The importance of legislative history in Supreme Court decisions

by Kathleen M. Trafford

One of the most important rules of law the Supreme Court of Ohio often repeats is that, when the Court is called on to interpret a statute, its role is to give meaning to the legislative intent. Performing this role is relatively easy when the General Assembly speaks plainly, but not all statutes are written in plain-speak. When a statute is ambiguous, the Court's task is more challenging, and the Court must reach into the General Assembly's toolbox for the right tools to help it divine the legislative intent.[1] One important tool in that box is the statute's legislative history.[2] But for many years both the Court and the General Assembly appeared reluctant to use this tool to its full potential.

The General Assembly, unlike its federal counterpart, was stingy in expressing its intent. Supreme Court Justice Pfeifer, who was a member of the General Assembly before joining the Court in 1992, recently shared his insight that for some period of time it was a "cardinal sin to insert legislative intent into a bill, and that policy was strictly enforced by legislative leadership and by the Legislative Service Commission."[3] For quite some time, the Supreme Court embraced only certain limited sources of legislative intent, such as legislative journals, comparisons of statutes to earlier versions of the same statute, or recorded statements of legislative intent in the statute or uncodified law.[4] For a long time it was reluctant to embrace other available sources of legislative history, such as statements by bill sponsors or bill analyses prepared by the Legislative Services Commission (LSC) even though such testimony and reports are routinely relied on by federal courts in interpreting ambiguous federal statutes.[5]

In 1970, the Court had this to say about reliance on LSC reports:

> [N]otwithstanding the fact that the Legislative Service Commission, composed of seven members from each house of the General Assembly, is created and its duties prescribed by Sections 103.11 to 103.13, Revised Code, we find nothing in those statutes to indicate that, in determining what the General Assembly intends by language which it uses in the enactment of a bill, any weight should be given to what the commission stated in its report to the General Assembly with regard to that bill.[6]

The Court adopted this dismissive view of the value of LSC reports, notwithstanding its understanding that the report at issue was distributed to the legislators, the press and others interested in the bill, because "it was not made a part of the record of the General Assembly and has not otherwise been published and is not generally available even in the best of the law libraries in this state."[7] Two years later, the General Assembly enacted R.C. 1.49 and expressly encouraged the Court to consider "legislative history" in determining the meaning of ambiguous statutes. The Court responded by softening its position on the weight to be given to LSC reports, stating in *Meeks v. Papadopulos*, that although it did not consider itself bound by LSC analyses, it would refer to them if it found them "helpful and objective."[8]

More recently, however, both the General Assembly and the Court have become more comfortable dealing with legislative intent. The General Assembly is now more open to publicly proclaiming its intent in the law. It does so, for example, by actually embedding the purpose of the law within the statute itself.[9] It also may set out its intent within the uncodified law. For example, in a recently enacted law requiring claimants in asbestos tort actions to make certain disclosures pertaining to asbestos trust claims that have been submitted to asbestos trust entities for the purpose of compensating the claimant for asbestos exposure, the General Assembly set out very detailed "statements of findings and intent."[10] It did the same last year in enacting the Lupus Education and Awareness Program, codified in R.C. 3701.77, et seq.[11]

At the same time the General Assembly has become more obliging in stating its intent, the Court has become more receptive to considering alternative sources of legislative intent. Subsequent to the enactment of R. C. 1.49 and its decision in *Meeks v. Papadopulos*, the Court has consulted LSC reports as part of the legislative history to be considered in interpreting ambiguous statutes in 113 cases.[12] In *Griffith v. City of Cleveland*, for example, the Court reviewed the various reports on 2003 Sub. S.B. 149 as it worked its way toward passage to confirm that the General Assembly did not intend to alter the two-step process that requires a wrongful imprisonment claimant to first seek an adjudication of wrongful imprisonment from a court of common pleas before seeking damages in the Ohio Court of Claims.[13] The Court found that the reports showed "a clear indication that the General Assembly understood that the statutory scheme contemplated a two-step process."[14] In *Mandelbaum v. Mandelbaum,* the Court relied on a Senate Judiciary Report, reporting on testimony before the House Civil and Commercial Law Committee, to conclude that the General Assembly's intent in amending a statute to give courts limited power to award and modify spousal support was to supersede prior judicial precedent holding that courts had continuing jurisdiction over alimony agreed to in a dissolution of marriage case.[15]

In a few cases, the Court has gone even further and looked to proponent or sponsor testimony as an aid in statutory

construction, when that testimony further supported the Court's interpretation of a statute. For example, in interpreting Ohio's Corrupt Practices Act for the first time, the Court relied on the Senate sponsor's description of the new law as "the toughest and most comprehensive RICO Act in the nation" and "state-of-the art legislation" to glean the legislative intent to impose strict liability for violations of the Ohio act.[16] Occasionally this testimony is documented in some legislative report, but the Court has shown a willingness to look even to external sources, such as news services and other media outlets.[17]

The Supreme Court's openness to more broadly consider "legislative history" as an aid in interpreting ambiguous statutes puts it in better sync with modern technology. Unlike four decades ago when the official legislative reports were not generally available even in the best law libraries, LSC reports, sponsor statements, committee hearing reports and testimony, and floor debates can now be found with a click of the mouse, making legislative history an even more powerful tool in the R.C. 1.49 toolbox.[18] A word of caution, however, before handing this tool to the Court. Although a wealth of legislative history is now accessible, it should not be used indiscriminately. No amount of legislative history will persuade the Court to interpret an unambiguous statute contrary to its plain meaning.[19] And, sometimes legislative history itself can mean different things to different justices. For example, in *State v. Lowe* both the majority opinion and the dissent looked to the comments prepared by LSC at the time the statute was enacted to determine whether Ohio's incest statute applies to the consensual sexual conduct between a step-parent and adult stepchild.[20] The majority read the LSC comments as supporting its conclusion that the statute protects "the family unit more broadly," and not just minors, while the dissent read the LSC summary to support the conclusion that the intent was to "protect children against a broader class of person who can exert a parental role."[21] Ambiguous legislative history cannot pound home a point. ■

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Endnotes

1 The toolbox is R.C. 1.49, which enumerates six factors the Court may consider in determining legislative intent.

2 R.C. 1.49(C).

3 *Sheet Metal Workers International Assn., Local Union No.33 v. Gene's Refrigeration, Heating & Air Conditioning*, 122 Ohio St.3d 248, 2009-Ohio-2747, 910 N.E.2d 444, ¶51.

