

The Ohio Legislative Reference Bureau And Its Place in The Legislative Process

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In the American way of life which is based on the theory of representative government as the bulwark of a free people, the legislator becomes the cornerstone upon which rests the responsibility of encompassing through the vehicle of legislation the sum total of man's relations with his fellow man.

For generations the hackneyed phrase of mediocre legislative accomplishment has perpetuated itself in common parlance. The distrust of legislatures in general has in many instances resulted in state constitutions which are nothing more than compiled statutes with innumerable restrictions on the action of the legislator.¹ By the legislative reference bureau supplying the proper technical aid to the legislators, the legislative process can be lifted up by its own bootstraps.

The legislator may be a newcomer to the field of legislation. From all walks of life, from every focus of endeavor, we see the farmer, the storekeeper, the country lawyer, the man of business, the housewife, all grappling entirely unprepared with the problems of making laws that represent every phase of industrial, social, economic or governmental life. Suddenly thrown from the quiet of his native community, the legislator enters life on a new plane; he must acclimate himself to his new surroundings, new techniques must be acquired and new problems must be solved.

The comparatively simple problems which perplexed our forefathers find no comparison when juxtaposed with the intricate questions of our day, which include taxation, public utilities, public finance, social security, insurance, elimination of crime and a host of other subjects covering every field of human endeavor from the highly technical and professional to those of the ordinary layman.

If the legislator is to represent properly his constituents he must introduce bills and must in some way by providing the proper impetus succeed in getting the bills passed. First, he must have his bills drafted, and as he probably has had little, if any, drafting experience and knows little of legal technique, he is greatly perplexed. He is confronted with a host of bills on as many different

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¹ An excellent example is the constitution of the state of Louisiana.

questions and should be intellectually equipped to run the gamut of a multitude of complex subjects. Even the scientific problems that the chemist, the physicist or the other men of science find difficult, must be met and solved.

The only answer is that if private business secures experts to look after its business, the public should do likewise. Every improved business method should be utilized in providing technical assistance to our legislators to the end that men who pass the laws may always have at their command knowledge worthy of being utilized in the making of good laws.

And here the legislative reference bureau steps in as liaison officer to bridge the gap, as it were, and make it easier for the legislator to enter upon his new duties with a greater degree of proficiency. Unless the bureau enters into this relationship with the spirit to win the legislator's confidence and trust, unbiased and uninfluenced by partisanship, and with unflinching devotion to truth, fact finding and scholarship, the bureau is not fulfilling its function.

ORIGIN OF THE LEGISLATIVE REFERENCE MOVEMENT

The legislator groping for light, fumbling his way through the musty archives of a university library, laid the groundwork for a vision to a graduate student at the University of Wisconsin in 1901, and out of that vision has evolved the legislative reference concept, which from its first inception in New York² and Wisconsin has grown until it now encompasses a large percentage of our states.

With a background deeply vested in the fundamentals of economics, history, philosophy and political science, Charles McCarthy left the university imbued with an idea, a spirit of helpfulness which took concrete form in a new technique devised primarily to provide specific aid to members of a legislative body. It was McCarthy of Wisconsin who envisioned a new order of things, in which the art of formulating legislation, aided by fundamental research into the concepts of the social sciences, could rise above the mediocre and stand out head and shoulders above the hodgepodge draftsmanship of previous decades.

Dr. Charles McCarthy lived to see a dream come true—he saw the art of legislative draftsmanship lifted to a place worthy of its importance.³ In 1912, he published "The Wisconsin Idea"⁴ in

² While the state of New York actually started a legislative reference bureau in 1890 as a section of the New York State Library, it was Wisconsin that first attracted national interest in the field.

³ Dr. Charles McCarthy was chief of the Wisconsin Legislative Reference Library from its inception in 1901 until his death in 1921.

⁴ MCCARTHY, *THE WISCONSIN IDEA*, (New York, 1912).

which he outlined for posterity the objects and purposes of a legislative reference bureau.⁵

EVOLUTION OF THE LEGISLATIVE REFERENCE BUREAU IN OHIO

Ohio ranks among one of the earliest of the states in which efforts were made to focus attention on the needs of calling for technical assistance in drafting bills and in supplying legislative members with research data to aid the legislative process.

