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State of California

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OPINION	:	No. 82-1209
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of	:	<u>MARCH 9, 1984</u>
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THE HONORABLE DARRELL W. LARSEN, County Counsel, Sutter County,  
has requested our opinion on the following question:

Has the 1982 amendment to section 27201 of the Government Code (Stats. 1982, ch. 285) obviated the need for a county recorder to see that a document complies with the requirements of Government Code sections 27280-27296 before the document is recorded?

CONCLUSION

The 1982 amendment to section 27201 of the Government Code has not obviated the need for a document to comply with the requirements of Government Code sections 27280-27296 or for a county recorder to see that a document does before recording it.

## ANALYSIS

Section 27322 of the Government Code provides that a county recorder shall record all instruments, papers and notices the recording of which is permitted by law. Various other sections of that code set forth certain requirements that must be met before particular documents and instruments may be recorded. By way of example and in abbreviated paraphrase, section 27280.5 provides that the names of parties required to be indexed in any instrument for recording "shall be legibly signed, typed or printed therein *before acceptance by the county recorder*"; section 27281 provides that deeds or grants to governmental agencies "*shall not be accepted for recordation without the consent of the grantee evidenced by its certificate . . . of acceptance attached to or printed on the deed or grant*"; section 27287 provides that with certain exception, "*before an instrument can be recorded*, its execution shall be acknowledged by the person executing it"; section 27288.1 provides that the documents described therein shall contain certain information "in addition to such information as may be required by law pertaining to it" and "[n]o such document shall be recorded or indexed unless it contains [it]"; section 27290 provides that an instrument that is proved and certified "*may be recorded . . . only if the original [is and remains on hand] for public inspection*"; and section 27293 provides that "the recorder *shall not accept [an] instrument for record*" that is executed or certified in whole or in part in a language other than English.<sup>1</sup> (63 Ops.Cal.Atty.Gen. 905, 909 (1980); see also, § 27321.5 which provides that "*before acceptance for recording*, . . . [e]very deed or instrument executed to convey fee title to real property shall have noted across the bottom of the first page thereof the name and address to which future tax statements may be mailed.") Meeting these requirements—of the legibility of names (§ 27280.5), of evidence of the consent of a grantee (§ 27281), of an acknowledgement of execution (§ 27287), of the certain required information of § 27288, of the presence of an original (§ 27290), of the English language (§ 27293) and of the mailing for tax statements (§ 27321.5)—

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<sup>1</sup> But see 65 Ops.Cal.Atty.Gen. 205 (1982). There we were asked whether the provisions of the Hague Convention Abolishing the Requirement of Legalization for Sovereign Public Documents (T.I.A.S. 10072) superseded the provisions of Civil Code section 1183 with respect to the proof or acknowledgement of "public documents" that were executed in countries which are signatories to the Convention. The Convention created a standardized form of a certificate of endorsement, the apostille (Conv., arts. 3, 4 & Annex.), and provided that it be "the only formality that may be required" to certify or authenticate certain documents to be "produced" (i.e., used with formality) in the territory of another signatory. (*Ibid.*; see 65 Ops.Cal.Atty.Gen., *supra*, at pp. 207-209.) We concluded that by reason of the supremacy clauses of the federal (and state constitutions (U.S. Const., art. VI, cl. 2; Cal. Const., art. III, § 1) the provisions of the Convention to which the United States was signatory, superseded the inconsistent demands for authentication of documents found in section 1183 of California's Civil Code. Under the Convention though the *apostille* that proves or acknowledges the genuineness of a document *need not be in English*. (Conv., art. 4 & Annex.; cf. *id.*, art. 3; and see 65 Ops.Cal.Atty.Gen., *supra*, at 208, fn. 4.) By parity of our prior reasoning it would appear that would supersede the provisions of section 27293 of California's Government Code insofar as it forbids a recorder accepting an instrument for record that "is executed or certified in whole or in part in any language other than English."

has always been considered to be *sine qua non* to a county recorder recording the particularly-affected documents. (Cf. 65 Ops.Cal.Atty.Gen. 321, 324 (1982).)

In 1982 though, the Legislature amended section 27201 of the Government Code to have it provide as follows:

*"The recorder shall, upon payment of proper fees and taxes, accept for recordation any instrument, paper, or notice which is authorized or required by law to be recorded, if such instrument, paper, or notice contains sufficient information to be indexed as provided by statute and is photographically reproducible. The County recorder shall not refuse to record any instrument, paper, or notice which is authorized or required by law to be recorded on the basis of its lack of legal sufficiency."*

(§ 27201, as amended by Stats. 1982, ch. 285, § 1, p. —.) Prior to its being amended section 27201 merely required that the recorder not record any document or furnish any service "until the fees prescribed by law are . . . paid. . . .", and it did not contain the admonition currently found in the section's second sentence that a recorder not refuse to record any document "which is authorized or required by law to be recorded *on the basis of its lack of legal sufficiency*."<sup>2</sup>

Confusion has arisen concerning the extent of the recorder's duties under the section as amended, particularly in light of that latter injunction. We are asked to clarify its meaning and particularly whether the fact that a recorder may *not* now refuse to record any document . . . which is authorized by . . . law to be recorded, *on the basis of its lack of legal sufficiency* "thereby obviates the need for a document to have to comply with the aforementioned particular prerequisites to recording of the other Government Code sections (hereinafter "the other sections") and perforce the need for a county recorder to determine if a document does before recording it. We conclude that neither need has been obviated by the amendment to section 27201.

