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August 4, 2006

Gabriella Holt, President  
County of Los Angeles  
Probation Commission  
9150 E. Imperial Highway  
Downey, California 90242

**Re: Powers and Duties of the Probation Commission**

Dear Ms. Holt:

Your letter of May 30, 2006, presents the following questions regarding the powers and duties of the Probation Commission:

1. What are the specific powers and duties of the Los Angeles County Probation Commission?
2. Does the Probation Commission have the powers of a Juvenile Justice Commission?
3. Are any duties imposed upon the Probation Commission by Title 15, § 1313?
4. What constitutes a "majority" for action taken at a Commission meeting, a majority of the Commission or a "majority" of the quorum in attendance?
5. Can the duties described in Welfare and Institutions Code § 209(b) be delegated by the Juvenile Court to the Probation Commission?

## CONCLUSIONS

1. The Probation Commission's sole duty is to function in an advisory capacity to the Probation Officer. Its powers are limited to those necessarily required to perform that duty.
2. The Probation Commission is not a Juvenile Justice Commission and has none of the powers and duties of a Juvenile Justice Commission.
3. Title 15, § 1313 does not impose duties upon the Probation Commission.
4. A "majority" for action taken at a Probation Commission meeting is a majority of the quorum in attendance.
5. The duties described in Welfare and Institution Code § 209(b) can be delegated by the Juvenile Court to a Juvenile Justice Commission, but not to the Probation Commission.

## ANALYSIS

### **The Number of Commissioners Required to Take Action**

We first address the issue of what constitutes a majority for action taken at a Probation Commission meeting.

The Los Angeles County Probation Commission must consist of no less than seven members.<sup>1</sup> By order of the Board of Supervisors, there are to be 15 members of the Probation Commission, with three nominated by each of the five members of the Board of Supervisors.<sup>2</sup>

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<sup>1</sup> Welfare and Institutions Code § 240.

<sup>2</sup> County of Los Angeles Board of Supervisors Order 111, of September 7, 1999.

A quorum is generally defined as the least number of the members of a body that can transact the business of that body.<sup>3</sup> At common law,<sup>4</sup> and by statute,<sup>5</sup> a simple majority of a body's members constitutes a quorum. Applying this rule, a quorum of the Probation Commission consists of at least eight of its members. If there are vacancies on the Commission, a quorum is computed as if there are no vacancies.<sup>6</sup> In the case of your Commission, a quorum requires the attendance of at least eight members, even if there are vacancies in the number of appointed Commissioners. A meeting of the Commission may not proceed without a quorum.

In the absence of a statutory restriction, the majority of a quorum may take action.<sup>7</sup> That is, if only eight members of the Probation Commission are present at a meeting, a quorum exists, and the votes of five of those members will be sufficient to take action.

### **The Powers and Duties of the Commission**

Your remaining questions all concern the powers and duties of the Probation Commission and whether those powers and duties are commensurate with those of a Juvenile Justice Commission. The Probation Commission does not have the powers and duties of a Juvenile Justice Commission. The two Commissions are distinct bodies with different statutorily defined powers and duties.

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<sup>3</sup> *People v. Dale*, (1947) 79 Cal. App. 2d 370, 375.

<sup>4</sup> *Urisno v. Superior Court*, (1974) 39 Cal. App. 3d 611, 621.

<sup>5</sup> Civil Code § 12, Code of Civil Procedure § 15, *Ford v. Civil Service Commission*, (1958) 161 Cal. App. 2d 692, 697.

<sup>6</sup> *Pennington v. George W. Pennington & Sons*, (1950) 27 Cal. App. 57, 59-60.

<sup>7</sup> *People ex. rel. Flint v. Harrington*, (1883) 63 Cal. 257, 259-260.

The Legislature has established Juvenile Justice Commissions in each county. These Commissions are required to have between seven and 15 members. At least two members must be between the ages of 14 and 21. Juvenile Justice Commissioners are appointed by the Presiding Judge of the Superior Court.<sup>8</sup> Juvenile Justice Commissions are charged with a range of duties and granted powers commensurate with those duties. A Juvenile Justice Commission is required to inquire into the administration of the Juvenile Court Law in the county. It has access to public institutions, and must inspect those institutions no less than once a year. It may hold hearings and issue subpoenas.<sup>9</sup> A Juvenile Justice Commission may inquire into the operations of group homes<sup>10</sup>, and may make recommendations to any person charged with administration of any provision of the Juvenile Court law.<sup>11</sup>

In counties with a population in excess of 6 million, there is a Probation Commission "in lieu of" a Juvenile Justice Commission. A Probation Commission consists of at least seven members appointed by the authority that appoints the Probation Officer.<sup>12</sup> Los Angeles County is the only county which meets the requirements of the statute, and is the only county with a Probation Commission. "In lieu of" means "instead of," "in place of," or "in substitution for."<sup>13</sup> In the County of Los Angeles, there is a Probation Commission "instead of," "in the place of," or "in substitution for," a Juvenile Justice Commission.

