

SUPREME COURT OF LOUISIANA

99-K-2209

STATE OF LOUISIANA

VERSUS

JOHN CARR

TRAYLOR, J. (dissenting)

The paramount consideration in interpreting a statute is the legislature's intent. *State ex rel. A.M.*, 98-2752 (La. 7/2/99), 739 So. 2d 188, 190; *Theriot v. Midland Risk Ins.*, 95-2895 (5/20/97), 694 So. 2d 184, 186. Determination of the legislature's intent begins with an examination of the text of the statute. *State v. Barbier*, 98-2923 (La. 9/8/99), 743 So. 2d 1236, 1238. In the realm of criminal statutory interpretation, provisions are to be given a genuine construction, according to the fair import of words. La. Rev. Stat. 14:3; *State v. Robertson*, 128 So. 2d 646, 648 (La. 1961). If the statute is clear and unambiguous, it is to be applied as written by the legislature. *State v. Barbier*, 98-2923 (La. 9/8/99), 743 So. 2d 1236, 1238 (La. 1999) (citing La. Civ. Code art. 9; *Touchard v. Williams*, 617 So. 2d 885 (La. 1993)). Courts are not authorized to look outside its provisions when ascertaining its meaning. *See State v. Pierre*, 320 So.2d 185, 188 (La. 1975). Nevertheless, a statute's legislative history is particularly enlightening when attempting to ascertain the legislature's intent, and is appropriate if some ambiguity in the text of the statute makes the legislature's intent unclear. *State ex rel. A.M.*, 739 So. 2d at 190.

In my attempt to ascertain the legislature's intent, *i.e.*, whether the "means of conveyance" in La. Rev. Stat. 14:98 must be motorized, I start with the text of the statute. La. Rev. Stat. 14:98A(1) applies to "motor vehicle[s], aircraft, watercraft, vessel[s], or other means of conveyance." A plain reading indicates that the enumerations are not limited to motorized means of transport. As the court of appeal noted, the statute lists watercraft in addition to vessels. *Carr*, 738 So.2d at 1173, 1176-77. Given that the term "vessel" would not unambiguously include non-motorized types of smaller watercraft, the legislature must have added the term "watercraft" to encompass non-motorized forms of watercraft. Further, as noted in the trial court, hanggliders are clearly aircraft, but they are not motorized. Likewise, nothing about the term "other means of conveyance," in and of itself, suggests

that it must be motorized. Therefore, unless the word “motor” applies to the entire enumeration, La. Rev. Stat. 14:98 does not require, on its face, that the means of transport necessarily be motorized.

Given that “motor” immediately precedes “vehicle,” the most realistic construction is that “motor” was placed in the enumeration, not to modify the entire chain, but rather to refer to a “motor vehicle.” Although written as two words, the term “motor vehicle” is used throughout the Revised Statutes, as well as in common usage, as if it were one. Further, the Traffic Code, itself entitled “Motor Vehicles and Traffic Regulation,” provides a definition for “motor vehicle” as well as “vehicle.” La. Rev. Stat. 32:1(40) (motor vehicle); § 32:1(92) (vehicle); *see* Random House Dictionary of the English Language (1967) at 934. Had the legislature chosen to precede the enumeration with “motorized” instead of “motor,” perhaps I would agree with the majority.¹ Given that our concern is specifically with the term “other means of conveyance,” it is telling that the legislature did not use the term “other means of motorized conveyance,” as it did in La. Rev. Stat. 14:98J. In sum, nothing about La. Rev. Stat. 14:98, on its face, indicates that the legislature intended to limit its application to motorized means of transport.

Notwithstanding the unambiguous language of the statute, the majority agrees with the defendant and concludes that the legislature did not intend for La. Rev. Stat. 14:98 to apply to non-motorized means of transport. Defendant argues that prior to the enactment of La. Rev. Stat. 14:98 in 1942, the DWI criminal statutes applied only to motorized means of transportation. On the other hand, other non-criminal “traffic” statutes or “civil” statutes applied to operating non-motorized means of transport, such as a bicycle, while intoxicated.

Unlike the Original DWI Statute which criminalized DWI without regard to where the offense took place, Act 296 was limited in application to the highways of the state. *See* 1928 La. Acts 296, § 1.² And most significant for our purposes, Act 296 used the term “vehicle,” as opposed to “motor

¹For instance, had the legislature referred to “any motorized vehicle, aircraft, watercraft, vessel, or other means of conveyance,” it would have been much easier to conclude that “motorized” refers to the entire enumeration. Again, however, the legal as well as common usage of “motor vehicle,” as a single entity, makes any other construction farfetched at best.

