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A Revision of Statutes for Colorado

A REVISION OF STATUTES FOR COLORADO

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The problem of making the statutes accessible to members of the bar and the public has been troublesome in states other than Colorado. For the most part, the matter has been handled through periodic upheavals, in some cases at regular intervals, and in others only when forced by demand of the legal profession. Missouri is an example of a state wherein the statutes are "revised"¹ at regular intervals of every ten years. The Missouri constitution requires such periodic attention. On the other hand, Kentucky is a notorious example of a state that let the matter of revision slide for a period of 69 years between the revisions of 1873 and 1942. Periodic upheaval has been the path pursued in Colorado, but such upheavals have resulted not in revisions but only in compilations, which represent mere accumulations of the laws from one legislative session to the next.

On March 28, 1951, Governor Thornton signed into law House Bill No. 201² providing for the *revision* of all statutes in the state of Colorado. This action might well serve as a cause for rejoicing among lawyers of this state, there having been no true revision of the statutes in Colorado since this state was admitted to the union. The "Revised" Statutes of 1908 were made only *prima facie* evidence of the law, and were really only a compilation. Although a "Statute Revision Commission" prepared them, the Compiled Laws of 1921 apparently were what they purported to be, merely a compilation. Likewise, the 1935 Colorado Statutes Annotated were also nothing more than a compilation of the existing laws of this state. A compilation is not the law but is merely evidence of the law. Of a decidedly different nature is a revision which represents a statement of statutory law in force at any given time. The revision "displaces and repeals the former law as it stood relating to subjects within its purview."³ Despite the victory for members of the bar in securing approval for a new revision of the Colorado statutes, the more far reaching effect of the new law, as will be seen later, is in its plan for continuous revision.

The value of any revision, like that of a compilation, will be lost within a few years unless the statutes are continually kept up to date. Recognition of this fact has led to the establishment

¹ While the Missouri constitution calls for a revision, in the past, only compilations have been forthcoming.

² This bill in its final form was essentially the same as that printed in 28 DICTA 78 (1951), with the addition of an appropriation of \$25,000 and a section levying a tax of \$1 as a surcharge on plaintiff's docket fee to reimburse the state for the costs of the revision.

³ SUTHERLAND, STATUTORY CONSTRUCTION, p. 207 (1891).

since 1939 of programs of continuous statutory revision in Florida, Illinois, Kentucky, Louisiana, Minnesota, Mississippi, Missouri, Nebraska, New Jersey, North Carolina, Ohio, and Washington. Prior to 1939 a total of ten states⁴ had followed the lead of Wisconsin⁵ in adopting such a plan. Such a plan is presently being seriously considered in New Mexico, North Dakota, Oregon, and possibly other states.

COMPILATION OR REVISION?

One writer⁶ has observed that while private publishers have been responsible for many improvements in law books throughout the years, they have also brought their evils. Both because of their obligation to print, in compilations, "all the law" which has not been repealed by the legislature of a given state, and because of their apparent eagerness to publish lengthy annotations which are seemingly designed to usurp the functions of digests, such publishers have been guilty of publishing codes in as many as 68 volumes for one state and of publishing codes to sell for \$300 per set. The 1936 code for Georgia consisted of 34 volumes and was priced to sell at \$300. A very striking contrast is presented by those states having a system of continuous statutory revision where the entire statutes of such states are contained in compact, well-organized, well-indexed, one or two volume sets. Examples of such states wherein the statutes are kept up to date include Florida (\$20), Kansas (\$30), Kentucky (\$10.50), Maine (\$20), Minnesota (\$21.50), and Wisconsin (\$5).⁷

Notwithstanding the fact that, when published, the 1935 Colorado Statutes Annotated contained an extravagant use of language as well as many obsolete or partially obsolete sections (this being a necessary concomitant of compilations), there was at that time justifiable pride in the finished product. But the investment of time and money that went into the 1935 statutes was not guarded. No effort was made to preserve the statutes from the deterioration which began with the next session of the General Assembly. With each two years that passed after their publication, the statutes became less complete, less satisfactory, and less usable. The solution to the problem presented obviously lies only in a continuous

⁴ Connecticut, Iowa, Kansas, Maine, Massachusetts, Maryland, New York, Pennsylvania, Rhode Island, and South Carolina.

