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Commonwealth of Kentucky

Court of Appeals

NO. 2011-CA-002085-MR

COMMONWEALTH OF KENTUCKY,
CABINET FOR HEALTH AND FAMILY SERVICES;
JOHN P. HAMM; AND JAY KLEIN

APPELLANTS

v. APPEAL FROM FRANKLIN CIRCUIT COURT
HONORABLE PHILLIP J. SHEPHERD, JUDGE
ACTION NO. 10-CI-01146

DEBORA PIGMAN, KENTUCKY
PERSONNEL BOARD; MARK A. SIPEK,
EXECUTIVE DIRECTOR; KENTUCKY
PERSONNEL BOARD

APPELLEES

OPINION
AFFIRMING

** ** * ** * ** *

BEFORE: CAPERTON, STUMBO, AND THOMPSON, JUDGES.

CAPERTON, JUDGE: The Commonwealth of Kentucky, Cabinet for Health and Family Services; John P. Hamm; and Jay Klein appeal from the opinion and order of the Franklin Circuit Court affirming an administrative decision of the Kentucky

Personnel Board invalidating the dismissal of a classified employee, Debora Pigman, on the sole ground that the dismissal letter was signed by one other than the person with the authority to take dismissal actions. After a thorough review of the record, the parties' arguments, and the applicable law, we affirm.

Pigman was employed as a classified employee with the Commonwealth of Kentucky, Cabinet for Health and Family Services (hereinafter "CHFS") in the Department of Community Based Services, Northeastern Service Region. Pigman was terminated from her position on September 11, 2009, for a number of incidents involving unsatisfactory job performance and breach of confidentiality. The dismissal letter provided a typed notation at the signature of "J.P. Hamm, Appointing Authority" and was actually signed on behalf of J.P. Hamm by Howard J. Klein, also known as Jay Klein. J.P. Hamm is the Executive Director of the Office of Human Resource Management for CHFS and Klein is the Assistant Director of the Office of Human Resources Management ("OHRM"). On June 8, 2005, Hamm filed with the Kentucky Personnel Cabinet an authorization form in which Hamm authorized Klein to sign letters of terminations among other authorized tasks.

Pigman filed an appeal with the Kentucky Personnel Board (hereinafter the "Board") on September 22, 2009. On March 16, 2010, Pigman filed a motion to sustain the appeal before the Board on the ground that the person who signed the dismissal letter lacked the authority to do so. CHFS filed a response to Pigman's motion and produced the Personnel Cabinet Authorization

Form dated June 8, 2009 in which Hamm authorized Klein to act on his behalf in personnel matters. The Board issued its findings of fact, conclusions of law, and recommended order on April 27, 2010, sustaining the appeal of Pigman holding that the appointing authority for CHFS is the Secretary pursuant to statute and that there was no authorization from the Secretary to Klein to take personnel actions for the Secretary; thus, Pigman's dismissal was void because it was not undertaken by the appointing authority. Exceptions were filed by CHFS to the recommended order on May 12, 2010. The Board issued its final order on June 17, 2010, adopting without change the recommended order. A timely petition for review was filed by CHFS, Hamm, and Klein in the Franklin Circuit Court.

In affirming the decision of the Board, the circuit court noted that the statutes contained in Kentucky Revised Statutes (KRS) Chapter 18A are very specific in their directives. The court determined that the legislature created KRS Chapter 18A to cover all Executive Branch employees, not just those in specific cabinets, unless a specific statute exempts. The court further surmised that nowhere did the legislature exempt CHFS employees from provisions of KRS Chapter 18A with the creation of KRS Chapter 194A. The court gave deference to the Board's interpretation that KRS Chapter 194A cannot trump KRS 18A, as the Board interpreted personnel law governing state employees. The court concluded that the Board was reasonable in its determination that KRS Chapter 18A is the applicable law and that Klein did not have the authority to sign Pigman's dismissal letter because he had not been formally designated by the Secretary, i.e.,

appointing authority, to act on behalf of the agency. As stated, the court affirmed the decision of the Board. It is from this order that the Appellants now appeal.

