

COMMISSION ON STATE MANDATES

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January 27, 2015

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Ms. Jill Kanemasu
State Controller's Office
Accounting and Reporting
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And Parties, Interested Parties, and Interested Persons (See Mailing List)

Re: **Decision**

Collective Bargaining and Collective Bargaining Agreement Disclosure, 08-4425-I-16
Government Code Sections 3540-3549.9
Statutes 1975, Chapter 961; Statutes 1991, Chapter 1213
Fiscal Year 2001-2002, 2002-2003, 2003-2004
Los Rios Community College District, Claimant

Dear Ms. Asmundson and Ms. Kanemasu:

On January 23, 2015, the Commission on State Mandates adopted the decision on the above-entitled matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Heather Halsey".

Heather Halsey
Executive Director

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE INCORRECT REDUCTION CLAIM
ON:

Government Code Sections 3540-3549.9

Statutes 1975, Chapter 961; Statutes 1991,
Chapter 1213

Fiscal Years 2001-2002, 2002-2003, 2003-
2004

Los Rios Community College District,
Claimant.

Case No.: 08-4425-I-16

*Collective Bargaining and Collective
Bargaining Agreement Disclosure*

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

(Adopted January 23, 2015)

(Served January 27, 2015)

DECISION

The Commission on State Mandates (Commission) heard and decided this incorrect reduction claim (IRC) during a regularly scheduled hearing on January 23, 2015. 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 unanimously adopted the proposed decision to approve the IRC on consent.

Summary of the Findings

The Commission approves this IRC, finding that the audit of the 2001-2002, 2002-2003, and 2003-2004 fiscal year reimbursement claims was not timely completed by the State Controller's Office (Controller) according to the deadline in Government Code section 17558.5, as amended by Statutes 2004, chapter 890; the audit is therefore void. Pursuant to Government Code section 17551(d) and section 1185.9 of the Commission's regulations, the Commission requests that the Controller reinstate to claimant the \$286,895 incorrectly reduced.

COMMISSION FINDINGS

I. Chronology

- 01/10/03 Los Rios Community College District, (claimant) signed the reimbursement claim for fiscal year 2001-2002¹
- 01/08/04 Claimant signed the reimbursement claim for fiscal year 2002-2003²
- 01/05/05 Claimant signed the reimbursement claim for fiscal year 2003-2004³
- 11/09/05 Controller e-mailed claimant requesting the audit.⁴
- 12/08/05 Controller conducted entrance conference for audit.⁵
- 11/21/07 Controller issued the draft audit report.⁶
- 12/10/07 Claimant submitted comments on the draft audit report.⁷
- 12/12/07 Controller issued the final audit report.⁸
- 02/05/09 Claimant filed this IRC.⁹
- 10/10/14 Commission staff issued draft proposed decision.¹⁰
- 10/20/14 Controller submitted comments on the draft proposed decision.¹¹

II. Background

Collective Bargaining and Collective Bargaining Agreement Disclosure Mandates

On July 17, 1978, the Board of Control, predecessor to the Commission, found that Statutes 1975, chapter 961 imposed a reimbursable state mandate. On October 22, 1980, parameters and guidelines were adopted, which were amended several times. On March 26, 1998, the Commission adopted a second test claim decision on Statutes 1991, chapter 1213.¹² Parameters

¹ Exhibit A, Incorrect Reduction Claim, page 81.

² Exhibit A, Incorrect Reduction Claim, page 143.

³ Exhibit A, Incorrect Reduction Claim , page 172.

⁴ Exhibit A, Incorrect Reduction Claim, page 15.

⁵ Exhibit A, Incorrect Reduction Claim, page 10.

⁶ Exhibit A, Incorrect Reduction Claim, page 61.

⁷ Exhibit A, Incorrect Reduction Claim, pages 75-78.

⁸ Exhibit A, Incorrect Reduction Claim, page 57.

⁹ Exhibit A, Incorrect Reduction Claim.

¹⁰ Exhibit B, Draft Proposed Decision.

¹¹ Exhibit C, State Controller's comments on the draft proposed decision.

¹² Commission on State Mandates, Test Claim Statement of Decision, 97-TC-08.

and guidelines for the two programs were consolidated on August 20, 1998, and were amended again on January 27, 2000.¹³

The reimbursement claims at issue in this IRC were filed for the 2001-2002, 2002-2003, and 2003-2004 fiscal years. At the time the claims were prepared and submitted, the applicable parameters and guidelines were those amended January 27, 2000. These parameters and guidelines authorize reimbursement for costs incurred to comply with sections 3540 through 3549.1, and “regulations promulgated by the Public Employment Relations Board,” including:

