

MINUTES OF COMMISSION MEETING
April 26, 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 Albert Burstein, and Commissioner Sylvia Pressler. Professor Bernard Bell of Rutgers Law School, Newark, attended on behalf of Commissioner Stuart Deutsch.

Also in attendance was Deborah Jacobs from the ACLU.

Before the meeting began were Ksenia Takhistova, the new law student intern for the Commission, and Jenene Hatchard, the new administrative person for the office, were introduced to the Commission.

Minutes

The Minutes of the March 15, 2007, meeting were unanimously approved as submitted after a motion by Commissioner Pressler and a second by Chairman Gagliardi.

Title 39

Laura Tharney reported that not all parties who received the chart grouping the penalties for motor vehicle offenses into classes had replied with comments. They had been requested to return comments by the end of April. Comments were solicited from the municipal court practice committees of the State and County bar associations, members of the New Jersey State Traffic Officers Association, the State Chiefs' Association, and the Motor Vehicle Commission, among others.

Thus far, only one respondent has said that classification of offenses in the manner proposed is a bad idea. Other respondents have made suggestions regarding moving some offenses from one class to another. There have been other comments regarding the fines, with some officers suggesting that they are too high, and other suggesting that they are too low. Ms. Tharney is waiting for to see if additional comments come in, and then will compile those received for the Commission to review.

Chairman Gagliardi suggested that it was easy to move an offense from one classification to another.

Title 22A

Ms. Tharney asked the Commissioners for guidance on this project and said that she had received unofficial recommendations to raise certain of the fees. She suggested that raising the fee for the first filing in any action to make them all consistent arguably makes sense. She expressed some concerns about whether the Commission would be in a position to recommend instituting fees for things that the Court does not currently charge for. Chairman Gagliardi suggested that the goal of the Commission was to improve the

statute, and that raising revenue was outside of the scope of the Commission's mission. The Commission agreed with this position.

Commissioner Pressler suggested that the deposit for costs in the Appellate Division should remain in the Rules and should not be included in the statute.

Land Use Law

Chairman Gagliardi suggested that the substantive discussion of this project await the next meeting so that Commissioners Bunn and Bertone can participate.

Commissioner Pressler asked if something was missing from (c)(2). Judy Ungar said that the Minutes indicated that the "benefit outweighs the burden" language was to be added to both (c)(2) and d(d). Mr. Cannel said that it had not been added in, but would be. Commissioner Pressler suggested that the new draft reads very well, better than the current statute. Staff was requested to remove the "but" from the second sentence of the Comment.

Mr. Cannel said that he could do a new draft quickly to make the correction and then advise the League of Municipalities that it is available on our website. Chairman Gagliardi asked that the League of Municipalities be asked for their comments and that any comments be provided to the Commission at the next meeting. Chairman Gagliardi said that the more people the Commission hears from before releasing the report, the better.

Anachronistic Statutes

Commissioner Pressler said that partial birth abortions are not an anachronistic statute and asked why they were included with the statutes proposed for elimination on that ground. Mr. Cannel introduced Deborah Jacobs from the ACLU on this issue. He said that he thought that the issue was too controversial for the Commission's involvement to be productive at this point, and that he did not think that having the Commission involved makes the result sought by the ACLU any more likely than it would otherwise be. The second provision proposed by the ACLU, dealing with the salute of the flag he described as less controversial, and it did not involve the repeal of an entire statutory section.

Chairman Gagliardi agreed that the issue of the flag salute is one that arises with some frequency, but observed that the chances of obtaining a legislative sponsor for a bill making changes to that section of the statute were slim.

