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OPINION

of

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No. 81-411

DECEMBER 3, 1981

THE HONORABLE RUTH L. RUSHEN, DIRECTOR OF THE DEPARTMENT OF CORRECTIONS, has requested an opinion on the following questions:

1. May the Department of Corrections grant one of its retired employees the privilege of carrying a concealable firearm concealed on his person or in his vehicle?
2. Does Penal Code section 12027 require the Department of Corrections to issue the retiring employee a certificate indicating he has no such privilege?

CONCLUSION

1. The Department of Corrections has no authority to grant one of its retired employees the privilege of carrying a concealable firearm concealed on his person or in his vehicle.

2. The Department of Corrections is not required to issue the retiring employee a certificate indicating he has no such privilege.

ANALYSIS

Chapter 1, title 2, part 1 (§ 12000 *et seq.*) of the California Penal Code¹ is known as the “Dangerous Weapons’ Control Law.” Section 12025 provides in part:

“(a) Except as otherwise provided in this chapter, any person who carries concealed within any vehicle which is under his control or direction any pistol, revolver, or other firearm capable of being concealed upon the person without having a license to carry such firearm as provided in this chapter is guilty of a misdemeanor, . . .

“(b) Any person who carries concealed upon his person any pistol, revolver, or other firearm capable of being concealed upon the person without having a license to carry such firearm as provided in this chapter is guilty of a misdemeanor, . . .

“(c) Firearms carried openly in belt holsters are not concealed within the meaning of this section, . . .”

Section 12027(a) provides in part:

“Section 12025 does not apply to or affect any of the following:

“(a) Peace officers listed in Section 830.1 or 830.2 whether active or honorably retired, other duly appointed peace officers, full-time paid peace officers of other states and the federal government who are carrying out official duties while in California, or any person summoned by any such officers to assist in making arrests or preserving the peace while he is actually engaged in assisting such officer. . . .”

We assume that the retired employee of the Department of Corrections referred to in the question was a peace officer as defined in section 830.5.²

¹Hereafter all section references will be to the Penal Code unless otherwise indicated.

²Section 830.5 (Stats. 1980, ch. 1340, § 13) states.

“The following persons are peace officers whose authority extends to any place in the state while engaged in the performance of the duties of their respective employment and

In 63 Ops. Cal. Atty. Gen. 385 (1980), prior to the 1980 amendment to section 830.5, we concluded that peace officers employed by the Department of Corrections (“department”) were “duly appointed peace officers” who fell within the exemption of section 12021 whether they were on or off duty. (*Id.*, at pp. 386, 388, 390.) The 1980 amendment to section 830.5 permits the department’s peace officers to carry firearms only “if authorized and under such terms and conditions as are specified by . . .” the department. (See fn. 2, *supra*.) Construing the provisions of sections 830.5 and 12027 together so as to harmonize and achieve a uniform and consistent legislative purpose (*Isobe v. Unemployment Ins. Appeals Bd.* (1974) 12 Cal. 3d 584, 590), it is our view that the department’s peace officers fall within the exemption of section 12027 as “duly appointed peace officers” if they have been authorized by the department to carry concealable firearms. (See 64 Ops. Cal. Atty. Gen. 832 (Opn. No. 81–709 issued November 10, 1981).)

We are asked whether such officers, upon retirement, still fall within the exemption of section 12027.

Following the rules of statutory construction:

“We begin with the fundamental rule that a court should ascertain the intent of the Legislature so as to effectuate the purpose of the law. In determining such intent the court turns first to the words themselves for the answer. We are required to give effect to statutes according to the usual, ordinary import of the language employed in framing them.” (*Moyer v. Workmen’s Comp. Appeals Bd.* (1973) 10 Cal. 3d 222, 223; see *California Teachers Assn. v. San Diego Community College Dist.* (1981) 28 Cal. 3d

for the purpose of carrying out the primary function of their employment or as required under Sections 8597, 8598, and 8617 of the Government Code. Such peace officer (sic) may carry firearms only if authorized and under such terms and conditions as are specified by their employing agency:

“.....

