

MINUTES OF COMMISSION MEETING
February 21, 2002

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, Vito A. Gagliardi, Jr., and Peter A. Buchsbaum. Professor Bernard Bell, Rutgers Law School, attended on behalf of Commissioner Stuart Deutsch.

Also attending were: Edward R. McGlynn, Esq., lobbyist for the New Jersey Amusements Association; Michael Skelly, of Skelly's Amusements; and Kevin O'Neill, Deputy Director of the Council on Compulsive Gambling of New Jersey.

Minutes

The minutes of January 17, 2002 were accepted subject to one correction offered by Commissioner Gagliardi. In line seven, paragraph two, page two, "Chuckie Cheese" should read "Chuck E. Cheese's".

Games of Chance

The Commission considered the draft games of chance memorandum, and the attached letter from the Princeton Public Affairs Group, Inc. expressing approval of the Tentative Report, which was filed prior to the meeting. The Commission also considered an additional draft memorandum, proposing language 5:11-1, the "kiddie exception" discussed below, which was distributed at the meeting.

Mr. Cannel briefly explained that he had discussed with Mr. McGlynn, of the New Jersey Amusement Association ("NJAA"), the addition of language, as a new section 5-3.5, permitting licensed amusement games to be operated at the seashore, at an amusement park, and at a fair or carnival having a duration of one week or less. Mr. Cannel indicated that while an agreement had not been reached, there had been some progress.

Preliminarily, an outstanding issue remains regarding the definition of a "recognized amusement park." Mr. McGlynn indicated that he thought that the language permitting games at a limited duration fair or carnival might be acceptable to the NJAA. Permitting amusement games at an "amusement park" presented a more significant concern. Mr. McGlynn noted that the NJAA worked very hard years ago to have a law passed limiting the conduct of amusement games to recognized amusement parks, seashore areas and other

resorts areas. Allowing licensed amusement games at "amusement parks" as described in the proposed language raises the possibility of an expansion to modified family entertainment centers ("FEC"). According to Mr. McGlynn, expanding the law to include an "amusement park" including at least two carnival rides, means, in practical terms, that an FEC will obtain two of the smallest rides licensed by the State, and install them in their facilities to comply with the law so that they can offer redemption.

Mr. Cannel indicated that another alternative had been proposed. In an effort to address the possibility that there would be no agreement on expanding games of chance beyond the shore areas, a "kiddie exception" was proposed (5:11-1). This section defines a set of games that are not real gambling because it is impossible to "win" because the value of all coupons given for winning a single game does not exceed the amount paid to play the game. These games are like including a variable quality prize in the bottom of a cereal box, which is already legal. Commissioner Gagliardi observed, based on his experience, that when Chuck E. Cheese's offered variable redemption years ago, there was no way that you could obtain a prize that exceeded the amount that you paid to play the game. He suggested that the distinction is probably not whether you have variable redemption or not but whether or not you can exceed what you invest.

Mr. McGlynn indicated that other national chain FECs outside of New Jersey, such as Dave & Busters, would try to enter the state if the law is changed. He suggested that the legislation was designed to afford NJAA a monopoly, and that there was no reason to change it since to do so would constitute an expansion of gambling throughout the State of New Jersey. Mr. McGlynn explained that most of the NJAA businesses are small and privately owned by families that started them in the 1950s and 1960s, and have handed them down through the generations. He explained that tourism is the second largest industry in the state of New Jersey, and an expansion would reduce the number of people patronizing NJAA members.

Mr. Cannel suggested that the newly drafted "kiddie exception" to the statute might be less objectionable to the NJAA since according to the proposed language, the resulting establishment would not look like those owned by NJAA members. It would be different from a general expansion of the seashore games throughout the State since there would be variable redemption on a few games, but no wheels, shooting galleries, competition-type games, etc. Mr. McGlynn indicated that he had not yet had the opportunity to review the "kiddie exception" language, and would like to do so and discuss it with the NJAA membership.

Mr. Cannel indicated that William York, Commissioner of the Legalized Games of Chance Control Commission had also asked that no action be taken on this today, but that the matter be carried to allow his people to take a look at it.

Mr. Skelly, owner of a portable amusement company based in southern New Jersey, explained that in New Jersey, according to the current regulations, a portable amusement company is permitted to operate games of chance at a recognized county fair, or a qualifying festival. Mr. Skelly noted that there are less than twenty fairs statewide, and even fewer festivals. Mr. Skelly explained that his company is authorized to work at one county fair, so he operates one week out of the year in New Jersey. He noted that his company receives approximately 20% of its annual grosses for rides and food from New Jersey business, but only 11% for games. Mr. Skelly suggested that over a million dollars of his annual revenue comes from outside of New Jersey (Pennsylvania). As a result, New Jersey loses out each year on corporate income taxes, sales taxes, licensing fees for each game, payroll taxes, and workmen's compensation. Mr. Skelly also suggested that non-profit corporations and churches setting up carnivals lose as well, as do their patrons. He noted that including carnivals in the statutory language would address this issue, so he is satisfied with the proposed language of 5:3-5(c). He also suggested that he does not see a problem with the way Chuck E. Cheese's is operating now.