Ms. Jacobs said that the ACLU has had to put considerable resources and time in to addressing this question and has had to ask the Department of Education to send a memo on three separate occasions. Apparently, however, according to Ms. Jacobs, the memo never gets to the people who need it most. Ms. Jacobs said that she had read carefully the Commission's charge and mission and that recommending that statutes be

taken off the books when they have been declared unconstitutional is the Commission's job, and it is not controversial. She said that it was the Commission's job to find the laws that are not working for New Jersey and not relevant. She said that she is going to continue to do anything she can to get these laws removed from the statutes since they have already been declared unconstitutional but are still on the books, causing much unnecessary confusion. Ms. Jacobs said that that was the reason for her attendance at the meeting. She explained that she has been in touch with Mr. Cannel previously, but wanted to take the opportunity to address the matter with the Commission directly.

Chairman Gagliardi asked if she had tried to get any legislators to sponsor bills to remove either of the provisions she wanted removed from the statute. Ms. Jacobs indicated that she had not, suggesting that the Commission was the appropriate place to start.

Mr. Cannel said that since the United States Supreme Court had just acted on the abortion issue, the state law is of little significance. He suggested, however, that if the flag salute issue comes up every year, it may be an item that can and should be submitted to the Legislature.

Chairman Gagliardi said that the practice now, when it is consistent with the Appellate Division case declaring that students are not required to salute, is that the school boards have implemented the policy or practice of having the salute every morning, but that students who do not wish to participate are not required to do so. What we are talking about here is making a change to the language of the statute to make it clear that students do not have to participate if they do not wish to. Commissioner Pressler confirmed that it was only subsection (c) of the statute that was in issue.

Commissioner Burstein asked if the case in question indicated exactly what was permissible and what was not as far as student participation was concerned. Mr. Cannel said that it was his understanding that if the student does not want to participate; the student does not have to participate.

Chairman Gagliardi said that he thought that the flag issue warrants consideration, but that before making any determination, every member of the Commission needed to see a copy of the opinion, which should be shepardized to see if the issue has been revisited by the Courts since the time of the case under discussion. Chairman Gagliardi said that it was his understanding that the student is not required to participate in the salute to the flag and is, in fact, not required to stand. They cannot be disruptive, but they are not required to participate. He indicated that he did not believe that there were regulations on this issue.

Ms. Jacobs said that the other issue that she wanted the Commission to consider was not partial birth abortion but parental notification. She said that the Commission might find it more compelling since young people who need abortions now go to the statute and access a statute that has been found to be unconstitutional. She suggested that it is an important issue because young people's lives are involved. Mr. Cannel

apologized and indicated that he had picked up the wrong section of the statute for submission to the Commission and will provide the language regarding parental notification.

Commissioner Pressler said that it makes a great deal of sense for the Commission to recommend the repeal of legislation that has been declared unconstitutional. Mr. Cannel said that the Commission had, on occasion, done so in the past when the language involved was a small piece of the statute, in the material witness area, and in the replevin area, for example.

Chairman Gagliardi asked that Staff provide to the Commission a copy of the ACLU letter sent to Commissioner Stuart Deutsch previously, copies of the seminal cases and any other relevant cases.

Mr. Cannel said that in reviewing the statutes, it is often hard to determine which are out-of-date and which are not. He explained that he reviewed Title 40 and had difficulty trying to determine which parts were anachronistic and which were not. Mr. Cannel said, with regard to the provisions regarding Canada thistle that invasive plants and animals create problems in the environment, while others have been here so long we are no longer sure if they are foreign or native. He said that he was not sure if Canada thistle still needs to stand alone or not. He noted that it is also a misdemeanor to release goldfish into the environment.

With regard to the statutes of limitation, Commissioner Pressler said that Staff should check the 30 year statute of limitations because Judge Skillman did a lengthy opinion on this issue several years ago and, at the time; he made distinctions between the 20 and the 30 year statutes. Professor Garland said that before eliminating the 30 year statute of limitations, Staff should look more closely since the first part of it was founded on proprietary rights, but that language is followed by a disjunctive clause that may be founded on something other than proprietary right. Mr. Cannel said that he was not sure about the impact of the language, and Professor Garland said that the way the statute is written, the substantive right is at the end. He suggested that the Commission should merge the adverse possession statutes (20 and 30 years) in to one section of the statute but keep the 60 year language separate.

