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A REVISOR OF STATUTES FOR NORTH DAKOTA?

ROSS C. TISDALE *

FROM 1895 to 1943, a period of 48 years, North Dakota lawyers had no adequate systematization of their code. True, during that period, the codes were re-compiled on an average of once every nine years¹ — but aside from the omission of repealed statutes little was done towards building up an adequate index or a permanent and elastic classification system,² and defects in form were perpetuated due to the high cost of periodic revision.³ The Office of Statutory Revisor is designed to prevent such a state of affairs from prevailing in the future.⁴

If we are to adopt a permanent system of revision, the first and primary aim should be to correct errors before they are made. Three major aids to legislation are exemplified in legislative drafting service, legislative research bureaux, and re-

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¹ True Revisions: Rev. Codes 1895; Rev. Code 1943. Compilations: Rev. Codes 1899; Rev. Codes 1905; N. D. Comp. Laws (1913); 1925 Supp. to N. D. Comp. Laws of 1913.

² Change in section numbering often required institution of an independent search — much to the inconvenience of the user.

³ If the cost of publication is included, the cost of the 1943 revision exceeded \$100,000. The following appropriations were made: Laws 1939, c. 110 (\$35,000); Laws 1941, c. 32 (\$18,380); Laws 1943, c. 15 (\$70,000 to cover printing).

⁴ Wisconsin was the first state to adopt the plan of continuous revision centered around the office of statutory revisor. Wis. Laws 1911, c. 157; Wis. Laws 1913, c. 771, s. 7; Wis. Stat. 1913, c. 20.17. Wisconsin also instituted republication of the entire code every two years, thus eliminating supplements at periodic intervals.

Iowa made its Supreme Court Reporter, Code Editor. Office created 1924. Iowa Code (1939) T. II, Sec. 154, 176.

Kansas combines drafting, research and revision in the office of code revisor. Office created in 1929. Issues supplements at periodic intervals, but complete revisions are at direction of the legislature. Kan. Rev. Stat. (1935) Sec. 77-301, 77-306.

Kentucky: Office created in 1942. See Addendum.

Minnesota created the office of revisor of statutes in 1939. Minn. Laws 1939, c. 442; M.S.A. (1947) Sec. 482.01, 482.08.

Mississippi places appointment of revisor in Attorney General. Gen. Laws Miss. 1944, c. 264, created the office.

Connecticut also has adopted this form of continuous revision. 10 Mo. LAW REV. 116 (1945).

⁵ Excellent discussions are found in the following articles: Cullen, *The Advantages of a System of Continuous Statutory Revision*, 10 Mo. L. REV. 113 (1945); Kennedy, *The Legislative Process, With Particular Reference to Minnesota*, 80 MINN. L. REV. 653 (1945-46); Heineman, *A Law Revision Commission for Illinois*, 42 ILL. LAW REV. 697, 727 (1948).

vision service.⁵ North Dakota already has taken a step in the right direction by creating the Legislative Research Committee,⁶ and employing special counsel⁷ to aid in drafting statutes. The question is whether the appointment of an additional functionary, whose sole duty would be to conduct a continuing study of the code, striving toward a continuous revision of its context, improvement of its index and adequate and continuous annotation, would be an unnecessary and unwarranted expense to the state.⁸

Would the office of code revisor result in duplication of efforts, or is such an office the next step in rounding out the process of intelligent and successful legislative procedures? It is the opinion of the writer, that the functions of a revisor would in no way duplicate the work of the Legislative Research Committee. In the words of the statute: "... the committee shall have the power and right to study, consider, accumulate, compile and assemble information on any subject upon which the legislature may legislate . . ."⁹ Revision is concerned with defects in form in the statutes. The function of a revisor, as contrasted with that of the research committee, are as far apart as the two poles. A few typical illustrations of the function of a revisor follow.¹⁰

When a statute contains a specific reference to other statutes for the purpose of avoiding unnecessary repetition of definitions or procedural provisions, or to indicate exceptions and qualifications of the text, any change in the main statute requires correction of the references, and any change in the referential statutes requires conformation to the main statute. This is particularly true where the reference is for the purpose of identification of place, office or function, and the legislature changes the nomenclature used in the referential statute.

