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Wyoming State Bar

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1961 Legislature — PROBLEM: The law should be amended to conform to the report of the Joint Committee; the Wyoming State Medical Society at its annual meeting in 1962 resolved to cooperate with the Wyoming State Bar in the matter of PROFESSIONAL SERVICE CORPORATIONS.

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## REPORT OF WYOMING STATE BAR COMMITTEE ON LEGISLATION AND LAW REFORM

The 1962-63 Committee on Legislation and Law Reform of the Wyoming State Bar herewith submits its report. The portion dealing with the 1963 session of the Wyoming Legislature is submitted by Dean W. Borthwick, John J. Rooney and David N. Hitchcock, who acted as and for the Committee during the session, and the remainder is submitted in behalf of the entire Committee:

### 1963 Session of the Wyoming Legislature

With the hope of transforming 1963's hindsight into 1965's foresight, the Committee submits the following recommendations:

1. The Wyoming State Bar might well consider inviting the State Judicial Conference to designate a Judge to serve as an honorary or ex-officio member of the Committee, whether with or without vote, or in some liaison capacity, to seek more constant and effective correlation between these groups in matters of mutual legislative interest, to enhance the possibility of assistance in the Committee's work by retired Judges, and to provide a more definite relationship under which a judicial spokesman could appear before legislative committees under the auspices or at the invitation of the Bar.

2. The Wyoming State Bar might wish to consider an arrangement under which a member of the faculty of the University of Wyoming College of Law would serve as an ex-officio member of the Committee, whether with or without vote, or in some liaison capacity, to assure earlier and more constant and effective correlation and exchange of information between these organizations, possibly to increase the facilities for drafting or Bar Committee, and possibly of its apparent program, in the school for new legislators conducted by the Law School before each session of the Legislature.

3. The Bar should provide a definite and adequate budget for a joint meeting with the Judiciary Committees of the Senate and the House of the Wyoming Legislature, either at dinner or luncheon, as soon as practicable after adjournment of the Bar Legislative meeting in January, so that the entire Bar Legislative program can be outlined briefly to all members of both committees as soon as it is formulated, and before their work and the demands upon their time begin to build up, even though drafting of the Bar bills is not then completed.

4. If adequate funds and personnel can be provided, the Legislative Bulletin suggested in the President's Message to the 1963 State Bar Meeting should be sent to all members of the Bar, as soon as possible after adjournment of the January Bar Meeting, so that all members can communicate their views to their own Legislative delegation, and effectively urge support of the Bar program.

Had either of the last two suggestions been in effect during the 1963 session, fewer bills would have died in the House Judiciary Committee.

The history of each of the bills approved by the Bar, and others approved by our Committee which the Bar did not have time to consider, follows:

1. All measures which the Bar approved and instructed the Committee to have introduced in the Legislature, drafting or revising the same where necessary, were prepared and ready for introduction, and with one exception were introduced.

2. The urgent problems requiring most immediate action were taken care of, although many important problems remain.

3. Only one measure approved by the Bar was killed by legislative vote: H.B. 148, which would have permitted an increase in probate fees for attorneys, was voted down on the floor of the House.

4. Only one measure approved by the Bar received a "Do Not Pass" recommendation: H.B. 288, providing for agent-office designation by some corporations died on general file in the Senate because of such recommendation of the Senate Judiciary Committee.

5. Three measures approved by the Bar, and one bill later drafted by the Committee, were enacted as submitted:

(1) The Senate Joint Resolution, proposing the Constitutional amendment concerning minor or subordinate Courts;

(2) Ch. 44 (H.B. 148), which restored provisions for redemption of real estate after foreclosure or judicial sale to their original form, prior to the 1961 amendment;

(3) Ch. 136 (H.B. 273), liberalizing judicial retirement; and

(4) Ch. 163 (S.F. 145), extending the Homestead Exemption to trailer houses.

6. Four other goals approved by the Bar were partially achieved through adaptations of or substitutes for the Committee's work, although not in the form originally prepared by the Committee, as follows:

(1) The potentially fraudulent loophole in the Duplicate Motor Vehicle Title Law was plugged by adding the Bar's recommendation to Ch. 185 (H.B. 16):

(2) H.B. 272, proposing an increase in judicial salaries was replaced by § 16 of Ch. 116, the General Salary Increase Bill, (and the Com-

mittee also assisted in sponsoring increases for the Clerk and Deputy Clerk of the Supreme Court in § 17 and § 18 of that Law.)

