THE CALIFORNIA MOTOR VEHICLE POLLUTION CONTROL LAW

Air pollution was recognized as a proper subject for government control as early as medieval times.¹ However, only since the advent of the motor vehicle has the problem assumed major importance. Since the turn of the century, the constantly growing number of motor vehicles has combined with other sources² of pollutants to create an ever increasing air pollution problem.

Many research groups over the past fifteen years have established the motor vehicle as a major cause of air pollution in those areas having a plethora of vehicles and an abundance of sunlight. Representative, and especially germane here, are the findings of the Air Pollution Foundation of Los Angeles, California. Based primarily on research in the Los Angeles area, these findings clearly show that motor vehicles are a major cause of air pollution in those areas of Los Angeles County plagued with the problem. In discussing the production in Los Angeles of "photochemical" smog, which results from a reaction of organic matter and nitrogen oxides in the presence of sunlight, the Foundation stated that once

organic matter and nitrogen oxides were proved to be the principal contributors to photochemical smog it became clear that automobile exhaust was a major suspect. Some of the evidence supporting this conclusion was obtained from the following studies: the chemical composition of automobile exhaust, comparison of the estimated quantities of pollutants emitted by automobiles with those measured in the atmosphere, distribution of traffic as compared with the distribution of smog effects, wind trajectory studies, and photochemical studies with automobile exhaust to produce smog effects.³

The Foundation concludes that "in Los Angeles, automobile exhaust is now the principal source of air pollutants that lead to smog. All of the factors known to contribute to smog, including the composition, amount, distribution, and reactions of automobile exhaust, support this conclusion."⁴ W. L. Faith of the Los Angeles Air Pollution Foundation sums up the role of the motor vehicle in smog formation by saying "no matter how you define it or which smog manifestation bothers you, you can find a relationship between smog and some constituent of auto exhaust."⁵

Although the above conclusions were based primarily on research and study in the Los Angeles area, the Foundation also concluded that "as car population increases, other areas with similar meteorological conditions, e.g., San Francisco and San Diego, are experiencing this type of smog more often."⁶ The key factors in the production of smog are stated to be "the combination of prolonged atmospheric inversion, weak winds, and strong sunlight. These are the factors that contribute to the San Francisco and San Diego problems."⁷ The inescapable con-

¹ Kennedy & Porter, *Air Pollution: Its Control and Abatement*, 8 VAND. L. REV. 854 (1954).

² E.g., factory smoke stacks and incinerators.

³ Faith, *Auto Exhaust and Smog Formation*, in Report No. 21, Air Pollution Foundation, Los Angeles, Vol. 2, No. 9, p. 7 (1957).

⁴ *Id.* at 15.

⁵ Faith, *The Role of Motor Vehicle Exhaust in Smog Formation*, 7 J. OF THE AIR POLLUTION CONTROL A. 219 (1957). Mr. Faith points out that it is well accepted that the constituents of automobile exhaust create an odor, are toxic and therefore a health hazard, and can produce eye irritation, damage vegetation, restrict visibility, and irritate the lungs.

⁶ *Id.* at 220.

⁷ *Ibid.*

clusion appears that motor vehicles are a substantial source of pollutants in all areas of California where air pollution is a problem.

It is clear that the state may properly exercise its police power to deal with the air pollution problem.⁸ Although no cases have been found holding it a valid exercise of the police power to control motor vehicles as a source of air pollutants by requiring the installation of a control device, it appears the cases dealing with the elasticity of the police power⁹ are a sound legal basis for such a control statute.¹⁰

THE CALIFORNIA MOTOR VEHICLE POLLUTION CONTROL LAW

A. General

In 1960, the California legislature, recognizing that "the emission of pollutants from motor vehicles is a major contributor to air pollution in many portions of the state,"¹¹ enacted sections 24378 through 24398 of the Health and Safety Code. In general, the new statute provides for a Motor Vehicle Pollution Control Board, which is to carry out the duties conferred upon it by the Motor Vehicle Pollution Control statute. The board's key function is the granting of certificates of approval for any motor vehicle pollution control device that keeps the emissions of contaminants from motor vehicles within the standards set¹² and meets the criteria adopted by the board for approval of such a device.¹³ Once the board has issued

