

May 16, 2005 (updated October 2017)

Dear Sir:

You have the following question: Under Section 14 of the City Charter can the mayor demote, suspend and remove officers and employees (for cause) without the consent of the city council?

The answer is yes.

Section 14, Para. 7, provides that:

He [the mayor] shall have authority, subject to confirmation by the board, to make appointments, promotions and transfers of employees; to make demotions, suspensions and removals of officers and employees for cause; and may delegate such authority as he deems advisable.

While that provision is not a model of clarity, when its punctuation is taken into account, it cannot be read any other way. For that reason it is not ambiguous. It is made up of three independent clauses on three separate subjects, each clause being separated by a semicolon, indicating that the clauses are indeed independent. In Williams v. Carr, 404 S.W.2d 522 (Tenn. 1966), a constitutional provision twice passed by referendum and which contained provisions separated by semicolon rather than a comma, indicated the separateness of the provisions, even though it was clear in the court's mind that the semi-colon should have been a comma. There was no ambiguity in that provision, said the Court. However, the fact that the provision at issue was a constitutional provision undoubtedly had a lot to do with that decision.

But the function of the semicolon is also seen in McLeod v. Nagle, 48 F.2d 189, (9th Cir. 1931). There the question was whether the phrase "within five years after entry" applied to every succeeding clause (each of which was separated by a semicolon) until the "clearly antithetical phrase 'at any time within three years'" was reached. No, held the Court, explaining the function of the semicolon:

The Oxford Dictionary, after defining semicolon, says that it is used for 'marking off a series of sentences or clauses of co-ordinate value.' Volume VIII, part II, p. 440. According to this statement of usage, every clause separated by a semicolon in the section under consideration is co-ordinate with each of the others, and therefore must each be read separately with the verb 'shall'....be taken into custody and deported.' Under this construction the beginning phrase, 'at anytime within five years', cannot be carried over to each of the succeeding clauses; each of the latter must be modified only by the time limit specifically stated therein, and, if no time limit is expressed, then the section must be interpreted to mean 'at any time after the entry of the alien into the United States. [At 190]

In accord (and citing McLeod v. Nagle), is Mills v. State Board of Education, 33 P.2d 563 (Mont. 1934).

But it has been said that the Tennessee courts are not bound by the rules of grammar where their application would defeat the intent of the legislature. [See Cavender v. Hewitt, 239 S.W. 767 (1922); Samuelson v. State, 95 S.W. 1012 (1906).] Let us assume that the provision is ambiguous to determine whether any different result would be reached under the rules of statutory construction.

In Section 14, Para. 7, of the City Charter the first clause speaks of, "subject to the confirmation of the board," appointments, promotions and transfers of employees. The second clause speaks of demotions, suspensions and removals, of officers and employees, "for cause." The second clause says nothing about such actions requiring the confirmation of the board. The third clause gives the mayor the authority to "delegate such authority as he deems advisable." At first glance, the third clause arguably relates to personnel, as do the first two clauses. But such an interpretation makes no sense. It is highly unlikely that the General Assembly intended that clause to mean that the mayor could delegate all the personnel actions in the first two clauses to subordinates. It is far more likely that the third clause relates to the delegation of authority in general. But if the confirmation provision in the first clause is read to mean to apply to the entire provision, such a reading would make any delegation of authority under the third clause subject to the confirmation of the board. That is not likely the intent of that provision.

For those reasons, a reading of that provision that applies the confirmation of the board only to the personnel actions in the first clause is also consistent with the rules of statutory construction relating to punctuation and grammar. It is said in General Care Corporation v. Olsen, 705 S.W.2d 642 (Tenn. 1986), that,

This Court has long held that statutes are to be construed in their entirety and in accordance with grammatical rules if possible. [Citation omitted.] In our opinion the Commissioner disregards the statute's clear grammatical structure by attempting to make the word "property" the subject of the clause upon which she bases her argument. The literal terms of the statute cannot be read to make the integral role of an asset in the taxpayer's business the controlling factor by which business earnings are identified without doing violence to the elementary rules of grammar. The language the Commissioner relies upon cannot be lifted out of its context and construed without reference to the balance of the statute. [At 648]

In your city's case, the argument that the semicolons are not meant to be semicolons at all, does violence not only to the rules of grammar concerning semicolons, but actually to the intent of the legislature. Indeed, a close reading of that provision indicates that punctuation of that provision is deliberate. At first glance, that may not be apparent, but that conclusion is supported by a closer look at that provision.

Sincerely,

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