“(b) A correctional officer employed by the Department of Corrections or any employee of the Department of the Youth Authority having custody of wards or any employee of the Department of Corrections designated by the Director of Corrections or employee of the Board of Prison Terms designated by the Secretary of the Youth and Adult Correctional Agency or employee of the Department of Youth Authority designated by the Director of the Department of the Youth Authority, any superintendent, supervisor, or employee having custody of wards in an institution operated by a probation department, and any transportation officer of a probation department.”

While our research failed to uncover any of the department’s employees who fall within the provisions of section 830.1, members of the department’s Law Enforcement Liaison Unit are listed in section 830.2. (§ 830.2(8), added by Stats. 1980, ch. 1340. § 6.) We do not consider members of that unit in this opinion.

692, 698.)

But “[w]ords may not be inserted in a statute under the guise of interpretation.” (*In re Miller* (1947) 31 Cal. 2d 191, 199.) Looking to the language of section 12027(a), we see that the Legislature has exempted “[p]eace officers listed in Section 830.1 or 830.2 *whether active or honorably retired*” (emphasis added), but its exemption of “other duly appointed peace officers” is not so modified. To construe section 12027(a) as permitting the department to grant the privilege of carrying a concealed firearm to its “retired” employees would be to insert the word “retired” under the guise of interpretation to modify the phrase “other duly appointed peace officers,” and this may not be done.

We further note that in *Charles S. v. Board of Education* (1971) 20 Cal. App. 3d 83, it was stated at page 95:

“When different language is used in the same connection in different parts of a statute it is presumed the legislature intended a different meaning and effect.”

Peace officers listed in sections 830.1 or 830.2 are exempted “whether active or honorably retired,” words not applicable to “other duly appointed peace officers” in section 12027(a). This difference in the exemption language indicates that the Legislature intended a different scope of exemption for “other duly appointed peace officers.” We think the difference intended was that only such “other duly appointed peace officers” who are on active service may be granted the exemption authorized by section 12027(a).

In support of this, we note that a “duly appointed peace officer” can no longer be considered “duly appointed” upon retirement. (See *Reed v. Schon* (1905) 2 Cal. App. 55, 57–58; also Gov. Code, S 21150.) Moreover, if the Legislature had intended the exemption in section 12027(a) to apply to retired “duly appointed peace officers,” it could have so stated. (See *Bailey v. Superior Court* (1977) 19 Cal. 3d 970, 977. fn. 10, also fn. 3 and Legislative Counsel’s Digest, Stats. 1969, ch. 1012, *supra*.)

We conclude that the department has no authority to grant one of its retired officers who was not a peace officer under Penal Code section 830.1 or 830.2 the privilege of carrying a concealable firearm concealed on his person or in his vehicle. (See *California State Employees’ Assn. v. Enomoto* (1981) 118 Cal. App. 3d 599, 603–604.)

The second question we are asked is whether the department must issue the retiring employee a certificate indicating he does not have the privilege of carrying a concealable firearm concealed on his person or in his vehicle. Section 12027(a) states in

this regard:

“The agency from which a peace officer is honorably retired may, upon initial retirement of the peace officer, or at anytime subsequent thereto, deny or revoke for good cause, the retired officer’s privilege to carry a weapon as provided in this subdivision.

“A retired peace officer shall petition the issuing agency for renewal of his or her privilege to carry a concealed firearm every five years. *Any peace officer who has been honorably retired shall be issued an identification certificate containing an endorsement by the issuing agency indicating whether or not the retired peace officer has the privilege to carry a weapon pursuant to this subdivision and the date when the endorsement is to be reviewed again.*” (Emphasis added.)

In interpreting this language, we look to the legislative purpose behind it. (*Great Lakes Properties, Inc. v. City of El Segundo* (1977) 19 Cal. 3d 152, 153.)

