

Chapter 174

Construction of Statutes and General Definitions

174.010

NOTES OF DECISIONS

1. In general

2. "Where there are several provisions or particulars"

1. In general

Words in a statute are to be interpreted in their ordinary and usual signification. *Portland v. Meyer*, (1898) 32 Or 368, 52 P 21, 67 Am St Rep 538; *Fishburn v. Londershausen*, (1907) 50 Or 363, 370, 92 P 1060, 15 Ann Cas 975, 14 LRA(NS) 1234.

It is axiomatic that when the legislature in adopting an Act makes use of plain, unambiguous and understandable language, it is presumed to have intended precisely what its words imply. *State v. Buck*, (1953) 200 Or 87, 118, 262 P2d 495; *Berry Trans., Inc. v. Heltzel*, (1954) 202 Or 161, 272 P2d 965; *Franklin v. State Ind. Acc. Comm.*, (1954) 202 Or 237, 274 P2d 279; *Ohm v. Fireman's Fund Indem. Co.*, (1957) 211 Or 596, 317 P2d 575; *Dilger v. Sch. Dist. 24CJ*, (1960) 222 Or 108, 352 P2d 564; *State ex rel. Appling v. Chase*, (1960) 224 Or 112, 355 P2d 631; *Buell v. State Ind. Acc. Comm.*, (1964) 238 Or 492, 395 P2d 442.

For the purpose of explaining any ambiguity that may exist in a present legislative Act, resort may be had to the Act amended, but the parts of the former Act omitted in the revision cannot be supplied by construction. *State v. Simon*, (1891) 20 Or 365, 26 P 170.

The provisions relating to the admissibility in evidence of entries in family Bibles or other family books are to be construed in the light of this section and ORS 174.020. *State v. Goddard*, (1914) 69 Or 73, 133 P 90, 138 P 243, Ann Cas 1916A, 146.

Although punctuation may be resorted to as an aid in construction when it tends to throw light on the meaning, yet it may be disregarded when it would tend to convey a meaning to a section not in consonance with the other parts of the Act. *Mackenzie v. Douglas County*, (1916) 81 Or 442, 159 P 625, 1033.

The court must ascertain the legislative intention from the language used and adopt such construction of the Act as to give effect, if possible, to all provisions thereof. *City of Astoria v. Kozer*, (1928) 124 Or 261, 264 P 445.

A law enacted by the Oregon legislature necessarily applies only to a subject within its jurisdiction. *Union Pac. R. Co. v. Anderson*, (1941) 167 Or 687, 120 P2d 578.

A court may not extend the language of a law beyond its natural meaning to accomplish salutary ends. *Id.*

Powers may be implied as reasonably and necessarily incident to those expressly granted. *Cabell v. City of Cottage Grove*, (1942) 170 Or 256, 130 P2d 1013.

The court is not limited to the mere words of the statute. *Id.*

Administrative agencies as well as courts are bound not to construe statutes needing no construction or alter the meaning of unambiguous language. *Gouge v. David*, (1948) 185 Or 437, 202 P2d 489.

When the state consents to be sued, as in ORS 116.253, and then closes its courts to the litigant, thereby denying

the privilege which it granted, some construction must be sought which will avoid absurdity. *Peters v. McKay*, (1951) 195 Or 412, 238 P2d 225, 246 P2d 535.

Statutes will be construed to operate prospectively unless an intent to the contrary clearly appears. *Kempf v. Carpenters and Joiners Local Union*, (1961) 229 Or 337, 367 P2d 436.

Rules that govern construction of statutes are applied when provisions of ordinances are in need of interpretation. *Local 1724B v. Bd. of County Commrs.*, (1971) 5 Or App 81, 482 P2d 764.

Statute for dismissal of school teachers which differentiated the procedure for dismissal for different causes was construed in the light of this section. *Foreman v. Sch. Dist. 25*, (1916) 81 Or 587, 159 P 1155, 1168.

A word could not be inserted in an Act incorporating a municipality on the assumption that it had inadvertently been omitted. *Athena v. Jack*, (1925) 115 Or 357, 236 P 760.

A statute which provided for condemnation by counties of property for county roads could not be invoked by a city for the purpose of condemning property for a street. *Barrett v. Union Bridge Co.*, (1926) 117 Or 566, 245 P 308.

A statute which provided for condemnation by counties of property for county roads could not be invoked to change the rule concerning the recovery of consequential damage when there was nothing in the statute to indicate any legislative intent to change such rule. *Id.*

Statute providing for right of appeal from order of Industrial Accident Commission to circuit court of county of claimant's residence could not be construed as permitting such appeal by a nonresident alien who had no residence in any county of the state. *Liimatainen v. State Ind. Acc. Comm.*, (1926) 118 Or 260, 246 P 741.

Under a statute providing that Public Utility Commissioner could suspend a proposed "new" intrastate rate contained in schedule of rates filed by a railroad carrier pending investigation, such suspension was not allowed because the proposed rate was not a "new" rate. *Union Pac. R. Co. v. Bean*, (1941) 167 Or 535, 119 P2d 575.

A contract entered into in contravention of the real estate brokers' Act was void. *Hunter v. Cuning*, (1945) 176 Or 250, 154 P2d 562, 157 P2d 510.

2. "Where there are several provisions or particulars"

Statutes will be so construed that all parts will be given effect. *Grant v. Paddock*, (1897) 30 Or 312, 319, 47 P 712; *Henry v. Yamhill County*, (1900) 37 Or 562, 62 P 375; *Anthony v. Veatch*, (1950) 189 Or 462, 220 P2d 493, 221 P2d 575.

Sections of a statute forming part of one general Act should be so construed as to harmonize their apparent discrepancies and give effect, as far as possible, to the provisions of each. *Grant v. Paddock*, (1897) 30 Or 312, 319, 47 P 712; *Dutro v. Ladd*, (1907) 50 Or 120, 91 P 459.

Sometimes words used in an earlier section of a statute must be incorporated into a later section in order to determine the import of the later section. *Wong Sing v. City of Independence*, (1905) 47 Or 231, 83 P 387.

Tariff provisions should be construed so as to give effect

to all the language employed in them. *Black v. So. Pac. Co.*, (1918) 88 Or 533, 171 P 878.

