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Book Review. Iowa Departmental Rules

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BOOK REVIEWS

IOWA DEPARTMENTAL RULES. Charles W. Barlow, Code Editor. Des Moines, Iowa: State of Iowa, 1952. Pp. iv, 546. \$3.00.

The common-law reliance on the decided case dies hard even with the practicing lawyer who must rely, at least initially, much more upon the statutes than upon the cases. Nevertheless, the idea that the session laws should be collected and arranged in orderly fashion and that a single authoritative code should be adopted found slow and reluctant acceptance. Iowa, however, was one of the leaders in this movement, and the Whitney-Patton Code of 1924 still stands as a landmark of legal scholarship in American statutory codification.

The demand for codification and publication of administrative rules did not emerge until lawyers recognized that the effective practice of law today requires the immediate availability of cases, statutes, *and* administrative regulations. The Federal Government first published the Code of Federal Regulations in 1938,¹ and since that time an ever growing number of states have issued similar collections. Iowa has now joined that group with publication of its first volume of "permanent rules and regulations of general application."² In it the rules of twenty departments and commissions are set forth at length and reference is made to six other areas of regulation where the rules are not included.³

The statute authorizing the publication of the Departmental Rules anticipates continuous revision⁴ of the rules for it provides that a volume shall be issued in each even-numbered year.⁵ If this policy is fulfilled, then the regulations omitted from the first volume most certainly should

¹ Authorized by the Federal Register Act, 49 STAT. 500 (1935), 44 U.S.C. §§ 301-14 (1946). For a careful analysis of the problems of administrative rules publication see, Newman, *Government and Ignorance—A Progress Report on Publication of Federal Regulations*, 63 HARV. L. REV. 929 (1950).

² Authorized by Iowa Laws 1951, c. 51, § 8. The inclusion of "rules and regulations applying to professional and regulatory examining and licensing provisions and any rules and regulations of limited application" was made discretionary with the code editor. Iowa Laws 1951, c. 51, § 9 authorized agencies issuing rules of the above character to publish them "in pamphlet form for distribution upon demand." The burden, to say nothing of the risk of loss, of numerous pamphlets of varying size and shape is all too well known to those who have tried to keep a complete file of administrative rules.

³ The omitted rules are: Conservation Commission; State Fair Board; State Department of Health rules relating to the licensing of barbers, barber schools, chiroprodists, chiropractors, cosmetologists, cosmetology schools, dentists, doctors of medicine, embalmers, optometrists, osteopaths, etc.; Highway Commission; State Board of Nurse Examiners; State Pharmacy Department.

⁴ For the importance of continuous revision see, Patton, *Continuous Code Revision in Iowa*, 13 IOWA L. REV. 1 (1927).

⁵ Iowa Laws 1951, c. 51, § 8.

be included in the second. To those who must comply, the omitted regulations are equally as important as those included. There probably are more "egg buyers" in Iowa than "fur dealers" but the inclusion of the egg regulations will be of little comfort to the fur buyer or his attorney who discovers that the Rules do not contain the regulations of the Department of Conservation. A half a code is better than none; but there should be no compromise with completeness.

Although the omissions are disappointing, the form and organization of the included material are equally distressing. The brilliant pattern of the Iowa Code appears to have been ignored. The rules, though arranged alphabetically by the name of the department or commission, have not been assigned chapter numbers nor have they been organized into articles or titles. The arrangement of materials, indeed even the form of the suggested citation,⁶ appears to be patterned more after the session laws or the judicial reports than after the Code.

