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Public Law: Legislation and Statutory Interpretation

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firming the action of the trial court, the Supreme Court said, inter alia,

> "It is not our intention to hold that the peaceful picketing of which the employer complains in the instant case falls within the prohibition or protection of the Taft-Hartley Act, for we recognize that primary jurisdiction to determine these questions rests with the National Labor Relations Board, and not with the state court."[16]

Adopting the rationale of the United States Supreme Court in the case of *Weber v. Anheuser-Busch, Inc.*,[17] the Louisiana court reasoned that the Board's dismissal of a charge of union violation of Section 8(b)(4) was not dispositive of the inquiry whether other sections of the act may not have been violated by the union, and, in any case, it was wholly inconclusive of the issue whether the union's activity constituted a right protected by the act. All of these inquiries are properly referred to the Board and outside the state court's jurisdiction. The decision seems entirely correct and the court appears to have a complete appreciation of this most difficult problem of federalism — or jurisdictional tidelands of labor relations, as it has aptly been called.

LEGISLATION AND STATUTORY INTERPRETATION

*Dale E. Bennett**

ENACTMENT — COMPLIANCE WITH READING REQUIREMENTS

In *Doll v. New Orleans*[1] the Supreme Court invalidated a 1954 act of the Louisiana Legislature[2] on the ground that it had not been read on *three different days* as required by Article III, Section 24, of the Louisiana Constitution.[3] The Constitution does not require that compliance with this provision be shown by a *Journal* entry. If the *Journals* are silent as to compliance or noncompliance with this type of constitutional requirement, the courts conclusively presume that the constitutional mandate has

15. 229 La. 37, 85 So.2d 22 (1956).
16. 229 La. 37, 50, 85 So.2d 22, 27 (1956).
17. 348 U.S. 468 (1955).

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1. 229 La. 277, 85 So.2d 514 (1956), 17 LOUISIANA LAW REVIEW ... (1956).
2. La. Acts 1954, no. 536, p. 1001, incorporated as LA. R.S. 47:2190 (1950).
3. LA. CONST. Art. III, § 24: "Every bill shall be read on three different days in each house. . . ."

been followed.[4] However, if the *Journals* affirmatively show either compliance or non-compliance with the Constitution they are conclusive proof as to the legislative proceedings.[5] In this case, since the Senate *Journal* clearly showed that the bill had been read on only *two different days*,[6] the court was correct in invalidating the act. It should be noted that the opinion failed to indicate that the invalidating infirmity was proved by a *Journal* entry. This is important, because if the *Journal* had not reflected the error in the legislative process, the Supreme Court would have conclusively presumed compliance with the constitutional reading requirements.[7]

CONSTRUCTION OF PROVISIONS OF REVISED STATUTES IN PARI MATERIA

The common law and civil law rule that statutes *in pari materia* are to be construed together applies to laws "upon the same subject matter,"[8] and is most effective as to laws passed at the same session of the Legislature.[9] This last element is clearly met by the revised statutes. As Chief Justice Fournet stated in *Fudickar v. Heard* —"the Revised Statutes constitute a single act of the Legislature, adopted as a whole; different sections should be regarded not as separate acts, but as simultaneous expressions of the legislative will, and all provisions should be construed together and reconciled whenever possible."[10] It should be noted, however, that the Revised Statutes cover a wide variety of subjects, sometimes quite unrelated. In these situations the legislative purposes will be defeated, rather than achieved, by an attempt to carry over definitions and policies from one area of the law to another. It is only where the provisions deal with a common subject matter that they are to be treated as *in pari materia* and construed together.

The problem is graphically presented by *State v. Viator*[11] where the Supreme Court construed the crime of unlawful sale

4. Wall v. Close, 203 La. 345, 14 So.2d 19 (1943); State v. Bauman, 148 La. 743, 87 So. 732 (1921).

5. Bethlehem Supply Co. v. Pan-Southern Petroleum Corp., 207 La. 149, 20 So.2d 737 (1945); State *ex rel.* Porterie v. Smith, 184 La. 263, 166 So. 72 (1936).

6. Louisiana Senate Journal, 1690, 1692, 1875, 1876 (17th Regular Session 1954).

7. Note 4 *supra.*

8. LA. CIVIL CODE Art. 17 (1870); SUTHERLAND, STATUTORY CONSTRUCTION § 5201 (1943).

9. Sutherland, *supra*, § 5202.

10. 223 La. 127, 134, 65 So.2d 112, 114 (1953).

