

TUESDAY, JULY 20, 2021

PERSPECTIVE

School boards sue state controller over tax guidance

By Malcolm Maclachlan

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Schools could lose out on “hundreds of millions of dollars” under budget guidance from the state controller, according to a writ filed in Sacramento.

The California School Boards Association claimed in a complaint Friday that Controller Betty Yee violated state tax laws and Proposition 98 guarantees when she issued her budget guidance in February. *California School Boards Association v. Yee*, case number pending (Sac. Super. Ct., filed July 16, 2021).

“That guidance unlawfully permits counties to avoid allocating to school districts, county education offices and community college districts their lawful share of local property tax revenues from the counties’ Education Revenue Augmentation Funds, thereby unlawfully decreasing the minimum school funding guarantee provided by Article XVI, Section 8(b) of the California Constitution,” wrote Karen A. Getman, a partner with Olson Remcho LLP in Oakland.

Neither Getman nor Yee’s press office responded to emails seeking comment.

Voters narrowly passed Proposition 98 in 1988. It mandated the state to reach minimum funding levels for education each year. It also included a dual

set of tests designed to stabilize school funding. One test governs in strong budget years, the other during budget shortfalls.

In the decades since, Proposition 98 has become famous as possibly the most complex budget mandate in California state government. The fund at issue in this case, known in budget circles as “ERAF,” was designed to shift local property tax revenues around in order to provide more money to schools and provide minimum funding levels in districts without a strong property tax base.

Lawmakers passed SB 98, an education funding bill which coincidentally had the same number as the 1988 initiative, in 2020. It called on the controller’s office to issue the new guidance on allocating these funds.

The writ claims Yee’s guidance will allow some high revenue counties to illegally funnel “excess ERAF” to non-educational purposes. While such excess funds have been in short supply in most of the state in recent years, Getman wrote that since 2018, five wealthy Bay Area counties—Marin, Napa, San Francisco, San Mateo and Santa Clara — have generated property taxes well beyond what they need to satisfy Proposition 98 minimums.

Yee ignored guidance from the California Department of Finance on how these funding levels must be calcu-

lated, Getman argued. Yee also disregarded portions of the Education Code governing “how the tax code is applied when the county has both school districts and charter schools within its boundaries,” Getman argued, potentially allowing counties to shortchange charter schools.

The writ comes during a historically strong budget year. Gov. Gavin Newsom and legislative leaders have touted increased education funding. But Getman said the funding guidance could have effects well beyond the current fiscal year.

“While school funding is surprisingly robust this year coming out of the pandemic, history proves it will be scarce again in the future when the next economic downturn hits,” she wrote. “Unless the controller’s erroneous guidance is declared unlawful, it will create a permanent decrease in the Proposition 98 minimum funding guarantee.”

The writ asks the court to issue a permanent injunction barring the use of the guidance Yee’s office issued in February and to order her office to issue new guidance that aligns with Proposition 98 and state tax and education laws. ■

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