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## Summaries of Tentative Committee Reports

George O. Dix

*Indiana State Bar Association*

Walter R. Arnold

*Indiana State Bar Association*

Glenn D. Peters

*Indiana State Bar Association*

Alfred Evens

*Indiana State Bar Association*

Benjamin F. Long

*Indiana State Bar Association*

*See next page for additional authors*

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## Summaries of Tentative Committee Reports

### Authors

George O. Dix, Walter R. Arnold, Glenn D. Peters, Alfred Evens, Benjamin F. Long, and James J. Robinson

# SUMMARIES OF TENTATIVE COMMITTEE REPORTS

## JURISPRUDENCE AND LAW REFORM

The Committee on Jurisprudence and Law Reform of the Indiana State Bar Association was directed by the Association at its last annual meeting to prepare a bill for an act creating a Judicial Council in Indiana, and to cause the proposed bill to be published in the Journal and submitted to the Association at its mid-year meeting.

The committee has prepared the bill, but instead of publishing the full text thereof, was requested to submit a summary of its principal provisions. The committee accordingly submits the following summary:

Section 1 establishes the Council and provides that its members shall consist of one of the judges, or a former judge, of the Supreme Court, to be selected by that court; one of the judges, or a former judge of the Appellate Court, to be selected by that court; a judge, or a former judge of a Circuit or Superior Court, to be appointed by the Governor; the chairman of Judiciary "A" Committee of the Senate and the chairman of Judiciary "A" Committee of the House of Representatives; a prosecuting attorney, or a former prosecuting attorney, to be selected by the Supreme Court; a member of the faculty of the Law School of the Indiana University, to be selected by the President of the University; and two members of the Bar of the State of Indiana, who have practiced at least ten years in the state, to be selected by the President of the Indiana State Bar Association.

Section 2 provides that the terms of each of the members, except the chairmen of the two Judiciary Committees, shall be four years, and that the terms of the two chairmen shall be for their respective terms of office as such chairmen. All vacancies shall be filled in the same manner as the original appointment is made.

Section 3 provides that the Council shall elect a chairman from among its number, shall make rules for its procedure and may employ a secretary and incur such other expenses as shall be necessary in the performance of its duties.

Section 4 provides for regular meetings at the seat of government twice a year and such other meetings as may be provided for by the rules.

Section 5 sets out the duties of the Council. It shall continuously study the operation of the Judicial Department, receive and consider suggestions from judges, public officers, members of the bar and others; shall devise ways of correcting faults in the administration of justice; shall submit from time to time to the courts or the judges such suggestions as it may deem advisable, and shall report biennially to the Governor and the Legislature with recommendations as to needed changes in the Judicial Department, or the courts, or in judicial procedure.

The Council is purely a fact finding and research body, with power to make recommendations to the courts and to the Legislature. It is a clearing house for complaints and suggestions involving the Judicial Department.

Section 7 provides that the members of the Council shall receive no compensation for their services but shall be allowed their expenses, and that the Council shall be allowed its expenses.

Section 8 provides for an appropriation of \$2,000.00 for the purpose of carrying out the provisions of the act for the first two years.

GEORGE O. DIX, Chairman.

#### COMMITTEE ON REORGANIZATION

The Committee on Reorganization of the Bar has given searching study to the problem, and various means of solution suggested, envisaged under the proposal for integration of the bar and its statutory creation as a public corporation. A report, after careful study, rendered by a similar committee to the Michigan Bar Association, afforded helpful guidance and profitable suggestions; other reports of other committees and individuals from other state bars and published articles in the *Journal of the American Bar Association*, *Journal of the State Bar of California*, *the Journal of the Commercial Law League of America*, *Journal of the American Judicature Society*, report of the Conference of Delegates to the American Bar Association, and extracts from speeches and articles touching the subject-matter were all studied and analyzed in conjunction with

the compilation of the Conference of Bar Association delegates to the American Bar Association of "State Bar Acts Annotated" published February 2, 1931, and containing the acts, in *haec verba* extant in the state of Alabama, California, Idaho, Nevada, New Mexico, North Dakota, Oklahoma, Utah and the proposed act for Virginia.

