

TO BE PUBLISHED IN THE OFFICIAL REPORTS

OFFICE OF THE ATTORNEY GENERAL
State of California

GEORGE DEUKMEJIAN
Attorney General

OPINION	:	No. 80-413
	:	
of	:	<u>September 9, 1980</u>
	:	
GEORGE DEUKMEJIAN	:	
Attorney General	:	
	:	
Paul H. Dobson	:	
Deputy Attorney General	:	
	:	

SUBJECT: ISSUING NOTICES OF PARKING VIOLATIONS BY NON PEACE OFFICERS—A city is authorized to employ a person who is not a peace officer to issue notices of parking violations and state law does not provide any training requirements with respect to such a person.

The Honorable Jack R. Fenton, Assemblyman, 59th District, has requested an opinion on a question which we have phrased as follows:

Is a city authorized to employ a person who is not a peace officer to issue notices of parking violations and if so, does state law provide any training requirements for such a person?

CONCLUSION

A city is authorized to employ a person who is not a peace officer to issue notices of parking violations and state law does not provide any training requirements with respect to such a person.

ANALYSIS

The instant request raises the issue of who may issue what is commonly referred to as a “parking ticket.” A vehicle may be illegally parked in violation of the Vehicle Code or a local ordinance enacted pursuant thereto. (See Veh. Code § 22500 *et seq.*) A parking violation is an infraction. (Veh. Code, § 40000.1.)

Vehicle Code section 41102 sets forth what shall constitute prima facie Evidence that the registered owner of an illegally parked vehicle was the person who parked the vehicle. Vehicle Code section 41103 provides:

“The method of giving notice for the purposes of the provisions of Section 41102 is as follows:

“(1) During the time of the violation a notice thereof shall be securely attached to the vehicle setting forth the violation including reference to the section of this code or of such ordinance so violated, the approximate time thereof and the location where such violation occurred and fixing a time and place for appearance by the registered owner or the lessee or renter in answer to said notice.

“Such notice shall be attached to said vehicle either on the steering post or front door handle thereof or in such other conspicuous place upon the vehicle as to be easily observed by the person in charge of such vehicle upon his return thereto.

“(2) Before any warrant of arrest shall issue following the filing of a complaint charging such a violation, a notice of the violation must be given to the person so charged. Such notice shall contain the information required in paragraph (1) above and shall also inform such registered owner or the lessee or renter that unless he appears in the court to be designated in said notice within 10 days after service of such notice and answers said charge, a warrant or citation to appear will be issued against him.

“Such notice shall be given, either by personal delivery thereof to such owner, lessee or renter, or by deposit in the United States mail of an envelope with postage prepaid which said envelope shall contain such notice and shall be addressed to such owner lessee or renter at his address as shown by the records of the department or the leasing or renting agency. The giving of notice by personal delivery is complete upon delivery of a copy of said notice to said person. The giving of notice by mail is complete upon the expiration

of 10 days after said deposit of such notice.

“Proof of giving such notice may be made by the certificate of any traffic or police officer or affidavit of any person over 18 years of age naming the person to whom such notice was given and specifying the time, place and manner of the giving thereof.” (Emphases added.)

As may be seen a “parking ticket” is the notice of a parking violation placed upon a vehicle described in subsection (1) of Vehicle Code section 41103. The issuance of a notice of a parking violation involves neither an arrest nor the obtaining of a written promise to appear. (See *People v. Weitzer* (1969) 269 Cal. App. 2d 274, 283, disapproved on other grounds; *People v. Superior Court* (Simon) (1972) 7 Cal. 3d 186, 206, fn. 14.)¹

Having ascertained exactly what a parking ticket is, we must next consider the authority, if any, of a city to employ persons to issue such a ticket. Vehicle Code section 21 provides:

“Except as otherwise expressly provided, the provisions of this code are applicable and uniform throughout the State and in all counties and municipalities therein, and no local authority shall enact or enforce any ordinance on matters covered by this code unless expressly authorized herein.”

¹ The preliminary steps in the prosecution of a parking violation are as follows:

(a) A notice of violation, i.e., a parking ticket is placed on the vehicle pursuant to Vehicle Code section 41102, subsection (1).

(b) A copy of the ticket is filed with the court in lieu of a complaint and shall constitute a complaint to which the defendant may plead guilty or nolo contendere. (Veh. Code, § 40513.)

(c) The vehicle’s registered owner may pay bail in the amount specified on the ticket. (Veh. Code, §§ 40309, 40309.5.)

(d) If bail is not paid and the registered owner does not appear at place and time set forth in the first notice, a second notice to appear is served on the registered owner of the vehicle pursuant to Vehicle Code section 41103, subsection (2).

(e) A warrant of arrest or a citation to appear may issue after a failure by the owner to appear in response to the second notice (Veh. Code, § 41103, subsection (2).)

