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# Constitutional Law -- The Legislative Subject Title Requirement

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# COMMENT

## CONSTITUTIONAL LAW—THE LEGISLATIVE SUBJECT TITLE REQUIREMENT

Each law enacted in the legislature shall embrace but one subject and matter properly connected therewith, which subject shall be briefly expressed in the title, and no law shall be amended or revised by reference to its title only . . . .<sup>1</sup>

The Florida Constitution provides not only substantive limitations on the legislative process but also requires compliance with certain procedural and formal measures. Failure to comply with these requirements of form will result in the invalidity of laws just as certainly as had they been violative of the most basic pronouncements of the organic law.

Noncompliance with the mandates of Article III, Section 16 resulting in defective titling and/or drafting of statutes has caused the voiding of otherwise desirable and valid legislation. It is the aim of this comment to trace the history and application of the "subject-title" requirement and to ascertain what measures must be taken by the legislator to satisfy its demands. This effort is made in the sincere hope that, with a greater degree of knowledge, care and preparation on the part of the legislator in drafting statutes, three advantageous results may be had: a more stable statutory structure, judicial decisions based to a greater degree on the merit and substance rather than on the form of statutes, and, finally, some stem in the steady stream of legislation which sets in issue the competency and validity of the manner in which statutes and their titles have been drafted.

### I. HISTORY

Although the civil law recognized the need for titles to statutes and applied statutory titles as both an aid to interpretation and as a limitation on the scope and effect of a law,<sup>2</sup> the maxim *nigrum nunquam excedere debet rubrum*<sup>3</sup> found no place in the English common law.<sup>4</sup> Originally, bills in Parliament were mere petitions to the king and were submitted to and passed by Parliament without any title. When custom and practice

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1. FLA. CONST. ART. III § 16. Hereafter, this section of the Florida Constitution will be referred to in text and footnotes as Article III, Section 16 or as the "subject-title" rule. The portion of this section omitted in the above quotation merely requires that the act, section, subsection or paragraph amended or revised be re-enacted and published at length.

2. BLACK CONSTRUCTION AND INTERPRETATION OF THE LAWS § 83 (2d ed. 1911).

3. The black should never depart from or go beyond the red. That is, the black ink text of the statute should not include matters which are not referred to in the red ink title. BALLENTINE, LAW DICTIONARY (2d ed. 1948).

4. See, generally, BLACK, CONSTRUCTION AND INTERPRETATION OF THE LAWS § 83 (2d ed. 1911); ENDLICH, INTERPRETATION OF STATUTES § 58 (1888); MAXWELL, INTERPRETATION OF STATUTES 41 (10th ed., Sharp and Galpin, 1953).

did result in the titling of statutes, such titles merely served as an aid to the legislators in identifying and recognizing proposed laws, and were usually prepared by the clerk of the house in which the bill was first passed. These titles were more indicative of the clerks' understanding of the proposed legislation than of the legislators.<sup>5</sup> Due to changes in legislative procedure and the judicial attitude, titles to statutes are now required and are afforded some weight in ascertaining legislative intent by the English courts. However, titles still do not greatly limit the scope, content or validity of acts of Parliament.<sup>6</sup>

In adopting the common law of England, the several states also adopted English procedures and attitudes towards legislative processes. However, as early as 1798, as a result of dissatisfaction caused by the absence of a common law subject-title rule, state constitutions required a definite relationship between the title and subject of an act; laws whose subject matter varied from that described in their title were held to be invalid.<sup>7</sup> By the middle of the nineteenth century, two other provisions had been adopted by several of the state constitutions as further evidence of the importance placed upon the proper drafting of statutes and their titles:<sup>8</sup> the unity of subject rule<sup>9</sup> and a prohibition of amendment or revision by mere reference to title.<sup>10</sup> Today, 41 states have subject-title provisions in their constitutions.<sup>11</sup>

The confusion and inequities resulting from adherence to the English rules seem to have been the moving force behind this change from the common law doctrine. As was stated in the often cited case of *Walker v. Caldwell*,<sup>12</sup> wherein an attempt to amend a statute by reference to title only was held invalid:

The title of an act often afforded no clue to its contents; important general provisions were often found in acts private or local in their operation; provisions concerning matters of practice or judicial proceedings were sometimes in the same statute with matters entirely foreign to them; the result of which was that, on many important subjects, the statute law had become almost unintelligible. . . . To prevent any further accumulation of this chaotic mass was the object of the constitutional provisions under consideration.<sup>13</sup>

5. For excellent treatments of the history and development of the common law statutory title, see note 4 *supra*; 1 COOLEY, CONSTITUTIONAL LIMITATIONS 291-2 (8th e.d., Carrington, 1927); Manson, *Drafting of Statute Titles*, 10 IND. L.J. 155 (1934-35).

