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OPINION	:	No. 82-202
	:	
of	:	<u>NOVEMBER 17, 1982</u>
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THE HONORABLE DOUGLAS J. MALONEY, COUNTY COUNSEL,  
MARIN COUNTY, has requested an opinion on the following question:

Does Government Code section 68073.4(a) require a county treasurer of a county having a County Criminal Justice Facility Temporary Construction Fund to make payments to that fund on the basis of the total number of parking cases presented to or filed in the courts of the county or on the basis of the number of parking cases resulting in the collection of surcharges on fines and forfeitures?

CONCLUSION

Government Code section 68073.4(a) requires a county treasurer of a county having a County Criminal Justice Facility Temporary Construction Fund to make payments to that fund on the basis of the total number of parking cases presented to or filed in the courts of the county.

## ANALYSIS

Penal Code section 1206.8 (Stats. 1981, ch. 1171, § 6) presently provides as follows:

"(a) In each county, provided that the board of supervisors has adopted a resolution stating that the provisions of this section and Section 68073.1, 68073.2, or 68073.4 of the Government Code are necessary to the establishment of adequate facilities in the county, the following surcharges and assessments shall be collected:

*"(1) With respect to each fund established, for every parking offense where a fine or forfeiture is imposed, a surcharge of one dollar and fifty cents (\$1.50) shall be included in the fine or forfeiture.*

"The judges of the county shall increase the bail schedule amounts as appropriate to reflect the surcharge provided for by this subdivision.

"In those cities, districts, or other issuing agencies which elect to receive, deposit, accept forfeitures, and otherwise process the posting of bail for parking violations pursuant to subdivision (3) of Section 1463 of the Penal Code, that city, district, or issuing agency shall observe the increased bail amounts as established by the court reflecting the surcharge provided for by this section.

*"(b) With respect to each fund established, there shall be levied an additional amount of one dollar (\$1) for every ten dollars (\$10) or fraction thereof which shall be collected together with and in the same manner as the assessment established by Section 1464, upon every fine, penalty, or forfeiture imposed and collected by the courts for criminal offenses, including all offenses involving a violation of the Vehicle Code or any local ordinance adopted pursuant to the Vehicle Code, except offenses relating to parking or registration or offenses by pedestrians or bicyclists, or where an order is made to pay a sum to the general fund of the county pursuant to paragraph (iii) of subdivision (3) of Section 258 of the Welfare and Institutions Code. This amount shall be deposited with the county treasurer and placed in the fund established pursuant to Section 68073.1, 68073.2, or 68073.4 of the Government Code.*

"(c) The surcharge and assessment increase imposed pursuant to this section shall continue so long as deposits to the funds are required pursuant

to Section 68073.1, 68073.2, or 68073.4 of the Government Code." (Emphases added.)

Accordingly, where certain funds have been established within a county that county may collect for each such fund a surcharge of \$1.50 on every parking offense resulting in a fine or forfeiture (subdivision (a)(1)), and may levy for each such fund an assessment of \$1.00 for every \$10.00 fine, penalty or forfeiture imposed for certain other non-parking offenses (subdivision (b)).

Penal Code section 1206.8 has been amended (Stats. 1982, ch. 275, § 2), effective January 1, 1983, to allow the county, by appropriate resolution, to collect both the surcharge and the assessment, or just the assessment.

This opinion concerns a County Criminal Justice Facility Temporary Construction Fund established pursuant to Government Code section 68073.4 (Stats. 1981, ch. 301, § 1) which presently provides in part as follows:

"Notwithstanding any other provision of law, to assist a county in the funding of county criminal justice facilities construction and the improvement of criminal justice automated information systems, the board of supervisors, operative upon the adoption of a resolution stating that the provisions of this section and Section 1206.8 of the Penal Code are necessary to the establishment of adequate county criminal justice facilities in the county, may establish in the county treasury a County Criminal Justice Facility Temporary Construction Fund. *Deposits shall be made to the fund, as follows:*

"(a) *The county treasurer shall place in the fund one dollar (\$1) for each parking case presented to or filed in the courts of the county. Such moneys shall be taken from fines and forfeitures deposited with the treasurer prior to any division pursuant to Section 1463 of the Penal Code.*" (Emphases added.)

