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OPINION	:	No. 79-829
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of	:	<u>May 14, 1980</u>
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SUBJECT: PAYMENT OF FINE—Penal Code section 1205 prohibits a municipal court from imprisoning a defendant for nonpayment of fines for state law infractions. The court may enforce judgment for a fine for a violation of a state law infraction by execution as in the case of a civil judgment and also in the case of a Vehicle Code violation, by the remedies specified in Vehicle Code section 40508. Enforcing a judgment of a fine by imprisonment and authorizing payment of the fine by installments are also discussed.

The Honorable James B. Lindholm, Jr., County Counsel, County of San Luis Obispo, has requested an opinion on questions which we have phrased as follows:

1. Does the power of a municipal court to enforce the payment of a fine by imprisonment apply to a violation of state law which amounts to an infraction?

2. If the municipal court's power to enforce payment of a fine by imprisonment does not apply to a violation of state law which amounts to an infraction, how would the court enforce such a judgment?

3. Does the court possess the inherent power to enforce the payment of a fine by imprisonment for violations of local ordinances?

4. Does the court have the power to enforce a judgment of a fine by imprisonment when, at the time it imposes judgment and authorizes payment of the fine by installments, it does not also provide that in default of payment the defendant could be imprisoned?

CONCLUSIONS

1. The power of a municipal court to enforce the payment of a fine by imprisonment is restricted by Penal Code section 1205, which precludes imprisonment for nonpayment of a fine in the case of an infraction.

2. The court may enforce a judgment for a fine for a violation of a state law infraction by execution as in the case of a civil judgment and also in the case of a Vehicle Code violation, by the remedies specified in Vehicle Code section 40508.

3. The court's power to enforce payment of a fine for violation of a local ordinance by imprisonment is regulated by Penal Code section 1205.

4. The court does not have the power to enforce a judgment of a fine by imprisonment when, at the time it imposes judgment and authorizes payment of the fine in installments, it does not also provide that in default of payment the defendant shall be imprisoned.

ANALYSIS

Question 1:

The first question is whether the power of the municipal court¹ to enforce the payment of a fine by imprisonment applies to a state law infraction. In addressing this question, we must first consider the nature of an infraction and then examine what power a municipal court has to enforce payment of fines by imprisonment.

In California, crimes and public offenses are classified as felonies, misdemeanors, and infractions. (Pen. Code, § 16.)² “A felony is a crime punishable with death or by imprisonment in the state prison. Every other crime or public offense is a misdemeanor

¹ While the questions are limited to a municipal court, our discussion is applicable to a justice court as well. (See Pen. Code, § 1462.1.)

² All unidentified section references will be to the Penal Code.

except those offenses that are classified as infractions.” (§ 17, subd. (a).)

“An infraction is not punishable by imprisonment. A person charged with an infraction shall not be entitled to a trial by jury. A person charged with an infraction shall not be entitled to have the public defender or other counsel appointed at public expense to represent him unless he is arrested and not released on his written promise to appear, his own recognizance, or a deposit of bail.” (§ 19(c).)

For the most part, infractions have been limited to minor traffic violations (see Veh. Code, § 4000.1 *et seq.*); however, there are other infractions. (See Pub. Util. Code, § 12821; Bus. & Prof. Code, § 12024.2; Food & Agr. Code, § 31401; Health & Saf. Code, § 1909.) Additionally, a violation of a city or county ordinance may be designated to be an infraction (otherwise it is a misdemeanor). (Gov. Code, §§ 25132, 36900.)

It should be emphasized that not all offenses which have no imprisonment specified as punishment are infractions. Unless expressly designated as an infraction, such an offense would be a misdemeanor. (*Tracy v. Municipal Court* (1978) 22 Cal. 3d 760, 765–766.) As section 19c indicates, persons charged with infractions are not accorded the full panoply of procedural rights which is accorded defendants in felony and misdemeanor prosecutions. (Cf. *People v. Miner* (1977) 68 Cal. App. 3d. Supp. 1; *People v. Prince* (1976) 55 Cal. App. 3d. Supp. 19, 22; *People v. Oppenheimer* (1974) 42 Cal. App. 3d. Supp. 4.) The constitutional justification for the absence of such procedural rights is the petty nature of the offenses. (See *People v. Oppenheimer*, *supra*; *People v. Battle* (1975) 50 Cal. App. 3d. Supp. 1.)

