CHAPTER XVI

THE LAW MAKING PROCESS

The State legislator is a busy man. Every morning he has to hurry to the capitol in order to read the papers or look over his bills or think about his speeches before the session of the legislature, which begins at nine or ten o’clock and lasts until noon. In the afternoon he has to be back for committee meetings which last from two o’clock until time for the evening meal and sometimes through the evening. Between meetings someone is always looking for him.

Most members introduce one or more bills each session. There are so many bills that it is impossible to give all of them, or most of them, the careful study they should have. The legislature does the best it can, and the Wisconsin Legislature does very much better than some others!

In order to give attention to all bills, the Senate and the Assembly are both divided into standing committees which study bills on special subjects. There are, for example, committees on education, on agriculture, and on labor. Every legislator belongs to one or more of these committees. Each member indicates the subjects in which he is most interested. Then the Speaker of the Assembly, and the Committee or Committees of the Senate attempt to place each as nearly as possible where he prefers to be.

The bills introduced may be measures in which the legislator himself is personally greatly interested, or measures which some of his constituents want him to introduce. The clerk reads the title of each bill. The presiding officer of the house refers the bill to the committee which he thinks most suitable to consider it. A bill to regulate the size of the mesh of fish nets, for example, would go in the assembly to the committee on conservation.

The chairman of this committee takes the bills as fast as they come and makes up a “calendar” for the whole week. This list can be obtained by anyone in the state who will pay for the service. It shows on what afternoon the committee is ready to listen to explanation or discussion of each bill.

Suppose you are interested in Bill No. 600-A, and that this is the fish net bill. You see on the printed sheet which comes out on Thursday or Friday,—if you do not receive service, you may have some one in Madison watch the calendar so as to tell you—that Bill No. 600-A, comes up for hearing before the Assembly Committee on Fish and Game the next Wednesday. You are much interested. You come down to Madison on Wednesday. When the Chairman of the Committee says, “Is there anyone here who would like to speak in favor of 600-A?” you rise and tell the committee your name and address, and whom you represent. If you are paid by some organization to appear on the bill, you should, before the meeting, have gone down to the office of the secretary of state, and have registered there as a paid agent or counsel; that is, a “lobbyist.” If you come just as a private citizen representing yourself, you need not do that. The committee will listen to you without it.

After all the people who want to appear for the bill, including the author of the bill who may be a member of this committee, or who may have to leave his own committee to come here and explain this one, those who are opposed have their chance. When they are all through, the committee passes on to the next bill on the calendar.

In the evening, or sometime, the members of the committee will have to get together, alone, go over the whole thing again and decide what to recommend to the legislature. They vote on each bill. Their report goes into the legislature like this:
“Bill Number 600-A, passage recommended, Mr. Smith and Mr. Jones dissenting.”

The bill is then placed on the calendar of the legislature itself. When the time comes, it is read by title a second time, and members have a chance to offer any amendments they may desire. It is then placed on the calendar again and comes up a third time. This time, the members themselves discuss it at length and vote on it. If they pass it, immediately, or at the next session, someone may move reconsideration. If the majority vote in favor of reconsideration, the members have a chance to think it over a few days and perhaps to change their minds. Those who are opposed to it have a chance to work on those who voted for it and try to get them to change their mind. Finally, they vote on it again. If the bill passes again, it is messaged over to the other house, where it goes through exactly the same process. If it passes there, it goes up to the governor. If he signs it, it becomes law. He may hold it for ten days however. If in that time he decides to veto it, he sends it back with or without explanation to the house in which it started. It those who favor it can get two-thirds of those present in both houses at the time of passage to vote for it, it becomes law in spite of the governor. If not, it is lost. It is very seldom that a law has been passed in this state over the governor’s veto.

