

TO BE PUBLISHED IN THE OFFICIAL REPORTS

OFFICE OF THE ATTORNEY GENERAL
State of California

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OPINION	:	No. 13-1101
	:	
of	:	September 22, 2015
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THE HONORABLE TORI VERBER SALAZAR, DISTRICT ATTORNEY FOR THE COUNTY OF SAN JOAQUIN, has requested an opinion on the following question:

May a superior court clerk charge a county district attorney's office the specified statutory fee for providing that office with certified copies of court records for use in a criminal action?

CONCLUSION

A superior court clerk may, but is not required to, charge a county district attorney's office the specified statutory fee for providing that office with certified copies of court records for use in a criminal action.

ANALYSIS

Some superior court clerks assess county district attorney's offices a fee for making or certifying copies of court records for use in criminal actions.¹ Some of these clerks do not charge the district attorney of their own county, but do charge district attorneys of other counties. Other superior court clerks do not charge any district attorney's office for providing records. We are asked whether the practice of charging a district attorney's office a fee for this service is permissible. As we will demonstrate, there is express statutory authorization for the practice in connection with criminal actions. In all other contexts, however, the district attorney's broad immunity from having to pay fees for official services controls.

The statute that provides general governmental immunity from having to pay fees for official services is Government Code section 6103, subdivision (a):

Neither the state nor any county, city, district, or other political subdivision, nor any public officer . . . acting in his or her official capacity on behalf of the state, or any county, city, district, or other political subdivision, shall pay or deposit any fee for the filing of any document or paper [or] for the performance of any official service *This section does not apply where it is specifically provided otherwise.*²

We have previously concluded that the phrase "official service" refers to the performance of a duty imposed by law.³ The making and certifying of copies of court records is an "official service" of the clerk of the court.⁴

Accordingly, Government Code section 6103 bars a court clerk from charging district attorneys a fee for providing certified copies of court documents, unless some other law "specifically provide[s] otherwise." Although statutes that operate as an

¹ E.g., El Dorado County Superior Court, "Notice of Government Code Section 70633(b) Authorization to Charge for Copy and Certification Fees" (Nov. 26, 2013) <https://www.amadorcourt.org/newsRelease/2013/20131126-NoticeToCharge.pdf>.

² Emphasis added.

³ 53 Ops.Cal.Atty.Gen. 322, 323 (1970); see also 62 Ops.Cal.Atty.Gen. 609, 610 (1979); *City of Pasadena v. Fox* (1936) 16 Cal.App.2d 584, 586.

⁴ *Hayward Lumber & Investment Co. v. Biscailuz* (1957) 47 Cal.2d 716, 722.

exception to section 6103 sometimes make an express cross-reference to it,⁵ a cross-reference is not necessary to render section 6103 inapplicable in a particular context.⁶

Here, we find that subdivisions (b) and (c) of Government Code section 70633 “specifically provide otherwise”—that is, they create an exception to section 6103’s general rule—in connection with criminal actions. Section 70633 states:

(b) No fee shall be charged by the clerk for services rendered in any criminal action unless otherwise specifically authorized by law, *except that the clerk may charge the fee specified in Section 70627^[7] for making or certifying to a copy of any filed paper, record, or proceeding in a criminal action.* If a criminal defendant has been granted a fee waiver or the court finds that the defendant does not have the ability to pay the fee, the court may reduce or waive the fee.

(c) *Except as permitted in subdivision (b),* no fee shall be charged by the clerk for service to any municipality or county in the state, to the state government, nor to the United States of America or any of its officers acting

⁵ E.g., Gov. Code, § 38773.1; Health & Saf. Code, § 2066; Lab. Code, § 7314; Pub. Util. Code, § 12811.1

⁶ E.g., 92 Ops.Cal.Atty.Gen. 51, 54 & fn. 29 (2009) (“It is not necessary for the Legislature to make a specific reference to section 6103 in order to create an exception to it”) (citing *Anaheim City School Dist. v. County of Orange* (1985) 164 Cal.App.3d 697, 702); see 61 Ops.Cal.Atty.Gen. 458, 460 (1978) (noting that Health & Safety Code provisions “specifically provide otherwise”).

⁷ Government Code section 70627 provides:

....

(a) The clerk of the court shall charge fifty cents (\$0.50) per page to cover the cost of preparing copies of any record, proceeding, or paper on file in the clerk’s office.

(b) For comparing with the original on file in the office of the clerk of any court, the copy of any paper, record, or proceeding prepared by another and presented for the clerk’s certificate, the fee is one dollar (\$1) per page, in addition to the fee for the certification.