⁸ "Legislation designed to free from pollution the very air that people breathe clearly falls within the exercise of even the most traditional concept of what is compendiously known as the police power." *Huron Portland Cement Co. v. City of Detroit*, 362 U.S. 440, 442 (1960). That air pollution is peculiarly a local problem is brought out by the *Huron* case. See also 69 Stat. 322 (1955), 42 U.S.C. § 1857 (1957), where Congress recognizes "the primary responsibilities and rights of the states and local governments in controlling air pollution."

⁹ See, e.g., *Miller v. Board of Pub. Works of the City of Los Angeles*, 195 Cal. 477, 234 Pac. 381 (1925). The court here makes it clear that the police power is not an inelastic power, but rather that as a state "develops politically, economically, and socially, the police power likewise develops, within reason, to meet the changed and changing conditions." *Id.* at 484, 234 Pac. at 383.

¹⁰ In spite of the admitted elasticity of the police power, it is clear such power cannot be exercised arbitrarily or unreasonably. See, e.g., *Laurel Hill Cemetery v. City & County of San Francisco*, 152 Cal. 464, 93 Pac. 70 (1907). Furthermore, though the legislature's determination of what is a proper exercise of the police power is entitled to every presumption in favor of validity, such determination is always subject to review by the courts. See, e.g., *Lawton v. Steele*, 152 U.S. 133, 137 (1894); *Natural Milk Producers Ass'n of California v. City & County of San Francisco*, 20 Cal. 2d 101, 124 P.2d 25 (1942). If motor vehicles do contribute a substantial amount of pollutants toward the pollution problem wherever such problem exists, it is highly doubtful that the legislative exercise of discretion could be held clearly and palpably wrong or arbitrarily or unreasonably exercised. *Cf.* *Huron Portland Cement Co. v. City of Detroit*, note 8 *supra*.

¹¹ CAL. HEALTH & SAFETY CODE § 24378(a).

¹² CAL. HEALTH & SAFETY CODE § 426.5 makes it the duty of the California Director of Public Health to determine the maximum allowable standards of emission of exhaust contaminants from motor vehicles. CALIFORNIA ADMINISTRATIVE CODE § 30520, tit. 17, ch. 5, subch. 5, art. 2 sets the standards for hydrocarbons as 275 parts per million by volume as hexane (0.165 mole % carbon atoms) and for carbon monoxide 1.5% by volume.

¹³ CAL. HEALTH & SAFETY CODE § 24386(3) calls for the Control Board to determine and publish the criteria for approval of devices. In determining the criteria the board is required to take into consideration the cost of the device and its installation, its durability, the ease and facility of determining whether an installed device is properly functioning, and any other factors deemed to make the device suitable or unsuitable for the control of vehicular pollution or for the health, safety, and welfare of the public.

certificates of approval for two or more devices it is to notify the Department of Motor Vehicles; the date it so notifies the Department is called the certification date, and it is this date that controls the times for installation of certified devices on motor vehicles. Once the certification date is established, sections 24390 through 24393 of the act require installation of certified devices as a condition precedent to registration of a motor vehicle. Section 24390 states that no new motor vehicle¹⁴ shall be registered in the state one year after the certification date unless equipped with a certified device; section 24391 requires a certified device in order to register a used motor vehicle upon transfer by a registered owner¹⁵ one year after the certification date. However, installation is required only if the principal vehicle location¹⁶ is a county or portion of a county where the provisions of the section are operative¹⁷ under the local option provision of section 24394. Section 24392 imposes the same requirement as section 24391 when an owner seeks to register a used commercial motor vehicle after the second December 31 next following the certification date; section 24393 is the all-inclusive section and states that no motor vehicle (without qualification) is to be registered after the third December 31 next following the certification date when the principal vehicle location is a county or portion of a county where the "used" provisions of the act are operative. Thus, it is apparent that once there is a certified device

¹⁴ The Vehicle Code defines a used motor vehicle as one that has been previously registered with the California Department of Motor Vehicles or that has been registered with the department or agency of another state.

