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OPINION	:	No. 84-401
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THE HONORABLE ALAN K. MARKS, COUNTY COUNSEL OF SAN BERNARDINO COUNTY, requests an opinion on the following question:

Do the penalty assessments imposed by subdivision (a)(2) of Penal Code section 1206.8 apply to monies ordered paid in Juvenile Traffic Court pursuant to Welfare and Institutions Code section 258(a)(3)(iii)?

CONCLUSION

The penalty assessments imposed by subdivision (a)(2) of Penal Code section 1206.8 apply to monies ordered paid by a Juvenile Traffic Court pursuant to Welfare and Institutions Code section 258(a)(3)(iii).

ANALYSIS

Section 68073.4 of the Government Code (Stats. 1981, ch. 1177, p. 4703, § 3) authorizes the board of supervisors of a county to establish a County Criminal Justice Facility Temporary Construction Fund to assist the county with the construction of county criminal justice facilities (e.g., jails, women's centers, detention facilities, juvenile halls, and courtrooms) and to improve its criminal justice automated information systems. (§ 68073.4.) Section 68073.6 of that code (Stats. 1983, ch. 1194, p. —, § 1) authorizes the board of supervisors of a county (other than Los Angeles or the City and County of San Francisco) to establish a Courthouse Temporary Construction Fund to assist the county getting adequate courtroom facilities. (§ 68073.6.)

Section 1206.8 of the Penal Code provides a source of monies for those funds by authorizing a board of supervisors to impose surcharges and penalty assessments on the fines, penalties and forfeitures levied for certain offenses, for collection and deposit into those funds. This opinion considers whether traffic violations found in Juvenile Traffic Court are liable to one of its specified assessments.

Penal Code section 1208.6 reads 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, 68073.4, and 68073.6 of the Government Code are necessary to the establishment of adequate facilities in the county, the following surcharges and assessments shall be collected, except that a resolution adopted pursuant to Section 68073.4 of the Government code may limit the collection to the assessments specified in paragraph (2) and a resolution adopted pursuant to Section 68073.6 of the Government Code shall limit the collection to the assessments specified in paragraph (2):

"(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 paragraph.

"(2) 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, 68073.4, and 68073.6 of the Government Code.

"(b) 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, 68073.4, and 68073.6 of the Government Code.

"(c) No county, city and county, city, district or other issuing agency shall be required to contribute revenues to any fund in excess of those revenues generated from the surcharges and assessments established in the resolution adopted pursuant to this section."

We are asked whether that assessment, of one dollar per ten of fine, penalty or forfeiture, applies to monies ordered paid in Juvenile Traffic Court pursuant to section 258(a)(3)(iii) of the Welfare and Institutions Code.¹

¹ Section 258(a)(3)(iii) of the Welfare and Institutions Code provides the fount of authority for juvenile judges referees or traffic hearing officers to assess a "sum" in Juvenile Traffic Court for traffic violations. (Cf. *In re Timothy E.* (1949) 99 Cal.App.3d 349, 354; *In re Jon D.* (1978) 84 Cal.App.3d 337, 339; 63 Ops.Cal. Atty.Gen. 232, 233-237 (1980); 57 Ops.Cal.Atty.Gen. 619, 622 (1974); 38 Ops.Cal.Atty.Gen. 141, 142 (1961).) It reads as follows:

"(a) Upon a hearing conducted in accordance with Section 257, upon an admission by the minor of the commission of a traffic violation charged, or upon a finding that the minor did in fact commit the traffic violation, the judge, referee, or traffic hearing officer may do any of the following:

".....

"(3) Make any or all of the following orders:

The question quite obviously arises because the context in which section 258(a)(3)(iii) is mentioned in section 1206.8 is not clear. To recall, subdivision (a)(2) of section 1206.8 provides for the levy of an additional one dollar, to be collected with and in the same manner as the assessment established by Penal Code section 1464, on:

"... every fine, penalty, or forfeiture imposed and collected by 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.*"²

"(iii) That the minor pay to the general fund of the county for each offense a sum, as specified in Article 1 (commencing with Section 42000) of Chapter 1 of Division 18 of the Vehicle Code, excluding Section 42000, but not to exceed two hundred fifty dollars (\$250), and to the Assessment Fund an assessment in the amount provided in Section 1464 of the Penal Code. Any judge, referee, or traffic hearing officer may waive an assessment if the amount the minor is ordered to pay to the general fund of the county is less than ten dollars (\$10). A fine imposed on a minor pursuant to this section shall not exceed the maximum fine that could be imposed on an adult for the same offense."