On appeal, the parties present three issues, which we have concisely summarized¹ as: (1) whether the trial court conducted the proper standard of review of the Board's decision; (2) whether deference should be afforded the Board's statutory interpretation of KRS 194A.030; and (3) whether the court erred in affirming the Board and interpreting the applicable statutes in its conclusion that the Secretary and not Hamm was the appointing authority. We now turn to the first and second issues raised by the parties, the applicable standard of review and whether the Board was entitled to deference in the statutory interpretation of KRS 194A.030.

¹ Appellants make three rather lengthy arguments. First, the circuit court erred in affirming the decision of the Kentucky Personnel Board, specifically as to who was the "appointing authority" for CHFS when the court failed to conduct a de novo review and erroneously afforded deference to the agency's interpretation. Moreover, deference is not required to be given to the agency's determination that KRS 194A.030(10) does not "trump" KRS 18A in that KRS 194A.030(10) is not a law or regulation that the Board is charged with implementing and is not ambiguous. Second, the circuit court erred in affirming the final decision of the Board concluding that the Secretary of CHFS was the "appointing authority" for CHFS in that the Board failed to consider the enabling statute for CHFS found in KRS 194A.030(10) which vests the personnel actions taken by the Cabinet in the Office of Human Resource Management in determining which agency head is considered the appointing authority under KRS 18A.005(1). Third, the circuit court erred in not finding that the Agency Head is John P. Hamm, the Executive Director of the Office of Human Resource Management and, therefore, Hamm is the "appointing authority" under KRS 18A.005(1). Further, Hamm duly authorized Jay Klein, the Assistant Director of OHRM, to perform personnel actions for him.

Appellee Pigman argues that the circuit court used the correct standard of review for the Kentucky Personnel Board's decision; and both the circuit court and the Board correctly applied the applicable statute. The Board additionally argues that the circuit court correctly determined the Secretary of CHFS is the agency head and the only one who can delegate appointing authority; the executive director of the Office of Human Resources Management is not an agency head for CHFS.

Appellant contend that the circuit court erred in its assessment of the applicable standard of review. Our review of the record shows first, that the circuit court noted that the fact-finder is entitled to deference in regards to credibility and the weight of the evidence, resulting in a substantial evidence review. Second, the court noted that deference is accorded when an agency interprets its own regulations but not when it is interpreting statutes of general applicability or regulations outside of the scope of the agency's authority. Third, the circuit court noted that statutory law is a question of law reviewed *de novo* by courts, and that no deference was required to be given to agency construction. Fourth and finally, the court noted that it must determine whether the agency correctly applied relevant law to its factual findings. We cannot say that the court erred in its assessment of the applicable standard of review.

Generally speaking:

Our standard of review of a circuit court's affirmance of an administrative decision is to determine whether the circuit court's findings upholding the Cabinet's decision are clearly erroneous. The circuit court's role as an appellate court is to review the administrative decision, not to reinterpret or to reconsider the merits of the claim, nor to substitute its judgment for that of the agency as to the weight of the evidence. Thus, the circuit court must determine both “[i]f the findings of fact are supported by substantial evidence of probative value” and “whether or not the administrative agency has applied the correct rule of law to the facts so found.” “The test of substantiality of evidence is whether ... it has sufficient probative value to induce conviction in the minds of reasonable [persons].” Further, “the possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's finding from being

supported 'substantial evidence.' ” As long as there is substantial evidence in the record to support the agency's decision, the court must defer to the agency, even if there is conflicting evidence.

An administrative agency, such as the Cabinet, is “afforded great latitude in its evaluation of the evidence heard and the credibility of witnesses appearing before it” [citation omitted]. “[A]lthough a reviewing court may arrive at a different conclusion than the trier of fact in its consideration of the evidence in the record, this does not necessarily deprive the agency's decision of support by substantial evidence” [citation omitted]. Further, even if this Court would have come to a different conclusion if it heard the case de novo, it must affirm the administrative agency's decision if supported by substantial evidence. “[I]t is the exclusive province of the administrative trier of fact to pass upon the credibility of witnesses, and the weight of the evidence” [citation omitted]. Indeed, an administrative agency's trier of facts may hear all the evidence “ ‘and choose the evidence that he believes’ ” [citation omitted]. “ ‘If the findings of fact are supported by substantial evidence of probative value, then they must be accepted as binding and it must then be determined whether or not the administrative agency has applied the correct rule of law to the facts so found’ ” [citations omitted].

