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Report to the Colorado General Assembly

PROPOSED REORGANIZATION

OF

FINANCE AND ADMINISTRATIVE SERVICES



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COLORADO LEGISLATIVE COUNCIL

RESEARCH PUBLICATION NO. 87

JANUARY 1964

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Floyd Oliver
Robert L. Knous, Lt. Governor

* * * * *

The Legislative Council, which is composed of five Senators, six Representatives, and the presiding officers of the two houses, serves as a continuing research agency for the legislature through the maintenance of a trained staff. Between sessions, research activities are concentrated on the study of relatively broad problems formally proposed by legislators, and the publication and distribution of factual reports to aid in their solution.

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PROPOSED REORGANIZATION OF
FINANCE AND ADMINISTRATIVE SERVICES:

Supplemental Report to Legislative
Council Research Publication No. 80

LEGISLATIVE COUNCIL
REPORT TO THE
COLORADO GENERAL ASSEMBLY

Research Publication No. 87
January, 1964

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COLORADO GENERAL ASSEMBLY



LEGISLATIVE COUNCIL

ROOM 341, STATE CAPITOL
DENVER 2, COLORADO
222-9911—EXTENSION 2285

January 13, 1964

MEMBERS

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Sen. Frank L. Gill
Sen. Floyd Oliver

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Rep. Joseph V. Calabrese
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Rep. John W. Nichols
Rep. Clarence H. Quinlan

To Members of the Forty-fourth Colorado General Assembly:

As authorized by the provisions of House Joint Resolution No. 25, 1963 regular session, the Legislative Council submits the accompanying summary report and recommendations concerning the administrative organization of state government in Colorado. This report supplements a report submitted previously for your consideration in the 1964 session.

The accompanying report was accepted for submission to the General Assembly by the Council at a special meeting held on January 13, 1964, with the Council adopting the position that the committee's lack of time to submit specific legislation concerning the additional four proposals is not intended to preclude the members of the Forty-fourth General Assembly from acting on these matters.

Respectfully submitted,

Representative C. P. (Doc) Lamb
Chairman

CPL/cg

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COLORADO GENERAL ASSEMBLY



LEGISLATIVE COUNCIL

ROOM 341, STATE CAPITOL
DENVER 2, COLORADO
222-9911—EXTENSION 2285

January 10, 1964

MEMBERS

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Sen. William E. Bledsoe
Sen. Edward J. Byrne
Sen. Frank L. Gill
Sen. Floyd Oliver

Speaker John D. Vanderhoof
Rep. Joseph V. Calabrese
Rep. John L. Kane
Rep. William O. Lennox
Rep. John W. Nichols
Rep. Clarence H. Quinlan


Representative C. P. Lamb, Chairman
Colorado Legislative Council
Room 341, State Capitol
Denver, Colorado

Dear Mr. Chairman:

Pursuant to the authorization granted by the Legislative Council at its December meeting, the Committee on Administrative Organization has continued to consider various proposals relating to appointive positions of the Governor and to revisions in the state's organizational structure in such areas as fiscal management and administrative services.

Your committee has completed its consideration of these subjects, at least until the completion of the 1964 session, and submits the accompanying summary report and recommendations.

Respectfully submitted,


Floyd Oliver, Chairman
Committee on Administrative
Organization of State
Government

FL/cg

SUPPLEMENT TO 1963 REPORT
OF COMMITTEE ON ADMINISTRATIVE ORGANIZATION OF STATE GOVERNMENT

Proposed Departments of Finance and Administrative Services

In its 1963 report, the Committee on Administrative Organization of State Government of the Colorado Legislative Council pointed out that it had been reviewing jointly with the Governor various proposals to realign the appointive positions granted the Governor under the constitution in order to provide a better and more effective administrative structure in the executive branch of state government, and that the committee would submit a separate report thereon during the early part of the 1964 session. To review, the committee reported:

Section 13 of Article XII, Colorado Constitution, includes the various positions exempt from the classified civil service of the state. Among the exempt positions are "the governor's private secretary and three confidential employees of his office, ...one deputy of each elective officer, the position involving the duties incident at present to the position of that deputy of the secretary of state, known as deputy commissioner of labor and the incumbent thereof..." In addition, Section 1 of Article XVI, Colorado Constitution, provides that the Governor shall appoint a commissioner of mines, i.e., a position not under civil service.

Under the law, the General Assembly has designated the three confidential employees of the Governor to be the director of revenue, the director of institutions, and the state purchasing agent, and the commissioner of mines serves as the coordinator of the natural resources division. No statutory provision has been made for the deputy to the Governor nor for the deputy commissioner of labor.

