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THE PRODUCT OF THE FIFTY-FIFTH GENERAL ASSEMBLY

BY ERNST FREUND*

In reviewing the Illinois legislation of 1925,¹ attention was called to the steady decrease in the volume of session laws from 1919 to 1925; in 1927 there has been an increase, from 617 to 874 pages. This is chiefly, and perhaps entirely, due to one measure which called for upwards of one hundred amending acts, that is to say, nearly one-fourth, or if appropriation acts are not counted, more than one-fourth of the total number of laws enacted. This measure is the raising of the assessed valuation from one-half to the full value of taxable property in the state. The constitution limits municipal bonded indebtedness to five percentum of the assessed value of the taxable property of the municipality; the legislature has power to keep indebtedness down by prescribing assessment at less than full value. For a long time the assessed value was one-fifth, and was later raised to one-half of the value. The pressure for larger bonding capacity has resulted in the raising of the assessments to the full value, making, for the future, further legislative relief in this way impossible. All local taxing powers (cities, counties, drainage districts, parks, schools, etc.) are granted by the legislature, and often by separate acts for separate purposes, and in each case the legislature grants the power subject to maximum rates, and the rates are measured by reference to the assessed value of property. If, as was done at this session, the assessed value is doubled, and if the rate is to be kept at its actual maximum, it must be nominally cut in half. Hence the plethora of amending acts. A host of rates had to be adjusted to the "full value" law. This additional situation was, however,

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1. "The Product of the Fifty-fourth General Assembly" 20 ILLINOIS LAW REVIEW 585.

presented: the Juul law of 1901 fixed for the total of the taxes levied in each county an aggregate maximum rate of two per centum on the assessed valuation, involving a proportionate scaling down of each distinct maximum statutory rate. A number of rates are exempt from this scaling down process, the other rates, however, to be scaled down only as though these exemptions did not exist. These irreducible rates raise the total aggregate maximum above the two per cent of the Juul law. Of course the Juul law rate was also cut from two per cent to one per cent. Previous, however, to all this legislation, a number of taxing bodies (City of Chicago, South Parks, Sanitary District) had obtained from the present legislature other amendments of the Juul law raising their irreducible rates, and these raised rates likewise had to be cut down one-half. This has been done by six separate amendments of the Juul act, not one of which contains all the reductions. The present law has to be arrived at by reading and construing these six amending acts together as one act; in Cahill's edition of the statutes the gentlemen who were in charge of the legislation present in form of a note a consolidated text of their own; in Smith-Hurd's edition, attention is called to the situation.

No more striking illustration could be given of the cumbersome form of some of our statute law. Simpler forms readily suggest themselves, but not merely do the constitutional requirements concerning amendments stand in the way, but if they were removed, there would still be the question of the mechanical handling of the changes in the unofficial biennial revisions of the statute book. A combination of constitutional freedom with the adoption of something like the Wisconsin system of the Official Reviser might furnish a solution. The present legislature has given the Legislative Reference Bureau a large commission for revising, simplifying and rearranging existing statutory law; and the men charged with the task might well employ some of their time in considering this problem.

The inconveniences of the present amending system to which attention was called in the ILLINOIS LAW REVIEW two years ago appears also in the present volume: for the sake of a relatively minor addition to the powers of the city council we have again the re-enactment of a section covering eight pages, and over forty pages are taken up with amendments of the park pension acts. The Workmen's Compensation Act undergoes another twenty-three page amendment, again mainly given to an enlargement of benefits, including, however, also a desirable provision on behalf of children illegally employed. The revision of the Primary Law is the most voluminous

measure of the session, its dubious fate to be eventually determined by the Supreme Court.²

