Preface

The Interstate Reference Bureau, jointly operated by the American Legislators' Association and the Council of State Governments, and working in close cooperation with legislative reference bureaus of the state, has long realized the need for a handbook on such bureaus. It now presents the first edition of a Legislative Reference Manual.

Legislatures, legislation, and legislators have been the object of much public opprobrium. Among the most serious defects in the legislative process—defects which have admittedly handicapped the progress of lawmaking in the United States—are the following: lack of experienced legislators; lack of individual responsibility for defective bills introduced; insufficient time for consideration of legislative measures; and need of expert advice both on content and on the legal form of proposed legislation.

The growing complexity of our society has made government increasingly important. Never has the process of lawmaking stood more in need of scientific aids. Over 50 per cent of the lawmakers at each session are inexperienced. They are eager to learn but they must learn quickly if they are to serve the state successfully. To meet this situation two things are necessary: (1) a good and efficient source to which legislators may turn for data on the social and economic aspects of legislation; (2) an instrument for the preparation of laws which are technically correct, and free from contradictions, excess verbiage and ambiguous language. The answer to these needs is an adequately staffed and equipped legislative reference bureau where the experience of other governmental units may be studied and where proposed legislation may be correctly phrased.

The first modern type of legislative reference bureau was established in Wisconsin early in 1901. At the same time New York was developing a valuable type of library service. State after state, anxious to find means of improving legislation, established bureaus—usually of the Wisconsin type. Congress, after considering for several years the feasibility of a national legislative reference bureau, established the Legislative Reference Division of the Library of Congress in 1914. The American Bar Association appointed special committees to study the movement and has issued several favorable reports recommending the further development of the movement, while a similar committee of the American Political Science Association likewise went on record in favor of legislative reference bureaus.

Thirty-four of the states now have legislative reference bureaus or libraries and nine others may lay claim to some variety of legislative reference work. It is true that reduction of governmental expenditures has curtailed their growth, but there are indications that new bureaus may be formed and several reorganized during the 1935 sessions of the legislatures.

Neither a reform agency nor a lobby for vested interests, the bureau exerts absolutely no political influence. Its function is specialized and its purpose specific. By adhering to a representative system the states have shown that they do not wish government by experts, but they do wish, and can have, government with the aid of experts. Legislative reference service is a most valuable type of expert aid.
Plan of the Manual

This Legislative Reference Manual is not a theoretical study. It is an actual survey made by practical experts in the legislative field. Prepared for the general purpose of promoting better state legislation it is specifically designed to supply practical information on legislative reference service to the existing legislative reference bureaus, legislators of the several states, and educational institutions interested in the subject.

In lieu of an introduction there is a reprint of a radio broadcast by two state legislative reference bureau directors and the director of the Interstate Reference Bureau.

In the second chapter the most important information on the legislative reference bureaus is summarized and tabulated. Columnar analyses show general trends in organization, services rendered, personnel, and finances. The chapter is primarily intended to give the reader a general overview of the fifty-two legislative services operating in forty-three states, but a concise picture of each individual bureau may be secured from a study of the tabulated material.

The detailed synopsis of the legislative reference bureaus, which comprises the third chapter, was made possible by the cordial cooperation of the bureau heads. The description of each bureau contains sections on history, statutory bases, organization, legislative reference services performed, personnel, library facilities and finances.

There has been no attempt to evaluate the work of the bureaus in comparative terms, since the standards of measurement are too variable to permit such a procedure. However it is to be hoped that a study of the experiences and facilities and services of the other bureaus may prove valuable both to the director and to the legislators in each state.

The fourth chapter submits a model act creating a legislative reference bureau and providing for its activities, operation, and maintenance. This act, drafted according to the recommendations of a conference of the leading legislative reference bureau directors will probably be submitted to several of the state legislatures during the current sessions.

The Interstate Reference Bureau, operated by the American Legislator's Association, and by the Council of State Governments, acts as a clearing house of information for state legislatures, administrative departments, and particularly the legislative reference bureaus. Activities of this Bureau are described in chapter five of the Book of the States.