⁵ The Wisconsin plan was first adopted in 1911. "Investigation has shown that within the field of modern revision, Wisconsin, under the guiding hand of Mr. Brossard, has gained supremacy. Practically all states wishing to follow the lead of that state have had their revisors educated in the office of the 'Revisor of Statutes' of Wisconsin. Mr. Brossard has become recognized throughout the country as the leading authority on the subject. Some of his graduates, however, are building up followings of their own and are now doing revision work that may well become classic. This is said as preliminary to the statement that Wisconsin and Kentucky exemplify the ultimate in the field." Goodenough, *Report to Interim Committee on Revised Statutes*, 25 ORE. L. REV. 36, 42 (1945).

⁶ *Id.* at 41.

⁷ The prices noted following the states of Kansas, Florida, Maine, and Minnesota are prices quoted in 1951 to out-of-state purchasers. The price to purchasers within the state may be even less.

activity directed toward keeping the statutes up to date, regardless of whether the product is a compilation or a revision.

Although apparently no state has yet tried it, such activity might take the form of a recompilation after every legislative session. The volume of the present statutes of this state would seem to indicate that, irrespective of the cost factor, such a course would be undesirable. It is not unusual for the statutes enacted at one session of a legislative session to equal in volume one-tenth of the entire statutes previously in force in that state. At that rate, the total volume of the statutes would double in approximately 20 years. On the other hand, in those states which have a program of continuous revision, it is not uncommon for the total volume of the revised statutes following a legislative session actually to be less than the volume of the statutes prior to the legislative session. Through the process of stressing economy of language, eliminating the unconstitutional, obsolete or partially obsolete sections, and in rewriting existing sections in simple, direct statements of law, it has been possible in some instances to reduce the length of some statutes to approximately one-third that of the original version.

AN IMMEDIATE BULK REVISION IS NEEDED

The new Colorado revision act emphasizes, as does that in other states having continuous revision, the fact that there are two aspects to revision—the immediate bulk revision, and continuous revision thereafter. The immediate interest of the lawyer will be in the bulk revision. That is scheduled to be completed in 1953. It is difficult to appreciate the magnitude of the task a revisor faces in such a bulk revision. Some indication of the nature of that task may be given by the following statement of the objectives in such a revision as paraphrased from a comment by Mr. Willard D. Campbell, Director of the Ohio Bureau of Code Revision:⁸

1. To determine what laws are in effect and to establish a master file containing true copies of the original sections of statute law.

2. To eliminate from the statutes the obsolete,⁹ unconstitutional,¹⁰ antiquated, and unnecessary sections of law.

3. To determine, list, and correct the many partially obsolete sections in the statutes. These include, among others, the following types of sections:

- (a) Those which continue to use the names of offices, boards, commissions, and departments which have been legally abolished.

⁸ Campbell, *Code Revision in Ohio*, 24 OHIO BAR 123, 127-131 (1951).

⁹ An illustration of sections in the present Colorado statutes, picked at random, which give the impression of being obsolete is found in COLO. STAT. ANN., c. 153, § 90 and following, which provide for the issuance of funding bonds, series 1909, payable in 20 years "for the purpose of paying the expenses incurred in suppressing the insurrection and defending the state during the years 1899, 1903 and 1904."

¹⁰ It is possible for an attorney at present to wade through pages of a technical statute only to come to an annotation at the end informing him that "this and the following section is unconstitutional," COLO. STAT. ANN., c. 97, § 94(20) (1950 Supp.)

(b) Those which contain ambiguous or meaningless phrases, e.g., "and/or," and "in sections 1 and 2 of this Act."

(c) Those which contain paragraphs which have been held unconstitutional.

(d) Those referring to sections which have been subsequently repealed.

4. To bring together, under a logical classification system, those statutes and parts of statutes which, because of similarity of subject matter, properly belong together.

5. To simplify and clarify the statutes by restating them in clear and simple language and applying to them a uniformity of punctuation, expression, capitalization, and spelling.¹¹

6. To adopt and apply a numbering system for titles, chapters, and sections which will have present meaning and will have elasticity for the future.¹²

The initial bulk revision in the state of Kentucky took approximately six years. The task in Colorado will undoubtedly be less complicated than that of Kentucky because of the fact that the Colorado statutes are at present more accessible than were the Kentucky statutes in 1936. If a bulk revision is to be completed in Colorado within a period of two years, and though the objectives listed above are kept in mind, it is apparent that there will be need for further revision after 1953 even of the statutes presently in force. This will be in addition to any contemplated program of "revising" future statutes before they are enacted into law.

