

Commonwealth Of Kentucky

Court of Appeals

NO. 2004-CA-000500-MR

PHILIP STURGILL, INDIVIDUALLY AND
AS SHERIFF OF BOYD COUNTY, KY; AND
FIDELITY AND DEPOSIT COMPANY OF
MARYLAND

APPELLANTS

v. APPEAL FROM BOYD CIRCUIT COURT
HONORABLE DANIEL R. SPARKS, SPECIAL JUDGE
ACTION NO. 01-CI-00643

BOYD FISCAL COURT

APPELLEE

OPINION
AFFIRMING IN PART AND
REVERSING IN PART

** ** * * *

BEFORE: COMBS, CHIEF JUDGE; MINTON, JUDGE; AND MILLER, SENIOR
JUDGE.¹

COMBS, CHIEF JUDGE: Philip Sturgill, individually and in his
capacity as Sheriff of Boyd County; and Fidelity and Deposit
Company of Maryland, Sturgill's surety, appeal from a summary

¹ Senior Judge John D. Miller sitting as Special Judge by assignment of the
Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and
KRS 21.580.

judgment holding Sturgill liable to the Boyd County Fiscal Court for more than \$113,000.00. After our review of the record, we affirm a portion of the judgment and reverse in part.

Phillip Sturgill began his tenure as Sheriff of Boyd County in January 1994. The operation of the sheriff's office is ordinarily publicly funded through sums allocated from the county treasury, commissions earned for tax collection, fees collected for services rendered, grants administered under federal programs, and interest earned on funds on deposit. In order to supplement this public funding, Sturgill's office undertook a campaign to solicit private donations.

Several newspaper articles contained in the record of the trial court accurately summarize the factual background. The following article appeared in *The Daily Independent*, a local newspaper of general circulation:

King's Daughters' Medical Center has given a financial shot in the arm to the 911 dispatching center in Ashland and the law enforcement agencies it serves.

* * * *

The new equipment Boyd County Sheriff Philip Sturgill plans to buy for his department will provide deputies a higher level of security in their communications.

"There's so many people with scanners out there. When you're approaching a house where there's a high-risk call, you're not sure if they're listening and it's hard to

communicate," he said. "The new digital technology will give us voice privacy."

In another article, the *Daily Independent* recounted the following:

Boyd County sheriff's deputies will soon have added protection, thanks to a recent gift from a local company.

On Monday, Addington Enterprises Inc. made what Sheriff Philip Sturgill called "a major donation" to a fund to outfit deputies with bullet-proof vests.

Sturgill wouldn't reveal the amount of the donation, but he did say it was "so generous that I was nearly moved to tears."

* * * *

Sturgill said a trip to Washington D.C. with his daughter last month gave him the incentive to start the bullet-proof vest fund.

"We stopped by the Law Enforcement Memorial and I was struck by the number of peace officers who have died in the line of duty," he said. "When we came back home, I started immediately making phone calls."

Sturgill said he also mailed out letters of solicitation to local businesses.

In a third article, the *Daily Independent* related the following:

During a high-profile police chase last summer, the Boyd County Sheriff's Department had no way of stopping a suspect as he sped toward Ashland on U.S. 60.

The deputies had to ask for help from city police, who using stop sticks, helped bring the pursuit to a halt.

* * * *

Now, Boyd County deputies no longer have to borrow the devices from Ashland.

The sheriff's office recently bought stop sticks for every cruiser. Sheriff Philip Sturgill said he hopes the purchase means future pursuits can be ended without injuries to the suspect, police officers or other motorists.

* * * *

Sturgill purchased the new stop sticks with a donation from King's Daughters Medical Center. The funding also provided radio upgrades for the department's cruisers, he said.

Julie Marsh, public-relations specialist for KDMC, said the donation to the sheriff's department is part of the hospital's continued support of local law enforcement.

"Both the medical center and the safety forces are dedicated to saving lives, so it is fitting that we work together and support each other's efforts," Marsh said. "We are glad the Boyd County Sheriff's Department is able to benefit in a number of ways from our donation."

