

## LEGISLATIVE RESEARCH COUNCILS: PURPOSES AND OPERATION

JACK A. RHODES, University of Oklahoma, Norman

Anxiety grips political thinking, these days, lest past legislative experiences portend the future of representative assemblies. The representative legislature is the *modus operandi* of the democratic state; its basic tools of procedure must be strengthened if democracy is to merit the confidence of those whom it serves. Welfare societies make exacting demands upon the lawmaking agents of the people. The simple truth is that the age of modern technology finds government, on all levels, ill-equipped, structurally and spiritually, to meet the challenge. Expert opinion and technical skill must be filtered through the democratic process and utilized in policy formation and public administration (Finer 1934, III (I) and IV (I); Willoughby 1934, I).

State governments, in particular, are staggering under the impact of progressively heavier burdens. In a very significant sense, the representative legislature is the most important branch of State government; yet, its basic techniques have responded the least to specialized problems of modern life. Our creaking lawmaking machinery is reminiscent of the era when extreme public distrust and detailed constitutional restraints circumscribed every act of state legislatures. These anachronisms linger to hamstring present-day procedures. I cite such limitations as the following: Infrequent and short sessions, meagre salaries, inflexible and uniform laws, discontinuous sessions, short terms of office, antiquated committee systems, and lack of responsible-leadership opportunities within the lawmaking chambers (Reinsch 1907—IV, VIII, and X; Buck 1936). Legislatures are not equipped with the fundamental tools necessary to discharge effectively the duties incumbent upon them.

The legislative-council idea was developed in an effort to remedy many of these evils of lawmaking. The council program was first proposed in the *Model State Constitution* (N. M. L. 1941; Art. III). Beginning in 1933, sixteen States have enacted statutes providing for councils or similar agencies with other names. Kansas and Michigan were the pioneer States in the field. In 1939, the Michigan Council was abolished; the Kansas Council has come to be a firmly established reality (Guild 1936).

*The Brookings Report for Oklahoma* (1935) recommended a legislative council for this State. Four years later a council statute was enacted. The President *pro tempore* of the Senate refused to appoint the senatorial members and the Council has never been in actual operation. The statute has been as ineffective as if it had never been passed. While other States move forward in legislative techniques, Oklahoma seems complacent, now that the council bill has been enacted; but I suggest that statutes are to be evaluated only in terms of their practical operation.

At the present writing Kansas, Illinois, Nebraska, Kentucky, Virginia, Maryland, and Connecticut have functioning councils; other States have used other names for similar bodies. Wartime burdens of government have stimulated interest in the principle as worthy of thoughtful consideration (Guild 1943a). During their 1945 sessions the States of Alabama and Indiana enacted council bills. Largely by a gradual, experimental method the idea is spreading and taking root in State government.

Legislative research councils effect the varied objectives of many earlier-developed technical aids to lawmakers. I refer to University research bureaus, bifurcated or trifurcated sessions, legislative libraries and reference services, interim committees, agencies for revision and for codification of statute law, delegation of authority to executive departments, and other related procedures.

The council is a permanent interim committee composed exclusively of legislators, except in a few States. Kentucky is now the only State with administrative representation on its membership. Two States include the governor, in one case as a nonvoting honorary member and in the other as *ex officio* member. Legislative confidence in the council's planning and research projects is enhanced if membership is exclusively from their own body (Guild 1943b: 2).

Total membership varies from five in Connecticut to twenty-seven in Kansas. In most States the speaker of the house and the president of the senate are included as regular members. Appointment is for a period of two years almost without exception. Members from each house of the legislature are selected by their respective presiding officers. In addition, the two houses are represented in the ratio of their total memberships. Kansas, with a Senate of forty members and a House of one hundred and twenty-five, provides for eleven Senators and sixteen Representatives on her Council of twenty-seven members. Within each house the Council members are apportioned according to the relative strengths of the political parties represented. A third standard is that of representing all major geographical areas of the State. Nebraska provides that not more than three members may come from the same Congressional district. In addition, custom demands that the chairman of each important standing committee of the legislature be represented.

Councils do not alter existing institutions; they are designed to implement legislative procedures by providing a fact basis for lawmaking, by planning a program in advance of the sessions, and by harmonizing relations between the legislature and the executive branch, particularly the governor. The council does not limit powers of the legislature, nor does it adversely affect the governor's lawmaking program.

The *Model State Constitution* (N. M. L. 1941: Art. III, Sect. 319) outlines council duties as the collecting of "information concerning the government and general welfare of the state" and reporting thereon to the lawmakers. The council prepares and submits to legislators a program, either as bills or as comprehensive reports, in advance of the opening of the sessions. The council studies consolidations in State executive departments, to the end that efficiency and economy may result. This program has often eliminated duplication in administrative functions. Merits of laws already passed are analyzed and recommendations are made for amendments thereto in the light of experience. A novel provision is that of delegation of authority to the council to fill in the details of legislation by orders which have the binding force of law until repealed by the legislature. The exercise of quasilegislative powers by the council may reduce, in the first instance, rulings by the attorney general on incomplete and poorly drawn laws. A considerable amount of lawmaking by the courts may be absorbed by the council. Dr. Guild (1943b: 32) of the Kansas Research Staff has observed that "it would force the legislature itself to follow legislation through to administrative adequacy and practicability." Lawmaking should not be regarded as complete with the enactment of a bill; legislative analysis and investigation of the practical operation of statutes has been conspicuously neglected.

