NOTES ON CURRENT LEGISLATION

EDITED BY HORACE E. FLACK

Intoxicating Liquors. The usual volume of legislation for the control of the liquor traffic was passed in 1911 and some new experiments were authorized in three states, Alabama, Indiana and Utah, where the volume was largest.

Three states submitted the prohibition question to the people Maine, Texas and West Virginia. The first two have already voted against prohibition and the latter will vote at the next general election. Minnesota, North Dakota, Illinois and New Hampshire prohibited sales on trains and other public conveyances. South Dakota, Utah and Alabama fixed new closing hours, the first making the hours most restricted, namely, 9. p. m. to 6 a. m. South Dakota also repealed her anti-treating law which was passed in 1909. Minnesota gave right of action to any person injured in person, property or means of support against the seller; Kansas makes a second offense in liquor selling a felony; Michigan requires druggists to file cancelled prescriptions with the prosecuting attorney of the County and keep one on file; Maine repealed the Sturgis enforcement law of 1905 which provided for a state commission to enforce the liquor law; New Hampshire requires common carriers to keep names and addresses of persons in dry territory to whom liquor is shipped; Massachusetts repealed the "bar and bottle" law thus divorcing the bar from the bottle; and California enacted a local option law.

By far the most far reaching liquor legislation of the year was that of Alabama. This state had gone for prohibition but a reaction soon set in and the new laws giving local option were enacted.

The voters of each county accept one of three propositions: First, prohibition; second, dispensary; third, license. The questions submitted are whether liquor shall be sold and if it is to be sold, how shall it be done?

If the decision is in favor of license, the city or town is provided with means of administration and enforcement through an excise commission of three members to be appointed by the governor and

subject to removal by him. The commissioners must have no connection with the liquor traffic in any way and must not receive gratuities or favors of any kind.

The whole matter of licensing liquor dealers, determining their qualifications under the law, revoking licenses and enforcing the law is in the hands of the commission. Licenses may not be granted in excess of 1 to 1000 and in Birmingham 1 to 3000 population. The law goes into careful detail in prohibiting practices deemed harmful. Two provisions are of special note; the sheriff must visit all places at regular intervals for inspection and all liquors must be analyzed by the state chemist frequently.

In case the decision of a county is in favor of a dispensary there are established public dispensaries in each city or town, the number varying according to population. The dispensaries must be within corporate limits of cities or towns.

The chief manager is the purchasing agent elected by the people of the city or town. He has general charge of the purchasing end of the business. The dispenser is another official elected by the city or town who has charge of the actual sales. The management of the business subject to the council or town board is in the hands of the purchasing agent and dispenser. The profits of the business are divided, forty-five per cent going to the county, forty-five per cent to the city or town and ten per cent to the state.

Careful restrictions are made on the conduct of saloons and dispensaries. The law is written in great detail and most of the restrictive features usual in the best laws are found in it.

Indiana also legislated at length on the liquor question. The first step was the repeal of the county option law passed in 1908 and the enactment in its place of the same law making the unit the city, township and the territory of the township apart from the cities in it.

The second act was the restriction measure which was fathered by the liquor interests. This law leaves the number of licenses to be fixed by the boards of county commissioners; makes provision for granting licenses, and hearing remonstrances by the commissioners; fixes the qualifications of licensees, prohibits brewery ownership; gives power of revocation to the boards of commissioners; enables sales and transfers of licenses to be made and gives power to the councils to fix license fees and restrict the number of saloons.

The contention was made that the intent of this law was to make licenses a vested right. This was offset by the declaration that

nothing in the act should be so construed as to affect the right of control and regulation by the state.

Utah joined the local option states by a law making the units the cities and towns and the territory of counties exclusive of its cities and towns. The provisions of the law include: a search and seizure provision, prohibition of licenses outside business districts of cities and towns; no license within five miles of a city or town voting dry; prohibition of further establishment of breweries and distilleries; counties are dry until voted wet; all elections are on a definite date every two years; no sales are to be permitted within five miles of construction camps employing 25 men; no lunch, gambling, amusement or seating accommodations in saloons; druggists prescriptions must be filed with local authorities twice a year; licenses are made liable for damages caused by intoxication; shipments must be labelled and no fictitious names used; adulteration is prevented; and all license fees go to the local unit.

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Juvenile Courts. By the passage of twenty-two distinct laws, fourteen states, California, Illinois, Indiana, Iowa, Kansas, Michigan, Missouri, Montana, Nebraska, Nevada, New York, Utah, Washington and Wisconsin, amended their Juvenile Court laws during the sessions of 1911. The California law, the Montana law and the Missouri law were entirely re-written, the latter because of manifest ambiguity. Arkansas, Florida, (if we except the doubtful act of 1905,) and North Dakota passed new and comprehensive acts. Delaware passed a law pertaining to the city of Wilmington; Tennessee to Hamilton county, containing the city of Chattanooga, and to Knox county containing the city of Knoxville; and New York to the city of Buffalo.

The more notable amendments relate to the alteration, expansion and clarification of the definition of neglected, dependent and delinquent children. Montana proscribes the use of drugs and cigarettes;[1] Utah excludes crimes punishable by death or life imprisonment.[2] The age limit of children who are placed expressly under the jurisdiction of juvenile courts was appreciably raised. Original juvenile jurisdiction or concurrent jurisdiction was conferred on courts not hitherto possessing such power. Utah withdrew all juvenile court powers previously conferred on justices of the peace in precincts outside cities of the first and second classes.[2] The authority and

[1] Laws 1911, p. 320.
[2] Laws 1911, p. 77.

