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Bernard S. Meyer

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Comments and Casenotes

LEGISLATIVE HISTORY AND MARYLAND STATUTORY CONSTRUCTION

By BERNARD S. MEYER*

"If Parliament does not mean what it says, it must say so"—thus spoke Lord Mildeu, in the case of *Bluff v. Father Gray*.¹ Strangely enough, in the course of the passage of statutes, the legislative bodies often do!

Semantic limitations, considerations of policy, legalistic adherence to ritualistic forms often require or render more desirable adumbration of the plan of a statute rather than enactment of a complete and final system.² Necessarily, therefore, legislative history (*e. g.*, the hearings, reports and debates) is, to an increasingly large extent, the determining factor in the decision whether or in what manner a particular statute is to be applied.³

An apt illustration of the necessity for use of legislative history is the relatively short section of the First War Powers Act, 1941,⁴ which gave the President power to

* Of the Baltimore City Bar. B.S., 1936, Johns Hopkins University; LL.B., 1938, University of Maryland; Attorney, Department of the Treasury. (The statements made in this article represent only the personal views of the author; they do not in any way reflect the official views of any Government department or officer.)

¹ A. P. HERBERT, UNCOMMON LAW 192.

² Thus, the statutory authorization pursuant to which, by administrative regulation, automobiles, bicycles, tires, typewriters, sugar, and gasoline are rationed is contained in one relatively short sentence:

"... Whenever the President is satisfied that the fulfillment of requirements for the defense of the United States will result in a shortage in the supply of any material or of any facilities for defense or for private account or for export, the President may allocate such material or facilities in such manner, upon such conditions and to such extent as he shall deem necessary or appropriate in the public interest and to promote the national defense."

Act of May 31, 1941, c. 157, 55 Stat. 236 (Public Law 89, 77th Congress) as amended by Act of March 27, 1942, c. 199, 56 Stat. — (Public Law 507, 77th Congress) (U. S. C. A. title 41, note preceding section 1).

³ Of 109 cases decided by the Supreme Court from the beginning of the present term through May 5, 1942, construing or relying on federal or state statutes, 45, or 41% analyzed or relied on the legislative history of the statute involved.

⁴ Section 201 of the Act of December 18, 1941, c. 593, 55 Stat. 838; 50 U. S. C. 611. That section provides in pertinent part:

"The President may authorize any department or agency of the Government exercising functions in connection with the prosecution of the war effort, in accordance with regulations prescribed by the President for the protection of the interests of the Government, to

authorize the making, amendment or modification of contracts without regard to the provisions of law relating thereto. It is not clear from the language used whether the modification authorized by the Act requires consent or not.⁵ But from the legislative history of the Act it is clear that under the authority of section 201 contracts may be modified only by consent of both parties. In the course of the debate in the Senate on December 16, 1941, the following colloquy between Senator Vandenberg and Senator Van Nuys (the Senator in charge of the bill) occurred:⁶

"MR. VANDENBERG. Mr. President, may I ask for an interpretation of the meaning of the words in line 10, page 2, 'or modifications of contracts?' Does that language mean that the President might change the price in a contract in any way he saw fit, for anybody, at any time or place, of course assuming that it would be in what he believed to be the national interest? Would this language grant him the right to make any contract, at any price he pleased, with anybody?"

"MR. VAN NUYS. It would enable him to modify a contract by consent. Under the present law, a contract cannot be modified even with the consent of both parties.

"MR. VANDENBERG. Then this language does permit possible modification of a contract?"

"MR. VAN NUYS. By consent of both parties; yes."

In the Federal courts, at least, it seems clear that the "plain meaning rule"⁷ no longer prevents resort to legisla-

enter into contracts and into amendments or modifications of contracts heretofore or hereafter made and to make advance, progress and other payments thereon, without regard to the provisions of law relating to the making, performance, amendment, or modification of contracts whenever he deems such action would facilitate the prosecution of the war: . . ."

⁵ While it is not entirely clear, it appears probable that a statutory requirement that contractors with the Government accept modifications reasonably imposed is constitutional. Cf. *Hamilton v. Kentucky Distilleries & Warehouse Co.*, 251 U. S. 146, 156 (1919); *Omnia Commercial Co., Inc., v. United States*, 261 U. S. 502, 508 (1923).