A significant advance in techniques of legislating is the planning and analyzing of impending problems in advance of the regular sessions. It seems almost absurd that lawmaking in the modern state should be an intermittent, limited activity. Legislatures adjourning *sine die*, with no interim committees, will later convene in an atmosphere of confusion and doubt. During the adjournment period lawmakers will tend to think along their own individual lines; there is no formal instrument for the channeling of discussion and thought. Attention is seldom focused upon forthcoming problems; anticipating solutions along cooperative lines is not in

evidence. Duplication of bills, lack of unified opinion as to which bills merit priority, hastily drawn measures, and misinformation or complete absence of facts, especially if technical subjects are involved, mark the prevailing atmosphere in many noncouncil States. Intersession planning, discussion, research, and, indeed, bill drafting are council projects to insure constructive lawmaking from the very first day of each session. This example is impressive. In 1937, the Kansas and Missouri Legislatures convened at about the same time, and faced similar problems. The Kansas Legislature finished its program two months ahead of the Missouri. Within twenty-four hours after the opening of the Kansas session it was possible to take up for consideration any one of forty-two outstanding subjects on which all the fact finding had been completed. For several legislative problems the Council had prepared tentative bills with alternatives which the Legislature might find advisable to consider. There was no need for committee hearings; every bit of information they could produce was sent in reports to each member of the Legislature several weeks before he left home for the Statehouse.

The council does not function officially during the session; informally, and entirely unofficially, its effectiveness is significant on the floor of the two houses. It is not, however, a steering committee, even though in practice it supplies responsible legislative leadership. Meetings are held at stated intervals, or on call, during the intersession periods. Kansas meetings are held quarterly and on call. One is impressed while attending meetings of lawmakers who are planning programs for a session many months in the future. The writer had the privilege to observe the significance of pre-session planning by attending a meeting of the Committee on Federal, State, and Local Government of the Kansas Legislative Council (Special Meeting at Topeka, August 4, 1943); the opening date for the legislative session was approximately eighteen months in the future. Often investigatory hearings are held; the power of subpoena is usually given to the council. The lawmaking program evolves progressively as the opening date of the session approaches; legislative eyes are constantly turned towards future policy decisions.

#### THE RESEARCH STAFF

Legislative councils now have independent research staffs. Every one of them may, in addition, require studies and cooperation of State administrative officials. The research staff is designed for central clearance of facts; it is the impartial middle man between practical politicians and experts and academicians. It is suggested that the staff office be a permanent repository for reports of all prior committees and departments. This research material will then be available for future reference. The staff should possess the confidence of lawmakers; its effectiveness is determined largely by the degree to which it regards itself as the servant, not the master, of the legislature (observation by F. H. Guild, personal interview, August 3, 1943). Every attempt should be made to insulate the staff from partisan influences. Appointment is on a merit basis; removal is recognized only for specified causes. Qualified personnel is an important factor in the success of the entire program. For the summer months it has become popular to include on the research staff faculty members from universities and colleges of the State. According to suggestions obtained during interviews with various members of the faculty from Kansas University who were engaged in research for the Kansas Council during July and August, 1943, both the Council and the professors themselves have profited from these experiences. Indeed, many council staffs have begun as bureaus of research in the State university.

Members of the legislative, judicial, and executive departments, as well as other individuals, may seek the aid of this central clearing house of facts. The legislature and the council may ask the staff to make specific research

studies. In Kansas and Nebraska no major research projects may appear on the agenda except by direction of the Council. Studies completed by the research staffs range from fact finding on marketing farm cream and controlling field bindweed to proposals for altering the tax structure, writing a judicial code, or reorganizing major administrative departments of the State. On one occasion, the Kansas Council collected data from every inmate of the State Penitentiary; a report was then submitted to the Legislature. Since its organization in 1933, this Council has completed over one-hundred research projects.

An important aspect of the program in Kansas is the sending of periodic "progress" reports to legislators as the individual research study advances. Final summaries are prepared and made public prior to the convening of the session, usually thirty days in advance of the opening date. In Connecticut the reports are submitted directly to the Legislature. Placing research studies in the hands of lawmakers during the interim has produced interesting results. Most important, perhaps, is the opportunity which legislators have to inform themselves on the facts of specific problems pressing for consideration at the coming session. On occasions, members seeking reelection to the legislature have used these "progress" reports to test the reaction of the voters to the given proposal. In Kansas there is evidence to indicate that the reports have been a significant factor in the outcome of elections (opinion given by F. H. Guild in personal interview, August 3, 1943). The theory underlying the council movement gives promise that it may substitute, at least to a degree, issues of policy for personalities as major factors in deciding the outcome of political campaigns. Policies desired by constituents become clearer to their elected agents in the legislature when fact-finding studies are widely circulated throughout the State. Here is an approximate to English theory and practice.

