



ENGROSSMENT*

2010 CASES CITING LEGISLATIVE HISTORY DOCUMENTS

We begin our Summer **ENGROSSMENT**, appropriately enough, with a few of the recently decided June/2010 cases citing to legislative history materials. Our short survey covers California, New York, and Texas.

On its own motion in its June 10, 2010 opinion, the **California Supreme Court** took judicial notice of the legislative history materials in *People v. Indiana Lubermens Mut. Ins. Co* (10 Cal. Daily Op. Serv. 7256) to find that the “legislative history confirms the *Lexington* court’s interpretation of the statutory scheme.” The Court stated also:

Furthermore, as both the *Lexington* court and the 1999 Senate committee report noted, summary judgment is to be entered against the surety after the expiration of the 180-day period unless the forfeiture of bail has been set aside. . . .”

A few days earlier, the state Supreme Court decided *Greene v. Marin County Flood Control and Water Conservation Dist.* (10 Cal. Daily Op. Serv. 7049, June 7, 2010), which included reviewing legislative history documents to conclude that Gov’t Code § 53753 was amended in 2000 to provide for a certain measure of assessment ballot secrecy.

On June 14, 2010, in *Embassy LLC v. City of Santa Monica* (10 Cal. Daily Op. Serv. 7473), the 2nd **District Court** found that the legislative history established Gov’t Code § 7060 applies to public entity contracts.

The 1st **District Court** decision in *People v. Johnson* (10 Cal. Daily Op. Serv. 7267, June 9, 2010) cited to two analyses prepared by the Senate Committee on Criminal Procedure and the Office of Senate Floor Analyses.

In a 3rd **District Court** case that received much press, the *American Nurses Association v. O’Connell* (10 Cal. Daily Op. Serv. 7122, June 8, 2010), the nurses associations successfully challenged the Department of Education’s legal advisory authorizing school employees, other than nurses, to administer insulin to students. The court noted that it “may also provisionally examine legislative history and other extrinsic matters to confirm a plain meaning construction.”

New York courts have also been deciding cases and addressing legislative history. In one example, *Len v. State* (2010 N.Y. Sip Op. 05307), decided on June 17, 2010, the **New York Supreme Court** stated:

We are mindful that the language of Public Authorities Law § 382(5), on its face, seems to dictate a contrary result. That statute states that “[t]he employees of the ... [C]orporation ... generally shall not be deemed to be employees of the [A]uthority by reason of their employment by the ... [C]orporation.” However, the language is not absolute as it states only that Corporation employees “generally” shall not be deemed employees of the Authority. Further, “[w]hen confronting an issue of statutory interpretation, [the Court’s] primary objective is to ‘ascertain and give effect to the intention of the Legislature’ “ (*Matter of Emigrant Bancorp, Inc. v. Commissioner of Taxation & Fin.*, 59 AD3d 30, 33 [2008], quoting *Riley v. County of Broome*, 95 N.Y.2d 455, 463 [2008] [internal quotation marks and citation omitted]). Here, legislative history exists suggesting that the language was intended to differentiate Corporation employees from other Authority employees simply to protect the seniority rights and privileges of Department of Transportation employees who were transferred to the Corporation when jurisdiction of the canal system was transferred to the Authority (*see* N.Y. Assembly Debate on Assembly Bill 12138A, at

41-42 [July 28, 1992]). Finding no evidence in the statute's legislative history to the contrary and since case law confirmed that Corporation employees are treated as Authority employees in other contexts (see e.g. *Matter of Lamphron v. State of N.Y. Thruway Auth.*, 239 A.D.2d 860, 861 [1997] [suit for unpaid vacation time]; *Matter of Weir v. State of N.Y. Thruway Auth.*, 231 A.D.2d 836, 837 [1996] [petition for wrongful termination]), we hold that the language of Public Authorities Law § 382(5) does not operate to preclude the Authority from asserting the exclusivity defense of the Workers' Compensation Law. Accordingly, the claims against the Authority were properly dismissed.

In **Texas**, also on June 17, 2010, the **Texas Court of Appeals** observed that interpreting various statutes, it “may consider the object of the statute, legislative history, and the consequences of a proposed construction.” (*Community Health Choice, Inc. v. Hawkins*, 2010 WL 2428455 (Tex.App.-Austin))

Summer Legislation in Brief

Responding to the Texas Board of Education’s revisions made to its “Essential Knowledge and Skills” for social studies curriculum, **SB 1451** was carried by Senator Leland Yee of S.F. to require the State Board of Education notify the chairs of the Assembly and Senate Education Committees and the Governor’s office if it determines any instructional materials submitted for consideration for adoption contain content that meets the revised standards for social studies curriculum in Texas. The bill requires the SBE to ensure that the next revision of the “History-Social Science” framework is consistent with existing requirements to ensure instructional materials include, portray accurately, encourage and impress certain content upon pupils.

The state may be permitting digital electronic license plates to function both as license plates and advertisements. **SB 1453**, introduced by Sen. Curran Price of L.A., seeks to allow DMV to work with company “Smart Plate” to investigate the creation and use of digital electronic license plates and report to the Legislature on that investigation.

AB 2411 proposes to define “pet insurance” as a separate line of insurance and to establish new regulatory requirements for the sale of pet insurance products, including disclosure requirements designed to create better consumer understanding of pet insurance policies prior to purchasing them. Assem. member Dave Jones carried this bill because pet insurance is not adequately defined in the Insurance Code and consumers are too frequently confused or misled about what is covered by their policies.

It looks like **SB 1137 of 2008**, California’s **foreclosure reform bill**, has attracted numerous measures in **2010** seeking to amend this new law. The following bills seek to establish a “Monitored Mortgage Workout Program” (**AB 1588**), prohibit deficiency judgments on a note secured by a first lien when selling a house for less than the remaining mortgage due (**SB 931**), notify borrowers of specific reasons a loan modification request is rejected (**AB 2024**), amend existing timelines for a lender’s notice of sale filing (**SB 1221**), require notice of default to identify contact information (**SB 1427**), expand the scope of parties considered foreclosure consultants (**AB 2325**), require servicers to contact a borrower to assess financial situation and explore foreclosure avoidance options (**SB 1275**), require transfer of mortgage servicing rights to be in writing (**AB 2653**), and express intent to pass legislation ensuring notices of default filed on multifamily properties would be delivered to the secondary mortgage lender if a public entity (**AB 2347**).

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CONTACT US!

Tom Stallard, Esq., owner,
tstallard@legintent.com
Maria Sanders, Esq.,
msanders@legintent.com
Jenny Lillge, Esq.,
jlillge@legintent.com

712 Main Street, Woodland, CA 95695
(800) 666-1917 • Fax (530) 668-5866 • www.legintent.com