

PUBLICATION OF STATUTES IN NORTH DAKOTA - HISTORY AND DEVELOPMENTS

After North Dakota was admitted to the Union in 1889, it was determined it would be necessary to harmonize the body of statutory law, and in 1891 a code commission of three persons was established by law to compile the statutes. After subsequent developments each session, the report of the commission was submitted to the Legislative Assembly in 1895, and the result was the adoption of the Revised Codes of 1895. Although 2,500 copies of the revision were printed, the supply was exhausted, and in 1897 the Legislative Assembly passed legislation instructing the Secretary of State to provide for a new compilation. As a result, the Revised Codes of 1899 was published. The 1905 Legislative Assembly authorized the Secretary of State to employ compilers and others learned in the law to assist in the preparation of a new edition, and the result was the Revised Codes of 1905.

In 1913 legislation was enacted providing that the Secretary of State was to enter into a contract with a publisher to prepare statutes to be known as the Compiled Laws of the State of North Dakota for the year 1913. The result was the Compiled Laws of North Dakota of 1913.

In 1925 a contract was entered with a private publisher for the publication of a supplement to the Compiled Laws of 1913 to include the statutes enacted since 1913. No further provision was made for the compilation or revision of statutes until 1939, when the Supreme Court was authorized to select three attorneys to be known as the Code Revision Commission. The resulting revision was reported to the Legislative Assembly in 1943 and was adopted as the North Dakota Revised Code of 1943. Supplements were prepared in 1947, 1949, 1953, and 1957.

The 1959 Legislative Assembly appropriated \$150,000 to purchase 1,000 complete sets of a republication of the North Dakota Revised Code of 1943. The Secretary of State and the Legislative Research Committee (predecessor to the Legislative Council) were authorized to negotiate a contract with a private publisher for the republication. A contract was entered between the relevant state agencies and The Allen Smith Company of Indianapolis, Indiana.

The original contract provided that the state could give, sell, and distribute the new code to state entities and certain political subdivisions and could exchange sets with other states, but all other sales to residents and others were reserved by the publisher.

Insofar as copyright provisions, the 1959 contract provided:

It is understood and agreed between the parties hereto that a copyright of the new

edition of the North Dakota Revised Code and all material contained therein, will be taken out in the name of the Publisher and promptly assigned to the State of North Dakota. It is understood however that the Party of the First Part [state] will not use this copyrighted material for any but its own official purposes and will not assign or grant to other publishers or printers rights to use the material contained in the new edition of the North Dakota Revised Code except by written consent of the Party of the Second Part [publisher] but this restriction shall not apply to the language of the basic statutes and laws or the numerals of the Code numbering system. It is also understood and agreed that except as to the language of the basic statutes and laws and the Code numbering system, the Party of the First Part will grant to the Party of the Second Part exclusive rights to use the material contained in the new edition of the North Dakota Revised Code for any other publication it may issue bearing on North Dakota law.

If at the end of twenty years, for which period the Party of the Second Part hereby undertakes to keep sets of the new edition of the Revised Code of North Dakota in print, either party to this contract desires to discontinue the contractual relationship created by this contract, then the restriction as to the use of copyrighted material referred to in the paragraph immediately above, is specifically waived by the Party of the Second Part. This copyright restriction also is specifically waived in event the Party of the Second Part is liquidated voluntarily or by process of law within the period of twenty years herein referred to or in event this contract is cancelled by mutual agreement of the parties hereto within the period of twenty years herein above referred to.

Therefore, it appears that after 20 years, the state has the rights to the copyright, but there may be questions regarding the rights to annotations and supporting documents prepared by the publisher.

In 1985 The Allen Smith Company was purchased by the Michie Company, which has since been merged into LEXIS Publishing. The new firm has assumed the rights and obligations of the original contract with The Allen Smith Company. It should be noted that the state makes no payments to the publisher for publishing the North Dakota Century Code except to buy supplements and replacement volumes. The Legislative Council staff works with the

publisher in providing the necessary electronic documents to prepare supplements and replacement volumes, and distribution of the supplements and replacement volumes purchased by the state is handled by the Secretary of State. The sales and distribution of sets of original volumes, supplements, and replacement volumes to private parties are the business of the publisher.

