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## Statutory Interpretation--Department of Revenue v. McIlvain

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**STATUTORY INTERPRETATION—DEPARTMENT OF  
REVENUE v. McILVAIN**

In the recent case of the *Department of Revenue v. McIlvain*<sup>1</sup> the Kentucky Court of Appeals was called upon to interpret Kentucky Revised Statutes 134.210, relative to the office of special tax collector. In arriving at their interpretation of the statute the Court relied upon the following expressed rules of statutory interpretation:

"In the interpretation of writings, including statutes the primary factor to be considered is to determine the intent of the maker and which in turn is to be determined by the language employed. If that language is plain and unambiguous its meaning should be upheld as so expressed, uninfluenced by any unwise or unusual result that might follow the upholding of the plainly expressed writing or statute, which is but following frequent expressions of courts to the effect that the intention to be gathered from employed language is the one that it plainly expresses, and not the one that may have been in the mind of the composer, but which he failed to express. In other words, the intention is gathered from what the writers of such documents, including statutes, actually said and not what they may have intended to but did not say."<sup>2</sup>

The Court failed to cite authority for their statement of these rules of statutory interpretation and it must be presumed that the Court considered such rules so well settled in this state as not to require citation of authority. This is a definite commitment that Kentucky follows the "plain meaning rule" of statutory interpretation. That is, in the absence of any ambiguity, the plain meaning of the words employed, in their common usage, is deemed to be the intent of the legislature regardless of anything to the contrary which may be shown by extrinsic evidence.<sup>3</sup>

While the Court undoubtedly arrived at the correct interpretation of the statute in question, it did not confine its reasoning to the plain meaning of the words employed, but developed the legislative and judicial history of the statute. The controversy arose from a provision of Kentucky Revised Statutes 134.210 providing for the compensation of the outgoing sheriff who has elected to act as special tax collector after the expiration of his term of office. The Court points out that the statute plainly provides that the compensation of the office of special tax collector "shall be the same as provided by law for the sheriff of the county in which the duties are per-

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<sup>1</sup> 302 Ky. 558, 195 S.W. 2d 63 (1946).

<sup>2</sup> Department of Revenue v. McIlvain, 302 Ky. 558 at 561, 195 S.W. 2d 63 at 64.

<sup>3</sup> Horack, *In the Name of Legislative Intent* (1932) 38 W. VA. L. Q. 119; Jones, *The Plain Meaning Rule and Extrinsic Aids in the Interpretation of Federal Statutes* (1939) 25 WASH. U. L. Q. 2; Jones, *Statutory Doubts and Legislative Intent* (1940) 40 COL. L. R. 957.

formed, except that the special tax collector's personal compensation shall not exceed \$2083.35."<sup>4</sup> By applying the "plain meaning rule" alone the Court would have been required to go no further to reach their construction of the statute. But the Court did go further to show that the question under consideration originated with an act of the 1928 Legislature<sup>5</sup> which had been interpreted by the Court of Appeals in *Madison County v. Hamilton*<sup>6</sup> to have created the office of delinquent tax collector and since the compensation for the office had not been specified in the act it should be a reasonable amount derived by way of commission on the taxes collected in the manner prescribed by law for sheriffs. The Court points out that by an act of the Legislature in 1932<sup>7</sup> the provisions of the 1928 act were amended to provide that "the income of the outgoing sheriff arising from the commissions for the collection of taxes shall be treated as a part of the income of the sheriff for the preceding year," but that this latter provision did not appear in the amendment and re-enactment of the statute in 1940<sup>8</sup>, which is the statute under consideration. This development of the history of the statute through its various amendments would indicate that the Court relied on past decisions of the Court of Appeals and the inferences that can be drawn from the legislative history of the statute in addition to the plain meaning of the words used in arriving at their interpretation.

Confining the discussion solely to those cases wherein there has been no allegation of ambiguity in the language of the statute, only a cursory examination of the Kentucky cases dealing with statutory interpretation is required to raise some doubt in the mind of the observer as to the conclusiveness of the Court's statements in the *McIlvain* case. But one need not rely wholly on the former expressions of the Court, but may look to the Kentucky Revised Statutes to confirm his doubts of the conclusiveness of these rules. The Legislature, in Kentucky Revised Statutes 446.080<sup>9</sup>, has laid the rules for the interpretation of the Kentucky Revised Statutes, stating:

"(1) All statutes of this state shall be liberally construed with a view to promote their objects and carry out the intent of the legislature, and the rule that

<sup>4</sup> Ky. R. S. (1944) 134. 210, subsection (3).

