Denver Law Review

Volume 28 | Issue 5 Article 3

January 1951

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Recommended Citation
William B. Miller, A Milestone in Colorado Statutory History - The Revision Bill Passes!, 28 Dicta 159 (1951).

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A MILESTONE IN COLORADO STATUTORY HISTORY—THE REVISION BILL PASSES!

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One of the most important laws enacted by the 38th General Assembly from the standpoint of the courts, the legislature, public officers and the average lawyer, was H.B. 201 "to provide for the revision of codification of the laws of the State of Colorado; to establish a commission for statute revision and providing for the office of revisor of statutes and prescribing the duties thereof." [1]

It is hardly necessary to state that its importance and value to the legal profession stems from the fact that if the General Assembly pursues the policy laid down in the new act, the practitioner in late '53 or early '54 will have a brand new and official revision of state law, which after all is the lawyer's most important tool. One might even go farther and state that H.B. 201 was the most beneficial legislation passed by the 38th General Assembly for the improvement of the whole judicial process, since, as Sutherland says,[2] until an efficient and reliable source of statute law is provided by means of "an official code which is brought to date after each legislative session the improvement in the judicial process founded as it is today upon the statutes cannot be achieved."

H.B. 201, was signed by Governor Thornton on March 28 after a stormy and hair-raising legislative history. The bill was drafted and submitted to the General Assembly by the Statutes Publication Committee of the Colorado Bar Association under the chairmanship of Allyn Cole of Glenwood Springs.[3] The committee did not claim, nor does it now contend, that this bill is the final answer to Colorado's statutory revision problems. Like all measures arrived at by means of cooperative committee effort, it was a compromise, and from the Olympian heights of the ideal law for this purpose it needs shoring-up in some respects, as Allen P. Mitchem, himself a member of the committee, points out elsewhere in this issue.

In view of the vigorous opposition exerted at every step of the legislative process, it is a miracle that any measure was passed on the subject. That it became a law was not due so much to the merits of the bill, as to persistent and untiring efforts of Repre-

[1] HOLLAND'S LEGISLATIVE SERVICE, General Laws Enacted by the 38th General Assembly, p. 290.
[2] SUTHERLAND, STATUTES AND STATUTORY CONSTRUCTION. (Third ed. by Frank E. Horack, Jr.) § 3714 (1943).
[3] In addition to the chairman, the committee is composed of the following members: Thos. M. Burgess, Colo. Springs; Dayton Denious, Denver; Jas. K. Groves, Grand Junction; Hubert D. Henry, Denver; Stanley H. Johnson, Denver; Harry A. King, Denver; Clyde O. Martz, Boulder; Floyd F. Miles, Denver; Allen P. Mitchem, Denver; Wm. B. Paynter, Brush; and H. B. Van Valkenburgh, Denver.

sentative Louis I. Hart, of Denver, combined with the grass-roots support of aroused members of the association throughout the state.

NEW LAW SUMMARIZED

In brief, the statutory revision act may be summarized as follows:

1. A Committee on Statute Revision is established consisting of the Chief Justice, or a Justice of the Supreme Court designated by him, the Attorney General, and two members of opposite political parties from each house.

2. The committee's function is to lay down the policy and provide the overall direction for a revision of state statutes to be submitted to the 1953 General Assembly.

3. The report of the committee to the 1953 General Assembly is to include specifications for printing and binding, as well as recommendations "for the repeal or amendment of existing laws, which may be obsolete, inoperative, imperfect, obscure or in doubt. . . ."

4. The publication of the 1953 Revised Statutes of Colorado shall contain all the laws of Colorado of a general and permanent nature, including those passed at the 1953 session, and shall be copyrighted by the Secretary of State for the State of Colorado.

5. The committee is directed to appoint a revisor of statutes and such assistants as are necessary to prepare the revision and annotations thereto.

6. In the course of the revision, the revisor "shall adopt a uniform system of punctuation, capitalization and wording; eliminate all obsolete and redundant words; correct obvious errors and inconsistencies, eliminate duplications and laws repealed directly or by implication; correct defective section structure in arrangement of the subject matter of existing statutes; clarify existing laws and such other similar matter as the Committee shall deem proper. All of the foregoing shall be done in such form and manner as to preserve the intent, effect and meaning of any and every such statutory provision."

7. The revisor shall prepare and annotate all laws enacted at each session of the General Assembly after 1953 and issue the same as pocket parts or bound supplements to the official revision with like force and effect.

