# THE USE OF CONTEMPORANEOUS CIRCUMSTANCES AND LEGISLATIVE HISTORY IN THE INTERPRETATION OF STATUTES IN MISSOURI

The problem of statutory interpretation is one which is increasingly being presented to the courts. However, the problem is far from new. Indeed, modern rules of construction date back to the famous statement of Lord Coke in *Heydon's Case* in 1584:

> . . . for the sure and true interpretation of all statutes in general (be they penal or beneficial, restrictive or enlarging of the common law,) four things are to be discerned and considered:—
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> 1st. What was the common law before the making of the Act.
>
> 2nd. What was the mischief and defect for which the common law did not provide.
>
> 3rd. What remedy the Parliament hath resolved and appointed to cure the disease of the commonwealth.
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> And, 4th. The true reason of the remedy. And then the office of all judges is always to make such construction as shall supress the mischief, and advance the remedy, and to supress subtle inventions and evasions for continuance of the mischief, and to add force and life to the cure and remedy according to the true intent of the makers of the Act.[1]

Sutherland has said:

> This rule has been reformulated, expanded, restricted, explained, and rephrased, but the conclusion of it, the application of the law according to the spirit of the legislative body, remains the principal objective of judicial interpretation.[2]

The above comment fairly describes the present state of the rule in Missouri. The Missouri courts frequently quote and paraphrase Lord Coke's statement.[3]

The primary rule of construction, then, is to enforce the intent of the legislature.[4] This doctrine assumes that the legislature has

1. 3 Co. 7a, 76 Eng. Rep. 637.
2. 2 SUTHERLAND, STATUTORY CONSTRUCTION 315 (3rd ed., Horack, 1943).
3. Vining v. Probst, 239 Mo. App. 157, 186 S.W.2d 611 (1945); State v. Ball, 171 S.W.2d 787 (Mo. App. 1943).
4. For comparison of the problem of statutory construction with the problem of the construction of a private written insrument see Nutting, *The Ambiguity of Unambiguous Statutes*, 63 N.J.L.J. 265 (1940), pointing our similarities. *But see:* de Sloovere, *Extrinsic Aids in the Interpretation of Statutes*, 88 U. OF PA. L. REV. 527 (1940).

an intention. Max Radin says that it cannot have one.[5] Landis says that it can.[6] A suitable compromise would be to agree that even though all of the members of the legislature rarely, if ever, have a particular factual situation in mind when a bill is passed, there is a class of cases, essentially similar, with respect to which the legislature can have a general policy.[7] This general policy, then, is the legislative intent which can assist in the interpretation of the statute. And the role of extrinsic aids, such as contemporaneous circumstances and legislative history, is to help discover the legislative intent.

The cases involving statutory construction fit into two major categories: (1) those in which the problem is whether the statute applies to the factual situation before the court,[8] and (2) those in which the problem is what effect a clearly applicable statute should produce.[9] A third class of cases might arise when both questions were presented to the court, but these are the two basic problems involved.[10] In the first, the effect of the statute is generally apparent, and the difficulty lies in determining whether the statute was intended to cover a specific factual situation. In the second, by contrast, the applicability of the statute is not in doubt, and the obstacle arises in ascertaining what result is required by the statute. It is not apparent from the cases that the type of problem involved affects the use of extrinsic aids. Both are problems of construction, and the same aids will be of assistance in either case.

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5. *Statutory Interpretation*, 43 HARV. L. REV. 863 (1930).

6. *A Note on Statutory Interpretation*, 43 HARV. L. REV. 886 (1930).

7. See Jones, *Extrinsic Aids in the Federal Courts*, 25 IOWA L. REV. 737 (1940).

8. *E.g.*, Logan v. Fidelity & Casualty Co., 146 Mo. 114, 47 S.W. 948 (1898).

9. State *ex rel.* Klein v. Hughes 351, Mo. 651, 173 S.W.2d 877 (1943).

10. See Radin, *supra* note 5. The author states, "The act of interpretation, however, is not that of rendering a determinable quite determinate. The determinate involved is the actual issue in litigation. As soon as it is made apparent that the statutory determinable does or does not cover this determinate event, the act of interpretation in finished." *Id.* at 869. This definition clearly encompasses type one suggested above, but it includes type two only when the second problem is stated in terms of the first. It is suggested that the recognition of two distinct problems is a more helpful analysis.

