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POLITICS AND THE STATE DEPARTMENT OF JUSTICE

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Comprehensive studies have been published in the *Journal of Criminal Law and Criminology* upon the subject of local community and integrated state law enforcement agencies.[1] These studies reveal that in Criminal Law Administration, the traditional local unit is being replaced by a centralized state organization, geared to combat the criminal technique of today and effective in administering the traffic and police regulations of a modern state.

The initial attempts at control by the state were taken through the office of the attorney-general.[2] He was given, or in some states he derived as common law inheritance, concurrent power with that of local officials to prosecute criminal cases. But the state continued in a negligible role in the field of law enforcement. For that type of control did little more than create a parallel prosecuting agency which hesitated to subordinate local authorities, except in the instance of a flagrant violation of duty. Nor was this extension of the prosecuting power sufficient to solve the enforcement problem

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1 "The Prosecutor—Initiation of Prosecution," 23 J. Crim. L. 770-796 (Jan.-Feb., 1933); "The Prosecuting Attorney: Provisions of Law Organizing the Office," 23 J. Crim. L. 926-963 (Mar.-Apr., 1933); "The Prosecuting Attorney: Powers and Duties in Criminal Prosecution," 24 J. Crim. L. 1025-1065 (Mar.-Apr., 1934); "Powers and Duties of the Prosecuting Attorney: Quasi-Criminal and Civil," 25 J. Crim. L. 21-52 (May-June, 1934); "Powers and Duties of the State Attorney General in Criminal Prosecution," 25 J. Crim. L. 358-400 (Nov.-Dec., 1934); "The Prosecuting Attorney and His Office," I, 25 J. Crim. L. 695-720 (Jan.-Feb., 1935); "The Prosecuting Attorney and His Office," II, 25 J. Crim. L. 884-901 (Mar.-Apr., 1935); "The Prosecuting Attorney: The Process of Prosecution," I, 26 J. Crim. L. 3-21 (May-June, 1935); "The Prosecuting Attorney: The Process of Prosecution," II, 26 J. Crim. L. 185-201 (July-Aug., 1935); "The Prosecuting Attorney: Legal Aspects of the Office," 26 J. Crim. L. 647-678 (Jan.-Feb., 1936); "The Prosecuting Attorney and Reform in Criminal Justice," 26 J. Crim. L. 821-846—Newman F. Baker and Earl H. De Long.

"Some Problems of Criminal Prosecution," Newman F. Baker, 14 Ore. L. Rev. 153-164 (December, 1934). "Which Man for the Job?" Earl H. De Long, State Government, March, 1935, pp. 64-8.

"Rural Crime Control," by Bruce Smith. "Local Democracy and Crime Control," by Arthur C. Millspaugh.

2 "Powers and Duties of the State Attorney General in Criminal Prosecution," Earl H. De Long, 25 J. Crim. L. 358-400 (Nov.-Dec., 1934).

while the policing function was managed, sporadically at best, by a host of unorganized peace officers.

The movement for centralized administration may be traced to the early 1800's when such a plan was suggested at a New York Constitutional State Convention. But only within comparatively recent years has the shift to state policing and prosecuting gained concrete acceptance.[3] Nation-wide interest in "state departments of justice" was stimulated in 1934 by the initiation and adoption of a constitutional amendment in California which formed the basis for legislation, placing the Attorney General of that State at the head of all law enforcement, state and local.[4]

The American Bar Association recognized this movement in the states at its Milwaukee meeting that same year:

> "The American Bar Association recommends the creation, in each state, of a State Department of Justice, headed by the attorney-general or by such other officer as may be desirable, whose duty it would be to direct and supervise actively the work of every district attorney, sheriff and law enforcement agency, and who would be specifically charged with the responsibility therefor. This Department would include a central criminal bureau equipped with records and with investigators similar in character and qualifications to those now attached to the Federal Department of Justice. The American Bar Association recommends that the Commissioners on Uniform State Laws be requested to outline an act for the establishment of such State Department of Justice so drawn as to be adaptable to various state conditions."[5]

This recommendation was praised as embodying a commendable reform if the American Bar Association was "definitely proposing unified and controlled state prosecution along with unified, mobile and professionalized state police, both serving the same state department and charged with the apprehension and prosecution of those who violate state laws."[6]

Another comment upon the recommendation stressed the need for a responsible head of any proposed department of justice, and concluded that "if any particular lesson is to be drawn from American experience with the power of attorney-generals to supervise criminal prosecution, it is that this officer should not be given any of the criminal law functions which the state government decides

[3] State Departments of Justice have been created in Iowa, Louisiana, Nebraska, New Mexico, Pennsylvania, South Dakota, California and North Carolina.