500 Associates, Inc. v. Natural Resources and Environmental Protection Cabinet, 204 S.W.3d 121, 131-32 (Ky. App. 2006) (internal citations omitted).

Thus, the circuit court correctly stated that a review of the factual findings of an agency are subject to a substantial evidence review, and due deference is given to the fact-finder in regards to credibility and the weight of the evidence.

In *Commonwealth, ex rel. Stumbo v. Kentucky Public Service Com'n*, 243 S.W.3d 374, 380 (Ky. App. 2007), this Court stated:

The interpretation of a statute is a matter of law. *Commonwealth v. Garnett*, 8 S.W.3d 573, 575–6 (Ky.App.1999). However, while we ultimately review issues of law de novo, we afford deference to an administrative agency's interpretation of the statutes and regulations it is charged with implementing. *Board of Trustees of Judicial Form Retirement System v. Attorney General of Com.*, 132 S.W.3d 770, 787 (Ky.2003); *Chevron, U.S.A., Inc. v. Natural Res. Defense Council, Inc.*, 467 U.S. 837, 843–845, 104 S.Ct. 2778, 2782–2783, 81 L.Ed.2d 694 (1984) (If the statute is silent or ambiguous with respect to the specific issue, the question for the court is whether the agency's answer is based on a permissible construction of the statute).

Stumbo at 380.

The Kentucky Supreme Court reiterated that deference may be afforded an agency's statutory interpretation in *Louisville/Jefferson County Metro Government v. TDC Group, LLC*, 283 S.W.3d 657, 661 (Ky. 2009), wherein the court stated:

This Court has recognized the “deference afforded an administrative agency's construction of a statute that it is charged with implementing,” so long as the “agency interpretation is in the form of an adopted regulation or formal adjudication.” *Board of Trustees of Judicial Form Retirement System v. Attorney General of the Commonwealth*, 132 S.W.3d 770, 786–87 (Ky.2003) (citing *Chevron, U.S.A., Inc. v. Natural Res. Def. Council, Inc.*, 467 U.S. 837, 844–45, 104 S.Ct. 2778, 81 L.Ed.2d 694 (1984)); see also *Commonwealth, ex rel. Stumbo v. Kentucky Public Service Com'n*, 243 S.W.3d 374, 380 (Ky.App.2007) (“[W]e afford deference to an administrative agency's interpretation of the statutes and regulations it is charged with implementing.”); *Commonwealth ex rel. Beshear v. Kentucky Utilities Co.*, 648 S.W.2d 535, 537 (Ky.App.1982) (“Great deference is always given to an administrative agency in the interpretation of a statute which is within its specific

province. The ABC Board's interpretation of KRS 241.075(3) came in the context of the formal adjudicatory process, namely an appeal to the Board. Moreover, the Board's interpretation is not arbitrary or capricious, as it was determined by applying a reasonableness analysis.

Sub judice, the circuit court correctly noted that an agency is often afforded deference to their interpretation of the statutes and regulations it is charged with implementing. The court also correctly noted that the question of statutory interpretation is a matter of law, which is ultimately reviewed *de novo*, meaning that no deference was *required* to be given to agency construction. See *Halls Hardwood Floor Co. v. Stapleton*, 16 S.W.3d 327, 330 (Ky. App. 2000) (“Statutory interpretation is a matter of law reserved for the courts and this Court is not bound by the Board's interpretation of the statute.”). Similarly, the circuit court correctly determined that a reviewing court must determine whether the agency applied the correct rule of law to its factual findings. *Commonwealth, Dept. of Educ. v. Commonwealth*, 798 S.W.2d 464, 467 (Ky. App. 1990) (internal citations omitted). After our review of the record, the parties’ arguments, and our applicable jurisprudence, we are in agreement with Appellees that the circuit court properly assessed the correct standard of review.

