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Judicial Administration

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determined by conditions with relation to their age and/or membership in the credit union. The policy premium must be paid either wholly from the credit union's funds, or partially from such funds with the remaining portion to be paid by the members for their insurance. The entire premium may not be procured from funds contributed by the individual members. There must be at least twenty-five members insured at the date of issue of the policy and the amount of insurance of any member must not exceed the amount of his total shares and deposits, with a maximum of two thousand dollars.

RCW 48.24.040 has been amended by the deletion of two subsections relating to the insurance of debtor groups. These subsections formerly provided that the amount of insurance on the life of a debtor must not exceed the amount owed by him which was repayable in installments to his creditor over a period of not more than five years, with a maximum of ten thousand dollars;[5] also, that the insurance must be payable to the policyholder with such payment extinguishing the unpaid indebtedness of the debtor to the extent of the payment.[6]

ROBERT L. TAYLOR

JUDICIAL ADMINISTRATION

Your attention is directed to four laws and one proposed constitutional amendment which came out of the 1961 session of the Washington Legislature.

1. Chapter 42[1] amends RCW 2.24.010 by eliminating the requirement that court commissioners must reside at the county seat. This change, a Judicial Council proposal, will make it possible to appoint court commissioners to serve in population centers other than the county seat, such as Kennewick or Richland in Benton County, or Aberdeen or Hoquiam in Grays Harbor County. If implemented, this device will eliminate the necessity for and the expense of trips to the county seat with respect to matters which can be handled locally by the court commissioner.[2]

2. Court rule 41.04W(b),[3] as amended 9 September 1959, was promulgated as a means of eliminating dead and dormant superior court cases in which nothing had happened for over a year. The rule failed

[5] Wash. Sess. Laws 1961, ch. 194, § 9. See also Wash. Sess. Laws 1961, ch. 219, § 6.
[6] Wash. Sess. Laws 1961, ch. 194, § 9(5). See also Wash. Sess. Laws 1961, ch. 219, § 9(2).

[1] Wash. Sess. Laws 1961, ch. 42.
[2] For powers of court commissioners, see RCW 2.24.040-050.
[3] WASH. R. P. P. P. 41.04W(b).

in its objective, however, because RCW 36.18.020 required the clerk to collect a fee for entering the order of dismissal. Chapter 41[4] amends RCW 36.18.020 by providing that no fee need be assessed or collected when an order of dismissal is filed as provided by rule of the supreme court. Rule 41.04W(b) will be amended in due course in order to make this housekeeping measure effective. This proposal originated in the office of the Court Administrator and was sponsored by the Judicial Council.

3. Chapter 204[5] authorizes the use of "certified" mail, with return receipt requested, whenever the use of "registered" mail is authorized by law. This statute implements Court rule 5.04W[6] which is to the same effect.

4. The Legislative Council of the State of Washington, after four years of labor, proposed a complete reorganization of the justice of the peace system and of the inferior courts of the state. Senate Bill No. 111 proposed a single uniform inferior court system for the state, to be known as the justice court. The purpose, as stated in the preamble, was:

> To establish a system of courts providing uniform justice to all parts of the state, and to eliminate many undesirable features of the existing law such as the payment of justices of the peace on a fee basis, selection of court by law enforcement agencies, differences in jurisdiction, ambiguous venue provisions, excessive number of judges, unsupervised courts, and inadequate qualification requirements for judges.

The bill was subjected to considerable amendment. In its final form it appears as Chapter 299.[7] Section 2 of the new law states that the provisions of the act shall apply to class AA and class A counties, with the proviso that any city having a population of more than five hundred thousand may by resolution of its legislative body elect to continue to operate a municipal court under RCW 35.20. Section 2 further provides that chapter 299 may be made applicable to any other county by a majority vote of its board of county commissioners.

The new act is mandatory in only three counties—King, Pierce and Spokane. Even in these three counties the single uniform inferior court approach will not be operative if: (1) a city with a population of more than 500,000 wants to keep its present municipal court; or (2) a city or town with a population of 20,000 or less provides by ordinance for its

[4] Wash. Sess. Laws 1961, ch. 41.
[5] Wash. Sess. Laws 1961, ch. 204.
[6] WASH. R. P. P. P. 5.04W, 157 Wash. Dec. No. 2A, p. 12 (1961).
[7] Wash. Sess. Laws 1961, ch. 299.

own inferior court in accordance with sections 50 through 96 of the act. This second exception applies not only to the class AA and class A counties, but also to all other counties whose county commissioners vote to make the act applicable to their county.

