

# CODE OF IOWA

1927

CONTAINING

ALL STATUTES OF A GENERAL AND  
PERMANENT NATURE

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PUBLISHED BY THE STATE OF IOWA UNDER AUTHORITY OF CHAPTER 13 HEREOF

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1927



## PREFACE TO CODE, 1924

1846  
Constitution  
skipped  
over.

The first publication of Iowa laws which bore any semblance to a code was *The Statute Laws of the Territory of Iowa*, 1838-1839, sometimes referred to as *The Old Blue Book*. A few years later there appeared the *Revised Statutes of the Territory of Iowa*, 1842-1843, popularly known as *The Blue Book*, revised and compiled by a joint committee of the Territorial Legislature, which went into effect July 1, 1843.

On January 25, 1848, the first General Assembly appointed a committee composed of Charles Mason, Wm. G. Woodward, and Stephen Hempstead to "draft, revise and prepare a code of laws for the State of Iowa". This work was accomplished in a very creditable manner and the first code of the state, known as the *Code of 1851*, was enacted by the legislature and approved by the Governor, February 5, 1851. This code was in the form of a single act, and although it was considered in chapters and sections by the legislature, it passed both houses on the last day of the session as a single bill, and on the same day was approved by the Governor.

Following the adoption of the new constitution in 1857 the seventh General Assembly in 1858 passed a joint resolution appointing William Smyth of Linn County, W. T. Barker of Dubuque County, and Charles Ben Darwin of Des Moines County "Commissioners to draft and report to the Judiciary Committee of the two houses a Code of Civil and Criminal procedure; \* \* \* and to Revise and Codify the General Laws of the State so far as practicable".

These commissioners reported to the eighth General Assembly in 1860 a code of civil and criminal practice and these proposed bills became the law with few changes. The commissioners construed the statute as authorizing them only to make a compilation of the remaining laws and they limited their work to this, but in their report expressed the opinion that a real codification of all of the law would be very desirable but would take the "painful labor of many minds working in concert for many years".

This *Revision of 1860* was apparently not satisfactory and the *Code of 1873* soon followed. The thirteenth General Assembly in 1870 appointed William H. Seevers of Mahaska County, John C. Polley of Clinton County, and William J. Knight of Dubuque County, as commissioners to carefully revise the statutes of this state, rewrite the same, omit obsolete parts, insert all amendments, transpose words and sentences, and when necessary, to change the phraseology. Judge Polley, however, removed from the state and Wm. G. Hammond, Chancellor of the Law Department of the State University, was appointed to fill the vacancy. The report of this commission was the basis of the *Code of 1873*. The General Assembly saw that it was not possible to do the work in the regular session and this work was done at an adjourned session which lasted thirty-six days. This code took effect September 1, 1873, and section 47 thereof provided that: "All public and general statutes passed prior to the present session of



the general assembly, and all public and special acts, the subjects whereof are revised in this code, or which are repugnant to the provisions thereof, are hereby repealed, subject to the limitations and with the exceptions herein expressed."

The *Code of 1873* continued to be the official code of the state for twenty-four years, although supplemented in a measure by private compilations known as McClain's Code and Miller's Code, respectively, which were officially recognized by the General Assembly, and came into general use throughout the state.

The twenty-fifth General Assembly in 1894 passed a bill providing for the appointment of a commission of five persons to carefully revise and codify the laws, rewrite the same and divide them into appropriate parts and arrange them into titles, chapters, and sections, omit all parts repealed or obsolete, insert all amendments to make the laws complete, transpose words and sentences, arrange the same into sections or paragraphs, number them, change the phraseology, and make any and all alterations necessary to improve, systematize, harmonize, and make the laws clear and intelligible.

This commission consisted of Emlin McClain, Chancellor of the Law Department of the State University, appointed by the Senate, John Y. Stone and Charles Baker, appointed by the House, and H. S. Winslow and H. F. Dale, appointed by the Supreme Court.

This commission reported to the twenty-sixth General Assembly a "Proposed Code" with an "Explanatory Report". The General Assembly undertook the work of code revision; but finding that it could not be done at the regular session, an extra session was called which convened January 19, 1897. The proposed code reported by the commissioners was little more than a compilation, comparatively few changes being recommended. The General Assembly followed in general the work of the code commissioners, but made numerous changes in the law, entirely rewriting several parts of it. On May 11, 1897, a recess was taken until July 1st, and the extra session finally adjourned July 2, 1897, having been in session one hundred eleven days, and the laws, under the constitution, took effect ninety days thereafter.

