

Ky. OAG 97-16, 1997 WL 295189 (Ky.A.G.)

Office of the Attorney General
Commonwealth of Kentucky

OAG 97-16

May 15, 1997

Subject: Changes to the Domestic Mail Classification Schedule

Syllabus: The U.S. Postal Service's decision to redesignate "Second Class" mail as "Periodicals" is a ministerial change as the eligibility requirements for obtaining a permit remain the same. Therefore, the requirement of a "Second Class" mailing permit found in [KRS 424.120](#) should now be read as a requirement for a "Periodicals" mailing permit.

Statute construed: [KRS 424.120](#)

David T. Thompson
Executive Director

Opinion of the Attorney General

Effective July 1, 1996, the United States Postal Service enacted a number of changes in the Domestic Mail Classification Schedule. Vol. 61 Federal Register; No. 49, page 10114. Accordingly, "Second Class" mail has been redesignated as "Periodicals." This change is referred to in the Federal Register as a revision "in nomenclature" and appears to be void of any substantive changes.

Our office has been asked to examine the effect of the changes to the Domestic Mail Classification Schedule upon [KRS 424.120](#). It is the position of the Kentucky Press Association that the changes to the Schedule are simply ministerial and that there is no difference in the eligibility requirements for the new "Periodicals" class of mail from the former category referred to as "Second Class" mail.

We begin our analysis with a review of KRS Chapter 424 which sets forth the criteria for the publication of legal notices in the Commonwealth of Kentucky. Pursuant to this chapter, all newspapers which are permitted to publish legal notices must meet the requirements set forth in [KRS 424.120](#). Said statute states in relevant part:

(1) Except as provided in subsection (2) of this section, if an advertisement for a publication area is required by law to be published in a newspaper, the publication shall be made in a newspaper that meets the following requirements:

(a) It shall be published in the publication area. A newspaper shall be deemed to be published in the area if it maintains its principal office in the area for the purpose of gathering news and soliciting advertisements and other general business of newspaper publications, *and has a second-class mailing permit* issued for that office.

(Emphasis added.)

Clearly, [KRS 424.120](#) requires newspapers to have a second-class mailing permit. However, pursuant to the

changes instituted by the United States Postal Service, such a permit no longer exists. As a result, we are left with the question of what effect the federal action has upon our state statute. Specifically, we ask how can a newspaper comply with [KRS 424.120](#) when it can no longer obtain the necessary second-class mailing permit. To answer these questions, we must turn to the rules of statutory construction.

It is a basic premise of statutory construction that the language used in a statute should be construed so as to carry out the purpose of the statute. *Singleton v. Commonwealth*, 164 Ky. 243, 175 S.W. 372 (1915). Over the years, many courts have adhered to this rule, reinforcing the concept that the purpose of statutory construction is to give effect to the legislative intent. *See, e.g., Martin v. Louisville Motors*, 276 Ky. 696, 125 S.W.2d 241, 245 (1939) (stating that in matters of statutory construction, it is the legislative will that is controlling, not the specific words.) As the Sixth Circuit Court of Appeals stated in *Egyptian Supply Co. v. Boyd*:

*2 In carrying out legislative purpose which is the prime and sole object of all rules of statutory construction, the courts are not always confined to the literal meaning of a statute and to this end will disregard the literal import of words used, when the reason of the law is indicated by its general terms and when adherence to its strict verbiage or punctuation will defeat its purpose.

[117 F.2d 608, 611-612 \(6th Cir. 1941\)](#).

A few years later, the Supreme Court espoused this philosophy in *Perry v. Commerce Loan Company*, 383 U.S. 392, 400, 86 S.Ct. 852, 857, 15 L.Ed.2d 827, rehearing denied, 384 U.S. 934, 86 S.Ct. 1441, 16 L.Ed.2d 525 (1966). Reviewing the Bankruptcy Act, the court noted that the most persuasive evidence of the purpose of a statute can be found in the words employed by the legislature. In such cases where those words are sufficient in and of themselves to determine the purpose, the plain meaning of the words should be followed. However, when the plain meaning leads to absurd or futile results, the court may look beyond the words to ascertain or carry out the purpose. *See also, Colautti v. Franklin*, 439 U.S. 379, 392, 99 S.Ct. 675,684, 58 L.Ed.2d 596 (1979) (stating that it is “an elementary canon of construction that a statute should be interpreted so as not to render one part inoperative.”); *U.S. v. Branham*, 97 F.3d 835, 846 (6th Cir. 1996); and *Overnite Transportation Co. v. Gaddis*, [Ky.App., 793 S.W.2d 129, 131 \(1990\)](#) (noting that a departure from the literal meaning of a statute may be warranted when adherence leads to “an unreasonable or nonsensical result”).

Applying the foregoing principles of statutory construction to the question before us, we find that [KRS 424.120](#)'s requirement of a “Second Class” mailing permit should now be read as a requirement for a “Periodicals” mailing permit. We base our decision upon the observation that the changes to the U.S. Postal Services's Domestic Mail Classification Schedule, i.e., redesignating “Second Class” mail as “Periodicals,” is a ministerial change. The eligibility requirements for the new “Periodicals” class of mail do not differ from the former category referred to as “Second Class” mail. To find otherwise would thwart the legislative will and lead to a nonsensical result.

We caution, however, that our interpretation applies only to the language found in [KRS 424.120](#). The interpretation of the phrase “Second Class” mail as it may appear elsewhere in the Kentucky Revised Statutes has not been presented for our consideration and as such is a question left for another day.

Albert B. Chandler III
Attorney General

Diane Schuler Fleming
Assistant Attorney General

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