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The Honorable Newton R. Russell, Senator, Twenty-First Senatorial District, has requested an opinion on questions we have rephrased as follows:

1. Is judicial arbitration mandated by the Legislature for municipal courts within the meaning of Article XIIIB, section 6 of the California Constitution?

2. Is the state obligated to reimburse counties for the costs of the municipal court arbitration program?

CONCLUSIONS

1. Judicial arbitration is mandated by the Legislature for municipal courts within the meaning of Article XIIIB, section 6 of the California Constitution as to arbitration based upon stipulation or plaintiff election. It is also mandated within the meaning of Article XIIIB, section 6 as to "court ordered" arbitration resulting from a local court rule adopted after July 1, 1980, the effective date of Article XIIIB.

2. Article XIIIB, section 6 of the California Constitution contemplates that the state should provide a subvention of funds to reimburse counties for the costs of the judicial arbitration in municipal courts. Reimbursement, however, is still subject to appropriation of funds by the Legislature.

ANALYSIS

In 1975 the Legislature enacted a statute providing for a system of judicial arbitration of small civil cases in superior courts upon stipulation of the parties or election by the plaintiff. (See Code Civ. Proc. §§ 1141.10 and 1141.20 as added by Stats. 1975, ch. 1006, § 1, p. 2364, operative July 1, 1976.) Under the 1975 legislation, the services of the arbitrator were to be paid for by the Judicial Council.

In 1978 the Legislature enacted another statute providing for an expanded system of judicial arbitration for "small civil claims" in *all courts* of this state, operative July 1, 1979. (Stats. 1978, ch. 743; Code Civ. Proc. §§ 1141.10–1141.32.)[1] With some exceptions (§ 1141.21) "[a]ll administrative costs of arbitration, including compensation of arbitrators, shall be paid for *by the county* in which the arbitration costs are incurred." (§ 1141.28, emphasis added.)

Article XIIIB, section 6 of the California Constitution provides that "[w]henever 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" thereof.[2] Article XIIIB was adopted by the

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[1] "All section references will be to the Code of Civil Procedure unless otherwise indicated. It is to be noted that arbitration of existing controversies upon written agreement has been provided for in sections 1280 *et seq.* for many years. That form of arbitration is different from that provided for in 1976 and 1979, although the latter is not to be construed as "in derogation" of the former. (§ 1141.30.) For our purposes herein, it is sufficient to note that they are *different programs*.

Sections 1141.10 and 1141.20 as added in 1975 provided:

§ 1141.10. "Notwithstanding any other provision of law, the Judicial Council shall provide by rule for a uniform system of arbitration of the following causes in superior courts:

(a) Any cause upon stipulation of the parties.

(b) Upon filing of an election by the plaintiff, any cause in which the plaintiff agrees that the arbitration award shall not exceed the total sum of seven thousand five hundred dollars ($7,500)."

§ 1141.20. "Each arbitrator shall receive reasonable compensation for his services from funds appropriated to the Judicial Council for that purpose."

[2] Section 6 of Article XIIIB provides in full: "Section 6. Whenever the Legislature or any state

people at a special election on November 6, 1979 as Proposition 4 (Limitation of Government Appropriations-Initiative Constitutional Amendment) at such election. Generally, the constitutional amendment limits state and local appropriations which are financed by the "proceeds of taxes" to the base year, 1978–1979, with adjustments for changes in the "cost of living" and the population of the affected entity.

Article XIIIB was patterned upon an earlier legislative enactment, the Property Tax Relief Act of 1972 (Stats. 1972, ch. 1406), renumbered and reorganized by Statutes of 1973, chapter 358.[3] This act, now known in common governmental parlance as "SB 90," essentially restricted local governments to a property tax level for a prior base year (alternatively the 1971–72 or 1972–73 fiscal years), and also adjusted for such matters as changes in population and the cost of living. (See Rev. & Tax. Code, § 2202 *et seq*.)

