

TITLE XXXIV.

Construction of Statutes, Repeal of Existing Laws,
Curative Acts.

CHAPTER 370.

CONSTRUCTION OF STATUTES.

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370.001 Construction of laws; rules for. In construing Wisconsin laws the following rules shall be observed unless construction in accordance with a rule would produce a result inconsistent with the manifest intent of the legislature:

(1) **SINGULAR AND PLURAL.** Words importing the singular number extend and may be applied to several persons or things; words importing the plural number extend and may be applied to one person or thing.

(2) **GENDER.** Words importing one gender extend and may be applied to any gender.

(3) **TENSES.** The present tense of a verb includes the future when applicable. The future perfect tense includes past and future tenses.

(4) **TIME, HOW COMPUTED.** The time within which an act is to be done or proceeding had or taken shall be computed by excluding the first day and including the last; if the last day be Sunday or a legal holiday the act may be done or the proceeding had or taken on the next secular day; and when any such time is expressed in hours the whole of Sunday and of any legal holiday, from midnight to midnight, shall be excluded.

(5) **STATUTORY REFERENCES.** If a statute refers, by number, to a group of chapters, sections, subsections or paragraphs of the statutes, the reference includes both the first and the last numbers mentioned.

(6) **STATUTE TITLES.** The titles to subchapters, sections, subsections and paragraphs of the statutes are not part of the statutes.

(7) **CONSTRUCTION OF REVISED STATUTES.** A revised statute is to be understood in the same sense as the original unless the change in language indicates a different meaning so clearly as to preclude judicial construction. If the revision bill contains a note which says that the meaning of the statute to which the note relates is not changed by the revision, the note is indicative of the legislative intent.

(8) **JOINT AUTHORITY, HOW EXERCISED.** All words purporting to give a joint authority to 3 or more public officers or other persons shall be construed as giving such authority to a majority of such officers or other persons.

(9) **ACTS BY AGENTS.** If a statute requires an act to be done which may legally be done by an agent, such requirement includes all such acts when done by an authorized agent.

(10) **LIABILITY OF SURETIES.** If an officer is liable on his official bond for any act, the sureties on his bond are also liable.

(11) **SEVERABILITY.** The provisions of the statutes are severable. The provisions of any session law are severable. If any provision of the statutes or of a session law is invalid, or if the application of either to any person or circumstance is invalid, such invalidity shall not affect other provisions or applications which can be given effect without the invalid provision or application.

(12) **TIME.** When time is referred to, central standard time is meant.

History: 1951 c. 261, 469; 1951 c. 734 s. 33.

Revisor's Note, 1951: (1) and (2) are from old 370.01 (2); (3) from 370.01 (21) and (29); (4) from (24); (5) from (28); (6) from (48); (7) from (49); (8) from (3); (9) from (20); (10) from (36); with no change in the meaning of any one. (11) is new; it will eliminate the necessity for severability clauses in separate acts and sections. (12) is new and will eliminate repetition of "standard time", "central standard time" and "central time" in many statutes. (Bill 203-S)
In construing a state statute, the Wisconsin-

sin supreme court may properly resort to the decisions of the United States supreme court which have construed a federal act similar in import, and such construction by the latter court is entitled to great weight. *Coulter v. Dept. of Taxation*, 259 W 115, 47 NW (2d) 303.

Statutes in derogation of the common law are to be strictly construed. *Laridaen v. Railway Express Agency, Inc.* 259 W 173, 47 NW (2d) 727.

A statute should not be construed so as to work an absurd result. *Laridaen v. Railway Express Agency, Inc.* 259 W 173, 47 NW (2d) 727.

Where a revisor's bill, ch. 403, Laws 1931, which deleted from what was originally 2394-4, Stats. 1911, relating to liability of the employer under the workmen's compensation act, the words "in lieu of any other liability whatever," declared that the meaning of the act remained as before and that the revision was intended only to change the verbiage without changing the law, and there was retained in the act the provision in 102.03 (2), that the right to recover compensation pursuant to the act shall be the exclusive remedy against the employer, the act continued to have the legal effect of 2394-4, Stats. 1911, notwithstanding the 1931 revision. Revisions of statutes do not change their meaning unless the intent to change the meaning necessarily and irresistibly follows from the changed language. *Guse v. A. O. Smith Corp.* 260 W 403, 51 NW (2d) 24.

