

EXHIBIT B

MINUTES

SENATE INTERIM COMMITTEE ON JUDICIARY

September 17, 2018

The Senate Interim Committee on Judiciary met at 10:00 a.m., on Monday, September 17, 2018, in Room 149, State Capitol Building, Little Rock, Arkansas.

Committee members present: Senators Linda Collins-Smith, Chair; Terry Rice, Vice-Chair; Will Bond and Trent Garner.

Other legislators present: Senators Alan Clark and Jonathan Dismang.

Senator Collins-Smith called the meeting to order. She recognized Arkansas Supreme Court Justice John Dan Kemp for remarks.

Consideration to Approve Minutes [EXHIBIT B]

Senator Rice made a motion to approve the June 21, 2017, meeting minutes. The motion was seconded by Senator Garner, and without objection, the motion carried.

Consideration of Interim Study Proposal for Adoption and Study [EXHIBIT D]:

Interim Study Proposal 2017-116: “Study and Develop Rules and Procedures for the Impeachment Process in the State of Arkansas.” [Exhibit D1]

Senator Garner, Sponsor, provided an explanation of ISP 2017-116.

Senator Garner made a motion to adopt ISP 2017-116. Senator Rice seconded the motion, and without objection, the motion carried.

Presentation on “Impeachment in Arkansas” [EXHIBIT E]

Ms. Michelle Davenport, Legislative Attorney, Bureau of Legislative Research (BLR), was recognized and presented a PowerPoint presentation titled, “Impeachment in Arkansas.” Ms. Davenport stated as an employee of the Arkansas General Assembly and the BLR that nothing she says should be interpreted as advocating any specific course of action presented by ISP 2017-116 or her presentation. She discussed the following topics in her presentation:

- Constitutional provisions related to impeachment,
- Statutory provisions governing impeachment,
- Procedures established by the House of Representatives (the House),
- History of impeachment in Arkansas, and
- Brief look at recent impeachments by the United States government and Illinois.

Ms. Davenport cited a section of the Arkansas Constitution regarding Constitutional Officers being subjected to impeachment grounds. Notably, she mentioned the term “high crimes and misdemeanors” is not defined in Arkansas law, nor the federal law. She added legal scholars have debated the definition of “high crimes and misdemeanors,” and the scope of the phrase as it relates to impeachment. She stated the only consensus is that the final determination of whether an action falls within the scope of the aforementioned term is within the discretion of the House. According to Ms. Davenport, Arkansas’s impeachment provisions in the Arkansas Constitution closely resemble the process established in the United States Constitution in Article 1, § 2. Ms. Davenport noted, in 2017, the House adopted HR1001, which amended its rules to include a section regarding the procedure for consideration of articles of impeachment.

Discussion from Mr. David Sachar, Executive Director, Judicial Discipline and Disability Commission (JDDC), was recognized. In 1988, the JDDC was established by Amendment 66 in the Arkansas Constitution. It is charged with investigating complaints concerning misconduct of all justices and judges. The JDDC may recommend sanctions for violations of the professional and ethical standards governing judicial officers to the Supreme Court. Notably, Mr. Sachar stated Amendment 66 specifically addresses impeachment, “stating that this amendment is an alternative to, and in conjunction with, impeachment and address authorized by the Arkansas Constitution.” He pointed out that Arkansas Code Annotated. §16-10-410 has been ruled unconstitutional and is no longer the law.

Mr. Sachar offered to provide material to the Committee that involves the process of judicial error or misconduct when a judge does not follow the law. In response to a question from Senator Rice, Mr. Sachar, replied the JDDC does not accept complaints on attorneys. Senator Collins-Smith asked how the Committee can find out about cases or information involving judges. Mr. Sachar stated statutorily the Committee can authorize the JDDC to have access to records. He added the JDDC produces annual reports to show the number of complaints against judges, types of cases, etc.

Presentation on “Contested Elections” [EXHIBIT F]

Mr. Steve Cook, Chief Counsel, Arkansas Senate and Matthew Miller, Assistant Director – Legal Services, BLR, were recognized and presented a PowerPoint presentation titled, “Resolving Contested Elections When Existing Law Doesn’t Guide the Courts: A Case Study” and the handout “Procedures for Senate Election Contest” [HANDOUT 1]. Mr. Cook stated in 2006, Arkansas did not have a framework in place for someone who contested an election to a Senate office. He also discussed Arkansas Constitution, Article 5, §12 and explained how the Senate created a procedure for a contested election hearing. He noted the Senate is prepared to create a procedure for impeachment, if it becomes necessary.

Other Business

The next Committee meeting will be held on Monday, October 1, 2018, at 10:00 a.m., in Room B-MAC, Little Rock, Arkansas.

There being no further business, the meeting adjourned at 12:15 p.m.