Section 6 of Article XIIIB was patterned after the key section which implemented SB 90, that is, section 2231 of the Revenue and Taxation Code. That section provides, *inter alia*, that "[t]he state shall reimburse each local agency for all 'costs mandated by the state,' as defined in Section 2207." Section 2207 defines "costs mandated by the state" to essentially include any increased costs incurred by a local agency by reason of "[a]ny law enacted [or executive order issued after January 1, 1973, which mandates a new program or an increased level of service of an existing program." In 63 Ops. Cal. Atty. Gen. 700, 702 (1980) we concluded with respect to Article XIIIB that "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."

It is to be noted that Article XIIIB, section 6, subdivision (c) sets forth a January 1, 1975 cut-off date for certain purposes. Legislative mandates or implementing executive orders or regulation in effect prior to that date may, but need not be, funded by the Legislature. Although Article XIIIB, section 6 says nothing specifically with respect to "mandates" between January 1, 1975 and the effective date of Article XIIIB, that is, July

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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."

[3] See generally 60 Ops. Cal. Atty. Gen. 197 (1977); 58 Ops. Cal. Atty. Gen. 114 (1975); and 57 Ops. Cal. Atty. Gen. 451 (1974) for published opinions of this office discussing and interpreting that act.

1, 1980 (see Cal. Const., Art. XIIIB, § 10), we conclude that the only logical inference to be drawn therefrom is that such "mandates" are to be included within the scope of Article XIIIB. In so concluding, we do not mean to say that Article XIIIB is to be *applied* retroactively, but only that it shall operate *prospectively* after July 1, 1980, its effective date, with respect to mandates both after that date and those in effect between January 1, 1975 and such date. This conclusion is in accord with the usual rules of statutory construction that "[s]tatutes should not be given retroactive application unless it is clearly apparent that the Legislature so intended" (*Bollen v. Wood* (1979) 96 Cal. App. 3d 944, 957) but that "[a] statute does not operate retroactively merely because some of the facts or conditions upon which its application depends came into existence prior to its enactment" (*Sitzman v. City Board of Education* (1964) 61 Cal. 2d 88, 89). "'Generally speaking, principles of construction applicable to statutes are also applicable to constitutions.'" (*Hammond v. McDonald* (1942) 49 Cal. App. 2d 671, 681.) Accordingly, the 1978 judicial arbitration enactment could fall within the scope of Article XIIIB.

Many of the procedural statutes enacted to implement SB 90 which are contained in the Revenue & Taxation Code are being followed both by the Legislature and the appropriate governmental executive officers with respect to Article XIIIB. Included are such matters as the requisite appropriation language to be included in the bill, or a disclaimer to be included that there are no reimbursable costs (Rev. & Tax. Code, § 2231); procedures for obtaining reimbursement from the State Controller (Rev. & Tax. Code, §§ 2229, 2231, 2235, 2236 and 2238); estimates to be made by the Department of Finance with respect to mandated costs (Rev. & Tax. Code §§ 2242–2243); annual review of statutes containing disclaimers by the Department of Finance (Rev. & Tax. Code, § 2246); and procedures for filing claims with the State Board of Control by local agencies where the state has failed to provide for reimbursement of state mandated costs (Rev. & Tax. Code, § 2250 *et seq*.). (See also, generally, Statutes 1980, ch. 1256, §§ 2–21, recently amending the SB 90 procedural statutes.)

Accordingly, the Revenue and Taxation Code provisions enacted to implement SB 90 are germane to our consideration herein for two reasons. First of all, the manner in which the bill which became the new judicial arbitration law was processed is material in searching for legislative intent with respect to the program. Secondly, the procedures are being used with respect to Article XIIIB, including such matters as filing claims with the State Controller for reimbursement, or, if necessary, ultimately with the State Board of Control.[4]

[4] The scope of the procedural carryover from SB 90 to Article XIIIB is exemplified in Senate Bill No. 49, introduced December 3, 1980, providing for a new crime. The Legislative Counsel's digest in the bill provides in part:

"This bill would make such conduct a misdemeanor. Article XIIIB of the California

In addition to its main operative provision, section 2231 of the Revenue and Taxation Code provides, *inter alia* (1) that in the initial year in which costs are to be incurred, the "statute mandating such costs shall provide an appropriation therefor"; (2) that "[i] n subsequent fiscal years appropriations for such costs shall be included in the State Budget and the Budget Bill"; and (3) that "[t]he amount appropriated for such purposes shall be appropriated to the Controller for disbursement" to local agencies upon claims made to the Controller for reimbursement of the state mandated costs.

