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Report of the Committee on Legislation and Law Reform - 1961-1962

Wyoming State Bar

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REPORT OF THE COMMITTEE ON LEGISLATION AND
LAW REFORM — 1961-1962

This Committee consisted of the following members: David Hitchcock, J. R. Sullivan, Frank Mockler, Byron Hirst, Dean Borthwick and myself as Chairman.

As a preliminary to the report I should mention that the Bar Association has its Uniform Commercial Code Committee that has been making a study of the Commercial Code and we, therefore, have not gone into this matter.

Also, before proceeding to our report, I wish to inform the Bar that the Wyoming Judicial Conference through its chairman, the Honorable Ted Daniels, submitted its report to me last evening and this Committee has not had an opportunity to study the report, which report I will read to you at this time.

The Committee recommends that the President appoint a committee to make a further study of this matter, subject to such action as the Bar Association may take here today, to take necessary steps to bring this to the attention of the Legislature.

The matter of proposing legislative reform is limitless and the members of this Committee could probably have devoted their entire time since their appointment to research and work, which they weren't inclined to do, without attaining perfection; however, the Committee has considered certain questions that have been of particular interest to the Committee members with the following recommendations to the Association.

First Proposal. In the 1961 Session of the Wyoming Legislature companion bills were introduced in the House—one proposing to shorten the redemption period of a mortgagor or judgment debtor after foreclosure or execution sale from six months to ninety days, and the other bill proposing to permit credits, junior mortgages, etc. to redeem after the ninety day period. (This change in redemption period applying only as to lands within municipal corporate limits and tracts of land outside of corporate limits of less than three acres). Both bills passed the House and the second bill passed the Senate, but the first bill was killed in the Senate. The result is that Sec. 1-480 W.S. 1957, is now in effect, which gives all mortgagors and judgment debtors six months for redemption; which is the old law, but the bill was enacted into law now permits attaching creditors and junior mortgages lands within municipalities and the small tracts outside of municipalities to redeem in the middle of the six month period of the mortgagors and judgment debtors, that is, following the ninety day period.

The Committee Recommends that Sec. 1-48 W.S. 1957 be amended

at the next session of the legislature back into its original form prior to the 1961 legislative session.

Second Proposal. Under the provisions of Sec. 2-47 W.S. 1957 during the probate of a decedent's estate where the decedent died testate, the District Judge, not less than three months nor more than five months following the admission of the will to probate "shall advise the surviving spouse of his or her right of election and shall explain fully such right and the consequences thereof." This provision does not appear to be in particular favor with the District Judges, is not workable, and may likely be unconstitutional under the provisions of Art. V, Sec. 25 of the Constitution which states that "No judge of the Supreme or District Court shall act as attorney or counsellor at law."

The Committee Recommends that Sec. 2-47 W.S. 1957 be amended to require the attorney for the executor to draft a written explanation fully advising the surviving spouse of his or her right to elect to take under the statute; that the written explanation be mailed to the surviving spouse with proof of the mailing being shown to the Court; that a copy of the written explanation be filed in the Court file; and that the District Judge be no longer required to perform this duty.

Third Proposal. Under the provisions of Sec. 5-3, W.S. 1957 the salaries of the Justices of the Supreme Court were fixed at \$14,000.00 per year and the salaries of the District Judges were set at \$12,500.00 per year with the following provisions: "The Justices and Judges now in office shall receive the salary now provided by law."

Article V, Sec. 17 of the Constitution provides that the Supreme Court and District Judges shall receive such compensation as provided by law; that their compensation shall not be increased or diminished during the term for which a judge shall have been elected and then states "provided, however, that when any legislative increase or decrease in the salary of the Justices or Judges of such courts whose respective terms of office do not expire at the same time, has heretofore or shall hereafter become effective as to any member of such court, it shall be effective from such date as to each of the members thereof."

It is unfortunate that this last clause: "the Justices and Judges now in office shall receive the salary now provided by law" was attached to this bill. If this clause is construed to mean exactly what it says, then the legislature appears to be attempting to freeze the salaries of the judges "now in office" and would be unconstitutional in the light of the above provision and if the act were held unconstitutional then the increased salaries would be lost.

It is not the opinion necessarily of the Committee that this would occur but that it would be advisable to clarify the matter.

The Committee Recommends that the act be amended to eliminate

the objectional clause with the provision that the amendment would be retroactive to January 1, 1963.

Fourth Proposal. It appeared to the Committee that a problem exists between our statutes relating to certificates of title of motor vehicles and the provisions of the Commercial Code pertaining to security instruments on motor vehicles. Should we require filing of financing statements on motor vehicles at all? If financing statements must be filed, is it necessary to show the amount of the indebtedness on the financing statement? Are there sufficient safeguards requiring the notation of liens on titles and on duplicate titles of motor vehicles? What should be required on used motor vehicles constituting the inventory of an automobile dealer? Space here will not permit a discussion of the arguments pro and con and the members of the Bar consulted were not in agreement as to the proper solution.

It is the Conclusion and Recommendation of the Committee that the filing of financing statements be required on motor vehicles but that the amount of the indebtedness need not be shown in keeping with the general tenor of the Commercial Code.

