STATE OF MICHIGAN

COURT OF APPEALS

JOHN BATE, on Behalf of Himself and All Others Similarly Situated,

Plaintiff-Appellant,

v

CITY OF ST. CLAIR SHORES MICHIGAN,

Defendant-Appellee.

FOR PUBLICATION
August 17, 2023
9:10 a.m.

No. 364536
Macomb Circuit Court
LC No. 2022-002395-CZ

JOSEPH RUMAN, DAVID J. PETERS, and CYNTHIA A. PETERS, on Behalf of Themselves and All Others Similarly Situated,

Plaintiffs-Appellants,

v

CITY OF WARREN MICHIGAN,

Defendant-Appellee.

No. 364537
Macomb Circuit Court
LC No. 2022-002396-CZ

Before: BOONSTRA, P.J., and LETICA and FEENEY, JJ.

LETICA, J.

In these consolidated appeals,[1] plaintiffs, taxpayers from defendant cities, St. Clair Shores and Warren, Michigan, appeal as of right the trial court order granting summary disposition in

[1] In Docket No. 364536, plaintiff John Bate filed suit on behalf of himself and all others similarly situated against defendant city, St. Clair Shores. In Docket No. 364537, plaintiffs Joseph Ruman, David J. Peters, and Cynthia A. Peters filed suit on behalf of themselves and all others similarly

favor of defendants by concluding that the collection of taxes to fund pension and other benefits for police and fire employees did not violate the Headlee Amendment, Const 1963, art 9, § 31. We affirm.

I. BASIC FACTS AND PROCEDURAL HISTORY

In their capacity as taxpayers, plaintiffs filed suits against defendant cities solely alleging a violation of the Headlee Amendment. Specifically, plaintiffs alleged that the Michigan Fire Fighters and Police Officers Retirement Act, MCL 38.551 *et seq*. (Act 345) authorized a municipality to establish a police and fire employee pension plan and to impose a new tax to fund the obligations under the pension plan. Plaintiffs further asserted that, under Act 345, a municipality was only entitled to impose taxes sufficient to fund the city's actual contributions to the pension plan. While Act 345 governed pension plans, it did not entitle defendant cities to impose taxes to fund benefits such as healthcare. The basis of the Headlee violation was plaintiffs' contention that defendant cities were generating millions more than necessary to fund the actual annual contributions to the Act 345 pension plan, and these "excess taxes" were a new tax not authorized by law or charter at the time the Headlee Amendment was ratified. Plaintiffs requested that defendant cities disgorge and refund the excess taxes collected and be enjoined from continuing to impose and collect these "excess taxes" in the future.

The parties submitted the matter for resolution through motions for summary disposition. Among other determinations, the trial court concluded that Act 345 provided for the payment of retirement benefits that included healthcare benefits. From this decision, plaintiffs appeal.

II. STANDARDS OF REVIEW

The interpretation of a constitutional provision presents a question of law that an appellate court reviews de novo. *Paquin v St Ignace*, 504 Mich 124, 129; 934 NW2d 650 (2019). When interpreting a constitutional provision, the primary goal is to determine the initial meaning of the provision to the ratifiers, the people, at the time of ratification. *Nat'l Pride at Work, Inc v Governor*, 481 Mich 56, 67; 748 NW2d 524 (2008). That is, the court applies the common understanding of the people at the time the Constitution was ratified. *Paquin*, 504 Mich at 129-130 (citation omitted). To effectuate this intent, the court also applies the plain meaning of the terms used in the Constitution. *Toll Northville Ltd v Northville Twp*, 480 Mich 6, 11; 743 NW2d 902 (2008).

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situated against defendant city, Warren. In the trial court, these plaintiffs moved to certify their respective class actions on behalf of all persons or entities who paid or incurred property taxes in St. Clair Shores and Warren. However, all parties stipulated to adjourn any hearings on the class certification until the dispositive motions were decided. Because the trial court granted summary disposition in favor of defendant cities, the issue of class certification was not determined. For ease of reference and in light of the commonality of the issues, we will use "plaintiffs" to refer to Bate, Ruman, and the Peters. This Court consolidated the appeals "to advance the efficient administration of the appellate process." *Bate v City of St Clair Shores*, unpublished order of the Court of Appeals, entered January 17, 2023 (Docket Nos. 364526; 364537).

