TOTAL PAGE COUNT: 813

SENATE BILL 506, 1969
(Probate Code)
Introduced by Sen. Judiciary Committee at request of Law Improvement Committee

SENATE JUDICIARY COMMITTEE MINUTES:

Feb. 3: p. 2, 3, 4, 5, 6, 7, 8 and 9 (~~Also Taped~~ (purpose of meeting was to get general background info. Several members of Advisory Committee which prepared the Code, explained it.)

Exhibits attached:

1. "New Ore. Probate Code", marked Appendix A, Feb. 3, 1969. States objectives of new code. 4 pages.
2. "Proposed Ore. Probate Code", marked Appendix B, 2 Feb. 1969. lists, abbreviated, principal changes from existing law. 8 pages.

Feb. 5: p. 2, 3, 4 & 5 (Also taped: Tape 1, side 1) Mr. Allison presented file of material assembled as result of Probate Advisory Committee's meetings with Bar associations, and discussed various sections of bill.

Mar. 17: p. 1 (states only bill accepted for introduction).

Apr. 7: p. 1, 2, 3, 4, 5, 6, and 7 (Also taped: Tape 10, side 2 and Tape 11, s
1PM (discussion of Sections 1 through 52)

Apr. 7: p. 1, 2, 3, 4, 5, and 6 (Also taped: Tape 11, side 1 and 2)
7:30PM (discussion of Secs. 53-102)

Exhibits attached:

1. Ltr. from Gordon G. Carlson to Committee (Appendix A), stating what he believes law should provide. 4 pages.

Apr. 9: p. 1, 2, 3, 4, 5 and 6. (Also taped: Tape 12, side 1 and 2)
1PM (discussion of Secs. 103-167 and amendment to Sec. 176)

Apr. 9: p. 1, 2, 3, 4, 5, 6 and 7. (Also taped: Tape 12, side 2 and Tape 13,
(discussion of Secs. 168-193)

Exhibits attached:

1. Statement in opposition, presented by Philip N. Bladine, Legis. Comm., Ore. Newspaper Publishers Assn. 2 pages.

Apr. 11: p. 1, 2, 3, 4, 5 and 6. (Also taped: Tape 13, side 1 and 2)
(discussion of Secs. 194-262 plus amendment to Sec. 110, 302, and 305)

Apr. 15: p. 1, 2, 3, 4, 5, 6, 7 and 8, (Also taped: Tape 14, side 1 and 2 and
and 12 & 13 may continue to Tape 15, side 1)
(discussion of Sec. 263-306)

Exhibits attached:

1. Proposed housekeeping amendments to SB 506, dated Apr. 15, 1969. 3

Apr. 21: p. 8 and 9. (Also taped: Tape 16, side 2; may continue on
7:30 Tape 17, side 1)
PM

for separate exhibit file, see following...

NOTE::::::: since basic work on this code appears to have been done by the Law Improvement Committee, ~~perhaps Mr. Robert Lundy, Secretary, 410 Capitol Building, Salem 97310, could give you further information.~~

Minutes + exhibits 1964-69 now in Archives as of 2-17-72. Must be researched by Patricia

SEE ALSO TRACING OF ORS 119.010

SENATE JUDICIARY COMMITTEE EXHIBITS (2 folders)

Folder 1 contains: a large notebook consisting of

1. "Proposed Ore. Probate Code (SB 506) - a table showing source from Preliminary draft Sections of Bill Sections. Prepared by Legislative Counsel's Office. 13 pages.
2. Printed copy of SB 506. 151 pages.
3. "Proposed Oregon Probate Code - Principal Changes from Existing Laws" dated 2 Feb. 1969 but from unidentified source. 8 pages.
4. "New Oregon Probate Code" - outlines the objectives of the Advisory Committee of the Law Improvement Committee and Probate Law and Proce Committee of the State Bar in preparing and submitting the new Code. 4 pages.
5. Memorandum to Law Improvement Committee from Robert W. Lundy, Legislative Counsel, Jan. 31, 1969. Subject: Law Improvement Committee changes in preliminary draft of proposed Oregon Probate Code. 19 pages.
6. Memo to Law Improvement Committee from Advisory Committee on Probate Law Revision, ~~Subject~~ dated Dec. 6, 1968. Subject: Changes in Preliminary Draft of proposed Oregon Probate Code. 2 pages.
7. Preliminary Draft of Proposed Oregon Probate Code, prepared by Advisory Committee on Probate Law Revision and published Aug. 1968. (contains Advisory Committee comments on sections of the code). 443 pages.

Folder 2 contains:

1. Copy of Item 4 above
2. Copy of Item 3 above
3. "Suggested changes in SB 506 (new probate code) - marked "Joss amendments. 3 pages.
4. Memo from Bill Love to Sen. Yturri, Husband & Lent re SB 506; concerns House amendments and their purposes. 1 page.
5. "Observations re comments of members of Senate Judiciary Committee on SB 506". Undated, unidentified. 3 pages.
6. Proposed amendments to SB 506 to incorporate SB 266. 1 p.
7. " " " " " " " SB 237. 1 p.
8. Proposed "housekeepiing" amendments to SB 506 dated April 15, 1969.
9. Proposed amendments to SB 506 dated April 21, 1969. 11 p.
10. "A New Probate Code: SB 506". Unidentified, undated data containing info. about why the code was revised, how prepared, objectives and how SB 506 meets the objectives, and summary. 6 p.
11. Letters to members of committee opposing various portions of the bill, with some replies from Senators. 12 p.
12. Statement in opposition to SB 506 presented to Senate Judiciary Committee April 9, 1969 by Oregon Newspaper Publishers Assoc. Inc., Philip N. Bladine, presenting. 2 p.
13. Ltr. to R. T. Gooding, Attorney, LaGrande, from James A. Cox, Attorney, ~~Ontario~~ Ontario, Ore., commenting upon sections of the code, subsequent to a meeting of "task force" in Ontario. 9 p. (date Nov. 1968)
14. Ltr. from Wm. Dobson, Manager, Estate Administration Section, Public Welfare Comm. to Judge Wm. Dickson, Portland, April 1, 1969, re needs of Commission pertaining to repeal of ORS 117.150 and ORS 117.615, with exhibits. ~~xxx~~ 4 p.

HOUSE JUDICIARY COMMITTEE MINUTES:

May 7: p. 1 and 2 (Also taped: Tape 31)
(Full Committee)
May 9: p. 1 (Also taped: Tape 32)
(Full Committee)

for separate exhibit file, see following..

52 M
30 A.E.
582 S.E.

HOUSE JUDICIARY COMMITTEE EXHIBITS

Probate Code

1 folder, containing:

1. Proposed amendments to Engrossed SB 506, dated May 8, 1969. 9 pages.
2. Copies of Items 3 and 4 in Folder 1 of Senate Judiciary Exhibits, and Item 12 in Folder 2 of Senate Judiciary exhibits.
3. Study of probate notice provisions of the 50 states, prepared by Paul Conrad, General Counsel, Natl. Newspaper Assn., Washington, D. C. and presented by Carl Webb, Ore. Newspaper Publishers Assn. Dated June 7, 1968. 3 pages.
4. Letters to and from persons requesting to appear at meetings or having suggestions for or against the bill. 10 pages.

There being no objection, the Chairman indicated the above bills would be introduced by the Judiciary Committee at the request of the specific agency or individual listed.

Senator Fadeley called attention to a bill relating to small claims in district courts which would, among other things, increase the jurisdiction of the small claims department of the district courts. The District Judges' Association had requested its introduction, he said. There being no objection, the Chairman specified this bill would also be introduced by the committee at the request of the District Judges' Association.

Senator Fadeley indicated there was a bill to be proposed which would create licensing provisions for private investigators in the process of being prepared for introduction by Legislative Counsel. Chairman Yturri asked Senator Fadeley to submit the bill when it was ready and the committee would consider its introduction.

Governor's Appointments to Commission on Judicial Fitness

Chairman Yturri indicated that Mr. Ed Westerdahl of the Governor's office would testify at the meeting on Wednesday, February 5, and present biographical material on the Governor's appointments to the Commission on Judicial Fitness. He asked if committee members felt it necessary to request the prospective appointees to appear in person. Senator Lent expressed the view that since this was an important Commission, the committee should talk to the appointees personally to ask them why they would like to serve on this Commission and why they would be willing to accept this responsibility. The committee was generally agreed this course would be followed after Mr. Westerdahl had testified.

Hearing on Abortion Bills

Chairman Yturri indicated that two bills relating to abortion were being introduced today and the committee would conduct a public hearing on them on Monday, February 17.

Proposed Probate Code

The principal purpose of today's meeting, Chairman Yturri said, was to obtain preliminary background information in general terms with respect to the proposed probate code. Senator Husband had arranged for several members of the Advisory Committee which prepared the code to be present today and he asked Senator Husband to introduce them.

Senator Husband advised that there were four members of the Advisory Committee on Probate Law Revision present at today's meeting: Judge William Dickson, Chairman; Mr. Stanton Allison; Professor Thomas Mapp; and himself. There were also three members of the Law Improvement Committee in attendance: Mr. Allan G. Carson, Chairman; Mr. William Love; and himself. He asked Mr. Carson to begin the presentation.

Mr. Carson explained that the Law Improvement Committee had appointed the Advisory Committee on Probate Law Revision and the Advisory Committee, assisted by the Oregon State Bar Committee on Probate Law and Procedure, had conducted the actual revision.

Senator Husband next introduced Judge Dickson who related that Mr. Carson had asked him to be Chairman of the Advisory Committee in 1963 and he had readily agreed. He presented a brief background on the qualifications and achievements of each of the distinguished members of the Advisory Committee, all of whom, he said, were eminently qualified in the field of probate law. He advised that the members of the Bar Committee also had considerable expertise in probate law and the Advisory Committee had in addition had the assistance and advice of seven expert consultants in specific areas of the probate code.

Judge Dickson advised that the committee first met in the summer of 1964 and decided their first job was one of research with respect to all of the Oregon probate code sections and the interpretations placed upon them by the Oregon Supreme Court in addition to exploration of the provisions of probate codes of other states which had recently been updated. Following completion of this initial step, the probate code was divided among the committee members for further study and further research after which drafts were prepared by members of the particular sections referred to them. These drafts were then discussed at great length by the full committee. Beginning in the fall of 1964, Judge Dickson said, the committee met all day on the third Saturday of each month plus the preceding Friday afternoon.

After the code's completion last November, the committee arranged with the Bar Associations throughout the state to hold a series of meetings to discuss the probate code with the lawyers in their respective localities. These meetings, Judge Dickson indicated, were well attended and many constructive suggestions were received. The green sheets in the notebooks furnished the Judiciary Committee indicated the changes made in the code as a result of this series of meetings.

Thereafter the code was submitted to the parent committee, the Law Improvement Committee, and a memo in the notebooks from Mr. Lundy dated January 31, 1969, indicated the further refinements made as a result of the conferences with that committee.

In summary, Judge Dickson said that the Advisory Committee had tried to embody in the code all of the existing probate law of Oregon, refined, as necessary, to avoid inequities that were the result of Supreme Court decisions. They had tried to provide a flexible code and one that would be easily understood by everyone. They had made an effort to present the latest thinking in the United States in connection with the revision of probate codes. The committee, he said, was prepared for the benefit of the Judiciary Committee to go into the code in a general way or in the minutest detail.

Mr. Allison had prepared a four page summary of the probate code, a copy of which is attached hereto as Appendix A, which was written in language easily understandable by lay members of the legislature. He read the seven objectives of the proposed code as set forth in his summary and noted that, while the code did not adhere strictly to the format used in the Uniform Probate Code of the American Bar Association, many of the ideas and much of the language used was taken from that uniform code.

Some of the comments made by Mr. Allison enlarging upon his summary are set forth below.

Power and Authority of Personal Representative to Act Without Court Order. Mr. Allison said that one of the difficulties the committee had encountered in its meetings with attorneys throughout the state was to sell them on the idea that the personal representative should have the right to deal with estate property without having to go to the court every time he intended to handle some of the affairs of the estate. Under present law, he said, the personal representative could sell personal property without court formalities, yet the amount of personal property involved in estates today was ordinarily far greater than the amount of real property involved. The proposed code, therefore, gave the personal representative broad power and broad responsibility to deal with the property of the estate unless he desired to go to the court for specific authority. The requirement for bond was also deleted, he said.

Notice to Interested Persons and Publication to Creditors. Mr. Allison said the Advisory Committee was convinced that to avoid grave legal questions involving due process, it was necessary to require notice to heirs and devisees in addition to publication of notice to creditors and interested persons.

Guardianships of Missing Persons. Mr. Allison noted that entire chapters of the existing probate code had been eliminated because they were duplicative, unnecessary or could be replaced in a simpler form. One example of this type of deletion concerned the present complicated procedure for administering the estates of missing persons. Mr. Zollinger, a member of the Advisory Committee, had suggested a sensible solution to the problem which the committee had adopted by simply adding another category to the present guardianship code, thereby providing for appointment of a guardian for the estate of a missing person. The guardianship code, he observed, contained broader and better provisions than the existing statute for administering estates of missing persons.

Dower and Curtesy Abolished. Another extensive area which was eliminated by the Advisory Committee was the entire chapter on dower and curtesy. The proposed code would give actual inheritance rights to the widow or widower to inherit both real and personal property.

Probate Jurisdiction. The proposed probate code would place all probate jurisdiction in the circuit court, but the procedure had been made as flexible as possible, Mr. Allison said, by permitting district judges in some areas to act as circuit court judges in probate matters. Present law had been continued in that in the absence or disability of the circuit court judge, the district judge could operate as the circuit judge. In less populated counties, particularly those in eastern Oregon where a circuit judge was not readily accessible, the problem was to provide a workable procedure whereby the property of a deceased person could be taken care of immediately without the necessity of waiting until a circuit judge came into the area two or three weeks hence. The proposed code resolved this problem by providing that the circuit judge could appoint any person who was available and able to do the job and he would be empowered to begin the probate on an ex parte basis, subject to the supervision and control of the circuit court.

