

Administrative Law Advisory Committee Meeting
January 8, 2009- 11:30 a.m.
House Room C, General Assembly Building

I. Welcome and Call to Order- **Chris Nolen (Chair)**

- a. Professor John Paul Jones tendered his resignation due to other commitments.
- b. We will coordinate with the Code Commission; the Chair will appoint a replacement, hopefully prior to the next meeting.
- c. The representatives from JLARC are here to discuss their undertaking of a study of exemptions similar to what ALAC has started; should collaborate our efforts on work done already and any work we do in the future.

II. Continuing Studies

a. Exemptions

- JLARC Study- **Bob Rotz**
 - JLARC- Joint Legislative Audit and Review Commission- Fourteen legislative members, nine from the House and five from the Senate.
 - We provide staff resources to the Commission, including research projects.
 - Perform functions similar to GAO at the Federal level.
 - There is a statutory requirement that requires JLARC to conduct reviews of exemptions authorized by the Administrative Process Act. The purpose is to assess whether any exemptions should be discontinued or modified.
 - At the December JLARC meeting, the Commission concurred with the staff proposal that we take a look at exemptions.
 - Project Team:
 - Leader- Aris Bearse
 - Jennifer Breidenbaugh
 - The study will most likely utilize surveys and/or questionnaires related to:
 - Rationale and benefits of exemptions that currently exist, and;
 - Concerns with exemptions that are in place- concerns with how these can be utilized.
 - May JLARC meeting-
 - Will discuss an organizational work plan with the Commission.

- Describe issues and methods using for the various studies – review of APA exemptions will be part of this.
- September JLARC meeting- Hope to have concluded our review and will brief the Commission on our findings – this is tentative depending on how involved the issues are and how the study progresses.
- Questions from ALAC members?
 - **Eric Page-** Will our group be involved at all? Do you want to know our opinions or give you suggestions of changes that we think should occur?
 - **Bob Rotz-** This is possible. ALAC is taking a look at what other states are doing; this is an area where we would have some interest on the information coming back. However, the questionnaires are intended to get feedback from agencies and regulated communities. We can get together as to what is being covered; cannot commit to collaboration on what the surveys and questionnaires will cover, but there could be some sharing in terms of questions identified, etc.
- **Chris Nolen-** We want to share information with you for you to incorporate or use in your study. We will assist you in any way we can.
- **Bob Rotz** – It is typical for us to have a pretest with people going to complete survey or expert input.
- **Chris Nolen-** We will keep the previous Exemptions Work Group going, and have Elizabeth Palen be the interface with JLARC as one contact that information can be routed through. This will be more efficient for your staff in gathering comments from our side.
- **Jane Chaffin-** Will you specifically look at exemptions identified in Administrative Process Act, or will you be looking outside for any exemptions that are in the code that indicate that an agency is exempt from the Act, but that are outside of the Act?
- **Bob Rotz-** We will look at those outside of the Act as well. We will present this to the Commission at the May meeting and get some feedback from them as to the way they wish to proceed, but we would suggest to them that we look outside the Act itself.
- **Roger Chaffe-** The last study was done about twenty years ago, so this is a good time to be looking at exemptions again.

b. Incorporation By Reference

- **Elizabeth Palen-**
 - What does the Work Group want to accomplish this year?
 - We also need a new chair for the Work Group.
 - (**Chris Nolen** asked **Mike Quinan** if he would like to take over as Chair for this work group and Mr. Quinan accepted.)
- Chris Nolen – We will get the group together some time after this General Assembly session; Chairs should coordinate with Work Group members in the interim.

c. **Chris Nolen** - 2009 Work Plan- Other Ideas

- Hope to have at least three Work Groups studying individual issues.
- Today presents an opportunity to come together and discuss forming a third group with a work plan going forward through the year.
- Roger Chaffe's idea is to update the Hearing Officer Desk Book. Katya Herndon can help us coordinate our efforts with the Supreme Court.
- **Roger Chaffe-** During the Supreme Court hearing officer training last month, realized that the Hearing Officer Desk Book was not being used or updated.
 - The book covers everything that a hearing officer needs to know, but it needs to be updated for statutory cites, new laws, and experiences in this area.
 - Suggest putting together a group to go through it in detail, change it and improve it. The book has not been updated since 1999.

d. Chris Nolen- Are there any other ideas that the group should consider?

- **Jane Chaffin** – NCCUSL Model APA Revision Project
 - The NCCUSL group is receiving comments and there are clean and red line drafts on their website. The group will be presenting the draft for reading at the NCCUSL summer meeting.
- **Chris Nolen-** How long is the comment period open?
- **Jane Chaffin** – I will have to check on this and get back to the group.
- **Elizabeth Palen-** At the next ALAC meeting, we can have Lane Kneedler update us on the project. We will put up a link on the ALAC website to the NCCUSL site so it can be found easily.

e. **Chris Nolen-** any other ideas?

- If so, email EP and we will put it on a list for consideration at the next meeting.

- This group is also repository for bills that deal with administrative law. We need to make sure that appropriate people in the House and Senate are aware of this option; may produce some study over the course of the next year.
- At the end of session, we will coordinate dates and have a short full meeting, followed by the smaller Work Group meetings. Expect this to be some time in March.
- **Eric Page**-When reassigning Work Groups, will you ask us in which groups we would like to participate?
- **Chris Nolen**- Yes, we will accommodate the requests.
- **Elizabeth Palen**- Members are not limited to being on work group.

III. Adjourn