In 1991 the Legislative Council entered a contract with the publisher for electronic use of the North Dakota Century Code. The publisher has an agreement with West Group, a competing publisher that also publishes several state codes, and the state receives a five percent royalty on revenues received from both companies for electronic use of the North Dakota Century Code. The revenue from this contract has been minimal, and on May 25, 2000, the state received notification that the most recent accounting showed the state would receive a credit of \$6,486.96 for the period 1996 through 1999.

Each biennium the Legislative Council staff provides the Secretary of State the staff recommendations regarding replacement volumes and other publications for the next two years. The Secretary of State is responsible for the public printing budget, and final decisions on replacement volumes is based upon the appropriation decisions by the Legislative Assembly.

Although the number of copies has varied through the years, for the next biennium it is recommended the state purchase 700 copies of supplements and replacement volumes. The Legislative Council staff works with the publisher concerning which volumes of the North Dakota Century Code should be replaced over the next two years. To reduce costs for supplements, it is necessary to replace a certain number of volumes of the North Dakota Century Code each biennium. If the size of a particular supplement is substantial, the choice is to continue publishing the large supplements every two years or replace the volume and begin publishing a small supplement for that volume. Replacement volumes also make the North Dakota Century Code more easily usable by the public.

During the 1993-94 interim, the Legislative Management Committee studied the feasibility of making the North Dakota Century Code, North Dakota Administrative Code, North Dakota Session Laws, and other legislative publications available in mediums other than hard copy, including compact disk - read-only memory (CD-ROM) and diskettes. The publisher presented the committee with information on the development of state legislative publications on CD-ROM. In 1990 the publisher began to make available the codes of the states it published on CD-ROM. The New Mexico statutes--published by the Michie Company--were the first state statutes published in CD-ROM format (in 1990). The committee determined that a CD-ROM format was preferable to a floppy disk format and requested the publisher to submit a proposal for making the North Dakota

Century Code, the North Dakota Administrative Code, and North Dakota Supreme Court cases available on CD-ROM. As a result of the committee's interest in making the Century Code available on CD-ROM, the Legislative Council staff also contacted CD Media, Incorporated (which had expressed interest in publishing the North Dakota statutes on CD-ROM), and the Banks Baldwin Law Publishing Company and the West Publishing Company (both of which had expressed interest in publishing the North Dakota Century Code); described the study and the request for the Michie Company to prepare a proposal; and invited each company to submit a proposal for publishing the Century Code and in making the Century Code available on CD-ROM at the May 24, 1994, meeting of the committee. None of these companies responded to the invitation. Two other companies--Advanced Retrieval Systems, which had expressed interest in providing the Century Code in floppy disk format, and Barclays Law Publishers, which had expressed interest in publishing the Administrative Code on floppy disks--were not invited because their interest lay in floppy disks rather than compact disks.

At the May 1994 meeting of the Legislative Management Committee, the publisher presented a proposal to publish a disk containing the North Dakota Century Code, the decisions of the Supreme Court of North Dakota from January 1929, the decisions of the Court of Appeals of North Dakota from November 1987, and the North Dakota Administrative Code. Under the proposal, each member of the North Dakota Supreme Court, Court of Appeals, and the district court would receive one complimentary subscription to *North Dakota Law on Disc* and 25 complimentary subscriptions would be provided to the Legislative Council, with the prerequisite that the disks be used for state government use only. In exchange, the Michie Company would "retain the exclusive right to sell the North Dakota Century Code in CD-ROM format." The committee accepted the proposal so long as the Michie Company would also provide a complimentary copy of the *North Dakota Law on Disc* to each legislator who requests one for state government use only. The publisher accepted this counteroffer. It should be noted at the time of the committee's counteroffer and the acceptance of the proposal by the publisher, legislators used mainframe terminals and CD-ROM disks are usable only with personal computers. In October 1994 the committee approved a pilot project whereby four notebook computers would be assigned to four legislators during the 1995 session. Since that session, personal computers are now available to all legislators, and 132 legislators used personal computers during the 1999 legislative session.