Your committee has also made a study of the decisions of courts of review under the several state bar acts now in effect, and has laid particular emphasis on an analysis and consideration of the constitutional points involved, to the end that it may advise your association whether, assuming a state bar act to be adopted in this state, it could survive assault on constitutional grounds. Happily, the state of California, Idaho, and Oklahoma, with constitutional provisions involved very similar to those which would be pointed to in any attack in Indiana, have, by the decisions of their courts of last resort, in divers well-reasoned opinions, eliminated any substantial controversy on every point of this nature, barring two exceptions peculiar to our Constitution, viz: Section 21 of Article VIII of the Constitution of Indiana, providing that:

"Every person of good moral character, being a voter, shall be entitled to admission to practice law in all courts of justice."

and Section 13 of Article XI of the Constitution of Indiana providing that

"Corporations other than banking shall not be created by special act, but may be formed under general laws."

The latter apparent barrier to the creation and functioning of an integrated bar, has been removed, in our judgment, by the decision of our Supreme Court in *Bullock v. Billheimer, Auditor, et al.*, 175 Ind. 428; whereunder it was held no infringement upon the section and article last mentioned to create corporations, *not for profit*, by special act, upholding the establishment in the manner of the Indiana Historical Society, the Trustees of Purdue University, the Indiana Horticultural Society, the Indiana Academy of Science, the Indiana Corn Growers' Association, the Indiana Live Stock Breeders Association, and the State Dairymen's Association.

Assuming that your committee's conclusion in this behalf is correct, there remains only for consideration in this respect

section 21 of Article VII, *supra*. Your committee is not of opinion that this provision in any manner either militates against the institution of or detracts from the potency of an integrated state bar statute. Manifestly no state bar can be of great utility and public value unless it is an *all-inclusive* one—compels membership of all practitioners. It will be observed that there is naught in section 21 prohibiting the imposition of reasonable duties and exactions, which could include compulsory membership, *after* “admission to practice law.” The constitutional inhibition against restriction is designed to keep open the channels of admission only, and does not hamper the legislature in dealing with admittees. Your committee does not believe, therefore, that any constitutional right or principle would be violated by the adoption of an integrated compulsory state bar act after the manner proposed by this report.

After satisfying itself on the practicability and constitutionality of an integrated state bar act, its feasibility and desirability being assumed by the appointment of the committee, the committee addressed itself to the question of choice as between a number of recommended forms of legislation on the subject. In addition to examination of the statutes of the various states already having compulsory state bars, study was given to the model integrated bar act drafted by the American Judicature Society and the model act of the Conference of Delegates to the American Bar Association, drafted in 1926. The State of California adopted, in principle, the best parts of both of these models and it is believed that the California act, taking into account the amendments made after a period of test and trial, is what might be termed the “electric” act and many compelling reasons persuade the committee to recommend cleaving as closely to the text of the present California act as may be, the principal reason being the fact that the State of Oklahoma adopted the California act almost *verbatim*, and both California and Oklahoma courts of review have numerously passed upon various phases of the act, interpreted the same, and determined the constitutionality thereof. There are more than fifteen decisions extant construing various provisions of the bar act of California and Oklahoma which, by itself, would constitute a valuable exegesis to an act for Indiana, if substantially adopted.

Your committee herewith tenders to the Indiana State Bar Association a proposed bill for an Indiana State Bar Act

modeled largely after the California Act and following as near as may be the exact text of the California Act. An outline of the provisions of the act, as drafted and recommended, is as follows:

Section 1, refers to the title.

Section 2, defines "The State Bar of Indiana" as a public corporation and its purpose.

Section 3 provides that, immediately upon its organization, every person entitled to practice law in the state automatically becomes a member of the State Bar.

Sections 4, 5 and 6 classify members into two categories, active and inactive. Active, on their request, may become inactive; inactive, on their request, may become active.

Section 7 provides that every person hereafter, as soon as he shall be regularly admitted to practice law, becomes a member of the state bar.

Section 8 confines voting and office-holding rights only to active members.

Section 9 provides for the Board of Governors, the governing body of the bar, to consist of the chief justice of the Supreme Court, *ex officio*, one member from each Congressional District of the state, and four members elected at large, each to hold office for two years, except that the first board is divided for rotational purposes, divides one-half for one year and one-half for two years.

Section 10 provides for president, three vice-presidents, secretary and treasurer.

Section 11 provides for the election of president and vice-president by the Board of Governors.

Section 12, provides for the appointment of the first governors at large by the Chief Justice of the Supreme Court.

Section 13, deals with the original organization and meeting in respect thereto.

