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THE TITLE-BODY CLAUSE AND THE PROPOSED STATUTORY REVISION

The continuing emphasis on legislative regulation and an increase in the totality of legislative enactments¹ without notable improvement in the calibre of legislative draftsmanship² have focused attention on questions of statutory construction. Probably the most prolific source of comment and litigation has been the constitutional restriction commonly termed the "title-body" clause,³ and its numerous ramifications.⁴ The Louisiana Constitution of 1921, Article III, Section 16, provides that "every law enacted by the legislature shall embrace but one object, and shall have a title indicative of such object."⁵ In conformity with a general policy of seeking to effectuate the legislative intent and of resolving doubt in favor of constitutionality,⁶ the Louisiana Supreme Court has adopted a liberal construction of this constitutional requirement.

Early Louisiana cases⁷ had established the principle that "every law enacted by the General Assembly shall embrace but one object, and that shall be expressed in its title."⁸ This rule was mandatory on the legislature and every enactment which violated it was void.⁹ However, in these early cases the court refused to apply the principle in its more limited meaning, recognizing, as does the present court,

1. The total of enacted legislation for the 1946 session of the Louisiana legislature was 444 enactments, Lazarus, *Louisiana Legislation of 1946* (1946) 7 *LOUISIANA LAW REVIEW* 23.

2. *Id.* at 26, 45, the latter involving a discussion of La. Acts 78, 196 and 210 of 1946.

3. So called because the normal state constitution provides in substance that no statute shall embrace more than one subject, which subject shall be expressed in the title. 1 Sutherland, *Statutes and Statutory Construction* (1943) 283 et seq., § 1701.

4. See Lazarus, *supra* note 1, at 80, for a discussion of the "title-body" clause and its effect on the title of amendatory legislation.

5. A similar clause has been incorporated in all Louisiana Constitutions: La. Const. (1845) Art. 118; La. Const. (1852) Art. 115; La. Const. (1864) Art. 118; La. Const. (1868) Art. 114; La. Const. (1879) Art. 29; La. Const. (1898) Art. 31; La. Const. (1913) Art. 31.

6. 3 Sutherland, *Statutes and Statutory Construction* (1943) 131, § 5904.

7. *Walker v. Caldwell*, 4 La. Ann. 297 (1849); *State v. Hackett*, 5 La. Ann. 91 (1850), interpreting La. Const. (1845) Art. 118; *State v. Harrison*, 11 La. Ann. 722 (1856), interpreting La. Const. (1852) Art. 115.

8. La. Const. (1879) Art. 29.

9. ". . . and it has been uniformly held that the provision was mandatory in its scope and character, and that a violation of its requirements would entail nullity of any act of the Legislature." *State v. Heywood*, 38 La. Ann. 689 (1886).

that where a part of the statute is constitutional and a part unconstitutional, it is permissible to separate the good from the bad.¹⁰

Subsequent decisions¹¹ have, in accord with the great weight of authority,¹² continued to temper the constitutional requirement by application of the cardinal principle of legislative interpretation, that where doubt exists, the presumption is in favor of validity.¹³ The courts down through the years, by simply refusing to ascribe an intention to the legislature that would place an act in conflict with the constitution, have held a statute void only where the variance in the provisions of the act is palpable and totally irreconcilable with its title,¹⁴ or where both title and body express two distinct subjects.¹⁵

In conformity with this view, the court has upheld a statute which exceeded the promises of its title by deleting those parts not mentioned in the title.¹⁶ Conversely, they have treated parts of the title not included in the body of the act as mere surplusage.¹⁷

The impelling force behind the court's liberal attitude has, of course, been an insight into the primary object of the constitutional requirement, which is to give the legislature and the public fair notice of the scope of the legislation. The requirement is designed to defeat deceitful, mysterious, and misleading practices of entrapping the legislature into the passage of provisions unrelated to and not intimated by the title of the bill.¹⁸ The dominant objective of

10. *State v. Ferguson*, 104 La. 249, 28 So. 917, 81 Am. St. Rep. 123 (1900); *State v. Atkins*, 104 La. 37, 28 So. 919 (1900); *State v. Goff*, 106 La. 270, 30 So. 844 (1901).

11. *State v. Duson*, 130 La. 488, 58 So. 159 (1912); *Peck v. City of New Orleans*, 199 La. 76, 5 So. (2d) 508 (1941); *Stewart v. Stanley*, 199 La. 146, 5 So. (2d) 531 (1941).

12. See 1 *Sutherland*, op. cit. supra note 6, at 292, § 1704, for listing of decisions from other jurisdictions.

13. "In considering questions of this character, the rule of liberal construction has definite application to the end that the constitutionality of the act assailed be upheld unless a contrary status is obvious. All doubts, if any exist, should be resolved in favor of the law's validity." *Ramey v. Cudahy Packing Co.*, 200 So. 333, 335 (La. App. 1941).

