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Department of Finance v. Commission on State Mandates

Court of Appeal, Second District, Division 1, California - January 4, 2021 - Cal.Rptr.3d - 2021 WL 22066 - 21 Cal. Daily Op. Serv. 234

Department of Finance, State Water Resources Control Board, and regional water quality control board filed petition for writ of administrative mandamus seeking to overturn decision of Commission on State Mandates that regional board's condition on permit authorizing local governments to operate storm drain systems, requiring local governments to install and maintain trash receptacles at transit stops, constituted a reimbursable state mandate, and local governments filed cross-petition, challenging the Commission's determination that requirement that they periodically inspect commercial facilities, industrial facilities, and construction sites to ensure compliance with various environmental regulatory requirements, was not a reimbursable state mandate.

The Superior Court granted petition, and denied cross-petition as moot. Local governments appealed. The Second District Court of Appeal affirmed. Local governments petitioned for review. The Supreme Court reversed. The Superior Court again granted petition. Local governments appealed.

The Court of Appeal held that:

- Conditions constituted new programs or higher levels of service, for purposes of state constitutional provision requiring the state to pay for such programs that it imposes upon local governments;
- Local governments had authority to levy a fee on businesses to cover their costs of inspecting various facilities to ensure compliance with environmental regulatory requirements; and
- Local governments did not have authority to charge a fee to transit agencies or adjacent property owners to install and maintain trash receptacles at transit stops.

Supreme Court's statement that state agencies and local governments did not dispute that each challenged condition on permit authorizing local governments to operate storm drain systems was a new program or higher level of service, did not constitute a rule of law necessary to the decision of the case, and thus, was not law of the case, for purposes of action brought by state agencies seeking to overturn decision of Commission on State Mandates that regional board's condition on permit authorizing local governments to operate storm drain systems, requiring local governments to install and maintain trash receptacles at transit stops, constituted a reimbursable state mandate.

"Programs," for purposes of state constitutional provision requiring the state to pay for new governmental programs, or for higher levels of service under existing programs, that it imposes upon local government agencies, are programs that carry out the governmental function of providing services to the public, or laws which, to implement a state policy, impose unique requirements on local governments and do not apply generally to all residents and entities in the state; the two parts of the definition are alternatives, and either will trigger the subvention obligation unless an exception applies.

Conditions on permit authorizing local governments to operate storm drain systems, requiring local governments to install and maintain trash receptacles at transit stops and to periodically inspect various facilities to ensure compliance with environmental regulatory requirements, constituted new programs or higher levels of service, for purposes of state constitutional provision requiring the state to pay for such programs that it imposes upon local governments; both requirements increased the level of service provided by the existing stormwater drainage system, but also imposed new requirements on local governments, and alternatively, both were requirements unique to local governments to implement state policy.

Based upon the local governments' constitutional police power and their ability to impose a regulatory fee that does not exceed the reasonable cost of the inspections, is not levied for unrelated revenue purposes, and is fairly allocated among fee payers, local governments had authority to levy a fee on businesses to cover their costs of inspecting various facilities to ensure compliance with environmental regulatory requirements, as required by permit authorizing local governments to operate storm drain systems; permit's inspection requirements and statute requiring regional water quality control boards to use a portion of fees they received from certain waste dischargers for stormwater inspection and regulatory compliance issues could be applied without duplication or conflict.

A regulatory fee local governments could impose on businesses to cover their costs of inspecting various facilities to ensure compliance with environmental regulatory requirements, as required by permit authorizing local governments to operate storm drain systems, would not be preempted by statute obligating waste dischargers to pay annual fees to the state, and requiring some of those fees be used for stormwater inspection and regulatory compliance issues; there was no evidence that a local government's inspection fee would necessarily duplicate the annual fees imposed under statute, nor was there any indication that the Legislation intended to occupy the field of stormwater program inspections or inspection fees.

Local governments did not have authority to charge a fee to transit agencies to install and maintain trash receptacles at transit stops, under statute allowing one public agency to impose a fee for a public utility service provided to another public agency, as would provide an exception to subvention under state constitutional provision requiring the state to pay for new governmental programs, or for higher levels of service under existing programs, that it imposes upon local government agencies; transit authority was not a public utility customer that solicited installation and ongoing maintenance of trash receptacles.