⁶ 88 Cong. Rec. D. I. 10097.

⁷ That rule is stated by Mr. Justice Butler, in *United States v. Missouri Pacific Railroad Company*, 278 U. S. 269, 278 (1929) in the following language:

" . . . where the language of an enactment is clear and construction according to its terms does not lead to absurd or impracticable consequences, the words employed are to be taken as the final expression of the meaning intended. And in such cases legislative

tive materials to aid statutory construction.⁸ The materials which may be used in determining legislative intention,⁹ include hearings before the committees of Congress,¹⁰ debates on the floor of the House or Senate,¹¹ reports of the Congressional committee to which the bill was referred,¹² amendments made or rejected,¹³ statements by the sponsor

history may not be used to support a construction that adds to or takes from the significance of the words employed. . . ."

Compare with that language the statement of Mr. Justice Reed in his dissenting opinion in *Toucey v. New York Life Insurance Co.*, 314 U. S. 118, 145 (1941) that:

"The courts properly are hesitant to depart from literalism in interpreting a statute. Strong equities do induce departure from the ordinary course where the purpose of the Congress appears plain. . . ."

⁸ *United States v. American Trucking Associations*, 310 U. S. 534, 542 (1940); *United States v. Dickerson*, 310 U. S. 554, 561 (1940); *cf.* *United States v. Rosenblum Truck Lines, Inc.*, 62 S. Ct. 445, 449 (U. S. 1942).

⁹ Interesting discussions of the concept of "legislative intention" will be found in the following articles: Radin, *Statutory Interpretation* (1930) 43 *Harv. L. Rev.* 863; Landis, *A Note on "Statutory Interpretation"* (1930) 43 *Harv. L. Rev.* 886; Horack, *In the Name of Legislative Intention* (1932) 38 *W. Va. L. Q.* 119; de Sloovere, *Extrinsic Aids in the Interpretation of Statutes* (1940) 88 *U. of Pa. L. Rev.* 527; Jones, *Statutory Doubts and Legislative Intention* (1940) 40 *Col. L. Rev.* 957.

¹⁰ Statements of the author of one of the bills in question made during hearings were considered by the court in *United States*, to the use of *Noland Co., Inc., v. Irwin*, 62 S. Ct. 899, 902 (U. S. 1942); and in *United States v. Rehwald*, 44 F. (2d) 663 (D. Cal., 1930); hearings generally were considered in *United States v. American Trucking Associations*, 310 U. S. 534, 538, 539, 547 (1940); and in *Re Drainage District No. 7 of Pointsett County, Ark.*, 21 *Fed. Supp.* 798, 804 (D. Ark., 1937); and the use of statements made during hearings by a person who would be responsible for the exercise of the functions to be conferred was upheld in *Securities and Exchange Commission v. Robert Collier & Co., Inc.*, 76 F. (2d) 939 (C. C. A. 2d, 1935). See also *O'Hara v. Luckenbach Steamship Co.*, 269 U. S. 364, 367 (1926); *Twin Ports Oil Co. v. Pure Oil Co.*, 26 *Fed. Supp.* 366, 373 (D. Minn., 1939) *aff'd* 119 F. (2d) 747 (C. C. A. 8th, 1941).

¹¹ Debates may be used to show common agreement concerning the purpose of legislation: *United States v. San Francisco*, 310 U. S. 16, 22 (1940); *Wright v. Vinton Branch of the Mountain Trust Bank of Roanoke*, 300 U. S. 440, 464 (1937); *Federal Trade Commission v. Raladam Co.*, 283 U. S. 643, 651 (1931); and explanatory statements made in debate by the committee member in charge of the bill may be used: *Wright v. Vinton Branch of the Mountain Trust Bank of Roanoke*, *loc. cit. supra*; *United States v. Missouri Pacific Railroad Co.*, 278 U. S. 269, 278 (1929); *Duplex Printing Press Co. v. Deering*, 254 U. S. 443, 475 (1921).

¹² *Wright v. Vinton Branch of the Mountain Trust Bank of Roanoke*, 300 U. S. 440, 463 (1937); *United States v. Missouri Pacific Railroad Co.*, 278 U. S. 269, 278 (1929); *Duplex Printing Press Co. v. Deering*, 254 U. S. 443, 474 (1921).

