

**MINUTES OF COMMISSION MEETING**  
**February 13, 2003**

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, Professor William Garland of Seton Hall Law School attended on behalf of Commissioner Patrick Hobbs and Grace Bertone, of McElroy, Mulvaney & Deutsch, attended on behalf of Rayman Solomon.

Also present were David Ewan, Consultant to the New Jersey Land Title Association and Joanne Rajoppi, County Clerk of Union County. Briefly present was Ramon de la Cruz, Esq., Director of the New Jersey State Division of Elections.

Minutes

The Minutes of the January meeting were approved as submitted.

Report of Nominating Committee

Commissioner Hugo M. Pfaltz, Jr., announced that Commissioner Albert Burstein was nominated for the position of Chairman and Commissioner Vito A. Gagliardi, Jr. was nominated for the position of Vice Chairman. There were no other nominations. Albert Burstein was elected Chairman and Commissioner Vito A. Gagliardi, Jr. was elected Vice Chairman.

Election Law

John Cannel said comments received from County Clerks show their disagreement with a reduction in their election functions. Commissioner Burstein asked for suggestions as to how the Commission could contact the appropriate representative of the County Clerks to open a dialogue before a Final Report is formally introduced in the Legislature.

Mr. Cannel said that the comments indicated three primary objections on the part of the County Clerks: the removals of ballot design and absentee ballots from the responsibilities of the County Clerks, and the creation of a State Commission on Elections. He noted that federal law requires statewide registration, and a state entity to control it.

Joanne Rajoppi, Union County Clerk, indicated that she was appearing and speaking on her own behalf, and not that of the County Clerks as a group, and said that County Clerks object to the creation of another state bureaucracy, not to statewide registration. Mr. Cannel noted that a state officer was needed to oversee statewide registration. Ms. Rajoppi responded that an individual at the state level could be assigned the necessary responsibilities and that the Division of Elections should be put back into the

Secretary of State's office. Mr. Cannel noted that a Division in the Secretary of State's office could be more politicized than an independent Commission. Ms. Rajoppi noted that the election function was not political, explaining that there is a right way to perform certain tasks required of the office that has nothing to do with politics. Commissioner Burstein explained that the Commission, in looking at the State in its entirety, finds that there is a need for a hierarchy that does not presently exist, that the law is not a model of clarity, and that there are many opportunities for differences between the counties. Some final authority would be useful in promoting uniformity in election law application statewide. Ms. Rajoppi said that there is a divergence between the counties, and that one reason is the machinery used by the different counties. Eleven of the twenty-one counties use "Sequoia" machines. Federal funding may enable the remaining counties to purchase electronic machines.

Ms. Rajoppi explained that she is concerned that the Commission views the involvement of the County Clerks as a political issue, suggesting that the proof to the contrary was the last general election, in which the County Clerks were under Court order regarding changes to the ballots in the Torricelli matter, and that they properly complied in a short period of time without regard to party affiliation. Commissioner Burstein said that there was no question that the County Clerks responded quickly in the Torricelli matter, but that one of the concerns of the Commission is that there is reliance upon the Clerks to tell lawmakers what is practical from a timing perspective, and that while such reliance can properly continue, there are other election-related functions that can be transferred to another entity.

Ms. Rajoppi asked about the uniform ballot, suggesting that the ballot preparation was best done locally, noting that there are differences in who is running from county to county (sheriff vs. surrogate, for example) and that there is also the question of split congressional districts. Mr. Cannel replied that if the County Clerk is on ballot, the Clerk should not be making up the ballot. Ms. Rajoppi responded that the drawing for position on the ballot is dictated by the law, and is done in public, in a courtroom, with a transcriber. Commissioners explained that if the Tentative Report allocates functions in a manner that is not most appropriate or effective, that is open for discussion. Ms. Rajoppi explained that drawing a ballot is not simple, that there are a lot of third party candidates and a considerable number of challenges in court regarding the placement of those candidates on the ballot. She explained that the Board of Elections should continue doing what they are doing, because they do it well, and that the County Clerks should also continue in their present role.

Commissioner Burstein asked what objections the County Clerks have aside from the shift in job functions. Ms. Rajoppi agreed that the revision was a good way to address archaic language and new technology. Commissioner Buchsbaum asked for a clarification of the Clerk's argument that the Commission report removed "checks and balances" argument. Ms. Rajoppi responded that the Legislature must have had some balancing in mind since the County Clerks have to certify the election, and the Board of Elections has to meet with the County Clerk before that may be done in case the tabulations do not match. Commissioner Buchsbaum explained that there is a check on vote counting through the

court system and because there are members of both parties on Board of Elections. Mr. Cannel also noted that at the present time, the procedure on counting ballots is different from county to county, and that the law is not clear regarding who is the final authority. He explained that whoever is going to be the final authority should be stated unambiguously.

Commissioner Burstein asked about the Clerk's position on the change to no reason required for voting using a pre-election day ballot, and Ms. Rajoppi responded that the Clerks have supported a switch to "no reason" for a long time. Commissioner Gagliardi inquired about the change to allow nonpartisan May elections and April school board elections to be combined. Ms. Rajoppi indicated that she saw no problem in combining those two.

Commissioner Gagliardi suggested that the Commission staff underscore in writing the things the states are now compelled to do by federal law and ask for comments on the manner in which those items may be accomplished if the current proposals are not satisfactory.

