

TO BE PUBLISHED IN THE OFFICIAL REPORTS

OFFICE OF THE ATTORNEY GENERAL
State of California

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OPINION	:	No. 80-310
	:	
of	:	<u>December 17, 1980</u>
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SUBJECT: RETROACTIVE TRANSFER OF FUNDS—The Board of Supervisors of Santa Clara County may not retroactively transfer existing monies from its road funds to its general fund for those fiscal years in which fifty percent (50%) of the monies received into, the former was not transferred into the latter pursuant to Penal Code section 1463 (1) (b) and Vehicle Code section 42201(a).

The Honorable Kenneth Cory, Controller of the State of California, has requested an opinion on the following question:

May the Board of Supervisors of Santa Clara County retroactively transfer existing monies from its road funds to its general fund for those fiscal years in which fifty percent (50%) of the monies received into the former was not transferred into the latter pursuant to Penal Code section 1463 (1) (b) and Vehicle Code section 42201(a)?

CONCLUSION

The Board of Supervisors of Santa Clara County may not retroactively transfer existing monies from its road funds to its general fund for those fiscal years in which fifty

percent (50%) of the monies received into the former was not transferred into the latter pursuant to Penal Code section 1463 (1) (b) and Vehicle Code section 42201 (a).

ANALYSIS

California's counties receive monies for their road funds from two principal sources: from their share of monies collected under the Motor Vehicle Fuel License Tax, i.e., the gasoline tax (Sts. and Hy. Code § 2150) and from fines and forfeitures collected following convictions or forfeitures of bail in their municipal and justice courts. (Pen. Code § 1463; Veh. Code § 42201.) Monies deposited in the county road fund from the former source may only be expended for county roads or other public street and highway purposes specified by law (Sts. and Hy. Code § 2150; *Cf.* Sts. and Hy. Code § 2101).¹ While monies from the latter source—i.e. those collected from fines and forfeitures—are also deposited in a county road fund (Pen. Code § 1463, Veh. Code § 42201) the Board of Supervisors of a county, by resolution, may provide that not more than fifty percent of those monies be transferred to the county's general fund (Pen. Code § 1463(1)(b), Veh. Code § 42201(a)).

This opinion addresses certain aspects of those transfers. Specifically we are presented with a factual situation occurring in the county of Santa Clara which we detail here by footnote, whereby less than the permissible fifty percent of monies was transferred to the county's general fund in fiscal years 1977-1978 and 1978-1979, and the county is desirous of effecting that transfer of over \$1 million now, on the basis of a 1976 motion and/or a 1979 resolution referring to and memorializing that motion.² The question is

¹ The "source" is actually the Highway Users Tax Account (formerly the Highway Users Tax Fund) of the Transportation Tax Fund (Sts. and Hy. Code § 2100) into which net revenue derived from the tax on motor fuel is deposited (*Id.*, § 2102). Once a month the State Controller apportions at least ninety percent of the balance in that account to counties and cities, pursuant to formulae set forth at sections 2104 through 2122 of the Streets and Highways Code. (§ 2103.) Section 2150 of that code provides that the amounts so paid to each county must be deposited in its road fund.

² The Santa Clara scenario is detailed as follows:

At a meeting on August 11, 1976, the Santa Clara County Board of Supervisors adopted a motion to transfer \$250,000 in vehicle related court fines to the county general fund and further ordered "that the Transportation Agency be noticed that exactly one-half of these court fine funds will be so-transferred in the following fiscal year."

Excerpts from the Board's minutes read as follows:

"Supervisor Steinberg suggests one-half of the revenue from court fines be placed in the General Fund. Transportation Agency Director James T. Pott advises that by law these fines are assigned to the road fund, but the Board can take fifty percent of these fines and place them into the General Fund if it so desires. On motion of Supervisor Steinberg, seconded by Supervisor Diridon, it is ordered on a vote of three to two. Supervisors Sanchez and Cortese voting 'no,' that \$250,000 or vehicle-related court fines be transferred from this budget into the General Fund. It is

whether the desired transfer can be made. In general we must answer an initial question of whether a motion rather than a resolution will suffice to effect the transfer of fine and forfeiture monies from a county's road funds to its general fund under Vehicle Code section 42201 (a) and Penal Code section 1463(1) (b), and then the question of whether a transfer of such monies may be accomplished by a resolution retroactively directing that the monies be transferred and posted belatedly for those fiscal years when the permissible amount was not transferred. While we conclude that under Vehicle Code section 42201 (a) and Penal

further ordered that the Transportation Agency be noticed that exactly one-half of these court fine funds will be so-transferred in the following fiscal year. Supervisor Cortese advises that the impact of such a policy is unknown. Supervisor Sanchez advises he is not prepared to establish a policy regarding next year's budget."

