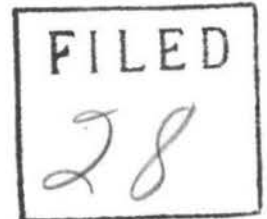


COUNTY COURT: Construction of Section 10384A relative
to procedure in determining true value
SCHOOLS: of property.

December 8, 1943

12/9



Honorable Roth H. Faubion
Prosecuting Attorney
Barton County
Lamar, Missouri

Dear Sir:

This will acknowledge receipt of your letter of November 25th, requesting an official opinion from this department, which reads:

"Controversy has arisen between the members of the county court of Barton County, regarding the meaning of certain parts of Senate Bill 13 and more particularly in Section 10384A on page 881 in the Laws of Missouri, 1943. Starting with the second sentence of said section:

"Said appraisers shall not be related in any degree to the party seeking the loan, and shall have no interest therein, and they shall make and file a written report of their appraisement, under oath, in the office of the county clerk, which report shall be used by the county court in arriving at the true value of the premises that will be encumbered if the loan is made."

"The point in question is this, does the above statement in the law make it mandatory for a county court to accept the report of the appraisers as final in either making or refusing a loan, or does the county court still retain it's

authority to be the final judge of the making or the refusal of the loan. The particular words in the law and contained in said section are these, 'Which report shall be used by the county court in arriving at the true value of the premises that will be encumbered if the loan is made.'

"If possible I would like your opinion on the above matter though I am aware that it has not been construed by any court."

The words, "Which report shall be used by the county court in arriving at the true value of the premises that will be encumbered if the loan is made," if intended by the Legislature to prevent the county court from exercising any discretion in determining the true value of the premises certainly did not choose language so as to avoid ambiguity. If the intention of the Legislature was that such report should be taken as the true value without anything further, then we must construe the words "in arriving at the true value" to be surplusage and meaningless. There is a rule of statutory construction that each and every word of a statute should be harmonized, if possible, and given some meaning; also, that in construing statutory provisions the court will not construe same so as to accuse the Legislature of enacting a meaningless provision, if same can be reconciled with other provisions of the Act and construed so as to have some meaning.

In the case of State v. Allen, 128 S. W. (2d) 1040, l. c. 1043, the court said:

"We adopt the reasons assigned by Commissioner Cooley in overruling the Klasing opinion, which are as follows:

"Statutes are to be construed, if possible, so as to harmonize and give

effect to all their provisions,
Gasconade Co. v. Gordon, 241 Mo.
569, 145 S. W. 1160. * * * * *

Therefore, we are of the opinion that such provision should be construed so that it shall not be mandatory that the county court accept as true the appraisal and report of the appraisers; but that the county court shall consider said appraisal along with other methods and procedures of determining the true value of said property, and great weight should be given such appraisal and no other figure should be used as the true value, unless the county court be convinced that the appraisal is erroneous, if for no other reason than as a protection to the county court from future criticism in determining the true value of said property. After all, it is not so easy in these times to determine the true value of property, and very seldom will persons be in agreement as to the true value.

Similar provisions are included in other acts in the statutes, but the writer fails to find wherein any are construed by the courts. Such are found in a new section of the Nonintoxicating Beer Act as amended by the Sixty-second General Assembly, found in Section 4996a, Laws of Missouri, 1943, page 615, which reads in part:

"If the Court shall find upon the hearing that the offense or offenses charged in the complaint have been established by the evidence, the Court shall order the suspension or revocation of the license but, in so doing, shall take into consideration whatever order, if any, may have been made in the premises by the Supervisor of Liquor Control. * * * * *

(Underscoring ours.)

Then the Act later adds:

"* * * and the suspension or revocation of a license as herein provided shall be

in addition to and not in lieu of any other revocation or suspension provided by this Act."

All of which indicates the Legislature, in such case, never intended by the use of the words "shall take into consideration whatever order, if any, may have been made in the premises by the Supervisor of Liquor Control," to prohibit the court from suspending or revoking said license, notwithstanding the fact the Supervisor of Liquor Control may have already suspended or revoked said license, but only that the court should take into consideration such punishment already invoked by said Supervisor of Liquor Control.

Furthermore, had the Legislature so intended this report appraising said property to be taken as final, and no discretion whatsoever to be exercised by the county court in the matter, it would have been an easy matter, for the Legislature could have used words as may be found in the sale of real estate by the guardian or curator of a minor, which reads in part, "but in no case shall the same be sold for less than three-fourths of its appraised value," or such similar words as, in no case shall the valuation of said real estate exceed the appraised valuation, or, the county court shall consider the appraisal value as the true value of said real estate and be governed accordingly in making any loans on said real estate.

CONCLUSION

Therefore, it is the opinion of this department that such words as found in Section 10384A, Laws of Missouri, 1943, which read "which report shall be used by the county court in arriving at the true value of the premises that will be encumbered if the loan is made," only means that the county court shall give such appraisal and report grave consideration, but by no means does it make it mandatory

upon the county court to consider such appraisal and report as the true value of such property, but the county court shall exercise sound discretion in arriving at the true value of said property in whatever manner they deem advisable.

Respectfully submitted,

AUBREY R. HAMMETT, JR.
Assistant Attorney-General

ARH:CP

APPROVED:

ROY MCKITTRICK
Attorney-General