Commissioner Burstein asked about the status of election law introduction. Mr. Cannel said that Assemblywoman Greenstein had introduced it in the Assembly and Senator Gary Furnari in the Senate.

#### Title Recordation

David Ewan brought a draft of the Tentative Report on Title Recordation to the meeting with comments that were supplied by Mr. Ewan and the attorneys for the Land Title Association. Some of the comments are minor corrections and consolidations of prior memos, but some are more substantial.

Regarding section R-2a(6), Mr. Ewan noted that eliminating marginal notations is appropriate, but that it cannot be done overnight because, for some counties, this is the only method used for notations of cancellation of mortgages. Mr. Ewan responded that any sort of wording to accomplish that goal probably would be acceptable. Concerning section R-2a(3), Mr. Cannel explained that anything substantive should be acknowledged. Commissioner Burstein asked how the differentiation would be made and Commissioner Bertone noted that there was considerable opportunity for fraud, especially with deeds.

Regarding the changes to section R-3a(2), Mr. Cannel said that the new wording may not make it clear, but that there was no problem with concept. Mr. Ewan does not know why they removed section R-3b(3). Mr. Cannel advised that it needs to remain. Sections R-3b(6) and (7) pertain to fixture filings. Professor Garland suggested that language be included in the comment to clarify this. Mr. Ewan explained that the section pertained to documents filed and not recorded, including such things as notices of settlement, lis pendens, aircraft liens and the like. Professor Garland asked why the distinction between recorded documents and filed documents was not eliminated. Mr.

Ewan explained that saying that a filed document shall be recorded would eliminate the problem and agreed that the time has come to abolish the distinction between the two. Mr. Cannel said that this section would have to be looked at to see what can be done, that the status of federal tax liens, for example, could not be changed by the State.

Professor Garland suggested that the caption to R-4 be expanded to include cover sheet and maps.

Regarding section R-5, Professor Garland asked whether documents are recorded when presented and indexed within 2 days after receipt. Joanne Rajoppi explained that the County Clerks have to take documents in order they are received, and that there is no guarantee that they will be recorded on the day they are presented.

In section R-7g Mr. Ewan explained that in section R-7g the commenter aimed to make clear that the recording officer is not liable for any differences between cover sheet and document to be recorded.

In section R-9 Mr. Ewan noted that if someone sends in several documents with a request regarding the order of recording, the documents should be recorded in the order requested. In that same section, Mr. Ewan noted that the second comment deals with documents recorded as of the date on which they are acknowledged, or the date on which the document is dated if it is not acknowledged.

Mr. Ewan noted that there was a comment on section R-10 regarding notices of settlement.

Mr. Ewan also called the Commission's attention to a minor change to section F-4d. Mr. Cannel noted in response that he was concerned about changing language that involved the Division of Taxation, since they are generally not willing to modify language.

Commissioner Pfaltz asked if the change proposed by subsection (r) really necessary and Mr. Ewan responded that on second reading it appeared to be a duplicate section and, as a result, unnecessary.

In section F-9, Mr. Ewan suggested that the section be worded to permit a combination of an account with the Clerk and a check, and to clarify whether or not the Commission is retaining a distinction between filing and recording. Ms. Rajoppi indicated that her office was laying the ground work to take credit cards now, and she noted that for checks over \$10,000, payment cannot be by personal check, a check must be certified. She explained that this policy resulted from the fact that some 30% of all personal checks submitted to the County Clerks bounce. She explained that credit cards need not deprive the State of money, and that when an entity sets up a credit card account, it is allowed to charge a convenience fee to make up difference on small amounts. She acknowledged that this would not work on larger amounts such as a realty transfer fee. Commissioner Pfaltz asked why the language of the statute could not be written as permissive, allowing but not requiring County Clerks to accept credit card payments. A question was raised about the

need for uniformity throughout the State.

Regarding sections OE-1c(4) and (5), Mr. Ewan said that there were some problems with the 10 day time period, and that while the idea is good, it will be difficult to implement. Mr. Cannel observed that there should be some duty on the filer to check to see whether a document is indexed properly.

Ms. Rajoppi suggested that the Division of Archives and Records Management should have its duties redefined to include any new functions rather than to create another bureaucracy. Ms. Rajoppi said that the Commission is opening the door to fraud if it makes the document extraneous and puts too much emphasis on cover sheet, asking, for example, if the Commission knew how easy it would be to discharge a mortgage under those circumstances. The point was made in response that it would be fairly easy to do such a thing now.

### Annual Report

Commissioner Gagliardi clarified that there was no section in the Annual Report on reports that became law because there were no such reports last year.

### Aviation

Commissioner Burstein asked about the Aviation project. Mr. Cannel explained that this was a review of an older project which was suspended when the Department of Transportation was unable to continue its cooperation with the project. The current report is a new updated version of the old report. Staff will be moving on to other sections of the transportation law which will require more revision.

### Scheduling

The Commission agreed to change the following meeting dates:

March 20<sup>th</sup> to March 13<sup>th</sup>  
September 18<sup>th</sup> to September 11<sup>th</sup>  
November 20<sup>th</sup> to November 13<sup>th</sup>

### Miscellaneous

The next meeting will be on March 13, 2003.