

MEMORANDUM OF LAW

DATE: May 2, 1986

TO: San Diego Police Department

FROM: City Attorney

SUBJECT: Section 40802 of the Vehicle Code, Speed Trap

By memorandum dated March 20, 1986 from J. D. Moody to this office, you pose several questions regarding section 40802 of the Vehicle Code. Those questions as well as some other questions regarding speed enforcement with radar that have arisen from Traffic Division are addressed individually below.

1. Is the local streets exception, 40802(b)(1),(2) and (3) of the Vehicle Code in effect only until January 1, 1987? Must all streets be surveyed before radar enforcement can be used after that date?

Section 40802(b)(1),(2) and (3) (Local streets exception) is to remain in effect only until January 1, 1987. Effective January 1, 1987 there will no longer be a local streets exception. Thereafter, the prima facie speed limit of every street must be justified by traffic and engineering survey. As discussed below, depending on the characteristics of the particular street it should not be necessary to have an actual survey for every section of a street.

2. What is the meaning of a "particular section of highway" for purposes of Vehicle Code section 40802(a) and (b)?

The definition of a "particular section of highway" as used in Vehicle Code section 40802(a) is clear from the language of the code itself. It is a measured distance between two marked landmarks or boundaries. That section of highway becomes a speed trap when the speed of a vehicle is calculated by timing how long it takes to travel the known distance.

As used in section 40802(b), a "particular section of highway" becomes a speed trap when radar or other electronic devices are used to determine speed and the prima facie speed

limit is not justified by a traffic engineering survey conducted within five years of the alleged offense.

Enforcement problems sometime arise when a vehicle's speed is determined by radar when the vehicle is not within the actual boundaries of a survey. It is clear from the Vehicle Code and case law that a survey is required for radar speed enforcement. However there is no authority which requires the total distance of every street to be surveyed or that radar speed enforcement take place within the actual boundaries of a section of highway

which has been surveyed.

Vehicle Code section 627 and 8-03.3(B)(2) and (3) of the Department of Transportation's Traffic Manual establish the criteria for engineering and traffic surveys. Neither set out requirements as to where a survey must be conducted or how far apart they may be. Because of limited resources, the Traffic Engineering Section has not surveyed every street, and the surveys that have been done do not cover a street without interruption. The Traffic Engineering Section considers the characteristics of a street (number of lanes, volume of traffic, number of parked cars and pedestrians, density of housing, changing topography, number of accidents etc.) in deciding how far apart to conduct the surveys.

The obvious solution for trouble free enforcement would be to check with Traffic Engineering prior to setting up a radar enforcement detail. The officer could then set up so that the vehicles are observed, locked in by the radar and stopped on a section of highway within the boundaries of a valid survey. While this would be the ideal situation, it is not required. Section 40802(b) requires that the speed limit of the particular section of highway be justified by a survey. When the offense did not take place within the actual boundaries of a survey, the speed limit can be justified through testimony showing the section where the vehicle was observed to have similar characteristics to the surveyed section. There is no requirement by case law or statute that the survey include the same block. Nor is there a requirement that the officer or vehicle cited be within the boundaries of the survey. When a driver of a vehicle is cited outside the actual boundaries of a valid survey, it will be a question of fact for the judge to decide whether the survey presented justifies the prima facie speed limit of the area the vehicle was travelling. Of course the closer the area is to that of a valid survey and the more similar it is in characteristics, the more persuasive the argument will be that the speed limit is justified.

3. Must there be a speed survey for violations of Vehicle Code section 22348?

If the section of highway has a posted prima facie speed limit, radar may not be used for enforcement without a valid speed survey to justify the speed limit. This is true even if the offender is cited for travelling in excess of 55 miles per hour pursuant to Vehicle Code section 22348. *People v. Flaxman*, 74 Cal.App.3d Supp. 16 (1977). However if there is no prima facie speed limit posted, (such as a highway) radar may be used without a survey. *People v. Miller*, 70 Cal.App.3d Supp. 35

(1979).

4. Is a speed survey required for radar enforcement in a school zone?

No. The speed limit for school zones is defined by Vehicle Code section 22352(b)(2). Section 22352(b)(2) is not among those sections for which a survey is required pursuant to section 40802.

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By

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