

**MINUTES OF COMMISSION MEETING**  
**September 20, 2001**

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., Peter Buchsbaum and Vito Gagliardi, Jr. Professor Bernard Bell, Rutgers Law School, attended on behalf of Commission Stuart Deutsh; Professor William Garland, Seton Hall Law School, attended on behalf of Commissioner Patrick Hobbs; and Grace Bertone attended on behalf of Commissioner Rayman Soloman.

Also attending were Robert DelTufo, Former Attorney General of the State of New Jersey; Peter Incardone, Jr., Chairman/Commissioner of the Bergen county Board of Elections; Donna Kelly, Senior Deputy Attorney General and Grace Cunningham, Chair and Linda Van Nessi, Clerk, from the Essex County Board of Elections.

Minutes

The Commission accepted the Minutes of July 19, 2001 as submitted.

Election Law

Chairman Burstein introduced the Commission and staff to the guests. He explained that the Commission senses that the time is now right to undertake election law revision because public attention is focused on issues relating to the voting process. Chairman Burstein then introduced Robert DelTufo.

Mr. DelTufo stated that he thinks that this project is certainly worthwhile and necessary. He favors uniformity throughout the state and more centralized control of voting districts. Mr. DelTufo commented on Justice Souter's dissenting opinion in the Bush v. Gore case, and stated that a person in Morris County should be afforded the same voting opportunities as a person in Salem County. Uniformity could start with the type of machines used.

Mr. DelTufo stated secondly that the current system is cumbersome and burdened. Some counties have superintendents of election; others have boards of election. Occasionally someone must break the tie in a politically balanced situation. The State plays a role, acting through the Attorney General's Office now. Registration cards, and a canvassing board to certify the election evidence a degree of uniformity, but a streamlined system does not exist. He suggested that a statewide office be created to establish uniformity in the counties, with a county and local presence at elections.

Commissioner Burstein stated that the Election Law Revision Commission in its 1975 report showed a way of moving forward from laws written in 1914 in the Woodrow Wilson era and proposed a centralized authority. He asked Mr. DelTufo whether it is possible from a political standpoint to centralize control at the State level.

Mr. DelTufo responded that the attempt would encounter opposition. Effective local presence in the counties should be overseen by a State agency. At the least, the State should establish guidelines or give directives and serve as an agency to resolve disputes.

Chairman Burstein introduced Peter Incardone, Jr., Chairman/Commissioner of Elections in Bergen County, to give a perspective from the county level. Mr. Incardone thanked the Commission for inviting him and noted that earlier in the year he had met with John Cannel and Judith Ungar. As a Commissioner for 16 years, he is one of the most senior Commissioners in the State. He asked the Commission to keep three things in mind: first, do not fix things that are not broken; second, the more the public is educated, the more the vote will increase and fraud will decrease; and third, piecemeal legislation should be avoided. Now is the time for broad based statute revision.

Regarding a recent law which extends voting by opening polls one hour earlier in the morning, Mr. Incardone said that he would have preferred keeping the polls open an hour later in the evening instead. Early opening presents problems for the Board of Election in setting up the polling places and hiring workers.

Mr. Incardone stated that paper and electronics do not mix. Digital electronic computerized machines are better. Three or four years ago Bergen County spent \$6,000,000 on top of the line machines and now is completely computerized. The County has considered using machines to obviate some absentee voting. If a machine were at the borough clerk's office, a person could vote there on November 1 when paying taxes, instead of using an absentee ballot.

Mr. Incardone asked that county election officials be able to contribute input to drafts before the Law Revision Commission sends their report to Trenton. Chairman Burstein explained that Commission drafting process and assured Mr. Incardone that county officials' input is welcomed.

Chairman Burstein asked if Mr. Incardone foresees voting machines eventually surpassing the ones in his county. Mr. Incardone said that he does, based on models he sees at conventions. In answer to Chairman Burstein's question about provisional ballots, Mr. Incardone said that when a dispute arises, a call to the Attorney General's Office resolves the matter. In the last couple of years only two ballots have been brought to a Superior Court.

Lastly, Mr. Incardone suggested that especially in First Class counties, it may be necessary to employ two people on the county board full time - perhaps the Chairman and the Secretary - because of the large amount of voter education needed to be done.

Commissioner Gagliardi mentioned an article describing optical scanners as the best means for casting ballots, preferable to touch pad machines which do not allow people to know if their votes registered. Mr. Incardone stated that he does not favor optical scanners. Donna Kelly said that they are used in some counties. Ms. Kelly said that using a lever machine does not let the voter know whether the vote is tabulated. She stated that she is unaware that recounts on new touch pad machines have ever changed the vote results. She cited the voter "psychology" factor which must be addressed by education efforts. Voters, often senior citizens, find new technology intimidating.

