



1988

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Recommended Citation

Vincent C. Henderson II, *The Creation of the Arkansas Code of 1987 Annotated*, 11 U. ARK. LITTLE ROCK L. REV. 21 (1988).

Available at: <https://lawrepository.ualr.edu/lawreview/vol11/iss1/2>

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THE CREATION OF THE ARKANSAS CODE OF 1987 ANNOTATED

*Vincent C. Henderson, II**

I. INTRODUCTION

Legal history was made at midnight, December 31, 1987, when the Arkansas Code of 1987, the first code in the state's history, became effective statute law for the State of Arkansas. The Code's thirty-five¹ volumes represent nearly four years of work by the Arkansas Code Revision Commission and its staff, with the input of countless others. This article reviews the history of the codification process and describes the features of the new Code in order to assist in the understanding, use, and interpretation of the Code.

II. A SHORT HISTORY OF STATUTE REVISION IN ARKANSAS

The General Assembly established the Arkansas Statute Revision Commission in 1945 to provide for the creation and publication of what has become known as the Arkansas Statutes of 1947 Annotated.² Prior to creation of the Commission, the General Assembly relied on contractors, usually an attorney or two, to prepare and publish digests of Arkansas statute law. Contracts for the preparation and publication of these digests were made and moneys were appropriated every ten to twenty years.

William McKinley Ball and Samuel Roane prepared the first collection of Arkansas statute law.³ After its adoption in 1838 by the

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I would like to thank the staff of the Commission for their assistance in preparing this article, especially Eric Williams and Rebecca Sharp Hamilton.

1. The thirty-five volume set consists of one constitution volume, one rules volume, one tables volume, three general index volumes, and twenty-nine volumes containing the statute law.

2. Act of Feb. 14, 1945, No. 50, 1945 Ark. Acts 98 (codified at ARK. CODE ANN. § 1-2-301 *et seq.* (1987)).

3. In 1836, the General Assembly passed "An act providing for the Revision of the Laws of the State of Arkansas", which provided for the Governor to appoint, with the advice and consent of the Senate, "two competent persons to revise and arrange the statute laws of this state, and prepare such a code of civil and criminal laws as, in their opinion, may be necessary for the government of this state. . . ." Samuel Roane and William McKinley Ball were chosen to compile the Revised Statutes of Arkansas.

Samuel Calhoun Roane was born in Mecklenburg County, North Carolina, in 1793. In

Arkansas General Assembly,⁴ Albert Pike,⁵ editor, published that document as the Revised Statutes of 1838. Since that time, lawyers, judges, public officers, and laity have relied on various digests of the statute law. Each of these digests was merely a collection of the General Assembly's enactments that, in the opinion of the digesters, were then in force, combined with the immediately preceding digest. The digesters arranged the enactments under very broad subject areas and placed the subject areas in alphabetical order. With the exception of the Chapters of the Digest of 1869, the digests were only prima facie evidence of the law. These digests include English's Digest of 1848, Gould's Digest of 1858, Chapters of the Digest of 1869, Gantt's Digest of 1874, Mansfield's Digest of 1884, Sandels and Hill's Digest of 1894, Kirby's Digest of 1904, Kirby and Castle's Digest of 1916, Crawford and Moses' Digest of 1921, and Pope's Digest of 1937.

Prior to the adoption of the 1987 Code, the General Assembly made its only attempt since statehood to enact a body of law when it

his early youth, he moved to Tennessee and later became a major during the War of 1812. He later moved to the Missouri Territory. When the Territory of Arkansas was formed in 1819, Roane, who was a friend of President Andrew Jackson, was appointed United States Attorney for the territory. Roane moved to Little Rock in 1820 where he began his law practice and became a prominent land lawyer. When Arkansas was admitted as a state in 1836, Roane was elected to the State Senate and was chosen to preside over it. That same year, he was a member of the state's Constitutional Convention.

William McKinley Ball was a prominent and popular Washington County lawyer during the 1830's. In 1836, he was elected to the Arkansas Senate without opposition and nominated for the position of judge of the Arkansas Supreme Court. He was also a member of the Constitutional Convention of 1836.

4. Act of Dec. 14, 1838, 1838 Ark. Acts 27 (uncodified), which declared the "revised code by Wm. McK. Ball and Samuel C. Roane, Esq's, printed under the superintendence of Albert Pike, be, and the same is hereby declared to be, the law of Arkansas. . . ."

5. Albert Pike (1809-1891), a man of gifted intellect, lived to become one of the last links between pioneer territorial and post-reconstruction jurisprudence, according to the biographer, Goodspeed. After anonymously writing a few controversial articles to the "Arkansas Advocate" newspaper, Pike accepted the position of editor with the newspaper and removed to Little Rock. Although a Whig, Pike was elected Secretary of the Legislative Council by the Democrat-controlled upper house of the territorial legislature. During this time he edited, set type, and studied law. Pike became an owner of the "Arkansas Advocate" by 1835, and was licensed to practice law in 1836.

Pike broke the connections between the Governor and the official state printer when the "Arkansas Advocate" was named the new state printer. He also was appointed as the constitutional convention printer when, through the newspaper, he supported the fight for statehood and the proposed constitution.

Pike quickly established his reputation as an effective lawyer in the state and district courts, according to one biographer, becoming one of the territory's leading lawyers at the age of twenty-nine. He served as the first Supreme Court Reporter from 1836 to 1848, publishing the Reports as he had previously published the Arkansas Form Book.

Pike was appointed to supervise the publishing of the Revised Statutes of 1838 compiled by William McKinley Ball and Samuel C. Roane.

tried to enact the Chapters of the Digest of 1869 into positive law. This effort failed when the Arkansas Supreme Court struck down almost all of the Chapters of the Digest as having been passed unconstitutionally.⁶ This was the result of substantive changes, additions, and deletions made in the statute law in the preparation of the Digest by the constitutional revision commission, which was without constitutional authority to make such changes pursuant to the Arkansas Constitution of 1868.⁷

By 1945, the increasing volume of legislation made it apparent that a more effective vehicle was needed for the state's statute law. The General Assembly established the Arkansas Statute Revision Commission by Act 50 of 1945.⁸ Pursuant to a contract authorized in 1945 by the General Assembly,⁹ the Commission secured the services of the Bobbs-Merrill Publishing Company to prepare the latest digest of Arkansas' statutes. The Commission entered into a second contract authorized by the General Assembly in 1947 with the Bobbs-Merrill Publishing Company to provide for the publication of the Arkansas Statutes of 1947 Annotated.¹⁰

The Arkansas Statutes of 1947 Annotated was arranged by subject matter in a more orderly fashion than its predecessors and was indexed to allow easier access and use. Since 1947, the number of acts adopted by the General Assembly has increased dramatically, and it has become increasingly difficult for the compiler to logically integrate the later acts into the outdated and restrictive format used in the Arkansas Statutes of 1947 Annotated.¹¹ Integration of later acts was also made more difficult because the Arkansas Statutes of 1947 Annotated did not reserve any sections, chapters, or titles for future expansion of the compilation resulting from new enactments.

In 1976, the Arkansas Bar Association appointed a committee to

6. *Vinsant v. Knox*, 27 Ark. 266 (1871).

7. Because of the substantive changes, additions, and deletions of the law by the constitutional revision commission, the Arkansas Supreme Court held that each chapter should have been treated as a separate bill and passed in the proper manner and form. The court, in dicta, declared most of the Chapters of the Digest unconstitutional because no record was made of the third reading and final passage of several chapters, 27 Ark. at 281, several chapters did not have enacting clauses attached, 27 Ark. at 282-286, and several chapters were approved by the governor in batches, rather than separately, 27 Ark. at 287.

