

**IN THE SUPREME COURT OF MISSISSIPPI**

**NO. 2009-CA-01077**

**CONSERVATORSHIP OF THE ESTATE  
OF ROBERT BAIRD MOOR, BY BETTY  
PEARSON MOOR AND ROBERT BAIRD  
MOOR, JR., CO-CONSERVATORS**

**APPELLANT**

**VS.**

**STATE OF MISSISSIPPI, DEPARTMENT  
OF WILDLIFE, FISHERIES AND PARKS;  
LEFLORE COUNTY, MISSISSIPPI; AND  
LEFLORE COUNTY SCHOOL DISTRICT**

**APPELLEES**

*Appeal from the Chancery Court of the First Judicial District of Hinds County, Mississippi  
No. G2005-737 R/1*

**BRIEF FOR THE APPELLEES**

**ORAL ARGUMENT NOT REQUESTED**

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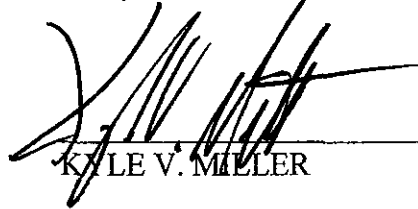
**APPELLEES**

**CERTIFICATE OF INTERESTED PERSONS**

The undersigned counsel of record certifies that the following listed persons and entities have an interest in the outcome of this case. These representations are made in order that the Justices of the Supreme Court and/or the Judges of the Court of Appeals may evaluate possible disqualification or recusal:

1. Estate of Robert Baird Moor, Plaintiff/Appellant;
2. Betty Pearson Moor, Plaintiff/Appellant;
3. Robert Baird Moor, Jr., Plaintiff/Appellant;
4. Janie Logan Moor, Plaintiff;
5. Donald W. Boykin, counsel for Plaintiffs/Appellants;
6. State of Mississippi, Department of Wildlife, Fisheries and Parks, Defendant/Appellee;
7. Peter W. Cleveland, counsel for Defendant/Appellee State of Mississippi, Department of Wildlife, Fisheries and Parks;
8. Leflore County, Mississippi, Defendant/Appellee;
9. Joyce I. Chiles, counsel for Defendant/Appellee Leflore County;
10. Leflore County School District, Defendant/Appellee;

11. Willie J. Perkins, Sr., counsel for Defendant/Appellee Leflore County School District;
12. LeAnn W. Nealey, counsel for Defendant/Appellee Leflore County School District;
13. Lem E. Montgomery, counsel for Defendant/Appellee Leflore County School District;
14. Kyle V. Miller, counsel for Defendant/Appellee Leflore County School District; and
15. Butler, Snow, O'Mara, Stevens & Cannada, PLLC, counsel for Defendant/Appellee Leflore County School District.

A handwritten signature in black ink, appearing to read 'KYLE V. MILLER', is written over a horizontal line.

KYLE V. MILLER  
COUNSEL FOR LEFLORE COUNTY SCHOOL  
DISTRICT

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## **STATEMENT OF THE ISSUES**

- I. WHETHER THE CHANCERY COURT CORRECTLY FOUND NO GENUINE ISSUE OF MATERIAL FACT ON THE ISSUE OF WHETHER THE DEFENDANTS EXPENDED \$2,000,000 ON FLOREWOOD PLANTATION?**
- II. WHETHER THE CHANCERY COURT CORRECTLY INTERPRETED THE TERM "CONSTRUCTION" COSTS TO INCLUDE MORE THAN "BRICK AND MORTAR" EXPENSES?**
- III. WHETHER PLAINTIFFS' ARGUMENT THAT DEFENDANTS FAILED TO EXPEND \$2,000,000 ON THE CONSTRUCTION OF FLOREWOOD PLANTATION IS RIPE FOR ADJUDICATION?**
- IV. WHETHER THE CHANCERY COURT CORRECTLY FOUND NO GENUINE ISSUE OF MATERIAL FACT ON THE ISSUE OF WHETHER REVERTER LANGUAGE WAS ABSENT FROM THE WARRANTY DEEDS?**
- V. WHETHER THE CHANCERY COURT CORRECTLY INTERPRETED THE LANGUAGE OF THE WARRANTY DEEDS TO FIND NO REVERSIONARY INTENT?**

## STATEMENT OF THE CASE

### A. Nature of the case, course of proceedings, and disposition.

The instant appeal arises from a real property action brought by the plaintiffs/appellants the Conservatorship of the Estate of Robert Baird Moor, Betty Pearson Moor, and Robert Baird Moor, Jr. (collectively "Moors")<sup>1</sup> against the defendant/appellees the State of Mississippi, Department of Wildlife, Fisheries and Parks ("MDWFP"), Leflore County, Mississippi ("County"), and the Leflore County School District ("District") (collectively "Defendants"). Charles H. Moor, Robert Baird Moor, and Marion M. Moor (collectively "Grantors") conveyed certain real property to the District by warranty deed. The real property was then conveyed by the District to the County by a second warranty deed and was later conveyed from the County to MDWFP by a third warranty deed. The Moors allege that the Defendants violated certain conditions contained in the warranty deeds regarding the use the subject property, arguing that the property should revert to them, or in the alternative, that they should be entitled to repurchase the property for \$750.00 per acre.

The Moors filed their Complaint on April 18, 2005, in the Chancery Court for the First Judicial District of Hinds County, Mississippi. (R. 000001-22.) On May 24, 2005, MDWFP filed its motion to dismiss or in the alternative for summary judgment. (R. 000023-29.) On July 20, 2005, with leave of the Chancery Court, the Moors filed their First Amended Complaint for Declaratory Judgment. (R. 000047-69.) On September 9, 2005, the District and the County filed separate motions to dismiss or, in the alternative, for summary judgment. (R. 000070-72; R. 00007375.) On January 15, 2008, the Moors filed their cross-motion for summary judgment. (R. 000167-88.) The Chancery Court held a hearing on the pending motions on March 18, 2008.

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<sup>1</sup> Janie Logan Moor was also a plaintiff in the underlying action. However, she is not a party to the instant appeal.



Thereafter, the Chancery Court entered a memorandum opinion on June 4, 2008, granting Defendants' motions for summary judgment and denying the Moors' motion for summary judgment. (R. 000232-250, Pls.' Record Excerpts ("P.R.E.") 9-27.) The Chancery Court found that there was no reversionary language in three deeds. (R. 000236-38, P.R.E. 13-15.) Additionally, the Chancery Court found that the three conditions contained in the warranty deeds were met: (1) the subject property was used for the construction of an historical park; (2) MDWFP spent at least \$2,000,000 on the construction of the historical park; and (3) construction commenced before July 1, 1976. (R. 000238-39, P.R.E. 15-16.) The Chancery Court entered a final judgment in favor of Defendants on June 4, 2008. (R. 000229-31, P.R.E. 6-8.)

On June 13, 2008, the Moors filed a motion to alter or amend the memorandum opinion and final judgment of the Chancery Court. (R. 000251-60.) A hearing on that motion was held on May 28, 2009. The Chancery Court denied the Moors' motion to alter or amend by written order on June 1, 2009. (R. 000285-86, P.R.E. 28-29.) The Moors filed their notice of appeal on July 1, 2009. (R. 000287-89.)

**B. Statement of the facts.**

On May 17, 1973, the Grantors entered into an option agreement with the County, granting the County the option to purchase approximately 100 acres of real property located within the County. (R. 000006-11, Defs.' R. Excerpts ("D.R.E.") 001-6.) The County was granted the option to purchase the real property for the price of \$1,050.00 per acre. (R. 000007, D.R.E. 002.) The Option to Purchase and Agreement ("Option to Purchase") stated that the property would be:

[C]onveyed to the [County] for the sole and exclusive purpose of the [County] or its successor in title utilizing said property as a Historical Park. \$2,000,000 or a greater sum will be expended in constructing said Historical Park on the property herein conveyed. Construction on said Historical Park will begin on or before July 1, 1976, and [the County] and [its] successors in title hereby covenant

and agree to use due diligence in completing said Park. In the event construction is not begun on the Historical Park within the time specified, the Grantors, their heirs or assigns shall have the exclusive option to purchase said property for the sum of \$750.00 per acre for a period of 120 days from the first breach of the foregoing conditions, which privilege shall be binding on the [County], its heirs or assigns, it being hereby agreed that the cash consideration to be paid hereunder is substantially less than the present market value of said property and that the moving consideration is to aid in the construction of a Historical Park thereon.

3. If this option is exercised and if the Mississippi State Park Commission places a state park on the land herein conveyed and if in the future the State of Mississippi, or the then owner desires to sell the property herein conveyed, then the Grantors, their heirs and assigns, will have the right for a period of not exceeding 120 days of re-purchasing said property from the then owner at its offered price. The said property may never be sold unless the Grantors, their heirs or assigns, will be afforded an opportunity to purchase said property at the offered price and the Grantors will have the right of first refusal each time the property is offered for sale.

(R. 000007-8, D.R.E. 002-3 (emphasis added).) Nowhere in the Option to Purchase do the Grantors define the terms “constructing” or “construction.” (R. 000006-11, D.R.E. 001-6.) Nowhere does the Option to Purchase recite language providing for reverter in the event that the County ceased using the property as a historical park. (*Id.*) In fact, the Option to Purchase provides the Grantors with only a right of first refusal on later disposition of the property. (R. 000008, D.R.E. 003.)

The Grantors later conveyed the subject property to Otis W. Allen and R. Cunliffe McBee, as trustees of the District. (R. 000012-16, D.R.E. 007-11.) The instrument of conveyance was a warranty deed, dated August 20, 1973 (“First Warranty Deed”). (*Id.*) The First Warranty Deed did not recite verbatim the language of the Option to Purchase. (*Compare* R. 000007-8, D.R.E. 002-3, *with* R. 000015, D.R.E. 010.) Instead, the First Warranty Deed reads, in pertinent part:

The above described property is conveyed to the [District] subject to the condition that the [District] or [its] successors in title utilize said property for the construction of a Historical Park, and subject to the condition that \$2,000,000 or a greater sum, will be expended in constructing said Historical Park on the property therein conveyed, and subject to the condition that said construction shall begin on or before July 1, 1976. In the event construction is not begun on the Historical Park within the time specified, the [G]rantors, their heirs or assigns, shall have the exclusive option to purchase said property for the sum of \$750.00 per acre for a period of 120 days from the first breach of the foregoing conditions, which privileges shall be binding on the [District], [its] successors or assigns, it being hereby agreed that the cash consideration being paid hereunder in the event of breach of these conditions is substantially less than the present market value of said property and that the moving consideration is to aid in the construction of a Historical Park.

