The New Revised Code--A Lawyers' Code

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At the regular session of the 100th General Assembly of Ohio, which convenes January 5, 1953, the Revised Code will be presented for consideration, in compliance with Section 76-6 of the General Code. The act of 1945 creating the Bureau of Code Revision, and providing for a Code Revision Director and Commission, established the Bureau’s authority to devise a plan for the order, classification and arrangement of the General Code.

The Revised Code is to be submitted in thirty-one volumes comprising thirty-one separate titles with a total of 596 chapters and approximately 19,000 sections of law. The General Code is divided into four parts, fifty-eight titles, forty-two divisions, 624 chapters and contained approximately 24,000 sections prior to recent legislative repeal of over 4,000 sections of obsolete, unconstitutional and unnecessary provisions. It can be seen that research performed by the Bureau has substantially altered the size and make-up of the outmoded General Code. Though the Bureau has not made, and was not authorized to make, changes in the substantive law, its work has been of the utmost importance in remodeling the Code, which was becoming virtually unserviceable by reason of its poor arrangement and its unconstitutional and obsolete sections of law. The last revision was made over forty years ago in 1910. Ohio was in effect saddled with a set of horse and buggy laws, and the necessity for revision can hardly be underestimated. Revision of laws, moreover, has been undertaken by many other states within the last decade.

The plans of arrangement and numbering of statutes of all the other states were considered by the Commission and the Bureau. Ten different plans of arrangement and eight types of numbering systems were formulated and studied prior to the approval by the legislature of the final plan now employed in conformity with the needs of revision.

*Written prior to the convening of the 100th Legislature at which the revision is scheduled to be the first order of business.

1 Ohio Gen. Code §§ 76-1 to 76-8.
Essentially a revision as to form, its main purpose is achievement of certainty and conciseness in expression and logic in arrangement. In the cases where doubt existed as to the danger of effecting any substantive change whatever, the revision of each of the approximately sixty-five sections of law considered border-line in this respect were briefed and then approved by the nine members of the Commission. Such sections will be so identified in a master list of sections in the form of a comparative table of new and old section numbers to be submitted together with the Revised Code for the consideration of the legislature. In total, the aims of the Bureau have been: the consolidation of overlapping provisions; the correction of inaccurate, wordy or redundant expressions; the elimination of obscurities and conflicts; and the collection and assimilation of the whole into a logical, compact arrangement without change in substance.

It is to be noted that the legislator, in giving approval to the revision as a whole, is afforded a safeguard against unwittingly passing any suspected substantive change, as it relates to legislative intent, by means of savings clauses contained in the first chapter of the General Provisions. As a further safeguard, it is urged by the Bureau that the effective date of the revision be made such as to allow for legislative corrections of any errors during the regular session of the 100th General Assembly. It is estimated that September or October of 1953 would provide the time necessary to consolidate legislation passed during the session, thus simplifying many of the problems of procedure and final publication of the law.

The manner of the formal introduction of the Revised Code, the time of its presentation to the General Assembly, and the extent of the legislators' deliberations upon the issues involved are questions pertinent to the success of its passage. Designed as a bulk revision, the Revised Code should be adopted as law in its entirety without any change or amendments other than corrections of form. Any controversy over suggested changes in the substantive law would possibly defeat the entire plan and procedure of this revision. The time for actual amendment and creation of new legislation should logically be subsequent to the Code's adoption, when legislation may be drawn up and inserted in accordance with the rules which governed revision. For not only should the numbering and placement of laws conform to the revision, but new legislation should be reviewed and checked as to form and style before final enactment in order to render an entire statute clear and harmonious. In fact, all bills in the future should conform to the pattern, if it is to be that of the Revised Code now to be submitted. The

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2Five chapters comprise the General Provisions, which will precede the arrangement of the thirty-one titles of law. They relate to definitions and rules of construction generally applicable; the oaths and bonds of officers; the state insignia, seals, and holidays; process and publication; and miscellaneous provisions such as facsimile signatures, inventories of state property, etc.
real choice before the legislature, then, will be either adoption or rejection of the Revised Code in its entirety.