Finally, the *Daily Independent* reported:

Police found drugs in the Boyd County Fiscal Court chambers Thursday.

And they were glad.

Baggies containing marijuana, cocaine residue and heroin were sniffed out by the newest member of the Boyd County Sheriff's Department during a demonstration.

Cody, a golden retriever, sniffed furiously as his handler, Deputy Greg Armstrong, led

him first around the perimeter of the room and then its furnishings.

* * * *

Also on hand for Cody's performance were Bill Gerak and Bill Jessie, vice-presidents at Kentucky Electric Steel Inc., which donated \$5,000.00 to the sheriff's department to pay for Cody's purchase and training.

"Our company thinks of itself as a good corporate citizen and we felt this was an extremely worthwhile cause," said Gerak, vice-president of administration for the Coalton business.

* * * *

With the donation from Kentucky Electric Steel, the only cost to the taxpayers for Cody is food, Sturgill said. Two local veterinary clinics - Ashland Animal Clinic and Guardian Animal Hospital at Meads - have donated services and medicine.

Sturgill said he hopes other local businesses will offer to help pay any future costs.

From 1994 through 1999, the sheriff's office accepted donations from local citizens and corporations totalling more than \$160,000.00. The campaign was obviously successful, and the generosity of the corporate community was both remarkable and praiseworthy.

Pursuant to the provisions of KRS² 134.310, Sturgill was required to file an annual financial settlement with the

² Kentucky Revised Statutes

fiscal court. The sheriff's receipt of private donations was well publicized throughout the county. For example, Billy Joe Ross, Boyd County Judge/Executive from 1994 through 1998, stated in his affidavit that he was aware that Sturgill was accepting private donations from individuals and businesses; however, he never asked for an accounting of the funds donated. Sturgill's final, formal settlement of accounts with the Boyd Fiscal Court did not include the receipt or disbursement of the private donations received between 1994 and 1999.

In 2001, Boyd County Fiscal Court requested Edward B. Hatchett, Jr., the Commonwealth's Auditor of Public Accounts, to undertake an examination of the donations received and disbursed by the sheriff's office from May 12, 1994, through August 31, 2000. The state auditor interviewed sheriff's office personnel; confirmed significant donations with individual and corporate donors; and examined accounting records, bank records, and other detailed documentation of transactions found in the sheriff's office. On May 8, 2001, the auditor submitted a complete report of his findings to Sheriff Sturgill and to Bill F. Scott, the county Judge/Executive.

The state auditor reported that his staff had identified \$160,868 in private donor receipts for the period under examination. Of these receipts, \$143,244 had been

disbursed, leaving \$17,624 on deposit in the sheriff's office accounts as of August 31, 2000.

The report indicated that more than one-half of the private donations received during the period were made by Kings' Daughters Medical Center. There was no suggestion that the hospital's donations were linked in any way to the performance of its public duty by the sheriff's office. However, the report noted that nearly \$25,000.00 in disbursements from the office's private donor accounts was not supported by adequate documentation. Consequently, the auditor's staff was unable to comment on the nature of these disbursements. Finally, the report concluded that all of the properly supported disbursements appeared to have been made for a public purpose directly benefiting the sheriff's office and its constituents, including expenditures for body armor, firearms, uniforms, office equipment, radio equipment, and canine training and supplies.

The state auditor recommended that the sheriff's office refrain from soliciting or accepting donations from private sources in the future and that it remit the \$17,624 remaining on deposit to the Boyd County Fiscal Court. In a written response to the auditor's report, Sturgill indicated that no additional donations had been accepted by the sheriff's office. He indicated that the sheriff's office would no longer

solicit or accept private donations and that the office would remit the funds remaining on deposit to the fiscal court. Sturgill also sought an assurance from the fiscal court that it would honor the intentions of the private donors by purchasing protective body armor for Boyd County deputy sheriffs and police officers.