In construing 247.28, the principle of statutory construction to be followed is that the rules of the common law are not to be changed by doubtful implication. *Leach v. Leach*, 261 W 350, 52 NW (2d) 896.

In deciding whether an entire act of the legislature must be held invalid by reason of the unconstitutionality of a part thereof, or whether only the part held invalid is void, leaving the remainder valid and enforceable, the all-determining factor is the intention of the legislature, unless the invalid part is of such a nature that the remainder cannot stand in any event without it. The elimination of even material provisions in an act, because of the invalidity of such provisions, does not render the remaining valid provisions ineffective if the part upheld constitutes, independently, a complete law in some reasonable aspect, unless it appears from the act itself that the legislature intended it to be effective only as an entirety and would not have enacted the valid part alone. Sec. 4 of the reapportionment statute, ch. 723, Laws 1951, providing that the legislature "does not intend that any part of this act shall be the law if any other part is held unconstitutional," is a valid and effective provision, so that, if any other part of the act should be held invalid, the entire act would have to be declared void. *State ex rel. Broughton v. Zimmerman*, 261 W 398, 52 NW (2d) 903.

One part of the statute may be unconstitutional and the remainder may still have effect, provided the 2 parts are distinct and separable and are not dependent on each other. The so-called "county board law" is severable from the remainder of 31.06 (3), and its invalidity does not affect the validity of any other portion of such statute. *Muench v. Public Service Comm.* 261 W 492, 53 NW (2d) 514, 55 NW (2d) 40.

When a general statute and a specific statute relate to the same subject matter, the specific statute is controlling. *Estate of Miller*, 261 W 534, 53 NW (2d) 172.

A construction of a statute which gives it a retrospective effect is not favored, especially where vested rights are affected. *Des Jardin v. Greenfield*, 262 W 43, 53 NW (2d) 784.

The title of a section of the statutes, such as "Common school districts," prefacing 40.30 (1), constitutes no part of the law. *In re Joint Union Free High School Dist.* 262 W 126, 54 NW (2d) 40.

It is a principle of statutory construction that the rules of the common law of Wisconsin are not to be changed by doubtful implication. *Estate of Ogg*, 262 W 181, 54 NW (2d) 175.

If an affirmative statute, which is introductory of a new law, directs a thing to be done in a certain manner, that thing shall not, even though there are no negative words, be done in any other manner, and the mode prescribed by statute for the exercise of a power must be adopted. In some cases, a strict, and even literal, compliance is required. This is particularly true in regard to enactments modifying the course of the common law. *State v. Resler*, 262 W 235, 55 NW (2d) 35.

No construction of a statute is permitted where no uncertainty or ambiguity exists therein. *Beck v. Hamann*, 263 W 131, 56 NW (2d) 837.

Where there is any obscurity in the meaning of a statute, practical construction by the administrative agency charged with administering such law is entitled to great weight. *Wisconsin Axle Division v. Industrial Comm.* 263 W 529, 57 NW (2d) 696, 60 NW (2d) 383.

The requirement of reasonable certainty in orders of an administrative agency, as in statutes, does not preclude the use of ordinary terms to express ideas which find adequate interpretation in common usage and understanding. *Madison Bus Co. v. Public Service Comm.* 264 W 12, 58 NW (2d) 463.

As a general rule, no construction or interpretation of a statute is necessary where the statute is plain and unambiguous, but otherwise where the statute is ambiguous. Where obscurity exists in a statute because it is unreasonable or absurd if given its literal meaning, the court may look to its history, to all the circumstances intended to be dealt with, to the evils to be remedied, to its reason and spirit, to every part of the enactment, and may reject words, or read words in place which seem to be there by necessary or reasonable inference, and substitute the right word for one clearly wrong, and so find the real legislative intent, although it is out of harmony with or even contradicts the letter of the enactment. *Connell v. Luck*, 264 W 282, 58 NW (2d) 633.

A nonseverability clause, being an unequivocal expression of the intent of the legislature, must be given effect as written. 40 Atty. Gen. 304.

The term "otherwise" as used following the enumeration "paraplegia, amputation of a member * * * or otherwise" means any injury as defined above which results in a degree of disability substantially equal to that caused by paraplegia or amputation of a member. 41 Atty. Gen. 38.

