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| OPINION | : | No. 79-322 |
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| of | : | <u>May 16, 1979</u> |
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SUBJECT: PENALTY ASSESSMENTS—The provision in Penal Code section 1203.1 which requires payment into a county’s general fund of all fines that are collected by the county probation officer does not apply to penalty assessments levied pursuant to specific sections in the Penal Code, Vehicle Code, or Government Code.

The Honorable Kenneth Cory, State Controller, has requested an opinion on the following question:

Does the provision in Penal Code section 1203.1, which requires payment into a county’s general fund of all fines that are collected by the county probation officer as a condition or term of probation, apply to penalty assessments levied pursuant to Penal Code section 13521, Vehicle Code section 42050, and Government Code section 13967?

CONCLUSION

The provision in Penal Code section 1203.1 which requires payment into a county’s general fund of all fines that are collected by the county probation officer as a condition or term of probation, does not apply to penalty assessments levied pursuant to Penal Code section 13521, Vehicle Code section 42050, and Government Code section 13967.

ANALYSIS

The present question involves the interrelationship between one statute which directs that fines in specified situations be paid into the county general fund, and three other statutes which provide for the payment of monetary penalties into designated *state* funds.

With respect to those statutes requiring payment into the county fund, Penal Code section 1203.1 provides in pertinent part:

“Any other provision of law to the contrary notwithstanding, all fines collected by a county probation officer in any of the courts of this State, as a condition of the granting of probation, or as a part of the terms of probation, shall be paid into the county treasury and placed in the general fund, for the use and benefit of the county.”

As to the three statutes requiring payments into the designated state funds, Penal Code section 13521 in part provides:

“On and after September 18, 1959, there shall be levied a penalty assessment in an amount equal to five dollars (\$5) for every twenty dollars (\$20), or fraction thereof, of every fine, penalty and forfeiture imposed and collected by the courts for criminal offenses, other than a fine, penalty or forfeiture for an offense included within the penalty assessment provisions of Section 42050 of the Vehicle Code, an offense expressly exempted from the penalty assessment provisions of Section 42050 of the Vehicle Code, or a violation of the Fish and Game Code. Where multiple offenses are involved, the penalty assessment shall be based upon the total fine or bail for all offenses. When a line is suspended, in whole or in part, the penalty assessment shall be reduced in proportion to the suspension. . . .”

“After a determination by the court of the amount due, the clerk of the court shall collect the same and transmit it to the county treasury. *It shall then be transmitted to the State Treasury to be deposited in the Peace Officers’ Training Fund.* The transmission to the State Treasury shall be carried out in the same manner as fines collected for the state by a county. . . .” (Emphasis added.)

Vehicle Code section 42050 provides:

“To reimburse the General Fund for amounts appropriated therefrom for the laboratory phases of driver education pursuant to Section 17305 of the Education Code,

and to augment the Peace Officers' Training Fund to the extent designated in Section 42052, there shall be levied a penalty assessment on all offenses involving a violation of a section of this code or any local ordinance adopted pursuant to this code, except offenses relating to parking or registration or offenses by pedestrians or bicyclists, or where an order is made to pay a sum to the general fund of a county pursuant to subdivision (3) (c) of Section 564 of the Welfare and Institutions Code, in the following amounts:

- “(a) Where a fine is imposed \$5 for each \$20 of fine, or fraction thereof.
- “(b) If sentence is suspended \$5 if jail only, otherwise based on the amount of the fine levied, as in subdivision (a).
- “(c) If bail is forfeited \$5 for each \$20 of bail, or fraction thereof.
- “(d) ‘Where multiple offenses are involved . . . The penalty assessment shall be based on the total fine or bail for all offenses, or \$5 for each jail sentence.

“When a fine is suspended, in whole or in part, the penalty assessment shall be reduced in proportion to the suspension.”¹ (Emphasis added.)

¹ Specific provisions for the distribution of funds collected pursuant to Vehicle Code section 42050 are set forth in Vehicle Code section 42052 which provides:

“After a determination by the court of the amount due under Section 42050, the clerk of the court shall collect the same and transmit it to the county treasury. It shall then be transmitted to the State Treasury in the same manner as fines collected for the state by a county. Upon order of the State Controller, the money shall be deposited in the State Treasury as follows:

“(a) Seventy-five percent of each such penalty assessment shall be deposited in the Driver Training Penalty Assessment Fund, which fund is continued in existence, to be used exclusively to reimburse the General Fund as provided in Section 42050.

“(b) Twenty-five percent of each such penalty assessment shall be deposited in the Peace Officers' Training Fund.”