Commissioner Pressler said that the Commission's guest made a good point, which is that repealers should happen quickly and that, perhaps, the Commission should do a review once a year. She explained that she regularly read the advance sheets and could send a note to Staff when she finds something that should be addressed.

Chairman Gagliardi suggested that the flag issue should be a separate project as should the adverse possession issue. Title 46, Title 51 and the Canada thistle item could remain together as a single project on anachronistic statutes. Mr. Cannel asked to include Title 30:8-14, victualing prisoners. Chairman Gagliardi said that could be included with the items that are grouped in a single project.

Commissioner Pressler confirmed that parental notification should also be a separate project.

Poor Law

Judy Ungar said that after the Commission's last meeting, the guest at that meeting, Maura Saunders, stayed to meet with Staff and then offered to come back for a second meeting. She did so. Ultimately, there were only two small points that needed to be changed from the Legal Aid perspective, so Ms. Ungar suggested that the revisions seem to be appropriate from the perspective of that interested group.

Ms. Ungar then pointed out to the Commission changes that were made at the request of the Commission at the last meeting.

Commissioner Pressler said that the Commission had recommended calling the statute "Public Assistance Law" rather than "Poor Law". Professor Garland said that in Section 8, the language says "means tested public benefits" and later the language says "public benefits". He asked if they could be taken to mean separate things? Mr. Cannel said the change would be made to refer to both things as "public benefits". Professor Garland asked if the term "public benefits" should also be used in Section 9 and Mr. Cannel indicated that change would be made.

Chairman Gagliardi said that in the definitions section, between "eligible person" and "employable" there is a comment that should be removed.

Commissioner Pressler said that 1-1(c) is awkward, and that the language should say "a person may not simultaneously receive benefits from both TANF and GA".

Chairman Gagliardi said that the definition of "residence" does not have a source and there is a Supreme Court opinion that talks about the difference between residence and domicile and says that an individual can have many residences and only one domicile, but the way it is defined in the statute, it looks like the term is being defined as domicile. Commissioner Pressler said that it looks like domicile because of the "intends to live" language. Mr. Cannel said that the language was designed to address the issue of a person who gets off a bus in Hackensack and has not had time to establish residence there but requires assistance. If someone is homeless and shows up in a municipality, that person cannot be refused assistance just because he or she has not established residence in that period of time since he or she arrived. The current language was an attempt to make the statute more open-ended. Commissioner Pressler suggested using the language "declares an intention to reside". Chairman Gagliardi asked if declaring an intention was enough or whether the individual was required to do something to get there. Ms. Ungar said that Ms. Takhistova pointed out the provision in the federal regulations defining "state of residence". Chairman Gagliardi suggested that the language needs to clarify that the person in question is in the place voluntarily and that intends to reside there. Commissioner Pressler proposed "is present and declares an intent to remain" for the definition of residence.

Ms. Ungar explained that in Section 4-11, many changes in the proposed statutory language had been requested since Staff had not provided for the full set of administrative structures that are in the present statute and that vary based on the types of municipalities. Many of the changes sought were incorporated. She explained that Staff had also included, again by request, the criteria that a welfare director should have.

Commissioner Pressler said that in Section 4-13(b), the language should probably read “body corporate”.

Commissioner Burstein said that in the comments, there are some explanatory references that say "substantially identical" and some that say "substantially like". He asked if there was a difference. Mr. Cannel indicated that the language meant “identical in substance”. Ms. Ungar suggested the substitution of “substantively identical”.

Mr. Cannel said that in the current statute, there is no clear distinction between general assistance and categorical assistance programs. He explained that Staff tried to separate them out, and make the proper distinctions between them, and that it is the hope of Staff that this was done correctly.

Miscellaneous

The meeting was adjourned on a motion by Commissioner Pressler and seconded by Professor Bell which carried unanimously. The next meeting of the Commission is presently scheduled for May 17th.