8. The revisor and his staff shall assist the Legislative Reference Bureau or other agency of the General Assembly in bill-drafting service.

9. An appropriation of $25,000 is made for the operations of the committee.

10. A tax of $1.00 is levied on every civil action in the district and county courts of the state, payable by the plaintiff, for the purpose of reimbursing the state for the appropriation.

Except for the last two provisions, which were floor amendments, the bill is substantially as presented by the Statutes Publication Committee and published in the February *Dicta.*[4]

The success of the committee this year comes as the culmination of over three years' work. As long ago as January, 1948, the then-chairman, Frank E. Hickey, proposed to send a questionnaire to members of the state bar inquiring as to their views on the desirability of a revision. The Board of Governors disapproved the proposal on the ground that it was wholly unnecessary to confirm what everyone *then* knew—that such a statutory revision was urgently needed!

Judge Hickey's committee then proceeded to canvass various publishers to find out if any would be interested in undertaking the task of revision and the costs thereof. Few were interested. Among those expressing no interest in a new revision was the publisher of the 1935 statutes, the Bradford-Robinson Printing Co., which in June of 1948 first gave the committee an inkling of the plan to republish volume 4 in two volumes.

The Bobbs-Merrill Company seemed to offer the best proposition at the time. It was reported that their requirement of a state subsidy of some $125,000 would have made possible sale of sets of the statutes to lawyers at from $50 to $60. However, when it was revealed that Bradford-Robinson claimed the copyright on the 1935 statutes, the Bobbs-Merrill people cooled on the project.

Code Bill Not Pushed in 1949

In view of the fact that no private publisher appeared to be interested, the Board of Governors at the October, 1948, convention instructed its new Statutes Publication Committee to take up the question with the General Assembly at the next session. A code commission bill, sponsored by the Colorado Public Expenditures Council in the 37th General Assembly, was endorsed in principle by the board. Little, if any actual support was given the measure in the legislature, however, and as events in the past session so clearly demonstrated, no technical measure lacking widespread popular support, whatever its merit, can survive the legislative process unless at least one legislator, with generous grassroots support, concentrates nearly all of his efforts on its passage.

In the spring of 1949 announcement was made by Bradford-Robinson of the publication of volumes 4A and 4B. Not until these actually appeared in December, 1949, at a price of $55 and in conjunction with the announcement that no supplement to old volume 4 would be issued, did the full significance of their predicament dawn upon the public officials and lawyers of the state. The bar association was bombarded with protests from all over the state, and the entire work of the Statutes Publication Committee

[4] 28 Dicta 78 (1951).

during the chairmanship of Hubert D. Henry was directed toward this problem.

Confronted with a *fait accompli*, little could be done other than protest the publication, note that the volumes were unauthorized and unofficial, if not, indeed, illegal, and advance the opinion that the copyright on '35 C.S.A. might be judicially determined to be held in trust for the State of Colorado if someone would undertake to litigate the question. Judge Henry published an article in *Dicta* setting forth all these factors,[5] but no action was taken by state officials or others. A conference with Mr. Bradford in September, 1950, sought by the committee at the direction of the Board of Governors, accomplished nothing, not even an asking price on the worth of the claimed copyright on '35 C.S.A.

STATE SHOULD DO EDITORIAL JOB

Thus, the new 1950-51 Statutes Publication Committee under the chairmanship of Allyn Cole, concluded that the only means of securing a worthwhile revision of the statutes of Colorado was for the state to step in and take over the job, leaving the printing and binding problem to the lowest bidder upon completion of the editorial work. Under the vigorous leadership of the chairman, four meetings were held between December 9 and January 15. It was early agreed (1) that there was a compelling need for a statutory revision, (2) that in comparable states even privately published statutes cost less than '35 C.S.A., (3) that to have a complete, thorough and *continuous* revision a permanent state revisor's office was basic, and finally (4) that a bill should be prepared and presented to the General Assembly incorporating these principles.

A subcommittee, composed of Floyd F. Miles, Hubert Henry, and Duke Dunbar, the latter especially invited by Mr. Cole to sit in with the committee, was asked to prepare a draft. Actually, at least three different drafts were presented: one modeled on the Ohio act, one similar to the Nebraska statute, and one along the lines of a Florida law. Out of these Mr. Cole and his committee distilled a draft measure which was approved by the Board of Governors, 22-4, in a special referendum vote conducted January 16-30.

The measure was introduced in the House of Representatives as H.B. 201 on February 1 by Representative Viggo Johnson, and bore as additional sponsors the names of Representatives Hart, Hayes, Holland, Wade and Carter. Senator Carlson tossed an identical bill into the Senate hopper on February 14 which was denominated S.B. 285.