With respect to the inadequately documented disbursements, Sturgill acknowledged the likelihood that some records might have been misplaced or discarded over the years. Finally, Sturgill emphasized that his plan to solicit and accept private donations for the benefit of the public had been undertaken in good faith supported by assurances from the county attorney that this activity was allowed by law. He also noted that his conscientious use of the private donations had resulted in remitting more than \$300,000 in sheriff's office income to the county for public use.

On June 28, 2001, the Boyd County Fiscal Court filed a complaint against Sturgill in circuit court. (The complaint was amended in September 2002 to include Sturgill's surety, Fidelity and Deposit Company of Maryland, as a party-defendant.) The fiscal court alleged that Sturgill: (1) had failed to file a complete statement of his office's receipts and expenditures; (2) had failed to turn over to the fiscal court the office's excess receipts; and (3) had failed to keep his expenditures

within the budget for his office. The fiscal court demanded that Sturgill disclose "all the income of his office . . . and all the expenditures. . . ." It also asked that he be required to pay over to the fiscal court "the amount by which the income of his office exceeds his authorized expenditures." Sturgill filed a counterclaim alleging abuse of process and malicious prosecution.

In February 2002, following a period of written discovery, the trial court granted the fiscal court's motion for partial summary judgment. The court determined that the provisions of KRS 61.310 prohibited the sheriff's office from soliciting or accepting private donations to offset the costs of equipment, supplies, and training; but that once accepted, the amount of the donated funds was required to be included as income in the sheriff's annual settlement statements with any excess receipts to be remitted to the fiscal court.

The court also found persuasive an opinion from the office of the attorney general dated August 13, 1982. Ky. OAG 82-433. In that letter opinion, the attorney general's office indicated that a county sheriff has no statutory authority to receive donations for the operations of his office. "Moreover, KRS 61.310(2) prohibits gifts paid to sheriffs or their deputies for the performance of any service." Id. at 1.

In a supplemental summary judgment, entered March 1, 2004, and designated as a final and appealable order, the court found as follows:

1. The Defendant Philip Sturgill was the sheriff of Boyd County, Kentucky from January, 1994 until January, 2003.
2. During the years 1994 through 1999, inclusive, various businesses and other entities made donations to the Boyd County Sheriff's Office that were omitted from [Sturgill's] annual settlements for those years.
3. Defendant Sturgill has documented certain expenditures from those donations for which he is entitled to credit.
4. For the year 1994, Defendant Sturgill had unreported receipts of \$14,423.47 from which expenditures of \$13,649.04 were documented, leaving \$1,354.43 that should have been paid over to the fiscal court as part of the sheriff's settlement for 1994.
5. For the year 1995, Defendant Sturgill had unreported receipts of \$16,896.20 from which \$9,956.88 in expenditures were documented, leaving \$6,939.32 that should have been paid over to the fiscal court as part of the sheriff's settlement for 1995.
6. For the year 1996, Defendant Sturgill had unreported receipts of \$35,171.30 from which expenditures of \$11,565.58 were documented, leaving \$23,605.72 that should have been paid over to the fiscal court as part of the sheriff's settlement for 1996.
7. For the year 1997, Defendant Sturgill had unreported receipts of \$34,346.33 from which expenditures of \$4,899.44 were documented, leaving \$29,446.89 that should have been paid over to the fiscal court as part of the sheriff's settlement for 1997.

8. For the year 1998, unreported income was exceeded by documented disbursements and therefore nothing is now owed to the fiscal court for that year.
9. For the year 1999, Defendant Sturgill had unreported receipts of \$48,475.99 and documented disbursements of \$51,973.58. However, he had been placed on a budget for that year by the fiscal court and he was not entitled to spend more than the amount budgeted for his expenditures. According to his settlement for 1999, \$10,086.96 remained unspent from his budget. When this amount is credited against his receipts, \$38,389.03 is left owing to the fiscal court for that year.
10. The total amount owed to the fiscal court by Defendant Sturgill for the years 1994 through 1999 is \$113,457.62.
11. Defendant Philip Sturgill has executed a qualifying bond with Defendant Fidelity and Deposit Company of Maryland as surety in the amount of \$10,000 for each of his two terms as sheriff. The terms of the bonds are that the Defendant Sturgill shall "honestly account for all moneys coming into his hands according to law."
12. The Plaintiff filed this action to require the Defendant Sturgill to account for all the income and expenditures of his office during his terms as sheriff of Boyd County, and to recover any additional funds owed by the Defendant Sturgill to the Boyd Fiscal Court.