6. MAXWELL, *op. cit. supra* note 4, at 41-42.

7. The first constitutional provision demanding a relation between the title and subject matter of statutes is found in the Georgia Constitution of 1798. See FREUND, STANDARDS OF AMERICAN LEGISLATION 154-55 (1917).

8. FREUND, *op. cit. supra* note 7, at 155.

9. E.g., N.J. CONST. Art. IV, § 7, par. 4 (1844) ("To avoid improper influences which may result from intermixing in one and the same act such things as have no proper relation to each other, every law shall embrace but one subject and that subject shall be expressed in its title").

10. E.g., LA. CONST. Art. III, § 17.

11. See Manson, *Drafting of Statute Titles*, 10 IND. L.J. 156 (1934-5).

12. 4 La. Ann. 297 (1849).

13. *Id.* at 298; see *Fletcher v. Oliver*, 25 Ark. 289 (1868); *People v. Mahaney*, 13 Mich. 481, 494 (1865); *Albrecht v. State*, 8 Tex App. 216, 221 (1880).

In addition to the confusion and chaos referred to above, such constitutional provisions were also enacted to prevent fraud and surprise with reference to the legislature, to deter "log-rolling" and "hodge-podge" in legislation and, perhaps most important, to provide a means of placing interested members of the public on notice as to the subjects of legislation being considered.<sup>14</sup>

The typical constitutional subject-title provision requires that each law embrace but one subject, which subject shall be stated in the title, and that no statute may be amended or revised merely by reference to the original statute's title or section number. As early as 1868, the Florida Constitution contained such a provision.<sup>15</sup> Article III, Section 16 of our present Constitution adopted this section verbatim in 1885 and, except for a slight amendment in 1950,<sup>16</sup> the provision promulgated in 1868 has remained intact.

## II. THE SUBJECT-TITLE REQUIREMENT AND THE FLORIDA SUPREME COURT

There has been much litigation in which Article III, Section 16 has been raised as either an offense or a defense. A great number of judicial pronouncements construing, interpreting and applying this section have thus resulted. Following is a summary of those rules and standards set by the Court, culled from a study of those decisions.

*Purpose:* All of the forces which the several states have listed as reasons for the invocation of the subject-title rule<sup>17</sup> have been, at one time or another, used in the rationale of Florida decisions. There seem to be two motives behind this constitutional provision: an orderly and honest legislative structure,<sup>18</sup> and a means of adequately providing the public and legislature with notice.<sup>19</sup>

In considering the former, the court has stressed its desire to eliminate fraud, surprise, "log-rolling", "hodge-podge" and deception from the legisla-

14. COOLEY, *op. cit. supra* note 5, at 295-296; see *Nelson v. Brown*, 7 So.2d 572, 575 (Ala. 1942); *People v. Mahumed*, 381 Ill. 81, 83-4, 44 N.E.2d 911, 912 (1942); *Crouch v. Benet*, 198 S.C. 185, 191, 17 S.E.2d 320, 322 (1941).

15. FLA. CONST. Art IV, § 14 (1868).

16. This amendment to Article III, § 16 was passed on November 7, 1950. It changed ". . . section, as amended, shall be re-enacted and published at length" to "section, or subsection of a section, or paragraph of a subsection of a section, as amended, shall be re-enacted and published at length."

17. See note 14 *supra*.

18. *Lee v. Bigby Electric Co.*, 136 Fla. 305, 307, 186 So. 505 (1939) (To prevent surprise, hodgepodge and logrolling in legislation); *State ex rel. Giblin v. Barnes*, 119 Fla. 405, 413, 414, 161 So. 568, 571 (1935) (To prevent the embracing of two unconnected subjects in one act and to prevent deceptive title and surprise or fraud upon the legislature); *Webster v. Powell*, 36 Fla. 703, 716, 18 So. 441, 442 (1895) (to prevent fraud or surprise by means of false or deceptive titles).

