

**JOINT PERFORMANCE REVIEW COMMITTEE**

**JANUARY 22, 2014**

**MINUTES**

The Joint Performance Review Committee met Wednesday, January 22, 2014 at 10:00 a.m. in Room A, MAC Building, Little Rock, Arkansas.

Committee members present were Senators Jane English, Senate Co-Chair, Jimmy Hickey, Keith Ingram, Uvalde Lindsey, and Jon Woods. Also attending were Representatives Terry Rice, House Co-Chair, Bob Ballinger, Harold Copenhaver, Jody Dickinson, Jon Eubanks, Debra Hobbs, Mark Lowery, Josh Miller, Warwick Sabin, Brent Talley, and Bruce Westerman.

Other members present were Senators Ronald Caldwell, Jonathan Dismang, Michael Lamoureux, Bill Sample, Bobby Pierce, and Eddie Joe Williams. Also attending were Representatives Duncan Baird, Scott Baltz, Nate Bell, Mary Broadaway, Charlotte Vining Douglas, Jeremy Gillam, Kim Hammer, Joe Jett, Sheila Lampkin, Andrea Lea, Stephanie Malone, Walls McCrary, Micah Neal, Betty Overbey, Mary Lou Slinkard, Tommy Thompson, and Jeff Wardlaw,

**Approval of Minutes – January 7-8, 2014 [Exhibit B, B-1]**

A motion to approve the minutes of the January 7, 2014 and January 8, 2014 meetings of the Joint Performance Review (JPR) Committee was made by Representative Terry Rice and seconded by Senator English. The motion carried.

**Call to Order**

Senator English called the meeting to order.

**Comments by Senator English and Representative Rice, Co-Chairs, JPR Committee**

Senator English recommended that the committee review and discuss the process used by the Arkansas Securities Department when it investigates securities violations.

**Overview of the Arkansas Securities Department and Securities Law (A.C.A. §23-42-101-509) [Exhibit D]**

Senator English asked Heath Abshure, Arkansas Securities Commissioner, to summarize the procedures he uses in an investigation, to clarify what constitutes a violation, and describe how an investigation is initiated. Mr. Abshure gave a detailed description of complaints received by the department:

- customer complaints
- information received from another regulator
- information received from a law enforcement agency
- discovery of problems found during compliance examinations

Mr. Abshure explained the procedure used for handling a complaint:

- an examiner is assigned to begin investigating the complaint
- the examiner does an initial analysis to determine whether or not the complaint is valid
- the examiner discusses the findings with Deputy Commissioner Ann McDougal
- a decision is made whether or not to move forward
- a department attorney is assigned to work with the examiner
- the attorney and examiner determine what violations occurred, both statutory and applicable violations
- a decision is made whether or not the complaint is to be processed administratively, or taken to circuit court

Representative Lowery made a request for the presenters to be sworn in. Senator English asked the presenters from the Arkansas Securities Department to stand, state their name, employer, and position. She then asked each person to raise their right hand and swear the following oath:

“Do you solemnly swear or affirm that the testimony you are about to give will be the truth, the whole truth, and nothing but the truth”

Heath Abshure, Commissioner, Arkansas Securities Department, stated “I do”. Ann McDougal, Deputy Commissioner, Arkansas Securities Department, stated “I do”. David Smith, Chief Counsel, Arkansas Securities Department, stated “I do”.

Legislators then discussed the operation and procedures at the Securities Department, the amount of fines assessed, contributions to organizations in lieu of fines, specifically the North American Securities Administrators Association (NASAA), and the policy regarding assignment of an administrative hearing versus a circuit court hearing. Senator English stated that those individuals who signed-in to give testimony before the committee would be sworn in. She asked each person to stand, state their name, employer, and position. She then asked each person to raise their right hand and swear the following oath:

“Do you solemnly swear or affirm that the testimony you are about to give will be the truth, the whole truth, and nothing but the truth”

David Knight, Executive Vice President and General Counsel, Stephens, Inc., stated “I do”. Kevin Burns, Senior Vice President and Associate General Counsel, Stephens, Inc., stated “I do”. Kim Fowler, Senior Vice President, Associate General Counsel, and Ethics Officer, Stephens, Inc., stated “I do”.

Senator English recognized David Knight. Mr. Knight told legislators that Stephens, Inc. believes they have identified serious problems with the procedures at the Arkansas Securities Department, including lack of due process and conflict of interest. He read from a 32-page written statement, which he provided to the Committee. [Handout 2] Stephens, Inc. suggests that a number of legislative changes be made in the operation of the securities department. Mr. Knight

explained that the proposed changes result from a specific situation Stephens, Inc. is engaged in with the Arkansas Securities Department. Mr. Knight described the proceedings that occurred between Stephens, Inc, and the Securities Department:

- ❖ an initial meeting was held between Stephens, Inc. and Securities Department staff attorney Scott Freydl
- ❖ Mr. Freydl sent a letter to Stephens, Inc. which advised the company of the intent of the Securities Department to bring enforcement action and file a complaint for an administrative proceeding
- ❖ Stephens, Inc. submitted a detailed response indicating the alleged violations were correct
- ❖ Stephens, Inc. received an e-mail from Mr. Freydl relaying a request to visit with the Securities Commissioner to discuss a settlement
- ❖ A meeting was held with the Securities Commissioner, Mr. Knight, Mr. Burns, and Ms. Fowler during which the violation and a settlement offer of \$30,000 was discussed
- ❖ Stephens, Inc. believed the \$30,000 settlement offer was too large and declined
- ❖ the Securities Commissioner made an offer to Stephens, Inc. to make a \$20,000 contribution to NASSA, in lieu of a fine
- ❖ Stephens, Inc. declined the offer of a contribution

Mr. Knight told the legislators that Stephens, Inc. would rather have their case tried before the circuit court. Stephens, Inc. now proposes that a legislative change be made to require the Securities Commissioner to bring enforcement actions before a circuit court rather than through administrative hearings. Stephens, Inc. recommends that a legislative change be implemented that prohibits the Securities Commissioner from using his enforcement powers to direct contributions to third parties. Stephens, Inc. suggest that Section 213 of the Securities Act be revised to direct fines levied by the Securities Department to go directly to the State Treasury and not into the operating budget of the Arkansas Securities Department.

There being no further business, the meeting adjourned at 12:35 p.m.