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CHAPTER 24

Legislative Process and Statutory Interpretation

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The 1954 session of the General Court began on January 6 and ended on June 11. Although the largest number of bills in the Commonwealth's history were introduced, prorogation occurred on the earliest date since 1937. The General Court passed 687 bills and 126 resolves which received executive approval. The Governor returned one bill, the "wire tap" bill (Senate No. 144), to the Senate with his objections thereto in writing, and his objections were sustained. This bill provided for restricting the authority of the attorney general and district attorneys to authorize wire tapping.

When the General Court prorogued, there were two resolves and six bills which had been placed before the Governor for his approval. These enactments were not signed by the Governor and never became law.

The General Court adopted a proposal for a legislative amendment to the Massachusetts Constitution providing four-year terms for governor, lieutenant governor, state secretary, treasurer and receiver general, attorney general, and auditor. This amendment will become part of the Constitution if it is similarly adopted in a joint session of the General Court in 1955 and approved by the people at the next state election.

Three bills were passed at the extra session of the General Court held on September 7-8, and they received executive approval.

A. Legislative Process

§24.1. Contempt of the General Court: The case of Otis A. Hood. Chapter 89 of the Resolves of 1953 provided for the establishment of a Special Commission, to consist of two senators, three representatives, and two persons to be appointed by the Governor, for the purpose of conducting an investigation and study of Communism and subversive activities and related matters "that would aid the General Court in

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enacting any remedial legislation." The Commission was empowered to hold public hearings; to require by summons the attendance of witnesses and the production of books, papers, and documents; and to take testimony. Further, the Commission could, by majority vote, issue summonses, and any member had authority to administer oaths to witnesses. The resolve contained the following provision: "Every person who, having been summoned as a witness by said commission, or any subcommittee thereof, willfully makes default, or who, having appeared, refuses to answer any question pertinent to the investigation hereby authorized, shall be guilty of contempt and shall be subject to a fine of two hundred dollars or to imprisonment for not more than one month, or both." [1]

In the course of its investigation, the Commission summoned one Otis A. Hood of Boston to appear before it at a hearing to be held on March 18, 1954. Upon his appearance he refused to be sworn as a witness without first receiving witness fees to which he claimed he was entitled prior to being sworn as a witness. He stated to the Commission, "I am not ready to be sworn. This commission owes me a witness fee from the last time I was here, and I want that witness fee and this witness fee . . . I will be reimbursed right now. I won't take any chances." Upon being ordered by the chairman to take the oath, Hood replied, "I will not take the oath without having received my witness fee." He was thereupon advised by the chairman that it was the judgment of the Commission to cite him for contempt before the legislature. To this Hood stated, "I think it would be preferable if you pay the fee as you are supposed to . . . You are asking for eighteen thousand dollars for more funds. What are you doing with it, padding your expense accounts?"

Hood was then requested to sign a form of certificate for witness fees and was assured by the chairman that the witness fees would be mailed to him. Although Hood signed the certificate, he persistently refused to be sworn and testify before receiving the money, stating, "I will not take the oath without the money. Why don't some of you loan it out of your pocket? You have plenty . . ." It was only after he was paid a witness fee by the Commission's counsel that he took the oath. At one point, after being informed by the chairman that the Commission would not be drawn into an argument with him, he stated, "I would like to have an argument." He refused, on constitutional grounds, to answer almost all of the questions put to him.

After the public hearing, the Commission voted to cite Otis A. Hood for contempt. On March 30, 1954, the Commission filed with the General Court a Partial Report,[2] in which it stated:

> Because of certain contemptuous behavior on the part of a witness called before the commission on the eighteenth day of March, it was felt that the work of the commission would be considerably

§24.1. [1] Compare this provision with G.L., c. 7, §11.
[2] House Doc. 2645 (1954).

hampered unless some definite action were taken. The commission has therefore voted to recommend to the General Court that the Opinions of the Justices of the Supreme Judicial Court be required relative to the right of the General Court to proceed with contempt proceedings, and if affirmative answers are received from the said Justices that contempt proceedings be brought, and have enclosed the following Orders.

The first order referred to was for the Opinions of the Justices of the Supreme Judicial Court on certain "important questions of law" arising in connection with the second order, which provided for Hood's being adjudged in contempt and punished.

The questions submitted were as follows:

1. Is the Special Commission established under chapter eighty-nine of the Resolves of nineteen hundred and fifty-three a committee or commission of the General Court so that disrespect or contemptuous behavior toward it by a witness duly summoned by it to give testimony before it, constitutes contempt of the General Court within the meaning of Articles X and XI of Section III of Chapter I of Part II of the Constitution of the Commonwealth?

