

## EXHIBIT B

### MINUTES OF ARKANSAS CODE REVISION COMMISSION MEETING

**Wednesday, June 16, 2021**

**1:30 P.M.**

**Room B, MAC**

**Little Rock, Arkansas**

Commission members present: Speaker Matthew Shepherd, Chair; Representative Jimmy Gazaway; Senator Clarke Tucker; Camille Bennett; Vaughn Hankins; Robert F. Thompson III; Theresa Beiner, Dean, University of Arkansas at Little Rock Bowen School of Law; Cory Cox. Also present: Vincent Henderson II, Arkansas Code Revisor.

Speaker Matthew Shepherd, Chair, called the meeting to order.

Chair Shepherd recognized and welcomed new members Mr. Vaughn Hankins, Mr. Robert F. Thompson III, and Ms. Camille Bennett to the Arkansas Code Revision Commission.

#### **Minutes of the December 20, 2021 Meeting – Exhibit B**

Without objection, the minutes of the December 20, 2021, meeting were approved.

#### **Conflicts from the 2021 Legislative Session – Exhibits C**

Chair Shepherd recognized Mr. Henderson, Code Revisor, to discuss in detail the conflicts from the 2021 legislative session.

Mr. Henderson explained in detail the issues and conflicts and recommendations for resolving the issues and conflicts from the 2021 legislative session.

**Item 1**— Act 1012, Arkansas Sovereignty Act of 2021- The Act was drafted into Title 1 – General Provisions of the Arkansas Code. In light of the fact that the Act is mainly provisions concerning the responsibilities of certain public officers and employees of the state, Mr. Henderson recommended codifying the Act by transferring it to Title 21 – Public Officers and Employees.

Chair Shepherd asked whether the lead sponsors of the acts with potential conflicts were notified that the commission may take actions on these conflicts. Mr. Henderson stated that all the lead sponsors of the acts being discussed have been notified by Mr. Miller, Assistant Director, Legal, Bureau of Legislative Research.

**Without objection the commission approved moving Act 1012 from Title 1 to Title 21, § 21-1-9.**

**Item 2**— Act 1106, amending the Human Trafficking Act of 2013- “Serious harm” was defined in Act 1106 on page 2. However, the Human Trafficking Act already has a definition of “serious

harm” that is almost but not quite the same language as the definition on page 2 of Act 1106. The present law tends to focus on a commercial sex act, or a sexually explicit performance in order to avoid incurring that harm. The language that was adopted this past session with respect to commercial sex acts or sexually explicit performances was not included in the new definition and there is a conflict as there is one term with two definitions and the only way to reconcile them is to assume that Act 1106 from this past session would supersede the earlier inconsistent legislation. This correction also would be placed in a technical corrections bill for the next session to confirm the change.

Chair Shepherd asked if both definitions are under § 5-18-102, the previous definition being subdivision (11) and the new one being subdivision (17), whether subdivision (11) would be replaced by the language in subdivision (17). Mr. Henderson stated that was correct.

**Without objection, Item 2 was approved to replace § 5-18-102(11) existing definition with § 5-18-102(17) and to also put into a technical corrections bill for the next regular session.**

**Item 3**— Act 448 and Act 610, Election Law Conflicts- Concerning the drawing of ballot order for candidates in some school elections on pages 2 and 3 of Act 448, the language was amended, and then in Section 3 below that, in particular line 14, the 10 days language was stricken in Act 448. In Act 610, page 2, 6-14-111(k), has the same sort of language. The problem is that the deadlines are different. The later Act 610 also has a specific effective date clause on page 15. Act 610 is not effective until January 1, 2022, so the way these would be codified is that Act 448 would be codified in effect until January 1, 2022, at which point the later act, Act 610, would become effective and supersede Act 448.

Chair Shepherd explained that he understood that the later act which was actually passed and signed and in effect last would normally control but does not have an effective date until 2022, and therefore the previous act that was passed earlier in the session would apply until 2022. Mr. Henderson stated that was correct.

