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To: RCRC Board of Directors  
From: Paul A. Smith, Senior Legislative Advocate  
Date: January 8, 2013  
Re: Update on Litigation Involving the Budgeting Powers of a Board of Supervisors vis-à-vis the County Sheriff  
**Informational Item**

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### **Summary**

This memo provides an update on recent litigation concerning the powers available to Board of Supervisors in adopting budgets for their respective Sheriff's Departments.

### **Background**

Under the California Constitution Article XI, Section 1: "The governing body [the board of supervisors] shall provide for the number, compensation, tenure, and appointment of employees." Furthermore, the Government Code (commencing with Section 29000) affords county boards of supervisors with budget-writing authority.

It should be noted, there are limits on a Board of Supervisor's powers with respect to their law enforcement departments. Specially, Government Code 25303 states: "The Board of Supervisors shall not obstruct the investigative function of the Sheriff of the county nor shall it obstruct the investigative and prosecutorial function of the District Attorney of a county."

Over the last forty years, there have been a number of court cases testing the limitations on the separation of powers with respect to the Board of Supervisors and the Sheriff, particularly the role of the Board and its budget-writing authority. Generally speaking, state courts continue to favor broad - but not unlimited - discretion to the legislative branch (the Board of Supervisors) versus the executive branch (the Sheriff) in determining the budgets of each county department.

The two most relied upon cases are the *Hicks v. Board of Supervisors* in 1977 and *County of Butte v. Superior Court* in 1985. In *County of Butte*, the courts determined the power to delete and add county employee positions is vested exclusively in the Board of Supervisors and affirmed the Board's budgetary elimination of 23 Sheriff's Department positions. By contrast, in *Hicks*, the court found that a Board action simply eliminating positions in one law enforcement department (the District Attorney) and transferring them to another law enforcement department (the Sheriff) infringes upon the investigatory powers of the District Attorney for no budgetary purpose.

## **Issue**

Last year, Fresno County Sheriff Margaret Mims sued the Fresno County Board of Supervisors alleging unlawful budgeting practices towards her department (*Mims v. the Fresno County Board of Supervisors*). The central questions before the court were: Does the Board of Supervisors have the authority to manage the budget of the Sheriff specifically by adjusting the number of positions within the Sheriff's department by position classification, and to what level of detail can a Board prescribe specific funding levels for various items within the department's budget?

During the difficult fiscal year of 2009-10, the Fresno County Board of Supervisors adopted a budget which eliminated a large number of vacant positions as well as a handful of current positions in the Sheriff Mims' department. The Board specifically identified the position classifications to be deleted. Furthermore, Mims' alleged that the budget adopted by the Board contained various line-item reductions (a practice commonly referred to as subobject level budgeting). As a result of these budget actions, Sheriff Mims alleged that the Board was interfering in the Sheriff's operation of the jail and did not have the authority to make such personnel/budget decisions. Mims' asserted that the Board was essentially limited to prescribing her overall budget at the "object level" (i.e., by setting forth lump sum amounts for salaries, services and supplies, etc.) and could not lawfully control the Sheriff's expenditures within those broad categories.

In December, Fresno Superior Court Judge Mark Snauffer issued a 40-page ruling upholding the budget practices of the Fresno County Board of Supervisors. Specifically, the court held that the Board was within its powers to eliminate positions by classification (defunding vacant correctional officer positions) and that the Board had the power to prescribe the level of funding for specific expenditures within the Sheriff's Department (i.e., budget at the subobject level), provided that the Board did not attempt to interfere with the Sheriff's "deployment decisions" or otherwise obstruct her investigative functions. (Judge Snauffer concluded that the Fresno County Board of Supervisors had not actually engaged in subobject level budgeting in that case, but upheld the Board's authority to do so in the future.)

## **Staff Recommendation**

RCRC staff will continue to monitor the issue. Members of the Boards of Supervisors are encouraged to become familiar with the *Mims* decision through discussions with their respective county counsels.

## **Attachment**

- Copy of *Mims v. the Fresno County Board of Supervisors* ruling issued December 5, 2012