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Subject: Civilianization of red light camera enforcement

This analysis examines Vehicle Code section 40518(a) as there is a growing belief that this section allocates police powers to civilians for the purposes of red light camera enforcement. This review confronts this interpretation as erroneous on the grounds that it is in direct conflict with general law; Red light camera citations are crimes not committed in the presents of any officer and can, therefore, only be approved by officers defined in 830.1 and 830.2 of the California Penal Code.

First, the language of this statute will be examined and interpreted. Then an explanation will be given as to how jurisdictions have enjoyed complacency while continuing this practice.

But before continuing, I will explain, in general, how traffic laws are enforced: Officers must observe an incident and make a determination as to whether or not a crime/public offense has occurred. If it is determined that a crime has occurred, a citation is issued to the defendant in lieu of incarceration. In the instant of red light cameras, the violation is considered a crime not committed in the presence of the officer who has made the determination. As a consequence, determinations must be made and action can only be taken, pursuant to probable cause, upon reviewing physical evidence—The photographs or video.

The beginning phrase of 40518(a) CVC states the following:

"Whenever a written notice to appear has been issued by a peace officer or by a qualified employee of a law enforcement agency..."

Because this phrase includes the term "qualified employee" and is preceded by the word "Issue", some entities erroneously interpret this phrase as implied authorization that allows non-sworn personnel to make determinations regarding certain crimes. But, they believe that this authority is restricted to red light camera enforcement.

To understand this section, and the language thereof, we must first understand its intent and apply a basic understanding of law and the rules of interpretation. When doing so, 40518(a) is easily deciphered.

To assist in the rules of interpretation, I offer the following excerpt from an appellate court decision (The City Of West Hollywood vs. Leonte). The following excerpt explains how courts are mandated to interpret law. This language is very common in appellate decisions when clarification is an issue:

"Our task in construing a statute is to ascertain and give effect to the Legislature's intent. (People v. Murphy (2001) 25 Cal.4th 136, 142.) We begin

meaning and construing them in the context of the statute as a whole. (People v. Garcia (2002) 28 Cal.4th 1166, 1172; Murphy, at p. 142.) If the plain language of the statute is unambiguous and does not involve an absurdity, the plain meaning governs. (Garcia, at p. 1172; People v. Ledesma (1997) 16 Cal.4th 90, 95.) If the statute is ambiguous, the court may consider a variety of extrinsic aids, including the apparent purpose of the statute. (Hughes v. Board of Architectural Examiners (1998) 17 Cal.4th 763, 776.)"

The intent of 40518(a) CVC is for the purpose of describing required fields for red light camera citations in addition to mandating a timeframe, and the manner in which they are mailed. That's it! To elaborate, the Vehicle Code does not define police powers or grant authority. Likewise, 40518(a) does not make any explicit statements regarding police powers. It is the 830 Sections of the California Penal Code that give officers the authority to enforce the laws of this State. To reiterate, red light camera citations are considered crimes not committed in the presence of the officer who has made the determination. The only officers who qualify for this type of enforcement are described in 830.1 and 830.2 of the Penal Code. In part, these sections read as follows as pertaining to the ability of a peace officer to take action: "(1) As to any public offense committed or which there is probable cause to believe has been committed within the political subdivision that employs the peace officer or in which the peace officer serves."

Utilizing the above case law and definitions, the language used in 40518(a) CVC becomes clear and will now be examined.

Understanding the meaning of the word "issue" is critical to understanding 40518(a). The word "issue" has been so loosely used when referring to notices to appear that most incorrectly believe it encompasses the entire process of observing, making a determination then enforcing. The word "Issue" is not synonymous with any degree of police power. The dictionary definition (The usual and ordinary meaning) is as follows:

Issue:

Webster:

1 a: to go, come, or flow out b: to come forth

2 a: to put forth or distribute usually officially <government *issued* a new airmail stamp> <*issue* orders> **b**: to send out for sale or circulation

Cambridge:

to give, supply, or produce (something official)

Nowhere in the definition are the words enforce, generate, observe etc. used. When applying the "plain meaning" mandate, and understanding the legislative intent of 40518(a) CVC, the word "issue" can only be synonymous with the verb "mail". And as indicated in the above case law "The plain meaning governs".

Now to give meaning to the term "qualified employee". This term is not defined in the Penal Code, Vehicle Code nor is there any case law that would support a conclusion that a "qualified employee" has any measure of the required police powers. So what are they talking about? This is very simple: Years ago, prior to Vendors offering mail service, agencies were tasked with having to respond to the post office to obtain the required certificate of

mailing. But instead of utilizing an officer, some would allow a civilian to complete this function. The reason the employee must be "qualified" is obviously for testimonial purposes; In the event they are called to court for testimony regarding their responsibilities, personal knowledge may be required (Ev Code 702,1401,1271). But the court cannot accept this type of testimony unless the witness has qualified themselves (Ev Code 720).

To condense the above, a "qualified employee" may issue (mail) a red light camera citation but has no authority to make a determination that a crime, not committed it their presence, has occurred. The proper interpretation of 40518(a) CVC is as follows: When a police officer or qualified employee mails a red light camera citation, they must obtain a certificate of mailing from the U.S. Post Office. Once the citation has been mailed, and the defendant has received it within 15 days, the issuance (delivery) process has been lawfully completed. To reiterate, the legislative intent of 40518(a) exists solely for the purpose of giving instruction on the manner in which red light camera citations are delivered or issued to defendants.

The above analysis is both precise and conclusive. However, many will chose to ignore the obvious. When asked why they feel civilians are authorized to issue these citations, they point to 40518(a) and assert the fact that their court jurisdiction has upheld their interpretation. I have never heard any other explanation nor have I seen any research, case law or appellate decisions that would support this opinion. The apparent extent of any research on this matter, by officers and city attorneys, is the presumption that this interpretation is correct based upon the affirmations of lower courts.

I believe that the affirmations of lower courts have perplexed the minds of many who would ordinarily be in agreement with my position. But because lower court judges are presumed to be knowledgeable and competent, most disregard the suggestion of any needed research. But based upon my experience, I find it very difficult to loan these jurisdictions any real credibility. My lack of confidence in these jurisdictions is explained in the following paragraph.

Over the years, I have accumulated approximately 23 decisions from the LA County Court of Appeals. Virtually every aspect of our program has been examined and decided upon at the appellate level. However, when I inquire about appellate decisions that may have been rendered towards other programs, I find that most other agencies have none. The inference is that defendants from these jurisdictions have never petitioned the appellate court. Nonsense! This does not stand to reason particularly when considering the number of years some of these programs have existed.

The lack of appellate decisions can only be explained as follows:

- 1) These jurisdictions actually have appellate decisions but are unaware of them.
- 2) When knowledgeable defendants attack certain aspects of a program, their citations will be dismissed in an effort to avoid an adverse appellate opinion whereas less knowledgeable defendants will be found guilty.
- 3) Other reasons that will not be mentioned in this commentary.

Regardless of the reason for the lack of appellate opinions, the fact remains that a higher court has never examined the practices of some

jurisdictions. This alone should raise suspicion regarding certain practices.