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OPINION	:	No. 80-718
of	:	MAY 27, 1981
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The Honorable Ollie Speraw, Member of the Senate, has requested an opinion on the following questions:

1. Do the motor vehicle emission control system warranty regulations adopted by the California Air Resources Board, set forth in title 13, California Administrative Code, sections 2035 through 2046, pursuant to CARB Resolution 78–55, dated December 14, 1978, violate the antitrust statutes of this state or of the United States?

2. Is the California Air Resources Board authorized to adopt motor vehicle emission control system warranty regulations in the form and substance set forth in title 13, California Administrative Code, sections 2035 through 2046, pursuant to CARB Resolution 78–55, dated December 14, l978?

CONCLUSIONS

1. The motor vehicle emission control system warranty regulations adopted by the California Air Resources Board, set forth in title 13, California Administrative Code, sections 2035 through 2046, pursuant to CARB Resolution 78–55, dated December 14, 1978, do not violate the antitrust statutes of this state or of the United States.

2. The California Air Resources Board is authorized to adopt motor vehicle emission control system warranty regulations in the form and substance set forth in title 13, California Administrative Code, sections 2035 through 2046, pursuant to CARB Resolution 78–55, dated December 14, 1978.

ANALYSIS

The Legislature has found that the people of the State of California have a primacy interest in the quality of the physical environment in which they live, and that this physical environment is being degraded by the waste and refuse of civilization polluting the atmosphere, thereby creating a situation which is detrimental to the health, safety, welfare, and sense of well-being of the people of California. (§ 39000.)[1] As a result, the Legislature has expressly declared that this public interest shall be safeguarded by an intensive, coordinated state, regional, and local effort to protect and enhance the ambient air quality of the state. (§ 39001.) The control of vehicular sources of air pollution, except as otherwise provided by law, is the responsibility of the California Air Resources Board ("board," *post*). (§ 39002.) The board is the state agency charged with coordinating efforts to attain and maintain ambient air quality standards, to conduct research into the causes of and solution to air pollution, and to systematically attack the serious problem caused by motor vehicles, which is the major source of air pollution in many areas of the state. (§§ 39003, 39500, 43000.)

In order to accomplish these statutory purposes, the board is authorized to adopt and implement necessary and technologically feasible emission standards for new motor vehicles. (§ 43101; *Western Oil & Gas Assn. v. Orange County Air Pollution Control District* (1975) 14 Cal. 3d 411.) With respect to new motor vehicle emission control warranties, section 43204 provides:

> "(a) The manufacturer of each motor vehicle and each motor vehicle engine shall warrant to the ultimate purchaser and each subsequent purchaser that the motor vehicle or motor vehicle engine is:

[1] All section references are to the Health and Safety Code unless otherwise indicated.

"(1) Designed, built, and equipped so as to conform, at the time of sale, with the applicable emission standards specified in this part.

"(2) Free from defects in materials and workmanship which cause such motor vehicle or motor vehicle engine to fail to conform with applicable regulations for its useful life as determined pursuant to subdivision (b).

"(b) As used in subdivision (a), 'useful life' of a motor vehicle or motor vehicle engine means:

"(1) In the case of light-duty motor vehicles, and motor vehicle engines used in such motor vehicles, a period of use of five years or 50,000 miles, whichever first occurs.

"(2) In the case of any other motor vehicle or motor vehicle engine, the period of use set forth in paragraph (1) of this subdivision, unless the state board determines that a period of use of greater duration or mileage is appropriate."

The board is expressly authorized to do such acts, including the adoption, in accordance with the Administrative Procedure Act,[2] of standards, rules, and regulations, as may be necessary for the proper execution of the powers and duties conferred upon it. (§ 39600, 39601.) Pursuant to such authority and for the purpose of interpreting and making specific the provisions of section 43204, the board, by CARB Resolution 78–55, dated December 14, 1978, promulgated regulations set forth in title 13, California Administrative Code, sections 2035 through 2046.[3]

Rule 2036, subdivision (a) provides:

"The manufacturer of each motor vehicle or motor vehicle engine shall:

"(a) Warrant to the ultimate purchaser and each subsequent purchaser that the vehicle or engine is:

"(1) Designed, built, and equipped so as to conform, at the time of sale, with all applicable regulations adopted by the Air Resources Board

[2] *Cf*. Government Code section 11342 *et seq*., formerly Government Code section 11371 *et seq*.

