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JOHN K. VAN DE KAMP
Attorney General

OPINION	:	No. 84-107
	:	
of	:	<u>MAY 16, 1984</u>
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JOHN K. VAN DE KAMP	:	
Attorney General	:	
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RODNEY O. LILYQUIST	:	
Deputy Attorney General	:	
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THE HONORABLE GORDON DUFFY, CHAIRMAN, AIR RESOURCES BOARD, has requested an opinion on the following question:

Does the Air Resources Board have the authority to conduct inspections of used cars, regardless of age or mileage, offered for sale at used car dealerships?

CONCLUSION

The Air Resources Board has the authority to conduct inspections of used cars offered for sale at used car dealerships, but only with regard to such cars during the first five years or 50,000 miles of use, whichever first occurs.

ANALYSIS

Health and Safety Code section 43012¹ states in part:

"For the purpose of enforcing or administering any federal, state, or local law, order, regulation, or rule relating to vehicular sources of emissions, the executive officer of the state board or an authorized representative of the executive officer, upon presentation of his credentials or, if necessary under the circumstances, after obtaining an inspection warrant pursuant to Title 13 (commencing with Section 1822.50) of Part 3 of the Code of Civil Procedure, shall have the right of entry to any premises owned, operated, used, leased, or rented by any new or used car dealer, as defined in Sections 285, 286, and 426 of the Vehicle Code, for the purpose of inspecting any new vehicle, including any vehicle subject to the warranty provisions of Sections 43204 and 43205, for which emission standards have been enacted or adopted or for which emissions equipment is required and which is situated on the premises for the purpose of emission-related maintenance, repair, or service, or for the purpose of sale, lease, or rental, whether or not such vehicle is owned by such dealer. Such inspection may extend to all emission-related parts and operations of any such vehicle, and may require the on premises operation of an engine or vehicle, the on premises securing of samples of emissions from any such vehicle, and the inspection of any records which relate to vehicular emissions required by the Environmental Protection Agency or by any state or local law, order, regulation, or rule to be maintained by any such dealer in connection with his business.

"This right of entry shall be limited to the hours during which the dealer is open to the public, except when the entry is made pursuant to warrant or whenever the executive officer or his authorized representative has reasonable cause to believe that a violation of any federal, state, or local law, order, regulation, or rule has been committed in his presence. No vehicle shall be inspected pursuant to this section more than one time without an inspection warrant or without reasonable cause unless (a) the vehicle undergoes a change of ownership or (b) the inspection reveals that the vehicle has failed to comply with required emissions standards or equipment, in which case one additional inspection may be made to verify the violation or to verify that the violation has been corrected." (Emphasis added.)

¹ All references hereafter to the Health and Safety Code are by section number only.

The question presented for analysis is whether section 43012 gives authority to the Air Resources Board (hereafter "Board") to conduct inspections of used cars, regardless of age or mileage, offered for sale at used car dealerships. We conclude that the statute gives such authority but only with regard to used cars during the first five years or 50,000 miles of use, whichever first occurs.

The question arises because section 43012 appears to be internally inconsistent. Some of the statutory language suggests that the Board's authority is limited to "new vehicle" inspections, other language suggests that used vehicles may be inspected but only during the first five years or 50,000 miles of use, while still other language supports a third alternative that the Board is not limited to the five year or 50,000 miles limitation.²

Section 43012 plainly states that the Board has the authority to enter and inspect "any new vehicle." It does not state "any new or used vehicle." A "new vehicle" is generally defined as "a motor vehicle, the equitable or legal title to which has never been transferred to an ultimate purchaser." (§ 39042.)

One principle of statutory construction is: *expressio unius est exclusio alterius* (the expression of one excludes the other). (See *Wildlife Alive v. Chickering* (1976) 18 Cal.3d 190, 195; *People v. Hacker Emporium, Inc.* (1971) 15 Cal.App.3d 474, 477.) Under this rule of construction, the Legislature has restricted the inspection authority of the Board to new vehicles at new and used car dealerships.

The *expressio* rule is inapplicable, however, where "it would operate contrary to the legislative intent," where it would "nullify the essence of the statute," "where no reason exists why persons or things other than those enumerated should not be included, and manifest injustice would follow by not including them," or where it "leads to absurd and undesirable consequences." (*People v. Hacker Emporium, Inc., supra*, 15 Cal.App.3d 474, 477; see *Wildlife Alive v. Chickering, supra*, 18 Cal.3d 190, 195; *In re Cathey* (1961) 55 Cal.2d 679, 689.)

