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Tentative Committee Reports

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Tentative Committee Reports

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Glen D. Peters

TENTATIVE COMMITTEE REPORTS

THE COMMITTEE ON REORGANIZATION OF THE BAR

To the Members of the Indiana State Bar Association:

Your Committee on Reorganization of the Bar has, since the last mid-winter meeting of this association sought, by conference and correspondence with the membership of the committee as well as with many members interested in the work of the committee, to arrive at a concrete and composite conclusion as to what the proposed act should and should not encompass. The work of your committee is, quite naturally, the subject of avid controversy. It is equally self-evident that a reconciliation of the divergent views held by the membership on the subject is utterly impossible. Manifest also is the fact that the proposed act presented at the last meeting of this association is unacceptable to a majority of the association. Your committee divined from the comment made on the floor of the convention then, and communicated to your committee since, that three general objections in the proposal should be removed:

First: All question of constitutionality of the act (under Sec. 13, Art. 11) should be eliminated by proposing a commission in lieu of a public corporation.

Second: The state judiciary should have effective recognition on the governing body of the State Bar.

Third: Administrative detail should not be thrown into a statutory straight-jacket, but be left subject to duly promulgated rule.

The third objection also envisages the general criticism of prolixity directed against the first proposal. The committee has endeavored to make brevity its watchword in the re-draft submitted herewith.

The committee is by no means satisfied with the present tentative draft. It is believed that substantial elisions on the act submitted could be safely carried out. It invites suggestions along this line especially. The desideratum is to produce and present a proposed act of five or six sections with an irreducible minimum of legislative declarations. One suggestion made was that the entire act be embraced in two sections as follows:

By the first section create the commission and provide for its election by delegates from the several congressional districts of the state.

"Section 2. Every person entitled to practice law in this state shall be

a member of the State Bar and shall pay an annual license fee of \$5.00 to the commission and shall be under its jurisdiction as affects such practitioner's professional conduct in every respect and in like manner as barristers at common law were under the jurisdiction of the Benchers of the Inns of Court in England; which jurisdiction and authority shall be exercised by the commission by general and special rules, duly promulgated, as the commission shall determine."

It is proper to note that the tentative report has not yet received the unanimous endorsement of the committee membership. None have taken exception to any part of its content, but a number of your committee have not had sufficient time to digest and analyze its provisions. This is stated as a reservation, as the final draft of the report as ultimately presented to the convention at its mid-summer meeting may differ in some respects—possibly some essential respects—from the tentative report herewith submitted for publication in accordance with the direction of the president of the association.

It is proposed that the following act will, in general outline, meet the most of the objections made against the former proposal as pointed out above:

A PROPOSED BILL FOR

AN ACT concerning attorneys at law and the practice of law; creating a State Bar Commission and defining its powers and prescribing its duties; defining the State Bar of Indiana and its membership, and providing for an annual license fee for practitioners of the law in this State, and pertaining to professional conduct.

Sec. 1. COMPOSITION OF STATE BAR COMMISSION. There is hereby created the State Bar Commission of Indiana (hereinafter referred to as "the Commission") consisting of twenty-four district commissioners by the election of one judge of a circuit or superior court and one member of the State Bar, hereinafter defined, from each congressional district of this state, to be chosen by the membership of the State Bar residing within such several districts, respectively, and, *ex officio*, the chief justice of the Supreme Court of Indiana.

Sec. 2. ORGANIZATION COMMITTEE AND FIRST ELECTION. Within ninety days after this act shall be in force, the judges of the Supreme Court and Appellate Court of this State, functioning as the organization committee of the State Bar Commission, shall adopt and promulgate rules for, and within thirty days thereafter hold and conduct, an election by all members of the State Bar whereby there shall be chosen the first twenty-four district commissioners from among the attorneys and judges of the respective congressional districts of the state, all resident members of the state bar within each respective congressional district of the state choosing from such district such district commissioners. Any system of election prescribed shall contemplate votes by secret ballot and provide

for the transmission of individual ballots by mail. Two nominees for each office to be filled by election shall be selected by a system of delegates, under such rules as the organization committee, for the first election, and the commission for any subsequent election, may prescribe. Nominees shall be chosen and their names published to the State Bar at least fifteen days before any district election.