discretion of the courts over the disposition and commitment of juvenile delinquents to correctional institutions and hospitals was perceptibly increased. Nevada has a rather unique provision. The Governor and the Superintendent of Public Instruction are authorized, up to July 1, 1913 to make contracts with California, Oregon, Idaho or Utah for the care, maintenance and training of juvenile delinquents in the industrial or training schools of those states,[3] and $7500 was appropriated for their tuition and support.[4] Wisconsin, in common with some of the other states, has incorporated a very sensible and humanitarian provision in her law authorizing the courts, if the child be in need of medical attention, to place it for treatment in a public or private hospital.[5] Nine states made changes in the appointment, nomination, number, classification, functions, and compensation of probation and assistant probation officers. Provision was made for temporary detention of juvenile offenders and for the creation, maintenance and supervision of Detention Homes. Montana, Nevada and Washington require the erection of detention houses in counties having a certain designated population, and their supervision by a superintendent and matron.[6] Utah amended her law relating to detention homes so far as to include cities of the second class.[7] Provision was made in Montana and Nevada for the creation and maintenance of Juvenile Improvement Committees.[8] Among the interesting amendments are those providing for the punishment of contributory delinquency, the extension of judicial clemency to felonious culprits, the subsidizing of worthy poor parents, and the shielding of juvenile transgressors so far as possible from humiliating publicity. In Nevada in certain cases of persons over 18 and under 21 years of age who are accused of the commission of a felony, the judge is authorized to investigate the circumstances of the commission of the crime and determine whether the culprit be dealt with as a delinquent or otherwise.[9] In Illinois if the parents of a dependent or neglected child are proper guardians but too poor to properly care for it, the court is authorized to fix the amount necessary to enable the parents

[3] Laws 1911, p. 382.
[4] Laws p. 84.
[5] Laws 1911, p. 539.
[6] Laws 1911, Montana, p. 320; Nevada, p. 382; Washington, p. 310.
[7] Laws 1911, p. 76.
[8] Laws 1911, p. 382.
[9] Laws 1911, p. 382.

to properly care for the child and the county board is required to pay the designated sum.[10] In Missouri, in counties having a population of from 250,000–500,000, and having a juvenile court, provision is made for the expenditure of not to exceed $12,000 annually out of the county funds for the partial support of poor women whose husbands are dead or convicts when such women are the mothers of children under 14 years of age. The Juvenile Court is charged with the disbursement of the money in sums not to exceed $10 per month when there is one child and $5 for each additional child. The allowance enables the mother and children to live together and obviates the necessity of the mother working regularly away from home.[11] Washington excludes the general public from hearings, the child's record of delinquency is withheld from public inspection and when he reaches the age of twenty-one it is destroyed.[12] Montana provides for shielding the trials of juvenile delinquents as far as possible from publicity.[13]

Delaware. By an Act of April 4, 1911, a Juvenile Court was created for the City of Wilmington. The court is given sole and exclusive jurisdiction in all cases relating to delinquent, dependent or neglected male children 17 years of age or under, and female children 18 years of age or under. The judge is appointed by the Governor for a term of 4 years. Provision is made for the appointment, duties, functions, compensation or gratuitous service of probation officers; for ascertaining delinquencies and securing to the accused a speedy, impartial and non-public trial; and for remanding culprits to correctional institutions. Acts 1911, p. 709.

New York. An Act of July 14, 1911, revised the charter of the city of Buffalo by providing for the establishment of the Children's Court. The jurisdiction of this court extends to all cases involving the delinquency of persons 16 years of age and under and the concurrent jurisdiction to the contributory delinquency of adults. The court is divided into two parts, one the children's court, the other for the trial of adults. The Judge is elected for a term of 10 years, any resident elector of Buffalo being eligible, removable by the appellate division of the Supreme court, and his compensation is fixed by the common council. The Judge is required to appoint at least three probation officers, one of whom must be a woman, their compensation being

[10] Laws 1911, p. 126.
[11] Laws 1911, p. 120.
[12] Laws 1911, p. 310.
[13] Laws 1911, p. 320.

provided by the common council. The city is required to provide a detention home presided over by a superintendent. Delinquent children may be judged in need of care and protection or subjected to merited punishment. (Laws 1911, p. 1729.)

Tennessee. During the session of 1911, the Legislature of Tennessee passed two Acts, one approved March 28, creating a Juvenile Court for Hamilton county, containing the city of Chattanooga, the other approved July 3, creating a Juvenile court for Knox county, containing the city of Knoxville. The Hamilton county court is held by the Judge of the City court of Chattanooga; the juvenile judge of Knox county is elected by the qualified voters for the constitutional period. Both courts are given original and exclusive jurisdiction in the enforcement of laws regulating the conduct of dependent or delinquent children of 16 years of age and under. Probation and assistant probation officers are appointed by the judge. Disciplinary punishment is accurately prescribed. The court of Hamilton county is given jurisdiction over the contributory delinquency of adults; Knox county is required to provide separate places of detentions for white and colored offenders. (Laws 1911, p. 488 and 1569)

Arkansas, Florida and North Dakota. The juvenile court laws of Arkansas, Florida and North Dakota contain most of the provisions of the more approved state laws on this subject. Juvenile courts were established in the several counties of these states. These courts are held by the respective county judges and their jurisdiction is made to extend to all dependent, neglected or delinquent children 17 and 18 years of age and under. In Arkansas, one chief probation officer and any number of assistants at salaries not to exceed $1200 and $900 respectively, except in sparsely settled countries, are appointed by the respective county courts. In Florida, the Governor is required to appoint at least one probation officer in each county, for a term of 4 years, and as many assistants, of either sex, as the business may require, and when paid, their compensation is fixed by the county commissioners. The juvenile officers of North Dakota are appointed by the district courts, they serve without pay, may be of either sex, the number so appointed is not fixed by statute. In the disposition of delinquent or dependent children, the courts are authorized to place such juvenile offenders in their own homes, or in a reputable family under probation, remand them to training schools or other juvenile institutions, or when the health of the child is impaired, to place them

in public or private hospitals where they may receive proper medical attention.

Children under 12 and 14 years of age may not be committed to common jails or police stations, but proper places of detention and confinement must be provided. Arkansas and North Dakota created a Board of Visitation, composed of 6 reputable men and women, appointed by the juvenile judge, who serve without pay and are required to visit all child-receiving institutions at least once annually. In Arkansas, the parents of delinquent children, if financially able, are required to contribute to their support. In Florida, when the juvenile offender is less than 16 years of age, sentence may in certain cases be suspended or withheld. (Laws of 1911: Arkansas, p. 166; Florida, p. 181; North Daktoa, p. 266.)