- Determination of appropriate bargaining units for representation and determination of the exclusive representation and determination of the exclusive representatives;
- Elections and decertification elections of unit representatives are reimbursable in the event the Public Employment Relations Board determines that a question of representation exists and orders an election held by secret ballot;
- Negotiations: reimbursable functions include – receipt of exclusive representative’s initial contract proposal, holding of public hearings, providing a reasonable number of copies of the employer’s proposed contract to the public, development and presentation of the initial district contract proposal, negotiation of the contract, reproduction and distribution of the final contract agreement;
- Impasse proceedings, including mediation, fact-finding, and publication of the findings of the fact-finding panel;
- Collective bargaining agreement disclosure before the adoption of the agreement by the governing body;
- Contract administration and adjudication of contract disputes either by arbitration or litigation, including grievances and administration and enforcement of the contract; and
- Unfair labor practice adjudication process and public notice complaints.¹⁴

III. Positions of the Parties

Los Rios Community College District

Claimant requests the Commission to approve this IRC and direct the Controller to reinstate the costs reduced. Claimant argues that the Controller did not complete the audit of the 2003-2004 reimbursement claim within the two-year deadline in Government Code section 17558.5. Claimant also asserts that the Controller incorrectly reduced claims for grievance adjudication (\$27,260) and indirect costs (\$82,858), but does not dispute the other audit findings.

¹³ Exhibit A, Incorrect Reduction Claim, pages 24-35.

¹⁴ Exhibit A, Incorrect Reduction Claim, pages 24-35 (Exhibit B, Parameters and Guidelines amended January 27, 2000).

State Controller's Office

In its audit, the Controller found that claimant submitted unallowable claims of \$286,895 (out of \$980,409 claimed) during fiscal years 2001-2002, 2002-2003 and 2003-2004.

Specifically, the Controller adjusted the claimed grievance adjudication costs of \$27,260 for fiscal year 2001-2002, finding it is not related to collective bargaining, and reduced indirect costs of \$82,858 for all fiscal years (2001-2004), in addition to other undisputed reductions.

The Controller filed comments concurring with the draft proposed decision to approve the IRC, stating: "we will pull the audit report from our website and notify the district and affected parties that the audit has been withdrawn for the reasons cited in the Commission's staff analysis."¹⁵

IV. Discussion

Government Code section 17561(b) authorizes the Controller to audit the claims filed by local agencies and school districts and to reduce any claim for reimbursement of state mandated costs that the Controller determines is excessive or unreasonable.

Government Code Section 17551(d) requires the Commission to hear and decide a claim that the Controller has incorrectly reduced payments to the local agency or school district. If the Commission determines that a reimbursement claim has been incorrectly reduced, section 1185.9 of the Commission's regulations requires the Commission to send the statement of decision to the Controller and request that the costs in the claim be reinstated.

The Commission must review questions of law, including interpretation of the parameters and guidelines, de novo, without consideration of legal conclusions made by the Controller in the context of an audit. 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 6.¹⁶ The Commission must also interpret the Government Code and implementing regulations in accordance with the broader constitutional and statutory scheme. 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."¹⁷

With regard to the Controller's audit decisions, the Commission must determine whether they were arbitrary, capricious, or entirely lacking in evidentiary support. This standard is similar to the standard used by the courts when reviewing an alleged abuse of discretion of a state agency.¹⁸ Under this standard, the courts have found that:

¹⁵ Exhibit C.

¹⁶ *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551, 17552.

¹⁷ *County of Sonoma, supra*, 84 Cal.App.4th 1264, 1280, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

¹⁸ *Johnston v. Sonoma County Agricultural* (2002) 100 Cal.App.4th 973, 983-984. See also *American Bd. of Cosmetic Surgery, Inc. v. Medical Bd. of California* (2008) 162 Cal.App.4th 534, 547.

When reviewing the exercise of discretion, “[t]he scope of review is limited, out of deference to the agency’s authority and presumed expertise: ‘The court may not reweigh the evidence or substitute its judgment for that of the agency. [Citation.]’” ... “In general ... the inquiry is limited to whether the decision was arbitrary, capricious, or entirely lacking in evidentiary support. . . .” [Citations.] When making that inquiry, the “ ‘ ‘court must ensure that an agency has adequately considered all relevant factors, and has demonstrated a rational connection between those factors, the choice made, and the purposes of the enabling statute.’ ”¹⁹

The Commission must review also the Controller’s audit in light of the fact that the initial burden of providing evidence for a claim of reimbursement lies with the claimant.²⁰ In addition, section 1185.2(c) of the Commission’s regulations requires that any assertions of fact by the parties to an IRC must be supported by documentary evidence. The Commission’s ultimate findings of fact must be supported by substantial evidence in the record.²¹

A. The Controller’s Audit was Completed Beyond the Two-year Deadline Imposed by Government Code section 17558.5 and so is Void.