8. Act of Feb. 14, 1945, No. 50, 1945 Ark. Acts 98 (codified at ARK. CODE ANN. § 1-2-301 *et seq.* (1987)).

9. *Id.*

10. Act of Mar. 19, 1947, No. 282, 1947 Ark. Acts 617.

11. Over 15,000 acts have been adopted by the General Assembly since 1947. Almost as many acts have been adopted in the past forty years as were enacted during the 110 years prior to the publication of the Arkansas Statutes of 1947 Annotated.

study the Arkansas Statutes of 1947 Annotated and to propose solutions to the problems found in the statutes.¹² In its study, this committee determined that the essential prerequisites for the revision of the statutes were that the Statute Revision Commission have funds sufficient to enable it to properly supervise and direct the work of the publisher and that the commission engage a publisher who would be willing to accept the state's financial requirements.¹³

In 1983, the General Assembly adopted the committee's recommendations.¹⁴ The General Assembly reconstituted the Statute Revision Commission with liaison membership from each house of the General Assembly and established the Statute Revision Fund supported by a twenty-five cent fee collected on every civil case filed in the circuit, chancery, and probate courts and for every criminal conviction in the circuit and municipal courts.¹⁵ Moneys were appropriated from that fund to provide the necessary staff to engage a publisher to prepare the Code without the state underwriting the cost.¹⁶

In 1987, after enacting the Arkansas Code of 1987, the General Assembly changed the name of the commission to the Arkansas Code Revision Commission.¹⁷ The present voting membership of the Arkansas Code Revision Commission consists of three members appointed by the Arkansas Supreme Court¹⁸ and three ex officio members who are the deans of the two law schools and the Attorney General or his designee.¹⁹ One nonvoting observer member is ap-

12. Unpublished minutes, Arkansas Bar Association House of Delegates semi-annual meeting, January 22, 1976, p. 50.

13. Unpublished minutes, Arkansas Bar Association House of Delegates special meeting, September 16, 1976, pp. 69-76; unpublished minutes, Arkansas Bar Association House of Delegates annual meeting, June 4, 1976, p. 15, and attachment 4, which is a resolution adopted by the House of Delegates resolving "that the Arkansas Statute Revision Commission authorize the publication of a new and complete statutory code for the State of Arkansas and that such code be prepared by a law book company engaged solely in the publication of law books and with computer capability."

14. Unpublished minutes, Arkansas Bar Association House of Delegates special meeting, September 11, 1982, pp. 61, 62. Act of Mar. 22, 1983, No. 641, 1983 Ark. Acts 1394 (codified at ARK. CODE ANN. § 1-2-301 *et seq.* (1987)).

15. Acts of Mar. 22, 1983, Nos. 641, 651, 1983 Ark. Acts 1394, 1414 (codified at ARK. CODE ANN. §§ 1-2-301 to -306 (1987)).

16. Act of Mar. 22, 1983, No. 640, 1983 Ark. Acts 1130-A.

17. Act of Mar. 19, 1987, No. 334, 1987 Ark. Acts 932 (Adv. Leg. Ser.) (codified at ARK. CODE ANN. § 1-2-301 *et seq.* (1987)).

18. The present court-appointed members are: William S. Arnold, Chairman; William H. (Buddy) Sutton; and Douglas O. Smith, Jr.

19. The present ex officio members are: J.W. (Jake) Looney, Dean of the University of Arkansas at Fayetteville School of Law; Lawrence H. Averill, Jr., Dean of the University of Arkansas at Little Rock School of Law; and R.B. Friedlander, Attorney General's designee.

pointed from each house of the General Assembly. A State Senator is appointed by the Senate Committee on Committees,²⁰ and a State Representative is appointed by the Speaker of the House of Representatives.²¹

III. THE CONTRACT BETWEEN THE COMMISSION AND THE MICHIE COMPANY

In 1984, after examining draft bid specifications derived from other states' code editing and publishing contracts, the Commission sent the draft bid specifications to several law publishing companies for any comments concerning the adequacy, fairness, and reasonableness of the specifications. After receiving and considering those comments, the Commission solicited bids from publishers in the United States, Canada, and Great Britain to furnish a manuscript of a code of law for Arkansas.²² In August 1984, the Commission accepted the bid of the Michie Company of Charlottesville, Virginia (Michie), to produce the Code. The Commission and Michie agreed that the contract would run for a period of ten years beginning with the date of initial publication of the Code. All of Michie's publication costs are to be recouped on sales of the Arkansas Code of 1987 Annotated, and none of this cost has been borne by the State of Arkansas.

The provisions of the contract with the publisher are advantageous to the State of Arkansas, giving the state more control over the publication of its statute law than ever before. For example, under the contract, the State of Arkansas owns the copyright to the Arkansas Code of 1987 Annotated, whereas all reprints of volumes and supplements of the Arkansas Statutes of 1947 Annotated are copyrighted in the name of the publisher. This ownership will enable the state, after the expiration of the contract, to renegotiate with the present publisher, find a new publisher, or publish the Code on its own.

20. The nonvoting observer member from the Senate is State Senator Mike Beebe.

21. The nonvoting observer member from the House of Representatives is State Representative J.L. (Jim) Shaver, Jr.

22. Bids were solicited from Butterworth Legal Publishers, Inc., Austin, Texas, a subsidiary of Butterworth Ltd. of London, England; West Publishing Co., St. Paul, Minnesota; Banks-Baldwin Law Publishing Co., Cleveland, Ohio; The Michie Company, Charlottesville, Virginia; Callaghan & Company, Wilmette, Illinois; George T. Bisel Company, Philadelphia, Pennsylvania; Equity Publishing Co., Orford, New Hampshire; Lawyers Co-operative Publishing Co., Rochester, New York; Allen Smith Co., Indianapolis, Indiana; Carswell Legal Publishers, Agincourt, Ontario, Canada; The Harrison Co., Publishers, Norcross, Georgia; and Anderson Publishing Co., Cincinnati, Ohio.

Bids were submitted by West Publishing Co., Lawyers Co-operative Publishing Co., and the Michie Company.

The contract also required the publisher to develop a computerized data base tape of the Code, index, and all supplements and to deliver that data base tape to the Commission at no cost to the state. However, during the term of the contract, the state's use of the data base is limited to governmental and academic use. In the future, the data base tape will prove valuable for legal research and bill drafting purposes by the Bureau of Legislative Research, the Arkansas General Assembly, the Attorney General, the Governor, the two law schools, and other governmental officers and entities. The quality of bill drafting should improve because drafters will be better able to find all the law on a particular subject and determine the effect of a proposed bill upon that law. The quality of the Code should improve as bills are drafted with the classification and organization system of the Code kept in mind and as the logic of the system is imposed consistently.

The contract requires the publisher to issue supplements to the Code within ninety days of the end of each legislative session. Although all nonemergency acts are effective ninety days after the end of a legislative session,²³ the purchasers of the Arkansas Statutes of 1947 Annotated sometimes did not receive supplements until four or five months after the end of a legislative session. The supplements now will be issued by the time the law is effective and will be made available promptly. Users are thus assured that they will have all the law of a general and permanent nature available by the time those acts become effective pursuant to our Constitution.²⁴ Further, the Commission may direct when and how future replacement volumes of the Code are to be published and issued. The Commission must also approve the price of sets of the Code, replacement volumes, and all future supplements.

The Code was published November 10, 1987, with the effective date of the Arkansas Code of 1987 at 12:00 midnight, December 31, 1987.²⁵ A set of the 1987 Code consists of thirty-five volumes of about 850 pages each and costs \$950 per set as fixed by the contract. The price of future publications of the Code and its supplements will be set by agreement between the Commission and the publisher.

In effect, the contract makes a regulated public utility of the publisher since the publisher can take no action relative to the Code dur-

23. ARK. CONST. amend. 7; *Fulkerson v. Refunding Board of Arkansas*, 201 Ark. 957, 147 S.W.2d 980 (1941).

24. ARK. CONST. amend. 7.

25. ARK. CODE ANN. § 1-2-118 (1987).

ing the ten-year period of the contract without the approval of the Commission. For the first time in its history, the State of Arkansas has continuing control over the publication of its statute law. The state is in a position to avoid and prevent the recurrence of problems, errors, and mistakes made in the compilation of the Arkansas Statutes of 1947 Annotated. In the future, this control will allow the state to revise its statute law without the assistance of a law publishing company.

