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The Incorporation of the Bar

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The Incorporation of the Bar

Editor's Note: On March 26, 1925, an Act for the regulation and organization of the Bar of the State of New York was introduced in the New York Legislature. This act was generally known as the Gibb's Bill, and did not pass. The Act provided for the incorporation of the Bar of the State of New York whereby a self-governing body would have been formed with sole power to license attorneys and discipline its members. The members of this Association will recall the address delivered by Stanley T. Wallbank on the subject, "The Bar a Body Politic," which dealt with this same problem.

The Honorable William D. Guthrie, President of the Association of the Bar of the City of New York has written a review of the above proposed compulsory incorporation of the Bar of the State of New York and in view of the growing interest in the proposal to incorporate the Bar and give to it jurisdiction over its members, we print herewith the first instalment of Mr. Guthrie's review:

REVIEW

of

The proposed compulsory incorporation of the Bar of the State of New York

and

The Gibbs Bill

Under date of January 7, 1926, and by direction of the Executive Committee, a notice was sent to the members of the Association calling their attention to a bill introduced by Senator Gibbs in the State Senate on March 26, 1925, entitled "An Act for the regulation and organization of the bar of the State of New York, in order to promote administration of justice," and a copy of the bill accompanied the notice. This measure, which is generally known as the Gibbs bill, was drafted by a special committee of the New York State Bar Association and introduced at the request of that committee. It has not, as I am informed, so far been reintroduced in the legislature of 1926. The bill, if passed, would provide for the compulsory incorporation of the entire bar of the State of New York into a new corporate body to be created by the proposed statute and to be known as the "Bar of the State of New York," or "the State Bar," and every practising lawyer in the State would have to become a member of this body corporate and would not be entitled to practice his profession unless he paid to the new corporation for its

own use an annual license tax or registration fee. The notice of January 7th stated that the subject of the Gibbs bill would be discussed at the stated meeting of the Association to be held on February 9th. Thereafter, the Executive Committee at a meeting held on February 2d, resolved as follows:

"RESOLVED that the bill introduced in the Senate of the State of New York, entitled 'An Act for the regulation and organization of the bar of the State of New York, in order to promote the administration of justice,' and the proposed compulsory incorporation of the bar, should, in the opinion of this committee, be disapproved;

"RESOLVED that the matter of the proposed compulsory incorporation of the bar by legislative enactment is referred to the Committee on Miscellaneous Affairs for investigation and report to the Association."

The Committee on Miscellaneous Affairs, having investigated the subject, reported to the Association at the stated meeting held on February 9th that it had considered the proposed compulsory incorporation of the bar and the Gibbs bill and had adopted the following resolution:

"RESOLVED that the Committee on Miscellaneous Affairs of the Association of the Bar of the City of New York considers that compulsory incorporation of the bar by legislative enactment is unwise in principle and would be prejudicial to the best interests, service and prestige of the profession at large, and that, therefore, it report to the Association at its stated meeting on February 9, 1926, its disapproval of the principle involved in any compulsory incorporation by legislation of the entire bar of the State of New York.

"RESOLVED FURTHER that, even if the principle of a compulsory incorporation of the entire bar of the State of New York by legislative enactment were sound and such compulsory incorporation advisable, it nevertheless considers the provisions of the said Gibbs bill to be objectionable and several of them to be of doubtful constitutionality, and it therefore reports to the Association its disapproval of the said Gibbs bill."

On the presentation of this report to the

Association, the secretary of the committee moved that its consideration be postponed until the April stated meeting, which motion was carried. He so moved because of the fact that only about seventy-five members were present, due undoubtedly to the snow-storm of that evening. It was also resolved by the Association at that meeting that the committee's report be made a special order for the April meeting, and that a copy of it be sent to the members together with a statement urging their special attention to its contents and requesting the expression of their views in writing to the secretary of the Association by those who would be unable to attend the April meeting.