Two statutes apparently in conflict must, whenever possible, be construed together and in such a manner as to be consistent, rather than in conflict, thus giving effect to both statutes. *McLain v. Lafferty*, (1971) 257 Or 553, 480 P2d 430.

FURTHER CITATIONS: *Miller v. Tobin*, (1887) 16 Or 540, 16 P 161; *Pacific Univ. v. Johnson*, (1906) 47 Or 448, 84 P 704; *State v. Schuler*, (1911) 59 Or 18, 115 P 1057; *State v. Farnam*, (1916) 82 Or 211, 161 P 417, Ann Cas 1918A, 318; *Fitze v. Am.-Hawaiian S.S. Co.*, (1941) 167 Or 439, 117 P2d 825; *State v. Latourette*, (1949) 186 Or 84, 205 P2d 849, 8 ALR2d 803; *Gooch v. Rogers*, (1951) 193 Or 158, 238 P2d 275; *City of Reedsport v. Hubbard*, (1954) 202 Or 370, 274 P2d 248; *Gilbertson v. Culinary Alliance and Bartenders' Union*, (1954) 204 Or 326, 377, 282 P2d 632; *School Dist. 1 v. Bingham*, (1955) 204 Or 601, 283 P2d 670, 284 P2d 779; *State v. Davis*, (1956) 207 Or 525, 296 P2d 240; *Wampler v. Dept. of State Police*, (1960) 224 Or 439, 355 P2d 238; *Cook v. Hill*, (1960) 224 Or 565, 356 P2d 1067; *Lane County v. R. A. Heintz Constr. Co.*, (1961) 228 Or 152, 364 P2d 627; *Johnson v. Craddock*, (1961) 228 Or 308, 365 P2d 89; *Miller v. Schrunck*, (1962) 232 Or 383, 375 P2d 823; *Oregon Willamette Lbr. Corp. v. Lincoln County*, (1962) 232 Or 540, 375 P2d 422; *Schmitt v. State Tax Comm.*, (1962) 1 OTR 25; *Utgard v. State Tax Comm.*, (1963) 1 OTR 274, aff'd, 236 Or 596, 390 P2d 182; *Buell v. State Ind. Acc. Comm.*, (1964) 238 Or 492, 395 P2d 442; *Snellstrom v. State Tax Comm.*, (1965) 2 OTR 56; *State v. Blum*, (1970) 1 Or App 409, 463 P2d 367; *Carnahan v. McCarver*, (1970) 255 Or 36, 463 P2d 857; *Boggs v. Multnomah County*, (1970) 2 Or App 517, 470 P2d 159; *Martin v. Coos County*, (1971) 4 Or App 587, 481 P2d 375.

ATTY. GEN. OPINIONS: Construing the purview of a statute and effect of proviso, 1928-30, p 193; ascertaining the legislative intent in construing a dental practice statute, 1934-36, p 117; construing Oregon Racing Commission statute as amended, 1938-40, p 374; construing "average annual payroll" in Employment Div. Law, 1956-58, p 16; duties of State Bd. of Parole and Probation, 1956-58, p 56; construing statute so as to correct manifest error, 1956-58, p 180; duty to approve sale of higher education bonds, 1958-69, p 199; contents of petition or declaration of candidacy for nonpartisan judgeship, 1958-60, p 236; construing statute authorizing reimbursement of expenses of Traffic Court Rules Committee in absence of appropriation, 1958-60, p 306; mileage for sheriffs in counties with over 50,000 population, 1960-62, p 8; effective and operative dates of County Civil Serv. Act, 1960-62, p 121; tithing from Real Estate Educational Account, 1960-62, p 320; departure from the rules of this section under exceptional circumstances, 1960-62, p 347; construction of courthouse requiring bond issue, 1960-62, p 358; employment of attorney by a state board, 1960-62, p 368; hearing and election changes proposed by rural school board, 1960-62, p 440; fuel tax refund for use on property "in private ownership," 1962-64, p 81; requirement that roadmaster be a licensed engineer, 1962-64, p 85; qualifications of cemetery district directors, 1962-64, p 123; construing "immediate," 1962-64, p 191; housing authority as "municipal corporation," 1962-64, p 287; notice required by 1963 statute to persons previously holding certificates, 1962-64, p 319; blanket surety bond for superintendent, 1962-64, p 368.

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filling vacancy on county board of equalization, 1964-66, p 115; authority of State Treasurer to authorize clerks to sign or countersign checks, 1964-66, p 116; construing authority to invest Oregon War Veterans' Fund, 1964-66, p 119; insured's right to appeal to commissioner question of application of fire insurance rating schedule, 1964-66, p 168; authority of State Fire Marshal to regulate the sale of fireworks, 1964-66, p 206; construing statute authorizing reimbursement of school districts for special program supervisors, 1964-66, p 237; duty of county in furnishing office for administrative district superintendent, 1964-66, p 324; construing special and general statutes in pari materia, 1964-66, p 361; construing "felony" in insurance licensing law, 1964-66, p 370; authority of State Board of Parole and Probation to refuse to make presentence report to justice of the peace, 1964-66, p 377; effect of filing for second office prior to formal withdrawal of first filing, 1964-66, p 396; jurisdiction to reduce bail or dismiss proceedings after defendant is held to answer, 1964-66, p 403; duty of Washington wholesaler to be licensed to deliver or pick up fish in Oregon, 1964-66, p 407; reimbursing district judge for travel outside county to purchase supplies, 1964-66, p 409; construing "one year next preceding" and "self-supporting" municipal utility, 1964-66, p 457; amount of good time that may be lost by infraction of prison rules, 1964-66, p 464.

Use of blanket bond for division officers, 1966-68, p 83; construing statutes on dogs together, 1966-68, p 126; investment of funds by State Treasurer in bonds of Inter-American Development Bank or of the International Bank for Reconstruction and Development, 1966-68, p 167; application of garnishment to work release enrollee's earnings, 1966-68, p 209; construing statutes on disqualification of judicial officers, 1966-68, p 250; construing Unclaimed Property Act, 1966-68, p 297; testing legality of regulation requiring inmates to save part of all money received, 1966-68, p 361; considerations in approving application for changing location of a bank, 1966-68, p 380; apportionment of school funds if school census report is in error, 1966-68, p 488; construing penal statute, 1966-68, p 542; using restoration fund to replace part of state prison, (1969) Vol 34, p 256; construing exceptions to general licensing law, (1970) Vol 35, p 87.

