

MINUTES OF COMMISSION MEETING

December 21, 2023

Present at the meeting of the New Jersey Law Revision Commission, held remotely, were: Chairman Vito A. Gagliardi, Jr.; Vice-Chairman Andrew O. Bunn; Commissioner Virginia Long; Commissioner Louis N. Rainone; Professor Edward Hartnett, of the Seton Hall University School of Law, attending on behalf of Interim Dean John Kip Cornwell; Professor Bernard W. Bell, of the Rutgers University Law School, and Grace C. Bertone, of Bertone Piccini, LLP, attending on behalf of Dean Johanna Bond.

Minutes

On the motion of Vice-Chairman Bunn, seconded by Commissioner Rainone, the Minutes of the November 16, 2023, as amended to add additional language pursuant to the request of Commissioner Bell, were unanimously approved by the Commission.

Applicability of Driving While Intoxicated Statute (N.J.S. 39:4-50) to Bicycles

Samuel Silver began by indicating that the catalyst for analyzing the common law conflict in the application of New Jersey's driving while intoxicated statute to individuals operating bicycles was an inquiry by Sergeant First Class Guinan - the Unit Head of the Safe Corridor Unit within the New Jersey State Police. He then discussed a Draft Final Report based on work begun in November of 2022, when the Commission authorized Staff to undertake additional research in this area. Staff subsequently examined the common law and comments from the New Jersey State Bar Association.

State v. Tehan, 190 N.J. Super. 348 (Law Div. 1982), *State v. Johnson*, 203 N.J. Super. 436 (Law Div. 1985), and *State v. Machuzak*, 227 N.J. Super. 279 (Law Div. 1988) all involved defendants alleged to have operated bicycles while under the influence of alcohol. In *Tehan* the Court held that individuals who operate bicycles while under the influence could be found guilty of driving while intoxicated. Subsequently, in the *Johnson* and *Machuzack* cases, the courts determined that the pertinent definitions within the motor vehicle statutes, including N.J.S. 39:4-50, made it clear that the provisions of N.J.S. 39:4-50 were not intended to apply to non-motorized pedal-type bicycles.

Mr. Silver explained that the New Jersey State Bar Association provided the Commission with comments indicating that NJSBA members who specialize in this area said that N.J.S. 39:4-50 unequivocally excludes conveyances powered by humans.

A trial court is not bound to follow the holding of another trial court. Absent a published appellate court determination on this point, whether or not an intoxicated individual will be charged with a violation of the driving while intoxicated statute depends on which decision the court elects to follow. The Draft Final Report explains that although the statute does not seem to be ambiguous regarding whether an intoxicated cyclist will face charges under New Jersey's DWI statute, the goal of the Report is to bring to the attention of the Legislature the conflicting common

law regarding the applicability of N.J.S. 39:4-50 to bicyclists so that the Legislature may take such action as it deems appropriate.

Commissioner Hartnett noted that the Commission may wish to consider the intersection of the driving while intoxicated statute and motorized bicycles, asking if there was any question about the application of the exception, including any doubt about the speed or power of various motorized bicycles. Chairman Gagliardi stated that further consideration of that issue may form the basis of a separate Commission project if supported by the research. Staff will contact knowledgeable individuals and report back to the Commission at an upcoming meeting.

On the motion of Commissioner Long, seconded by Commissioner Bunn, the Commission unanimously released the work as a Final Report.

Interpretation of the Vote by Mail Law in N.J.S. 19:63-26

Whitney Schlimbach discussed a Revised Draft Tentative Report proposing modifications to New Jersey's election statutes. In New Jersey, an election may be contested by asserting one of the grounds found in N.J.S. 19:29-1, which includes that the number of legal votes rejected was sufficient to change the election result. The Vote By Mail Law, on the other hand, directs that an election "shall not" be held invalid due to irregularities or failures in preparation or forwarding of mail-in ballots in N.J.S. 19:63-26.

