ROP v. Palau Museum, 6 ROP Intrm. 277 (1995)

REPUBLIC OF PALAU,
Plaintiff,

v.

PALAU MUSEUM, d/b/a/
Belau National Museum, a non-profit corporation,
Defendant.

CIVIL ACTION NO. 435-95

Supreme Court, Trial Division
Republic of Palau

Decision and order
Decided: December 27, 1995

Counsel for Plaintiff: Jeffery A. Tomasevich

Counsel for Defendant: Raynold B. Oilouch

ARTHUR NGIRAKLSONG, Chief Justice:

The Government seeks an injunction permanently preventing the Palau Museum, doing business as the Belau National Museum, from constructing, digging, or excavating at the grounds surrounding the Museum without first obtaining a permit from the Division of Cultural Affairs. The key issues facing the Court are whether a "tangible cultural property" must be registered before the permit requirement of 19 PNC § 151 applies and whether the project may affect "manifestations of a part of traditional Palauan culture" within the meaning of 19 PNC §§ 151 and 103(j).

The parties do not dispute the pertinent facts. On December 1, 1995, Dr. William H. Adams, the Senior Archeologist for the Division, observed a backhoe and several United States Navy Seabees near the Museum. Adams told the operator of the backhoe and the Seabees that alteration of the sites was prohibited because a permit from the Division had not been issued. The Seabees indicated that they were working for the Museum and asked Adams to speak with Faustina Rehuher, the Museum's Director. Rehuher and Demei Otobed, President of the Board of Trustees of the Museum, stated that they believed that such a permit was not necessary.

Backhoe operations began at the Museum site. The Government ⊥278 moved for a temporary restraining order preventing the defendant from proceeding with the project. The Court granted that motion.

Must a "Tangible Cultural Property" be "Registered" before Section 151 Applies?

The Government relies on 19 PNC § 151, which provides:

> Before any agency[1] or officer of the national government commences any project which may affect a registered historical site or tangible cultural property . . . the agency or officer shall advise the Division and allow the Division an opportunity to review the effect of the proposed project on such sites or properties. The proposed project shall not be commenced, or, in the event it has already begun, continued . . . until the Division has given its written concurrence.[2]

The Government argues that, because the project near the Museum may affect a tangible cultural property, the permit requirement of section 151 applies. The defendant contends that a "tangible cultural property" must be registered before Section 151 applies. The parties stipulated that the area in question is not a registered tangible cultural property. The Defendant reads the phrase "registered historical site or tangible cultural property" within section 151 as meaning that the statute applies to a registered historical site or a registered tangible cultural property. The Court rejects this view.

In the interpretation of statutes, the all-important or controlling factor is the legislative will. *United States v. Stones & Downer Co.*, 47 S.Ct. 616, 620 (1927); 73 Am. Jur. 2d, *Statutes* § 145 (1974). "[T]he meaning of a statute must, in the first instance, be sought in the language in which the act is framed . . . ." *Caminetti v. United States*, 37 S.Ct. 192, 194 ⊥279 (1917). *See Yano v. Kadoi*, 3 ROP Intrm. 174, 182 (1992); 2A N. Singer, Sutherland Statutory Construction § 46.01 (4th ed. 1984). When "the language is plain and admits of no more than one meaning, the duty of interpretation does not arise," and statutory terms are presumed to be "used in their ordinary and usual sense, and with the meaning commonly attributed to them." *Yano*, 3 ROP Intrm. at 182-83 (internal quotations and citation omitted). *See In the Matter of the Application of Won and Song*, 1 ROP Intrm. 311, 312 (Tr. Div. 1986). The plain meaning of the statute is that "registered" applies to a "historical site" only; the statute does not use "registered" to modify the phrase "tangible cultural property." *See* § 151.

Other portions of title 19 illuminate the legislature's intent, which the Court must carry into effect to the fullest degree. *See ROP v. Pacifica Development Corp.*, 1 ROP Intrm. 214, 219-20 (Tr. Div. 1985); *Archina v. People*, 307 P.2d 1083, 1092 (Colo. 1957); 73 Am. Jur. 2d, *Statutes* § 145. The portion of title 19 that addresses private construction projects requires a permit or other action if the project "will significantly affect a historical site or tangible property on the register of historical sites or register of tangible cultural property." 19 PNC § 154 (emphasis added). When the OEK wished to limit permit requirements to registered tangible

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[1] It is undisputed that, for the purposes of this section, the Defendant is an agency of the national government. *See also* 19 PNC §§ 201-03.

