

MINUTES OF COMMISSION MEETING September 26, 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, Peter A. Buchsbaum, and Vito A. Gagliardi, Jr. Professor Bernard Bell of Rutgers Law School, Newark, attended on behalf of Commissioner Stuart Deutsch, Professor William Garland of Seton Hall Law School, attended on behalf of Commissioner Patrick Hobbs and Grace Bertone, McElroy, Delvaney & Deutsch, attended on behalf of Rayman Solomon.

Also in attendance were: Michael Skelly, of Skelly's Amusements; Sandra Matsen, of the League of Women Voters New Jersey; William J. Pascrel, III, Passaic County Counsel; and Dr. Leonard T. Flynn, of the New Jersey Libertarian Party.

Minutes

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

Games of Chance

Mr. Cannel indicated to the Commission that after making the revisions to the Draft Report on Games of Chance, he received no comment from either Edward McGlynn or Bill Yorke. Mr. Cannel noted that the Draft Report included the insurance provisions that had been discussed previously. In the section titled "Gambling transactions unlawful" Commissioner Burstein noted that there is always a concern that there might be other items not presently included in subsection (b) that should be included. Mr. Cannel indicated that he had tried to make subsection (a) as detailed as possible to decrease reliance on the exceptions language. It was suggested that the only way to find out if there were significant items that had not been included in those subsections, or in other sections, was to disseminate the report. Commissioner Gagliardi moved that the Draft Report be released as a Final Report. The typographical error of two 'm's in "Amendment" will be corrected.

Mr. Skelly, of Skelly's Amusements, commented briefly on the Draft Report. He indicated that New Jersey is the only State that controls the geographic location of games, but to the extent that this Report changes that with regard to fairs and carnivals, he agreed with the Commission. He noted again that a carnival held in conjunction with a non-profit organization provided support for charity.

Distressed Property

The Commission had the opportunity to review the letter from Alan Mallach, commenting on the Draft Tentative Report on the Distressed Property Act. Since staff

was under the impression that this matter was removed from the agenda for this meeting, the Commission did not have the opportunity to consider Mr. Burke's response to Mr. Mallach's comments as the response was distributed at the meeting.

Commissioner Buchsbaum noted generally that one of the things that had not yet been done was to compile a listing of all of the disparate statutes, including such things as the Abandoned Buildings Act, the Uniform Construction Code Act, etc. and create a single streamlined procedure that reconciles all of the various statutory sections that address issues similar to those addressed by the Distressed Property Act.

Mr. Cannel noted that an inventory of the existing statutes had been commenced and could be completed as the next phase of this project. Commissioner Buchsbaum suggested that the new bills cited by Mr. Mallach provide an alternate way to do things that existing law already addresses. He requested that staff pursue a full inventory of the number of existing laws that deal with similar issues. Commissioner Burstein asked that staff look at the existing statutes and the two proposed bills and see if certain components can be incorporated into the Distressed Property Act for the next meeting prior to circulation of a Draft Tentative Report.

Election Law

Mr. Cannel explained that the election law modifications so far were contained in two packets of information, the initial section dealing with voting, and the new one dealing with running for office. The section pertaining to how to run for office deals with petitions, vacancies, etc. Mr. Cannel noted that there was a relatively recent addition to the existing law dealing with vacancies in legislative positions that is contrary to the provisions of the State Constitution. As a result, we are faced with the question of whether to more closely follow the existing law or the State Constitution. It was suggested that the existing law has some wise provisions and that we may want to recommend those but point out that they should be brought in line with the Constitution.

The statutory provisions pertaining to parties have been simplified and streamlined but staff is of the opinion that the critical items have been preserved. There seems to be very little power in party committees but there is an entire structure and it has not been substantially disturbed by the proposed revisions. At the present time, county committee people are elected, and this will continue to be the case. It will, however, be very much up to the party as to how they do it. Since this is an intra-party function, the party may determine how to perform the function. Commissioner Burstein suggested that one of the problems from the party perspective is finding members for the party committee. Mr. Cannel suggested that it might be helpful to limit the number of committeepersons. If the number was reduced from 1,000 to 100 in a county, more people might be willing to be involved. There was some additional discussion of this issue, and it was determined that this was a matter for the parties to decide.