To be sure, the reference in Penal Code section 1206.8 to an order made pursuant to "paragraph (iii) of subdivision (3) of section 258 of the Welfare and Institutions Code" is not quite correct. The proper designation of the appropriate authority is as it appears in Penal Code section 1464: an order made pursuant to "subparagraph (iii) of paragraph (3) of subdivision (a) of section 258" We will treat the erroneous designation of authority as a legislative inadvertency and so ignore it. (*Pond v. Maddok* (1869) 38 Cal. 572, 574-575; *Pepper v. Board of Directors* (1958) 162 Cal.App.2d 1, 4.)

² But for its correctly designating the authority of the Juvenile Traffic Court to order a juvenile to pay a sum to the county's general fund, Penal Code section 1464(a) uses the same language to designate the monies upon which its five on ten dollar surcharged assessment is levied. Thus:

"(a) Subject to the provisions of Section 1206.8, there shall be levied an assessment in an amount equal to five dollars (\$5) for every ten dollars (\$10) or fraction thereof, upon every fine, penalty, or forfeiture imposed and collected by the courts for criminal offenses, including all offenses involving a violation of a section 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 subparagraph (iii) of paragraph (3) of subdivision (a) of Section 258 of the Welfare and Institutions Code.* . . ."

The problem is whether the underlined phrase that refers to sums ordered paid to the county general fund in Juvenile Traffic Court pursuant to Welfare and Institutions Code section 258(a)(3)(iii) is part of the language of exception that it immediately follows or is not. An analysis of the wording of the subdivision, riddled as it is with commas and subordinate clauses, convinces us that it is not.³

Our fundamental task of course is to ascertain the intent of the Legislature regarding the subdivision's reference to offenses found in Juvenile Traffic Court (*Moyer v. Workmen's Comp. Appeals Bd.* (1973) 10 Cal.3d 222, 230, citing *Select Base Materials v. Board of Equal.* (1959) 51 Cal.2d 640, 645) and to do so we must turn first to the wording of the subdivision and the context in which the phrase containing the troublesome reference appears. (*People v. Knowles* (1950) 35 Cal.2d 175, 182; *Johnstone v. Richardson* (1951) 103 Cal.App.2d 41, 46.) So doing we see that the reference to "order[s] to pay a sum . . . pursuant to paragraph (iii) of subdivision (3) of section 258 . . ." is found in the last subordinate clause of paragraph (2) of subdivision (a) and that it is separated from the rest of that paragraph by a comma and is introduced by the disjunctive "or." That punctuation and the use of the disjunctive is significant. The clause "is grammatically complete" in itself and its connection to the rest of the paragraph by the comma and the disjunctive "or" indicates that the Legislature intended for it to be considered independently as a "separate category" from that which precedes it. (*White v. County of Sacramento* (1982) 31 Cal.3d 676, 681 (Gov. Code, § 3303: punitive action = "any action which may lead to dismissal, demotion, suspension, reduction in salary, written reprimand, *or transfer for purpose of punishment*"); *In re G.* (1972) 28 Cal.App.3d 276, 283; cf. *Elbert, Ltd. v. Gross* (1953) 41 Cal.2d 322, 326; *County of Los Angeles v. Graves* (1930) 210 Cal. 21, 26; *Wholesale T. Dealers v. National etc. Co.* (1938) 11 Cal.2d 634, 659; and compare *Board of Trustees v. Judge* (1975) 50 Cal.App.3d 920, 927-928 & 927-928, fn. 4, with *Furnish v. Board of Medical Examiners* (1957) 149 Cal.App.2d 326, 329-330; see also Kittredge & Farley, *Advanced English Grammar* (Boston: Ginn & Co., 1913) at p. 307 ("To set off . . . phrases out of their regular order"); E.D. Johnson, *Handbook of Good English* (New York: Washington Square Press, 1983) at p. 65.) That which precedes the clause referring to

Subdivision (e) of section 1464 then provides for the collection and transmittal of an appropriate amount of the monies so assessed for an initial deposit into the *Assessment Fund* in the State Treasury, and subdivision (f) then provides for appropriate transfer to other specific funds; amongst them is a 27.75 percent transfer to the Peace Officers' Training Fund (§ 1464(f)(3)) and a 29.73 percent transfer to the Driver Training Penalty Fund. (*Id.*, ¶ (4).)

