



DISCERN LEGISLATIVE INTENT

BY M. SCOTT MCKENNA, ESQ.

The purpose of this article is to provide to the readers of Nevada Lawyer some helpful hints and basic reminders about different tools that may be used to assist in determining what the Nevada Legislature intended when it enacted a given statute.

Legislative Intent as the Cornerstone of Determining the Meaning of a Statute

The Nevada Supreme Court has explained on numerous occasions that “[t]he intent of the legislature is the controlling factor in statutory interpretation.”¹ Usually, but not always, the “plain language” of a statute is considered to be the most accurate indication of what the legislature intended when it enacted that statute.² However, as a result of ambiguities, honest differences of opinion or any one of several other factors, the so-called “plain language” of a statute does not always suffice to fully and comprehensively convey what the legislature intended. For example, if a statute’s plain language seems inconsistent with the known intentions of the legislature, such plain language may be of little practical value in determining what was intended.³ Furthermore, as the U.S. Supreme Court has pointed out, a plain-language reading of a statute may not, in reality, be so plain.⁴

As a result of the fact that plain language or plain meaning is sometimes not adequate for the purpose of determining what the legislature meant when it enacted a statute, the conscientious legal practitioner is forced to turn

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A Brief Primer

to what are typically referred to as “extrinsic aids.” In the most literal sense, extrinsic aids are any tools that may be used to determine the intent of the legislature and which are external to the language of the statute. Some of the most common extrinsic aids are:

- (a) **rules (or canons) of statutory construction;**
- (b) **committee minutes and reports; and**
- (c) **other forms of legislative history.**⁵

This article sets forth a condensed discussion of the use of each of the preceding types of extrinsic aids.

Rules & Canons of Statutory Construction

Although the phrases “rule of statutory construction” and “canon of statutory construction” are sometimes used separately, in actuality they are effectively synonymous. A canon is simply a rule or maxim that is used to construe a written instrument.⁶ There are innumerable rules (or canons) of statutory construction and, as Professor Karl N. Llewellyn observed famously, for each of any one of 28 common canons of construction, there is an equal and opposing canon which would compel reaching the contrary result.⁷ However, despite the fact that rules and canons of statutory construction are legion, they are not necessarily all of equal usefulness to a person attempting to determine what the legislature intended when it enacted a statute. Three of the more commonly used rules or canons are discussed below.

The first of these canons is a Latin phrase usually stated as, “*inclusio unius est exclusio alterius*” (literally: “the inclusion of one is the exclusion of another”).⁸ In its most basic formulation,



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this rule – frequently shortened simply to “*inclusio unius*” – means that if a legislature sets forth a particular thing that is to be done, a particular remedy that is available or a particular person who is entitled to take a given action, the legislature did not intend for the act, remedy or person to be replaced by another not so enumerated. Take the classic example: if a legislature enacts a statute providing that mandamus is a remedy for certain aggrieved parties but lists no other remedies, it is logically presumed the legislature intended that mandamus be the sole remedy.⁹

Somewhat related to the principle of “*inclusio unius*,” another rule of construction used commonly is that which states that if a legislature could have easily provided for a given thing to take place, but did not so provide, it will not be presumed that the legislature intended that for which it did not provide.¹⁰ A simple example of this rule is the instance in which a legislature enacts two separate statutes providing for the issuance of two different license plates: in one statute, the legislature states that the plates may be renewed upon the payment of a fee of \$5; in the other statute, the legislature does not refer to the payment of a renewal fee at all. In such a situation, absent the existence elsewhere of a broader statute setting forth the renewal fees for license plates generally, the rule of “the legislature could have easily provided” would lead to the conclusion that the omission of the requirement of a renewal fee in the latter statute was deliberate and not inadvertent.

