

Case No. C079239

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT

CALIFORNIA PUBLIC RECORDS RESEARCH, INC.
Plaintiff and Appellant,

v.

COUNTY OF SACRAMENTO,
Defendant and Respondent.

[PROPOSED] AMICUS CURIAE BRIEF OF THE CALIFORNIA STATE
ASSOCIATION OF COUNTIES IN SUPPORT OF DEFENDANT AND
RESPONDENT COUNTY OF SACRAMENTO

On Appeal from a Judgment of the Sacramento County Superior Court
Case No. 34-2011-80001008-CUWMGDS
The Honorable Christopher Krueger

Jennifer B. Henning (SBN 193915)
California State Association of Counties
1100 K Street, Suite 101
Sacramento, CA 95814-3941
Telephone: (916) 327-7534
Facsimile: (916) 443-8867
jhenning@counties.org

TABLE OF CONTENTS

	<u>Page(s)</u>
I. INTRODUCTION	4
II. ISSUE PRESENTED	5
III. ARGUMENT	5
A. The Plain Meaning Of The Statute Does Not Limit What Is Included In Indirect Costs.	5
B. The Legislative History Indicates That There Was No Intent To Limit Indirect Costs In The Manner Advanced By Appellant... ..	8
IV. CONCLUSION.....	14

TABLE OF AUTHORITIES

Page(s)

California Government Code

Section 901	12
Section 904	12
Section 3200	12
Sections 27364	10
Section 54985	passim

Cases

<i>DiCampli-Mintz v. County of Santa Clara</i> (2012) 55 Cal.4th 983, 992	6
<i>Gray Cary Ware & Freidenrich v. Vigilant Ins. Co.</i> (2004) 114 Cal.App.4th 1185	6
<i>Hoschler v. Sacramento City Unified School Dist.</i> (2007) 149 Cal.App.4th 258	7, 11, 13
<i>Kaiser Steel Corp. v. County of Solano</i> (1979) 90 Cal.App.3d 662	7, 11, 12, 13
<i>People v. Snook</i> (1977) 16 Cal.4th 1210	6
<i>Waters of Long Valley Creek Stream System</i> (1979) 25 Cal.3d 339	6

Federal Statute

1983	9, 10
------------	-------

I. INTRODUCTION

The California State Association of Counties (“CSAC”) is an association of all 58 county governments whose purpose is to represent county government before the California Legislature, administrative agencies and the federal government. CSAC places a strong emphasis on educating the public about the value and need for county programs and services. Appellant in this matter, California Public Records Research, Inc (“CPRR”), is urging an interpretation of Government Code section 27366 that is contrary to the legislative intent and to the reality of how a recorder’s office operates. The legislative history is clear that it was the intent of the legislation and its proponents to be able to recoup a variety of costs associated with maintaining records for the public benefit through the copying fees.

Government Code section 27366 provides the authority for a county recorder to set fees for copies of documents on file in the recorder’s office. Historically the fees set by that section have not kept pace with the costs incurred by the recorders’ offices. This has negatively impacted the ability of the recorder to provide services, and has required counties to pick up the difference. For counties, this has meant spending funds that could be otherwise used to provide important county services.

In 1993 the Recorders’ Association sponsored legislation to address this issue. In its wisdom, the Legislature eliminated the dollar amount

specified in section 27366 and instead provided county Boards of Supervisors the discretion to set the fees in the amount necessary to recover the direct and indirect costs of providing those copies. The Legislature did not limit the types of indirect costs that were recoverable, but rather left it to the discretion of individual Boards to determine the amount that would be necessary to recover its costs. This was not an oversight. The Legislature was fully aware of how to limit the types of indirect costs if it so chose. It had done so in other legislation that was explicitly made non-applicable to Section 27366 – Government Code section 54985.

Accepting Appellant CPRR’s limiting interpretation of section 27366 would have a significant fiscal impact on CSAC’s member counties. CSAC urges the Court to reject Appellant’s arguments.

II. ISSUE PRESENTED

Does Government Code section 27366 permit county Boards of Supervisors to set the fee for copies of record and documents on file in recorders’ offices in the amount necessary to recover all direct and indirect costs for providing that product or service?