³ To forewarn the reader: This analysis involves a discussion of four interrelated sections of three different codes, to wit, sections 1206.8 and 1464 of the Penal Code, section 258 of the Welfare and Institutions Code and section 42050 of the Vehicle Code. Hoping not to add to confusion, we feel it best to sometimes refer to the section numbers without code designation to avoid the "mouthful."

monies ordered paid in Juvenile Traffic Court in subdivision (a)(2) is its language of exception ("except offenses relating to parking or registration or offenses by pedestrians or bicyclists") and the fact that the two are separated by a comma and the disjunctive would indicate that such payments were not meant to be a part of the subdivision's exemption. (*White v. County of Sacramento, supra*; *In re G., supra*; *Elbert, Ltd. v. Gross, supra*; *County of Los Angeles v. Graves, supra*.)

The presence of the disjunctive "or" preceding the clause in question is significant in another respect. Its use in a statute "indicates an intention . . . to designate *alternative . . . categories*" as well as separate ones. (*White v. County of Sacramento, supra*, 31 Cal.3d at 681; see also *People v. Smith* (1955) 44 Cal.2d 77, 78-79; *Barker Bros., Inc. v. Los Angeles* (1938) 10 Cal.2d 603, 606; *Barth v. San Juan Development Co.* (1959) 168 Cal.App.3d 760, 764.) That effort, however, usually requires that the complementing categories found on either side of the disjunctive be of similar notions in order that they present a meaningful alternative. When we look at subdivision (a) with this in mind we see that the clause of concern cannot sensibly be part of the exclusionary language if the disjunctive is to strike a meaningful alternative. On one side of the "or" is the Juvenile Court clause which speaks in terms of "*an order . . . to pay a sum*"; on the other side would be the language of exception. But that speaks in terms of *offenses* ("except offenses relating to parking, etc."). Plainly those notions are not similar and cannot be disjoined to present a meaningful alternative. Indeed, for us to find one to complement the clause of concern we must go back to the very beginning of the description of items which are subject to penalty assessment surcharge; i.e., to the phrase "upon every fine, penalty or forfeiture imposed and collected by courts for criminal offenses." That clause, which also speaks in terms of mandated payments following trial, is the alternative category with which the clause of concern is most meaningfully disjoined. Paragraph (2) of subdivision (a) would thus be analyzed or diagrammed as follows:

"With respect to each fund established, there shall be levied an additional amount of one dollar . . .

—"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,

—"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 [§ 258(a)(3)(iii) by a Juvenile Traffic Court]."

The reason for the disjoinder is apparent if we recall two salencies of Juvenile Court Law. The first is that "proceedings in juvenile court . . . are *sui generis*" (63 Ops.Cal.Atty.Gen. 232, 238 (1980) so that "[e]ven where it is charged that [a] minor has committed a crime [,those proceedings] are not criminal trials." (38 Ops.Cal. Atty.Gen. 141, 142, *supra*.) Thus while an order to pay a sum may be pecuniary punishment for an unlawful act, "it is not attended by conviction of a crime." (*Ibid.*; cf. Welf. & Inst. Code, § 203; but see Veh. Code, §§ 13105, 13352.2; and see generally B.K. Falk, *Juvenile Traffic Violations*, CEB; Cal. Juv. Ct. Practice, §§ 26.30, 26.31.) The second is that at the time subdivision 1206.8 was adopted in 1981 (Stats. 1981, ch. 1171, § 6, p. 4704), payments ordered in juvenile traffic court *were not considered in the nature of fines*. (38 Ops.Cal.Atty.Gen. 141, 142, *supra*.)⁴ As we shall now see, the legislative history of the section and the provenance of our clause of concern demonstrates that the latter was emplaced because the Legislature thought payments ordered in Juvenile Traffic Court would not be subsumed as a "fine, penalty or forfeiture imposed by the courts for criminal offenses" and thus be subject to the one dollar upon ten surcharge of section 1206.8 and specific mention would have to be made for them to be so.

