

TO BE PUBLISHED IN THE OFFICIAL REPORTS

OFFICE OF THE ATTORNEY GENERAL
State of California

GEORGE DEUKMEJIAN
Attorney General

OPINION	:	No. 79-1008
	:	
of	:	<u>August 27, 1980</u>
	:	
GEORGE DEUKMEJIAN	:	
Attorney General	:	
	:	
Edmund E. White	:	
Deputy Attorney General	:	

SUBJECT: USE OF RADAR TO ENFORCE SPEED LAWS ON RESIDENTIAL STREETS NOT DESIGNATED AS STATE HIGHWAYS—Radar may be used to enforce speed laws on local residential streets, whether or not they are classified as arterial streets by the Federal Highway Administration, and whether or not the particular section of highway or street has a prima facie speed limit established by the Vehicle Code or by local ordinance which is justified by an engineering, and traffic survey conducted five years prior to any citation for exceeding said speed limit. Radar may not be used to enforce speed laws if its use for such purpose constitutes a “speed trap” within the meaning of Vehicle Code section 40802.

The Honorable Peter R. Chacon, Assemblyman, Seventy-Ninth District, requests an opinion on the following question:

May radar be used to enforce speed laws on local residential streets, whether or not classified as arterial streets by the Federal Highway Administration maps, provided the streets are not designated state highways?

CONCLUSION

Radar may be used to enforce speed laws on local residential streets provided that its use for such purpose does not constitute a “speed trap” within the meaning of Vehicle Code section 40802. The use of radar to enforce speed laws is permitted by Vehicle Code section 40802:

(1) On a particular section of a highway or street, whether or not it is classified as arterial, which does not have a prima facie speed limit established by the Vehicle Code or by local ordinance;

(2) On a particular section of a highway or street, whether or not it is classified as arterial, which does have a prima facie speed limit established by the Vehicle Code or by local ordinance, which prima facie speed limit is justified by an engineering and traffic survey conducted within five years prior to any citation for exceeding said speed limit;

(3) On a local street or road not classified as an arterial street by the Federal Highway Administration maps, if:

(a) Such streets are defined as local streets and roads by the latest functional usage and federal-aid system maps as submitted to the Federal Highway Administration, or

(b) Assuming that no such maps have been submitted to the Federal Highway Administration, then on any local street or road primarily providing access to abutting residential property and meeting each of the following three conditions:

(i) It has a roadway width of not more than 40 feet;

(ii) It has not more than one-half mile of uninterrupted length. Interruptions shall include official traffic control devices as defined in Vehicle Code section 445; and

(iii) The street or road shall have no more than one traffic lane in each direction.

ANALYSIS

Vehicle Code section 40801¹ prohibits a peace officer or other person from using a speed trap in arresting, or participating or assisting in the arrest of any person for any Vehicle Code violation. Section 40801 also prohibits the use of a speed trap to secure evidence as to the speed of any vehicle for purposes of an arrest or prosecution under the

¹ All unidentified section references are to the Vehicle Code.

provisions of the Vehicle Code. See also section 40803 prohibiting the use of “speed trap” evidence in a court.

Section 40802 defines a “speed trap” as follows:

“A ‘speed trap’ is either of the following:

“(a) A particular section of a highway measured as to distance and with boundaries marked, designated, or otherwise determined in order that the speed of a vehicle may be calculated by securing the time it takes the vehicle to travel the known distance.

“(b) A particular section of a highway with a prima facie speed limit provided by this code or by local ordinance pursuant to paragraph (1) of subdivision (b) of Section 22352, or established pursuant to Section 22354, 22357, 22358, or 22358.3, which speed limit is not justified by an engineering and traffic survey conducted within five years prior to the date of the alleged violations, and where enforcement involves the use of radar or other electronic devices which measure the speed of moving objects. The provisions of this subdivision do not apply to local streets and roads.

“For purposes of this section, local streets and roads shall be defined by the latest functional usage and federal-aid system maps as submitted to the Federal Highway Administration. When these maps have not been submitted, the following definition shall be used: A local street or road primarily provides access to abutting residential property and shall meet the following three conditions:

“1. Roadway width of not more than 40 feet,

“2. Not more than ½ mile of uninterrupted length. Interruptions shall include official traffic control devices as defined in Section 445.

