OPINION OF THE SUPREME COURT OF NEBRASKA

Case Title

Central States Foundation, a Nebraska not-for-profit corporation, Appellant,
v.
M. Berri Balka, Tax Commissioner, State of Nebraska, and
the Nebraska Department of Revenue, Appellees.

Case Caption

Central States Found. v. Balka

Filed March 5, 1999. No. S-97-1192.

Appeal from the District Court for Lancaster County: Earl J. Witthoff, Judge. Affirmed.

Michael D. Kozlik and Robert S. Lannin, of Croker, Huck, Kasher, DeWitt, Anderson & Gonderinger, P.C., for appellant.

Don Stenberg, Attorney General, and L. Jay Bartel for appellees.

HENDRY, C.J., WRIGHT, CONNOLLY, GERRARD, STEPHAN, MCCORMACK, and MILLER-LERMAN, JJ.

GERRARD, J.

NATURE OF CASE

The Youth Athletic Association (YAA) is a nonprofit organization licensed to sell pickle cards. Central States Foundation (Central States) is a nonprofit organization which is not licensed to sell pickle cards, but to which the YAA had donated pickle card proceeds. In order to determine that the YAA's pickle card proceeds were being disbursed lawfully, M. Berri Balka in his capacity as Tax Commissioner of the State of Nebraska and the Nebraska Department of Revenue (collectively the Department) notified Central States that the Department would conduct an audit of Central States.

Central States sued in Lancaster County District Court, seeking an injunction against the audit. The district court denied a permanent injunction, and Central States appealed. We moved the case to the Nebraska Supreme Court docket on our own motion. The question presented in this appeal is whether the Department may audit the records of an organization which is not licensed to sell pickle cards but does receive pickle card revenues from a licensee.

FACTUAL BACKGROUND

The Nebraska Pickle Card Lottery Act, Neb. Rev. Stat. §§ 9-301 through 9-356 (Reissue 1997), provides for licensed nonprofit organizations to raise revenue by selling pickle cards. A pickle card is a form of lottery which affords a person the opportunity to win a cash prize by removing a tab from the card to reveal a set or combination of numbers, letters, or symbols. See § 9-315.

The Department is charged by statute with the responsibility to regulate the issuance, renewal, and revocation of licenses; to enforce the terms of the Nebraska Pickle Card Lottery Act; to regulate compliance with the requirements of the Nebraska Pickle Card Lottery Act; and to investigate potential violations. See §§ 9-306 and 9-322. The primary function of this enforcement and regulation capacity is to ensure that pickle card revenues are used for lawful purposes, which may be generally described as purposes which are charitable or benefit the public welfare. See § 9-309.

The Department conducted an audit of the YAA, as authorized by § 9-322(9), and discovered that much of the YAA's pickle card revenue was being directed to Central States. In total, the Department determined that of $177,365.90 designated by the YAA as "donated to charity" between July 5, 1995, and June 30, 1996, $159,000 was given to or benefited Central States.

The Department informed Central States by letter that the Department had scheduled an audit of Central States in order for the Department to review and examine all books and records pertaining to compliance with the Nebraska Pickle Card Lottery Act. Central States then filed a petition in district court against the Department, asking that the Department be enjoined from any examination of Central States' books and records pertaining to compliance with the Nebraska Pickle Card Lottery Act. Central States also alleged that an audit would be a violation of its rights under the Fourth Amendment to the U.S. Constitution.

ANALYSIS

STATUTORY AUTHORITY TO AUDIT CENTRAL STATES

Central States claims that the Department has no authority to audit Central States' records. The Department argues that it is authorized to do so pursuant to § 9-322(9). That statute provides, in relevant part, that the Department shall have the power, function, and duty to

> examine or to cause to have examined, by any agent or representative designated by the department for such purpose, any books, papers, records, or memoranda relating to the conduct of lottery by the sale of pickle cards of any licensee, to require by administrative order or summons the production of such documents or the attendance of any person having knowledge in the premises, to take testimony under oath, and to require proof material for its information. If any such person willfully refuses to make documents available for examination by the department or its agent or representative or willfully fails to attend and testify, the department may apply to a judge of the district court of the county in which such person resides for an order directing such person to comply with the department's request.

Id.

Central States argues that this section does not authorize the Department to audit any organization that is not a pickle card licensee. The Department maintains that it is empowered to audit an organization that receives pickle card revenues, regardless of whether that organization is itself licensed to sell pickle cards.

Resolution of this issue rests on the meaning of the phrase "books, papers, records, or memoranda *relating to the conduct of lottery* by the sale of pickle cards." (Emphasis supplied.) See *id.* In the absence of anything to the contrary, statutory language is to be given its plain and ordinary meaning; an appellate court will not resort to interpretation to ascertain the meaning of statutory words which are plain, direct, and unambiguous. *Miller v. Meister & Segrist*, 255 Neb. 805, 587 N.W.2d 399 (1998).

