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THE MISSOURI REVISED STATUTES—EVERYTHING'S UP-TO-DATE IN JEFFERSON CITY?

I. INTRODUCTION

It should be obvious to nearly anyone that statutes, rather than judicial decisions, are the most important source of the law today. Events and problems arise too quickly and are too complex for one to expect the judiciary to have the resources necessary to cope with them. Legislative bodies, by necessity, must assume the responsibility of providing solutions.

The bulk of the statute books is some evidence that legislators are not shy in exercising their duty, and yet the increasing mass of enactments creates special problems. The point to be made is this—as the General Assembly adds more laws, its members should, at the same time, concern themselves with repealing their earlier efforts that have been made obsolete by changes caused by time and events.

At one time in America, it was rare that a law was repealed. Instead, statutes were allowed to lapse into disuse¹ and at times were openly ignored and disobeyed.² Legislatures were looking to the present and the future and could not or did not take the time to erase outmoded statutes from the books. In addition to the problem of obsolescence, the form and mechanics of early statutes were often defective. They were poorly indexed and organized, contained ambiguous and unnecessary language, and were redundant and grammatically defective.³

Starting in the 1920's, a realization developed that some action was needed to rectify the situation.⁴ The most widespread and usual response was to appoint a revisor of statutes and charge him with the task of remedying these deficiencies. In some states this was a continuous process;⁵ in other states a bulk revision would take place periodically.⁶ The scope of the

1. JOHNSEN, *LAW ENFORCEMENT* 340 (1930).

2. For a discussion of some specific examples of noncompliance with criminal laws see Berry, *Spirits of the Past—Coping With Old Laws*, 19 FLA. L. REV. 24 (1966). The author writes of state-sanctioned defiance of Mississippi's prohibition laws; nonenforcement of New York's adultery law; and the United States Supreme Court's treatment of widely flaunted Sunday closing laws.

3. O'Connell, *Need for Statutory Revision in Oregon*, 23 ORE. L. REV. 93, 95-96, 101-02, 107, 110 (1943).

4. See Cooper, *The Need of a Statute Reviser*, 20 ILL. L. REV. 125 (1925); Corrick, *The Establishment and Operation of the Office of Revisor of Statutes in Kansas*, 9 J. MO. B. 64 (1938); Hodges, *How the Revisor Plans Works in Wisconsin*, 6 IND. L.J. 37 (1930); Moseley, *Continuous Statute Research and Revision in North Carolina*, 22 N.C.L. REV. 281 (1944); Ratner, *Continuous Statute Revision*, 49 KAN. B.J. 133 (1924).

5. For example, the states of Kansas, Kentucky, Wisconsin, and Florida have a permanent program authorized to continually work on statutory revision. See Hodges, *supra* note 4, at 39; Tribble, *Statutory Revision in Florida: What a Few Young Lawyers Accomplished*, 26 A.B.A.J. 498, 499 (1940); and Ratner, *supra* note 4.

6. Missouri's constitutions prior to 1945 provided for revision every 10 years, thus prohibiting any continual revision. See, e.g., MO. CONST. art. IV, § 41 (1875). In the 1945 constitution the requirement was modified so that continuous statutory

revisor's authority also differed from state to state. The job of some revisors was limited to indexing and organizing the laws and correcting mechanical irregularities.⁷ Other states in addition required their revisors to study and recommend the repeal of unworkable and outdated laws.⁸

Missouri has by no means been a leader in shaping its statutes into a well organized, modern system of codified law. Its constitution, throughout most of Missouri's statehood has required a revision to be made every 10 years.⁹ This was certainly more progressive than many states, which at one time had no provisions for any sort of program for review.¹⁰ Yet other states recognized the value of a program of continuous statutory revision sooner than Missouri.¹¹

Prior to 1945, the constitution was worded in such a way that it was not possible for the General Assembly to provide for a continuing revision plan.¹² The constitution of 1945 eliminated this obstacle,¹³ and in 1949 the Revision Publication Act¹⁴ was passed by the General Assembly. Section 3.120¹⁵ specifically established a committee to carry out a continuing program of statutory revision.

The purpose of this comment is to explore the present statutes of Missouri, and to point out areas where many of the laws are inconsistent, outdated, or useless. However, it should be noted at the outset that Missouri has, under its two very competent revisors, Edward D. Summers and Sam G. Hopkins, managed to keep its books relatively free of these types of laws. Most of the obsolete and preposterous statutes were repealed at the time of the decennial bulk revision in 1939.¹⁶ Also, under the authority of the Revision Publication Act of 1949, the revisor and his staff have been able to do considerable work in correcting mechanical and grammatical

revision would be possible if the General Assembly so directed. See Mo. CONST. art. III, § 34.

For an early history of statute revision in Missouri, see STATUTE REVISION COMM., REPORT, MO. H. & S. JOUR., 50th Gen. Ass'y, app. at 117 (1919). See also MISSOURI GEN. ASS'Y COMM. ON LEGISLATIVE RESEARCH, ESTABLISHMENT OF A SYSTEM OF CONTINUOUS STATUTORY REVISION, REPORT No. 7, in § J. MO. B. 39 (1947), and DEBATES OF THE CONSTITUTIONAL CONVENTION OF MISSOURI 5911-22 (1945).

7. Wheeler & Wheeler, *Statute Revision: Its Nature, Purpose and Method*, 16 TUL. L. REV. 165, 168-70 (1942).

8. *Id.* These two types of revision are called formal and substantive. *Id.* at 170. Obviously, if only formal revision is permitted the statute books will still be burdened with obsolete laws.