²Unlike the Original DWI Statute, Act 296 did not differentiate between those violations which involved injury or property damage to another, and those that did not. *See* 1928 La. Acts 296, §§ 3, 76.

vehicle,” and expressly stated that a bicycle was included in the term “vehicle.” 1928 La. Acts 296, § 2(a). Violations of Act 296 were misdemeanors punishable by fine and/or jail time. *Id.* § 76. Thus, beginning in 1928, Louisiana had two separate, coexistent statutory criminal schemes for punishing DWI--the Original DWI Statute, which was applicable anywhere in the state but pertaining only to motor vehicles, and the new Act 296 of 1928, applicable only to state highways, but pertaining expressly to non-motorized means of transportation (bicycles and ridden animals). Criminal penalties, however, were common to both statutory schemes. In short, as of 1928, riding a bicycle on a state highway while intoxicated was a crime.

Act 296 was subsequently replaced by the Highway Regulatory Act of 1932, 1932 La. Acts 21, which in turn was replaced by the Highway Regulatory Act of 1938, 1938 La. Acts 286. Throughout each version of the Highway Regulatory Act, the legislature maintained the DWI provision that it had introduced in Act 296, always providing criminal penalties for operating a vehicle, including a bicycle, while intoxicated if the act was committed upon a state highway, public road, or bridge. *See* 1938 La. Acts 286, § 1(a); § 3, Rule 2(a); § 12(d). This series of DWI provisions (hereinafter referred to collectively as “the Highway DWI Statute”), coexisted with the Original DWI Statute, and like the Original DWI Statute, was in effect until the legislature adopted the Criminal Code, and article 98, in 1942.³

By Act 7 of 1940, the legislature instructed the Louisiana State Law Institute to prepare a draft or project for a collected codification of Louisiana’s substantive criminal law.⁴ 1940 La. Acts 7, § 1. The legislature adopted the Louisiana Criminal Code by Act 43 of 1942. The new Criminal Code, as adopted by the legislature, contained article 98, entitled Operating a Vehicle While Intoxicated (currently located at La. Rev. Stat. 14:98), which read in pertinent part:

Operating a vehicle while intoxicated is the operating of any motor, vehicle, aircraft, vessel, or other means of conveyance by a person under the influence of intoxicating liquor or narcotic drugs.

Whoever commits the crime of operating a vehicle while intoxicated shall be

³The DWI provision of the Highway Regulatory Act was amended one last time by 1940 La. Act 142, before its repeal in 1942. That amendment is not pertinent

⁴At this time, Louisiana’s substantive criminal law existed in scattered statutes and was not collected in one volume or title.

fined not more than [\$300], or imprisoned for not more than [6] months, or both.

In addition to enacting article 98, Act 43 also repealed both the Original DWI Statute and the Highway DWI Statute. 1942 La. Acts 43, § 2 (repealing 1938 La. Acts. 286, §§ 3, Rule 2(a), 12; 1938 La. Acts 320; 1940 La. Acts 143, § 2).

Thus, the term “other means of conveyance” was introduced into Louisiana’s DWI statutory scheme when the legislature abandoned the dual (the Original and the Highway DWI Statutes) criminal statutory DWI scheme in lieu of a single DWI statute, article 98 (currently La. Rev. Stat. 14:98). The inquiry then becomes whether the legislature intended for article 98 to encompass both of the prior criminal statutory schemes--both of which were repealed by the same Act that created article 98.

After reviewing the revision comments accompanying article 98, I must conclude that the legislature intended to encompass both criminal schemes. The Law Institute listed the Original DWI Statute (1938 La. Acts 320, §§ 1-7) and the Highway DWI Statute (1938 La. Acts 286, § 3 (Rule 2(a))) as statutes “covered” by the new article 98. Furthermore, as for the scope of the statute, the Institute noted that the addition of aircraft was a change in the law from 1938, but otherwise, the article is “substantially the same as the former statute on intoxicated driving.” 1942 La. Acts 43 (article 98 cmts.).⁵

Further, we have previously held that the revision comments may be considered when interpreting a criminal statute. *State v. Gyles*, 313 So. 2d 799, 802 (La. 1975) (citing *State v. Truby*, 29 So. 2d 758 (La. 1947)). The comments accompanying the articles of the newly (1942) enacted Criminal Code are particularly enlightening and persuasive in light of Act 7 of 1940. *State v. Davis*, 23 So. 2d 801, 808 (La. 1945). By Act 7 of 1940, the legislature commissioned the Institute to prepare explanatory statements and notes to accompany the new criminal articles. 1940 La. Acts 7, §2. Then, by a concurrent resolution of both houses, the legislature made an express finding that the comments prepared by the Institute would serve as useful information to users of the new Code, and the

⁵I note that La. Rev. Stat. 14:98, as did the original article 98, appears in the section of the Criminal Code entitled “Driving Offenses.” Typically, one does not “drive” a bicycle, however, the Highway DWI Statute, which expressly applied to bicycles, also used the term “drive.” Thus, I cannot conclude that the legislature’s decision to include La. Rev. Stat. 14:98 in the “Driving Offenses” section of the Criminal Code evidences an intent to limit its application to modes of transportation that are typically “driven.”