14. 1 *Sutherland*, op. cit. supra note 6, at 296, § 1707.

15. *State v. Harrison*, 11 La. Ann. 722 (1856); *State v. Ferguson*, 104 La. 249, 28 So. 917, 81 Am. St. Rep. 123 (1900).

16. "... where a part of a statute is constitutional and a part unconstitutional, it is permissible to separate the good from the bad. . . . And if this were an act whose title expressed only one object, while the body of the act set forth two objects,—where the act is merely broader than its title,—it would be incumbent on the court to restrict its declaration of the nullity . . . to that object of the act . . . not indicated in the title." *State v. Ferguson*, 104 La. 249, 253, 28 So. 917, 81 Am. St. Rep. 123 (1900).

17. 1 *Sutherland*, op. cit. supra note 12, at 299, § 1708.

18. For a good discussion of the history and purpose of the "title-body" clause, see Comment (1944) 6 *LOUISIANA LAW REVIEW* 72; Comment (1934) 10 *Ind. L. J.* 155; 1 *Sutherland*, op. cit. supra note 12, at 287 et seq., § 1702.

the provision is to insure the titling of the legislative act in a manner which will give reasonable notice of the purview to the members of the assembly and to the public.¹⁹ The court has recognized, and properly so; that the "title-body" clause of the Louisiana constitution was not adopted to hamper or impede the legislative process by requiring a needless multiplication of the number of statutes necessary to effect a given purpose.

Justice Rogers, in *Jackson v. Hart*,²⁰ pointed out a valid and significant distinction between Article III, Section 16, of the Constitution of 1921 and prior constitutions²¹ by noting that

"under corresponding sections in preceding constitutions, it was required that the object of the law be '*expressed*' in its title. The effect of the changing of the wording of the constitutional provisions was to relax the previous requirement that the statute must '*express*' its object, so now all that is required is that the title of the statute should be '*indicative*' of its object. The constitutional provision must be construed broadly rather than narrowly, with a view of effectuating, not of frustrating, the legislative purpose."

However, earlier courts in interpreting a similar requirement in those prior constitutions had little difficulty in reaching the same result, despite the provision that the object of the law be "expressed" in its title.²²

This liberal approach on the part of the court has inevitably led to fine distinctions, not always too clear or well defined. In cases where the court holds one portion of a statute constitutional and another unconstitutional, it is necessary to determine what is within and what is without the purview of the title. The general test to determine whether the inclusion in an act of numerous provisions violates the constitutional prohibition against plurality of subject matter is that of determining whether the various provisions are "germane" to a single general purpose as expressed in the title of the act.²³

19. *State v. Hincy*, 130 La. 620, 58 So. 411 (1912). See also Comment (1944) 6 LOUISIANA LAW REVIEW 72, 74.

20. 192 La. 1068, 190 So. 220 (1939).

21. See note 5, *supra*.

22. *Williams v. Payson*, 14 La. Ann. 7 (1859); *State v. Exnicios*, 33 La. Ann. 253 (1881).

23. "Germane" is defined as meaning in close relationship, appropriate, relevant, or pertinent to the general subject, and no portion of a bill not germane to the general subject can be given the force of law. The constitution is complied

As early as 1885,²⁴ the supreme court asserted that "it is sufficient if it [the title] indicate the general object or purpose of the law without specifying each provision made therein."²⁵ An unbroken line of jurisprudence has adhered to this principle.²⁶ In 1943, the court, after reviewing the jurisprudence, stated:

"In deciding whether a statute of the Legislature violates the constitutional provision . . ., the courts must keep in mind its main purpose as disclosed by its language. It matters not how comprehensive the act may be or how numerous its provisions; it does not violate the prohibition if its language, reasonably construed, shows that it has one main, general object, or purpose, and if nothing is written into it except what is naturally connected with and incidental to the one purpose of the act."²⁷

Thus, the test is primarily whether a particular part is germane to the "object" as expressed in the title. "Whether a statute contains more than one object must be determined from the body of the act and not from its title."²⁸ The title expresses the purpose. The determination for the court is whether the subdivisions within the act are necessary to or incidental to the expressed purpose of the legislation.²⁹

It can be simply stated that while the "title-body" clause of the present constitution has been treated as mandatory, it has been very liberally and reasonably construed. Wherever possible the court will salvage the statute by protecting that which is constitutional, and expurgating that which is unconstitutional. On the whole, the

with if the various provisions relate to, and are a means of carrying out the general purpose of an enactment." 1 Sutherland, *op. cit.* supra note 6, at 303, § 1711.

24. Louisiana Board of Trustees of the American Printing House for the Blind v. Dupuy, 37 La. Ann. 188 (1885).

25. *Id.* at 191.

