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OPINION	:	No. 79-1214
	:	
of	:	<u>January 2, 1980</u>
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SUBJECT: YOUTHFUL OFFENDER PAROLE BOARD—State employees of the new Youthful Offender Parole Board are “miscellaneous” members of the Public Employees Retirement System rather than “safety” or “industrial” members.

The Honorable Pearl S. West, Director, Department of the Youth Authority, requests an opinion on the following question:

Are state employees who by operation of law were transferred from the staff of the Youth Authority Board to the staff of the Youthful Offender Parole Board on January 1, 1980, entitled to continue to be “safety” or “industrial” members of the Public Employees Retirement System in accordance with their P.E.R.S. classification while they were staff of the Youth Authority Board?

CONCLUSION

State employees of the new Youthful Offender Parole Board are “miscellaneous” members of the Public Employees Retirement System rather than “safety” or “industrial”

members.

ANALYSIS

Pursuant to the provisions of chapter 860, Statutes of 1979, effective January 1, 1980, the Youth Authority Board was abolished. The newly created Youthful Offender Parole Board succeeded to the powers and duties previously vested in the Youth Authority Board. (Welf. & Inst. Code, § 1725.)¹

The Chairman of the Youth Authority Board under the prior law was also the Director of the Youth Authority. (§ 1710.5) The Director of the Youth Authority was the appointing authority for all civil service positions of employment in the department. (§ 1710.5.) The Director, as Chairman of the Youth Authority Board, was the administrative head of the board and, in such capacity, was the appointing authority for all civil service positions of employment in the board. (§ 1723.1.) However, such employees were civil service employees of the Department of the Youth Authority, rather than civil service employees of the Youth Authority Board. See new section 1726, subdivision (b), which provides in part that:

“All officers and employees of the Department of Youth Authority who on the effective date of this section are serving in the state civil service . . . as part of the direct staff of the Youth Authority Board . . . shall be transferred to the Youthful Offender Parole Board.”

It was their status as employees of the Department of the Youth Authority that gave them their special status as either industrial members or safety members of the Public Employees Retirement System. (Gov. Code, §§ 20016, 20017.77, 20017.79.)

However, pursuant to section 1726, subdivision (b), chapter 860, Statutes of 1979, all officers and employees of the Department of the Youth Authority who were part of the “direct staff” of the Youth Authority Board on January 1, 1980:

“. . . shall be transferred to the Youthful Offender Parole Board. The status, positions, and rights of such persons shall not be affected by the transfer and shall be retained by them as officers and employees of the Youthful Offender Parole Board pursuant to the State Civil Service Act.”

The legislative enactments establishing categories of officers and employees for purposes of the Public Employees Retirement System law are not part of the State Civil

¹ All unidentified section references are to the Welfare and Institutions Code.

Service Act. (See Gov. Code, §§ 18570, 19370.) No provisions of the Government Code relating to the Public Employees Retirement System specifically categorizes officers and employees of the new Youthful Offender Parole Board as either industrial retirement members or safety retirement members. Absent legislative categorization of state employees as either industrial retirement members or safety retirement members, state employees, by operation of law, are “miscellaneous members.” (Gov. Code, §§ 20013, 20014.)

Thus, the issue is whether the officers and employees of the new Youthful Offender Parole Board are to be considered, on the one hand, as either industrial retirement members or safety retirement members in accordance with their previous classification while employees of the Department of the Youth Authority or, on the other hand, are now miscellaneous members of the Public Employees Retirement System as new employees of the Youthful Offender Parole Board.

With respect to this issue, we are advised by the Director of the Department of the Youth Authority that:

“Through inadvertence, appropriate amendments to the cited Government Code Sections [§§ 20016, 20017.77, 20017.7931] were not made by Chapter 860 to clearly and specifically indicate that departmental employees assigned to the Youth Authority Board who, by operation of law and without any change whatsoever in their duties, will become Youthful Offender Parole Board employees will continue in their respective retirement categories. Should such not be the case, they will revert to ‘miscellaneous’ membership with a concomitant potential loss of benefits, with the potential (for ‘safety’ members) of having to pay into the Social Security System, and with substantial morale and administrative disruption for the employees and for the Department and Board.”

Pursuant to the provisions of chapter 860, the Director of the Department of the Youth Authority is no longer a member of the Youthful Offender Parole Board, either as Chairman or as a regular member. While the functions of the Youthful Offender Parole Board appear to be generally the same functions as were entrusted to the Youth Authority Board (compare new § 1716, *et seq.* with old §§ 1711.3, 1711.5), the critical difference is that the Youthful Offender Parole Board is no longer a part of the Department of the Youth Authority. This difference is critical for two reasons. First, it is the Department of the Youth Authority that is responsible for the care and treatment of wards, i.e., for the “custodial” care of wards, except for certain “hearings” which involve specific wards. (See former § 1711.3 and new §§ 1712, 1714, 1721.) Secondly, only the Department of the Youth Authority—not the Youth Authority Board—is designated in the statutes that determine

who shall be industrial members or safety members of P.E.R.S. (See Gov. Code, §§ 20016, 20017.77, 20017.79.) The new Youthful Offender Parole Board does not perform the equivalent functions of the Department of the Youth Authority, which latter entity is the only agency mentioned in the critical statutes.

