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OPINION	:	No. 79-50
	:	
of	:	<u>July 12, 1979</u>
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Paul H. Dobson	:	
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SUBJECT: UNDERCOVER VEHICLE LICENSE PLATES—Neither county public defenders nor their investigators are eligible to receive undercover vehicle license plates.

Nelson P. Kempsey, Director, Division of Law Enforcement, Department of Justice, has asked for an opinion on the following question:

Are county public defenders and their investigators eligible to receive undercover vehicle license plates?

CONCLUSION

Neither county public defenders nor their investigators are eligible to receive undercover vehicle license plates.

ANALYSIS

The Vehicle Code requires motor vehicles and certain other types of vehicles which are driven, moved or left standing upon a highway to be registered with the Department of Motor Vehicles; such registration generally is subject to the payment of certain fees. (Veh.

Code, § 4000.) The department issues to registered vehicles license plates on which the registration number assigned to each vehicle is displayed. (Veh. Code, §§ 4850, 4851.) Publicly owned vehicles are exempt from registration fees and generally are issued license plates which display a distinguishing symbol or letter. (Veh. Code, § 4155.) Vehicle Code section 5001 provides for the issuance of license plates, which appear to be plates for private nonexempt vehicles, for public vehicles which are exempt from registration fees. These plates are commonly referred to as “undercover” plates. Prior to 1979, section 5001 read as follows:

The department may issue license plates for vehicles exempt from registration fees in the same series as plates issued for nonexempt vehicles. The plates may be issued for a *period not extending beyond the then current calendar year* and only upon the certification of the Attorney General that the issuance of the plates has been requested by the head of a law enforcement agency of a city, county, or state or federal department, that the vehicle is assigned *to the duty* of investigating actual or suspected violations of the law or the supervision of persons liberated from a state prison or other institution under the jurisdiction of the Department of Corrections by parole or the supervision of persons liberated from an institution under the jurisdiction *of the Department of the Youth Authority by parole, and is intended for the use in line of duty of regularly employed law enforcement officers of a city, county, or state or federal department.*” (Emphasis added.)

By Statutes 1978, chapter 617, section 2, this section was amended and now provides:

“The department may issue license plates for vehicles exempt from registration fees in the same series as plates issued for nonexempt vehicles. The plates may be issued for a * * * *one-year period* and only upon the certification of the Attorney General that the issuance of the plates has been requested by the head of a *criminal justice* or a law enforcement agency of a city, county, or state or federal department, that the vehicle is assigned to * * * *persons responsible* for investigating actual or suspected violations of the law or the supervision of persons liberated from a state prison or other institution under the jurisdiction of the Department of Corrections by parole or the supervision of persons liberated from an institution under the Jurisdiction of the Department of the Youth Authority by parole, and is intended for use in the line of duty. * * *¹

¹ The asterisks indicate where words were deleted and the italics indicates words inserted by the amendment.

It is asked whether public defenders and their investigators are eligible for undercover vehicle license plates. Since Vehicle Code section 5001 is the only authority for the issuance of such plates, public defenders and their investigators would have to be eligible, if at all, under the terms of that section. We conclude they are not.

“In engaging in statutory interpretation we are to accord words their usual, ordinary, and common sense meaning based on the language the Legislature used and the evident purpose for which the statute was adopted.” (*In re Rojas* (1979) 23 Cal. 3d 152, 155.)

Section 5001, by its express terms, permits the Attorney General to issue a certificate of eligibility for undercover plates only upon request from the head of a criminal justice or law enforcement agency for such plates for a vehicle to be assigned for certain law enforcement functions—the investigation of actual or suspected law violations or the supervision of parolees. Neither public defenders nor their investigators are expressly mentioned in the section.

Section 5001 is in effect an exception to Vehicle Code section 4851, which specifies exempt plates shall have special markings. Exceptions are to be construed narrowly. (*Lacahanne Properties, Inc. v. Dept. of Alcoholic Beverage Control* (1968) 261 Cal. App. 2d 181, 189.) “Another familiar rule of construction is that where a statute enumerates things upon which it is to operate it is to be construed as excluding from its effect all those nor expressly mentioned.” (*Shelby v. Southern Pacific Co.* (1945) 68 Cal. App. 2d 594, 599.)