¹⁵ Section 24391 requires a device on a used motor vehicle upon transfer by a registered owner only, thereby exempting a used car owner who merely re-registers his used vehicle yearly. However, such an owner would still be required to comply with § 24393 and install a certified device by the third December 31 following the certification date.

¹⁶ Section 24389(b) states:

As used in this article "principal vehicle location" means (1) for passenger vehicles owned by a person (as distinguished from a firm, copartnership, association, or corporation), the county in which the owner resides; (2) for commercial vehicles, and passenger vehicles registered in the name of a firm, copartnership, association, or corporation (as distinguished from a person), that county or counties in which the vehicle will be operated during the greatest portion of time during the period for which registered. If the vehicle referred to in subdivision (2) of subsection (b) operates the greatest portion of time in more than one county in which the provisions of Sections 24391, 24392, and 24393 are operative, the principal vehicle location shall be designated as one of the counties in which the provisions of Sections 24391, 24392 and 24393 are operative.

Section 24389(c) states:

Where only a portion of a county is located within an air pollution control district of the class described in subdivision (b) of section 24394 and where Sections 24391, 24392 and 24393 are operative in only one portion of the county, the principal vehicle location shall be determined with respect to the portion of the county in which the owner resides or in which the vehicle is operated, respectively.

¹⁷ Subsections 24394(a) and (c) provide that the board of supervisors of a county which is not, in whole or in part, included within the boundaries of an air pollution control district, or of a county of which only a portion is located within an air pollution control district, may decide, after determining the existence and extent of air pollution, "that the provisions of Sections 24391, 24392 and 24393 are unnecessary for the accomplishment of the purposes of this chapter and that those sections shall not be operative within that county . . ." or "portion of the county not included in the air pollution control district." Subsection 24394(b) provides for the same suspension of the statutory sections on a districtwide basis, with the governing body of the air pollution control district making the determination that the provisions of sections 24391, 24392, and 24393 are unnecessary.

available, no motor vehicle which does not have the device installed will be registered after three years and new vehicles must have it in one year. However, if the appropriate local governing body determines that sections 24391, 24392, and 24393 are not necessary to accomplish the purpose of the statute,¹⁸ then only new motor vehicles¹⁹ will be required to have a certified device installed²⁰ and used vehicles will escape coverage entirely.

B. Possible Problems Under the California Law

1. Constitutional Problems

The new statutes are likely to raise certain constitutional problems; it appears, however, that they can be resolved in favor of the act.

The "new only required to have" aspect of the statute may create an equal protection problem, giving rise to the claim that the statute is unconstitutional when applied in areas that choose to suspend the "used provisions."²¹ The question would be whether this division into "new" and "used" motor vehicles²² is a reasonable classification.²³ The legislature is not bound, in order to make its action valid, to extend its regulation to all cases it might possibly reach, but may confine its restrictions to those classes of cases where "the need is deemed to be clearest."²⁴ However, it is questionable whether new motor vehicles fall within the area most clearly needing control.²⁵

Generally speaking, a new vehicle will be much less a contributor to the air

¹⁸ It is clear that the "unnecessary for accomplishment" determination would mean that the provisions of all three sections (24391, 24392, and 24393) would be inoperative. The statute expressly states "the provisions of sections 24391, 24392 and 24393" (emphasis added), in the conjunctive, and therefore the determination of lack of necessity means that only new motor vehicles will be required to have a certified device installed for registration. Hereafter the term "used provisions" will be used to refer to sections 24391, 24392, and 24393.

¹⁹ This of necessity follows since § 24390 specifically covers only new motor vehicles and is the only section exempted from the suspension to be brought about by the local governing body's determination of lack of necessity.

²⁰ Of necessity a great deal of this Comment must be framed in speculative terms. Changes to the statute may be made prior to a certification date eliminating possible problems. No cases have been decided that deal with the statute.

