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GRAB BAG OF SWAG: A COLLECTION OF GEORGIA'S RULES OF STATUTORY CONSTRUCTION

J. Matthew Maguire, Jr.

mmaguire@pcwlawfirm.com

Alexandra ("Sachi") Cole

scole@pcwlawfirm.com

PARKS, CHESIN & WALBERT, P.C.

75 Fourteenth Street, 26th Floor

Atlanta, GA 30309

(404) 873-8000

www.pcwlawfirm.com

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I remember being surprised back in law school to find that some statutes lent themselves to multiple interpretations. To my naïve mind, a statute was a clear and unambiguous “Thou Shalt” that was handed down from above. Having since observed the actual making of laws, I am now surprised they are as clear as they are. Under our system of government, it is the duty of the courts to interpret the laws, but what happens when those laws are not so clear? Justice Scalia recently answered that question in his typically acerbic fashion: “And the cases will publish forever the discouraging truth that the Supreme Court of the United States favors some laws over others, and is prepared to do whatever it takes to uphold and assist its favorites.” King v. Burwell, 135 S. Ct. 2480, 2507 (2015) (Scalia, J., dissenting).

Justice Scalia's cynicism aside, the federal and state courts have created rules of statutory construction to resolve conflicts and ambiguities in statutes in furtherance of the “cardinal rule” of statutory construction, which is to ascertain and effectuate the legislative intent and purpose. Carringer v. Rodgers, 276 Ga. 359, 363, 578 S.E.2d 841 (2003). While entire books have been written on statutory construction, this paper represents a more modest undertaking. There is no deep – or even original – thinking here. This is merely a collection of the most common rules of statutory construction plucked from two centuries of Georgia case law.¹

The most important rule of statutory construction describes not how, but when, a court is empowered to construe a statute. Because, “under our system of separation of powers [the courts] does not have the authority to rewrite statutes,” State v. Fielden, 280 Ga. 444, 448, 629 S.E.2d 252 (2006), statutes must be applied as written “[i]f the language is plain and does not lead to any absurd or impracticable results.” Diefenderfer v. Pierce, 260 Ga. 426, 426, 396 S.E.2d 227 (1990). “Where the language of a statute is plain and ambiguous, judicial construction is not only unnecessary, but forbidden.” Cardinale v. City of Atlanta, 290 Ga. 521, 523, 722 S.E.2d 732 (2012).

¹ Georgia's rules of statutory construction are not unique. Many are expressed in the common law of the federal courts and other states. One interesting source is “The Rehnquist Court's Canons of Statutory Construction.” http://www.ncsl.org/documents/lss/2013PDS/Rehnquist_Court_Canons_citations.pdf (last accessed on July 27, 2015). Additionally, Georgia courts typically apply rules of statutory construction when interpreting contracts. See, e.g., Lamb v. Fulton-DeKalb Hosp. Auth., 297 Ga. App. 529, 533, 677 S.E.2d 328 (2009) (because a settlement agreement is a contract, “it is subject to the usual rules of statutory construction.”) See also O.C.G.A. § 13-2-2 (codifying many of the rules of contract construction which, in large part, mirror those of statutory construction).

If, on the other hand, the court finds an ambiguity, it must attempt to resolve that ambiguity by applying the statutory construction rules set out below.

I. The Georgia Code

O.C.G.A. § 1-3-1 codifies the following rules on statutory construction:

(a) In all interpretations of statutes, the courts shall look diligently for the intention of the General Assembly, keeping in view at all times the old law, the evil, and the remedy. Grammatical errors shall not vitiate a law. A transposition of words and clauses may be resorted to when a sentence or clause is without meaning as it stands.

(b) In all interpretations of statutes, the ordinary signification shall be applied to all words, except words of art or words connected with a particular trade or subject matter, which shall have the signification attached to them by experts in such trade or with reference to such subject matter.

(c) A substantial compliance with any statutory requirement, especially on the part of public officers, shall be deemed and held sufficient, and no proceeding shall be declared void for want of such compliance, unless expressly so provided by law.