**Without objection, the change was approved and Item 3 will be referred for drafting of a technical corrections bill for the next regular session.**

**Item 4**— Act 756 and Act 974, Election Law Conflicts- Mr. Henderson stated he had to take Act 756 and Act 947 with respect to § 7-4-120 and stitch them together. Section 1-2-207(b) requires giving effect to every part of an act except when it is in irreconcilable conflict with another act, in which case the later act controls. The problem with these two acts was trying to determine how to give effect to all the different parts that were amending § 7-4-120.

Chair Shepherd recognized Senator Hammer to discuss his legislation. Senator Kim Hammer explained that his understanding from talking to persons he consulted in the drafting of the two

bills was that this codification of the two acts does not alter the intent of the bills. The codification does not change what the legislation would allow, but it is just for simplicity and flow that they have been brought together. As the sponsor of the bills, he had no issue with what was being done, and if it helps simplify things as for how it reads in the Code that was great. He appreciated the opportunity to share his comments.

Commission Bennett requested more time to look over the bills before voting.

Chair Shepherd stated that he understood that the recommendation from the Code Revisor would be to take both acts and combine the language of the two acts for codification and then come back and clean the codification up with a technical corrections bill next regular session.

Mr. Henderson stated that was correct and that he did send out a report on these conflict issues, Exhibit C-1, and in the particular case of these two acts he included the actual language identifying by the act number and kept the strikethrough and underlining from the two acts so the commissioners could better grasp what his recommendation was. Mr. Henderson explained that his staff was in the middle of examining page proofs of the supplements to the Code but had not examined the page proofs of Title 7 yet.

Chair Shepherd suggested that the Code Revisor could prepare the suggested language and email that out to the commission and, if there was any concern with the language, another commission meeting could be held to discuss those concerns. If there was no objection within a certain period of time then the proposed corrections would be considered approved.

Commissioner Bennett explained that she would be able to review the proposed codification before the end of the commission meeting.

Consideration of this item was postponed until later in the meeting when the members had an opportunity to further study and review the issue and relevant acts.

This item was postponed until later in the meeting.

**Item 5**— Act 448 and Act 1051, Election Law Conflict- Mr. Henderson stated that Act 448 amended § 7-5-202 to change the published notice date from twenty days before the preferential primary and general election and ten days prior to the general runoff, school, and special election to eight days before the beginning of early voting in the preferential primary, general primary, general election, general runoff, school, and special election. Act 448 changed the date by which an objection must be made to the board of election commissioners concerning an election official from ten days to seven days after the election notice had been posted.

Act 1051 amended § 7-5-202 to allow a county party chair or his or her spouse or the spouse of a poll worker to work an election so long as no objection has been made within ten days after the posting of the list of election officials. According to Mr. Henderson, it appeared that this act merely restated the ten days as that was the law previous to Act 448 and did not take into account the change made by Act 448. On pages 3 and 4 of Act 1051 it also mentions making the objection in ten calendar days for spouses working in elections. He explained that the ten days referred to was probably picked up from the law prior to change by made by Act 448.

Chair Shepherd stated that because the posting was moved from ten days to eight days there could be situations where there would be no objection within the ten-day period but the ten-day period would actually extend into the period of time in which the vote was actually being taken. He explained that poll workers could potentially be objected to after they had already begun working the polls.

**Without objection, the change was approved and Item 5 will be referred for drafting of a technical corrections bill for the next regular session.**

**Item 6**— Act 384 and Act 385, Campaign Contribution Levels- Act 385 became law before Act 384. While Act 385 will be effective January 1, 2023, Act 384 will be effective July 28 of this year. Consequently, Act 384 would be in effect until January 1, 2023, and then Act 385 would become effective and be the law.