“3. Not more than one traffic lane in each direction.”²

Subdivision (b) of section 40802 defines speed traps involving the use of radar. Pursuant to subdivision (b), a speed trap is a particular section of a “highway” with a prima facie speed limit established pursuant to specified Vehicle Code sections or by local

² This section will remain in effect only until January 1, 1982, whereupon a new section 40802 will become operative.

ordinance (as therein specified), which speed limit is not justified by an engineering and traffic survey less than five years old and where enforcement involves the use of devices which measure the speed of moving vehicles. Thus, where a speed limit in effect on a highway is not a prima facie speed limit, then radar may be used irrespective of the existence of the requisite current engineering and traffic survey. (*People v. Miller* (1979) 90 Cal. App. 3d Supp. 35.) Section 22348 provides in part that “no person shall drive a vehicle upon a highway at a speed greater than 55 miles per hour.” (See also 23 U.S.C. § 154 establishing a 55-mile-per-hour national maximum speed limit.) Thus, the 55-mile-per-hour speed limit specified in section 22348 is a maximum speed limit and not a prima facie speed limit. The term “highway” has a broad meaning under the Vehicle Code which meaning includes “streets.” See section 360 which provides that:

‘Highway’ is a way or place of whatever nature, publicly maintained and open to the use of the public for purposes of vehicular travel. Highway includes street.” (See also § 590, which contains a mirror-image definition of street.)

The, provisions of subdivision (b), defining a “speed trap” do not apply to “local streets and roads.” (§ 40802, subd. (b).) Since subdivision (b) of section 40802 is the only statute circumscribing the use of radar in the enforcement of speed laws, radar may be used in the enforcement of speed laws on local streets and roads which comply with the definition of “local streets and roads” in subdivision (b).

The phrase “local streets and roads” is defined in two ways by subdivision (b) of section 40802. First, where functional usage and federal-aid system maps have been submitted to the Federal Highway Administration, then “local streets and roads” within the meaning of section 40802 are those local streets and roads as defined by the latest version of such maps. Second, where no functional usage or federal-aid system maps have been submitted to the Federal Highway Administration, then a “local street and road” is one which primarily provides access to abutting residential property and, in addition, meets the three specific conditions set forth in subdivision (b) of section 40802.

A “functional usage and federal-aid system map” constitutes an official document to be used by the Federal Highway Administration as a basis for designating the routes of the “federal-aid systems.” Title 23, Code of Federal Regulations, section 470.105 defines the federal-aid systems as consisting of:

“(a) The National System of Interstate and Defense Highways shall consist of routes of highest importance to the Nation, which connect as direct as practicable the principal metropolitan areas, cities, and industrial centers, including important routes into, through, and around urban areas, serve the

national defense and, to the greatest extent possible, connect at suitable border points with routes of continental importance in Canada and Mexico.

“(b) The Federal-aid primary system shall consist of an adequate system of connected main roads important to interstate, statewide, and regional travel, consisting of rural arterial routes and their extensions into or through urban areas.

“(c) The Federal-aid secondary system shall consist of rural major collector routes.

“(d) The Federal-aid urban system shall consist of arterial routes and collector routes, exclusive of urban extensions of the Federal-aid primary system.”

The following definitions appear in 23 United States Code section 101 (a) and in title 23, Code of Federal Regulations, section 470.103:

“(a) Except as otherwise provided herein, terms defined in 23 U.S.C. 101 (a) are used in this regulation as so defined.

“(b) As used herein:

“(1) ‘Urban area’ means an urbanized area, or in the case of an urbanized area encompassing more than one State, that part of the urbanized area in each such State, or an urban place as designated by the Bureau of the Census having a population of 5,000 or more and not within any urbanized area, within boundaries to be fixed by responsible State and local officials in cooperation with each other. Such boundaries shall, as a minimum, encompass the entire urban place designated by the Bureau of the Census.

“(2) ‘Rural area’ means all areas of a State not included in ‘the boundaries of urban areas.

“(3) ‘Public road’ means any road under the jurisdiction of and maintained by a public authority and open to public travel.

“(4) ‘Rural arterial routes’ means those public roads that are functionally classified as a part of the rural principal arterial system or the rural minor arterial system as described in Volume 20, Appendix 12, Highway Planning Program Manual.

“(5) ‘Rural major collector routes’ means those public roads that are functionally classified as a part of the major collector subclassification of the rural collector system as described in Volume 20, Appendix 12, Highway Planning Program Manual.

