

Hi, this is Chris Micheli with the Sacramento governmental relations firm of Aprea & Micheli, and an adjunct professor at McGeorge School of Law in its Capital Lawyering Program.

Today's podcast is a quick look at specified court cases that are related to the California legislative process. As you can probably imagine, there are a number of California appellate court decisions that relate to the legislative process in this state.

Now these cases deal with a number of separate and distinct issues, and certainly we don't cover all of them, but the following is a brief summary of some of the major cases that capital insiders should be aware of.

The first one is *Kaufman & Broad Communities vs. Performance Plastering*, which was a California appellate court decision in 2005. The 3rd District Court of Appeal essentially clarified that a determination of the existence of any ambiguity occurs not at the time of a motion for judicial notice but by the panel of judges that hear the appeal.

The case also lists certain cognizable and non-cognizable legislative history documents that can be utilized by judicial notice for interpreting laws. The decision acknowledges the propriety of taking judicial notice of enrolled bill reports from the Governor's file.

The decision lists sources of legislative history that will be considered by courts in trying to ascertain legislative intent. The appellate court set forth the form by which it will consider certain documents as, "properly cognizable legislative history."

The appellate court decision also notes that a motion for judicial notice must be made with the understanding that the judicial panel ultimately adjudicating the case may determine that the subject statute is ambiguous.

The motion for judicial notice must identify each separate document for which judicial notice is sought by utilizing a separate exhibit. Points and authorities must be submitted that cite the relevant authority for each exhibit as to why it should be cognizable legislative history.

The *Kaufman & Broad* case is very important and very well-known and has been cited over 80 times by other appellate courts in this state for what documents may be utilized to ascertain legislative intent in interpreting statutes.

The next case to be aware of is *Yamaha, Yamaha Corporation of America vs. The State Board of Equalization* in 1998. That decision was issued by the California Supreme Court.

What it says is that, in general, the deference that is afforded to an administrative agency's interpretation of a statute by the agency that's charged with enforcing and interpreting will vary depending upon a legally-informed and common sense assessment of the statute's context.

The Court said, "We conclude that while the particular annotations relied upon by the Board of Equalization in this matter are entitled to less weight than quasi-legislative rules, they are nonetheless entitled to great weight."

Basically, in light of a number of factors indicating that the BOE, the Board of Equalization's interpretation of the statute that was set forth in its written annotations is entitled to great weight,

that's also based upon the Court's independent interpretation of the relevant revenue and taxation code sections that were at issue in this case.

Yamaha is well-known for what level of deference a court is to give to a state agency's interpretation of a statute that it is charged with either enforcing or interpreting.

The next case of interest is *Association for Retarded Citizens vs. Department of Developmental Services*, which is a 1985 California Supreme Court case. Here the plaintiffs in the case were a number of organizations and individuals who were at the time concerned with the condition of developmentally-disabled persons in this state.

They brought a legal action for declaratory and injunctive relief against the Department of Developmental Services as well as its director, the state agency that oversees DDS, which is Health and Human Services, and its agency secretary, who's actually a member of the Governor's Cabinet.

In their lawsuit, they alleged that certain spending directives that were issued by the director of this department were actually void. What the Court said was that they entered an order granting a preliminary injunction at the lower court level and that was affirmed by the appellate court.

The Court said, "Administrative action that is not authorized by or is inconsistent with acts of the legislature is void."

In this specific instance, the appellate court said that they gave great weight to the construction of the Lanterman Act, a state law adopted by the legislature and administered by the Department of Developmental Services.

The Court said that they were concluding that the priorities that were issued for spending by the DDS director were not actually authorized by the Act. They were actually inconsistent with the Lanterman Act, and therefore, the spending directives by the director were void because they violated the underlying statute.

Another case is *Raven vs. Deukmejian*, a 1990 California Supreme Court case. At issue here was a proposed initiative measure that was intended to amend California's constitution.

The name of this ballot measure was The Crime Victims Justice Reform Act. Its stated purpose was to limit the rights of criminal defendants to only those that are guaranteed by the United States Constitution.

The appellate court said that this proposed ballot measure would have fundamentally changed and subordinated the constitutional role assumed by the judiciary in the governmental process.

Because the Court made that determination, it said that, "The proposed constitutional amendment by this initiative measure would affect a core function of one of the three branches of state government," i.e., the judiciary, the judicial branch.

The Court in noting this decided to order this proposed ballot measure to not appear on the statewide ballot because it would have amounted to a revision of the state constitution rather than an amendment.

To note, our state constitution here in California allows only amendments, not revisions. A revision could only occur by a constitutional convention. A ballot measure placed on the ballot by the legislature or by the electorate can only amend the constitution and not revise it.

Another well-known case that capital observers should be aware of is *People's Advocate vs. The Superior Court of Sacramento with the California Legislature*, the so-called real party and interest. This was a California appellate court decision.

The California Legislature, as the real party and interest, they moved for judgment on the pleadings. They basically challenged the provisions of a measure that attempted to regulate the internal rules of the legislature, including the selection of officers and employees, the selection and powers of committees of the houses of the legislature, etc. The ballot measure would have also limited prospectively the content of budget legislation.

Basically, the California Legislature argued that these powers are reserved to the Legislature in Article IV of the state constitution, and therefore, this ballot measure violates the California Constitution. The Legislature also challenged the remaining provisions of the ballot measure as not being severable from the invalid provisions.