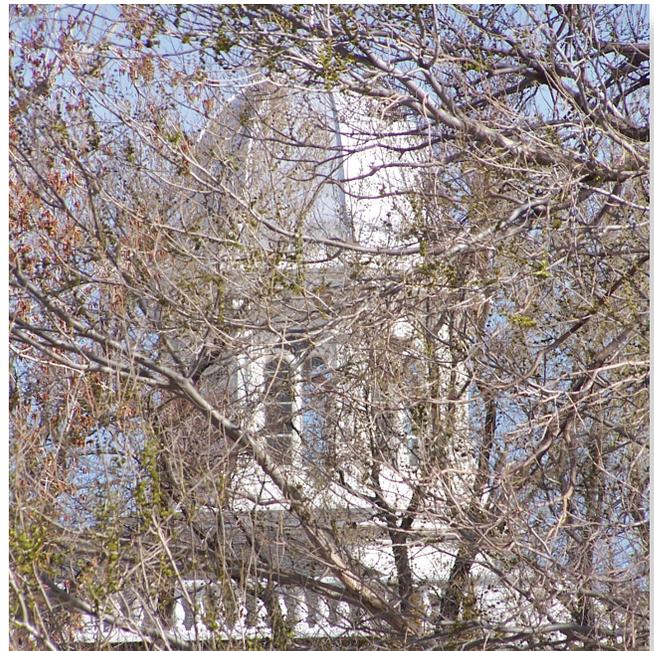
A third rule of statutory construction which is used commonly is that which provides, “[the] meaning of a statute may be determined by referring to laws which are ‘*in pari materia*’...[that is] ‘when they relate to the same person or things, to the same class of persons or things, or have the same purpose or object.’”¹¹ This rule of construction often proves to be a very valuable one, particularly because legislatures, when enacting a statute, have in many instances enacted similar statutes on related matters. In fact, it is not uncommon for a legislature to use an earlier statute as a direct model for the enactment of a later statute.

However, as noted above, the three preceding rules are merely a narrow-angle snapshot of but a few of the many canons and rules of statutory construction that exist. Further, while canons and rules of statutory construction can be exceptionally helpful when used properly, it is sometimes necessary to dig deeper and to examine the actual materials a legislature considered and generated when it was contemplating the enactment of a given statute.

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Committee Minutes & Reports

Many courts have explained that committee minutes and reports are perhaps the most important documents in determining legislative intent.¹² This is because, as stated by the U.S. Supreme Court, “[a] committee report represents the considered and collective understanding of those [legislators] involved in drafting and studying proposed legislation.”¹³ The issue then becomes, as a practical matter, how an attorney practicing in the state of Nevada is to locate relevant committee minutes and reports.



The answer begins with the sourcenotes that appear under each section codified within the Nevada Revised Statutes (NRS). A sourcenote is the sequence of calendar years, section numbers and page numbers, as applicable, that appears beneath a section of NRS, set off by parentheses and/or brackets. As an example, the following sourcenote is found beneath NRS 11.250, which is a section enumerating certain disabilities that toll the running of a statute of limitations:

[1911 CPA § 34; A 1951, 54] –
(NRS A 1973, 1577; 1977, 1081)

The Legislative Counsel’s Preface, which appears in Volume 1 of NRS, explains that the preceding interpolation has the following meaning:

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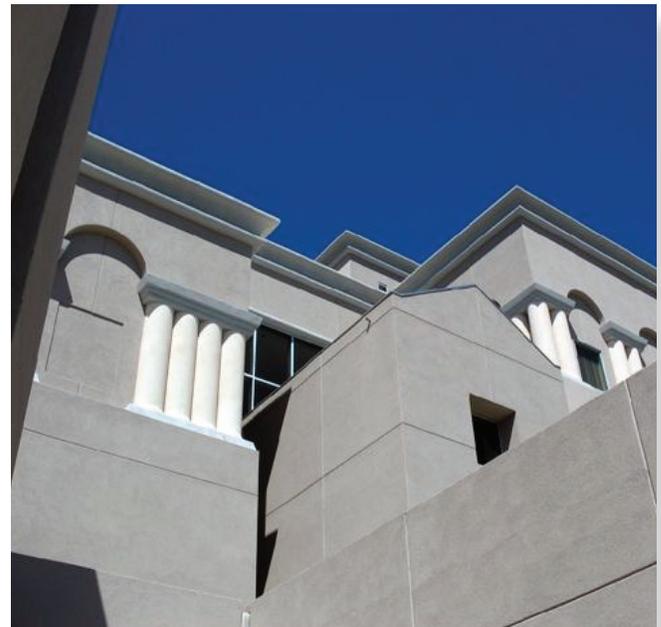
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- (1) the section (NRS 11.250) was derived initially from section 34 of the Criminal Practice Act of 1911;
- (2) the section was next amended by Statutes of Nevada 1951, at page 54;
- (3) then, in 1973 – after the creation of the Statute Revision Commission in 1955 and the abolition of that commission in 1963 and the transfer of its powers, duties and functions to the Legislative Counsel of the State of Nevada – the section was further amended by Statutes of Nevada 1973, at page 1577; and
- (4) most recently, the statute was amended by Statutes of Nevada 1977, at page 1081.

