

## MEMORANDUM OF LAW

**DATE:** June 25, 1999

**NAME:** Eugene T. Ruzzini, Audit Manager

**FROM:** City Attorney

**SUBJECT:** Request (dated April 1, 1999; copy attached) for legal opinion and answers to questions concerning allocation of particular court fines and fees

### INTRODUCTION

You requested the City Attorney's opinion—and answers to specific questions posed—about the proper allocation of fines/fees in two areas of California law: (1) so-called “red light” or red traffic control signal violations under California Vehicle Code sections 21453(a) and (c), 21454(c) and 21457(a); and (2) criminalistics laboratory fund deposits and distributions under California Health and Safety Code section 11372.5.

### QUESTIONS PRESENTED

#### “Red Light” Violations

1. Under California Penal Code section 1463.28 and related subsections, does the allocation of increases in bail to the County of San Diego apply solely to increases set judicially, or does it apply to increases in the bail set by any means? More specifically, does the County of San Diego have the right under California Penal Code section 1463.28 to retain the increase in the red light base bail legislatively set by Assembly Bill [AB] 1191?

## **Crime Lab Services Reimbursement**

2. Is the \$50 fee for each conviction of controlled substance violations covered under California Health and Safety Code section 11372.5(b) required to be placed in the Criminalistics Fund regardless of whether the fee is imposed by the judge or paid by the defendant?

3. For each individual convicted of violations enumerated in Health and Safety Code section 11372.5, should the City of San Diego be reimbursed \$50 from the Criminalistics Fund for microscopic and chemical analyses for controlled substances performed by City-operated or contract labs?

4. Are the answers to questions 2 and 3 different for those individuals who enroll in diversion programs?

### **SHORT ANSWERS**

1. As to California Penal Code section 1463.28, such allocation applies solely to bail increases “set judicially,” i.e., attributable to an increase in the bail amounts adopted pursuant to the bail schedule provisions of State law, in particular California Penal Code section 1269(b). More specifically, the County of San Diego does *not* have the right under California Penal Code section 1463.28 to retain the “increase” in the “red light base bail” (base fine enacted pursuant to AB 1191, now codified in California Vehicle Code section 42001.15).

2. Whether or not the \$50 fee is imposed on the defendant by the sentencing judge, and to the extent controlled substances fines collected and normally distributed under California Health and Safety Code section 11502 are available, the \$50 fee is required to be placed in the fund.

3. The City should be reimbursed from the Fund for its “costs incurred” in providing such analyses “in connection with criminal investigations conducted” whether or not a conviction ensues, but not necessarily “\$50” for each investigation’s analysis.

4. No, because pursuant to California Health and Safety Code section 11372.5, reimbursing laboratory costs incurred is not contingent upon convictions or other normal court proceedings.

### **BACKGROUND**

Your letter mentioned a former “base fine” of \$20 for “red light” violations, which was “increased legislatively to \$100” in 1997 pursuant to AB 1191 [stats. 1997, c. 852 (A.B. 1191), 4.], and that the County was “retaining the \$80 increase in the bail” which by law would be otherwise distributed between the City and County. In fact, there does not appear to have been a previous “base fine”—meaning a minimum fine as required by statute—for these violations. The \$100 base fine enacted pursuant to AB 1191 (now California Vehicle Code section 42001.15) was the first for the enumerated violations. Prior to that, so-called “red light” violations were punishable like other infractions, to wit: “[b]y a fine *not exceeding* one hundred dollars (\$100).” Cal. Veh. Code 42001(a)(1) (emphasis added). There was (and still is) no statutory *minimum*

dollar fine for infractions generally. Statutory minimum fines for particular infractions were in existence in 1997, such as, for example, certain violations involving intersections. See Cal. Veh. Code 42001.1(a)(1) (“a fine of *not less than* fifty dollars (\$50) nor more than one hundred dollars (\$100) (emphasis added).” It simply appears that the Legislature had yet to enact a specific minimum base fine for “red light” violations prior to AB 1191.

Furthermore, according to our research, there was a \$35—not \$20—scheduled bail amount for “red light” violations in 1997. See attached copy of excerpts from *San Diego County Misdemeanor and Infraction Bail Schedule Effective January 1, 1997*. We have been unable, by way of background, to discover the origin or genuineness of the “\$20” former base fine/bail figure that you mentioned the County is using for the present calculation.