Section 14 and 15 provide for nomination and election of members of the board of governors one for each congressional district, each nominating and electing its own member to the board; the bar at large nominating and electing, after the first board at large, the members at large, voting to take place by mail.

Section 16 provides for the filling of vacancies on the board by the remaining members of the board.

Sections 17, 18 and 19 provide for terms and duties of officers.

Sections 20, 21 and 22 vest in the Board of Governors the power to manage the affairs of the State Bar.

Section 23 gives the Board power to inaugurate investigations, either upon its own initiative, or on the request of the Supreme Court, the Appellate Court, or the Governor, to make studies and recommendations pertaining to the administration of justice.

Section 24 authorizes the Supreme Court to call upon the Board of Governors to deal with any phase of admission to the bar and discipline of members of the bar.

Section 25 empowers the board, with the approval of the Supreme Court, to formulate and enforce rules of professional conduct for members of the bar aside from any statutory provisions.

Section 26 empowers the board of governors to institute disbarment, suspension, or disciplinary proceedings of any kind against attorneys at law. The board itself has no power to inflict any punishment, other than private or public reproof and a fine of not to exceed \$25.00 (all of which is subject to review by the Supreme Court) and as to all other disciplinary proceedings carrying with it any recommendation in excess of public or private reproof, or a recommendation for a fine to exceed \$25.00, the Supreme Court shall pass upon such recommendations and the findings of fact by the board shall be *prima facie* correct, the burden resting upon the accused to show the unjustness thereof before the Supreme Court.

Section 27 provides for power in the Board of Governors to formulate rules and by-laws.

Section 28 appertains to the prudential affairs of the state bar.

Section 29 deals with rules of professional conduct, as mentioned in section 25, *supra*.

Sections 30, 31 and 32 require the creation of administrative committees in each congressional district and the delegation of power to it to inaugurate investigations, etc.

Section 33 makes each district member of the Board of Governors *ex officio* a member of the local administrative committee, and provides for the interchange of local committees for investigation proceedings.

Section 34 provides for the procedure in disciplinary proceedings, the compulsory attendance of witnesses, the keeping of records of the proceedings, taking of depositions, the situs of hearings.

Section 35 provides for the rights of the accused for notice, opportunity to appear, and defend, and be represented by counsel and to cross-examine witnesses, and to have the benefit of subpoena.

Section 36 provides for the preservation of all records in any hearing.

Section 37 empowers the Board of Governors to provide rules of procedure.

Section 38 provides for the review by the Supreme Court of any order or recommendation of the Board of Governors.

Section 39 provides for an annual meeting of the organization at Indianapolis, four months after taking effect of the act, and thereafter every year.

Section 40 appertains to the reports to be made at annual meetings.

Section 41 appertains to special meetings of the bar.

Sections 42, 43, 44 and 45 fix the membership annual fee of \$5.00 for active members, and \$2.00 per annum for inactive members.

Section 46 treats of suspension of membership for nonpayment of dues.

Section 47 prohibits any person practicing law in this state except members of the state bar.

Section 48 deals with the prudential affairs of the corporation.

Section 49 contains a saving clause against possibility of any provision being held unconstitutional.

The committee recommends the introduction in the next legislature, and support by this Association, of the Proposed Indiana State Bar Act.

WALTER R. ARNOLD, Chairman.

## SPECIAL COMMITTEE ON ILLEGAL PRACTICE OF LAW

The committee appointed at the summer session to consider the question of the unlawful or unauthorized practice of law in this state, begs leave to report as follows:

Your committee is satisfied, after some partial investigation, that, in the several counties of this state, practices are engaged in by unlicensed individuals and corporations which constitute the practice of law. To enumerate all of such practices is, at the present moment, impossible, but the following are some which your committee believes are engaged in.

## A.

Certain banks and financial institutions have been and are now proposing, for a consideration, to draw wills, instruments creating trusts, leases and contracts. Such services on the part of these corporations are advertised in the public press and open solicitation takes place on behalf of some of these institutions seeking to engage the public in such matters. Not only is there open solicitation in the public press, but your committee is informed that in some instances lawyers are recommended to prospective seekers after legal services, whose interest it is to serve not the interests of the person seeking such services, but who is bound by contract, understanding, or otherwise, to serve the institution by whom the prospective client is directed to such lawyer.