III. ARGUMENT

A. The Plain Meaning Of The Statute Does Not Limit What Is Included In Indirect Costs.

Appellant’s argument distilled is that the language of section 27366 requiring the Board of Supervisors to set fees in an amount necessary to

recover the direct *and* indirect costs should be narrowly interpreted to exclude any overhead costs. (App. Br. At 3-4; App. App. Appx at 9:24-10:2.) This interpretation ignores the plain language of the statute. Section 27366 clearly states:

The fee for any copy of any other record or paper on file in the office of the recorder, when the copy is made by the recorder, shall be set by the board of **supervisors in an amount necessary to recover the direct and indirect costs** of providing the product or service or the cost of enforcing any regulation for which the fee is charged or levied. (emphasis added).

It does not limit the definition of indirect costs to exclude overhead. In construing statutes, courts must look to the language of the statute.

(*DiCampli-Mintz v. County of Santa Clara* (2012) 55 Cal.4th 983, 992.)

When the language of the statute is clear and unambiguous, the court's inquiry ends. (*In re Waters of Long Valley Creek Stream System* (1979) 25 Cal.3d 339, 348.) The court presumes "the Legislature meant what it said and the plain meaning of the statute governs." (*People v. Snook* (1977) 16 Cal.4th 1210, 1215.) It is the court's "role to ascertain the meaning of the words used, not to insert what has been omitted or otherwise rewrite the law to conform to an intention that has not been expressed." (*Gray Cary Ware & Freidenrich v. Vigilant Ins. Co.* (2004) 114 Cal.App.4th 1185, 1190.)

Here, the Legislature clearly intended to allow for the County to recover all indirect costs as determined by the Board of Supervisors. If the

Legislature had desired to limit the types of recoverable costs under section 27366 it would have inserted such a limitation into that statute.

Instead, the legislative history of Government Code section 27366 shows that the Legislature intended to vest the Board with the same, or broader, discretion to set fees as it has under Government Code section 54985. In enacting Government Code section 54985, which provides the general authority for a county Board of Supervisors to increase or decrease fees to reflect the amount necessary to recover the cost of providing a service, the Legislature was very specific about the recoverable indirect costs. In fact, section 54985 specifically limits what may be included in indirect costs:

Indirect costs that may be reflected in the cost of providing any product or service or the cost of enforcing any regulation *shall be limited to those items that are included in the federal Office of Management and Budget Circular A-87* on January 1, 1984.

(Gov. Code, § 54985 (emphasis added).) Section 27366, however, contains no such limitation. Statutory interpretation requires that the parties assume the Legislature was aware of prior legislation on the same subject, and is deemed to have enacted the legislation with the similar legislation in mind. (*Kaiser Steel Corp. v. County of Solano* (1979) 90 Cal.App.3d 662, 667; *Hoschler v. Sacramento City Unified School Dist.* (2007) 149 Cal.App.4th 258, 269.) Moreover the legislative history is clear that in drafting the amendments to section 27366, the Legislature was keenly aware of, and

took into consideration, the restrictions of section 54985 and chose not to insert them into section 27366.

B. The Legislative History Indicates That There Was No Intent To Limit Indirect Costs In The Manner Advanced By Appellant.

Government Code section 27366 was amended by Assembly Bill 130 in 1993. (See Generally App. Appx. at Vol. II-III.) At that time, the language of section 27366 was changed from specifying the exact dollar amount the recorder was allowed to charge for copies of recorded documents, to allow the Board of Supervisors the discretion to set the fees at an amount necessary to recoup the direct and indirect cost of providing the service.

The initial version of the bill provided as follows:

Section 27366 of the Government Code is amended to read:

The fee for any copy of any other record or paper on file in the office of the recorder, when the copy is made by the recorder, is one dollar (\$1) for each page or portion thereof; provided, that the *original* page does not exceed 8½ by 11 inches. The fee for photographic copies of the *original* pages exceeding ½ by 11 inches shall be two dollars (\$2) per page or portion thereof. (Emphasis added.)

