

**MINUTES OF COMMISSION MEETING**  
**June 15, 2006**

Present at the New Jersey Law Revision Commission meeting held at 153 Halsey Street, 7<sup>th</sup> Floor, Newark, New Jersey, were Commissioners Vito Gagliardi, Jr., Albert Burstein, Sylvia Pressler and Andrew Bunn. Professor William Garland of Seton Hall Law School attended on behalf of Commissioner Patrick Hobbs.

**Minutes**

The Minutes of the May 18, 2006, meeting were revised in the first paragraph to clarify that Judge Pressler was not in attendance at the May meeting, and were otherwise accepted as submitted.

**Poor Law**

Judy Ungar began by calling the attention of the Commission to changes made as a result of the direction given by the Commission at the May meeting. Those changes included replacing the term “needy person” with “eligible person” and replacing the terms “assistance unit” and “eligible family” with “eligible household”. Mrs. Ungar noted that in certain respects, the terminology in the draft project is not yet consistent, and that Staff is seeking additional guidance from the Commission as to the preferred terms. She clarified that Staff will comply with the Commission’s determination to call the general assistance program “General Public Assistance”.

Mrs. Ungar explained that guests from Legal Aid plan to attend a future meeting to provide information about the current status of the law and the available programs. Commissioner Burstein said that input from the State on the executive side was also a necessity.

John Cannel explained that relatively few municipalities run their own programs since, if the municipality runs the program, they have to pay the administrative costs.

Commissioner Bunn suggested that it was important to maintain the distinction in the draft between categorical and non-categorical assistance.

Mrs. Ungar explained that the most recent draft contains four chapters, and that the public policy and legislative findings are contained in the first part of the draft. Commissioner Burstein requested that Staff develop the first chapter in more detail, suggesting that it contain more information about the framework of the current programs and explain the history so that anyone reviewing the law will understand the historical development of the project. Chapter 1 of the draft will be revised accordingly. Commissioner Burstein suggested that the initial language of the draft say that “the Legislature finds and declares that...” Professor Garland added that a negative declaration could also be included to clarify that nothing in the law should supplant the basic duty of the State to provide for those in need. Mr. Cannel added that it should be

clear in the law that if someone qualifies for assistance, it is not discretionary, the person is entitled to assistance. Commissioner Burstein said that the initial sections of the draft have to be reworked. He also requested that Staff combine the two current sets of definitions. Mr. Cannel noted that combining the definitions will present a problem only in a few circumstances, as with the term “Commissioner” since that term is used to refer to different commissioners in different chapters. It was suggested that, to address this issue, the definition be phrased as “Unless otherwise specified, the term Commissioner shall refer to the Commissioner of ---”.

In the beginning of the Legislative findings section, the draft should state clearly that an individual cannot qualify for both programs at the same time. Mrs. Ungar explained that it was possible to start out as a participant in one program and then be transferred to the other, but that it was not permissible to participate in both at the same time.

Section 2-1(b) will be rewritten. Section 2-2 will be revised and the words “help from New Jersey government” replaced with “financial assistance”. Also, in Section 2-2, the word “unnecessary”, which currently modifies “suffering”, will be deleted. In the Comment to that Section, on the second line, the words “of the Eligibility portion of the” will be deleted.

Mrs. Ungar pointed out that two sections had been added making specific reference to fair hearing requirements. She received Commission authorization to consolidate those two sections into one, and include it in the administrative chapter.

Commissioner Pressler suggested that while Section 1-2(a) says there are two categories of persons, employable and unemployable, the actual categories are those who qualify for categorical program and those who don't. Mrs. Ungar clarified that not everyone is considered employable.

Commissioner Bunn said that it appears that non-categorical assistance is the ultimate safety net; there are a couple of smaller nets and, if you do not fit in to any one of those, you move in to the group of persons who receives general public assistance.

Commissioner Pressler asked if all categorical programs were federal assistance. If so, she suggested that Staff include in the legislative findings that the federal government, through the states, administers programs of categorical assistance but that those programs are not inclusive of all individuals who require assistance and that, if a person does not qualify for one of those programs, there is still assistance available to them.

Commissioner Pressler noted that the Department of Labor does not administer many of the categorical programs. Mrs. Ungar responded that the division of administration is not very clear cut in practical terms despite the fact that the statute suggests that it is almost all handled by the Department of Labor.

Commissioner Pressler suggested that Section 2-6(a) is awkwardly worded. Professor Garland asked if there is a requirement to update the information in an affidavit. Commissioner Pressler said that such a requirement is suggested by Section 2-7(c), but not clearly stated. She noted that there should be language in Section 2-7 that there is a continuing obligation on the part of a recipient to update and advise the appropriate individual or entity of a change in status affecting eligibility.

Professor Garland said that the end of Section 2-5 states that individuals should receive aid where they are “found” at the time of the application, and suggested that the term “located” or “residing” be substituted for “found”. Mr. Cannel agreed that the language could be improved by modification, but asked if it made any sense to make the distinction when it is all paid for by the State. Commissioner Bunn suggested that this was something that could be clarified with the executive branch representatives contacted for information.