26. Edwards v. Police Jury of Avoyelles, 39 La. Ann. 855, 2 So. 804 (1887); Thornhill v. Wear, 131 La. 479, 59 So. 909 (1912); Surety Credit Co. v. Tieman, 171 La. 581, 131 So. 678 (1930); Ricks v. Department of State Civil Service, 200 La. 341, 8 So. (2d) 49 (1942).

27. Wall v. Close, 203 La. 345, 14 So. (2d) 19 (1943).

28. State v. Morton, 182 La. 887, 162 So. 718 (1935).

29. "Where the title expresses a general object, the addition of subdivisions of that object does not perforce render the whole title null. Act No. 183 of 1910."

"If a rigorous interpretation were adopted and nice technicalities followed, it would result in defeating, without cause, the intention of the lawmaker.

"There is no necessity of the title being a complete index to every section of the act. It is only necessary that it shall, in general terms, direct attention to the purpose of the law; . . ." State v. Hincy, 130 La. 620, 623, 58 So. 411, 412 (1912).

constitutional provision on titles has two component parts. It limits legislation to a single general subject; it requires that this single object be indicated in the title. Certain general principles have evolved from a multitude of decisions in point:

(1) If a title totally fails to express the subject of an act, or if the title is misleading, the entire act is invalid.

(2) If the title indicates and the act actually embraces two distinct objects, the courts will refuse to choose between the two, and the act as a whole will fall.

(3) If the statute deals with more than one object, only one of which is set forth in the title, the whole act will not necessarily be invalidated. The unconstitutional portion may be stricken out and the valid portion enforced. However, if the unconstitutional portion of the act is so interrelated and connected with the constitutional parts that they cannot be separated without utterly destroying the intention of the legislature then the entire act is void.

(4) If the title is broader than the act, that portion of the title unnecessary to the act is regarded as surplusage.

(5) If the title restricts the body of the act, only the portion of the act that conforms to the title is valid.

One major consideration worthy of note is the status of the present undertaking by the Louisiana Law Institute to effect a revision of the statutes.³⁰ In face of the constitutional prohibition that each law "shall embrace but one object,"³¹ may the Revised Statutes be adopted as a single statute?

Louisiana has had two general statutory revisions, and the methods adopted in these instances shed little light on the present question. The Revision of 1855 was accomplished piecemeal, title by title, while the Revision of 1870 was enacted at the time when the constitution provided that "every law shall express its object or objects in its title,"³² and there was no bar to more than one object being contained in the same enactment.³³

Thus there has been no instance in Louisiana jurisprudence wherein the court has passed on the constitutionality of a general

30. Under authority of La. Act 42 of 1942 [Dart's Stats. (Supp. 1946) §§ 10011-10012].

31. La. Const. of 1921, Art. III, § 16.

32. La. Const. (1868) Art. 114.

33. The revision became law as La. Act 96 of 1870.

statutory revision, passed by a single act of the legislature. The Criminal Code of 1942³⁴ was passed by a single act, and its validity upheld by the supreme court.³⁵ Decisions of other states have similarly upheld the passage of codes, dealing with particular fields of substantive law, under one title.³⁶

Despite that fact and although the Supreme Court has recognized that "object" refers to the aim or purpose of the statute, and has adopted the liberal approach to the application of the constitutional prohibition, a revision of statutes necessarily covers a multitude of various and diverse subjects; whether or not a single statute would be sufficient to take all such diverse fields into its fold is very doubtful. In any event, the passage of the Revised Statutes as a single statute with one title would raise immediately the question of validity. Special steps will probably be taken to safeguard against this contingency. In this regard, several possibilities present themselves: (1) to adopt a constitutional amendment, and pass the revision as an enabling act or a provision in the proposed new constitution which would specifically provide for the adoption of a general statutory revision, or (2) to pass the revision piece-meal, title by title—a long and cumbersome process.

Whatever steps are taken, it appears that to place the passage of the revision beyond grave legal uncertainties, such action may well be necessary. It would seem that for the first time the "title-body" clause presents a stumbling block of a sort not easily brushed aside by judicial determinations and distinctions.

GORDON KEAN

OWNERSHIP OF AIRSPACE IN LOUISIANA

"Article 505.¹ The ownership of the soil carries with it the ownership of all that is directly above and under it.

"The owner may make upon it all the plantations and erect all the buildings which he thinks proper, under the exceptions established in the title: OF SERVITUDES.

34. La. Act 43 of 1942.

35. *State v. Pete*, 206 La. 1078, 20 So. (2d) 368 (1944).

36. *State v. Tieman*, 32 Wash. 294, 73 Pac. 375 (1903), upholding the validity of the Washington State Penal Code; *Central of Georgia Railway Co. v. State*, 104 Ga. 831, 81 S. E. 531 (1898), declaring valid a code of substantive law, similar to the Revised Civil Code of 1870; *Johnson v. Harrison*, 47 Minn. 575, 50 N. W. 923 (1891), upholding validity of the Minnesota Probate Code.

1. La. Civil Code of 1870.