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Elections

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methods of making arrests and arrange them according to their order of efficiency and effectiveness, and (2) from this array it must select those which it will allow peace officers to use because those selected methods are in keeping with the higher goals to which our society is dedicated. The first function easily can be performed on the grounds of efficiency, merely selecting means to a single end, but the second is tougher because it poses considerations of ends as well as means. Detection and arrest of suspected persons are not the sole ends of government, and efficient police practices can easily be incompatible with other overriding ends of society. The legislature has tried to protect merchants from the difficult, risky, and expensive job of adequately detecting shoplifting. In doing so, it may have created a trap for the unwary and unwise peace officer who, on a moment's notice, must determine whether he has reasonable cause and a constitutional right to arrest without a warrant. From the consumer's viewpoint, shopping might become likened to a poker game in that you move your hands from sight at your peril. When the liberty and good names of our responsible citizens hang in the balance, more care and deliberation should be reflected by the legislative product.

ARVAL A. MORRIS

ELECTIONS

Judicial Elections—Primaries and General Elections. The problem presented is whether section 1 of chapter 247, Session Laws of 1959, relating to school district primary elections, and hereinafter referred to as Laws 1959, repeals Wash. Sess. Laws 1955, c. 101 (RCW 29.21.180), relating to procedure when no primary election in certain offices, and hereinafter referred to as Laws 1955. Section 1 of Laws 1955, in turn, is said to have "repealed" some provisions of Wash. Sess. Laws 1927, c. 155, covering the nomination and election of judges, now appearing in RCW chapter 29.21 (particularly RCW 29.21.070), and hereinafter referred to as Laws 1927, and also Wash. Sess. Laws 1933, c. 85, covering the nomination and election of justices of the peace, also now appearing in RCW chapter 29.21 (particularly RCW 29.21.070), and hereinafter referred to as Laws 1933. The question is also raised whether such repeal of a "repealing act" will revive the provisions of the earlier acts. It is this writer's opinion that Laws 1955 is not a repealing act, but is an act supplementary to

the 1927 and 1933 acts. Therefore, the question posed does not arise and the 1959 amendatory act has the effect of repealing an original supplementary act, against which there is no constitutional or other invalidating rule.

Laws 1927 comprises a lengthy section which sets forth in detail procedures for nominations and elections of judges of the supreme and superior courts. Among other things it provides that any judicial candidate receiving a majority of the votes cast for a position at the September primary election shall appear unopposed on the November general election ballot. It makes no specific provision with respect to the method of electing a judge when there are but two candidates who filed for the position. Laws 1933 is a similar lengthy provision relating to nominations and elections of justices of the peace.

Laws 1955 added a new section, RCW 29.21.180, to RCW chapter 29.21. This section provides that when there are no more than two candidates for a judicial or other specified elective position, there shall be no primary election, but that the names of the candidates shall be first placed on the ballot in the November general election. Laws 1955 does not specifically repeal Laws 1927 or Laws 1933. Neither does it purport to amend Laws 1927 or Laws 1933.

Laws 1959 in specific terms amends Laws 1955 by striking out the words "any nonpartisan or judicial, state, county or precinct office" and substituting in place thereof "the offices of state superintendent of public instruction, county superintendent of schools" and so forth.

While it has been said that Laws 1955 "repeals" the acts of 1927 and 1933, this is in fact untrue. What the 1955 act does is to provide an alternate procedure to those specified in Laws 1927 and Laws 1933 in the event that a particular set of circumstances occurs, namely, if only two candidates have filed for a particular judicial or justice of the peace position. As previously stated, there is no specific reference to this type of situation in Laws 1927 or Laws 1933. The provisions of Laws 1955 are, consequently, supplementary to the provisions of Laws 1927 and Laws 1933 in this respect. Moreover, it is to be noted that if there are more than two candidates who filed for the judicial office, then the provisions of Laws 1927, or Laws 1933, continue to be applicable. Thus, Laws 1955 did not repeal Laws 1927 and Laws 1933, but rather the 1955 act was supplementary to the two earlier acts.

