Opinionated: A Look Inside the Legal Opinion Unit of the California Attorney General’s Office

Wednesday, January 17, 2018

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BIOGRAPHIES

Panelists

**Marc J. Nolan** is the Lead Deputy Attorney General for the California Attorney General’s Legal Opinions and Quo Warranto Unit. He was previously a Supervising Deputy Attorney General in the Attorney General’s Criminal Division, where he served as statewide coordinator for the division’s handling of issues involving the Substance Abuse and Crime Prevention Act (diversion and treatment for nonviolent drug offenders) and Compassionate Use Act (medicinal marijuana). He received his law degree from the UCLA School of Law, and his undergraduate degree in Psychology from the University of California at Berkeley.

**Larry Daniels** is a Deputy Attorney General in the Attorney General’s Legal Opinions and Quo Warranto Unit. He is responsible for drafting opinions on behalf of the Attorney General and is currently managing several quo warranto matters. Before this assignment, he was the Supreme Court Reviewer and a Supervising Deputy Attorney General in the Appeals, Writs, and Trials section of the Attorney General’s Criminal Division. There, he obtained an affirmance of the murder conviction in the Phil Spector appeal, and a reversal of the Ninth Circuit’s grant of habeas relief in *Cavazos v. Smith* (2011) 565 U.S. 1.

**Catherine Bidart** is the newest Deputy Attorney General in the Attorney General’s Legal Opinions and Quo Warranto Unit. Previously, she litigated civil cases in the Health, Welfare and Education section of the Attorney General’s Office as well as the California Department of Transportation. Prior to that, Catherine worked in Sacramento as a staff attorney for the California Law Revision Commission, then as a Deputy Legislative Counsel. She received an LL.M. from the University of Cambridge, England, a J.D. from U.C. Hastings College of the Law, and a B.A. in Communications Studies from UCLA.

Moderator

**Kent J. Bullard** is a Deputy City Attorney in the Criminal Appellate Section of the Los Angeles City Attorney’s Office. He previously practiced civil appeals and writs at Greines, Martin, Stein and Richland LLP, civil litigation and appeals at Quinn Emanuel Urquhart & Sullivan, LLP, and criminal appeals and writs at the Office of the California Attorney General in Los Angeles. He clerked for U.S. District Judge David W. Hagen in the District of Nevada after earning his law degree from the UCLA School of Law.
The Attorney General shall give his or her opinion in writing to any Member of the Legislature, the Governor, Lieutenant Governor, Secretary of State, Controller, Treasurer, State Lands Commission, Superintendent of Public Instruction, Insurance Commissioner, any state agency, and any county counsel, district attorney, or sheriff when requested, upon any question of law relating to their respective offices.

The Attorney General shall give his or her opinion in writing to a city prosecuting attorney when requested, upon any question of law relating to criminal matters.

(Amended by Stats. 2001, Ch. 76, Sec. 1. Effective January 1, 2002.)
ATTORNEY GENERAL’S GUIDELINES FOR
ISSUING OPINIONS ON QUESTIONS OF LAW

The Attorney General’s authority to issue legal opinions is set out in Government Code section 12519:

“The Attorney General shall give his or her opinion in writing to any Member of the Legislature, the Governor, Lieutenant Governor, Secretary of State, Controller, Treasurer, State Lands Commission, Superintendent of Public Instruction, Insurance Commissioner, any state agency, and any county counsel, district attorney, or sheriff when requested, upon any question of law relating to their respective offices.

“The Attorney General shall give his or her opinion in writing to a city prosecuting attorney when requested, upon any question of law relating to criminal matters.”

RECIPIENTS

Under section 12519, the Attorney General may give opinions only to the specified public officials, and not to private citizens or to public officials who are not listed in the statute.

**Constitutional Officers.** The Attorney General may provide an opinion to any state constitutional officer: the Governor, Lieutenant Governor, Secretary of State, Controller, Treasurer, State Lands Commissioner, Superintendent of Public Instruction, and Insurance Commissioner.

**Legislators.** The Attorney General may provide an opinion to “any Member of the Legislature.” This refers to the State Senate and the State Assembly, but not to local legislative bodies such as city councils or county boards of supervisors. Requests may be made by individual state legislators, but not by legislative committees or consultants.
State Agencies. The Attorney General may provide an opinion to “any state agency.” The Attorney General interprets this as permitting opinions to be provided to state-level departments, agencies, boards, and commissions. This does not include local agencies, even though the local agency has been organized under state statutes. A request by a state agency or department should be made by or on behalf of the head of the state agency or department, not by individual employees of the agency. A request by a state board or commission must be authorized by a majority vote of the board or commission.

The California Supreme Court and Court of Appeal are state agencies authorized to request opinions. Requests should come from the chief justice or a presiding justice of the court or, as is usually the case, be submitted by the Administrative Office of the Courts.

County Counsel, District Attorneys, and Sheriffs. The Attorney General may issue an opinion to “any county counsel, district attorney, or sheriff.” The request should be made by or on behalf of the elected or appointed district attorney, county counsel, or sheriff, not by individual deputies or employees.

City Prosecuting Attorneys. The Attorney General may issue an opinion to “a city prosecuting attorney when requested, upon any question of law relating to criminal matters.” Opinions may not be given to city attorneys who do not prosecute criminal cases. Whether or not a city attorney prosecutes criminal cases, an opinion may not be given to a city attorney on a question of civil law.

QUESTIONS PRESENTED

Government Code section 12519 states that opinions will be provided on “questions of law.” Requests that require factual investigations or that would require the resolution of a factual dispute are declined. Requests for advice, or for policy determinations, are also declined.

Section 12519 also states that opinions will be given to specified officers on questions “relating to their respective offices.” Requests for opinions posed on behalf of others, or on questions unrelated to the office, are declined.

For policy reasons, the Attorney General also declines to give opinions on legal questions under special circumstances. The limitations include:

Conflicts of Interest under the Political Reform Act. The Attorney General normally recommends that questions concerning conflicts of interest arising under the Political Reform Act of 1974 (California Government Code §§ 81000-91015) be directed to the Fair Political Practices Commission, which administers the Act. A public official may rely on the Commission's opinion as a defense in enforcement actions regarding the requirements of the Political Reform Act.
**Local Laws.** The Attorney General declines opinion requests calling for interpretation of local charters, ordinances, resolutions, regulations, or rules. Responsibility for interpreting and enforcing local laws rests with local government lawyers.

**Pending Legislation.** The Attorney General declines opinion requests regarding the validity or interpretation of legislation prior to its enactment. Responsibility for providing opinions on pending bills rests with the Office of Legislative Counsel.

**Litigation.** The Attorney General declines opinion requests involving legal issues that are pending in a judicial or administrative proceeding. Issuing an opinion on a question that is at issue in litigation might be perceived as an attempt to influence the litigation. When the Attorney General's Opinion Unit becomes aware that a question raised in an existing request has become the subject of litigation, the assignment to prepare the opinion is cancelled.

**Conflict of Interest.** Occasionally, the Attorney General declines a request because it presents a conflict of interest with respect to other legal matters with which the Attorney General’s Office may be involved.

**PROCESS**

**Contents of Request.** An opinion request should be submitted in writing, and signed by the public official or head of the agency authorized to make the request.

The request should set out the question to be answered as clearly as possible, along with enough description of the background and context of the question to allow a precise legal analysis to be prepared.

Any request that is made by a department or officer that employs legal counsel must be accompanied by a legal analysis prepared by the department or officer’s legal counsel. Requests from a sheriff must be accompanied by the legal analysis of the district attorney or county counsel.

A Deputy Attorney General in the Opinion Unit may contact the requester for additional background information, or to discuss whether revisions to the question are desirable.

**Comments by Interested Persons.** After a request for an opinion has been accepted, the matter will be assigned to a Deputy Attorney General in the Opinion Unit for research and drafting. During the preparation period, the Attorney General’s Office welcomes any interested person or entity to submit its comments on the issues under consideration.

The Attorney General’s Opinion Unit makes substantial efforts to solicit comments from persons or entities who may have knowledge of the issues, but we realize that we cannot expect to reach everyone, and we encourage all those with an interest to make themselves
and their views known to us. All comments submitted before a draft is prepared will be considered, but early comments are strongly preferred.

**Drafting and Internal Review.** The Deputy Attorney General assigned to the matter is primarily responsible for directing research into the question, and for drafting the opinion.

After a draft opinion has been prepared, it is circulated internally within the Attorney General’s Office for extensive review and revision. This process is crucial to ensuring the quality and value of a written opinion, and the process can be protracted. Due to many variables, it is often not possible to accurately predict when a particular opinion will be issued.

Proposed analyses and conclusions of pending opinions are not discussed outside of the Attorney General’s Office.

**Publication.** Once the Attorney General has formally approved an opinion, it is provided first to the requester, and then to the public. Published opinions are available on the Attorney General’s website, through online legal research services, and in law libraries.

**Public Information.** All written requests for Attorney General’s opinions, as well as all written views submitted on questions under consideration, are public documents and may be disclosed to third parties under the Public Records Act.
THE HONORABLE ROD PACHECO, DISTRICT ATTORNEY, COUNTY OF RIVERSIDE, has requested an opinion on the following question:

In response to a request made under the California Public Records Act for the names of peace officers involved in a critical incident, such as one in which lethal force was used, must a law enforcement agency disclose those names?

CONCLUSION

In response to a request made under the California Public Records Act for the names of peace officers involved in a critical incident, such as one in which lethal force was used, a law enforcement agency must disclose those names unless, on the facts of the particular case, the public interest served by not disclosing the names clearly outweighs the public interest served by disclosing the names.
This question arises at the intersection of two statutory schemes pertaining to the confidentiality—or not—of records maintained by law enforcement agencies. One set of statutes, collectively known as the California Public Records Act, provides generally that “every person has a right to inspect any public record,” except as specified in that act. The other set of statutes, set forth in the Penal Code, makes peace officer personnel records confidential and establishes a procedure for obtaining these records, or information from them.

The complex interaction between these interrelated statutory schemes has given rise to a number of published decisions interpreting various specific provisions. The question before us stems from a desire to clear up confusion among some law enforcement agencies engendered by two of those decisions: the relatively recent decision by the Supreme Court in *Copley Press, Inc. v. Superior Court*, 39 Cal. 4th 1272 (2006), and the court of appeal’s decision in *New York Times Co. v. Superior Court*, 52 Cal. App. 4th 97 (1997), which *Copley* disapproved in part.

A full understanding of the issue and our analysis requires a brief review of the relevant statutes. We begin with the California Public Records Act (“Act”).

The express purpose of the Act is to facilitate the public’s right to monitor governmental activities on the principle that “access to information concerning the conduct of the public’s business is a fundamental and necessary right of every person in this state.” Thus, under the Act, most records maintained by state and local agencies are subject to disclosure. However, the right to see public records is not absolute. In adopting the Act, the Legislature also declared that it was “mindful of the right of individuals to privacy.”

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1 Govt. Code § 6253(a); *see generally* California Public Records Act, Govt. Code §§ 6250 *et seq.*

2 Pen. Code §§ 832.5, 832.7, 832.8; *see also* Evid. Code §§ 1043-1047.


4 Govt. Code § 6250; *see* Cal. Const. art. I, § 3(b)(1).

5 Govt. Code § 6253(a).

6 Govt. Code § 6250; *see* Cal. Const. art. I, § 3(b)(3).
Accordingly, the Act contains numerous exceptions, many of which are designed to protect individual privacy.\(^7\)

Exceptions to the Act’s general rule of disclosure are narrowly construed, and the burden is on the governmental agency to show that a record should not be disclosed.\(^8\) That is, an agency seeking to withhold a public record from disclosure must demonstrate either that the record falls under an express category of exemption under the Act, or that “on the facts of the particular case the public interest served by not making the record public clearly outweighs the public interest served by disclosure of the record.”\(^9\)

One exception to the Act’s general rule of disclosure is an exemption for “[r]ecords, the disclosure of which is exempted or prohibited pursuant to federal or state law.”\(^{10}\) Here, the relevant state law is Penal Code section 832.7, which establishes the confidentiality of peace officer “personnel records.”\(^{11}\) The term “personnel records” includes “complaints, or investigations of complaints, concerning an event or transaction in which [the officer] participated, or which he or she perceived, and pertaining to the manner in which he or she performed his or her duties.”\(^{12}\) The term “personnel records” also includes “personal data, including marital status, family members, educational and employment history, home addresses, or similar information,”\(^{13}\) as well as “any other information the disclosure of which would constitute an unwarranted invasion of personal privacy.”\(^{14}\)

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\(^7\) See Govt. Code § 6254.

\(^8\) Cal. Const. art. I, § 3(b)(2); Govt. Code § 6255.

\(^9\) Govt. Code § 6255.

\(^10\) Govt. Code § 6254(k).

\(^11\) Penal Code section 832.7(a) states, “Peace officer or custodial officer personnel records and records maintained by any state or local agency pursuant to [Penal Code] Section 832.5, or information obtained from these records, are confidential and shall not be disclosed in any criminal or civil proceeding except by discovery pursuant to Sections 1043 and 1046 of the Evidence Code.” Penal Code section 832.5 establishes a procedure for citizens to lodge complaints against peace officers.

\(^12\) Pen. Code § 832.8(e).

\(^13\) Pen. Code § 832.8(a).

\(^14\) Pen. Code § 832.8(f).
Even a cursory review of these statutes suggests that they will not be easy to apply in every situation, entailing as they do a series of cross-references, exceptions within exceptions and, in the end, a balancing of the public’s right to access information against individual privacy rights—both of which are fundamental interests under our state Constitution. In light of the importance of the competing interests at stake, it is understandable that a number of such situations have resulted in published decisions. We turn now to the two decisions that have brought this particular question to us.

*New York Times Co. v. Superior Court* involved a local newspaper’s public records request for the names of uniformed sheriff’s deputies who had fired shots at a private citizen during an incident that resulted in the citizen’s death. Citing peace officer confidentiality statutes, the sheriff refused to provide the names. The newspaper filed a petition for writ of mandate, which the superior court denied. The court of appeal reversed, holding that the Act required the sheriff to provide the requested names. The court reasoned that a request encompassing “simply the names of officers who fired their weapons while engaged in the performance of their duties” did not, in itself, call for production of confidential peace officer personnel records—as would a request for information concerning citizen complaints against peace officers or a request for reports on an internal investigation involving a peace officer. Moreover, the court noted, the deputies’ names could be “readily provided . . . without disclosure of any portion of the deputies’ personnel files” and would “reveal no deliberative process” of any internal investigation connected to the shooting incident. Thus, *New York Times* stands for the proposition that a law enforcement agency must generally provide the names of officers involved in a critical incident, such as one involving the lethal use of force.

It has been suggested that the Supreme Court’s decision in *Copley Press, Inc. v. Superior Court* overruled the holding of *New York Times*. For reasons that we now explain, we disagree.

In *Copley*, the publisher of the San Diego Union-Tribune submitted a public records request to the county civil service commission seeking the identity of a deputy sheriff whom the newspaper had learned was the subject of a disciplinary proceeding, and also requested

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15 52 Cal. App. 4th at 99-100.


the details of that closed proceeding. The commission refused to provide the requested information, and the superior court denied the newspaper’s petition for writ of mandate. Thereafter, the Supreme Court granted review and held that, in this context, the commission was not required to reveal the officer’s identity because Penal Code section 832.7(a) “is designed to protect, among other things, ‘the identity of officers’ subject to complaints.” In so holding, the Supreme Court disagreed with an assertion made in the New York Times opinion that could be read as stating that a peace officer’s name is never exempt from disclosure under the peace officer confidentiality statutes. The Copley court qualified its disagreement, however, by stating that the seemingly categorical assertion in New York Times was incorrect “at least insofar as it applies to disciplinary matters like the one at issue here.” We infer from the specific and qualified

19 39 Cal. 4th at 1279.

20 Id. at 1279-1280.

21 The court of appeal had ordered the commission to provide, with certain redactions, the requested records based on its determination that the commission was not the officer’s “employing agency” within the meaning of the peace officer confidentiality statutes, and that its records concerning the officer were “outside the definitional limitations applicable to” those provisions. Copley, 39 Cal. 4th at 1280-1281. The Supreme Court rejected this rationale, finding that the commission’s records should be treated as those of the employing agency, and therefore that they are covered by the officer confidentiality statutes. Id. at 1289.

22 Id. at 1297 (quoting City of Richmond, 32 Cal. App. 4th at 1440 n. 3).

23 39 Cal. 4th at 1298. The Copley decision’s full discussion of New York Times is as follows:

In reaching this conclusion, we reject Copley’s reliance on New York Times, supra, 52 Cal. App. 4th 97. There, through a public records request, a news organization sought the names of deputy sheriffs who fired weapons during a criminal incident. (New York Times, at p. 100.) The county sheriff, who determined this information during an internal investigation of the incident, agreed to provide the names of all deputies who were present at the crime scene, but refused to identify the particular officers who fired their weapons. (Id. at pp. 99-100.) The court ordered disclosure of the information, holding in relevant part that it was not confidential under section 832.7. (New York Times, supra, at pp. 101-104.) Without any analysis, the court broadly
nature of this disagreement that the Copley court did not overrule the central holding of New York Times that a peace officer’s name is generally subject to disclosure. Instead, the holding in Copley is more narrow, that is, that a peace officer’s name may be kept confidential when it is sought in connection with information pertaining to a confidential matter such as an internal investigation or a disciplinary proceeding.24

To look at it another way, New York Times holds that the name of an officer involved in a given incident must be disclosed as long as the disclosure does not reveal confidential information from the officer’s personnel file, or endanger either the integrity of an investigation or the safety of a person.25 This rule simply does not apply to the circumstances presented in Copley, where a peace officer’s name was sought precisely because of its connection with a confidential disciplinary proceeding. Therefore, we conclude that Copley did not overrule the central holding of New York Times.

Our conclusion finds additional support in the Supreme Court’s recent, post-Copley decision in Commission on Peace Officer Standards and Training v. Superior Court.26 There, a reporter from the Los Angeles Times made a public records request of the Commission on Peace Officer Standards and Training for the names, employing departments, and employment dates of numerous peace officers. The Commission denied the request, claiming that the information was exempt from disclosure because the officers’ names, employing departments, and dates of employment were all items of information that would be obtained from confidential peace officer personnel records.27 The superior court ordered declared that “[u]nder . . . sections 832.7 and 832.8, an individual’s name is not exempt from disclosure.” (New York Times, supra, at p. 101.) As the preceding discussion of the statutory language and legislative history demonstrates, the court’s unsupported assertion is simply incorrect, at least insofar as it applies to disciplinary matters like the one at issue here. Thus, we disapprove New York Times Co. v. Superior Court, supra, 52 Cal. App. 4th 97, to the extent it is inconsistent with the preceding discussion, and we reject Copley’s reliance on that decision.

Id. at 1297-1298.

24 Id. at 1297.

25 52 Cal. App. 4th at 102-103.

26 42 Cal. 4th 278 (2007).

27 Id. at 286-287.
disclosure, but the court of appeal reversed, concluding that the requested records were covered by the peace officer confidentiality statutes. The Supreme Court then reversed the court of appeal, holding that the requested information did not constitute “peace officer personnel records” under Penal Code section 832.7.  In the course of its analysis, the Supreme Court emphasized that Copley’s disagreement with the New York Times decision was “qualified.” The Supreme Court also quoted with approval a passage from New York Times as support for its general conclusion that peace officer names ordinarily are not, and should not be, considered confidential information:

The public’s legitimate interest in the identity and activities of peace officers is even greater than its interest in those of the average public servant. “Law enforcement officers carry upon their shoulders the cloak of authority to enforce the laws of the state. In order to maintain trust in its police department, the public must be kept fully informed of the activities of its peace officers.”

The Supreme Court surely would not have cited this language from New York Times as support for its holding if, only a year earlier, it had overruled New York Times in Copley.

Having concluded that the central holding in New York Times is still good law, then, how do we apply it to the question at hand? First, we assume for purposes of our analysis that the law enforcement agency has made and kept some kind of record of the names of the officers who become involved in a critical incident, such as one in which lethal force was used. Such information would fall well within the Act’s broad definition of a “public record,” regardless of how it might be stored. As we have noted, New York Times holds that the name of an officer involved in a given incident must be disclosed as long as the disclosure does not reveal confidential information from the officer’s personnel file, or

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28 Id. at 287-288.

29 Id. at 298-303.

30 Id. at 298.

31 Id. at 297 (quoting New York Times, 52 Cal. App. 4th at 104-105.)

32 The Act does not apply to information that is not maintained as a record in any form. Govt. Code § 6252(g) (definition of “writing”); see Govt. Code § 6253.9(c) (public agency not required to reconstruct electronic record that is no longer available).

33 Govt. Code § 6252(e), (g).
endanger either the integrity of an investigation or the safety of a person. Therefore, because the name of an officer involved in a critical incident does not, in itself, reveal confidential information from the officer’s personnel file as defined by Penal Code section 832.8(e), the name may not be withheld under Government Code section 6254(k) (“[r]ecords, the disclosure of which is exempted or prohibited pursuant to federal or state law”).

We next consider whether the name may be withheld under Government Code section 6254(c), which exempts records “the disclosure of which would constitute an unwarranted invasion of personal privacy.” This exemption calls for the balancing of a peace officer’s interest in privacy against the public’s interest in disclosure. The Supreme Court has observed that the public has a legitimate interest in the identity and conduct of peace officers, and in keeping fully informed as to their official actions. This interest is substantial and “both diminishes and counterbalances” any expectation that a peace officer may have that his or her identity will ordinarily be kept confidential. At least as a general matter, the perceived harm to peace officers “from revelation of their names as having fired their weapons in the line of duty and resulting in a death does not outweigh the public interest in disclosure of their names.” Thus, we conclude that the names of peace officers involved in a critical incident in the performance of their official duties are not generally exempt from disclosure under Government Code section 6254(c).

We also find inapplicable the section 6254(f) exception for “[r]ecords of complaints to, or investigations conducted by, or records of intelligence information or security procedures of, the Office of the Attorney General and the Department of Justice, and any state or local police agency . . . .” Generally speaking, a response to a request just for the names of officers involved in a particular incident may be provided without revealing any investigatory or disciplinary matter that may have arisen out of the incident. Disclosure would merely communicate a statement of fact that the named officers were involved in the incident. It would not imply any judgment that the actions taken were inappropriate or even

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34 See Commission on Peace Officer Standards and Training, 42 Cal. 4th at 299.

35 Id. at 297.


38 Govt. Code § 6254(f).

suspect. That the name of involved officers might also appear in an investigatory file connected to the incident is of no moment for purposes of the applicable law. It is well established that a public agency may not shield otherwise non-confidential information from public disclosure “simply by placing it in a file labeled ‘investigatory.’”

Finally, we do not accept the suggestion that section 6254(f) shields an involved officer’s name from disclosure on the theory that the name would constitute mere “information”—as distinguished from a disclosable “record”—that an agency would have no obligation to reveal. In our view, this would-be semantic distinction wrongly presupposes a much more restrictive definition of what constitutes a “public record” than is actually the case. As the Supreme Court observed in Commission on Peace Officer Standards and Training, the Act’s definition of “public record” is “intended to cover every conceivable kind of record that is involved in the governmental process. . . . Only purely personal information unrelated to ‘the conduct of the people’s business’ could be considered exempt from this definition.” The identities of officers involved in a particular incident that occurred in the course and scope of their duties as peace officers is clearly information related “to the conduct of the public’s business,” and therefore disclosable if—as we assume—it is recorded in any manner and can be redacted to protect any confidential material.

In summary, we conclude that the name of a peace officer involved in a critical incident is not categorically exempt from disclosure under either the Act or the peace officer confidentiality provisions of the Penal Code. Nevertheless, we cannot leave the subject without pointing out that there will inevitably be instances in which confidentiality will be required because “the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record.”

40 E.g., Williams v. Superior Court, 5 Cal. 4th 337, 355 (1993).

41 See supra n. 32.


43 See Govt. Code § 6257(a): “. . . Any reasonably segregable portion of a record shall be available for inspection by any person requesting the record after deletion of the portions that are exempted by law.”

44 Govt. Code § 6255(a).
operating undercover is one such situation.\textsuperscript{45} An incident involving a street gang member and the possibility of retribution by other gang members might be another example. In any proper case, a law enforcement agency may seek to justify withholding an officer’s identifying information under Government Code section 6255(a). This provision “contemplates a case-by-case balancing process, with the burden of proof on the proponent of nondisclosure to demonstrate a clear overbalance on the side of confidentiality.”\textsuperscript{46} While a “‘mere assertion of possible endangerment’ is insufficient to justify nondisclosure,” the interests of both the individual officer and the public in peace officer safety and effectiveness are significant, and a law enforcement agency must therefore have an opportunity to demonstrate that a particular case merits confidential treatment of the identity of the officer or officers involved.\textsuperscript{47}

Therefore we conclude that, in response to a request made under the California Public Records Act for the names of peace officers involved in a critical incident, such as one in which lethal force was used, a law enforcement agency must disclose those names unless, on the facts of the particular case, the public interest served by not disclosing the names clearly outweighs the public interest served by disclosing the names.

\textsuperscript{45} See Commission on Peace Officer Standards and Training, 42 Cal. 4th at 301-304.

\textsuperscript{46} Michaelis, Montanari & Johnson v. Superior Court, 38 Cal. 4th 1065, 1071 (2006).

\textsuperscript{47} Commission on Peace Officer Standards and Training, 42 Cal. 4th at 302 (quoting CBS, Inc. v. Block, 42 Cal. 3d 646, 652 (1986)).
THE HONORABLE KEVIN DE LEÓN, MEMBER OF THE STATE SENATE, has requested an opinion on the following question:

Does a police department have discretion to establish guidelines that would allow an impounded vehicle to be released in less than 30 days, under Vehicle Code section 22651(p), in situations where a fixed 30-day statutory impoundment period, under Vehicle Code section 14602.6(a)(1), may also potentially apply?

CONCLUSION

A police department has discretion to establish guidelines that would allow an impounded vehicle to be released in less than 30 days, under Vehicle Code section 22651(p), in situations where a fixed 30-day statutory impoundment period, under Vehicle Code section 14602.6(a)(1), may also potentially apply.
When a peace officer orders an automobile or other motor vehicle towed away from its location and impounded, he or she makes “a seizure within the meaning of the Fourth Amendment.”\(^1\) Even without a search warrant, such seizures are constitutionally permissible where officers have probable cause to believe that the vehicle contains evidence of criminal activity or was itself an instrumentality in the commission of a crime.\(^2\) But the courts have held that warrantless vehicle seizures may also be appropriate, and valid under the Fourth Amendment, in various other situations where officers lack probable cause to seize and search the vehicle but nonetheless have grounds to remove it from its location under what has become known as the “community caretaking doctrine.” In performing their community caretaking function, police officers may remove and impound vehicles that “jeopardize public safety and the efficient movement of vehicular traffic,”\(^3\) so long as an officer’s discretion in ordering the removal “is exercised according to standard criteria and on the basis of something other than suspicion of evidence of criminal activity.”\(^4\) Thus, as one court has stated,

An impoundment may be proper under the community caretaking doctrine if the driver’s violation of a vehicle regulation prevents the driver from lawfully operating the vehicle, and also if it is necessary to remove the vehicle from an exposed or public location. [Citations.] The violation of a traffic regulation justifies impoundment of a vehicle if the driver is unable to remove the vehicle from a public location without continuing its illegal

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\(^1\) *Miranda v. City of Cornelius*, 429 F.3d 858, 862 (9th Cir. 2005).


\(^4\) *Colorado v. Bertine*, 479 U.S. 367, 375 (1987). Cases discussing the community caretaking doctrine typically arise from a criminal defendant’s Fourth Amendment challenge to an inventory search performed upon an impounded vehicle, where the search resulted in the discovery of incriminating evidence against that defendant. These cases generally hold that inventory searches performed according to standardized procedures are valid so long as the seizure of the vehicle was also done according to standardized procedures such as those implementing a community caretaking policy—i.e., rather than as a pretext to seize and search a vehicle suspected to contain evidence of criminal activity under circumstances where probable cause is lacking. Id. at 375-376; *South Dakota v. Opperman*, 428 U.S. at 368-373; see also *People v. Torres*, 188 Cal. App. 4th 775, 786-788 (2010); *People v. Williams*, 145 Cal. App. 4th 756, 762-763 (2006).
In California, statutory authority for vehicle impounds of any type is found in the Vehicle Code. The Los Angeles Police Department (Department) recently adopted a policy (Impound Policy) that, among other things, provides its officers with “standard criteria” for determining whether, and under what statutory authority, to order a vehicle removed from its location for community caretaking purposes when the driver of the vehicle is found driving on a suspended or revoked driver’s license, or without ever having been issued a valid driver’s license. In many such cases, removal and storage of the vehicle is warranted because a person who lacks a valid driver’s license may not lawfully operate the vehicle so as to move it away from a public location.

