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## AMENDMENT OF STATUTES UNDER THE MISSOURI CONSTITUTION

*Edward D. Summers\**

The constitutions of the various states, unlike the federal constitution, prescribe various steps in the procedure for the enactment of laws. Under section 5, Article 1 of the national constitution such procedure is fixed by congressional rules. Missouri's Constitution, sections 21 to 33 of article III, provides various steps which must be followed in the enactment of laws. Section 23 relating to subjects and titles of bills has been the subject of a great deal of litigation and as a result its scope and effect have been fairly well established. On the other hand, the meaning of section 28 governing the amendment and reenactment of laws seems not so clear.

Congress may amend federal law by enacting a bill which simply provides that "Section \_\_\_\_ of the Internal Revenue Code is amended by striking out of line 6 thereof the words ' \_\_\_\_\_ ' " or by striking out words and inserting other words in lieu thereof. This type of an amendatory act, of course, requires an examination not only of the amendatory act but also of the original act to find out what the law is. After a number of such amendatory acts have been adopted the research required becomes really formidable. Fortunately, private book publishers, as well as federal agencies affected by legislation, have undertaken the work necessary to present the law in its amended form.

During the first half century of our national existence the legislatures of the various states followed the same practice in amending statutes. However, most of the states, beginning with Louisiana in 1845, have adopted constitutional provisions to require amendatory acts to include the setting forth in full of the act as amended. Article 119 of the Louisiana constitution of 1845 provided that: "No law shall be revised or amended by reference to its title; but in such case, the act revised, or section amended, shall be reenacted and published at length." A like provision was incorporated in the 1850 Michigan Constitution<sup>1</sup> and in the 1851 Indiana Constitution.<sup>2</sup>

Some of the earliest decisions in Louisiana and Indiana construed such provisions to require that both the act or section in its unamended form and the section containing the proposed amendment be set forth.<sup>3</sup> Later

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1. MICH. CONST. of 1850, art. 4, § 25.

2. IND. CONST. of 1851, art. 4, § 21.

3. Walker v. Caldwell, 4 La. Ann. 297 (1849); Langdon v. Applegate, 5 Ind. 327 (1854).

decisions, however, abandoned this useless procedure and required only that the act or section as amended be set forth.<sup>4</sup>

The purpose of the provision was outlined by the Michigan Supreme Court in *People ex rel. Drake v. Mahaney*.<sup>5</sup> There an act which was not expressly amendatory in form abolished certain police offices and transferred the functions thereof to other officers. The act was attacked as violative of the constitutional provision requiring that amended acts be "reenacted and published at length." In its decision the court noted that:

The mischief designed to be remedied was the enactment of amendatory statutes in terms so blind that legislators themselves were sometimes deceived in regard to their effect, and the public, from the difficulty in making the necessary examination and comparison, failed to become apprised of the changes made in the laws. An amendatory act which purported only to insert certain words, or to substitute one phrase for another in an act or section which was only referred to but not republished, was well calculated to mislead the careless as to its effect, and was, perhaps, sometimes drawn in that form for that express purpose. Endless confusion was thus introduced into the law, and the constitution wisely prohibited such legislation.<sup>6</sup>

The court concluded, however, that where the act was so complete in itself as to avoid any confusion or deception, the constitution did not require reenactment and publication of every statute modified by the new act.

A similar provision was adopted in Missouri's 1865 Constitution. It read:

No act shall be revived, or reenacted by mere reference to the title thereof; nor shall any act be amended by providing that designated words thereof shall be struck out, or that designated words shall be struck out and others inserted in lieu thereof; but in every such case the act revived, or reenacted, or the act or part of act amended, shall be set forth and published at length, as if it were an original act or provision.<sup>7</sup>

In the 1945 constitution this provision appears as follows:

No act shall be revived or re-enacted unless it shall be set forth at length as if it were an original act. No act shall be amended by providing that words be stricken out or inserted, but the words to be

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4. *Greencastle Southern Turnpike Co. v. State ex rel. Malot*, 28 Ind. 382 (1867); *City of Portland v. Stock*, 2 Or. 70 (1863); *Commonwealth v. Reinecke Coal Mining Co.*, 117 Ky. 885, 79 S.W. 287 (1904).

5. 13 Mich. 481 (1865).