IV. CREATING THE ARKANSAS CODE OF 1987

A. Organization of Code

Upon entering into a contract with the Michie Company in August 1984, the Commission and the publisher began analyzing the eighty-five titles or subject areas of the Arkansas Statutes of 1947 Annotated as to the overall subject matter contained in them. The publisher submitted a list of forty-seven proposed titles for the Code.²⁶ The Commission narrowed the number of titles for the Code to the following twenty-eight titles:

1. General Provisions
2. Agriculture
3. Alcoholic Beverages
4. Business and Commercial Law
5. Criminal Offenses
6. Education
7. Elections
8. Environmental Law
9. Family Law
10. General Assembly
11. Labor and Industrial Relations

26. The titles suggested by Michie were: General Provisions; Agriculture; Alcoholic Beverages; Animals; Aviation; Banking and Finance; Civil Practice; Commerce and Consumer Protection; Commercial Code; Conservation and Development of Resources; Corporations, Partnerships and Associations; Correctional Facilities; Courts; Crimes and Offenses; Criminal Procedure; Domestic Relations; Education; Elections; Evidence; Food, Drugs and Cosmetics; Game and Fish; General Assembly; Guardians, Fiduciaries and Trusts; Health and Safety; Highways, Roads, Bridges and Ferries; Insurance; Labor and Industrial Relations; Law Enforcement Officers and Agencies; Libraries, Archives and Historical Preservation; Local Government; Mental Health; Military and Veteran's Affairs and Emergency Services; Minors; Motor Vehicles and Traffic; Professions, Occupations and Businesses; Property; Public Finance; Public Officers and Employees; Public Property; Public Works; Retirement and Pensions; Revenue and Taxation; Social Services; State Government; Utilities and Carriers; Waterways and Navigation; Wills and Decedents' Estates.

12. Law Enforcement, Emergency Management, and Military Affairs
13. Libraries, Archives, and Cultural Resources
14. Local Government
15. Natural Resources and Economic Development
16. Practice, Procedure, and Courts
17. Professions, Occupations, and Businesses
18. Property
19. Public Finance
20. Public Health and Welfare
21. Public Officers and Employees
22. Public Property
23. Public Utilities and Regulated Industries
24. Retirement and Pensions
25. State Government
26. Taxation
27. Transportation
28. Wills, Estates, and Fiduciary Relationships

The Commission decided on broader titles to make reclassification of the statutes less complicated and to give users of the Code larger targets to hit when doing research in the Code, thus decreasing the need for extensive intertitle cross-referencing.

B. Classification of Law

The publisher and the staff of the Commission then began a section-by-section reading, review, and analysis of the Arkansas Statutes of 1947 Annotated. The various sections of statute law were classified according to the new title scheme. During the title-by-title examination of the drafts of the Code, the publisher and the staff of the Commission made some transfers of sections to another title²⁷ and duplications of sections in two or more titles.²⁸ Acts and parts of acts which could not be accounted for in the Arkansas Statutes of 1947 Annotated were reviewed by the publisher and the staff. Upon approval of the Commission, the publisher placed in the Code any provisions that were not compiled but which should have been compiled. Some of these uncompiled provisions were derived from general legis-

27. See, e.g., ARK. STAT. ANN. § 77-118 (originally classified at ARK. CODE ANN. § 20-20-302 in the first phase of codification but later reclassified and transferred to ARK. CODE ANN. § 2-16-302 (1987)).

28. See, e.g., ARK. CODE ANN. § 16-65-108 (1987) and ARK. CODE ANN. § 16-90-103 (1987).

lation that the compilers in the past had erroneously classified as local, special, or temporary. Many of these uncompiled provisions were overlooked because they were embedded in appropriation acts. This material consisted of over 200 acts or parts of acts enacted since 1907.²⁹

C. Numbering System of the Code

The titles, chapters, and subchapters are keyed to a three-unit numbering system, e.g., § 5-10-201. The principle behind the new numbering system is that, insofar as possible, every hierarchical level (title-chapter-subchapter-section) within the Arkansas Code will be linked to a unique number. The first unit indicates the title, the second unit indicates the chapter, the first digit of the third unit indicates the subchapter, if any, and the last two digits of the third unit indicate the section. In a chapter with only one subchapter, the first digit of the third unit will always be "1". The numbering system does not reflect the particular subtitle involved, if any. The new numbering system was necessary because the present statute law has simply outgrown the two-unit numbering system used in the Arkansas Statutes of 1947 Annotated.³⁰ The new system will allow the Code to accommodate greater expansion, growth, and development of statute law without straining the classification, organization, and numbering system.³¹

D. Chapter and Subchapter Organization

Within each title, the publisher organized the statutory material into coherent chapters containing material related by subject matter. Where necessary, some large titles were also divided into subtitles in order to group chapters into broad subject areas³² or to clarify the organization of certain titles.³³ The publisher then divided chapters into subchapters on specific topics. To the extent possible, discrete acts were kept together as separate chapters or subchapters.

Every title and subtitle contains a "General Provisions" chapter,

29. See, e.g., ARK. CODE ANN. § 14-298-122 (1987) (formerly uncompiled Act of Mar. 7, 1963, No. 185, §§ 1 and 2, 1963 Ark. Acts 551).

30. See, e.g., ARK. STAT. ANN. §§ 75-266.1 — 75-266.18. The decimal numerals were necessary because no adequate space was reserved for new legislation. Also, Arkansas Statutes Annotated section numbers with letters after the numbers were common and exemplify the inability of the classification system to cope with the ever-increasing amount of new legislation.

31. 321 sections, 120 subchapters, 887 chapters, and 5 subtitles were expressly reserved.

32. See, e.g., title 14, Local Government.

33. See, e.g., title 26, Taxation.

and every chapter with subchapters contains a "General Provisions" subchapter consisting of, or reserving space for, statutes which govern the subject of the subtitle or chapter as a whole or which do not fit easily into the chapter or subchapter scheme.

Within each chapter and subchapter, standard types of sections, if present, are arranged in the following order (uniform laws excepted):³⁴

- Title
- Purpose or legislative intent
- Definitions
- Applicability
- Construction
- General penalties

These sections are followed by the remainder of the sections arranged in logical order. For example, sections which establish procedures follow the order in which each procedural step would occur.³⁵ General penalties applying to whole chapters or subchapters follow the order given above.³⁶ Penalties which apply only to specific Code sections are located near those sections or are combined with them.³⁷

E. Statute Analyses

Analyses, the organizational lists at the beginning of each division of the Code, are carried for titles, chapters, and subchapters. A title analysis lists every chapter in the title, a chapter analysis lists every subchapter in the chapter, and a subchapter analysis lists every section in the subchapter. If a chapter is not divided into subchapters, then the chapter analysis lists every section in the chapter.

V. TEXT EDITING OF THE ARKANSAS CODE OF 1987

A. Corrections of Misspellings and Typographical and Grammatical Errors

The publisher and the Commission relied on *Webster's Third International Dictionary of the English Language*³⁸ and the Arkansas Code Revision Commission spelling list³⁹ to correct misspelled words.

34. See *infra* notes 78-87 and accompanying text.

35. See, e.g., ARK. CODE ANN. § 6-13-201 *et seq.* (1987).

36. See, e.g., ARK. CODE ANN. § 20-18-105 (1987).

37. See, e.g., ARK. CODE ANN. § 20-23-301(b) (1987).

38. Webster's Third International Dictionary of the English Language (Merriam-Webster Pub., 1961).

39. The Commission spelling list was created by the staff throughout the proofreading

The publisher and the Commission corrected typographical errors found in the statutes. To the extent possible, the Commission corrected grammatical errors, especially subject-predicate agreement. If there was any doubt as to the correct spelling of a word,⁴⁰ whether a typographical error was an error,⁴¹ or how to correct a grammatical error,⁴² the language was left as originally enacted.

B. Standardization of Capitalization and Punctuation

The publisher and the Commission changed or corrected capitalization and punctuation to conform to an approved style.⁴³ The general rule that capitals be used as little as possible was enforced. However, guidelines were used with respect to capitalization of certain words that were contrary to the general rule.

The first letter of a proper name was capitalized whenever the full name was used. However, the first letters in "department", "board", "commission", etc. were not capitalized when those words were not used as part of a full name. The exception to the latter guideline was the names of certain constitutional officers in which the first letter of the name is always capitalized. For example, "Governor" for the Governor of Arkansas, "Secretary" for Secretary of the State of Arkansas, and "Speaker of the House" for Speaker of the House of Representatives of the Arkansas General Assembly were always capitalized.

process. When a word used in the Code had two or more possible spellings, one was selected and placed on the list so that throughout the Code the same spelling for that word would be used, for example, "moneys" instead of "monies".

40. See, e.g., ARK. CODE ANN. § 27-49-205(b) (1987) ("Tabliabue").

41. See, e.g., ARK. CODE ANN. § 16-43-801(1) (1987) (Michie suggested that "arbitration" be changed to "arbitrator").

42. For example, ARK. CODE ANN. § 23-38-303(c)(1) states:

"After the association has been served with the notice of the filing of the petition, the chancery court, if in session, and if not in session then in vacation, shall hear the petition. Upon finding that the association is insolvent or is conducting its business in a fraudulent, illegal, and unsafe manner, it shall appoint a receiver or conservator to take over all books, papers, records, and effects of every description belonging to the association, *or on petition filed in chancery court, signed by five percent (5%), in amount, of the share or certificate holders of the association who shall be required to give opposite each person's name the number and amount of shares or certificates held in the association.*" (emphasis added).