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<sup>8</sup> Welfare and Institutions Code § 225.

<sup>9</sup> Welfare and Institutions Code § 229.

<sup>10</sup> Welfare and Institutions Code § 229.5.

<sup>11</sup> Welfare and Institutions Code § 230.

<sup>12</sup> Welfare and Institutions Code § 240.

<sup>13</sup> *Carey v. Retirement Board*, (1955) 131 Cal. App. 2d 739, 745. Disapproved on other grounds, *Abbott v. City of Los Angeles*, (1958) 50 Cal. 2d 438, 453.

The Board of Supervisors of Los Angeles County appoints the Probation Officer,<sup>14</sup> and, therefore, appoints the members of the Probation Commission. In contrast to the broad duties imposed upon a Juvenile Justice Commission,<sup>15</sup> the Probation Commission, by statute, is expressly charged with but one duty: it advises the Probation Officer.<sup>16</sup>

Even if we discerned an ambiguity in the statutory language, the rules of statutory construction would lead us to the same conclusion. The statute defining the Probation Commission's duties lists only one duty, advising the Probation Officer. Under the doctrine of *expressio unis est exclusio alterius*, the express statutory description of that single duty precludes the existence of other implied duties.<sup>17</sup>

In construing a statute, we must give effect to every word and clause and must consider the absence of a word or clause.<sup>18</sup> In describing the duties of the Juvenile Justice Commission, the Legislature listed a series of duties and empowered the Juvenile Justice Commission to advise all persons associated with the administration of the Juvenile Court law. In the case of the Los Angeles County Probation Commission, the Legislature imposed the duty of advising only one of that class of officials, the Probation Officer. If we were to conclude that a Probation Commission has the same powers and duties as a Juvenile Justice Commission, the description of a Probation Commission's duty found in Welfare and Institutions Code § 243 would be surplusage. A rule of statutory construction dictates that a statutory interpretation resulting in surplusage should be avoided.<sup>19</sup>

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<sup>14</sup> County of Los Angeles Charter §§ 11, 14.

<sup>15</sup> Welfare and Institutions Code § 229.

<sup>16</sup> Welfare and Institutions Code § 243.

<sup>17</sup> *Burlingame v. Treager*, (1929) 101 Cal. App. 365, 371.

<sup>18</sup> *Arden Carmichel Inc. v. County of Sacramento*, (2001) 93 Cal. App. 4<sup>th</sup> 507, 517.

<sup>19</sup> *Cooley v. Superior Court*, (2002) 29 Cal. 4<sup>th</sup> 228, 249.

The legislative history of Juvenile Justice Commissions and the Los Angeles County Probation Commission is also consistent with our interpretation that the Los Angeles County Probation Commission has powers and duties different from those of a Juvenile Justice Commission.

In 1945, the management and control of the Juvenile Halls in all California counties, including Los Angeles County, was vested by the Legislature in each county's "Probation Committee." Probation Committees were the statutory predecessor to both Juvenile Justice Commissions and the Los Angeles County Probation Commission.<sup>20</sup> But since 1949, through several legislative amendments, Los Angeles County's Probation Commission or Probation Committee has had different powers and duties than those legislatively granted to the Juvenile Justice Commissions or Probation Committees in all other counties.

In 1949, the applicable statute was amended to provide that the management of the Juvenile Hall in Los Angeles County was under the control of the Probation Committee. In all other counties, the Probation Committee had only an advisory function.<sup>21</sup>

In 1951, a Probation Committee still managed the Juvenile Hall in Los Angeles County. Probation Committees in all other counties still only had an advisory role, but the Juvenile Court in those other counties could place control of the Juvenile Halls in the county's Probation Committee.<sup>22</sup>

Things changed again in 1957. The Legislature took management of the Los Angeles County Juvenile Hall away from the Probation Committee and gave it to the Probation Officer. The Probation Committee was left with an advisory role. In all other counties, the Probation Officer had control of the Juvenile Hall subject to the Probation Committee's advice, but the Juvenile Court could still place control of the Juvenile Halls under the Probation Committee.<sup>23</sup> This option

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<sup>20</sup> Stats 1945, Chap. 967 § 4.

<sup>21</sup> Stats 1949, Chap. 1585 § 3.

<sup>22</sup> Stats 1951, Chap. 582 § 3.

