STATE OF MICHIGAN

COURT OF APPEALS

MICHIGAN MUTUAL INSURANCE COMPANY, CITIZENS INSURANCE COMPANY OF AMERICA and THOMAS E. HOEG,

Plaintiffs-Appellants,

and

MICHIGAN INSURANCE PARTNERS, PHYSICIANS INSURANCE COMPANY OF MICHIGAN, MICHIGAN PHYSICIANS MUTUAL LIABILITY COMPANY, and ACCIDENT FUND CORPORATION,

Plaintiff,

v

DEPARTMENT OF TREASURY, STATE TREASURER, CHIEF DEPUTY STATE TREASURER and REVENUE COMMISSIONER,

Defendant-Appellee,

and

BLUE CROSS & BLUE SHIELD OF MICHIGAN,

Intervening Defendant-Appellee.

UNPUBLISHED
December 10, 1996

No. 178228
Ingham County
LC No. 94-077740-AW

MICHIGAN MUTUAL INSURANCE COMPANY, CITIZENS INSURANCE COMPANY OF AMERICA, THOMAS E. HOEG, ACCIDENT

FUND CORPORATION and MICHIGAN FUND COMPANY,

Plaintiffs-Appelles,

and

MICHIGAN INSURANCE PARTNERS, PHYSICIANS INSURANCE COMPANY OF MICHIGAN and MICHIGAN PHYSICIANS MUTUAL LIABILITY COMPANY,

Plaintiffs-Appellants,

v

No. 178330
LC No. 94-077740-AW

DEPARTMENT OF TREASURY, STATE TREASURER, CHIEF DEPUTY STATE TREASURER, REVENUE COMMISSIONER, PATRICIA A. WOODWORTH, PETER J. WADEL, E.L. COX, SHARON J. ROTHWELL, DAVID J. DYKEHOUSE, and BLUE CROSS & BLUE SHIELD OF MICHIGAN,

Defendants-Appelles.

Before: McDonald, P.J., and Fitzgerald and M. J. Matuzak*, JJ.

PER CURIAM.

Plaintiffs appeal as of right from a December 18, l994, order granting summary disposition in favor of defendants in this action involving the state's sale of the Accident Fund. We affirm.

The Accident Fund is a provider of worker's compensation insurance. Three entities bid on the Accident Fund: (1) defendant Blue Cross & Blue Shield of Michigan (BCBSM), (2) plaintiff Michigan Insurance Partners, and (3) plaintiff Michigan Fund Company. Defendant

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* Circuit judge, sitting on the Court of Appeals by assignment.

BCBSM, a nonprofit health care corporation regulated under Public Act 350 of l980, MCL 550.1101 *et seq*.; MSA 24.660(101) *et seq*., was the successful bidder for the purchase of the Fund.

The Michigan Legislature established the procedure for the sale of the Accident Fund through a series of enactments. The specific act at issue, MCL 418.701a(7); MSA 17.237(701a)(7), provides that if a non profit health care corporation purchases the Accident Fund it must pay "an additional amount calculated by the state treasurer as being equal to the single business tax the non profit health care corporation would have paid on the accumulated assets used to acquire the accident fund if the non profit health corporation were a for profit mutual insurer." At issue on appeal is the statutory interpretation of "accumulated assets used to acquire the accident fund," referred to by the parties as the "deemed tax."

As previously stated, defendant BCBSM was the successful bidder. It offered to pay the State of Michigan $291 million plus the additional deemed tax. BCBSM's bid was contingent on the deemed tax being calculated in the manner announced by Deputy Treasurer Kouri (i.e., purchase price times the single business tax [SBT] rates.) The sale was closed on December 28, 1994. In the circuit court and on appeal, plaintiffs challenge the manner in which Kouri calculated the deemed tax, as well as the constitutionality of MCL 418.701a(7); MSA 17.237(701a)(7), which permitted BCBSM to bid on the Accident Fund.

Prior to the sale, plaintiffs challenged defendants' actions in a five count complaint. Count IV, which requested relief under the Freedom of Information Act, was withdrawn. As set forth by the trial court, the remaining claims requested the following relief:

> Count I urges the Court to mandamus the Treasurer to calculate the "deemed tax" or "additional fee" in the manner urged by Plaintiffs, Count II asks the court to issue a declaratory judgment on how the "additional fee" should be calculated. Count III seeks a permanent injunction against the Treasurer from calculating the "deemed tax" or "additional fee" in the manner in which he has announced. Count V requests the Court to declare unconstitutional that portion of the act that permits Blue Cross/Blue Shield to purchase the Accident Fund. Plaintiffs claim this provision violates the "Title Object" clause of 1963 Constitution.

All parties filed motions for summary disposition.[1] The trial court granted summary disposition in favor of defendants as to all claims. Plaintiffs now appeal.