LAW REVIEW CITATIONS: 42 OLR 315; 48 OLR 117; 50 OLR 47.

174.020

NOTES OF DECISIONS

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1. In general

Where a section of an Act is amended "so as to read as follows" and the later law sets forth the changes contemplated, the parts of the old section that are incorporated in the new are not to be treated as having been repealed and re-enacted, but are to be considered as portions of the original statute. *Renshaw v. Lane County Court*, (1907) 49 Or 526, 89 P 147; *State v. McGinnis*, (1910) 56 Or 163, 108 P 132.

Where a statute limits a thing to be done in a particular form, it includes in itself a negative, and in effect, provides

that the thing shall not be done otherwise. *Scott v. Ford*, (1908) 52 Or 288, 296, 97 P 99.

A subsequent special statute necessarily operates to circumscribe the effect of a prior general Act. *State v. Lewis*, (1917) 86 Or 488, 168 P 932.

Where there is a conflict between a part of the purview and the proviso thereof appearing in the same sentence, the proviso must govern. *Olson v. Heisen*, (1918) 90 Or 176, 175 P 859.

The title may be looked to for the purpose of ascertaining the meaning of the Act. *Malloy v. Marshall-Wells Hdw. Co.*, (1918) 90 Or 303, 173 P 267, 175 P 659, 176 P 589.

Statute appropriating such state taxes to a city as were collected from persons and upon property within the corporate limits of such city, contemplated only general property taxes. *City of Astoria v. Kozer*, (1928) 124 Or 261, 264 P 445.

2. "The intention of the legislature is to be pursued"

The fundamental rule of construing legislative enactments is to ascertain and declare the intention of the legislature as expressed in the statute. *Ankeny v. Multnomah County*, (1872) 4 Or 271; *State v. Simon*, (1891) 20 Or 365, 26 P 170; *State v. Siemens*, (1913) 68 Or 1, 5, 133 P 1173; *Sargent v. Am. B. & Trust Co.*, (1916) 80 Or 16, 154 P 759, 156 P 431; *Warm Springs Irr. Dist. v. Pac. Livestock Co.*, (1918) 89 Or 19, 173 P 265; *Boyd v. Olcott*, (1921) 102 Or 327, 362, 202 P 431; *Spencer v. Portland*, (1925) 114 Or 381, 235 P 279; *State v. Crews*, (1926) 118 Or 629, 247 P 775; *State v. Slusher*, (1926) 119 Or 141, 248 P 358; *Berry Transport v. Heltzel*, (1954) 202 Or 161, 272 P2d 965; *Jarvie v. State Tax Comm.*, (1963) 1 OTR 1; *Gross v. State Tax Comm.*, (1964) 2 OTR 8.

The intention of the legislature must be ascertained from the words used in connection with surrounding circumstances. *State v. Simon*, (1891) 20 Or 365, 26 P 170; *Schaedler v. Columbia Contract Co.*, (1913) 67 Or 412, 135 P 536; *Sargent v. Am. B. & Trust Co.*, (1916) 80 Or 16, 154 P 759, 156 P 431.

When a statute is clear and unambiguous the courts should declare the meaning imported and not resort to rules of construction for some other meaning. *State v. Young*, (1915) 74 Or 399, 403, 145 P 647; *Franklin v. State Ind. Acc. Comm.*, (1954) 202 Or 237, 274 P2d 279.

A remedial statute should be construed to give it practical effect according to the lawmakers' intention. *Landers v. Van Aukin*, (1915) 77 Or 479, 488, 151 P 712.

Every statute must be construed with reference to the object intended to be accomplished by it. *Fales v. Multnomah County*, (1926) 119 Or 127, 248 P 151.

The intention of the legislature is to be ascertained and effectuated, if possible. *Banfield v. Schulderman*, (1931) 137 Or 167, 296 P 1066, 298 P 905.

The intention of the legislature is to be determined from the language used. *Cary v. Metropolitan Life Ins. Co.*, (1933) 141 Or 388, 17 P2d 1111.

In construing statute court may consider the mischief the legislature intended to remedy. *Oregon, Cal., & Eastern Ry. v. Blackmer*, (1936) 154 Or 388, 59 P2d 694.

Legislative history is reviewed to determine legislative intent. *Standard Ins. Co. v. State Tax Comm.*, (1962) 230 Or 461, 370 P2d 608.

Many factors must be considered such as the language used, the object to be accomplished and the history behind the provision, no one of which is completely controlling. *Cudd v. Aschenbrenner*, (1962) 233 Or 272, 377 P2d 150.

Every statute must be construed with reference to the object intended to be accomplished by it. *Local 1724B v. Bd. of County Commrs.*, (1971) 5 Or App 81, 482 P2d 764.

A statute is to be construed with reference to its manifest object. *Myers v. Bd. of Directors*, (1971) 5 Or App 142, 483 P2d 95.

The legislative history may be reviewed because the subsection was not free from ambiguity. *Standard Ins. Co. v. State Tax Comm.*, (1962) 230 Or 461, 370 P2d 150.

3. Strict construction

Statutes creating a liability where none otherwise would exist are to be strictly construed. *McFerren v. Umatilla County*, (1895) 27 Or 311, 40 P 1013; *Jones v. Union County* (1913) 63 Or 566, 570, 127 P 781, 42 LRA(NS) 1035.

The right of an officer to demand expenses incurred by him in the performance of his duty, must be found in the statute conferring it, either directly or by necessary implication. *Houser v. Umatilla County*, (1897) 30 Or 486, 49 P 867.

Statutes granting power to a city to license occupations are to be strictly construed. *Abraham v. City of Roseburg*, (1910) 55 Or 359, 105 P 401, Ann Cas 1912A, 597.

The provisions in reference to the authentication of deeds must be strictly complied with. *Knighton v. Smith*, (1859) 1 Or 276.

Statutes which give costs must be strictly construed. *Jackson v. Siglin*, (1883) 10 Or 93.

Statutes in derogation of the common law must be strictly construed. *Ferguson v. Jones*, (1888) 17 Or 204, 20 P 842, 11 Am St Rep 808, 3 LRA 620.

