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WHAT IS LEGISLATIVE INTENT & HOW IS IT USED?

By Carolina C. Rose, J.D.

The subject of legislative intent is not a particularly well covered aspect of the typical law school curriculum. Heavy emphasis on the case method of studying law tends to restrict the discussion of legislative purpose to what the courts say on the subject. However, judicial opinions are only one facet of a thorough multi-faceted approach to properly construing a statute. The subject of statutory construction and the proper use of legislative history for both state and federal purposes is covered in the preeminent American law treatise in this area, *Sutherland on Statutory Construction* (hereafter *Sutherland*). Following is a recap of California's tradition in this area which typifies the discussion found in *Sutherland*.

California

See LRI's complimentary Research and Practice Guide: "California Legislative History and Intent, Practical 'How To' Guidance for Improving Your Advocacy Skills When Legislative History/Intent is at Issue," by Carolina C. Rose, J. D., on our [Complimentary Resources](#) webpage. This guide provides extensive information and guidance for the California practitioner who wishes to utilize evidence of California legislative history as an aid for interpreting statutes. Following are selected excerpts from Chapter one of that guide.

In California, the primacy of legislative intent is established by both statute and case law:

In the construction of a statute the intention of the Legislature ... is to be pursued, if possible
... *California Code of Civil Procedure Section 1859* (Enacted 1872)

As we have often noted, our role in interpreting or construing a statute is to ascertain and effectuate the legislative intent. *Laurel Heights Improvement Association v. Regents of U.C.* (1993) 6 Cal. 4th 1112, 1127
[Sample citation]

In general, evidence of legislative intent can be derived from two primary sources:

- 1) An intrinsic analysis of the statute and its surrounding statutory context. The intrinsic method works within the four corners of the adopted language, including the surrounding statutory context, turning to interpretative case law when available, and utilizing standard principles of statutory construction.

In order that legislative intent be given effect, the statute should be construed with due regard for the ordinary meaning of the language used and in harmony with the whole system of law of which it is a part. *California State Restaurant Assoc. v. Witlow* (1976) 129 Cal. Rptr. 824, 58 CA.3d 340.

- 2) The use of extrinsic aids to reconstruct the legislative history. The wider historical circumstances surrounding the adoption of statutes can yield extrinsic evidence of legislative intent that is outside the four corners of the statute and its surrounding statutory context.

A wide variety of factors may illuminate legislative design, such as context, object in view, evils to be remedied, history of the times, and of legislation upon the same subject, public policy, and contemporaneous construction." *People v. White* (1978) 77 Cal. App. 3d Supp. 17.

In the present instances both the legislative history of the statute and *the wider historical circumstances of its enactment* are legitimate and valuable aids in divining the statutory purpose. *California Manufacturers Association v. Public Utilities Commission* (1979) 24 Cal. 3d 836, 844 (Emphasis added)

In general, statutory authority on the use of "extrinsic" aids for determining legislative intent can be found in Evidence Code Section 452 (c) ("official acts" of the Legislature) and Code of Civil Procedure Section 1859 (the intention of the Legislature is to be pursued, if possible). For obtaining judicial notice of specified matters, see Evidence 450 et seq and Rules of Court, Rule 323 (b). See also, Government Code Sections 9075 and 9080 regarding access to and the use of legislative records (Senate Bill 1507, Secs. 1 & 2, legislation originally proposed by Legislative Research & Intent LLC, Carolina Rose).

Such evidence is broadly inclusive of relevant historical background including identification of the problem addressed, the chronology of events and the presumption that the legislature is aware of prior law.

One ferrets out the legislative purpose of a statute by considering its objective, the evils which it is designed to prevent, the character and context of the legislation in which the particular words appear, the public policy enunciated and vindicated, the social history which attends it, the effect of the particular language on the entire statutory scheme. *Santa Barbara County Taxpayers Assoc. v. County of Santa Barbara* (1987) 194 Cal.App.3d 674, 680.

These extrinsic aids may show the circumstances under which the statute was passed, the mischief at which it was aimed and the object it was supposed to achieve. ... knowledge of circumstances and events which comprise the relevant background of a statute is a natural basis for making such findings." *Sutherland*, Section 48.03. See generally Chapter 38 of *Sutherland*.

Such evidence may even contradict a "plain reading" of the statute which contradicts persuasive, extrinsic evidence of legislative intent. (LRI's research and advocacy guide focuses on the effective use

of extrinsic aids in the reconstruction of legislative history.) A review of the case law and commentary reveals two schools of thought as to when the use of extrinsic evidence of legislative intent is appropriate. (See *Legislative Analysis and Drafting*, 2nd edition 1984 by William Statsky (hereafter *Statsky*), pages 3, 40, 75, 76, 118, 119, 152, 153. See also *Sutherland*, Section 46.07 on the "Limits of Literalism" and the case notes following CCP Sec. 1859 and Evidence Code Sec. 462 (c) in the West or Deering annotated codes.)

