

TO BE PUBLISHED IN THE OFFICIAL REPORTS

OFFICE OF THE ATTORNEY GENERAL  
State of California

GEORGE DEUKMEJIAN  
Attorney General

---

OPINION	:	No. CV 78-82
	:	
of	:	<u>March 20, 1979</u>
	:	
GEORGE DEUKMEJIAN	:	
Attorney General	:	
	:	
Rodney Lilyquist, Jr.	:	
Deputy Attorney General	:	
	:	

---

SUBJECT: VEHICLE INSPECTION—Personnel of the Department of the California Highway Patrol may enter a terminal or maintenance facility in order to inspect vehicles and maintenance records pursuant to Vehicle Code section 34501 without first obtaining an administrative inspection warrant if consent to the inspection has been refused.

The Honorable G. B. Craig, Commissioner of the Department of the California Highway Patrol, has requested an opinion on the following question:

May personnel of the Department of the California Highway Patrol enter a terminal or maintenance facility in order to inspect vehicles and maintenance records pursuant to Vehicle Code section 34501 without first obtaining an administrative inspection warrant if consent to the inspection has been refused?

The conclusion is:

Personnel of the Department of the California Highway Patrol may enter a terminal or maintenance facility in order to inspect vehicles and maintenance records pursuant to Vehicle Code section 34501 without first obtaining an administrative inspection warrant where consent to the inspection has been refused.

## ANALYSIS

Pursuant to Vehicle Code section 34501,<sup>1</sup> the Department of the California Highway Patrol (hereinafter “CHP”) is required to regulate the safe operation of certain trucks, buses, and trailers regarding “hours of service of drivers, equipment, fuel containers, fueling operations, inspection, maintenance, recordkeeping, accident reports . . . .” In order to insure compliance with the provisions of the safety program, the statute authorizes the CHP to “inspect any vehicles in maintenance facilities or terminals, as well as any records relating to the dispatch of vehicles or drivers, and the pay of drivers. . . .”

The regulations adopted by the CHP pursuant to section 34501 provide for a comprehensive safety inspection program. (Cal. Admin. Code, tit. 13, §§ 1210–1230.) They require that motor carriers “provide systematic inspection and maintenance of all vehicles subject to their control” and “afford authorized representatives of the department reasonable opportunity to enter terminals or maintenance facilities to inspect vehicles and pertinent records to determine compliance with these regulations.” (Cal. Admin. Code, tit. 13, § 1216, subds. (a), (b).)

Failure to comply with any safety regulation constitutes an infraction or in some cases a misdemeanor. (§§ 34506, 34506.3.)

The question presented for analysis concerns whether under its safety program the CHP may enter a terminal or maintenance facility to inspect vehicles and records without first obtaining an administrative inspection warrant if consent to the inspection has been refused. We conclude that a warrant is not necessary in such circumstances.

The United States Supreme Court has recently reviewed the question of whether an administrative inspection warrant may be required for the enforcement of an administrative inspection safety program. (*Marshall v. Barlow’s, Inc.* (1978) 436 U.S. 307.) The Court noted that the purposes of an administrative inspection warrant would be to “provide assurances from a neutral officer that the inspection is reasonable under the Constitution, is authorized by statute, and is pursuant to an administrative plan” as well as to “advise the owner of the scope and objects of the search, beyond which limits the inspection is not expected to proceed.” (*Id.*, at p. 323.)

The Court reiterated the holdings of its prior decisions that commercial buildings were protected under the Constitution and that regulatory “inspections” infringe upon the right of privacy in the same manner as “searches” for evidence of criminal law violations. (*Marshall v. Barlow’s, Inc.*, *supra*, 436 U.S. 307, 312–313.) It pointed out that a

---

<sup>1</sup> All unidentified section references hereinafter refer to the Vehicle Code.

warrantless “search” was generally unreasonable and thus forbidden under the Fourth Amendment and that a government inspector without a warrant usually stands “in no better position than a member of the public.” (*Id.*, at pp. 312, 315, 324.) Accordingly, although an administrative inspection may be lawful without a warrant depending upon “the specific enforcement needs and privacy guarantees of each statute,” the Court concluded that in general a warrant was necessary for administrative inspections. (*Id.*, at pp. 321, 324.)

