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OPINION	:	No. 11-1104
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of	:	December 17, 2012
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THE HONORABLE TOM AMMIANO, MEMBER OF THE STATE ASSEMBLY, has requested an opinion on the following question:

Under state law, may a city install and utilize an automated photographic traffic enforcement system in order to enforce a right-turn prohibition at an intersection equipped with official traffic control signals and signage indicating that such turns are prohibited at all times?

CONCLUSION

Under state law, a city may install and utilize an automated photographic traffic enforcement system in order to enforce a right-turn prohibition at an intersection equipped with official traffic control signals and signage indicating that such turns are prohibited at all times.

ANALYSIS

An automated photographic traffic enforcement system (often referred to as an “automated enforcement system” or “AES”) is defined in Vehicle Code section 210 as:

any system operated by a governmental agency, in cooperation with a law enforcement agency, that photographically records a driver’s responses to a rail or rail transit signal or crossing gate, or both, or to an official traffic control signal described in Section 21450,^[1] and is designed to obtain a clear photograph of a vehicle’s license plate and the driver of the vehicle.

Two other statutes authorize the use of an AES in certain kinds of locations. Vehicle Code section 21362.5(a) provides that “[r]ailroad and rail transit grade crossings may be equipped with an [AES] if the system is identified by signs clearly indicating the system’s presence and visible to traffic approaching from each direction.” Vehicle Code section 21455.5(a) states that “[t]he limit line, the intersection, or a place designated in Section 21455,^[2] where a driver is required to stop, may be equipped with an [AES]” if the governmental agency utilizing the system (1) clearly identifies the system’s presence, and (2) ensures that the traffic lights at any intersection equipped with an AES are in compliance with the “minimum yellow light change interval” described in Vehicle Code section 21455.7.³ Neither of these two authorizing statutes, however, identifies the kinds of driving *violations* that may be enforced by an AES in these locations.

¹ Vehicle Code section 21450 states, in relevant part:

Whenever traffic is controlled by official traffic control signals showing different colored lights, color-lighted arrows, or color-lighted bicycle symbols, successively, one at a time, or in combination, only the colors green, yellow, and red shall be used, . . . , and those lights shall indicate and apply to drivers of vehicles, operators of bicycles, and pedestrians as provided in this chapter.

² Vehicle Code section 21455 provides, in relevant part:

When an official traffic control signal is erected and maintained at a place other than an intersection, the provisions of this article shall be applicable

³ Vehicle Code section 21455.7 states that the minimum yellow light change interval “shall be established in accordance with the Traffic Manual of the Department of Transportation,” and that this interval shall be a mandatory minimum, which may be lawfully exceeded.

Separately, Vehicle Code section 22101(a) allows local authorities to regulate and prohibit turning movements at the intersections of highways and streets under their jurisdictions via the use of “official traffic control devices” that indicate the particular regulation or prohibition.⁴ Where turns are prohibited, “notice of such a prohibition shall be given by erection of a sign,”⁵ and it is unlawful for drivers to disobey the no-turn directions placed on a properly erected sign.⁶

For purposes of this opinion, our attention has been directed to a particular signaled intersection within the City and County of San Francisco (City) where drivers are prohibited from making right turns at any time. Specifically, the City has made it unlawful to turn right from the northeast-bound lanes of Market Street onto the Central Freeway on-ramp located at the intersection of Market Street and Octavia Boulevard, regardless of whether the traffic light signals controlling the northeast-bound lanes at that location—which are placed immediately beside non-lighted no-right-turn signs—are showing green, yellow, or red.⁷ This prohibition was designed, we are told, “to improve safety and limit congestion along Market Street,”⁸ and is indicated to motorists by the

⁴ See 81 Ops.Cal.Atty.Gen. 252, 253-254 (1998); see also Veh. Code § 360 (“A highway is a way or place of whatever nature, publicly maintained and open to the use of the public for purposes of vehicular travel. Highway includes street.”); Veh. Code § 385 (“‘Local authorities’ means the legislative body of every county or municipality having authority to adopt local police regulations.”); Veh. Code § 440 (“An ‘official traffic control device’ is any sign, signal, marking, or device . . . placed or erected by authority of a public body or official having jurisdiction, for the purpose of regulating, warning, or guiding traffic”)

⁵ Veh. Code § 22101(c).

