

THE CODE OF 1924

On November 12, 1838, Governor Robert Lucas suggested to the Legislative Assembly of the Territory of Iowa that a committee of not more than three persons be appointed "to digest and prepare a complete code of laws during the recess of the Legislature, and to report them for consideration at the ensuing session." Although this suggestion was not followed, a joint resolution was adopted requesting the judges of the Supreme Court "to furnish this Legislative Assembly, during its present session, with such bills, as will, in their opinion, form a proper code of jurisprudence". This request was complied with and many of the most important laws passed at this first session of the Legislative Assembly were written by Judge Charles Mason, at that time Chief Justice of the Territorial Supreme Court. These laws, although arranged topically and published in an alphabetical order, were in reality nothing more than session laws, but the volume containing them has been looked upon as the first "code" in Iowa and is commonly referred to as *The Old Blue Book*.¹

It is a significant fact that a code of whatever character soon becomes out of date. Additional laws passed by succeeding sessions of the legislature, together with amendments and repeals of the existing laws, renders new compilations necessary. Accordingly in 1842 a joint legislative committee on revision was appointed and the following year a new compilation — *The Blue Book* — was published.²

¹ Clark's *Codification of Statute Law in Iowa* in the *Iowa Applied History Series*, Vol. III, pp. 402, 403.

² Clark's *Codification of Statute Law in Iowa* in the *Iowa Applied History Series*, Vol. III, pp. 403, 404.

The need of a complete revision was, however, apparent by 1847, and a commission consisting of Charles Mason, William G. Woodward, and Stephen Hempstead was appointed "to draft, revise and prepare a code of the laws for the State of Iowa." The result of their work was the *Code of 1851*, the first real code of Iowa. On February 5, 1851, this code was adopted as a whole by both houses of the General Assembly and signed by the Governor.³

The decade from 1850 to 1860 was marked by many legislative changes in Iowa, hence there resulted a need of re-writing the laws. In 1858 a commission was appointed "to conform the laws of the State to the Constitution" and also "to prepare a code of civil and criminal procedure, and revise and codify the laws of the State". In the work of revision the commission followed the arrangement of the *Code of 1851* as to parts, titles, chapters, and sections. The volume which resulted is known as the *Revision of 1860*. This was a compilation of existing laws and not a code in the strict sense of being adopted at a single session of the legislature. Portions of this volume were codifications of existing laws — the Code of Civil Practice and Procedure and the Code of Criminal Practice and Procedure.

The Thirteenth General Assembly in 1870 appointed a commission of three men to prepare another revision. William H. Seevers of Oskaloosa, John C. Polley of Clinton, and William J. Knight of Dubuque were the men appointed on this committee. Mr. Polley, however, removed from the State before the commission was ready to begin work. Accordingly Governor Samuel Merrill appointed William G. Hammond, Chancellor of the Law School of the University of Iowa, to fill the vacancy. The committee reported to the Fourteenth General Assembly, and the following year, after an adjourned legislative session of thirty-six

³ *Code of 1924* (Preface), p. v.

days, the *Code of 1873* was published. This volume remained the official code for a period of twenty-four years, although private compilations known as McClain's Code and Miller's Code were in current use.⁴

Early in the nineties, however, it became apparent that there should be recodification of the statutes of the State. The commission of five members appointed for this purpose was empowered to "change the phraseology and make any and all alterations necessary to improve, systematize, harmonize and make the laws clear and intelligible." The men chosen for this work were Horace S. Winslow of Newton, Horatio F. Dale of Des Moines, John Y. Stone of Glenwood, Charles Baker of Iowa City, and Judge Emlin McClain, Chancellor of the Law School of the State University of Iowa. Ezra C. Ebersole was appointed code editor, and a code supervising committee — made up of two members of the Senate and three members of the House — was appointed to supervise the publication of the work.

The *Code of 1897* was much larger than any of the former codes. The increase in size was due largely to the fact that extensive and valuable annotations, prepared by Judge McClain, were included. This volume was adopted at one session of the legislature — each title being passed as a separate act. Furthermore certain classes of prior laws not included in the code were repealed. Thus it constituted a real code rather than a compilation.⁵

Since 1897 there have been three supplements to the code — the *Supplement of 1902*, the *Supplement of 1907*, and the *Supplement of 1913*. In addition the latter was further augmented by the *Supplemental Supplement of 1915*.⁶

⁴ Clark's *Codification of Statute Law in Iowa* in the *Iowa Applied History Series*, Vol. III, pp. 405-408.

