

MINUTES OF COMMISSION MEETING
May 23, 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, Hugo Pfaltz, Jr., and Peter Buchsbaum. Professor Bernard Bell, Rutgers Law School, attended on behalf of Commissioner Stuart Deutsch; Professor William Garland, Seton Hall Law School, attended on behalf of Patrick Hobbs, and Grace Bertone, McElroy, Delvaney & Deutsch, attended on behalf of Rayman Soloman.

Also attending were: Henry Gottlieb, New Jersey Law Journal and Kimberly Kersey, Governor's Office.

Minutes

The Commission approved the Minutes of April 18, 2002 as submitted.

Distressed Property

The Commission considered the draft report, dated May 13, 2002, pertaining to the Distressed Property Act. The draft contains amendments resulting from the Commission's consideration of a prior draft report.

Mr. Burke explained that Section 1 entitled "Definitions" was amended to clarify that the definition of "commercial property" meant a structure containing 75% of usable area dedicated to non-residential purposes. Section (b) accordingly was amended to reflect the same criteria.

The Commission directed staff to correct the language in Section 1(c)(4) intended to state that a residential property is neglected if it is the subject of repeated code violations but that those code violations are not the fault of the landlord but of a third party.

The Commission also directed staff to review the statute governing construction permits to determine the accuracy of the language used in Section 1(c)(5) governing the expiration and renewal of construction permits. The Commission wanted to know if the statute provides for extensions of construction permits.

Next, the Commission considered at length Section 3 requiring the code enforcement official to send a notice to an owner of property that his property has been designated a "distressed property," and that if the owner fails to correct the defect underlying the finding made by the code enforcement official within the time provided in the order, that the property would be placed on the inventory of distressed properties making the property subject to sale.

The discussion first centered on the requirement that the code enforcement official not only notify the record owner of the property but also conduct a title and

judgment search to identify, and also notify, all persons who may have an interest in the property. Mr. Burke said this approach was unworkable and would render the Act, if enacted, ineffective. Code enforcement officials generally are not lawyers; they may work part-time, and may lack the expertise and time to provide comprehensive notices to all lien holders. Mr. Burke suggested that the proper time to serve all lien holders was at the stage of litigation when the plaintiff is represented by counsel. Mr. Burke recommended that the notice in Section 3 be limited to the owner as identified in the tax records.

Professor William Garland opposed that proposition. He stated that the procedure lacked sufficient due process protections for the property owner. He argued that the determination of the code enforcement official is an adverse finding against the property owner having the capacity to affect the value and alienability of the property. Lien holders have stakes in the property; the code enforcement official's finding affects their interests. Due process requires the government to notify not only the owner of record but all lien holders whose interest might be affected by the code enforcement finding that the property is a distressed property.

Mr. Burke replied that the draft report provides several layers of due process protections and that the degree of due process escalates according to the gravity of the event. He stressed that to get to the point where the code enforcement official sends a notice to an owner, the owner must already have failed to comply with an order to remedy a code violation based on a health or safety standard. Second, the Section 3 notice does not differ from any ordinary notice now given to owners of property not in compliance with local property rules. Third, Section 3 and 4 give the owner a hearing and opportunity to contest the code enforcement official's finding. Fourth, if the owner loses at this hearing, the owner has the option to appeal the final decision of the code enforcement official by filing a complaint in lieu of prerogative writs with the Superior Court Law Division.

The effect of the owner's objection to the code enforcement official's finding is twofold. First, the code enforcement official's finding is not a public record as constituted by the inventory of distressed properties and second, the property is not subject to the remedies provided by the Act. Mr. Burke argued that this procedure satisfied due process requirements at this stage of government action.

The Commission debated the issue and decided to defer notice to all lien holders until the point of litigation. Professor Garland noted his objection to that decision. The Commission also discussed at length the practical problems of giving lien holders notice because, unlike a regular transfer of title, where the seller can provide an affidavit stating he is not the person named in particular judgments, no such procedure would be available in the sale contemplated by the draft report. Owners having common names such as

Johnson or Smith would exacerbate this practical difficulty. The Commission asked staff to contact title insurance lawyers to comment on this aspect of the report.