Government Code section 68073.4 has been amended (Stats. 1982, ch. 257, § 1), effective January 1, 1983, to read as follows:

"Notwithstanding any other provision of law, to assist a county in the funding of county criminal justice facilities construction and the improvement of criminal justice automated information systems, the board of supervisors, operative upon the adoption of a resolution stating that the provisions of this section and Section 1206.8 of the Penal Code are

necessary to the establishment of adequate county criminal justice facilities in the county, may establish in the county treasury a County Criminal Justice Facility Temporary Construction Fund. *From those surcharges and assessments that the board of supervisors has established in a resolution adopted pursuant to section 1206.8 of the Penal Code, deposits shall be made to the fund as follows:*

*"(a) The county treasurer shall place in the fund one dollar (\$1) for each parking case presented to or filed in the courts of the county. These moneys shall be taken from fines and forfeitures deposited with the treasurer prior to any division pursuant to Section 1463 of the Penal Code." (Emphases added.)*

Penal Code section 1463, referred to in Government Code section 68073.4(a), is a comprehensive statute concerning the distribution of fines and forfeitures collected in municipal and justice courts, including Vehicle Code fines and forfeitures. In context, fines are equivalent to forfeitures. (*Board of Trustees v. Municipal Court* (1977) 95 Cal.App.3d 322, 326.) In part, Penal Code section 1463 provides:

"Except as otherwise specifically provided by law:

"(1) All fines and forfeitures including Vehicle Code fines and forfeitures collected upon conviction or upon the forfeiture of bail, together with moneys deposited as bail, in any municipal or justice court, shall, as soon as practicable after the receipt thereof, be deposited with the county treasurer of the county in which such court is situated . . . ."

The statute then sets down detailed provisions for the distribution of such deposits by the county treasurer to the county and to the cities therein.<sup>1</sup> However, as we have seen, Government Code section 68073.4(a) in its present form and as amended requires the county treasurer to place one dollar in a County Criminal Justice Facility Temporary Construction Fund "for each parking case presented to or filed in the courts of the county" before any distribution may be made under Penal Code section 1463.

The plain meaning of Government Code section 68073.4(a) is that the one dollar distribution to the fund is made from the surcharges collected under Penal Code

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<sup>1</sup> Moneys which were deposited as bail and were transmitted to the county treasurer but which were not forfeited in court are returnable to the owners. However, if not claimed within the times prescribed, they are also subject to distribution. (Pen. Code, § 1463(2); see also Pen. Code, § 1463.1.)

section 1206.8(a)(1) and on deposit with the county treasurer under Penal Code section 1463. Since the assessments collected under Penal Code section 1206.8(b) go directly to the fund as expressly provided in that statute, and are unrelated to parking offenses, the one dollar comes from the surcharges only.

The question we are asked requires us to decide whether the additional language in Government Code section 68073.4(a), namely, "one dollar (\$1) for each parking case presented to or filed in the courts of the county," is to be construed literally or is to be interpreted to require a payment to the fund only for each parking case resulting in the imposition of a Penal Code section 1206.8(a)(1) surcharge. We conclude that the statute means what it says, and that it is the number of parking cases handled by the courts which is the controlling factor rather than the number of parking cases wherein surcharges were collected.

