



# ***TWISM ENTERPRISES:*** **OHIO'S LANDMARK** **DECISION ON** **ADMINISTRATIVE DEFERENCE**

By Larry H. James and Christopher R. Green

Ohio state courts are no longer obligated to defer to administrative agencies' interpretations of ambiguous statutes. On December 29, 2022, the Ohio Supreme Court ruled in *TWISM Ents., L.L.C. v. State Bd. of Registration for Professional Engineers & Surveyors*, 172 Ohio St.3d 225, 2022-Ohio-4677, that "it is the role of the judiciary, not administrative agencies, to make the ultimate determination about what the law means." While many states continue to apply *Chevron* deference, following the U.S. Supreme Court's decision in *Chevron, U.S.A., Inc. v. Natl. Resources Defense Council, Inc.*, 467 U.S. 837 (1984), Ohio courts are no longer bound to defer to an agency's interpretation of the law.

The *TWISM* case centered on the licensing of an engineering firm. TWISM Enterprises, the appellant, contested the agency's interpretation of a statute outlining requirements for providing engineering services in Ohio. The statute mandates engineering firms to designate full-time partners, managers, members, officers, or directors as being in "responsible charge" of its engineering activities. TWISM Enterprises designated an independent contractor instead of a full-time W-2 employee as its designated manager. The Ohio Board of Registration for Professional Engineers and Surveyors, the appellee, argued that the statute necessitates the designation of an employee of the firm, not an independent contractor.

During administrative appeal, the Hamilton County Court of Common Pleas conducted a *de novo* review and sided with TWISM Enterprises' interpretation of the statute, declining to defer to the agency. However, the Court of Appeals for the First District reversed this decision, citing *Chevron* and stating that the statute was ambiguous, thereby requiring deference to the agency's interpretation. The Ohio Supreme Court accepted the appeal on two propositions of law, including the appropriate approach to administrative deference.

In its ruling, the Ohio Supreme Court adopted permissive deference allowing consideration of an agency's interpretation of an ambiguous statute but not mandating adherence to it. Justice DeWine emphasized, "The idea that a court must defer to an agency determination is difficult to reconcile with these separation-of-powers concepts. When a court defers to an agency's interpretation of the law, it hands to the executive branch the judicial authority 'to say what the law is.'" *TWISM* at ¶ 34, quoting *State v. Parker*, 157 Ohio St.3d 460, 2019-Ohio-3848, 137 N.E.3d 1151, ¶ 31. The Court clarified that lower courts should interpret statutes administered by state agencies as follows:

1. It is never mandatory for a court to defer to the interpretation of an administrative agency.
2. A court may consider an administrative agency's interpretation of a legal text but should exercise independent interpretation, with the weight of the agency's interpretation dependent on its persuasive power and the competency of the agency. And if the statute is unambiguous, then the court should stop right there.

Ultimately, the Supreme Court sided with TWISM Enterprises and held that an independent contractor may be responsible for and in charge of the engineering activities and decisions of the firm.

The *TWISM* ruling holds significant implications for disputes between Ohioans and administrative agencies. During administrative appeals, state agencies will have reduced influence over how courts interpret statutes, particularly when the agency is a party to the case. Recent cases, such as one involving the interpretation of a local zoning code in the Tenth District Court of Appeals, demonstrate the practical implications of the *TWISM* decision. Prior to *TWISM*, the court held that “[u]nless interpretation of a local zoning code is clearly in error, a court should defer to the administrative interpretation.” *Turner v. City of Bexley Bd. of Zoning & Planning*, 10th Dist. Nos. 22AP-554 and 22AP-562, 2023-Ohio-3225, ¶ 26, citing *Access Ohio, LLC v. Gahanna*, 10th Dist. No. 19AP-64, 2020-Ohio-2908, ¶ 16. Now, pursuant to *TWISM*, the court cannot exercise the level of deference to the administrative interpretation of the zoning code. Thus, where “the legal text is clear and unambiguous, a court never even considers the administrative interpretation of that text.” *Id.* at ¶ 27. Even though the Tenth District case involved ordinances instead of statutes, the constitutional role of the court remained the same: to say what the law is.

Ohio is not alone in departing from agency deference. Several other states, including Arizona, Delaware, Florida, Kansas, Michigan, Mississippi, Utah, Wisconsin, and Wyoming, have also shifted away from deference towards administrative agencies. Some states, such as Arizona, Florida, and Wisconsin, have even approved constitutional amendments or state laws abolishing deference to administrative agencies.



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