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OFFICE OF THE ATTORNEY GENERAL  
State of California

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OPINION	:	No. 80-205
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of	:	<u>June 4, 1980</u>
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SUBJECT: NOTICE OF PUBLIC HEARING—When an air pollution control district publishes notice in the district of the time and place of a public hearing to adopt, amend; or repeal a regulation, the notice need not include a copy of the regulation proposed to be adopted, amended, or repealed.

The Honorable Paul De Lay, Acting County Counsel, Monterey County, has requested an opinion on the following question:

When an air pollution control district publishes notice in the district of<sup>9</sup> the time and place of a public hearing to adopt, amend, or repeal a regulation, must the notice include a copy of the regulation proposed to be adopted, amended, or repealed?

CONCLUSION

When an air pollution control district publishes notice in the district of the time and place of a public hearing to adopt, amend, or repeal a regulation, the notice need not include a copy of the regulation proposed to be adopted, amended, or repealed.

## ANALYSIS

The Legislature has enacted a statutory scheme (Health and Safety Code §§ 39000–43835)<sup>1</sup> “to protect and enhance the ambient air quality of the state” through “an intensive, coordinated stays regional, and local effort.” (§ 39001.)

Under the legislative scheme, the state is divided into air basins, with local and regional officials responsible for the control of air pollution from all sources other than vehicles; control of vehicular sources of pollution is the general responsibility of the State Air Resources Board (“Board”). (§§ 39002–40000.) The Board is also responsible for conducting research into the causes of air pollution and for coordinating the local efforts in attaining ambient air quality standards. (§ 39003.)

An air pollution control district is located within each county, unless the entire county is included within the south coast district, the bay district, a regional district, or a unified district. (§§ 40390–40391.)

Each district may buy and sell property as necessary to the full exercise of its powers and contract with governmental agencies, private industries, and civic groups in order to accomplish the purposes of the statutory scheme. (§ 40701.)

Each district is required to enact regulations for the control of air pollution within its jurisdiction. Section 40001 states:

“Subject to the powers and duties of the state board, the district shall adopt and enforce rules and regulations which assure that reasonable provision is made to achieve and maintain the state ambient air quality standards for the area under their jurisdiction, and shall enforce all applicable provisions of state law. The districts shall also endeavor to achieve and maintain the federal ambient air quality standards.

“Such rules and regulations may, and at the request of the state board shall, provide for the prevention and abatement of air pollution episodes which, at intervals, cause discomfort or health risks to, or damage to property of, a significant number of persons or class of persons.”

Section 40702 provides:

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<sup>1</sup> All unidentified section references hereinafter are to the Health and Safety Code.

“A district shall adopt rules and regulations and do such acts as may be necessary or proper to execute the powers and duties granted to, and imposed upon, the district by this division and other statutory provisions.

“No order, rule, or regulation of any district shall, however, specify the design of equipment, type of construction, or particular method to be used in reducing the release of air contaminants from railroad locomotives.”

A violation of a district regulation is a misdemeanor. (§ 42400.)

The question presented for analysis concerns the procedure by which a district may adopt, amend, or repeal one of its regulations. Specifically, we are asked whether a copy of the regulation proposed to be considered must be published in the district at the time notice is given of the public hearing to be held on the proposed action. We conclude that a copy of the regulation need not be published.

In analyzing the question, we must first determine what body of law is applicable to the promulgation of regulations by air pollution control districts. We note that the Legislature has characterized each district as an “agency of the state.” Section 40700 states, “A district is a body corporate and politic and a public agency of the state.”

The Legislature has enacted a comprehensive scheme, the Administrative Procedure Act (Gov. Code §§ 11370–11528), requiring each “state agency” to give notice of any proposed action, to hold a hearing on the proposal, to file the adopted regulation with the Secretary of State, and to publish the adopted regulation in the California Administrative Code. (See Gov. Code §§ 11380, 11409, 11421–11424.) A “state agency” is generally defined as “every state office, officer, department, division, bureau, board, and commission” (§ 11000), except “an agency in the judicial or legislative departments” (§§ 11342 subd. (a); 11371 subd. (a)); for purposes of the Administrative Procedure Act.

