Mercer Law Review

Volume 3 | Number 1 Article 23

12-1951

Statutory Construction and the Legislative Process

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STATUTORY CONSTRUCTION

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Although important principles of statutory construction were reiterated by the Georgia courts during the survey period, the chief interest in these cases derives from the application of these principles rather than from any novel development of doctrine.

The very important question of the effect of codification was discussed in two decisions, *Norris v. McDaniel*[1] and *Sirota v. Kay Homes*.[2] Prior to codification, an Atlanta ordinance provided that property for which rezoning was sought should be placarded with a sign at least "12 square feet." The notice involved in the *Sirota* case measured three feet by four feet. In the City Code of Atlanta adoped the year following the enactment of that ordinance, the sign was required to measure at least "12 feet square." The contention that the difference in wording was caused by a clerical or typographical error was rejected by the Supreme Court. It relied upon the wording of the adopting ordinance, and said that a change by official codification resulted from the adopting statute rather than any legislative power of the codifiers. The Code provision, being inconsistent with the earlier ordinance provision, therefore prevailed, and the notice provision had not been complied with. The *Norris* case presented the situation of a 1927 statute transferring McDuffie County from the Augusta Judicial Circuit to the Toombs Judicial Circuit, while the 1933 Code named McDuffie County as being in the Augusta Circuit. Thus there was a direct conflict between the 1927 statute and the 1933 Code as adopted by the General Assembly. The Supreme Court in this case, too, pointed out that a codification is given effect because of the adopting statute rather than the codifiers' power, but here came to the conclusion that the 1927 statute prevailed. The court felt the historical note to the section in the 1933 Code showed that the codifiers and legislature had "simply overlooked" the 1927 statute, and held that McDuffie County was in Toombs Circuit. The court was probably guided to its decision in part by the fact that everyone had for so long considered McDuffie County as in the Toombs Circuit. On the other hand, although it is impossible to say definitely without greater knowledge of the facts, the legislative body of Atlanta would not likely in approximately one year increase the size required of a notice on city property from 12 square feet to 144 square feet. The two cases present the difficult choice between modifying the plain statement of a later statute so as to approach the more probable legislative intent, and making certain the language of a codification at the risk of warping the legislative intent. There is certainly much to be said for the reasoning of Chief Justice Duckworth's dissent (concurred in by Mr. Justice Hawkins) in the *Norris* case, where he stated that the "undesirable consequences of a re-

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1. 207 Ga. 232, 60 S.E.2d 329 (1950).
2. 208 Ga. 113, 65 S.E.2d 597 (1951).

versal are infinitely less important than the upholding and preservation of provisions of our official Code which was enacted into law by the legislature."

A repeal by implication, though such repeals always meet with courts' disfavor, was found in *Collier v. Mitchell.*[3] The court pointed out that such repeals result necessarily when the later statute is repugnant to the earlier one or when the later statute covers the whole subject matter of the earlier enactment. In this case, the court concluded that the later statute in dealing with the qualifications of judges of a municipal court intended to deal with the whole subject matter of his qualifications, and therefore requirements set up by the earlier act were not in force. In *Goebel v Hodges,*[4] the Court of Appeals found the two statutes there in question were not inconsistent, since the trend of legislative enactments on the subject matter showed a constant expanding of jurisdiction of the court to which the acts related. The later act, it was found, was not intended to cover the whole subject.[5]

In both *Cole v. Foster*[6] and *Lancaster v. State,*[7] the contention that the statutes involved were void for vagueness was rejected. In the former case, the requirement of the act that peace officers' benefits and annuities should not be paid until necessary funds had been obtained was found to be merely "a matter of administering the act in accordance with its terms," and in the latter, the Court of Appeals said that "willful or wanton," used in defining the offense of reckless driving, had an established meaning in civil and criminal statutes and decisions.

The Supreme Court in *Schneider v. City of Folkston*[8] declared unconstitutional a local statute which sought to amend the charters of two municipalities on the ground that the act referred to more than one subject and, since one of the municipalities was not mentioned in the title, the act contained matter different from what was expressed in the title. Thus the act violated both part of the constitutional provision[9] which requires unity of subject matter and expression of it in the title of each law.

The special constitutional requirements for the passage of local laws was before the Supreme Court in *Robertson v. Temple,*[10] which held that the requirement for publicaiton[11] required publication in the proper paper for the county of the legal situs of the municipality, and there only, so publication in another county, even though the county was partly within the municipality, was not compliance with the constitutional provision.

The courts in other cases also stated rules for statutory construction, although the rules played a less important part than in the cases mentioned above. Some of these statements were that statutes should be construed

3. 207 Ga. 528, 63 S.E.2d 338 (1951).
4. 83 Ga. App. 574, 64 S.E.2d 207 (1951).
5. See also Outlaw v. Premium Distributing Co., 83 Ga. App. 198, 200, 63 S.E.2d 260, 262 (1951).
6. 207 Ga. 416, 61 S.E.2d 814 (1950).
7. 83 Ga. App. 746, 64 S.E.2d 902 (1951).
8. 207 Ga. 434, 62 S.E.2d 177 (1950).
9. GA. CONST. Art. III, § 7, ¶ 8, GA. CODE ANN. § 2-1908 (Rev.).
10. 207 Ga. 311, 61 S.E.2d 285 (1950).
11. GA. CONST. Art. III, § 7, ¶ 15, GA. CODE ANN. § 2-1915 (1948 Rev.).

so as to harmonize with each other,[12] that statutes will not be interpreted to have retroactive application unless the legislative language clearly requires it,[13] and that penal and condemnation statutes are to be strictly construed,[14] as are statutes of limitation.[15] The courts also relied to some extent upon the construction of similar statutes[16] and the background and history of the legislation.[17].

One legislative act in this general field that may have important and beneficial effects is the statute[18] setting up within the State Department of Law a Bill Drafting Unit, whose primary function will be to "aid and advise the members of the General Assembly in the drafting of proposed legislation." The drafting of statutes is as complex and difficult as it is important, and it is no reflection upon the members of the legislature to say that many are not prepared to accomplish it without expert assistance. This statute will provide for assistance in this matter and leave individual legislators more time and freedom to devote to what should be their primary and most important function, the formulation of legislative policy.

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12. Outlaw v. Premium Distributing Co., 83 Ga. App. 198, 62 S.E.2d 260 (1951).
13. Rhyne v. Price, 82 Ga. App. 691, 62 S.E.2d 420 (1950).
14. State v. Schafer, 82 Ga. App. 753, 62 S.E.2d 446 (1950).
15. Redwine v. Arvaniti, 83 Ga. App. 203, 63 S.E.2d 222 (1951).
16. Ford Motor Co. v. Abercrombie, 207 Ga. 464, 62 S.E.2d 209 (1950).
17. Wimberly v. Wimberly, 82 Ga. App. 539, 61 S.E.2d 508 (1950).
18. Ga. Laws 1951, p. 351.