(3) The designation of a filing office for non-residents without Wyoming offices, which was included in H.B. 315, the Bar's comprehensive Bill to Amend the Uniform Commercial Code, was provided by Ch. 97 (S.F. 28); and

(4) The renewal of Articles of Incorporation of State Banks, which was the chief motivation of the Bar's H.B. 289, was provided for in § 8 of Ch. 160 (S.F. 30).

7. The following bills failed to pass, although the Committee does not know of any opposition or particular objection to any of them:

A. In the Senate:

(1) H.B. 288, providing for registration of agents and offices for corporations not under the Wyoming Business Corporation Act finally reached the Senate General File with a "Do Pass" recommendation from the Senate Judiciary Committee, but not in time for final passage;

B. In the House Judiciary Committee, without consideration or action:

(1) Bills approved by the Bar:

(a) H.B. 289, covering renewal of franchises of some corporations;

(b) H. B. 290, as to lis pendens for federal court actions;

(c) H.B. 291, to provide for personal property liens after they are removed from the Uniform Commercial Code;

(d) H.B. 304, as to General Rules of Construction (embodying the editor's note to § 8-18 '57 WS) :

(e) H.B. 306, to provide subpoena powers for State agencies, such as the Land Board, pending adoption of the Model Administrative Procedure Act, which was introduced and printed as H.B. 307 with no thought of passage at this session;

(f) H.B. 315, to correct some errors in and adopt the recommended amendments to the Uniform Commercial Code:

(2) Bills approved by the Bar Committee but not presented to the Bar because no time was available:

(a) H.B. 305, a curative act to eliminate old power-of-sale mortgages which are paid or abandoned, without prejudice to such mortgages which are still active and alive;

(b) H.B. 319, the Uniform Interstate and International Procedure Act, which would enlarge jurisdiction of Wyoming Courts over persons outside the State, in line with the fine opinion of Justice Grey which was adopted by our Supreme Court in *Ford Motor Co. v. Arguello*, decided June 19, 1963, 382 P.2d 886, 892;

By the time the three-member Bar Committee finished redrafting the Uniform Commercial Code Amendments, which ran more than ten pages,

and the Model Administrative Procedure Act, which exceeded thirty pages, in the printed bills as well as the other bills for which the Committee was made responsible, and had all of them introduced, the pressures and tensions of the session, which seemed to involve an unusual number of extremely controversial measures, had reached such a degree that it was almost impossible to keep the attention of one legislator long enough to explain an important bill, let alone gather two or three together.

During this period, the Bar Committee Chairman had a previously set hearing in Federal Court on January 21, and had trials set in State Court on January 22, and February 1, 4, and 7, but at all times Dean Borthwick and John Rooney were available and repeatedly advised the House Judiciary Chairman that the Bar Committee would like to explain its bills and stood ready to help in any way possible. The Bar Committee recognized the tremendous burden of the House Committee, and did not seek to high-pressure or brow-beat the members of the House Committee; the Bar Committee sought to meet the convenience of the House Committee and simply asked to be notified when the Bar Committee might be heard.

During the next-to-last week of the session, the Bar Chairman asked the House Chairman when the Bar Committee might be heard and what might be done to expedite the Bar Bills, and was told that feelings had become so worked up over the so-called "Right-to-Work Law" that some members were boycotting the House Judiciary Committee so that no meetings could be held for want of a quorum. When asked which members might be contacted by the Bar Committee, and in what other ways that Committee might help move the Bar program, the House Chairman replied that the situation seemed to be better now so that meetings could be resumed and the Bar bills should be coming out of Committee immediately.

When no bills had been reported out by the following Monday, starting the final week, the Bar Committee sought and tried urgently but without success, to appear before the House Committee or in some way obtain action on these Bar bills, but never did have a hearing or opportunity to explain to the full Committee the Bar's position and program.

Obviously, comprehensive communication to all members of both Judiciary Committees, as to the general program of the Bar, as early as possible in the session, is essential if the Bar's program is to be fully successful; and this will require earlier preparation of bills and broader support from more and better-informed members of the Bar: The three members who worked on the 1963 program believe that the bills which were not considered are still as valid, available and useful as ever, and will gladly hand them on to the next Committee. We acknowledge with deep appreciation the assistance of Chief Justice Parker in supporting the Judicial Salary Bill, of Professors George Rudolph and Joseph Geraud of the University Law School, the former for advice and counsel on the Motor Vehicle Title Law, and the latter for a very helpful memorandum sup-

porting the Power-of-Sale Mortgage Curative Act, for the fine work of the Park County Bar, under Chairman Charles Kepler, in drafting the Personal Property Lien Bill, and other members whose work was submitted in bill form.