[4] California Political Code, Sections 476, 477, 478 and 479.

[5] 1934 Reports of the Association, p. 113.

[6] "Some Problems of Criminal Prosecution," Newman F. Baker, 14 Ore. L. Rev. 153 at p. 164.

to assume."[7] The suggestion was made that the portion of the American Bar Association's recommendation referring to *some other desirable officer* was a "fruitful possibility" of which the most ought to be made.

In 1935 the Committee on the Uniform State Department of Justice Act presented a tentative draft of a Uniform Act for this subject to the National Conference of Commissioners on Uniform State Laws and Proceedings.[8] But the difficulties in preparing an acceptable Uniform Act for this complex field, and fundamental differences of opinion among the members on the advisability of any centralization of the policing and prosecuting powers prevented the acceptance of the draft.[9] After discussion it was returned to the Committee with the recommendation that it be rewritten as a Model Act rather than a Uniform Act. In 1936 the Conference abandoned the attempt to prepare even a Model Act, but retained the Committee to watch the development of the subject matter of departments of justice in the states experimenting with them.[10] Hesitating to recommend that the subject be laid aside, but unready to report a draft, the Committee asked in 1938 to be continued without further annual report until by its own motion or Conference resolution, a report was ordered.[10a]

Against this background of growth and comment should be thrown the short history of the South Dakota Department of Justice. The rise and fall of the Department of Justice in that State during the short space of four years reveals some of the pitfalls which beset this newest venture in law administration.

Early State Sheriff Plan

Long before an actual Department of Justice was created, South Dakota had experimented with unified State law enforcement. In 1917 the Legislature created the Office of State Sheriff and constituted the county sheriffs a State Constabulary under its control.[11] The adoption of State-wide Prohibition had made some form of State control necessary. This particular plan was the re-

[7] "The Prosecuting Attorney and Reform in Criminal Justice," Earl H. De Long and Newman F. Baker, 26 J. Crim. L. 821-846 at p. 842.

[8] Handbook of the National Conference of Commissioners on Uniform State Laws and Proceedings, 1935, pp. 249-259.

[9] *Ibid.*, p. 261.

[10] Handbook of the National Conference of Commissioners on Uniform State Laws and Proceedings, 1936, p. 79.

[10a] Id. 1938, pp. 165-6.

[11] South Dakota Session Laws, 1917, C. 355.

sult of a contest between the drafters of the Prohibition Act who desired State enforcement of the Prohibition Law, and the pro-liquor element which objected to having the liquor traffic singled out for special treatment. Accordingly, the jurisdiction of the State Sheriff's Office was extended to *all* criminal offenses in the State. But by the Prohibition Act, heavy responsibility for *prohibition enforcement* was imposed on the newly-created Office. Though the scope of the Office was never confined to the Prohibition law—actually, the enforcement of that law became its major function. Conscientious attempts by the State Sheriff to perform this special duty incurred for his Office the open hostility of the pro-liquor group who considered the Office an instrumentality in the hands of the dry forces. A determination to "get" the State Sheriff's Office became synonymous with the desire of the wet forces for Prohibition repeal.

A weakness of the plan was its dependency on each county sheriff for its success. The county sheriff in South Dakota is a local figure responsible ultimately to the political group in control of his county. If it became advantageous for him to wink at local infractions of the Prohibition Law, he often failed to become an effective unit of the State Constabulary.

Did the State Sheriff plan prove inefficient because of its dependency on elected officials, or was it too closely allied with the Prohibition movement to survive the wet wave which swamped that movement in 1933? These questions do not admit of a dogmatic choice. Both factors contributed to end South Dakota's first attempt at State law enforcement.

