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The Creation of the Montana Code Annotated

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THE CREATION OF THE MONTANA CODE ANNOTATED

Diana S. Dowling*

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I. Introduction

A new chapter was added to Montana legal history on January 10, 1979, when the Montana legislature passed Senate Bill 1, adopting the Montana Code Annotated. Representing almost four years of dedicated work, the new code appears in seventeen volumes (including index, cross-reference tables to the old code, and Code Commissioner Report) and contains nearly 9,000 pages. The Montana Code Annotated (hereinafter MCA) follows a completely different format than did the Revised Codes of Montana, 1947 (hereinafter R.C.M.), although the substance of the old code is unchanged.

The purpose of this article is to preserve for members of the Montana bar and other code users a record of the procedures followed in recodification. It reviews the history of the project, the reasons used in deciding whether to codify statutes, and the reasons for making certain non-substantive changes in the code. The article also may give a clearer insight into legislative law by pointing out the problems faced by those involved in the recodification.

II. BACKGROUND OF THE PROJECT

In the 1975 legislature, Representative James Moore introduced House Bill 183, entitled "An Act Creating the Office of Code Commissioner to Supervise the Recodification of the Revised Codes of Montana, 1947, to provide for Recodification on a Continuing Basis" The bill was co-sponsored by sixty-two House members, both Democrats and Republicans. The bill provided that the Code Commissioner be under the supervision of the Legislative Council. Opposition to the bill came from those who supported a bill calling for recodification by the supreme court. Backers of the bill argued that recodification was a legislative function and that a statute requiring the supreme court to recodify the laws would violate the principle of separation of powers.

House Bill 183 passed and became effective on April 15, 1975.¹ The author of this article was appointed Code Commissioner on April 17, 1975.

To fulfill the statutory requirement that the Code Commissioner "confer with members of the judiciary and the state bar relative to recodification procedures,"² a Recodification Advisory Committee of the State Bar was appointed.³ Its members provided valuable advice during the initial stages of the project.

Several large law book publishing firms asked to bid on the project, proposing that they do the entire recodification. For several reasons, however, the legislature decided to have the Legislative Council perform the task. None of the publishers had adequate equipment to use the Council's computerized information (more about the use of the computer follows); the Council's staff attorneys were more familiar with the old Montana code than out-of-state attorneys would be; and a Montana staff probably would be more dedicated to completing the task than would the staff of an out-of-state professional publisher. With an in-state staff and publisher, furthermore, some of the costs of the project could be recouped in the form of income taxes.

III. BEGINNING THE PROJECT

A. *Initial Problems*

The council staff faced several difficulties at the outset of the project. First, within a four-year period, and in addition to the other duties, the staff would have to recodify more than 25,000 statutory sections containing more than 3 million words. Modern computer technology, used by the Legislative Council since 1971 for drafting bills, provided the solution to this otherwise monumental task.

Briefly, the computerized system worked as follows. The full text of the R.C.M. was keypunched into a computer disc. This "data base" was then updated, edited, and reformatted concurrently by using typewriters and CRT terminals (similar to television screens) connected to the computer. By retrieving a section of the code on the screen, the computer operator then could change the R.C.M. number to an MCA number, correct errors and make other changes,

1. Ch. 419, Laws of Montana (1975).

2. MONTANA CODE ANNOTATED [hereinafter cited as MCA] § 1-11-204(6) (1978) (formerly codified at REVISED CODES OF MONTANA (1947) [hereinafter cited as R.C.M. 1947], § 12-505(7) (Supp. 1977)).

3. Committee members are Ronald F. Waterman, Helena, and James Moore, Kalispell, co-chairmen; James T. Harrison, Jr., Helena; Maurice Michel, Missoula; William Bellingham, Billings; Judge Peter Meloy, Helena; R.H. Robinson, Missoula; and William Coldiron, Butte.

and store the section for printing upon command. The unchanged part need not be retyped. Therefore, if a section were merely to be renumbered to fit the MCA arrangement, the text need not be retyped or reproofed. The computer automatically printed the sections in their new order, thus eliminating time consuming manual rearrangement and editing.

A second problem the staff considered was whether to create the data base from the text of the R.C.M. or to use the session laws published since statehood. The 1951 legislature adopted the R.C.M. as "the laws of Montana now in force and effect . . .,"⁴ but a possibility existed that some statutes had been inadvertently omitted. The staff decided, however, that reviewing the session laws would not be feasible in terms of time and money. Furthermore, Montana attorneys would be unfamiliar with any statutes not included in the 1947 code, and including these statutes in the new codification would merely revive laws considered dead for many years.

Allen Smith Publishing Company's copyright on the R.C.M. created a third preliminary problem. The staff determined that the copyright probably covered only the "arrangement," compilers' notes, and the publisher's case notes and catch lines. Rather than risk a law suit, however, the Legislative Council purchased for \$25,000 the rights to the copyright of "boldface section captions, history notes, abstracts of state and federal court decisions, cross references, collateral references, indexes, tables, and explanatory notes."⁵

B. Arrangement and Numbering System⁶

The staff studied the organization and numbering system of

4. Ch. 4, Laws of Montana (1951).

5. Agreement between Allen Smith Publishing Co. and Montana Legislative Council (April 30, 1976).

6. Before reading about the procedure used during the recodification process, it will be helpful to keep in mind the basic concepts of statutory law. A statute begins as a *bill* introduced by a legislator. A bill is a proposed or projected law. Once a bill is passed by the legislature and signed by the governor, the bill is enrolled and becomes an *act* of the legislature. BLACK'S LAW DICTIONARY at 42 (4th ed. 1968) defines "act" as a "written law, formally ordained or passed by the legislative power of a state . . . ; a statute." After each bill is signed by the governor, it is delivered to the secretary of state for official filing. The secretary of state assigns session law chapter numbers to the bills as they are filed. The first bill filed becomes "chapter 1" in the *session laws*. "Session laws" is the "name commonly given to the body of laws enacted by a state Legislature at one of its . . . sessions." *Id.* at 1537. Session laws are not arranged by subject matter, nor are they adequately indexed. Legal research using only session laws would be so time-consuming as to be practically impossible because of the lack of reference sources to disclose amendments and repeals. One of the advantages of a *code*, a systematic arrangement of all the laws by subject matter, is to reflect all changes by repeal and amendment. *Statute* is a generic term applying to all written law, as opposed to the

codes used in other states to determine the best method of topical arrangement. Placing all statutes related to a common subject matter under one title seemed to provide logical organization. For instance, all statutes dealing with family law would appear under one title rather than being distributed throughout the codes under various sub-topics such as adoptions, divorce, and husband and wife.

To accomplish this organization, the staff met several times to determine appropriate topic headings and title groups and to analyze the old code to determine which statutes should fall within the various titles. During a three-year period, the arrangement was changed fifteen times, usually in response to suggestions by members of the bar who had reviewed the proposed arrangements, or in response to newly discovered relationships amongst certain statutes. The final arrangement appears in an appendix to this article.

