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*Montana Commissioner in the National Conference*

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# National Conference of Commissioners on Uniform State Laws

WILLIAM J. JAMESON\*

The National Conference of Commissioners on Uniform State Laws is composed of commissioners from each of the states, the District of Columbia, Alaska, Hawaii, Puerto Rico, and the Philippine Islands. By Act of the 1945 Legislative Assembly, Montana became the 34th state in which the commissioners are appointed by express legislative authority.<sup>1</sup> In the remaining jurisdictions the appointments are made by general executive authority. There are usually three representatives from each jurisdiction, chosen from judges, practicing lawyers, and teachers of law.

The Conference was organized in 1892, following the appointment by the American Bar Association of a special committee on uniform state laws and the adoption by the New York Legislature of an act authorizing the appointment of "commissioners for the promotion of uniformity of legislation in the United States." Since that time fifty national conferences have been held. The commissioners meet annually the week preceding the meeting of the American Bar Association. All commissioners serve without compensation and many pay their own expenses.

The funds necessary for carrying on the work of the National Conference are derived from contributions of twenty-seven of the states and territories, appropriations made by the American Bar Association, and contributions from various state bar associations. Many states make provision also for the payment of expenses of their representatives in attending the meeting of the National Conference and for printing reports of their commissioners. Thus far Montana has made no provision for any contribution to the work of the Conference, or for the payment of any of the expenses of its commissioners.

\*Mr. Jameson, Hon. Howard A. Johnson, Chief Justice of the Montana Supreme Court, and J. Howard Toelle, Professor of Law, Montana State University Law School, are the Montana Commissioners in the National Conference.

<sup>1</sup>Ch. 175, LAWS OF MONTANA, 1945.

The purpose of the National Conference is "to promote uniformity in state laws on all subjects where uniformity is desirable and practicable." Proposals of subjects for legislation are first referred to a standing committee on scope and program. After full consideration and hearing interested parties, this committee reports its recommendations to the Conference. If the Conference then decides the subject proper for a uniform act, it is referred to a standing or special committee to prepare the draft of an act. In the more important acts it has been customary to employ an expert draftsman.

Proposed drafts are printed and distributed to the members of the Conference. At the annual meeting they are thoroughly discussed, section by section. At least one year must elapse between the introduction of the act and its final approval. Often proposed acts are considered for several years before final action is taken. In the final action, the vote is taken by states, each state having one vote, with a majority vote required for approval. Each act is thus the result of one or more tentative drafts submitted for the criticism, discussion and recommendations of commissioners and represents the experience and judgment of a body of lawyers chosen from every part of the United States.

When finally approved by the National Conference, the uniform acts are submitted to the House of Delegates of the American Bar Association for its approval. When approved by the Association, they are recommended for adoption in each jurisdiction. In the presentation of uniform acts to the state legislatures the Conference works in close cooperation with the Council of State Governments.

Where there is a demand for an act in a substantial number of states covering a subject which in the judgment of the Conference is not one upon which uniformity is necessary, but upon which it would be helpful to have legislation tending toward uniformity where enacted, model rather than uniform acts are promulgated and recommended for adoption.

So-called uniform acts have been proposed by other agencies. For example, during the war years various uniform acts were promulgated under the auspices of the Federal-State Conference on Law Enforcement Problems of National Defense. This naturally led to confusion in the minds of many legislators, and certain proposals of the National Conference were erroneously criticised as emanating from a federal agency. Officers and members of the National Conference, while recognizing the problems created by the war emergency, warned

against the dangers of continuing with the preparation of uniform acts in disregard of the agency created for that purpose. The president of the Conference, in his address in 1942, suggested that "the states are being rapidly deprived of every vestige of the power and authority to govern their own affairs which the Constitution was intended unalterably to give them," and stressed the importance of referring uniform acts to the "official representatives of the states, who are charged with the duties of preparing such measures."<sup>2</sup>

The prefaces to recent volumes of Uniform Laws, Annotated, contains this statement: "Uniformity of the law is the present day aim and hope of the legal student. A decided step in that direction is the gradual centralization of the law-making power in the federal government, but a still more remarkable advance has been made by the adoption in our state jurisdictions of uniform laws dealing with matters of state cognizance."<sup>3</sup> There is an ever present demand from many sources for federal legislation on many subjects where lack of uniformity exists in state laws. The work of the National Conference and the adoption of uniform legislation are important safeguards against undue encroachment of the federal government in subjects heretofore recognized as within the domain of the various states.

