

MINUTES OF COMMISSION MEETING
May 17, 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 Bunn, Commissioner Albert Burstein, and Commissioner Sylvia Pressler. Professor Bernard Bell of Rutgers Law School, Newark, attended on behalf of Commissioner Stuart Deutsch.

Also attending were Edward Eastman and Lawrence J. Fineberg of the New Jersey Land Title Association, and Deborah Jacobs and Ed Barocas of the American Civil Liberties Union.

Minutes

Commissioner Burstein asked that the word “were” be removed from line one of the third paragraph of the Minutes. Chairman Gagliardi said that on page three, two corrections are needed: in the third paragraph from the bottom of the page, the semicolon should be removed after the word “participate” in line three; in the next paragraph, in line five, “the” following the word “that” should be changed to “a.” On page five, Chairman Gagliardi, said that the word “also” should be inserted in the last paragraph, line thirteen, between the words “individual” and “was.”

Commissioner Bunn moved that the Minutes as corrected be adopted. Commissioner Pressler seconded the motion which carried unanimously.

Land Use Law – Variances

Commissioner Bunn suggested that the unnumbered paragraph following Subsection (c)(2) should have “(c)” added after the word “subsection” in line one. The unnumbered paragraph following Subsection (d)(6) should have “(d)” after the word “subsection” in line one. The goal was to clarify that each of the unnumbered paragraphs pertains to the entire multi-paragraph subsection of which it is a part.

Commissioner Burstein said that in the Comment, the word “but” in the second line should be deleted.

Commissioner Bunn moved to release the draft; Commissioner Burstein seconded the motion which carried unanimously.

Married Women’s Property Acts

Lawrence J. Fineberg of New Jersey Land Title Association said that while many of the sections of the Act were archaic and could be repealed, he believed that four sections of the Act which the Commission’s report recommends repealing should be saved from repeal since they overcome the common law. 37:2-18 supersedes the

common-law rule that husband and wife may not convey realty to one another and Mr. Fineberg indicated that he did not know of any other statute that specifically addresses this issue. 37:2-18.1, allows deeds releasing inchoate rights of dower or curtesy which were repealed, but the repeal was said to be prospective only and the existence of this section leaves less uncertainty with regard to the joint possessory right. It was noted that 3B:28-1 et seq does not release dower and curtesy which were only prospectively abolished.

Commissioner Pressler suggested adding a single section to Title 46 to encompass the substance of the four sections in question instead of preserving any part of the Married Persons Act. Mr. Fineberg agreed that the creation of a single section would work and volunteered to submit proposed language for an addition to Title 46. Mr. Cannel will have the next draft ready for the June meeting.

Adverse Possession

Mr. Fineberg recognized that the existing statutory scheme is confusing and noted that a bill is in the Legislature to amend 2A:14-7, shortening the time period during which an action can be brought to twenty years or thirty years for undeveloped land, rather than the 20 year general period and 30 year period for unimproved land. Generally, in other states, the time periods are shorter. Chairman Gagliardi asked if Mr. Fineberg had a chart of other states' time periods. Mr. Fineberg said that while he did not, he would be happy to compile some information for the Commission. Mr. Fineberg explained that the position of the NJLTA was somewhat different from that taken by the Commission with regard to the issue of whether a single time period should be used as both the sword and the shield in adverse possession matters. Mr. Fineberg said that there was no rationale for having two separate time periods in these cases.

Mr. Eastman said that his group had met with controversy in the Legislature on the issue of adverse possession against the state, so the group omitted the offending section. He suggested that the Commission do likewise. Mr. Cannel asked if there had been controversy in regard adverse possession against municipal government; Mr. Eastman said that there had not.

Mr. Cannel will provide copies of the pending bills and information about the time periods in other states for the next meeting. Professor Bell asked if trends exist in other states. Mr. Fineberg said that to the extent that there was a trend, the trend is to shorten the time period.

Title 22A

Laura Tharney told the Commissioners that the current draft includes additional consolidation. For ease of review, where whole areas have been stricken, she has removed them but has left the section heading and the comments.