The final version of the statute states:

The fee for any copy of any other record or paper on file in the office of the recorder, when the copy is made by the recorder, shall be set by the board of supervisors in an amount necessary to recover the direct and indirect costs of providing the product or service or the cost of enforcing any regulation for which the fee or charge is levied.

The legislative history indicates that this change came as a result of discussion with counties as to the problems they were having in being able to keep their recorder's office open without assistance from the county's general fund. The discussion centers around the fact that the functions of the recorder's office are mandated by the State and necessary to conduct the real estate business of the State, but are underfunded. In its analysis, and in comments by interested counties, the Legislature references the fact that the Government Code already allows counties to charge the amount reasonably necessary to recover the costs for many services, but notes that section 27366 is specifically excluded from Government Code section 54985 which allows them to do so. (See e.g. App. Appx. Vol. II p. 532, 543-544.)

The Legislature specifically examined the problems created by the exclusion of section 27366 from the allowances of section 54985 providing local governments the discretion to recuperate the "direct and indirect costs" of providing services. In a document titled Concurrence of Senate Amendments, the comments section explicitly references the legislation that enacted section 54985, AB 151 (Hannigan), and proposes that the same cost recovery be applied to the Recorder:

AB 151 (Hannigan) Chapter 295, Statutes of 1983, allows counties to increase or decrease fees in an amount reasonably necessary to recover costs, with certain exceptions, including certain county recorder fees. This bill repeals provisions which set certain recorder fees and strikes the related AB 151 exception, thereby allowing these recorder fees to be directly proportional to the cost of providing the service.

(App. Appx. Vol II at p. 554.) The commentary by the Senate Local Government Committee Chairman goes on to inquire as to whether there is some state interest in preventing local government from recovering those same costs for the Recorder:

While county officials can adjust some fees and charges to reflect changes in service costs, state law fixes the rates of other fees. AB 151 (Hannigan, 1983) deregulated most county fees, but excluded certain recorder's fees. The Government Code allows counties to charge "the amount reasonably necessary to recover" costs for many services. Does the Legislature have a statewide policy interest in regulating local document certification and copying fees? If not, the Committee may wish to consider letting counties increase or decrease these fees as necessary.

(App. Appx. Vol. II at p. 560-61.) In a letter in support of the legislation, the City and County of San Francisco also raises the fact that the prohibitions excluding section 27366 from the permissions in Government Code section 54985 were an impediment to Recorders' management of increasing costs of providing the services:

Copy fee increases to recapture operational cost has not happened since 1967. Why? Because we are excluded from using Government Code 54985 to recover copy cost and no amendments to Government Code sections 27364 and 27366 increasing fees have occurred since then.

(App. Appx. Vol. II at p. 411.) "This bill, as amended in committee, basically deregulates the two service fees by deleting them from the codes. In effect, it will give the counties flexibility in determining on their own what the fees will be relative to the two services." (App. Appx. Vol III at p.

599.) Therefore the legislative history clears up any doubt that the amendments to section 27366 in 1993 were intended to allow counties the discretion to set fees to recover costs without continual resort to the State Legislature, and to conform the local control of the Recorders' fee structure to that discretion which had already been granted to local government by section 54985 a decade earlier. (*Kaiser Steel Corp. v. County of Solano* (1979) 90 Cal.App.3d 662, 667 ["Where the Legislature omits a particular provision in a later enactment related to the same subject matter, such deliberate omission indicates a different intention which may not be supplanted in the process of judicial construction."]; *Hoschler v. Sacramento City Unified School Dist.* (2007) 149 Cal.App.4th 258, 269 ["Moreover, '[t]he Legislature 'is deemed to be aware of statutes and judicial decisions already in existence, and to have enacted or amended a statute in light thereof. [Citation.] Where a statute is framed in language of an earlier enactment on the same or an analogous subject, and that enactment has been judicially construed, the Legislature is presumed to have adopted that construction.' "].)

