

CHAPTER 370.

CONSTRUCTION OF STATUTES.

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370.01 Construction of statutes; rules for. In the construction of the statutes of this state the following rules shall be observed unless such construction would be inconsistent with the manifest intent of the legislature; that is to say:

(1) **GENERAL RULE.** All words and phrases shall be construed and understood according to the common and approved usage of the language; but technical words and phrases and such others as may have acquired a peculiar and appropriate meaning in the law shall be construed and understood according to such peculiar and appropriate meaning.

(2) **SINGULAR AND PLURAL NUMBERS; MALES AND FEMALES.** Every word importing the singular number only may extend and be applied to several persons or things as well as to one person or thing; and every word importing the plural number only may extend and be applied to one person or thing as well as to several persons or things, and every word importing the masculine gender only may extend and be applied to females as well as to males.

(3) **JOINT AUTHORITY, HOW EXERCISED.** All words purporting to give a joint authority to three or more public officers or other persons shall be construed as giving such authority to a majority of such officers or other persons unless it shall be otherwise expressly declared in the law giving the authority.

(4) **GRANTOR AND GRANTEE.** The word "grantor" may be construed as including every person from or by whom any freehold estate or interest passes in or by any deed; and the word "grantee" as including every person to whom any such estate or interest passes in like manner.

(5) **HIGHWAY.** The word "highway" may be construed to include all public ways and thoroughfares and all bridges upon the same.

(6) **INHABITANT.** The word "inhabitant" shall be construed to mean a resident in the particular locality in reference to which that word is used.

(7) **INSANE PERSONS.** The words "insane persons" shall be construed to include every idiot, non compos, lunatic and distracted person.

(8) **ISSUE.** The word "issue," as applied to descent of estates, shall be construed to include all the lawful lineal descendants of the ancestor.

(9) **LAND, REAL ESTATE AND REAL PROPERTY.** The word "land" or "lands," and the words "real estate" and "real property" shall be construed to include lands, tenements and hereditaments and all rights thereto and interests therein.

(10) **MONTH AND YEAR.** The word "month" shall be construed to mean a calendar month unless otherwise expressed; and the word "year" a calendar year unless otherwise expressed; and the word "year" alone shall be equivalent to the expression "year of our Lord."

(11) **OATH AND SWORN.** The word "oath" shall be construed to include "affirmation" in all cases where by law an affirmation may be substituted for an oath; and in the like cases the word "sworn" shall be construed to include the word "affirmed."

(12) **PERSON.** The word "person" may extend and be applied to bodies politic and corporate as well as to individuals.

(13) **PRECEDING AND FOLLOWING.** The word "preceding" and "following," when used by way of reference to any section of any statute of this state, shall be construed to mean the section next preceding or next following that in which such reference is made unless when some other section is expressly designated in such reference.

(14) **FOLIO.** The word "folio," wherever it occurs, shall be construed to mean one hundred words or figures.

(15) **QUALIFIED.** The word "qualified," when applied to any person elected or appointed to office, shall mean the performance by such person of those things which are required by law to be performed by him previous to his entering upon the duties of his office.

(16) **SEAL.** In all cases in which the seal of any court or public officer shall be required by law to be affixed to any paper issuing from such court or officer the word "seal" shall be construed to include an impression of such official seal made upon the paper alone as well as an impression made by means of a wafer or of wax affixed thereto.

(17) **TOWN AND MUNICIPALITY.** The word "town" may be construed to include all cities, villages, wards or districts unless such construction would be repugnant to the provisions of any act specially relating to the same, and the word "municipality" may be construed to include "towns."

(18) **WILL.** The word "will" shall be construed to mean codicils as well as wills.

(19) **WRITTEN AND IN WRITING.** The word "written" and "in writing" may be construed to include printing, engraving, lithographing and any other mode of representing words and letters; but in all cases where the written signature of any person is required by law it shall always be the proper handwriting of such person or in case he is unable to write, his proper mark or his name written by some person at his request and in his presence.

(20) **ACTS BY AGENTS.** When a statute requires an act to be done which may by law as well be done by an agent as by the principal such requisition shall be construed to include all such acts when done by an authorized agent.

(21) **TENSES.** The use of any verb in the present tense shall include the future when applicable.

(22) **HERETOFORE AND HEREAFTER.** Whenever the word "heretofore" occurs in any statute it shall be construed to mean any time previous to the day when such statute shall take effect; and whenever the word "hereafter" occurs it shall be construed to mean the time after the statute containing such word shall take effect.

(23) **STATE AND UNITED STATES.** The word "state," when applied to different states of the United States, shall be construed to extend to and include the District of Columbia and the several territories organized by congress; and the words "United States" shall be construed to include the said district and territories.

