Should Iowa Establish a Court of Claims? - Part II

Frank E. Horack Jr.
are occasioned by the industrial revolution, the machine age, the age of big business, forms of government, social ideals and commercial and industrial life. These various factors are undergoing changes in themselves and in their relations to one another very rapidly. Where do they lead? What will be their effect upon the laws of Iowa and America in our generation and in the near future? Forward-looking men everywhere are concerned about it. Lawyers are awake to the situation and contributing to the task of directing the growth of a new age in which law will be supreme and courts will be the conservators of security and justice.

Our Association is endeavoring to promote the highest ideals of justice and to bring law and the administration of law always into harmony with life. The meeting at Burlington in June, 1932, it is hoped, will advance these high ideals.

SETH THOMAS,
President Iowa State Bar Association.

Should Iowa Establish a Court of Claims?

By FRANK E. HORACK, State University of Iowa

In the December, 1931, issue of this Quarterly, the writer discussed the number and the nature of private claim bills submitted in the Forty-third and Forty-fourth General Assemblies, together with the procedure followed by the legislature in allowing such claims. It is now his purpose (1) to show why private claim bills can not ordinarily be judicially handled by legislative committees; and (2) to discuss the several legislative proposals which have been made in recent years for the establishment of a court of claims in Iowa.

THE POLITICAL ASPECTS OF CLAIMS.

If claims were presented only by the Attorney General, we could at least hold him responsible for the recommendations made; but many legislators are loath to give up any prerogative that carries patronage or may enhance their political prestige at home. Thus the members of the claims committees find themselves pressed by many interests to take favorable action on private claims. They are pressed by some of their own colleagues, whose support they need on other measures. There is pressure from constituents—friends and relatives of the claimant, and attorneys whose fees are depend-
ent upon the success of the claimants. At best the time the average committee member can give to any one committee is very limited because of the pressure of politics, business, and social activities.

There are, moreover, several other good reasons why the members of the claims committees can neither thoroughly investigate nor judicially pass upon claims presented to them.

In the first place every member serves on too many committees. In the Forty-third General Assembly each member of the Senate committee on claims served on ten committees, and in the Forty-fourth one served on nine, two on ten, and five on eleven. The House committee in each session consisted of thirteen members. In the Forty-third General Assembly, two served on seven committees and eleven on eight. In the Forty-fourth General Assembly one member served on six committees, two on seven, six on eight, and four on nine.

Some of these committees, to be sure, are unimportant because few or no bills are referred to them. Yet in the aggregate the number of bills each member must consider in all of his committees is very large. The smallest total number of bills referred to any member of the Senate committee on claims in the Forty-third General Assembly was 114, while the largest number was 230, forty-nine of which were claim bills. In the Forty-fourth General Assembly the smallest total number of bills referred to any member of the Senate committee on claims was 153 while the largest number was 298, fifty-one of which were claim bills.

An examination of the personnel of these committees shows that there is considerable interlocking. Thus the Senate committee on claims in the Forty-fourth General Assembly was made up of eight members, while the House committee numbered thirteen members. Five of the Senate members of the claims committee also served on the Senate committee on appropriations, constituting one-fourth of its members, while nine of the thirteen members of the House Committee on claims also served on the House committee on appropriations, consisting of fifty members.

The appropriations committees are too large to investigate the merits of all the bills calling for appropriations from the public treasury, so most of the investigative work is done by sub-committees appointed by the chairman of the committee. The chairman of the appropriations committee may appoint the members who also serve on the committees on claims as a sub-committee to report to the full committee on the claim bills recommended by the claims committee. Moreover the committees on appropriations are exempt from the
rules which limit the time in which bills may be introduced, or require a report within a specified time after a bill has been received. Nor do any appropriation bills fall to the mercy of the sifting committees.

Practically all of the appropriation and claim bills are passed in the end-of-the-session-rush within the last ten days. All of the claim bills passed by the Forty-fourth General Assembly in 1931 came to the Governor's hands after adjournment. It may be argued that these bills have had long and careful consideration in the committees and that their passage in the whirlwind finish of the session is no evidence that the action was hasty or ill-considered. The evidence, however, does not seem to sustain such a contention. Of the nineteen claim bills introduced in the Senate of the Forty-fourth General Assembly, seven were introduced after April first, and of the thirty-two introduced in the House, twelve were introduced after April third, but regardless of when the bills were introduced or passed in one house, the other deferred action so that all fell into the Governor's hands after adjournment in April.