Mr. Henderson stated his recommendation would include a separate bill, probably not a technical corrections bill, because this could be substantive by changing back to no limit. He explained that that was his opinion and the Commission could certainly do what it wanted with the technical corrections bills.

Mr. Henderson stated that Act 384 would allow, under § 7-6-203(b)(1)(A), campaign contribution limits to be established by rule by the Arkansas Ethics Commission under § 7-6-203(i) per election. It would do away with specific dollar amounts limits and set the limits at what the Ethics Commission set them at by rule. Act 385 amended § 7-6-203(b)(1)(A) incorporated the specific dollar amount and required aggregation.

Chair Shepherd clarified that the existing language in § 7-6-203(b)(1)(A) is the technical conflict. However, because of the effective dates of each act there is no actual conflict.

Senator Tucker explained that the effective date differences were intentional.

Representative Gazaway asked whether the conflict could be addressed in the extended session later in the year. Chair Shepherd explained the issues and difficulties of that approach and mentioned the difficulty of trying to address them in a special session.

**Without objection, both acts will be codified, essentially retaining § 7-6-203(b)(1) as amended by Act 384, and effective January 1, 2023, when Act 385 takes effect, designating (b)(1) as (b)(1)(A) and inserting subdivision (b)(1)(B) with the language from Act 385. A bill will be drafted for the next regular session to include the correction.**

**Item 7**— Acts 737, 272, 324 and 1029, Carryover funds in political campaigns

Act 737 repealed the definition of “carryover funds” in § 7-6-201 et seq., and removed all of the references to the term in § 7-6-201 and § 7-6-203, but missed one in § 7-6-230(a)(1).

Act 272 added a subdivision to the repealed definition in § 7-6-201(3) that the Code Revisor recommended be treated as effectively repealed by Act 737.

**Without objection, Act 272 will be treated as repealed by Act 737, and the correction will be included in a technical corrections bill for next regular session.**

Act 324 added new subdivisions to § 7-6-203(f) and (g) which referenced carryover funds. The Code Revisor recommended treating those references to carryover funds within the new subdivision as effectively repealed by Act 737, but otherwise codifying the new subdivisions.

**Without objection, the references to “carryover funds” in the new subdivisions in Act 324 will be treated as repealed by Act 737, and the remaining language will be codified. The corrections are to be included in a technical corrections bill for next regular session.**

Act 1029 amended § 7-6-230(a)(1) which has a reference to carryover funds, but did not repeal the reference.

**Without objection, the sentence will be codified as follows: “(a)(1) A candidate required to file carryover fund reports in electronic form under § 7-6-203 and campaign contribution and expenditure reports in electronic form under § 7-6-207 may file reports in paper form under this section.” The change will be put in a technical corrections bill for next regular session.**

**Item 8**— Act 306 and Act 1040, Cottage Food Production Operations as an Exempt Food Service Establishment

Mr. Henderson explained that Act 306 amended § 20-57-201(2)(B)(vi)(a) that established certain exemptions from the term “food service establishment” for the purpose of regulation by the Department of Health to exempt cottage food production operations from state regulation of internet sales direct to in-state consumers and direct to out-of-state consumers so long as the out-of-state sales comply with federal food safety laws. Act 306 has an emergency clause, making it effective March 9, 2021.

Act 1040 repealed the definition of and references to “cottage food production operation” in § 20-57-201, repealed certain provisions and made certain other amendments to that section, repealed § 20-57-209, and enacted the Food Freedom Act, § 20-57-501 et seq., which appears to cover cottage food production operations specifically under the term “homemade food or drink product” as defined in § 20-57-503(3), and regulates those operations under other sections of the Food Freedom Act.

The Code Revisor recommended codifying Act 1040 pursuant to § 1-2-207(b) as it is the later enactment and treating Act 306 as superseded. Because of its emergency clause, Act 306 is effective until July 28, 2021.

