STATE OF MICHIGAN

COURT OF APPEALS

TUSCOLA COUNTY BOARD OF COMMISSIONERS, Plaintiff-Appellant, v TUSCOLA COUNTY APPORTIONMENT COMMISSION, Defendant-Appellee.	FOR PUBLICATION June 15, 2004 9:10 a.m. No. 242105 Tuscola Circuit Court LC No. 02-020909-CL Official Reported Version

Before: Schuette, P.J., and Cavanagh and White, JJ.

CAVANAGH, J.

Plaintiff appeals as of right from a declaratory judgment denying its claim that a county board of commissioners has a right under MCL 46.401 to apportion the county into commissioner districts. We affirm.

The sole issue on appeal concerns the interpretation of MCL 46.401, which provides:

> Within 60 days after the publication of the latest United States official decennial census figures, the county apportionment commission in each county of this state shall apportion the county into not less than 5 nor more than 35 county commissioner districts as nearly of equal population as is practicable and within the limitations of section 2. In counties under 75,000, upon the effective date of this act, the boards of commissioners of such counties shall have not to exceed 30 days into which to apportion their county into commissioner districts in accordance with the provisions of this act. If at the expiration of the time as set forth in this section a board of commissioners has not so apportioned itself, the county apportionment commission shall proceed to apportion the county under the provisions of this act.

The second sentence is the primary focus of the dispute. Plaintiff argues that the sentence is unambiguous and must be enforced as written, particularly the phrase "upon the effective date of this act." Plaintiff argues that this phrase modifies the antecedent phrase "[i]n counties under 75,000" and not the subsequent phrase "the boards of commissioners . . . ." According to

plaintiff, then, the correct meaning of the second sentence is that "[t]he boards of commissioners of the 65 counties under 75,000 in population as of March 10, 1967, are permitted 30 days to attempt to complete [the] apportionment process." Further, that without regard to whether population growth subsequently surpasses 75,000, this right inheres in these counties in perpetuity.

In *Kizer v Livingston Co Bd of Comm'rs*, 38 Mich App 239; 195 NW2d 884 (1972), this Court considered the same argument that plaintiff posits here. But, plaintiff urges us to reconsider and, ultimately, reject *Kizer* as wrongly decided. We are not bound by *Kizer*, MCR 7.215(I)(1), but we remain convinced that *Kizer* should not be disturbed.

The *Kizer* Court framed the issue as

> whether § 1 of the County Reapportionment Act granted county boards of commissioners in counties having less than 75,000 population in 1960 a 30-day period following publication of each official United States decennial census in which said boards could apportion themselves, or whether this option was restricted to the 30-day period following the effective date of the original act. [*Id.* at 246.]

After concluding that the statutory language was ambiguous, the *Kizer* Court proceeded to utilize the rules of statutory construction to resolve the ambiguity. *Id.* First, plaintiff claims that the statute is not ambiguous and, thus, the *Kizer* Court erred in concluding that it was. We disagree.

Statutory language is deemed ambiguous if reasonable minds could differ with regard to its meaning, i.e., the language is susceptible to more than one interpretation. *In re MCI*, 460 Mich 396, 411; 596 NW2d 164 (1999). Here, it is not the words of the statute per se that lead to ambiguity, but the punctuation, in particular, the two commas in the second sentence. Does the statute direct the boards of commissioners in counties with populations under 75,000 to apportion their counties, one time, into commissioner districts within thirty days of the date that this apportionment act became effective? Or, does the statute grant counties with populations under 75,000 on the effective date of the act the right to apportion their counties into commissioner districts every ten years and within 30 days of the release of the United States official census figures?

Plaintiff argues that the "last antecedent" rule should govern the construction of this statute. That grammatical rule provides "that a modifying or restrictive word or clause contained in a statute is confined solely to the immediately preceding clause or last antecedent, unless something in the statute requires a different interpretation." *Stanton v Battle Creek*, 466 Mich 611, 616; 647 NW2d 508 (2002). Stated differently, ""a modifying clause is confined to the last antecedent unless there is something in the subject matter or dominant purpose which requires a different interpretation."" *Haveman v Kent Co Road Comm*, 356 Mich 11, 18; 96 NW2d 153 (1959), quoting *Kales v Oak Park*, 315 Mich 266, 271; 23 NW2d 658 (1946), quoting *Hopkins v Hopkins*, 287 Mass 542, 547; 192 NE 145 (1934).

According to plaintiff, then, the qualifying phrase "upon the effective date of this act" is only applicable to the phrase "[i]n counties under 75,000." The *Kizer* Court rejected that

argument, opining that such a construction would require a determination that the comma between the words "75,000" and "upon" was inadvertent, which was untenable in light of the importance of punctuation in determining legislative intent and the presumption that the Legislature is cognizant of the rules of grammar. *Kizer, supra* at 250-251. Instead, the *Kizer* Court interpreted "upon the effective date of this act" as triggering "not to exceed 30 days" and held that such interpretation was consistent with the rule of the last antecedent. *Id*. at 252. I disagree with both plaintiff's and the *Kizer* Court's interpretations. If the phrase "upon the effective date of this act" is a modifying or restrictive phrase within the contemplation of the rule of the last antecedent, I conclude that its exception is applicable here, i.e., the rule does not apply because "there is something in the subject matter or dominant purpose which requires a different interpretation."