II. Canons of Construction

In addition to the Georgia Code, Georgia common law recognizes the following canons of construction:

A. Textual Integrity

1. “A statute draws its meaning, of course, from its text,” Chan v. Ellis, 296 Ga. 838, 839, 770 S.E.2d 851 (2015), and the text must be read “in its most natural and reasonable way, as an ordinary speaker of the English language would.” FDIC v. Loudermilk, 295 Ga. 579, 588, 761 S.E.2d 332 (2014). This is because, “[w]hen we consider the meaning of a statute, we must presume that the General Assembly meant what it said and said what it meant.” Deal v. Coleman, 294 Ga. 170, 172, 751 S.E.2d 337 (2013).

2. “The common and customary usages of the words are important, but so is their context.” Chan v. Ellis, 296 Ga. 838, 839, 770 S.E.2d 851 (2015). “For context, we may look to other provisions of the same statute, the structure and history of the whole statute, and the other law—constitutional, statutory, and common law alike—that forms the legal background of the statutory provision in question.” May v. State, 295 Ga. 388, 391-392, 761 S.E.2d 38 (2014). “A statute must be construed in relation to other statutes of which it is a part, and all statutes relating to the same subject-matter, briefly called statutes *in pari materia*, are construed together, and harmonized wherever possible, so as to ascertain the legislative intent and give effect thereto.” Tew v. State, 320 Ga. App. 127, 130, 739 S.E.2d 423 (2013).

3. “All parts of a statute should be harmonized and given sensible and intelligent effect, because it is not presumed that the legislature intended to enact meaningless language.” Grimes v. Catoosa Cnty. Sheriff’s Office, 307 Ga. App. 481, 483-84, 705 S.E.2d 670, 673 (2010). See also Berryhill v. Georgia Cmty. Support & Solutions, Inc., 281 Ga. 439, 441, 638 S.E.2d 278 (2006) (courts should give a sensible and intelligent effect to every part of a statute and not render any language superfluous).

4. The caption of a statute does not “constitute part of the law and shall in no manner limit or expand on the construction of any Code section.” O.C.G.A. § 1-1-7 (legislatively overruling Moore v. Robinson, 206 Ga. 27, 40, 55 S.E.2d 711 (1949) (“The title or caption of the act—which, while no part thereof, may always be examined by the court when the act is doubtful, for the purpose of finding the legislative intent thereof.”)).

5. “Where a particular expression in one part of a statute is not so extensive or large in its import as other expressions in the same statute, it must yield to the larger and more extensive expression, where the latter embodies the real intent of the legislature.” Schwartz v. Black, 200 Ga. App. 735, 736, 409 S.E.2d 681 (1991) (citing Board of Trustees, etc., of Atlanta v. Christy, 246 Ga. 553, 555, 272 S.E.2d 288 (1980)).

6. “Where there is in the same statute a specific provision, and also a general one which in its most comprehensive sense would include matters embraced in the former, the particular provision must control, and the general provision must be taken to affect only such cases within its general language as are not within the provisions of the particular provision. The rule of construction applicable to all writings is this: that general and unlimited terms are restrained and limited by particular recitals, when used in connection with them.” Schwartz v. Black, 200 Ga. App. 735, 736, 409 S.E.2d 681 (1991) (citing Mayor, etc., of

Savannah v. Savannah Elec., etc., Co., 205 Ga. 429, 436-437, 54 S.E.2d 260 (1949)) (internal punctuation omitted).

7. *Noscitur a sociis*, meaning “known from its associates.” Under this maxim, the meaning of words or phrases in a statute may be ascertained “from others with which they are associated and from which they cannot be separated without impairing or destroying the evident sense they were designed to convey in the connections used.” Saleem v. Bd. of Trustees of Firemen’s Pension Fund of Atlanta, 180 Ga. App. 790, 791, 351 S.E.2d 93 (1986). “Words, like people, are judged by the company they keep.” Anderson v. Southeast Fidelity Ins. Co., 251 Ga. 556, 566, 307 S.E.2d 499 (1983).

B. May and Shall

8. “[L]anguage contained in a statute which, given its ordinary meaning, commands the doing of a thing within a certain time, when not accompanied by any negative words restraining the doing of the thing afterward, will generally be construed as merely directory and not as a limitation on authority, and this is especially so where no injury appeared to have resulted from the fact that the thing was done after the time limited by the plain words of the Act.” Charles H. Wesley Educ. Foundation, Inc. v. State Elections Bd., 282 Ga. 707, 709, 654 S.E.2d 127 (2007).