(R. 000015, D.R.E. 010 (emphasis added).) Nowhere does the First Warranty Deed define the terms “constructing” or “construction.” (R. 000012-16, D.R.E. 007-11.) Nowhere does the First Warranty Deed state that the property will revert to the Grantors if the property is no longer used as a historical park. (*Id.*)

The subject property was then conveyed from the District to the County by an instrument titled Special Warranty Deed and dated October 5, 1973 (“Second Warranty Deed”). (R. 000017-19, D.R.E. 012-14.) The language of the Second Warranty Deed did not recite verbatim the language of the First Warranty Deed. (*Compare* R. 000015, D.R.E. 010, *with* R. 000018, D.R.E. 013.) The Second Warranty Deed reads, in pertinent part:

The above described property is conveyed to the [County] subject that specific condition that the said [County], or its successors in title, utilize the said property for the construction of a Historical Park, and further subject to the condition that Two Million Dollars (\$2,000,000.00), or a greater sum, will be expended in constructing the said Historical Park on the property herein conveyed, and further subject to the condition that said construction shall begin on or before July 1, 1976, and in the event construction is not begun on the said park on or before July 1, 1976, Charles H. Moor, R.B. Moor and Marion M. Moor, prior owners of said land, have the exclusive option to purchase said property for the sum of \$750.00

per acre for a period of 120 days from the first breach of any of the conditions herein set out . . . .

(R. 000018, D.R.E. 013 (emphasis added).) Nowhere does the Second Warranty Deed define the terms “constructing” or “construction.” (R. 000017-19, D.R.E. 12-14.) Nowhere does the Second Warranty Deed state that the property will revert to the Grantors if the property is no longer used as a historical park. (*Id.*)

Finally, the real property was again conveyed by a document titled Warranty Deed and dated December 12, 1973 (“Third Warranty Deed”), transferring the property from the County to the Mississippi Park Commission, an agency of the State of Mississippi.<sup>2</sup> (R. 000020-22, D.R.E. 015-17.) As with each of the prior instruments, the Third Warranty Deed contained language different from its predecessor instruments:

The warranty of this conveyance is subject to the following conditions, to-wit:

. . .

4. The right and option of R.B. Moor, Charles H. Moor and Marion M. Moor to re-purchase said property for the sum of \$750.00 per acre in the event said property is not used for the construction of a Historical Park on said property on which \$2,000,000.00 or a greater sum will be expended in the construction of said historical park and further subject to the condition that said construction shall begin on or before July 1, 1976.

(R. 000021, D.R.E. 016.) Nowhere does the Third Warranty Deed define the terms “constructing” or “construction.” (R. 000020-22, D.R.E. 015-17.) Nowhere does the Third Warranty Deed state that the property will revert to the Grantors if the property is no longer used as a historical park. (*Id.*)

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<sup>2</sup> The Mississippi Parks Commission later became the Department of Wildlife, Fisheries and Parks. See Miss. Code Ann. § 55-3-31.

Thereafter, MDWFP constructed and operated a historical park known as the Florewood Plantation State Park ("Florewood Plantation"), located in Greenwood, Leflore County Mississippi. (R 000243.) MDWFP expended the following sums on the Florewood Plantation:

<b>Year</b>	<b>Purpose</b>	<b>Amount</b>
1974	Site Planning	\$15,000.00
1975	Cotton Museum	\$766,756.95
	Plantation Building (Phase I)	\$314,216.00
	Maintenance Building	\$29,574.00
	Water System	\$111,978.40
	Water Distribution	\$102,132.06
1977	Furniture & Equipment	\$104,882.20
	Plantation Buildings. (Phase II)	\$231,153.14
1978	Day-Use/Picnic Area	\$126,015.00
1979	Tram	\$46,682.24
	Cotton Museum Exhibits	\$67,000.00
1980	Tram Station	\$28,160.00
1981	Exhibits	\$37,588.00
	Furniture and Equipment	\$3,000.00
	Tram Road	\$10,331.92
1981-85	Phase II Buildings & Exhibits (Saw Mill, Gristmill Bolter, Shingle Mill, Planer, Cotton Gin, Steam Engine, etc.)	\$53,925.00
1983	Furniture and Equipment	\$2,968.00
<b>TOTAL:</b>		<b>\$2,051,362.91</b>

(R. 000028, D.R.E. 020.) Of the funds expended, \$2,000,000 were state funds, the remainder were federal funds. (*Id.*)

In 2004, the Mississippi State Legislature passed and the Governor signed into law House Bill 1741. The bill reads, in pertinent part:

**SECTION 21.** It is the intention of the Legislature that the Commission of the Mississippi Wildlife, Fisheries and Parks shall have the authority to close, transfer, lease or sell properties under

the department's jurisdiction. Pursuant to the above mentioned authority, the Legislature hereby identifies the following state parks as properties to be promptly disposed of by the Commission through closure, transfer, lease or sale:

...

Florewood Plantation State Park

Greenwood, Leflore County, Mississippi....

House Bill 1741 § 21 (2004 reg. sess.). Pursuant to House Bill 1741, MDWFP entered into a lease agreement with the County, leasing the subject property to the County for a term of twenty-five years. (R. 000181-188, D.R.E. 022-29.) In the lease, the County covenanted to “use said premises for the purpose of operating it as a state park for outdoor recreation and other related purposes.” (R. 000182, D.R.E. 023.) Additionally, the lease places the responsibility on MDWFP to make capital improvements to the property. (R. 000183, D.R.E. 024.)

It is undisputed that MDWFP began construction of a historical park on the subject property prior to July 1, 1976. (R. 000028, D.R.E. 020.) Likewise, it is undisputed that MDWFP operated a historical park – Florewood Plantation – on the subject property. (R. 000050.) Similarly, it is not disputed that MDWFP spent more than \$2,000,000 on the historical park. (R. 000028, D.R.E. 020.) The Moors’ points of contention in the lower court and here on appeal are: whether the \$2,000,000 expended by MDWFP can be considered “construction” expenses for purposes of satisfying the warranty deeds; and (2) whether the Moors have a reversionary interest in the property that was triggered by MDWFP leasing the subject property to the County.

## SUMMARY OF THE ARGUMENT

MDWFP satisfied the three conditions of the warranty deeds, and there is no genuine issue of material fact regarding the satisfaction of these conditions. MDWFP used the subject property for the construction of a historical park, construction commenced prior to July 1, 1976, and more than \$2,000,000 was expended in the construction of the historical park. The Moors argue that MDWFP failed to expend the necessary \$2,000,000 on “construction” costs. To reach this argument, the Moors apply a tortured reading of the term “construction” and assert that “construction” costs should be limited to “brick and mortar” expenses. This argument has no basis. Neither the language of the conveying instruments nor the prevailing definition of the term “construction” support the Moors’ limited interpretation of the term “construction.”

Alternatively, even if the Court applied the Moors’ definition of “construction,” the deeds contain no date certain by which the \$2,000,000 must be expended. There is nothing that prohibits MDWFP from expending additional sums of money on Florewood Plantation, and, in fact, the lease with the County assigns to MDWFP the responsibility of making capital improvements to the property. Accordingly, even if the Defendants have not yet expended \$2,000,000 or construction of the historical parks, the legal consequences of such failure to expend the \$2,000,000 is not yet ripe for adjudication.

The Moors’ second argument – that the property needed to be used as a historical park in perpetuity else it reverts to them – is similarly unsupported. None of the conveying instruments contain reverter language. The law does not favor the forfeiture of property, and deeds are strictly construed on the issue of whether a reversionary interest is created. The language of the deeds, at best, expresses a purpose for which the property is to be used; however, black letter Mississippi law provides that deviation from a stated purpose does not create reverter. Moreover, the language of the deeds must be read against the Grantors and the Moors.

**I. THERE IS NO GENUINE ISSUE OF MATERIAL FACT – MDWFP EXPENDED \$2,000,000 ON FLOREWOOD PLANTATION.**

The Option to Purchase and the three deeds imposed three conditions on the sale of the subject property: (1) for the property to be “utilize[d] . . . for the construction of a Historical Park;” (2) for at least \$2,000,000 to be “expended in constructing said Historical Park;” and (3) for “said construction [to] begin on or before July 1, 1976.” (R. 000015, D.R.E. 010; *see also* R. 000007-8, 18, 21, D.R.E. 002-3, 13, 16.) There is no dispute whatsoever regarding the commencement date of construction – construction began before July 1, 1976. Similarly, there is no dispute that the property was used for the construction of a historical park.<sup>3</sup>

The Moors argue that there is a genuine issue of material fact regarding whether \$2,000,000 was spent in the construction of the historical park. However, Plaintiffs presented the Chancery Court (and present this Court) with no evidence to counter Defendants’ competent summary judgment evidence demonstrating the expenditure of at least \$2,000,000.

**A. Standard of review is *de novo* regarding grant of summary judgment.**

The Mississippi appellate courts apply a *de novo* standard of review to a trial court’s grant or denial of a motion for summary judgment. *Cousin v. Enter. Leasing Co. – S. Cent., Inc.*, 948 So. 2d 1287, 1289 (¶6) (Miss. 2007). Accordingly, this Court should apply the same inquiry that the Chancery Court applied to the parties’ cross motions for summary judgment regarding the question of whether an issue of material fact exists.

Summary judgment is appropriate when the pleadings and the evidence before the court demonstrate that there exists no genuine issue regarding any material fact and that the movant is entitled to judgment as a matter of law. Miss. R. Civ. P. 56(c); *see Smith ex rel. Smith v. Gilmore Mem. Hosp., Inc.*, 952 So. 2d 177, 180 (¶ 8) (Miss. 2007). What constitutes a

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<sup>3</sup> There is a dispute, discussed *infra* §§ IV and V, regarding whether the deeds required the property to be used as a historical park in perpetuity.



