



SUPREME COURT OF MISSOURI
en banc

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| MICHAEL HOLMES, |) | <i>Opinion issued June 15, 2021</i> |
| |) | |
| Respondent, |) | |
| |) | |
| v. |) | No. SC97983 |
| |) | |
| SARAH STEELMAN and |) | |
| ERIC SCHMITT, |) | |
| |) | |
| Appellants. |) | |

APPEAL FROM THE CIRCUIT COURT OF THE CITY OF ST. LOUIS
The Honorable Joan L. Moriarty, Judge

The commissioner of the office of administration and the attorney general appeal a judgment in favor of Michael Holmes on his claim that the state legal expense fund (SLEF) is obligated to pay his 2016 judgment against two former officers of the St. Louis Metropolitan Police Department (SLMPD). The state claims the circuit court erred in applying the version of section 105.726.3 in effect in 2003, when the former police officers filed a false report that caused his wrongful arrest and conviction, rather than the version in effect when Mr. Holmes filed his claim in a lawsuit against the former officers. Because a right to payment from SLEF does not arise until a claim is made, section 105.726.3, RSMo Supp. 2013, governs Mr. Holmes’s claim and prohibits SLEF from paying any claim or

judgment against the police officers. The circuit court's judgment in Mr. Holmes's favor is vacated, and the cause is remanded.

Factual and Procedural Background

In 2003, Mr. Holmes was arrested after officers of SLMPD allegedly found cocaine base at his grandmother's home. Then-officers Shell Sharp and Bobby Garrett¹ conspired together to include false information in a police report, stating Mr. Holmes had engaged in drug-related activities in front of the house and was found in possession of cocaine base inside the home. As a result of the former officers' false report, Mr. Holmes was prosecuted for federal drug crimes.² Based in part on the former officers' testimony at trial, Mr. Holmes was found guilty and sentenced to 20 years' imprisonment due to a prior felony drug-trafficking conviction.

A subsequent SLMPD investigation into the former officers uncovered misconduct, including false accusations of drug crimes and fabrication of evidence in other cases. Based on this new information, Mr. Holmes sought to vacate his sentence, and, in 2011, a federal court vacated Mr. Holmes's conviction because the former officers' testimony had been discredited. Federal prosecutors decided not to retry the case and dismissed the indictment against Mr. Holmes.

¹ Mr. Sharp and Mr. Garrett were subsequently removed from the force and, for that reason, will be referred to as the "former officers" throughout this opinion.

² Specifically, Mr. Holmes was charged with and convicted of possession of more than 50 grams of a substance containing cocaine base with intent to distribute (in violation of 21 U.S.C. section 841(a)(1)) and possession of firearms in furtherance of a drug trafficking crime (in violation of 18 U.S.C. section 924 (c)).

In December 2012, Mr. Holmes filed a lawsuit in federal court, under 42 U.S.C. section 1983, against the mayor of the City of St. Louis, the board of police commissioners for the City of St. Louis, and the former officers. In his complaint, he alleged the former officers wrongfully caused his arrest and prosecution and, as a result, he spent more than five years wrongfully imprisoned. The federal court dismissed the mayor and the board of police commissioners on summary judgment, and Mr. Holmes proceeded to trial against only the former officers. The attorney general's office represented the former police officers after the board tendered the defense pursuant to SLEF's statutory requirements. A jury returned a verdict of \$2.5 million in Mr. Holmes's favor, finding the former officers in 2003 fabricated evidence in violation of Mr. Holmes's due process rights, falsely arrested him, and maliciously initiated his prosecution. The district court entered its judgment accordingly and awarded attorney fees and costs.

Mr. Holmes then sought payment of the judgment from SLEF by means of a demand letter sent to the attorney general, but payment was denied. In February 2015, Mr. Holmes filed the present declaratory judgment action against the commissioner of the office of administration and the attorney general (collectively, the "State"),³ as well as the City of St. Louis, the city's mayor, and members of the St. Louis police board, seeking a declaration that either the state of Missouri, through SLEF, or, alternatively, the City of St. Louis is obligated to pay the judgment.

³ Mr. Holmes's amended petition for declaratory judgment named Commissioner Doug Nelson and Attorney General Chris Koster in their official capacities as defendants. They no longer hold office. Pursuant to Rule 52.13(d), Commissioner Sarah Steelman and Attorney General Eric Schmitt have been substituted as defendants by operation of law.

All parties filed motions for summary judgment. In Mr. Holmes’s motion, he sought a declaration that either the State, through SLEF, or the city is obligated to pay his judgment against the former officers. The State sought, in its cross-motion for summary judgment, a declaration that SLEF is not obligated to pay the judgment. In its cross-motion, the city sought a declaration that it has no obligation to pay the judgment or, in the alternative, that Mr. Holmes may collect the judgment from SLEF. The circuit court sustained Mr. Holmes’s motion for summary judgment and entered judgment in his favor, declaring that the State, through SLEF, was obligated to pay his judgment against the former officers.

The circuit court’s grant of summary judgment was based on its findings that (1) section 105.726.3 excludes SLEF coverage only for the board of police commissioners and not for police officers and (2) in the absence of section 105.726.3, SLEF covers the former officers pursuant to section 105.711.2(2). The State appealed, and this Court ordered transfer after an opinion by the court of appeals. Mo. Const. art. V, sec. 10.

