

MEMORANDUM OF LAW

DATE: August 6, 1985

TO: Lieutenant J. D. Moody, Traffic Division, San
Diego Police Department

FROM: City Attorney

SUBJECT: Vehicle Code Section 40600

In your memorandum of July 16, 1985, you asked whether a peace officer signing a Notice of Violation pursuant to Vehicle Code Section 40600 must personally investigate the accident at the scene. A Notice of Violation issued pursuant to Vehicle Code Section 40600 must be prepared and signed by a peace officer who has personally investigated the accident at the scene.

The purpose of the Vehicle Code Section 40600 is to enable an officer trained in traffic accident investigation to utilize his or her training by making a determination whether or not a Vehicle Code violation occurred, where he or she did not personally witness the accident. The officer makes this

determination as a result of personal investigation. Vehicle Code Section 40600(d). Section 40600(d) states that reasonable cause exists where the investigating officer has obtained testimonial and/or real evidence that would be sufficient to issue a written notice to appear if he or she had personally witnessed the accident.

It thus becomes clear from the language of the statute that the issuing officer must personally investigate the accident at the scene. Any other interpretation would circumvent the purpose of the statute by enabling an authorized officer to make a violation determination based solely upon the report of an unauthorized officer.

It should be noted that the procedure set forth in Section 40600 is not the only method of initiating criminal complaints for Vehicle Code and Penal Code violations based upon evidence obtained during an accident investigation. 59 Op. Att'y Gen. 355 (1976). If the officer on the scene is not authorized to issue a Notice of Violation, he can file a verified complaint against the suspect pursuant to Penal Code Sections 740 and 948 et seq. Id. at 361.

JOHN W. WITT, City Attorney

By

Grant Richard Telfer

Deputy City Attorney

GRT:mem:520.1(x043.2)

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