⁵ *Laws of Iowa*, 1894, p. 112; *Code of 1897*, Sec. 49.

⁶ Clark's *Codification of Statute Law in Iowa* in the *Iowa Applied History*

MAKING THE CODE OF 1924

Notwithstanding the publication of code supplements, the volume of legislation since the *Code of 1897* had so increased by the year 1919, that it was difficult to ascertain the exact status of the statute law. Accordingly the Thirty-eighth General Assembly created a Code Commission with authority to compile in a single volume all of the existing statutory laws of the State which were of a general and permanent nature, and to rearrange, revise, and rewrite such parts as were deemed necessary. It was stipulated that this work should be completed by December 1, 1919.

The law further provided that the commission should consist of the Supreme Court Reporter, and two other persons to be selected by the Governor from a list of five persons recommended by the Chief Justice of the Supreme Court. In accordance with this law Chief Justice Scott M. Ladd submitted the names of W. A. Helsell of Odebolt, J. C. Mabry of Albia, E. D. Perry of Des Moines, J. H. Trewin of Cedar Rapids, and Chas. M. Waterman of Davenport. From this list Governor Harding selected J. H. Trewin and J. C. Mabry who, together with U. G. Whitney, Supreme Court Reporter, constituted the members of the Code Commission. Immediately upon appointment, the commission organized with Mr. Trewin as chairman and Mr. Whitney as secretary.

Realizing that without special aid the work could not be completed within the time prescribed, the commission employed Ralph MacLean to assist Mr. Trewin at Cedar Rapids, C. A. Robbins to assist Mr. Mabry at Albia, and O. K. Patton to assist Mr. Whitney at Des Moines. The

Series, Vol. III, pp. 411-413. A more complete history of codification in Iowa prior to the year 1919 is given in a series of articles by Clifford Powell in *THE IOWA JOURNAL OF HISTORY AND POLITICS*, Vols. IX-XII, and *A Review of the Work of the Iowa Code Commission*, by Jacob Van der Zee, in *THE IOWA JOURNAL OF HISTORY AND POLITICS*, Vol. XVIII, pp. 477-533.

commission also obtained the services of John E. Brindley of Ames to aid in compiling and codifying the State tax laws, H. C. Horack of Iowa City to analyze the uniform conditional sales act, and Jacob Van der Zee of Iowa City to prepare the index.⁷

The commissioners interpreted the law as authorizing them to prepare a compilation of the laws of the State, omitting all acts of a local or temporary character, all repealed legislation, and all annotations and court decisions, and to redraft in the form of code revision bills such portions of the existing law as seemed advisable.

The Code Commission in discharge of this duty prepared: (1) the *Compiled Code of 1919*, which consisted of all of the statutory law of a general and permanent nature reclassified and rearranged, but otherwise unaltered; and (2) the *Report of the Code Commission*, which consisted of 253 recommendations in the form of code revision bills. In preparing the *Compiled Code* no actual changes were made in the law. Indeed, it was compiled only as preparatory to the later work of codification, and was not intended for general use.⁸

It should be noted, however, that a new classification of the existing law was adopted. The *Code of 1897* consisted of four parts: Public Law, Private Law, Code of Civil Practice, and Code of Criminal Procedure; each of these was divided into titles, and these further subdivided into chapters. In the *Compiled Code* this four-fold division was dispensed with as having no special value. The twenty-six titles of the *Code of 1897* were divided into thirty-four titles, and over three hundred new chapters were added. Twenty-one of the old title headings were slightly altered.

⁷ *Laws of Iowa*, 1919, Ch. 50; Van der Zee's *A Review of the Work of the Iowa Code Commission* in THE IOWA JOURNAL OF HISTORY AND POLITICS, Vol. XVIII, pp. 480-483.

⁸ *Code of 1924* (Editor's Introduction), p. xxvi.

