

MINUTES OF COMMISSION MEETING
June 21, 2001

Present at the meeting of the New Jersey Law Revision Commission held at 153 Halsey Street, 7th Floor, Newark, New Jersey were Commissioners Albert Burstein and Vito Gagliardi, Jr. Professor Bernard Bell, Rutgers Law School, attended on behalf of Commissioner Stuart Deutch.

Also attending were David M. Schneck, Director of Finance, New Jersey Redevelopment Authority, and Walter Timpone, Esq., federal elections monitor for Passaic County.

Minutes

The Commission asked staff to correct the May 17, 2001 Minutes, page three, first full paragraph, third to last line, containing the phrase "some give the right to sue other liens." The language should read: "others provide for liens for repair costs." Clarify on page four "previously had impeded" rehabilitation code. The Commission accepted the Minutes as corrected.

Election Law

Expert Commentary - Walter Timpone, of McElroy, Deutch and Mulvaney and a federal monitor for elections in Passaic County, addressed the Commission. Previously he had met with John Cannel and Judy Ungar regarding his suggestions for the project.

A three-judge federal panel put Mr. Timpone in place to implement changes in Passaic County election procedures primarily in response to alleged mistreatment of Hispanic voters at the poll. Poll workers were alleged to have remarked "If you want to vote in this country, you must speak English" and "you should all go back to Mexico." The poll workers also did not provide proper information on provisional ballots. Instead of using procedures to enfranchise the Hispanic voters, poll workers used procedures to discourage them.

Mr. Timpone identified the following additional issues:

(1) School board elections present a special problem regarding absentee ballots. The time between the completion of the final school budget and the school board elections does not provide enough time to utilize absentee ballots.

In response, Commissioner Gagliardi stated that nothing could be done to rectify the use of provisional ballots for school budget elections. The time constraints develop from statutes, local practice and regulatory code. First, the State aid figures are received. Next, there is a ten-day window in which to hold a public hearing on the budget. The superintendent of schools gives feedback. Then, the school board discusses the budget; a final budget must be approved by a set deadline. At that time, the final budget figure goes to the board of elections, only three to four weeks prior to election date. Under these circumstances, there is not time to print, distribute and receive provisional ballots.

Mr. Timpone asked if the election could be postponed to May. Commissioner Gagliardi stated that the answer would probably be no based on conflicts with elections held in May and June, and the time to clear the voting machines. All school board elections are held in April. Mr. Timpone suggested holding the school board and municipal elections on the same date in May to resolve the problem. There is no legal reason to prevent the holding of the election in May.

However, Commissioner Gagliardi explained that the separation of the two elections insulates the vote on the school budget from the vote on local officials. If the two elections were tied together, the officials running for office would tell voters to vote against the school budget on the ground of its cost. School board officials would want to avoid the tax friction. Although changing the date of school board elections might encounter political opposition, Commissioner Burstein stated that political opposition should not shape the making of decisions on this project since almost every decision is likely to impinge on the special interests of some group.

(2) The New Jersey statutes have failed to keep up with changing technology, especially the transition from mechanical to electronic machines. A question had arisen in Passaic County as to what legal procedure to follow when a voter leaves the booth but fails to register his vote by pushing the specified electronic button. The statutes do not address this issue. Mr. Timpone improvised a solution by having one poll worker from each party entered the booth and push the button to record the vote. The Attorney General, though requested, failed to provide an opinion on this matter.

(3) In Passaic County, the officials who make up the individual components of the election cycle do not feel accountable to any other person. Hence, no one coordinates his efforts with other officials in the election official.

The fractious nature of the individual officers causes problems in the efficient administration of the polling process.

Commissioner Gagliardi asked whether Mr. Timpone had a practical suggestion for solving problems presented by the multi-jurisdictional structure of county elections. Mr. Timpone stated that he needed to give the subject more thought, but that one person should have the authority to break deadlocked votes and to control the overall process of carrying out the election. This person must bear accountability for election results. Mr. Timpone also suggested having a Deputy Attorney General at each board of election meeting to provide legal advice where it is needed.

(4) For voters' convenience, Mr. Timpone asked the Commission to permit voter registration applications to be downloaded from the Internet and then sent to the County. This procedure would avoid the existing cumbersome process.

(5) A current statute permits off-duty police officers to work in polls. Passaic County has received allegations that these off-duty officers have acted as poll workers and have bullied people. They intimidate voters as they come through the door by saying, "Didn't I arrest you last week?" and often serve warrants on dead-beat dads walking toward the polls. Although Mr. Timpone has banned this practice in Passaic County, the law does not appear to support his position.