²¹ A further problem may exist in those areas that suspend the three appropriate sections if it is also unnecessary for a device to be installed in new motor vehicles. If new vehicles are required to have the device even though there is no air pollution problem, *e.g.*, in one of the mountainous, sparsely populated counties, is this a valid statutory requirement? Can the legislature require a vehicle owner to spend an additional sum of money for a device which apparently serves no useful purpose? The likelihood that the vehicle will be used elsewhere will probably justify this portion of the act. See text at notes 33-34 *infra*, and note 25 *infra*.

²² Practically speaking this is the result since sections 24391, 24392, and 24393 can be suspended. See note 18 *supra*.

²³ It would appear that there is no problem of equal protection insofar as residents and non-residents are concerned. The statute makes no distinction between residents and non-residents seeking to register a motor vehicle. Both classes will be required to install certified devices in order to register their motor vehicles.

²⁴ *People v. International Steel Corp.*, 102 Cal. App. 2d Supp. 935, 941, 226 P.2d 587, 591 (1951). See *Miller v. Wilson*, 236 U.S. 373, 384 (1915). "If the law presumably hits the evil where it is most felt, it is not to be overthrown because there are other instances to which it might have been applied."

²⁵ If all new vehicles were required to have a device installed, perhaps eventually all vehicles would have a device installed, assuming the device outlasts the vehicle and that all used vehicles at some time were no longer registered. If a device only lasted one year, a new vehicle being re-registered after the year, no longer being within the new vehicle definition, could be registered without a device if only § 24390 were effective. See notes 12 and 13 *supra*.

pollution problem than a used vehicle, for new motor vehicles perform more efficiently than older ones.²⁶ Of course "used motor vehicle" is given its Vehicle Code meaning, *i.e.*, a vehicle which has been previously registered with the California Department of Motor Vehicles or the department or agency of another state; but usually a "used motor vehicle" will be an older vehicle, which performs less efficiently and therefore contributes more toward polluting the air.

The cases also speak of a classification being valid if it has a "substantial relation to a legitimate object to be accomplished . . .".²⁷ This apparently means that the classification is valid if it has a substantial relation to the statutory purpose of eliminating the evil where it is clearest.²⁸ Under such construction of the substantial relation test, the classification of new and used is arguably valid only if it is beyond question that new vehicles are the primary source of pollutants.²⁹ However, it is often remarked that a classification will be upheld if it substantially contributes toward accomplishing the statutory purpose.³⁰ If this is so, then it seems that the classification at hand is valid, for its end result is to aid in reduction of the pollutants from motor vehicles; new motor vehicles are admittedly a substantial source of pollutants.³¹

The soundest argument in favor of the classification is that it is an easier and less expensive process to install the device on new vehicles.³² The classification therefore is the most practical means of striking at the evil,³³ even though it is

²⁶ The Air Pollution Foundation of Los Angeles in its Report Number 21, Volume 2, Number 9, in an article entitled "Auto Exhaust and Smog Formation," reports that exhaust smoke, carbon monoxide, and hydrocarbon are due largely to improper engine maintenance. Research indicated cars over five years old contributed twice as much hydrocarbon to the atmosphere as those less than five years old. It seems clear that used motor vehicles are generally going to be larger contributors of pollutants to the air than new vehicles, unless maintained in new condition. To hope for such maintenance of used vehicle owners is hardly realistic.

²⁷ *Dribin v. Superior Court*, 37 Cal. 2d 345, at 352, 231 P.2d 809, at 813 (1951), quoting from *Leland v. Lowery*, 26 Cal. 2d 224, 232, 157 P.2d 639, 645 (1945).

²⁸ See *T. E. Connolly, Inc. v. State*, 72 Cal. App. 2d 145, 164 P.2d 60 (1945), where a statute to protect roads from excessive weight-load damage validly classified vehicles by exempting from registration oversize vehicles merely crossing roads to get from one property to another, while requiring registration of similar vehicles traveling unlimited distances over the roads. See also *People v. International Steel Corp.*, 102 Cal. App. 2d Supp. 935, 226 P.2d 587 (1951), where a statute to reduce air pollution validly classified by exempting those contaminant discharges below the stated limit as well as agricultural operations and orchard heating.