Title III was broken up into two new ones covering "Courts of Record of Original Jurisdiction" and "Supreme Court", and Titles XIX, XX, XXIII, and XXVI were reduced to the status of chapters under other titles. While eleven subjects formerly appearing as chapters were raised to the prominence of titles. This new compilation of laws and the bills presented by the Code Commissioners were to be used as stepping stones toward the further work of codification, which it was hoped would be completed at a special session of the General Assembly.⁹

There was, however, a difference of opinion regarding the manner in which the program of codification should be carried forward. The members of the Code Commission were of the opinion that a special session should be called for the completion of this work. Governor W. L. Harding, on the other hand, was of the opinion that it could and should be done at the regular session — there being no good reason why the legislature could not "meet from six to ten hours a day in the work of Code Revision." The Governor contended that by combining the work of the special and regular session the State would be saving about \$300,000.

On the other hand a large number of the members of the legislature and many others thought that codification could be successfully accomplished only in a special session so that careful consideration could be given to each bill. The law of the Thirty-eighth General Assembly creating the Code Commission was unique since it "requested" the Governor to call a special session of the legislature to complete the task of codification. Notwithstanding this legislative request and the advice of other prominent citizens Governor Harding continued to assert his belief that the work of codification should be done in the regular session, and on March 6, 1920, announced that he did not intend to

⁹ *Code of 1924* (Editor's Introduction), p. xxvii.

call an extra session. Thus the problem of codification was turned over to the Thirty-ninth General Assembly.¹⁰

On November 16, 1920, an informal meeting of members-elect of the Thirty-ninth General Assembly was held at the Savery Hotel in Des Moines, seventy-eight Representatives and thirty-seven Senators attending the caucus at their own expense of time and money. This meeting resulted in the selection of a committee composed of six members from each house to consider the problem of code revision and to recommend to the General Assembly a plan of procedure. Accordingly on the first day of the session — January 10, 1921 — this committee submitted its report and suggested that code revision be postponed to a special session. This recommendation was based upon the experience of the General Assembly in connection with the codes of 1873 and 1897. The committee, however, wished to expedite the work of the special session, and accordingly offered a resolution, which was adopted, providing that as much of the work of revision as possible be done during the regular session, and that a Joint Committee on Code Revision be appointed to supervise the work.

With a view to devoting as much time as possible to code revision, a concurrent resolution was passed fixing the second legislative day in March as the final date for the introduction of all bills except appropriation and committee bills, and providing that only as many code bills be brought upon the calendar for passage on that date as it was believed could be passed. In accordance with a recommendation of the Joint Committee on Code Revision eight special committees were appointed in each house, comprising all the

¹⁰ Van der Zee's *A Review of the Work of the Iowa Code Commission* in THE IOWA JOURNAL OF HISTORY AND POLITICS, Vol. XVIII, pp. 524, 526. For details of the controversy relative to calling a special session the reader is referred to *The Des Moines Register* for January 7, 27, 28, February 9, 11, 23, 25, 27, 29, and March 8, 9, 1920.

members of the Assembly, and these committees, under the direction of the Joint Committee on Code Revision proceeded to verify the *Compiled Code*. Reports were made in mimeograph form and filed with the Code Editor who transferred the data to a set of books prepared for the purpose so that by a system of marks the approval or disapproval of a particular section by the legislative checking committee might be observed at a glance. Much time was consumed in this work, and fourteen of the sixteen committees completed their work. Although the work of verification was never approved by the General Assembly, the work was valuable in showing the real character and content of the Code.¹¹

Early in March it became apparent that little could be done during the regular session aside from verifying the *Compiled Code*. On March 8th, a concurrent resolution was offered providing for a special session to revise the code — such session to convene on the first Monday in June, 1921. This proposition was not considered and two weeks later was withdrawn by the author. Another concurrent resolution which provided for a special session to meet not later than November 28, 1921, was then introduced but it failed of passage. On March 28th, however, a concurrent resolution was introduced declaring that a special session to revise and codify the laws was necessary and advisable. This resolution was adopted. To facilitate the work of the special session, all code bills were assigned to standing committees and referred to sub-committees with a view of having reports ready at the beginning of the special session. Such reports, however, were never made.¹²

When it became evident that code revision would not be

¹¹ Briggs's *The Legislation of the Thirty-ninth General Assembly of Iowa* in THE IOWA JOURNAL OF HISTORY AND POLITICS, Vol. XIX, pp. 496, 497.