The irrigation law must be construed strictly and its execution strictly scrutinized. *Umatilla Irr. Co. v. Barnhart*, (1892) 22 Or 389, 30 P 37.

Statutes relating to assessments having been made to raise a public tax did not have to be construed strictly. *Godfrey v. Douglas County*, (1896) 28 Or 446, 43 P 171.

4. Contemporaneous construction

Where a statute has for many years, and from almost the date of its enactment, been construed by successive legislatures in a particular manner not inconsistent with the language used, the courts will hesitate to adopt a different construction. *Biggs v. McBride*, (1889) 17 Or 640, 650, 21 P 878, 5 LRA 115; *Kelly v. Multnomah County*, (1890) 18 Or 356, 359, 22 P 1110; *Shattuck v. Kincaid*, (1897) 31 Or 379, 49 P 758.

Legislative interpretation of a constitution, as evidenced by the enactment of laws which, for many years, have been accepted without dispute, is a strong argument for sustaining the validity of such statutes. *Wallace v. Bd. of Equalization*, (1906) 47 Or 584, 86 P 365.

Contemporaneous construction by an administrative body acquiesced in by the legislature in subsequent re-enactment is to be given weight. *Standard Ins. Co. v. State Tax Comm.*, (1962) 230 Or 461, 370 P2d 608.

5. Statutes in pari materia

Statutes relating to the same subject are in pari materia, and are to be construed as though their several provisions were incorporated together, and constituted one entire Act. *Miller v. Tobin*, (1887) 16 Or 540, 556, 16 P 161; *Ex parte Tice*, (1897) 32 Or 179, 189, 49 P 1038.

A criminal law and a licensing provision were considered in pari materia. *State v. Buck*, (1953) 200 Or 87, 262 P2d 495.

6. Punctuation

Quotation marks are points of punctuation, and like other such points, are not controlling in determining the real meaning of an Act, or its title, but may be entirely disregarded and rearranged as the meaning may require. *State v. Banfield*, (1903) 43 Or 287, 72 P 1093.

If necessary to discover the true meaning of a statute, courts will disregard the punctuation, or even re-punctuate. *Sargent v. Am. Bank & Trust Co.*, (1916) 80 Or 16, 154 P 759, 156 P 431.

7. General and particular provisions

The rule that where there is some repugnancy or incompatibility between the general and specific provisions, the particular enactment will prevail over the general provision so far as the two are incompatible or in conflict, is subordinate to the principle for the construction of statutes that they are to be so construed that if possible full effect shall be given to all parts of the statute. *Ex parte Ah Hoy*, (1892) 23 Or 89, 31 P 220.

The statute authorizing admission in evidence of entries in family Bibles or family books is a particular provision within the meaning of this section which must control over an inconsistent general provision. *State v. Goddard*, (1914) 69 Or 73, 133 P 90, 138 P 243, Ann Cas 1916A, 146.

8. Statutes adopted from other states

Where a statute of another state is adopted, it is presumed to have been adopted with the construction placed on it by the courts of that state. *Putnum v. Douglas County*, (1877) 6 Or 328, 331, 25 Am Rep 527; *Trabant v. Rummell*, (1886) 14 Or 17, 12 P 56; *Jenkins v. Hall*, (1894) 26 Or 79, 86, 37 P 62; *State v. Finch*, (1909) 54 Or 482, 103 P 505; *Jamieson v. Potts*, (1910) 55 Or 292, 299, 105 P 93, 25 LRA(NS) 24; *Abraham v. City of Roseburg*, (1910) 55 Or 359, 105 P 401, Ann Cas 1912A, 597; *State v. Townsend*, (1911) 60 Or 223, 229, 118 P 1020; *Hoskins v. Dwight*, (1914) 69 Or 558, 565, 139 P 922; *Dale v. Marvin*, (1915) 76 Or 528, 148 P 1116, 1151, Ann Cas 1917C, 557.

As respects statutes adopted from other states it is only a construction announced before the adoption of the statute that is ever considered controlling. *Elliott v. Clement*, (1944) 175 Or 44, 149 P2d 985, 151 P2d 739.

9. Amendment and repeal

A new and independent law, revising some previous policy, or altering the whole subject of a prior statute, and evidently intended as a substitute therefor, although containing no abrogating clause will operate as a repeal of the old law by implication. *State v. Benjamin*, (1865) 2 Or 125; *Fleischner v. Chadwick*, (1874) 5 Or 152; *Little v. Cogswell*, (1891) 20 Or 345, 25 P 727; *Strickland v. Geide*, (1897) 31 Or 373, 376, 49 P 982; *Ex Parte Ferdon*, (1899) 35 Or 171, 57 P 376; *Ladd v. Gambell*, (1899) 35 Or 393, 59 P 113; *Reed v. Dunbar*, (1902) 41 Or 509, 69 P 451; *Sandys v. Williams*, (1905) 46 Or 327, 332, 80 P 642; *Ex parte Case*, (1914) 70 Or 291, 305, 135 P 881, 141 P 746, Ann Cas 1916B, 490.

Statutes and parts of statutes omitted from a revision are to be considered annulled, and cannot be revived by construction. *State v. Simon*, (1891) 20 Or 365, 26 P 170.

Resort may be had to the original Act, to explain any ambiguity which may exist in the language of the amended Act, but not to supply omission. *Id.*

Parts of the statutes copied into amended statutes are usually read as parts of the original statute, when considered in connection with an intermediate conflicting statute, and only the new parts of the amended law are considered as enacted at that time. *Allison v. Hatton*, (1905) 46 Or 370, 80 P 101.

Where a section of a statute is amended "so as to read" in a prescribed manner, the amended section is entirely repealed; all matters not incorporated in the amendment being repealed. *State v. Smith*, (1910) 56 Or 21, 25, 107 P 980.

The requirement of the constitution that constitutional amendments be "entered in" the legislative journals was complied with even though a proposed amendment was not entered at length in the senate journal. *Boyd v. Olcott*, (1921) 102 Or 327, 202 P 431.

10. Particular words and phrases

Words used in a statute should always be given that construction and meaning which they had in general use

among the people for whom the statute was enacted, and with the legislators who enacted the law. *Kamer v. Clatsop County*, (1877) 6 Or 238; *Portland Fish Co. v. Benson*, (1910) 56 Or 147, 152, 108 P 122.