As early as 1908 two bills were introduced in the Ohio General Assembly providing for the establishment of a legislative reference department in the Ohio State Library.⁶

Reintroduced in the regular session of 1910, a bill was finally passed on May 10, 1910, as "An Act to provide for a legislative reference and information department in connection with the Ohio State Library."⁷ Under this law there was established in connection with the state library a department to be known as the Legislative and Information Department for the use and information especially of the general assembly, the officers of the several state departments and such other persons as may desire to consult the same.

In 1913, an act entitled, "An Act to create a legislative reference department, to provide for the maintenance and administration of the said department, for the appointment of a chief thereof, and to repeal sections 798-1 to 798-5 of the General Code of Ohio," was passed by the assembly.⁸ This newly created department was still kept under the control of the board of library commissioners as was the old department. The duties of the chief prescribed by this act are the same as provided in Section 798-3, General Code.⁹

⁵ For a complete biography of Charles McCarthy, see: FITZPATRICK, MCCARTHY OF WISCONSIN, (New York, 1944).

⁶ House Bill No. 709, 77th General Assembly, was introduced January 7, 1908, and was defeated in the house January 23, 1908. *House Journal, Ohio General Assembly No. 99* (1908).

House Bill No. 1043, 77th General Assembly, was introduced February 3, 1908, and died in the committee on libraries. *House Journal, Ohio General Assembly No. 99* (1908).

⁷ House Bill No. 384, 78th General Assembly, passed April 30, 1910 (101 Ohio Laws, 221).

⁸ 103 Ohio Laws, 8.

⁹ "It shall be the duty of the director to collect and compare the laws of this and other states pertaining to any subject upon which he may be requested to report by the governor or any committee or member of the general assembly; to collect all available information relating to any matter which shall be the subject of proposed legislation by the general assembly; to prepare or advise in the preparation of any bill or resolution when requested to do so by the governor or by any member of the General Assembly; to preserve and collate all information obtained and carefully index and arrange the same so that it may be at all times easily accessible to the members of the general assembly, other state officials and to the general public

In 1933 the control of the legislative reference bureau was transferred from the state library to a legislative reference board composed of the governor, clerk of the Senate and clerk of the House of Representatives, who appoint the director and the secretary of the bureau.¹⁰

FUNCTIONS OF THE BUREAU

Bill Drafting

"It shall be the duty of the director * * * to prepare or advise in the preparation of any bill or resolution when requested to do so by the governor or by any member of the general assembly ***"¹¹

The most important function of the legislative reference bureau is the actual drafting of bills ready for introduction in the general assembly. Approximately 90 per cent of all bills and practically all resolutions introduced are prepared in the bureau. At the 1949 regular session of the general assembly, 1091 bills and resolutions were drafted in the bureau.

The member either orally outlines the bill he desires drafted, or presents written notes which serve as a basis for the preparation of the bill by the drafter. Frequently drafts of bills which have been previously prepared outside the bureau are presented, which must be drawn over in order to meet the specifications of correctly drafted bills, including the standard component parts of title, enacting clause, body and repeal clause.¹²

The process by which a bill is perfected through the facilities of the bureau, and made ready for introduction on the floor of the general assembly, makes an interesting story.

for reference purposes; to collect such books, pamphlets, periodicals, documents and other literature as may be of use to the general assembly or other state officials, and to keep the same on file in the quarters of the bureau, temporarily or permanently, according to the time for which such literature may be needed. It shall further be the duty of the director to collect, compile, classify and index the documents of the state, including Senate and House journals, executive and legislative documents and departmental reports of this and other states; to keep on file all bills and resolutions printed by order of either house of the general assembly; to accumulate data and statistics regarding the practical operation and effect of statutes of this and other states."

¹⁰ See: OHIO GEN. CODE § 798-1.

¹¹ OHIO GEN. CODE § 798-3.

¹² Sections of the Ohio General Code are either newly enacted, amended or repealed. A newly enacted section appears by reference to number, only, in the title and in section one of the bill, while the text of the section as enacted appears in the body of the bill. An amended section appears by reference to number only in the title, in section one and in the repeal clause, and the text of the section amended appears in the body of the bill. A repealed section appears by reference to number only in the title and the repeal clause.