The Assistant Attorney General who advised the committee on claims writes: "It has always been our endeavor to make a written report on these claims, but so many claimants have delayed the filing of their claims until during the session of the Legislature that the extreme press of work during the session and the demands made upon this Department do not always permit of such report". If the legislature would insist that no claims would be considered which had not been filed with the Attorney General prior to the beginning of the session, it is quite certain that not many unworthy ones would be allowed; but a claim of doubtful merit has a much better chance of passing than it otherwise would have, if it is presented by a member of the committee, or urged by a colleague when the members of the General Assembly are packing their trunks.

THE FIRST PROPOSAL FOR A COURT OF CLAIMS, 1927.

Let us now turn to the proposals for handling these claims in a more judicial manner than at present.

In the Forty-second General Assembly (1927) Senator Langfitt, who was a member of both the committees on claims and appropriations, introduced a bill to create a court of claims for the State of Iowa.1 The bill was referred to the Senate judiciary committee No. 1, which recommended strik-

ing out all of its provisions except the enacting clause and substituting provisions which would have given the district courts the authority to hear claim cases. The Attorney General was to defend in such cases and an appeal was open to the Supreme Court. The bill was never called up again, but it is interesting inasmuch as it seems to have been the model for a similar bill in the Forty-fourth General Assembly in 1931.

A PROPOSAL FOR A CLAIMS COMMISSION.

In 1929 a bill originating in the Senate committee on claims proposed to repeal the law of 1923 under which claims are now supposed to be allowed on recommendation of the Attorney General, and enact a substitute therefor which would have constituted the State Board of Audit as a claims commission. The commission was to investigate and determine "whether in equity and good conscience the claim should be paid by the state." The commission was to be authorized to take testimony and administer oaths much the same as the Attorney General now is. It might authorize one of the members to hold hearings and take evidence in a particular case. The agreement of two members was necessary to make a recommendation. The Attorney General, who is a member of the State Board of Audit, was charged with the duty of presenting the report and recommendations of the commission "to either the Senate or House committees on appropriations, together with a summarized finding of fact in each case."

This bill passed the Senate on April 10, 1929, by a vote of 36 to 0. It was received in the House on the same day and was referred to the sifting committee where, with many others, it died in the end-of-the-session rush.

The significant feature about this bill, when compared to the present method mentioned above, is that it substituted the judgment of three persons, two of whom must agree, for the single judgment of the Attorney General. In the second place, it made no reference to any committee on claims as does the present law, but submitted its findings directly to the appropriations committees of the two houses.

The Senate committee on claims of the Forty-third General Assembly in 1929, also introduced a bill designed to les-

---

4. The State Board of Audit consists of the State Auditor, the Director of the Budget, and the Attorney General.
sen the liability of the State for injuries arising out of highway construction, by throwing upon the contractors for State highway work the liability (through bonding) for injuries to "any person traveling upon the highway and injured through the negligence of such contractor, his agents or employees". This bill was referred to the Senate sifting committee and was never reported out.

All the bills for handling claims already mentioned were introduced late in the session, two of them within two weeks of adjournment, and it may be said that there was not sufficient time in which to convince the members that the innovation proposed was a desirable one.

THE SECOND PROPOSAL FOR A COURT OF CLAIMS, 1931.

The most recent attempt to change the method of handling claims was introduced early in the session of the Forty-fourth General Assembly by Senator Chas. L. Rigby, of Stanwood, Iowa. His bill proposed to create a State court of claims and in many respects was very similar to the Langfitt bill of 1927 mentioned above. The bill provided for the appointment, by the Chief Justice of the Supreme Court of Iowa, of three district court judges to serve as a court of claims. One of the three was to be designated as "presiding judge". Vacancies were also to be filled by the Chief Justice. The judges thus chosen by the Chief Justice were to hold office for two years.

The court of claims as thus proposed was to have power to make rules for its own government and for the regulation of practice in the court. The bill specified that these rules and regulations should include the issuance of process, the preparation and filing of pleadings, and the procedure to be followed.

