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STATE OF ARKANSAS

# House of Representatives

April 22, 2008

REPRESENTATIVE  
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DISTRICT 74

Counties:  
Part Craighead County

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Rules

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Chairperson,  
Joint Budget

Honorable Sue Madison  
Chair, Arkansas Code Revision Commission  
573 Rock Cliff Road  
Fayetteville, AR 72701-3809

Re: Arkansas Code Revision Commission contract with LEXIS

Dear Senator Madison:

This letter will follow-up our conversation on Thursday, April 17, 2008 in the above-referenced matter. To refresh your recollection, during that conversation I told you how disappointed I was to learn that the Commission had voted to extend the current contract with LEXIS for another ten (10) years. It was my understanding that prior to the March 2008 meeting the Commission was in the process of arranging for competitive bids between LEXIS and WEST. It was for that reason that prior to now, I saw no reason to weigh-in on this issue. At your suggestion, I write.

I want to again make clear that I do not personally or professionally care which company is ultimately awarded this contract, but I do have at least two (2) concerns about the process, which I believe warrants further discussion by the Commission and, ultimately, rescission, of the ten (10) year extension.

First, I do not believe that the Commission can circumvent the bidding requirement of Arkansas Code Annotated Section 1-2-303(a)(2). That statute specifically provides that, "[t]he commission shall arrange for the solicitation and receipt of competitive bids for all these publications on such terms as it deems reasonable." In my opinion, the Commission may not circumvent this statutory requirement by couching the process as an extension of an existing contract. To couch it in these terms would completely thwart the bidding process in general and would be particularly egregious here where the existing contract is at least ten (10) years old now. Surely when the Legislature delegated this responsibility to the

Commission, the Legislature did not envision a sole-source contract running in perpetuity.

It is my understanding that you have executed and delivered a letter on behalf of the Commission in accordance with the vote of March 20, 2008 which purports to so extend the previous contract. In my opinion, this attempt at extension is void as a matter of law. Having abrogated its statutory responsibilities in refusing to solicit competitive bids as required by statute, the Commission did not have the authority to enter into any contract, much less extend an already dubious one.

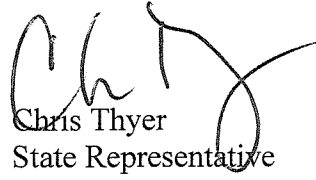
And, even if the Commission had the authority, it offends my sense of fairness as a Member of the General Assembly that a ten (10) year contract could be entered into binding the State of Arkansas without a competitive bid. I have repeatedly told my own constituents that these types of things may happen in the Bush Administration, but they do not happen in Arkansas. I sincerely hope the Commission does not prove me wrong.

The second reason I am compelled to write about this no-bid, ten (10) year contract is my own oath of office. We were elected by the citizens of the State of Arkansas to, among other things, ensure her resources are not squandered. As a lawyer, I do not know what the gold-embossed "Official Edition" on the LEXIS books is worth. Honestly, to me personally, not much. But I am more convinced than ever that it has significant value to these publishers. My own review of the original contract indicates that that value was given away then, and is still valued at nothing in the purported extension. It must, however, have value for these publishers to want it so badly. And, my question to you is what are the citizens of Washington County, Craighead County, et al. getting in return for the publisher's right to print "Official Edition?" Until both parties are given the opportunity to bid, we will never know

For these reasons, I implore you, as Chair of the Commission, to rescind the purported extension and allow LEXIS and WEST the opportunity to bid the contract. Lastly, we discussed the possibility of a formal Attorney General's opinion on this issue. I will happily make that request if you would like.

Additionally, If you would like my thoughts on what the State should get out of a contract, the length of the contract, etc., I will happily share those with you upon request. And, as always, if you would like my assistance on this or any other matter, I remain,

Sincerely,



Chris Thyer  
State Representative

CRT:tf

cc: Honorable Benny Petrus, Speaker of the House  
Honorable Jack Critcher, President Pro Tempore  
Honorable Scott Sullivan, Chair Legislative Council  
Honorable Hank Wilkens, Chair Legislative Council  
Mr. David Ferguson, Director, Bureau of Legislative Research