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Life Insurance Legislation of 1911. Laws enacted by the several states in 1911 brought the total number of statutory requirements affecting the institution of life insurance and its holders of thirty million policies up to about forty-five hundred. This figure does not include the requirements affecting domestic companies solely, with the exception of New York state. Were those to be added, the number would be much larger. Domestic laws should be considered in any general review of life insurance legislation, but there is no compilation of them, as it is not needed for practical purposes. No one company is subject to all the laws governing domestic and foreign companies in all states. But there are several which have to adjust themselves to the laws governing foreign companies in practically all the states, in addition to the domestic companies' laws of their respective home states. Therefore, there are some companies—the larger ones—which operate under nearly all the forty-five hundred requirements referred to. This gives one view of the present magnitude of the supervision of the business of life insurance by the states, in its practical application.

As to the character of these requirements, they range from broad principles of supervision to regulation of minute business details. In other words, some states believe that while the managers should be held responsible for the operation of their companies their judgment should not be restricted by a multitude of legal enactments. Other states, besides holding the managers responsible, also provide in detail as to how they shall perform various parts of their managerial

functions. Laws dealing specifically with the business of life insurance might be classified under the following broad groupings:

Regulating the administrative functions of the companies, including election of directors and officers, apportionment and limitation of expenses, compensation to agents, investment of capital stock and assets, maintenance of reserves, distribution of surplus to policyholders, keeping of records and accounts, provision for medical examinations, preparation and filing of reports, including annual statement, etc.

Pertaining to the rights of the insured, including provisions that guarantee their use of the reserve accumulations on their policies in event of lapse or surrender; loans on their policies; phraseology that makes the policy clear and not susceptible of misrepresentation, etc.

Dealing with the conduct and ethics of the business, including prohibition of rebating by agents, and use of misleading statements or incomplete comparisons tending to induce policyholders to lapse, forfeit or surrender their insurance.

Regulation of companies in their organization stage, including various provisions designed to prevent deception in promotion and sale of stock to the public.

Taxation and fees.

Functions and powers of state Insurance Departments, including valuation of policies, examinations of companies and determining solvency of same, licensing of companies and agents, filing of various reports made by companies, collection of taxes and fees, enforcement of laws and penalties, etc.

In addition to these groupings of laws specifically applying to life insurance there are many other statutes of general effect which concern the business, including regulations with respect to investments generally and their taxation; corporation laws requiring annual and special reports to be made to state officials, in addition to those furnished to the insurance supervision authorities; acts relative to corrupt practices and registration of legislative counsel, and anti-trust legislation so broadly drawn as to require reports and statements from life insurance companies.

While in theory all laws dealing with life insurance are supposed to be based primarily on the idea of protecting the interests of policyholders, as a matter of fact they are really approached from various viewpoints. Undoubtedly most of the legislation dealing with the administrative functions of the company, policy provisions, the conduct of the business and departmental supervision is approached from

what is regarded as the viewpoint of the policyholder. However, the same cannot be said of the various statutes imposing varying rates of taxation upon policyholders' funds, for the twelve million dollars thus annually collected is exacted chiefly as a revenue proposition for the benefit of the public generally. This sum is many times more than the cost of insurance supervision. A calculation made on the basis of 1907 statistics shows that the ratio of expenses of state insurance departments, including the supervision of life, fire and all other branches to the amount of life insurance taxes collected ranged from 2.6 per cent to 20.2 per cent, with the exception of a single state which collected no taxes. The state whose ratio was 2.6 per cent collected more than one and one half million dollars in life insurance taxes in 1907, while the cost of its insurance department that year was little more than $40,000.

One phase concerning the supervision of the life insurance business, which is lost sight of by legislators, as a rule, is that the policyholder is inseparable from the company. A burdensome restriction placed upon the business is placed upon the policyholders. A company is merely a collection of policyholders. It is, of course, most desirable that the interests of policyholders should be thoroughly protected by legal enactments. But life insurance is a highly technical business and efforts to legislate on the subject without deliberation and study as to the effect on the whole fabric are likely to result in burdensome restrictions entailing much expense to policyholders without any benefit to them.

Any expense that is added to the business increases the cost of insurance and therefore falls upon present or future policyholders. Not only is this true of the taxes and fees imposed, but also of the expenses caused by the diversity of statutory provisions in the states. If a general policy form which applies to most states has to be amended and specially printed for a certain state, that additional expense is borne by the policyholders. So is it also with respect to special forms of voluminous statements that may be required by some states. The preparation of a special report by a large company for one state recently involved the exclusive use of a band of clerks for several months. The present lack of uniformity among statutory requirements largely adds to the cost of insurance in many ways. At the home offices of all companies of considerable size there are various officials whose duties largely consist of keeping track of the statutory requirements in the different states and seeing that their companies conform to all of

them. This is expensive, but it would be still more expensive to violate any of these provisions, even innocently.

The year 1911 saw no diminution in the tendency to propose and enact legislation on the subject of life insurance. All told about 1650 bills were introduced in the legislatures of 43 states, including the District of Columbia, where some insurance bills were introduced in Congress. Of these 1650 bills 160 became laws. They ranged from one brief statute, requiring that notice shall be given to policyholders in connection with the merger of one insurance company with another, to a comprehensive code of 238 sections involving all branches of insurance.

New codes were enacted in Washington, Pennsylvania and Idaho. The Washington code is in line with advanced thought on the subject of regulation of insurance, and with respect to domestic companies particularly, it goes into much more minute detail than the laws of other states. As to foreign companies, its provisions in the main may be said to be in harmony with the laws of other states. It leads the laws of practically all of the states in one particular. This is the provision directing that the expenses of every examination or other investigation of the affairs of any insurance company made by the Commissioner shall be paid by the state. All the states impose various fees for performing certain duties, such as filing reports and other papers and also tax the companies heavily for revenue purposes, yet practically all make a special charge against the companies for the expense of examinations. The Washington innovation is in the interest of good government, for it removes any possible incentive for unnecessary examinations, yet provides for them if needed. The National Convention of Insurance Commissioners, the organization of the state insurance supervisors, from which much good has come in the matter of uniformity of practice and in otherwise advancing the standard of supervision, has taken a commendable attitude in the matter of examinations. At its 1910 session it adopted a resolution that no examinations should be made by any member of the Convention, of a company outside of its home state, without first requesting the Committee on Examinations of the Convention to co-operate. Action like this tends to discourage a practice of some officials in the past to make expensive trips to the home offices of distant foreign companies to make so-called examinations, irrespective of the fact that those companies may have been thoroughly examined within a short time by the insurance supervisor of their home state.

