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OPINION	:	No. 82-1206
	:	
of	:	<u>JULY 7, 1983</u>
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THE HONORABLE KENNETH CORY, CONTROLLER OF THE STATE
OF CALIFORNIA, has requested an opinion on the following question:

1. Does Code of Civil Procedure section 685.010, providing that interest accrues at the rate of 10 percent per annum on the amount of a judgment remaining unsatisfied, apply to judgments against the State of California?

2. Does Code of Civil Procedure section 685.010 apply to interest on judgments against the State of California entered on or after January 1, 1982, and to interest on and after January 1, 1982, on such judgments entered before January 1, 1982?

CONCLUSIONS

1. Code of Civil Procedure section 685.010, providing that interest accrues at the rate of 10 percent per annum on the amount of a judgment remaining unsatisfied, applies to judgments against the State of California.

2. Code of Civil Procedure section 685.010, applies to interest on judgments against the State of California entered on or after January 1, 1983, and to interest on and after January 1, 1983, on such judgments entered before January 1, 1983.

ANALYSIS

By the Statutes of 1982, chapter 150, section 3, section 685.010 was added to the Code of Civil Procedure¹ as follows:

"(a) Interest accrues at the rate of 10 percent per annum on the amount of a judgment remaining unsatisfied.

"(b) The Legislature reserves the right to change the rate of interest provided in subdivision (a) at any time to a rate of not less than 7 percent per annum and not more than 10 percent per annum regardless of the date of entry of the judgment or the date any obligation upon which the judgment is based was incurred. The change in the rate of interest may be made applicable only to the interest that accrues after the operative date of the act that changes the rate."

Therefore, the rate of interest on judgments rendered in this state was, under California Constitution, article XV,² and by virtue of legislative inaction thereunder, fixed at seven percent. Article XV provides in part:

"The rate of interest upon a judgment rendered in any court of this state shall be set by the Legislature at not more than 10 percent per annum. Such rate may be variable and based upon interest rates charged by federal agencies or economic indicators, or both.

"In the absence of the setting of such rate by the Legislature, the rate of interest on any judgment rendered in any court of the state shall be 7 percent per annum.

¹ Hereinafter, section references are to said code, unless otherwise indicated.

² Hereinafter, reference to any article is to that article of the California Constitution.

"The provisions of this section shall supersede all provisions of this Constitution and laws enacted thereunder in conflict therewith."

The first inquiry is whether section 685.010 applies to judgments against the State of California. The California Supreme Court has recently reviewed the principles of construction which must be followed in determining whether the general terms of a statute are applicable to a public jurisdiction:

"[I]n the absence of express words to the contrary, neither the state nor its subdivisions are included within the general words of a statute. [Citations.] But this rule excludes governmental agencies from the operation of general statutory provisions only if their inclusion would result in an infringement upon sovereign governmental powers. 'Where . . . no impairment of sovereign powers would result, the reason underlying this rule of construction ceases to exist and the Legislature may properly be held to have intended that the statute apply to governmental bodies even though it used general statutory language only.' [Citations.]" (*City of Los Angeles v. City of San Fernando* (1975) 14 Cal.3d 199, 276-277; accord *Regents of University of California v. Superior Court* (1976) 17 Cal.3d 533, 536; 65 Ops.Cal.Atty.Gen. 267, 272 (1982).)

Section 685.010, however, was enacted pursuant to the constitutional authority of article XV, *supra*. Considering the scope of that article, the court in *Harland v. State of California* (1979) 99 Cal.App.3d 839, noting that such principle "would seem to have little if any application to the interpretation of a *constitutional* provision" (*id.*, at 844), said:

"Article XV, section 1 by its terms applies to 'a judgment rendered in any court of this state,' and contains no exceptions for the state or any other class of defendant. The section has repeatedly been interpreted to permit recovery of interest on judgments against the state and its political subdivisions. In *Bellflower City School Dist. v. Skaggs* (1959) 52 Cal.2d 278, in which a school district appealed from an order allowing interest upon certain condemnation awards made in favor of property owners, the court described the predecessor section to article XV, section 1 as a 'constitutional mandate for the payment of interest on judgments' (*id.*, at p. 281), and held that the statute regarding condemnation proceedings did not purport to declare that a judgment bears interest only after it becomes final, 'nor could it so modify the Constitution.' (*Ibid.* See also *People v. Superior Court (Bank of America)* (1956) 145 Cal.App.2d 683, 690-691 (holding that the Department of Public Works was constitutionally required to pay interest upon a judgment in condemnation); *City of Los Angeles v. Aitken* (1939) 32

Cal.App.2d 524, 527 [disapproved on other grounds, *Southern Public Utility Dist. v. Silva* (1956) 47 Cal.2d 163, 165] (holding that a condemnee was entitled to interest on a condemnation award pending appeal even in the absence of specific statutory provision for interest, on the ground that 'The right to recover interest on a judgment is given by section 22, article XX, of the constitution. . .').) In the one reported case in which the state contended as a general matter that it was not liable for postjudgment interest in the absence of statutory authority, the court responded curtly, 'The rule is settled the other way in a long line of California cases. [Citations.]' (*Connecticut Gen. Life Ins. Co. v. State* (1941) 47 Cal.App.2d 88, 89. See also Van Alstyne, Cal. Governmental Tort Liability (Cont.Ed.Bar 1964) § 9.15, p. 424; 4 Cal. Law Revision Com. Rep. (1963) 1001, 1018.) And in 1978, when the people voted upon an amendment to article XV, section 1 allowing the Legislature to provide for interest on judgments up to 10 percent, the voters pamphlet contained the following observation by the legislative analyst: 'The fiscal effect of this amendment on state and local government would depend upon action by the legislature. The interest on judgments would be increased if legislation was enacted raising the rate. *Because the state and local governments both pay and receive interest on judgments*, an increase in the interest rate would affect both their revenues and their costs.' (Cal. Ballot Pamp., Primary Elec. (June 6, 1978) italics added.)" (*Id.*, at 842-843; fn. omitted.)

Section 685.010, increasing the rate of interest upon "a judgment," provides not the slightest hint of a legislative intent to limit the scope and effect of the exercise of its constitutional powers to judgments against nongovernmental agencies. Where, on the contrary, in section 1 of the same enactment (Stats. 1982, ch. 150, § 1), the Legislature intended to exempt from the effect of such enactment public entities and employees, it did so expressly. Even assuming such rule of construction to be applicable, however, no reason has been suggested why liability for interest on a judgment would interfere with sovereignty where the judgment itself is wholly authorized. (*Harland v. State of California, supra*, 99 Cal.App.3d at 844.) It is concluded that section 685.010 applies to judgments against the State of California.

The second inquiry is whether section 685.010 applies to interest on judgments entered on or after January 1, 1982, and to interest on and after that date upon judgments previously entered. Chapter 150 of the Statutes of 1982 was approved by the Governor and filed with the Secretary of State on April 6, 1982, and became effective by constitutional prescription on January 1, 1983.³ The Legislature has twice expressed its

³ California Constitution, article IV, section 8, subdivision (c) provides:

intent that sections 682.1⁴ and 685.010, as amended and added, respectively, by chapter 150 of the Statutes of 1982 shall become effective on January 1, 1983, and remain operative until July 1, 1983, at which time they shall be repealed.⁵ (Stats. 1982, ch. 497, § 186 & ch. 1364, § 5.)

