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Model Law for Planning Cities, Counties and States

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upon the cases with suitable references to them in the foot-notes. This style does not detract from the value of the volume as it is not noticeable enough to actually make it difficult to use. As stated, it would seem to be a matter rather of the reader's pleasure, than of a matter for particular criticism.

The chapters dealing with, respectively, Res Adjudicata, Stare Decisis, and Overruled Decisions in Constitutional Law; Reliance upon Decisions and the Effect of Overruling Decisions in Constitutional Law; Amendatory, Validating, Curative and Remedial Measures and Judicial Review as an Instrument of Government are especially commendable, not only as relating to the general subject indicated by the title of the volume, but in covering generally the topics dealt with in those chapters. These chapters, together with the Introduction, are especially outstanding, but that they are singled out does not mean that the other contents of the book is not meritorious. It is, taken as a whole, a most accurate, concise and scholarly presentation of matters which properly can be gathered under such a head as that of the effect of an unconstitutional statute.

The full and detailed table of contents, and a table of the cases discussed, together with the full general index, make the work one which can be readily used. This text, as indicated above, should prove to be an excellent reference, and in view of the detailed manner in which it covers the field and its many references to case authorities, should also prove a worth-while adjunct to the practising attorney. It is also suitable for reference work in college courses other than those offered by a law school, as the author deals with his material in a way which develops, not only its legal significance, but also its economic, political and sociological aspects.

—CHARLES P. WILHELM.

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MODEL LAWS FOR PLANNING CITIES, COUNTIES AND STATES.
By Edward M. Bassett, Frank B. Williams, Alfred Bettman and
Robert Whitten. Cambridge: Harvard University Press, 1935.
Pp. viii, 137.

A book review is a patently inadequate vehicle for the thorough analysis of a set of far-reaching model enabling laws. It may serve, however, as a means of presenting general reactions and a limited number of specific observations.

It seems appropriate to say at once that it is important to bear in mind that model laws must be used critically. Granting that there is catholicity in many planning problems it is none the less plain that varying conditions in the several states should be dealt with on their merits; the mechanics and enabling features of planning legislation should be adapted to the specific governmental, physical and social structure of the given state. This caution, which was not overlooked by Mr. Bettman, deserves emphasis, even at the risk of tedium. At the same time, there is danger that unstudied "tinkering" with a model law may spoil its symmetry or even cause serious difficulties. In sum, not even model laws are safe short cuts.

All contributors to the volume agree that only the police power is adequate for planning purposes. Eminent domain is both too costly and mechanically cumbersome and inflexible.

Mr. Bettman follows the lead of Messrs. Bassett and Williams in distinguishing between the "master plan" and the "official map" in planning legislation. The former serves as a plastic general pattern fertile with data and ideas while the latter crystallizes in detail the legally-binding plan. Both adopt the familiar form of plainning commission for municipalities and counties, but Mr. Bettman appropriately suggests a planning department headed by a permanent paid official as a possible future development of special significance to larger cities. Structurally, the Bassett and Williams models for municipal and county planning comprehend in one act general planning provisions, subdivision regulation, and control of building in mapped streets. Mr. Bettman, on the other hand, for the announced purpose of promotional strategy, breaks these heads down into three separate laws.

The Bassett and Williams models evince a too-literal application of the principle of local self-government. They confine city zoning and planning powers within the municipal corporate limits. That, to this reviewer, seriously cripples the control of urban development. Cities grow out as well as up, so to speak, and to limit planning and zoning powers to artificial legal boundaries obscures the very functions of planning and zoning. Nor do county planning and zoning fill the breach since it is important to effective action that urban development be regulated by a single authority. Mr. Bettman's scheme extends the planning power of municipalities with a population of 25,000 or more to all land within three miles of their corporate limits not included within the

bounds of other municipalities. He has also made provision for regional planning commissions through which counties or municipalities within counties may cooperate for planning purposes with respect to a region defined by the authorities participating. This regional planning would find zoning expression through the county legislative bodies. Mr. Whitten has expressed doubt that an enabling act for regional planning is desirable. The answer seems to depend upon particular conditions but in some jurisdictions a general law might be necessary in order to obviate inhibitions upon special legislation.

Since Mr. Bassett participated largely in the drafting of the Standard Zoning Enabling Act, it is but natural that the Bassett and Williams model substantially follows the Standard Act. The authors indicate variations by footnotes. The Bettman model is much shorter. It contains a full grant of power but it does not elaborate the objects and policy of the Act. Another important difference is the fact that the Bettman model provides for the initiation of zoning in every instance by the submission to the municipal legislative body of a zoning plan prepared by the planning commission, whereas the Bassett and Williams model permits the creation of a separate zoning commission. It is desirable that the planning and zoning functions of the commission be not confused, but it is not perceived that a single body would not perform both functions adequately and with greater coordination.

Both models call for zoning boards of appeals, the principal function of which is to flex zoning regulations in order to prevent hardship in exceptional cases. The Bassett and Williams model attempts to establish legislative standards to control the discretion of the board, but the Bettman law would leave this specification of standards to the local legislative body. Only the former contemplates judicial review of the rulings of the board of appeals. It is Mr. Bettman's thought that adequate redress already exists while to permit judicial reviews in every case would tend to jeopardize the plan.

The immediate outlook for county planning and zoning is none too rosy. For the most part the exercise of the police power would be entirely new to county commissioners. At best it would take considerable time to develop an adequate background for zoning legislation and administration. As for state planning, the idea definitely bears promise for the future. It is doubtful, however, whether we should for the present go any further than Mr.

Bettman has done by simply making the work of the state planning commission entirely advisory.

The short discussion by Mr. Whitten which concludes the volume is very stimulating. Possibly his most significant thought is the notion that there should be a combined planning and zoning enabling act in order to assure unity of plan. Separate procedures for zoning, subdivision control and for the adoption of the official map would, he believes, defeat unity of plan. Mr. Whitten adds the sentient suggestion that the planning commission would exercise the authority to make changes in official maps, official street maps, or land development plans much more satisfactorily than the municipal legislative body. Political considerations, for example, might be expected to carry less weight with a planning commission.

There is not space to discuss these laws from a drafting standpoint. It may be said generally that both sets of models embody developments suggested by experience in public planning. Both involve worthy efforts to minimize the generality somewhat characteristic of this type of legislation. The Bettman product is a bit more palatable. The models of Messrs. Bassett and Williams are too heavily freighted with drab forms of expression,—for example, the repeated use of “such”.

Planning and zoning are in their infancy in West Virginia. The state has had municipal planning and zoning enabling legislation only since 1931. This volume can be of substantial utility in the further development of the subject in West Virginia.

—JEFF B. FORDHAM.

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