The question whether a defendant may be imprisoned for nonpayment of a fine resulting from a conviction for an infraction, would seem to be easily answered by reference to section 19c, which prohibits imprisonment as punishment for infraction; however, that section does not resolve the question. The power of a court to enforce the payment of a fine by imprisonment has been long recognized in this state as well as others. (*In re Antazo* (1970) 3 Cal. 3d 100, 108.) Imprisonment for nonpayment of a fine is “not a distinct punishment, but merely a method of enforcing the fine.” (Citations omitted.) (*Ex parte Garrison* (1924) 193 Cal. 37, 38.)

Initially we note that the court in *In re Antazo*, *supra*, held that imprisonment of a defendant for nonpayment of a fine, where the only reason for the nonpayment was the defendant’s indigency, violated the Equal Protection Clause of the Fourteenth Amendment. Thus, our discussion in this opinion is premised on the fact that the defendant’s failure to pay the fine is not a result of his indigency.

In the absence of a statutory limit on the power of the court to imprison for nonpayment of a fine, there appears to be no “inherent restriction upon the power to imprison for nonpayment of a fine, merely because the Legislature has fixed a term of imprisonment as a punishment for the offense which may be less than the term of imprisonment for the nonpayment of a fine.” (*In re Kennerly* (1923) 190 Cal. 774, 784.) However, the Legislature, by statute, may place limits on this power. (See *Id.*, at p. 785.)

In California the power of the court to order imprisonment for nonpayment of a fine is regulated by Penal Code section 1205 and in certain cases by Vehicle Code section 42003. (See also Welf. & Inst. Code, § 1735.) A judgment of a fine is also enforceable by execution as in the case of a civil judgment. (§§ 1206, 1214; see *People v. Brown* (1896) 113 Cal. 35; *Cf.* 34 Ops. Cal. Atty. Gen. 290 (1959).)

We have found no provision of law providing for the enforcement of fines by imprisonment expressly applicable to infractions. Section 19d provides:

“Except as otherwise provided by law, all provisions of law relating to misdemeanors shall apply to infractions, including but not limited to powers of peace officers, jurisdiction of courts, periods for commencing action and for bringing a case to trial and burden of proof.” (Emphasis added.)

The general provision of law applicable to misdemeanors in this respect is section 1205 which provides:

“[1] A judgment that the defendant pay a fine, with or without other punishment, may also direct that he be imprisoned until the fine is satisfied and may further direct that such imprisonment begin at and continue after the expiration of any imprisonment imposed as a part of the punishment or of any other imprisonment to which he may theretofore have been sentenced. [2] Every such judgment shall specify the extent of the imprisonment for nonpayment of the fine, which shall not be more than one day for each thirty dollars (\$30) of the fine, nor exceed in any case the term for which the defendant might be sentenced to imprisonment for the offense of which he has been convicted. [3] A defendant held in custody for nonpayment of a fine shall be entitled to credit on the fine for each day he is so held in custody, at the rate specified in the judgment. [4] When the defendant has been convicted of a misdemeanor, a judgment that the defendant pay a fine may also direct that he pay the fine within a limited time or in installments on specified dates and that in default of payment as therein stipulated he be imprisoned in the discretion of the court either until the defaulted installment

is satisfied or until the fine is satisfied in full: but unless such direction is given in the judgment, the fine shall be payable forthwith.

