

MINUTES OF COMMISSION MEETING
March 15, 2007

Present at the New Jersey Law Revision Commission meeting held at 153 Halsey Street, 7th Floor, Newark, New Jersey, were Chairman Vito A. Gagliardi, Jr., Commissioner Andrew O. Bunn and Commissioner Sylvia Pressler. Grace C. Bertone of McElroy, Deutsch, Mulvaney & Carpenter, LLP, attended on behalf of Commissioner Rayman Solomon and Professor William Garland of Seton Hall Law School attended on behalf of Commissioner Patrick Hobbs.

Also attending was Maura Sanders, Legal Services of New Jersey.

Minutes

Commissioner Pressler moved to accept the Minutes of the February 15, 2007, meeting; Commissioner Bunn seconded the motion, which carried unanimously.

Annual Report

Chairman Gagliardi noted a typographical error on page 10, in the first line of the second paragraph of C. Open Public Records Act, and asked that the term "require" be replaced with "required." Commissioner Pressler moved to accept the corrected Annual Report; Commissioner Bunn seconded the motion, which carried unanimously.

Title 39

Laura Tharney will speak with Mitchell C. Sklar, Esq., of the New Jersey State Association of Chiefs of Police about the project before the next meeting.

Poor Law

Judith Ungar said that in February John Cannel and she met in Mercerville with representatives of the Division of Family Development, county welfare boards and municipal welfare agencies and are scheduled to meet with the group again on March 20.

Maura Sanders, from Legal Services of New Jersey, told the Commission that a significant concern of her organization is making sure that the foundations of the law are preserved. New Jersey has a long history of providing assistance to the poor, and it is important that in revising the statute, the underpinnings of the current framework are not lost. Ms. Sanders suggested that some of the key provisions appear to have been incorporated in the current draft, but she was unable to say that all of the significant items have been included. Some changes have been made to the language that may not be appropriate as a result of the history of the statute, and because of the manner in which similar or identical language is used in other, unrelated, benefit programs. The term "household" has a distinct use in other benefits programs, and may not be appropriate for use in the draft of the poor law. The end result of the drafting process should amount to

more than just the current “Work First” program because even though that program may appear to be the only part of the statute that must remain, there is still more to public assistance in New Jersey than that program.

When asked by Ms. Ungar if the term “household” should be removed from the draft, Ms. Sanders said that it should be, in order to avoid confusion since the term is used differently in the food stamps and SSI programs in the State. Ms. Sanders explained that for some programs, it is possible to have several different “assistance units” living together under the same roof. As used in the draft, that would be a “household” but for other programs that situation would count as different assistance units. Ms. Ungar said that the monthly meetings with the Division of Family Development, and input from Ms. Sanders who planned to stay after the Commission meeting, were providing very substantial help.

Chairman Gagliardi said that the draft that the Commission will consider at the next meeting will contain modified language, and he asked if the Commissioners had other issues they wished to address at this meeting.

Section 3-6(c). Professor Garland noted that something is described as a crime of the 4th degree. He asked if everything that is characterized as a crime should appear in Title 2C or at least be cross-referenced to it. Mr. Cannel said that it might be better to include it in Title 2C since there are other offenses covering the same conduct there it is not at all clear when the crime might merge with others, or when it is a lesser-included offense, making it difficult to determine how to reasonably handle prosecution. Professor Garland said that instead, language could be included in the draft describing the crime as “is a crime under 2C.” Mr. Cannel added that more neutral language might be appropriate, such as “may be prosecuted under 2C.”

Mr. Cannel wondered if, since the statute was enacted before the criminal code, it could be deleted. Ms. Sanders said that she would check the history of the section to determine if the section was intended to limit it to a crime of the 4th degree. Professor Garland said that if the Commission is considering criminal matters, subsection (b)(6) should be examined since it refers to felonies and high misdemeanors in other jurisdictions. Ms. Sanders said that the language in question originated with the Personal Responsibility and Work Act and that while the wording may be slightly different, it was drawn from federal law. Commissioner Pressler suggested that subsection (c) read: “may be subject to prosecution for a crime.”