(6) Mr. Timpone proposed a rule that would prohibit any person having been convicted of a crime of moral turpitude from holding office. To stop Jerry McCann from running for Mayor of Jersey City, the Supreme Court invoked the Faulkner Act: where there is a crime of moral turpitude a person is prohibited from running for office. The recently enacted Mayor of Passaic City has a criminal record based on a guilty plea entered in Puerto Rico; he may be decertified. Mr. Timpone stated that the Supreme Court could make a distinction between Faulkner Act cases and non-Faulkner Act cases. His suggested reform would be that any person convicted of a crime of moral turpitude would be prohibited from running for elected office.

(7) Training of poll workers is vital to an efficient election process. Mr. Timpone state poll workers are underpaid and that one gets what one pays for. People doing the training are political appointees not trained to teach or interact with others. In his experience, poll workers have violated the procedures to be followed in administering the election even though they have been trained.

In response, Mr. Timpone has recruited 18-year-old high school students to conduct the elections. He found them motivated and grateful for the \$100 payday. Passaic County intends to increase the pay to \$150 from \$100 in November 2001. He would like to see this rate mandated by statute. Professor Bell agreed that there should be some substantial minimum. Mr. Timpone also wanted to establish a "master" poll worker to provide a list of the best poll workers.

Professor Bell pointed out that the problems identified by Mr. Timpone might best be resolved administratively not legislatively by statute.

(8) Poll workers do not give out provisional ballots and do not understand them. Voters also do not understand them. Poll workers are under the impression that a voter bearing a provisional ballot may vote twice. The chain of custody presents another issue to be specified by rules.

(9) Challenge rules are located in various sections of the statutes rather than in one place. The Passaic Board of Elections lacks control over challenges. Challengers are taught to push the envelope; lawyers leave the room and then the party leaders say, "Look for Hispanic last names." In Passaic County, Mr. Timpone has never seen an affidavit of challenge, but voters say that they were challenged. Mr. Timpone has posted bi-lingual signs to inform voters of their rights.

John Burke mentioned that the State of Michigan had solved the problem of voters by casting votes in more than one district or in an improper district by establishing a central database of voter registrations. There is an official list on Election Day, and if the voter is not on the list he cannot vote. Mr. Cannel stated that if registration is based solely on residence, then challengers might be required to make sure voters cast their votes where they are registered. In addition, candidates may want challengers to make sure no one steals the election. Master poll workers may solve this problem. Commissioner Burstein stated that in his experience in Hudson County, the function of challengers was to intimidate voters.

Commissioner Burstein thanked Mr. Timpone for his input, stating that the Commission wanted to hear from as many persons involved in the election process as possible. The Commission then examined the staff proposal. Professor Bell, attending a Commission meeting for the first time, asked a series

of questions regarding the Commission's process of reforming the election law and the staff explained the process to them.

Article 2. This draft assumes a bi-partisan board of elections with an Executive Director appointed on recommendation of that Board from a list of candidates produced by the State. The Commission asked staff to introduce a provision to break an impasse reached by the bi-partisan board. One possibility is to let a State level administrator decide it. Discussion centered on which state agency is best suited to act as a state election board. This board would have supervisory powers over all local county elections. Alternatively, a court may be asked to break the impasse, though the judicial system may not be able to respond quickly enough.

Professor Bell proposed a system where four board members must appoint a fifth board member to break the tie. Commissioners Burstein thought this proposal might raise political problems. Partisans cannot be left to appoint the fifth person; the appointment must be made from the outside. The Commission favored, at this point, the establishment of a state structure.

This state structure also would control the rules and regulations regarding the use of new technology and voting machines. Technology has the ability to resolve many legal problems. The Commission determined that the new law must contain a mandate for counties to use some form of electronic voting. For example, Salem and Sussex Counties still use paper ballots only. The Commission asked staff to obtain information from manufacturers of voting machines and to arrange a session with them to discuss the various options in the market.

Professor Bell asked the Commission to reconsider the decision of referring all disputes at the local level to the State level. Resolving disputes locally is faster than transferring them to the State. Professor Bell also noted that the section 6.10 phrasing differs from that of the 6.1, though both sections deal with an identical concept. The 6.1 phrasing is preferable. He also noted that the statute enshrines the two party political system and does not appear to recognize third parties. Professor Bell thought it unwise to build this bias in to the law.

Section 6.10 reflects that the two biggest parties have the largest roles rather than specifically identifying the two major political parties explicitly referred to in other sections. Commissioner Burstein stated that in a perfect world there should be a structure to account for and allow third parties to enter

the structure. Commissioner Burstein felt that it would be too difficult to craft a statute to accomplish this goal. Commissioner Gagliardi offered the suggestion of rephrasing 6.11 to march 6.10.