Words of common use are ordinarily to be taken in their natural, plain and obvious signification. *Portland v. Meyer*, (1898) 32 Or 368, 370, 52 P 21, 67 Am St Rep 538; *State v. Young*, (1915) 74 Or 399, 401, 145 P 647.

Legal terms used and not defined in a statute are given their accepted legal definition. *Crawford v. Linn County*, (1884) 11 Or 482, 5 P 738.

The word "may" is construed "must" when the legislature means to impose a positive duty, and not merely to give a discretionary power. *King Real Estate Assn. v. Portland*, (1892) 23 Or 199, 31 P 482.

Where power is given to public officers by statute, whenever the public interests or individual rights call for its exercise, the language used, though permissive in form, is in fact peremptory. *Id.*

Where the meaning of a word or phrase in a statute is doubtful, but the meaning of the same word or phrase is clear where it is used elsewhere in the same Act, the word or phrase in the obscure clause will be held to mean the same thing as in the instances where the meaning is clear. *Toedtmeier v. Clackamas County*, (1898) 34 Or 66, 54 P 954.

The word "adopted" in a provision requiring the report of the viewers of a proposed road to be "adopted" is synonymous with "approved." *Miller v. Union County*, (1906) 48 Or 266, 270, 86 P 3.

"Property" means everything of exchangeable value, and includes money, chattels, things which may be sold and that may be assessed for taxation. *Fishburn v. Londerhausen*, (1907) 50 Or 363, 368, 92 P 1060, 15 Ann Cas 975, 14 LRA(NS) 1234.

The words "public good" in a charter authorizing the city "to license and regulate all such callings, trades, and employments as the public good may require," were sufficiently broad to include the raising of revenue. *Abraham v. City of Roseburg*, (1910) 55 Or 359, 105 P 401, Ann Cas 1912A, 597.

An interpretation clause of a statute which declares that a particular word includes a variety of things not within its general meaning is a provision by way of extension and not a definition by which other things which normally fall within the natural meaning of the word are excluded. *State v. Standard Oil Co.*, (1912) 61 Or 438, 446, 123 P 40, Ann Cas 1914B, 179.

When necessary to carry out legislative intent, it is proper to construe "may" as meaning "shall". *Local 1724B v. Bd. of County Commrs.*, (1971) 5 Or App 81, 482 P2d 745.

11. Prospective and retrospective operation

Where the legislative intent is obscure, the statute should not be given a retroactive construction, though within the wording thereof, if such construction impairs existing rights, creates new obligations or imposes new duties in respect to past transactions. *Denny v. Bean*, (1908) 51 Or 180, 184, 93 P 693, 94 P 503.

The word "whenever" in the phrase "Whenever a judgment is given," excluded the idea of a judgment theretofore given. *Id.*

12. Statutes enacted by people

Statutes proposed and enacted by the people are subject to the same constitutional limitations as legislative statutes, and after their adoption they exist at the will of the legislature just as do other laws. *Kadderly v. Portland*, (1903) 44 Or 118, 146, 74 P 710, 75 P 222.

FURTHER CITATIONS: *Falconio v. Larsen*, (1897) 31 Or 137, 48 P 703, 37 LRA 255; *Riggs v. Polk County*, (1908) 51 Or 509, 95 P 5; *State v. Caseday*, (1911) 58 Or 429, 445,

115 P 287; *Stoppenback v. Multnomah County*, (1914) 71 Or 493, 142 P 832; *Home Tel. Co. v. Moodie*, (1915) 75 Or 117, 145 P 635; *Gates v. Pub. Serv. Comm.*, (1917) 86 Or 442, 167 P 791, 168 P 939; *Title & Trust Co. v. Wharton*, (1941) 166 Or 612, 114 P2d 140; *State Land Bd. v. McVey*, (1942) 168 Or 337, 121 P2d 461, 123 P2d 181; *Brassfield v. Brassfield*, (1948) 183 Or 217, 191 P2d 639; *White v. State Ind. Acc. Comm.*, (1961) 227 Or 306, 362 P2d 302; *Johnson v. Craddock*, (1961) 228 Or 308, 365 P2d 89; *State Hwy. Comm. v. Walker*, (1962) 232 Or 478, 376 P2d 96; *Powrie v. State Tax Comm.*, (1962) 1 OTR 11; *Buell v. State Ind. Acc. Comm.*, (1964) 238 Or 492, 395 P2d 442; *Terney v. Belton*, (1964) 239 Or 101, 396 P2d 557; *State v. Stuart*, (1968) 250 Or 303, 442 P2d 231; *State v. Blum*, (1970) 1 Or App 409, 463 P2d 367; *Boggs v. Multnomah County*, (1970) 2 Or App 517, 470 P2d 159.

ATTY. GEN. OPINIONS: Construing "unnaturalized foreign born person", 1928-30, p 84; construing the purview of a statute and effect of proviso, 1928-30, p 193; construing the "lawful use" of alcohol in regard to statute defining chiropractic, 1928-30, p 612; determining legislative intent in a statute concerning personal service outside of the state, 1932-34, p 400; legislative intent as determined by language of dental practice statute, 1934-36, p 117; intention of legislature in application of full train crew law, 1938-40 p 218; construing intention of legislature in the fishing law, 1938-40, p 335; giving effect to the legislative intent in the law imposing a tax on a domestic company for doing business in the state, 1944-46, p 241.