Something of South Dakota politics will be helpful at this point. No theorist should draft and advocate a state reform such as that of a state sheriff or a department of justice without weighing the effect which normal political fluctuations will have upon the proposed plan. A discussion of South Dakota's experience is simplified when given its political setting. Normally the State is Republican, and it was Republican when the State Sheriff's Office was formed in 1917. Governors were often Democrats, but the Legislature as a rule was controlled by the Republicans until 1932. Then a Democratic Legislature abolished the State Sheriff's Office and established the first Department of Justice. Another Democratic Legislature replaced that Department with a larger one in 1935. By 1937 when this 1935 Department was abolished, the Republicans were again in control.

The 1933 Legislature created the first Department of Justice

and provided for a system of criminal identification.[12] The staff of the Department included the Attorney-General as executive head, his assistants, and the Warden of the State penitentiary at Sioux Falls, acting *ex-officio* as the Superintendent of Criminal Identification. Under this plan the Attorney-General was given complete power to conduct and assist in the prosecution of any person charged with felony, to employ and direct a staff of State Peace Officers in police work, and to control and direct the activities of the Superintendent of Criminal Identification whose duties related to the collection and distribution of crime information. A 1931 statute[13] had given the Attorney-General jurisdiction in prosecuting local cases, thus expanding his former duty to appear when the State was a party or interested.[14] But the Justice Department Act of 1933 was passed in a direct attempt to make him the actual chief law enforcement officer of the State. For in his office were now combined the policing and prosecuting functions of the State. The possibilities of this arrangement never appeared. The return of legalized liquor and an attendant highway need prepared the way for a more grandiose scheme which replaced it at the next legislative session.

The 1935 Legislature formed a new department of state, the Department of Justice and Public Safety.[15] In contrast to the 1933 plan, this plan took no particular cognizance of the prosecution angle of law enforcement. The intention seems to have been to create a vigorous and centralized policing agency—a greater State Constabulary of elected county sheriffs augmented by State police. Duties long performed by the Secretary of Agriculture in the Division of Inspections and by the Secretary of State in the enforcement of motor vehicle laws were transferred to the Justice Department. Any centralized prosecution power which existed after the 1933 Act had been replaced by the 1935 Act must be found in the Attorney-General's former statutory powers.[16]

The 1935 Department was controlled by a Commission composed of the Governor, the Attorney-General and the Warden of the State penitentiary. The chief function of this Commission was to select and appoint a Superintendent, experienced in police procedure, to be executive head of the Department. The Superintendent was to hold office until a successor was appointed to replace

[12] South Dakota Session Laws, 1933, C. 85.
[13] South Dakota Session Laws, 1931, C. 129.
[14] Compiled Laws of 1929, Section 5364, Article 2.
[15] South Dakota Session Laws, 1935, C. 97.
[16] See note 13.

him. It is to be noticed that this method of selecting the Superintendent varies widely from the one suggested in the tentative draft of the Uniform State Laws Committee.[17] The Committee's proposal was that the Director General of the Department be appointed by the Governor with the consent of the Senate; that his term of office be made coincidental with the term of office of the Governor; and that he be subject to removal by the Governor at any time. This section of the draft was openly rejected during discussion by the Commissioners, but attention is called to it here to contrast the two methods of selecting the head of the Department. It is submitted that the Committee's proposal would have been more conducive to longevity of the South Dakota Department had it been adopted rather than the one actually used.