The interpretation and application of a statute presents a question of law that the appellate court reviews de novo. See *Buhl v City of Oak Park*, 507 Mich 236, 242; 968 NW2d 348 (2021). When interpreting a statute, the goal is to give effect to the Legislature's intent. *Ricks v State of Mich*, 507 Mich 387, 397; 968 NW2d 428 (2021). The most reliable evidence of legislative intent is the plain language of the statute. *South Dearborn Environmental Improvement Ass'n, Inc v Dep't of Environmental Quality*, 502 Mich 349, 360-361; 917 NW2d 603 (2018). "If the language of a statute is clear and unambiguous, we presume that the Legislature intended the meaning clearly expressed." *Gardner v Dep't of Treasury*, 498 Mich 1, 6; 869 NW2d 199 (2015). When construing a legislative enactment, the courts may not select a construction that implements any rational purpose, but must choose the construction that implements the legislative purpose perceived from statutory language and the context in which it is used. *Le Gassick v Univ of Mich Regents*, 330 Mich App 487, 495-496; 948 NW2d 452 (2019).

Legislative history may be beneficial when a statute is ambiguous, and it is necessary to construe an ambiguous provision. *In re Certified Question from the United States Court of Appeals for the Sixth Circuit*, 468 Mich 109, 115 n 5; 659 NW2d 597 (2003). But legislative history is given little significance when it does not reflect an official view of the legislators and cannot be utilized to create an ambiguity where one does not otherwise exist. *Id*. Legislative history composed of "legislative analysis" composed by staff are entitled to little judicial consideration when resolving an ambiguity because they are not an official form of legislative record in Michigan, reflect staff rather than legislative views, and are produced outside the bounds of the legislative process. *Id*.

We review de novo a trial court's ruling on a motion for summary disposition. *Houston v Mint Group, LLC*, 335 Mich App 545, 557; 968 NW2d 9 (2021). When reviewing a motion for summary disposition challenged under MCR 2.116(C)(10), the Court considers the affidavits, pleadings, depositions, admissions, and other admissible documentary evidence then filed in the action or submitted by the parties in the light most favorable to the nonmoving party. MCR 2.116(G)(4), (5); *Buhl*, 507 Mich at 242.

III. THE HEADLEE AMENDMENT

The impetus for the Headlee Amendment, see Const 1963, art 9, § 6, and §§ 25 to 34, was a nationwide taxpayer revolt. *Taxpayers for Mich Constitutional Gov't v State*, 508 Mich 48, 57; 972 NW2d 738 (2021). The Amendment was designed to "limit legislative expansion of requirements placed on local government, put a freeze on what had been perceived as excessive government spending, and lower taxes at both the local and state levels." *Id*.

> Sections 25 through 34 of article 9 of the Constitution of 1963 were adopted pursuant to initiative petition, Proposal E, at the general election of November 7, 1978. They are popularly called the "Headlee Amendment." The Headlee Amendment imposes on state and local government a fairly complex system of revenue and tax limits. These are summarized in art 9, § 25 and implemented in the following sections. There are three main elements. Section 26 limits any changes in total state revenues to an amount based on changes in personal income in the state. Section 31 prohibits units of local government from levying any new

> tax or increasing any existing tax above authorized rates without the approval of the unit's electorate.
>
> The third element of the Headlee system is summarized in art 9, § 25, which states in part, "The state is prohibited from requiring any new or expanded activities by local governments without full state financing, from reducing the proportion of state spending in the form of aid to local governments, or from shifting the tax burden to local government." [*Durant v Michigan*, 456 Mich 175, 182-183; 566 NW2d 272 (1997) (footnotes omitted).]

In this case, plaintiffs challenge whether the tax imposed purportedly through Act 345 violates the Headlee Amendment, Const 1963, art 9, § 31, which provides in pertinent part:

> Units of Local Government are hereby prohibited from levying any tax not authorized by law or charter when this section is ratified or from increasing the rate of an existing tax above that rate authorized by law or charter when this section is ratified, without the approval of a majority of the qualified electors of that unit of Local Government voting thereon.