Plaintiffs first argue the trial court erred in affirming the Treasury Department's interpretation of §418.701a(7). We disagree. MCL 418.701a(7);MSA 17.237(701a)(7) provides in relevant part:

> (7) . . . If a proposal submitted by a nonprofit health care corporation . . ., is accepted, the nonprofit health care corporation, in addition to payment of the purchase price, shall emit to the state treasurer an additional amount calculated by the state treasurer as being equal to the single business tax that a nonprofit health care corporation *would have paid on the accumulated assets used to acquire the accident fund*

if the nonprofit health care corporation were a for-profit mutual insurer. [Emphasis added.]

The primary goal of judicial interpretation of statutes is to ascertain and give effect to the intent of the Legislature. *People v Stanaway*, 446 Mich 643; 512 NW2d 557 (1995). Nothing will be read into a statute which is not within the manifest intent of the Legislature as gathered from the act itself. *In re Marin*, 198 Mich App 560; 499 NW2d 400 (1993). The first criterion in determining intent is the specific language of the statute. *House Speaker v State Administrative Bd*, 441 Mich 547; 495 NW2d 539 (1993).

If reasonable minds could differ as to the meaning of a statute, judicial construction is appropriate. *DSS v Brewer*, 180 Mich App 82; 446 NW2d 593 (1989). The court must look to the object of the statute, the harm it is designed to remedy, and apply a reasonable construction which best accomplishes the statute's purpose. *Marquis v Hartford Accident & Indemnity*, 444 Mich 638; 513 NW2d 799 (1994). In doing so, the court may consider a variety of factors and apply principles of statutory construction, but should always use common sense. *Marquis, supra*.

The object of the statute at issue was to require BCBSM, if it was the successful bidder, to pay a one-time fee in addition to the purchase price. The purpose of the fee was to offset the alleged advantage BCBSM possessed because of its tax-exempt status. Kouri determined the "deemed tax" should be calculated as the purchase price times the single business tax rate. In arriving at this interpretation he properly viewed the language of the statue as most important. *House Speaker, supra*. Kouri considered possible alternative methodologies recognizing the phrase "accumulated assets" had no special meaning within the Single Business Tax Act and within the insurance industry. Kouri equated the phrase "accumulated assets used to acquire the Accident Fund" with purchase price. He did so because the section states the fee is to be limited to only those accumulated assets used to acquire the Accident Fund. Defendants, on the other hand, urge this Court to, in effect, rewrite the statute. Defendants suggest the phrase "tax the nonprofit health care corporation would have paid on the 'accumulated assets' used to acquire the accident fund" be read as the tax it would have paid "while accumulating the assets."

Although courts may look to the legislative history of an act, as well as to the history of the time during which the act was passed, to ascertain the reason for the act and the meaning of its provisions, *People v Hall*, 391 Mich 175; 215 NW2d 166 (1974), the "legislative history" relied upon by defendants is of little probative value. Defendants rely on comments written by staff members in partisan reports and "against" statements made by interested parties.

Finally, although it is not a long-standing interpretation, Kouri's administrative interpretation is entitled to deference. *CF. Ludington Service Corp v Acting Comm'r of Ins*, 444 Mich 481; 511 NW2d 661 (1994). The trial court did not err in upholding the Treasury Department's interpretation of §418.701a(7).

Next plaintiffs claim the statutory amendment of 1993 PA 201 violates the title object clause of the Michigan Constitution. The clause provides:

> No law shall embrace more than one object, which shall be expressed in its title. No bill shall be altered or amended on its passage through either house so as to change its original purpose as determined by its total content and not alone by its title. (Const 1963, art 4, § 24.)

Three kinds of challenges may be brought against statutes on the basis of the title-object clause: (1) a multiple object challenge, (2) a "title-body" challenge, and (3) a change of purpose challenge. *People v Kervorkian*, 446 Mich 436; 527 NW2d 714 (1994). Plaintiffs herein challenge the amendment on the first two bases.

The object of a law is its general purposes or aim. *Livonia v DSS*, 423 Mich 466; 378 NW2d 402 (1985); *Builders Square v Dept of Agriculture*, 176 Mich App 494; 440 NW2d 639 (1989). The single object requirement of the title-object clause is violated only when the subjects are so diverse that they have no necessary connection. *Ann Arbor v Nat'l Center for Mfg Sciences, Inc*. 204 Mich App 303; 514 NW2d 224 (1994). We find no error in the trial court's determination the amendment did not violate the multiple object prohibition of the title-object clause. The amendment provides in relevant part:

> (1) A health care corporation, subject to any limitation provided in this act, in any other statute of this state, or in its articles of incorporation, may do any or all of the following:
>
> * * *
>
> (x) Notwithstanding subdivision (o) or any other provision of this act, establish, own and operate a domestic stock insurance company only for the purpose of acquiring, owning, and operating the state accident fund . . .. [MCL 550.1208(1)(x); MSA 24.660(207)(1)(x).]