6. *Id.* at 496-97. *Accord*, 59 C.J. *Statutes* § 455 (1932); 82 C.J.S. *Statutes* § 262(b) (1953); T. COOLEY, *CONSTITUTIONAL LIMITATIONS* 315 (8th ed. 1927). See also Freund, *Supplemental Act—A Chapter in Constitutional Construction*, 8 ILL. L. REV. 507 (1914); Note, 43 HARV. L. REV. 482 (1930); Note, *State Statutes: Constitutional Subject-Title and Amendatory Requirements*, 24 U. OF CHI. L. REV. 722, 729 (1957).

7. MO. CONST. OF 1865, art. 4, § 25.

stricken out, or the words to be inserted, or the words to be stricken out and those inserted in lieu thereof, together with the act or section amended, shall be set forth in full as amended.<sup>8</sup>

Although this constitutional provision has been in effect in this state for more than one hundred years, only three legislative enactments have been held invalid under this provision.<sup>9</sup> The first case so holding was *French v. Woodward*.<sup>10</sup> That decision involved a suit against the marshal of the city of Mexico who claimed to be and to have acted as a deputy constable in seizing property under an execution. The lawfulness of the marshal's action was challenged under a provision of the act incorporating the city which provided that the marshal of the city should "hold no other state, county or city office nor act as deputy of such other officers. . . ."<sup>11</sup> In 1872 the act incorporating the city was extensively amended.<sup>12</sup> Among the provisions of the amendatory act was a section which read: "That section three of article seven of [the act incorporating the city] be and the same is hereby amended so as to authorize the city marshal to act as deputy constable in Salt River Township, Audrain County, Missouri, in addition to his present duties."<sup>13</sup> The supreme court ruled the amendment invalid on the ground that:

[I]t does not set forth, nor publish at length as if it were an original act or provision, "the act or part of act amended," as required by . . . our constitution, but simply refers to a section and says "the same is hereby amended so as to authorize," etc. etc. To hold such an attempted amendment as this sufficient, would be to act in flagrant violation of a very admirable constitutional provision, one which, if heeded, would greatly tend, by the prevention of ambiguities and uncertainties in legislative enactments, to discourage litigious strife. . . .<sup>14</sup>

The next case to invalidate an act of the legislature under this constitutional provision was *State v. Fenley*.<sup>15</sup> That was a prosecution for violation

8. MO. CONST. art. 3, § 28. The substance of the first sentence of this section was included as a separate section in the 1875 constitution. See MO. CONST. of 1875, art. 4, § 33. As such it did not appear to be the subject of much litigation. In *State ex rel. Bair v. Producers Gravel Co.*, 341 Mo. 1106, 111 S.W.2d 521 (1937), it was ruled that an act which repealed tax collection procedure and then provided that such procedure should continue to govern suits already commenced was valid.

9. Amendatory acts, as well as others, must also comply with section 23, article III of the Missouri Constitution which prescribes that "No bill shall contain more than one subject which shall be clearly expressed in its title." *Sherrill v. Brantley*, 334 Mo. 497, 66 S.W.2d 529 (1933); *City of St. Louis v. Tiefel*, 42 Mo. 578 (1868).

10. 58 Mo. 66 (1874).

11. MO. LAWS 1856, at 214.

12. MO. LAWS 1872, at 452.

13. *Id.* at 453.

14. 58 Mo. at 68.

15. 309 Mo. 520, 275 S.W. 36 (1925).

of state laws prohibiting the sale of intoxicating beverages. The defendant attacked the indictment on the ground that it did not charge defendant with selling liquors "which are fit to use for beverage purposes" as specified by the federal Volstead Act.<sup>16</sup> The Missouri statute defined "intoxicating liquor" as beverages containing at least one-half of one percent of alcohol by volume subject to the proviso that when Congress defined "intoxicating liquor" by federal statute such definition would supersede that in the Missouri statute.<sup>17</sup>

The court ruled the proviso invalid, saying:

Section 34 of Article IV of our Constitution declares how a legislative act may be amended. The section as amended must be set out in full. The claim, therefore, that Section 6602, Revised Statutes 1919, may be amended by incorporating therein subsequent legislation by Congress defining intoxicating liquors was abortive and the proviso of Section 6602 must be held to be a nullity.<sup>18</sup>

Finally in *State ex rel. McNary v. Stussie*<sup>19</sup> the court considered the validity of a 1974 act<sup>20</sup> which provided that the age of majority in this state is eighteen years. Theretofore the age of majority had been fixed at twenty-one years since 1921.<sup>21</sup> The act also provided that "whenever the term twenty-one years of age is used as a limiting or qualifying factor it shall be deemed to mean 'eighteen years of age' and the revisor of statutes is hereby authorized to make the appropriate changes in the Revised Statutes of Missouri as they are revised, reenacted or reprinted."<sup>22</sup> The controversy arose over the question of whether this act was effective to amend section 494.010, RSMo 1969, which fixed the qualifications of jurors at twenty-one years of age. The court ruled the statute was violative of section 28 of Article III of the state constitution and therefore invalid.

