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OPINION	:	No. 02-604
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of	:	October 3, 2002
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THE CALIFORNIA NATIONAL GUARD has requested an opinion on the following question:

Are members of the California National Guard required to satisfactorily complete an introductory course of training prescribed by the Commission on Peace Officer Standards and Training before they may exercise the powers of peace officers when called into emergency state service by the Governor?

CONCLUSION

Members of the California National Guard are required to satisfactorily complete an introductory course of training prescribed by the Commission on Peace Officer Standards and Training before they may exercise the powers of peace officers when called into emergency state services by the Governor.

## ANALYSIS

The question presented for analysis concerns California National Guard members who are “peace officers”<sup>1</sup> when called into emergency state service by the Governor. May such Guard members exercise peace officer powers without first completing an introductory course of training prescribed by the Commission on Peace Officer Standards and Training (“Commission”)? We conclude that completion of the course of training is required.

The California National Guard is part of the active militia of the state. (Mil. & Vet. Code, § 120.) The Governor, by virtue of his office, is the commander in chief of the militia. (Mil. & Vet. Code, § 140.) Guard members are designated “peace officers” and granted “the powers of peace officers” under the circumstances described in Penal Code section 830.4,<sup>2</sup> which states:

“The following persons are peace officers whose authority extends to any place in the state for the purpose of performing their duties under the conditions as specified by statute. Those peace officers may carry firearms only if authorized and under terms and conditions specified by their employing agency.

“(a) Members of the California National Guard have the powers of peace officers when they are involved in any or all of the following:

“(1) Called or ordered into active state service by the Governor pursuant to the provisions of Section 143 or 146 of the Military and Veterans Code.

“(2) Serving within the area wherein military assistance is required.

“(3) Directly assisting civil authorities in any of the situations specified in Section 143 or 146.

“The authority of the peace officer under this subdivision extends to the area wherein military assistance is required as to a public offense committed or which there is reasonable cause to believe has been committed within that

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<sup>1</sup> The term “peace officer” embraces numerous specific classifications of public officers having law enforcement powers and responsibilities. (85 Ops.Cal.Atty.Gen. 68, 70 (2002).)

<sup>2</sup> All further statutory references are to the Penal Code unless otherwise indicated.

area. The requirements of Section 1031 of the Government Code are not applicable under those circumstances.

“.....”

Military and Veterans Code sections 143 and 146 concern various emergency conditions that permit the Governor to call out the militia. Military and Veterans Code section 143 states:

“Whenever the Governor is satisfied that rebellion, insurrection, tumult or riot exists in any part of the state or that the execution of civil or criminal process has been forcibly resisted by bodies of persons, or that any conspiracy or combination exists to resist by force the execution of process, or that the officers of any county or city are unable or have failed for any reason to enforce the laws, the Governor may, by proclamation, declare any part of the State of California or the county or city or any portion thereof to be in a state of insurrection, and he or she may thereupon order into the service of the state any number and description of the active militia, or unorganized militia, as he or she deems necessary, to serve for a term and under the command of any officer as he or she directs.”

Military and Veterans Code section 146 provides:

“The Governor may call into active service any portion of the active militia as may be necessary, and if the number available be insufficient, the Governor may call into active service any portion of the unorganized militia as may be necessary, in any of the following events:

“(a) In case of war, insurrection, rebellion, invasion, tumult, riot, breach of the peace, public calamity or catastrophe, including, but not limited to, catastrophic fires, or other emergency, or imminent danger thereof, or resistance to the laws of this state or the United States.

“(b) Upon call or requisition of the President of the United States.

“(c) Upon call of any United States marshal in California, or upon call of any officer of the United States Army commanding an army, army area, or military administrative or tactical command including generally the State of California, or upon call of any officer of the United States Air Force commanding an air force, air defense force, air defense command or air command including generally the State of California.

“(d) Upon call of the chief executive officer of any city or city and

county, or of any justice of the Supreme Court, or of any judge of the superior court, or of any sheriff, setting forth that there is an unlawful or riotous assembly with intent to commit a felony, or to offer violence to person or property, or to resist the laws of the State of California or the United States or that there has occurred a public calamity or catastrophe requiring aid to the civil authorities.