19. *City of Hialeah v. State*, 128 Fla. 46, 174 So. 843 (1937); *Gray v. Central Florida Lumber Co.*, 104 Fla. 446, 140 So. 320 (1932), *rehearing denied*, 104 Fla. 446, 141 So. 604 (1932), *cert. denied*, 287 U.S. 634 (1932); *Smith v. Chase*, 91 Fla. 1044, 109 So. 94 (1926).

tive system.<sup>20</sup> The latter purpose requires that the legislature and the public be able to rely on the title of an act to provide fair and adequate notice as to the contents of the act.<sup>21</sup>

*Rules of Application:* In considering and applying the subject-title requirement, the court has invoked the usual canons of statutory construction.<sup>22</sup> The presumption arising in favor of the validity of the act is great, and, before invalidating any statute, the violation must be substantial, plain and free from every reasonable doubt.<sup>23</sup> Although the application of Article III, Section 16 has been held mandatory,<sup>24</sup> the existence of these presumptions and the enormous discretion afforded the legislature are further evidences of the court's reluctance to declare invalid positive acts of legislation.<sup>25</sup>

If it is possible, the provisions of the statute not contained in the title will be held inoperative and the rest of the act will be allowed to stand.<sup>26</sup> However, there have been cases where the title of the act was so defective as to vitiate the entire statute.<sup>27</sup>

*Unity of Subject:* Though some constitutional subject-title requirements require a unity of object,<sup>28</sup> the Florida Constitution commands that each law shall embrace one subject (and matters properly connected therewith).<sup>29</sup> There is a real distinction between subject and object maintained by the court.<sup>30</sup> The former is held to be the matter to which the act relates; the

20. See note 18 *supra*.

21. See note 19 *supra*.

22. *Gray v. Central Florida Lumber Co.*, 104 Fla. 446, 140 So. 320 (1932), *rehearing denied*, 104 Fla. 446, 141 So. 604 (1932), *cert. denied*, 287 U.S. 634 (1932) (These six canons of construction are: (1) on its face, every act of the legislature is presumed to be constitutional; (2) every doubt as to its constitutionality must be resolved in favor of the act; (3) if the act admits of two interpretations, one of which would lead to its constitutionality and the other to its unconstitutionality, the former rather than the latter must be adopted; (4) the constitutionality of a statute should be determined by its practical operation; (5) in determining its constitutionality, the courts should be guided by its substance and manner of operation rather than by the form in which the act is cast; and (6) after indulging all presumptions in favor of the act, if it is found to be in positive conflict with some provision of organic law, it becomes the duty of the court to strike it down).

23. *Spencer v. Hunt*, 109 Fla. 248, 255, 147 So. 282, 285 (1933); *State ex rel. Terry v. Vestel*, 81 Fla. 625, 628, 88 So. 477, 478 (1921); *State ex rel. Moodie v. Bryson*, 50 Fla. 293, 396, 39 So. 929, 961 (1905).

24. *State v. Poston*, 119 Fla. 699, 160 So. 875 (1935); *Disston v. Board of Trustees*, 75 Fla. 653, 79 So. 295 (1918); *State v. Burns*, 38 Fla. 367, 21 So. 290 (1896).

25. *Carr v. Thomas*, 18 Fla. 736, 747 (1882) ("We loath to pronounce any act of deliberate legislation to be invalid." This dicta has echoed through nearly all cases wherein the issue of presumption of validity is discussed).

26. *E.g.*, *Ex parte Knight*, 52 Fla. 144, 41 So. 786 (1906); *State ex rel. Gonzalez v. Palmes*, 23 Fla. 620, 3 So. 171 (1887).

27. *E.g.*, *City of Miami v. Headly*, 61 So.2d 321 (Fla. 1952).

28. *E.g.*, LA. CONST. Art III, § 16. For a case interpretive of the origin and application of this section see *Conley v. City of Shreveport*, 216 La. 800, 43 So.2d 223 (1949).