The present inquiry concerns the *operative date* of section 685.010. The traditional rule in California, established in the early cases, is that a statutory change in the rate of interest operates, as a general rule, only prospectively, i.e., as of the effective date of the statute, and does not affect rights already accrued. (*White v. Lyons* (1871) 42 Cal. 279, 284-285; *Randolph v. Bayue* (1872) 44 Cal. 366, 369.) It is an established rule of statutory interpretation that legislation should not be construed to overthrow long-established principles of law unless such an intention is made clearly to appear either by express declaration or by necessary implication. (*People v. Cardenas* (1982) 31 Cal.3d 897, 913-914.) The traditional rule concerning a statutory change in the rate of interest is consistent with the general presumption that legislative enactments operate prospectively and not retroactively. (*Interinsurance Exchange v. Ohio Cas. Ins. Co.* (1962) 58 Cal.2d 142, 149; *Di Genova v. State Board of Education* (1962) 57 Cal.2d 167, 176.) This presumption is subordinate, however, to the transcendent canon of statutory construction that the intent of the Legislature be given effect. (*Mannheim v. Superior Court* (1970) 3 Cal.3d 678, 686; 63 Ops.Cal.Atty.Gen. 633, 638 n. 3; 60 Ops.Cal.Atty.Gen. 197, 202 (1977).) In this regard, section 6 of chapter 150, Statutes of 1982, provides unequivocally:

"This act governs the rate of interest on a judgment entered on or after January 1, 1982, and the rate of interest on and after January 1, 1982, on a judgment entered before January 1, 1982."

Thus, this section expressly provides for the retroactive operation of section 685.010.

"(1) Except as provided in paragraph (2) of this subdivision, a statute enacted at a regular session shall go into effect on January 1 next following a 90-day period from the date of enactment of the statute and a statute enacted at a special session shall go into effect on the 91st day after adjournment of the special session at which the bill was passed.

"(2) Statutes calling elections, statutes providing for tax levies or appropriations for the usual current expenses of the State, and urgency statutes shall go into effect immediately upon their enactment."

⁴ Section 682.1 prescribes the form of a writ of execution issued on a judgment for the recovery of money.

⁵ Section 685.010 will be superseded, operative July 1, 1983, by a similar provision. (Stats. 1982, ch. 1364, § 2.)

We have observed on numerous occasions that except in the case of impairment of a vested right or of the obligation of a contract, or of some specific state constitutional limitation,⁶ no constitutional objection exists to the retroactive operation of a civil statute. (*Gordon H. Ball, Inc. v. State of California ex rel. Dept. Pub. Wks.* (1972) 26 Cal.App.3d 162, 168; *Coast Bank v. Holmes* (1971) 19 Cal.App.3d 581, 593-597; 65 Ops.Cal.Atty.Gen., *supra*, 69 n. 4; 63 Ops.Cal.Atty.Gen., *supra*, 639 n. 5; and see *Mass v. Board of Education* (1964) 61 Cal.2d 612, 624-625.) In any event, article XV expressly declares that the provisions thereof "shall supersede all provisions of this Constitution and laws enacted thereunder in conflict therewith." Thus, the Legislature may fix the rate of interest upon a judgment, including a judgment against itself, notwithstanding any other provision of the Constitution. As in the case of article XIV, section 4, granting the Legislature plenary power, "unlimited by any provision of this Constitution," to establish a comprehensive system of workers' compensation (58 Ops.Cal.Atty.Gen. 287, 289 (1975)), article XV's language of supersedure effects a repeal *pro tanto* of any other constitutional provision⁷ which might constitute a limitation upon the power to establish by legislation the rate of interest upon a judgment rendered in any court of this state. (*Harland v. State of California, supra*, 99 Cal.App.3d at 845.) Hence, no objection on state constitutional grounds may be asserted against section 685.010, nor do we perceive any such constraint upon the retroactive increase in the rate of interest upon a judgment against the state.

Nor, with respect to an increase in the rate of interest upon a judgment against the state, does an issue arise under the federal Constitution respecting the impairment of a vested right, since the state is not a "person" within the purview of the Fourteenth Amendment.⁸

⁶ (E.g., art. IV, 17, and art. XI, section 10--extra compensation after service rendered, see 65 Ops.Cal.Atty.Gen. 66, 68 (1982); 63 Ops.Cal.Atty.Gen. 633, 638 (1980).)

