

1946

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## Recommended Citation

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<https://scholarship.law.umn.edu/mlr/1167>

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## BENCH AND BAR

THE LEGISLATIVE PROCESS, WITH PARTICULAR  
REFERENCE TO MINNESOTA

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## I

## THE PROBLEM OF LEGISLATION IN MINNESOTA

LEGISLATURES are judged by their product. Laws are the main product of any state legislature and its value to the people is measured by the excellence of its product.

In the Act of Congress, entitled "An act to establish the Territorial Government of Minnesota" approved March 3, 1849, it was provided "That the legislative power of the territory shall extend to all rightful subjects of legislation, consistent with the Constitution of the United States and the provisions of this act; no tax shall be imposed upon the property of the United States; nor shall the lands or other property of non-residents be taxed higher than the lands or other property of residents. All the laws passed by the legislative assembly and governor shall be submitted to the Congress of the United States, and if disapproved, shall be null and of no effect."

This act prescribed the manner in which laws were to be enacted by the legislative assembly and approved by the governor, but failed to provide the form of enactment to be followed. Consequently, the acts of the Territorial Legislature varied in form, following the differing styles in use by legislative bodies of that period. The enacting clause formed the beginning of the first section, which was unnumbered. Occasionally there were additional enacting clauses inserted at the beginning of the other sections. The whim of the draftsman governed in this respect. The enacting clause was later placed after the title of the act and ahead of the first section, which was numbered. The exact form of the enacting clause is now set out in the Constitution, art. 4, s. 13.

Except as provided by the Constitution of the United States and the Organic Act of Minnesota, the territorial legislature could enact laws upon any subject which was a "rightful" subject of legislation. It could enact public and private acts, and many special or private acts were passed.

For example, we find acts: "granting a divorce to Louis Laramie from Wa-kan-ye-ke-win, his wife"; "to dissolve the marriage contract between Stanislaus Bielanski and Mary Bielanski"; "grant-

ing to Franklin Steele the right to establish and maintain a ferry across the Mississippi River"; "providing for laying out and establishing a Territorial Road from Rum River to Crow Wing"; "to provide for the alteration of the St. Paul and Point Douglas Road"; "to incorporate the St. Paul and St. Anthony Plank Road Company"; "to incorporate the Louisiana and Minnesota Railroad Company"; "to incorporate the Mississippi Boom Company"; "to incorporate the Mississippi Bridge Company"; "to incorporate the town of St. Paul, in the County of Ramsey"; "to incorporate the St. Paul Institute"; "to incorporate Minnesota Lodge No. 1, I. O. O. F."; "to incorporate the city of St. Paul, Ramsey County, Territory of Minnesota"; "to organize Pembina County"; "to establish the County of Hennepin"; "relative to the County officers of Wabashaw County"; "to establish the County Seat of Hennepin County"; "to restore to Ephraim H. Whitaker his civil rights as a citizen of the United States"; "changing the name of Ann Elizabeth White to Ann Elizabeth Tinker"; "to provide for the improvement of navigation of the Minnesota River"; "to secure the free passage of logs and lumber down Cannon River"; "relating to the distribution of the School Fund in Sibley County"; "to authorize the Commissioners of Scott County to borrow money for the purpose of erecting county buildings"; "to authorize the Common Council of the city of St. Paul to issue bonds for certain purposes"; "relative to free schools in the City of St. Paul"; "to attach a certain portion of Sibley County to Le Seuer County"; "to extend the corporate limits of the town of Henderson"; "to authorize the Regents of the Minnesota University to borrow money"; "to extend the time for the collection of taxes in Dakota County"; "to define the boundaries between the counties of Rice and Dakota"; "authorizing the proprietors of the town of Carver to cause the same to be surveyed, and a new plat thereof recorded"; "to extend Rice Street in the City of St. Paul"; "relative to an Improvement in the City of St. Paul"; and "to change the name of the Root River Valley and Southern Minnesota Railroad Company."

The original state constitution did not forbid special acts. Beginning with 1858 and ending with 1881, the enactments of the legislature were divided into "General Laws" and "Special Laws." During this period there were twenty-four sessions of the legislature, including two extra sessions. The "General Laws" enacted at these sessions occupied 4,202 printed pages, while the "Special Laws" occupied 8,566 printed pages.

On November 8, 1881, the voters ratified an amendment to the Constitution, art. 4, which prohibited the legislature from enacting any special or private laws in eleven enumerated cases, but provided that it might repeal any special law relating to those subjects.

This amendment failed to stop the avalanche of special legislation. In 1883 the general laws covered 224 printed pages, while the special laws covered 456; in 1885 the general laws amounted to 355 pages, and the special to 552; in 1887 the figures rose to 383 pages for the general and 1,037 for the special; but the all-time high was reached in 1889 with 530 pages of general and 1,227 pages of special; and in 1891 the general laws amounted to 370 pages and the special to 1,104.

A more drastic amendment was proposed by Laws 1891, Chapter 1, and ratified November 8, 1892. This amendment is the present section 33. Since the adoption of the 1892 amendment few laws have been passed bearing the label "special."

The prohibition against special legislation on certain subjects does not prevent the legislature from dividing any subject of legislation into different classes for different treatment, provided that the division is founded on a proper basis. The legislature has considerable discretion in this and the courts will not interfere to declare a statute invalid unless the classification is "manifestly arbitrary." The fact that there is only one member in the class established is immaterial if the basis of classification is a proper one. Population may be made the basis of classification in some cases.

One provision in the constitution is "No law shall embrace more than one subject, which shall be expressed in its title." The object of this provision was to secure to each distinct measure of legislation a separate consideration and decision, dependent upon its individual merits, by prohibiting insertion therein of matters in no way related to or connected with its subject, and by preventing the combination of different measures, dissimilar in character, purpose, and object, but united with the sole aim of acquiring sufficient support to secure passage, and to prevent the passage of acts bearing deceitful and misleading titles. This tends to protect the members of the legislature and the public against fraud and to guard against the passage of bills the titles of which give no indication of the substance of the matters contained therein. The Constitution does not require that the title disclose the purpose and scope of the act, but it should give the subject of the bill in general terms and with the fewest words.