Thus, this section "prohibits units of local government from levying any new tax or increasing any existing tax above authorized rates without the approval of the unit's electorate" after December 1978. *Midwest Valve & Fitting Co v City of Detroit*, ___ Mich App ___, ___; ___ NW2d ___ (Docket No. 358868) (2023); slip op at 4 (quotation marks and citation omitted). However,

> the Headlee exemption of taxes authorized by law when the section was ratified permits the levying of previously authorized taxes even where they were not being levied at the time Headlee was ratified and even though the circumstances making the tax or rate applicable did not exist before that date. [*American Axle & Mfg, Inc v City of Hamtramck*, 461 Mich 352, 357; 604 NW2d 330 (2000).]

IV. ACT 345

Act 345 went into effect on October 29, 1937. See 1937 PA 345. The objective of Act 345 is as follows:

> AN ACT to provide for the establishment, maintenance, and administration of a system of pensions and retirements for the benefit of the personnel of fire and police departments employed by cities, villages, or municipalities having full paid members in the departments, and for the spouses and children of the members; to provide for the creation of a board of trustees to manage and operate the system; to authorize appropriations and deductions from salaries; to prescribe penalties and provide remedies; and to repeal all acts and parts of acts inconsistent therewith. [1937 PA 345.]

Pertinent to this appeal, MCL 38.561 states:

> At any time after [Act 345] shall become effective, any city, village or municipality having a paid or part paid fire or police department, may come under the provisions of this act and create a pension board hereunder by submitting the same to the electors of any such city, village or municipality at any regular or special election for adoption, in the manner provided by law for amending charters . . . .

Thus, if the locality's voters approve adoption of Act 345, a "city, village or municipality having a paid or part paid fire or police department" may "create a pension board." The pension board, which is "a corporate body," has five members, one of which being the "treasurer of the city, village or municipality . . . ." MCL 38.551(1).

In relevant part, the pension board has the following responsibilities:

> (1) Make rules and regulations necessary to the proper conduct of the business of the retirement system.
>
> (2) Retain legal, medical, actuarial, clerical, or other services as may be necessary for the conduct of the affairs of the retirement system and make compensations for the services retained.
>
> (3) Cause amounts as established by law to be deducted from the salaries of active members of the retirement system and be paid into the treasury of the retirement system.
>
> (4) Certify to the governing body of the city, village, or municipality the amount to be contributed by the city, village, or municipality as provided in this act.
>
> * * *
>
> (8) Disburse the pensions and other benefits payable under this act. [MCL 38.552.]

In order "to make an actuarial determination of the funds needed to maintain the retirement system," the pension board is required to "hire an actuary and then certify to the municipality an amount that covers current service costs as well as unfunded accrued liabilities." *Shelby Twp Police & Fire Retirement Bd v Shelby Twp*, 438 Mich 247, 257-258; 475 NW2d 249 (1991).

With respect to how a municipality is to finance its obligations under Act 345, MCL 38.559(2) allows the municipality to impose property taxes. Specifically, MCL 38.559(2) states:

> For the purpose of creating and maintaining a fund for the payment of the pensions *and other benefits* payable as provided in this act, the municipality, subject to the provisions of this act, shall appropriate, at the end of such regular intervals

> as may be adopted, quarterly, semiannually, or annually, an amount sufficient to maintain actuarially determined reserves covering pensions payable or that might be payable on account of service performed and to be performed by active members, and pensions being paid to retired members and beneficiaries. The appropriations to be made by the municipality in any fiscal year shall be sufficient to pay all pensions due and payable in that fiscal year to all retired members and beneficiaries. The amount of the appropriation in a fiscal year shall not be less than 10% of the aggregate pay received during that fiscal year by members of the retirement system unless, by actuarial determination, it is satisfactorily established that a lesser percentage is needed. All deductions and appropriations shall be payable to the treasurer of the municipality and he or she shall pay the deductions and appropriations into the retirement system. Except in municipalities that are subject to the 15 mill tax limitation as provided by section 6 of article IX of the state constitution of 1963, the amount required by taxation to *meet the appropriations* to be made by municipalities under this act shall be in addition to any tax limitation imposed upon tax rates in those municipalities by charter provisions or by state law subject to section 25 of article IX of the state constitution of 1963. [Emphasis added.]