The clerk of the Supreme Court was to be the clerk of the court of claims. The jurisdiction of the court was to include all claims against the State of Iowa, including those growing out of contract, tort, or otherwise. The bill provided that the issues should be determined in accordance with the rules of the statutory and common law in force in this State, the same as though actions were brought by and against individuals, except that no judgment allowing a claim should be entered.

This court of claims was intended to be an itinerant court, holding its sessions at the county seats of counties where the causes of action brought against the State arise. It provided, however, that testimony might be taken at such county seats and the final hearing held at any other place. Two judges were to constitute a quorum and the concurrence of two of them was necessary to a decision.

The Attorney General was to represent the State in all actions brought in the court of claims and he also had power to direct any county attorney to appear in behalf of the State.

On the first day of a regular legislative session, the clerk of the court of claims was to submit to the legislature “a full and complete statement of all claims heard by the court during the previous biennium . . . . together with the court's findings of fact and conclusions of law therein.”

Upon presentation to the legislature, the act provided the report was to be submitted to the proper committees of the House and Senate and each committee should report to the legislature its recommendations thereon.

The bill made it unlawful and punishable by a $2000.00 fine and two years imprisonment for any member of the legislature, or any State official, either elective or appointive, or any one in the employment of the State to practice in the court of claims; and any one convicted of doing so, in addition to the fine and imprisonment noted above, would be incapable of holding any office of honor, trust, or profit under the government of the State of Iowa.

On application of the Attorney General, or any attorney authorized by him to represent the State, the court of claims was to have power to summon any claimant to appear before the court, or any commissioner appointed by the court, for examination on oath touching any matter in relation to his claim. If any claimant failed to appear to testify or refused to answer fully concerning the material facts in the case, the court could, in its discretion, order that the claimant's case should not be brought up for trial until he had fully complied with the order of the court. Provision was made for a shorthand transcript of all testimony and proceedings.

The bill also provided that the disapproval of any claim by the court should “bar any further claim or demand against the state of Iowa arising out of the matters involved in the controversy.” This last provision was no doubt intended to forestall appeals to the legislature in cases disallowed by the court of claims.
The Rigby bill fared somewhat better than its predecessor, the Langfitt bill. It was referred to the judiciary committee No. 1 in the Senate and its passage was recommended on February 14, 1931.

On February 24th, Senator Edw. J. Wenner submitted eighteen amendments to the original bill, some of which were slightly modified by amendment on the floor of the Senate. As the bill passed the Senate the following substantial changes were made:

1. Instead of the Chief Justice appointing three district judges as a court of claims, the Chief Justice was to appoint one judge in each judicial district, thus establishing a court of claims in each judicial district.

2. The original bill provided that the court of claims should have power to establish rules for its government and for the regulation of practice before the court. The Senate amendment centralized this power in the Supreme Court.

3. The clerk of the district court of the county in which the hearing is held was designated as clerk of the court of claims instead of the clerk of the Supreme Court as provided for in the original bill and he was empowered to issue process for the attendance of witnesses and for the production of records and documents.

4. The Senate amendments struck out all of section 8 in the original bill which contemplated a court of three members. In place of this section the following provision was inserted: "The court shall, without a jury, make complete findings of fact and conclusions of law, which shall be signed by said judge and filed in the office of the clerk of the supreme court."

5. The Senate struck out section 12 which made it a penitentiary offense and imposed a fine for any member of the legislature or any State official or employee to practice in the court of claims.

6. Section 13 was also struck out. This section was probably aimed against allowing attorney's fees as it limited costs to "what is actually incurred for witnesses, the summoning of the same, and for reporting the case and the making of the records therein."

7. The other changes were chiefly in the wording.

The act as thus amended passed the Senate by a vote of 39 ayes, 3 nays, and 8 absent or not voting, and was sent over to the House of Representatives where it was referred to the committee on judiciary.

On March 16th the chairman of the House judiciary committee reported the bill with four amendments and recom-
mended its passage. Two of these amendments were chiefly in the wording while one amended section 6, defining the jurisdiction of the court of claims, by striking out the words "and the issues of said actions shall be determined by the court in accordance with the rules of statutory and common law in force in this state, the same as though such actions were brought by and against individuals."

The provision of section 6 that "no judgment allowing a claim shall be entered" was taken from that section by the House judiciary committee and added at the end of section 8.