The Department had four Divisions: (1) The Division of Motor Patrol; (2) the Division of Identification, Statistics, and Communications; (3) the Division of Investigation and Secret Service; and (4) the Division of Inspections and Administration of Regulatory Laws. Each of these Divisions was headed by a Deputy-Superintendent appointed by the Superintendent of the Department. South Dakota has no comprehensive Civil Service plan and the 1935 Act did not provide for personnel selection under that kind of system. Instead, the Superintendent appointed the agents and the personnel for the four Divisions through examinations and tests prepared by him. Section 15 of the Act shows the strictly centralized nature of the Department and the authority held by the Superintendent. In part:

". . . The Superintendent shall appoint the personnel of agents of the Department of Justice and Public Safety irrespective of the Division in which such personnel may be employed to such ranks, grades and positions as are deemed by him to be necessary for the efficient administration of the Department. . . . the Superintendent shall devise and administer examinations designated to test applicants in the qualifications required for such rank, grade or position and only those applicants shall be appointed who best meet the prescribed standards and prerequisities . . . and upon the expiration of such probation period if such employee shall have passed the required examination and *shall display ability satisfactory to the Superintendent,*[18] he then shall be appointed and commissioned an agent of the Department of Justice . . . ."

Removal of an agent for cause was permitted following a complaint by the Superintendent to the Commission.

[17] Handbook of the National Conference of Commissioners on Uniform State Laws and Proceedings, 1935, p. 250, Section 2a.

[18] Italics inserted by writer.

Expenses of the new Department were met by a special appropriation under the Liquor Act.[19] Section 42 of that Act provided for a fund to be entitled "Law Enforcement Fund" into which the State Treasurer was to pay the license and penalty fees received under the Act. The major portion of the funds so accruing was appropriated to the use of the Department; and the superintendent was authorized to use these funds for the proper enforcement of functions under his control.

Storm Centers in the Department

The Act of 1935 went into effect in July of that year. B. D. Mintener was appointed Superintendent by the Commission composed of Governor Tom Berry, Attorney-General Walter Conway, and Warden Eugene O'Reilly. By the time a majority of the agents of the Department had been selected by the Superintendent, charges were being made that the appointments were based on political affiliations with the design to build a powerful Democratic machine in the State. In the bitter fight which followed it should be said in defense of the Department that few charges of inefficiency were hurled at it. In the main, highway traffic and truck regulations were rigidly enforced; inspection and health regulations were stringently administered; and the general tempo of law enforcement quickened, perhaps even more than the average South Dakota citizen desired.

The actual storm centers which were to level the Department seem to have been two: *The creation of a political machine through an enlarged State payroll, and the inordinate expense of maintaining such an elaborate policing system.*

On March 14, 1936, the Farmer Labor party of the State in its platform for election called for repeal of the law establishing the Department of Justice.

During the summer the Republican platform was announced. Plank No. 8 read:

"We denounce the blanket appropriation of liquor revenues to the State Department of Justice, without any restrictions as to its amount or use, as a vicious and dangerous misuse of public funds, and charge that such appropriation is being used by the present State Administration in the upbuilding of a gigantic political machine. We demand that any further appropriation to the said Department shall be in a specific

[19] South Dakota Session Laws, 1935, C. 134, Section 42.

sum to be fixed by the Legislature with such restrictions and safeguards as will insure its proper expenditure."

On July 30, 1936, the *Watertown Public Opinion* editorialized:

". . . The question then is whether or not the Department has been organized and so operated as to reflect the best interests of the people. Thought may start from the fact that it has been granted the unusual authority of practical self-financing.

"The Department collects funds and spends them without legislative control or oversight.

"A large part of the operating revenue is obtained from the liquor license system. Here collections are made and the money spent without supervision from any other authority.

"The situation enabled the Department to feature the opening of the State campaign [election campaign] by the appointment of fifteen new State policemen. There is no reason as far as we know why the increase in pay roll should not have been many times fifteen. The only inhibition to suggest itself is a shortage in the Department's collections.

"As far as we know the South Dakota Department of Justice is the only police department in the United States that is permitted both to collect and spend its revenue without oversight . . . ."

The Democratic party's platform was quiet concerning the Department of Justice. A July 14, 1936, (AP) dispatch reported that "After holding open the platform draft for inclusion of a plank on the State Justice Department, the committee finally decided to omit mention of the new Democratic sponsored agency, presumably because of inability to agree. Some members urged a plank advocating the abolition of the Department . . . ."

A September 14 (AP) dispatch shows the conflicting views which were crystallizing as election day in November approached. This dispatch quotes Superintendent Mintener as saying:

"It is unfortunate that an attempt is being made to drag the State Department of Justice into the campaign. Political domination and control in any police organization tends to corruption and under any circumstances lessens its efficiency. . . .

