

3

3. Report from the City Attorney on validity and enforcement of AB 2013 (Moore) relating to street gangs. (Report requested 07-28-88 #4)

Materials to follow.



3

**OFFICE OF THE
CITY ATTORNEY**

JAMES P. JACKSON
CITY ATTORNEY

THEODORE H. KOBEY, JR.
ASSISTANT CITY ATTORNEY

**CITY OF SACRAMENTO
CALIFORNIA**

September 15, 1988

812 TENTH STREET
SACRAMENTO, CA
95814-2694

916-449-5340

DEPUTY CITY
ATTORNEYS:
SAMUEL L. JACKSON
WILLIAM P. CARNAZZO
LAWRENCE M. LUNARDINI
GARLAND E. BURRELL, JR.
DIANE B. BALTER
RICHARD F. ANTOINE
TAMARA MILLIGAN-HARMON
RICHARD E. ARCHIBALD
KATHLEEN L. MCCORMICK

Law & Legislation Committee
13th & "I" Street
Sacramento, CA 95814

Re: AB 2013

Honorable Members in Session:

SUMMARY

This report addresses the concerns raised by Councilman Shore during discussion of the above-referenced Assembly Bill at the July 28, 1988 meeting of this Committee.

BACKGROUND

Assembly Bill 2013 was the subject of discussion at the Law and Legislation Committee meeting on July 28, 1988. The description of the bill, as is set forth on page 1, under Item No. 1 of the Bill Referral Form, is somewhat misleading. That description implies that the bill provides for a 180-day enhancement upon conviction for a misdemeanor committed by a person who is a gang member.

In addition to the incorrect description on the Referral Form, incorrect information was apparently provided at the time the bill was presented to the Committee. The July 28, 1988 Minutes reflect that the Committee was informed that the bill provides additional sentence enhancement for being a member of a gang (180 additional days), and that the judge can't set that aside. The Committee was further informed that if you commit a crime and you are a proven member of a gang, you will be sentenced accordingly.

Apparently, as a result of the above, Councilman Shore has expressed concerns relating to equal protection and selective enforcement of the enhancement provision. More specifically, Councilman Shore has inquired as to whether it would be difficult to enforce the enhancements if a gang member commits a misdemeanor (say shoplifting) compared to anyone else; i.e., the gang member would get an additional

Law & Legislation Committee

Re: AB 2013

September 15, 1988

Page -2-

180 days, whereas someone else would get five days, or probation. Councilman Shore's concerns resulted in an agreement that the City Attorney should report to the Committee regarding the legal issues the City may encounter when attempting to enforce the 180-day additional sentence.

DISCUSSION

Prior to any discussion on the merits of Councilman Shore's concern, this Committee should be apprised of the status of AB 2013. The bill has enjoyed a long but successful life at the hands of the legislature. It is currently on the Governor's desk awaiting it's fate.

The language of AB 2013 does not provide for enhancement of punishment simply because a known gang member entered a Macy's store and stole a neckless for his girlfriend. Councilman Pope's comments regarding the purpose and enforcement of AB 2013 are clearly consistent with the spirit and intent of the legislature. The enhancement provisions of this legislation are to be used only when the criminal activity which results in a conviction meets certain criteria set forth in the bill.

The following is some critical language of the bill which supports the above-stated conclusion:

AB 2013 as amended in the Senate on April 4, 1988

Page 3, line 33 through page 4, line 2 reads as follows: It is the intent of the Legislature in enacting this chapter to seek the eradication of criminal activity by street gangs by focusing upon patterns of criminal gang-related activity . . . (emphasis added).

Page 4, lines 20 through 25 reads as follows: Any person who is convicted of a felony or a misdemeanor which is committed for the benefit of, at the direction of, or in association with, any criminal street gang, with the specific intent to promote, further, or assist in any criminal conduct by gang members, shall be punished . . . (emphasis added).

Based on the above excerpts from the bill, it appears clear that the legislature intends to require a nexus between gang activity and the criminal conduct prior to imposition of the enhancements. Further, that nexus must be more than mere gang membership at the time a person commits an isolated criminal act.