At the end, the House committee on judiciary proposed to add a new section as follows:

"The expense and cost attending the above proceedings before the court of claims, including reporter's transcript of proceedings, shall be paid out of any funds in the state treasury not otherwise appropriated."

The House never acted upon this bill; it fell into the hands of the House sifting committee and was never reported out for passage. Thus the second attempt to create a court of claims for the State of Iowa failed to become a law, but the fact that it passed the Senate and was recommended for passage by the House committee on judiciary indicates that a sentiment for a judicial review of claims against the State is gaining ground.

Senator Rigby's bill as amended in the Senate, and incorporating the amendments proposed by the House Judiciary Committee would, had the bill been adopted in that form, read as follows:

A BILL FOR

An Act to create a Court of Claims, to prescribe its jurisdiction, and to provide a method for the selection of Judges thereof, and to prescribe the procedure in said Court.

Be It Enacted by the General Assembly of the State of Iowa:

Sec. 1. That there is hereby created a Court of Claims to hear and determine all claims against the state.

Sec. 2. Within ten (10) days after the taking effect of this act, the Chief Justice of the Supreme Court shall appoint one Judge of the District Court in each judicial district as judge of the Court of Claims in that judicial district. Vacancies occurring in the membership of said court shall also be filled by the Chief Justice, and shall hold office only during the remainder of the term of the judge whose vacancy is filled by appointment.
Sec. 3. The judges so appointed shall hold office until the second secular day of January, 1933, and their successors shall hold office for a period of two (2) years and shall be appointed by the Chief Justice of the Supreme Court.

Sec. 4. The Supreme Court shall have power to establish rules for its government and for the regulation of practice therein, including the issuance of process, the preparation and filing of pleadings, and procedure therein.

Sec. 5. The Clerk of the district court of the county in which the hearing is held shall be the Clerk of the Court of Claims, and all pleadings shall be filed in his office and all of the records of said Court shall be kept by him in said office. He shall issue process for the attendance of witnesses and for the production of records and documents.

Sec. 6. The Court of Claims shall have jurisdiction of all claims against the State of Iowa, including those growing out of contract, tort, or otherwise.

Sec. 7. The Court of Claims shall hold its sessions at the county seats and in the counties where the claimant resides or where causes of action brought against the state arise, or may order the testimony taken in such counties and the final hearing had at any other place in the same judicial district.

Sec. 8. The court shall, without a jury, make complete findings of fact and conclusions of law, which shall be signed by the said judge and filed in the office of the clerk of the supreme court. No judgment allowing a claim shall be entered.

Sec. 9. The Attorney General shall represent the state in all actions brought in the court of claims, but the county attorney of the county in which the hearing is held shall upon request of the Attorney General appear in said action and hearing on behalf of the state.

Sec. 10. The Clerk of the Supreme Court shall on the first day of every regular session of the Legislature submit to such Legislature a full and complete statement of all claims heard by the court during the previous biennium, the amounts thereof, and the parties in whose favor the claims were approved and the amounts thereof, together with the Court's findings of fact and conclusions of law therein.

Sec. 11. The Clerk of the Supreme Court shall certify the report of the court of claims to the legislature on the first day of its session. When such report is submitted to the legislature it shall be referred to the proper committees of the senate and house, which committees shall report their recommendations to the senate and house.
Sec. 12. The Court of Claims shall have power to call upon any of the departments of the state government, or the heads of any state institution for any information or papers it may deem necessary, and shall have the use of all recorded and printed reports made by any committee of either house of the Legislature when deemed necessary in the prosecution of its business.

Sec. 13. When it appears to the Court in any case that the facts set forth in the Petition of the plaintiff do not furnish any grounds for relief, the Court of Claims shall not authorize the taking of any testimony therein.

Sec. 14. The court may, upon application of the Attorney General, County Attorney, or any attorney authorized by the Attorney General to represent the state, make an Order in any case pending therein, directing any claimant in such case to appear, upon reasonable notice, before the court or any commissioner appointed by the court, for examination on oath touching any or all matters pertaining to said claim. Said examination shall be reduced to writing by the said Clerk of the court or a commissioner and returned to and filed in the office of the Clerk of the Court of Claims, and may at the discretion of the attorney appearing for the state be read and used as evidence on the trial thereof. If any claimant, after such order is made and due and reasonable notice is given him, fails to appear or refuses to testify or answer fully as to all matters within his knowledge material to the issue, the Court may in its discretion order that said cause shall not be brought forward for trial until he shall have fully complied with the Order of the Court in the premises.