(24) **TIME, HOW COMPUTED.** The time within which an act is to be done as provided in any statute, when expressed in days, shall be computed by excluding the first day and including the last, except that if the last day be Sunday or a legal holiday the act may be done 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.

(25) **WEEK.** The word "week" shall be construed to mean seven days; but publication in a newspaper of any notice or other matter indicated to be for a stated number of weeks shall be construed to mean one insertion in each week, unless specifically stated to be for each day of the week or for more than one day in each week; and all publications heretofore made in accordance with the terms of this subdivision are hereby validated.

(26) **ACQUIRE.** The word "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.

(27) **POPULATION.** The word "population," when used in connection with a classification of towns, villages, cities or counties for the exercise of their corporate powers or for convenience of legislation, means the population of such towns, villages, cities or counties according to the last national census.

(28) **STATUTORY REFERENCES.** When a statute refers, by number, to more than one chapter, section, subsection or paragraph of the statutes, the reference includes both the first and the last numbers mentioned.

(29) **SHALL HAVE BEEN.** The words "shall have been" include past and future cases.

(30) **PERSON.** The word "person" shall extend and be applied to bodies corporate unless plainly inapplicable.

(31) **PERSONAL PROPERTY.** The words "personal property" include money, goods, chattels, things in action and evidences of debt.

(32) **PROPERTY.** The word "property" includes property real and personal.

(33) **VILLAGE.** The word "village" imports only a municipal corporation organized by some special act or under some general law, except when a different definition shall be expressly given to the same.

(34) **COUNTY BOARD AND TOWN BOARD.** The words "county board" and "town board" import respectively the county board of supervisors and the town board of supervisors unless otherwise clearly indicated.

(35) **COUNTY, TOWN, CITY, VILLAGE.** Whenever a county, town, city or village is mentioned without any particular description it imports the particular county, town, city or village appropriate to the matter.

(36) **LIABILITY OF SURETIES.** When an officer is declared to be liable on his official bond for any act it imports that his sureties on such bond shall also be so liable.

(37) OATH. When any oath or affirmation is required to be taken by any person it imports that 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.

(38) ACKNOWLEDGMENT. When an instrument in writing is required or directed to be acknowledged such requirement or direction shall import that such acknowledgment be made before some officer authorized by the laws of this state to take the acknowledgments of deeds at the place where the same is required to be or may be made, and certified in the manner prescribed for the acknowledgment of conveyances of land.

(39) RECORDED. When any instrument in writing is required to be recorded by any officer or in any office such requirement imports that it must be recorded in a suitable book kept for that purpose unless otherwise expressly directed.

(40) COPY AS EVIDENCE. When a certified copy of any record, paper or instrument of any kind is made receivable in evidence such copy shall have the same effect as evidence as the original.

(41) PHYSICIAN, SURGEON OR OSTEOPATH. The words "physician," "surgeon" or "osteopath" mean a person holding a license or certificate of registration from the state board of medical examiners.

(42) RAILROAD CORPORATION. The phrases "railroad corporation" and "railroad company" may be taken to embrace any company, association, corporation or person managing, maintaining, operating or in possession of a railroad, whether as owner, contractor, lessee, mortgagee, trustee, assignee or receiver.

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

(44) LEGACY, BEQUEST, DEVISE. The words "legacy" and "bequest" include a devise; and "legatee" includes a devisee; and "bequeath" includes devise.

(45) EXECUTOR. The word "executor" in these statutes relating to probate proceedings shall be construed to include an administrator with the will annexed.

(46) HOMESTEAD. The word "homestead" means the estate or interest in land as defined and set forth in section 272.20, except as provided in subsection (2) of section 237.02.

(49) 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. And where 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. [1931 c. 470 s. 11; 1933 c. 190 s. 2, 21; 1933 c. 251; 1935 c. 541 s. 234; 1941 c. 298]

Revisor's Note, 1933: The purpose of (18a) is obvious. It will permit the substitution of a single word for the often recurring phrases "legatees and devisees," "legacy and devise," and "bequeath and devise." (Bill No. 123 S, s. 21)

The rule declared by (1) applies to the construction of contracts. *Charette v. Prudential Ins. Co.*, 202 W 470, 232 NW 848.

For an application of the doctrine of *noscitur a sociis*, see note to 343.02, citing *Boardman v. State*, 203 W 173, 233 NW 556.

A statute which refers to and adopts the provisions of another statute is not repealed by the subsequent repeal of the statute which is adopted. Implied repeals are not favored. An earlier act remains in force unless it is so manifestly inconsistent and repugnant to a later act that they cannot reasonably stand together. *Milwaukee County v. Milwaukee W. F. Co.*, 204 W 107, 235 NW 545.