Is the petition filed pursuant to the last phrase an alternative to the petition mentioned in the first sentence, an alternative to the necessity of the finding by the chancery court of insolvency or business misconduct for the appointment of a receiver or conservator, or is some language simply missing which would make sense out of the last phrase?

43. Shortly after accepting the bid by Michie, the executive director and the Attorney General's designee on the Commission met with representatives of Michie and agreed upon certain style conventions used in creating the Code.

C. Division and Combination of Sections

Very long sections were split into shorter ones where feasible.⁴⁴ Short, related sections, usually from the same act, were combined into larger sections.⁴⁵ Parts of different sections which govern the same subject were combined where necessary.⁴⁶ In deciding whether to split or combine sections, the publisher and the Commission used the following guidelines:

1. Each section of the Code should be distinct. If a section of an act covered two or more separate subjects, then splitting of that section was indicated. If the same subject governed two or more sections, combination was indicated. But if the thrust of each section was different, although the sections were superficially related, they were not combined.

2. A catchline⁴⁷ describing a section of the Code should also be distinct. If a distinct catchline could not be drafted for a section, then combining of sections was indicated. If a catchline covered two or more separate subjects, then the section was split.

3. The length of sections, subchapters, and chapters and the difficulty of writing appropriate catchlines sometimes affected the decision of whether to split or combine sections. In some very short chapters and subchapters, sections were best left separate.⁴⁸ But if leaving sections separate caused catchlining problems, such as needless repetition of introductory words in the catchlines for very short sections and the sections were closely related, then the sections were combined.⁴⁹

D. Division of Lengthy or Run-on Sentences

The publisher and the Commission broke lengthy or run-on sentences into shorter sentences to improve the clarity and subdivi-

44. See, e.g., ARK. STAT. ANN. § 43-743 (split into ARK. CODE ANN. §§ 17-17-104 and 17-17-108 (1987)).

45. See, e.g., ARK. STAT. ANN. §§ 41-1971 — 41-1974 (combined to become ARK. CODE ANN. § 5-38-212 (1987)).

46. See, e.g., ARK. CODE ANN. § 12-9-103 (1987) (combining ARK. STAT. ANN. §§ 6-623 — 6-626 (Supp. 1985) and ARK. STAT. ANN. § 42-701.1 (Supp. 1985)).

47. A catchline is that bold line running immediately after the section number which is intended to clearly and succinctly describe the Code section as an aid in organizing the Code. See the heading at the beginning of ARK. CODE ANN. § 17-81-208 (1987).

48. See, e.g., ARK. CODE ANN. §§ 14-234-111 and -112 (1987) ("Service to adjacent areas - Cities of the second class.", was left separate from "Service to adjacent areas - Municipalities generally.").

49. See, e.g., ARK. CODE ANN. § 16-118-103 (1987) (combining ARK. STAT. ANN. §§ 34-1601 to 34-1608 under the catchline "Gambling debts and losses.").

sion organization of sections. Sentences with several purported provisos were broken into separate sentences often beginning with "however" instead of "provided".⁵⁰

E. Rearrangement of Sentences, Parts of Sentences, Subsections, and Subdivisions

The publisher and the Commission rearranged sentences, parts of sentences, subsection, and subdivisions to improve clarity and to improve the section, subsections, and subdivision organization of sections. For example, Arkansas Statutes Annotated section 72-545(E) states:

- (E) Any such person, firm or corporation who: (1) furnishes such services to any licensed dentist without first obtaining a written work authorization therefor from such dentist; or
 (2) fails to retain the original work authorization for two (2) years; or
 or
 (3) any violation of this Section shall be a misdemeanor.

As revised, the subsection, which is now Arkansas Code Annotated section 17-82-105(e), reads as follows:

- (e) Any person, firm, or corporation shall be guilty of a misdemeanor if that person, firm, or corporation:
 (1) Furnishes such services to any licensed dentist without first obtaining a written work authorization from the dentist;
 (2) Fails to retain the original work authorization for two (2) years; or
 (3) Commits any violation of this section.⁵¹

50. See, e.g., ARK. CODE ANN. § 1-5-102(a) ("However" substituted for "Provided" as the first word of the second sentence).

51. Another example is the second unnumbered paragraph of ARK. STAT. ANN. § 84-706, which reads as follows:

Each year the board shall, beginning the first day of August, and if deemed necessary, through the first day of September, but not thereafter except when convened in special session, which meeting in special session shall not last beyond the first day of October, except in those counties wherein the assessed value of real and personal property has been found by the assessment coordination department to be below the per centum of true or fair market value as required by law such special session may continue until, but not later than, the third Monday in November of each year, exercise its functions as a board of equalization to equalize the assessed value of all acreage lands, city and town lots, other real property and personal property subject to local assessment, regardless of the year in which such property was last assessed by the local assessor.

As revised, the paragraph is now ARK. CODE ANN. § 26-27-309(c) (1987) and reads as follows:

- (c) The board shall exercise its functions as a board of equalization to equalize the

F. Uniform System of Subsection and Subdivision Designation

The text of the Code was conformed to a uniform system of subsection and subdivision designations to clarify the relationship between different hierarchical levels within a section and to provide a more consistent text. The designation pattern was accompanied by a consistent indentation pattern.

The pattern used for subsection and subdivision designations is as follows:

First level (subsections): (a), (b), (c), etc.

Second level (subdivisions): (1), (2), (3), etc.

Third level (subdivisions): (A), (B), (C), etc.

Fourth level (subdivisions): (i), (ii), (iii), etc.

Fifth - eighth levels: the patterns above were repeated but italicized designations were used. Breakdowns below the second level were discouraged and breakdowns below the fourth level were avoided if reasonably possible.

The first letter of the first word in each subsection and subdivision was capitalized. Subsections and many subdivisions ended in a period, however, items in lists ended in semicolons. Wherever possible, existing subsection and subdivision headings have been retained.

G. Internal References

The publisher translated various references in prior law which were codified in the Code to the correct Code references. Translations were made in nine different situations:

(1) Where, for example, a statute referred to "subparagraph (1) of this section", the reference was changed to "subsection (a) of this section", using the subsection and subdivision designation within the uniform system;⁵²

(2) State acts referred to by name, such as "the Arkansas Compensating Tax Act", were translated to include the first Code section

assessed value of all acreage lands, city and town lots, other real property, and personal property subject to local assessment, regardless of the year in which the property was last assessed by the local assessor, beginning August 1 of each year and, if deemed necessary by the board, through September 1 but not thereafter unless convened in special session which shall not extend beyond October 1. However, in those counties where the assessed value of real and personal property has been found by the Assessment Coordination Division of the Arkansas Public Service Commission to be below the percentage of true or fair market value as required by law, such special session may continue until, but not later than, the third Monday in November of each year.

52. See *supra* part F of this section.

with "et seq." following it, now "the Arkansas Compensating Tax Act, § 26-53-101 et seq.";⁵³

(3) State acts referred to only by act number and year were translated directly to Code section numbers where necessary and possible;⁵⁴

(4) References such as "Section 1 of this act" were translated outright to the correct Code section number or numbers;⁵⁵

(5) References to "this act" were either translated to "this subtitle",⁵⁶ "this chapter",⁵⁷ "this subchapter",⁵⁸ or "this section",⁵⁹ if appropriate, or to Code section numbers.⁶⁰ If a reference to section numbers was unwieldy, the references were explained in a "Meaning of 'this act' " note;⁶¹

(6) References to "the effective date of this act" were translated outright to the actual effective date of the act;⁶² however, references to "date of passage of this act" were left intact, and a publisher's note was placed after the section containing the date of approval and apparent effective date of the section;⁶³

(7) References to numbers were treated in the same way as in the Arkansas Statutes of 1947 Annotated, such as, "twenty-five (25)", "thirty dollars (\$30.00)", or "three hundred dollars (\$300)";⁶⁴

(8) References to federal laws were translated where possible in separate notes entitled "U.S. Code";⁶⁵

53. See, e.g., ARK. CODE ANN. § 23-32-101 (1987) (section references were added after the reference to the Compensating Tax Act).