Since the committee approved its 1963 report on October 16, 1963, three meetings have been held to review possible administrative reorganizations in the executive branch of state government -- on November 15 and December 11, 1963, and on January 9, 1964. At this latter meeting, the committee voted to recommend administrative reorganizations involving proposed department of finance and administrative services, but the committee believes more study is needed in regard to creating or expanding offices of coordinators for the areas of natural resources; institutions, rehabilitation, parole, and the school for the deaf and blind; health, education, welfare, state homes for the aged, and veterans' affairs; and employment, industrial commission, and commerce and development.

Proposed Department of Finance

The committee recommends the creation of a department of finance to include a consolidation of some of the related activities and programs now located in the department of revenue, the division

of accounts and control, and the state planning division. Such a proposal could result in a department having the following divisions--accounts and control, budget, management analysis, revenue, and motor vehicles. Thirty-three of the other 49 states have combined similar services into administrative or finance departments.

Generally, the duties assigned these divisions would be much the same as the ones they have at the present time. However, in addition to its present functions, the division of budget should include a capital construction section and a statistical research section in order to promote greater coordination and information relating to the long-range capital construction planning program and to provide data on various factors essential to the budgeting process.

The position of director of the department of revenue, now appointed by the Governor, would be used for the director of finance under this proposal. The committee believes that this proposed reorganization can be effected with little or no increase in cost to the state and will ultimately result in economies to the state. Furthermore, this proposal will provide the Governor -- the person who bears the ultimate responsibility for the executive budget -- with more direct control over its preparation, as well as expanded information upon which the budget is based.

Proposed Department of Administrative Services

Colorado's state government contains a number of agencies and programs whose main function is to provide services to other state agencies and not directly to the general public. The committee believes that these service-type agencies should be consolidated into one state department, much the same as has been done in many of the other 49 states.

General administrative services may be classified as "house-keeping" activities, i.e., services necessary in the day-to-day administration of state government. The following list of services are examples of the types of activities handled by general service agencies in various other states:

- (1) purchase of materials, supplies, and equipment;
- (2) motor pool;
- (3) central stores or warehouse;
- (4) records control and storage;
- (5) office machine repair and maintenance shop;
- (6) mail and messenger service;
- (7) buildings and grounds management;
- (8) telephone and switchboard service;
- (9) duplicating service;
- (10) stenographic service or a central dictaphone operation;
- (11) data processing; and
- (12) addressograph system.

The committee has made a review of Colorado's program of providing administrative services and notes that the state now provides the aforementioned services with the exception of a messenger service,

stenographic or dictaphone service, repair and maintenance service, and addressograph system. However, these services in Colorado are not located within one department but are apportioned among the purchasing division, planning division, accounts and control division, and the archives and public records division.

Consequently, the committee recommends the creation of a department of administrative services to consolidate into one state agency these various related service activities now located in several separate state agencies. Such a department could include the following divisions: purchasing, general services (i.e., central mailing, central duplicating, central telephone or switchboard, motor pool, etc.), archives and public records, buildings and grounds, public works (i.e., to supervise capital construction projects after they have been approved), and data processing. The director of the proposed department would be appointed by the Governor and would not be under civil service, using the position of the state purchasing agent. Again, the committee believes this reorganization would not result in increased costs to the state and would result in more efficient operations.

Other Offices of Coordinators

The committee has been discussing and giving formal consideration to the proposed departments of finance and administrative services for some time. However, four other proposals for reorganization and coordination were presented to the committee for the first time at its meeting on December 11, 1963. The committee believes that it has not had sufficient time to consider these four proposals and the committee therefore is not recommending legislative action at this time. The committee would like to point out, however, that with this decision it is not saying whether these proposals are good or bad, but rather that it would like to give more time to their study and consideration before making any final recommendations as a committee.

In brief, the first of these proposals would add the agriculture department to the division of natural resources, which is headed by the coordinator of natural resources (commissioner of mines) who is appointed by the Governor. The second proposal would designate the director of institutions, who is also appointed by the Governor outside of civil service, as rehabilitation coordinator for the department of institutions, department of rehabilitation, state board of parole, and the Colorado school for the deaf and the blind.

The third proposal would provide for a deputy to the Governor to act as health, education, and welfare coordinator and would involve the following state agencies -- state department of education, state department of public welfare, state department of public health, state homes for the aged, and the department of veterans' affairs. The fourth proposal would utilize that exempt position known as the deputy commissioner of labor who would act as economic development coordinator and the following departments and agencies would be assigned to him -- department of employment, industrial commission, and the division of commerce and development.

