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LEGISLATION

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Expository Legislation

It is so well settled that the legislature may, by the use of definitions and interpretative clauses, prescribe the rules whereby its enactments should be construed, that no citation of authority is necessary. But may the legislature, without encroaching on the judicial power, declare in subsequent legislation what construction the court must give to a prior enactment, or what decision the court must make in the application of an existing law? The Louisiana Supreme Court had this question before it in *State Licensing Board for Contractors v. State Civil Service Commission*,[1] and answered it in the negative holding that statutory construction was a judicial and not a legislative function.

There are compelling reasons why declaratory or expository legislation should not be binding on the courts. That it cannot be justified as an expression of legislative intent is evident, for the legislative intent that controls in cases of ambiguity or obscurity is that of the legislature which enacted the given statute, and not that of a subsequent legislature. The Anglo-American concept that statutory construction is essentially and exclusively a judicial function stems from the accepted premise that the legislative, judicial, and executive branches of government, although equal and coordinate within their respective departments, are nonetheless separate, and they function independently of each other.[2] Moreover, the recognition that an independent judiciary is essential in a society where the rule of law prevails, compels the conclusion that the legislative practice of enacting expository legislation should not be binding on the courts. The true function of the legislature is not to construe, but to enact laws.[3]

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1. State Licensing Board for Contractors v. State Civil Service Commission, 240 La. 331, 123 So.2d 76 (1960).

2. "It is undoubtedly true that, in our system of government, the law making power is vested in Congress and the power to construe laws in the course of administration between citizens, in the courts. And it may be conceded that Congress cannot, under cover of giving a construction to an existing or expired statute, invade private rights, with which it could not interfere by a new or affirmative statute." Stockdale v. Atlantic Ins. Co., 87 U.S. (20 Wall.) 323 (1874).

3. The leading authority on this point appears to be Titusville Iron-Works v. Keystone Oil Co., 122 Pa. 627, 15 Atl. 917 (1888). Sterrett, C.J., speaking for

A legislative mandate to the courts that they "shall construe" an existing law as applicable to situations, things, or persons not originally included or envisaged by the legislature which enacted it, or as extending its provisions beyond the scope originally contemplated is, in effect, an amendment of the existing law,[4] and where the Constitution prescribes the requirements that must be observed and the form in which legislative enactments must be cast, is ineffective as such for failure to comply with those constitutional precepts.[5]

If declarative or expository legislation cannot bind the courts, much less should the courts be bound by expressions of legislative intent which have no force of law. The Louisiana legislature was thus guilty of double fault when in 1958, it adopted House Concurrent Resolution No. 48, declaring that the legislature did not intend, by Act 233 of 1956, to create the State Licensing Board for Contractors as an agency of the state or subject it to the rules of the State Civil Service Commission. As pointed out by the court in the case under discussion, two cardinal principles

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the Supreme Court of Pennsylvania in Commonwealth *ex rel.* Roney v. Warwick, 182 Pa. St. 140, 142, 33 Atl. 373, 375 (1895), said: "One of the fundamental principles of all our governments is that the legislative power shall be separate from the judicial. If the legislature would prescribe a different rule for the future from that which the courts enforce, it must be done by statute, and cannot be done by a mandate to courts, which leaves the law unchanged, but seeks to compel the courts to construe and apply it, not according to the judicial, but to the legislative, judgment."

4. Under certain circumstances and in the absence of constitutional limitations, where it is possible to revive a statute which has expired, or to amend or re-enact a law by reference to its title only, a statute which directs the courts to "construe" the law as extending it for an additional period of time has been considered as amendatory legislation rather than as an invasion of the judicial power. Stockdale v. Atlantic Ins. Co., 87 U.S. (20 Wall.) 323 (1874). In that case the United States Supreme Court was considering a clause in an 1870 statute providing that certain sections of a prior revenue law "shall be construed to impose the taxes therein mentioned to the first day of August 1870." Said the court: "Congress could have passed a law to re-impose this tax retrospectively, to revive the sections under consideration if they had expired, *to re-enact the law by a simple reference to the sections.* Has it done anything more? Has it intended to do anything more? Are we capriciously to construe the use of the word 'construe' as an invasion of the judicial functions where the effect of the statute and the purpose of the statute are clearly within the legislative function? . . .. The paragraph we have been considering was not in its essence an attempt to construe a statute . . . . But it was a legitimate exercise of the taxing power by which a tax, which might be supposed to have expired, was revived and continued in existence for two years longer." *Id.* at 332. (Emphasis added.)

