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What is the Effect of a General Statute Revision?

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WHAT IS THE EFFECT OF A GENERAL STATUTE REVISION?

Serious problems in statutory interpretation are raised by conflicts between the law as enacted by the legislature and the copies of the acts as printed in session laws, compilations, codifications, and revisions. These conflicts may be due to changes in the phraseology, to omissions, or to additions.

The simplest problem arises where there is a conflict between the enrolled bill and a subsequent publication of the session laws or acts of the legislature. In this case the original or enrolled bill is the law.[1] Whether or not a statute has been recited incorrectly is a question of law of which the court will take judicial notice.[2] This result is not affected by the fact that the publication has been authorized by the legislature.[3] *A fortiori*, the enrolled bill should take precedence over an unofficial compilation or publication of the acts.

A different problem arises where there has been a legislative adoption of the publication. It is well to note here that many courts fail to make a proper distinction between an adoption and an enactment when dealing with this situation. The distinction which should be recognized is clearly brought out in the case of *Lyman* v. *Martin*,[4] where, in discussing the effect of a legislative *adoption* of a compilation, the court said, "That committee had performed the duty assigned them, and the act passed simply amounted to an approval of their work. It is plain that the legislature did not intend that it should have any other or further effect, and in law it did not. It was not a revision of the law that had been authorized, but a compilation only If the committee had included in the compilation any provision not found among the old laws, and which had never been passed by the legislature, the legislative action above referred to would not have given it any force or validity as a law."

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[1] Sherman v. Story, 30 Cal. 253 (1866), Eld v. Gorham, 20 Conn. 8 (1849), Morris v. City of Gainesville, 60 Fla. 338, 53 So. 739 (1910), State v. Howell, 80 Wash. 692, 142 Pac. 1 (1914), Combs v. City of Bluefield, 97 W Va. 395, 125 S. E. 239 (1924).

[2] Sherman v. Story, 30 Cal. 253 (1866).

[3] Taylor v. Chicksaw County, 74 Miss. 23, 19 So. 834 (1896), Stevens v. State, 70 Tex. Crim. Rep. 565, 159 S. W 505 (1913), Lyman v. Martin, 2 Utah 136 (1879).

[4] 2 Utah 136 (1879)

In the case of an adoption of a compilation, revision or codification, the legislature usually merely passes a resolution to the effect that the codification, revision or compilation shall thenceforth constitute the prima facie law of the state. The codification is not before it in the form of a bill, or included in the bill passed except by reference. Most, if not all state constitutions require that any bill, in order to be enacted as law, must be before the legislature, written out in full. This clearly is not true of an adoption. For this reason an adoption can have no posible effect upon the true law of a state other than making it the prima facie law. In the case of an enactment, however, the legislature is not merely passing upon the act of another, but is enacting the codification or revision word for word as the law of the state. The content of the revision or codification is before the legislature in full and is included in and a part of the bill passed by that legislature.

Suffice it to say that an adoption has no true law-making effect, but is merely an approval, usually for convenience in citing sections in evidence or for revising by reference to section number only, whereas an enactment creates in itself, and is dependent upon no previous act for its force and effect. Therefore, since the legislature in adopting a compilation of prior acts in fact merely approved the work of the committee or commission, and that only for the purposes intended to be served thereby, it cannot be presumed that they intended to make that publication the law, except insofar as it coincides with the enrolled bills.

A third problem arises when the legislature enacts a compilation or revision. A general statute revision is customarily understood to signify or imply a re-examination of all previous acts for the purpose of restating the law in an improved or corrected form.[5] The agent or commission whose appointment is authorized by the legislature is generally instructed not to change the law but merely to improve, clarify, and simplify it.