54. See, e.g., ARK. CODE ANN. § 19-11-102(c)(1) (1987) ("Act 132 of 1965" referred to in ARK. STAT. ANN. § 6-622 (Supp. 1985) was translated to "§§ 26-51-901 — 26-51-917").

55. See, e.g., ARK. CODE ANN. § 12-8-303(9) (1987) (a reference in ARK. STAT. ANN. § 42-470 (Supp. 1985) to "section 5 of this act" was changed in the Code to "§ 12-8-307").

56. See, e.g., ARK. CODE ANN. § 4-1-101 (1987) (translating "this act" in ARK. STAT. ANN. § 85-1-101 (Add. 1961) to "this subtitle").

57. See, e.g., ARK. CODE ANN. § 28-12-111 (1987) (translating "this act" in ARK. STAT. ANN. § 61-411 (Supp. 1985) to "this chapter").

58. See, e.g., ARK. CODE ANN. § 13-5-321(a) (1987) (translating "this act" in the first sentence of ARK. STAT. ANN. § 6-1211 (Supp. 1985) to "this subchapter").

59. See, e.g., ARK. CODE ANN. § 6-17-110(a)(2) (1987) (translating "this act" in ARK. STAT. ANN. § 80-1273 (Supp. 1985) to "this section").

60. See, e.g., ARK. CODE ANN. § 26-50-101(a) (1987) (translating "this act" in ARK. STAT. ANN. § 84-2087 (Repl. 1980) to particular Code section numbers).

61. See, e.g., ARK. CODE ANN. § 14-123-306 (1987).

62. See, e.g., ARK. CODE ANN. § 5-65-101(c) (1987) (translating "the effective date of this act" in Act of Mar. 21, 1983, No. 549, § 1, 1983 Ark. Acts 1153, to "March 21, 1983").

63. See, e.g., ARK. CODE ANN. § 18-12-401 (1987) and the note following.

64. See, e.g., ARK. CODE ANN. § 5-51-303 (1987). The penalty provision is expressed in both words and numbers, even though the Act of Mar. 26, 1941, No. 312, § 2, 1941 Ark. Acts 783, expresses this provision only in words.

65. See, e.g., the note following ARK. CODE ANN. § 13-7-105 (1987).

(9) Code sections referred to in the text and notes to the Code were translated without the use of "Arkansas Code" or some similar reference before the section number, for example, "§ 5-10-201".⁶⁶

Where internal references were clearly incorrect, the publisher corrected them with the approval of the Commission.⁶⁷

H. Obsolescence

In updating the text of the statute law, the publisher corrected agency, board, and commission names and names of officers pursuant to transfers of authority by law.⁶⁸ The language making the transfers was deleted from the text and carried in notes to the appropriate sections.⁶⁹

The publisher and the Commission checked the names of agencies, funds, programs, etc., for accuracy and consistency. Fee, salary, and penalty provisions were also checked for accuracy. As a by-product of the codification process, the Commission prepared a complete list of all funds which still legally exist in the statute law. The locations of all funds in the Code have been identified and the names updated, where necessary, to properly reflect the new names of the agencies, boards, and commissions to which each fund is dedicated.

The publisher, subject to the review and approval of the Commission, deleted all obsolete,⁷⁰ temporary,⁷¹ or superseded⁷² language and sections, and language and sections judicially declared unconstitutional.⁷³ Where possible, the publisher resolved conflicts between sections, subject to the review and approval of the Commission.⁷⁴

66. See, e.g., the references in ARK. CODE ANN. § 16-84-111(c) (1987).

67. For example, the internal reference in ARK. CODE ANN. § 27-15-314(b) initially referred to Act of Apr. 15, 1985, No. 907, § 7, 1985 Ark. Acts 1935, codified at ARK. CODE ANN. § 27-15-312 (1987), but the correct reference was to § 8 of that act, codified at ARK. CODE ANN. § 27-15-313. The correction was made and the new internal reference substituted.

68. See, e.g., ARK. CODE ANN. § 20-22-203 (1987) ("Department of Local Services" changed to "Department of Arkansas State Police, Fire Marshal's Office").

69. See, e.g., publisher's note to ARK. CODE ANN. § 20-22-203 (1987). The publisher's note is derived from Act of Mar. 23, 1983, No. 690, § 1, 1983 Ark. Acts 1545.

70. See, e.g., Act of Mar. 3, 1975, No. 300, § 2, 1975 Ark. Acts 759 (rendered obsolete by repeal of Act of Mar. 3, 1975, No. 300, § 1, 1975 Ark. Acts 759, by Act of Feb. 19, 1981, No. 120, § 32, 1981 Ark. Acts 250).

71. See, e.g., Act of Feb. 14, 1983, No. 192, 1983 Ark. Acts 293-A (classified as "Temporary/Appropriation" in tables volume).

72. See, e.g., ARK. CODE ANN. § 17-12-405 (1987) (Act of Feb. 14, 1983, No. 170, § 1, 1983 Ark. Acts 229, superseded by Act of Feb. 15, 1985, No. 117, § 1, 1985 Ark. Acts 212).

73. See, e.g., Act of Mar. 19, 1981, No. 590, §§ 1-8, 1981 Ark. Acts 1231 (creation science law declared unconstitutional in *McLean v. Arkansas Board of Educ.*, 529 F. Supp. 1255 (E.D. Ark. 1982)).

74. A conflict appeared between Act of Mar. 31, 1913, No. 302, § 36, 1913 Ark. Acts

Otherwise, the publisher inserted explanatory notes.⁷⁵

I. Adoption of Specific Style Conventions

The Commission imposed certain rules for style in preparing the Code. For example, a standard format for definition sections was adopted; certain boilerplate words such as “hereby”, “such”, “said”, and “same”, were deleted or the correct reference was substituted;⁷⁶ a standard citation form for the Arkansas Constitution was used; act names were placed in quotation marks; and a standard format for article headings in compacts was used.

J. Catchlines

The publisher and the Commission prepared catchlines to identify all sections to reflect the new arrangement of statutory material.⁷⁷ Catchlines serve both a hierarchical function and a descriptive function. The hierarchical function gives the user an overview of the contents of the unit by means of quick reference to the analysis of that unit, and the descriptive function gives the user a sufficient representation of the contents of the section or unit.

K. Uniform Laws and Interstate Compacts

Uniform laws and interstate compacts were excepted from the editorial work previously mentioned.⁷⁸ The Commission deemed it advisable to leave these laws in substantially the form in which they were enacted. However, misspellings and typographical errors were corrected. Chapter and subchapter designations were substituted for article or part designations in order to conform to the rest of the Code.⁷⁹ However, the Commission did not apply uniform subsection

1179, and Act of Jan. 27, 1933, No. 3, § 3, 1933 Ark. Acts 4. The publisher asked the Commission if the 1933 act superseded the 1913 act and if the 1913 act could be deleted. Permission was given to delete it. See ARK. CODE ANN. § 27-65-123 (1987).

75. An ACRC note appears under ARK. CODE ANN. § 27-65-130 (1987). It states that the operation of this section was suspended by the adoption of a single blanket bond program for state officers and employees pursuant to ARK. CODE ANN. §§ 21-2-501 to -509 (1987). The note also states that this section may later become effective under certain conditions.

76. See, e.g., ARK. CODE ANN. § 19-1-212(3) (1987) (“obligation” substituted for “same” in the last line); ARK. CODE ANN. § 19-3-206(b) (1987) (“such” deleted from the second line); and ARK. CODE ANN. § 2-16-206(a) (1987) (“hereby” deleted).

77. See *supra* note 47.

78. Since completing the codification process, Commission research has uncovered several model and uniform acts which were not identified as such in the published acts nor in the Arkansas Statutes of 1947 Annotated. Therefore, these acts were inadvertently treated the same as any other legislation. See, e.g., ARK. CODE ANN. §§ 18-11-301 to -307 (1987).

79. Compare Act of Mar. 29, 1979, No. 657, Article 2, 1979 Ark. Acts 1369, and ARK.

and subdivision designations,⁸⁰ or reorder or reorganize sections.⁸¹ Enacted catchlines were used exactly as enacted.⁸² In the case of uniform laws, Code sections were reserved for sections which appear in the uniform laws approved by the National Conference of Commissioners on Uniform State Laws but which were not adopted by the General Assembly.⁸³ Repeal,⁸⁴ separability,⁸⁵ effective date,⁸⁶ and emergency clauses⁸⁷ were codified only in uniform laws.

