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OPINION	:	No. 82-904
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of	:	<u>DECEMBER 23, 1982</u>
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THE HONORABLE DORIS V. ALEXIS, DIRECTOR OF THE DEPARTMENT OF MOTOR VEHICLES, has requested an opinion on the following question:

Does section 9263 of the Vehicle Code require the Department of Motor Vehicles to assess a separate fifteen dollar investigation service fee against a licensed automobile dismantler for failure to comply with each subdivision of that section, or is only one investigation service fee assessable per vehicle under that section?

CONCLUSION

Section 9263 of the Vehicle Code requires the Department of Motor Vehicles to assess only one fifteen dollar investigation service fee against a licensed automobile dismantler per vehicle for failure to comply with the provisions of that section irrespective of the number of subdivisions the dismantler fails to observe or follow.

ANALYSIS

Section 9263 of the Vehicle Code,¹ as amended in 1974 (Stats. 1974, ch. 613), provides:

"Any automobile dismantler or other person who fails to comply with the provisions of Section 11520 shall pay an investigation service fee of fifteen dollars (\$15)."

Section 11520, referred to therein, and also as amended in 1974 by the same bill, provides:

"(a) A licensed automobile dismantler who acquired, for the purpose of dismantling, actual possession, as a transferee, of *a vehicle* of a type subject to registration under this code:

"(1) Shall within five calendar days, not including the day of acquisition, mail a notice of acquisition to the department at its headquarters.

"(2) Shall within five calendar days, not including the day of acquisition, mail a copy of the notice of acquisition to the Department of Justice at its headquarters.

"(3) Shall not begin dismantling until 10 calendar days have elapsed after mailing the notice of acquisition. In the alternative, dismantling may begin any time after the dismantler complies with the provisions of paragraph (4).

"(4) Shall deliver to the department, within 90 calendar days of the date of acquisition, the documents evidencing ownership and the license plates last issued for the vehicle. Proof that a registered or certified letter of demand for the document was sent within 90 days of the date of acquisition to the person from whom the vehicle was acquired may be submitted for documents that cannot otherwise be obtained. A certificate of license plate destruction, when authorized by the director, may be delivered in lieu of the license plates.

"(5) Shall maintain a business record of all vehicles acquired for dismantling. The record shall contain the name and address of the person from whom such vehicle was acquired; the date the vehicle was acquired;

¹ All section references are to the Vehicle Code unless otherwise indicated.

license plate number last assigned to the vehicle; and a brief description of the vehicle, including its make, type, and the vehicle identification number used for registration purposes. The record required by this subdivision shall be a business record of the dismantler separate and distinct from the records maintained in those books and forms furnished by the department.

"(b) The provisions of paragraphs (1) and (2) of subdivision (a), shall not apply to vehicles acquired pursuant to Section 11515 or 22705 of this code or Sections 3071, 3072, or 3073 of the Civil Code.

"(c) Any person, other than a licensed dismantler, desiring to dismantle a vehicle of a type subject to registration under this code shall deliver to the department the certificate of ownership, registration card, and the license plates last issued to the vehicle before dismantling may begin.

"(d) Any person who violates this section is guilty of a misdemeanor. Any person not licensed under the provisions of this chapter who is convicted under this section shall be punished upon a first conviction by imprisonment in the county jail for not less than five days or more than six months or by a fine of not less than fifty dollars (\$50) nor more than five hundred dollars (\$500) or by both such fine and imprisonment; and upon a second or any subsequent conviction, by imprisonment in the county jail for not less than 30 days nor more than one year or by a fine of not less than two hundred fifty dollars (\$250) nor more than one thousand dollars (\$1,000) or by both such fine and imprisonment." (Emphasis added.)

It is thus seen that as to any particular vehicle, a licensed automobile dismantler must, under subdivisions (a)(1) through (a)(5) above, submit certain reports, maintain certain records, and refrain from dismantling the vehicle until he has submitted particular reports, documents or other matters.