The staff decided a three-element numbering system would be a logical format and would require the least amount of change. It is being used by a majority of our sister states, and code users already were familiar with the system since several of the old code provisions used the format.⁷ Most statutes under the old code, however, were identified by a two-part system, the number to the left of a hyphen designating the title, and the number to the right of the hyphen designating both the chapter and section. The designation 66-1901, for example, referred to Title 66, Chapter 19, Section 1. Transposed to a three-element system, it would read 66-19-101, referring to Title 66, Chapter 19, Part 1, Section 1.

By skipping numbers within chapters and parts and between titles, the codifiers left room for future insertions without resorting to the decimal system, which had been used in the old code.⁸ The new requirement of continuous recodification⁹ will also help maintain an orderly and logical arrangement and avoid future need for bulk revision.

unwritten common law, *id.* at 1581, and therefore can be applied to an act, session law, or code.

7. See, e.g., MONTANA CRIMINAL CODE, MCA title 45 (formerly codified in R.C.M. 1947, title 94); MONTANA UNIFORM COMMERCIAL CODE, MCA title 30, ch. 1-9 (formerly codified in R.C.M. 1947, title 87A); MONTANA UNIFORM PROBATE CODE, MCA title 72, ch. 1-5 (formerly codified in R.C.M. 1947, title 91A).

8. See, e.g., R.C.M. 1947, § 82A-304.1 (Supp. 1977) (now codified at MCA § 2-15-3003(6) (1978)).

9. MCA § 1-11-204(5)(b) (1978) (formerly codified at R.C.M. 1947, § 12-505(6)(b) (Supp. 1977)).

IV. PROCEDURES AND POLICIES FOLLOWED

A. Organization of Titles

Each attorney consulted a variety of sources to determine which statutes to place in a title of the new code. These include preliminary allocation tables prepared by the staff; the R.C.M. index; other states' codes having similar titles; suggestions from attorneys and other code users; and advice from specialists in each area, such as department heads, state employees, lobbyists, and attorneys. The Council's computer also assisted by providing key words, names, and phrases that often led to statutes that had not been considered.

Once the appropriate statutes were chosen, the attorney prepared an outline of the structure of the new title. He also screened the statutes for obsolescence, conflicts among different sections, unconstitutionality,¹⁰ incorrect grammar, spelling, capitalization, punctuation, numbering and paragraphing. Each attorney used a master check list to spot these problems.

The attorney next requested a computer print-out of those sections falling within the title. On this "master" copy the attorney would enter the new three-part MCA number assigned and make other changes required or allowed by law.

B. Non-Substantive Changes

1. Punctuation

Despite a wealth of authority that should dispose of the problems of punctuation of statutes, the Council staff could not ignore the facts: attorneys continue to wrangle and worry over punctuation, and judges often use it to defend or fortify their decisions. Several guidelines, thus, were developed to work with the problem:

- punctuation is *not* a science, and teachers of the art often disagree on its application;
- styles in punctuation change with the times; statute meaning does not;
- the words should control the punctuation, not the punctuation the words;
- commas should not be relied on to convey a meaning; when in doubt, drop the comma and a smoother flow of words probably will result; and
- bill drafters and codifiers have a duty to clarify sentences so they can "stand up" without the aid of punctuation props.

10. See section IV(C) *infra*.

Particular problems were presented with commas because of the staff's discovery that perhaps as much as ninety percent of the discussions on punctuation by courts relate to the presence, omission, or misplacing of commas. Being heavily laden with commas, the old code did not conform with the more modern "open" style of punctuation that follows a sparing use of the comma. The modern style was more in conformity with the "taste" of the staff, which, by deleting an average of five commas per section, omitted more than 125,000 commas from the new code without changing its meaning.

2. Capitalization

The Council staff followed the general rule, set out in bill drafting manuals,¹¹ that capitals should be used as little as possible because capitalization has no legal significance, and the lower case is easier to read and write. During the recodification process, however, there were so many exceptions made to this general rule in deference to uniformity or "looks" that the staff often wished it had committed itself to more conventional capitalization rules.

3. Spelling

The staff corrected obvious misspellings and updated archaic spellings with preferred spelling according to *Webster's New World Dictionary*. The temptation was strong to change an "or" to "of" when it was obviously a typographical error. In order not to risk a misreading, however, this type of change was not made during the recodification process. A note was made that amendment was needed, and the change was incorporated into a Code Commissioner revision bill.¹²

4. Grammatical Construction

There were three types of changes that were made often under this category. One was making pronouns agree with their antecedent in number, gender, and person. An example of such a change can be seen in the section formerly numbered 93-318(2):¹³ "The district court has the power of naturalization, and to issue papers. Therefore, in all cases where they are authorized to do so" The words "they are" were changed to "it is."

The codifiers often changed "nor" to "or." "Nor" should not be

11. See, e.g., MONTANA BILL DRAFTING MANUAL 9 (1976); R. DICKERSON, LEGISLATIVE DRAFTING 72 (1954).

12. See section IV(D)(1) *infra*.

13. Now codified at MCA § 3-5-302(2) (1978).

used in the same clause with any other negative; thus, in the clause "not less than \$100 nor more than \$1,000,"¹⁴ the "nor" was changed to "or." Third, a verb often had to be changed to agree in number with the subject of a sentence. A plural subject must have a plural verb, and a singular subject a singular verb.

Proper grammatical construction was not used, however, as a reason to correct bad or erroneous drafting or typographical errors. These types of problems were relegated to Code Commissioner revision bills.¹⁵

5. *Numbering*

A uniform system of numbering internal paragraphs in a section was used: (1)(2)(3), (a)(b)(c), (i)(ii)(iii), (A)(B)(C). Thus, if the R.C.M. section began with "(a)(b)(c)," it was changed to "(1)(2)(3)," except for the Uniform Commercial Code, in which no changes in the numbering system were made.

6. *"This Act"*

The words "this act" were used thousands of times in the R.C.M. Since the law provides that during recodification, an appropriate MCA code division may be used to refer to a "section of, part of, or to an entire act,"¹⁶ the staff was authorized to clarify many of these references. Thus, during recodification, "act" was changed wherever possible to a more precise term such as "title," "chapter," "part," or "section." The original act was studied to determine exactly to which statutes the words "this act" applied, and the appropriate references were then substituted.