The SB 90 procedures also provide that with respect to state mandated costs, the amount originally appropriated in the legislative bill, and the amount subsequently placed in the State Budget, will be based upon estimates prepared by the Department of Finance. (See Rev. & Tax. Code, §§ 2240.2245.)

Finally, the SB 90 legislation provides a procedure whereby local agencies may file claims with the State Board of Control asserting that the local agency "has not been reimbursed for all costs mandated by the state as required by section 2231 or 2234." (Rev. & Tax. Code § 2250 *et seq.)*

With this background on Article XIIIB, section 6 of the California Constitution and on the Property Tax Relief Act of 1972 (SB 90), we return to the provisions of the 1978 enactment which provides in section 1141 *et seq*., of the Code of Civil Procedure for judicial arbitration in all courts.[5]

Basically, the purpose of judicial arbitration is to provide a simple and

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Constitution and Sections 2231 and 2234 of the Revenue and Taxation Code require the state to reimburse local agencies and school districts for certain costs mandated by the state. Other provisions require the Department of Finance to review statutes disclaiming these costs and provide, in certain cases, for making claims to the State Board of Control for reimbursement.

However, this bill would provide that no appropriation is made and no reimbursement is required by this act for a specified reason." Section 2 of the bill sets forth the appropriate "disclaimer."

For examples of various types of disclaimer provisions under SB 90, see Statutes of 1979. chapters 167, 323 and 328.

[5] We also note a significant distinction between Article XIIIB, section 6 and SB 90 "mandates." With respect to the latter, if the Legislature fails to provide funding for new programs or increased levels of services, it may still be urged that in doing so the Legislature has impliedly amended or excepted such "mandates" from the general terms of SB 90. This, of course, would be within the power of the Legislature to do. However, since Article XIIIB, section 6 is a *constitutional* provision, no similar power would repose in the Legislature with respect to Article XIIIB.

economical procedure for the expeditious resolution of "small civil claims," that is claims not in excess of $15,000. Thus, among the legislative findings and declarations of legislative intent it is stated that "[t]he Legislature . . . finds and declares that arbitration has proven to be an efficient and equitable method for resolving small claims, and that *courts should encourage or require the use of arbitration for such actions whenever possible*." (§ 1141.10, emphasis added.)[6]

The basic provisions conferring the power or duty upon courts to submit matters to arbitration are found in sections 1141.11 and 1141.12.

Section 1141.11, subdivisions (a) and (b) provide for arbitration in superior courts. These subdivisions state:

> "(a) In each superior court with 10 or more judges, all at-issue civil actions pending or filed after the operative date of this chapter shall be submitted to arbitration, by the presiding judge or the judge designated, under this chapter if the amount in controversy in the opinion of the court will not exceed fifteen thousand dollars ($15,000) for each plaintiff, which decision shall not be appealable.
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> "(b) In each superior court with less than 10 judges, the court may provide by local rule, when it determines that it is in the best interests of justice, that all at-issue civil actions pending on or filed after the operative date of this chapter, shall be submitted to arbitration by the presiding judge or the judge designated under this chapter if the amount in controversy in the opinion of the court will not exceed fifteen thousand dollars ($13,000) for each plaintiff, which decision shall not be appealable. In the Superior Court of Sonoma County all at-issue civil actions pending between October 1, 1979, and October 1, 1981, shall be submitted to arbitration by the presiding judge or the judge designated under this chapter if the amount in controversy in the opinion of the court will not exceed fifteen thousand dollars ($15,000) for each plaintiff, which decision shall not be appealable."

Thus, with the exception of Sonoma County which has certain special rules,

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[6] Essentially, arbitration contemplates that a case which is at-issue will be assigned to an arbitrator, who will be a retired judge or a member of the bar familiar with that type of proceeding. The arbitrator, who will be entitled to a fee, normally $150 per day, will hear the matter informally, and will have the power to decide the law and facts of the case, and make an award. If neither party requests a trial de novo, judgment is entered in the case, based upon the arbitrator's award. (See generally, § 1141.10 *et seq*.; Cal. Rules of Court, Rule 1600 *et seq*.).

arbitration *appears* to be mandated in "small civil cases" only in superior courts with 10 or more judges, and *appears* to be completely discretionary in other superior courts under section 1141.11.

