MOTOR VEHICLES ON HIGHWAYS: Relating to the rules of the road on passing a vehicle from the rear at the top of a hill or on a curve where the view ahead is in any way obscured.

3-28

March 26, 1934.

FILED 62

Honorable J. W. Milford
City Attorney
Shrewsbury, Missouri

Dear Sir:

This department is in receipt of your enclosure dated February 17, 1934, and your letter dated February 21, 1934. Your letter states as follows:

"The writer is City Attorney for the City of Shrewsbury, Missouri, and has been called upon by our City Judge, Honorable Casper LeFort, to interpret Section #52 of Ordinance #304 of the City of Shrewsbury, Missouri, which Section is copied verbatim from Paragraph E of Section #7777 of the Revised Motor Vehicle Laws of the State of Missouri.

"The particular portion of Paragraph E of Section #7777 that seems confusing to Judge LeFort, myself and others, reads as follows:

> 'and provided further, that no operator or driver shall pass a vehicle from the rear at the top of a hill or on a curve where the view ahead is in any way obscured etc.'

"I am enclosing herewith a letter from Judge LeFort which explains his view point and his suggestion growing out of an actual case.

"My thoughts on this subject are as follows: Do the words 'when the view ahead is obscured' refer to the top of the hill or do they only refer to a curve? What is meant by 'top of a hill'? Does it mean the highest point, or peak, or does it include the adjacent territory? The common answer is that the view ahead is not, and cannot be obscured at the top of a hill unless there is a curve immediately beyond.

"It seems to me that if this part of Paragraph E, Section #7777 read as follows: 'that no operator or driver shall pass a vehicle from the rear when the view ahead is in any way obscured etc.' there would be less ambiguity and thereby better enforcement of the law. Such wording would not only cover the situation in regard to hills and curves, but would also cover the motorist who is traveling on a straight, level highway when he starts to pass a vehicle from the rear when the latter vehicle is closely approaching a sharp decline or valley.

"In the City of Shrewsbury, we have a Highway running over a hill that is greatly used by traffic between St. Louis and Webster Groves, Missouri, and this hill top has been the scene of numerous head on collisions, so we are interested in the proper enforcement of our Ordinance, which in turn calls for a proper interpretation of Paragraph E of Section #7777 of the State Law."

Your enclosure reads in part as follows:

"For your ready reference I am copying below my opinion as rendered in Case No. 319 in which this question was the issue, the defendant being brought before me under the sworn complaint of a police officer charged with the offence of passing a vehicle from the rear at the top of a hill, in violation of Section 52 of Ordinance No. 304, etc.

" IN THE POLICE COURT
OF THE CITY OF SHREWSBURY, MISSOURI.

City of Shrewsbury)
vs) No. 319
Rufus T. Stephenson)

Opinion of the Court

The undisputed evidence adduced in the trial of this case reflects that the defendant while operating a motor vehicle did pass a vehicle from the rear near the top of a hill but not at the top thereof, and that in fact he pro-

ceeded over the top of the said hill on the right hand side of the street, therefore it is the opinion of the Court that while the defendant was possibly guilty of carelessly operating a motor vehicle, in that when he did actually pass the vehicle he was near enough to the top of the hill to constitute a hazard to traffic approaching from the opposite direction, but as he is not charged with careless driving and further no evidence is introduced to that effect, he cannot be found guilty of the offence with which he is charged, therefore it is the order of the Court that the defendant herein be discharged from custody and this case be dismissed.

(Signed) Caspar B. LeFort
Judge.

"It would be my suggestion that this ordinance could be amended very simply by striking out the words, 'at the top of a hill' and in lieu thereof insert, 'on a hill where the view ahead is obscure.' ".

I.

Your letter of request is divisible into two questions, the first being, What is meant by the words "where the view ahead is obscured", do they refer to the top of the hill or do they only refer to the curve?

Section 7777, paragraph (e), R. S. Mo. 1929, dealing with the rules of the road and traffic regulations reads in part as follows:

"* * * * and provided further, that no operator or driver shall pass a vehicle from the rear at the top of a hill or on a curve where the view ahead is in any way obscured * * * *."

