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The Legislative Program

Dan W. Simms

Indiana State Bar Association

Frank H. Hatfield

Indiana State Bar Association

Charles M. McCabe

Indiana State Bar Association

Julius C. Travis

Indiana State Bar Association

Wilmer T. Fox

Indiana State Bar Association

See next page for additional authors

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The Legislative Program

Authors

Dan W. Simms, Frank H. Hatfield, Charles M. McCabe, Julius C. Travis, Wilmer T. Fox, Charles S. Batt, and John W. Craig

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THE LEGISLATIVE PROGRAM

To The Indiana State Bar Association:

Your Committee on Legislation, to whom was specially referred the following matters:

- (a) The amendment of the Constitution respecting admissions of lawyers to the bar and the method to be employed in the submission of such amendment;
- (b) The amendment of the Constitution respecting the membership and tenure of office of the Supreme Court;
- (c) The approval of certain proposed uniform legislation heretofore approved by the American Bar Association;

respectfully begs leave to report upon said matters in the order stated.

ADMISSION TO THE BAR

(a) 1. We recommend that this association approve, sponsor and urge the legislature to approve and submit the following joint resolution.

JOINT RESOLUTION NUMBER——(SENATE)

A joint Resolution to Amend Section XXI, Article VII, of the Constitution of the State of Indiana Relating to Admission to Practice Law.

“Resolved by the Senate, the House of Representatives Concurring, That the following amendment be and is hereby proposed to the Constitution of the State of Indiana, to-wit: Amend Section XXI, Article VII, so as to read as follows, to-wit:

“Section XXI. Every person of good moral character, being a voter shall, with the approval of the Supreme Court according to such rules and regulations as it may prescribe, be entitled to admission to practice law in all courts of justice.”

(b) 2. Your Committee further reports that it has given careful consideration to the method to be employed in the submission of the foregoing amendment. It was suggested to the Committee that probably under existing law this amendment could be placed upon party ballots in such manner as to permit the choice of the electorate to register thereon when voting either a straight or scratched ticket, and that this method would obviate the difficulties heretofore met in securing the expression of a majority one way or the other upon the amendment. Your Committee reached the conclusion that under existing law there is no warrant for the adoption of such a method.

It was also suggested that if it were found there was no law authorizing this method, a bill providing such method should be recommended by the association to the legislature and enacted at the same session that submits the amendment.

Your Committee finds that in the States of Ohio and Nebraska, the Constitutions of both of which relating to this subject are identical with our own, the Supreme Court has held that a legislative act providing for the placing of an amendment upon the party ballot in such manner that a straight vote under the party emblem would be a vote for the amendment, with provisions that it could be voted for or against where the voter desired to vote a mixed ticket, did not violate the Constitution and was entirely legal from every point of view. The Supreme Court of the State of Iowa, whose constitutional provision upon this subject is likewise identical with ours, holds to the contrary.

Your Committee, upon careful consideration of the provision of our Constitution relating to amendments in connection with the history of its adoption and the construction placed thereon by our Supreme Court in *Ellingham v. Dye*, 178 Ind. 336, have reached the conclusion that it was not the intent and purpose of the framers of our Constitution to provide for its amendment in the manner suggested, and that the lawyers cannot afford to sponsor legislation not in accord with such intent and purpose.

Your Committee, therefore, recommends that the foregoing amendment, if concurred in by joint resolution of the legislature in manner and form as provided for by the Constitution, should be submitted to the electorate for adoption or rejection in the usual and regular way, as clearly contemplated by the Constitutional Convention. If a concerted action of the bench and bar of Indiana to remedy what is conceived to be a substantive evil in admissions to the bar proves unavailing, then and in such event it seems to us we should forego the remedy.

SUPREME COURT AMENDMENT

(b) We recommend that this association approve, sponsor and urge the legislature to approve and submit the following joint resolution.

"Section I. Be it resolved by the General Assembly of the State of Indiana, that Section II of Article VII of the Constitution of the State of Indiana be amended to read as follows, to-wit:

"The Supreme Court shall consist of not less than nine nor more than fifteen judges, a majority of whom shall form a quorum. They shall hold their offices for a period of ten years if they so long behave well."