(c) The fee for a search of records or files conducted by a court employee that requires more than 10 minutes is fifteen dollars (\$15) for each search.

in his or her official capacity.⁸

First, the italicized clause from subdivision (b) provides that the court clerk *may* charge the specified fee⁹ for making or certifying copies in criminal actions (although the clerk may not charge a fee for other services rendered in criminal actions). Then, by expressly cross-referencing the fee permitted under subdivision (b), the italicized clause of subdivision (c) permits the clerk to impose the same fee on governmental entities in criminal actions (although the clerk may not do so in other circumstances).¹⁰

The interplay between the two subdivisions refutes any suggestion that the fee authorization in subdivision (b) applies only to criminal defendants, and not to district attorneys (or other governmental entities). If that were the case, there would be no reason for subdivision (c) to cross-reference subdivision (b) in the context of restricting the fees that may be imposed on governmental entities (including district attorneys). We are not free to interpret subdivision (c) in a way that would render its cross-reference to subdivision (b) meaningless.¹¹

In short, subdivisions (b) and (c) of Government Code section 70633 create an exception to governmental agencies' general immunity from having to pay court fees for official services.¹²

⁸ Emphasis added.

⁹ The use of the permissive term “may” in Government Code section 70633, subdivision (b), leads us to conclude that the clerk is legally permitted, but not required, to impose the statutory fee under circumstances where the fee is authorized. (Gov. Code, § 14 (“‘Shall’ is mandatory and ‘may’ is permissive”); see *Lonicki v. Sutter Health Central* (2008) 43 Cal.4th 201, 210.)

¹⁰ Government Code section 70633 treats criminal actions differently from all other actions, including civil actions and special proceedings. (See 3 Witkin, California Procedure (5th ed. 2008), Actions, § 64 [“special proceeding” is “legal proceeding that, under the common law and equity practice, was not an action at law or a suit in equity”]; see also Code Civ. Proc., §§ 21-24.) Based on the language of subdivision (c), we conclude that a superior court clerk may not charge the district attorney a fee for providing that office with certified court records in civil actions or special proceedings.

¹¹ See *People v. Johnson* (2002) 28 Cal.4th 240, 246-247; *Delaney v. Superior Court* (1999) 50 Cal.3d 785, 798-799 (same).

¹² Subdivisions (b) and (c) of Government Code section 70633 were enacted in 2005 as part of a new Uniform Civil Fees and Standard Fee Schedule Act (Stats. 2005, ch. 75, § 121; see Gov. Code, § 70600), and worked a significant change in practice. Previously, neither the defendant nor the district attorney was subject to document fees in a criminal

Before leaving the subject, we address a perceived conflict between subdivisions (b) and (c) of Government Code section 70633 on the one hand, and the straightforward prohibition contained in Government Code section 26857 on the other. Section 26857 provides that “[n]o fee shall be charged by the clerk for service rendered to any municipality or county in the state, or to the state or national government, nor for any

action. (See *People v. Superior Court (Laff)* (2001) 25 Cal.4th 703, 737; see also *Lewis v. Clarke* (2003) 108 Cal.App.4th 563, 567 (citing former Gov. Code, §§ 26857, 72073).) The longstanding prohibition was the consequence of the interplay of three statutes: Government Code section 6103, discussed earlier, and former Government Code sections 72073 and 26857. Former section 72073 permitted court clerks to charge for making or certifying a copy of court records in a criminal action, but only “when not otherwise specified by law.” Section 6103 was a law that specified otherwise. So was former section 26857, which stated: “No fee shall be charged by the clerk for service rendered to a defendant in any criminal action *No fee shall be charged by the clerk for service rendered to any municipality or county in the state, or to the state or national government, nor for any service relating thereto.*”

In 2005, the Legislature repealed section 72073. (Stats. 2005, ch. 75, § 135.) At the same time, the Legislature amended section 26857 (Stats. 2005, ch. 75, § 92), deleting all references to court proceedings. The same 2005 legislative enactment also added section 70633 as the successor statutory treatment of fees for copies of court records in criminal actions. (Stats. 2005, ch. 75, § 121.) Despite the significant change in practice worked by these changes, the legislative history is silent as to the Legislature’s purpose behind extending the costs of copying and certifying records in criminal actions to both defendants and district attorneys. For example, the uniform fee structure imposed by that legislation was recommended by the Judicial Council, but that recommendation made no mention of fees in criminal actions. (See Judicial Council of Cal., Admin. Off. of the Courts, Rep. on Uniform Civil Fees (Nov. 29, 2004) <http://www.courts.ca.gov/documents/1204item14b.pdf>; cf. Sen. Rules Com., Off. of Sen. Floor Analyses, Analysis of Assem. Bill No. 145 (2005-2006 Reg. Sess.) as amended July 6, 2005.)