29. FLA. CONST. Art. III, § 16.

30. *Spencer v. Hunt*, 109 Fla. 248, 147 So. 282 (1933).

latter being construed as the purpose(s) of the legislation.<sup>31</sup> Hence, even though an act may have numerous objects, so long as it has but one subject, it will not be violative of or repugnant to Article III, Section 16.<sup>32</sup>

The greatest difficulty in ascertaining whether an act encompasses only one subject arises in trying to determine whether the questioned provisions are matters properly connected with the subject (*i.e.*, merely objects of the legislation) or whether they are without logical connection—perhaps designed to accomplish separate and disassociated objects of legislative effort.<sup>33</sup> There is no absolute test possible.<sup>34</sup> All that can be said is that all provisions must be germane to or reasonably connected with the subject.<sup>35</sup>

*Sufficiency of Title:* The subject of each law must be briefly expressed in the title.<sup>36</sup> This constitutional requirement of briefness has been virtually ignored by court rulings that, in the absence of a deceptive or misleading title, excessive length alone will not serve to invalidate.<sup>37</sup> Perhaps the most graphic illustration of the judicial attitude towards the requirements of brevity is *Moody v. Bryan*.<sup>38</sup> In this case, the questioned title covered almost six pages of the Florida Reports.<sup>39</sup> The court held that this title was not violative of the constitution even though "it is very prolix, being unduly drawn out, contains much unnecessary matter, is cumbersome and is awkwardly worded."<sup>40</sup>

As to the sufficiency of expression of title generally, again, there are few absolute rules that may be stated. It has repeatedly been held that the title to an act need not be an index to its contents<sup>41</sup> and those provisions which may be reasonably inferred from the title need not be expressly stated in the title.<sup>42</sup> Yet, titles which have not expressly referred to certain

31. *Wright v. Board of Public Instruction of Sumpter County*, 48 So.2d 912 (Fla. 1950); *Nichols v. Yandre*, 151 Fla. 87, 9 So.2d 157 (Fla. 1942); *Spencer v. Hunt*, 109 Fla. 248, 147 So. 282 (1933).

32. *E.g.*, *State ex rel. Moodie v. Bryan*, 50 Fla. 293, 39 So. 929 (1905) (Here, twelve objects ranging from the establishment of the Florida Female College through appropriations of lands to high schools, were all held to be within the broad but single subject of the reorganization of state special schools).

33. *State ex rel. Landis v. Thompson*, 120 Fla. 860, 163 So. 270 (1935); *Colonial Investment Co. v. Nolan*, 100 Fla. 1349, 131 So. 178 (1930).

34. *Nichols v. Yandre*, 151 Fla. 87, 91, 9 So.2d 157, 158 (1942) ("... there is little use to attempt a review in any detail of these decisions because it is largely true that each of them has been based upon the particular phraseology of the law under consideration").

35. *E.g.*, *Smith v. Chase*, 91 Fla. 1044, 109 So. 94 (1926); *Fine v. Moran*, 74 Fla. 417, 77 So. 535 (1917).

36. FLA. CONST. Art. III, § 16.

37. *Fine v. Moran*, 74 Fla. 417, 77 So. 533 (1917); *State v. Bethea*, 61 Fla. 60, 55 So. 550 (1911); *State ex rel. Moodie v. Bryan*, 50 Fla. 293, 39 So. 929 (1905).

38. 50 Fla. 293, 39 So. 929 (1905).

39. 50 Fla. 301 through 50 Fla. 306.

40. *State ex rel. Moodie v. Bryan*, 50 Fla. 293, 392, 39 So. 929, 960 (1905).

41. *Wright v. Board of Public Instruction of Sumpter County*, 48 So.2d 912 (Fla. 1950); *State ex rel. Watson v. Crooks*, 15 So. 2d 675 (Fla. 1943); *Smith v. Chase*, 91 Fla. 1044, 109 So. 94 (1926).

