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1962

STATE LEGISLATIVE COUNCILS

Their Organization and Operations

by

Margaret E. Holden
Assistant Researcher

STATE OF HAWAII
APR 12 2006
LEGISLATIVE REFERENCE BUREAU

January 1962
Request No. 7943

Tom Dinell, Acting Director
Legislative Reference Bureau
University of Hawaii
Honolulu, Hawaii

FOREWORD

The Legislative Reference Bureau was requested to prepare a report on the organization and operation of legislative councils. The report which follows is in response to that request. It is in part based on interviews conducted by Miss Holden on the mainland with legislative leaders and with staff members of legislative councils and other legislative service agencies as well as with staff members of the Council of State Governments, the secretariat of the National Legislative Conference.

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I. INTRODUCTION

The need of state legislatures for professional and technical assistance in carrying out their responsibilities to state government has been recognized in the twentieth century by the creation and expansion of various types of permanent legislative service agencies such as legislative reference and research bureaus, bill drafting units, fiscal review agencies and legislative councils. The most recent report of the National Legislative Conference's Committee on Legislative Services reiterates the continuing need for development of legislative services:

In view of the complexity, size and importance of the problems facing our mid-Twentieth Century governments, our legislatures (their individual members, leaders, committees and each house) should have available to them a wide variety of services--provided in "adequate depth" to meet actual need, and normally provided under legislative jurisdiction.¹

Necessary Legislative Services

The Committee on Legislative Services lists the following legislative services which all states should provide:

- A. Prefiling, bill drafting and review of legislation
- B. Orientation of new legislators
- C. Post-audit of state fiscal operations
- D. Legislative oversight of governmental operations
- E. Budget review

¹Conclusions and Preliminary Recommendations (Chicago: September 5, 1961), unpagged.

- F. Fiscal analysis
- G. Legislative housekeeping and clerical assistance
- H. Information and reference service
- I. Assistance on policy problems
- J. Indexing and summarizing of legislative action
- K. Legislative counseling
- L. Statutory and code revision

Few, if any, states provide all of these services nor are all the services available in any state provided by a single legislative agency.

Growth and Functions of the Legislative Councils

In addition to the need for professional and technical services to state legislators, there has been a growing realization of the need for continuing participation by legislators in interim research programs. Interim committees to study special problems in anticipation of the next session's action have long been used by state legislatures. The value of permanent joint interim committees was recognized by the creation of the legislative council which is a combination of a permanent legislative committee functioning during the interim between sessions and a legislative service agency. Kansas created the first legislative council in 1933. Thirty-nine states have since established similar agencies. One state, Michigan, abolished its council after a short period. The single most important feature of a legislative council program in comparison with any other

form of legislative research is that the research is conducted under the direction and with the participation of legislators themselves.

The services provided by legislative councils and their staffs in those 39 states which operate councils or equivalent agencies are listed below. A list of agencies appears in the Appendix.

<u>Legislative Council Services</u> ²	
<u>Service</u>	<u>Number of Councils Providing</u>
Preparation of research reports	39
Spot research and counseling for legislators	34
Bill drafting for legislators	23
Recommendation of substantive legislative program	22
Reference library facilities	21
Preparation of bill and law summaries	17
Statutory revision	13
Continuous study of state revenues and expenditures	8
Budgetary review and analysis	7
Legislative post-audit	4

Some of the services listed above are provided in council states through other legislative service agencies.

The Nature of a Legislative Council

A legislative council is a permanent statutory agency through which legislators give continuing attention to many of the complex problems of state government upon which the lawmakers must act in formal legislative session. A legislative council has the following characteristics:

²Council of State Governments, Permanent Legislative Service Agencies (Chicago: 1960), unpagged.

1. It is a permanent, bipartisan, statutory body which meets periodically during the interim between legislative sessions. This factor of permanence distinguishes it from other interim committees of which it is a special type.
2. It is composed principally, most often entirely, of legislators from both houses.
3. Its members provide for and to some extent participate in a research program directed to developing solutions to problems which may be considered at the next legislative session.
4. It has a continuing research staff to assist it.

Legislative councils are frequently classified as either "recommending" or "non-recommending" agencies: that is, some legislative councils formulate a program for presentation to the next legislature, complete with substantive recommendations and proposed bills, while other councils present the results of research studies without making recommendations for legislative action. The latter group may suggest alternative solutions to the problems studied, but they will not recommend a particular course of action to the legislature. Twenty-four states have recommending councils.

Councils which develop substantive programs have a more direct and dynamic part in the total legislative process than do those councils which do not make recommendations. In order to arrive at a specific course of action, legislators who are council members must study a problem, weigh alternatives, test proposed solutions and finally agree on a proposal to present to the rest of the legislature. Emphasis may tend

to be placed on the research staff of a non-recommending council and on staff products rather than upon legislative participation in interim research.

Since research reports are static and the legislature is an action body, research reports must be translated into action through the vehicle of bills which are based on legislative policy decisions. According to Frederick Guild, director of the research department of the Kansas legislative council since its creation, research findings alone lead the legislator to a "so-what" stage. Before a bill can be drafted, the legislator must reach the "make-up-your-mind" stage.³ Legislative councils which make recommendations and have bills prepared to carry them out translate the static research product into active policy.