Construing special and general statutes in *pari materia*, 1952-54, p 239; mileage for sheriffs in counties with over 50,000 population, 1960-62, p 8; effect of county civil service on health department merit system, 1960-62, p 232; parking cost as official expense for legislator, 1960-62, p 318; employment of attorney by a state board, 1960-62, p 368; authority of administrative agency to set salaries, 1962-64, p 71; limitation on per diem during special session, 1962-64, p 250; housing authority as "municipal corporation," 1962-64, p 287; determination of pension due widow of judge retired after July 1963, 1962-64, p 345; conflict between special statute and subsequent comprehensive enactment both special and general, 1962-64, p 419; crediting interest on invested funds, 1964-66, p 31; construing authority to suspend a license without a hearing, 1964-66, p 109; authority of State Treasurer to authorize clerks to sign or countersign checks, 1964-66, p 116; construing authority to invest Oregon War Veterans' Fund, 1964-66, p 119; insured's right to appeal to commissioner question of application of fire insurance rating schedule, 1964-66, p 168; authority of State Fire Marshal to regulate the sale of fireworks, 1964-66, p 206; construing special and general statutes in *pari materia*, 1964-66, p 361; construing "felony" in insurance licensing law, 1964-66, p 370; authority of State Board of Parole and Probation to refuse to make presentence report to justice of the peace, 1964-66, p 377; legality of key-lock gasoline dispensing devices on tanks leased by consumers, 1964-66, p 419; duty of Attorney General to prepare charges upon complaint filed by Commissioner of the Bureau of Labor, 1964-66, p 443; construing "one year next preceding" and "self-supporting" municipal utility, 1964-66, p 457; amount of good time that may be lost by infraction of prison rules, 1964-66, p 464; application of state allotment procedure to community college reimbursement, 1966-68, p 91; construing Unclaimed Property Act, 1966-68, p 139; authority of county to require restaurant employees to have a food service permit, 1966-68, p 152; investment of funds by State Treasurer in bonds of Inter-American Development Bank or of the International Bank for Reconstruction and Development, 1966-68, p 167; application of garnishment to work release enrollee's earnings, 1966-68, p 209; construing statutes on disqualification of judicial officers, 1966-68, p 250; testing

legality of regulation requiring inmates to save part of all money received, 1966-68, p 361; agency responsible for sheriff's travel expenses under Agreement on Detainers, (1969) Vol 34, p 863.

LAW REVIEW CITATIONS: 29 OLR 1; 42 OLR 315; 50 OLR 47.

174.030

NOTES OF DECISIONS

Where a statute is reasonably susceptible of different constructions, that should be adopted which would avoid harsh and absurd consequences. *State v. McGuire*, (1893) 24 Or 366, 33 P 666, 21 LRA 478; *Beck v. Aichele*, (1971) 258 Or 245, 482 P2d 184.

This section was applied in construing provisions prohibiting a remarriage after divorce until the expiration of the time allowed to appeal, to effect a validation of certain marriages made within that time. *Wallace v. McDaniel*, (1911) 59 Or 378, 385, 117 P 314, LRA 1916C, 744.

FURTHER CITATIONS: *State v. Buck*, (1953) 200 Or 87, 118, 262 P2d 495; *State v. Kuhnhausen*, (1954) 201 Or 478, 560, 266 P2d 698, 272 P2d 225; *Landgraver v. Emanuel Lutheran Charity Bd., Inc.*, (1955) 203 Or 489, 539, 280 P2d 301; *Buell v. State Ind. Acc. Comm.*, (1964) 238 Or 492, 395 P2d 442; *State v. Stuart*, (1968) 250 Or 303, 442 P2d 231.

ATTY. GEN. OPINIONS: Crediting funds to State Census Account after July 1, 1963, 1964-66, p 246.

174.040

NOTES OF DECISIONS

This section does no more than codify what has long been the common-law rule of construction in this state. *State v. Jackson*, (1960) 224 Or 337, 356 P2d 495; *Ivancie v. Thornton*, (1968) 250 Or 550, 443 P2d 612.

The challenged sections of the law were not severable. *Pavlicek v. State Ind. Acc. Comm.*, (1963) 235 Or 490, 385 P2d 159.

The challenged provision was clearly severable. *Ivancie v. Thornton*, (1968) 250 Or 550, 443 P2d 612.

FURTHER CITATIONS: *Gilbertson v. Culinary Alliance and Bartender's Union*, (1955) 204 Or 326, 353, 282 P2d 632; *Dodd v. State Ind. Acc. Comm.*, (1957) 211 Or 99, 310 P2d 324, 311 P2d 458, 315 P2d 138; *Seale v. McKennon*, (1959) 215 Or 562, 336 P2d 340; *State v. Robinson*, (1959) 217 Or 612, 343 P2d 886; *Dilger v. Sch. Dist. 24 CJ*, (1960) 222 Or 108, 352 P2d 564; *Willamette Assn. of Elec. Contractors v. Nilsen*, (1967) 245 Or 588, 423 P2d 497.

ATTY. GEN. OPINIONS: Separability of amendment to Motor Vehicle Accident Fund law, 1964-66, p 326; constitutional defect in part of an Act, 1966-68, p 331; expenditure limitation bill dealing with matters not germane or incidental to appropriations for current state expenses, 1966-68, p 402; separability of proposed legislation regulating cigarette advertising, (1970) Vol 35, p 524; separability of part of legislative proposal to regulate labor relations between agricultural employes and employers, (1971) Vol 35, p 744.

LAW REVIEW CITATIONS: 39 OLR 173.

174.050

ATTY. GEN. OPINIONS: Second amendment of law in a session as repeal of the first amendment, 1952-54, p 161, (1970) Vol 35, p 782; crediting funds to State Census Account after July 1, 1963, 1964-66, p 246.

LAW REVIEW CITATIONS: 39 OLR 120.

174.060

NOTES OF DECISIONS

Prior to the enactment of this section, if the provisions of one statute were incorporated into another by mere reference, a subsequent change in the former would not affect the terms of the latter. *State v. Caseday*, (1911) 58 Or 429, 445, 115 P 287.

FURTHER CITATIONS: *State v. Robinson*, (1959) 217 Or 612, 343 P2d 886; *Seale v. McKennon*, (1959) 215 Or 562, 336 P2d 340.

ATTY. GEN. OPINIONS: Effect of later amendments, 1950-52, p 362; application in condemnation procedure statutes, 1958-60, p 381; county distribution formula for revenue from state forest lands, 1962-64, p 482; election of Oregon State Bar Board of Governors after redistricting, 1964-66, p 350.

LAW REVIEW CITATIONS: 37 OLR 274; 39 OLR 233.

174.080

CASE CITATIONS: *Lilly v. Gladden*, (1959) 220 Or 84, 348 P2d 1; *Woodburn v. Domogalla*, (1963) 1 OTR 292, 350.

ATTY. GEN. OPINIONS: Provisions providing criminal penalty for livestock running at large, 1948-50, p 328, 1950-52, p 51; effect of repeal section in 1963 Commerce Department law, 1964-66, p 315.