The Interstate Reference Bureau wishes to acknowledge the assistance in gathering material on legislative reference bureaus which was given by the American Political Science Association's Sub-committee on Research of the Committee on Policy. Mr. W. F. Willoughby was Chairman of the Sub-committee.


CHAPTER I

Aids to Legislation

RADIO Lecture No. 19, of the You and Your Government Series III was delivered May 9, 1933, over a nation-wide network of the National Broadcasting Company under the sponsorship of the National Advisory Council on Radio Education. The lecture was given by Doctor Edwin E. Witte, then Director of the Wisconsin Legislative Reference Library, Mr. DeWitt Billman, Director of the Illinois Legislative Reference Bureau, and Senator Henry W. Toll, in a round table discussion entitled "Aids to Legislation." Their discussion is submitted as an introduction to this Legislative Reference Manual.

MR. TOLL: Eccentric incidents always excite interest, no matter how trivial they are. They intrigue not only simple-minded children, but intelligent adults as well. If a hundred men are standing on their feet while one man stands on his head, we have no eyes for anyone except the man who is standing on his head. If each of a hundred bankers is faithful to his trust, involving the care of millions, while one embezzles seventeen thousand dollars to supply a platinum blonde with flossy furs and with bubbling beverages, he is the one that we read about. By the same token, if a thousand reasonable proposals for laws are contained in a thousand bills introduced in a legislature, and along with them, ten wild-eyed ideas are introduced, the public will remember the ten ridiculous measures long after it has forgotten the thousand meritorious measures. Consequently it is not surprising that there is a popular appetite for distorted magazine articles about "the clowns who make our laws" and about the freak laws that they make. These articles are especially relished by citizens who are blind to everyone in the legislature except the cut-up who is turning cartwheels—and most of us have that sort of blindness.

MR. BILLMAN: Yes. And also by the same token, there is a constant hue and cry concerning the large number of laws which are enacted by our legislatures. This protest is made by people who do not realize that most of our laws relate to minor readjustments of technical matters, and who are oblivious of the fact that the typical legislative session passes only eight or ten laws of major significance.

MR. TOLL: The man on the street never gives any thought to the practical ways in which a legislature can improve its work. Mr. Billman. He simply finds fault with the laws that are passed. He complains about their substance. He complains about their form. He complains about their quantity. A visitor from Mars might get the impression that it is a crime to pass a law in this country.

MR. BILLMAN: In fact, Senator Toll, some American citizens would apparently like to return to the ancient custom of the Greeks. When a man proposed a new law, he stood with a cord around his neck. If his proposal was rejected, he was instantly strangled.

MR. TOLL: Fine idea! But that was punishment—not cure. And no sore thumb was ever cured by simply finding fault with it. It is high time that the criticisms of our legislatures and of their enactments were given a constructive turn. It is time that more people were asking this question: "If we really want to improve the output of our forty-eight law-making bodies, what can we do about it?" What would your answer be, Mr. Billman?

MR. BILLMAN: Well, there are four main features which determine the efficiency of a legislature: first, its personnel; second, its organization; third, its procedure; and fourth, its expert technical staff.

MR. TOLL: Yes, I would agree with you as to that, also. Now, to take the last matter first: Mr. Witte, How many people work in the Wisconsin Legislative Reference Bureau now?

MR. WITTE: Well, throughout the year we have a research staff of six in addition to four clerical assistants. Of course, during
the sessions we have a larger staff, with four lawyers drafting laws, and six or eight additional stenographers. Every member of the legislature uses the service either for research, or for bill-drafting. And for a quarter of a century there has never been any question as to the continued maintenance of this service in Wisconsin.

Mr. Toll: Well, now, Mr. Witte, to get down to cases, what sort of questions does the individual legislator ask you? I wish that you and Mr. Billman would swap examples of some of the specific questions that legislators have presented during the past ninety days.