With changing economic and social conditions, it is of course necessary from time to time to revise many of the uniform acts. Some of its own acts have been by National Conference action declared obsolete and superseded, or have been withdrawn, leaving at present a total of 43 uniform acts recommended for adoption. Of that number Montana has adopted 16 in addition to amendments of two acts, and two acts which are in the process of revision. At the 1945 legislative session the Uniform Fraudulent Conveyance and Uniform Trust Receipts Acts were adopted.<sup>4</sup>

<sup>2</sup>Handbook of the National Conference, 1942, p. 48.

<sup>3</sup>Uniform Laws, Annotated, published by Edward Thompson Co.

<sup>4</sup>Ch. 126, ch. 147, LAWS OF MONTANA, 1945. The list of Montana adoptions together with dates of adoption is as follows: Acknowledgment Act; Acknowledgment Act Amendment (1943); Act to Secure the Attendance of Witnesses from without a State in Criminal Proceedings (1937); Aeronautics Act (1929) (in process of revision); Business Records as Evidence Act (1937); Criminal Extradition Act as Revised (1937); Declaratory Judgments Act (1935); Federal Tax Lien Registration Act (1927); Judicial Notice of Foreign Law Act (1937); Machine Gun Act (1935) (in process of revision); Narcotic Drug Act (1937); Negotiable Instruments Act (1903); Official Reports as Evidence Act (1937); Stock Transfer Act (1943); Veterans' Guardianship Act (1929); Veterans' Guardianship Act Amendment (1943);

The conspicuous success of the movement for uniform legislation has been in the field of commercial law. The Negotiable Instruments Act has been adopted in all 53 jurisdictions, and the Uniform Warehouse Receipts Act in all jurisdictions except South Carolina and Hawaii. The Uniform Stock Transfer Act has been adopted in 39 jurisdictions, the Uniform Sales Act in 37, the Bills of Lading Act in 32, the Partnership Act in 24, and the Limited Partnership Act in 27 jurisdictions.

The practicing lawyer frequently has occasion to refer to a uniform act and its interpretation even though the act has not been adopted in his own state. The Uniform Sales Act, for example, has been adopted in most of the important manufacturing and commercial states. In an f. o. b. sale in Michigan, Ohio, New York, Massachusetts or Pennsylvania to a resident of Montana, the contract would be governed by the Uniform Sales Act in effect in those states, and a Montana lawyer might often be concerned with the provisions and interpretation of that act, even though it has not been adopted in Montana.

With the expansion of business from a local to a nationwide basis, uniformity becomes increasingly important, and lack of uniformity leads inevitably to federal legislative control. A few years ago a committee of New York business men proposed a federal sales act which would apply to all transactions in interstate and foreign commerce. The officers of the National Conference took cognizance of this effort and proposed to the sponsors of the federal sales act that they cooperate in the revision of the Uniform Sales Act to the end that any act passed by Congress to govern interstate transactions might be identical with the uniform act passed by the state to govern intrastate transactions.<sup>5</sup>

The agreement for cooperation in the revision of the uniform sales act suggested the advisability of a comprehensive commercial code to deal similarly with other phases of commercial law. As a result, the National Conference is now cooperating with the American Law Institute in the preparation of a revised commercial code. When completed, this will bring up to date the basic commercial law of the land, and will be in

Vital Statistics Act (1943); Warehouse Receipts Act (1917); Uniform Fraudulent Conveyances Act (1945); Uniform Trust Receipts Act (1945).