The Committee on Miscellaneous Affairs thereupon passed a resolution requesting the president of the Association to prepare a statement on the subject for submission to the members of the Association for their information prior to the April meeting. It is in compliance with this request that the following review has been written. As three of the members of our Association, Messrs. Cohen, Conboy and McCulloh, were members of the State Bar Association's special committee which drafted the Gibbs bill, the president under date of February 20th wrote to them that he had been requested to prepare a statement and that "the Association will distribute among its members, together with the memorandum I am to prepare, any remarks that you may desire to submit on the subject, to the end that the members may be advised as to the views of those who favor the compulsory incorporation of the bar of the State of New York."

The request of the Committee on Miscellaneous Affairs addressed to the president and his letter above mentioned having been submitted to the Executive Committee, it adopted the following resolution at its stated meeting held on March 3d:

"RESOLVED that the memorandum of President Guthrie, in reference to the pending bill for the compulsory incorporation of the bar, be printed at the expense of the Association and that any memorandum submitted by Messrs. Cohen, Conboy and McCulloh in opposition thereto, be similarly printed and distributed to the Association at its expense and that the discussion of this matter be made a special order of business at the April meeting of the Association."

Mr. Conboy has stated that his views on the subject of bar incorporation are

fully contained in the address before the New York Bar Association, delivered by him in January, 1923, and Mr. Cohen has requested that an article written by him and published in the March, 1926, number of the New York Law Review, entitled "The national call for the organization of an all-inclusive bar," be sent to members. Both are, therefore, being printed and distributed herewith.

I

History of the Movement for the Compulsory Incorporation of the Bar

To those members of the Association who are not familiar with the history of the movement for legislation compulsorily incorporating the entire bar of the State of New York into one involuntary organization, it may be helpful and instructive to trace the steps so far taken by the State Bar Association.

At its annual meeting in January, 1922, ex-Judge Clarence N. Goodwin, of Chicago, delivered an address, in which he argued that there was a need for a self-governing bar and that every lawyer should be compelled to belong to a statewide bar organization having self-governing powers. Judge Goodwin has been the most active and the principal propagandist of the movement for compulsory incorporation of the bar in every State, and his views are more or less typical of the arguments which have generally been advanced in its support at various National Conferences of Bar Association Delegates and elsewhere.

Judge Goodwin's address began with a general review of conditions and tendencies of the country as he understood them. He urged that our problem of national development was complicated by the fact that we had added millions of foreigners to our family stock without in any real sense assimilating them; that "these foreign elements have changed, but in the greater part they have not become American," that "in many cases they have changed for the worse and not the better," etc.; and he said that "it has been pointed out that we are the only civilized nation that does not have a self-governing bar, and that as a result ours is the only one in which the office of lawyer does not carry with it the respect and esteem of the community." He thereupon expressed the opinion that action by voluntary bar associations in the United States had been ineffective, and declared that "if we are frank with ourselves, we must admit that such efforts at bar government have been in the greater part a failure." The only remedy, as it apparently seemed to him,

was that "there should be a governing body with authority to advise and power to admonish publicly or privately, to censure, to discipline and to disbar."

There can be no doubt that what Judge Goodwin and his colleagues in the movement were then urging was a self-governing bar on the pattern of the English and French bars, with exclusive power over admission to practice and the discipline or disbarment of members, without court action or review.

The State Association, after hearing Judge Goodwin's address, adopted a resolution to appoint a special committee with its president *ex officio* a member, and directed such committee to present to the next meeting of the Association an act to accomplish the purpose. The special committee appointed in pursuance of this resolution presented its report to the State Association at the annual meeting held in January, 1923, and with such report submitted a model act which had been drafted by Judge Goodwin providing for a self-governing bar, and likewise a tentative draft of an act for the State of New York prepared by the committee, and stated in its report that—

"The committee does not believe that Judge Goodwin's draft is suitable in view of the special conditions existing in New York State. It believes a new approach must be made in the draftsmanship of an act for this state, taking into account the nature of the existing bar organizations of the state, the variety of professional life throughout the state, the distances between various centers and the habits of lawyers."