“[5] Except as otherwise provided in case of fines imposed as conditions of probation, the defendant must pay the fine to the clerk of the court, or to the judge thereof if there is no clerk, unless the defendant is taken into custody for nonpayment of the fine, in which event payments made while he is in custody shall be made to the officer who holds him in custody and all amounts so paid shall be forthwith paid over by such officer to the court which rendered the judgment. [6] The clerk shall report to the court every default in payment of a fine or any part thereof, or if there is no clerk, the court shall take notice of such default. [7] If time has been given for payment of a fine or it has been made payable in installments, the court shall, upon any default in payment immediately order the arrest of the defendant and order him to show cause why he should not be imprisoned until the fine or installment thereof, as the case may be, is satisfied in full. [8] If the fine, or installment, is payable forthwith and it is not so paid, the court shall without further proceedings, immediately commit the defendant to the custody of the proper officer to be held in custody until the fine or installment thereof, as the case may be, is satisfied in full. [9] The provisions of this section shall apply to any violation of any of the codes or statutes of the State of California punishable by a fine or by a fine and imprisonment.”³

The language of section 1205 is ambiguous. The last (ninth) sentence states that its provisions are applicable to violations punishable by fine alone, as well as by fine or imprisonment, but the second sentence states the limit for a term of imprisonment for nonpayment of a fine. The term (1) may not be more than one day for each thirty dollars of the fine and (2) may not exceed the term for which the defendant could be sentenced to imprisonment for the offense of which he was convicted. Since a violation punishable by fine alone has no term of imprisonment, the second sentence would preclude any imprisonment for a fine as to such an offense. Then why does the last sentence state the provisions of the section are applicable to such a violation?

“[T]he various parts of a statutory enactment must be harmonized by considering the particular clause or section in the context of the statutory framework as a whole.” (*Moyer v. Workmen’s Comp. Appeals Bd.* (1973) 10 Cal. 3d 222, 230.) Harmonizing the second and ninth sentences to give each effect, we conclude that as to a violation which has no term of imprisonment, the ninth sentence provides that the restriction on imprisonment for nonpayment of a fine in the second sentence applies even to violations

³ We have inserted numbers for each sentence for easy reference.

punishable by fine alone. The effect of section 1205 therefore is to preclude any imprisonment for nonpayment of a fine for such a violation since it has no term of imprisonment. To that extent the provisions of section 1205 are applicable to such violations-as a statutory bar to imprisonment for nonpayment of a fine.

Thus, we conclude that section 1205 precludes imprisonment for nonpayment of a fine in the case of an offense for which no imprisonment is authorized. Since an infraction is such an offense, section 1205 precludes imprisonment for nonpayment of infraction fines. (Accord Werdegor (Ed.), *California Misdemeanor Procedure Benchbook (Revised)*, (Continuing Education of the Bar, 1975) at pp. 286–287.)

The Vehicle Code also contains certain provisions relating to the enforcement of fines. In the case of violations of the Vehicle Code and local traffic ordinances enacted pursuant thereto, which are infractions (see Veh. Code, § 40000.1), Vehicle Code section 40508 provides in pertinent part:

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“(b) Any person willfully failing to pay a lawfully imposed fine for a violation of any provision of this code or a local ordinance adopted pursuant to this code within the time authorized by the court and without lawful excuse having been presented to the court on or before the date the fine is due is guilty of a misdemeanor regardless of the full payment of the fine after such time.

“(c) If a person convicted of an infraction fails to pay a fine or any installment thereof within the time authorized by the court, the court may, except as otherwise provided in this paragraph, impound the person’s driver’s license and order him not to drive for a period not to exceed 30 days. Before returning the license to the person the court shall endorse on the reverse side of the license that the person was ordered not to drive, the period for which such order was made, and the name of the court making the order. If the defendant satisfies the court that impounding his driver’s license and ordering him not to drive will affect his livelihood, the court shall order that the person limit his driving for a period not to exceed 30 days to such driving as is essential in the court’s determination to the person’s employment, including his driving to and from his place of employment if other means of transportation are not reasonably available. The court shall provide for the endorsement of such limitation on the person’s license. The impounding of the license and ordering the person not to drive or the order limiting the person’s driving does not constitute a suspension of the license, but a

violation of the order constitutes contempt of court.”

Thus as to traffic infractions, failure to pay the fine may result in a misdemeanor prosecution and/or the curtailment of the defendant’s driving privilege.

