

IDAHO CODE COMMISSION

Minutes

August 3, 2021-10:00 a.m.

Capitol Building , Room E205, Secretary of State Conference Room
700 W Jefferson, Boise ID 83702

A Code Commission meeting was held on Tuesday, August 3, 2021, pursuant to notice, at the office of the Idaho Secretary of State, in Boise, Idaho. In attendance were Jill Holinka, with Andrew Doman and Jeremy Vaughn via Teams and telephone.

Others in attendance were Lawrence Denney, Secretary of State and Lisa Mason with the office of the Secretary of State, Dennis Dougherty, Nikki Dougherty, and Anders Ganten with Lexis Nexis.

Andrew Doman thanked everyone for meeting regarding the publication contract. Nikki Dougherty confirmed that all the commission is doing is updating the prices on the agreement to be consistent with changes in the consumer price index. Looking at the last three years of the contract, after the first year there was 2.7% increase from the 2018 pricing. Then there was a 2.8% increase and then a 2.7% increase for the total package price. The price has remained consistent and always below the 3% cap. The proposal for this next contract is a 2.6% increase over the 2021 pricing.

Commissioner Doman said that in reviewing the previous contract, he felt that there should be a provision added in the event the legislature did not fund the full amount so they would not be bound by those terms. He also asked if the commission wanted to keep the provisions regarding e-format. Commissioner Holinka said it should be available to those who want that option. Nikki and Anders said that they have it available in nearly every jurisdiction and find it useful to keep the option.

Commissioner Doman also stated that there should probably be a change in the language in paragraph 13 in reference to "The Commission shall not disclose such information to any third party". Because of public records requests, possibly put language in that states we will not release proprietary information. We can protect proprietary information but we need to make sure that we specify that so we are able to be in compliance with the Idaho Public Records Act. He asked if there were any other concerns with the general terms of the agreement itself. Commissioner Holinka also said that we need to make sure that we are following the Idaho Public Records Act.

Because of the recent queries from Public Resource, Commissioner Holinka asked if there something we should consider in terms of if there is a court case out there that would make it not even an option. Nikki had sent Commissioner Doman a copy of the public records court case from the US Supreme Court and he has read it in detail. He stated that we are different from Georgia in the fact that we are not a branch of the legislature. In our code, the copyright is passed on to the publisher. Maybe language should be added if during any point of the contract, regarding if the legislature or by judicial decision, there would be a waiver of copyright. Anders said that in their view, the Georgia situation is unique to Georgia in that they vote on an

annotated code once a year. Situation in Idaho is it somewhat different. He recommends that the commission leave it as is for now. Language can be added regarding judicial decision but otherwise stay the course as much as possible and we can always add clarification later. Adding judicial decision would protect publisher more but is fine either way. Commissioner Holinka said she doesn't have a strong opinion either way. Commission Vaughn said he is for adding language about a judicial decision, but otherwise leave it as is. Commission Doman said he would like to add the judicial language.

It was requested that Nikki send the document in a Word copy to the commissioners to put together some language and then review it with the publisher as soon as possible. Commissioner Doman asked if there were any other things that need to be clarified in the agreement. All commissioners said no.

Commissioner Doman said he one more thing to bring to the board that wasn't on the agenda regarding the public records request from Mr. Malamud. He suggested Brian Kane from the Attorney General's office should take a look at it and clarify what documents need to be sent to fulfill the request. He will call Brian and then coordinate with Lisa Mason to send the required documents.

Andrew added again that Anders made a very good point regarding the Georgia case. Idaho is in a different situation than Georgia and it makes sense to do what we are doing.

No further business to be brought forward. Meeting was adjourned.