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Hints on Bill Drafting†

BY WILLIAM B. HENDERSON*

The ordinary citizen is required to obey the law. It must be so phrased that he understands what it means. The first rule of draftsmanship is to use modern, everyday language. The person who uses hackneyed *couplets* and time-worn legal expressions is either trying to impress someone with his knowledge of obsolete legal style, or is too lazy to select and employ words of his own.

Use the same word to express the same sense. The substitution of words to break monotony of phraseology leads to confusion. Rhetorical flourishes and word painting must be avoided. Follow the style of Jeremy Bentham rather than that of the Letters of Junius. Beauty of expression must yield to clarity. Synonyms should be avoided.

Use an adjective or an adverb rather than a phrase. Phrases tend to prolixity and may separate the grammatical subject from the grammatical predicate. Never use a phrase when a word is its exact equivalent. Instead of "is hereby authorized and it shall be his duty to," use "shall."

Brevity is commendable, but must yield to clarity. Use nouns rather than pronouns, even if the noun must be repeated. Use the active rather than the passive form of the verb, because it is stronger and more positive.

As the law speaks in the present, use the present rather than the future conditional tense. Use "if it is necessary," not "if it shall be necessary." It is preferable to use the present tense of a verb rather than the future or imperative; as, "the term 'employee' means" rather than "the term 'employee' shall mean.

An enactment in simple form is a declaration directing or empowering the doing of, or directing abstention from doing a particular act or thing. Such an enactment consists of a legal subject and a legal action (predicate); a noun and a verb. In the personal form, the subject is the person who is directed and empowered to do, or prohibited from doing the thing mentioned. In the impersonal form, it is the thing to be done or left undone. Except where there are several classes of persons constituting the subjects, the impersonal form should be avoided, because it encourages the use of the passive form of verb, a much weaker construction than the active form.

When it is necessary to limit the declaration or describe the instances to which the law is to operate, there must be a statement of the *case* to which the law applies. Where possible, the *case* should be stated at the

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beginning, preceding the declaration, and introduced with words such as "where," "when," "in the event of," "in case," or "if" with the indicative. This gives notice that the law is limited. It must be couched in the present.

Laws must often be called into action only upon the fulfilment of certain *conditions*. The logical position for the *condition* is immediately following the *case*. The *condition* clause should begin with "if," or, when the clause is negatively stated, with "unless." Where the negative form is used, the performance of the condition is mandatory; if the affirmative form of expression is used, directory only. The future form of verb must be avoided. When the application of the law is entirely general, or with a single named exception, statement of *case* and *condition* is not required.

Minnesota Statutes 1941, Section 645.19 reads as follows: "Provisos shall be construed to limit rather than to extend the operation of the clause to which they refer. Exceptions expressed in a law shall be construed to exclude all others."

This is declaratory of the common law rule.

The function of provisos is to make a special exemption from the general statutory declaration, and they should be confined to that function. The practice of tacking every conceivable kind of provision at the end of a sentence or section is abominable. It most frequently happens in the case of amendments to existing statutes where the bill drafter is too lazy, or too inexperienced to rephrase the statute to properly embrace the amendatory provision. It is commonly introduced with words such as: "provided, however, that," "provided, nevertheless, that," and similar. In hundreds of appealed cases, the Supreme Court has been forced to resort to judicial legislation, and in 90 per cent of the cases determined that the legislature used the words in a conjunctive sense.

Where a bill contains definitions of words and phrases used in a sense other than those found in the construction statute or in standard dictionaries, the definition section should be section one of the act, and preceded by "Unless the language or context clearly indicates that a different meaning is intended, the following words, terms, and phrases, for the purposes of this chapter, shall be given the meanings subjoined to them." Penalties should be grouped together and placed at the end of the bill. When incorporated into the statutes, the definitions are placed in section one of the statutes, and the penalties in the final section.

The title must conform to the bill as drawn. Prolivity is dangerous. In a long bill, it is difficult to particularize and escape error. Generally the form "A bill for an act relating to firemen's relief associations in certain cities; amending sections (stating them); and repealing sections (stating them)," is sufficient. The bill drafter must study and

cognately follow the house and senate rules. They are printed and distributed liberally. Many meritorious bills fail of passage because of technical errors which the extremely busy committees and employees do not have time to correct.

The most useful aids for a bill drafter are an unabridged dictionary and an elementary textbook on English grammar. There are no textbooks as such; but Law Review articles by Robert K. Cullen and E. E. Brossard (Oregon Law Review, December, 1944, and January, 1945) are most helpful. Every lawyer should have in his library the United States Government Printing Office Style Manual, and "Practical Legislation" by Lord Thring (Little, Brown & Co., 1902).

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