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OPINION	:	No. 80-225
	:	
of	:	<u>May 9, 1980</u>
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SUBJECT: CONCEALED FIREARM—Department of Corrections peace officers, as defined in Penal Code section 830.5, are exempt from the prohibition against carrying a concealed firearm set forth in Penal Code section 12025 by virtue of Penal Code section 12027 whether such officers are on duty or off duty.

The Director of Corrections has requested an opinion on a question which may be phrased as follows:

Are Department of Corrections peace officers, as defined in Penal Code section 830.5, exempt from the prohibition against carrying a concealed fire arm set forth in Penal Code section 12025 by virtue of Penal Code section 12027 during the officers' off-duty hours?

CONCLUSION

Department of Corrections peace officers, as defined in Penal Code section 8301, are exempt from the prohibition against carrying a concealed firearm set forth in Penal Code section 12025 by virtue of Penal Code section 12027 whether such officers are on duty or off duty.

## ANALYSIS

Penal Code section<sup>1</sup> 12025 provides that any person who carries a concealable firearm concealed on his person or in his vehicle is guilty of a misdemeanor. Sections 12026 and 12027 set forth certain exemptions from the rule of section 12025.

Section 12027 provides:

“Section 12025 does not apply to or affect any of the following:

“(a) Peace officers listed in Sections 830.1, 830.2, or subdivision (a) of Section 830.3, whether active or honorably retired, other duly appointed peace officers, full-time paid peace officers of other states and the federal government who are carrying out official duties while in California, or any person summoned by any such officers to assist in making arrests or preserving the peace while he is actually engaged in assisting such officer.

“The agency from which a peace officer is honorably retired may, upon initial retirement of the peace officer, or at anytime subsequent thereto, deny or revoke, for good cause, the retired officer’s privilege to carry a weapon as provided in this subdivision. Any peace officer who has been honorably retired shall be issued an identification certificate containing an endorsement by the issuing agency indicating whether or not the retired peace officer has the privilege to carry a weapon pursuant to this subdivision.

“(b) The possession or transportation by any merchant of unloaded firearms as merchandise.

“(c) Members of the Army, Navy, or Marine Corps of the United States, or the National Guard, when on duty, or organizations which are by law authorized to purchase or receive such weapons from the United States or this state.

“(d) Duly authorized military or civil organizations while parading, or the members thereof when going to and from the places of meeting of their respective organizations.

“(e) Guards or messengers of common carriers, banks, and other financial institutions while actually employed in and about the shipment

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

transportation, or delivery of any money, treasure, bullion, bonds, or other thing of value within this state.

“(f) Members of any club or organization organized for the purpose of practicing shooting at targets upon established target ranges, whether public or private, while such members are using any of the firearms referred to in this chapter upon such target ranges, or while going to and from such ranges.

“(g) Licensed hunters or fishermen while engaged in hunting or fishing, or while going to or returning from such hunting or fishing expedition.

“(h) Members of any club or organization organized for the purpose of collecting and displaying antique or historical pistols, revolvers or other firearms, while such members are displaying such weapons at meetings of such clubs or organizations or while going to and from such meetings, or individuals who collect such firearms not designed to fire, or incapable of firing fixed cartridges or fixed shot shells, or other firearms of obsolete ignition type for which ammunition is not readily available and which are generally recognized as collector’s items, provided such firearm is kept in the trunk. If the vehicle is not equipped with a trunk, such firearm shall be kept in a locked container in an area of the vehicle other than the utility or glove compartment.” (Emphasis added.)

Section 83 0.5 provides that the Director of Corrections and various members of his staff, including parole officers and correctional officers, are peace officers.<sup>2</sup> That section

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<sup>2</sup> Section 830.5 provides in pertinent part:

“(a) Any parole officer of the State Department of Corrections, placement or parole officer of the Youth Authority, probation officer, or deputy probation officer is a peace officer. Except as otherwise provided in this subdivision, the authority of any such peace officer shall extend only (1) to conditions of parole or of probation by any person in this state on parole or probation; (2) to the escape of any inmate or ward from a state institution; (3) to the transportation of such persons; and (4) as provided in Section 8597 or 8598 of the Government Code, or when acting pursuant to Section 8617 of the Government Code. The authority of any parole officer of the State Department of Corrections shall further extend to violations of any penal provisions of law which are discovered in the course of and arise in connection with his employment.

“(b) Any warden, superintendent, supervisor, or guard employed by the department of Corrections, the Director of Corrections, any deputy director of the department of Corrections, any superintendent, assistant superintendent, supervisor, or employee

limits the authority of Department of Corrections peace officers to law enforcement duties related to their particular employment except in certain cases of a proclaimed state of emergency.

By its express terms section 12027 exempts “duly appointed peace officers” from the provisions of section 12025. The issue presented by the instant question is whether by virtue of the limitations on the authority of peace officers employed by the Department of Corrections set forth in section 830.5, such officers would not fall within the exemption set forth in section 12027 during their off-duty hours. We conclude that peace officers specified in section 830.5 fall within the exemption of section 12027 whether they are on or off duty.

It is a fundamental principle of statutory construction that the primary and controlling consideration in the construction of a statute is the determination of and the giving effect to the legislative intent behind the statute (*Great Lake Properties, Inc. v. City of El Segundo* (1977) 19 Cal. 3d 152, 153; *Select Base Materials, Inc. v. Board of Equalization* (1959) 51 Cal. 2d 640, 645.) In determining legislative intent, the words used in the statute should be interpreted to give effect to the statute according to the usual, ordinary import of the language. (*Moyer v. Workmen’s Comp. Appeals Bd.* (1973) 10 Cal. 3d 222, 230.) Statutes on the same subject matter should be construed together in light of each other so as to ascertain the legislative intent and to harmonize the statute. (*Id.*, at p. 230.)

