

MINUTES OF COMMISSION MEETING
July 20, 2006

Present at the New Jersey Law Revision Commission meeting held at 153 Halsey Street, 7th Floor, Newark, New Jersey, was Chairman Vito Gagliardi, Jr. Grace Bertone of McElroy, Deutsch & Mulvaney attended on behalf of Commissioner Rayman Solomon, Professor Bernard Bell of Rutgers Law School, Newark, attended on behalf of Commissioner Stuart Deutsch, and Professor William Garland of Seton Hall Law School attended on behalf of Commissioner Patrick Hobbs.

Minutes

The Minutes of the June 15, 2006, meeting were accepted as submitted.

Common Interest Ownership Act

John Cannel began by explaining that Staff removed the sections of the draft that the Commission wanted removed, but that he was not sure if the remaining sections met with the approval of the Commission. Commissioner Bertone suggested that the sections remaining seemed reasonable. Professor Garland said that in Section (b)(a)(2) the word “destroy” seems rather strong, and suggested that “substantially impair” be substituted.

Mr. Cannel explained that it was Staff’s impression that the Commission did not wish to put out a comprehensive report on common interest ownership, but would put out the proposed piece out as a tentative report recommending the included items as an addition to any comprehensive piece of legislation. He noted that if the Legislature does not present a comprehensive piece of legislation on this issue, this project could be recommended to stand-alone. The Commission asked if a draft tentative report would be prepared for in September, and Mr. Cannel said that it would.

Professor Garland pointed out that Section (b)(a)(6) refers to a second degree crime. Mr. Cannel responded that, in doing so, it sets a high standard. He noted that the theft of more than \$200 is a crime of only the 4th degree. Mr. Cannel said that the crime approach might not be the right approach, explaining that it was included because there is an equivalent provision for tenants, including drug crimes and crimes in which other members of the community were targeted. Professor Bell added that there is a deleterious effect that drugs have on the community and the surrounding area, and Mr. Cannel said that the language could be phrased in terms of effects on the community. John Burke said that the current language also calls for crime to be committed within the community, thus limiting the scope of the provision to illegal activity committed in the property.

Chairman Gagliardi requested that Staff leave the language in its current form since several members with an interest in this issue were not present at the meeting, and said that the Commission will revisit the issue in September.

Open Public Records Act Clarification

Mr. Cannel asked the Commission if there was any argument concerning the approach taken by the draft. There was none. Chairman Gagliardi suggested that the language in question clarifies the need for openness. Professor Garland said that the provisions in the initial section should be lettered. Mr. Cannel agreed, but noted that he did not want to change any more of the existing statutory language than necessary to address the question posed. He said that Staff will prepare this piece it for a tentative report, rather than a memo for September.

Uniform Foreign-Country Money Judgments Recognition Act

Mr. Burke explained that this piece is straightforward and can be prepared for a tentative report. He suggested that the uniform law is a good piece of proposed legislation. It is short, logically organized, and it makes some improvements over the existing Act. In addition, it nicely delineates the application of this Act to foreign judgments, and the language makes it clear that it applies only to recognition of money damage awards. It does not preclude recognition by a court on other principles, but it focuses only on money judgments. Mr. Burke said that the only question he had regarding whether or not to proceed with enactment of a uniform law when no one else has. Having reviewed this area of the law, he did not think that adopting this piece would harm the law; he explained that the new act is similar to the old one, but happens to be slightly better.

Chairman Gagliardi clarified that the Act has been available for a year, but no state has adopted it. Mr. Burke said that this is happening with many of NCCUSL's proposals. They are not presently being widely introduced or enacted, and the piece under consideration by the Commission may go nowhere. He said that he has worked on Articles 1 and 7, and there is some movement there. He noted, however, that NCCUSL's last success is Article 9 and that a piece like the current one is not likely to be considered a priority item.

Chairman Gagliardi said that this is not very complicated, and it seems that this would be a beneficial piece of legislation. It was confirmed that to the best of Mr. Burke's research, there was no particular issue that would be a reason not to enact it. Mr. Burke said that he could not see what anyone would object to in the Act. The scope is clear, the extent of the discretion is clear, and the process is clear. No one is writing law review articles about this. New Jersey would, however, be the only state to introduce and enact it.

Chairman Gagliardi asked if any Commissioners objected to recommending the piece. There were no objections. Professor Garland asked if a court would have a *Winbury v. Salisbury* objection to the provisions in Section 3. Mr. Cannel responded that the provisions of Section 1 could not be considered procedural, but that Sections 2 and 3 could be problematic. However, procedural provisions have been upheld by the Courts and Mr. Cannel said he did not believe that the language in those sections was

sufficiently problematic to be an impediment if the Commission thinks the provisions are correct. Professor Garland suggested adding language that either left in the specific details, or simply said “or as specified by rule of court”.

Mr. Burke said that in the introduction, the Commission could review the proposed Legislation, explain why it is an improvement, and simply explain that if it is enacted, New Jersey would be the first state to do so.

Chairman Gagliardi asked that Staff draft the piece for submission to the Legislature, incorporating Professor Garland’s suggestions.

Poor Law

It was noted that Staff has not yet had the opportunity to incorporate all of Professor Garland's comments. Chairman Gagliardi responded that the goal, at this point, is simply to have the report in a form that the Commission can circulate; it does not have to be in a final form as yet.

John Cannel observed that there will be some opposition to the terminology changes.

Commissioner Gagliardi said that in Section 4-7, there is language that appears to require additional revision. He suggested that, given the precision that was added to so much of this piece, the phrase “shall collect and give on a timely basis to the Commissioner” seems out of place and not in keeping with other statutory language. Judy Ungar responded that Staff would work on this area before the next meeting to make it more specific.

Commissioner Gagliardi asked if Section 4-7 was needed at all. Professor Bell suggested that the section makes it indisputable that the counties and municipalities have an obligation to provide the information in question. Mr. Cannel added that not only can the Commissioner obtain information that those entities have, the Commissioner can require them to obtain additional information not already in their possession, which may not be implied without the inclusion of the specific language. Chairman Gagliardi said that there are other circumstances in which State entities have the power to require information from the counties or states. The Attorney General, for example, can obtain information from county prosecutors, and the State weights and measures officials can obtain information from localities. Chairman Gagliardi said that these things may not be explicitly stated, but they are implicit. He added that if the language is removed, there should be a reference to the fact that it is not removed because the State cannot compel the information, but because it is implicit that they can do so.

The Commission determined that the draft report should be released to individuals who will be asked to come and speak with the Commission. He added that this provided a window of approximately two months in which to encourage written comments or observations in advance of the meeting.

Title 39

In October, Staff will present Volume II to the Commission for review. A brief summary was provided by Laura Tharney of the sections in Volume II that have been simply “cleaned up”, and of those that have been revised to one extent or another. Some revision, albeit minor, was done to the sections pertaining to the powers of municipalities (to eliminate provisions designed to apply to a single highway), the section pertaining to specialized traffic regulation (to expand the provisions pertaining to State property to apply to State property in locations other than Trenton), the provisions concerning lights and signage, the provisions concerning accidents, and the provisions concerning parking. In addition, the provisions applicable to bicycles, horses, and skateboards were revised in a limited way. Similarly, the provisions applicable to pedestrians and handicapped drivers, and to enforcement, were subject to limited revision.

Ms. Tharney and Mr. Cannel explained that the goal of Staff was to have a Tentative Report for December.

Professor Garland inquired about the tiered penalty system. Detailed discussion of this aspect of the project was left for a subsequent meeting.

Miscellaneous

The date of the next meeting is September 21, 2006.