On September 4, 1979, the Board of Supervisors adopted a Resolution to—"continuously" transfer fine funds from the county road fund into the county general fund, pursuant to Vehicle Code § 42201 and Penal Code § 1463. This resolution reads as follows:

"RESOLUTION PROVIDING THAT CERTAIN FUNDS IN THE COUNTY TREASURY BE TRANSFERRED INTO THE GENERAL FUND OF THE COUNTY

WHEREAS, Penal Code § 1463 and Vehicle Code § 42201 provide that certain fines and forfeitures collected in municipal courts in the County be deposited with the Treasurer of the County in the County Road Fund; and

WHEREAS, Vehicle Code § 42201 provides that 50 percent of such funds and of certain other funds as set forth in Penal Code § 1463 and Vehicle Code §§ 42201.5 and 42204 may be transferred into the General Fund of the County by resolution of the Board of Supervisors,

NOW, THEREFORE, BE IT RESOLVED that any and all funds subject to the authorization provided in Vehicle Code § 42201 and Penal Code § 1463 shall be transferred into the General Fund of the County. This provision for transfer of said funds shall be continuous.

"BE IT FURTHER RESOLVED that this resolution refers to and memorializes the similar action taken by this Board with regard to said funds on August 11, 1976, found at Book 80 Page 644 or the Minutes of the Board."

Pursuant to the August 1976 motion, 5250,000 was transferred to the county general fund for the 1976-1977 fiscal year, \$250,000 was transferred for Fiscal Year 1977-1978 and \$230,000 for Fiscal Year 1978-1979—which amounts were less than fifty percent of the fines collected. The county now wishes to transfer an additional \$1 million for those two fiscal years to take full advantage of the permitted fifty percent transferrable amount. It is unclear whether the \$1 million to be transferred would come from existing surplus in the road fund or from future monies which would be received into it and belatedly posted as a transfer to the general fund for the 1977-1978 and 1978-1979 fiscal years. We assume the former, for the latter would clearly be impermissible as it would inevitably involve the transfer of more than fifty percent of the fines and forfeiture monies which would be accrued in a future monthly period, and more important, it would not be a transfer of the actual monies received "during the preceding month" in the past years as required by Penal Code section 1463(1)(b) and by Vehicle Code section 42201(a) taken in conjunction with Penal Code section 1463(1)(a). (*Cf. Bilby v. McKenzie* (1896) 112 Cal. 143, 146.)

Code section 1463(1) (b), a motion adopted by a county Board of Supervisors could suffice to effect a future transfer of those monies, we also conclude that a county Board of Supervisors may not, even by resolution, effect a retroactive transfer of them by having it posted for prior fiscal years when less than the permissible fifty percent of such monies was transferred. With respect to the situation occurring in Santa Clara County we conclude that while the transfer of fine monies was properly effected in 1976 for fiscal 1976-1977, albeit by motion rather than by resolution, the Board of Supervisors of that county may not now transfer the fine monies retroactively for fiscal 1977-1978 and fiscal 1978-1979.

The statutory detail with which we are concerned is as follows: Penal Code section 1463 sets forth a comprehensive system for the division of motor vehicle fine and forfeiture monies whereby “all fines and bail forfeitures are deposited in the county treasury and are eventually distributed [on a monthly basis] into various county funds and to cities within the county in certain stated percentages, generally depending on what governmental entity’s officer initially issued the citation or made the arrest and the geographic area where the incident occurred. Penal Code § 1463, subd. (1), subsections (a), (b), (c), and (d). See, 25 Ops. Cal. Atty. Gen. 122 (1955); 34 Ops. Cal. Atty. Gen. 221 (1959).” (55 Ops. Cal. Atty. Gen. 256, 256 (1972); accord, *County of Los Angeles v. City of Alhambra* (1980) 27 Cal. 3d 184, 193.) Subsections (a) and (b) of subdivision (1) of that section read in full as follows:

“Except as otherwise specifically provided by law:

“(1) All fines and forfeitures including Vehicle Code fines and forfeitures collected upon conviction or upon the forfeiture of bail, together with moneys deposited as bail, in any municipal court or justice court, shall, as soon as practicable after the receipt thereof be deposited with the county treasurer of the county in which such court is situated. The moneys so deposited shall be distributed as follows:

(a) Once a month there shall be transferred into the proper funds of the county an amount equal to the fines and forfeitures collected during the preceding month upon the conviction or upon the forfeiture of bail following arrests made by officers or other persons employed by the state or by the county in which such court is situated, exclusive of fines or forfeitures or forfeitures of bail collected from any person arrested by a state officer and charged with the commission of a misdemeanor under the Vehicle Code within the limits of a city within the county.

(b) Except as otherwise provided in this subdivision, once a month there shall be transferred into the traffic safety fund of each city in the county

an amount equal to 50 percent of all fines and forfeitures collected during the preceding month upon the conviction or upon the forfeiture of bail from any person arrested by a state officer and charged with the commission of a misdemeanor under the Vehicle Code within that city, and an amount equal to the remaining 50 percent shall be transferred to the special road fund of the county; *provided, however, that the board of supervisors of the county may, by resolution, provide that not more than 50 percent of the amount to be transferred to the special road fund of the county, be transferred into the general fund of the county.*” (Emphasis added.)