The draftsman first makes a study of the General Code in order to determine if there is any statute now in force and effect, which covers the subject in any way, and determines whether any law relates either directly or indirectly to the content of the proposed bill. A like check is made of the session laws in order to ascertain whether any law, previously adopted by the General Assembly, but not of a permanent or general nature has any bearing on the content of the bill.¹³

Through a complete set of the Journals of the general assembly, and through a like file of the final bulletins which index all bills and resolutions introduced, access can readily be had to the bills of any previous session of the general assembly, which may in any manner relate to the subject matter of the bill under consideration and which may be an important factor in determining the content of the new bill being prepared. Likewise the pamphlet acts of previous sessions are frequently utilized to great advantage, especially where minor changes are made in a large number of sections of previously enacted laws. (In this case, the bill is typed directly from the slip act.)

The next step in the process is determining whether any comparative legislation of other states would be helpful in the formulation of the content of the bill. Digests of legislation of other states on various subjects filed in the bureau library are used. Also the "State Law Index" of the Legislative Reference Service of the Library of Congress serves as an index to legislation in other states, citing acts which are available in the codes and session laws of the various states on file in the Supreme Court Law Library.

Frequently the necessity of reading decisions of the supreme court and courts of appeals as well as Opinions of the Attorney General, construing certain sections of the code concerning which requests for amendments have been filed in the bureau, have important bearing on the actual wording of the amendment sought. Then too, on numerous occasions amendments to statutes are requested for the express purpose of obviating previously rendered opinions of the attorney general and court decisions construing said statutes.

On the face of it, the comparatively simple task of drafting a bill on any particular subject, may have far deeper implications. Is the bill within the encompassing sphere of constitutional limitations? Does the bill fulfill a legitimate function? Is there a philosophic background that justifies its existence?

Whenever a bill is drafted by the bureau and questions of

¹³ The reader should keep in mind the fact that only laws of a permanent or general nature are included in the Ohio General Code.

constitutionality arise in the opinion of the staff of the bureau, a brief is presented to the author of the bill summarizing court decisions and attorney general's opinions on the basis of which the bureau deems the bill constitutional or unconstitutional, as the case may be.

But how are we to determine when the purpose of a law, which is unaffected by any express prohibition in the constitution, is legitimate? The answer may appear to be easy. Look first to the purpose of the constitution itself. Thus the central thought manifests itself as the very foundation upon which the whole is built. If the purpose of the proposed law is within this all encircling spirit then such law is legitimate, as anything fairly within that has always been, and must necessarily always be.

Thus, far above the actual mechanics of lawmaking or law drafting lies a far more significant, a far deeper attribute.

Another element of prime importance in legislative drafting is the confidential relationship which must of necessity be entered into between the legislator and the legislative reference bureau. Legislators being human, often take pride in being the first to initiate a brand-new idea on the floor of the legislative halls. Their thoughts and observations and suggested solutions of legislative problems must be guarded with utmost secrecy while the bill is in the process of preparation and until he, and he alone, cares to divulge it.

The legislative reference bureau only fulfills its mission in prudent guidance. Never must it assert itself in matters of policy. That is the province of the legislator. Whenever the legislator has the slightest inkling that research or reference material has been assembled or put forward with the slightest flavor of bias, he will feel that the bureau is no longer serving on the high plane on which it was established. That is where the line must be closely drawn. The legislator must be the sole judge. Decisions must be based on facts.

The actual bill drafting function loses its identity and merges itself into the finished product in the various steps a bill takes in its course through the general assembly. When the bill as finally enacted in the end finds its place in the Ohio General Code, it often bears no resemblance or perhaps only slight resemblance to the bill as initially introduced. This is often due to the ironing out of the wants and needs of conflicting interests to the best satisfaction of all concerned.

The element of compromise enters into most successfully enacted legislation. Unless a spirit of give and take plays its part in the process, very few laws would finally be enacted, and frequently compromises are successfully concluded through the

intermediary relationship effected by the legislative reference bureau by which antagonistic minds are brought together and conflicting ideas harmonized.

These compromises are brought about on numerous occasions through the amending and reamending process in which the legislative reference bureau comes to the legislators' assistance in the preparation of these amendments.

It often happens that after introduction and reference to committee and after committee hearings, and both sides of a question have been thoroughly discussed, a bill must be rewritten in its entirety. In that event the bureau is likely to be asked to draft a new bill.

Usually amendments are offered to bills during their course through both houses of the general assembly, either in committee or on the floor of either house. Again it becomes the province of the legislative reference bureau to prepare these amendments.