The enforcement remedies provided in Vehicle Code section 40508 do not include imprisonment for nonpayment of a fine. Vehicle Code section 42003 provides:

“(a) A judgment that a person convicted of an infraction be punished by a fine may also provide for the payment to be made within a specified time or in specified installments. *A judgment granting a defendant time to pay the fine shall order that if the defendant fails to pay the fine or any installment thereof on the date that it is due he shall appear in court on that date for further proceedings.* Willful violation of the order is punishable as contempt.

“(b) A judgment that a person convicted of any other violation of this code be punished by a fine may also order, adjudge and decree that the person be imprisoned until the fine is satisfied. In every such case, the judgment shall specify the extent of the imprisonment which shall not exceed one day for every thirty dollars (\$30) of the fine, nor extend in any such case beyond the term for which the defendant might be sentenced to imprisonment for the offense of which he was convicted.” (Emphases added.)

As to infractions, that section provides that a willful violation of an order to appear upon nonpayment of a fine is punishable as contempt; it does not provide for imprisonment for nonpayment, willful or otherwise. Thus, neither Vehicle Code section 40508 nor section 42003 authorize a court to order imprisonment for nonpayment of a fine for an infraction under the Vehicle Code or a local traffic ordinance enacted pursuant thereto.⁴

We conclude, therefore, that section 1205 prohibits a municipal court from imprisoning a defendant for nonpayment of state law infractions fines.⁵

⁴ If the defendant were held in contempt and fined, the power of the court to imprison the defendant for failure to pay that fine would present a different question beyond the scope of this opinion. (See §§ II, 19(a); *Ex parte Kanlion* (1911) 160 Cal. 378.)

⁵ We also would conclude, for reasons stated in our answer to question three, that the power of the municipal court to enforce the payment of a fine does not apply to a violation of a local ordinance designated an infraction.

Question 2:

We are next asked how the court is to enforce such judgments. The judgment or a fine in any case may be enforced by execution as in a civil action. (§§ 1206, 1214.) As to Vehicle Code infractions or infractions specified by ordinances enacted pursuant to the Vehicle Code, the court may refer the case of a defendant who refuses to pay a fine for possible prosecution of a misdemeanor violation of section 40508. If the defendant has a driver's license, the court may order his driving privileges curtailed pursuant to that same section. Additionally, a defendant who fails to pay a fine at the time specified in the judgment and fails to appear on the due date may be held in contempt of court. (Veh. Code, § 42003.)

Question 3:

The third question is whether the court possesses “inherent” power to enforce the payment of a fine by imprisonment for violations of local ordinances.⁶

We have already seen that Vehicle Code section 40508 and section 42003 apply to ordinances (i.e., infractions) adopted pursuant to the Vehicle Code. (See Veh. Code, § 4000.1.) Thus, the power of the court to enforce payment of fines for violating such ordinances is regulated by those sections which do not authorize imprisonment for nonpayment.

The third question refers to the “inherent” power of the court to enforce the payment of a fine by imprisonment for violation of local ordinances. Apparently, the requestor assumes there is no statute which regulates this power as to ordinances other than traffic infractions. (Cf. *In re Kennerly, supra*, 190 Cal. at p. 784.) We disagree with this assumption.

Section 1205 by its terms is applicable “to any violation of any of the codes or statutes of the State of California. . . .” Prior to its amendment by Statutes of 1951, chapter 1674, section 1205 applied to superior court judgments. (Stats. 1939, ch. 193, § 1; *In re Kennerly, supra*, 190 Cal. at p. 775.) Former section 1446 (Stats. 1939, ch. 192, § 1) provided for imprisonment for nonpayment of fines in the case of judgments of inferior courts. (*In re Kennerly, supra*.)