Section 42201 (a) of the Vehicle Code reads as follows:

“(a) Of the total amount of fines and forfeitures received by a county under subsection (a) of subdivision (1) of Section 1463 of the Penal Code, that proportion which is represented by fines and forfeitures collected from any person charged with a misdemeanor under this code following arrest by any officer employed by the state or by the county shall be paid into the treasury of the county and deposited in the road fund of the county; *provided, however, that the board of supervisors of the county may, by resolution, provide that not more than 50 percent thereof be transferred into the General Fund of the county.*” (Emphasis added.)

Thus pursuant to Vehicle Code section 42201 (a) and Penal Code section 1463 (1) (a) the Board of Supervisors of a county may by resolution effect a monthly transfer from the county road fund to the county general fund of fifty percent of monies from “county fines and forfeitures” (i.e., those collected during the preceding month from misdemeanor violators of the Vehicle Code following arrest by a state or county officer, exclusive of fines or forfeitures collected from those arrested by a state officer and charged with the commission of a Vehicle Code misdemeanor within the limits of a city within the county), and pursuant to Penal Code section 1463 (1) (b) the Board of Supervisors of a county may by resolution effect a monthly transfer from the county special road fund to the county general fund of fifty percent of those latter “city fines and forfeiture” funds (i.e., those collected from fines and forfeitures following arrests by state officers for Vehicle Code misdemeanors occurring within city limits).³ With this background in mind we address the

³ In 1952 we concluded that under the statutory scheme then existing, the fund established by Streets and Highways Code sections 622 and 2150 is the repository or all money received by the county from the Highway Users Tax Fund of the state (gasoline tax subventions) and then called the “special road improvement fund” could not be merged with the special road fund” established by Vehicle Code section 771 (the precursor to section 42201) as the repository or motor vehicle fines received by the county. (20 Ops. Cal. Atty. Gen. 266, 267 (1952).) We concluded however

question of whether the Board of Supervisors of Santa Clara County may properly effect their desired transfer of fine and forfeiture monies for fiscal 1977-1978 and 1978-1979.

Turning first to the action taken in 1976 we see that the basis for the transfer of funds—for “this budget,” i.e. for fiscal 1976-1977 and for the “following fiscal year,” i.e. for fiscal 1977-1978—was a *motion* adopted by the Board of Supervisors on August 11, 1976, and not by a *resolution*. (See fn. 2, *ante*.) However, we do not view this departure to be of crucial significance to our ultimate determination.

There is no question that the statutes giving a county board of supervisors power to effect a transfer of monies from the county’s road funds to the county’s general fund, are specific as to the way in which that transfer is to be accomplished: both Penal Code section 1463 (1) and Vehicle Code section 42201 (a) require that such be done “by *resolution*.” It is also settled that,

“ . . . when a county acts as it does here under authority derived from a statute, it must strictly follow the statutory provisions; the mode of the

that inasmuch as those sections (and former Streets and Highways Code § 1620 which was repealed in 1957) should be construed in *pari material*, when read together, they authorized counties to credit vehicle fines directly to the sections 1622-2150 “special road improvement fund” as long as an appropriate separate account showed the source of the revenue. (20 Ops. Cal. Atty. Gen., *supra*, at pp. 268-269.) Subsequent legislation has merged the funds.

When Vehicle Code section 771 was repealed and reenacted as Vehicle Code section 42201 it then designated the repository for Penal Code section 1463 fines and forfeitures, to be a county special road improvement fund (Stats. 1959. ch. 3, p. 1788, § 42201). When that section was amended in 1961 however, the designation was changed to the “road fund” (Stats. 1961, ch. 801, p. 2066, § 15), as it appears today. The designation of the “special road improvement fund” formerly appearing in sections 2150 and 1622 was also changed to the “road fund” in 1961. (Stats. 1961, ch. 494, p. 1589, § 1, Stats. 1961, ch. 801, p. 2065, § 10.) Therefore to the extent that our 1952 opinion concluded that the section 771 (14220) fund for fine monies and the section 2150/1622 fund for gasoline tax subvention monies could not be merged, it is no longer viable since the subsequent legislative development did not change the requirement that gasoline subvention monies must be spent exclusively for road purposes 2150 and 2101), however, we reaffirm our former conclusion that it is necessary for counties to maintain a separate identity for each type of revenue deposited in the “fund” (*Id.* at p. 269).

The fund mentioned in Penal Code section 1463(1)(b) as the depository for fine and forfeiture monies following arrests by state officers of Vehicle Code misdemeanants within a county’s cities, however, is still designated the county special road fund and extrapolating from our former opinion (20 Ops. Cal. Atty. Gen. 266, *supra*) we conclude that a separate account must also be maintained for the monies deposited therein.

power is also the measure of the power (*Zottman v. City of County of San Francisco*, 20 Cal. 96 [81 Am. Dec. 96]; *Miller v. McKinnon*, 20 Cal. 2d 83 [124 P. 2d 34, 140 A.L.R. 570]).” (*Richter v. Board of Supervisors [of Sacramento County]* (1968) 259 Cal. App. 2d 99, 105.)⁴

Nevertheless, we believe that a motion adopted by a county board of supervisors in form similar to a resolution, as that adopted by the Board of Supervisors of Santa Clara County in 1976, would suffice to effect a transfer of fine monies under Penal Code section 1463(1) (b) or Vehicle Code section 42201 (a).

