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CITY OF SACRAMENTO



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April 29, 1983

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City Council
City of Sacramento
Sacramento, California

In re: WORKERS COMPENSATION SB-90 CLAIMS

Members in Session:

APPROVED
BY THE CITY COUNCIL

MAY 10 1983

OFFICE OF THE
CITY CLERK

SUMMARY

It is recommended that the City Council approve the filing of a lawsuit against the State of California and the State Board of Control to establish the City's right to reimbursement for compensation costs associated with workers compensation disability rate increases.

BACKGROUND

Effective January 1, 1983, the City's workers compensation costs increased substantially as a result of two chaptered bills. The first of these is AB 684, which increased disability payment rates as set forth below:

	As of <u>December 31, 1982</u>	Effective <u>January 1, 1983</u>	Effective <u>January 1, 1984</u>
Temporary Disability	\$ 175.00/week	\$ 196.00	\$ 224.00
Permanent Disability	70.00	130.00	140.00
Death Benefit	75,000.00	85,000.00	95,000.00

The second bill, AB 3011, provided that in the case of fire fighters, any cancer which develops or manifests itself while the employee is employed as a fire fighter is presumed to arise out of and in the course of employment if the employee was exposed to a known carcinogen, as defined, while employed. This presumption will undoubtedly be treated in the same fashion as the "heart" presumption, which is virtually conclusive in its operation. It will undoubtedly cause increased expense.

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The question which must be resolved is whether the increased costs caused by these two chaptered bills is a State-mandated local cost within the meaning of Revenue and Taxation Code Section 2207 and Article XIII B of the State Constitution. If so, the State must reimburse the City for the increased costs. It is our belief that these costs are State-mandated local costs. This conclusion is supported by the attached opinions of Legislative Counsel.

The Law and Legislation Committee on March 24, 1983 authorized the filing of reimbursement claims on both of these chaptered bills with the State Board of Control. Both claims were filed as test claims, to determine if a "state mandate" exists. The test claim on the cancer presumption is scheduled for a Board hearing on May 26, 1983. The Board, however, rejected the test claim on the benefit increase bill because it had recently denied a similar claim filed by the County of Los Angeles. Because the City's claim was rejected, the City's only remaining avenue of relief is an action in Superior Court for declaratory relief and for issuance of a writ of mandate. In those proceedings, the issue would be whether the benefit increase is a "state mandated local program."

COST IMPACT

No cost to the City, except for time spent by the City Attorney's office and normal litigation expenses.

RECOMMENDATION

It is recommended that the City Council approve the filing of a lawsuit to obtain reimbursement from the State for workers compensation costs associated with workers compensation disability rate increases.

Respectfully submitted,

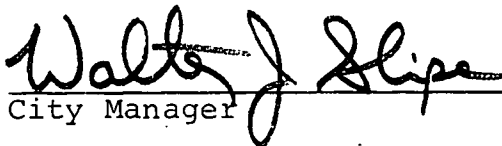


JAMES P. JACKSON
City Attorney

JPJ:kn

attachments

Recommendation approved:


City Manager

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Sacramento, California

August 23, 1982

Honorable Newton R. Russell
Senate Chamber

Workers' Compensation Benefits (A.B. 684) - #17219

Dear Senator Russell:

QUESTION

Would Assembly Bill No. 684, as enrolled, mandate a new program or higher level of service on local public agencies for which the state is required to provide a subvention of funds to reimburse the local agencies?

OPINION

A.B. 684 would mandate a higher level of service on local public agencies for which the state is required to provide a subvention of funds to reimburse the local agencies.

ANALYSIS

Article XIII B of the California Constitution, with certain exceptions, prohibits the annual appropriations subject to limitation of any governmental entity from exceeding the appropriations limit of that entity of government for the prior year adjusted for changes in cost of living and population. Article XIII B became effective July 1, 1980 (Sec. 10, Art. XIII B, Cal. Const.).