42. *State ex rel. Moodie v. Bryan*, 50 Fla. 293, 39 So. 929 (1905). See *City of Ocoee v. Bowness*, 65 So.2d 7 (Fla. 1953); *State ex rel. Grodin v. Bams*, 119 Fla. 405, 161 So. 568 (1935); *Hayes v. Walker*, 54 Fla. 163, 44 So. 747 (1907).

objects of acts have caused provisions relating to those objects to be invalidated.<sup>43</sup> The crux of the problem seems to be whether the title to the proposed act put the legislators and all interested parties on notice as to the content and scope of the act.<sup>44</sup> Decisions of the court deal in the nebulous and subjective intangibles of reasonableness of notice<sup>45</sup> and the possibility that a reading of the title would lead all interested parties to make further inquiry.<sup>46</sup>

This requirement of notice to public and legislator has been the underlying basis of numerous declarations of unconstitutionality, the most recent of which was *Copeland v. State*.<sup>47</sup> An amendment to the Child Molester Act<sup>48</sup> attempted to change the penalties of eleven crimes to a maximum of 25 years when the offense is committed against a person under fourteen years of age. Among the included offenses was the crime of rape for which the maximum penalty had previously been death.<sup>49</sup> The title to the act in question made no mention of this change in the penalty for rape but related that the act was to amend the Child Molester Act relating to the sentencing, commitment, treatment, parole, release and discharge of persons convicted of certain sex offenses against, to, or with, persons under fourteen years of age. In holding this act unconstitutional, as applied to rape, the court said:

The title of the act is wholly insufficient to put the members of the legislature and the public on notice of such drastic amendment in the rape statute.<sup>50</sup>

*Amendatory Acts:* The constitutional requirement of singularity of subject and expression of that subject in the title of all legislative acts applied to amendatory as well as original acts.<sup>51</sup> The act (or portion of the act) amended or revised must be re-enacted and published at length as amended or revised.<sup>52</sup> However, this and other requirements applying to amending statutes applies only to those statutes which expressly amend or revise, and is not intended to affect laws amending solely by implication.<sup>53</sup>

43. *E.g.*, *Copeland v. State*, 76 So.2d 137 (Fla. 1954); *Lee v. Bigby Electric Co.*, 136 Fla. 305, 186 So. 505 (1939); *Ex parte Knight*, 52 Fla. 144, 41 So. 786 (1906).

44. *Nichols v. Yandre*, 151 Fla. 87, 9 So.2d 157 (1942); *State ex rel. Cochran v. Lewis*, 118 Fla. 536, 159 So. 792 (1953).

45. *State ex rel. Watson v. Crooks*, 15 So.2d 675 (Fla. 1943); *Spencer v. Hunt*, 109 Fla. 248, 147 So. 282 (1933).

46. *State ex rel. Buford v. Daniel*, 87 Fla. 270, 66 So. 150 (1914); *Butler v. Perry*, 67 Fla. 405, 66 So. 150 (1914).

47. 76 So.2d 137 (Fla. 1954).

48. Fla. Laws 1953, c. 28158.

49. FLA. STAT. § 794.01 (1953).

50. *Copeland v. State*, 76 So.2d 137, 142 (Fla. 1954).

51. *McCord v. Conner*, 132 Fla. 56, 180 So. 519 (1939).

52. FLA. CONST. Art. III, § 16.

53. *In re DeWoody*, 94 Fla. 96, 113 So. 677 (1927); *Van Pelt v. Hilliard* 75 Fla. 792, 78 So. 693 (1918); *Lake v. State ex rel. Palmer*, 18 Fla. 501 (1882).

Although the title of an act merely setting out the statutory section number of the act to be amended is insufficient,<sup>54</sup> a title giving the number of the Revised General Statutes and briefly expressing the general subject expressed therein has been held to be sufficient<sup>55</sup> Here again, the court's primary concern seems to be the reasonableness of the attempted action.<sup>56</sup>

The amending act should contain no provisions that could not have been included under the title of the original act.<sup>57</sup> When it is desired to include provisions which could have been included in the original act (being germane and objects of the legislation) but which were not mentioned in that title, the title of the original statute must be amended in the amending act to give notice of the inclusion of this new matter.<sup>58</sup>

### III. OBSERVATIONS

The preceding section dealing with the interpretation and construction of the subject-title requirement could have been treated at much greater length by presenting a survey of all interpretive cases and the rules and dicta stated therein.<sup>59</sup> However, it is the author's opinion that any more lengthy treatment of the rulings of the past would serve no valuable end; our concern should be with the future since the past is only valuable in aiding our understanding of the future. Therefore the remainder of this article will be devoted to a study of how these past decisions may affect future decisions.