3. The character of our present day economy makes uniformity of state law in this field a necessity in order to facilitate economic activity for the benefit of the commerce and industry of our own state. Over the past sixty years, and particularly in the past twenty years, commercial activity has tended less and less to limit its operational sphere to one state and the multi-state character of such activity has greatly increased. It would indeed aid Colorado economy if its laws covering these fields were in accord with the laws of the principal commercial states of the United States and this would be the case if the uniform commercial code were enacted in Colorado. In our judgment the code offers the only present hope of achieving such desirable modernization, clarification, and uniformity.

4. We believe that the code in detailing and specifying particular rules to govern given situations, particularly where that is not the case in our present law, will make it much easier to determine with greater assurance of certainty just what is the law applicable to particular commercial situations. The code states principles directly and concisely which now can be discovered only by painstaking research among scattered statutes plus decisional law.

5. At the time of filing this report, namely, November, 1964, there are now 29 states which have enacted the code.

It is interesting to note that the code has not only been approved in highly industrialized and commercial states such as Connecticut, Illinois, Massachusetts, Michigan, New Jersey, New York, Ohio and Pennsylvania, but also in such agricultural states as Arkansas, Georgia, New Mexico, Oklahoma, Oregon and Wyoming.

The code either became effective or will become effective in Colorado's neighboring states as follows:

Oklahoma, December 31, 1962.
New Mexico, December 31, 1961.
Nebraska, September 1, 1965.
Wyoming, January 1, 1962.
Utah, Under study.

In most of these states, extensive studies of the code were made by highly-qualified independent groups which concluded that enactment was most desirable, and experience to date in states where the code has become effective has confirmed the wisdom of these conclusions. We believe the code will eventually be adopted throughout the United States.

6. We are satisfied from our study of the code that its drafting has on the whole been exceptionally well done. Under the code it is much easier for one to put his finger on what the law is and to determine what provision governs a particular situation. The members of our committee feel that the code will therefore be most helpful in shaping transactions so as to reduce the risk of misunderstanding and in resolving disputes when they do occur without the necessity of having recourse to expensive and sometimes prolonged litigation. Experience under the code in Pennsylvania and other states has substantiated this thought.

APPENDIX B

THE UNIFORM COMMERCIAL CODE COMPARED WITH PRESENT COLORADO LAW

(Prepared by the Uniform Commercial Code Committee
of the Colorado Bar Association)

ARTICLE I - GENERAL PROVISIONS

The uniform commercial code is intended to be a "code" in the true sense, with certain general overriding principles running throughout. These general principles are set forth in Part I and declare that the code should be liberally construed and applied to promote policies of uniformity, simplification, and modernization of the law governing commercial transactions, and to permit the continued expansion of commercial practices through custom, usage, and agreement of the parties. Except as otherwise provided in the act, however, the effect of any of its provisions may be varied by agreement between the parties, except that obligations of good faith, diligence, reasonableness, and care may not be disclaimed. The code does not try to provide an answer for every problem which can arise from commercial transactions; its provisions are supplemented by principles of law and equity, including the law merchant, and the law relating to capacity to contract, agency, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy, or other validating or invalidating cause.

The code imposes an obligation of good faith in the performance or enforcement of every contract duty, and defines good faith as honesty in fact in the conduct or transaction concerned. An important question is to what extent the code imposes an overriding duty of fair dealing on the parties to a contract. In good faith purchaser cases, "honesty in fact" means lack of knowledge - a subjective test; examples are good faith as a requisite for holding in due course (Section 3-302(1)), or as a requisite for taking good title from a person with voidable title (Section 2-403(1)). Except in the foregoing instances, however, the code imposes an obligation of good faith in the sense of objective fairness or reasonableness. Section 2-103 (1)(b) states that good faith in the case of a merchant means honesty in fact and the observance of reasonable commercial standards of fair dealing in the trade, and Section 2-311 (1) states that where a contract leaves particulars of performance to be specified by one of the parties, such specification must be made "in good faith and within limits set by commercial reasonableness."

Another general principle declared in Part I that is of importance throughout the code is that the terms of an agreement can be supplemented, qualified, or given a particular meaning by the course of dealing between the parties or by usage of the trade (Section 1-205).

The parties to a contract are given the right to choose the applicable law when the transaction bears a reasonable relation to Colorado and also to another state, but the reasonable relation principle limits their right to choose the law of another state. When the parties do not agree on the law to apply, the UCC in Colorado will apply if the transaction bears an appropriate relation to Colorado.