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OPINION	:	No. 81-205
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The Honorable Nolan Frizzelle, Member of the California Assembly, has requested an opinion on a question we have paraphrased as follows:

Does a city have the authority to-prohibit the parking of vehicles on that portion of private roadways designated as fire lanes by city ordinance which are to be kept unobstructed for fire emergencies?

CONCLUSION

A city has the authority to prohibit the parking of vehicles on that portion of private roadways designated as fire lanes by city ordinance which are to be kept unobstructed for fire emergencies.

ANALYSIS

We are-informed that the fire departments of a number of cities are encountering an escalating problem with vehicles parked on private ways which restrict the access of fire-fighting apparatus to certain structures. We are asked whether a city has the authority to enact an ordinance prohibiting the parking of vehicles on private roadways which have been designated fire lanes and which are to be kept unobstructed for fire emergencies.

We assume for purposes of this opinion that the designation of the private ways as fire lanes constitutes a reasonable regulation of the use of private property under the police power. A regulation which deprives the owner of substantially all reasonable use of his property is unconstitutional and amounts to a taking for which just compensation must be made. (See *Agins v. Cay of Tiburon* (1979) 24 Cal. 3d 266, 272–273, 277.)

Article XI, section 11, of the California Constitution provides:

> "Any . . . city . . . may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations nor in conflict with general laws."

(See also Gov. Code, § 37100.)

A city's police power under the constitutional provision is as broad as the police power exercisable by the Legislature itself except that it can be applied only within the city's own territory and is subject to displacement by general state law. (*Birkenfeld v. City of Berkeley* (1976) 17 Cal. 3d 129, 140; *Stanislaus Co. etc. Assn. v. Stanislaus* (1937) 8 Cal. 2d 378, 383–384.) In order to have a valid exercise of the police power in enacting an ordinance, the object of the ordinance must be one for which the police power may be properly invoked, and the ordinance must bear a reasonable relation to that objective. (*Sunset Amusement Co. v. Board of Police Commissioners* (1972) 7 Cal. 3d 64, 72; *Barry v. City of Oceanside* (1980) 107 Cal. App. 3d 257, 261; *Sievert v. City of National City* (1976) 60 Cal. App. 3d 234, 236; see *Miller v. Board of Public Works* (1925) 195 Cal. 477, 484.) We have no difficulty in concluding that the subject ordinance is concerned with the public safety or fire safety, an objective for which the police power may be properly invoked. (See *People v. Greene* (1968) 264 Cal. App. 2d 774, 778.)

Furthermore, assuming that the portion of the private ways which have been designated as fire lanes provide access for fire-fighting equipment to structures not readily accessible by public roads, :he prohibition of parking on such fire lanes bears a reasonable relation to that objective A fire hazard is defined as 'anything or any act which increases

or may cause an increase of, the hazard or menace of fire, or which may *obstruct, delay, or hinder,* or may become the cause of any obstruction, delay, or hindrance to the prevention or extinguishment of fire." (Emphasis added; Health & Saf. Code, § 12510; Cal. Admin. Code, tit. 19, § 3.14.) Therefore any obstruction such as a parked vehicle on that portion of a private roadway designated as a fire lane, which causes any delay or hindrance "to the prevention or extinguishment of fire," would constitute a "fire hazard" and a public nuisance. (See *City of Bakersfield v. Miller* (1966) 64 Cal. 2d 93, 100; *City etc. of San Francisco v. City Investment Corp.* (1971) 15 Cal. App. 3d 1031, 1041–1042.) It is well-established that in the exercise of its police powers, a city may enact an ordinance to abate a public nuisance. (Thain v. City of Palo Alto (1962) 207 Cal. App. 2d 173, 187; see *People v. Greene*, *supra*. 264 Cal. App. 2d at pp. 776–778.) The extent to which a city may invoke its police power in order to reduce a fire hazard is shown by the cases and statutes on weed abatement. (See *Thain*, *supra*, 207 Cal. App. 2d at pp. 187–188, Gov. Code, §§ 3680.1 *et seq*., 39501, 39502, 39561, 39564, 39572, 39577.)

Having determined that a city may properly invoke its police power to enact an ordinance prohibiting the parking of vehicles on that portion of private roadways which have been designated as fire lanes, we must determine whether the city would be preempted from enacting such ordinance by state law. A city's police power is subject to displacement by general state law or federal law (*City of Lafayette v. County of Contra Costa* (1979) 91 Cal. App. 3d 749, 754.) When the Legislature has adopted a general scheme for the regulation of a particular field, the entire control over whatever phases of the field are covered by state legislation ceases as far as a city is concerned. (*In re Lane* (1962) 58 Cal. 2d 99, 102; *Pipoly v. Benson* (1942) 20 Cal. 2d 366, 371; 55 Ops. Cal. Atty. Gen. 178, 179 (1972).)