Publication and Notice. Mr. Allison noted that the Advisory Committee was in session when Dacey's How to Avoid Probate was released and they were cognizant of public feeling against the expensive, tremendously time consuming and complicated probate proceedings. The committee had attempted to reduce the expense of probate in a number of ways, one of which was to decrease the required number of publications to creditors from five to two. They had also eliminated the requirement for publication for sale of real property, and no publication of notice of hearing on the final account hearing was required. The whole thrust of the notice requirements was to give actual notice where possible instead of requiring publication in trade papers, he said.

Inventory and Appraisement. The proposed code provided that appraisers could be appointed and paid a reasonable fee either by the personal representative or by the court in cases where appraisers were needed. The Advisory Committee, Mr. Allison said, had consulted with the National Society of Real Estate Appraisers in drafting the appraisement sections and the Society was completely satisfied with the provisions in the proposed code.

Fees of Personal Representatives. The Advisory Committee had not substantially altered the fees of the personal representative. The original draft, he said, increased the fees in line with the rise in the general cost of living but in interviews around the state, there was general agreement that an increase would be unwise and might introduce a controversial feature into the code which the committee wanted to avoid.

Fees of Attorneys. Mr. Allison said that the recently revised probate codes encouraged attorneys to base their fees on the amount of time spent in administering an estate rather than on a fixed fee based on the value of the estate. The amount of work involved in an estate, he said, was in no way dependent upon the value of the estate. While attorney fees could not legally be regulated, the Advisory Committee was hopeful that after attorneys had experienced

the simplified procedure, they would find they could well afford to charge the public less because they would be doing less work, making fewer court appearances and spending less time on probate matters.

Small Estates. Senator Fadeley asked Mr. Allison what changes, if any, were made in the area of probating relatively small estates. Mr. Allison replied that in 1965 a Small Estates Act had been presented to the legislature but it had met with opposition from many sources. The committee then reconsidered the matter and the first problem they encountered was the question of the amount which constituted a small estate. Some jurisdictions considered an estate of $50,000 net to be a small estate while others talked in terms of $5,000.

The Advisory Committee had resolved the problem by providing that in estates where the court finds that after payment of expenses, claims and taxes, the entire estate would be needed for the support of the widow and dependent children, the court may set aside the net estate to the widow and minor children for their support and summarily close the estate. The code did not limit this procedure to a specific amount. The only restriction was that in the case of an insolvent estate, support was limited to one-half of the estimated value of the estate. It also provided that if support to the widow and minor children would exhaust the estate, the estate could be closed four months after notice to interested persons.

Chairman Yturri asked what type of notice was required and was told by Mr. Allison that notice was to be given either by mail or by personal service or, if the persons could not be reached, by publication. He called attention to section 10 containing a general notice provision which was applicable to this situation.

Senator Fadeley asked if the proposed code contained a provision for closing estates which had been pending for many years even though they might not have been fully administered. Mr. Allison replied that the proposed code did not discuss that problem because those estates would not fall under the jurisdiction of this code.

Senator Burns asked Mr. Allison if a record of the testimony was maintained from the hearings with Bar Associations throughout the state and was told that one of the members of the Advisory Committee present at each meeting had submitted a report to Judge Dickson setting forth the objections and questions raised at that particular meeting. He agreed to furnish the Judiciary Committee with this file of material.

Judge Dickson introduced Professor Thomas Mapp, Advisory Committee member and Professor of Law at the University of Oregon. Professor Mapp distributed a memorandum he had prepared setting forth the principal policy changes made in the proposed probate code as they differed from existing Oregon law. A copy of the memorandum is attached hereto as Appendix B. Professor Mapp said he would discuss the areas not touched upon by Mr. Allison and some of his comments expanding upon his memorandum are set forth below.

Article II, Intestate Succession and Wills; Part 1, Intestate Succession. Section 17. Inasmuch as dower and curtesy had been abolished by the proposed code, Professor Mapp said, section 17 gave the surviving spouse one-half of the decedent's net intestate estate which constituted a significant increase. The committee had adopted this provision on the theory that this would probably be what the average man would have wanted his spouse to have had he died testate.

Section 19 represented a change from existing law in that it provided for right of representation throughout the line of succession. The right of inheritance would terminate with the grandparents and their issue and this provision conformed to the pattern in most of the new codes. Where someone might be an heir down both sides of the line, he could inherit only once and in that instance he would take the larger share. It would no longer be necessary, he said, to count degrees of kinship because the right of representation was granted throughout. Chairman Yturri asked if a diagram showing the line of inheritance was available and was told by Judge Dickson that one would be furnished the committee.

Section 23, Professor Mapp explained, established a five day survival requirement in order for the heirs to take by succession. Senator Burns asked why five days was chosen and was told that this was the standard in the Uniform Probate Code and was probably chosen because it was a rough estimate of the time death was likely to occur as the result of an automobile accident. The longer the time period, Professor Mapp said, the more difficult the statute became administratively. If the wife died one day after the husband as a result of injuries in the same automobile accident, for the purposes of this statute she would be deemed to have predeceased him. Senator Lent commented that if the man and wife each had children by a previous marriage, this provision would drastically change the line of succession by cutting the wife's children out altogether. Senator Burns asked what policy decision outweighed the equities in the present law in this respect and was told by Professor Mapp that the equities would be in favor of having the property go to the husband's children. The provision, he said, would not apply to joint tenancies nor to any of the wife's property.

Part 3, Status of Adopted Persons for Inheritance, Wills and Class Gifts. Section 30. This section was an effort to make clear that an adopted child was completely identical to a natural child for all purposes of succession.

Part 5, Wills. Section 38. Professor Mapp said that many persons today under the age of 21 were beneficiaries of significant trusts and there was some advantage in permitting them to make a will at the age of 18 to work out a sophisticated estate plan with the aid of an attorney.

Section 47. Under present law, Professor Mapp said, a will was revoked by divorce or annulment. Under the proposed code only the provisions in the will having to do with former spouses would be revoked; all other provisions would remain intact.

Section 54 was a highly technical provision and would provide that if a testator had left a house or part of a farm to his children and the property was taken by condemnation, the condemnation award would go to the persons who would have taken the property. Another common problem arose in the area of substituted securities where one corporation merged with another and issued new securities. Present law was extremely complex as to whether or not the shares of the substituted corporation would pass under the specific devise and section 54 was a statutory attempt to solve many problems of that type.

Section 56, Professor Mapp said, contained both technical and policy changes and was an attempt to do equity by statute where the testator overlooked providing for an after-born child in his will. The provision that the share of the omitted after-born child would be taken from shares of the living children, he stated, would do the minimum damage to the testamentary plan and would treat the after-born child the same as the other children.

Part 6, Effect of Homicide on Intestate Succession, Wills, Joint Assets, Life Insurance and Beneficiary Designations. Sections 59 to 69. Professor Mapp said that for many years the theory was that it would be better not to have a statute covering the effect of homicide on intestate succession because the rules in the restatement of restitution were considered to be adequate. However, very few jurisdictions had adopted the restatement of restitution and these sections made an effort to codify the law on this subject but made no significant changes in existing law.

Article III, Initiation of Estate Proceedings. Section 85. Professor Mapp explained that section 85 was drafted to make it administratively simpler to launch an ancillary probate in Oregon and was designed for the case where no grounds for contest existed.

Section 88 was included to give the probate judge more discretion as to the person he should appoint in terms of his intrinsic ability to act as a personal representative. Judge Dickson gave as an example of the type of situation intended to be covered by section 88 an instance where the person nominated as a personal representative was thoroughly qualified under the statute but was not suitable because the judge knew he was a thief or an incompetent person. Section 88 would permit the judge to refuse to appoint that person. Senator Lent asked if the judge was required to make a finding setting forth the reasons why he considered such a person unfit to serve and was told by Judge Dickson that a finding was not required but the judge could make one if the person insisted.

Professor Mapp noted that the proposed code made the personal representative a fiduciary for all purposes.

Article IV, Administration of Estates Generally; Part I, Support of Spouse and Children. Section 104, Professor Mapp said, required the court to consider the interests and needs of the spouse and children in the estate property and if the court considered it necessary, it could set aside, for example, $10,000 in stocks out of the estate for their support.

Judge Dickson commented that the thrust of this portion of the proposed code was to give the support to the needy spouse, male or female, and to the dependent children and to repeal, in effect, all of the present exemption statutes which were archaic and did not serve the principal objective of providing support for the family unit. Professor Mapp added that it introduced a concept that there existed a requirement for the decedent spouse to provide for his family even after his death and if he didn't do so, the court would.

Section 113. Mr. Mapp said that if the spouse elected against the will and took one-fourth of the entire estate, her election often played havoc with a testamentary plan if the normal rules of abatement were applied. Section 113 was an attempt to solve this difficult problem by providing for a pro rata abatement. Chairman Yturri asked if the pro rata would apply to the residuary of the estate and received an affirmative reply.

References to ORS Numbers in Proposed Probate Code. Senator Burns asked if he was correct in assuming that when no ORS section was shown in the commentary to a section of the proposed probate code, that material was completely new. Mr. Allison replied that he had attempted to insert all the pertinent ORS sections in the commentary but the tables showing ORS sections in the back of the proposed code had been prepared by Mr. Lundy and were completely reliable.

Chairman Yturri then asked the Advisory Committee members if they would be able to continue their presentation on the following Wednesday. Judge Dickson replied they would be happy to do so and were prepared to have representatives in attendance at any time convenient to the Judiciary Committee.

The meeting was adjourned at 3:30 p.m.

Respectfully submitted,

Mildred E. Carpenter, Clerk
Senate Judiciary Committee

the Governor could not have made a better appointment. Mr. Westerdahl then proceeded to apprise the committee of the qualifications of Mr. Craine and Dr. Krygier. Copies of their biographical data are attached hereto as Appendix A. Mr. Westerdahl indicated that Mr. Craine was known personally by Mr. Edward Branchfield of the Governor's staff who said he was the forthright, outspoken type of individual who would be useful on this type of Commission.

Mr. Westerdahl indicated that the Supreme Court was interested in calling a meeting of the Commission as soon as possible and had urged the Governor's office to expedite the appointments. Chairman Yturri said that the committee would like to interview the prospective appointees personally and since Mr. Chandler would be in Salem on Monday, February 10, he asked Mr. Westerdahl to contact the other two appointees to see if it would be possible for them to appear before the committee at that time. Mr. Westerdahl agreed to do so.

Introduction of Bills by Committee

Chairman Yturri asked if there was any objection to the committee introducing a bill relating to investigators and investigation agencies at the request of the Pacific Northwest Association of Investigators. There being no objection, it was so ordered.

Chairman Yturri next read to the committee a letter written by Mr. A. R. McMullen, District Attorney of Lincoln County, requesting introduction of a bill to amend ORS 164.330 to remove the minimum fine and minimum jail sentence. Senator Burns said he agreed completely with the philosophy of deleting the minimum sentencing provisions in all the criminal statutes and the Criminal Law Revision Commission was in the process of doing exactly that. He commented that there might be some sentencing provisions which would need to be amended at this session of the legislature despite the anticipated adoption of the new criminal code in 1971, but he did not believe the bill proposed by Mr. McMullen was of such great priority as to justify the expense of printing and introduction. He suggested the proposed amendment await revision of the criminal code. The other members of the committee agreed with Senator Burns.

Proposed Probate Code

Mr. Allison presented the committee with the file of material which had been assembled as a result of the Probate Advisory Committee's meetings around the state with the Bar Associations.

Pending Professor Mapp's arrival, Mr. Allison resumed explanation of the summary prepared by Professor Mapp at the point where the presentation was interrupted at the previous meeting. [Note: See Appendix B, Minutes, February 3, 1969.]

Part 3, Title and Possession of Property. Section 115.

Mr. Allison explained that the present law contained a difficult area whereby title and possession of personal property was vested in the personal representative at the instant of death. This was illogical, he said, in that there was no provision for turning over the personal property in the possession of the personal representative to the persons entitled to receive it. That area had been simplified in the proposed code by making the same provision for vesting of both real and personal property. Title would vest in heirs and devisees, subject to administration.

Part 4, Duties and Powers of Personal Representatives.

Section 120. Mr. Allison commented that there had been criticism of the provision in the present law which required that a copy of the will be furnished to everyone receiving under the will. Also, this requirement could be an onorous chore in large estates. Section 120 attempted to solve this problem by prescribing the information to be given to the heirs and devisees upon the appointment of the personal representative. Any person wishing to do so could secure a copy of the will from the county clerk or the attorney for the estate but it was no longer necessary to furnish copies to all heirs and devisees.

Section 124. Chairman Yturri asked if the State Treasurer had approved the sections on inventory and appraisement and was told that he had not been contacted by the Advisory Committee.

Professor Mapp arrived at this point and continued the explanation.

Section 129, Professor Mapp said, pointed up the basic difference between the power and the authority of a personal representative. The committee wanted him to have the power to convey a good title merely because he had been appointed a personal representative by a court of the State of Oregon and, because he had that power, third persons dealing with him would be protected as long as they did not have actual knowledge that he was exercising his power improperly.

Section 136, he said, made the personal representative liable to any interested person if he improperly exercised his power.

Section 138. Present law provided that if a personal representative were carrying on a business and one of his employes tortiously injured someone else, the personal representative would be liable for the tort committed by his agent. The proposed code would reverse that situation and the personal representative would not be liable unless he were personally at fault. The estate, however, would be liable.

