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Report of the Advisory Committee on the Code

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between this committee and the judges.

Another matter considered by this committee is the following: The practice of procuring affidavits from jurors reciting the arguments, votes, etc. which took place in the jury room while the jury was in process of considering its verdict. It is the belief of the committee that the usual juror enters upon the consideration of the verdict in an atmosphere of confidence and he does not expect that a fellow juror will be making an affidavit as to the arguments and votes in the jury room. This committee believes that this matter also, should have further study and may warrant legislation to the end that the deliberations of the jury in the jury room be confidential. It has been suggested to the committee that the subsequent disclosure of the deliberations of the jury tends to embarrass the jurors and to make prospective jurors reluctant to serve.

The present committee feels that there is benefit in continuity of membership in this kind of a committee. It is our recommendation that a committee of nine, with three appointed each year for three year terms, would be an improvement.

REPORT OF THE ADVISORY COMMITTEE ON THE CODE

By Harry Ellsworth Foster

The Revised Code of Washington, contained in six loose-leaf volumes, is not the law but is only prima facie evidence of the law. The law itself, is found only in the session laws. Since the adoption of the Revised Code of Washington as a prima facie code the supreme court has made it abundantly clear by repeated decisions that the session laws control RCW.

On the eve of the convening of the 32nd session of the legislature the Washington State Bar News carried this note of caution.

"Members of the Bar who may be interested in the drawing of amendatory legislation to be presented to the current session of the Legislature should be careful to see that the former law references in the same comply with the Constitution, Article II, Sec. 37. There is reason to believe that amendatory legislation which refers to the Revised Code of Washington, enacted by reference as Chapter 16, Laws of 1950, Extraordinary Session, would not comply with the above referred to constitution provision for Revision or Amendment of existing law."

Yet both the 32nd and 33rd sessions of the legislature used the formula contained in Section 17 of Chapter 157 of the Laws of 1951, which is:

"The legislature shall amend or repeal laws with reference to code numbers."

The legislature has amended sections of RCW but has not amended the law

Before the 33rd session convened, the Advisory Committee recommended to the chairmen of the two judiciary committees that in amending or repealing acts, both the applicable sections of the session laws and RCW be amended or repealed instead of only RCW, leaving the session law itself unchanged.

Has the law been changed? Only the supreme court can decide.

As a result of a committee meeting in April of 1952 with Acting Dean Harsch of the University of Washington School of Law, that institution undertook a study to disclose all deviations between the code and the law, itself. Dean Stevens now advises that this study is nearing completion.

It is with pleasure that attention is directed to the following announcement in the Alumni News Bulletin of the University of Washington Law School dated July, 1953, which is as follows:

"THE REVISED CODE OF WASHINGTON is being carefully compared with the original session laws under the supervision of the law school. This detailed check of each section is being made at the request of the Washington State Bar Association. All changes from the original texts are being noted, and a faculty committee will make an analysis of those sections in which significant modifications are found. The results of the study will be made available to publishers for incorporation into annotations for the new code. A contribution of \$2,550.00 to help defray the University's expenses in this study was made by Mort Frayn, president of the Book Publishing Company of Seattle."

One publisher's RCW annotations were printed before the law school study was undertaken; another publisher's annotations refer to that study. The work of the law school should be made available to the profession by a reliable printing.

At the 1952 meeting of this association a resolution was unanimously adopted urging that RCW contain only the law as enacted by the legislature and that neither RCW nor any of the titles in it should

be enacted as basic law until necessary corrections were made.

But last year the former Statute Law Committee recommended the enactment as basic law of seven or more RCW titles. In a series of meetings prior to the 33rd session of the Washington Legislature these titles were considered by the Advisory Committee. The committee, however, could only sanction the enactment of the insurance title and was unable to say whether the errors had been eliminated from the remaining six titles. However, the legislature did not enact any titles and RCW remains only a *prima facie* code. Strong apprehension prevails that the enactment as law of RCW, without corrections, may jeopardize a large body of the decisional law of the state.

Your Advisory Committee unanimously urged the enactment of House Bill 31 by the 33rd session of the Washington Legislature. The bill, which was prepared by the University of Washington Law School faculty, in collaboration with the Advisory Committee, dealt with the code problem. One of the principal features was to vest control in this association. Opposition was encountered resulting in the enactment of a substitute bill—Chapter 257 of the Laws of 1953, which gives the association the right to nominate two of the seven members instead of only one under the former act. The association's designee on the previous committee, Mr. Grosscup, was appointed to the four-year term, and the Chairman of the Advisory Committee was appointed to the two-year term, but I have had some considerable difficulty in advising myself, since. That body organized promptly and elected Mr. Grosscup as chairman, who will report to you elsewhere on this program respecting the work of that group.* I have had the privilege of examining Mr. Grosscup's report and find it discriminating, comprehensive and accurate.

The work of the present Permanent Statute Law Committee has been primarily, up to yesterday, the integration of the 1953 session laws and the code. While twenty orders correcting errors have been adopted, up to yesterday, it had not yet come to grips with the problem of insuring that RCW be an accurate printing of the laws of Washington.

There has been no occasion for a meeting of the Advisory Committee since the adjournment of the legislature, but when the Permanent Statute Law Committee actually starts work upon the correction of errors in the code an arduous task will be confronted.

* See Editor's Note which follows this report.

In view of the action taken yesterday by the Permanent Statute Law Committee, it now seems very advisable that a continuation of the Advisory Committee on the code be a major program of this association until the work on the code is finally concluded.

I may say in closing that the aims of this association have only been possible of achievement by the close cooperation of Senator Goodloe of King County, and Representative Newman H. Clark, also of King County. They have been a tower of strength and without their assistance we could not have prevailed.

EDITOR'S NOTE

At the close of Mr. Foster's report, *supra*, Ben C. Grosscup of Seattle, chairman of the STATUTE LAW COMMITTEE commented on the state of RCW and reported that at the Committee's August 6, 1953 meeting, the following program was adopted:

1. That the reviser prepare for submission to the Committee schedules of variance for Titles 20, 25, 30, 32, 48, 62, 75 and 77.

2. That said schedules after examination together with the Committee's comments thereon be submitted to the Bar as provided for by the Statute Committee Rules.

3. That the reviser examine RCW commencing with Title I; prepare a variance schedule for each Title, and that the same as completed be submitted to the Committee and the Bar as provided by the Committee's rules.

4. That any corrective matter brought to the attention of the reviser but not relating to a title not then under consideration, shall be evaluated and submitted to the Committee for consideration of action to be taken, if any.

5. That the Reviser shall proceed with the work of compiling a comprehensive index to RCW, so designed that an integrated index to court rules and procedural titles may be published prior to the time that the entire comprehensive index would be ready for publication.

Mr. Grosscup then urged the Bar to participate in the work of the Committee by pointing out to the reviser all Code discrepancies discovered by them; and further to voice their comments as to the variance schedules when distributed, stating that the Code is a lawyer's tool. If it is faulty, then the job being attempted to be done with it is likewise faulty. He urged activity by the Bar and pledged his support to a program of restoring RCW to the legislative language.