5. In Titusville Iron-Works v. Keystone Oil Co., 122 Pa. 627, 15 Atl. 917 (1888), the court was considering an act of 1887 the object of which was to extend a prior law relative to mechanics liens to new classes not previously enumerated. The method adopted for making this extension was by a direction to the courts that the prior law "shall be construed" as applying to these new classes. This, the court said, was an attempt to amend the existing statute by reference only, in violation of the constitutional requirement that all laws amended, revived or extended, must be re-enacted and published at length. *Cf.* LA. CONST. art. III, § 17.

were ignored: (1) that a merely declaratory resolution approved without the formalities prescribed as essential to the passage of a law cannot be given legal effect as a definitive expression of legislative will, and (2) that it is not within the province of the legislature to construe the enactments of a previous legislature.[6]

PUBLIC UTILITIES

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Station Closings

As has been evident in prior terms, the Louisiana Public Service Commission has set up more rigorous standards to justify station closings than the railroads have been willing to accept; consequently, recent terms have seen a flurry of such cases reach the Supreme Court and this term with six such cases was no exception.[1] The guide which the court has followed was adopted some years ago from a statement in Corpus Juris Secundum and was recently phrased as follows:

6. There have been other instances of expository legislation and interpretative resolutions by the Louisiana legislature, but thus far no question has arisen as to their validity. See, for example, H. C. R. No. 29 of 1955 interpreting certain language in LA. R.S. 3:2809 (1950), by declaring it the intent of the legislature to confer upon the Department of Highways the authority to approve the erection of fences on the rights-of-way of public roads; S.C.R. No. 7, 1960 (E.S.), stating that the legislature, in enacting R.S. 18:231-18:261, intended to confer the right on parishes, not only to adopt the system of permanent registration of voters, but also to confer the right to rescind such action once taken, and to revert to the system of periodic registration; S.C.R. No. 10, 1960 (2 E.S.), whereby the legislature expresses its intention "that no member of the Armed Forces of the United States of America who are citizens of Louisiana . . . should be required to pay a license fee in order to hunt or fish . . ." thus exempting them from the license fees imposed by LA. R.S. 56:104 and R.S. 56:331. In addition there are numerous other resolutions suspending the operation of existing law, some for an indefinite period. See for example, H.C.R. No. 2, 1960 (1 E.S.), suspending until May 1, 1961, the operation of La. Act 357 of 1960; H.C.R. No. 8, 1960 (1 E.S.), suspending indefinitely Act 216 of 1960; H.C.R. No. 25, 1960 (1 E.S.), suspending indefinitely the provisions of R.S. 13:3471(6).

Indefinite suspension of laws amounts to a virtual repeal, and consequently the practice is unsound since laws can only be repealed by other laws enacted in accordance with constitutional safeguards.

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1. Louisiana & Arkansas Ry. v. Louisiana Public Service Commission, 240 La. 658, 124 So.2d 899 (1960); Texas & Pacific Ry. v. Louisiana Public Service Commission, 240 La. 669, 124 So.2d 902 (1960); Illinois Central R.R. v. Louisiana Public Service Commission, 240 La. 769, 125 So.2d 159 (1960); Illinois Central R.R. v. Louisiana Public Service Commission, 241 La. 1, 127 So.2d 178 (1961); Missouri Pacific R.R. v. Louisiana Public Service Commission, 241 La. 242, 128 So.2d 644 (1961); Texas & New Orleans R.R. v. Louisiana Public Service Commission, 130 So.2d 398 (La. 1961).