³ Remarks made at National Legislative Conference, Workshop discussion, Chicago, August 1960.

II. ORGANIZATION OF LEGISLATIVE COUNCILS

Legislative councils originate in state statutes except in Alaska and Missouri whose constitutions require their creation. The authority of the legislature to conduct investigations, to create committees, and to establish organizations and appropriate funds for public purposes provides the legal framework for the establishment of legislative councils. With one exception, the constitutionality of legislative councils has not been successfully challenged.¹

The council is distinctly a creature of the legislature. Thus, in all states, including Alaska and Missouri, the legislature determines who shall serve on the council, for how long, when members shall meet, how the council will be financed and what size and type of staff the council will have.

Membership

Size of Council. The number of members on state legislative councils varies from 5 in South Carolina to 260 in Pennsylvania with about 15 members as a median. In most states, legislative council statutes establish criteria for

¹A Montana court ruling abolished the state's newly formed legislative council in 1954, but when a legislative council was again established in 1957, its constitutionality was upheld by the Montana supreme court. See D. W. Smith, "The Constitutionality of Legislative Councils," Western Political Quarterly, VIII (March 1955), 68-81; Book of the States, 1958-59, pp. 70-71.

the selection of a specified number of members. In the states of Nebraska, Oklahoma, Pennsylvania and South Dakota, however, the entire membership of the legislature continues as a joint interim body, led by an executive board or steering committee.

Selection of Members. Perhaps more important than size is the method of selection of the legislative council members. Those who lead the legislature decide who will lead the council. Legislative leaders are frequently given ex officio appointments or have the power of appointing council members. Many statutes assign the presiding officers of each house to council membership. Other legislative leaders of both the majority and minority parties and chairmen of certain major committees are designated in some state statutes. In Maryland, for instance, the chairmen of the finance and judiciary committees of each house are ex officio council members by law. The South Carolina legislative council and Pennsylvania's executive committee are composed entirely of ex officio members. Pennsylvania's Joint State Government Commission, its permanent legislative interim agency, prior to 1956 was composed of an equal number of members from each house appointed by their presiding officers. When the statute was amended to provide that the entire membership of the General Assembly should constitute the Commission, its executive committee was created entirely ex officio by designation of the following legislative leaders as members: the

President pro tempore of the Senate, the Speaker of the House of Representatives, the majority and minority leaders of each house and the chairmen of the majority and minority caucuses of each house. In addition, the executive committee selects another member of the General Assembly to serve as chairman of the Joint State Government Commission and ex officio as the committee's chairman.²

In most states, members of the legislative council other than those specified by law are appointed by the presiding officers of each house, sometimes subject to confirmation by the membership of the house.

Officers. Officers of the legislative councils are usually elected by the council although in some states officers are prescribed by their ex officio status. Several states designate the President of the Senate as chairman and the Speaker of the House as vice chairman. Oklahoma alternates the chairmanship each session between the President pro tempore of the Senate and the Speaker of the House. Massachusetts law requires that one of the Senate members of the council be designated as chairman by the President of the Senate and that one of the House members be named vice chairman by the Speaker of the House. Politically realistic leadership of the Bay State is reflected in the recent action of the President of the Senate's appointment of himself as chairman and the Speaker's appointment of himself as vice chairman.

²Laws of Pa. 1959, no. 646, sec. 1.

Use of Non-Legislative Membership. Although early proposals for legislative councils provided for executive and public as well as legislative membership, this idea has found little favor among legislators who tend to view the council as a legislative agency rather than as a mixed board. In 14 states, the lieutenant governor in his role as President of the Senate is a member of the legislative council. South Carolina makes the Secretary of State a council member. Many states use citizen members on council committees, but only Utah and New Hampshire make statutory provision for citizen membership on the council itself. New Hampshire's legislative council has three public members who are appointed by the governor, two from the majority party and one from the minority party. One of Utah's three citizen members is appointed by the governor, another by the President of the Senate and a third by the Speaker of the House.

Partisan Representation. Legislative councils are bipartisan agencies, but their composition frequently recognizes party strength in the legislature either by statute or by practice. Twenty-two states require political party representation in legislative council membership, although proportions of party membership vary. Some states, Illinois for example, specify that party representation on the council be proportional to the number of members of each political party in each house, except that an upper percentage limit is

placed on majority party membership.³ In such states as Wisconsin where the statute does not mention party affiliation as a criterion for membership, the legislative council still tends to reflect the political composition of the legislature but with a weighting toward the majority party. On the other hand, whatever the proportion of Republicans and Democrats in the Montana legislature, Montana law permits no more than half of the council membership to belong to the same political party. In Maryland, a state where one party tends to dominate the legislature, specific requirements for minority representation were amended in 1959 because they gave the minority party a disproportionate number of members on the legislative council relative to party strength.⁴ Prior to 1959, the council statute required that council membership generally reflect party strength and further specified that the minority floor leaders and two additional minority members be appointed from each house. At present, the minority floor leaders are given statutory membership on the Maryland council. Although the provision for party representation relative to strength has been retained, the minority party has only 3 out of 29 members in the Senate and 6 out of 123 House members and hence does not qualify for additional council representation.