Actions undertaken by local entities embrace many forms of expression such as ordinances, resolutions, motions, bylaws, regulations and the like. (5 McQuillan, *Municipal Corporations* (1969 rev. vol.) § 15.08, p. 62.) While the differences between an ordinance and a resolution or other forms of municipal action might be significant (*City of Sausalito v. County of Marin* (1970) 12 Cal. App. 3d 550, 565; *Central Manufacturing District, Inc. v. Board of Supervisors* (1960) 176 Cal. App. 2d 850, 860; *Keyport Sewerage Authority v. Granata* (N.J. 1958) 144 A. 2d 811, 815; 5 McQuillan, *Municipal Corporations*, *supra*, § 15.02, at pp. 42-47) and while the Legislature has painfully distinguished between *those two* (*City of Sausalito v. County of Marin*, *supra*, 12 Cal. App. 3d at p. 566 & p. 566, fn. 10), the differences between *resolutions* and the other forms of local action, such as motions, are less consequential and have not warranted similar particularity of distinction by the Legislature. As was said in *Keyport Sewerage Authority v. Granata*, *supra*,

“While there are in some instances and for some purposes fundamental distinctions between a resolution and an ordinance, there is no such broad distinction between a resolution and other acts of a municipality such as motions or orders.” (144 A. 2d at p. 815.)

McQuillan has described the differences between ordinances and resolutions thus:

“A ‘resolution’ is not an ‘ordinance.’ and there is a distinction between the two terms as they are commonly used in charters. A resolution ordinarily denotes something less solemn or formal than, or not rising to the dignity of, an ordinance. The term ‘ordinance’ means something more than a mere verbal motion or resolution, adopted, subsequently reduced to writing,

⁴ We are aware that the County of Santa Clara is a charter county (Stats. 1951, p. 4401 as amended, etc.), but the issue involved is governed by statutory law and not by charter. (*Cf.* Cal. Const., Art. XI, § 4, subds. (g) and (h).) Further, the *Richter* case also involved a charter county. Sacramento (Stats. 1933, p. 3088, as amended, etc.).

and entered on the minutes and made a part of the record of the acting body. It must be invested, not necessarily literally, but substantially, with the formalities, solemnities, and characteristics of an ordinance, as distinguished from a simple motion or resolution. [¶] A resolution in effect encompasses all actions of the municipal body other than ordinances. Whether the municipal body should do a particular thing by resolution or ordinance depends upon the forms to be observed in doing the thing and upon the proper construction of the charter. In this connection it may be observed that a resolution deals with matters of a special or temporary character; an ordinance prescribes some permanent rule of conduct or government, to continue in force until the ordinance is repealed. An ordinance is distinctively a legislative act; a resolution, generally speaking, is simply an expression of opinion or mind concerning some particular item of business coming within the legislative body's official cognizance, ordinarily ministerial in character and relating to the administrative business of the municipality." (5 McQuillan, *Municipal Corporations*, *supra*, § 15.02, pp. 42-44 (fns. omitted).)

In *Central Manufacturing District v. Board of Supervisors*, *supra*, the court, in making the distinction, chose to quote from another source:

"The difference between an ordinance and a resolution is well stated in 35 California Jurisprudence 2d, section 392, page 200 [now 45 Cal. Jur. 3d *Municipalities*, § 188, pp. 188-189]: 'The enactments of a city's legislative branch are known as ordinances and resolutions. Strictly speaking, there is a difference between the two. An ordinance in its primary and usual sense means a local law. It prescribes a rule of conduct prospective in operation, applicable generally to persons and things subject to the jurisdiction of the city. 'Resolution' denotes something less formal. It is the mere expression of the opinion of the legislative body concerning some administrative matter for the disposition of which it provides. Ordinarily it is of a temporary character, while an ordinance prescribes a permanent rule of conduct or of government. However, for many purposes the two words are equivalent terms.' See also 37 American Jurisprudence, section 142, page 755." (176 Cal. App. 2d at p. 660.)

In *City of Sausalito v. County of Marin*, *supra*, the court deemed the differences between an ordinance and a resolution to be "substantive, under case law and by deliberate legislative definition. . ." (12 Cal. App. 3d at p. 566) and therefore not to be "ignored." Said the court.

“We are not at liberty to ignore the very real difference between a ‘resolution’ and an ‘ordinance.’ ‘The resolution of a board of supervisors is ordinarily not equivalent to an ordinance. A resolution is usually a mere declaration with respect to future purpose or proceedings of the board. An ordinance is a local law which is adopted with all the legal formality of a statute.’ (*McPherson v. Richards* (1933) 134 Cal. App. 462, 466.)” (12 Cal. App. 3d at p. 577.)

“A resolution adopted without the ‘formality’ required of an ordinance cannot be deemed an ordinance. (5 McQuillan, *op. cit. supra*, § 15.02, pp. 46–47.) A duly enacted county ordinance is a ‘law of this State’ within the meaning of a penal statute proscribing the violation of such law (*In re Groves* (1960) 54 Cal. 2d 154, 158 [4 Cal. Rptr. 844, 351 P. 2d 1028]; *County of Plumas v. Wheeler* (1906) 149 Cal. 758, 768 [87 P. 909]); a board resolution is not.” (*Id.* at p. 576.)