In this opinion, we are concerned with two provisions of the Vehicle Code—sections 14602.6(a)(1) and 22651(p)—that provide authority for peace officers to remove vehicles from a roadway when the driver has been found not to hold a valid license. See Colorado v. Bertine, 479 U.S. at 375.

For purposes of the Vehicle Code, a driver’s license is a “valid license to drive the type of motor vehicle or combination of vehicles for which a person is licensed under this code or by a foreign jurisdiction.” § 310.

§§ 12500(a) (“A person may not drive a motor vehicle upon a highway, unless the person then holds a valid driver’s license issued under this code, . . . .”); 14601-14601.5 (driving on suspended or revoked license); 14603 (driving in violation of license restrictions).

There are situations in which impounding a vehicle under a facially valid state statute may nevertheless result in an unreasonable seizure in violation of the Fourth Amendment. See Cooper v. Cal., 386 U.S. 58, 61 (1967) (“a search authorized by state law may be an unreasonable one under th[e] [Fourth] amendment”). One such example occurred when an officer from an Oregon city’s police department seized an automobile under an unlicensed driver statute even though the vehicle’s registered and properly-licensed owner did not commit the driving violation, and even though the vehicle was parked in the registered owner’s driveway. See Miranda v. City of Cornelius, 429 F.3d at 860-861, 864-866. Incidents of this nature are outside the scope of this opinion.

5 Miranda v. City of Cornelius, 429 F.3d at 865.
6 Veh. Code § 22650 (“It is unlawful for any peace officer or any unauthorized person to remove any unattended vehicle from a highway to a garage or to any other place, except as provided in this code.”); see Veh. Code §§ 14602, 14602.5-14602.9, 14607.6-14607.8, 22651-22856. All further undesignated statutory references are to the Vehicle Code.
8 For purposes of the Vehicle Code, a driver’s license is a “valid license to drive the type of motor vehicle or combination of vehicles for which a person is licensed under this code or by a foreign jurisdiction.” § 310.
9 §§ 12500(a) (“A person may not drive a motor vehicle upon a highway, unless the person then holds a valid driver’s license issued under this code, . . . .”); 14601-14601.5 (driving on suspended or revoked license); 14603 (driving in violation of license restrictions).
Section 14602.6(a)(1) sets a fixed 30-day period of impoundment (in the absence of mitigating circumstances or the applicability of other statutory exceptions). Section 22651(p) allows impoundment but, rather than setting a fixed time period for the impoundment, permits the vehicle’s registered owner to reclaim the vehicle upon presentation of his or her (or his or her agent’s) valid driver’s license and proof of current vehicle registration.

We are informed that, in situations where either of these provisions may be used, the Department’s Impound Policy instructs officers to cite section 14602.6(a)(1) (“30-day hold”) as the “impound authority” when the circumstances are more serious, and to cite section 22651(p) when the circumstances are less serious. As summarized by the Chief of Police, the Impound Policy directs officers to seize and impound a vehicle under the stricter 30-day hold statute “if the driver has prior convictions for being an unlicensed driver, is unable to show proof of insurance, has insufficient identification, or is at-fault in a major traffic collision,” and to order removal without a 30-day hold in other cases where removal is warranted. This policy has been approved by the Los Angeles Board of Police Commissioners, which, under the City Charter, oversees the Chief of Police’s exercise of his or her administrative authority.

Given this background, we consider whether the Department may lawfully implement the above-described Impound Policy. For the reasons that follow, we believe

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11 Memo from Chief of Police to Bd. of Police Commrs. re Community Caretaking Doctrine and Vehicle Impound Procedures (Feb. 10, 2012) at 1. A separate provision of the Vehicle Code, section 14607.6, subjects a motor vehicle to impoundment—and possible forfeiture—if it was being driven by a driver with a suspended or revoked license, or by an unlicensed driver, and if the driver (1) is a registered owner of the vehicle, and (2) has one or more prior misdemeanor convictions for specified unlicensed, suspended license, or revoked license offenses. Id. at subds. (a), (c)(1); see also People v. One 1986 Cadillac DeVille, 70 Cal. App. 4th 157, 163 (1999). As we understand the Impound Policy, officers are instructed to impound the vehicle, and to invoke section 14602.6(a)(1)’s 30-day hold, in cases where a vehicle is subject to forfeiture based on a suspected violation of section 14607.6.

12 Los Angeles City Charter §§ 571(b)(1), 574(b) & (c).

13 In an effort to conform to constitutional requirements of the community caretaking doctrine, the Department’s Impound Policy does not require officers to order vehicles to be removed and impounded in all unlicensed driving situations. For example, the Policy instructs officers to release the vehicle when all of the following conditions are present: (1) the cited unlicensed driver has no prior license-related offenses; (2) the vehicle’s registered owner or authorized designee has a valid driver’s license and is immediately

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that it may. To be clear, we do not conclude that a police agency must necessarily direct its officers in the same way that the Impound Policy does. We are informed that different police agencies in California take different approaches toward impoundments under sections 14602.6(a)(1) and 22651(p). Some may allow their officers to exercise various degrees of discretion; others may direct their officers to enforce the 30-day impoundment rule whenever section 14602.6(a)(1) permits it. In our view, it is entirely appropriate for various agencies to adapt their policies as they best see fit to serve the particular needs of their communities. As long as a policy falls within the bounds of the law, we express no preference or judgment as to any particular form it may take. Both our emphasis and our ultimate conclusion here are aimed at the straightforward question whether these two statutes, taken together and as part of a larger statutory scheme, afford agencies and their officers some measure of discretion in this area.

### Two discretionary statutes

We begin our analysis with the text of the statutes in question. Section 14602.6(a)(1) provides:

> Whenever a peace officer determines that a person was driving a vehicle while his or her driving privilege was suspended or revoked, . . . , or driving a vehicle without ever having been issued a driver’s license, the peace officer *may either* immediately arrest that person and cause the removal and seizure of that vehicle *or*, if the vehicle is involved in a traffic collision, cause the removal and seizure of the vehicle without the necessity of arresting the person in accordance with Chapter 10 (commencing with Section 22650) of Division 11. A vehicle so impounded *shall* be impounded for 30 days.\(^\text{14}\)

This provision has been found to confer discretionary authority on an officer to arrest and impound; just to impound (in the case of a traffic collision); or to do neither.\(^\text{15}\) In *California Highway Patrol v. Superior Court*, the court of appeal considered the question whether the language of the statute was permissive or mandatory, given that the language available; and (3) the vehicle’s registration is valid. In any event, these “no impound” situations are not at issue here because the question under consideration is whether, *when an officer decides to impound a vehicle* under the Impound Policy, he or she may lawfully select between the 30-day hold provision set forth in section 14602.6(a)(1), or the removal and storage authority of section 22651(p).

\(^\text{14}\) Emphases added.

of the statute includes both permissive and mandatory words (as italicized above).\textsuperscript{16} Considering the language and structure of the statute, the statute’s legislative history, and relevant public policy considerations, the court concluded that the statute does not create a mandatory duty on a police officer to impound a vehicle in the first instance, but that the statute does require a fixed 30-day period of impoundment if the vehicle is seized under the statute’s authority.\textsuperscript{17} Specifically, with regard to section 14602.6(a)(1)’s final sentence, the court observed,

The word “shall” describes only the 30-day time period for any vehicle “so impounded.” (Italics added.) If an officer decides not to impound a car under the discretionary authority provided by section 14602.6(a)(1), it is not “so impounded” and therefore the 30-day provision is inapplicable.\textsuperscript{18}

Conversely, if an officer chooses to impound a vehicle under the authority of section 14602.6, then the presumptive\textsuperscript{19} period of impoundment for the “vehicle so impounded” is 30 days. In considering (and rejecting) a claim that section 14602.6(a)(1) is unconstitutionally vague, the court of appeal in \textit{Samples v. Brown} parsed the provision in a similar way, stating that it

provides unquestionably clear notice that a person who drives without a license \textit{may} be arrested, that the car driven by an unlicensed driver \textit{may} be seized by a law enforcement officer, and that a seized vehicle \textit{will} be

\textsuperscript{16} As used in the Vehicle Code, “‘[s]hall’ is mandatory and ‘may’ is permissive.” § 15.

\textsuperscript{17} \textit{Highway Patrol} was a wrongful death action filed against the California Highway Patrol due to its release of a vehicle it had seized earlier that day from a motorist who was arrested for driving under the influence and for driving with a suspended license. Shortly after the vehicle was released to the motorist’s mother, the motorist again drove the vehicle, collided with another car, and killed a person. The plaintiffs’ theory of relief was based on their contention that the Highway Patrol had a mandatory duty to impound the vehicle for the fixed 30-day period prescribed by section 14602.6(a)(1).


\textsuperscript{19} As mentioned earlier, other provisions of section 14602.6 provide for the release of a vehicle impounded under subdivision (a)(1) before expiration of the 30-day period. In particular, subdivision (b) affords the vehicle’s registered owner an opportunity to present any mitigating circumstances that would militate toward an earlier release, and subdivisions (d), (f), and (h) list circumstances under which the impounded vehicle must be released to, respectively, the vehicle’s registered owner, legal owner, or (if applicable) car rental agency. \textit{See Samples v. Brown}, 146 Cal. App. 4th 787, 796-797 (2007).
impounded for no longer than 30 days.\(^{20}\)

Turning now to section 22651(p), we see that it is one of several circumstances permitting removal of a motor vehicle. Under this provision, a “peace officer . . . may remove a vehicle located within the territorial limits in which the officer . . . may act, under the following circumstances:

\[\ldots\]

(p) When the peace officer issues the driver of a vehicle a notice to appear for a violation of Section 12500, 14601, 14601.1, 14601.2, 14601.3, 14601.4, 14601.5, or 14604\(^{21}\) and the vehicle is not impounded pursuant to Section 22655.5.\(^{22}\) A vehicle so removed from the highway or public land, or from private property after having been on a highway or public land, shall not be released to the registered owner or his or her agent, except upon presentation of the registered owner’s or his or her agent’s currently valid driver’s license to operate the vehicle and proof of current vehicle registration, or upon order of a court.\(^{23}\)

This provision has also been found to confer discretionary authority on peace officers,\(^ {24}\) as have other circumstances listed in section 22651 that permit removal.\(^ {25}\)

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\(^{20}\) *Id.*, 146 Cal. App. 4th at 801 (emphases added).

\(^{21}\) These statutes provide that it is unlawful to drive without a valid driver’s license (§ 12500), to drive with a license that has been suspended or revoked for specified reasons (§§ 14601, 14601.1, 14601.2, 14601.3, 14601.4, 14601.5), and for a vehicle owner to knowingly allow an unlicensed driver to operate the vehicle (§ 14604).

\(^{22}\) Section 22655.5 applies in situations where the impounding officer has probable cause to believe that the vehicle in question was used as a means to a commit a public offense, or contains or is itself evidence of criminal activity.

\(^{23}\) § 22651(p) (emphasis added).


\(^{25}\) See *e.g.* *Posey v. State of Cal.*, 180 Cal. App. 3d 836, 849-850 (1986) (interpreting § 22651(b) (vehicle obstructing traffic or creating a hazard)); *Green v. City of Livermore*, 117 Cal. App. 3d 82, 90-91 (1981) (interpreting § 22651(h) (driver arrested and taken into custody)).
The *Highway Patrol* holding implicitly sanctions the Impound Policy’s approach of allowing officers the guided discretion to order a vehicle impounded under either section 14602.6(a)(1) or section 22651(p) in circumstances where either of the two statutes could apply. In that case, Highway Patrol officers arrested a motorist for driving under the influence of prescription drugs, and ordered the motorist’s vehicle removed and stored pursuant to section 22651(h), which authorizes removal and storage when “an officer arrests a person driving . . . a vehicle for an alleged offense . . . and [takes] the person into custody.” While “en route to the Sacramento County Sheriff’s Department,” the officers discovered that the arrestee’s driver’s license was suspended and, upon their arrival at the station, the arrestee was booked for both driving under the influence and driving on a suspended license.

The Court of Appeal found no fault with the Highway Patrol officer’s failure to order an impound under the authority of section 14602.6(a)(1), rather than under section 22651(h), once he discovered the driver’s suspended-license status. We see no meaningful distinction between that scenario and an officer’s exercise of discretion to use the authority of section 22651(p), rather than section 14602.6(a)(1), in the unlicensed/suspended license/revoked license scenarios envisioned under the Department’s Impound Policy. No doubt, section 14602.6(a)(1)’s 30-day hold provision affords officers a powerful enforcement tool to utilize in combating the serious problem of unlicensed driving. Still, we agree with the *Highway Patrol* court that officers are

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27 *Id.*

28 As part of the Safe Streets Act of 1994 (1994 Stat. ch. 1133 § 11)—which was coordinated with the legislation that added the 30-day hold (1994 Stat. ch. 1221 § 13)—the Legislature provided for the civil forfeiture of vehicles driven by unlicensed drivers with specified prior license-related convictions. *See* § 14607.6(a). In enacting the forfeiture provision, the Legislature made numerous findings, including the following:

(b) Of all drivers involved in fatal accidents, more than 20 percent are not licensed to drive. A driver with a suspended license is four times as likely to be involved in a fatal accident as a properly licensed driver.

(c) At any given time, it is estimated by the Department of Motor Vehicles that of some 20 million driver’s licenses issued to Californians, 720,000 are suspended or revoked. Furthermore, 1,000,000 persons are estimated to be driving without ever having been licensed at all.

(d) Over 4,000 persons are killed in traffic accidents in California annually, and another 330,000 persons suffer injuries.
authorized, not required, to use this tool in the stated circumstances.29

**Inapplicability of the specific-over-general doctrine**

Holding to our view that both statutes are permissive in the relevant respects, we are not swayed by the suggestion that section 14602.6(a)(1)’s fixed 30-day hold period must be selected whenever it applies on the ground that it constitutes a “more specific”

(e) Californians who comply with the law are frequently victims of traffic accidents caused by unlicensed drivers. These innocent victims suffer considerable pain and property loss at the hands of people who flaunt the law. The Department of Motor Vehicles estimates that 75 percent of all drivers whose driving privilege has been withdrawn continue to drive regardless of the law.

(f) It is necessary and appropriate to take additional steps to prevent unlicensed drivers from driving, including the civil forfeiture of vehicles used by unlicensed drivers. The state has a critical interest in enforcing its traffic laws and in keeping unlicensed drivers from illegally driving. Seizing the vehicles used by unlicensed drivers serves a significant governmental and public interest, namely the protection of the health, safety, and welfare of Californians from the harm of unlicensed drivers, who are involved in a disproportionate number of traffic incidents, and the avoidance of the associated destruction and damage to lives and property.

§ 14607.4(b), (c), (d), (e), (f).

29 As the Highway Patrol court observed, public policy considerations also weigh in favor of finding that section 14602.6(a)(1) provides discretionary authority, not a mandatory duty, to impound for 30 days:

One cannot overstate the logistical difficulties that would ensue if all California police officers arresting an individual for driving with a suspended or revoked license were required to impound that individual’s vehicle for 30 days. The Legislature has acknowledged in section 14607.4 that at any given time an estimated 720,000 drivers in California have a suspended or revoked driver’s license, and an additional 1,000,000 persons are driving without ever having been licensed at all. (§ 14607.4, subd. (c).) It is unclear whether towing facilities would have the capacity to impound the substantial number of vehicles affected by a mandatory regulation, let alone for a period of 30 days.

162 Cal. App. 4th at 1154.
provision than section 22651(p). On February 11, 2012, the Office of Legislative Counsel issued a legal opinion in response to an inquiry “whether a local government has the authority to establish a policy authorizing the release of an impounded vehicle driven by a driver who has never been issued a driver’s license and who does not have a prior conviction for driving without a valid driver’s license prior to the end of a 30-day impoundment period [prescribed in] . . . Section 14602.6 of the Vehicle Code.” In concluding that a local government does not have such authority, the opinion reasons as follows:

. . . subdivision (p) of Section 22651 applies generally to vehicles driven by drivers in violation of Section 12500, which includes drivers whose driver’s licenses have expired, while Section 14602.6 applies only to those vehicles driven by drivers whose licenses were suspended or revoked, or by drivers who were never issued a driver’s license. It is a “long-standing principle of statutory construction [that] a special statute governs over a general.” (People v. Jackson (2005) 129 Cal.App.4th 129, 170). Hence, in regard to a vehicle driven by a person who has never been issued a driver’s license, it is our opinion that Section 14602.6 would control.30

We appreciate that section 22651(p) may be deemed the broader provision in the sense that it authorizes the impoundment of a vehicle driven by a person with an expired but otherwise valid license while section 14602.6(a)(1) does not. Nonetheless, we disagree with the proposition that section 14602.6(a)(1) necessarily controls whenever it applies.31 While it is true that one of the well-established principles of statutory construction is the presumption that a specific provision prevails over a general one relating to the same subject,32 the specific-over-general doctrine “only applies when an irreconcilable conflict exists” between the general and specific provisions.33 We do not

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30 Opn. of Cal. Legis. Counsel (No. 1200017; Feb. 11, 2012) at 5.
31 We realize that Legislative Counsel was responding to different question than the one we address here. Still, we think it is important for us to address the opinion’s rationale because it has been understood by some as calling into question the legality of the Department’s Impound Policy.
believe that these two permissive statutes are in irreconcilable conflict with one another. Indeed, an equally well-established rule of statutory construction holds 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.” 34 Applying this principle, we find that sections 14602.6(a)(1) and 22651(p) complement—rather than conflict with—one another.35

To illustrate, when a peace officer encounters an unlicensed driver whose conduct comes within the ambit of section 14602.6(a)(1), the officer may choose to invoke that section and its fixed 30-day impound hold by either (1) “immediately arrest[ing]” the driver for the license-related violation and ordering the impound,36 or (2) in the case of a traffic collision, simply ordering the impound “without the necessity of arresting the person[].”37 If the officer chooses to do neither one of these things, as the permissive statute allows him or her to do, then a section 14602.6(a)(1) 30-day hold is plainly inapplicable and unavailable.38 Does this mean that the officer has no alternate means of removing the vehicle for community caretaking purposes? In other words, what, if anything, can be done about vehicles that are not “so impounded” under the arrest-and-impound or post-collision impound procedures of section 14602.6(a)(1)?


35 In addition, the doctrine is also inapplicable under circumstances where “[w]e are unable definitely to denominate either [statute] as the more specific so as to supplant the other.” People v. Bertoldo, 77 Cal. App. 3d 627, 633 (1978); see People v. Earnest, 53 Cal. App. 3d 734, 748 (1975). It is by no means clear to us that the 30-day hold provision set forth in section 14602.6(a)(1) should or could always be denominated the “specific” statute in relation to section 22651(p). For example, it might be argued that section 22651(p) is the more specific statute when applied to a driver whose license has been revoked for driving under the influence of drugs or alcohol; the Vehicle Code section describing that particular conduct (section 14601.2) is specifically enumerated in the text of section 22651(p), while section 14602.6(a)(1) is more broadly concerned with persons driving a vehicle “while his or her driving privilege was suspended or revoked.”

36 § 14602.6(a)(1).

37 Id.

38 Cal. Hwy. Patrol, 162 Cal. App. 4th at 1151-1152 (“If an officer decides not to impound a car under the discretionary authority provided by section 14602.6(a)(1), it is not ‘so impounded’ and therefore the 30-day provision is inapplicable.”)
We think that this kind of situation is exactly where section 22651(p) comes into play. We simply cannot see why an officer’s decision not to impound a vehicle under the authority of section 14602.6(a)(1) would preclude him or her from exercising his or her discretion to order the vehicle’s removal and storage under section 22651(p). To interpret these statutes in such a way as to deny an officer in the field the option of using section 22651(p) where he or she has chosen, based on standardized criteria, not to invoke the more severe sanction of section 14602.6(a)(1) would fail to harmonize the two related statutes as the authorities instruct us to do. In addition, it would also lead to an anomalous gap in the officer’s authority to order a vehicle impounded under the otherwise permissive provisions of section 22651, thereby curbing the officer’s discretion and flexibility in responding to any number of competing concerns and demands he or she might encounter in the field, and violating the “fundamental rule” that statutes should be construed to avoid such anomalies.39

Because we find sections 14602.6(a)(1) and 22651(p) to be complementary, rather than in “irreconcilable conflict,”40 we reject the idea that the former should always take precedence over the latter. For the same reason, we reject any suggestion that the later-enacted section 14602.6(a)(1) constitutes an “implied repeal” of section 22651(p) to the extent that the two statutes cover the same conduct. All presumptions are against implied repeal, which will only be found “when there is no rational basis for harmonizing the two potentially conflicting statutes, and the statutes are irreconcilable, clearly repugnant, and so inconsistent that the two cannot have concurrent operation.”41 Instead, we “are bound, if possible, to maintain the integrity of both statutes if the two may stand together.”42 We think that our construction of these two statutes adheres to this principle.43

39 In re Marriage of Harris, 34 Cal. 4th 210, 222 (2004).

40 Moore v. Panish, 32 Cal. 3d at 541.


43 Our conclusion that these two permissive statutes may coexist in the manner described disposes of the related contention that, in cases where the criteria for citing Vehicle Code section 14602.6(a)(1) are present, impounds of less than 30 days are only authorized under the exceptions contained in other subdivisions of that same statute. See Opn. of Cal. Legis. Counsel at 5-6. Of course, where section 14602.6(a)(1) is actually cited as the basis for an impound, the rest of section 14602.6 also applies to that impound.
Legislative intent

Having carefully reviewed the legislative history of these statutes,\textsuperscript{44} we believe that it would do violence to the intent of the Legislature to construe them as denying officers the option of impounding a car at all whenever they have elected not to invoke section 14602.6(a)(1)’s 30-day hold. We note that, in 1994, the Legislature enacted a bill that both added section 14602.6 and amended section 22651(p),\textsuperscript{45} along with several other provisions dealing with the registration and licensing of vehicles, the revocation and suspension of licenses, and punishments for driving with suspended or revoked licenses.\textsuperscript{46} The Legislative Counsel’s Digest for the chaptred bill stated, among other things, that the new statute would “specifically authorize” (as opposed to \textit{require}) a peace officer to immediately arrest an unlicensed person coming within its terms and seize the vehicle in question.\textsuperscript{47} The Digest noted that another part of the bill would remove a then-existing restriction that a vehicle could not be impounded, under the unlicensed driver rationale set forth in section 22651(p), if a validly licensed passenger was available and able to drive it away.\textsuperscript{48}

We agree with the \textit{Highway Patrol} court’s finding that these features of the 1994 legislation evidence the Legislature’s intent to give officers more discretion, not less, in deciding whether to order a vehicle towed away when they encounter an unlicensed driver.\textsuperscript{49} It would severely frustrate that intent, we believe, to conclude now that the same legislation mandates what amounts to an all-or-nothing approach, by prohibiting officers from exercising an intermediate option of removing a vehicle for community caretaking

\textsuperscript{44} “Both the legislative history of the statute and the wider historical circumstances of its enactment may be considered in ascertaining the legislative intent. [Citation.]” \textit{Dyna-Med, Inc. v. Fair. Empl. & Hous. Commn.}, 43 Cal. 3d 1379, 1387 (1987).

\textsuperscript{45} 1994 Stat. ch. 1221 (Sen. 1758) §§ 13, 17.


\textsuperscript{48} \textit{Id.} Before it was amended as part of this legislation, section 22651(p) had granted officers the authority to remove a vehicle:

When the peace officer issues the driver of a vehicle a notice to appear for a violation of Section 12500, 14601, 14601.1, 14601.2, 14601.3, 14601.4, or 14601.5 and there is no passenger in the vehicle who has a valid driver’s license and authorization to operate the vehicle. . . . .

purposes under section 22651(p) in circumstances when (guided by their department’s standardized criteria) they choose not to invoke section 14602.6(a)(1)’s 30-day hold.50

Our reasoning receives further support from the fact that the now-removed restriction against impounding a vehicle where a licensed driver was available to drive it away was contained in an earlier version of section 22651(p) itself. In our view, if the Legislature had intended to preclude the use of section 22651(p) in circumstances where section 14602.6(a)(1)’s 30-day hold could potentially apply, it would have inserted words to that effect in either or both provisions when it was amending section 22651(p) and adding section 14602.6 in 1994. It did not do so then, and it has not done so since.51

Other considerations

In closing, two related considerations merit discussion. Both involve instances of phrasing which, if read in isolation or taken out of context, might call into question the conclusion we reach here.

First, we are aware of a passage contained in the court of appeal’s opinion in Alviso v. Sonoma County Sheriff’s Department,52 a case in which the main issue was whether section 14602.6(a)(1) violates the constitutional guarantee of equal protection because of an alleged irrational distinction between the types of license-based violations that give rise to the statute’s 30-day hold and the types of license-based violations that do not.53 The passage in question reads as follows:

In recognition of the disproportionate number of serious accidents caused by unlicensed drivers, the Legislature enacted section 14602.6 to protect Californians from the harm they cause and the associated destruction of lives and property. [Citations.] To that end, when a person is caught driving without a valid license the vehicle he or she is operating must be impounded for 30 days. (§ 14602.6(a)(1).)

50 By the same token, as we have said, nothing in the statutory scheme prohibits a police agency from exercising its policy discretion in a manner that would require its officers to invoke section 14602.6(a)(1) whenever it applies.

51 The Legislature clearly knows how to use words of limitation and/or exclusion in this context. Section 22651(p) contains the express limitation that it only applies when “the vehicle is not impounded pursuant to Section 22655.5.”


53 See id. at 204-209.
Unmoored from its context, the quoted language might be read as conclusive authority for the proposition that “when a person is caught driving without a valid license the vehicle he or she is operating must be impounded for 30 days” under section 14602.6(a)(1). However, “it is beyond cavil that ‘an opinion is not authority for a proposition not therein considered[,]’”\textsuperscript{54} and the Alviso court had no occasion to consider whether officers are required to utilize section 14602.6 in every case in which it is available. Because only the “ratio decidendi” of an appellate opinion has precedential effect, we must always view with caution the “seemingly categorical directives” contained in other parts of an opinion.\textsuperscript{55} The Alviso opinion contains no analysis of the question whether section 14602.6(a)(1) creates a mandatory duty to impound because that question was not before the court. We therefore decline to read Alviso’s “seemingly categorical directive” as a holding on the question of law that we are considering here. For that, we rely instead on the opinion of the Highway Patrol court, which actually did consider and decide the question that is so critical to our present analysis.

Next, we reject the suggestion that officers are required to impound a vehicle in virtually all unlicensed-driver situations under the command of a third statutory provision—section 14607.6(c)(1)—not at issue in our main discussion above.\textsuperscript{56} That provision reads, in part, as follows:

If a driver is unable to produce a valid driver’s license on the demand of a peace officer enforcing the provisions of this code, as required by subdivision (b) of Section 12951, the vehicle shall be impounded regardless of ownership, unless the peace officer is reasonably able, by other means, to verify that the driver is properly licensed.

Although the quoted language may at first glance appear to broadly require impoundment for unlicensed driving violations, a much narrower focus becomes evident when the

\textsuperscript{54} Strauss v. Horton, 46 Cal. 4th 364, 496 (2009) (quoting Ginns v. Savage, 61 Cal. 2d 520, 524 n. 2); see People v. Mendoza, 23 Cal. 4th 896, 915 (2000) (decision “is not authority for everything said in the opinion but only for the points actually involved and actually decided.”)

\textsuperscript{55} See Mendoza, 23 Cal. 4th at 915.

\textsuperscript{56} See Ltr. from Los Angeles Co. Dist. Atty. Steve Cooley to Chief of Police Charles Beck (Feb. 27, 2012) at 2 (stating opinion that section 14607.6(c)(1) creates “mandatory duty” to impound whenever it applies, subject only to express exceptions found in other subdivisions of that statute); see also Ltr. from Los Angeles Co. Dep. Dist. Atty. Irene Wakabayashi to Dep. Atty. Gen. Marc J. Nolan (Apr. 25, 2012) (reiterating same opinion in greater detail).
provision is read in its context as part of a larger statute within a complex statutory framework.