The statute does not presently contain information concerning the manner in

which Presidential and Vice-Presidential candidates are chosen. Statutory language sets forth the manner in which delegates and electors are chosen, but does not set out the manner in which a candidate for President, for example, ends up on the ballot in New Jersey. Since there has been no suggestion that this is a problem, it did not appear to be an item requiring additional attention. Commissioner Buchsbaum raised the question of what happens in a situation in which there is no petition filed, and no write-in candidate receives sufficient votes. Presently, the seat is considered a vacant seat that cannot be filled. The question was raised as to whether or not the Commission wished to address this issue.

The Commission heard from the guests in attendance. The first guest to speak was William Pascrell, Jr., County Counsel in Passaic County. Mr. Pascrell noted that Passaic County is the only county in the country in which a federal election monitor is in place. Mr. Pascrell suggested that the disjointed nature of the present Title 19 was an underlying reason for the appointment of a federal election monitor, and commended the Commission for its suggestion of statewide registration, which he described as critical to proper elections in New Jersey.

Mr. Pascrell suggested that the Tentative Report is a good first start that can be built upon. He noted that the report takes into consideration the technological changes (computer technology) impacting the election process, but advised that Passaic had spent some \$2.6 million dollars to upgrade its lever machines only to have problems with the new technology. He described lever machines as nearly indestructible, while the newer technology was subject to power and other problems.

As a result of concerns in Passaic County with regard to bilingual ballot access, Mr. Pascrell encouraged the Commission to take another look at the need for bilingual poll workers. He suggested that the 10% rule is a good start for addressing the ability of individuals with different languages to come and register an informed vote but said that the law needs to be given some teeth. Mr. Pascrell also discussed the difficulty in filling the poll worker slots, mentioning that the individuals who staff those positions should have experience and should be trained. He suggested that those individuals should be registered voters.

Mr. Pascrell also touched on the problem of bi-partisan paralysis in election matters. Mr. Pascrell suggested that while elections in Passaic County are now running properly, when you have an election board with two Republicans and two Democrats, there should be some mechanism for breaking the paralysis that may result. When those individuals do not do their jobs, county taxpayers may be required to pay for an election monitor - without the ability to give an incentive or coerce them into doing their jobs. The County is placed in a position of having to pay for the expense of an election monitor but has no control over the process giving rise to the need for the monitor. According to Mr. Pascrell, the County needs to be able to arbitrate and resolve conflicts without need for election monitor.

Mr. Pascrell noted that it was necessary to clarify who represents the Board of Elections. While the Attorney General's office will sometimes be available to participate in the resolution of problems or questions, members of the board of elections will call the County Counsel for legal guidance. This is not an appropriate role for the County Counsel. He also suggested that it is necessary to clarify who has budgetary authority for the board of elections. Mr. Pascrell asked what would happen with the Superintendent of Elections and the County Clerk, noting that they are integral to the process now, but that the Tentative Report removes them from the process. He suggested that while a Commission on Elections is a good idea, it should be done with a budget, with counsel, and without partisan politics. He gave two examples of difficulties encountered in Passaic drawn from reports of the federal election monitor: (1) the refusal by the Board of Education to segregate the polling area from the school lunch area as a result of claims that doing so was too expensive; and a recount in a freeholder race that brought to light the fact that the machine counter could be programmed in different ways and was programmed differently on election night than it was on recount night, resulting in divergent counts of absentee and provisional ballots.

As to whether it was helpful to have the 10% cutoff figure for languages other than English, Mr. Pascrell indicated that this could be clarified to apply to registered voters at a specific point in time, but that the specific cutoff is helpful because if it is removed, there would be more problems. Regarding whether a Commission at the State level should monitor the counties, Mr. Pascrell suggested that it would be better to have a State monitor available to come in at a set rate, and that he would welcome a process that would allow members of the board of elections to appeal issues to higher authority within the State. He suggested that there be a board of elections administrator. Such an individual could decide who should perform what functions, staff salaries, etc. This could be a non-partisan person, with authority to get the job done without steering the process in favor of one party or another.