The Idaho code, which was not enacted with the usual deliberation which should attach to such important measures, contains some technical requirements that are unnecessary so far as the interest of policyholders is concerned and which are burdensome and expensive for companies to carry out. One of these is a provision that cash, paid up and extended insurance options available under the policy each year, upon default in premium payments, shall be shown in each policy by tables covering the full length of the premium paying period which technically is up to age ninety-six. The general practice is merely to figure in advance the value of such options for twenty years, which is more than the average length of a policy.

In Pennsylvania a fair and reasonable code was enacted, after much thought and study on the part of the Insurance Department. It revises existing laws so as to bring them up to modern requirements, and enlarges the department. It protects the interests of policyholders, and does not impose harsh or burdensome restrictions on the operation of the business. Like the Washington and Idaho codes, it includes a provision to protect the citizens of the state from the operations of unscrupulous promoters of new life insurance companies.

The funds of life insurance policyholders are ever a prey to the taxing authorities. As usual, 1911 had a large crop of taxation bills. Sixty-five of them applied to the business of life insurance and most of them provided for increased taxes. Had all the bills been enacted $900,000 a year would have been added to the $12,000,000 annual tax already imposed on premiums paid by life insurance policyholders. Earnest efforts, participated in by the policyholders themselves in some instances, showed the injustice of these measures, and the end of the year recorded increases in only a couple of Western states and they were slight ones. In Montana, where there is a heavy state tax on life insurance premiums, a law was enacted relieving life insurance from county taxation. In Alabama, where there is also a high tax on such premiums, a statute was passed reducing the amount of taxes that municipalities may impose. A material increase was enacted in California, but this was in conformance with a constitutional amendment adopted in 1910 and therefore, probably should not be considered in the legislation of 1911.

Laws dealing with the organization and powers of Insurance Departments but not taking the comprehensive form of codes were enacted in fourteen states. In Wisconsin, for instance, the Commissioner was given authority to require from any insurance company a deposit in

advance of such an amount as he shall estimate would be necessary for the expense of an examination. Another law enacted in Wisconsin provides that except as specifically authorized by statute, no officer or employe of the state shall directly or indirectly, receive or accept any sum of money, or anything of value, for the furnishing of any information, or performance of any service whatever relating in any manner to his duties. In Alabama it was enacted that the examination of domestic companies shall be each year instead of every two years. Michigan provided that the Commissioner shall not retain as perquisites any fees or other moneys received by him directly or indirectly for the performance of duties connected with this office.

In all, eleven states enacted laws to restrict the operations of promoters of new life insurance companies. Washington, Idaho and Pennsylvania did this in their new codes already referred to. The eight other states enacting laws on this subject were Connecticut, Massachusetts, Michigan, Missouri, Montana, Oregon, Wisconsin and California. These laws were placed on the statute books in response to a demand both from the public generally and life insurance interests to meet an evil that has developed within the last four years or so. The National Convention of Insurance Commissioners at Denver, Col., on August 26, 1909, adopted a resolution urging the various states to pass laws to regulate the matter. Organized bands of promoters have been going through the country forming life insurance companies and selling the stock in many instances through misleading statements as to profits that would be made. Usually these operators are not insurance men but merely stock promoters. They retain large percentages of the amounts paid for the stock, under the guise of expenses, and after the game has been worked in one locality they depart for other fields to do the same thing over again. A group of persons in the community thus find on their hands the form of a life insurance company with various obligations to stockholders and, possibly, policyholders, and without the necessary knowledge, experience or perhaps the additional means, to make the business successful. This situation has already brought about many failures of such companies, and the result has been to reflect discredit in the minds of the public upon the business of life insurance as a whole, although the business has not been in any way responsible for the actions of these stock sellers. The laws enacted to meet this evil generally follow the principle of giving the Insurance Commissioner or Superintendent jurisdiction over insurance companies in their formation as well as

after they are organized. The statute enacted by New York state in 1910 has been the one used most as a model by the states passing such laws in 1911. It provides that the Insurance Superintendent shall, as often as he deems it expedient, examine into the affairs of such companies and make a report thereon, which report shall be presumptive evidence in any action or proceeding against the corporation, its officers or agents. The Superintendent is also authorized to publish the report in one or more newspapers. Connecticut, Idaho, Montana and Oregon enacted the New York Law of 1910, using practically the same phraseology, while Missouri enacted it with additional provisions one of which makes it unlawful to pay more than 10 per cent of the total amount realized from the sale of capital stock for organization purposes. The statutes passed by Pennsylvania and Michigan make use of the New York Law in part. Wisconsin's law limits the promotion or organization expenses to ten per cent of the amount actually paid on subscriptions for the stock. The statute passed by California limits organization and promotion expenses of domestic insurance companies to 15 per cent of the total amount actually paid on capital stock, exclusive of surplus.

Several states in 1911 followed the lead taken by New York in 1909 in authorizing the insurance supervising authorities to take proceedings in court for the liquidation of a delinquent insurance corporation, including a company which has by contract of re-insurance or otherwise, transferred its business to another corporation, without having first obtained the written approval of the state supervisory official. Connecticut, Michigan, Pennsylvania, Washington and Wisconsin enacted statutes using not only the form of the New York Law, but, in most instances, its phraseology practically verbatim. The New York Law itself was amended during 1911 by applying its provisions to corporations in process of organization as well as those already organized. The effect of this is to give the state supervisor of insurance additional authority over companies in process of promotion.