³ Ill. Rev. Stat., ch. 63, sec. 33 (1959).

⁴ Laws of Md. 1959, ch. 48.

Geographical Representation. Statutory requirements for representation on legislative councils according to geographical area are less common than are specifications for political party representation. At least 14, or about one-third of the states with legislative councils specify some sort of geographical limitation on membership, such as membership by Congressional district. In Tennessee each of the "three grand divisions of the state" and in Alaska each of the four judicial divisions must be given council representation.

Terms of Office

Most legislative council members are selected for two-year terms or for the period for which the member is elected. Usually the law does not limit the number of terms for which a member may serve.

The timing of appointment to a council is important, particularly in view of the coveted nature of the assignment. Appointment to the council in many states is made during the closing days of the regular session or soon after it has adjourned. Where a council works actively for the adoption of its recommendations, the timing of new appointments is particularly important.

Although the Utah legislative council statute provides that members be appointed at the convening of the legislature, in practice council members continue to serve through the

legislative session; and new members are selected after adjournment.⁵ Some years ago Kansas switched from the practice of making and announcing appointments to the legislative council during the final week of the session to action on the last day of the session. It was found that membership on the Kansas council is

. . . sufficiently popular among the legislators to produce some jockeying for membership and occasional efforts to harass the council during the closing days of the session by some disgruntled legislators who had vainly sought appointments.⁶

Turnover in membership is desirable in that too many holdover members may tend to dominate proceedings. Too much turnover, however, may result in an insufficient number of experienced members who understand how to operate the council effectively. Natural attrition occurs through failure of reelection; for example, only twelve out of twenty council members were returned to a recent Montana legislature. Where the statute provides for ex officio membership, the chance for some continuity is increased.

Many legislative councils, particularly those in states with biennial sessions, may have a number of potential "lame duck" members. Legislators appointed to a council at the close of one biennial session may have to stand for reelection before the succeeding general session at which they are scheduled to report. Even if individual representatives and

⁵Interview with Mr. Lewis H. Lloyd, Director, Utah Legislative Council, August 1960.

⁶William J. Siffin, The Legislative Council in the American States ("Social Science Series," No. 18; Bloomington: Indiana University Press, 1959), p. 71.

senators are reelected or hold over, the political balance of the legislature may have changed from that at the time of their appointment. In states where primaries are held early in a calendar year, the fate of a particular council member may be known long before his term of office has actually expired. Nevertheless, he will continue to serve on the legislative council until his term has expired. The appointment of experienced legislators, likely to be reelected to office, minimizes the "lame duck" factor to some degree.

Some councils, such as Illinois', have no statutory provision for the filling of vacancies which occur before a term has expired. Other states tend to provide for the filling of such vacancies by (1) the presiding officer of the house affected, (2) the entire remaining membership of the council, and (3) the remaining council members of the house in which a vacancy occurs.

Council Meetings

Most legislative councils meet quarterly to transact formal business although a few hold monthly meetings. Subcommittees of the council, working with the research staff, may be active during the entire interim. Provisions for special or regular meetings or for public hearings in various parts of the state are usually incorporated in either the statute or rules which govern each council.

Council Finances

Legislative council budgets for the biennium 1961-63 range from a token \$5,000 in New Hampshire to \$430,000 in Ohio. The amount of the appropriation in each state governs the scope of the council's program and the diversity of the staff services which it furnishes to the legislature. The largest expense for any legislative council is for the expenses of its permanent research agency rather than for the expenses of the legislators and others who compose the council itself. The proportion of expenses shows clearly in Massachusetts where the budget of the council is distinguished from that of its research bureau. In 1959-60 fiscal year, for instance, the council was allotted \$6,039 and the research bureau \$80,000. Funds allocated to council expenses are spent principally for travel expenses and attendance at national conferences held on matters of legislative interest.⁷

Compensation of legislative council members for participation in council meetings generally follows state practice of compensation for any other type of legislative interim activity. About half the states allow per diem and at least travel expenses; the remainder of the states allow "expenses". Apparently only Nevada limits its compensation strictly to travel expenses. Per diem compensation for legislative

⁷Massachusetts Legislative Research Council and Legislative Research Bureau, Fifth Annual Report, House [document] No. 2675, November 11, 1959, pp. 7-8.

council participation ranges from \$5 in Kentucky to \$35 in Alaska.⁸

Council Staff

The need of state legislatures for efficient and objective professional staff service has been recognized and provided for in some measure by every state, including those which have established legislative councils. Just as the legislative council gives continuity to the legislative process between sessions, so does the professional staff give continuity to the basic research program which is essential to the adequate consideration of state problems by the legislative council and subsequently by the entire legislature.

Research personnel of legislative service agencies should be professionally trained, objective, and able to work effectively with persons of different political points of view. It is generally agreed that staff members should never be chosen for political reasons. Although political control of the legislature and the legislative council may shift from biennium to biennium, the council's permanent research agency can survive political change and provide continuity to legislative research.

