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OPINION	:	No. 80-1001
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of	:	<u>FEBRUARY 10, 1981</u>
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The Honorable David A. Roberti, State Senator, Twenty-Third District, has requested an opinion on a question which we have phrased as follows:

Is it violation of Penal Code section 597m for a bullfight promoter to stage a bloodless bullfight at which a priest simply says a Catholic mass and blesses the bulls?

CONCLUSION

It would be a violation of Penal Code section 597m for a bullfight promoter to stage a bloodless bullfight at which a priest simply says a Catholic mass and blesses the bulls.

ANALYSIS

We have been advised that bloodless bullfight promoters have approached pastors of Catholic churches with an offer to promote a bloodless bullfight “in connection

with” a Catholic mass. Admission is charged and the proceeds of the bullfight are to be divided between the sponsoring church and the promoters. We are asked to decide whether a bloodless bullfight held under such circumstances is a violation of Penal Code.<sup>1</sup> section 597m. Section 597m enacted by Statutes of 1957, chapter 2243, section 1, provides:

“It shall be unlawful for any person to promote, advertise, stage, hold, manage, conduct, participate in, engage in, or carry on any bullfight exhibition, any bloodless bullfight contest or exhibition, or any similar contest or exhibition, whether for amusement or gain or otherwise; provided, that nothing herein shall be construed to prohibit rodeos or to prohibit measures necessary to the safety of participants at rodeos.

“This section shall not, however, be construed as prohibiting bloodless bullfights, contests, or exhibitions held in connection with religious celebrations or religious festivals.

“Any person violating the provisions of this section is guilty of a misdemeanor.”

Thus section 597m makes it unlawful for a person to promote a “bloodless bullfight contest or exhibition . . . whether for amusement or gain or otherwise” but provides an exception with respect to “bloodless bullfights, contests, or exhibitions held in connection with religious celebrations or religious festivals.”

We have found no California published decision which defines or describes a ‘bloodless bullfight.’ In *Pennsylvania Society for the Prevention of Cruelty to Animals v. Bravo Enterprises, Inc.* (1968) 428 Pa. 350, 237 A.2d 342, the court was faced with an action to enjoin the public performance of “American-style” bullfights. The court found that the plaintiff society did not have standing to bring the action. The event as described by the record in that case (237 A.2d at p. 345, fn. 1) included a matador waving a cape at a bull and then sidestepping the charging bull. Subsequently, other performers would enter the ring carrying sticks about 30 inches in length. As the bull charged these performers, they would sidestep the bull and would thrust the sticks near its neck. In the final phase of the event, the matador would re-enter the ring carrying” ‘a smaller cape separated by a wooden stick with a spike protruding from its end and a false sword.’ “The bull would charge the matador as he waved the cape and he would prod the bull with the metal spike. The court on appeal found the trial court did not err in characterizing such an event as “fighting any bull” within the statutory definition of cruelty to animals. (See also C.E.

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<sup>1</sup> Hereinafter all unidentified section references are to the Penal Code.

*America, Inc. v. Antinori* (Fla. 1968) 210 So.2d 433.)

For the purpose of this analysis we are given the fact that the event is a “bloodless bullfight.” Section 597m by its own terms prohibits such events unless they are “held in connection with religious celebrations or religious festivals.” Our primary task therefore is to determine whether the event presented by the question is held in connection with religious celebration or religious festival. If it is not, section 597m would prohibit a person from conducting the event.

In undertaking this task we are guided by the general rules of statutory construction set forth by the *Supreme Court in Moyer v. Workmen ‘s Comp. Appeals Bd.* (1973) 10 Cal. 3d 222, 230–231:

“We begin with the fundamental rule that a court ‘should ascertain the intent of the Legislature so as to effectuate the purpose of the law.’ (*Select Base Materials v. Board of Equal.* (1959) 51 Cal. 2d 640, 645.) In determining such intent ‘[t]he court turns first to the words themselves for the answer.’ (*People v. Knowles* (1950) 35 Cal. 2d 175, 182, cert. den. 340 U.S. 879.) We are required to give effect to statutes ‘according to the usual, ordinary import of the language employed in framing them.’ (*In re Alpine* (1928) 203 Cal. 731, 737; see also *Merrill v. Department of Motor Vehicles* (1969) 71 Cal. 2d 907, 918; *Chavez v. Sargent* (1959) 52 Cal. 2d 162, 203, disapproved on another ground in *Petri Cleaners, Inc. v. Automotive Employees, etc. Local No. 88*, 53 Cal. 2d 455, 473–475.) ‘if possible, significance should be given to every word, phrase, sentence and part of an act in pursuance of the legislative purpose.’ (*Select Base Materials v. Board of Equal.*, *supra*, 51 Cal. 2d 640, 645); ‘a construction making some words surplusage is to be avoided.’ (*Watkins v. Real Estate Commissioner* (1960) 182 Cal. App. 2d 397, 400.) ‘When used in a statute [words] must be construed in context, keeping in mind the nature and obvious purpose of the statute where they appear.’ (*Johnson v. Richardson* (1951) 103 Cal. App. 2d 41, 46; see also *West Pica Furniture Co. v. Pacific Finance Loans* (1970) 2 Cal. 3d 594, 608.) Moreover, 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. (*Select Base Materials v. Board of Equal.*, *supra*, 51 Cal. 2d 640, 645; *Stafford v. L.A. etc. Retirement Board* (1954) 42 Cal. 2d 795, 799.)”

We also recognize that “[i]t is settled policy to construe a penal statute as favorably to the defendant as its language and circumstances of its application may reasonably permit.” (Emphasis added; *People v. Colver* (1980) 107 Cal. App. 3d 277, 285;

*Keeler v. Superior Court* (1970) 2Cal. 3d 619, 631.) However, even the language of penal statutes must be interpreted in a common sense manner so as to effectuate the apparent purpose of the Legislature. (*People v. Colver, supra*; *People v. Agnello* (1968) 259 Cal. App. 2d 785, 791; see also *People v. Davis* (1978) 85 Cal. App. 3d 916, 924.)

In an unpublished opinion, I.L. 77–156, dated November 4, 1977, we concluded that a bloodless bullfight exhibition held in Santa Cruz County fell within the religious celebration exception of Penal Code section 597m. At that time we noted that it was our understanding that this bloodless bullfight exhibition was held on Pentecost Sunday and was sponsored by a recognized Catholic organization. It was also understood that the Bishop of the Monterey Diocese authorized the saying of a Portugese mass at this festival held in honor of “Our Lady of Fatima, Virgin Mary.” On the basis of all those facts, it was our opinion that the district attorney could, within his discretion as a public prosecutor, conclude that this exhibition was not made unlawful under Penal Code section 597m.<sup>2</sup>

That prior opinion concerned a recognized religious festival. In the present factual situation we have been given no information about a recognized religious festival. Here we have only a mass and a blessing of the bulls.

We recognize that the word “celebration” is defined by Webster to include “the performance of a public religious ceremony or of a sacred rite” (Webster’s, 3rd New Internat. Dict. (1961) p. 359) and that a Catholic mass is commonly understood to be the “celebration of the Eucharist.” (Webster’s, 3rd New Internat. Dict. (1961) p. 1388.) Dictionary definitions are not always controlling. As stated in *Pearson v. State Social Welfare Board* (1960) 54 Cal. 2d 184, 194–195:

“The interpretation of a statute may well begin, but should not end, with a dictionary definition of a single word used therein. A word is ‘. . . 9. An articulate sound, or series of sounds which, through conventional association with some fixed meaning, symbolizes and communicates an idea, without being divisible into smaller units capable of independent use; that is, the smallest unit of speech that has meaning when taken by itself; . . .’ (Webster’s New International Dictionary, 2d ed.). A word is a symbol of thought but has no arbitrary and fixed meaning like a symbol of algebra or chemistry, and it may take on values from the words and ideas with which it is associated. Words are the product of history and their meaning may change

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<sup>2</sup> However, in that opinion we did note that the manner in which the exhibition was conducted could violate some other provisions of the Penal Code, namely, sections 597 and 597b. (See fn. 3, *infra*.)

with time, place and social group. As expressed by Mr. Justice Holmes in *Towne v. Eisner*, 245 U.S. 418, 425; ‘A “word” is not a crystal, transparent and unchanged, it is the skin of a living thought and may vary greatly in color and content according to the circumstances and the time in which it is used.’ Words used in a statute may, as applied to the words with which they are combined and to the words with which they were intended to be related, have connotations which they might not have when used in context with, or in relation to, other language or where used to express a different purpose.”

