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OPINION	:	No. CV 78-116
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of	:	<u>January 24, 1979</u>
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SUBJECT: HIGH SCHOOL DISTRICT’S REQUIREMENT TO PROVIDE DRIVER TRAINING INSTRUCTION—A high school district is required to provide driver training instruction for those students eligible and interested in the program.

The Honorable Wilson C. Riles, Superintendent of Public Instruction and the Director of the Department of Education, has requested an opinion on the following question:

Is a high school district required to provide automobile driver training instruction?

The conclusion is:

A high school district is required to provide automobile driver training instruction for those students who are eligible and elect to participate in the program.

ANALYSIS

Automobile driver training is the laboratory phase of the driver education course of study. (Ed. Code, § 51853.)¹ It involves both on-street and off-street driving practice in dual-control automobiles and driving simulators. (§ 51852; Cal. Admin. Code, for. 5, § 10040.)

While classroom instruction in driver education is required for graduation from public high schools, driver training practice is an elective program for those students who meet the eligibility requirements. (§§ 41902, 51220, subd. (j), 51850; Cal. Admin. Code, tit. 5, § 10041; *California Teachers Assn. v. Board of Trustees* (1978) 82 Cal. App. 3d 249, 253 fn. 2; 43 Ops. Cal. Atty. Gen. 322, 323 (1964).)

The question presented for analysis is whether driver training must be given by a high school district to those students who qualify and wish to participate in the program. We conclude that the availability of such instruction is statutorily required.

The principal statute concerning the provision of driver training by high school districts is section 41902. It states in part:

“Driver training *shall* be available without tuition to all eligible students commencing on July 1, 1969. The governing board of a district maintaining a high school or high schools, the county superintendent of schools, the California Youth Authority, and the State Department of Education may make driver training available during school hours, or at other times, or any combination thereof.” (Emphasis added.)

It may be argued that these two sentences are contradictory or that a district is only required to provide the instruction *without tuition*—if it *elects* to provide the program. We disagree with both interpretations.

The cardinal rule of statutory construction is to “ascertain the intent of the Legislature so as to effectuate the purpose of the law.” (*Select Base Materials v. Board of Equal.* (1959) 51 Cal. 2d 640, 645; accord, *Cossack v. City of Los Angeles* (1974) 11 Cal. 3d 726, 732.)

While it is true that the words “shall” and “may” are mandatory or permissive depending upon the legislative intent (see *Jacobs v. State Bar* (1977) 20 Cal. 3d 191, 198),

¹ All unidentified section references hereinafter refer to the Education Code as reorganized and operative April 30, 1977.

ordinarily “shall” is mandatory and “may” is permissive. (*California Teachers Assn. v. Governing Board* (1977) 70 Cal. App. 3d 833, 842; *County of Sacramento v. Superior Court* (1971) 20 Cal. App. 3d 469, 472; *Parks v. Superior Court* (1971) 19 Cal. App. 3d 188, 191.) When a statute contains both the words “shall” and “may,” it has been held that the former must be construed as mandatory and the latter as permissive. (See *Hogya v. Superior Court* (1977) 75 Cal. App. 3d 122, 133 fn. 8; *National Automobile etc. Co. v. Garrison* (1946) 76 Cal. App. 2d 415, 417.) More importantly, the Legislature has declared that throughout the Education Code “shall” is to be construed as mandatory and “may” as permissive. (§ 75.) Based upon the foregoing principles and declaration of legislative intent, it would appear that in section 41902, the Legislature intended to require the general availability of driver training instruction by high school districts.

Whether the Legislature so intended may be discerned in part from the provisions of section 41912. In the latter statute, the Legislature has stated its overall purpose in establishing the driver training program as follows:

“The expressed purpose of the Legislature is that highway accidents can and must be reduced through the education *and training* of drivers prior to licensing, and *that this instruction properly belongs in the high school curriculum*. . . . Only through a high quality program of driver instruction can the greatest potential in traffic accident prevention be realized. Further, the state has a responsibility to share in the reasonable costs of providing such courses.” (Emphasis added.)

The Legislature has supported its declaration of purpose by providing state funds for the payment of the actual cost of driver training up to a maximum of \$60 per pupil instructed. (§§ 41304, subd. (b), 41900, 41903.) Under certain circumstances, additional state aid may be available for the replacement of auto-mobiles and simulators. (§§ 41304, subd. (c), 41909)² The foregoing statutes indicate a strong legislative commitment toward having driver training instruction made available to high school students.