In assessing whether deference should be afforded the Board’s statutory interpretation of KRS 194A.030, we note that the circuit court concluded that the Board had issued a final decision interpreting the statutes and regulations that were within its special realm of expertise; accordingly, judicial deference to

the agency was appropriate. The circuit court, in affirming, concluded that the Board's interpretation was reasonable. We agree with the court's determination that deference to the agency's interpretation was appropriate, albeit not required. KRS Chapter 194A empowers the Cabinet for Health and Family Services; thus, KRS 194A.030 is certainly within the province of the agency. Thus, we find no error in the trial court's determination that deference to the Board was appropriate. *See Commonwealth ex rel. Beshear v. Kentucky Utilities Co.*, 648 S.W.2d 535, 537 (Ky. App. 1982) ("Great deference is always given to an administrative agency in the interpretation of a statute which is within its specific province.")

We now turn to the dispositive issue on appeal, whether the court erred in affirming the Board and interpreting the applicable statutes in its conclusion that the Secretary and not Hamm was the appointing authority.

At issue, KRS 194A.030 states in part:

The cabinet consists of the following major organizational units, which are hereby created:

(1) Office of the Secretary. Within the Office of the Secretary, there shall be an Office of Communications and Administrative Review, an Office of Legal Services, an Office of Inspector General, an Office of the Ombudsman, and the Governor's Office of Electronic Health Information.

....

(9) Office of Human Resource Management. The Office of Human Resource Management shall coordinate, oversee, and execute all personnel, training, and management functions of the cabinet.

The office shall focus on the oversight, development, and implementation of quality personnel services; curriculum development and delivery of instruction to staff; the administration, management, and oversight of training operations; health, safety, and compliance training; and equal employment opportunity compliance functions. The office shall be headed by an executive director

appointed by the secretary with the approval of the Governor in accordance with KRS 12.050....

KRS 194A.030.²

² KRS 194A.030 states in its entirety:

The cabinet consists of the following major organizational units, which are hereby created:

- (1) Office of the Secretary. Within the Office of the Secretary, there shall be an Office of Communications and Administrative Review, an Office of Legal Services, an Office of Inspector General, an Office of the Ombudsman, and the Governor's Office of Electronic Health Information.
 - (a) The Office of Communications and Administrative Review shall include oversight of administrative hearings and communications with internal and external audiences of the cabinet. The Office of Communications and Administrative Review shall be headed by an executive director who shall be appointed by the secretary with the approval of the Governor under KRS 12.050.
 - (b) The Office of Legal Services shall provide legal advice and assistance to all units of the cabinet in any legal action in which it may be involved. The Office of Legal Services shall employ all attorneys of the cabinet who serve the cabinet in the capacity of attorney, giving legal advice and opinions concerning the operation of all programs in the cabinet. The Office of Legal Services shall be headed by a general counsel who shall be appointed by the secretary with the approval of the Governor under KRS 12.050 and 12.210. The general counsel shall be the chief legal advisor to the secretary and shall be directly responsible to the secretary. The

Also at iss KRS 18A.005(1) sets forth:

“Appointing authority” means the agency head or any person whom he has authorized by law to designate to act on behalf of the agency with respect to employee appointments, position establishments, payroll documents, register requests, waiver requests, requests for certification, or other position actions. Such

Attorney General, on the request of the secretary, may designate the general counsel as an assistant attorney general under the provisions of KRS 15.105.

(c) The Office of Inspector General shall be responsible for:

1. The conduct of audits and investigations for detecting the perpetration of fraud or abuse of any program by any client, or by any vendor of services with whom the cabinet has contracted; and the conduct of special investigations requested by the secretary, commissioners, or office heads of the cabinet into matters related to the cabinet or its programs;
2. Licensing and regulatory functions as the secretary may delegate;
3. Review of health facilities participating in transplant programs, as determined by the secretary, for the purpose of determining any violations of KRS 311.1911 to 311.1959, 311.1961, and 311.1963; and
4. The notification and forwarding of any information relevant to possible criminal violations to the appropriate prosecuting authority.