Many times it was found that the word "act" applied to nothing; that the original act had been repealed. Because new law was often tacked on the end of a chapter or a title in the R.C.M., it often appeared to a casual user of the code that the words "this act" applied to an entire chapter. For instance, the original welfare laws abounded in such phrases as "persons eligible for assistance under other parts of *this act*,"¹⁷ or "persons who are not entitled to preference under *this act*."¹⁸ Research showed, however, that sections from the original welfare act were practically non-existent, having been repealed or replaced by later acts. In this and similar cases, the codifiers were not able to substitute a reference to any specific

14. R.C.M. 1947, § 17-206 (now codified at MCA § 27-1-606 (1978) (emphasis added)).

15. See section IV(D)(1) *infra*.

16. MCA § 1-11-101(2)(b) (1978) (formerly codified at R.C.M. 1947, § 12-501(2)(b) (Supp. 1977)).

17. R.C.M. 1947, § 71-305 (Supp. 1977) (emphasis added).

18. R.C.M. 1947, § 71-1301 (emphasis added).

statutes for the words "this act," so the words were bracketed and scheduled for amendment by a Code Commissioner revision bill¹⁹ to something more relevant such as "violation of Chapter 2" or "appropriated for public assistance purposes."

7. *Effective Date*

The calendar date was inserted whenever possible for expressions such as "the effective date of this act," after "passage and approval," or "hereafter." There were instances, however, in which the expression used was subject to interpretation and was thus not changed. For instance, although the usual meaning of the expression "after passage" is after the effective date, it could refer to after passage by the legislature, before approval by the governor, or perhaps after passage and approval, but before the effective date.

Consider MCA § 15-24-1307(1) (1978):²⁰

Existing vacant unimproved land within the core area and classified as commercial shall be taxed at current taxable values *for 5 years after passage of this act*. If at that time the land is still vacant, 5% shall be added annually to the taxable value to a maximum of 50%. Thereafter, the land shall be taxed at 150% of taxable value until it is converted to commercial use.^{20.1}

Does "after passage of this act" refer to five years after April 22, 1977, the day the bill was signed by the speaker of the house and president of the Senate; after May 13, 1977, the day approved by the Governor;²¹ after July 1, 1977, the effective day of the bill; or after 1977, the *year* the bill became effective? The Council staff did not think this was a decision that could be made during recodification, so no guesses were made.

8. *Changing or Inserting Language*

It was vital that the Code Commissioner have authority to insert or change language made necessary because of rearrangements in the code. If a section of the law is moved so that it no longer follows a section on which it relies for meaning, it may become necessary to insert a noun for a pronoun, or make other changes. In the liquor code, for example, there was a sentence concerning passenger carrier licenses that read, "*They* shall be issued upon payment by the applicant of an annual license fee in the sum of three hundred dollars" ²² In order to move that sentence to a section

19. See section IV(D)(1) *infra*.

20. Formerly codified at R.C.M. 1947, § 84-7509(1) (Supp. 1977).

20.1. Emphasis added.

21. See ch. 582, Laws of Montana (1977).

22. R.C.M. 1947, § 4-4-109 (Supp. 1977) (emphasis added).

on fees, it was necessary to substitute "passenger carrier licenses" for "they" so the sentence would read, "*Passenger carrier licenses shall be issued upon payment . . .*"²³

It may also be necessary to insert clarifying language to correctly merge sections. MCA § 23-2-642 (1978), replacing R.C.M. 1947, §§ 53-1023 and 53-1027 (Supp. 1977), reads in part:

(1) The failure to display a current tax-paid decal during the time provided in this part is a misdemeanor, punishable by a fine of not less than \$10 or more than \$50.

(2) A person who violates any *other* provision of this part or a rule adopted pursuant thereto shall pay a civil penalty of not less than \$15 or more than \$500 for each separate violation.^{23.1}

It was necessary to add the word *other* in (2) to clarify the new code section. The old section 53-1023, to be consistent, should have read, "a person who violates any provision of this part *other than 53-1027 . . .*" Merging the two penalty sections made the conflict more obvious, thus the word "other" was needed to cure the defect.

9. *Redundancy*

The recodification statute also conferred the power to eliminate redundant words.²⁴ Many were found. For example, if within a title, chapter, or part, "department" is defined to mean "department of social and rehabilitation services," the entire phrase need not, indeed *should not* be used elsewhere in that title, chapter, or part. In such a situation, the staff would delete the words "of social and rehabilitation services."

Paragraphs often consisted of several sentences connected with semicolons and "provided however" that were not really provisos, but were redundant conjunctions. The staff separated the paragraphs into sentences by eliminating the redundant words.

10. *Correcting Obsolete or Inaccurate References*

There were many code sections needing changes because later acts affected names and terminology. For instance, the Executive Reporganization Act of 1971²⁵ abolished or renamed hundreds of offices and agencies. The Allen Smith Company, however, did not make the changes in the code. For example, the act abolished the office of state controller and transferred his duties to the depart-

23. MCA § 16-4-501(4) (1978).

23.1. Emphasis added.

24. See MCA § 1-11-204(3)(b) (1978) (formerly codified at R.C.M. 1947, § 12-505(4)(b) (Supp. 1977)).

25. Ch. 272, Laws of Montana (1971).

ment of administration,²⁶ but many references to the state controller were still in the code.²⁷ The Allen Smith Company, which did not have access to a computerized data base, had no way of knowing where all these references might appear. Consequently, for seven years, many of the effects of the Executive Reorganization Act had not been reflected in the code.

The recodification staff members searched the code for references to abolished or renamed offices and agencies. They also had to study any amendments made between 1971 and 1977 that made further changes in the executive branch. The office of budget director, for instance, has been the subject of a bill in almost every legislative session since 1971.²⁸ After careful study to determine the exact state of the law, the statutes were changed during the recodification process to reflect the current legal status of all affected offices or agencies.

Usually there was no problem with making these changes, other than the time and care spent in finding and changing all the relevant statutes. In a few cases, however, personalities and politics became involved. A good example is the law relating to the chief of the Highway Patrol.

The Reorganization Act stated that the "functions of the highway patrol . . . and of the position of the highway patrol chief . . . are transferred to the division of motor vehicles."²⁹ However, reference to functions of the highway patrol chief remained in several sections of the law. Many of these sections related to such things as supervisory powers over patrolmen³⁰ and appointment of patrolmen.³¹ The attorney for the Highway Patrol argued to the Code Commissioner that the literal effect of the quoted section was to make the office of chief of the Highway Patrol statutorily functionless, but that interpretation could not have properly reflected the intention of the legislature, which did not abolish other positions when functions were transferred.