Kevin O'Neill, Deputy Director of the Counsel of Compulsive Gambling of New Jersey suggested that while he is not opposed to gambling, he is concerned with any expansion of legalized gambling. Mr. O'Neill indicated that the proposed modifications to the statute reflect a clear expansion of gambling in New Jersey for both adults and children and that the State does not need to provide more opportunities for gambling in light of what he characterized as the State's poor record in addressing issues such as adolescent gambling.

Commissioner Burstein advised that the Commission needed to digest the information prepared by staff and by those present at this meeting, and to examine proposal 5:11-1 to determine its suitability. He asked that Mr. McGlynn review proposal 5:11-1 and provide input to the Commission, and indicated that the Commission would be discussing this issue again at the next meeting.

Election Law

The Commission considered Draft Tentative Reports regarding voter registration, pre-election voting, and voting procedure.

Mr. Cannel noted that by the time of the next meeting, the Commission will have before it a draft of every piece of the election law that is being worked on, including: administration, registration, pre-election day voting, voting procedure, voting machines, ballot design, and counting the votes. Commissioner Burstein requested that a section be prepared to address the penalties for election violations. Mr. Cannel noted that there is an existing Commission Report on this subject that can be revised for this purpose.

Commissioner Burstein indicated that he was interested in hearing from someone in the industry regarding where voting technology was going in the long term to put in context issues like simplicity/ease of voting and security. Commissioner Gagliardi asked if there was an association of voting machine entities that might be able to supply the sort of information sought by the Commission. The Commissioners expressed their disappointment in the Cal Tech/MIT report considered previously. It was confirmed that staff would endeavor to find someone to present additional information to the Commission on the future of voting technology for the April meeting. Commissioner Burstein also suggested that it would be helpful to hear from attorneys practicing in the election law area that, and that a presentation by a group of those individuals might be useful.

It was determined that the staff would prepare a complete packet of the five or so sections that are being worked on for review at the March meeting, and that the April meeting would be slated for a more formal presentation of the issues. This was determined to be a priority project for the next several months.

After a review of the three sections submitted prior to the meeting, the Commission requested that staff establish a 14 day time period limiting the time frame for pre-election day voting, the same time period for the closing of voter registration.

Commissioner Buchsbaum mentioned that the New Jersey Appleseed Foundation was pleased to see the election law revisions, and that Renee Steinhargen, Executive Director of the foundation, may be in touch.

The Commission agreed that there are three discrete issues comprising election law: how you vote, how you run for office, and campaign finance. The Commission will complete revision of law in regard to the first issue and may work on the second, but it is not anticipated that work will be done on that third area.

Miscellaneous

After a discussion of the schedules of the Commissioners, it was determined that the March meeting would be moved to a different night to accommodate the Commissioners. Staff will attempt to reschedule the meeting to Tuesday, March 26, 2002 at 4:00 p.m. (rather than 4:30 p.m.).

Mr. Cannel indicated that there was Legislative progress on some recommendations including the Uniform Child Custody Enforcement Act, and the Judgment and Enforcement of Judgment report. Mr. Burke suggested that the Commission might want to propose to the National Conference of Commissioners on Uniform State Laws the drafting of a uniform law on standard form contracts, focusing on shrink wrap, click wrap, browse wrap, and the like. When the staff appeared before a Bar Association committee on the Standard Form Contract Act, the committee said that it did not make sense to pursue law on standard form contracts in a single state, that the issue should be addressed nationally.

Mr. Burke explained that courts do not normally make a distinction between the validity of a contract and enforceability of a particular term. He indicated that although there is arguably no difference between shrink wrap/click wrap/browse wrap contracts and the manner in which contracts have been dealt with by the courts for 100 years in other areas, the courts look at them differently, find the absence of consent, and question the entire validity of the contract. Mr. Burke explained that there are only a few ways to deal with this. One way is to say none of these agreements are enforceable at all, leaving transactions without any terms. Another way is to say they are enforceable if there is any manifestation of assent. A third option is to pursue it as the Commission had, and select areas of concern to vendors (limitations of liability, warranties, etc.), and identify problematic terms (those the consumer would not expect, or would impede the economic value of the contract) and allow the Court to address those terms.

The staff will draft a letter to NCCUSL requesting that it approve a project to develop a uniform state law on standard form contracts.

Commissioner Burstein noted that Mr. Burke's law review article on this issue might be a useful addition to any packet prepared for submission to an outside entity.

Commissioner Buchsbaum mentioned that the Uniform Mediation Act was approved by the ABA House of Delegates a couple of weeks ago.

The Tentative Draft of the Distressed Properties Act will be submitted for the next meeting.

The Annual Report was reviewed and a correction was made the Commission asked staff to correct minor errors.

The next Commission meeting is tentatively scheduled for Tuesday, March 26, 2002, at 4:00 p.m.