Section 1141.11 subdivision (c) provides for arbitration in municipal courts. It states:

> "(c) In each municipal court district, the municipal court district may provide by local rule, when it is determined to be in the best interests of justice, that all at-issue civil actions pending on or filed after the operative date of this chapter in such judicial district, shall be submitted to arbitration by the presiding judge or the judge designated under this chapter. The provisions of this section shall not apply to any action maintained pursuant to Section 1781 of the Civil Code or Section 116.2 or 1161 of this code."

Accordingly, subdivision (c) appears to make arbitration in municipal courts completely discretionary in each municipal court district.

Section 1141.11 subdivision (d), the final subdivision of that section, excepts from arbitration those actions filed in certain superior and municipal courts which are participating in pilot projects, and then provides its own exceptions to the exception. It states:

> "(d) The provisions of this chapter shall not apply to those actions filed in a superior or municipal court which has been selected pursuant to Section 1823.1 and is participating in a pilot project pursuant to Title 1 (commencing with Section 1823) of Part 3.5; provided, however, that any superior or municipal court may provide by local rule that the provisions of this chapter shall apply to actions pending on or flied after July 1, 1979. Any action filed in such court after the conclusion of the pilot project shall be subject to the provisions of this chapter."

If we were required to consider only section 1141.11, it would appear, as a general proposition, that arbitration of small civil actions is mandated by the Legislature only in superior courts with 10 or more judges; that in other superior courts, and in all municipal courts, judicial arbitration is a matter of local option.[7]

[7] We do not attempt to consider or discuss the various exceptions to the general rules as to when arbitration is to take place. For example, section 1141.13 excepts actions which include a prayer for equitable relief. Also, section 1141.15 requires the Judicial Council by rule to provide "exceptions for cause."

However, section 1141.12 belies such a simple conclusion. That section reads:

> "(a) In each superior court in which arbitration may be had pursuant to subdivision (a) or (b) of Section 1141.11, upon stipulation of the parties, any at-issue civil actions *shall be submitted to arbitration* regardless of the amount in controversy. (b) In all other superior, municipal, and justice courts, the Judicial Council *shall provide by rule for a uniform system of arbitration of the following causes*: (i) any cause upon stipulation of the parties, and (ii) upon filing of an election by the plaintiff, any cause in which the plaintiff agrees that the arbitration award shall not exceed the total sum of fifteen thousand dollars ($15,000)." (Emphases added.)

Thus, pursuant to section 1141.12, subdivision (a), upon stipulation of the parties, arbitration is required *or mandated* in all superior courts described in subdivision (a) and (b) of section 1141.11 in all civil actions irrespective of the amount in controversy. Pursuant to subdivision (b) of section 1141.12, the Judicial Council is *directed by the Legislature* to provide by rule for a uniform system of arbitration in the remaining superior courts, and in all municipal and justice courts (1) upon stipulation of the parties irrespective of the amount in controversy and (2) upon election by the plaintiff where the plaintiff agrees to limit any award to $15,000.[8] Since the jurisdictional limit of municipal courts is now $15,000, *all* municipal court actions in these categories are required or mandated to go to arbitration.

In accordance with the legislative mandate, (see note 6, *supra*), the judicial Council has adopted comprehensive rules for judicial arbitration in civil cases in the California Rules of Court, Rules 1600–1617. Rule 1600 specifies the actions which *shall* be arbitrated, and is essentially a composite of sections 1141.11 and 1141.12, discussed above. Rule 1600 reads:

> "Rule 1600. Actions Subject to Arbitration Except as provided in rule 1600.5 the following actions shall be arbitrated:

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[8] This is not the only direction to the judicial Council. Section 1141.14 provides: "Notwithstanding any other provisions of law except the provisions of this chapter, the judicial Council shall provide by rule for practice and procedure for all actions submitted to arbitration under this chapter. The judicial Council rules shall provide for and conform to the provisions of this chapter."