Although not rendering an opinion on the illusive intent of the legislature, the Code Commissioner agreed that although it did not make much sense to leave the position of patrol chief functionless, that was precisely what the Reorganization Act had done. One reason advanced for the transfer in the report of the Commission on Executive Reorganization was to allow the attorney general,

26. See R.C.M. 1947, § 82A-202(2) (repealed by ch. 326, Laws of Montana (1974)).

27. See, e.g., R.C.M. 1947, §§ 6-105, 10-1004, 16-2723, 59-701, 75-6206.

28. See, e.g., ch. 282, Laws of Montana (1974); ch. 460, Laws of Montana (1975); ch. 229, Laws of Montana (1977).

29. R.C.M. 1947, § 82A-1206 (Supp. 1977).

30. See, e.g., R.C.M. 1947, § 31-105(1)(d) (Supp. 1977).

31. See, e.g., R.C.M. 1947, § 31-105(1) (Supp. 1977).

through his division of motor vehicles, to define duties and perhaps assign "administration" of motor vehicle laws to non-uniformed employees.³²

The end result is that the new code will reflect correctly executive reorganization changes, which can be amended by the legislature if seen necessary, whereas between 1971 and 1979 the effect of all the changes did not appear in the code, making amendment more difficult.

The staff also changed the name "legislative assembly" to its new name under the 1972 Montana Constitution, "legislature."³³ Another change was converting "police court" to "city court."³⁴

One legislative mandate that the staff was unable to carry out was that of R.C.M. 1947, § 38-121 (Supp. 1977),³⁵ which read:

Any reference to the terms "insane" person, "incompetent" person, a person with a "mental disease or defect," persons "disordered in mind," persons "unable to handle their own affairs," persons "feeble-minded, moron, imbecile, idiot and mentally deranged," and all other like references in the Revised Codes of Montana, 1947, mean "of unsound mind."

The terms listed in this section are used in many ways in 192 sections of the code. Because there is a great difference between such terms as "serious mental illness" and "mental incompetence" or "mental defect," it did not seem logical to substitute one general term for all of them. In most cases it seemed to be closer to the correct meaning to substitute "mental illness" or "mental disorder" for words such as "insane" and "mental incompetence," or "developmentally disabled" for "imbecile," "moron," "retarded," or similar terms. The title to the act in which §38-121 appeared³⁶ indicated that it was meant to implement the 1972 Constitution. The only reference to "of unsound mind" in the Constitution appears as follows:

Any citizen of the United States 18 years of age or older who meets the registration and residence requirements provided by law is a qualified elector unless he is serving a sentence for a felony in a penal institution or is of unsound mind, as determined by a court.³⁷

32. Montana Commission on Executive Reorganization, *Report to the Montana Legislative Assembly* 198 (December 1970).

33. MONT. CONST. art. V, § 1.

34. See, e.g., MCA §§ 25-32-101 (formerly codified at R.C.M. 1947, § 93-7804), 25-32-102 (formerly codified at R.C.M. 1947, § 93-7801), 25-33-102 (formerly codified at R.C.M. 1947, § 93-7901) (1978).

35. Not currently codified.

36. "An Act Implementing Article II, Section 28, Article IV, Sections 2 and 4, and Article XII, Section 3(2) of the 1972 Montana Constitution. . . ."

37. MONT. CONST. art. IV, § 2.

If the intent of the legislature in § 38-121 was to define "of unsound mind" for the purpose of this constitutional provision, it obviously was not well-written. The recodification staff decided that the constitutional provision needed no implementing legislation, because the state of being of unsound mind had to be determined by a court in any case. The staff recommended that the section be repealed and that each of the 192 sections containing references to a mental state be individually amended if necessary to fit the meaning of the parent statute.

C. *Dealing with Unconstitutional Statutes*

Two issues concerning unconstitutional statutes faced the Council staff. First, is a statute revived when the supreme court reverses a previous declaration that the statute was unconstitutional? Second, is a statute, declared unconstitutional under the 1889 Montana Constitution, revived under the 1972 Constitution with which it is in conformity? Before it could be decided if any such statutes should be excluded from the data base for recodification, these questions had to be answered. The legislature, of course, could have solved the problem by repealing all statutes declared unconstitutional when they were so declared, but it has not done so consistently.

1. *Case Law*

In *Jawish v. Morlet*,³⁸ the Municipal Court of Appeals for the District of Columbia stated the general rule that a law which is declared unconstitutional by a court and later held to be constitutional by that court need not be reenacted by the legislature to restore its operative force.³⁹ The court said a statute declared unconstitutional is void in the sense that it is inoperative so long as the decision stands, but not in the sense that it is repealed or abolished; and if the decision is reversed, the statute is valid from its first effective date.⁴⁰

In accord is the 1867 Indiana case of *Greencastle S. Tpk. Co. v. State ex rel. Malot*.⁴¹ That case overruled an 1854 case, *Langdon v. Applegate*,⁴² which had held most of the statutes enacted in the 1853 legislative session to be unconstitutional because of a technical drafting defect. The legislature of 1867, apparently upon notice that

38. 86 A.2d 96 (D.C. Mun. Ct. App. 1952).

39. *Id.* at 97.

40. *Id.*

41. 28 Ind. 382 (1867).

42. 5 Ind. 327 (1854).

the court was about to reverse its 1854 holding, specifically repealed the 1853 legislation, which for thirteen years had been considered dead. According to the reasoning of the Indiana Supreme Court, the specific repeal of the 1853 laws was necessary to keep the laws ineffective upon the court's reversal of its former holding that those laws were unconstitutional.⁴³

Despite Indiana's holding that statutes formerly declared unconstitutional are revived by reversal of the unconstitutional holding, the Indiana Code Revision Commission took it upon itself to delete all such statutes from its computer's data base.⁴⁴ The authority for doing so is not stated, and it seems unsafe to delete such statutes without a specific legislative repeal if there is a chance those statutes may be revived. There is some authority to the effect that leaving out material in a revision or recompilation acts to repeal that deleted material.⁴⁵ Recodification may differ from revision here, in that it is not always presumed that in a codification the intent to completely supplant the old law is present.⁴⁶ The safest and surest alternative with recodification is thus a legislative repeal.

The above cases are premised on the theory that the unconstitutional statute is "dormant" (although the courts use the word "void"), and thus susceptible of revival. Montana is among the jurisdictions that hold a statute that is declared unconstitutional to be "no law at all,"⁴⁷ "as nothing,"⁴⁸ "wholly void,"⁴⁹ or void "since its passage,"⁵⁰ implying that it cannot be automatically revived. These courts apparently find they have the power to "repeal" and

43. 28 Ind. at 389.

44. See Oddi and Attridge, *The Indiana Code of 1971: Its Preparation, Passage, and Implications*, 5 IND. LEGAL F. 1, 52 (1971).

45. See, e.g., *State v. Conally*, 227 S.C. 507, 518, 88 S.E.2d 591, 597 (1955). But cf. MCA § 1-11-103(2)(d) (1978) (formerly codified at R.C.M. 1947, § 12-506(2)(d) (Supp. 1977)) (providing that enactment of the MCA shall not repeal omitted statutes of a nongeneral, nonpermanent nature).