¹² Briggs's *The Legislation of the Thirty-ninth General Assembly of Iowa* in THE IOWA JOURNAL OF HISTORY AND POLITICS, Vol. XIX, pp. 498, 499.

completed at the regular session of the Thirty-ninth General Assembly, an act was passed which provided for bringing the work preparatory to codification up to date. In addition to publishing the acts of the regular session of the General Assembly in the usual form of session laws, the Code Editor was directed to prepare a supplement to the *Compiled Code*, containing the new legislation arranged according to the titles, chapters, and sections of the *Compiled Code*. This resulted in the *Supplement to the Compiled Code, 1921*. Aside from this, provision was made for the revision of the Code Commission bills so as to harmonize them with the legislation of the Thirty-ninth General Assembly.¹³

The legislature placed the supervision of this revision work in the hands of the Joint Committee on Retrenchment and Reform. After some deliberation this committee decided that time and money would be saved by the preparation of explanatory notes or statements for each of the code revision bills. Accordingly a "brief" was prepared for each bill. Each brief was in the form of a three-column table. In the first column was the section of the bill, in the second the section or sections of the code which was rewritten in this particular section of the bill, and the third contained explanatory matter relative to changes, additions, and omissions. These briefs were published in book form. The number of bills was also increased from 253 to 262.¹⁴

Again it was hoped by members of the legislature that an extra session might be called in which to complete the work of codification, but Governor N. E. Kendall, like Governor Harding, favored the idea of disposing of the work during

¹³ *Laws of Iowa, 1921*, Ch. 333; Briggs's *The Legislation of the Thirty-ninth General Assembly of Iowa* in THE IOWA JOURNAL OF HISTORY AND POLITICS, Vol. XIX, p. 499.

¹⁴ *Briefs of Code Commissioners' Bills, 1922* (Editors' Preface), p. iv.

the regular session. Accordingly no extra session was called and the work was carried over to the regular session of the Fortieth General Assembly.

When the Fortieth General Assembly convened on January 8, 1923, one of the principal problems to be dealt with was that of codification. On the first day of the session a concurrent resolution was adopted, providing that eight Senators and eight Representatives be appointed as a joint committee to consider the matter of code revision and report by January 15th as to whether it was advisable for the regular session to undertake the revision of the code, and if so, to recommend methods of procedure. On the following day Governor Kendall delivered his biennial message in which he restated his opinion that this work could and should be done during the regular session, and called attention to the fact that much of "the mechanical drudgery of revision" had been already performed through the work of the Code Commission. Moreover, he expressed the belief that the magnitude of the legislative task had been "vastly exaggerated".¹⁵

On the same day on which the message was delivered the joint committee above referred to was appointed. Two days later a report was made in which it was recommended that the General Assembly proceed at once with the work of code revision, with the understanding that the consideration of general legislation should not be restricted in any manner on account of such code revision work. The committee further reported that it had been assured by the Governor that if the work of codification could not be completed during the regular session, that a special session would be called for that purpose. The committee therefore offered the following recommendations: (1) that the code revision bills be immediately introduced in both houses,

¹⁵ *Journal of the House of Representatives*, 1923, pp. 14, 31.

that they be numbered respectively from one to two hundred and sixty-two inclusive, and that general bills commence with the number two hundred and sixty-three; (2) that such bills be immediately referred to the appropriate standing committees of the Senate and House as recommended by the Joint Code Revision Committee of the Thirty-ninth General Assembly; and (3) that the Lieutenant Governor and the Speaker of the House of Representatives be requested to appoint a Joint Code Revision Committee which should have general charge and oversight of the work of code revision.¹⁶

This committee was appointed, and on January 19, 1923, it made its report setting forth a detailed recommendation relative to the method of disposing of code revision bills.¹⁷

The session of the Fortieth General Assembly was a particularly busy one, in which there were no less than 1606 bills introduced. Of this number 250 were code revision bills, which as companion measures were introduced into both houses. Fifty-four of these bills were passed by both houses and signed by the Governor.

Long before the end of the session, however, it became apparent that the work of code revision would not be completed. Accordingly, in order to keep the laws compiled up to date, provision was made for the issuing of another supplement, including the legislation of the Thirty-ninth and Fortieth General Assemblies, to be designated as the *Supplement to the Compiled Code, 1923*. The preparation of amendments to the code revision bills to make them harmonize with the legislation of the Fortieth General Assembly was also authorized and the supervision of the work was entrusted to the Committee on Retrenchment and Reform. Moreover, on April 16th Governor Kendall called a

¹⁶ *Journal of the House of Representatives*, 1923, p. 142.