Section 14607.6 is a forfeiture statute aimed at vehicle owners with repeated license-related offenses. Section 14607.6(a) authorizes forfeiture of a vehicle as a nuisance if it is driven on a highway in this state by a driver with a suspended or revoked license, or by an unlicensed driver, who is a registered owner of the vehicle at the time of impoundment and has a previous misdemeanor conviction for a violation of subdivision (a) of Section 12500 or Section 14601, 14601.1, 14601.2, 14601.3, 14601.4, or 14601.5.

Section 14607.6(c) then sets forth the circumstances in which peace officers are authorized to impound a vehicle to initiate forfeiture proceedings. Subsection (c)(1) provides the general authority to impound such vehicles; subsections (c)(2)-(5) carve out exceptions where impoundment is either prohibited or discretionary.\(^{57}\) In particular, section 14607.6(c)(5) directs that “the vehicle shall be released pursuant to this code and is not subject to forfeiture” if the driver is not the registered owner of the vehicle, or does not have a prior license violation. It our view, there would be scant reason for an officer to impound a vehicle that he or she knew must immediately be released because the terms of subdivision (a) were not met.

Read in context, then, it seems clear to us that section 14607.6(c)(1) is intended to authorize impoundment of vehicles that are subject to forfeiture under section 14607.6(a). Our interpretation finds further support in the fact that section 14607.6(e)(2)

\(^{57}\) Compare § 14607.6(c)(1) (“If a driver is unable to produce a valid driver’s license on the demand of a peace officer enforcing the provisions of this code, as required by subdivision (b) of Section 12951, the vehicle shall be impounded regardless of ownership, unless the peace officer is reasonably able, by other means, to verify that the driver is properly licensed.”) with § 14607.6(c)(2) (“A peace officer shall not impound a vehicle pursuant to this subdivision if the license of the driver expired within the preceding 30 days and the driver would otherwise have been properly licensed.”); § 14607.6(c)(3) (“A peace officer may exercise discretion” where driver is driving employer’s car within scope of employment, or owner relinquished vehicle “solely for servicing or parking of the vehicle or other reasonably similar situations”); § 14607.6(c)(4) (right to impoundment hearing to determine lawfulness of impound); § 14607.6(c)(5) (“the vehicle shall be released pursuant to this code and is not subject to forfeiture” if the driver is not the registered owner of the vehicle, or does not have a prior license violation).
requires the impounding agency to send an impounded vehicle’s registered and legal owners a notice “informing them that the vehicle is subject to forfeiture and will be sold or otherwise disposed of pursuant to this section.” To read this provision as requiring that forfeiture notices be sent out for impounded cars that are not subject to forfeiture under subdivision (a) would, in our estimation, produce unintended if not absurd consequences. “Language of a statute should not be given a literal meaning if doing so would result in absurd consequences which the Legislature did not intend.”

Furthermore, interpreting section 14607.6(c)(1) as establishing a mandatory impoundment rule for virtually every unlicensed driving violation would largely nullify both sections 14602.6(a)(1) and 22651(p). Such a result would be contrary to the well-established principle discussed above that statutes covering related subjects should be harmonized to the greatest extent possible.

On this point as well, we find support for our view in the Highway Patrol opinion. There, the court considered the scope of Section 14607.6 and construed it as authorizing impoundment only incident to forfeiture, stating:

> Section 14607.6 provides for impoundment of a vehicle if it is driven by a person who lacks a valid driver’s license and who has been convicted previously of a specified offense, including the offense of driving with a suspended or revoked license.

While this determination may not have been central to Highway Patrol’s holding regarding the discretionary authority granted by section 14602.6(a)(1), it nonetheless represents an important element of the court’s ultimate conclusion, which would necessarily have been radically different had the court concluded that section 14607.6 calls for mandatory impounds in nearly all unlicensed driving situations.

Finally, our construction is supported by the legislative history of section 14607.6, which was adopted in 1994 as part of Assembly Bill 3148, a companion to the bill (Senate Bill 1758) that created section 14602.6. The Floor Analysis for Senate Bill 1758 states expressly that:

> With recent amendments, there is no longer any conflict between this bill and AB 3148 (Katz), and the bills are complementary. AB 3148’s vehicle

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forfeiture provisions will only apply to a specified group of the most dangerous illegal drivers, and this bill applies to the other drivers.\textsuperscript{60}

For these reasons, we conclude that section 14607.6(c)(1) has no direct application to the question presented for our analysis.\textsuperscript{61}

\textbf{Conclusion}

For the foregoing reasons, we conclude that a police department has discretion to establish guidelines that would allow an impounded vehicle to be released in less than 30 days, under Vehicle Code section 22651(p), in situations where a fixed 30-day statutory impoundment period, under Vehicle Code section 14602.6(a)(1), may also potentially apply.

\textsuperscript{60} Smith v. Santa Rosa Police Dept., 97 Cal. App. 4th 546, 560 (2002) (quoting Sen. Floor Analysis 3d reading of Sen. 1758 (1993–1994 Reg. Sess.) as amended Aug. 29, 1994 at 3) (emphasis added). This understanding was later confirmed by Assemblymember Katz, the sponsor of Assembly Bill 3148. See id. at 561 (“Following passage of Assembly Bill No. 3148, Assemblymember Katz on September 2, 1994, sent the governor a letter urging him to sign the bill into law and stating that Assembly Bill No. 3148 and Senate Bill No. 1758 were ‘complementary’ measures, Assembly Bill No. 3148 applying to the most dangerous repeat offenders and subjecting only vehicles owned by the illegal driver to forfeiture, while Senate Bill No. 1758 provided for impoundment for a period of time for vehicles driven by drivers not lawfully licensed that are not subject to forfeiture under Assembly Bill No. 3148.”).

\textsuperscript{61} In any event, as mentioned earlier (see n. 11, \textit{supra}), the Impound Policy directs officers to impound vehicles actually subject to forfeiture under section 14607.6(a), and to cite the 30-day hold provision of section 14602.6(a)(1) as the statutory authority for doing so.
THE HONORABLE CHRIS R. HOLDEN, MEMBER OF THE STATE ASSEMBLY, has requested an opinion on the following question:

Does the California Voter Participation Rights Act apply to charter cities, and to local school districts whose elections are governed by city charters?

CONCLUSION

The California Voter Participation Rights Act applies to charter cities, and to local school districts whose elections are governed by city charters.
ANALYSIS

California holds statewide elections in June and November of every even-numbered year.¹ Local elections held on the statewide election dates are referred to as “consolidated,” “concurrent,” or “on-cycle,” whereas those held on other dates are described as “nonconcurrent” or “off-cycle.”² In 2015, faced with the problem of substantially lower voter turnout in off-cycle elections, the Legislature enacted the California Voter Participation Rights Act (“Act”).³

The Act, which becomes operative on January 1, 2018,⁴ requires any “political subdivision” whose elections have a “significant decrease in voter turnout” to hold its elections on a statewide election date.⁵ The Act defines “political subdivision” as “a geographic area of representation created for the provision of government services, including, but not limited to, a city, a school district, a community college district, or other district organized pursuant to state law.”⁶ A “[s]ignificant decrease in voter turnout” occurs where “the voter turnout for a regularly scheduled election in a political subdivision is at least 25 percent less than the average voter turnout within that political subdivision for the previous four statewide general elections.”⁷ And “voter turnout” is “the percentage of voters who are eligible to cast ballots within a given political subdivision who voted.”⁸ The question presented is whether charter cities (and school

¹ Elec. Code, § 1001; see Elec. Code, §§ 1200 (“The statewide general election shall be held on the first Tuesday after the first Monday in November of each even-numbered year”), 1201 (“The statewide direct primary shall be held on the first Tuesday after the first Monday in June of each even-numbered year”).
² Elec. Code, §§ 10403, 14052, 14053; Cal. Common Cause, Getting to 100%: How Changing the Election Date Can Improve Voter Turnout (Feb. 2015) p. 3.
⁴ Elec. Code, § 14057.
⁵ Elec. Code, § 14052, subd. (a); see also Elec. Code, § 14052, subd. (b) (“A political subdivision may hold an election other than on a statewide election date if, by January 1, 2018, the political subdivision has adopted a plan to consolidate a future election with a statewide election not later than the November 8, 2022, statewide general election”).
⁶ Elec. Code, § 14051, subd. (a).
⁷ Elec. Code, § 14051, subd. (b).
⁸ Elec. Code, § 14051, subd. (c).
districts whose elections are governed by those charters\textsuperscript{9}, by virtue of the California Constitution’s “home-rule” provision, need not comply with the Act, or whether charter city law must yield to the Act where the two conflict. For the reasons that follow, we conclude that under such circumstances the Act controls.

We begin our analysis with the law on charter city autonomy. The California Constitution, article XI, section 5 gives charter cities the power to legislate “in respect to municipal affairs” over inconsistent state law.\textsuperscript{10} These municipal affairs include the “conduct of city elections” and “the times at which . . . the several municipal officers . . . whose compensation is paid by the city shall be elected . . . .”\textsuperscript{11} But a charter city’s “home-rule” authority over municipal affairs is not absolute; state law may trump charter law on matters of “statewide concern.”\textsuperscript{12}

The California Supreme Court has set forth a four-part test to determine when a state statute preempts a charter city law.\textsuperscript{13} Under this test, a court must determine: (1) whether the charter city law regulates a municipal affair; (2) whether there is an actual conflict between the charter city law and the state statute; (3) whether the state statute addresses a matter of statewide concern; and (4) whether the state statute “is reasonably related to resolution of that concern and narrowly tailored to avoid unnecessary interference in local governance.”\textsuperscript{14} “If the court is persuaded that the subject of the state statute is one of statewide concern and that the statute is reasonably related to its resolution [and not unduly broad in its sweep], then the conflicting charter city measure ceases to be a ‘municipal affair’ pro tanto and the Legislature is not prohibited by article XI, section 5(a), from addressing the statewide dimension by its own tailored enactments.”\textsuperscript{15}

\textsuperscript{9} Like charter cities, school districts within charter cities whose charters govern their elections are normally exempt from the requirement that local elections be held on one of four “established election dates,” which include the statewide election dates. (Elec. Code, §§ 1000, 1002, 1003, subds. (b), (d).)

\textsuperscript{10} Cal. Const., art. XI, § 5, subd. (a).

\textsuperscript{11} Cal. Const., art. XI, § 5, subd. (b)(3), (b)(4); see also Cal. Const., art. IX, § 16, subd. (a) (city charter may regulate school board elections).

\textsuperscript{12} State Bldg. and Const. Trades Council of Cal., AFL-CIO v. City of Vista (2012) 54 Cal.4th 547, 552, 555-556 (Vista).

\textsuperscript{13} Vista, supra, 54 Cal.4th at p. 556; Cal. Fed. Savings & Loan Assn. v. City of Los Angeles (1991) 54 Cal.3d 1, 16-17 (Cal. Fed.).

\textsuperscript{14} Vista, supra, 54 Cal.4th at p. 556, internal quotation marks, internal citations, and ellipses omitted.

\textsuperscript{15} Vista, supra, 54 Cal.4th at p. 556, internal quotation marks and ellipses omitted.
In *Jauregui v. City of Palmdale*, the Court of Appeal utilized this preemption test in a case concerning the California Voting Rights Act of 2001 (CVRA). The CVRA sought to remedy minority vote dilution—a different voting-rights problem than the one that the Act addresses, i.e., low voter turnout in off-cycle elections. As explained in *Jauregui*, the CVRA was “adopted to prevent an at-large electoral system from diluting minority voting power and thereby impairing a protected class from influencing the outcome of an election.” At issue in *Jauregui* was whether the CVRA applied to charter cities.

Using the California Supreme Court’s preemption test from *Vista*, the Court of Appeal in *Jauregui* first determined that a charter city’s selection of at-large elections over district-based elections was a “municipal affair” because “article XI, section 5, subdivision (b) expressly identifies the conduct of city elections as a municipal affair.” Second, the court found that there was an “actual conflict” between the CVRA and the city charter provision upon finding vote dilution of a protected class. Third, the court explained that the CVRA involved a statewide concern as it implicated the constitutional rights to vote and equal protection as well as electoral integrity. Finally, the court reasoned that the CVRA was narrowly drawn and reasonably related to the resolution of these statewide concerns since the CVRA only applied to at-large council elections when there has been vote dilution of a protected class. Based on its analysis, the Court of Appeal concluded that the “home-rule” provisions of article XI, section 5 did not prevent the CVRA from being enforced in charter cities. The Court of Appeal’s analysis now informs our own as we apply this same preemption test to the Act.

First, we also find the Act regulates a municipal affair—the decision when to hold a local election. The state Constitution enumerates the “conduct of city elections” and “the times at which . . . the several municipal officers . . . shall be elected” as two
categories of municipal affairs. A charter city’s decision to hold a local election on a date other than a statewide election date involves the conduct of city elections and may also involve the times at which municipal officers are elected.

Second, an actual conflict exists between state and charter city law. As a threshold matter, we find that the Legislature intended the Act to apply to charter cities and school districts. The Act specifically includes “a city” and “a school district” under the definition of “political subdivision.” A charter city is a city. Moreover, a charter city and a school district fall within the definition of “political subdivision” under the Act, as each is “a geographic area of representation created for the provision of government services . . . .” The Court of Appeal in Jauregui applied the CVRA’s identical definition of “political subdivision” to charter cities, and we presume that the Legislature enacted the same language in the Act in light of this judicial ruling. The presumption is bolstered here by the author’s statements during legislative hearings that the bill covered charter cities. Under this interpretation, the Act actually conflicts with

24 Cal. Const., art. XI, § 5, subds. (b)(3), (b)(4); see Johnson, supra, 4 Cal.4th at p. 398; Jauregui, supra, 226 Cal.App.4th at p. 796.

25 Elec. Code, § 14051, subd. (a) (“‘Political subdivision’ means a geographic area of representation created for the provision of government services, including, but not limited to, a city, a school district, a community college district, or other district organized pursuant to state law”); see Elec. Code, § 14052, subd. (a) (“a political subdivision shall not hold an election other than on a statewide election date if holding an election on a nonconcurrent date has previously resulted in a significant decrease in voter turnout”).

26 Gov. Code, §§ 34100, 34101; Jauregui, supra, 226 Cal.App.4th at p. 794 (“The Legislature recognizes two types of cities. The first kind, a municipality organized under a charter, is a charter city”).

27 Elec. Code, § 14051, subd. (a); see Cal. Const., art. IX, § 14, art. XI, §§ 5, 7, 9; Ed. Code, §§ 1040, 1042, 1240, 35160, 35160.1, 35160.2.


29 People v. Harrison (1989) 48 Cal.3d 321, 329 (“Where a statute is framed in language of an earlier enactment on the same or an analogous subject, and that enactment has been judicially construed, the Legislature is presumed to have adopted that construction”).

30 Assem. Standing Com. on Elections and Redistricting, Hearing (Jul. 1, 2015),
charter city law where the charter city’s off-cycle elections result in a significant decrease in voter turnout. Specifically, charter city law allows off-cycle elections, yet the Act prohibits them.\footnote{Elec. Code, §§ 14051, subd. (b), 14052, subd. (a).} When this happens, the conflict “is in fact a genuine one, unresolvable short of choosing between one enactment and the other.”\footnote{Cal. Fed., supra, 54 Cal.3d at pp. 16-17.}

Third, the Act addresses a matter of statewide concern: low voter turnout in off-cycle elections. To determine whether a statewide concern is present, we consider whether there is a “a convincing basis for legislative action originating in extramunicipal concerns, one justifying legislative supersession based on sensible, pragmatic considerations.”\footnote{Cal. Fed., supra, 54 Cal.3d at p. 18.} In doing so, we must “avoid the error of ‘compartmentalization,’ that is, of cordonning off an entire area of governmental activity as either a ‘municipal affair’ or one of statewide concern.”\footnote{Cal. Fed., supra, 54 Cal.3d at p. 17.} A finding of statewide concern does not mean that the charter city law is not of municipal concern, but “rather, that under the historical circumstances presented, the state has a more substantial interest in the subject than the charter city.”\footnote{Cal. Fed., supra, 54 Cal.3d at p. 18.}

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\footnote{31 Elec. Code, §§ 14051, subd. (b), 14052, subd. (a).}
\footnote{32 Cal. Fed., supra, 54 Cal.3d at pp. 16-17. While the Act and charter city law are not “entirely at odds” because a charter city may still hold off-cycle elections if there is no significant decrease in voter turnout (Jauregui, supra, 226 Cal.App.4th at p. 797), for an actual conflict to be present, “a local enactment may only contravene some aspects of a state law or do so only to an extent” (id. at p. 798, citing Domar Electric, Inc. v. City of Los Angeles (1995) 41 Cal.App.4th 810, 822). In Jauregui, there was an actual conflict even though the CVRA “does not prohibit city-wide council elections” but only does so if the charter city’s “at-large electoral system” results in “a dilution of a protected class’s voting rights . . . .” (Jauregui, supra, 226 Cal.App.4th at p. 798.) Likewise, there is an actual conflict whenever the charter city’s off-cycle elections meet the statutory standard of a significant decrease in voter turnout.

\footnote{33 Cal. Fed., supra, 54 Cal.3d at p. 18.}
\footnote{34 Cal. Fed., supra, 54 Cal.3d at p. 17.}
\footnote{35 Cal. Fed., supra, 54 Cal.3d at p. 18.}
California’s off-cycle elections generally have a substantially lower voter turnout than its on-cycle elections.\(^{36}\) According to one report—cited in the legislative history about California mayoral and councilmanic elections—“simply moving an election to be synchronized with the even year state elections can result in a 21-36 percent boost in voter turnout for municipal and other local elections.”\(^{37}\) Some commentators maintain that off-cycle elections often have low voter turnout “because they are formally nonpartisan and deliberately timed not to coincide with other elections, when the public’s attention is at its peak.”\(^{38}\) The Act’s purpose, according to the bill’s author, was to combat the “abyssmal” voter turnout in certain off-cycle elections by holding them “concurrently with statewide and federal elections, where voter turnout is often twice as high.”\(^{39}\) Given these historical circumstances, we believe that the state has a more substantial interest in tackling the problem of low voter turnout in off-cycle elections than a charter city has in setting off-cycle dates for its local elections.\(^{40}\) Here, as in \textit{Jauregui}, there are grounds for finding a matter of statewide concern—the constitutional right to vote and the integrity of the electoral process.\(^{41}\)

\(^{36}\) Berry & Gerson, \textit{supra}, 77 U of Chi.L.Rev at p. 55 & fn. 66.


\(^{38}\) Raam, \textit{Charter School Jurisprudence and the Democratic Ideal} (Fall 2016) 50 Colum. J.L. & Soc. Probs. 1, 23, internal quotation marks omitted; see Cal. Const., art. II, § 6, subd. (a) (all school and city offices must be nonpartisan).


\(^{40}\) It is claimed that charter cities have a “categorical” supremacy over city-officer elections based on their constitutionally granted “plenary authority” in these matters. (See Cal. Const., art. XI, § 5, subd. (b)(4).) We are particularly directed to \textit{Mackey v. Thiel} (1968) 262 Cal.App.2d 362, where the Court of Appeal ruled that a state statute mandating that the city clerk mail qualification pamphlets upon a candidate’s request must give way to the charter city’s refusal to do so. (\textit{Id.} at pp. 363-366.) In reaching its decision, the appellate court determined that the statute at issue was not of statewide concern as it did not “involve[ ] the right to vote.” (\textit{Id.} at pp. 365-366.) The court’s own rationale therefore refutes the idea that a charter city’s sovereignty over city elections is absolute. (See also \textit{Jauregui, supra}, 226 Cal.App.4th at pp. 803-804 [“The plenary authority identified in article XI, section 5, subdivision (b) can be preempted by a statewide law after engaging in the four-step evaluation process specified by our Supreme Court”].)

\(^{41}\) See \textit{Jauregui, supra}, 226 Cal.App.4th at pp. 799-801, citing U.S. Const., 14th
As the *Jauregui* court observed, “[t]he right to vote is fundamental” and the federal and state Constitutions protect it.\(^{42}\) The California Constitution devotes several sections to this right, providing that “[a]ll political power is inherent in the people,”\(^ {43}\) that any United States citizen and resident at least 18 years old may vote,\(^ {44}\) that every vote must count and be secret,\(^ {45}\) and that the Legislature is responsible for providing “free elections.”\(^ {46}\)

As at-large elections may impinge on voting by causing voter dilution, off-cycle elections may impinge on voting by causing low voter turnout. The state’s interest in facilitating the exercise of the people’s right of suffrage “is one that goes to the legitimacy of the electoral process” and arises not “merely from a municipal concern.”\(^ {47}\)

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\(^{42}\) *Jauregui*, supra, 226 Cal.App.4th at pp. 799-800; see *Yick Wo v. Hopkins* (1886) 118 U.S. 356, 370 (the right to vote is “a fundamental political right, because preservative of all rights”); *Cawdrey v. City of Redondo Beach* (1993) 15 Cal.App.4th 1212, 1226 (recognizing “the fundamental right to vote” as “obviously” a matter of statewide concern).

\(^{43}\) Cal. Const., art. II, § 1.

\(^{44}\) Cal. Const., art. II, § 2.


\(^{46}\) Cal. Const., art. II, § 3.

\(^{47}\) *Jauregui*, supra, 226 Cal.App.4th at p. 800; see *O’Callaghan v. State* (Alaska 1996) 914 P.2d 1250, 1263 (“The State’s interests in encouraging voter turnout . . . are important and are legitimate objectives for a state to seek to achieve when structuring
Moreover, significantly lower voter turnout in off-cycle elections affects electoral integrity. The California Supreme Court has instructed that “the integrity of the electoral process, at both the state and local level, is undoubtedly a statewide concern.”48 In *Jauregui*, in concluding that the California Voting Rights Act governed a matter of statewide concern, the Court of Appeal reasoned, “Electoral results lack integrity where a protected class is denied equal participation in the electoral process because of vote dilution.”49 One meaning of “integrity” is the “[s]tate or quality of being complete, undivided, or unbroken; entirety; as the integrity of an empire.”50 Elections are less “complete” when there is significantly lower voter turnout because fewer eligible voters are participating in the electoral process.51 This turnout therefore undermines electoral integrity and thus involves a matter of statewide concern.52 This concern potentially

48 *Johnson*, supra, 4 Cal.4th at p. 409, citing 35 Ops.Cal.Atty.Gen. 230, 231-232 (1960) (concluding that a state statute requiring that candidates comply with campaign financial disclosure laws governed a matter of statewide concern because it was “aimed at obtaining the election of persons free from domination by self-seeking individuals or pressure groups”).


50 Webster’s New Internat. Dict. (2d ed. 1961) p. 1290, col. 3; see also Random House Webster’s Unabridged Dict. (2d ed. 1997) p. 990, col. 2 (defining integrity as “the state of being whole, entire, or undiminished”); Merriam-Webster online, at https://www.merriam-webster.com/dictionary/integrity (defining integrity as “the quality or state of being complete or undivided”).

51 In other contexts, too, integrity has been construed to include completeness. (E.g., *People v. Santana* (2013) 56 Cal.4th 999, 1004 [interpreting our mayhem statute]; *State v. Pratt* (Neb. 2014) 842 N.W.2d 800, 810-811 [interpreting Nebraska’s DNA testing statute]; *Garelli Wong & Associates, Inc. v. Nichols* (N.D. Ill. 2008) 551 F.Supp.2d 704, 709 [interpreting the federal Computer Fraud and Abuse Act].)

52 Analogously, in 2013, the Legislature amended other statutes to require that certain elections on city charters occur only on established statewide general election dates. (Stats. 2013, ch. 184, § 2; Elec. Code, §§ 1415, 9255, 9260; Gov. Code, §§ 34457, 34458.) The bill’s purpose was to increase voter participation for these elections. (Assem. Com. on Elections and Redistricting, Analysis of Sen. Bill No. 311 (2013-2014 Reg. Sess.) as amended Jun. 18, 2013, pp. 3-7.) Similarly, two years earlier, the Legislature had circumscribed the dates of these elections to a lesser degree to secure
arises in all off-cycle local elections, including those held in charter cities. In light of the statewide concerns about voter participation in off-cycle elections, we readily conclude that the Act does not solely address municipal matters.53

Finally, we find the Act to be reasonably related to the resolution of the statewide concerns discussed above. As mentioned, election studies support the Legislature’s determination that consolidating low-turnout off-cycle elections with statewide elections would increase voter participation in local elections.54 The Act is also narrowly tailored to avoid unnecessary interference in local governance. It applies only when the locality has a quantifiably (at least a 25%) lower voter turnout in its regularly scheduled elections than in its statewide general elections.55 So it does not affect charter cities whose off-cycle elections do not manifest this difference in voter turnout.56

While a charter city’s constitutional sovereignty over its municipal affairs should not be minimized, it must at times yield to statewide concerns. When off-cycle elections result in significantly decreased voter participation, they compromise “the essence of a democratic form of government,”57 raising an important matter of statewide concern. For

“broader voter participation.” (Id. at p. 6.) In so doing, the Legislature acted “to ensure the statewide integrity of local government,” thereby addressing “an issue of statewide concern.” (Stats. 2011, ch. 692, § 10.)

53 See also Cal. Fed., supra, 54 Cal.3d at p. 24 (any doubt as to whether a matter is solely a municipal concern “must be resolved in favor of the legislative authority of the state,” internal quotation marks omitted).

54 It is argued that consolidating off-cycle elections with statewide elections is counterproductive because voters often pay less or no attention to local elections near the end of lengthy ballots as a result of “choice fatigue.” During the legislative process, opposing positions on this issue were presented to the Legislature. (Compare Sen. Rules Com., Off. of Sen. Floor Analyses, 3d reading analysis of Sen. Bill 415 (2015-2016 Reg. Sess.) as amended Apr. 28, 2015, pp. 5-6 [“Voter fatigue would likely counteract any benefit of forcing such a change as Agency elections would fall toward the end of a crowded ballot”] with id. at p. 5 [“Elections held on the same date can help reduce voter fatigue and make voting more habit forming”].) We need not enter into this policy debate, which the Legislature apparently resolved, to decide that the Act reasonably addressed the structural problem of low voter turnout in off-cycle elections.

55 Elec. Code, §§ 14051, subd. (b), 14052, subd. (a).

56 Cf. Jauregui, supra, 226 Cal.App.4th at p. 802 (finding the CVRA was narrowly tailored because it permits “citizens to challenge city-wide elections and, only if there is vote dilution, permit[s] a court to impose reasonable remedies to alleviate the problem”).

57 Jauregui, supra, 226 Cal.App.4th at p. 800.
these reasons, we conclude that the California Voter Participation Rights Act applies to charter cities, and to local school districts whose elections are governed by city charters.

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THE HONORABLE VICKI L. HENNESSY, Sheriff of the City and County of San Francisco, has requested an opinion on the following question:

Penal Code section 4030, subdivision (k), specifies that any person (other than medical staff) who conducts, or is present at, or is within sight of, a strip search, body cavity search, or body scan of specified prearraignment detainees must be the “same sex” as the person searched. Does the term “sex,” as used in this provision, refer to the searched person’s gender, including the person’s gender identity and gender expression?

CONCLUSION

“Sex” as used in Penal Code section 4030, subdivision (k) refers to the searched person’s gender, including the person’s gender identity and gender expression.
Penal Code section 4030\(^1\) governs strip searches, body cavity searches, and body scans conducted on prearraignment detainees, including specified minors, arrested for an infraction or misdemeanor.\(^2\) Subdivision (k) of the statute provides that any person (other than medical staff) who conducts, is present at, or is within sight of, the search, must be the “same sex” as the person being searched. We have been asked whether the term “sex,” as used in subdivision (k), refers to the gender of the person searched, including the person’s gender identity and gender expression. For the reasons that follow, we conclude that it does.

Subdivision (k) states:

(1) A person conducting or otherwise present or within sight of the inmate during a strip search or visual or physical body cavity search shall be of the same sex as the person being searched, except for physicians or licensed medical personnel.