2. Does the General Court have power and authority under Articles X and XI of said Section III to adjudicate in contempt and punish a person who was guilty of disrespectful and contemptuous behavior, as above described, before such Special Commission?

3. If the General Court has such power and authority, must the person who was guilty of such disrespectful and contemptuous behavior be brought before the bar of the General Court and heard before being adjudged in contempt and ordered committed?

The order for the Opinions of the Justices of the Supreme Judicial Court was adopted by the House of Representatives on April 1, 1954, and by the Senate in concurrence on April 6. It was transmitted to the Justices on April 7. On April 22, a communication[3] containing the Opinions of the Justices was filed in the office of the Clerk of the House. Questions 1 and 2 were each answered in the negative, in view of which question 3 became inapplicable.

Articles X and XI referred to in the questions provide, in part, that the House of Representatives and the Senate "shall have authority to punish by imprisonment, every person, not a member, who shall be guilty of disrespect to the house (or senate), by any disorderly, or contemptuous behavior, in its presence . . ." The Court, in its opinion,[4] stated that these powers of the General Court do not extend to a special commission composed partly of members of the legislature and

[3] House Doc. 2758 (1954).

[4] Opinion of the Justices, 1954 Mass. Adv. Sh. 405, 119 N.E.2d 385.

partly of other persons. The Justices asserted, "We do not overlook decisions and legislative practice upholding the proposition that contemptuous conduct before a committee composed entirely of members of a house is a contempt of the house." [5]

The Court drew a distinction between a committee composed entirely of legislators and a *mixed commission* of legislators and others on the ground that while it was "possible to regard" a purely legislator-staffed committee as a "working part of the house" and while performing its duties as being "invested with the dignity of the house itself so that contemptuous conduct against such a committee is directed against the house as a whole," [6] it was not possible to take this view of the mixed commission, since it is "not a part of the house but is merely an *independent* body to which certain members of the house as individuals belong." [7] (Emphasis supplied.)

The Court asserted this to be true even where the mixed commission is "assigned tasks which aid the General Court in the performance of its duties." [8]

The questions submitted to the Court were confined to the General Court's powers under Articles X and XI of the Constitution, and the Court therefore properly did not consider whether or not Hood could be prosecuted criminally under the provisions of the resolve creating the Commission, or whether he could be compelled to testify under the provisions of Chapter 233, Section 10 of the General Laws.

Pending before the General Court at the time of the Hood proceedings was a bill [9] entitled "An Act providing that a witness who refuses to testify at a hearing before the General Court or either branch thereof shall be guilty of a misdemeanor." This bill, patterned generally on the federal statutes,[10] provided, in part, as follows:

> Every person who having been summoned as a witness by the authority of either branch of the General Court or both, jointly, to give testimony or to produce papers upon any matter under inquiry before either branch, or any committee established by a resolve or a joint order of the two branches, or any committee of either branch, wilfully makes default, or who having appeared, refuses to answer any question pertinent to the question under inquiry, shall be deemed guilty of a misdemeanor, punishable by a fine of not more than one thousand dollars nor less than one hundred dollars and imprisonment in a common jail for not less than one month nor more than twelve months.

It should be noted that this bill made no specific mention of special commissions but did include "any committee established by a resolve or a joint order of the two branches."

[5] 1954 Mass. Adv. Sh. at 409, 119 N.E.2d at 387.
[6] 1954 Mass. Adv. Sh. at 410, 119 N.E.2d at 388.
[7] Ibid.
[8] Ibid.
[9] Senate No. 321 (1954).
[10] 2 U.S.C.A. §§192, 194 (1927), 11 Stat. 155 (1857).

The bill was referred to and considered by the Joint Committee on the Judiciary, which, on April 5, reported a new draft[11] entitled "An Act providing a penalty for the refusal by a witness to appear, testify or produce papers before the General Court or either branch thereof or before committees or commissions acting under authority thereof." The new bill specifically included a "special commission consisting in whole or in part of members of the general court" and provided a criminal penalty for a willful default or refusal to testify. Neither bill covered disrespectful, disorderly, or contemptuous behavior.[12] The new draft, to which an emergency preamble was added, was enacted by the General Court and signed by the Governor on May 20, 1954, becoming Chapter 454 and inserting a new Section 28A in Chapter 3 of the General Laws.