“material” fact is determined by the elements of the claim. *See Montgomery v. Woolbright*, 904 So. 2d 1027, 1029 (¶ 7) (Miss. 2004) (“A fact is material if it ‘tends to resolve any of the issues properly raised by the parties.’ ” (quoting *Palmer v. Anderson Infirmary Benevolent Ass’n*, 656 So. 2d 790, 794 (Miss. 1995))).

A genuine issue of material fact is absent if the record, taken as a whole, could lead no rational trier of fact to a judgment in favor of the nonmoving party. *See Luvene v. Waldrup*, 903 So. 2d 745, 748 (¶ 10) (Miss. 2005) (“The non-moving party's claim must be supported by more than a mere scintilla of colorable evidence; it must be evidence upon which a fair-minded jury could return a favorable verdict.” (quoting *Wilbourn v. Stennett, Wilkinson & Ward*, 687 So. 2d 1205, 1214 (Miss. 1996))). The burden is on the movant to demonstrate the absence of a genuine issue of material fact. *Holman v. Howard Wilson Chrysler Jeep, Inc.*, 972 So. 2d 564, 568 (¶ 6) (Miss. 2008).

Once the movant satisfies its burden, to survive a motion for summary judgment, the nonmovant must rebut such a showing by coming forward with specific facts showing that there is a genuine issue for trial. *Cousin*, 948 So. 2d at 1289 (¶6). The nonmovant “may not rest upon mere allegations or denials of the pleadings.” *Id.* While all evidence must be viewed in the light most favorable to the non-moving party (*Vaughn v. Miss. Baptist Med. Ctr.*, 20 So. 3d 645, 649-50 (¶ 11) (Miss. 2009)), to satisfy his burden, the nonmovant must present more than a “mere scintilla of evidence” (*Pollard v. Sherwin-Williams Co.*, 955 So. 2d 764, 775-76 (¶¶ 33, 35) (Miss. 2007)). Additionally, if the nonmovant cannot make a sufficient showing to establish the existence of an essential element for which the nonmovant bears the burden at trial, summary judgment is appropriate. *Gilmore Mem. Hosp., Inc.*, 952 So. 2d at 180 (¶ 9).

**B. No fact issue regarding amount spent.**

On the various motions for summary judgment, the only competent evidence regarding the amount of money spent on the construction of Florewood Plantation was presented by the Defendants. In support of its motion to dismiss or in the alternative for summary judgment, MDWFP submitted an affidavit from W. Douglas Mann, Jr., general counsel to MDWFP. (R. 000026-29, D.R.E. 018-21.) Attached as Exhibit “A” to Mann’s affidavit was a listing of the historical expenditures for Florewood Plantation. (R. 000028, D.R.E. 020.) The listing plainly states that at least \$2,000,000 was expended on Florewood Plantation. (*Id.*)

The Moors proffered no evidence to counter the facts contained in the Mann Affidavit. Confronted with this uncontested, conclusive piece of competent summary judgment evidence, the Chancery Court found that at least \$2,000,000 had been spent on Florewood Park. (R. 000248, P.R.E. 25 (“[M]ore than \$2 million was spent on the project.”).) Even upon this Court’s *de novo* review of the Chancery Court’s holding, it cannot be said that there is a “fact issue” regarding whether \$2,000,000 was spent on the Florewood Plantation. Despite the Moors’ contention to the contrary, the issue is actually a question of law: as a matter of deed interpretation, was \$2,000,000 spent on the “construction” of Florewood Plantation?

**II. UNDER ORDINARY MEANING OF TERM “CONSTRUCTION” MORE THAN \$2,000,000 WAS SPENT ON “CONSTRUCTION” OF FLOREWOOD PLANTATION.**

Issues of contract interpretation present questions of law. The Moors argue that \$2,000,000 was not spent on the “construction” of Florewood Plantation by asserting that “construction” does not include expenditures for site planning, exhibits, equipment, and furniture. However, the Moors did not present the Chancery Court (and do not present this Court) with any interpretation of the term “construction” that would exclude such expenditures.

**A. Standard of review is *de novo* for contract interpretation.**

Questions of contract interpretation are questions of law – not fact – and, thus, are reviewed *de novo*. See *Anglin v. Gulf Gaur. Life Ins. Co.*, 956 So. 2d 853, 859 (¶ 15) (Miss. 2007) (insurance contract).<sup>4</sup> Accordingly, to the extent the Moors argue the Chancery Court applied an improper interpretation of the term “construction” as contained in the warranty deeds, this Court should review such interpretation *de novo*.

**B. Chancery Court correctly held \$2,000,000 was spent on “construction.”**

Under Mississippi law, courts are “bound to enforce contract language as written and give it its plain and ordinary meaning.” *Anglin*, 956 So. 2d at 859 (¶ 16) (quoting *Miss. Farm Bureau Cas. Ins. Co. v. Britt*, 826 So. 2d 1261, 1266 (¶ 14) (Miss. 2002)); *Clarendon Nat’l Ins. Co. v. McAllister*, 837 So. 2d 779, 780 (¶ 5) (Miss. Ct. App. 2003) (“A contract is to be construed and enforced as written.”). Thus, in the absence of a definition to the contrary contained in the document itself, courts apply the “commonly accepted meaning” to terms of a contract. See *Sanderson Farms, Inc. v. Gatlin*, 848 So. 2d 828, 836 (¶ 19) (Miss. 2003) (quoting *Parkerson v. Smith*, 817 So. 2d 529, 541 (¶ 42) (Miss. 2002)); *Clarendon Nat’l Ins. Co.*, 837 So.

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<sup>4</sup> “Deeds are construed in a manner similar to contracts.” *Wicker v. Harvey*, 937 So. 2d 983, 981 (¶ 22) (Miss. Ct. App. 2006); see also *Dalton v. Cellular S., Inc.*, 20 So. 3d 1227, 1232 (¶ 11) (Miss. 2009) (noting deeds and contracts construed under same analysis).

2d at 780 (¶ 5) (“We will not strain the bounds of the English language by imparting meanings to common words beyond ordinary use.”). “[A]n instrument should be construed in a manner ‘which makes sense to an intelligent layman familiar only with the basics of English language . . . .’” *Peoples Bank & Trust Co. v. Nettleton Fox Hunting & Fishing Ass’n*, 672 So. 2d 1235, 1238 (Miss. 1996) (quoting *Pursue Energy Corp. v. Perkins*, 558 So. 2d 349, 352 (Miss. 1991)).

Additionally, a deed of conveyance is construed against the grantor. *Ouber v. Campbell*, 202 So. 2d 638, 641 (Miss. 1967) (“The ancient and well-recognized rule of law has application here. Where controversies arise over the construction of a deed, the deed is to be resolved most strongly against the grantor . . . .”); *McCuiston v. Blaylock*, 215 Miss. 504, 508, 61 So. 2d 332, 334 (Miss. 1952) (“If there is any doubt as to what is intended to be conveyed the grantee receives the benefit of the doubt.”); *Richardson v. Moore*, 198 Miss. 741, 750, 22 So. 2d 494, 495 (Miss. 1945) (“[I]n case the deed is ambiguous, and subject to two possible constructions, one more favorable to the grantee, and the other more favorable to the grantor, that construction favorable to the grantee will be adopted.”).

The Moors argued in their motion to alter or amend the final judgment of the Chancery Court – and now argue before this Court – that some of the expenditures outlaid by MDWFP do not constitute “construction” costs. Specifically, the Moors contend the following expenses are excluded from the term “construction” costs:

Year	Purpose	Amount
1974	Site Planning	\$15,000.00
1977	Furniture & Equipment	\$104,882.20
1979	Cotton Museum Exhibits	\$67,000.00
1981	Exhibits	\$37,588.00
	Furniture and Equipment	\$3,000.00

1983	Furniture and Equipment	\$2,968.00
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(Compare R. 000028, D.R.E. 020, *with* Br. for the Appellants (“Moor Br.”) at 11.) Under the Moors’ skewed interpretation of the term “construction,” MDWFP spent only \$1,692,895.72 on the “construction” of Florewood Plantation. (Moor Br. at 11.)

The Moors’ tortured interpretation of the word “construction” is both erroneous and unsupported. The plain meaning of the word “construction” encompasses the costs of planning, furniture, equipment, and exhibits. WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY OF THE ENGLISH LANGUAGE UNABRIDGED, defines “construction” as “the act of putting parts together to form a complete integrated object.” WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY OF THE ENGLISH LANGUAGE UNABRIDGED 489 (4th ed. 1976).<sup>5</sup> Similarly, BLACK’S LAW DICTIONARY defines “construction” as “the act of building or arranging parts or elements; the thing so built.” BLACK’S LAW DICTIONARY 262 (8th ed. 2004). Notably, the Moors provided this Court with no other definition of the word “construction” – no definition that would exclude the contested expenses.

The deeds called for \$2,000,000 to be “expended in constructing said Historical Park.” (R. 000015, D.R.E. 010; *see also* R. 000018, D.R.E. 013 (\$2,000,000 “will be expended in constructing the said Historical Park”); R. 000021, D.R.E. 016 (\$2,000,000 “will be expended in the construction of said historical park”).) Accordingly, under the ordinary meaning of the word “construction,” the deeds required the expenditure of \$2,000,000 in “the act of putting parts

<sup>5</sup> Webster’s Third New International Dictionary of the English Language Unabridged was originally published in 1961. Subsequent editions were published in 1969, 1971, and 1973. However, changes and new definitions were compiled in the addenda. No addition or change to the definition of the word “construction” appears in the addenda as of the 1976 edition. *See* WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY OF THE ENGLISH LANGUAGE UNABRIDGED 61a (4th ed. 1976). Accordingly, WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY OF THE ENGLISH LANGUAGE UNABRIDGED (4th ed. 1976) is evidence of the ordinary definition of the word “construction” at the time when the subject deeds were executed.

together to form a complete integrated [Historical Park]" or in "arranging parts or elements" of the historical park. There can be no doubt that the grantees satisfied this condition.