Article V, Claims, Actions and Suits; Part 1, Claims Against Estates. Mr. Allison explained that when the proposed code used the word "claims," the term referred to debts owed at the time of death. Other expenses occurring after death, such as funeral expenses, would not be "claims" but would be "expenses."

Section 153. Mr. Butler commented that section 153 was a reversal of the existing law which provided that if claims were not acted upon in a specified period of time, they were assumed to have been disallowed and placed the burden of insuring their approval for payment on the creditors. Section 153 would place the burden on the personal representative so that if the claim were not affirmatively disallowed within 60 days, it would be deemed approved.

Article VI, Accounting, Distribution and Closing; Part 1, Allocation of Income. Section 167. Professor Mapp noted that there was presently no statute in Oregon law covering allocation of income but there was some complicated judicial law determining to what extent income could be allocated. The plan adopted by the Advisory Committee followed essentially the pattern of the Revised Uniform Principal and Income Act and filled a void in existing law.

Section 177. Professor Mapp commented that there was no provision in present Oregon law calling for a decree of distribution and section 177 would remedy that obvious gap. It would give statutory authority for the court issuing the decree of final distribution to conclude all the determinations made during the course of the administration. Mr. Allison noted that the Law Improvement Committee had further amended this portion of the proposed code to provide that if an agreement were made among family members for division of the property

which was somewhat different from the terms of the will, if the court approved the agreement, it could then incorporate the result of that agreement between the heirs in the decree of final distribution in order to avoid the necessity of a petitioner's suit. Professor Mapp indicated that the section would also apply in an intestate situation in which the heirs agreed to a distribution which was different than the laws of intestate succession.

Format of Printed Bill. Mr. Lundy inquired if the Judiciary Committee would prefer that the proposed probate code, when printed in bill form, include a table of contents and received an affirmative reply. He next asked if the committee would prefer to have a table of existing ORS sections printed at the end of the bill and the members indicated this would be of benefit in considering the bill.

The meeting was adjourned at 2:30 p.m.

Respectfully submitted,

Mildred E. Carpenter, Clerk
Senate Judiciary Committee

Tape 1, Side 1

SENATE JUDICIARY COMMITTEE
Room 315 Capitol Building
March 17, 1969
1:00 p.m.

MAR 17

Members Present: Senator Anthony Yturri, Chairman
Senator John D. Burns, Vice Chairman
Senator Donald R. Husband
Senator Kenneth A. Jernstedt
Senator Berkeley Lent
Senator Don S. Willner

Excused: Senator George Eivers

Absent: Senator Edward S. Fadeley
Senator Gordon W. McKay

Witnesses: House Bill 1156

Representative Gordon Macpherson
Mr. A. R. McMullen, District Attorney, Newport

House Bill 1243

Representative George F. Cole

House Bill 1262

Representative Wallace P. Carson, Jr.
Mr. William Juza, City Attorney, Salem
Mr. Richard Braman, City Attorney, Portland
Mr. A. R. McMullen, District Attorney, Newport

House Bill 1263

Representative Elizabeth W. Browne

Introduction of Revised Probate Code

There being no objection, the Chairman ordered that the revised probate code be introduced by the Committee on Judiciary at the request of the Law Improvement Committee.

House Bill 1262

Representative Wallace P. Carson, Jr., explained that at the present time most of the cities of Oregon enacted their own traffic laws which, under ORS 483.036, were required to conform to the state traffic laws.

APR 7

SENATE JUDICIARY COMMITTEE
Room 315 Capitol Building
April 7, 1969
1:00 p.m.

Members Present:	Senator Anthony Yturri, Chairman Senator John D. Burns, Vice Chairman Senator Edward N. Fadeley Senator Donald R. Husband Senator Berkeley Lent
Delayed:	Senator Kenneth A. Jernstedt Senator Gordon W. McKay Senator Don S. Willner
Absent:	Senator George Eivers
Also Present:	Representative David G. Frost representing House Judiciary Committee Mr. Robert Lundy, Legislative Counsel
Representatives of Probate Advisory Committee:	Mr. Allan Carson, Chairman, Law Improvement Committee Mr. Clifford Zollinger Mr. Stan Allison Mr. William Love Mr. Duncan McKay

Senate Bill 506 (Sections 1 through 52)

Mr. Allan Carson indicated that the proposed probate code, Senate Bill 506, was the most important project the Law Improvement Committee had undertaken. For this reason the Probate Advisory Committee had agreed to send representatives to committee sessions to explain the bill and assist the legislative committees. He introduced Mr. Clifford Zollinger, Vice Chairman of the Probate Advisory Committee, who would make today's presentation.

Mr. Zollinger outlined the history of Senate Bill 506 and explained the manner in which the bill draft had been submitted to members of the Bar for suggestions, revisions and criticism. The bill, he said, had received expert drafting assistance not only from the Probate Advisory Committee and the Oregon State Bar Committee on Probate Law and Procedure but from the Legislative Council, the Law Improvement Committee and a substantial group of very competent persons. It was, he said, a very

carefully considered proposal and expressed the hope that there would be a disposition to accept it even if it did not entirely fit into the concepts of every member of the Judiciary Committee. If it contained faults, Mr. Zollinger urged that they be corrected in the light of experience at future legislative sessions. He asked that the Judiciary Committee resolve doubts about the code in favor of letting the bill alone. He said he felt strongly that the bill merited favorable consideration not only as a whole but in its parts.

Mr. Zollinger proceeded with a section by section examination of the draft of the code as it appeared in bill form and in making the section by section review, he said it would be his purpose to call attention to everything he felt was important plus material changes in substance.

Inasmuch as a tape of this and the subsequent meetings concerning the proposed probate code is on file in the archives, these minutes include only committee discussion and motions made by the Judiciary Committee; explanatory remarks are omitted for the most part.

Section 1. Definitions. Senator Lent pointed out that a number of the definitions said the defined term "includes" rather than "means" and cited as examples the definitions of "action", "claim", "interested person" and "personal property". He asked if the term "includes" was meant to outline examples. Mr. Zollinger replied that the definition of "action", for example, was not intended to be exclusive when it said that "action" includes suits and legal proceedings. Senator Lent asked Mr. Zollinger if he thought there was any danger in adopting this approach and Mr. Zollinger said he did not. He would hesitate, he said, to draft a definition which purported to exclude everything that should be excluded. Senator Lent said that the definition of "action" could be construed to mean only suits and legal proceedings and exclude anything not included in those two terms. Mr. Zollinger said that this would be the result if "means" were substituted for "includes", and was the reason it would be dangerous to say "means" unless everything intended by the definition were listed.

Senator Burns noted in connection with the definition of "will" that "codicil" was not defined. Mr. Zollinger advised that there were some sections in the code which explained how a will was to be made. Since "will" was defined as including a codicil, whatever was later said about drawing a will would apply to codicils as well.

Senator Willner asked if "special administrator" was defined and was told that he was defined by description in section 80 on page 27 of the bill.

Section 11. Powers of probate commissioner. Senator Willner commented that appointment of a probate commissioner was a significant change in the law. He said he was concerned about a situation of two competing petitioners seeking to be appointed personal representative of an estate. Mr. Zollinger asked if that situation would be different with a commissioner than with a judge. Senator Willner expressed the view that a judge would have a better background to make the decision and he was concerned about the county clerks in the smaller counties who had a hundred different duties of which this was only one.

Mr. Zollinger advised that the larger counties usually had a probate clerk and he would probably be the one who would discharge this function. If one of the probate commissioners blundered, his orders were subject to review by the judge. If he felt uncertain about his duties, he could get judicial advice. He said he anticipated no problem with this procedure.

Section 13. Notice; method and time of giving. Section 13, Mr. Zollinger said, was new and provided a general requirement for the method of giving notice, the time for which it was to be given and the proof of such giving. Representative Frost called attention to the language on page 9, line 10, requiring notice "to each person interested in the subject of the hearing". He asked how broad that was interpreted to be and, in a situation where there was a probate contest filed, whether notice should be given to all of the heirs. Mr. Zollinger replied that if they were interested in the outcome of the petition, they should have notice. Section 13 said that when notice was to be given, this was the manner in which to give it.

Section 15. Filing objections to petition. Senator Lent questioned whether "may" on page 10, line 1, meant "may" or "must". Mr. Zollinger said he did not know whether it was intended that the interested person "must" file written objections to a petition previously filed. It was a good question, he said, and should be resolved. Senator Lent expressed the view that he did not think a written objection should be required. Many people, he said, didn't feel they needed an attorney and when notified of the date of the hearing, they would appear at the courthouse at the proper time and should be entitled to be heard whether or not they had previously filed a written objection.

Chairman Yturri observed that this question was raised in Ontario when the Advisory Committee was meeting there with members of the Bar. His understanding at that time was that the intent of section 15 was not to require anyone to file written objection and whether he did or did not file, he would be entitled to appear. It was his opinion that the language of the section accomplished this intent.

Section 20. Share of surviving spouse if decedent leaves issue. Senator Lent asked if the Probate Advisory Committee was satisfied that "issue" as used in the context of sections 20 and 21, for example, was sufficiently broad to include lineal descendants of adopted children. Mr. Zollinger replied that he would expect the definition of "issue" on page 4, line 7, to include the children of adopted children but there was room for controversy.

After further discussion, Senator Lent moved adoption of the following amendment: In subsection (22) of section 1 on page 4, line 6 of the bill, after "children" insert "and their children". The motion carried unanimously.

Section 26. Heir to survive decedent by five days. Section 26 provided that an heir must survive the decedent by at least five days in order to take an interest in the decedent's estate. Mr. Zollinger said this gave, in a degree at least, a provision commonly found in testamentary provisions that if the beneficiary did not survive the decedent for a short period, the distribution was to be made as though he did not survive at all.

Chairman Yturri commented that when the committee had earlier heard testimony on the probate code, a committee member had raised the question of why the period of five days was selected. Mr. Zollinger said this period was chosen because the Uniform Probate Code used five days and the committee felt it would be of some benefit to fit into a pattern.

Section 28. Illegitimate children. Mr. Zollinger explained that subsection (2) of section 28 provided that the father of an illegitimate child was to be treated as though he were the father of a legitimate child if his paternity was established during the lifetime of the child. This was to prevent the father of a child who left a substantial estate, when the father had not recognized his relationship before, from claiming that estate after the death of his child.

In reply to a question by Senator Fadeley, Mr. Zollinger explained that the section applied to two situations: One in which the father died intestate survived by a child and the question was whether the child was entitled to take upon his intestate death. If the father recognized the existence of the relationship in writing during the lifetime of the child, the child could claim. The other situation was one in which the child died and the father claimed as his heir. In that situation

the section said the father could not claim unless he had, during the life of the child, established paternity or acknowledged himself to be the father in writing. Senator Fadeley contended that the result of the section was to allow a will without witnesses when the father was permitted to write that he was the father of the child.

Section 33. Adopted child treated as natural child. Mr. Zollinger explained that section 33 provided that for all purposes of intestate succession an adopted child shall be treated as a natural child of the adopting parents. It was elaborated upon by subsections (1) and (2) which were exceptions to this general rule.

Senator Fadeley questioned the inclusion of subsection (1). If an adoptive child was the same as a natural child, he asked, what purpose was served by preserving the natural relationship between the one parent when there was a stepfather - stepmother adoption situation. Mr. Zollinger explained that the adopted child would continue to take through the natural parent. Senator Fadeley asked again why this would make a difference when an adopted child had the same rights as a natural child. Mr. Zollinger explained that subsection (1) carved out an exception to the general rule stated in the first paragraph of section 33. In reply to a question by Senator Lent, Mr. Zollinger advised that the section did not exclude illegitimate children but it was not limited to them.

Chairman Yturri inquired as to the meaning of the phrase, "If a natural parent marries". Mr. Zollinger cited a hypothetical situation wherein a married or unmarried natural parent had a child and, either because the mother had an illegitimate child or because the father died, the child was left fatherless; the natural parent then married or remarried and the person to whom the natural parent was married adopted the child. In that situation the natural parent remained the natural parent of the child; the adopting parent became his adoptive parent. This was an exception to the rule that upon adoption the natural parent relationship terminated and the child ceased to be treated as a child of his natural parents.

Section 44. Revocation by marriage. Sections 44 and 45, Mr. Zollinger said, departed from present law. Chairman Yturri asked if the contract referred to in subsection (2) was intended to be a written or verbal contract and Mr. Zollinger said he presumed that the language would include an oral contract. Chairman Yturri said that leaving the question open could invite a great deal of litigation and Mr. Zollinger concurred. The Chairman requested Mr. Love's opinion and he recommended that the contract be in writing.

Senator Burns moved adoption of the following amendment: On page 17, line 7, after "a" insert "written". The motion carried unanimously.

Senator Lent asked if "indicating" on line 5, page 17, was a strong enough word and suggested "establishing" or "showing" be inserted in its place. Chairman Yturri and Mr. Zollinger concurred.

Senator Lent moved that "indicating" be deleted on line 5, page 17, and "establishing" be substituted. The motion carried unanimously.

Section 45. Revocation by divorce or annulment. Section 45 contained a substantial change from present law, Mr. Zollinger said, and was a more sensible provision than that in existing law that the marriage completely revoked a will.

Senator Burns called attention to ORS 114.130 and asked how section 45 of the bill was an improvement over the present law. Mr. Zollinger explained that the essential difference was that the ORS section covered both marriage and divorce whereas SB 506 separated them into separate sections because they were substantially different. With respect to divorce or annulment, section 45 was different from ORS 114.130 in that it did not require that the intention of the testator be expressly declared by the will; it required rather that the will show its purpose.

Senator Burns asked if section 45 would invite litigation and Mr. Zollinger said he thought it would not. The testator who was about to be divorced from his wife could execute a will in which he made provision for her but did not say, "I intend that this shall not be revoked." He might very well indicate his purpose that the will was not to be revoked by language other than the expressed declaration.

