

## **MINUTES OF COMMISSION MEETING October 17, 2002**

Present at the meeting of the New Jersey Law Revision Commission held at 153 Halsey Street, 7<sup>th</sup> Floor, Newark, New Jersey, were Commissioners Albert Burstein, Peter A. Buchsbaum, Hugo M. Pfaltz, Jr., and Vito A. Gagliardi, Jr. Professor Bernard Bell of Rutgers Law School, Newark, attended on behalf of Commissioner Stuart Deutsch and Grace Bertone of McElroy, Delvaney & Deutsch, attended on behalf of Rayman Solomon.

Also in attendance were: Dr. Leonard T. Flynn, of the New Jersey Libertarian Party and Robert Garrenger of the Office of Governor's Counsel.

### Minutes

The Commission approved the Minutes of the September 26, 2002 meeting as submitted after being informed by staff that those Minutes would be amended to correct the spelling of the names of William J. Pascrell, III and Gerald Pomper of the Rutgers University Eagleton Institute.

### Title Recordation

Commissioner Buchsbaum suggested that the Commission and staff review the previously completed project in light of the Uniform Recordation Act and the issue of electronic recordation. Mr. Cannel said that no responses had come in after the report was sent out. Staff will revisit the project.

### Uniform Arbitration Act

The Commission had concerns regarding sections of existing New Jersey law that might be impacted if the Uniform Arbitration Act now being considered by the Legislature is passed. The Commission decided, however, to send a letter to the Legislature stating that it does not object to the Act in its present form.

### Election Law

The Commission discussed the impact of the new federal law on the election law project. Preliminary review of the new federal law suggested that many of the requirements that would be federally imposed had already been addressed by the Commission in anticipation of the federal law.

Staff will review sections of the federal law dealing with alternate language accessibility to be sure that the proposed statutory language complies. The Commission questioned whether or not the census actually monitors information that determines which alternate languages are to be required. Nothing precludes the State from offering election materials in more languages than are actually required, or seeking information regarding an

individual's primary language at the time the individual registers to vote, as long as the federal minimum requirements are met.

Staff will review the use of Social Security numbers.

Mandatory federal requirements should be mirrored in the State law so that the individuals and entities responsible for the conduct of elections at the State level will not have to look in two places to determine the applicable requirements. General voting system requirements will be incorporated into the State law, but detailed requirements for voting machines purchased with federal money need not be included since clearly federal requirements would have to be met.

No ambiguity should exist as to the time beyond which a ballot could no longer be altered, to reflect a new candidate or a vacancy for example, and exactly what would be done if something happens after that time. Staff will obtain relevant information from other states and from the local County Clerks about overseas voters, sample ballots, and sending out regular ballots within very short deadlines. Commissioner Bell asked if there was a constitutional problem if individuals serving in the military cannot vote.

Chairman Burstein asked Mr. Cannel to explain the current county administrative structure and the proposed roles for the Superintendents, the Administrators, the County Board and the County Clerks. The proposal would not significantly impact the Attorney General's office, but the Secretary of State would be impacted to a limited extent by the proposed changes in the law, with certain functions shifted to the Commission on Elections. The Secretary of State's office would probably not strongly object to a modification of its fairly limited role.

Mr. Cannel said that the language in the initial draft would be revised to clarify that the bulk of the functions would be handled by the counties rather than imposing day-to-day responsibilities on the State. The language regarding the State involvement would also be relocated within the piece so that it was not given undue emphasis by appearing at the beginning of the revision.

As concerns the division of responsibilities, politically sensitive responsibilities should be entrusted to the body attuned to balance and discretion, the County Board. Ministerial tasks should be entrusted to the Superintendent/Administrator since these offices are full-time positions, with staff, and are thus better equipped to handle ongoing administrative needs.

Other items of discussion included: (1) possible arrangement of the registration database so that if any data is entered or modified by the State, the counties have some sort of "sign-off" function so they have some control of the data; (2) the fact that with an electronic system, much of the registration and entry of data will be done locally and that data will be accessible on the state-wide database; (3) the division of individuals into election districts will be done locally since the local officials know the districts better than

the State; (4) the selection and equipping of polling places will be left with the county boards; (5) the printing and mailing of ballots left with superintendents/administrators; (6) the county boards taking over responsibility from the county clerks for drawing up the ballot and the Commission on Elections having "check-off" authority over this function. The county clerks will also be removed from sending out absentee ballots, and any role in the selection of ballot position, but will still be the entity that receives official filings.

According to the new proposed language and under current law, Superintendents of Elections are appointed by the Governor and not accountable to the County Board. The Board of Elections would not be given the power to remove a Superintendent; an Administrator would serve at the pleasure of the Board.

In response to a question about whether an independent candidate changing position would require the entire ballot to be redone, it was determined that the ballot would, in fact, have to be redone, but that the independent candidate would have to pay the cost if the change was required to be made after a certain time.

The Commission requested certain stylistic changes as follows: (1) make the capitalization on references to the County Board of Elections consistent; (2) in section 5-8(b), the word "it" is missing on line 5 and, on the next to last line in that section, there is a question as to whether "may" should be replaced with "shall"; (3) in section 1-1 the word "certified" should be removed from the last underlined sentence; and (4) sections 1-4 and 1-8 should have the words "executive director" removed from the title.

Commissioner Buchsbaum asked whether a truly non-partisan fifth person would be selected to the Commission on Elections in sections 1-1 and 1-3 and that a change in the composition of the group could be a problem since the group is required to work together. An alignment of three individuals, for example, could be a problem on issues such as where polling places should be located, etc. Chairman Burstein said that the language should be left as drafted and that it should be specifically brought to the attention of the public so that feedback can be obtained from the county people and the general public. Commissioner Bell suggested having the State Commission on Elections appoint the fifth person instead of the Governor making the appointment.

The addition of new language was requested (1) indicating that if a dispute is decided by the Commission on Elections, a challenge to the Commission's determination may be made to the Appellate Division as an appeal from an administrative agency; (2) indicating in section 5-3 that a summary action may be brought on notice to the entities impacted, including the Attorney General; (3) that the provisions of the statute should be interpreted as consistent with the new federal law; (4) clarifying that in addition to "poll officials" other persons connected with the election (such as County Board members or janitors) are permitted in polling places; (5) clarify in 5-15(d) regarding costs that "deposit for district" means money that the candidate put in, not the district, and do not make the amount any larger than it needs to be, since if there is a legitimate reason for a recount, it should be as easy as possible to obtain one; (6) include language providing an automatic

recount if the result of the election is within ½%; (7) in section 8-14, include in the comments a reference to the requirement that costs of modifying the ballot be paid pursuant to the rule adopted by the Court in the Toricelli case, *New Jersey Democratic Party, Inc. v. Samson*, --- N.J. --- (2002).

Miscellaneous

The next meeting is scheduled for November 21, 2002 and will be followed by the annual holiday dinner.