46. See, e.g., *Sullivan v. Siegal*, 125 Colo. 544, 554, 245 P.2d 860, 865 (1949). R.C.M. 1947, § 12-506 as enacted by ch. 419, Laws of Montana (1975), provided that the enactment of the MCA would repeal all general and permanent laws not contained in the MCA. This section was amended by ch. 1, Laws of Montana (1977), to provide that the new code "shall not . . . repeal statutes of a nongeneral, nonpermanent nature such as severability . . ." merely because those statutes are omitted from the code. MCA § 1-11-102(2)(d) (1978) (formerly codified at R.C.M. 1947, § 12-506(2)(d) (Supp. 1977)).

47. *Tipton v. Sands*, 103 Mont. 1, 18, 60 P.2d 662, 670 (1936). See also *State v. Cormier*, 171 La. 1035, 1039, 132 So. 779, 781 (1931).

48. *Hamilton v. Board of County Commissioners*, 54 Mont. 301, 309, 169 P.2d 729, 731 (1917).

49. *State ex rel. Woodahl v. District Court*, 162 Mont. 283, 294, 511 P.2d 318, 324 (1973). See also *Fellows v. Schultz*, 81 N.M. 496, 501, 469 P.2d 141, 146 (1970).

50. *State ex rel. Woodahl v. District Court*, 162 Mont. 283, 296, 511 P.2d 318, 325 (1973). See also *State ex rel. Tharel v. Board of County Commissioners*, 188 Okla. 184, 187, 107 P.2d 542, 547 (1940).

"abolish" laws not in conformity with the constitution, contrary to the Indiana court.

In *Hamilton v. Board of County Commissioners*,⁵¹ the Montana Supreme Court stated:

An unconstitutional statute is void, and a void thing is as nothing. A void statute is not a law. It imposes no duty, confers no authority, affords no protection, and no one is bound to observe it. In contemplation of law it is as inoperative as though it had never been passed.⁵²

The court said in *Lowery v. Garfield County*,⁵³ that a "void thing" is no thing; it has no legal effect whatsoever and no right whatever can be obtained under it or grow out of it. In law it is the same thing as if the 'void thing' had never existed."⁵⁴ It likened a void law to "a dead limb upon the judicial tree, which may be lopped off at any time."⁵⁵ And in *Tipton v. Sands*,⁵⁶ the court stated that if a law is unconstitutional, it is "no law at all."⁵⁷

A more recent and definitive case is *State ex rel. Woodahl v. District Court*.⁵⁸ The Montana Supreme Court held in that case that a 1937 amendment⁵⁹ to a gambling statute,⁶⁰ which amendment had been declared unconstitutional under the old Montana constitution prohibiting gambling,⁶¹ was void *ab initio*, and even though the legislature never repealed the amendment, it was not revived by subsequent enactment of the new constitution, which permits gambling under circumstances with which the amendment conformed.⁶²

The view that an unconstitutional statute is void *ab initio*, or "no law at all," is appealing when one considers that in enacting the statute the legislature is acting beyond its authority and hence has no power to enact the law. Thus, the law could be said never to come into existence. This ignores, however, the fact that before the statute was declared to be unconstitutional, it was considered to be law and was treated as if it were. It also ignores the fact that in subsequently ruling the statute to be constitutional, the court is in effect finding the legislature did have power and authority to enact the law

51. 54 Mont. 301, 169 P. 729 (1917).

52. *Id.* at 309, 169 P. at 731.

53. 122 Mont. 571, 208 P.2d 478 (1949).

54. *Id.* at 584, 208 P.2d at 485.

55. *Id.*

56. 103 Mont. 1, 60 P.2d 662 (1936).

57. *Id.* at 18, 60 P.2d at 670.

58. 162 Mont. 283, 511 P.2d 318 (1973).

59. Ch. 153, Laws of Montana (1937).

60. R.C.M. 1947, § 94-2401 (amended by ch. 508, Laws of Montana (1977)) (now codified at MCA § 23-5-102 (1978)).

61. See *Harrison v. Deniff*, 126 Mont. 109, 113, 245 P.2d 140, 142 (1952).

62. 162 Mont. at 294, 511 P.2d at 323-24.

from the beginning. To say no law ever was enacted is to engage in a legal fiction and may well affront personal and property rights vested under the statute.

2. Staff Action

Although it appears that there is no need for a specific legislative repeal of statutes declared unconstitutional in Montana, there is some question about the status of a statute upon the reversal of a decision holding it unconstitutional. Thus, the Council staff decided to recommend the repeal of all statutes that had been held unconstitutional. Repeal leaves no question about the legislative intent to abolish those laws, whereas if the staff had taken it upon itself to delete the laws from the new code, there may have been left some question. There might also have been some grumbling from the legislators who were not presented with a package of the exact laws that were being deleted. Laws unconstitutional in part were either rewritten in Code Commissioner revision bills to conform,⁶³ or the unconstitutional parts were recommended for repeal if severable.

The Council staff Shepardized each code section in searching for unconstitutional provisions. Some thirty-five instances of a statute or series of statutes being declared unconstitutional, or unconstitutional in part, were found. Some were since repealed by the legislature, a few corrected, some deleted by the publisher with an annotation on the case declaring the statute unconstitutional, and many were still on the books, most with an annotation on the unconstitutional holding and leaving it up to the researcher to determine if the statute was valid as applied in his case. Because Shepard's recording of unconstitutional statutes was incomplete, a complete search of the annotations in the R.C.M. was required to locate all unconstitutional statutes. That search was made as staff attorneys worked on each title.

Because unconstitutional laws might have been overlooked and included in the new code, the question arose whether those laws would be revived by such inclusion. The *Woodahl* case indicates they would not. The supreme court held in that case that the renumbering of sections 94-2401 through 94-2403 in the 1973 recodification and revision of the Montana Criminal Code did not reenact the previously invalid provisions.⁶⁴

63. See section IV(D)(1) *infra*.

64. 162 Mont. at 296, 511 P.2d at 325.

D. *Special Problems*

1. *Code Commissioner Revision Bills*

The Code Commissioner must recommend legislation to cure various problems in the code.⁶⁵ Specifically, Code Commissioner revision bills must be drafted to eliminate outdated laws, eliminate obsolete or redundant language in the code, eliminate unnecessary duplication, delete from the code laws that have been directly or impliedly repealed, clarify existing laws, and correct errors and inconsistencies in the code.⁶⁶ Such bills also have been used to make the code conform with recent attorney general opinions and court decisions.

Code Commissioner bills also played an important role in the recodification by providing a vehicle to change the old law, with the aid of the legislature's power, in situations in which the Code Commissioner or Legislative Council had no power to act alone. Examples of their use in the recodification appear throughout this article.⁶⁷

Because no such bills had been passed in more than thirty years, the code contained many technical errors. Sixty Code Commissioner bills, representing the sixty areas of the code that had been studied by the Council staff, were passed in the 1977 Legislature to correct the problems. In 1979, seventy-two such bills were introduced.

