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OPINION	:	No. 79-422
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of	:	August 1, 1979
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SUBJECT: TRAINING REQUIREMENTS—The requirement that peace officers receive the training in arrest procedures and firearm use, as specified in Penal Code section 832, applies to a county’s juvenile probation officers.

The Honorable Milton Marks, Senator for the Fifth District, has requested an opinion on the following question:

Does the requirement that peace officers receive the training in arrest procedures and firearm use, as specified in Penal Code section 832, apply to a county’s juvenile probation officers?

CONCLUSION

The requirement that peace officers receive the training in arrest procedures and firearm use, as specified in Penal Code section 832, applies to a county’s juvenile probation officers.

ANALYSIS

Under section 832 of the Penal Code¹ “every person described . . . as a peace officer” in chapter 4.5 of title 3, part 2 of the Penal Code is required to receive a course of training in arrest procedures and firearm use.²

Among those so described as peace officers in that chapter of the Penal Code are “any parole officer of the State Department of Corrections, placement or parole officer of the Youth Authority, *probation officer, or deputy probation officer. . . .*” (§ 830.5, subd. (a); emphasis added.)³

¹ All section references are to the Penal Code except where otherwise specified.

² As set forth in full, section 832 provides:

“(a) Every person described in this chapter as a peace officer, shall receive a course of training in the exercise of his powers to arrest and a course of training in the carrying and use of firearms. The course of training in the carrying and use of firearms shall not be required of any peace officer whose employing agency prohibits the use of firearms. Such courses shall meet the minimum standards prescribed by the Commission on Peace Officer Standards and Training.

“(b) (1) Every such peace officer described in this chapter, within 90 days following the date that he was first employed by any employing agency, shall, prior to the exercise of the powers of a peace officer, have satisfactorily completed the course of training as described in subdivision (a).

“(2) Every peace officer described in Section 832.3 shall satisfactorily complete the training required by this section as part of the training and under the limitations set forth in Section 832.3.

“(c) Persons described in this chapter as peace officers who have not so satisfactorily completed the courses described in subdivision (a) as specified in subdivision (b), shall not have the powers of a peace officer until they satisfactorily complete such courses.

“(d) Any peace officer who on the effective date of this section possesses or is qualified to possess the basic certificate as awarded by the Commission on Peace Officer Standards and Training shall be exempted from the provisions of this section.”

³ As set forth in full, section 830.5, subdivision (a), provides:

“(a) Any parole officer of the State Department of Corrections, placement or parole officer of the Youth Authority, probation officer, or deputy probation officer is a peace officer. Except as otherwise provided in this subdivision, the authority of any such peace officer shall extend only (1) to conditions of parole or of probation by any person in this state on parole or probation; (2) to the escape of any inmate or ward from a state institution; (3) to the transportation of such persons; and (4) as provided in Section 8597 or 8598 of the Government Code, or when acting pursuant to Section 8617 of the Government Code. The authority of any parole officer of the State Department of

It has been contended that this designation in section 830.5, subdivision (a), of probation officers as peace officers does not extend to juvenile probation officers. Thus the question we consider here is whether the attest and firearm training required of peace officers by section 832 applies to juvenile probation officers.

Under California law there are both adult probation officers and juvenile probation officers. The office of juvenile probation officer is established under the Juvenile Court Law (ch. 2 (commencing with § 200), pt. 1, div. 2, Welf. & Inst. Code) where it is provided that “There shall be in each county the offices of probation officer, assistant probation officer, and deputy probation officer. A probation officer shall be appointed in each county . . .” (Welf. & Inst. Code § 270.) The Juvenile Court Law also provides that: “As used in this chapter [the Juvenile Court Law], unless otherwise specifically provided, the term ‘probation officer’ shall mean the juvenile probation officer or the person who is both the juvenile probation officer and the adult probation officer . . .” (Welf. & Inst. Code § 215.)

The office of adult probation officer is established under the Penal Code by section 1203.5 which in part provides: “The offices of adult probation officer, assistant adult probation officer, and deputy adult probation officer are hereby created. [Those appointed as juvenile probation officers or assistants or deputies under the Juvenile Court Law] shall be ex officio adult probation officers, assistant adult probation officers and deputy adult probation officers except in any county or city whose charter provides for the separate office of adult probation officer. . . .”

