

MINUTES OF COMMISSION MEETING

March 17, 2016

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 Virginia Long, Commissioner Andrew Bunn, and Commissioner Anthony R. Suarez. Professor Bernard W. Bell, of Rutgers Law School, attended on behalf of Commissioner Ronald K. Chen; Professor Edward A. Hartnett, of Seton Hall University School of Law, attended on behalf of Commissioner Kathleen M. Boozang; and Grace C. Bertone, Esq., of Bertone Piccini LLP, attended on behalf of Commissioner John Oberdiek.

Ms. Marjorie E. Crawford, Head of Technical and Automated Services, Rutgers School of Law, was in attendance on behalf of the New Jersey Law Librarians Association.

Minutes

The Minutes of the February 2016 Commission meeting, with the correction of a typographical error in the first full paragraph on page 4, were approved on motion of Commissioner Bunn, seconded by Commissioner Long, with an abstention from Commissioner Suarez.

New Jersey Electronic Legal Material Act

Susan Thatch informed the Commission that she would be discussing the most recent version of the New Jersey Electronic Legal Material Act, based on the Commission's changes, including changes to sections 2, 5, and 9.

Commissioner Bunn asked whether language emphasized in gray on page 16 was intended to be an addition. Ms. Thatch answered in the affirmative, saying that the new language was intended to address inconsistencies. Commissioner Bunn asked that the citation be corrected to identify the court that decided the *State v. Cranbury* within the new language.

Chairman Gagliardi recognized Marjorie E. Crawford, Head of Technical and Automated Services, Rutgers School of Law, who conveyed the appreciation of both the New Jersey Law Librarians Association (NJLLA) and American Association of Law Libraries (AALL) for the Commission's work on this project and for its perseverance in moving the draft to this point.

Commissioner Bunn moved to release the project as a Draft Tentative Report, Commissioner Hartnett seconded; the motion carried unanimously.

Special Needs Trust

Jayne Johnson presented a Memorandum proposing revisions to N.J.S. 43:16A-12.1a, based on the Supreme Court's decision in *Saccone v. Bd. of Trustees of Police and Firemen's Retirement Sys.* Ms. Johnson noted the comments that had been provided by Donald Vanarelli,

Esq., who represented the Saccone family in the underlying litigation, and Regina Spielberg, Esq., a leading attorney in the practice areas of elder and disability law, in response to the Commission's request for comment from practitioners specializing in elder and disability law. Commissioner Long commended the commenters for their assistance and the detailed commentary that they provided. Ms. Johnson thanked Commissioner Bertone, who was instrumental in directing Staff to Ms. Spielberg.

Commissioner Bunn asked whether the language from the federal statutory framework discussed in the Memorandum should be incorporated in the Commission's Report. Laura Tharney suggested that, given the numerous statutory schemes proposed for revision, a more tailored approach to revising the statutes governing each state-administered retirement scheme might best in order to clarify and revise our state statutes. She noted that as a result of variations in the language from statute to statute, it was not possible to incorporate the federal language uniformly throughout. Commissioner Bunn then suggested that the best course to aid in interpretation of the changes may be to add the federal statutory language in the comments of the Commission's report, identifying the federal approach to the issues raised in *Saccone*.

Commissioner Hartnett recommended adding the phrase "any benefit to which the beneficiary is or will be entitled pursuant to this subsection" to the proposed statutory language, as Mr. Vanarelli suggested. Commissioner Bell noted that it may be beneficial to incorporate additional language to directly address establishing a trust on behalf of a beneficiary while the member is living. He expressed concern that there should also be explanatory language included in the comment so that the change, and the reason for it, is clear. Chairman Gagliardi stated that the Commission is pleased with the direction of the revisions and looks forward to seeing the proposed revisions incorporated in the Draft Final Report.