9. See Mo. CONST. art. III, § 34; Mo. CONST. art. IV, § 41 (1875). The constitution of 1865 contained no such provision.

10. See authorities cited note 4 *supra*.

11. See note 5 *supra*.

12. Mo. CONST. art. IV, § 41 (1875) contained the following language:

In the year 1939 and every ten years thereafter all the statute laws of a general nature, both civil and criminal, shall be revised, digested and promulgated in such manner as the General Assembly shall direct.

13. The Missouri Constitution of 1945, by the addition of the phrase "at least every ten years," authorized the General Assembly to set up a continuous revision program. Mo. CONST. art. III, § 34.

14. §§ 3.010-140, RSMo 1969.

15. All statutory references within the text of this article refer to the 1969 edition of the Revised Statutes of Missouri.

16. MISSOURI GEN. ASS'Y COMM. ON LEGISLATIVE RESEARCH, *supra* note 6, at 41.

errors in the statutes and recommending the passage of bills repealing defective and outmoded laws.¹⁷

Even though the Missouri statutes have been relatively well-cleansed, research has revealed certain specific fields where much work is still needed. Specifically, the laws defining criminal acts and the statutes governing local government units are the two main areas in which broad, sweeping reform is so urgently needed that special committees have been formed to remedy the situation. The problems in these areas are so complex and overwhelming that they far exceed the capabilities or authority of the revisor of statutes. Only men with expertise in criminal and municipal law could be expected to cope with and solve the confusion that presently exists. Perhaps by citing a few examples of some of the deficiencies in the criminal and local government statutes, this article can generate some publicity for the serious consideration that needs to be given to the proposals that these two committees will recommend to the General Assembly for passage into law.

II. MISSOURI CRIMINAL LAW

In Missouri, a Committee to Draft a Modern Criminal Code was established in 1969. The original Committee consisted of 12 men: two appointed by the Supreme Court to represent the judiciary; two appointed by the Superintendent of the State Highway Patrol to represent law enforcement; two by the Missouri Association of Prosecuting Attorneys to represent prosecutors; one by the Director of Corrections; one by the Attorney General; two (one from each dominant political party) by the President of the Missouri Senate; and two (one from each dominant political party) by the Speaker of the House of Representatives. This program to thoroughly revise the substantive criminal laws of Missouri has been funded by the Missouri Law Enforcement Assistance Council. The Attorney General's Office operates as the subgrantee, disbursing funds and providing other assistance. The Committee was expanded in 1971, and two more reporters were added, for a total of four.

Presently, Missouri criminal law is found in 12 chapters dealing with procedure and 9 chapters defining criminal acts and setting punishment, with other criminal provisions scattered throughout the Revised Statutes. Even by only a general perusal of the substantive chapters, a few observations can readily be made. First, many of the laws were passed 50 to 70 years ago. Some of the laws date from the territorial laws of 1820. The terms and style of the statutes seem antiquated. Many of the provisions cover narrow, specific offenses and are noticeable by the negligible number of appellate decisions interpreting them.

It is difficult to assess exactly what conclusions can be drawn from the lack of annotations under so many of the criminal statutes. Perhaps these laws are so effective that the public is deterred from committing the various offenses; perhaps the prosecutor has chosen not to file charges against any violators; perhaps those convicted are not appealing; perhaps the laws are so clear no appeals need to be taken; or perhaps the laws have ceased to be of any real use to the public in the prevention of antisocial behavior. A few

17. Summers, *Statute Revision in Missouri*, 22 Mo. L. Rev. 14, 16-17 (1957).

examples may prove to be helpful to the reader in coming to his own conclusions.

Section 289.120 prohibits a theatrical booking agency from sending an applicant under 21 years of age to any place where he will sell liquor or where liquor is sold and prohibits the sending of any applicant regardless of age to a place where he will appear in a strip or nude act or appear in an act considered lewd, immoral, or indecent. Violation of this statute is a misdemeanor. No Missouri appellate court has ever decided a case under this law.

In 1906 the Kansas City Court of Appeals handed down a rather enlightening opinion in the case of *State v. Bell*.¹⁸ The court came to grips with the intricacies of the Missouri statute prohibiting a minor from playing in a pool hall without his parent's consent.¹⁹ The court held that the information was sufficient to sustain the conviction of the owner of the pool hall for the violation. *State v. Bell*, is the most recent of three cases appearing in the annotations under this provision.

It is a felony in Missouri for a person to remove the dead body or remains of any human being from his grave.²⁰ Maximum punishment is five years in the state penitentiary. The most recent annotated case under this law was decided in 1899,²¹ but the most interesting opinion was written one year earlier. In *State v. Baker*²² the Missouri Supreme Court reversed a conviction on the grounds that the evidence was insufficient to find the defendant guilty of grave robbery. The decision to reverse was made in spite of evidence that witnesses through illumination provided by lightning saw a mysterious figure digging in the cemetery at midnight; that the body of a certain Mrs. W. was subsequently missing from her gravesite; and that the defendant was heard to remark that he had a "stiff" he hoped to sell for 20 or 40 dollars.²³

Section 563.030 provides for a sentence of not less than two nor more than twenty years in the penitentiary if a man forces his wife into a house of prostitution. The annotations list no cases decided under this law; and yet this lack of case law seems somehow fair since, no doubt, many a woman has forced her husband into a house of prostitution and gone unpunished.

There are numerous other criminal statutes with no reported cases dealing with them, or with the most recent decisions 40 or more years old.²⁴ Possible inferences to be made from the existence of this type of statute have already been discussed. Perhaps the only conclusion to be drawn is

18. 115 Mo. App. 13, 90 S.W. 757 (K.C. Ct. App. 1905).