The first case to construe this provision of the Missouri Constitution was *City of Boonville v. Trigg*.<sup>23</sup> That case involved the validity of an act which sought to amend the City of Boonville's legislatively granted charter of incorporation. The amendatory act, which sought to amend those provisions of the original charter relating to the city's boundaries, set

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16. Pub. L. No. 66-66, c. 85, 41 Stat. 305 (1919).

17. RSMo § 6602 (1919).

18. 309 Mo. at 528, 275 S.W. at 39.

19. 518 S.W.2d 630 (Mo. En Banc 1974).

20. MO. LAWS 1974, at 706.

21. MO. LAWS 1921, at 399. The 1921 act amended the definition of minors as given in the guardianship law so as to make females of full age at age twenty-one rather than eighteen. In a case dealing with parties to actions by minors the validity of this act under section 34 does not appear to have been questioned although other attacks were made upon it. *Nahorski v. St. Louis Electric Terminal Ry.*, 310 Mo. 227 (1925).

22. MO. LAWS 1974, at 706.

23. 46 Mo. 288 (1870).

forth only those parts of the charter being amended.<sup>24</sup> The amendatory act was challenged on the ground that it violated the constitution's publication requirement for its failure to embody the whole section as amended. In upholding the validity of the amendatory act, the Missouri Supreme Court ruled that where only a part of an act is amended only that part need be set out and published. The court distinguished decisions from other jurisdictions requiring that the full act or section as amended be set out in the amendatory act on the ground that the Missouri Constitution explicitly provides that "the act or *part of act* amended, shall be set forth and published. . . ."<sup>25</sup> The court concluded that:

Where an entire act is revived or re-enacted it must be set forth and published in whole. Where a whole act is amended the same course must be pursued; but where a part of an act is amended, the amendatory part only need be set out and published.

. . . .

The constitution in these States [i.e. states which required that the whole act be reenacted every time it is amended] expressly declares that where a section is amended it shall be reenacted and published at full length. But our constitution only requires the act or part of act amended to be set forth and published. That was done in this case. There was no striking out, or inserting words in lieu thereof, but there was an amendment of part of the act, and the amendment was set forth and published entire. The constitution was strictly complied with.<sup>26</sup>

In *State v. Chambers*<sup>27</sup> our supreme court had before it a prosecution of a second offense of petit larceny under a statute which prescribed more severe punishment upon a second conviction. The first conviction for petit larceny was had before a justice of the peace whose jurisdiction of the offense was granted by an act of the legislature amending three sections of the criminal code.<sup>28</sup> The amendatory act provided for the substitution of certain language in each of the sections and then set out at length each section of the statute as amended. The court rejected the contention that the amendatory act was void for not setting out and publishing the entire act, and affirmed the conviction. The court observed that the publication requirement of the constitution "requires the entire act, when the amendment relates to the entire act, to be set out in full, or when the amendment relates only to certain sections of an act to be amended, that only the sections as amended should be fully set out. The amendments . . . relate only to sections of another act, and the sections as amended being fully set in the amendatory act, the constitutional requirement is met and answered."<sup>29</sup>

24. MO. LAWS 1868, at 190.

25. MO. CONST. of 1865, art. 4, § 25 (emphasis added).

26. 46 Mo. at 290.

27. 70 Mo. 625 (1879).

28. MO. LAWS 1871, ch. 281.

29. 70 Mo. at 628.

Literally the second sentence of the current provision would seem to require that when an act or part of act is amended by striking out words or by inserting words, or striking words and inserting words in lieu thereof, both the words stricken and the words inserted must be set out and, in addition, the section as amended must be set forth in full. Of course, if a section or act is set forth in full as amended, the words inserted obviously will be included. But what about those stricken? A literal compliance with this provision would seem to require also that such stricken words be set forth. The cases, however, seem consistently to hold that all that is required is that the amended section or part of the act be set forth in full.

