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Calendar

May 3—Denver Bar Association regular monthly luncheon meeting, 12:15 P. M., Chamber of Commerce dining room. This is the annual election meeting for the election of officers, trustees, and members of the Board of Governors of the Colorado Bar Association, and is the final regular meeting until fall.

July 22, 23 and 24—Tenth Judicial Circuit annual conference, Post Office Bldg., Denver, Senior Circuit Judge Orie L. Phillips presiding.

September 6, 7, 8 and 9—American Bar Association annual meeting, Seattle, Washington.

Progress of the Judiciary Committee's Plan

By STANLEY H. JOHNSON

Executive Secretary

The Judiciary Committee of the Colorado Bar Association ran into a serious obstacle, in forwarding its plan for improvement of the courts, in the 1941 statute making more rigid the requirements for initiating measures. This statute extends the constitutional limitations upon filing petitions for amendment over the four months required in the constitution to eight months and the percentage of electoral votes from 8% to 15%. In other words, a petition for a measure adopting the non-partisan plan of selection, abolishment of the justice of the peace courts, permitting salaries to be increased during a judge's term of office, and other changes necessary in the constitution to effectuate the plan, had to be filed by March 2d and to contain approximately fifty thousand names. Furthermore, the statute requires that the various measures be published in local newspapers in sixty-two counties at a cost of approximately ten dollars a word. There was not time available, after the joint committees had completed the final plan, to finance such a proposition nor to obtain the necessary signatures, if the money for publication could have been raised.

Therefore, the only possibility of submitting to the people the necessary constitutional amendments was to persuade the legislature to meet in a special session. It is common knowledge that the legislators are underpaid and that their regular sessions are so long that the business of many of the legislators

suffers. The amount they receive for their services is inadequate even to pay the cost of living in Denver during the session. It would, therefore, have been unfair to request them to meet over any controversial measures.

The most controversial portion of the committee's plan is, of course, that of non-partisan selection, the plan recommended by the American Bar Association and adopted in Missouri in 1940. Although three-fourths of the attorneys supported this plan at the state bar convention, it was felt that to attempt to include it in the matters the legislators would be asked to consider in special session would be unfair to them and would possibly jeopardize the remainder of the plan. The abolition of the offices of justice of the peace and constable and the substitution of county judges and magistrates was also considered to some extent to be controversial and it was felt best to submit this matter to the legislators in two forms, by amendment to Article VI, Section 25, of the constitution. Under one proposal the legislature could at its discretion abolish these offices; under the other the offices are abolished and the county court-magistrate substitution is provided for a trial period until 1953, at which time the matter is left to legislative discretion.

In December the drafting of the necessary bills and resolutions for amendments were assigned to the chairmen in Denver who had worked on these subjects. During January, and the first half of February, constant meetings were held until all the necessary measures had been drafted, checked, and re-checked. In February these bills and resolutions were presented by Colonel Van Cise and myself to the Board of Governors in Colorado Springs and the board's advice requested concerning future action to be undertaken by the committee.

The board decided that, in view of the amount of money contributed by the bar to the forwarding of this plan, the Judiciary Committee should make every effort to persuade the legislators to meet in special session to consider the less controversial features. The board and the committee further felt that it was imperative to make every effort to provide for increases in salaries for the judges of the various courts at a special session, for the reason that evidence has been obtained that without such an increase some of our best judges may not run for re-election in 1948. Such an increase, to be effective, must be passed at the special session with a supporting constitutional amendment permitting increase of judges' salaries during their terms of office. Without such provision any new judge appointed in 1950 to the Supreme Court, for example, would be entitled to any increase voted at the regular session in 1948, whereas all judges elected for the full term in 1948 would not be entitled to an increase until ten years had elapsed. It was, therefore, finally determined that the following bills and resolutions should be mailed out to the district and county chairmen of the committee, and to the district and county judges urging them to discuss these matters with the legislators in their counties and to attempt to obtain written, or at least oral, consent from the legislators to meet in special session to consider these measures. It

was felt that, if a majority of the legislators would consent, the governor could be persuaded to call a session for this purpose.

The following portions of the plan were felt to be proper for submission to the legislature at such a session:

1. A bill increasing the salary of the chief justice to ten thousand dollars, the associate justices of the Supreme Court to ninety-five hundred dollars, all district judges to seventy-five hundred dollars, and also the county court and juvenile court judges in Denver, and an increase in the salaries of county judges according to the classifications of the counties over the salaries permitted by the legislature in 1945. In the first three classes of counties these increases range from thirty to forty per cent with a considerable difference between the judges in Class 3, Group B, and Class 4, Group A, because of the fact that judges in the first three classes, who must be qualified lawyers under the plan, are not permitted to practice law or engage in any other gainful occupation, whereas those in the last three classes are not required to be attorneys and may engage in other occupations.

2. A retirement pension bill providing for mandatory retirement at age 75 and for a pension for judges 65 years and over of forty per cent of salaries for those who have served at least ten years, and fifty per cent for sixteen years and over. The bill also includes a similar pension for judges removed from office for disability, except in the case of judges who have served less than ten years, who are allowed a pension for the period of years which they have served.