Regular Staff. Legislative councils generally employ a director who may also serve as executive secretary for the

⁸Book of the States, 1960-61 (Chicago: Council of State Governments, 1960), p. 73. Information brought up to 1961 by letter from Council of State Governments.

council. Authorities recommend that the director have graduate training in government or another social science and that he have knowledge of the law.

The council director is usually given the authority to select the rest of his staff, sometimes subject to the approval of the council. Internal administration of the research program is the director's province. In addition to the staff head, most legislative councils also employ an assistant director and one or more research specialists who prepare research reports or make special studies of projects assigned by the council. Other professional members of the council staff are selected in accordance with the scope of the council's program and may include attorneys, librarians and fiscal analysts. Clerical and stenographic employees complete the permanent staff.

Special Staff. In addition to a well-balanced permanent staff, part-time or short-term personnel and special council staff are used by legislative research agencies for special projects or for peakload operations.

Frequently, the college or university faculties of a state provide a pool of talent upon which to draw for special studies of problems which cannot be adequately handled by the regular research staff. The Massachusetts legislative research bureau supplements its regular staff by hiring consultants on a contract basis.

The Montana legislative council calls on the University of Montana's Bureau of Government and Bureau of Business and Economic Research for assistance from time to time and also obtains compilation of laws on subjects of interest to it from the University of Montana Law School. Pennsylvania makes extensive use of experts on its task force advisory committee.

During a legislative session, most states add staff to their regular service agencies. On the professional level, attorneys are in particular demand to meet the rush of bill-drafting requests. Some states find it useful to hire law school students or recent graduates who have not yet passed the bar. Other states find it more satisfactory to retain experienced attorneys who do not require the training and orientation that must be given to inexperienced workers. The permanent clerical staff is also augmented during peak-load periods.

Civil Service Status. Applicability of state civil service laws to legislative service staffs varies. Avoidance of political patronage in staff selection is paramount, but the need for flexibility in recruiting professional staff outside the sometimes restrictive aspects of civil service laws is also recognized. Matters of residence, salary and availability of specialized talents are factors to be considered in deciding to what extent to place the legislative council staff under the merit system laws of the state.

A comprehensive report on legislative service agencies presented the following conclusion on personnel selection.

It is suggested that whether they are to be included in or excluded from the classified service, all service agency personnel should be selected on the basis of merit. No administrator should be held responsible for the operation of an agency staffed with political appointees.⁹

Civil service status is not generally made a statutory requirement for legislative council employment for either the professional or clerical staff. Some states, such as Massachusetts, specifically exempt the legislative council staff from provisions of the civil service law. Employees of the Minnesota Legislative Research Committee are considered to be employees of the legislature and in the "unclassified service of the state civil service." Some states provide that appointment be made and compensation fixed outside the civil service provisions, but that classification and employee benefits conform to the personal law. Wisconsin makes civil service appointment optional with the council and, in practice, the merit system pattern is generally followed, but the residence requirement is not applied.¹⁰

⁹Legislative Service Conference Special Committee on Organization of Legislative Service, Revised Preliminary Report (Chicago: Council of State Governments, September, 1953), pp. iv-20.

¹⁰Mass. Gen. Laws ch. 3, sec. 58; Minn. Stat. 1957, 3-35; Wis. Stat. 13.35.7.

III. LEGISLATIVE COUNCIL OPERATIONS

The general rules under which a council operates, the procedures which it follows and the willing acceptance of those rules and procedures by legislative leaders and committees and by individual legislators determine, in large measure, how effectively the council will be able to discharge its responsibilities. How a council receives its assignments, what services it provides to individual legislators, how it conducts its research, its relationships with standing and interim committees, and the procedures it follows during a legislative session will all significantly affect a council's performance.

Legislative Council Assignments

The legislature itself generally prescribes the interim research program of the legislative council and its staff either by formal resolution or through requests of individual legislators for study and reporting on topics of interest and importance to state government. Councils also may usually initiate studies. In some states, other government departments, lobby groups or private citizens may request legislative council assistance, but the council may exercise discretion in accepting such requests.

Methods of exercising control over the legislative research program differ. The state of Washington is among the most generous in its receipt of proposals for study. Council

rules provide that any subcommittee of the council, any legislator, or any state official may present proposals in writing to the council. In addition, the Washington legislative council makes studies for such organizations as the State Labor Council and the Washington Library Association. At the other extreme of input is the Pennsylvania Joint State Government Commission which receives assignments only by resolution of the General Assembly or as initiated by its own executive committee. Even assignments authorized by the General Assembly are evaluated by the executive committee in terms of costs and resources and priorities are assigned. In the 1957-59 biennium, the executive committee selected twelve subjects for review and recommendation.