²⁹ Although no statistics are cited, it seems an obvious fact, easily ascertainable by mere observation of the traffic on any road, that used motor vehicles predominate in all areas of the state.

³⁰ *E.g.*, *Railway Express Agency, Inc. v. New York*, 336 U.S. 106 (1949).

³¹ It appears to be irrelevant that used vehicles are generally of much smaller value and require a proportionately larger outlay for installation of a device. The possibility that the device might even cost more than the used vehicle's value should not deter the state in acting to protect the health, safety, and general welfare of the public. This unequal relative burden would exist even for new vehicles, *e.g.*, compare the cost of installation on a Volkswagen with a Cadillac.

³² This may well be the case. A cost survey has shown that exhaust pipe control devices will cost \$70 factory installed on new cars and up to \$190 on older cars not equipped with the device at the factory. See *San Francisco Chronicle*, Nov. 29, 1961, p. 5, col. 6, Feb. 22, 1962, p. 5, col. 3. *But see* note 33 *infra*.

³³ Of course even with this underlying rationale of facility and inexpensiveness of installation, problems may arise when devices actually are produced. If the device can be slipped into position, by an untrained person, without any expense beyond the cost of the device itself, then the classification which requires installation on new and not on used vehicles (in areas where the used provisions are inoperative) may be unreasonable and clearly arbitrary.

not directed at the area where the evil is greatest.³⁴

A second possible constitutional problem under the new California statute arises from the possibility that the installation requirement may impose an unconstitutional burden on interstate commerce. In general, the Vehicle Code³⁵ requires the registration (with payment of the appropriate fee) of any vehicle that will be operated upon the California highways. Exemptions apply to publicly operated vehicles, diplomatic vehicles, fire and related emergency vehicles, and those covered by reciprocal agreements.³⁶ It is apparent that a substantial number of these commercial vehicles will be engaged in interstate commerce.

The requirement of a certified device is clearly an attempt to regulate in what is a peculiarly local area.³⁷ As stated in *Bibb v. Navajo Freight Lines, Inc.*,³⁸ if the subject is one peculiarly local in nature (such as health and safety), a state statute that seeks to control such a problem may be upheld even though it does have some impact upon interstate commerce.³⁹ The California statute clearly has such an effect, for the highways are not open to interstate vehicles without the required device.

The most germane case on the question of the permissible burden a local air pollution control statute may cast upon interstate commerce is *Huron Portland Cement Co. v. City of Detroit*.⁴⁰ The smoke emission statute there was also a "state regulation, based on the police power, which does not discriminate against interstate commerce or operate to disrupt its required uniformity."⁴¹ Since *Huron* held an air pollution statute valid, even though it required a sizable outlay of cash to alter ship's boilers, the California statute which deals with the same problem and requires a relatively small outlay (when compared with the basic cost of the motor vehicle) would seem equally valid.

Even apart from the *Huron* case it seems there is no undue burden inherent in the California legislation. That a vehicle must have a certified device in order to be registered merely increases the cost of the privilege of using the state's highways.⁴² The Supreme Court has upheld statutes requiring a greater relative

³⁴ It could also be argued that a classification made to remedy a particular problem should be judged reasonable or arbitrary on the basis of the purpose for classification (here, to control motor vehicles as a source of pollutants) and not on the basis of some extraneous consideration, e.g., that installation on one class is easier or less expensive. Thus this would only be a reasonable classification if it clearly hits the greatest source of pollutants.

³⁵ CAL. VEH. CODE § 4000.

³⁶ E.g., CAL. VEH. CODE §§ 6700-05, 6850, 8000, and 9100-06.

³⁷ See note 8 *supra*.

³⁸ 359 U.S. 520 (1959). An Illinois statute required a contour mudguard as a prerequisite to operation of trucks on Illinois roads. The straight or flat mudflap was required in forty-five other states. The statute applied to both interstate and intrastate vehicles. The court held the Illinois statute to be unconstitutional, placing an undue burden on interstate commerce. The court called safety a local subject, and pointed out that other state statutes had been upheld despite the fact that they had an impact on interstate commerce (if of a safety nature and applicable to both interstate and intrastate commerce).