Sec also re Judicial Council rules; section 1141.15 ("exceptions for cause"); section 1141.18(b) (compensation of arbitrators); section 1141.19 (powers of arbitrators); section 1141.29 (effectiveness reports by courts).

(a) Upon stipulation, any action in any court, regardless of the amount in controversy.

(b) Upon filing of an election by a plaintiff, any action in any court in which the plaintiff agrees that the arbitration award shall not exceed $15,000.

(c) In each superior court with 10 or more judges all civil actions where the amount in controversy does not exceed $15,000 as to any plaintiff.

(d) In a superior court with fewer than 10 judges that so provides by local rule, all actions where the amount in controversy does not exceed $15,000 as to any plaintiff.

(e) All actions in a municipal court that so provides by local rule."

Rule 1600.5 contains exceptions such as actions including requests for equitable relief, class actions, and other actions which are not amenable to arbitration.

As noted earlier, we have previously concluded with respect to Article XIIIB, section 6, that "[t]he 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." (63 Ops. Cal. Atty. Gen. 700, 702, *supra*.) In our view, judicial arbitration of small civil claims as initially conceived and commenced in 1976 and as expanded in 1978 has placed upon local government, *the county*, the costs of a *new program*. That is because judicial arbitration is something "newly conceived" as compared to something "different in degree," which would be merely a higher level of service.

That judicial arbitration of small claims is a new program and has added new costs to local government is evident from the fact that in 1976 the Legislature appropriated funds to the Judicial Council for the costs of arbitrators, and thus did not burden the county with those costs (see prior § 1141.20 at fn. 1, *supra*). Additionally, this is even more evident and supported by the actions of the Legislature itself in 1978. It is to be recalled that the SB 90 procedures outlined above provide that the Legislature, in mandating a new program, is to provide in the enacting bill an appropriation funding that program, and thereafter the funding is to appear in the budget bill and the state budget. Such finding is predicated upon Department of Finance estimates. (Rev. & Tax. Code, §§ 2240, 2245.) An examination of sections 3, 4 and 5 of Chapter 743, Statutes of 1978,[9] the judicial arbitration bill of 1978

[9] "Sec. 3. It is the intent of the Legislature that the additional costs incurred by counties in the 1979–80 fiscal year and subsequent years in administering the arbitration program required by this

discloses *funding*, but only for arbitration in superior courts. Additionally, we are informed that the appropriation and subsequent budgeting for judicial arbitration has only been "to reimburse the 12 counties [those with 10 or more superior court judges] under the mandatory arbitration provisions of Chapter 743 for costs incurred and that no additional funds were appropriated for counties providing arbitration pursuant to stipulation or election."[10] Accordingly, no reimbursement for the costs of arbitration has been provided or is being provided for superior courts with less than ten judges (except Sonoma County), or for municipal or justice courts. The Legislature has, however, recognized that judicial arbitration means added costs to the counties, at least in its initial stages.

At this juncture, we believe it is necessary to reexamine the features of Article XIIIB with respect to mandates between January 1, 1975 and July 1, 1980, its effective date, and those thereafter. It is to be recalled that the main operative provision of Article XIIIB, section 6 applies to mandates either by (1) "the Legislature" or (2) "any start agency." This is to be contrasted with those described in subdivision (c) of Article XIIIB, section 6, the exception as to pre-1975 mandates, and the provisions from which we determined that post-1975 mandates fell with the scope of the constitutional provision on a prospective basis. Subdivision (c) speaks of (1) "legislative mandates" or (2) "*executive* orders or regulations" which implement legislation. Thus it does not speak in terms of

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act be reimbursed to the extent that such costs are not offset by the avoidance of costs associated with the reduced need for additional superior court judgeships. Funding for such costs can be provided through the regular budget process. Claims for actual costs incurred in the 1979–80 fiscal year and subsequent Fiscal years must be submitted to the State Controller pursuant to paragraph (2) of subdivision (d) of Section 2231 of the Revenue and Taxation Code. The Controller shall reduce such claims by the amount of any cost avoidance that is found to have occurred in each county in the report of the Auditor General pursuant to Section 4 of this act.