In *People v. A-1 Roofing Service, Inc.* (1978) 87 Cal. App. 3d Supp. 1, however, the court considered whether an air pollution control district was a “state agency” for purposes of the Administrative Procedure Act and held that the provisions of section 40700 merely stated “the obvious”: that “districts are not private agencies.” (*Id.*, at pp. 11–12.) It concluded that under the authorizing legislation, the districts were clearly local in nature and could not be characterized as “state agencies” under the Administrative Procedure Act. (*Id.*, at p. 12.)

Consistent with this conclusion is the Legislature’s enactment of particular statutes concerning procedures applicable only to the adoption of regulations by air pollution

control districts. (§§ 40702–40704.) It is well established that the provisions of specific statutes govern over conflicting provisions of general statutes. (See *Agricultural Labor Relations Bd. v. Superior Court* (1976) 16 Cal. 3d 392, 420.)

For purposes of our discussion, therefore, the key statute applicable to air pollution control districts is section 40703. When initially enacted, it provided:

“A district board shall not adopt any rule or regulation without first holding a public hearing thereon.

“Notice of the time and place of a public hearing to adopt, amend, or repeal any rule or regulation shall be given not less than 30 days prior thereto to the state board and by publication in the district pursuant to Section 6061 of the Government Code. In the case of a district which includes portions of more than one county, the notice shall be published in each such county.”

Government Code section 6061 states, “Publication of notice pursuant to this section shall be for one time.” No mention was made in section 40703, when originally enacted, regarding the publication of a copy of the regulation proposed to be considered.

In 1976, however, the Legislature amended the statute to read in its current form as follows:

“(a) A district board shall not adopt, amend, or repeal any rule or regulation without first holding a public hearing thereon.

“(b) Notice of the time and place of a public hearing to adopt, amend, or repeal any rule or regulation shall be given not less than 30 days prior thereto to the state board, *which notice shall include a copy of the rule or regulation proposed to be adopted, amended, or repealed, as the case may be*, and by publication in the district pursuant to Section 6061 of the Government Code. In the case of a district which includes portions of more than one county, the notice shall be published in each such county.” (Emphasis added.)

Under the statutory amendment, the notice to the Board must include a copy of the regulation, but did the Legislature intend that the published notice also include a copy of the regulation? For several reasons, we conclude that such a result was not intended.

First, if the Legislature intended that only the notice to the Board contain a copy of the regulation, the amendatory language is in the correct location. It is well recognized

that “qualifying words, phrases or clauses are construed as referring to the words, phrases and clauses immediately preceding.” (*Addison v. Department of Motor Vehicles* (1977) 69 Cal. App. 3d 486, 496; see also *People v. Corey* (1978) 21 Cal. 3d 738, 742.) On the other hand, if the Legislature intended that the published notice contain a copy of the regulation, then the amendatory language was inserted in the wrong location; it manifestly should have been placed after the words “Government Code” or after the first “regulation” in the next to last sentence of the statute.

Second, we are informed that district regulations may be exceedingly lengthy due to their complex, technical content. Such a fact would militate against publication of proposed regulations.

Third, we note that the Administrative Procedure Act does not require publication of a regulation by a state agency, only a summary of the proposed action. (See Gov. Code §§ 11346.4–11346.7, 11423–11424.)

Fourth, *People v. A-1 Roofing Service Inc. supra*, 87 Cal. App. 3d Supp. 1, appears to be instructive on the point. The notice furnished to the Board by a district should include a copy of the regulation since the “Board maintains a superior position to that of local districts, so as to assure that their regulations do not conflict with the overall responsibilities and programs.” (*Id.*, at p. 12.) A copy need not be included in the published notice, however, since:

“Simple inquiry of the state board will produce them for anyone interested. The California Public Records Act (Gov. Code, § 6250 *et seq.*) expressly makes the public records of the Air Resources Board subject to inspection at all times during office hours and requires the board to establish written guidelines for accessibility of records. (Gov. Code, § 6253.) Copies shall be provided upon request accompanied by a minimal fee. (Gov. Code, §§ 6256–6257.)” (*Id.* at p. 13.)

For the foregoing reasons, we conclude that when an air pollution control district publishes notice in the district of the time and place of a public hearing to adopt, amend, or repeal a regulation, the notice need not include a copy of the regulation proposed to be adopted, amended, or repealed.

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