¹⁷ *Journal of the House of Representatives*, 1923, pp. 260, 261.

special session of the legislature to convene two days later. At this meeting emergency business only was transacted and an adjournment was taken until December 4, 1923, when the General Assembly reconvened for the real work of codification.¹⁸

Immediately upon the convening of this session the committee on code revision made a report in which it recommended that during the session no bills be introduced except the printed bills numbered from one to two hundred and eighty-three inclusive, designated as Code Commission bills, bills for legalizing acts, bills for editing and printing the code, bills providing for salaries and expenses of the extra session, and bills prepared and reported by the joint tax commission. This was amended by striking out the provision relative to tax commission bills and adopted in the amended form.

A study of the bills of the extra session shows that code revision bills, introduced in both houses in identical form, were numbered from 1 to 283 inclusive. House Files numbering 54a, 60a, 68a, 88a, and 261a were also classed as code revision bills, thus increasing the number to 288. In this numbering, however, 73 numbers were omitted because bills so numbered had been disposed of in the regular session — 54 passed, 14 withdrawn, and 5 indefinitely postponed. Accordingly of the 288 measures considered as code revision bills 215 were actually dealt with in the extra session. Of this number 196 were passed by both houses and approved by the Governor. The remaining bills were disposed of in the following manner: two passed the House and failed in the Senate; four failed on vote in the Senate; five were indefinitely postponed by the Senate; three were

¹⁸ Briggs's *The Legislation of the Fortieth General Assembly of Iowa* in THE IOWA JOURNAL OF HISTORY AND POLITICS, Vol. XXI, pp. 509, 510; *Journal of the House of Representatives*, 1923, pp. 1809, 1810.

indefinitely postponed by the House; and five were withdrawn in the House.¹⁹

As a rule odd numbered bills were first considered for passage in the Senate, and even numbered bills were first considered in the House. As has already been indicated, the members of the legislature were of the opinion that each of the code bills should be carefully considered, and not simply accepted as presented by the drafters and passed as a matter of form. Notwithstanding this fact 196 of the 215 code revision bills were enacted into laws while only 19 failed of passage — thus leaving the law with reference to the subject matter dealt with in these 19 bills unchanged. Moreover, it is to be noted that most of the measures which failed of passage were of minor importance. During the consideration of the code revision bills, however, amendments were frequent. Indeed only about 30 of the 215 measures passed in the identical form in which they were originally presented. Such amendments usually brought about only slight alterations in the wording, though in some instances important changes were made.

Most of the measures passed at the extra session became effective ninety days after the close of the session, but a few acts, because of their immediate need, were put into operation by publication. The legislation based upon the code bills of this session produced 6152 sections of the law now included in the *Code of 1924*, while 7875 sections of this volume were taken without change from the existing law embodied in the *Compiled Code of 1919* and the *Supplement to the Compiled Code, 1923*.²⁰

An interesting feature of the code revision work was the

¹⁹ *Journal of the House of Representatives, 1923-1924 (Extra Session)*, p. 12; *Index and History of Senate and House Bills, 1923-1924 (Extra Session)*, p. 2.

²⁰ *Journal of the House of Representatives, 1923*, pp. 260, 261; *Code of 1924 (Editor's Introduction)*, p. xxvi.

manner in which sections taken from the existing law, on the one hand, and from the code bills, on the other, were brought together in the form of the present code. Laws passed prior to the publication of the *Compiled Code of 1919* which had not been changed were carried into the *Code of 1924*. Frequently, however, a section of the *Compiled Code of 1919* had been changed or readjusted by the Thirty-ninth or Fortieth General Assembly, thus giving it a new form in the *Supplement to the Compiled Code, 1923*. If this were the case and there were no code bills in the extra session upon this subject the law as thus compiled became a part of the new code. If, however, a code bill were passed it superseded the prior existing law, and became a part of the present code.