Section 6 of Article XIII B provides, in pertinent part, as follows:

"SEC. 6. Whenever 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 such local government for the costs of such program or increased level of service

* * * (See, also, Sec. 2201 et seq., R. & T.C., for statutory provisions requiring reimbursement for state-mandated local costs.)

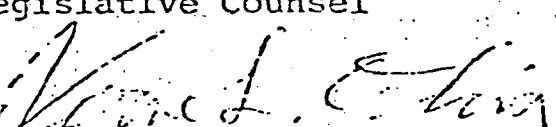
The workers' compensation law is contained in Division 4 (commencing with Section 3200) of the Labor Code, and generally requires employers to provide benefits to employees who are injured in the course and scope of their employment. The amount of workers' compensation benefits payable, within minimum and maximum limits, is provided by statute (see, for example, Secs. 4452, 4453, 4453.1, 4658, and 4702, Lab. C.). Local public agencies are required to provide workers' compensation to their employees (Sec. 3300, Lab. C.).

A.B. 684 would, among other things, increase the maximum workers' compensation disability benefits and workers' compensation death benefits, and local public agencies would be required to pay the higher benefit amounts to employees injured in the course and scope of their employment. Thus, the local public agencies would be required to provide a higher level of service because of the state mandate.

Therefore, in our opinion A.B. 684 would mandate a higher level of service on local public agencies for which the state is required to provide a subvention of funds to reimburse the local agencies.

Very truly yours,

Bion M. Gregory
Legislative Counsel

By 
Verne L. Oliver
Deputy Legislative Counsel

VLO:lgh

Two copies to Honorable Bruce Young,
pursuant to Joint Rule 34.

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Sacramento, California
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Honorable Newton R. Russell
Senate Chamber

Workers' Compensation Benefits
(A.B. 3011) - #17220

Dear Senator Russell:

QUESTION NO. 1

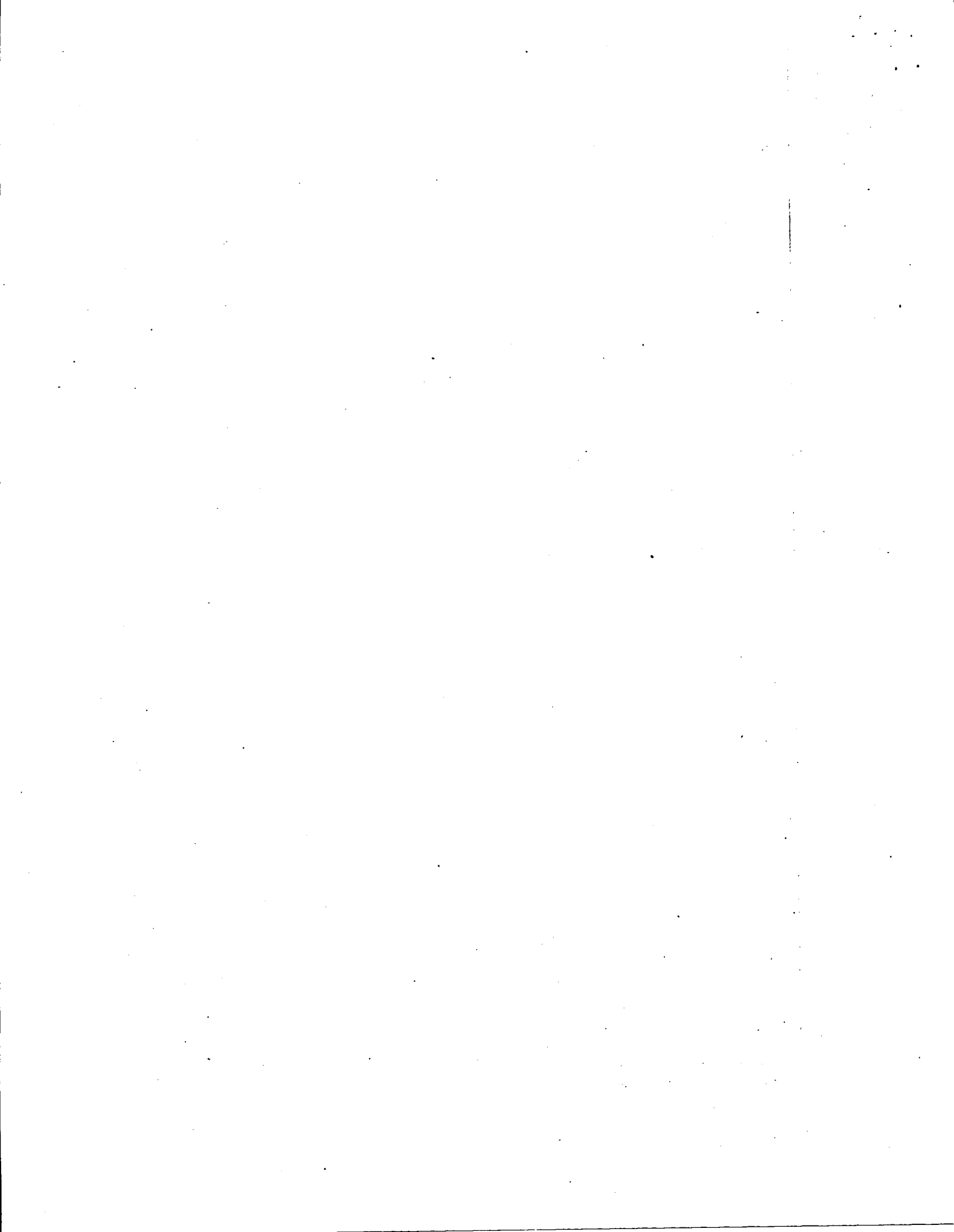
Would Assembly Bill No. 3011, as amended August 10, 1982, mandate a new program or higher level of service on local public agencies for which the state is required to provide a subvention of funds to reimburse the local public agencies?