Disadvantages and weaknesses of the council program will be glossed over only at a substantial sacrifice to its continued success. Arguments against the program are basically of two types, (1) weaknesses in structure and (2) opposition to the theory underlying the council movement. (See Kneidler 1939).

Early in its history the Kansas Council was branded as a "little legislature." Legislative opposition and distrust may easily arise, especially from those who have never served on the council. The most explosive issues occur when the governor is of one political party and a majority of the council membership from another party. In conducting the council's administrative investigations extreme tact is an absolute requisite; the appearance of meddling in executive functions must be avoided at all costs. "Lame duck" councils weaken the confidence of the victorious party in the program planned. This factor was significant in the repeal of the Michigan council law according to a personal letter from Hon. D. Hale Brake, State Treasurer, Lansing, Michigan, October 29, 1945. Legislators may resent the implication that they are rubber-stamping the bills proposed. This weakness was significantly pointed out to the writer in an interview with the Hon. Thad Eure, Secretary of State, Raleigh, North Carolina, October 20, 1944.

In the last analysis councils must be evaluated in terms of their actual effects upon subsequent legislation, and State government generally. The variables are many; scientific testing, as in all fields of political science, is extremely difficult. This much can be said, however. Fewer major bills are introduced; quality of laws appears to have been improved—I cite as examples the Kansas Tax Code and various Nebraska statutes originating with the Council. No longer is the legislature dependent upon the governor for the initiation of a program. The council provides for continuous intermission consideration of problems facing the lawmaking cham-

bers. Advance preparation of the legislative program expedites procedures during the session. The movement has eliminated duplication of interim and special committees and commissions. Standing committees may begin constructive work within twenty-four hours after convening because the facts have already been presented. Debate in the sessions is often confined to facts supplied by the research staff. Legislators uninformed or misinformed appear reluctant to call into question the reports submitted by the staff. The information contained in research-study reports is important in pre-session discussions, permeates work in committees, and is conspicuous in the floor debates in the two houses. Lobbyists appear to be working at a disadvantage in a legislature whose members have both sides of the questions being discussed. Interparty strife may be minimized as a result of bipartisan council membership. The council's role of liaison among the legislature, the governor, and the administrative departments is of considerable significance. Outstanding is the contribution of bringing technical information to bear in the solution of complex, specialized modern problems (Culver 1941).

The council is not a panacea for all legislative ills—that much is certain. The program should not be expected to work political miracles immediately. Council advocates believe that it will provide the requisite flexibility for removing obstacles inherent in rigid, detailed State constitutions. The legislative council, during its brief history, has given impressive evidence that it marks the first fundamental advance in State legislative procedure since the turn of the century—see research reports submitted by various State councils, especially those of Kansas, Nebraska, Maryland, and Illinois.

In Oklahoma government generally, commendable welfare provisions fall short of realization because administrative implementation has not been forthcoming. Oklahoma's inactive Council is a victim of legislative procrastination, indirection, and a refusal of those concerned to cooperate. The council statute, for all practical purposes, is as ineffective as if it were never enacted. Government by default has long been one of Oklahoma's great weaknesses.

In conclusion, I submit to you the observation that the Oklahoma Council, now a "paper council" only, should become a functioning aid for an overburdened, constitutionally handicapped, and ill-equipped Legislature.

#### LITERATURE CITED

- Buck, A. E. 1936. Modernizing our State legislatures. Pamphlet Ser., Am. Acad. Political and Social Sc. 4.
- Culver, D. C. 1941. Legislative reorganization. In *Legislative Problems*, No. 4. Berkeley (California): Bureau of Public Administration, University of California.
- Finer, H. 1934. The theory and practice of modern government. (Revised by W. L. Guthrie). New York: Dial Press.
- Guild, F. H. 1936. Kansas' experiment with a legislative council. Bull. Research Dept. Kansas Legislative Council 42.
- Guild, F. H. 1943a. The Kansas Legislative Council considers war legislation. *State Government* 16 (35): 44-45.
- Guild, F. H. 1943b. Legislative councils. *Law Library J.* 36 (5): 1-10.
- Kneeder, G. M. 1939. Legislative councils and commissions. In *Legislative Problems*, No. 12. Berkeley (California): Bureau of Public Administration, University of California.
- National Municipal League. 1941. Model State Constitution. New York: National Municipal League.
- Reinsch, P. S. 1907. American legislatures and legislative methods. New York: Century Co.
- Willoughby, W. F. 1934. Principles of legislative organization and administration. Washington: Brookings Institution.