MINUTES OF COMMISSION MEETING
May 19, 2005

Present at the New Jersey Law Revision Commission meeting held at 153 Halsey Street, 7th Floor, Newark, New Jersey, were Commissioners Albert Burstein, Vito Gagliardi Jr., and Sylvia Pressler. Grace Bertone of McElroy, Deutsch & Mulvaney attended on behalf of Commissioner Rayman Solomon and Professor Bernard Bell of Rutgers School of Law, Newark, attended on behalf of Commissioner Stuart Deutsch.

Also present at the meeting were Betty Greitzer, Esq., New Jersey Food Council, and from the New Jersey Weights and Measures Association: Ray Szpond and John McGuire of P.B.A. Local # 269; Mike Santos, Warren County; and Tony Neri, Superior Officer, Lodge # 183.

Minutes

With the correction of the spelling of James Woller's name, the Commission accepted the Minutes of the Meeting of April 21, 2005 as submitted.

Enforcement of Judgments

C-6(a)(3) will be changed to read "professionally prescribed." After some discussion of whether the term "health aid" is inclusive enough, the Commission decided that if the language in the draft statute is derived from federal language, it would be left alone. Language will be added to the Comment to clarify that the term and the concept behind it are drawn from the federal statute.

C-6(a)(5) will become C-6(b) and the remaining sections will be adjusted accordingly. The missing explanation of provision C-6(d) will be included in the comment and the semicolon replaced with a comma in the text of the draft statute.

The reference in C-7(a) allowing a judgment debtor to select property with a limited value should be to C-6(a)(4) rather than to C-6(a)(3). C-7(a) will be revised to confirm that the debtor has the opportunity to select the property to be exempt. Proposed language was "In consultation with the collection officer, the judgment debtor shall make claims for exemption pursuant to C-6(a) and shall make claims for exempt property pursuant to C-6(a)(4) and (5)."

C-9(a) and (b) shall be revised to clarify that the written collection instructions shall accompany the writ and the word "collection" shall be removed from those places where it precedes "instructions" throughout the section.

C-10 discusses property which remains in the possession of the debtor. The point was raised that there is an ambiguity as to whether the damage referred to in (b) is intentional. It was suggested that the word "waste" be used since it is limited to intentional and grossly negligent conduct. The Commission decided that if there was a definition of

"waste" that could be incorporated, or if the language could be altered to take into account the "knew or should have known" concept regarding the cause of the damage, the existing language should be replaced with something like "The debtor shall not intentionally damage or dispose of the property and shall be responsible for waste and destruction of the property left by the collection officer." If not, the new, underlined, language would be removed in that subsection.

In C-16, subsection (b) was eliminated, but the lettering was not changed.

In F-9, the words "an interest" will be substituted for "lien."

In S-3(d) the words "or posted" will be eliminated from the first sentence.

In S-7, there is a comment to subsection (a) that no longer refers to that subsection. It will be moved to the appropriate location and the remaining comment expanded to deal with the actual (a).

Weights and Measures

John Cannel explained that the compromise provisions drafted by the Commission as 51A:9-1 are not acceptable to the county weights and measures officers. They continue to object to any limitation on the discretion of county officials regarding multiple violations. Commissioner Pressler noted that the county officials could not constitutionally argue for unfettered discretion and Chairman Burstein suggested that as subordinate officials, they cannot be unsupervised and lacking statutory guidelines. Commissioner Gagliardi indicated that he was troubled by the testimony that he had heard regarding the variability in the exercise of discretion from jurisdiction to jurisdiction.

There was discussion regarding what would happen if 51A:9-1(c) were enacted and the State Superintendent of Weights and Measures did not promulgate regulations. Commissioner Pressler suggested that would mean that there was no discretion and said that she would like to see that subsection start with language stating "At the discretion of the weights and measures officer, in compliance with the regulations established by the State Superintendent, each instance…". Commissioner Pressler also suggested that the section begin with a requirement for the State Superintendent to promulgate regulations, and she said that the language about Handbook 133 should be in the comment, not in the statute. Chairman Burstein said that if the Commission is changing the statutory language to limit the discretion of local weights and measures officials, that would require considerable explanation in the comment, including the rationale for doing so.