OPINION NO. 1

A.B. 3011 would mandate a higher level of service on local public agencies for which the state is required to provide a subvention of funds to reimburse the local public agencies.

ANALYSIS NO. 1

Article XIII B of the California Constitution, with certain exceptions, prohibits the annual appropriations subject to limitation of any governmental entity from exceeding the appropriations limit of that entity of government for the prior year adjusted for changes in cost of living and population. Article XIII B became effective July 1, 1980 (Sec. 10, Art. XIII B, Cal. Const.).



Section 6 of Article XIII B provides, in pertinent part, as follows:

"SEC. 6. Whenever 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 such local government for the costs of such program or increased level of service

* * *" (See, also, Sec. 2201 et seq., R. & T.C., for statutory provisions requiring reimbursement for state-mandated local costs.)

The workers' compensation law (Div. 4 (commencing with Sec. 3200), Lab. C.), generally speaking, requires every employer in this state, including public agencies, to secure the payment of workers' compensation for injuries to employees acting within the course of their employment. Before an employee is entitled to workers' compensation benefits, it must be shown that the injury was proximately caused by the employment (subd. (c), Sec. 3600, Lab. C.).

A.B. 3011 would add provisions to the workers' compensation law to provide that in the case of specified local agency firefighters, any cancer which develops or manifests itself while the employee is employed as a firefighter is presumed to arise out of and in the course of employment if the employee was exposed to a known carcinogen, as defined, while so employed.

If A.B. 3011 is chaptered, the specified firefighters could use this presumption and be entitled to workers' compensation benefits without showing that the injury was proximately caused by the employment, unless the local public agencies could prove otherwise. Local public agencies would be required, as a result of this presumption, to provide workers' compensation to the specified firefighters in situations where, under existing law, the employee would not be able to show that the injury was proximately caused by the employment and would not be entitled to workers' compensation benefits. Thus, the local public agencies would be required to provide a higher level of service by the provisions of A.B. 3011.

Therefore, in our opinion A.B. 3011 would mandate a higher level of service on local public agencies for which the state is required to provide a subvention of funds to reimburse the local public agencies.

QUESTION NO. 2

If the Legislature fails to appropriate funds to reimburse local public agencies for the state mandate contained in A.B. 3011, would the local public agencies be required to provide the higher level of service mandated by A.B. 3011?