19. § 318.090, RSMo 1969.

20. § 563.830, RSMo 1969.

21. *State v. Fox*, 148 Mo. 517, 50 S.W. 98 (1899).

22. 144 Mo. 323, 46 S.W. 194 (1898).

23. *Id.* at 328, 46 S.W. at 195.

24. *E.g.*, § 537.285 (penalty for injuring railroad property); § 560.330 (soaping railroad tracks); § 563.050 (prostitute not to be detained for debts contracted); § 563.090 (bawdyhouse within 100 yards of a church); § 563.110 (obtaining lease under false pretenses a felony); § 563.400 (betting on an election); § 563.850 (larceny of articles from grave); § 564.250 (what ingredients prohibited in manufacture of candies); § 564.520 (shooting at mark on public road a misdemeanor); § 564.550 (injuring lighthouse with specific intent).

that further investigation as to whether there is a real need for some statutes is warranted.

Another readily apparent characteristic of Missouri criminal statutes is the large number of laws that define very narrow, specific criminal acts. Logically it would seem that many of these statutes that cover related areas could be combined into a single comprehensive provision. One comprehensive statute would be easier to work with, simplify procedures, clear up inconsistencies in the elements of the crime, standardize punishment, eliminate overlapping offenses, and give better notice to the public as to the state of the law. Again, concrete examples can best illustrate the problem.

Scattered throughout the statute books are over 30 separate provisions making it illegal to destroy property of some kind. It is a crime, for example, to harm or destroy racing pigeons, fruit trees, baggage, electrical equipment, government buildings, levees, rafts, prison buildings, and mileposts.²⁵ In addition there are separate statutes covering destruction of property by arson.²⁶ The entire law establishing criminal conduct with respect to property needs to be reorganized and simplified into several compact statutes with varying punishment depending on the nature and value of the property, the criminal malice involved, and the possibility of harm to human life accompanying the crime against the property.

In all fairness the General Assembly has done good, but only occasional, work in condensing the large number of related statutes into one or two compact provisions. The outstanding example is the enactment into law in 1955 of important legislation related to the crime of stealing.²⁷ A

25. These various statutes and their titles are: § 8.150 (penalty for defacing statehouse—parent or guardian liable for acts of infants); § 12.060 (to injure or mutilate property of United States a misdemeanor); § 216.460 (conspiracy or assaults by prisoners to guards or inmates, felony, penalty—includes injury to any penitentiary building or workshop); § 231.140 (penalty for injuring or destroying trees planted under the supervision of the county highway engineer); § 246.210 (obstruction, impairment, destruction of drainage ditches—penalty); § 537.285 (penalty for injuring railroad property); § 560.540 (destruction of levees and ditches); § 246.230 (injury to levee—penalty); § 560.300 (penalty for injuring electrical equipment); § 560.325 (throwing stone at train while in motion); § 560.330 (soaping railroad tracks); § 560.345 (injuring baggage); § 560.380 (administering poison to animals); § 560.385 (malicious mischief—penalty); § 560.400 (malicious destruction of property by explosives—penalty); § 560.405 (malicious destruction of fruit and ornamental trees and other property); § 560.425 (destroying marks on chattel subject to a security agreement—penalty); § 560.470 (injury to courthouses and other county buildings); § 560.475 (destruction of trees, shrubs, flowers or ferns along a highway a misdemeanor); § 560.525 (destruction of bridges, milldams—penalty); § 560.530 (destruction of landmarks); § 560.535 (destroying milepost, guideboards); § 560.550 (burning raft); § 560.555 (injury to racing pigeons); § 560.580 (maliciously firing forest lands a misdemeanor); § 560.590 (wilfully setting outdoor fires—penalty); § 563.750 (desecration of United States flag or emblem, a misdemeanor—penalty); § 564.540 (injuring lighthouses, misdemeanor); § 564.550 (injuring lighthouse with specific intent—felony).

26. § 560.010 (arson—penalty); § 560.020 (arson if shop, warehouse, factory, church, public building—penalty); § 560.025 (arson of public or private property); § 560.030 (arson of insured property).

27. See Mo. Laws 1955, at 507, §§ 1-5, as amended Mo. Laws 1957, at 374, § 1.

general statute defining the elements of the offense of stealing was enacted.²⁸ Its purpose was to eliminate the technical and confusing distinctions between the common law forms of stealing and to simplify the law.²⁹ A companion statute set up a standardized penalty provision to cover all types of offenses.³⁰ These two comprehensive statutes combined over 30 separate sections into one statute defining the crime and a single statute setting the punishment.³¹ This type of legislation is certainly commendable, but it is only a small step. Sporadic stabs at reform of the criminal law will not do. A total revision must be carried out.

Because the criminal laws of Missouri were enacted in a piecemeal manner over a long period of time, without benefit of an integrated scheme, there are many inconsistencies. One of the most flagrant examples is the three statutes covering injury or destruction of levees and drainage ditches. Section 246.220 provides that anyone who wilfully injures or interferes with a drainage ditch constructed under the laws of Missouri is guilty of a felony and shall be punished by not less than two nor more than fifteen years in the state prison. Conduct of the same nature with respect to a levee is also a felony under section 246.230, although the maximum sentence is limited to five years. And yet, in chapter 560, the same acts are punishable as misdemeanors.³² Since there are no cases decided under any of the three statutes, the conflict has never been resolved. Unhappily, it appears that the prosecuting attorney's discretion would be extended beyond what was ever intended if anyone was charged with this type of crime. He would have the power to decide whether he wanted to subject a violator to the possibility of imprisonment for a felony or charge him with the lesser offense, even though the elements of the crime under each statute might be for all practical purposes identical.