Commissioner Bell cited a concern in the CalTech/MIT report, over-voting, that is, voting for two candidates instead of for one. Ms. Kelly said that a lever machine will not permit an over-vote. On Bergen's machines a person can under-vote or skip something and it will register, but a person cannot over-vote. Mr. Incardone noted that on absentee ballots if a person over-votes, the Board of Elections does not count that one vote, but will count the other votes on the ballot. Commissioner Bell asked if the machine is set up to assure that a person knows for whom he voted. Ms. Kelly stated that New Jersey does not have butterfly ballots and that the machine makes it clear for whom a vote is cast.

Commissioner Garland said that Ocean County introduced touchpad machines and that only problem was the placement of the key to record the vote. Commissioner Pfaltz said that he fears that people will be turned off by electronic devices that the election board workers can neither set up nor operate correctly. Commissioner Buchsbaum asked if there is any reason why only one type of machine should be used in New Jersey. Ms. Kelly reported that soon neither Salem nor Sussex Counties will use paper ballots or punch card

machines. She has no reason to advocate that all machines be of the same type throughout the State. She noted that in Ocean County senior citizens had more difficulty changing from lever machines to paper ballot machines than to touch screens. Regarding differences in machines' recount abilities, Ms. Kelly said that older lever machines are more difficult than other machines are. Mr. Incardone said that the Bergen machines provide a computer readout, the same on recount. Not one single tally has been changed.

Commissioner Garland asked about touch pads: does the machine print out the results or do the results need to be copied down out of the machine? Commissioner Garland noted that when tabulation is done by board workers an inversion of problems can arise. Ms. Kelly said that in Middlesex County, cartridges from the Sequoia machines go into a server, eliminating human counting. John Burke inquired about a central physical location for networking all individual machines in a county. Ms. Kelly said that type of set up does not exist now.

Chairman Burstein asked if the Attorney General's Office had input as to the choice of machines for the counties. Ms. Kelly stated that once a machine was on the certified list, any county is free to select it. There are a dozen or more machines on the list.

Chairman Burstein raised the issue of culled out deceased persons from registration lists. Mr. Incardone said that in counties of the first class, the Superintendent is the commissioner of registration and follows rules and regulations in taking names from the list. Both the local bureau of vital statistics and the State Department of Health are supposed to give information to the commissioner of registration. The statute requires that the reporting be done periodically, but as Ms. Kelly pointed out, if a person resides in Bergen and lives and votes in Ocean, notification is a problem.

Regarding people who have moved from one location to another, Ms. Kelly said that the National Voter Registration Act has a process to change their names from old lists to new ones. However, if the person moves without completing a change of address form correctly, the process does not work.

Chairman Burstein asked Mr. Incardone how to remedy the declining number of board workers. Back up workers are paid \$25 an hour for the first two hours polls are open for staying by their phones in case they are needed to come to work at a polling place. The increase in pay to \$200 a day hopefully will

help secure workers. Mr. Incardone detailed the extensive training given board workers.

Commissioner Bell asked about excusing people from jury duty to work as poll workers. Ms. Kelly noted that the same lists are used for jury duty and voter registration. Chairman Burstein asked Ms. Kelly which sections of the statutes need attention. She suggested archaic provisions in Chapter 18 dealing with ballot boxes and paper ballots, and the provision on electronic voting systems which was written for punchcard machines that electronically count. The Commission should look at Illinois's State Board of Elections and New York's centralized system. Chairman Burstein asked all guests to submit a prioritized list of desired statutory changes.

Chairman Burstein introduced the two guests from Essex County. Linda VonNessi, Clerk of the County Board of Elections, is a member of a state legislative committee advocating a bill to allow county or other government workers to be paid while absent from their jobs in order to be poll workers. She favors another hour for voting but prefers it at night rather than in the morning. Grace Cunningham, Chair of the Board, would like poll workers to be required to attend training annually instead of every two years as they now do. She suggested paying workers \$25 to attend training sessions. She also advocated standardizing the machines; Essex has old lever models. Communication poses problems at the polls and could be improved if a cell phone were available at each station.

Commissioner Bell asked why antiquated machines in use in Essex are on the certified list. Ms. Kelly said that the certification process needs to be updated. She said that establishing procedures for use of voting machines should be regulatory instead of statutory to better keep up with technological advances.

Mr. Cannel asked whether the statutes on challengers should be reviewed. Ms. Kelly said she did not think it was necessary.

Chairman Burstein asked staff to clean up the statutes and then to consider concepts. The Commission agreed that staff should invite Professor Frank Askin and Richard Perr, Esq., to the next meeting.

Title Recordation

Discussion on this project will be held at the next meeting. Commissioners who have comments on the Title Recordation draft will submit memos for distribution to the Commission.

Miscellaneous

The next Commission meeting is scheduled for October 18, 2001.