The conference table, whereat the discussion and digestion of crosscurrents of opinion frequently contribute an important element to the formulating of new legislation or the revamping of former laws, likewise plays its part in the legislative process. Here the facilities of the bureau are utilized to great advantage. In the preliminary discussion in which forthcoming legislation is outlined, in the threshing over and the rethreshing of ideas, the discussion around the conference table forms an invaluable aid.

Often the draftsmen in the bureau are called to take part in these discussions, in preparation for the drafting of a bill and the director of the bureau frequently participates, upon request, in both the deliberations of interim commissions, pre-session conferences and in the multitude of instances where the counterplay of ideas precipitates a meeting of the minds on legislative issues.

File of Bills, Resolutions and Acts

"It shall further be the duty of the director *** to keep on file all bills and resolutions printed by order of either house of the general assembly; ***"¹⁴

Bills represent potential future legislation. They serve as a clearing house for embryonic ideas that will often crystalize in the future, but at the time of introduction they indicate matters that are stirring in the hearts and minds of the people, but are still without the backing of an organized public opinion.

Bills introduced at previous sessions serve as stimuli to subsequent legislation. Often after repeated introductions into the General Assembly, these bills finally find their place in the statutes of the state.

¹⁴ OHIO GEN. CODE § 793-3.

The bureau maintains a file of bills and joint resolutions introduced in the Ohio General Assembly since 1880;¹⁵ and of acts passed since 1913. The copies of the acts on file are in the form of pamphlets or slip acts and are available for use of the bureau, the members of the general assembly, and for distribution in limited number to those parties having a special interest therein. This file of bills, joint resolutions and acts represents the only file kept in this state of proposed, as well as, of enacted legislation of previous sessions.

All printed bills¹⁶ of each current session are bound into bill books and kept on file in the bureau. These include all printings of each bill, which may in some instances involve as many as two, three or four printings, as originally introduced, as amended bills, as substitute bills, and as amended substitute bills.

Likewise separate copies of all bills printed including reprints are placed in file boxes according to bill number. These separate copies are utilized by the bureau for subsequent bill drafting, and copies are available to members of the general assembly as the basis for proposed legislation at later sessions, and a very limited number, if any, are available to the public for study by research or other agencies having a direct interest in the subject matter of the bill. A few copies of all bills and acts are kept permanently on file.

In some instances a bill is reported out to a standing committee with recommendations that it be not printed; it may however be rewritten by the standing committee which then reports the bill out with recommendations that it be printed as a substitute bill. Hence the bill is not available as originally introduced.

Maintaining a Reference Library

"It shall be the duty of the director *** to collect such books, pamphlets, periodicals, documents and other literature as may be of use to the general assembly or other state officials, and to keep the same on file in the quarters of the bureau, temporarily or permanently, according to the time for which such literature may be needed."¹⁷

Another important duty of the bureau is the collection of

¹⁵ See: OHIO GEN. CODE § 798-6, which directs the clerk of both houses of the General Assembly to deliver, at the end of each session, copies of all bills and joint resolutions to the director of the legislative reference bureau.

¹⁶ All bills are usually printed after introduction in the Senate, while in the House of Representatives bills undergo a general screening process by the reference committee. If the subject matter of the bill has been covered by a previously introduced bill, or if the bill can be handled as an amendment to another bill the reference committee so recommends and the bill is never printed. Bills of a frivolous nature are likewise not printed.

¹⁷ OHIO GEN. CODE § 798-3.

a wide range of material that can be utilized in the preparation of legislation.

The catalogued pamphlet library of the bureau covers subjects of legislative interest, especially in the field of the social sciences, including reports of legislative commissions of this and other states, and other special reports of studies and documents in the field of state government. It must be a working library, futuristic in intent and purpose.

The library is indexed by author and subject and is constantly kept up to date by the addition of new material as published and through the elimination of obsolete or redundant material.

In addition to the catalogued pamphlet library, there is also kept on file in the bureau one of the few extant complete sets of the journals of the Ohio Senate and the House of Representatives, containing a complete record of the proceedings of both houses of the general assembly since its inception in 1803. This is purely a procedural record as no stenographic transcripts of the debates on the floor of the general assembly or of committee hearings are made.

The bureau also contains a complete set of the 123 volumes of the session laws of Ohio, a complete set of the Ohio Reports, Ohio State Reports and a set of Attorney General's Opinions rendered since 1910.