9. “‘May’ ordinarily denotes permission and not command. However, when the word as used concerns the public interest or affects the rights of third persons, it shall be construed to mean ‘must’ or ‘shall.’” O.C.G.A. § 1-3-3(10). See also Holtsclaw v. Holtsclaw, 269 Ga. 163, 164, 496 S.E.2d 262 (1998) (“may” means “shall” where the thing to be done “is for the sake of justice or for the public benefit”).

10. “In its ordinary significance, ‘shall’ is a word of command; however, in the absence of injury to the defendant and in the absence of a penalty for failure to comply with the statute, ‘shall’ denotes simple futurity rather than a command.” Comm’r of Ins. v. Stryker, 218 Ga. App. 716, 719, 463 S.E.2d 163 (1995).

C. Effect of Judicial or Administrative Decisions

11. “Where a statute has, by a long series of decisions, received a judicial construction in which the General Assembly has acquiesced and thereby given its implicit legislative approval, the courts should not disturb that settled construction.” Abernathy v. City of Albany, 269 Ga. 88, 90, 495 S.E.2d 13 (1998).

12. “When a statute of another jurisdiction has been adopted by this State, the construction placed upon such statute by the highest court of that jurisdiction will be given such statute by the courts of this State.” Wilson v. Pollard, 190 Ga. 74, 80, 8 S.E.2d 380 (1940).

13. “Where statutory provisions are ambiguous, courts should give great weight to the interpretation adopted by the administrative agency charged with enforcing the statute.” Schrenko v. DeKalb Cnty. School Dist., 276 Ga. 786, 791, 582 S.E.2d 109 (2003). The court should defer to the agency’s interpretation “so long as it comports with legislative intent and is reasonable.” Cook v. Glover, 295 Ga. 495, 500, 761 S.E.2d 267 (2014). See also Handel v. Powell, 284 Ga. 550, 553, 670 S.E.2d 62 (2008) (since the judiciary is the final authority on issues of statutory construction, they are not bound by the agency’s interpretation). Less deference is afforded to statutory interpretations contained in an agency’s opinion letters, policy statements, agency manuals or enforcement guidelines because these writings lack the force of law. Cook, 295 Ga. at 502 (Namias, J. concurring) (citing Christensen v. Harris Cnty., 529 U.S. 576, 587, 120 S.Ct. 1655, 146 L.Ed.2d 621 (2000)). Instead, such agency opinions are merely “entitled to respect.” Id. (quoting Skidmore v. Swift & Co., 323 U.S. 134, 140, 65 S.Ct. 161, 89 L.Ed. 124 (1944)).

14. All statutes “are presumed to be enacted by the legislature with full knowledge of the existing ... law and with reference to it; they are therefore to be construed in connection and in harmony with the existing law.” In re H.E.B., 303 Ga. App. 895, 896-97, 695 S.E.2d 332 (2010). See also Spence v. Rowell, 213 Ga. 145, 150, 97 S.E.2d 350 (1957) (legislature conclusively presumed to have known when it passed laws using the term “city” that Supreme Court of Georgia had said the words “city” and “town” were not synonymous). Accord State v. Randle, 331 Ga. App. 1, 6, 769 S.E.2d 724 (2015) (In determining the meaning of language found in a statute, “we look to its text as well as the interpretation that courts have given to the same language at the time the statute was enacted.”)

D. Order, Grammar and Syntax

14. *Ejusdem generis*. When a statute enumerates by name several particular things, and concludes with a general term of enlargement, this latter term is construed as being *ejusdem generis* so that it is limited to the same kind or class with the things specifically named unless there is something to show that a wider sense was intended. Dep’t of Educ. v. Kitchens, 193 Ga. App. 229, 231, 387 S.E.2d 579 (1989) (“This rule, which is applicable to the instant case, compels the conclusion that the general term ‘educational institution’ following the specific terms ‘school’ and ‘college’ must refer to other institutions

like schools and colleges—e.g., universities, academies, trade schools—and not to administrative agencies which regulate those institutions.”).