The investing of policyholders' money so as to guarantee that it will bring in sufficient return to pay policies on maturity is a very important part of the business of life insurance. Many of the states have recognized the sacredness of these funds by providing that they shall be invested only in certain general classifications of securities regarded as safe. Some laws specifically state the classes of securities in which investments may be made. Others enumerate the classes which are prohibited, including, for instance, the stock of mining

corporations. The investments of life insurance companies are made up largely of United States, state, county and municipal bonds, the bonds and stocks of public utilities corporations and real estate mortgage loans. During 1911 measures were introduced in four states to restrict the investments of foreign insurance companies geographically, along the lines of the Robertson Law of Texas. Fortunately, for the interests of policy holders, none of these bills became laws. When the Robertson Law was enacted by Texas in 1907, twenty-three—nearly all—of the leading foreign life insurance companies doing business in the state retired. This law requires that seventy-five per cent of the reserves set aside to meet obligations to Texas policyholders shall be invested in certain specified local securities. The avowed object of the law was to compel foreign companies to make investments in Texas. This man-made statute utterly ignores the natural law of supply and demand affecting the flow of investments. It also takes from the managers and trustees of life insurance funds the right of exercising their judgment as to investments although it does not relieve these managers and trustees from being responsible if the compulsory investments should prevent their companies from meeting the test of solvency. Two elements enter into the making of investments for life insurance companies. First, the security must be absolutely beyond question. Second, the investment must earn a rate of interest to add sufficient to the reserve funds to pay policies upon maturity. The Texas law takes no heed of these conditions but merely says to foreign companies that if they wish to do business in the state they must invest in certain specified Texas securities. The companies which retired had no objection to Texas securities as such. But they were opposed to the underlying principle of the law that took from them the right to judge and decide as to availability of securities for policyholders' funds. Beginning with 1907 the subject of such compulsory investment has been considered in 24 states, either in the form of legislation actually introduced or talked of seriously among state officials. In only one state, Texas, has the legislation been enacted into law. The states in which it was introduced in 1911 were Montana, Missouri, North Dakota and Oklahoma.

Indiana enacted a law adding county highway bonds to the securities in which domestic insurance companies may invest. A law passed in Montana adds bonds issued by legislative authority secured by land grants and the bonds or warrants of any school district, county or city in the state.

State authorities are joining with the trustees of life insurance funds in seeking to give more stability and permanency to life insurance policies. The lapsing of life insurance means loss of protection to widows and orphans, which deficiency the state or its political subdivisions are often called upon to supply. One of the several causes of lapsing is what is called "twisting" in the insurance vernacular. This means the act of getting a man to give up his insurance with one company and taking it out in another. As such a transfer always involves the payment of a second commission it means more expense, while the practice itself has a tendency to unsettle the business. It is a practice deprecated by all reputable companies and agents alike and various states have passed laws to discourage it. The New York law on this subject, enacted in 1908, prohibited the making of any misrepresentations to any insured person for the purpose of inducing, or tending to induce such person to lapse, forfeit or surrender his insurance. This was strengthened in 1911 by an amendment prohibiting the making of any misleading representations or any incomplete comparisons of policies for such a purpose. Michigan and Ohio in 1911 enacted the New York Law with this amendment, and Pennsylvania placed in its code a section along the same lines. Rhode Island enacted a provision similar to the old form of the New York Law.

Another evil of the business, which, however, has become less of late years is that of rebating part of the premiums to policyholders by agents. Many of the states have had laws on this subject for sometime but the difficulty has been to get legislation that is effective. The high-minded attitude taken by agents within the business themselves is responsible for a great deal of the reform along this line of recent years. Idaho, Ohio, Rhode Island and Wisconsin amended their statutes on this subject in 1911 by making it a violation of law to receive a rebate as well as to give one. In this connection the Idaho, Ohio and Rhode Island enactments provide that no person shall be excused from testifying before a court or magistrate as to violations upon the ground that the testimony or evidence required may tend to incriminate him, adding the provision needed to make it constitutional that no person shall be prosecuted for or on account of any transaction concerning which he may so testify. Wisconsin also added a provision to its anti-rebate law to the effect that the insured, having knowingly and wilfully violated this statute, shall be entitled to recover from the company only such proportion of the amount otherwise payable under the policy as the difference between the

amount of the premiums which have become payable and the rebate would have provided for.

Ohio, Pennsylvania, Rhode Island, New York and New Jersey enacted laws tending to decrease the cost of industrial life insurance. These enactments amended existing anti-rebate laws by providing that where industrial insurance premiums are paid directly to the home or district offices of companies, a return of part of the premium may be made to the policyholders. One of the big expenses of industrial life insurance is the weekly collection at policyholders' homes by agents. This law will permit a lower rate of insurance for groups of policyholders, as, for instance, in the factory where all the workmen may become insured, and their premiums forwarded in one amount by the employer to the insurance company.

A trial of state insurance is to be made under a law enacted by Wisconsin. The statute provides that existing officials, including the Insurance Commissioner, shall operate a life insurance business for the benefit of the residents of the state. This is an experiment which will be watched with much interest. The theory back of the law is that the state can provide insurance cheaper than companies, because it will have no agency force to solicit business, and because being a state institution, it will have additional prestige. Some companies at various times during the history of life insurance have tried to do business without agents, but the general experience in the past has proved that the people do not take life insurance unless they are educated to do so through personal interviews. One of the arguments against state insurance is that it will be subject to the vicissitudes of changing politics, including a lack of continuous expert supervision and management. The Wisconsin Law provides that the life fund to be administered by the state shall be without liability on the part of the state beyond the amount of the fund paid in by the policyholders. Policies are issuable only to residents of the state and not in excess of $3,000 on any life or of $300 a year from age sixty on any annuity risk. Insurance in the state fund is optional, not compulsory.

Various other laws affecting life insurance were enacted in 1911, most of which have a place in one or more of the following classifications: False advertisements, annual statements to be made by companies, insurance of minors, regulation of agents, policy provisions, deposits of funds with state authorities, claims, fees for various duties performed by state officials, extension of powers of insurance depart-

ments, restrictions as to capital stock, mergers of insurance companies and reinsurance, and exemption of real estate mortgage loans from taxation.

ROBT. LYNN COX.