¹³ *Gray v. Powell*, 314 U. S. 402, 410 (1941) (amendment rejected); *District of Columbia v. Murphy*, 314 U. S. 441, 449 (1941) (amendment rejected); *United States v. American Trucking Associations*, 310 U. S. 534, 551-553 (1940) (amendment made); *Fox v. Standard Oil Company*, 294 U. S. 87, 96 (1935) (amendment rejected); *United States v. Great Northern Railway Co.*, 287 U. S. 144, 155 (1932) (amendments made and rejected); *United States v. Pfitsch*, 256 U. S. 547, 551 (1921) (amendment rejected); *Fleming v. Hawkeye Pearl Button Co.*, 113 F. (2d) 52, 58 (C. C. A. 8th, 1940) (amendment rejected).

of an amendment made on the floor of the House or Senate, or by the draftsman of an act,¹⁴ earlier acts,¹⁵ and the legislative history of a later related act.¹⁶

Of what value are these extrinsic aids in the construction of an act of the General Assembly of Maryland? While our Court of Appeals still adheres to the plain meaning rule,¹⁷ it has stated that: "all agree that the intention of the Legislature must govern in the construction of all statutes",¹⁸ and it has followed legislative intention (*i. e.*, purpose rather than meaning) in at least two cases.¹⁹ And while it has stated in dictum in *Baltimore Retail Liquor Package Stores Ass'n., Inc., v. Kerngood*²⁰ that, ". . . it is a mistake to refer the Court to reports of the intention of the draftsmen, . . .", it has made reference, in construing the Corporation Law of 1868, to the report of the Commissioners appointed pursuant to the Constitution of 1867 to frame that law,²¹ has relied on debates of the Constitutional Convention of 1867 in construing the constitutional provision relating to uniform registration,²² and has stated that, ". . . the courts are not shut off from any discussion or

¹⁴ *Richbourg Motor Company v. United States*, 281 U. S. 528, 536 (1930) (sponsor of amendment); *United States, to the use of Noland Co., Inc., v. Irwin*; and *United States v. Rehwald*, both *supra*, n. 10 (draftsman of act).

¹⁵ *United States v. Katz*, 271 U. S. 354, 357 (1926).

¹⁶ In *Penn Mutual Life Insurance Co. v. Lederer*, 252 U. S. 523, 538 (1920), the Court refused to consider the legislative history of a later act, but in *United States v. Cooper Corporation*, 312 U. S. 600, 612 (1941) the Court, in construing the Sherman Act, gave consideration to the legislative history of the Clayton Act. Accord: *Pierce v. United States*, 62 S. Ct. 237, 239 (U. S., 1941). See also *Neuberger v. Commissioner of Internal Revenue*, 311 U. S. 83, 90 (1940); *United States v. American Trucking Associations*, 310 U. S. 534, 550 (1940).

¹⁷ *Hopper v. Jones*, 178 Md. 429, 13 A. (2d) 621 (1940); *Maryland Agricultural College v. Atkinson*, 102 Md. 557, 62 A. 1035 (1906); *State v. Archer*, 73 Md. 44, 20 A. 172 (1890). The Court has stated in a number of cases that the "language of a statute is its most natural expositor", *Hopper v. Jones, supra*; *Frederick Iron & Steel Co. v. Page*, 165 Md. 212, 220, 166 A. 738 (1933); *R. H. Frazier & Son v. Leas*, 96 Md. 764, 127 A. 572 (1916); *Alexander v. Worthington*, 5 Md. 471, 485 (1854).

¹⁸ *Healy v. State*, 115 Md. 377, 80 A. 1074 (1911). *State v. Archer, supra*, n. 17. In the *Healy* case, the Court added:

" . . . If the words of the law seem to be of doubtful import, it may then perhaps become necessary to look beyond them in order to ascertain what was the legislative mind at the time the law was enacted, what the circumstances were under which the action was taken, what evil, if any, was meant to be redressed, and what was the leading object of the law."

Accord: *Maryland Agricultural College v. Atkinson, supra*, n. 17.

¹⁹ *Baltimore Retail Liquor Package Stores Ass'n., Inc., v. Kerngood*, 171 Md. 426, 189 A. 209 (1937); *Johnson v. Heald*, 33 Md. 352, 372 (1870).

²⁰ 171 Md. 426, 189 A. 209 (1937).