Legislative councils attempt to develop policies which will enable them to give equitable treatment to requests for service and at the same time carry out a balanced research program based on legislative direction. Montana has tried to develop a screening procedure so that resolutions requesting council studies can be considered simultaneously by both houses of the legislature. Its proposal suggests:

Council rules provide that resolutions of the legislature have priority over proposals by individual legislators. The Council suggests that all resolutions requesting studies by the Council be introduced as joint resolutions. This would afford the members of both houses an opportunity to approve the research proposals to the council. Moreover, if all such resolutions were sent to single committees in each house (after possible review by other committees) it would be possible for a conference committee to meet and assign a priority order to the resolutions. Near the end of the session the conference committee, with legislative

leaders, newly appointed Council members and someone from the Council staff could "boil down" the resolutions to a workable assignment for the Council, perhaps combining them in an omnibus resolution.¹

The same report emphasizes that the legislative council's primary function is to serve the legislative assembly and its individual members, not the executive branch or the general public.

Service to Individual Legislators

Most state legislative council staffs provide some service to individual legislators although the amount and kind of such assistance is likely to be influenced by the existence and functions of other legislative service agencies. Council rules and policies often delineate the scope of service and may require formal council approval for defined types of assistance. A requirement for council approval of an individual's request for service will, of course, destroy the confidentiality of a request.

The procedures of the Rhode Island legislative council illustrate a common approach to methods used to differentiate between requests for individual service. Its statement of purpose declares on this point: "While the staff exists to serve the legislature, it will do so only through the Council's action and direction."²

¹Montana Legislative Council, General Report ("General Report," No. 2; Helena: 1960), p. 2.

²Rhode Island Legislative Council, Statement of Purpose (Providence: December 1, 1959), p. 1.

Rhode Island legislative council projects are classified as "major, spot or miscellaneous research." Major research projects are undertaken between legislative sessions and result in reports to the General Assembly with or without council recommendations. Individual legislators may request "spot research" either during or between sessions. Such requests must be of a nature to be answerable within a one or two page memorandum prepared from information at hand or readily compiled by the staff. Any information that can be assembled within 24 to 72 hours is included. Legislative council approval must be secured for any request which will take longer or which is more complex. All other requests are treated as "miscellaneous" and generally require council approval.³

Research Methods

Although council research studies are carried out to a large extent by the councils' professional staffs, participation of the legislators themselves in all phases of the research program is a significant element in council functions. A description of some of the procedures used by selected councils will serve to illustrate alternative methods of operation.

Legislative councils generally operate through a committee system. During the 1959-61 interim, 13 committees in Wisconsin, two subcommittees and one advisory committee

³Rhode Island Legislative Council, Statement of Policy (Providence: December 1, 1959), p. 1.

worked in the council research program. Council committees during that period varied in size from eleven to seventeen members and included in many cases public members as well as non-council legislators, with a total membership of 213 made up of 184 different persons. The council also has an executive committee (consisting of the three officers: chairman, vice-chairman and secretary) which administers council affairs and a finance committee which prepares the budget for each fiscal year for the council and its committees.

Projects requested by the legislature are assigned by the council to the appropriate council committee. A major project may be the sole assignment of a particular committee or several related assignments may be given to the same committee. Committees are composed of Senate members, Assembly members and public members. A council rule that every committee have a council member on its roster is legally met by the fact that the chairman of the council is ex officio a member of every committee. It is desirable, however, that a council member be a participating member of each committee since otherwise problems of liaison and understanding may arise when reports are made back to the full council.

Each council committee chooses its own chairman. Some consideration has been given to a closer tie-in between the council and its committees by providing for council control of committee chairmanships.

Arranging for meetings and public hearings, taking minutes, keeping records and other administrative duties are performed by the council staff. Reports and briefings are prepared by the research staff for the committee's interim attention. The agenda for each council meeting is prepared by the executive secretary and mailed to council members prior to the meeting after approval by the council secretary or chairman.

Final reports and recommendations of the committees are presented to the full council for action toward the end of the interim. Those committee reports adopted and recommended bills approved by two-thirds of the council become part of the council report and are transmitted to the legislature and the governor. Definite recommendations are presented, usually in the form of bills introduced by the council itself.⁴

States which have the entire legislature designated as the legislative council stress that the advantage of such a system lies in the extent to which the work done represents the thinking and efforts of all interested legislators. Each member of the 110 member South Dakota legislature is permitted to choose two committees on which he wishes to serve. The full committees, which tend to be large, in turn form several subcommittees where much of the actual research and study is conducted with the aid of the research staff.

⁴Wisconsin Legislative Council, Directory and Project Assignments, 1959-1961 Interim ([Madison] February 1960), 54 pp. and interview with Earl Sachse, Executive Secretary, Wisconsin Legislative Council, September 1960.

Having the entire legislature as the legislative council does not mean that every member of the legislature necessarily participates in interim activities every year. In Pennsylvania, for example, about half the members of the General Assembly were active in task forces during the 1959-60 biennium. The nature of topics under consideration, conflicting commitments of individuals and other factors will govern the extent of an individual legislator's participation during a particular interim.

Relationship with Standing Committees

The avoidance of conflict with the jurisdictions of regular legislative committees is recognized as important by a number of legislative councils in their interim operating procedures as well as in the presentation of recommendations to the legislature.⁵ Interim research of the Pennsylvania General Assembly is conducted with particular awareness of the significant role of regular standing committees in the legislative process.