In *Morrison v. St. Louis, I.M. & S. Ry. Co.*<sup>30</sup> the court considered a challenge to an amendatory law which simply said: "Section 17 of said act is hereby amended to read as follows" and then set out the section. In sustaining the amendment the court said:

Under this constitutional provision, it is quite common for the legislature to first state that certain words of a specific section are stricken out and others inserted, and then set out in full the section as amended, but the constitution makes no such requirement. In former times, a practice had grown up of amending an act, or a section of an act, simply by saying that designated words were stricken out, or that they were stricken out and others inserted, leaving it to the reader to examine both acts and make the erasure and substitution. This practice the constitution prohibits, and when a section of an existing statute is amended, the sections, as amended, must be set out in full; nothing more is required.<sup>31</sup>

It appears also that the addition of sections to an act is not such an amendment as will require the entire act to be set forth. In *State v. Thruston*<sup>32</sup> the court dealt with an act which amended one section of an act and added three new ones thereto. The court ruled that since the amended section was set out in full as well as the three new sections, the act conformed to the constitution, saying: "It is only when all the sections of an act are amended that the entire act as amended is required to be set out."<sup>33</sup> This ruling is not in accord with decisions of other states on their constitutional provisions which adhere to the rule that a section can be added by way of amendment without setting forth the entire act only if the added sections are complete in themselves.<sup>34</sup>

30. 96 Mo. 602, 9 S.W. 626 (1888).

31. 96 Mo. at 606, 9 S.W. at 68. *Accord*, *Burge v. Wabash Ry.*, 244 Mo. 76, 148 S.W. 925 (En Banc 1912); *State ex inf. Hadley ex rel. Wayland v. Herring*, 208 Mo. 708, 106 S.W. 984 (1907); *Cox v. Hannibal & St. J. Ry.*, 174 Mo. 588, 74 S.W. 854 (1903); *State v. Bennett*, 102 Mo. 356 (1890). *See also State v. Long*, 238 Mo. 383 (1911).

32. 92 Mo. 325 (1887).

33. *Id.* at 327.

34. *See* 59 C.J. *Statutes* § 457; 82 C.J.S. *Statutes* § 263.

The rule that the constitutional provision does not apply to amendments by implication—that is, to a statute which is inconsistent with a previously enacted statute without being expressly amendatory—seems also to have been consistently followed in this state. *State ex rel. Maguire v. Draper*<sup>35</sup> was a suit by a county collector to compel the state to pay half of the costs of advertising the delinquent land list as required by preexisting law. An 1870 act provided a new method of collecting taxes and made no provision for the payment of such costs.<sup>36</sup> It was not amendatory in form and made no reference to the existing statute. The court sustained the new law saying that the constitutional provision does not apply to amendments and repeals by implication.<sup>37</sup>

*State ex rel. McRee v. Maguire*<sup>38</sup> was a mandamus proceeding to compel the collector to receive tax payments levied in 1860. The action was based on an 1870 statute (not amendatory in form) which authorized redemption of lands theretofore forfeited for taxes within two years after passage of the act.<sup>39</sup> The tax payments for 1860 (and resulting redemption) were refused on the ground that the section authorizing forfeiture was amended in violation of this provision. The court issued the mandamus writ saying the issue was controlled by *State ex rel. Maguire v. Draper*.<sup>40</sup>

*State ex rel. Speck v. Geiger*<sup>41</sup> was a quo warranto proceeding to determine who held the office of prosecuting attorney in Texas County. In 1872 an act was passed abolishing the office of circuit attorney in most of the judicial circuits of the state, and providing for the office of prosecuting attorney in each county. One provision of the 1872 law stated “whenever the words circuit attorney or county attorney shall appear in any of the statutes of this state, the same shall be taken and understood to mean prosecuting attorney.”<sup>42</sup> The 1874 election for prosecuting attorney of Texas County resulted in a tie. The county board of canvassers issued an order to the sheriff to call a special election which was held and resulted in the election of Geiger, who assumed office. An action for quo warranto was brought to oust Geiger from office on the ground that the election laws provided that in case of a tie in the vote for circuit attorney, the governor was required to issue the proclamation calling a new election and that the sheriff had no right to do so.<sup>43</sup> The court rejected Geiger’s contention that act of 1872 had been ineffective to change the reference in the election laws from “cir-

35. 47 Mo. 29 (1870).

36. MO. LAWS 1870, at 114.

37. The court cited *People ex rel. Drake v. Mahaney*, 13 Mich. 481 (1865), discussed in the text accompanying notes 5 & 6 *supra*, and cases from Indiana.

38. 47 Mo. 35 (1870).

39. MO. LAWS 1870, at 114.

40. See text accompanying notes 35-37 *supra*.

41. 65 Mo. 306 (1877).