Still, despite the “very real difference” between an ordinance and a resolution, courts have not been controlled by “labels” and where a municipal resolution is clothed with the formalities of an ordinance, it has been accepted as such to effect municipal action. As McQuillan states:

“Generally, whether what is done by a municipal legislative body is an ordinance or a resolution depends not on what the action is called but on the reality. Thus the mere doing of a particular thing in the form of an ordinance does not necessarily constitute it an ordinance; in other words acting by ordinance rather than by resolution does not necessarily constitute municipal legislation. Conversely, where a resolution is in substance and effect an ordinance or permanent regulation, the name given to it is immaterial. If it is passed with all the formalities of an ordinance it thereby becomes a legislative act, and it is not important whether it be called ordinance or resolution. Of course, where the requisites and formalities for passing an ordinance are not observed, a resolution does not have the effect of an ordinance.”

(5 McQuillan, *Municipal Corporations, supra*, § 15.02, pp. 46-47, citing *inter alia* *Pollok v. San Diego* (1897) 118 Cal. 593 and *San Francisco Gas Co. v. City of San Francisco* (1856) 6 Cal. 190; (fns. omitted).) We therefore should be, and are, less concerned with “labels” in the case before us, where the less significant differences between a *resolution* and a *motion* are involved.

Black's Law Dictionary defines "resolution" as, "A formal expression of the opinion or will of an official body or a public assembly, adopted by vote; as a legislative resolution . . . [In Legislative practice] the term is usually employed to denote the adoption of a motion, the subject-matter of which would not properly constitute a statute. . . ." (4th Ed. (1951) at p. 1474.) It defines "motion" as "the formal mode in which a member submits a proposed measure or resolve for the consideration and action of the meeting" (*Id.*, p. 1164).

"Technically, a resolution is a formal expression of the will or settled decision of a deliberate assembly, while a motion is usually a proposal for action by the assembly." (*Lindahl v. Independent School District No. 306* (Minn. 1965) 133 N.W. 2d 23, 26; *but see Allen v. Wise* (Ga. 1948) 50 S.E. 2d 69, 72.) Neither however, rises to the dignity of an "ordinance" nor is invested with the formalities, solemnities and characteristics of one. Both deal with special or temporary matters or matters of administrative concern rather than constituting legislative acts. Thus "[i]t has been said that there is no substantial difference between a motion and a resolution, that the terms are practically synonymous, and that they are the same. . . ." (5 McQuillin, *Municipal/ Corporations*, (1969 rev. vol.) § 15.08, pp. 64-65, fns. citing sister state authorities omitted) see also *Keyport Sewerage Authority v. Granata, supra*, 144 A. 2d at p. 811). That being the case, courts have been willing to ignore deficiencies of form and to affirm municipal action undertaken by a motion, where statute or charter required a resolution. (*Lindahl v. Independent School District No. 306, supra*, 133 N.W.2d at pp. 2 5-26 ("Generally, where the statute requires a resolution, any official action, though not in form a resolution, may be one in legal effect. Thus, although the motion made by the board lacked the formal attributes of a resolution, the deficiency of form is not fatal.") ; *Keyport Sewerage Authority v. Granata, supra*, 144 A.2d at pp. 8 15-816, ("When an oral motion is adopted by a city council it becomes a resolution or order of that body.") Cf. *City of Pasadena v. Paine* (1954) 126 Cal. App. 2d 93, 96; *Allen v. Wise* (Ga. 1948) 50 S.E.2d 69, 72; *contra, California-Oregon Power Co. v. City of Mcdford* (D.Ore. 1915) 226 Fed. 959, 960-961 (motion insufficient where city charter called for resolution or ordinance).)

The action undertaken by the Board of Supervisors on August 11, 1976 dealt with a special matter of administrative concern—i.e., that of transferring fine monies to the county's general fund pursuant to Penal Code section 1463 (1) (b) and Vehicle Code section 42201 (a). The action did not, nor was it intended to by those sections, rise to the dignity of an ordinance affecting local law. Based on our foregoing discussion of the similarities between resolutions and motions, and the lack of differences of meaningful significance between them, we conclude that the intention of the Legislature was as equally fulfilled by the Board of Supervisor's adoption of a *motion* as it would have been had the action been accomplished by *resolution*. Accordingly, we conclude the Board properly transferred the fine monies to the county general fund for fiscal 1976-1977.

With respect to the transfer for fiscal 1977-1978, however, the motion merely “ordered that the Transportation Agency be noticed that exactly one-half of these court fine funds will be so transferred” (*Ibid.*); it did not specifically order that that transfer take place. Further, with respect to any transfer of monies for fiscal 1978-1979, the motion was completely silent. A transfer for those years therefore, cannot be predicated on the motion of August 11, 1976.