The Commission also asked staff to change the Section 3 term “notice” to “warning” and suggested that staff consider posting the warning on the building itself as well as giving written notice to record owner.

Next, the Commission discussed Section 7 entitled “Sale” and directed staff to delete subsection (b) prohibiting “related persons” from participating in the bid process. Mr. Burke explained that the original idea was to prevent the owner and related entities from getting the property back on the theory that returning the property to those that had it during its period of decline would defeat the objective of rehabilitating the property. The Commission observed that the term “related persons” was not defined, was incapable of being defined precisely and would prevent legitimate potential buyers from participating in the auction.

The Commission asked staff to consider adding a provision to the statute stating the legal principle that the sale is ineffective against a lien holder not given notice prior to the sale.

The Commission asked staff to clarify by comment the meaning of the word “grants” used in Section 8 to mean financial funding.

New Project - Uniform Athletes Agent Act

Mr. Cannel explained that New Jersey Uniform Law Commissioner Joseph Donnegan had requested that the Commission consider approving the Uniform Athletes Agent Act as a new project.

The Act is the product of the National Conference of Uniform Law Commissioners and has been introduced in 15 states and adopted in 13. The Uniform Law addresses the problems posed by agents representing student athletes. Professional representation may lead to player ineligibility and affect the athletic programs run by universities.

The Act sets up regulatory rules for agents and provides mandatory disclosure of certain terms on contracts between agents and players warning them of the possible consequences of signing any agreement to be represented.

The effects of signing a contract with an agent fall on the student player. Professor Bell expressed the view that the agent, not the student, should be the person to suffer the consequences of representation prohibited by NCAA rules.

Commissioner Burstein asked why a specific statute was needed given the general law of principal and agent. The Commission asked staff to work up a more detailed memorandum for its consideration at the June meeting.

Uniform Arbitration Act

Mr. Cannel will prepare a memorandum for the next meeting.

Election Law

The Commission reviewed the Draft Tentative Report dated May 13, 2002 and made several technical amendments.

Section 19A:1-2. Duties of Commission; executive director.

The Commission asked staff to delete in subsection (c) the phrase “It shall be the duty of” and insert the word “shall” after the word “director.” The Commission approved the new language of subsection (c), but asked staff to insert the introductory phrase “For good cause shown” at the beginning. The Commission also approved a new provision, subsection (d)(8), incorporating language required by proposed federal law.

Section 19A:2-1. Statewide voter registration database.

Subsection (a) must be corrected to provide that voters may obtain registration forms from the Commission on Election’s Web site by downloading them and to clarify that they cannot register over the Internet. Also, staff was asked to address in the comment, transition issues concerning transfer of current voter registration records to the new system.

Section 19A:2-2. Minimum components of the registration database.

The Commission found the word “harmonize” in subsection (a)(2) was vague and asked staff to find a more accurate term to describe how the records of different institutions are to be linked. The Commission approved the added language in subsection (a)(2) and (3) reflecting proposed federal law.

The new language in subsection (f), also inserted to conform to proposed federal law, is unclear. The question of providing instructions and forms in different languages should be based on state census data, since people are able to register at diverse places under federal law.

Section 19A:2-3. Uniform statewide voter registration form.

In subsection (f), Professor Garland preferred the phrase “other than in person,” to the term “by mail” with reference to the new language, contained in proposed federal

law, to require production of identification when a voter, who has previously registered by mail, votes for the first time.

The Commission also discussed the requirements of providing registration forms and instructions in various languages. Staff was asked to study the best way to determine the percentage of persons whose first language was not English to develop a method to comply with proposed federal law. The question was raised whether “voting district” or “election district” are appropriate standards by which to measure the number of people speaking a non-English first language. The better view is to rely on state census records since voters may register not only in their districts but in several designated state agencies. The Commission favored retaining “shall develop instructions...” if “more than 5 percent...” and adding “may develop instructions...” if “less than 5 percent...”

Section 19A:2-7. Acceptance of registration.

Professor Bell’s recommended amendment requiring retention of records denying voter registrations was approved.

Section 19A:2-12. Public Availability of voter registration lists.