Still, “[i]t has been repeatedly declared that where changes have been introduced by amendment it is not to be assumed that they were without design and, further, that by substantially amending a statute the Legislature demonstrates an intent to change the preexisting law.” (*People v. Valentine* (1946) 28 Cal.2d 121, 142; see *Hoschler v. Sacramento City Unified School Dist.* (2007) 149 Cal.App.4th 258, 269.) Most importantly, the language of section 70633 is facially clear and unambiguous, and we are not at liberty to go behind the plain language of the statute. (*In re D. B.* (2014) 58 Cal.4th 941, 944; see also 71 Ops.Cal.Atty.Gen. 106, 109 (1988).) Although there are certainly policy arguments in favor of exempting governmental entities from the payment of court-related fees, such arguments are most appropriately addressed to the Legislature.

service relating thereto.” Because of its unambiguous and sweeping language, some have argued that section 26857 limits the fee-collection authority granted by subdivisions (b) and (c) of section 70633. We cannot agree, because section 26857 does not apply to the *clerk of the superior court*. Instead, the “clerk” referenced in section 26857 is the office of *county clerk*.¹³

Before 2002, the county clerk also served as the clerk of the superior court.¹⁴ In 2002, however, as part of a series of legislative changes implementing trial court unification and funding, the county clerk’s responsibilities and duties with respect to the superior court were transferred to a new office within the court.¹⁵ Government Code section 26857 therefore no longer applies to the clerk of the superior court.¹⁶ Accordingly, there is no conflict between section 26857 (which applies to the county clerk) and section 70633 (which applies to the clerk or executive officer of the superior court).

Finally, we note that Government Code section 70633—including the criminal-action language in subdivision (b)—is situated in article 1 of the Uniform Act, which relates to “*Civil Fees Generally*.”¹⁷ But any seeming inconsistency in this placement is of no moment.¹⁸ Although article headings may be useful for resolving ambiguities,¹⁹ we may not look to them “for the purpose of creating ambiguity when none exists.”²⁰

¹³ Gov. Code, § 69840, subd. (a); see generally Government Code chapter 3, part 3, title 3 (“County Clerk”).

¹⁴ See former Gov. Code, § 26800 (repealed by Stats. 2002, ch. 784, § 180).

¹⁵ Stats. 2002, ch. 784, § 302; see Gov. Code, § 71620, subd. (b) (added by Stats. 2000, ch. 1010, § 14) (court executive or administrative officer has the authority of the clerk of the court); see also Cal. Rules of Court, rule 10.610.

¹⁶ Gov. Code, § 69840, subd. (a) (“ . . . The county clerk is relieved of any obligation imposed by law on the county clerk with respect to [his or her former] powers, duties, and responsibilities [with respect to judicial actions, proceedings and records].”).

¹⁷ Emphasis added.

¹⁸ At the same time, subdivision (a) of Government Code section 70633 refers to fees in civil actions, and subdivision (c) refers to fees for any services other than those in criminal actions described in subdivision (b). This amply explains the statute’s placement under the heading of civil fees.

¹⁹ See, e.g., *People v. Hull* (1991) 1 Cal.4th 266, 272; 88 Ops.Cal.Atty.Gen. 56, 60, fn. 6 (2005); 66 Ops.Cal.Atty.Gen. 302, 304 (1983).

²⁰ *City of Berkeley v. Cukierman* (1993) 14 Cal.App.4th 1331, 1340; see also Gov. Code, § 6 (“Title, division, part, chapter, article, and section headings do not in any manner affect

We conclude that a superior court clerk may, but is not required to, charge a county district attorney's office the specified statutory fee for providing the district attorney's office with certified copies of court records for use in a criminal action.²¹

the scope, meaning, or intent of the provisions of this code.”).

²¹ We have not been asked, and accordingly do not resolve, the question whether actions designated by the Legislature as “Special Proceedings of a Criminal Nature,” such as proceedings in habeas corpus (see chapter 1 (commencing with section 1473) of Title 12 of Part 2 of the Criminal Code) are “criminal actions” within the meaning of Government Code section 70633, subdivision (b). (Cf. *Bravo v. Cabell* (1974) 11 Cal.3d 834 (treating mandamus proceeding as a “criminal action” for purposes of filing-fee exemption under former section 26857).) Although further analysis may be appropriate, we note that Government Code section 6101 states: “No fee shall be charged in proceedings upon habeas corpus.”