Property Tax

John Cannel informed the Commission that the Property Tax project began approximately 18 years ago, but ended with the untimely passing of Lawrence Lasser, formerly Chief Judge of the Tax Court. Mr. Cannel explained that he would like to update the project and work only on the part of the law establishing what property is taxable and how it is to be assessed. He noted that property tax assessment is currently governed by two separate statutes that do not interact well.

Commissioner Bunn inquired as to what precipitated returning to this project and Mr. Cannel replied that it had once again come to his attention. Commissioner Hartnett asked how this would affect New Jersey's property tax reevaluation issues. Mr. Cannel assured the Commission that this project would not determine when a reevaluation is needed, but would only establish a clear assessment process.

Chairman Gagliardi asked whether the Legislature would be interested in a project like this and Mr. Cannel stated that he was unsure of the potential interest level. Commissioner Bunn noted that multiple other states have reassessments and inquired whether the Uniform Law

Commission has ever addressed this issue. Mr. Cannel responded that he was unaware of any Uniform Law Commission project in this area except for a uniform act addressing the taxation of manufactured homes, but that he would confirm that no other work was done by the ULC in this area.

Chairman Gagliardi stated that it would be helpful to determine which legislative committee would have oversight of this area to avoid a lengthy, unproductive process. Mr. Cannel stated that the Local Government committee might become involved and also noted that the League of Municipalities may be willing to provide input. Chairman Gagliardi encouraged Mr. Cannel to involve some interested parties, including the League of Municipalities and the State Bar Association, as part of moving forward and Commissioner Bunn and Commissioner Bertone agreed. Mr. Cannel stated that he would seek input to help the Commission assess the project's viability.

Retired Police Right to Carry, N.J.S. 2C:39-6(l)

Vito Petitti discussed a Memorandum regarding the rights of retired campus police officers to carry concealed weapons under N.J.S. 2C:39-6(l), noting that the potential project arose when a member of the public brought to Staff's attention a recent Star-Ledger article. The article observed that retired campus police are not included in the enumerated list of law enforcement officers permitted to carry under N.J.S. 2C:39-6(l). Mr. Petitti informed the Commission that, based on relevant case law, plaintiffs tend to argue either that public university officers work for the State and are thus state agency employees, or that public university officers receive police training and perform police work, and therefore upon retirement should be treated as retired police officers. Mr. Petitti added that the courts so far have not supported either position, and federal law in the form of the Law Enforcement Officers Safety Act (LEOSA), which entitles retired police officers to carry concealed weapons in all 50 states, does not cover campus police officers.

Mr. Petitti noted that it is the position of the New Jersey State Police – responsible for enforcing the statute – that the letter of the law is followed, and while campus police in metropolitan areas may receive similar training to state, county, and municipal police officer, the statute must be amended to include university or campus police.

Chairman Gagliardi observed, in the course of his work with law enforcement organizations, that metropolitan campus police officers are respected and treated as peers by other police officers. Commissioner Suarez said that, in his experience, campus police attend the police academy, qualify with their weapons during the course of their work, and are included in the State pension system. Commissioner Bertone said that the campus police officers have a valid argument, but expressed concern that the Commission is not the appropriate forum for the argument. Commissioner Bunn suggested that the problem arises from the statute quoted on page 2 of the Memorandum, and that the problem is not an issue of clarity, but a policy determination that would appear to exceed the scope of the Commission's mandate. Commissioner Long

suggested that the way for campus police officers to address the issue is to bring it to the attention of the Legislature, seeking a modification of the existing policy as expressed in the language of the current statute. Commissioner Bell agreed, noting the sensitivity of the issue and indicating that it was an issue that should be addressed by the elected representatives.

Miscellaneous

Ms. Johnson briefly updated the Commission regarding the status of the bill concerning pejorative terms and Ms. Thatch provided an update regarding the Human Trafficking project. Ms. Tharney also briefly mentioned that the UIFSA bill had passed both houses of the Legislature unanimously, and was awaiting signature by the Governor.

The Commission meeting was adjourned upon motion of Commissioner Bell, seconded by Commissioner Bunn.