⁶ Veh. Code § 22101(d).

⁷ Traffic heading northeast on Market Street may, however, make a *left* turn onto Octavia Boulevard by using a dedicated left-turn lane that is controlled by a left-turn arrow signal.

⁸ Ltr. from Assemblymember Tom Ammiano to Supv. Dep. Atty. Gen. Susan Lee (Jan. 7, 2011).

use of “straight-through” green arrows⁹ on the three traffic signals at the location and the placement of no-right-turn signs immediately beside those signals.

In 2010, the requester of this opinion sponsored a bill (Assembly Bill 2729) that would have expressly authorized the City to install an AES to photograph and issue citations for illegal right turns¹⁰ at the Market/Octavia intersection, including those made when the controlling traffic signal is green or yellow, rather than red—i.e., when drivers are not required to make an immediate stop. The avowed purpose of the legislation was to prevent automobile-bicycle collisions that have occurred with dismayingly frequency at this location when, on a green or yellow signal, automobiles making unlawful right turns have struck bicyclists who were lawfully proceeding straight through the intersection.¹¹ To address these concerns, Assembly Bill 2729 would have added section 21455.8 to the Vehicle Code, which would have provided in relevant part:

(a) The City and County of San Francisco may utilize an automated traffic enforcement system to enforce a violation of subdivision (d) of Section 22101, from Market Street onto the Central Freeway located at the intersection of Market Street and Octavia Boulevard, if the system meets the requirements of Section 21455.5.¹²

Assembly Bill 2729 passed in the Legislature, but it was vetoed by the Governor, whose veto message stated that the statute was unnecessary because “[c]urrent law already allows for violations of section 22101 of the Vehicle Code to be enforced through an automated enforcement system.”¹³ The requester of this opinion has asked for our view as to whether existing law does in fact permit automated enforcement of illegal

⁹ See Veh. Code § 21451(b) (“A driver facing a green arrow signal, shown alone or in combination with another indication, shall enter the intersection only to make the movement indicated by that green arrow or any other movement that is permitted by other indications shown at the same time. . . .”); Cal. Manual on Uniform Traffic Control Devices, Part 4, §§ 4D.04 & 4D.05 (Meaning and Application of Vehicular Signal Indications).

¹⁰ Veh. Code § 22101(d) (unlawful to disobey no-turn instructions).

¹¹ See Assembly Floor Analysis of Assembly 2729 (Aug. 24, 2010) 3-4; see also Zusha Elinson, *The Intersection from Biking Hell*, *The Bay Citizen* (Feb. 28, 2011), available online at <http://www.baycitizen.org/bikes/story/intersection-biking-hell/>.

¹² Assembly 2729, 2009-2010 Reg. Sess., § 1, as enrolled (Aug. 31, 2010).

¹³ Veto message of Gov. Arnold Schwarzenegger re Assembly 2729 (Sept. 29, 2010).

turns that are not made on a red light, as is the case at Market and Octavia.¹⁴ We conclude that local law enforcement authorities may utilize an AES to enforce such illegal turns, provided the intersection is equipped with traffic control signals and signage indicating that such turns are prohibited at all times.

In analyzing this issue, we are guided by well established principles of statutory construction, with the paramount goal of ascertaining the Legislature's intent.¹⁵ To do so, we "look first to the words of the statute themselves, giving to the language its usual, ordinary import and according significance, if possible, to every word, phrase and sentence in pursuance of the legislative purpose."¹⁶ While we are mindful that "any right of a local authority to interfere with the free flow of traffic . . . must be derived from an express delegation of authority from the Legislature"¹⁷ that appears in the state Vehicle Code,¹⁸ we do not interpret individual sections of the Vehicle Code in isolation. Instead, we interpret the relevant statutory provisions "in context, examining legislation on the same subject, to determine the Legislature's probable intent,"¹⁹ thereby following the principle that "every statute should be construed with reference to the whole system of law of which it is a part, so that all may be harmonized and have effect."²⁰

¹⁴ Ltr. from Assemblyman Tom Ammiano at 1-2.

¹⁵ *Freedom Newsps., Inc. v. Orange Co. Employees Ret. Syst.*, 6 Cal. 4th 821, 826 (1993).

