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OPINION	:	No. 80-802
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of	:	<u>FEBRUARY 10, 1981</u>
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The Honorable Daniel V. Blackstock, County Counsel of Butte County, has requested~ an opinion on a question which we have phrased as follows:

Does the governing board of a high school district have the authority to promulgate a rule requiring students who drive to school to park only in school lots or in designated areas on public streets for the purpose of eliminating parking congestion on the public streets near the school?

CONCLUSION

The governing board of a high school district does not have the authority to promulgate a rule requiring students who drive to school to park in school lots or in designated areas on public streets for the purpose of eliminating parking congestion on the public streets near the school.

ANALYSIS

The instant inquiry concerns the authority of a governing board of a high school district to regulate student parking on public streets. We shall first consider the authority of a school board to regulate generally. Article IX, section 14 of the California Constitution provides in pertinent part:

“The Legislature may authorize the governing boards of all school districts to initiate and carry on any programs, activities, or to otherwise act in any manner which is not in conflict with the laws and purposes for which school districts are established.”

Pursuant to this grant of authority, the Legislature has enacted Education Code section 35160 which provides:

“On and after January 1, 1976, the governing board of any school district may initiate and carry on any program, activity, or may otherwise act in any manner which is not in conflict with or inconsistent with, or preempted by, any law and which is not in conflict with the purposes for which school districts are established.”

Education Code section 35161 provides:

“The governing board of any school district may execute any powers delegated by law to it or to the district of which it is the governing board, and shall discharge any duty imposed by law upon it or upon the district of which it is the governing board.”

The first sentence of Education Code section 35291 provides:

“The governing board of any school district shall prescribe rules not inconsistent with law or with the rules prescribed by the State Board of Education, for the government and discipline of the schools under its jurisdiction.”

In 60 Ops. Cal. Atty. Gen. 177 (1977) we had occasion to analyze the authority of a school district with respect to employment of crossing guards. We concluded in that opinion, that under the provisions of former section 7503.5 of the Education Code, which was recodified as section 35160, the constraints imposed on the governing board of a school district with respect to adoption of a rule are that it shall not be in conflict,

inconsistent, or preempted by law, or in conflict with the purposes for which school districts are established.

We noted in that opinion (at pp. 178–179) that article IX, section 14, was amended at the general election on November 7, 1972. The Detailed Analysis by the Legislative Counsel in the voters’ pamphlet (at p. 14) explained the purpose of the amendment.¹

“Under the existing provisions of the Constitution, statutory authority is required to permit school boards to initiate and carry out programs or activities.

“This measure would -amend the Constitution to authorize the Legislature, commencing July 1, 1973, to enact legislation to permit school boards to initiate and carry on any programs, activities, or to otherwise act in any manner, not in conflict with the laws and purposes for which school districts are established.

“Thus, the Legislature would not have to grant specific authority for a school board to carry out a particular activity, but could authorize school boards to carry out any activity *if it is related to school purposes* and is not prohibited by law.” (Emphasis added.)

Thus it is clear that the phrase “not in conflict with the laws and purposes for which school districts are established” in section 35160 was intended to be a grant of general authority to school boards to regulate on matters “related to school purposes.”

In 60 Ops. Cal. Atty. Gen., *supra*, at p. 181 we concluded that, “[t]he hiring of school crossing guards does not appear to be a program or activity directed toward educational needs.” We concluded, therefore, that school districts were not authorized to employ such guards by virtue of the general grant of authority now contained in section 35160. We noted that this conclusion was “supported by the complete absence of any indication that the Legislature intended that school districts be considered as an agency to provide crossing protection.” (60 Ops. Cal. Atty. Gen., *supra*, at p. 182.) Subsequent to that opinion the Legislature enacted Education Code sections 45450–45452 giving districts specific authority to employ school crossing guards.

¹ Use of the election brochure is an appropriate aid in construing constitutional amendments. (*White v. Davis* (1975) 13 Cal. 3d 757, 775, fn. 11.)

For reasons stated below, we conclude that a school district governing board lacks authority to regulate student parking on the public street for the purpose of relieving parking congestion in the area of the school.

It is clear that the governing board of a school district has no authority to directly regulate parking on public streets. 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 the matters covered by this code unless expressly authorized herein.”

Accordingly, it has been held that no local regulation of traffic on public streets and highways is permitted unless expressly authorized by the Vehicle Code. (*City of Lafayette v. County of Contra Costa* (1979) 91 Cal. App. 3d 749, 755; see also *Mervynne 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. 329.1–333 (1976).)

The regulation of parking has been recognized judicially as falling within the realm of traffic control. (*Mervynne v. Acker, supra*, at p. 561.) In the area of parking, chapter 9 of division 11 of the Vehicle Code (§ 22500 *et seq.*) sets forth various provisions authorizing “local authorities” to make certain regulations regarding parking on public streets by ordinance. “‘Local authorities’ means the legislative body of every county or municipality having authority to adopt local police regulations.” (Veh. Code, § 385.) Thus, the chapter does not authorize school boards to enact parking regulations with respect to public streets.