Each Code Commissioner bill is attached to an explanation sheet that gives the reasons for each change and emphasizes the fact that the changes are nonsubstantive. Most Code Commissioner bills have a title containing "general revision" language. If the intent is to change meaning, this is made evident in the title or explained in the attached explanation. The Council staff has assumed that because of the hundreds of changes in some of the general revision bills, the courts would not interpret a minor change in language as a change in meaning unless legislative purpose to change the meaning is clear.⁶⁸

2. *Sections Recommended for Repeal*

A separate table in the Table of Corresponding Code Sections volume published with the new code lists all the R.C.M. sections recommended for repeal. These sections are incorporated in some of

65. MCA § 1-11-204(3) (1978) (formerly codified at R.C.M. 1947, § 12-505(4) (Supp. 1977)).

66. *Id.*

67. See section IV, subsections (B)(3), (4), (6), (C)(2), *supra*.

68. See *Schneider v. Schneider*, 17 N.Y.2d 123, 269 N.Y.S.2d 107, 110, 216 N.E.2d 318, 320 (1966).

the Code Commissioner bills introduced during the 1979 session, recommending approximately 200 sections for repeal because of their redundancy or being superseded by later law. If the legislature decides against repealing any of those sections, they will be assigned MCA section numbers and will appear in the 1979 version of the code.

3. *Sections Not Codified*

The recodification is a compilation, arrangement, and rearrangement of permanent, general laws. Nongeneral, nonpermanent laws, such as temporary statutes and those dealing with severability, construction, and repeals were not codified, but will appear in the 1979 publication as compiler's notes. These sections are not repealed by enactment of the new code.⁶⁹ Because of their nonpermanent or nongeneral nature, however, and because most of them are standard parts of acts that recur in almost every statute, it would be wasteful to repeat them in the code. The R.C.M. sections not codified are also listed in the *Table of Corresponding Code Sections* volume of the MCA.

4. *Bracketed Material*

Material added to the enrolled bill by the Allen Smith Co. in the 1947 code to correct omissions or errors in the enrolled acts appeared as bracketed material. That material sometimes had no substantive import, such as when it involved mere corrections in spelling or insertion of words to correct grammar. Possible substantive import was involved in other changes, such as changing "lawful" to "unlawful" or changing a reference to "chapter 96" to "chapter 69."

Whenever the insertion of bracketed material obviously had been a correction of inadvertent error and would not change significantly the impact of the statute, the insertion was made in the new code without brackets. If insertion of the bracketed material significantly altered the meaning of the statute, the original language of the enrolled act was retained and the section was included for amendment in a Code Commissioner revision bill.

When obvious, possibly substantive, errors were found, brackets were inserted around the inaccurate material, and the section was included for amendment in a Code Commissioner revision bill.

69. MCA § 1-11-103(2)(d) (1978) (formerly codified at R.C.M. 1947, § 12-506(2)(d) (Supp. 1977)).

5. *Internal References to Other Code Sections*

Sections of an act often refer to other provisions of the same act (for example, "as provided in Section 3"). Sections of one act may also incorporate sections of other acts or code sections (for example, "The provisions of the Administrative Procedure Act (Title 2, Chapter 4) apply to this act."). There are thousands of such references in the Montana code. While a new title was being assembled and processed, however, it often was impossible to change these internal references because the total renumbering would not occur until later.

If a section contained an internal reference to a statute that did not yet have a new MCA number, the section was stored with a special symbol in the computer. By looking at a computerized storage list, the staff could identify each section that still contained unchanged internal references. Once the total renumbering had taken place, the internal references were changed. Each internal reference was checked in two or three separate proofing steps to ensure its accuracy.

The staff discovered many references to repealed sections, as well as many references that were no longer accurate because the original section referred to had been renumbered or amended so that it no longer applied. Sections containing inaccurate references were scheduled for amendment by Code Commissioner revision bills.

By using their computer search facilities, the Council staff members have compiled an "internal reference list" containing each code section number that is referred to in another code section. This list for MCA § 7-8-2213 (1978) provides an example:

- REFERENCES TO SECTION 7-8-2213
- #1.007008002214 SEC. BODY..... 7-8-2214.
the county, where the provisions of 7-8-2213 have been compiled
 - #2.007008002308 SEC. BODY..... 7-8-2308.
by tax deed may be sold as provided by 7-8-2213, and except so
7-8-2213 shall remain in force and effect. Nothing herein contained
shall

E. *Using the Computer To Produce the Final Copy*

When a staff attorney finished making the changes discussed above on the master copy of the title he was assigned, the copy went to a data entry operator. The operator retrieved the R.C.M. section affected on the computer screen, and by using a cursor (similar to the "bouncing ball" in the old movies that helped us sing along with the music), made the changes indicated and stored the section under its MCA number. The operator also entered the title, chapter, and part names and numbers from the outline prepared by the

attorney. The computer was then instructed to print the new title in its entirety. The various elements of the title (such as title, chapter, and part names, title table of contents, chapter table of contents, statute text, and histories) could have been entered in the computer at different times and in random order, so the entry procedures were designed to make those elements print out in their proper order.

Five proofreaders were used on the first proofreading. Two read the "clean" version of the new title printed by the computer, one read from the attorney's master draft, one read from the R.C.M. and one read from the session laws. Since the data base had been constructed from the text of the R.C.M. and never had been proofed against the session laws, it was vital to so proof it. Several errors were found. Whenever the R.C.M. version differed from that of the session laws, the editor referred to the enrolled bill on file with the secretary of state to determine the correct version.

One set of the session laws from 1947 through 1977 and one set of the R.C.M. were marked "working copy" and used during the proofreading process. After a section of the session laws or code was proofread, it was marked with a red "X" and the MCA number assigned was written in the margin. Finally, the working copies were checked after the recodification was considered complete to ensure that each R.C.M. section had been allocated an MCA title.

A computer tape of the new code, produced as discussed above, was fed into a photocomposer, which turned out camera-ready copy. This tape was also run through another program that made the new data base "searchable." The data base thus will never need to be retyped or redone in any manner.

The same data base used to create camera-ready copy for the new code will be used in computerized bill drafting. Changes made in new bills will be made on computer tape, and that tape will be used to create camera-ready copy of the session laws. The tape also will ensure that the statute text not changed by bills making amendments will be the same in the bills as in the code.

V. THE NEW CODE

A. *Bill Enacting New Code*

Senate Bill 1 of the 1979 Montana legislature, which adopted the new code as *prima facie* the law of Montana,⁷⁰ probably was necessary to adopt the new code produced by the Legislative Council staff. As a 1952 Colorado case said, "It is doubtful whether the

70. Ch. 1, Laws of Montana (1979).

legislature could lawfully delegate to any person or commission authority to make a compilation or codification of the statutes of a state which, when completed, would give it the dignity of a basic and fundamental law without further legislative action."⁷¹

A bill to adopt a code, like any other bill, is subject to constitutional requirements of form. The Montana Constitution explicitly excepts codification and general revision bills from the requirement that bills contain only one subject, clearly expressed in their titles.⁷² In any case, Senate Bill 1 may conform to that requirement. Its sole subject is the entire body of statute law, and because that is what a code is understood to be, it appears that the subject matter is clearly expressed in the title.