As originally enacted, neither section 1205 nor former section 1446 contained language regarding their applicability to particular statutes. Former section 1446 was

⁶ As indicated before, such violations could be misdemeanors or infractions. (Gov Code, §§ 25132, 36900.)

applicable to violations of local ordinances. (See *In re Kinney, supra*, 53 Cal. App. 792.) However, former section 1446 and section 1205 were amended by Statutes of 1939, chapters 192 and 193, respectively, which added to each the following paragraph:

“The provisions of this section shall apply to the Labor Code, Vehicle Code, Fish and Game Code, Agricultural Code and to all other statutes of the State of California the violation of which constitutes a misdemeanor and is punishable by fine.”

The reference in the present version of section 1205 was added by Statutes of 1951, chapter 1674, section 128. Chapter 1674 repealed section 1446 (§ 150) and also added Penal Code section 690, (§ 3) which provides:

“The provisions of Part 2 of this code shall apply to all criminal actions and proceedings in all courts, except where jurisdictional limitations or the nature of specific provisions prevent, or special provision is made for particular courts or proceedings.”

Part 2, which deals with criminal procedure, includes section 1205.

Section 690 clearly expresses the intent of the Legislature that the provisions of the Penal Code regarding criminal procedure should apply to all criminal actions except where jurisdictional limitations or the nature of the specific provisions prevent such applicability or special provision is made for particular courts, or proceedings.

A fundamental rule of statutory construction is that the legislative intent behind the statute should be determined and given effect. (*Great Lake Properties, Inc. v. City of El Segundo* (1977) 19 Cal. 3d 152, 163; *Select Base Materials v. Board of Equalization* (1959) 51 Cal. 2d 640, 645.) Significance should be given to every word, phrase, sentence and part of the statute in pursuance of the legislative purpose. (*Moyer v. Workmen’s Camp. Appeals Bd., supra*, 10 Cal. 3d 222, 230.) As we noted before, “. . . the various parts of a statutory enactment must be harmonized by considering the particular clause or section in the context of the statutory framework as a whole.” (*Moyer v. Workmen’s Camp. Appeals Bd., supra*, at p. 230.)

The fact the last sentence of section 1205 expressly makes its provisions applicable to state statutes and state codes does not preclude its applicability to ordinances. The maxim, *expressio unius exclusio alterius est*, is not to be used as an aid in construction to defeat what otherwise appears to be legislative intent behind a statute. (See *L.A. County Flood Control Dist. v. Southern Cal. Edison Co.* (1958) 51 Cal. 2d 331, 338.)

Section 1205 does not purport to prevent its provisions from being applied to ordinances. Its history does not suggest a legislative intent to exclude ordinances. The 1939 amendments to section 1205 and former section 1446 added references to specific codes and “to all other statutes.”⁷ The 1951 amendment expanded the reference to all codes and statutes.

The reference to codes and statutes must be read in harmony with the express legislative intent in section 690. The procedural rules of part 2 apply to a criminal action for the violation of an ordinance. (See § 1462.) Although section 1205 could be considered a “special provision” by virtue of the reference to state codes and statutes, it is not made applicable only to “particular courts or proceedings.” (§ 690.) Consequently, section 690 makes section 1205 applicable to “all criminal actions . . . in all courts” unless otherwise restricted. With the exception of the special provisions of Vehicle Code sections 40508 and 42003, the Legislature has made no special provisions relating to enforcement of fines.

Thus, we conclude that because Penal Code section 1205 is not expressly made inapplicable to local ordinances, it is applicable by virtue of Penal Code section 690 (except in the case of local traffic infractions covered by Veh. Code, § § 40508, 42003)⁸ Thus, as to violations of ordinances which are infractions, Penal Code section 1205 would preclude imprisonment for nonpayment of fines. As to violations of ordinances which are misdemeanors, imprisonment would be authorized only to the extent specified by section 1205.

Question 4:

The fourth question is whether the court has the power to enforce a judgment of a fine by imprisonment when, at the time it imposed the judgment and authorized payment of the fine by installments, it does not also provide that upon default of payment the defendant could be imprisoned.

⁷ The Labor Code was enacted by Statutes of 1937, chapter 90; the Vehicle Code was enacted by Statutes of 1935, chapter 27; the Fish and Game Code was enacted by Statutes of 1933, chapter 73; the Agricultural Code was enacted by Statutes of 1933, chapter 25. It should be noted that while no reference was made to ordinances in the amending language, no express reference was made to the Penal Code itself, to which the section was obviously applicable.