VI. EXAMINATION, REVIEW, AND APPROVAL OF THE WORK OF THE PUBLISHER

From 1984 to 1987, the staff of the Commission reviewed, examined, reexamined, corrected, and proofread the drafts of the Code prepared by the publisher. After the initial reorganization of the title arrangement of the statute law, the work of preparing the Arkansas Code of 1987 for submission to the General Assembly in 1987 fell into three phases.

In the first phase, the Commission examined on a title-by-title basis the work of the publisher on the first draft of the Arkansas Code of 1987 and considered over 17,200 questions raised by its editors regarding various aspects of Arkansas statute law and the Code. The drafts of the titles, or the relevant parts, and all memoranda from the publisher were sent out to all interested agencies, government entities, public and private officers, lobbyists, interest groups, and associations

CODE ANN. §§ 4-43-201 to -209 (1987). "Subchapter" is substituted for "Article" in Code subchapter headings.

80. Compare Act of Mar. 7, 1961, No. 185, § 2-202, 1961 Ark. Acts 421, and ARK. CODE ANN. § 4-2-202 (1987). The Commission's uniform subdivision designations call for the use of numbers instead of letters in subdivisions that follow an introductory paragraph. See, e.g., ARK. CODE ANN. § 22-2-113 (1987). Since letter designations were used in the act, they were carried over into the Code.

81. For example, sections of the Uniform Criminal Extradition Act appear in the same order in the Code, ARK. CODE ANN. §§ 16-94-201 to -231 (1987) as they do in the original act, Act of Mar. 19, 1935, No. 126, §§ 1-31, 1935 Ark. Acts 353.

82. See catchlines, sometimes called section captions, in Act of Mar. 10, 1967, No. 303, 1967 Ark. Acts 576, and compare them with those of ARK. CODE ANN. Title 4, subtitle 1, the Uniform Commercial Code.

83. See, e.g., ARK. CODE ANN. § 4-42-701 (1987).

84. See, e.g., ARK. CODE ANN. § 9-14-344 (1987). Repealers are usually not codified, as in the case of Act of Mar. 7, 1969, No. 200, § 2, 1969 Ark. Acts 655.

85. See, e.g., ARK. CODE ANN. § 9-14-343 (1987). Separability clauses are usually not codified, as in the case of Act of Mar. 7, 1969, No. 201, § 15, 1969 Ark. Acts 656.

86. See, e.g., ARK. CODE ANN. § 4-10-101 (1987). Effective date clauses are usually not codified, as in the case of Act of Mar. 15, 1961, No. 427, § 5, 1961 Ark. Acts 1320.

87. See, e.g., ARK. CODE ANN. § 4-43-1109 (1987). Emergency clauses are usually not codified, as in the case of Act of Mar. 2, 1979, No. 253, § 12, 1979 Ark. Acts 522, 539.

for their comments concerning the work of the publisher and Commission.⁸⁸ During the title-by-title examination by the legal staff of the Commission, each of the steps taken by the publisher, every decision made concerning the organization and classification of the statute law in the Code, and all editorial work completed were considered and approved or disapproved.⁸⁹ The Commission considered all comments received by parties to whom parts of the Code were sent and, where beneficial, implemented those comments.⁹⁰ During the first phase, the proofreaders of the Commission read the first draft of each title against the Acts of Arkansas for fidelity to the published acts. This phase began in December 1984 and ended fourteen months later in January 1986.

In the second phase, the Commission reviewed and examined on a title-by-title basis the work of the publisher on the second draft of the Arkansas Code of 1987, considered over 2,300 questions raised by the editors regarding Arkansas statute law, and conformed 1985 session legislation to the Code.⁹¹ The drafts of the titles, or the relevant parts, and all memoranda from the publisher were sent out a second time to all interested parties. During the title-by-title examination of the second draft by the legal staff of the Commission, the attorneys checked for compliance with every direction and order given by the Commission to the publisher resulting from the first phase examination.⁹² The attorneys also gave any further instructions and directions for revisions.⁹³ All comments received from parties who reviewed

88. More than 365 parties were contacted in the first phase for comments.

89. The editors at Michie requested that the phrase "(. . . the sheriff when acting as ex officio tax collector)" be deleted in proposed Arkansas Code § 19-8-106, which was derived from ARK. STAT. ANN. § 13-802 (1979), because that particular editor thought that sheriffs no longer collect taxes in Arkansas and that the section was, therefore, obsolete. The Commission directed the editors to put the phrase back in. See ARK. CODE ANN. § 19-8-106 (1987).

90. Representatives of the State Board of Nursing made several suggestions with regard to chapter 86 of title 17 of the Code. For example, the Nursing Board asked that the portion of ARK. STAT. ANN. § 72-746(e) (1979), which defines a certified nurse anesthetist, should either be placed in proposed Arkansas Code § 17-86-102(2) or duplicated there, as well as placed in proposed Arkansas Code § 17-86-305.

91. Because the codification process took four years to complete, the 1985 regular session intervened. The legislation from that session had to be incorporated into the Code to assure that when the Code was adopted and published in 1987 it would contain all the law of a general and permanent nature adopted in Arkansas up to that time.

92. More than 10,300 directions and orders were given to Michie by the Commission during the second phase.

93. For example, Michie editors were directed to change the U.S. Code note after ARK. CODE ANN. § 23-13-252 (1987) to read "Section 20, Subsection 11 of Part I of the Interstate Commerce Act, referred to in this section and formerly codified as 49 U.S.C. § 20(11), was repealed by Public Law 95-473."

parts of the second draft of the Code were considered by the Commission and, where necessary, implemented.⁹⁴ During the second phase, the proofreaders read the second draft of each title against the first draft of the Code while a legislative attorney read along with them from the Arkansas Statutes of 1947 Annotated. The purpose of the attorney reading from the Arkansas Statutes of 1947 Annotated was to insure that any editorial changes that were made during either the first or second phase did not alter the substance or meaning of the law and to discover any errors that existed in the Acts of Arkansas as published under the authority of the Secretary of State. This phase began in February 1986 and ended seven months later in August 1986.

The third phase consisted of the further review and examination on a title-by-title basis of the Legislative Edition of the Arkansas Code of 1987. All of the various parties, associations, officers, and agencies to whom drafts or parts of drafts of the Code were sent during the first two phases were notified that the Legislative Edition had been received and that arrangements could be made with the Commission for the inspection or copying of any part or all of the Code. While the legislative attorneys verified that every direction and order given by the Commission to the publisher resulting from the first and second phase examinations had been complied with by the publisher, the proofreaders of the Commission read the Legislative Edition against the second draft. Upon completion of this phase, the Commission compiled a document, known as the technical corrections document, which consisted of corrections of errors resulting from the failure of the publisher to carry out the orders of the Commission,⁹⁵ corrections of errors made in codifying the statute law which were discovered after the publication of the Legislative Edition,⁹⁶ and corrections of

94. Upon the suggestion of Frank Newell, an administrative law judge with the Arkansas Workers' Compensation Commission, one of the drafters of the Arkansas Criminal Code, and the author of the updated commentaries to the Criminal Code, the Commission directed Michie to revise the draft of Ark. Code §§ 5-10-101(b), 5-10-102(b)(1), and 5-10-104(b)(1) to substitute the phrase "homicidal act" in Ark. Code Ann. §§ 5-10-101(b), 5-10-102(b)(1), and 5-10-104(b)(1) (1987), for the phrase "homicide act" which was the original language used in the Criminal Code.

95. Occasionally, agencies, boards, and commissions were not uniformly referred to in the Code pursuant to the spelling list prepared by the Commission, and Michie was directed to convert these references to the accepted and current nomenclature. For example, the Arkansas Code Legislative Edition § 18-44-502 retained the name "State Highway Department". The department is now referred to as the Arkansas State Highway and Transportation Department. The Commission put the correction, which is found at ARK. CODE ANN. § 18-44-502 (1987), in the technical corrections document.

96. See, e.g., ARK. CODE ANN. § 12-64-108(d)(1) (1987) (The word "offenders" was sub-

internal references which could not be made until after the initial publication of the Legislative Edition.⁹⁷

During the third phase, the Commission compiled a list of acts by Code section which were codified but which were constitutionally suspect as a result of *Ricarte v. State*⁹⁸ and *Wells v. Riviere*.⁹⁹ The list was necessary as a result of the limitation placed on the Commission by the General Assembly that no change in the substance or meaning of the law be made during the codification process.¹⁰⁰ As the inclusion of those suspect acts in the Code might have altered the substance or meaning of the law, they had to be dealt with one way or another: either deleted from the Code, expressly repealed, or expressly enacted. By a series of acts,¹⁰¹ the 1987 General Assembly enacted the suspect legislation anew.

