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Maurice T. Van Hecke

West Virginia University College of Law

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A LEGISLATIVE REFERENCE BUREAU FOR
WEST VIRGINIA

By MAURICE T. VAN HECKE*

This paper¹ suggests the benefits that might be derived from the establishment and maintenance of a legislative reference bureau in West Virginia. Similar agencies are now functioning in a majority of the states and at the national capital. It is understood that a need for such a bureau has developed in this state, and that a bill providing for the creation of a legislative reference bureau will be presented to the legislature at this session.²

The function of legislative reference bureaus and kindred agencies has been that of furnishing skilled assistance and special information and data in connection with the increasingly technical job of government, and particularly in connection with the work of law making. On the whole, they have been called upon to render three distinct services, namely, a special library service, a research service, and a legislative drafting service. Their work has for the most part related to problems of legislation, statutory and constitutional revision, and administrative and constitutional law. The various bureaus have been made use of by members of the legislature, state executive officers, members of constitutional conventions, municipal officers, civic societies, and the public in general.

The library forms the basis of the work of a reference bureau.³ It should be devoted particularly to making available those ma-

* Assistant Professor of Law, West Virginia University.

¹ The writer desires to acknowledge his indebtedness to the authors of the publications cited in the footnotes and in the bibliography appended at page 126; to his teacher, Professor Ernst Freund, of the University of Chicago Law School; and to Mr. W. F. Dodd, of the Chicago Bar, and Mr. E. J. Verlie, of the Alton, Illinois, Bar, under whom he served for three years as a member of the drafting staff of the Legislative Reference Bureau of Illinois. The bibliography was prepared by Miss Kathleen Clyne, of the research staff of that Bureau.

² Some valuable legislative reference work has been done in this state by the Department of Archives and History. Especially have its library facilities been made use of. Assistance has also been given legislators in the drafting of bills. All of this, however, has been done without official recognition, without adequate room or equipment, and without sufficient funds. This department, for these reasons, has not been able to procure the trained staff without which effective work of the type discussed herein cannot be carried on. What this paper proposes is the creation of a new agency, properly supplied for its special field of service.

³ For full accounts of the special library phases of reference bureau work, see the materials listed in the bibliography at page 126.

terials likely to be of current governmental and legislative interest in West Virginia. The following list is suggestive of the principal types of public documents and private publications that should be found in the bureau library :

Federal and state institutions, session laws, and compiled statutes, together with the constitutional convention and legislative records, journals and debates.

Federal and state court reports.

Federal, state, county and municipal executive department reports, including those of special investigating commissions, and similar reports from England, Canada and the Australasian states.

The more important treatises, research studies, and critical and technical periodicals devoted to matters of governmental and legislative interest.

The task of keeping the library abreast of the enormous amount of literature of these types that is published every year in this and foreign countries by public and private enterprise is a difficult one. It requires a constant and painstaking survey of the field through the various announcements, indices, bibliographies and check lists, and a discriminating selection of those productions likely to be of use in the state in which the bureau is located.

The functions of the research staff can best be indicated by a few illustrations. The governor or a member of the legislature may desire to learn how a particular type of mortgage recording tax law, then under consideration, has worked in those states where it has been tried. Or he may want to know what the various plans are that have been resorted to for the settlement of labor disputes by government agencies in England, Canada and the Australasian states, how these plans have functioned, and what the principal factors are that made them successes or failures. A state tax officer may need information as to the relative cost of collection of inheritance taxes in the various states. In each of these cases, those who want the particular data are normally too busy, and possibly too unfamiliar with the sources of such information, to investigate the matters for themselves. For the same reasons, they are often equally unable to use the mass of original material that might be furnished from the library shelves. What is desired is a special statement, prepared in view of local conditions and from the standpoint of the particular problem in hand.

The making of investigations and reports such as these should

be the regular work of the research staff. No doubt more requests for such work would come in during the legislative session than at other times. The state executive departments, however, would probably require a considerable amount of research service throughout the year, particularly while shaping up the administration's legislative program.

Of a more comprehensive significance are certain studies that might well be undertaken during the intervals between sessions of the legislature, either upon the bureau's own initiative, by official request, or by legislative direction. That is to say, there are in every state a great number of matters relating to government, and primarily to legislation, that no one of the state departments, while carrying on its regular activities, has time to investigate, analyze and discuss. As typical of these, the following might be suggested:

The results of the judicial construction of the state constitution and of the important statutes, such as the tax laws, that are affected by each succeeding legislature.

Summaries, digests, and annotations of the laws administered by the various state departments.

The status, inter-relationships, and operation of the various local government units in the state, and of the duties, powers and compensation of the officers thereof.

The constitutional history of the state.

The operation of legislative procedure.