The legislative intent behind section 41902 can also be found by examining the legislative history of the relevant statutes. At one time, a high school district had unqualified statutory discretion as to whether it wished to provide driver training. The law provided:

² A school district need not itself provide the instruction. It can contract with a private driver training school, and the state will provide the same amount of funding. (§§ 41913–41917); *California Teachers Assn. v. Board of Trustees, supra*, 82 Cal. App. 3d 249, 256–258.)

“ . . . The governing board of any district maintaining a secondary school which includes any of the grades 9 to 12, inclusive, may in its discretion establish and maintain automobile driver training for pupils enrolled in the day secondary schools in the district.”

(See Stats. 1959, ch. 2, p. 822, § 8103; Stats. 1953, ch. 1877, p. 3665, § 4.) This permissive language was replaced by the following: “Driver training shall be available without tuition to all eligible students commencing July 1, 1969.” (See Stats. 1969, ch. 1104, p. 2105, § 8; Stats. 1968, ch. 182, p. 468, § 33; Stats. 1967, ch. 1933, p. 3907, § 2.)

A substantial change in the language of a statutory scheme manifests a change of legislative intent. (See *People v. Schmel* (1975) 54 Cal. App. 3d 46, 51; *Van Nuis v. Los Angeles Soap Co.* (1973) 36 Cal. App. 3d 222, 228.) Accordingly, it may be said that the Legislature intended in section 41902 to change its prior legislative purpose by requiring the availability of driver training instruction for eligible students who elect to participate in the program.

In determining that the availability of driver training instruction is mandatory, we can harmonize the various provisions of section 41902 and of other statutes dealing with the same subject matter. It is well established that statutes should be construed together, if possible, and harmonized within the statutory framework as a whole. (*Moyer v. Workmen’s Comp. Appeals Bd.* (1973) 10 Cal. 3d 222, 230.) Pursuant to this guiding principle, section 41902 can be interpreted as (1) requiring districts to provide driver training instruction for eligible students who elect to participate and (2) allowing districts flexibility in determining when the instruction may be offered. This construction appears to best effectuate the intent of the Legislature, and it avoids any conflict between the provisions of the statute.

Similarly, the apparent legislative mandate contained in section 41902 can be harmonized with the related provisions of section 51850. The latter statute provides:

“The governing board of a school district maintaining a high school . . . may prescribe regulations determining who can profit by and who shall receive instruction in automobile driver training; provided, however, that no pupil shall be permitted to enroll in automobile driver training unless such pupil is presently enrolled in a course of instruction in automobile driver education, or has satisfactorily completed such course. *The regulations shall be subject to such standards for driver education and driver training as may be prescribed by the State Board of Education. Where driver training is provided, such course of instruction shall be given in one or more of the grades 9, 10, 11, or 12. Pupils shall be at least 15 years and six months of age at the time of completion of a driver training course.*” (Emphasis added.)

Section 51850 recognizes that while most students would benefit from driver training instruction, it would be unwise for all students to participate in the program. Because of the nature of the instruction, certain mental and physical qualifications must be met before participation would be of benefit to a student. The state regulations concerning student eligibility provide for such standards. (Cal. Admin. Code, tit. 5, § 10041.) It would be manifestly unreasonable for a district to totally prevent program participation by setting unattainable standards. Indeed, the state regulatory framework is consistent with our conclusion that the program must be made available by a district although subject to reasonable eligibility requirements. (Cal. Admin. Code, tit. 5, § 10044.)³

Finally, we note that the Legislature has specifically precluded districts from charging tuition except in certain limited circumstances. (§ 37105.) Since none of these special circumstances involve the driver training program, it would constitute surplusage for section 41902 to be construed as merely prohibiting tuition from being charged for the program by a district. A statute is to be construed so as to avoid making some words surplusage. (*In re Quinn* (1973) 35 Cal. App. 3d 473, 482.) Hence, we believe that section 41902 is mandatory not only regarding the requirement of a tuition free program but also as to the general availability of the instruction for eligible students.

The conclusion to the question presented, therefore, is that a high school district is required to provide automobile driver training instruction for those students who are eligible and elect to participate in the program.

³ We do not believe that the passing reference to section 51850 in *California Teachers Assn., v. Board of Trustees*, *supra*, 82 Cal. App. 3d 249, 253 fn. 2, is inconsistent with our conclusion; driver training is a “permissive” (elective) course for the student, while driver education is “mandated” for a student’s graduation.