But we cannot be quite sure yet that this measure is law. People may disagree as to what it means. The body which settles questions which arise as to the meaning of a law is the Supreme Court of the state. Some laws give rise to few, if any, questions. Others give rise to many questions. This latter type of law is illustrated by an act of 1921, which provided that:

“Women shall have the same rights and privileges under the law as men in the exercise of suffrage, freedom of contract, choice of residence for voting purposes, jury service, holding office, holding and conveying property, care and custody of children, and in all other respects. The various courts, executive and administrative officers shall construe the statutes where the masculine gender is used to include the feminine gender, unless such construction will deny to females the special protection and privileges which they now enjoy for the general welfare.”

A law like this gives the courts a great deal of work. In fact, we shall never know just what the law is. As one case after another comes up, the courts will have to decide whether treating women the same as men in the particular connection would or wouldn’t be denying to females “the special protection and privileges which they now enjoy for the general welfare.”

Another example of a law which will require the interpretation of the Supreme Court probably many times is the Home Rule Amendment to the State Constitution, adopted by the people in November, 1924. This empowers cities and villages “to determine their local affairs and government, subject only to this constitution and to such enactments of the legislature of state-wide concern as shall with uniformity affect every city or every village.” On its face this home rule provision of the constitution appears to be very simple and clear. But a careful study of it shows that the Supreme Court will probably be busy for years explaining its meaning. What are “local affairs?” What is “uniformity?” What matters are of “State-wide concern?” All of these are questions which the Supreme Court only can answer.

There are two kinds of state law. First is the constitution, sometimes known as the fundamental law. It was adopted by popular vote and we can make amendments to it only by putting them through both houses of the legislature in two successive sessions, and then to a vote of the people. Second is law passed by the majority of those present in both houses of the legislature and not vetoed by the governor. This second kind of
The Wisconsin senate chamber showing mural paintings by Kenyon Cox.

Courtesy S. T. Dodge, Capitol Guide
law, known as statute law, must be in harmony with the constitution, or fundamental law. It must do nothing forbidden by that document.

That also sounds simple. But it is far from being simple. Some people imagine that they can understand the constitution of the State of or the United States and the other laws of the state and the United States, just by reading them over. They are much mistaken. In order to understand the meaning of constitutional and other laws, they must study carefully the court decisions which have settled disputes arising about their meaning.

The Wisconsin constitution itself says nothing about who should decide whether a statutory law is in conflict with the state constitution. From the beginning, however, the Supreme Court of the State has assumed the duty of making the final decision. The members of the legislature may debate long as to whether the constitution permits them to pass a certain bill. Someone, distrusting the opinion of his colleagues, is pretty sure to ask the Attorney General of the State for his opinion as to its constitutionality. They may pass the bill in the belief that it is all right. The governor may sign it in the same belief. Then someone individual may claim that it is not constitutional and refuse to obey it. The state tries to force him to obey it. He is brought before the court and the court decides whether it is constitutional or not and consequently whether he must obey it or not.

From 1850 to 1923 the Wisconsin Supreme Court had declared unconstitutional over a hundred and sixty measures. Most of these measures were state laws. A few of them, including the Fugitive Slave law, were federal. A few were actually amendments to the State Constitution. One of these was an amendment to permit the state to appropriate money “for the purpose of acquiring, preserving, and developing the water power and the forests of the state.” This amendment was held void because the correct procedure had not been followed in the legislature. The different steps in its passage required by the Constitution had not been entered correctly on the journals. The assembly had forgotten to pass it a second time. Other calamities had happened to it. So, although the people had voted at the polls to adopt it, it was thrown out.

(State ex rel Owen, Attorney General, v. Donald, Secretary of State, 160 Wis. 21.)

Another constitutional amendment which was at first declared void on account of careless procedure was aimed to prevent voting by unnaturalized aliens. On rehearing, however, the court changed its opinion, and decided that it actually had passed.

(State ex rel Postel v. Marcus, 160 Wis. 354.)

The court also changed its mind on the law regulating the hours of labor for women. At first it declared unconstitutional the law giving the industrial commission power to issue orders regulating the hours of labor for women. On rehearing, however, it reversed itself. (State v. Lange Canning Co. 164 Wis. 228. 1916.)