[3] Hereinafter, specific sections of the California Administrative Code are referred to as "rules."

pursuant to its authority in Chapters 1 and 2, Part 5, Division 26 of the Health and Safety Code; and

"(2) Free from defects in materials and workmanship which cause the failure of a 'warranted part' to be identical in all material respects to that part as described in the vehicle or engine manufacturer's application for certification.

With regard to the repair or replacement of any warranted part, rule 2037 provides in part as follows:

"Subject to the conditions and exclusions of Section 2041, the warranty on emissions-related parts shall be interpreted as follows:

"(d) Repair or replacement of any 'warranted part' under the warranty provisions of this article shall be performed at no charge to the vehicle or engine owner, *at a service establishment authorized by the vehicle or engine manufacturer* to perform warranty repairs (hereinafter referred to as a 'warranty station'), except in the case of an emergency when a 'warranted part' or a 'warranty station' is not reasonably available to the vehicle or engine owner. In an emergency, repairs may be performed at any available service establishment, or by the owner, using any replacement part. The manufacturer shall reimburse the owner for his or her expenses, not to exceed the manufacturer's suggested retail price for all warranted parts replaced and labor charges based on the manufacturer's recommended time allowance for the warranty repair and the geographically appropriate hourly labor rate. Heavy-duty vehicle and engine manufacturers shall establish reasonable emergency repair procedures which may differ from those specified in this subsection. A vehicle or engine owner may reasonably be required to keep receipts and failed parts in order to receive compensation for warranted repairs reimbursable due to an emergency, provided the manufacturer's written instructions advise the owner of his obligation.

"(e) Notwithstanding the provisions of Subsection (d). warranty services or repairs shall be provided at all of a manufacturer's dealerships which are franchised to service the subject vehicles or engines.

"(f) The vehicle or engine owner shall not be charged for diagnostic labor which leads to the determination that a 'warranted part' is in fact defective, provided that such diagnostic work is performed at a 'warranty station."

" . . . . . ." (Emphasis added.)

The first inquiry, whether the subject regulations violate state or federal antitrust laws, is directed at the provisions of rule 2037.[4] Specifically, it has been suggested that such regulations have created "an anti-competitive and monopolistic situation in the automotive aftermarket to the detriment of the independent members of that industry and to the consumers which it serves."

We examine first the question whether the rule is authorized by statute. If not, the rule is void. (Discussion, infra.) If, on the other hand, the rule is authorized by a statute ostensibly in conflict with another state statute, then the applicable principle is that the more specific enactment will control over the more general one. (*Mitchell v. County Sanitation Dist.* (1938) 164 Cal. App. 2d 133, 141; 62 Ops. Cal. Atty. Gen. 106, 108 (1979).)

Rules adopted by an administrative agency must be within the scope of authority conferred by the relevant enabling legislation, and in accordance with standards prescribed by other provisions of law. (Gov. Code, § 11342.1; *Selby v. Department of Motor Vehicles* (1980) 110 Cal. App. 3d 470, 474–475.) The fundamental precepts relating to the sufficiency of quasi-legislation were reiterated in *Agricultural Labor Relations Board v. Superior Court* (1976) 16 Cal. 3d 392, 411, as follows:

> "An administrative regulation, however, must also comport with various statutory prerequisites to validity. At the outset we take note of certain principles which govern our consideration of the matter; although these rules have been often restated, it would be well to remember that they are not merely empty rhetoric. First, our task is to inquire into the legality of the challenged regulation, not its wisdom. (Morris v. Williams (1967) 67 Cal. 2d 733, 737 [63 Cal. Rptr. 689, 433 P. 2d 697].) Second, in reviewing the legality of a regulation adopted pursuant to a delegation of legislative power, the judicial function is limited to determining whether the regulation (1) is within the scope of the authority conferred' (Gov. Code, § 11373) [5] and (2) is 'reasonably necessary to effectuate the purpose of the statute' (Gov. Code, § 11374).[6] (Footnote omitted.) Moreover, 'these issues do not present a matter for the independent judgment of an appellate tribunal; rather, both

[4] The consideration and analysis hereinbelow set forth in connection with rule 2037 also apply to the similar provisions as to designated warranty stations in rule 2039.

[5] See now Government Code section 11342.1.

[6] See Government Code section 11342.2.