The clause "or where an order is made to pay a sum to the general fund of the county pursuant to [§ 258(a)(3)(iii) by a Juvenile Traffic Court]" first appeared on the statutory scene in 1973 when former Vehicle Code section 42050 was amended to include it. (Stats. 1973, ch. 1059, § 4, p. 2098.) The section, since repealed (Stats. 1980, ch. 530, §§ 6, 7, p. 1479), imposed penalty assessments on certain Vehicle Code violations to fund the Driver Training Assessment Fund and the Peace Officer's Training Fund. As amended in 1973 the section read as follows:

⁴ It bears noting that until the last sentence mentioning fines was added to subparagraph (iii) of subdivision (a)(3) of section 258 of the Welfare and Institutions Code in 1982 (Stats. 1982, ch. 73, § 1, p. 223) the Juvenile Traffic Law was devoid of any mention of fines. (But see § 730.5 added by Stats. 1980, ch. 991, p. 3137, § 2 and amended by Stats. 1981, ch. 727, p. 2879, § 2, authorizing fines when a minor is adjudged a ward of the court under Welf. & Inst. Code, § 602.) Nevertheless two court cases just before then referred to the "sum" ordered paid in Juvenile Traffic Court pursuant to that section before so amended, as a "fine"! (See *In re Timothy E.* (1979) 99 Cal.App.3d 349, 354 ("the express provision for a fine in section 258"); *In re Jon D.* (1978) 84 Cal.App.3d 337, 339 ("The Juvenile Court is authorized by . . . section 258 to impose a fine not exceeding \$50).) We should also note that while "*penalty assessments*" were authorized to be levied in Juvenile Traffic Court since 1973 (see 57 Ops.Cal.Atty.Gen. 619, 622) we do not believe that was thought of as being the same as a penalty.

"To reimburse the General fund for amounts appropriated therefrom for the laboratory phases of driver education pursuant to Section 17305 of the Education Code, and to augment the Peace Officers' Training Fund to the extent designated in Section 42052, there shall be levied a penalty assessment on all offenses involving a violation of a section of this code or of a city or county ordinance relating to vehicles or their operators or owners, except offenses relating to parking or registration or offenses by pedestrians. *or where an order is made to pay a sum to the general fund of a county pursuant to subdivision (3) (c) of Section 564 of the Welfare and Institutions Code*, in the following amounts:

"(a) Where a fine is imposed: \$5 for each \$20 of fine, or fraction thereof.

"(b) If sentence is suspended: \$5 if jail only, otherwise based on the amount of the fine levied, as in subdivision (a).

"(c) If bail is forfeited: \$5 for each \$20 of bail, or fraction thereof.

"(d) Where multiple offenses are involved: The penalty assessment shall be based on the total fine or bail for all offenses, or \$5 for each jail sentence.

"When a fine is suspended, in whole or in part, the penalty assessment shall be reduced in proportion to the suspension." (Emphases added; Stats. 1973, ch. 1059, § 4, p. 2098.)

In 1961 we had concluded that an earlier version of section 42050 *that did not contain the emphasized critical clause* (Stats. 1959, ch. 3, § 42050, p. 1786 as amended by Stats. 1959, ch. 1996, § 53, p. 4640) did *not* authorize the imposition of penalty assessments on sums ordered paid in Juvenile Traffic Court because the "payment of money by a minor pursuant to the order provided in section 564(3)(c) of the Welfare and Institutions Code [was] not a fine within the meaning of section 42050 and . . . the penalty assessment provision of section 42050 [was] not applicable thereto." (38 Ops.Cal.Atty.Gen. 141, 142, *supra*; ch. fn. 4, *ante*.)⁵ The 1973 amendment to Vehicle Code section 42050 served to provide authority to surcharge those sums.