In view of this enactment, the resolve[13] reviving and continuing the Special Commission Established to Study and Investigate Communism and Subversive Activities did not include the provision, set forth above, relative to the willful default or refusal to answer of a witness summoned by the Commission but contained instead the following provision: "Every person who behaves in a disorderly or contemptuous manner before such commission shall be deemed guilty of a misdemeanor punishable as provided in section twenty-eight A of chapter three of the General Laws."

§24.2. The Legislative Research Council and Legislative Research Bureau. A significant development of the 1954 session of the General Court was the enactment of legislation[1] establishing a Legislative Research Council and a Legislative Research Bureau to constitute a "research staff which shall perform its duties in a manner completely impartial and nonpartisan at all times and in conformance with the highest standards of research practice for the assistance and benefit of the members, committees and commissions of the General Court."

The Council consists of two senators and four representatives, designated annually by the president and speaker, respectively, the membership from each branch being divided equally between the two major political parties. The members of the Council serve without compensation directly under the General Court.[2]

The Council determines all policies with respect to a legislative research program, while the Legislative Research Bureau has the task of carrying out the research tasks assigned to it by the Council.[3]

The Council appoints "a person qualified by education, training and experience" to be the director of the Bureau and also "such assistants to the director as are necessary to carry out the program of

[11] Senate No. 716 (1954).
[12] In this connection see G.L., c. 34, §13.
[13] Resolves of 1954, c. 123.

§24.2. [1] Acts of 1954, c. 607.
[2] G.L., c. 3, §56, inserted by Acts of 1954, c. 607.
[3] Id. §57.

statistical research and fact-finding required by the council." [4] The Bureau will make reports to the Council, and the Council will report at least annually to the General Court.[5]

Massachusetts thus becomes the thirty-fourth state to adopt a legislative research agency. Such an agency was first established in Kansas in 1933. The ever increasing volume and complexity of legislative matters in recent years, much of which is of a highly technical and specialized nature, has given rise to the need for a legislative research staff. Such a staff, working in close cooperation with the State Library, particularly its Legislative Research Division, should become a valuable aid to the General Court in providing the necessary research and information for its legislative programs.

It was not contemplated that the Legislative Research Council and Legislative Research Bureau would eliminate entirely the need for special commissions. The new law specifically provides that the Council and Bureau will be "for the assistance and benefit of the members, committees and commissions of the general court." The number of special commissions should, in time, decrease, however, and their tasks should be made easier by the existence of the new Council and Bureau.

§24.3. **Home rule.** In his Annual Message to the two branches of the legislature on January 8, 1953, Governor Herter stated: "In general, it is my belief that the State Government ought not to legislate on matters which are strictly local in their character, or affect the administrative functions of local officials in particular cases."

In 1953, a proposal was filed for a legislative amendment to the Constitution relative to the enactment of laws affecting particular cities, towns, or districts, which provided, in substance, that no law should be passed by the General Court "which affects in any manner the form of government or the powers, rights, duties, property or affairs of a particular city, town or . . . district, or of any officer or agency thereof acting in its behalf, except with its approval or upon its request . . ." [1] The Committee on Constitutional Law reported in each branch that the amendment ought not to pass and the report was placed on file in accordance with the requirement of Joint Rule 23. No further action was taken on the measure.

In 1954, a similar proposal was filed.[2] This time the same committee reported that the amendment "ought to pass," but no further action was taken after the report was placed on file in accordance with the rule. Joint Rule 23 provides, in part: "In each branch the report shall be read and placed on file; and no further legislative action shall be taken on the measure unless consideration in joint session is called for by vote of either branch, in accordance with the provisions

[4] Id. §58.
[5] Id. §61.

§24.3. [1] House No. 889 (1953).
[2] House No. 1849 (1954).

of Section 2 of Part IV of Article XLVIII of the Amendments of the Constitution."

The arguments in favor of such an amendment are basically that local matters should be within the control of local officials and that the great volume of legislation with which the General Court is annually forced to deal would thereby be reduced. Opponents cite the traditional right of free petition[3] and the wisdom of retaining legislative control over actions of local officials.

With the placing on file of the report on the proposed "home rule" amendment, the legislature considered the report of the Committee on Rules of the two branches, acting concurrently, recommending that the Joint Rules be amended by striking out Rules 7A and 7B and inserting in their place a single rule[4] combining the two and broadening the prohibition against the admission of certain bills affecting a city or town without its consent. Existing Rule 7A requires the approval of a county, city, or town in connection with legislation authorizing it "to reinstate in its service a person formerly employed by it." Rule 7B requires the approval of a county, city, or town in connection with legislation authorizing it

> to retire or pension or grant an annuity to any person, or to increase any retirement allowance, pension or annuity, or to pay any sum of money in the nature of a pension or retirement allowance, or to pay any salary which would have accrued to a deceased official or employee but for his death, or to pay any claim for damages or otherwise, or to alter the benefits or change the restrictions of any county or municipal retirement or pension law, or, in the case of a city or town, to borrow money outside of the debt limit . . .