Sec. 3. **TERMS OF OFFICE.** The chief justice of the Supreme Court, *ex officio*, shall hold office and membership on the commission during his continuance in such office of chief justice; all district commissioners shall hold office for a period of two years; provided, that of the first district commissioners, one-half thereof shall be chosen by lot to serve for the period of only one year, and thereafter each member shall be elected for the period of two years, so that one-half of all district commissioners shall be elected each year. After the first, each election shall be held on the first Monday in December of each year, but provision may be made for earlier deposit and transmission of ballots. The commission shall, by appropriate rules, provide for the filling of vacancies occurring during the term of any district commissioner, until the next regular election, at which time, if the term of the vacating commissioner has not expired, the vacancy shall be filled for the unexpired term. The term of each elected commissioner shall commence and end on the first Monday of February. The expiration of the term of any judge of a circuit or superior court, who, during such term is a commissioner, will not vacate his office or render him ineligible, nor will the fact of election of a commissioner, who is a member of the bar, to the office of judge of any such court, terminate his office as commissioner.

Sec. 4. **STATE BAR DEFINED.** The commission shall have administrative jurisdiction and authority over and the government of the State Bar of Indiana. The State Bar of Indiana shall consist of all persons now entitled, or who may hereafter become entitled to practice law in the Supreme Court of this State, and such persons shall continue members of the State Bar until their names are struck from the roll of membership of the bar of said Supreme Court. Each of such members of the State Bar shall be classified, either as active or inactive members. Active members shall be all those who are not classified as inactive. Inactive members shall be those who have formally requested to be enrolled as inactive members, and such inactive members shall not be entitled to hold office or vote. They shall be entitled to return to the active list upon their written request and the payment of active member's license fee as hereinafter provided. They shall not hold themselves out to the public as active practitioners so long as they shall remain on the inactive list. Active members shall pay to the treasurer of the commission annually as a license fee the sum of \$5.00; inactive members shall pay annually to the treasurer of the commission, as a license fee, the sum of \$2.00; all license fees shall be payable on or before February 1st of each year, commencing with the year 1934. No member of the State Bar who has not paid his license fee for the current year shall be permitted to practice law in any court of this state.

Sec. 5. **SECRETARY AND TREASURER, EMPLOYEES AND EXPENSE.** A secretary and treasurer of the commission shall be selected

annually by it, and need not be members of the State Bar; the commission shall have power to appoint and employ such other officers, employees and committees as it may deem appropriate to carry out the purposes of this act, and to fix and pay salaries and expense, including necessary transient expense of the members of the commission when attending to their official duties; provided, however, that all expense and disbursement of the commission shall be borne by license fees and other income of said commission and shall in no event exceed the income of said commission. All fines which may be imposed pursuant to any provision of this act upon members of the State Bar shall be covered into the treasury of the commission. The commission may publish directly or in conjunction with any state institution so authorized, for the membership of the state bar, such periodicals, pamphlets and studies as it shall from time to time see fit.

Sec. 6. **POWERS AND DUTIES OF COMMISSION.** The commission shall have authority and supervision, by general rules duly promulgated, over the professional conduct of the membership of the State Bar, and may inaugurate investigations, collect data on its own initiative or on the request of the Supreme Court, the Appellate Court, or the Governor, appertaining to the science of jurisprudence and the improvement of the administration of justice and make recommendations to said courts and to the administrative branch of the government and to the legislature of the state; and it, or such committees as it may designate or appoint, shall be at the disposal of the Supreme Court of Indiana for the purpose of aiding and carrying into effect, under the supervision of the Supreme Court, any provisions of law in relation to the rules of court, the correction of abuses in practice and procedure, admissions to the bar, and the discipline of members of the State Bar for infraction of canons of professional ethics or the rules of court.

