



Interoffice Communication

To James J. Doyle
From George Safi
Date July 10, 1978
Subject IMPOSSIBILITY AS A DEFENSE TO NONCOMPLIANCE WITH
VINYL CHLORIDE EMISSION REDUCTION SCHEDULES

1. Legal Principles.

Courts appear to be in agreement that the law does not require a person to do an impossible thing and that statutes will not be construed to require performance of duties which are rendered impossible of performance for reasons which the person is in no way responsible and powerless to change. See e.g., Boyd v. Coleman, 111 S. 600 (Miss. 1927). A case exemplifying this legal principle is Dalzell v. Kane, 183 A. 782 (Pa. 1936) where a statute provided that county boards were to select banks and deposit funds at interest rates of not less than two percent per annum. The Court held that despite the specific statutory language, where no bank offered interest rates equal to or greater than two percent a board could lawfully deposit funds at less than two percent interest.

Courts have allowed impossibility as a defense to noncompliance not only in cases where strict compliance has been rendered absolutely impossible such as in Dalzell, supra, but also in cases where strict compliance was in fact physically possible but would result in substantial hardship and injustice. See e.g., Boyd v. Coleman, supra; State v. Gish, infra. Those court holdings must be reconciled, however, with the legal principle that a person is not to be exculpated for violating a statute merely because complying with such statute would have resulted in substantial hardship to him. See e.g., Helvering v. Ohio Leather Company, 317 U.S. 102 (1942). The basis for distinction appears to be whether or not the adverse consequences resulting from a person's strict compliance was within legislative contemplation. Thus, if a court finds (a) strict compliance is physically possible and (b) the consequences of strict compliance are not beyond the legislative intent of the statute, then a person is bound to comply with the literal language of the statute even though such compliance may result in substantial hardship or injustice.

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2. Conoco's inability to comply with the vinyl chloride emission standard.

It will be impossible for Conoco, for reasons beyond its control, to continue operating its VCM plant and be in compliance with the present vinyl chloride emission reduction schedules. It would be possible, however, for Conoco to avoid violating the regulations by shutting down its VCM plant until the incineration system has been completed. Applying the legal principles discussed above, Conoco would seem to have impossibility as a defense to noncompliance only if it can show that Congress did not intend for a VCM plant to shut down to avoid violating emission reduction schedules where such plant was unable to comply with the schedules solely because of actions of third parties over which the plant operator had no control.

3. Discerning legislative intent.

As a general rule, a court may always presume that the legislature intended exceptions to statutes to avoid hardship and injustice that would result from an otherwise literal application of the statute. United States v. Kirby, 7 Wall. 482 (1869). The closing of the VCM plant would certainly result in economic hardship to Conoco and to workers laid off during the closure. Moreover, the closure would be unjust since Conoco's inability to comply was caused solely by circumstances beyond its control.

The proposition that closing the plant to avoid violating emission schedules is beyond legislative intent and that, therefore, strict compliance should be deemed impossible is supported by Gish v. States, 150 N.W. 37 (Iowa 1914). In that case, an automobile owner was relieved from criminal prosecution for violation of the provision of a statute requiring license plates to be displayed on motor vehicles when the failure of the owner to comply was due solely to the inability of the state officials to furnish the plates. In reaching its decision the court observed that unless the owners assumed the risk of penalty for violating the statute, a strict construction of the statute would require thousands of vehicles to stand unused waiting for the license plate factory to perform its broken contract with the state. The court stated that recognition of such adverse consequences is relevant to ascertaining legislative intent because they arise naturally out of the practical application of law. For a case with similar fact and holding, see Boyd v. Coleman, supra.

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4. Conclusion.

A court is not likely to depart from the literal language of the statute unless the merits of the case so justify. In Gish and Boyd, the hardship and injustice resulting from a literal application of the statute were such that those courts had little difficulty in holding that the legislature could not have intended strict compliance under the circumstances and that, therefore, strict compliance was impossible. In order for Conoco to prevail on a plea of impossibility as a defense to noncompliance with the emission schedules, it must be able to show that plant closure under the circumstances results in such hardship and injustice as to be beyond legislative intent.

George Safi

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