"There has been no political interference in the matter of appointment of agents or in the administration of any of the affairs of the Department. I have ignored all political consideration and I shall continue to do so as long as I am Superintendent."

The same article reported the provision of the Republican platform charging the Administration with seeking to build "a gigantic political machine through the Justice Department" and pledging itself to reform of the agency.

Reform or Abolition

The November elections changed the membership of the Commission of the Department of Justice and Public Safety. Leslie Jensen, Republican candidate, swept the State in his campaign for Governor. Clair Roddewig, Democratic nominee for Attorney-General, was elected to office by a narrow margin of several hundred votes. The Warden of the penitentiary was by this time, Guy E. Geelan, a Democrat.[20]

Thus, elected on a platform of reform in the Department of Justice, Republican Governor Leslie Jensen found himself with two Democratic cohorts on the Commission which controlled the Superintendent of the Department. Whether the pledges of the Governor could have been fulfilled by replacing Superintendent Minener and reworking the Department internally, and whether that would have been done by Governor Jensen if the Commission had been sympathetic to his program is but a matter of speculation. *Suffice it to say that any department of justice plan which may leave its executive heads at sword points following an election is structurally unsound and contains seeds for its own destruction.*

Some support for the belief that this unbalanced state of control within the Commission was related directly to the later demobilization of the Department may be found in the contesting of Attorney-General Roddewig's election by Republican candidate Sterling Clark. The contest dragged on in the courts until in the early months of 1937. But by the time the Legislature convened in January of that year, it was generally conceded that the Democratic official would retain the office.

On January 5, 1937, when Governor Jensen addressed his first Legislature, predominately Republican in both Senate and House, he proposed complete abolishment of the State Department of Justice and Public Safety. His plan was to break the Department into its four units, placing two of them with Republican-controlled State Departments and transferring the other two in a modified form to the Attorney-General's office.

It would have been relatively simple for the Legislature to have packed the Commission by adding to its membership several

[20] The Warden is appointed by the State Board of Charities and Corrections and holds his office for two years unless sooner removed by the Board, §5426, Compiled Laws of South Dakota, 1929. Appointments to the Board of Charities and Corrections are made by the Governor and confirmed by the Senate.—Article XIV, Section 2, Constitution. (When Geelan was appointed in the summer of 1936, the Board was composed of two Democrats and one Republican.)

Republican State officials. These new members, sympathetic to the Administration's reform desires, would have removed the obstacle of a Democratic-controlled Board. That this was not done and an abolition program followed instead, argues for the view that the scheme of a State policing agency had been tried and found wanting; that the Department was considered too expensive for South Dakota; and that its abolition was desired more than its reform.

The Department Dies Hard

The first action of the Legislature in contemplation of this abolition program came on February 9, 1937, when the Liquor Control Commission was abolished, and its functions transferred to the State Department of Agriculture with the stipulation that all tax and license money was to be returned to the general fund of the State, subject to later use for old-age assistance and similar welfare activities. This transfer removed the main source of revenue from the Department of Justice.[21] Since a two-thirds vote could not be mustered in the Senate to pass this bill as emergency legislation,[22] the Act could not take effect until July 1, 1937.

However, the financial picture for the Department of Justice was changed before July 1. In an original proceeding instituted in the Supreme Court by Leslie Jensen as Governor and a taxpayer, the Court enjoined the further disbursement of public funds under Section 42 of the 1935 Liquor Act.[23] The Court held this section of the Liquor Act unconstitutional as a violation of Article XII, Section 2, of the South Dakota Constitution. Section 2 provides that "the general appropriation bill shall embrace nothing but appropriations for ordinary expenses . . . all other appropriations shall be made by separate bills, *each embracing but one object* . . . ."[24] The Court said that "a continuing appropriation for the support and maintenance of the Liquor Control Commission and the Department of Justice and Public Safety is not for a single object or purpose."[25]

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[21] See note 19.

[22] The Senate was split politically, 23 Republicans and 22 Democrats.