#### Post-Legislature Work

After the Legislature adjourned, the Committee considered other matters, including the following:

The Committee found that the 1941 Act providing that Tax Deeds are prima facie evidence of title had been mis-printed in the 1957 Wyoming Statutes; and also that it had been commented upon by Justice Kimball in the case of *Ohio Oil Co. v. Wyoming Agency*, 63 Wyo. 187, 179 P.2d 773, but without citing the Act by name or number, so that the reference had never been annotated; and the Committee suggested the re-print and annotation, which now appear in the 1963 Cumulative Supplement, and also the annotation which is promised for the next edition of Shepard's Citations.

President Millett requested the Committee to consider the failure of our election laws to provide for the filling of a vacancy in nominations where a non-partisan candidate dies or withdraws between primary and general elections. While a bill developed in Committee, which would reopen the vacant nomination for Judge, County Superintendent of Schools, or other non-partisan office, to all qualified candidates was under consideration, President Millett referred to the Committee the report submitted by Chairman W. Hume Everett for the Committee on Judicial Selection, which would provide that the Commissioners of the State Bar should fill such vacancy in nominations for Judge. Our Committee agrees that delegating the power to Bar Commissioners could have real advantages in many circumstances, although one of our Committee suggested that the power might be delegated to the Wyoming Supreme Court, and another is inclined to feel that the Governor should be empowered to fill the vacancy in nominations as he would a vacancy in the office. None of the latter methods would make provision for candidates for County Superintendent of Schools, and the majority of our Committee favor the open filing theory for all non-partisan offices, as being the most democratic but believe the Bar will wish to consider the report of the Committee on Judicial Selection before attempting to reach any decision.

The Committee has considered and approved a suggestion for providing a permissive, and not mandatory, system whereby the fact that a parcel of real estate was being sold on contract could be made a matter of record, for the protection of the buyer, without disclosing any details which the seller might wish to keep confidential, nor encumbering the seller's title with any real burden or expense. At present, a buyer whose installment purchase contract and deed are placed in escrow, but not recorded, runs the very real risk that the seller might mortgage or again

sell the property to an innocent third party who has no means of knowing that the buyer has any connection with the property. It would seem to the Committee that a simple technique could be adapted from the Uniform Commercial Code to protect such buyers: § 9-402(2) permits the filing of a financing statement which simply shows the names of the parties and the fact that there are financial dealings between them which may affect title or liens upon personal property; and we can see no reason why a similar brief instrument, duly acknowledged by the seller so as to be recordable, could not be provided for real estate transactions if the following conditions are met:

- (1) The property and parties should be clearly identified;
- (2) The buyer and seller should agree that if taxes were assessed against the buyer, that all tax levies and sales based thereon would be valid and both parties would waive any defense or objections to such taxing and sale procedure;
- (3) The buyer should agree that he has executed, acknowledged and deposited in escrow a deed back to the seller, the recording of which would be evidence that the buyer had abandoned or defaulted the contract, that the buyer's rights were completely extinguished, and that the seller had regained full ownership, free of any equity of the buyer.

Experience has demonstrated the Bar's wisdom last January in declining to approve H.B. 72 as to adoption of children, and believing that it needed further study. The Youth Council proceeded with the bill anyway, and it is now Ch. 59 of the 1963 Session Laws. In drafting the amendment of § 1-709 '57 WS, which is now § 6 of the new Law, the draftsman inadvertently omitted the words, near the beginning of the section "Unless said petition is accompanied with the written consent of the living parent of said child" from the requirement that a hearing must be set upon a petition for adoption, and the new law requires that "the Judge shall by written order set such petition for hearing," and requires the petitioner and such parents who are living to appear on the date set and show cause why such petition should not be granted; even when the child has been completely relinquished and full consent to the adoption given. Most agencies concerned with adoption of children, and probably most adoptive parents, believe that it is most important that the natural parents do not know where the child went, and the adoptive parents do not know where the child came from, in most cases, but this new requirement for a "show-cause" hearing could completely destroy the hopes for preserving this situation. The Committee cannot suggest any remedy until the Legislature can amend the section, except most respectfully to suggest to our District Judges that the Court might find "that the best interest of the child will be furthered" by waiving the entry of an interlocutory decree where the natural parents have clearly shown an intention to relinquish all rights to and knowledge of the child.