Plaintiffs submit that defendant cities appropriated more funds than necessary to meet the amount required under Act 345. In support of their position, plaintiffs cite to the terms "meet" and "appropriations" as set forth in MCL 38.559(2). Because "meet" and "appropriations" are not defined in Act 345, it is proper to consider dictionary definitions. *Midwest Valve & Fitting Co*, ___ Mich App at ___; slip op at 9. "Appropriate" is defined as "to set apart for or assign to a particular purpose or use[.]" *Merriam-Webster's Collegiate Dictionary* (11th ed). The definition of "appropriation" is "something that has been appropriated . . . money set aside by formal action for a specific use." *Merriam-Webster's Collegiate Dictionary* (11th ed). "Meet" is defined as "to pay fully: SETTLE[.]" *Merriam-Webster's Collegiate Dictionary* (11th ed). In light of those definitions, MCL 38.559(2) requires defendant cities to set aside tax dollars so it can fully pay benefits owed under the retirement system.

V. ANALYSIS

The crux of the issues on appeal is whether Act 345 permits defendant cities to set aside and use tax dollars to help pay for healthcare benefits to retired firefighters and police officers who are members of the retirement system. Despite plaintiffs' focus on the terms "meet" and "appropriations," the operative words and phrases "retirement system," "pension," and "other benefits payable" are within MCL 38.559(2) and also must be examined.[2]

Because "retirement system," "pensions," and "other benefits payable" are not defined in Act 345, we again properly consider dictionary definitions. *Midwest Valve & Fitting Co*, ___ Mich App at ___; slip op at 9. "Retirement" is defined as "withdrawal from one's position or

[2] The terms also repeatedly appear throughout Act 345. See MCL 38.559(2); MCL 38.552(1), (2), (3) and (8); MCL 38.552; MCL 38.553; MCL 38.556; MCL 38.556b; MCL 38.556c; MCL 38.556e; MCL 38.558; MCL 38.559; MCL 38.560; MCL 38.561; MCL 38.562.

occupation or from active working life," and "system" is defined as "an organized or established procedure[.]" *Merriam-Webster's Collegiate Dictionary* (11th ed). Accordingly, "retirement system" involves the manner in which retirement benefits, such as "pensions" and "other benefits payable," are funded and dispersed under Act 345. "Pension" is defined as "a fixed sum paid regularly to a person," and "one paid under given conditions to a person following retirement from service or to surviving dependents[.]" *Merriam-Webster's Collegiate Dictionary* (11th ed). "Other" is defined as "being the one or ones distinct from that or those first mentioned or implied . . . ." *Merriam-Webster's Collegiate Dictionary* (11th ed). Thus, use of the word "other" was intended to distinguish the term "other benefits payable" from "pensions." "Benefit" is defined as "a payment or service provided for under an annuity, pension plan, or insurance policy," and "a service (as health insurance) or right (as to take vacation time)[.]" *Merriam-Webster's Collegiate Dictionary* (11th ed). "Payable" is defined as "may, can, or must be paid[.]" *Merriam-Webster's Collegiate Dictionary* (11th ed). Accordingly, "other benefits payable" includes healthcare benefits, in the event the benefits "must be paid[.]" Defendant cities are therefore permitted to appropriate tax dollars to help pay for healthcare benefits to retired firefighters and police officers who are members of the retirement system and entitled to those benefits.

Despite Act 345's identification of "other benefits payable" in MCL 38.559(2), plaintiffs nonetheless submit that MCL 38.556 describes the "retirement benefits payable under" Act 345, and that MCL 38.556 does not mention healthcare benefits. In short, plaintiffs contend that MCL 38.556 only authorized the payment of pension benefits, disability benefits, and death benefits, and therefore, it does not authorize the payment of healthcare benefits. However, we must give effect to every word, phrase, and cause in a statute, and avoid any interpretation that would render part of the statute surplusage or nugatory. *South Dearborn*, 402 Mich at 361. Importantly, MCL 38.556 addresses (1) "[a]ge and service retirement benefits payable under this act"; and (2) "[d]isability and service connected death benefits payable under the act." *Id*. Moreover, in discussing "age and service retirement benefits," the statute uses the term "retirement benefits," as distinguished from "pension benefits," and it indeed uses the two terms in a manner that suggests that they are not equivalents. Thus, although plaintiffs conflate the terms, "retirement benefits" are broader than "pension benefits," and the fact that MCL 38.556 does not specifically identify healthcare benefits as other "retirement benefits" is inconsequential. When Act 345 is examined as a whole, it expressly identified that "other benefits" were payable as noted in MCL 38.559(2). Accordingly, like the trial court, we reject plaintiffs attempt to exclude healthcare benefits from the "other benefits payable" in MCL 38.559(2) by relying on a distorted interpretation of MCL 38.556.[3]