## WHEN EXTRINSIC AIDS WILL BE USED—THE PLAIN MEANING RULE

There are numerous Missouri cases which state the plain meaning rule.[11] This doctrine provides that when the language of a statute is plain and unambiguous, *i.e.*, having only one possible meaning, it may not be construed but must be given effect as written. However, this language is not entirely accurate. The mere application of any statute to any given factual situation of necessity presents a construction problem. Before a court can apply a statute in a particular case, it must determine the meaning of the statute in order to know that it is applicable and what effect it is intended to produce. What the courts mean is that when the legislative enactment contains no patent ambiguity, they will not investigate the possibility of a meaning other than that which plainly appears from its language.[12]

The effect of this rule, then, is to preclude the courts' considering extrinsic aids. They will look only at the language of the statute.[13]

An interesting example is contained in *Cobb v. Thompson*.[14] There a statute read:

> There is hereby created a Missouri state negro industrial commission. This commission shall be composed of sixteen (16) members, one from each congressional district, appointed by the Governor for a period of four (4) years with the advice and consent of the Senate.[15]

Applying the plain meaning rule, the Missouri Supreme Court held that the commission was to have a life of only four years. This result was reached despite a showing that the commission

11. Norberg v. Montgomery, 351 Mo. 180, 173 S.W.2d 387 (1943); St. Louis Rose Co. v. Unemployment Compensation Comm'n, 348 Mo. 1153, 159 S.W.2d 249 (1941); St. Louis Amusement Co. v. St. Louis County, 347 Mo. 456, 147 S.W.2d 667 (1941); Cummins v. K. C. Pub. Serv. Co., 334 Mo. 672, 66 S.W.2d 920 (1933).

12. State *ex rel.* Jensen v. Sestric, 216 S.W.2d 152 (Mo. App. 1948).

13. See Jones, *The Plain Meaning Rule and Extrinsic Aids in the Interpretation of Federal Statutes*, 25 WASH. U.L.Q. 2 (1939). In this article it is stated that although the plain meaning rule was originally intended to eliminate the traditional doctrine of the "equity of the statute," its main effect in modern statutory construction is to bar resort to otherwise admissable extrinsic aids. The author states that when one encounters the statement of the rule there is a strong probability that counsel has tried to introduce a committee report or other legislative record in support of his interpretation of the statute.

14. 319 Mo. 492, 5 S.W.2d 57 (1928).

15. Laws of Mo. 1919, p. 82.

had been functioning for ten years, with the legislature appropriating money for its operation during this period.[16] Moreover, four years after its establishment, the original sponsor of the act introduced a bill to repeal it, and the legislature defeated this proposed repealer. Although the court indicated that it was cognizant of these facts, it said that only when the language is ambiguous can reference be had to the construction placed upon an act by the legislative and executive departments. It said the courts cannot use extrinsic matters to create an ambiguity.[17]

It can never be predicted with certainty when the judges will consider a statute unambiguous. Such a determination is incapable of being reached objectively. What may be clear and unequivocal to one, may be confused and uncertain to another. Since no generalization can be made as to when the plain meaning rule will be invoked, it is always uncertain whether the court will consider extrinsic aids. The only safe course for the lawyer is to tender extrinsic aids in each case. They will then be available should the court find an ambiguity in the statute.

THE MANNER IN WHICH EXTRINSIC AIDS ARE USED

An excellent example of the use of extrinsic aids to determine and give effect to the legislative intent is to be found in *State ex rel. Klein v. Hughes.*[18] A section of the liquor control act provided:

> No person shall be granted a license hereunder unless such person is of good moral character and a qualified legal voter and tax paying citizen of *the county, town, city or village. . . .*[19] [Italics added.]

16. The court pointed out that the statute did not provide for the appointment of subsequent members. The appellant argued that the words "and until their successors are appointed and qualified" were inadvertently omitted. He thus admitted that the words of the statute did not by themselves support the construction he was contending for, but argued that the court should read in the words omitted. This the court justifiably refused to do. An aid which the court could have referred to in support of its decision was the fact that the revisors of the Revised Statutes of 1919 left the text of the act out of the revised statutes, making reference in the index only to the Laws of Missouri 1919, thus showing they considered the act of a temporary nature.

17. See also Metropolitan Life Ins. Co. v. Scheufler, 180 S.W.2d 742 (Mo. 1944).

18. 351 Mo. 651, 173 S.W.2d 877 (1943).

19. MO. REV. STAT. § 4906 (1939).

Pursuant to this statute, an ordinance of Crystal City prohibited the issuance of a liquor license to a non-resident of Crystal City. Klein, a resident of Festus, was denied a license. Thus the question presented was in what county, town, city or village did a person have to live in order to qualify for a license.