We therefore turn to the action taken in 1979 and address the question of whether the Board of Supervisor’s resolution of September 4, could retroactively post a transfer of existing monies in the county’s road funds to its general fund for the prior two fiscal years when the permissible amount was not transferred. We answer the question in the negative.

With respect to effecting a transfer for the fiscal years 1977-1978 and 1978-1979, the Board’s resolution of September 4, 1979, merely referred to and memorialized the “similar action taken by [the] Board with regard to said funds on August 11, 1976” (fn. 2, *ante*) which was the earlier motion discussed above. However, while that motion may have been in the proper form to effect a transfer of fine and forfeiture monies under Vehicle Code section 42201 (a) and Penal Code section 1463 (1) (b), as we noted, it was deficient in content to do so for the two fiscal years in question. It did not specifically order that transfers take place in fiscal 1977-1978, and with respect to fiscal 1978-1979 it was utterly silent. It was thus insufficient to accomplish its later-characterized purpose.⁵ In any event, we do not believe the statutory scheme envisioned by Penal Code section 1463(1) (b) and Vehicle Code section 42201 (a) permits retroactive action to be taken with respect to fine and forfeiture monies once they have been deposited in the county’s road funds.

Penal Code section 1463, subdivision (1) as we have seen, requires the deposit of fine and forfeiture monies with the County Treasurer “as soon as practicable after the receipt thereof” and that they be distributed on a monthly basis to various county and city funds according to the formulae set forth in its subsections (a) through (d).⁶

⁵ Indeed we note that at the time, the administrative interpretation given the 1976 motion by the county was that it was not to direct the transfer of fifty percent of fine and forfeiture monies for fiscal 1977-1978 and fiscal 1978-1979, as that amount was not transferred (fn. 2, *ante*). (*Cf. Richfield Oil Corp. v. Crawford* (1952) 39 Cal. 2d 729, 736; *County of Los Angeles v. Frisbie* (1942) 19 Cal. 2d 634, 643-644.)

⁶ With similarity of timing, the transfer of a designated percentage of monies received during the preceding month as fines and forfeitures for violations that occurred at special location (e.g. on regional park or port district property, on a community college property, or B.A.R.T.) are also made on a ‘once a month’ basis. (Penal Code §§ 1463.2-1463.4, 1463.5(a)(2)-1463.6(a)(2), 1463.10–1463.13, 1463.15.)

Pursuant to Penal Code section 1463 (1) (b), a county board of supervisors by resolution may provide that not more than fifty percent of its half share of “*city* fines and forfeitures” collected from Vehicle Code misdemeanants be transferred into the General Fund of the county, and pursuant to Vehicle Code section 42201 (a), they may by resolution provide that not more than *fifty* percent of “*county* fine and forfeitures” collected from Vehicle Code misdemeanants also be transferred to the county’s general fund. The statutory provisions authorizing the two transfers, however, are worded slightly differently.

Penal Code section 1463, subdivision (1) subsection (b) provides that,

“ . . . 50 percent of all fines and forfeitures collected during the preceding month upon the conviction or upon the forfeiture of bail from any person arrested by an officer and charged with the commission of a misdemeanor under the Vehicle Code within [a] city . . . shall be transferred to the special road fund of the county; provided, however, that the board of supervisors of the county may, by resolution provide that *not more than 50 percent of the amount to be transferred to the special road fund of the county, be transferred into the general fund of the county.*” (Emphasis added.)

This section is clearly prospective in its contemplated operation. The resolution of a board of supervisors must be directed to “50 percent of the amount *to be* transferred to the special road fund”—an event to occur in the future. The resolution halts the complete transfer to the special road fund and redirects half of it instead to the county’s general fund. Thus under the statutory scheme the monies involved are never to be deposited in the special road fund; rather they are to go directly to the county’s general fund. In other words, the statute does not provide for redirection or retransfer of the monies once they are placed in the special road fund, and once they are, it is too late to effect a retransfer of them to the general fund.

The prospectively of a resolution under Vehicle Code section 42201, subdivision (a) is less clear, but we believe that it too was not intended to operate on a retroactive basis. The subdivision provides that of the total amount of fines and forfeitures received on a monthly basis by a county under subsection (a) of subdivision (1) of section 1463 of the Penal Code—i.e., of those “fines and forfeitures” collected during the preceding month following arrests by state or county officers exclusive of fines and forfeitures for Vehicle Code misdemeanors occurring *within the limits of a city*—that proportion which is represented by fines and forfeitures collected from any person following arrest by any state or county officer for Vehicle Code misdemeanors,

“shall be paid into the treasury of the county and deposited in the road fund of the county; *provided, however, that the board of supervisors of the*

county may, by resolution, provide that not more than 50 percent thereof be transferred into the General Fund of the county.” (Emphasis added.)

The issue for resolution becomes what the “50 percent thereof” refers to. If the phrase refers to the amount “which *shall* be paid into the county road fund” it would indicate a prospective operation of the subdivision and thus preclude a retransfer of monies to the general fund once they already have been deposited in the county road fund. On the other hand, if the phrase refers to monies which have been “deposited in the road fund,” the section would admit a retroactive operation, and would permit a county board of supervisors to retransfer them to the county general fund at any time after their initial deposit in the road fund *if* the integrity of the easily fungible monies for those years is still intact, *and* they can still be specifically identified as the actual monies that were received into the county road fund under Penal Code section 1463 (a) in the particular months in question. (*Bilby v. McKenzie* (1896) 112 Cal. 143, 146.)

