

MINUTES OF COMMISSION MEETING
June 18, 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, Vito A. Gagliardi, Jr., Peter A. Buchsbaum, and Daniel F. Becht. 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, Deutsch & Mulvaney attended on behalf of Commissioner Rayman Solomon.

Also present were Pat Fiumara and Bill Dressler of New Jersey Gasoline Retailers Association.

Minutes

The minutes of the May 2003 meeting of the Commission were accepted as submitted.

Legislative Matters

Chairman Burstein indicated that he may be at some of the public hearings on election law held by the New Jersey State Plan Committee for Help America Vote Act (HAVA) for informational purposes, to answer questions about the Commission's Final Report on Election Law. John Cannel said that the Commission's Final Report on Cemeteries, with some modifications, is now before the Legislature in bill form and that the Commission's Final Report on Games of Chance now is being drafted into bill form by OLS.

NCCUSL

Chairman Burstein told the Commission that he had received a letter from Barry Evenchick of NCCUSL, who suggested that the Commission meet with the New Jersey NCCUSL representatives. Chairman Burstein wrote Mr. Evenchik, agreeing to do so.

Liens for Motor Vehicle Service

Commissioner Gagliardi noted that in the draft language storage charges begin two days after the car is ready and asked where that time period came from. Mr. Cannel advised that it had been selected as a proposed reasonable time period. Pat Fiumara of New Jersey Gasoline Retailers Association (NJGRA) explained that two days is generally an industry standard. He said that notification is given when the car is ready, and generally the individual comes in promptly to pick it up. There are situations where a car is left for a

long time, usually because the owner has difficulty coming up with the charge for repair.

In response to a question regarding signed contracts for work, Mr. Fiumara said that generally no prospective customer leaves his shop without signing a shop order. If, however, a customer has a car towed in from the road, or if a car is dropped off before work hours, then there is no signed contract but he has either the owner's note or a notation that it was towed in. If a request for work comes in by telephone, he documents the request. If the repair is going to be an expensive item, like a motor, he will say that he will assess the problem for some limited fee, and then call and let the owner know the extent of the problem. He always has some sort of agreement, whether the agreement is just to do the preliminary check, or to go ahead and perform the repair.

Bill Dressler, also of NJGRA, said that those in Mr. Fiumara's position should be able to obtain reimbursement for what they have put into the car, including situations where the repaired vehicle is leased and the lessor claims the car. Mr. Cannel explained that the current draft attempts to give the garage keeper a lien that has priority over any other liens, and that so far, no one who has commented seems to have a problem with that as far as work done but that there remains the question of storage and charges for storage.

Mr. Dressler said that the garage keeper has to be prudent. If there are 45 days of storage charges, and the lessor did not know of the repairs or the storage, a garage keeper may be well advised to compromise on the storage issue. Mr. Cannel explained that the draft calls for payment of the reasonable cost of towing, and storage for a certain number of days after notification of possession of the vehicle. Mr. Dressler said he had no problem with that. Mr. Cannel explained that in this area, there seems to be general agreement regarding some of the key issues. Commissioner Gagliardi observed that it appears that we are simply codifying the concept of unjust enrichment.

Commissioner Becht asked how an operator of a repair facility becomes aware of who owns the vehicle. Mr. Cannel said that for a \$5 fee, a garage keeper can find out who owns a vehicle, but in practical terms, it may not be that easy or that cheap. Mr. Fiumara explained that a garage keeper generally would not find this out until having had the car for several weeks. Mr. Dressler indicated that the only other time a garage keeper would have this information more quickly is when the car is presented for inspection.

Commissioner Buchsbaum said that there is a balance to be struck as far as determining the party most appropriate to bear certain charges and that it should not be overlooked that the garage keepers are engaged in assessment of customers while the customers are there in front of them regarding the customers' ability to pay for the repairs requested. Mr. Fiumara responded that the leasing company has a certain advantage because it engages in a credit analysis of the purchaser, while a garage keeper cannot do that for every customer. Mr. Cannel asked Mr. Fiumara if, when a garage keeper is unsure of the creditworthiness of the customer, he runs a credit check before doing any work. Mr.

Fiumara explained that it is not that simple. Generally, if a car comes in for a \$500 repair and it is a \$20,000 car, he would do the repair. If the car looks like it should be in a junkyard, however, he would likely require a deposit. Professor Garland suggested that the provision in 2(b)(2) that a leasing company was liable for repair up to \$2000 was a compromise. Mr. Cannel agreed and said that the only way the repair shop can really be burned is for storage. Mr. Fiumara said that the \$2,000 repair language is fine with him.

Chairman Burstein asked if there was an ambiguity about whether service encompasses storage. Mr. Cannel agreed that the existing language is not clear enough, and that a definition or a clarification of whether "repair" includes or excludes storage should be included.

