

MINUTES OF COMMISSION MEETING
February 19, 2004

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

Also present were Paul S. Natanson, and Henry Gottlieb of the New Jersey Law Journal.

Minutes

The minutes of the January 22, 2004 meeting of the Commission were accepted as submitted.

Old Projects – Status Report

Chairman Albert Burstein advised the Commission that a meeting had not yet been set up with Senator Adler and Assemblywoman Greenstein because of scheduling conflicts, but that he would let everyone know when it is scheduled.

John Cannel asked if any of the Commissioners know legislators who might be interested in sponsoring any of the available projects. The Election Law and Mediation projects are already in bill form, but no one has picked up on the Judgments project yet.

The Judgments group of reports is problematical because it is an older piece of work. The difficulty is that while it has been considered by the Legislature previously, it has not moved. Mr. Cannel suggested that since it is an important piece of work, it could be cleaned up and reissued. Two issues to be re-examined are: the elimination of the requirement in collecting a judgment that personal property be exhausted before real property is taken, and the amount of property exempt from execution (New Jersey now has no homestead exemption and has the lowest exemption amount in the nation). The Commission asked Staff to draft the changes; then the Commission will look at the report again before reissuing it. Professor Garland suggested that the exemption level could be set at an acceptable number and indexed using the CPI as the federal bankruptcy statutes do instead of trying to select a large dollar figure.

Commissioner Gagliardi offered to assist with finding a sponsor for the Games of Chance project. He suggested that since the modifications made by the Commission make it easier for charities and houses of worship to raise money, the piece might be of interest to the Legislature.

Regarding other projects, it was suggested that since the Chairs of the Judiciary Committees are Commission members, they might represent a good springboard for some

projects that need consideration. Staff will check on the current status of the Arbitration Report. Finally, Mr. Cannel advised that he has a possible sponsor for the Title Recordation project and that a meeting has been tentatively scheduled for the beginning of March.

Chairman Burstein requested that Staff concentrate on Judgments, Games of Chance and Title Recordation at this point.

UCC-1

Mr. Cannel said that the only controversial provision in the new Article 1 of the Uniform Commercial Code is the choice of law provision, which John Burke addressed in his memo. The question to be addressed by the Commission is whether to stay with the current choice-of-law rule or wait and see what other states do in this regard and join the majority to achieve as much uniformity as possible. Almost all the states that have enacted the new Article 1 or have with bills pending to enact it have stayed with the current choice-of-law rule. The advice from Donald Rapson was to stay with the old rule. The Commission agreed, and Staff will draft a Tentative Report for the next meeting.

Proposed Projects – Title 37 Marriages and Married Persons

Although the second half of the title concerning marriage is anachronistic, the timing was deemed inappropriate to address this matter. The Commission did not wish to confuse the issue with the same-sex marriage issue now receiving national attention. No action will be taken at this time.

Proposed Projects – Background Checks for School Employees

Mr. Cannel advised that Staff had received a call from a representative of the New Jersey Education Association who asked that the Commission recommend that an individual should not be permitted to begin work until after the results of a background check are received. Commissioner Gagliardi said that while he agreed in principle, there are serious practical problems with that approach. He said that there has been an effort to reduce the backlog in background checks. The Commission decided that the issue was not within the scope of the Commission's project, as the Commission could not remedy it.

Commissioner Buchsbaum asked if our language covered school board members. It is not intended to do so. To clarify this issue, Mr. Cannel recommended the insertion of the phrase "have regular contact with students and" before the language which reads "who provide services on a voluntary basis" in the last sentence of section 7.1. Also, the word "voluntary" will be changed to "volunteer."

In section 7.2, after discussion concerning the issue of the State mandate-State pay issue, the Commission decided to strike the last sentence and replace it with "In cases where a school board has required a criminal history record check for an unpaid volunteer,

the school board shall reimburse the applicant for its costs. A school board may also reimburse these costs to applicants for paid positions.”

Title 39

Laura Tharney advised that the information provided in advance of this meeting was slightly more than one-half of the revision of the first of the three volumes of Title 39. The information presented at the next Commission meeting will be the entire first volume of Title 39. Ms. Tharney explained that the grammatical changes proposed by Professor Garland after the last meeting were incorporated in this revision, but that there were substantive issues that would require the Commission’s consideration before any action could be taken, particularly with regard to the use of “may” and “shall” as concerns action by the Motor Vehicle Commission (“MVC”). In general, the Commission and the Commissioner of Motor Vehicles retain considerable discretion and are rarely required to perform any specific action even if, for example, an applicant for a license or permit has complied with all requirements imposed by the statute.

Ms. Tharney said that the revision has consisted primarily of a rearrangement and a removal of duplicative sections and inconsistencies. She stated that several people at the Motor Vehicle Commission have been cooperative and provided feedback in response to direct questions posed by Staff, but that no one at the MVC has reviewed this portion of the project in detail. Staff will continue with the revision. Then the Commission will see how the project fits together and begin a more detailed discussion once it has the entire first volume to consider.

Weights and Measures

Mr. Cannel said that Staff had received some feedback on this project and has a meeting set up for next week with representatives of the Weights and Measures Local of the PBA who have expressed concerns about the Commission’s revisions to the weights and measures law. Mr. Cannel clarified that the Uniform Weights and Measures Law was derived from the federal standards propounded by the National Institute for Standards and Technologies and is not a Uniform Law.

The Commission requested that Staff advise of the results of that meeting at the next Commission meeting when a more detailed review of the language changes will take place.

Miscellaneous

The next meeting is scheduled for March 25, 2004.