Using the most recent alteration of NRS 11.250 as an example, if a person turns to page 1081 of Statutes of Nevada 1977, they will see that the legislative measure which most recently amended that section was Assembly Bill No. 268 of the 59th Regular Legislative Session (1977). At this point, an attorney now knows the exact bill for which he or she needs to find minutes or reports.

At least as of the time of the writing of this article, the website maintained by the Nevada Legislature has committee minutes dating back only to 1993. However, the Research Library of the Legislative Counsel Bureau (Legislative Research Library) has committee minutes on microfiche for each Legislative Session from 1965 through 2005.¹⁴ To view the microfiche pertaining to A.B. 268 (1977), a person would need to visit the Legislative Research Library or one of the other libraries enumerated in the Legislative History Tutorial that has been prepared by the Legislative Research Library.¹⁵ Having located the relevant minutes, an attorney may read them to determine when the bill was introduced, in what committees it was heard (and on what dates), and what various legislators and other interested parties had to say about the bill. The materials that have been prepared by the Legislative Research Library (including the Legislative History Tutorial, as well as Legislative History Frequently Asked Questions¹⁶) are extremely helpful. However, a legal practitioner will then need to use his or her skills to determine what weight to assign to different pieces of information and testimony.

As a final caveat, the attorney must consider the oft-announced rule that statements of *individual* legislators, even the legislator who is the sponsor of a particular legislative measure, “are not controlling in analyzing legislative history.”¹⁷ Further, the expressions of legislators who opposed a legislative measure are entitled to even less deference, because “[t]he fears and doubts of the opposition are no



authoritative guide to the construction of legislation.”¹⁸ Thus, at the risk of stating the obvious, it is crucial when examining committee minutes and reports to ensure that any information upon which an attorney relies is truly indicative of consensus thought on the part of legislators.