Turning to the words of section 12027, we find that the Legislature has exempted from the provisions of section 12025 “duly appointed peace officers.” Department of Corrections peace officers are “duly appointed peace officers” while they are on duty at work or while they are off duty. In the absence of countervailing circumstances, it must be assumed that the Legislature meant to say what it said in drafting the statute. (*Tracy v. Municipal Court* (1978) 22 Cal. 3d 760, 764.) If the Legislature had intended the exemption in section 12027 to apply to peace officers only when they were acting with

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having custody of wards, of each institution of the department of the Youth Authority, or any transportation officer of the Department of the Youth Authority, is a peace officer. The authority of any such peace officer shall extend only (1) as is necessary for the purpose of carrying out the duties of his employment, and (2) as provided in Section 8597 or 8598 of the Government Code, or when acting pursuant to Section 8617 of the Government Code. When he is carrying out his duties, any such supervisor, guard, (officer, or employee who is engaged in transportation of prisoners or apprehension of prisoners or wards who have escaped is a peace officer whether acting within or without this state.

“ . . . . .”

peace officer authority it could have so stated.<sup>3</sup>

We note that when the Legislature has determined to limit the exemption of section 12027 to a person while such person is acting in the course of a certain duty, it has done so. Thus, subdivision (a) of section 12027 provides that a person summoned by any peace officer to assist in making an arrest or preserving the peace is exempt “while he is actually engaged in assisting such officer.” Likewise, subdivision (c) exempts members of the armed forces “when on duty.” Subdivision (e) exempts certain guards and messengers “while actually employed in and about the shipment, transportation, or delivery of any money, treasure, bullion, bonds, or other thing of value within this state.” Likewise, subdivisions (f), (g) and (h) exempt members of shooting clubs, licensed hunters or fishermen, and members of antique gun clubs during the period they are engaged in such activities. Had the Legislature wanted to place a similar restriction on peace officers and restrict their section 12027 exemption to duty hours, presumably it would have done so as in the case of the other classes referred to in that section.

There is an exception which proves the rule in this regard. In 62 Ops. Cal. Atty. Gen. 508 (1979) we concluded that a reserve peace officer within the meaning of section 830.6 was subject to the license requirements of section 12025 when not performing duties as a reserve officer. However, that conclusion was based upon the language of section 830.6 regarding the authority of a reserve peace officer and section 12050 regarding issuance of a concealed firearms license. Section 830.6 provides:

*“(a) Whenever any qualified person is deputized or appointed by the proper authority as a reserve or auxiliary sheriff or city policeman, a deputy sheriff, or a reserve police officer of a regional park district, and is assigned specific police functions by such authority, such person is a peace officer; provided, such person qualifies as set forth in Section 832.6, and provided further, that the authority of such person as a peace officer shall extend only for the duration of such specific assignment.*

*“(b) Whenever any person is summoned to the aid of any uniformed peace officer, such person shall be vested with such powers of a peace officer as are expressly delegated him by the summoning officer or as are otherwise reasonably necessary to properly assist such officer.” (Emphasis added.)*

Section 12050 provides in part:

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<sup>3</sup> In this respect it should be noted that the Legislature has expressly provided that section 12027 is not applicable to certain peace officers who are prohibited by statute from carrying firearms. (See § 830.3, subds. (j), (l) and (o).)

“(a) The sheriff of a county or the chief or other head of a municipal police department of any city or city and county, upon proof that the person applying is of good moral character, that good cause exists for the issuance, and that the person applying is a resident of the county, may issue to such person a license to carry concealed a pistol, revolver, or other firearm for any period of time not to exceed one year from the date of the license, *or in the case of a peace officer appointed pursuant to Section 830.6, three years from the date of the license.*

“ . . . . . ”

(Emphasis added.)

It can be seen from the above two sections that the legislature has specifically provided that a reserve officer is a peace officer only for the duration’ of a specific assignment and has made a special provision for a license for such officer to carry a concealed firearm. Reading the express language of these two sections in harmony with the provisions of section 12027 it becomes apparent that as to a reserve peace officer the Legislature intended that such officer would not be exempt under section 12027 while not performing a specific peace officer assignment. In contrast, the Legislature has not made special provision for a license for other peace officers in section 12050. We do not believe that the Legislature intended reserve peace officers to be eligible to obtain a three year license under section 12025, but that other peace officers would be eligible only for a one year license. Again, reading the statutes in harmony, we conclude that section 12050 is not applicable to duly appointed peace officers other than reserve peace officers because generally other officers are exempt from the licensing requirements of section 12025 by virtue of section 12027.<sup>4</sup>

We have considered the possibility that the Legislature intended that the exemption of section 12027 would only apply to peace officers while they are acting within the scope of peace officer authority. The wording of the section negates any such intention on the part of the Legislature. Peace officers listed in sections 830.1, 830.2, or subdivision (a) of 830.3 are exempt whether they are active or honorably retired. For example, a member of the San Francisco Bay Area Rapid Transit District Police Department who is honorably retired falls within the exemption. (See § 830.2, subd. (f).) Consequently, we see no basis for assuming that the Legislature intended to limit the exemption of peace officers to those times when they are acting within the scope of their authority as police officers.

A peace officer as defined in Penal Code section 830.5 is a “duly appointed peace

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<sup>4</sup> As we have noted (in fn. 2, *supra*) some peace officers are expressly excluded from the exemption of section 12027.

officer” whether on or off duty, although the peace officer’s authority may be limited to specified functions by that section. We conclude that a Department of Corrections peace officer, as defined in section 830.5, is exempt from the provisions of section 12025 by virtue of section 12027, subdivision (a).

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