

MINUTES OF COMMISSION MEETING
April 14, 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; Professor William Garland of Seton Hall Law School attended on behalf of Commissioner Patrick Hobbs; 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 of P.B.A. Local # 269; Maria Todaro, Secretary, Union County; David Dombey; Mike Santos, Warren County; Tony Neri, Superior Officer, Lodge # 183; Ernest Solerno, Superintendent, Passaic County; and Robert Alvierre, Superintendent, Morris County.

Minutes

The Commission accepted the Minutes of the Meeting of March 17, 2005 as submitted.

Preliminary Matters

Chairman Albert Burstein welcomed James Waller. Mr. Waller's formal appointment to the Commission is expected shortly.

Weights and Measures

John Cannel reported that he had made changes to the draft report as instructed at the last meeting. He pointed the Commission's attention to page 26 of the draft to section 51A:9-1(c) dealing with penalties for multiple offenses. The Commission had considered previously the issue of determining the appropriate penalty for a retailer when several packages from the same manufacturer were found to be in violation of the law due to an error in marking weight. The Commission had decided that in circumstances where the fault was not attributable to the retailer, the latter should be subject to one penalty even though multiple offenses had technically been committed. Mr. Cannel stated that the proposed language was phrased as "packages of the same lot." To counterbalance the reduction of multiple offenses to a single offense, the Commission had raised the level of penalty to \$250 from \$100.

Weight and Measure Officers present at the meeting uniformly objected to the Commission's approach, stating that they need discretion to impose multiple penalties upon certain retailers and that they do not seek a greater monetary penalty. They argued that to protect New Jersey consumers and to deter illegal conduct, they need the power to impose individual penalties upon retailers in cases even where packages derived from a

single source contained an incorrect weight applied by the manufacturer. The officers argued that retailers have the obligation to ensure compliance with the law, that the retailer could recover the penalty from the manufacturer, and that the officers exercise their authority in these cases with a view not toward penalizing the innocent merchant but toward compelling the recalcitrant merchant to comply with the law. They therefore requested the Commission to return to the approach of existing law maintaining the fine at \$100 but giving the officers discretion to apply multiple penalties in cases of multiple offenses under circumstances where the manufacturer caused the short weight marking.

Betty Greitzer, representing the Food Council, objected to the position taken by the weights and measures officers and noted the inconsistent enforcement of standards throughout the state. She stated that under present circumstances, officers from different counties treat retailers differently under identical circumstances. If officers are given discretion to impose multiple offenses for single lot violations, then retailers in one county may face multiple sanctions while retailers in other counties will face a single penalty. She argued that the mandatory language of the section is needed to promote uniform enforcement of the law.

The Commissioners expressed concern about non-uniform enforcement of the law and decided that the State Superintendent should have an obligation to promote uniformity through promulgating regulations under the Administrative Procedure Act. The Commission decided to: (1) give the officers discretion to impose multiple penalties for multiple offenses, and (2) require the State Superintendent to establish state-wide standards to guide discretion to enforce multiple as opposed to single penalties.

The Commission ordered the following changes to the draft report:

Page 2, 51A:1-1(h): add “supervisor” ahead of “assistants” and remove duplications (last five words);

Page 5, 51A:2-5(b): delete phrase “that need not be” and term “Handbook 133” and replace latter with phrase “widely recognized standards”; also in commentary delete the phrase “the regulations in” since Handbook 133 is not a set of federal regulations and clarify what is the nature of the standards contained in Handbook 133. Laura C. Tharney asked if the draft should explain what Handbook 133 is, the first time it is mentioned. Chairman Burstein said yes.

Page 8, 51A:3-3, subsection (h): delete phrase “with a view” and amend word “obtaining” to “obtain”; add separate section dealing with propane; add separate section dealing with lumber as it is sold by volume and grade; add language requiring the Superintendent to promulgate regulations to achieve uniform enforcement of standards;

Page 26, 51A:9-1: subsection (c): delete “shall be” in line 2; delete language in lines 3 and 4 starting with “from” and ending with “kind”; add “not” after “were” in line 4;

delete “a person other than” in line 5; delete “shall” in line 5 and replace with “may”; add new sentence in line 6: “The standards for the discretion shall be set forth in regulations promulgated by the State Superintendent.” Add language in commentary to reflect changes made to 51A:9-1. Chairman Burstein said to give discretion to inspectors in all instances.