The St. Louis Court of Appeals[20] was of the opinion that the policy of the statute was to issue licenses only to residents of the locality in which the licensee lived. The underlying theory of the legislation was thought to be that the applicant's concern for the welfare of the community in which he lived would encourage him to conduct his business in a manner not detrimental to his community. That court made no reference to extrinsic aids other than the generally know facts that the distribution of liquor is a potential threat of harm to the community and that an individual is usually more concerned with the welfare of his own community that with that of one in which he does not live.[21] The opinion said, "We can see no inconsistency, conflict or ambiguity whatever in the statute or the ordinance which follows the wording of the statute."[22]

Appeal was taken to the Missouri Supreme Court.[23] Quoting extensively from relator-appellant's brief, that court said:

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20. State *ex rel.* Klein v. Balsiger, 151 S.W.2d 521 (Mo. App. 1941).

21. The court said: "When we consider the well known fact that sometimes a place where intoxicating liquor is sold drives other legitimate business from the locality, and in many cases has other objectionable features, we are constrained to the view that the Legislature intended that the citizens of every city, town or village, through the local courts and officers, should have some protection against a proscribed business only carried on by the tolerance of the law. . . . There can be no doubt that a licensee himself being a voter and citizen, and therefore maintaining a home in the city, town or village, would have much more inducement to conduct the business in an orderly and legitimate manner, than one not possessed of such interest in the municipality that a voter and citizen has." 151 S.W.2d 521, 523 (Mo. App. 1941).

22. *Ibid.*

23. Appeal was taken under the doctrine of State *ex rel.* Wors v. Hostetter, 343 Mo. 945, 124 S.W.2d 1072 (1939). Therein it was said, "When a statute plainly can have only one meaning under canons of construction established by this court, and a Court of Appeals gives it another meaning, we may interfere because there the necessary effect of such erroneous holding is to violate the canons of construction—as much so as if they were expressly denounced." *Id.* at 959, 124 S.W.2d at 1078. Therefore, in the *Kline* case the court said, "It is only when the proper construction of the statute is uncontrovertable that we can intervene." 351 Mo. 651, 653, 173 S.W.2d 877, 878 (1943). Thus appellants had to make out a strong case merely to get the Supreme Court to grant certiorari.

The court in the *Kline* case went on to say, "The doctrine is analogous to that stated in State *ex rel.* K.C. So. Ry. v. Shain, 340 Mo. 1195, 105 S.W.2d 915 (1937), where it was held a Court of Appeals has the same right

> . . . it cannot be denied that one of the accepted canons of statutory construction permits and often requires an examination of the historical development of the legislation, including changes therein and related statutes.[24]

The court went on to point out that a former provision had stated:

> No person shall be granted a license hereunder, unless such person is . . . a qualified legal voter and taxpaying citizen of the county, town, city or village *wherein such person seeks a license.*[25] [Italics added.]

In 1935 this section of the act had been repealed, and the new section set out above was enacted, the italicized words of the old act being omitted. In addition, the legislature enacted a new section which provided that an individual might have a total of three such licenses, with no indication that they were to be secured in the same community. The Supreme Court concluded that, in view of these changes, the section as finally worded must have meant that the licensee was to be a citizen and taxpaying legal voter of the county, town, city or village in which he resided, although he need not reside in the locality in which he seeks the license.

Thus in this case the St. Louis Court of Appeals found no ambiguity and relied upon some contemporaneous circumstances only. On the other hand, the Supreme Court employed other extrinsic aids, such as the history of the section and other statutes dealing with the problem, and reached the opposite result.

This phenomenon suggests that the courts should be careful when they use extrinsic aids to give them only the relative importance they deserve. It cannot be said that any one type of aid will always be more helpful or more relevant than another. This is a question to be decided in each case in the light of the problem involved and the extrinsic aids available. In the above case,

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as this court to decide that a given state of facts substantially tends to prove another ultimate fact; but if that conclusion be contrary to *physical laws or universal knowledge,* then this court can interfere by certiorari. (. . . a rare occurrence.) On the other hand, in construing a statute we may consult the same canons and resort to the same extrinsic aids to construction as were available to the lower courts. And although the meaning of the statute *on its face* may be debatable and open to construction, yet if in the light of those canons and aids the meaning of the statute is certain, then certiorari will lie." 351 Mo. 651, 653, 173 S.W.2d 877, 878 (1943).

24. 351 Mo. 651, 655, 173 S.W.2d 877, 879 (1943).