The subject title area presents a field of law in which a premium is placed upon the subjective. Rules, other than the restatement of truisms, platitudes and vague absolutes, are almost non-existent. The legislator should use his reason rather than his ability to memorize form. As was admitted by the court in *Thompson v. Inter County Tel. and Tel.*,<sup>60</sup>

A method by which acts or titles may be cast into one category or another with the accuracy that the chemist obtains by the use of litmus is not available to us. Too often . . . we must resort to our own judgment to test the relationship between title and content.<sup>61</sup>

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54. *McConville v. Ft. Pierce Bank and Trust Co.*, 101 Fla. 727, 135 So. 392 (1931); *Webster v. Powell*, 36 Fla. 703, 18 So. 441 (1895).

55. *McConville v. Ft. Pierce Bank and Trust Co.*, 101 Fla. 727, 135 So. 392 (1931).

56. *E.g.*, *McLin v. Florida Automobile Owner's Protective Ass'n*, 105 Fla. 164, 141 So. 147 (1932) (Germane particulars need not be included); *State ex rel. Bonsteel v. Allen*, 83 Fla. 214, 91 So. 104 (1922) (provisions with a common connection to the subject or which are germane to the subject need not be included in the title).

57. See note 51 *supra*.

58. *Ibid.*

59. The researcher desiring such a complete presentation will find all cases interpretive of Article III, § 16 collected in 25 F.S.A. 808-53.

60. 62 So.2d 16 (Fla. 1952).

61. See *Hart v. State*, 144 Fla. 409, 198 So. 120 (1940) ("There is no absolute rule possible").

The ostensible inconsistencies in dicta and the apparent differences between the cases discussed in the following text are not intended to befuddle or confuse, but merely to apprise the reader. There is consistency, wisdom and logic in the results of these decisions when the facts are considered; and this liberality of the rules set by the court presents the only degree of certainty possible without risking injustice through formal loopholes in the law.

*The Subject:* Though most of the difficulties arising under the subject-title requirement surround the drafting of the title, there has been some litigation setting in issue whether the scope of the act includes only one subject and matters properly connected therewith. The courts have been extremely reluctant to declare questioned acts to be duplicitous when it has been reasonably possible to hold all matters to be germane and reasonably inferable from the subject as set out in the title. Hence, an act<sup>62</sup> punishing those who would burn or attempt to burn property of value with the intent to defraud the insurer was held to be broad enough to include within the scope of its subject provisions dealing with those who would counsel or procure the burner.<sup>63</sup> However, a statute<sup>64</sup> providing for the acknowledgement of deeds and other conveyances of land was not held to be broad enough to include within its subject provisions regarding the effect of failing to record a conveyance.<sup>65</sup>

*The Title:* The major source of litigation under the subject-title rule seems to be the adequacy and sufficiency of the title. The court, as one means towards the end of a fair and well ordered legislative structure, has insisted upon a fair and well-ordered titling structure. This aim (rather than strict adherence to the letter of law and precedent) has been the moving force behind numerous cases causing a great deal of ostensibly irreconcilable dicta which may only be reconciled by an awareness of the underlying motives of the court.

Each statute and its title must be considered individually on its own unique facts. The two different aims (notice and order) have provided two varying schools of dicta which would seem to support opposite conclusions. Only the careless and unwary will rely on the false sense of security provided by the general dictates of the court.

#### IV. DRAFTING THE STATUTE

After reporting a series of recent Florida decisions construing Article III, Section 16 and listing the standards set by the court (*i.e.*, reasonable notice, inartificial, not deceptive, etc.), one author noted that a strong

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62. Fla. Laws 1931, c. 15602.

63. *Hart v. State*, 144 Fla. 409, 198 So. 120 (1940).

64. Fla. Laws 1873, c. 1939.

65. *Carr v. Thomas*, 18 Fla. 736 (1882).

prayer might assist a drafter under these phrases.<sup>66</sup> True, prayer should never be discouraged, but, in this author's opinion, a greater degree of thought and preparation in the drafting process would considerably expedite favorable answers to these prayers. In an attempt to predict the unpredictable, the following outline is submitted as a guide to be used in the drafting of statutes which will satisfy the subject-title requirement.

- I. Set out the broad subject of the legislation.
- II. Form a rough draft of the statute enumerating *all* provisions to be included.
- III. Draft the title to the act by presenting the subject defined in I, followed by all of the objects to be accomplished as listed in II.

