

ALADS Legislative Corner
By
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A number of members have asked me what is the outlook in Sacramento for 2010? Will the state's fiscal condition begin to improve? What about funding for local governments? Will the union face more "take away" battles on pensions, furloughs, and other issues? Will the governor and the Legislature act responsibly, or will the political craziness that has earned the governor and the Legislature the lowest public approval ratings in history continue? Before I walk off the plank with my fearless forecasts for 2010, I would like to comment about a bill the Governor recently vetoed that affects some of our members – specifically any deputy who is, or may be, married to another deputy.

AB 653 (Feuer, D., Los Angeles) was introduced in response to a recent 4th District Court of Appeals decision which eliminated application of the "marital privilege" in peace officer disciplinary hearings. Under law, the "marital privilege" is a legal right which protects the confidential communications of spouses, much the same as the lawyer-client privilege protects confidential communications with your attorney. The purpose of the "marital privilege" is to foster truth and honesty between married partners, and to protect these confidential conversations from leaving the bedroom and going to the courtroom – or in this case, to the administrative disciplinary hearing room. **AB 653** would have allowed a limited invasion of the marital privilege, but only for serious cases, and only then as a "last resort." In addition to broad rank-and-file support, **AB 653** had been signed off by Sheriff Baca, and both Sheriff Baca and the California State Sheriffs were neutral on the bill. The California Police Chiefs supported the bill. It passed both houses on legislative consent, receiving strong bipartisan support. **AB 653** should have been a "slam dunk" for the governor to sign, but, instead, the governor vetoed the bill stating it would encroach on management's disciplinary authority – *even though there was no opposition from management?* What will the governor's VETO mean to you if you happen to be married to another officer, or may someday be married to one?

Let me illustrate how his veto could affect you by using a hypothetical example. Let's say Officer Schwertenpooper has been married to Lt. Scribner for the past twenty years. Officer Schwertenpooper has been an exemplary husband and officer, but, being a natural leader, he had risen to the presidency of his association. As president, Officer Schwertenpooper has been very critical of abusive management practices, but his public criticism had earned him the enmity of Sheriff Blackheart.

Several years ago, Officer Schwertenpooper, being a rather handsome and charming fellow, had a few beers after his late night shift, and ended up having had a one night tryst with a married female deputy – not his wife! The guilt laden couple immediately broke off their relationship. Both went home and honorably confessed all to their respective spouses, (first making sure their spouse's firearm was empty before

confessing.) In the end, it was a hard lesson for all involved, but amends were made, forgiveness was obtained, and all the parties lived happily ever after.

Well, not so fast, my friend! Sheriff Blackheart, hearing gossip from his departmental spy network, learns of Officer Schwertzenpooper's marital indiscretion. He decides this is his golden opportunity to get revenge and get rid of the annoying Schwertzenpooper permanently – but he needs legal proof to support the “fraternization” and “conduct unbecoming” and other trumped up charges that his internal affairs staff had prepared against the union president. So the sheriff orders Officer Schwertzenpooper and his wife, Lt. Scribner, as well as the other female deputy and her spouse, brought in for interrogation. The parties claim “marital privilege,” *but the sheriff's lawyer informs them that case law has now eliminated that claim of privilege in administrative disciplinary hearings, so they are legally compelled to answer all the questions concerning the trust or be fired.* Based on their confession, the Sheriff decides to fire all the parties involved for misconduct and for failing to report a serious violation of departmental policy. However the sheriff's lawyer tells Officer Schwertzenpooper that, if he hands in his resignation, the sheriff will relent and just give the others (including Lt. Scribner) a 15 day suspension. To protect his wife's career, Officer Schwertzenpooper resigns. Soon, thereafter, Sheriff Blackheart reassigns Lt. Scribner to a job supervising latrines in the county jail – letting it be known that her career with the department is finished as long as she is married to that troublemaker, Schwertzenpooper. Rather than cave in to Blackheart's evil treachery, Lt. Scribner also resigns from the department.

Farfetched? Perhaps, but, unfortunately, it is a scenario that could happen when too much authority is given management. Until the *Riverside* Case, it had always been assumed that officer discipline *never* involved violating the marital privilege (or any other legal privilege) for reasons of sound public policy. Management never complained that their hands were tied *because* they could not encroach upon the marital privilege, (or the doctor-patient privilege or the lawyer-client privilege,) and they have functioned quite well. Now, we have an open door for abuse! ***Governor, you need to respect the rights of married officers, not discriminate against them! Your VETO means an officer is now penalized for being married to another officer! Sorry, but it seems cupid takes a hit if you wear a badge!***

As for my fearless forecasts for 2010 – well, they are not very rosy! On the positive side, both the Legislative Analyst and the Department of Finance believe the economy is stabilizing and beginning to recover. The recent recession has been the longest and deepest since the Great Depression, and California was one of the hardest hit states by this economic downturn. For 2010, eight of ten economic indicators have already turned positive, but jobs and home prices are still negative. Still, GDP (gross domestic product) is predicted to increase by 2% next year, 3% in 2011 and 3.7% in 2012. Unfortunately, this does NOT translate into a rosy budget picture. Governor Schwarzenegger inherited a fiscal mess when he assumed office, and he will likely leave his successor with an even bigger mess. The economy, not the governor's policies, is the main culprit, as the recession has seriously eroded the personal income, sales, and property tax bases. The Legislative Analyst predicts a budget deficit of \$20.7 billion for

the next fiscal year, growing to \$23 billion by 2012. Given the budget politics of Sacramento, it's hard to imagine a political scenario where most of this projected deficit will be closed, without serious cuts to government services. Those cuts will no doubt affect public safety as well!

On the political side, we will likely have new leadership in the Assembly in early 2009 and a new Governor and Attorney General in early 2010. (O.K., even though he has not formally declared, who really believes Jerry Brown is not running for Governor?) We are likely to see a plethora of ballot measures in 2010 as well. We know the voters will decide whether the state has an "open" primary system (meaning independents and "decline to states" may vote in partisan primaries.) We may also see a call for a constitutional convention, a "split roll" property tax initiative, another Keith Richman backed "pension initiative," a "majority vote" budget initiative, and even another "pay check protection" initiative. There will likely be a plethora of other controversial measures as well. Navigating the seas of political change to date has been a huge challenge. In 2010, and beyond, it will be an even greater challenge.

Because of the recovering economy, this year will be a tough holiday season for many people. However, people forget that *every holiday season* is difficult when you wear a badge! Crime does not take a holiday, and while I hope it's not the case, this year may prove to be the toughest yet for many of you. My wish for you in 2010 – stay safe!