The statute creating the Pennsylvania Joint State Government Commission specifies the following procedure for the conduct of studies:

Section 3. The commission shall undertake, through the standing committees of the Senate and House of Representatives, such studies and investigations as the General Assembly by resolution shall direct.

When a study or investigation is to be made, the Speaker of the House of Representatives shall designate

⁵Discussed also below on pp. 29-31.

the appropriate standing committee of House and the President pro tempore of the Senate shall designate the appropriate standing committee of the Senate, to make such study or investigation. These two standing committees, when so designated, shall constitute a joint study committee of the commission for such purpose.⁶

By statute, Pennsylvania's standing committees are continued in existence during the interim between general sessions in order to carry out the research program authorized by the General Assembly. In practice, however, joint study committees are not composed of the entire membership of appropriate standing committees. Instead, the executive committee appoints "task forces" composed of the chairmen of appropriate standing committees, some of the membership of such committees, and other public or private persons who may be able to contribute to the subject under consideration.

Task forces are aided by the permanent staff of the Joint State Government Commission and other technical and professional assistance as required. The task force submits its report with recommendations to the executive committee. The executive committee reviews the report and transmits the results with comments to the appropriate standing committees of each house which are designated by the presiding officers of each house. Thus the intent of the law to involve the regular standing committees in the interim research process is achieved, although the precise letter of the law is modified by practice.⁷

⁶Laws of Pa. 1959, no. 646, sec. 5.

⁷Pennsylvania Joint State Government Commission, Biennial Report . . . , 1959-61 ([Harrisburg] January 1961) and interview with Guy Davis, Director, Pennsylvania Joint State Government Commission, October 1960.

Relationship with Interim Committees

Special interim committees which study particular problems assigned by the legislature and which go out of existence when their work has been completed have been used by all state legislatures for many years. Their extensive use may precede the establishment of a permanent joint interim committee such as a legislative council.

Special interim committees are perhaps more common in those states which lack legislative council agencies. New York and California, two of the eleven states without legislative councils, rely heavily upon interim committees for consideration of legislative problems. During the 1957 interim for instance the California legislature employed 378 people with salaries amounting to \$214,000 per month. Interim work was carried on by ninety-four committees. The eighty-member Assembly had forty-eight committees and the forty-member Senate used forty-six committees. In the same period, the New York state legislature authorized the operation of thirty-nine legislative interim committees or commissions and appropriated \$1.2 million to cover their expenses.⁸

The strong trend toward the formation of legislative councils and a concentration of interim work with them does not necessarily eliminate, although it probably minimizes, the need for temporary interim committees to handle special

⁸Legislative Research Checklist (May 1959).

problems. Kansas, for example, has not had a special interim committee since 1935 but has relied on its legislative council for interim research and recommendations.⁹

Massachusetts, on the other hand, continues to use many special committees and commissions, although it has had a legislative council since 1954.

Coordination of interim committee work through the legislative council and its staff is common. Maryland, for instance, had about sixteen committees operating in the 1960 interim, most of which were tied in to some degree with the council. A Maryland tax committee, composed entirely of non-council legislators, has been functioning for several interims. Staff work, however, is provided to a large extent by the Maryland fiscal research bureau, an adjunct of the legislative council. In recent years, the Maryland legislative council has been performing less work directly while devoting more effort to coordinating interim research performed by other special committees. The value of enlisting the activity of non-council legislators in an interim program is thought to outweigh having all research directly under the council. Altogether about two-thirds of the 162 member Maryland General Assembly participated in some interim research in 1960.¹⁰

⁹Siffin, op. cit., p. 79.

¹⁰Interview with Carl Everstine, Secretary, Maryland Legislative Council, October 1960.

According to a report by the American Political Science Association, some weaknesses of interim committees as compared with legislative councils are:

1. Interim committee does not insure planned or comprehensive approach to subjects needing legislative attention.
2. Each committee starts fresh, must organize and set patterns for action.
3. There tends to be a lack of experienced staff to serve for limited time; difficult to produce final report.
4. Interim committees tend to work without relationship to other committees and general programs of legislature.

Advantages of interim committees cited are:

1. They offer opportunity for wider participation between sessions by more members of the legislature than most legislative councils.
2. Individual members of interim committees are usually much interested in the subject matter to be studied.¹¹

By combining the interim committee system with the legislative council approach, as in Maryland, some of the disadvantages of each can be minimized and some of the advantages retained.

Procedure During Legislative Sessions

Some councils cease to function during the formal session while others serve as active proponents of the program developed during the interim.

¹¹Belle Zeller (ed.), American State Legislatures (New York: Thomas Y. Crowell Co., 1954), pp. 137-41.

The Utah council, for instance, does no lobbying. Bills are prepared to carry out council recommendations, but may be signed by any member of the legislature who approves of the content of the measure as well as by members of the legislative council.