"Subject" is given a broad and extended meaning, so as to give the legislature full scope to include in one act all matters having a natural or logical connection. To constitute duplicity of subject an act must embrace two or more dissimilar and discordant subjects that cannot fairly be considered as having any legitimate relation to each other. It is necessary that the act embrace one general subject. This means that all matters treated should fall under one general idea, be so connected with or related to each other, either logically or in popular understanding, as to be parts of or germane to one general subject.

It is not necessary that the title of an act embrace an abstract or catalog of its contents.

An existing statute may be amended in three ways. The particular words which it is desired to change may be stricken out and other words added or substituted. The section may be re-enacted in the form in which the law is desired to stand. A new act may be passed changing the particular provision of the law.

The method, to re-enact the section in the amended form, is far better than to enact a new law as it prevents confusion and makes the law less voluminous and easier to locate. This method is the one adopted in this state.

There is no provision in our statutes regulating the manner of amendment. This is covered by the rules of the Senate and House, which read: "If the bill is for an amendment of a present statute, it shall contain the full text of the chapter, section, or subdivision to be amended. In the proper place in such text insert the words and characters constituting the amending matter and underscore the same, and when the bill is printed, put such amending matter in italics. The words and characters to be eliminated by the amendment are to be stricken out by a line drawn through them, and when the bill is printed, capitalize them and enclose the same in brackets."

The grist of bills turned out by the legislature is lampooned by the press and ridiculed by the bar. Until recently little attempt has been made to understand why our laws are so often poorly phrased, so hard to understand, and often unconstitutional. Perhaps the fault lies largely in the limitations placed on legislative action by our constitution. We have constructed political machinery by means of which we attempt to cut down the power of the legislature for evil. In doing this we have also reduced its power for good. Such limitations force our legislature to work under many difficulties. Some of these difficulties can be removed

without changing our constitution. Many amendments to the constitution were apparently drawn with some temporary or local abuse in mind. In other instances when our legislators wrongly used their power, we took away that power permanently, instead we should have removed the legislator permanently. By this we placed restrictions in our constitution which tie the hands of our legislators and encourage efforts to accomplish indirectly that which is forbidden. Too many laws have been placed in our constitution.

Another factor handicapping our legislative processes is the large number of new recruits elected. This is one of the main causes for the mass of poorly drawn laws for which it is blamed. Many members of the legislature are inexperienced, being to a great extent men serving their first term. Many of them have had no training or experience to prepare them for the task of framing legislation. Even the members of the legislature who have had experience are handicapped by the fact that there is insufficient time during the rush of business of the session for extended consideration of the content and form of legislative measures. In the House there are now 131 members; in 1937, sixty-three of them had never before served in the legislature; in 1939, there were sixty-nine; in 1941, thirty-four; in 1943, thirty-six; and in 1945, twenty-five.

In this state we have biennial sessions of the legislature in odd-numbered years, with the session limited to 90 days. The result is that an effort will be made to crowd through the "hopper" all the legislation public opinion demands. In 1939 there were 3,090 bills introduced, and of these 447 were enacted; in 1941, 3,057 bills were introduced, 555 became laws; in 1943, the number of bills introduced was 2,782, and 666 were enacted; and in 1945, the number of bills was 2,761, with 615 enacted.

This is an enormous amount for the legislators to deal with. They should be free to deal with the content of bills, while the control over the form thereof should be delegated to those who by long training have become expert in setting forth in clear language the legislative purpose proposed for adoption. The advantage of this is evident. The efforts of the legislators can then be devoted to decisions on policy.

A very large part of the litigation and the miscarriages of intention on the part of the lawmakers and the failure of our people to obtain by legislation the relief which they wish to have and which their representatives in the legislature wish to give them comes

from the fact that the laws are carelessly drawn; that laws are drawn without sufficient study or an adequate understanding of what is going to be the result of putting them into the same system with existing laws under existing conditions.

There are many things which hinder legislators in the performance of their duties. Many of these difficulties cannot be removed in this state except by constitutional changes, but others are within the power of the legislature itself to remove. It can create, by law or by its rules, a system of legislative procedure for the carrying on of its own business.

In the main, our legislature has a good system of legislative procedure, comparing favorably with that of other states. Only lately, however, has any attention been paid to securing improvement in the form of bills introduced. For many years, the form of bills depended solely upon the whim of the draftsman. It is true that there were some requirements in the rules regarding the drafting of bills, but seldom did a draftsman pay any attention to them, even if he knew about them. In 1923, the House created the position of Revision Clerk, whose duty it was to see that all bills should conform to the rules. This person was usually not a lawyer, was not familiar with the statutes, and had no knowledge as to what constituted errors in drafting. In 1937, the House created a Legal Bureau, consisting of two attorneys, to draft bills for its members, and in 1945 the Senate added to its list of employees one attorney for drafting bills for members. This is the existing situation.

The form of bills is properly left in the hands of the legislature. However, few efforts have been made either by statute or by the rules of the legislature to regulate the condition in which bills may be presented. This lack of regulation shows a need for the establishment of higher standards in the management of the mechanical side of our lawmaking. When bills are introduced without safeguards as to form, the chances of error and of improper tampering with the phraseology are much increased. Especial attention should be given to the attempt to secure a high standard not only in the final form of the bill, the enrolled act, but also to the shape the bill shall have on introduction and during its passage. The rules of the Senate and House should fix this high standard. Supplement these rules by an efficient official drafting department. Such a combination will go a long way toward insuring that the form of the bills will be uniform, that tampering with the phraseology will be eliminated, that the bills will be phrased in proper

language, and that the danger of a clash with our numerous constitutional limitations will be greatly lessened.