- 1) Restricted use: Only if statutory ambiguity prohibits an intrinsic, "plain meaning" interpretation. One view is that extrinsic evidence of legislative intent is only appropriate if the intent cannot be determined from the "plain meaning" of the statute because there is ambiguity in the statute's terms.

The primary rule in this regard was articulated in *Caminetti v. United States*, 242 U.S. 470, 485, 37 S.Ct. 192, 194, 61 L.Ed. 442 (1916) "It is elementary that the meaning of a statute must, in the first instance, be sought in the language in which ... [it] is framed, and if that is plain, ... the sole function of the of the courts is to enforce it according to its terms." California courts have concurred. Example:

If there is doubt as to the intent of the legislature, the court may resort to extrinsic aids to interpret a statute, such as its contemporary history, circumstances under which it was passed and mischief at which it was aimed." *Koenig v. Johnson* (1945) 163 P. 2d 746, 71 C.A.2d 739. [Emphasis added]

- 2) Unrestricted use: To avoid absurd results or to uphold "clear, contrary" intent. However, the courts have come to acknowledge that problems can occur in applying the plain meaning rule, especially when adherence to the strict letter of the statute would trigger an absurd result or contravene clear evidence of the legislature's intent.

The literal interpretation of the words of an act should not prevail if it creates a result contrary to the apparent intention of the legislature and if the words are sufficiently flexible to allow a construction which will effectuate the legislative intention. The intention prevails over the letter, and the letter must if possible be read to conform to the spirit of the act. *Sutherland*, Section 46.07.

Even the literal language of a statute may be disregarded to **avoid absurdities** or to uphold the clear, contrary intent of the legislature. *Disabled and Blind Action Committee of California v. Jenkins* (1974) 118 Cal. Rptr. 536, 44 C.A.3d 74. [Emphasis added]

The golden rule [a canon of statutory construction] ... inclines us to *avoid* an interpretation of a statute to which an application of the **plain meaning rule** would otherwise lead us. We must presume that the legislature did not intend any interpretation of the statute that would lead to absurd or ridiculous consequences, no matter how 'plain' the meaning of a statute *appears* to be. *Statsky*, page 81. In construing a statute, the intent of the legislature must be ascertained if possible, and, when once ascertained, will be given effect though it may not be consistent with the **strict letter** of the statute. *People v. Minter* (1946) 167 P.2d 11, 73 [Emphasis added]

We disagree, however, with respondent's sweeping assertion that in all cases "ambiguity is a condition precedent to interpretation." Although this proposition is generally true, "the literal meaning of the words of a statute may be disregarded to avoid absurd results or to give effect to the manifest purposes that, in light of the statute's legislative history, appear from its provisions considered as a whole." *Silver v. Brown* (1966) 63. 2d 841, 845; *County of Sacramento v. Hickman* (1967) 66 Cal.2d 841, 849. [Emphasis added]

In such cases, "...contrary to the traditional operation of the plain meaning rule, courts are increasingly willing to consider other indicia of intent and meaning from the start rather than beginning their inquiry by considering only the language of the act." (*Sutherland*, Section 46.07).

One court has even spoken in terms of the judicial "duty" to admit historical legislative documents.

In the case at bench, the extrinsic evidence in dispute was highly relevant to show the legislative intent underlying the statute. It follows that the trial court was not only free, but also **duty bound** to admit the challenged extrinsic evidence to ascertain the true intent of the Legislature and to effectuate the purpose of the law. *Pennisi v. Fish & Game* (1979) 97 Cal. App. 3d 268, 275. [Emphasis added]

Evidence Code Sections 452 and 453 set forth the procedures for judicial notice of legislative records.

The literature also speaks of the onus on the legal practitioner to offer such evidence.

As indicated earlier, an advocate who does not appear with an argument based on legislative history **is usually considered unprepared**. *Statsky*, page 119 [Emphasis added]

This is consistent with the approach taken by the California Supreme Court in *Mercy Hospital & Medical Center v. Farmers Insurance Group of Companies* (1997) 15 Cal. 4th 213, 223 where the court noted the absence of support for plaintiff's argument in the legislative history.

The trend is growing. Statutory ambiguity is not always a necessity. More and more we see the courts resorting to extrinsic evidence of legislative history that supports a "plain meaning" interpretation of the statutes. See, for example:

- *People v. Bensen* (1998) 18 Cal.4th 24, 34: A committee analysis and ballot arguments accompanying an initiative for the "three strikes" statute.
- *Stabl v. Wells Fargo Bank* (1998) 63 Cal. App. 4th 396, 402-3: A committee analysis, State Bar Report and CEB article on a trust statute.
- *Department of Water & Power v Energy Conservation & Development Comm.* 2 Cal.App.4th 206, 220-223: A letter by an opponent asking for an amendment and giving the rationale resulted in a subsequent amendment adopting the proposed changes. The court adopted the rationale stated in the letter. (Note: LRI provided the legislative history report for this case and LRI's President, Carolina Rose, provided expert witness testimony at the administrative review level.)