We also recommend that this association approve, sponsor and urge the legislature to approve and submit the following joint resolution:

"That Section III of Article VII of the Constitution of the State of Indiana be amended to read as follows:

"The state shall be divided into as many districts as there are judges of the Supreme Court; and such districts shall be formed of contiguous territory, as nearly equal in population as, without dividing a county, the same can be made. One of said judges shall be elected from each district, and reside therein, but said judges shall be elected by the electors of the state at large.

"The said court may sit in divisions or in banc under such rules and regulations as the court may prescribe."

UNIFORM LEGISLATION

(c) There were also referred to this Committee, for its consideration, certain proposed bills approved in conference of Commissioners on Uniform State Laws, and covering the following subjects:

Desertion and Non-support of Wife and Children by Parents, or Either of Them;

Uniform Sales Act;

Uniform Conditional Sales Act;

Uniform Partnership Act;

Uniform Limited Partnership Act;

Uniform Fraudulent Conveyance Act.

As to the above act relating to desertion and non-support of wife or children by parents, or either of them, we find that our present statute appears to fully cover every substantive provision contained in said proposed uniform act.

As to the other proposed uniform acts, we report that the Committee did not have at its command sufficient time after the reference to enable it to make intelligent recommendations upon them, or either of them.

Another subject which your Committee has had under consideration was not pursued far enough to enable it at this time to make definite recommendations. It feels, however, that it will not be improper to offer some suggestions in connection therewith for the consideration of the association. Perhaps no subject is so frequently spoken of in public and in private as the lack of the enforcement of law, and perhaps no officer in our political organization is charged with greater responsibilities and higher duties in the enforcement of the law than prosecuting attorneys. In our present system the salary and compensation of prosecuting attorneys in judicial circuits having a population of not less than seventy-one thousand is Five Hundred Dollars per year plus the fees allowed by statute.

We take it that it goes without the saying that seasoned lawyers cannot ordinarily be induced to assume the great responsibilities of this office for the compensation which it affords. Moreover, in the opinion of your Committee, the compensation of prosecuting attorneys should be placed wholly upon a salary basis. The fee system has

never been satisfactory, nor in the very nature of things can it be. We are not unmindful of the fact that under our present system many young men of natural ability and educational attainment have been chosen to administer the affairs of this great office and have afterward developed into excellent outstanding lawyers. But the fact remains that this office, the responsibilities of which cannot be over estimated, is, in a majority of the circuits of our state, filled by young men just starting in the practice, untrained in the law and inexperienced in the ethics of the profession, who make it a stepping stone at the beginning of their careers.

Almost without exception, case after case arises in each of the circuits of the State where the trial judge feels it incumbent upon him to appoint experienced lawyers to assist in the prosecution of the pleas of the State. It is perhaps entirely safe to say that the compensation of these special assistants to the prosecutor, when added to the salary and fees now received by the prosecutor, does exceed an amount which would be more than adequate to command the services of a seasoned lawyer as prosecutor in each of these circuits.

It may be true that under the conditions that prevailed when our present system was adopted the salary awarded was sufficient to command the services of the average practicing lawyer. Whether that is true or not, no argument is needed to demonstrate that that salary and compensation will not serve that purpose today.

It has occurred to your Committee that a system might be worked out by which the prosecuting attorney could also be made the local adviser of the Board of Commissioners and of county officers with respect to all county business, and thus dispense with the present practice, now almost universal, of employing at a fixed salary what we now call "county attorneys."

The work of preparing a bill along the lines suggested here, that would grade and apportion the salaries upon the basis of population among the judicial circuits, would require facts and data which are not at the command of your Committee. If the association should agree with this Committee that an entire change in our system is urgently required, then it would seem well worth while to appoint a special committee of the association which would be solely charged with the working out of a new plan and the preparation of a bill that would embody it. In our judgment this should be done and we therefore recommend it.

Respectfully submitted,
DAN W. SIMMS, *Chairman*,
FRANK H. HATFIELD,
CHARLES M. McCABE,
JULIUS C. TRAVIS,
WILMER T. FOX,
CHARLES S. BATT,
JOHN W. CRAIG.

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