Chairman Yturri asked Mr. Love if in his opinion there was any material difference between the word "evidences" as opposed to "shows" or "discloses". He suggested "shows" might be more appropriate on line 10 than "evidences". Mr. Love indicated that it was a question of degree. "Shows", he said, went more toward "establishes"; "indicates" was the weakest of the verbs; "evidences" was stronger than "indicates" and "establishes" was stronger than "evidences".

Mr. Zollinger commented that section 45 was concerned with the construction of a will and should not talk about "establishing" but rather about "showing", "disclosing" or "evidencing". He expressed the view that there was no material difference between these three latter words. The committee decided they were satisfied with "evidences" on line 10, page 17.

Section 52. Non-ademption of specific devises in certain cases. Mr. Zollinger explained that section 52 related primarily to the situation where there was a change in the character of the property of the decedent by a fire loss, or otherwise, and the insurance or the proceeds replaced that property. The Advisory Committee followed the Wisconsin law on this question and decided the devisee should receive the insurance or the proceeds of that property provided there was no more than a reasonable time lapse after the casualty loss that would afford the testator a chance to make other testamentary provisions. The committee had picked six months as that time period.

Senator Fadeley asked if the six months limit would apply to all circumstances and received an affirmative reply from Mr. Zollinger. Mr. Zollinger cited the example of a man who willed Black Acre to his son and Black Acre was condemned a week before the man died. If no more than six months expired after the award and before the testator's death, the son would take the award. The same situation, he said would apply to a stock split.

The meeting was adjourned until 7:30 p.m.

Respectfully submitted,

Mildred E. Carpenter, Clerk
Senate Judiciary Committee

Tape 10 - Side 2 (343 to end)
Tape 11 - Side 1 (1 to 577)

SENATE JUDICIARY COMMITTEE
Room 315 Capitol Building
April 7, 1969
7:30 p.m.

APR 7

Members Present:	Senator Anthony Yturri, Chairman Senator Donald R. Husband Senator Kenneth A. Jernstedt Senator Berkeley Lent
Delayed:	Senator John D. Burns
Absent:	Senator George Eivers Senator Edward N. Fadeley Senator Gordon McKay Senator Don S. Willner
Also Present:	Representative David G. Frost representing House Judiciary Committee Mr. Robert Lundy, Legislative Counsel
Representatives of Probate Advisory Committee:	Mr. Clifford Zollinger Judge William Dickson Mr. Herbert Butler Mr. Stanton Allison Mr. Allan Carson, Chairman, Law Improvement Committee Mr. Duncan McKay
Witnesses:	Mr. Thomas Garrison, attorney, Roseburg Mr. Gordon G. Carlson, attorney, 329 SE Jackson Street, Roseburg

Senate Bill 506 (Sections 53 through 102)

Mr. Thomas Garrison advised that his purpose in appearing was to set the stage for Mr. Carlson's presentation which would embody a new approach to the question of what to do when someone died who owned property.

A copy of Mr. Carlson's statement is attached hereto as Appendix A. In summary, he contended:

(1) Most married people with children would prefer that in the event of intestacy the property would go all to the spouse and then to the children rather than in the first instance go half to the spouse and half to the children.

(2) The code should provide a means of transmitting property without probate if no complicating factors existed to render probate necessary.

Chairman Yturri noted that each attorney's experiences differed. He had, he said, prepared a minimum of 3,000 wills during the time he had practiced law and it amazed him to hear Mr. Carlson say that he believed a majority of the people would want the surviving spouse to succeed to all the property. His experience had been that the majority of his clients wanted their children to participate in their estate. He asked Mr. Carlson if he had appeared before the Law Improvement Committee or any of the Bar committee meetings to present his proposal. Mr. Carlson said he had not and explained that he had not received notification of the Probate Advisory Committee meeting with the Bar association in his area. Senator Husband advised that he and Mr. Riddlesbarger had repeatedly attempted to set up a meeting date with the Bar association in Roseburg but the President of the association had said he was unable to get sufficient response from the members.

Chairman Yturri commented that if the views Mr. Carlson espoused were so prevalent, it seemed strange that the advisory committee which had worked on this code for years had not heard this theory announced earlier.

Representative Frost asked Mr. Zollinger how the advisory committee arrived at the determination of giving one-half to the spouse and one-half to the children. Mr. Zollinger replied that the committee was determined to end dower and curtesy and also determined to provide the same disposition for personal property as for real property. The question of what disposition should be made was a moot decision and the advisory committee had agreed on the half and half formula.

Mr. Zollinger began his section by section review of the proposed probate code with section 53.

Section 54. Children born or adopted after execution of will; pretermitted children. In a situation where a testator left 2/3 of his estate to his daughter and 1/3 to his son with no provision for the pretermitted child, Senator Lent asked what disposition of the estate would be made under Section 54. Mr. Zollinger replied that the pretermitted child would receive 1/3 of the estate and the other two would take 2/3 and 1/3 of the remainder. This, he said, would be a good illustration of the requirement on page 21, lines 12 and 13, to preserve the testamentary plan of the testator.

Chairman Yturri inquired as to the meaning of "other than nominal provision" on page 20, line 34. Mr. Zollinger explained that the phrase referred to a provision in the will included in order to make a recognition of the child. The question of the meaning of "nominal provision", he said, depended upon the size of the estate. One hundred dollars might be a nominal provision in a million dollar estate whereas $10 would suffice in a smaller estate.

Section 56. Delivery of will by custodian; liability. Senator Lent asked the name of the proceeding referred to in subsection (2) of section 56 and how it was to be initiated. Mr. Zollinger replied that the proceeding would be filed "In the matter of the estate of John Doe, deceased" and the application was for an order requiring Joe Jones to deliver the will of the decedent in his possession to the temporary administrator.

Section 57. Disposition of wills deposited with county clerk. In reply to a question by Chairman Yturri, Mr. Zollinger explained that a will could not be lodged with a county clerk after July 1, 1970.

Sections 58 through 68. Effect of homicide on intestate succession, wills, joint assets, life insurance and beneficiary designations. Chairman Yturri noted that section 60 said that "an undivided one-half interest shall remain in the slayer for his lifetime" and asked if this constituted an inconsistency. He asked why "for his lifetime" had been included in the section. Mr. Zollinger explained that half interest was already vested in the slayer for his lifetime and he was being treated as though he had not survived, whether or not he did in fact survive, but he was nevertheless entitled to a half interest for life because that was what he owned as a joint owner with right of survivorship.

Senator Lent asked if the probate code covered the situation of the tort feasor. He cited as an example a situation where a father, exercising his visiting rights, took his daughter for a boat ride. The boat capsized, the girl drowned and the father survived. Mr. Zollinger replied that there was nothing in the probate code to cover that situation; part 5 dealt only with situations involving felonious intent.

Section 77. Renunciation of intestate succession or devise. Chairman Yturri inquired as to the reason for including section 77. Mr. Zollinger cited a situation where the testator left Black Acre to his widow and the residual of his estate to his children. His widow had other ample income and she would prefer that the children had Black Acre. Under section 77 she could renounce and the children would take Black Acre without a liability for a gift tax. The same thing, he said, could happen upon intestate succession. The Chairman asked why the four months limitation was imposed and was told by Mr. Zollinger that the four months period had been used in this code wherever six months was used under present law.

Chairman Yturri asked if this section could be used as a device to defraud creditors in a situation where a debtor might wish to escape his just obligations and would therefore give his inheritance to a relative in order to avoid paying his creditors. He asked if the advisory committee gave any thought to the rights of attaching creditors and how they

would be affected by such a renunciation. Mr. Zollinger replied that the last sentence of the section provided expressly that the creditors would be affected and, in reply to a further question by the Chairman, said the advisory committee had specifically discussed the question raised by him. Section 77 expressed their conclusion.

The principal changes made by section 77, Mr. Zollinger said, were that renunciation applied to intestate succession as well as gifts by will and, secondly, that it clarified gift tax liability and made it clear that renunciation was not subject to a gift tax whereas this point was not clear under present law.

Senator Lent asked if the federal government would honor this gift tax provision and Judge Dickson replied that they recognized state law with respect to descent and distribution and he saw no reason why they would not also recognize this provision.

Section 86. Establishing foreign wills. In reply to a question by Senator Lent, Mr. Zollinger explained that although there was a division of opinion on the advisory committee, the majority of the committee was of the opinion that Oregon should be able to try specific questions in Oregon relating to the validity of the will if the will was going to be admitted to probate here. If a question arose as to duress or incompetency, those grounds could be contested in Oregon notwithstanding the fact that there was an adjudication in the state of domicile on the same questions.

Section 89. Persons not qualified to act as personal representative. Senator Lent commented that conviction for a felony had little to do with a person's honesty and cited a homicide conviction as an example. He suggested that the provision refer to a felony involving honesty. Mr. Zollinger remarked that section 89 in this respect followed the language of the present law, ORS 115.410.

Senator Burns asked if there was any reason for deleting the provision of ORS 115.410 which stated a person convicted of a misdemeanor involving moral turpitude was barred from becoming a personal representative. Judge Dickson explained that this deletion resulted in the inclusion of the phrase "finds suitable" on line 3, page 88, which would authorize the court to reject the request of any person it found unsuitable to serve.

Chairman Yturri asked why the advisory committee had not permitted a nonresident to be an administrator as well as an executor in subsection (6). Mr. Butler explained that his view was that where the testator had named

a nonresident to serve as executor, usually that person would be one who was going to inherit or take under the will. It seemed to him, he said, that there was a difference between appointing someone to act for the settlement of an estate in Oregon who was not appointed by the testator but who qualified simply by reason of relationship, and for no other reason, and without benefit of professional qualifications.

Mr. Zollinger explained that the advisory committee took several different positions with respect to this question and finally ended up with this result chiefly because it was a position everyone could accept.

Section 95. Publication of notice to interested persons. Chairman Yturri asked if it would disrupt any portion of the code if section 95 required three consecutive publications rather than two. Mr. Zollinger replied that three publications would not do violence to the code.

Senator Burns moved that "two" on line 23, page 34, be changed to "three". The motion carried.

Mr. Zollinger pointed out that the same amendment could be made in section 13 for purposes of uniformity.

Senator Jernstedt moved that "two"on line 20, page 9, be changed to "three". The motion carried unanimously.

Section 98. Appraisement; employment and appointment of appraisers. Representative Frost asked if under subsection (3) of section 98 the present practice of having an appraiser sign the inventory would be sufficient. Mr. Zollinger replied that it would be sufficient but it would be unusual because the code was not concerned about having all of the property appraised in the ordinary case. He said he could see no particular gain in having an appraiser put a value on securities which were listed securities.

Representative Frost next asked if there was any place in the code which set forth a reasonable fee for appraisers and was told by Mr. Zollinger that there was not. The advisory committee had decided not to approve a statutory fee for the appraiser, he said. Representative Frost asked if this might cause a personal representative problem when he filed his final accounting four months after the appraisal and found that the fee he paid an appraiser was more than the court would allow. Mr. Zollinger

replied that the personal representative or any party in interest could go to the court at any time for instructions.

Mr. Zollinger's explanation concluded with Section 102.

The meeting was adjourned.

Respectfully submitted,

Mildred E. Carpenter, Clerk
Senate Judiciary Committee

Tape 11
Side 1 (577 to end)
Side 2

SENATE JUDICIARY COMMITTEE
Room 315 Capitol Building
April 9, 1969
1:00 p.m.

APR 9

Members Present:	Senator Anthony Yturri, Chairman Senator George Eivers Senator Donald R. Husband Senator Kenneth A. Jernstedt Senator Don S. Willner
Delayed:	Senator Edward N. Fadeley Senator Berkeley Lent
Excused:	Senator John D. Burns
Absent:	Senator Gordon W. McKay
Also Present:	Representative David G. Frost representing House Judiciary Committee Mr. Robert Lundy, Legislative Counsel
Representatives of Probate Advisory Committee:	Professor Thomas Mapp Mr. William Riddlesbarger Mr. Stanton Allison Mr. William Love
Witnesses:	Mr. William Dobson, Estate Administration Section, State Public Welfare Commission

Senate Bill 439

Chairman Yturri explained the amendments made to Senate Bill 439 by the House of Representatives. House Bill 1437, he said, proposed changes of terms in counties other than those contained in SB 439 and those revisions had been incorporated into SB 439.

Senator Husband moved that the Judiciary Committee recommend concurrence in the House amendments and the motion carried unanimously. Voting: Senators Eivers, Fadeley, Jernstedt, Willner and Mr. Chairman.

Senate Bill 506 (Sections 103 through 167 plus amendment to section 176)

Professor Thomas Mapp and Mr. William Riddlesbarger represented the Probate Advisory Committee in making today's presentation.

Section 103. Occupancy of family abode by spouse and children. Professor Mapp explained that section 103 provided that the spouse and dependent children of the decedent would have the right to occupy the family abode for a year to the extent that the estate itself had a right to occupy that abode.

Senator Lent inquired if there had to be a surviving spouse for this section to come into play and received a negative reply. Senator Lent commented that the section was not clear that if there was no surviving spouse, the dependent children would still have the right to occupy the family abode.

After further discussion, Mr. Lundy suggested the section read "The spouse or any dependent children, or both, . . . " Senator Lent moved adoption of the proposed amendment and the motion carried unanimously.

Section 110. Priority of support; treated as administration expense. Providing there were no changes made in the inheritance tax law other than those in this bill and inasmuch as support under this section was an expense of administration, Senator Fadeley asked if this provision would reduce the taxable estate since expenses of administration were generally viewed as reducing the taxes. Professor Mapp replied that the support was an expense of administration so far as priority was concerned but was not literally an expense of administration. He could not conceive, he said, that for tax purposes it would be possible to set off $30,000 because it was necessary for the education of eight children and thereby elude the claims of the IRS and the State Tax Commission. Senator Fadeley commented that he had asked the question because of the language on page 39, line 34, "but shall be treated as an expense of administration." Professor Mapp said he thought the language was all right because it said "treated as" rather than "is" an expense of administration.

