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Report of Committee on Auditing and Miscellaneous Matters

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for his generous aid and expert advice in the rearrangement of the books of our own library;

To John Gorsuch and F. R. Olmsted, younger members of the Bar Association, for their kindly help in moving the books in order to effect their present arrangement; and

To Miss Estalene Secrest, librarian, for her helpful cooperation in the conduct of the library.

Respectfully submitted,

PAUL P. PROSSER, *Chairman*

April 15, 1929.

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REPORT OF COMMITTEE ON AUDITING AND MISCELLANEOUS MATTERS

Shortly after the President appointed the Auditing Committee, Mr. Frank Fetzer complained to the Association that he was much irritated by the quality of the paper used in the Colorado Reports and requested that something be done about it, whereupon President Toll added the word "miscellaneous" to the title of this committee and referred Mr. Fetzer's case to us.

Thereafter there were also referred to this Committee, the matter of having the Abstract Companies supply missing page numbers on Abstracts of Title, and the matter of the delay between the bar examination and the admission of the new members.

We submit herewith full reports on each of these subjects, which reports we summarize herein as follows:

First: Colorado Reports, Paper and Binding:

The present contract for publication of Colorado Reports expires in September, this year. The specifications for a new contract will be made by the Supreme Court Publication Committee. After conference with the Supreme Court Reporter, Callaghan & Co., the publishers, and Mr. Fetzer, your Committee has, with their approval, recommended the following to the Supreme Court Publication Committee.

(a) *Paper:* That the Supreme Court Reports be printed on a thin, but opaque and tough, paper such as will be found in Fletcher's Cyc. of Corporations 1928 cumulative supple-

ment. This will reduce the thickness of the volumes about one-third.

(b) *Binding*: Color to remain as at present. Form to remain as at present, namely, with deep grooves at the back edges. Quality of material to be improved, adopting a material similar to that used, for example, in the binding of 248 New York, which is closer woven and better grade than the material used on the present Colorado Reports.

(c) That the matter of advance publication of opinions of Colorado Supreme Courts, in the form of advance sheets, be considered, estimate of cost thereof having been promised by Callaghan & Co.

Second: Supplying Missing Page Numbers on Abstracts of Title:

Both Abstract Companies have agreed to supply missing page numbers on all abstracts brought to them for continuation, wherever the recording of the instrument has been completed and the page thus determined. Such page numbers will be entered in pencil where they are supplied by one Company on entries originally made by the other Company. Each Company may decide to use ink in completing its own entries. The Committee wishes to express its appreciation of the helpful cooperation of both of the Abstract Companies in this matter and begs to remind the members of the Bar of the many courtesies extended to them by the Abstract Companies from day to day and to suggest that expressions of thanks for these courtesies will be much appreciated by the Abstract Companies.

Third: Delay Between Examination of Applicants for Admission to the Bar and Actual Admission.

The average time of six weeks to two months between bar examinations and actual admission to the Bar, seems to your Committee, after investigation, to be as short as can reasonably be expected of a Bar Examining Board composed of nine members, serving gratuitously, and who are now making very substantial sacrifices of their time and business interests in order to perform this public service which, in many States is being compensated in a substantial manner.

Fourth: Auditing:

The by-laws provide for the annual meeting on the last Monday in April, but the officers continue in office until the first of July. The fiscal year is not defined. The Secretary-Treasurer advises that it is customary for him to close his books on May 31st, thereafter reporting to the outgoing President, and that it is customary for the Auditing Committee to audit the books as balanced on May 31st and report to the outgoing President in June.

Accordingly, a formal report on Auditing is not made at this time, but your Committee has made some examination of the financial records of the Association and has some suggestions to make for consideration of the Association, its officers and governing body, prior to the making of formal audit.

The by-laws empower the executive committee to "authorize all expenditures, except from the library fund" and they give the library committee "supervision and control of all expenditures from the library fund".

Up to April 30, 1928, the library fund was composed of two-fifths of the dues collected, and on that date there was a considerable balance in the library fund from this source.

On that date the by-laws were amended to provide a library fund composed of semi-annual payments of \$550.00 each to be received from the City, together with such additional amounts as the Executive Committee may, from time to time, set aside out of the general fund.

Thereupon, instead of setting aside any additional amounts, the Executive Committee, by unanimous resolution, instructed the Secretary to *transfer* to the general fund, the balance then in the library fund.

Your Committee can see no distinction between an expenditure and a transfer (both being made out of the library fund) and, therefore, recommend that the balance in the library fund on April 30th, 1928 be kept in that fund, or, if the transfer to the general fund has already been made, that the amount be re-transferred to the library fund.

Investigation of the account of the Library Committee and the activities of the Executive Committee in connection

therewith, raised the question as to the authority of the Executive Committee and an investigation into this question, in turn disclosed a condition, which, in an organization of lawyers, is rather amusing.

The by-laws of this Association give the trustees supervision of the property of the Association, but give to the Executive Committee (an appointed body) management of the affairs of the Association and the authorization of expenditures.

Examination of the records in the Secretary of State's office discloses the fact that this Association was incorporated in 1903 as a non-profit corporation, with power under the general law, to make by-laws not inconsistent with the laws of the State. The corporation law pertaining to non-profit corporations, provides that such corporations shall elect trustees, directors or managers, who shall have control and management of the affairs and funds of the corporation.

It, therefore, seems that this Association, which is a body politic and corporate, organized under the corporation laws of this State has framed by-laws directly violating the provisions of the law of its corporate existence, by providing for its government, including the expenditure of its funds, by an appointive executive committee, instead of by elected trustees, directors or managers.

Your Committee is in doubt as to whether to proceed with its audit on a *de jure* or on a *de facto* basis. Unless authoritatively instructed to the contrary, your Committee will be obliged to disapprove all expenditures made under the assumed authority of the Executive Committee.

Your Committee is advised that when the Allied Architects of Denver were assigned the job of planning a court house, they hired a New York Architect to do the job for them, and we recommend a similar procedure to this organization viz: In the spirit of the already famous admonition of one Hoover to all citizens to respect and obey the law, The Denver Bar Association hire a lawyer to amend and revise its by-laws and organization, so as to make the same conform to the Statutes of the State of Colorado in such case made and provided.

Dealings with the library fund during the current year have caused your Committee to make some investigation into the history of that fund. The investigation is not complete, but the following facts appear, namely, that at one time, not far distant, there were two separate and distinct library funds, one being the general library fund, composed of a percentage of the dues or of appropriations from the general fund, and the other a special library binding fund amounting to \$1600.00, composed of donations made for the purpose of binding the abstracts and briefs given to the library by the Supreme Court. It appears that these funds were at one time carried separately on the books of the Association but not in separate bank accounts, but that at a later date the funds were both merged in the general funds of the Association and entirely lost track of, as separate funds.

The present Secretary-Treasurer has again established the general library fund as a separate fund, not only on the books of the Association but in the bank as well. The special library binding fund has been entirely lost track of, so far as the Association records disclose. There seems to be a difference of opinion as to whether, since the merging of this fund with the general funds, the expenditures for binding have equaled the balance which was in the binding fund at the time of the merger with the general fund. Investigation of these records, prior to the current year, may not be within the scope of the duties of this Committee, but the Committee recommends that the binding fund be investigated and if it shall be found that the expenditures for binding, since the merger of the funds, be less than the amount in the binding fund at the time it was merged with the general fund, that the special library binding fund be reestablished by an appropriation of the proper amount out of the general funds.

Respectfully submitted,

C. A. BAILEY
FRITZ A. NAGEL

CARLE WHITEHEAD, *Chairman*

April 29, 1929.