Ms. Schlimbach explained that in the case of *In re Election for Atlantic County Freeholder District 3 2020 General Election (Atlantic County Election)*, the Appellate Division held that N.J.S. 19:63-26 establishes a presumption of validity when there is an irregularity or failure in the preparation or forwarding of mail-in ballots. The presumption may be rebutted by asserting one of the grounds in N.J.S. 19:29-1 as a basis to invalidate the election.

Following the release of a Tentative Report in 2022 incorporating modifications that reflected this holding, the Commission authorized further research and outreach into issues related to the jurisdiction of the Election Law Enforcement Commission (ELEC) as provided in the Campaign Contributions and Expenditures Reporting Act.

During the November 2023 Commission meeting, the Commission requested an additional modification incorporating the *Atlantic County Election Court's* finding that the defective mail-in ballots in that case fell within the scope of the phrase "legal votes rejected" in N.J.S. 19:29-1(e). Ms. Schlimbach explained that the Appellate Division in *Atlantic County Election* cited the New Jersey Supreme Court's language in *Gray-Sadler*.

In *Gray-Sadler*, the Supreme Court determined that the phrase "legal votes rejected" included "any situation in which qualified voters are denied access to the polls," explaining that "[v]oters need not be physically barred from voting to have their votes rejected, but may instead show that, through no fault of their own, they were prohibited from voting for a specific candidate

by some irregularity in the voting procedures.” The Court noted that “[t]he essential question is whether voters were denied the opportunity to vote for a candidate of their choice.”

Ms. Schlimbach consulted with Scott Salmon, Esq., who has provided extensive feedback on this project. Mr. Salmon favored the inclusion of “standard of review” language in the statute and Title 19 generally, but advocated for a standard requiring that a “legal vote rejected” involved an actual attempt to vote.

Modifications made since the October 2023 Commission meeting, including those made since the November 2023 Commission meeting, are shown in bold in the Appendix. One revision was made in N.J.S. 19:29-1(e) after the November 2023 meeting. That revision added language to the end of the subsection clarifying the meaning of a “legal vote rejected.” The new language specifies that mail-in ballots are considered legal votes and tracked the language used by the Supreme Court in *Gray-Sadler* and relied upon by the Appellate Division in *Atlantic County Election*.

Guidance was requested from the Commission with respect to two options for proposed language that were provided in the Appendix. Both options employ language used by the Supreme Court that reflects New Jersey’s strong policy in favor of voter enfranchisement. The first option is broad: “denied access to polls,” and the second makes clearer that rejection is not limited to a situation where a voter is physically barred from accessing the polls. The language used in the second option indicates that a voter must be prohibited from voting for a specific candidate by an irregularity in the voting procedures.

In an e-mail received from Commissioner Bell prior to the Commission meeting, Commissioner Bell proposed the following language:

A legal vote, including a vote by mail, is rejected when, a qualified voter, through no fault on the voter’s part [~~of their own~~], has not been provided the opportunity to vote for a specific candidate, either due to a defect in the ballot, an irregularity in the voting procedures, or denial of access to the polls. If the defect permits the voter to vote for candidates for other races on the ballot, the legal vote is rejected only for those races involving candidates for which the voter was not provided an opportunity to vote.

Commissioner Bell explained that the language best reflects the test in *Gray-Sadler*, and also focuses on the key issue of defects in printed ballots. He added that it removes the plural “their” in conjunction with the singular “qualified voter.” Commissioner Bell’s formulation also adds language ensuring that a denial of the opportunity to select from among all candidates in one race does not necessarily invalidate other races on the same ballot in which voters had the opportunity to select from all candidates.

Ms. Schlimbach noted that the language added by Commissioner Bell tracks the *Gray-Sadler* language except for the phrase “due to a defect in the ballot,” which is not included in that

case. She noted that, although this language clearly addresses the specific issue in *Atlantic County Election*, the Appellate Division has characterized the mail-in ballot defects as falling within the definition articulated by the *Gray-Sadler* Court. The Appellate Division specifically found that “the defective ballots issued by the Atlantic County Clerk here . . . prohibited [the voters] from voting for a specific candidate by some irregularity in the voting procedures.”