We believe the former construction, which precludes the transfer, to be more consonant with the intent of the Legislature. 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 Lakes Properties, Inc. v. City of El Segundo* (1977) 19 Cal. 3d 152, 163; *Select Base Materials, Inc. v. Board of Equal.* (1959) 51 Cal. 2d 640, 645; *Hogya v. Superior Court* (1977) 75 Cal. App. 3d 122, 132.) While “legislative intent” is discerned at the onset by looking to the words used in the statute, giving them effect according to their usual and ordinary meaning (*Moyer v. Workmen’s Comp. Appeals Bd.* (1973) 10 Cal. 3d 222, 230), “[it] is not to be ascertained from isolated parts of a statute or act; each part is to be construed with reference to the entire statutory system of which it is a part, in such a way that the various overall elements of the scheme are harmonized. (*Griffith v. Gibson* (1977) 73 Cal. App. 3d 465, 470)” (*People v. Colver* (1980) 107 Cal. App. 3d 277, 285). Furthermore, although a difference of language used in related statutes normally indicates that differing consequences are intended by the Legislature (see *Safer v. Superior Court* (1975) 15 Cal. 3d 230, 238; *In re Dees* (1920) 50 Cal. App. 11, 19; *McCarthy v. Board of Fire Commrs.* (1918) 37 Cal. App. 495, 498), it is well settled that statutes relating to the same subject matter should be construed together and harmonized by considering the statutory framework as a whole and all statutory language should be given a practical and commonsense interpretation. (*California Mfrs. Assn. Public Utilities Com.* (1979) 24 Cal. 3d 836, 846; *Moyer v. Workmen’s Camp. Appeals Board, supra*, at p. 230; *People v. Buese* (1963) 220 Cal. App. 2d 802, 807.)

Turning first to the words of the Vehicle Code section 42201, subdivision (a) itself, we note that the authority of a county to direct payment of fifty percent of the fine and forfeiture monies stemming from Vehicle Code misdemeanor arrests occurring within a

county and outside of a city, is contained in a proviso separated from the rest of the subsection by a semicolon. The normally understood purpose for using such a construction is to exclude from the operative portions of the subsection which precede the semicolon and the words “provided, however,” those inconsistent provisions of the subsection which appear after them. (*McAlpine v. Baumgartrner* (1937) 10 Cal. 2d 409, 417; *Cf. Dupry v. Board of Education* (1930) 106 Cal. App. 533, 538; *Livermore v. Waite* 102 Cal. 113, 121–122 (1894).) Put another way, “the purpose of a proviso is to create an exception, qualification, restriction, or limitation of the preceding principal provision that would have included the matter excepted were it not for the proviso, and to deprive the principal provision of any effect inconsistent with the terms of the proviso.” (5.8 Cal. Jur. 3d, *Statutes*, § 117; accord, 2A Sutherland, *Statutory Construction* § 47.08 (4th ed. 1972) p. 82 (“Provisos . . . serve the purpose of restricting the operative effect of statutory language to less than what its scope of operation would be otherwise . . .”).)

That being the case, the use of the proviso “provided however” in Vehicle Code section 42201, subdivision (a), indicates that the Legislature intended that those county fine and forfeiture monies stemming from Vehicle Code misdemeanor arrests not occurring within a city, not be deposited in the road fund of a county *at all*, if a resolution were passed, but rather that they go directly to the county general fund. In other words, the *transfer* of monies that should take place is one between the county treasury and the general fund, and not one from the county’s road fund to the general fund. Had the Legislature wished to provide for the latter contingency it could easily have provided “that the board of supervisors of a county may, by resolution, provide that not more than 50 percent of the monies so transferred be retransferred into the General Fund of the county.” But it did not include a provision for such a second transfer. We therefore believe that “the 50 percent *thereof*” refers to monies before they are ever transferred—i.e., to the monies which “shall be paid into the county road fund,” and we therefore conclude accordingly that Vehicle Code section 42201, subdivision (a), as Penal Code section 1463, subdivision (1), subsection (b), was meant to be prospective and not retroactive in its operation.

The two transfer provisos with which we are concerned—i.e., Vehicle Code section 42201, subdivision (a) and Penal Code section 1463, subdivision (1), subsection (b)—deal with virtually the same subject matter, are part of the same statutory scheme and stand in *pari materia*. Our prospective interpretation for the former is more in harmony with the prospective interpretation we arrived at, without ado, for the latter, than would be the alternative interpretation of retroactive effect which would permit a county board of supervisors to retransfer county fine monies after they were placed in a county’s road fund. This further confirms the correctness of the interpretation we adopt. (*Cf. People v. Cohen, supra*, at p. 285; *California Mfrs. Assn. v. Public Utilities Com., supra*, at p. 846; *People v. Buese, supra*, at p. 807.)