The drafting of legislative bills is an important phase of legislation. During the past four sessions of the legislature 12,690 bills were introduced. Few members of the legislature have any legal training and the attention of all members is directed to the substance of the bills rather than their form. Careful consideration of only the substance of these bills by legislators is difficult; and a checking of the drafting is impossible, since some errors in drafting do not appear on the face of the bills.

If the legislature desires to enact laws which will not be found to be violative of our constitution, which fulfill the purpose for which they are passed, and which do not modify statutes which they are not intended to affect, the bills presented to it must be properly drawn.

Drafting legislative bills is a tedious task and a technical problem. To do the job properly requires both a broad knowledge of law and great care in drafting. One attempting to draft a bill on an important subject cannot do so intelligently until he is familiar with the principles of common law involved and all the statutory provisions on the subject.

Many poorly drawn bills are presented at each legislative session. Some show that the draftsman had a mastery of the substance of the law but was unacquainted with the fundamentals of good bill drafting.

The major technical services for state legislators which have developed in this country are statutory revision, bill drafting, and legislative reference and research. One of these services, statutory revision, Minnesota has adopted.

Laws 1939, Chapter 442, created the office of revisor of statutes. Among other things, the revisor was to formulate and prepare a definite plan for the order, classification, arrangement, printing, and binding of the Minnesota Statutes and, after the close of each regular session of the legislature, to prepare and deliver printer's copy for a volume which shall contain all general statutes in force. Laws 1943, Chapter 507, authorized the revisor to prepare printer's copy for the session laws. Laws 1945, Chapter 462, authorized the revisor to continue the revision of all general laws in force after each regular session of the legislature. Thus, the legislature established a method of keeping our body of general statutes in such form as to make the laws therein quickly available and easily accessible to the user.



The second service, bill drafting, is being performed in a limited measure by attorneys employed by the Senate and House during the legislative session.

The third service, legislative reference and research, seems to have been entirely overlooked.

All of these three types of legislative service are universally acknowledged to be necessary to the reasonably efficient functioning of state legislatures; where established, they function without arousing serious opposition, and legislators do not hesitate to make use of them.

In those states which have all three of these services eight of them, Arizona, California, Colorado, Illinois, Kansas, Pennsylvania, Indiana, and Michigan, have placed them in one department, and two, Massachusetts and Wisconsin, have placed them in two departments. In Massachusetts the bill drafting and revision are combined, while in Wisconsin the bill drafting and research are together.

In those states which have but two of the services, it is usually bill drafting and research, united under one head, and given an independent status.

Although these services were designed primarily to assist the legislature that body has seldom been entrusted with the power to supervise them, except in those cases where the function of bill drafting is separate from the reference work.

The power of appointment where a single agency exists has more frequently been given to the governor than vested in the legislature. However, this form of control is not widely favored. The judicial department has been considered less frequently as an appointing agency than the other branches of government. However, the office of Revisor of Statutes in Kansas, which performs nearly all of the legislative reference functions, was created under the control of the Supreme Court. The location of the power of appointment is not as important as it is to have the agency non-political.

In this state all these services could readily be placed under the supervision of the revisor of statutes. However, if the legislature desires to have the bill drafting and reference service under its immediate control, a plan similar to that adopted by California could well be followed. In that state the legislature established a legislative counsel bureau in 1913, which has been functioning continuously ever since. The bureau is in charge of a chief, known as the Legislative Counsel of California. He is selected by concur-

rent resolution at the beginning of each regular session and serves until his successor is selected and qualified. He is chosen without reference to party affiliations and solely on the ground of fitness to perform the duties of his office.

## II

### BETTER LEGISLATION IN MINNESOTA

Before worthwhile suggestions can be made for the betterment of legislation in this state it is necessary to obtain a true picture of what the legislator does and how the legislature operates.

The work of the legislator and of the legislature is unique. It is separate and distinct from the work of other state personnel or the requirements of other public offices.

According to the popular conception, the work of a legislator is confined to attending sessions in St. Paul on the legislative days of a four-month period and voting on bills. Such summary disposition of a legislator's work, functions, and responsibility is unfair. In any large body of men exceptions will be found, but the great bulk of our elected representatives are industrious, sincere, faithful, and conscientious.

What is the work of the legislator during the session? There is actual attendance at the sessions. There is work on the standing committees. Each legislator serves on several committees, to which bills are referred for attention. Bills must be considered. There is the following-up of measures which he has introduced, efforts to eliminate opposition, requiring many conferences. Add to that conferences with representatives of the many groups who are interested either in the passage or defeat of legislation, conferences with state officials for their views, approval or rejection of proposed or pending bills. This is the time that constituents focus their efforts to obtain the benefits of legislative activity. All mail has to be read and answered, because the bulk of it comes from sincere and responsible people who seek to aid their representatives. The legislator is expected to provide "open sesame" for anything from a letter of introduction to the securing of some concession. During the session St. Paul becomes a Mecca for out-of-town visitors who expect their legislator to pay host, at his own expense. In many instances, the legislator spends during the four-months period the major portion of the compensation paid him.

Many people think the work of the legislator is over the day

the session ends and that the compensation is more than enough pay for the period. When the session is over the heavy pressure is off but the work continues. Constituents still come in pressing for intervention of one kind or another with various units of government. Suggestions are made for legislation. Conferences are held for the obtaining of material which will help put through the bill that was defeated or discarded. Research is necessary, and if not done by the legislator himself, some arrangement must be made to obtain the facts. The organizations interested in legislation continue to send letters, reports, and propaganda material. None of it can be neglected. Numerous invitations to attend affairs and to make speeches must be accepted. For a legislator the community and group needs come first, and private business must suffer.