Standard of Review

A circuit court’s grant of summary judgment is subject to *de novo* review on appeal. *Knopik v. Shelby Invs., LLC*, 597 S.W.3d 189, 191 (Mo. banc 2020). Summary judgment will be affirmed when the moving party has established a right to judgment as a matter of law “on the basis of facts as to which there is no genuine dispute.” *Newton v. Mercy Clinic E. Comtys.*, 596 S.W.3d 625, 628 (Mo. banc 2020). “This Court reviews the record in the light most favorable to the party against whom judgment was entered.” *Id.*

Analysis

On appeal, the State claims the circuit court erred in granting Mr. Holmes summary judgment because, as a matter of law, SLEF coverage does not arise until a claim is made or a judgment is entered. At the time Mr. Holmes made his claim against the officers, section 105.726.3, RSMo Supp. 2013, prohibited SLEF from paying claims or judgments against police officers employed by a police board established under chapter 84, RSMo. Mr. Holmes and the city claim the circuit court correctly applied the statutes in effect in 2003 when the former officers' conduct occurred. At that time, section 105.711.2(2), RSMo 2000, provided for the payment of claims or judgments against the former officers and no other section limited that provision.

Determination of which version of the statutes governs Mr. Holmes's demand for payment of his judgment against the former officers depends on when the former officers' rights to payment from SLEF first attached. Sections 105.711 and 105.726 must be examined to make that determination. Matters of statutory interpretation are questions of law reviewed *de novo*. *Sun Aviation, Inc. v. L-3 Commc'ns Avionics Sys., Inc.*, 533 S.W.3d 720, 723 (Mo. banc 2017). The primary goal of statutory interpretation is to discern the legislature's intent as evidenced by the text and to consider the words in their plain and ordinary meaning. *Turner v. Sch. Dist. of Clayton*, 318 S.W.3d 660, 665 (Mo. banc 2010). In determining the meaning of words in a statute, the words should not be read in isolation but rather "must be considered in context and sections of the statutes in *pari materia*, as well as cognate sections, must be considered in order to arrive at the true meaning and scope of the words." *Cosby v. Treasurer of State*, 579 S.W.3d 202, 206 (Mo. banc 2019).

The legislature established SLEF in 1983 to replace the tort defense fund. *Cates v. Webster*, 727 S.W.2d 901, 904 (Mo. banc 1987). Moneys in SLEF are used to pay claims or judgments against the state, its agencies, any officer or employee of the state or its agencies, and certain other designated individuals and entities. As relevant to this case, the statute governing payment of claims in 2003, when the officers' conduct occurred, was section 105.711.2(2), RSMo 2000,⁴ which provided:

Moneys in the state legal expense fund shall be available for the payment of any claim or any amount required by any final judgment rendered by a court of competent jurisdiction against . . . [a]ny officer or employee of the State of Missouri or any agency of the state, including, without limitation, elected officials, appointees, members of state boards or commissions and members of the Missouri national guard upon conduct of such officer or employee arising out of and performed in connection with his or her official duties on behalf of the state, or any agency of the state[.]

In 2003, section 105.726, RSMo 2000, contained only two subsections. Subsection 1 provided the statutes governing SLEF were not intended to broaden the liability of the state or to abolish or waive any defense at law available to any agency, officer, or employee of the state; subsection 2 provided the creation of SLEF and payments therefrom were "deemed necessary and proper public purposes for which funds of this state may be expended." Sections 105.726.1-.2, RSMo 2000.

In 2005, this Court interpreted section 105.711.2(2), RSMo 2000, to find SLEF provided representation by the attorney general, reimbursement for expenditures in defending lawsuits, and satisfaction of judgments or settlements pertaining to lawsuits brought against

⁴ Because the language of section 105.711.2(2) has remained unchanged since RSMo 2000, this opinion dispenses with further references to a specific version of the statute, unless otherwise indicated.

members of the St. Louis board of police commissioners because the board was an agency of the state. *Smith v. State*, 152 S.W.3d 275, 278 (Mo. banc 2005). It further found SLEF was obligated to provide coverage to SLMPD officers because such officers were – and always had been – officers of the state for purposes of SLEF coverage. *Id.* at 279.

In response to *Smith*'s holding that members of the city's board of police commissioners and SLMPD officers were entitled to coverage under SLEF, the legislature amended section 105.726 to add subsection 3, which provided:

*Moneys in the state legal expense fund shall not be available for the payment of any claim or any amount required by any final judgment rendered by a court of competent jurisdiction against a board of police commissioners established under chapter 84, RSMo, including the commissioners, any police officer, notwithstanding section 84.330 and 84.710, RSMo, or other provisions of law, other employees, agents, representative, or any other individual or entity acting or purporting to act on its or their behalf. Such was the intent of the general assembly in the original enactment of section 105.711 to 105.2726, and it is made express by this section in light of the decision in *Wayman Smith, III, et al. v. State of Missouri*, 152 S.W.3d 275. Except that the commissioner of administration shall reimburse from the legal expense fund any board of police commissioners established under chapter 84, RSMo, for liability claims otherwise eligible for payment under section 105.711 paid by such boards on an equal share basis per claim up to a maximum of one million dollars per fiscal year.*

105.726.3, RSMo Supp. 2005 (emphasis added).