THE FUNCTION OF CONTINUOUS REVISION

A program of continuous statutory revision will obviously eliminate the necessity of ever having another bulk revision. The most desirable method by which statutes presently in force may be revised through a program of continuous attention is undoubtedly that of "topical revision." Such a method is described by Mr. Robert Cullen, Revisor of Statutes for Kentucky, as follows:¹³

Topical revision, involving the thorough application of the principles of statute revision to individual subjects, furnishes the means through which a continuous revision system can accomplish the true aims and purposes of revision. The subject may be eminent domain, general corporation law, removals and vacancies, administrative procedure, or any other of the many subjects dealt with in statute law.

The revisor, after selecting the subject, gathers together all the statutory provisions that relate to the subject and carefully studies the annotations to those statutes. He examines the statutes of other states,

¹¹ The specific suggestions as to style for bill drafting given by Professor Menard, *Legislative Bill Drafting*, 23 ROCKY MOUNTAIN L. REV. 127, 132-4 (1950), are equally applicable to the revision of statutes.

¹² The decimal system of numbering of sections and chapters has been generally recognized as superior to other systems presently in use. It permits ample facilities for the expansion or contraction of the laws. Its application in the new Denver code was discussed recently by George L. Creamer, *The New Municipal Code—A Study in Ordinance Codification*, 27 DICTA 317 (1950).

¹³ Cullen, *The Advantages of a System of Continuous Statutory Revision*, 10 MO. L. REV. 113, 120 (1945).

and consults persons who have a special knowledge of the subject. On the basis of this information, he drafts a clarified, harmonious statute in which the details and technical aspects of the subject are simplified, modernized, and unified. He will restrict the changes to matters of detail, avoiding controversial matters or questions involving the policy of the law, since policies are for the legislature to settle. Revision deals with details, not fundamentals.

Topical revision bills, limited to a single subject, constitute an ideal method of revision. The revisor has sufficient time to become thoroughly familiar with the subject, and to draft and redraft the bill until it approaches perfection. The legislature is not required to accept the bill on faith, but has ample opportunity to examine its contents and pass intelligent judgment upon it. Through such bills, over a period of years, the most important and most often used statutes will be made plain, certain, and accessible.

In addition to this continuous function, and to maintaining a continuous list of annotations to the statutes, the office of a revisor might well be made the center for final review, on matters of form and style, of all proposed legislation. This would tend to eliminate errors before bills become law.¹⁴ The practice and skill of the revisor in stating the law in clear and concise language would result in reducing the length of bills and thus reduce the cost of publication.¹⁵

WHAT ABOUT THE ANNOTATIONS?

Unquestionably no practicing attorney would be willing to sacrifice completely the statutory annotations in order that the statutes could be published in a more compact form and be available at a reasonable cost. On the other hand, the real function of annotations can be fulfilled without the extravagant verbage which characterizes the present Colorado statutes and contributes perhaps 50 per cent to their bulk. Upon the assumption that lawyers seldom rely solely upon the annotations themselves, one might hazard the guess that their present bulk could be reduced at least two-thirds without any sacrifice to their usefulness.

Another question arises with respect to the annotations. If the practice were to be adopted in Colorado of publishing the statutes in their entirety in revised form every two years, would it be an unnecessary expense to have the annotations republished with like frequency? In those states wherein the annotations are published in a separate volume, experience seems to answer this question in the affirmative, for the annotations have been republished much less frequently than have the statutes. The annotations

¹⁴ An interesting example of language which would undoubtedly have been deleted by a revisor's office before the bill became law is found in our new Certificate of Title Act: ". . . The provisions of Chapter 32, . . . shall not be applicable to nor shall the said provisions of said chapter apply to the mortgaging of motor vehicles . . ." COLO. STAT. ANN., c. 16 § 13(18) (1950 Supp.)

