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OPINION	:	No. 11-504
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THE HONORABLE BOB HUFF, MEMBER OF THE STATE SENATE, has requested an opinion on the following questions:

1. If a county's population exceeds 45,000, does the Community Recreation Act permit the use of school buses to transport persons for purposes of community recreation that is not directly controlled by a public authority?

2. How are the transportation provisions of the Community Recreation Act enforced?

CONCLUSIONS

1. If a county's population exceeds 45,000, the Community Recreation Act authorizes the use of school buses to transport persons for purposes of community recreation only if that recreation is under the direct control of a public authority, except

that a school district which, on July 25, 1983, already had in place "established practices, policies, and procedures" permitting school bus use by nonprofit organizations "for purposes consistent with community recreation" is authorized to continue such historically permitted use.

2. A school district's use of its school buses for community recreation purposes not authorized by the Community Recreation Act may subject the district to oversight by the Department of Education, and to legal actions to compel the district's compliance with statutory and constitutional standards.

ANALYSIS

We are asked to determine the extent to which school districts may lawfully use school buses to transport persons for purposes of community recreation activities and programs which are not under a public authority's direct control, and to explain the means by which such restrictions may be enforced. We conclude that the use of school buses for recreation purposes is permitted only under specific, statutorily defined circumstances, and that a school district's use of its school buses in unauthorized circumstances may subject the district to penalties including withheld revenue, or legal actions to compel compliance with the law.

Question One: Use of School Buses for Community Recreation

As their name implies, school buses are used primarily to transport school pupils to and from school and school-related activities.[1] A "school bus" is defined as:

> any motor vehicle designed, used, or maintained for the transportation of any school pupil at or below the 12th grade to or from a public or private school or to or from public or private school activities.[2]

Certain other uses of school buses are also permitted. For example, school buses may be used to transport school district employees and pupils' parents to and from educational activities;[3] to transport pupils to and from summer jobs connected with summer employment programs for youth;[4] to transport government employees to and from their

[1] *See generally* Educ. Code §§ 39800-39860.

[2] Educ. Code § 39830; *see also* Educ. Code § 82321.

[3] Educ. Code § 39837.5.

[4] Educ. Code § 39837.

places of work under certain circumstances;[5] and, during wars or other national emergencies, to transport pupils to and from harvest sites when they are engaged in the harvesting of crops.[6]

Our focus here is on the use of school buses for "community recreation." Authority for this use is provided in Education Code section 39835(a):

> The governing board of any school district may use school buses to transport persons for purposes of community recreation as provided in Chapter 10 (commencing with Section 10900) of Part 7. The transportation may be provided on any day or days throughout the school year.

Accordingly, we look to Chapter 10 of Part 7 of the Education Code—the Community Recreation Act ("Act")[7]—to determine the extent to which such use is permitted.

In examining these provisions, we apply standard principles of statutory construction. Our goal is to ascertain the Legislature's intent so as to effectuate the law's purpose.[8] We begin by examining the words used in the statutes, giving them their usual and ordinary meaning.[9] We avoid constructions that would render any part of a statute redundant or superfluous.[10] If we encounter ambiguity, we may look to extrinsic aids, including "the ostensible objects to be achieved, the evils to be remedied, the legislative history, public policy, contemporaneous administrative construction, and the statutory scheme of which the statute is a part."[11] On the other hand, if a statute is clear

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[5] Educ. Code § 39840.

[6] Educ. Code § 39836.

[7] Educ. Code §§ 10900-10914.5.

[8] *E.g. People v. Albillar*, 51 Cal. 4th 47, 54-55 (2010); *City of Santa Monica v. Gonzalez*, 43 Cal. 4th 905, 919 (2008); *Hassan v. Mercy Am. River Hosp.*, 31 Cal. 4th 709, 715 (2003); *Esberg v. Union Oil Co.*, 28 Cal. 4th 262, 268 (2002); *People v. Murphy*, 25 Cal. 4th 136, 142 (2001); *cf.* Civ. Code § 4.

[9] *People v. Skiles*, 51 Cal. 4th 1178, 1185 (2011) ("plain and commonsense meaning of the statute" is "generally the most reliable indicator of legislative intent and purpose"); *Albillar*, 51 Cal. 4th at 55; *Gonzalez*, 43 Cal. 4th at 919; *Curle v. Super. Ct.*, 24 Cal. 4th 1057, 1063 (2001); *cf.* Civ. Code § 13.

[10] *Cooley v. Super. Ct.*, 29 Cal. 4th 228, 249 (2002); *Dix v. Super. Ct.*, 53 Cal. 3d 442, 459 (1991).