Delete “date of birth” from subsections (a) and (b) and deal with free viewing versus cost for production of record reference to statute governing public records.

Section 19A:3-1. Voting systems; requirements for all systems.

Delete language of subsection (i) and replace with general reference that Title is subject to and superseded by Federal Law. Identify the federal law in comment.

Section 19A:3-2. Voting systems; requirements for new systems.

Check Illinois case applying Bush v. Gore. Also simplify and generalize language in subsection (d) dealing with issues of accessibility.

Section 19A:3-3. Approval of voting systems.

The Commission discussed this provision at length. Consensus was reached on the following principles: (a) the goal should be uniformity of equipment without stifling of competition in the market place so that if a person in Hudson County, were to move to Somerset County, that person would not encounter an entirely different voting system, (b) the Commission on Elections should not be required to approve any machine meeting the minimum requirements but should have the discretion to approve those systems offering advantages in quality and other considerations over competitors, (3) the Commission on Elections should have the power to withdraw existing systems that become obsolete or once their costs are amortized. Staff was asked to produce the exact language. Change “similar” to “uniform” in subsection (b).

Section 19A:3-4. Regulations for use of voting machines.

Add the term “of this Title” at the end of the first sentence in the introductory paragraph. The Commission approved subsection (d) required by proposed federal law.

Section 19A:4-13. Preparation and distribution of sample ballots.

Subsection (b), concerning provision of ballots in different languages, must be resolved in same manner as provision governing registration forms and instructions.

Section 19A:5-1. Pre-Election Day voting.

Reverse order of Chapters 5 and 6.

Section 19A:5-2. Approving or rejecting a pre-Election Day vote request.

The Commission approved new subsection (c) incorporating language required by proposed federal law.

Section 19A:5-6. Pre-Election Day voting by persons covered under federal law.

Delete new subsections (c) and (d) as they are obvious under federal law.

Section 19A:5-4. Approving or rejecting a pre-Election Day vote request.

The Commission approved new subsection (b) incorporating language required by proposed federal law but asked staff to delete proposed language in subsection (c) as governed by another section dealing with identification requirements at the polling place.

Section 19A:6-1. Polling places.

The Commission asked staff to add qualifying language to subsection (c) to clarify that that subsection applied only if the Commission granted a waiver or determined that an emergency existed as to availability of polling places to handicapped voters.

Section 19A:6-2. Dates of Election.

The dates of election should be established by statute, not left to the decision of the Commission of Elections.

Section 19A:6-3. Approving or rejecting a pre-Election Day vote request.

The Commission approved new subsection (c) incorporating language required by proposed federal law.

Section 19A:6-4. Poll workers; equipment.

The Commission approved new subsection (d) incorporating language required by proposed federal law except that subsection must be conformed with changes to be made regarding provision of documents in multiple languages.

Section 19A:6-6; 19A:6-7; and 19A:6-9.

The Commission approved new subsections incorporating language required by proposed federal law.

Section 19A:7-1. Appointment of challengers.

The Commission, after protracted discussion on whether to broaden scope of who may challenge, decided to retain requirement that challenger must be person registered to vote. The Commission asked staff to correct subsection (a)(2) to say “has nominated a candidate.”

Section 19A:7-2. Permits to challengers.

The Commission asked staff to re-write subsection (c) to clarify the meaning of that subsection.

Section 19A:7-6. Basis for challenge.

Change language as follows: “A person seeking to vote may be challenged on the ground that the person is ineligible or disqualified from voting.”

Section 19A:7-7. Challenges.

The Commission approved new subsection (d) incorporating language that would be required by proposed federal law.

2C:31-1. Illegal voting

The Commission approved amendments to provision downgrading to disorderly person offense the act of knowingly signing a nominating petition when that person is not eligible to sign it.

2C:31-1. Interfering with voting

The Commission approved increasing the penalty for a person who repeatedly engages in illegal voting conduct. The offense is raised to a third degree offense.

The Commission asked staff to make the changes noted above and re-submit the Draft Report for consideration at the June meeting.

Miscellaneous

The next meeting was scheduled for June 13, 2002.