Under section 560.320 it is a misdemeanor for a person to intentionally interfere with a railroad signaling device or a railroad switch with a resulting stoppage or interference with the operation of a train. Similarly, it is unlawful under section 560.330 for a person to intentionally place upon the rails of a railroad soap, grease, or any substance or obstruction, so as to interfere with the railroad's operations. Violation is also a misdemeanor. Compare these two statutes with section 564.360 which declares a person guilty of a felony with a maximum sentence of 20 years if he wilfully and maliciously places any stone, logs, or other objects on railroad tracks with the intent to obstruct the passage of an oncoming train. Although the felonious conduct under section 564.360 must be coupled with intent to

28. § 560.156, RSMo 1969.

29. *State v. Perkins*, 380 S.W.2d 433, 435 (Mo. 1964).

30. § 560.161, RSMo 1969.

31. All the old larceny statutes were repealed, including §§ 560.155, .160, .165, .170, .185, .190, .195, .205, .210, .215, .220, .225, .230, .235, .240, and .245, RSMo 1949. These embezzlement laws were also repealed: §§ 560.250, .255, .260, .265, .230, .285, .340, RSMo 1949. Miscellaneous statutes condensed into the two general provisions were §§ 560.290, .295, .430, .485, 561.610, .620, .650, .690, .720, .740, .870, RSMo 1949.

32. § 560.540, RSMo 1969. § 560.605, RSMo 1969 sets the punishment for a misdemeanor at imprisonment in the county jail not exceeding one year, or by fine not in excess of 500 dollars, or by both fine and imprisonment.

obstruct the railroad,³³ and the two misdemeanor statutes are not clear as to any requisite intent, the disparity in punishment for the same or very similar acts seems to open up all three laws to criticism.

Other laws, while not making the same acts unlawful under separate provisions, can be criticized on the basis that the punishments provided are inconsistent with other criminal acts of equal culpability. For example, it is against the law to anchor a boat to railroad structures.³⁴ The maximum penalty for violation of this statute is five years imprisonment. But a person who wilfully and maliciously shoots into a dwelling house, barn, stable, garage, motor vehicle, aircraft, or railroad car is exposed to a maximum criminal liability of only three years in the penitentiary.³⁵ Obviously this later criminal act has at least as much potential for harm to human life as the unlawful conduct described in the former statute, and yet the punishments differ significantly. This type of inconsistency points up the need for further study of all the penalty provisions to determine if they should be adjusted under some sort of uniform system to make the punishment fit the crime, relative to the rest of the criminal laws.

Finally, even if a statute manages to be free of the shortcomings already noted, the chances are it will still be compatible with the dominant theme of Missouri criminal law—old age. These statutes are simply out of touch with the present. Some are antiquated by nature of the crimes they define. These laws should be repealed outright. Others continue to have utility for the present, but the terms and language used are time-worn. These laws should be updated and modernized.

There are a half dozen statutes relating to old-fashioned modes of travel. Under sections 564.330 and 564.340 it is a misdemeanor to permit an electric streetcar to operate without protecting the driver against cold weather. Although citizens of this state may have fond memories of the trolley car era, the statutes of Missouri are hardly the place to memorialize "the good old days." Another relic of the past is the drunken stage coach driver law.³⁶ It was the discovery of this law which inspired the author of this article to undertake this study.³⁷ If the law had been properly re-

33. In the case of *State v. Johns*, 124 Mo. 379, 27 S.W. 1115 (1894) defendants loosened a rail and then with the intention of obtaining a reward from the company for preventing a wreck, warned the engineer of the oncoming train in time to avoid the danger. The supreme court held that it was not necessary to have the specific intent to injure the railroad, or kill or hurt its employees or passengers. The court said the criminal act was complete when the track was torn up and approved jury instructions that negated the need for the state to prove the defendants intended at the time to wreck the train or endanger the lives of anyone. However it was necessary to show intent to obstruct the passage of the train. *Id.* at 384-85, 27 S.W. at 1116.

34. § 560.323, RSMo 1969.

35. § 562.070, RSMo 1969.

36. § 564.420, RSMo 1969. This law dates from 1855 and covers drivers of stages, coaches, wagons, omnibuses, hacks, or other vehicles who are intoxicated to such an extent that the safety of their passengers is jeopardized. The statute's language is as dated as its substance. The word "whilst" is used in the text of the provision.

37. Whenever the author told anyone the subject matter of this article, the reaction was invariably: "Have you found the drunken stage coach driver law?" It seems many people cite that law as an example of the critical need for updating the criminal statutes. No cases are annotated under this statute.

pealed, the author would not have realized the possibility of writing an article on Missouri statutes. Instead he would have been relegated to toiling on some dull, traditional law review topic.³⁸

A further stroll down memory lane reveals some interesting criminal offenses involving man and his horse. It is illegal under section 564.500 for a person to run his horse on a public road and disturb and frighten the horses of his fellow travelers.³⁹ Section 564.510 makes it a crime to race horses on public byways. For those readers who have a difficult time recalling the last time they saw horses racing on the streets of their city, the absence of violators can perhaps be traced to the statutory power of the state highway patrol to stop the rider of any animal traveling on the highways of this state.⁴⁰