⁵ 1947 Supp. N. D. Rev. Code (1943) Sec. 54-3501, 54-3510.

⁷ President's Page, 25 N. D. BAR BRIEFS 158 (1949).

⁸ "The practicability of publishing statutes at a low price, through a permanent revision office, has been proved by experience. In Wisconsin the biennial editions of the statutes have for many years cost the attorney only \$5.00. In Iowa the 1939 edition sold for \$10.00. In Kentucky the 1944 edition is being sold for \$9.50." Cullen, *The Advantages of a System of Continuous Statutory Revision*, 10 Mo. L. Rev. 113, 125 (1945).

⁹ 1947 Supp. to N. D. Rev. Code (1943) Sec. 54-3502.

¹⁰ REPORT, LAW REVISION COMMISSION (N. Y. 1947), REVISION OF STATUTES IN MATTERS OF FORM, p. 463, 515; Cullen, *Mechanics of Statutory Revision—a Revisors Manual* (1944-45) 24 ORE. L. REV. 1, 24 (1944-45).

Grammatical and verbal errors are not uncommon, and the revisor runs a constant check for errors of this type. Sometimes an entire sentence or clause is omitted, or a sentence or clause the legislature intended to delete is left in the statute by mistake.

Multiple amendments of a statute by different bills enacted at the same session of the legislature frequently cause serious trouble. If the amendments deal with different parts of the statute and the revisor feels that the legislative intent expressed in each of the amending statutes is not inconsistent, it is proper to introduce a bill making the act read as one continuous statute. On the other hand, the revisor is not a policy maker, and if the two acts conflict he can draw the attention of the Legislative Research Committee to the matter.

The highest degree of care on the part of the draftsman and of the Legislative Committee on Revision will not prevent inadvertent errors in reproduction of the unamended text. Where it is clear that omissions or changes do not express the legislative intent, revision bills are proper.

It seems to be a uniform practice for the draftsman, who seeks to amend a statute, to retain unchanged the original wording of the unamended portion of the law. The result is that redundancies, cumbersome expressions, archaic language and unnecessarily complicated sentences remain to plague us in future years. One of the functions of the revisor is to restate and simplify where the accretions from years of amendment have brought confusion into the text. Of course, the danger of change in meaning is ever present, and the burden of proof rests on the revisor before the legislature. Revisions of the types above will arise naturally in any program involving continuous and systematic study of the Code. The primary function of the revisor will be to take the Code title by title, at his leisure, and through careful study of the field of law, and this includes the case law, try to rearrange, simplify and make it state more clearly the true intent of the legislature.¹¹

Peculiarly within the field of revision, is the task of making our existing legislation clearer by incorporation of authoritative interpretations made by the courts. Unless this is done the language of the statute may be misleading and through in-

¹¹ Many of the statutes cited in Note 4, *supra*, give broad discretionary powers to the revisor.

advertence, courts and lawyers may overlook judicial interpretations that limit a particular statute.¹²

The elimination of unconstitutional statutes requires careful study. If a statute has been declared unconstitutional *in toto* by a court of last resort, an express repeal will put everyone on notice. However, if the court strikes a particular clause or limits a particular application, it is not easy to determine how far the statute or its remaining portion is changed in meaning. Certainly it must be interpreted in the light of the construing opinion, and frequently rewriting involves a great deal more than revision. However, where the legislative intent is clear, revision is proper.

A statute may become obsolete because of desuetude. Ordinarily, statutes of this type may be retained for many years. Their repeal is a matter of policy, not of revision, except in extreme cases. Perhaps a good illustration of an extreme case is found in the Torren's Title Act,¹³ recently repealed.¹⁴ Revision legislation is proper where the statute has become obsolete by its terms, or by the terms of qualifying statutes. There is no good reason why statutes of this type should encumber the books, since their publication and republication entails unnecessary expense. Elimination of statutes repealed by implication, and correction of unnecessary duplication may also be noted in passing, as a continuous revision problem.