The threshold issue is whether the Controller’s audit of the reimbursement claim was completed within the two-year statutory deadline in Government Code section 17558.5. Because the Commission concludes that it was not, the substantive allegations of the IRC are not analyzed.

Claimant alleges that when the final audit report was issued on December 12, 2007, the audit of the 2003-2004 reimbursement claim was completed beyond the two-year statutory deadline required by Government Code section 17558.5.²²

The Commission finds that, although the Controller timely initiated the audit of the reimbursement claims filed for fiscal years 2001-2002, 2002-2003, and 2003-2004, the Controller did not complete the audit of these reimbursement claims within the deadline imposed by Government Code section 17558.5, (last amended eff. Jan. 1, 2005) making the audit findings for all reimbursement claims void.

The reimbursement claims in this case were signed and presumably filed with the Controller’s Office in January 2003, January 2004, and January 2005.²³ At the time the reimbursement

¹⁹ *American Bd. of Cosmetic Surgery, Inc, supra*, 162 Cal.App.4th at pgs. 547-548.

²⁰ *Gilbert v. City of Sunnyvale* (2005) 130 Cal.App.4th 1264, 1274-1275.

²¹ Government Code section 17559(b), which provides that a claimant or the state may commence a proceeding in accordance with the provisions of section 1094.5 of the Code of Civil Procedure to set aside a decision of the Commission on the ground that the Commission’s decision is not supported by substantial evidence in the record.

²² Exhibit A, Incorrect Reduction Claim, pages 10-13.

²³ Exhibit A, Incorrect Reduction Claim, pages 81, 143, and 172. The record shows the date the reimbursement claims were signed. Claimant specifically alleges in the IRC, which is signed under penalty of perjury, that the reimbursement claim for fiscal year 2003-2004 was filed on the

claims were filed, Government Code section 17558.5 stated that a reimbursement claim is subject to the initiation of an audit by the Controller no later than three years after the claim is filed or last amended, whichever is later.²⁴ The entrance conference for the audit of these reimbursement claims occurred on December 8, 2005, within the three-year period to initiate the audit for all three reimbursement claims.²⁵ Thus, the Controller timely initiated the audit pursuant to Government Code section 17558.5.

Government Code section 17558.5 was amended, effective January 1, 2005, before the audit was initiated, adding for the first time a deadline for the Controller to complete an audit not later than two years after it is commenced:

A reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter is subject to the initiation of an audit by the Controller no later than three years after the date that the actual reimbursement claim is filed or last amended, whichever is later. However, if no funds are appropriated or no payment is made to a claimant for the program for the fiscal year for which the claim is filed, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim. In any case, an audit shall be completed not later than two years after the date that the audit is commenced.²⁶

The courts have held that where the state gives up a right previously possessed by it or one of its agencies (e.g., the Controller's having no statutory deadline to complete an audit before Jan. 1, 2005), the restriction in the new law becomes effective immediately upon the operative date of the change in law for all pending claims. In *California Employment Stabilization Commission v. Payne* (1948) 31 Cal.2d 210, 215-216, the California Supreme Court stated:

Accordingly, the power of the Legislature to lessen a statute of limitations is subject to the restriction that an existing right cannot be cut off summarily without giving a reasonable time after the act becomes effective to exercise such right. (See *Davis & McMillan v. Ind. Acc. Comm.*, 198 Cal. 631, 637, 246 P. 1046, 46 A.L.R. 1095.) This principle, however, does not apply where the state gives up a right previously possessed by it or by one of its agencies. Except where such an agency is given powers by the Constitution, it derives its authority from the Legislature, which may add to or take away from those powers and therefore a statute which adversely affects only the right of the state is not invalid merely because it operates to cut off an existing remedy of an agency of the state. The case of *Superior Oil Co. v. Superior Court*, 6 Cal.2d 113, 56 P.2d 950, is distinguishable since the court was there concerned with the operation of a statute

same date it was signed. (Exhibit A, p. 10.) The Controller has not filed comments disputing the facts alleged.

²⁴ Government Code section 17558.5, as amended by Statutes 2002, chapter 1128, effective January 1, 2003.

²⁵ Exhibit A, Incorrect Reduction Claim, page 10.

²⁶ Statutes 2004, chapter 890.

which applied to private persons as well as the state. This distinction was not noted in *Calif. Emp. Stab. Comm. v. Chichester etc. Co.*, 75 Cal.App.2d 899, 172 P.2d 100, which relied on the Superior Oil case and assumed without discussion that the same rule would apply where the state alone would be adversely affected. It was held in the *Chichester* case that the amendment of section 45.2 in 1943 could not operate to deprive the commission of the right to sue on existing causes of action until a reasonable time had passed after the statute became effective. The commission was created by, and derives its powers from, the Legislature, and it does not have rights which are superior to the legislative will. By the enactment in 1939 of section 45.2, the three-year limitation contained in section 338 was rendered inapplicable, and the commission was given the right without limit as to time to enforce contributions where no return had been filed. Thereafter in 1943 the Legislature determined that it was unwise and perhaps unfair to allow the commission an unlimited time within which to enforce contributions where there was no intent to evade the act, and as to those cases, the three-year limitation was restored and the right of action was cut off if the period had run. Thus the Legislature had the power to do insofar as the constitutional requirement of due process is concerned, and the holding to the contrary in the *Chichester* case, 75 Cal.App.2d 899, 172 P.2d 100, is disapproved.