It further provides that

> any petition for legislation raising any statutory limitation on appropriations authorized to be made for any school purpose by the school committee in any city where the city council has unlimited authority to make appropriations for all such purposes on the recommendation of the mayor and at the request of the school committee, shall be referred to the next annual session, unless when filed it be the petition or be approved by vote of the mayor and city council.

The proposed Joint Rule 7A would require the approval of a county, city, or town in connection with legislation authorizing it "to appropriate or borrow money for any purpose, or to pay any claim for damages or otherwise, or affecting the salaries, reinstatement, retirement, tenure or other status of a county, city or town officer or employee or to alter the benefits or change the restrictions of any county or municipal pension or retirement law."

[3] Mass. Const., Declaration of Rights, Pt. I, Art. XIX.
[4] To be numbered Rule 7A.

Some legislators undoubtedly felt that a constitutional amendment might be going too far in that it would prevent the General Court from taking legislative action in a particular situation where some action might become necessary. Providing for home rule by a joint rule would be more flexible since such a rule could be suspended by a concurrent vote of two thirds of the members of each branch present and voting thereon.[5]

The proposed Joint Rule 7A was adopted by the Senate but was rejected by the House on a roll-call vote, less than two thirds of the members present and voting thereon having voted in the affirmative. A similar proposal had been rejected by the House in 1953 without a roll-call vote.

B. Statutory Interpretation

§24.4. Effective date of new law: Emergency preamble. The state rent control law[1] was approved as an emergency law on June 2, 1953. Twenty-five taxable inhabitants of the Commonwealth brought a petition under the General Laws, Chapter 29, Section 63, in which the validity of the enactment as an emergency measure and its constitutionality were challenged.[2] The following discussion is limited to the first issue.

Article XLVIII of the Amendments to the Constitution of the Commonwealth, The Referendum, I, provides: "No law passed by the general court shall take effect earlier than ninety days after it has become a law, excepting laws declared to be emergency laws and laws which may not be made the subject of a referendum petition, as herein provided." Article XLVIII, The Referendum, II, as amended by Article LXVII of the Amendments, reads in part: "A law declared to be an emergency law shall contain a preamble setting forth the facts constituting the emergency, and shall contain the statement that such law is necessary for the immediate preservation of the public peace, health, safety or convenience." The emergency preamble of the rent control law reads: *"Whereas,* The deferred operation of this act would tend to defeat its purpose which is, in part, to alleviate the severe shortage of rental housing in certain areas of the commonwealth which shortage has caused a serious emergency detrimental to the public peace, health, safety and convenience, therefore this act is hereby declared to be an emergency law, necessary for the immediate preservation of the public peace, health, welfare, safety and convenience."

The Court, in holding that the preamble was "adequate to validate the act as an emergency measure," stated:

[5] Joint Rule 33.

§24.4. [1] Acts of 1953, c. 434.

[2] Russell v. Treasurer and Receiver General, 1954 Mass. Adv. Sh. 571, 120 N.E.2d 388.

It contains the required statement that the law is necessary for the immediate preservation of the public peace, health, safety, and convenience, and sets forth as a fact that its purpose is to alleviate the severe shortage of rental housing in certain areas which has caused a serious emergency. Although, technically, it is the purpose of the act which is stated as a fact, the statement amounts to a declaration that there is a severe shortage of rental housing in certain areas which has caused a serious emergency and that the purpose of the act is to alleviate this shortage.[3]

§24.5. Legislative pension decisions. On January 7, 1954, the Supreme Judicial Court handed down two decisions, *Roach v. State Board of Retirement*[1] and *McCarthy v. State Board of Retirement*,[2] in which it reaffirmed the principle set forth in *Kinney v. Contributory Retirement Appeal Board*.[3] Effective September 16, 1952, the General Court, in an extra session, passed an act entitled "An Act repealing the legislation providing pensions or retirement allowances for members or former members of the General Court and for elected state officials." [4] In the *Kinney* case, the Court held that an assistant attorney general could be deprived of any right to have his service in the General Court computed as creditable service in the retirement system irrespective of whether on September 16, 1952, he was already in a position to claim retirement rights. The Court stated: "We incline to agree with the more numerous decisions holding that a contributory pension or retirement system, like a non-contributory system, commonly creates no vested and immutable rights resting upon contract rather than upon legislative policy even after the beneficiary has become entitled to pension payments." [5]