> come to this court freighted with the strong presumption of regularity accorded administrative rules and regulations.' (*Ralphs Grocery Co. v. Reimel* (1968) 69 Cal. 2d 172, 175 [70 Cal. Rptr. 407, 444 P. 2d 79].) And in considering whether the regulation is 'reasonably necessary' under the foregoing standards, the court will defer to the agency's expertise and will not 'superimpose its own policy judgment upon the agency in the absence of an arbitrary and capricious decision. (*Pitts v. Perluss* (1962) 58 Cal. 2d 824, 832 [27 Cal. Rptr. 19, 377 P. 2d 83].)"

Nevertheless,

> "It is settled that 'Administrative regulations that violate acts of the Legislature are void and no protestations that they are merely an exercise of administrative discretion can sanctify them. They must conform to the legislative will if we are to preserve an orderly system of government.' (*Morris v. Willams* (1967) *supra*, 67 Cal. 2d 733, 737.) Nor is the motivation of the agency relevant: 'It is fundamental that an administrative agency may not usurp the legislative function, no matter how altruistic its motives are.' (*City of San Joaquin v. State Bd. of Equalization* (1970) 9 Cal. App. 3d 365, 374 [88 Cal. Rptr. 121].)" (*Id*., at p. 419.)

Thus, administrative regulations that alter or amend the statute or enlarge or impair its scope are void. (*Morris v. Williams* (1967) 67 Cal. 2d 733, 748; *Harris v. Alcoholic Bev. etc. App. Bd.* (1964) 228 Cal. App. 2d 1, 6; *California School Employees Assn. v. Personnel Commission* (1970) 3 Cal. 3d 139; *Duskin v. State Board of Dry Cleaners* (1962) 58 Cal. 2d 155; *Schenley Industries, Inc. v. Munro* (1965) 237 Cal. App. 2d 106.)

In determining whether the proposed regulations fall within the coverage of the delegated power, the sole inquiry is whether the department reasonably interpreted the legislative mandate. (*Agricultural Labor Relations Board v. Superior Court*, *supra*, 16 Cal. 3d at p. 412; *Ralphs Grocery Co. v. Reimel* (1968) 69 Cal. 2d 172, 176.) Neither section 43204 nor any other provision of law expressly authorizes the board to restrict warranty repair or replacement service to an establishment authorized by the vehicle or engine manufacturer.

A legislative decision to restrict industrial competition is, in our view, one of fundamental policy. The Legislature itself must resolve such truly fundamental issues. (*Kugler v. Yocum* (1968) 69 Cal. 2d 371, 375–376.) When the Legislature does purport to confer power relating to the execution of a decision to limit competition, the courts insist upon stringent standards to contain and direct the exercise of such delegated authority.

(*Wilke v. Holzheiser, Inc. v. Dept. of Alcoholic Bev. Control* (1966) 65 Cal. 2d 349, 366–367.)

With regard to the regulations in question, however, the board has merely afforded to the manufacturer which is required to pay for the warranty repair or replacement the prerogative of designating, except in the case of emergency, the establishments which will perform such services. While an administrative agency, in executing a certain statutory responsibility, may be required to take heed of, sometimes effectuate and other times not thwart other valid statutory governmental policies (*Zabel v. Tabb* (1970) 430 F.2d 199, 209) and specifically to take into account any antitrust implications and competitive considerations when it weighs the public interest (*cf. Industrial Communications Systems, Inc. v. Public Utilities Com.* (1978) 22 Cal. 3d 572, 581; *Northern California Power Agency v. Public Utilities Com.* (1971) 5 Cal. 3d 370, 377; and *cf. Motor and Equipment Mfrs. Ass'n., Inc. v. Environmental Protection Agency* (1979) 627 F.2d 1095, 1116–1119) the subject regulations do not, in our view, have any significant anticompetitive effects which would constitute an unreasonable restraint of trade (*cf. Main County Bd. of Realtors, Inc. v. Palsson* (1976) 16 Cal. 3d 920, 930) in violation of the Cartwright Act (Bus. & Prof. Code, § 16720 *et seq*.) or of public po1icy, nor is there any indication that any such implications and considerations were not taken into account by the board. We find that the board's regulations constitute a reasonable interpretation of the enabling legislation and fall readily within its scope.

