

by rule. In this respect much must depend upon usage.<sup>50</sup>

The usage of an enacting clause is thousands of years old, and every state and the United States have followed this custom from the beginning. Thus for something to be regarded as a true and valid law it is logical that one would expect to see an enacting clause on its face.

One of the leading cases on this issue was from the Supreme Court for the Territory of Washington. The validity of an act of the Territorial Legislature that would move the seat of the government was in question. The act had no enacting clause, and the territory had no constitution of its own requiring one, as it was generally governed by the U.S. Constitution. The Court held the law invalid stating:

Strip this act of its outside appendages, leave it "solitary and alone," is it possible for any human being to tell by what authority the seat of government of Washington Territory was to be removed from Olympia to Vancouver?

The staring fact that the constitutions of so many states, made and perfected by the wisdom of their greatest legal lights, contain a statement of an enacting clause, in which the power of the enacting authority is incorporated, is to our minds a strong, and powerful argument of its necessity. It is fortified and strengthened by the further fact that Congress, and the other states, to say nothing of the English Parliament, have, by almost unbroken custom and usage, prefaced all their laws with some set form of words, in which is contained the *enacting authority*. Guided by the authority of such eminent jurists as Blackstone, Kent, and Cushing, and the precedents of national and state legislation, the Court arrives with satisfaction and consciousness of right in

declaring, that where an act like the one now under consideration, is wanting in the essential formalities and solemnities which have been mentioned, it is inoperative and void, and of no binding force or effect.<sup>51</sup>

The Court here judged the validity of the law based upon fundamental law, rather than any specific constitutional provision. This case has been cited quite frequently by various legal texts and courts and always in a favorable or approving manner.

Various law textbooks in the discussion of statutes have clearly stated the need for an enacting clause despite the lack of a constitutional provision for one:

Although there is no constitutional provision requiring an enacting clause, such a clause has been held to be requisite to the validity of a legislative enactment.<sup>52</sup>

In recognition of this custom [of using an enacting clause], it has sometimes been declared that an enacting clause is necessary to the validity of a statute, although there is no provision in the fundamental law requiring such a clause.<sup>53</sup>

In 1967, the Supreme Court of Georgia held that a law without an enacting clause was null and void, even though their State constitution had no provision requiring one. They based their decision on the long standing custom of its usage.<sup>54</sup>

The requirement that all laws contain an enacting style or clause is deeply rooted in precedent and the common law. There thus need not be any constitutional provision for an enacting clause to make its usage mandatory. If it is not used the law in question is not valid and carries no obligation to be followed.

50 *Smith v. Jennings*, 45 S.E. 821, 824, 825, 67 S.C. 324 (1903); *Commonwealth v. Illinois Cent. R. Co.*, 170 S.W. 171, 173, 160 Ky. 745 (1914); *State of Nevada v. Rogers*, 10 Nev. 250, 256, 257 (1875); *Sjoberg v. Security Savings & Loan Assn.*, 73 Minn. 203, 211, 75 N.W. 1116 (1898).

51 *In re Seat of Government*, 1 Wash. Ter. 115, 123 (1861).

52 82 *Corpus Juris Secundum*, "Statutes," § 65, p. 104.

53 *Ruling Case Law*, vol. 25, "Statutes," § 22, p. 776.

54 *Joiner v. State*, 155 S.E.2d 8, 10, 223 Ga. 367 (1967).