370.01 Construction of statutes; words and phrases. In the construction of Wisconsin laws the words and phrases which follow shall be construed as indicated unless such construction would produce a result inconsistent with the manifest intent of the legislature:

(1) **GENERAL RULE.** All words and phrases shall be construed according to common and approved usage; but technical words and phrases and others that have a peculiar meaning in the law shall be construed according to such meaning.

(2) **ACQUIRE.** "Acquire," when used in connection with a grant of power to any person, includes the acquisition by purchase, grant, gift or bequest. It includes the power to condemn in the cases specified in section 32.02.

(3) **ADULT.** An adult is a person who has attained the age of 21 years.

(4) **BEQUEST AND BEQUEATH.** "Bequest" includes a devise; "bequeath" includes devise.

(5) **CHIROPRACTOR.** "Chiropractor" means a person holding a license issued by the state board of examiners in chiropractic.

(5a) **CONTROLLED ACCESS HIGHWAY.** "Controlled access highway" means a highway on which abutting property owners have no right or only a limited right of direct access and on which the type and location of all access connections are determined and controlled by the highway authorities.

(6) **COUNTY BOARD.** "County board" means the county board of supervisors.

(7) **EXECUTOR.** "Executor," in statutes relating to probate proceedings, includes an administrator with the will annexed.

(7a) **EXPRESS HIGHWAY OR EXPRESSWAY.** "Express highway or expressway" means a highway with full or partial control of access and with the important crossroads separated in grade from the pavements for through traffic.

(8) **FOLIO.** "Folio" means 100 words or figures. Any fraction of a folio shall be paid for as a full folio.

(9) **FOLLOWING.** "Following," when used by way of reference to any statute section, means the section next following that in which the reference is made.

(9a) **FREEWAY.** "Freeway" means a highway with full control of access and with all crossroads separated in grade from the pavements for through traffic.

(10) **GRANTOR AND GRANTEE.** "Grantor" includes every person from or by whom any freehold estate or interest passes in or by any deed; and "grantee" includes every person to whom any such estate or interest passes in like manner.

(11) **HERETOFORE AND HEREAFTER.** "Heretofore" means any time previous to the day on which the statute containing it takes effect; "hereafter" means the time after the statute containing such word takes effect.

(12) **HIGHWAY.** "Highway" includes all public ways and thoroughfares and all bridges upon the same.

(13) **HOMESTEAD.** (a) The word "homestead" means the dwelling and so much of the land surrounding it as is reasonably necessary for use of the dwelling as a home, but not less than one-fourth acre (if available) and not exceeding 40 acres.

(b) The amendment effected September 1, 1949 by chapter 245, laws of 1949, shall not affect liens of creditors attaching prior thereto nor rights of devisees or heirs of persons dying prior thereto.

(14) **HOMESTEAD EXEMPTION.** The words "exempt homestead" mean that part of the homestead within the limitation as to value set forth in section 272.20, except as to liens attaching before September 1, 1949 or rights of devisees or heirs of persons dying before September 1, 1949.

(15) **INHABITANT.** "Inhabitant" means a resident.

(16) **INSANE PERSONS.** "Insane persons" include every idiot, non compos, lunatic and distracted person.

(17) **ISSUE.** "Issue," as applied to descent of estate, includes all the lawful descendants of the ancestor.

(18) **LAND.** "Land" includes lands, tenements and hereditaments and all rights thereto and interests therein.

(19) **LEGACY, LEGATEE.** "Legacy" includes a devise; "legatee" includes a devisee.

(20) **MINOR.** A minor is a person who has not attained the age of 21 years.

(21) **MONTH.** "Month" means a calendar month unless otherwise expressed.

(22) **MUNICIPALITY.** "Municipality" includes cities and villages; it may be construed to include towns.

(23) **NIGHTTIME.** "Nighttime," used in any statute, ordinance, indictment or information, means the time between one hour after sunset on one day and one hour before sunrise on the following day; and the time of sunset and sunrise shall be ascertained according to the mean solar time of the ninetieth meridian west from Greenwich, commonly known as central time, as given in any almanac.

(24) **OATH.** "Oath" includes affirmation in all cases where by law an affirmation may be substituted for an oath. If any oath or affirmation is required to be taken such oath or affirmation shall be taken before and administered by some officer authorized by the laws of this state to administer oaths, at the place where the same is required to be taken or administered, unless otherwise expressly directed, and, when necessary, duly certified by such officer. If an oath is administered it shall end with the words "so help me God."