We are informed that the Department of Motor Vehicles has, since the statutes were cast in their present form in 1974, required of a licensed automobile dismantler only one fifteen dollar "investigation service fee" as prescribed in section 9263 irrespective of the number of subdivisions of section 11520 the licensee has failed to observe. We are now asked essentially whether this administrative practice of the department is correct.

The assessment of an investigation service fee against automobile dismantlers had its genesis in the enactment of the predecessor to section 9263, that is,

section 247 of the Vehicle Code of 1939. As originally enacted in 1941 (Stats. 1941, ch. 1028), section 247 provided:

"Any person acquiring a vehicle subject to registration hereunder, for the purpose of wrecking or dismantling the same, who fails to forward to the department the documents required by Section 246, within ninety (90) days after taking possession of the vehicle, and before dismantling and wrecking such vehicle, shall pay in addition to any other penalties an investigation service fee in the amount of five dollars (\$5)."²

Section 247, as originally cast, appears to clearly have contemplated the payment of *one* "investigation service fee" although there were even then two possible "violations" which could occur: (1) failure to forward the requisite documents within the ninety-day period and (2) failure to await the forwarding of the documents before dismantling the vehicle no matter when forwarded. Section 247 was renumbered section 9263 upon the adoption of the Vehicle Code of 1959 (Stats. 1959, ch. 3), without substantive change.³

That the section as it then read contemplated the assessment of a single investigation service fee per vehicle is evident in the only construction of these provisions our research has disclosed to the present time. Such construction was in an opinion of this office in 1941. We stated:

"In my opinion, the proper interpretation of Section 247 is that the documents in question must be forwarded to the department before the vehicle is dismantled or wrecked, and in any event within ninety days from the time it came into possession of the person who acquired it for wrecking or dismantling purposes. *The investigation service fee of five dollars* provided for in the section becomes payable unless the documents are forwarded both within the ninety-day period and prior to dismantling or wrecking. I do not believe the section is open to any other interpretation." (Ops.Cal.Atty.Gen. No. N.S. 3949 (1941), emphasis added.)

² Section 246 is essentially the predecessor of present section 11520, and required a dismantler (1) to immediately forward to the department the certificate of ownership, registration card and license plates of the vehicle to be dismantled; (2) to maintain records of all vehicles dismantled; and (3) to obtain a certificate of dismantling from the department.

³ The reference to section 246 was changed to section 11505. Accordingly, section 11505 of the Vehicle Code of 1959 is the immediate predecessor to present section 11520.

The next major development with respect to section 9263 occurred in 1961 when the section was rewritten to read as follows by Statutes of 1961, chapter 1640:

"9263. (a) Any automobile wrecker acquiring a vehicle subject to registration under this code, for the purpose of wrecking or dismantling the same, who fails to forward to the department notification of acquiring such vehicle as required in Section 11520(a) within 24 hours after taking possession of the vehicle and before dismantling or wrecking such vehicle *or* who fails to forward to the department the documents and license plate or plates required by Section 11520(b), within ninety (90) days after taking possession of the vehicle, shall pay in addition to any other fees due an investigation service fee in the amount of five dollars (\$5). If such person who fails to forward the documents and license plate or plates as required by Section 11520(b) can furnish written evidence of a diligent effort to secure required documents, the investigation service fee shall not be due or payable.

"(b) Any person other than a licensed automobile wrecker who fails to surrender to the department the documents and license plate or plates as required by Section 11520(b) before dismantling or wrecking a vehicle, shall pay in addition to any other fees due an investigation service fee of five dollars (\$5)." (Emphasis added.)⁴

In 1974, section 9263 was "streamlined" to read as it presently does, assessing an "investigation service fee of fifteen dollars (\$15)" for failure "to comply with the provisions of Section 11520."