Sec. 15. All testimony taken before the Court of Claims, or a commissioner appointed by the court, shall be reported by a shorthand reporter of the district in which the hearing is held and shall be certified by the presiding Judge and the reporter, or the commissioner and his reporter, and filed in the office of the Clerk of the Court of Claims and shall constitute a part of the record in such cases.

Sec. 16. No interest shall be allowed on any claim except upon a contract expressly stipulating for the payment of interest.

Sec. 17. The payment of the amount allowed or approved shall be a full discharge to the state of all claim or demand touching any of the matters involved in the controversy.

Sec. 18. Disapproval of any claim as provided in this act shall bar any further claim or demand against the State of Iowa arising out of the matters involved in the controversy.
Sec. 19. The Judges of the Court of Claims and the reporters of said court shall be paid their actual traveling expenses when holding court in counties other than the county of the residence of such members and the reporter.

Sec. 20. The expense and cost attending the above proceedings before the court of claims, including reporter's transcript of the proceedings, shall be paid out of any funds in the State Treasury not otherwise appropriated.

CONCLUSION.

Whether the judicial machinery set up by the Rigby bill as amended is adequate or not is a matter for the legal profession to determine. The writer, however, believes that it would be desirable to include that section of the Langfitt bill which provided that "any litigant involved in any action before the Court of Claims, including the State, may appeal to the Supreme Court from the judgment or findings of the Court of Claims."

Such a provision would be in keeping with our common notion of judicial organization and would be fair to both the claimants and the State.

The writer is convinced that the establishment of a court of claims would be a highly desirable and progressive step. The Federal government established a Court of Claims in 1855, and in 1866 it empowered this Court of Claims to render final judgments. Its jurisdiction, however, is practically limited to claims of a contractual nature. Several of the States have established courts of claims, and Iowa should fall in line in this march of progress.

No doubt there are many claims that in the name of justice and good conscience should be allowed; no doubt many flimsy claims without legal merit are urged and sometimes passed for the sake of political expediency rather than in the cause of justice. These smack of patronage.

The present system throws a heavy burden upon members of the General Assembly in dealing with matters essentially judicial in character. The members of the Assembly should devote their energies to the public business and let courts settle matters essentially private in character.

Claimants, like the departments and institutions of the State, soon learn that committees like to point to the fact that they have materially reduced all of the askings. Accordingly, they often make their claims large, anticipating reductions. One of the few claimants put under oath by the joint committee on claims of the Forty-fourth General Assembly so testified.
When the Attorney General investigates a claim and recommends that it be allowed, he does not usually state what sum he thinks just and proper, but rather urges the committee to fix such sum as it feels is just under the circumstances. Thus the committee must undertake to estimate the amount of damages to be paid. In a personal injury claim case in the Forty-fourth General Assembly, the members of the Committee could not agree upon what was a fair sum to recommend so each member wrote on a slip of paper the sum he thought adequate; the sums ranging from $695.00 to $4196.50. The amounts were added and divided by eleven (the number of members present). This gave a sum of $2000.00, which was recommended.

A court of claims should be given the right to render final judgments. As it is, rejected claims, like the cat, come back session after session. Some are granted later, because of change in personnel of the committees or because the legislators are wearied by the insistence of the claimants. Inasmuch as the majority of claims arise out of highway accidents, it might be expedient to require all officers, agents, and employees operating motor vehicles in the performance of their duties to take out liability insurance to protect the State against tort claims.

If a court of claims were established, the committees on claims would probably cease to function. All claims recommended by a court of claims would be consolidated into one single appropriation bill, which the General Assembly would act on as a matter of financial routine.

The average citizen feels that the judicial department of government is much less influenced by considerations of political expediency than are the other two departments; and when the taxpayer's money is voted for the benefit of private individuals, he has a right to demand that such claims be passed upon by those in whom "the judicial habit of thought" is more highly developed than it is in the rapidly changing personnel of our State legislature.

The American Law Institute Progresses

The American Law Institute this spring completes its work upon the Restatement of the Law of Contracts. For nearly ten years Professor Samuel Williston, of the Harvard Law School, as Reporter, and a very able group of advisers