With respect to the last sentence added by Commissioner Bell, Ms. Schlimbach explained that she had not seen any cases during her review of the law in this area in which that principle was in controversy. Rather, the requested relief is limited only to the specific election result challenged in each case.

Commissioner Long questioned whether Commissioner Bell’s proposed language fits within the framework that is provided in the Appendix, other than N.J.S. 19:29-1(a)(5) (Section 5). Commissioner Bell said yes, that his proposed language focuses on the definition of legal votes. Laura Tharney noted that Commissioner Bell’s proposed language says, “through no fault on the voter’s part has not been provided...” She explained that because he had taken care to track the *Gray-Sadler* language closely, she is wondered if there is a difference between the proposed “has not been provided” and the “is denied” language used in the case. Commissioner Bell responded that he did not feel that it would have a substantive impact.

Scott Salmon, Esq., stated that the language “denied access to the polls” found in the *Gray-Sadler* opinion reflects the world in which *Gray-Sadler* was decided – which had effectively no mail-in ballots. He explained that it referred to access to the voting machines. The phrase could be confusing when applied to mail-in ballots, which is how the issue that primarily comes up now. He added that the second language option contained in the Appendix as circulated is more specific and more accurately reflects the way voting occurs now.

Commissioner Bunn said that in Chapter 63, section 26 is focused on mail-in ballots, so the reference to denial of access to the polls does not fit well with the specific focus of the section. He also expressed concern that Commissioner Bell’s proposed language may be adding too much information to Section 5. He suggested that the proposed language goes beyond the current purpose of Section 5, which is to define a legal vote denied and suggested adding Commissioner Bell’s language to another section. Commissioner Bell stated that he had no objection to it being added to another section.

Commissioner Harnett said that he supports Commissioner Bell’s proposed language and the placement Commissioner Bell suggested. Commissioner Long stated that Commissioner Bell’s proposed language is the right structure, but would be better in another section – she added, however, that she does not see a better place for it. Ms. Tharney suggested leaving Commissioner Bell’s language in Section 5 and releasing the Tentative Report to see what feedback the Commission receives from commenters. The Commissioners agreed with that suggestion.

Ms. Schlimbach mentioned that the language in N.J.S. 19:29-1 might affect other sections that use the “change of results” language. She asked whether the last sentence in the proposed language would apply to more than one subsection. Commissioner Bunn suggested taking

Commissioner Bell’s concept, drafting language that is broader, and adding a free-standing subsection at the end of the section to clarify that just because one ballot item is invalid does not mean that everything on that voter’s ballot is.

Chairman Gagliardi stated that the Commission agrees that all of a voter’s selections should not be discarded based on a defect impacting just one of the votes. He suggested keeping Commissioner Bell’s proposed language in Section 5 and sending out a Tentative Report to see what feedback the Commission receives.

With the amendment recommended by Commissioner Bell, and on the motion of Commissioner Bell, seconded by Commissioner Bunn, the Commission voted unanimously to release the Revised Tentative Report.

Juvenile Justice – State Home for Boys and Girls as used in N.J.S. 30:4-85

Samuel Silver discussed with the Commission a Draft Tentative Report proposing the removal of anachronistic references to the “State Home for Boys” and the “State Home for Girls” from the statutes. He explained that Christina Broderick, Chief of Legal & Regulatory Affairs, New Jersey Juvenile Justice Commission, confirmed that those references are no longer appropriate because these titles are not used by the Juvenile Justice Commission (JJC). In October and November of 2023, the Commission authorized Staff to prepare a Draft Tentative Report setting forth proposed modifications to N.J.S. 30:4-85 and N.J.S. 48:12-109.

Consistent with contemporary drafting practices, Mr. Silver proposed that the undesignated paragraphs be revised to provide each distinct provision with a letter designation from (a) – (g) to promote accessibility. He also noted that the proposed modifications incorporate the recommendations contained in a previously-released Commission Report regarding the replacement of the word “inmate” in the New Jersey statutes with person-first references. Those references are seen in existing subsections (a)-(c), (e)-(f), and in the proposed subsection (d).