“(6) ‘Urban arterial routes’ means those public roads that are functionally classified as a part of the urban principal arterial system or the urban minor arterial system as described in Volume 20, Appendix 12, Highway Planning Program Manual.

“(7) ‘Urban collector routes’ means those public roads that are functionally classified as a part of the urban collector system as described in Volume 20, Appendix 12, Highway Planning Program Manual.

“

(Fn. omitted.)

The classification system described in volume 20, appendix 12 of the Federal Highway Planning Program Manual (hereinafter “the manual”) classifies areas either as urban or rural. It further classifies road systems within such areas as principal and minor arterial systems, major and minor collector systems, and local streets and road systems. (Manual, pp. 11–8–11–15.)

The manual describes a rural local road system as follows:

“The rural local road system should have the following characteristics: (1) Serve primarily to provide access to adjacent land; and (2) provide service to travel over relatively short distances as compared to collectors or other higher systems. Local roads will, of course, constitute the rural mileage not classified as principal arterial, minor arterial road, or collector road.” (Manual, p. 11–10.)

The urban local street system is described as follows:

“The local street system comprises all facilities not on one of the higher systems. It serves primarily to provide direct access to abutting land and access to the higher order system. It offers the lowest level of mobility and usually contains no bus routes. Service to through traffic movement usually is deliberately discouraged.” (Manual, p. II–13.)

A review of the urban Function Usage and Federal-Aid System map provided with the opinion request shows the following systems as having particular markings on the map:

1. Interstate and other freeway
2. Other principal arterials
3. Minor arterials
4. Collector street

Roads which do not meet one of these four classifications are shown on the map but do not have a particular marking. We conclude from the definitions contained in the manual that these other roads, which are not designated as part of the freeway, arterial, or collector systems, are local streets and roads for purposes of subdivision (b) of section 40802.³

³ Under subdivision (b) of section 40802, the designation of a road as A state highway is not the controlling factor for determining if a speed trap is present. From the manual description of the urban principal arterial system, a state highway would most likely be classified as an arterial.

The urban principal arterial system is described in the manual in part as follows:

“This system of streets and highways, called here the urban principal arterial system, should serve the major centers of activity of a metropolitan area, the highest traffic volume corridors, and the longest trip desires: and should carry a high proportion, of the total urban area travel on a minimum of mileage. The system should be integrated, both internally and between major rural connections.

“The principal arterial system should carry the major portion of trips entering and leaving the urban area, as well as the majority of through movements desiring to bypass the central city. In addition, significant intra-area travel, such as between central business districts and outlying residential areas, between major inner city communities, or between major suburban centers should be served by this class of facilities. Frequently the principal arterial system will carry important intraurban as well as intercity bus routes. Finally, this system in urbanized areas should provide continuity for all rural arterials which intercept the urban boundary

“Because of the nature of the travel served by the principal arterial system, almost all fully and partially controlled access facilities will be part of this functional class. However, this system is not restricted to controlled access routes. In order to preserve the identification of controlled access facilities, the principal arterial system should be stratified as follows: (1) Interstate, (2) other freeways and expressways, and (3) other principal arterials (with no control of access).” (Manual, p. II-12.)

Since section 40802, subdivision (b), is the only statute limiting the use of radar to enforce speed laws, radar may be used on local residential streets that are classified as part of the arterial or collector systems if the use of radar on such' streets does not fall within the definition of a speed trap as set forth under subdivision (b) of section 40802. Radar may be used on a section of highway or street which does not have a prima facie speed limit set by the Vehicle Code or by local ordinance pursuant to section 22352, subdivision (b), paragraph (I) or established by section 22354, 22357, 22358, or 22358.3. Radar may also be used on any highway or street having a prima facie speed limit where the prima facie speed limit is justified by an engineering and traffic survey as provided for in subdivision (b) of section 40802.

Radar may be used to enforce speed laws on local residential streets, not classified as arterial streets by the Federal Highway Administration maps, if:

(1) Such streets are defined as local streets and roads by the latest functional usage and federal-aid system maps as submitted to the Federal Highway Administration, or

(2) Assuming that no such maps have been submitted then on any local street or road primarily providing access to abutting residential property and meeting each of the following three conditions:

(a) It has a roadway width of not more than 40 feet;

(b) It has not more than one-half mile of uninterrupted length. Interruptions shall include official traffic control devices as defined in Vehicle Code section 445; and

(c) The Street or road shall have no more than one traffic lane in each direction.