Check for:

- (a) Classes, areas, organizations, individuals, etc., affected by the act;
  - (b) Any amendment (other than amendment by implication) effected;
  - (c) Those provisions in the title which repeat or restate the subject or a previously listed object.
- IV. Include specific notice to III(a), comply with amending requirements as to statutes affected by III(b), and eliminate III(c).
  - V. Recheck each section of the statute against the title to be certain that the title gives notice:
    - (a) Of the subject,
    - (b) Of the object(s),
    - (c) To all and everything affected by the legislation.

True, these five steps are simple and many of the precautions called for have been declared to be unnecessary by the courts. However, only if the drafter is omniscient enough to feel that his definition of "reasonable" and "germane" will be the same as that offered by the court on the day of the ruling may any of the above safeguards be safely disregarded. As for the simplicity of the above rules, the past shows the simple errors that have caused the voiding of otherwise valid legislative efforts. Examining such errors in the safety of retrospect, we may learn and benefit from them. Following is such an examination of five cases illustrating typical drafting errors which will, perhaps, tend to establish the validity and practical soundness of the above outline.

The case of *Carr v. Thomas*<sup>67</sup> dealt with the validity of a statutory provision making unrecorded sales of land void against all subsequent pur-

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66. Alloway, *Survey of Florida Law, Constitutional Law* 8 MIAMI L.Q. 158, 200 (1954).

67. 18 Fla. 736 (1882).

chasers six months after the unrecorded transaction was effected. The court held this provision to be unconstitutional solely because the title of the act<sup>68</sup> within which it was included dealt with provisions for the acknowledgement of deeds and other conveyances of land. Finding that the subject of the section and the title of the act had no proper connection with each other, it was a simple matter for the court to invalidate the section.

Had the drafter stated that the act was to be one relating to instruments conveying real estate and enumerated, as objects of the law, provisions regarding acknowledgements and the effect of not recording a conveying instrument, it is unlikely that the court could have found such a disparity between title and subject. The two drafting errors found in this statute (insufficient notice and too restrictive a title) could have been avoided had a greater degree of care and preparation been exercised in the drafting of its title.

*State ex rel. Gonzalez v. Palmes*<sup>69</sup> illustrates another defective statute.<sup>70</sup> Here, the title declared the act to be one fixing the license tax of stevedores. Provisions of the act attempted to set up qualifications for stevedores and to accomplish other ends relating to stevedores but not to the license tax. The court, in holding the act to be unconstitutional, set out the errors of the legislators and suggested titles that would have been held constitutional.<sup>71</sup>

It is obvious that here the license tax was merely an *object* of this statute; the broad *subject* was stevedores. Hence, failure to list the objects to be accomplished and to include those objects in the title under a broad and comprehensive subject caused the unconstitutionality of this otherwise valid act.

The requirement of notice was put in issue in the recent case of *Thompson v. Inter-County Tel. & Tel. Co.*<sup>72</sup> The questioned statute<sup>73</sup> was titled as an act to define, levy and collect privilege taxes upon sales, admissions and rentals of real and personal property within the state. A section<sup>74</sup> of the act authorized the collection of this tax on property imported from another state for use in this state. The only issue, as stated by the court, was whether one reading the title of the act would "gather the thought or even the suspicion that taxes were authorized against property imported from another state for use or storage for use in this state."<sup>75</sup> Answering this question in the negative, the questioned section was invalidated.

Here, the defect was lack of notice and could have been remedied simply by including this object of the legislation within those objects set out in the

68. See note 64 *supra*.

69. 23 Fla. 620, 3 So. 171 (1887).

70. Fla. Laws 1881, c. 3221.

71. *State ex rel. Gonzalez v. Palmes*, 23 Fla. 620, 630, 3 So. 171, 176 (1887).

72. 62 So.2d 16 (Fla. 1952).

73. Fla. Laws 1949, c. 26319.

74. Fla. Laws 1949, c. 26319, § 6.

75. *Thompson v. Inter-County Tel. and Tel. Co.*, 62 So.2d 16, 17 (Fla. 1952).

title. Instead of reading "sale, rental and admission", had the words "use or storage for use" been added, in all probability the section would have passed this constitutional test.