If the legislator achieves any standing he may become a member of an interim committee which operates after the session closes. That is a weighty responsibility. There is no extra compensation, merely the reimbursement of the travel and hotel expenses. There are meetings to be held. There is material to be studied. Conscientious functioning involves a great drain, both on time and on the pocketbook. Reimbursement never actually covers the outgo.

If one is a leader, particularly of the majority group, the drain on his time and pocketbook is even greater. The leaders bridge the gap between the legislative sessions. There is the matter of handling the problems which arise between sessions and preparing for a legislative program in the next session. Problems are in a constant state of flux, and conscientious men do not lose sight of them.

Most of the state legislatures have not modernized their procedures to keep pace with the increased tempo of modern times. This default can be cured by a general overhauling and modernizing of their procedural machinery. This should be done by the legislatures themselves.

Improvement of state legislatures does not lie alone in the speeding up of the legislative process. The desire for speed should not be allowed to affect the quality of legislation or the loss of any of the safeguards which protect our citizens and the various minority groups. The first aim should be to improve the quality of our legislation.

The question of saving time usually takes undue significance in a discussion of the improvement of legislation, especially among legislators. Some of the worst mistakes our state legislature has made have been due to legislation hastily passed without proper

consideration in the closing hours of a session in order to hasten adjournment. It is then that many bills of great importance are hurried through when the members are tired, tempers are short, and a spirit of "Let's clean up and get out of here" prevails. Such legislation usually results in confusion and necessity for many amendments at the next session.

The task which confronts a state legislature is that, not only of getting a statute drafted, but of determining the policy upon which it should be based. To determine such policy the legislature must understand the situation for which a change is asked, not only from the point of view of the group which may be asking for the change, but from that of other groups which may be affected by it; and it must also make a decision as to whether, in the interest of the general public, the situation requires a change. After determining that there is a need for correction, the legislature must determine what kind of remedy should be applied. It may be that an amendment to an existing law will accomplish the desired result or it may be that a new law must be prepared. Once having determined the form of remedy, the legislature must fix upon the method of enforcement. It must find the proper administrative agency to carry out the law and must equip it with the proper means for putting the legislative will into effect.

To perform its primary function of lawmaking intelligently, the legislature must have available relevant, complete, and objective data on every conceivable subject. Members contemplating legislation need a canvass of all available facts pertinent to the proposed measures. Committees which must pass judgment on bills referred to them require adequate independent analyses to offset the self-pleading briefs and memoranda filed by advocates and opponents of particular measures. To meet the need for expert assistance the legislature has created, as fact-finding agencies, special joint legislative committees and temporary commissions.

The one most frequently used is the special joint legislative committee. Its main function is to investigate and study special problems and to recommend remedial action. It usually consists of three or more members from each branch of the legislature, one or more of whom are representatives of each major political party. It is created by a resolution initiated and adopted by one house and concurred in by the other. A concurrent resolution does not require the approval of the governor, but becomes effective immediately upon its adoption by both houses.

Such a concurrent resolution recites the facts and circumstances

which, in the judgment of the legislature, makes it necessary to create the committee. It then provides for the number of legislators who will be members of the committee and the manner of their appointment, describes the scope and purpose of the study, inquiry, or investigation to be made, enumerates the powers of the committee not only with respect to its organization, the conduct of its procedure, and the employment of its research and clerical assistants but also with respect to the time, place, and manner in which it shall conduct its hearings, the witnesses it may summon, and the testimony and evidence which it may receive, fixes a time by which it shall conclude its labors and report to the legislature its findings, conclusions, and recommendations, and allocates to the committee from the appropriation for legislative expenses a sum of money which, in the opinion of the legislature, will be reasonably required for the performance of the work delegated to the committee.

The record of accomplishment of joint legislative committees over the years is one in which the legislature and the people of the state may take just pride. There is a striking variation in the work of individual committees. Most reports reflect the leadership of the chairman, a constructive plan of investigation, the expertness of the staff, and a passion for comprehensiveness and accuracy. A few reports are mediocre documents hastily assembled to meet the deadline date set in the resolution.

The uneven quality in the work of these committees results largely from the fact that each new committee launches its inquiry without the benefit of the experience, records, or data of other committees. It must mark time while it looks for office space and for an expert staff willing to undertake a temporary job. Certain committees, after completing their labors, leave inadequate records or no published materials. Under these conditions committees, without realizing it, occasionally duplicate, sometimes at great cost, research completed by other committees. When an interim committee is created to reappraise a problem previously explored by a former interim committee, time is lost in assembling the basic data and in locating materials that should have been left by the former committee.

Too often the timing of a committee report vitiates its effect. A report can be of maximum use only if available early in the session. Most reports are not published until the closing days of the session and, consequently, do not receive the consideration they deserve. The resolutions creating these committees are frequently at fault in this respect.

To avoid costly repetition of research and unnecessary waste of time, all joint legislative committees and temporary commissions should be required to turn over their records and data to a central legislative research agency. Contents of all reports of interim committees and commissions obtainable should be indexed and thereafter maintained on a cumulative basis. This would make available the vast body of reference materials gathered by committees and commissions and save duplication of effort.

Joint legislative committees are incomparable in investigating special problems and in meeting particular crises and emergencies.

Temporary commissions are created by law rather than by concurrent resolution when it is thought advisable to include laymen in an inquiry or survey. The provisions of the laws creating temporary state commissions are virtually identical with the provisions contained in the concurrent resolutions creating joint legislative committees. Temporary commissions are also established to cope with particular crises and problems. In some ways they are better equipped to handle certain problems. Citizens who have achieved prominence in their specialties are frequently appointed as members of commissions, where they work hard and gratuitously and give a great deal of their knowledge and experience in the interest of the state. Temporary commissions share the virtues and failings of joint legislative committees. The same failings that mark the performance of some joint legislative committees have dogged some temporary commissions as well.