[11] *Big Creek Lumber Co. v. Co. of Santa Cruz*, 38 Cal. 4th 1139, 1153 (2006) (quoting

and unambiguous, resort to extrinsic sources is unnecessary, and "the Legislature is presumed to have meant what it said."[12]

Under the Act, counties, cities, schools, and other public agencies may conduct community recreation programs.[13] For purposes of this statutory scheme, Education Code section 10901(d) defines "community recreation" and "public recreation" as:

> . . . the recreation as may be engaged in under direct control of a public authority, or any camping or outdoor recreation activity which is (1) sponsored by a nonprofit organization, (2) for the benefit of disadvantaged or handicapped school age children, and (3) in a county with a population less than or equal to 45,000 according to the most recent federal census.

We construe the word "or," following "public authority," as having its usual and ordinary meaning,[14] which is disjunctive. This indicates an "intent to designate alternative ways of satisfying the statutory requirements."[15] We recognize that the term "or" may sometimes be interpreted as having a conjunctive meaning, but this is so "only when such construction is found necessary to carry out the obvious intent of the Legislature."[16] In this case, we see no need to resort to anything other than the ordinary, disjunctive meaning of "or."

Section 10901(d) thus defines two distinct categories of "community recreation" for which school buses may be used to transport participants. First, school buses may be used for "recreation" that is directly controlled by a "public authority." Second, school buses may be used for "any camping or outdoor recreation activity" sponsored by a "nonprofit organization," provided that two further conditions are also met: the camping

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Hoechst Celanese Corp. v. Franchise Tax Bd., 25 Cal. 4th 508, 519 (2001)).

[12] *Skiles*, 51 Cal. 4th at 1185; *see also e.g. Albillar*, 51 Cal. 4th at 55; *People v. Traylor*, 46 Cal. 4th 1205, 1212 (2009).

[13] Educ. Code § 10901(a); Educ. Code § 10902; *see* Educ. Code § 10900(b); *see also* 81 Ops.Cal.Atty.Gen. 293, 295 (1998); 78 Ops.Cal.Atty.Gen. 181, 185-186 (1995).

[14] *Skiles*, 51 Cal. 4th at 1185; *Albillar*, 51 Cal. 4th at 55.

[15] *People v Loeun*, 17 Cal. 4th 1, 9-10 (1997) (emphasis added); *see also In re Jesusa V.*, 32 Cal. 4th 588, 622-623 (2004); *Houge v. Ford*, 44 Cal. 2d 706, 712 (1955); 94 Ops.Cal.Atty.Gen. 15, 18 (2011); 88 Ops.Cal.Atty.Gen. 196, 198 (2005).

[16] *In re Jesusa V.*, 32 Cal. 4th at 623; *see Houge*, 44 Cal. 2d at 712.

or outdoor activity must be "for the benefit of disadvantaged or handicapped school age children," and it must be "in a county with a population less than or equal to 45,000."

In connection with the first, and broader, category—that is, recreation under the direct control of a public authority—we note that the term "recreation" is defined in the Act to include:

> . . . any activity, voluntarily engaged in, which contributes to the physical, mental, or moral development of the individual or group participating therein, and includes any activity in the fields of visual and performing arts, handicraft, science, literature, nature study, nature contacting, aquatic sports, and athletics, or any of them, and any informal play incorporating any such activity.[17]

"Public authorities" are also specifically defined in the Act, as "any city of any class, city and county, county of any class, public corporation or district having powers to provide recreation, or school district in the state."[18] Hence, under the first category described in section 10901(d), school buses may be used to transport participants to and from a wide variety of publicly sponsored activities and programs.

The question presented here, however, specifically concerns recreation *not* controlled by a public authority, and in counties with populations exceeding 45,000. These specifications pertain to the second, more limited, category of community recreation described in section 10901(d), that is, "camping or outdoor recreation activity" sponsored by a "nonprofit organization."

The initial limitation—confining the category to "camping and outdoor recreation activity"—is not further defined in the Act, but we find the terms to be generally self-explanatory. We believe it unnecessary for our purposes to define "camping or outdoor recreation activity" in greater detail, noting only that these terms describe a narrower range of activities than those included in the first category of section 10901(d).

The next requirement for this second category of community recreation is that the camping or outdoor activity be "sponsored by a nonprofit organization." For this requirement, the statute does supply a definition:

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[17] Educ. Code § 10901(c).

[18] Educ. Code § 10901(a).