Notably, the Legislature did not define the term indirect costs under section 27366 even though it did proscribe what might be included in the allowances under section 54985: "Indirect costs that may be reflected in the cost of providing any product or service or the cost of enforcing any regulation shall be limited to those items that are included in the federal

Office of Management and Budget Circular A-87 on January 1, 1984.” The language in section 27366 contains no such limitations and cannot be interpreted as being more restrictive than Section 54985. (*Kaiser Steel Corp, supra*, 90 Cal.App.3d at 667.)

There is scant discussion of what items specifically should be included in indirect costs in the legislative history, but the plain meaning of the term is unambiguous and definitions of indirect costs are readily available both in the legislative history and in accounting literature:

- One letter from the County of Colusa makes an attempt at defining those costs: “This increase is long overdue. (...) There are many costs associated with the production of copies for the public, including records storage and management, equipment and personnel.” (App. Appx. Vol. II at p. 530.)
- By law, the State Controller provides counties with a manual that prescribes uniform accounting procedures conforming to the Generally Accepted Accounting Principals (GAAP). (Gov. Code, § 3200; 2 Cal.Code Reg. §§901, 904.)¹
- Appendix C of the State Controller’s Manual contains a glossary of accounting terms and cross-refers the term “Indirect/charges/costs/expenses” to “See Overhead.”

¹ The State Controller’s Manual is available online:
http://www.sco.ca.gov/Files-ARD-Local/ASP_Manual_02-27-15.pdf

“Overhead” is then defined as “those elements of cost necessary in the production of a good or service which are not directly traceable to the product or service. Usually these costs relate to objects of expenditure which do not become an integral part of the product or service such as rent, heat, light, supplies, management, and supervision (indirect/costs/charges/expenses).”

It is reasonable to conclude, therefore, that the Legislature never intended that the limitations of section 54985 to those costs allowed by OMB-A87 Circular should apply to the more expansive recovery of “direct and indirect costs” found in section 27366. The Court can thus dispose of Appellant’s argument that section 27366 is more limited in its discretion than Section 54985. (*Kaiser Steel Corp., supra*, 90 Cal.App.3d at 667 [“Moreover, it is equally well settled that fundamental rules of statutory construction require ascertainment of the legislative intent “so as to effectuate the purpose of the law (and) ‘every statute should be construed with reference to the whole system of law of which it is a part so that all may be harmonized and have effect.’ (Citation.) If possible, significance should be given to every word, phrase, sentence and part of an act in pursuance of the legislative purpose.”]; (*Hoschler, supra*, 149 Cal.App.4th at 269 [“Moreover, ‘[t]he Legislature ‘is deemed to be aware of statutes and

judicial decisions already in existence, and to have enacted or amended a statute in light thereof. [Citation.] Where a statute is framed in language of an earlier enactment on the same or an analogous subject, and that enactment has been judicially construed, the Legislature is presumed to have adopted that construction.’ ”.) If a county, however, were to follow the dictates of the OMB-A87 when determining which indirect costs to include in the formulation of a fee, such a decision would be more restrictive than what is required by section 27366 and could never violate section 27366.

The legislative history merely backs up the plain reading of the statute and makes clear that the intent of the Legislature in enacting section 27366 is that counties should recoup all direct and indirect costs for providing copies of documents without the limitations urged by Appellant.

IV. CONCLUSION

As established above, the narrow construction of section 27366 urged by Appellant is contrary to the plain meaning of the statute and the intent of the Legislature in authorizing recovery of indirect costs.

Accordingly, CSAC urges and respectfully requests that the trial court’s interpretation of section 27366 be affirmed.

Dated: November 24, 2015

Jennifer B. Henning, SBN 193915
Litigation Counsel
California State Association of Counties

**CERTIFICATION OF COMPLIANCE WITH
CALIFORNIA RULES OF COURT, RULE 8.204(c)(1)**

I hereby certify that this brief has been prepared using proportionately double-spaced 13 point Times New Roman typeface. According to the word count feature in my Microsoft Word software, this brief contains 3,778 words.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 24th day of November, 2015 in Sacramento, California.

Respectfully submitted,

By: _____
JENNIFER B. HENNING
Attorney for Amicus Curiae