## ANALYSIS

### 1. “Red Light” Violations

The answer to question one essentially depends upon the meaning of two California Penal Code sections: Sections 1463.28 and 1269(b), both of which in their titles refer to increases in bail schedules. Section 1463.28 provides in pertinent part as follows:

[T]hat portion of fines and forfeitures . . . which are attributable to an increase in the bail amounts adopted . . . pursuant to subdivision . . . (d) of Section 1269b which would otherwise be divided between county and cities within the county shall be deposited into the county general fund up to the annual limit listed in subdivision (b) for that county.

California Penal Code section 1269b(d) provides in pertinent part that the judges of each county “shall prepare, adopt and annually revise . . . a uniform, county-wide schedule of bail for all misdemeanor and infraction offenses except Vehicle Code infractions.” According to your letter, San Diego County claims the right to retain and deposit—pursuant to Penal Code sections 1463.28 and 1269b(d)—\$80 of the \$100 base fine prescribed—*not* by a Penal Code section 1269b(d) bail amount increase—but by the enactment of California Vehicle Code section 42001.15 for “red light” violations pursuant to AB 1191. California Vehicle Code section 42001.15, effective January 1, 1998, provides in pertinent part that “[e]very person convicted of an infraction for a violation of [the “red light” laws] shall be punished by a fine of \$100.”

In analyzing the governing statutes we are guided by several rules of statutory construction. “In construing a statute a court’s objective is to ascertain and effectuate the underlying legislative intent.” *Moore v. California State Board of Accountancy*, 2 Cal. 4th 999, 1012 (1992). “In determining intent, we look first to the language of the statute, giving effect to its ‘plain meaning.’” *Kimmel v. Goland*, 51 Cal. 3d 202, 208-9 (1990). “A construction making some words surplusage is to be avoided. The words of the statute must be construed in context, keeping in mind the statutory purpose, and statutes or statutory sections relating to the same subject must be harmonized.” *Dyna-Med, Inc. v. Fair Employment & Housing Commission*, 43 Cal. 3d 1379, 1387 (1987). As to provisions of the Penal Code, “[w]ords and phrases must be construed according to the context and the approved usage of the language; but technical words

and phrases, and such others as may have acquired a peculiar and appropriate meaning in law, must be construed according to such peculiar and appropriate meaning.” Cal. Penal Code 7.16.

Applying these various principles, we find that a “fine” is one of several prescribed forms of punishment for the commission of crimes. Cal. Penal Code 15. The dollar amounts of fines, whether minimum, maximum, or universal, are set by legislative enactment and appear throughout the Penal Code and in penal provisions of other State codes. Sentencing courts “impose” fines in the amounts or within the ranges of discretion the legislature has fixed, limited there beyond by the State and Federal Constitutional prohibitions on “excessive fines imposed.” U.S. Const. amend. VIII; Cal. Const. art. I, 17. By contrast, “bail” is the product of “the order of a competent Court” accepting a sufficient undertaking for the appearance of a defendant released from custody, “or that the bail will pay to the people of this state a specified sum.” Cal. Penal Code 1268 and 1269. “Bail” is not one of the prescribed forms of punishment for crime. Bail amounts—unlike fines—are not in any manner fixed by statute, but also may not be “excessive” under the Constitutions. U.S. Const. amend. VIII; Cal. Const. art. I, 12. One must be careful not to confuse “fines” with “bail,” nor to use them interchangeably. Such may be the cause of most or all of the present controversy.

As best we can determine, the term “base fine” is not particularly defined by California law. By comparison, “base term” is defined as “the determinate prison term selected from among the three possible terms *prescribed by statute* or the determinate prison term *prescribed by law* if a range of three possible prison terms is not prescribed.” Cal. Rules of Court, Rule 405(b) (emphasis added). “Base fine” is used in contexts that would allow for a similar construction, that is, in contexts where a fine or fine range is prescribed by statute. For example, California Penal Code section 1463(l)(1) identifies the “base fine” as the first component of the “total fine or forfeiture” “upon which the state penalty and additional county penalty is calculated.” More particularly, the Legislative finding and declaration in AB 1191 states in pertinent part that “[a]n increase in the base fine to not less than \$100 would significantly decrease the number of red light violations . . . .” AB 1191, section 1(e). This law as enacted provides that red light violators “shall be punished by a fine of one hundred dollars (\$100).” Cal. Veh. Code 42001.15. It is clear, then, that the “base fine” for red light violations is \$100, and was legislatively enacted as such. By definition it is not a “bail amount” increase.

