

RESOLUTION 08-08-2012

DIGEST

Agriculture: Entry of Judgment on Civil Penalties by County Agriculture Commissioners
Amends Food and Agricultural Code section 43003 to allow County Agriculture Commissioners to enter judgments on civil penalties.

RESOLUTIONS COMMITTEE RECOMMENDATION

APPROVE IN PRINCIPLE

History:

Similar to Resolution 03-02-2009, which was approved in principle (and subsequently enacted into law).

Reasons:

This resolution amends Food and Agricultural Code section 43003 to allow County Agriculture Commissioners to enter judgments on civil penalties. The resolution should be approved in principle because it provides a mechanism for civil penalties levied by a County Agricultural Commissioner to be enforced, using a procedure common in other areas of the Food and Agricultural Code.

Although the provision requiring that courts not charge any filing fee for the entry of judgment on a Commissioner's order of civil penalties could be construed as an unfunded mandate, it is consistent with Government Code section 6103, which bars courts from charging filing fees to county officials acting in their official capacities. The resolution might benefit from making reference to that section. For example, after Resolution 03-02-2009 (making similar changes to Food and Agriculture Code section 46017, regarding organic foods) was passed by this conference, it was amended to add a specific reference to Government Code section 6103, before being enacted into law.

TEXT OF RESOLUTION

RESOLVED, that the Conference of the California Bar Associations recommends that legislation be sponsored to amend Food and Agricultural Code section 43003 to read as follows:

- 1 § 43003
2 (a) In lieu of civil prosecution, the secretary or the commissioner may levy a civil penalty
3 against any person violating this division or any regulation adopted pursuant to its provisions.
4 Except as provided in subdivisions (b) and (c), the civil penalty for each violation shall be, for a
5 first violation, a fine of not more than five hundred dollars (\$500). For a second or subsequent
6 violation, the fine shall be not less than one hundred dollars (\$100), nor more than one thousand
7 dollars (\$1,000).
8 (b) The secretary or the commissioner may, for a first violation, levy a civil penalty not to
9 exceed three thousand dollars (\$3,000) for each violation of Section 42945, 42948, 42949,
10 42951, subdivision (b) of Section 44971, Section 44972, subdivision (c) of Section 44974, or
11 Section 44986.

12 (c) The secretary or the commissioner may, for a first violation, levy a civil penalty not to
13 exceed five hundred dollars (\$500) for each violation of Section 44973, 44982, 44983, 44984,
14 45031, 45034, or 45035. For a second or subsequent violation, or for a violation involving
15 avocados worth five hundred dollars (\$500) or more, the fine shall be not less than two hundred
16 fifty dollars (\$250) nor more than five thousand dollars (\$5,000).

17 (d) Before a civil penalty is levied, the person charged with the violation shall receive
18 notice of the nature of the violation and shall be given an opportunity to be heard. This shall
19 include the right to review the evidence and a right to present evidence on his or her own behalf.

20 (e) The person fined may appeal to the secretary within 10 days of the date of receiving
21 notification of the fine. The following procedures apply to the appeal:

22 (1) The appeal need not be formal, but it shall be in writing and signed by the appellant or
23 his or her authorized agent, and shall state the grounds for the appeal.

24 (2) Any party may, at the time of filing the appeal or within 10 days thereafter, present
25 written evidence and a written argument to the secretary.

26 (3) The secretary may grant oral arguments upon application made at the time written
27 arguments are filed.

28 (4) If an application to present an oral argument is granted, written notice of the time and
29 place for the oral argument shall be given at least 10 days before the date set therefor. The times
30 may be altered by mutual agreement.

31 (5) The secretary shall decide the appeal on any oral or written argument, briefs, and
32 evidence that he or she has received.

33 (6) The secretary shall render a written decision within 45 days of the date of appeal or
34 within 15 days of the date of oral arguments.

35 (7) On an appeal pursuant to this section, the secretary may sustain, modify by reducing
36 the amount of the fine, or reverse the decision of the commissioner. A copy of the secretary's
37 decision shall be delivered or mailed to the appellant and the commissioner.

38 (8) Review of the decision of the secretary may be sought by the appellant pursuant to
39 Section 1094.5 of the Code of Civil Procedure.

40 (f) After the exhaustion of the appeal and review procedures provided in this section, the
41 commissioner or his or her representative may file a certified copy of a final decision of the
42 commissioner that directs the payment of a civil penalty and if applicable, a copy of any decision
43 of the secretary or his or her representative rendered on an appeal from the commissioner's
44 decision and a copy of any order that denies a petition for a writ of administrative mandamus,
45 with the clerk of the superior court of any county. Judgment shall be entered immediately by the
46 clerk in conformity with the decision or order. No fees shall be charged by the clerk of the
47 superior court for the performance of any official service required in connection with the entry of
48 judgment pursuant to this section.

(Proposed new language underlined; language to be deleted stricken.)

PROPONENT: San Diego County Bar Association

STATEMENT OF REASONS

Existing Law: Confers upon County Agricultural Commissioners the authority to issue civil penalties for violations of fruits, nuts and vegetables standardization laws and regulations.

However, unlike other civil penalty provisions, the current language of Food and Agricultural Code section 43003 makes no provision enabling the Commissioner to enforce a decision under this section by entering the judgment in superior court should the respondent fail to pay the penalty as ordered.

This Resolution: Adds a new subdivision (f) which includes language nearly identical to similar civil penalty provisions granting such authority to the Commissioners of Agriculture or the Sealers of Weights and Measures. (*See, e.g.*, Food & Agr. Code, § 12999.5, subd. (t) [violations of pesticide laws and regulations]; Bus. & Prof. Code, § 12015.3, subd. (d) [violations of weights and measures laws and regulations].)

The Problem: Without this authority, the Commissioners have very little if any leverage short of going to the District Attorneys for criminal prosecution, or to County Counsel to request the superior court for an injunction when respondents fail to pay civil penalties. Once judgment is entered in superior court, then the Revenue and Recovery Office of the County of San Diego, or similar office in other counties, can proceed to enforce the Commissioner's Decision and Order, and relieve her staff of this burden.

IMPACT STATEMENT

This proposed resolution does not affect any other law, statute or rule.

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