Medical Milk Commissions. State laws, local ordinances and private enterprises of the past few years bear witness to the practical interest that has been aroused on the question of pure milk, to the ends that only milk from healthy cattle be sold, that it be both produced in, and distributed from sanitary surroundings, that it be of a high standard and that the processes of pasteurization, evaporation and condensation of milk as well as of the making of butter, cheese etc. are safe-guarded for the public good. The latest departure and a perfectly logical one, in this on-rush of milk legislation, comes simultaneously from Massachusetts and Michigan, in the form of laws, passed in 1911, authorizing the incorporation of medical milk commissions in cities and towns. The purpose as stated in the Massachusetts law is "to supervise the production of milk intended for sick room purposes, infant feeding, use in hospitals and other cases." The Michigan law, in giving its object, reads slightly differently,—"for the purpose of supervising the production, transportation and delivery of milk which it is intended to use for infant feeding, sick room, clinical purposes." In Massachusetts the medical milk commissions of which there may be more than one organized in a city or town, may be incorporated under this law, by five physicians duly authorized to practice medicine in the state. Also, the members of the city or town board of health are ex-officio members of the commission. In Michigan the city or town health board must have in its membership two or more duly authorized physicians, to empower it to appoint a medical milk commission consisting of five physicians. Otherwise the members are named by the state board of health, the secretary of which as well as the local health officer are ex-officio members of the commission. Only one such commission may exist in a community. The term of office for the members is, in Michigan, for five years, the term of one member expiring each year, while the members hold office, in Massachusetts, seemingly for an indefinite period. In Michigan a member may be removed at any time by the board to which he owed his appointment and in both states, any member accepting salary, compensation or emolument of any kind, is liable to fine, removal from office, and disqualification from any future holding of office in a

milk commission. The sections of the two laws which deal with the agreements between the commission and the dairymen, for the production of milk under the supervision of the commission, are practically the same,—the agreements to be in writing, conditions for production of milk prescribed according to the standards of purity and quality fixed by the American association of medical milk commissions and the laws of the two states respectively. By the Michigan law, it is further provided that the commission may designate analysts, chemists, bacteriologists, veterinarians, medical inspectors, etc., prescribe their duties and remove or discharge any such persons employed by the dairymen. Also in Michigan, all containers must be sealed by the commission. In both states, the work of the commissions is at all times subject to investigation by the local or state health authorities and selling milk as certified that is not produced in conformity with the laws, is penalized. No financial provision for carrying out the work is included in either statute.

ETHEL CLELAND.

State Boards of Control. The value of a state board of control, unless its original intent becomes warped through partisan abuses, is the centralization of the financial and business administration of public charitable institutions with a view to large economies. In some states, notably in California, Minnesota, Ohio, Rhode Island and Wisconsin, correctional institutions are also controlled, and in Minnesota supervision is exercised over state educational institutions as well.

In California (Laws, 1911. Ch. 349) control is vested in a board of three members appointed by the governor, with salaries of $4000 each per annum. The secretary appointed by the board receives $2400. Each member must give bond for the faithful performance of his duties, in the penal sum of $25,000. The duties of this state board of control are to examine the accounts of the different state prisons, reformatories, state hospitals and other institutions, commissions, bureaus and officers of the state at least yearly, and oftener if necessary. Public institutions, maintained in whole or in part by state appropriations, and public buildings in the course of construction must be visited by some member of the board from time to time to determine the conditions therein existing and in the case of new buildings to discover whether all provisions of law in relation to construction and contracts therefor are being faithfully executed. All claims against the state, the settlement of which is not otherwise provided by law,

must be presented to the board and the same must be allowed or rejected within thirty days. Very broad auditing functions are permitted with respect to the money in the state treasury which must be counted by the board without previous notice to the state treasurer at least once a month. The board has charge of the sale of bonds, real estate and other property of the state and has authority to authorize the payment of deficiencies when an appropriation made by law has not been sufficient for actual necessities. In fact, such general powers of supervision over all matters concerning the financial and business policies of the state are given it that investigations and proceedings may be instituted by the board at any time when deemed necessary for conserving the rights and interests of the state. All contracts entered into by any state officer, board, commission, department, or bureau for the purchase of supplies and materials, or either must before the same becomes effective be transmitted to the board for approval, and it may also grant permits to purchase in the open market. In connection with the board of control a department of public accounting is established and a uniform system of accounting and reporting for any and all officers, charged with the custody and handling of public money or its equivalent, must be devised, installed and supervised. Biennial reports are made by the board to the legislature.

Illinois (Revised Statutes. 1909, Ch. 23) provides for a board of administration. There are five members, one of whom must be an expert, qualified to advise the board with regard to the treatment of the insane, feeble-minded and epileptic. The term of office is six years, the annual compensation $6000 each, and traveling expenses. This board exercises executive and administrative supervision over all state charitable institutions and succeeds to all the property rights of the boards of trustees hitherto in charge. It exercises control over all contracts for the purchase of supplies for state institutions.

In Ohio in 1911 a bill passed creating a state board of administration for the management of all state benevolent, penal and correctional institutions, except the Ohio Soldiers and Sailors Orphan Home, and this act went into effect in August, 1911.

Oregon (Laws, 1911. p. 170–171) has a state purchasing board consisting of the governor, secretary of state, and state treasurer, with authority to purchase supplies for certain specified state institutions. The secretary of state buys supplies for certain offices specially provided for by law, usually the law creating the office, and other offices buy independently out of their own appropriations.

By Chapter 825 of the Public Laws of 1912 the Rhode Island Legislature created a board of control and supply, numbering five members, for five year terms. The salaries of the chairman and the secretary are $3000 each, the other members receiving $2000 each. This board may purchase supplies and make contracts for repairs and alterations at the state institutions in Cranston, the state sanitorium, the state home and school for dependent children, the institute for the deaf and the school for the feeble-minded. It has charge of all the construction and furnishing of all buildings for any of the said institutions, and the power hitherto exercised by the board of state charities and corrections over the labor or prisoners and other inmates of the institutions is transferred to this board. It must provide for a uniform system of accounting, may appoint certain disbursing agents, and may also make purchases required by any state officer, board or commission in excess of $500 at any one time.

In Connecticut along many lines the comptroller does the purchasing for the state. Indiana has no purchasing and issuing agent for provisions, for the state board of accounts is systematizing the matter considerably, especially on the accounting side. In New Hampshire, although there is no restriction upon the purchasing of supplies of any sort other than state printing and binding, there is a law which provides that contracts for supplies in excess of a certain amount shall be let out to bids. In New Jersey there is an approach to official control in the commissioner of charities and corrections, and the state architect and the commissioner practically control extensions and enlargements to institutions. In New York there is no general law covering this subject, but there are provisions for the purchase of supplies for state charitable institutions. (Consolidated Laws, 1909. v. 5. p. 5390. Sec. 48.)