⁸ There is authority which indicates that in the absence of general law on the subject, local ordinances could prescribe for enforcement of fines by imprisonment without regard to the limits of section 1205. (See *Ex parte Green* (1892) 94 Cal. 387; *People v. Sayre* (1937) 26 Cal. App. 2d. Supp. 757.) We conclude, however, that there is general law on the subject, i.e. sections 690 and 1205.

We conclude that unless the court includes in the judgment that, in default of payment of a fine, the defendant shall be imprisoned, the court does not have the power to imprison the defendant upon a subsequent default in payment. The first two sentences of section 1205 clearly require that a judgment specify the extent of imprisonment for nonpayment of a fine where the imprisonment is to be an alternative to nonpayment. In *In re Garrity* (1929) 97 Cal. App. 372, it was held that in view of similar language in former section 1205, the trial court was without jurisdiction to amend a judgment for a fine after the judgment was rendered to include an imprisonment alternative if the fine were not paid.

In *People v. McAllister* (1940) 15 Cal. 2d 519, the Supreme Court considered a case in which the trial court rendered a judgment of a fine and later that same day modified the judgment to include an alternative of imprisonment. In that case the judgment had not been entered upon the judgment roll until after the modification. The Supreme Court held that the trial court had jurisdiction to modify the judgment in that case because the judgment had not become final until entered upon the judgment roll. The Supreme Court approved the holding in *In re Garrity*, *supra*, to the extent that it applied to judgments which were final as to the trial court. The Court stated the following general rule (at p. 526):

“If the sentence has been entered in the minutes of the court, or if the defendant has begun serving said sentence or has been restrained by the sentence imposed, then the court is without jurisdiction to vacate, add to, or in any manner modify the sentence originally pronounced. On the other hand, if the sentence pronounced has not been entered by the clerk in his minutes, and no legal restraint has been imposed upon the defendant by reason of said sentence, then it is proper for the court to change the sentence originally pronounced.”

Subsequent to the decision in *McAllister*, section 1205 was amended to include the provisions with respect to postponed payments of fines. The fourth sentence of section 1205 provides:

“When the defendant has been convicted of a misdemeanor, a judgment that the defendant pay a fine may also direct that he pay the fine within a limited time or in installments on specified dates and that in default of payment as therein stipulated he be imprisoned in the discretion of the court either until the defaulted installment is satisfied or until the fine is satisfied in full; but *unless such direction is given in the judgment, the fine shall be payable forthwith.*” (Emphases added.)

The seventh and eighth sentences provide that if time for payment has been given or if the fine has been made payable by installments, the court shall upon any default in

payment, order the arrest of the defendant, and if he cannot show cause why he should not be imprisoned, the court shall without further proceedings imprison him until the payment is satisfied.

We must interpret the words of the statute in a common sense manner to effectuate the apparent legislative purpose. (*Moyer v. Workmen's Comp. Appeals Bd.*, *supra*, 10 Cal. 3d 222.)

The fourth, seventh and eighth sentences of section 1205 do not purport to change the rule of *In re Garrity*, *supra*, 97 Cal. App. 372. Rather, they are in conformance with the rule. The fourth sentence clearly states that unless the court makes the direction that the defendant pay the fine at another time or in installments and that in default of payment he be imprisoned in the discretion of the court until the fine or installment is paid, the fine payment is due immediately. Thus, the court has only two options. The first is to require immediate payment of the fine, *and* the second is to direct a time payment and to specify in the judgment that in the event of default the defendant shall be subject to imprisonment. The provisions of the seventh and the eighth sentences only become applicable where the payment of the fine has been postponed under the terms of the fourth sentence.

We conclude that the court does not have the power to enforce a judgment of a fine by imprisonment when, at the time it imposes the judgment and authorizes payment of the fine by installments, it does not also provide that in default of payment the defendant could be imprisoned.