Legislation in derogation of the common law should be strictly construed most favorably to a public corporation, and not to a claimant for damages. *Necedah M. Corp. v. Juneau County*, 206 W 316, 237 NW 277.

In common language a "filling station" is not a store or a mercantile establishment where goods, wares or merchandise are sold or offered for sale at retail. *Wadhams O. Co. v. State*, 210 W 448, 245 NW 646; 246 NW 687.

Construing a statute it is first to be examined to discover the legislative purpose, and when that purpose is discovered, it is to be so construed as to effect the evident purpose of the legislature if the language admits of that construction. *Beckman v. Bemis-Hooper-Hays Co.*, 212 W 565, 250 NW 420.

See note to 289.16, citing *North Shore M. Co. v. Frank W. Blodgett, Inc.*, 213 W 70, 250 NW 841.

Corporation is generally considered a "person" within meaning of such word in statutes. *State ex rel. Torres v. Krawczak*, 217 W 593, 259 NW 607.

Where the court construed a statute in 1916 and approved that construction in 1925 and the statute remained unamended in 1936, the construction was presumed to have legislative approval. *Buehler Bros. v. Industrial Commission*, 220 W 371, 265 NW 227.

The word "privilege," in the statutes taxing privileges, is used as synonymous with "right." *State ex rel. Froedtert G. & M. Co. v. Tax Commission*, 221 W 225, 265 NW 672, 267 NW 52.

The statute, in providing the conditions of a liquor licensee's bond in language which theretofore had been construed by the supreme court, manifests a legislative intent that the language should have the meaning ascribed to it by the former construction, and, therefore, the full penalty of such a bond is recoverable by the state notwithstanding that no judgment for damages has been recovered against the licensee by reason of the breach of the conditions of the bond and that no penalties or forfeiture have been incurred. *Thomas v. Kind*, 222 W 645, 269 NW 543.

Section 5.01 (6), is not a mere rule of construction, but is a mandate to the judicial tribunal that mere informality or failure to comply with some of the provisions of the title to which it applies shall not defeat the will of the electors, and has the effect of relaxing the strict provisions of the title in all cases where the will of the electors can

be ascertained from the proceedings had. State ex rel. Pelishek v. Washburn, 223 W 595, 270 NW 541.

In view of 370.01 (19) a petition under 62.07 must be signed by qualified electors in person. The names of such electors signed by others and in their presence is not sufficient, although the signing was with their consent. De Bauche v. Green Bay, 227 W 148, 277 NW 147.

When the court has interpreted a statute, the interpretation in effect becomes a part of the statute. Estate of Siljan, 233 W 54, 288 NW 775.

The word "use" in a will giving the "use" of property should be given effect according to its common and primary meaning, which is, to make use of, to put to one's use or benefit, to use up, to consume, to employ to one's service or benefit, to use so as to derive service therefrom. Estate of Holmes, 233 W 274, 289 NW 638.

A separability clause, although not controlling on the court, will not be ignored except in a case where it clearly appears that the remainder of the act is dependent on the part held invalid. The effect of a separability clause is to reverse the presumption of inseparability which ordinarily obtains and to create the opposite one of separability. J. C. Penney Co. v. Tax Comm. 233 W 286, 289 NW 677.

The term "joint tenancy" applies primarily to estates in land. It has been extended to cover interests in personal property, but when so applied it has been as pertaining to rights of ownership in the property itself as distinguished from a right to receive the income from the property. Will of Levy, 234 W 31, 289 NW 666, 290 NW 613.

If a statute has been in force for a long period, its contemporary practical construction is an aid to judicial construction. State ex rel. Dorst v. Sommers, 234 W 302, 291 NW 523.

The practical construction, long continued, given to a statute by those intrusted with its administration is of great weight

and oftentimes decisive in determining its meaning. State ex rel. Green v. Clark, 235 W 628, 294 NW 25.

The intent of the draftsman has no place in construing statutes. City of Milwaukee v. Milwaukee County, 236 W 7, 294 NW 51.

Revisions of statutes do not change the meaning of the statutes revised, unless the intent to change their meaning necessarily and irresistibly follows from the changed language. Repeals of statutes by implication are not favored. City of Milwaukee v. Milwaukee County, 236 W 7, 294 NW 51.

Construction of a statute long continued by those charged with its administration is entitled to consideration, and is sometimes controlling, when courts are called on to construe it, but at other times administrative construction has little weight, and it is not conclusive. City of Milwaukee v. Milwaukee County, 236 W 7, 294 NW 51.