comments, as contained in the project, would be printed along with the new articles. *See* Senate Concurrent Resolution No. 7 of 1940. Thus, given that the comments at issue bear the imprimatur of the legislature, they are particularly enlightening. *Davis*, 23 So. 2d at 808. In sum, when considering the revision comments in addition to the fact that the legislature has criminalized operating non-motorized means of conveyance (in particular a bicycle) while intoxicated, for nearly as long as it has criminalized motorized conveyances, there is no indication that the legislature intended to change the law by excluding non-motorized conveyances when it enacted article 98.⁶

Against this backdrop of legislative history of Louisiana’s DWI laws, the majority’s conclusion that the legislature did not intend to include non-motorized means of transportation in La. Rev. Stat. 14:98, because such an inclusion would have been a departure from prior law, is erroneous. First, this is based on an incorrect premise, *i.e.*, that the Highway DWI Statute was a “civil” statute as opposed to a criminal statute. To the contrary, the Highway DWI Statute, throughout its years in force, subjected the offender to a fine and/or jail time. Because a violation of the Highway DWI Statute could result in a loss of liberty, the statute was a criminal statute. *Chevalier v. L. H. Bossier, Inc.*, 95-2075 (La. 7/2/96), 676 So. 2d 1072, 1076 (citing *State v. Page*, 332 So. 2d 427 (La. 1976)). The fact that the Highway DWI Statute was part of the Highway Regulatory Act, and limited in application to state highways, does not change that characterization. *See Id.* This is especially true in light of the fact that Louisiana’s substantive criminal law, prior to 1942, was not found in a single compiled criminal code.⁷ Thus, contrary to the majority’s conclusion, no drastic change in the law results from including non-motorized means of transport in La. Rev. Stat. 14:98. To the contrary, a more prominent change would have resulted had non-motorized conveyances not been included by the legislature, especially

⁶Also noteworthy is that the penalty of DWI under the newly enacted article 98 was no harsher than the penalty for DWI under the Highway DWI Statute which included bicycles. The penalty for operating a bicycle while intoxicated under the Highway DWI Statute was thirty days to four months in jail and/or a fine of \$50 to \$250. Similarly, the penalty for operating an “other means of conveyance” under the new article 98, when enacted in 1940, was zero to six months in jail and/or a fine of \$0 to \$300 for a first offense. Under both statutes, both first and second offenses were misdemeanors. The similarity in the penalties belies the assertion that the legislature did not include non-motorized transportation, such as bicycles, in article 98 because it was a much harsher criminal provision.

⁷Even today, almost sixty years after our Criminal Code was compiled, criminal statutes are situated in other titles of the Revised Statutes. *E.g.* La. Rev. Stat. Ann. § 23:1163 (criminalizing an employer’s attempt to collect from employees any amount for the purpose of paying workers’ compensation premiums); *Chevalier*, 676 So. 2d at 1076.

since the same act that enacted article 98 repealed the Highway DWI Statute.⁸

In addition to the plain wording of the statute and its legislative history, Section 14:98J is also a strong indication that the legislature would have expressly limited section Section 14:98A(1) to motorized vehicles had it intended to do so. Section 14:98J, the Child Endangerment Law, expressly applies to “any other means of motorized conveyance.” La. Rev. Stat. 14:98J (emphasis added). The legislature added section 14:98J in 1993, in order to heighten the penalty for DWI when the offender places a child twelve years of age or younger in danger as a result of the offense. *See* La. Rev. Stat. 14:98J. No such changes were made to La. Rev. State 14:89 at that time, nor have any such changes subsequently been made.

The fact that La. Rev. Stat. 14:98 provides that DWI violators may be punished by participation in a court-approved driver improvement program does not prove that La. Rev. Stat. 14:98 excludes bicycles. The plain language of La. Rev. Stat. 14:98A(1) specifically states that the operation of “aircraft” or “watercraft” while intoxicated constitutes a violation. The legislature’s specific inclusion of “aircraft” and “watercraft” indicates that DWI was intended to cover many types of conveyances, not only those which would be directly remedied by a driver improvement program.

After reviewing the legislative history, I find that the legislature intended to include non-motorized means of transport in La. Rev. Stat. 14:98. Therefore, a bicycle is an “other means of conveyance” as that term is used in the statute. It is not the business of this court to declare what the legislature intended. Our job is to interpret ambiguity, and I do not believe, in light of the legislative history, that there is ambiguity in this case. Accordingly, I respectfully dissent.

⁸Defendant argues that because La. Rev. Stat. 14:98, unlike its predecessor, the Highway DWI Statute, applies anywhere in the state, including private property, the general public is sure to be caught unaware should we find that La. Rev. Stat. 14:98 includes non-motorized forms of transport, i.e., most people would not understand that criminal penalties could attach for riding a bicycle, while intoxicated, in one’s own backyard. While speculation as to potential factual scenarios can be fascinating, it is inappropriate for our task at hand. As defendant was arrested for DWI on a state highway, we need not consider any potential notice problem associated with a DWI offense committed in his backyard.