Finally, it should be noted that the language of the bill is not subject to enforcement by the City of Sacramento. The enhancements must

Law & Legislation Committee

Re: AB 2013

September 15, 1988

Page -3-

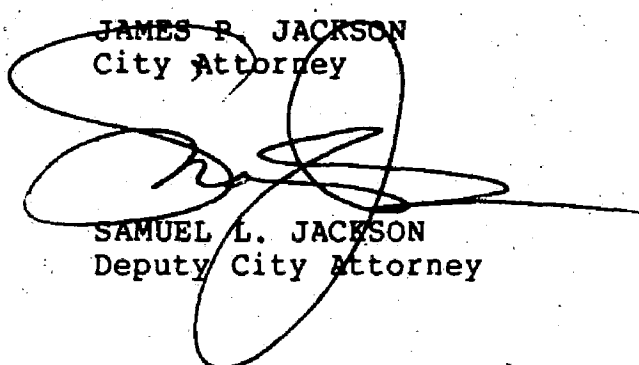
be sought by the Sacramento County District Attorney. Thus, the City would not experience any enforcement difficulty.

RECOMMENDATION

It might be too late to adversely or favorably affect the outcome of this legislation since it may be immediately signed or vetoed by the Governor. However, a letter to the Governor supporting the bill is the recommendation. Ken Emanuels may have a more concrete recommendation at this time.

Respectfully Submitted,

JAMES P. JACKSON
City Attorney



SAMUEL L. JACKSON
Deputy City Attorney

SLJ:rmm

City of Sacramento
LAW & LEGISLATIVE COMMITTEE

Update on City Legislation
September 15, 1988

Kenneth Emanuels
Legislative Advocate

State-Wide Legislation. Status.

- (a) SB 1779 (Morgan) Child Care. Support. SIGNED.
- (b) SB 1555 (Robbins) Criminal Street Gangs. Support.
TO GOVERNOR.
- (c) AB 2013 (Moore) Criminal Street Gangs. Support.
TO GOVERNOR.
- (d) AB 2737 (Waters) Youth Center. Support. TO GOVERNOR.
- (e) SB 2545 (Rosenthal) Emergency Response to Elder Abuse.
Support. FAILED PASSAGE.
- (f) SB 1741 (Torres) State Regulation of Vicious Dogs.
Oppose. FAILED PASSAGE.
- (g) SB 502 (Royce) Colusa Basin Flood Control. State
Financial Assistance. Support. TO GOVERNOR.
- (h) SB 1692, SB 1693 (Roberti) State Bonds for Affordable
Housing. Support. SIGNED. On November Ballot.
- (i) SB 2525 (Garamendi) State Map Repository. Support.
FAILED PASSAGE.
- (j) AB 4498 (Sher) Recycled Oil. Support. TO GOVERNOR.
- (k) AB 3287 (La Follette) Abatement of Abandoned Vehicles.
Support. FAILED PASSAGE.
- (l) SB 144 (McCorquodale) Funding for Abandoned Vehicles.
Support. FAILED PASSAGE.
- (m) AB 4089 (Johnston) Local Agency Treasury Restrictions.
Oppose. SIGNED.
- (n) SB 1961 (Watson), AB 4521 (Hannigan) Restrictions on
City Transient Occupancy Tax. Oppose. FAILED PASSAGE.
- (o) AB 3979 (McClintock) State-Mandated Cost Claims
Process. Support. TO GOVERNOR.

- (p) ACA 64 (Stirling) Regulation of Local Public Retirement Systems. Oppose. FAILED PASSAGE.
- (q) AB 3723 (Katz) Gang Violence Intervention Programs. Support. TO GOVERNOR.
- (r) AB 3498 (Moore) Gang Violence Prevention Fund. Support. TO GOVERNOR.
- (s) SB 2600 (Garamendi), SB 2712 (Kopp) Transportation Funding. Support. FAILED PASSAGE.
- (t) AB 3295 (Moore) Cable Franchise Authority. Oppose. TO GOVERNOR.
- (u) ACA 53 (McClintock) Reimbursement of State-Mandated Costs. Support. FAILED PASSAGE.