THE SUPREME COURT OF MONTANA

JIM RICE
JUSTICE

JUSTICE BUILDING
215 NORTH SANDERS
PO BOX 203001
HELENA, MT 59620-3001
TELEPHONE (406) 444-5573
FAX (406) 444-3274

The Role of the Courts: Interpretation and Constitutionality

Law School for Legislators
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I. THE "SCIENCE" OF STATUTORY INTERPRETATION: JUDICIAL PURSUIT OF LEGISLATIVE INTENT.

"Our purpose in construing a statute is to ascertain the Legislature's intent and to give effect to the legislative will."[1]

A. Plain Meaning. In ascertaining legislative intent, we look first to the plain meaning of the words used."[2] "The statutory language must be reasonably and logically interpreted and words given their usual and ordinary meaning."[3] "We are to neither insert that which has been omitted, nor omit that which has been inserted. Section 1-2-101, MCA."[4] "Where the language is clear and unambiguous, the statute speaks for itself and we will not resort to other means of interpretation."[5]

B. Uncertainty and Ambiguity. "When the intent of the legislature cannot be determined from the plain language of the statute, we examine the statute's legislative history to determine its correct interpretation."[6] "Where a statute is subject to more than one reasonable but conflicting interpretation, it is ambiguous. . .We resolve ambiguous terms by looking to the structure, purpose and/or legislative history of a statute to determine the intent of the Legislature."[7]

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[1] *State v. Stanczak*, 2010 MT 106, ¶ 17
[2] *Stanczak*, ¶ 17.
[3] *In the Matter of R.L.S.*, 1999 MT 34, ¶ 8.
[4] *In the Matter of K.M.G.*, 2010 MT 81, ¶ 26.
[5] *Matter of R.L.S.*, ¶ 8.
[6] *Matter of K.M.G.*, ¶ 26.
[7] *State v. Norquay*, 2010 MT 85, ¶ 30.

C. Avoiding Absurd Results. "This Court must read and construe each statute as a whole so as to avoid an absurd result and to give effect to the purpose of the statute."[8] "Statutory construction should not lead to absurd results if a reasonable interpretation can avoid it."[9]

1. *State v. Heath*, 2004 MT 126, ¶ 37. A plain meaning approach would have eliminated extensive sentencing authority of the courts, on the basis of a mere codification error.

2. *Bitterroot Prot. Assoc. v. Conservation Dist.*, 2008 MT 377, ¶ 72. A plain meaning approach to the Stream Access Law, rendering it applicable to purely "natural water bodies" only, would have failed to broadly ensure recreational access to Montana waters it was intended to provide.

II. THE "DANCE" OF THE BRANCHES: 'GIVE AND TAKE' WITHIN THE CONSTITUTIONAL SYSTEM.

A. The Judiciary's Deference to the Legislature. Courts entertain constitutional challenges to legislation pursuant to the power of judicial review, first applied by the U.S. Supreme Court in the landmark case of *Marbury v. Madison* in 1803. When a constitutional challenge is brought to legislation, courts will presume that the statute is constitutional. The party bringing the challenge has the burden of establishing constitutional error, and any doubt is resolved in favor of the statute. Courts ask not whether it is possible to condemn the statute, but whether it is possible to uphold it and to construe it in a manner that preserves the statute. The judiciary has the "final say" on constitutionality among the branches of government, and should use the power carefully.

B. A Two-Way Street: Legislative Responses to Judicial Decisions. The Legislature responds to, and often counters, judicial decisions. These legislative responses to court decisions occur in every session and, while many are minor statutory fixes, some involve major issues:

1. Chap. 28, Laws of Montana (2001). The Legislature responded to the Montana Supreme Court's decision in *Larson-Murphy v. Steiner*, 2000 MT 334, which imposed a duty upon livestock owners to keep their livestock from wandering onto highways, by reestablishing the open range doctrine in Montana.