(25) **OFFICERS.** "Officers" when applied to corporations include directors and trustees.

(26) PERSON. "Person" includes all partnerships, associations and bodies politic and corporate.

(27) PERSONAL PROPERTY. "Personal property" includes money, goods, chattels, things in action, evidences of debt and energy.

(28) PHYSICIAN, SURGEON OR OSTEOPATH. "Physician," "surgeon" or "osteopath" means a person holding a license or certificate of registration from the state board of medical examiners.

(29) POPULATION. "Population," when used in connection with a classification of municipal corporations for the exercise of their corporate powers or for convenience of legislation, means the population according to the last national census.

(30) PRECEDING. "Preceding," when used by way of reference to any statute section, means the section next preceding that in which the reference is made.

(31) PROPERTY. "Property" includes real and personal property.

(32) PUBLICATION. "Publication" in a newspaper of any notice or other matter indicated to be for a stated number of weeks means one insertion each week, unless specifically stated to be for more than one day in each week.

(33) QUALIFIED. "Qualified," when applied to any person elected or appointed to office means that such person has done those things which he was by law required to do before entering upon the duties of his office.

(34) RAILROAD CORPORATION. "Railroad corporation" and "railroad company" include any person managing, maintaining, operating or in possession of a railroad, whether as owner, contractor, lessee, mortgagee, trustee, assignee or receiver.

(35) REAL ESTATE OR REAL PROPERTY. "Real estate" or "real property" includes lands, tenements and hereditaments and all rights thereto and interests therein.

(36) RECORDED. If any instrument is required to be recorded by any officer or in any office it must be recorded in a suitable book kept for that purpose unless otherwise expressly directed.

(37) SEAL. Except for the sealing of instruments by persons required to have and use official seals, "seal" includes the word "seal", the letters "L S" and a scroll or other device intended to represent a seal, if any is affixed in the proper place for a seal, as well as an impression of a seal on the instrument. An instrument executed in the corporate name, by the proper officers of a corporation, under any seal is sealed even though the corporate seal is not used. If the seal of any court or public officer is required to be affixed to any paper issuing from such court or officer "seal" includes an impression of such official seal made upon the paper alone.

(38) SIGNATURE. If the signature of any person is required by law it shall always be the handwriting of such person or if he is unable to write, his mark or his name written by some person at his request and in his presence.

(39) SQUARE. "Square" means one inch in length of a column and not more than a newspaper column in width. Any fraction of a square shall be paid for as a full square.

(40) STATE. "State," when applied to states of the United States, includes the District of Columbia and the several territories organized by congress.

(41) SWORN. "Sworn" includes "affirmed" in all cases where by law an affirmation may be substituted for an oath.

(42) TOWN. "Town" includes cities, villages, wards or districts.

(43) TOWN BOARD. "Town board" means the town board of supervisors.

(44) UNITED STATES. "United States" includes the District of Columbia, the states, and the territories organized by congress.

(45) VILLAGE. "Village" means incorporated village.

(46) WEEK. "Week" means 7 days.

(47) WILL. "Will" includes codicils as well as wills.

(48) WRITTEN AND IN WRITING. "Written" and "in writing" include printing, engraving, lithographing and any other mode of representing words and letters.

(49) YEAR. "Year" means a calendar year, unless otherwise expressed; "year" alone means "year of our Lord".

History: 1951 c. 206; 1951 c. 261 s. 4, 6; 1951 c. 469; 1951 c. 734 s. 34; 1953 c. 578.

An "exception" exempts something absolutely from the operation of a statute by express words in the enacting clause, while a "proviso" defeats its operation conditionally; and an "exception" takes out of the statute something that otherwise would be part of the subject matter of it, while a "proviso" avoids them by way of defeasance or excuse. The words excluding depot grounds from the necessity of fencing constitute a true "exception," so that the burden is on a plaintiff, basing his action on the

defendant's failure to fence, to negative the exception in fact. *Garcia v. Chicago & N. W. R. Co.*, 256 W 633, 42 NW (2d) 288.

A provision "witnesseth our hands and seals" did not make a contract an instrument under seal. *Skelly Oil Co. v. Peterson*, 257 W 300, 43 NW (2d) 449.

For definition of real estate, see note to 201.24, citing *Catholic Knights of Wisconsin v. Levy*, 261 W 284, 53 NW (2d) 1.