Subsections 4 and 5 were also added to section 105.726 in 2005. Subsection 4 provided the attorney general “shall represent, investigate, defend, negotiate, or compromise all claims under sections 105.711 to 105.726 for the board of police commissioners, any police officer, other employees, agents, representatives, or any other individual or entity acting or purporting to act on their behalf,” if requested. Section 105.726.4, RSMo Supp. 2005. Subsection 5 provided:

Claims tendered to the attorney general promptly after the claim was asserted . . . and prior to August 28, 2005, may be investigated, defended, negotiated, or compromised by the attorney general and full payments may be made from [SLEF] on behalf of the entities and individuals described in this section as a result of the holding in [*Smith*].

Section 105.726.5, RSMo Supp. 2005. Otherwise, “claims against employees of Police Boards would not be covered by the Fund.” *Sherf v. Koster*, 371 S.W.3d 903, 907 (Mo. App. 2012).

Together, sections 105.726.3-.5, RSMo Supp. 2005, prohibit SLEF from paying claims or judgments against police officers⁵ if the claims were tendered to the attorney general after August 28, 2005. Instead, those claims would qualify only for reimbursement and representation. Under the reimbursement and representation scheme, SLEF is obligated to reimburse the board of police commissioners for claims against the entities or individuals designated in section 105.726.3, including police officers, that are “otherwise eligible for payment under section 105.711” and paid by the board. Reimbursement for liability claims, however, is limited to a maximum of \$1 million dollars per fiscal year.⁶ Finally, for such

⁵ The circuit court interpreted the prohibition in section 105.726.3, RSMo Supp. 2005, against use of moneys in SLEF to pay certain claims and judgments to apply “only to judgments against a board of police commissioners” and not to judgments against police officers. This Court disagrees. The circuit court’s interpretation ignores the words after “commissioner” in the first sentence of the subsection – “any police officers, notwithstanding sections 84.330 and 84.710, RSMo, or other provisions of law, other employees, agents, representative, or any other individual or entity acting or purporting to act on its or their behalf.” Because this Court presumes the legislature intended every word to be given effect, *State ex rel. Goldsworthy v. Kanatzar*, 543 S.W.3d 582, 585 (Mo. banc 2018), the Court must give effect to the words “any police officer.”

⁶ Section 105.726.3, RSMo Supp. 2005, provided that police boards would be reimbursed for liability claims “on an equal share basis per claim up to a maximum of one million dollars per fiscal year.” When it was amended in 2012, however, the provision for reimbursement on an equal share basis per claim was removed, and it was rewritten to provide reimbursement “for

claims tendered to the attorney general after August 28, 2005, if a board of police commissioners requests representation, the attorney general is obligated to “represent, investigate, defend, or compromise all claims under sections 105.711 to 105.726.” Section 105.726.4, RSMo Supp. 2005.

Mr. Holmes asserts that, despite this interpretation of section 105.726.3, SLEF is obligated to pay his judgment against the former officers because section 105.711.2(2) says, “Moneys in the state legal expense fund shall be available . . . upon conduct of such officer or employee arising out of and performed in connection with his or her official duties on behalf of the state.” In other words, he claims the phrase “*upon* conduct of such officer” in section 105.711.2(2) establishes *when* a state employee’s right to payment from SLEF arises. As applied to this case, he claims that language means the former officers had a right to payment from SLEF when their conduct occurred in 2003. Under this premise, he claims applying section 105.726.3, RSMo Supp. 2013, to prohibit payment from SLEF would violate the prohibition against retrospective laws in article I, section 13 of the Missouri Constitution because the officers had a vested right to payment from SLEF in 2003, before the enactment of section 105.726.3, RSMo Supp. 2005, eliminated the right to payment.

Relying on this Court’s holding in *Cates*, 727 S.W.3d at 904, the State counters the former officers never had a right to payment of the judgment from SLEF because a right to payment from SLEF does not arise until a claim is made and Mr. Holmes asserted his claim well after section 105.726.3 was enacted. Under the State’s theory, “upon” in section

liability claims otherwise eligible for payment under section 105.711 paid by such board up to a maximum of one million dollars per fiscal year.” Section 105.726.3, RSMo Supp. 2013.

105.711.2(2) does not designate when officers or employees are entitled to payment from SLEF but rather denotes which claims or final judgments are payable – namely, those based on conduct performed in connection with official duties on behalf of the state. Accordingly, the State contends it does not matter that the conduct occurred in 2003 because the earliest the former officers would have had a right to payment from SLEF would have been when Mr. Holmes first asserted his claim in December 2012.⁷ At that time, section 105.726.3, RSMo Supp. 2013, prohibited SLEF from paying claims or final judgments against SLMPD officers.⁸

It is not necessary to engage in statutory construction to resolve the conflict between Mr. Holmes’s definition of “upon” and that of the State. While in isolation the word “upon” is susceptible to either meaning,⁹ its plain meaning is determined from its “usage in the

⁷ In *Cates*, this Court held “the protection provided an employee under [SLEF] arises when the claim is made and extends to the time when a judgment might be rendered.” 727 S.W.2d at 904. The record in this case does not show Mr. Holmes asserted his claim before filing his federal civil rights suit against the officers in December 2012.

