

MINUTES OF COMMISSION MEETING
October 18, 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, Hugo Pfaltz, Jr., Peter Buchsbaum and Vito Gagliardi, Jr. Professor Bernard Bell, Rutgers Law School, attended on behalf of Commissioner 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 Frank Askin, Professor of Law and Robert Knowlton, Scholar, Rutgers School of Law, Newark; Kathleen Donovan, Bergen County Clerk (and Voter Registration), Hackensack, New Jersey; and Richard Perr, Esq., Fineman and Bach, P.C., Haddonfield, New Jersey.

Minutes

The Commission asked staff to amend the Minutes of September 20, 2001 to correct errors and to make them more succinct.

Election Law

The Comments of Professor Frank Askin.

Professor Frank Askin is the director of the Voter Assistance Day project in Newark. Based on his experience, he identified six major election problems.

(1) Voters often move to Essex County from other counties and forget to register to vote in Essex County. On Election Day, these voters who registered in other counties but presently reside in Essex are denied permission to vote. The problem is caused by the 29 day cut off period for registration prior to the election. Professor Askin's recommendation was elimination of the existing cut off period and a provision allowing same day registration, including the day of the election. The creation of a central registry combined with the use of available technology and provisional ballots would prevent any fraud in the election process if this proposal were adopted.

(2) Many voters go to the wrong polling place to vote. There is no reason to maintain individual registration books at each polling place. Rather, each polling place should have access to the central registry to verify a qualified and registered voter and should allow that person to vote at the polling place where the voter is present. Cell phones should be available at each polling place.

(3) In some instances, a page from a voter registry book is missing at polling places in Essex County. The victim of this error is sent to Newark to appear before a judge to resolve the problem by a court order to vote. A central registry and telephone communication among the polling places would solve this problem.

(4) Voters without proper credentials are sent first to Newark to the Commissioner of Elections and then they must appear before a judge to obtain an order to vote. The better practice would be to have the judge sit at the Commissioner of Elections office and reduce the number of steps a voter must take to cast his vote on Election Day.

(5) N.J.S.A. 19:31(11)(b) contains language impeding the ability of a person to vote when the registration was lost in the mail and not recorded. The voter is often told to vote by provisional ballot, but if he does so, the vote will not be counted because the county board has no record of the registration. To have the vote count, the voter must appear in court in Newark to obtain an order to vote. The problem is in the statutory language.

(6) Many ex-felons are disenfranchised because of having been incarcerated. After they are eligible to vote again, they are required to re-register. One solution is to give a person a registration form at the time of release from prison or parole. In addition, a pre-trial inmate in jail has not yet lost the right to vote, but needs to vote by absentee ballot. The law revision process should address this problem of lack of information and education.

Commissioner Pfaltz asked whether statewide registration would be desirable. Professor Askin said it was a "great idea." He favors statewide centralization of the entire process.

Additionally, Professor Askin addressed third party rights, the treatment of alternative political parties in New Jersey. At present, the law requires an alternative political party to obtain ten percent of the cumulative, state wide vote in Assembly races to obtain party recognition, that is, the party's own column and line on the ballot. This requirement is too onerous: only New Jersey has never had third party recognition. The statute uses the standard of statewide elections. It is unrealistic to expect an alternative political party to run candidates for 80 Assembly seats to obtain party recognition. The State of Alaska recently ruled a similar requirement unconstitutional and Professor Askin is

using that precedent in current New Jersey litigation. He recommended a lower percentage such as three percent, or the adoption of a system of major and minor parties has been the practice in other states.

Alternatively, Professor Askin suggested removing any requirement about voter support and allowing any party to obtain recognition if that party runs candidates for office, has by-laws, has elected officials and holds an annual meeting.

Professor Askin further urged the Commission to adopt a provision to provide for registering in a political party at the time the voter registers. Assembly Bill No. 1996 permits a person registering to vote to disclose political affiliation on the voter registration form, but fails to incorporate the salient provisions of the September 10, 2001 Appellate Division opinion, Council of Alternative Political Parties v. John J. Farmer, Jr.