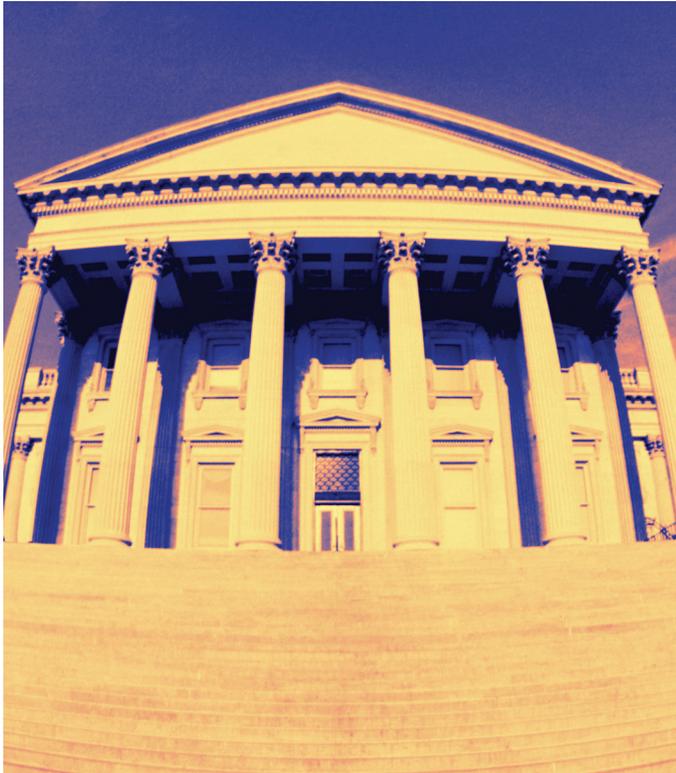
Other Forms of Legislative History

In addition to committee minutes and reports, an attorney practicing in Nevada who desires to get the most complete picture of legislative intent will most likely also want to consult the Senate and Assembly Journals. As explained in the Legislative History Tutorial prepared by the Legislative Research Library, “[w]hile the journals are not verbatim transcriptions of floor activity, they do record all official actions taken on measures pending before the chambers and frequently include the text of remarks made by legislators, especially as it relates to legislative intent on specific legislation.” As a result, the contents of the Senate and Assembly Journals are instrumental in determining what may have transpired on the floor of one of the houses of the Legislature, as compared to what occurred in committee. At the present time, the Senate and Assembly Journals are available on the website maintained by the Nevada Legislature going back to 1997. Before 1997, the journals are available in hard-bound volumes.

Also, while the scope of this article is devoted primarily to statutes, the reader should be advised that if he or she is endeavoring to interpret the history behind a provision of the

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Nevada Constitution, the Nevada Constitutional Debates and Proceedings are available in a hyperlinked computer format in the Official Nevada Law Library from the Source™. Of note, the computer version of the Nevada Constitution contains, for each of its sections, hyperlinks to the relevant page or pages of the Nevada Constitutional Debates and Proceedings. The Nevada Constitutional Debates and Proceedings should also be available in hard-bound form in most well-equipped law libraries.

Moreover, no discussion of legislative history would be complete without acknowledging the fact that the Legislative Research Library has already prepared (compiled) literally hundreds of complete legislative histories for bills dating back to 1965 (and sometimes dating further back).¹⁹ The reason that prepared legislative histories do not generally exist for bills pre-dating 1965 is that, as noted above, committee minutes do not exist even on microfiche before that year. To determine whether an already prepared legislative history exists for a given bill, a legal practitioner would use the form available on the Legislative Research Library's website.²⁰ Note that the Legislative Research Library prepares legislative histories upon request only for legislators, staff of the Legislative Counsel Bureau and state agencies. However, persons other than those in the three preceding categories may contact the Legislative Research Library for further assistance in the research process.

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Conclusion

As the preceding discussion makes clear, an attorney in Nevada has many resources at his or her disposal when attempting to determine what the legislature intended when it enacted a given statute. The inquiry begins, of course, with the plain language of the statute. However, a plain-language analysis must often be augmented by rules and canons of statutory construction, and legislative materials. Frequently, it is this last class of resources which provides the most direct and literal expression of what legislators intended to accomplish in enacting a statute. Thankfully, here in Nevada, we are blessed with having a Legislative Research Library that has made a plethora of useful materials available online, including (for many bills) complete legislative histories and even a step-by-step Legislative History Tutorial, referenced supra. In addition, the website maintained by the Nevada Legislature offers bill histories and legislative committee minutes extending back to 1993.²¹ **NL**