Section 111. Small estates; setting apart whole estate; termination of administration. Senator Fadeley asked if "sufficient or reasonable provision for support" on page 40, lines 3 and 4, referred to the life of the spouse or the minority of the child. Professor Mapp replied that it applied to both and also included the lifetime of the child if he was retarded or otherwise unable to take care of himself.

Chairman Yturri asked why "Small estates" was used in the caption of section 111 inasmuch as there was nothing in the section which limited the amount of the estate. Senator Burns moved that "Small estates;" be deleted from line 1, page 40, and the motion carried unanimously.

Section 115. Denial of election or share reduction when decedent and surviving spouse living apart. Senator Fadeley commented that under section 115 the husband who deserted his wife before his death would place the burden on the wife to prove that she was entitled to her election. Professor Mapp said that the advisory committee was thinking of the opposite situation where the wife had run away with another man and they wanted to put something in the code to provide that the elective share would not be automatic in all cases. They felt the only viable solution was to leave the decision to the judge. Senator Fadeley commented that section 115 in effect allowed the court to make the will.

Chairman Yturri asked how much violence would be done to the code if the committee either: (1) Confined section 115 to situations where there was a legal separation; or (2) Deleted the section. Professor Mapp replied that he thought either alternative would do no harm to other sections.

The committee decided not to make a decision with respect to this section at this time.

Senator Willner asked if under section 117 the court's decision could be appealed by anyone other than the surviving spouse and was told by Mr. Love that any interested party could appeal.

Section 127. Transactions authorized for personal representative. Section 176. Notice for filing objections to final account and petition for distribution. Mr. William Dobson explained proposed amendments to sections 127 and 176. Excerpts of a letter written by Mr. Dobson are set forth below and explain the reasons for the proposed amendments:

> "I am directing this letter to you concerning the needs of the State Public Welfare Commission pertaining specifically to the repeal of ORS 117.150 (FUNERAL CHARGES, WHO MAY INCUR: PAYMENT OF CHARGES.) and ORS 117.615 (NOTICE TO STATE PUBLIC WELFARE COMMISSION.). In repealing both of these sections, it does not appear that some of the pertinent provisions were embodied in the new code.

"Section 127 (1) of the proposed code, containing the repealed provisions of ORS 117.150 does not appear to require sufficient restraint in incurring funeral charges by heirs and personal representatives. We are attaching a proposed change which incorporates the pertinent portion of the repealed statute which we feel is necessary to reduce excessive charges.

"You will note from our proposal that the Board of Control is also included. They have been consulted concerning this and wish to stay on a parity with the Welfare Commission concerning these matters.

"For your information we maintain approximately 700 probate files throughout the State of Oregon so you can understand our concern in the above matter and also in the following revisions pertaining to final accounts.

"ORS 117.615 presently requires that the State Public Welfare Commission be served with a copy of the final account ten days prior to the hearing. The proposed new code inadvertently omitted this in Section 176.

"The new proposal in effect provides that where the State Public Welfare Commission and/or the Board of Control has filed its claim in an estate the respective agencies shall receive a copy of the final accounting together with the notice of the time fixed for hearing of final account."

Mr. Dobson explained that the Public Welfare Commission sent a notice to attorneys for the estates along with each claim. The notice, he said, had greatly reduced controversies over funeral expenses and, in addition to setting forth ORS 117.150, included this statement:

"In estates where the State Public Welfare Commission will not receive a full distributive share on its claim, the sum of $750 has been fixed as the amount necessary to provide a plain and decent burial. Your cooperation in limiting burial expenses to this amount would be appreciated."

In reply to a question by the Chairman, Mr. Dobson advised that his department handled more than a million dollars in estates each biennium.

Senator Fadeley moved that the amendment proposed by Mr. Dobson to section 127 be adopted: On page 45, line 26, after the period insert: "No funeral charges, except those necessary to give the decedent a plain and decent burial, shall be allowed out of the estate where the assets are not sufficient to satisfy the claim of the State Public Welfare Commission and of the Board of Control.". The motion carried unanimously.

After further discussion, Senator Husband moved that the following amendment proposed to section 176 be adopted: On page 65, after line 22, insert: "(2) If the State Public Welfare Commission, its authorized agent or the Board of Control or its authorized agent has filed its claim pursuant to ORS chapters 411 to 417 or subsection (3) of ORS 179.620 against the estate, and the claim has not been settled or paid in full, the personal representative shall deliver to the State Public Welfare Commission or the Board of Control a copy of the final account at the same time and manner for service of notice provided in subsection (1) of this section." This motion also carried without opposition.

Section 141. Presentation of claims; time limitations. Professor Mapp explained that section 141 provided that if claims were filed within the four months period, they would then have priority for payment and claims not presented within 12 months were barred from payment. Subsection (4), however, offered an escape hatch for this latter provision.

Senator Lent asked if any provision were made for claims which did not arise until long after the 12 month period had expired and cited as an example a situation where a doctor left a sponge in his patient during surgery and died before the sponge was discovered three years later. Mr. Riddlesbarger said the estate would probably have to be reopened under subsection (4) of section 141.

Mr. Allison called attention to Part 3 involving Actions and Suits on page 60. The committee turned to that portion of the code and Senator Lent commented that he was afraid section 167 would nullify or drastically cut the present statutes of limitations.

There was further discussion, and the committee decided to return to consideration of this problem at a later time.

Discussion of the code was resumed with section 142 and the committee concluded their section by section review with section 167.

The meeting was adjourned.

Respectfully submitted,

Mildred E. Carpenter, Clerk
Senate Judiciary Committee

Tape 12 - Side 1
Side 2 (1 to 189)

SENATE JUDICIARY COMMITTEE
Room 315 Capitol Building
April 9, 1969
7:30 p.m.

Members Present:	Senator Anthony Yturri, Chairman Senator John D. Burns, Vice Chairman Senator George Eivers Senator Edward N. Fadeley Senator Kenneth A. Jernstedt Senator Berkeley Lent Senator Don S. Willner
Absent:	Senator Donald R. Husband Senator Gordon W. McKay
Also Present:	Representative Tom Young representing House Judiciary Committee Mr. Robert Lundy, Legislative Counsel Mr. J. J. Ferder, Supervisor, Inheritance and Gift Tax Division, State Treasury Department
Representatives of Probate Advisory Committee:	Mr. Otto Frohnmayer, Medford Mr. Gene Piazza, Medford Mr. Stanton Allison
Witnesses:	Mr. Philip Bladine, McMinnville News-Register; Chairman, Legislative Committee of Oregon Newspaper Publishers Association Mr. Carl Webb, Manager, Oregon Newspaper Publishers Association

Senate Bill 506 (Sections 168 through 193)

Section 168. Allocation of income. Mr. Frohnmayer explained that Section 168 dealt with one of the most difficult problems in the probate code which was how to allocate income received during the course of administration. The sections in Article VI, he said, were adapted from the Uniform Principal and Income Act which was in force in Oregon and dealt with trusts. Essentially, the probate of an estate was no different than a trust so after a great amount of time spent on this subject, Mr. Frohnmayer stated that the advisory committee finally determined to adopt as a part of the probate code the same method of allocation of income as was used in allocation of income in trusts.

Senator Lent called attention to the reference to the Internal Revenue Code on line 26 of page 61 and suggested that a specific date be inserted to avoid future problems if the federal Act were later amended.

Senator Lent moved that "as of January 1, 1969," be inserted after "amended," on line 27, page 61. The motion carried unanimously.

Section 170. Undertaking of distributee. Chairman Yturri called attention to the caption of section 170 and noted that nothing in the section referred to the distributee.

Senator Lent moved that "of any distributee" be inserted after "security" on page 62, line 24. The motion carried unanimously.

Section 171. Discharge of personal representative. Senator Lent commented that section 171 contained a broad discharge of the personal representative and asked if there was any danger that the person or corporation who put up his bond might by this section escape liability for fraud or misrepresentation by the personal representative. Mr. Frohnmayer replied that equitable remedies were available where fraud was present and any time a personal representative made a misrepresentation to the court with respect to the distribution, he could not rely upon section 171 to absolve him from blame.

After further discussion, Senator Lent moved adoption of the following amendment: On page 62, line 30, delete the period and insert ", except as provided in sections 1 to 212 of this Act.". Mr. Lundy commented that the same problem would arise in several other parts of the code where a personal representative was discharged and suggested a similar amendment be placed in those portions for the sake of uniformity. Senator Lent amended his motion to include an instruction to Legislative Counsel to find and incorporate amendments in like portions of the code. The motion carried unanimously.

Section 172. Petition and order for refund by distributee. Senator Willner asked if the surety should receive notice of the hearing referred to in section 172. Senator Lent called attention to section 13 requiring notice to each interested person and commented that a surety would certainly be an interested person and would therefore receive notice through the reference to section 13.

Section 173. Liability of personal representative. Senator Willner noted that section 173 provided that the personal representative was liable for and chargeable in his accounts with property not a part of the estate if he had commingled the property with the assets of the estate. He cited a situation where a personal representative might commingle $1,000 of estate assets with $10,000 of assets outside the estate and expressed the view that the personal representative should not be liable to the estate for the $10,000 in assets which were not part of that estate.

Mr. Piazza replied that subsection (2)(a) probably referred to commingling nonsegregatable assets where the two funds were put together to buy a piece of real property, for instance, and could not then be separated.

Chairman Yturri commented that the section would probably accomplish all that was necessary if "liable for and" were deleted from line 13, page 63. Mr. Lundy noted that if that phrase were deleted, the surety might not then be liable.

After further discussion, Senator Willner moved adoption of the following amendment on page 63, line 13: Delete "is" and insert "may be" and in the same line after "and" insert "is". The motion carried.

Senator Lent referred to line 30 on page 63 and asked what "nonfeasance" was intended to cover which would not be covered by negligence. Mr. Frohnmayer replied that there had always been some difference between "nonfeasance" and "misfeasance" and he thought "nonfeasance" was intended as a catch-all.

Section 175. Accounting by personal representative. Senator Lent called attention to subsection (1)(a) of section 175. Since everything else in this code had been speeded up, he asked why the departure was made in this subsection to provide for an annual accounting. Mr. Frohnmayer expressed the view that it was a waste of time in most cases to have to file an interim accounting and the majority of the advisory committee had agreed. Chairman Yturri called attention to subsections (1) (c) and (d), and Mr. Piazza remarked that it was the advisory committee's hope that all the estates would be probated before the year expired.

Section 176. Notice for filing objections to final account and petition for distribution. Mr. Frohnmayer explained that under section 176 the personal representative would no longer give published notice but at least 20 days before the time fixed for filing objections to the final account, he was required to notify the persons listed in subsections (a) through (d).

Chairman Yturri announced that this would be an appropriate time to hear the members of the press who were present in opposition to the deletion of the publication notice. He pointed out that the committee had earlier amended the proposed code to increase publication of notice to creditors from two to three and also that the material required to be included in the notice was substantially more than that required at the present time.

Mr. Philip Bladine introduced members of the press also present at this meeting:

Bill Mainwaring, Capital Journal, Salem; President of Oregon Newspaper Publishers Association

Jack McClung, Assistant Classified Ad Manager of the Oregonian and Oregon Journal

John Nelson, Springfield; Immediate past president of Oregon Newspaper Publishers Association

John Morrow, Blue Mountain Eagle, John Day

Pete King, Oregon City Enterprise-Courier

Rex Layton, Classified Ad Manager of the Statesman-Journal

Ralph Rose, Silverton Tribune

Jack Zimmerman, Portland Press

Classified Ad Manager, Eugene Register-Guard

A copy of Mr. Bladine's statement is attached hereto as Appendix A.

Senator Burns asked if the Oregon Newspaper Publishers Association had made its views known to the Probate Advisory Committee at any time during the years they were working on the probate code. Mr. Carl Webb replied that no representations had been made to the committee nor had the association been invited to sit in on any of the meetings. Mr. Webb also contended that published notice was the best way of finding unknown heirs and urged that the present requirements for published notice be restored in the probate code.

Chairman Yturri assured the members of the press that consideration would be given to their position on this policy question.

Section 180. Distribution; order in which assets appropriated; abatement. Senator Lent asked why "gift" was used on lines 30 and 31 rather than "devise". Mr. Lundy commented that it was probably copied from the Uniform Code.

Senator Lent moved adoption of the following amendments: On lines 30 and 31, page 67, delete "gift" and insert "devise". The motion carried unanimously.

Section 181. Interest on pecuniary devises. Mr. Frohnmayer expressed the view that pecuniary devises should bear interest payable at the rate of six percent rather than three. Senator Burns asked what the Model Code suggested and was told by Mr. Lundy that it said "the legal rate" which in Oregon was six percent.

After further discussion, Senator Lent moved that "three" on line 3, page 68, be changed to "five" and the motion carried unanimously.

Section 184. Compensation of personal representative. Mr. Frohnmayer explained that section 184 contained no changes in compensation of the personal representative from present law except on line 3, page 69, which provided for a charge of one percent on the jointly held property exclusive of life insurance proceeds.

Senator Willner asked why this latter addition had been made and was told by Mr. Allison that the original draft provided not for a substantial increase but for a measurable increase in the scale of compensation to the personal representative. The advisory committee later decided it was more sensible to leave the rates unchanged and not inject a controversial feature into the code. The one percent charge on jointly held property, he said, would apply only to substantial estates where there were measurable nonprobate assets in which the personal representative handled federal estate taxes.

Chairman Yturri asked what additional work was entailed in connection with the administering of a $100,000 piece of property held as tenants by the entirety or securities held with right of survivorship or joint bank accounts. Mr. Frohnmayer replied that occasionally there was a problem with joint ownership funds in proving to whom those funds properly belonged.

