

Language for Lawyers

by Gertrude Block



Question: *The attached newspaper item discusses a legal controversy caused by a missing comma. Could you please discuss the problem of the missing comma?*

Answer: A vigilant reader has sent me a newspaper article that illustrates the importance of one small piece of punctuation that is often misused or omitted—the comma. When that happens, a lot of money and time are wasted for courts, lawyers, and society.

The current controversy was about a single comma in Article IV, Section 27 of the Constitution of the state of Missouri. Here is the sentence in question:

The governor may control the rate at which any appropriation is expended during the period of the appropriation by allotment or other means and may reduce the expenditures of the state or any of its agencies below their appropriations whenever the actual revenues are less than the revenue estimates upon which the appropriations were based.

That sentence, reprinted exactly as it appeared, has no commas, in accord with the current tendency to reduce comma usage. (One example of that tendency is the disappearance of the final serial comma in a list of items.) For an example of former comma usage, see the series “misuse, overuse, or omit” in my final sentence above. I inserted a comma before “or omit.” Most journalists would omit that comma.

Before discussing the controversy that the omitted comma caused, we should look at the same issue that in the 1984 Republican party platform statement, prompted a *Time* magazine article: “Rallying Round a Comma Cause.” Back then a draft of the platform originally stated that Republicans “oppose any attempts to increase taxes which would harm the recovery and reverse the trend to restoring control of the economy to individual Americans.”

Republicans soon realized that as the language of the platform was drafted, the party was indicating that Republicans did not oppose *all* tax increases—only “harmful increases.” As drafted, that language would allow the newly elected Democratic president to increase taxes as a last resort.

To avoid that meaning, Republicans hastily added a single comma—after “taxes” and before “which,” thus avoiding the problem. The language following “which” then indicated what all the Republicans intended: that no tax increase could occur under any

circumstances. Now the platform reads: “[Republicans] oppose any attempts to increase taxes, which would harm the recovery and reverse the trend to restoring control of the economy individual Americans.”

In the present case, a single comma would accomplish the same purpose. That comma should be inserted after the phrase “or other means” and before “and may reduce.” Now the pertinent section of the article would read:

The governor may control the rate at which any appropriation is expended during the period of the appropriation by allotment or other means, and may reduce the expenditures of the state or any of its agencies below their appropriations whenever the actual revenues are less than the revenue estimates upon which the appropriations were based.

The sentence would be written more gracefully if the word “and” were changed to “which,” that relative pronoun making it clear that the writer is explaining the reason for the reduction in taxes; but the addition of that single comma eliminates the crucial problem of ambiguity. Here is the added paragraph:

The governor may control the rate at which any appropriation is expended during the period of the appropriation by allotment or other means, which might reduce the expenditures of the state or any of its agencies below their appropriations whenever the actual revenues are less than the revenue estimates upon which the appropriations were based.

The opposing attorneys relied on different authorities for their reasoning. The assistant attorney, arguing that the governor had correctly acted within his authority to manage the state finances, relied on Strunk & White’s *The Elements of Style*. The auditor’s chief litigation counsel used “a different authority,” his own 10th grade grammar teacher. My source was *Sutherland Statutory Construction*, 4th edition, § 47.15. ©

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