With respect to the question of whether the requirement that peace officers receive the training specified in section 832 applies to juvenile probation officers, we note first that section 830.5, subdivision (a), designates “*any* . . . probation officer or deputy probation officer” (emphasis added) as a peace officer, without indicating any distinction between adult or juvenile probation officers. The use of the word “any” to modify the term “probation officer” is significant in this regard since the word “any” is ordinarily used in a statute “as ‘indicating a person, thing, etc., as one selected *without restriction or limitation of choice*, with the implication that every one is open to selection without exception; one, no matter what one; all, taken distributively; every; . . .” (*Emmalo v. Southern Pacific Co.* (1949) 91 Cal. App. 2d 87, 92 (emphasis added); see also *California State Auto. Assn. Inter-Ins. Bureau v. Warwick* (1976) 17 Cal. 2d 190, 195.)

Thus by its express terms, being applicable to “any . . . probation officer,” the statute appears to comprehend both adult and juvenile probation officers. To limit its applicability to adult probation officers would therefore impose a qualification which does not appear

Corrections shall further extend to violations of any penal provisions of law which are discovered in the course of and arise in connection with his employment.”

in the statute's terms. "In construing the statutory provisions a court is not authorized to insert qualifying provisions not included and may not rewrite the statute to conform to an assumed intention which does not appear from its language. . . ." (*Vallerga v. Dept. Alcoholic Bev. Control* (1959) 53 Cal. 2d 313, 318; see also *Taylor v. McKay* (1975) 53 Cal. App. 3d 644, 651–652; Code Civ. Proc. § 1858.)

Reinforcing the conclusion that the statute was intended to apply to both juvenile and adult probation officers is the fact that in other statutes relating to probation officers, the Legislature has provided explicit indications when a distinction between the two types of probation officers is intended. As stated in Welfare and Institutions Code section 215: ". . . unless otherwise specifically provided, the term 'probation officer' [as used in the Juvenile Court Law] shall mean the juvenile probation officer or the person who is both the *juvenile* probation officer and the adult probation officer" (Emphasis added.)

In the Penal Code provisions establishing and relating to the office of *adult* probation officer (§§ 1203.5–1203.14), there are only two instances where the distinction between the two types of probation officers is relevant. The first instance involves the section which declares the creation of the office of "adult probation officer." That section (section 1203.5) which we have already referred to above provides:

"The offices of *adult* probation officer, assistant *adult* probation officer, and deputy adult probation officer are hereby created. . . ." [T]hose appointed as juvenile probation officers or assistants or deputies under the Juvenile Court Law shall be *ex officio* *adult* probation officers, assistant *adult* probation officers and deputy *adult* probation officers except in any county or city and county whose charter provides for the separate office of *adult* probation officer. When the separate office of *adult* probation officer has been established he shall perform all the *duties* of probation officers except for matters under the jurisdiction of the juvenile court. Any *adult* probation officer may accept appointment as member of the Board of Corrections and serve in that capacity in addition to his *duties* as *adult* probation officer and may receive the per diem allowance authorized in Section 6025.1." (Emphasis added.)

Thus in creating the office of adult probation officer as an office distinct from that of the juvenile probation officer, the Legislature in section 1203.5 appropriately indicated that distinction in express terms by designating such probation officers as "*adult* probation officers."

The second instance where the distinction is relevant relates to the section (§ 1203.6) dealing with the appointment of the adult probation officer and his assistants and deputies.

The distinction is relevant here because procedures for appointing juvenile probation officers differ from those relating to the appointment of the “separate” adult probation officer. (Compare § 1203.6 with Welf. & Inst. Code §§ 270–271.) Consequently in section 1203.6 whenever the term “probation officer” is used, it is also expressly modified by the word “adult.”⁴

However, in the other related sections the distinction is irrelevant. Accordingly in these sections (§§ 1203.9, 1203.10, 1203.11, 1203.12, 1203.13) the term “probation officer” is used without qualification. Thus the legislature has demonstrated its awareness of the distinction between adult and juvenile probation officers and has made such distinctions in the appropriate situations.

It is thus reasonable to assume that when the legislature added probation officers to the enumeration of peace officers in section 830.5 and, in doing so, used the term “probation officer” without any distinguishing qualifications, it did not intend that there be any distinction.

When considering a similar contrast between the presence of a specific legislative qualification in one instance and its absence in another, the Supreme Court stated: “Thus the Legislature, when it desired to . . . [provide for a particular authority], had no difficulty in expressing itself; its articulation of specific statutory authority in that situation points to the absence of such authority in the instant case.” (*Safer v. Superior Court* (1975) 15 Cal. 3d 230, 238.) Similarly in *Gilbaugh v. Bautzer* (1970) 3 Cal. App. 3d 793, 796, it was stated: “The legislative care in expressly limiting the operative period of some sections necessarily implies an intent to give continuing effect to sections not so limited.” (See also

⁴ Section 1203.6 provides:

“The adult probation officer shall be appointed and may be removed for good cause by the judge of the superior court or, in a county with two superior court judges, by the judge who is senior in point of service. In the case of a superior court of more than two judges, a majority of the judges shall make the appointment, and may effect removal.