The main exception to the warrant requirement for administrative inspections is where the inspection is of a “pervasively regulated business” (*United States v. Biswell* (1972) 406 U.S. 311, 316) or of a “closely regulated” industry “long subject to close supervision and inspection.” (*Colonnade Catering Corp. v. United States* (1970) 398 U.S. 72, 74, 77.)<sup>2</sup>

Generally speaking, this exception requires that the inspection be conducted (1) by a licensing agency (2) pursuant to statutory authorization (3) in a specific industry (4) subject to strict regulation (5) so as to prevent well-known public dangers. (See *Marshall v. Barlow’s, Inc.*, *supra*, 436 U.S. 307, 313; *United States v. Biswell*, *supra*, 406 U.S. 311, 315; *Colonnade Catering Corp. v. United States*, *supra*, 397 U.S. 72, 77; *See v. City of Seattle* (1967) 387 U.S. 541, 546; *Miller v. Obledo* (1978) 79 Cal. App. 3d 714, 715–718; *Cowling v. City of Torrance*, *supra*, 60 Cal. App. 3d 757, 763–764; *Currier v. City of Pasadena*, *supra*, 48 Cal. App. 3d 810, 814; *People v. Conway* (1974) 42 Cal. App. 3d 875, 891; *People v. Grey* (1972) 23 Cal. App. 3d 456, 461; *People v. Lisner* (1967) 249 Cal. App. 2d 637, 641–642; *People v. Hutchings*, *supra*, 69 Cal. App. 3d Supp. 33, 36; *People v. White*, *supra*, 259 Cal. App. 2d Supp. 936, 939–942.)

We believe that we have such a situation before us. The type of vehicles in question can present a dangerous threat to the safety of the public highways by, for example, having defective safety equipment while transporting hazardous materials under the control of an operator who has had insufficient rest. (See *Anderson v. Cozens* (1976) 60 Cal. App. 3d 130, 143.) It is therefore reasonable for the Legislature to provide in section 34501 for inspections by the CHP without requiring that a warrant first be obtained, especially in light of the general movability of the vehicles to be inspected.

---

<sup>2</sup> Other possible exceptions involve emergency situations (see *Camara v. Municipal Court* (1967) 387 U.S. 523; *Currier v. City of Pasadena* (1975) 48 Cal. App. 3d 810, 815; *People v. Hutchings* (1977) 69 Cal. App. 3d Supp. 33, 36) and “plain views” from public areas (see *Marshall v. Barlow’s, Inc.*, *supra*, 436 U.S. 307, 315; *Air Pollution Variance Bd. v. Western Alfalfa* (1974) 416 U.S. 861, 865; *Cowling v. City of Torrance* (1976) 60 Cal. App. 3d 757, 762–763; *City etc. of San Francisco v. City Investment Corp.* (1971) 15 Cal. App. 3d 1031, 1038–1039; *People v. White* (1968) 259 Cal. App. 2d Supp. 936, 942), both of which are inapplicable to the factual situation presented herein.

Importantly, use of the public highways has long been subject to government supervision; extensive traffic regulations and motor vehicle licensing requirements exist. (See *Cady v. Dombrowski* (1973) 413 U.S. 433, 441.) Such government supervision is similar to that present in the liquor (*Colonnade Catering*) and firearms (*Biswell*) industries. Consequently, a reasonable expectation of privacy by the truck and bus operators does not exist to the extent that the administrative inspection warrant procedure would be required. (See *Marshall v. Barlow's, Inc.*, *supra*, 436 U.S. 307, 313–314; *United States v. Biswell*, *supra*, 406 U.S. 311, 316; *See v. City of Seattle*, *supra*, 387 U.S. 541; *Camara v. Municipal Court*, *supra*, 387 U.S. 523, 535; *People v. Hutchings*, *supra*, 69 Cal. App. 2d Supp. 33, 36.)

We conclude, therefore, that the CHP's safety program for industries using trucks and buses falls within the "certain carefully defined classes of cases" (*Camara v. Municipal Court*, *supra*, 387 U.S. 523, 528) where warrantless inspections are permitted. Accordingly, the CHP is not required to obtain an administrative inspection warrant to enforce its safety program where consent to its inspection of the vehicles and records in the terminals is refused.

\*\*\*\*\*