Ms. Tharney also said that some of the fees had been revised simply to make the dollar figures multiples of five for the sake of simplicity, rather than having fees of \$4.50 and \$7.50, for example.

Ms Tharney said that she will request comments on the draft for the next meeting. Commissioner Pressler asked about certain of the fees that remain in the draft, such as the fee for swearing a witness, the fees for true copies and the notice of appeal to a trial court. Chairman Gagliardi requested that Ms. Tharney find out if these fees are really collected. Commissioner Pressler said that the county clerks or civil division managers would be helpful in this regard.

Commissioner Pressler said that some items in Miscellaneous on page 17 should be moved to the probate statutes, including provisions pertaining to renunciation and refunding bonds.

Title 39

Ms. Tharney reported on the limited but fairly consistent feedback from the traffic safety officers and asked the Commissioners if they want to go ahead with the classification system. Of the individuals from whom she has received comments, only one has suggested that classification is a bad idea since it would make it too easy for the Legislature to raise the fees applicable to an entire category. Professor Bell asked what the alternative to keeping the classification system is. Ms. Tharney said the statute could remain in its present form, with various subsections containing both an offense and a penalty. The Commissioners favored going forward with the classification system.

Shaded portions in the document before the Commission indicate receipt of recommendation to move the section from one place to another. Ms. Tharney will ask for more information regarding the recommendations already made. Chairman Gagliardi said the Commission will go through the entire draft thoroughly at a later time and that this project will consume much of the agenda at the next meeting.

Ms. Tharney would like to have the complete draft ready for the September meeting.

Anachronistic Statutes

Chairman Gagliardi said that at the April meeting the Commissioners looked at several possibilities for statutory repeal.

Chairman Gagliardi suggested that the Commissioners consider, as part of their regular obligation, the consideration of statutory sections which the court has determined to be unconstitutional or otherwise appropriate for removal from the statutes. Commissioner Bunn said that if a statute has been unconstitutional for ten years it is a good candidate for repeal; if for a much shorter period of time, or if it is a situation in which further review by the courts is possible, he is not comfortable with the

Commission working on the issue. Commissioner Gagliardi agreed that if the statute in question was currently under legislative review or if the appeals have not concluded, then it is outside of the purview of the Commission.

Commissioner Pressler said that the length of time the Commission should wait depends on the issue involved. She suggested that parental notification should have come out of the statute quickly. Commissioner Burstein said the Commission should certainly deal with the moribund statutes.

Deborah Jacobs of the ACLU suggested that the Commission talk to other state law revision commissions and see how they deal with the problem of statutes that have been held unconstitutional.

Flag Salute

The statutory requirement that a student stand and salute the flag was held by the Third Circuit to be unconstitutional in 1978. Professor Bell suggested adding a section saying that the Department of Education will distribute materials to school administrators. Ms. Jacobs said that the necessary information does not trickle down in all of the districts. A proposal was made to remove the language pertaining to children of accredited representatives with diplomatic immunity and the Commission determined that to do so would go beyond the modifications called for by the 1978 decision.

Professor Bell noted that it might be important to make educators throughout the State aware of any change to this section. He said that since school administrators might be exposed to liability as a result of Section 1983 of the federal law, which could have significant financial ramifications, he would be more comfortable if an effort were made to make those impacted by any change aware of it.

Commissioner Pressler moved that, subject to the amendment, the draft be released separately. Commissioner Burstein seconded the motion, which passed.

Parental Notification

Chairman Gagliardi said the Commission should look at the statute on parental notification and decide if it should be part of a larger repealer package that Staff was putting together for the Commission's consideration.

Professor Bell said that the Commission should recommend its repeal, but asked whether or not unconstitutional and anachronistic statutes proposed for repeal should be separated because the constitutionally based statutes are more compelling and may require different consideration. Chairman Gagliardi suggested that the Commission not diminish or highlight statutes proposed for repeal on any grounds. The Commission said that it would consider the parental notification issue at the next meeting with the four or five other projects that have been proposed by Staff for a repealer.

Miscellaneous

The next meeting is scheduled for June 21 and the following meeting is set for July 19.

Professor Bell moved to adjourn; Commissioner Pressler seconded the motion which passed unanimously.