174.090

NOTES OF DECISIONS

Constitutional amendment vesting in municipalities control of liquors was impliedly repealed by prohibition amendments vesting the control in state, and was not revived by repeal of prohibition amendments. *Klamath Falls v. Ore. Liquor Control Comm.*, (1934) 146 Or 83, 29 P2d 564.

ATTY. GEN. OPINIONS: Revival of provision relating to term of county judge, 1956-58, p 200.

174.100

NOTES OF DECISIONS

"Time of war" for World War I veterans ends with cessation of actual hostilities. *Jarvie v. State Tax Comm.*, (1962) 1 OTR 1.

FURTHER CITATIONS: *Columbia R. Salmon & Tuna Packers Assn. v. Appling*, (1962) 232 Or 230, 375 P2d 71.

ATTY. GEN. OPINIONS: Construing "active military service," 1948-50, p 369; construing minimum service period and dates of wars, 1950-52, p 239; provisions for sentencing habitual criminals, 1958-60, p 86; corporation as a person under auctioneer licensing law, 1960-62, p 41; corporation as a person under insurance licensing statutes, 1960-62, p 340; municipality as incorporated city, 1960-62, p 344; county as a "person," 1962-64, p 80; name of licensee on buyer's license, 1962-64, p 376; termination of rights to veterans' educational benefits, 1964-66, p 368.

174.105

NOTES OF DECISIONS

See also annotations under ORS 174.100.

ATTY. GEN. OPINIONS: Tacking terms of service to qualify, (1968) Vol 34, p 366.

174.110

CASE CITATIONS: *State v. Rice*, (1956) 206 Or 237, 291 P2d 1019.

ATTY. GEN. OPINIONS: "City" includes the plural, 1962-64, p 123; limitation on per diem during special session, 1962-64, p 250; panels in billboard law included in singular, 1962-64, p 440; right to pay during military leave, 1966-68, p 251; construing appropriation law, 1966-68, p 346.

174.120

NOTES OF DECISIONS

1. In general
2. Excluding the first day
3. Last day legal holiday or Saturday
4. Stipulated or specially ordered time
5. Time prescribed in "months"

1. In general

The only purpose of the statute was to furnish a rule for ascertaining a period within which the subsequent act should be performed. *Poppleton v. Nelson*, (1882) 10 Or 437.

The rule prescribed for computing time applies to all divisions of time, days, months or years; hence to computing limitations of actions. *Grant v. Paddock*, (1897) 30 Or 312, 47 P 712.

Except in special cases when otherwise provided, a prescribed period of days within which an act must be done is to be computed by excluding the first day and including the last. *Rynearson v. Union County*, (1909) 54 Or 181, 102 P 785. *Distinguished in State ex rel. Smith v. Appling*, (1960) 223 Or 576, 355 P2d 760.

Time is computed under this section by excluding the known date and counting forward or backward as required to the last date, which is included. *State ex rel. Smith v. Appling*, (1960) 223 Or 576, 355 P2d 760. *Overruling State ex rel. Stewart v. Macy*, (1916) 82 Or 81, 161 P 111.

2. Excluding the first day

The first day after the appeal is perfected is the first day of the 30-day period within which to file the transcript. *Pringle Falls Power Co. v. Patterson*, (1913) 65 Or 474, 128 P 820, 132 P 527; *Caldwell v. Bingham & Shelley Co.*, (1916) 84 Or 257, 260, 155 P 190, 163 P 827.

The act may be done on the first day; the statute does not exclude it. *Poppleton v. Nelson*, (1882) 10 Or 437.

Time for filing transcript for appeal begins when time allowed to except to sureties has expired, and the first day thereafter is excluded. *Boothe v. Scriber*, (1906) 48 Or 561, 87 P 887, 90 P 1002.

In the justice court where the plaintiff had one day after the answer to plead, he had the right to plead until the expiration of the following day. *Mulkey v. Day*, (1907) 49 Or 312, 89 P 957.

The first day after notice of appeal is excluded in computing the days allowed to file undertaking and abstract. *Vincent v. First Nat. Bank*, (1915) 76 Or 579, 581, 143 P 1100, 149 P 938.

Where judgment was entered March 13th, the 60-day period within which the notice of appeal is required to be served and filed was computed by excluding both the 13th and the 14th of March. *Nealan v. Ring*, (1921) 98 Or 490, 184 P 275, 193 P 199, 747.

In computing the time for contesting a nomination the day after the primary election is excluded. *Osborne v. Zimmerman*, (1940) 165 Or 92, 105 P2d 1097.

The time within which an act is to be done shall be

computed by counting the first day following the precipitating event, e.g., the day the judgment is filed or day the summons is served. *Beardsley v. Hill*, (1959) 219 Or 440, 348 P2d 58. *Overruling United States Nat. Bank v. Shefler*, (1915) 77 Or 579, 143 P 51, 152 P 234; *In re Anderson's Estate*, (1921) 101 Or 94, 188 P 164, 198 P 263; *In re Riggs*, (1922) 105 Or 531, 207 P 175, 1005, 210 P 217; *Phillips v. Elliott*, (1933) 144 Or 694, 17 P2d 1179, 25 P2d 557 and *Meyer v. Meyer*, (1954) 203 Or 578, 276 P2d 386.

3. Last day legal holiday or Saturday

Before the 1949 amendment, when the last day fell on "Sunday or was nonjudicial," the act to be done could be done on the next day. **Filing record**, *Nicklin v. Robertson*, (1895) 28 Or 278, 42 P 993; *Wachsmuth v. Routledge*, (1899) 36 Or 307, 51 P 443, 59 P 454; **filing transcript for appeal**, *McCabe-Duprey Tanning Co. v. Eubanks*, (1910) 57 Or 44, 102 P 795, 110 P 395; *Pringle Falls Power Co. v. Patterson*, (1913) 65 Or 474, 128 P 820, 132 P 527; *In Re Riggs*, (1922) 105 Or 531, 207 P 175, 1005, 210 P 217; **filing notice of appeal**, *Hewey v. Andrews*, (1917) 82 Or 448, 159 P 1149, 161 P 108; **to answer after service**, *Steeves v. Steeves*, (1932) 139 Or 261, 9 P2d 815; **filing notice of lien for labor**, *Barr v. Lynch*, (1939) 163 Or 607, 97 P2d 185.