[8] *Infinity Ins. Co. v. Dodson*, 2000 MT 287, ¶ 46.
[9] *Mont. Sports Shooting Ass'n v. State*, 2008 MT 190, ¶ 11.

2. Chap. 229, Laws of Montana (2001). The Legislature responded to the Montana Supreme Court's holding in *Sherner v. Conoco*, 2000 MT 50, which expanded worker lawsuits in workers' comp cases, by reaffirming that workers comp was to be the exclusive legal remedy for injured workers, except in very limited circumstances.

C. Here, the People Rule: The "Welfare Debate" of the 1980s. When the Legislature's efforts to enact welfare reform was struck down twice by the Montana Supreme Court, the people responded by passing Constitutional Amendment No. 18 (1988) to give discretionary power over welfare to the Legislature.[10] Ultimately, in a democracy, the people should have the final say about constitutional issues.

III. ADVICE FOR LEGISLATING: CREATE LEGISLATIVE HISTORY THAT PROMOTES CLARITY ABOUT YOUR INTENTIONS.

A. What is "legislative history"? "The background and events leading to the enactment of a statute, including hearings, committee reports, and floor debates." Black's Law Dictionary (7th ed., 1999).

B. How do courts use legislative history? Note the below discussion by the Montana Supreme Court, in *Olson v. Dept. of Revenue* [edited]:

> In 1983, this Court defined the nature of Montana's veterans' and handicapped persons' hiring preference under the statutes then in effect in *Crabtree v. Montana State Library* (1983), 204 Mont. 398, 665 P.2d 231. The Court held that the then-existing statute gave "Montana veterans and disabled civilians who meet the minimum qualifications for a state, county or municipal job an absolute preference over all other non-veterans or non-disabled civilians." In December of 1983, the Montana Legislature met in special session. During that session, it amended the employment preference statutes to their present form. In introducing this legislation, its sponsor stated as follows:
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> > "A statement of intent is provided to address the nature of the employment preference granted in the bill. The legislature intends that public employers seek and hire the most qualified persons for positions in public employment. It is also the intent of the legislature that the nature of the preference is a relative one in that it is to be applied as a 'tie-breaker' among two or more applicants for a position who have substantially equal qualifications."

[10] *See In Re T.W.*, 2005 MT 340, ¶ 18.

> The minutes of the committee meetings of the Judiciary Committees of both the Senate and the House demonstrate considerable dissatisfaction with the absolute preference we adopted in *Crabtree*. Consequently, the resulting Act provides that a job applicant who is a veteran or handicapped person and claims the right to a preference is entitled to be hired "over any other applicant with substantially equal qualifications who is not a preference eligible applicant." The term "substantially equal qualifications" is defined in Section 39-30-103(9), MCA.
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> We conclude that in amending the veterans' preference statutes, the Montana Legislature meant to abolish the absolute employment preference for veterans and handicapped persons who possess the minimum qualifications for a job. Being minimally qualified for the job is no longer enough.

Olson v. Dept. of Revenue, 235 Mont. 31, 33-34, 765 P.2d 171, 172-173 (1988).

C. Recommendations for legislating:

1. *Draft with precision*: make sure your intentions are plainly set forth. Read your bill with critical eyes, and as someone who is unfamiliar with the topic. Does it convey what you mean?

2. *Definitions*. Are there key words or terms in your bill that are undefined? Consider adding a definition section.

3. *Purpose clauses or statements of intent, and whereas clauses*. Courts often look to expressions of purpose to determine legislative intent. *Olson v. DOR* (quoted above); *see also Hiett v. Missoula County Public Schools*, 2003 MT 213, ¶ 32. **Caution**: A legislator's intent is not necessarily the same as legislative intent.

4. *Codification instructions*. Where in the MCA do you intend your bill to reside?

5. *Make your record*! Sponsor statements; explanatory testimony; written statements; illustrative exhibits. Think of the task of carrying a bill, not only as a legislative act, but as a legal act.

Best wishes for a successful session!