The Comments of Kathleen Donovan

Ms. Donovan has served as the Bergen County Clerk for 13 years. Her office's policy is to provide open, fair and easily accessible voting. She made the following specific recommendations.

(1) The latest revision of the election law did not accomplish a clean interface between Title 19 and Title 18A dealing with school board elections. The major problem is that candidates in school board elections are required to file with local school board administrators who are ill equipped to deal with filing requirements. The better practice would be to have the filing take place with the Municipal Clerks or the County Clerk who have experience in that area.

(2) School board elections should end at 8 p.m. not 9 p.m. Ms. Donovan's experience is that the additional hour is not effectively used and the time period is contrary to all other elections the close at 8 p.m. She would prefer uniformity of opening and closing hours among the various types of elections.

(3) The law requires counties to print too many forms of ballots: *e.g.*, machine strips, provisional, absentee and emergency ballots. Emergency ballots are rarely used. This requirement leads to economic waste, costing the county as much as \$50,000 to \$60,000 per election, as these various forms invariably are not all used and discarded after the election. She proposed a consolidation of absentee and

provisional ballots and recommended electronic voting even for provisional ballots. Absentee ballots are subject to federal law as well as state law. In answer to a question regarding the number of absentee ballots, Ms. Donovan said that in a presidential election Bergen County sends out 25,000 absentee ballots. (Registered voters number 520,000.)

(4) Ms. Donovan had reservations about the Commission's proposal to establish a single authority to regulate elections. She objected to having a single person in charge but supported the concept of some state oversight provided all commissioners were appointed to terms and not removed at the discretion of the parties.

(5) Ms. Donovan proposed that any qualified and registered voter should be able to vote by absentee ballot. The requirements of specific reasons for an absentee ballot should be eliminated. She did not believe that this change in the law would substantially increase the number of absentee votes cast in her county. She cautioned against changing the law that requires absentee votes to be received prior to the close of the election.

(6) Contrary to Professor Askin, Ms. Donovan did not believe same day voter registration was possible on the day of the election. She proposed a seven-day cut off period before the date of the election.

(7) Ms. Donovan noted that the statute presently allows a candidate in a primary election to file as an independent for the general election if he does so by 4 p.m. of the day of the primary. That technicality is in conflict with the intent of the statutes that prevent a candidate who loses a primary from running as an independent.

(8) While challengers did not pose a problem in her county, Ms. Donovan recommended uniform procedures to handle disputes.

(9) In her experience, Bergen County does not suffer any disadvantage from decentralization of the election governing process. The three major groups work well together. She suggested that any legal revision clearly specify the duties of each office participating in the election process to avoid turf battles and disputes as to the division of responsibility.

Mr. Perr commented on the method by which a candidate gains access to the ballot. The statute provides three alternatives; Mr. Perr preferred a single method, and recommended coordinating Title 19 and Title 40. His primary concerns were the length of the objection period – four days – which is too short for gathering evidence in objection, and the local authority's refusal to verify the signatures appearing on the candidate's petition. Mr. Perr suggested that if the local authority were not going to conduct a verification of petition signatures, then the law should allow a candidate's access to the ballot by means other than signed petitions. An alternative to signature verification would be to allow any person who has filed an application to run for office and has complied with financing law, to appear on the ballot.

Mr. Perr noted that the national trend and the New Jersey judicial trend is to open the ballot to candidates who want to run for office. The revision of the election law should be based on this overall policy.

Regarding speakers for a future meeting on election law, Chairman Burstein will speak to John Carbone; Commissioner Buchsbaum, time permitting, will approach the Clerk of Hunterdon County, and Mr. Cannel will contact Joanne Rajoppi, Clerk of Union County.

Miscellaneous

Status notes: Commissioner Buchsbaum received a memo from Alan Mallach supporting the project revising the law to facilitate rehabilitating distressed property. Commissioner Buchsbaum also recommended that the Commission consider the Uniform Mediation Act. Mr. Cannel will distribute that act and R. 1:40 for the next meeting.

The next Commission meeting is scheduled for November 8, 2001.