²¹ *Strauss v. Heiss*, 48 Md. 292, 296 (1878).

²² *Bangs v. Fey*, 159 Md. 548, 152 A. 508 (1930).

sources of information available to the Legislature in order to ascertain the legislative intent".²³ In the determination whether a statute was passed in accordance with the Constitution, when it was to take effect or what its precise terms were, the Court has permitted use of not only the legislative Journals, but also oral evidence of the Governor, Senators, Clerks, and other participants in the legislative act.²⁴

The most recent case touching the point is *Taggart, Insurance Commissioner of Pa. v. Mills*.²⁵ In that case it was urged that Section 2 of Acts of 1941, Chapter 640 (which enacted a one year period of limitations on assessment actions against policyholders in reciprocal insurance companies) was enacted for the specific purpose of barring existing causes of action on assessments against policyholders of the Keystone Indemnity Exchange. Concerning this contention the Court, speaking through Chief Judge Bond, said:²⁶

"It seems to be assumed in some of the arguments that this new statute was prepared with the purpose of barring these very claims on the Exchange assessments. The court would not have any authentic information of the fact, if the fact were relevant. It is not relevant, *for the intention of the legislature passing the act, and that of the Governor signing it, form the test for construction, and only the understanding of legislators and the Governor examining the act is to be measured.*

"The statute does not, then, contain any expression of intention that it shall effect pre-existing causes of action, and the intention cannot be implied, and therefore, under the law as it is laid down for us, there seems to be no escape from the conclusion that those causes are not affected . . ." (Italics supplied.)

²³ *West v. Sun Cab Co.*, 160 Md. 476, 154 A. 100 (1931). The Court cited *Bangs v. Fey*, *supra*, n. 22, and LEWIS' SUTHERLAND, STATUTORY CONSTRUCTION (2nd Ed.) Sec. 470, as authority for its statement. The section from Sutherland (which was also relied on in the Baltimore Retail Liquor Package Stores Ass'n. case) deals generally with the use of proceedings of the legislature and states in part: "The proceedings of the legislature in reference to the passage of an act may be taken into consideration in construing the act."

²⁴ *County Commissioners of Washington County v. Baker*, 141 Md. 623, 119 A. 461 (1922); *Strauss v. Heiss*, *supra*, n. 21; *Legg v. Mayor, Councilor and Alderman of the City of Annapolis*, 42 Md. 203 (1875); *Berry v. Baltimore & Drum Point Railroad Co.*, 41 Md. 446 (1875).

²⁵ 23 A. (2d) 832 (Md., 1942).

²⁶ *Ibid.*, 836.

It may fairly be inferred from that language, and from the statements of the earlier cases set forth above, that subject to the limitation of the plain meaning rule our Court of Appeals would consider committee hearings and reports and legislative debate if those materials existed in obtainable form.

However, under present legislative practice in Maryland, the only method, aside from the words of the statute itself, of indicating legislative intention is by use of a preamble.²⁷ A substantial factor in the determination of statutory meaning is, therefore, unavailable. It therefore seems proper to suggest that the Legislative Council consider the feasibility of modernizing the antiquated Maryland system by providing for the reporting and printing of legislative hearings, reports and debates.²⁸ If it be argued that the result is not worth the additional expense involved, it may be answered that that argument is equally applicable to the printing of the statutes themselves, for in present legal theory legislative history is as much a part of the construction of a statute as is the language of the act itself. Yet, clearly, no one would regard such an argument as tenable.

²⁷ See, e. g., Md. Laws 1933 Sp., Ch. 104, in the preamble of which the General Assembly indicated its intention to reverse the holding of a decision of the Court of Appeals. The most common form of preamble is the "whereas" clause of most repealing statutes, e. g., Md. Laws 1941, Ch. 697. See also the recent case of *Shell Oil Co. v. Brownley*, Baltimore Daily Record, June 26, 1942 (Md., 1942), the opinion in which relies, in part, on the preamble to the statute.

²⁸ Consideration might also well be given to the removal by statute of the limitation of the plain meaning rule. The anomalies of that rule are well presented in Jones, *The Plain Meaning Rule and Extrinsic Aids in the Interpretation of Federal Statutes* (1939) 25 Wash. U. L. Q. 2; Note (1937) 50 Harv. L. Rev. 822.