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THE BACKGROUND OF THE UNIFORM COMMERCIAL CODE

O. H. THORMODSGARD, C. L. YOUNG AND JOHN C. POLLOCK*

IN 1889, the year the Constitution of North Dakota was adopted, the American Bar Association appointed a Committee to study the problem of securing greater uniformity as to the laws common to all states. By 1892 the demand for greater uniformity of legislation led to the formation of the National Conference of Commissioners on Uniform State Laws. The object of the Conference is "to promote uniformity in state laws on all subjects where uniformity is deemed desirable and practicable." During the sixty years of its existence, it has drafted and approved 124 Uniform Acts. The Conference during the same period has declared several Acts obsolete and superseded, leaving only eighty Acts which are presently recommended for adoption.

North Dakota has adopted thirty-four Uniform Acts. There are only eleven states which have adopted more Acts than North Dakota. Wisconsin is in the lead with fifty-two Acts and South Dakota has approved fifty Acts. The Legislative Assembly of North Dakota adopted the Negotiable Instrument Act in 1899, the Proof of Statute Act in 1913, the Sales Act and the Warehouse Receipts Act in 1917. Since the North Dakota Codes were enacted in the latter part of the nineteenth century, there was no immediate need for this state to be the first to adopt many Uniform Acts. A majority of the thirty-four Acts were enacted at the time the North Dakota Code was revised in 1943 and in subsequent years. Many of the Uniform Acts, as prepared by the Conference in past years, were not written with present day problems or conditions in mind. Especially in the field of Commercial Law, there was no uniformity between the several Acts.

In 1938 the New York Merchants Association prepared and recommended to Congress the adoption of a new Sales Act intended to govern all interstate sales. This proposal prompted the National Conference on Uniform State Laws to plan a revision of all the Uniform Acts dealing with the commercial subjects. A Commercial Code was accordingly proposed and the New York Merchants Association then withdrew its special Federal Sales Act.

The Uniform Commercial Code, which has since been pre-

* North Dakota Commissioners on Uniform State Laws.

pared, is not the sole product of the Conference. It is a joint product of the Conference and the American Law Institute. The purposes of the Uniform Commercial Code are expressed in section 1-102 as follows:

- (a) to simplify, modernize and develop greater precision and certainty in the rules of law governing commercial transactions;
- (b) to preserve flexibility in commercial transactions and to encourage continued expansion of commercial practices and mechanism through custom, usage and agreement of the parties;
- (c) to make uniform the law among the various jurisdictions."

Those who have studied the Uniform Commercial Code are of the opinion that it will bring about modernization, flexibility, utility and uniformity in the field of Commercial law.

The Chairman of the Section of Corporation, Banking and Business Laws of the American Bar Association reported in part as follows: "The Council is of the opinion that the Code has progressed to the extent that the Sponsors are warranted in introducing it in state legislatures." The Uniform Commercial Code was approved by the American Law Institute on May 18, 1951, by the Conference of Commissioners on Uniform State Laws on September 15, 1951, and by the House of Delegates of the American Bar Association on September 20, 1951. It is now ready to be introduced into the state legislatures. The Legislative Assembly of the State of North Dakota should enact it during the 1955 legislative year.

The Uniform Commercial Code embraces the fields of Sales, Commercial Paper, Bank Deposits and Collections, Documentary Letters of Credit, Bulk Transfers, Warehouse Receipts, Bills of Lading and other Documents of Title, Investment Securities, Secured Transactions and Sales of Accounts, Contract Rights and Chattel Paper. In form, scope and contents, the Code represents a product of excellent draftsmanship, integration and substance, all well planned to accomplish the objectives as stated in section 1-102.

The Chief Reporter of the Code was Professor Karl N. Llewellyn and the Associate Chief Reporter was Professor Soia Mentschikoff of the University of Chicago. The Chairman of the Editorial Board was Judge Herbert F. Goodrich, who is also Director of the American Law Institute. Members on the Editorial Board were Attorneys John C. Pryor of Burlington, Iowa, William A. Schnader of Philadelphia, Harrison Tweed of New York City, Williard B. Luther

of Boston, Walter Malcolm of Boston, Howard L. Barkdull of Cleveland, Joe C. Barrett of Arkansas, Robert K. Bell of New York City, Robert P. Goldman of Cincinnati, Ben W. Heineman of Chicago, Albert E. Jenner of Chicago, Arthur Littleton of Philadelphia, Kurt F. Pantzer of Indianapolis, R. Jasper Smith of Springfield, Missouri and Charles H. Willard of New York City.

Members of the American Law Institute, members of the Conference, members of the Sections of the Corporation, Banking and Business Law of the American Bar Association had, for a period of ten years, the opportunity to consider the various drafts of the Code as they appeared and to offer suggestions, recommendations and corrections. Law teachers, judges, lawyers and businessmen were invited to give information as to current business practices. Numerous national organizations were consulted and conferred with each year. Articles have been published in Trade Journals, Law Reviews, and magazines commenting and analyzing the essential features of this proposed Code.

The years of research, work and effort which have gone into the preparation of the Code by the distinguished panel of experts who wrote it reached their first fruition in Pennsylvania last year. Introduced into the legislature of that state, the Code was carefully explained to the legislators. Its enactment occurred under singularly auspicious circumstances. No single change or amendment was made by the Pennsylvania Legislative Assembly, and it passed both houses without a single dissenting vote — a virtually unparalleled acceptance of a piece of legislation of such immense importance. Legislation to enact it is presently pending in many other jurisdictions, and the nation-wide adoption of the Code is assured for all practical purposes.

The Uniform Commercial Code will come before the North Dakota Legislative Assembly in 1955, and it is to be hoped it will be adopted at that time, since failure to do so would in all probability place this state at a distinct commercial disadvantage. This issue of the *North Dakota Law Review* is accordingly devoted primarily to an explanation of various provisions of the Code, as a service to the lawyers of this state.

The official draft of the Code itself, with comments, runs approximately 850 pages. Despite this fact, it is recommended that the Code be passed without amendment, following the lead of the Pennsylvania legislature. The whole purpose of any Uniform Act is to secure uniformity of the law throughout the United States and

this purpose would be defeated by any process of amendment. Moreover, amendments might well have the effect of destroying the logic, conformity and consistency of the Code as a unitary piece of legislation. In view of the intensive consideration given this Code for over ten years by hundreds of lawyers, judges, law teachers and representatives of the American Bankers Association, the Warehouseman's Association, the transportation representatives and all other interested groups and parties, the Code may fairly be said to represent the consensus of informed opinion as to what the law should be.

North Dakota has a long and distinguished tradition of leadership in legislation. It would be a furtherance of that tradition if the Legislative Assembly were to once again place North Dakota in the forefront of the states by adopting the Code at the 1955 session.