⁷ Among the constitutional provisions found inapplicable in 58 Ops.Cal.Atty.Gen., *supra*, was the prohibition of article XVI, section 6, against the gift of public funds. (Compare *Gregory v. State of California* (1948) 32 Cal.2d 700, 704.)

⁸ Section 1 of Amendment XIV of the federal Constitution ordains in pertinent part that "No state shall . . . deprive any person of life, liberty, or property, without due process of law . . ." As stated in *Riley v. Stack* (1932) 128 Cal.App. 480, 483-484, respecting a political subdivision of the state:

"But respondents argue that the due process of law clauses of the federal and state Constitutions require that the county, or its taxpayers, should be heard before an obligation to pay is placed upon them. This constitutional guaranty is that no *person* shall be deprived of his property without due process of law. The word 'person' has been extended to include private corporations, and, in a limited field, has been extended to public corporations. A county in this state does not come under either class. It is merely a political subdivision of the state over which the

Hence, we return to the unequivocal terms of section 6 of chapter 150, Statutes of 1982, and are guided by the principles set forth in *Gillett-Harris-Duranceau & Associates, Inc. v. Kemple* (1978) 83 Cal.App.3d 214, 219-220:

"Juridical construction of a statute is possible only when uncertainty is found. 'Clear statutory language no more needs to be interpreted than pure water needs to be strained.' (*Holder v. Superior Court* (1969) 269 Cal.App.2d 314, 317.) A court may not rewrite a statute by inserting thoughts that have been omitted or by omitting thoughts that have been inserted. (*Richardson v. City of San Diego* (1961) 193 Cal.App.2d 648, 650.) Where the words of a statute are clear, the courts cannot add to them or alter them or insert qualifying provisions to conform to an assumed intent or accomplish a purpose that does not appear on the face of the statute or from its legislative history. (*Rowan v. City etc. of San Francisco* (1966) 244 Cal.App.2d 308, 314.)

"On the other hand, there is abundant authority for the proposition that the literal construction of a statute will not prevail if it is opposed to legislative objective. (*Pacific Gas & Electric Co. v. Morse* (1970) 6 Cal.App.3d 707, 712.) The fundamental rule of statutory construction is that the court should ascertain the intent of the Legislature so as to effectuate the purpose of the law, and every statute should be construed with reference to the whole system of law of which it is a part so that all may be harmonized and have effect. (*Cannon v. American Hydrocarbon Corp.* (1970) 4

legislature has the inherent right to prescribe the powers, duties and obligations for the purpose of exercising, on behalf of the state, the governmental functions of such subdivision.

".....

"Our conclusion is that the act does not offend the due process clause in so far as the county is concerned because the county is not a 'person' within the meaning of either the federal or state Constitution, but is a mere subdivision of the state, and, in so far as the individual taxpayer of the county is concerned, his property is not taken without due process because when the legislature itself fixes the taxing district (i.e., the county), it is presumed to have taken such evidence upon the question of benefits to the local taxpayer as may be necessary and its determination of that matter is conclusive. (Citations)."

The term "person" in the context of due process cannot, by any reasonable mode of interpretation, be expanded to encompass the states of the Union. (*South Carolina v. Katzenbach* (1966) 383 U.S. 301; cf. *Essex Public Road Bd. v. Skinkle* (1891) 140 U.S. 334; *Fahey v. O'Melveny & Myers* (1952) 200 F.2d 420, cert. den. 345 U.S. 952.)

Cal.App.3d 639, 648.) Words will not be given their literal meaning when to do so would make the provisions of a statute apply to transactions never contemplated by the Legislature, and to this end, the intent of a law must be held to prevail over the letter. (*LaBorde v. McKesson & Robbins, Inc.* (1968) 264 Cal.App.2d 363, 370.)"

