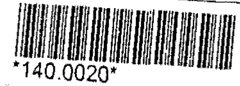

Opinion No. 80-509—August 28, 1980

SUBJECT: COSTS INCURRED WHEN LEGISLATURE INCREASES NUMBER OF JUDGES IN MUNICIPAL COURT DISTRICT—The state is not required to reimburse the costs incurred by local agencies when the Legislature increases the number of judges in a municipal court district.

Requested by: STATE SENATOR, ELEVENTH DISTRICT

Opinion by: GEORGE DEUKMEJIAN, Attorney General

Anthony S. DaVigo, Deputy

The Honorable Alfred E. Alquist, State Senator, Eleventh District, has requested an opinion on the following question:

Where the Legislature increases the number of judges in a municipal court district, is the state required to reimburse the costs incurred by local agencies for such additional judges?

CONCLUSION

Where the Legislature increases the number of judges in a municipal court district, the state is not required to reimburse the costs incurred by local agencies for such additional judges.

ANALYSIS

The Legislature is constitutionally authorized to prescribe the jurisdiction of municipal courts and for each such court the number, qualifications, and compensation of judges, officers, and employees. (Cal. Const., art. VI, §§ 5, 19; and *cf.* Gov. Code, § 72000.) Specifically, article VI, section 5, subdivision (a) provides:

> "Each county shall be divided into municipal court and justice court districts as provided by statute, but a city may not be divided into more than one district. Each municipal and justice court shall have one or more judges.
>
> "There shall be a municipal court in each district of more than 40,000 residents and a justice court in each district of 40,000 residents or less. The number of residents shall be ascertained as provided by statute.
>
> "The Legislature shall provide for the organization and prescribe the jurisdiction of municipal and justice courts. It shall prescribe for each municipal court and provide for each justice court the number, qualifications, and compensation of judges, officers, and employees."

Section 6 of article XIIIB of the California Constitution, an initiative constitutional amendment which became effective on July 1, 1980, provides:

> "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, except that the Legislature may, but need not, provide such subvention of funds for the following mandates:
>
> "(a) Legislative mandates requested by the local agency affected;
>
> "(b) Legislation defining a new crime or changing an existing definition of a crime; or

"(c) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975."

Revenue and Taxation Code section 2231, subdivision (a) provides:

"The state shall reimburse each local agency for all 'costs mandated by the state,' as defined in Section 2207. The state shall reimburse each school district only for those 'costs mandated by the state' as defined in Section 2207.5."

Section 2207 of said code provides in part:

"'Costs mandated by the state's means any increased costs which a local agency is required to incur as a result of the following:

"(a) Any law enacted after January 1, 1973, which mandates a new program or an increased level of service of an existing program;

". . . . ."

The question presented is whether, upon the enactment on or after July 1, 1980, of a statute by the Legislature pursuant to California Constitution, article VI, section 5, increasing the number of judges in a municipal court district, the state is required, under Revenue and Taxation Code section 2231 or California Constitution, article XIIIB, section 6, to reimburse the costs incurred by local agencies for such additional judges.[1]

In construing the meaning and intent of constitutional language, consideration must be given to the words employed, giving to every word, clause and sentence their ordinary and usual meaning in common currency at the time of adoption. (*Amador Valley Joint Union High Sch. Dist.* v. *State Bd. of Equal.* (1978) 22 Cal. 3d 208, 244-245; *Flood* v. *Riggs* (1978) 80 Cal. App. 3d 138, 152; *Fields* v. *Eu* (1976) 18 Cal. 3d 322, 327; *State Board of Educ.* v. *Levit* (1959) 52 Cal. 2d 441, 462.) The words "a new program or higher level of service" connote the imposition by the Legislature or other state agency of an obligation, newly conceived or ordained, which is different in kind or degree from any preexisting requirement. An increase in the number of judges in an existing municipal court district is clearly not a "new program" as that term is generally perceived. (*Cf.* 57 Ops. Cal. Atty. Gen. 451, 456 (1974).) Nor would the addition of judges constitute a "higher level of service."[2] Providing for an adequate number of judges for the most important court in the state in terms of the numbers of citizens it serves, in order that it may continue effectively to function

[1] For purposes of the subject inquiry, it is assumed that the additional position was not requested by the affected local agency.

[2] The term "increased level of service" was defined in the former section 2231, subdivision (e) of the Revenue and Taxation Code, to include any requirement mandated by state law after January 1, 1973, which makes necessary expanded or additional costs to a local agency. The broad definition was deleted in that section as re-enacted. (Stats. 1975, ch. 486, § 7.)

as a forum for the orderly settlement of civil disputes and the prosecution of the floodtide of petty crime (*cf. Board of Supervisors* v. *Krumm* (1976) 62 Cal. App. 3d 935, 946), in accordance with the standard of justice prescribed by the constitution and laws of this state and of the United States, is a preexisting constitutional imperative. It is that standard, as distinguished from the number of personnel, to which the "level of service" relates. Thus, a "standard" has been defined in part as "a definite level or degree of quality that is proper and adequate for a specific purpose." (Webster's Third New Internat. Dict. (1961) p. 2233.) Hence, in our view, an increase in the number of judges does not portend the imposition by the Legislature of any new or increased obligation, but the maintenance of preordained constitutional standards.

With regard specifically to the costs incurred for the compensation of such additional judges, however, we predicate our conclusion on alternative, constitutional premises. As noted initially, the authority of the Legislature to prescribe the compensation of municipal court judges emanates from the constitution. Section 19 of article VI provides:

> "The Legislature shall prescribe compensation for judges of courts of record.
>
> "A judge of a court of record may not receive the salary for the judicial office held by the judge while any cause before the judge remains pending and undetermined for 90 days after it has been submitted for decision."

