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Code Commissioner of Montana

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The 1947 Codes of Montana

I. W. CHOATE*

I. INCREASING VOLUME OF STATUTORY LAW

In Montana, as in other so-called code states, the "law" consists of the common law of England (when not repugnant to or inconsistent with the statutes of the United States or the statutes or laws of Montana Sec. 5672 R. C. M. 1935) and the statutes of the state, commonly called the codes.

It is not the purpose of this article to discuss the place of the common law in Montana's jurisprudence. Reference to it has been made only incidentally in order to emphasize the increasing magnitude of our body of statute law.

Each year has seen a steady increase in the volume of our statute law. Mere counting of the sections in each code affords proof of this assertion. The Codes of 1895 were in two volumes and contained about 8000 sections, not including the constitution and introductory matters. The Codes of 1907, also in two volumes, contained 9,817 sections. The Codes of 1921, in four volumes, contained 12,552 sections. The Codes of 1935 contain, according to the Commissioner's preface, 2,000 sections more than the 1921 Code.

It is the best estimate of the Commissioner that the Revised Codes of Montana, 1947, will contain fully 18,000 sections or their equivalent in ordinary sized sections. There will also be well over 3,000 new annotations to be added to those in the 1935 Codes. The work will comprise not less than eight volumes.

II. NEED FOR PERIODIC CODIFICATION AND REVISION OF THE CODES.

That the statute law of Montana requires recodification, and so far as possible, revision every ten years is obvious. During that period of time the Legislature will have ground out at its regular sessions, five volumes of new law, each containing on an average, 500 sections of laws of a permanent nature.

The bench and bar as well as the many other users of the

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codes, must search through all these five volumes, in addition to the codes, to find the state of the law, or perhaps better put, "the law of the state." Also, during that time the Supreme Court will have handed down decisions at the rate of about two volumes of Montana Reports a year, which necessitate the writing of several thousand new annotations to supplement those in the existing Code. Besides this grist of the legislative and judicial mill, many inconsistencies, conflicts and imperfections will have found their way into the statute books and can be discovered and corrected only by a thorough revision.

III. DISTINCTION BETWEEN "CODIFICATION" AND "REVISION."

Judging from the way in which the two words are indiscriminately used, there seems to be some misunderstanding both on the part of lawyers and law makers as to the difference between codification and revision of statutes. While the two terms are often used synonymously, there is a wide difference in their meaning.

To "codify" means to collect and arrange the law of the state into a code, a complete system of law.

To "revise" the law means to correct or amend it, to re-write it and make changes in it, all subject of course, to later approval by the legislature.

While we have had three "codifications" of our statute law since the enactment of the Codes of 1895, besides the one now pending, one must say, to speak with entire accuracy, that we have never had a *revision* of the Codes for the simple reason that the legislature has never seen fit to make available the necessary time and editorial staff for such an enterprise. This does not mean that nothing has been accomplished by any of the codifications since 1895, in the way of wiping obsolete and conflicting statutes off the books. The writer, who was Commissioner in 1921, distinctly recalls that he submitted some 126 bills to the legislature to accomplish the purposes above indicated, and I have no doubt that a like pruning of dead timber was done by the Code Commissioners in 1907 and 1935.

All so-called "codifications" of the laws of Montana have followed an identical pattern; a code commissioner has been appointed (this time with the assistance of an advisory board), an appropriation of money has been made sufficient to procure necessary supplies and pay the salary of the commissioner, a

stenographer and either one or (for part time) two assistants. There has then been laid upon the commissioner the injunction in effect, to "have you here the body of the law or show cause why you have not done so," by the time the next session of the legislature convenes. More specifically, the present bill (Chap. 184, Laws 1945) imposes upon the commissioner the duty to do the following things (besides many others) if possible of completion between the date of his appointment, July 1, 1945, and December 31st, 1946, some 18 months.

1. To compile, revise, codify and recodify all the laws of the state of a permanent nature.

2. To prepare an historical statement on the origin, development and relationship of the laws of Montana.

3. To make a complete new index for each volume and in addition, a consolidated index. (There will be at least eight volumes of the new Code).

4. To annotate the code to all Montana Supreme Court decisions since the 1935 Code.

5. To note all inconsistencies, ambiguities, omissions, contradictions and imperfections in the several sections of the code and draw bills to correct them.

Many other requirements are contained in the bill, such as annotating it to the opinions of the attorney general, preparing uniform laws, historical notes, tables of comparative sections, etc.

The above facts are presented merely to indicate the extent of both codification and revision required by the Legislature.