As previously noted, the object of a law is its general purpose or aim. *Livonia, supra*. Here, the object of the Non-Profit Health Care Corporation Act is to regulate non-profit health care corporations. The title of 1993 PA 201 lists, among many other subjects of regulation, that, as to the health care corporation, the bill will "provide their rights, powers, and immunities" and, "prescribe certain conditions of the transaction of business by those corporations in this state." 1993 PA 201, Title. We agree with the trial court that the amended subsection (x), regulating the ability of a health care corporation to own a domestic stock insurer, is germane and directly related to the object of the statute—the regulation of the non-profit health care corporation.

We also find no error in the trial court's determination the amendment did not violate the title body requirement of the title-object clause. The amendment allows BCBSM to own and operate the Accident Fund, a provider of workers' compensation insurance. This power is germane and incidental

to the general purpose declared in the title, i.e., to provide for non-profit health care corporations' rights and powers. *Ace Tex Corp, supra*.

Plaintiffs next argue the trial court erred in determining the individual plaintiffs lacked standing. We disagree. Citizens obtain standing to litigate tax issues by demonstrating the government action at issue, whether to spend or tax, poses the threat of substantial injury or damage through increased taxation. *Menendez v Detroit*, 337 Mich 476; 60 NW2d 319 (1953). Here, the sale of the Accident Fund does not involve the expenditure of state funds. Further, contrary to plaintiffs' position, the sale does not constitute a failure to collect taxes. The additional amount to be collected from BCBSM was a one-time fee, not a yearly tax. Finally plaintiffs failed to assert the sale would result in any substantial injury or damage caused through an increase in taxation. The trial court correctly concluded the individual plaintiffs lacked standing.

We also find the trial court correctly enjoined plaintiffs from deposing legislative staff regarding their activities within the legislative sphere. The language of the Michigan Constitution's Speech or Debate Clause is substantially similar to that utilized in the Constitution of the United States, i.e.:

> "They [senators and representatives] shall not be questioned in any other place for any speech in either house." Const 1963 art 4, §6.
>
> "[A]nd for any Speech or Debate in either House, they [senators and representatives] shall not be questioned in any other Place." US Const, art I, §6.

So long as they are undertaking valid "legislative acts," legislative aides and employees are protected by the Speech or Debate Clause. *Gravel v United States*, 408 US 606, 625; 92 S Ct 2614; 33 L Ed 2d 583 (1972). The trial court did not err in enjoining plaintiffs from deposing the legislative aides. However, we agree with plaintiffs and find the court erred in prohibiting discovery of certain documents relating to legislative intent that were in the possession of the aides.

MCL 4.554; MSA 2.55(4) provides:

> The legislative files, recordings, tapes, records, memoranda, or written documents of a member of the legislature shall not be subject to a subpoena duces tecum in a civil action, contested case, or other administrative proceeding. *This section shall not apply to the files, recordings, tapes, records, memoranda, or written documents of a committee, subcommittee, commission or council of the legislature.* (Emphasis added.)

The statute clearly provides the files, records, etc., of committees are not exempt from subpoena duces tecum. Art 4, §11 of the Michigan Constitution does not mandate our departure from the literal construction of MCL 4.554. Rather, the Speech or Debate Clause prohibits legislators and their aides from being questioned about the legislative acts. It does not prevent the subpoena of documents from committee files. Nonetheless, because we found the State Treasurer's interpretation and construction of

MCL 418.701A(7) to be proper and the sale of the fund has been consummated, we are unable to fashion plaintiffs any relief on this issue.

Finally, we find proper the trial court's determinations that neither a declaratory judgment nor a mandamus action were appropriate under the facts of this case. Plaintiffs failed to plead any facts which would demonstrate an actual controversy existed or that declaratory judgment was necessary to guide their future conduct, *Shavers v Attorney General*, 402 Mich 554; 267 NW2d 72 (1978), and mandamus is an inappropriate tool to review or control the exercise of discretion vested in a public official or administrative body. *W A Foote Memorial Hospital v Dept of Public Health*, 210 Mich App 516; 534 NW2d 206 (1995).

Affirmed. Costs to defendants.

/s/ Gary R. McDonald
/s/ E. Thomas Fitzgerald
/s/ Michael J. Matuzak

[1] As previously noted, defendant BCBSM is a nonprofit health care corporation. Plaintiff Michigan Insurance partners is an entity formed to acquire the Accident Fund. It created a shell corporation (plaintiff Accident Fund Corporation) to make the bid. Plaintiffs Physicians Insurance Company of Michigan and Michigan Physicians Mutual Liability Company are part owners of the shell corporation. Plaintiffs Michigan Mutual Insurance Company and Citizens Insurance Company of America are for-profit insurance companies engaged in the sale of workers' compensation policies. Plaintiffs Kurt Galliger, Thomas E. Hoeg and D. Joseph Olson, who asserted taxpayer standing, are individuals associated with the above corporate plaintiffs.