The Legislature has prescribed the salary of municipal court judges. (Gov. Code, §§ 68202, 68203.) Government Code section 71220 provides that the salaries of municipal court judges, officers, and attaches "shall be paid by the county in which the court is situated out of the salary fund or, if there is none, out of the general fund of the county."

The issue which derives from these provisions is whether the specific constitutional directive to the Legislature to prescribe the compensation of judges extends to the source and manner of payment. If so, then Government Code section 71220, providing that the salaries of municipal court judges *shall be paid by the county* in which the court is situated, would prevail over any general provision of section 6 of article XIIIB to the contrary. (*Cf.* 63 Ops. Cal. Atty. Gen. 151, 152 (1980).)[3] In this regard, the general rule is that where the same subject matter is covered by inconsistent provisions, one of which is special and the other general, the special one, whether or not enacted first, is an exception to the general statute and controls unless an intent to the contrary clearly appears. (*Warne* v. *Harkness* (1963) 60 Cal. 2d 579, 588; 62 Ops. Cal. Atty. Gen. 494, 498 (1979).)

[3] Assuming that the constitutional directive extends to the source of payment, it is clear that article XIIIB, providing for "reimbursement" of costs could not be practicably harmonized with it. Whether the term "reimbursement" for costs or "payment" of costs be employed, the effect of transferring from the county to the state the source of payment would be manifestly identical.

The mandate of sections 5 and 19 of article VI extends, in our view, not only to the amount, but to the source of compensation. Prior to the constitutional revision (Proposition 1a, general election, Nov. 8, 1966), the third paragraph of section 5, subdivision (a), and the first sentence of section 19 were contained in the former article VI, section 11, paragraphs 4 and 6, respectively. Paragraph 6 provided:

> "The compensation of the justices or judges of all courts of record shall be fixed, *and the payment thereof prescribed*, by the Legislature." (Emphasis added.)[4]

While the words "and the payment thereof" do not appear in the present section 19, it is clear that the intent of the revision was to delete excess language and to subsume by implication in the broader, more general expression the same effect and import of the superseded section. (1967 Annual Report to the Governor and the Legislature, Judicial Council of California, pp. 66, 88; Cal. Const. Revision Comm., Proposed Revision of the Cal. Const. (Feb. 1966), pp. 81, 98; *cf. County of Madera* v. *Superior Court* (1974) 39 Cal. App. 3d 665, 671; 56 Ops. Cal. Atty. Gen. 315 (1973).)

There can be no doubt that the effect and import of the superseded section was to vest in the Legislature the fullest measure of control, direction, ordination, and dictation over the entire subject of the compensation of judges, including the amount, time, and manner of payment. Thus, in *Sevier* v. *Riley* (1926) 198 Cal. 170, 174-176, the Supreme Court stated:

> ". . . There is no room for doubt as to the interpretation to be given to this clause in said amendment to the constitution, since it makes manifest as clearly and tersely as words could do the intent of the framers thereof that the entire matter of the compensation of justices and judges of courts of record in this state, both as to the amount thereof and as to the time and manner of payment thereof, should be transferred from the constitution and reposed in the legislature. This is made all the more manifest when we take note of the meaning of the word 'prescribed' as employed therein. The term 'prescribe' is defined by the lexicographers as meaning, 'To lay down beforehand as a rule of action; to ordain, appoint, define authoritatively.' (Century Dictionary.) 'To lay down authoritatively as a guide, direction, or rule of action; to impose as a peremptory order; to dictate, appoint, direct, ordain.' (Webster's New International Dictionary.) In Words and Phrases it is stated: 'The word prescribed has a well defined legal meaning denoting to lay down authoritatively as a guide, direction or rule; to dictate; to appoint; to direct; to give as a guide, direction or rule of action.' (Words and Phrases, 2d series, 'Prescribe,' p. 1154 and

[4] Municipal courts are courts of record. (Cal. Const., art. VI, § 1, formerly art. VI, § 12.)

cases cited.) Among the cases cited in support of the foregoing definition is that of *Merchants Exchange* v. *Knott*, 216 Mo. 616 [111 S.W. 565, 571], in which the meaning of the word is traced back through Kent and Sharswood to Blackstone, through which original sources we derive our best definition of civil or municipal law as being 'a rule of civil conduct *prescribed by the supreme power of a state.*' It is in the foregoing broad and general sense that we must assume this word to have been used by the framers of the clause in the constitutional amendment in question and as intending thereby to invest the state legislature with the fullest measure of control, direction, ordination, and dictation over the matter of the amount and payment of judicial salaries in and for the courts of record of this state. The amendment in question contains but one limitation upon the completeness of this direction and control through its express retention in the constitution of its former requirement having relation to the prompt decision of submitted causes. In all other respects the amendment is ample and inclusive. . . .

The foregoing considerations would seem to furnish ample reason for the conclusion that the framers of the recent amendment to the constitution intended by the clause therein, above quoted, to commit the entire subject of the compensation of the justices and judges of all courts of record in this state, both as to the amount thereof and as to the time and manner of payment, to the legislature and to abrogate whatever of the former provisions of the constitution touching that subject were found to be inconsistent with the exercise of such plenary legislative control."

(*Cf. Woodcock* v. *Dick* (1950) 36 Cal. 2d 146; 56 Ops. Cal. Atty. Gen. 320, 322 (1973).) In our view, the prescription of Government Code section 71220, providing that municipal court judges shall be paid by the county, falls well within the exercise of such plenary legislative control, and countermands to the extent of inconsistency any statute or constitutional provision of general application.

It is concluded that where the Legislature increases the number of judges in a municipal court district, the state is not required to reimburse the costs incurred by local agencies for such additional judges.