⁴ Interestingly, section 11520 contained analogous provisions at that time (1961) to those presently contained in such section (reports to two agencies; waiting period for dismantling; surrender of ownership papers and license plates; alternate provisions as to when dismantling may commence; and requirement of maintaining business records of dismantling). At that time, however, we are informed that despite the fact that an argument could have been made that a separate fee of five dollars was to be assessed for the violation of subdivision (a) *or* subdivision (b) by virtue of the use of the disjunctive "or" in the section as then cast, the Department of Motor Vehicles continued the historical construction of assessing a single five dollar fee per vehicle. Such a construction was supportable and not clearly erroneous by virtue of the continuation in the section of the prescription of "*an* investigation *fee* in the amount of five dollars (\$5)," thus using the singular with respect thereto. Furthermore, the prescription of the *single fee* followed a description of both ways in which a dismantler might violate the section, indicating further that only one fee was to be assessed whether the dismantler failed to follow subdivision (a) of section 11520, subdivision (b) of section 11520, or both.

In determining whether the Department of Motor Vehicles has been correctly charging a single fee of fifteen dollars irrespective of the number of subdivisions of subdivision (a) of section 11520 not followed by a dismantler, the following rules of statutory construction are applicable.

"[B]oth the legislative history of . . . [a] statute and the wider historical circumstances of its enactment are legitimate and valuable aids in divining the statutory purpose." (*California Mfrs. Assn. v. Public Utilities Com.* (1979) 24 Cal.3d 836, 844.) "[W]hen an administrative agency is charged with enforcing a particular statute, its interpretation of the statute will be accorded great respect by the court 'and will be followed if not clearly erroneous'." (*Judson Steel Corp. v. Workers' Comp. Appeals Bd.* (1978) 22 Cal.3d 658, 668.) This is particularly true where the administrative construction is not only contemporaneous, but is of long standing. "The department's long-standing administrative practice . . . may, in the absence of any legislative intent to the contrary, be deemed approved by the Legislature and representative of existing state law." (*California Welfare Rights Organization v. Brian* (1974) 11 Cal.3d 237, 241.)

Initially, we point out that the department's construction of section 9263 as presently cast is not clearly erroneous. Section 9263 speaks in terms of "fail[ure] to comply with the provisions of Section 11520." Although section 11520 sets forth a series of matters which a licensed automobile dismantler must and must not do as to any particular vehicle, a dismantler can only *comply* with the provisions of section 11520 *once per vehicle*. Thus, he would only send in the required reports, ownership documents, license plates, make his business entries, and wait the prescribed time to dismantle a vehicle *once* as to a given vehicle. In so doing, he would then "comply with the provisions of section 11520." Conversely, if a dismantler can be said to be able to comply with section 11520 only once as to a given vehicle, it can also be said that he can not comply, that is, "*fail* to comply" with these provisions only once as to any given vehicle. Accordingly, although it could be argued that failure to comply with each requirement of section 11520 constitutes a separate "violation" of the section and should give rise to a separate investigation service fee, section 9263, when read in conjunction with section 11520, does not require such a construction. (Cf. *People v. Superior Court* (1973) 9 Cal.3d 283, multiple misrepresentations constitute a *single* violation of false advertising statute as to any given potential customer.)

This fact, plus the fact that historically only *one* fee was contemplated by section 247 when it was enacted in 1941, adds further evidence that as legislative changes were made over the years, the Legislature intended to continue its original prescription of a single "investigation service fee." At least since 1974, and probably since 1961, it could have been argued that multiple fees should have been required. However, throughout all

that time, the department has assessed only a single fee per vehicle. It would appear that the Legislature has acquiesced in such construction.

Accordingly, we conclude that section 9263 of the Vehicle Code requires the Department of Motor Vehicles to assess only one fifteen dollar investigation service fee against a licensed automobile dismantler per vehicle for failure to comply with the provisions of section 11520 irrespective of the number of subdivisions of that section the dismantler fails to observe or follow.⁵

⁵ This conclusion renders moot the second question posed by the requester, that is, if more than one investigation service fee is required, whether the Department of Motor Vehicles would be required to adopt an administrative regulation changing its long-standing practice of assessing only a single fee per vehicle.