

December 2019

Committee Report - Commercial Code and Delegate to American Bar Association

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Recommended Citation

Alfred M. Pence, *Committee Report - Commercial Code and Delegate to American Bar Association*, 16 Wyo. L.J. 124 (1962)
Available at: <https://scholarship.law.uwyo.edu/wlj/vol16/iss2/7>

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COMMITTEE REPORT — COMMERCIAL CODE
AND
DELEGATE TO AMERICAN BAR ASSOCIATION

ALFRED M. PENCE

Mr. President, Gentlemen of the Bar:

As John told you, it is my job to represent this Bar Association on the House of Delegates in the American Bar Association. We meet twice a year, in February and at the Annual Meeting of the American Bar. Prior to the meeting in the House of Delegates for about three days is the National Conference of Bar Presidents meeting at which your President and the President-elect and other officers of the Wyoming State Bar attend this National Conference of Bar Presidents. Habitually I have gone to the meetings early enough to attend those National Bar Conference meetings because it seems to me that I should know what the officers of this Association are interested in and in that manner better represent you on the House of Delegates, and I think it has paid off. Your President and other officers that might be with the President, usually the President-elect, and I talk frequently during that National Bar Conference and the early meetings of the House of Delegates about matters that concern Wyoming State Bar and probably through the joint efforts we can better represent you in the American Bar Association and come back here with better programs for the State Bar as a whole.

I want to mention particularly one thing that this Bar has not been very active in and it is a subject which I have been extremely interested in, and that is, the interprofessional relationships with other professions in the State and particularly insofar as they effect the practice of law. The American Bar Association has worked out a number of treaties and understandings with other professions and, frankly gentlemen, it doesn't help us a great deal to have the American Bar Association work out these treaties and agreements unless we take them back and confirm them or endorse them, or whatever word you care to use, to bring them into operation and effect in the State. Now, there are some of them I think that are quite important. I think for the most part we are small enough that we probably handle as real estate brokers' practice of the law pretty well, and probably the banks in their trust departments we handle pretty well, but I think there are some of them that we are not taking full advantage of, and I have particular reference to the inter-professional relationships with the Medical Association. I sincerely hope that those of you who are coming up as officers in the Wyoming State Bar will give serious consideration to initiating problems of interprofessional relationships.

Now, mostly with the Medical Association. I think we can work out relationships which are going to make your negligence trial practice a great deal more pleasant. I think there will be a much better under-

standing between the doctor and the lawyer and litigation and you will find the cooperation between you is going to work to the benefit of that individual who is a patient to the doctor and a client to the lawyer and whom both of you have great interest in and to whom both of you owe a great obligation. Right at the present, I see it from time to time and I am sure you do in your practices, where we are not pulling together for the purpose of rendering proper service to this man who is both patient and client in the two professions. So I think we need to initiate that on a State level, and the moment we initiate it and accomplish it on a State level, then we need to take it down into our towns and counties and see that it becomes a living thing in our everyday practice wherein the two professions are jointly interested.

Now, the other one I think that we need to give considerable attention to is the interprofessional relationship with the accountants. A very definite treaty and understanding has been arrived at between the two national organizations. It is probably extremely important to you from a dollar and cents standpoint because I know and you know and no one need to remind you of it that the accountants are doing a great deal of practice of law, particularly in the taxation field, and the State tax and estate planning field as well. They don't stop with the State tax matters, they go right on into the State planning, which is clearly the practice of law. And some of you are not too free from blame in it because I know that some of you refer matters to accountants and this was hard for me to believe but I have it from an attorney in this State that he has even shared fees with accountants because he felt that there was an obligation to do so. Well, I need not say that his feeling in that regard was certainly not a problem.

The third and newest one of the interprofessional relationships is that with the architects and I doubt very much if any of you have ever stopped to think about it. It is a matter that I have been concerned about for several years because I have represented a number of building contractors and am attorney for the Building Contractors Association of the State. These architects draw practically all of the building contracts in this State, believe it or not. And objection has been raised and the American Bar Association has had a meeting with the American Institute of Architects and they have arrived at an agreement as to where an architect may begin and stop in his relationship with our clients and where the attorney comes into the picture. Basically, the agreement says this, that the standard forms of the A.I.A. may be used but they will not be completed and filled out by an architect but by the lawyers. Now, go back and ask your owners and your contractors in your community who have been making up these agreements and you will find that almost without exception, the architects have.