The Commission submitted its work, the Arkansas Code of 1987, the bill for adoption of the Code, and the technical corrections docu-

stituted in the technical corrections document for the incorrect word "officers" in the Arkansas Code Legislative Edition § 12-64-108(d)(1)).

97. For example, ARK. CODE ANN. § 19-6-301 (1987) contains internal references converting Arkansas Statutes Annotated sections designating which agencies, departments, institutions, commissions, and boards codified throughout the Code are to deposit special revenues into the State Treasury. In subdivision (100) of that section, reference to Section 8 of Act No. 285 of 1971, as amended, § 73-1915, was converted in the technical corrections document to §§ 23-15-211, 23-15-214, and 23-15-216.

98. 290 Ark. 100, 717 S.W.2d 488 (1986).

99. 269 Ark. 156, 599 S.W.2d 375 (1980).

100. The following acts were adopted by the General Assembly during the extended session of 1975 held in 1976 and were deemed of sufficient importance to be presented to the General Assembly for consideration and repassage during the 1987 regular session: Acts 1975 (Ext. Sess. 1976), Nos. 1014, 1015, 1056, 1081, 1099, 1107, 1111, 1126, 1131, 1132, 1134, 1140, 1141, 1149, 1175, 1186, 1195, 1216, 1218, and 1238.

101. Of those acts comprising the Commission's list of suspect acts passed in the extended session of 1975, Acts 1975 (Ext. Sess. 1976), Nos. 1081, 1111, 1126, 1131, 1132, 1134, 1140, 1149, 1218, and 1238 were deleted from the Code; Act 1975 (Ext. Sess. 1976) No. 1014 was repealed by Acts 1987, No. 945, codified at ARK. CODE ANN. § 19-5-501 (1987); Acts 1975 (Ext. Sess. 1976) No. 1056, was deemed superseded by Acts 1987, No. 928, § 3, codified at ARK. CODE ANN. §§ 19-5-309 and 19-5-1025 (1987); Acts 1975 (Ext. Sess. 1976) No. 1099, was reenacted by Acts 1987, No. 1021, codified at ARK. CODE ANN. § 20-13-210(b)(1) and (2) (1987); Acts 1975 (Ext. Sess. 1976) No. 1107, was reenacted by Acts 1987, No. 1022, codified at ARK. CODE ANN. § 20-77-106 (1987); Acts 1975 (Ext. Sess. 1976) No. 1175, was reenacted by Acts 1987, Nos. 283 and 364, codified at ARK. CODE ANN. § 16-13-315(g) and (h) (1987); Acts 1975 (Ext. Sess. 1976) No. 1186, was reenacted by Acts 1987, No. 1023, codified at ARK. CODE ANN. § 21-2-114 (1987); Acts 1975 (Ext. Sess. 1976) No. 1195, was reenacted by Acts 1987, No. 1024, codified at ARK. CODE ANN. § 15-31-110 (1987); Acts 1975 (Ext. Sess. 1976) No. 1216, was reenacted by Acts 1987, No. 1025, codified at ARK. CODE ANN. §§ 2-33-306 and 2-33-307(b) (1987); Acts 1975 (Ext. Sess. 1976) No. 1015, was restated by amendment in Acts 1983, No. 627, codified at ARK. CODE ANN. § 15-4-211(a) and (b)(1) (1987); and Acts 1975 (Ext. Sess. 1976) No. 1141, § 5, amended Acts 1975, No. 1003, § 4, codified at ARK. CODE ANN. § 19-5-308 (1987) with no reenactment.

ment to the Arkansas General Assembly for adoption as the Arkansas Code of 1987 during the 1987 regular session. The General Assembly adopted the Code as Acts 1987, No. 267.

VII. ENACTMENT AND EFFECT OF THE NEW CODE

A. Bill Enacting the Code

Upon enactment, House Bill 1471 of the regular session of the 76th General Assembly became Act 267 of 1987, the Arkansas Code of 1987.¹⁰² Because of the questions raised by *Vinsant v. Knox*,¹⁰³ the bill included the 191-page Code bill and technical corrections document and incorporated the Arkansas Code of 1987 Legislative Edition expressly. Both parts were filed together as one bill.¹⁰⁴

Although a bill to adopt a code must meet the same requirements as any other bill to adopt a law, the joint rules were suspended to allow some minor departures from certain legislative rules pertaining to form and procedure, that is without numbered lines on bill paper, because of the size and volume of the Code. For the same reason, the requirement that the pages of the bill be perforated was suspended. The requirement that the bill be reproduced for placement upon the desks of the members of the General Assembly was also suspended since each member of the General Assembly was issued by the Commission a copy of the Code bill and Legislative Edition upon filing of the bill in each house.¹⁰⁵ Otherwise, the bill was treated as any other bill.

102. House Bill 1471 was introduced in the House of Representatives by Representative J.L. (Jim) Shaver on February 4, 1987. After first and second reading on that date, the Speaker referred the bill to the House Judiciary Committee. The Committee gave the bill a do pass recommendation on February 19. The House of Representatives approved the bill on February 26 by a vote of 97 to 0. The bill was then transmitted to the Senate, and on February 27 the bill was read the first and second time and placed directly on the calendar. The Senate approved the bill on March 10 by a vote of 33 to 1. The Governor signed the bill as Act 267 on March 17.

A companion bill was introduced in the Senate on February 3, 1987, by Senator Mike Beebe, Senate Bill 331. It was read twice and placed directly on the calendar. The Senate adopted the bill by a vote of 32 to 1. After transmittal to the House of Representatives, the bill was read the first and second times and sent to the House Judiciary Committee. The Committee gave the bill a do pass recommendation on March 5. The House adopted the bill by a vote of 95 to 0 on March 10. On March 31 the Senate permanently filed the bill.

103. 27 Ark. 266 (1871). See *supra* note 7.

104. Act of Mar. 17, 1987, No. 267, 1987 Ark. Acts 734 (Adv. Leg. Ser.).

105. Senate Concurrent Resolution 2 of 1987.

B. Effect of the New Code

1. *Prevention of Changes in Substance or Meaning*

First and foremost, the Commission wanted to be certain that the Code made no changes affecting the substance or meaning of the law because the commission had no authority to make substantive changes.¹⁰⁶ The Commission provided two safeguards to prevent unintentional changes in the substance or meaning of the law.

The first safeguard was the process and procedure of codification itself. In examining and correcting the work of the publisher, the Commission was meticulous in preparing the Code for the General Assembly, particularly with respect to its responsibility of insuring that no changes to the substance or meaning of the law be made during the codification process. The checks which were built into the process of codifying the statute law, the careful examination of the Acts of Arkansas and the Arkansas Statutes of 1947 Annotated by the Commission, and the public dissemination of every draft of the Code to any and all interested persons insured that the Commission carefully and competently carried out its responsibilities under the law.¹⁰⁷

The second safeguard was built into the Arkansas Code of 1987 Annotated to prevent any accidental or unintentional changes in the substance or meaning of the law. This safeguard is found in section 4(b) and (c) of Act 267 of 1987 and restated in Arkansas Code section 1-2-103.¹⁰⁸

Subsection (b) provides for the application of pre-Code law if some error in codification should appear to change the substance or meaning of the law under subdivisions (2) or (3). In other words, if an error is discovered which somehow would give the appearance of

106. See Act of Mar. 15, 1955, No. 246, § 1, 1955 Ark. Acts 536 (codified at ARK. CODE ANN. § 1-2-303 (1987)).

107. See *supra* notes 88-97 and accompanying text.

108. ARK. CODE ANN. § 1-2-103 (1987) states:

(a) All acts, codes, and statutes, and all parts of them and all amendments to them of a general and permanent nature in effect on December 31, 1987, are repealed unless:

(1) Expressly continued by specific provision of this Code;

(2) Omitted improperly or erroneously as a consequence of compilation, revision, or both, of the laws enacted prior to this Code, including without limitation any omissions that may have occurred during the compilation, revision, or both, of the laws comprising this Code; or

(3) Omitted, changed, or modified by the Arkansas Code Revision Commission, or its predecessors, in a manner not authorized by the laws or the constitutions of Arkansas in effect at the time of the omission, change, or modification.