Mr. Silver explained that in subsection (a), the proposed changes are limited to replacing the term “inmate” with person-first language. In addition to the replacement of “inmate,” subsection (b) calls for the replacement of anachronistic references to the State Home for Boys and the State Home for Girls with a reference to a state juvenile facility falling under the purview of the JJC. In subsection (c), the outdated references to the State Home for Boys and the State Home for Girls have been updated to reflect the current names of the designated correctional facilities. The proposed modifications introduce a separate subsection (d) to address references to female transfers and update the name of the State’s correctional facility for women.

At the November Commission meeting Staff was asked to examine whether the difference in transfer ages between male and females who are incarcerated poses an equal protection problem. Mr. Silver advised the Commission that he was unable to locate any New Jersey case or constitutional challenge that raised this issue. He noted that in the context of corrections, equal

protection challenges generally involved access issues, educational and vocational opportunities, for example.

Regarding N.J.S. 48:12-109, Mr. Silver explained that the proposed modifications remove outdated references to titles that no longer exist in New Jersey. Of the seventy-eight titles that are listed in the statute, eighteen appear to be anachronistic.

During the November Commission meeting Staff were asked to examine whether N.J.S. 48:12-109 was anachronistic, preempted, or unconstitutional. Mr. Silver said that authorization to engage in outreach would give Staff a better idea of whether or not the statute is still being relied upon. To this time, Staff has found no indication that the statute has been preempted, as evidenced by reference to it in the New Jersey Transportation Act, its supporting statutes, the Public Utility statutes, and an Executive Orders issued by Governor Florio.

Mr. Silver advised the Commission that he found nothing to indicate that the statute is unconstitutional or contrary to the Hepburn Act. Enacted in 1906, the Hepburn Act empowered the Interstate Commerce Commission to change a railroad rate to one it considered to be “reasonable and just.” The Act served as an amendment to the Interstate Commerce Act, which had focused on railroad and telegraph company regulations. In the 1920s, the Esch-Cummins Transportation Act returned the railroads to private ownership while allowing the Interstate Commerce Commission to dictate railroad mergers. By 1958, railroads were no longer seen as a monopoly threat. In 1971, Amtrack was formed as a federally funded corporation to operate intercity passenger train services. The 1980 Staggers Act further railroad deregulations. In 1995, the Interstate Commerce Commission lost its mandate and was decommissioned and dissolved pursuant to the Sunset Act. The last constitutional challenge to N.J.S. 48:12-109, occurred in 1917 when railroads were privately owned – a situation that no longer exists in New Jersey.

Commissioner Rainone suggested that the reference to the State Board of Tax Appeals be modified to reflect the judges of the tax courts. In addition, he recommended that the references to the judiciary – law division, appellate, and chancery – be replaced with a general reference to judges of the Superior Court.

With the modifications recommended by Commissioner Rainone, and on the motion of Commissioner Bertone, seconded by Commissioner Bunn, the Commission voted unanimously to release the Tentative Report.

Ex Post Facto Nature of Penalties for Parole Supervision for Life Statute

Ms. Schlimbach discussed with the Commission a Draft Tentative Report concerning amended penalties for community supervision for life (CSL) violations that were held unconstitutional pursuant to the Ex Post Facto Clauses of the New Jersey and the federal Constitutions as applied to individuals sentenced prior to enactment of the amendments. She explained that in New Jersey, individuals convicted of certain sex offenses may be sentenced to PSL, but prior to a 2003 amendment to the statute, offenders were sentenced to CSL. A 2014

amendment to the statute provided that violations of either PSL or CSL are third-degree, rather than fourth-degree, offenses and mandated that a violation of CSL converts it to PSL.

The issue was brought to Staff's attention by Fletcher Duddy, from the Office of the Public Defender, during the course of discussions regarding a different project addressing New Jersey's sex offender laws.