4 See *Shafer v. Ohio Turnpike Comm.*, 159 Ohio St. 581, 588, 113 N.E.2d 14 (1953); See e.g., *State v. Ferguson*, 120 Ohio St.3d 7, 2008-Ohio-4824, 896 N.E.2d 110, ¶24 (noting

that the General Assembly amended a statute without inserting language to supersede prior judicial precedent allowing for retrospective application and finding such fact "significant"); *State ex rel. Ohio Attorney General v. Shelly Holding Co*., 135 Ohio St.3d 65 2012-Ohio-5700, 984 N.E.2d 996 ¶17 (relying on the statement that Ohio's Air Pollution Control Act is to be construed to be consistent with the federal Clean Air Act to determine how penalties for violations of the Act are to be calculated); *State v. Consilio*, 114 Ohio St.3d 295, 300, 2007-Ohio-4163, 871 N.E.2d 1167 (relying on uncodified law to determine whether statute applies retroactively).

[5] *Beach v. Mizner*, 131 Ohio St. 481, 485, 3 N.E.2d 417 (1936) (stating that the legislative sponsor's "intention cannot be regarded as conclusive nor even persuasive unless subsequently embodied in the language of the Legislature").

[6] *Cleveland Trust Co. v. Eaton*, 21 Ohio St.2d 129, 139, 256 N.E.2d 198 (1970).

[7] Id.

[8] 62 Ohio St.2d 187, 191, 404 N.E.2d 159 (1980).

[9] See, e.g., R.C. 3704.02(B), stating the purpose of the Ohio Air Pollution Control Act and that it is to be construed to be consistent with the federal Clean Air Act.

[10] Am. Sub. H.B. 380, 129th Gen. A., (eff. March 27, 2013), Sec. 4. See also H.B. 59, 130th Gen. A., Sec. 733.20 ("The General Assembly hereby declares its intent, in enacting section 3319.031 of the Revised Code, to supersede any effect of the decision of the Court of Appeals of the Eighth Appellate District in *OAPSE/AFSCME Local 4 v. Berdine*, 174 Ohio App.3d 46 (Cuyahoga County, 2007 ...)").

[11] See Am. Sub. H.B. 487, 129th Gen. A. (eff. Sept. 10, 2012), Sec. 737.60.

[12] A Lexis© search for "LSC" or "legislative service commission" resulted in references to LSC reports in 113 Ohio Supreme Court cases decided after 1980: 15 in the 1980s; 43 in the 1990s; 40 in the 2000s; and,15 since 2010.

[13] 128 Ohio St.3d 35, 2010-Ohio-4905, 941 N.E.2d 1157, ¶20-21.

[14] Id. at ¶20.

[15] 121 Ohio St.3d 433, 2009-Ohio-1222, 905 N.E.2d 172, ¶24, citing *Mandelbaum v. Mandelbaum*, 2nd Dist. No. 21817, 2007-Ohio-6138, ¶58.

[16] *State v. Schlosser*, 79 Ohio St.3d, 329, 333, 681 N.E.2d 911 (1997).

[17] Id., see also, *State v. Roberts*, 134 Ohio St.3d 459, 2012-Ohio-5684, 983 N.E.2d 334, ¶19; *In re G.V.*, 126 Ohio St.3d 249, 258, 2010-Ohio-3349, 933 N.E.2d 245, ¶37-38 (J. Cupp, dissenting); *Pack v. Osborn*, 117 Ohio St.3d 14, 18, 2008-Ohio-90, 881 N.E.2d 237, ¶13.

[18] Bills and LSC bill analyses can be found on the Ohio General Assembly's website, www.legislature.state.oh.us, going back as far as the 122nd (1997-1998) General Assembly. The Ohio Channel offers video stream of floor sessions of the Ohio House and Senate, available at www.ohiochannel.org, and its video archive goes back to the 122nd General Assembly. David M. Gold, an LSC attorney, prepared an excellent guide to the various types of legislative history available. *A Guide to Legislative History in Ohio* (Jan. 26, 2010) can be accessed at www.lsc.state.oh.us/membersonly/128legislativehistory.pdf. The Ohio Supreme Court Law Library (Information Services) also offers a helpful pamphlet, Ohio Legislative History, which is available at www.supremecourt.ohio.gov/Publications/lib_series/4.pdf.

[19] *Hough v. Dayton Mfg. Co.*, 66 Ohio St. 427, 437, 64 N.E. 521 (1902) ("We are satisfied, by considerations outside of the language, that the legislature intended to enact something very different from what it did enact. But it did not carry out its intention, and we cannot take the will for the deed.") (quoting *Woodbury & Co. v. Berry*, 18 Ohio St. 456 (1869).

[20] 112 Ohio St.3d 507, 2007-Ohio-606, 861 N.E.2d 512.

[21] Id. at ¶10-13; Id. at ¶31.