Followers of western movies, who remember the old trick of cutting the straps on the villain's saddle while he was inside robbing the bank, might find it disconcerting to know that the quick thinking hero of this ploy could be charged with a misdemeanor. In Missouri it is against the law for anyone to wilfully and maliciously cut the saddle, bridle, halter, hitch, rein, buggy or wagon harness of another or wilfully and maliciously remove any tap or nut from someone else's buggy or wagon.⁴¹

Although the great majority of the criminal laws are still very functional, the style and wording of the statutes need to be modernized. The term "firkin"⁴² is used in section 561.750, a statute making it unlawful to sell oleomargarine improperly labeled. Graduates of the University of Missouri Law School at Columbia possess a special expertise with respect to this word, having been exposed to the strange sounding noun in one of their first cases in law school.⁴³ The prostitution statutes use the old-fashioned term "bawdyhouse;"⁴⁴ section 560.345 contains within its pro-

38. For plentiful examples see prior issues of the Missouri Law Review.

39. In the only case annotated under this statute the Supreme Court of Missouri affirmed the conviction of Isaac Fleetwood, Jr. The indictment describes his crime:

[O]n the nineteenth day of September, in the year of our Lord eighteen hundred and fifty-one, with force and arms, at Ozark County, aforesaid, [Isaac Fleetwood] then and there did run upon a public road, in common use, in the county of Ozark, and State of Missouri, a horse, so as to interrupt travelers, and did then and there run said horse at and against one Elvira Martin, then and there being, thereby greatly hurting and interrupting the said Elvira Martin, then and there being, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the state.

State v. Fleetwood, 16 Mo. 448, 449 (1852).

40. § 43.170, RSMo 1969. Actually this law also gives authority to members of the patrol the right to stop any vehicle, along with charging drivers and riders with the duty to obey reasonable signals and directions of a patrolman. Part of the law is perfectly timely and useful, but the remainder seems antiquated.

41. § 560.385, RSMo 1969.

42. A "firkin" is a small wooden vessel or cask of no special size, or any of several British units of weight. A firkin of butter equals 56 pounds. WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 856 (1961).

43. See the case of Dame v. Baldwin, 8 Mass. 517 (1812), which dealt with what was contended to be a sale of 40 firkins of butter at a market overt.

44. See §§ 563.020, .090, .120, .130, RSMo 1969.

visions reference to "stage drivers" and "hackmen" carelessly and recklessly handling a "valise;"⁴⁵ and under section 559.090 it is manslaughter to wilfully kill an unborn "quick child" by any injury to the mother of the child. The old common law phrase "quick with child" describes that time during pregnancy when the woman feels the fetus moving in the uterus.⁴⁶

Although many of the criminal statutes cannot be criticized for any reasons already considered, they, nevertheless, are of questionable need and value by the very nature of the act sought to be punished. These statutes should at least be examined by the Committee to Draft a Modern Criminal Code to determine if the objectives of the criminal system are really furthered by their presence on the statute books. Examples include the offense of transporting an uncaged savage animal through the state;⁴⁷ the prohibition against permitting a stallion to service a mare within 300 yards of a school, college, or church;⁴⁸ the felonious crime of running a bawdy-house within 100 yards of a church, school, library, or theater;⁴⁹ and the laws defining dueling as a crime.⁵⁰

As a unit the criminal laws of Missouri present the greatest need for revision out of the entire body of statutory law. This reform can not be carried out in a piecemeal manner by correcting specific provisions such as those pointed out in this article. The Committee to Draft a Modern Criminal Code is not set up for this purpose. Instead, their goal is to revise the laws completely and recommend to the legislature the adoption of a comprehensive criminal code. The various references to particular shortcomings of individual criminal statutes were merely an attempt to single out a few of the many deficiencies in order that the case for reform could more easily be made. This study of the statutes is only a cursory and superficial overview of some statutes which seem clearly to be in need of change. The task of exploring in depth more complex weaknesses is left to those more skilled in the legal theories of criminal law, *i.e.*, the reform committee. If their efforts fail to effect the necessary changes, the only alternative that may be left is for some brave soul to risk the consequences of violating section 560.430. This law makes it a felony for a person to mutilate, alter, or change a law except by legislative process.⁵¹

III. MISSOURI LOCAL GOVERNMENT LAW

The various laws that regulate local government units run a close second to the criminal laws in terms of an urgent need for reform. These

45. This statute provides for a fine of up to 100 dollars if a person whose duty it is to handle the baggage of passengers treats the baggage in a wilful and reckless manner so as to damage the goods.

46. *State v. Emeric*, 13 Mo. App. 492, 495 (St. L. Ct. App. 1883), *aff'd*, 87 Mo. 110 (1885).

47. § 562.280, RSMo 1969.

48. § 563.320, RSMo 1969.

49. § 563.090, RSMo 1969.

50. § 562.090, .100, .110, RSMo 1969.

51. Actually this law was repealed by Mo. Laws 1955, at 507, § A, and incorporated into the stealing statute. *See* § 560.161 (6), RSMo 1969.

laws are strewn throughout all the chapters of the revised statutes. There are 62 pages of statutes regulating first and second class cities alone.⁵²

This is certainly not the first time that the charge has been made that these laws are confusing, obsolete, and ineffective. Many articles have been written on the problem⁵³ and positive steps have been undertaken to remedy the chaos.⁵⁴ Here again the purpose of this article will be to praise the work that is being done and encourage its eventual implementation by those who have the power to do so—the General Assembly.

