

Roger MEARS, County Judge,  
Pulaski County, Arkansas *v.* ARKANSAS  
STATE HOSPITAL

79-5

581 S.W. 2d 339

Opinion delivered May 29, 1979  
(Division II)

1. STATUTES — STATUTORY CONSTRUCTION — GIVING STATUTE USUAL & ORDINARY MEANING. — A statute must be given its usual and ordinary meaning.
2. STATUTES — UNAMBIGUOUS STATUTES — NO AUTHORITY IN COURT TO CONSTRUE DIFFERENTLY. — The Supreme Court has no authority to construe a statute to mean other than what it says, if it is unambiguous.
3. STATUTES — PLAIN MEANING — COMMENTARY, EFFECT OF. — The commentary to a statute does not control its plain meaning.
4. CRIMINAL LAW — MENTAL EXAMINATION OF DEFENDANT — STATUTORY LIABILITY OF STATE ONLY FOR PAYMENT OF PERSONS MAKING OR ASSISTING IN EXAMINATION. — Where a statute requires only that the state pay for the “persons making or assisting in the examination” of criminals committed for mental examinations and says nothing about the maintenance costs of room and board, the statute is plain and unambiguous as to the extent of the state’s responsibility, and the state is liable only for the expenses enumerated in the statute.
5. CRIMINAL LAW — MENTAL EXAMINATIONS OF CRIMINAL DEFEND-

ARK.] MEARS, COUNTY JUDGE v. ARK. STATE HOSPITAL 845

ANTS — STATUTES REQUIRING COUNTY TO PAY COSTS NOT REPEALED BY IMPLICATION. — Implied repeals are not favored, and Ark. Stat. Ann. § 41-605 (9) (Repl. 1977) does not impliedly repeal the provisions of Ark. Stat. Ann. § 43-1301 (Repl. 1977) and Ark. Stat. Ann. § 59-404 (Repl. 1971), which provide that the county is to bear the costs of mental examinations of criminal defendants.

6. STATUTES — STATUTORY CONSTRUCTION — INTENT OF LEGISLATURE, HOW DETERMINED. — To ascertain the intent of the legislature, the Supreme Court examines the statute historically, as well as the contemporaneous conditions at the time of its enactment, consequences of interpretation, and other matters of common knowledge within the limits of the Court's jurisdiction.
7. CRIMINAL LAW — COSTS OF MENTAL EXAMINATIONS OF CRIMINAL DEFENDANTS — COSTS HISTORICALLY BORNE BY COUNTY. — Counties historically have borne the costs of mental examinations when criminal defendants are committed for observation, and they are obligated to do so when required by statute.
8. CRIMINAL LAW — COSTS OF MENTAL EXAMINATIONS OF CRIMINAL DEFENDANTS — UNASSIGNED COSTS LEFT TO COUNTY FOR PAYMENT. — Ark. Stat. Ann. § 41-605 (9) (Repl. 1977) mandates the state to pay only the costs of personnel making or assisting in the mental examination of criminal defendants, and the unassigned costs are left to the county for payment.

Appeal from Pulaski Circuit Court, Third Division, *Tom F. Digby*, Judge; affirmed.

*Wilbur C. "Dub" Bentley*, Pros. Atty., by: *John Wesley Hall*, Deputy. Pros. Atty., for appellant.

*Hall, Tucker, Lovell & Alsobrook*, for appellee.

FRANK HOLT, Justice. The issue on this appeal is the interpretation of Ark. Crim. Code § 41-605 (9) (1976). Before its amendment in 1977, it read in pertinent part: "The compensation of persons making or assisting in the examination . . . shall be paid by the state." This statute was in effect between January, 1976, and June, 1977. During this time the appellee hospital billed Pulaski County for the "necessary maintenance costs of room and board" for 54 criminal defendants committed to it for mental examinations. The county refused to remit payment. The trial court held that the claims should be paid by the county, and we agree.

For reversal appellant argues that this statute should be interpreted to require the state and not the county to pay these costs for these criminal commitments. He argues that § 41-605 (9) is ambiguous and, therefore, should be construed as requiring the state to pay all costs of the commitments rather than merely the compensation of the persons who made or assisted in the examinations. A statute must be given its usual and ordinary meaning. *City of North Little Rock v. Montgomery*, 261 Ark. 16, 546 S.W. 2d 154 (1977). We have no authority to construe a statute to mean other than what it says, if it is unambiguous. *Weston v. State*, 258 Ark. 707, 528 S.W. 2d 412 (1975). The commentary to a statute does not control its plain meaning. *Britt v. State*, 261 Ark. 488, 549 S.W. 2d 84 (1977). Here the statute requires only that the state pay for the "persons making or assisting in the examination." It says nothing about the maintenance costs of room and board. In our view the statute is plain and unambiguous as to the extent of the state's responsibility.

Neither do we think that the enactment of § 41-605 (9) impliedly repealed the provisions of Ark. Stat. Ann. § 43-1301 (Repl. 1977) and Ark. Stat. Ann. § 59-404 (Repl. 1971), which provide that the county is to bear the costs of mental examinations of criminal defendants. Implied repeals are not favored. *Selig v. Powell*, 253 Ark. 555, 489 S.W. 2d 484 (1972). To ascertain the intent of the legislature, we examine the statute historically, as well as the contemporaneous conditions at the time of its enactment, consequences of interpretation, and other matters of common knowledge within the limits of our jurisdiction. *Prewitt v. Warfield*, 203 Ark. 137, 156 S.W. 2d 238 (1941). Counties historically have borne the costs of mental examinations when criminal defendants are committed for observation. §§ 43-1301 and 59-404. Also *Campbell, County Judge v. Arkansas State Hospital*, 228 Ark. 205, 306 S.W. 2d 313 (1957). Counties are obligated to pay for costs of the administration of justice where required to do so by the legislature. *Mears v. Hall*, 263 Ark. 827, 569 S.W. 2d 91 (1978). The legislature, by enacting § 41-605 (9), as evidenced by the commentary, sought to "minimize" those costs to the county as a factor influencing the decision by a trial judge to commit a criminal defendant for a mental examination. It did not eliminate payments by the county of all cost factors. Here, as indicated, we interpret § 41-605 (9), as originally

enacted, as mandating the state to pay only the costs of personnel making or assisting in the mental examination. That leaves the unassigned costs to the county for payment. Consequently, if the legislature intended for § 41-605 (9) to be a complete substitute for §§ 43-1301 and 59-404, then there would be no provision for the assignment of responsibility for the remainder of the costs of examination; i.e., the "necessary maintenance costs of room and board" as sought here. This would be an impractical result which we think the legislature did not intend. The court was correct in its interpretation of the statutes involved.

Affirmed.

We agree: HARRIS, C.J., and FOGLEMAN and PURTLE, JJ.

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