<sup>5</sup> Kentucky Acts (1928), Chapter 128, p. 438; KENTUCKY STATUTES (Carroll, 1930) Sec. 4135.

<sup>6</sup> 243 Ky. 29, 47 S.W. 2d 938, 939 (1932).

<sup>7</sup> Kentucky Acts (1932), Chapter 129, p. 628 at 630.

<sup>8</sup> Kentucky Acts (1940), Chapter 163, p. 641.

<sup>9</sup> This statute first appeared in THE REVISED STATUTES OF KENTUCKY of 1851-52 as Sections 14, 15, 16, and 17 of Chapter XXI and was adopted from New York and Massachusetts. These sections were combined in the 1892 revision of the GENERAL STATUTES and appeared as Sections 459 and 460 of Chapter 26 in the 1894 edition of the KENTUCKY STATUTES. These sections remained in this form through the various revisions and editions of the KENTUCKY STATUTES until the 1942 revision when they appeared as Ky. R. S. 446.080.

statutes in derogation of the common law are to be strictly construed shall not apply to the statutes of this state.

"(2) There shall be no difference in the construction of civil, penal and criminal statutes.

\* \* \*

"(4) All words and phrases shall be construed according to the common and approved usage of language, but technical words and phrases and such others as may have acquired a peculiar and appropriate meaning in the law, shall be construed according to such meaning."<sup>10</sup>

From this statute it would appear that the statutes of this state should be interpreted to carry out the intention of the Legislature as indicated by the objects of the statutes and not merely to carry out the plain meaning of the language used, regardless of consequences, and the obvious intent of the legislature,<sup>11</sup> as ruled in the *McIlvain* case.

In the majority of the cases wherein the Court has cited Kentucky Revised Statutes 446.080, or its predecessors, the result has been that the legislative intent, as derived from sources other than the plain meaning of the words used, has been the controlling factor in the interpretation given.<sup>12</sup> In a few cases the Court has recognized the statute, but has declared that it was not controlling or that a strict literal interpretation of the statute should be made notwithstanding the admonition of the statute on construction.<sup>13</sup> On other

<sup>10</sup> See also: KENTUCKY CIVIL CODE (Carroll, 1938) Sec. 733.

<sup>11</sup> *Wood Oil Co. v. Commonwealth*, 196 Ky. 196, 244 S.W. 429 (1922); *Green v. Moore*, 281 Ky. 305, 135 S.W. 2d 682 (1939).

<sup>12</sup> In *Bailey v. Commonwealth*, 74 Ky. 688 (1876) the court was asked to construe section 5, art. 29, chap. 29, of the *General Statutes* which provided that it would not be unlawful for a person to carry a concealed deadly weapon "when the person has reasonable ground to believe his person or the person of some member of his family, or his property, is in *immediate danger* from violence or crime." The court referred to Sec. 17 of Chap. 21 of the GENERAL STATUTES (Ky. R. S. 446.080, subsection (4)) and to the dictionary definition of the word "immediate" which was given as, "having nothing intervening either as to place, time or action." The court held that the use of the word immediate in its ordinary meaning would lead to the absurd result that a man might not arm himself until his adversary was present, and that "every statute ought to be expounded, not according to the letter, but according to the meaning" and that "every interpretation that leads to an absurdity ought to be rejected."

See also: *Comm. ex. rel. Martin v. Tom Moore Distillery*, 287 Ky. 125, 152 S.W. 2d 962 (1939); *Holliday v. Fields*, 210 Ky. 179, 275 S.W. 642 (1925); *Gibson v. Commonwealth*, 209 Ky. 101, 272 S.W. 43 (1925); *Newport Benevolent Burial Assn. v. Clay*, 170 Ky. 633, 186 S.W. 658 (1916).