Meanwhile, the House Judiciary Committee held a hearing on a bill sponsored by Bradford-Robinson and designed to legitimate 4A and 4B. Although the bar association received very short

[5] 27 DICTA 107 (1950).

notice of the hearing, it had a few representatives present. It was pointed out in answer to the major arguments advanced by the Bradford-Robinson representatives against H.B. 201 that the longer a real revision was put-off the more expensive it would be for the taxpayers, and that even legitimatizing 4A and 4B would cost the state $35,000 to $70,000 in order to provide these volumes for state offices and exchange purposes. Worse, it would encourage publication of a 3A and 3B, etc., at further expense to the state and other users of the statutes.

A full-dress hearing was attempted on February 21 for bar association representatives, including Chairman Cole and President-elect Hatfield Chilson, but this was aborted when action on the House floor kept the legislators tied-up all afternoon. It was at this late date in the session, when the prospects for statutory revision legislation appeared quite dim, that Representative Louis I. Hart of Denver took command of the situation. The bill began to make headway almost immediately.

On February 27, it was reported-out by the House Judiciary Committee with favorable recommendation and referred to the Rules Committee. The companion bill, S.B. 285, had received similarly favorable recommendation by the Senate Judiciary Committee, but in a floor fight on February 28 it was referred back to the Senate Finance Committee. The latter committee emasculated it and reported out a bill just providing for a commission to study methods of revision and to make recommendations to the 1952 session.

Representative Hart to the Rescue

Meanwhile, the House bill appeared to be hopelessly bogged-down in the Rules Committee until Representative Hart by the use of those magic manipulations known to some legislators, but mystifying to amateur lobbyists and the uninitiated, persuaded the Rules committee to report it out. It then passed on second reading on the morning of March 12, the last session in which bills could be so acted on by the originating house. The roll call next day on third reading disclosed only five members of the House against the measure, while 50 voted in the affirmative. On the same day, the Senate's watered-down version was passed and sent to the House where the Judiciary Committee quickly approved it and then allowed it to meet a quiet and unlamented death in the Rules Committee.

The House bill, which had been amended by Rep. Hart on the floor to provide for an appropriation of $25,000 recoverable by the state by means of a $1 surcharge on docket fees, was referred in the Senate directly to the Finance Committee. This appeared likely to be its last resting place, particularly after Bradford-Robinson representatives appeared before the committee

and it was reported that the latter had voted to table. The opponents of the bill failed to reckon with the popularity and support for the measure throughout the state, however, and it became clear that, if the full membership of the Finance Committee were to act, H.B. 201 would reach the floor. After much feverish activity on the part of Rep. Hart, ably supported by Senators Carlson, Gobble and Henry, as well as by Representative Sayre, the measure was reported out with a favorable recommendation on the morning of March 20. It was placed on special orders, and with a clarifying amendment to correct a typographical error, was passed on second reading after the clock had been stopped to meet the deadline for all second readings. On March 21, the last day of the session, H.B. 201 passed the Senate on third reading without recorded dissent, and the House concurred in the amendment. The Governor's signature made it law on March 28.

REVISION COMMITTEE FACES REAL CHALLENGE

Since then it is understood that the presiding officers of both houses have exercised their statutory power to designate their representatives on the revision committee. Speaker Hamil is reported to have selected Representatives Hart and Crowley; and Lieutenant Governor Allott, a stout champion of the bill in his own right, has appointed Senators Carlson and Gobble. To sit as chairman of the committee, Chief Justice Jackson has designated Justice Alter, who with Attorney General Dunbar, complete the committee complement.

Needless to say, this committee has an opportunity to do a real service to the people of Colorado by planning a complete and efficient system of statutory revision, and by designating as Revisor of Statutes a person who is thoroughly competent, able and willing to put in the tremendous amount of work necessary to make such a revision a reality.

The bar association, their officers and committees, stand ready to assist the official Committee on Revision in any way the latter deems proper. Certain it is that constant vigilance at each session of the General Assembly will be necessary to insure that the principle of *continuous revision* is not abandoned.

THE BOOK TRADER'S CORNER

Harry S. Silverstein, Jr., 728 University Bldg., Denver, has a complete set of Colorado session laws and of U. S. Supreme Court reports, Law Edition, for sale.

Robinson and Priest have announced the association of Ray A. Curran with the firm in Lakewood and Golden.