A series of motions suspended the rules requiring three readings in each house in order to allow the code to pass as quickly as possible, since the presumption exists that the laws contained in the new code were originally enacted with due constitutional precaution.⁷³ The bill itself is very simple and short. It appears as an appendix to this article.

B. *Effect of New Code*

To ensure that statutes re-enacted in the new code will be construed as continuations of previously existing law rather than as new law, the implementing language of the code itself says that the laws re-enacted in the code are not to be considered *de novo*, but are to be viewed as continuations of the statutes they replaced.⁷⁴ The code also says that its adoption will not revive a repealed or superseded law, nor will it repeal statutes of a nongeneral, nonpermanent nature that have not been codified.⁷⁵

The law further says that no presumption of legislative construction is to be drawn from the new code arrangement.⁷⁶ And finally, in case of inconsistencies resulting from omissions or other errors in the recodification, the version of the official enrolled bill on file with the Secretary of State will prevail.⁷⁷

The effect of this is that the recodification does not change the

71. *Sullivan v. Siegel*, 125 Colo. 544, 554, 245 P.2d 860, 865 (1952).

72. MONT. CONST. art. V, § 11(3).

73. See *In re Interrogatories*, 127 Colo. 160, 164, 254 P.2d 853, 855 (1953).

74. MCA § 1-11-103(3) (1978) (formerly codified at R.C.M. 1947, § 12-506(3) (Supp. 1977)).

75. MCA § 1-11-103(2)(a),(d) (1978) (formerly codified at R.C.M. 1947, § 12-506(2)(a),(d) (Supp. 1977)).

76. MCA § 1-11-103(4) (1978) (formerly codified at R.C.M. 1947, § 12-506(4) (Supp. 1977)).

77. MCA § 1-11-103(6) (1978) (formerly codified at R.C.M. 1947, § 12-506(6) (Supp. 1977)).

law, and the effect of each statute is the same as when originally enacted. Because the Code Commissioner has no legislative power, there can be no change in the law without legislative sanction.

The Montana recodification thus should avoid court decisions holding that "where . . . a change [in the law] by codification does appear, it must be given effect, not because of any power of legislation vested in the codifiers, but because of the adopting statute."⁷⁸ Montana's recodification also should be in line with the presumption that, because the function of recodification is to reorganize law, changes in language are for purposes of clarity rather than for changes in meaning.⁷⁹

The R.C.M. compilation often tended to combine sections of various acts together as though they were one act. Thus, a substantive section from one act might be followed by a penalty section from another. Enactment of the new code will not fortify any previous erroneous or misleading combinations of law. The original acts and amendments thereto must still be closely inspected to determine legislative intent. However, the staff attempted to codify all laws in such a way as to clarify internal meaning as well as relationships between certain statutes.

C. *Format of Code Volumes*

1. *Content of New Code*

The code as adopted by Senate Bill 1 consists only of statute text and histories. The Montana Rules of Civil Procedure, the Montana Rules of Appellate Civil Procedure, the Montana Rules of Evidence, and the 1972 Montana Constitution will be reprinted with the code for the convenience of the user.⁸⁰ As soon as possible following the 1979 legislative session (and following each subsequent session), the code will be completely reprinted, containing all amendments and new law enacted in that session. There will be no pocket supplements, although the printing of supplements is authorized.⁸¹

2. *Microfiche Versions*

A microfiche version of the code (including statute text and histories) will be available to code users within one month after the last bill of each legislative session is signed into law. Early availability and convenient storage are the microfiche version's primary ad-

78. *Atlanta Coach Co. v. Simmons*, 184 Ga. 1, 6, 190 S.E. 610, 614 (1937).

79. See C. SANDS, *SUTHERLAND STATUTORY CONSTRUCTION* § 28.11 (4th ed. 1972).

80. This is required by MCA § 1-11-204(4) (1978) (formerly codified at R.C.M. 1947, § 12-505(5) (Supp. 1977)).

81. MCA § 1-11-302 (1978) (formerly codified at R.C.M. 1947, § 12-510 (Supp. 1977)).

vantages. The bulk of a newly printed code of some seventeen volumes every two years could well present a significant storage problem.

3. *Histories*

The user should be aware that the reported history of each section in the MCA is the history of the section as it appeared in the old code. Where the R.C.M. sections are split into several MCA sections, the history may be confusing, or even misleading. R.C.M. 1947, § 4-4-201 provides an example. Subsections (1), (3), and (4) are codified at MCA § 16-4-105 (1978); subsection (2) is codified at MCA § 16-3-309 (1978) and at MCA § 16-4-405(1) and (2) (1978). The reported histories of those MCA sections thus are identical, because each is the history of former § 4-4-201. The history of § 16-3-309 says the section was enacted by Sec. 14, Ch. 46, Ex. L. 1933. That section 14, however, bears no resemblance to § 16-3-309, because some of the language in § 16-3-309 did not appear until 1955 as an amendment to former R.C.M. 1947, § 4-333 (which was redesignated 4-4-201 in 1975),⁸² and some of the language in § 16-3-309 was not enacted until 1977 as an amendment to 4-4-201.⁸³ Technically, the history of § 16-3-309 could show only the two years' activity, 1955 and 1977, but that would not show a complete history of former sections 4-333 or 4-4-201. To redo all histories to have them coincide exactly with MCA sections would be nearly impossible.

4. *Chapter Cross References*

Chapter cross references will be printed starting with the 1979 versions of the MCA. After the table of contents for the chapter on marriage, for example, a list of statutes or court rules related to marriage, but not codified in that chapter will follow.

5. *Annotations*

Annotations and editorial aids to the new code, other than chapter cross references, will appear in separate volumes coinciding with one or more volumes of statute text. The Council staff plans to bind the annotations by title, and insert them in three-ring binders. The annotations will be printed for the first time in late 1979 or early 1980. They will include comments of drafting commissions;

82. See MCA § 16-3-309(2) (1978), which was enacted as the first part of a long sentence in former R.C.M. 1947, § 4-333(1)(a). Ch. 55, Laws of Montana at 99 (1955).

83. See MCA § 16-3-309(1) (1978), which was enacted as the first sentence of R.C.M. 1947, § 4-4-201(2) (Supp. 1977) by ch. 496, Laws of Montana at 1580 (1977). (The language, however, was not new; it was a rephrasing of the former R.C.M. 1947, § 4-403.)

editorial notes by the Council staff; digests of cases of the Montana Supreme Court and federal courts in Montana; recent attorney general opinions not rendered moot by subsequent legislation; law review articles; sections of the Administrative Rules of Montana adopted under statutory authority; notations to statements of intent, as required under the Legislative History Act;⁸⁴ references to encyclopedias, treatises, and state bar publications; and section cross references.