In Vermont a state officer, known as the Printing Commissioner, purchases all office supplies, such as paper, pens, pencils, typewriter supplies and the like. These are in charge of the sergeant-at-arms and are delivered by him to the different officers on requisitions issued to him. There is no fixed rule as to larger items though this is generally done through the sergeant-at-arms. Supplies for the state charitable institutions are looked out for by the several boards of trustees.

The subject of a board of control and supply has been agitated at times in several states although no affirmative action has been taken. This has been the case particularly in Connecticut, Maine and Michigan.

GRACE M. SHERWOOD.

Presidential Primary Elections—Legislation of 1910–1912. The most notable characteristic of primary election legislation during the past two years is the rapid extension of the application of the direct primary to national party machinery and nominations, through state, not national, action. For years the steady advance of the direct primary movement confined itself entirely to state party organization and nominations for offices elective within a single state. The selection of state party representatives in national party councils was passed over in silence, or expressly exempted from the direct primary, or legally to be exercised indirectly through delegate conventions. The only influence exerted by the direct primary on national party operations was indirect and roundabout. Hence the application of the direct primary to the choice of national committeemen, delegates to national conventions, and the instruction of delegates through a presidential preference vote is a distinct innovation. It marks the loosening of the bonds of excess-control by national over state party organization, and constitutes a long stride toward making national party machinery and nominations subject to legal regulation and more truly representatives of the will of the rank and file of the party.

The introduction of the direct primary into the field of national party activities began as early as 1906 with the Pennsylvania provision for the choice of delegates to national conventions at primary elections.[1] Wisconsin (1907), Oklahoma[2] (1908), and South Dakota (1909) adopted the innovation, and extended its application. In 1910, Oregon enacted the first law providing for a distinct presidential prefererence primary election.[3] These pioneers having blazed the way, there followed during the next two years the passage of similar acts by nine or ten states, five,[4] in 1911 and four or five[5] in 1912, making at least one-fourth of the states having such legislation.

These twelve laws present many marked similarities and some decided differences in scope and method. Two[6] provide for the direct

[1]Applies only to congressional district delegates, those at large being chosen by state conventions, the delegates to which are elected directly by the respective party voters.

[2]Provision repealed in 1909.

[3]Proposed by initiative petition and approved at the November election.

[4]N. J., N. D., Nebr., Wis., Cal. Wisconsin added the presidential preference vote to her law of 1907 for the direct choice of delegates.

[5]Md., Mass., Ill., Mich., and probably Maine. For want of a few votes the Michigan act failed to become effective in time for use in 1912.

[6]Pa., S. D.

choice of delegates to national conventions without a distinct presidential preference vote; three[7] for a presidential preference vote without a direct choice of delegates; while seven[8] provide for both a presidential preference vote and the direct choice of delegates.[9] Three states[10] require the selection of national committeemen by direct vote of the party electors; one, New Jersey, by the state central committee; while the others leave the selection to party usage. Finally, two states, Oregon and North Dakota, emphasize the public character of the functions of delegates to a national convention by providing that every delegate of a legally defined political party "shall receive from the State Treasury the amount of his traveling expenses necessarily spent in actual attendance upon said convention, . . . but in no case to exceed two hundred dollars for each delegate."

The provisions respecting delegates and committeemen are mandatory upon all legally recognized political parties. The presidential preference primary is merely permissive in five states,[11] while in five others[12] it is essentially mandatory, at least in spirit. "The qualified electors of the political parties subject to this law shall have opportunity to vote for their preference, on ballots provided for that purpose, . . . among those aspiring to be candidates of their representative parties for president," reads a typical provision. One-half[13] of these laws provide for a *separate* presidential primary election every four years, the other half,[14] for a *combined* presidential and general state primary election. The dates for holding these various presidential primaries range over a period of eleven weeks from March 19 to June 4. Only two, those of Oregon and Nebraska, fall on the same day. In every one of these states all political parties hold their presidential primaries on the same day and at the same polling places. They are conducted in the same general manner as regular elections, and entirely

[7]Md., Ill., Mich.

[8]Ore., N. D., Wis., N. J., Nebr., Cal., Mass.

[9]In all but two states, the direct choice of delegates includes alternates, both district and at large. California provides for the choice of alternates by the regular delegates and Wisconsin by the state central committee. In five states, Ore., Nebr., N. D., Wis., and Mass., the presidential preference primary applies to the vice-presidency also.

[10]S. D., N. D., Nebr.

[11]Wis., N. J., Md., Mass., Ill.

[12]Ore., N. D., Nebr., Cal., Mich.

[13]Wis., N. D., N. J., Cal. Mass., Mich.

[14]S. D., Ill., Pa., Ore., Nebr., Md., the last four by advancing the date of their general primary in presidential years.

at public expense. The party test and other qualifications for voting at presidential primaries are in every case exactly the same as those required at the general state primary election. Without exception a direct plurality vote suffices to instruct, nominate, or elect as the case may be.

Candidates for national committeemen may have their names placed on the primary ballot only by petitions signed by their respective party voters.[15] In South Dakota, the names of candidates for election as delegates to national conventions are printed on the ballot upon written request and a declaration of candidacy. But in the other states providing for direct choice, a place on the ballot is secured by such candidates only by petitions containing the signatures of a specified number[16] or percentage of party electors. With only two exceptions, the names of presidential candidates are to be printed on the ballot "solely on the petition of their political supporters"[17] in the state. "No signature statement, or consent shall be required to be filed by any such candidate." Two states, California and New Jersey, expressly provide that any person thus put forward as a candidate may withdraw his name by a written declination filed with the secretary of state. In marked contrast with the above policy, Illinois provides for a personal petition by presidential candidates to be indorsed by at least three thousand party voters; while Maryland requires both the filing of a certificate of candidacy and the payment of a fee in each of her twenty-seven counties and legislative districts.