Mr. Witte: Well, Senator Toll, during the present session of the Wisconsin legislature, our office has answered over a thousand questions, and they related to every imaginable phase of the government of the state.

Mr. Toll: Well, what was one of them?

Mr. Witte: Can the marketing of milk be regulated as a public utility?

Mr. Toll: All right, now Mr. Billman, what is one specific question that a legislator has recently asked you?

Mr. Billman: Well, how do the several states handle delinquent taxes?

Mr. Witte: What have the forty-seven other states done about controlling the sale of beer, and about repealing the Eighteenth Amendment?

Mr. Billman: What position do leading economists take on farm mortgage moratorium proposals?

Mr. Toll: And so you could go on from now until midnight. What other types of requests do the Wisconsin legislators make of you, Mr. Witte?

Mr. Witte: We are often asked to make a summary of a bill, boiling its legal provisions down to concise terms, in convenient form. Often we are asked to report on the present status of a pending measure. We check up points of legislative procedure; we draft proclamations and departmental orders; we help members with speeches; sometimes a legislator asks us to write a letter for him. In fact, once we were called on to make arrangements for an operation which a member needed.

Mr. Toll: Mr. Witte, how does your research service differ from ordinary library service? It is of little value to pile up a stack of books in front of a legislator and tell him that somewhere in that ore body is to be found the pay vein that he is prospecting for.

Mr. Witte: Yes, the average legislator has little time for research in the hurly-burly of the session. He will not, and he should not be expected to, fan through a lot of material in order to winnow the grain from the chaff. The legislative reference service—in other words, the legislature's research staff—must do the searching; and it must compile the data in concise, understandable form. Our experience has shown that even when we compile a digest of the laws of the various states concerning a single subject, we have not made our material as useful as it can be made until we prepare a summary with which to precede it.

Of course, we have to maintain a substantial library, primarily for the use of our own research staff, for we can't make up the answers to questions that we are asked, out of our heads.

Mr. Toll: Mr. Witte, to many people the term "research" means the sort of exhaustive study and analysis to which a college professor devotes months or years of work when he is writing an article or a book. Of course, in the legislative-reference field, we mean a somewhat different kind of research, don't we?

Mr. Witte: Yes, Senator. In the first place, our so-called research work usually consists in getting out the kernels from one or more exhaustive studies that have already been made by somebody else. And besides, what the legislator wants us to do for him is what he would call "every-day, practical research"—work which makes it possible for him to reach an immediate decision on a pending problem. He doesn't want to write a book; often all that he wants is to decide whether to say "yes" or "no."

Mr. Toll: Well, Mr. Witte, here is a question which naturally arises: We have 48 state legislatures. Forty-two of them have regular meetings only once during every two years. When the session is over, do the members of your technical staff pack their suitcases and go home, leaving you with the task of organizing a new and relatively inexperienced staff when the regular session convenes in Wisconsin two years later?
Mr. Witte: No, far from it. Our Wisconsin experience is that there is almost as much reference work to do between sessions as during sessions. The law under which we are organized provides that all of the departments of the state shall have the same right to use our research service as the legislators—although we draft proposed laws only for legislators. Some of our most extensive research is done for various departments of the state government between sessions, when we have time for more profound studies than are possible during the session. During the session, when a legislator may rush into our office at a quarter of two to get information with which to bolster up an argument that he is going to make at two o'clock, it is not easy to carry on a systematic study concerning some long and involved subject, such, for instance, as the possibility of consolidating counties and cities, and reducing the complexity and cost of local government.

Mr. Toll: And then of course, Mr. Witte, another factor which enters into the picture is the fact that most of the effective legislatures organize interim committees to work between the sessions.

Mr. Witte: That's true, Senator Toll. For instance, a legislature may establish an interim committee of seven, and instruct it to study (after the session adjourns) what changes should be made in the laws of the state concerning the licensing, taxation, and regulation of motor vehicles. Such a committee is usually instructed to prepare appropriate bills to be introduced in accordance with its recommendations at the next legislative session, two years later. In many states these interim committees set up their own research organizations. In a state which has a legislative reference bureau, it is logical for this bureau to do all of the research work for each interim committee, and, if desired, to handle the committee's correspondence. The work which a legislative reference department does for these committees which are at work between the sessions may be as important as any of its functions.