Even when a state law has been declared by the state court not to be in conflict with the state constitution, we are still not sure yet that it is really law. Some one may claim that it is in conflict with the Constitution of the United States, or with some federal law permitted by the Constitution of the United States. A case may be carried up to the Supreme Court of the United States and the law may be declared unconstitutional under the federal constitution.

It is clear that the judges in our highest courts have a tremendous power and responsibility. It is clear also that members of the legislative body need to exercise great care and watchfulness. It is possible for them to draft laws so clearly and so carefully that few disputes concerning their meaning will be brought before the courts for settlement. It is possible, on the other hand, to do the drafting so vaguely that the courts will be overwhelmed with cases.
Although we can find numerous examples of Wisconsin laws which, whether intentionally or carelessly, were so drafted as to require court interpretation, in the main the Wisconsin legislature performs its duty so as not to burden the courts unreasonably.

One thing which helps to secure clearness in our laws is, of course, the drafting department of the Legislative Reference Library. Another is the fact that the public is given unusually ample opportunity to make criticisms and suggestions. There is complaint from some states that bills do not receive a fair hearing. Some bills appear in committee. Others do not. The committee just ignores them, and never gives them a hearing at all.

This never happens in Wisconsin. Every bill is heard here, and the committee reports it out to the house in which it originated, and the house acts upon it. Every bill is either passed or refused passage before the legislature adjourns. The length of the legislative session is not limited as in some states, so that matters are finished in a comparatively orderly way without great rush and confusion at the end.

The legislature has sometimes felt the need for giving a matter more careful consideration than even the unlimited session affords. It has appointed many "interim" committees to investigate for two years and make recommendations to the next legislature. These committees usually hold public hearings in different parts of the state so that everybody who has an idea on the subject can present it to them. With the help of the Legislative Reference Library, they gather together all the available information on the subject. With the help of the draftsmen of the Library, they prepare bills to present to the legislature. When the legislature meets, these bills are introduced and referred to the legislative committee. A public hearing is given by that committee as in the case of all bills.

One of the first of Wisconsin's important interim committees was the committee appointed in 1905 to investigate the affairs of life insurance companies.

The session of 1909 provided for many of these interim committees to investigate problems upon which the legislature did not feel sufficiently informed to act. A very important committee was the Industrial Insurance Committee, consisting of Senators Sanborn, Fairchild and Blaine; Assemblymen Cleary, Ingalls, Culbertson and Egan. This is the committee whose work resulted in the Workman's Accident and Compensation law of 1911.

A second important interim committee of 1909 was the Income Tax Committee, consisting of Senators Marsh, Kleczyka and Hazlewood; Assemblymen Georgi, McConnell, Ingram and Towers. A third was the committee on Water Power, Forestry and Drainage, with Senators Bird, Husting and Krumrey and Assemblymen Bray, Hambrecht, Kubasta and Thomas. The committee to investigate the desirability of having the state guarantee bank deposits consisted of Senators Walter C. Owen, Wright and Marti, and Assemblymen Whittet, Whitman, Crowell and Reader. The committee on Highways consisted of Senators Browne, Burke and Donald; Assemblymen Jones, Wellensgard, Chinnock and Buslett. There were two interim educational committees. One, called the committee on Education, consisted of Senators Stout, Pearson, and Gaylord; Assemblymen Haight, Atwood, LeRoy, Wehrwein and Chapple. The other, called the commission on plans for the Extension of Industrial and Agricultural Training, was not the usual joint legislative committee. It consisted of the State Superintendent of Public Instruction, C. P. Cary, who acted as chairman; the President of the Milwaukee Normal, Carroll G. Pearse, the Dean of the Extension Division of the University, L. E. Reber and the chief of the Legislative Reference Bureau, Charles McCarthy, who acted as Secretary.
No other session ever appointed so many investigating committees, although there are usually one or two at work. The session of 1911 appointed a Fire Insurance investigation committee. The session of 1913 appointed a Forestry committee; the session of 1919 a Committee on Marketing; 1918 (special session) a committee on Reconstruction; 1919, a committee on teacher’s pensions; 1927, a committee on Prison Labor conditions. There have been others, but these give an idea of the type of subject on which investigation is considered desirable.