Concerning implementation, there was a question of whether an interim regulation could be promulgated. One of the guests present at the meeting advised that the State could set a protocol immediately, but the Commission determined that the law prohibited mandating a protocol in the statute. John Cannel indicated that he would look at the cases

dealing with the implementation of a statute by something less formal than a regulation. Commissioner Gagliardi said that he favors a six-month deadline for the implementation of regulations. Chairman Burstein added that the comment should include language explaining that since these are ongoing issues in the field of consumer protection, there should be no undue delay in the implementation of regulations.

Commissioner Pressler suggested that 51A:9-1(c) state that "The Superintendent shall establish standards defining the circumstances under which instances of a violation shall be charged separately and be the basis for a separate penalty…." She added that the county officers must be mentioned in that sentence. The comment will include a detailed explanation for the reason that the Commission made the changes and state that testimony before the Commission showed the existence of variations from county to county.

In addressing the issue of liquefied petroleum gas, discussion indicated that a number of retail establishments do not sell the gas by weight or measure since they charge a flat fee to fill a tank whether it is empty or half full. An exception for flat fee tank filling or consumer tank exchange programs was discussed, as was the inclusion of tolerances and delivery tickets. Mr. Cannel said that he would contact the guests by telephone to make sure that the current draft language includes all of the necessary provisions.

Chairman Burstein suggested that the manner in which the Superintendent's affirmative obligations were set out in 51:13-1 should be done in 51A:12-1 as well. In 51:13, Superintendent should be capitalized throughout.

Regarding 51A:2-3, it was suggested that some equipment owned and operated by law enforcement agencies, like the State Police wheel load weighers, do not meet the statutory standard. The standard required that weight in 20-pound graduations, and the State Police equipment weighs in 50-pound graduations. It was suggested that the end of the section addresses that issue; modifying the language at the end of the section to read "except as otherwise provided by the Superintendent" was suggested.

Section 51A:9-4 poses a presumptive evidence issue since there are 561 police departments, plus county departments, plus the port authority, all of which issue certificates. Mr. Cannel said that he would review the former section 51:1-102 to see if it had been streamlined too drastically.

In response to a request to allow weights and measures officers to write summonses on site (51A:3-7) rather than having to go to sign it on oath, it was explained that the Court Rules do not extend that power to anyone other than sworn police officers. If the power were extended to weights and measures officers, it might be necessary also to extend it to Health Department officers, code enforcement officers and others. The Commission suggested that the power of arrest and the power to stop commodities in transit were different from the power to swear out a complaint and could exist even if the weights and measures officers were required to swear out a complaint. Commissioner Pressler

suggested that the matter be taken up with the Criminal Practice Committee and the Municipal Court Practice Committee.

The language in the last sentence of 51A:3-13(c) differs from the current statute. Mr. Cannel will determine the reason.

Title 39

Laura Tharney provided a brief summary of the list of meetings she had attended, the individuals she had spoken with and the communications received regarding this project. The Motor Vehicle Commission had said that it would provide information responsive to some general questions by the end of June. Comments from other individuals and organizations who are reviewing provisions of the Title are expected to be received by that time as well. So far, no comments have been received from the municipal court practice committees of the county bar associations or the municipal court judges.

The Commission recommended that she contact the Administrative Office of the Courts.

Questioned about what information she has provided to the MVC, Ms. Tharney said that when she sends down her list of questions, she would provide an update on the individuals contacted and the information received.

For purposes of the presentation of this project to the Commission, the Commission requested that Staff identify the major issues and areas where decisions need to be made. The Commission also requested that the project be divided between areas in which the new provisions are substantially identical to the existing statute, and those areas in which real decisions have to be made.

Next Meeting

The next meeting of the Law Revision Commission is scheduled for June 16th.