¹⁵ "In Kentucky, over a period of twenty-five years prior to the establishment of the permanent revision office, the average length of each legislative act was four pages. At the first session at which the bill-drafting services of the revision office were utilized, the average dropped to two and a quarter pages. The volume of acts at that session was the smallest in thirty-five years." Cullen, *op. cit.*, *supra* note 13.

of recent cases may, of course, be included in supplemental pocket parts.

Publication of the annotations in a separate volume would produce an inconvenience to attorneys who use the statutes. They would have to use two books when referring to a single section of the statutes. However, that is necessary in any set of statutes where a supplement is used for recent legislative enactments. The ideal arrangement would be to have the annotations following each section in the statutes and to have the annotated statutes published in revised form after every legislative session. But if that method is found too expensive, the Colorado lawyers might find it necessary to make a choice between a current set of statutes with annotations in a separate volume on the one hand, and a soon-out-dated set of annotated statutes with a current annotated supplement on the other.

BIENNIAL PUBLICATION

The matter of biennial publication of statutes is so closely tied in with modern plans of continuous revision as to become recognized as almost a necessary part thereof. Prior to each new publication, the new legislative material is arranged in proper form and inserted in the statutes in the proper place. Of great significance in this process is the elimination of repealed sections which will tend to become quite numerous when the statutes are under the watchful eye of a revisor. Over 1400 sections of statutory law have been repealed in Ohio in the past two years upon the recommendation of that state's Bureau of Code Revision.¹⁶

The new Colorado revision statute does not specifically provide for biennial publication but rather refers to publication of bound supplements after each subsequent legislative session. However, the advantages of a system of biennial publication seem so numerous that it is felt that some discussion of the plan would be desirable prior to the date of the publication of the new statute and a supplement thereto. Such discussion usually centers around the cost factor.

In a state such as Colorado where members of the bar have felt compelled to wait for a period of 15 or more years before asking the legislature for the necessary funds to bring the statutes up to date, it might seem that the cost of biennial publication would be prohibitive. Experience in other states apparently does not bear out that conclusion. The cost of publication may be broken down into its two component parts: the editorial work and the printing.

Like the plans for continuous revision in other states, the new Colorado statute provides that all editorial work, including arranging, assigning section numbers, annotating, and indexing will be

¹⁶ Campbell, *op. cit. supra* note 8.

done in the revisor's office. This will make it necessary to have only the actual printing and binding work performed by private contractors. In this respect Mr. Robert Cullen, Revisor of Statutes for Kentucky, has said:¹⁷

The revisor is best qualified to determine the place at which new legislation should be compiled. He is required to maintain a file of current annotations, and an adequate index, in order to carry on properly his revision program. His staff is in a position to prepare the statutes for publication with little extra work, with the result that the cost of maintaining an editorial staff, which constitutes a major portion of the selling price of privately-published statutes, may be saved.

The expense of maintaining the revisor's office is an expense of government which other states have assumed because of the general benefits which accrue from improvement of the laws. It is not charged to the purchasers of the statutes. It is an expense which the state of Colorado should be willing to assume.

As to the extent of such cost to the state, Mr. Cullen in 1949, seven years after the first publication of the Kentucky Revised Statutes, made the following statement:¹⁸

Our current operating budget in Kentucky is \$16,000 per year. One-fourth of that sum can be attributed to our statute-publications work . . . which leaves \$12,000 per year as the cost of the revision work itself. In return for this sum the Legislature receives a complete bill-drafting service, the state agencies and the public have the benefit of an agency equipped at all times to supply authoritative information concerning the statute laws, and the statutes not only are continuously protected from deteriorating but are continually being improved.

Additional benefits of revision which cannot be measured in terms of dollars and cents include the possibility of reduced litigation, greater understandability of the laws, and encouragement of respect rather than contempt for the law.

COST OF PRINTING A BIENNIAL PUBLICATION

Under established practice in other states, the price at which the statutes are sold does, however, take care of the cost of printing, and the state incurs no obligation in that regard. Drastic savings to the purchasers of the statutes are effected even here through continuous revision and biennial publication. When the printing occurs every two years, it will be found that because many large segments of the statutes are either unchanged or are subjected to only minor changes, the great bulk of the composition work would remain undisturbed if the type is preserved or plates are used. This factor obviously accounts to a large extent for the low cost of the printing. It should be noted that in most states such as Kentucky and Wisconsin wherein the statutes are published

¹⁷ Cullen, *op. cit.*, *supra* note 13.