In a number of cases our supreme court has clearly recognized the distinction between an act which amends a prior enactment and one

that is supplementary to the prior enactment. In *Naccarato v. Sullivan*,[1] the court stated:

> This court has adopted the rule that Art. II, § 37 of the state constitution is not violated in the following instances: (1) complete acts which repeal prior acts or sections thereof on the same subject; (2) complete acts which adopt by reference provisions of prior acts; (3) complete acts which supplement prior acts or sections thereof without repealing them; (4) complete acts which incidentally or impliedly amend prior acts.

It is clear that the situation at hand falls within the third category above stated: "complete acts which supplement prior acts or sections thereof without repealing them." Further comment on the problem of amendatory or supplementary acts is given in the concluding paragraph of this article.

Laws 1959 specifically amends Laws 1955 and deletes from the 1955 act all reference to judicial offices. The effect of the 1959 act is to *repeal* the provisions of the 1955 act relating to judicial positions which were supplementary to the 1927 and 1933 acts. This constitutes a repeal of an original supplementary legislative enactment, not the repeal of a repealing act. Therefore, there is no issue involving the repeal of a repealing act under the facts here considered.

Even if it is argued that Laws 1955 operated to suspend the general statutes (Laws 1927 and Laws 1933), insofar as Laws 1955 conflicted with them, and that, therefore, Laws 1927 and Laws 1933 are not revived by the repeal (by Laws 1959) of the suspensatory act (Laws 1955), the contention will fail. The Washington Supreme Court held in *In re Williamson*:[2]

> The rule against the revival of a statute by the repeal of a repealing statute relates to absolute repeals only, and not to instances where the statute is left in force, and all that is done in the way of repeal is to except certain cases from its operation. In such instances the original statute does not need to be revived, for it remains in force; and, the exception being taken away, the statute is to be applied without the exception.

Another question which might be raised under these facts is whether Laws 1955 is violative of Article 2, Section 37 of the Washington State Constitution. This constitutional provision declares: "No act shall

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[1] 46 Wn.2d 67, 75, 278 P.2d 641, 645 (1955).
[2] 116 Wash. 560, 565, 200 Pac. 329, 331 (1921).

ever be revised or amended by mere reference to its title, but the act revised or the section amended shall be set forth at full length."

Laws 1955 does not purport to amend the earlier 1927 and 1933 acts. Laws 1955, however, does deal with the same subject matter as Laws 1927 and Laws 1933. The question which may be raised is as follows: Is the 1955 act: (1) valid as an act which supplements the 1927 and 1933 acts, or (2) invalid as an amendment of the 1927 and 1933 acts which fails to meet the requirements of Article 2, Section 37 of the state constitution? This is the same problem involved in *Naccarato v. Sullivan, supra,* and the many cases cited therein. If the 1955 act runs afoul of Article 2, Section 37 because it is an amendatory act, rather than a supplementary act, the effect would be to invalidate the 1955 act and to leave the 1927 and 1933 acts unchanged. If this were the case, the provisions of the 1927 and 1933 acts would always have been operative, and as far as the judicial positions are concerned, the effect would be the same as that attained by a valid amendment of the 1955 act by the 1959 act. Consequently, it appears that whether the 1955 act is construed to be: (1) an invalid attempt to amend the 1927 and 1933 acts, or (2) an act which supplements the 1927 and 1933 acts, the policy of the 1927 and 1933 acts is now in effect, insofar as the two types of judicial offices are concerned.

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LABOR LAW

Washington Minimum Wage and Hour Act. Of great interest to Washington lawyers and their clients is the new Washington Minimum Wage and Hour Act, Chapter 294 of Session Laws of 1959. The act establishes a minimum wage of $1.00 an hour and requires the payment of overtime pay at one and one half times the regular rate of pay for all work in excess of eight hours a day or forty hours a week. It is a statute of general applicability and hence has a much broader coverage than previous Washington legislation on the subject, which touched upon only specialized problems such as the employment of women[1] or employment on public contracts.[2] The importance of the law to employers whose employment practices were already governed by the federal Fair Labor Standards Act is diminished by a proviso that for such employers compliance with the federal statute shall be deemed

[1] RCW 49.12.010 *et seq.;* RCW 49.28.070.
[2] RCW 49.28.010-060.