The Moors' argument that a different and narrower definition of the word "construction" should apply is untenable. As successors to the Grantors, the language of the deeds should be construed against the Moors and in favor of the Defendants. MDWFP expended the necessary money to satisfy the terms of the deeds. The Chancery Court was correct in finding this condition of the deeds was met. As a matter of law, this Court should affirm the Chancery Court's interpretation of the word "construction."

### III. ALTERNATIVELY, ISSUE OF WHETHER DEFENDANTS FAILED TO SATISFY CONSTRUCTION COST CONDITION IS NOT RIPE FOR ADJUDICATION

In the unlikely event that this Court accepts the Moors' interpretation of the word "construction" – an interpretation that is unsupported by the written instruments in this case and the prevailing meaning of the term –, the issue of whether Defendants violated the "construction" cost condition is not yet ripe for adjudication.<sup>6</sup>

A conveyance of an interest in an estate may contain a condition for the estate to vest. A "condition precedent" is "an event that, under the terms of the instrument, must occur before the interest vests." *Matter of Estate of Anderson*, 541 So. 2d 423, 429 (Miss. 1989). A "condition precedent" is subject to the rule against perpetuities ("the Rule"). *See id.* (comparing "condition precedent" to "condition subsequent" and noting "condition subsequent" is not subject to the Rule). The Rule provides: "No interest is good unless it vests within twenty-years after the death of all persons in being when the interest is created who can affect the vesting of the interest." *Id.* Generally, the "lives in being" for the purpose of the Rule must be indicated in the instrument conveying the estate. *Carter v. Berry*, 243 Miss. 321, 362, 140 So. 2d 843, 848 (Miss. 1962) ("The lives in being which are the measure of the period must be indicated by the creating instrument, but they need not be mentioned in it.").

The Mississippi courts have adopted a "wait and see" approach to the Rule. *C&D Inv. Co. v. Gulf Transp. Co.*, 526 So. 2d 526, 530 (Miss. 1988). Under the "wait and see" approach, a contingent interest in an estate will not be declared void just because the interest might not vest within twenty-one years of a life in being. *Id.* at 529. Rather, the courts will allow the time period for vesting to expire before declaring the contingent interest void. *Id.* "Under this rule, if

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<sup>6</sup> Mississippi appellate courts can affirm a trial court's decision on grounds different from trial court. *Kirksey v. Dye*, 564 So. 2d 1333, 1336-37 (Miss. 1990). Both the County and the District raised the issue of ripeness on their motions for summary judgment. (R. 000080; R. 000121.)

the required contingency actually happens during the perpetuity period, the future interest is held valid.” *Id.*

Under the warranty deeds, the interest in the estate will vest in the District, its successors, or its assigns when the conditions of the deed are met (i.e. when \$2,000,000 is spent on construction of a historical park). None of the deeds at issue provide a date certain on which the \$2,000,000 in “construction” costs must be spent. Rather, the deeds provide only the open-ended requirement that the funds must be spent. Accordingly, the only temporal limitation that can exist regarding the “construction” cost condition – and, thus, vesting of the estate – is the Rule.

The warranty deeds name at least three individuals who should serve as the “measuring lives” for the purpose of the Rule – Charles H. Moor, Robert Baird Moor, and Marion M. Moor (the original grantors). If within twenty-one years of their death the interest of the District (its successors or assigns) does not vest, then the conveyance would be void. The record is unclear regarding the status of Robert Baird Moor or Marion M. Moor. However, the record indicates that Charles H. Moor died on December 7, 2001. (R. 000171.) Accordingly, the District, (its successors, or assigns) must satisfy the condition precedent by December 7, 2022, at the earliest.<sup>7</sup>

Nothing in House Bill 1741 or the lease between MDWFP and the County prohibits MDWFP from engaging in additional construction to satisfy the Moors’ narrow interpretation of the term “construction.”<sup>8</sup> Similarly, nothing in the warranty deeds requires that the MDWFP, rather than the County or the District, satisfy the \$2,000,000 expenditure requirement. Thus,

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<sup>7</sup> The Rule’s twenty-one year time period would not begin to run until the death of the last Grantor. Accordingly if Robert Baird Moor and/or Marion M. Moor survived Charles H. Moor, the Rule’s twenty-one year time period will not expire until the twenty-first anniversary of the last surviving Grantor.

<sup>8</sup> While the Moors contend in their brief that MDWFP “conveyed” the subject property to the County (Moor Br. at 16), this contention is erroneous. MDWFP “conveyed” only a leasehold to the County. Title to the subject property has not been divested.



under Mississippi's "wait and see" approach to the Rule, the Moors' claims are not yet ripe for adjudication.

#### **IV. NO GENUINE ISSUE OF MATERIAL FACT REGARDING LACK OF REVERSIONARY INTEREST.**

The Moors argue that a genuine issue of material fact exists regarding the intent of the Grantors to create a reversionary interest and, thus, that the Chancery Court erred in granting summary judgments to the Defendants. The Moors' argument is wholly unsupported. On the narrow question of whether a "fact issue" existed regarding the intent of the Grantors, the Moors provided no summary judgment evidence to counter the plain language of the warranty deeds.

##### **A. Standard of review is *de novo* regarding grant of summary judgment.**

As stated *supra*, this Court should apply a *de novo* standard of review to the Chancery Court's grant of summary judgment in favor of the Defendants.

##### **B. No summary judgment evidence other than deeds.**

On this purported fact issue, the Moors provided no summary judgment evidence to counter the plain language of the Option to Purchase and deeds. Pursuant to Miss. R. Civ. P. 56(c), the Moors were not allowed to rest on the allegations of their Complaint when confronted with the Defendants' motions for summary judgment properly supported by competent summary judgment evidence. If the Moors had additional documents or information to create a "fact issue" regarding the intent of the Grantors, it was incumbent on the Moors to marshal that evidence at the summary judgment stage. Simply put, the Moors failed to make the necessary showing to counter the Defendants' properly supported motions for summary judgment. Thus, there is no "fact issue" that needs to be resolved in favor of the Moors. As with the issue regarding the meaning of the term "construction," the Moors' disagreement with the Chancery Court is a question of deed interpretation issue – a question of law.

**V. DEEDS DO NOT CREATE REVERSIONARY INTEREST.**

A plain reading of each of the four instruments – the Option to Purchase and the three warranty deeds – reveals no reversionary language of any kind. Because forfeiture is not favored in the law and because the language of the conveyances must be construed against the Grantors, the Chancery Court correctly held that, as a matter of law, the deeds created no reversionary interest.

**A. Standard of review is *de novo* for questions of law.**

As stated above, a question of contract interpretation is a question of law and should be reviewed *de novo*. The Moors inaccurately argue that there is a question of fact regarding whether they have a reversionary interest in the subject property. (Moor Br. at 13.) However, the actual issue is whether the language of the deeds created a reversionary interest. This question of deed interpretation is a question of law to be reviewed *de novo*.

**B. Deeds did not give Grantors reversionary interest.**

Because forfeitures are not favored in the law, conditions contained within an instrument that would work a forfeiture are strictly construed. *Bd. of Supervisors of Franklin County v. Newell*, 213 Miss. 274, 281, 56 So. 2d 689, 692 (Miss. 1952) (“A condition, when relied upon to work a forfeiture, is construed with great strictness.”) “Conditions subsequent are not favored by the law and provisions containing them are construed very strictly.” *New Orleans Great N.R.R. v. Hathorn*, 503 So. 2d 1201, 1204 (Miss. 1987) (citing *Yazoo & Miss. Valley R.R. v. Lakeview Traction Co.*, 100 Miss. 281, 56 So. 393, 395 (1911)). To create a reversionary interest, the conveyance must express the reversionary intent by including such phrases as “provided,” “so long as,” and “until.” *See Soria v. Harrison County*, 96 Miss. 109, 50 So. 443, 444 (Miss. 1909).

A statement in a conveyance articulating a purpose for the subject land does not by itself create a right of reverter when the land is no longer used for the stated purpose. *Nicholson v.*

*Myres*, 170 Miss. 441, 441, 154 So. 282, 283 (Miss. 1934); *Lenoir v. Anderson*, 12 So. 3d 589, 594 (¶ 10) (Miss. Ct. App. 2009) (“[I]f there is no express language in the instrument for the property to revert back to the grantor or his/her heirs when the property is no longer used for the stated/intended purpose, it will be concluded that the grantor intended to convey his entire interest in the property.”). In *Nicholson*, the grantor conveyed certain land to the Board of Mississippi Levee Commissioners “for levee purposes.” 154 So. at 282. “[L]ittle, if any, use was made of [the subject property] for those purposes.” *Id.* at 283. The heirs to the grantor executed a quitclaim deed on the subject property. *Id.* at 282-83. This Court asked itself and held:

Does the language in the conveyance from the [grantor] to the levee board “for levee purposes,” create a condition subsequent, resulting in reversion of the title to the land to the [grantor’s heirs]? On the authority of *Thornton v. Natchez*, 88 Miss. 1, 41 So. 498, 499 [(Miss. 1906)], and *Soria v. Harrison County*, 96 Miss. 109, 50 So. 443, 444 [(Miss. 1909)], this question must be answered in the negative.

*Id.* at 283 (emphasis added). The two cases cited by the *Nicholson* Court – *Thornton* and *Soria* – both held that where an instrument conveying real property for a stated purpose does not contain reversionary language, the real property does not revert when the grantee ceases using the property for the stated purpose. *Id.*<sup>9</sup>

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<sup>9</sup> In *Thornton*, the instrument of conveyance stated that the real property was conveyed to the City of Natchez “to have and to hold . . . , forever, for the uses and purposes of a burial place, and to be forever kept, used, and inclosed [sic] in a decent manner, and to and for no other use or purposes whatsoever.” 41 So. at 499 (emphasis added). Noting that the law “abhors forfeitures and looks with hostility on conditions subsequent,” this Court held that the instrument at issue did not create a right of reverter. *Id.* at 501. “To give the right of reverter through the courts it should be expressed in the instrument that by devotion of the land to a purpose other than that indicated the whole estate should revert to the grantor and his heirs.” *Id.*

Likewise, the instrument of conveyance in *Soria* read, “the land hereinafter described shall be kept by said board of police for the use of a courthouse and jail for the benefit of said county.” 50 So. at 443-44. This Court held that the language of the conveyance did not create a condition subsequent that would give rise to a right of reversion. *Id.* at 444.