Mr. Toll: Well, Mr. Witte, I think that you have given a very fair picture of the research work of a legislative reference bureau. Now, I want to ask Mr. Billman to say something concerning the expert counsel which such a bureau can give in connection with the writing or drafting of proposed laws. Perhaps at this point I should explain that both the Illinois and the Wisconsin legislative reference services draft bills and also conduct research work. Mr. Billman, what is the necessity for technical aid in the writing of laws?

Mr. Billman: Well, Senator Toll, there is certainly ground for the complaint that state laws are being enacted which are ambiguous, unreadable, and poorly drafted. In fact, many a law is a cross-word puzzle until the Supreme Court of the state has either solved it, or thrown it into the waste-basket.

Mr. Toll: Well, it is no simple matter to phrase a law which is above criticism.

Mr. Billman: No, an eminent writer on jurisprudence once said that legislative drafting is "one of the most difficult achievements of legal skill." So long as words must be used to communicate ideas, and so long as the same word has different meanings and various shades of meaning, there can be no perfect laws. The more that one knows about statutes, the more he appreciates how many excellent legislative plans are fumbled through badly-drawn laws. Wouldn't you subscribe to that idea, Senator Toll?

Mr. Toll: If I understand you, Mr. Billman, you mean that when a legislature comes to bat, its batting average is likely to be unnecessarily lowered on account of poorly written bills.

Mr. Billman: Yes, draftsmanship is the bat with which the legislature swings at the idea. A legislature which doesn't prepare its laws expertly, and which doesn't phrase them accurately, is using a cracked bat—and it is no wonder if it fans out. When the inning is over, you can look for the idea lost in the weeds—somewhere back of the catcher.

Mr. Toll: Check! However, much is being done by trained draftsmen to improve the form of the laws. This fact must not be overlooked: In any state, there is only one way to make sure that every law on the statute books is properly written, and that is to make sure that every proposed law which is introduced into the legislature is properly written. But the average citizen expects too much of legislators. He
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forgets that few of them have had technical training as law-makers.

Mr. Billman: Yes, the public should recognize the fact that legislators are elected to decide policies, and that they are not elected as technical experts. If the government doesn't provide the legislator with an experienced, unprejudiced draftsman, the lobby will supply him with a partisan draftsman, whose workmanship may be very inferior.

Mr. Toll: When a legislator who is not a lawyer undertakes to write a law, he especially needs a lawyer to help him. And the American Legislators' Association has collected statistics which show that of the 7,500 legislators in the United States, only one-fourth are lawyers—and that there are as many farmers as lawyers.

Mr. Witte: But, of course, legal training alone does not make a competent draftsman: The bill-drafter should pray for that sort of ingenuity and imagination which will enable him to visualize how a paper scheme will work out in practice. In fact, there is more than a suspicion that one of the difficulties with many of our laws is that they are couched in the archaic, redundant style employed in legal documents.

Mr. Toll: Now, Mr. Billman, tell us something about the writing of bills.

Mr. Billman: Well, if the legislator has arrived at a fairly definite idea of how he wants his plan to operate, it is one thing. But it is another matter if he merely realizes that a certain situation ought to be corrected, but does not know exactly how it should be done. For instance, he may come into our office in the Capitol at Springfield and say, "People have lost money through buying mortgage bonds. What shall we do to give them protection?" Now, between that general idea and a finished law, there is a long road to travel.

Somebody has said that all statutes are grumbles. In other words all laws are passed to remedy imperfect conditions. Now, there are certain logical, distinct steps in preparing a law. The first step is to understand exactly what the trouble is which you are trying to remedy. The second step is to understand the legal situation which produces the trouble, or which relates to it. After we know what the situation is which must be corrected, we have to decide accurately what is to be done to accomplish the cure.