The Committee feels that, since four of our seven Judicial Districts now have two Judges with equal and concurrent jurisdiction under the Statutes, § 1-53 '57 WS should be brought up to date by relieving a Judge in a two-judge District, as to whom an Affidavit for Change of Judge on any of the statutory grounds, from a requirement that he "shall, within ten days from date of filing of such Affidavit, make and enter an Order . . . calling on some other Judge of the District Court of the State to preside," since the other Judge in the District already has jurisdiction.

It seems to the Committee that, when such Affidavit for Change of Judge is filed, a District Court Commissioner should be empowered to act, just as he is now empowered to act when a Judge is absent or voluntarily disqualifies himself, and that § 5-71 '57 WS should be amended accordingly. The presence in the County of a Judge whose power to act has been terminated by an Affidavit for Change would now prevent a Court Commissioner from acting, and the Committee feels that possible unnecessary and unjustified delay might sometimes result.

We wish to point out to the County Attorneys two possible problems which result from adoption of the Uniform Commercial Code:

1. All of the Uniform Warehouse Receipts Act, Ch. 20 of Title 34 '57 WS, was repealed, except Article 5 which contains the criminal provisions. Two of the sections defining crime, § 34-370, and § 34-372 refer back to prior sections of the Act, which are now repealed, and the Committee is not certain of the results.

2. In the criminal code, § 6-149 through § 6-151, refers to disposal, concealment, etc., of property subject to mortgage or conditional sale contracts, and the Committee is not certain that financing statements and security agreements under the Uniform Commercial Code would come within a strict interpretation of these sections.

Our Committee extends congratulations to Chairman R. S. Lowe and his Committee on Minor Courts for their effective work in preparing and securing passage of the proposed Constitutional Amendment which would remove Justices of the Peace from the list of Constitutional Courts, etc., and we suggest that all members of the State Bar could be of assistance to the Committee in pointing out obscure references to Justices of the Peace, which may not be properly indexed and might not otherwise reach the Committee's attention as it formulates its program, such as those in the Uniform Narcotic Drug and Uniform Illegitimacy Laws.

In conclusion, the Committee should point out that while the interest of its members in questions of legislation and law reform is particular and special, it is not exclusive, and all members of the Bar should feel free and be encouraged to refer to the Committee any questions and problems in the fields which may occur to them.

Respectfully submitted,



COMMITTEE ON LEGISLATION  
AND LAW REFORM

David N. Hitchcock, Chairman

Dean W. Borthwick

John J. Rooney

J. B. Sullivan

Frank Mockler

Arthur Kline

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**REPORT OF THE COMMITTEE FOR LIAISON WITH THE  
INTERNAL REVENUE SERVICE**

The Committee for Liaison with the Internal Revenue Service reports to the President and members of the Wyoming State Bar as follows:

This is a new committee which was created by the President at the suggestion of Mr. Paul A. Schuster, District Director of the Internal Revenue Service which was made at the 1962 Annual Meeting of the Wyoming State Bar. Following several informal discussions, a formal meeting was held with representatives of the office of the District Director of the Internal Revenue Service on 3 January 1963. Those in attendance were: Richard V. Thomas and James L. Applegate, representing your committee; Mr. Paul A. Schuster, District Director of the Internal Revenue Service; Mr. William H. Boyle, Chief of the Audit Division; Mr. Albert F. Siebert, Chief of the Collection Division; and Mr. Robert A. Clark, Chief of the Intelligence Division.

Pursuant to a suggestion made by Mr. William A. Cole, of your committee, a request was submitted that the Internal Revenue Service send directly to the membership of the Wyoming State Bar an announcement concerning the substantive aspects of account numbers, particularly as they pertain to probate practice. Mr. Cole made the suggestion because attorneys can become liable for penalties if they fail to follow the account number requirements. This led to a general discussion concerning the possibility of mailing items directly to members of the Wyoming State Bar, and, at the request of Mr. Schuster, a copy of the mailing list for the Wyoming Law Journal was obtained so that the Internal Revenue Service would have available current addresses for all lawyers. Other matters of general interest which were covered at this formal meeting included a statement by the representatives of the Internal Revenue Service to the effect that they believed that attorneys should make an effort to appear in tax proceedings at an earlier stage. They felt that in many instances lawyers would appear only when the matter was ready to go to the Tax Court or was ready for a formal conference, and at that point it became necessary to acquaint the lawyer with all that had previously happened often involving repetition of what had occurred at earlier conferences. The I.R.S. representatives stated that they felt it was important for all attorneys