The report further stated that it was the unanimous opinion of the special committee that the entire bar should be organized and every lawyer required to be a member of the proposed state organization, "that the State Bar Association should become the nucleus of any such state bar organization, and that the county bar associations throughout the State, operating through Judicial Districts, should be sections of the state bar organization, and that facilities should be devised for regular meetings of these sections and for coordinating their work with the general body."

Great care, however, was taken by the committee to emphasize the fact that the report and its expressions of opinion were merely tentative. Thus, in presenting the report, the chairman of the special committee, Mr. George Hopkins Bond, of Syracuse, stated on its behalf as follows:

"Mr. President, lest there be any misunderstanding, I want to say that it is the opinion of the Committee that it would be very unfortunate if any definite action were taken on this report at this meeting. It does not desire that. This report is tentative. It may be possible that any further organization of the bar is undesirable. That may prove so, after study and investigation."

During the course of the debate, Mr. Cohen, as spokesman of the special committee, requested the expression of views by members of the Association on the general principle of compulsory incorporation and assured them that the committee "will hold our minds open, even on that general principle," and the day before, the President of the Association (Mr. Guthrie) in his annual address reviewed the subject and used the following language:

"Whether membership in any such organization shall be made compulsory by statute, whether there shall be classes of members such as paying and non-paying, and whether the Association shall be vested with the regulation of admission to practice and disciplinary powers, as in other countries, present, it seems to me, very delicate and difficult questions which invite and should receive the most careful and mature study by our members and the fullest consideration and exchange of views before the Association shall be definitely committed to any particular project."

The State Association at the 1923 annual meeting did not approve either the principle of compulsory incorporation of the entire bar of the State of New York or the draft bill submitted by the special committee. After hearing the tentative report, the explanation of Mr. Bond, chairman of the special committee, the address of Mr. Conboy, and the explanatory remarks of Mr. Cohen, it was resolved, on the latter's motion, simply that the special committee should be continued in order that it might give further study to the subject and report at the next meeting of the Association. Hence, it is quite inaccurate to state, as has been repeatedly done, though probably inadvertently, that at its annual meeting in January, 1923, the State Association approved the principle of a state bar organization in which every member of the bar should compulsorily be made a member, and it is likewise inaccurate to state that every member of the special committee as then constituted intended to commit himself in the tentative report they submitted, to

the principle of compulsory state incorporation in any form.

At a subsequent meeting of the State Association held on January 18, 1924, however, the principle of compulsory state-wide bar organization was for the first time approved; but reference to the minutes of that meeting will show that neither in the special committee's supplemental report then submitted, nor in the debate that followed, was there a full discussion of the merits of the proposition, or any evidence that the subject had in the meantime been investigated and studied by the members of the Association other than the special committee. Indeed, except for the able and scholarly address made by Mr. Conboy at the 1923 annual meeting above mentioned, there has never been prior to this year any discussion in the State Association worthy of the supreme importance of the subject. This matter, which is of vital and permanent concern to every member of the profession, and which may tend to impair the present spirit and serviceableness and effectiveness of the voluntary bar associations throughout the State, seems to have attracted surprisingly meager attention, interest, or action on the part of the lawyers throughout the State. Mr. Cohen, in his article published in the *New York Law Review* for March, makes the following statement (p. 82):

"It is probably accurate to say that, except for the small group whose business it has been to consider the matter, the lawyers of New York City have not thought about the matter at all. Their interest was for the first time aroused by the debate in January at the meeting of the State Bar Association, in which Judge Hughes took the lead in the affirmative and Mr. William D. Guthrie in the negative."

The 1923 address of Mr. Conboy is printed in full in the forty-sixth annual report of the State Association (pp. 265-282), and a reprint is now being sent to each member of this Association. It should be read by all, for it is excellent in style and substance and worthy of careful study. He analyzed the tentative act prepared and then submitted by the special committee, and although he stated that he was not personally opposed to compulsory incorporation, he nevertheless conceded the gravity and doubtfulness of the questions presented by its provisions, and recognized what he characterized as the formidable obstacles and difficulties in the way. There is so much pertinent matter in Mr. Conboy's address that it is difficult to summarize it, and I am only

partly doing so in order to induce its general reading, for nearly all of it applies to the present Gibbs bill.