(2) A person within sight of the visual display of a body scanner depicting the body during a scan shall be of the same sex as the person being scanned, except for physicians or licensed medical personnel.\(^3\)

To ascertain the Legislature’s intent, we first look to the ordinary meaning of the words of the statute.\(^4\) Although section 4030 and case law do not define the term, we find that the word “sex” is consistently defined throughout the codes to mean “gender,” and “gender” is consistently defined to mean “sex” and includes “gender identity and gender expression.”\(^5\)

The Penal Code itself defines “gender” as “sex,” including “gender identity and gender expression;” “gender expression” means “a person’s gender-related appearance and behavior whether or not stereotypically associated with the person’s assigned sex at

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\(^1\) All subsequent undesignated section references are to the Penal Code.

\(^2\) Pen. Code, § 4030, subds. (b), (k).

\(^3\) Pen. Code, § 4030, subd. (k).


\(^5\) E.g., Civ. Code, §§ 51, subd. (e)(5); Ed. Code, §§ 210.766260.7; Gov. Code, § 12926, subd. (r)(2); Ins. Code, §§ 10140, subd. (h); Pen. Code, § 422.56, subd. (c).
birth.”6 This definition applies throughout the Penal Code “unless an explicit provision of law or the context clearly requires a different meaning.”7 We find no contrary provision or context here.

In addition, the legislative history of section 4030 strongly supports a conclusion that “sex” means “gender.” Section 4030 has been amended twice since its enactment in 1984.8 Legislative committee analyses of the first bill that amended the statute reveal an intent9 that “sex” means “gender.”10 The bill language, like the statute, sets forth a same-sex search requirement, but the analyses invariably describe it as a “same-gender” search requirement: a person who conducts, is present, or within sight of the search must be the same gender as the person searched.11 As the committee analyses consistently interpret the term “sex” to mean “gender,” we believe the intent for “sex” to mean “gender” is clear. And again, in the Penal Code, “gender” means “sex” and includes “gender identity and gender expression,” unless clearly indicated otherwise.12

6 Pen. Code, § 422.57.
7 Pen. Code, § 422.57.
8 Stats. 2016, ch. 162, § 1 (authorizing use of visual body scanner); Stats. 2015, ch. 464, § 1 (persons present during search include persons within view of search); Stats. 1984, ch. 35, § 2 (enacting Penal Code section 4030).
10 Neither the legislative history of section 4030 as enacted, nor that of the second bill that amended the statute, shed light on the intended meaning of “sex.”
12 Pen. Code, §§ 422.56, subd. (c), 422.57.
Accordingly, we conclude that “sex” as used in Penal Code section 4030, subdivision (k) refers to the searched person’s gender, including the person’s gender identity and gender expression.
FAIEZ ENNABE, Individually and as Administrator, etc., et al., Plaintiffs and
Appellants, v. CARLOS MANOSA et al., Defendants and Respondents.

S189577

SUPREME COURT OF CALIFORNIA

58 Cal. 4th 697; 319 P.3d 201; 168 Cal. Rptr. 3d 440; 2014 Cal. LEXIS 1426

February 24, 2014, Filed


PRIOR HISTORY:
Superior Court of Los Angeles County, No. KC053945, Robert A. Dukes, Judge. Court of Appeal, Second Appellate District, Division One, No. B222784.

SUMMARY:

CALIFORNIA OFFICIAL REPORTS SUMMARY

Plaintiffs, the parents of a decedent partygoer, killed by another partygoer who was drunk, filed a wrongful death action against defendants, a social host and her parents. Plaintiffs asserted three causes of action: general negligence, premises liability, and liability under Bus. & Prof. Code, § 25602.1. The trial court granted defendants' motion for summary judgment. (Superior Court of Los Angeles County, No. KC053945, Robert A. Dukes, Judge.) The Court of Appeal, Second Dist., Div. One, No. B222784, affirmed the judgment.

The Supreme Court reversed the decision of the Court of Appeal and remanded the case for further proceedings. The court concluded that the pleaded facts, which alleged the social host charged an entrance fee to some guests (including the minor who caused the death), payment of which entitled guests to drink the provided alcoholic beverages, raised a triable issue of fact whether the host sold alcoholic beverages, or caused them to be sold, within the meaning of Bus. & Prof. Code, § 25602.1, rendering her potentially liable under the terms of that statute as a person who sold alcohol to an obviously intoxicated minor. The host's act of charging guests a fee in exchange for entrance to her party and access to the alcoholic beverages she provided constituted a sale under Bus. & Prof. Code, §§ 23025 & 25602.1, because the beverages were purveyed for consideration and therefore not free. Because the facts, read in a light most favorable to plaintiffs supported the conclusion that the host was a person who sold alcoholic beverages to an obviously intoxicated minor, and the minor's intoxication was the proximate cause of the decedent's death, the host was potentially liable under § 25602.1, and the trial court erred in granting summary judgment in her favor. (Opinion by Werdegar, J., expressing the unanimous view of the court.)

HEADNOTES

CALIFORNIA OFFICIAL REPORTS HEADNOTES

(1) Alcoholic Beverages § 22--Civil Immunity--Sellers or Furnishers.--The sweeping civil immunity provided by Civ. Code, § 1714, and Bus. & [*698] Prof. Code, §
25602, for sellers or furnishers of alcoholic beverages was intended to supersede evolving common law negligence principles which would otherwise permit a finding of liability under the circumstances.

(2) Alcoholic Beverages § 22--Civil Immunity--Sellers or Furnishers--Exception--Sale to Obviously Intoxicated Minor.--Bus. & Prof. Code, § 25602.1's exception to immunity for sellers or furnishers of alcoholic beverages embraces those required to be licensed and those who sell alcohol on military bases. In addition, the Legislature excepted from the rule of civil immunity any other person who sells alcohol to an obviously intoxicated minor.

(3) Alcoholic Beverages § 22--Civil Immunity--Sellers or Furnishers--Exception--Sale to Obviously Intoxicated Minor--Drinks Given Away.--If a plaintiff can establish the defendant provided alcohol to an obviously intoxicated minor, and that such action was the proximate cause of the plaintiff's injuries or death, Bus. & Prof. Code, § 25602.1, permits liability in two circumstances: (1) the defendant was either licensed to sell alcohol, required to be licensed, or federally authorized to sell alcoholic beverages in certain places, and the defendant sold, furnished, or gave the minor alcohol or caused alcohol to be sold, furnished, or given to the minor; or (2) the defendant was any other person (i.e., neither licensed nor required to be licensed), and he or she sold alcohol to the minor or caused it to be sold. Whereas licensees (and those required to be licensed) may be liable if they merely furnish or give an alcoholic beverage away, a nonlicensee may be liable only if a sale occurs; that is, a nonlicensee, such as a social host, who merely furnishes or gives drinks away--even to an obviously intoxicated minor--retains his or her statutory immunity.

(4) Alcoholic Beverages § 22--Civil Immunity--Sellers or Furnishers--Exception--Sale to Obviously Intoxicated Minor--Commercial Enterprise.--The placement of Bus. & Prof. Code, § 25602.1, in the Business and Professions Code does not limit the scope of that provision to commercial enterprises.

(5) Alcoholic Beverages § 22--Civil Immunity--Sellers or Furnishers--Exception--Sale to Obviously Intoxicated Minor--Private Person--Ostensible Social Host.--The final category of persons addressed by Bus. & Prof. Code, § 25602.1, includes private persons and ostensible social hosts who, for whatever reason, charge money for alcoholic drinks. The plain meaning of the word "person" as used in § 25602.1's final category can include a private person who was not engaged in a commercial enterprise. [*699]

(6) Alcoholic Beverages § 22--Civil Immunity--Sellers or Furnishers--Exception--Sale to Obviously Intoxicated Minor--Private Person.--Even aside from the question of licensing, a private person may be held to have shed his or her civil immunity if he or she sold alcoholic beverages (or caused them to be sold) to an obviously intoxicated minor within the meaning of Bus. & Prof. Code, § 25602.1.

(7) Statutes § 29--Construction--Language--Legislative Intent--Plain Meaning.--As with all questions of statutory interpretation, a court attempts to discern the Legislature's intent, being careful to give the statute's words their plain, commonsense meaning. If the language of the statute is not ambiguous, the plain meaning controls and resort to extrinsic sources to determine the Legislature's intent is unnecessary.

(8) Alcoholic Beverages § 22--Civil Immunity--Sellers or Furnishers--Exception--Sale to Obviously Intoxicated Minor--Construction.--The California Constitution grants exclusive power to the State of California to regulate the sale of alcoholic beverages (Cal. Const., art. XX, § 22, 1st par.), the Legislature has exercised that power by the enactment of the Alcoholic Beverage Control Act (Bus. & Prof. Code, § 23000 et seq.), and the act expressly provides that its terms should be liberally construed to accomplish the stated purposes of the act, which include to eliminate the evils of unlicensed selling, and disposing of alcoholic beverages, and to promote temperance in the use and consumption of alcoholic beverages (Bus. & Prof. Code, § 23001). Giving the law a liberal construction that leans in favor of promoting temperance suggests that, in a close case, a court should err on the side of permitting liability, for the possibility of liability may provide a strong deterrent against the provision of alcohol to minors, especially those who are already obviously intoxicated. But at the same time, because the general rule of law is one of civil immunity for the sale or provision of alcoholic beverages (Bus. & Prof. Code, § 25602, subd. (b); Civ. Code, § 1714, subd. (c)), § 25602.1 represents an exception to that general rule and therefore should be strictly construed to achieve the Legislature's intent.
Alcoholic Beverages § 2--Definitions--Sale--Transaction--Consideration.--Bus. & Prof. Code, § 23025, part of the Alcoholic Beverage Control Act (ABC Act) (Bus. & Prof. Code, § 23000 et seq.), defines the terms "sell," "sale," and "to sell" as including any transaction whereby, for any consideration, title to alcoholic beverages is transferred from one person to another. Because Bus. & Prof. Code, §§ 25602 & 25602.1, also appear in the ABC Act, § 23025's definition of "sale" applies to those sections. Thus, the definition of a sale of alcoholic beverages in [*700] § 23025 applies to § 25602.1. Section 23025's broad definition of a sale shows the Legislature intended the law to cover a wide range of transactions involving alcoholic beverages: a qualifying sale includes "any transaction" in which title to an alcoholic beverage is passed for "any consideration." Use of the term "any" to modify the words "transaction" and "consideration" demonstrates the Legislature intended the law to have a broad sweep and thus include both indirect as well as direct transactions.

(10) Statutes § 29--Construction--Legislative Intent--Alteration of Statutory Language.--A court presumes the Legislature intends to change the meaning of a law when it alters the statutory language, as for example when it deletes express provisions of the prior version.

(11) Alcoholic Beverages § 2--Definitions--Sale.--The use of the phrase "directly or indirectly" in Bus. & Prof. Code, §§ 24070 & 25511, does not render ambiguous Bus. & Prof. Code, § 23025's expansive definition of a sale of alcoholic beverages.

(12) Alcoholic Beverages § 22--Civil Immunity--Sellers or Furnishers--Social Hosts--Exception--Sale to Obviously Intoxicated Minor--Proximate Cause.--Where injuries are proximately caused by excess alcohol consumption, the Legislature has carefully balanced the interests involved and settled on a rule generally precluding liability for those who provide alcoholic beverages, on the ground that the consumption of alcoholic beverages rather than the serving of alcoholic beverages is the proximate cause of injuries inflicted upon another by an intoxicated person (Bus. & Prof. Code, § 25602, subd. (c)). Specifically addressing the potential liability of social hosts, the Legislature has provided that no social host who furnishes alcoholic beverages to any person may be held legally accountable for damages suffered by that person, or for injury to the person or property of, or death of, any third person, resulting from the consumption of those beverages (Civ. Code, § 1714, subd. (c)). But the Legislature has also established some narrow exceptions to this broad civil immunity: liability may attach where the plaintiff alleges facts suggesting that the defendant was a person who sold, or caused to be sold, any alcoholic beverage, to any obviously intoxicated minor (Bus. & Prof. Code, § 25602.1). A "sale" of alcohol, in turn, is defined as "any transaction" for "any consideration" (Bus. & Prof. Code, § 23025). Thus, where the facts, read in a light most favorable to plaintiffs supported the conclusion that a social host was a person who sold alcoholic beverages to an obviously intoxicated minor, and the minor's intoxication was the proximate cause of a decedent's death, the social host was potentially [*701] liable under Bus. & Prof. Code, § 25602.1, and the trial court erred in granting summary judgment in the social host's favor.


COUNSEL: Innabi Law Group, Abdalla J. Innabi and Amer Innabi for Plaintiffs and Appellants.

The Arkin Law Firm and Sharon J. Arkin for Consumer Attorneys of California as Amicus Curiae on behalf of Plaintiffs and Appellants.


Kamala D. Harris, Attorney General, Susan Duncan Lee, Acting State Solicitor General, Alicia M. B. Fowler, Assistant Attorney General, and Jerald L. Mosley, Deputy Attorney General, for Department of Alcoholic Beverage Control as Amicus Curiae, upon the request of the Supreme Court.

JUDGES: Opinion by Werdegar, J., with Cantil-Sakauye, C. J., Kennard, Baxter, Chin, Corrigan, and Liu, JJ., concurring.

OPINION BY: Werdegar
WERDEGAR, J.—Beginning in 1971 this court decided three cases that together reversed decades of previous law and recognized, for the first time, that sellers or furnishers of alcoholic beverages could be liable for injuries proximately caused by those who imbibed. (Vesely v. Sager (1971) 5 Cal.3d 153 [95 Cal. Rptr. 623, 486 P.2d 151]; Bernhard v. Harrah's Club (1976) 16 Cal.3d 313 [128 Cal. Rptr. 215, 546 P.2d 719]; Coulter v. Superior Court (1978) 21 Cal.3d 144 [145 Cal. Rptr. 534, 577 P.2d 669].) In 1978, the Legislature abrogated the holdings of those cases, largely reinstating the prior common law rule that the consumption of alcohol, not the service of alcohol, is the proximate cause of any resulting injury. (Bus. & Prof. Code, § 25602, subd. (c); Civ. Code, § 1714, subd. (b).) The Legislature's action in essence created civil immunity for sellers and furnishers of alcohol in most situations. The Legislature also enacted section 25602.1, which created some narrow exceptions to this broad immunity, and we find one such exception relevant to this case. In addition to permitting liability in some circumstances for the provision of alcohol (i.e., the sale, furnishing or giving away of alcoholic beverages) by those licensed to sell alcohol (or who are required to be licensed), section 25602.1 also states that "any other person" who sells alcoholic beverages (or causes them to be sold) to an obviously intoxicated minor loses his or her civil immunity and can be liable for resulting injuries or death. Liability of such "other person[s]" is limited to those who sell alcohol; civil immunity is still the rule for nonlicensees who merely furnish or give drinks away.

We consider in this case whether defendant Jessica Manosa 2 can be liable under the foregoing exception when, at her party, an underage, intoxicated guest who was charged a fee to enter consumed alcoholic beverages defendant supplied and subsequently, in a drunken state, killed someone in an automobile accident. To assist in resolving the issues in this case, we solicited and obtained the views of the Department of Alcoholic Beverage Control, 3 the state agency charged by our state Constitution with enforcement of the laws relating to the consumption of alcoholic beverages in this state. (Cal. Const., art. XX, § 22, 5th par. "The Department of Alcoholic Beverage Control shall have the exclusive power, except as herein provided and in accordance with laws enacted by the Legislature, to license the ... sale of alcoholic beverages in this State ....").

2 Plaintiffs do not challenge the lower court's ruling in favor of codefendants Carlos and Mary Manosa, Jessica's parents. Accordingly, we refer to defendant Jessica Manosa only.

3 We will use the abbreviation ABC as a shorthand for "Alcoholic Beverage Control." Hence, the Department of Alcoholic Beverage Control is referred to as "the Department of ABC" and the Alcoholic Beverage Control Act (§ 23000 et seq.) is referred to as "the ABC Act."

After considering the views of the parties and the Department of ABC, we conclude the pleaded facts, which allege defendant charged an entrance fee to some guests (including the minor who caused the death), payment of which entitled guests to drink the provided alcoholic beverages, raise a triable issue of fact whether defendant sold alcoholic beverages, or caused them to be sold, within the meaning of section 25602.1, rendering her potentially liable under the terms of that statute as a person who sold alcohol to an obviously intoxicated minor. Having reached this decision, we need not, and thus do not, address the further question whether defendant might also be liable on the ground she was a person who was required to be licensed who furnished alcohol to an obviously intoxicated minor.

Because the Court of Appeal affirmed the trial court's grant of summary judgment in defendant's favor, we reverse. [*703]

I. BACKGROUND

As the case comes to this court following the trial court's grant of defendants' motion for summary judgment, we "recite the evidence in the light most favorable to the nonmoving party (here, plaintiffs)." (Clayworth v. Pfizer, Inc. (2010) 49 Cal.4th 758, 764 [111 Cal. Rptr. 3d 666, 233 P.3d 1066].) On the evening of April 27, 2007, defendant Jessica Manosa (Manosa) hosted a party at a vacant rental residence owned by her parents, defendants Carlos and Mary Manosa, without their consent. The party was publicized by word of mouth, telephone, and text messaging, resulting in an attendance of between 40 and 60 people. [*444] The vast majority of attendees were, like Manosa, under 21 years of age.
For her party, Manosa personally provided $60 for the purchase of rum, tequila, and beer. She also provided cups and cranberry juice, but nothing else. Two of Manosa's friends, Mario Aparicio and Marcello Aquino, also provided money toward the initial purchase of alcohol, and Aquino purchased the alcoholic beverages for the party with this money. The beer was placed in a refrigerator in the kitchen, and the tequila and "jungle juice" (a mixture of rum and fruit juice) were placed outside on a table at the side of the house. Manosa did not have a license to sell alcoholic beverages.

Guests began to arrive at the party around 9:00 p.m., entering through a side gate in the yard. Aquino heard Manosa ask Todd Brown to "stand by the side gate to kind of control the people that came in and if he [**205] didn't know them, then charge them some money to get into the party." Brown thereafter served as a "bouncer," standing at the gate and charging uninvited guests an admission fee of $3 to $5 per person. Once inside, partygoers enjoyed music played by a disc jockey Manosa had hired and could help themselves to the beer, tequila, and jungle juice.

Thomas Garcia, who had not been invited and was unknown to Manosa, testified that a "big, tall, husky, Caucasian dude" was charging an entrance fee to get into the party. Garcia paid $20 so that he and three or four of his friends could enter. The person who took Garcia's money, presumably Brown, told him alcoholic beverages were available if he wanted them. Mike Bosley, another uninvited guest, declared he was charged $5 to enter the party. Brown eventually collected between $50 and $60 in entrance fees, and this money was used to buy additional alcohol sometime during the party. [***445] The record is unclear whether any attendees brought their own alcoholic beverages or whether Manosa provided the only alcohol consumed on the premises.

4 The summary judgment record is unclear who purchased this additional alcohol and whether Manosa had personally asked someone to use the gate money to buy more alcohol. The parties assert it is undisputed that Mario Aparicio and Stephan Filaos bought the additional alcohol, although Aparicio denies doing so. One guest, Hani Abuershaid, overheard Filaos say Manosa had asked him to purchase more alcohol using the money collected at the door, "because I think no one else had regulation of the money besides the bouncer and [Manosa]." Abuershaid also testified to seeing the bouncer give Filaos the money. Further, decedent Andrew Ennabe's brother declared he had heard Manosa ask Aparicio and Filaos to use money collected at the door to purchase additional alcohol.

Sometime before midnight, decedent Andrew Ennabe arrived at the party; he was Manosa's friend and an invited guest. Thomas Garcia and his friends arrived about 30 minutes later and were charged admission. Ennabe and Garcia, both under 21 years of age, were visibly intoxicated on arrival. Garcia in particular exhibited slurred speech and impaired faculties. By his own reckoning, he had consumed at least four shots of whiskey before arriving. Although Garcia later denied drinking anything at Manosa's party, other guests reported seeing him drinking there.

Once inside the gate, Garcia became rowdy, aggressive, and obnoxious. He made obscene and vaguely threatening comments to female guests, and either he or a friend dropped his pants. While Manosa claimed she was neither aware of Garcia's presence nor that he was causing problems with other guests, Garcia was eventually asked to leave for his inappropriate behavior. Ennabe and some other guests escorted Garcia and his friends off the premises and ultimately to their car. [***445] One of Garcia's friends spit on Ennabe, prompting Ennabe to chase him into the street. Garcia, who by this time was driving away, ran over Ennabe, severely injuring him. Ennabe later died from his injuries.

5 Garcia was convicted of a felony in connection with Ennabe's death and was sentenced to 14 years in prison.

Plaintiffs Faiez and Christina Ennabe, on behalf of themselves and the estate of their son, filed a wrongful death action against defendant Manosa and her parents. Plaintiffs asserted three causes of action: general negligence, premises liability, and liability under section 25602.1. Defendants moved for summary judgment or adjudication, claiming plaintiffs could not show defendants were liable under section 25602.1, which permits liability for certain persons who serve alcohol to obviously intoxicated minors, and that they were entitled to civil immunity under section 25602, subdivision (b) and Civil Code section 1714, subdivision (c). Plaintiffs countered that by charging an entrance fee, Manosa had
"sold" alcohol to party guests and was thus not entitled to civil immunity. The trial court granted defendants' motion for summary judgment on all causes of action and, in the alternative, also granted the motion for summary adjudication. The Court of Appeal affirmed.

We granted plaintiffs' petition for review. [*705]

II. DISCUSSION

"A trial court properly grants a motion for summary judgment only if no [**206] issues of triable fact appear and the moving party is entitled to judgment as a matter of law. (Code Civ. Proc., § 437c, subd. (c); [citation.] The moving party bears the burden of showing the court that the plaintiff 'has not established, and cannot reasonably expect to establish,' " the elements of his or her cause of action. [Citation.] [Citation.] We review the trial court's decision de novo, liberally construing the evidence in support of the party opposing summary judgment and resolving doubts concerning the evidence in favor of that party." (State of California v. Allstate Ins. Co. (2009) 45 Cal.4th 1008, 1017-1018 [90 Cal. Rptr. 3d 1, 201 P.3d 1147].)

This case involves the scope of statutory immunity for social hosts who provide alcohol to their guests and the exception to that immunity for hosts who sell alcoholic beverages, or cause them to be sold, to obviously intoxicated minors. The history of the applicable statutes is helpful to gain a proper understanding of the issues.

A. The Immunity Statutes

For the better part of the 20th century, California case law held that a person who furnished alcoholic beverages to another person was not liable for any damages resulting from the latter's intoxication. (Cole v. Rush (1955) 45 Cal.2d 345 [289 P.2d 450]; Fleckner v. Dionne (1949) 94 Cal. App. 2d 246 [210 P.2d 530]; Hitson v. Dwyer (1943) 61 Cal. App. 2d 803 [143 P.2d 952]; see Lammers v. Pacific Electric Ry. Co. (1921) 186 Cal. 379 [199 P. 523] [dictum].) The Legislature acquiesced in these decisions, also known as dramshop laws, by declining to enact a contrary statutory scheme that would permit civil liability (Cole, supra, at p. 355 [noting the Legislature's failure to change the law despite making numerous other statutory changes "is indicative of an intent to leave the law as it stands in the aspects not amended"], although it enacted legislation making the selling or furnishing of an alcoholic beverage to an obviously [***446] intoxicated person a misdemeanor in 1953 (former § 25602). 6 This court first departed from the general common law rule of nonliability in 1971 when, noting the trend in a majority of other states, we ruled that a vendor could be liable for selling alcoholic beverages to an obviously intoxicated person who thereafter inflicted injury on third persons. (Vesely v. Sager, supra, 5 Cal.3d 153.) Overruling Cole v. Rush, [*706] Vesely held that furnishing alcohol to an already intoxicated person could be the proximate cause of an injury to a third person on a showing that the person furnishing the alcohol violated section 25602, the misdemeanor statute enacted in 1953. (Vesely, supra, at pp. 165-167.)

6 Prior to 1978, section 25602 provided in full: "Every person who sells, furnishes, gives, or causes to be sold, furnished, or given away, any alcoholic beverage to any habitual or common drunkard or to any obviously intoxicated person is guilty of a misdemeanor." (Stats. 1953, ch. 152, § 1, pp. 954, 1020.) The same language now appears in subdivision (a) of the same statute. (Stats. 1978, ch. 929, § 1, pp. 2903-2904.)

Five years later, in Bernhard v. Harrah's Club, supra, 16 Cal.3d 313, this court broadened the scope of potential liability. Bernhard involved a commercial vendor in Nevada that furnished alcohol to a California resident who then proceeded to injure another California resident while driving drunk in California. The defendant in Bernhard, a Nevada corporation, argued that because the misdemeanor statute had no extraterritorial effect, it was entitled to immunity. (Bernhard, supra, at p. 323.) Although our decision in Vesely v. Sager, supra, 5 Cal.3d 153, had relied on section 25602 for its analysis, Bernhard read Vesely in broader terms: "Although we chose to impose liability on the Vesely defendant on the basis of his violating the applicable statute, the clear import of our decision was that there was no bar to civil liability under modern negligence law. Certainly, we said nothing in Vesely indicative of an intention to retain the former rule that an action at common law does not lie." (Bernhard, supra, at p. 325.) Bernhard thus downplayed Vesely's reliance on the criminality of serving an intoxicated person as the [**207] analytical linchpin of the modern rule permitting liability.

Finally, in 1978, this court extended the Vesely
holding to noncommercial social hosts, reasoning that a private person who serves alcohol in a noncommercial setting to an obviously intoxicated guest with the knowledge that person intends to drive a vehicle while in an intoxicated state fails to act with reasonable care. (Coulter v. Superior Court, supra, 21 Cal.3d at pp. 153-155 (plur. opn. of Richardson, J.); id. at p. 156 (conc. opn. of Mosk, J., joined by Bird, C. J.); id. at p. 157 (conc. & dis. opn. of Newman, J.).) As the plurality explained: "We think it evident that the service of alcoholic beverages to an obviously intoxicated person by one who knows that such intoxicated person intends to drive a motor vehicle creates a reasonably foreseeable risk of injury to those on the highway. [Citation.] Simply put, one who serves alcoholic beverages under such circumstances fails to exercise reasonable care." (Coulter, supra, at pp. 152-153.)

The Legislature responded to this trilogy of cases in 1978 by expressly abrogating their holdings and largely reinstating the previous common law rule that the consumption of alcohol, not the service of [*447] alcoholic, is the proximate cause of any resulting injury. This 1978 legislation took three forms, spread across both the Civil Code and the Business and Professions Code. First, although Civil Code former section 1714 had provided generally that everyone is responsible for his own negligent or willful acts, the Legislature amended that statute, placing the existing language in new [*707] subdivision (a) and adding subdivisions (b) and (c) to qualify that general principle. New subdivision (b) of Civil Code section 1714 provided: "It is the intent of the Legislature to abrogate the holdings in cases such as Vesely v.] Sager (5 Cal.3d 153, 95 Cal. Rptr. 623, 486 P.2d 151), Bernhard v. Harrah's Club (16 Cal.3d 313, 128 Cal. Rptr. 215, 546 P.2d 719), and Coulter v. Superior Court (121 Cal.3d 144) [145 Cal.Rptr. 534, 577 P.2d 669]) and to reinstate the prior judicial interpretation of this section as it relates to proximate cause for injuries incurred as a result of furnishing alcoholic beverages to an intoxicated person, namely that the furnishing of alcoholic beverages is not the proximate cause of injuries resulting from intoxication, but rather the consumption of alcoholic beverages is the proximate cause of injuries inflicted upon another by an intoxicated person." (Stats. 1978, ch. 929, § 2, p. 2904.) Along these same lines, Civil Code section 1714, new subdivision (c) provided: "No social host who furnishes alcoholic beverages to any person shall be held legally accountable for damages suffered by such person, or for injury to the person or property of, or death of, any third person, resulting from the consumption of such beverages." (Stats. 1978, ch. 929, § 2, p. 2904.)