[23] *State ex rel. Jensen* v. *Kelly, State Auditor, et al.*, 274 N. W. 319, (S. D. 1937).

[24] Italic inserted by writer.

[25] Speaking of this move in a Republican rally at Mitchell, South Dakota, April 9, 1938, Governor Jensen said, "I personally financed the fight to the Supreme Court and won. I got the keys to the "Milk Wagons" [popular parlance for the white Motor Patrol cars], locked them in the barn and gave the money to the old age pensioners." This statement came after Governor Jensen had said that there was $147,000 in the fund of the Patrol Department at that time which

In the Legislature economy was stressed as the primary reason for the abolition program on the theory "that it is more important to feed the people than to police them." Advocates of the Justice Department contended, however, that while the Department had cost slightly more than when the varied functions were under separate state departments, greater efficiency had resulted and increased revenues had been received from traffic fines, liquor licenses, truck compensation plates and regulatory licenses of all kinds.

Members of the South Dakota Sheriffs and Peace Officers' Association were present at the State House, urging retention of the Department. R. A. Bielski of Sioux Falls, and M. Q. Sharpe of Kennebec represented the Association as legal counsel. Sharpe, a former State's Attorney-General, speaking before a House group, said that a "centralized non-political police force is needed in South Dakota to fight organized crime." Bielski stressed the view that "actually the Department has not cost the State one cent by reason of the additional revenue collected." Both attorneys declared that the Department should be expanded by putting under its Inspection and Enforcement Officers, other State agencies, rather than curtailing it. E. D. Barrow, Sioux Falls, attorney, speaking for Governor Jensen before the House group, denounced the existent Department as "top-heavy, inefficient, and expensive."

The most extreme condemnation by the Legislators of the Department of Justice was embodied in a bill introduced in the House of Representatives by Representative H. H. Motley of Frankfort. It was said to express the feelings of the Farmers' Union and a large number of other South Dakota citizens. *This measure made no provision for continuation in any form of a State law enforcement agency. It simply proposed to abolish the Department, and leave South Dakota without any centralized policing organization.* The bill attracted sufficient support to pass the House of Representatives, but was later killed by the Senate on the final day of session.

In the meantime a bitter partisan fight had attended the introduction and final passage of three modified bills introduced and engineered by the powerful Senate State Affairs Committee headed by Senator C. V. Trygstad of Brookings. In both Senate and House these measures were carried on strictly party votes.

Enacted into law, Senate Bill No. 175 abolished the Division of Inspections and Administration of Regulatory Laws, transferring

he wanted to use to tide over the shaky Old Age Assistance fund until Federal money arrived for its support. After the granting of the injunction, the money was used for that purpose.

its powers, duties and functions to the Republican Secretary of Agriculture's office.[26] Senate Bill No. 174 abolished the Division of Motor Patrol and transferred its powers and functions to the Republican-controlled State Highway Commission.[27] Senate Bill No. 173 abolished the Division of Investigation and Secret Service and the Division of Identification, Statistics and Communications and transferred the powers, duties and functions to the Democratic Attorney-General's office.[28] This latter Act carried a $30,000 per annum appropriation, and secured the necessary two-thirds vote, presumably because the transfer was to a Democratic agency. Appropriations for the other two transfers had to be included in the General Appropriations Bill which needed but a majority vote for final passage. These were: $32,000 per annum to the Highway Department for the Motor Patrol unit; $33,000 per annum to the Agriculture Department for the Inspections unit.

Before July 1, 1937, when these transfer laws were to become effective, the two Acts removing Divisions of the Department to Republican hands were halted by the filing of Referendum petitions with the Secretary of State, Goldie Wells. Miss Wells, Democrat, announced that the petitions were in regular form and valid. Automatically, the transfer of the two Divisions was halted. The appropriations for these Divisions were now unavailable for any purpose.