The cases dealing with this type of revision are numerous and apparently irreconcilable. Many courts have said that since the committee was instructed not to change the law, the legislature did not intend a change to be made unless it was clearly shown to the contrary, and the original act should be referred

[5] Jernigan v. Holden, 34 Fla. 530, 16 So. 413 (1894).

to when any question as to its meaning arises.[6] The same result is often reached where there has been an omission or an addition.[7] Other courts have said that the enactment of a general statute revision is an express repeal of prior statutes and in case of conflict only those sections and sub-sections included in the revision may be referred to.[8] It is to be noted that in a few instances decisions of the same jurisdiction are in conflict on this question. It is difficult, however, to determine in many instances, whether the cases are dealing with an enactment or an adoption. It is submitted that the decisive factor is not what the legislature authorized the commission to do, but rather, what the legislature itself did.

If, when the legislature acted upon the bill proposing the revision or compilation, it had the contents of the proposed revision before it in the form of a bill and proceeded to enact that bill word for word as it stood, referring to the sections of such revision or compilation as making up a part of the bill being passed, the result is that the revision or compilation becomes the law of that state and all prior laws of a general and permanent nature are thereby repealed by implication if found to conflict with those enacted.[9] This form of repeal by implication would have no effect upon an omission where there was no conflict, the prior law remaining in force in spite of its having been omitted from the revision or compilation.

In determining whether or not an express repeal was intended and in fact accomplished, reference must be had to the enacting and repealing clauses. Although not a conclusive indication, the wording of the enacting clause should serve as an aid in determining the intent of the legislature in regard to

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[6] State v. Holland, 117 Me. 288, 104 Atl. 159 (1918), Hugo v. Miller, 50 Minn. 105, 52 N. W 381 (1892), McDonald v. Lincoln County, 139 Neb. 188, 296 N. W 892 (1941), Berry v. State, 69 Tex. Crim. Rep. 602, 156 S. W 626 (1913).

[7] In re Sullivan's Estate, 38 Ariz. 387, 300 Pac. 193 (1931), Carpenter v. Jones, 121 Cal. 362, 53 Pac. 842 (1898), Beatty v. Miller, 146 Ind. 231, 44 N. E. 8 (1896), Commonwealth v. Grinstead, 21 Ky. Law Rep. 1444, 55 S. W 720 (1900); Hugo v Miller, 50 Minn. 105, 52 N. W 381 (1892), Ex Parte Copeland, 130 Tex. Crim. Rep. 59, 91 S. W (2d) 700 (1936), noted in 15 Tex. L. R. 145.

[8] State v. Griffin, —— Ariz. ——, 118 P (2d) 676 (1941), In re Todd's Estate, 17 Cal. (2d) 270, 109 P (2d) 913 (1941), Schwartz v. Ritter, 186 Ill. 209, 57 N. E. 887 (1900), Buchannon v. Commonwealth, 15 Ky. Law Rep. 738, 25 S. W 265 (1894), In re Craven's Estate, 177 Minn. 437, 225 N. W 398 (1929).

[9] Vol. VIII, Blackstone Institute, at p. 435; 25 R.C.L. 924.

repeal of all prior legislation irrespective of conflict. If the enacting clause is unqualified, i. e., where the revision is enacted "as *the law* of the state," it would appear that the intent of the legislature was to make the revision *the only* statutory law of the state of a general and permanent nature.

However, the form and content of the repealing clause is a factor of far greater importance and entitled to much more weight in determining what the legislature actually did, than is the enacting clause. It is the wording of this clause that should ultimately indicate whether or not an express repeal was intended and effected, or in short, whether or not the original act has been so repealed that it no longer can be referred to or considered, regardless of any conflict.

If the repealing clause is so worded as to repeal only those prior statutes which are repugnant to those enacted, it is logical to assume that the legislature did not intend to abolish completely the prior law, since, in order to determine whether or not such law is repugnant to those enacted, it must be referred to. Nor, in this case, could omissions be considered as intentionally left out unless to include them would destroy all effect of the revised portion.