**Without objection, Act 1040 will be codified and Act 306 will be treated as superseded. This change will be put in a technical corrections bill for next regular session.**

**Item 9**— Act 404 and Act 894- Two Acts, same Purpose, Technical Conflict

Mr. Henderson explained that Acts 404 and 894 amend § 23-4-422, and the Formula Rate Review Act, § 23-4-1201 et seq., specifically, § 23-4-1205(c), § 23-4-1206, § 23-4-1207(d), and § 23-4-1208. While their titles are identical, there are some conflicts between the two acts that cannot be reconciled textually.

The acts have identical retroactive and applicability clauses. Both acts have emergency clauses; Act 404 became effective March 22, 2021, and Act 894 became effective April 25, 2021.

To the extent that there is any issue regarding the application of the two acts because of the differences between the two acts, Act 404 was effective for 34 days after which Act 894 became effective.

The Code Revisor recommended codifying Act 894 and treating Act 404 as superseded.

**Without objection, Act 894 will be codified and Act 404 will be treated as superseded. This change will be put in a technical corrections bill for next regular session.**

**Report of Code Revisor:**

Mr. Henderson gave the following report.

At the last commission meeting in December 2020, I mentioned and discussed recodification, and have been looking at five titles to recodify. I will be conferring with Marty Garrity, Director, Bureau of Legislative Research, and Matthew Miller, Assistant Director, Bureau of Legislative Research, about what it will take if anything in the way of staffing and timing to do this. As I explained at the last commission meeting, Title 19 Public Finance is the farthest along from the standpoint of work of recodifying it and estimate if we get some cooperation by various parties it

might take as much as four years to get it to bill form for consideration and enactment. We have four other titles back behind that in process. As soon as I talk to Marty Garrity and Matthew Miller, I will bring this back to the Commission at the next meeting about how to go about that work and this process to recommend to the Commission.

Also, we have been in discussion with representatives from Lexis Law Publishing Company and we are looking at how to deal with the case notes annotations in the annotated Code in light of the United States Supreme Court decision in PublicResource.org v. Georgia, and what, if anything, we want to do or recommend the Commission look at in the way of possible contract modifications.

Finally, one of the things I was going to bring up today but I realized we can't address is that there are some technical corrections that need to be made to some of the constitutional amendments. As some of you may be aware the Commission has some authority to do the same sort of thing with the constitutional amendments that we are looking at here today with the Arkansas Code. However, the way the authority is written, the Commission can only make those kinds of corrections in constitutional amendments to those parts that were amended by legislation. As you know, some constitutional amendments can be amended by legislation that takes supermajority vote. Unfortunately with one minor exception, the corrections we looked at in the constitutional amendments are in the original language and have not been amended by the General Assembly, so the Commission doesn't have the authority to deal with that directly. What we will probably do is draw up a technical corrections bill to have the General Assembly see about making those kind of corrections. Amendment 98, the Arkansas Medical Marijuana Act of 2016 is one with minor but interesting problems in it.

Other than that, I can report that out of page proofs of the supplements to 54 volumes, we have finished up as of this morning 14 supplements and have 40 to go and should be finished up by the middle of July. The staff here has worked really hard and done a very good job on the bills and the acts as well the supplements. This may be the earliest that we've gotten the supplements out in perhaps 20 years.

Chair Shepherd added for the benefit of the new commissioners that the case that Mr. Henderson alluded to relates to the copyright various states hold to their codes. Chair Shepherd explained that from time to time there are developments on that front that the Commission will need to consider what position the Commission should take. So when those issues come up we will usually get input from LexisNexis and from others as to what the proper response is from our standpoint.

**Item 4**—The Commission recessed for five minutes to take some time to review item 4—Act 756 and Act 974 Election Law Conflict, before taking it up again for consideration of the Code Revisor's recommendations.

**After further review, the Commission, without objection, directed the Code Revisor to make the recommended changes in combining the two acts and prepare a technical corrections bill for the next regular session.**

With no further business, the meeting was adjourned.