Additionally, Mississippi follows the maxim of “verba fortius accipiuntur contra proferentem.” *Soria*, 50 So. at 444. Thus, courts “construe the words of [a] deed most strongly against the grantor.” *Id.* In *Soria*, this Court found that the deed did “not contain any language usually employed to create a condition subsequent, the breach of which would cause the land to revert to the grantor” and that “[t]he words in th[e] deed . . . are quite as consistent with an intent to repose a trust and confidence as they are with an intent to impose a condition which would compel the county, on pain of forfeiture, to maintain on the land for all time a courthouse and jail.” *Id.* Following the maximum of verba fortius accipiuntur contra proferentem, this Court construed the terms of the deed against the grantor and determined that “no condition subsequent, the breach of which would cause a reversion, was thereby created.” *Id.*

In the instant case, the words “revert,” “reversion,” or any derivative thereof are wholly absent from the Option to Purchase and the deeds. (R. 000006-22, D.R.E. 001-17.) Similarly, none of the four documents contains the “reversionary language” enumerated in *Soria* (i.e., “provided,” “so long as,” and “until”). (*Id.*) At best, the relevant instruments indicate only a desired purpose on the part of the Grantors – for the subject property to be used for the “construction of a historical park.”<sup>10</sup> The instruments do not state that the property should revert to the Grantors in the event that the property is no longer used for a historical park. The instruments do not state that the property must be used indefinitely as a historical park.

In fact, the only indication regarding the intent of the Grantors is inapposite to the Moors’ reversion argument. The Option to Purchase contemplated the possibility that the property would not be used as “a historical park” at some point in the future. Yet the Option to Purchase provided the Grantors with a right of first refusal. (R. 000008, D.R.E. 003.) The Option to Purchase stated:

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<sup>10</sup> It is also notable that the deeds do not provide for the property to be “used” as a historical park, only that the property utilized for the “construction” of a historical park.

If this option is exercised and if the Mississippi State Park Commission places a state park on the land herein conveyed and if in the future the State of Mississippi, or the then owner desires to sell the property herein conveyed, then the Grantors, their heirs and assigns, will have the right for a period of not exceeding 120 days of re-purchasing said property from the then owner at its offered price.

(*Id.*) If the Grantors intended for the property to be used as a historical park in perpetuity, there would be no need for the right of first refusal contained in the Option to Purchase. That is, if the Grantors thought they had a reversionary interest in the subject property, then the right of first refusal provision is surplusage because as soon as the property ceased being used as a historical park, the property would revert to the Grantors. The right of first refusal language directly contradicts the Moors' argument that a reversionary interest was intended.

Each of the cases relied upon by the Moors for their reverter argument is distinguishable on its face. The Moors cite only two cases in support of their argument that the subject property should revert: *City of Laurel v. Powers*, 366 So. 2d 1079 (Miss. 1979) and *Columbus & Greenville Ry. Co. v. City of Greenwood*, 390 So. 2d 588 (Miss. 1980). Unlike the subject deeds, the deeds in both cases contained reversionary language.<sup>11</sup>

In *Powers*, the grantor conveyed by deed to the City of Laurel an interest on certain real property within the city for the purpose of developing a parking lot. 366 So. 2d at 1080. The deed contained the following reverter provision:

This conveyance . . . is made only for so long as the property conveyed is used for a public parking lot, and if, at any time, it

<sup>11</sup> To be sure, the Moors' brief discusses the issue of abandonment of dedicated property. (Moor Br. at 13-14.) However, the issue of abandonment is not relevant to the underlying dispute. To constitute a dedication, property owner must act with the intent to donate the property to the public. See *Magnolia Mem'l Gardens, Inc. v. Denton*, 317 So. 2d 38, 42 (Miss. 1975) ("[T]o constitute a dedication at common law, it is essential that there be an intention of the owner of the land to donate the same for public use. . . . Donation is the act by which the owner of something voluntarily transfers the title and possession of the same without any consideration."). Here, the Grantors did not donate the subject property for public use; rather, they conveyed it to the District for the sum of \$1,050 per acre. (R. 000236; P.R.E. 13.) Furthermore, the Moors concede that the law of dedication is inapplicable. (Moor Br. at 13 ("The law pertaining to abandonment of 'dedicated' property does not apply to this case."))

shall cease to be used for such purpose, title shall automatically and immediately revert to the grantor, his heir, successors or assigns.

*Id.* (emphasis added). The city later conveyed a portion of the subject property to the Laurel Urban Renewal Agency for the purpose of making part of the lot into a street. *Id.* This Court held that the conveyance to the city “created a determinable fee estate in the city, with a possibility of reverter.” *Id.* at 1081. The city’s title to the property ceased when it stopped using the property for a parking lot. *Id.* at 1081-82.

In *Columbus & Greenville Ry. Co.*, the grantor conveyed by deed certain real property to the Columbus & Greenville Railway Company. 390 So. 2d at 589. The deed read: “It is distinctly understood that should said tract of land cease to be used for railway track and depot, then and in that case the same shall revert to the heirs of the grantors herein.” *Id.* (emphasis added). This Court held that the deed created a reversionary interest in the heirs of the grantors, noting that the deed’s reversionary language was “[s]uch an emphatic expression of intent [it] cannot be ignored.” *Id.* at 591.

The holdings of *Powers* and *Columbus & Greenville Railway Company* are not controversial holding – a deed with a reversionary clause allows for reversion. *See, e.g., Hathorn v. Ill. Cent. Gulf R.R. Co.*, 374 So. 2d 813, 814 (Miss. 1979) (finding reversionary interest where deed stated “[s]hould [defendant] . . . abandon the depot . . . , the lands described above is (sic) to revert to the Grantors herein.”; emphasis added). However, the Moors do not seek enforcement of long established case law. Instead, without expressly admitting it, they ask this Court to overrule *Nicholson*, *Thornton*, and *Soria*, to look upon forfeiture with favor, to abandon the maxim of *verba fortius accipiuntur contra proferentem*, and to hold that a deed without revisionary language creates a revisionary interest. Such proposition is untenable

The Grantors, at best, stated a purpose for the land. The Moors argue that the deeds created a fee simple determinable with the possibility of reverter. However, there is no reversionary language expressed in any of the deeds. The law will not presume the existence of a reversionary interest in these deeds, and the courts will strictly construe these deeds on the issue of reverter. Moreover, the deeds must be construed against the Grantors. Accordingly, as a matter of deed interpretation, the deeds created no reversionary interest.



## CONCLUSION

For the reasons stated herein, the Court should affirm the Chancery Court's Final Judgment in favor of the Defendants and hold that MDWFP's interest in the subject property is vested.

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**CERTIFICATE OF SERVICE**

I, Kyle V. Miller, one of the attorneys for Leflore County School District, do hereby certify that I have this day caused to be served a true and correct copy of the above and foregoing instrument by mailing same to the following:

Honorable Dewayne Thomas  
P.O. Box 686  
Jackson, MS 39205-0686

CHANCERY COURT JUDGE

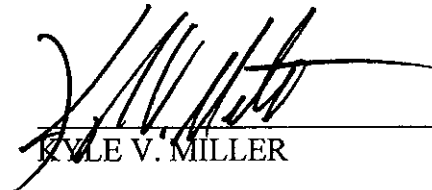
Ms. Kathy Gillis  
Mississippi Supreme Court Clerk  
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MISSISSIPPI SUPREME COURT CLERK

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COUNSEL FOR PLAINTIFFS-APPELLANTS

SO CERTIFIED, this 23<sup>rd</sup> day of March, 2010.

  
\_\_\_\_\_  
KYLE V. MILLER

**CERTIFICATE OF FILING**

I, Kyle V. Miller, certify that I have had hand-delivered the original and three copies of the Brief of the Appellee and an electronic diskette containing same on March 23<sup>rd</sup>, 2010, addressed to Ms. Kathy Gillis, Clerk, Supreme Court of Mississippi, 450 High Street, Jackson, Mississippi 39201.

  
\_\_\_\_\_  
KYLE V. MILLER

## ADDENDUM

House Bill 1741 (2004 reg. sess.) .....	A-1
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Excerpts from WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY OF THE ENGLISH LANGUAGE UNABRIDGED (4th ed. 1976) .....	A-13
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By: Representatives Green, McBride,  
Frierson, Gadd, Middleton, Pierce

To: Appropriations

HOUSE BILL NO. 1741  
(As Sent to Governor)

1 AN ACT MAKING AN APPROPRIATION FOR THE SUPPORT AND  
2 MAINTENANCE OF THE DEPARTMENT OF WILDLIFE, FISHERIES AND PARKS FOR  
3 THE FISCAL YEAR 2005.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

5 SECTION 1. The following sum, or so much thereof as may be  
6 necessary, is hereby appropriated out of any money in the State  
7 General Fund not otherwise appropriated, for the support and  
8 maintenance of the Department of Wildlife, Fisheries and Parks for  
9 the fiscal year beginning July 1, 2004, and ending June 30, 2005  
10 ..... \$ 9,519,764.00.

11 SECTION 2. The following sum, or so much thereof as may be  
12 necessary, is hereby appropriated out of any money in any special  
13 fund in the State Treasury to the credit of the Department of  
14 Wildlife, Fisheries and Parks which is comprised of special source  
15 funds collected by or otherwise available to the department for  
16 the support and maintenance of the department, for the fiscal year  
17 beginning July 1, 2004, and ending June 30, 2005.....  
18 ..... \$ 45,166,533.00.

19 The following sum, which is included in the sum appropriated  
20 above in this section, is hereby appropriated out of the state  
21 excise taxes upon gasoline, oil and other petroleum products to  
22 the Fisheries and Wildlife Fund for the fiscal year beginning  
23 July 1, 2004, and ending June 30, 2005..... \$ 5,750,000.00.