> "Nonprofit organization" means those nonprofit organizations which, as determined by the governing board of the school district, are unable to pay for the private transportation of disadvantaged or handicapped school age children to recreation activities.[19]

This narrow definition of "nonprofit organization" corresponds with the requirement that eligible camping and outdoor recreation activities must be conducted "for the benefit of disadvantaged or handicapped school age children."

The final requirement under the second category of section 10901(d) is that the camping or outdoor recreation activity must be located "in a county with a population less than or equal to 45,000."[20] To put it another way, in counties with populations *greater than* 45,000, *no* activity sponsored by a nonprofit entity qualifies as "community recreation" under section 10901(d). This means that, for more populous counties, the *only* activities that might qualify under the Act's definition of "community recreation" are those "under direct control of a public authority."[21]

In short, to constitute "community recreation," an outdoor or camping activity not directly controlled by a public authority must meet all of the requirements listed in the second category of section 10901(d).[22] The legislative history confirms our interpretation.[23]

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[19] Educ. Code § 10901(e). The Act does not define the terms "handicapped" and "disadvantaged" (which appear only in sections 10901(d) and (e)). For our purposes, it is enough to observe that terms operate both to limit the set of qualified nonprofit organizations under the Act *and* to restrict the set of school age children for whom school buses may be made available in connection with nonprofit-sponsored community recreation.

[20] *Id.*

[21] *Id*; *see* 54 Ops.Cal.Atty.Gen. 181, 182 (1971) (school buses may be used for community recreation "only if the organizations and activities concerned with the use fall within the provisions of the Community Recreation Act").

[22] *See People v. Olguin*, 45 Cal. 4th 375, 379 (2008) ("and" is conjunctive, so all statutory conditions must be met); *Kobzoff v. Los Angeles Co. Harbor*, 19 Cal. 4th 851, 861 (1998) (same); *United Parcel Serv. Wage and Hour Cases*, 190 Cal. App. 4th 1001, 1014 (2010) (same); *Rodriguez v. Blue Cross of Cal.*, 162 Cal. App. 4th 330, 341 (2008) (same).

[23] *See e.g*. Assembly Third Reading ("Corrected"), Sen. 43 (June 30, 1983) ("and" underscored for emphasis in summary of bill's amended definition of "community

Some interested parties argue that there is no logical rationale for distinguishing school bus policy based on a county's population, and that a population cap of 45,000 is anachronistically low. According to the 2010 U.S. Census, however, 14 of California's 58 counties have populations below 45,000. [24] In any event, the statute's language is not ambiguous in this respect, and its population-based restriction continues to govern the use of school buses.[25]

The Act contains one exception to this low-population requirement, in the form of a "grandfather clause."[26] Under Education Code section 10900.5, which became effective on July 25, 1983, school districts are permitted to continue any preexisting "established practices, policies, and procedures" under which school buses were employed in conjunction with nonprofit-sponsored activities "for purposes consistent with community recreation."[27] To date, neither we nor the courts have had occasion to interpret this

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recreation").

[24] The counties are Alpine (1,175), Amador (38,091), Colusa (21,419), Del Norte (28,610), Glenn (28,122), Inyo (18,546), Lassen (34,895), Mariposa (18,251), Modoc (9,686), Mono (14,202), Plumas (20,007), Sierra (3,240), Siskiyou (44,900), and Trinity (13,786). *See* 2010 U.S. Census data for California by county, http://quickfacts.census.gov/qfd/states/06/06103.html; *see also* Govt. Code § 23012.

[25] The legislative history of the provision reveals the Legislature's clear intent to define the specified activities as "community recreation" *only* in such small-population counties. *See* Assembly Third Reading ("Corrected"), Sen. 43 (June 30, 1983) ("The Tehama County School District, sponsors of the bill, and the Red Bluff Kiwanis Club have conducted recreational programs and provided transportation to disadvantaged and handicapped children since 1970. Recently, however, the Tehama County Counsel stated that state law does not permit nonprofit organizations to use school buses for these purposes. This bill specifically allows the practice."); *see also e.g.* Assembly Educ. Comm. Rpt. Sen. 43 (June 7, 1983) at 1.

[26] *See Black's Law Dictionary* 767 (9th ed. 2009) ("grandfather clause" is a "statutory or regulatory clause that exempts a class of persons or transactions because of circumstances existing before the new rule or regulation takes effect").