Even assuming, however, that rule 2037 does establish a limited restraint of trade, it is concluded, on alternative grounds, that the rule violates neither state nor federal antitrust laws. Neither the Sherman Act, 15 United States Code section 1, *et seq*., nor the Cartwright Act, *supra*, constitutes a restriction upon a state in the exercise of its governmental regulatory powers. (*New Motor Vehicle Bd. of Cal. v. Orrin W. Fox Co.* (1978) 439 U.S. 96, 109–111; *Exxon Corp. v. Governor of Maryland* (1978) 437 U.S. 117, 133; *Lafayette v. Louisiana Power and Light Co*. (1978) 435 U.S. 389, 409; *Goldfarb v. Virginia State Bar* (1975) 429 U.S. 773, 791; *Widdows v. Koch* (1968) 263 Cal. App. 2d 228, 235; and *cf. People ex rel. Freitas v. City etc. San Francisco* (1979) 92 Cal. App. 3d 913, 920–921.)

The second inquiry, whether the board is authorized to adopt the subject regulations, is focused upon the provisions of rule 2039:

> "This section shall apply to passenger cars, light-duty trucks and medium-duty vehicles required to be inspected pursuant to the Motor Vehicle Inspection Program (MVIP) established pursuant to Sections 9889.5 *et seq*., of the California Business and Professions Code.

"(a) The owner of such a vehicle which fails in the inspection during its useful life may choose to have the vehicle repaired at a warranty station.

"(1) *If the warranty station identifies that the M VIP failure was caused by the failure or malfunction of a 'warranted part,' then the vehicle manufacturer shall be liable for all expenses involved in detecting and correcting the part failure or malfunction*, unless the warranty station demonstrates that the part failure or malfunction was caused by abuse, neglect, or improper maintenance as specified in Subsection 204 1(a), or was caused by an improper adjustment as specified in Subsection 204 1(b).

"(2) If the warranty station demonstrates that the MVIP failure was caused by one or more of the conditions excluded from warranty coverage pursuant to Section 2041, the vehicle owner shall be liable for all diagnostic and repair expenses. Such expenses shall not exceed the maximum repair costs permissible under the MVIP.

"(3) If the warranty station identifies that the MVIP failure was caused by one or more defects covered under warranty pursuant to these regulations in combination with one or more conditions excluded from warranty coverage pursuant to Section 2041, then the vehicle owner shall not be charged for that portion of the diagnostic and repair costs related to detecting and repairing the warrantable defects.

"(b) In the alternative, the owner of a vehicle which fails an MVIP inspection may choose to have the vehicle repaired somewhere other than at a warranty station. If a warrantable defect is found, the vehicle owner may deliver the vehicle to a warranty station and have the defect corrected free of charge. The vehicle manufacturer shall not be liable for any diagnostic expenses incurred at a service establishment not authorized to perform warranty repairs, except in the case of an emergency as specified in Subsection 2037(d)." (Emphasis added.) Specifically, is the board authorized under section 43204 to establish a warranty for failure, caused by the "failure or malfunction" of a warranted part, of a vehicle to pass inspection during its useful life?[7]

Section 43204, subdivision (a) provides for a warranty that the vehicle or engine is (1) *designed so as to conform at the time of sale* with applicable standards, and

[7] The term "useful life" and warranted part" are defined in rule 2035, subdivision (c)(1) and (2), respectively.

(2) free from *defects in material and workmanship* which would cause it to fail to conform with applicable standards for its useful life. To this extent, the provisions of rule 2036, subdivision (a)(1) and (2), providing for *design*, and *defect* or product warranties, are clearly authorized. If, however, rule 2039 provides a warranty for failure to *perform* at any time *during the useful life* of the vehicle or engine *without regard to any defect in material or workmanship*, then it constitutes a substantial departure from, and finds no counterpart in the enabling statutes. In our view, based on the express and specific statutory terms and on the provisions of concomitant federal legislation hereinbelow set forth, the Legislature neither envisioned nor intended to authorize any such performance warranty.

Section 43204 is patterned after the provisions of the federal Clean Air Amendments of 1970 ("Act," post), Public Law 91–604, section 8(a), 84 Statutes 1676, as amended, Public Law 95–95, 91 Statutes 754, and Public Law 95–190, section 14(a), 91 Statutes 1403. The Act, as amended (tit. 42, U.S.C. § 7401 *et seq*.) provides in pertinent part (§ 7541, subd. (a)(1)) as follows:

> "Effective with respect to vehicles and engines manufactured in model years beginning more than 60 days after December 31, 1970, the manufacturer of each new motor vehicle and new motor vehicle engine shall warrant to the ultimate purchaser and each subsequent purchaser that such vehicle or engine is (A) designed, built, and equipped so as to conform at the time of sale with applicable regulations under section 7521 of this title, and (B) free from defects in materials and workmanship which cause such vehicle or engine to fail to conform with applicable regulations for its useful life (as determined under section 7521(d) of this title)."