24 The State Tax Commission is hereby directed to set aside the  
25 amount of this appropriation or any part thereof at any time it  
26 sees fit, out of any collections of taxes upon gasoline, oil and  
27 other petroleum products, and to deduct the amounts so set aside

28 from such funds before making distribution thereof. However,  
29 provisions shall first be made for the Highway Bonds Sinking Fund,  
30 as required under the provisions of Chapter 130, Laws of 1938, and  
31 any amendments thereto, and Section 27-5-101, Mississippi Code of  
32 1972.

33 Any funds available in the Wildlife Heritage Fund may be  
34 expended by the Commission on Wildlife, Fisheries and Parks as  
35 authorized by law. The department shall make a detailed report to  
36 the Legislature regarding the spending of the Wildlife Heritage  
37 funds by September 1 for the preceding fiscal year.

38 **SECTION 3.** Of the funds appropriated under the provisions of  
39 Section 2 to the Bureau of Wildlife and Fisheries, funds in the  
40 amount of One Hundred Twenty-five Thousand Three Hundred  
41 Thirty-five Dollars (\$125,335.00) shall be derived from the  
42 Education Enhancement Fund deposited pursuant to Sections 27-65-75  
43 and 27-67-31, Mississippi Code of 1972, for the purpose of  
44 defraying the expenses of Project WILD for Fiscal Year 2005.

45 **SECTION 4.** It is the intention of the Legislature that the  
46 Department of Wildlife, Fisheries and Parks shall have the  
47 authority to receive, budget and expend funds from the Gulf and  
48 Wildlife Protection Fund, not to exceed Three Hundred Fifty  
49 Thousand Dollars (\$350,000.00) for the purpose of preservation,  
50 protection, conservation, and acquisition of waters, land and  
51 wildlife of this state.

52 **SECTION 5.** With the funds appropriated under the provisions  
53 of Sections 1 and 2, the following positions are authorized:

54 **AUTHORIZED POSITIONS:**

55	Permanent:	Full Time.....	825
56		Part Time.....	209
57	Time-Limited:	Full Time.....	49
58		Part Time.....	0

59 Each conservation officer and supervisor shall be furnished  
60 an allowance for uniforms not to exceed Five Hundred Fifty Dollars  
61 (\$550.00) per annum.

62 Provided further, when any personnel of the Bureau of  
63 Wildlife and Fisheries are transferred from one county to another  
64 on a permanent assignment, the expense monies now paid on  
65 out-of-county duty shall not be applicable.

66 **SECTION 6.** It is the intention of the Legislature that the  
67 Department of Wildlife, Fisheries and Parks shall maintain  
68 complete accounting and personnel records related to the  
69 expenditure of all funds appropriated under this act and that such  
70 records shall be in the same format and level of detail as  
71 maintained for Fiscal Year 2004. It is further the intention of  
72 the Legislature that the agency's budget request for Fiscal Year  
73 2006 shall be submitted to the Joint Legislative Budget Committee  
74 in a format and level of detail comparable to the format and level  
75 of detail provided during the Fiscal Year 2005 budget request  
76 process.

77 **SECTION 7.** In compliance with the "Mississippi Performance  
78 Budget and Strategic Planning Act of 1994," it is the intent of  
79 the Legislature that the funds provided herein shall be utilized  
80 in the most efficient and effective manner possible to achieve the  
81 intended mission of this agency. Based on the funding authorized,  
82 this agency shall make every effort to attain the targeted  
83 performance measures provided below:

84		FY2005
85	<u>Performance Measures</u>	<u>Target</u>
86	Support Services	
87	Hunting & Fishing Licenses Sold (Licenses)	526,000
88	Registration of Boats (Boats)	21,550
89	Freshwater Fisheries Mgmt	
90	Fish Stock for Public Water (Fish)	3,650,000
91	Users of DWFP Lakes (Man-days)	65,000



92	Game Management	
93	DMAP Cooperators	720
94	DWFP Management for Hunters (Man-days)	175,650
95	Law Enforcement	
96	Hunter Education (Persons)	18,673
97	Parks & Recreation	
98	Overnight Accommodations (Persons)	674,280
99	Water Related Services (Persons)	95,000
100	Day Use Services (Persons)	3,620,515
101	Facilities Repair Projects (Projects)	3,980
102	Historical & Nature Services (Persons)	86,220

103 Museum of Natural Science

104	Information Provided (Participants)	240,000
105	Participants in Museum Projects (Persons)	430,000

106 A reporting of the degree to which the performance targets  
107 set above have been or are being achieved shall be provided in the  
108 agency's budget request submitted to the Joint Legislative Budget  
109 Committee for Fiscal Year 2006.

110 **SECTION 8.** With the funds appropriated herein, it is the  
111 intention of the Legislature that a reasonable number of  
112 Conservation Officers, Conservation Officer Supervisors, District  
113 Managers, Area Managers, and Lake Managers shall be employed  
114 and/or detailed to both temporary and permanent job assignments in  
115 areas other than their county of residence.

116 **SECTION 9.** With the funds appropriated herein, the  
117 Mississippi Commission on Wildlife, Fisheries and Parks shall  
118 adopt rules and regulations to permit the building, equipment and  
119 facilities of the Mississippi Museum of Natural Science, or any  
120 portion thereof, to be used by individuals, organizations,  
121 associations or other groups or entities for special events,  
122 occasions or activities. Such rules and regulations may authorize  
123 the commission to establish and collect reasonable fees and  
124 charges for the use of such building, equipment and facilities,

125 shall authorize such building, equipment and facilities to be used  
126 for such purposes during the regular operating hours of the museum  
127 as well as after regular operating hours or at other times when  
128 such use will not unreasonably interfere with access to the museum  
129 by the general public, may require users to provide security in  
130 the form of cash deposits, bond and/or insurance for the care and  
131 safekeeping of the building, equipment and facilities, may require  
132 users to enter into indemnity agreements to protect the state, its  
133 agencies and its officers and employees from liability and may  
134 authorize the commission to establish such other terms,  
135 conditions, restrictions and limitations from time to time as the  
136 commission deems advisable with regard to the use of the museum  
137 and its building, equipment and facilities.

138       **SECTION 10.** With the funds herein appropriated, it is the  
139 intention of the Legislature that it shall be the agency's  
140 responsibility to make certain that funds required to be  
141 appropriated for "Personal Services" for Fiscal Year 2006 do not  
142 exceed Fiscal Year 2005 funds appropriated for that purpose,  
143 unless programs or positions are added to the agency's Fiscal Year  
144 2006 budget by the Mississippi Legislature. Based on data  
145 provided by the Legislative Budget Office, the State Personnel  
146 Board shall determine and publish the projected annual cost to  
147 fully fund all appropriated positions in compliance with the  
148 provisions of this act. It shall be the responsibility of the  
149 agency head to insure that no single personnel action increases  
150 this projected annual cost and/or the Fiscal Year 2005  
151 appropriation for "Personal Services" when annualized, with the  
152 exception of escalated funds. If, at the time the agency takes  
153 any action to change "Personal Services," the State Personnel  
154 Board determines that the agency has taken an action which would  
155 cause the agency to exceed this projected annual cost or the  
156 Fiscal Year 2005 "Personal Services" appropriated level, when  
157 annualized, then only those actions which reduce the projected

158 annual cost and/or the appropriation requirement will be processed  
159 by the State Personnel Board until such time as the requirements  
160 of this provision are met.

161 Any transfers or escalations shall be made in accordance with  
162 the terms, conditions and procedures established by law or  
163 allowable under the terms set forth within this act. The State  
164 Personnel Board shall not escalate positions without written  
165 approval from the Department of Finance and Administration. The  
166 Department of Finance and Administration shall not provide written  
167 approval to escalate any funds for salaries and/or positions  
168 without proof of availability of new or additional funds above the  
169 appropriated level.

170 No general funds authorized to be expended herein shall be  
171 used to replace federal funds and/or other special funds which are  
172 being used for salaries authorized under the provisions of this  
173 act and which are withdrawn and no longer available.

174 The agency shall not take any action to award salary  
175 increases through reallocation, reclassification, realignment,  
176 education benchmark or career ladder.

177 **SECTION 11.** Of the funds appropriated in Section 2, the  
178 following amount shall come from the Department of Wildlife,  
179 Fisheries and Parks Special Pearl River Timber Fund No. 3465, for  
180 the purpose of making improvements to the Pearl River Wildlife  
181 Management Area..... \$ 150,000.00.

182 **SECTION 12.** The board of supervisors of any county or any  
183 group or combination of counties are hereby authorized and  
184 empowered to enter into cooperative agreements with each other and  
185 with the Commission on Wildlife, Fisheries and Parks for the  
186 purpose of creating, improving or restoring parks, public game and  
187 fish habitat lying or to be situated wholly or partially within  
188 such county or in an adjoining county; and each county is  
189 empowered and authorized, in its discretion, to expend a sum not  
190 exceeding One Hundred Thousand Dollars (\$100,000.00) from the

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04/HR40/A473SG  
PAGE 6 (RM\ST\BD)

191 general county fund for such purposes from which fund they shall  
192 reimburse to the Commission on Wildlife, Fisheries and Parks the  
193 actual cost of all surveying and engineering projects incurred by  
194 the Department of Wildlife, Fisheries and Parks incidental  
195 thereto. Such boards of supervisors are further authorized and  
196 empowered, in their discretion, to enter into agreements necessary  
197 to carry out the purposes of this act with any other county, the  
198 United States Forest Service or any other agency if same should be  
199 necessary for the acquisition of land by lease or otherwise for  
200 such purposes.

201       **SECTION 13.** The Department of Wildlife, Fisheries and Parks  
202 is hereby directed to keep an exact accounting of the funds  
203 received during each fiscal year by fund and source and an exact  
204 accounting of how these funds were expended by fund and  
205 program/division. Such information shall be provided to the House  
206 and Senate Appropriations Chairmen, Chairman of the House Game and  
207 Fish Committee and Chairman of the Senate Wildlife and Fisheries  
208 Committee no later than October 1 following the end of the fiscal  
209 year.