For example there was in the *Code of 1897* a section relative to the destruction of liquor. This law was amended by the Thirty-eighth General Assembly by the passage of a section consisting of sixty lines. One provision of this section provided that a judge might direct the disposition of liquor by ordering it to be destroyed, or by ordering any portion thereof consisting of alcohol, brandies, wine, or whiskey delivered for medical or scientific purposes to any State or other reputable hospital. The last four lines of this section stipulated that the statute should be construed so that the disposition of liquors under the provisions of the act should constitute a destruction thereof within the meaning of such statute.

At the regular session of the Fortieth General Assembly this section was repealed and seven short sections enacted in lieu thereof. The four lines above referred to were enacted as one section of the new law and designated as the "Interpreting Clause". Accordingly these lines appear in the *Supplement to the Compiled Code, 1923* as a separate section but with the wording unchanged from the original.

In the extra session of the Fortieth General Assembly this subject was presented in the form of a code bill which was adopted without amendment—the result being a much clearer statement of the law than had previously existed. This is only one of many instances where the work of codification resulted in bringing together the existing law and presenting it in a more convenient form.²¹

NATURE OF THE CODE OF 1924

The *Code of 1924*, as stated in the editor's introduction, is a compilation rather than a code. It is in fact an extensively amended *Code of 1897* compiled in one volume and containing the following:

1. All the sections of the *Code of 1897*, the *Supplement of 1913*, and the *Supplemental Supplement of 1915*, of a *general and permanent* nature, which were still in force at the close of the extra session of the fortieth general assembly.
2. All the sections of the acts of the thirty-seventh, thirty-eighth, thirty-ninth and fortieth (regular) general assemblies of a *general and permanent* nature, which were still in force at the close of the extra session of the fortieth general assembly.
3. All the sections of the acts of the extra session of the fortieth general assembly (known as the code revision session) of a *general and permanent* nature.

The sections which constitute the *Code of 1924* were not all enacted, therefore, at a single session of the legislature. Indeed, some of the sections were enacted at the extra session of the Twenty-sixth General Assembly in 1897, while others were enacted at each succeeding session down to and including the extra session of the Fortieth General Assembly. These code sections, therefore, are to be found in the original enrollments of all the sessions of the General Assembly from 1897 to 1924.

²¹ *Code of 1897*, Sec. 2416; *Laws of Iowa*, 1919, Ch. 266, Sec. 1; *Compiled Code of 1919*, Sec. 977; *Code of 1924*, Sec. 1999.

Since the *Compiled Code of 1919* and the *Supplement to the Compiled Code, 1923*, were compiled preparatory to, and as stepping stones toward, the larger work of codification, it may be briefly stated that the *Code of 1924* "is in fact the *Compiled Code* and the *Supplement of 1923*, plus the legislative changes made in those two volumes by the adoption of code revision bills presented to the legislature at the extra session of the fortieth general assembly."²²

About two-thirds of the sections of the *Compiled Code of 1919* and the *Supplement to the Compiled Code, 1923* — constituting about half of the contents of these volumes — were not changed by the legislature of the extra session and appear in the new code with the wording unchanged. There are 14,027 sections in the new code. Of these 7875 were brought unchanged from prior existing compilations of the law, while the remaining 6152 sections were made up from the original enrolled bills of the extra session of the Fortieth General Assembly.²³

The *Code of 1924*, including the index, is a volume of 1955 pages. In the rewriting of sections of the law at the special session an attempt was made to clarify its meaning, and set it forth in simple and concise language. Moreover, the volume was printed on thin but durable paper. Thus it is more compact, and in many respects superior to any previous compilation of the laws of the State. The index, which was prepared by Jacob Van der Zee, constitutes nearly three hundred pages of the volume. It is detailed, inclusive, and accurate, thus rendering the contents of the volume accessible, even to the non-professional student of law. The volume does not contain annotations, as it was deemed advisable to publish these in a separate volume, thereby reducing the size of the code.

²² *Code of 1924* (Editor's Introduction), pp. xxv, xxvi.

²³ *Code of 1924* (Editor's Introduction), p. xxvi.