After having served the people for about twenty-five years, the *Code of 1897* and the supplements thereto became so complicated and cumbersome that the thirty-eighth General Assembly provided for a new revision of the laws by the passage of an act (38 G. A., ch. 50) which contained provisions similar to those which resulted in the *Code of 1897*. This act provided for the appointment of a commission consisting of three members, one of whom was to be the Supreme Court Reporter, and the two remaining members were to be named by the Governor from a list of five persons especially fitted for such work, submitted to him by the Chief Justice of the Supreme Court. The commissioners appointed were James H. Trewin of Cedar Rapids, who had been chairman of the code supervising committee of the twenty-sixth General Assembly; J. C. Mabry of Albia, and U. G. Whitney, the Reporter of the Supreme Court.

The act providing for the appointment of the commission suggested no definite plan for the work or the report of the commission, but directed it to edit and codify the laws of Iowa, "reporting necessary and desirable changes to the General Assembly." It also provided that the commission



should "submit a report to the Legislature calling attention by reference to the section of the code, to all repealed laws by section and reference to the session repealing same and calling attention to such portions of the laws as may be found to be conflicting, or redundant or ambiguous or such as otherwise require legislative action to make clear; and shall include in such reports the comments and recommendations of the commission or editor upon the subject of any part of said code." Also, the Governor was requested by this act "to convene the Legislature in extra session during the month of January, 1920, or as soon thereafter as practicable, for the consideration of said report and code."

The commission organized March 19, 1919, by selecting James H. Trewin as chairman and U. G. Whitney as secretary. Believing it would be impracticable for the General Assembly to formulate bills, and guided by the experience of the twenty-sixth General Assembly, the commission presented to the thirty-eighth General Assembly the following plan for the pending code revision:

"First. To prepare an orderly compilation of the laws, omitting all laws of a local or temporary character, etc., and cause the same to be printed on or before December 1, 1919, without change in wording;

"Second. To prepare a report, setting forth a codification of such parts of the law as in the judgment of the commission is necessary, and that such codification shall be prepared in the form of bills as substitutes for the sections or chapters codified, as the case may be;

"Third. To separately report such amendments to the laws as codified as, in the judgment of the commission, are necessary for the public interest." (See *House Journal*, 1919, page 1101.)

The code commissioners prepared and published as directed an orderly compilation of the laws which is known as the *Compiled Code of Iowa*, 1919, and also prepared two hundred fifty-three bills, comprising two thousand sixty pages, which amended, revised, and codified certain sections, chapters, and titles of the *Compiled Code*. The commissioners made this report to the thirty-eighth General Assembly on February 1, 1920, accompanying the report with a schedule of the commissioners' bills, together with a table showing the sections codified.

The Governor having failed to call the extra session as requested, the *Compiled Code* and the commissioners' bills came before the regular session of the thirty-ninth General Assembly. Committees of the House and Senate compared the *Compiled Code* with the sources from which it was derived. The thirty-ninth General Assembly directed that its acts of a general and permanent nature be published in the form of a supplement to the *Compiled Code*, and that the code commissioners' bills be amended to conform with the legislation passed by it. Provision was also made for an extra session at which it was contemplated the work of code revision would receive exclusive consideration. The Governor did not see fit, however, to call such extra session and the matter of code revision was again delayed until the meeting of the fortieth General Assembly.

The fortieth General Assembly, at its regular session, had before it all of the code commissioners' amended bills and the advantage of a book of briefs of the bills prepared by the commissioners, but found time to pass only a small number of these bills. Governor Kendall then called



an extra session to convene April 18, 1923, the day following the adjournment of the regular session. After meeting and organizing, the General Assembly recessed until December 4, 1923. Provisions were again made for conforming the bills to the acts of the regular session of the fortieth General Assembly, and also for a cumulative supplement to the *Compiled Code*. These were prepared, and all the bills, together with a number of additional bills, were reprinted, the briefs, for greater convenience, being printed under the appropriate sections of the bills.

The extra session of the fortieth General Assembly reconvened on December 4, 1923, and immediately began consideration of the code commissioners' bills. It soon became apparent that the work would be greatly facilitated by calling the code commissioners in consultation, and such action was authorized. The commissioners remained to the end of the session as advisors and assistants to the General Assembly, and appreciation of this assistance found expression in resolutions passed by the Assembly at the close of the session. It is estimated that approximately one-third of the sections of the *Compiled Code* were amended and revised in the process of producing the *Code of 1924*. Historical references at the end of each section disclose the origin of the section and any subsequent legislative action. The sections which were affected by the codification can therefore be determined by an examination of such historical references.