¹⁶ *Dyna-Med., Inc. v. Fair. Empl. & Hous. Commn.*, 43 Cal. 3d 1379, 1386-1387 (1987).

¹⁷ 75 Ops.Cal.Atty.Gen. 80, 81 (1992); *see Rumford v. City of Berkeley*, 31 Cal. 3d 545, 550 (1982) ("the state has preempted the entire field of traffic control," so "unless 'expressly provided' by the Legislature, a city has no authority over vehicular traffic control"); *Homes on Wheels v. City of Santa Barbara*, 119 Cal. App. 4th 1173, 1177 (2004); *Citizens Against Gated Enclaves v. Whitley Heights Civic Assn.*, 23 Cal. App. 4th 812, 820 (1994).

¹⁸ Veh. Code § 21(a) ("Except as otherwise expressly provided, the provisions of this code are applicable and uniform throughout the state and in all counties and municipalities therein, and a local authority shall not enact or enforce any ordinance or resolution on the matters covered by this code, . . . , unless expressly authorized by *this code*." (Emphasis added).)

¹⁹ *Cal. Teachers' Assn. v. Governing Bd. of Rialto Unified Sch. Dist.*, 14 Cal. 4th 627, 642 (1997).

²⁰ *Moore v. Panish*, 32 Cal. 3d 535, 541 (1982); *Lincoln Place Tenants Assn. v. City of Los Angeles*, 155 Cal. App. 4th 425, 440 (2007); *see Mejia v. Reed*, 31 Cal. 4th 657, 663 (2003); *Garcia v. McCutchen*, 16 Cal. 4th 469, 476 (1997).

As mentioned previously, two Vehicle Code sections expressly permit the use of AES technology (provided statutory requirements are met) at (1) railroad and rail transit grade crossings,²¹ and (2) limit lines, intersections, and specified non-intersection locations, where a driver is required to stop.²² Although neither section lists the specific driving laws that may be enforced by an AES, we may not presume that the Legislature performed an idle act by enacting either of these provisions.²³ In other words, the Legislature must have intended to allow law enforcement officials to use AES to enforce *some* driving laws, but which ones?

In seeking an answer to this question, we examine related provisions of the Vehicle Code governing notices to appear—also known as traffic citations, or traffic tickets—that may be issued based on violations recorded by an AES. In relevant part, Vehicle Code section 40518(a) states:

Whenever a written notice to appear has been issued . . . , based on an alleged violation of Section 21453, 21455, *or* 22101 recorded by an automated enforcement system pursuant to Section 21455.5 or 22451^[24], . . . an exact and legible duplicate copy of the notice when filed with the magistrate shall constitute a complaint to which the defendant may enter a plea. . . .²⁵

This language plainly assumes that valid citations and/or notices to appear may be generated based on AES-recorded violations of Vehicle Code sections 21453 and 21455 (which describe failure-to-stop violations) *and* AES-recorded violations of Vehicle Code section 22101 (which makes it unlawful for a motorist to make a prohibited left or right turn). Because we are not free to interpret a statute so as to “omit what has been

²¹ Veh. Code § 21362.5(a).

²² Veh. Code § 21455.5(a); *see also* Veh. Code §§ 21455, 21455.7.

²³ *Cal. Teachers Assn.*, 14 Cal. 4th at 634; *People v. Kennedy*, 168 Cal. App. 4th 1233, 1241 (2008).

²⁴ Vehicle Code section 22451 both describes the traffic violation for failure to stop as required at railroad or rail transit grade crossings (Veh. Code § 22451 (a), (b)), and states that “whenever a railroad or rail transit crossing is equipped with an automated enforcement system, a notice of a violation of this section is subject to the procedures provided in Section 40518” (Veh. Code § 22451 (c)).

²⁵ Emphasis added.

inserted,”²⁶ we take the Legislature’s listing of AES-recordable violations at face value—that is, as including prohibited turns as well as red-light violations.