Thus, it is reasonable to conclude that the Youthful Offender Parole Board is not the alter ego of the old Youth Authority Board. It is a new state agency which replaces the Youth Authority Board. The question as to the appropriate classification of its officers and employees for purposes of retirement status with the Public Employees Retirement System is a matter of basic policy that is within the exclusive power of the Legislature to decide.

We turn to the issue of whether this basic policy decision has been made by the Legislature.

Government Code section 20014 provides that “‘State miscellaneous member’ includes all members employed by the state and university, except patrol and state safety members.”

Government Code section 20016 provides in part that “‘State industrial members includes . . . all state employees appointed by . . . the Department of the Youth Authority and employed in the . . . facilities of . . . the Department of Youth Authority . . . except such employees who are state safety members”

Government Code section 20017.77 provides in part that ‘State safety member’ shall also include officers and employees in . . . (b) the Department of the Youth Authority employed to perform the duties now performed in positions with the following class titles: . . . [specific class titles enumerated].”

It is a fundamental principle of statutory construction that the primary and controlling consideration in the construction of a statute is the determination of and giving effect to the legislative intent behind the statute. (*Great Lakes Properties, Inc. v. City of El Segundo* (1977) 19 Cal. 3d 152, 163; *Select Base Materials v. Board of Equal.* (1959) 51 Cal. 2d 640, 645; *Steilberg v. Lackner* (1977) 69 Cal. App. 3d 780, 785.)

Where the language of a statute is clear, its plain meaning should be followed. (*Great Lakes Properties, Inc. v. City of El Segundo, supra*, 19 Cal. 3d at p. 155.) If such is the case, the sole function of the courts is to enforce the statute according to its terms. (*Leroy T. v. Workmen’s Comp. Appeals Board* (1974) 12 Cal. 3d 434, 438.)

In determining the legislative intent, the court turns first to the words used in the statute. (*Moyer v. Workmen’s Comp. Appeals Board* (1973) 10 Cal. 3d 222, 230; *Steilberg*

v. Lackner, supra, 69 Cal. App. 3d at p. 785.) The court is required to give effect to the statutes according to the usual ordinary import of the language, significance being given to every word, phrase, sentence and part of an act in pursuance of the legislative purpose. (*Moyer v. Workmen's Comp. Appeals Board, supra*, at p. 230; *Steilberg v. Lackner, supra*, at p. 785.)

Courts have gone on to caution that where the meaning of the statute is clear, one may not, in the name of "statutory construction," add to or subtract from that clear meaning:

"Courts should not read into statutes qualifications or modifications that will materially affect their operation so as to conform to a supposed intention not expressed by the Legislature. [Citations.] *Taylor v. McKay*, 53 Cal. App. 3d 644, 651-652 (1975).

"Courts may not add to or detract from a statute or insert or delete words to accomplish a purpose that does not appear on its face or from its legislative history. [Citations.] *Organization of Deputy Sheriffs v. County of San Mateo*, 48 Cal. App. 3d 331, 340 (1975) (footnote deleted)."

The critical sections to be construed are sections 20016, 20017.77 and 20017.79. Neither the Youth Authority Board nor the Youthful Offender Parole Board are mentioned in these sections. The Department of the Youth Authority is mentioned in these sections. The services that were provided to the Youth Authority Board were provided by employees of the Department of the Youth Authority rather than by employees of the Youth Authority Board. When one examines these sections, one still finds that employees of the Department of the Youth Authority are classified by sections 20016, 20017.77 and 20017.79 as other than "miscellaneous" members of P.E.R.S. If the situation were that the Youth Authority Board was an enumerated agency in the specified sections of the Welfare and Institutions Code, it might be reasonable to assume a legislative intent that a reference to the Youth Authority Board could be deemed a reference to the Youthful Offender Parole Board. No such inference is possible when the only relevant reference is to the Department of Youth Authority, which continues to exist.

Thus, when Government Code sections 20016, 20017.77 and 20017.79 are examined, one finds no language, express or implied, that operates to make the officers and employees of the Youthful Offender Parole Board either industrial retirement members or safety retirement members. We would have to add to these statutes the name of the Youthful Offender Parole Board in order to conclude that its officers and employees are to have a classification other than as "miscellaneous" members.

But we may do that, if at all, only to effectuate the legislative intent which is assumed to be reflected in the words used. In this instance, it appears to be conceded that the omission from the critical statutes of the necessary words was ‘inadvertent.” Whatever the reason for the omission, the Legislature did not address the issue of whether employees of the Youthful Offender Parole Board should have a special P.E.R.S. classification when it enacted chapter 860, Statutes of 1979, although it did address the issue of their civil service status. Since the Legislature has not addressed the issue, neither we nor a court may act in lieu thereof so as to supply the necessary language that would affirmatively establish for the affected employees the special retirement classifications that the Legislature provided to them when they were employees of the Department of the Youth Authority. Of course, any retirement rights such employees obtained while officers and employees of the Department of the Youth Authority are vested and are not affected by chapter 860, Statutes of 1979. (See generally, *Frank v. Board of Administration of P.E.R.S.* (1976) 56 Cal. App. 3d 236.)

Accordingly, it is concluded that the employees of the Youthful Offender Parole Board are, by operation of law, “miscellaneous” members of the Public Employees Retirement System until the Legislature acts so as to provide otherwise.