Here we have several indications that the Legislature intended for at least some used cars to come within the Board's inspection powers. First, the statute specifically refers to the premises of any "used car dealer." Since a used car dealer would be considered by statutory definition a new car dealer if he sold any new vehicles (Veh. Code, §§ 285, 286, 426), the term "used car dealer" in the statute is superfluous unless section 43012 also covers used cars. Statutory constructions that "accord significance to every word and

² As will be further explained, cars prior to the 1955 model year would have nothing to be inspected by the Board unless they contained a "new" engine.

phrase are preferred." (*Pacific Legal Foundation v. Unemployment Ins. Appeals Bd.* (1981) 29 Cal.3d 101, 114; see *Wells v. Marina City Properties, Inc.* (1981) 29 Cal.3d 781, 788.)

Moreover, section 43012 expressly covers "any vehicle subject to the warranty provisions of Sections 43204 and 43205." While section 43205 has been repealed, section 43204 is generally applicable to "each motor vehicle and each motor vehicle engine" for "a period of use of five years or 50,000 miles, whichever first occurs."³ Although new cars would come within the provisions of section 43204, so too would used cars within the age and mileage restrictions.

It is true that the Legislature used the word "including" rather than "and" ["for the purpose of inspecting any new vehicle, including any vehicle subject to the warranty provisions of Sections 43204 and 43205"] which suggests that used cars are not covered, but such a construction again renders meaningless other statutory language. The entire "including" phrase is unnecessary if only new cars are covered by the statute.

Finally, we note the third alternative: the Board has inspection powers covering all used cars regardless of age or mileage. In support of this position is the language of section 43012 that the Board's inspection authority is "[f]or the purpose of enforcing or administering any . . . state . . . law, order, regulation, or rule relating to vehicular sources of emissions." One such law is Vehicle Code section 24007, subdivision (b):

"No person shall sell, or offer or deliver for sale, to the ultimate purchaser a new or used motor vehicle . . . subject to Part 5 . . . which is not in compliance with the provisions of that Part 5 and the rules and regulations of the State Air Resources Board"

The reference to "Part 5" is to sections 43000-43835, covering both new and used vehicles. (See also §§ 39601, 43000, 43009, 43013, 43600; Veh. Code, §§ 27151, 27156, 27157, 27157.5.)⁴

³ Some component parts and systems have a two-year or 24,000 mile warranty period under the statute. For vehicles with a gross weight of over 6,000 pounds, the Board may determine "that a period of use of greater duration or mileage" than the five-year or 50,000 mile period is appropriate for the length of the warranty. (§ 43204, subd. (b)(2).)

⁴ Special standards are applicable for 1955-1965 model cars (§§ 43601-43604; Veh. Code, § 27157.5) and 1966-1970 model cars (§§ 43610-43614), while a "new" engine installed in any used car would be covered under section 43204 for five years or 50,000 miles.

Also in support of this alternative is the Board's regulation which sets forth in broad and general terms the authority to inspect used cars at used car dealerships that are subject to the "Part 5" requirements. (Cal. Admin. Code, tit. 13, § 2152.)⁵ It is difficult to conceive of why the Legislature would give inspection authority to the Board only with regard to new cars or those used cars during the first five years or 50,000 miles of use, when older cars are also subject to emission control standards and by law cannot be offered for sale without compliance therewith. The Legislature has repeatedly recognized the grave, detrimental harm of air pollution (see, e.g., §§ 39000-39003, 43000; Bus. & Prof. Code, § 9889.50) and has directed the Board "to systematically attack the serious problem caused by motor vehicles, which is the major source of air pollution in many areas of the state" (§ 39003).

Nevertheless, we cannot say that the Legislature has placed all cars which are subject to "Part 5" under the Board's inspection authority of section 43012.⁶ It appears to have specifically limited the Board's duties to the inspection of new vehicles and used vehicles during the first five years or 50,000 miles of use.⁷

In answer to the question presented, therefore, we conclude that the Board has the authority to conduct inspections of used cars offered for sale at used car dealerships but only with regard to such cars during the first five years or 50,000 miles of use, whichever first occurs.

⁵ Of course, an administrative regulation must not "violate acts of the Legislature." (*Agricultural Labor Relations Bd. v. Superior Court* (1976) 16 Cal.3d 392, 419.)

⁶ We also note the Board's inspection authority regarding nonvehicular sources of air pollution emission. (§ 41510.)

⁷ Another way of expressing this conclusion is to say that in the context (see § 39010) of section 43012, the term "new vehicle" has a broader definition than that contained in section 39042; it includes vehicles subject to the section 43204 warranty provisions.