15. Under the “venerable principle of statutory construction *expressio unius est exclusio alterius*: the express mention of one thing implies the exclusion of another.” Dep’t of Human Res. v. Hutchinson, 217 Ga. App. 70, 72, 456 S.E.2d 642 (1995). Relatedly, the maxim *expressum facit cessare tacitum*, means that if some things (of many) are expressly mentioned, the inference is stronger that those omitted are intended to be excluded than if none at all had been mentioned. Id.

16. “[T]he absence of offsetting commas suggests that a phrase modifies only the language immediately adjoining.” J. Kinson Cook, Inc. v. Weaver, 252 Ga. App. 868, 870, 556 S.E.2d 831 (2001). But see O.C.G.A. § 1-3-1(a) (“Grammatical errors shall not vitiate a law. A transposition of words and clauses may be resorted to when a sentence or clause is without meaning as it stands.”).

E. Conflicts Between Multiple Statutes

17. When two statutes are in conflict, “the most recent legislative expression prevails.” Pawnmart, Inc. v. Gwinnett County, 279 Ga. 19, 20, 600 S.E.2d 639 (2005).

18. A specific statute will generally prevail over a general statute. GMC Grp., Inc. v. Harsco Corp., 293 Ga. App. 707, 709, 667 S.E.2d 916 (2008).

20. The presumption against repeal by implication is strong, and constructive repeals, or repeals by implication, are not favored. Brackett v. Arp, 156 Ga. 160, 118 S.E. 651 (1923). But see Hooks v. Cobb Ctr. Pawn & Jewelry Brokers, Inc., 241 Ga. App. 305, 309, 527 S.E.2d 566 (1999) (“[W]hile not favored, a statute may be deemed to have repealed an earlier statute where the statute later in time appears to give comprehensive expression to the whole law on the subject.”).

21. “The presumption is that different acts passed at the same session of the legislature are imbued by the same spirit and actuated by the same policy, and that one was not intended to repeal or destroy another, unless so expressed.” Adcock v. State, 60 Ga. App. 207, 3 S.E.2d 597 (1939) (citing 1 Sutherland’s Statutes and Statutory Construction, p. 513).

F. Presumptions Against Absurd Or Meaningless Results

22. “In construing a statute, our goal is to determine its legislative purpose. In this regard, a court must first focus on the statute’s text. In order to discern the meaning of the words of a statute, the reader must look at the context in which the statute was written, remembering at all times that the meaning of a sentence may be more than that of the separate words, as a melody is more than the notes. If the words of a statute, however, are plain and capable of having but one meaning, and do not produce any absurd, impractical, or contradictory results, then this Court is bound to follow the meaning of those words. If, on the other hand, the words of the statute are ambiguous, then this Court must construe the statute, keeping in mind the purpose of the statute and ‘the old law, the evil, and the remedy.’” Rite-Aid Corp. v. Davis, 280 Ga.App. 522, 524, 634 S.E.2d 480 (2006) (quoting O.C.G.A. § 1–3–1(a)) (punctuation and emphasis omitted).

23. “It is the duty of the court to consider the results and consequences of any proposed construction and not so construe a statute as will result in unreasonable or absurd consequences not contemplated by the legislature.” State v. Mulkey, 252 Ga. 201, 204, 312 S.E.2d 601 (1984).

24. “In arriving at the intention of the legislature, it is appropriate for the court to look to the old law and the evil which the legislature sought to correct in enacting the new law and the remedy provided therefor.” State v. Mulkey, 252 Ga. 201, 204, 312 S.E.2d 601 (1984).

25. “A legislative body should always be presumed to mean something by the passage of an Act and an Act should not be so construed as to render it absolutely meaningless.” Hardison v. Booker, 179 Ga. App. 693, 695, 347 S.E.2d 681 (1986). See also Central Georgia Power Co. v. Parnell, 11 Ga. App. 779, 76 S.E. 157 (1912) (“Any other rule would practically nullify the statute and defeat the object sought to be accomplished by the General Assembly.”).

26. “When an exception, exemption, proviso or any clause which limits the scope of an Act’s applicability is found to be invalid, the entire Act may be void on the theory that by striking out the invalid exception the scope of the Act has been widened and therefore cannot properly represent the legislative intent.” Georgia S. & F. Ry. Co. v. Odom, 242 Ga. 169, 171, 249 S.E.2d 545 (1978) (citing Sutherland, *Statutory Construction*, Vol. 2, s 44.13 (4th Ed.)).