Upon enactment of the Vehicle Code in 1935, the Legislature preempted local legislation in the area of motor vehicle traffic regulation and control. (*City of Lafayette*, *supra*, 91 Cal. App. 3d at p. 755.) Former Section 458 of the Vehicle Code[2][1] stated:

> "The provisions of this division [IX Traffic Laws] 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 division unless expressly authorized herein."

In 1959, the Legislature expanded its preemption language by enacting section 21 which currently provides:

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[1] [2]Hereafter all section references will be to the Vehicle Code unless otherwise specified.

> "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." (Added by Stats. 1959, ch. 3, § 21; amended Stats. 1961, ch. 2017, § 1.)

It has been long recognized that the right to exclusive control of vehicular traffic on public streets and highways is that of the state. (*Pipoly v. Benson*, *supra*, 20 Cal. 2d at pp. 372–373; *City of Lafayette v. County of Contra Costa*, *supra*, 91 Cal. App. 3d at pp. 753–756; *Bragg v. City of Auburn* (1967) 253 Cal. App. 2d 50, 53; *Mervynne v. Acker* (1961) 189 Cal. App. 2d 558, 561; 63 Ops. Cal. Atty. Gen. 719, 721 (1980).) As stated in *Mervynne v. Acker*, *supra*, 189 Cal. App. 2d at pages 561–562:

> "The right of the state to *exclusive control* of vehicular traffic on public streets has been recognized for more than 40 years. While local citizens quite naturally are especially interested in the traffic on the streets in their particular locality, the control of such traffic is now a matter of statewide concern. Public highways belong to all the people of the state. Every citizen has the right to use them, subject to legislative regulation. *Traffic control on public highways* is not a 'municipal affair' in the sense of giving a municipality (whether holding a constitutional charter or not) control thereof in derogation of the power of the state. . ." (Emphases added.)

And it is well-established that the regulation of parking on public streets and highways is a legitimate aid to such traffic control and regulation. (*County of Los Angeles v. City of Alhambra* (1980) 27 Cal. 3d 184, 192–193; *Siegel v. City of Oakland* (1978) 79 Cal. App. 3d 351, 357.) In other words, the state has preempted local legislation as to parking on public streets and highways in the field of traffic control.

If the state has not preempted the field of law with which the subject ordinance is concerned, local supplemental legislation would not be deemed conflicting to the extent it covers phases of the field nor covered by state law. (*Baron v. City of Los Angeles* (1970) 2 Cal. 3d 535, 541; see *Birkenfeld v. City of Berkeley* (1976) 17 Cal. 3d 129, 142; 62 Ops. Cal. Atty. Gen. 448, 450 (1979); *cf.* 53 Ops. Cal. Atty. Gen. 313, 316 (1970).) Furthermore, state preemption of the field of law would not preclude local legislation enacted for the public safety which only incidentally affects the preempted field. (*People v. Mueller* (1970) 8 Cal. App. 3d 949, 954; see *Birkenfeld v. City of Berkeley*, *supra*, at p. 142; 58 Ops. Cal. Atty. Gen. 519, 524–525 (1975).)

In order to determine whether a city is preempted from enacting an ordinance which would prohibit the parking of vehicles on private roadways which have been designated as fire lanes, we look to "the language of section 21. Section 21 states, in part: " . . . no local authority shall enact or enforce any ordinance on the *matters covered by the code* unless expressly authorized herein." (Emphasis added.)

In interpreting the foregoing language we note that the primary and controlling consideration is the determination of and the giving effect to the legislative purpose and intent behind the statute, (*Great Lake Properties, Inc. v. City of El Segundo* (1977) 19 Cal, 3d 152, 153; *County of Nevada v. McMillen* (1974) 11 Cal. 3d 662, 673, fn. 9.)

As we stated in 30 Ops. Cal. Atty. Gen. 69, 71 (1957):

> " . . . the Vehicle Code is composed of several fields of law, and the problem becomes to determine with respect to each field whether the Legislature intended to fully occupy that field. . . ."

In 55 Ops. Cal. Atty. Gen. 178 (1–972) we determined that, by the enactment of sections 23130 and 27160 as to vehicular noise limits *upon* highways, the state preempted the field. (*Id*., at p. 180.) We then concluded that even though the statutory scheme of section 38000 *et seq*. as to *newly manufactured* vehicles which are to be operated or used exclusively *off* the highways established the state's preemption of the area of noise standard setting for such vehicles "(directed at the seller)," the state had " . . . not preempted the area of enacting and enforcing operational vehicular noise limits (directed at the operator of the vehicle)" as to *off*-highway vehicular noise. (*Id*., at pp. 179, 181.) Operational vehicular noise limits as to *off*-highway use other than as to newly manufactured vehicles is not a matter covered by the code.

Is the parking of a vehicle on that portion of a private way which has been designated a fire lane a matter covered by the code?

