

CHAPTER XI

The Attorney-Generals' Section of the Council of State Governments

The Section of the Central Secretariat which Serves the National Association of Attorney-Generals

FOR a number of years, members of the National Association of Attorney-Generals had discussed the desirability of establishing a clearing house for opinions of the attorney-generals of the several states, but no real action was taken until the year 1935. The Association itself, necessarily having a limited membership, was not financially able to establish a full-time secretariat and to underwrite such a project.

Mr. Ernest L. Averill, at that time Deputy Attorney-General of the State of Connecticut, and Mr. Laurence C. Jones, Attorney-General of Vermont, took an especial interest in the project and pushed the plan toward its eventual fruition. In January, 1935, representing the Association, Mr. Averill attended the first meeting of the Council of State Governments in Washington, D. C., which was being held in conjunction with the meeting of American Legislators Association and of the Interstate Commission on Conflicting Taxation. At that meeting he suggested that it would be to the benefit of the Council of State Governments, as well as to the attorney-generals of the several states, if the Council should undertake the establishment of such a clearing house. This suggestion met with favor, and a resolution was adopted recommending the establishment of a clearing house in the event the state attorney-generals of the country desired its establishment.

The Idea Grows

At the beginning of March in the same year, Mr. Averill discussed the matter with the legislators of the forty-eight states then meeting at the Second Interstate Assembly held in Washington, D. C. Again he pro-

posed the establishment of a clearing house for attorney-generals' opinions, and found that the suggestion met with general approval by all of those present.

The next affirmative step was taken at a regional meeting of attorney-generals in Hartford, May 15-16, 1935, when attorney-generals from the Middle Atlantic and New England states gathered to discuss interstate compacts and interstate agreements. At that meeting Attorney-General Paul A. Dever of Massachusetts stressed the advisability of establishing a clearing house, pointing out the enormous saving of time and of duplication of effort which could be made possible through such a service. He was warmly supported by Attorney-General Laurence C. Jones of Vermont, and as a result of that meeting it was resolved that the conference recommend to the National Association that there be established a clearing house to which the opinions of the attorney-generals of the several states could be forwarded for distribution to all attorney-generals. Mr. Averill then submitted the proposal to the members of the executive committee of the Association and received a favorable response.

In the meantime, Mr. Henry W. Toll, executive director of the Council of State Governments, had interested himself in the National Association of Attorney-Generals, and in particular with the idea of establishing such a clearing house.

When the Association assembled at its annual meeting at Los Angeles in July, 1935, Mr. Averill, as the main point of his presidential report, reviewed the history of the movement and recommended that a committee be appointed to cooperate with the executive director of the Council of State

Governments in setting up the machinery for such a clearing house.

A Clearing House

Mr. Toll, present at the meeting as he had been at several past meetings, discussed the organization of the Council of State Governments and the extent to which the Council would go in establishing such a clearing house. The proposal met with unanimous acceptance and a committee was appointed to conclude the agreement. The agreement was reduced to writing and in 1936 the Attorney-Generals' Section of the Council of State Governments became an actuality.

The beginning was modest, commencing with one staff member, Miss Evelyn Sparling, who conducted general clearing house services by way of answering inquiries and issuing bulletins. On November 1, Mr. Ray Nagle, former president of the Association, resigned his office as Attorney-General of Montana, to join the staff, at which time definite plans for a regular weekly digest were formulated. The actual publishing of this digest at the time of this writing has reached its fourteenth issue and each attorney-general in the United States has received copies.

Early in the planning it was apparent that it would be impossible, from the standpoint of finance, to distribute every opinion of every attorney-general. It was apparent also that only selected opinions should be digested and distributed because a large percentage of the opinions dealt with matters of purely local concern and would be of no assistance to attorney-generals of other states. It was inevitable that the Attorney-Generals' Section would have to digest and distribute only those opinions which dealt with law general in its application.

The contemplated name "Digest" was changed to "Report," because many references of value other than opinions were coming to notice. Upon the question of taxation involving exemption and instrumentalities of the federal government, for example, not only were there attorney-generals' opinions on the subject, but cases were being decided which should be called to the attention of the attorney-generals. Papers were being read at meetings and conventions, while there were miscellaneous publications

dealing with the subject. Very useful articles in law reviews were not being utilized generally, so it was determined to call attention to such material from time to time.

The first issue of the digest was devoted solely to the question of state taxation of the income of officers and employees of the federal agencies or instrumentalities. An opinion by the attorney-general of West Virginia and one from the attorney-general of Montana, a note upon a recent case by the Supreme Court of the United States, reference to a paper by Attorney-General Herbert R. O'Connor, of Maryland, and an article by the assistant director of the New York State Income Tax Bureau completed the initial number.

Present Importance

Perhaps the most valuable service which will be accomplished during the coming year will be the clearance of information upon the Social Security Act and the various state laws supplementary to it. The laws of the various states will have many essentially similar provisions, because the state plan must meet conditions imposed by the Social Security Act, and every attorney-general will be presented with countless problems relating to the interpretation of these laws. It is highly desirable that each attorney-general have the benefit of all information possible when presented with a new problem in this new field in order that the people of the different states may receive the uniform treatment. To do this, similar provisions of the state laws must be similarly construed, and this, of course, is possible only if the different attorney-generals agree on underlying principles when interpreting these laws.