So, my recommendation to you this year as coming back to you from the American Bar in a field in which I think the American Bar

has rendered tremendous service, is that you take advantage of this service, these understandings on a State level, and initiate the same sort of treaty and cooperation with these other three professions as has been through in the American Bar Association. I think that you certainly are making a great mistake if you don't do that. Then, of course, when the State Bar has had the doctors in and the architects and the accountants and you have adopted, which I think you should, the treaties and agreements which have been adopted on the National level, when you have done that on the State level, then urge your local Bar Associations to carry them down to the local level. That much for the report.

I might say this about the A.B.A. meeting just very generally. I think it was unfortunately held in St. Louis, I think it was still more unfortunately held at the Jason-Park Plaza Hotels which were far removed from the center of town where the other sections were holding meetings. The meetings were not well attended this year. A lot of wives didn't go because they didn't find it to their liking to go to that country this time of year, so the meeting was not as well attended and, in my opinion, was not nearly as successful as former meetings have been. Next year should be a tremendous meeting at San Francisco. I know a great many of you who haven't previously attended are intending to go there and those of you who have attended other meetings and didn't go this year are planning to renew your attendance next year. Certainly that will be a very fine meeting and everyone should go as well as to the Regional Meeting. That ends my remarks about the American Bar Association.

About the Uniform Commercial Code. You all know by now, of course, that our Committee was successful in getting the Code adopted by the State Legislature. Initially I want to say this, that our Committee owes one of the greatest debts of gratitude to the 100 percent membership of the Wyoming State Bar as any committee that has ever served you could possibly owe. At no time did we find any lack of cooperation on the part of the Bar. One local Bar thought, late in the proceedings, maybe they should raise some objection to it, but after a short conference with its leaders and active members, they very graciously withdrew and threw their support to the measure. That was the only indication at all that there might be some difficulties as far as the lawyers were concerned, and, as I say, that ended very happily and I am very grateful that it did. I want to thank this Bar Association and each individual member because you made what could have been an almost impossible task for us a very successful and pleasant one. I want to especially commend the lawyers that were in the Legislature. I appeared on the second day of the Legislature with the bill and within a matter of ten minutes every lawyer in the House had jointly endorsed the bill and became a joint sponsor of it and then encouraged two or three other people to join in. We had tremendous support and the bill passed the House by unanimous vote, there were only five adverse votes in the Senate. So it has been adopted and will become a law the first of January.

One little remark about its lack of uniformity. The draftsman in our Committee took it upon himself to change the bill in three or four particulars which I didn't discover and no one else in our Committee discovered until after the bill had been introduced. Then we found that the draftsman had purposely changed two or three rather important parts of the Code. Bill Snader, who had been Chairman of the National Committee on Uniform Code, said it was rather interesting to see that one lawyer thought he knew more about it than thousands of people who had made their contribution to it and that is, of course, about all you can say about something like that. This particular Committee member did us a tremendous job otherwise, and why he made those changes I don't know. We are going to have to go back to the Legislature at its next session and ask that those Sections be amended in order to cause them to come back into uniformity and I am sure that the Legislature will be happy to assist us in remedying that little mistake. It was nobody's fault, of course, but our own. I felt like I know you have felt many times, "Where was I when that thing took place and why did I, as chairman not discover it sooner." But I didn't.

Now I urge you, you've got four months left in which to acquaint yourself sufficiently with the Code, to properly advise your clients, and if you haven't already studied it and particularly studied the necessary forms which your clients will be interested in having in order to commence doing business under the Code, I think you certainly ought to so.

We are especially grateful to the University of Wyoming for the institute which they held. It was attended, as Dean Trelease said, by a very large number of lawyers and a great many bankers and we had a splendid institute. We got an awful lot of help from people in national positions who knew a great deal about it.

Mr. President, I think there is need for this Uniform Commercial Committee to be continued until after the next session of the Legislature. I think it needs to be continued for these reasons. I think maybe we can still be helpful to the Bar of the State during the next year or so. And secondly, I think we need to be continued until such time as we affect the legislative corrections that have become necessary as a result of the Code being brought out of uniformity. And so, with that short report, Mr. President, I move that the recommendations of the Uniform Commercial Code Committee be adopted and that the Committee be continued.