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**ITEM 4**

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**COMMISSION ON  
STATE MANDATES**

January 20, 2009

Paula Higashi, Executive Director  
 Commission on State Mandates  
 980 Ninth Street, Suite 300  
 Sacramento, CA. 95814

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Re: Surplus Property Advisory Committees 02-TC-36  
 Education Code Sections 17387, 17388, 17389, 17390, 17391  
 Statutes 1982, Chapter 689, Statutes 1984, Chapter 584, Statutes 1986,  
 Chapter 1124,  
 Statutes 1987, Chapter 655, Statutes 1996, Chapter 277  
 Clovis Unified School District, Claimant

**Administration**  
 Terry Bradley, Ed.D.  
*Superintendent*  
 Daniel E. Kaiser, Ed.D.  
*Deputy Superintendent*  
 Michelle Steagall, Ed.D.  
*Chief Curriculum Officer*  
 Steve Ward  
*Associate Superintendent*  
 Janet Young, Ed.D.  
*Associate Superintendent*

Dear Ms. Higashi:

The claimant provides the following comments in response to the Final Staff Analysis.

This test claim alleges reimbursable state-mandated costs for school districts to appoint, supervise, and consult with a surplus property advisory committee to assist in the adoption and implementation of policies and procedures governing the use or disposition of excess school buildings or space in school buildings.

The intent behind the test claim statutes is expressed by the Legislature as follows:

It is the intent of the Legislature that leases entered into pursuant to this chapter provide for community involvement by attendance area at the district level. This community involvement should facilitate making the best possible judgments about the use of excess school facilities in each individual situation. It is the intent of the Legislature to have the community involved before decisions are made about school closure or the use of surplus space, thus avoiding community conflict and assuring building use that is compatible with the community's needs and desires. (Ed. Code, § 17387.)

Additionally, the intent of the bill was to help districts offset revenue losses due to declining enrollment. The revenue from renting unused facilities could be used to supplement the school districts' regular educational program.

Paula Higashi  
Surplus Property  
January 20, 2009

Section 17388 reads: The governing board of any school district may, and the governing board of each school district, prior to the sale, lease, or rental of any excess real property, except rentals not exceeding 30 days, **shall (emphasis added)**, appoint a district advisory committee to advise the governing board in the development of districtwide policies and procedures governing the use or disposition of school buildings or space in school buildings which is not needed for school purposes. (§ 17388.) It is the intent of the Legislature to have the community involved before decisions are made about school closure or the use of surplus space, thus avoiding community conflict and assuring building use that is compatible with the community's needs and desires.

Staff concludes, "The plain language of this single-sentence statute indicates two things. First, that the governing board may form an advisory committee. And second, that prior to the sale, lease, or rental of any excess real property (except rentals not exceeding 30 days) the governing board shall appoint an advisory committee.

As to the first part of the sentence (formation of the committee when there is no excess property), the plain meaning of the word "may" indicates that section 17388 is not mandatory. Claimant contends the advisory committee is mandatory prior to the sale, lease, or rental of any excess real property (except rentals not exceeding 30 days) as required by the second sentence in the state statute.

Staff cites as authority the appellate court decision, *San Lorenzo Valley Community Advocates for Responsible Educ. v. San Lorenzo Valley School District* that involved a school district accused of failing to comply with various statutes in closing two elementary schools. Staff states further, "The court interpreted section 17388 as follows: Given the circumstances here-with no surplus property then proposed to be sold, leased, or rented within the meaning of the statute-the District's use of the committee was discretionary, not mandatory".

As indicated by the following excerpts claimant contends in *San Lorenzo Valley Community Advocates for Responsible Educ. v. San Lorenzo Valley School District* the closing of the schools did not involve surplus property requiring the formation of the advisory committee as stated by the court.

In its statement of decision, the trial court refused to rule on the issues, concluding that the claim was not yet ripe. As the court explained: "Education Code [sections] 17387-[173]90 relate to the creation of an Advisory Committee prior to and relating to the 'sale, lease or rental of excess real property ....' Those circumstances have not yet arisen."

Paula Higashi  
Surplus Property  
January 20, 2009

(42) We agree with the trial court that appellant has no current cognizable claim under the statute. In pertinent part, Education Code section 17388 provides that a school district's governing board "may, and ... prior to the sale, lease, or rental of any excess real property ... shall, appoint a district advisory committee ... ." (§ 17388, italics added.) Given the circumstances here--with no surplus property then proposed to be sold, leased, or rented within the meaning of the statute--the District's use of the committee was discretionary, not mandatory. (See Ed. Code, § 75 ["may" is permissive; "shall" is mandatory].) Because the SPAC was not a statutorily mandated committee, the District was not bound by the statutory requirements for its composition or duties. *San Lorenzo Valley Community Advocates for Responsible Educ. v. San Lorenzo Valley School District*, (2006) 139 Cal. App.4th 1356

Staff additionally concludes ... because there is no legal or practical compulsion for school district governing boards to designate as surplus or transfer (sell, lease or rent) school district property, staff finds that there is no state mandate to perform the activities in the test claim statutes". Claimant contends the failure to sell, lease or rent surplus property would cause economic instability and hardship resulting in practical compulsion for school district governing boards to designate advisory committees which is aligned with the legislative intent schools offset decreased revenues from declining enrollment with the disposition of surplus property.

Claimant previously submitted comments stating, School Districts like private business should not permit the underutilization of district assets. "Migrating populations, changes in the population density of school age children, and other socio-economic conditions dictate the sale or disposal of surplus school property. The decision to act is not discretionary, demographic conditions beyond the control of governing boards dictate those decisions. And once the decision is dictated, the appointment of an advisory committee is a mandated activity for which reimbursement is required".

Based on the above and other information submitted claimant asserts the legislation be approved as a reimbursable mandate.

Respectfully submitted,



Michael Johnston  
Assistant Superintendent

cc: mailing list attached

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**Clovis Unified School District**

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<b>Re:</b> Surplus Property Test Claim	<b>Date:</b> 1/20/09

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• **Comments:**

Ms. Higashi,

Response regarding Surplus Property Advisory Committees Final Staff Analysis.

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Clovis Unified School District  
(559) 327-9127