³⁹ Also upholding the imposition of some burden on interstate commerce are *Sproles v. Binford*, 286 U.S. 374 (1932) and *South Carolina State Highway Dept. v. Barnwell Bros., Inc.*, 303 U.S. 177 (1938).

⁴⁰ 362 U.S. 440 (1960).

⁴¹ *Id.* at 448.

⁴² In *Bibb*, *supra* note 38, at 526, the Court stated that

the matter of safety was . . . one essentially for the legislative judgment; and the burden of redesigning or replacing equipment was . . . a proper price to exact for interstate and intrastate motor carriers alike . . . Cost taken into consideration with

outlay for safety devices than is likely to be found under the California statute.⁴³

2. Constructional Problems

Section 24389 defines "principal vehicle location" for passenger vehicles owned by an individual as the county in which the owner resides. Thus residence becomes crucial in deciding whether an owner must have a certified device installed on his used vehicle prior to registration.⁴⁴

The legislature's use of the word "resides" implies that an owner must have the device if the statutory provisions are in effect within the area in which he lives, dwells, or abides. Use of "resides" appears intended to avoid the ticklish problem of the meaning of residence,⁴⁵ but the general statutory definition of residence⁴⁶ may create problems by its use of "resides." Whether residence within a statute means physical residence⁴⁷ or domicile⁴⁸ requires consideration of the purposes of the statute.⁴⁹

The statute is designed to reduce the amount of pollutants released in any given area.⁵⁰ If residence is intended to mean the place of physical abode, the place where the owner lives, it will sweep into its terms also all those who are not domiciliaries of the area.⁵¹ If it means domicile, then not only is it necessary that the vehicle owner live within the area, but he must intend that such area be his domi-

other factors might be relevant in some cases to the issue of burden on commerce. But it has assumed no such proportions here. If we had here only a question whether the cost of adjusting an interstate operation to these new local safety regulations prescribed by Illinois [it would have cost about \$30 to install the contour flaps] unduly burdened interstate commerce, we would have to sustain the law . . .

Sproles v. Binford, *supra* note 39, also supports the position that merely increasing the cost of engaging in interstate commerce is a valid exercise of power by a state.

⁴³ South Carolina State Highway Dept. v. Barnwell Bros., Inc., 303 U.S. 177 (1938). Here the court upheld a statute that prohibited the use on the state highways of trucks exceeding ninety inches in width and weighing over 20,000 pounds.

⁴⁴ This assumes the used provisions apply at his "residence." See text at notes 18-20 *supra*. Section 24390 covers new vehicles regardless of the owner's residence.

⁴⁵ If the word residence appears within a statute the question is whether the legislature means residence in the sense of a factual place of abode of some permanency, more than a mere sojourn, or domicile. Here factual abode seems the logical conclusion to draw from the language chosen.

⁴⁶ CAL. GOV'T CODE § 244. See Smith v. Smith, 45 Cal. 2d 235, 288 P.2d 497 (1955), illustrating the difference between domicile and residence. The court there pointed out that residence involves merely the factual place of abode; domicile involves in addition the person's intent.

⁴⁷ *E.g.*, CAL. CODE CIV. PROC. § 537, which provides for attachment in a contract action of property of a defendant "not residing in this state"; CAL. VEH. CODE § 17450 providing for substituted service on a "non-resident" in an action arising from the operation of an automobile within this state. See Smith v. Smith, note 46 *supra*. Actual physical residence is also required for a valid statutory homestead. Rix v. McHenry, 7 Cal. 89 (1857).

⁴⁸ *E.g.*, CAL. CODE CIV. PROC. § 417 (establishing the rule that jurisdiction to render a personal judgment after publication lies only if the party is personally served with a copy of the summons and was a domiciliary of the state at a certain time; CAL. GOV'T CODE § 244, which establishes the basic rules applicable to domicile without the word "domicile" appearing once. See Smith v. Smith, note 46 *supra*. See also Chambers v. Hathaway, 187 Cal. 104, 200 Pac. 931 (1921) (inheritance tax); O'Brien v. O'Brien, 16 Cal. App. 103, 116 Pac. 692 (1911) (venue).