(f) Owner may be arrested on the warrant (Pen. Code § 816) and may be released on his written promise to appear in court (Veh. Code, § 40500; Pen. Code, § 853.5 *et seq.*)

Accordingly, it has been held that “[t]raffic control on public highways is not a ‘municipal affair’ in the sense of giving the municipality (whether holding a constitutional charter or not) control thereof in derogation to the power of the state.” (*Mervyns v. Acker* (1961) 189 Cal. App. 2d 558, 561–562; *Wilton v. Henkin* (1942) 52 Cal. App. 2d 368, 372; 59 Ops. Cal. Atty. Gen. 329, 333 (1976); 53 Ops. Cal. Atty. Gen. 313 (1970); see also *City of LaFayette v. County of Contra Costa* (1979) 91 Cal. App. 3d 749, 755–756 as modified in Advance Reports, 92 Cal. App. 3d 8690.) The regulation of parking has been recognized judicially as falling within the realm of traffic control. (*Mervyns v. Acker*, *supra*, at p. 561.)

Where matters are covered by the Vehicle Code, no local regulation is permitted unless expressly authorized by the code. (*City of LaFayette v. County of Contra Costa*, *supra*, 91 Cal. App. 3d at p. 755.) However, where the Legislature has not covered matters with respect to traffic regulation in the Vehicle Code, the field as to those matters remains subject to municipal regulation. (*Wilton v. Henkin*, *supra*, 52 Cal. App. 2d at p. 372.)

In the area of parking, chapter 9 of division 11 of the Vehicle Code (§ 22500 *et seq.*) contains various provisions authorizing local regulation ‘of parking by ordinance. Thus, the Legislature has covered the field with respect to the enactment of parking regulations, and it has expressly authorized cities to enact certain types of parking ordinances. However, as to who may issue parking tickets, the Vehicle Code is silent. While Vehicle Code section 41103 provides that anyone over 18 years of age may serve the second notice to the registered owner of the vehicle, the section does not provide for the qualifications of the person who places the parking ticket on the vehicle.

A city council is authorized to hire employee to perform the functions of city government including law enforcement. (Gov. Code, § 36505.) Penal Code section 830.1 recognizes the authority of a city to employ police officers and bestows peace officer status on such officers. Penal Code section 836.5 provides that the governing body of a local agency² by ordinance may authorize its *public officers* and *employees*, who have the duty to enforce a statute or ordinance, to arrest persons for misdemeanor violations occurring in their presence. (See also Pen. Code, § 818.) By virtue of Penal Code Section 19d, this authorization would also apply to infractions. While the issuance of a parking ticket does not involve an arrest, Penal Code section 836.5 constitutes legislative recognition that law enforcement personnel of a city need not be peace officers in all cases. Since no provision of the Vehicle Code specifies who is authorized to issue parking tickets, it is our conclusion that a city may employ persons who are not peace officers to issue parking tickets. (*Walton v. Henkin*, *supra*, 52 Cal. App. 2d at p. 372.)

² The term local agency is not defined for purposes of Penal Code section 836.5, but it is apparent that it includes a city. (Sec Gov. Code, § 50001.)

Our conclusion in this respect is confirmed by reference to chapter 10 of division 11 of the Vehicle Code (§ 22650 *et seq.*) which concerns the removal of parked and abandoned vehicles. While some of the sections of that chapter provide the circumstances under which certain peace officers may remove illegally parked vehicles (see, e.g., §§ 22653–22656), section 22657 sets forth circumstances under which a “regularly employed and salaried employee who is engaged in the direction of traffic or enforcement of parking regulations when designated by the sheriff of any county or the chief of police of any city may remove a vehicle from a highway. Thus, the Legislature has recognized the authority of a city to employ a person who is not a peace officer for enforcement of parking regulations.

We also note that cities have long interpreted state law to authorize employment of nonpeace officer employees to check parking meters and issue parking tickets. This long-standing administrative interpretation is entitled to great weight. Additionally, this office has previously concluded in an unpublished opinion (I.L. 67–63, dated April 26, 1967) that a public employee need not be a peace officer to issue a parking ticket.

The only limitation in state law with respect to persons employed by a city in the enforcement of parking regulations of which we are aware, is that found in Vehicle Code section 22657. It would appear from the wording of that section, that in order to remove a vehicle from a highway in accordance with the provisions of that section, such an employee must be regularly employed and salaried and must be designated by the police chief for that duty. However, we have found no similar requirements with regard to employees who merely issue parking tickets. Accordingly, the employment and training of personnel in this respect is a matter which falls within the power of the city to regulate. (*Wilton Henkin, supra*, 52 Cal. App. 2d at p. 372

It is our conclusion, therefore, that a city is authorized to employ a person who is not a peace officer to issue notices of parking violations and that state law does not provide any training requirements for such person.