Thus, in order to construe section 5001 to include public defenders and their investigators within the class of persons eligible for undercover plates, it would be necessary initially to conclude that a county public defender’s office is a law enforcement or criminal justice agency within the meaning of the section. The term “law enforcement” does not appear applicable to the function of a public defender. That term traditionally has been used to refer to enforcement of penal laws. (See Calif. Const., art. V, § 13; Gov. Code, § 12524; *State of California ex rel Division of Industrial Safety v. Superior Court* (1974) 43 Cal. App. 3d 778’, 784.)

A public defender has no express law enforcement duty. (See Gov. Code, § 27706.) When he is appointed to represent a client, he becomes the attorney of the client for all purposes of the case and to the same extent as if he were regularly retained and employed by the client. (*In re Hough* (1944) 24 Cal. 2d 522; see also *Ligda v. Superior Court* (1970) 5 Cal. App. 3d 811, 825.) While a public defender, like any other attorney, has a duty to protect his clients’ legal rights, this duty hardly could be deemed a “law enforcement” duty so as to make a public defender’s office a “law enforcement agency” within the meaning

of Vehicle Code section 5001. If that were the case, any law firm could also be included within the meaning of the term.

Likewise, the term “criminal justice agency” is not applicable to public defenders’ offices. The term “criminal justice agency” has been used in the Penal Code in connection with laws regulating criminal offender records. (See part 4, tit. 3, ch. 2 (§ 13100 *et seq.*) of the Pen. Code; see also Pen. Code, § 11105.) In this context the Legislature has expressly defined criminal justice agencies in Penal Code section 13101 as follows:

“As used in this chapter, ‘criminal justice agencies’ are those agencies at all levels of government which perform as their principal functions, activities which either:

“(a) Relate to the apprehension, prosecution, adjudication, incarceration, or correction of criminal offenders; or

“(b) Relate to the collection, storage, dissemination or usage of criminal offender record information.”

Absent from that definition is an agency which has the principal function of *defense* of those *accused* of criminal offenses. Moreover, criminal justice agencies, as defined in this context, perform the function of collecting, storing, and disseminating criminal offender information. (See, e.g., Pen. Code, §§ 13100, 13102, 13300.) This is not the function of a public defender’s office.

While a public defender’s office has no general responsibility to investigate actual or suspected violations of the law or to supervise parolees, in defense of a client, a public defender may make an investigation of certain factual matters surrounding a charged offense. His duty is to his client. His investigation responsibility is limited to this duty. It could be argued, however, that the most recent amendment to Vehicle Code section 5001, which substituted “persons” for “law enforcement officers” as authorized assignees of vehicles with undercover plates and added “criminal justice agency” as an eligible employer, demonstrates a legislative intent to include persons who have some duty to investigate actual or suspected law violations, but who are not law enforcement officers, i.e., public defenders and their investigators.

“When a statute is amended by a material change in the language, it is to be presumed that there is an intent to change the preexisting law.” (*The Learner Co. v. County of Alameda* (1965) 234 Cal. App. 2d 278, 284.) (Emphasis added.) However, to conclude that the Legislature intended to include public defenders and their investigators within the group of persons eligible for undercover plates pursuant to Vehicle Code section 5001, it

would be necessary to find that the Legislature intended the term “criminal justice agency” as used in Vehicle Code section 5001 to be defined differently from the same term as used in the Penal Code.

Neither the legislative history of the section nor its most recent amendment suggests such an intent. Section 5001, originally enacted by Statutes of 1959, chapter 3, section 5001, is based upon former Vehicle Code section 374.5, which was enacted by Statutes of the First Executive Session in 1940, chapter 10. That chapter reads as follows:

“The people of the State of California do enact as follows:

“Section 1. Section 374.5 is hereby added to the Vehicle Code, to read as follows:

“374.5. Exceptions as to Type of License Plates for Exempt Vehicles. The department may issue for any exempt vehicle license plates in the series of plates issued for nonexempt vehicles. Such plates may be issued for a period not extending beyond the then current calendar year and only upon the certification of the Attorney General that the issuance of such plates has been requested by the head of a law enforcement agency of a city, city and county, county, State, or Federal department, that the vehicle is assigned to the duty of investigating actual or suspected violations of the law, and is intended for the use in line of duty of regularly employed law enforcement officers of a city, city and county, county, State or Federal department. The department shall maintain a record of any such registration, which record shall not be open to public inspection. Such record shall be disclosed in the event of any accident involving such vehicle on demand of the Attorney General or upon an order of court.