What did the appellate court find? The Court found that certain provisions of this measure in fact violated the state constitution. However, it also found that the remaining provisions of the act relating to secrecy in legislative proceedings were in fact severable.

According to the Court, they said, "What is at issue is not the authority to amend a statute however adopted, but the power to say what content a future statute may have. The authority to enact statutes which appropriate money for the support of the state government, including the legislature, is set forth in Article IV, Section 12 of the California Constitution."

"It provides for the appropriation of such monies through the adoption of the budget bill. It also provides for special appropriations measures which may be adopted outside of the budget bill process." Again, it reserved those powers to the Legislature.

A very old case to be aware of is *French vs. Senate*, a 1905 California Supreme Court case. What they said there was that a house of the California Legislature -- obviously the Assembly or the Senate -- has power to adopt any procedure and to change that procedure at any time and without any public notice.

The California Supreme Court also said that it can't tie its own hands by establishing rules which as a matter of power it can't change at any time or disregard. The Court also said that its action in any given case is the only criteria by which to determine the rule of proceeding that was adopted, and so this gives the legislature a wide swathe to enact its own internal rules.

There's also of interest a California Supreme Court case, *In re Collie* from 1952. This is the power to bind future legislatures precedent that's often cited. The California Supreme Court said in *In re Collie* that neither house of the California legislature may bind its own hands or bind those of future legislatures by adopting any rules that are not capable of change.

The most often cited statement in that decision is, "It is the general rule that one legislative body cannot limit or restrict its own power or that of subsequent legislatures and that the act of one legislature does not bind its successors."

Some more recent cases of interest include *Howard Jarvis Taxpayers Association vs. Bowen* from 2013, a California Appellate Court decision.

There the Court said that the narrow but potentially recurring and important question that they were addressing in the proceedings at hand, in *Howard Jarvis Taxpayers vs. Bowen*, was whether the California constitution was amended by a ballot measure.

Here, the voters in a statewide election in 2010, allows the Legislature to identify blank bills within an assigned number but no substance -- which are called spot bills -- in the budget bill and pass that budget, and then add contents to those spot bills and approve them by a majority vote as an urgency bill.

What the California Appellate Court said was, "We conclude that spot bills which remain empty of content at the time that the budget is passed are not bills that can be identified within the meaning of Article IV, Section 12, Subdivision E-2 of the constitution and enacted as urgency legislation by a mere majority vote."

As a result, the appellate court confirmed that the legislature cannot add content to an empty budget spot bill as a means to avoid the two-thirds vote requirement.

The next case *Marine Forests Society vs. California Coastal Commission*, which is a 2005 California Supreme Court decision, where the Supreme Court upheld the constitutionality of the California Coastal Commission itself. It did so under the separation of powers clause found in the California constitution.

Basically, the Court removed a legal challenge to the California Coastal Commission, even though it had been in existence for three decades and is certainly considered one of the state's most powerful environmental bodies.

Essentially, the Cal Supreme Court found that there was no support that the structure of the Commission violated the separation of powers doctrine. The Court looked at the structure using a standard whether the provisions, "viewed from a realistic and practical perspective operate to defeat or materially impair the executive branches exercise of its constitutional function."

Because this is an independent commission, it is not a line authority, meaning one directly responsible or under the direct authority of the Governor's office.

Basically, the Court considered whether the statutes either improperly intrude upon a core zone of executive authority, which would impermissibly impede the Governor in exercising his or her authority or functions, or does it retain undo legislative control and compromise the ability of the legislative appointees to the Coastal Commission to perform their executive functions independently and without any legislative coercion or interference.

Again, the California Supreme Court found that the structure of the Coastal Commission did no such thing, and is therefore permissible, and in fact was valid under the separation of powers doctrine.

There's also a 1986 appellate court decision, *California War Veterans for Justice vs. Tom Hayden*, at that time a California legislator. What the appellate court held was that the jurisdiction over a legislator's qualifications as an assembly member belongs exclusively to the assembly.

In fact, the appellate court said, "Under the California Constitution, as found under the federal Constitution and the law of most states, it's the Legislature that has sole jurisdiction to determine the qualifications of its members and the sole right to expel them from membership. This power is found in Article IV, Section 5 of the California Constitution."

For over a hundred years, the California Supreme Court has consistently held that the constitution under it, the courts have no jurisdiction to inquire into the qualifications of the members of the Legislature.

The last one I wanted to mention was a California Supreme Court decision from 2014, *Howard Jarvis Taxpayers Association vs. Padilla*. Here the effort was to pull a measure, which was Prop 49, off of a November 2014 ballot.

Prop 49 was adopted by statute by the Legislature and was proposed as an advisory vote on whether the U.S. Congress should propose an amendment to the federal Constitution that would overturn a controversial U.S. Supreme Court case on campaign finance called *Citizens United*.

What the California Supreme Court concluded was that the Legislature has the power to investigate the need for legislation. At least for questions pertaining to amendments to the U.S. Constitution, they can exercise that power that they have by placing an advisory measure on the ballot. By its language, the decision is limited to advisory votes on amendments to the U.S. Constitution.

Footnote 6 in that Supreme Court decision is of particular interest where the Court says, "Because we conclude that investigative power permits advisory questions in connection with potential federal constitutional amendments, we express no opinion about other potential sources of authority for advisory questions." That's obviously an open question.

I hope you enjoyed this brief look at some of the court cases in California that affect the legislature and the legislative process. Thanks for joining.