<sup>13</sup> In *Phoenix Third National Bank v. Martin*, 219 Ky. 579, 293 S.W. 1064 (1927), Sec. 550, KENTUCKY STATUTES (1922) prescribing the liability of directors of private corporations who failed to comply with the various statutes governing their conduct was interpreted by the court, stating: "Section 550, Ky. Stats., imposing a burdensome liability on delinquent directors, is a drastic law, and on its

occasions, however, the court recognized that Kentucky Revised Statutes 446.080, or its forerunners, does change the common law rules of statutory interpretation to some extent and that the rules set out in the statute are controlling in his state.<sup>14</sup> The confusion which appears in the cases wherein the statute on construction is cited is but a small indication of the great confusion that exists generally in the field of statutory interpretation in this state.

The Court can find an ample number of cases to support its statement of the plain meaning rule in the *McIlwain* case.<sup>15</sup> But

face, it is absolute. . . . Nevertheless, it is intrinsically a penal statute, for the same state of facts that would make corporate officers and directors civilly liable would make them criminally liable also. It is true that section 459, Ky. Stats., provides 'that there shall be no distinction in the construction of statutes, between criminal or civil and penal enactments.' But, without stopping to discuss the sense or significance of this provision, I am satisfied that the statute in question, both in its civil and in its penal aspect, should be construed strictly—strictly, at least, in the sense that it ought not be extended beyond its fair scope and reasonable intentment."

*Dennison v. Commonwealth*, 208 Ky. 366, 270 S.W. 752 (1925) held that the word "storehouse" as used in 1169 KENTUCKY STATUTES (1922) describing the offense of burning a "storehouse" on which there was insurance, did not include the offense of burning a storehouse where the contents only were insured, citing Kentucky Statutes, Sec. 460.

<sup>14</sup>*Sutton v. Sutton*, 87 Ky. 216, 8 S.W. 337, (1888); *Commonwealth v. Davis*, 75 Ky. 240 (1876); See also: *Fidelity & Columbia Trust Co. v. Meeks*, 294 Ky. 122, 171 S.W. 2d 41 (1943).

<sup>15</sup>In *Commonwealth v. Lipiginski*, 212 Ky. 366, 279 S.W. 339 (1926) the defendant was indicted for violation of the child labor laws, sub-section 15 of section 331A, KENTUCKY STATUTES (1922), which provides in part:

1. "No boy under fourteen years of age . . . shall be employed . . . in connection with the street occupations of peddling, boot-blacking, the distribution or sale of newspapers, magazines, periodicals or circulars. . ."

2. "No boy between 14 and 16 years of age shall be employed . . . in connection with the street occupations of peddling, boot-blacking, the distribution or sale of magazines, periodicals or circulars. . ."

The defendant had employed a boy between fourteen and sixteen to sell newspapers and was charged with the violation of the second section above quoted. The defendant argued that the word "newspaper" did not appear in that section and therefore the indictment was bad. The Commonwealth argued that the word "newspaper" had been omitted from the section by inadvertence, oversight or mistake. In holding the indictment bad, the Court said: "We conclude that the act must be considered as presented by the Legislature without the interpolation of words which may appear to some were intended to be but were not employed by the lawmaking body in the enactment of the statutes. . ."

In the often cited case of *Hewlett v. Springfield*, 210 Ky. 199, 275 S.W. 385 (1925) the Court said: "We fully appreciate the fact that . . . was perhaps not the actual intention of the legislature, but as has often been said, the legislative intent may not be gathered

there is a respectable number of well-considered decisions wherein the Court has faced the problem of interpreting a clearly unambiguous statute, admitted to be unambiguous by the Court, expressly or by inference, where they have refused to invoke the "plain meaning rule."<sup>16</sup>

The Court points out in the *McIlwain* case that the intention of the legislature is to be gathered from what the legislature actually said, not what they intended to say.

But in *Dougherty v. Kentucky Alcoholic Beverage Control Board*<sup>17</sup> the Court was asked to interpret Section 2554b-177, 1939 Supplement, *Kentucky Statutes*<sup>18</sup> which provides:

"No license for the sale of alcoholic beverages at retail, shall be granted for any premises which shall be located on the same street or avenue, and within two hundred feet of a building occupied exclusively as a school, hospital, church or other place of worship. . . . The measurement called for in this section shall be taken on the street or avenue on which the licensed premises are located in a straight line from the nearest property line of the property on which is located the building used as a church . . . to the nearest property line of the real estate on which is located the building for which the license is sought."