It is only logical that an AES, which may lawfully placed at a location where drivers are required to stop,²⁷ may be used to enforce the laws that require drivers to stop there.²⁸ But little extension of this logic is required to conclude that an AES may be used to enforce a prohibition against making illegal turns in the same locations. Vehicle Code section 22101(c) specifically refers to right- or left-hand turns that a local jurisdiction has prohibited via the erection of a sign “at an intersection”—which is exactly the kind of location where AES technology is statutorily permitted. Furthermore, Vehicle Code section 40518(a) expressly contemplates the issuance of a traffic ticket “based on an alleged violation of Section . . . 22101 recorded by an automated enforcement system” We reject the suggestion that section 40518(a) should be interpreted as covering only those turn violations which are themselves based on red-light or other failure-to-stop violations. No such qualifying language appears in section 40518(a), and we are not free to insert it.²⁹

We find further support for this conclusion in the legislative history of Vehicle Code section 40518.³⁰ The provision was added in 1994 as part of the Rail Traffic Safety Enforcement Act,³¹ when AES technology was first authorized for use at railroad and rail transit grade crossings. That original version allowed the issuance of AES-generated citations for prohibited turn violations at rail crossings.³² Assembly Transportation

²⁶ *Stop Youth Addiction v. Lucky Stores, Inc.*, 17 Cal. 4th 553, 573 (1998); see Code Civ. Proc. § 1858; 78 Ops.Cal.Atty.Gen. 192, 194 (1995).

²⁷ See Veh. Code § 21455.5.

²⁸ Drivers are required to stop at red traffic lights or red-lighted arrows controlling intersections (Veh. Code § 21453(a), (c)), and at official traffic signals indicating a stop at non-intersection locations (Veh. Code § 21455).

²⁹ See *Napa Valley Wine Train, Inc. v. Pub. Utils. Commn.*, 50 Cal. 3d 370, 381 (1990); *Boston v. Penny Lane Ctrs., Inc.*, 170 Cal. App. 4th 936, 952 (2009).

³⁰ “Both the legislative history of the statute and the wider historical circumstances of its enactment may be considered in ascertaining the legislative intent. [Citation.]” *Dyna-Med, Inc.*, 43 Cal. 3d at 1387.

³¹ 1994 Stat. ch. 1216 (Sen. 1802) § 7.

³² In relevant part, former Vehicle Code section 40518(a) read as follows:

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

Committee reports prepared at the time the legislation was being considered³³ characterized the bill as authorizing the use of an AES to detect, among other things, “the failure of a driver to obey other traffic control devices including turn signals.”³⁴

In 1995, the Legislature extended the use of AES technology to intersections and other locations controlled by traffic signals,³⁵ and amended Vehicle Code section 40518(a) into what is essentially its present form.³⁶ The Legislative Counsel’s Digest³⁷ for the 1995 legislation noted that the chaptered bill would expand the use of AES technology “to all places where a driver is required to respond to an official traffic control signal showing different colored lights.”³⁸ A similar characterization appears in several legislative committee and floor analyses.³⁹ While some of these reports use short-

approved by the Judicial Council for an alleged violation of Section 22451, or, *with respect to a rail crossing, of Section 21453 or 22101 based on an alleged violation recorded by an automated rail crossing enforcement system, . . .*, an exact and legible duplicate copy of the notice when filed with the magistrate shall constitute a complaint to which the defendant may enter a plea.

(Emphasis added.)

³³ A legislative staff analysis may be a useful indicator of legislative intent. *Hassan v. American River Mercy Hosp.*, 31 Cal. 4th 709, 717-718 (2003); *see Coburn v. Sievert*, 133 Cal. App. 4th 1483, 1500 (2005).

³⁴ Assembly Comm. on Transp. Rpt. Sen. 1802 (as amended Jul. 7, 1994), 1993-1994 Reg. Sess. (Jul. 8, 1994) at 1-2; Assembly Comm. on Transp. Rpt. Sen. 1802 (as amended Jun. 23, 1994), 1993-1994 Reg. Sess. (Jun. 26, 1994) at 1-2.

³⁵ 1995 Stat. ch. 922 (Sen. 833) §§ 1, 4; *see Veh. Code* § 21455.5.

³⁶ 1995 Stat. ch. 922 (Sen. 833) § 8. As originally enacted, this provision, and the general authorization to use an AES at locations other than railroad and railroad transit grade crossings, was to be automatically repealed (or to “sunset”) on January 1, 1999. Legislation enacted in 1998 removed this sunset provision. 1998 Stat. ch. 54 (Sen. 1136) §§ 1-7.

