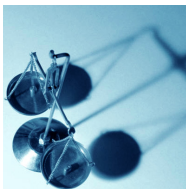
Statutory Construction



The Issue

In 1963, the Texas Legislature directed the Texas Legislative Council to effect a permanent statutory revision of state law to "clarify and simplify the statutes and to make the statutes more accessible, understandable, and usable." The Council was instructed not to "alter the sense, meaning, or effect of [a] statute." In *Fleming Foods v. Rylander*, it was deemed that one of these non-substantive changes in fact did alter the intent of the statute. The Texas Supreme Court determined that in those instances, the newly re-written version of the statute controls.

In *Fleming Foods*, the Texas Supreme Court held that prior law and legislative history cannot be used to modify the express terms of a statute when the meaning is clear. The Court understood the law should be clear, certain, and accessible to ordinary citizens. They reasoned that if a prior law were supplanted by the codification process—yet still given effect—no provision could be relied upon by citizens to clearly understand what the law actually is, and "anyone wanting to know what the law of Texas required would have to consult not only the existing law, but the former, repealed law and then compare the new with the old." In other words, the law ought to mean what the law says today, not what it said 50 years ago.

Because the law's effect on citizens is often determined by how courts interpret lawmakers' intent, it is important that the intent be based on clear statutory language. If the courts are forced to review multiple versions of statutory provisions, they will be tempted to divine the "true" intention from a variety of sources outside the actual text of the law. For instance, they may rely on legislative history. However, the legislative history of many statutes is so extensive that support could be found for any of the competing interpretations of its meaning.

The Facts

- The 1999 *Fleming Foods* decision was based on Texas legal precedent. The Texas Supreme Court has held since 1922 that "to say that the citizen, in order to know that law by which his rights are to be determined, must go through the many volumes of session laws … and examine the original acts, including the captions and repealing acts and clauses, is not to be seriously considered … The session laws are for all practical purposes inaccessible to the average citizen, and the task of searching through them to ascertain the law an insurmountable one."
- In 2001, the 77th Legislature passed HB 2809, which provided for statutory revision and construction in giving non-substantively codified statutes the same meaning that was given the statute before its codification. That legislation effectively gave courts the authority to interpret statutes outside of their purview of interpreting and applying the plain meaning of the statute. Governor Perry vetoed the bill.
- In 2009, the 81st Legislature passed nearly identical legislation which was again vetoed by Governor Perry.
- Under the vetoed legislation, citizens seeking to understand their rights and responsibilities under Texas law would be consigned to long-defunct regulations and obscure floor debates between legislators to discern the lawmakers' intentions.
- Additional legal research into the previous versions of law, as well as legislative activities, would result in skyrocketing attorney fees and make Texas law less accessible to average citizens.

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Recommendations

- Avoid legislation that complicates the plain meaning of statutes. The very purpose of the codification process is to solidify public policy and make Texas law more accessible to its citizens.
- Prevent legislation that gives non-substantively codified statutes the same effect and meaning that was or would have been given the statute before its codification.

Resources

Tex. Govt. Code Annotated Sec. 323.007.

Fleming Foods of Texas, Inc. v. Rylander, 6 S.W. 3d 278 (Tex. 1999).

American Indemnity Co. v. City of Austin, 112 Tex. 239, 246 S.W. 1019 (1922).

"The Rise and Fall of Textualism" by Jonathan T. Molot, 106 *Columbia Law Review* 1, 3 (2006).