⁸ Mr. Holmes and the city assert the State is estopped from denying its responsibility to pay the judgment because, in asking in federal court to stay enforcement of its judgment and waive the requirement that the State post a supersedeas bond, the State represented that “the Judgment will definitely be paid, either by [the State] through its SLEF or by [the city].” Mr. Holmes claims this earlier representation is inconsistent with the position the State now takes that SLEF has no obligation to pay the judgment. To be sure, the doctrine of judicial estoppel prevents a party from taking a position clearly inconsistent with an earlier position. *Vacca v. Mo. Dep’t of Lab. & Indus. Rels.*, 575 S.W.3d 223, 235 (Mo. banc 2019). The State, however, has not taken inconsistent positions. It maintains it is not obligated to pay the judgment through SLEF but the city is. Therefore, the State is not estopped from disclaiming a duty to indemnify the officers.

⁹ The first meaning of “upon” is “on.” *Upon*, WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY UNABRIDGED 2517 (3d ed. 2002). The word “on,” in turn, may be used to indicate “the source or support or basis on which something (as an action, opinion) turns or rests” or “position with regard to . . . time.” *On*, WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY UNABRIDGED 1574 (3d ed. 2002).

context of the entire statute.” *State ex rel. Goldsworthy v. Kanatzar*, 543 S.W.3d 582, 585 (Mo. banc 2018). A court cannot look at single, separate words in a statute and then apply to each a definition untethered from its context. *See Kehlenbrink v. Dir. of Revenue*, 577 S.W.3d 798, 800 (Mo. banc 2019).

Section 105.711.2, RSMo 2000, identified the individuals and entities whom SLEF would indemnify against claims or judgments, and for some individuals and entities, the maximum amount that would be paid from SLEF. Four subdivisions specified, generally, that moneys in SLEF shall be available for payment of claims or final judgments against:

- (1) The state of Missouri or any agency of the state;
- (2) Any officer or employee of the state or an agency of the state, including “elected officials, appointees, members of state boards or commissions, and members of the Missouri national guard”;
- (3) Certain health care providers; and
- (4) Employees of the juvenile divisions of the judicial circuits.

These subdivisions designated who had a right to SLEF coverage. They did not purport to designate when that coverage arises. Contrary to Mr. Holmes’s and the city’s arguments, there is no language in any of the other subdivisions to support their interpretation of section 105.711.2(2), RSMo 2000, as establishing when an individual’s or entity’s right to payment from SLEF arose. Consistent with the purpose of the other subdivisions of section 105.711.2, the language of subdivision 2 designates the individuals and entities entitled to SLEF payments, not the time the right to payment arises.

Indeed, this Court has held the first act to which section 105.711.2(2) attributes legal significance is the making of a claim, not the conduct underlying the claim. *Cates*, 727 S.W.2d at 904. In *Cates*, after he was named as a defendant in a tort action, a circuit court bailiff filed a declaratory judgment action to determine whether SLEF provided him with

representation and payment of any claim or any amount required by a final judgment. *Id.* at 902. The bailiff’s conduct at issue occurred before SLEF was enacted. *Id.* The threshold issue before the Court was whether SLEF could apply to events that occurred before it was enacted. *Id.* at 904.

The Court held SLEF covered the bailiff’s prior conduct because “the protection provided the employee under [SLEF] arises when the claim is made and extends to the time when judgment might be rendered.” *Id.* For the same reason, the Court held the application of SLEF to the underlying tort action against the bailiff was “not retrospective since the judgment, an act to which certain legal effects are ascribed by section 105.711.2,” occurred after SLEF’s effective date. *Id.* The acts “to which certain legal effects are ascribed by section 105.711.2” are the making of a claim or the rendering of a final judgment; therefore, “the protection provided the employee under [SLEF] arises when the claim is made and extends to the time when judgment might be rendered.” *Id.* Whether *obiter dictum* or not, the Court’s analysis in *Cates* is correct. The first act to which section 105.711.2(2) ascribes any legal significance is the making of a claim, so the right to SLEF payment does not arise until a claim is made.

This interpretation is further supported by consideration of the statute’s subsequent amendment. Section 105.711.5, RSMo 2016, provides:

In the case of any claim or judgment against an officer or employee of the state or any agency of the state *based upon conduct* of such officer or employee arising out of and performed in connection with his or her official duties on behalf of the state or any agency of the state that would give rise to a cause of action under section 537.600, the state legal expense fund shall be liable, excluding punitive damages, for:

- (1) Economic damages to any one claimant; and

(2) Up to three hundred fifty thousand dollars for noneconomic damages.