“Sec. 2. This act is hereby declared to be an urgency measure necessary for the immediate preservation of the public peace, health and safety within the meaning of Section 1 of Article IV of the Constitution of the State of California, and shall take effect immediately.

“The following is a statement of facts constituting such necessity: Motor vehicles used by law enforcement officers are required to display ‘exempt’ license plates. *This clearly discloses to suspected criminals the nature and ownership of the vehicles, and, in enabling such criminals to escape apprehension, seriously impairs the effectiveness of the work of such officers.*” (Emphasis in last paragraph added.)

As can be seen, the express intent behind the legislative authorization for undercover license plates for certain vehicles was to increase the effectiveness of law enforcement officers in apprehending criminals by enabling them to participate in covert activity with their vehicles.

It does not appear from its legislative history that the most recent amendment to Vehicle Code section 5001, Statutes 1978, chapter 617, section 2, was intended by the Legislature to expand the group of eligible recipients of undercover plates to include public defenders or their investigators. Senate Bill 1912, introduced on March 27, 1978, originally provided for only the enactment of Vehicle Code section 165.4 regarding emergency vehicles of the City of Los Angeles Harbor Department. It was amended subsequently by its author to include a second section amending Vehicle Code section 5001 to read as it presently does. In regard to this amendment, the Legislative Counsel's digest (printed at the top of the bill) stated the following:

“The Department of Motor Vehicles is currently authorized to issue regular series license plates to vehicles exempt from registration fees. Such plates, issued only upon certification by the Attorney General, as specified, are issued for a period not extending beyond the calendar year in which they are issued.

“The bill would authorize issuance of regular series plates for law enforcement vehicles for a one-year period.”

The bill was referred to the Committees on Transportation of both houses and the Assembly Committee on Ways and Means. It passed through the committees and both houses without a dissenting vote. The bill analysis for SB 1912 prepared on June 8, 1978, by the staff of the Assembly Committee on Transportation indicates that the purpose of the amendment to Vehicle Code section 5001 was “to allow undercover police officers to use regular license plates for a period of one year rather than expiring at the end of the current calendar year.”

The bill analysis for SB 1912 prepared by the staff of the Senate Committee on Transportation on May 4, 1978, states two purposes for the amendment:

“[1.] The Department of Motor Vehicles may issue license plates for vehicles exempt from registration in the same series as plates issued to nonexempt vehicles. These plates are issued in order that vehicles being used for undercover investigations are not conspicuous. Regular series license plates for exempt vehicles are allowed only on request of the head of a law enforcement agency of a city, county, state or federal department and are

issued for a period not extending beyond the then current calendar year. This bill will bring exempt vehicles into compliance with the new year-round registration.

“[2.] Undercover investigators *for the District Attorney’s office* are not classified as law enforcement but are criminal investigators. This bill would allow vehicles used by these investigators to have regular series license plates when requested by an authorized entity.” (Emphasis added.)

It would appear from this legislative history that the amendment to section 5001 was intended primarily to change the period for which undercover plates were issued. The other changes in language deleting “law enforcement officer” eliminated the requirement that the person assigned to the vehicle be a sworn peace officer (see tit. 3, ch. 4.5 (§ 830 *et seq.*) of the Pen. Code). The purpose of these changes, according to the Senate Transportation Committee staff analysis, was to permit “undercover investigators” of district attorneys to use undercover vehicles. Regularly employed investigators of district attorneys are peace officers. (Pen. Code, § 830.1.) So, it is unclear to us what type of “undercover investigator” the committee staff had in mind. However, it is clear that the “investigator” was one employed by a district attorney, nor by a public defender, for undercover operations. Therefore, we cannot conclude that changes in the wording of Vehicle Code section 5001 were intended to enable public defenders to engage in covert investigations through the use of undercover plates. Such changes clearly would constitute a substantial revision of the purpose behind the section. Absent some indication the Legislature was aware of and intended such a substantial revision, we conclude that it was not intended.