¹⁸ Cullen, *Revision of the Oregon Statutes*, 28 ORE. L. REV. 120, 124 (1949).

biennially, the printing is not done by state owned printing plants, but by private contractors. It would thus seem that the state of Colorado is also in a position to enjoy the benefits of reduced printing costs of the statutes if published biennially.

Because of the initial expense necessitated by the bulk revision, it is apparent that the first edition of the Colorado revised statutes will seem considerably more expensive from the standpoint both of the editorial work and the printing than will succeeding editions of a biennial publication. But the state would have been faced with that initial expense under any system of revision. Savings to the state from a program of biennial publication, in addition to elimination of the expense of another major surgical operation at some time in the future, will include the cost of publication of session laws and substantial savings in the cost of reprints of individual laws such as the insurance statutes, workmen's compensation laws, banking laws, etc.

CONCLUSION

Having considered in some detail, in the course of this paper, various plans for making the statutes accessible to the bar and to the public, a natural response might well be, "Why should members of the bar be concerned with these various plans now that a revision statute has been passed in Colorado?" The answer is that the opportunity which the bar now has to make a permanent improvement in the laws of Colorado might yet become lost unless the revision program is carefully watched during its initial stages. The above discussion seems to make it imperative that the bar insist upon the following requirements as the revision program progresses:

First, a *revision*. Colorado, as well as some other states, has had statutory "revision" commissions in the past, but compilations rather than revisions were the product.

Second, *continuous revision*. The members of the Statutes Publication Committee of the Colorado Bar Association who drafted the new statute obviously overlooked the desirability of this important feature. Consequently, the new statute empowers the Revisor of Statutes at the end of each legislative session after 1953 merely to "annotate, arrange and prepare for publication . . . all general laws enacted during such session. . . ." At best, it is uncertain whether this language is broad enough to permit sufficient revision of new legislative enactments. However, this language would hardly be thought sufficient to empower the revisor to undertake further modification by way, for example, of a "topical revision" approach of statutes which were in effect prior to 1953. An amendment to the new statute is obviously needed for this purpose.

Third, *biennial publication*. Again, facts relating to the advantages of this procedure and the reasonableness of the cost thereof

were not brought to the attention of the committee, with the result that provision for biennial publication was not included in the draft of the new statute. The statute rather provides for publication of the general laws enacted at each session "in the form of pocket parts or bound supplements to said revision." This provision should be corrected by amendment prior to time for such publication.

Each of the above three requirements is an absolute necessity unless the new statutes are again to fade into the historic process of deterioration with the accumulation of new statutes after 1953. Unless prompt attention is given to these matters by the bar, it is almost certain that a periodic upheaval will again become necessary at some time in the not-too-distant future.

SUMMARY OF DENVER BAR-SPONSORED BILLS PASSED BY GENERAL ASSEMBLY

IRA L. QUIAT

Chairman, Legislative Committee, Denver Bar Association

The Legislative Committee¹ of the Denver Bar Association drafted and sponsored about a dozen bills before the first regular session of the General Assembly, which concluded on March 21. Most of them were enacted into law and are now in effect. These measures, briefly summarized, are as follows:

S.B. 286—DETERMINATION OF DESCENT OF REAL ESTATE

This act rewrote Sections 28 to 34 inclusive of Chapter 176, 1935 C.S.A. Under the old law it was the duty of the attorney bringing the action to set forth in the petition all the lands of which the decedent died seized. In most cases this was an impossible requirement.

The lawyer had before him an abstract of title for certain property. He found that the heirs had never been determined. He did not know what other parcels the decedent possessed at the time of his death.

Under the new act the determination of descent may be had for all or any portion of intestate real property. The terms "lands, tenements, and hereditaments" are eliminated and the words "real property" or "land" is used throughout the act.

Section 29 now contains a simple form of notice which lawyers can follow and be assured that the act has been complied with. It is no longer necessary to serve a copy of the petition.

¹ Composed of Hazel M. Costello; George L. Creamer; Lawrence M. Henry; Harry A. King; Donald M. Leshner; Fritz A. Nagel, ex-officio; Ira L. Quiat, chairman; and Royal C. Rubright.