The Office of Inspector General shall be headed by an inspector general who shall be appointed by the secretary with the approval of the Governor. The inspector general shall be directly responsible to the secretary.

(d) The Office of the Ombudsman shall provide professional support in the evaluation of programs, including but not limited to quality improvement and information analysis and reporting, contract monitoring, program monitoring, and the development of quality service delivery, and a review and resolution of citizen complaints about programs or services of the cabinet when those complaints are unable to be resolved through normal administrative remedies. The Office of the Ombudsman shall

designation shall be in writing and signed by both the agency head and his designee. Prior to the exercise of

appointing authority, such designation shall be filed with the secretary....

KRS 18A.005(1).

place an emphasis on research and best practice and program accountability and shall monitor federal compliance. The Office of the Ombudsman shall be headed by an executive director who shall be appointed by the secretary with the approval of the Governor in accordance with KRS 12.050.

(e) The Governor's Office of Electronic Health Information shall provide leadership in the redesign of the health care delivery system using electronic information technology as a means to improve patient care and reduce medical errors and duplicative services. The Governor's Office of Electronic Health Information shall be headed by an executive director who shall be appointed by the secretary with the approval of the Governor in accordance with KRS 12.050;

(2) Department for Medicaid Services. The Department for Medicaid Services shall serve as the single state agency in the Commonwealth to administer Title XIX of the Federal Social Security Act. The Department for Medicaid Services shall be headed by a commissioner for Medicaid services, who shall be appointed by the secretary with the approval of the Governor under KRS 12.050. The commissioner for Medicaid services shall be a person who by experience and training in administration and management is qualified to perform the duties of this office. The commissioner for Medicaid services shall exercise authority over the Department for Medicaid Services under the direction of the secretary and shall only fulfill those responsibilities as delegated by the secretary;

(3) Department for Public Health. The Department for Public Health shall develop and operate all programs of the cabinet that provide health services and all programs for assessing the health status of the population for the promotion of health and the prevention of disease, injury, disability, and premature death. This shall include but not be limited to oversight of the Division of Women's Health. The Department for Public Health shall be headed by a commissioner for public health who shall be appointed by the secretary with the approval of the Governor under KRS 12.050. The commissioner for public health shall be a duly licensed physician who by experience and training in administration and management is qualified to perform the duties of this office. The commissioner shall advise the head of each major organizational unit

In interpreting the two statutes, we must look to our oft-used statutory construction maxims, as set forth in *Cosby v. Commonwealth*, 147 S.W.3d 56, 58–59 (Ky. 2004). Generally:

“[A] court must not be guided by a single sentence of a statute but must look to the provisions of the whole statute and its object and policy.” *County of Harlan v.*

enumerated in this section on policies, plans, and programs relating to all matters of public health, including any actions necessary to safeguard the health of the citizens of the Commonwealth. The commissioner shall serve as chief medical officer of the Commonwealth. The commissioner for public health shall exercise authority over the Department for Public Health under the direction of the secretary and shall only fulfill those responsibilities as delegated by the secretary;

(4) Department for Behavioral Health, Developmental and Intellectual Disabilities. The Department for Behavioral Health, Developmental and Intellectual Disabilities shall develop and administer programs for the prevention of mental illness, intellectual disabilities, brain injury, developmental disabilities, and substance abuse disorders and shall develop and administer an array of services and support for the treatment, habilitation, and rehabilitation of persons who have a mental illness or emotional disability, or who have an intellectual disability, brain injury, developmental disability, or a substance abuse disorder. The Department for Behavioral Health, Developmental and Intellectual Disabilities shall be headed by a commissioner for behavioral health, developmental and intellectual disabilities who shall be appointed by the secretary with the approval of the Governor under KRS 12.050. The commissioner for behavioral health, developmental and intellectual disabilities shall be by training and experience in administration and management qualified to perform the duties of the office. The commissioner for behavioral health, developmental and intellectual disabilities shall exercise authority over the department under the direction of the secretary, and shall only fulfill those responsibilities as delegated by the secretary;