Since we have found no judicial decision interpreting Government Code section 68073.4(a), we will apply the traditional rules of statutory construction, as summarized in *California Mfgs. Assn. v. Public Utilities Com.* (1979) 24 Cal.3d 836, 844:

"Where a statute is theoretically capable of more than one construction we choose that which most comports with the intent of the Legislature. (E.g., *Tripp v. Swoap* (1976) 17 Cal.3d 671, 679 [131 Cal. Rptr. 789, 552 P.2d 749]; *Select Base Materials v. Board* (1959) 51 Cal.2d 640, 645 [335 P.2d 672].) Words must be construed in context, and statutes must be harmonized, both internally and with each other, to the extent possible. (*Moyer v. Workmen's Comp. Appeals Bd.* (1973) 10 Cal.3d 222, 230 [110 Cal. Rptr. 144, 514 P.2d 1224]; *Select Base Materials v. Board of Equal.*, *supra*, at p. 645; *Johnstone v. Richardson* (1951) 103 Cal.App.2d 41, 46 [229 P.2d 9].) Interpretive constructions which render some words surplusage, defy common sense, or lead to mischief or absurdity, are to be avoided. (*Fields v. Eu* (1976) 18 Cal.3d 322, 328 [134 Cal. Rptr. 367, 556 P.2d 729]; *Sanchez v. South Hoover Hospital* (1976) 18 Cal.3d 93, 98 [132 Cal. Rptr. 657, 553 P.2d 1129]; *Stanley v. Justice Court* (1976) 55 Cal.App.3d 244, 253 [127 Cal. Rptr. 532]; *Watkins v. Real Estate Commissioner* (1960) 182 Cal.App.2d 397, 400 [6 Cal. Rptr. 191].) In the present instance both the legislative history of the statute and the wider circumstances of its enactment are legitimate and valuable aids in devining the statutory purpose. (*Steilberg v. Lackner* (1977) 69 Cal. App. 3d 780, 785 [138 Cal. Rptr. 378]; *Alford v. Pierno* (1972) 27 Cal.App.3d 682, 688 [104 Cal. Rptr. 110].)"

The purpose of Government Code section 68073.4 is to create a separate fund for capital improvements in county criminal justice systems. Specifically, subdivision (c) in part provides:

"The moneys in the County Criminal Justice Facility Temporary Construction Fund shall be payable only for construction, reconstruction, expansion, or improvement of county criminal justice and court facilities, and for improvement of criminal justice automated information systems."

The processing of parking cases in the courts, whether or not the cases generate fines or forfeitures, is a heavy burden on the court facilities and information systems. According to the 1982 Annual Report of the Administrative Office of the California Courts, Judicial Council of California, at page 97, table XXX, there were 9,637,632 parking cases filed in the municipal and justice courts in the 1980-1981 fiscal year. While this was a decrease in filings from the previous fiscal year, it represented a 42 percent increase in such filings over a 10 year period. In the same report, at page 114, figure 16, it is shown that 20 percent of the parking cases were dismissed before trial, that 77 percent were disposed of by bail forfeitures and that the remainder were resolved by pleas of guilty or trials. The report, at page 119, figure 19, discloses that parking cases represented 57 percent of the court filings in the 1980-1981 fiscal year.

We discern from Government Code section 68073.4(a) a legislative intent to foster improvements in the facilities and the systems of the courts based upon the total number of parking cases processed. This is consistent with Penal Code section 1206.8(a)(1) which places a surcharge of one dollar and fifty cents, for the benefit of a County Criminal Justice Facility Temporary Construction Fund,<sup>2</sup> on every parking offense "where a fine or forfeiture is imposed." If the Legislature had intended the one dollar payment in Government Code section 68073.4(a) to be applicable only for parking fines and forfeitures actually imposed it would have used language similar to that in Penal Code section 1206.8(a) and not the language "each parking case presented to or filed in the courts of the county." Moreover, while a surcharge of one dollar and fifty cents on each parking fine and forfeiture is collectible under Penal Code section 1206.8(1), the county treasurer is required to add only one dollar to the fund for each parking case presented or filed. The remaining fifty cents would be available to cover payments for parking cases which were dismissed or resulted in not guilty judgments.

We conclude that a county treasurer of a county which has established a County Criminal Justice Facility Temporary Construction Fund must make a payment of

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<sup>2</sup> Los Angeles and San Francisco counties have special courtroom construction funds under Government Code section 68073.1 and 68073.2.

one dollar to that fund on the basis of the total number of parking cases presented to or filed in the courts of the county.

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