The principles, forms and practices involved in the drafting of bills for introduction in the state legislature.

Published studies of such questions as these are of great value, not only to the bureau's research and legislative drafting staffs, but to those charged with the task of government and law making. They make available accurate data descriptive of the basic factors in the state's governmental system and policy upon which future action may be intelligently predicated.⁴

In this general connection, it is suggested that the legislature

⁴ Perhaps the most comprehensive research task that has been carried out by any reference bureau was that undertaken by way of preparation for the Illinois Constitutional Convention of 1920, at the request of the legislature by the Legislative Reference Bureau of that state. Under the direction of Mr. W. F. Dodd and Mr. E. J. Verlie, the Bureau staff, considerably enlarged for this work, prepared and published some fifteen bulletins analyzing the principal problems likely to come before the Convention, a volume containing a statement of the result of the judicial construction of the state constitution, and another descriptive of the state's constitutional history. These publications aggregate some 1700 pages. See CONSTITUTIONAL CONVENTION BULLETIN, ILLINOIS, 1920; THE CONSTITUTION OF THE STATE OF ILLINOIS, ANNOTATED, 1920; and CONSTITUTIONAL CONVENTIONS IN ILLINOIS, 1919, Legislative Reference Bureau, Springfield, Illinois.

and those interested in its work can be aided greatly by the bureau's publication, each week, of a pamphlet, carefully indexed, giving a summary of each bill and resolution introduced, with a tracing of its progress through the legislative procedure, its amendments and its status in committee. In Illinois, where this service has been highly developed, the concluding issue, published usually only a few days after the *sine die* adjournment of the legislature, contains a digest of all laws enacted at that session. This has served to furnish the public, some four months in advance of the publication of the state edition of the session laws, with the only authoritative indication of the nature of the new laws then in force.⁵

In the drafting of a bill for introduction in the legislature,⁶ at least four main problems are involved. The legislative intention on every phase of the bill must be made clearly ascertainable from the text. An adequate and workable administrative machinery and enforcement system must be provided. The provisions of the bill must be made to fit in with existing legislation. And all constitutional requirements must be complied with.

Frequently those seeking legislation on a particular matter have in mind merely the general objective or result to be effected. Often the exact scope of that general objective and of the many minor but vital questions of policy are matters that, so far as the sponsor is concerned, either are accidentally arrived at or go by default. For example, take a bill providing for a system of state police. Those back of the project are likely to have no opinion on such questions as these: Of how many men shall the force consist? What, exactly, are the powers and duties they are to have? What is to be their relation to local peace officers? How are they to be selected? Is their organization and discipline to be military or civil? At what point and how is the new state agency to be fitted into the existing arrangement of the administrative departments?

It is usually the draftsman of the bill who must work out and express clearly the purpose of the bill in all of the phases just mentioned. This involves a careful study of the provisions of similar laws and of the results of their operation in other states, a

⁵ See DIGEST OF LAWS ENACTED, JANUARY 8, 1919, TO JUNE 30, 1919, Legislative Reference Bureau, Springfield, Illinois.

⁶ On the general subject of legislative drafting, see COURTENAY ILBERT, *THE MECHANICS OF LAW MAKING*, 1914; ASHTON R. WILLARD, *A LEGISLATIVE HANDBOOK*, 1890; CHESTER LLOYD JONES, *STATUTE LAW MAKING IN THE UNITED STATES*, 1912; ERNST FREUND, *STANDARDS OF AMERICAN LEGISLATION*, 1917; and the reports of the Special Committee on Legislative Drafting of the American Bar Association, 1913 to date.

detailed analysis of local conditions in connection with which the proposed bill is to be enforced, and a determination of these collateral questions of policy upon the draftsman's own responsibility. He must then painstakingly draft provisions covering every conceivable contingency presented by the expected operation of the bill when enacted. The resulting text should be so well thought out, so clear and free from ambiguity, that at no point will misconstruction be reasonably probable.

The second problem of drafting suggested, namely, that of providing for an adequate and workable administrative machinery and enforcement system, is one that deserves the most careful attention. Here again those supporting the measure usually have little interest in the precise procedure to be used. Suppose a civic society desires to have a bill prepared providing for a free public county library system. Often a local option scheme, with provision for a petition and an election, has to be provided for. Perhaps a county library board must be created and the number, tenure, selection, duties and powers of its members prescribed. Then there are provisions to be made for the raising of funds by taxation, the appropriation and expenditure of those funds, the acquirement of real estate, the erection of a building and the establishment of branch stations, to say nothing of the number, duties, compensation and manner of appointment of employes. Again, the solution of these problems, as well as the drafting of provisions meeting them, is usually the work of the draftsman.