11. 229 La. 882, 87 So.2d 115 (1956).

of "intoxicating or spirituous liquors" to minors, so as to exclude the sale of beer. This limitation of the crime of unlawful sales to minors, found in the Criminal Law Title of the Revised Statutes,[12] was achieved by applying a definition of "liquor" found in the Liquor-Alcoholic Beverage Title,[13] which treats of alcoholic beverage controls and licensing. "Liquor" was therein defined as "any distilled or rectified alcoholic beverage," as distinguished from fermented beverages such as beer and wine. It is significant that this definition is one of several that are specially provided for purposes of the alcoholic beverage control chapter wherein it is found.[14] The crime of unlawful sales to minors, as defined in the Criminal Code, might well employ the term "intoxicating liquors" in a much broader sense than they were used in the licensing and taxing provisions of Title 26, where a distinction between beverages of high and low alcoholic content has been established.

As dissenting Justice Hawthorne pointed out, the phrase "intoxicating liquor" is used in other Criminal Code articles and in several titles of the Revised Statutes. Whether the provision deals with driving a vehicle while "under the influence of intoxicating liquor,"[15] or with the sale of "intoxicating liquors in close proximity to a polling place on election day,"[16] it may be assumed that the common or popular meaning is intended, rather than the somewhat artificial and limited meaning provided for Title 26. The generally accepted meaning, until the *Viator* decision, had been that the beverage must be capable of producing intoxication, regardless of whether it is distilled or fermented. This popular construction of the phrase, over a long period of time, should be "highly significant" as to its true meaning.[17]

However, the judicial interpretation of "intoxicating liquor" is now fixed by the *Viator* decision. As a result, new statutes intending to stress the intoxicating effect, rather than the nature of the beverage, must steer clear of the limiting term "liquor" in favor of the more embracive term "beverage." For example, a 1956 statute amended Article 98 of the Criminal Code so as to

12. LA. R.S. 14:91 (1950).
13. LA. R.S. 26:2(2) (1950).
14. LA. R.S. 26:2 (1950): "*Definitions.* For the purpose of this Chapter, the following terms have the respective meanings ascribed to them in this Section . . . ."
15. LA. R.S. 14:98 (1950).
16. LA. R.S. 18:333, 366, 367 (1950).
17. United States v. Farrar, 38 F.2d 515 (D. Mass. 1930); SUTHERLAND, STATUTORY CONSTRUCTION § 5107 (1943).

define drunken driving as the operation of a vehicle while under the influence of "*intoxicating beverages* or narcotic drugs."[18]

SECTION HEADINGS OF THE REVISED STATUTES

Where section headings are enacted as part of a law they have been frequently construed as limiting the scope of the section to which they are appended.[19] In order to avoid this construction as to the Louisiana Revised Statutes of 1950, Section 1:13 expressly declares that the section headings "are given for the purpose of convenient reference and do not constitute part of the law."

In *State v. Democratic State Central Committee*[20] a question is raised as to what judicial recognition is to be afforded the section headings in the revised statutes. The principal issue in that case was whether the State Central Committee was required to call a second primary for lesser state officers where the candidate for Governor had received a majority of the votes cast in the first primary. R.S. 18:356 (Second Primary for Governor and Other State Officers) was construed by the court as not providing for a second primary for lesser state officers if the candidate for Governor received a majority of the votes cast. A further question had been raised as to whether R.S. 18:358 (Second Primary for Local Offices) could be the basis of a second primary for lesser state officers in the state-wide election. Here again the Supreme Court ruled against the petitioners in their request for the calling of a second primary, holding that Section 358 applied solely and exclusively to second primaries for local offices. A question as to the effect of the section headings of the revised statutes is raised by the fact that Justice Simon, writing for a unanimous court, declared that the 1950 Revised Statutes "clearly indicates that section 18:358 by its very caption, carried in heavy black type, applies only to second primaries for local offices, and that section 18:356 by its like pronounced caption applies solely and exclusively to a second primary for governor and other state officers."[21] "Conceding for the moment" petitioner's argument that the caption formed no part of the statute,

18. La. Act 122 of 1956, discussed in Bennett, *Legislation Affecting Criminal Law and Procedure*, 17 LOUISIANA LAW REVIEW 52, 54 (1956).

