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OPINION	:	No. 84-802
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of	:	<u>DECEMBER 26, 1984</u>
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THE CALIFORNIA SEISMIC SAFETY COMMISSION has requested an opinion on the following question:

What, if any, are the independent emergency powers of local law enforcement officers to restrict entry to an area damaged by an earthquake?

CONCLUSION

Local law enforcement officers have independent emergency powers to restrict entry to an area damaged by an earthquake while a threat exists to the public health and safety as reasonably determined on a case-by-case basis. State officials performing official duties on behalf of the state and, in general, representatives of the news media may not be denied access.

## ANALYSIS

Recently a major earthquake struck a Central California community causing significant damage to property. A local state of emergency was immediately declared, followed a few hours later by the declaration of a state of emergency by the Governor. The county sheriff initially closed the area to the general public. Three or four days later the sheriff allowed residents and members of the news media to enter the area for limited periods of time while accompanied by sheriff deputies and building officials. One week later city officials took control of the area, had a fence constructed, and hired security police to guard the perimeter. The damaged area remained closed for an additional three weeks, at which time badly damaged buildings were demolished.

As part of its statutory duties the California Seismic Safety Commission conducts hearings to evaluate the seismic safety policies and practices of public and private agencies following major earthquakes. (See Gov. Code, §§ 8897-8897.1.) At the hearing conducted to analyze the actions taken with respect to the Central California earthquake, three groups expressed concern regarding their lack of access to the damaged area—property owners, volunteers sent to the area by the state to assist local officials, and members of the news media. The commission now seeks clarification of the independent, emergency powers of local law enforcement officers to restrict entry to an area damaged by an earthquake with respect to these groups. We generally conclude that restriction is permissible when it is reasonable while a threat to the public health or safety exists as determined in light of the immediate facts and circumstances; however, state officials and news media representatives may not be barred from such an area.

Several statutes have been enacted by the Legislature authorizing government agencies to deal with emergencies. The California Emergency Services Act (Gov. Code, §§ 8550-8668), for example, empowers the Governor to issue orders and regulations which take effect immediately and have the force of law. (Gov. Code, § 8567; see also Mil. & Vet. Code, § 143.)<sup>1</sup> Other statutes grant specific authority to law enforcement officers in dealing with such problems as obstructing the performance of duties at a disaster (Pen. Code, § 402)<sup>2</sup> and unlawful assembly and riot control (§ 409).

Only one statute, however, may be found that specifically addresses the independent authority of local law enforcement officers to restrict entry to an area damaged

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<sup>1</sup> The act also provides for local curfew and other legislative regulations (§§ 8610, 8634), immunity from liability for exercising discretionary functions (§ 8655), and payment of claims for damaging private property (§ 8652).

<sup>2</sup> All section references hereafter are to the Penal Code unless otherwise specified.

by an earthquake—section 409.5. Accordingly, the scope of our opinion will be limited to that statutory provision.

Section 409.5 states:

"(a) *When a menace to the public health or safety is created by a calamity such as flood, storm, fire, earthquake, explosion, accident or other disaster, officers of the California Highway Patrol, California State Police, police departments, marshal's office or sheriff's office, any officer or employee of the Department of Forestry designated a peace officer by subdivision (f) of Section 830.3, and any officer or employee of the Department of Parks and Recreation designated a peace officer by subdivision (i) of Section 830.3, may close the area where the menace exists for the duration thereof by means of ropes, markers or guards to any and all persons not authorized by such officer to enter or remain within the closed area.* If such a calamity creates an immediate menace to the public health, the local health officer may close the area where the menace exists pursuant to the conditions which are set forth above in this section.

"(b) Officers of the California Highway Patrol, California State Police, police departments, marshal's office or sheriff's office or officers of the Department of Forestry designated as peace officers by subdivision (f) of Section 830.3 may close the immediate area surrounding any emergency field command post or any other command post activated for the purpose of abating any calamity enumerated in this section or any riot or other civil disturbance to any and all unauthorized persons pursuant to the conditions which are set forth in this section whether or not such field command post or other command post is located near to the actual calamity or riot or other civil disturbance.

"(c) Any unauthorized person who willfully and knowingly enters an area closed pursuant to subdivision (a) or (b) and who willfully remains within such area after receiving notice to evacuate or leave shall be guilty of a misdemeanor.

"(d) *Nothing in this section shall prevent a duly authorized representative of any news service, newspaper, or radio or television station or network from entering the area closed pursuant to this section.*" (Emphases added.)

In construing the authorization granted under section 409.5 to local law enforcement officers, we apply well-established principles of statutory construction. The primary rule of interpretation is to ""ascertain the intent of the Legislature so as to effectuate the purpose of the law."" (*Valley Circle Estates v. VTN Consolidated, Inc.* (1983) 33 Cal.3d 604, 608.) In ascertaining legislative intent, we turn first to the language used (*Tracy v. Municipal Court* (1978) 22 Cal.3d 760, 764), giving the words their ordinary and usual meanings (*People v. Belleci* (1979) 24 Cal.3d 879, 884). "Words must be construed in context, and statutes must be harmonized, both internally and with each other, to the extent possible." (*California Mfrs. Assn. v. Public Utilities Com.* (1979) 24 Cal.3d 836, 844.) A sensible construction should be given, avoiding absurdities, and making the statute workable and reasonable whenever possible. (*Fields v. Eu* (1976) 18 Cal.3d 322, 328; *City of Santa Clara v. Von Raesfeld* (1970) 3 Cal.3d 239, 248.)