Further, as stated in *Massachusetts Mutual Life Ins. Co. v. City and County of San Francisco* (1982) 129 Cal.App.3d 876, 881:

"In fact, as noted in *People v. Davis* (1978) 85 Cal.App.3d 916, 924: ' . . . a persuasive and basic principle of statutory construction provides that . . . intent should prevail over a literal or plain-meaning construction.' And, as expressed in *English v. County of Alameda* (1977) 70 Cal.App.3d 226, 233-234: ' . . . intent may be ascertained not only by considering the words used, but also taking into account other matters as well, such as the objects in view, the evils to be remedied, the legislative history, public policy and contemporaneous administrative construction."

While the statutory terms alone, taken in isolation and out of the context of the legislative scheme and history, are unambiguous, we find sufficient uncertainty to warrant the introduction of external principles of juridical evaluation. Uncertainty initially appears upon examination of legislative history. As noted in the cases last cited, the legislative history of a statute is an important aid in its construction. (*Evans v. City of Anaheim* (1982) 133 Cal.App.3d 853, 857; *Osgood v. County of Shasta* (1975) 50 Cal.App.3d 586, 589.) The proposed legislation which culminated in chapter 150, Statutes of 1982, was introduced as Senate Bill 203, in substantial form as passed insofar as sections 3 and 6 are concerned, on February 2, 1981, and was last amended by the Assembly on September 4 of that year. Had passage been envisioned and accomplished in 1981, effective January 1, 1982, section 6 would have been in conformance with the "traditional rule."

Some time thereafter, the author of the measure requested an opinion of the Office of Legislative Counsel. The opinion, issued March 24, 1982,⁹ concluded:

"Section 6 of SB 203 would be interpreted so that SB 203 would govern the rate of interest on a judgment entered on or after January 1, 1983, and the rate of interest on and after January 1, 1983, on an outstanding

⁹ Legislative Counsel Opinion No. 6033, March 24, 1982, published in the Senate Journal, page 11020, on June 17, 1982; Legislative Counsel Opinion No. 17984, November 2, 1982.

judgment entered before January 1, 1983; that is, '1982,' as used in Section 6 of SB 203, would be interpreted to mean '1983.'"

On the following day, March 25, 1982, the Senate concurred in the Assembly amendments. The bill was enrolled on March 26, 1982, and was approved and filed on April 6, 1982. Thus it is, at the very least, entirely within the realm of reasonable inference that neither the Assembly, the Senate, nor the Governor intended or contemplated the retroactive operation of the statute.

Further uncertainty, in the face of unequivocal terms, is found upon examination of the statutory scheme as a whole. First, subdivision (b) of section 685.010, providing that a change in the rate of interest may be made applicable only to the interest that accrues *after* the "operative" date of the act that changes the rate, reflects legislative cognizance and concern with regard to the traditional rule of prospective application. While it must be conceded that subdivision (b) refers particularly to *future enactments* changing the rate specified in subdivision (a), such interpretation appears to render that aspect of subdivision (b) virtually insignificant inasmuch as any future amendatory enactment inconsistent therewith would assuredly prevail.

An ambiguity of greater import arises from the provisions of section 2 of chapter 150, Statutes of 1982, amending section 682.1 (fn. 4, *ante*) to provide in the standard form of a writ of execution for the recovery of money a rate of interest at 10 percent. The modification of the prescribed form, however, increasing the rate of interest, does not take effect until January 1, 1983, the effective date of the amendatory enactment (fn. 3, *ante*). Hence, for the period from January 1, 1982, to January 1, 1983, an inconsistency appears between the rate of interest prescribed in a writ of execution (7), and the actual rate (10) according to the literal terms of section 6 of chapter 150.

It is well settled that the various parts of a statutory enactment should be harmonized not only in the context of its framework as a whole (*Evans v. City of Anaheim*, *supra*, 133 Cal.3d at 856) but also with reference to the whole system of law of which it is a part so that all may have effect (*Gillett-Harris-Duranceau & Associates, Inc. v. Kemple*, *supra*, 83 Cal.App.3d at 220). Construing the references in section 6 of chapter 150 to 1982 as intended references to 1983 provides internal consistency with section 2 of that chapter (amending § 682.1) and with the express legislative declaration in section 685.010, subdivision (b) (prospective application of future rate adjustments), as well as external consistency with the traditional rule of prospective application.