Mr. Conboy pointed out that the objects to be attained under the proposed bill could be gathered from the duties to be imposed upon its four principal committees or so-called councils, namely, consideration and recommendation of matters of legislation, recommendations of improvement in the law, consideration of rules for admission to the bar and submission to the Court of Appeals of suggestions for changes in such rules, and discipline of members, hearing of grievances and the conduct of disciplinary proceedings before the courts, all being now within the powers and activities of the existing voluntary bar associations. After referring to the idea of enlisting the whole profession in the process of legislation, he declared that—

"The test of the proposed scheme, in so far as it involves recommendations only, would, therefore, seem to be this—will it stimulate activity of the character described on the part of the bar at large? Experience does not suggest that it will."

He assumed as a fact (p. 269) that "the county associations throughout the State are, with but few exceptions, altogether apathetic regarding the administration of disciplinary measures," and in respect of the initiation of disciplinary proceedings by grievance committees, he said:

"The latter work (i. e. the initiation of disciplinary proceedings before the courts) is done with thoroughness and impartiality by the Association of the Bar of the City of New York, by the New York County Lawyers' Association and by a few county organizations elsewhere in the state. Experience has proved that grievance committees are necessary if the profession is to be purged of unworthy practitioners. Such committees, however, are only found where there are active organizations, of which they are a part, directing their operations. In those places where the disciplining of the dishonest or unworthy lawyer is effectively done by local organizations there is no necessity for similar activity on the part of the state association. Where such organizations do not exist the ideals of the bar are likely to suffer, and inasmuch as such organizations are not to be found in a large part of the state there is a present necessity certainly for proper local organization and probably for a general state organization of a supervisory character.

"It is, however, a necessary consequence of the admitted need for better disciplinary methods, that the bar should be self-governing in the sense in which the English and Canadian bars are self-governing. It may be observed, parenthetically, that the tentative act proposed by the Committee if adopted will not produce a self-governing bar, for neither admission nor discipline is left by its terms to the bar, which, by its provisions, can only make recommendations to the courts as to admissions and conduct investigations to be made the basis of applications to the courts for the administration of disciplinary measures."

(To be continued in a later issue)

IN RE MINIMUM FEES

At the annual meeting of the Association on May 31, the question as to whether this Association shall adopt the schedule of minimum fees and whether the schedule presented by its Committee shall be the schedule of this Association will be discussed and voted upon. This question has created more discussion and interest, some favorable and some adverse, than any other question which has been presented to the Association for some time. The matter has been discussed from time to time during the last ten or fifteen years, but this is the first real attempt to settle the controversy.

Whether you are in favor of or are opposed to the adoption of this schedule or the proposition in general, it is hoped that you will be present at this meeting and make your ideas known.

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or was unhorsed himself, depended upon his own prowess and skill."

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"To well decide you must well hear."

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The ideal judge is "firm, indeed, but temperate; mild, though unyielding; neither a blustering bravo, nor a timid poltroon."

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Chauncey M. Depew

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THE DENVER BAR ASSOCIATION

RECORD

P U B L I S H E D M O N T H L Y

VOL. III

DENVER, JUNE, 1926

No. 6

NEXT REGULAR MEETING

Monday, June 14, 1926, 12:15 P. M.

LUNCHEON MEETING

Dining Room Cosmopolitan Hotel

Henry McAllister, Vice Chairman of our American Bar Meeting Committee, will make a final report. Clem W. Collins, Manager of Safety and Ex-Officio Treasurer of the City and County of Denver, will discuss the recently completed re-valuation of Denver's real estate and other problems of his office. This address will be of practical importance to every attorney and in addition you will have an opportunity to inspect the new Cosmopolitan Hotel.

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