Section 8 of the act provides that the supreme court may adopt rules of procedure for justice courts. The objective was, of course, to achieve a single uniform system of procedure applicable in all inferior courts. However, section 94 of the act provides that "pleadings, practice and procedure in cases not governed by statutes or rules specifically applicable to municipal courts shall, in so far as applicable, be governed by the statutes and rules now existing or hereafter adopted governing pleadings, practice and procedure applicable to justice courts." And section 96 adds that "*any* city or town may elect to continue under existing statutes relating to police courts, municipal courts, or laws relating to justices of the peace." (Emphasis added.—Does it really mean "any"? Or, does it mean any of the cities under 20,000?)

These two provisions (1) assure the continuation of the confusion and the useless, but tricky, differences in the rules of procedure in the various inferior courts of this state, and (2) make any substantial improvement in the procedure employed in the lower courts exceedingly difficult if not impossible in the immediate future. The only hope lies in the very real possibility that the supreme court may be forced to exercise its inherent rule-making power over procedure in these lower courts because of the intolerable confusion now existing.

Section 10 of the act establishes the number of justices of the peace to be elected in each county. This provision was inserted in order to meet the requirements of the Washington Constitution.[8] There is a very real possibility that the entire act is unconstitutional because of the provisions in section 2 of the act which permit the board of county commissioners in all but class AA and class A counties to decide whether to come under the act, and thus to make the decision as to how many justices of the peace there shall be in a particular county. If the board of county commissioners elects to come under the act, section 10 becomes operative and determines the number of justices of the peace for the county. If the board does not so elect, then RCW 3.04, which provides for an entirely different method of determining the number of justices of the peace in each county, remains effective. Thus, the power to determine the number of justices of the peace in a county is by this

[8] WASH. CONST. art. 4, § 10 (amend. 28).

law delegated to the board of county commissioners. No standards are provided to control their decision. The supreme court held in *Manus v. Snohomish County Justice Court Dist. Comm.*:[9]

> ... [T]he specific mandate of the twenty-eighth amendment to the constitution of the state of Washington is too clear for interpretation. It unequivocally places the duty of fixing the number of justices of the peace upon the legislature exclusively, and leaves no room for the applicability of the doctrine of permissive delegation of legislative authority.

The bill, as proposed by the Legislative Council, in the opinion of the Advisory Committee and the Legislative Council, met the tests of the *Manus* case. There is a very real possibility that the bill as enacted does not.

The act provides for the manner of selection, the eligibility, and the qualifications of justices of the peace in those counties in which the act is mandatory or is adopted by action of the county commissioners. It provides for the establishment of justice court districts, setting forth the procedures and standards to be followed, but the act omits a recommended provision covering cities lying in more than one county.

Sections 31 to 34 of the act provide for justice court commissioners and prescribe their powers. A Legislative Council recommendation which placed a limitation on their jurisdiction and venue was deleted.

Sections 35 to 49 of the act provide that any city may secure the establishment of a municipal department of the justice court, cover the selection of the judge, the jurisdiction of the department, salary of the judge, and a procedure for the abolition of the department if desired. Reference has already been made to sections 50 through 96 which provide as an alternative that any city or town with a population of less than 20,000 may provide for an inferior court to be known as the municipal court, which is not a part of the new justice court system.

Sections 98 and 99 of the act deal with clerks and deputy clerks. The Governor vetoed section 97 which authorized the county commissioners to appoint a clerk and such deputy clerks as might be necessary for the administration of the court. In his veto message the Governor pointed out:

> The item and the section quoted are vetoed because Justices of the Peace in the past have always appointed their clerks and office staff. Believing as I do that the judiciary is a separate and independent branch of the government, it is my fervent conviction that neither a city nor a

[9] 44 Wn.2d 893, 895, 271 P.2d 707, 709 (1954).

board of county commissioners, through the appointment of clerks and the office staff of a Justice of the Peace, should interfere with the independent discharge of duties of a Justice of the Peace.[10]

The Governor's point is well taken. The Legislative Council had recommended that the appointive power be in the justice court. Case law also supports the Governor's position.[11]

Sections 100 to 104 cover salaries and expenses. The annual salary of each full time justice of the peace was set at $8,000 with the proviso that the salary may be increased to not more than $13,500, generally, and with the added proviso that cities of over 500,000 may pay as much as the superior court judge earns. The Legislative Council had recommended a minimum of $11,250. Query: How many good lawyers can afford to become justices of the peace at the $8,000 minimum? How many cities or counties will set the salary at the maximum so long as someone is willing to take the job for less?

Sections 100 to 104 eliminate the fee justice in the mandatory counties, AA and A, and in those counties which vote to come under the act. The salary scale for part time justices of the peace is set forth in section 101.

Sections 105 to 111 of the act deal with the income of the court—nonsuspension of costs, disposition of fees, fines, forfeitures and penalties, disbursements and filing fees in both civil and criminal cases.

