

MINUTES OF COMMISSION MEETING
January 17, 2002

Present at this meeting of the New Jersey Law Revision Commission held at 153 Halsey Street, 7th Floor, Newark, New Jersey, were Commissioners Albert Burstein, Assemblywoman Linda Greenstein, Hugo Pfaltz and Vito Gagliardi, Jr. Professor Bernard Bell, Rutgers Law School, attended on behalf of Commissioner Stuart Deutsch; Professor William Garland, Seton Hall Law School, attended on behalf of Commissioner Patrick Hobbs; and Grace Bertone attended on behalf of Commissioner Raymon Solomon.

Also attending were Edward McGlynn, Esq. and Greta Kiernan.

Minutes

The Commission accepted the Minutes of December 13, 2002 as submitted.

Welcoming Remarks

The Commission welcomed Linda Greenstein, Chair of the Assembly Judiciary Committee, and newly appointed Commissioner Ex-Officio.

Games of Chance

The Commission received a memorandum from the New Jersey Amusement Association (NJAA) regarding its Tentative Report and Recommendations on Games of Chance. That memorandum raised serious policy issues. Mr. McGlynn, registered lobbyist for the NJAA, addressed the Commission.

Commissioner Gagliardi initially noted that it had been one year since the Tentative Report and Recommendations had been adopted by the Commission and circulated for comment. The Report expanded the ability to run amusement games statewide unless local government opted out of that provision. That expansion of current law was intended to codify practice; games of chance, as a practical matter, operate throughout the state. The Report made two fundamental changes to existing law: (1) automatic expansion of the legality to operate amusement games unless local government decided to opt-out of the provision and (2) no local licensing requirements for games of chance. Commissioner Gagliardi, who had spoken previously to Mr. McGlynn, stated that the Commission did not intend to promote an expansion of

gaming but rather to track the reality of New Jersey business. He also noted that current law was too confusing; charities running raffles or bingo games often run afoul of the legal requirements. Mr. McGlynn had informed Commissioner Gagliardi that, while the NJAA agreed with the need to simplify the law on raffles and bingo, it opposed expanding games beyond the geographic areas where they are presently permitted. Mr. McGlynn noted that current law goes back to the late 1950's and was amended in 1962 primarily to permit amusement games along the New Jersey shore. Expansion would hurt members of the organization by introducing competition in other areas of the state outside the Atlantic coast. Mr. McGlynn asked the Commission to remove that provision. His group otherwise would support the proposed legislation.

Commissioner Burstein explained that the Report reflected the reality that games of chance now operate throughout the state. He asked Mr. McGlynn whether there was a way to address that reality without encountering the opposition of the NJAA. Mr. McGlynn explained the major issue is redemption, that is, the prizes a player wins at a particular game. At the Jersey shore, redemption is limited whereas it is not limited in other places. For example, at Chuckie Cheese there is no redemption based on game performance. To the contrary, at the New Jersey Shore, redemptions are based on game outcome and may be accumulated for years. If redemption were expanded, it would cause a reduction of business for his group. Therefore, he asked for an amendment to the Commission report. Commissioner Pfaltz asked why would members of his group oppose the ability to expand to other areas. Mr. McGlynn explained that most members are small businesses that do not want to expand their businesses beyond the New Jersey shore.

Mr. Cannel stated that were the report to remove the provision expanding the legality to run games of chance, it would result in making unlawful a substantial number of business activities and that the law would not be enforced to shut down these businesses. Commissioner Gagliardi said that Bowcraft, for example, has redemption based on game outcome. Mr. McGlynn explained that Bowcraft is legal because it is a designated amusement park and properly licensed by state and local government to run games involving redemption. In other family entertainment centers not in licensed zones, they are violating the law. The NJAA does not investigate the unlawful activity of these organizations. Commissioner Gagliardi hoped that the Report would not make unlawful existing businesses running some games.

Commissioner Burstein asked whether Mr. McGlynn would not oppose deleting the municipal step but it might bother the municipalities based on their police power. Local government conducts background checks as to who are the licensees. Local government also collects licensing fees. Commissioner Burstein expressed that the state-level background would be adequate and simplifies the licensing process. The NJAA would not oppose the elimination of municipal licensing.

The Commission directed staff to draft an amusement park exception to satisfy the concerns of the NJAA and to retain provisions regularizing actual gaming practice in NJ. Mr. Cannel stated he would draft amendments within two weeks and would circulate the revised Report to Mr. McGlynn, Mr. York and Mr. Zucker. Commissioner Burstein stated the Commission would attempt to reach a compromise.

Election Law

The Commission considered the draft voter registration memorandum filed prior to the meeting and an additional memorandum distributed at the meeting. The latter memorandum creates the statewide database, specifies minimum components it must contain, provides for a uniform application, identifies a voter registration record, specifies confidentiality and removal of records and incorporates various provisions of existing law. Pending federal legislation would require states to adopt statewide voter registration databases. In addition, the national trend is to move from local to statewide voter registration.