Finally, a statute should be construed, if possible, so as to render it valid and constitutional rather than invalid and unconstitutional. (*In re Rodriguez* (1975) 14 Cal.3d 639, 651; 64 Ops.Cal.Atty.Gen. 837, 842 (1981); 64 Ops.Cal.Atty.Gen. 894, 899 (1981).)

We have previously alluded to the constitutional sufficiency of a retroactive increase in the rate of interest upon a judgment against the state. While it was initially concluded that section 685.010 extends to such judgments, it is clearly not so limited. With regard to a retroactive increase in the rate of interest upon a judgment against a private person, a serious issue arises respecting the impairment of a vested right.¹⁰ In *Missouri & Ark. Co. v. Sebastian County* (1919) 249 U.S. 170, the Supreme Court considered the effect of a decrease in the statutory rate of interest upon the right of a judgment creditor:

"Plaintiff in error maintains that the challenged act conflicts with § 10, Art. I, of the Constitution and also the Fourteenth Amendment forbidding a State from depriving any person of property without due process of law; but we think the contrary is settled by our opinion in *Morley v. Lake Shore & Michigan Southern Ry. Co.*, 146 U. S. 162, 168, 171. There the judgment directed that interest should accrue from its entry without mentioning any rate, the statutory one then being seven per centum; later another act fixed six per centum for the future and the debtor claimed benefit of it while the creditor maintained that to permit this would violate both the contract clause and Fourteenth Amendment. Through Mr. Justice Shiras we said (p. 168): 'After the cause of action, whether a tort or a broken contract, not itself prescribing interest till payment, shall have been merged into a judgment, whether interest shall accrue upon the judgment is a matter not of contract between the parties, but of legislative discretion, which is free, so far as the Constitution of the United States is concerned, to provide for interest as a penalty or liquidated damages for the non-payment of the judgment, or not to do so. *When such provision is made by statute, the owner of the judgment is, of course, entitled to the interest so prescribed until payment is received, or until the State shall, in the exercise of its discretion, declare that such interest shall be changed or cease to accrue. Should the statutory damages for non-payment of a judgment be determined by a State, either in whole or in part, the owner of a judgment will be entitled to receive and have a vested right in the damages which shall have accrued up to the date of the legislative change; but after that time his rights as to interest as damages are, as when he first obtained his judgment, just what the legislature chooses to declare. He has no contract whatever on the subject with the defendant in the judgment, and his right is to receive, and the defendant's obligation is to pay,*

¹⁰ See Government Code section 9606:

"Any statute may be repealed at any time, except when vested rights would be impaired. Persons acting under any statute act in contemplation of this power of repeal."

(Cf. 65 Ops.Cal.Atty.Gen. 475, 480 (1982).)

as damages, just what the State chooses to prescribe. . . (p. 171). The discretion exercised by the legislature in prescribing what, if any, damages shall be paid by way of compensation for delay in the payment of judgments is based on reasons of public policy, and is altogether outside the sphere of private contracts. . . . The further contention of the plaintiff in error, that he has been deprived of his property without due process of law, can be more readily disposed of. If, as we have seen, the plaintiff has actually received on account of his judgment all that he is entitled to receive, he cannot be said to have been deprived of his property.' See *Barnitz v. Beverly*, 163 U.S. 118, 129." (*Id.*, at 172-173; emphasis added.)

(Cf. generally, 4 A.L.R.2d 950-951.)¹¹ In our view, it is doubtful that the Legislature intended to confront this constitutional question, nor is there any evidence in the statutory history, scheme, or design of an intent to treat interest upon judgments against public entities and private parties differently insofar as the operative date of increase is concerned.

It is concluded that section 685.010 applies to interest on judgments against the State of California entered on or after January 1, 1983, and to interest on and after that date upon such judgments previously entered.

¹¹ We are not concerned for purposes of this analysis with a judgment upon a contract expressly providing a stipulated rate of interest.