In addition to the provisions of subdivision (a)(1), subdivision (b) of section 7541 provides:

> "If the Administrator determines that (i) there are available testing methods and procedures to ascertain whether, when in actual use throughout its useful life (as determined under section 7521(d) of this title), each vehicle and engine to which regulations under section 7521 of this title apply complies with the emission standards of such regulations, (ii) such methods and procedures are in accordance with good engineering practices, and (iii) such methods and procedures are reasonably capable of being correlated with tests conducted under section 7525(a)(1) of this title, then—
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> "(1) he shall establish such methods and procedures by regulation, and
> "(2) at such time as he determines that inspection facilities or equipment are available for purposes of carrying out testing methods and procedures established under paragraph (1), he shall prescribe regulations which shall

require manufacturers to warrant the emission control device or system of each new motor vehicle or new motor vehicle engine to which a regulation under section 7521 of this title applies and which is manufactured in a model year beginning after the Administrator first prescribes warranty regulations under this paragraph (2). The warranty under such regulations shall run to the ultimate purchaser and each subsequent purchaser and shall provide that if—

"(A) the vehicle or engine is maintained and operated in accordance with instructions under subsection (c)(3) of this section,

"(B) *it fails to conform at any time during its useful life* (as determined under section 7521(d) of this title) to the regulations prescribed under section 7521 of this title, and

"(C) such nonconformity results in the ultimate purchaser (or any subsequent purchaser) of such vehicle or engine having to bear any penalty or other sanction (including the denial of the right to use such vehicle or engine) under State or Federal law,

"then such manufacturer shall remedy such nonconformity under such warranty with the cost thereof to be borne by the manufacturer. No such warranty shall be invalid on the basis of any part used in the maintenance or repair of a vehicle or engine if such part was certified as provided under subsection (a)(2) of this section. For purposes of the warranty under this subsection, for the period after twenty-four months or twenty-four thousand miles (whichever first occurs) the term 'emission control device or system' means a catalytic converter, thermal reactor, or other component installed on or in a vehicle for the sole or primary purpose of reducing vehicle emissions. Such term shall not include those vehicle components which were in general use prior to model year 1968." (Emphasis added.)

Unlike subdivision (a)(1) of section 7541, providing for design and defect warranties, subdivision (b), providing for a performance warranty, finds no counterpart in the California statutes. Inasmuch as section 43204 was patterned after section 7541, subdivision (a)(1) of the federal Act, and based on the similarity of language and obvious identity of purpose of the state and federal provisions, the state statute must be construed not independently but in conjunction with its federal counterpart. (*Pearson v. State Social Welfare Board* (1960) 54 Cal. 2d 184, 214; 62 Ops. Cal. Atty. Gen. 798, 803 (1979).) It is apparent that section 7541, subdivision (a)(1) was not intended or understood to encompass a performance warranty which is the specific subject of subdivision (b). It will ordinarily

be presumed that the Legislature intended the language of its enactment on the same or analogous subject, framed in identical terms, to be given a like interpretation. (*Cf. Kaplan's Fruit & Produce Co. v. Superior Court* (1979) 26 Cal. 3d 60, 65; *Agric. Labor Rel. Bd. v. Superior Court* (1976) 16 Cal. 3d 392, 413–414; *People ex rel. Mosk v. National Research Co. of Cal.* (1962) 201 Cal. App. 2d 765, 773.) Thus, the omission by the Legislature of any counterpart to section 7541, subdivision (b) of the federal Act was, in our view, neither inadvertent nor based on any misconception as to the scope of subdivision (a)(1), or intention to ascribe to such terms a different or expanded significance.