[27] Education Code section 10900.5 states:

> Notwithstanding the provisions of this chapter, school districts which, prior to the effective date of this section, have interpreted their authority as permitting the use of school buses by nonprofit organizations for purposes consistent with community recreation may continue to permit this use under established practices, policies, and procedures.

provision. We find little mystery in its purpose or effect, however. As the Legislative Counsel explained in its contemporaneous summary of the statute:

> This bill would, notwithstanding specified statutory provisions, also allow school districts which, prior to the effective date of this bill, have been permitting the use of school buses by nonprofit organizations for purposes consistent with community recreation to continue to permit this use, as specified.[28]

Under Education Code section 10900.5, therefore, a school district that provided school buses for recreational activities prior to July 1983 is authorized to continue that practice.

Apart from grandfathered practices and the specific small-county outdoor activities prescribed in Education Code section 10901(d), however, the Act permits school bus use only when community recreation is "under direct control of a public authority."[29] Some interested parties assert that a separate statute, Education Code section 10910, should be interpreted as giving school districts broad discretion in their use of school buses for nonprofit-sponsored community recreation activities. Section 10910 provides, in pertinent part, that a school district

> . . . may use the buildings, grounds, *and equipment* of the district, or any of them, to carry out the purposes of this chapter, or may grant the use of any building, grounds, or equipment of the district to any other public authority for the purposes, whenever the use of the buildings, grounds, or equipment for community recreational purposes will not interfere with use of the buildings, grounds, and equipment for any other purpose of the public school system.[30]

It is argued that school district "equipment," as used in this provision, should be construed to include school buses, and that section 10910 should therefore be understood to authorize discretionary use of school buses for a wide variety of nonprofit-sponsored purposes. We reject this interpretation, for two reasons.

First, we do not construe the term "equipment" in Education Code section 10910 to include school buses, because such a construction would render superfluous Education Code sections 10900.5, 10901(d), and 39835(a), which contain specific rules for the use of

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[28] 1983 Stat. ch. 341 (Sen. 43), Legis. Counsel Summary Dig. 113.

[29] Educ. Code § 10901(d).

[30] Emphasis added.

school buses. Under standard rules of statutory interpretation, "the various parts of a statutory enactment must be harmonized by considering a particular clause or section in the context of the statutory framework as a whole,"[31] and "[a]n interpretation that renders related provisions nugatory must be avoided."[32] Furthermore, statutes having a particularized subject matter, as Education Code sections 10900.5, 10901(d), and 39835(a) do, are construed as "paramount to" those having a more general scope and purpose.[33] Accordingly, we conclude that school bus use for community recreation purposes is governed by sections 10900.5, 10901(d), and 39835(a), and that the term "equipment" in section 10910 refers more generally to equipment that is directly associated with that provision's subject matter—namely, schools' "buildings and

[31] *DuBois v. Workers' Comp. Apps. Bd.*, 5 Cal. 4th 382, 388 (1993).

[32] *People v. Shabazz*, 38 Cal. 4th 55, 67-68 (2006); *see e.g. McCarther v. P. Telesis Group*, 48 Cal. 4th 104, 110 (2010); ("construction making some words surplusage is to be avoided") (quoting *Dyna-Med, Inc. v. Fair Empl. & Hous. Commn.*, 43 Cal. 3d 1379, 1386-1387 (1987)); *Dubois*, 5 Cal. 4th at 388.

Nor may we find an "implied repeal" based merely on superficial inconsistencies between two statutes. *Stop Youth Addiction, Inc. v. Lucky Stores, Inc.*, 17 Cal. 4th 553, 569 (1998); *Garcia v. McCutchen*, 16 Cal. 4th 469, 476 (1997); *Apt. Assn. of Los Angeles Co., Inc. v. City of Los Angeles*, 173 Cal. App. 4th 13, 22 (2009); *Stone Street Capital, LLC. v. Cal. State Lottery Comm.*, 165 Cal. App. 4th 109, 119 (2008).

[33] Code Civ. Proc. § 1859 ("when a general and a particular provision are inconsistent, the latter is paramount to the former . . . [s]o a particular intent will control a general one that is inconsistent with it"); Civil Code § 3534 ("particular expressions qualify those which are general"); *see e.g. Collection Bureau of San Jose v. Rumsey*, 24 Cal. 4th 301, 310 (2000); *Manhattan Loft, LLC. v. Mercury Liquors, Inc.*, 173 Cal. App. 4th 1040, 1056 (2009); *Stone Street Capital*, 165 Cal. App. 4th at 119. This is true even if the general statute was enacted after the particular, absent a clear legislative intent to "submerge" the earlier provision. *E.g. Hughes Elecs. Corp. v. Citibank Del.*, 120 Cal. App. 4th 251, 268 (2004).