<sup>23</sup> Stats 1957, Chap. 906 §§ 2 and 3.

was not available in Los Angeles County where the Probation Committee's role could only be advisory.

In 1961, the Legislature created Juvenile Justice Commissions in each county with duties similar to those described in the current statute. Probation Committees in those counties were eliminated. In Los Angeles County, a Probation Committee was established "in lieu of" a Juvenile Justice Commission. The statutory duties of the Probation Committee in Los Angeles County were the same as those of today's Probation Commission; it was an advisory body to the Probation Officer.<sup>24</sup>

In 1987, the Los Angeles "Probation Committee" was renamed "Probation Commission." Its duties were not changed.<sup>25</sup>

Since 1949, the Legislature has consistently established different powers and duties for the Probation Committee or Probation Commission in Los Angeles County than those provided to Probation Committees or Juvenile Justice Commissions in all other counties. At times, the Commission or Committee in Los Angeles County has had greater powers and duties than those in other counties. At other times, it has had less. But for more than five decades, the Legislature has consistently treated the Los Angeles County Probation Committee or Probation Commission differently than Probation Committees and Juvenile Justice Commissions in all other counties. This Legislative history precludes an interpretation of current legislation suggesting that the Los Angeles County Probation Commission has duties and powers that are identical to those of the Juvenile Justice Commissions existing in all other counties.

We conclude that the legislative intent expressed in Welfare and Institutions Code §§ 225 *et seq.* and 240 *et seq.* is for the Los Angeles County Probation Commission to have an advisory function to the Probation Officer, and not the broader powers of a Juvenile Justice Commission.

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<sup>24</sup> Stats 1961 Chap. 1616 §§ 540-545.

<sup>25</sup> Stats 1987 Chap. 228 § 3.

In the absence of express statutory powers, the Commission's powers are limited, but include those necessarily implied by its duty to advise the Probation Officer.<sup>26</sup> The Probation Officer's responsibilities are varied. They include taking custody of detained minors, preparing probation reports, supervising probationers, and crime prevention. Your Commission has implied powers to collect the information necessary to advise the Probation Officer on these duties as well as all of his or her other statutory responsibilities. For example, your Commission may interview Probation Department employees, members of the public, public officials, and with permission of their counsel, minors held in the Probation Officer's custody. The Probation Officer may also grant access to her or his facilities to members of the Commission.

These conclusions answer your remaining questions. Welfare and Institutions Code § 209(b) requires that the Juvenile Court conduct an annual inspection of all law enforcement facilities containing a lockup for adults that was used in the preceding year for the secure detention of any minor. The Juvenile Court may conduct this inspection personally, or may delegate the responsibility to a "Juvenile Justice Commission."<sup>27</sup> As explained, the "Probation Commission" is not a "Juvenile Justice Commission." Welfare and Institutions Code § 209(b) lacks any reference to a Probation Commission, and we are not at liberty to add the Probation Commission to the express terms of the statute. Your Commission has no duty to conduct the inspections statutorily required to be either personally performed by the Juvenile Court or delegated by that court to a Juvenile Justice Commission.

Title 15, California Code of Regulations, § 1313 also imposes no duties upon your Commission. The regulation imposes duties upon a facility administrator to obtain certificates of inspection of facility buildings and grounds from a number of agencies. The regulation imposes no duty upon your Commission to either conduct an inspection or issue a certificate. The duty of an agency to conduct an inspection or issue a certificate must be found in some other statute or regulation. However, no statute imposes a duty upon the Probation

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<sup>26</sup> *San Vicente Nursery School v. County of Los Angeles*, (1956) 147 Cal. App. 2d 79, 83.

<sup>27</sup> Welfare and Institutions Code § 209(b).



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Commission to conduct inspections or perform any duties other than that of advising the Probation Officer.<sup>28</sup> The language of the applicable statutes, Welfare and Institutions Code §§ 240 and 243, controls over an inconsistent administrative regulation promulgated to implement those statutes.<sup>29</sup>

In summary, the Probation Commission has but one duty: it is to act in an advisory capacity to the Probation Officer. It has those powers necessarily implied to perform that duty. It must have a quorum of at least eight members present to conduct a meeting. A majority of the quorum present at a meeting must vote in favor of any proposed action.

Very truly yours,


RAYMOND G. FORTNER, JR.  
County Counsel

By



GORDON W. TRASK  
Principal Deputy County Counsel  
Law Enforcement Services Division

APPROVED AND RELEASED:



RAYMOND G. FORTNER, JR.  
County Counsel

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<sup>28</sup> Welfare and Institutions Codes §§ 240, 243.

<sup>29</sup> *Nevada County Office of Education v. Riles*, (1983) 149 Cal. App. 3d 767, 733.