3. A bill for a judicial council of nine members consisting of judges, lawyers and laymen, as provided in the committee's final plan.

4. The necessary amendments to Article VI of the constitution to effectuate the committee's plan as follows:

Section 2. Transferring control over all courts from the Supreme Court to the chief justice.

Section 5. Permitting the substitution of retired supreme court judges or district judges, retired or active, for any supreme court justice temporarily absent.

Section 8. Providing for the election of a chief justice by the justices of the Supreme Court, selection to be for administrative ability, regardless of seniority of age or service, and providing for extension of his powers by rule or by statute. The section also gives the chief justice power to assign judges of any court of record to any other court of record.

Section 10. Requiring judges of the Supreme Court to be qualified to practice law.

Section 12. Providing that district judges shall hold court for each other.

Section 16. Requiring district judges to be qualified to practice law.

Section 18. Prohibits judges (except county judges in counties of less than ten thousand population) from receiving any compensation other than judicial salaries, prohibits judges from practicing law, holding public office,

accepting other employment, contributing to or taking part in political campaigns, or holding party office. It limits vacations to six weeks, sickness not included, and abolishes the fee system of compensation.

Section 22. Provides for an additional county judge, if necessary, in counties over one hundred thousand population, gives the governor appointive power to fill vacancies in the office of county court judge, and requires that county judges in counties with a population exceeding ten thousand shall be qualified to practice law.

Section 23. Corrects the present omission in the jurisdiction of the county court of the estates of minors and mental incompetents, regardless of the amount involved, and provides that appeals may be taken from the county to the district court, or to the Supreme Court, in such cases and in such manner as may be prescribed by law. The purpose of the last provision is to permit an appeal, on any case tried, from a county judge not a lawyer, to the district court, before an appeal is taken to the Supreme Court.

Section 25. Permits the abolition of the offices of justice of the peace and constable at the discretion of the legislature. As already stated, an alternate Section 25 was drafted to carry out the committee's plan in case the legislature should be willing to adopt it.

This alternate section abolishes the offices of justice of the peace and constable, effective six months from its passage. The jurisdiction of the justice courts is conferred upon the county courts, magistrates, and referees by the county judge until June 1, 1953, when the legislature may continue this plan in effect or adopt a new one. Service of summons and papers shall be made in the manner provided for courts of record. Special constables may be appointed by the county judge. There may be magistrates in any county with the consent of the chief justice, and in counties exceeding twenty thousand population a county judge may appoint one magistrate, and for each additional thirty thousand in excess of fifty thousand an additional magistrate without his consent. The county judge may, for non-contested matters, appoint referees to administer payment of fines and pleas of guilty. The county judge fixes the salary of the magistrate not exceeding 75% of his own and may, with approval of the county commissioners, fix the compensation of referees. Magistrates and referees serve at the pleasure of the county judge. The procedure and costs until otherwise provided by law or rule are as now prescribed for justice courts. Magistrates may also act as police magistrates and municipal judges.

Additional details concerning the jurisdiction and procedure of justice court cases may be made by rule or law.

Section 29. Provides that vacancies of offices of all courts of record shall be filled by appointment by the governor as provided by law. This leads up to the subsequent adoption of any plan of selection of judges that might be determined upon.

Section 31. Requires that all judges of all courts of record, newly appointed or elected, shall serve a trial term of at least one year before election to the regular term. This permits the voters to see what the candidate's record has been under any system of election before voting him in for the regular term.

Section 32. Makes retirement of judges mandatory at age 75 and provides for removal in case of disability, hearings on retirement or disability to be determined by such council, board, or committee as shall be provided by rule or law. It also enables the chief justice to call to active service any retired judge capable of serving.

Section 33. Permits the increase of salaries of judges of courts of record during their terms of office.

In February, as had been stated, copies of all of these bills and resolutions were made available to the legislators throughout the state. In Denver, members of the committee have met with all of the Denver legislators and the written consent of all but three, to the date of this article, have been obtained to the proposed bills and resolutions and to the calling of a special session for these matters only. In addition, the consent of four legislators outside of Denver has been obtained. Since these legislators number approximately one-quarter of the assembly, the committee still feels that it may be successful in obtaining consent of a majority of legislators to a special session in 1948 for the consideration of these non-controversial measures.

If they are adopted, some increase in salaries and a provision for retirement pensions seems reasonably well assured. Furthermore, the judicial council could then be appointed to carry on the work of this committee, and of other committees appointed by the Colorado and Denver Bar Associations. There will also be provision for the integration of our courts under a strong chief justice. The committee has no intention of abandoning the non-partisan method of selecting judges under nominating commissions as a part of its plan. At the 1949 regular session of the legislature it will attempt to persuade the legislature to pass a resolution for a constitutional amendment for this purpose, so that the people may vote upon it in 1950.

The committee earnestly urges all members of the bar to discuss these measures with the legislators in their respective counties and to give all possible assistance in forwarding these important improvements to our judicial system.

Board of Governors Meets

The Board of Governors of the Colorado Bar Association met in Denver on March 20 and considered a number of important matters. A complete report of the activities of the association during the current year will be published in an early issue of DICTA.