutes 1988, chapter 160, a code maintenance bill.

[38] The word "legislative" was later amended out of the provision.

[39] *Bollinger* v. *San Diego Civil Service Comm.* (1999) 71 Cal. App. 4th 568, 575.

[40] Lynn Suter, Legislative Advocate, County of Alameda, letter to Senator John Burton, Chair, Senate Committee on Judiciary, June 18, 1997.

there is no evidence in the record that CSAC was a delegated representative of the counties for purposes of requesting the programs in Assembly Bill No. 829.[41]

Additionally, there is no showing that the resolutions offered here even requested authorization for the legislation that was finally enacted. In this case, the county resolutions are broad enough to cover all versions of Assembly Bill No. 829. All versions of the bill addressed the concepts supported in the resolutions: grand jury training, facilities, and communication with the investigated party. Although they expressed support for the bill, the broad, vague nature of the county resolutions further shows that the resolutions did not constitute requested authorization to implement the program specified in chapter 443.

In conclusion, for the reasons stated above, the Commission finds that subdivision (a) of Government Code section 17556 does not bar reimbursement to counties that expressed support for Assembly Bill No. 829 (Stats. 1997, ch. 443). Thus, Statutes 1997, chapter 443 results in costs mandated by the state within the meaning of Government Code section 175 14.

Conclusion aud Recommendation

Based on the foregoing, the Commission concludes that the test claim legislation imposes a partial reimbursable state-mandated program upon local entities within the meaning of section 6, article XIII B of the California Constitution and Government Code section 175 14 for the following activities:

- Providing comments to the grand jury report (Stats. 1996, ch. I 170; Pen. Code, § 933.05, subds. (a) & (b)) and including fiscal matters in the report. (Stats. 1997, ch. 443 ; Pen. Code, § 933, subd. (a)).
- Providing training and consultation to the grand jury. The training addresses, at a minimum, report writing, interviews, and the scope of the grand jury's responsibility and statutory authority. (Stats. 1997, ch. 443; Pen. Code, § 914, subd. (b)).
- Meeting with the subject of an investigation (Stats. 1997, ch. 443; Pen. Code, § 933.05, subd. (e)).
- Providing a meeting room and support for the grand jury (Stats. 1997, ch. 443; Pen. Code, § 938.4).
- Forwarding copies of the grand jury report and responses to the State Archivist (Stats. 1998, ch. 230; Pen. Code, § 933, subd. (b)).

The Commission further finds the following activity does not impose a reimbursable state-mandated program upon local entities within meaning of the applicable authorities:

- Appearance by the subject of an investigation to read and discuss grand jury findings (Stats. 1996, ch. 1170; Pen. Code, § 933.05, subd. (d))

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[41] CSAC, Assembly Bill No.829's sponsor, is a private organization. By its own terms, Government Code section 17556, subdivision (a) only applies to a "local agency or school district," not private organizations (also true of former Revenue and Taxation Code section 2253.2). Finance's interpretation would have the odd result that local entities could not be reimbursed for state mandated programs if they supported the legislation that created the program, or that membership in CSAC could preclude counties from being reimbursed for supporting CSAC-sponsored bills. Section 17556 cannot be reasonably interpreted to chill debate and inhibit the free flow of ideas and communication in the legislative arena.