Notwithstanding the availability of these legislative research agencies, there are serious omissions and defects in legislative research facilities. These committees and commissions are necessarily limited to a few major fields of inquiry. The legislature actually does not have its own independent sources of information to which to turn for expert, objective, factual, and complete analyses of the other numerous problems of state-wide concern on which it must take action. The cost would be prohibitive for the legislature to create an interim committee or a commission every time it wanted to investigate a problem thoroughly.

The individual legislator is particularly handicapped by the lack of expert research assistance. When he attempts to formulate his policy as a necessary preliminary to the drafting of a bill, he finds a dearth of background information. Unable to do research in highly specialized fields because of lack of training or lack of time, the legislator reluctantly pigeonholes what would appear to be excellent ideas for legislation.

At the command of the legislature should be adequate research facilities so that it will have authoritative data at all times on the basis of which to accept or reject legislation. No expert independent analysis of bills is now available to legislators.

Standing committees are seriously handicapped by this gap in legislative fact-finding facilities. With few exceptions the legislature upholds the verdicts of its committees. Those interested in legislation recognize this fact and flood committees with briefs and memoranda designed to influence committee members. This information does not represent an objective, impartial, independent approach to the bills before a committee. The individual legislator has at present nowhere to turn for unbiased assistance in obtaining an objective analysis of proposed measures.

The legislature requires a permanent research agency staffed by experts to supplement its present fact-finding facilities. The elected representatives of the people of this state should not be denied the assistance available. It is essential that the legislature be geared to handle the complex problems of today. The most important function of representative government is the determination of policy. In exercising this function the legislature will continue to be handicapped until it has access to complete unbiased information on which, in the last analysis, policy should be based.

A number of state legislatures have pioneered in the establishment of permanent research agencies. A review of their experiences will perhaps suggest the type of legislative research agency that would be most expedient for the Minnesota state legislature.

Since 1933 fourteen state legislatures have created permanent legislative research agencies freely available to members for the study of complex problems and for the analysis of legislation. The Kansas legislature was the first to create an agency for continuous research on legislative problems and was followed by the legislatures of Colorado, Virginia, Kentucky, Connecticut, Illinois, Nebraska, Pennsylvania, Maryland, Maine, California, Missouri, Indiana, and Alabama. Most of the research agencies have been termed "legislative councils" although there are certain differences in the functions of these councils. In California, the Joint Legislative Budget Committee, normally concerned with fiscal affairs, has been assigned the comprehensive duties associated with legislative fact-finding agencies. Supervising legislative research in Pennsylvania is a Joint State Government Commission; in Missouri and in Maine a Legislative Research Committee; in Colorado a General

Interim Committee; and in Indiana a Legislative Advisory Commission.

Most of these agencies are fundamentally joint legislative interim committees engaged in a continuous study of legislative problems with the aid of a trained staff. Only in Kentucky is the executive branch represented. The legislators who supervise these research agencies represent all sections of the state and the relative party strength in each house. The tendency is to minimize partisanship and to emphasize the agency's role as a competent legislative staff service used by legislators to acquire and present unbiased factual information as a basis for legislation. In Missouri the Legislative Research Committee began its labors with both major parties equally represented.

In all the fourteen states the research staff is supervised by a legislative committee which generally deals with problems arising in the course of initiating and following through an inquiry. Only legislators are expected to determine the priority to be given to requests for research and the time to be spent on particular projects.

Appropriations for permanent state legislative research agencies range from \$7,500 to \$81,000 for the current biennium. The most active fact-finding agencies employ as a minimum five to twelve experts, generally a research director and several analysts, lawyers, and research and clerical assistants. When necessary the staff is supplemented by the retention of consultants, specialists, statisticians, and accountants for temporary periods. High standards have universally prevailed in the employment of research staffs. Salary rates for experts are correspondingly high, ranging from \$5,000 to \$10,000 per annum. Party lines have been ignored in the determination of the legislatures to equip themselves with a staff of unquestioned ability.

All of the legislative research agencies collect and analyze data pertaining to state government and the general welfare. At the request of legislators or legislative committees most of the agencies prepare research reports on varied subjects and analyze the effects of legislative proposals. In a number of states the work of interim committees and commissions is definitely implemented by the assistance of the legislative research agency's permanent research staff. On the theory that legislative activity should not cease with the passage of laws, legislatures have imposed upon nine legislative councils and research committees the added duty of examining the effects of previously enacted laws and constitutional provisions.

In some instances local conditions dictate supplemental func-



tions. The Kansas Legislative Council is empowered to study law enforcement and to make recommendations leading to the reform of local government. Kentucky requires its Legislative Council to consider periodically reports of the state auditor. The Nebraska Legislative Council studies taxation, the effectiveness of administrative methods, and the merit system as it relates to state and government employees. Over-all research, reference, and bill drafting duties come within the scope of the activities of the Missouri Legislative Research Committee. Six legislative research agencies also revise obsolete and conflicting statutes.

As originally conceived, legislative councils were expected to prepare a program in advance of the session. This function appeared to be essential in the forty-four states in which legislatures meet biennially and in the twenty-four states where sessions are limited to a specified number of days. Without some agency to give continuity to the legislative process between sessions it was feared that legislatures would continue to convene without a program and would adjourn in confusion without giving adequate consideration to measures introduced late. Most states did not have the numerous well-financed joint legislative committees and commissions common in Illinois, Pennsylvania and New York. No sooner did the early legislative councils begin to submit recommendations, than fears were voiced that legislative powers would be centralized in the members of the council, that the council would develop into a "little legislature," that only members of the council with access to a research staff would be in a position to introduce major legislation.