When the framer of an administrative order or a statute uses words which have a technical and well-established meaning universally understood in commerce or trade, that meaning must be read into and understood to be descriptive of the particular object dealt with in such order or statute. *Harnischfeger Corp. v. Industrial Comm.*, 263 W 76, 56 NW (2d) 499.

A city street is a public highway, and

within a city the words "street" and "highway" are interchangeable. *Herbert v. Richard Center*, 264 W 8, 53 NW (2d) 461.

The term "feloniously" has no synonym and admits of no substitute, since it describes a peculiar disposition and intent essential to the existence of "crimes" of a certain grade. *State ex rel. Kojis v. Barczak*, 264 W 136, 58 NW (2d) 420.

It was proper for the state highway commission to base allocations of highway funds provided by 20.49 (3) (Stats. 1951) on the latest officially entered census figure even though it was a preliminary count and subject to later correction. 41 Atty. Gen. 18.

"Paraplegia" is a pathological term, and hence a technical word which must be accorded its technical meaning. 41 Atty. Gen. 38.

See note to 351.57, citing 41 Atty. Gen. 390.

370.02 Construing statutes of 1898. (1) All references to titles, chapters or sections in the statutes of 1898 are to the titles, chapters and sections of those statutes.

(2) If the provisions of different chapters of the statutes of 1898 conflict with or contravene each other the provisions of each chapter shall prevail as to all matters and questions growing out of the subject matter of such chapter.

(3) If conflicting provisions are found in different sections of the same chapter of the statutes of 1898 the provisions of the section which is last in numerical order shall prevail unless such construction is inconsistent with the meaning of such chapter.

History: 1951 c. 261 s. 8.

370.03 Effect of repeals. (1) No law repealed by a subsequent act of the legislature is revived or affected by the repeal of such repealing act.

(2) The repeal of a curative or validating law does not impair or affect any cure or validation previously effected thereby.

(3) No section, subsection or paragraph of Wisconsin Statutes is repealed or affected by the repeal of any session law from which it was in whole or in part derived.

(4) The repeal, express or implied, of any law already repealed, expressly or by implication, does not constitute or supply a declaration or implication that such law was in force or was valid for any purpose at any time subsequent to such prior repeal.

370.04 Actions pending not defeated by repeal of statute. The repeal of a statute hereafter shall not remit, defeat or impair any civil or criminal liability for offenses committed, penalties or forfeitures incurred or rights of action accrued under such statute before the repeal thereof, whether or not in course of prosecution or action at the time of such repeal; but all such offenses, penalties, forfeitures and rights of action created by or founded on such statute, liability wherefor shall have been incurred before the time of such repeal thereof, shall be preserved and remain in force notwithstanding such repeal, unless specially and expressly remitted, abrogated or done away with by the repealing statute. And criminal prosecutions and actions at law or in equity founded upon such repealed statute, whether instituted before or after the repeal thereof, shall not be defeated or impaired by such repeal but shall, notwithstanding such repeal, proceed to judgment in the same manner and to the like purpose and effect as if the repealed statute continued in full force to the time of final judgment thereon, unless the offenses, penalties, forfeitures or rights of action on which such prosecutions or actions shall be founded shall be specially and expressly remitted, abrogated or done away with by such repealing statute.

370.05 Laws and acts; time of going into force. Every law or act which does not expressly prescribe the time when it takes effect shall take effect on the day after its publication.

370.06 Repeal or change of law limiting time for bringing actions. In any case when a limitation or period of time prescribed in any act which shall be repealed for the acquiring of any right, or barring of any remedy, or for any other purpose shall have begun to run before such repeal and the repealing act shall provide any limitation or period of time for such purpose, such latter limitation or period shall apply only to such rights or remedies as shall accrue subsequently to the time when the repealing act shall take effect, and the act repealed shall be held to continue in force and be operative to determine all such limitations and periods of time which shall have previously begun to run unless such repealing act shall otherwise expressly provide.

370.07 Citation of statutes. The statutes designated since 1898 as "the statutes of 1898" and all additions thereto may be styled in any act of the legislature or proceeding in a court of justice, or wherever otherwise referred to, as "Wisconsin Statutes"; former statutes of this state may be referred to as the annotated statutes or as the revised statutes of 1878, 1858, or 1849.

History: 1951 c. 261 s. 9.