

RESEARCHING LEGISLATIVE HISTORY

BY NICOLAS C. ANTHONY, ESQ.

Given the recent adjournment of the 77th Session of the Nevada Legislature, many readers may now be asking, “How do I research the legislative history of a particular state statute?” This article intends to provide the readers of *Nevada Lawyer* with a brief overview of the various techniques and tools available to assist in researching legislative history.

Legislative Intent

Legislative history is often useful in assisting a practitioner in determining what the Legislature intended when it enacted a given statute. The Nevada Supreme Court has stated that “[t]he intent of the legislature is the controlling factor in statutory interpretation.”¹ Further, the Nevada Supreme Court has consistently applied the so-called “plain-meaning rule” in determining legislative intent. “The starting point for determining legislative intent is the statute’s plain meaning; when a statute ‘is clear on its face, a court cannot go beyond the statute in determining legislative intent.’”² However, “when ‘the statutory language lends itself to two or more reasonable interpretations,’ the statute is ambiguous,” and the court may then look beyond the statute in determining legislative intent.³ The Nevada Supreme Court evaluates the legislative history and construes the statute in a manner that conforms to reason and public policy.⁴ Thus, as differences of opinion and ambiguities sometimes arise, a practitioner must be adequately prepared to research legislative history.

Legislative History

Legislative history has been defined as “the background and events leading to the enactment of a statute, including hearings, committee reports and floor debates. Such history is sometimes recorded so that it can later be used to aid in interpreting the statute.”⁵ The legislative history behind the codified Nevada Revised Statutes (NRS) generally consists of:

1. The bills themselves as introduced, amended and reprinted, and enrolled;
2. The minutes of committee hearings;
3. Remarks made on the floors of the Senate and Assembly; and
4. Other miscellaneous materials related to a bill.

As one begins to research the legislative history of a particular statute, the following materials may be useful:

1. NRS;
2. Statutes of Nevada;
3. Nevada Senate Final Histories;
4. Nevada Assembly Final Histories;
5. Journal of the Senate;
6. Journal of the Assembly;
7. Committee Minutes; and
8. The internet (Nevada Legislature Website/Legislative Research Library).

Identifying the Appropriate Bill

The key to researching legislative history is to first identify the appropriate bill making the particular statutory change the practitioner wishes to research. To search for bills introduced during a specific legislative session on a specific topic, the practitioner should browse the index and tables volume for the appropriate session year. The index and tables are available online beginning with the 1999 Legislative Session. For legislation enacted prior to 1999, the practitioner may wish to search the index to the Statutes of Nevada or browse the index to NRS.

Researching a Section of the NRS

Other times, the practitioner may be interested in the legislative history of a particular section of NRS. In this case, the practitioner may already be aware of a particular section of NRS, but must identify which particular bill or bills created or amended the statute in a manner that is relevant to his or her legal research. Thus, the practitioner must look to the "sourcenes" that appear under each section as codified within NRS.

A sourcenesote is the sequence of calendar years, section numbers and page numbers that appears beneath a section of NRS. Each sourcenesote contains a reference to the section, chapter and year of the Statutes of Nevada from which the section of NRS is derived, together with references to subsequent amendments and, when applicable, section numbers in prior compilations.⁶ For example, the following sourcenesote is located beneath NRS 193.140:

[1911 C&P § 19; RL § 6284; NCL § 9968] – (NRS A 1967, 459; 1981, 652)

The "Legislative Counsel's Preface," which appears in Volume One of NRS, contains numerous examples and detailed illustrations of how the legislative history is to be deciphered. For instance, the preceding interpolation has the following meaning:

1. The section (NRS 193.140) was initially derived from section 19 of the Crimes and Punishments Act of 1911;
2. The section subsequently appeared in the Revised Laws of Nevada (1919), at page 6284, and the Nevada Compiled Laws (1929), at page 9968;
3. In 1967, after the creation of the Statute Revision Commission in 1955 and then the transfer of its powers, duties and functions to the Legislative Counsel of the State of Nevada, the section was amended by Statutes of Nevada at page 459; and
4. Finally, the section was further amended by Statutes of Nevada 1981, at page 652.

By way of another example, the following sourcenesote follows NRS 206.330:

[Added to NRS by 1995, 736; A 1997, 37; 2001, 2582; 2003, 1019; 2007, 2297; 2011, 1598]

This sourcenesote indicates that section 206.330 was newly added to NRS in 1995 at page 736 of the Statutes of Nevada. If

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the practitioner turned to page 736, he or she would glean that Assembly Bill No. 374 (1995) originally enacted the section relating to the defacement of property. The section was then further amended in 1997, 2001, 2003, 2007 and 2011. It is also important to note that sometimes a page number reference in the Statutes of Nevada may refer to the middle of a bill, as the Statutes of Nevada are organized by chapter number based on when a bill is enrolled and sent to the Secretary of State. For example, the 2007 statutory change found on page 2297, occurs in the middle of the bill (section 5), so the practitioner would need to page back to the beginning of chapter 442 (page 2295 of Statutes of Nevada 2007) to realize the legislative change occurred as a result of Assembly Bill No. 14 (2007).

