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Proposition 218 Did Not Alter Authority of Districts to Impose Fees Despite Fee Protest Procedure.

Local government agencies in California may seek reimbursement from the state for costs of complying with unfunded state mandates. To do so, the agency may file a “test claim” with the Commission on State Mandates (“Commission”). An agency’s right to reimbursement is subject to important statutory limits. For example, under Government Code section 17556, the Commission may not find costs mandated by the state in any test claim if, after a hearing, the Commission finds that the local agency has the authority to levy service charges, fees, or assessments sufficient to pay for the mandated state program or increased level of service.

Several water districts (“Districts”) filed test claims seeking reimbursement for water service improvements mandated by the Water Conservation Act of 2009 (“WCA”) and associated regulations. The Districts argued that after the enactment of Proposition 218, the Districts could do no more than “propose” a fee, because under Proposition 218, fees imposed by water districts could be defeated by a majority of a district’s water customers filing written protests. The Commission initially denied the Districts’ claims for reimbursement, concluding that most of the code sections and regulations pled did not impose any mandated activities, and even if they did, the districts retained fee authority to cover the costs of any newly mandated activities. The Commission found that the Districts failed to present sufficient evidence under the California Constitution that: (i) the Districts tried and failed to impose or increase the necessary fees, or (ii) that Proposition 218 otherwise represented a hurdle to fee authority as a matter of law.

The Districts challenged the decision by the Commission. The trial court agreed with the Commission and dismissed a petition for writ of mandate brought by the Districts. The trial court found the Districts have sufficient authority to cover the cost of any mandated program.

The Court of Appeal concluded that the Commission properly denied the reimbursement claims, but on different grounds.

The costs of complying with the WCA were not subject to reimbursement because Article XIII B, section 6, of the California Constitution requires reimbursement only when the agency can recover the costs solely from tax revenues. Proposition 218 was only intended to address taxes, not fees, and water districts retained authority under Water Code section 35470 to levy fees, after enactment of Proposition 218. Moreover, Government Code section 17556, subdivision (d), provides that if the local agency has the authority to levy fees sufficient to pay for the mandated program, reimbursement is not available.

Citing prior California Supreme Court precedent, the Court of Appeal concluded that Proposition 218's majority protest procedure did not affect Districts' authority to levy fees, but merely imposed a "power-sharing" relationship between local agencies and the electorate. The Court acknowledged that the power-sharing arrangement had the potential for conflict, but presumed that: (i) local voters will give appropriate consideration and deference to a District Board's judgment about rate structure needed to ensure a public water agency's fiscal solvency; and (ii) District boards, whose members are elected, will give appropriate consideration and deference to the voters' expressed wishes for affordable water service. Thus, Proposition 218's protest procedure is not a limitation on the District's fee authority.

In addition, the Court found that the inquiry into fee authority is an issue of law, and concluded that a District's right to reimbursement is not controlled by whether the Districts have "tried and failed" to levy fees. Accordingly, the Court rejected a potential argument under the trial court's reasoning that Districts might become entitled to reimbursement later.

Paradise Irrigation District v. Comm'n on State Mandates (_ Cal.App.3d _ [2018 WL 4691078]).

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