Mr. Burke noted that the draft distributed at the meeting resembles but does not follow the Michigan model. Every state law examined contained historical curiosities. The draft statute is written to create a logical structure to establish a statewide voter registration database and is not based on legislation from any single state. The draft contains language that is flexible enough to account for the adoption of new technology as to registration records and methods of voting and eliminates statutory detail that has the capacity to fix requirements that, several years from now, may deter beneficial change.

Mr. Burke noted that, under the draft statute, county election officials would pull the voter registration lists from the central file and distribute them to district polling places. County election officials also would identify polling places in their counties. County officials essentially are transit points for the distribution of the official voter registration list.

Mr. Burke explained that the transition cost should be less than that sustained by Michigan because New Jersey has only twenty one counties rather than the thousand or so local governments in Michigan whose registration offices had to be integrated into a single system. Mr. Burke also added that logically in the future the state would want to require uniform voting machines across the state, whereas now the machines differ from county to county.

The Commission then considered the time limit for registration. Some observers believed seven days was too short. The observers believed fourteen days would be adequate and the Commission agreed with that time period. Commissioner Pfaltz asked what number is assigned to a voter who does not have a driver's license. If a voter lacks a driver's license, the state would generate a unique numeric identifier. Federal law prohibits using the full social security number but not the last 4 digits. Mr. Burke expressed the view that the statute should not dictate how to generate the unique numeric identifier but leave that to officials administering the system. The number may be generated at the state level or at a registration agency depending upon rules adopted by the Commissioner on Elections.

To reduce error in records, Michigan mails a voter registration card to the voter. If it is returned, then Michigan determines whether data was wrongly entered into the system or conducts an investigation. The postal system is one safeguard against data error.

Questions were posed whether the draft should allow voting on machines early as an alternative to absentee ballots to minimize the number of paper ballots. Any paper ballots used should be machine countable. Professor Bell referred to the Florida statute as to obtaining registration lists and confidentiality provisions. The Florida statute requires that certain types of information cannot be given out. Professor Bell asked staff to review the Florida statute to make certain that lists do not contain information deemed confidential. In Florida, a voter can state which information to exempt. Professor Garland stated that the list should be reduced to name, address and telephone number. Commissioner Pfaltz asked that the draft include a grandfather clause for existing machines but that in fifteen years or so the machines must be uniform. Professor Garland added that the Commission on Elections should issue a report shortly on how it would implement that conversion process.

The Commission also requested staff to impose a fourteen-day period of repose prior to the election under which no voter could be removed from the registration records. The list would be frozen. No deletions, changes or additions. If a voter changed residence in that period, he would go to his former district. Professor Bell referred to Michigan law that freezes the record; it might serve as a model.

Ms. Kiernan stated that the lists that officials now get are inaccurate. Accurate lists are bought from private companies; these lists contain telephone numbers. Fourteen days was too close but better than seven days. Mr. Burke stated that the original proposal contained a requirement for telephone numbers. To include them might involve a privacy issue, even though they are commercially obtained. The current problem with provisional ballots is that they are not always counted. Ms. Kiernan stated that provisional ballots should be retained as a safeguard.

Commissioner Burstein stated that any voter should have the flexibility to vote out of district for elections in their district. As to fraud, Michigan officials state they do not verify signatures or require any form of specific identification. To that official's knowledge, Michigan does not have fraud. Mr. Burke stated that you could not prevent fraud; you make it a crime. Mr. Cannel stated that the proposal should retain signature verification because people are comfortable with the present system. Mr. Burke stated the proposal allows for the development of alternative methods of verification.

The Commission liked the overall scheme of the proposal and directed staff to revise the draft based on the Commission's comments. Staff added that, at the next meeting, it would prepare a draft statute on the conduct of elections, and on absentee ballots and early voting.

Commissioner Burstein asked staff to arrange the appearance of vendors of voting machines at the March meeting. The Commission would discuss the substantive issues as to early, absentee and provisional voting at the February meeting.

Legislative Matters

Assemblywoman Greenstein asked how Commission revisions of statutory law were introduced in the Legislature: by whole or in parts. Commissioner Burstein stated that introducing legislation in bulk may generate opposition from different interest groups but piecemeal introduction also has limitations. As to the election law, Commissioner

Burstein felt it must be submitted as a single piece. Assemblywoman Greenstein agreed, stating that she preferred to consider a complete revision of the election law and thought it could be passed after careful consideration by the Legislature.

Commissioner Pfaltz asked the Assemblywoman for an exception to the bill limitation presently imposed on individual Legislators. He asked whether there could there be a separate track for Commission Final Reports and Recommendations. For example, perhaps the names of the President or Speaker of the Assembly could be placed on Commission bills to permit introduction without counting against the number of bills a legislator could introduce under the rules. Assemblywoman Greenstein suggested speaking with key members of the Legislature to discuss the larger issue of special track legislation and how to handle revision of the statutory law.

Miscellaneous

Staff reported on its continuing work with the cemetery representatives to produce a single product for introduction into the Legislature. The next Commission meeting is scheduled for February 21, 2002.