Senator Willner said he had never been able to justify compensation for personal representatives based on a percentage of the estate. He expressed the view that these fees should not be fixed by statute. He moved that lines 3 through 5 on page 69 be stricken and the motion failed. Voting for the motion: Senators Eivers, Fadeley and Willner. Voting no: Senators Jernstedt, Lent and Mr. Chairman.

Senator Lent asked if any significance was attached to the comma on line 4, page 69. Mr. Lundy said there was none that he was aware of. Senator Lent moved that the comma after "court" be deleted and the motion carried.

With respect to subsection (3) of section 184, Senator Willner cited a hypothetical situation where the decedent provided that the personal representative was to be compensated in the sum of $1,000. He said he read subsection (3) to mean that the personal representative then had the option of taking either the $1,000 or whatever higher amount he

could get by accepting the statutory fee. The decedent, he contended, should be able to limit the amount paid to the personal representative by his will. Mr. Piazza read ORS 117.660 which contained substantially the same provision as subsection (3) and Mr. Allison agreed that the subsection made no change from the present law.

Chairman Yturri pointed out that if the testator asked that his son be paid $1,000 for acting as personal representative of his estate and the son refused to do it for that amount, the testator would certainly not want the court to appoint someone else and pay him $5,000; he would prefer that the son have that amount.

After further discussion, Senator Willner moved that subsection (3) of section 184 be deleted. The motion failed.

Senator Willner next moved that all language in section 184 be stricken following the period on page 68, line 28. This motion also failed.

Section 188. Discharge of personal representative. Mr. Frohnmayer explained that section 188 provided for discharge of the personal representative upon filing of his receipts. He called attention to and read the language beginning on line 15, page 70.

Senator Lent moved the following amendment on line 18, page 70: After "through" insert "fraud or misrepresentation of the personal representative or his surety or through". He advised that adoption of this amendment would make a one year statute of limitation for fraud or misrepresentation for this purpose. The motion carried unanimously.

Senator Lent asked if section 188 was unnecessarily restrictive when it used the term "a suit" on line 17 rather than "an action". He commented that there might be some legal proceeding to be brought under the section other than a suit. He then moved the following amendment: On page 70, line 17, delete "a suit" and insert "an action". The motion carried without opposition.

Section 189. Recording of final decree and discharge order in other counties. Mr. Frohnmayer asked if the term "deed records" on line 23 should be changed to "official records". Mr. Lundy commented that the records were generally referred to as "deed records" and this was the term used in the present statute.

Section 193. Payment of debt and delivery of property to foreign personal representative without local administration. Mr. J. J. Ferder said he could visualize instances where persons could technically be residents of the State of Oregon but might spend most of their time in California and even own property in that state which would require administration. He said he did not think that, unless there were heirs in Oregon, there would be any objection to the commencement of the principal probate in California because no one in Oregon would be concerned and there would be no need for administration in Oregon. This, he said, would not necessarily establish domicile and he contended there should be a showing that this was the fact. He felt it was important to obtain a waiver or release from the State Treasurer's office in such instances.

Senator Lent moved adoption of the following amendment to correct Mr. Ferder's objection to section 193: On page 73, line 12, after "upon" insert "a release from the State Treasurer from inheritance taxes and". The motion carried unanimously.

Mr. Ferder called attention to the term "tangible property" on lines 6 and 10 of page 73 and suggested that "tangible" be deleted or the term "tangible or intangible property" be used.

Senator Burns moved that "tangible" be deleted in the two places suggested and the motion carried unanimously.

The meeting was adjourned at 10:00 p.m.

Respectfully submitted,

Mildred E. Carpenter, Clerk
Senate Judiciary Committee

Tape 12, Side 2 (190 to end)
Tape 13, Side 1 (1 to 404)

SENATE JUDICIARY COMMITTEE
Room 315 Capitol Building
April 11, 1969
1:00 p.m.

APR 11

Members Present: Senator Anthony Yturri, Chairman
Senator George Eivers
Senator Edward N. Fadeley
Senator Donald R. Husband
Senator Kenneth A. Jernstedt
Senator Berkeley Lent
Senator Don S. Willner

Delayed: Senator John D. Burns

Absent: Senator Gordon W. McKay

Also Present: Mr. Robert Lundy, Legislative Counsel
Mr. J. J. Ferder, Supervisor, Inheritance and Gift Tax Division, State Treasury Department

Representatives of Probate Advisory Committee: Mr. Robert Gilley
Mr. Campbell Richardson
Mr. William Love

Senate Bill 506 (Sections 194 to 262 plus amendment to Sections 110, 302 and 305)

Mr. Robert Gilley and Mr. Campbell Richardson, Portland attorneys who had served on the Oregon State Bar Committee on Probate Law and Procedure, made the presentation for the Probate Advisory Committee at today's meeting.

Section 197. Withholding of tax; recovery from distributee; bond of distributee. Chairman Yturri asked if section 197 would have any effect on a will which provided that before any bequests or legacies were made, all of the inheritance and other taxes were to be paid. Mr. Richardson replied negatively and noted that the provisions of the will would control. In reply to a further question by the Chairman, he stated that section 197 would apply only where there was no provision for payment of the taxes in the will.

Senator Husband noted that lines 15 through 20 on page 75 provided that the personal representative could recover the tax from any person interested in the estate. Mr. Ferder commented that it was his interpretation that the personal representative was required to make a diligent effort to collect the tax. Once he had done so, he had discharged his responsibility.

Section 198. Allowances for exemptions, deductions and credits. Senator Lent moved adoption of the following amendment to conform the bill to the amendment made on page 61, line 27: On page 76, line 19, after "amended," insert "as of January 1, 1969,". The motion carried.

Section 199. Income interests; life or temporary interests; charging corpus. Mr. Richardson explained that section 199 provided that where there was a life estate and a remainder interest, the tax was chargeable against the principal and was not apportioned as to the temporary interest and the remainder. He said this provision adopted the majority rule in the absence of a statute.

Section 209. Revocation of letters; proceedings upon revocation. Mr. Lundy explained that subsection (1) of section 209 covered sales by the personal representative while subsection (2) covered sales by the distributees. Chairman Yturri asked if the section should provide that the personal representative would be absolved from liability if he acted properly up to the point where the absentee reappeared. Mr. Gilley replied that if this was not implied in the section, it should be amended to include that provision. Mr. Lundy called attention to line 16 on page 79 and suggested that this statement might solve the problem under discussion:

"Acts of the personal representative before revocation of letters are valid for all purposes". He added that the section on discharge would cover the situation if the personal representative was to be discharged the same as any other personal representative and noted that section 188 provided for discharge of the personal representative.

Senator Burns commented that the legislative history should clearly show that if the missing person showed up alive, there should be no personal liability on the part of the personal representative for any acts he had performed while serving as personal representative.

Senator Lent called attention to line 16, page 79, and commented that the personal representative's illegal acts should not be made legal for all purposes and asked if the committee's intention was to ratify any act which the personal representative performed. Senator Fadeley

replied that one of the purposes of the language was to make certain that the purchaser could rely on a title conveyed by the personal representative. Chairman Yturri commented that the personal representative had to have authority to perform in the absence of the missing person because he could not perform an unauthorized act without being held responsible for it. He therefore suggested that line 16 read "All authorized acts of the personal representative . . . "

After further discussion, Senator Lent moved adoption of the following amendment: On page 79, line 16, after "are" insert "as". In line 17, delete "for all purposes" and insert "as though such letters had not been revoked". The motion carried.

Section 211. Substitution of parties. Senator Lent objected to the mandatory provision that the defendant should not be compelled to go to trial less than three months after the date of substitution and contended that the court should have discretion to force the trial at an earlier date. Mr. Gilley and Mr. Richardson said they would have no objection to deleting the last sentence in section 211. Senator Jernstedt so moved and the motion carried unanimously.

Article VIII. Inheritance Tax. Mr. Richardson explained that Article VIII contained the changes in the inheritance tax law which were necessary to conform it to the probate code. It was drafted on the assumption the legislature would make no changes in the inheritance tax law and the basic procedural change was that the determination of the inheritance tax would be made by negotiation between the estate and the State Treasurer's office. Mr. Gilley commented that the procedure in Article VIII was almost identical with the procedure followed at the present time in a nonprobate estate and had the advantages of keeping out of the public record detailed information of the assets of the estate.

In reply to a question by Senator Lent, Mr. Lundy explained that because of the limited nature of the amendments to the present inheritance tax statute and because ORS chapter 118 would not in effect be a part of the probate code, the definitions used in section 1 of SB 506 did not apply to ORS chapter 118.

Section 213. Property, transfers and interests subject to tax. Senator Lent asked what was gained by saying, in the opening sentence of section 213, "All property, tangible or intangible, . . . " Mr. Ferder expressed agreement that the phrase "tangible or intangible" served no useful purpose. After further discussion, Senator Lent moved that the phrase be deleted on page 80, line 14, and the motion carried.

Mr. Ferder expressed the hope that the committee would reconsider the repeal of ORS 118.480 which required the personal representative to notify the State Treasurer of the passage of real estate held in trust.

He next suggested that the committee go back to section 110 on page 39. While the property set apart to the widow and children was identified in section 110 as being part of the administrative expenses, presently this property was not exempt from tax. In 1959 the legislature decided these benefits should be taxed because at that time they enlarged the homestead provisions. He suggested that the following be added to line 34, page 39: ",but shall not be a deduction for inheritance tax purposes.". He expressed the view that the section with the proposed amendment would then be in agreement with the committee's understanding of the section at the time it was discussed. Senator Fadeley so moved and the motion carried unanimously.

Senator Lent then moved adoption of the following amendments: On page 2, line 9, delete "118.480,". On page 132, line 28, delete "118.480,". The motion carried unanimously.

Section 223. Penalties. Senator Burns suggested that lines 23 and 24 on page 88 be deleted and the words "is guilty of a misdemeanor" be inserted. After a brief discussion, he moved that Mr. Lundy prepare the proper language to accomplish his suggestion and the motion carried.

Section 302. Disposition of deposit on death intestate of depositor. Mr. Ferder noted that Senate Bill 228 had passed the Senate and section 302 contained a conflict with that bill as it related to the $1,000 limitations banks were allowed to pay out. Senate Bill 228 increased the amount to $2,500.

Senator Willner moved that Legislative Counsel prepare the necessary amendments to increase the amount to $2,500 and resolve the conflict. The motion carried unanimously.

Article IX. Guardianships and Conservatorships. Mr. Gilley explained that the advisory committee proposed to embody in the guardianship code the solutions to the problems that ORS chapter 127 purported to solve. He said the difficulty with ORS chapter 127 which pertained to conserving the property of missing persons was that it applied only to a case where the whereabouts of a missing person was unknown. The advisory committee envisioned situations where the whereabouts of the missing person might be known and cited as examples a prisoner of war or a person confined to a jail in Mexico. In such situations it would be impossible to

ascertain whether the person was incompetent and problems might arise concerning his property which could not be solved under the existing statute. The advisory committee concluded that the best place to insert a solution to this problem was in the guardianship code.

Section 224. Definitions for ORS 126.006 to 126.565. Included in section 224 was the definition of a "missing person" in subsection (6). Attention was called to the misspelling of "known" on page 89, line 13, and Mr. Lundy said he would check to see if the word was spelled properly in the original bill.

Mr. Gilley further explained that if a man were taking a trip around the world, even though his exact whereabouts might be unknown, his absence would not be unexplained and section 224 would not apply in that situation.

Section 225. Jurisdiction to appoint guardian. Senator Willner called attention to subsection (5) of section 225 and asked how it would be possible for a wife to transfer funds from her missing husband's bank account in New York if she were an Oregon resident. He maintained that the language in subsection (5) was too restrictive. Mr. Lundy pointed out that the subsection was discussing residency and not domicile.

Senator Willner moved the following amendment: On page 90, line 2, after "state" insert "or are residents of this state". The motion carried.

Section 229. Service of citation; appearance. Chairman Yturri asked why "registered or certified mail" had been used in subsection (2) of section 229. He suggested that in order to maintain consistency with other portions of the code "or certified" should be deleted on page 92, line 1. Senator Burns so moved and the motion carried.

Senator Lent indicated that a problem existed in subsection (c) which referred to publication but did not say how the publication should be made. He suggested that the subsection say "as provided in section 13 of this 1969 Act". Mr. Lundy asked if the intent was to make this subsection apply only to guardianships of missing persons or to apply to all guardianships. He commented that if a person were in a Mexican jail, for example, he would not see a publication made in an Oregon newspaper. Chairman Yturri remarked that he could see nothing wrong with treating the guardian of a missing person differently than another type of guardian.

After further discussion, the committee agreed to ask Mr. Lundy to write an amendment to meet the objections. He subsequently prepared the following amendment: On page 92, line 1, after "cation" insert "as summons is served by publication in a civil action".

Section 244. Service of citation; appearance. The same question with respect to publication was raised in section 244 as had been discussed during consideration of section 229. Mr. Lundy was asked to insert the same amendment in section 244; namely, on page 99, line 31, after "publication" insert "as summons is served by publication in a civil action".

Section 253. Discharge of guardian; exoneration of surety; vacating order. Senator Lent pointed out that section 253 should contain the safeguard inserted in a previous section concerning failure of the claimant to object to the final account resulting from fraud or misrepresentation of the guardian or the surety on his bond. The Chairman directed Mr. Lundy to incorporate this amendment on page 106, line 10.

Section 260. Gifts from ward's estate; expenditures for ward's relatives. Senator Willner noted that section 238 required that a guardian could only make gifts after obligations for support had been met and moved that the same provision be made applicable to conservators. The motion carried unanimously.