Jurisdiction and venue are covered in sections 112 to 122. Section 112 includes a provision for trial by jury in both civil and criminal cases, including the trial of actions brought for violation of any city ordinance where the offense involves the revocation or suspension of a driver's license or other gross misdemeanor. This jury trial provision also applies to municipal courts created under section 77 and, apparently, applies in all municipal and police courts which are continued by virtue of section 96, since section 77, under section 96, is stated by the act to be self-executing. It would, therefore, apparently apply to the Municipal Court of Seattle, if that court is continued under this act.

The civil jurisdiction of the justice courts where mandatory or adopted by the vote of the county commissioners is increased from $300 to $500. Elsewhere in the state it remains at $300.[12]

The venue provisions, as set forth in sections 115 and 116, are

[10] Letter from Governor Albert Rosellini to the Senate of the State of Washington, March 21, 1961. The letter is quoted in Wash. Sess. Laws 1961, following ch. 299 (temp. ed.).

[11] See, *e.g.*, State *ex rel* Hovey v. Noble, 118 Ind. 350, 21 N.E. 244 (1888).

[12] See RCW 3.20.020.

broadened and brought into line with fundamental concepts and distinctions between jurisdiction and venue. These sections represent a real step forward.

The section dealing with criminal jurisdiction, section 117, empowers the justice court to impose both fine and punishment, if merited, and to revoke or suspend vehicle operators' licenses where provided by law. These changes correct serious deficiencies which existed under the former statutes, and continue to exist in those counties which do not elect to come under the act.[13]

So, also, the venue provision covering criminal actions, section 118, ties down the place of trial and eliminates the choice of venue provisions which have caused so much trouble in the past. The new provision for correction of criminal venue improperly laid is also a decided and realistic improvement. Here again, however, the change is effective only in class A and AA counties, and those which choose to adopt the act.

Change of venue under specified conditions is provided for in section 120. Section 121 provides for state wide process in criminal cases, and county wide process in civil cases.

Section 122 is aimed at the "marrying" justices. It makes it a breach of judicial ethics for any justice of the peace to advertise in any manner that he is authorized to solemnize marriages, and further provides that any violation of this section shall be grounds for forfeiture of office. Unfortunately, this section appears to be applicable only in class AA and A counties, and in those counties which vote to come under the act.

Finally, sections 123 to 126 of this act establish an association to be known as the Washington State Magistrates' Association, membership in which shall include all duly elected or appointed and qualified inferior court judges, including but not limited to justices of the peace, police court judges and municipal court judges. The language of this section clearly indicates a legislative intent to create this association immediately and on a state-wide basis, whether or not the counties other than class AA and A decide to establish a justice court. It is suggested that even if the justice court provisions of this act are found to be unconstitutional for the reasons above suggested, these sections may well be permitted to survive under the severability provision of section 132 of the act.

5. The courts and bar of the State of Washington have long been

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[13] See Note, 36 WASH. L. REV. 161 (1960).

conscious of the necessity for a device by which the supreme court may in times of emergency due to illness or disqualification of a judge, or because of the press of work, call in qualified people to act as temporary judges in order that the courts might carry on their work expeditiously and proficiently. By joint resolution, the legislature has placed before the people at the next election, a proposed constitutional amendment which, if approved by the electorate, will authorize a majority of the judges of the supreme court to call upon judges or retired judges of courts of record of this state to perform judicial duties in the supreme court on a temporary basis. While not as broad as the Judicial Council proposal, this resolution, if approved, will eliminate the unhappy 4-to-4 decision and provide the additional man power needed by the court to stay on top of its case load. Every effort should be made by the bench and bar to assure the approval of this measure by the people.

GEORGE NEFF STEVENS

SECURITY TRANSACTIONS

Conditional Sales of Personal Property — Filing. Chapter 159[1] amends RCW 63.12.010, the conditional sale filing statute. Two important changes are made by the amendment. The period during which an unfiled conditional sale contract is effective against creditors of and transferees from the vendee is increased from ten days to twenty days. The range of transactions which are totally exempt from the filing requirement is much expanded. All conditional sales "wherein the total designated unpaid purchase price does not exceed the sum of two hundred and fifty dollars" are excepted, "and such contracts or leases shall be valid as to all bona fide purchasers, pledgees, mortgagees, encumbrancers and subsequent creditors...." Under the earlier statute the critical figure was fifty dollars.

In extending the period during which an unfiled conditional sale is valid this legislation is retrogressive. It creates another difference in the procedures by which the conditional sale and the chattel mortgage (as to which the free-period remains ten days) are created and perfected and each such difference is a trap for the unwary businessman or lawyer. It makes the effecting of a record title check on a chattel virtually impossible. The justification for the change is not readily apparent but is presumably the convenience of dealers who are remote from county seats. It is curious to find that the ten-day period, which

[1] Wash. Sess. Laws 1961, ch. 159.