

**MINUTES OF COMMISSION MEETING**  
**May 25, 2000**

Present at the meeting of the New Jersey Law Revision Commission held at 153 Halsey Street, 7<sup>th</sup> Floor, Newark, New Jersey were Commissioners Albert Burstein, Hugo Pfaltz, Jr., Vito Gagliardi, Jr., and Peter Buchsbaum. Grace Bertone attended on behalf of Commissioner Rayman Solomon and Professor William Garland attended on behalf of Commissioner Patrick Hobbs.

Also attending were: Carol G. Jacobson, Office of the Attorney General, Kris Ann cappelluti, Riker Danzig; Arthur Herrmann, Prudential; Maureen Davis, Bell Atlantic; Veronica Hursthouse, Consumer Protection; and Frank Dominquez, Office of the Attorney General.

Minutes

The Commission asked staff to change the word "immature" on page 2 of the minutes to "premature." The Commission then approved the Minutes of the May 2, 2000 meeting as submitted.

UCITA

Section 109 - Choice of Law

Mr. Cannel stated that he had spoken with Carlyle C. Ring, Jr. and Raymond Nimmer. They assured him that the drafters of UCITA had no intention to displace the consumer law of New Jersey. Mr. Cannel distributed proposed corrections to the statute to assure that result. The proposed New Jersey language includes an amendment that specifies that a choice of law provision in an agreement may not override New Jersey consumer protection law.

Maureen Garde stated that in his memorandum of May 24, 2000, Mr. Nimmer distinguished between prescriptive jurisdiction whereby UCITA cannot oust the jurisdiction of the Attorney General in enforcing the New Jersey consumer statutes and contractual choice of law terms under which a consumer could agree to be governed by other law. In absence of agreement, the law of the place of formation of the contract controls the law that governs the case.

But Mr. Ring and Mr. Nimmer did not appear bothered by the proposed language to make New Jersey law applicable to consumer transactions. As a practical matter, New Jersey courts would compare New Jersey consumer law and the consumer law specified in the choice of law contractual term.

Ms. Garde argued that if UCITA does not oust the jurisdiction of the state Attorneys General, then UCITA could not accomplish the goal of providing single law coverage to any transactions. Choice of law cases speaking of the "dominant interest" test do not involve consumer transactions. Ms. Garde analogized between the franchise cases and consumer cases to support the view that New Jersey forbids consumers to vary New Jersey law. Under the staff proposal, state consumer law would apply to any consumer case regardless of whether the consumer consented to be governed by the law of another jurisdiction.

The Commission also doubted that the Legislature would sanction any erosion of New Jersey consumer law. The Commission directed staff to add "in the absence of contractual agreement" after "applicable." Mr. Cannel asked interested parties to prepare "punch-lists" of non-uniform amendments they would like to make. Mr. Cannel then would make those proposals available to Mr. Ring and Mr. Nimmer and prepare language for the Commission's consideration.

The Commission asked staff to prepare a compendium of non-uniform amendments for the June and July meetings.

#### Game of Chance

Judy Ungar stated that Professor Garland had submitted numerous comments which will be incorporated into the next draft. She asked Ms. Hursthouse of Consumer Protection to explain her office's position on regulating games of chance. The policy objectives of her office are: (1) to assist charitable organizations to raise funds; (2) to write statutes in a manner that will insure compliance and the fair conduct of games; and (3) to make possible more efficient policing of the rules.

As to substantive changes:

1. The registration and licensing procedure; existing scheme is cumbersome. Her office would like to take municipalities out of the registration/licensing process. The Commission on legalized games would be the sole registration and licensing agency. The municipalities would lose a source of revenue. The fees range from \$10 per bingo game to a flat fee plus a

percentage of revenue raised on a 50/50 raffle. The State also gets registration fees.

Ms. Hursthouse's office would not object to requiring the State Commission to notify the municipalities of registrations and licenses affecting them. Mr. Cannel stated that the League of Municipalities did not know the positions of the municipalities on this issue. As to enforcement, State investigators audit and make sure games are run correctly and comply with the law.

2. Current law places "bizarre" restraints on advertising. The danger is false advertising. An Assembly bill proposes easing restriction on advertising. Ms. Hursthouse urged an end to statutory "micromanaging" of advertising.

3. The Commissioners discussed the question of raising the limits of prize money for bingo. Ms. Hursthouse's office would like to raise the limits to increase revenues for charities. An Assembly bill proposes elimination of limits on bingo prizes if the prize money is either insured or held in escrow.

4. There is no reason to limit the number of games to six per month; six per week is reasonable.

5. Her office also proposes greater flexibility in using proceeds. For example, the law should permit part of proceeds to be used to improve buildings where games are located. Current law does not permit this use of proceeds.

6. Games open to members of a group only should not need a special license; her office would like to expand the current rule applied to senior groups to all organizations. An Assembly bill proposes that certain groups should be permitted to run a 50/50 raffle without a license.

7. Fines should be increased from \$350 to \$7500.

Commissioner Gagliardi advised staff that in 1-(d) it should state "vacancy should be filled by governor" and that 1-(f) should establish term, probably annually. In (c)(2) on page 5, the term "false pretenses" was questioned; the term "fraud" was preferred. In (c)(3), Commissioner Gagliardi asked whether staff needed to define the word "nominal." In (c)(5), if the statute is intended to make it easier for charities, it is better that the municipality be copied on application. Under the draft, all applications go to the Commission;

then they go to the municipality. If approved, the Commission can go forward. If disapproved, the Commission must hear and consider the municipalities' objections. Ms. Hursthouse expressed her displeasure at this approach. She said that the obligation of the Commission should be limited to informing the municipalities of the application.