"Section 4. The Auditor General shall conduct studies of the effects of this act on superior court workload in each county affected by this act. The studies shall include but not be limited to, an analysis of the reduction in superior court workload, which resulted in a decreased need for additional superior court judgeships. The report shall also include a statement of the costs avoided in each affected county due to the effect of this act. The results of these studies shall be reported annually to the Legislature and the State Controller beginning on October 31, 1980.

"Sec. 5. The sum of one hundred seventy-three thousand nine hundred fifty dollars ($173,950) is hereby appropriated from the General Fund according to the following schedule:

(a) To the judicial Council for implementing this act in Fiscal Year 1978–79 . . . $31,000.

(b) To the State Controller for allocation and disbursement to counties pursuant to Section 2231 of the Revenue and Taxation Code to reimburse counties for costs incurred by them in Fiscal Year 1978–79 pursuant to this act; provided, claims for direct and indirect costs hereunder shall be filed as prescribed by the State Controller . . . $142,950."

[10] Materials received from the State Controller's Office November 26, 1980 by this office.

mandates of *any state agency* as does Article XIIIB. This is significant since, although the Judicial Council is clearly a "state agency," its rules clearly are not "*executive* orders or regulations." It is created pursuant to Article VI of the California Constitution, which provides for the *judicial* branch of government. (Cal. Const. Art. VI, § 6.) This distinction is also significant with respect to any "local rules" which might be adopted by superior or municipal courts to provide for a complete system of judicial arbitration pursuant to section 1141, subdivision (b) or (c), as will be developed herein.

With these distinctions in mind, we return to section 1141.12, *supra*, to determine if Article XIIIB applies to the judicial arbitration provided for in that section. Subdivision (a) provides that where there is judicial arbitration of small civil claims pursuant to subdivisions (a) and (b) of section 1141.11, there shall also be judicial arbitration of other claims upon stipulation of the parties irrespective of the amount. Since the statute so provides *directly*, the distinctions with respect to executive and judicial agencies discussed above are not material. The arbitration is clearly provided for by the Legislature.

Not so clear, however, is the arbitration provided for in subdivision (b) of section 1141.12. That subdivision provides that in all other superior courts, and in municipal and justice courts, the Judicial Council shall provide by rule for arbitration upon stipulation or plaintiff election. Does the interposition by the Legislature of the requirement of a Judicial Council rule mean that such arbitration is not provided for by the Legislature within the meaning of Article XIIIB? Since the Judicial Council Rules were adopted prior to the effective date of Article XIIIB, the resolution of that question is significant.

In our opinion, the judicial arbitration required by subdivision (b) of section 11.41.12 has been mandated by the Legislature. The Judicial Council has *been directed* to provide for judicial arbitration in all courts in *clearly delineated cases*. It has no discretion in this respect. Furthermore, in section 1141.14 (see note 8, *supra*) the Legislature, in directing the Judicial Council to provide rules of practice for judicial arbitration, has specified that such "rules shall provide for and conform with the provisions of this chapter." This is a further indication that judicial arbitration is a *legislative* program in all its aspects, and is not one "mandated" by the Judicial Council. Stated otherwise, the Judicial Council in its rules has mandated nothing on the courts or the county which has not been already mandated by the Legislature.

Accordingly, in our opinion, it is erroneous under the provision of Article XIIIB, section 6 to restrict subvention to counties with superior courts having 10 or more judges. We have been requested to focus upon municipal courts. Under section 1141.12 and Judicial Council Rules of Court adopted as required therein, a municipal court has no more discretion as to whether to send cases to arbitration upon stipulation or plaintiff

election than superior courts with 10 or more judges have to send "small civil cases" to arbitration. Both are equally mandatory, and accordingly *both* in our opinion constitute something new mandated by the Legislature within the meaning of Article XIIIB, section 6. We see no rational basis for distinction. Therefore, in municipal courts which send cases to arbitration pursuant to section 1141.12 and the Rules of Court, reimbursement should be provided by the Legislature for the program costs.