27. If the meaning is doubtful, the courts may look to legislative history to ascertain legislative intent. Sikes v. State, 268 Ga. 19, 21, 485 S.E. 2d 206 (1997). But expressions of legislative intention by individual legislators are

inadmissible. S. Ry. Co. v. A. O. Smith Corp., 134 Ga. App. 219, 221, 213 S.E.2d 903 (1975) (“While the opinion of a member of the legislature which passed an act, or that of the comptroller-general, as to its meaning and purpose, might possibly often be valuable and constructive in construing the act and arriving at the legislative intent, it cannot be seriously contended that courts can properly resort to sources of this kind in ascertaining the legislative will as expressed in a statute.”).

28. “[A]ny material change in the language of the original act is presumed to indicate a change in legal rights.” Shirley v. State, 149 Ga. App. 194, 206, 253 S.E.2d 787 (1979). “[B]ut it is also presumed that the legislature did not intend to effect a greater change than is clearly apparent either by express declaration or by necessary implication.” Undercofler v. Colonial Pipeline Co., 114 Ga. App. 739, 743, 152 S.E.2d 768 (1966).

G. Liberal vs. Strict Construction

29. While criminal and other statutes in derogation of common law must be strictly construed, remedial statutes may be liberally construed, even if they are in derogation of common law. Cardinale v. City of Atlanta, 290 Ga. 521, 526, 722 S.E.2d 732 (2012). “The fact that [a statute] contains a penal provision does not render the entire statute penal in nature such that all of its provisions must be strictly construed.” Id.

30. “[W]hen we are considering the right to legislate in the interest of public health, public safety, and public morals, the court should interpret broadly and liberally.” Kirk v. Lithonia Mobile Homes, Inc., 181 Ga. App. 533, 536, 352 S.E.2d 788 (1987).

31. Because counties and municipal corporations can exercise only such powers as are conferred on them by law, if there is a reasonable doubt of the existence of a particular power, the doubt is to be resolved in the negative. Beazley v. DeKalb Cnty., 210 Ga. 41, 43, 77 S.E.2d 740 (1953).

H. When All Else Fails...

32. *Argumentum ab inconvenienti*. This maxim meaning “argument to the consequences” allows courts to consider the inconvenience which the proposed construction of the law would create. Plantation Pipe Line Co. v. City of Bremen, 227 Ga. 1, 11, 178 S.E.2d 868 (1970).

33. “Where law is susceptible of more than one construction, it must be given that construction which is most equitable and just.” Ford Motor Co. v. Abercrombie, 207 Ga. 464, 468, 62 S.E.2d 209 (1950).

34. When a statute can be read in both a constitutional and unconstitutional manner, the courts apply the construction that upholds the law's constitutionality. Bd. of Pub. Educ. for City of Savannah v. Hair, 276 Ga. 575, 576, 581 S.E.2d 28 (2003). "If the statute is in part constitutional and valid, and in part unconstitutional and invalid, and the objectionable portion is so connected with the general scheme that, should it be stricken out, effect cannot be given to the legislative intent, the whole statute, section, or portion must fall; but, where an act cannot be sustained as a whole, the courts will uphold it in part, when it is reasonably certain that to do so would correspond with the main intent and purpose which the Legislature sought to accomplish by its enactment, if, after the unconstitutional part is stricken, there remains enough to accomplish that purpose." Rich v. State, 237 Ga. 291, 303, 227 S.E.2d 761 (1976).

III. Conclusion

While many of these quotations express the same rules in different ways, they have all been included since nuanced differences in phraseology may make one more suitable for a given purpose than another. You might have also noticed that some of these rules seem to conflict with one another. For example, as shown above, a municipality's statutory powers should be broadly construed when exercised in the interest of public health, safety or morals, but, on the other hand, any doubt about the municipality's power should be resolved against the municipality. Cf. Kirk, 181 Ga. App. at 536 with Beazley, 210 Ga. at 43. To resolve that conflict, you might need to reach back in to the grab bag of rules by, for example, examining the legislative history, whether one construction "saves" the statute while the other renders it completely meaningless, and so on. Revel in vagaries of the law. Without them, you might be out of a job.