Sec. 7. **GENERAL POWERS OVER STATE BAR.** Subject to the laws of this state and not inconsistent therewith, the commission shall have power from time to time to formulate, declare, alter and repeal rules and regulations it may deem necessary or expedient for carrying out the purposes of this act and the exercise of the powers in the commission hereby reposed, and it is hereby declared the policy of the state, in the enactment of this law, to clothe said commission with power and authority, and to impose upon it the duty to promote respect for the law and its administration, the integrity of the bar, expedition of litigation, fidelity of counsel to client and to court, and a wholesome practice of fair-dealing among counsel. Such rules and regulations, when duly promulgated, shall have the force and effect of statutes of this state, insofar as consistent with the provisions of this act and any other laws of this state. The commission shall by rule fix the time and place of the annual meeting of the State Bar, the calling of special meetings thereof; to determine what number shall constitute a quorum of the State Bar, and, with the advice and approval of the Supreme Court, shall have power to formulate rules of professional conduct which shall be binding upon all members of the State Bar, and the wilful breach of any such rule shall be punishable in a proceeding brought for that purpose in the Supreme Court by suspension from the practice of law for any determinate period, not to exceed one year, or the payment of a fine, not to exceed \$100.00 or both. Said com-

mission shall provide by rules for the investigation of any and all charges of professional misconduct of any member of the State Bar, and for disciplinary proceedings consistent with this act and the rules of discipline and professional conduct approved by the Supreme Court. No general rule of the commission shall be effective until thirty days after adoption thereof (and approval thereof by the Supreme Court if the same be a rule of conduct or penal in character) and promulgation thereof by mailing a copy thereof to each member of the State Bar as his name and address appear upon the roll of licensed attorneys to be kept by the secretary of said commission, and the affidavit of the secretary to the effect of such promulgation shall be conclusive as to the time and manner thereof, which affidavit shall be filed in the office of the clerk of the Supreme Court after such promulgation is completed, and thirty days thereafter the said rule, amendment, or repeal shall become effective. Nothing contained in this act shall be construed or taken as in any manner limiting or abridging the jurisdiction and power of all courts of record, under existing statutes and rules of court and in virtue of the inherent power of courts over their officers, to investigate, proceed against, discipline and punish for contempt or other disobedience attorneys of or practicing in such courts of record, including the power and jurisdiction of such courts to inaugurate and prosecute to determination disbarment and suspension proceedings against attorneys at law.

Sec. 8. MEETINGS OF THE COMMISSION. On the first Monday in February of each year the commission shall hold a meeting at the State House, Indianapolis, Indiana, at which meeting the commission shall choose from its membership a president, president *pro tempore*, and such other officers as it may by rule provide. The commission shall be called in meeting at least once each year in addition to its February meeting at such time and place as the president may declare. The president shall call such a meeting on the written application of any six commissioners. Twelve members of the commission shall constitute a quorum, but a less number may adjourn from day to day. At least five days' notice shall be given to the commissioners of all meetings other than the February meeting. The president shall preside at all meetings of the State Bar and the commission shall determine upon and publish notice of *agenda* for consideration at conventions of the State Bar, but such action of the commission shall not limit the State Bar assembled in convention in the consideration of topics and in its action on business which may come before it. The commission shall provide all necessary rules for the conduct of the business of the State Bar assembled in convention, and for the appointment of committees of said State Bar and the dispatch of business before such committees and the assignment of such committees to tasks appropriate to the respective creation of each.

It will be readily observed that the cardinal aim of your committee has been to vest the commission with an amplitude of authority in dealing by rule with the detail of organization and method and means of carrying into execution the general scope and purpose of the act. It is believed that such a course reflects

the sentiment of the association as expressed at the last mid-winter meeting and by correspondence from numerous members of the association since that time. The overwhelming sense of the membership seems to be in favor of leaving the elected authority untrammelled in this sphere, so that, unlike a statutory edict, an unpopular or impractical rule, once adopted, may be readily amended or repealed.