The importance of this step in the operation cannot be emphasized too strongly. No one can write a plain, understandable law, if he has only a hazy idea himself of what he is trying to do. Sad to say, this is the mental state of the author of many a statute.

Mr. Witte: At this point, too, Mr. Billman, you may have an opportunity to render another invaluable service to the legislator. For it may be that in some respects his proposal violates the provisions of the state constitution or the federal constitution. In many cases the author of a proposed law would not be conscious of this fact, if it were not called to his attention by the draftsman.

Mr. Billman: Yes, Mr. Witte, and every unconstitutional law means litigation, uncertainty, and expense to the persons whose rights are affected by it.

Mr. Toll: Of course, Mr. Billman, there is a direct connection between the original drafting of statutes, and the subsequent revision of statutes.

Mr. Billman: Yes, even if every law that was passed were correct in substance, and correct in form, there is another problem which confronts every legislature—and that is a problem which a great majority of our legislatures neglect woefully—the revision of their laws.

Mr. Toll: Yes, in every state, the compiled statutes—in other words, the accumulated laws which have been enacted by the legislature, session after session—are a jig-saw puzzle. This puzzle is composed of several thousand pieces. Each piece is a single statute which has been passed by the legislature at some time during the state's history. For in each state, every constitutional statute which the legislature has ever passed is still law today, unless the legislature has since revised it, or repealed it.

Mr. Billman: When you examine the statutes of a state you may find—side by side—laws that were passed in 1800, 1830, 1900, and 1930.

Mr. Toll: Yes, and the sad part about this jig-saw puzzle—and it is a somewhat discouraging feature—is that the pieces do not fit together. Some of them are dupli-
cates, some of them overlap, once or twice or three times; some of them are too large; some of them are too small; and there are gaps for which there are no pieces at all.

Mr. Billman: In each state, it should be somebody's job to work over the entire irregular jig-saw collection of statutes, and to make them all fit together. It is every legislator's job to get good laws passed; but when they have been passed, in many states it is nobody's especial responsibility to keep them revised, and to keep them weeded out.

Mr. Toll: That responsibility of revising the statutes is certainly one of the three principal functions of a legislative reference staff.

Mr. Billman: Yes. During the session the drafting experts should be giving their attention to putting the new laws into correct shape. Between sessions, they should be giving attention to putting the old laws into shape. By the way, Senator, I think something should be said as to the number of states that have legislative reference departments.

Mr. Toll: Well, there are not more than half a dozen states which have adequate expert counsel for their legislators in all three of the legislative-reference functions—first, in research concerning the substance of laws; second, in drafting (or writing) the proposed laws in proper form; and third, in revising the compiled laws between the sessions. Legislative reference services are to be found scattered through the states from Pacific to Atlantic, but few of them have adequate staffs—and usually only some one phase of legislative reference work is stressed in a state.

Mr. Toll: There are about half a dozen states in which the legislature has an expert staff of at least six or eight people who work the year round; and each of those states finds that it is good economy to do so. For our state governments are spending two billion dollars every year, and they are making laws which affect every man, woman and child in the country. Consequently, it is worth while for them to have adequate expert advice for their legislatures. But in about fifteen states there is no adequate agency for legislative reference service. In other words, in a vast majority of the states the legislative reference service either does not exist, or else it is operating with an inadequate staff. And many of these states are paying the price of this inadequacy through the enactment of unscientific and badly drafted laws. This has been particularly costly this year, when all states have had to work out so many new measures to meet the economic emergency.

Mr. Billman: Senator Toll, the picture would not be complete unless you said something about the Interstate Reference Bureau.

Mr. Toll: Well, all of the legislative reference bureaus which are functioning in the separate states are operating in the same general field. For instance, at this year's sessions, the legislatures in practically all agricultural states have considered the advisability of moratoria on farm mortgages. At this year's sessions, too, a majority of the legislatures have had proposals for tobacco taxes, for the revision of banking codes, and for the consolidation of bureaus. But it would be a wicked waste of effort if the legislative reference bureau in each of the affected states made a survey of the situation in all of the other states, every time that such a question arose.