(5) Commission for Children with Special Health Care Needs. The duties, responsibilities, and authority set out in KRS 200.460 to 200.490 shall be performed by the commission. The commission shall advocate the rights of children with disabilities and, to the extent that funds are available, shall provide the services and facilities for children with disabilities as are deemed appropriate by the commission. The commission shall be composed of seven (7) members appointed by the Governor to serve a term of office of four (4) years. The commission may promulgate administrative regulations under KRS Chapter 13A as may be necessary to implement and administer its responsibilities. The duties, responsibilities, and authority of the Commission for Children with Special Health Care

Appalachian Reg'l Healthcare, Inc., Ky., 85 S.W.3d 607, 611 (2002). “No single word or sentence is determinative, but the statute as a whole must be considered.” *Id.* In addition, “[w]e have a duty to accord to words of a statute their literal meaning unless to do so would lead to an absurd or wholly unreasonable conclusion.” *Bailey v. Reeves, Ky.*, 662 S.W.2d 832, 834 (1984). Moreover, “[i]n construing statutory provisions, it is presumed that the legislature did not intend an

Needs shall be performed through the office of the executive director of the commission. The executive director shall be appointed by the Governor under KRS 12.040, and the commission may at any time recommend the removal of the executive director upon filing with the Governor a full written statement of its reasons for removal. The executive director shall report directly to the Commission for Children with Special Health Care Needs and serve as the commission's secretary;

(6) Office of Health Policy. The Office of Health Policy shall lead efforts to coordinate health care policy, including Medicaid, behavioral health, developmental and intellectual disabilities, mental health services, services for individuals with an intellectual disability, public health, certificate of need, and health insurance. The duties, responsibilities, and authority pertaining to the certificate of need functions and the licensure appeal functions, as set out in KRS Chapter 216B, shall be performed by this office. The Office of Health Policy shall be headed by an executive director who shall be appointed by the secretary with the approval of the Governor pursuant to KRS 12.050;

(7) Department for Family Resource Centers and Volunteer Services. The Department for Family Resource Centers and Volunteer Services shall streamline the various responsibilities associated with the human services programs for which the cabinet is responsible. This shall include, but not be limited to, oversight of the Division of Family Resource and Youth Services Centers and the Kentucky Commission on Community Volunteerism and Services. The Department for Family Resource Centers and Volunteer Services shall be headed by a commissioner who shall be appointed by the secretary with the approval of the Governor under KRS 12.050. The commissioner for family resource centers and volunteer services shall be by training and experience in administration and management qualified to perform the duties of the office, shall exercise authority over the department under the direction of the secretary, and shall only fulfill those responsibilities as delegated by the secretary;

(8) Office of Administrative and Technology Services. The Office of Administrative and Technology Services shall develop and maintain technology, technology infrastructure, and information management systems in support of all units of the cabinet. The office shall have responsibility for properties and facilities owned, maintained, or managed

absurd result.” *Commonwealth, Central State Hosp. v. Gray*, Ky., 880 S.W.2d 557, 559 (1994). The legislature's intention “shall be effectuated, even at the expense of the letter of the law.” *Commonwealth v. Rosenfield Bros. & Co.*, 118 Ky. 374, 80 S.W. 1178, 1180 (1904).

We must further acknowledge that the General Assembly “intends an Act to be effective as an entirety. No rule of statutory construction has been more

by the cabinet. The Office of Administrative and Technology Services shall be headed by an executive director who shall be appointed by the secretary with the approval of the Governor under KRS 12.050. The executive director shall exercise authority over the Office of Administrative and Technology Services under the direction of the secretary and shall only fulfill those responsibilities as delegated by the secretary;

(9) Office of Human Resource Management. The Office of Human Resource Management shall coordinate, oversee, and execute all personnel, training, and management functions of the cabinet. The office shall focus on the oversight, development, and implementation of quality personnel services; curriculum development and delivery of instruction to staff; the administration, management, and oversight of training operations; health, safety, and compliance training; and equal employment opportunity compliance functions. The office shall be headed by an executive director appointed by the secretary with the approval of the Governor in accordance with KRS 12.050;