Prior to 1974, the agency from which a peace officer falling within the exemption of section 12027 retired had no power to deny or revoke the retired officer’s privilege to carry a concealable firearm. (Stats. 1953, ch. 36, § 1, Stats. 1959, ch. 1854, § 1; Stats. 1963, ch. 1677, § 1; Stats. 1965, ch. 281, § 2; Stats. 1968, ch. 1222, § 61; Stats. 1969, ch. 1012, § 1.) In 1974 the Legislature added all but the sentence beginning with “A retired peace officer shall petition . . .” and the words “and the date when the endorsement is to be reviewed again” of the last sentence of the foregoing quoted language of section 12027(a). (Stats. 1974, ch. 1090, § 1.) The Legislative Counsel’s Digest with respect to the 1974 amendment states:

“Specifics for purposes of the exemption from licensing requirements for carrying concealed or loaded firearms, that, as applied to honorably retired peace officers, the agency from which the peace officer is retired may, upon initial retirement of the peace officer or at any time subsequent thereto, deny or revoke, for good cause, the retired officer’s privilege to carry a weapon as provided, and shall issue an identification certificate containing an endorsement by the issuing agency indicating whether or not the retired peace officer has the privilege to carry a weapon.” (Stats. 1974, ch. 1090.)

We note in the language of section 12027(a), in the last sentence, the word “any” is used to modify “peace officer.” The word “any” is ordinarily used in a statute to indicate a person, thing, etc. as one selected without restriction or limitation of choice, with

the implication that every one is open to selection without exception. (See 62 Ops. Cal. Atty. Gen. 394, 395–396 (1979).) The phrase “Any peace officer” could therefore be interpreted as including those peace officers who do not come within the provisions of section 830.1 or 830.2 as well as those who do. (See *California State Auto. Assn. Inter-Ins. Bureau v. Warwick* (1976) 17 Cal. 3d 190, 195.)

However, the literal meaning of a statute’s words must give way to avoid absurd consequences or to give effect to the statute’s manifest purposes that, in light of its legislative history, appear from its provisions considered as a whole. (*Silver v. Brown* (1966) 63 Cal. 2d 841, 845; also *County of San Diego v. Muniz* (1978) 22 Cal. 3d 29, 36; cf *People v. Belleci* (1979) 24 Cal. 3d 879, 884.) The purpose of the 1974 amendment to section 12027(a) was to give the agency from which a qualified peace officer retired the authority to deny or revoke, for good cause, the privilege of carrying a concealable firearm. (See Legislative Counsel’s Digest, *supra*; Stats. 1974, ch. 1090.) Since we concluded that the department has no authority to grant one of its retired officers who was not a peace officer under Penal Code section 830.1 or 830.2 the privilege of carrying a concealable firearm, it follows that a “qualified” retired peace officer, for our purposes, would be one who came within the provisions of either section 830.1 or 830.2 and was honorably retired.

On the other hand, a retiring department peace officer who is not a peace officer within the provisions of section 830.1 or 830.2 can not be granted the privilege of carrying a concealable firearm by the department. The 1974 amendment to section 12027(a) did not expand the authority of the department to grant the privilege to “any” peace officer.

The phrase “Any peace officer who has been honorably retired . . .” in the last sentence of section 12027(a) must have reference to the phrase “Peace officers listed in section 830.1 or 830.2 . . . honorably retired . . .” in the first sentence of section 12027(a) as those are the only retired peace officers specifically mentioned in the section. Since the first sentence of section 12027(a) is limited in its application to retired officers listed in section 830.1 or 830.2 so is the last sentence of section 1202 7(a).

Accordingly, we conclude the department is not required to issue to a retiring employee who was not a peace officer under section 830.1 or 830.2 an identification certificate indicating that the officer does not have the privilege to carry a concealable firearm concealed upon his person or in his vehicle. The requirement that such a certificate be issued is limited in its application to those peace officers listed in section 830.1 or 830.2.