In August, 1937, Governor Jensen commenced proceedings to test the validity of the Referendum petitions, securing at that time a Writ of Prohibition from the Supreme Court to prevent the Secretary of State from certifying the petitions to a vote at the 1938 General Election, pending outcome of the attack. The number of valid signatures required to submit the statutes to a vote of the electors was 14,696. In September, 1938, the Court ruled in *Jensen* v. *Wells*[29] that the petitions on the Inspections Division were insufficient to permit referendum. As filed, the petitions had contained 21,582 names, but at least 7,103 were said to be invalid because of fraudulent verification affidavits and incompleteness. The petitions on the Motor Patrol Division were never passed upon, the attorneys for the two state officials having stipulated that they would abide by the one decision.

[26] South Dakota Session Laws, 1937, C. 102.
[27] South Dakota Session Laws, 1937, C. 103.
[28] South Dakota Session Laws, 1937, C. 104.
[29] 281 N. W. 357 (S. D. 1938).

The Present Situation

Technically speaking, the South Dakota Department of Justice was still in existence in the Divisions of Motor Patrol and Inspections during the year in which the validity of the petitions was in question. But unable, because of the Referendum petitions, to use the $32,000 and $33,000 funds appropriated for the activities of those Divisions by the 1937 Legislature, and deprived by the Supreme Court ruling on the Liquor License Law of the main source of revenue, this rump Department, as such, ceased functioning July 1, 1937.[30] On July 7, 1937, Governor Jensen, Attorney-General Roddewig and Secretary of State Wells came to an informal agreement upon law enforcement measures pending the Referendum interim. Seven men to assist in the administration and enforcement of motor vehicle, motor carrier and truck compensation laws were appointed by the Secretary of State and given police powers by the Attorney-General. This temporary Motor Patrol unit was financed by motor vehicle funds under the control of the Secretary of State. Also in accordance with this agreement, the activities of the former Division of Inspections were handled by the Secretary of Agriculture and his staff. Following invalidation of the Referendum petitions, the State Highway Commission took charge of the Patrol, a number of new patrolmen were appointed, and the task of highway supervision was recommenced.

Thus at the present time any centralized prosecution power in South Dakota is in the office of the Attorney-General under Senate Bill No. 173 which was not referred. This 1937 Act which transferred two Divisions of the 1935 Department of Justice to his office recreates substantially the 1933 Justice Department minus any policing powers. The policing powers have again been distributed throughout the branches of the State Government. After a successive march through three types of centralized State enforcement agencies, South Dakota is still without a unified policing and prosecuting department.

Conclusions

Four conclusions may be drawn from this brief description of the attempt in South Dakota to establish and maintain a Department of Justice. The *first* is that any plan must do more than concentrate responsibility for its functions in some one official, whether

[30] Senate Bill No. 311, adopted by the South Dakota Legislature in 1939, appropriated $5,812.37 to pay outstanding claims for the Department of Justice.

a state superintendent or an attorney-general. It must build the department consciously, either to keep it out of politics or else to make its structure flexible enough to withstand the changes of administration. Had the head of the Department in South Dakota been appointed by the Governor for a term coincidental with his and made directly responsible to him there could have been no *impasse* following the 1936 election.

Second, the personnel of the department must be selected on a Civil Service basis. States which have Civil Service laws will not be troubled by what proved a major weakness in the South Dakota system. Those states that do not have Civil Service laws should hesitate before adding to the state "plum bowl," the law enforcement payroll. "Civil Service" connotes responsibility to the state, and not to an uncertain electorate. Thus the weakness of an elective personnel, seen in the early State Sheriff plan, is also overcome.

Third, the collections of the department should be paid into the general fund of the state. The expenditures of the department might well be handled under the legislative appropriation method which is singularly successful in keeping the legislature master of its creations. In this or some analogous manner the income and expenditures of the agency will be accessible to the public. The fact that they were not in South Dakota was one of the biggest talking points of the Department's opposition.

Fourth, the scope of the department should be in keeping with the needs of the state in which it is organized. It is possible that South Dakota, a rural and not populous state, never did need a department of justice. The idea "reads well" and was recommended by the American Bar Association. But not every state has the pressing need for law enforcement reform which will give this innovation public sanction. Criminal law reformers should not assume too readily that every state in the Union is fertile territory for a replica of the Federal Department of Justice. The states that do need departments of justice and do desire permanent organizations may learn from the South Dakota venture.