<sup>5</sup>William A. Schnader, President's Address to National Conference 1942, Handbook of National Conference 1942, p. 49.

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form to be passed by every state and, if necessary for interstate transactions, by Congress as well. The first chapter, the Revised Sales Act, has been completed. Notes and comment are now being prepared and will be submitted at the next meeting of the Conference. As soon as those notes have been approved by the Conference and the American Bar Association has given its approval to the act, the revised sales act will be ready for presentation to the various legislatures.

Even though the uniform acts are prepared with extreme care, both as to subject matter and phraseology, they are sometimes subject to more than one interpretation. Uniform laws accordingly can be kept uniform only by judicial construction. Recognizing the importance of judicial construction in preserving uniformity, the Conference for many years has inserted in all acts a section reading as follows: "This act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it."

In commenting upon the effect of this provision in the Uniform Warehouse Receipts Act, the United States Supreme Court said:

"It is apparent that if these uniform acts are construed in the several states adopting them according to former local views upon analogous subjects, we shall miss the desired uniformity, and we shall erect upon the foundation of uniform language separate legal structures as distinct as were the former varying laws. It was to prevent this result that the uniform warehouse receipts act expressly provides: 'This act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.' This rule of construction requires that in order to accomplish the beneficial object of unifying, so far as this is possible under our dual system, the commercial law of the country, there should be taken into consideration the fundamental purpose of the uniform act, and that it should not be regarded merely as an offshoot of local law. . . . We think that the principle of the uniform act should have recognition to the exclusion of any inconsistent doctrine which may have previously obtained in any of the states enacting it.'"

Notwithstanding this provision in the uniform acts, many courts have failed to follow the construction placed upon the same act by other courts where the construction departed from

\*Commercial National Bank v. Canal-Louisiana Bank and Trust Co., (1916) 239 U. S. 520, 36 S. Ct. 194, 197.

decisions prior to the enactment of the uniform act. In fact, in a surprising number of cases, the courts have failed to refer to the act at all. A survey of uniform laws in 1926 revealed the following significant facts: The courts in states which had adopted the Uniform Sales Act, when deciding questions to which that act applied, failed even to refer to the act in 353 cases, while 941 cases cited it. With respect to other uniform acts, the results were similar: The Uniform Negotiable Instrument Act was ignored in 689 cases and cited in 1717 cases; the Uniform Warehouse Receipts Act ignored in 70 cases and cited in 109 cases; and the Uniform Partnership Act ignored in 59 cases and cited in 78 cases.<sup>7</sup>

On the other hand, some courts have regarded the decisions of other states construing a uniform law as obligatory, particularly since the insertion in the uniform acts of the provision quoted above. For example, the Supreme Court of Vermont, referring to this provision, said:

“In view of this requirement, decisions of the highest courts in other states having such enactment, involving its interpretation or construction, are precedents of more than persuasive authority. Speaking generally, they are precedents by which we are more or less imperatively bound, in cases where similar questions are presented.”<sup>8</sup>

Our own court has consistently referred to the uniform acts and has recognized the importance of uniformity of decisions. With respect to the Uniform Negotiable Instrument Act, the Supreme Court of Montana said:

“It was proposed by commissioners from the several states and was designed to secure uniformity in the text of the law, and through that agency uniformity in construction, and to remove the uncertainty which arose from diverse judicial decisions among the states, to the end that this ‘currency of commerce’ might pass through the channels of trade, unembarrassed by the conflicts of laws. It may not comprehend all the rules applicable to negotiable instruments, but, so far as it does undertake to declare the law, its provisions are exclusive.”<sup>9</sup>

Commissioners’ notes are appended to the various acts,

<sup>7</sup>Hargest, *Keeping the Uniform Laws Uniform*, 76 Univ. of Penn. L. Rev., 182 (1927); Edward Thompson Company, *Uniform Laws, Annotated* (Supp. 1926).