Consequently, three and a half years ago the American Legislators' Association established in Chicago the Interstate Reference Bureau. This Bureau serves as a clearing house between all of the state legislative reference bureaus. On its staff there have at all times been at least ten or twelve college graduates, and it has become a recognized pivotal point for legislative information.

Mr. Witte: In other words, the Interstate Reference Bureau functions more or less as a telephone switchboard?

Mr. Toll: Yes, exactly. Any legislator, or the director of any legislative reference bureau, can simply plug in and ask to be connected with the best source of information concerning any legislative topic. It is then the duty of the Interstate Reference Bureau to secure the exact information or advice which he desires from the best impartial source of information in the country. This source of information may be some legislative reference bureau, or some other department of one of the state governments, or it may be some department of the federal government, or the political science department of some university, or it may be a
national organization, such as the American Bar Association, the American Public Welfare Association, the National Conference of Social Work, the National Education Association, the National Tax Association, and so on and so forth. The usefulness of this Interstate Reference Bureau has been greatly increased through the whole-hearted assistance of every legislative reference bureau which is functioning today in any of the states.

Mr. Billman: Yes, and the usefulness of the state bureaus has been increased through the services of the Interstate Reference Bureau.

Mr. Toll: Yes, it is a work of mutual cooperation, in an effort to integrate all of the work that is being done anywhere in the United States in the cause of the improvement of state legislation. This bureau of the American Legislators' Association sends bulletins every week to each state legislative reference bureau. It also issues a sort of trade journal for legislators—a monthly magazine, known as "State Government." During the legislative sessions, this magazine goes to every one of the 7,500 state legislators in the United States.

Mr. Billman: I think that it would be of general interest to know how it has been possible to get this work started.

Mr. Toll: It has been financed primarily by two of the larger foundations, but several of the states have also contributed toward its support. This project has received formal endorsement in the legislatures of no less than forty-six states.

Mr. Billman: The service of the Interstate Reference Bureau is not confined to legislators, is it?

Mr. Toll: No, this bureau is working in conjunction with the Interstate Assembly which was recently organized by the American Legislators' Association, with the assistance of President Roosevelt and with the personal participation of former President Hoover. The Interstate Assembly is a biennial meeting, composed of three delegates from each state: one sent by the Senate, one by the House of Representatives, and one by the Governor. Just as the services of the Wisconsin Legislative Reference Library are available to executive and other departments of the Wisconsin state government, so the services of the Interstate Reference Bureau are available to the executive and other departments of the various state governments.

Mr. Witte: There is still a great field for the development of adequate legislative reference services throughout the states.

Mr. Toll: Yes, we have only scratched the surface. The present need for better government is sure to result in a popular demand for more adequate expert counsel for our state legislators. I anticipate that the next five years will witness a great development of legislative reference service in the various states—as well as a substantial development of the Interstate Reference Bureau.

Mr. Billman: At any rate, this is a problem which merits the concentrated attention of every man and woman who is conscious of the necessity for improving legislation in the states.

Mr. Toll: Yes, it is actually a matter of direct personal concern to each citizen of this country that the relatively inexperienced men who are making the laws of the states should have adequate expert counsel ready to assist them at all times in legislative research, in drawing up proposed laws, and in revising the statutes. Nor can the legislative reference service in any one of the 48 states fulfill its possibilities until it has been placed in closer communication with the similar bureaus in other states.

Mr. Witte: In other words, as a nation we should not be satisfied until we have developed an adequate legislative reference service in each of the 48 states.

Mr. Toll: No, nor should we be satisfied until we have made the research work of each of these state services readily available for each of the others. Only by the development of an adequate clearing house can wasteful duplication of effort be avoided. And only by such integration can we save each state from the necessity of working from the ground up, and enable it to build upon the knowledge and the experience of its fellow states.