Professor Bell suggested the approach of permitting a third party that gets, for example, 20% of vote, to have a member added to the board appointed by their party chairman. The Commission asked staff to consider this approach in future drafting.

The Commission determined that the rule requiring a poll watcher to stay until midnight of the election should not be modified at this moment.

Article 3. Commissioner Buchsbaum believed that ELEC is the wrong body to serve as the state board.

Abandoned Buildings Project

Mr. Burke explained that the first draft statute was based on prior Commission discussions. Mr. Burke also conveyed to the Commission his discussion with Michael Ticktin of the Department of Community Affairs. Mr. Ticktin opposed the suggestion to produce an additional statute addressing the problem of distressed properties. He also opposed any consolidation of existing statutes related to this matter. Rather, he emphasized that the Commission look at Title 55:19 (hereafter the Redevelopment Statute) that has established the New Jersey Redevelopment Authority and given it substantial authority to resolve problems posed by blighted areas. The enabling statute also contains two or three sections dealing specifically with abandoned property. For the most part, the definitions of abandoned property are based on those used in prior statutes. However, the Redevelopment Statute introduced a new concept, "inimical to the economic welfare" though that concept has not been defined or ever used.

The abandoned property part of the Redevelopment Statute, though enacted in 1996, has never been implemented. The Statute is designed for large-scale projects; it would be unlikely that a redevelopment project would focus on a single property. Rather, the work of the Redevelopment Authority identifies large problem areas and develops a plan to rehabilitate those areas.

Mr. Burke noted that the Commission's approach is broader than that of Title 55 and that it eliminates the middleman in the foreclosure process. A private party can act on the statute and obtain an order to compel the sale of a

single property. By contrast, the foreclosure process of the Redevelopment Statute is mediated through state public officials and imposes too many burdens on private parties to provide any incentive to invest in distressed properties.

The Commission's statute also redefines the trigger points and makes it easier to qualify property as a distressed property subject to public and private remedies. A major purpose of the Commission's statute is speed. Although Mr. Burke does not agree with Mr. Ticktin, Mr. Ticktin speaks for the Department of Community Affairs. If the Department opposes the Commission's project, it is unlikely to be enacted. Mr. Burke also said he did not see any reason why overlapping statutes could not be consolidated into a single regulatory scheme.

Mr. Scheck explained that he attended the meeting as an observer. However, he agreed with most of what Mr. Burke had said. The Redevelopment Authority focuses almost exclusively on inner cities, works on large projects and has exercised only a few of its powers under its enabling statute. As to the abandoned property part of the Redevelopment statute, Mr. Scheck stated that it has been difficult to get people to reach a consensus on the criteria of what constitutes "abandoned property." Relying upon the Department of Community Affairs and Department of Environmental Protection can be a burdensome process. He believed it would be preferable to consolidate various statutes and believed there was a role for single property rehabilitation.

Mr. Burke stated that the Redevelopment Authority's approach to distressed properties was from the top down. The Commission's approach is from the ground up. It opens doors for small investors or groups to acquire and rehabilitate a single property without undue red tape. The idea is to get property in the hands of an owner who will put it to its best use. The Commission's statute also does not get bogged down in the definition of "abandoned property" but uses a broader definition of underused property. For example, if property taxes are paid on an abandoned building, and the windows and doors are boarded, the property may remain in that state ad infinitum. That result would not follow from the Commission's statute.

Commissioner Burstein remarked that the proposal breaks new ground by dealing on smaller terms with the same problem addressed by other statutes: the battle against property decay. Mr. Burke said he did not know whether the Commission's approach would survive a constitutional test, as he did not know of any precedent.

Mr. Scheck stated that some tax certificate sales also make the problem worse. Investors hold, but do not fix, the best properties. Mr. Burke said that there was no statewide inventory of abandoned property. The problem goes beyond the urban centers; even wealthy towns have instances of neglected property. Properties need to be developed everywhere in the State.

To illustrate the need for property-specific legislation, Mr. Scheck explained that the Redevelopment Authority has supported the turn-around of properties located in Vailsburg. The goal is to keep the neighborhood stable. However, if one property goes bad on a block, the law does not permit a quick fix and that one property may have a domino effect bringing down other properties with it.

Commissioner Burstein deferred consideration of the proposed statute, as an insufficient number of Commissioners was present. The Commission also deferred the decision of whether to develop a freestanding statute or to undertake a total revision of the existing statutes.

Miscellaneous

Amusement Games will be discussed at the September meeting. The next Commission meeting is scheduled for July 19, 2001.