We also reject plaintiffs' reliance on *Studier v Mich Public Sch Employees Retirement Bd*, 472 Mich 642, 667-668; 698 NW2d 350 (2005), for the contention that healthcare benefits are not considered " 'pension' benefits as a matter of law." The *Studier* Court, 472 Mich at 646-651, analyzed the term "accrued financial benefits," which is a term that appears in Const 1963, art 9,

[3] It also matters not that the pension benefits and the healthcare benefits are administered separately; they are two components of the same retirement system, and each constitutes an aspect of the retirement benefits that are authorized by Act 345.

§ 24,[4] but not in Act 345. This Constitutional provision, which establishes that "pensions are contractual obligations of the state that political subdivisions may not impair," is not at issue in this appeal. See *Shelby Twp Police & Fire Retirement Bd*, 438 Mich at 261. Additionally, plaintiffs' argument ignores that Act 345 references "pensions" *and* "other benefits payable," and refers to "retirement benefits" as opposed to the narrower term, "pensions." Thus, it is immaterial whether healthcare benefits can be considered part of a pension. Indeed, plaintiffs have provided nothing to support their position that healthcare benefits cannot be considered "other benefits payable."

In sum, our Constitution requires that the "constitution and law concerning . . . cities . . . shall be liberally construed in their favor." Const 1963, art 7, § 34. When considering this mandate and the plain language of Act 345, defendant cities were permitted under Act 345 to appropriate tax dollars to fund healthcare benefits for retired firefighters and police officers who are members of the retirement system and entitled to those benefits. Because the tax was authorized before the Headlee Amendment was ratified, plaintiffs cannot establish a violation of Const 1963, art 9, § 31. See *American Axle & Mfg, Inc*, 461 Mich at 357; *Midwest Valve & Fitting Co*, ___ Mich App at ___; slip op at 4. Accordingly, the trial court's grant of summary disposition in favor of defendant cities was proper.

VI. ANCILLARY ISSUES

In support of their contention that the trial court erred, plaintiffs cite to legislative history and proposed amendments to Act 345, the trial court's merger of plans and boards when ruling on the dispositive motions, and the management and administration of the pension funds by defendant cities. These claims do not entitle plaintiffs to appellate relief.

Because the plain language of the constitutional provision and Act 345 is unambiguous, the statute must be enforced as written, no further judicial construction is permitted, and resort to extrinsic evidence is prohibited. *Bailey v Antrim Co*, 341 Mich App 411, 420-421; 990 NW2d 372 (2022). Consideration of legislative history is only proper when a statute is ambiguous and judicial construction becomes necessary. *In re Certified Question from United States Court of Appeals for Sixth Circuit*, 468 Mich at 116. Indeed, this Court does not "resort to legislative history to cloud a statutory text that is clear." *Id.* (quotation marks and citations omitted). The unambiguous language of Act 345 establishes that defendant cities are permitted to appropriate tax dollars to help pay for healthcare benefits to retired firefighters and police officers who are members of the retirement system and who are entitled to those benefits.

Furthermore, "[a] party is bound by [their] pleadings, and it is not permissible to litigate issues or claims that were not raised in the complaint[.]" *Bailey*, 341 Mich App at 424 (second and third alterations in original; quotation marks and citation omitted). Although plaintiffs submit that defendant cities violated other statutory provisions, such as the Protecting Local Government Retirement and Benefits Act, MCL 38.2801 *et seq*., and questioned the administration of Act 345,

[4] Const 1963, art 9, § 24 states, in relevant part: "The accrued financial benefits of each pension plan and retirement system of the state and its political subdivisions shall be a contractual obligation thereof which shall not be diminished or impaired thereby."

plaintiffs raised no cause of action pertaining to the administration and organization of Act 345. Rather, the complaint solely challenged as a Headlee Amendment violation the collection of taxes to pay for other benefits. Therefore, plaintiffs' remaining contentions also fail to demonstrate a Headlee violation and they are not entitled to appellate relief.

Affirmed.

/s/ Anica Letica
/s/ Mark T. Boonstra
/s/ Kathleen A. Feeney