Supplements to the annotations will be supplied as needed (perhaps as often as every six months for a title with a heavy case volume, such as the Criminal Code⁸⁵) and reprinted by title when necessary.

Because annotations to some titles neither change nor grow very much, it seldom will be necessary to reprint them.

6. *Index*

Some problems have contributed to the completion of the full index to the new code. For some titles, only major breakdowns such as chapters and parts were indexed in the 1978 version of the code, and it is doubtful that the index can be completed before the 1979 version is printed. By the 1981 version, however, the index will be completed. Furthermore, the aid of computer programs will result in updates and reprints of the index after each legislature, without the need for pocket supplements.

VI. CONCLUSION

The rearrangement of Montana statutory law was long overdue when work began on the Montana Code Annotated. Now that the task is completed, users of the new code appear to be receiving it well. Under the requirement of continual recodification and general updating, and with the aid of computer technology, the Council staff will maintain an orderly and logical arrangement in the code and avoid future bulk revisions. Credit also must go to the dedicated staff members whose long hours of work made this gigantic task possible.

84. MCA §§ 5-4-401 to 404 (1978) (formerly codified at R.C.M. 1947, §§ 43-519 to 522 (Supp. 1977)).

85. MCA title 45 (formerly codified in R.C.M. 1947, title 94).

APPENDIX 1
MONTANA CODE ANNOTATED

Volume and Title Arrangement

Volume 1

GOVERNMENT-RELATED

Titles

1. General Laws and Definitions
2. State Government Administration
3. Judiciary Courts
4. Reserved
5. Legislative Branch
6. Reserved

Volume 2

LOCAL GOVERNMENT

Titles

7. Local government
8. and 9.—Reserved

Volume 3

GOVERNMENT-RELATED

Titles

10. Military Affairs and Disaster and Emergency Services
11. and 12.—Reserved
13. Elections
14. Reserved
15. Taxation
16. Alcohol and Tobacco Finances
17. State Finance
18. Public Contracts
19. Public Retirement Systems

Volume 4

EDUCATION—LEISURE TIME

Titles

20. Education
21. Reserved
22. Libraries, Arts, and Antiquities
23. Parks, Recreation, Sports and Gambling
24. Reserved

Volume 5

CIVIL PROCEDURE—
LEGAL RELATIONSHIPS

Titles

25. Civil Procedure
26. Evidence
27. Remedies
28. Contracts and Other Obligations
29. Reserved

Volume 6

BUSINESS—FINANCE—INSURANCE

Titles

30. Trade and Commerce
31. Credit Transactions and Relationships
32. Financial Institutions
33. Insurance
34. Reserved

Volume 7

CORPORATIONS—PROFESSIONS—LABOR

Titles

35. Corporations, Partnerships, and Associations
36. Reserved
37. Professions and Occupations
38. Reserved
39. Labor

Volume 8**FAMILY—CRIME—SOCIAL SERVICES****Titles**

- 40. Family Law
- 41. Minors
- 42. and 43.—Reserved
- 44. Law Enforcement
- 45. Crimes
- 46. Criminal Procedure
- 47. and 48.—Reserved
- 49. Human Rights
- 50. Health and Safety
- 51. and 52.—Reserved
- 53. Social Services and Institutions
- 54. —59.—Reserved

Volume 9**TRANSPORTATION—PROPERTY—ESTATES****Titles**

- 60. Highways
- 61. Motor Vehicles and Traffic Regulations
- 62. —66.—Reserved
- 67. Aeronautics
- 68. Reserved
- 69. Public Utilities and Carriers
- 70. Property
- 71. Mortgages, Pledges, and Liens
- 72. Estates, Trusts, and Fiduciary Relationships
- 73. and 74.—Reserved

Volume 10**NATURAL RESOURCES****Titles**

- 75. Environmental Protection
- 76. Land Resources and Use
- 77. State Lands
- 78. and 79.—Reserved
- 80. Agriculture
- 81. Livestock

Volume 11**NATURAL RESOURCES—PLANNING****Titles**

- 82. Minerals, Oil, and Gas
- 83. and 84.—Reserved
- 85. Water Use
- 86. Reserved
- 87. Fish and Game
- 88. and 89.—Reserved
- 90. Planning, Research, and Development
- 91. —99.—Reserved

APPENDIX 2

CHAPTER NO. 1
MONTANA SESSION LAWS 1979
SENATE BILL No. 1

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Adoption of code. (1) The Montana Code Annotated (1978) as recodified and published by the code commissioner under the authority of Chapter 419, Laws of 1975, as amended by Chapter 1, Laws of 1977, is adopted as *prima facie* the law of Montana.

(2) The Montana Code Annotated may be cited as "MCA" and shall be given effect as provided in section 6, Chapter 419, Laws of 1975, as amended by section 4, Chapter 1, Laws of 1977, and set forth in 1-11-103, MCA.

Section 2. Effect of publishing supreme court rules. (1) The legislature recognizes the supreme court's authority pursuant to Article VII, section 2, of the Montana constitution to make rules governing procedure and practice before the courts.

(2) The legislature also recognizes that the practice of printing such rules with the Montana statutes is of benefit to code users and facilitates implementation of Article VII, section 2(3), of the Montana constitution concerning disapproval by the legislature.

(3) Therefore, the Montana Rules of Civil Procedure, printed as chapter 20, Title 25, MCA; the Montana Rules of Appellate Civil Procedure, printed as chapter 21, Title 25, MCA; and the Montana Rules of Evidence, printed as chapter 10, Title 26, MCA, appear only for the purpose of facilitating use of the code. Neither this act nor publication of the rules may be construed as an attempt to readopt or promulgate the rules.

Section 3. Section 1-11-301, MCA, is amended to read:

"1-11-301. Publication and sale of Montana Code Annotated.

(1) The legislative council with the advice of the code and grade of all publications prior to having the *code commissioner* contract for their publication. *The code commissioner shall follow the requirements of state law relating to contracts and bids except as herein provided.*

(2) The methods of sale to the public of the Montana Code Annotated and supplements or other subsequent and ancillary publications thereto may be included as an alternative specification and bid and as a part of a contract to be let by bids by the *code commissioner*.

(3) The sales price to the public shall be fixed by the legisla-

tive council but *may* not exceed the cost price plus 20%. All revenues generated from the sale of the Montana Code Annotated or ancillary publications shall be *deposited in the revolving fund, from which fund* appropriations *may be* made for the use of the office and facilities of the legislative council under this chapter.

(4) Sets of the Montana Code Annotated purchased by the state or local governmental agencies that are supported by public funds shall be for the cost price of the sets.”

Section 4. **Effective date.** This act is effective on passage and approval.