At the time Vehicle Code section 21 was enacted in 1959, only five provisions concerning traffic control and regulation on private property were in effect. (§ 21107 (based on former § 458 5); 21108 (based on former § 459.3); 21111 (based on former § 459.7); 22500 (based on former § 586(a), 586.1); and 22503 (based on former § 588(b), (c)).) The former sections authorized local authorities to enact traffic regulations with respect to certain private roads, but it cannot be said that the code coverage was comprehensive. In fact, there are currently no provisions which specifically regulate the parking of vehicles on private roadways. Moreover, while the Legislature has exhibited concern with respect to the field of fire or public safety as to public streets and highways

(e.g., §§ 22104 (prohibiting U-turn in front of a fire station), 22500(d) (prohibiting parking within 15 feet of the entrance of any fire station), 22514 (prohibiting parking within 15 feet of a fire hydrant) and 22651(e) (permitting the removal of an illegally parked vehicle so as to allow access by fire fighting equipment to a fire hydrant when it is impractical to move the vehicle to another point on the highway)), it has not done so with respect to private ways. We would note that section 35701 of the Streets and Highways Code states:

> "Any agreement to maintain parking meters on a public way *shall not affect the right of a city,* acting by virtue of its police power*, to control, regulate, or prohibit the parking of vehicles on any public way*, or portion thereof, to the extent necessary to *protect the public safety*." (Emphases added.)

From the foregoing we see that the Vehicle Code has not preempted local legislation in the *field of public safety* with respect to the parking of vehicles on *public* ways, although such matter is covered by the code as to the field of traffic regulation and control and is partially covered as to the field of fire or public safety. (See also Pub. Util. Code, § 10101.)

We therefore conclude that the parking of a vehicle on that portion of a private roadway designated as a fire lane is either a matter not covered by the code or only incidentally affects the field (traffic control and regulation) preempted by the code such that local authorities are not precluded from legislating on the matter as to fire or public safety.[3][2]

We note that the state has provided for the promulgation of regulations by the State Fire Marshal as to certain buildings[4][3] "for the protection of life and property

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[2] [3]In *People v. Deacon* (1978) 87 Cal. App. 3d Supp. 29, the appellate department of the Los Angeles County Superior Court declared that there was no validity to the argument that regulation of *private* roads had been preempted by the state. (*Id*., at Supp. 32–33.) The court was concerned with an ordinance which forbade motorcycle riding on an easement within Catalina Island. (*Id*., at Supp. 31.) It was determined that the ordinance was not a traffic ordinance but one regulating the use of a particular and unique land area available for recreational purposes. (*Id*., at Supp. 32) In other words, the *Deacon* court concluded that any state regulation of private roads had not preempted the field as to *environmental matters*.

[3] [4]The State Fire Marshal's regulations are limited, for purposes of this analysis, to "any building or structure used or intended for use as an asylum, jail, mental hospital, hospital, sanitarium, home for aged, children's home or institution, school or any similar occupancy of any capacity, and any theater, dance hall, skating rink, auditorium, assembly hall, meeting hall, night club, fair building, or similar place of assemblage where 50 or more persons may gather together in a building, room or structure for the purpose of amusement, entertainment, instruction, deliberation, worship, drinking or dining, awaiting transportation, or education, and in any

against fire and panic." (Health & Saf. Code, §§ 13100.1, 13143, 13145, 13211, 17950.) But a city is given express statutory authority to impose standards substantially equivalent to or greater than provided by the marshal's regulations. (Health & Saf. Code, §§ 13143, 13216, 17920.7; Cal. Admin. Code, tit. 19, § 1.07.) This establishes that the state has not preempted the field of fire safety as to such buildings.

The access road from a building subject to the marshal's regulations "to a public street shall be all-weather, hard-surfaced (suitable for use by fire apparatus) right-of-way not less than 20 feet in width. Such right-of-way shall be unobstructed and maintained only as access to the public street." (Cal. Admin. Code, tit. 19, § 3.05; see Sts. & Hy. Code, § 1805.) Therefore, to the extent that a city seeks to prohibit any obstructions on that portion of a private roadway designated as a fire lane which provides access to any of the subject buildings, it must impose standards which are substantially equivalent to or greater than the regulations provided by the State Fire Marshal. (Health & Saf. Code, § 13143, 13216, 17920.7; Cal. Admin. Code, tit. 19, § 1.07.)

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building or structure which is open to the public and is used or intended to be used for the showing of motion pictures when an admission fee is charged and when such building or structure has a capacity of 10 or more persons, . . ." and to "any building housing any occupancy when such building is used as an auxiliary or accessory structure to any of the occupancies specified," as well as "any building or structure used or intended for the housing of any person of any age when such person is referred to or placed within such home or facility for protective social care and supervision services by any governmental agency" and "every building of any type of construction or occupancy having floors used for human occupancy located more than 75 feet above the lowest floor level having building access" (Cal. Admin. Code, tit. 19, § 1.03(a), (d), (e); Health & Saf. Code, § 13142(a), 131436, 13210, 13211.)