There is no table of contents and the index is inadequate. The orderly form and the carefully-edited short sentence characteristic of the 1924 Code is generally missing. Contributing, no doubt, to the impression of disorder is the fact that the regulations are the product of twenty different agencies and at least twenty different ideas of proper drafting form. The result nonetheless underscores the necessity of granting real authority to the Code Editor over matters of style and form.⁷

The faults of form and style are most apparent in the numbering of the regulations. Some rules consume pages without any identifying symbol.⁸ The departments indiscriminately use "section," "rule," "item," and "number" to identify similar material. The citation of I.D.R. will be both difficult and confusing until an orderly system is adopted. Because the numbering system of the Iowa Code is excellent it is indeed unfortunate that it was not adopted for the Rules. Furthermore, Iowa lawyers already familiar with the Code system would find research in the Rules greatly simplified if the Code numbering had been used. The fact that the chapter numbers would not run consecutively seems inconsequential.⁹

Although the form of many of the regulations is excellent, too high a percentage have been drafted on the assumption that a regulation should read like a statute (and unfortunately a badly drafted statute). Such drafting defeats the very purpose of administrative legislation.

Because legislatures meet infrequently and errors cannot be quickly or easily corrected, statutes must be drafted in terms of consequences rather than in terms of means. If a statute is too specific, it invites

⁶ *Ibid.* "This volume shall be known as the Iowa Departmental Rules and any rule printed therein may be cited asI.D.R., giving the year of publication and the page where the particular rule, by number, may be found."

⁷ The authority is currently in the Attorney General. Iowa Laws 1951, c. 51, § 2(3).

⁸ For example, see 1952 IOWA DEP'T R. 129-30, 148-51, 213-14, 265-87.

⁹ Such a system caused no difficulty in the Indiana Administrative Code (Horack's ed., 1941). That integration is possible in Iowa, see 1952 IOWA DEP'T R. 356 *et seq.* where code sections and rules are combined but the code sections are given administrative rule numbers.

evasion. It must therefore err on the side of generality to the end that acts which violate its spirit will also violate its terms. This inescapable short-coming of statutes was a major reason for administrative legislation. The administrative rule was designed to reduce the risks of those who wish to comply with the law. It was intended to tell in simple, specific language the exact conduct necessary for compliance.

A good rule, therefore, should "spell-out" the means and manner of compliance as well as specify the acts which are prohibited. Thus, the inclusion of standard departmental forms would improve the code greatly. Persons regulated may have superior knowledge concerning the subject matter of the regulations but have little if any experience with administrative procedure and practice. The inclusion of simple forms would aid those who desire to comply with the law and would simplify and reduce the burdens of administration. To say that a person can write the agency for the forms is beside the point; there is no better sanction for law enforcement than the ready accessibility of the means of compliance.¹⁰

Even with these defects the Iowa Departmental Rules will increase the capacity of Iowa lawyers to give speedy and accurate counsel to their clients. With succeeding volumes it is to be hoped that the regulations of all the administrative agencies will be included, the style improved, and the regulations themselves redrafted to reflect the real objectives of administrative legislation.

FRANK E. HORACK, JR.*

CASES ON THE LAW OF TORTS. By Francis H. Bohlen. Fifth Edition by Fowler V. Harper.† Indianapolis, Indiana: The Bobbs-Merrill Co., Inc. 1953. Pp. xi, 992. \$9.00.

The new fifth edition of the great compilation of cases on torts by Professor Bohlen more greatly resembles its remote third edition ancestor than its immediate fourth edition progenitor. This resemblance not only exists in the basic analysis as indicated in a considerable degree by the Table of Contents but also is manifested by the inclusion of some cases in the present work which previously appeared in the third and earlier editions but were omitted from the fourth. Professor Bohlen's chapter on Transition From Liability Without Fault to Liability Based on Moral or Social Misconduct has been revived in the fifth edition.

¹⁰ I originally believed otherwise. See 1 IND. ADM. CODE iv (1941). "Most administrative agencies have prepared forms which are available upon application. As they are free and often extremely lengthy, it did not seem advisable to reproduce them in this volume." *Ibid.* However, a list of forms, their numbers, purpose, and where they could be procured, was appended at the conclusion of each chapter. Some forms are included in 1952 Iowa Departmental Rules, e.g., 1952 IOWA DEP'T R. 231-32, 430-31. The insufficiency of rules which refer to forms without at least describing them is illustrated by 1952 IOWA DEP'T R. 130.

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