Professor Garland pointed out other language in Section 2-5(b) dealing with therapeutic care and asked about the impact on receiving assistance if an individual is getting long-term rehabilitation at a facility, and residing there. Mr. Cannel said that that language should clarify that an individual may only receive assistance from one entity and in one location. Commissioner Burstein asked that Staff flag this point as something that needs verification.

In Section 2-6(d), Commissioner Pressler suggested that the assistance be called “temporary assistance”.

Professor Garland said that in Section 2-7(c), the phrase “appears eligible” should be replaced with “no longer is eligible”. Mr. Cannel added that the phrase “adequately provided for otherwise” can create mischief and is subsumed by eligible, and that it should be removed.

Commissioner Pressler said that in Section 2-8, the statute provides that the Commissioner may exempt an employable person. She asked that Staff look to determine if the regulations contain an employment provision. Commissioner Bunn suggested combining Section 2-8(a) and (b) by adding “as determined by the Commissioner” at the end of 2-8(a) and inserting a set of standards by which the determination could be made. Commissioner Pressler suggested looking to the regulations for standards.

Professor Garland said that instead of repetitive calls for regulations, Staff should simply include one section in which the Commissioner is authorized to enact regulations, and then separate sections will only be required to be included in the statute in cases where regulations are mandated, rather than permissible.

The Commission agreed that Staff was encouraged to meet with the individuals from legal aid, and any others who could be of assistance, but that it would be most appropriate to have guests appear at a meeting in September, rather than in July.

## Common Interest Ownership Act

Mr. Cannel initially explained that it was Staff's understanding from the Commission's comments at the last meeting that the Commission was looking for add-in provisions that could be included with a comprehensive bill like the one that is before the legislature. One provision included in the package prepared by Staff is a limitation on restrictions on alienation which was included in the Commission's 2001 Report on Common Interest Communities. The second is an eviction provision which was based on 2A:18-61.1. Also included are two provisions on regulation of the behavior of occupants.

Commissioner Bunn asked if the goals could be accomplished more simply. He suggested, for example, that since the law against discrimination applies to common interest ownership properties, no action was needed on that front. He expressed concerns about the language saying that bylaws cannot contradict an ordinance because there are circumstances under which a community might legitimately wish to have, for example, a stronger leash law, or stricter noise requirements than provided in the ordinance, and it may be appropriate under the circumstances.

Mr. Cannel suggested that one thing the Commission might want to consider is whether it would be appropriate to have different treatment for changes to the bylaws after an individual is already living in the unit, as opposed to prior to the time the unit is purchased. He said that this represents one of the hard policy issues in this area.

Commissioner Burstein asked about internal management issues, such as questions or complaints involving what has been described as an incestuous system that which involves those who are on the board staying on the board for extended terms, or seeing to it that their friends or cronies are elected to replace them. Mr. Cannel said that some language to address that issue is in the bill that is pending, and some is contained in existing law.

Mr. Cannel noted that eviction is a very significant issue, and that there is a legitimate question as to why an individual should be protected less in a residence he owns than in one he rents. Professor Garland suggested that perhaps eviction should not be an option, and injunction could be left as the appropriate remedy.

Commissioner Burstein said that there is a statute for condominiums that bars the right of first refusal (46:8b-38). Commissioner Burstein asked Staff to look at Section (e) to see how it fits in with the existing statute. He also asked if, in Section (a), where the language permits the bylaws to include standards regarding financial responsibility, language should be included imposing some standards that the boards must use, or if they should be given carte blanche in making these decisions. He cited examples in which individuals with large portfolios but modest incomes, who would certainly be able to meet their financial obligations, are turned down and not permitted to purchase units. Mr. Cannel said that the Commission had required objective criteria in the bylaws in its last report.

Mr. Cannel asked if the Commission wanted to eliminate or restructure the very particular grounds for removal currently included in the draft. Professor Garland suggested that the language could not evict an owner and then not let them rent the unit. Mr. Cannel suggested that the provisions pertaining to nonpayment and damage to the property would be the most significant provisions. Commissioner Pressler asked if the damage provisions should apply only to the common elements, and include only substantial damage. She also suggested that with regard to drug use as a tool for removal, it should be limited to 1st or 2nd degree offenses. She also questioned whether or not the Commission wanted relief to be sought by way of summary action, and whether or not it should be made clear that this action is not to be brought in the Special Civil Part.

Commissioner Burstein asked if, in the remedies section, Staff could include language that would mandate or send a signal to the court that granting a judgment of removal shall only be done in the most extreme cases, directing the court to avail itself of intermediate remedies before taking the drastic action of eviction. Mr. Cannel said that Staff would draft such a provision and include language in it that any judgment for removal shall protect the ownership interest of the owner and all co-owners. Commissioner Bunn said the language could state that the removal proceeding expressly does not deal with the related issues of ownership, etc.

Mr. Cannel said that Staff would prepare a revised draft for the next meeting.

### **Open Public Meetings Act Issue**

Chairman Gagliardi said that it has been his experience with the Commission that that the Commission looks at any request submitted to us by the court, and asked if there was anything the Commission can do to clarify the provisions of the Open Public Records Act that were brought to the attention of the Commission by Judge Kestin. Mr. Cannel said that Staff would produce a draft tentative report as a basis for discussion.

### **Miscellaneous**

The next meeting is scheduled for July 20, 2006.