210       **SECTION 14.** The Department of Wildlife, Fisheries and Parks  
211 is authorized to enter into an agreement with the Pearl River  
212 Valley Water Supply District to provide for financial support of  
213 an additional conservation officer on and around the Ross Barnett  
214 Reservoir.

215       The Department of Finance and Administration is authorized to  
216 escalate the budget of the Department of Wildlife, Fisheries and  
217 Parks for this purpose.

218       **SECTION 15.** It shall be unlawful for any officer, employee  
219 or other person whatsoever to use or permit or authorize the use  
220 of any automobile or any other motor vehicle owned by the State of  
221 Mississippi or any department, agency or institution thereof for  
222 any purpose other than upon the official business of the State of  
223 Mississippi or any agency, department or institution thereof.

224 It is the intent of the Legislature that motor vehicles  
225 authorized to be owned and operated by this agency shall comply  
226 with Sections 25-1-77 through 25-1-93, Mississippi Code of 1972.

227 **SECTION 16.** It is the intention of the Legislature that the  
228 Department of Wildlife, Fisheries and Parks shall have the  
229 authority to receive, budget and expend funds from any source, not  
230 to exceed One Million Dollars (\$1,000,000.00), that may become  
231 available to the department in accordance with the rules and  
232 regulations of the Department of Finance and Administration.

233 **SECTION 17.** In order to be in compliance with Sections  
234 63-1-74 through 63-1-79, funds are herein provided and may be  
235 expended by the Department of Wildlife, Fisheries and Parks to pay  
236 the costs of commercial driver's licenses for specific employees  
237 and/or to reimburse such costs for specific employees who, in the  
238 course of their duties and responsibilities, are required to hold  
239 a valid Mississippi Commercial Driver's License.

240 **SECTION 18.** It is the intention of the Legislature that the  
241 Department of Wildlife, Fisheries and Parks shall have the  
242 authority to receive, budget and expend funds from the Mississippi  
243 Development Authority in the amount of Four Million Dollars  
244 (\$4,000,000.00) as authorized in Section 57-61-32 (1), Mississippi  
245 Code of 1972. Such funds are to be used to defray the cost of  
246 constructing a North Mississippi Fish Hatchery.

247 **SECTION 19.** The Mississippi Department of Wildlife,  
248 Fisheries and Parks is authorized to provide financial support of  
249 One Hundred Fifty Thousand Dollars (\$150,000.00) and to enter into  
250 an agreement with the Mississippi Cooperative Extension Service  
251 for a biology specialist and related supportive cost.

252 The Department of Finance and Administration is authorized to  
253 escalate the budget of the Department of Wildlife, Fisheries and  
254 Parks for this purpose.

255 **SECTION 20.** Of the funds in Section 2, the Department shall  
256 be authorized to purchase and implement a satellite communications

257 system in an amount not to exceed Two Million Two Hundred Thousand  
258 Dollars (\$2,200,000.00).

259       **SECTION 21.** It is the intention of the Legislature that the  
260 Commission of the Mississippi Wildlife, Fisheries and Parks shall  
261 have the authority to close, transfer, lease or sell properties  
262 under the department's jurisdiction.

263       Pursuant to the above mentioned authority, the Legislature  
264 hereby identifies the following state parks as properties to be  
265 promptly disposed of by the Commission through closure, transfer,  
266 lease or sale:

267       Casey Jones Museum and State Park,  
268               Vaughn, Yazoo County, Mississippi  
269       Floewood Plantation State Park  
270               Greenwood, Leflore County, Mississippi  
271       Sam Dale State Park  
272               Daleville, Lauderdale County, Mississippi  
273       Nanih Wayia State Park  
274               Neshoba County, Mississippi  
275       Legion State Park  
276               Louisville, Winston County, Mississippi

277       **SECTION 22.** The department is authorized to spend up to  
278 twenty-five percent (25%) of revenue in the State Park Timber  
279 Endowment Fund, as needed, to operate and maintain the state  
280 parks.

281       **SECTION 23.** It is the intention of the Legislature that a  
282 DWFP-Conservation Officer I position shall be established and  
283 shall be filled and assigned to manage the Mason Creek Game  
284 Management Area. Furthermore, it is the intention of the  
285 Legislature that a Statewide Coordinator for the Recruitment and  
286 Retention of Hunting and Fishing shall be established and shall be  
287 filled and assigned to the Central Office.

288       **SECTION 24.** It is the intention of the Legislature that the  
289 District Office located at Florewood Plantation State Park shall  
290 cease operations at that location as soon as practicable.

291       **SECTION 25.** As funds become available to the department, an  
292 amount equal to One Million Five Hundred Thousand Dollars  
293 (\$1,500,000.00) may be used for completion of the North  
294 Mississippi Fish Hatchery and any repair of levies or dams as  
295 deemed necessary by the department.

296       **SECTION 26.** It is the intention of the Legislature that no  
297 more than Five Hundred Thousand Dollars (\$500,000.00) be spent  
298 from the Motor Vehicle Fund for the purchase of motor vehicles.

299       **SECTION 27.** Notwithstanding any other provision in this act,  
300 the career ladder shall be available to any Conservation Officer I  
301 hired after December 31, 2003.

302       **SECTION 28.** It is the intention of the Legislature that a  
303 joint study committee made up of the House and Senate Wildlife  
304 Committees study the efficiency and effectiveness of the agency's  
305 district offices.

306       **SECTION 29.** The money herein appropriated shall be paid by  
307 the State Treasurer out of any money in the State Treasury to the  
308 credit of the proper fund or funds as set forth in this act, upon  
309 warrants issued by the State Fiscal Officer; and the State Fiscal  
310 Officer shall issue his warrants upon requisitions signed by the  
311 proper person, officer or officers, in the manner provided by law.

312       **SECTION 30.** This act shall take effect and be in force from  
313 and after July 1, 2004.

**C**  
West's Annotated Mississippi Code Currentness  
Mississippi Rules of Court State  
■ Mississippi Rules of Civil Procedure  
■ Chapter VII. Judgment  
→ Rule 56. Summary Judgment

**(a) For Claimant.** A party seeking to recover upon a claim, counterclaim, or cross-claim, or to obtain a declaratory judgment may, at any time after the expiration of thirty days from the commencement of the action or after service of a motion for summary judgment by the adverse party, move with or without supporting affidavits for a summary judgment in his favor upon all or any part thereof.

**(b) For Defending Party.** A party against whom a claim, counterclaim, or cross-claim is asserted or a declaratory judgment is sought may, at any time, move with or without supporting affidavits for a summary judgment in his favor as to all or any part thereof.

**(c) Motion and Proceedings Thereon.** The motion shall be served at least ten days before the time fixed for the hearing. The adverse party prior to the day of the hearing may serve opposing affidavits. The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone, although there is a genuine issue as to the amount of damages.

**(d) Case Not Fully Adjudicated on Motion.** If on motion under this rule judgment is not rendered on the whole case or for all the relief asked and a trial is necessary, the court at the hearing of the motion, by examining the pleadings and the evidence before it and by interrogating counsel, shall if practicable ascertain what material facts exist without substantial controversy and what material facts are actually and in good faith controverted. It shall thereupon make an order specifying the facts that appear without substantial controversy, including the extent to which the amount of damages or other relief is not in controversy, and directing such further proceedings in the action as are just. Upon the trial of the action the facts so specified shall be deemed established, and the trial shall be conducted accordingly.

**(e) Form of Affidavits; Further Testimony; Defense Required.** Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matter stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith. The court may permit affidavits to be supplemented or opposed by depositions, answers to interrogatories, or further affidavits. When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of his pleadings, but his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If he does not so respond, summary judgment, if appropriate, shall be entered against him.

**(f) When Affidavits Are Unavailable.** Should it appear from the affidavits of a party opposing the motion that he cannot for reasons stated present by affidavit facts essential to justify his opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or dis-



covery to be had or may make such order as is just.

**(g) Affidavits Made in Bad Faith.** Should it appear to the satisfaction of the court at any time that any of the affidavits presented pursuant to this rule are presented in bad faith or solely for the purpose of delay, the court shall forthwith order the party employing them to pay to the other party the amount of the reasonable expenses which the filing of the affidavits caused him to incur, including reasonable attorney's fees, and any offending party or attorney may be adjudged guilty of contempt.

**(h) Costs to Prevailing Party When Summary Judgment Denied.** If summary judgment is denied the court shall award to the prevailing party the reasonable expenses incurred in attending the hearing of the motion and may, if it finds that the motion is without reasonable cause, award attorneys' fees.

Current with amendments received through June 1, 2009

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END OF DOCUMENT

Webster's  
Third  
New International  
Dictionary  
OF THE ENGLISH LANGUAGE  
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17. The seventeenth part is a list of names and addresses, including "Mr. K. L. Hall, 234 Birch St., Devils Lake, N.D." and "Mr. M. N. Hill, 567 Cedar St., Grand Forks, N.D."

18. The eighteenth part is a list of names and addresses, including "Mr. O. P. Jones, 890 Fir St., Bismarck, N.D." and "Mr. Q. R. King, 123 Ash St., Grand Forks, N.D."

19. The nineteenth part is a list of names and addresses, including "Mr. S. T. Lee, 456 Willow St., Devils Lake, N.D." and "Mr. U. V. Clark, 789 Hickory St., Grand Forks, N.D."

20. The twentieth part is a list of names and addresses, including "Mr. W. X. Lewis, 101 Walnut St., Bismarck, N.D." and "Mr. Y. Z. Adams, 234 Chestnut St., Grand Forks, N.D."

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25. The twenty-fifth part is a list of names and addresses, including "Mr. Q. R. King, 890 Ash St., Devils Lake, N.D." and "Mr. S. T. Lee, 123 Willow St., Grand Forks, N.D."

26. The twenty-sixth part is a list of names and addresses, including "Mr. U. V. Clark, 456 Hickory St., Bismarck, N.D." and "Mr. W. X. Lewis, 789 Walnut St., Grand Forks, N.D."

27. The twenty-seventh part is a list of names and addresses, including "Mr. Y. Z. Adams, 101 Chestnut St., Devils Lake, N.D." and "Mr. A. B. Baker, 234 Elm St., Grand Forks, N.D."