⁴⁹ See, *e.g.*, Smith v. Smith, note 46 *supra*.

⁵⁰ CAL. HEALTH & SAFETY CODE § 24378.

⁵¹ *E.g.*, all military personnel, governmental employees, schoolteachers, etc., who are living and working in an area and register their motor vehicles within the area, although they claim another place as their domicile. All those who live and work within a metropolitan area enforcing the used vehicle portion of the statute will be required to have a device installed.

cile.⁵² This would result in the thousands of governmental employees, servicemen, and others who are merely living within an area without intending that the area be their domicile, registering their vehicle within the area, but being exempted from the act. It would appear that the only meaning of "resides" consistent with the purpose of the statute is the place of factual abode.⁵³

An additional problem could be encountered in the language of section 24389. This section requires a device for used passenger vehicles if the "owner" resides within an area enforcing the used provisions of the statute.⁵⁴ If the vehicle is owned by tenants-in-common or in joint tenancy, one joint owner who has the possession and use of the vehicle may live within an area enforcing the used provisions while the other owner or owners live outside any area enforcing the used portion of the statute.⁵⁵ It would seem that the courts can further the statutory purpose by reading the section to mean simply the county in which the owner who has the possession and use resides.

3. Administrative Problems

As to commercial vehicles and passenger vehicles registered in the name of a firm, copartnership, association, or corporation, the principal vehicle location for purposes of the used provisions of the statute is "that county or counties in which the vehicle will be operated during the greatest portion of the time" during the period for which registered.⁵⁶ As a practical matter, how is the "greatest portion of time" to be determined? With a view to this problem, the legislature has added section 40004 to the Vehicle Code, making it a misdemeanor for any person knowingly to make any false or fraudulent statement in an application for registration or renewal or transfer of registration of a motor vehicle. Furthermore, as to original registration, the application form must contain such information as is reasonably required to enable the Department of Motor Vehicles to determine whether the vehicle is lawfully entitled to registration;⁵⁷ this could encompass a statement of the area where the vehicle will be operated the greatest portion of the time. However, as to renewal⁵⁸ or transfer⁵⁹ of registration, no application statement is presently required. It would appear an administrative matter, well within the Department of Motor Vehicle's power to make rules and regulations for the proper administration and carrying out of the statutory purposes,⁶⁰ to require the regis-

⁵² *Ungemach v. Ungemach*, 61 Cal. App. 2d 29, 142 P.2d 99 (1943).

⁵³ In either event all the commuters, salesmen, etc., who live in an area not enforcing the used provisions (and intending such place to be their domicile), but doing the bulk of their driving within a controlled area, will be free from the requirements of the statute. This could involve a sizable number of persons, e.g., the commuters to the Bay Area. If Marin, Napa, Sonoma, and Solano counties do not enforce the used provisions, all commuters to the Bay Area from these counties would be exempt although they clearly contribute to the Bay Area problem.

⁵⁴ Since § 24390 applies to all new vehicles, the identity of the owner is material only with regard to used vehicles.

⁵⁵ This problem could arise when spouses separate and one is given the use of a vehicle owned in joint tenancy.

⁵⁶ CAL. HEALTH & SAFETY CODE § 24389.

⁵⁷ CAL. VEH. CODE § 4150(d).

⁵⁸ CAL. VEH. CODE § 4602 provides in general that application for renewal is made by presentation of the registration card last issued for the vehicle.

⁵⁹ CAL. VEH. CODE § 5902 provides that application for transfer is made by the transferee forwarding the certificate of ownership and registration card with the transfer fee to the department.