Members of the Montana legislative council, on the other hand, serve as an active lobbying group for the program developed from council research. Recommendations for action on problems considered by the council are specific and bills are drafted to carry them out. When council bills are introduced, members of the council support the measures by planning strategy, speaking for the bills and in every respect acting as a lobbying group. The fact that the Montana legislative council is strictly bi-partisan (in that whatever the makeup of the legislature the council is equally divided between parties) may affect its acceptance as an active lobbying agency.¹²

In Wisconsin, legislative council bills may be printed in advance of the session, a privilege which has enabled the council to have a considerable number of its bills ready for introduction on the first day of the session. As a result, hearings can be scheduled promptly by the standing committees to which the bills are assigned. In addition to being printed as a regular bill, every measure introduced by the council is

¹²Interview with Eugene Tidball, Executive Director, Montana Legislative Council, August 1960.

sent to every member of the Wisconsin legislature in bill form together with an explanatory report.¹³

The Wisconsin legislative council in its most recent report points out:

It has, however been the custom of the council and its committees to refrain from undertaking any new proposals during the legislative session. It has always been the opinion of the council members that the standing committees of the legislature should take care of problems arising during the session. Unfinished business, of course, remains the responsibility of the council and its committees.¹⁴

Careful recognition of the prerogatives of the regular standing committees during legislative sessions is a basic part of the practice of other councils. In Massachusetts, council reports are filed with Senate and House clerks and are heard publicly by the regular standing committees having jurisdiction.

Kansas appoints five legislators, including members of both houses, as a steering committee to present the council's proposals, bills and other recommendations to the appropriate standing committees of the next legislature. Measures are not introduced in the legislature as council measures, but this steering committee does have the duty of seeing that council proposals and bills receive a fair presentation before the committees which receive them.¹⁵ The Oklahoma legislative

¹³Wisconsin Legislative Council, op. cit., p. v.

¹⁴Ibid., p. xi.

¹⁵Kansas Legislative Council, 14th Biennial Report (Topeka: 1960), p. iii.

council creates a steering committee which in turn presents proposals to appropriate standing committees.¹⁶

¹⁶Oklahoma Legislative Council, Rule 8.

IV. SPECIAL PROBLEMS OF LEGISLATIVE COUNCILS

Legislative councils are not without their problems. Those disturbed by their operations have claimed that councils unfairly dominate the legislative process, their members gain excessive free publicity, they will not succeed when the legislature is divided, and they are either a vehicle for or a threat against a strong executive. Each of these accusations has its element of truth. Legislative councils, however, may also help to restore legislatures to their place as a coordinate branch of state government.

Domination of Legislative Process

Concern is sometimes expressed by legislators that legislative council measures will dominate a legislative session in both quantity and success. An interim body such as a legislative council can, however, give intensive study to only a few major areas and these areas can be agreed upon by the entire legislature or at least by its leadership as appropriate for council study and recommendation. Some subjects on which partisan opinion is strongly divided may not even be studied by a legislative council since agreement on a council proposal for legislative consideration is recognized as impossible of achievement.

The existence of a legislative council does not eliminate party or personal programs. The individual legislator will

continue to introduce bills which are of particular concern to himself and his constituents. Bills which reflect partisan interests will still be developed outside the council. Private citizens, business interests and community groups will continue to advocate and oppose other legislative measures.

In the total legislative process, it is doubtful that legislative council sponsorship alone gives a particular measure additional assurance of passage. Success of legislative council programs may rather be related to the degree of selection exercised in setting up subjects for council study and the depth of study and decision-making that goes into the development of council measures. Another significant factor is the number of influential legislators who have personal understanding of the purpose and content of a legislative council proposal as a result of participation in its formulation.

Publicity for Members

Another fear expressed by many who doubt the desirability of the creation of any interim legislative committees, including legislative councils, is that its members will garner quantities of free publicity and thus strengthen their political position by means unavailable to non-committee members. Instances of the rise of politicians on the basis of well-publicized committee work are numerous.

Investigating committees are, of course, particularly fruitful sources of press and public attention.

Many legislative councils are given the power to conduct investigations as a recognized adjunct of fact finding and a well-established part of the legislative process. Some councils, however, avoid sensational investigations since there is some feeling that these tend to interfere with the long-term research role of the council.

Legislative council rules or practice generally provide for control of publicity and news releases on council matters through requirements for approval by the entire council or by the chairman. Public hearings furnish effective publicity forums for legislative participants and these too are regulated by legislative councils.

As is true in other phases of government, the power of the purse affects the activity of legislative council committees and members. South Dakota's Rule 9(d) states:

Committees may meet at their pleasure, but shall be entitled to per diem and expenses, only when such meetings shall have been authorized and approved by the executive board or Executive Committee.

Use of legislative council meetings as a forum for personal advancement by some of its members may be reasonably anticipated. An effective legislative council will, in any case, be composed principally of those legislators who hold leadership positions, either formal or informal. It is to

be expected that such persons, devoting considerable time and thought to state problems, will generate publicity for themselves as well as for the legislature and for the problems under consideration. As is true during a formal session of the legislature, the amount and kind of publicity will depend to a large measure on leadership control of the activities of the "little legislature". Rules such as those noted above tend to prevent abuse of the attention which is properly focused upon the work of a legislative council.

Effect of Divided Legislature

A question among students of the legislative process is whether a legislative council can be created when there is a serious political division between the two houses of the legislature or within one house of the legislature or within a political party. Under such conditions it may even be questionable whether an interim committee could function effectively. A minimal ability to work together on definition of problems for study and some agreement on approaches that might be considered for solving the problems selected are desirable for the initial organization of a legislative council.