⁵ In 1976 the Arnold-Kennick Juvenile Court Law was rearranged, amended and renumbered (Stats. 1976, ch. 1068, § 1.5, p. 4741), but in so doing the Legislature declared it not intend to make any substantive changes therein. (Stats. 1976, ch. 1068, § 82, p. 4799; see 63 Ops.Cal.Atty.Gen. 232, 235-236, fn. 13.) Among the changes in the rearrangement was the

Any doubt that that was its purpose, i.e., that the addition of the clause in question to section 42050 was to make payments ordered by a Juvenile Traffic Court subject to the surcharge imposed by that section, is removed by considering that the same legislation (Stats. 1973, ch. 1059) also amended section 564 of the Welfare and Institutions Code (the predecessor to § 258 (see fn. 5, *ante*)) *to expressly authorize* the judge, referee or traffic hearing officer in Juvenile Traffic Court to impose a "penalty assessment in the amount provided in Vehicle Code section 42050 for offenses not relating to parking or registration or offenses by pedestrians." (Stats. 1973, ch. 1059, p. 2098, § 3; cf. 57 Ops.Cal.Atty.Gen. 615, 621 (1974).) Those 1973 amendments, considered as an integrated whole (*Moyer v. Workmen's Comp. Appeals Bd.*, *supra*, 10 Cal.3d at 230) and in light of the historical circumstances surrounding their enactment (*California Mfrs. Assn. v. Public Utilities Com.* (1979) 24 Cal.3d 836, 844, citing *Steilberg v. Lackner* (1977) 69 Cal.App.3d 780, 785 and *Alford v. Pierno* (1972) 27 Cal.App.3d 682, 688), demonstrate beyond peradventure of a doubt that the clause in question was added to Vehicle Code section 42050—in a syntactical context that is identical to its present placement in section 1206.8 (i.e., after the language of exception and separated from it by a comma and an "or")—as a means of having the monies ordered paid by a Juvenile Traffic Court for the commission of a traffic violation, however called (see fn. 4, *ante*), become subject to the surcharge of that section to fund the Driver Training Assessment Fund and the Peace Officer's Training Fund. In other words our clause was wrought into section 42050 *not* as part of its language of exception, but as a part of its operation. Sums paid pursuant to an order of a Juvenile Traffic Court for the commission of a traffic violation were to be subject to the section's surcharge.

Section 42050 has since been repealed (Stats. 1980, ch. 530, *supra*) but the language in it founding our concern has found its way into Penal Code sections 1206.8(a)(2) (Stats. 1981, ch. 1171, § 6, p. 4704) and 1464(a) (Stats. 1981, ch. 966, § 3, p. 3673) *where it appears in identical context and virtually unchanged*, following language of exception and separated from it by a comma and the disjunctive "or." In 1973 the Legislature used that syntactical arrangement and punctuation to subject the monies ordered paid in Juvenile Traffic Court to the assessment-surcharge of Vehicle Code section 42050. The Legislature has continued it in Penal Code section 1206.8 and we would be hard pressed not to say it was not intended to have the same effect of having monies ordered paid in Juvenile Traffic Court pursuant to section 258(a)(3)(iii) brought within the operation of those Penal Code sections.⁶

renumbering of former section 564 to its present place as section 258. (Stats. 1976, ch. 1068, p. 4751, § 4.)

⁶ The same legislature which repealed Vehicle Code section 42050 in 1980, amended section 258 of the Welfare and Institutions Code to mention payment of an assessment in the amount provided in section 1464 of the Penal Code to the Assessment Fund, instead of payment of a

In view of its plain wording then, as well as its legislative history we conclude that the penalty assessments imposed by subdivision (a)(2) of Penal Code section 1206.8 do apply to monies ordered paid in Juvenile Traffic Court pursuant to section 258(a)(3)(iii) of the Welfare and Institutions Code.

penalty assessment in the amount provided in section 42050 to the Driver Training Penalty Assessment Fund. (Stats. 1980, ch. 530, § 12, p. 1480.) There is one complication from that amendment. Before it, the authorization of paragraph (iii) of section 258(a)(3) did *not* authorize assessments to be made on offenses relating to parking or registration. (Stats 1976, ch. 1068, p. 4751, § 4, quoted at 63 Ops.Cal.Atty.Gen. 232, 236, *supra*.) The excepted offenses are no longer mentioned in section 258, but they are contained as the language of exclusion that precedes mention of section 258(a)(3)(iii) in section 1464(a). In view of the interrelated histories of the three sections, we assume that that reference indicates that those offenses were also meant to be excepted from being subject to assessment in Juvenile Traffic Court. (Cf. 258(a)(3)(iii): "A fine imposed on a minor pursuant to this section shall not exceed the maximum fine that could be imposed on an adult for the same offense.")