The most striking change in the law of the state is perhaps the introduction of "electrocution" as the form of capital punishment; negatively it means that the legislature was not ready to abolish the death penalty. The law of most immediate interest to the people of the state is that imposing the gasoline tax, one of Governor Small's measures. Responsive to a widespread demand on the part of tax reformers is the law exempting, on condition of reciprocity, from inheritance taxation the intangible property of residents of other states. There is the usual crop of regulatory legislation, some of which (commercial fertilizers, insect pests and plant diseases, poultry dealers, protecting the marks of platinum articles) calls for only passing notice. The Warehouse License Act strengthens supervision, makes Board of Trade rules dependent upon the approval of the Commerce Commission, and protects the incompatibility between warehousing and grain ownership from evasion by corporate stockholding. The Grain Storage Certificate Act is a measure of civil regulation, operating without absolute compulsion. Several comprehensive measures of insurance regulation (life insurance assessment companies, Lloyds, mutual benefit associations) call attention to the fact that the ambitious scheme of codifying the entire insurance law, which ripened into a bill in 1925, has been temporarily laid aside.

The law permitting the settlement of small intestate estates (less than \$500) in Cook County without formal administration legalizes a practice which it is understood has in the past been indulged in to some extent by institutions at their own risk.

There seems to be no other striking legislation in the matter of private law. Neither the amendment to the Dower Act, nor the act to regulate perpetual cemetery trusts, appear to change the existing law in any substantial manner. The act dealing with slander by radio purports to establish a penal, and not a civil, liability.

The following somewhat casual comments are offered on a number of other measures enacted into law:

1. The act to legalize horse racing is a companion measure to the 1925 law concerning athletic exhibitions. It appears to be a carefully drawn measure. The weakness of the act lies in sections

2. It may be proper to point out, in view of newspaper reports to the effect that one of the defects of the law is the combining of two distinct subjects, namely, primaries and party organization, that legislative regulation of party organization has its foundation in the desire of parties for official recognition on the primary ballot; without primaries, political parties might well claim constitutional freedom from legislative regulation.

10 and 12 which undertake to legalize the pari-mutuel or certificate system of wagering by patrons of horse races, and to make the general provisions of the Criminal Code inapplicable to such wagering. It will be for the Supreme Court to say whether this preferred status of horse race bets is consistent with the decision in *Miller v. Sincere*,³ which defeated the attempt to exempt board of trade transactions from section 132 of the Criminal Code. It is true that the act contains the common separability provision; but how can horse racing be made an attractive or remunerative proposition without legalized or tolerated betting? Those who are interested should study the instructive history of New York in this matter.

2. The act regulating the practice of public accounting is due to the decision in *Frazer v. Shelton*,⁴ which invalidated the act passed in 1925 for a similar purpose. The Supreme Court found that while that act preserved the distinction between certified public accountants and public accountants, it made it impossible for the future to obtain the former designation in Illinois, thus discriminating in favor of present holders of C. P. A. certificates and of non-resident accountants; that objection is eliminated by restoring or keeping alive the act of 1903, which the act of 1925 had undertaken to repeal. The Supreme Court also thought that the police power does not justify the placing of the business of accounting under a licensing requirement, except under conditions especially affecting the public interest. These conditions the new act attempts to meet, whether successfully or not, remains to be seen. The registration certificate is to be required only if the business includes the preparation of financial statements, knowing that they are to be used, among other things, for the information of stockholders or inactive or silent partners, or as an inducement to any person to invest in or extend credit to such business. This seems to cover all except estate accounting, and the draftsman may have overshot his mark. Moreover, applicants for examination must have had three years' practice in public accounting, yet the practice of public accounting without a certificate is forbidden! The draftsman clearly did not mean what he said, but "lex ita scripta." No tears will be shed if this act should likewise fall by the wayside; the C. P. A. act serves every desirable purpose.

3. The act for the regulation of professional correspondence schools and manual or mechanical trade schools constitutes a new departure in state control. It gives to the Department of Registration and Education power over suitability and adequacy of courses

3. (1916) 273 Ill. 194, 112 N. E. 64.