The publishing of state statutes is a highly competitive business. There are two major

publishers--LEXIS Publishing and West Group. Some states publish their own statutes, and many states have multiple publishers. Although any attempt to categorize states is risky because there is no central clearinghouse on publishing state laws, the following

table, based on information provided by the LEXIS Publishing staff, attempts to show the various practices among the states:

Exclusively LEXIS Publishing	Exclusively West Group	Exclusively State Publishing	Both LEXIS and West Group	Both LEXIS and State	Both West Group and State	State, LEXIS, and West Group	Other Arrangements
Alaska	Louisiana		Alabama	Hawaii	Colorado	Indiana	Florida (State, West Group, and Harrison)
Arkansas	Maine	Montana	Arizona	Nebraska	Connecticut	Massachusetts	Georgia (LEXIS and Harrison)
	New Jersey	Oregon					
Delaware	Oklahoma		California	Nevada	Iowa	Washington	Idaho (LEXIS and Thornton)
					Kansas		
District of Columbia	Pennsylvania		Illinois		Minnesota		
Maryland	South Carolina		Kentucky		Missouri		New York (LEXIS, West Group, and Gould)
Mississippi	Texas		Michigan				Ohio (West Group and Anderson)
New Mexico			New Hampshire		Wisconsin		
North Carolina							
North Dakota							
Puerto Rico							
Rhode Island							
South Dakota							
Tennessee							
Utah							
Vermont							
Virgin Islands							
Virginia							
West Virginia							
Wyoming							

The Legislative Council staff asked the publisher of the North Dakota Century Code for price comparisons between LEXIS Publishing and West Group, and the table entitled *Comparison of State Code Prices for LEXIS Publishing and West Group* is attached as Appendix A. The price for the North Dakota Century Code is at the top of this table, and that price, for the full set and the price for supplements, indexes, and replacement volumes, should be compared with the prices paid by other states. As the state has already purchased sufficient full sets, the relevant information from the standpoint of state appropriations is the column entitled "upkeep."

Following the 1999 legislative session, West Group staff contacted the North Dakota Legislative Council staff and opened discussion regarding the publishing of the North Dakota Century Code. Copies of the following correspondence is relevant:

1. Letter from Ms. Katherine Ver Weyst, Attorney Editor for West Group and former

Code Revisor for the North Dakota Legislative Council, dated April 14, 1999, in which she raises the issue of opening the bidding process to West Group. This letter is attached as Appendix B.

2. Letter from Mr. John Walstad, Code Revisor, North Dakota Legislative Council, dated April 26, 1999, in which he asked questions regarding precedents, contractual rights, transition, types of publications and services, and cost. This letter is attached as Appendix C.
3. Letter from Mr. Tim Nixon, Manager of Legislative Relations, Government Relations and Contracts, West Group, dated August 24, 1999, in which Mr. Nixon responds to the questions raised in the previous letter. This letter is attached as Appendix D.

On September 14, 1999, three members of the West Group staff--Tim Nixon, Katherine Ver Weyst, and Shari Hendrickson (Government Relations

Specialist), came to Bismarck to meet with the North Dakota Legislative Council staff. At the conclusion of that meeting, the North Dakota Legislative Council staff told the West Group staff that they were satisfied with the services provided by the current publisher, that they believed there would be substantial staff time required to implement a change in publisher, that comparison of prices with other states gave no basis to believe West Group was providing the services for comparable or reduced prices to other states, and that it was possible that copyright questions could make a change in publishers costly. The staff also discussed the propriety of discussing specific copyright issues prematurely as it may be necessary to protect the interests of the state if the state should wish to change publishers at some time in the future. From the standpoint of the North Dakota Legislative Council staff, the burden is on West Group to articulate why it would be in the interests of the state to open the publishing contract to competitive bidding.

The response of the West Group staff is found in a letter from Mr. Nixon dated September 23, 1999, which is attached as Appendix E. The West Group

staff has also contacted North Dakota legislative leaders expressing the same interest as found in the original letter from Ms. Ver Weyst dated April 14, 1999.

The North Dakota Century Code is 40 years old. The Revised Code of 1913 lasted 30 years, and the Revised Code of 1943 lasted only 17 years. The North Dakota Century Code has a more flexible organizational style and is designed to last indefinitely. This flexibility has allowed the code to grow from the original 14 volumes to 24 volumes today, including a soft cover index and a soft cover Court Rules volume. There may be a time when it is determined the North Dakota Century Code needs to be replaced, and that would appear to be an ideal time to invest the time to consider all options. Any consideration of changing the method of publishing state laws should include the impact that change would have on the workload of the Legislative Council staff and should include participation by stakeholders other than state government.

ATTACH:5