## B.

Your committee is also informed that there exists in Indiana certain associations, either corporate or non-corporate, which, for a membership fee, contract to deliver to the members of such associations, a lawyer selected by the association who will render legal services to such member. These memberships are sold through advertising and through other schemes and practices ordinarily associated with high pressure salesmanship.

## C.

Your committee is advised that corporations engaged in the preparation of abstracts of the records are advertising that they

will, for a consideration, give opinions of title and prepare for prospective clients contracts relating to real estate, and advise such prospective clients as to their rights under such documents. Such services your committee understands are offered in the public press.

## D.

Your committee is further advised that persons having commissions as notarys public and justices of the peace have in the past and are now undertaking, for a consideration, the preparation of and the advice concerning deeds, wills, and other contractual documents, such persons not being at the time duly authorized to practice law.

## E.

Your committee is further advised that public accountants, architects, and real estate men have been and are now offering their services, for a consideration, in the preparation of contracts, preparation of claims relating to taxation, and advice concerning the rights of the persons seeking such services in connection with the matters for which they have been employed.

Your committee believes and is of the opinion that in the particulars above enumerated, the act of the corporations or the individual is illegal, constitutes the unlawful practice of the law, and subjects the person or corporation so acting to legal processes. In this connection, your committee would most respectfully refer to the following authorities which shed considerable light upon the legal status of these unauthorized practices:

73 A. L. R., page 1327;

*Dworken v. Apartment House Owners' Assn. of Cleveland*, 176 N. E. 577; decided June 10th, 1931, by the Supreme Court of Ohio;

Opinion 31 of the Committee on Ethics of the American Bar Association, found on page 158 of the advance program of The American Bar Association;

Article by J. T. Pugh, Esq., of The Boston Bar Association, found at page 575 of the September issue of *The American Bar Association Journal*;

*People v. Peoples Stock Yards State Bank* (Ill.), 176 N. E. 901.

Your committee is further of the opinion that any member of the bar who loans himself to the corporation, association, or individual, as a part of the scheme to unlawfully practice law, as above set out, is equally liable with the association, corporation or individual.

Your committee tentatively makes the following recommendations: It believes that in many instances such practices exist because of a non-appreciation on the part of the corporation or individual, as well as the lawyer associated, that such consists in an unlawful act. It believes that insofar as banks of financial institutions are concerned, that an understanding, if possible, should be entered into with a responsible committee representing such banks or financial institutions, clearly and unequivocally limiting the activities of such institutions insofar as the practice of law is concerned.

Your committee further believes that, if possible, understandings should be entered into with other associations along similar lines.

Your committee further believes that there should be furnished to the bar of the state, a clear and concise statement, pointing out to the members their obligations in relation to such unlawful practices.

Your committee further believes that if instances of open or definite violation of these practices are discovered, that your committee should co-operate with the local bar associations to endeavor, by appropriate court action, either injunction, suit for damages, or citations for contempt, to stop such practices.

Your committee would particularly point out that so far as the selfish interest of the bar is concerned, these so-called unlawful practices are of little consequence. It seems to clearly follow that such practices result in entanglements which the public finds itself in because of following advice, or entering into contracts prepared with the selfish interest of the institution at heart. Then the services of reputable members of the bar are necessarily engaged to untangle such matters, but your committee wishes to state positively that the recommendations that it makes in this report are in the public interest, and not otherwise.

Your committee would further show that many local situations arise concerning which your committee has not had the time to investigate or form an opinion concerning, and it there-

fore recommends that this committee, either in its present personnel, or otherwise, be continued for further action and investigation.

GLENN D. PETERS, Chairman.

#### COMMITTEE ON ENDOWMENT OF LAW JOURNAL

The necessity for the establishment of a permanent endowment for the INDIANA LAW JOURNAL in order to make it a more serviceable organ of the Indiana Bar Association was set out by former President W. W. Miller in the December, 1930, issue of the JOURNAL. The death of Mr. Miller, before he had an opportunity to carry into effect this wise suggestion, was a distinct loss to the Association. The present committee was appointed to carry on with this task which was cut short by Mr. Miller's untimely death.

Unavoidable engagements of a majority of the committee prevented its meeting on November 28 when the chairmen of various committees met with the President and Vice-President to discuss the work of the various committees. Therefore no definite suggestions have been agreed upon.

The following suggestions are under consideration as means of raising an endowment fund:

(1) Sale of life subscriptions to the LAW JOURNAL.