(b) In the event one of the above exceptions should be applicable, the law as it existed on December 31, 1987, shall continue to be valid, effective, and controlling.

changing the substance or meaning of the law, then the provision cited above would prevent the change from having any legal effect.

2. *Repeal and Reenactment of Prior Law*

Section 1-2-103 expressly repeals all prior laws with three exceptions. The exceptions in subdivisions (a)(2) and (3) are explained above. The exception given in subdivision (a)(1) was intended to insure that the provisions reenacted in the Code will be construed as continuations of prior law rather than as new law. Any other construction would violate the limitation placed on the Commission by the General Assembly.¹⁰⁹ This intent is made clearer by Arkansas Code sections 1-2-106 through 1-2-112.

3. *Savings Provisions*

Section 1-2-106 provides that the codification of an unconstitutional law will not validate that law or any part of it. Section 1-2-107 provides that any law that has been previously repealed, but has been codified nonetheless, shall not be revived by the inclusion of that law in the Code. Sections 1-2-108 and 1-2-109 were intended to make certain that the adoption of the Code would not affect, cure, validate, or authorize any existing rules and regulations. Sections 1-2-110 through 1-2-112 provide that the adoption of the Code will not affect terms of office, compensation, expenses, retirement, etc., of persons presently holding office on the effective date of the Code, or affect existing rights, liabilities, contracts, actions, etc., including criminal actions, existing on the effective date of the Code, or toll any statutes of limitations.

4. *Statutory Rules of Practice and Procedure Superseded by Supreme Court Rule*

Section 4(a) of the Code Bill provides that the inadvertent inclusion of statutory rules of practice and procedure which have been impliedly superseded by Supreme Court rule shall not constitute a reenactment of those statutory provisions.

5. *Certain Laws not Affected by the Code*

Section 1-2-105 lists certain acts which are not intended to be affected by the adoption of the Code. The acts may be separated into

109. See Act of Mar. 15, 1955, No. 246, § 1, 1955 Ark. Acts 536 (codified at ARK. CODE ANN. § 1-2-303 (1987)).

three classes: local and special acts; acts concerning compensation of persons whose compensation is paid by the state; and appropriation acts. Since the Code is intended to embody all the statute law of Arkansas of a general and permanent nature, these acts were excluded from the Code because they are local or special, not general, or they are temporary.

6. *Effect of the Code on Other 1987 Legislation*

Section 3 of the Code Bill was intended to make certain that the adoption of the Code during the regular session of the General Assembly in 1987 would not be interpreted as amending or repealing other legislation passed during that session. In the event of any conflict, the Code gives way to the 1987 legislation.

Further, the Commission was given authority to incorporate the 1987 legislation into the Code using the same standards as were used in creating the Code for arrangement, classification, numbering, and editing, and to compile the 1987 legislation for publication as part of the Code.¹¹⁰

VIII. INDEX

Most complaints the Commission and the publisher received about the Arkansas Statutes of 1947 Annotated concerned the inadequacies of the index. In fact, this concern was the initial impetus for the codification project. There was overwhelming justification for the complaints, as anyone who has tried to use the index knows. The problem was what to do about it.

Some users of the Statutes felt that only a new revised index was necessary to update the Arkansas Statutes of 1947 Annotated. Such a solution would have been temporary at best. One must look at a compilation or codification as a kind of collection of books in a specialized "library". As long as each book is in its proper place on the proper shelf, as long as each new book is put where the old book or books it is intended to replace were removed, then the card catalogue of the library will consistently identify the location of the desired book if the patron understands the logic of the classification system of the card catalogue. If a new book is put on any shelf without consideration of the classification system or if a new book is shelved without regard to the classification system and without removal of the outdated books it was intended to replace, then no classification system, no matter how

110. See Act of Mar. 17, 1987, No. 267, 1987 Ark. Acts 734 (Adv. Leg. Ser.).

well designed, can provide the logic necessary for a person to find a desired book in that library.

Each act of the General Assembly was a book in that specialized "library" we called the Arkansas Statutes of 1947 Annotated. Former publishers received little guidance in compiling the Statutes and asked for little. After forty years of such compilation practices, it was simply not possible to construct an adequate index with a classification system that had little "system" remaining in it. The only solution was to completely reorganize and reclassify the acts compiled in the Arkansas Statutes of 1947 Annotated, and create a new "card catalogue"—a new index.

IX. CONCLUSION

The single greatest advantage of the ten-year contract with the publisher is that the State of Arkansas now has a contract with a publisher. Never in the history of the state has there been a long-term contract for the publication and supplementation of statute laws in Arkansas. The Commission is now in control insofar as the Arkansas Code of 1987 Annotated is concerned. The relationship with the publisher is now in the nature of a public utility regulated by the Commission.

There are several other advantages to the state as a result of the Arkansas Code of 1987 Annotated. This is the first time in nearly 150 years that we have an enacted set of statute law. Unlike the prior digests and compilation, this enacted body of statute law is the base for future legislative work and statute revision. All acts of a general and permanent nature will be drafted in the form of amendments to the Code.¹¹¹ No longer will we have to rely upon the Acts of Arkansas as the source of the statute law. No longer will we have to rely upon the Arkansas Statutes of 1947 Annotated as the basis for amendment and future revision of the statute law. All future revisions and recodifications will start with the Arkansas Code of 1987 Annotated.

The Arkansas Code of 1987 Annotated is the official publication of the statute laws of a general and permanent nature of this state. After forty years of supplementation by the publisher without the direction or supervision of the Commission, the Arkansas Statutes of 1947 Annotated could no longer be considered *prima facie* evidence of the law contained in them.¹¹²

111. See ARK. CODE ANN. § 1-2-116 (1987).

112. Act of Feb. 14, 1945, No. 50, § 4, 1945 Ark. Acts 98. The General Assembly reen-

This is the first time in the history of the state that there has been a comprehensive examination of the statute laws, over 33,000 acts. Over 200 laws or parts of laws were found which should have been compiled in the digests and compilations over the years but for some reason were not. During the codification process, the Commission made extensive lists of laws which, although outdated or obsolete, are not technically repealed. Of these laws, many are provisions for fines, fees, and penalties which have not been examined by the General Assembly in fifty years or more. Others are criminal penalties which have not been reviewed in light of the Arkansas Criminal Code. Several of these provisions are such that the Commission was unable to determine the continuing legal effectiveness of them. Some are provisions which all attorneys would recognize as being of doubtful constitutionality.

The reorganization and reclassification of the statute law in the Arkansas Code of 1987 Annotated and the clarity and facility of the reorganization are of great importance and value to all whom the law touches, which is everyone. Laws with common subjects that have been scattered for decades throughout the Arkansas Statutes of 1947 Annotated and the digests preceding it are now joined together in a logical organization and structure.¹¹³ Where mistakes have been made by the Commission, by past compilers and digesters, and by the General Assembly, those mistakes may now be found and addressed. Laws that exist, which many people were unaware of, will now be known. No longer will the General Assembly spend its time and the public's money for sixty or more days every two years to enact laws which, once compiled, disappear in the morass known as the Arkansas Statutes of 1947 Annotated and are forever lost.

The statutes of Arkansas constitute an investment of time and money for over 150 years by the people of this state in their government. The people deserve the best and most secure system that can be provided for holding that investment, a system enacted by the Gen-

acted a similar provision in Act of Mar. 22, 1983, No. 641, § 2, 1983 Ark. Acts 1394 (codified at ARK. CODE ANN. § 1-2-303(a)(6) (1987)).

113. For example, the relevant criminal provisions of Arkansas law on driving while under the influence of alcohol or drugs, formerly compiled in title 76, Motor Vehicles, in the Arkansas Statutes Annotated, are now codified in title 5, Criminal Offenses, in the Arkansas Code of 1987 Annotated (ARK. CODE ANN. § 5-65-101 *et seq.* (1987)). Similarly, the Uniform Controlled Substances Act, formerly compiled in title 82, Public Health, in the Arkansas Statutes Annotated, is now codified in title 5, Criminal Offenses, in the Arkansas Code of 1987 Annotated (ARK. CODE ANN. § 5-64-101 *et seq.* (1987)).

eral Assembly that can grow to encompass future legislation and that allows the people to daily use their laws for the common good. The Arkansas Code of 1987 Annotated is that system.