In the second change, the Legislature amended section 25602 to its current version by adding subdivisions (b) and (c). (Stats. 1978, ch. 929, § 1, pp. 2903, 2904.) Section 25602, whose previous sole provision made it a misdemeanor to serve an obviously intoxicated person, now provided in subdivision (b) that "No person who sells, furnishes, gives, or causes to be sold, furnished, or given away, any alcoholic beverage [to any habitual or common drunkard or to any obviously intoxicated person] ... shall be civilly liable to any injured person or the estate of such person for injuries inflicted on that person as a result of intoxication by the consumer of such alcoholic beverage." Section 25602, new subdivision (c), like Civil Code section 1714, subdivision (b), expressly declared the Legislature's intent to overrule Vesely, Bernhard, and Coulter. This "sweeping civil immunity" (Strang v. Cabrol (1984) 37 Cal.3d 720, 724 [209 Cal. Rptr. 347, 691 P.2d 1013]) was intended "to supersede evolving common law negligence principles which would otherwise permit a finding of liability under the[se] circumstances" (id. at p. 725).

The third prong of the legislative response to this court's recognition of potential liability in alcohol cases authorized a "single statutory exception to the broad immunity created by the 1978 amendments." (Strang v. Cabrol, supra, 37 Cal.3d at p. 723.) Newly enacted section 25602.1 (Stats. 1978, ch. 930, § 1, p. 2905), concerned underage drinkers and authorized a cause of action against licensees (i.e., those licensed to sell alcohol by the Department of ABC; see § 23009) who sell, furnish, or give away alcoholic beverages to [*708] obviously intoxicated minors who later injure themselves or others. 7 Subsequent [*448] case law emphasized the narrowness of section 25602.1's exception to the general rule of civil immunity for providers of alcohol: the exception applied only to licensees (Cory v. Shierloh (1981) 29 Cal.3d 430, 440 [174 Cal. Rptr. 500, 629 P.2d 8]) [noting in passing that nonlicensed sellers retained their immunity], who provide alcohol to obviously intoxicated minors (see Rogers v. Alvas (1984) 160 Cal. App. 3d 997, 1004 [207 Cal. Rptr. 60]). Providing alcohol to sober minors or to obviously intoxicated adults was not actionable under section 25602.1. (See Cory, supra, at p. 440 ["The obviously intoxicated minor, and those injured by him,
retain a cause of action against the seller, but an adult consumer, and those similarly injured by him do not [citation]."

Nor did the exception apply to vendors who were required to be licensed, but for some reason were not (ibid. ["A preferred liability status is thus given to those sellers who refuse to obtain licenses."]).

Nor did the exception apply to vendors who were required to be licensed, but for some reason were not (ibid. ["A preferred liability status is thus given to those sellers who refuse to obtain licenses."]), or to other nonlicensees (Baker v. Sudo (1987) 194 Cal. App. 3d 936, 941-942 [240 Cal. Rptr. 38] [no liability for a social host]; Zieff v. Weinstein (1987) 191 Cal. App. 3d 243, 248 [236 Cal. Rptr. 536] [same]).

7 As added by the 1978 amendments, the original version of section 25602.1 stated: "Notwithstanding subdivision (b) of Section 25602, a cause of action may be brought by or on behalf of any person who has suffered injury or death against any person licensed pursuant to Section 23300 who sells, furnishes, gives or causes to be sold, furnished or given away any alcoholic beverage to any obviously intoxicated minor where the furnishing, sale or giving of such beverage to the minor is the proximate cause of the personal injury or death sustained by such person." (Stats. 1978, ch. 930, § 1, p. 2905.)

Following the 1978 amendments, two subsequent judicial decisions prompted further legislative refinement. First, in 1981, a minor who was injured when he became intoxicated at a party and crashed his car sued the party's host claiming, among other things, the defendant engaged in "the unlicensed and unlawful sale and furnishing of alcoholic beverages to minors." (Cory v. Shierloh, supra, 29 Cal.3d at p. 433.) When the trial court dismissed the case, citing the 1978 amendments that reestablished civil immunity, he appealed claiming the new laws were unconstitutional. (Id. at pp. 437-441.)

This court upheld the new laws, despite noting the incongruity of conditioning liability on a defendant's status as a licensee. 8 (Cory, supra, at p. 440.) A few years later, the Ninth Circuit Court of Appeals decided a case involving a girl's death in a drunk driving accident allegedly caused when a club operated by the United States Department of Defense at the Concord Naval Weapons Station served alcohol to an obviously intoxicated minor. The federal appellate court held the club was not liable under section 25602.1 [*709] because it was not a licensed liquor provider under California law. (Gallea v. U.S. (9th Cir. 1986) 779 F.2d 1403.) As recognized by these two cases, persons who refused to obtain a liquor license and establishments permitted to serve alcohol on military bases without a license retained full immunity from liability.

8 Accordingly under section 25602.1 as enacted in 1978, "whether or not the selling or supplying of the liquor is a tortious cause of a resultant injury turns on the license status of the supplier and the age of the consumer. Causation in a common law sense, whether actual or physical, proximate or legal, has never pivoted on such a perilous and seemingly irrelevant fulcrum." (Cory v. Shierloh, supra, 29 Cal.3d at p. 440.)

(2) In response to these two judicial decisions, the Legislature in 1986 amended section 25602.1 to its current version, specifically to overrule Cory v. Shierloh in part and Gallea v. U.S. in full. [***449] (See Assem. Com. on Judiciary, Analysis of Sen. Bill No. 1053 (1985-1986 Reg. Sess.) as amended Jan. [*209] 13, 1986, pp. 2-3.) 9 A Senate committee report suggested the original law's distinction between licensees and those sellers without licenses who were required by law to be licensed "may not have been foreseen or intended by the Legislature." (Sen. Com. on Judiciary, Analysis of Sen. Bill No. 1053 (1985-1986 Reg. Sess.) as amended Jan. 13, 1986, p. 4 (Senate Analysis).) Significantly, both the Assembly and Senate committees involved in the 1986 amendment indicated the bill would not change existing law with regard to social hosts who provide alcoholic beverages free to their guests. (See Sen. Analysis, at p. 4 ["The bill would not ... affect the existing immunity for social hosts as it would not impose any liability for the free furnishing of alcohol."]). Section 25602.1's exception to immunity now embraces those required to be licensed and those who sell alcohol on military bases. In addition, the Legislature excepted from the rule of civil immunity "any other person" who sells alcohol to an obviously intoxicated minor.

9 We grant defendant's request for judicial notice of the legislative history of the 1986 amendments to section 25602.1. (In re Reeves (2005) 35 Cal.4th 765, 777, fn. 15 [28 Cal. Rptr. 3d 4, 110 P.3d 1218]; Elsner v. Uveges (2004) 34 Cal.4th 915, 929, fn. 10 [22 Cal. Rptr. 3d 530, 102 P.3d 915].)

(3) In sum, if a plaintiff can establish the defendant provided alcohol to an obviously intoxicated minor, and that such action was the proximate cause of the plaintiff's injuries or death, section 25602.1--the applicable statute
in this case—permits liability in two circumstances: (1) the defendant was either licensed to sell alcohol, required to be licensed, or federally authorized to sell alcoholic beverages in certain places, and the defendant sold, furnished, or gave the minor alcohol or caused alcohol to be sold, furnished, or given to the minor; or (2) the defendant was "any other person" (i.e., neither licensed nor required to be licensed), and he or she sold alcohol to the minor or caused it to be sold. Whereas licensees (and those required to be licensed) may be liable if they merely furnish or give an alcoholic beverage away, a nonlicensee may be liable only if a sale occurs; that is, a nonlicensee, such as [*710] a social host, who merely furnishes or gives drinks away—even to an obviously intoxicated minor—retains his or her statutory immunity.

10 Section 25602.1, as amended in 1986, provides in full: "Notwithstanding subdivision (b) of Section 25602, a cause of action may be brought by or on behalf of any person who has suffered injury or death against any person licensed, or required to be licensed, pursuant to Section 23300, or any person authorized by the federal government to sell alcoholic beverages on a military base or other federal enclave, who sells, furnishes, gives or causes to be sold, furnished or given away any alcoholic beverage, and any other person who sells, or causes to be sold, any alcoholic beverage, to any obviously intoxicated minor where the furnishing, sale or giving of that beverage to the minor is the proximate cause of the personal injury or death sustained by that person." (Italics added.)

B. Application of Immunity Statutes

With this statutory scheme in mind, we turn to the merits. For purposes of our review following a grant of summary judgment, given properly pleaded facts and viewing the evidence favorably to the nonmoving party (here, plaintiffs), we may assume that Thomas Garcia was underage, 11 that he paid to enter Manosa's party, [*450] that he was obviously intoxicated, that he consumed some of the alcoholic beverages Manosa had provided for guests, that Manosa was not licensed to sell alcohol, and that Garcia's intoxication was the proximate cause of Andrew Ennabe's death. Manosa contends she cannot be liable for Ennabe's death because, as a social host, she is entitled to civil immunity under both section 25602, subdivision (b) and Civil Code section 1714, subdivision (c).

11 That is, he was under 21 years of age. (See Chalup v. Aspen Mine Co. (1985) 175 Cal. App. 3d 973, 975, fn. 2 [221 Cal. Rptr. 97] [for purposes of § 25602.1. " 'minor' refers to persons under the age of 21"]; Rogers v. Alvas, supra, 160 Cal. App. 3d at p. 1004 [same].)

In order to resolve this question, we first discuss whether the Business and Professions Code applies to a purported social host such as Manosa. Finding that it does, we then examine whether Manosa sold alcohol within the meaning of section 25602.1. As we explain, we find the Business and Professions [*210] Code applies here, and that Manosa's actions constituted a sale rendering her potentially liable as a person who sold alcohol to an obviously intoxicated minor.

1. Does the Business and Professions Code Apply to Manosa?

At the time this case arose in 2007, Civil Code former section 1714, subdivision (c) provided: "No social host who furnishes alcoholic beverages to any person may be held legally accountable for damages suffered by that person, or for injury to the person or property of, or death of, any third person, resulting from the consumption of those beverages." (Stats. 2003, ch. [*711] 62, § 15, pp. 293, 294.) 12 Section 25602, subdivision (b) appears largely to overlap that provision, providing: "No person who sells, furnishes, gives, or causes to be sold, furnished, or given away, any alcoholic beverage pursuant to subdivision (a) of this section shall be civilly liable to any injured person or the estate of such person for injuries inflicted on that person as a result of intoxication by the consumer of such alcoholic beverage." Section 25602.1, the exception to this statutory immunity, appears in the Business and Professions Code but the Civil Code contains no similar provision.

12 Since 2007, the statute has been amended twice. In 2010, the Legislature added former subdivision (d) to Civil Code section 1714: "Nothing in subdivision (c) shall preclude a claim against a parent, guardian, or another adult who knowingly furnishes alcoholic beverages at his or her residence to a person under 21 years of age, in which case, notwithstanding subdivision (b), the
furnishing of the alcoholic beverage may be found to be the proximate cause of resulting injuries or death." (Stats. 2010, ch. 154, § 1.)

A year later, the Legislature moved former subdivision (d) to subdivision (d)(1) and added what is now Civil Code section 1714, subdivision (d)(2): "A claim under this subdivision may be brought by, or on behalf of, the person under 21 years of age or by a person who was harmed by the person under 21 years of age." (See Stats. 2011, ch. 410, § 1.) The same amendment also added that liability under section 1714, subdivision (d) would attach if a person knew, or should have known, that the person served was under 21.

(4) Although neither party raises it, a preliminary issue is presented: Does section 25602.1 apply to a private person who, like Manosa, is not in the business or profession of selling or providing alcoholic drinks? We solicited supplemental briefing on, among other questions, whether that Business and Professions Code provision applies to businesses only, and whether private persons are governed solely by the Civil Code, which includes no explicit exception to its statutory immunity for those who sell or furnish alcoholic beverages to others. After considering the views of the parties and that of amicus curiae, the Department of ABC, we conclude that the placement of section 25602.1 in the Business and Professions Code does not limit the scope of that provision to commercial enterprises. First, the structure [***451] of section 25602.1 suggests it applies to noncommercial providers of alcohol. The statute addresses four categories of persons and we assume those falling in the first three categories—those licensed by the Department of ABC, those without licenses but who are nevertheless required to be licensed, and those authorized to sell alcohol by the federal government—are for the most part engaged in some commercial enterprise. The final category of persons addressed by section 25602.1 is more of a catchall: "any other person" who sells alcohol. (5) Consistent with the plain meaning of the statutory language and the views of the Department of ABC, we find this final category includes private persons and ostensible social hosts who, for whatever reason, charge money for alcoholic drinks. To be sure, this category poses something of a tautology, for a person who sells alcoholic beverages is generally required to have a license (§ 23399.1), threatening to collapse this [*712] fourth category into the second one, 13 but we agree with the Department of ABC [**211] that the plain meaning of the word "person" as used in section 25602.1's final category can include someone like defendant Manosa, a private person who was not engaged in a commercial enterprise.

13 The two categories are not precisely congruent, as an extremely small group of purveyors of alcohol are allowed under the code to operate without a license. Thus, under section 23102, subdivision (a), a person acting on behalf of a deceased, insolvent or incompetent licensee can sell alcoholic beverages for 30 days without a license. In addition, section 23399.5 permits limousine and hot air balloon operators to serve alcoholic beverages without a license so long as they do not charge extra for alcohol, although the Legislature enacted this provision in 1986 so it could not have had such operators in mind when it enacted section 25602.1 in 1978.

Second, that the Business and Profession Code applies to more than "businesses" and "professions" is clearly inferable from other provisions in the code. Chapter 16 of the ABC Act is entitled Regulatory Provisions (§ 25600 et seq.) and includes section 25602.1, the exception to civil immunity at issue in this case. The same chapter includes provisions regulating such noncommercial activities as the possession or delivery of an alcoholic beverage in a public schoolhouse (§ 25608, subd. (a)), possession of an open container of alcohol in a public park (§ 25620), and bringing an alcoholic beverage into a state prison or county jail (§ 25603). This court has itself recognized that a violation of section 25658 (providing an alcoholic beverage to someone under 21 years old) can be committed by a private person. (In re Jennings (2004) 34 Cal.4th 254 [17 Cal. Rptr. 3d 645, 95 P.3d 906].) In addition, chapter 6 of the ABC Act, entitled Issuance and Transfer of Licenses (§§ 23950-24082), includes several provisions addressed to the noncommercial purveying of alcoholic beverages, such as section 24045.1 (temporary daily license available for events staged by political, charitable or religious organizations), section 24045.2 (temporary off-sale license available for nonprofit public television stations) and section 24045.3 (temporary off-sale licenses available for certain women's educational and charitable organizations). The inclusion in the Business and Professions Code of so many statutes addressed to the
noncommercial provision of alcoholic beverages further supports the conclusion that section 25602.1 is not, by virtue of its placement in that code, limited to commercial enterprises only.

Finally, although we reject the suggestion that the scope of the Business and Professions Code, and thus section 25602.1, is confined to commercial, profit-generating endeavors, we note that even were we to find to the contrary, and that [***452] all private, noncommercial, social host scenarios should be governed exclusively under the provisions of Civil Code section 1714, that argument would merely beg the question of when, and under what conditions, an ostensible social host (such as defendant Manosa) loses that characterization—and thus becomes a commercial entity falling within the jurisdiction of [*713] the Business and Professions Code—by selling alcoholic beverages. Accordingly, merely attaching to Manosa the label of "social host" does not advance the analysis, for what would we call a social host who sells alcoholic beverages? We thus turn to an examination of whether Manosa sold alcoholic beverages within the meaning of section 25602.1.

2. Did Manosa Sell Alcoholic Beverages?

(6) Section 25602.1 provides in pertinent part that "a cause of action may be brought by or on behalf of any person who has suffered injury or death against [various licensees, as well as] ... any other person who sells, or causes to be sold, any alcoholic beverage, to any obviously intoxicated minor where the ... sale ... of that beverage to the minor is the proximate cause of the personal injury or death sustained by that person." (Italics added.) Thus, even aside from the question of licensing, a private "person" may be held to have shed her civil immunity if she sold alcoholic beverages (or caused them to be sold) within the meaning of section 25602.1. The meaning of the word "sold" in this context is a question of statutory construction. (7) "As with all questions of statutory interpretation, we attempt to discern the Legislature's intent, 'being careful to give the statute's words their plain, commonsense meaning. [Citation.] If the language of the statute is not ambiguous, the plain meaning controls and resort to extrinsic sources to determine the Legislature's intent is unnecessary.' " (Ste. Marie v. Riverside County Regional Park & Open-Space Dist. (2009) 46 Cal.4th 282, 288 [93 Cal. Rptr. 3d 369, 206 P.3d 739].)

(8) At the threshold, we find two principles provide potential guidance, but, as is sometimes the case, those principles point in somewhat opposite directions. First, the state Constitution grants exclusive power to the State of California to regulate the sale of alcoholic beverages (Cal. Const., art. XX, § 22, 1st par.), [***212] the Legislature has exercised that power by the enactment of the ABC Act (Bus. & Prof. Code, § 23000 et seq.), and the act expressly provides that its terms should be "liberally construed" to accomplish the stated purposes of the act, which include "to eliminate the evils of unlicensed ... selling, and disposing of alcoholic beverages, and to promote temperance in the use and consumption of alcoholic beverages" (§ 23001, italics added). Giving the law a liberal construction that leans in favor of promoting temperance suggests that, in a close case, we should err on the side of permitting liability, for the possibility of liability may provide a strong deterrent against the provision of alcohol to minors, especially those who are already obviously intoxicated.

But at the same time, because the general rule of law is one of civil immunity for the sale or provision of alcoholic beverages (§ 25602, subd. (b); [*714] Civ. Code, § 1714, subd. (c)), section 25602.1 represents an exception to that general rule and therefore should be strictly construed to achieve the Legislature's intent. (Hernandez v. Modesto Portuguese Pentecost Assn. (1995) 40 Cal.App.4th 1274, 1281 [48 Cal. Rptr. 2d 229] [§ 25602.1 should be strictly construed]; Salem v. Superior Court (1989) 211 Cal. App. 3d 595, 600 [259 Cal. Rptr. 447] [same].) Giving section 25602.1 a strict construction suggests that, in a close case, we should lean towards finding [***453] a wide scope of civil immunity. Cognizant of both these concepts, we turn to the language of the ABC Act to discern the meaning of a "sale" of alcohol.

(9) The ABC Act is division 9 of the Business and Professions Code, beginning with section 23000. The preliminary provisions of the ABC Act set forth basic definitions for the act, which "govern the construction of this division" "[u]nless the context otherwise requires." (§ 23002.) Section 23025 defines the terms "sell," "sale," and "to sell" as including "any transaction whereby, for any consideration, title to alcoholic beverages is transferred from one person to another." (Italics added.) Because sections 25602 and 25602.1 also appear in the ABC Act, section 23025's definition of "sale" applies to those sections. We thus agree with the Department of
ABC that the definition of a sale of alcoholic beverages in section 23025 applies to section 25602.1.

Section 23025's broad definition of a sale shows the Legislature intended the law to cover a wide range of transactions involving alcoholic beverages: a qualifying sale includes "any transaction" in which title to an alcoholic beverage is passed for "any consideration." (Italics added.) Use of the term "any" to modify the words "transaction" and "consideration" demonstrates the Legislature intended the law to have a broad sweep and thus include both indirect as well as direct transactions. (See Pineda v. Williams-Sonoma Stores, Inc. (2011) 51 Cal.4th 524, 533 [120 Cal. Rptr. 3d 531, 246 P.3d 612] [Legislature's use of the word "any" suggests it intended a broad construction]; Ladd v. County of San Mateo (1996) 12 Cal.4th 913, 920 [50 Cal. Rptr. 2d 309, 911 P.2d 496] [same].)

(10) Contrary to the foregoing, defendant urges us to embrace the Court of Appeal's reasoning, which found no sale because "there [was] no transfer of title to an alcoholic beverage at the time the entrance fee [was] paid," and that "it is difficult, if not impossible, to determine which individual or individuals held title to the alcoholic beverages consumed by Garcia." But the definition of a sale under section 23025 is broad enough to encompass indirect sales; the statute requires simply a transfer of title, not necessarily a transfer of possession of a particular drink. This conclusion follows from both the statutory definition of a sale to include "any" transaction, as well as the Legislature's 1937 amendment to section 23025 to clarify its meaning. The [*715] original version of what is now section 23025 was an uncodified precursor to the ABC Act and provided: "The transfer of title to alcoholic beverages unaccompanied by a transfer of possession of such beverages shall not be deemed a sale of such beverages." (Stats. 1935, ch. 330, § 2, pp. 1123, 1124-1125.) The Legislature deleted that sentence in 1937, thereby broadening the definition of sale to encompass those situations in which an immediate transfer of possession does not occur. (Stats. 1937, ch. 758, § 3, pp. 2127, 2129.) "We presume the Legislature intends to change the meaning of a [**213] law when it alters the statutory language [citation], as for example when it deletes express provisions of the prior version ... " (State Comp. Ins. Fund v. Workers’ Comp. Appeals Bd. (2008) 44 Cal.4th 230, 244 [79 Cal. Rptr. 3d 171, 186 P.3d 535].)

Nor is it difficult to discern when title to a drink passed to Garcia. Although his payment of the admission fee did not entitle him to, say, take possession of all the alcohol at the party, nor did he at that time necessarily take title to any particular drink, when Garcia did pour himself a drink and begin to consume it, title to that drink clearly passed to him. We conclude the plain meaning of a "sale," as defined in section 23025 and used in section 25602.1. [***454] includes Garcia's payment of the entrance fee for Manosa's party, irrespective of the fact possession of a particular drink did not occur immediately upon payment.

(11) Defendant further argues the statutory definition of "sale" in section 23025 is ambiguous because in other contexts the Legislature has specifically provided that a sale includes both direct and indirect sales. She cites two examples from the code: Section 24070, subdivision (c) restricts a corporate licensee from selling "a controlling interest in the stock ownership of the licensee" either "directly or indirectly, ... for a period of two years from date of issuance of the license ... " (Italics added.) Similarly, section 25511 provides in part that a beer manufacturer or beer wholesaler "may ... sell, directly or indirectly, any equipment, fixtures, or supplies, other than alcoholic beverages, to a retailer whose equipment, fixtures, or supplies were lost or damaged as a result of a natural disaster." (Italics added.) Neither statute is relevant to the issue before us. Section 24070, subdivision (c) addresses the sale of stock ownership, not alcoholic beverages. Section 25511 addresses the sale of "equipment, fixtures, or supplies, other than alcoholic beverages." (Italics added.) By contrast, section 23025 defines the terms "sell," "sale" and "to sell" in the specific context of the conveyance of alcoholic beverages, and the Legislature's use of the term "any" to modify the nouns "transaction" and "consideration" is another way of including indirect sales within the scope of the definition. Accordingly, the use of the phrase "directly or indirectly" in sections 24070 and 25511 does not render ambiguous section 23025's expansive definition of a sale of alcoholic beverages. [*716]

Although the parties have cited no previous California appellate decision addressing whether the collection of what is, in essence, a cover charge constitutes a sale of alcohol under the ABC Act, nor has our research revealed any, our decision that Manosa sold alcohol is consistent with section 25604. Section 25604 provides in part: "It is a public nuisance for any person to
keep, maintain, operate or lease any premises for the purpose of providing therein for a consideration a place for the drinking of alcoholic beverages by members of the public or other persons, unless the person and premises are licensed under this division. As used herein "consideration' includes cover charge, the sale of food, ice, mixers or other liquids used with alcoholic beverage drinks, or the furnishing of glassware or other containers for use in the consumption of alcoholic beverage drinks." (Italics added.) To conclude that "consideration" for a drink (and hence a sale) includes a cover charge for purposes of section 25604, but not for section 25602.1, would make little sense. Certainly defendant cites no evidence the Legislature intended such an idiosyncratic definition of the term "sale."

Our conclusion that the pleaded facts suggest a sale occurred within the meaning of section 25602.1 is consistent with an opinion prepared by the Office of the Attorney General. 14 (See 68 Ops.Cal.Atty.Gen. 263 (1985) [***455] [**214] (Attorney General Opinion.).) The director of the Department of ABC, who is charged with enforcing the ABC Act (see § 23050 et seq.), had asked this question of the Office of the Attorney General: "May the operator of a commercial enterprise who does not have an alcoholic beverage license legally offer and provide 'complimentary' alcoholic beverages to any interested adult guest, customer or passenger of the business or service, without specific charge while at the same time charging for the product provided or the services rendered?" (Atty. Gen. Opn., supra, 263.) Focusing its inquiry on whether the complimentary beverages were in fact free, and not whether, strictly speaking, title to a particular drink had passed from seller to buyer, the Attorney General concluded that offering a complimentary drink, while at the same time charging for another related service or product, constituted a sale under section 23025. (Atty. Gen. Opn., supra, 263.) While the Attorney General Opinion concerned an "operator of a commercial enterprise" and not an ostensible social host, the Attorney General's reasoning is pertinent here because he framed the issue as "whether the 'complimentary' beverages are in fact 'free' or whether they are [*717] in reality purveyed for a 'consideration.' " (Id. at p. 265.) In other words, did a sale of alcoholic beverages occur?

14 As we have explained, "[a]bsent controlling authority, [the Attorney General’s opinion] is persuasive because we presume that the Legislature was cognizant of the Attorney General’s construction of [the statute] and would have taken corrective action if it disagreed with that construction.' " (Hunt v. Superior Court (1999) 21 Cal.4th 984, 1013 [90 Cal. Rptr. 2d 236, 987 P.2d 705].) "Attorney General opinions are entitled to considerable weight." (Lexin v. Superior Court (2010) 47 Cal.4th 1050, 1087, fn. 17 [103 Cal. Rptr. 3d 767, 222 P.3d 214]; see California Assn. of Psychology Providers v. Rank (1990) 51 Cal.3d 1, 17 [270 Cal.Rptr. 796, 793 P.2d 2] [" 'Opinions of the Attorney General, while not binding, are entitled to great weight.’ "].)

Observing that no California cases on the subject existed, the Attorney General examined three out-of-state cases. In New York State Liquor Authority v. Fuffy's Pancake House, Ltd. (N.Y.App.Div. 1978) 65 A.D.2d 556 [409 N.Y.S.2d 20], a restaurant provided complimentary glasses of wine when a patron paid for a meal. In New York State Liquor Authority v. Sutton Social Club (N.Y.Sup.Ct. 1978) 93 Misc. 2d 1024 [403 N.Y.S.2d 443], a social club charged its members and their guests a fee that entitled them to enter the club and to obtain "free" alcoholic beverages. Finally, in Commonwealth v. Worcester (1879) 126 Mass. 256, the Supreme Judicial Court of Massachusetts addressed a case involving a dwelling house that charged for meals that included free alcoholic beverages. The decisions in all three cases concluded a sale of alcoholic beverages had occurred.

In light of this sister-state authority, the Attorney General concluded that when consideration for an alcoholic beverage is included in the basic charge for another item or service (such as a meal, admission to an event, hotel room rental, or limousine rental charge), "[i]t is wholly immaterial that no specific price is attached to those articles separately.' Therefore, the furnishing of the beverages, although denominated 'complimentary,' are for a consideration and constitute a sale within the meaning of California's Alcoholic Beverage Control Act." (Atty. Gen. Opn., supra, 68 Ops.Cal.Atty.Gen., at p. 267, italics added.) Under this reasoning, Manosa's act of charging guests a fee in exchange for entrance to her party and access to the alcoholic beverages she provided constitutes a sale under sections 23025 and 25602.1 because the beverages were purveyed for consideration and therefore not free.
Were further support needed, we observe that our interpretation of a sale for purposes of the ABC Act in general, and section 25602.1 in particular, is consistent with that of the Department of ABC. The department, appearing at our invitation as amicus curiae, opines that "a sale may occur whether the payment for alcohol is made at a bar upon delivery of the alcohol, or at the door as the price of admission to the premises where alcohol is served." (Italics added.) The department's view, as expressed in its amicus curiae brief, is consistent with its own internal guidelines, [***456] as expressed in a November 2009 trade enforcement information guide (TEIG), which served as an industry reference and enforcement guide for the ABC Act. 15 In a [*718] subsection entitled Private Parties, addressing licensure requirements related to private parties where alcohol is served, the TEIG notes that section 23399.1, specifying exemptions from the requirement of a liquor license, does not require a license if, among other factors, "there is no sale of an alcoholic beverage" at the party. (TEIG, supra, at [*215] pp. 21-22, capitalization altered.) But the TEIG then cautions: "Be aware that the definition of 'sale' includes indirect transactions other than merely paying for a glass of wine or other drink containing alcohol. For instance, if an admission fee is charged ... and the alcohol is included, but not separately charged, an ABC license is required." (Id. at p. 22, original underscoring, italics added.) The TEIG thus supports the conclusion that under the ABC Act a sale includes indirect transactions as occurred at Manosa's party. While the TEIG itself is not entitled to judicial deference, 16 that it is consistent with the meaning of "sale" urged by the department in its amicus curiae brief is significant, as the department has considerable expertise in enforcing the ABC Act. (See Department of Alcoholic Beverage Control v. Alcoholic Beverage Control Appeals Bd. (1999) 71 Cal.App.4th 1518, 1523 [84 Cal. Rptr. 2d 621] ["As a rule, it is appropriate for courts to accept the administrative expertise of the Department ... "].)

