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## Replacement Volumes 4A and 4B

## REPLACEMENT VOLUMES 4A AND 4B

HUBERT D. HENRY

*Chairman of the Committee on Statutes and Publications, Colorado Bar Association*

So much interest has been manifested by the members of the bar in the publication of replacement volumes 4A and 4B to the 1935 Colorado Statutes Annotated that it was felt desirable at this time to make a statement relating to them. The 1935 Colorado Statutes Annotated was published pursuant to Chapter 91, Session Laws of Colorado 1935. Under this law a statutory commission was appointed which let the contract for the publication of the 1935 Colorado Statutes Annotated to the Bradford-Robinson Printing Company of Denver.

This contract was the subject of litigation in the Denver District Court in Case No. A13661, *Courtright v. Legislative Statutory Commission*. A demurrer to the complaint was sustained, and this was affirmed by the Supreme Court in 100 Colo. 82. In the files of this case are found the specifications for the contract, but I have not yet seen the contract itself. The specifications called for the publication of annual supplements for ten years at the price of \$10 per year. Members of the bar will recall that annual supplements were so published for this period, and that shortly after the expiration of the ten year period, the price of the supplements went up to \$12.50. Members of the bar will also recall that there was no 1948 cumulative supplement published, the last complete cumulative supplement being published in 1947. This was highly desirable because the cumulative supplement published in non-legislative years had nothing but additional annotations, and these were not worth the expense of the supplements.

Early in 1949, Bradford-Robinson announced publication of replacement volumes 4A and 4B, and in December of 1949 these volumes were distributed. At that time it was also announced that there would be no cumulative supplement for the year 1949 for volume 4, as this material was incorporated in the replacement volumes. The cumulative supplement for four volumes was \$12.50, whereas in previous years it had been \$12.50 for five volumes, and the replacement volumes 4A and 4B were listed at \$55.

It seems evident, and I understand that the printing company has taken the position, that volumes 4A and 4B were private publications published by them on their own without specific governmental authorization. This position is confirmed by the action of the Supreme Court which has an agreement with other states to supply, on an exchange basis, copies of the official published laws of this state. The Supreme Court has refused to furnish replacement volumes 4A and 4B on the grounds that they are not official publications and not covered by the agreement.

There are several problems facing the members of the bar in connection with these volumes. The first is an economic problem. In order to get the 1949 supplements to volume 4, it is necessary to purchase replacement volumes 4A and 4B, because there is no pamphlet supplement to volume 4 printed. This makes the cost of bringing the statutes up-to-date \$67.50, plus tax, for each set of statutes. It has been suggested that the bar association print in some handy form the 1949 statutory material which would ordinarily be contained in the supplement to volume 4, but which is not contained in the 1949 cumulative supplement. The attorney could thus, by the use of this pamphlet, and by retaining his fourth volume of the 1947 cumulative supplement, have an up-to-date set of the statutes by the purchase of the 1949 cumulative supplements only.

#### ERRORS IN NEW VOLUMES

The next problem is that of the errors in volumes 4A and 4B. The advertisement says, "These replacement volumes contain all of the annotations and laws now in the present volume 4 which have not been repealed." The fly leaf of the volume says, "Containing all the laws of Colorado of a general and permanent nature." As a matter of fact, some provisions contained in volume 4 which have not subsequently been repealed are not contained in the replacement volumes. An example of this is Section 3, Chapter 137. Other errors of typography have been found. The attorney is, therefore, faced with the question of the value of volumes 4A and 4B in view of these errors and in view of the fact that the old volume 4 will have to be retained on the shelf anyway to provide him with a complete text of all the statutory materials in these chapters.

The matter of referring to volumes 4A and 4B in official citations, either in subsequent legislation or in court briefs, should also be considered. Usually official citations are made to an official publication. What would be the effect of a subsequently passed statute amending an existing law by referring to the numbering in the unofficial volumes 4A and 4B? Cannot objections properly be made to citations of these volumes in court briefs?