A legislative purpose to enact a law of doubtful constitutionality, and then, by the insertion of an all-inclusive severability clause, to authorize the courts to whittle down the law so as to bring it within the constitutional field, involves a method of lawmaking not contemplated by the constitution. State v. Neveau, 237 W 85, 294 NW 796, 296 NW 622.

A retroactive operation is not to be given to a statute so as to impair an existing right or obligation otherwise than in matters of procedure, unless that effect cannot be avoided without doing violence to the language of the enactment. State ex rel. Schmidt v. District No. 2, 237 W 186, 295 NW 36.

On construction of revisor's bill, see 25 Atty. Gen. 72.

Effect of action of legislature, during one session, in amending a section in two different ways, discussed in 25 Atty. Gen. 179. See also 24 Atty. Gen. 756.

Laws enacted by legislature providing that they take effect upon passage and publication take effect day after publication. 26 Atty. Gen. 119, 524.

370.02 Rules for these statutes. In addition to the rules of construction specified in section 370.01 the following rules shall be observed in the construction of these statutes:

(1) All references to titles, chapters or sections are to the titles, chapters and sections of these statutes.

(2) If the provisions of different chapters of these statutes 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 be found in different sections of the same chapter the provisions of the section which is last in numerical order shall prevail unless such construction be inconsistent with the meaning of such chapter.

Note: The words "these statutes" as used in this section refer to the Wisconsin Statutes of 1898. 10 Atty. Gen. 889.

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.

Note: The law does not favor a repeal of a statute by implication, and the implication, to be operative, must be necessary, and if it arises out of repugnancy between the two acts the later abrogates the older only to the extent that the later is inconsistent and irreconcilable with the older, and the court must construe the acts if possible so that both shall be operative. McLoughlin v. Malnar, 237 W 492, 297 NW 370.

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 stat-

ute, 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.

Note: Repeal of statute under which defendant was convicted did not relieve defendant of penalty. *Thomas v. State*, 218 W 83, 259 NW 829.

When ch. 342, Laws 1939, repealed 40.85, relating to the detachment of school territory, an appeal board created by the repealed statute ceased to exist on the date the repealing act went into effect, proceedings pending before such appeal board not constituting an "action" or a "special proceeding" so as to continue the board by operation of 370.04, and hence an order setting aside a detachment order of a school board and a town board, made by such appeal board after the effective date of the repealing act, was void, and the detachment order, made before the effective date of the repealing act, still stood. *State ex rel.*

Sanderson v. Amundson, 236 W 523, 295 NW 691.

The requirement, in an unconfirmed and hence not yet final or enforceable order of the labor relations board under the labor relations act of 1937, that an employer bargain collectively with a certain union, did not constitute a "civil liability," and the special proceedings before the board, and for the confirmation and enforcement of the order in the circuit court, authorized solely by provisions in the act of 1937, were neither "criminal prosecutions" nor "actions at law or in equity," so as to preserve, by operation of this section, the union's right to have the board's order confirmed and enforced notwithstanding the repeal of the act of 1937 and the abolition of the board. *Metropolitan Life Ins. Co. v. Wisconsin L. R. Board*, 237 W 464, 297 NW 430.

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. [1941 c. 16]

Note: Where the governor's partial disapproval of an appropriation bill (Bill No. 563, S., ch. 533, Laws 1939) included disapproval of a provision that the act should take effect on passage and publication except as otherwise indicated, approved parts of the act which contained an effective date

became effective as provided in the act, and other approved parts became effective the first day of July next succeeding the passage and publication of the act under 370.05, Stats. 1939. *State ex rel. Martin v. Zimmerman*, 233 W 442, 289 NW 662.

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.

Note: The amendment of 289.06 by chapter 75, Laws 1933, enlarging the period for filing a complaint to enforce a lien thereunder from one year to two years, but not providing that the amendment should be applicable to periods of limitation which had theretofore commenced to run, is inapplicable to a period of limitation which had commenced to run before the enactment of the amendment. *Augustine v. Congregation of the Holy Rosary*, 213 W 517, 252 NW 271.

Statute enlarging the time for filing an

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;" and any section or subsection thereof may be cited or referred to as "section of the statutes," or "subsection of section of the statutes." Former statutes of this state may be so referred to as the annotated statutes, the revised statutes of 1878, 1858, or 1849, as the case may be.

370.08 [Repealed by 1933 c. 159 s. 35]

affidavit of renewal of a chattel mortgage did not apply to mortgages on file when the statute was enacted. *Pierce v. Westby S. Bank*, 218 W 648, 261 NW 752.

Section 49.10 contains no indication of an intent to have the statute operate retrospectively and, therefore, section 370.06 operates to preserve the old limitation as to all causes which had accrued prior to the enactment of the first named section. In re *Tinker's Estate*, 227 W 519, 279 NW 83.