Judgments and their Enforcement

Commissioner Garland submitted to Mr. Cannel a marked up copy of the draft final report containing his comments and questions. Commissioner Sylvia Pressler also had extensive comments on the draft final report. The Commission heard the comments of Commissioners Garland and Pressler, discussed them, and decided as follows.

1. Introduction

Page 1, par. 2, l. 3: The verb should be “is”; page 1, par. 3, l. 3, the word “execution” should be “enforcement.

As to Notice of Pending Action, broader language should be used to indicate covering “anyone obtaining an interest in property”.

All suggestions in Commissioner Garland’s remaining comments regarding “collection of judgments”, “foreclosure”, and “public sales” accepted.

2. Judgments

J-2 Case docket: Fact that redundant language is used is approved.

J-3 Judgment docket: Leave language as contained in draft final report.

J-5 Attachments and execution of process: A notation should be made when a writ is returned unsatisfied.

J-7: A stay is not automatic; an application must be made.

J-9 Indexes: There should no different standard for assignee.

J-10 Security for payment of judgment: A judgment creditor is entitled to notice and hearing as to sufficiency of deposit; judgment creditor should be able to obtain money deposited on posting a refunding bond.

J-12 Ex parte entry: Staff should review the accuracy of the comment; but the approach on cognovit notes should not be changed.

3. Notice of Pending Action

In general, throughout the draft, the term “lis pendens” should be substituted for notice of pending action. That is the established term of art with a specific, well-developed meaning in the law; and it will make research easier.

N-3: The time of filing should be entered on recording, in addition to date, as it may affect priority.

N-4 Effect of Notice: In subsection (b), language should be broadened to include any interest in real property.

N-5 Expiration: There should be right to file a new notice after one has expired but there should be protection for any person who relies on the lack of a notice in the gap between expiration and refileing.

N-7 Hearing: Add to comment: “final judgment affecting interest in real property.”

4. Collection of Judgments

C-1 Definitions: Clarify that “property” refers to all property, including intangible rights.

C-2 Issuance of writs: Reconsider whether term “revived” is appropriate or term should be “extended.”

C-3½ Writ of Execution: Following lengthy discussion, it was decided to leave issues of priority to case law; Mr. Cannel is to check case law and Title 46.

C-6 Exemptions: The Commission decided to use the term “domicile” as opposed to “principal residence,” and to use the phrase, “exempt from collection” instead of stating that property is exempt from the writ of execution. In subsection (3), the term “professional prescribed health aids” should be used. In subsection (d), language “creditor may move to vacate stay at any time based on substantially changed circumstances” should be included.

C-7 Selection of Exempt Property: Change (a)(3)(4) so judgment debtor may select; debtor must act within one week from receipt of the inventory.

C-10 Levy against personal property: The debtor should be liable for damage beyond “reasonable wear and tear.” The section should state that the actions of the enforcing officer give priority against secured creditors.

C-11 Levy against personal property in a dwelling: The section should state that the debtor must permit the officer access during reasonable hours.

C-16 Priorities: Federal law provides for a rule in the event that there is more than one collection order; check original language of C-15(b)(2).

C-18 Collection order: Add the word “personal” before the word “property.”

C-20 Property; sold, manner: The judge should be able to order sale free and clear of all liens.

C-22 Priorities in Distribution: Add a reference to sheriff’s fees.

C-24 Return of Writ of execution: reference to “collection order” should be reference to “writ of execution”; all distributions should be itemized in statement.

5. Foreclosure

F-1 Notice of intention: Replace “owner of property” with “defendant.”

F-3 Curing Default: The comment should note the issue of what charges need to be paid to cure default.

F-4 Action necessary ...: Subsection (b) should refer to “amount due” as opposed to “debt.” In subsection (c), after the word “defenses,” the phrase “other than those affecting validity of mortgage” should be added.

F-6 Deficiency Action: Use broader term “obligation” as opposed to “on bond or note.”

F-7 Sale: In subsection (e) add “or by order of court.”

F-9 Strict Foreclosure: Staff should check to see if strict foreclosure is extended to easement holders or equitable lens; there may be case law on the subject. The words “if applicable” should be added after “right of redemption.”

6. Public Sales

S-6 Notice of Date: The time in subsection (a) should be 20 rather than 10 days.

Recompilation

The Commission reviewed written comments submitted by Paul Axel-Lute, Librarian, Rutgers School of Law, Newark, but decided that the matter presented addresses an issue beyond the scope of the Commission's undertaking. The Commission approved the draft as a Tentative Report.

Next Meeting

The next meeting of the Law Revision Commission is scheduled for May 19, 2005.