

MINUTES OF COMMISSION MEETING
January 16, 2003

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 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, Mulvaney & Deutsch, attended on behalf of Rayman Solomon.

Also present was David Ewan, Consultant to the New Jersey Land Title Association.

Minutes

The Minutes of the last meeting were approved as submitted. Commissioner Gagliardi requested that the minutes note who moves and seconds the proposals voted on, and identify those the Commission adopts.

Election Law

Commissioner Pfaltz said that the County Clerk in his county is upset because she perceives the revisions to the election law as taking away her power. He suggested that the Commission stress that federal law imposes certain requirements (including centralized statewide registration) and change the order of the information in the Introduction to the report.

Recordation

The Commissioners reviewed the bar graph provided by David Ewan, Consultant to the New Jersey Land Title Association, which depicted lag times in the counties for recording and indexing documents. Mr. Cannel noted that it is not clear what causes the problem in the counties with significant lag times. Factors may include implementation of new computer systems, the level of funding and management.

Mr. Ewan stated that 11 of the 21 counties have opted into the TRITS program, administered by NJIT which involves a five year plan for full automation of the document recordation process.

Mr. Cannel indicated that there are counties that want the individuals filing documents to file both the document and a cover sheet electronically. Mr. Cannel said that this was not a radical approach rather it represents the automation of a system and the removal of a large percentage of the manpower and most of the opportunity for errors.

Commissioner Burstein questioned the propriety of allowing each of the counties to automate recording without any guidance. Mr. Cannel explained that the latest revision allows them to establish electronic recordation, but does not compel them to do so. Commissioner Buchsbaum noted that the project was first begun right after the enactment of federal e-sign and there was a real question about whether all of the counties would be required to record land title transactions electronically. At that time it was not clear how electronic recording would work.

Commissioner Burstein asked if the Commissioners wished to include a mandate that all counties must achieve a certain minimum level of computerization. Mr. Cannel noted that any such requirement would meet with opposition from some urban counties committed to doing things their own way.

Commissioner Burstein inquired whether there were individuals or organizations who were able to spearhead a move toward increased computerization, and Mr. Ewan responded that Fannie May and Freddie Mac are two organizations that are looking for consistency and computerization from county to county. The secondary mortgage market cannot move on a property unless the mortgage is properly recorded; in certain of the slower counties this slows up the movement of money considerably. He suggested requiring each county to accept filings and cover sheets electronically, noting that New York recently required cover sheets, but that they did it wrong and that TRITS is doing a better job with its requirements at this point.

Commissioner Buchsbaum asked if requiring computerization constitutes an unfunded mandate. Mr. Cannel responded that because a portion of the fee for recording a document goes to the counties, there may not be an unfunded mandate issue. Commissioner Gagliardi suggested that it might be possible to avoid this issue by noting in commentary that the Commission is aware of the issue but there is a source of funds to be used to pay for the proposed modifications.

Commissioner Buchsbaum asked if the recommendation of computerization of the type presently under consideration would generate a response from banks and other entities. Mr. Ewan responded that one inducement to filing electronically would be an electronic response immediately, via email. The Commission agreed that this would be useful to individuals recording documents.

A discussion of the composition of Committee on Title Recording followed. Mr. Ewan suggested that the committee include one person representing each of the following: the county clerks; the Division of Archives and Records Management; and the State Office of Telecommunications. He suggested that the committee also include one of each of the following: the banking industry, licensed attorneys, licensed surveyors, and the title industry. Mr. Cannel explained that while all of those individuals have a legitimate interest in title recordation, there may be a perception on the part of the county clerks that they would be regulated by a committee of outsiders. Commissioner Garland suggested that if the Committee is left with recording officers as the primary participants, the

individuals who use the recordation services can be an oversight board or involved in some similar way.

Commissioner Burstein stated that uniformity of recordation in the state is a desirable policy goal and that if the Commission supports the project, staff should revise according to the comments, and circulate the Report.

With regard to specific provisions, Commissioner Garland suggested that the language proposed as subsection R-7(b½) should be at end of section so that it is clear that it applies to all subsections in section. Commissioner Buchsbaum explained that maps are not drafted anymore, but done with CAD (computer assisted design), so they can be electronically recorded. He suggested that staff meet with engineers or surveyors to provide information on the recordation of maps. Mr. Cannel indicated that he would convene a meeting so that the appropriate professionals from the Surveyors Association and the Society of Municipal Engineers can tell staff what needs to be done in the map chapter.

Commissioner Buchsbaum suggested that deleting the requirement of acknowledgement for assignments of mortgages between banks was not necessary. The requirement is not onerous; banking institutions have staff that routinely provides the acknowledgements as part of the underlying transaction. Mr. Cannel indicated that staff will remove the language in R-3(b)(7) and that another draft will be available for the next meeting.

Distressed Properties

Mr. Cannel explained that current bills relate to distressed properties, but that none of them has the scope of the Commission's earlier project idea. Commissioner Buchsbaum said that John Burke's memoranda point out that the two current bills are in the throes of revision. The Commission decided to delay the project until the final form of the bills becomes clear.

New Projects

Motor Vehicles

Mr. Cannel explained that certain sections of Title 39 may be appropriate candidates for revision, and that staff's focus was the driving offenses. The basic statutory provisions were drafted in the 1920s, and that the statute has accreted over time. The result is layered statutes, with overlapping provisions. While the project is a worthwhile one, the real question is whether it would be too sensitive. He has had preliminary discussions with the Administrative Office of the Courts and with DMV. Working in tandem with a task force within the DMV is a possibility. Mr. Cannel asked whether staff should pursue this. Commissioner Burstein suggested that the timing may be good, and Commissioner Gagliardi stated that as long as DMV is not opposed to the project, staff should move

forward. Commissioner Burstein requested that Mr. Cannel contact Diane Legriede, head of DMV, tell her of the Commission's interest and ask for her candid response.

Transportation

Mr. Cannel indicated that staff will have a redraft of part of the old transportation project brought up to date for next month.

General Repealer

Mr. Cannel suggested that a General Repealer may be an appropriate project, and that there are a great many statutory sections that are superseded, invalid or anachronistic. While none is as amusing to the public as swine trespass, it would be beneficial to remove them. The Commission indicated that staff should go ahead with this project.

Environmental Project

Commissioner Burstein suggested that staff pursue the two portions of the environmental project that had already been reported out, parks and forestry, and green acres.

Religious Non-profit Corporations

Mr. Cannel also proposed that the Commission look at Title 16 of the Statutes, Corporations and Associations, Religious. There are requirements imposed by statute that are not imposed on other non-profit corporations and which may be objectionable. Commissioner Burstein requested that staff check to see if the Secretary of State is a key official according to the current statute and, if so, see if they have anything pending in this area or any objection to the Commission's moving forward.

Weights, Measures and Containers

Mr. Cannel indicated that this section of the statute might be appropriate for revision, and that staff would prepare a memorandum on all of the proposals for the next meeting.

Payment Bonds on Public Construction Projects

Commissioner Buchsbaum also requested that staff take a look at 2A:44-143 and 144 which govern the form of payment bond on public construction since the statute presently contains archaic language (teams, provender) and that staff also look at the related trust provision. Commissioner Garland suggested that staff look to see if these sections could be consolidated under any of the existing construction lien law or public contract law.

Miscellaneous

Commissioner Burstein reminded staff to prepare the annual report for the next meeting.

The Commission also discussed changing the proposed dates for the 2003 meetings as follows: March 20th to the 13th, September 18th to 11th, and November 20th to the 13th. Staff will revise the proposed meeting schedule and resubmit in the next meeting packet.