In many cases the revisor will find it necessary to draft bills to correct defects in form. It is found expedient in most states where continuous revision is in effect to have these bills referred to a particular committee which submits them for passage as revision bills.¹⁵ (In North Dakota they could be introduced under the auspices of the Legislative Research Committee). Where this practice is followed, there is little or no opposition to the passage of this type of legislation. On the

¹² Illustrating a very dubious attempt to coordinate statute and case law, see 6 Revisor's Notes to N. D. Rev. Code (1943) Sec. 13-0105.

¹³ N. D. Laws 1917, c. 235; 1925 Supp. N. D. Comp. Laws Ann. 1913, Sec. 5604a1 to 5604a82.

¹⁴ N. D. Laws 1941, c. 250.

¹⁵ The Wisconsin statute is suggestive: "It shall be the duty of the revisor to formulate and prepare a definite plan for the order, classification, arrangement, printing and binding of the statutes and session laws, and between and during sessions of the legislature to prepare and at the beginning of each session of the legislature to present to the judiciary committee of the Senate, in such bill or bills as may be thought best, such consolidation, revision and other matter relating to the statutes or any portion thereof as can be completed from time to time." Wis. Stat. (1913) Sec. 117.

other hand, our Code contemplates correction of minor errors by the official entrusted with publication of the statutes.¹⁶ Logically, the duty of publishing the statutes should rest on the revisor. In his office will be found both the tools and the skill necessary to adequate correlation, indexing, and annotation.¹⁷

It is clear from the foregoing survey, necessarily a sketchy one, that a revisor of statutes is a non-policy making expert, whose value will increase in direct proportion to his concentration of effort on the tasks assigned. If he is made part of the legislative reference bureau he will no longer be his own master. In view of the fact that his work does not involve matters of legislative policy, the office should be taken out of politics. To insure diligence he should be appointed by a committee of outstanding lawyers who will in turn be vested with power to supervise his work. Such a committee could well serve without compensation, and be selected from a list of names submitted by the Bar Association to the Governor or Chief Justice of the Supreme Court.¹⁸

Because of the nature of his work, the revisor should have an office close to the state law library.¹⁹ Since his work will involve detailed research in both statute and case law, it seems entirely feasible to have an assistant to the revisor function as a part time instructor in the Law School at Grand Forks. After all, a good part of the poor draftsmanship in our present

¹⁶ The following statutes are enlightening:

N. D. Rev. Code (1943) Sec. 1-0206: "Clerical and typographical errors shall be disregarded when the meaning of the legislative assembly is clear."

Id. 46-0310: "In arranging the laws, memorials, and resolutions for publication, the secretary of state shall make such corrections in orthography, grammatical construction, and punctuation of the same as in his judgment shall be proper. When any words or clauses are inserted, the same shall be enclosed in brackets."

Id. 1-0211: "No source note shall be deemed a declaration by the legislative assembly as to the purpose, scope, or effect of any section to which source note or revisor's note relates."

Id. 1-0212: "No headnote, source note, or cross reference whether designating an entire title, chapter, section, sub-section, or subdivision, shall constitute any part of a statute."

Id. 1-0225: "The provisions of this code, so far as they are substantially the same as existing statutes, must be construed as continuations thereof, and not as new enactments."

N. D. Laws (1947) c. 303, am'd N. D. Rev. Code (1948) Sec. 46-0311: "The Secretary of State shall correct proof and supervise the publication of the laws in a manner and form prescribed by the legislative research committee. . . ."

¹⁷ See statutes cited in Note 4, *supra*.

¹⁸ Practice varies. See Note 4, *supra*.

¹⁹ See Note 4, *supra*.

law must be attributed directly to legal counsel. If we wish to correct evils of draftsmanship at the source the place to begin is in the law school. Another advantage of such a plan is the possibility of utilizing student aid in limited revision problems at little or no expense to the state. Publication of the results arrived at by student research in the Bar Briefs would tend to awaken the bar to the nature of the work, and induce active cooperation on the part of all members.