1. See, e.g., *County of Clark ex rel. Univ. Med. Ctr. v. Upchurch*, 114 Nev. 749, 753 (1998) (citing *Cleghorn v. Hess*, 109 Nev. 544, 548 (1993)). See also *Willis v. State*, 488 A.2d 171, 177 (Md. 1985) (“[T]he cardinal rule of statutory construction is to determine the legislative intent.”).
2. See, e.g., *State v. Allen*, 118 Nev. 842, 847 (2002) (citing *Washington v. State*, 117 Nev. 735, 738-39 (2001)) (explaining that the “plain meaning” of a statute is “intended to reflect legislative intent”). See also *Monterey Coal Co. v. Fed. Mine Safety & Health Review Comm’n*, 743 F.2d 589, 595 (7th Cir. 1984) (“[T]he language of the statute is the most reliable indicator of congressional intent.”).
3. *Koons Ford of Baltimore, Inc. v. Lobach*, 919 A.2d 722, 735 (Md. 2007) (citing *Pub. Citizen v. U.S. Dep’t of Justice*, 491 U.S. 440, 454-55 (1989)).
4. See *United States v. X-Citement Video, Inc.*, 513 U.S. 64, 71 (1994).
5. See, e.g., *Cirac v. Lander County*, 95 Nev. 723, 729 (1979) (citing *Lauritzen v. Casady*, 70 Nev. 136, 139 (1953)) (describing legislative history and committee reports as extrinsic aids). See also *Tello v. McMahon*, 677 F. Supp. 1436, 1441 (E.D. Ca. 1988) (describing a canon of statutory construction as an extrinsic aid).
6. See *Black’s Law Dictionary* 207 (6th ed. 1990). See also *Herchelroth v. Mahar*, 129 N.W.2d 140, 142 (Wis. 1964) (explaining that a “canon” is merely a “rule of construction”).
7. Karl N. Llewellyn, *Remarks on the Theory of Appellate Decision and the Rules or Canons About How Statutes Are to Be Construed*, 3 Vand. L. Rev. 395, 401-06 (1950).
8. See *Cannon v. Taylor*, 87 Nev. 285, 292 (1971) (Gunderson, J., dissenting).
9. See, e.g., *McHenry County Defenders, Inc. v. City of Harvard*, 891 N.E.2d 1017, 1032 (Ill App. Ct. 2008).
10. See *Palmer v. Del Webb’s High Sierra*, 108 Nev. 673, 680 (1992) (Young, J., concurring) (explaining that “[t]he

legislature could have easily provided that an occupational disease 'means,' 'is' or 'is defined as' any disease which 'arises out of and in the course of the employment,'" but that the legislature did not, in fact, do so).

11. English v. State, 116 Nev. 828, 834 (2000) (citing State Farm Mut. Auto. Ins. Co. v. Comm'r of Ins., 114 Nev. 535, 541 (1998)).
12. See, e.g., Stevenson v. J.C. Penney Co., 464 F. Supp. 945, 949 (N.D. Ill. 1979) (internal citations omitted).
13. Zuber v. Allen, 396 U.S. 168, 186 (1969).
14. www.leg.state.nv.us/lcb/research/library/MicroficheGuide.pdf. Notably, all committee minutes on microfiche are accompanied by any exhibits that were presented in committee with respect to a particular bill. In contrast, committee minutes that are on the website maintained by the Nevada Legislature are accompanied by exhibits from 2003 onward.
15. www.leg.state.nv.us/lcb/research/library/Tutorial/Start.cfm.
16. www.leg.state.nv.us/lcb/research/library/Tutorial/HistoryFAQs.cfm.
17. See Lott v. Pfizer, Inc., 492 F.3d 789, 794 (7th Cir. 2007) (citing Chrysler Corp. v. Brown, 441 U.S. 281, 311 (1979)).
18. Shell Oil Co. v. Iowa Dep't of Revenue, 488 U.S. 19, 29 (1988) (citing Gulf Offshore Co. v. Mobil Oil Corp., 101 S. Ct. 2870, 2878 (1981)).
19. The complete legislative histories compiled by the Legislative Research Library include: (a) all versions of the applicable bill; (b) the relevant Senate and Assembly journal pages; and (c) the pertinent committee minutes and exhibits.
20. www.leg.state.nv.us/dbtw-wpd/SimpleSearch.cfm.
21. NOTE: Particularly with respect to any statements as to which materials are available online and which materials are available on microfiche, the limitations of this article are such that the author is only able to state that which is accurate at the present time. The Legislative Research Library has provided an online form by which a person may make inquiries if there any questions: www.leg.state.nv.us/lcb/research/library/feedbackmail.cfm.

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you will FIND A WAY.

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