Although such fears are still raised whenever the "legislative council" type of research agency is discussed, they have proved to be without foundation. As legislators discover that there is no centralization of legislative power in the council, that the council is merely another legislative committee whose functions are to give preliminary shape to policy formation and to provide adequate factual backgrounds for any points of view, and that all responsibility or power still remains in the hands of the regular standing committees, this critical attitude of fear declines rapidly. The major contributions of a legislative council do not lie in the policies or bills suggested but merely in providing for all members of the legislature a thoroughly digested background on all major problems. The council has no legislative power. Its recommendations must stand on their merits, and council suggestions are approved not because it was the council that made the suggestion, but be-

cause the suggestion was based upon adequate fact-finding.

In the last few years, a number of legislative research agencies, particularly in the larger states, have tended to avoid active participation in developing a legislative program. They have confined themselves to the preparation of factual reports for legislators without recommendations, leaving the determination of policy and the drafting of legislation to legislators. Although the fact-finding agencies in Illinois, Missouri, and Nebraska have the statutory power to recommend legislation, they do not use it. Strict adherence to research functions on the part of the agency is more popular with legislators. The emphasis is on the proper staffing of the legislature to provide factual information on any subject to any legislator requesting it.

The powers given to the legislative research agencies reflect the willingness of most legislatures to give them unhampered access to sources of information. In most states, the statutes establishing the fact-finding agencies provide that they may utilize the services of executive and legislative agencies.

In all state legislatures serviced by permanent fact-finding agencies, legislators initiate requests for research and approve research reports before they are released. Requests are either informal or formal in nature. With respect to informal requests involving little intensive research, the staff generally prepares memoranda without requiring the approval of the members of the committee or council. No major research can be launched except by authorization of the legislative council or research committee. Such research is initiated either by legislative resolution or by a formal proposal filed by a member of the legislative committee. All legislators are completely free to submit proposals for research. The object of the committee is not to interfere with a legislator's right to adequate data, but rather to budget the time of the research staff, to determine what portion of the committee appropriation will be allocated to particular projects, to suggest to the research department the type of information that should be secured, and to decide upon the make-up and distribution of the final report. In the last analysis, the type of service the legislative research agency can furnish depends on the appropriation and the size of the staff.

Interim reports are released throughout the year and final reports about a month before the beginning of the session. Approval of the committee is required before a final report may be released. This procedure gives legislators an opportunity to inform themselves on the background of major problems before the opening

of the session. Because of this practice these reports frequently have more value than the reports of interim committees and commissions filed during the session at a time when legislators cannot give much attention to them.

The record of accomplishments of permanent legislative fact-finding bodies is impressive. They have produced a body of comprehensive and factual reports that touch almost every subject of state-wide concern. By the end of 1944, the Illinois Legislative Council, in existence seven years, had prepared sixty major research reports and 251 informal memoranda. Among its many contributions have been exhaustive analyses of tax delinquency, school administration, education of handicapped children, the veto power of the governor, financial responsibility in motor accidents, and administration of relief. In Kansas, the Legislative Council has released a series of reports that has earned nation-wide commendation. Among the 135 reports issued since its establishment in 1934 have been studies of old age pensions, soil drifting, potential sources of additional revenue from taxation, social security, state printing, legislative functions of administrative agencies, real estate assessment, operation of labor unions, personal property taxation, and the mortgage moratorium. The California Joint Legislative Budget Committee has made excellent studies of civilian defense, post-war public works, public printing, and has successfully recommended the reorganization of several administrative agencies. It is estimated that for every thousand dollars spent by the committee, approximately one million dollars is saved by the state. The Maryland Legislative Council has analyzed pension systems, tax sales, tobacco markets, and industrial life insurance, to cite but a few studies. Up to August, 1944, the Nebraska Legislative Council had prepared twenty-five major research reports and 200 minor reports and memoranda. Among its many outstanding accomplishments was a survey of the educational system. Organized in 1944, the Missouri Legislative Research Committee has issued a number of comprehensive reports on the use of the surplus for post-war construction, social security, and state certificates of indebtedness. While the legislative research agencies of Pennsylvania, Connecticut, Virginia, and Maine have produced a smaller number of reports, the studies have been exhaustive and have been used as a basis for legislation.

During the sessions the research staffs of the various legislative councils and research committees are of particular service to standing committees. At the request of these committees, they analyze

bills in detail, showing the social and economic effect of each proposal. Valuable assistance has been rendered to committees concerned with more technical legislation. Where previously committees depended for their information on memoranda filed by representatives of administrative agencies and interested private groups, they now have their own independent sources of information to which to turn.

Where permanent legislative fact-finding agencies exist, the work of interim committees has actually been facilitated. The permanent research departments have drawn up preliminary memoranda, thus saving valuable time, while investigating committees were engaged in looking for quarters and a staff. At the request of interim committees, the permanent legislative research agencies have analyzed particular problems, have prepared background materials and have aided in the preparation of reports. It has been felt in the larger states that there is no conflict between a permanent fact-finding agency and interim committees. One is engaged in acquiring and presenting objective data; the other is essentially a policy-making body.

There is no conflict in the aims of a legislative reference library and a permanent office of legislative research. In the fourteen states with central legislative research agencies, the reference and research work of the state library has actually increased. With the expansion of legislative research activities, more demands are made upon the library for assistance. In some instances it has been found advantageous to use only existing legislative reference facilities for research purposes. In Maryland and Virginia, the legislative reference staffs have been made by statute the research staffs for the Legislative Council and the Advisory Legislative Council, respectively. In Nebraska, the legislative reference bureau was consolidated with the research department of the Legislative Council. In Missouri, the Legislative Research Committee supervises the research department, the legislative reference section, and the bill drafting unit.

The arguments that have led to the creation of permanent legislative research and fact-finding agencies in other states apply with much force in a state like Minnesota with its large volume of legislation and complex economic and social problems. The time has come in Minnesota to establish a permanent legislative research service agency as an integral part of the legislative process.