The state legal expense fund shall be the exclusive remedy and shall preclude any other civil actions or proceedings for money damages arising out of or relating to the same subject matter against the state officer or employee, or the officer's or employee's estate. No officer or employee of the state or any agency of the state shall be individually liable in his or her personal capacity *for conduct of such officer or employee arising out of and performed in connection with his or her official duties on behalf of the state or any agency of the state.*

(Emphasis added). Section 105.711.5, RSMo 2016, describes the claims or judgments SLEF will pay as those “based upon” the conduct performed in connection with official duties. It then references the described conduct as the subject matter for which SLEF “shall be the exclusive remedy” and for which officers or employees shall not be individually liable.¹⁰

The dissenting opinion asserts “upon conduct” in section 105.711.2(2) indicates position in regard to time when read *in pari materia* with section 84.345.2, RSMo Supp. 2013, one of the provisions resulting from the adoption of Proposition A at the November 2012 general election.¹¹ To accomplish the transfer of control of SLMPD from the state to the city,

¹⁰ The dissenting opinion asserts section 105.711.5, RSMo 2016, dramatically changed the meaning of “upon conduct” in section 105.711.2(2) when it articulated the concept as “based upon conduct.” If the legislature meant to alter the meaning of “upon conduct” in section 105.711.2(2), it seems likely it would have amended that subdivision rather than removing any temporal sense from “upon conduct” by articulating the same concept with slightly different wording later in the same section. The more reasonable interpretation is that the legislature did not alter the meaning of “upon conduct” in section 105.711.2(2) by enacting section 105.711.5, RSMo 2016, because it intended all those provisions to refer to the conduct on which the claim or final judgment is based.

¹¹ In November 2012, voters passed Initiative Proposition A, which authorized the City of St. Louis to establish control over its own police force. *State ex rel. Hawley v. City of St. Louis*, 531 S.W.3d 602, 604 (Mo. App. 2017). Proposition A brought about three statutory changes relevant to this appeal. First, it led to the enactment of section 84.334, RSMo Supp. 2013, which gives the city the right to establish its own police force. *Id.* at 604. Second, Proposition A enacted section 83.345.2, RSMo Supp. 2013, which addresses how the transfer to city

section 84.345 altered the existing reimbursement and representation scheme of SLEF coverage of the police board and its officers. *See* section 84.345, RSMo Supp. 2013. Specifically, it provided that, for any claim “arising out of actions occurring before the date of completion of the transfer provided under subsection 2 of section 84.344, the state shall *continue* to provide legal *representation* as set forth in section 105.726, and [SLEF] shall continue to provide *reimbursement* for such claims under section 105.726.” Section 84.345.2, RSMo Supp. 2013 (emphasis added).

The dissenting opinion asserts this provision “demonstrates the legislature expressly required SLEF to continue to reimburse for claims or judgments against police officers pursuant to section 105.726, prior to the transfer of local control to the city, based on *when the underlying conduct occurred*.” Section 84.345.2, RSMo Supp. 2013, however, does not address when SLEF coverage arises. It merely provides SLEF shall *continue* to provide representation and reimbursement as required in section 105.726. Section 84.345.2.

The reimbursement and representation scheme established in sections 105.726.3-5 provides reimbursement and representation for “claims *otherwise eligible for payment under section 105.711*.” Section 105.726.3, RSMo Supp. 2013 (emphasis added). So, section 84.345.2, RSMo Supp. 2013, does not work in tandem with section 105.711 to determine

control affects the reimbursement and representation scheme adopted in the 2005 amendment to section 105.726. *Id.* at 605. Finally, Proposition A resulted in a revision to section 105.726.3, which excepted the police board from SLEF reimbursement. *Id.* After the city assumed control of the police force in September 2013, it became entitled to reimbursement for past claims as the board’s successor-in-interest. Section 105.726.3, RSMo Supp. 2013; *State ex rel. Koster v. Kan. City Bd. of Police Comm’rs*, 532 S.W.3d 191, 196 & n.6 (Mo. App. 2017). Whether SLEF may be obligated to reimburse the city for payment of the judgment “up to a maximum of one million dollars per fiscal year” pursuant to section 105.726.3 is not before this Court.

which claims will be eligible for SLEF payment. That function is committed solely to section 105.711. Rather, section 84.345.2, RSMo Supp. 2013, affects only whether claims for which reimbursement and representation are available under section 105.726 will continue to be eligible for reimbursement and representation following the transfer to local control.

In further support of their assertion that the former officers' right to payment from SLEF attaches at the time of their conduct, Mr. Holmes and the city claim SLEF is essentially an occurrence-based insurance policy that promises indemnity against liability arising from acts committed during the policy period regardless of when the claim is ultimately asserted. It is true SLEF has been compared to liability insurance. *See Dixon v. Holden*, 923 S.W.2d 370, 377 (Mo. App. 1996). In two aspects, it resembles liability insurance: it indemnifies certain entities against liability, *see* section 105.711.2, and indemnitees are not required to first pay a claim or judgment from their own pockets before being entitled to payment from SLEF, *Dixon*, 923 S.W.2d at 378. Its likeness to insurance ends there, however, and it has been affirmatively held that SLEF does not constitute insurance. *See Kesterson v. Wallut*, 157 S.W.3d 675, 684 (Mo. App. 2004); *Casady v. Bd. of Governors of Ne. Mo. State Univ.*, 875 S.W.2d 909, 914 (Mo. App. 1994).

Because the event triggering an officer or employee's right to indemnity is the making of a claim or the rendering of a final judgment, the former officers' entitlement to SLEF indemnity must be resolved through application of the statutes in effect when Mr. Holmes first asserted his claim by suing the officers in December 2012. At that time, section 105.726.3, RSMo Supp. 2013, prohibited the fund from paying "*any claim or any amount required by any final judgment rendered . . . against a board of police commissioners*

established under chapter 84, including the commissioners, *any police officer . . .* or any other individual or entity acting or purporting to act on its or their behalf.” (Emphasis added). Therefore, the state of Missouri, through SLEF, is not obligated under section 105.711.2(2) to pay Mr. Holmes’s judgment against the former officers.