15 Although both parties discuss the TEIG and debate its usefulness, it apparently was never reduced to hardcopy and existed as an online resource only. The TEIG no longer appears on the department’s Web site, but can currently be found at: <http://web.archive.org/web/20101117044811/http://www.abc.ca.gov/trade/TEU%20Information%20Guide%202009%20v2.pdf> (as of Feb. 24, 2014).

16 Although the TEIG itself cannot be enforced and is not binding legal authority because, as the parties acknowledge, it was not promulgated in accordance with the Administrative Procedure Act (Gov. Code, § 11340 et seq.), we can consider the Department of ABC’s interpretation of the law to the extent it is persuasive. (See Tidewater Marine Western, Inc. v. Bradshaw (1996) 14 Cal.4th 557, 576-577 [59 Cal. Rptr. 2d 186, 927 P.2d 296] [holding that while we do not defer to the Department of Labor Standard Enforcement’s interpretation of Industrial Welfare Commission wage orders, “we do not necessarily reject its decision” either]; see also Gattuso v. Harte-Hanks Shoppers, Inc. (2007) 42 Cal.4th 554, 563 [67 Cal. Rptr. 3d 468, 169 P.3d 889] [court may adopt a “statutory interpretation embodied in a void regulation if the court independently determines that the interpretation is correct”].)

Thus, according to the plain meaning of section 23025 defining a sale, the opinion of the Attorney General, and the interpretation of the Department of ABC, a "sale" of alcoholic beverages under section 25602.1 includes the type of transactions that occurred at defendant Manosa’s party. Because she sold Garcia alcoholic beverages at her party, section 25602.1 permits “a cause of action [to] be brought [against her] by or on behalf of any person who has suffered injury or death.”

Defendant’s counterarguments are unpersuasive. She contends primarily that the definitions of the terms "sell," "sale," and "to sell" in section 23025 (hereafter sale) necessarily imply a transaction that results in a commercial gain or profit for the seller. Observing that the statutory definition in section 23025 applies "unless the context otherwise requires," she argues the context of section 25602.1’s exception to the general rule of civil immunity requires we recognize a commercial gain component for the term "sale" so as [*719] to avoid rendering the term “furnish,” used earlier in the same statute, mere surplusage. "Courts should give meaning to every word of a statute if [***457] possible, and should avoid a construction making any word surplusage." (Arnett v. Dal Cielo (1996) 14 Cal.4th 4, 22 [56 Cal. Rptr. 2d 706, 923 P.2d 1]; see California Teachers Assn. v. Governing Bd. of Rialto Unified School Dist. (1997) 14 Cal.4th 627, 634 [59 Cal. Rptr. 2d 671, 927 P.2d 1175] [same].) Placement of the definition of a "sale" in the Business and Professions Code instead of the Civil Code, she further contends, suggests that, in context, the
definition contemplates a transaction of a business or commercial nature. (See *Van Horn v. Watson* (2008) 45 Cal.4th 322, 327 & fn. 6 [86 Cal. Rptr. 3d 350, 197 P.3d 164] [that Good Samaritan immunity statute was placed in the Health & Saf. Code rather than the Civ. Code suggests it applied to emergency medical care only].) 17

17 The holding in this case was superseded by an amendment to *Health and Safety Code section 1799.102*, (Stats. 2009, ch. 77, § 1.)

We decline to read a financial profit or commercial gain requirement into the phrase "sells, or causes to be sold," as used in *section 25602.1*. First, when construing *section 25602.1*, no reason appears to refrain from employing the definition of "sale" set forth in *section 23025*, and that statutory definition--"*any* transaction for "any" consideration" (italics added)--does not specify that some profit or gain must be made or intended. "Where the words of the statute are clear, we may not add to or alter them to accomplish a purpose that does not appear on the face of the statute or from its legislative history." (In re Jennings, supra, 34 Cal.4th at p. 265.) [*216] 

"[W]e must be careful not to add requirements to those already supplied by the Legislature." (Ibid.; see *Security Pacific National Bank v. Wozab* (1990) 51 Cal.3d 991, 998 [275 Cal. Rptr. 201, 800 P.2d 557] [it is a "cardinal rule of statutory construction that courts must not add provisions to statutes"]). We note the Department of ABC, the state agency tasked with interpreting and implementing the ABC Act, agrees that "[n]either profit nor intent to realize a profit is necessary for a sale to occur" under *section 23025*'s definition of a sale, and that "[c]onsideration which is equal to or less than the seller's cost is still good consideration, as long as it represents some benefit to the seller or some prejudice to the buyer. (Civil Code, § 1605.) [18] The buyer's purchase price, however the seller intends to use it, is good consideration."

Second, contrary to defendant's argument, our rejection of a commercial gain component does not convert *section 25602.1*'s use of the term "furnish[ly]"--in the statutory phrase permitting liability for licensees who "[sell], [*720] furnish[ly] or give[] away" alcoholic beverages--into meaningless surplusage. A sale requires consideration; mere furnishing does not.

Third, in permitting potential liability for the provision of alcohol to obviously intoxicated minors in *section 25602.1*, the Legislature distinguished between licensees--presumably business or commercial entities such as bars and restaurants--and "*any other person*"--presumably including noncommercial entities or individuals such as Manosa. This version of *section 25602.1*, amended to its current form in 1986, was partly enacted in response to *Cory v. Shierloh*, supra, 29 Cal.3d 430, which had found [***458] a social host immune from liability for injuries to a minor allegedly injured after he became intoxicated at a private party. From this we may infer the Legislature was aware of, and attempted to address, the problem of providing alcohol to minors in social settings in which no profit was expected.

Defendant raises additional counterarguments to our interpretation of the word "sale" but they are even less persuasive. She first contends we should not apply *section 23025*’s definition of a sale here because it will lead to "illogical results" and create an unworkable standard in the context of social parties. Observing that consideration for a sale need not be in cash, but may encompass "any value whatever" (*Estate of Freeman* (1965) 238 Cal. App. 2d 486, 489 [48 Cal. Rptr. 1]; see generally Civ. Code, § 1605), defendant hypothesizes that a promise to attend a friend's party or to bring a dessert to a social gathering where the host provides alcoholic beverages would constitute a sale under a broad reading of *section 23025*.

Defendant's hypothetical poses a false equivalency. In the usual social situation, the dessert or other gift brought by an invited guest and given to the host cannot fairly be characterized as a transaction in which consideration is given in exchange for alcoholic beverages provided by the host; the dessert or other offering is simply a commonplace gift consistent with ordinary etiquette. (See § 23025 [definition of a sale requires a "transaction"]). We need not sweep all informal potlucks into the jurisdiction of the Department of ABC's licensure purview to conclude the instant situation, in which Manosa operated what was in essence a pop-up nightclub that required a cover charge for entry,
falls within section 23025's definition of a sale of alcohol. The Department of ABC agrees, explaining that "situations involving casual reimbursement among friends who have agreed to purchase alcohol together rarely, if ever, arise for the Department, and the Department does not make a practice of intruding into clearly private parties to assess the casual pooling of money among friends to buy alcohol. On the other hand, circumstances in which alcohol is clearly being transferred in return for a purchase price, and the only defense to licensure is either that the alcohol is priced at cost or that a fee is charged for the privilege of entering [the] premises and consuming alcohol there, present clear cases of sales requiring a license." (Italics added.) [*721]

As to defendant's further contention that the standard we recognize today will prove "unworkable," we observe the Department of ABC, the agency responsible for enforcing the law with respect to the many ways in which alcoholic beverages can be distributed, expresses no concern the standard we now recognize is "unworkable"; indeed, our definition of a sale is consistent with both the plain meaning of section 23025 and the department's own view of the law. We agree with the department's further assertion that, faced with normal social gatherings, to interpret the statutory language strictly, leading to absurd results not contemplated by the Legislature, would be unjustified.

Noting that alcohol is "furnished at an infinite variety of social settings hosted by nonlicensees--from gallery openings, bar mitzvahs, weddings, political fundraisers and charity events--where admission is not 'free' and financial contributions from attendees are expected or required," defendant argues by a reductio ad absurdum that this court would wreak havoc on the "social fabric of modern life" were we to recognize indirect transactions could qualify as sales of alcohol under section 23025. The assertion is exaggerated. One does not normally charge guests an entrance fee to attend bar mitzvahs, weddings, or gallery openings, and the provision of alcoholic beverages to guests invited to such events typically is governed by social host immunity under Civil Code section 1714, subdivision (c). (Even if a host at such an event charged his or her guests for alcohol, such payment would simply raise questions of licensure, and civil liability could attach only if the host sold alcohol to an obviously intoxicated minor.) In any event, in contrast to how Manosa conducted herself at her party, ordinary social hosts do not use bouncers, allow uninvited strangers into their homes, or extract an entrance fee or cover charge from their guests. Nor does maintaining the social fabric of our society depend on protecting from civil liability those persons who would sell alcoholic beverages to minors who are already visibly intoxicated.

Defendant further argues that our interpretation of section 25602.1 will yield irrational results because some guests will pay but not drink, some will drink an alcoholic beverage provided by someone other than the host, and some will enter the party without being charged. To have liability turn on such facts, defendant argues, is absurd. (See In re J. W. (2002) 29 Cal.4th 200, 210 [126 Cal. Rptr. 2d 897, 57 P.3d 363] ["courts will not give statutory language a literal meaning if doing so would result in absurd consequences ..."]) We disagree. If a paying guest does not drink, there can be no liability, because section 25602.1 requires that the sale of alcohol be the proximate cause of the injury. If the guest drinks a beverage provided by someone other than the host, the same result obtains because the host's sale of alcohol cannot be said to have been the cause of the minor's intoxication and hence the injury. Finally, for guests who pay no admission charge the host retains her immunity, because without consideration there can be no sale under section 23025. The final category of section 25602.1, permitting liability for "any other person who sells," requires proof of a sale (that is, a transaction for consideration), and is not irrational for distinguishing between paying and nonpaying partygoers. In any event, a social host can retain her immunity by simply refraining from charging any of her invited guests.

In sum, we conclude that if, as indicated by plaintiff's evidence in opposition to the summary judgment motion, defendant Manosa charged an entrance fee to her party which enabled party guests to drink the alcoholic beverages she provided, she sold such beverages (or caused them to be sold) within the meaning of section 23025, and can be liable for Ennabe's death under section 25602.1's exception to immunity for persons who sell alcoholic beverages to obviously intoxicated minors.

III. CONCLUSION

(12) Where injuries are proximately caused by excess alcohol consumption, our Legislature has carefully balanced the interests involved and settled on a rule generally precluding liability for those who
provide alcoholic beverages, on the ground that "the consumption of alcoholic beverages rather than the serving of alcoholic beverages [is] the proximate cause of injuries inflicted upon another by an intoxicated person." (§ 25602, subd. (c).) Specifically addressing the potential liability of social hosts, the Legislature has provided that "no social host who furnishes alcoholic beverages to any person may be held legally accountable for damages suffered by that person, or for injury to the person or property of, or death of, any third person, resulting from the consumption of those beverages." (Civ. Code, § 1714, subd. (c).)

[***460] But the Legislature has also established some narrow exceptions to this broad civil immunity, one of which is potentially applicable here: liability may attach because plaintiff alleges facts suggesting that defendant Manosa was a "person who [sold], or cause[d] to be sold, any alcoholic beverage, to any obviously intoxicated minor." (§ 25602.1.) A "sale" of alcohol, in turn, is defined as "any transaction" for "any consideration." (§ 23025.) Because the facts, read in a light most favorable to plaintiffs (Clayworth v. Pfizer, Inc., supra, 49 Cal.4th at p. 764), support the conclusion Manosa is a person who sold alcoholic beverages to Garcia, a minor who was obviously intoxicated, and Garcia's intoxication was the proximate cause of Andrew Ennabe's death, she is potentially liable under section 25602.1, and the trial court erred in granting summary judgment in defendant's favor. [*723]

The decision of the Court of Appeal is reversed and the case remanded for further proceedings consistent with our opinion.

**Orange County Employees Assn., Inc. v. County of Orange**

Court of Appeal of California, Fourth Appellate District, Division Three

March 23, 1993, Decided

No. G012704

Report


ORANGE COUNTY EMPLOYEES ASSOCIATION, INC., Plaintiff and Appellant, v. COUNTY OF ORANGE et al., Defendants and Respondents.

Prior History: [***1] Superior Court of Orange County, No. 658065, Robert A. Knox, Judge.

Disposition: The judgment is reversed with directions to grant declaratory relief in accordance with the views expressed above. OCEA shall have its costs on appeal.

Core Terms

peace officer, firearms, off duty, concealed, carrying, carry firearms, terms and conditions, off-duty, statutes, concealable firearm, weapons, employment agency, sections, concealed firearm

Case Summary

Procedural Posture
Plaintiff county employees' association appealed a judgment from the Superior Court of Orange County (California) denying declaratory relief in its suit to prevent defendant county and municipal courts from precluding certain special sheriff's officers, deputy coroners, and court service officers from carrying concealed firearms off duty.

Overview
Plaintiffs county employees' association sought to prevent defendants county and municipal courts from regulating the carrying of concealed firearms off-duty by three employee classifications, certain special sheriff's officers, deputy coroners, and court service officers. The trial court entered judgment for defendants. On appeal, the court reversed because defendants had to apply to the legislature to restrict the carrying of the concealed weapons. The court sought to determine the effect of the limiting language of *Cal. Penal Code* §§ 830.33, 830.35, and 830.36, which all stated that officers in those respective categories could carry firearms only if authorized by their employing agency, on the grant of authority to carry concealed weapons to other duly appointed peace officers in *Cal Penal Code § 12027*. The court relied on five Attorney General opinions for reasoning and the legislature's reaction in reaching its decision.

Outcome
The judgment for defendants precluding certain peace officers from carrying concealed firearms off duty was reversed because if defendant wanted to restrict the carrying of concealed weapons by the affected officers, it had to apply to the legislature.

LexisNexis® Headnotes

Governments > Legislation > Types of Statutes

See *Cal. Penal Code § 12027*.
Cal. Penal Code §§ 830.33, 830.35, and 830.36 all state that officers employed in the categories of airport law enforcement, deputy coroners, and court service officers are peace officers. Each goes on to add, however, those peace officers may carry firearms only if authorized and under terms and conditions specified by their employing agency.

Governments > Legislation > Interpretation

**HN3** Legislation, Interpretation

While not binding, the opinions of the Attorney General are entitled to great weight.

Governments > Legislation > Interpretation

**HN4** Legislation, Interpretation

Where a statute has been construed by judicial decision, and that construction is not altered by subsequent legislation, it must be presumed that the legislature is aware of the judicial construction and approves of it. There is a strong presumption that when the legislature reenacts a statute which has been judicially construed it adopts the construction placed on the statute by the courts.

Headnotes/Syllabus

**Summary**

CALIFORNIA OFFICIAL REPORTS SUMMARY

A county employees association brought a declaratory relief action, seeking a ruling that the county and its municipal courts could not preclude airport law enforcement officers (**Pen. Code, § 830.33, subd. (d)**), deputy coroners (**Pen. Code, § 830.35, subd. (c)**), and court service officers (**Pen. Code, § 830.36, subd. (c)**) from carrying concealed firearms off duty. The trial court refused to grant the declaratory relief requested by the association. (Superior Court of Orange County, No. 658065, Robert A. Knox, Judge.)

The Court of Appeal reversed the judgment with directions to grant declaratory relief. The court held that while **Pen. Code, §§ 830.33, 830.35, and 830.36**, all provide that the respective peace officers may carry firearms only if authorized and under terms specified by their employing agency, the statutes’ restrictive language does not apply to officers off duty in light of relevant Attorney General opinions and legislation. The Attorney General interpreted identical restrictive language to refer only to officers on duty, and when the statutes at issue were subsequently passed, the Legislature was presumably aware of the Attorney General’s interpretation, and intended the same scheme. Moreover, the court held that the Legislature has specifically authorized both on and off duty regulation of concealable firearms with respect to state correctional officers, and had it intended county officers to be subject to similar controls, it would have so indicated. (Opinion by Crosby, J., with Sills, P. J., and Sonenshine, J., concurring.)

Headnotes

CALIFORNIA OFFICIAL REPORTS HEADNOTES

Classified to California Digest of Official Reports

**CA(1)** State of California § 10—Attorney General—Opinions—Effect on Appellate Courts.

--While opinions issued by the Attorney General are not binding on appellate courts, they are entitled to great weight.

**CA(2a)** Law Enforcement Officers § 26—Powers and Duties—Specified Peace Officers’ Right to Carry Concealed Firearms While Off Duty.

--In a declaratory relief action by a county employees association, seeking a ruling that the county and its municipal courts could not preclude airport law enforcement officers (**Pen. Code, § 830.33, subd. (d)**), deputy coroners (**Pen. Code, § 830.35, subd. (c)**), and court service officers (**Pen. Code, § 830.36, subd. (c)**) from carrying concealed firearms off duty, the trial court erred in refusing to grant the relief requested. While **Pen. Code, §§ 830.33, 830.35**, and **830.36**, all provide that the respective peace officers may carry firearms only if authorized and under terms specified by their employing agency, the statutes’ restrictive language does not apply to officers off duty in light of relevant Attorney General opinions and legislation. The Attorney General interpreted identical restrictive language to refer only to officers on duty, and when the statutes at issue were subsequently passed, the Legislature was presumably aware of the Attorney General’s interpretation, and intended the same scheme. Moreover, the court held that the Legislature has specifically authorized both on and off duty regulation of concealable firearms with respect to state correctional officers, and had it intended county officers to be subject to similar controls, it would have so indicated. (Opinion by Crosby, J., with Sills, P. J., and Sonenshine, J., concurring.)
only to officers on duty, and when the statutes at issue were subsequently passed, the Legislature was presumably aware of the Attorney General's interpretation, and intended the same scheme. Moreover, the Legislature has specifically authorized both on and off duty regulation of concealable firearms with respect to state correctional officers, and had it intended county officers to be subject to similar controls, it would have so indicated.


CA(3)[*] (3)


--Where a statute has been construed by judicial decision, and that construction is not altered by subsequent legislation, it must be presumed that the Legislature is aware of the judicial construction and approves of it. There is a strong presumption that when the Legislature reenacts a statute that has been judicially construed, it adopts the construction placed on the statute by the courts. Similar presumptions apply in the case of Attorney General opinions.

Counsel: Kathleen Sage for Plaintiff and Appellant.
Terry C. Andrus, County Counsel, and James F. Meade, Deputy County Counsel, for Defendants and Respondents.

Judges: Opinion by Crosby, J., with Sills, P. J., and Sonenshine, J., concurring.

Opinion by: CROSBY, J.

The Orange County Employees Association (OCEA) unsuccessfully sued in declaratory relief, seeking a ruling that the County of Orange and the county’s municipal courts could not preclude certain special sheriff’s officers, deputy coroners, and court service officers from carrying concealed firearms off duty. We reverse with directions to enter judgment for OCEA.

The three employee classifications OCEA represents in this action were established pursuant to Penal Code sections 830.33, subdivision (d) (airport law enforcement officer); 830.35, subdivision (c) (deputy coroner); and 830.36, subdivision (c) (court service officer). 1 Our analysis requires examination of the interplay between these and various other sections [***2] of the Penal Code. The first is section 12025. It generally prohibits the carrying of handguns or concealable firearms concealed on the person or in vehicles without a permit.

Another is HN1 Penal Code section 12027. As pertinent here, it reads, "Section 12025 does not apply to, or affect, any of the following: [P] (a)(1)(A) Any peace officer, listed in Section 830.1 or 830.2, whether active or honorably retired, other duly appointed peace officers, honorably retired peace officers listed in subdivision (c) of Section 830.5 . . .." (Italics added.)

HN2 Penal Code sections 830.33, 830.35, and 830.36 all state that officers employed in those respective categories are peace officers. Each goes on to add, however, "Those peace officers may carry firearms only if authorized and under terms and conditions [***3] specified by their employing agency."

The parties agree this limiting language allows the agencies named in these sections to regulate the carrying of firearms, concealed or not, by on-duty personnel. They also agree the statutes cannot reasonably be read to take away from off-duty officers the same right to bear arms enjoyed by other citizens. 2 For example, vacationing deputy coroners could not be required to seek permission from the county to visit a rifle range or go duck [*578] hunting. The question is, then, what is the effect of the limiting language of these

1 County counsel adopts OCEA’s statements of the case and of the facts. This supports OCEA’s assertion that there is no significant factual dispute and that we exercise de novo review of an unalloyed question of law.

2 They get there by different routes, however, OCEA takes the commonsense approach espoused by the Attorney General in several opinions we will shortly examine. County counsel, while contending the statutes are unambiguous and should be read literally, can only agree that the affected officers are not subject to more restrictions than ordinary citizens by interpreting the word "firearm" to mean a concealable or loaded weapon. There is no such definition in the statutory scheme, though; and we find these sections fraught with ambiguity. Accordingly, we must resort to techniques of statutory interpretation.
specific sections on the grant of authority to carry concealed weapons "to other duly appointed peace officers" in Penal Code section 12027?

[[*4]] We will rely upon a series of five opinions issued by the Attorney General to help resolve this dispute. They are persuasive not only for their reasoning, but for the Legislature's reaction--or lack thereof--as well. CA(1)[50x12] [1] HN3 While not binding on us, the opinions of the Attorney General are entitled to great weight. (See Henderson v. Board of Education (1978) 78 Cal.App.3d 875, 883 [144 Cal.Rptr. 568]; Fremont Police Assn. v. City of Fremont (1975) 48 Cal.App.3d 801, 803 [122 Cal.Rptr. 92].)

In May of 1980, the Attorney General decided that "Department of Corrections peace officers are 'duly appointed peace officers' while they are on duty at work or while they are off duty." (63 Ops.Cal. Atty.Gen., supra, at p. 832.) Those officers were peace officers per Penal Code section 830.5 and consequently enjoyed the exemption in section 12027 from the ban on concealed firearms. Section 830.5 did not then purport to regulate the carrying of firearms, however.

In apparent response, the Legislature added the following language effective in September of 1980: "Such peace officer [*697] may [[*5] carry firearms only if authorized and under such terms and conditions as are specified by their employing agency . . . ." The Attorney General answered this question the year after the statutory change: "Is a Department of Corrections peace officer, as defined in Penal Code section 830.5, permitted to carry concealed a concealable firearm without the license required by Penal Code section 12025?" (64 Ops.Cal. Atty.Gen., supra, at pp. 835-836.) He concluded as follows: "The authority to carry firearms is . . . qualified, i.e., such peace officer may carry firearms only if authorized and under such terms and conditions as are specified by the Department of Corrections." (Id. at p. 835, italics in original.)

The author added a problematic phrase, however; and it proved to be the understated key to the opinion: "[[*6] The exemption in section 12027 is now [*579] qualified by the authority of the Department of Corrections, under section 830.5, to allow or disallow the concealed carrying of concealable firearms or to set the terms and conditions of such carrying by its officers without a license while acting as peace officers." (64 Ops.Cal. Atty.Gen., supra, at p. 837, italics added.) We say "problematic" because off-duty officers sometimes must act as peace officers, as we consider more fully anon, and in that sense are never off duty. Taken literally, the emphasized language would imply that at the very moment an off-duty officer might need it most, i.e., when thrust into the role of a peace officer, it would become unlawful to carry a firearm contrary to the employer's rules. 3

3 The Legislature has clarified Penal Code section 830.5 considerably in the ensuing years. Subdivision (c) of that section now provides, "The following persons may carry a firearm while not on duty: a parole officer of the Department of Corrections or the Department of the Youth Authority, a correctional officer employed by the Department of Corrections or any employee of the Department of the Youth Authority having custody of wards or any employee of the Department of Corrections designated by the Director of Corrections. A parole officer of the Youthful Offender Parole Board may carry a firearm while not on duty only when so authorized by the chairperson of the board and only under the terms and conditions specified by the chairperson. Nothing in this section shall be interpreted to require licensure pursuant to Section 12025. The director or chairperson may deny, suspend, or revoke for good cause a person's right to carry a firearm under this subdivision. That person shall, upon request, receive a hearing, as provided for in the negotiated grievance procedure between the exclusive employee representative and the Department of Corrections, the Department of the Youth Authority, or the Youthful Offender Parole Board, to review the director's or the chairperson's decision."

Subdivision (d) adds, "Persons permitted to carry firearms pursuant to this section, either on or off duty, shall meet the training requirements of Section 832 and shall qualify with the firearm at least quarterly. It is the responsibility of the individual officer or designee to maintain his or her eligibility to carry concealable firearms off duty. Failure to maintain quarterly qualifications by an officer or designee with any concealable firearms carried off duty shall constitute good cause to suspend or revoke that person's right to carry firearms off duty."

Finally, subdivision (e) provides, "The Department of Corrections shall allow reasonable access to its ranges for officers and designees of either department to qualify to carry concealable firearms off duty. The time spent on the range for purposes of meeting the qualification requirements shall be the person's own time during the person's off duty hours."
The Attorney General was next asked, "Does the Chief of the California State Police Division have the authority to prohibit or allow Security Officers of the California State Police Division to carry concealed firearms while off duty?" (65 Ops.Cal.Atty.Gen., 527 (1982)) Penal Code section 830.4, the applicable statute, provided, "Such peace officers may carry firearms only if authorized by and under such terms and conditions as are specified by their employing agency . . . ." 4

4 Unlike Penal Code section 830.5, the firearm language of section 830.4 has not been materially modified since the Attorney General interpreted it in 1982.

The next opinion in the series addressed this question: "Does a district attorney have the authority to prohibit or allow the carrying of firearms by welfare fraud investigators employed in his office while such persons are off duty?" [***9] (70 Ops.Cal.Atty.Gen., 527 (1987).) Based on similar statutory language, 5 the Attorney General concluded that a district attorney has no such power. He provided additional reasons: "Although a peace officer is not required to have a license as set forth in section 12027, this exemption means only that he may carry concealed a concealable weapon without committing the crime specified in section 12025. It does not mean, of course, that he may carry a weapon while on duty if prohibited by his employer. Employers normally control the (lawful) activities of their employees in employment situations. Different considerations are present when determining whether a weapon should be carried while performing employment-related duties. In noting that a city may place more restrictive standards upon the conduct of its police officers in the use of firearms than [those] applicable to private citizens, the court in Long Beach Police Officers Assn. v. City of Long Beach (1976) 61 Cal.App.3d 364, 375-376 [132 Cal.Rptr. 348], stated: [¶] 'The city, as employer of the officer and a potential codefendant in a suit for wrongful [***10] death or injury, has an interest in [581] the officer's conduct which it lacks toward a private citizen. . . . Police officers are constitutionally subject to many burdens and restrictions that private citizens are not.' (70 Ops.Cal.Atty.Gen., supra, at p. 533.)

Finally, in 72 Ops.Cal.Atty.Gen. 167 (1989), the Attorney General reached a similar determination with respect to the right of deputy probation officers to carry concealed firearms while not on duty. Penal Code section 835, the statute designating them as peace officers contains this provision: "Except as specified in this section, these peace officers may carry firearms only if authorized [***11] and under those terms and conditions specified by their employing agency." 6 The opinion relied on its four predecessors on the points pertinent here and added no new analysis of relevance to the present case.