It is well understood that "[t]he ordinary meaning of [the phrase 'relating to'] is a broad one--'to stand in some relation; to have bearing or concern; to pertain; refer; to bring into association with or connection with.'" *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 383, 112 S. Ct. 2031, 119 L. Ed. 2d 157 (1992) (quoting Black's Law Dictionary 1158 (5th ed. 1979)). Accord *Contractors Ass'n v. West Virginia DPS*, 189 W. Va. 685, 434 S.E.2d 357 (1993). Compare *In re Estate of Andersen*, 253 Neb. 748, 572 N.W.2d 93 (1998).

Other courts have stated that "relating to" means "in respect to; in reference to; in regard to." *Snowden v. School Dist. No. 401*, 38 Wash. 2d 691, 698, 231 P.2d 621, 625 (1951). See, also, *Harris v. State*, 260 Ark. 646, 543 S.W.2d 459 (1976) (en banc).

It has also been stated that "[t]he ordinary meaning of 'relating to' is that there is a connection between two subjects, not that the subjects have to be the same." *Contractors Ass'n v. West Virginia DPS*, 189 W. Va. at 697, 434 S.E.2d at 369. See, also, *Matter of City of New York (Town of Hempstead)*, 125 A.D. 219, 109 N.Y.S. 652 (1908), *aff'd* 192 N.Y. 569, 85 N.E. 1117, *motion to amend remittitur denied* 194 N.Y. 587, 88 N.E. 1134 (1909).

The clear import of these well-established standards is that the phrase "relating to" is to be read broadly and should be interpreted as being comprehensive of the subject indicated. In this case, the subject indicated is "the conduct of lottery by the sale of pickle cards." See § 9-322(9). In the context of the overall legislative scheme of the Nebraska Pickle Card Lottery Act, the

profits of lottery by the sale of pickle cards are to be used from being subverted by improper elements.

It would be difficult, if not impossible, for the Department to ensure that pickle card profits were "used for legitimate purposes," and to prevent those purposes from being "subverted by improper elements," if the Department is unable to investigate the organizations which received donations from pickle card revenue.

The Nebraska Pickle Card Lottery Act further contains sections that extensively define the purposes for which pickle card profits may lawfully be spent. See, e.g., §§ 9-309, 9-347, 9-347.01, and 9-349. When considered as a whole, the Nebraska Pickle Card Lottery Act, as the district court noted, "evidence[s] a clear concern by the Legislature regarding the ultimate use of pickle card proceeds, even after initial donation by a licensed organization." In construing a statute, a court must look to the statutory objective to be accomplished, the evils and mischiefs sought to be remedied, and the purpose to be served, and then must place on the statute a reasonable or liberal construction that best achieves the statute's purpose, rather than a construction that defeats the statutory purpose. *Brown v. Wilson*, 252 Neb. 782, 567 N.W.2d 124 (1997). With that in mind, it is entirely appropriate that § 9-322(9) allows the Department to monitor the disposition of pickle card revenue with reasonable audits of organizations that receive that revenue.

We conclude that the Department is authorized by statute to audit Central States' records relating to its expenditure of donated pickle card revenue and that the district court was correct in so finding. Accordingly, Central States' assignment of error is without merit.

PROPRIETY OF INJUNCTIVE RELIEF

Having determined that Central States falls within the scope of § 9-322(9), we must determine whether the provisions of that statute entitle Central States to seek injunctive relief. Specifically, we must decide if the statute provides an adequate remedy at law that would make injunctive relief inappropriate.

It is well established that an injunction is an extraordinary remedy and ordinarily should not be granted except in a clear case where there is actual and substantial injury. Such a remedy should not be granted unless the right is clear, the damage is irreparable, and the remedy at law is inadequate to prevent a failure of justice. *State v. World Diversified, Inc.*, 254 Neb. 307, 576 N.W.2d 198 (1998). As noted previously, § 9-322(9) provides that if an entity refuses to honor a request for documents, the Department "may apply to a judge of the district court of the county in which such person resides for an order directing such person to comply with the department's request."

The federal courts have established that while an administrative agency may issue an administrative subpoena without first obtaining a search warrant, in order for the procedure to satisfy the Fourth Amendment to the U.S. Constitution, the subpoenaed party must have the opportunity for judicial review of the subpoena's requirements before suffering any penalties for refusing to comply. See, *Donovan v. Lone Steer, Inc.*, 464 U.S. 408, 104 S. Ct. 769, 78 L. Ed. 2d 567 (1984); *See v. City of Seattle*, 387 U.S. 541, 87 S. Ct. 1737, 18 L. Ed. 2d 943 (1967); *United States v. Powell*, 379 U.S. 48, 85 S. Ct. 248, 13 L. Ed. 2d 112 (1964). This is accomplished by requiring the agency to seek judicial enforcement of a subpoena at a contested hearing. *Id.* At such a hearing, if the subpoenaed party wishes to oppose enforcement, it may raise an appropriate challenge. See, *Donovan v. Lone Steer, Inc., supra*; *United States v. Powell, supra*; *United States v. Morton Salt Co.*, 338 U.S. 632, 70 S. Ct. 357, 94 L. Ed. 401 (1950).