The third problem mentioned, namely, that of fitting the provisions of a bill into the existing statute law, arises particularly in connection with amendatory legislation. It is of distinct importance that no undesired conflicts with or implied amendments or repeals of earlier statutory provisions may follow from the enactment of the bill. Such results may in a large measure be prevented by a careful examination of all the statute law on the subject matter directly affected or likely to be affected by the bill, and by a determination of the relationships between the bill and that body of law. This, of course, is a laborious and tedious task. It lies within the peculiar province of the draftsman.

The fourth problem is that of testing the constitutionality of proposed measures. Much of the great mass of state legislation that has been held unconstitutional, in whole or in part, during the last fifty years in this country could have been saved through a careful consideration, by those who prepared the measures, of

the constitutional questions arising on the face of the bills as proposed. The task is one of unappreciated difficulty and importance, calling for the highest type of legal ability.⁷

Modern state constitutions present innumerable pitfalls to carelessly prepared legislation. They are filled with detailed express and implied limitations upon the powers of the legislature and upon ways of exercising those powers. Some of these limitations are express and definite. Others are express and indefinite. Still others arise only by implication from detailed provisions relating primarily to the organization and functions of the state and local governments, the powers of the judicial and executive departments, legislative procedure and the form of legislative bills. Of especial difficulty are those limitations upon state legislative action springing from the relationships between the state and federal governments, such as those concerning the powers of the states in matters of interstate commerce and from such broad state constitutional provisions as the due process clause and that embracing the doctrines of the separation of powers. Moreover, the existence, nature, scope and operation of most constitutional limitations upon legislative powers can seldom be ascertained by an examination of the text of the constitution alone. They depend upon, and have been mainly developed by, judicial construction. The members of the legislature, in the rush of the session, have not the time to consider such involved and technical questions as these. It is, therefore, an important duty of a legislative drafting staff, to see that legislative measures are as free as possible from defects relating to constitutionality.

These are but the principal and outstanding problems of legislative bill drafting. They are more or less typical not only of the preparation of legislative measures, but of the drafting of constitutional amendments and revisions, statutory revisions,⁸ resolutions, city charters, and the administrative rules and regulations promulgated by the executive departments. The working out of the problems mentioned and of the many minor ones which cannot even be suggested here, constitutes the work of the drafting staff of a legislative reference bureau.

"In connection with the problem of legislative drafting, one

⁷ See ERNST FREUND, *STANDARDS OF AMERICAN LEGISLATION*, and W. F. Dodd, "The Problem of State Constitutional Construction," 20 *COL. L. REV.* 635-652.

⁸ For a statement of the work of the Pennsylvania Legislative Reference Bureau and the Wisconsin State Revisor in drafting revisions of the statutes of those states by chapters and topics, see *STATUTORY REVISION IN ILLINOIS*, 1918, 48-50, Legislative Reference Bureau, Springfield, Illinois.

thing should be emphasized strongly. In almost all cases, those interested in proposed laws wait until the General Assembly is in session and then proceed to undertake the work of draftmanship. In the rush of a legislative session it is out of the question for the bureau, or for members of the General Assembly, to devote an adequate amount of attention to each piece of draftmanship, and the one thing which should be strongly urged is the desirability of working upon proposed legislative measures well in advance of the assembling of a legislative body.”⁹

Finally, a suggestion or two about administrative policies may not be amiss. A legislative reference bureau will be of service in direct proportion to the ability, resourcefulness and loyalty of its staff. Therefore the tenure, compensation and method of selection of employes must be of such a character that the most capable and best trained men and women may be attracted and held. Therein lies the greatest practical difficulty to be overcome in connection with the whole problem of the efficient maintenance of a legislative reference bureau.

The bureau will be asked to do work for members of all parties and factions. Strict impartiality and secrecy are therefore indispensable.

It should always be borne in mind, too, that the bureau exists merely to assist those charged with the tasks of government in the technical phases of their work. Any attempt to urge enactment of specific legislation or to dictate or criticise a legislator's purpose, especially on questions of policy, and any failure to recognize the paramount power and duty of those seeking the bureau's services to decide for themselves what is to be embodied in a given bill, will tend to wreck the influence of the bureau far more quickly than perhaps any other cause. However, it is the bureau's duty to point out all technical defects in a proposed plan, the probable conflict of such a law with existing legislation, and any question as to its constitutionality.

It is submitted that the availability of a legislative reference bureau, operated on a scientific basis, would be of definite usefulness to the officials and people of West Virginia and that such an agency should be established.

⁹ From note by W. F. Dodd, relative to work of the Legislative Reference Bureau of Illinois, in REPORT OF COMMITTEE ON LEGISLATIVE DRAFTING, PROCEEDINGS, ILLINOIS STATE BAR ASSOCIATION, 1918, 143-45

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