Much may be said of the benefits which would accrue to lawyers using the Revised Code. Both lawyers and laymen, of course, will find the great reduction of redundant and surplus language of help, and the logic of the arrangement a saver of time in locating desired sections. Every title will have a breakdown of chapters and every chapter will be preceded by a listing of sections contained, so that in its new logical arrangement, whereby all the law on a subject may be found in one place, a person using the Revised Code will scarcely need to refer to an index except for very detailed provisions. Above all, however, the Revised Code will be a lawyers' code, streamlined and organized for their use.

The lawyer's research time is money. Of primary importance to a lawyer is the work the Bureau has done to clarify and make certain the reference of each section. Many sections of the General Code contained vague and ambiguous references to other sections or parts of the Code. Phrases such as "this act," "this chapter," "by law," and "herein" were maintained, even after repeals invalidated substantial portions to the extent that no lawyer could ascertain what parts of the law were intended to be included in the reference without consulting volumes of Ohio Laws and tracing subsequent legislation. The Bureau has checked all such references, has determined what was meant, and has substituted definite section numbers. It was their aim to make every section stand on its own. The insertion of numbers more exactly defines the intended scope of sections and eliminates the necessity of individual research.

Three general types of ambiguous references were treated in the revision. The first of these entailed only a simple mechanical process of determining the numbers, and is the type wherein the reference was to specific sections. It was necessary in such cases only to ascertain whether or not the section referred to had been repealed, and whether or not the subject matter was actually that to which reference was intended. This type included also references to a specific section of a particular act, as in the phrase "section 1 of this act." By consulting the volume of Ohio Laws containing the act, the section number of "section 1" was determined. In a reference which read simply "this act" it was necessary to check all sections contained, the repeals, amendments and supplemental sections. Repealed sections were then eliminated from the reference and supplemental ones added.

The second type of reference was that which required a tracing of section histories prior to 1910, when the codifiers of the General Code introduced changes which caused difficulty when the reference was to statutes in effect.
prior to 1880, before which date the laws were not organized as they are today. The 1910 codifiers changed "this act" to "this chapter," "this title," "by law" or a similar phrase, and inserted "herein," "hereinbefore," and "hereinafter"; and, where a section was split, reference to its parts was made by inserting "the preceding section" or "the succeeding section." Again it can be seen how very difficult it had become to determine the correct reference when such terms were employed.

It is indicated by case law, moreover, that if a revision or code is plain and unambiguous, it is construed by itself without recourse to original or prior acts which have been brought into it, but if the language used in a statute which has undergone a general revision requires construction, the statutes from which the revision was made will be referred to in an effort to clear up the ambiguity. Tracing the section back through the 1910 Code to the Revised Statutes of 1880 saves the lawyer from resorting to this further step, made necessary by reason of the division of a section or the transposal of its parts by the 1910 revisors.

The third type of reference includes that in which the insertion of correct numbers could not be carried out by tracing the history alone. Requiring the greatest amount of research, this type involved not only tracing the history, but also a study of the subject matter of the section in its relation to other sections, a search of case law dealing with the section, consultation of secondary authorities and Opinions of the Attorney General and consideration of apparent legislative intent. In this type, the word "herein" caused particular difficulty where it could not be ascertained whether it meant "in this section," "in this act," or "in this chapter." The type includes "hereinbefore" and "hereinafter," and references to sections which have been repealed and for which analogous sections have been enacted, and references to acts by title, such as "the administrative procedure act." In this type of reference, the words "by law" presented the greatest problem. Even after exhaustive research, however, it was occasionally necessary to retain the ambiguous phrase because the Bureau found it impossible to determine the meaning with certainty. Other references so vague that no definite determination could be made, and the reference could not therefore be changed, included wordings such as "the laws of this state," "other sections of the General Code," "the laws relating to highways," "as in other cases," or "in the same manner as in other civil actions."

Wherever section numbers were ascertained, if the reference was to a block of sections and included some clearly inapplicable subject matter, the

E.g., SWAN'S STATUTES (Ohio 1841), SWAN AND CRITCHFIELD (Ohio 1860), SWAN AND SAYLER (Ohio 1868).

