

# MINUTES

## Code Commission



Michael DeMersseman, Chair  
Margaret V. Gillespie, Vice Chair

**One hundred eighteenth Meeting**  
**Wednesday, June 21, 2017**

**Ramkota Hotel – Jefferson Room**  
**Rapid City, SD**

The one hundred eighteenth meeting of the South Dakota Code Commission was called to order by Chair Michael DeMersseman at 1:05 p.m. MDT, June 21, 2017, in the Jefferson Room of the Ramkota Hotel, Rapid City, South Dakota.

A quorum was determined with the following members answering the roll call: Commissioners Michael DeMersseman (Chair), Tom Lee, Arthur Rusch and Mike Stevens. Commissioner Margaret Gillespie (Vice Chair) was excused.

Staff member present was Doug Decker, Code Counsel.

Others present were Jim Scott of Thomson Reuters, and Morgan Nelson, law student. Lila Hambleton of Thomson Reuters participated by telephone.

All material distributed at the meeting is attached to the original minutes on file in the Legislative Research Council (LRC). For the purpose of continuity, these minutes are not necessarily in chronological order.

### **Approval of Minutes**

*Commissioner Tom Lee moved, seconded by Commissioner Arthur Rusch, to approve the minutes of the June 22, 2016, meeting. Motion prevailed unanimously on a voice vote.*

### **Opening Comments/Staff Report**

**Chair Michael DeMersseman** welcomed everyone and asked for a staff report. **Mr. Doug Decker**, Code Counsel, reviewed the agenda items and advised that the public comment section of the agenda is reserved for the discussion of the "missing" semi-colon from the 1903 reprint of the South Dakota Constitution.

### **West Publishing Contract Renewal**

The Commission discussed the contract for the publication of the Code with West, a Thomson Reuters Business. The contract addendum was reviewed. **Mr. Jim Scott**, representing Thomson Reuters, was present to discuss the addendum and answer any questions from the Commission. There was a minor increase in the cost for a subscription to the Code from the previous contract. The contract allowed for a cost adjustment according to the increase in the Producer Price Index for Technical, Scientific and Professional Book Publishing. This increase was in line with the Index.

*Commissioner Lee moved, seconded by Commissioner Stevens, to approve the contract extension with West for one year. Motion prevailed unanimously on a voice vote. Chairman DeMersseman signed the contract extension.*

### **Eliminating CD-Rom Products**

As part of the discussion of the renewal of the publishing contract, Mr. Scott informed the commission that the publisher was interested in discontinuing the CD-Rom as records revealed the product only had one subscriber. It is not cost-effective to continue to offer the CD-Rom and the market has indicated it is not interested in the product.

*Commissioner Lee moved, seconded by Commissioner Rusch, to authorize Thomson Reuters to discontinue the CD-Rom product. Motion prevailed unanimously on a voice vote.*

The discussion about the issue to discontinue the CD-Rom indicated that the basic publishing contract may need to be reviewed and updated to better represent each party's interests. Mr. Scott and Mr. Decker will continue these discussions.

### **Replacement Volumes**

The next topic to be discussed was the annual review for replacement volumes. **Ms. Lila Hambleton**, an editor at West, had provided an informational table showing each volume of the Code and the number of pages in each volume's pocketpart (**Document 1**). The table was used to identify which volumes of the Code should be reprinted to include the amended statutes in its pocketpart in the main volume. After a discussion of the information, the Commission determined to reprint only two volumes of the Code.

*Commissioner Rusch moved, seconded by Commissioner Lee, to limit the reprinting of replacement volumes to two volumes. Motion prevailed unanimously on a voice vote.*

*Commissioner Rusch moved, seconded by Commissioner Stevens, that volume 29 be reprinted. Motion prevailed unanimously on a voice vote.*

*Commissioner Rusch moved, seconded by Commissioner Lee, that volume 14 be reprinted. Motion prevailed unanimously on a voice vote.*

### **Public Discussion**

**Professor Tom Simmons** of the University of South Dakota Law School had noted what appeared to be an error in the reprinting of the South Dakota Constitution in 1903 and asked the Code Commission to review what he'd found.

Article XXI, Section 4 of the South Dakota Constitution was approved by voters in 1889 and recognizes homestead and personal property exemptions. A semicolon was present between the words "laws" and "exempting" in the 1889 "Session Laws" book where the Constitution was proposed. The semicolon placement is repeated in the reprinted South Dakota Constitution in the 1890 "Session Laws" book. In 1903 a new code was published – including the South Dakota Constitution – and the semicolon was omitted in that printing; the omission carries forward to today.

In an email to Chair DeMersseman, Professor Simmons commented that the omission of the semicolon made a substantive difference in the text that the commission may need to address.

Additional research by Ms. Hambleton, a Thomas Reuters editor for the South Dakota Code, indicated the removal of the semicolon may not have been inadvertent but was done on purpose by the Commission appointed under SL 1901, ch 183. The Commission had broad revisor powers to include removing an unnecessary semicolon in the Constitution. Another explanation is that the 1901 Commission analyzed the sentence and concluded the semicolon did not add anything and its use was not grammatically correct because the phrase starting with "exempting" is not a clause that can stand on its own.

With or without the semicolon, it is clear that what is doing the exempting is the word "laws" that precedes "exempting". Hambleton also noted the noun "laws" is modified by the adjective "wholesome" which grammatically does not modify anything other than the word "laws". To read it the way Professor Simmons is reading it, something other than "laws" would have to be doing the exempting in the case of personal property.

The Code Commission reviewed and discussed the commentary from Professor Simmons and Ms. Hambleton regarding the missing semicolon. They generally agreed with Ms. Hambleton and took no action on the issue because there was not sufficient evidence to conclude that the 1901 Commission either failed to catch a mistake or exceeded its authority under SL 1901, ch 183.

### **Adjournment**

There being no further business, Commissioner Lee moved, seconded by Commissioner Rusch, to adjourn. Motion prevailed unanimously on a voice vote.