In this regard, it is significant that the prospective interpretation we find for Vehicle Code section 42201 (a), subdivision (a), is also more consistent with peculiar wording of subsection (a) of subdivision (1) of section 1463 of the Penal Code which it mentions as the source whence the “county fine monies” available for its transfer is to come. That subsection provides that the fine and forfeiture monies with which it deals, be transferred once a month from the county treasury “into the proper funds of the county.” Thus, unlike the other subsections of Penal Code section 1463, subdivision (1) which designate with particular specificity the county or city fund the fine and forfeiture monies obtained thereunder are to be deposited (depending upon the circumstances of the employment of the arresting officer and the geographic area where the arrest occurred (51 Ops. Cal. Atty. Gen., *supra*, at p. 256; *County of Los Angeles v. City of Alhambra* (1980) 27 Cal. 3d 184, 193)), subsection (a) does not specify with exactitude the fund into which its fine and forfeiture monies is to be deposited.

We perceive this to be a recognition by the Legislature that that depository could not be known with certainty *until* a county board of supervisors decide to adopt or not to adopt a resolution under Vehicle Code section 42201, subdivision (a), directing where those funds should go. In this view such a resolution could only have a prospective effect, for if it were designed to operate retroactively, then the fund for the deposit of monies received under Penal Code section 1463, subdivision (1), subsection (a) could have been defined with more specificity. Since it was not, and since we are compelled to harmonize that Penal Code subsection with the Vehicle Code section 42201 (a) which specifically mentions it (*People v. Kuhn* (1963) 216 Cal. App. 2d 695, 698), we achieve that harmonization through our prospective interpretation of the latter.

Furthermore, under this view that Penal Code section 1463, subdivision (1), subsection (a) and Vehicle Code section 42201, subdivision (a) are complementary, the slight difference of wording between the latter and subsection (b) of subdivision (1) of Penal Code section 1463, pales into insignificance, and we no longer have any doubt that both of those transfer provisos were intended by the Legislature to operate only *in futuro*.

We are not unaware that the purpose for the enactment of the proviso in Penal Code section 1463, subdivision (1), subsection (b) which enables a county to have up to 50 percent of its half share of fine and forfeiture monies following Vehicle Code misdemeanor arrests within a city in the county transferred to its general fund (Stats. 1968, ch. 538, p. 1193, § 1), was to reimburse the counties for the added caseload in their municipal and justice courts (*Cf. County of Los Angeles v. City of Alhambra* (1980) 27 Cal. 3d 184, 194) occasioned by the court reorganization of 1950. (See Report of Assembly Interim Committee on Municipal and County Government, 1963-1965, Vol. 6 No. 21, Pt. III (Report on the Adequacy of the Current Formula for Apportioning Fine and Forfeiture Revenue (Pen. Code Sec. 1463)), pp. 49-56; Vol. 1 of Appendix to Journal of the

Assembly, Reg. Sess., 1965, a most valuable aid in ascertaining the meaning of the statute (*Hobretter v. Garrison* (1947) 81 Cal. App. 2d 384, 387).) And we can safely assume, given its contemporaneity, that the same reason prompted the Legislature to revise section 42201, subdivision (a), of the Vehicle Code in 1968 to add the similar proviso that now appears therein and enables a county to transfer up to 50¼ of “county fine monies” to its general fund. (Stats. 1968, Ch. 538, p. 1199, § 2.)

But we reject the suggestion that the desire to help a county defray its additional court costs meant that the Legislature intended a county to be able to retroactively resolve under Vehicle Code section 42201 (a) to raid its road funds several years later to plenish its general fund for that purpose, especially when it could be achieved as well by a resolution thereunder that could have been prospectively based. Furthermore, the same legislative purpose undergirt the revision *Cf.* Penal Code section 1463(1) (b) to add its transfer proviso, yet that subsection is clearly prospective in operation. To use that legislative purpose therefore in order to glean a retroactive interpretation for the Vehicle Code proviso (Veh. Code § 42201 (a)), is not well taken. We therefore conclude that that subdivision, as its sister (Pen. Code § 1463(1) (b)) is prospective in its intended operation and that it does not permit a retroactive application.

As noted in footnote 2, it is unclear from the question whether the source of the funds to be transferred would be from surplus already existing in the county’s road funds, which were deposited there in prior years, or would be from future monies to be received into them; we assumed the former, since the latter would not involve a transfer of the actual monies received into the road fund during “the preceding month,” (Pen. Code § 1463(1) (a)—Veh. Code § 42201 (a), Pen. Code § 1463(1) (b); *Cf. Bilby v. McKenzie* (1896) 112 Cal. 143, 146), and since it would inevitably involve a transfer of more than fifty percent of those monies for the month in which they will be received. In view of our analysis of the statutory scheme of how and when transfers of fine and forfeiture monies are to be effected under Penal Code section 1463(1) (b) and Vehicle Code section 42201 (a), we conclude that a county may not retroactively authorize the transfer of existing monies from its road funds to belatedly plenish its general fund, by retroactively posting the transfer for months in prior fiscal years in which less than the permitted fifty percent of fine and forfeiture monies was transferred.