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6 While, as we have seen (see fn. 3, ante), the carrying of firearms by off-duty state correctional officers is now specifically regulated in Penal Code section 830.5, there were no similar provisions for county probation officers and still are not. The Attorney General cites this as legislative confirmation of his analysis in 70 Ops.Cal.Atty.Gen., supra, at page 20 and 65 Ops.Cal.Atty.Gen., supra, at page 527 and an indication that the Legislature intended to allow county probation officers to carry concealed weapons off duty, notwithstanding the possible objections of their employers. (72 Ops.Cal.Atty.Gen. supra, at p. 171.)
Citing various pieces of legislative history potentially proving the Legislature originally intended to permit agencies to regulate *[699]* the carrying of concealable *[12]* firearms both on and off duty, 7 county counsel argues the Attorney General is simply wrong. County counsel also reminds us the statutes themselves make no distinction between on- and off-duty peace officers. Finally, he attacks the Attorney General’s assumptions that (1) because the statutes speak of “firearms” and not concealable weapons they must not refer to off-duty activities since the Legislature could not have intended to require employer approval for off-duty hunting trips and the like, and (2) employers would have no reason to control the carrying of firearms by their off-duty officers.

There is no reason to attempt *[13]* to divine what the Legislature intended in 1980, however; and we decline the invitation to do so. As noted earlier, the Legislature's reactions to the Attorney General's interpretations tell the story.

CA(2a)* (2a) In 1982, the Attorney General interpreted the language, “may carry firearms only if authorized and under terms and conditions specified by their *[582]* employing agency,” to refer only to on-duty officers. This is the identical wording contained in the implementing statutes we consider here (Pen. Code, § 830.33, 830.35, and 830.36). When those statutes were passed in 1989, 8 the Legislature was presumably aware of the Attorney General’s interpretation. (See Henderson v. Board of Education, supra, 78 Cal.App.3d at p. 883.) Whatever the Legislature intended in 1980, in 1989 it surely intended the scheme as explained in the Attorney General’s opinions.

Moreover, in various amendments to Penal Code section 830.5 over the past decade (see fn. 3, ante) the Legislature has specifically authorized on- and off-duty regulation of concealable firearms of state correctional officers. Had it intended county officers to be subject to similar controls, it surely would have said so.

The Supreme Court put it this way: “Although [People v.] Lobaugh [(1971) 18 Cal.App.3d 75 (95 Cal.Rptr. 547)] has been followed by the Courts of Appeal since 1971, the Legislature has not reacted to it despite repeated scrutiny of [Vehicle Code section 23153, Section 23153] (or its predecessor, former § 23101) was amended in 1972, 1976, 1977, 1978, 1980, 1981, 1982 and 1983, with a major rewriting and renumbering in 1981. . . CA(3) CA(2b) HN4. Where a statute has been construed by judicial decision, and that construction is not altered by subsequent legislation, it must be presumed that the Legislature is aware of the judicial construction and approves of it.’ [Citations.] ‘There is a strong presumption that when the Legislature reenacts a statute which has been judicially construed it adopts the construction placed on the . . . statute by the courts.’ [Citation.]” (Wilkoff v. Superior Court (1985) 38 Cal.3d 345, 353 [211 Cal.Rptr. 742, 696 P.2d 134].)

So it is here. Similar presumptions apply in the case of Attorney General opinions (Henderson v. Board of Education, supra, 78 Cal.App.3d 875, 883), and among the statutes we have reviewed the Legislature has sought to avoid the Attorney General’s interpretation only with respect to state correctional officers covered by Penal Code section 830.5. We must assume the Legislature knew what it was doing when it employed the language of the statutes *[583]* at issue in this case. If the county wishes to restrict the carrying of concealed weapons by the affected officers, it will have to apply to the Legislature. 9

***16*** [**700**] The judgment is reversed with directions to grant declaratory relief in accordance with the views expressed above. OCEA shall have its costs on appeal.

Sills, P. J., and Sonenshine, J., concurred.

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7 For example, the pertinent language in the special peace officer statutes we construe originated in chapter 1340 of the statutes of 1980. This was the chaptered version of Senate Bill No. 1447. We are told that the report to the Assembly Committee on Ways and Means stated, “This bill . . . allows for limits on the authority of peace officers to carry firearms both on and off duty.”

8 Penal Code section 830.35 was actually renumbered in 1989. But it was amended four times between 1982 and 1987 with no amendment to the statute similar to the changes made in Penal Code section 830.5 to specifically allow the employer to control off-duty carrying of concealed firearms.

9 The public employers have tired of being automatically named as defendants in every off-duty incident in which a plaintiff is injured by one of these special officer's firearms. They complain it is illogical to allow them to carry weapons because they have less firearm training than regular officers. But they do have firearm training and could obviously be provided more, if current training is truly insufficient.
QUO WARRANTO
MATERIALS
CHAPTER 5. Actions for the Usurpation of an Office or Franchise [802 - 811]  (Chapter 5 enacted 1872.)

802. The writ of sire facies is abolished.

(Amended by Code Amendments 1880, Ch. 22.)

803. An action may be brought by the attorney-general, in the name of the people of this state, upon his own information, or upon a complaint of a private party, against any person who usurps, intrudes into, or unlawfully holds or exercises any public office, civil or military, or any franchise, or against any corporation, either de jure or de facto, which usurps, intrudes into, or unlawfully holds or exercises any franchise, within this state. And the attorney-general must bring the action, whenever he has reason to believe that any such office or franchise has been usurped, intruded into, or unlawfully held or exercised by any person, or when he is directed to do so by the governor.

(Amended by Stats. 1907, Ch. 324.)

804. Whenever such action is brought, the Attorney General, in addition to the statement of the cause of action, may also set forth in the complaint the name of the person rightly entitled to the office, with a statement of his right thereto.

(Amended by Stats. 1973, Ch. 20.)

805. If the judgment be rendered upon the right of the person so alleged to be entitled, and the same be in favor of such person, he will be entitled, after taking the oath of office and executing such official bond as may be required by law, to take upon himself the execution of the office.

(Enacted 1872.)

806. If judgment be rendered upon the right of the person so alleged to be entitled, in favor of such person, he may recover, by action, the damages which he may have sustained by reason of the usurpation of the office by the defendant.

(Enacted 1872.)

807. When several persons claim to be entitled to the same office or franchise, one action may be brought against all such persons, in order to try their respective rights to such office or franchise.

(Enacted 1872.)

808. When a defendant, against whom such action has been brought, is adjudged guilty of usurping or intruding into, or unlawfully holding any office, franchise, or privilege, judgment must be rendered that such defendant be excluded from the office, franchise, or privilege, and that he pay the costs of the action. The Court may also, in its
discretion, impose upon the defendant a fine not exceeding five thousand dollars, which fine, when collected, must be paid into the Treasury of the State.

(Enacted 1872.)

[810.] If the action is brought upon the information or application of a private party, the Attorney General may require that party to enter into an undertaking, with sureties to be approved by the Attorney General, conditioned on the party or the sureties paying any judgment for costs or damages recovered against the plaintiff, and all the costs and expenses incurred in prosecuting the action.

(Amended by Stats. 2017, Ch. 561, Sec. 23. (AB 1516) Effective January 1, 2018.)

811. The action provided for in this chapter may be maintained by the board of supervisors of any county or city and county or the legislative body of any municipal corporation, respectively, in the name of such county, city and county or municipal corporation against any person who usurps, intrudes into or unlawfully holds or exercises any franchise, or portion thereof, within the respective territorial limits of such county, city and county or municipal corporation and which is of a kind that is within the jurisdiction of such board or body to grant or withhold.

(Added by Stats. 1937, Ch. 575.)
SECTION 1

Any person desiring "leave to sue" in the name of the people of the State of California under any law requiring the prior permission therefor of the Attorney General (which person is herein referred to as the relator), shall serve his application (which shall include the papers referred to in Section 2) upon the proposed defendant and within five days after such service shall file the same with the Attorney General.

SECTION 2

The relator shall submit to the Attorney General his application for "leave to sue," which application shall consist of the following: (a) Original verified complaint, together with one copy thereof, and a verified statement of facts. The proposed complaint shall be prepared for the signature of the Attorney General, a deputy attorney general and the attorney for the relator, as attorneys for plaintiff. (b) Points and authorities showing why the proposed proceeding should be brought in the name of the people, and supporting the contention of relator that a public office or franchise is usurped, intruded into or unlawfully held or exercised by the proposed defendant. (c) A notice directed to the proposed defendant to the effect that relator is about to apply to the Attorney General for "leave to sue" in the proceeding therein named, and that the proposed defendant may, within the period provided in Section 3 hereof, show cause, if any he have, why "leave to sue" should not be granted in accordance with the application therefor. (d) Proof of service of such application, complaint, statement of facts, points and authorities and notice upon the proposed defendant.

SECTION 3

The proposed defendant shall be allowed 15 days after service, within which to appear and show cause in accordance with the provisions of Section 2(c), if the notice be served within the county in which the proceeding is to be brought, and 20 days if served elsewhere. A shorter time may and will be prescribed by the Attorney General in special cases or upon a showing of good cause therefor. An
extension of the period for appearance herein limited may be granted by stipulation between the relator and the proposed defendant if filed with the Attorney General, and may be granted by the Attorney General upon a showing of good cause therefor. Any statement of facts filed by the proposed defendant shall be verified in like manner as the proposed complaint.

SECTION 4

The relator shall then be allowed 10 days (or such further time as may be granted by stipulation filed with the Attorney General, or upon a showing of good cause therefor), in which to reply to the showing thus made by the proposed defendant.

SECTION 5

Proof or admission of service must accompany all papers submitted to the Attorney General under Sections 2, 3 and 4.

SECTION 6

If the application for "leave to sue" be granted, the relator must, within 10 days after receiving notice of such action (unless further time be granted), present to the Attorney General an undertaking executed to the State of California in the sum of $500, to the effect that the relator will pay any judgment for costs or damages that may be recovered against the plaintiff, and all costs and expenses incurred in the prosecution of the proceeding in which such "leave to sue" is granted. The sureties upon the undertaking shall be approved by the Attorney General.

Upon receipt and approval of said undertaking, the Attorney General will transmit to the relator, in writing, "leave to sue" in the name of the people, which "leave to sue" shall be filed with the clerk of the court simultaneously with the filing of the complaint.
SECTION 7

The complaint filed in the proceeding shall be the proposed complaint herein before referred to, changed or amended as the Attorney General shall suggest or direct, and the relator shall not thereafter in any way change, amend or alter the said complaint without the approval of the Attorney General.

SECTION 8

The Attorney General may at all times, at any and every stage of the said proceeding, withdraw, discontinue or dismiss the same, as to him may seem fit and proper, or may, at his option, assume the management of said proceeding at any stage thereof.

SECTION 9

The relator must immediately inform the Attorney General of the date of the filing of the complaint, and the court number thereof, and shall thereafter notify the Attorney General, without delay, of every proceeding had, motion made, paper filed, or thing done in the proceeding, or in relation thereto, and must send to the Attorney General promptly a copy of every paper or document filed by any of the parties to the proceeding including the judgment, and when service of any paper in said proceeding is made on the relator by the opposing party the relator shall secure an additional copy of such paper, which additional copy shall be at once forwarded to the Attorney General.

SECTION 10

In special cases and upon a sufficient showing of urgent necessity, "leave to sue" will issue forthwith upon the filing of showing and undertaking required by Sections 2 and 6, upon condition that the defendant may thereafter show cause and that the right of the relator to maintain and prosecute such proceeding shall be thereafter determined.
SECTION 11

In the event that the judgment of the trial court shall be adverse to the relator, no appeal therefrom shall be taken without first securing the approval of the Attorney General.
Proposed Relators JOHN RANDO and MARIANO A. RODAS have requested leave to sue Proposed Defendants FRANK QUINTERO and the CITY OF GLENDALE in quo warranto in order to seek Mr. Quintero’s removal from the public office of Glendale City Council member based on their contention that, under the terms of the Glendale City Charter, he is ineligible to hold that office.

CONCLUSION

Because it is not in the public interest to authorize the initiation of a quo warranto lawsuit under the present circumstances, leave to sue is DENIED.
ANALYSIS

Proposed Defendant the City of Glendale (City) operates under a charter (Charter) enacted in 1921.\(^1\) Proposed Defendant Frank Quintero is currently serving as a member of the Glendale City Council (City Council or Council). He was appointed to that office on April 23, 2013, shortly after completing his term as City Mayor, and his Council term is set to expire in June 2014. Proposed Relators John Rando and Mariano Rodas are residents of the City. They contend that Mr. Quintero’s appointment to the Council violated the terms of the City Charter, and that he is therefore ineligible to serve as a Council member. They now seek to remove Mr. Quintero from that public office via the proposed action in quo warranto, and they request that we grant them leave to do so. For the reasons that follow, we must decline this request.

Code of Civil Procedure section 803 provides in pertinent part:

An action may be brought by the attorney-general, in the name of the people of this state, upon his own information, or upon a complaint of a private party, against any person who usurps, intrudes into, or unlawfully holds or exercises any public office, civil or military, . . . , within this state.

An action filed under the terms of this statute is known as a “quo warranto” action. In its modern form, “the remedy of quo warranto belongs to the state, in its sovereign capacity, to protect the interests of the people as a whole and guard the public welfare,”\(^2\) and it is appropriately sought in a number of contexts. As relevant here, quo warranto is the proper remedy to “try title” to public office; that is, to evaluate whether a person has the right to hold a particular office by virtue of eligibility requirements, valid election procedures, the absence of disqualifying factors, etc.\(^4\)

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\(^1\) 1921 Stat. ch. 71 at 2204.


Where, as here, a private party seeks to file an action in quo warranto in superior court, that party must obtain the Attorney General’s consent to do so.\(^5\) In determining whether to grant that consent, often called “leave to sue,” we must decide whether the application presents a substantial issue of fact or law that warrants judicial resolution, and whether granting the application would serve the public interest.\(^6\) That said, we are accorded broad discretion in determining whether to grant or deny a quo warranto application, and the existence of a “debatable” issue or a legal dispute does not necessarily establish that the issue or dispute requires judicial resolution through the quo warranto procedure.\(^7\) Instead, the overall public interest is the guiding principle and paramount consideration in our exercise of discretion.\(^8\)

With these precepts in mind, we now turn to the facts and circumstances that gave rise to the present application. On April 2, 2013, the City held a municipal election. In this election, Council member Rafi Manoukian, who had 14 months left to serve on his term, was elected to the office of City Treasurer, resulting in a vacancy on the Council. Under Charter article VI, section 13, “any vacancy occurring in the council shall be filled by a majority vote of the remaining members of the council.”\(^9\) On April 15, 2013, Proposed Defendant Quintero completed his term as City Mayor. On April 23, 2013, the remaining members of the Council unanimously voted to appoint Mr. Quintero to the vacant Council position. The unexpired term to which he was appointed ends in June 2014.


\(^{9}\) This same provision states that if a vacant Council seat is not filled within 30 working days of the vacancy, then the Council “shall immediately call for a special election . . . for the purpose of filling such vacancy, . . . .”
Proposed Relators contend that Mr. Quintero’s appointment violated a provision contained in Charter article VI, section 12 that “[n]o former councilmember shall hold any compensated city office or city employment until two (2) years after leaving the office of councilmember.” They argue that, since former Mayor Quintero’s term, as both mayor and Council member, ended on April 15, 2013, this provision made him ineligible to hold the elective office of City Council member for a period of two years from that date, thereby rendering his recent appointment invalid. The City counters that the cited language does not cover—and was never intended to cover—the circumstances of Council member Quintero’s appointment.

The language relied upon by Proposed Relators is contained in Charter article VI, section 12 (hereafter section 12). That section is entitled “Councilmembers holding other city offices,” and provides as follows:

A councilmember shall not hold any other city office or city employment except as authorized by State law or ordinarily necessary in the performance of the duties as a councilmember. No former councilmember shall hold any compensated city office or city employment until two (2) years after leaving the office of councilmember.11

The section was amended to its current wording by City voters’ passage of an initiative measure known as “Proposition JJ” in an election held on November 2, 1982.

There is more than one way to read Section 12. One could read it, as Proposed Relators do, as imposing a two-year bar on holding any compensated position with the City whatsoever, including an elective office. Read this way, the provision’s effects would appear to include a kind of term-limiting function.12 On the other hand, because it does not refer at all to elections or terms of elective office, one could read it as applying

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10 Under the Charter, the Council chooses “one (1) of its members as presiding officer, to be called mayor.” Charter, art. VI, § 5, ¶ 4.

11 Previously (and from the time the Charter was first enacted), the section had been entitled “Councilmen ineligible to other city positions” and had read: “No members of the council shall be eligible to any office or employment, except an elected office, during a term for which he [sic] was elected.” See 1921 Stat. ch. 71 at 2215.

12 Typically, a hiatus period on holding (or returning to) public office is imposed as part of a term-limits measure. For example, another quo warranto matter brought before us involved a voter-enacted charter provision in the City of Cerritos that imposed a two-year hiatus before a termed-out council member would be once again eligible to serve on that city council. See 87 Ops.Cal.Atty.Gen. 176, 177 (2004).
to non-elective compensated offices and employments with the City. Read this way, the provision’s effects would appear to focus more on limiting a Council member’s opportunity to use his or her influence on the Council as a stepping-stone to future City employment.

Where, as here, we must interpret the language of a city charter ballot amendment, we employ the same rules that apply to any other voter-approved measure, such as a proposed constitutional amendment. Our central goal in construing ballot measures is to effectuate the intent of the electorat

e. To determine that intent, we look first to the words of the provision adopted; if the language used is clear and unambiguous, there is ordinarily no need for further construction. But where the text itself is not enough to resolve a legal question, we must look deeper to ascertain the voters’ intent. When it comes to ballot measures, a recognized indicator of voter intent is the official ballot pamphlet, which contains both the language of the measure as well as information and arguments advanced for and against its passage.

To begin with, we note that the City’s Charter does not impose any limits on the number of terms that a Council member may serve. In the absence of any such limits, section 12’s two-year proviso cannot serve any meaningful term-limiting purpose. At most, a Council member who fails to win re-election would have to wait two years before

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14 Woo, 83 Cal. App. 4th at 975; see also Lungren v. Deukmejian, 45 Cal. 3d 727, 735 (1988).

15 Woo, 83 Cal. App. 4th at 975.

16 Even in those instances where a literal meaning is discernible, or even apparent, the so-called “plain meaning” rule does not prohibit us from determining whether the literal meaning of a given provision comports with its purpose. See Cal. Sch. Employees Assn. v. Governing Bd., 8 Cal. 4th 333, 340 (1994); Lungren, 45 Cal. 3d at 735. Stated differently, where extrinsic evidence suggests a contrary intent, we may not simply adopt a literal construction and end our inquiry. See Mosk v. Super. Ct., 25 Cal. 3d 474, 495 n.18 (1979); Coburn v. Sievert, 133 Cal. App. 4th 1483, 1495 (2005).


18 Indeed, a measure imposing term limits on Council members was considered, but rejected, by the Council in 1996.
running and serving again, but there is nothing in the Charter to stop that person from serving for forty years in a row the first time, and forty years more the second time. This is not how term-limiting provisions generally work.

What, then, did the voters intend when they placed this proviso in section 12? Because the text itself does not provide a clear answer to the question, we must delve more deeply into the circumstances surrounding Section 12’s enactment. We find that, before 1982 (and since the Charter was adopted in 1921), section 12 was entitled “Councilmen ineligible to other city positions” and read as follows:

No members of the council shall be eligible to any office or employment, except an elected office, during a term for which he [sic] was elected.\footnote{19}

Section 12 was amended to its current wording when Proposition JJ was adopted by the voters in the November 1982 municipal election. The official ballot pamphlet from that election shows that the purpose of the amendment was to clarify (1) that sitting Council members could obtain or maintain outside employment while serving on the part-time Council, and (2) that the then-existing Charter provision only prohibited Council members from obtaining \textit{City} employment.\footnote{20} In addition, the proposed measure would extend the ban on obtaining other City employment for a period of two years after a Council member left office.

Thus, the ballot argument in favor of Proposition JJ stated:

This amendment clarifies the language in the present Charter which leaves in question the right of a councilperson to be employed while on the Council. It clearly states that a council member may not hold another City office \textit{nor may a council member use his influence to obtain employment with the City until two years after leaving his council office}.\footnote{21}

By contrast, nothing in the ballot pamphlet suggested that Proposition JJ would prohibit a former Council member from seeking \textit{elective} office for two years after leaving

\footnote{19}\textit{See} 1921 Stat. ch. 71 at 2215.

\footnote{20} As explained in the City Attorney’s Impartial Analysis of the measure, “The legal interpretation has been that [the former] section refers to City employment only, although strict construction would be otherwise.”

\footnote{21}Emphasis added.
Indeed, a two-year washout or hiatus period on holding elective office would appear misplaced in the absence of term limits. Rather, as the ballot argument urging Proposition JJ’s passage explains, the measure was intended to curb a former Council member’s “use of his [or her] influence to obtain employment with the City,” and the elective office of Council member is not the type of position that one can generally exert prestige or improper influence to obtain.23 Certainly, section 12, as amended by Proposition JJ, could have been worded more precisely. But reading the provision in the context of the Charter as a whole, and in light of the reasons given in the ballot pamphlet, all indications are that the provision was aimed at prohibiting (or rather, continuing to prohibit) a Council member from improperly using his or her influence to gain non-elective City employment.

We must also be cognizant that an individual’s eligibility to hold public office is a fundamental right of citizenship in California,24 which may not be “declared prohibited or curtailed except by plain provisions of law.”25 To that end, we must resolve any ambiguities “in favor of eligibility to office.”26 Under the circumstances, we believe that the hypothesized two-year ban on holding elective office would have to be stated much more explicitly for it to have effect.27

22 For example, the argument against Proposition JJ focused exclusively on the negative (from the writer’s point of view) impact that the measure would have by barring talented ex-Council members from obtaining non-elective employment with the City—e.g., “Couldn’t an attorney who has had four or more years on the council become a most valuable part of the legal department?”; “Couldn’t a doctor work for the public health as an employee?”

23 Of course, sitting Council members already have the position, and former Council members seeking to regain it would in almost all circumstances be required to submit their candidacy to the electorate for approval. And, while we acknowledge that the particular circumstances of this case—involving the filling of a suddenly vacant Council seat by Council appointment, rather than by the holding of a special election—did not call for Proposed Defendant Quintero to actually seek reelection, this does not alter our analysis of what the voters were presented with when they were asked to consider Proposition JJ.


26 Carter, 14 Cal. 2d at 182; see Younger, 71 Cal. App. 2d at 418.

27 E.g. 87 Ops.Cal.Atty.Gen. 176 (City of Cerritos term-limits charter provision). In denying the quo warranto application filed in this earlier case, we found that the charter
As is the case with most legal propositions, there is room for some debate here as to the proper interpretation of section 12. Upon examining the language at issue in its full context, however, we do not consider this question to be a close one, and we conclude that the overall public interest would not be furthered by burdening the courts, the parties, and the public with the proposed quo warranto action. As we have said, the mere existence of a “debatable” issue is not enough to establish that the issue requires judicial resolution through the quo warranto procedure.28 Our exercise of discretion “calls for care and delicacy,” and a private party who has merely raised a debatable issue is not entitled to pursue the debate in quo warranto proceedings where we determine that it would not serve the public interest.29 Finally, the fact that Mr. Quintero’s term will end in June 2014—for all practical purposes before judicial proceedings could conclude—only reinforces our conclusion that the public interest is best served here by denying leave to sue.30

Therefore, because it is not in the public interest to authorize the initiation of a quo warranto lawsuit under the present circumstances, leave to sue is DENIED.

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provision at issue was sufficiently clear to effectively impose a hiatus period on holding office. Invoking the rules of interpretation that favor the right to hold elective office, however, we interpreted the ban more narrowly (i.e., as having a duration of two years, rather than four) than the proposed relators had urged. Id.


29 City of Campbell, 197 Cal. App. 2d at 650 (“The exercise of the discretion of the Attorney General in the grant of such approval to sue calls for care and delicacy. Certainly the private party’s right to it cannot be absolute; the public interest prevails. The presence of an issue here does not abort the application of such discretion; the issue generates the discretion.”); see 86 Ops.Cal.Atty.Gen. at 79; 72 Ops.Cal.Atty.Gen. at 20; 67 Ops.Cal.Atty.Gen. at 153-154; see also City of Campbell, 197 Cal. App. 2d at 649 (challenge to Attorney General’s discretion in denying leave to sue must show that such discretion was abused in an “extreme and clearly indefensible manner”).

JOHN RANDO et al., Plaintiffs and Appellants, v. KAMALA D. HARRIS, as Attorney General, etc., Defendant and Respondent; FRANK QUINTERO, Real Party in Interest and Respondent.

B254060

COURT OF APPEAL OF CALIFORNIA, SECOND APPELLATE DISTRICT, DIVISION TWO

228 Cal. App. 4th 868; 175 Cal. Rptr. 3d 733; 2014 Cal. App. LEXIS 706

August 6, 2014, Opinion Filed

Request denied by Rando v. Harris, 2014 Cal. LEXIS 10887 (Cal., Nov. 25, 2014)

PRIOR HISTORY: [***1] APPEAL from a judgment of the Superior Court of Los Angeles County, No. BS145904, James C. Chalfant, Judge.

DISPOSITION: Affirmed.

SUMMARY:

CALIFORNIA OFFICIAL REPORTS SUMMARY

The trial court denied a petition for writ of mandate challenging the California Attorney General's determination that it was not in the public interest to authorize the initiation of a quo warranto action (Code Civ. Proc., § 803) regarding the appointment of a former member of a city council to fill a vacancy on the council. (Superior Court of Los Angeles County, No. BS145904, James C. Chalfant, Judge.)

The Court of Appeal affirmed, concluding that although the Attorney General acknowledged that a debatable issue existed as to whether a city charter provision barring former members of the city council from holding compensated positions reflected voter intent to enact term limits, the Attorney General retained discretion in determining whether to grant leave to sue in quo warranto and properly exercised that discretion in denying leave. The Attorney General did not actually resolve the merits but considered the ballot pamphlet and the absence of any express term limits provision in the charter as evidence of voter intent in deciding that the question of law was not substantial. (Opinion by Ferns, J.,* with Boren, P. J., and Ashmann-Gerst, J., concurring.)

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

HEADNOTES [*869]

CALIFORNIA OFFICIAL REPORTS HEADNOTES

(1) Quo Warranto § 2--Occasions for Use--Determining Right to Occupy Public Office. Quo warranto was a common law writ literally meaning "by what authority" was a public office held or claimed. The crown instituted a formal inquiry into whether a subject was exercising a privilege illegally or
had the right to occupy a public office. The quo warranto remedy is codified in Code Civ. Proc., § 803, and it is the specific action by which one challenges any person who usurps, intrudes into, or unlawfully holds or exercises any public office. It is the exclusive remedy in cases where it is available. Title to an office cannot be tried by mandamus, injunction, writ of certiorari, or petition for declaratory relief.

(2) Quo Warranto § 3--Procedure--Discretion of Attorney General--Debatable Issue.--The remedy of quo warranto can only be brought by the California Attorney General, on his or her own information or by the request of a private party. A quo warranto action must be brought when the Attorney General has reason to believe the conditions warranting the remedy exist or when directed to do so by the governor (Code Civ. Proc., § 803). Courts have construed that language to mean the Attorney General enjoys considerable discretion whether to bring any particular quo warranto action and may exercise that discretion to refuse to sue where the issue is debatable.

(3) Quo Warranto § 3--Procedure--Discretion of Attorney General--Mandamus Action Challenging Refusal.--The California Attorney General's discretion under Code Civ. Proc., § 803, is not wholly beyond the trial court's control. A trial court's power to compel the Attorney General to violate his or her own judgment by ordering the Attorney General to grant leave to commence a suit against his or her own conviction and conscientious belief that such leave should not be given should be exercised only where the abuse of discretion by the Attorney General in refusing the leave is extreme and clearly indefensible. An appellant may challenge the Attorney General's exercise of discretion via a writ of mandamus.

(4) Quo Warranto § 3--Procedure--Discretion of Attorney General--Debatable Issue.--Notwithstanding the requirement of Code Civ. Proc., § 803, that the California Attorney General must bring an action when she or he has reason to believe certain conditions exist, this language should not be construed to minimize the scope of the Attorney General's discretion. The "must" language in § 803 suggesting a mandatory duty is negated by the qualifying language "has reason to believe." Hence the [*870] Attorney General has discretion to refuse to sue where the issue is debatable. A debatable issue does not inevitably produce the quo warranto. Indeed, the Attorney General's exercise of discretion is posited upon the existence of a debatable issue. To hold that the mere presentation of an issue forecloses any exercise of discretion would mean, in effect, that the Attorney General could exercise no discretion. The crystallization of an issue thus does not preclude an exercise of discretion, it causes it. The exercise of the discretion of the Attorney General in the grant of such approval to sue calls for care and delicacy. Certainly the private party's right to it cannot be absolute; the public interest prevails.