Commissioner Gagliardi proposed that the application go to the Commission with a copy to the municipality. This would satisfy the right of the municipality to be informed.

Regarding (c)(7), the Commission also asked staff to look into the constitutional issues of the Commission's right to enter and inspect.

In (b)(3) and (r)(3), the Commission asked staff to take out the phrase "adoption of the."

In (b)(7) on page 13, the Commission asked staff to look at the phrases used in that subsection.

Commissioner Buchsbaum questioned the term "renters," and questioned the time limits imposed on premises. Staff informed Professor Garland that the discrepancy between time limits in (b)(10) and (b)(15) was corrected. Commissioner Buchsbaum asked if the draft contained a definition of "raffle."

In response to a question on the number of criminal prosecutions conducted per year, Ms. Hursthouse stated that she did not know of any such cases.

The Commission asked staff to prepare a draft for the next meeting.

#### UCC Article 9

Judge Howard Kestin sent a letter to the Commission regarding a case involving the right to assign proceeds of a structured settlement. Judge Kestin saw a need for legislative regulation in the area to avoid overreaching by purchasers/assignees of these settlements. Commissioner Burstein asked the Commission to review the Appellate Division opinion.

Mr. Cannel stated that in the staff's view, Revised Article 9 permitted the assignment of structured settlements. The broader policy question is whether

the Legislature should regulate whether a competent adult should be prohibited from selling a structured settlement. A bill introduced by Senator Cardinale would allow assignment by permission of the court.

Professor Garland recommended disclosure of risks to tort victim. Chairman Burstein stated that sometimes the government must protect persons against themselves. Professor Garland added that the legislative approval of assignments might increase market competition and provide greater consumer choice. This matter will appear on next month's agenda.

#### UCIOA

Professor Garland re-read the draft and most questions he posed were addressed by staff. The issue of substance refers to Article 5. Mr. Cannel believed that the Commission would be better off leaving Article 5 alone.

Section 303(b). Two-thirds of unit owners can remove someone at any meeting where a quorum is present. But cross-reference in 306(b) states that the meeting notice must contain a proposal to remove anyone from the board. These provisions create an ambiguity as to the proper requirements for removal of an officer. The Commission decided to require advance notice of removal for due process purposes.

The Commission again considered the power of association over things that happen in units. The current draft requires a by-law rather than a rule to authorize control of activity taking place inside the unit. The by-law may be very general to permit regulation of certain activities. Professor Garland, asking for flexibility, thought it inadvisable to require recording of real estate documents to respond to disorderly or disruptive conduct. For example, to control noise in unit after 11:00 p.m. should not require the recording of a real estate document. Commissioner Bertone thought it wise to require a substantial step to control government of common interests. Chairman Burstein agreed.

Professor Garland asked if unit owners should have the power to reverse board decisions; he suggested employing a referendum process. Unit owners could knock out a rule they do not like. (Section 304.5) The proposal would require a certain percentage of unit owners to demand a referendum. Forty percent was offered as the baseline requirement; Commissioner Gagliardi said that figure was too high. Consensus was one-third.

The Commission next considered proposed inserted language to Section 306. The right to remove disruptive people during board meetings was preserved; the same right should be extended to association meetings. Because any unit owner can attend a board meeting, the board could remove a disruptive person. As a practical matter, the board would be required to call the police. Commissioner Buchsbaum referred to a case dealing with an analogous situation; he advised the staff to look at case language. Professor Garland proposed a parallel standard for association meetings. The Commission then questioned the entire idea of including this right in the statute; the board or association could call the police. The Commission directed staff to remove the provision.

Professor Garland would give an association the right to remove persons who are neither board members nor unit owners. Chairman Burstein mentioned the role of tenants in the association. They do not have a vote but their interests are affected. The board has such power. Commissioner Buchsbaum expressed discomfort with the idea of giving the association this power to exclude.

The rationale is that unit owners might want to discuss an issue in private. They might want to cut down the number of tenants or place restrictions on tenants. Mr. Cannel stated that he did not see a need to address this issue. The Commission decided to give the president of the association the authority to limit persons attending meetings.

Professor Garland proposed giving any person the right to record association meetings. However, some Commissioners felt it would chill the speech of unit owners. Mr. Cannel stated that the draft does not take a position because recording is not forbidden. The Commissioners felt that parallel provisions were unnecessary.

Section 315 deals with assessments having priority over mortgages. Two terms, "customary assessment" and "assessment," mean the same thing. Professor Garland suggested using the same word "assessment." Mr. Cannel stated that he and Professor Garland would discuss 315 and get it in shape for the next meeting. With regard to cooperatives, a co-op owner who has not paid assessments can be evicted like a commercial tenant, depriving him of residential tenant protections. The Commission decided to eliminate the word "commercial" and let the courts decide the issue.

Section 405 states that the statute of limitations starts to run when the committee looking into the claim has its first meeting. This standard is unclear; for example, the committee could intentionally delay the meeting or have trouble documenting when the meeting was held. The Commission decided that the starting point for the statute of limitations should be thirty days after the adoption of a resolution creating the committee.

Mr. Cannel stated that a draft final report would be ready for next meeting.

Miscellaneous

The next meeting was scheduled for June 15, 2000.