The trial court concluded that Sturgill's surety was jointly liable for \$20,000.00 and dismissed Sturgill's counterclaims for malicious prosecution and abuse of process. This appeal followed.

Sturgill and his surety raise numerous issues on appeal -- several of which are made in the alternative. We shall address only those issues that are dispositive of this appeal.

Sturgill and his surety maintain that the provisions of KRS 61.310 do not prohibit all donations to the sheriff's office. We agree. KRS 61.310 provides as follows:

- (1) "Peace officer," as used in this section, means any sheriff, deputy sheriff, constable, deputy constable, patrol or any other peace officer or deputy peace officer except those appointed pursuant to KRS 61.360. . . .
- (2) No peace officer shall receive any compensation or remuneration directly or indirectly, from any person for the performance of any service or duty except that he may be compensated for employment authorized by subsection (4) of this section. Any peace officer who violates this subsection may be removed from office, under the provisions of KRS 63.170.
- (3) Peace officers shall receive for the performance of their services and duties only such compensation or remuneration as is regularly provided and paid out of the public funds to the amount and in the manner provided by law except that they may be compensated from private funds for employment authorized by subsection (4) of this section. Donations made by persons to any governmental unit or officer thereof do not constitute public funds within the meaning of this subsection.

- (4) A peace officer may, while in office, and during hours other than regular or scheduled duty hours, act in any private employment as guard or watchman or in any other similar or private employment. . . .
- (5) No principal peace officer shall appoint or continue the appointment of any deputy contrary to the provision of this section. When it appears by the affidavit of two (2) citizens, taxpayers of the county, filed with any principal peace officer, that there is reasonable cause to believe that any of his deputies are receiving compensation from private sources contrary to the provisions of this section, the peace officer shall forthwith investigate the charges contained in the affidavit, and if he finds the charges are true he shall forthwith remove any such deputy from office. Failure to do so shall constitute neglect of duty on the part of the principal peace officer, and he may be removed from office under the provision of KRS 63.170.
- (6) In addition to being subject to removal from office, any peace officer who violates any of the provisions of this section shall be fined not less than five hundred dollars (\$500) nor more than five thousand dollars (\$5,000), or confined in jail for not more than one (1) year, or both.
- (7) Except as provided in KRS 61.360 and 277.280, any person who directly or indirectly pays or contributes or causes to be paid or contributed any money or other thing of value to any peace officer or to any governmental unit or officer thereof, either as a gift or donation for the performance of any public duty shall be fined not less than five hundred (\$500)

nor more than five thousand dollars
(\$5,000).

(Emphases added).

We begin our analysis in light of a fundamental rule of statutory construction. "All statutes should be interpreted to give them meaning, with each section construed to be in accord with the statute as a whole." Commonwealth Transportation Cabinet v. Tarter, 802 S.W.2d 944, 946 (Ky.App. 1990) *citing* George v. Scent, 346 S.W.2d 784 (Ky. 1961). The words and phrases of a statute are to be given their usual, ordinary meaning and should be construed to promote the clear objective and purpose of the legislation. Poole Truck Line, Inc. v. Commonwealth Transportation Cabinet, 892 S.W.2d 611 (Ky.App. 1995). Words of a statute (if clear) are solely determinative of legislative intent. Gateway Construction Co. v. Wallbaum, 356 S.W.2d 247 (Ky. 1962). While we appreciate the reasoning articulated in opinions issued by the office of the attorney general, they do not serve as binding precedent for this Court. Courier-Journal v. Jones, 895 S.W.2d 6, (Ky.App. 1995).