Whether action on the proposed act shall be taken at the annual mid-summer meeting by the association, or the matter be deferred for further study and report at the mid-winter meeting, your committee believes should be left for the determination of the coming convention without recommendation by your committee.

COMMITTEE ON REORGANIZATION OF THE BAR,
Per Walter R. Arnold, Chairman.

JURISPRUDENCE AND LAW REFORM

The Committee on Jurisprudence and Law Reform will re-submit to the Association the two proposed bills, which are in its files as unfinished business.

First. A bill vesting the rule making power in the Supreme Court of Indiana.

Second. A bill creating a Judicial Council for Indiana.

The bill vesting the rule making power in the Supreme Court was approved by the Association at its midyear meeting held in December, 1930, and was introduced in the 1931 General Assembly as Senate Bill No. 120. It received a favorable committee report, but never reached a vote in either branch of the Legislature.

This committee will recommend that the bill with some changes in form be introduced in the 1933 Assembly, and that its passage be urged by the association.

The bill creating a Judicial Council for Indiana is the result of several months investigation and discussion by this committee. The bill, as finally drafted by the committee was submitted to the association at the last midyear meeting, and after some brief discussion was referred back to this committee for further study and report. The discussion at the midyear meeting brought out several points which have been considered by this committee, with the result that some slight changes have been made in the proposed bill.

This committee will recommend that the bill be introduced in the 1933 General Assembly and that its passage be urged by the association.

The committee also directs attention to the bill revising appellate procedure which was introduced in the 1931 General Assembly as Senate Bill No. 227. This bill, although not prepared by this committee, was prepared by one of its members at the request of the Association's Committee on Legislation, and has this committee's full approval and the committee will recommend that it be re-introduced in the 1933 General Assembly and that its passage be urged by the Association.

These bills have at various times either been published in the Journal or published in pamphlet form and distributed among the members of the Association. Although some changes have been made in the phraseology of the bills, they remain in substance the same as originally published.

GEORGE O. DIX, Chairman.

COMMITTEE ON AMERICAN CITIZENSHIP

Constitution Day was observed last September, by many of the Kiwanis Clubs, by several of the schools of the State, and by a radio address at Indianapolis, by Mr. Charles F. Coffin.

An address made by the Hon. James A. Van Osdal was printed and sent to all of the public and parochial high schools in the State, with a request that it be read.

Heretofore, each of the following organizations—the Lions, Rotarians, Kiwanians and the Indiana Federation of Clubs, passed a resolution to the effect that at one meeting of each club, during the year, the subject of the Constitution of the United States would be considered. We understand this resolution has been observed by the clubs of each of these organizations. The public and parochial high schools of the State have joined in an essay and also an oratorical contest on a subject requiring a study, by the participants, of the Constitution of the United States.

One hundred and eighty-two schools in 73 counties participated in the oratorical contest and 156 schools of 63 counties participated in the essay contest. There were reported 2,539 participants in the two contests, and in one school there were between 300 and 400 participants. Twenty-four schools reported

that the attendance at local school oratorical contests was 4,107. Including the contestants, the county superintendents of schools, the county chairmen, district managers and members of the committee, there were all told, a total of 8,385 known to have participated in the contests, and if the same ratio of attendance at the oratorical contests in schools not reported was maintained as in those reported, there has been approximately 40,000 people attending the various oratorical contests.

In the essay contest there was a contest in each district. The judges were Miss Kathryn E. Pickett of the Indianapolis Star, Judge Charles F. Remy, formerly judge of the Appellate Court, and Prof. Haworth of Butler University.

The first place was awarded to Robert Plummer, Bedford high school, Lawrence County, 9th district—prize \$150.00.

Second place to May M. Cheesman, Peru high school, Miami County, 5th district—prize \$60.00.

Third place to Frances Conner, Losantville high school, Randolph County, 10th district—prize \$50.00.

Fourth place to John Kingsbury, Arsenal Technical high school, Marion County, 12th district—\$40.00 prize.

Fifth place to Eleanor Strickler, Rensselaer high school, Jasper County, 2nd district—prize \$30.00.

