

final minutes

**Michigan Law Revision Commission
Conference Call Meeting
Monday, February 27, 2006
1:00 p.m.**

[Note: The meeting was conducted via a conference call and a polycom phone was set up for the public in the Legislative Council Administrator's Conference Room, 4-Boji Tower.]

Members Present:

Richard McLellan, Chair
Anthony Derezinski, Vice-Chair
Senator Michael Bishop
Senator Hansen Clarke
George Ward
Judge William Whitbeck
John Strand, Legislative Council Administrator, Ex-Officio Member

Members Absent:

Representative Stephen Adamini
Representative Edward Gaffney

Others Present:

Gary Gulliver, MLRC Executive Secretary
Susan Cavanagh, Legislative Council Administrator's Office
Bruce Timmons, House Republican Policy Staff

I. CONVENING OF MEETING

Chairman McLellan called the meeting to order at 1:05 p.m. The clerk took the roll as each member joined the conference. A quorum was present and all absent members were excused.

II. APPROVAL OF MINUTES

The Chair asked for a motion to approve the minutes of the last meeting. No corrections or amendments were offered. **Mr. Strand moved, supported by Mr. Derezinski, to adopt the minutes of the September 14, 2005 Michigan Law Revision Commission meeting. The minutes were unanimously adopted.**

III. OLD BUSINESS

Mr. Gulliver reported there was no old business to cover at this meeting.

IV. NEW BUSINESS

Annual Report: Mr. Gulliver provided an explanation and highlighted the following items in the proposed Annual Report covering calendar years 2004 and 2005.

Proposals for Legislative Consideration in 2006: Mr. Gulliver explained that the list is a bit more abbreviated than in past years because of the removal of items that have either been enacted, are obsolete, or are proposals from past years where the Commission has suggested the Legislature consider an issue raised by the courts. Mr. Ward inquired if the Commission's study dealing with the subject of strengthening the ethics laws should be included on the list. Mr. McLellan recalled that the report, authored by Professor Lawrence at MSU, was not a report adopted by the Commission, but rather a report to the Commission. After discussion, there was support to add the issue as Item 9 to the Current Study Agenda.

Current Study Agenda: A discussion of Item 6 (review of ecclesiastical corporation laws) followed and it was decided that Mr. McLellan will ask Charles Toy to work on this project. Mr. Gulliver then provided a brief explanation of Item 8 (review of limits on fines assessed for violations of property association's bylaws) and pointed out that this is the only item that has been added since the last meeting. Mr. Derezinski inquired about the status of Item 1 (survey of laws affected by the adoption of the proposed Civil Rights Initiative) and Mr. Gulliver noted that he will be meeting with Dean Nusbaumer from Cooley Law School who has expressed an interest in this project. Mr. McLellan added that a law clerk in his firm conducted a search of the database and

there are relatively fewer statutes that are affected in part because the Civil Rights Initiative only deals with the public sector. He has also talked to Mr. Nusbaumer and will work with him to identify individuals to work of both Item 1 and Item 2 (review of economic development laws).

Resolution Honoring Kevin Kennedy: Mr. McLellan suggested that the date the resolution was adopted by the Commission be added. There were no objections.

Court Decisions Identifying Statutes for Legislative Action: Mr. Gulliver continued with a review of the Commission's recommendations of I through X and confirmed the following recommendations:

I and II: The Commission recommends legislative review of the issue, but makes no recommendation of specific legislative action.

III: The Commission recommends the assessment of treble damages against the actual converter of property as well as the one assisting the converter. Mr. Gulliver noted that legislation mirroring the Commission's recommendation was enacted as 2005 PA 44.

IV, V, and VI: The Commission makes no recommendation.

The difference between when the Commission recommends a review, but makes no recommendation and just makes no recommendation was discussed.

VII and VIII: The Commission recommends legislative review of the issue, but makes no recommendation of specific legislative action. The inclusion of the note regarding Justice Cavanagh's comments on VIII was raised by Mr. Ward. After discussion, it was decided to leave the note in the report.

IX: The Commission recommends legislative enactment of guidelines to be used in determining the reasonableness of medical charges and costs under the no-fault act. Senator Clarke expressed interest in what guidelines other no-fault states have implemented as referenced in Justice Cavanagh's concurrence and Senator Bishop noted that there is an insurance work group currently dealing with this issue. After discussion, it was decided that the recommendation will be included in the report and the issue will be added to the Current Study Agenda.

X: The Commission makes no recommendation on this issue. Judge Whitbeck provided an update and noted that the Supreme Court will ultimately decide the issue and a recent decision (Mazumder) contained a strong recommendation to the Legislature to review these statutory provisions. Senator Clarke suggested that the MCL reference in Judge Davis' quote be checked and Judge Whitbeck offered that the two paragraphs referring to Judge Davis' concurrence may be somewhat dated in light of two recent decisions (Mazumder and Mullins). Because the Annual Report covers the period up to December 31, Mr. McLellan recommended that a statement noting there are a number of related matters still pending in the court be included.