An appeal is perfected on Monday when the fifth day after filing of the undertaking falls on Sunday. *Cauldwell v. Bingham & Shelley Co.*, (1917) 84 Or 257, 260, 155 P 190, 163 P 827.

When Sunday is the last day, time is extended to Monday. *In re Legislative Apportionment*, (1961) 228 Or 575, 365 P2d 1042.

4. Stipulated or specially ordered time

A consent order "that defendants have up to and including the second day of October, 1910," a day which falls on Sunday, to file the transcript, did not permit doing it on the next day, and is to be construed according to its own terms. *Zelig v. Blue Point Oyster Co.*, (1912) 61 Or 535, 113 P 852, 122 P 756.

5. Time prescribed in "months"

A "month" means a calendar month unless a contrary intent is indicated. *In re Standard Cafeteria Co.*, (1914) 68 Or 550, 137 P 774.

FURTHER CITATIONS: *Woodward v. Baker*, (1883) 10 Or 491; *In re Losie's Estate*, (1937) 156 Or 207, 64 P2d 525, 66 P2d 1175; *Peterson v. Peterson*, (1956) 208 Or 131, 292 P2d 130, 300 P2d 443; *Kirk v. Rose*, (1959) 218 Or 593, 346 P2d 90; *Neet v. State Comp. Dept.*, (1966) 244 Or 331, 417 P2d 996; *Loveness v. State Tax Comm.*, (1967) 3 OTR 25.

ATTY. GEN. OPINIONS: Determining time within which an application for a bonus may be filed, 1920-22, p 603; latest date on which a petition for reduction of tax may be made, 1922-24, p 16; time within which Governor may veto, 1924-26, p 148, 1926-28, p 131; time within which nominating petitions may be filed, 1928-30, p 618; time within which certificate of nomination may be filed, 1930-32, p 808; waiting period for marriage license, 1932-34, p 265; time period commences when an insurance carrier has certified a motor vehicle liability policy and when license should be canceled, 1938-40, p 721; computing 50-day period after petitions have been filed before an election may be held, 1940-42, p 72; deadline for filing opposition statements for inclusion in voters' pamphlet, 1956-58, p 255; meaning of "month," 1958-60, p 10.

LAW REVIEW CITATIONS: 26 OLR 202.

174.130

ATTY. GEN. OPINIONS: Number of votes required for county court to transact business, 1966-68, p 29; lack of Senate confirmation, if required, to fill a vacancy on a board, (1969) Vol 34, p 617.

174.160

CASE CITATIONS: *Grabner v. Willys Motors, Inc.*, (1960) 282 F2d 644.

174.510

NOTES OF DECISIONS

Oregon Revised Statutes were adopted as law and not merely evidence of law. *State v. Holland*, (1954) 202 Or 656, 277 P2d 386; *State v. Davis*, (1956) 207 Or 525, 296 P2d 240.

Presumption that revision did not change the law and is substituted in a continuing way for the previous law does not control if the revision as adopted by the legislature does clearly change preexisting law. *State v. Davis*, (1956) 207 Or 525, 296 P2d 240.

Court may correct "clerical error or misprint" made in Oregon Revised Statutes to give same effect as original session law enacted in 1947. *State v. Lermeney*, (1958) 213 Or 574, 326 P2d 768.

Amendment and repeal of general laws during transition to ORS was provided for by Senate Concurrent Resolution 2. *Mallatt v. Luihn*, (1956) 206 Or 678, 294 P2d 871.

FURTHER CITATIONS: *Safeway Stores, Inc. v. State Bd. of Agriculture*, (1953) 198 Or 43, 130, 255 P2d 564; *State v. Buck*, (1953) 200 Or 87, 112, 262 P2d 495; *State ex rel. Thornton v. Williams*, (1959) 215 Or 639, 336 P2d 68.

ATTY. GEN. OPINIONS: Revised statutes as law, not compilation, 1952-54, p 235, 1954-56, p 205, 1956-58, p 214, 1958-60, p 21; conflicts with other 1953 enactments, 1956-58, p 204.

174.520

NOTES OF DECISIONS

Amendment and repeal of general laws during transition to ORS was provided for by Senate Concurrent Resolution 2. *Mallatt v. Luihn*, (1956) 206 Or 678, 294 P2d 871.

174.530

NOTES OF DECISIONS

The legislature did not pardon all persons committing crimes before December 31, 1953, who were not tried before January 1, 1954. *State v. Holland*, (1954) 202 Or 656, 277 P2d 386.

Presumption that revision did not change the law and is substituted in a continuing way for the previous law does not control if the revision as adopted by the legislature does clearly change preexisting law. *State v. Davis*, (1956) 207 Or 525, 296 P2d 240.

Court may correct "clerical error or misprint" made in Oregon Revised Statutes to give same effect as original session law enacted in 1947. *State v. Lermeney*, (1958) 213 Or 574, 326 P2d 768.

ATTY. GEN. OPINIONS: Reference to prior tax law, 1952-54, p 232; inclusion in revision of previously terminated statute, 1952-54, p 235; previous statutes resorted to, 1956-58, p 56; effect of 1953 revision upon scholarship statutes, 1956-58, p 214; crediting interest on invested funds, 1964-66, p 31; application to installation of sprinkler systems, 1964-66, p 57; construing authority to invest Oregon War Veter-

ans' Fund, 1964-66, p 119; construing special and general statutes in pari materia, 1964-66, p 361; effect of 1953 revision on Oregon State Fair's business licensing authority, 1966-68, p 300; construing military leave law, 1966-68, p 319; construing "public road" under county road law, 1966-68, p 412.

174.540

ATTY. GEN. OPINIONS: Conflict with other 1953 enactments, 1956-58, p 204.

174.550**NOTES OF DECISIONS**

Presumption that revision did not change the law and is substituted in a continuing way for the previous law does not control if the revision as adopted by the legislature does clearly change preexisting law. *State v. Davis*, (1956) 207 Or 525, 296 P2d 240.

Court may correct "clerical error or misprint" made in Oregon Revised Statutes to give same effect as original session law enacted in 1947. *State v. Lermeny*, (1958) 213 Or 574, 326 P2d 768.

ATTY. GEN. OPINIONS: Effect of enactment of Oregon Revised Statutes on existing livestock districts, 1954-56, p 205.