Because the statute is ambiguous, judicial construction is required to resolve the ambiguity. Our primary goal is to ascertain and give effect to the intent of the Legislature. *Gladych v New Family Homes, Inc*, 468 Mich 594, 597; 664 NW2d 705 (2003). We consider the object of the statute, as well as the harm it was designed to remedy, and apply a reasonable construction that best accomplishes the statute's purpose. *Marquis v Hartford Accident & Indemnity Co (After Remand)*, 444 Mich 638, 644; 513 NW2d 799 (1994). We assume that every word has some meaning and, as far as possible, give effect to every sentence, phrase, clause, and word, avoiding a construction that would render any part of the statute surplusage or nugatory. *Pohutski v City of Allen Park,* 465 Mich 675, 683-684; 641 NW2d 219 (2002).

First, we turn to the specific language of MCL 46.401. The first and second sentences seem to present an inconsistency. The first sentence mandates, through the use of the word "shall," that "the county apportionment commission in each county of this state" apportion its county into commissioner districts. See *Roberts v Mecosta Co Gen Hosp*, 466 Mich 57, 65; 642 NW2d 663 (2002) (the word "shall" designates a mandatory provision). Accordingly, it specifically assigns these apportionment responsibilities to county apportionment commissions in every county of the state, without reservation or qualification.

The second sentence then states "[i]n counties under 75,000, upon the effective date of this act, the boards of commissioners of such counties shall have not to exceed 30 days into which to apportion their county into commissioner districts in accordance with the provisions of this act." Does this second sentence create an exception to the mandated assignment created by the first sentence? Although the *Kizer* Court applied the in pari materia rule to these two sentences, *Kizer, supra* at 251, I find it inapplicable. See *Jennings v Southwood*, 446 Mich 125, 136; 521 NW2d 230 (1994), quoting *Wayne Co v Auditor General*, 250 Mich 227, 233; 229 NW 911 (1930) (the object of the in pari materia rule is to give effect to the legislative purpose as found in harmonious statutes on a subject).

Because we are not permitted to add provisions to statutes under the guise of interpretation, *In re Wayne Co Prosecutor*, 232 Mich App 482, 486; 591 NW2d 359 (1998), we focus on the existing provisions, in context, in an attempt to construct a harmonious statute. See *Macomb Co Prosecutor v Murphy*, 464 Mich 149, 159; 627 NW2d 247 (2001). The result of that effort is the conclusion that the second sentence was not an attempt to deprive the first sentence of its substantive force, but to carve out a small window of opportunity for the boards of commissioners in counties under 75,000 to have the final opportunity to perform apportionment

duties. The other provisions in this apportionment act support this conclusion. As the *Kizer* Court noted, no other statute in this act refers to county boards of commissioners as apportionment entities. See *Kizer*, *supra* at 252. Only county apportionment commissions are designated as having apportionment powers and are repeatedly referenced accordingly. See MCL 46.403, 46.404, 46.405, 46.407. If the Legislature intended to grant the boards of commissioners in counties with populations under 75,000 a perpetual right to apportion their counties every ten years, regardless of their population growth subsequent to March 10, 1967, such right would have been clearly and unambiguously stated and referred to throughout the apportionment act.

Plaintiff 's argument that the legislative history of this apportionment act refutes the *Kizer* Court's decision and, now, our own conclusion, is not persuasive. We agree that consideration of legislative history can be beneficial to issues of statutory interpretation, *In re Certified Question*, 468 Mich 109, 115 n 5; 659 NW2d 597 (2003), and have reviewed the legislative history. We agree with the *Kizer* Court's analysis of the relevant legislative proceedings and need not repeat it here. See *Kizer*, *supra* at 243-249. We also agree with the *Kizer* Court's ultimate conclusion regarding the dominant purpose of this apportionment act and its characterization of the harm the act was designed to remedy:

> The apportionment act established a sophisticated, progressive, comprehensive mechanism designed to eliminate the archaic apportioning procedures then extant. Given the traditional inability of existing political bodies to apportion themselves, it is not likely that the Legislature intended that this newly-developed apportionment mechanism should perpetually be inapplicable to 65 of Michigan's 83 counties. [*Kizer*, *supra* at 255.]

Review of the legislative history reveals, as the *Kizer* Court noted, that the Legislature had the opportunity to "create a mechanism whereby county Boards of Commissioners would have a perpetual option to apportion themselves," and such option was rejected. *Kizer*, *supra* at 256. Further, the Legislature has revisited this apportionment act after the issuance of the *Kizer* decision and has failed to amend the language of MCL 46.401. The Legislature is presumed to act with knowledge of appellate court statutory interpretations. *Gordon Sel-Way, Inc v Spence Bros, Inc*, 438 Mich 488, 505-506; 475 NW2d 704 (1991). The failure to amend the language following this Court's construction of it over thirty years ago suggests legislative affirmance of our interpretation. See *Craig v Larson*, 432 Mich 346, 353; 439 NW2d 899 (1989). We will not second-guess the *Kizer* Court or the Legislature now.

In sum, MCL 46.401 is ambiguous. Even if the rule of the last antecedent were applicable, it would not govern the interpretation of this statute because the resulting construction would be contrary to the clear mandate of the preceding sentence, and would be inconsistent with the dominant purpose of the statute. We will not defeat the clear and explicit language of one sentence in an attempt to decipher the ambiguities of another. Instead, we attempt to harmonize apparent inconsistencies so as to produce a reasonable construction that best accomplishes the statute's purpose—here, the establishment of apportionment procedures that effectively and efficiently protect the integrity of the political process. See, e.g., *Avery v Midland Co*, 390 US 474, 479-481; 88 S Ct 1114; 20 L Ed 2d 45 (1968). The *Kizer* Court's construction of MCL 46.401 fulfilled that objective and we agree with it. The legislative history

does not affirmatively or persuasively lead to a different construction. Accordingly, pursuant to MCL 46.401, county apportionment commissions in each county of the state have the exclusive right and duty to apportion their respective counties within sixty days after the publication of the latest United States official decennial census figures.

Affirmed.

/s/ Mark J. Cavanagh