

THE AUTHORITY OF STATUTES PLACED IN SECTION NOTES OF THE UNITED STATES CODE

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In statutory research it is common to find that a provision of Federal law has been placed in the note area following a related section of the United States Code. The question then arises as to whether the provision in the note has as much authority as a section in the body of the U.S. Code and, if so, why the codifiers did not give the provision its own section or perhaps add it to the related section.

The authority of statutes placed in a note area, although sometimes questioned, cannot be doubted--they do indeed have the same authority as statutes placed as U.S. Code sections. It may be more difficult to locate and distinguish these statutes from other matters in the note area or to cite to them, but it follows logically that if a U.S. statute is valid then it does not matter where it is placed in the Code. For cases specifically treating statutory notes, see *Springs v. Stone* (362 F.Supp 2d 686, 697 n. 7)¹ and *Conyers v. Merit Systems Protection Board* (388 F.3d 1380, 1382 n. 2).² In the latter the Court stated, "the fact that this provision was codified as a statutory note is of no moment. The Statutes at Large provide evidence of the laws of the United States." It should also be noted that the Supreme Court of the United States has continuously upheld the principle that "the Code cannot prevail over the Statutes at Large when the two are inconsistent." See *Stephan v. United States* (319 U.S. 423, 426),³ *United States v. Welden* (377 U.S. 95, 98 n. 4),⁴ and many others.

Why the codifiers may place a statutory provision in a note area rather than its own section of the Code frequently pertains to the structure of related statutes already enacted and codified. For instance, if a title of the U.S. Code has been enacted into positive law and a new statute is related to one or more of its sections but does not actually amend the title, then the codifiers may not add the statute to that title's sections, but they may add the new statute as a note. See, for example, the many statutory provisions in the note area to 5 U.S.C. §552,⁶ popularly known as the Freedom of Information Act. They may also add the statute as an appendix to the title, as in the Appendix to Title 5 of the U.S. Code⁷ which contains both the Inspector General Act and the Ethics in Government Act.

¹ http://scholar.google.com/scholar_case?case=25005803162395257&q=%22362+F.Supp.+2d+686%22&hl=en&as_sdt=2,9

² <http://law.justia.com/cases/federal/appellate-courts/F3/388/1380/569843/>

³ <http://supreme.justia.com/us/319/423/>

⁴ <http://supreme.justia.com/us/377/95/>

⁶ http://www.law.cornell.edu/uscode/html/uscode05/usc_sec_05_00000552----000-notes.html.

⁷ http://www.law.cornell.edu/uscode/html/uscode05a/usc_sup_05_5.html

Codifiers may find it easier to add sections to non-positive law titles in the U.S. Code such as the addition of related statutes to the end of the Federal Deposit Insurance Act at 12 U.S.C. §§1832 - 1835a.⁸ However, they may also decide that a note to a section is a more appropriate location because the new statutory provision may be very closely related to a previous section (such as a definitions section) but not actually amend the previous statute. The many statutes at the end of the note area to 12 U.S.C. §1821⁹ on deposit insurance funds, and at the end of the note area to 12 U.S.C. §1843¹⁰ concerning non-banking interests of bank holding companies, follow this pattern. Statutes in the note area may include provisions on the short title of an act, the dates of an act's effectiveness, an act's finding and purpose, a mandated temporary study/report (no longer after February 2004), and other matters such as transfers of functions and additional definitions. Generally, it seems, the codifiers like to place a statute's language all together in the U.S. Code without breaks from other statutes. So instead, they often place related statutes in the note area of those sections. However, this not a firm rule, as illustrated by the insertion of 12 U.S.C. §1831m-1 between §§1831m and 1831n containing sections 36 and 37 of the Federal Deposit Insurance Act. In like manner the codifiers do not generally combine a new statutory provision with an existing code section representing a previous Act that Congress did not specifically amend. This has been a fairly hard rule in recent decades, but these "combined credits" were made in earlier code sections, especially in the original 1926 U.S. Code of Laws, which was designed, at the time, to become positive law and repeal all prior laws, but was instead made prima-facie evidence of the law by Congress.

Matters, other than statutes, that are often placed in the note areas of sections to the U.S. Code include, 1) authority citations to the corresponding public law and its amendments, 2) amendment notes in reverse chronological order, 3) historical and revision notes to sections in codified titles, 4) references in the text, 5) related executive orders, 6) cross-references, and, 7) footnotes to possible mistakes ("so in the original" - as a footnote in text). Of course, the U.S. Code Annotated by Thomson Reuters (West) and the U.S. Code Service by LexisNexis often have other matters in the note sections including case annotations, CFR references, ALR and law journal references, and other matters.

This document was reviewed by the Law Revision Counsel in the U.S. House of Representatives whose Office is responsible for codifying U.S. statutory law.

⁸ http://www.law.cornell.edu/uscode/html/uscode12/usc_sup_01_12_10_16.html

⁹ http://www.law.cornell.edu/uscode/html/uscode12/usc_sec_12_00001821----000-notes.html

¹⁰ http://www.law.cornell.edu/uscode/html/uscode12/usc_sec_12_00001843----000-notes.html