28. The twenty-eighth part is a list of names and addresses, including "Mr. C. D. Carter, 567 Oak St., Bismarck, N.D." and "Mr. E. F. Evans, 890 Pine St., Grand Forks, N.D."

29. The twenty-ninth part is a list of names and addresses, including "Mr. G. H. Fisher, 123 Spruce St., Devils Lake, N.D." and "Mr. I. J. Gibson, 456 Maple St., Grand Forks, N.D."

30. The thirtieth part is a list of names and addresses, including "Mr. K. L. Hall, 789 Birch St., Bismarck, N.D." and "Mr. M. N. Hill, 101 Cedar St., Grand Forks, N.D."

31. The thirty-first part is a list of names and addresses, including "Mr. O. P. Jones, 234 Fir St., Devils Lake, N.D." and "Mr. Q. R. King, 567 Ash St., Grand Forks, N.D."

32. The thirty-second part is a list of names and addresses, including "Mr. S. T. Lee, 890 Willow St., Bismarck, N.D." and "Mr. U. V. Clark, 123 Hickory St., Grand Forks, N.D."

33. The thirty-third part is a list of names and addresses, including "Mr. W. X. Lewis, 456 Walnut St., Devils Lake, N.D." and "Mr. Y. Z. Adams, 789 Chestnut St., Grand Forks, N.D."

34. The thirty-fourth part is a list of names and addresses, including "Mr. A. B. Baker, 101 Elm St., Bismarck, N.D." and "Mr. C. D. Carter, 234 Oak St., Grand Forks, N.D."

35. The thirty-fifth part is a list of names and addresses, including "Mr. E. F. Evans, 567 Pine St., Devils Lake, N.D." and "Mr. G. H. Fisher, 890 Spruce St., Grand Forks, N.D."

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The following table shows the results of the experiments conducted on the different types of soil. The data is presented in a tabular format, with the first column representing the soil type, the second column representing the treatment, and the third column representing the yield (in kg/ha). The table is organized into three main sections, each corresponding to a different soil type: *Soil Type 1*, *Soil Type 2*, and *Soil Type 3*. Each section contains a table with the following columns: *Treatment*, *Yield (kg/ha)*, and *Standard Error*. The data is presented for each treatment, and the results are compared across the different soil types.

Soil Type	Treatment	Yield (kg/ha)	Standard Error
Soil Type 1	T1	12.5	0.5
	T2	13.2	0.5
	T3	14.1	0.5
	T4	15.0	0.5
Soil Type 2	T1	11.8	0.5
	T2	12.5	0.5
	T3	13.2	0.5
	T4	14.0	0.5
Soil Type 3	T1	10.5	0.5
	T2	11.2	0.5
	T3	12.0	0.5
	T4	12.8	0.5

The results of the experiments show that the yield of the different types of soil varies significantly. The yield is generally higher for *Soil Type 1* than for *Soil Type 2* and *Soil Type 3*. The yield is also higher for the *T4* treatment than for the *T1*, *T2*, and *T3* treatments. The standard error of the yield is relatively small, indicating that the results are reliable.

The following table lists the names of the authors of the papers presented at the conference, along with their affiliations and the titles of their papers. The table is organized into two columns, with the first column containing the author's name and affiliation, and the second column containing the title of the paper.

Author(s)	Title of Paper
John Doe, University of California, Berkeley	On the structure of the moduli space of curves
Jane Smith, University of Michigan	The geometry of the moduli space of surfaces
Robert Johnson, University of Texas at Austin	On the moduli space of curves of genus 2
Emily White, University of Wisconsin-Madison	The moduli space of curves of genus 3
Michael Brown, University of Illinois at Urbana-Champaign	On the moduli space of curves of genus 4
Sarah Green, University of California, San Diego	The moduli space of curves of genus 5
David Black, University of Michigan	On the moduli space of curves of genus 6
Olivia Grey, University of Wisconsin-Madison	The moduli space of curves of genus 7
William Gold, University of Illinois at Urbana-Champaign	On the moduli space of curves of genus 8
Isabella Silver, University of California, Berkeley	The moduli space of curves of genus 9
James Bronze, University of Michigan	On the moduli space of curves of genus 10
Grace Copper, University of Wisconsin-Madison	The moduli space of curves of genus 11
Benjamin Iron, University of Illinois at Urbana-Champaign	On the moduli space of curves of genus 12
Chloe Nickel, University of California, Berkeley	The moduli space of curves of genus 13
Samuel Tin, University of Michigan	On the moduli space of curves of genus 14
Victoria Lead, University of Wisconsin-Madison	The moduli space of curves of genus 15
Christopher Zinc, University of Illinois at Urbana-Champaign	On the moduli space of curves of genus 16
Stephanie Platinum, University of California, Berkeley	The moduli space of curves of genus 17
Jonathan Silver, University of Michigan	On the moduli space of curves of genus 18
Amelia Gold, University of Wisconsin-Madison	The moduli space of curves of genus 19
Christopher Silver, University of Illinois at Urbana-Champaign	On the moduli space of curves of genus 20

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## CONSTRUCTION

**construction**, *n.* 1. The act of building by combining or arranging parts or elements; the thing so built. 2. The act or process of interpreting or explaining the sense or intention of a writing (usu. a constitution, statute, or instrument); the ascertainment of a document's meaning in accordance with judicial standards. [Cases: Contracts 143; Statutes 174-278. C.J.S. Contracts § 302; Statutes §§ 306-431.] — **construct** (for sense 1), *vb.* — **construe** (for sense 2), *vb.*

"Construction, as applied to written law, is the art or process of discovering and expounding the meaning and intention of the authors of the law with respect to its application to a given case, where that intention is rendered doubtful either by reason of apparently conflicting provisions or directions, or by reason of the fact that the given case is not explicitly provided for in the law." Henry Campbell Black, *Handbook on the Construction and Interpretation of the Laws* 1 (1896).

"Some authors have attempted to introduce a distinction between 'interpretation' and 'construction.' Etymologically there is, perhaps, such a distinction; but it has not been accepted by the profession. For practical purposes any such distinction may be ignored, in view of the real object of both interpretation and construction, which is merely to ascertain the meaning and will of the lawmaking body, in order that it may be enforced." William M. Lile et al., *Brief Making and the Use of Law Books* 337 (3d ed. 1914).

"There is no explanation of the distinction between interpretation and construction [in Blackstone], nor can it be inferred from the matters dealt with under each head. The distinction is drawn in some modern works, but it is not taken in this book because it lacks an agreed basis. Some writers treat interpretation as something which is only called for when there is a dispute about the meaning of statutory words, while speaking of construction as a process to which all statutes, like all other writings, are necessarily subject when read by anyone. Others treat interpretation as something which is mainly concerned with the meaning of statutory words, while regarding construction as a process which mainly relates to the ascertainment of the intention of the legislature." Rupert Cross, *Statutory Interpretation* 18 (1976).

**construction ut res magis valeat quam pereat** (k<<schwa>>n-str<<schwa>>k-sh<<schwa>>n <<schwa>>t rays [or reez or rez] may-jis vay-lee-at kwam peer-ee-at). [Latin "a construction that gives effect to the matter rather than having it fail"] A construction arrived at when alternative readings are possible, one of which (usu. the broader reading) would achieve the manifest purpose of the document and one of which (usu. the narrower reading) would reduce it to futility or absurdity, whereby the interpreter chooses the one that gives effect to the document's purpose.

**contemporaneous construction.** An interpretation given at or near the time when a writing was prepared, usu. by one or more persons involved in its preparation. — Also termed *practical construction*; *practical interpretation*; *contemporaneous and practical interpretation*. See CONTEMPORANEOUS-CONSTRUCTION DOCTRINE. [Cases: Contracts 170; Statutes 218, 219(2). C.J.S. Contracts § 340; Statutes §§ 342, 344.]

**liberal construction.** An interpretation that applies a writing in light of the situation presented and that tends to effectuate the spirit and purpose of the writing. — Also termed *equitable construction*; *loose construction*; *broad interpretation*. [Cases: Contracts 143. C.J.S. Contracts § 302.]

"Liberal construction ... expands the meaning of the statute to embrace cases which are clearly within the spirit or reason of the law, or within the evil which it was designed to remedy, provided such an interpretation is not inconsistent with the language used. It resolves all reasonable doubts in favor of the applicability of the statute to the particular case." William M. Lile et al., *Brief Making and the Use of Law Books* 343 (3d ed. 1914).

**literal construction.** See *strict construction*.

**practical construction.** See *contemporaneous construction*.

**purposive construction** (p<<schwa>>r-p<<schwa>>-siv). An interpretation that looks to the "evil" that the statute is trying to correct (i.e., the statute's purpose). — Also termed *teleological interpretation*. See *liberal construction*.

**statutory construction.** See STATUTORY CONSTRUCTION.

**strict construction.** 1. An interpretation that considers only the literal words of a writing. — Also termed *literal construction*; *literal interpretation*. See STRICT CONSTRUCTIONISM. [Cases: Contracts 143. C.J.S. Contracts § 302.] 2. A construction that considers words narrowly, usu. in their historical context. • This type of construction treats statutory and contractual words with highly restrictive readings. — Also termed *strict interpretation*. 3. The philosophy underlying strict interpretation of statutes; STRICT CONSTRUCTIONISM.  
“Strict construction of a statute is that which refuses to expand the law by implications or equitable considerations, but confines its operation to cases which are clearly within the letter of the statute, as well as within its spirit or reason, not so as to defeat the manifest purpose of the Legislature, but so as to resolve all reasonable doubts against the applicability of the statute to the particular case.” William M. Lile et al., *Brief Making and the Use of Law Books* 343 (3d ed. 1914).  
“Strict interpretation is an equivocal expression, for it means either literal or narrow. When a provision is ambiguous, one of its meanings may be wider than the other, and the strict (i.e., narrow) sense is not necessarily the strict (i.e., literal) sense.” John Salmond, *Jurisprudence* 171 n. (t) (Glanville L. Williams ed., 10th ed. 1947).

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Bryan A. Garner, Editor in Chief

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