Government Code section 13967 provides:

“Upon a person being convicted of a crime of violence committed in the State of California resulting in the injury or death of another person, if the court finds that the defendant has the present ability to pay a fine and finds that the economic impact of the fine upon the defendant’s dependents will not cause such dependents to be dependent on public welfare the court shall, in addition to any other penalty, order the defendant to pay a fine commensurate with the offense committed, and with the probable economic impact upon the victim, of at least ten dollars (\$10), but not to exceed ten thousand dollars (\$10,000). In addition to any other penalty upon a person being convicted of any other felony or misdemeanor there shall be levied a penalty assessment of ten (\$10) for each felony conviction and five dollars (\$5) for each misdemeanor conviction upon every fine, penalty, and forfeiture imposed and collected by the courts. Any fine or penalty assessment imposed pursuant to this section shall not be subject to any penalty assessment imposed pursuant to Section 13521 of the Penal Code. *The fine or penalty assessment imposed pursuant to this section shall be deposited in the Indemnity Fund in the State Treasury*, hereby continued in existence, and the proceeds of which shall be available for appropriation by the Legislature to indemnify persons filing claims pursuant to this article.” (Emphasis added.)

Despite the fact that these three statutes expressly provide for the designated “penalty assessments” to be disbursed to specified state funds, it has been suggested that when such assessments are collected as a condition of probation by a county probation officer, as opposed to being collected by the clerk of the court, the funds collected should be regarded as “fines” as that term is used in Penal Code section 1203.1, and the provisions of that section should prevail, thus requiring the funds so collected to be paid into the county’s general fund.

It is our opinion that this construction of these statutes is at odds with a clearly manifested legislative intent to the contrary. “The basic rule of statutory construction is that the intention of the Legislature must be ascertained and given effect.” (*Marrujo v. Hunt* (1977) 71 Cal. App. 3d 972, 977; see also *California Sch. Employees Assn. v. Jefferson Elementary Sch. Dist.* (1975) 45 Cal. App. 3d 683, 691.) And, as the Supreme Court informs us: “In determining such intent “[t]he Court turns first to the words themselves for the answer. *Palos Verdes Faculty Assn. v. Palos Verdes Peninsula Unified Sch. Dist.* (1978) 21 Cal. 3d 650, 658.)

In regard to the statutes presently considered, the words most pertinent to a determination of the legislative intent regarding the disposition of funds levied as “penalty assessments” are those which demonstrate that the Legislature assiduously distinguished between the term “fine” and the term “penalty assessment in each of the statutes providing for payments into the specified state funds.

For example, in Penal Code section 13521 relating to the Peace Officers’ Training Fund, it is provided that “there shall be levied a *penalty assessment* . . . [equal to a specified ratio) of every *fine*, penalty and forfeiture imposed and collected by the courts for criminal offenses” (Emphasis added.) Vehicle Code section 42050, relating to the driver training and the peace officer training funds provides (as does Penal Code section 13521): “When a *fine* is suspended, in whole or in part, *the penalty assessment* shall be reduced in proportion to the suspension.” (Emphasis added.) Similarly in Government Code section 13967 relating to the violent crime indemnity fund, the Legislature distinguishes between a “fine” and a “penalty assessment” by first providing that “the court shall, in addition to any other penalty, order the defendant to pay a *fine*. . . .” (Emphasis added.) The section then provides: “In addition to any other penalty there shall be levied a *penalty assessment* upon every *fine*, penalty and forfeiture imposed and collected by the courts.” (Emphasis added.)

Thus, in these statutes, the Legislature has consistently distinguished the incremental sum (the “penalty assessment”) from the primary monetary penalty (the “fine”) upon which it is based. Applicable to this contrast in statutory terminology is the rule “that: ‘When different language is used in the same connection in different parts of a statute it is presumed the legislature intended a different meaning and effect.’” (People v. Ector (1965) 231 Cal. App. 3d 619, 625; see also *Charles S. v. Board of Education* (1971) 20 Cal. App. 3d 83, 95.)

Thus even though a “penalty assessment” is itself a form of fine (Sawyer v. Barbour (1956) 142 Cal. App. 2d 827, 835–836; 23 Ops. Cal. Atty. Gen. 113, 116 (1954); 57 Ops. Cal. Atty. Gen. 621, 622 (1974)), by affixing to such assessments distinguishing terminology, and by expressly earmarking them for specific state funds, the Legislature has made manifest its intent that, in the context of disbursing monetary penalties, that particular component it has denominated, “penalty assessment,” is to be treated differently from that component of the monetary penalty it has termed a “fine.” As stated in Sawyer v. Barbour, *supra*, 142 Cal. App. 2d at page 837: “the Legislature may, as it has done in section 773 (now Vehicle Code section 420501, add a penalty that must be imposed in addition to that provided elsewhere. No constitutional provision is violated by calling the penalty a penalty assessment and not a fine, nor by making use of the fund so collected for a particular public purpose.”

We thus conclude that in providing for the disbursement of “fines” to the county general fund under Penal Code section 1203.1, the Legislature did not intend the term “fines,” as used in that section, to comprehend and thus control the disbursement of what it termed “penalty assessments” in the three statutes considered here.²

² The statutes dealt with in 2 Ops. Cal. Atty. Gen. 113 (1943) and 28 Ops. Cal. Atty. Gen. 275 (1956) provided for the disposition of what those statutes denominated as “fines.” Therefore, the conclusions in those opinions that Penal Code section 1203.1 was controlling is not applicable to the present situation which involves statutes providing for the disposition of what the Legislature has termed “penalty assessments.”