19. Carter v. Liquid Carbonic Pacific Corp., 97 F.2d 1, (9th Cir. 1938), where "carbonated beverages" was limited to "soft drinks"; People v. Molyneux, 40 N.Y. 113 (1869); Barnes v. Jones, 51 Cal. 303 (1876).

20. 229 La. 556, 569-71, 86 So.2d 192, 196-97 (1956).

21. *Id.* at 569, 86 So.2d at 196.

Justice Simon declared that the captions preceding these sections "made crystal clear the particular applicability thereof."[22]

If the section headings were used by Justice Simon to bolster a construction placed upon the actual language of R.S. 18:358, it would appear that they were appropriately cited. Resort may be had to such sources of legislative intent, either as a make-weight argument or to resolve ambiguities. However, the section heading could not appropriately be used to place a restriction upon Section 358 which was inconsistent with the plain meaning of the language of that section. Such a use would be in violation of the specific provision in the Revised Statutes that the section headings "are given for purpose of convenient reference and do not constitute part of the law."

The primary purpose of section headings is to provide a quick index to the contents of the various sections. They may also be used to provide the revisor's version as to the nature and scope of the section. They may not be used to restrict, extend, or contradict the language of a section. It would appear entirely appropriate that where subsequently enacted statutes are given section headings by their draftsmen, and become part of the revised statutes, it is contemplated that the section headings shall have the same limited effect that is provided for the original section headings in the Revised Statutes of 1950. Where no section headings are provided in a new statute, and the section headings are inserted by the Louisiana State Law Institute as a part of the continuous revision process,[23] the section headings would then only serve the purpose of a convenient reference and could not be logically construed as a proper indication of legislative intent.

LEGISLATIVE COUNCIL DIGESTS AND STATUTORY INTERPRETATION

One of the important functions performed by the Louisiana Legislative Council is the preparation of digests of "all bills introduced, indicating the change each will make in existing law if adopted."[24] These digests are appended to the original and printed copies of the bills. They are generally regarded, both when the bills are considered in committee and when they are up for final passage, as an accurate resumé of the nature, scope, and effect of the bill. It may well be that these digests will provide

22. *Ibid.*, 86 So.2d at 197.
23. LA. R.S. 24:253(3) (1950).
24. A MANUAL FOR LOUISIANA LEGISLATORS 5 (1955).

an extrinsic source for ascertaining the basic purpose and nature of the statute. Louisiana, as is the case in most states, does not have a legislative record of the committee hearings and floor debates, and so our courts must rely heavily on artificial canons of construction, such as the doctrines of *expressio unius est exclusio alterius, ejusdem generis,* and *noscitur a sociis.* These maxims are merely guides to interpretation, giving way to the overriding general legislative purpose if such purpose can be ascertained.[25] Sometimes the general legislative purpose is ascertainable from the title of the act or a policy section. More often, such guides to statutory interpretation are unavailable or are very inadequate. The Council Digests in Louisiana will not provide the sponsor's version of the law, often available from the congressional records as to federal statutes.[26] However, they should be entitled to considerable weight in ascertaining the nebulous "legislative intent," which is the composite purpose of the committees that reported the bill favorably and of the legislative body that gave it vitality by final passage. The Legislative Council Digests were considered by these groups and may reasonably be presumed to represent their understanding as to the general nature and scope of the enactment. The availability of this interpretative material, and its weight, may well depend upon whether an official depository of these digests is available, either in the Office of the Secretary of State or of the Legislative Council itself.

LOCAL GOVERNMENT — ADMINISTRATIVE LAW

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ZONING

An attack upon the validity of an application of the New Orleans zoning ordinance was made in *New Orleans v. La Nasa.*[1]

25. City of Shreveport v. Price, 142 La. 936, 77 So. 883 (1918), refusing to apply the doctrine of *expressio unius*; Boardman v. State, 203 Wis. 173, 233 N.W. 556 (1930), holding that these maxims of construction "are servants, rather than masters, of the court."

26. See Schwegmann Bros. v. Calvert Distillers Corp., 341 U.S. 384 (1951) where the Court looked to the statements of the bill's sponsor, Senator Tydings, as to the purpose of the Miller-Tydings amendment to the Sherman Act.

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1. 230 La. 289, 88 So.2d 224 (1956).