[2] Section 151 does not gives absolute administrative power over these matters to the Division. That section also provides: "If the concurrence of the Division is not obtained within 90 days after filing of a request with the Division, the agency or officer seeking to proceed with such project . . . may apply to the President, who may request the Board to report on who may take such action as he deems best in overruling or sustaining the Division. If the President fails to act within 60 days of the application, the project . . . shall be deemed approved."

cultural property, it used language that clearly and explicitly did so. *See Omni Capital International v. Rudolf Wolff & Co., Ltd.*, 108 S.Ct. 404, 410-11 (1987); *Russello v. United States*, 104 S.Ct. 296, 300 (1983). Because § 154 uses such language and § 151 does not, § 151 is intended to cover broader subject matter; § 151 covers both registered and unregistered tangible cultural property.

The Government's position is also supported by one of the expressly stated purposes of title 19: "A strong regulatory framework is necessary to assure that . . . historical and cultural properties located in Palau are protected from destruction." 19 PNC § 102(c). Consideration of "the evil which [the legislature] sought to correct and prevent" is a strong force in statutory interpretation. *See Untied States v. Champlin Refining Co.*, 71 S.Ct. 715, 719-20 (1951); 2A N. Singer, Sutherland Statutory Construction § 47.06. To carry into effect the legislative will, § 151 must be read to apply to all tangible cultural property, regardless of whether it is registered or unregistered.

The Defendant points to parts of title 19 that provide for registration of tangible cultural property. Through 19 PNC §§ 103(a), 111, 114(b), 114(c), and 131(b), the Division recommends registration of a tangible cultural property, subject to the ⊥280 approval of the Palau Historical and Cultural Advisory Board. The Defendant contends that because the Division does not have the power to determine whether tangible cultural property should be registered, § 151 should be read to require a permit for registered tangible cultural property only. This argument is not persuasive. Title 19 unequivocally states that tangible cultural property must be registered for the purposes of § 154[3] and 19 PNC § 182. It does not necessarily follow that it must be registered for the purposes of § 151, especially in light of the other sections that apparently relate to unregistered tangible cultural property, as discussed below.

The Defendant argues that legislative history supports its view. "Reliance on legislative history in divining the intent of [the legislature] is, as has often been observed, a step to be taken cautiously." *Piper v. Chris-Craft Industries, Inc.*, 97 S.Ct. 926, 941 (1977). Because the statutory language is clear, the legislative history cannot control. *See Yano*, 3 ROP Intrm. at 182-83. Even if the legislative history is considered, it is ambiguous vis-a-vis § 151, and it cannot prevail over the clear statutory language. *See id*; *Cole v. Harris*, 571 F.2d 590, 597 (D.C. Cir. 1977); 2A N. Singer, Sutherland Statutory Construction § 48.01.

The original language of what became § 151 stated:

> Before any agency or officer of the Republic or its political subdivisions commences any project which may affect a historic site or tangible cultural

[3] The Defendant also argues that a serious deprivation of property rights would occur if the Division is able to "stop any body who tries to build or dig something at any time, by simply claiming that the intended work may affect a . . . potential tangible [cultural] property." This argument overlooks § 151's application to projects undertaken by government agencies and officers only; it does not address property held by private individuals. The requirements for private property are set forth in § 154. The argument also overlooks the study indicating that the area in question may contain archeological specimens, as discussed below.

> property, the agency or officer shall advise the Division and allow the Division an opportunity for review of the effect of the proposed project on such sites or properties, especially those listed in the Palau register of historic sites or the Palau register of tangible cultural property.

S. 213, First Olbiil Era Kelulau, 5th Session (1982). The bill was amended to insert "registered" before "historic site or tangible cultural property" and to strike the language following ⊥281 "especially." Floor Amendment to Senate Bill No. 213 (Oct. 28, 1982). The Defendant contends that these amendments were intended to restrict the reach of § 151 to registered historical sites and registered tangible cultural property. Such an "unexplained change" carries little weight. *See Drummond Coal Co. v. Watt*, 735 F.2d 469, 474 (11th Cir. 1984). This legislative history is ambiguous; it could also be viewed as clarifying that the section applies to registered historical sites and to tangible cultural property regardless of whether it is registered.