Since the adjournment of the legislature much criticism has arisen from the fact that the new code was not entirely reënacted at the special session, with a clause repealing all former statutes, thus making it a genuine code. That the need of such action has been exaggerated can scarcely be doubted, since the *Code of 1924* will be used in the same manner as if all of its provisions had been adopted at one session of the legislature. In fact a section of the new code provides that printed "copies of the statute laws of this or any other of the United States published under the authority thereof shall be admitted in the courts of this state as presumptive evidence of such law." Conclusive evidence, however, of what the law is can be found only in the enrolled bills, but as a matter of fact these are rarely referred to in the administration and enforcement of the law. Thus the question of whether or not the code should have been entirely reënacted, with a repealing clause, is not a vital one. Moreover, this question will become even less significant as the plan adopted by the Fortieth General Assembly for continuous code revision and the publication of all the statutory law every four years is carried into effect.²⁴

PROBLEMS OF CONSTRUCTION

Since the *Code of 1924* is a compilation and not a code in the sense of being entirely enacted at a single session of the legislature, it presents certain problems of construction which should be clearly understood. O. K. Patton, who was engaged in the actual work of revision, has presented these problems in the following words:

"Inconsistencies and conflicts in the Code of 1897 were dealt with by construing them together and giving to them such a construction as would give full force to all the sec-

²⁴ *Code of 1924*, Sec. 11312.

tions. Indeed, technically speaking, all the sections of that code were part of one legislative enactment, although the several titles were enacted as separate acts. Justice Emlin McClain, speaking on this point, said in the case of *Kenyon v. Cedar Rapids*: 'The whole Code is to be construed as one body of law, and each part is to be taken in connection with other parts bearing on the same subject.'

“Under the new code, however, when two sections are in conflict or overlapping it will be necessary, before applying the ordinary canons of construction, to ascertain the date of their enactment. If one of the sections was enacted subsequent to the other it would seem that the doctrine of implied repeal might be applicable, as it is well settled that when the terms of two sections of law are manifestly inconsistent, the older is repealed by implication. Of course in such a case the repugnancy would have to be very clear and the conflict irreconcilable, because repeals by implication are not favored by the courts.

“Another matter of importance which may arise in construing the new code is with reference to the re-enactment of former sections of law. In this connection the following language of the Iowa court is of interest:

“ ‘The repeal and simultaneous re-enactment of substantially the same statutory provisions is not to be construed as an implied repeal of the original statute, but a continuation thereof, so that all interests, under the original statute, remain unimpaired. The same rule applies to general revisions of existing laws that are substantially re-enacted. In practical operation and effect, the new statutes are to be considered as a continuance and modification of old laws, rather than as an abrogation of the old and the re-enactment of the new ones.’

“It has been pointed out that only about one-half of the sections in the Code of 1924 were enacted at the special code

revision session and a great many of these sections were merely restatements of existing law; there was no intention on the part of the drafters to change the law in these instances; their plan was merely to simplify it. In this connection it is important to note that the Supreme Court of Iowa has held that a statute need not be reenacted in exactly the same words as the former statute in order to have this effect of continuity — it is enough if the revision is in ‘substantially the same language’ as the original act and there is a ‘manifest purpose to continue the old law.’ Indeed it has been held that ‘changes made by a revision of the statutes will not be construed as altering the law unless it is clear that such was the intention.’ In view of these decisions it seems clear that the greater portion of the legislation enacted by the special session of the Fortieth General Assembly is a continuation of the old law as well as that portion of the Code of 1924 which is merely a compilation of the law as it existed prior to the special session, since the bulk of the code revision work consisted merely in a restatement of existing law.”²⁵

Recent experience has shown that allowing the statutes to go untouched for long periods of time before attempting to put them in order by codification or revision entails an enormous expense. In order to avoid this situation a plan has been devised for continuous codification and republication of the statute law every four years.²⁶ Under this plan the Reporter of the Supreme Court is designated as Code Editor and it is his duty: (1) to submit such recommendations as he deems proper to each General Assembly for the purpose of amending, revising, and codifying such portions of the law as may be conflicting, redundant, or ambiguous;

²⁵ Patton's *The Iowa Code of 1924* in *The Iowa Law Bulletin*, Vol. IX, pp. 10, 11.

²⁶ *Code of 1924*, Sec. 156.

(2) to prepare the manuscript copy of laws passed at each General Assembly, to arrange these in chapters, and prepare an index for the same; and (3) to edit and compile the code after each even-numbered session of the General Assembly.

Further provisions are made for the publication of annotations. This plan provides for the future publication of the statutes of the State in a form similar to the *Code of 1924*.

JACOB A. SWISHER

THE STATE HISTORICAL SOCIETY OF IOWA
IOWA CITY IOWA