“The salary of the probation officer shall be established by the board of supervisors.

“The adult probation officer shall appoint and may remove all assistants, deputies and other persons employed in his department, and their compensation shall be established, according to the merit system or civil service system provisions of the county. If no merit system or civil service system exists in the county, the board of supervisors shall provide for appointment, removal, and compensation of such personnel.

“This section is applicable in a charter county whose charter establishes the office of adult probation officer and provides that such officer shall be appointed in accordance with general law subject to the merit system provisions of the charter.”

Caterpillar Tractor Co. v. Teledyne Industries, Inc. (1925) 53 Cal. App. 3d 693, 699.)

Similarly, in the present situation, the express legislative specification of the type of probation officer in the sections noted leads to the conclusion that the legislature did not intend to exclude any type of probation officer whether juvenile or adult, when, in section 830.5, subdivision (a), it is designated without limitation “any . . . probation officer” as a “peace officer.”

The relevant legislative history affords additional confirmation of this conclusion. In this respect it is initially noted that former section 817, which was repealed in 1968 (Stats. 1968, ch. 1222, § 58, p. 2322), was the predecessor to chapter 4.5, the chapter in the Penal Code, commencing with section 830, which enumerates those officials who are designated as peace officers. Probation officers were not so enumerated under former section 817. (See Stats. 1959, ch. 871, § 2, pp. 2905–2906.) Thus prior to 1968 probation officers did not derive their peace officer power from the peace officer provisions in the Penal Code. However, during this period it was recognized in these Penal Code provisions that officials not specified in the Penal Code could have peace officer powers by virtue of other statutes. As provided in the former section 817: “When in any law a public officer or employee is designated as, given the powers of, or determined to be, a peace officer, such officer or employee shall be deemed to be a peace officer but only for the purpose of that law.” (§ 817; Stats. 1959, ch. 871, § 2, p. 2906.)

Thus prior to 1968 probation officers derived their peace officer status from the provisions of other statutes (see Welf. & Inst. Code § 283 (formerly Welf. & Inst. Code § 584) with respect to juvenile probation officers and Code Civ. Proc. § 131.4 with respect to adult probation officers).

But in 1968 when the Penal Code was amended to include probation officers in its provisions enumerating peace officers (§ 830.5, subd. (a)), these provisions were also amended to exclude from peace officer status anyone not specified in these Penal Code provisions. As stated in section 830: “notwithstanding any other provision of law, no person other than those designated in this chapter [ch. 4.5] is a peace officer.”⁵ (§ 830; Stats. 1968, ch. 1222, § 1, p. 2303; see also § 7(8).) Thus it was necessary to include juvenile probation officers in the enumeration under chapter 4.5 of the Penal Code to preserve the peace officer status of juvenile probation officers. This was done in section 830.5. At the same time the provision in the Juvenile Court Law conferring peace officer

⁵ Use of the phrase “notwithstanding any other provision of law” in a statute indicates an intent to make its provisions controlling over any contrary provisions in other statutes. (See *In re marriage of Dover* (1971) 15 Cal. App. 3d 675, 678 fn. 3; see also *State of California v. Superior Court* (1967) 252 Cal. App. 2d 637, 639.)

powers on juvenile probation officers was amended to make specific reference to section 830.5 as follows: “Every probation officer, assistant probation officer and deputy probation officer shall have the powers and authority conferred by law upon peace officers listed in section 830.5 of the Penal Code.” (Welf. & Inst. Code § 283 (formerly Welf. & Inst. Code § 584) see Stats. 1968, ch. 1222, § 76, p. 2331.)

Thus by expressly declaring that juvenile probation officers have peace officer powers, and at the same time expressly excluding from peace officer status anyone not designated as a peace officer in chapter 4.5, it must be concluded that the unqualified designation in section 830.5, subdivision (a), of “Any . . . probation officer” as a “peace officer” was intended to include juvenile probation officers.

We therefore conclude that the training requirements specified in section 832, applicable to “every person described in . . . chapter [4.5] as a peace officer,” are applicable to juvenile probation officers.⁶

⁶ See 55 Ops. Cal. Atty. Gen. 373 (1972) which concludes that section 832 applies to all peace officers except those specifically excluded.