We agree with Sturgill that a reasonable reading of KRS 61.310 supports the proposition that legitimate private donations to governmental units or to peace officers may be made. What is forbidden is the use of those donated funds as a source of personal compensation or remuneration to peace

officers. Additionally, the statute clearly prohibits the donation to and receipt by any peace officer of anything of value in exchange for the performance of his public duty. Finally, the statute identifies the range of penalties applicable to any person making or receiving a gift or donation for an improper purpose.

The provisions of KRS 61.310 do not prohibit the donations at issue in this case. No evidence presented to the trial court indicated that Sturgill or any peace officer under his authority violated any of the provisions of this statute. There was never an allegation that Sturgill or any other peace officer accepted the private donations in exchange for the performance of any official service or duty or that any officer was compensated personally either directly or indirectly from the donated funds. The evidence indicated instead that the sheriff and the peace officers under his authority were duly compensated for their services and duties only out of public funds as provided by law.

Following his thorough review of the sheriff's accounts, the state auditor found specifically that there was no suggestion that donations were linked to the sheriff office's performance of its public duties. The auditor concluded that the properly supported disbursements of the funds appeared to have been made solely for the public benefit. We hold that the

plain and unambiguous language of the statute does not support the trial court's interpretation of the statute as preventing legitimate private donations for the benefit of the public at large.

Sturgill and his surety argue that the trial court also erred by concluding that these private donations qualify as income pursuant to KRS 134.310. The provisions of KRS 134.310(1) required Sturgill to file an annual financial settlement with the fiscal court. In addition, he was to file:

- (a) A complete statement of all funds received by his office for official services, showing separately the total income received by his office for services rendered, exclusive of his commissions for collecting taxes, and the total funds received as commissions for collecting state, county, and school taxes; and
- (b) A complete statement of all expenditures of his office, including his salary, compensation of deputies and assistants, and reasonable expenses.

KRS 134.310(5). At the time that he filed his statements in compliance with KRS 134.310(5), Sturgill was also required to pay over to the fiscal court any fees, commissions, and "other income of his office" -- including income from investments -- that exceeded the sum of his maximum salary and other reasonable expenses. KRS 134.310(6).

The private donations received by the sheriff were not "funds received by his office for official services." They were not income received by his office for services rendered nor were they funds received as commissions for collecting state, county, and school taxes. The funds donated to the sheriff's office did not amount to "other income of his office" to be paid over to the fiscal court as contemplated by the provisions of KRS 134.380(6).

Addressing only the funds received for official services (namely income), the provisions of KRS 134.310 did not require Sturgill to include in his annual settlement with the fiscal court the private donations made to his office each year. Accordingly, he was not required to turn over to the fiscal court any sums that had not been disbursed from the private donations.

The fiscal court relied in error on Funk v. Milliken, 317 S.W.2d 499 (Ky. 1958), in support of its argument to the contrary. The Funk court observed that

a county officer who is compensated wholly or in part from fees is required to pay over to the county, each year, the excess of receipts over and above the amounts allowable for his personal compensation, the compensation of his legally authorized deputies and assistants, and authorized official expenses. (Emphases added.)

Id. at 506.

Private donations intended for use in public safety are simply not addressed, and there is surely no mandate that any sums from donations not disbursed by the end of the year be paid over to a fiscal court. We cannot construe by innuendo a requirement that is wholly omitted by clear statutory language and that would patently negate the intention of the public-spirited donors.

Sturgill and his surety next contend that the trial court erred by ordering the surrender of \$38,389.03 to the fiscal court to account for the amounts by which the sheriff's office allegedly exceeded its 1999 budgetary allowance. We agree that the court erred on this point.

In paragraph 9 of its order, the trial court concluded as follows:

For the year 1999, Defendant Sturgill had unreported receipts of \$48,475.99 and documented disbursements of \$51,973.58. However, he had been placed on a budget for that year by the fiscal court and he was not entitled to spend more than the amount budgeted for his expenditures. According to his settlement for 1999, \$10,086.96 remained unspent from his budget. When this amount is credited against his receipts, \$38,389.03 is left owing to the fiscal court for that year.

