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More about Code Revision

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fort. I would recommend to the members of the Bar that they study this situation and promote a feeling among their clients and friends that such action should be taken, as it will save not only the lawyers, but the public generally vast sums in time and expenditures, even without considering the errors that are made by reason of the unsatisfactory condition in which we find our laws. If every lawyer will talk to every client and to the public generally, explaining to them that it is not a lawyer's advantage, but is a profit to the public itself in a reduced public expenditure by the officials of the State and in a reduced amount of time that a lawyer has to put in in giving reasonable and proper advice to his clients. Every lawyer should make himself a committee of one advocating such action. When the public understands the situation there is no question but that they will demand a revision and the legislators, or prospective legislators, will not hesitate to advocate such action by the legislature.

I, therefore, earnestly recommend that every attorney keep this in mind and in conversations and conferences with his friends, advocate such action by the legislature in 1939. I have a copy of the South Dakota laws providing for a commission to be appointed by the Supreme Court and under its direction prepare such a revision. If the State Bar Association can promote such legislation it will be doing one of the greatest services not only to its membership, but to the public at large.

Action by all of us should be taken now and kept up during all of 1938.

L. J. PALDA, JR., President.

MORE ABOUT CODE REVISION

It may be interesting to the members of our Association to learn something in detail about the Revision of the South Dakota Law, in which their Commission is now engaged. The Commission was created by the Legislature of 1937, under Chapter 60 of the Session Laws of that year, and the Supreme Court has authority to select and employ not more than three persons, resident of the state and learned in the law, as a Code Commission, whose duty it shall be to act under the supervision and direction of the Supreme Court, to revise, annotate and index the laws of South Dakota, including, if possible, the Session Laws of 1939 and while designating the usual things to be done in revision, in addition thereto, instruct them to annotate and index a complete set of rules of practice and procedure, for all the Courts of the state, including all proceedings in which quasi-judicial functions are exercised by administrative offices and departments of the state government, together with the rules and regulations for admission to and disbarment from the practice of law.

Specifically, amongst other things, that the Commission shall eliminate all statutes that have been repealed, either directly or by implication, or that are inoperative or special and limited in their nature, to reconcile all inconsistencies, to eliminate duplication, to eliminate or restate useless, contradictory or confusing

words and language, to incorporate all amendments and statutes of general application, to harmonize the statutory and declaratory law so far as possible, and to revise all laws wherever it may deem it necessary to make a perfect, complete and consistent Code of Laws. This is granting to this Commission rather extraordinary powers, as it covers the whole field of their law, and, if fully exercised, should be conducive to the production of a Code which will be a credit to their Commission, as well as an example for other states.

The authority to prepare a set of rules of practice and procedure for all the Courts of the state shall and will regulate the power of the Courts to make their own rules of procedure. They have had this inherent power, of course, but it has been grossly interfered with by tinkering Legislatures all over the northwestern states, and while such statutes are clearly unconstitutional, they have had general recognition by the Courts, and have resulted in slowing up the machinery of trial Courts in this and other states, for which the Courts, themselves have been held to blame, and have been in nowise responsible. This power, if properly exercised by the Courts, gives them a chance to keep abreast of the times and to change and adopt rules in accordance with such requirements, and would be a great help in simplifying and expediting the business of everyone having to deal with their Courts. This is with reservation, that the future Legislatures keep their hands off of the rules of practice and procedure.

This Statute requires the Commission to supervise the preparation and arrangement and the printing of the Code and rules, in such an approved and modern manner and form, to the end of producing a Code of laws and rules of practice and procedure that will best and economically serve the people of South Dakota for a maximum period of future time. Of course, this new Code will only become effective when and if thereafter enacted by their Legislature.

The Code Commission, subject to the supervision and control of the Supreme Court employs such technical experts and clerical assistance as are necessary. However, the Supreme Court, in its discretion may designate one or more of the Circuit Judges of the State, whose position and authority correspond to District Judges of the State, to assist such Commission, and they shall receive no additional salary or compensation for such work, except necessary and actual living and traveling expenses while on such work away from their usual place of residence. The Supreme Court has direct power and authority to fix the compensation of all other persons employed or appointed by them, and has also the power to discharge them and fill any vacancies, giving them the power necessary and incident to supply suitable office space and equipment and necessary supplies in every way, provided for their purchase through the state division of purchases and accounts.

The Act requires the Supreme Court to proceed as speedily as possible, consistent with careful work and best results, but to complete the same by January 1, 1938, which is also established as a dead-line, when the style of printing and binding, etc.,

shall be determined in order to have the bound volumes delivered not later than June 15, 1939, and imposes upon the Supreme Court supervision control over the making of all contracts, and that it shall advertise for bids for the printing of the report of the Code Commission to be made to the Legislature of 1939. Such report to have appended, the proposed Code and rules in temporary binding, shall contain a table indicating the place in such proposed Code and rules where the existing laws may be found, and also indicating the existing laws which they amended or repealed. The Supreme Court is not bound to accept the lowest bid, but shall accept the lowest bid which in its opinion is the best bid consistent with the quality of printing, paper, binding, expeditious service and to the best interest of the state, which really gives the Court some latitude. And also declare this printing to be of such nature as is not subject to the general provisions of the printing Act and finally it appropriated the sum of \$50,000.00 for its work.

The history of this Revision Act goes back to the time when a successful attempt to secure the Legislative endorsement of the Code Compilation Act was made at the 1935 South Dakota Legislature, but was vetoed. When the Judicial Council, being of the opinion that the state needed a thorough revision, rather than a mere compilation, prepared a bill authorizing a Code Commission and appropriation of \$50,000.00 therefor. The proposition was approved and submitted to their Board of Bar Commissioners. In the 1937 Legislature the bill was introduced, and after an energetic campaign, was created and became a law. This Code Revision bill is generally recognized as the most progressive and satisfactory bill of its kind ever enacted, and reflects much credit upon the Judicial Council of the State of South Dakota. By this Act, the Legislature recognized the imperative necessity of the modernization of judicial procedure, and conceded the inability of any legislature wisely to regulate procedure, and the right and duty of the Supreme Court to prescribe by rules all terms of judicial procedure in the exercise of its constitutional power and the duty of superintending control over the judicial department, including quasi public bodies and administrative boards. If a model set of rules is not developed the Commission, Bench and Bar of South Dakota will have only themselves to blame. In further recognition of the splendid services already rendered by the Judicial Council of South Dakota, its offer of service to the Code Commission, in connection with the preparation of these rules was accepted, and the Commission was divided into several sub-committees on which are now at work, and nearing completion, upon tentative drafts. The work was divided as follows:

1. Code remedies, ordinary and extraordinary.
2. Pleadings in Civil and Criminal Cases.
3. Trial Procedure. Civil and Criminal.
4. Probate procedure.
5. Appellate procedure.
6. Procedure in administrative bodies.
7. Administration of trusts.
8. Admission to practice law and disbarments.

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