The above-cited sections of the Government Code are part of "a statutory system touching in abundant detail virtually every procedural aspect of the subject of recording of documents . . . [that is] organized in . . . a logical sequence . . . and in a manner which comprehensively covers the subject of such recording procedures." (63 Ops.Cal.Atty.Gen., *supra*, at 909.) As noted, compliance with them has always been considered a precondition to a document's being recorded and a directive to the county recorder to ensure that their requisites are met prior to his or her accepting a document for recordation. If they were, it had always been considered "the ministerial duty of the county recorder to record [the] document. . . ." (65 Ops.Cal.Atty.Gen. 321, 324 (1982).) Section 27201, however, sets but three preconditions for the recording of a document "which is authorized or required by law to be recorded", (to wit, that, as

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<sup>2</sup> Before amendment in 1982 section 27201 simply provided:

"The recorder shall not record any instrument, file any paper or notice, furnish any copy, or render any service connected with his office until the fees prescribed by law are, if demanded, paid or tendered. (Added Stats. 1947, c. 424, p. 1154, § 1.)"

before, the recording fee be paid, that the document be indexible (cf. §§ 27280.5, 27325) and that the document be photographically reproducible (cf. § 27322.2)), and it specifically directs the recorder to record any such a document meeting those conditions, and enjoins him or her not to refuse to record any such document because of "its lack of legal sufficiency." Does that mean that other sections may now be ignored?

To determine the effect of the amendment to section 27201 we follow several well-settled principles of statutory construction. The cardinal rule of course is to determine the Legislature's intention with respect to the amendment so as to be able to interpret it in such a way as may effect its purpose. (*Great Lake Properties, Inc. v. City of El Segundo* (1977) 19 Cal.3d 152, 163; *Select Base Materials Inc. v. Board of Equal.* (1959) 51 Cal.2d 640, 645; *In Re Lynwood Herald American* (1957) 152 Cal.App.2d 901, 909.) To ascertain that intention, we turn first to the words of the statute itself. (Cf. *California Teacher's Assn. v. San Diego Community College Dist.* (1981) 28 Cal.3d 692, 698; *People v. Belleci* (1979) 24 Cal.3d 879, 884), and doing that see once again that section 27201 now requires that when the three conditions set forth therein are met, that a recorder *not* refuse to record any document "*which is authorized or required by law to be recorded on the basis of its lack of legal sufficiency.*" A major ambiguity in that wording upon which resolution of our question depends presents itself: what is meant by the phrase "on the basis of its legal sufficiency" upon which a recorder cannot refuse to record a document?

The troublesome ambiguity is presented because the phrase "legal sufficiency" of a document can refer to either one of two things. One is whether a document has been sufficiently or adequately drafted (or contains enough information) *to accomplish its purpose*; the other is whether the document contains the information demanded of it by the recording statutes (i.e., the aforementioned other sections of the Gov. Code). (This ambiguity has sometimes been cast as a contrast between a document's "substantive" and its "procedural" legal sufficiency.) For example, an unacknowledged deed is internally legally sufficient to convey title to real property, but, for the purposes of recordation under present law, is not sufficient to be recorded. Other examples of the former type of legal sufficiency would be the capacity of a grantor to execute a deed of the correctness of a legal description therein.

Again, it has never been the duty of the county recorder to make determinations of that type of legal sufficiency; whether a document was sufficiently or correctly drafted to accomplish its purpose has always been a determination made by a court of law. (65 Ops.Cal.Atty.Gen., *supra*, at 324-325.) Thus if section 27201 speaks to that type of legal sufficiency, it would merely iterate existing law. If, on the other hand, it is the other type of legal sufficiency with which a recorder must not concern himself or herself (i.e., whether a document contains all the information required of it by the recording statutes), then the other sections of the Government Code which require that information for the document to be recorded must be ignored by him or her. That in effect would work a repeal of those sections.