The only provision we have found specifically authorizing a school board to enact regulations regarding parking is Vehicle Code section 21113 which authorizes the governing board or officer of a public school to permit traffic upon school driveways, paths and grounds subject to such conditions and regulations as may be imposed by such board or officer.

The Legislature has addressed the problem of parking congestion in Vehicle Code section 22507 (as amended, Stats. 1980, ch. 140) which authorizes cities and counties to prohibit or restrict parking on public streets and specifically provides them with the authority to permit “preferential parking privileges” to residents and merchants, and their guests on certain streets. Thus, the Legislature has placed the authority in the legislative body of counties and municipalities and not in the governing board of the local school district.

As indicated above, in our view, the general grant of authority in Education Code section 35160 is limited to regulation related to school purposes. (60 Ops. Cal. Atty. Gen. at p. 181, *supra*.) School purposes do not include the regulation of parking on a public street. Unlike the matter of the employment of crossing guards, there is no express authorization to school districts to regulate such parking. In contrast the statutes with respect to parking regulation make no provision for regulation by school districts.

We do not believe a school district board may limit or prohibit student parking on the public streets to eliminate traffic congestion under the guise of controlling the conduct of students. Education Code section 44807 provides in pertinent part:

“Every teacher in the public school shall hold pupils to strict account for their conduct on the way to and from the school”

By virtue of that section it is clear that student misconduct—conduct which has an adverse effect on the education process—on the way to and from school is a proper field of regulation for a school board. (48 Ops. Cal. Atty. Gen. 4, 7 (1966); *cf. Kerwin v. County of San Mateo* (1959) 176 Cal. App. 2d 304, 309.) However, we have been presented with no facts, nor are we aware of any, which suggest that parking an automobile in an otherwise lawful manner on a public street could constitute conduct adversely affecting the educational process. Public streets belong to the people of the state and it is the right of every citizen to use such streets subject to reasonable regulation by the Legislature. (*City of Lafayette v. County of Contra Costa, supra*, 91 Cal. App. 3d at p. 753; 59 Ops. Cal. Atty. Gen. 329, 331.) A high school student possessing a valid driver’s license has the right to park his or her vehicle on the public street in accordance with state law and local ordinances. Such conduct, itself, would not be inimical “to the preservation of order, decency, decorum, and good government in the public schools.” (48 Ops. Cal. Atty. Gen., *supra*, at p. 7.)

It has been suggested that the elimination of parking congestion could reduce the possibility of injury to students on their way to and from school. We have not been presented with any facts suggesting this to be the case. Nevertheless, we note that as a general rule districts are not under an obligation to supply traffic protection to pupils en route between home and school. (*Wright v. Arcade School District* (1964) 230 Cal. App. 2d 272, 278-279.)² However, we recognize that a school may be held liable for negligent supervision of students *on school grounds* which results in injuries on the public street. (See *Hoyem v. Manhattan Beach City School District* (1978) 22 Cal. 3d 508, 513; *Satariano v. Sleight* (1942) 54 Cal. App. 2d 278, 282–285.)

² This rule must be considered in light of the subsequent statutory authorization in Education Code sections 45450–45452 with respect to the employment of crossing guards.

In 24 Ops. Cal. Atty. Gen. 143 (1954), we concluded that while ordinarily a school district is not liable for injuries to pupils in going to and returning from school, “. . . it is conceivable that the physical situation could exist under which our courts might hold a school district liable for injuries to pupils resulting from a traffic accident on a street contiguous to a school building.”³ In that opinion we stated (at p. 146):

“We feel that normally no responsibility rests on a school district to provide protection to pupils from traffic hazards. However, in extreme situations some means of regulation of the pupils might be called for.

“Youthful students cannot be callously turned out of the school building to face the hazards of traffic adjacent to the school site in such cases without supervision, any more than they should be allowed to indulge in uncontrolled activities during the lunch hour or recess period. The school authorities have the duty to control the conduct of the students but not to control traffic.

“The problem presented is not one to be solved by the police to the exclusion of the school authorities or by the school authorities to the exclusion of the police. The safety of school children is a community problem and must be shared by community agencies, police and school, in active cooperation for the common good.”

Thus, is an extreme case where students parking on a public street for some reason presents a particular hazard to the safety of the students in the area adjacent to the school grounds, the school authorities would have the duty to control the conduct of the students in order to eliminate a reasonably foreseeable risk of injury. Conceivably, this duty could include taking steps to prevent parking of vehicles in places adjacent to a school which would create a foreseeable risk of injury. Where this involves a public street, the problem should be solved by the cooperative efforts of school authorities and the local authorities responsible for traffic control.

In summary, it is our conclusion that the governing board of a high school district does not have authority to promulgate a rule requiring students who drive to school to park in school lots or in designated areas on public streets for the purpose of eliminating parking congestion on the public streets near the school.

³ This pronouncement must also be considered in light of Education Code sections 45450–45452 (see fn. 2).