Section 7786, paragraph (d), R. S. Mo. 1929, provides the penalty for violation of above section and reads as follows:

"Any person who violates any of the other provisions of this article shall, upon con-

> viction thereof, be punished by a fine of not less than five dollars ($5.00) or more than five hundred dollars ($500.00) or by imprisonment in the county jail for a term n not exceeding two years, or by both such fines and imprisonment."

In the case of Ex Parte Kneedler, 147, S. W. 983, 243, Mo. 632, l. c. 641, the court states as follows:

> "* * * *Common observation and experience show that unrestricted use of motor vehicles on public streets would be extremely dangerous to life and limb and the property of the public. Their use thus becomes a fit subject for State regulation. Every person who operates or uses a motor vehicle must be regarded as exercising a privilege and not an unrestricted right. It being a privilege granted by the Legislature, a person enjoying such privilege must take it subject to all proper restrictions. * * * *"

The court in Straughan v. Meyers 187 S. W. 1159, 268 Mo. 580, l. c. 587, in construing a statutory provision states as follows:

> "It is true this section is not drawn with the nicety and precision which characterizes the work of a linguist, but its intent and meaning is not difficult of understanding when read with other parts. The worst that can be said of it is, that certain of its terms are ambiguous, and in that case we are at liberty to go to the title as a clue or guide to the intention of the Legislature. The title is clear, unambiguous and expressive, and, when invoked as an aid in this construction, removes all doubt as to the meaning. We have frequently said that doubtful words of a statutes may be enlarged or restricted in their meaning to conform to the true intent of the law makers, whnn manifested by the aid of sound principles of interpretation.* * * *"

Sedgwick on the construction of statutes (2d. ed.) page 226, says; "A limiting clause is generally to be restrained to the last preceding antecedent." The author cites in support of

this statement, Cushing v. Worrick, 9 Gray 382, but omits the very important words of that decision which complete the part of the sentence wherein the rules stated is laid down, which are, "unless there is something in the subject matter which requires a different construction". (Idem, p. 385). But the same author (p. 225) says, "Common sense should prevail over strick grammatical rules, and punctuation should not control. (Gyger's Estate 65 Pa. St. 311). The punctuation of a statute is not to be considered. (Cushing v. Worrick, 9 Gray 382; Hamilton v. Steamboat 16, Ohio St. (N. S.) 428)."

A few illustrations from the many cases collated by text writers will point the rule and its exceptions. Thus:

In Hart v. Kennedy 15 Abb. Pr. 290 and in Coxson v. Doland, 2 Daly 66, a provision of the Metropolitan Police Act of New York was involved. It provided that no member of the police force "shall be liable to military or jury duty or to arrest on civil process, nor to service of subpoenas from civil courts whilst on actual duty." It was contended that the words "whilst on actual duty", referred only to its immediate antecedent "nor to service of subpoenas from civil courts", and did not apply to the other precedents in the section. But the court said: "Whatever may have been the object of this alteration, it is very plain that the substitution of the word 'or' for 'nor', and of 'nor' for 'or', has made no change in the meaning of the section, and the decision in the case of Hart v. Kennedy, is as applicable to it now as it was before. 'Or' is a conjunction marking distribution, an alternative, or opposition, and the conjunction 'nor' performs the same office in negative propositions. The first is properly used in connection with either and the later with neither. The use of both in this case was inadmissible and as the negative 'shall not' was placed at the beginning of the sentence, the transposition of 'or' or 'nor' from one predicate to another could in no way affect the meaning". Accordingly it was held that the words "whilst on actual duty" applied to all the precedents in the section and was not limited to the immediate antecedent.

In Matthews v. Commonwealth 18 Gratt. 989, two clauses in a section were transposed to make the section constitutional.

II.

The second question in your letter is, "What is meant by the words 'top of a hill', do they mean the highest point or peak or do they include the adjacent territory?"