Needless to say, the answer to the question presented revolves upon a resolution of the ambiguity inherent in the term "legal sufficiency", and its existence invites "statutory construction." (Cf. *Sand v. Superior Court* (1983) 34 Cal.3d 567, 570.) Again several principles

of that endeavor come to our aid. First we are told that a statute ought 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 (*Palos Verdes Faculty Association v. Palos Verdes Peninsula School District* (1978) 21 Cal.3d 650, 659; *Moyer v. Workmen's Compensation Appeals Board* (1973) 10 Cal.3d 222, 230; *Select Base Materials v. Board of Equalization* (1959) 51 Cal.2d 640, 645; *Stafford v. Los Angeles etc. Retirement Board* (1954) 42 Cal.2d 795, 799) and that where the provisions of a statute are susceptible to two or more reasonable interpretations, the interpretation that will harmonize rather than conflict with other provisions should be adopted. (*People v. Kuhn* (1963) 216 Cal.App.2d 695, 698; *Tripp v. Swoap* (1976) 17 Cal.3d 671, 679; *Fuentes v. Workers' Comp. Appeals Bd.* (1976) 16 Cal.3d 1, 7; *Lara v. Board of Supervisors* (1976) 59 Cal.App.3d 399, 408-409; *People v. Ashley* (1971) 17 Cal.App.3d 1122, 1126.) We also know that in construing a statute we ought consider the consequences that might flow from a particular interpretation of it (*Estate of Ryan* (1943) 21 Cal.2d 498, 513, *In Re Mitchell* (1898) 120 Cal.384, 386-387; *People ex rel. Riles v. Windsor University* (1977) 71 Cal.App.3d 326, 332) and that we must avoid, if at all rationally possible, a construction of a section which would work a repeal by implication of other sections of law. (Cf. *In re Thierry S.* (1977) 19 Cal.3d 727, 744; *In re White* (1969) 1 Cal.3d 207, 212; *Hays v. Wood* (1979) 25 Cal.3d 772, 784, *Cal. Drive-in Restaurant Assn. v. Clark* (1943) 22 Cal.2d 287, 292.) Rather, we are "bound to maintain the integrity of both statutes if the two may stand together." (*In re White, supra.*)

Heeding these principles we return to our crucial phrase "*legal sufficiency*" for the lack of which a county recorder may not refuse to record a document. We have seen how it may be interpreted on two levels: the very basic internal sufficiency of the document to achieve its purpose, and the informational sufficiency of the document vis-a-vis the demands of the recording statutes found in the other sections of the Government Code. We have also seen how if we restrict the interpretation of the injunction contained in section 27201 to the former, those other sections would still remain operative, for the recorder's not refusing "to record a document on the basis of its lack of legal sufficiency" would be restricted to his or her not concerning himself or herself with the adequacy of the document to achieve its purpose (something the recorder was never concerned with anyway) and would *not* be a command to ignore these other sections. Such a result would preserve the other Government Code sections, and, in effect, would reflect recording practice as it was prior to the 1982 amendment of section 27201.<sup>3</sup> On the other hand, if the term "legal sufficiency" as it appears in section 27021 is interpreted to refer to the sufficiency of the documents to meet the demands of the other Government Code sections, then the recorder's

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<sup>3</sup> We realize that when the Legislature amends a statute it ordinarily does so with the purpose of effecting a change in existing law. (Cf. *People v. Valentine* (1946) 28 Cal.2d 121, 142; *Abbott v. City of San Diego* (1958) 165 Cal.App.2d 511, 524; *Smith v. Ricker* (1964) 226 Cal.App.2d 96, 101; *SIF v. Industrial Acc. Com.* (1963) 59 Cal.2d 842, 844.) Nevertheless there are times when the purpose of an amendment is to restate existing law to clarify its meaning. (*Nationwide Investment Corp. v. California Funeral Services, Inc.* (1974) 40 Cal.App.3d 494, 501.) For example, an amendment works a clarification rather than a change if its effect is to make explicit a result which was implicit under prior law. (*Forde v. Cory* (1977) 66 Cal.App.3d 434, 438.) We believe that is what occurred here.

ignoring them would disharmoniously make them meaningless and in effect work their repeal. Enjoined as we are to interpret section 27201 so as to avoid that disharmony *and to maintain the integrity of those other sections* we opt for the former restricted interpretation of the term legal sufficiency.

We therefore conclude that the phrase "legal sufficiency" refers *only* to whether a document has been sufficiently drafted to achieve its purpose and *not* to whether it might contain the particular information demanded by the "recording" sections of the Government Code. Thus the command that a county recorder "not refuse to record a [document] which is authorized . . . by law to be recorded on the basis of its lack of legal sufficiency" speaks only to the recorder's not investigating the internal legal sufficiency of the document, and does not affect his duty to ensure that it complies with the requirements of those other Government Code sections. A document which does not contain the information required by them may not be recorded.

In short we conclude that the 1982 amendment to section 27201 of the Government Code has not obviated the need for a document to comply with the requirements of sections 27280-27296 of that code or for a county recorder to see that it does before accepting it for record.

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