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Appeals Court Rejects Unfunded State Mandate for Lead Testing in Schools

Decision limits when the state can require cities to pay for new services

City Attorney Mara W. Elliott today announced that San Diego taxpayers are no longer responsible for the costs of lead-testing the water used by local school districts, following a court ruling that saves the City \$500,000 and likely more in the future.

In 2017, the state’s Water Resources Control Board began mandating water districts to test water sources at K-12 schools after lead absorbed from pipes was found in the drinking water of many Michigan schools. Even low levels of lead in the blood of children can result in behavioral and learning problems.

California’s testing requirement left open the question of who pays for the testing: the state, which mandated the “free” program or water districts, which provide the water.

The state’s Commission on State Mandates decided that water districts should pick up the tab. The cost of testing schools in San Diego – more than \$500,000 – fell to the City’s Public Utilities Department and was paid from the City’s General Fund.

The City sued the state, pointing to a 1979 law, passed by California voters, requiring the state to reimburse local agencies when it mandates their assistance in implementing a state program.

In a unanimous decision, a three-judge panel of the Third Appellate District in Sacramento agreed with the City, ruling that the State Water Resources Control Board created “a new program or higher level of service” when it required free lead testing at K-12 schools.

The City Attorney said the court victory goes beyond the issue of who will pay for the drinking water tests.

“San Diego has been a leader in protecting its children from the toxic effects of lead,” City Attorney Mara W. Elliott said. **“But we also protect taxpayers from unfunded state mandates. Had courts**

allowed this violation of state law, it would have exposed local tax dollars to Sacramento priorities instead of our City's needs.”

The appellate court sent the case back to the Commission on State Mandates to determine if the state must reimburse the City or whether the City has the legal authority to impose fees, charges, or assessments to cover the costs.

The precedent applies to all water testing that has occurred in California under the 2017 mandate.

This case was argued before the Court of Appeal on behalf of the City of San Diego by Deputy City Attorney Kevin B. King of the City Attorney's Affirmative Civil Enforcement Unit.

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