“(e) Upon call of the sheriff setting forth that the civil power of the county is not sufficient to enable the sheriff to execute process delivered to him or her.”

Government Code section 1031, also referenced in section 830.4, sets forth certain minimum standards for persons designated as peace officers:

“Each class of public officers or employees declared by law to be peace officers shall meet all of the following minimum standards:

“(a) Be a citizen of the United States or a permanent resident alien who is eligible for and has applied for citizenship, except as provided in Section 2267 of the Vehicle Code.

“(b) Be at least 18 years of age.

“(c) Be fingerprinted for purposes of search of local, state, and national fingerprint files to disclose any criminal record.

“(d) Be of good moral character, as determined by a thorough background investigation.

“(e) Be a high school graduate, pass the General Education Development Test indicating high school graduation level, pass the California High School Proficiency Examination, or have attained a two-year or four-year degree from an accredited college or university. . . .

“(f) Be found to be free from any physical, emotional, or mental condition which might adversely affect the exercise of the powers of a peace officer. . . .

“This section shall not be construed to preclude the adoption of additional higher standards, including age.”

Members of the National Guard are exempt from the statutory prohibitions

against carrying a concealed weapon (§ 12027, subd. (c)) and carrying a loaded firearm in a vehicle or public place (§ 12031, subd. (b)(4)), both of which exemptions are also applicable to peace officers. As peace officers, members of the National Guard may exercise the full powers of arrest (§ 836), use reasonable force to effect arrests (§ 835, subd. (a)), carry out searches and seizures incident to a custodial and lawful arrest (*U.S. v. Mota* (9th Cir. 1993) 982 F.2d 1384), serve search warrants (§§ 1528-1530), close areas in a disaster or other emergency (§ 409.5; 67 Ops.Cal.Atty.Gen 535 (1984)) and operate emergency vehicles (Veh. Code, § 21055). (See 80 Ops.Cal.Atty.Gen. 293, 295-296 (1997).)

While section 830.4 grants National Guard members “the powers of peace officers,” section 832 provides:

“(a) Every person described in [sections 830-832.9] as a peace officer shall satisfactorily complete an introductory course of training prescribed by the Commission on Peace Officer Standards and Training. . . .

“(b)(1) Every peace officer described in this chapter, prior to the exercise of the powers of a peace officer, shall have satisfactorily completed the course of training described in subdivision (a).

“.....

“(c) Persons described in this chapter as peace officers who have not satisfactorily completed the course described in subdivision (a), as specified in subdivision (b), shall not have the powers of a peace officer until they satisfactorily complete the course.

“.....”

As specified in section 830.4, a member of the National Guard, when called into service by the Governor pursuant to Military and Veterans Code sections 143 or 146, is a “person described in this chapter as a peace officer.” (§ 832, subd. (a).) However, subdivision (a) of section 830.4, when granting “the powers of peace officers” to Guard members, does not mention the training requirements of section 832. How are these two statutes to be reconciled?

The Commission sets minimum standards for the selection and training of peace officers (§ 13510), among its various duties. (See 80 Ops.Cal.Atty.Gen., *supra*, at pp. 294-295; 76 Ops.Cal.Atty.Gen. 270, 271 (1993).) Certain peace officers are required to take only an introductory course of training in order to exercise peace officer powers.

(§ 832, subd. (b)(1); 80 Ops.Cal.Atty.Gen., *supra*, at p. 294.) The introductory training course totals 64 hours and primarily covers arrest and firearms training. (Cal. Code Regs., tit. 11, § 1081.) It is this introductory course that National Guard members would be required to complete if they are found to be subject to the terms of section 832.