In fact *no* portion (let alone “\$80”) of the now \$100 base fine for “red light” violations is, in the language of California Penal Code section 1463.28, “attributable to an increase in the bail amounts adopted . . . pursuant to . . . Section 1269b. . . .” In fact, the *entire* \$100 is *solely* attributable to the Legislature’s addition of California Vehicle Code section 42001.15. “Under the familiar rule of construction, *expressio unius est exclusio alterius*, where exceptions to a general rule are specified by statute, other exceptions are not to be implied or presumed.” *People v. Harris*, 47 Cal. 3d 1047, 1082 (1989). Here, the exception to the general rule controlling fine distribution between cities and counties is specified by statute—California Penal Code section 1463.28(a)—that exception being bail amount increases pursuant to California Penal Code section 1269b. It is not, then, to be “implied or presumed” that a minimum fine enactment by the Legislature—as is the “red light” law—constitutes another exception to the general rule controlling city-county distribution.

## 2. Crime Lab Services Reimbursement

According to your letter, “the Court has not been allocating any narcotic analysis lab fees from the County Criminalistics Fund to the City of San Diego under H&S 11372.5.” By way of background, California Health and Safety Code section 11372.5(b) directs the county treasurer to maintain the fund and to deposit into it not only the \$50-per-conviction lab fee, but “in addition [thereto, all] fines, forfeitures, and other moneys which are transmitted by the courts to the county treasurer pursuant to [Health & Safety Code] Section 11502.” Section 11502 directs that all so-called narcotics-related “moneys, forfeited bail, or fines received by any court shall . . . be deposited with the county treasurer . . .” Accordingly, it is not the court’s duty to “allocate” money either to the lab fund or ultimately to the City of San Diego; it is the county treasurer’s duty. The court’s duty is merely to impose the lab fee at the time of sentencing.

Is the \$50 fee for each conviction of controlled substance violations covered under California Health and Safety Code section 11372.5(b) required to be placed in the Criminalistics Fund regardless of imposition by the judge or payment by the defendant? According to the language of California Health and Safety Code section 11372.5(b), “[t]he sum of fifty dollars (\$50) shall be deposited into the fund for every conviction” of an enumerated narcotics offense, and neither imposition by the judge nor payment by a defendant is a precondition to such deposit. In a California State Controller’s audit report of Los Angeles County court revenues dated July 1997 the following appears (page number unknown):

The \$50 fee is required to be imposed by the judges for each conviction of controlled substances violations under H&S 11372.5. Additionally, the \$50 fee is required to be transferred to the Criminalistic Laboratory Fund pursuant to H&S Code Section 11372.5, *regardless of imposition by the judges*. If fee collections are inadequate, controlled substance fines collected under H&S Code Section 11502 (normally distributable to the state, county and cities) are allowed to fund the required transfer to the Criminalistic Laboratory Fund (emphasis added).

This is consistent with the plain meaning of the words of the statute. As you know, the State Controller “. . . superintend[s] the fiscal concerns of the state” and “. . . audit[s] the disbursement of any state money, for correctness, legality, and for sufficient provisions of law for payment.” Cal. Gov’t Code 12410. Presumably, then, that official’s interpretation of the provisions at hand carries great weight.

Should the City of San Diego be reimbursed \$50 from the Criminalistics Fund for microscopic and chemical analysis for controlled substances performed by City operated or contracted lab(s) for each individual convicted of violations enumerated in Health and Safety Code section 11372.5? Criminalistics laboratories’ costs incurred for analyzing controlled substances in connection with criminal investigations are to be funded out of the Criminalistics Laboratory Fund. This law does not require or suggest that the sum of \$50 be transferred from the fund to the City or to anyone else for each narcotics conviction. The \$50 figure is the sum fixed at the “front end” of the process in order to “fund the fund” so to speak. It is not a measure or “flat charge” for reimbursement of costs incurred by labs in performing the various narcotics

analyzes. The statute does not specify a minimum or a maximum cost per investigation that might be reimbursed.

Are the answers to questions 2 and 3 different for those cases in which individuals enroll in diversion programs instead of being prosecuted through to convictions? Since reimbursement from the prosecution Criminalistics Laboratory Fund is not dependent upon “convictions,” defendants who are diverted from a prosecution rather than suffering convictions do not thwart reimbursement under the statute. Reimbursement is only contingent upon a criminal investigation having been “conducted” regardless of whether it leads to a conviction. Indeed, reimbursement

“contingent on conviction” could introduce a corrupting influence over lab management and staff who might succumb to the economic pressure to produce positive test results in order to qualify for reimbursement under such a statute.

CASEY GWINN, City Attorney

By

Stuart H. Swett  
Deputy City Attorney

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Attachments  
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