The Executive Order Project: Mr. Gulliver explained that this section of the Annual Report includes the basic outline of the project and a chart that shows the status of the organization of the executive branch previous to the State Constitution. Because the complexity of the project is more time-consuming than originally expected, Mr. Gulliver noted that he is waiving payment, but still intends to produce a report and will continue to keep the Commission apprised of his progress. Senator Bishop requested a more readable copy of the chart and inquired if any further discussion has been given to the powers of the Joint Committee on Administrative Rules. Mr. McLellan pointed out that given the Blank decision by the Supreme Court it would take a constitutional amendment to have any significant change in JCAR's powers. The development of a standardized list showing the structure of state government and the need for the legislature to update statutes to reflect changes made by EROs and EOs was also discussed.

Prior Enactments: Mr. Gulliver reported that the list has been updated with a few additional recommendations that were enacted including the partial adoption of the recommendation dealing with the Governor's power to remove public officials from office. Mr. McLellan pointed out that a diminishing number

of Commission recommendations have been adopted over the last few years for a variety of reasons. He would like the Commission to do more than just issue reports and suggested an appearance before the appropriate legislative body might prompt the Legislature to move some of the Commission's ideas and recommendations. Senator Bishop agreed and will extend an invitation to Mr. McLellan to appear before the Senate Judiciary Committee after the Annual Report is published.

Proposed Letters: Mr. Gulliver inquired if the two draft letters distributed to Commission members should be included in the Annual Report. The first encourages the Legislative Council to pay the expenses of Michigan Commissioners to attend the meetings of the National Conference of Commissioners on Uniform State Laws (NCCUSL) and to restore full payment of the dues assessed by the NCCUSL. The second letter is related to Justice Cavanagh's comments regarding inviting or encouraging legislative consideration or reconsideration of policy issues.

Mr. McLellan expressed his inclination to send the letters and include both letters in the report. Mr. Derezinski proposed sending both and only publishing the letter to the Legislative Council since the Cavanagh comment is already noted in the report. Mr. Strand voiced his concern over the NCCUSL letter since the funds would come out of the Legislative Council budget. He stated he would have to abstain from any voting and would not be able to sign the letter. Given the other members' comments, Mr. McLellan will work on sending out the letters, but the letters will not be included in the Annual Report.

As a follow-up to the earlier discussion of Court Decisions Identifying Statutes for Legislative Action, Senator Clarke indicated that he has a reservation of the Commission's recommendation in Item II regarding the question of whether state law should be amended to override Kimble. A statement reflecting that the Senator does not join the Commission in this recommendation will be added to the Annual Report.

The Chair asked for a motion to adopt the Annual Report for 2004-2005 as discussed including the changes made at today's meeting. There was no further discussion. **Mr. Ward moved, supported by Mr. Derezinski, to adopt the Annual Report as amended. The motion was carried and the Report was unanimously adopted.**

The Chair asked for a motion to authorize the Chair to send the two proposed letters discussed earlier recognizing that Mr. Strand will abstain from voting on this motion. The letters will not be included in the 2004-2005 Annual Report. There was no further discussion. **Mr. Derezinski moved, supported by Mr. Ward, that the Chair send two proposed letters on behalf of the Commission—1) to encourage the Legislative Council to pay the expenses of Michigan Commissioners to attend the meetings of the National Conference of Commissioners on Uniform State Laws (NCCUSL) and to restore full payment of the dues assessed by the NCCUSL, and 2) to request guidance from the Court as to whether the Commission should bring matters for which the appellate courts invite or encourage legislative consideration or reconsideration to the Legislature's attention through its Annual Reports. The motion was unanimously adopted.**

V. OTHER ITEMS

As mentioned earlier, Mr. McLellan would like the Commission to find someone to work on the review of economic development laws. He has had discussions with some legislators and others about the value of trying to consolidate all of the economic development statutes into a single economic development code.

Mr. Ward inquired if old Annual Reports can be found on the Commission's website. Mr. Gulliver responded that there is a limit as to how far back the reports posted on the website go, but paper copies of the reports are available in the Council Administrator's Office.

Senator Clarke asked if he could get information on the national association dues and the cost for legislative members to attend association events so that he can work with Senator Johnson to have additional funds put into the budget. Mr. Strand will send him the amounts that the national associations have billed and the amounts the Legislative Council has paid for the last five years.

VI. PUBLIC PARTICIPATION

Janet Welch of the State Bar could not be present at today's meeting and asked Mr. Gulliver to report that the State Bar has appointed some of the standing committees that have been assigned the responsibility of reviewing and responding to the Commission's court decision recommendations.

Bruce Timmons was present and shared that there has been some recent internal discussion about how court decisions get to the places where they need to go both within the Legislature and the bureaucracy. Judge Whitbeck announced that each year the Court of Appeals will send a listing of decisions that call for legislative action or review. In addition, he and Mr. Gulliver are trying to come up with standard language that can be used in court opinions that call for a legislative review. In regards to the history of the Law Revision Commission, Mr. Timmons recalled that most of the Commission's recommendations ended up as bills that went before the Judiciary Committee and agreed that it would be worthwhile for a member of the Commission to testify before the Committee.

The Chair asked for any other comments from the public. There were no other comments.

VII. ADJOURNMENT

Having no further business, Judge Whitbeck moved, supported by Mr. Ward, to adjourn the meeting. Without objection, the motion was approved. The meeting was adjourned at 2:20 p.m.

(Minutes were adopted at the October 31, 2006 Michigan Law Revision Commission meeting.)