



**Legislative
Research
Council**

Issue Memorandum 99-22

LEGISLATIVE INTENT AND THE IMPACT OF TECHNOLOGY

Introduction

One of the most frequent requests made of the Legislative Research Council concerns the nature of materials that this office maintains that might be useful to determine legislative intent. In the vast majority of these cases, the person inquiring is in some doubt about how to interpret a statutory provision and is seeking assistance in trying to come to the best understanding of its meaning.

The LRC staff is always willing to attempt to point these people to any official or unofficial records that may assist them in their research. However, there are a small minority of requests for assistance in researching legislative intent where the requestor may be considering the possibility of litigation. Even in these instances the requestor is more likely to be researching legislative intent more for background than for use to directly challenge the meaning of the statute in a judicial proceeding. It is in these instances, of course, that questions about which records, documents, or other evidence of legislative intent are admissible in litigation come most directly into play.

Although common law principles on the use of public records and publications to prove legislative intent is, for the most part, well established, recent advances in technology have contributed to creating a number of new electronic

informational services that have revolutionized the word processing as well as the engrossing and enrolling aspects of the legislative process. In addition, the entire recordings of floor debates are now stored on the Internet. Certainly these extraordinary new public informational resources will also provide much greater opportunities for legislative research. It is not, however, so clear that they will significantly impact litigation.

Judicial Determination of Legislative Intent

While it is the constitutional role of the courts to interpret and apply statutes, very little of their deliberations on legislative intent ever goes beyond reading and understanding the codified statutes on their face. In the overwhelming majority of cases, the statute itself will be relatively clear and unambiguous. In cases where the statute is not perfectly clear, courts will usually attempt to elucidate the meaning of the statute logically without permitting the introduction of other records or documents into evidence. Only in the most unusual circumstances will the court look beyond the statute itself.

Occasionally, however, the court will not be able to attain a satisfactory understanding of a statute through reading and reasoning. In such instances, the court may permit the

introduction of evidence to support a legislative interpretation of the statute. Historically the types of records and documents permitted in this regard have been very limited. Except under the most extraordinary circumstances, only public records are permitted into evidence, and the courts have determined that to be a public record three elements are essential:

- (1) The record must be to one that is required to be kept either by statute or legislative rule;
- (2) The record must be reasonably necessary to the discharge of a constitutional or statutory duty. In the case of the Legislature this is lawmaking; and
- (3) The record must be prepared under the direction of and approved by the official public body (again, in this case, the Legislature).

Types of Legislative Information

It should be clear that most forms of legislative information, even most legislative documents, do not meet the rigorous standards traditionally required to be considered public records in the strict sense of that term. However, it may be useful to look at a few specific types of legislative information.

Statute. It may seem trite to discuss statute as a form of public record; but, in a sense, statutes are the ultimate public record and superior to any other public record when it comes to determining legislative intent. If the meaning of the statute is clear and unambiguous, no other evidence, whether a public record or not, can impugn its meaning. Moreover, the

quality of legal drafting and the resulting statutes have improved markedly in recent decades. This may be partially, perhaps primarily, attributed to rising standards of professionalism among legislatures and their legislative staff. Technology, however, also has played an important part. Electronic word processing eliminates typographical errors and facilitates revisions and corrections. Internet access provides model statutes and assists research. The ability to provide updated versions of legislation through continuous engrossing makes engrossing errors less likely and contributes significantly to the quality of legislative debate. The cumulative effect should be to promote clear, unambiguous statutes.

Statutory Declaration of Purpose.

The Legislature may choose to place a statement of purpose or declaration of legislative intent directly within a given statute. Since these provisions are statutory, they are clearly available to the court in considering legislative intent, but they can be fruitful sources of litigation.

Earlier in American history, when legislative drafting standards were less professional than today, declarations of legislative intent were frequently inserted into bills. They may even have served a purpose, since poorly drafted bills may be uncertain and ambiguous. However, if a bill is well drafted, a declaration of purpose or intent adds nothing to a bill and may well cause confusion. Moreover, since they are statutory, the court may consider them when determining legislative intent.

As a result, most states discourage statutory declarations of intent as does the South Dakota Legislative Research Council in its style

manual, *Drafting of Legislative Documents*. Too often, declarations of purpose are more of a political than a legal nature and may render an otherwise well-drafted statute equivocal.

Journals of the House and Senate. The most authoritative nonstatutory public records for the interpretation of legislative intent are journal entries. While clearly public records by definition, their usefulness in litigation is often negligible. As records of amendments, they are secondary to the statutes unless an amendment has been incorrectly engrossed and enrolled. However, if a portion of a statute is not clear, it may assist the court to know if other amendments were offered and rejected. Very rarely, other journal entries may also be of use in helping the court construe legislative intent on a litigated issue; for example, a ruling or vote on the germaneness of an amendment or whether the bill unconstitutionally encompasses two subjects. The Journals also provide documentation that all procedural requirements have been fulfilled.