Sixth place to Ralph Kistler, Pleasant Lake high school, Steuben County, 4th district—\$20.00 prize.

Honorable mention was awarded to Helen Newman, Quincy high school, Owen County, 7th district; Elsie L. Vogtritter, Kingsbury high school, LaPorte County, 3rd district; Thelma Overbeck, Holland high school, Dubois County, 8th district; Lena Willkie, Elwood high school, Madison County, 11th district; Blanche Hamilton, Emerson high school, Lake County, 1st district; Carolyn Moore, New Richmond high school, Montgomery County, 6th district.

In the oratorical contest there were contestants from each district. The six zone winners being at the contest were awarded prizes as follows:

1. Charles McDorman, Jr., New Castle high school, Henry County, 10th district, \$250.00.
2. Paul Kigar, Central high school, Ft. Wayne, Allen County, 4th district, \$60.00.
3. Gene Eckerty, Princeton high school, Gibson County, 7th district, \$50.00.

4. Mary Jeanette Myres, Rensselaer high school, Jasper county, 2nd district, \$40.00.

5. Modenna Hartman, Bridgeton high school, Parke County, 5th district, \$30.00.

6. Henry Marks, Shortridge high school, Marion County, 12th district, \$20.00.

The judges of the oratorical contest were all from Richmond, Indiana, and were: Senator Denver C. Harlan, Prof. E. P. Trueblood, head of the Department of Speech of Earlham College, and Hon. Demas S. Coe of the Coe Publishing Company, a veteran newspaper man.

All the cash prizes awarded and the medals presented throughout the contest were made possible by the generosity of Mr. Frank C. Ball of Muncie, Indiana.

The oratorical contest was held at Goddard auditorium, Earlham College, Richmond, Indiana, on April 22, 1932, at 7:30 P. M., Mr. Samuel E. Garrison presiding.

Prof. Donald C. Gilley, of the Earlham Music Department, provided the music for the occasion, and a very fine violin solo was played by Miss Mildred Thomas with Miss Margaret Harrold at the piano. One of the outstanding features of the contest was the banquet given to the contestants by the Tau Kappa Alpha Chapter of Earlham College.

Another outstanding feature of the occasion was the presentation by Earlham College of a \$200.00 scholarship to Mr. Charles McDorman, the winner of the oratorical contest, and a one hundred dollar scholarship to Mr. Robert W. Plummer, the winner of the essay contest.

The committee desires to express its thanks to Earlham College, and everybody in Richmond, Indiana, who helped to make the oratorical contest an enjoyable occasion.

ISAAC CARTER, Chairman,
SAMUEL E. GARRISON, Executive Secretary.

COMMITTEE ON MEMBERSHIP

The Membership Committee desires to impress upon the Association the importance of maintaining the membership intact during the difficult times through which the country is passing, and the desirability of reducing withdrawals from the Association to a minimum. It has endeavored throughout the year

through its district representatives and members of the board of managers to achieve this end. A comprehensive report including the details from each district will be given to the Association at the summer session.

The committee desires to urge upon every member of the Association to exert every possible effort to prevent the dropping out of members lest the program which the Bar Association is undertaking should be seriously impaired.

FRANK H. HATFIELD, Chairman.

COMMITTEE ON LEGAL EDUCATION

The report of the Committee on Legal Education will direct specific attention to the amendment of the Constitution concerning the admission to the practice of law which is to be voted on in the fall. The committee will urge the importance of a concentrated effort by the association and every member thereof to secure the adoption of this amendment so that every doubt concerning the constitutionality of the regulation of admission may be removed.

BENJAMIN F. LONG, Chairman.

COMMITTEE ON ILLEGAL PRACTICE OF LAW

The committee is planning to prepare a definite statement of the field in which the activities of banks are legitimate and mark out with precision the limits beyond which banks and trust companies should not extend their activities without encroaching upon the practice of law. An effort is being made to prepare this statement in such a form that it will be acceptable to the Bankers Association. The committee is not yet in a position to offer a tentative outline of its report.

GLEN D. PETERS, Chairman.