Digesting Legislation and Collecting Statistical Data

"It shall be the duty of the director to collect and compare the laws of this and other states pertaining to any subject upon which he may be requested to report by the governor or any committee or member of the general assembly; to collect all available information relating to any matter which shall be the subject of proposed legislation by the general assembly; ***"¹⁸

Common sense tells us that we should secure all possible knowledge relating to a proposed statute for the use of our legislators. In this way legislation cannot avoid being improved; in this manner the best there is can be culled from the statutes throughout the length and breadth of our land and the dearly bought experience in one state used for the betterment of conditions in another state.

Especially during the interim between sessions of the general assembly, digests of the laws of all states covering subjects within the scope of current interim commissions¹⁹ or relating to subjects

¹⁸ *Id.*

¹⁹ The Ohio General Assembly is utilizing the interim commission more and more as an adjunct to the legislative process. These commissions serve as fact-finding agencies which make long range studies of legislative issues during the interim, and then prepare reports, embodying recommended bills carrying out the commissions' recommendations.

which are likely to come up for discussion at a forthcoming session of the general assembly, are prepared at the request of interim commissions or of individual members of the general assembly. All these digests are catalogued and placed on the library shelves for reference and are continually used in the drafting of bills or the supplying of research data for interim commissions, standing committees of both houses of the general assembly, as well as individual members.

The process of ascertaining statistical data or other factual information concerning any proposed legislation often involves the gleaning of information from federal and state documents and the necessary research work involved in checking material on file in various government agencies of the state of Ohio and its political subdivisions.

THE COUNCIL OF STATE GOVERNMENTS

The Council of State Governments of Chicago, which is an outgrowth of the American Legislators' Association established in 1925, through the medium of its various publications, is an important adjunct to the services offered by the reference bureau. This organization is committed to the improvement of state government, especially on the legislative level.

Among the numerous publications sponsored and published by the Council of State Governments and designed primarily to aid the legislative process and which have become leading tools of the legislative reference bureau, we may mention the following:

"Recent Publications of Governmental Problems" (This is a self-explanatory weekly checklist.)

"Legislative Research Checklist" (A monthly checklist based on information sent to the council by legislative and other governmental research agencies and prepared as an interstate reference service.)

"State Government" (A monthly magazine on state affairs.)

"The Book of the States" (This book is published biennially as an authoritative source of information on state activities, administration, legislatures, services, problems and progress, together with current listings of state elective and administrative officials and members of the legislatures.)

The Council of State Governments also acts in the capacity of secretariat for a number of conferences of officials on every level of governmental interest, national, state and local.

Of chief interest to the legislative reference bureau is the Legislative Service Conference, organized in 1948. This conference is composed of legislators who are officers of legislative service agencies, legislative librarians and reference officials,

statutory and code revisors and legislative drafting officials of the states and territories. At the annual conference discussions of direct interest to all legislative service agencies are promoted.

UTILIZATION OF STUDENT SERVICES

In the early nineteen twenties and continuously since that time the Ohio Legislative Reference Bureau has utilized the assistance of senior law students of the College of Law of The Ohio State University. These law students are chosen solely on the recommendation of the dean of the law school and assist in the drafting of bills, resolutions and other requests for research work by members of the General Assembly.

Under guidance the youth with a trained mind with its usual zest and vigor seizes upon the opportunity to serve the legislators. This zeal for intellectual companionship affords the senior law student a seminar in the solution of economic, political and social problems, which are being translated into the language of legislation.

After a preliminary course in training in the principles of bill drafting, legislative research, parliamentary and constitutional law and Ohio government, during the months of November and December, prior to the opening of the legislative session in January, these senior law students are ready and available to enter upon their duties with ardor and zest. This stands out as a splendid example of how co-operation between the university and the reference bureau can work to the distinct advantage of the legislators.

Our social order can never become stationary. As "new occasions teach new duties" we must advance and meet the problems of each new day and hour. The legislative reference bureau must envision the future, keep a step ahead of current events and foresee a particular need when the call to serve arrives. To accomplish this, the bureau must of necessity become a social inventor projecting plans far into the future and laid upon a definite course. One must know where one is going, and we must insist on going forward, if only a step at a time. Thus our effort will accentuate itself in a better legislative process and a more finely delineated product.

With courageous application to research and to the scholarly pursuit of information, with a keen insight into human nature and adaptability to the multitudinous demands of eight score and more legislators at any particular session of our General Assembly, the legislative reference bureau moves on with unflinching devotion to its goal: **Service.**