Committee Minutes. Committee minutes are a third tier of public record. Their relationship to the journals is analogous to the relationship of the journals to the statutes. It is possible that a court might refer to the committee minutes for an obvious or apparent engrossing error or might examine amendments offered on an ambiguous provision. This is not likely, however, and the committee's structure as a subset of the Legislature lessens its reliability as a gauge of the legislative intent of the full body.

Transcripts. Transcripts represent a much more problematic legislative document. A few states,

such as Connecticut, Maine, Nebraska, and Pennsylvania, follow Congress in reducing all or a portion of their debates to writing. While this is obviously an excellent source for general research into the legislative process, transcripts do not constitute public records for litigation purposes unless they are required by law and prepared and approved by the legislative body. Even under those unusual circumstances, their usefulness in a court of law would be quite limited. When individual legislators speak on the floor or in committee, the opinions expressed are necessarily personal. There is no way for the court to reckon the extent to which the full body reflects the opinions of any one legislator, even if that legislator is the prime sponsor or the foremost legislative authority, when enacting legislation. Under the best of circumstances, misunderstandings will occur, and on important bills it is unlikely that all legislators voting for a measure ever share an identical conception of its intent.

Tapes. From a litigation standpoint, tapes are very similar to transcripts, although they are less likely to contain errors, or, short of equipment failure, omissions. Many states are beginning to tape at least some of their proceedings. According to a National Conference of State Legislatures survey in 1996, these included Alaska, Arizona, Colorado, Connecticut, Delaware, Florida, Hawaii, Indiana, Maryland, Minnesota, Nebraska, North Carolina, Oklahoma, Oregon, South Carolina, Tennessee, Utah, Vermont, Washington, and West Virginia. Perhaps because of this sudden increase in legislative taping in the 1970s and 1980s, several appellate decisions were generated about that time concerning the use of taped

proceedings to determine legislative intent. The courts were very plain in the two primary cases, *Jensen v. Matheson*, 581 P.2d 77 (Utah 1978) and *Florida v. Kaufman*, 430 So.2d 904 (Florida 1983), that tapes and transcripts made from tapes fall far short of being considered public records.

Internet Broadcast of Legislative Proceedings. More recently, the live broadcast of legislative proceedings via the Internet promises to provide the public with unparalleled access to legislative action. Since its introduction in 1996, seventeen states have, through 1999, provided some degree of Internet coverage (See *Appendix A*). Although Internet coverage is the crest of the technological wave in legislative documentation, there is no reason to believe that the courts will find that Internet broadcasts have any more evidential value than tapings or transcripts.

Miscellaneous Legislative Documents. There are a few other legislative documents that are sometimes used as research tools but do not constitute public records. One of the best of these is the bill brief or bill summary. Legislative staff in some states prepare these narratives on many significant bills. For legislators, as well as the public, they can be a valuable shortcut to understanding the legislation. However, to the court, the bill summary has no more legal significance than the opinion of a private citizen or a newspaper editorial. Much the same can be said about the sponsor's or the staff's notes or working papers. Nor do press releases or journalistic reportage have any evidential value. Finally, even the stated opinion of the prime sponsor, who should know what the bill means if anyone does, cannot be used to impugn

the plain meaning of the statute because that opinion, even if given under oath, is inferior to the statute itself, which is a legal public record.

Conclusion

Recent advances in technology have been so quick and dramatic in their impact on the legislative process, and especially the public's access to the legislative process, that their effects cannot be ignored by legislative policymakers. Most of these impacts can only be viewed as highly beneficial and democratic. Many more citizens will be able to participate in a timely and responsive fashion to the development of legislation. Still more will be able to follow the process passively and gain knowledge about the workings of their Legislature.

From a research perspective, there will be far more information available about the purpose and meaning of statutes and the considerations that accompanied their enactment. There are also political, as well as purely legislative, implications for constituents or candidates who wish to know more about an incumbent's record or public statements. Opportunities for journalistic research are also inherent.

As regards litigation, however, the technological revolution has had far less of an impact. To the extent that technology assists legislators and their staff to produce statutes that are more technically correct, the result is clearly less scope for legal dispute. Nor have any of the new technical reports been able to achieve the status of official public records in the legal sense of that term. This does not mean that legislatures might not, at some future time, move in the direction of granting

public record status to one or more of these innovations. It is this movement that will be necessary for the archived

proceedings of the legislation sessions to become documents for legal interpretation.

This issue memorandum was written by Reuben D. Bezpaletz, Chief of Research Analysis and Legal Services for the Legislative Research Council. It is designed to supply background information on the subject and is not a policy statement made by the Legislative Research Council.