The most persuasive group to call for a complete revision of the statutes regulating local governmental bodies is the Advisory Council on Local Government Law set up by Governor Warren Hearnes in 1967. This committee completed a year and a half study and submitted a final report to the Governor. The Council made an extensive investigation of the statutes in the area, compiling and sorting them by the class of cities affected and by particular municipal functions.⁵⁵ In its report the Council noted that most of the laws were passed years ago—some even predating the Missouri Constitution of 1875.⁵⁶ When there was a need for a new law or an amendment to existing law, the General Assembly acted with little consideration of how the new legislation fitted in with prior law.⁵⁷ There was no systematic development of the law. Instead things were done in a piecemeal, "as needed" fashion,⁵⁸ with the result that the law is a jumbled mass of hundreds of overlapping, inconsistent, and obsolete statutes, describing in infinite detail how a municipality is to operate.⁵⁹

The Council was able to supply ample evidence to support its conclusions. The most glaring examples of useless law on the statute books of Missouri are the regulations that set forth the powers and limitations of first and second class cities. The reason for their failure to be of any value is quite simple—there are no first or second class cities in this state. All municipalities that could fall within class one or two have instead chosen

52. See Salsich, *Local Government in Missouri: The Crossroads Reached*, 32 Mo. L. Rev. 73 (1967).

53. Salsich & Tuchler, *Missouri Local Government: A Criticism of a Critique*, 14 St. L. L.J. 207 (1969); MISSOURI PUBLIC EXPENDITURE SURVEY, BETTER LOCAL GOVERNMENT FOR EVERYONE IN MISSOURI 6 (1966); GOVERNOR'S ADVISORY COUNCIL ON LOCAL GOVERNMENT LAW, REPORT 3 (1969). In addition, numerous resolutions have been passed by the Missouri Municipal League recommending modernization of local government law.

54. In June, 1967, Governor Warren Hearnes appointed a 90-man Advisory Council on Local Government Law to study and make recommendations dealing with the laws regulating local government. This report was completed in 1969. The Council, in summary, proposed increased home rule powers, a simplification of the statutes in the area, and a modernization of county government. See Salsich & Tuchler, *supra* note 53, at 207-09.

55. REPORT, *supra* note 53, at 13-14.

56. *Id.* at ii.

57. *Id.*

58. *Id.*

59. *Id.* at iv.

to become constitutional home rule charter cities.⁶⁰ In spite of this there are over 200 statutes dealing with first and second class city government.⁶¹

Examination of a few of these statutes helps explain in part why the citizens of what would be first and second class cities have chosen to govern themselves under a home rule charter instead of relying on the General Assembly to supply the authority. Sections 73.110 and 75.110 list the general corporate powers of first and second class cities. Because non-home rule municipal corporations only have such powers as are expressly granted by the legislature,⁶² each statute must spell out in lengthy detail the exact authorized acts that a city may carry out. Thus, whenever a city official could not find the requisite statutory authority needed to accomplish a certain task, the legislature, if willing, had to amend the statute to legally sustain his actions. In addition to the obvious disadvantages of such an inefficient system, the statutes themselves became a compilation of a host of specific acts passed in a haphazard "as needed" manner.⁶³

These laws are never updated. The only way the statutes are changed is through the continual addition, at the request of local officials, of more powers. Consequently, Missouri municipal law is a kind of hodgepodge of the old and the new—a potpourri of nostalgia. It is possible in a single statute to trace the passage of time as its descriptions move from one era to another. The best examples are the statutes authorizing a city to license, tax, and regulate various activities and occupations. Listed among a second class city's many powers is the right to regulate, tax, and license lightning rod agents, corn doctors, masseurs,⁶⁴ horoscopic views, moving picture exhibitions, cycloramas, panoramas, public masquerade balls, fortune tellers, palmists, lung testers, buggies, keepers of knife and board and cane racks, and magnifying glasses.⁶⁵ Other vital powers include the authority to enact regulations concerning the width of tires on wagons, automobiles, and all vehicles drawn by a horse or powered by electricity, gasoline, or steam;⁶⁶ the power to prohibit all games, amusements, or practices tending to frighten horses;⁶⁷ and the authority to compel persons having horses or mules standing on the streets to fasten or hitch them.⁶⁸

60. §§ 72.010-.040, RSMo 1969 define by population the permissible classes of Missouri cities. Class 1, over 65,000; class 2, 27,500-100,000; class 3, 3,000-30,000; and class 4, 500-3,000. A city has only such powers as are specifically authorized by the statutes for its particular class. However, the Missouri Constitution authorizes any city with a population of 5,000 or more people to construct and adopt its own charter. Mo. CONST. art VI, § 19. The constitution further states that a charter city has all the powers the General Assembly has authority to grant to it. *Id.* § 19 (a).

61. R. KARSH, *THE GOVERNMENT OF MISSOURI* 168-73 (1966).

62. *Hays v. City of Poplar Bluff*, 263 Mo. 516, 173 S.W. 676 (En Banc 1915); *City of Independence v. Cleveland*, 167 Mo. 384, 67 S.W. 216 (1902); *Kennedy v. City of Nevada*, 222 Mo. App. 249, 281 S.W. 56 (K.C. Ct. App. 1926).

63. REPORT, *supra* note 53, at ii.

64. With the recent increase in massage parlor business, this power to regulate and tax is still quite timely.

65. § 75.110 (18), RSMo 1969. These outdated terms and provisions were included in an amended version of this law that was enacted in 1953.

66. § 75.110 (19), RSMo 1969.

67. § 75.110 (34), RSMo 1969.

68. § 75.110 (62), RSMo 1969.