In the *McCarthy* case, the same principle was applied even though the plaintiff's intestate had ceased to hold office, had been retired, and had actually begun to receive a retirement allowance. The Court said: "We believe that the Commonwealth has entered into no contract of insurance with a legislator whose retirement is complete any more than with one who has not ceased to hold office." [6]

No opinion was expressed by the Court in any of the cases on the question as to recovery of contributions to the retirement fund. However, in the 1954 session of the legislature, provision was made for the return of contributions to the surviving beneficiary or legal representative of any former member of the General Court who is deceased.[7]

[3] 1954 Mass. Adv. Sh. at 572, 573, 120 N.E.2d at 389, 390. See, on the general subject, G.L., c. 4, §1; Prescott v. Secretary of the Commonwealth, 299 Mass. 191, 12 N.E.2d 462 (1938).

§24.5. [1] 1954 Mass. Adv. Sh. 43, 116 N.E.2d 850.
[2] 1954 Mass. Adv. Sh. 47, 116 N.E.2d 852.
[3] 330 Mass. 302, 113 N.E.2d 59 (1953).
[4] Acts of 1952, c. 634.
[5] 330 Mass. 302, 306, 113 N.E.2d 59, 62 (1953).
[6] 1954 Mass. Adv. Sh. 47, 49, 116 N.E.2d 852, 854.
[7] Acts of 1954, c. 615.

Several bills were filed in the last session which attempted to make the rights and benefits under contributory retirement systems contractual and not subject to impairment, but they failed of passage.[8] A provision of similar import is found in the General Laws, Chapter 32, Section 25(5), which provides that Sections 1 to 28 may be altered, amended or repealed, "provided, that no such alteration, amendment or repeal shall be deemed to reduce the amount of any annuity, pension or retirement allowance granted under the provisions of such sections . . . or to affect adversely the rights of any person . . ." With reference to this provision, the Court in the *Kinney* case stated: "Whatever may be the effect of this provision upon the power of the Legislature to alter, amend, or repeal the sections therein mentioned, upon which we imply no opinion, it can have no effect upon the power of the Legislature to deal with §28H out of the repeal of which the present controversy arises." [9]

In New York, benefits incident to membership in a retirement system are protected by a constitutional amendment. The following new provision was adopted by the Constitutional Convention of 1938 and approved by vote of the people on November 8, 1938: "After July first, nineteen hundred forty, membership in any pension or retirement system of the state or of a civil division thereof shall be a contractual relationship, the benefits of which shall not be diminished or impaired." [10]

§24.6. Applicability of veterans' tenure law to a legislative employee. In *Sullivan v. Committee on Rules of the House of Representatives,*[1] it was held that the veterans' tenure law did not apply to a position in the legislative branch of the government. The petitioner, a veteran, had been employed as director of fiscal affairs for the Committee on Ways and Means of the House of Representatives from January 13, 1949, to January 7, 1953, when the position was terminated by vote of the respondent Committee on Rules. He contended that, having served "for not less than three years," he was entitled to the benefits of tenure of office and protection of the civil service laws.[2]

The Court asserted that it was unable to discover that the legislature had manifested "the most unlikely intention" [3] of binding successive General Courts to the hire of an individual by one of its committees.

The Court took judicial notice of the "well known historical fact" [4] that legislatures in democracies reorganize along political lines after every state-wide election. Although this would have been enough to

[8] See Senate No. 434 and House No. 1521 and No. 1529.
[9] 330 Mass. 302, 307, 113 N.E.2d 59, 62 (1953).
[10] N.Y. Const., Art. V, §7.

§24.6. [1] 1954 Mass. Adv. Sh. 147, 117 N.E.2d 817.
[2] G.L., c. 30, §9A.
[3] 1954 Mass. Adv. Sh. 147, 149, 117 N.E.2d 817, 818.
[4] 1954 Mass. Adv. Sh. at 149, 117 N.E.2d at 819.

sustain its finding, the Court carefully examined the civil service laws and veterans' tenure provisions and concluded that positions in the legislative branch were excluded therefrom both by the letter[5] and the spirit of these laws.

[5] 1954 Mass. Adv. Sh. at 151, 117 N.E.2d at 820.