

MINUTES OF COMMISSION MEETING
December 19, 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, Hugo M. Pfaltz, Jr., and Vito Gagliardi, Jr. Professor Bernard Bell of Rutgers Law School, Newark, attended on behalf of Commissioner Stuart Deutsch.

Also present was Edward C. Eastman, Jr., Executive Director of the New Jersey Land Title Association.

Minutes

Regarding the Minutes of the November 21, 2002 meeting, the Commission clarified that, contrary to the information contained in the Minutes of the prior meeting, the Commission on Elections will consist of eight members (19A:1-9(b)), but that the County Board of Elections will have only four members rather than the five members previously proposed (19A:1-1(a)). In all other respects, the Minutes were approved as submitted.

Election Law

The Commission completed the review of the Tentative Report on Election Law and requested certain revisions before the Report is disseminated.

The Commission decided not to delete the last sentence in 19A:1-3 determining that the deletion involved policy changes that should be left to the Legislature. In 19A:1-6 Staff will revise the language to clarify that the county must provide suitable offices, furnishings and equipment for deputies as well as for the Superintendent or Administrator. In 19A:1-10(d)(3) Staff will eliminate the word "publicly" and will revise the language to include "at least" before "ten years". In 19A:1-18 the word "that" will be substituted for "which".

The language of 2-2(a)(1) will be changed from "The fact that these entities are linked" to "Only the state and county election offices may add, delete or modify..." and the comment will be revised accordingly. In addition, Staff will review this section to make sure it is clear that the Commission on Elections has power to supervise the process of adding, deleting or modifying data.

After reviewing the initial chapters of the Tentative Report, the Commissioners decided that they would focus their attention on policy matters at this meeting, so that a decision could be made on accepting the Tentative Report. Individuals have requested copies of the Report, the Governor's office needs to receive the Report quickly if it is to be mentioned in the State of the State address, and the federal deadlines carry with them certain time constraints for consideration and implementation.

Professor Bell suggested that perhaps the best way to ascertain someone's primary language was to ask at the time of registration. Federal law, however, requires the determination of necessary languages to be based on census data. The Commission determined that the Commission on Elections should decide whether it was appropriate to provide more materials in alternate languages than are required by federal law.

In 19A:4-9(a), Staff will insert new language indicating that the Commission on Elections 'shall consider whether the ballot is clear and understandable to voters and inform the County promptly of its decision'.

In 19A:5-1, Staff will include language in the Comment indicating that it is intended that all non-partisan elections will be conducted at the same time. In 19A:5-2(a), because of the low turnout for certain school elections, and anticipated objections to the language as currently included in the Report, language will be inserted carving out an exception for school elections or fire district elections, for which the polls may be open only from 12 pm to 8 pm'. The intention is to allow the polls to open earlier if the district chooses to do so, but not require them to do so. In 19A:5-3(a) the new sentence will be cleaned up by Staff and the words "impacted by the action" will be replaced with "affected". In 19A:5-6(f) the words "connected with" will be changed to "necessary to conduct". In 19A:5-8(a) the language will be revised to include "may be directed to the proper voting location" in addition to "shall be permitted to vote on a provisional ballot".

The language of 19A:5-9(b) and 19A:7-8(e) will be reviewed by Staff to determine if it is clear that the election officials in question will be informed of the results of the action. In addition, Staff will check any discrepancy between Section 5-9(b) and Section 7-8(e) to see if the entity to whom the record is provided should be changed to be consistent, since now the record in the former Section is provided to the County Clerk and in the latter Section, the record is provided to the County Board.

In 19A:8-14(a) the words "is convicted" will be modified to include instead "is convicted of an offense that would preclude the candidate from holding office". In addition, the Comment to that section will be cleaned up to remove references to sections that no longer exist (subsection (i), for example).

A source will be included in 19A:9-11.

Sections 19A:12-1, 12-4, and 12-5(c) will be examined by Staff to determine whether there are constitutional problems. With regard to section 12-1, it is not clear if federal officials can be recalled in the manner set forth in the current language, which was taken from the existing language. If it appears that there is a problem, the matter will be flagged in the Comment. In Section 12-4 Staff will check to see if there is a constitutional issue raised by requiring any answer submitted by the challenged candidate to be included on a recall petition. If it appears that there is a problem, the matter will be flagged in the

Comment. Similarly, Section 12-5(c) will be checked for constitutional deficiencies as compelled speech. If it appears that there is a problem, the matter will be flagged in the Comment.

The Comment to 19A:12-6 will be corrected; it refers to a subsection (d) and the statute does not contain one. In 19A:12-8, "the" preceding "may" will be deleted. In 19A:12-8 the words "the may" will be changed to "may". In 19A:12-10(c)(2) and (3) the double commas in (c)(2) will be eliminated and the language revised to indicate that if the petition requested that the election in question be held at a general election or a special election, then specific provisions would apply to each situation.

In 19A:12-12(b), staff will check and see if barring subsequent recall attempts presents a constitutional problem. If it appears that there is a problem, the matter will be flagged in the Comment. In addition, the second sentence of the Subsection will be deleted.

In 19A:13-2(f), the word "the" appearing before the word "statute" will be removed.

Sections 19A:5-12 and 19A:12-2(a) will be modified to clarify that a runoff election will be held only in the event of a tie.

At the conclusion of the review of the Tentative Report, the Commission voted unanimously to release it as a Tentative Report with the changes as noted.

Distribution of the Report will include all of the individuals who received the initial Tentative Report, in the same manner in which those individuals were sent the Report or made aware of its availability last time, as well as those individuals who have commented. This includes all of the pertinent individuals at the County and State levels of government, prioritized in the same way as was done with the previous Tentative Report (Governor's office first, etc.). Comments will be requested within 60 days of dissemination. Staff anticipates that the Report can be disseminated in approximately two weeks. The Summary of Recommended Changes will be sent with each copy of the Report.

Chairman Burstein requested that Staff obtain a copy of the language from the Congressional Record indicating that pertinent County organizations supported the federal legislation during its consideration. In addition, he requested that Staff have the federal law citation regarding statewide registration readily available for inquiries.

Chairman Burstein noted that there were still issues regarding the implementation costs to be considered, and that there had been no federal appropriation yet, and no clear determination as to what will be required before federal money will be provided. He requested that Staff prepare information setting forth the requirements for obtaining federal

money. Chairman Burstein also requested that, after the dissemination of the Report, Staff prepare a listing of the impact of all of the changes to the statute, including details regarding which statutes are to be repealed, and which survive (a table of disposition).

Meeting Dates for 2003

The Commission agreed on the proposed date of January 16, 2003 for the next meeting, and to discuss the balance of the meeting dates at that meeting.

Miscellaneous

The next meeting is scheduled for January 16, 2003. Title Recordation will be on the January meeting agenda.