Another shortcoming of Missouri local government law that arises from the character of the statutes is that they seem to induce or encourage litigation over interpretation of a city's statutory power to act. Such lawsuits are monetarily wasteful and time-consuming. Consider the following "landmark" decisions. In the case of *Moots v. City of Trenton*,⁶⁹ the Missouri Supreme Court ruled that the city of Trenton could not levy a license tax on juke boxes because such machines were not specifically named in the statute under consideration. And in *Keane v. Strodtman*,⁷⁰ a municipal ordinance imposing a license tax on persons engaged in the business of erecting, maintaining, and repairing awnings was invalid for lack of any authority under the statutes. These two cases and others like it have little significance for anyone but the parties directly affected, although advocates of home rule could argue that adoption of a charter would eliminate disputes of this nature. Apparently these proponents must have been successful in view of the complete absence of first and second class cities still taking their mandate to govern from statutes.

The remainder of the cities in Missouri are mostly third or fourth class cities. (Missouri also has towns, villages, and special charter cities.) The state constitution forbids more than four classifications of cities.⁷¹ Sections 72.010-.040 set up four categories of cities by population.⁷² In spite of the constitutional prohibition the Governor's Advisory Council in its research discovered over 167 additional classifications of municipalities based either on population or location.⁷³ It would seem logical to conclude

69. 358 Mo. 273, 214 S.W.2d 31 (1948).

70. 323 Mo. 161, 18 S.W.2d 896 (En Banc 1929).

71. Mo. CONST. art. VI, § 15. However, the Missouri Supreme Court has held that the General Assembly can make further classifications without regard to the general classifications. *City of Lebanon v. Schneider*, 349 Mo. 712, 163 S.W.2d 588 (En Banc 1942).

72. See note 60 *supra*.

73. REPORT, *supra* note 53, at 12. Some of these classifications and sections of the Missouri Revised Statutes referring to them are as follows:

Cities of less than 30,000 inhabitants

Public Parks, § 90.500, RSMo 1969.

Power to build and maintain sidewalks, § 88.863, RSMo 1969.

Cities of 30,000 or less

Storm sewers along railroad right of way, § 398.670, RSMo 1969.

Cities of 100,000 inhabitants or over

Fire department regulation, § 87.380, RSMo 1969.

Cooperation of cities with drainage districts for flood protection, § 70.330, RSMo 1969.

Municipal and school election procedure in Clay County, § 119.040, RSMo 1969.

Cities of 300,000 to 700,000 inhabitants

Cost of appeal to be paid by city when the defendant is acquitted of violating a city ordinance, § 98.027, RSMo 1969.

Cities of 400,000 inhabitants and over

Scales of weights and measures, § 413.380 (2), RSMo 1969.

Additional bonding authorization for national parks or plazas, § 95.527, RSMo 1969.

Cities of over 450,000 inhabitants

Pension system for city employees, § 95.540, RSMo 1969.

This information is quoted from Salsich, *Local Government in Missouri: The Crossroads Reached*, 32 MO. L. REV. 73, 75 n.14 (1967).

that given the large number of different statutes and the numerous classifications in this area of the law, inconsistencies would be prevalent. And, in fact, such a conclusion can rather easily be proved. Sections 122.100, 122.170, and 122.500-.590 contain regulations applicable to elections in first and second class cities. There are no such provisions covering third and fourth class cities. Sections 79.490-.510 set up procedures for the disincorporation of fourth class towns, but no statutes provide this procedure for the other three classes.⁷⁴ In fourth class cities law enforcement officials may enforce state law and municipal ordinances, but policemen in third class cities do not have this dual authority.⁷⁵

The governing body of a first class city has the power to prohibit kite flying and hoop rolling when it would frighten horses,⁷⁶ and the power to regulate the use of candles and other lights in stables and houses.⁷⁷ This vital and critical regulatory power has not been extended to second class cities. Under section 94.110 a third class city council has the power and authority to levy and collect a license tax on feather renovators. No other municipality can do this. The fourth class cities can claim that they are the only cities in Missouri with the power to regulate and collect a license tax on tipling houses.⁷⁸ For some unknown reason in 1945 the fourth class cities lost their power to license and tax hay scales (by amendment to section 94.270), but fortunately for third class cities the power to tax this source of revenue still exists.⁷⁹ Also, by amendment in the same year, the fourth class cities were deprived of their right to tax drummers,⁸⁰ but all other classes of cities still possess this authority.⁸¹ Why these inconsistencies exist can not be answered. Although it is only speculation, perhaps the failure to coordinate the local government statutes at the time of enactment and the fragmented manner in which they developed contributed to the problem.

At the time it published its report, the Advisory Council proposed to wipe these statutes off the books and replace them with a single "General Law City Code."⁸² This code was to be the law governing all cities' operation except those controlled by constitutional and special charter.⁸³ The Council started working to compile all the statutes affecting municipalities by class and by function with the goal of drafting the general law from this compilation.⁸⁴ Unfortunately, a check with authoritative sources at

74. REPORT, *supra* note 53, at 13.

75. §§ 85.561 (3), .610, .620, RSMo 1969; Salsich, *supra* note 73.

76. § 73.110 (34), RSMo 1969.

77. § 73.110 (50), RSMo 1969.

78. § 94.270, RSMo 1969.

79. § 94.110, RSMo 1969.

80. Mo. Laws 1945, at 1224, § 1. Webster's Dictionary gives several definitions of the word drummer. A drummer can be a traveling salesman; one who plays a drum; or a large cockroach (*Blaberus giganteus*) of Central America that beats on wood as a sexual call. WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 695 (1961).

81. §§ 94.110, 75.110 (18), 73.110 (17), RSMo 1969.