⁶⁰ *Stanislaus County Dairymen's Protective Ass'n v. County of Stanislaus*, 8 Cal. 2d 378, 65 P.2d 1305 (1937).

trant seeking renewal or the transferee seeking transfer to certify where the vehicle will be operated the greatest portion of time.⁶¹ Naturally, the practical problem of watchdogging to see if the statements are true looms large. It seems safe to say a good deal of falsification will be undetected unless some effective method is devised of checking the areas in which a used vehicle is operated.⁶²

Under section 24394, the county supervisors⁶³ or the governing body of an air pollution control district⁶⁴ may determine that the used vehicle provisions are unnecessary to accomplish the statutory purposes and that the sections shall not be operative within the relevant area. The governing body "may" act to make the statute inapplicable, but is not expressly required to act at all. Though it seems unlikely that a governing body would leave the used provisions in effect in rural counties, the possibility that they may do so invites speculation upon the supervisor's power to refrain from action. It may be that the statute contains an implicit standard requiring action when the used provisions are clearly unnecessary; arguably the legislature did not contemplate application of the used provisions in the more sparsely populated communities. It is also possible that an owner of a used motor vehicle could resist enforcement of the statute upon the ground that the supervisors' inaction was an unreasonable and clearly arbitrary determination that the used provisions were necessary; therefore, the statute as applied would exceed the due process limitation imposed upon the exercise of the police power.

CONCLUSION

It appears that the major obstacles encountered in enforcing the California Motor Vehicle Pollution Control Law will be practical problems of administering the act rather than problems of its legality. The prodigious administrative problems involved in the properly controlled sale, installation, and inspection of certified devices will have to be solved on an *ad hoc* basis.

The possible legal problems which have been brought out here all appear to be resolvable so that the act as written will be fully operative. However, to insure the maximum reduction of motor vehicle pollutants, the statute should clearly be applied to all used as well as new vehicles in problem areas. That a greater relative burden will be imposed on the owners of used as compared with new vehicles should not be decisive. If air pollution is to be effectively countered an all out effort should be made even though hardship may result to some vehicle owners.

Since not all areas are plagued with the pollution problem, a better method of attack might be for the legislature to create special air pollution control districts that encompass only those areas where control is necessary. The legislature should, in creating these tailor-made districts, shape them so as to include all vehicle

⁶¹ This would put the teeth of CAL. VEH. CODE § 40004 into the used vehicle portion of the statute. Any person knowingly making any false or fraudulent statement would be guilty of a misdemeanor. Unless the legislature enacts a statutory provision to the contrary this would make the registrant subject to CAL. PEN. CODE § 19, and liable to imprisonment in the county jail not exceeding six months, or a fine not exceeding \$500, or both.

⁶² The expense of checking on such statements would seem to outweigh the benefits to be derived. This potential administrative burden may be partly responsible for the local option provision. A "spot-check" modeled on the federal income tax audit procedure is apparently the only feasible safeguard.

⁶³ As to a whole county and as to that portion of a county not within an air pollution control district.

⁶⁴ *I.e.*, a district formed by a special law to include two or more counties.

owners who actually reside within the physical area of air pollution and also all those who live on the perimeter of such an area, but are likely to be contributors to the problem by commuting.⁶⁵ In setting up these districts the legislature should require devices to be installed on both new and used motor vehicles, without any local determination regarding used vehicles. If, after such a district is created, it is apparent that additional territory should be included, it would be for the legislature to so provide. It seems doubtful that the need to include additional territory within a district would be so pressing that redelineation could not await the next session of the legislature. Furthermore, the governing body of a district could be given the power to annex additional territory when necessary to insure the fulfillment of the statute's purpose. The district could report such action to the legislature, and in case of improper boundary extensions the legislature could override the administrative decision.

If it is considered unfair to require the device on all used vehicles, an exemption could be framed for vehicles a certain number of years old, *e.g.*, five or more years. This would generally avoid having the installation cost exceed the value of the vehicle. Of course, the actual burdens that will be imposed upon new and used motor vehicle owners can only be determined once certified devices are available.⁶⁶ Only then will specific criticism of the scope of the statute be feasible.

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⁶⁵ An alternative to creating special tailor-made air pollution control districts as above outlined might be to require the certified device on all motor vehicles owned by persons who actually reside within the city limits (or within a stated number of miles of such city limits) of any city with a stated minimum population.

⁶⁶ See San Francisco Chronicle, Feb. 22, 1962, p. 5, col. 3.

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