If taken out of context and read literally the words “religious celebrations” could be construed to include Catholic mass. If taken out of context and read literally the words “in connection with” could be construed to refer simply to temporal and spatial proximity. Thus it could be argued that the reference to “bloodless bullfights . . . held in connection with religious celebrations” includes the situation presented in the question—a bloodless bullfight at which a mass is “celebrated.”

The argument is specious because it fails to take into account the rules of statutory construction that the words of the statute must be read in context and in a common sense manner with the view of giving effect to the legislative purpose.

We must construe the entire phrase “bullfights . . . in connection with religious celebrations or religious festivals” in context so as to effectuate the legislative intent behind the words. Turning to the matter of legislative intent we observe that section 597m is “. . . found in a series of Penal Code sections consecutively numbered 597 through 597z. The obvious purpose of these statutes, q.v., is to prevent the active or passive infliction of unnecessary or unjustifiable pain or suffering, or cruelty, on animals by their owner, or keeper, or others.” (*People v. Untiedt* (1974) 42 Cal. App. 3d 550, 554; *People v. Treadway* (1975) 55 Cal. App. Supp. 15, 18.) The Legislature in prohibiting bullfights, even those termed bloodless, undoubtedly considered such activity as involving *unnecessary* or *unjustifiable* discomfort to bulls. The amusement of the participants or financial gain of the promoters does not justify such treatment of bulls. (*Cf. C.E. America, Inc. v. Antinori, supra*, 210 So.2d 433.) However, as to bloodless bullfights conducted as a matter of religious tradition or practice, the Legislature apparently found that some discomfort to which the bulls might be subjected is justifiable in view of the public policy against unnecessary interference with religious expression. (See *People v. Woody* (1964) 61 Cal. 2d 716, 718; (“[T]he state may abridge religious practices only upon demonstration that some compelling state interest outweighs the defendant’s interest in religious freedom.”).)

It is common knowledge that masses are conducted in Catholic churches throughout the world on a daily basis. They may be offered for various intentions. A

bloodless bullfight is not part of the liturgy of the mass, nor is it an essential adjunct thereto.

By using the words “in connection with religious celebrations or religious festivals,” we believe the Legislature had in mind those events in which a religious theme predominates and the bloodless bullfight is merely an adjunct thereto. The words “religious celebrations” or “religious festivals” must be read in their common and usual sense implying a gathering of the laity as well as the clergy to honor a personage or an event of religious significance by appropriate ceremony. We do not believe these terms were intended to embrace a sporting event conducted primarily for profit to which a religious rite is merely an adjunct.

On the facts presented there is no religious celebration or festival as we have construed those words. It is clear that the saying of the mass and blessing of the bulls is merely an adjunct to the bloodless bullfight which is conducted primarily for public amusement and profit and has minimal religious significance.

We conclude that it would violate Penal Code section 597m for a bullfight promoter to stage a bloodless bullfight at which a priest simply says a Catholic mass and blesses the bulls.<sup>3</sup>

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<sup>3</sup> Penal Code section 597b originally enacted by Statutes of 1905, chapter 519, section 2, provides:

Any person who, for amusement or gain, causes any bull, bear, cock, or other animal, not including any dog, to fight with like kind of animal or creature, or causes any such animal, including any dog, to fight with a different kind of animal or creature, or with any human being; or who, for amusement or gain, worries or injures any such bull, bear, cock, dog or other animal, or causes any such bull, bear, cock, or other animal, not including any dog, to worry or injure each other; and any person who permits the same to be done on any premises under his charge or control; and any person who aids, abets, or is present at such fighting or worrying of such animal or creature, as a spectator, is guilty of a misdemeanor.’ (Emphases added.)

Having concluded that an event presented by the question violates section 597m, we do not consider whether it also violates or could violate section 597b. (Cf. *People v. Rester* (1976) 16 Cal. 3d 690, 694, *People v. Career* (1933) 131 Cal. App. 180, 181.)