Application of Section 105.726.3 Not Retrospective

Mr. Holmes claims applying section 105.726.3, RSMo Supp. 2013, to the former officers would violate the prohibition on retrospective laws in article I, section 13 of the Missouri Constitution. Article I, section 13 provides that “no ex post facto law, nor law impairing the obligation of contracts, or *retrospective in its operation*, or making any irrevocable grant of special privileges or immunities, can be enacted.” (Emphasis added). A law is retrospective in its operation if it “impairs some vested right or affects past transactions to the substantial prejudice of the parties.” *La-Z-Boy Chair Co. v. Dir. of Econ. Dev.*, 983 S.W.2d 523, 525 (Mo. banc 1999). A law is not retrospective, however, “merely because it relates to or is directed to prior facts or transactions.” *Dial v. Lathrop R-II Sch. Dist.*, 871 S.W.2d 444, 447 (Mo. banc 1994).

“Before passing judgment on the constitutional [validity] of a statute, this Court must determine whether plaintiffs have standing to bring the constitutional challenge.” *Mo. State Med. Ass’n v. State*, 256 S.W.3d 85, 87 (Mo. banc 2008). Consequently, although the parties have not raised the issue, this Court must determine at the outset whether Mr. Holmes has standing to maintain a constitutional challenge to the application of section 105.726.3, RSMo Supp. 2013, to the former officers.

Those adversely affected by a statute have standing to challenge its constitutional validity. *Brehm v. Bacon Twp.*, 426 S.W.3d 1, 5 (Mo. banc 2014). To be adversely affected, Mr. Holmes must show he has some “legally protectable interest in the litigation so as to be directly and adversely affected by its outcome,” such as “a pecuniary or personal interest directly at issue and subject to immediate or prospective consequential relief.” *Id.* Judgment creditors, like Mr. Holmes, are entitled to seek satisfaction directly from SLEF. *Dixon*, 923 S.W.2d at 378. For that reason, a decision deciding whether the former officers are entitled to payment of the judgment from SLEF necessarily determines whether Mr. Holmes is entitled to payment from SLEF. Mr. Holmes has a pecuniary interest directly at issue and subject to immediate relief; therefore, he has standing to challenge the application of section 105.726.3, RSMo Supp. 2013, to his judgment against the former officers as a constitutionally invalid retrospective law.

His claim lacks merit, however, because the former officers did not have a right to payment from SLEF in 2003, when they fabricated evidence against Mr. Holmes. As discussed above, in 2003 and at all times subsequent, a right to payment from SLEF does not arise until a claim is made. When Mr. Holmes first asserted his claim in December 2012, section 105.726.3, RSMo Supp. 2013, was in effect. The former officers never had a right to payment from SLEF because section 105.726.3, RSMo Supp. 2013, prohibited SLEF from paying claims or judgments against them when Mr. Holmes first asserted his claim. Although it relates to prior facts, section 105.726.3, RSMo 2013, is not being applied to rights, substantive or procedural, that arose before its enactment. Therefore, the application of

section 105.726.3, RSMo Supp. 2013, to Mr. Holmes's judgment against the former officers does not violate article I, section 13 of the Missouri Constitution.

Conclusion

Mr. Holmes failed to show, as a matter of law, he is entitled to a declaration that the state is obligated to pay his judgment out of SLEF. The right to payment from SLEF attaches when a claim is made and, at the time Mr. Holmes first made his claim, section 105.726.3, RSMo Supp. 2013, prohibited SLEF from paying claims against police officers. Accordingly, the circuit court's judgment in favor of Mr. Holmes is vacated, and the cause is remanded.

PATRICIA BRECKENRIDGE, JUDGE

Wilson, Russell, Powell and
Fischer, JJ., concur; Draper, C.J.,
dissents in separate opinion filed.



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MICHAEL HOLMES,)
)
 Respondent,)
)
 v.) No. SC97983
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 SARAH STEELMAN and)
 ERIC SCHMITT,)
)
 Appellants.)

DISSENTING OPINION

The principal opinion’s holding that Shell Sharp’s and Bobby Garrett’s (hereinafter and collectively, “the former officers”) right to payment from the State Legal Expense Fund (hereinafter, “SLEF”) did not attach until Michael Holmes (hereinafter, “Holmes”) made his claim ignores the plain language of section 105.711.2(2), RSMo 2000,¹ and section 84.345.2, RSMo Supp. 2013,² and relies on dicta in reaching this result. I would affirm the circuit court’s judgment finding the former officers’ right to payment from SLEF arose from their 2003 conduct. Accordingly, I respectfully dissent.

¹ Because section 105.711 has remained unchanged since 2000, all references will be to RSMo 2000, the version of the statute in effect at the time the former officers’ conduct occurred.

² All references to sections of chapter 84 are to RSMo Supp. 2013.