When asked his opinion of a commentator's suggestion that an independent should be appointed to break deadlocks, Mr. Pascrell suggested that this was a good idea, but that it would be necessary to think through who would be considered an independent since people shift parties to be appointed to positions. He asked if it might be possible to go back and check the voting records to see what the person's voting record is. He noted that the Governor should be able to appoint a fifth member to the boards, and that it was a disservice to American voters to have a disagreement over petty political issues result in the need to bring in a federal election monitor, suggesting that there should be a way to break the partisan paralysis that would not break the back of the public. Commissioner Garland suggested that perhaps a fifth member that rotated back and forth between a Democratic and a Republican member on a set schedule with a time limit.

When asked if there should be a single entity responsible for elections at the County level, or if the three entities presently involved should be retained, Mr. Pascrell answered that, as a private citizen, it was his opinion that it was important to have a single entity responsible so that the entity either performs the necessary functions or it

does not, but it cannot disclaim responsibility or point the finger at another individual or entity that it claims is responsible.

Ms. Sandra Matson of the League of Women Voters New Jersey commented briefly that she was delighted to see the Tentative Report, and that anything that would make the election process easier has her vote, including statewide registration, provisional ballots, and pre-election day voting, all of which she viewed as positive changes.

The third and final speaker was Dr. Leonard T. Flynn of the Libertarian Party. Mr. Flynn stated that having listened to the manner in which election boards divided along partisan lines so predictably, he was left to wonder what kind of impression it gives to public that they can't depend on election officials to be objective. He suggested that the law should allow independents, unaffiliated and uncommitted voters to be represented on election boards. If there are two Democrats, two Republicans and one unaffiliated member, it puts party members on notice that they should be serving the public not the party and that their primary interest should be the integrity of the process. Mr. Flynn indicated that when you exclude the largest section of the voters, you politicize the voting process. He also advised that when independent or alternative party voters register with an independent party they have been informed that they could not be poll workers anymore.

The Commission addressed the issue of 14-day registration or 30-day registration and the determination was made to change the deadline to 30 days to address the constitutional question and in response to logistical issues. In response to the lack of understanding of the school elections and the manner in which they are tied to the budget process, the Commission requested that staff include information in the comments as appropriate to address this issue. It was also determined that the timing of elections could be revised to schedule non-partisan and school elections on the same day since they are now approximately three weeks apart.

The Commission determined that a Statewide registration database was appropriate and that a Statewide Commission had a role to play at the State level since the counties need to know who to go to in the event of a problem, but that the law needed to establish a clear line of adjudication, with a clear indication of who serves as counsel. Additional analysis is required to determine which functions are best performed at a State level and which are most appropriate for county-level control. Counties do not want to be held accountable for actions taken at the State level. The Commission requested that staff prepare a graphic or balance sheet showing the functions and the individuals or entities that perform them at the county level under the current law and then another to show the proposed division of functions and responsibilities. An effort will be made to use this information to demonstrate to individuals at the county level that they will retain certain functions they feel are critical, while the election process is improved.

Consideration should be given to ways in which boards and/or commissions

might be enlarged to include individuals who are not members of the Democratic or Republican parties. Staff indicated that the language regarding parties throughout the Tentative Report would be modified to reflect that parties other than those two exist. Staff indicated that in response to comments about provisional balloting and the need for a voter to pursue the matter in Court, an attempt would be made to set forth a manner in which more relevant information would be provided to the voter on election day in the event of a problem necessitating the use of a provisional ballot. Work will also be done on the issue of the County Clerk, who is a member of one of the political parties, ending up with access to more information that may be advantageous to one party than any members of the other party.

Chairman Burstein asked staff to send Reports to Jerry Pomper, of Rutgers University, and Renee Steinhagen of the New Jersey Appleseed Foundation, 744 Broad Street in Newark, a public interest organization with funds for election law projects that is focusing on provisional voting.

Mr. Cannel indicated that the Commission would have a full draft for the next meeting. Remaining "punch list" items will be addressed at the next meeting.

Uniform Arbitration

This will be discussed at the next meeting.

Miscellaneous

The next meeting is scheduled for October 17, 2002.