At the present time under Sec. 31-37 (f) W.S. 1957 the owner of a motor vehicle who encumbers the title is required to deliver the certificate of title to the holder of the encumbrance who, within five days, is required to file or record the encumbrance instrument in the office of the County Clerk where the vehicle is located and which County Clerk is required to endorse on the face of the certificate an appropriate notation showing the date and amount of the encumbrances, the name of the holder thereof, and is further required to endorse the same information on the certificate copy on file in his office or transmit the information to the County Clerk, where the original certificate was issued for this purpose. This would afford the lienholder generally adequate protection except for the issuance of duplicate titles. Section 31-40 W.S. 1957 permits the State Board of Equalization, or any County Clerk, to issue a duplicate certificate of title so long as the loss of the original certificate is accounted for.

The Committee Recommends that this latter section be amended to permit the issuance of a duplicate only by the County Clerk who originally issued the certificate of title. We would require the owner of the motor vehicle to file an affidavit describing the loss of the certificate and require collection of a \$3.00 fee therefor. We would require the duplicate certificate to bear all notations as to encumbrances as are shown on the County Clerk's copy of the original certificate with the following notation prominently displayed: "This is a duplicate certificate of title and may be subject to the rights of a person under the original certificate." Realizing that it may take some time for a lender to have the notation of his encumbrance endorsed on an original certificate, and some further time required to mail the same from one part of the state to the County Clerk

who issued the original certificate, we would require that no duplicate certificate of title could be issued until after a ten day waiting period following the application for a duplicate unless an adequate bond were posted for the protection of such lienholder.

The Committee Further Recommends the appointment of a committee to study the advisability of adopting the Uniform Certificate of Title Act which we understand has proven very effective in other states.

As to used motor vehicles that are a part of the inventory of an automobile dealer, we would make no differentiation as to the requirement of filing the financing statement, but as to the matter of encumbrances appearing on the certificate title, we would provide that if the lien or encumbrance on such motor vehicle is not shown on the certificate of title, a purchaser from such dealer, in good faith, would take the title free and clear of such encumbrance.

Fifth Proposal. It has come to the attention of the Committee that many abstractors do not check the judgment index as to all persons in the chain of title, but check for the names of only those persons which appear in the chain since the last certification. Judgments and decrees quieting title have not always been filed with the County Clerk, the court proceeding are not abstracted and titles have been quieted a second time upon the requirement of the person examining the title. There are adequate requirements in the law concerning probate proceedings, but there is no clear requirements for the recordation of civil orders and judgments affecting titles.

The Committee Recommends that legislation be passed to cure this inadequacy.

Sixth Proposal. A study of the existing law discloses that the State Land Board does not have the power to subpoena witnesses in hearings before it. As the record of the proceedings before this Board is used before the district court without further opportunity for the presentation of evidence, it is concluded that the subpoena power should be given.

The Committee Recommends that the legislature confer subpoena power on the State Land Board and similar boards where so required.

Seventh Proposal. At the time of the passage of the Wyoming Business Corporation Act, the present corporation law was repealed and, by oversight, no provision was made for the renewal of the charters of state banks.

The Committee Recommends that the provision of the prior law in this respect be re-enacted as part of the law.

Eighth Proposal. The Wyoming Business Corporation Act made no provision for registered agents and registered offices for banks, building and loan association and insurance companies.

The Committee Recommends that these oversights be corrected.

Ninth Proposal. Chapter 235, being the revision of the election laws, was enacted by the legislature in 1961. The method and procedure of nominating the mayor and councilmen in towns was repealed but no provision was made in this respect in the new act.

The Committee Recommends that the law existing prior to the 1961 legislative session providing for the nomination of the mayor and councilmen in towns be re-enacted into law.

Tenth Proposal. The Committee was mindful of the problem of the clouding of land titles by old mortgages which contain a power of sale. The Committee is making no recommendation on the matter at this time but is continuing its study to determine whether or not a proper curative act can be made workable without invading vested rights of mortgagees under the mortgages.

The Committee urges all members of the Bar to submit their criticism of matters in this report to the Committee in writing or suggested changes. On all matters pertaining to legislation, we would like to have your information prior to October 1 so that we can meet and make a further study.

The Committee also urges all members of the Bar, whether you are drafting legislation for this Association, members of the legislature, or your own clients, to number all paragraphs in the bills, make each paragraph as short as possible. This will simplify future amendments or repeal of sections, make amendments more understandable to the legislature, save time and greatly reduce the printing costs.

We extend a note of special appreciation to Mr. George Rudolph and Mr. John Rames of the University of Wyoming College of Law and other members of the Bar for the fine assistance they have given the Committee.

Respectfully submitted,

Committee on Legislation and Law Reform
D. N. Sherard, Chairman

ANNUAL REPORT OF JUNIOR BAR COMMITTEE

As Chairman of the Wyoming Junior Bar Committee, it is a pleasure for me to address this 47th Annual Meeting of the Wyoming State Bar here in Worland. The Wyoming Junior Bar Committee is a regular committee of the Wyoming State Bar and as such has no independent activities of its own but operates within the framework of and as a part of the Wyoming State Bar. This arrangement was arrived at between President Sawyer, Mr. George Hopper and myself after concluding that it was neither desired by members of this Bar nor desirable for the Junior Bar of Wyoming to function as a separate association.

As a result of this decision the Wyoming Junior Bar Committee became affiliated with the Junior Bar Conference of the American Bar