<sup>8</sup>*Aetna Chemical Company v. Spaulding and Kimball Company*, (1924) 98 Vt. 51, 126 A. 582, 585.

<sup>9</sup>*Merchants National Bank of Billings v. Smith et al.* (1921) 59 Mont. 280, 289, 196 P. 523.

and these notes, together with annotations of decisions construing the act, appear in *Uniform Laws, Annotated*, a 12-volume work, with cumulative supplementary service.<sup>10</sup> The National Conference has a standing committee on uniformity of judicial decisions, which includes several judges of appellate courts. In 1939 this committee prepared a reference pamphlet on the importance of uniform construction of uniform state laws which was mailed to all the judges of state appellate courts and federal courts. In this pamphlet reference was made to the introductory notes to the acts and to the comments under the separate sections, prepared by the National Conference. Recent court decisions have referred to these notes as "very highly persuasive" in the interpretation of the act, and have adopted the construction suggested by the notes and comments.<sup>11</sup>

Montana, with its 16 uniform acts, is about average for the various jurisdictions in the number of acts adopted. Montana has failed, however, to adopt several of the important acts in the field of business law, including the sales act, bills of lading act, partnership act, and limited partnership act. Eventually, no doubt, all of these subjects will be included in the comprehensive commercial code. The Revised Sales Act should be ready for presentation in 1947, and should receive serious consideration at the next session of the Montana legislature. Other phases of the commercial code will require years in preparation. In the meantime, the Montana commissioners have suggested the enactment of the Uniform Partnership Act and the Uniform Limited Partnership Act. These acts were introduced in the 1945 session of the legislature, but failed of passage.

The Uniform Partnership Act was the result of ten years consideration by the Conference, with the aid of Dean James Barr Ames of Harvard Law School as draftsman, and after his death Dean William Draper Lewis of the Law School of the University of Pennsylvania. The care with which this act was prepared was well expressed by Samuel Williston as follows:

"Certainly if it be conceded that it is possible and desirable to codify the law of partnership, or any other branch of the law, all will agree that no pains should be spared to secure the most scientific and exact statement

<sup>10</sup>Published by Edward Thompson Company.

<sup>11</sup>*Tinney v. Crosby* (1941) 112 Vt. 95, 99, 22 A(2d) 145, 147; *Shultz v. Young* (1943) ....Ark....., 169 S. W. (2d) 648; *Handbook of National Conference*, 1943, p. 133.

of the law, and to this end expert talent, long study, and criticism are essential. The commissioners on uniform laws may fairly claim that in the framing of all laws which they have recommended for enactment, these principles have been carefully observed. Years have been spent in the drafting of all the important acts, and in most of them numerous tentative drafts have been prepared and submitted for the successive criticism of a committee of the commissioners, of the commissioners as a body, and of the outside public. In none of the recommended acts, however, has the same degree of time, care and expert criticism been expended as on the partnership act."<sup>22</sup>

The importance of the Uniform Partnership Act was well expressed by the Conference in the explanatory note accompanying the act, which contains this significant statement: "There is probably no subject connected with our business law in which a greater number of instances can be found where, in matters of almost daily occurrence, the law is uncertain."

It is of course obvious that the preparation of uniform acts, however carefully done, and uniformity of construction through judicial decisions, will be of little avail unless the states generally adopt the acts presented. While the results to date have been decidedly encouraging, the Conference recognizes the importance of a continuous and systematic campaign in each state to encourage the introduction and passage of the uniform acts. To that end the National Conference is cooperating with the Council of State Governments and with special committees on state legislation appointed by the president of the American Bar Association. Some state legislatures have standing committees on uniform laws and many state and local bar associations have committees to study the uniform acts and sponsor those deemed necessary or desirable. Only through the active interest and support of the bar generally can the work of the Conference be effective.

<sup>22</sup>Address before Law Association of Philadelphia, Dec. 18, 1914.