On this point, Siffin remarks:

Great and persistent tension within the legislature, as in Illinois, or a splintered body politic leading to much "trading and dealing" in the best Kentucky fashion do not furnish adequate environments for legislative councils. In the face of deep and persistent political cleavage within the legislature the

delicate synthesizing process of the council does not seem to work. In such cases one must do as in Illinois and a number of other states, where the legislative policy staff operates in a relatively detached fashion, furnishing legislative research services but avoiding policy recommendations.¹

That a well-established council can continue to exist and function in a divided legislature is illustrated by the division of political parties in the 1959 Wisconsin and Pennsylvania legislatures. Wisconsin's Senate had 13 Democrats and 20 Republicans at the same time that the House was composed of 55 Democrats and 45 Republicans. A parallel situation occurred in Pennsylvania where 22 Democrats and 28 Republicans were elected to the Senate and 108 Democrats and 102 Republicans made up the membership of the House of Representatives. Although a certain amount of tension was probably generated by these divisions, the legislative council program in these states, both of which have "recommending" councils, survived the cleavage.

Legislative Council-Executive Relations

The coordinate and co-equal nature of the legislative, executive and judicial branches of American state government has had perhaps more recognition as a historical intention than as a present day fact. In the development of state governments, legislatures have tended to suffer a decline in prestige and power which only recently has shown some signs of reversal.

¹Siffin, op. cit., p. 214.

A recent article reiterates the fundamental importance of the legislative branch of state government.

Laws must exist before they can be administered by the executive or construed by the judiciary. The special mission of the legislative branch in American government is to create the laws which then become the compass and concern of the other branches.²

The organization of the legislature itself to provide for effective staffing and research services such as are available to the full-time executive branch is necessary for the strengthening of the legislative branch. Legislative councils are one means of providing an organized liaison between the legislature and the executive. In states where there is political party unity, a council can provide a channel for legislative-executive coordination in policy determination and program planning. A strong governor, however, may dominate a legislative council and use it as a means for controlling the legislative as well as the executive branch of government. The governor may even exert an important influence on the appointment of council members. In such cases, of course, there is some question of whether the council is a legislative or an executive agency. Other legislative councils manage to remain independent of the governor's orbit regardless of party influence.

²"American State Legislatures in Mid-Twentieth Century," State Government, XXXIV, No. 4 (Autumn, 1961), 245.

Siffin offers the following opinion on the relationship between the governor and a legislative council.

The prospects for success of a legislative council appear inversely related to the power of the governor as legislative leader. With persistently strong executive leadership a council is likely to succumb to potent opposition as in Michigan, or to be pulled into the executive orbit, as in Kentucky and Virginia. . . .

An effective council does pose a threat to other policy proponents particularly to the Governor who would be legislative leader. Where those who are threatened are also strong, a legislative council has little lasting prospects for survival. The authority of a council is not the authority of power, but of confidence. Councils cannot wage political warfare over any period of time with much chance of success.³

Conclusion

The legislative council provides what appears to be the most advanced contemporary approach to organized legislative activity between formal sessions. It furnishes legislative guidance and review of interim research and policy recommendations on important governmental problems. Properly used, it can enable members of the legislature to reach understanding of, if not agreement on, problems which will require decisions during the session. Since legislators themselves participate directly in the research program, a more effective translation of research products into action is likely than when a staff service agency presents research findings in response to legislative requests.

³Siffin, loc. cit.

Appendix

LEGISLATIVE COUNCILS AND COUNCIL-TYPE AGENCIES

Alabama Legislative Council
Alaska Legislative Council
Arizona Legislative Council
Arkansas Legislative Council
Colorado Legislative Council

Connecticut Legislative Council
Florida Legislative Council
Georgia Joint Committee on Operations of the
 General Assembly
Illinois Legislative Council
Indiana Legislative Advisory Commission

Iowa Legislative Research Committee
Kansas Legislative Council
Kentucky Legislative Research Commission
Louisiana Legislative Council
Maine Legislative Research Committee

Maryland Legislative Council
Massachusetts Legislative Research Council
Minnesota Legislative Research Committee
Missouri Committee on Legislative Research
Montana Legislative Council

Nebraska Legislative Council
Nevada Legislative Commission
New Hampshire Legislative Council
New Jersey Law Revision & Legislative Service Commission
New Mexico Legislative Council Service

North Dakota Legislative Research Committee
Ohio Legislative Service Commission
Oklahoma State Legislative Council
Pennsylvania Joint State Government Commission
Rhode Island Legislative Council

South Carolina Legislative Council
South Dakota Legislative Research Council
Tennessee Legislative Council Committee
Texas Legislative Council
Utah Legislative Council

Virginia Advisory Legislative Council
Washington State Legislative Council
Wisconsin Joint Legislative Council
Wyoming Legislative Research Committee

Source: "Legislative Councils and Council-Type
Agencies," Book of the States, 1960-61
(Chicago: Council of State Governments, 1960), p. 72. MUNICIPAL REFERENCE LIBRARY