Commissioner Buchsbaum suggested that each section should begin by stating what is enforceable rather than what is not enforceable. He also stated that he had a question about section 4(c) concerning storage. Mr. Cannel explained that what is intended in (c) is that the lessor does not pay for storage except for storage commencing three days after notification since prior to that time, the lessor did not even know about the car, and will need time to get organized and go get the car.

Professor Bell asked Mr. Fiumara whether if he knew that a leasing company could come in and take the car without paying for it, would Mr. Fiumara change his practices? Mr. Fiumara said yes, he would have to change his practice. Mr. Dressler said that if a repair is for an engine or a transmission job, and if it is not a standard customer, a garage keeper will normally ask for a down payment on the repair in order to insure that he or she will be able to repair the car and get paid for it. Professor Bell said he would assume that the garage keeper would probably follow the same practice if a car is leased, and asked if a garage keeper called the leasing company and they said that they had no interest in repairs, would the garage keeper ask for a down payment? He also asked with regard to storage if it was fair to say that if a car was only in the shop for three or four days, that the garage keeper would not do a registration check for the car. Mr. Dressler agreed that since people have a tendency to have a car repaired and then go on a business trip or vacation, or make other arrangements, a car would have to be there for more than three or four days before a garage keeper would check the registration. He suggested that part of the problem is that not all deadbeats are in rags, and that it would generally be prudent to do a check, or to require money up front.

Professor Bell asked if some of the garage keepers do storage resulting from towing, and Mr. Dressler indicated that some of them do. Professor Bell asked what percentage of cars would be there after 10 days with no contact with the owner. Mr. Fiumara said it would be a very small percentage, less than 10%. He suggested that when it does happen, it is a hardship because it takes up room he could be using to do repair work.

Professor Garland said that some work needs to be done on definitions of "repair," "service," "parts" and "modification," and he asked if modification is something done by different companies. Mr. Dressler said that there are companies that do repair and restoration on older cars, so that might be considered modification. Professor Garland also asked what it would be considered if someone bought a cap for a pickup. Mr. Dressler said that would not come under repair, rather, perhaps, under accessories. Professor Bell suggested that perhaps there should be a distinction between repairs and things like detailing, painting lines on, etc. and that maybe there should be a distinction if repair adds value to a vehicle while painting stripes on it does not. Mr. Dressler asked if such distinctions would defeat the purpose of the proposed statutory language, and Mr. Cannel said that the difficulty is in making the distinction.

Chairman Burstein requested that staff try for a comprehensive draft for next meeting, but that the Commission may want to modify the language further. Mr. Cannel noted that the storage issue is still a problem and asked the Commission if they wanted any part of storage to be a charge against a bank or storage company before they are notified. Chairman Burstein said that he had not heard any sentiment for that, not until after they are notified. Mr. Cannel explained that he had used the abandoned vehicle act as a model for drafting. He also brought to the attention of the Commission one comment made by NJ CAR, that if there are two claimants the garage keepers should be able to give the car to the owner as shown on the title and let the parties resolve any dispute between themselves.

Chairman Burstein asked if "junk title" is defined. Mr. Cannel said he thought so and would check again to be sure. Professor Bell noted that in section 1(a) there is a lien on vehicle and contents, and asked if it was necessary to have a lien on the contents as well as the vehicle. Mr. Cannel said that there are cases where it is difficult to distinguish equipment that is part of the car from property left in the car, and the common law rule gave a workman a lien against the item worked on, plus other items in his possession. Mr. Fiumara said that he feels the customer should not be able to take the contents, explaining that once a customer comes in and gets the baby seat or whatever item is wanted, the customer does not care what happens to the car, and has no incentive to make payment.

Chairman Burstein directed staff to make the discussed changes and to obtain the comparable statute on undamaged and abandoned vehicles.

Title 39

Chairman Burstein said that the Commission will hold off its review until it has the completed first volume revisions.

Transportation

Mr. Cannel said that most of what is was presented to the Commission is work that

most of the Commission has seen before as a report done 8 years ago, explaining that the staff reviewed all of the sections of the proposed language and updated it for changes in the statutes. Mr. Cannel also explained that the Public Transportation Report was reissued two years ago, and while it got some interest, it did not go anywhere. He suggested that it may be better to put public transportation back together with transportation. Chairman Burstein asked if Mr. Cannel had any idea who the appropriate contact person for this project is. Mr. Cannel said that Tom Thatcher was the contact person last time, and that he would get back in touch with him to see who should receive it draft reports.

Commissioner Gagliardi noted that the Turnpike Authority and Parkway Authority have been merged, and the document should be modified to reflect that recent change. (See Section 2-14.)

Upcoming Projects

Mr. Cannel said that other work that will come before the Commission for review is additional work from staff on Title 51 and some work on a general repealer.

Chairman Burstein asked about recompilation and Mr. Cannel said that it might be time to consider recompilation, since the Commission has worked on many of the problem titles. Chairman Burstein requested that staff put together a memo for July or September to outline the titles that have been revised by the Commission and the condition of those that had not.

Miscellaneous

The next meeting is scheduled for July 17, 2003.