(10) The Office of Policy and Budget shall provide central review and oversight of budget, contracts, legislation, policy, grant management, boards and commissions, and administrative regulations. The office shall provide coordination, assistance, and support to program departments and independent review and analysis on behalf of the secretary. The office shall be headed by an executive director appointed by the secretary with the approval of the Governor in accordance with KRS 12.050;

(11) Department for Community Based Services. The Department for Community Based Services shall administer and be responsible for child and adult protection, violence prevention resources, foster care and adoption, permanency, and services to enhance family self-sufficiency, including child care, social services, public assistance, and family support. The department shall be headed by a commissioner appointed by the secretary with the approval of the Governor in accordance with KRS 12.050;

(12) Department for Income Support. The Department for Income Support shall be responsible for child support enforcement and disability determination. The department shall serve as the state unit as required by

definitely, cited or more often repeated than; a cardinal rule that significance and effect shall, if possible, be accorded to every part of the Act.” *George v. Scent*, Ky., 346 S.W.2d 784, 789 (1961).

Cosby at 58–59.

Additionally, “[i]n construing legislative enactments, courts should look to the letter and spirit of the statute, viewing it as a whole.” *Lewis v. Jackson Energy Co-op. Corp.*, 189 S.W.3d 87, 93 (Ky.2005), citing *Combs v. Hubb Coal Corp.*, 934 S.W.2d 250 (Ky.1996). Our duty as a court is to effectuate the intent of the legislature in construing a statute. *Hall v. Hospitality Resources, Inc.*, 276 S.W.3d 775, 784 (Ky.2008), citing *Commonwealth v. Plowman*, 86 S.W.3d 47, 49 (Ky.2002). “A fundamental canon of statutory construction is that, unless

Title II and Title XVI of the Social Security Act,² and shall have responsibility for determining eligibility for disability for those citizens of the Commonwealth who file applications for disability with the Social Security Administration. The department shall be headed by a commissioner appointed by the secretary with the approval of the Governor in accordance with KRS 12.050; and

(13) Department for Aging and Independent Living. The Department for Aging and Independent Living shall serve as the state unit as designated by the Administration on Aging Services under the Older Americans Act³ and shall have responsibility for administration of the federal community support services, in-home services, meals, family and caregiver support services, elder rights and legal assistance, senior community services employment program, the state health insurance assistance program, state home and community based services including home care, Alzheimer's respite services and the personal care attendant program, certifications of adult day care and assisted living facilities, the state Council on Alzheimer's Disease and other related disorders, the Institute on Aging, and guardianship services. The department shall also administer the Long-Term Care Ombudsman Program and the Medicaid Home and Community Based Waivers Consumer Directed Option (CDO) Program. The department shall serve as the information and assistance center for aging and disability services and administer multiple federal grants and other state initiatives. The department shall be headed by a commissioner appointed by the secretary with the approval of the Governor in accordance with KRS 12.050.

powers and duties. Within the provisions of I.R.S. 344.180 and 344.190, the Commission and only the Commission has the power to “appoint an Executive Director, attorneys, hearing examiners, clerks, *and other employees* and agents as it may deem necessary....” [Emphasis added.] KRS Chapter 344 does not authorize the Commission to delegate its discretionary authority to employ personnel to its Executive Director. Therefore, only the Commission fits within the legal definition of “appointing officer” and “appointing authority”.

Martin at 867-68.

We agree with the Board and the lower court that the Secretary was clearly the appointing authority to act on behalf of the agency in light of *Martin*, KRS 18A.005(1), and KRS 194A.030. We likewise agree that KRS Chapter 18A is binding upon the agency. We find no error in the court’s finding that the Board was reasonable in its conclusion that KRS Chapter 18A is the applicable law and that Klein did not have the authority to sign Pigman’s dismissal letter because he had not been formally designated by the Secretary, i.e., appointing authority, to act on behalf of the agency. We believe that such a construction of KRS 18A.005(1), and KRS 194A.030 effectuates the intention of our legislature.

Finding no error, we affirm.

ALL CONCUR.

BRIEFS FOR APPELLANTS:

Mary Stewart Tansey
Frankfort, Kentucky

BRIEF FOR APPELLEES:

C. David Emerson
Lexington, Kentucky