The General Assembly completed its work on April 26, 1924. In chapter 3, laws of the extra session of the fortieth General Assembly, (sections 168, 169, and 172 of this Code) the preparation and publication of the *Code of 1924* were provided for. Some of these provisions are new in code building in Iowa. For instance, chapters are numbered consecutively without regard to titles. Each page contains two columns, and a chapter analysis is placed at the head of each chapter. It is believed that these features will meet with approval.

The volume contains no tables of corresponding sections and no annotations, but the law provides for the publication of such tables and annotations in separate volumes.

Provision was made that the President of the Senate should appoint two members of the Senate, and the Speaker of the House three members of the House, who should constitute a code supervising committee, to have "general supervision and oversight over the work of editing the code and the work of the code editor in preparing the code for publication and of the printing and binding thereof." The members selected from the Senate were Charles M. Dutcher of Iowa City, and Ed. M. Smith of Winterset; and those from the House were C. F. Clark of Cedar Rapids, E. P. Harrison of Oakland, and Clyde H. Doolittle of Manchester.

In view of the fact that under the constitution all of the provisions of the *Code of 1924* which were passed by the extra session of the fortieth General Assembly would take effect "ninety days after the adjournment" of such extra session, and of the fact that the code could not be prepared and published within ninety days from April 26, 1924, the General Assembly, in order that its laws might be published and ready for distribution before taking effect, recessed until July 22, 1924.

Upon reconvening on July 22d, the General Assembly, upon the recommendation of the code supervising committee, passed several bills curing manifest errors which had crept into the work of the extra session. Some



of these corrections have been carried into the code as published, and all will be found in the session laws published by the authority of the General Assembly.

The extra session of the fortieth General Assembly, having been in session one hundred fifty-five days, finally adjourned on July 30, 1924, and the laws passed by it, except those which took effect by publication, will become effective "ninety days after the adjournment".

The committee believes that the *Code of 1924* is more logically arranged than the *Code of 1897*. It is divided into many more titles and chapters, and most of the duplications and inconsistencies which resulted from the enactment of many statutes since the *Code of 1897*, sometimes without regard to the then existing law, have been eliminated. Wherever changes have been made, it has been the endeavor to express the law in concise and clear language, short sentences and sections, and it is confidently believed that it will be more readily found and more easily understood than the law appearing in any previous code of Iowa.

One of the important accomplishments of the fortieth General Assembly was the laying of the foundation for continuous code revision in providing that the code editor shall in future submit recommendations to the General Assembly for amending, revising, and codifying the laws; and it is sincerely hoped that every succeeding General Assembly will appoint appropriate committees and give serious consideration to such recommendations and that some portions of the law will be amended, revised, and codified at each session, and thus the enormous expense and the consumption of time of the members of the General Assembly in going through another general revision will be avoided. Under the law enacted, there will be a new code issued every four years; and it is, in our judgment, entirely feasible and economical to do this and thus with timely revisions of portions of the law prevent in the future the great complication and confusion into which our laws fell between the adoption of the *Code of 1897* and the present time.

The index of this code has been prepared by Mr. Jacob Van der Zee of the faculty of the State University of Iowa. As far as possible it has followed the index to the *Code of 1897*, with which users of the code are familiar. We believe that it is a great improvement over any previous index and predict that it will give general satisfaction.

In compiling and editing the present volume, the committee desires to especially commend the work of Hon. U. G. Whitney, the Code Editor. He has worked untiringly and intelligently to produce a creditable code. He has been ably assisted by Mr. O. K. Patton, of the law faculty of the State University of Iowa, and others, all of whom have displayed commendable zeal in their work.

While this code contains all the laws of the state of a general and permanent nature, it should be borne in mind that its contents were not enrolled and passed as a whole by any General Assembly. The book therefore is a compilation of the laws of Iowa, published under the authority of the state.



The "Tables of Corresponding Sections" and the "Book of Annotations" will appear in due season; and it is hoped that in content, workmanship, and design the work of "code revision" started in the thirty-eighth General Assembly and ending in the extra session of the fortieth General Assembly will meet with the approval of the lawyer and the layman.

Respectfully submitted,

CHARLES M. DUTCHER, *Chairman*

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