

SUPREME COURT OF LOUISIANA

No. 98-C-1170

CITY OF NEW ORLEANS AND THE VIEUX CARRÉ COMMISSION

versus

BOARD OF DIRECTORS OF THE LOUISIANA STATE MUSEUM,
JAMES SEFCIK; TAMMANY CONTRACTING COMPANY; AND THE
DEPARTMENT OF CULTURE, RECREATION AND TOURISM

ON WRIT OF CERTIORARI
TO THE COURT OF APPEAL,
FOURTH CIRCUIT,
PARISH OF ORLEANS

KNOLL, JUSTICE, assigning additional concurring reasons*

In addition to the reason assigned as the organ for this Court, I write separately to address the issue of whether the VCC has jurisdiction over public buildings located within the Vieux Carré.¹ While the court of appeal concluded that the VCC had such jurisdiction, I conclude that by the clear language of the Constitution, the VCC's jurisdiction is limited solely to a reasonable degree of control over "private and semi-public" buildings located within the Vieux Carré.

The constitutionally mandated jurisdiction of the VCC is not omnipotent. Rather, the Constitution authorizes the VCC's jurisdiction only for the exercise of a *reasonable* degree of control over *private and semi-public building* located within the Vieux Carré to prevent the impairment of the architectural and historical worth of its *tout ensemble*. The constitutionally limited duties of the VCC include reviewing applications for the erection of any new building or for alterations or additions to any existing building in the Vieux Carré, as far as they relate to the appearance, color, texture of materials and architectural design of the exterior. Additionally, the VCC is charged with the duty of promptly making recommendations to the City Council. The clear purpose of limiting the VCC's duties was to ensure that experts in historic and architectural preservation would assist the

* Kimball, J., not on panel. See Rule IV, Part 2, § 3.

¹ While I conclude that the LSM was under no constitutional duty to seek a permit from the VCC, the LSM, following the principle of comity suggested by Attorney General's Opinion No. 79-60, nonetheless sought a permit from the VCC. Accordingly, because the LSM purposefully *availed* itself of the VCC's jurisdiction, the resolution of the action under the abridgment of State's police power is correct.

City Council's duty in maintaining and preserving the *tout ensemble* of the Vieux Carré. In the case *sub judice*, the LSM opposed the VCC's position that the LSM is required to seek and receive a permit from the VCC before any construction by filing an exception of no cause of action, urging that the VCC's jurisdiction does not include public buildings.

In interpreting amendments to our Constitution, courts should follow certain axioms. Generally, the Louisiana Constitution and its amendments are subject to the same rules of interpretation as other legislation. *Succession of Lauga*, 624 So.2d 1156, 1165 (La.1993). A constitutional provision is the solemn expression of the legislative will and the people who adopted it; thus, the interpretation of a constitutional provision is primarily the search for how the people who adopted it understood it, and not only how the drafters understood it. *Id.*; *Cf. Hutchinson v. Patel*, 93-2156 (La. 5/23/94), 637 So.2d 415. When a constitutional provision is clear and unambiguous and its application does not lead to absurd consequences, it shall be applied as written, with no further interpretation made in search of the legislative intent. LA.CIV. CODE art. 9; *Daigrepoint v. Louisiana State Racing Comm'n*, 95-0539 (La.App. 4 Cir. 10/26/95), 663 So.2d 840, *writ denied*, 95-2828 (La. 2/2/96), 666 So.2d 1085. Courts must interpret every provision, considering the purpose of the provision and the interests it furthers and resolves. *Succession of Lauga*, 624 So.2d at 1165. The starting point for interpretation of any constitutional provision is the language of the provision itself. *Touchard v. Williams*, 617 So.2d 885 (La.1993).

Section 22(A) of the Constitution is supreme law. We must view any ordinance or action on that subject matter in the light of section 22(A)'s provisions. It is fundamental that no inferior enactment can violate the manifest tenor of our Constitution. We cannot consider only those portions of the constitutional amendment that deal with the discretionary authority of the City and the VCC in our deliberation.¹ Rather, we must consider the entirety of the amendment in determining its dictates. When the constitutional amendment is read as a whole and in context, the expressed terms "private and semi-public" are clear limitations on the constitutional grant of authority over buildings located within the Vieux Carré subject to the VCC's jurisdiction. That is, the constitutional provision is clear and unambiguous, and its application does not lead to absurd consequences; therefore, it must

¹ The City and the VCC, for example, have discretionary authority under the Constitution to designate the buildings which in their opinion are considered worthy of preservation. *See* LA.CONST. art. XIV, § 22(A).

applied as written and no further interpretation may be made in search of the people who adopted it or its drafters' intent. LA.CIV. CODE art. 9; *Daigrepoint*, 663 So.2d at 840. As such, the VCC, in the exercise of the trust in preserving the Vieux Carré imposed upon it by the Constitution, may not exercise control over those public buildings entrusted to the LSM for the same purpose.

I agree with the court of appeal that the constitutional amendment evidenced a need for uniformity. However, I do not agree with the conclusion that the “language, ‘private and semi-public buildings’ was meant to specifically include private and semi-public buildings, not to tacitly exclude public buildings.”² Such a conclusion of the constitutional provision reads out this clear limitation, reads in what is not there, and renders the words meaningless. Such a conclusion is an interpretation in search of the amendment’s intent, violating our jurisprudential rules on statutory interpretation. Courts must afford a reasonable and practical effect to entire constitutional provisions over one that renders part of it meaningless or useless. *Smith v. Cajun Insulation, Inc.*, 392 So.2d 398 (La.1980); *J.M. Brown Const. Co. v. D & M Mech. Cons., Inc.*, 275 So.2d 401 (La.1973). Courts are required to give effect to all parts of a constitutional provision and not adopt constructions making any part superfluous, meaningless, or nugatory. *First Nat’l Bank of Boston v. Beckwith Mach. Co.*, 94-2065 (La. 2/20/95), 650 So.2d 1148.

Instead of the erroneous interpretation by the court of appeal, I find that the “Duties” section of the amendment makes clear that the VCC’s authority only extends to a “*reasonable degree of control . . . over . . . private and semi-public buildings erected on or abutting the public streets of said Vieux Carré section.*” LA.CONST. art. XIV, § 22(A) (1921) (emphasis added). Thus, I conclude that by the clear and unambiguous language of our Constitution, the VCC lacks any jurisdictional authority over *public* buildings located within the Vieux Carré. Accordingly, by the clear and explicit terms of the Constitution, the law imposes an insurmountable bar to the relief sought by the VCC. Therefore, the trial court’s granting of the LSM’s exception of no cause of action and dismissal of the VCC’s temporary restraining order and petition for injunctive relief was

² The court of appeal also noted that because the New Orleans Charter and Code both refer only to “all buildings” and “buildings” this evidenced “an intent to include all building, whether public or private.” *Board of Dirs. Of La. State Museum*, 709 So.2d at 1013-14. However, this rationale is misplaced. Despite what the City may have intended by its own provisions, the proper focus of the inquiry is on the constitutional provision, not the inferior legislation. *Succession of Lauga*, 624 So.2d at 1165. Further, legislation of a home rule municipality or parish may not conflict with the Constitution. *Board or Comm’rs of Orleans Levee Dist.*, 640 So.2d at 243-44.

correct.