The final step in utilizing the office of revisor to the fullest extent is to make this office the center for final review of all proposed legislation. The task of the revisor, in this instance, has nothing to do with policy. He is solely concerned with style and form. All bills, whether drafted by individuals, the Judicial Council, the Legislative Research Committee, or any of the State Bureaus or Departments, should receive final attention in the revisor's office. The reason for this policy may be concisely stated. It will tend to eliminate errors before the bills become law — elimination at the source. His familiarity with the code would go far towards elimination of duplication and unnecessary conflicts with existing law. His file of annotations would enable him to synchronize case and statute law in advance. His practice and skill in stating law in clear and concise language will result in reducing the length of bills and thus reduce publication costs.²⁰ Kentucky follows this procedure, and in addition the Kentucky revisor keeps a file of all bills and follows them through both houses.²¹ By message to either house he points out errors in suggested amendments, and suggests the proper form of amendment to accomplish the desired result. Such a procedure should be a welcome aid to the legislature.

In conclusion, the office of statutory revisor can save the state expense and furnish lawyers with an adequate code if we place the following duties in the revisor:

First, preparation of revision legislation as suggestions flow

²⁰ "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." See Cullen, *op. cit. supra*, note 5, at p. 124. It might also be noted that states republishing the entire code every biennium succeed in encompassing their entire body of statutory law in either one or two volumes.

²¹ Cullen, *op. cit. supra*, note 5, at pp. 120, 121.

into the office from members of the bar, Judicial Council, Legislative Research Committee, and the various bureaus and departments of the state.

Second, continuous study of the Code by topic or topics as time permits with a view to preparation and submission to the legislature of topical revision bills.

Third, creation of a bill review service for correction of errors in style and form.

Fourth, vesting in that office the duty of preparing and publishing the statutes, since the revisor and his assistants really constitute a permanent editorial staff.

ADDENDUM

Because the Kentucky statute combines the features suggested in the preceding article, it is set out in full below. In the opinion of the writer, this statute could be adopted in North Dakota with relatively few changes.

STATUTE REVISION COMMISSION: organization.¹ The Governor shall, on or before March 1 every four years, beginning with 1942, appoint a Statute Revision Commission composed of four members, to be selected from a list of eight persons, learned in the law, submitted by the Board of Commissioners of the Kentucky State Bar Association. The members of the commission shall serve for four years and until their successors are appointed and have qualified. Vacancies in the commission shall be filled by appointment by the Governor from a list of two names for each vacancy submitted by the Board of Commissioners of the Kentucky State Bar Association. The members of the commission shall receive no salaries, but shall receive their reasonable and necessary expenses in connection with the performance of their duties, to be paid out of sums appropriated to the commission. The commission shall constitute an agency independent of the administrative departments provided for in Chapter 12 of the Kentucky Revised Statutes.²

OFFICE SPACE, KENTUCKY REPORTS, LEGISLATIVE ACTS AND BILLS TO BE FURNISHED COMMISSION.³ The Division of Purchases and Public Properties shall provide the commission with suitable office space convenient to the State Law Library. The State Librarian shall furnish the commission with a complete set of Kentucky Reports . . . and with advance sheets and permanent volumes as they are published. The State Librarian shall also furnish the commission with a complete set of the printed Acts, . . . and with future volumes of the Acts as published. The clerk of each house of the General Assembly shall furnish to the commission a copy of each

¹ Ken. Rev. Stat. (1944) 447.070.

² Ken. Rev. Stat. (1944) 12.010(7) "Independent Agency" means any agency of the state government which is not a part of an administrative department." Under this chapter the head of a statutory department, with the approval of the governor, might wipe out a subordinate board.

³ Ken. Rev. Stat. 447.080.

bill introduced in the house of which he is clerk, as soon as the bill is introduced. The contractor for state printing of the first class shall, at the time of printing legislative bills for the use of the members of the General Assembly, and at the time of printing legislative bills for enrollment, print one additional copy of each bill, from the same type, and furnish it to the commission, any expense connected therewith to be paid from the appropriations made for expense of legislative sessions.