In *State v. Hester*, the New Jersey Supreme Court found that the 2014 amendment to N.J.S. 2C:43-6.4 violated the Ex Post Facto Clauses of the New Jersey and Federal Constitutions as applied to individuals originally sentenced to CSL. The four defendants in *Hester* were sentenced to CSL after committing qualifying offenses. After 2014, all of the defendants violated their CSL, were convicted of third-degree crimes, and had their CSL converted to PSL. The trial courts and Appellate Division found that the application of the 2014 amendment to the defendants violated the Ex Post Facto Clause because it increased the punishment for CSL violations for defendants who were sentenced to CSL prior to the 2014 amendment.

The Court relied upon the reasoning in *State v. Perez*. In that case, the defendant was sentenced to CSL in 1998 and convicted of a new offense in 2011. Pursuant to the 2011 version of N.J.S. 2C:43-6.4(e), he was subject to a mandatory extended term without the possibility of parole. However, when he was sentenced to CSL in 1998, subsection (e) did not preclude parole. The 2003 amendment to the statute converted CSL to PSL and changed parole eligibility in subsection (e). The *Perez* Court held that the 2003 amendment was an ex post facto law as applied to the defendant who was sentenced to CSL prior to the amendment.

Ms. Schlimbach explained that staff also reviewed the relevant provisions of the New Jersey Administrative Code and noted that it distinguishes between CSL and PSL. N.J.A.C. 10A:71-6.11 governs CSL and instructs that CSL is imposed for enumerated offenses committed prior to Jan 14, 2004 (the effective date of the 2003 amendment). N.J.A.C. 10A:71-6.12 instructs that PSL is imposed for offenses after the effective date. Additionally, section 6.11 specifies that violations of CSL are a fourth-degree offense.

Ms. Schlimbach also indicated that, according to the 2022 Annual Report of the New Jersey State Parole Board, there are still almost 3,000 individuals serving CSL in New Jersey. Fletcher Duddy, who brought this issue to Staff's attention, indicated that the current formulation of N.J.S. 2C:43-6.4, which does not specify that a violation of the conditions of CSL is a fourth-degree offense, has led to confusion at the trial court level regarding the appropriate course of action when an individual has been convicted of a third-degree violation of CSL.

Ms. Schlimbach explained that there are two categories of modifications in the Appendix: those that incorporate the holding in *Hester* and those that incorporate the holding in *Perez*. In subsection (a), the language requiring that a sentence of CSL be converted to PSL following a violation of CSL has been eliminated, in accordance with the holding in *Hester*. In subsection (d), the proposed modifications add language clarifying that a violation of CSL is a fourth-degree, rather than a third-degree crime, as held in *Hester*.

In subsection (e), the proposed modifications further divide the section into two subsections, each of which addresses a consequence of committing a qualifying crime while serving CSL or PSL. Subsection (e)(1) provides that an individual is subject to an extended term of imprisonment. No modifications were made to this subsection because the pre-2003 version of the statute also required those on CSL who committed an enumerated offense to serve an extended term. Subsection (e)(2) contains language prohibiting parole eligibility. Language was added to this section to clarify that the prohibition on parole is not applicable to those who were serving a sentence of CSL at the time they committed the enumerated offense, as held in *Perez*.

Commissioner Hartnett noted there are a few places where the proposed text for modification refers to a sentence imposed prior to July 14th. The ex post facto clause, however, does not focus on when the sentence was imposed. Instead, it focuses on when the offense is committed. Accordingly, Commissioner Hartnett recommended the language should instead refer to a sentence imposed for an offense committed prior to July 14th, 2014. Ms. Schlimbach clarified that this observation covered subsections (d) and (e) and restated each subsection with the language suggested by Commissioner Hartnett. Commissioners Bunn and Long agreed on this modification stating that it was a good catch.

With the modifications suggested by Commissioner Hartnett and on his motion, seconded by Commissioner Bertone, the Commission voted unanimously to release the Tentative Report.