42. MO. LAWS 1872, at 33.

43. WAGNER STAT. c. 51, § 33 (1872).

cuit attorney" to "prosecuting attorney," and ordered his ouster. The court held that the act did not amend the previously existing statute but simply furnished a definition of the term "circuit attorney" and hence did not contravene the constitution's publication requirement.

*Ensworth v. Curd*<sup>44</sup> was a suit in the circuit court of Buchanan County for an accounting by a surviving partner against the estate of a deceased partner. The case was dismissed for the reason that the probate court had exclusive jurisdiction. The statute creating the Buchanan County Probate Court which vested such jurisdiction was attacked on the ground that it amended several statutes which were not set forth. The court said such objection "is answered by the decision of this court in *State ex rel. Speck v. Geiger*."<sup>45</sup>

*State ex rel. Attorney General v. Miller*<sup>46</sup> was a quo warranto proceeding to test the right of Miller to the office of school director in the city of St. Louis. The school corporation was created by an 1833 special act which provided for the election of two directors from each ward in the city every three years.<sup>47</sup> An 1887 act did not mention the 1833 law but provided that in cities of over 300,000 inhabitants "the number of school directors of trustees, or number of members of any board having charge of public schools or public school property in such cities, under and by virtue of any special charter or general law, shall be twenty-one; seven to be elected on general ticket at large by the qualified voters of such city, and fourteen to be elected by districts by the qualified voters of such city districts."<sup>48</sup>

In ruling the 1887 law valid the court noted that although failure to identify the sections of the old act being repealed by implication or to set forth the sections as modified "may lead to inconvenience in requiring a comparison of the old and new law, . . . such legislation is not prohibited by the provision of the constitution before quoted. The constitution of 1865 contained a provision much like the one now in question, under which it was held that repeals by implication were not prohibited."<sup>49</sup>

After this review of these cases one may cautiously venture the view that the provision requires the observance of the following rules in the enactment of amendatory legislation:

1. In express amendatory acts each section or part of an act which is amended must be set forth in full and when an entire act is amended the act as amended must be set forth in full.
2. Words stricken and words inserted in amendatory acts do not have to be recited separately, but words inserted must be incorporated in the act or section as amended and set forth.

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44. 68 Mo. 282 (1878).

45. *Id.* at 285.

46. 100 Mo. 439, 13 S.W. 677 (1890).

47. MO. LAWS 1832, at 37.

48. MO. LAWS 1887, at 272.

49. 100 Mo. at 446, 13 S.W. at 678.

3. The addition of sections to an act requires only that the added sections must be set forth in full but does not require that the entire act be set forth.

4. Amendments and repeals of prior laws by implication would seem not to be prohibited by the constitutional provision.

Although some question as to the last rule may arise from the decision in *State ex rel. McNary v. Stussie*,<sup>50</sup> a careful reading of that case reveals that the rule was not intended to be abrogated. The statute challenged in *Stussie* undertook to strike out of all but a few specified statutes the words "twenty-one years of age" and substitute therefor the words "eighteen years of age." That situation is clearly distinguishable from that in *State ex rel. Attorney General v. Miller*<sup>51</sup> where the new statute was complete in itself and superseded the provisions of the earlier statute, and in *State ex rel. Speck v. Geiger*<sup>52</sup> where the new statute did not amend existing sections but merely redefined a term which appeared in them. Indeed, *Stussie* contains dictum from which it may be inferred that had the new statute simply declared the age of majority to be twenty-one, it would have effected a substantial part of the act without contravening the constitution's reenactment requirement.<sup>53</sup>

This constitutional provision has served a very useful purpose. It is probable, however, that its object might be accomplished more easily if it were replaced by the provision appearing in the constitutions of most of the other states of the union which requires that the entire section being amended be set forth as amended. As the Missouri Supreme Court noted more than one hundred years ago:

It is greatly to be regretted that our constitution did not adopt the same terms and language that we find used in the States [which require that the entire section being amended be reenacted]. Then the whole matter would always be found in the amended section, and there would be no necessity of hunting through different books and in separate enactments to find what the law was.<sup>54</sup>

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50. See text accompanying notes 19-22 *supra*.

51. 100 Mo. 439, 13 S.W. 677 (1890). See text accompanying notes 46-49 *supra*.

52. 65 Mo. 306 (1877). See text accompanying notes 41-43 *supra*.

53. 518 S.W.2d at 637 ("We do not believe that the General Assembly intended § 1 to be purely definitional of 'age of majority' with no applicability to statutes which express limiting or obligating conditions in terms of specific ages rather than majority and minority.")

54. *City of Booneville v. Trigg*, 46 Mo. 288, 290 (1870).