When researching the legislative history of a section of NRS, it is often most beneficial to start at the most recent amendment and work backwards chronologically. For example, if the practitioner wanted to research what bill added a provision providing for the aggregation of the value of all damage done in a scheme or continuing course of conduct to NRS 206.330, he or she would begin with the 2011 statutory change. Since the language appeared in 2011, he or she would then work his

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or her way back until the language adding aggregation appeared as new language in 2003. Thus, looking at the string above, a practitioner would turn to page 1019 of the 2003 Statutes of Nevada. There he or she would see that Senate Bill No. 105 (2003) actually made the particular legislative change. The practitioner could then pull a legislative history (including the committee minutes) for Senate Bill No. 105 (2003) to identify the intent behind that particular change in the law.

Committee Minutes

Once the practitioner has determined the particular bill number, the attention should focus on locating the relevant committee minutes. Committee minutes and reports are perhaps the most important documents in determining legislative intent.⁷ This is because legislative committees are often the place where bills are more closely studied and debated. In Nevada, a bill will often be heard multiple times, in multiple committees and in both houses of the Legislature. The question then becomes, how is the practitioner to locate relevant committee minutes?

If the bill is from a more recent legislative session, it is best to navigate the legislative website (www.leg.state.nv.us) and to begin reviewing the hyperlinks listing the committee minutes for each hearing on the measure. The Nevada Legislature's website currently has committee minutes dating back to 1993. However, the Research Library of the Legislative Counsel Bureau has committee minutes on microfiche for each Legislative Session from 1965 through 2005. Those are available at the Legislative Research Library, the Nevada State Library and Archives or any of the major law libraries in the state.

Once the relevant committee minutes are located, the practitioner should read them to determine what legislators and other interested parties had to say about the bill. Since the committees in the Nevada Legislature do not publish formal committee reports (like Congress) these minutes are invaluable to glean insight as to a legislator's intent. The practitioner should be cautioned as to the appropriate weight to assign statements made during committee hearings, as it is important to note that legislative history is only persuasive authority. The Nevada Supreme Court recognized this position, where it concluded that testimony before a committee is of little value in determining legislative intent where there is no showing that the committee endorsed or relied on the testimony.⁸

Senate and Assembly Journals

In addition to committee minutes, a practitioner will also want to consult the Senate and Assembly Journals. "While 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."⁹ As a result, the contents of the Senate and Assembly Journals are instrumental in determining what may have transpired on the floors of both houses of the Legislature. At the present time, the Senate and Assembly Journals are available on the Legislative website dating back to 1997. Prior to 1997,

the journals are only available in hard-bound volumes, and can be found at the Legislative Research Library and certain other law libraries throughout the State.

Concluding Remarks

As this article suggests, a practitioner in the state of Nevada has a multitude of accessible resources at his or her disposal when attempting to determine what the Nevada Legislature intended when it enacted a particular statute. In Nevada, we are fortunate to have one of the premier legislative websites in the country and a comprehensive Legislative Research Library that houses hardbound materials and consistently updates useful online materials. In fact, the Legislative Research Library contains a database of more than 4,000 complete legislative histories that have already been compiled, and are available to the public, in PDF format, free of charge. Thus, before beginning any legislative history search, the practitioner should first check with the Legislative Research Library to see if a legislative history for that particular measure has already been compiled. Finally, should the need arise, there is also a step-by-step “Legislative History Tutorial” and a “Legislative History Frequently Asked Questions” available on the Legislative Research Library website.¹⁰ By following these guidelines, any practitioner should be able to research legislative history in Nevada. ■

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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)).
 2. See, e.g., *State v. Lucero*, 249 P.3d 1226, 1228 (2011) (citing *Robert E. v. Justice Court*, 99 Nev. 443, 445, (1983)).
 3. *Lucero*, 249 P.3d at 1228 (citations omitted).
 4. See, e.g., *Chanos v. Nevada Tax Comm'n*, 124 Nev. 232, 240 (2008).
 5. See Black's Law Dictionary 911 (7th ed. 1999).
 6. Nevada Revised Statutes, Page XIX of Legislative Counsel's Preface, Volume 1.
 7. J. Jacobstein & R. Mersky, Fundamentals of Legal Research 166 (1977).
 8. *Robert E. v. Justice Court*, 99 Nev. 443, 446 (1983).
 9. Legislative Manual, p. 197 (2013).
 10. <http://www.leg.state.nv.us/lcb/research/library/Tutorial/Start.cfm>;
<http://www.leg.state.nv.us/lcb/research/library/Tutorial/HistoryFAQs.cfm>.

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