OPINION NO. 2

If the Legislature fails to appropriate funds to reimburse local public agencies for the state mandate contained in A.B. 3011, the local public agencies could apply for judicial relief which could, in the discretion of the court, include a holding that the state mandate is inoperative and performance of the mandate is excused until reimbursement is provided.

ANALYSIS NO. 2

As discussed in Analysis No. 1, A.B. 3011 would mandate a higher level of service on local public agencies for which the state is required to provide a subvention of funds to reimburse the local public agencies by the provisions of Section 6 of Article XIII B of the California Constitution.

If the Legislature fails to appropriate funds for claims for reimbursement for the costs of the state mandate, local public agencies could bring an action for judicial relief.

In this regard, however, it is a well-established principle of constitutional law that the commanding of specific legislative action is beyond the power of the courts. The rule was stated recently in California State Employees' Assn. v. State of California, 32 Cal. App. 3d 103, 108-109, as follows:

"... [T]he courts have no authority to compel a separate and equal branch of state government to make appropriation of funds. At the time of the filing of this action, section 1 of article III of the state Constitution provided: 'The powers of state government are legislative, executive, and judicial. Persons charged with the exercise

of one power may not exercise either of the others except as permitted by this Constitution.' [Now Sec. 3, Art. III, Cal. Const.] As stated in Myers v. English, ... [9 Cal. 341, 349]:
'We think the power to collect and appropriate the revenue of the State is one peculiarly within the discretion of the Legislature. It is a very delicate and responsible trust, and if not used properly by the Legislature at one session, the people will be certain to send to the next more discreet and faithful servants.

"It is within the legitimate power of the judiciary, to declare the action of the Legislature unconstitutional, where that action exceeds the limits of the supreme law; but the Courts have no means, and no power, to avoid the effects of non-action. The Legislature being the creative element in the system, its action cannot be quickened by the other departments. Therefore, when the Legislature fails to make an appropriation, we cannot remedy that evil. It is a discretion specially confided by the Constitution to the body possessing the power of taxation. There may arise exigencies, in the progress of human affairs, when the first moneys in the treasury would be required for more pressing emergencies, and when it would be absolutely necessary to delay the ordinary appropriations for salaries. We must trust to the good faith and integrity of all the departments. Power must be placed somewhere, and confidence reposed in some one.' . . ."
(Emphasis in original; citations and footnote omitted.)

Stated more succinctly, if the Legislature fails to provide reimbursement, as required by Section 6 of Article XIII B, a court could declare the statute or executive action mandating the new program or higher level of services to be unconstitutional, but the court would not be able to compel the Legislature to appropriate funds to pay for the mandated costs.

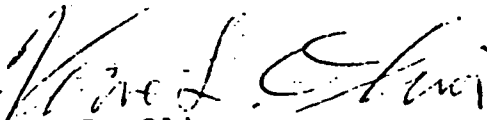
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The remedy of holding the legislative or executive mandate unconstitutional is, however, more drastic than may be required. It has been held that a public officer is not required to expend funds in excess of the amount which is available to him or her (see Cache Valley General Hospital v. Cache County (Utah), 67 P. 2d 639). Applying that rule here, a court could hold that the application of a particular mandate was conditioned upon the appropriation of funds by the state for reimbursement of the costs resulting from the mandate. Under this alternative, the mandate would not be unconstitutional, but simply inoperative, and performance of the mandate would be excused until reimbursement was provided.

Therefore, in our opinion, if the Legislature fails to appropriate funds to reimburse local public agencies for the state mandate contained in A.B. 3011, the local public agencies could apply for judicial relief which could, in the discretion of the court, include a holding that the state mandate is inoperative and performance of the mandate is excused until reimbursement is provided.

Very truly yours,

Bion M. Gregory
Legislative Counsel

By 
Verne L. Oliver
Deputy Legislative Counsel

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Two copies to Honorable Art Torres,
pursuant to Joint Rule 34.