Whenever a state agency is authorized by statute to adopt regulations to implement, interpret, make specific or otherwise carry out the provisions of the statute, no regulation is valid or effective unless consistent and not in conflict with the statute and reasonably necessary to effectuate its purpose. (Gov. Code, §11342.2; *Morris v. Williams* (1967) 67 Cal. 2d 733, 748; 63 Ops. Cal. Atty. Gen. 95, 101 (1980).) An administrative agency may not, by means of a regulation or otherwise, alter, amend, enlarge or impair the scope of the statute. (Gov. Code, S 11342.1; *Morris v. Williams*, *supra*; Selby v. *Department of Motor Vehicles* (1980) 110 Cal. App. 3d 470, 474–475; 61 Ops. Cal. Atty. Gen. 424, 438 (1978).) While the board has been granted broad statutory powers (*Western Oil & Gas Assn. v. Orange County Air Pollution Control District, supra*, 14 Cal. 3d at p. 414), it is a creature of statute and possesses only such powers as are expressly granted or fairly implied from the law of its creation. (*Cal. Toll Bridge Authority v. Kuchel* (1952) 40 Cal. 2d 43, 53; 63 Ops. Cal. Atty. Gen. 95, 101, *supra*.) For the reasons hereinabove set forth, the board is not authorized under section 43204 to establish a warranty for failure, caused by the failure or malfunction of a warranted part, of a vehicle to pass inspection during its useful life. The question remains, however, whether rule 2039 does, by its terms, purport to establish such a warranty. The rule is not a model of clarity. Do the words "failure or malfunction" of a warranted part connote a new and expanded warranty, in addition to that provided in rule 2037, in the nature of a performance warranty?

Rule 2039 applies to vehicles subject to the Motor Vehicle Inspection Program. (Bus. & Prof. Code, § 9889.50 *et seq*.) The program, designed and adopted by the Department of Consumer Affairs, provides for the mandatory periodic emission inspection of all motor vehicles registered within the South Coast Air Basin. (Bus. & Prof. Code, § 9889.51, subd. (a).) Subdivision (b) of section 9889.51 provides:

> "The emission inspection of each motor vehicle shall include all of the following:
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> "(1) A determination that all emission control equipment and devices required by state and federal law *are installed and functioning correctly.*

"(2) A measurement of the vehicle's exhaust emissions as determined by tests adopted by the department. In adopting a test procedure, the department shall consider, among other things, the cost of performing the test, the time required to conduct the test, the reliability of the test to provide accurate measurements of various air pollutants, and the ability of the automotive industry to interpret the test data accurately.

"(3) A determination as to whether the vehicle complies with the emission standards for that vehicle's class and model year as prescribed by the State Air Resources Board pursuant to Section 43010 of the Health and Safety Code.

"(4) Where applicable, a written indication to the vehicle's owner of the probable cause of any malfunction or misadjustment responsible for the vehicle's failure to comply with such standards and of any maintenance or repairs recommended to correct such malfunction or misadjustment." (Emphasis added.)

Thus, a vehicle would fail the MVIP, inspection if its emission control equipment and devices were not "functioning correctly" *for whatever reason*, i.e., without regard to any defect or design deficiency. Rule 2039, subdivision (a)(1) provides that if the owner of a vehicle which fails inspection due to the "failure or malfunction" of a warranted part has the vehicle repaired at a warranty station, "the vehicle manufacturer shall be liable for all expenses involved in detecting and correcting the part failure or malfunction," except as otherwise expressly provided. Interpreted literally, it would appear that the rule purports to establish a performance warranty, in excess of the scope of the board's statutory charge.

Taken in the context of the rule as a whole, there is, nevertheless, sufficient basis for determination that it was not intended and should not be understood as an expansion upon the warranties authorized under section 43204 and established under rules 2036 and 2037. Rule 2039, subdivision (a)(3) provides, for example, that if the inspection failure was caused by one or more *defects covered under warranty pursuant to these regulations* in combination with one or more conditions excluded from coverage, then the vehicle owner shall not be charged for that portion of the diagnostic and repair costs related to the detection and repair of the *warrantable defects*. Further, subdivision (b) provides: that if the owner of a vehicle which fails inspection elects to have the vehicle repaired somewhere other than a warranty station, and a *warrantable defect* is found, he may deliver the vehicle to a warranty station and have the *defect* corrected free or charge. Thus, while the term "failure or malfunction" in subdivision (a)(1) is patently ambiguous, it is to be understood contextually in reference to the underlying defect warranty established in rules 2036 and 2037, and otherwise referred to in subdivisions (a)(3) and (b) or rule 2039. So

interpreted, it is concluded that the board is authorized to adopt motor vehicle emission control system warranty regulations in the form and substance set forth in CARB Resolution 78–55.

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