State v. Williams, 104 Ohio St. 232, 135 N.E. 631(1922); State v. Toney, 81 Ohio St. 130, 90 N.E. 142 (1909); Heck v. State, 44 Ohio St. 536, 9 N.E. 305 (1886); Allen v. Russell, 39 Ohio St. 336 (1883).
Bureau eliminated the needless (and often misleading) reference instead of retaining the original reference to an entire act or chapter, some of which did not apply.

In addition to the invaluable research, so time-saving to the lawyer, in the matter of insertion of numbers for reference, the Bureau carried out a further service in the insertion of dates, also necessary to make each section stand alone, to make it clear, and to facilitate its use. Where sections contained the phrases "the effective date of this act," "the passage of this act," "the date of enactment of this act," "heretofore," and "hereafter," the Bureau determined what dates were indicated and inserted them. Certainty of expression has thus been achieved.

Conciseness of expression, necessary to improve readability and to reduce unnecessary bulk, was achieved in several ways. Preface clauses at the beginning of sections such as "In order to enable him to better protect the woodlands of the state" were deleted. Title sections reading "This act may be cited as 'The horse racing act,'" for example, have been removed. The pet couplets of "legalese" have been dropped in favor of single words: "null and void, and of no effect" was changed to "void", "be and the same is hereby" was changed to "is," and "sole and exclusive," to "exclusive." The greatest economy was effected in the reduction of the elaborate construction "is hereby vested with power and authority and it shall be its duty in carrying out the provisions of this act to" to "shall."

One of the Bureau's primary purposes was to arrange the Code so that it would be logical, and would, above all, gather together all related laws on a subject. In the General Code, the four-part division created artificial separation of administrative provisions. Most awkward, too, was the problem created by Part IV, pertaining to crimes. Scattering of penalty sections throughout the General Code is the result of the failure of codifiers since 1910 to adhere to the idea of the 1910 revisors of gathering all penal provisions in Part IV of the Code. Under the plan of revision followed by the Bureau all these provisions were put with the chapter and subject matter to which they relate. This policy tends to make each chapter self-contained, and will be of great convenience to users of the new Ohio Revised Code.

In carrying out this system, the Bureau decided to gather the actual penalty provisions into the last section of each chapter, but to leave the substantive prohibition provisions wherever they logically belonged in the chapter. Since many chapters contain numerous identical penalty provisions, this scheme avoids repetition of the phrases setting forth the fine

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8 Effective date and passage date are established by law. Date of enactment was considered by the Bureau to be synonymous with passage date.

* Placement of sections was done, until 1945, by the attorney general as codifier.
and term of imprisonment. Instead, a single clause states, "Whoever violates [listing all sections with identical fines] shall be fined, etc." The chapter is thus simplified and shortened.

In the title on crimes an exception to this method is found, since every section is a prohibition and a penalty, and the advantages of the usual method are not present.

Penalty sections at the end of chapters will invariably have a decimal number ending in 99, as for example 101.99. The renumbering of the Code has been done according to a decimal system, very similar to the Dewey decimal system used in libraries. Numbers to the left of the decimal indicate title and chapter; "101.01" is, for example, the first title, the first chapter, the first section. Penalty sections, having the section number .99, will always be last, no matter how many sections after .01 are added, and will be easily identifiable.

Compared to the consecutive numbering of the General Code, the decimal system of the Revised Code has three major advantages: Subsequent legislation may be inserted where it logically belongs, not wherever there happens to be a gap in numbers; insertion of legislation for all future time is provided for by its elasticity; citation of sections is greatly facilitated because of association by number with their proper title and chapter.

In the arrangement of sections within chapters the Bureau, where logically possible, used the following pattern:

(a) Definitions;
(b) The law or leading principle of the chapter;
(c) Administration of the law;
(d) Exceptional provisions;
(e) Penalties.

The thirty-one titles of law in the Revised Code are arranged, after the first four titles devoted to State Government, Counties, Townships, and Municipal Corporations, alphabetically by subject, as: Agriculture, Banks, Commercial Transactions, etc.

The greater ease in finding material in the Revised Code may be compared to the sense of relief a traveler knows, when in a strange city, he finds it has been laid out on a gridiron pattern with its streets and avenues systematically numbered. Lawyers cannot fail to find that in its modernization the new Revised Code represents a tremendous service to them.