At the time the former officers' conduct occurred, section 105.711.2(2) provided:

Moneys in the state legal expense fund shall be available for the payment of any claim or any amount required by any final judgment rendered by a court of competent jurisdiction against ... [a]ny officer or employee of the state of Missouri or any agency of the state, including, without limitation, ... members of state boards or commissions ... *upon conduct* of such officer or employee arising out of and performed in connection with his or her official duties on behalf of the state, or any agency of the state[.]

(Emphasis added). Holmes contends the availability of SLEF coverage is triggered “upon conduct” of an officer performing official duties on behalf of the state pursuant to section 105.711.2(2). Holmes maintains this provision establishes the timing of a state employee’s entitlement to coverage, arguing that, at the time the former officers engaged in official conduct in 2003 exposing them to liability, they were entitled to SLEF protection. The state maintains “upon conduct” does not trigger when a state employee is entitled to payment from SLEF but signifies that claims and judgments arising from a state employee’s conduct are entitled to protection. Hence, the state believes the former officers were not entitled to payment from SLEF until Holmes made his claim in 2012.

The principal opinion concedes “upon conduct” is susceptible to either meaning asserted by the parties but chooses to ignore its plain meaning or give the words effect. “This Court presumes ‘each word, clause, sentence, and section of a statute will be given meaning and that the legislature did not insert superfluous language.’” *City of Aurora v. Spectra Commc’ns Grp., LLC*, 592 S.W.3d 764, 783 (Mo. banc 2019) (quoting *Macon Cnty. Emergency Servs. Bd. v. Macon Cnty. Comm’n*, 485 S.W.3d 353, 355 (Mo. banc 2016)). Hence, this Court must give effect to the words “upon conduct” when reading section 105.711.2(2). “Upon” is defined as “on.” *Webster’s Third New Int’l*

Dictionary Unabridged 2517 (3d ed. 2002). “On” contains a myriad of definitions, but relevant to this issue, “on” means “to indicate position with regard to ... time; ... or at a set time...; occurrence ... or following or as a result of something” *Id.* at 1574. When applying the plain meaning of “upon” in section 105.711.2(2), it is clear the former officers’ entitlement to SLEF monies to pay Holmes’ claim arose as a result of their conduct, which occurred in 2003.³

The principal opinion concedes section 105.711.2(2) provided for the payment of claims or judgments against the former officers and no other section limited that provision in 2003 when the former officers’ conduct occurred. Moreover, in *Smith v. State*, 152 S.W.3d 275, 279 (Mo. banc 2005), this Court held SLEF provided coverage to police officers because, at that time, they were officers of the state pursuant to section 105.711.2(2).⁴ Hence, when giving the words “upon conduct” effect, it is clear the

³ The principal opinion attempts to bolster its faulty interpretation of “upon conduct” in section 105.711.2(2) by looking at the subsequent amendment to section 105.711.5, RSMo 2016. That subsection added the word “based” immediately before the words “upon conduct” and used the phrase “for conduct,” both which dramatically change the meaning of “upon conduct” by removing the temporal meaning used in section 105.711.2(2), hence undermining the principal opinion’s position and demonstrating Holmes’ analysis of the statute in effect in 2003 is correct. The principal opinion speculates that, if the legislature meant to alter the meaning of “upon conduct,” it would have amended the subdivision rather than articulate the same concept with slightly different wording later in the same section. “[W]hen the legislature amends a statute, that amendment is presumed to change the meaning of the law.” *State ex rel. Coleman v. Wexler Horn*, 568 S.W.3d 14, 21 (Mo. banc 2019). In this case, “slightly different wording” in the 2016 statute makes a difference in the temporal meaning of the phrase “upon conduct.”

⁴ In 2005, the legislature amended section 105.726 after *Smith* to prohibit SLEF from being used to pay for claims or judgment incurred by police officers. *See* section 105.726.3, RSMo Supp. 2005. This amendment is irrelevant, however, because section 105.711.2(2) and section 105.726 as written at the time of the former officers’ conduct in 2003 require SLEF to pay Holmes’ judgment.

former officers were entitled to SLEF monies to pay Holmes' claim at the time their conduct occurred in 2003.⁵

Further, when determining legislative intent of a statute, it must be read "*in pari materia* with related sections." *City of Aurora*, 592 S.W.3d at 783. "Under the doctrine of *in pari materia*, statutes relating to the same subject matter should be construed to achieve a harmonious interpretation." *Roesing v. Dir. of Revenue*, 573 S.W.3d 634, 639 (Mo. banc 2019). My interpretation of section 105.711.2(2) is bolstered when examining related legislation concerning when SLEF monies are available to reimburse claims and judgments incurred by police officers after the state transferred local control to the City of St. Louis (hereinafter, "the City").

