

**MINUTES OF COMMISSION MEETING**  
**November 16, 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 and Hugo Pfaltz, Jr. Grace Bertone attended on behalf of Commissioner Rayman Solomon.

Also attending were: Henry Gottlieb, New Jersey Law Journal; James Maxenier, Bun & Bradstreet; Charles Centinaro, Office of Governor's Counsel; Kris Ann Cappelluti, Riker, Danzig; Beth Rubinstein, Capital Public Affairs; Susan Lyons, New Jersey Law Librarians Association; and Maureen Davin, Verizon.

Minutes

The Commission approved the Minutes of the October 12, 2000 meeting as submitted.

UCITA

Chairman Burstein stated that he had circulated a letter from Carlyle C. Ring, Jr., asking the Commission to defer its consideration of UCITA under the year 2001. The Senator Kyrillos bill in the State Legislature is not moving pending the Commission's recommendation. Chairman Burstein also stated that staff had prepared a written reply to material submitted to the Commission earlier by Mr. Ring and Professor Raymond Nimmer. The Chairman felt there were still many issues to be considered with regard to UCITA.

Commissioner Pfaltz asked that the project be tabled temporarily to await further developments. Chairman Burstein stated that because the Commission has a statutory duty to review Uniform State Laws, he was uncomfortable with the proposal to table the project indefinitely. He proposed that the project lay over to the beginning of 2001 and be scheduled for further consideration at the February or March 2001 meeting.

Ms. Garde stated that it was difficult to draft amendments to UCITA. She therefore suggested memorializing the Commission's concerns and reporting that result in some form to the Legislature. Chairman Burstein did not see any problem with that approach. Mr. Cannel stated that if the Commission decided to hold off, he was concerned that the Commission might not be ready to act if the bill began to move. Commissioner Bertone agreed with Ms. Garde's proposal.

Mr. Maxeiner of Dun & Bradstreet, which supports UCITA, agreed with the proposal deferring consideration of UCITA. He did not want to see a completely different New Jersey version. The benefit of uniform laws is uniformity. Ms. Lyons stated that she was grateful that the Commission's draft report had identified and discussed problems with the UCITA report with regard to libraries and copyright law. She felt that UCITA contained very serious problems that might affect its uniform adoption.

The Commission decided to accede partially to Mr. Ring's request and postpone further consideration of UCITA to next year. Chairman Burstein asked Ms. Garde to put together a balance sheet setting forth a subject-by-subject analysis of where the Commission objects to UCITA. He asked Ms. Garde to send the draft report to the Chair of the Judiciary Committee.

Ms. Garde noted that she had obtained a final UCITA draft dated September 29, 2000 and that she would include this in a briefing book she intended to complete.

#### Structured Settlements

Mr. Cannel stated that he had received a fax containing a draft federal bill - an excise tax on transfers of structured settlements - exempting transfers approved by a court using a "best interest" standard from the tax. This federal bill would conflict with the Commission's prior decision to use a "voluntary and knowing" standard. If Congress acts, then the Commission's report would need to be amended. Mr. Cannel said that he could insert a presumption in the draft that if the transfer is voluntary and knowing then it is presumed to be in the transferor's best interest. The Commission supported this view and opposed altering the draft's standard. The Commission asked staff to add a provision regarding procedure. Mr. Cannel stated that the staff would prepare a draft report for the next meeting.

#### Legalized Games of Chance

Judith Ungar stated that she did not prepare a new draft. Instead, she prepared a memorandum containing information the Commission had asked for. In addition, she and Mr. Cannel had met with Ms. Hursthouse and Bill York; based on that meeting, Ms. Ungar stated that she would like to prepare a subsequent draft report containing information learned at that meeting and

incorporating both the Commission's corrections and substantive changes stemming from new information.

Mr. Cannel remarked that he had missed the relationship between a raffle and amusement game as those terms are used in administration of current law. Ms. Hursthouse and Mr. York consider amusement games non-draw raffles. This distinction may require clarification.

The main question is what should be the role of law in this area. The original law was enacted during a time of anti-gambling sentiment. Circumstances have changed. For example, under current law, if a tennis tournament is held and the players are paid winnings from ticket sales, then the tournament is gambling. If they are paid from funds put up by a sponsor, the tournament is not gambling. The same would be true of a chess tournament. The old nineteenth century background governs the 1948 New Jersey Constitution. This view provides a strict limitation of gambling. Gambling is as indeterminate as modern physics. If the Commission wants to make activity now considered gambling lawful, the Commission may have to address this issue in the report.

As for amusement games, Ms. Ungar stated that they had reversed the presumption about town referenda. Amusement games would be allowed unless a municipality held a referendum to prohibit them. Chairman Burstein asked whether it was possible to eliminate licensing altogether. Ms. Ungar and Mr. Cannel stated that there were consumer protection issues involved, and charitable game activity is heavily regulated to assure that the charity gets the money.

Chairman Burstein asked if there was a way to establish a less elaborate system relying upon general principles of law to govern the conduct of game operators. As to charities, it is not clear who looks at these reports, but the concern is that the money goes to charity. A report shows the amount taken in and the amount paid out to charity. The following questions arise: What percentage of the revenue goes to the charity? Can the charity use the money to fix the roof of the building where the charity is held?

Chairman Burstein stated this area is needlessly over-regulated; he would like to obtain the input of other Commission members on the view of de-regulating several activities.

Ms. Ungar said that staff would work on a draft de-emphasizing the regulatory nature of present law.

UCCJEA

Mr. Cannel stated that staff had received objection of the Commission's report from Professor Russell M. Coombs of the Rutgers Law School - Camden. They are working to learn the basis of Professor Coombs's objections and to deal with them.

Miscellaneous

The Commission discussed the meeting schedule for year 2001 and asked Mr. Cannel to send them a proposed list of meeting dates. The next meeting is scheduled for December 14, 2000 to be followed by the annual Christmas dinner.