82. REPORT, *supra* note 53, at ii.

83. *Id.* at 13-14.

84. *Id.*

the Missouri Municipal League and the state Department of Community Affairs has shown that the project has stalled. Apparently, pressure to write a general code has slackened due to the recent passage of the home rule amendment which permits smaller cities to draft their own charters. And yet this mass of statutory law still clutters the books. For reasons painfully clear, someone must resume work on the code so that the General Assembly can enact it into law as quickly as possible.

IV. CONCLUSION

It is obvious that there are problems with the statutes of Missouri. An inexperienced person might place the blame with the Revisor of Statutes. The holder of this office, it is true, is charged with the continuous revision of the state's laws. But, in Missouri, it is not the Revisor's job to work for major and drastic changes in the substantive law. Instead he is charged with correcting mechanical defects in the law. He organizes and indexes the statutes and corrects minor errors.⁸⁵ So it is wrong to place the blame on the Revisor.

A statute book which has been revised by competent persons may still contain laws that are obsolete and inconsistent with the needs of modern society.⁸⁶ Ultimately, the General Assembly must take the responsibility and free current law from the grip of outdated law. Unfortunately, legislators have all they can do to keep abreast of current problems. There is too little time that can be devoted to the task of what one might call negative legislation. There is a definite need for a standing body to continually study areas of the law that need major overhauls and propose recommended alternatives to the General Assembly.

The present situation in Missouri is not good enough. Through no fault of his own, the Revisor of Statutes is just not able to suggest needed substantive changes in the law and in actuality, he should not have to—this is not his job.⁸⁷ At present the impetus for reform of the law comes from many sources. Three very important sources that the General Assembly depends on are bar, ad hoc, and supreme court committees. These committees are composed of people, who, in addition to their regular jobs as lawyers, judges, and law school professors, have volunteered their time to take on this extra responsibility. The Committee to Draft a Modern Criminal Code for Missouri, for example, is an ad hoc committee. Although it and other groups like it perform valuable work, it is at best a makeshift arrangement.⁸⁸

By far the most superior plan is that adopted by the state of New York. The Law Revision Commission has been in existence in that state for over 35 years. It is a permanent body of full time legislative experts and advisors whose job is to aid the legislature in keeping the law in touch with modern

85. See text accompanying note 17 *supra*.

86. Wheeler & Wheeler, *Statute Revision: Its Nature, Purpose and Method*, 16 TUL. L. REV. 165, 197 (1942).

87. See text accompanying note 17 *supra*.

88. O'Connell, *Need for Statutory Revision In Oregon*, 23 ORE. L. REV. 93, 123 (1943-44).

conditions and repealing obsolete law.⁸⁹ The Commission only makes recommendations; it has no legislative power.⁹⁰ It receives suggestions from all over the state as to potential areas of needed law reform.⁹¹ It examines appellate opinions for judicial pleas to the legislature to change case law;⁹² it considers proposed changes in the law suggested by the American Law Institute; and it studies proposals for uniform legislation in this country.⁹³

The advantages of such an agency are obvious. There is one body charged with updating laws. Members of the bar are not asked to voluntarily serve on ad hoc committees. It is not necessary to wait until certain laws degenerate to such a point that legal reform can not be put off any longer. The members of a body such as that implemented in New York would constantly seek the better solution. Reform would thus be achieved before crisis.

The advantages to the development of the private law are especially beneficial. The impetus for change in the private sector of the law is traditionally slow. Legal practitioners familiarize themselves with pitfalls and deficiencies and are thus able to compensate for weaknesses in the law. Because of this no one really takes the initiative to push through reforms in private law. It tends to be ignored.⁹⁴ When bad laws affect wide segments of the public, the legislature is eventually under so much pressure that change is brought about. But this is not the case with laws affecting private transactions and dealings between individuals. If you do not want to get tripped up by some anachronism in Missouri law, the only advice given is, see your lawyer. How many times have law students heard their torts, contracts, or trusts professors remark that Missouri law is out of touch; that the courts are adhering to faulty precedents; that the rationale behind a certain statute or judge-developed law is completely wrong. But who takes the ultimate responsibility in this area? What is everybody's business tends to be nobody's business, and thus the defects are perpetuated by the failure to take action.

The establishment in Missouri of a permanent body like the New York Law Revision Commission would eliminate this inaction. It would relieve the legislature of much tedious and time-consuming work and establish a central body through which all suggestions for reform of the law, especially in the private area, could be channeled for further study. This special body would have the responsibility of freeing our laws of obsolete provisions through recommendations to the General Assembly for passage of new laws. It would then be possible to pinpoint someone in Missouri who could be the initiator of changes in our laws; someone charged with the obligation and accountability to do what needs to be done.

The adoption of a plan similar to the New York Commission would

89. N.Y. STATE LEG. DOC. No. 50, at 54 (1934).

90. N.Y. STATE LEG. DOC. No. 70, at 10 (1924).

91. N.Y. STATE LEG. DOC. No. 60, at 8 (1935).

92. *Id.* at 15.

93. *Id.*

94. Stone & Pettee, *Revision of Private Law*, 54 HARV. L. REV. 221, 224 (1940).

not mean that the office of Revisor of Statutes would be abolished. On the contrary its work is still very important. Perhaps the ultimate solution would be the establishment of some sort of "legislative service bureau" whose work would include (1) substantive law reform, (2) procedural reform, (3) statutory revision and editing, and (4) aid to the members of the legislature in bill-drafting and research.⁹⁵ Implementation of a plan such as has been suggested would be a positive step towards upgrading legislative skills.

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95. *Id.* at 239.