FUNCTIONS OF COMMISSION.⁴ The commission shall formulate, supervise and execute plans for the future revision, clarification, classification, codification, arrangement, annotation, indexing, printing, binding, publication, copyrighting, sale and distribution of the Kentucky Revised Statutes, including annotations and supplements, and all editions thereof. The commission shall determine when editions shall be published, and shall fix the prices thereof. Such printing shall not be considered printing of the first class within the meaning of the statutes relating to printing of the first class.⁵ The commission shall report to the General Assembly whenever called upon, and shall prepare and submit to the General Assembly such consolidation, revision and other matters relating to the statutes as can be completed from time to time.

USE OF TYPE FROM WHICH STATUTES ARE PRINTED.⁶ The commission shall control and supervise the use of any type acquired by the state in connection with the printing of editions of the statutes, and may permit the use of the type for the printing of pamphlets of particular portions of the statute laws requested by any state department or agency, under such terms and conditions as the commission considers reasonable.

POWERS OF THE COMMISSION IN PREPARING EDITIONS OF THE STATUTES; CERTIFICATION OF EDITIONS; ADMISSIBILITY OF STATUTE EDITIONS IN EVIDENCE; LEGISLATIVE AMENDMENTS.⁷ The commission, in preparing editions of the statutes for publication and distribution, shall not alter the sense, meaning or effect of any act of the General Assembly, but may renumber sections and parts of sections of the Acts of the General Assembly, change the wording of headnotes, rearrange sections, substitute the proper section or chapter numbers for the terms "this Act," "the preceding section," and the like, strike out figures where they are merely a repetition of written words, change capitalization for the purpose of uniformity, and correct manifest clerical or typographical errors. When any edition of the statutes is published by the commission, the Reviser of Statutes shall prepare a certificate certifying that he has compared each section printed in such edition with the original section in the enrolled Kentucky Revised Statutes, or, in the case of sections of Acts enacted after the adoption of the Kentucky Revised Statutes, with the original section in the enrolled bill, and that, with the exception of the changes in form permitted by this section, the sections in the printed edition are correctly printed. One copy of the edition, with the original certificate affixed thereto, shall be

⁴ Ken. Rev. Stat. 447.090.

⁵ Tendency is to give revisor of statutes wide discretion with a view towards reducing cost.

⁶ Ken. Rev. Stat. 447.100.

⁷ Ken. Rev. Stat. 447.110.

filed in the office of the Secretary of State. All other copies of the edition shall contain a printed copy of the certificate. Any edition so certified shall constitute prima facie evidence of the law in all courts and proceedings, and any section in such edition may be amended or repealed by reference to the section number, without reference to the legislative Act from which it was compiled. No compilation of the statute laws of Kentucky not bearing such a certificate shall be admissible as evidence of the law in any court or proceeding.

REVISOR OF STATUTES.⁸ The commission shall, as soon as possible after its appointment, appoint a Revisor of Statutes, who shall serve for a term of four years and until his successor is appointed and has qualified, subject to removal at any time at the discretion of the commission. The revisor shall consider, prepare, submit and assist in carrying out the plans and methods of the commission. He shall keep an accurate and complete record in the office of the commission of all legislation enacted by the General Assembly and of all bills introduced in the General Assembly, and shall study the same for the purpose of considering and determining the intention and effect thereof. He shall prepare and keep accurate and complete annotations of court decisions construing the statutes. He shall advise and assist the members of the General Assembly and the various departments and agencies of the state government in the preparation and revision of all legislation and matters connected therewith. He shall, when requested by the General Assembly, or either house thereof, report to the General Assembly on bills introduced, calling attention to their effect on existing legislation and to any deficiencies in form.

EMPLOYEES OF COMMISSION; COMPENSATION OF REVISOR AND EMPLOYEES.⁹ The commission may appoint, and remove at pleasure, such assistants as may be necessary to the discharge of its duties, and shall fix the salary of the revisor and the assistants, within the limits of the appropriations made to the commission.

⁸ Ken. Rev. Stat. 447.120.

⁹ Ken. Rev. Stat. 447.130.