

Opinion No. 22

**Silicosis—Income Limitations—
Gainful Occupations—What
Constitutes.**

HELD: Words cannot be supplied to or omitted from a statute to determine the legislative intent.

A "gainful occupation" under the Silicosis Act is a work or business; it is not a person.

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Gentlemen:

You ask me a number of questions about the effect of the amendment to Section 71-1003 (a), of substitute House Bill 204, enacted by the last legislative assembly.

For this opinion these questions may be consolidated and restated as one question:

What is the effect of substitute House Bill 204 on Section 71-1003 (a), R.C.M., 1947.

Before the last amendment, this paragraph read:

"Eligibility Requirements For Aid To Persons Having Silicosis, As Herein Defined. Payments shall be made under this chapter to any person who:

(a) Has silicosis, as defined in this chapter, which results in his total disability so as to prevent him from engaging in a gainful occupation. The term "gainful occupation" as used herein shall not be construed to mean occasional or intermittent light employment where the ability to do manual labor is not essential."

* * *

This paragraph defines the term "gainful occupation". It was amended as here concerned, by changing the period at the end to a comma and adding this clause:

"but, shall mean any person having an income from any other source exceeding one hundred fifty dollars (\$150.00) per month."

The result is that the last sentence now reads:

"The term 'gainful occupation' as used herein shall not be construed to mean occasional or intermittent light employment where the ability to do manual labor is not essential, but, shall mean any person having an income from any other source exceeding one hundred fifty dollars (\$150.00) per month."

Immediately, the question arises: What shall mean any person? A gainful occupation? A silicotic? A payment? What is meant is not at all clear.

A familiar canon of statutory construction tells that where the language of a statute is plain, simple, direct, and unambiguous, there is no

room for interpretation. It interprets itself.

One reading of this paragraph is enough to convince that it is greatly in need of interpretation to give it a meaning so it can be administered.

The subject of the paragraph is a "gainful occupation". With the amendment, the paragraph seems to say that a "gainful occupation" is a person with an income from any other source exceeding \$150.00 per month.

The ordinary meaning of the term "gainful occupation" is any work or business that is beneficial, advantageous or profitable. This meaning has been modified by the statute to exclude intermittent light labor, but, legal authority could be ransacked without disclosing that a "gainful occupation" is a person, in fact, without disclosing that a "gainful occupation" is something other than a work or business. With the amendment, the paragraph becomes obscure.

The entire statute (Section 71-1003, R.C.M., 1947) deals with the eligibility requirements silicotic victims must meet in order to receive benefit payments under the silicosis act. A reading of it discloses the following internal arrangement by paragraph:

- (a) Defines a "gainful occupation" and how it effects eligibility;
- (b) States the Montana residence requirements;
- (c) States the eligibility of medical institutional inmates;
- (d) States the eligibility when the silicotic also draws payments under the workmen's compensation act.

We can guess that the amendment was intended to impose another qualification on eligibility by setting an income limitation of some sort. That is possible, but then we wonder if such was the case, why the legislature did not place it under paragraph (d) where it would logically fall, or, make a new paragraph of it. We wonder also, if such was the in-

tent, why the legislature would have any difficulty in stating this in simple, straight language, rather than incongruously grouping it in the same sentence with a definition of a "gainful occupation".

To find what the legislature did, in fact, intend we are restricted in our search to the statute itself. The rule on this was stated in *Green vs. City of Roundup*, 117 Mont. 160, 157 Pac. (2d) 1010, as follows:

" . . . While it is the general rule that it is the duty of this court to ascertain the intention of the legislature, if possible, it is equally true that the intention must be gathered from language employed by the lawmakers . . . "

This restriction on source is emphasized in, *Mills vs. State Board of Equalization*, 97 Mont. 13, 33 Pac. (2d) 563, where Justice Anderson said:

" . . . the intention must be gathered from the language employed by the lawmakers and not from street rumors or other similar sources." (Cases cited.)

With this background in mind we see that it is necessary to supply and delete language to give this amended section some semblance of meaning. We could restate it so that only income from a "gainful occupation" is computed, but, that ignores the phrase "from any source".

We could restate it so that all income whether from veterans' pensions, social security, etc., is computed. But that ignores the fact that the sentence defines a "gainful occupation".

However, the law forbids this approach as a means of arriving at the legislative intent.

Section 93-401-15, R.C.M., 1947, states:

"Construction Of Statutes And Instruments—General Rule. In the construction of a statute or instrument, the office of the judge is simply to ascertain and declare what is in terms or in substance contained therein, not to insert what has been omitted, or to omit

what has been inserted; and where there are several provisions or particulars, such a construction is, if possible, to be adopted as will give effect to all."

In the *Mills* case, supra, the rule is positively stated to be:

" . . . This court will not read into a statute words necessary to make it conform to a supposed intention of the legislature . . . "

In *Re Baxter's Estate*, 101 Mont. 504, 54 Pac. (2d) 869, the rule is stated:

"In the construction of a statute it is not permissible to read something into or out of it to make it understandable or workable . . . "

This rule has been strictly adhered to in a host of Montana cases. The reason for it was well expressed by the Indiana Supreme Court in *Ry. Comm. of Indiana vs. Grand Trunk Western Ry. Co.*, 179 Ind. 255, 100 N.E. 852:

"The courts cannot venture upon the dangerous path of judicial legislation to supply omissions or remedy defects in matters committed to a coordinate branch of the government. It is far better to wait for necessary corrections by those authorized to make them, or, in fact, for them to remain unmade, however, desirable they may be, than for judicial tribunals to transcend the just limits of their constitutional powers."

That is true here, the legislature will have to correct the error made by this amendment if it is to be corrected.

In the meantime it is my opinion that because the amendment to the last sentence of Section 71-1003 (a), R.C.M., 1947, is meaningless and the law forbids "reading something into or out of it to make it understandable or workable" the amendment is unenforceable.

Very truly yours,

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