The names of individual candidates, whether for president, national committeemen, or delegates to national conventions, are to be arranged on the ballot as follows: in two states, in the order of the filing of petitions; in four, in alphabetical order; in four more, according to a system of rotation. In six states, the names of candidates for the positions of delegates to national conventions appear on the ballot only individually and with absolutely no indication of their presidential preference with the one exception of Pennsylvania. There, would-be delegates may have placed on the ballot opposite their individual names, that of the candidate they prefer and wish to support for president. In New Jersey, South Dakota and California can-

[15]Nebr. requires 500 signatures in each of her 6 congressional districts, if not more than 5% of total party vote; S. D. and N. D., only 1% of state party vote.

[16]Varies greatly in different states: only 100 in N. J. and 250 in Mass. for all delegates, while 500 in Nebr. for district delegates and 3,000 for those at large.

[17]Number required in Nebr., 25; Mich., 100; Mass., N. J., Ore., Wis., 1,000; Cal. and N. D., 1% of state party vote.

didates for election as delegates may appear on the ballot not only individually but in groups to be voted for as a unit. In New Jersey, candidates may have printed opposite their names individually or in a group, and under the caption "Choice for President," the name of the candidate they favor. In South Dakota, a group may go on the ballot under the common motto or pledge of not more than five words. In California, a full set of candidates for election as delegates may go on the ballot as a group, on two conditions: first, that not less than one nor more than four of the candidates shall come from each congressional district; second, that such group has "the endorsement of that candidate for presidential nominee for whom the members of said group have filed a preference, or the endorsement of such a state political organization created in support of the candidacy of said presidential nominee as shall not be repudiated by him as lacking authority to make such endorsement."

Both California and New Jersey provide for the mailing of sample presidential primary ballots to the voters for their instruction. But the former state further provides that the sample ballot of each party shall be accompanied by a sheet of "biographical sketches of presidential candidates." These sketches are not to exceed three hundred words in length. "The biographical sketch of each candidate for presidential nomination shall be furnished by such candidate or by such state political organization created in support of his candidacy as shall not be repudiated by him as lacking authority" to do so. Those submitting such sketches must pay two hundred dollars a sketch to defray the cost of publication.

These presidential primary states form two groups with respect to the territorial or political unit of election and instruction of delegates to national conventions. In five states[18] two delegates are chosen by each congressional district and four at large, thus treating the district as the primary and the state as only a secondary election unit. All of this group of states except Pennsylvania provide for a presidential preference vote by all the party voters of the state; but make no attempt by law to define its operation, nor to add particularly to its moral and political force as an instruction to the delegates.

Illinois expressly provides that the preferential "vote of the state at large shall be taken and considered as advisory to the delegates and alternates at large to the national conventions of the respective political parties; and the vote of the respective congressional districts

[18]Pa., Wis., Nebr., N. J., Mass.

shall be taken and considered as advisory to the delegates and alternates of said congressional district."

In a second group of five states,[19] the delegates to national conventions are all elected by the state at large.[20] The state is treated as the sole and supreme unit or agency both for electing and instructing delegates. Oregon and North Dakota seek to make the preferential vote binding by requiring every delegate to take an oath of office that he will "to the best of his judgment and ability, faithfully carry out the wishes of his political party as expressed by its voters at the time of his election." California closely connects the choice of delegates with the presidential preference vote by providing for a full group of indorsed and pledged candidates, placed on the ballot under the name of the candidate they favor for president, so that the candidate carrying the state on the preferential vote will almost inevitably secure all the delegates. This state also has a permissive provision for a statement or pledge by a prospective delegate that if elected he will to the best of his judgment and ability support that candidate for president who received a plurality of the "votes cast throughout the entire state" by the voters of his party.

Michigan provides that the candidate receiving a plurality of the presidential preference "votes in the state . . . shall be declared to be the candidate and the choice of such political party for this state." The Maryland law goes the farthest in seeking to bind the delegates by the presidential preference vote. It provides that the person receiving a majority of a party preferential vote for president "has been chosen by the voters of the party . . . as their choice for candidate for President in the national convention for such political party, and all the delegates of such party . . . shall be instructed and bound to vote as a unit in the national convention for such candidate . . . as long as in their conscientious judgment there is any possibility of his being nominated."

L. E. AYLSWORTH

[19] S. D., Ore., N. D., Cal., Md.

[20] In Md. all the delegates are chosen by a state convention made up of delegates chosen directly on the date of the presidential preference vote. The result of the presidential preference vote is not ascertained as is usual in primary laws, by adding up the total vote for a candidate throughout the State. The vote of each county and district is considered by itself, and the carrying of any county or district by a candidate merely serves legally to instruct and require its delegates to the state convention to vote for him. Not the party voters but the state convention voting by counties and districts under the unit rule as instructed by the primary vote formally and legally makes the presidential preference nomination.

CURRENT MUNICIPAL AFFAIRS

WILLIAM BENNETT MUNRO

The question of permitting cities to take by condemnation proceedings, more private land than is actually needed for public improvements with the idea of reselling unused portions and thereby recouping themselves for part of the outlay, is one which has received a good deal of attention in various parts of the country within the last few months. Throughout Europe it has long been the practice of cities to follow the principle of excess condemnation in carrying through street improvements. It was under this system that Baron Haussmann put through his great scheme of street reconstruction in Paris a half-century ago and under somewhat similar arrangements the London County Council built the magnificent thoroughfare known as the King's Way. This latter undertaking was carried through at practically no cost to the public treasury, since the increased value of adjacent property about offset the outlay both for construction and for the acquisition of the land.

In most of the states of the Union constitutional provisions which forbid the taking of private property for other than strictly public purposes has placed serious obstacles in the way of many large municipal undertakings. These constitutional limitations have so restricted the authority of the city in the matter of land takings that although public improvements add greatly to the value of private property within adjacent zones, the municipal treasury gets only a small share of this increment by way of betterments. Moreover, when new thoroughfares are constructed or old streets widened, the present restrictive arrangements result in the creation of irregular and small-sized plots of land which are unsuitable for proper building development. It is coming to be realized that the replanning of American cities can be brought within the bounds of possibility only if the constitutional limitations relating to the taking of private property are somewhat relaxed.

It is now eight years since the Ohio legislature passed the first American act recognizing the principle, which, for what of a better term, is commonly called excess condemnation. A similar measure