As stated above, the audit was initiated at the latest at the entrance conference on December 8, 2005. Therefore, the Controller had until December 8, 2007, at the latest, to complete the audit according to the two-year deadline in section 17558.5. The only evidence of when the audit was completed is the final audit report, dated December 12, 2007 – four days *after* the deadline.²⁷ Thus, the Controller did not comply with the completion deadline of section 17558.5.

Although section 17558.5 does not specify the consequences for failing to meet the deadlines imposed by the statute, the Commission finds that the deadlines in section 17558.5 are jurisdictional and the failure to meet the deadlines makes the audit findings void. The California Supreme Court has ruled that, when a deadline is for the protection of a person or class of persons, and the language of the statute as a whole indicates the Legislature's intent to enforce the deadline, the deadline is mandatory.

[T]he intent must be gathered from the terms of the statute construed as a whole, from the nature and character of the act to be done, and from the consequences which would follow the doing or the failure to do the particular act at the required time. (Citation.) When the provision is to serve some public purpose, the provision may be held directory or mandatory as will best accomplish that purpose (citation)...²⁸

The court specifically rejected the view that a statute could only be mandatory if it included a means of enforcement. Rather, the court ruled that the important analysis is whether the purpose

²⁷ Exhibit A, Incorrect Reduction Claim, page 66.

²⁸ *People v. McGee* (1977) 19 Cal.3d 948, 962, citing *Morris v. County of Marin* (18 Cal.3d 901, 909-910).

of the statute is to require an act.²⁹ Moreover, courts have held that failure to comply with a mandatory statute makes subsequent action invalid or void.³⁰

Here, the Legislature specifically amended section 17558.5 to require an audit to be completed within two years, stating “[*i/n any case*, an audit shall be completed not later than two years after the date that the audit is commenced.” (Emphasis added.) The Controller had more than eleven months notice that section 17558.5 had been amended to require completion of an audit within two years when the audit was initiated, but failed to meet that statutory deadline. Failure to complete the audit within the two-year completion deadline is a jurisdictional bar to the Controller’s reduction of the reimbursement claims.

Accordingly, the Commission finds that the audit of the 2001-2002, 2002-2003, and 2003-2004 fiscal year reimbursement claims was not timely completed pursuant to Government Code section 17558.5, as amended by Statutes 2004, chapter 890, and is therefore void.

V. Conclusion

Based on the foregoing, the Commission concludes that the Controller incorrectly reduced the reimbursement claims filed for fiscal years 2001-2002, 2002-2003, and 2003-2004. Pursuant to Government Code section 17551(d) and section 1185.9 of the Commission’s regulations, the Commission requests that the Controller reinstate to the claimant all costs incorrectly reduced, totaling \$286,895.

²⁹ *Id.*

³⁰ *Saffer v. JP Morgan Chase Bank* (2014) 225 Cal.App.4th, 1239, 1251-1252.

COMMISSION ON STATE MANDATES

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RE: Decision

Collective Bargaining and Collective Bargaining Agreement Disclosure, 08-4425-I-16
Government Code Sections 3540-3549.9
Statutes 1975, Chapter 961; Statutes 1991, Chapter 1213
Fiscal Year 2001-2002, 2002-2003, 2003-2004
Los Rios Community College District, Claimant

On January 23, 2015, the foregoing decision of the Commission on State Mandates was adopted in the above-entitled matter.

A handwritten signature in black ink, appearing to read "Heather Halsey".

Heather Halsey, Executive Director

Dated: January 27, 2015

DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

I am a resident of the County of Solano and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

On January 27, 2015, I served the:

Decision

Collective Bargaining and Collective Bargaining Agreement Disclosure, 08-4425-I-16
Government Code Sections 3540-3549.9
Statutes 1975, Chapter 961; Statutes 1991, Chapter 1213
Fiscal Year 2001-2002, 2002-2003, 2003-2004
Los Rios Community College District, Claimant

by making it available on the Commission's website and providing notice of how to locate it to the email addresses provided on the attached mailing list.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on January 27, 2015 at Sacramento, California.



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COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 11/19/14

Claim Number: 08-4425-I-16

Matter: Collective Bargaining

Claimant: Los Rios Community College District

TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.3.)

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