Expungement – Inclusion of Local Ordinances in the “Clean Slate” Statute – N.J.S. 2C:52-5.3

Samuel Silver discussed with the Commission a Draft Tentative Report concerning expungement pursuant to N.J.S. 2C:52-5.3, focusing on whether the “Clean Slate” provision includes the expungement of local ordinance violation convictions.

Mr. Silver explained that in *State v. R.O.-S*, two petitioners sought “Clean Slate” relief for multiple convictions, including local ordinance violations. As a matter of first impression, the Court considered whether the recently enacted statute, N.J.S. 2C:52-5.3, includes violations of local ordinances. The Court examined the general intent and purpose of the expungement statute and noted that the charges faced by each petitioner were typically accompanied by police and arrest reports, fingerprint cards, mug shots, complaint warrants or summonses and most importantly, they are included on an individual’s criminal case history or “RAP” sheet. The Court reasoned that this persistent criminal history is not what the ‘clean slate’ statute intended and would undermine the very purpose and intent of N.J.S. 2C:52-5.3.26.

Mr. Silver indicated that the Court granted the Petitioners’ motion for expungement of their criminal histories, including violations of any local ordinance that originated from a Title 2C violation. He added there are no bills pending seeking to amend the language of N.J.S. 2C:52-5.3.

The proposed modifications set forth in the Appendix employ contemporary drafting techniques to improve readability and accessibility. In addition, subsection (a)(1)(C) includes a reference to municipal ordinances of any government entity of this state.

Mr. Silver advised the Commission, however, that the Legislature had recently undertaken work in this area. In early December of 2023, A5826 – a bill pertaining to expungement that included a reference to municipal ordinances – was introduced in the Assembly. On December 18th, the bill was reported out of committee. On December 21st, A5826 was passed by the Assembly by a vote of 70-3-0. The fate of the Senate bill, S4211, however, was unclear given the short time left in the legislative session.

Commissioner Bunn inquired about the substance of the pending bill. Mr. Silver explained that the proposed legislation adds a reference to violations of municipal ordinances as eligible for expungement. Other proposed changes affect jurisdictional and venue issues related to where an individual is permitted to file an expungement petition.

William Lim of the Office of Legislative Services was in attendance and he explained that the Senate version of the bill would need to be reconciled with the Assembly version, since there were significant amendments made to the Assembly version. In addition to the issue of municipal ordinance expungements, Mr. Lim said that the bulk of the pending bill deals with expanding the ability of individuals to file for expungement by allowing filing in the county of residence in addition to the county where a person was last adjudged, and clarifying that “Clean Slate” relief would be available notwithstanding the late satisfaction of a court-ordered financial assessment.

Chairman Gagliardi wondered about the impact on the Commission’s work. Ms. Tharney noted that although the Assembly bill has been moving quickly, the new legislative session is scheduled to begin January 9, 2024, so it is not clear that the bill will be passed prior to the end of the current legislative session.

Commissioner Rainone suggested that the Commission revisit the project at the January 2024 meeting, given that it will be clear at that point whether the bill was passed. Chairman Gagliardi agreed. Ms. Tharney added that Staff is tracking the current bill and will provide the Commission with an update regarding its progress.

Time Limitation on Actions Concerning Publication of Bond Resolutions

Carol Disla-Roa discussed with the Commission a proposed project to address whether N.J.S. 40:14B-28 would benefit from clarification regarding its application to contracts referenced in public bond resolutions that pre-date the publication of bonds.

Under Municipal and County Utilities Authority Law, N.J.S. 40:14B-2(4), municipal and county utilities authorities have the power to issue bonds to pay for infrastructure projects. N.J.S. 40:14B-28 bars any challenge to the validity of a bond resolution, or any covenant, agreement, or contract provided for by the bond resolution, that does not occur within the first twenty days of issuance.