A good example of the time and editorial staff necessary for an adequate code revision is to be found in the last report of the California Code Commission, which is now engaged in the codification and revision of the laws of that state. That commission consists of nine members of its editorial staff. It was appointed by the legislature in 1929 and has made biennial reports to each legislative session since that time. According to its last report (1945) it has arranged the laws of California into 24 code classifications, of which four were then incomplete.

IV. THE MECHANICS OF CODIFICATION.

The process of codifying the laws of a state, is one upon which almost no bibliography is to be found, and the few "rules" which have sometimes been laid down by those who

have had experience in that sort of work, usually amount to no more than an account of how the author did the job.

The following is, therefore, a brief statement of how the writer is proceeding in the effort to give form to the new Montana Codes of 1947.

The text of the work, ie., the copy which will ultimately go to the printer, is taken from the 1935 Codes and subsequent session laws. Two copies of the codes and session laws were cut up and pasted on sheets of fairly heavy paper about 7x10 inches in size, so that they could be readily transposed for purposes of arrangement and also stand repeated handling.

These sections were first filed numerically and all amendatory acts were attached by metal clips to the section amended. Then the session laws were inserted throughout the code sections in accordance with their subject matter. Following that, the entire body of law was gone over, repeals were eliminated, amendments added to the history of each section and title lines were written where necessary.

Next the sections of the Political and Civil Codes were arranged topically and alphabetically.

The Code of Civil Procedure and the Penal Code obviously do not lend themselves readily to alphabetic or topical arrangement without destroying all unity of subject matter. They will therefore be retained in substantially their present order of arrangement, although they will be brought into the uniform numbering system of the code.

New section numbers were then assigned to each section, the old number being retained in parenthesis immediately following the new one.

Title and chapter tables of contents were then written and inserted in their proper places throughout the code.

Annotation cards (of which there are well over 3000) covering the annotations from the 1935 Code to date have been written and added to those in the present code.

V. ARRANGEMENT OF THE CODE.

The feature of the new code about which there seems to be the greatest interest on the part of the legal profession, is its topical and alphabetic arrangement, with which goes of necessity a new numbering system.

Except for the practice acts as above stated, the 1947 Montana Code will be topically arranged in Titles and Chapters, the titles being in numerical and alphabetical order.

It will commence with "Aeronautics" Title 1, and extend to "Workmen's Compensation Act" Title 92, followed by the Civil and Penal Practice Acts. Each section will be so numbered as to show at a glance both the Title and Chapter in which it is located, and also to obviate the necessity of repeating the word "Title" every time one cites a section. For example: The number 15-214 indicates that the section came from title 15 and from chapter 2 of that title. The number at the left of the hyphen (which will never exceed two digits) indicates the title number; the first one or two digits at the right of the hyphen, denotes the chapter from which the number came. This system also allows 100 sections for each chapter, which gives ample room for the insertion of later additions to the code.

The topical arrangement of codes of law in alphabetical order has been almost universally adopted by the western states which have published new codes during the past five or ten years. It is in use in the following states near Montana, and in many others.

Arizona (1939), Nebraska (1943), North Dakota (1943), South Dakota (1939), Oklahoma (1941), Oregon (1940), New Mexico (1941), Utah (1943), Deering's California Code now in 18 volumes is also topically arranged; each volume constituting a separate Code.

VI. THE INDEX.

However complete a code of laws may be, its usefulness depends in very large measure upon the index. That there is no "perfect index" which will meet the requirements of every user of the code, be he lawyer or layman, is a truism which needs only to be stated. That the search for a perfect and completely satisfactory index ranks second only to the quest for the fountain of youth is apparent from the fact that no two minds work alike; therefore no indexer can ever tell just what the word or phrase is, under which another person will look for the law.

Illustrative stories abound; such as the one about the man who looked under the subject "hound dogs" to find the law on "dogs" and profanely condemned the index because he couldn't find it there. Or the man who was writing an index to a book on the life of Washington. He came across the sentence, "Washington said he had a great mind to dismiss the

man from the army." The indexer promptly seized upon the sentence and indexed it.

"George Washington—his great mind."

None-the-less, a few rules may be helpful in practicing the art of writing an index, such for example as: 'Don't over-index'—'Be sure your index contains all necessary main titles'—'Use nouns for key-words'—'Avoid verbs and adjectives in introducing an entry', etc. It is however your author's humble belief, that there are two prime and indispensable necessities for producing a good index; First an exhaustive legal vocabulary, and Second, an unlimited amount of labor.

Perhaps an appreciation of the importance of a good index may help in its production.