Clearance on other state-federal activities will loom into prominence. A rapid multiplication of statutes has created a larger field in taxation. Clearance of information upon this subject is an urgent matter, and by proper clearance much confusion can be saved. If, for example, salaries of employees of certain governmental agencies are immune from state income taxation, it is much better that the attorney-general be informed, and that he so rule, thus avoiding payment under protest and the usual costly and cumbersome procedure of

refund. So too with the collection of gasoline license taxes. The states, by prompt clearance of information, may also increase their revenues by requiring payment in cases when they had been granting immunities and where no immunity should have been granted.

Informational Service

In addition to publishing the weekly "Reports," the Attorney-Generals' Section has from time to time gathered information and has issued bulletins on the legal aspects of such subjects as "The Right of State Banks to Invest in Mortgages Insured under the National Housing Act"; "Local Taxation of RFC Owned Bank Stock"; "State Actions to Recover Processing Taxes Paid under the Agricultural Adjustment Act"; "Effect of Sections 77 or 77b of the Bankruptcy Act upon the Collection of State Franchise Taxes"; "Resettlement Administration Plan—Permitting Recipients of Monetary Grants to Enter into Voluntary Work Agreements for the Repayment of the Grants"; and "Can the State Rural Rehabilitation Corporation Transfer Its Property to the United States upon Dissolution?"

It has circulated outstanding papers or addresses, such as "The Problem of the Minimum Wage," by Solicitor-General Epstein of New York. It has reprinted and distributed particularly timely and important opinions.

Frequent inquiries on special subjects are received and information furnished.

The following are samples of the nature of such inquiries:

"What amount of bank stock owned by RFC is liable for taxation in various states and how much revenue will result therefrom?" (Telegram.)

"Methods used in the various states in sentencing prisoners."

"Statutes relating to the manner in which trust companies must hold fiduciary investments."

Without undertaking to infringe upon any of the autonomy of the Association, the Section is prepared to help in organizing committees, keeping records, collecting dues, planning, organizing, conducting, and reporting annual meetings. In short, it is ambitious to be of the greatest utility to the Association and to the attorney-generals of the several states.

The report is not intended to be a newsletter or a magazine. It is intended to be a technical tool for use in the attorney-general's library, in the same manner as any law book. It is set up in the usual legal style familiar to the practicing lawyer. It avoids editorial comment and seeks only to direct the attention of the attorney-generals to opinions, cases, legal articles, books and other publications which have a direct bearing upon problems which will confront them. A cumulative index is issued at regular intervals so that an attorney-general faced with a new question can see whether or not some other attorney-general has passed upon the same subject and whether or not writers of legal articles have considered his problem.

CHAPTER XII

Commissions on Interstate Coöperation¹

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EXTRAORDINARY progress has been made in the two-year-old movement to organize permanent machinery for coöperation between states. At the end of June 1937, thirty-five states had established Commissions on Interstate Coöperation, in order to provide machinery to alleviate the governmental chaos which exists in this field, and to check the tendency towards increased centralization in fields which the states are best suited to control.

It is time that the powers and duties of the states and the federal government be canvassed again in the light of modern conditions, in order to determine what functions may most appropriately be performed on the State level, and which can be most adequately administered under centralized control. Without permanent machinery for the development of harmonious action among the states it would appear that practically all functions, regardless of sound administrative theory, would eventually be absorbed by the federal government. With the founding of the Council of State Governments and the recognition of the Council as their joint agency by thirty-five States, the tendency has been put in check and the States are prepared to assume responsibility for the duties which are theirs.

Integral Parts of Council

Commissions on Interstate Coöperation are the basic elements in the organization of the Council of State Governments. The Council is made up of member states, who are represented in the work of the Council by these Commissions. It had already been fully recognized that each state would need to coöperate with one or more other states on almost every problem of government, and that legislators, administrators, and

governors would be involved in the conferences necessary to implement this coöperation. Therefore, in the model bill establishing the Commission it was provided that there should be represented on each Commission five members of each house of the legislature and five administrative officers, with the governor as ex-officio member.

It is the major function of these Commissions to carry forward participation of their respective States as members of the Council of State Governments. The Commissions have the further duty to encourage and assist the legislative, executive, administrative, and judicial officials and employees of their States to develop friendly contact by correspondence, by conference, and otherwise, with officials and employees of other States, of the federal government, and of local units of government. The model act, creating the Commissions, declares the Council of State Governments to be a joint governmental agency of the States which coöperate through it. This coöperation, of course, is accomplished primarily through the Commissions on Interstate Coöperation and secondarily through the interstate commissions which are described elsewhere in this volume.

Practical Activities

Suppose, for instance, that the citizens of New Jersey seek relief from what they consider to be discriminatory automobile and truck licensing provisions in Pennsylvania or New York. An appeal from the highway department of New Jersey to the

¹For a background discussion of the theory upon which these Commissions are based, readers may see Chapter VIII, pp. 93-104, Vol. I, 3rd Edition, 1935, "The Book of the States."