³⁷ The Legislative Counsel’s Digest is another extrinsic aid used to ascertain legislative intent. *Kaufman & Broad Communities, Inc. v. Performance Plastering, Inc.*, 133 Cal. App. 4th 26, 35 (2005).

³⁸ Legis. Counsel’s Dig., Sen. 833 (1995-1996 Reg. Sess.) Summary Dig.

³⁹ Assembly Floor Analysis, Sen. 3d Reading Sen. 833 (as amended Sept. 12, 1995), 1995-1996 Reg. Sess. (Sept. 12, 1995) at 2; Sen. Floor Analysis, Sen. 3d Reading Sen. 833 (as amended Sept. 12, 1995), 1995-1996 Reg. Sess. (Sept. 12, 1995) at 2; Assembly

hand terms such as “red-light camera” or “red-light enforcement system” to refer to an AES, we have found no indication of any legislative intent to limit the use of AES to circumstances where a driver is actually disobeying a red light by failing to stop.

Having determined that an AES may be used, where authorized, to enforce an illegal turn prohibition, we now revisit the particulars of the Octavia/Market intersection in San Francisco. As mentioned, the City has prohibited motorists driving in a northeastern direction on Market Street from making a right turn onto the Central Freeway onramp. To mark this prohibition, northeastern bound traffic on Market Street is controlled by three lighted traffic signals that use a straight-through green arrow followed by circular yellow and red signals—providing notice that the only movement permitted is *forward* movement⁴⁰—and immediately adjacent non-lighted signs indicating that right turns are prohibited at all times.⁴¹ Because the intersection is controlled by traffic signals that require a stop when indicated, Vehicle Code section 21455.5 permits the use of an AES at the location.⁴² An AES “photographically records a driver’s responses to . . . an official traffic control signal,”⁴³ whose definition includes “color-lighted arrows,”⁴⁴ and we find that making a right turn at any time is an unlawful response to both the color-lighted arrows and the immediately adjacent no right-turn signage placed at the Market/Octavia intersection. Therefore, we believe that an AES may be properly used to record a driver’s illegal turning movement at that location and that a

Floor Analysis, Sen. 3d Reading Sen. 833 (as amended Aug. 30, 1995), 1995-1996 Reg. Sess. (Aug. 31, 1995) at 2; Assembly Comm. on Appropriations Rpt. Sen. 833 (as amended Jul. 15, 1995), 1995-1996 Reg. Sess. (Aug. 21, 1995) at 1; Assembly Comm. on Transp. Rpt. Sen. 833 (as amended Jul. 15, 1995), 1995-1996 Reg. Sess. (Jul. 17, 1995) at 1; Assembly Comm. on Transp. Rpt. Sen. 833 (as amended Jun. 22, 1995), 1995-1996 Reg. Sess. (Jul. 9, 1995) at 1; Sen. Rules Comm. Rpt. Sen. 833 (as amended May 25, 1995), 1995-1996 Reg. Sess. (May 25, 1995) at 1-2; Sen. Rules Comm. Rpt. Sen. 833 (as amended May 10, 1995), 1995-1996 Reg. Sess. (May 10, 1995) at 1-2; Sen. Comm. on Transp. Rpt. Sen. 833 (as amended Apr. 18, 1995), 1995-1996 Reg. Sess. (Apr. 18, 1995) at 1-2.

⁴⁰ See Veh. Code § 21451(b).

⁴¹ Veh. Code § 22101(c) (turn prohibition “shall be given by the erection of a sign”).

⁴² This is provided, of course, that all of the procedural and notice requirements of that section and related provisions are met. See Veh. Code §§ 21455.5(b)-(g), 21455.6, 21455.7.

⁴³ Veh. Code § 210.

⁴⁴ Veh. Code § 21450.

notice to appear for a violation of Vehicle Code section 22101 may be issued consistent with the express listing of such violations that appears in Vehicle Code section 40518.

We therefore conclude that, under state law, a city may install and utilize an automated enforcement system in order to enforce a right-turn prohibition at an intersection equipped with official traffic control signals and signage indicating that such turns are prohibited at all times.
