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OPINION	:	No. 79-707
	:	
of	:	October 30, 1979
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SUBJECT: DRIVING HOUR AND RECORDKEEPING VIOLATIONS—Violations of the driving hour regulation are misdemeanors and should be cited under Vehicle Code section 34506(a). Violations of the recordkeeping regulations are infractions and should be cited under Vehicle Code section 34506.3.

The Honorable G.B. Craig, Commissioner of the California Highway Patrol, has requested an opinion on the following questions:

1. Are violations of the driving hour regulations of section 1212, title 13 of the California Administrative Code misdemeanors or infractions, and how should they be cited?

2. Are violations of the recordkeeping regulations of section 1213, title 13 of the California Administrative Code misdemeanors or infractions, and how should they be cited?

CONCLUSIONS

1. Violations of the driving hour regulations of section 1212, title 13 of the California Administrative Code are misdemeanors which should be cited as violations of Vehicle Code section 34506(a).

2. Violations of the recordkeeping regulations of section 1213, title 13 of the California Administrative Code are infractions which should be cited as violations of Vehicle Code section 34506.3.

ANALYSIS

The California Highway Patrol is directed by Vehicle Code section 34501¹ to adopt rules and regulations to promote the safe operation of trucks and buses,² and by sections 34501.5 and 34508 to adopt such rules and regulations with respect to school buses.

Among the regulations adopted by the Highway Patrol are section 1212 of title 13, California Administrative Code³ (hereafter title 13), which specifies the maximum hours

¹ Hereafter all section references are to the Vehicle Code unless otherwise specified.

² To the extent pertinent, section 34501 provides:

“(a) The Department of the California Highway Patrol shall adopt reasonable rules and regulations which in the judgment of the department are designed to promote the safe operation of vehicles described in Section 34500 [most types of trucks and buses], regarding, but not limited to, hours of service of drivers, equipment, fuel containers, fueling operations, inspection, maintenance, recordkeeping, accident reports, and drawbridges. Such rules and regulations shall not, however, be applicable to school buses which shall be subject to the rules and regulations adopted pursuant to Section 34501.5. . . .”

“(b) The department, using the definitions adopted pursuant to Section 2402.7, shall adopt such regulations for the transportation of hazardous materials in this state, except for materials the transportation of which is subject to other provisions of this code, as the department determines reasonably necessary to ensure the safety of persons and property using the highways. . . .”

³ Section 1212 of title 13 provides in pertinent part:

“Driving hours and on-duty status begin at a point following 8 consecutive hours off duty, except as provided in subsection (c), Driver’s hours shall be regulated from the time a driver first reports for duty for any employer as follows:

“(a) The driver of a bus shall not drive more than 10 hours within a work period, or drive after having been on duty for 16 hours.

“(b) The driver of a school bus, SPAB, or farm labor vehicle shall not drive more

of service for truck and bus drivers, and section 1213 of title 13 which requires such drivers to keep a log of their driving hours.⁴

The present question relates to the consequences of violating these regulations.

With respect to such violations section 34506 provides:

“It is a misdemeanor to fail to comply with any rule or regulation adopted by the Department of the California Highway Patrol pursuant to sections 34501 and 34508 regarding:

“(a) Hours of service of drivers.

“(b) Hazardous materials transportation.

“(c) Schoolbus constructions, design, color, equipment, maintenance, or operation.” (See also § 40000.21.)

than 10 hours within a work period or drive after 16 consecutive hours have elapsed since first reporting for duty.

“(c) The driver of a truck shall not drive more than 12 hours within a work period, or drive after having been on duty for 16 hours. The driver of a truck may accumulate off-duty time in two periods totaling 8 hours resting in a sleeper berth, provided neither period is less than 2 hours. . . .”

⁴ Section 1213 of title 13 provides in pertinent part:

“A driver’s log shall be used to record a driver’s hours to ensure compliance with Section 1212. Drivers of vehicles subject to and in compliance with the log requirements of the U.S. Department of Transportation, Section 395.8, Part 395, Code of Federal Regulations, Title 49, shall be deemed in compliance with this section.

“(a) A driver’s log, in duplicate, shall be kept by each driver and each codriver, while driving, on duty not driving, or resting in a sleeper berth. The log shall be presented for inspection immediately upon request by any authorized employee of the department. A driver’s log is not required for the drivers of the following:

“(1) School buses

“(2) Buses in urban or suburban service or vehicles leaving and returning to the same location within 12 consecutive hours and operating within a 100-mile radius of their home terminal, providing records of their total days worked, on duty hours, and time of reporting on and off duty each day, are maintained by the motor carrier for one year. . . .”

As to violations of those regulations not specified in section 34506, section 34506.3 provides:

“Except as provided by Section 34506, it is unlawful to fail to comply with any rule or regulation adopted by the Department of the California Highway Patrol pursuant to Section 34501.”

The pertinent distinction between these two Vehicle Code sections relating to the violation of Highway Patrol regulations lies in the fact that, while a violation comprehended by section 34506 constitutes a “misdemeanor,” a violation under section 34506.3 is characterized merely as “unlawful.” Section 40000.1 provides: that: “Except as otherwise provided in this article, [Article 1 of Chapter 1 of division 17] it is unlawful and constitutes an *infraction* for any person to violate or fail to comply with any provision of this code” (Emphasis added.) Under the article specified in section 40000.1 violations coming under section 34506 are designated as misdemeanors (see section 40000.21) while those under section 34506.3 are not. Thus violations under section 34506.3 constitute infractions.

Unlike a misdemeanor, an infraction cannot result in a jail sentence nor can it result in fines as serious as those that may be imposed in the case of a misdemeanor. (§§ 42001, 42002; Pen. Code §§ 19, 19c.)