The final two cases to be considered again illustrate the obvious and simple errors which, resulting in disorder or failure to give adequate notice, cause the voidance of otherwise desirable and valid legislation. *Lee v. Bigby Electric Co., Inc.*<sup>76</sup> involved an act<sup>77</sup> which, by title, imposed a license tax on all persons and firms in the business of constructing certain public works. One of the sections<sup>78</sup> of this act attempted to tax all persons and firms who offered to or did bid for the construction of these public works. The court found this section to be inconsistent and irreconcilable with the title. *Ex parte Knight*<sup>79</sup> was a habeas corpus proceeding which questioned one of the provisions in an act<sup>80</sup> punishing the cutting or removing of any timber from any lands that were or might be sold for taxes. Petitioners were convicted under this questioned section which punished the removal of turpentine from such lands.<sup>81</sup> In declaring this section to be unconstitutional and discharging the petitioners from custody, the court said,

As the provision . . . is not included in the restricted subject . . . as expressed in the title, and is not matter properly connected with such subject, the provision is inoperative and of no effect.<sup>82</sup>

How simple it would have been to have defined the subjects of these two acts and listed their objects in the title.

## V. CONCLUSIONS

This comment could have been written from any one of numerous approaches. It could have been a survey presenting a complete listing of all holdings and their dicta. It could have been more startling in the presentation of a comparison of cases which seem to almost completely contradict one another. It could have enumerated all of the fact situations considered by the court and speculated on the different decisions reached. However, though one or all of these approaches may be desirable and appropriate when other fields of law are considered, they are of little value in the consideration of the "subject-title" rule.

The survey approach, by numerous express and implied judicial statements discussed in the text, is almost valueless. A revealing comparison of dicta would serve no useful purpose since the court does not seem to be nearly as concerned with laying firm precedent as with reaching a fair de-

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76. 136 Fla. 305, 186 So. 505 (1939).

77. Fla. Laws 1935, c. 17178.

78. Fla. Laws 1935, c. 17178, § 1.

79. 52 Fla. 144, 41 So. 786 (1906).

80. Fla. Laws 1895, c. 4416.

81. Fla. Laws 1895, c. 4416, § 1.

82. *Ex parte Knight*, 52 Fla. 144, 150-1, 41 So. 786, 788-9 (1906).

cision on the facts. And, finally, a listing and discussion of past fact situations, though of great value to historians, would be of very limited use to the attorney.

The approach employed attempted to utilize these other approaches, in part, but great stress was placed on the practical application of this rule in an effort to present it as the functional, social tool it is rather than as just another absolute legal rule. The conclusions reached are few, general, and (of necessity) deal in great part with the jurisprudential aspects of this constitutional rule.

The primary consideration of the courts is the purpose behind the passage of Article III, Section 16, and the relation of the questioned statute to this purpose. Order and reasonable notice being the two aims of this section, statutes which would seem to violate the letter of this rule have been upheld in the absence of confusion or lack of notice. By treating the "subject-title" rule in this manner, the evils intended to be affected by its passage are eliminated without creating a blind and arbitrary legal rule.

Advice to the legislator is also simple and general. The most glaring and prevalent legislative error has been the restrictive and/or insufficient title. The simple solution to this problem is, as presented in the suggested drafting outline in the text, more comprehensive and detailed titles. No statute has ever been voided due solely to the excessive length of its title. When doubt exists, the subject should be set out and labeled as such and the objects enumerated in such length and detail as to dispel all doubt.

There seem to be no improvements needed or changes desired in the way that the courts have interpreted and applied the "subject-title" rule. The only real need existing is that of remedying the apparent insensitivity of the legislature to the judicial attitude. When this sensitivity is developed in the legislature, consistent compliance with the dictates of Article III, Section 16 will follow as a matter of course.

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## NONRESIDENT ADMINISTRATORS—A DIVERSITY CITIZENSHIP PROBLEM

### INTRODUCTION

Decisions arising in the federal courts through diversity of citizenship<sup>1</sup> between adverse litigants have manifested a marked intent to conform to state law, where applicable, since the coming of *Erie R.R. v. Tompkins*.<sup>2</sup>

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1. U.S. CONST. art. III, § 2.  
2. 304 U.S. 64 (1938).