Section 3-6(b)(8). Professor Garland asked about the draft’s reference to a person who is found to have misrepresented, and then the mention of a conviction. One could be found to have committed a misrepresentation in a civil proceeding, which would not be termed a conviction. Commissioner Bunn said that one could also be found by an administrative officer to have misrepresented. Mr. Cannel said that the term “convicted” should appear in all instances. Ms. Sanders said it is possible to administratively disqualify someone, or the county or municipal agency could elect to proceed in municipal court. Mr. Cannel then suggested that if the administrative process is currently

used, the draft should not require the use of the criminal process if that is not the current procedure. Commissioner Pressler saying “a person found in a judicial or quasi-judicial proceeding...” Ms. Sanders added that the administrative hearing is a hearing, but has a higher standard than a “fair hearing.” Commissioner Bunn said that the draft should clarify what the process is and Professor Garland suggested that Staff determine who makes the finding and include that in the draft. Commissioner Pressler said that the use of the language “judicial or administrative proceeding” should be sufficient.

Professor Garland said that the Commission should consider whether “Poor Law” is the term it wants to use. Commissioner Pressler suggested “Public Assistance” and Ms. Sanders indicated that some of the cases refer to “safety net assistance.”

Title 22A

Ms. Tharney reported that Jane Castner of AOC supports the Commission’s effort to streamline the statute. One of the AOC staff members who reviewed Ms. Tharney’s proposed draft will send comments.

Commissioner Pressler recommended the elimination of costs in the trial court and Commissioner Bunn seconded the motion. Chairman Gagliardi said that Staff should inquire of AOC whether or not the award of costs at the trial level has value that is not apparent to the Commission; if it does not, the draft should eliminate those costs.

Commissioner Pressler said that probably the draft required only one provision for the trial courts, both law and chancery divisions, because the only difference is divorce and dissolution. Section 2-6 and Section 2-12 are completely duplicative and should be consolidated. No rational reason exists to have costs in Chancery Division and not in the Law Division.

Commissioner Pressler said that petit jurors need more than the \$5.00 fee which is not sufficient even to buy lunch.

Land Use Law

Commissioner Bunn said that “grant” should be the first word in revised 40:55D-70(c) and suggested that the Commission work off of Judge Pressler's version of the document because it is cleaner.

Commissioner Pressler suggested that the words “from application or appeal” should be removed, and that the remaining language should read: “Grant a variance from the strict application of a zoning regulation which proscribes the size or configuration of the lot, the size or placement of improvements or other bulk requirements, provided relief can be granted without substantial impairment of the zone plan and zoning ordinance and except as otherwise provided by subsection (d):

- (1) if...
- (2) if...”

Commissioner Bertone suggested that, in (c)(2), Staff add back in the language re: “if the benefit outweighs any detriment...” from the original statutory language” and that that language be added back in to subsection (d) as well.

Commissioner Pressler said that, like subsection (c), subsection (d) should be restructured as well, beginning with “grant” and eliminating “application or appeal.”

Commissioner Bunn suggested that subsection (c) begin “Grant a variance from the strict application of a zoning regulation permitting:...” and Commissioner Pressler added that Staff should list the necessary items with a colon after each item and an “or” before the last item, which is currently item number 5.

In the un-numbered final paragraph of subsection (c), on the second line, a period should be inserted after “the planning board” and the remaining language in the sentence stricken. “However” in the beginning of the next sentence should be removed, and the final sentence of the section, which should be its own paragraph, should read: “An application for multiple variances, none of which is enumerated in subsection (d), may be granted under this subsection.”

In subsection (d)(5), at the end of the second line, the language should now read “detached one- or two-family dwelling on either an isolated....”

Mr. Cannel said that a new draft would be prepared for the next meeting. Commissioner Pressler recommended that Staff find out who is counsel to the League of Municipalities and contact that individual before distributing this project so that they have the opportunity to consider the matter before its general public release.

Miscellaneous

Commissioner Bunn mentioned that, in response to the Commission’s discussion at the last meeting regarding recommendations for new projects, he had sent an email regarding potential new projects (probate, banking) to Commission Staff and would resend it as it did not reach the office. Mr. Cannel mentioned the possibility of presenting a general repealer at the April meeting.

The next Commission meeting is scheduled for April 19, 2007. Commissioner Pressler moved to adjourn; Professor Garland seconded the motion the motion, which carried.