4. (1926) 320 Ill. 253, 150 N. E. 696.

and facilities of supervision and assistance, and over reasonableness of fees. It applies to all schools operated for profit which teach any trade or manual or mechanical occupation, thus excluding the teaching of music, art, or any cultural subject; and also to schools teaching, by other than resident instruction, any profession or occupation for the practice of which a certificate of registration from the department is or may hereafter be required by law, if school training is a prerequisite, thus excluding correspondence schools of law, since the department has no jurisdiction over licenses to practice law. The law is defective in this respect that it makes it unlawful to conduct such schools without a certificate of registration from the department, but provides no penalty for violation; reliance must therefore be placed upon the general penalty provision of division II, section 6 of the Criminal Code. Should this be inapplicable, the law would be simply an optional registration measure, and a very much more conservative exercise of legislative powers. It may be said that practically the same control would have been established over correspondence schools had the department been simply vested with a rule-making power regarding the qualification of institutions desiring recognition in satisfaction of training requirements under registration laws, an advantage which no correspondence school would be willing to forego; but such control would not have extended to fees; and the legislative purpose could not have been accomplished in this way with regard to trade schools, which are regulated irrespective of any statutory training requirements. The institutions covered by the law render professional services, and the validity of legislative regulation of professional charges remains to be established; an entirely new policy is thus introduced in a casual and incidental manner, and by delegation to a state department, which is guided neither by the statute, nor by traditions of its own, nor by the traditions of established professional organization.

4. Professional and occupational licenses in general. Whether on purpose or through lack of coordination, the correspondence and trade school law is not brought under the amendments of the Civil Administrative Code relating to the Department of Registration and Education. These amendments provide a carefully drawn code for the revocation of professional and occupational licenses, which seems to be a model of its kind; it would have been easy also to make some provision for the refusal of licenses, in view of the decision in *Bratton v. Chandler*.⁵ As is almost inevitable with legislation in this

5. (1922) 260 U. S. 110.

state, the act raises a minor constitutional question: the revocation of licenses is also regulated in connection with particular professions, e. g., medicine, and it may be contended that under the peculiar doctrine of our Supreme Court, these cannot be changed without amending the particular sections. However, if the point is well taken, little harm is done, for the existing provisions are substantially similar to the new law.

5. The amendments to the Criminal Code reveal a curious inconsistency of policy: the minimum penalties for robbery and certain forms of burglary are reduced from ten, five, and three years respectively to one year, a change apparently induced by the experience that a high minimum penalty not uncommonly leads to the substitution of a charge of an offense of less degree, that, in other words, unyielding rigor defeats its own ends. Yet the same amendment prescribes for the offense, not merely of aiding the escape of a prisoner sentenced to death, but also of concealing or assisting him after escape, an absolute penalty of life imprisonment—a manifest absurdity, which is certain to result in non-enforcement.

6. The amendment to the quo warranto act inevitably raises a question of validity. It forbids the issue of the writ to oust from office members of the Assembly or judicial or executive officers whose office is created by the constitution. As regards members of the Assembly, the act is of no particular significance, for each house judges of the qualification of its own members. But with regard to judicial and executive officers the situation is different. The Constitution makes ineligible to office any holder of public moneys who has failed to account for them; the disqualification can obviously not be reached by impeachment, and there is no remedy to enforce it other than quo warranto. Can the legislature nullify a constitutional provision by taking away the only method available to give it effect? It will be interesting to see how the Supreme Court will answer this question, if it ever comes before it.

7. The very important provision for excess condemnation is to apply only to the City of Chicago, being enacted under the constitutional amendment of 1905, and therefore subject to referendum vote, but with authority to re-submit in case of failure of adoption. The provision is that the city may take in fee simple and hold, lease, or sell more land than is needed for public improvement, wherever the court in which the proceedings have been instituted finds that such excess land is required to protect, preserve, or aid the improvement, and is reasonable in quantity therefor. The safeguarding provision should be a strong argument in favor of the power without

express constitutional sanction, such as has been found advisable in some other states.

Legislative inaction has perhaps been more important than legislative action, particularly in the matter of reapportionment and Chicago traction; but this is not the place to discuss omissions. The reflection that forces itself upon the mind in laying down this volume of session laws is how much legislative energy is devoted to getting more money from the pockets of some people into those of others, how much there is in regulation that is questionable, how much there is that might be done toward the improvement of the law, and how little there is that is actually done.