In *Vernon Township v. Sussex County Municipal Utilities Authority*, Vernon Township brought a suit seeking relief in the form of a rescission of its modified service contract with the Sussex County Municipal Utilities Authority (SCMUA). The parties entered into the contract in

2005, arranging for SCMUA to begin to manage Vernon's wastewater. The contract contemplated that SCMUA would need an infrastructure expansion to add capacity to accommodate Vernon's wastewater, and that bonds would be issued to finance the expansion. In 2013, Vernon and SCMUA amended their 2005 contract, requiring Vernon to pay for more wastewater treatment in anticipation of a new housing development. Though the anticipated development failed to occur, Vernon alleged that it continued to pay for more than double the amount of wastewater that it actually generated for treatment. Vernon contended that the prices imposed on it violated the uniform pricing requirement of N.J.S. 40:14B-22 and the contract between the parties.

The trial court found that Vernon's challenge was subject to the twenty-day limitation on actions concerning bond resolutions and was time-barred. On appeal, Vernon argued that the statutory limitation in N.J.S. 40:14B-28 was applicable to contracts specified in the bond resolution. Therefore, Vernon contended that a 2005 service contract, predating the 2008 bond resolution by several years, was not encompassed by the statute.

The trial court determined that Vernon's challenge was time-barred under the bond resolution statute and that granting the relief sought would jeopardize the SCMUA's ability to pay its bond indebtedness and could wreak havoc on the financing structure which allows SCMUA to function. The Appellate Division affirmed the trial court decision finding that the 2008 bond resolution incorporated the 2005 contract by reference, and that the suit was time-barred under N.J.S. 40:14B-28.

The Court noted that it had discussed this particular issue only once in the 1978 case, *Graziano v. Mayor of Montville*. Relying on *Graziano*, the Court examined whether the bond resolution *provides for* the 2005 service contract by reference.

Ms. Disla-Roa explained that an enforceable incorporation by reference of a separate document into a contract requires that the separate document must be described in such a way that its identity may be ascertained beyond doubt, and that the party to be bound by the terms must have knowledge of, and assent to, the incorporated terms. Finding that the 2005 service contract explicitly contemplates a bond resolution and that Vernon plainly assented to such terms, the Court held that the contract was *provided for* by the bond resolution making it subject to the statute of limitations.

Commissioner Rainone indicated that the statute is clear and that he did not see the basis for Commission work in this area. The Chairman sought clarification on the scope of work to be undertaken by the Commission. Laura Tharney mentioned that Staff was not certain if the language of the statute was sufficiently clear. She said that it was not clear to Staff whether this was a situation in which individuals working in this field are familiar with the statute's requirements, or whether there is uncertainty about its application. Commissioner Rainone suggested that Staff engage in preliminary outreach to several individuals who specialize in this area, and then provide an update to the Commission regarding whether those individuals believe that statutory modification is necessary.

The Commission directed Staff to initiate preliminary outreach and present their findings at an upcoming commission meeting.

Miscellaneous

Laura Tharney briefly noted that the draft Annual Report had been distributed to all Commissioners earlier in the week. She acknowledged that the Commission does not act on the Annual Report in December, but that since – by statute – it must be submitted to the Legislature by February 1st, she wanted the members of the Commission to have the document in their hands before the end of the year so that if any Commissioner wants to see changes to the document, these can potentially be made before the filing day in January.

She also mentioned that Staff had presented a second CLE to OLS in December that seemed to be well-received.

In addition, Ms. Tharney advised that A2351/S2991 had passed the Assembly 74-0-0. The Assembly version of the bill had initially passed the Assembly in October 2022, but that there were amendments when the bill was released by the Senate Committee in June of 2023. The bill previously passed the Senate, and passed the Assembly again today and was sent to the Governor's desk.

The Commission approved the first three proposed meeting dates for 2024 (January 25th, February 15th, and March 21st) and will consider and approve the other dates in 2024.

The Chairman thanked everyone for their work throughout the year, and wished everyone the best for the remainder of the holiday season.

The meeting was unanimously adjourned by the Commission and the first meeting of 2024 is scheduled for January 25, 2024, at 10:00 a.m.