The next question is one of legality. This arises from a reading of Section 13, Chapter 214, 1937 Session Laws of Colorado which provides: "The right to print, publish, and sell such laws (of this state) shall always remain with the state, and in case any such laws shall be printed, published, sold or given away by any person, except by authority of the state, such book so printed, published, sold or given away may be seized by the state as its property, and the person so printing, publishing, selling or giving away the same shall forfeit to the state the sum of One Hundred Dollars (\$100.00) for each and every book, volume and pamphlet so printed, to be

recovered by an action in the nature of an action in the name of the state, and the state purchasing agent shall take necessary steps to secure and shall secure copyrights for and on behalf of the State of Colorado for the printing and publishing of all statutes of the state."

The question naturally arises whether or not the publication of volumes 4A and 4B is a violation of this section of the statutes. If attorneys lay out \$55 of their good money for these volumes, are they subject to confiscation by the state pursuant to this statute?

#### THE COPYRIGHT QUESTION

The next question is whether or not there has been any violation of copyright, as the Session Laws are supposedly copyrighted in the name of the State of Colorado. This, of course, also brings up the question of the value of Bradford-Robinson's copyright to the 1935 Colorado Statutes Annotated. Does the copyright extend only to the annotations, or does it also extend to arrangement and numbering? The question has also arisen as to why Bradford-Robinson could copyright a work authorized by the state government and without the aid of which it could never have been completed. A further question arises as to whether or not the copyright might be considered held by Bradford-Robinson in trust for the State of Colorado.

There has been much agitation in recent years for a complete recodification of the statutes. Several such ideas have been proposed and one bill was presented to the last general assembly. Even though the bill did not pass at that time, it is safe to assume that the Colorado Bar Association will request consideration of a similar bill at the next session of the general assembly. If the recodification of the statutes is imminent, lawyers hesitate to invest such a large amount of money in volumes which would soon be out of date. It is entirely possible, of course, that because of this economic factor the publication of the replacement volumes might have the effect of diminishing the hue and cry for a new codification.

All of these facts were reported to the Board of Governors at its mid-winter meeting on January 7, 1950. The board asked that the Committee on Statutes and Publications refer this information to the appropriate state officials for such action as they might wish to take. Accordingly, as chairman of that committee, I consulted with members of the Supreme Court, the State Auditor and the Deputy Attorney General, and found that all of these persons were well-aware of the situation as set forth about. The auditor is studying the matter to determine whether or not state funds are being illegally expended to purchase replacement volumes for the state. We understand that the Attorney General also has the

matter under consideration. However, no official action to date has been taken to accommodate the needs of attorneys.

We suggest that all errors in the replacement volumes coming to the attention of members of the bar be reported to the secretary of the association. We also suggest that any members of the bar having ideas as to what position or action the Colorado Bar Association should take in this matter forward their comments to the secretary for consideration by the committee involved or by the Board of Governors.

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## CONFERENCE ON LEGAL EDUCATION

Preceding its annual Law Day exercises this year, the School of Law of the University of Colorado is playing host to a conference on "Legal Education and Admission to the Bar". Legal educators of nation-wide reputation, led by Dean Wesley A. Sturges of Yale, will participate in the two day session, April 27 and 28, the results of which will be reported to the Law Day convocation on Saturday morning, April 29.

The conference, to which all members of the bar are invited, will be seeking answers to such questions as "What is the proper preparation for the legal profession?" "What should be the minimum requirements for admission to the bar?" "How should the law school curriculum be constructed to meet the requirements of active practice, of society, and of bar examinations?" "What methods should be used to determine the applicant's educational fitness for admission?" and "What examination techniques best test legal capabilities?"

The April DICTA will carry a complete schedule of the conference which is being arranged by the faculty of the School of Law with the cooperation of the Boulder and Colorado bar associations.

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## THE BOOK TRADER'S CORNER

Charles S. Thomas of Paonia is in search of all of the Colorado Court of Appeals volumes and volumes 77, 81-85, and 117-119 of the Colorado reports.

Stanley Maus, 720 Patterson Bldg., Denver (AC-5848) has available the following books and materials which he is desirous of disposing of in one lump sale: Vols. 1-78 of the Colorado reports, Vol. 11 Court of Appeals, Vols. 1-20 C.J., a complete set of Cyc, 5 vols. of Fed. Stat. Ann., a Webster International Dictionary, and miscellaneous treatises, in addition to a 3-shelf bookcase and a rotating bookstand.