25. Laws Mo. 1933-34 (Ex. Sess.), p. 77.

for example, reference to the changes made in the law on the subject clearly revealed the intent of the legislature, whereas reference to general circumstances existing in the field of liquor distribution was of little help in determining the specific legislative intent. On the other hand, some other problem might be resolved more readily by resort to contemporaneous circumstances.

The use of the types of extrinsic aids discussed in this paper as an aid to the determination of legislative intent is justified by several presumptions indulged in by the courts. It is presumed that the legislature was familiar with the state of the law prior to its most recent enactment.[26] If a statute previously existed, the legislature is deemed to have been aware of its effect[27] and judicial interpretations of it.[28] The appropriateness of these presumptions is beyond the scope of this note. The important thing, for our purposes, is that they do exist.

## CONTEMPORANEOUS CIRCUMSTANCES

Contemporaneous circumstances may be defined as the circumstances or state of affairs leading to the passage of the act. They are the "mischief" or defect in the law intended to be cured.

Contemporaneous circumstances fall into two categories. One type is the general history of the times, the environment so to speak. The other is the specific problem or "mischief" that brought about the particular legislation. Both types are used by the courts without differentiation. Indeed, except for purposes of analysis, there is no need for differentiation. The dividing line is only one of degree of particularity.

In *Pate v. Ross*,[29] the question was whether drainage taxes were within the scope of an act providing relief from penalties for the non-payment of real estate taxes. The Springfield Court of Appeals recognized the existence of a depression and that people were having a hard time getting along. This factor motivated the court to construe the term "real estate taxes" broadly. In finding the taxes to be within the scope of the act,

26. Graves v. Little Tarkio Drainage Dist. No. 1, 345 Mo. 557, 134 S.W.2d 70 (1939).
27. Smith v. Pettis County, 345 Mo. 839, 136 S.W.2d 282 (1940).
28. State *ex rel.* Northwestern Mutual Fire Ass'n. v. Cook, 349 Mo. 225, 160 S.W.2d 687 (1942); Plater v. Mullins Construction Co., 223 Mo. App. 650, 17 S.W.2d 658 (1929).
29. 229 Mo. App. 836, 84 S.W.2d 961 (1935).

it felt that it was carrying out the basic purpose of the legislation, to keep as many taxpayers as possible from losing their land.

In *Fischbach Brewing Co. v. City of St. Louis,*[30] it was held that the City of St. Louis could not require a license from a brewery located in the City of St. Charles which sold its product in St. Louis. A statute provided:

> The Board of Aldermen, City Council or other proper authorities of incorporated cities may charge for licenses issued to manufacturers, distillers, brewers, wholesalers, and retailers of all intoxicating liquor, within their limits. . . .[31] [Italics added.]

The question to be decided then was what "within the limits" meant. The St. Louis Court of Appeals noted that during the depression it had been difficult for the state to raise revenue; that the Eighteenth Amendment had just been repealed; and that breweries were just commencing operations. It further noted that the state desired to raise revenue from this source, but at the same time wished to encourage the establishment and growth of breweries in order to alleviate the unemployment situation. In view of these circumstances, the court deemed the legislative policy to be an exemption of the brewing industry from too much local taxation. In order to effectuate this policy, the legislative intent was found to be to restrict local taxation to the area in which the brewery itself was actually located. Thus since the brewery had no office or plant within the City of St. Louis, although doing business there, it was not within the limits of the city under the meaning of the statute.

Both types of contemporaneous circumstances were present in each of these cases. In each, the general circumstance was the depression economy in which the legislation was passed. The specific circumstance in *Pate v. Ross* was the fact that many landowners were losing their land because of their inability to pay taxes. In the *Fischbach* case the more particular factor was the embryonic stage of the brewing industry and the need to protect it from heavy local taxation.

Both types of contemporaneous circumstances are helpful in determining the purpose of legislation. The Missouri courts will examine both without hesitancy. Due to their closer relation

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30. 231 Mo. App. 793, 95 S.W.2d 335 (1936).
31. Laws Mo. 1933-34 (Ex. Sess.), p. 88.

to the statute, the specific circumstances are probably more important that the general history of the times. However, both should be considered for what they may be worth.

### Legal History

Legal history may also be divided into two classes. One is the state of the law prior to the final enactment. An examination of such material and a comparison of it with the final legislative product will bring any alterations or additions into clear focus. A changed legislative policy may then frequently be discovered.