After Missouri voters passed Initiative Proposition A in November 2012, the legislature enacted section 84.344, which "gave the City the right to establish its own police force free from state control" *State ex rel. Hawley v. City of St. Louis*, 531 S.W.3d 602, 604 (Mo. App. E.D. 2017). Passage of Initiative Proposition A also led to the enactment of section 84.345. *Id.* at 605. Section 84.345.2 provides:

For any claim, lawsuit, or other action *arising out of actions occurring before the date of completion of the transfer* provided under subsection 2 of section 84.344, the state shall continue to provide legal representation as set forth in section 105.726, and the [SLEF] shall continue to provide reimbursement for

⁵ The principal opinion's reliance on various subdivisions of section 105.711.2 as designating individuals entitled to SLEF payments effectively reads "upon conduct" out of subdivision (2), which expressly provides *when* state officers and employees are entitled to SLEF payments: "*upon conduct* of such officer or employee arising out of and performed in connection with his or her official duties on behalf of the state." Section 105.711.2(2) (emphasis added). None of the other subdivisions contain this qualifying temporal language.

such claims under section 105.726. This subsection applies to all claims, lawsuits, and other actions brought against any commissioner, police officer, employee, agent, representative, or any individual or entity acting or purporting to act on its or their behalf.

(Emphasis added). “The primary rule of statutory interpretation is to effectuate legislative intent through reference to the plain and ordinary meaning of the statutory language.” *State ex rel. Valentine v. Orr*, 366 S.W.3d 534, 540 (Mo. banc 2012). “When the words are clear, there is nothing to construe beyond applying the plain meaning of the law.” *Id.* (quoting *State v. Rowe*, 63 S.W.3d 647, 649 (Mo. banc 2002)).

Although the principal opinion must read section 84.345 separately from sections 105.726 and 105.711 to justify its holding, all three sections must be consulted in *pari materia* to determine when a police officer is entitled payment from SLEF. Section 84.345.2’s plain language clearly demonstrates the legislature expressly required SLEF to continue to reimburse for claims or judgments against police officers pursuant to section 105.726, prior to the transfer of local control to the City, based on *when the underlying conduct occurred*. Moreover, section 105.726.3 expressly refers to section 105.711 to determine “claims otherwise eligible for payment,” which arises “upon conduct” of the officer as stated in section 105.711.2(2). It is undisputed the former officers’ conduct occurred in 2003, well before the transfer of local control to the City, and *Smith* held police officers who were under state control were entitled to funds from SLEF to pay for those claims and judgments. Because the former officers’ conduct occurred before the state completed the transfer of control to the City, section 84.345.2’s

unambiguous language mandates SLEF *shall* provide reimbursement for Holmes' judgment.

The principal opinion ignores the straightforward language of sections 105.711.2(2) and 84.345.2, presumably because it undermines its claims-based holding. Instead, the principal opinion clings to a sentence from *Cates v. Webster*, 727 S.W.2d 901, 904 (Mo. banc 1987), which states "the protection provided the employee under the [SLEF] arises when the claim is made and extends to the time when a judgment might be rendered." A careful reading of *Cates* demonstrates this single sentence is dicta and should not be relied upon to insulate the state through SLEF from paying Holmes' judgment.

In *Cates*, this Court stated the question to be resolved was whether the circuit court correctly found a bailiff employed by the Jackson County circuit court "was not an employee nor was he performing duties on behalf of the state or an agency thereof within the meaning of section 105.711.2(2)" to be entitled to representation and reimbursement for any judgment under SLEF. *Id.* at 903. This Court stated the bailiff could prevail on his claim "only if: (1) he was an officer or employee of the state or any agency thereof; *and* (2) the claim is against conduct which arose out of and was performed in connection with his official duties on behalf of the state or any agency thereof." *Id.* at 904 (emphasis in original). Hence, the threshold issue to be resolved was whether the bailiff was entitled to payment from SLEF under section 105.711.2(2) as a circuit court employee. This Court did not need to reach the issue of when the bailiff's conduct occurred or when the claim arose because those considerations were irrelevant and inconsequential if first he did not qualify as a state employee under section 105.711.2(2). "[A]s this Court has held countless

times, an opinion is limited by the issues before the Court and any holdings beyond those necessary to decide the issues are *dicta*.” *Theroff v. Dollar Tree Stores, Inc.*, 591 S.W.3d 432, 440-41 (Mo. banc 2020) (Breckenridge, J. concurring). Because it was not necessary to resolve when the bailiff’s conduct occurred or when the claim arose to deny the bailiff relief, the sentence from *Cates* on which the principal opinion relies is unpersuasive *dicta* and not dispositive of this appeal.⁶

Based on the foregoing, I believe the statutes in effect in 2003 conferred the right of SLEF coverage upon the former officers when their conduct occurred. Accordingly, I would affirm the circuit court’s judgment finding the state, through SLEF, was obligated to pay Holmes’ \$2.5 million judgment against the former officers for their reprehensible conduct in 2003 resulting in his wrongful conviction and incarceration.

GEORGE W. DRAPER III, Chief Justice

⁶ In *Smith*, this Court described the *Cates* holding as focused on whether the bailiff was a state employee or officer:

Cates held, in particular, that a circuit court bailiff was not covered by the SLEF because he was paid by the county, despite the fact that he was hired by and served at the pleasure of the circuit judges and that his sole job was to assist the judges in the performance of their state responsibilities. Although the *Cates* Court rejected a “control” test in favor of a “payment” test, in this case, the outcome is dictated instead by the express language of the statute: St. Louis police officers are both officers of the City and officers of the state.

Smith, 152 S.W.3d at 279 (internal citation omitted). The principal opinion does not address the argument it is immaterial whether SLEF could apply to events occurring before it was enacted if the person seeking its benefit was not within the category of individuals entitled to its protection.