#### A. Property Owners

At the commission hearings, property owners stated that they were not allowed to enter the damaged area to recover their property. One jewelry store was demolished, for example, with the contents of the store (gold, jewelry, and gems) transported to the county dump without first giving the owner an opportunity to recover his inventory.

Under section 409.5 a local law enforcement officer may close an earthquake damaged area "to any and all persons" while "a menace to the public health or safety" exists. The statute thus requires that the health or safety of those entering or already in the area be endangered and that the threat result from the earthquake (or other calamity contemplated by the statute).

The officer may authorize certain persons to enter the damaged area under the terms of the statute. This exercise of discretion suggests a balancing between the need to enter against the danger presented. At the one extreme would be those who need to enter because they are responsible for evacuating persons and fighting fires. Residents and property owners would clearly have a greater need to be present at the site than the public generally.

A key consideration is that closure is authorized under section 409.5 only for the duration of the threat to public health and safety. Manifestly the danger would persist while the ground is shaking and fires caused by the earthquake are burning. A period of time may thereafter be necessary to explore the damaged area for latent hazards. Once specific dangers are known to remain in certain areas, the "menace" would be reduced to the particular locations.

Understandably we cannot furnish a precise rule to be applied in all situations. What is a reasonable closure restriction on the day following a major earthquake may be unreasonable a week later. While tours through a damaged area may initially be appropriate, the continued prohibition weeks later of individual entry by property owners would appear to be inappropriate.

#### B. Volunteers

The Office of Emergency Services sent structural engineers to the damaged area to assist the city in assessing the extent of damage. They were to furnish information and advice concerning whether to condemn and demolish damaged structures.

Had these persons been sent to perform official duties on behalf of the state (see Gov. Code, § 8628), we would apply the rule: "A statute will not be construed to limit the sovereign power of the state to . . . perform its governmental functions in behalf of the public . . . unless such intent clearly appears" (*State of California ex rel. Dept. of Employment v. General Ins. Co.* (1970) 13 Cal.App.3d 853, 858; see *Regents of University of California v. Superior Court* (1976) 17 Cal.3d 533, 536; *Hall v. Taft* (1956) 47 Cal.2d 177, 183; *Hoyt v. Board of Civil Service Commrs.* (1942) 21 Cal.2d 399, 402). Since section 409.5 does not expressly authorize local law enforcement officers to close an area to state officials, the latter would be free to enter under application of the above rule.

Here, however, the structural engineers were acting as volunteers whom the Office of Emergency Services sent to assist, if needed, city officials in assessing structural damage. (See Gov. Code, §§ 8618, 8632, 8647, 8657.) The city was under no compulsion to use the services of the volunteers and instead decided to rely upon the expertise of county building officials.

Because the volunteers had no official duties to perform, they were subject to exclusion by the police under the same considerations discussed with respect to the property owners and other private parties.

#### C. News Media Members

The third group denied individual access to the earthquake-damaged area was comprised of news media representatives. They were given "guided tours" of the area on an infrequent basis over an extended period of time.

The United States Supreme Court recently observed: "It has generally been held that the First Amendment does not guarantee the press a constitutional right of special access to information not available to the public generally." (*Pell v. Procunier* (1974) 417

U.S. 817, 833; see *Zemel v. Rusk* (1965) 381 U.S. 1, 16-17; *New York Times Co. v. United States* (1971) 403 U.S. 713, 728-730 (conc. oppn. of Stewart, J.).) More specifically, "[n]ewsmen have no constitutional right of access to the scenes of crime or disaster when the general public is excluded." (*Branzburg v. Hayes* (1971) 408 U.S. 664, 684-685.) A special *statutory* right of access, however, may be given by state legislatures to news media representatives. (See *Branzburg v. Hayes*, *supra*, 408 U.S. 664, 706.) This is precisely what we believe the Legislature has done in section 409.5.

In 66 Ops.Cal.Atty.Gen. 497, 498-499 (1983), we stated that under section 409.5, law enforcement officers may not prevent newsmen from entering an area otherwise closed to the general public.

We reject the argument that the "duly authorized" news media exception refers to someone authorized to be in the area by the law enforcement officer. Rather, it is apparent that the phrase "duly authorized" refers to the news station, newspaper, or radio or television station or network having "duly authorized" the individual to be its representative at the site.<sup>3</sup> Otherwise, the entire subdivision exception would again be superfluous.

Law enforcement officers may of course take appropriate action to prevent the news media representatives at a disaster site from violating any specific laws. (See §§ 402, 409; 66 Ops.Cal.Atty.Gen. 497, *supra*, 499, fn. 2.)

In general, then, news media representatives may not be denied access to a disaster site under section 409.5.

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<sup>3</sup> Often this is accomplished by the news media representative displaying a "press badge." (See *Los Angeles Free Press Inc. v. City Los Angeles* (1970) 9 Cal.App.3d 448, 451.)