The rule is that penal statutes must be strictly construed, and in the case of Northern Securities Co. v. U. S., 193

U. S. 197, 24 Supt. Ct. 436, 48 L. Ed. 679, the court defines "strictly construed" as follows:

> "The rule that a criminal provision must be strictly construed means only that the court must not bring cases within the provisions of such a statute that are not clearly embraced by it, nor by narrow technical, or forced construction of words exclude cases from it that are obviously within its provisions. What must be sought for always is the intention of the Legislature, and the duty of the court is to give effect to that intention as disclosed by the words used."

In Moore v. Tel. Co. 164, Mo. App. l. c. cit. 171, 148 S. W. 157, the court defines "strict construction" as follows:

> "By the expression 'strict construction' is meant that the scope of the statute shall not be extended by implication beyond the literal meaning of the terms employed, and not that the language of the terms shall be unreasonably interpreted. Courts should neither enlarge nor narrow the true meaning of penal statutes by construction, but should give effect to the plain meaning of words, and, where they are doubtful, should adopt the sense in harmony with the context and the obvious policy and object of the enactment."

The word "at", when applied to the place or location of an object, is not treated as definitely locative. Webster defining the word "at" declares:

> "Primarily this word expresses the relation of presence, nearness in place or time, or direction toward. * * * *. It is less definite than in or on. 'At the house' may be 'in' or 'near the house'."

In 3 Encyc. of Law (2d ed.) 167, it is said:

> " 'At', used in reference to time or place has frequently the sense of near. A railroad was authorized by its charter to inter-

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another railroad 'at Charlotte,' and it was held that an intersection a thousand yards outside Charlotte satisfied the requirement the court saying: 'The word "at", when used in reference to place, frequently means "IN" or "within", but not always. It sometimes denotes nearness or proximity. That is its primary significance, and it is less definite than "in" or "on". Its significance would generally be controlled by the context and attending circumstances, if any, denoting the precise sense in which it is used.' (Purifoy v. Richmond & Danville R. R. Co., 108 N. C. 100).

"A tract of land near the terminus of a railroad was held exempt under a statute exempting certain lands 'at' the terminus; the court considered the matter saying: 'The word "at" is somewhat indefinite; it may mean in, or within, * * * * or it may mean near. Its primary idea, the lexicographer says, is nearness, and it is less definite than in or on.' State v. Receiver, etc., 38 N. J. L. 299, 302; see also Rogers v. Galloway, etc., College, 64 Ark. 627, 44 S. W. 454, 39 L. R. A. 636; Minter v. State, 104 Ga. 743, 30 S. E. 989; Bartlett v. Jenkins, 22 N. H. 53; West Chicago, etc. Co. v. Manning, 70 Ill. App. 239. Other authorities to the same effect might be cited, but it is unnecessary, as the rule announced is hardly open to question."

CONCLUSION.

In the light of these cases and these rules of law, we are of the opinion that the words "where the view ahead is in any way obscured, etc.", applies to the precedent "no operator or driver shall pass a vehicle from the rear at the top of a hill," and was not intended to be limited to its immediate antecedent, "or on a curve".

Neither grammatical construction, punctuation nor relative arrangement of the several parts of the section must be

allowed to absolutely control. A common sense interpretation is the safest and surest to apply, bearing always in mind the mischiefs to be remedied and the benefits to be secured by the law.

We are also of the opinion that the word "at" has as its primary meaning nearness or proximity. It must be kept in mind that it is a relative term, the signification of which is to be determined by taking into consideration the circumstances surrounding and attending its use. Referring as it does to the phrase "top of a hill", the latter can be reasonably construed as including the adjacent territory as was stated by the court in Purifoy v. Richmond, etc. R. R. Co., supra,

We are of the further opinion that any operator or driver who shall pass a vehicle from the rear at (near or in the proximity of) the top of a hill or on a curve where the view ahead is in any way obscured shall be held to have violated Section 7777, paragraph (e) as set out above and shall be subject to penalties prescribed for such violation as provided for in Section 7786, paragraph (d), supra.

Respectfully submitted,

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Assistant Attorney General.

APPROVED:

ROY McKITTRICK
Attorney General.

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