

December 27, 2009

California Highway Patrol
Fiscal Management Section/DUI Unit
PO Box 942900
Sacramento, CA 94298-2900

Re: GC §53150, My Client:
File No. , Invoice Number

Dear Sir or Madam:

Thank you for your correspondence of _____, wherein you indicate that you feel that Government Code §53150 authorizes you to recover costs incurred. Please be advised that, in light of the Legislative Counsel Opinion and *Allende* decision discussed below, I strongly disagree with your assessment and I am accordingly advising my client, by copy of this letter, to refrain from paying the requested amount.

Government Code §53150 through §53152 authorizes public agencies such as yours to charge criminal defendants who are under the influence of alcohol or drugs for costs incurred in making an "appropriate emergency response" to an "incident." Since the advent of this legislation, a number of law enforcement agencies and municipalities have attempted to use these statutes to justify seeking reimbursement for costs incurred in ordinary arrests of those accused of driving under the influence, as opposed to limiting their requests for reimbursement of costs to circumstances involving actual extra-ordinary emergency responses to incidents such as DUI accidents.

As a result of this apparent disconnect between the authorizing statutes and aggressive billing practices by cash-strapped agencies, a request in 1988 was made by California Assemblyman Jack O'Connell for a Legislative Counsel Opinion as to whether or not section 1203.1 enlarged the scope of expenses which are reimbursable to a public agency under Article 8 (commencing with section 53150) of chapter 1 of part 1 of division 2 of Title 5 of the Government Code by including expenses which are incurred by a public agency as a result of an ordinary arrest of a person for operating a vehicle (as in this case), boat or vessel, or civil aircraft while under the influence of an alcoholic beverage or drug, or a combination thereof, where that arrest did not involve an emergency response to an incident. The Legislative Counsel Opinion indicated that it did not.

As to the issue of what constitutes an incident, the Legislative Counsel Opinion held:

"The statutes imposing the liability under Article 8 clearly contemplate the occurrence of an event involving the negligent operation of, among other things, a motor vehicle which causes an "incident" resulting in an emergency response by a public agency . . .

We think that, in studying the legislative history of these statutes, the use of the word "incident" was used to mean the occurrence of an accident or an event involving more than simply an arrest. Legislative intent is the primary and controlling consideration, and the statements in legislative committee reports which are in accordance with a

reasonable interpretation of a statute will be followed by the courts to assist in the interpretation of legislative intent (*In re Marriage of Bjornstead* (1974) 38 Cal.App.3d 801, 805)."

As to the issue of what constitutes an appropriate emergency response, the Legislative Counsel Opinion stated that:

"The Senate Committee on Judiciary, in its report on Senate Bill No. 735 of the 1985-1986 Regular Session, as introduced, commented regarding the purpose of the legislation adding Article 8, that according to the City of Orange, traffic incidents caused by those driving under the influence of alcoholic beverages usually require the response of several police, fire and paramedic units, as well as emergency public works personnel to complete immediate repairs of traffic signals, signs or roadways. The purpose of the bill as introduced (which was unchanged by later amendments), therefore, apparently was to provide that the cost of an emergency response to these types of incidents should be placed on the persons responsible . . ." *Ops. Cal. Legis. Counsel, No. 6416 (Oct. 18, 1988) Emergency Response.*

Noting that the term "incident" is not defined, the Legislative Counsel turned to the definition of "expense of an emergency response" in section 53156(a), which provides as follows:

"Expense of an emergency response' means reasonable costs incurred by a public agency in reasonably making an appropriate emergency response to the incident, including the costs of providing police, fire fighting, rescue, and emergency medical services at the scene of the incident, but shall only include those costs directly arising because of the response to the particular incident."

Therefore, an invoice pursuant to this law may be valid if emergency personnel were required to respond (for example an ambulance, paramedics or fire trucks responding to an accident scene, or more CHP officers required to manage traffic interruption). However, the Legislative Counsel determined that an "incident" entails more than a simple or ordinary arrest because the types of expenses that may be claimed in section 53156(a) are emergency service costs, suggesting the Legislature did not intend the cost of ordinary arrests to be recoverable.

The courts agree with the Legislative Counsel. In *California Highway Patrol v. Superior Court (Allende)* (1st Dist. 2006) 135 C.A.4th 488, our California Court of Appeals for the county where we reside and where this arrest occurred clearly ruled that an ordinary arrest for DUI is not a sufficient trigger event to justify or require reimbursement to an arresting agency or municipality attempting to recoup costs under this law. The court held that "[b]ased on the plain language of section 53150...[a cost-recoverable] 'incident' necessarily means something

more than the negligent operation of a motor vehicle while under the influence of an intoxicant.”

The court explained to the CHP that:

“If the Legislature had intended *any* police intervention involving a person driving under the influence to qualify for recovery of response costs, it could have provided simply that a person is liable for costs incurred by a public agency responding to that person’s operation of a vehicle while intoxicated. There would have been no need to add the requirement of an incident. Moreover, regardless of how one defines “incident,” the term is followed by language limiting the incidents for which costs may be recovered to those “resulting in an appropriate emergency response.” (§ 53150.) It would be a highly strained interpretation to consider stopping a motorist for driving under the influence, without more, as an “emergency” within the meaning of section 53150.” Indeed, the Vehicle Code defines “emergency response situation” in one context to mean “instances in which necessary measures are needed in order to prevent injury or death to persons or to prevent, confine, or mitigate damage or destruction to property.” (Veh. Code, § 23116, subd. (e).) While the purpose underlying the prohibition of driving under the influence and the enforcement of that prohibition is of course public safety, that general objective hardly transforms every arrest for DUI into an emergency.”

Until your agency convinces the Legislature otherwise, or *Allende* is modified or overruled by the First District or the California Supreme Court, the following *Allende* holding is the law in Sonoma County where this arrest occurred:

“[A]n incident [for which costs are recoverable under GC 53150] is any event that proximately causes an emergency response by a public agency. Although an accident is not necessary to trigger the right to reimbursement, an ordinary arrest, even for driving under the influence of alcohol or drugs, is not sufficient.”

In summary, it is readily apparent that the purpose of the authorizing statute and the holding of *Allende* was not to reimbursement for an ordinary DUI arrest such as our case, but rather to allow public agencies to recover their costs when providing an appropriate emergency response to an incident approximately caused by a person due to that person's negligent operation of an automobile while under the influence of an alcoholic beverage or drug. My client’s case did not involve such an emergency response.

Moreover, where individuals have been forced to litigate these issues with overzealous agencies, substantial attorneys fees have been awarded in settlements and final decisions to compensate for efforts fighting these aggressive and unfounded billing practices. *See, Ramon*

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v. County of Santa Clara (6th Dist. 2009) H032542 (Santa Clara County Super. Ct. No. CV038065).

Finally, you are hereby formally notified that this supposed debt is the subject of a bona fide dispute, and therefore my client is fully protected by applicable state and federal consumer protection laws against reporting to any collection or credit bureau.

Should you have any further questions in regard to this matter, please contact me.

Sincerely yours,

Dave Jake Schwartz
Attorney at Law

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