The other class may be denominated legislative history. This includes what drafts of the bill were offered, what amendments were accepted and rejected and the like. Such facts evidence a choice by the legislators, which in turn may throw light upon their intent at the time the act was passed. This latter type of aid would be of great value in determining the meaning of legislation, but unfortunately in Missouri the records kept of legislative action are very perfunctory. Only the House and Senate Journals are available. They merely record the readings of bills, disposition to committees, simple committee recommendations, and whether or not the bill passed.[32] No transcripts of the debates, which would indicate what the legislators were actually thinking, are kept.

An excellent example of the value of an examination of the state of the prior law is to be found in *State ex rel. Klein v.*

32. The importance of the Journal has increased over the last century, however, and there is no reason why it could not be referred to for such aid as it is able to furnish. In 1856 the Supreme Court held that the statute roll is the absolute and conclusive proof of a statute, and resort cannot be had to journals of the legislature to impeach the validity of the law. Pacific Ry. v. Governor, 23 Mo. 353. In 1875 it was held that the Journal was only prima facie evidence of the original legislative rolls and could be used in the Supreme Court only if it had been introduced into evidence at the trial. Bradley v. West, 60 Mo. 33. In 1879 it was held that the Legislative Journal could under proper circumstances be introduced into evidence to show that a law was not passed in accordance with the constitutional requirements. State *ex rel.* Attorney Gen. v. Mead, 71 Mo. 266. In 1914 it was held that the House Journal could be examined to show that a law had not received a majority vote of the total membership of the House, and consequently was not passed in accordance with the Constitution and was therefore void. State *ex rel.* Schmoll v. Drabelle, 261 Mo. 515, 170 S.W. 465. In 1917 the court held that the Legislative Journal was admissable to show the history of the act. State *ex rel.* Greene County v. Gideon, 273 Mo. 79, 199 S.W. 948. Thus no barrier any longer stands between the court and the Legislative Journal, and the only difficulty is that it is not especially productive of helpful information in its present form.

*Hughes*[33] discussed *supra.* No case has been found in which a Missouri court examined the various drafts of a section submitted and used this information to determine the sense of a statute.

## CONCLUSION

The use of extrinsic aids is not a panacea for the problems of statutory construction. Indeed, the use of such aids presents difficulties not easily overcome. One very practical problem is the availability of the materials to the lawyer. Contemporaneous circumstances offer little difficulty. For the most part, such circumstances will be a matter of common knowledge. But such things as the legislative history of an act are to be found only in official records not generally available. What is the lawyer who has little or no opportunity to examine these records to do? How is he to advise his client about the meaning of a statute when he cannot look at its text and be sure that the language contained therein is what he can rely upon? In the light of this fact, the use of some extrinsic aids is not at all satisfactory unless complete information concerning legislative proceedings, including those of committees, is available generally.

The root of the problem lies in the fact that statutes are often ambiguous, and their language does not always convey the meaning intended. The obvious solution would be to draft statutes so that they would clearly convey what is meant. But this is not easy. Language being what it is, uncertainties are bound to crop up. Also conditions change, and the problem is raised as to the applicability of statutes to situations which could not have been contemplated by the legislature.[34] In these situations, the court must make a decision. The only question is upon what basis the judges should decide. Obviously, there is no legislative intent in the sense of a result to be accomplished in a particular situation. It is probable, however, that there is an intent in the sense of a policy or attitude to be taken toward a particular class of cases.

Sometimes the purpose of the legislation will be manifest upon the face of the statute. But in other cases, when it is difficult to ascertain the policy from the statute itself, extrinsic aids may be

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33. 351 Mo. 651, 173 S.W.2d 877 (1943).

34. See, for example, Logan v. Fidelity & Casualty Co., 146 Mo. 114, 47 S.W.2d 948 (1898).

of assistance. Certainly, the court should examine these aids in any case. They may be used to confirm or question a determination gleaned from the wording of the statute itself. Or they may shed some light upon the policy of the legislature when a determination thereof is impossible from the face of the statute itself.

It is true that such a procedure may inflict a hardship upon the lawyer attempting to advise his client in advance because these aids are not available to him. However, by the time a case comes before the court for decision, the sole object should be to reach a result consonant with the legislative intent. Anything that may help the court achieve this objective should be used, provided discrimination is exercised in selection. Only such aids as are relevant should be employed, and care must be taken not to attach undue weight to them.

But aids such as the records of the legislative history must be produced in both greater quantity and greater detail to be of real assistance. The publication of committee hearings and reports as an aid in the interpretation of federal tax laws is an example to be emulated.

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