May a person be designated a peace officer but not have peace officer powers? In 80 Ops.Cal.Atty.Gen. 293, *supra*, we addressed that question and concluded that if a police officer or deputy sheriff failed to complete the training prescribed by the Commission, such officer, although still “designated” as a peace officer, could not exercise peace officer powers, such as the powers of arrest, serving warrants, and carrying concealed weapons without a permit. (*Id.* at p. 297.) We found that the relevant training requirements were limitations placed upon the exercise of peace officer powers even though the officers would retain their “status” as peace officers. (*Ibid.*)

Here, members of the National Guard are designated as peace officers under certain circumstances (§ 830.4, subd. (a)), but to exercise peace officer powers, they must comply with the training requirements of section 832, subdivision (b)(1). We are to harmonize related statutes, giving effect to each if possible. “ ‘A statute must be construed “in the context of the entire statutory system of which it is a part, in order to achieve harmony among the parts.” [Citation.]’ [Citation.]” (*People v. Hull* (1991) 1 Cal.4th 266, 272.) “ ‘[S]tatutes or statutory sections relating to the same subject must be harmonized, both internally and with each other, to the extent possible. [Citation.]’ ” (*Walnut Creek Manor v. Fair Employment & Housing Com.* (1991) 54 Cal.3d 245, 268.)

The fact that section 830.4 grants peace officer powers to National Guard members does not abrogate the training requirements specified in section 832. Compliance with the conditions of section 830.4 and the requirements of section 832 effectuates the purposes of each.

Nothing in the legislative histories of sections 830.4 (see Stats. 1996, ch. 305, § 50; Stats. 1989, ch. 1165, § 32) and 832 (see Stats. 1994, ch. 43, § 1; Stats. 1991, ch. 509, § 2) supports a different construction of the two statutes. Indeed, we note that section 830.4, subdivision (a) exempts National Guard members from the requirements of Government Code section 1031. We are not free to add another exemption regarding “the requirements of section 832.” (See *Wells Fargo Bank v. Superior Court* (1991) 53 Cal.3d 1082, 1097 [“ ‘courts are no more at liberty to add provisions to what is therein declared in definite language than they are to disregard any of its express provisions’ ”]; 85 Ops.Cal.Atty.Gen., *supra*, at p. 73; 83 Ops.Cal.Atty.Gen. 111, 115 (2000).) If the Legislature chooses to exempt National Guard members from the Commission’s basic training standards, it knows how to do so. (See *Safer v. Superior Court* (1975) 15 Cal.3d 230, 236-238; *Board of Trustees v. Judge* (1975) 50 Cal.App.3d 920, 927.) For example, while designating certain Oregon, Nevada and Arizona officers as “a peace officer in this state” under specified conditions

(§ 830.39, subd. (a)), the Legislature has deemed these officers to have met the Commission's training requirements "if the officer has completed the basic training required for peace officers in his or her state" (§ 830.9, subd. (c)).<sup>3</sup> No similar exemption is granted to California National Guard members.

Finally, our construction of the requirements of section 832 in connection with the granting of peace officer powers in section 830.4 is consistent with the longstanding administrative construction of the two statutes by the Commission. "Unless unreasonable, or clearly contrary to the statutory language or purpose, the consistent construction of a statute by an agency charged with responsibility for its implementation is entitled to great deference." (*Dix v. Superior Court* (1991) 53 Cal.3d 442, 460; see *People ex rel. Lungren v. Superior Court* (1996) 14 Cal.4th 294, 309; 83 Ops.Cal.Atty.Gen. 40, 44 (2000); 80 Ops.Cal.Atty.Gen. 322, 326-327 (1997).)

We conclude that members of the California National Guard are required to satisfactorily complete an introductory course of training prescribed by the Commission before they may exercise the powers of peace officers when called into emergency state service by the Governor.

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<sup>3</sup> The Legislature has granted peace officers powers to certain persons without designating them as peace officers. (See e.g., § 830.8, subd. (a) ["Federal criminal investigators and law enforcement officers are not California peace officers, but may exercise the powers of arrest of a peace officer . . ."].) Such persons would not be subject to the training requirements of section 832 as "peace officers"; however, they may still be required to complete the course of training before exercising peace officer powers. (See §§ 830.8, subd. (a) ["These investigators and law enforcement officers, prior to the exercise of these arrest powers, shall have been certified by their agency heads as having satisfied the training requirements of Section 832, or the equivalent thereof"], 830.9 ["Animal control officers are not peace officers but may exercise the powers of arrest of a peace officer . . . if those officers successfully complete a course of training in the exercise of those powers pursuant to Section 832"].)