The proposed research staff should not make recommendations or formulate a legislative program. It should be a legislative

agency freely available at all times to legislators and to standing and special committees for the preparation of impartial fact-finding reports.

Exclusive of the use of joint legislative committees and temporary commissions for specific major inquiries, the over-all research requirement of the legislature can be satisfied by the employment of three or four experts of broad training and wide experience in public administration, economics, government, and taxation and finance, assisted by a small clerical and research staff.

The over-all functions of a permanent fact-finding agency might be summarized as follows:

- (1) Upon the request of legislators or of legislative standing and special committees, to prepare factual objective reports without recommendations on important issues of public policy and on questions of state-wide interest.

- (2) Upon the request of legislators or standing committees, to analyze and appraise objectively legislative proposals pending before either house, or any data or memoranda submitted in support of or in opposition to these proposals, without making recommendations as to legislative action.

- (3) To collect systematically data and information concerning the government and general welfare of the state.

- (4) Upon request of a member or committee of the legislature, to make impartial reports on any problem or question arising from the operation or administration of the laws or constitution of the state.

- (5) Upon request, to assist standing and special committees in acquiring and analyzing data, preparing reports, and summarizing public hearings.

- (6) To receive, classify, file and preserve for future use the published and unpublished research materials of joint legislative committees and temporary commissions.

- (7) Upon request, to assist the clerk of each house or any other legislative officer in the preparation of manuals, reports, directories and other legislative publications.

- (8) To abstract and analyze for legislators the reports of state departments and other administrative agencies.

- (9) At the request of the President of the Senate and the Speaker of the House to cooperate with administrative agencies in gathering and evaluating data as a basis for legislation.

Legislative reference and drafting departments conducted on proper lines provide efficient agencies to furnish legislatures with scientific and expert assistance in the drafting of legislation.

The services of the expert draftsmen connected with drafting and legislative bureaus can be secured by anyone entitled to such service, irrespective of his political connections or the policy to be expressed in the act which they desire drawn. It is conceivable that an employee of such a department should attempt to promote legislation; but the remedy is always self-acting. A drafting bureau, the members of which would so far forget their duties as to seek to promote legislation, must quickly lose public confidence. This fact and the fact that those engaged in the work rapidly acquire, even if they do not possess it at the start, a professional code of ethics which regards the promotion of legislation as the one cardinal sin, form a great practical safeguard against any abuse on the part of members of an official drafting bureau of their position as expert advisers in the technic of legislative bill drafting.

Experience is proving that placing the three closely related functions of statutory revision, bill drafting, and special legislative service in one office is the most satisfactory and effective method, especially when the office is kept nonpartisan, free to serve everyone impartially and free to cooperate with other agencies of government.

The work of such an office may be divided into three logical parts:

(1) bill drafting, which is a technical aid in the formation of legislation;

(2) reference, which is designed to place at the disposal of legislators such available information as will enable them to act intelligently on the subject matter of proposed legislation; and

(3) statutory revision.

A closely related function is that of preparing and indexing the session laws for publication.

What is the value of all these services?

They are much more than a convenience to the members of the legislature and to persons interested in legislation. In the final analysis their purpose and justification is the improvement of the statute law. Changes in law are not only inevitable but are necessary for progress.

The state has many serious problems as the result of ill-considered, contradictory and obscure legislation.

These services will lessen the hazards of bad legislation of this character and improve the general quality of the work of the legislature through assistance to its members.

It is by this standard that these services are to be judged.

### III

#### LEGISLATIVE REFERENCE SERVICE

A legislative reference service is an integral and necessary part of an efficient bill drafting service.

The activities that form the legislative reference service have become fairly well standardized. The most general type of service relates to research work in relation to laws proposed for introduction. The necessary data upon which to base legislation may require a wide-ranging enquiry as to laws adopted in other states, the manner of their administration, success in operation, and evidences of general public opinion. To secure, have on hand and immediately available, and supply this type of special material supplementing the general library collections is the primary field of the legislative reference service. The preparation or acquirement of indexes, digests, records, and briefs is necessary; the material required may be books, pamphlets, clippings, letters, or manuscripts, but must be arranged for easy and quick consultation. The foregoing constitutes a reference service, pure and simple.

Reference requires the collection and maintenance of a special library containing the necessary information upon which to base legislation.

The library constitutes but a small part of a properly developed legislative reference service. The main function is that of active research.

Legislative research goes beyond the mere collection and indexing of documentary matter. It involves research by the agency charged with such work and the preparation of summaries or digests of pertinent information obtained from the original sources. From such information a legislator can quickly obtain all historical facts bearing on existing or prospective legislation.

Legislative reference service does not consist of collecting books or even the very miscellaneous fleeting literature of current legislative questions; nor does it consist merely of indexing bills and making accessible prior legislative proposals. Its essence is the

furnishing of information in response to inquiries, primarily from legislators and secondarily from others interested in legislation. The information furnished should be accurate and as complete as possible. It is important that the information be in such concise and understandable form that it can and will be used by the legislators.

Library service includes the keeping and filing of copies of all bills, resolutions, amendments, memorials, reports of committees, journals and other documents printed by order of the legislature, and the collecting, cataloging, and indexing of them as soon as they have been printed.

The library collection should be kept up to date in relation to changing legislative interests and biennially between sessions much of the old material, which is no longer of current value, may be disposed of. The aim is to have the smallest possible working library of the best material on the legislative questions of immediate interest, so minutely classified and cataloged that the reference workers can locate all available information in a few minutes. This library collection is invaluable for the services rendered and renders absolutely essential the employment of several technically trained librarians.

Reference is a service carried on both during and between sessions.

On highly controversial questions or subjects on which there are no opinions in printed form it is necessary to send out questionnaires and make compilations of the answers.

The time element is frequently an important factor and the object is to arrange the material in compact form so that all the information which the library has on a subject is immediately accessible.