(5) Quo Warranto § 3--Procedure--Discretion of Attorney General--Relevant Inquiries.--The existence of a legal dispute or justiciable issue does not invariably give the California Attorney General reason to believe that the conditions mandating a quo warranto action exist. Rather, the Attorney General retains discretion to evaluate the proposed action and address three relevant inquiries: (1) Is quo warranto the proper remedy to resolve the issues which are presented? (2) Has the proposed relator raised a substantial question of law or fact? (3) Would the public interest be served by judicial resolution of the question? It is well within the scope of the Attorney General's discretion to conclude that the presence of a debatable issue neither raises a substantial question of law or fact, nor establishes that the public interest would be served by judicial resolution.

(6) Quo Warranto § 3--Procedure--Discretion of Attorney General--Merits Not Resolved.--In determining whether to grant leave to sue in quo warranto, the California Attorney General does not attempt to resolve the merits of the controversy. Instead, he or she decides whether the application presents substantial issues of fact or law that warrant judicial resolution, and whether granting the application will serve the public interest.

(7) Statutes § 30--Construction--Language--Plain Meaning Rule--Exceptions.--The plain meaning rule does not require courts to automatically adopt the literal meaning of a statutory provision. For example, when a literal construction would frustrate the purpose of the statute, that construction is not adopted. Also, courts will not adopt a literal construction when it produces absurd consequences.

(8) Municipalities § 11--Charters--Interpretation--Voter Intent.--Voter intent is the paramount consideration in interpreting a charter provision. [*871]
Quo Warranto § 3--Procedure--Discretion of Attorney General--No Abuse of Discretion in Refusing Leave.--The California Attorney General acknowledged that a debatable issue existed as to whether a city charter provision barring former members of the city council from holding compensated positions reflected voter intent to enact term limits. But the Attorney General retains discretion whether to grant leave to sue in quo warranto where an issue is fair or debatable. Stated more generally, a decision will not be reversed for an abuse of discretion merely because reasonable people might disagree. There was no basis to conclude the Attorney General committed an extreme and indefensible abuse of discretion in determining the public interest would not be served by initiating a quo warranto action regarding a former member of the council who had been appointed to fill a vacancy on the council.


COUNSEL: Michel & Associates, C.D. Michel and Sean A. Brady for Plaintiffs and Appellants.

Kamala D. Harris, Attorney General, Douglas J. Woods, Assistant Attorney General, Mark R. Beckington and Susan K. Smith, Deputy Attorneys General, for Defendant and Respondent.

Michael J. Garcia and Andrew C. Rawcliffe for Real Party in Interest and Respondent.


* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

OPINION BY: Ferns, J.

FERNS, J.*--Real party in interest Frank Quintero (Quintero) was appointed to fill a vacant position on the city council for real party in interest the City of Glendale (City). Petitioners and appellants John Rando and Mariano Rodas thereafter submitted an application for leave to sue in quo warranto to respondent Kamala Harris, the Attorney General for the State of California (Attorney General). They argued Quintero's appointment violated the City [*872] charter. The Attorney General denied the application and the trial court denied appellants' ***2 petition for writ of mandate challenging that decision.

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

We affirm. The Attorney General did not abuse her discretion in determining that it was not in the public interest to authorize the initiation of a quo warranto action.

FACTUAL AND PROCEDURAL BACKGROUND

City of Glendale Governance.

The City is governed by a City charter (Charter). Article IV, section 3 of the Charter provides that City council members are compensated. Article VI of the Charter contains provisions regarding "[t]he Council Generally" and in section 13 specifies how a vacancy on the City council must be filled, providing, "[a]ny vacancy occurring in the council shall be filled by a majority vote of the remaining members of the council." The person appointed serves until the next local or statewide election, whichever is earlier. In the event an appointment is not made within 30 days of the vacancy, a special election must be held. In the same article, section 12 (Section 12), captioned "Councilmembers holding other city offices," provides: "A councilmember shall not hold any other city office or city employment except as authorized by State law or ordinarily necessary in the performance of the duties as a councilmember. No former councilmember shall hold any compensated city office or city employment ***3 until two (2) years after leaving the office of councilmember. (1982.)"

Prior to its 1982 enactment via proposed charter amendment JJ (Amendment JJ), Section 12 read: "No members of the council shall be eligible to any office or employment, except an elective office, during the term for which he was elected." The neutral analysis in the ballot pamphlet for Amendment JJ explained the amendment was designed to [**736] clarify that the ban on employment in Section 12 applied only to City employment--not to other outside employment. The argument in favor of the amendment similarly stated:
"This amendment clarifies the language in the present Charter which leaves in question the right of councilpersons to be employed while on the Council. It clearly states that a council member may not hold another City office nor may a council member use his influence to obtain employment with the City until two years after leaving his council office." The argument against the amendment emphasized the valuable experience a council member could provide to the City in other capacities, asserting as one example: "Couldn't an attorney who has had four or more years on the council become a most valuable part of the legal department? Perhaps even the manager?" [*873]

April 2013 Events.

On April [***4] 2, 2013, the City held its municipal elections, which included the election of a City treasurer and three City council members. The terms of Quintero and two other council members had expired, and Quintero did not run for reelection. After the election results were finalized on April 11, 2013, three new council members took office and Quintero's term of office ended. In the same election, sitting City council member Rafi Manoukian had run for City treasurer and won, thereby creating a vacancy on the City council. Pursuant to article VI, section 13 of the Charter, the City council appointed Quintero to serve the remainder of Manoukian's term, set to expire in June 2014.

Quo Warranto and Writ Proceedings.

Code of Civil Procedure1 section 803 provides: "An action may be brought by the attorney-general, in the name of the people of this state, upon his own information, or upon a complaint of a private party, against any person who usurps, intrudes into, or unlawfully holds or exercises any public office, civil or military ... within this state. And the attorney-general must bring the action, whenever he has reason to believe that any such office ... has been usurped, intruded into, or unlawfully held or exercised by any person, or when he is directed [***5] to do so by the governor." In May 2013, appellants, the proposed "relators" as members of the public and City residents, sought leave to sue in quo warranto and submitted their application to the Attorney General in accordance with section 803. (See Cal. Code Regs., tit. 11, §§ 1-11.) They argued that Quintero's appointment to the City council violated Section 12. As proposed defendants, the City and Quintero opposed the application.

1 Unless otherwise indicated, all further statutory references are to the Code of Civil Procedure.

The Attorney General issued an opinion (Opinion) in October 2013, denying leave to sue on the ground that it was "not in the public interest to authorize the initiation of a quo warranto lawsuit under the present circumstances." The Attorney General found the language of Section 12 ambiguous, reading it as either imposing a ban on any type of office and serving a term-limiting function, or applying to City employment and precluding a former council member from using his or her influence as a means to future City employment. In view of that ambiguity, the Attorney General turned to the electorate's intent in enacting Section 12 and concluded that "reading the provision in the context of the [***737] Charter as a whole, and in light of the [***6] reasons given in the ballot pamphlet, all indications are that the provision was aimed [*874] at prohibiting (or rather, continuing to prohibit) a Council member from improperly using his or her influence to gain non-elective City employment." Though the Attorney General acknowledged there was "room for some debate" concerning Section 12's interpretation, she concluded the case was not close and therefore burdening the courts with the proposed quo warranto action would not further the public interest.

In November 2013, appellants filed an ex parte application seeking an alternative writ of mandate and an order to show cause why a peremptory writ should not issue, arguing the Attorney General abused her discretion by deciding the merits of the quo warranto action and, alternatively, abused her discretion by ruling incorrectly. The Attorney General opposed the application. The trial court issued an alternative writ of mandate to expedite a hearing on an order to show cause why a peremptory writ of mandate should not issue. It also set a briefing schedule, and the Attorney General, the City and Quintero thereafter answered the petition and filed opposition papers.

The trial court heard the matter on January [***7] 7, 2014. At the beginning of the hearing, the trial court summarized the bases for its tentative ruling denying the writ of mandate. Rejecting the first of appellants' two arguments, it explained that the Attorney General was necessarily required to evaluate the merits of appellants' proposed action in order to determine whether their quo
warranto application raised a substantial question. With
respect to appellants' second argument, the trial court
explained that while the plain language of Section 12
could be read to support appellants' position, nothing in
the ballot materials supported the view that Section 12
precluded Quintero from holding the position of a City
council member less than two years after leaving office.
The trial court also considered that there was no public
purpose served by appellants' interpretation and that the
fundamental right to hold office may only be curtailed
when clearly specified. Accordingly, the trial court
reasoned that while appellants offered a plausible
interpretation of Section 12, the Attorney General did not
commit an extreme and indefensible abuse of discretion
in concluding that the public interest would not be served
by appellants' proposed action. At the conclusion [***8]
of the hearing, the trial court adopted the tentative ruling
denyng the writ of mandate as its final order.

Thereafter, the trial court entered judgment denying
the petition for writ of mandate. This appeal followed.

DISCUSSION

Appellants maintain that the trial court erred in
denying their petition for writ of mandate, arguing that
the trial court essentially provided the Attorney [*875]
General with unfettered discretion both to determine the
merits of their claim and, in turn, to make an incorrect
determination. We find no merit to their contentions.

I. General Principles Regarding Quo Warranto Actions
and the Standard of Review.

(1) Quo warranto was a common law writ literally
meaning "by what authority" was a public office held or
claimed. The crown instituted a formal inquiry into
whether a subject was exercising a privilege illegally or
had the right to occupy a public office. (International
Assn. of Fire Fighters v. City of Oakland (1985) 174
Cal.App.3d 687, 695 [220 Cal. Rptr. 256] (Fire
Fighters); accord, 8 Witkin, Cal. Procedure (5th ed.
2001) p. 1285, col. 2.) The quo warranto [***738]
remedy is currently codified in Section 803, and it is "the
specific action by which one challenges 'any person who
usurps, intrudes into, or unlawfully holds or exercises
[***9] any public office.' [Citation.] It is the exclusive
remedy in cases where it is available. [Citation.] Title to
an office cannot be tried by mandamus, injunction, writ
of certiorari, or petition for declaratory relief.

[ Citations. ] ( Nicolopoulos v. City of Lawndale (2001) 91
Cal.App.4th 1221, 1225-1226 [111 Cal. Rptr. 2d 420]
(Nicolopoulos).)

(2) The key to the remedy of quo warranto is that it
can only be brought by the Attorney General, on his or
her own information or by the request of a private party.
(Nicolopoulos, supra, 91 Cal.App.4th at p. 1228; Fire
Fighters, supra, 174 Cal.App.3d at p. 697.) A quo
warranto action "must" be brought when the Attorney
General "has reason to believe" the conditions warranting
the remedy exist or when directed to do so by the
governor. (§ 803.) Courts have construed that language
to mean the Attorney General enjoys considerable discretion
whether to bring any particular quo warranto action and
may exercise that discretion to "refuse to sue where the
issue is debatable." (Fire Fighters, supra, at p. 697; see
City of Campbell v. Mosk (1961) 174 Cal.App.2d 640,
650-651 [17 Cal. Rptr. 584].)

(3) The Attorney General's discretion under section
803 is not wholly beyond the trial court's control. As
explained in Lamb v. Webb (1907) 151 Cal. 451, 454 [91
P. 102], the trial court's power "to compel [the Attorney
General] to violate his own judgment by ordering him to
grant leave to commence a suit, against his own
conviction and conscientious belief that such leave
should not be given, should be exercised only [***10]
where the abuse of discretion by the attorney-general in
refusing the leave is extreme and clearly indefensible."
(Accord, City of Campbell v. Mosk, supra, 197
Cal.App.2d at p. 645 ["Appellant must demonstrate that
the Attorney General's refusal to sue was an extreme and
clearly indefensible abuse of his discretion."].) [*876]

An appellant may challenge the Attorney General's
exercise of discretion via a writ of mandamus. (Fire
Fighters, supra, 174 Cal.App.3d at p. 697; see Lamb v.
Webb, supra, 151 Cal. at p. 453.) Because "[t]he trial
court and appellate court perform the same function in a
traditional mandamus action, ... we therefore do not
undertake a review of the trial court's findings or
conclusions. [Citation.]" (Khan v. Los Angeles City
98, 105-106 [113 Cal. Rptr. 3d 417].) We consider the
record to determine whether appellants have met their
burden to show the Attorney General abused her
discretion--in other words, whether the "decision was
arbitrary, capricious, entirely lacking in evidentiary
support, unlawful, or procedurally unfair. [Citation.]."
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Khan v. Los Angeles City Employees' Retirement System, supra, 187 Cal.App.4th at p. 106.) To the extent the Attorney General's decision depended upon an interpretation of section 803, the decision raises a question of law that we review de novo. (California Correctional Peace Officers' Assn. v. State of California (2010) 181 Cal.App.4th 1454, 1460 [105 Cal. Rptr. 3d 566].)

II. The Attorney General and the Trial Court Properly Construed Code of Civil Procedure Section 803 to Afford Discretion to the Attorney General to Decline to Bring a Quo Warranto Action.

In the Opinion, the Attorney General [***11] set forth the principles governing her decision [**739] whether to grant leave to sue: "[W]e must decide whether the application presents a substantial issue of fact or law that warrants judicial resolution, and whether granting the application would serve the public interest. That said, we are accorded broad discretion in determining whether to grant or deny a quo warranto application, and the existence of a 'debatable' issue or a legal dispute does not necessarily establish that the issue or dispute requires judicial resolution through the quo warranto procedure. Instead, the overall public interest is the guiding principle and paramount consideration in our exercise of discretion." (Fns. omitted.)

Following an assessment of the facts and circumstances giving rise to appellants' application, the Attorney General concluded that while the application presented a debatable issue it did not present a substantial one. The Opinion concluded: "As is the case with most legal propositions, there is room for some debate here as to the proper interpretation of section 12. Upon examining the language at issue in its full context, however, we do not consider this question to be a close one, and we conclude that the [***12] overall public interest would not be furthered by burdening the courts, the parties, and the public with the proposed quo warranto action. ... [A] private party who has merely raised a debatable issue is not entitled to pursue the debate in quo warranto proceedings where we determine it would not serve the public interest." (Fns. omitted.) [*877]

In its order, the trial court outlined the Attorney General's obligations, explaining: "The test for quo warranto is whether there is a substantial issue of fact or law for a court to decide concerning the interpretation of section 12 after application of rules of construction, including the legal presumption in favor of Quintero's right to hold public office." The trial court expressly rejected appellants' assertion that the Attorney General's role was confined to weeding out frivolous or vexatious claims against public officials. Though it acknowledged case law confirming that one purpose of the application process was to prevent frivolous and vexatious prosecutions, the trial court explained that the quo warranto remedy "is vested in the People because disputes over title to public office are a public question of governmental legitimacy and not just a private [***13] quarrel among rival claimants." (See Nicolopulos, supra, 91 Cal.App.4th at p. 1228.) Accordingly, the trial court reasoned: "The requirement for leave to sue, therefore, is not just a procedural vehicle to weed out spurious claims. It also serves to authorize a private party to prosecute a lawsuit in the name of the People based on the public interest. The Attorney General must have reason to believe the private party is raising a substantial issue furthering the public interest before authorizing a lawsuit in the People's name."

We find no merit to appellants' assertion that the Attorney General's discretion is far more circumscribed than the trial court described and that, therefore, the Attorney General did not have discretion to deny their quo warranto application. Appellants emphasize that section 803 makes a distinction between situations where the Attorney General "may" bring an action (upon his or her own information or private party complaint) and where it "must" bring an action (when he or she has reason to believe an office is unlawfully held or when directed by the governor). (§ 803.) They further argue the "reason to believe" standard is low, requiring that the Attorney General must be deemed to have abused her discretion in failing [***14] to comply with section 803's mandatory directive because their application--at a minimum--provided a reason to believe that Quintero [***740] was holding office in violation of the Charter.

(4) Appellants' position finds no support in the law. Notwithstanding the statute's requirement that the Attorney General "must" bring an action when she has "reason to believe" certain conditions exist, the court in Fire Fighters, supra, 174 Cal.App.3d 687, determined that this language should not be construed to minimize the scope of the Attorney General's discretion. Fire Fighters highlighted the "must" language in section 803, but then explained, "this suggestion of a mandatory duty
is negated by the qualifying language ("has reason to believe"). Hence he has discretion to refuse to sue where the issue is debatable.' [Citation.] And while the subject has received but limited judicial attention, despite occasional suggestions that the court may intervene [*878] in the event of an extreme abuse of the Attorney General's discretion [citations], no such instance of mandamus issuing can be found." (174 Cal.App.3d at p. 697.)

Even earlier, the court in City of Campbell v. Mosk, supra, 197 Cal.App.2d at page 648, construed the statute in the same manner, explaining "that the last line of section 803, stating that 'the attorney-general must bring the action, whenever he has reason [***15] to believe' the usurpation has occurred, does not exclude the exercise of his discretion." The court further described the scope of the Attorney General's discretion, particularly where the proposed action raises merely a debatable issue: "We do not believe ... that the debatable issue inevitably produces the quo warranto. Indeed, the Attorney General's exercise of discretion is posited upon the existence of a debatable issue. To hold that the mere presentation of an issue forecloses any exercise of discretion would mean, in effect, that, contrary to the holding in the Lamb v. Webb (1907) 151 Cal. 451 case, the Attorney General could exercise no discretion. The crystallization of an issue thus does not preclude an exercise of his discretion; it causes it. [¶] ... [¶] The exercise of the discretion of the Attorney General in the grant of such approval to sue calls for care and delicacy. Certainly the private party's right to it cannot be absolute; the public interest prevails." (City of Campbell v. Mosk, supra, 197 Cal.App.2d at p. 650.)

In addition to this authority, multiple Attorney General opinions have emphasized the broad nature of the Attorney General's discretion in granting leave to bring a quo warranto action.2 (See, e.g., 86 Ops.Cal.Atty.Gen. 76, 80 (2003) ["the Attorney General need not automatically [***16] grant leave to file any kind of suit presented to him if he does not in the exercise of his discretion deem it a proper subject for litigation ...": 74 Ops.Cal.Atty.Gen. 31, 32 (1991) ["It is well settled that the mere existence of a justiciable issue does not establish that the public interest requires a judicial resolution of the dispute or that leave automatically should be granted for the relator to sue in quo warranto"]; 67 Ops.Cal.Atty.Gen. 151, 154 (1984) ["the mere existence of a legal dispute does not establish that the public interest requires a judicial resolution of the dispute or that leave automatically should be granted for the proposed relator to sue in quo warranto"]).

2 "Attorney General opinions are entitled to considerable weight." (Lexin v. Superior Court (2010) 47 Cal.4th 1050, 1087, fn. 17 [103 Cal. Rptr. 3d 767, 222 P.3d 214]; see California Assn. of Psychology Providers v. Rank (1990) 51 Cal.3d 1, 17 [270 Cal.Rptr. 796, 793 P.2d 2] ["Opinions of the Attorney General, while not binding, are entitled to great weight."]).

[**741] (5) Thus, contrary to appellants' argument, the existence of a legal dispute or justiciable issue does not invariably give the Attorney General "reason to believe" that the conditions mandating a quo warranto action exist. [*879] Rather, the Attorney General retains discretion to evaluate the proposed action and address three relevant inquiries: "1. Is quo warranto the proper remedy to resolve the issues which are presented? [***17] [¶] 2. Has the proposed relator raised a substantial question of law or fact? [¶] 3. Would the public interest be served by judicial resolution of the question?" (72 Ops.Cal.Atty.Gen. 15, 20 (1989).) It was well within the scope of the Attorney General's discretion to conclude that the presence of a debatable issue neither raised a substantial question of law or fact, nor established that the public interest would be served by judicial resolution.

III. The Attorney General Did Not Abuse Her Discretion in Declining to Bring a Quo Warranto Action.

Beyond challenging the scope of the Attorney General's discretion, appellants maintain the Attorney General abused her discretion by actually resolving the question of whether Quintero's appointment violated Section 12, and resolving it incorrectly. In the Opinion, the Attorney General outlined appellants' position that Quintero's appointment violated the provision that "No former councilmember shall hold any compensated city office or city employment until two (2) years after leaving the office of councilmember.' " The Opinion reasoned that this provision could be read more than one way. On one hand, it could be construed as encompassing any City position, including elective office, thereby [***18] operating as the functional equivalent of a term limit. Alternatively, it could be construed to apply to nonelective, compensated positions, thus limiting a former City councilmember from using his or her
influence as a means to gain City employment.

Applying established methods of statutory construction, the Opinion concluded that consideration of the Charter as a whole, ballot arguments for and against Amendment JJ, and the principle that limitations on the right to hold public office must be unambiguous together indicated "that the provision was aimed at prohibiting (or rather, continuing to prohibit) a Council member from improperly using his or her influence to gain non-elective City employment." Conceding that the proper interpretation of Section 12 was debatable, the Opinion concluded the issue was not substantial, nor would it serve the public interest to adjudicate the issue, particularly given that Quintero’s term was set to expire in June 2014.

(6) It is well established that in determining whether to grant leave to sue in quo warranto, the Attorney General does "not attempt to resolve the merits of the controversy. Instead, [he or she] decide[s] whether the application presents substantial issues [*880] of fact or law that warrant judicial resolution, and whether granting the application will serve the public interest." (95 Ops.Cal.Atty.Gen 50, 51 (2012).) Though appellants maintain that the Opinion’s examination of Section 12 was an improper resolution of the merits of [*880] the controversy, the trial court properly rejected that argument, stating: "[T]he Attorney General did not exceed or abuse her discretion by considering the merits of their claim. The Attorney General was required to decide whether the question of law was substantial, and was not required to grant leave to sue for a debatable proposition. Thus, she appropriately considered the merits in deciding whether the legal issue was sufficiently [*742] substantial for the court to decide." Indeed, Attorney General opinions involving whether leave to sue should be granted typically discuss the merits of the issue proposed for judicial action. (See, e.g., 95 Ops.Cal.Atty.Gen 77 (2012) [applying rules of construction and considering extrinsic evidence to determine the scope and meaning of the statutory term "policymaking management employee," and on that basis finding the relator had raised a substantial question]; 88 Ops.Cal.Atty.Gen. 25 (2005) [evaluating facts and construing Lab. Code, § 1150 to conclude the question [*20] whether individual forfeited his board position because he performed paid political consulting work during his term of office did not pose a substantial issue of fact or law].) Thus, the trial court properly concluded that the Attorney General had the discretion to utilize accepted principles of statutory construction to determine whether appellants had raised a substantial question mandating judicial resolution.

(7) The trial court likewise properly concluded that the Attorney General did not abuse her discretion by determining appellants had not raised a substantial issue. In their application for leave to sue in quo warranto, appellants urged that Section 12 barred Quintero’s appointment, while the City and Quintero asserted the provision was never intended to bar anything beyond City employment. On its face, the two-year ban in Section 12 applies to "any compensated city office or city employment ... ." While the Opinion concluded this provision was capable of more than one meaning, it also acknowledged the propriety of examining extrinsic evidence where a literal construction suggests a meaning different from what was intended. As recently summarized in Honchariw v. County of Stanislaus (2013) 218 Cal.App.4th 1019, 1027 [160 Cal. Rptr. 3d 609]: "The 'plain meaning' rule ... does not require [***21] courts to automatically adopt the literal meaning of a statutory provision. (Goodman v. Lozano (2010) 47 Cal.4th 1327, 1332 [104 Cal. Rptr. 3d 219, 223 P.3d 77].) For example, when a literal construction would frustrate the purpose of the statute, that construction is not adopted. (Arias v. Superior Court (2009) 46 Cal.4th 969, 979 [95 Cal. Rptr. 3d 568, 209 P.3d 923] [nonliteral construction of Prop. 64 adopted based on evidence of underlying purpose and voter intent]; See Bob Jones University v. United States (1983) 461 U.S. 574, 586 [76 L. Ed. 2d 157, 103 S. Ct. 2017] [a well-established canon of statutory construction provides that literal language should not defeat the plain purpose of the statute].) Also, courts will not adopt a literal construction when it produces absurd consequences. [Citations.]” (Accord, Woo v. Superior Court (2000) 83 Cal.App.4th 967, 975 [100 [*881] Cal. Rptr. 2d 156].) (8) Correspondingly, voter intent is the paramount consideration in interpreting a charter provision. (Arntz v. Superior Court (2010) 187 Cal.App.4th 1082, 1092 [114 Cal. Rptr. 3d 561]; Woo v. Superior Court, supra, 83 Cal.App.4th at p. 975.)

In line with these principles, the Opinion considered the Charter as a whole and reasoned that the absence of any express term limits provision militated against construing Section 12 as a term limit on City council members. The Opinion further found nothing in the ballot pamphlet suggesting the voters intended to enact
term [*743] limits. (See Silicon Valley Taxpayers' Assn. v. Garner (2013) 216 Cal.App.4th 402, 407-408 [156 Cal.Rptr.3d 703] [official ballot pamphlet's analyses and arguments may be considered to ascertain voter intent when the statutory language is unclear or to show an interpretation consistent with otherwise unambiguous statutory [*22] language].) To the contrary, the ballot pamphlet showed that Amendment JJ was intended to clarify that City council members could maintain outside employment--not City employment--during their term and to prevent City council members from using their influence to obtain City employment. Nothing in the ballot pamphlet suggested that Amendment JJ was intended to effect term limits; none of the arguments in favor of or in opposition to Amendment JJ addressed the question of term limits. (See Woo v. Superior Court, supra, 83 Cal.App.4th at pp. 977-978 [declining to adopt literal construction of a measure where there was no indication voters intended that construction].) Finally, the Opinion was guided by the principle “that the right to hold public office is a fundamental right of citizenship [citation] that can be curtailed only if the law clearly so provides [citations].” (Woo v. Superior Court, supra, at p. 977.)

3 Though the City and Quintero also offered evidence demonstrating that in 1996 the City council rejected a term limits measure, the Attorney General accorded little weight to this evidence. (See American Financial Services Assn. v. City of Oakland (2005) 34 Cal.4th 1239, 1261-1262 [23 Cal. Rptr. 3d 453, 104 P.3d 813] [the failure to enact a measure generally sheds little light on legislative intent].)

In finding the Attorney General did not commit an extreme [*23] and indefensible abuse of discretion, the trial court emphasized the extrinsic evidence uniformly showing the voters intended to address the issue of former council members obtaining City employment, as well as an individual's fundamental right to hold office. It concluded: "[Amendment] JJ was intended to prevent former council members from using their influence to obtain employment from the City. The extrinsic evidence shows that voters did not intend to impose a term limit on council members, and [appellants] have presented no rationale for why the voters would have wanted section 12 to ban former council members from running for elected office.” (Fn. omitted.)

(9) In asserting that the Attorney General abused her discretion by construing Section 12 so as not to bar Quintero's appointment, appellants [*882] point to reasons why an alternative construction should prevail, emphasizing that the phrase "city office" generally refers to elective and nonelective office throughout the Charter. The Attorney General acknowledged that appellants raised a debatable issue and that Amendment JJ "could have been worded more precisely"; the trial court likewise characterized appellants' argument as a "fair one." But as explained [*24] earlier, the Attorney General retains discretion whether to grant leave to sue in quo warranto where an issue is fair or debatable. (Fire Fighters, supra, 174 Cal.App.3d at p. 697; City of Campbell v. Mosk, supra, 197 Cal.App.2d at pp. 649-650.) Stated more generally, a decision will not be reversed for an abuse of discretion “merely because reasonable people might disagree.” (Gouskos v. Aptos Village Garage, Inc. (2001) 94 Cal.App.4th 754, 762 [114 Cal. Rptr. 2d 558]; see O'Donoghue v. Superior Court (2013) 219 Cal.App.4th 245, 269 [161 Cal. Rptr. 3d 609] ["That another court might reasonably have reached a different result on this issue, however, does not demonstrate an abuse of discretion.”].) We find no basis to conclude the Attorney General committed an extreme and indefensible abuse of discretion in determining the public interest would not be served by initiating a quo warranto action in this matter. (See Lamb v. Webb, supra, 151 Cal. at p. 545.)

DISPOSITION

The judgment is affirmed. The City and Quintero are entitled to their costs on appeal.


On August 21, 2014, the opinion was modified to read as printed above.