But, if the repealing clause expressly and unqualifiedly "repeals all prior laws", it must be admitted that it was the intent of the legislature to make this the *only* law, repealing not only all conflicting laws, but those omitted as well, and this same result should follow in cases involving additions or changes in phraseology This conclusion would be still further strengthened by the addition to the repealing clause, as is frequently done, of certain specified exceptions where no repeal is intended, because of the rule of statutory construction, *inclusio unius est exclusio alterius,* the enumeration of one is the exclusion of all others.

The above type of act has been held to create a true revised code, passed as an original and independent act and as such deriving all its authority, not from any previous acts, but from the act of the legislature enacting the revision or compilation.[10]

This problem is of particular interest and importance to the lawyers and judges of Kentucky at this time.

[10] State v. Griffin, — Ariz. —, 118 P (2d) 676 (1941), American Indemn. Co. v. Austin, 112 Tex. 239, 246 S. W 1019 (1922).

In 1936 the General Assembly passed an act[11] which provided for the appointment of a statute revision committee. This committee was directed to "revise, codify, annotate and publish the Statute Laws of Kentucky" and it was provided, among other things, that "the committee shall not alter the language or sense of any act of the General Assembly"

Pursuant to this authority, the committee employed an expert in the field of statute revision, together with a staff who undertook the accomplishment of this work.

After the committee had gone over the old statutes, the General Assembly, at the suggestion of this committee, in 1940 repealed over one thousand sections and sub-sections of these old statutes. However, from the revision submitted, not only were those sections omitted, but well over 500 others, because, in the opinion of the committee, they were obsolete, unconstitutional, redundant, or had been repealed by implication. Also, in addition to those, the meaning of some of the remaining ones was altered by the omission of certain words.

Then, too, the report of the Statute Revision Committee which accompanied the proposed revision when it was submitted to the General Assembly, admitted that changes in phraseology had been made and that many sections and sub-sections had been omitted. Also the committee there called attention to the fact that the acts of this revision were not to be construed in the light of their predecessors, but that to do so would result only in confusion.

Nevertheless, on February 27, 1942, the General Assembly enacted this revision as "the law of the Commonwealth."[12]

This act has every appearance of an express repeal. The enacting clause is worded so as to indicate that it was the legislature's intent that this revision be the *only* law since it said " as *the* law of the Commonwealth" In addition thereto, the repealing clause which reads, "all statute laws of the Commonwealth of a general and public nature enacted prior to the present session of the General Assembly (with specified exceptions), are hereby repealed", is clear and unqualified.

In short, all of the elements necessary to make up an express repeal are present, including the additional strength of an

[11] Kentucky Acts 1936, Ch. 111, p. 343.
[12] Kentucky Acts 1942, Ch. 208, p. 909.

enumeration of specified instances where the General Assembly did not intend a repeal.

There is present here, however, one element which likely will not be found in other cases of statute revision, and that is section 446.130 of the revised statutes which reads as follows

"The Kentucky Revised Statutes of 1942 are intended to speak for themselves, and all sections of the Kentucky Revised Statutes of 1942 shall be considered to speak as of the same date, except that in cases of conflict between two or more sections or of a latent or patent ambiguity in a section, reference may be had to the Acts of the General Assembly from which the sections are indicated to have been derived, for the purpose of applying the rules of construction relating to repeal by implication or for the purpose of resolving the ambiguity. Like reference may be had to any special Acts or charters granted by the General Assembly prior to the adoption of the present Constitution, for like purpose."

Taken in the light of the above section, even if the rule propounded by some courts is accepted, that in all cases of statutory revision there is a presumption against any intent to change the law unless clearly indicated to the contrary, still this revision must take precedence over all prior statutes in cases of conflict and must also be held to repeal all omitted statutes, since no presumption can be raised in the face of an express provision in the statute itself. This section permits reference to prior statutes in only two instances, first, for the purpose of applying the rules of construction relating to repeal by implication when there is a conflict between sections included in the revision, and second, for the purpose of resolving any latent or patent ambiguity in a particular section.

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