"Reference requests" range all the way from inquiries which involve only locating material on the library shelves to those which necessitate the preparation of digests and of other studies requiring weeks, sometimes months, of research. Every study, after it has been used by the person for whom it was made, is placed on the shelves of the library, and these studies are among the most valuable materials in the entire collection.

Any question dealing with a matter of legislative interest is a proper subject for a reference request; and "legislative interest" embraces not only matters which are peculiarly state questions, but federal questions as well, since the legislature frequently memo-



rializes Congress and since federal questions are often the most important issues in state elections.

On most subjects of possible legislation, the difficulty is not to find the material, but to arrange the large mass of available material so as to make its efficient use practical.

The collection and cataloging of legislative data and information is not enough. It must be made available and explained after a careful sifting of material and painstaking analysis and interpretation of facts. This should only be done after a thorough study and understanding of the subject to which it is to be applied. This is scientific research.

Digests and compilations of laws on subjects which are likely to come up for consideration at the next session are carefully prepared.

Statistics on the operation of certain laws are compiled, analyzed, and interpreted.

The card catalog is more comparable to a detailed index than to the usual library catalog. The material is closely analyzed and explanatory notes are freely employed. Important material available in collections of state departments or in other libraries is noted under the subject.

Next to supplying information on current legislative subjects, the most common function performed by the reference bureaus is keeping a subject index to all bills introduced in their own state legislatures, and a complete file of the actual bills. The index usually takes the form of a card catalog, with a complete history or legislative travel of each bill recorded on its card. In addition to the value of the service in answering inquiries during a session, it often saves the drawing of a new bill and makes the experience of the past cumulative.

It is between sessions that the most extensive reference studies are made. Many of them are undertaken for interim committees, for the governor, and for other state departments; while others are made for organizations engaged in the preparation of bills which are to be introduced in the next legislature.

Some of the most important work of the well organized legislative reference bureaus has been assisting or working in cooperation with special investigating committees of the legislature. The work has involved not only research but the preparation of legislation, and has ordinarily been carried on between sessions.

The legislative reference library of Wisconsin has a collection of 75,000 cataloged pieces of material. It spends only \$1,000 a year upon books and subscriptions. The state library collection is used freely by the reference library workers, as are the State Historical and University libraries. Most friendly and cooperative relations are maintained with all state departments and with the University of Wisconsin, and often assistance is secured from experts in these departments within their respective fields. The closest possible relations are maintained with the legislative reference services of other states, and many of their studies are placed on our shelves.

Most of all, technical services for state legislatures have suffered from a too narrow conception of their purposes and from second rate leadership. There is far more danger that legislative reference bureaus will do too little than that they will attempt too much.

To be in a position to furnish up to date and accurate information upon public questions, a reference library must watch all the principal sources for such data, public documents, books, pamphlets, newspapers, and magazines. When necessary it should also send out letters and questionnaires to get information not available in published form. It should also keep in touch with legislative reference bureaus and other similar organizations in other states upon the work which they are doing and, through arrangements for an interchange, get copies of all digests and other studies of these bureaus. It should also make an index of all bills introduced in the legislature, as far back as possible, and should prepare a complete index of the private and local laws which have been enacted in this state.

A complete index of bills which have not become law saves the drawing of new bills and makes the experience of past available.

Records of vetoes, special messages, political platforms, political literature, and other handy matter should be carefully noted and arranged. The political literature from all parties upon all questions should be kept handy.

A legislative reference library is a storehouse for facts and a clearing house for information.

In all this work the emphasis is on accuracy and conciseness. No information is given without indicating its source. The library is responsible for the correctness of the information it furnishes. When it comes from a partisan or doubtful source, this fact is plainly stated. The information requested is furnished in the most concise form consistent with accuracy. It takes the form of digests,

memoranda, tables, and summaries of many kinds. Often the busy legislator not only lacks knowledge of where to get information, but lacks time to wade through a great mass of material to find what he wants. The library serves him in both respects. It locates or gathers the desired information and then puts it into such shape that it can be grasped with a minimum of effort. A long digest is itself condensed into a summary of a few pages, which are followed by the complete digest, with its more detailed and precise information.

The reference work would be done by the permanent staff of the revisor, although occasionally specially qualified persons would be employed for special studies, usually in the case of researches requiring expert knowledge.

It is highly important that a specially trained personnel with experience in legislative research and bill drafting be employed to perform these varied services. Personnel skilled in such work can do research, draft bills, revise and annotate statutes far more quickly and efficiently than such work can be done by inexperienced persons.

The cost of these "technical services for legislators" depends primarily on the nature of the services furnished and the extent to which they are used.

The cost of all these services would be very little more than the present cost of statutory revision.

California, Maryland, New York, Pennsylvania, and Wisconsin each have eight or more people engaged in legislative reference work on a full time basis.

Experience has clearly demonstrated that each of these bureaus is of great value to the state which maintains it.

Agencies which perform the services of legislative bill drafting, research, and revision of statutes have been found of great value wherever used.

Since an agency which would perform these technical services is essentially an appendage to the legislature, it should be created along lines acceptable to legislative leaders and with a full consideration of the needs which their experience has shown to exist.

In Minnesota the legislative sessions are short and during these limited sessions bill drafting is done under great pressure, and sufficient time for study and research is usually not available during sessions.

A permanent department which has time to study and prepare and become more and more familiar with the art of bill drafting and research should greatly improve the efficiency of the legislature and the quality of the legislation enacted.

In the final analysis, how well these "technical services for legislators" are performed depends upon the man in charge and the competency of his assistants. If well done, services of this kind are worth all the effort that anyone can put into them; and, while they cannot guarantee good legislation, they can be very valuable in helping legislators to do their work more efficiently.

Where these services have been carried on by competent persons they have proven of great value in helping legislators to do their work more efficiently. The enactment of legislation is an important public function worthy of the best efforts of trained assistants.

