



Legislative Research Council

SOUTH DAKOTA CODE COMMISSION MINUTES

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**Ninety-third Meeting
Friday
June 20, 2003**

**Executive Board Room
Best Western Ramkota Inn
Sioux Falls, South Dakota**

The ninety-third meeting of the South Dakota Code Commission was called to order by Chair Michael DeMersseman at 11:30 a.m., June 20, 2003, in the Executive Board Room of the Best Western Ramkota Inn, Sioux Falls, South Dakota.

A quorum was determined with the following members answering the roll call: Commissioners Eric Bogue, Michael DeMersseman, Tom Lee, Lee McCahren, and Matt McCaulley.

In attendance as interested parties were Mr. Lary Zastrow, State Bar of South Dakota; Mr. Tom Barnett, State Bar of South Dakota; Mr. Tom Leighton, West Group; Mr. Rick Brown, West Group; Mr. Jim Anderson, West Group; Mr. Dave Gerdes, representing LEXIS Publishing; Mr. Barry Bridges, LEXIS Publishing; and Ms. Leigh Trippe, LEXIS Publishing. Staff member present was Doug Decker, Code Counsel.

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

Approval of Minutes

Commissioner Bogue moved, seconded by Commissioner McCaulley, to approve the minutes of the January 16, 2003, meeting. Motion carried unanimously on a voice vote.

Agenda Items

Chair DeMersseman outlined the general purpose of the meeting: to consider further information from West Publishing regarding the publishing contract for the South Dakota Codified Laws (Code). The meeting will also provide an opportunity to solicit input from the State Bar Association or others concerning the publishing contract and review any concerns they may have regarding the award of the bid to West. Chair DeMersseman reviewed the

steps that led the Code Commission to the present situation of the contract with Lexis ending on June 30, 2003, and the negotiations for a new contract to begin with West. The West representatives provided a brief general discussion regarding the various new codes that they have produced.

Chair DeMersseman asked about the special session of the Legislature scheduled to convene on June 26, 2003. Mr. Decker responded that it was his understanding that one to three bills will be introduced. One bill will be an appropriation and another bill will provide the substantive details of the uninsured risk pool. The legislation will deal with statutes primarily in Title 58, the insurance code, and the bill will be approximately 20 to 30 pages. Vice-Chair Bogue clarified the number and extent of the legislation to be introduced at the special session. Mr. Decker stated that he had discussed the special session with both Lexis and West and that it was the State's expectation that Lexis would be responsible for publishing the legislation resulting from the special session. The State's contract with Lexis expires June 30, 2003.

Mr. Dave Gerdes made some additional comments and Ms. Leigh Trippe asked a question about potential licensing to allow Lexis online access to the Code. There was a general discussion regarding the first contract with Michie. In that contract the State did not include any provision regarding licensing access to other publishers. Online access was not an issue because the service did not exist at that time.

In other contexts and situations Lexis has had licensing agreements with Michie and West.

At this point Chair DeMersseman asked West to make its presentation regarding its ideas to make improvements to the Code. The presentation was a PowerPoint presentation by Mr. Tom Leighton and Mr. Rick Brown. Mr. Leighton commenced by stating that West was pleased to be selected and that West is willing to publish the Code as it was bid under the RFP; however, West would like to propose certain improvements to the Code.

Research by West has revealed two items, among many, that are important to users of the Code. Those items are the Index and the Notes of Decisions.

Regarding the Index, Mr. Brown made a comparison of the merits of West's treatment of topics in the Index versus the current treatment of the topics in the Michie or Lexis Index. He also discussed the "Notes of Decision" feature. He discussed the details of using this feature to aid in research.

Other editorial features to be included in the improvements to the Code include such things as: cross-references, amendment notes, administrative code references, U.S. Code Annotated references, library references, law reviews, uniform laws, U.S. Supreme Court opinions, and constitutional provisions.

Mr. Leighton repeated his comment that West is willing to publish the Code according to the bid but if the Code Commission decides to republish the Code in its entirety then certain costs can be saved if it is done at one time.

Commissioner McCahren asked when the new Code could be available. Mr. Leighton and Mr. Brown responded that the availability would depend on certain variables. They would like to get the new Code to consumers before the 2004 session of the Legislature.

Commissioner McCaulley asked for clarification and discussion of the pricing scheme for the new Code. As part of this discussion the representatives from West commented that West anticipated recovering the recodification costs over a period of five years through increased supplement pricing. This explains why the price for supplements increased and the price for the full set decreased under West's recodification proposal. Mr. Lary Zastrow asked for the cost to a new practitioner for the Code. It is anticipated that the cost would be \$382.50.

The commission asked if the number of volumes would increase due to the addition of improvements to the Code. Mr. Brown responded by stating that there would be more volumes due to more information and that the current volumes would be split. It is estimated that the Code would increase from the approximate 33 volumes to about 45 volumes.

Ms. Trippe asked about the possibility of including a licensing requirement in the contract. Mr. Leighton responded that West has concerns regarding licensing being a part of the contract as this was not included in the RFP.

Chair DeMersseman asked each of the publishers to address the licensing issue in a letter to the Code Commission. They should outline their positions relative to the granting or denial of allowing online access to the Code from West to Lexis. He asked them to provide this information within 10 days.

Chair DeMersseman asked Mr. Leighton and Mr. Brown from West to be available on Saturday, June 21, 2003, to make their presentation regarding the proposed republishing of the Code to any members of the State Bar that are interested.

Commissioner Bogue asked West to compare the cost of the proposal as accepted under the RFP to the cost of the proposed improvements.

In the public comment part of the agenda Ms. Trippe commented on the bid pricing versus the proposal pricing. She urged the Commission to consider the impact on the State's copyright regarding the annotations. The annotations would result from work for hire under the contract to publish the Code. Ms. Trippe submitted a letter dated June 19, 2003, to the Commission outlining Lexis-Nexis' concerns (**Document #1**).

At this point Chair DeMersseman asked the publishers to be excused. *Commissioner McCahren moved, seconded by Commissioner Bogue, that the Commission move into executive session to discuss the publishing contract. Motion prevailed on a voice vote.*

The executive session commenced at approximately 12:30 p.m.

Commissioner McCahren moved, seconded by Commissioner Bogue, that the executive session be concluded. Motion prevailed on a voice vote. The executive session concluded at approximately 1:55 p.m. No formal action was taken as a result of the executive session.

The next meeting of the Code Commission was tentatively set for 10:00 a.m. on July 11, 2003, in Pierre. **(Note: This meeting was canceled.)**

Commissioner McCahren moved, seconded by Commissioner McCaulley, to adjourn. Motion prevailed unanimously on a voice vote.

The meeting adjourned at 2:00 p.m.