It thus becomes significant to determine whether violations of the two Highway Patrol regulations specified in the present opinion request fall under section 34506, the misdemeanor section, or under section 34506.3, the infraction section.

As noted, one of these regulations (tit. 13, § 1212) limits the hours of driving time for truck and bus drivers, and the other (tit. 13, § 1213) requires the keeping of a log to record such driving hours along with other related data.

Under the present question, the issue is whether section 34506 (the misdemeanor section) is applicable only to a violation of the hour limitations of section 1212 of title 13 or whether it extends to a violation of the recordkeeping requirements of section 1213 of title 13.

Since section 34506 is directed *inter alia* to violations of those regulations “regarding . . . hours of service of drivers,” it must be determined whether that regulation, which requires the keeping of a log of driver’s hours, is such a regulation “regarding . . . hours of service of drivers.”

In the sense pertinent here the term “regarding” is defined as being essentially synonymous with the phrase “relating to.”⁵ (Webster’s Third New International Dictionary, p. 1911; see also *Rapp v. Kizer* (Ark. 1976) 543 SW. 2d 458, 459.) “Relating to” is defined as meaning “to show or establish a logical or causal connection between” (Webster’s Third New International Dictionary, p. 1916) or as meaning “‘pertaining to’ or ‘concerning.’” (*State v. Gaddy* (Ohio 1962) 184 N.E. 2d 689, 694.)

Certainly there is a “logical or causal connection” between the Highway Patrol regulation requiring the keeping of a log “to record a driver’s hours” (tit. 13, § 1213) and the “hours of service of drivers” (§§ 34506, 40000.21(a)). Thus, as the terms “regarding” or “relating to” are used in their ordinary sense, such a regulation could appropriately be viewed as one that is “regarding” or “relating to” “hours of service of drivers.” However, in light of the statutory context and the arrangement of terms in the pertinent statutes, it appears that the Legislature intended that the terms “regarding” or “relating to” as used in sections 34506 and 40000.21 be given a more restrictive meaning than the ordinary sense of those terms might indicate.⁶

In this connection it is initially noted that the sections which authorize the Highway Patrol to adopt safety regulations (§§ 34501, 34501.5 and 34508) set forth a number of specific items which are enumerated as the subjects of the regulations to be adopted. Sections 34506 and 40000.21 designate three of these specific items as the subject of misdemeanor violations, one of which is “hours of service of drivers.”

Among the specific items enumerated in section 34501 (a) as the subjects of Highway Patrol regulations are “hours of service of drivers” and “recordkeeping.” Thus the Legislature expressly distinguished between hours of service and recordkeeping as the subject of the regulations. Yet, as noted, in selecting the subjects of those regulations for

⁵ Section 40000.21 which, in essence, duplicates the provisions of section 34506 uses the phrase “relating to.” Section 40000.21 provides:

“A violation of any of the following provisions shall constitute a misdemeanor, and not an infraction:

“(a) Section 34506, subdivision (a), relating to the hours of service of drivers.

“(b) Section 34506, subdivision (b), relating to the transportation of hazardous materials.

“(c) Section 34506, subdivision (c), relating to schoolbuses.”

⁶ “. . . we must construe ordinary words as having the meaning ordinarily attributed to them, but if it appears that an ordinary word has been used to convey some special or technical meaning then we must give such word or words the meaning intended” (*Belli v. Roberts Bothers Furs* (1966) 240 Cal. App. 284, 288; see also *Directors El. District v. Abila* (1895) 106 Cal. 355, 362; *Division of Labor Law Enforcement v. El Camino Hosp. Dist.* (1970) 8 Cal. 3d Supp. 30, 34.)

the misdemeanor sections, the Legislature specified only hours of service without reference to recordkeeping. As stated in *Marsh v. Edwards Theatres Circuit, Inc.* (1976) 64 Cal. App. 3d 881, 891: “Where a statute on a particular subject omits a particular provision, the inclusion of such a provision in another statute concerning a related matter indicates an intent that the provision is not *applicable to the statute from which it was omitted.*” (Emphasis added.)

Thus in view of the omission of a reference to “recordkeeping” in the two misdemeanor sections (§§ 34506 and 40000.21) and the express inclusion of this subject as a separate item in the related section 34501, we cannot conclude that the Legislature intended the term “hours of service of drivers,” as used in those misdemeanor sections, to include the keeping of records of hours of service. “[W]here a statute enumerates things upon which it is to operate it is to be construed as excluding from its effect all those not expressly mentioned.” *Capistrano Union High School Dist. v. Capistrano Beach Acreage Co.* (1961) 188 Cal. App. 2d 612, 617.

Finally, we would note that in our examination of whether a misdemeanor or infraction statute is applicable to a particular violation, we are construing penal statutes. (See *People v. Superior Court (Douglass)* (1979) 24 Cal. 3d 428.) Thus a rule pertinent here is that “When . . . [a penal] statute is susceptible of two reasonable constructions . . . the defendant is ordinarily entitled to that construction most favorable to him.” (*People v. Superior Court (Douglass)*, *id.* at p. 435.)

In view of this rule and in view of the terms of the statute which indicate that the Legislature intended to limit the scope of the misdemeanor sections, we conclude that sections 34506(a) and 40000.21(a) are applicable only to a violation of section 1212 of title 13 which limits a drivers hours of service and are not applicable to a violation of section 1213 of title 13 which requires the keeping of records of such driver’s hours. A violation of this recordkeeping regulation should therefore be cited as a violation under the infraction section, Vehicle Code section 34506.3.
