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.

SCHUETTE, P.J. *(concurring).*

I concur in the decision reached by my distinguished colleague in the lead opinion. Specifically, pursuant to MCL 46.401, "county apportionment commissions in each county have the exclusive right and duty to apportion their respective counties within sixty days after the publication of the latest United States decennial census figures." *Ante* at ___.

The issue presented before this Court was whether MCL 46.401 provided county boards of commissioners in Michigan counties populated by less than 75,000 people a one-time window of opportunity to self-apportion or whether the opportunity to self-apportion was perpetually granted to those counties upon the effective date of the statute, regardless of their later population growth.

Thirty-two years ago, in *Kizer v Livingston Co Bd of Comm'rs*, 38 Mich App 239; 195 NW2d 884 (1972), this Court reached the correct decision in overruling a 1970 opinion of Attorney General Frank Kelly by holding the disputed statutory language—namely, the phrases "in counties under 75,000" and "upon the effective date of this act"—constituted a one-time opportunity, effectively the last, for county boards of commissioners to conduct apportionment, instead of a county apportionment commission. The conclusion reached in *Kizer* is dispositive in this case.

While the *Kizer* Court ultimately reached the correct legal decision, its analytical approach contains some fault lines.[1] Therefore, I raise some objections and concerns with the reasoning in *Kizer* and with certain aspects of the lead opinion.

Our task in construing statutes is to discern and give effect to the intent of the Legislature. *Weakland v Toledo Engineering Co*, 467 Mich 344, 347; 656 NW2d 175 (2003). To accomplish this task, we begin by examining the language of the statute itself because statutory language provides the most reliable evidence of legislative intent. *United States v Turkette*, 452 US 576, 593; 101 S Ct 2524; 69 L Ed 2d 246 (1981). If the language of the statute is unambiguous, the Legislature must have intended the meaning clearly expressed, and the statute must be enforced as written; no further judicial construction is permitted. *Sun Valley Foods Co v Ward*, 460 Mich 230, 236; 596 NW2d 119 (1999). Thus, judicial statutory construction is only appropriate when a statute's language is ambiguous, that is, it can lend itself to two rational interpretations. *Id.*

Admittedly, the inclusion of the separating comma that divides the disputed statutory clauses creates such ambiguity. Yet the *Kizer* Court and the lead opinion in this case placed undue emphasis on the inclusion of the separating comma between the clauses. Presuming exacting legislative knowledge of grammatical rules—namely, the "last-antecedent" rule[2]—both the *Kizer* Court and the lead opinion found legislative intent suggesting that the disputed phrase was not intended to modify the first clause of the second sentence. *Kizer*, *supra* at 251. *Ante* at ___. Notably, however, the *Kizer* Court purported to apply the last-antecedent rule, while the lead opinion applied the rule's exception.[3] Yet the two came to the same conclusion.

I contend this preoccupation with legislative knowledge of rules of grammar is misplaced. Our Supreme Court has noted, "[r]elying [too] heavily upon the absence of a punctuation mark . . . exalts form over substance. Although the form and location of a [clause] may be some indication of legislative intent, form alone will not control." *In re Forfeiture of $ 5,264*, 432 Mich 242, 253; 439 NW2d 246 (1989); see 2A Sands, Sutherland Statutory Construction, § 47.09, p 138. The same is true when a nonconforming comma is included in statutory language that only makes sense if read in a particular light after considering the legislative history. 432 Mich at 242; Sands, p 138. Since the rules of statutory construction require that the intent of the Legislature, once ascertained, prevail regardless of any conflicting rule of grammar or statutory construction, *Green Oak Twp v Munzel*, 255 Mich App 235, 240; 661 NW2d 243 (2003), this Court should not grapple with stringent grammatical rules when legislative intent can be more easily ascertained through other means. Rather, it is more

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[1] *See In re Apportionment of Tuscola Co Bd of Comm'rs*, 466 Mich 78, 84 n 6; 644 NW2d 44 (2002).

[2] The grammatical "last-antecedent" rule holds that a modifying word or clause is confined solely to the last antecedent. *Sun Valley Foods Co v Ward*, 460 Mich 230, 237; 596 NW2d 119 (1999). The rule does not apply if a contrary intention appears. *Id.*

[3] *Kizer*, *supra* at 252; *ante* at ___.

appropriate to consider the object of the statute, the harm it is designed to remedy, and apply a reasonable construction that best accomplishes the statute's purpose. *People v Lawrence*, 246 Mich App 260, 265; 632 NW2d 156 (2001). After all, our primary task is to interpret the language of a statute—interpreting its grammatical structure is a secondary concern. Thus, I contend that, in construing statutes, this Court should apply exact grammatical rules, arguably divested from common usage, only after other methods of discerning legislative intent are exhausted.

My second objection to the analysis used by *Kizer* and the lead opinion is their reliance on the doctrine of legislative acquiescence. This principle of statutory construction has been squarely rejected by our Supreme Court because it reflects a critical misapprehension of the legislative process. *People v Hawkins*, 468 Mich 488, 507; 668 NW2d 602 (2003); *See Robertson v DaimlerChrysler Corp*, 465 Mich 732, 760 n 15; 641 NW2d 567 (2002); *Nawrocki v Macomb Co Rd Comm*, 463 Mich. 143, 177-178 n 33; 615 NW2d 702 (2000). Rather, Michigan courts are required to determine legislative intent by the Legislature's words not its silence. *Hawkins*, *supra* at 507. The Legislature's silence in regard to this statutory language has no dispositive effect on our interpretation. I believe the lead opinion erred by including this doctrine as a basis for its decision.

/s/ Bill Schuette