This leaves, however, one aspect of judicial arbitration in municipal courts still to be discussed, that is, "court-ordered" arbitration pursuant to local rules adopted in accordance with section 1141.11, subdivision (c). As will be recalled, that subdivision provides that in each municipal court district, the court may by local rule provide for judicial arbitration essentially in *all* civil cases upon order of the court. In determining whether such "court-ordered" arbitration falls within the requirements of Article XIIIB, two basic questions arise from the distinctions discussed above with respect to pre-July 1, 1980 and post-July 1, 1980 "mandates" ("executive orders" vs. those of "any state agency"). Such questions are whether a *court* is a "state agency" within the meaning of Article XIIIB, and, if so, whether the date the local rule is adopted is significant.

As to the first point, we conclude that a local court rule which mandates arbitration costs on a county would be the rule of "any state agency" within the meaning of Article XIIIB. All courts, including municipal courts, are provided for in Article VI of the Constitution and collectively they constitute one of the three independent branches of state government. (See *Millholen v. Riley* (1930) 211 Cal. 29, 34.) Their regulation is a matter of statewide, as opposed to local concern (*Nicholl v. Koster* (1910)157 Cal. 416, 418–420; see also, generally, *Sacramento Etc. D. Dist. v. Superior Court* (1925) 196 Cal. 414, 432). Although court personnel may be considered employees of local government for various purposes (see, e.g. *Martin v. County of Contra Costa* (1970) 8 Cal. App. 3d 856) it can hardly be said that the courts, whether they be superior, municipal or justice courts, are part of local government. Accepting the purpose of Article XIIIB, section 6, to preserve the financial integrity of local governments such as counties, we accordingly believe that when the Legislature elects to give the courts the power to impose *new* costs for *new* programs upon counties, the action of the court in doing so should be viewed as the action of a state agency implementing state law.

As to the second point, the timing of the court rule, it-appears that the timing is material under the provisions of Article XIIIB. With respect to "mandates" predating July 1, 1980, the effective date of Article XIIIB, we have concluded that insofar as rules or regulations are concerned, such must be those of an *executive*-branch state agency. Therefore, rules mandating other than plaintiff-election or stipulated arbitration in municipal courts would have to be *after* such date in order to qualify as those of "any state agency" within the meaning of Article XIIIB since local court rules would be rules of a

judicial state agency.

Accordingly, we conclude that judicial arbitration is mandated for municipal courts by the Legislature within the meaning of section 6 of Article XIIIB of the California Constitution as to arbitration upon stipulation or plaintiff election. It is also mandated within the meaning of Article XIIIB, section 6 as to "court-ordered" arbitration resulting from a local court rule adopted after the effective date of Article XIIIB.

This conclusion brings us to the second facet of this opinion request, that is, whether the state is obligated to reimburse counties for the costs of the municipal court arbitration program. To answer this question, we return to Article XIIIB, section 6 of the California Constitution which states that "the state shall provide a subvention of funds to reimburse such local government for the costs of such program." Despite this language, however, it appears that such reimbursement is still subject to the actual appropriation of the requisite funds by the Legislature. (See generally *Straughter v. State of California* (1980) 108 Cal. App. 3d 412; *County of Orange v. Flournoy* (1974) 42 Cal. App. 3d 908, 913–915; *Veterans of Foreign Wars v. State of California* (1974) 36 Cal. App. 3d 688, 697; *California State Employees' Assn. v. State of California* (1973) 32 Cal. App. 3d 103, 107–108; *California State Employees' Assn. v. Flournoy* (1973) 32 Cal. App. 3d 219, 234–235.) Absent an appropriation by the Legislature, it appears that counties which incur costs for legislatively mandated arbitration upon stipulation or plaintiff election must follow the claims procedure provided for by statute, ultimately filing a claim with the State Board of Control.[11]

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[11] "We do not attempt to determine what the "costs" of the arbitration are, but leave such details to the cost accountants. *Cf*. Sections 3 and 4 of Chapter 743, Statutes of 1978, at note 9, *supra.*

We also note the possible argument that Article XIIIB, section 6 itself is a "continuing appropriation." However, as noted in *County of Orange v. Flournoy*, *supra,* 42 Cal. App. 2d 908, 913–914, although no particular language is necessary to create an appropriation, there still must be a clear intent to do so in 'the subject legislation. The court there held that the language that "the state shall pay" in Revenue and Taxation Code section 2231 which is similar to the language of Article XIIIB, section 6, *and is as predecessor*, did not express the requisite clear intent.