The Court revoked a license issued to a country crossroads store to sell liquor and from the language quoted below it is submitted that the Court relied upon the intention of the legislature as drawn from other factors than the plain meaning of the words used.

"We have pointed out the word 'highway' is commonly used to signify a public road in the country, and that a thoroughfare in a city or town is referred to or designated as a street \* \* \*

"It is a familiar rule of statutory construction that the entire act is to be considered with the judicial eye upon the historical setting, the public policy, the objects

from what the General Assembly failed to say, but from what it actually did say. . ."

See also: *Plummer et al. v. City of Vanceburg*, 275 Ky. 713, 122 S.W. 2d 772 (1938); *Hurley Co. v. Martin*, 267 Ky. 182, 101 S.W. 2d 657 (1936); *Lewis v. Creasey Corp.*, 198 Ky. 409, 248 S.W. 1046 (1923); *Western and Southern Life Ins. Co. v. Weber*, 183 Ky. 32, 209 S.W. 716 (1919); *James v. J. S. Fidelity & Guaranty Co.*, of N. Y., 133 Ky. 299, 117 S.W. 406 (1909).

<sup>16</sup> *Oates v. Simpson, Tax Commissioner*, 295 Ky. 433, 174 S.W. 2d 505 (1943); *Swift v. Southeastern Greyhound Lines*, 294 Ky. 137, 171 S.W. 2d 49 (1943); *Reeves v. Fidelity and Columbia Trust Co.*, 293 Ky. 544, 169 S.W. 2d 621 (1942); *Commonwealth v. Bartholomew*, 265 Ky. 703, 97 S.W. 2d 591 (1936); *Golightly v. Bailey*, 218 Ky. 794, 292 S.W. 320 (1927); *Felts v. Edwards*, 181 Ky. 287, 204 S.W. 145 (1918).

<sup>17</sup> 279 Ky. 262, 130 S.W. 2d 756 (1939).

<sup>18</sup> Ky. R. S. 243.220 (3). Sections 2554b-174, 2554b-175, and 2554b-177 of KENTUCKY STATUTES (1939 Supp.) have been incorporated into this section.

to be accomplished, the mischief intended to be remedied, and all other attendant facts and circumstances which throw intelligent light upon the intention of the law-making body . . . The reason and spirit of the law must be considered. If a literal meaning of the language used would defeat the intention, such will not be given it for the real purpose of the legislature must prevail over the literal import of the words used . . . It cannot be thought that the legislature intended to leave schools, hospitals, churches, and other places of religious worship in the country or unincorporated villages unprotected from the influence of places where intoxicating liquors are dispensed and at the same time intended to afford such protection in a town or city."<sup>19</sup>

In *Martin v. Louisville Motors*<sup>20</sup> the Court was asked to construe Kentucky Statutes (1930) Sec. 2739g-2(a) as amended by Acts of 1936, c. 67, concerning motor vehicle registration. In arriving at their interpretation the Court laid down several rules of statutory interpretation which they considered controlling in this state. The Court quoted from *Sams v. Sams' Admr.*<sup>21</sup> as follows:

"It is a well settled rule of construction that the letter of a statute will not be followed where it will lead to an absurd conclusion; but, on the contrary, *the reason for the enactment must enter into its interpretation, so as to determine what was intended to be accomplished by it.*"

Again in the same opinion the Court quoted from *Nentzel v. Ryan*:<sup>22</sup>

"The purpose is to give effect to the legislative intent. *The will of the Legislature, not its words, are (sic) the law.*"

No attempt will be made to discuss the various methods the Court of Appeals has employed to discover the legislative intent where the plain meaning rule is not invoked. It is submitted however that rules of statutory interpretation laid down in the *McIlwain* case, which are but a clear statement of the "plain meaning rule," are not necessarily controlling in this state and that the court can, and often does, employ other means than the plain meaning of the words used to ascertain the intent of the legislature when interpreting an unambiguous statute.

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<sup>19</sup> *Dougherty v. Kentucky Alcoholic Beverage Control Board*, 279 Ky. 262 at 266-267, 130 S.W. 2d 756 at 759-760 (1939).

<sup>20</sup> 276 Ky. 696, 125 S.W. 2d 241 (1939).

<sup>21</sup> 85 Ky. 396, 3 S.W. 593 (1887).

<sup>22</sup> 184 Ky. 292, 211 S.W. 852 (1919).