Section 262. Orders of court in winding up conservatorship affairs; discharge of conservator; exoneration of surety; vacating order. Mr. Lundy noted that section 262 raised the same problem of fraud or misrepresentation by the conservator as was discussed during consideration of section 253. The Chairman directed Mr. Lundy to prepare the necessary amendment.

After discussion of section 262, the meeting was adjourned.

Respectfully submitted,

Mildred E. Carpenter, Clerk
Senate Judiciary Committee

Tape 13
Side 1 (404 to end)
Side 2 (1 to 675)

SENATE JUDICIARY COMMITTEE
Room 315 Capitol Building
April 15, 1969
7:30 p.m.

Members Present: Senator Anthony Yturri, Chairman
Senator George Eivers
Senator Kenneth A. Jernstedt
Senator Gordon W. McKay
Senator Don S. Willner

Delayed: Senator John D. Burns
Senator Edward N. Fadeley
Senator Donald R. Husband
Senator Berkeley Lent

Witnesses: Mr. Robert Lundy, Legislative Counsel
Mr. William Love

Senate Bill 506 (Sections 263 through 306)

Mr. Robert Lundy was present to explain the provisions of the proposed probate code and began with section 263.

Section 281. Cotenant shall prove ouster. Mr. Lundy explained that section 281 deleted the reference in the present law to the recovery of dower. Senator Lent asked what kind of an action was referred to in the opening phrase. He said there were several reasons to sue a cotenant but not all of them had to do with property. Senator Fadeley said he was sure that the section was declaratory of all common law rights and the only time it would be applied would be in cases having to do with the rights of possession or title to the property.

Chairman Yturri said the section meant any action relating to right of possession, ownership or other rights relating to property and Senator Fadeley concurred. Senator Fadeley added that he was certain there was an old requirement that ouster had to be proved in order to get into court. After further discussion, the committee decided that the section did not need amendment for purposes of clarification.

Section 290. Collection of fines, penalties and forfeitures. Mr. Lundy noted that section 290 deleted the reference to county clerks reporting titles of estates of deceased persons which had remained open.

It had been carried over as a new provision in the probate code itself and the equivalent provision was to be found in section 191 on page 71.

Senator Lent noted that subsection (1) of section 290 gave the State Treasurer authority to examine the dockets of all courts other than the Supreme Court and asked why the Supreme Court was sacrosanct. He said it wasn't a matter he wished to go into but did want to comment on the provision.

Section 303. Application of Act. Mr. Lundy explained that section 303, as far as the execution of a will was concerned, would provide that those wills executed prior to the effective date of the Act were valid but only concerned the manner of execution. Chairman Yturri asked Mr. Lundy to comment on wills written in compliance with existing law and executed prior to the effective date of this Act and also how such a will would be interpreted with respect to dower and curtesy. Mr. Lundy said the problem was that in some cases it could not be determined whether the testator was thinking in terms of existing law or in terms of the new law which was soon to become effective. The new Act would apply to the will itself but if the testator was contemplating dower and curtesy, which was not being perpetuated in SB 506, and if it affected his testamentary disposition, he should make another will.

Chairman Yturri asked if the code would apply retroactively. Mr. Lundy answered that it would not, except as to the manner of execution. He commented that a choice had to be made one way or the other and there was no way to determine the percentage of testators' schemes which would be disrupted either way.

Chairman Yturri outlined a hypothetical situation where a husband executed a will under present law and left his wife the mandatory minimum which the surviving spouse would receive under the law today; namely, one fourth of the personal property and a dower interest in the real property. SB 506 then went into effect and the husband died five years later without changing his will. He asked if, in that situation, the will would be all right because it had been executed in accordance with existing law. Mr. Lundy replied that a disposition would be made according to the terms of the will. However, since he died after the effective date of the new Act, the provisions on the elective share would apply and he could not perpetuate his testamentary plan under those circumstances. The wife would be entitled to one-fourth of the real and personal property under the new code.

Chairman Yturri asked Mr. Love to comment on this question. Mr. Love advised that the will itself speaks as of the date of death, not as of the date of its execution. If it is good when made, it will be good later. He added that inchoate dower would be abolished by passage

of this Act and people would have no right to dower after the effective date regardless of the terms of the will. If someone said in his will that he was giving to his wife a dower right in all of his real property, it might be construed by the court as giving her an equivalent amount of property because it was spelled out in the will.

Chairman Yturri asked Senator Husband if he agreed with Mr. Love's statement. Senator Husband said that if the husband left his wife the minimum required by law and a life estate in the real property, upon his death the wife could then elect under the law as it existed at the time of death.

Mr. Love commented that if this approach were not adopted, there would be wills made today for people who will die 40 years from now and it would be necessary 40 years hence to check back to see what the law was at the time the will was made. Administratively, the approach adopted in the code was a more simple procedure.

Senator Husband asked if there was a different problem where a husband and wife entered into a mutual will. Mr. Love said he was not certain because that problem to his knowledge was never discussed or considered by the Probate Advisory Committee but he would assume that the same principal would apply; namely, that the will would be governed by the law in existence at the time of death. Chairman Yturri commented that it would still be the will of each of them and he did not see how it could get away from the provisions of the new code. Mr. Love said he would assume the contract would bind them against the election; they would be barred because of the contractual relationship.

Amendments to Senate Bill 506

Mr. Lundy distributed copies of "housekeeping" amendments which he had prepared. The committee discussed the amendments after which Senator Husband moved that they be adopted. The motion carried unanimously. A copy of the amendments is attached hereto as Appendix A.

Section 141a. Claims for personal injury, death or property damage covered by insurance. Senator Lent pointed out that Mr. Lundy had prepared amendments, denoted section 141a, which embodied the provisions of Senate Bill 237 concerning reopening an estate for a plaintiff who suffered personal injury or property damage and limiting the injured party's recovery to the amount of the decedent's applicable insurance policy. He explained that the only asset that would be left in the estate at the time of the reopening would be the insurance policy so

the claim would be paid from the insurance proceeds or not at all. Mr. Lundy added that in effect the amendment constituted an exception to the bar on the nonclaim section covering claims. The claim would not be barred so long as it applied only to the insurance policy and the extent to which the decedent was covered by that insurance policy. The claim would, however, be barred by the general statute of limitations.

Chairman Yturri asked if the statute of limitations would be affected by adoption of the amendment and Senator Lent pointed out that the proposed section 141a stated " . . . to the extent that the liability of the decedent therefor is covered by insurance, is not barred by failure to present it as provided in subsection (3) of section 141 of this Act . . . " His position was that the claim was still within the statute of limitations and he said he would have no objection to adding: "Nothing in this section shall be construed to extend the statute of limitations as set forth in ORS chapter 12." Mr. Lundy stated he was satisfied that the statute of limitations was not extended by the amendment.

Senator Lent moved that section 141a in the form presented to the committee by Mr. Lundy be added to the probate code with the express understanding of the committee that there was no intention to extend the general statute of limitations. The motion carried unanimously.

Senate Bill 266. Senator Lent asked the committee to make a policy decision concerning incorporation of the provisions of Senate Bill 266 which would remove the requirement of filing claims in a decedent's estate prior to commencing action against the personal representative where the plaintiff claims liability of the decedent for personal injury or damage to property. Chairman Yturri asked if there had been any opposition to SB 266 and Senator Lent said that Ed Smith had indicated the bill was involved with insurance but neither he nor Mr. Lundy could see where insurance was applicable. However, to avoid any problem he said he would be willing to forget about the bill for this session but expressed the view that it embodied a better policy than the existing law.

Senator Husband asked what procedure would be followed under the new code in the case of a mortgage foreclosure and was told by Mr. Lundy that the creditor would rely on the security and if that was not sufficient, a claim could be filed. He called attention to subsection (1) of section 146 on page 54 which set forth this provision.

The committee decided not to incorporate the provisions of Senate Bill 266 into the proposed probate code.

Section 103. Occupancy of family abode by spouse and children. Senator Lent said that what was sought to be accomplished in section 103 was to allow the surviving spouse and dependent children to continue to occupy the family residence. Instead of just applying to the children of the decedent, it should also be applicable to the dependent children of the surviving spouse, he said. For example, if the children of the wife were living in the household with their mother and her husband, when the husband died, he would probably have intended that his wife's children could continue to live in that place of abode. He also asked if section 103 was intended to apply to grandchildren or if the intent was to limit it only to children of the surviving spouse or decedent.

Chairman Yturri cited a hypothetical situation where a woman had three children, three, six and eight years of age. The eight year old was living with the mother and her husband and the other two younger children were with their aunt. Upon the death of the husband, the two children were returned to the mother. He asked if those two children would have a right to live in the residence. Senator Lent remarked that a problem would probably arise in that situation because of the phrase "may continue" in the opening sentence of section 103. Senator Fadeley expressed the view that so long as the surviving spouse had a right to occupy the house, trouble was not likely to arise because her children lived there with her.

The Chairman asked Mr. Love to discuss the problems raised by the committee. Mr. Love expressed agreement with Senator Fadeley that since the amendment to section 103 changing "spouse and" to "spouse or", there would be no problem with dependent children living in the household. In a situation where a woman had three children by a prior marriage who were living in the same house with her and her husband at the time both spouses were killed, Mr. Love said the children would probably not be included within the provisions of section 103 as it was worded because they would not be dependent children of the decedent.

Mr. Lundy remarked that in section 103 as previously amended by the committee, "The spouse or any dependent child, or both, . . . " the term "or both" sounded as though it applied only to two people. He suggested the sentence read "The spouse and dependent children of the decedent, or any of them, . . . " on line 28, page 37. Senator Burns moved the language suggested by Mr. Lundy be adopted and the motion carried unanimously.

At a later point in the meeting Mr. Lundy indicated that the same language as that discussed in section 103 appeared in the support provisions and in a number of places in the code and suggested that since section 103 had been amended, the code should be amended to conform in those other places where the same language appeared.

Senator Lent moved that Mr. Lundy prepare the necessary amendments to accomplish his suggestion and the motion carried unanimously.

Section 269. Nonabatement of action or suit by death, disability or transfer; continuing proceedings. Senator Willner called attention to subsection (3) of section 269 which referred to the disability of a party. With "or against" stricken, he said, the section said that only the guardian could make the motion to continue the case against the disabled person which he was not apt to do.

Senator Willner moved that "or against" be restored on line 26, page 113, and the motion carried unanimously.

Senator Willner called attention to subsection (2) (b) of section 269. If a suit were on file against a person and that person died, he said this provision would not require the personal representative to give actual notice of his substitution and of the death of the person. He could wait four months and then move to dismiss the suit. He objected to permitting the personal representative to do this if actual notice had not first been given to the plaintiff. The committee discussed the question raised by Senator Willner and decided the possibility of such an event occurring was so remote as to be of little concern.

Section 184. Compensation of personal representative. Senator Willner expressed objection to paying the personal representative for handling property outside of the estate. Chairman Yturri commented that there was often a great deal of work involved in the nonprobate portion of an estate yet these duties were ordinarily required of a personal representative. He also noted that if lines 3 through 5 were deleted, the personal representative would get nothing under subsection (2).

Senator Willner moved that lines 3 through 5 on page 69 be deleted. The motion was defeated.

Section 115. Denial of election or share reduction when decedent and surviving spouse living apart. Senator Fadeley said he would favor deletion of section 115 and stated such deletion would not damage the rest of the bill. Mr. Lundy remarked that one of the questions raised by the committee earlier was whether the probate court should deny the election or share reduction or whether the divorce court should handle the matter at the time of the divorce or annulment.

Senator Fadeley indicated his opposition to the section was based on the fact that it allowed the court to make the final disposition on the basis of facts which would be found after the decedent died when he was not there to defend himself. It would be possible, he said, for a person to claim there was an actual separation and to try to keep the spouse from getting the share that the legislature said she should get. He objected to a provision which said that the wife would get a share -- however, she would have to have a lawsuit to find out what that share was.

Chairman Yturri asked what would be done in a situation where a man and wife had been separated for three weeks when the husband died. During this period the wife had sued for a legal separation but the husband died before the decreee was granted. The separation, he said, was, practically speaking, as effective as one which had been decreed. An injustice would result in that case and he was of the opinion that to eliminate that possibility, it was better to leave the matter to the court's discretion. Senator Lent expressed approval of the flexibility provided in section 115.

After further discussion, Senator Fadeley moved adoption of the following amendment: On page 42, line 20, delete "whether or not" and insert "if". In line 21, after "separation" insert "or if such decree had been applied for". In line 30, after "circumstances" insert "including any determinations of the court issuing the decree of legal separation regarding the distribution of property and status of property interests". Senator Willner commented that the words "or divorce" should be added after "legal separation" in Senator Fadeley's amendment to line 30. Senator Fadeley amended his motion to include the phrase suggested by Senator Willner. Vote was then taken on Senator Fadeley's motion and it failed.

Section 89. Persons not qualified to act as personal representatives. Senator Lent noted that the probate code provided for a nonresident executor but in effect did not provide for a nonresident administrator and expressed the view that both should be treated the same. Chairman Yturri advised that he had called this to the attention of the Probate Advisory Committee several months earlier and had been notified that it had been thoroughly discussed by that committee and they had determined that no change was needed.

After further discussion, Senator Lent moved that "named executor in the will" be deleted from lines 21 and 22 on page 31. In effect, the motion would provide that nonresidents would be permitted to act

as administrators as well as executors if the person named a member of the Oregon State Bar as an agent. The motion carried with Senator Husband voting no.

Section 110. Priority of support; treated as administration expense. Section 127. Transactions authorized for personal representative. Section 176. Notice for filing objections to final account and petition for distribution. Mr. Lundy called attention to minor errors contained in the amendments to sections 110, 127 and 176 which had previously been adopted by the committee. The committee agreed that Mr. Lundy should make whatever revisions were necessary to clarify the amendments without doing violence to the committee's intent.