grounds."[34] Again, the legislative history of the Act's 1983 amendments supports our construction.[35]

Secondly, we understand Education Code section 10910 to concern only community recreation activities that are directly controlled by school districts or by other public authorities, *not* by nonprofit organizations. Accordingly, even if we assumed for argument's sake that the term "equipment" was intended to include school buses, the only authorized use of such equipment under section 10910 would be (1) by school districts themselves, "to carry out the purposes of this chapter," or (2) by "any other public authority for the purposes." Thus, even under the proposed construction, section 10910 would confer no authority on school districts to use school buses for activities not directly controlled by public authorities.

In answer to Question One, therefore, we conclude that, if a county's population exceeds 45,000, the Community Recreation Act authorizes the use of school buses to transport persons for purposes of community recreation only if that recreation is under the direct control of a public authority, except that a school district which, on July 25, 1983, already had in place "established practices, policies, and procedures" permitting school bus use by nonprofit organizations "for purposes consistent with community recreation" is authorized to continue such historically permitted use.

Question Two: Enforcing Limitations on School Bus Use for Community Recreation

The second question asks what sanctions, if any, a school district would risk if it permitted its school buses to be used for community recreation purposes under circumstances not authorized by the Community Recreation Act.

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[34] In 54 Ops.Cal.Atty.Gen. at 182, we concluded that the term "property," as used in a general provision (former Educ. Code § 16551) of the Civic Center Act that referred to "the use of schoolhouses, property and grounds," was not intended to include school buses or to expand the permissible uses of school buses:

> We believe that the term "property" as used in the Civic Center Act refers and is confined to that property necessarily used in conjunction with the school buildings and grounds for Civic Center Act purposes. The term may not properly be interpreted as constituting authorization in and of itself for a school district to lease school buses to private and community organizations.

[35] *See e.g.* Rpt. on Sen. 43 by Assembly Educ. Comm. (June 7, 1983) at 1 (treating school buses as distinct from "buildings, ground, and equipment").

In addition to their general duty to comply with the law,[36] the governing boards of local school districts are subject to oversight by the state's Department of Education. As we have previously observed, "The Department of Education stands in a supervisory position vis-à-vis local school districts, ensuring that the Legislature's mandates are carried out in the administration of the public schools."[37]

Further, a school district that permitted its school buses to be used for transportation to and from unauthorized activities could be subject to a judicial action to enforce the district's compliance with statutory standards.[38] The courts' "expansive interpretation of taxpayer standing," coupled with their recognition of a "public interest" exception to the requirement that petitioners have a personal beneficial interest in the proceedings, reflect a "longstanding approval of citizen actions to require governmental officials to follow the law."[39]

We thus conclude, in answer to Question Two, that a school district's use of its school buses for community recreation purposes not authorized by the Community Recreation Act may subject the district to oversight by the Department of Education, and to legal actions to compel the district's compliance with statutory and constitutional standards.

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[36] *See e.g. Lockyer v. City and Co. of San Francisco*, 33 Cal. 4th 1055, 1086 (2004) ("If each official were empowered to decide whether or not to carry out each ministerial act based upon the official's own personal judgment of the constitutionality of an underlying statute, the enforcement of statutes would become haphazard, leading to confusion and chaos and thwarting the uniform statewide treatment that state statutes generally are intended to provide.").

[37] 88 Ops.Cal.Atty.Gen. 8, 14 (2005) (Department of Education required to withhold tobacco tax revenues from districts that refuse to participate in associated mandatory surveys).

[38] A writ of mandate may issue to correct a refusal to follow the law or to comply with statutory commands. Code Civ. Proc. § 1085; *see e.g. Lockyer*, 33 Cal. 4th at 1107-1109, 1112; *Common Cause of Cal. v. Bd. of Supervisors*, 49 Cal. 3d 432, 440 (1989); *Salinger v. Jordan*, 61 Cal.2d 824, 827 (1964); *see also Karuk Tribe of N. Cal. v. Cal. Reg. Water Quality Control Bd.*, 183 Cal. App. 4th 330, 367 at n. 27 (2010); *Co. of San Diego v. State*, 164 Cal. App. 4th 580, 593 (2008) ("ministerial duty" is one required to be performed in prescribed manner under law); *Young v. Gannon*, 97 Cal. App. 4th 209, 221 (2002) (mandamus available to correct administrative agencies' acts in violation of law).

[39] *Common Cause of Cal.*, 49 Cal. 3d at 440.