(2) Gifts, either present or by way of devices in wills from members of the bar and their friends interested in the promotion of a better administration of justice.

(3) The income from advertising in the LAW JOURNAL.

The committee also have under consideration the advisability of such funds being administered by the regular officers of the Association or by a separate corporation set up for that purpose.

It is hoped that definite recommendations can be made by the Committee for the consideration of the Association at its January 16 meeting.

ALFRED EVENS, Chairman.

#### LEGAL EDUCATION

The Committee on Legal Education has been observing with keen interest and satisfaction the first steps taken under the new method of admission to the bar in this state. This committee with its personnel of last year was largely responsible

for the enactment of the law placing control of this matter in the Supreme Court and in the adoption of rules by the Supreme Court.

The first examination held under this law and these rules has demonstrated the value and merit of this new procedure, and bar examiners are to be congratulated on their successful start. The Bar of the State, we believe, is very favorably impressed with the new law and its operation, and any opposition which may have existed in the profession is rapidly disappearing.

This committee approves the rules of admission as adopted by the Supreme Court, but believes that within a short time and as soon as this procedure has been fairly tested that an educational qualification should be added to the requirement for taking the bar examination.

At the general election to be held in November, 1932, a constitutional amendment will be voted on again for the striking out of Section 21, Article VII of the State Constitution. This is the section which purports to provide that any voter of good moral character may be admitted to practice law. This amendment has failed several times before because of the failure of sufficient voters to vote on the question either way. The Act of 1931 authorizes the Supreme Court to prescribe rules for admission to the bar, but some of our citizens, including a few of our own profession, still question the validity of this act, and it is the judgment of this committee that that question will not be entirely settled until this unfortunate provision of our Constitution has been repealed.

We therefore recommend that the entire Association get behind the adoption of this amendment and by proper and effective organization in every county see that the voters are informed on this question and vote thereon.

We recommend that this matter receive attention at the Mid-Winter meeting of the Association.

BENJAMIN F. LONG, Chairman.

#### COMMITTEE ON CRIMINAL JURISPRUDENCE

The Committee will hold a meeting before the mid-winter meeting of the Association. Trial dockets of members of the Committee, especially of those members who are judges, have prevented a full meeting to date, but the vacation preceding the

January terms of court will permit the chairman to issue another summons, or if necessary, a warrant.

The program of the Committee this year, as in the past, is to be directed not alone toward legislation, but generally toward greater economy, effectiveness and public confidence in the administration of criminal law in this State. It is believed that the scope of the Committee's work should extend not merely to proposals for the amendment of the criminal code, but also to a consideration of the requirements of the whole machinery of the criminal law in the state. The Committee will recommend to the consideration of members of the General Assembly, of administrative officials, and of the general public, suitable applications of recent surveys and reports on criminal law administration. Among these reports are those of the National Commission on Law Observance and Enforcement, of the American Law Institute, and of the Indiana Committee on Observance and Enforcement of Law. An extensive legislative program is not contemplated. Proposals will be directed toward reducing public expenditures by better coordination and direction of criminal law administration.

Among the possible activities or projects which the Committee will consider will be:

(1) The cooperation of this Committee with the organizations of the police and sheriffs of the state, with the Bureau of Criminal Identification and Investigation, and with Indiana University and Purdue University, directed toward the establishment of police schools and of correspondence and extension courses and of licensing systems for police officers;

(2) The cooperation of this Committee with the administrators of penal institutions, and with leaders of labor unions and of organizations of manufacturers and of other commercial groups, directed toward relieving the overcrowding and the idleness which have become acute in the state's penal institutions, and which promise to become more acute as soon as the Hawes-Cooper Act becomes effective;

(3) The cooperation of this Committee with the proper legislative officials and committees of the General Assembly, directed toward the enactment of specific statutes which are reasonably certain to improve criminal procedure and which may help to prepare the way eventually toward a necessary codification of the criminal law and procedure of Indiana.

The Committee may concentrate its work upon collecting and presenting facts in regard to present effectiveness and to possible economical readjustments in the system of peace officers, of criminal courts and of penal institutions. In the absence of any other coordinating body, such as a judicial council or a standing parliamentary committee, this Committee stands ready to welcome any information and recommendations in regard to the administration of criminal law in Indiana.

JAMES J. ROBINSON, Chairman.

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