Senate Bill 267

Senator Lent moved that Senate Bill 267 be reported out do pass and the motion failed. Voting for the motion: Senators Fadeley, Lent and Willner. Voting no: Senators Eivers, Husband, Jernstedt, McKay and Mr. Chairman.

Senator Fadeley moved that the bill be deferred and the motion carried with Senator Lent voting no.

Senate Bill 277

Senator Lent moved that Senate Bill 277 be reported out do pass and the motion failed. Voting for the motion: Senators Lent and Willner. Voting no: Senators Eivers, Fadeley, Husband, Jernstedt, McKay and Mr. Chairman.

Senator Fadeley moved that the bill be deferred and the motion carried with Senator Lent voting no.

Senate Bill 297

Senator Lent moved that Senate Bill 297 be deferred and the motion carried unanimously.

Senate Bill 266

Senator Lent noted that the committee had earlier in this meeting decided not to include the policy embodied in Senate Bill 266 in the proposed probate code.

Senator Jernstedt moved that the bill be tabled and the motion carried unanimously.

to avoid problems when the measure was compiled in ORS. The members agreed that Mr. Lundy should prepare the necessary amendments to resolve the problem and they would be included with the other amendments adopted by the committee.

House Bill 1261

Senator Willner spoke in opposition to House Bill 1261 and said that it posed a question of what the legislature wanted the Attorney General to be doing. The issue, he said also arose in Senate Bill 192. He was opposed to removing the Attorney General from the membership of the Crime Coordinating Council, at least until a policy decision was made on SB 192.

Chairman Yturri expressed the opposing view. He noted that the Council was presently receiving funds from the Safe Streets and Crime Control Act and it was necessary that the Council be composed of persons interested in doing a good job.

Senator Burns said he had become convinced that it was a mistake to limit membership in an organization such as the Crime Coordinating Council to heads of departments and said that he was sorry that the membership of the Criminal Law Revision Commission was limited by statute to particular individuals. The Attorney General, he said, was a member of so many organizations at the present time that he was unable to serve adequately on all of them.

Senator Burns moved that HB 1261 be reported out do pass and the motion carried. Voting for: Senators Burns, Eivers, Husband, Jernstedt, McKay and Mr. Chairman. Voting no: Senators Fadeley, Lent and Willner.

Senator Fadeley said he would oppose the bill in the Senate because he was afraid it would downgrade the state's responsibility in the area of law and order.

Senate Bill 506

Senator Burns said that his law partner, Mr. Phil Joss, probably handled more adoptions than any lawyer in the State of Oregon and Mr. Joss objected to some of the provisions of the proposed probate code which had to do with adoptions. Mr. Joss had, he said, submitted amendments to Mr. Zollinger and Mr. Allison which would make the corrections he felt were necessary.

Senator Husband expressed opposition to changing the provisions but after further discussion agreed to meet with Mr. Joss and Mr. Lundy to discuss the proposed amendments and to report his recommendations to the committee.

Senate Bill 255

Senator Husband moved that Senate Bill 255 be reported out do pass and the motion carried with all members present. Voting no: Senator Willner.

House Bill 1243

Senator Willner said he had discussed House Bill 1243 with Judge Crookham who had stated it posed no problem. He then moved that the bill be given a do pass recommendation and the motion carried unanimously with all members present.

The meeting was adjourned at 11:00 p.m.

Respectfully submitted,

Mildred E. Carpenter, Clerk
Senate Judiciary Committee

Tape 14 - Side 1 (539 to end)
Side 2
Tape 15 - Side 1 (1 to 230)

Senate Bill 506

Senator Husband advised that he, Mr. Philip A. Joss and Mr. William Love had spent several hours discussing amendments to Senate Bill 506 as proposed by Mr. Joss. Senator Husband indicated his willingness to go along with the proposed amendments even though Mr. Love was not convinced that all of them were necessary. Mr. Lundy distributed copies of all amendments to the probate code thus far approved by the committee including those suggested by Mr. Joss to sections 28, 33, 34, 35 and 286.

A verbatim transcript of the discussion concerning the proposed amendments follows:

MR. LUNDY: Mr. Joss pointed out that adoption is one of the few areas left, apparently, where statutory provisions are construed by the courts as -- construed strictly by the courts because they are contrary to common law. So the statutes have got to be crystal clear or they are going to be difficult. Not only in Oregon -- I don't think he is too worried about the Oregon courts -- but he is worried about the effect of Oregon adoptions in other states. He generally feels that because the courts have been wont to construe these statutes strictly, that you've got to be as specific as the present statutes are in the adoption situations.

Now in Senate Bill 506, I think they were -- the Advisory Committee was cognizant of this problem but they were trying to cut down wording to some extent and they used the phrase, "all purposes of intestate succession" and they defined that in the definition section to mean inheritance "by, through or from any person, both lineal and collateral." Mr. Joss doesn't feel that this is detailed enough, especially in the "through" situation -- inheritance through. He feels that it is desirable to go back essentially to some of the wording of the present law, say, at least in the case of the adoptions. "The adopted person, his issue and kindred shall take by intestate succession from his adoptive parents, their issue and kindred, and his adoptive parents, their issue and kindred shall take by intestate succession from the adopted person, his issue and kindred, as though the adopted person were the natural child of his adoptive parents." [Section 33.]

Actually, I think that is what the Advisory Committee thought they had accomplished when they said "for all purposes of intestate succession" but he may have a point on this and, as Senator Husband said, Mr. Joss works in adoption a great deal and he sees the problems, I suppose.

CHAIRMAN YTURRI: This is like Senator Musa's "out of an over-abundance of caution." Will the insertion of these amendments cause a possible interpretation to be placed on any other portion of the code that we don't contemplate or don't intend, merely because we did get wordy and mouthy in this?

MR. LUNDY: That is one of the things I was worried about. Since we have the definition in these sections and we use it in a few other sections, not using it here, the question arose in my mind, well, does it mean anything in the other sections of the code?

SENATOR HUSBAND: He finally did agree with us on that, didn't he?

MR. LUNDY: Well, he finally agreed in the legitimacy section but he wasn't as concerned about that as he was about adoptions. I am inclined to think that it won't cause that problem. Hopefully, the court will see that you don't use the definition where you are actually describing the kind of relationship and the kind of inheritance . . .

CHAIRMAN YTURRI: The very least that we can do is to be sure that the minutes of this meeting have the verbatim transcript of the tape about what you have said and to show clearly that the fact that we have adopted this adoption amendment is in no manner intended to change the interpretation of the probate code prior to the adoption of this, whether it is in definition or otherwise. Is that a fair statement?

SENATOR LENT: You'll use that statement in lieu of the amendments?

CHAIRMAN YTURRI: No, I mean why don't we adopt them. If we adopt them. If we don't, of course, then there isn't any problem. Don, you don't think that it changes anything?

SENATOR HUSBAND: I don't think it does.

CHAIRMAN YTURRI: Bob, do you?

MR. LUNDY: No, I don't think that it changes it substantially. I've got to hedge. I don't believe it does.

Senator Husband then moved that the proposed amendments submitted by Mr. Lundy consisting of 11 pages dated April 21, 1969, be incorporated into Senate Bill 506 which set forth all the amendments adopted by the committee and included the amendments proposed by Mr. Joss. The motion carried unanimously with all members present.

Senator Husband next moved that SB 506 be given a do pass as amended recommendation and this motion also carried without opposition.

Mr. Lundy recalled that at a previous meeting the committee had discussed how the applicability section applied to wills. The Chairman asked Mr. Lundy to discuss this with the House committee after the bill passed the Senate.

SB 506 AND WORK SESSION ON HB 1159, SJR 23, SJR 47

HOUSE COMMITTEE ON JUDICIARY

May 7, 1969 3:00 P.M. Capitol Room 20

Members Present: Chairman Don Wilson,
Representatives Browne, Carson, Cole, Frost, Macpherson, Pynn

Members Excused: Representatives Anunsen, Haas, Skelton, Young

Also present: Jena Schlegel, Committee Counsel

HB 1159 - WORK SESSION

Representative Browne moved that the committee reconsider the vote by which the bill passed 6-5 on the 5th of May 1969. There was no objection by committee members to recall the bill from the Speaker back to committee. Representative Browne then proposed further amendments to the bill, and after explanation moved that the same be adopted. Motion passed unanimously, with Haas, Skelton and Young absent.

SJR 23 and 47 - WORK SESSION

The Chairman suggested that it would be advisable for the Senate to pass SJR 23 through for House consideration, and that our committee hold action on SJR 47 until this is accomplished. He stated that SJR 23 would be a better vehicle by which to accomplish the purposes of this legislation, and that it could be easily amended if necessary by this committee after passage through Senate. The committee agreed unanimously to do so.

SB 506 - HEARING

Phil Bladine, Chairman of the Legislative Committee of the Oregon Newspaper Publishers Association, appeared in opposition to SB 506, and submitted to the committee a written statement of the ONPA's opposition. Specifically, this group's opposition is to the repeal of sections which provide that the notices of sale or lease of real property and notice of final account be published. He stated that the newspapers did not object to loss of revenue through loss of this advertising, but rather that their objection was the loss of public notice. He stated that the law as it now stands protects the best interests of the public.

Carl Webb, Secretary Manager of the Oregon Newspaper Publishers Association, commented that he is concerned that there has been no apparent public discussion of the proposed legislation. That resumes of the measure have not been published, and that generally the lay people and editors do not understand the bill. Members of the Bar are well educated, but the general public has been ignored.

Mr. Webb also stated that readership studies prove legal advertisements are read by 25.3% of the populace....this rates well above the farm columns, national advertisements and just below editorials readership.

Representative Frost questioned the witness on how this proposed legislation could have been more publicized, adding that the Bar committee had spent nearly 5 years in the preparation of the code and that their task had been to educate the attorneys to the proposals and incorporate their suggestions and corrections thereto.

Mr. Webb said he did not intend that the whole code be presented to the public, but a type of resume which would contain "this is what would be changed" type information.

There was a general discussion and there was no further questioning of the witnesses.

Clifford E. Zollinger, practicing attorney from Portland and member of the Advisory Committee, presented a brief background of the purposes of the committee, established in 1963. He stated that it had been established with the purpose of studying the existing probate law, and to correct, amend, improve and update where necessary. The probate Committee of the Oregon State Bar joining with the Advisory Committee for monthly meetings over a period of 4-1/2 years....35 members of the Bar, both committees and legal counsel attending the week-end meetings and prepared minutes therefrom. He said it was this group's policy to consult and call in experts in any and all fields of probate jurisdiction involved, and that all bar members had been contacted with regards to any criticism or suggestions they might have to make. The proposed code was circulated to every Bar member in the state. The joint committees also relied on the Iowa, Wisconsin, New York's new probate codes, as well as the new Uniform Code, now in 5th draft. After the printing of the proposed code, there were 16 meetings of the committee held in all areas of the state for public hearing with the area's attorneys. The final draft was then given to Legislative Council for drafting into the present printed bill.

The committee discussed generally with Bob Lundy the proposed amendments submitted from Legislative Council. He stated that these amendments are to resolve conflicts with 5 other bills submitted during this session, and are strictly of a "housekeeping" nature. He added that one further amendment, dealing with wills executed prior to the date of this code, will be re-worded to be made more clear and submitted shortly.

Representative Dave Frost, laison of this committee with Senate Judiciary in hearing testimony on the proposed legislation, submitted to the committee two resumes itemizing changes or new law stated within the proposed code. A copy of which is attached hereto and is on file with the committee records.

There followed a lengthy discussion by the committee, including all phases of the above resumes, and areas of specific questions by the committee to the witnesses. No action was taken on the bill.

Meeting adjourned at 5:00 p.m.

Respectfully submitted,

Carol Doerksen

Committee Clerk

SB 506, HB 1412, 1707, 1551, 1060, 1364, 1874, 1885, 1552, 1662, 1643, 1209, 1401, 1459, 1431, 1516, 1629, 1666, 1681, 1729, 1802, SB 299, 59, 106, 155, 244, 287, 453, 477, 478, 186.

HOUSE COMMITTEE ON JUDICIARY

May 9, 1969 3:00 P.M. Room 20

Members Present: Chairman Don Wilson, Representatives Browne, Cole, Frost, Haas, Macpherson, Pynn, Young;

Excused: Representatives Carson, Anunsen (to 4:30 p.m.), Skelton (to 3:45 p.m.).

Also present : Jena Schlegel, Committee Counsel

WORK SESSION

SB 506

Representative Pynn reported on the proposed amendments dated 5/8/69, and moved that the same be adopted. General committee discussion followed, and motion passed unanimously. Representative Pynn then moved that the bill be adopted with a do pass with amendment recommendation of the committee. Motion passed unanimously, with Anunsen, Carson, Frost and Young excused. Representative Frost will carry the bill to the House.

HB 1412

Representative Browne reported on the bill and the proposed amendments dated 5/9/69. She then moved, after committee discussion, that the amendments be adopted. Motion passed unanimously. Mrs. Browne then moved that the bill be adopted with a do pass with amendments recommendation of the committee. Motion passed unanimously, with Anunsen, Carson and Young excused. Representative Browne will carry the bill to the House.

SB 299

Representative Macpherson spoke extensively on this bill. Upon his motion, and unanimously passed by the committee, the bill was taken from the table. Representative Macpherson then moved that the bill receive a do pass recommendation of the committee. Motion passed unanimously, with Anunsen, Carson and Young and Skelton excused. Representative Young will carry the bill to the House.

HB 1707

After extensive discussion by the committee, Representative Cole moved that the proposed amendments under date of 4/29/69 be adopted. Motion passed unanimously, with Anunsen, Carson and Skelton excused. After further discussion Representative Cole moved that the bill receive a do pass with amendment recommendation from the committee. Motion lost; Browne, Haas and Young