Sturgill contends that his office was not bound by an expense budget fixed by the fiscal court in 1999. KRS 64.530 provides as follows:

In the case of officers compensated from fees, or partly from fees and partly by salary, the fiscal court shall fix the maximum compensation that any officer except the officers [including the sheriff] named in KRS 64.535 may receive from both sources. The fiscal court may also fix the maximum amount that the officer may expend each year for expenses of his office. The fiscal court shall fix annually the maximum amount, including fringe benefits, which the officer may expend for deputies and assistants, and allow the officer to determine the number to be hired and the individual compensation of each deputy and assistant.

(Emphasis added).

This provision was also directly addressed by the court in Funk, supra, where the court observed as follows:

We think it means that the fiscal court may fix, in advance, the categories of reasonable official expenses that will be allowed and the maximum amount that will be allowed for each category. . . . It would be desirable for all fiscal courts to exercise the authority given by KRS 64.530, and limit the expenses in advance, or even require that each individual expenditure be approved in advance. However, it is our opinion that the statute does not require this to be done, and where it has not been done the officer yet may receive credit for proper expenses.

Id. at 507. (Emphasis original.)

Thus, the Boyd County Fiscal Court had the authority to restrict in advance the payment of the sheriff's expenses from public funds. However, it does not appear from the record that any affirmative effort was made to do so. The record

before us indicates only that the fiscal court accepted Sturgill's proposed budget of \$1,209,067.58 for 1999. Of this approved amount, the sheriff's office spent only \$1,163,327.00 - - as reflected in the settlement timely submitted by Sturgill in 1999. The 1999 settlement documents were carefully reviewed and duly accepted by the fiscal court, and Sturgill surrendered to the fiscal court more than \$75,000.00 in excess fees for 1999 as required by law.

The facts do not support the court's order requiring Sturgill to reimburse the fiscal court for the \$38,389.03 collected in private donations and disbursed for the benefit of his constituents in 1999. These sums were collected and disbursed outside the scope or proper parameters of his publicly funded budget. Therefore, they are not funds to be remitted as contemplated by KRS 64.530 and as construed by Funk, supra.

We last address that part of the judgment dismissing Sturgill's counterclaim for malicious prosecution and abuse of process on the part of the fiscal court. The Boyd County Fiscal Court was attempting to carry out legitimate governmental functions in seeking to recoup funds associated with a public office statutorily accountable to its oversight. Even though we have found that it erred in characterizing these private donations as being subject to recoupment, we have no basis for questioning its good faith while acting in a governmental

capacity. The proper treatment of revenues is a function integral to government. We agree that the Boyd Fiscal Court was entitled to invoke the protection of governmental immunity to shield it from tort liability in this case:

The principle of governmental immunity from civil liability is partially grounded in the separation of powers doctrine embodied in Sections 27 and 28 of the Constitution of Kentucky. The premise is that courts should not be called upon to pass judgment on policy decisions made by members of coordinate branches of government in the context of tort actions, because such actions furnish an inadequate crucible for testing the merits of social, political or economic policy. [Citations omitted.] Thus, a state agency is entitled to immunity from tort liability to the extent that it is performing a governmental, as opposed to a proprietary, function.

Accordingly, we hold that the trial court did not err in dismissing Sturgill's counterclaims. Yanero v. Davis, 65 S.W.3d 510, 519 (Ky. 2001); Franklin County v. Malone, 957 S.W.2d 195 (Ky. 1997), *overruled on other grounds by* Commonwealth v. Harris, 59 S.W.3d 896 (2001).

In summary, we reverse the judgment of trial court ordering Sturgill and his surety to reimburse the fiscal court in the amount of approximately \$113,000.00. We affirm that portion of the judgment dismissing Sturgill's counterclaims against the Fiscal Court.

MINTON, JUDGE, CONCURS.

MILLER, SENIOR JUDGE, CONCURS IN RESULT.

BRIEF AND ORAL ARGUMENT FOR
APPELLANTS:

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BRIEF AND ORAL ARGUMENT FOR
APPELLEE:

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