The Defendant also relies on § 181 of Title 19, which sets penalties for damaging a historical site or tangible culture property, and on the legislative history for that section. Section 181(a) states that it is unlawful "for any person . . . to take, appropriate, excavate, injure, destroy, or alter any registered historical site or tangible cultural property located on lands owned or controlled by the Republic . . . except as permitted by the Division." The Defendant argues that § 181 must be read to reach only registered cultural property, and if "registered historical site or tangible cultural property" was intended to apply to only registered tangible cultural property for the purpose of § 181, the phrase has the same meaning when it appears in § 151.

The Court need not decide the reach of § 181. Any analogy between §§ 181 and 151 does not carry controlling weight because the penalty provisions of § 181 are sufficiently removed from the permit provisions of § 151. Moreover, one possible interpretation of § 181 is that it applies to unregistered tangible cultural property "on lands controlled or owned by the Republic," which would be a rational approach.

In commenting on what became § 181, a Senate committee issued a report to the Speaker which states: "Your committee inserted the word 'registered' so as to make clear the fact that only registered historic sites and registered tangible property are affected." Senate Comm. on Health, Education, and Welfare, Report No. 285, First Olbiil Era Kelulau (October 26, 1982). Under appropriate circumstances, a committee report may be a helpful aid in statutory interpretation. *Miller v. Federal Mine Safety & Health Rev. Comm'n*, 687 F.2d 194, 195 (7th Cir. 1982); 2A N. Singer, Sutherland Statutory Construction § 48.06. Nonetheless, a committee report does not establish the intent of the legislature as a whole. *Young v. Tennessee Valley Authority*, 606 F.2d 143, 147 (6th Cir. 1979). Moreover, to the extent that the legislative history of § 181 conflicts with the statutory language of § 151, the former must yield. *See Elbelau v. Election Commission*, 3 ROP Intrm. 428, 431, n.6 (Tr. Div. 1993).

⊥282 The force of this Senate Report is also undercut by two sections of title 19 pointed out by the Government. Section 183(b) of title 19 allows "any person" to maintain an action for injunctive relief "for the protection of a historical site or tangible cultural property . . . from unauthorized or improper . . . alteration . . . of such property." Section 183 may not contain a

"registration" requirement, so at least some of the protection extended by title 19 may not depend on whether the subject matter is registered. The Government also points to 19 PNC § 153, which requires devotion of a percentage of the expenditures for certain government projects involving historical property or tangible cultural property to "the investigation, recording, preservation, and salvage" of such property. This section does not relate to permit requirements, but it may support the view that not all of the protection of title 19 is limited to registered historical sites and registered tangible cultural property.

Any force that Report 285 may have is outweighed by other factors. Report 285 refers to § 181, not 151. The registration requirement apparently does not apply to all of the protection offered by title 19. The statutory language contained in §§ 151 and 154, and the express purpose of the legislation as stated in § 102(c), support the Court's determination that the legislature did not intend to limit § 151 to registered tangible cultural property.

Whether the Project "May Affect" a "Tangible Cultural Property"

The Defendant argues that the project is not covered by § 151 because "'tangible cultural property' . . . must have something to do with Palauan culture." The Defendant adds that a comprehensive 1985 archeological survey of Koror State did not list the Museum building as a historical site or a tangible cultural property.

"Tangible cultural property" is defined as "those objects . . . which are manifestations of a part of traditional Palauan culture, and includes any . . . archeological specimens . . . ." 19 PNC § 103(j). Dr. Adams stated in an affidavit[4] that the area has "been the subject of at least one prior archeological study." According to Dr. Adams, the study that the "site is a significant resource with the potential to provide important information on Palauan history and prehistory."

During the hearing for this matter, the parties conceded that ⊥283 they do not know whether the area contains archeological specimens. The study's references to "the potential to provide important information on Palauan history and prehistory" is sufficient to show that the project in question "may affect a . . . tangible cultural property" within the meaning of §§ 151 and 130(j).

The Court concludes that "registered" in § 151 does not apply to "tangible cultural property." The Court further determines that the project in question "may affect" such property. Therefore, IT IS ORDERED that the Defendant is permanently enjoined from constructing, digging, or excavating at the grounds surrounding the Museum without first obtaining a permit in accordance with the provisions of title 19, § 151 of the Palau National Code. *See* 19 PNC § 183(a).

[4] The Defendant did not object to the Court's consideration of the affidavit and offered no contrary evidence or argument.