

CLIENT NEWS BRIEF

Court Restricts Ability to Seek Mandate Reimbursements

A California appellate court has ruled that a public agency is not entitled to seek reimbursement from the state for the cost of implementing mandated programs if the agency has existing statutory authority to impose or raise fees, even if the attempt to impose or raise fees is prevented by a successful Proposition 218 majority protest.

In *Paradise Irrigation District v. Commission on State Mandates*, decided on October 1, the Court of Appeals held that the Proposition 218 majority protest process does not deprive local agencies of the “authority” to levy new fees or charges. This decision raises the bar for public agencies seeking reimbursement of state mandates.

Background

Article XIII B of the California Constitution provides that “[w]henver the Legislature or any state agency mandates a new program or higher level of service on any local government, the state shall provide a subvention of funds to reimburse that local government for the costs of the program or increased level of service.” The Legislature has provided an exception to this general rule by prohibiting reimbursement for state mandates where “[t]he 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.” (Gov. Code, § 17556(d).)

The Commission on State Mandates has traditionally found that a local agency does not have “authority” to impose or increase fees if such is subject to either the “majority protest” or voter approval requirements of Proposition 218. This “majority protest” process generally requires public agencies to inform property owners of proposed new or increased fees and allows a majority of property owners to block such new or increased fees by submitting written protests prior to a required public hearing on the new or increased fees.

The commission recently reversed itself, finding that the majority protest process does not deprive public agencies of “authority” to levy new or increased fees. A trial court, deciding on a challenge to the commission’s new position, held that public agencies must at least “try and fail” to impose or increase fees subject to the majority protest process before the commission could find that the agency lacks “authority” to levy the fee and thus entitle the public agency to reimbursement.

The Court of Appeals disagreed with the trial court’s “try and fail” test and instead held that the only relevant question is whether some statutory authority to levy new or raise existing fees exists. The practical inability of a public agency to impose or increase fees, whether due to a majority protest or otherwise, is irrelevant in determining whether the public agency is entitled to state reimbursement. Accordingly, even if a local agency is unable to raise fees

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William P. Curley III
Partner and Co-Chair
Local Government Practice Group
Los Angeles Office



Nicholas J. Clair
Associate
Sacramento Office
nclair@lozanosmith.com



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due to a majority protest, the local agency is not entitled to reimbursement from the state for the cost of implementing the mandated program.

Lozano Smith's litigation team of Nicholas J. Clair, Anne L. Collins, and Sloan R. Simmons assisted the court by filing an amicus curiae brief on behalf of California Special Districts Association, Association of California Water Agencies, and California Association of Sanitation Agencies that emphasized the legal and practical issues of the appeal.

Takeaways

- Public agencies are not entitled to reimbursement from the state for mandated programs so long as there is some statutory fee authority which the public agencies could use to impose new or increased fees to cover the cost of the state mandated programs, regardless of the potential problems with the revenue authority.
- Public agencies cannot seek reimbursement from the state even if attempts to impose new or increased fees are blocked by majority protests. Those agencies must then decide to forgo projects or reduce services to fund the state imposed mandates.

From a broader standpoint, the Court of Appeal decision means that the political costs of the Legislature's new programs or mandated higher levels of service will be borne by local agency officials.

If you have any questions about *Paradise Irrigation*, or about state mandates in general, please contact the authors of this Client News Brief or an attorney at one of our [eight offices](#) located statewide. You can also visit our [website](#), follow us on [Facebook](#) or [Twitter](#) or download our [Client News Brief App](#).