

NEW JERSEY ELECTION LAW ENFORCEMENT COMMISSION

PUBLIC SESSION MINUTES

JANUARY 25, 1982

PRESENT

M. Robert DeCotiis, Member
Haydn Proctor, Member
Alexander P. Waugh, Jr., Member
Scott A. Weiner, Executive Director
William R. Schmidt, Assistant Executive Director
Gregory E. Nagy, Staff Counsel
Edward J. Farrell, General Counsel
Sidney Goldmann, Consultant

ABSENT

Andrew C. Axtell, Member

In the absence of a gubernatorially appointed chairman, the Commission designated the Executive Director to guide the meeting. The Executive Director called the meeting to order and announced that pursuant to the Open Public Meetings Law, P.L. 1975, c.231, annual notice of the meetings of the Commission, as amended, has been filed with the Secretary of State's office, and that copies have been filed in the State House Annex, and mailed to the Newark Star Ledger, the Philadelphia Bulletin and the entire State House press corps.

The meeting convened at 10:10 a.m. at the Commission's offices.

1. Presentation of Additional Preliminary Staff Reports Concerning Public Financing

The Executive Director distributed staff reports on the following public financing topics to the Commission members and former Chairman Goldmann, who has been retained by the Commission as a consultant to assist in its analysis of the Public Financing Act: Issue No. 4, Expenditure Limit; Issue No. 5, \$50,000 Limit on Bank Loans; Issue No. 6, Limits on Purposes for Which Public Funds May Be Spent; and Issue No. 9, \$25,000 Limit on Candidate's Own Funds. In addition, tables for Issue No. 3, Limit on Public Funds and copies of clippings of editorials and columns on public financing were distributed.

2. Review and Discussion of Preliminary Staff Reports Concerning Public Financing

The Executive Director introduced the discussion by noting that the process of developing the Commission's report on public financing would involve the following steps:

- Review of the issue papers by the Commission;
- Revision and amendment of the issue papers;
- Distribution of the revised papers to interested legislators and the press, among others;
- The holding of at least two public hearings on the public financing issues in late February and early March; and

- Preparation of a final report, including the Commission's recommendations.

The Executive Director suggested that the Commission begin to consider the underlying goals or objectives of amending the public financing program. He cited as possible examples of such goals or objectives the reduction of costs or providing public funds only to "bona fide" or "viable" candidates.

General Legal Counsel Farrell noted that the Commission's reaction to the 1977 experience and, tentatively, to the 1981 experience, is that the public financing program does work in limiting large contributions and thus the "undue influence" by those who are able to make large contributions.

Commissioner Waugh asked what the question was that the Commission is asking -- to eliminate the program or to improve the program?

The Executive Director suggested that the public financing program is here to stay but that some adjustments are needed. He noted that last summer, shortly before and immediately after the primary, bills were introduced in the Legislature to change the public financing program for the primary election. He noted that no such bills affecting the general election public financing program had been proposed. He also noted that changes in the primary election public financing program need not be carried through into the general election public financing program and that the state could develop two separate models, one for the primary election and one for the general election. He said that he was aware of no strong efforts in the Legislature to repeal the public financing program entirely, although bills to repeal primary funding were pre-filed with the current Legislature.

Commissioner DeCotiis asked about the cost of compliance. Assistant Executive Director Schmidt said that both in absolute dollars and as a percentage of total expenditures, the reported cost of compliance increased in 1981 over 1977. In the case of the Democratic candidates, Governor Byrne, in 1977, spent \$32,000 or 2 percent of his total expenditures on compliance as compared to Congressman Florio's \$62,000 and 2.6 percent in 1981. Senator Bateman, in 1977, spent \$21,000 or 1.3 percent of his total expenditures on compliance as compared to Governor Kean's \$87,000 or 3.7 percent in 1981. (These figures are from Table 6.1 found immediately behind the text of Issue No. 6, Limits on Purposes for Which Public Funds May Be Spent.) Commissioner DeCotiis asked why costs of compliance went up if the two 1981 general election campaigns ran more smoothly, in terms of the public financing program, than did the two 1977 campaigns. He suggested that the cost of compliance seems too high and that we should try to streamline the reporting requirements to lower the compliance costs.

General Counsel Farrell noted that both 1981 campaigns may have spent more to avoid problems. Mr. Schmidt noted that both campaigns showed a significant drop in expenditures for administration and the decrease in administrative costs may partly explain a shifting of certain costs to the category of "compliance".

Former Chairman Goldmann pointed out that there was far less turmoil during the 1981 general election as compared to the 1977 general election.

Assistant Executive Director Schmidt commented on the experience of administering the primary election public financing program and noted that the work involved in processing the submissions from the 16 gubernatorial primary election candidates was vastly underestimated when the staffing was set up. He noted that the error rate on the submissions during the primary reached a high of over 40 percent and an average of 15 percent, before corrections were made. This compared with the much lower 5 percent error rate of the general election submissions. Also, during the primary, there were many submissions by most of the candidates whereas in the general election, both Mr. Kean and Congressman Florio made only two or three submissions before they reached the maximum in public funds.

Next, the Commission discussed the issue of the \$800 contribution limit. Commissioner Waugh asked if the contribution limit were lowered, would that not result in more contributions and an increase in "grassroots" participation through small contributions. The Executive Director noted that a lowered contribution limit would provide an incentive to solicit smaller contributions. General Counsel Farrell noted that the justification for imposing a limit was to reduce the perceived "undue influence" of those who can afford to make large contributions. Both the \$600 limit in 1977 and the \$800 limit in 1981 provided a test to see if those limits made sense. Commissioner Waugh suggested that one purpose of the public financing program and the contribution limit is to encourage the involvement of more people in the political process and one of the key ways to exhibit that involvement is through contributions. General Legal Counsel Farrell suggested that one way the law could be changed to encourage the solicitation of small contributions is to limit the amount of the contributor's contribution that is matched with public funds, for example, only the first \$500 of a contribution would be matched but the contribution limit could stay at \$800 or be raised higher. Commissioner Proctor asked the effect of the Supreme Court's recent decision concerning Berkeley, California; Staff Counsel Nagy said that that decision affected fund raising for referenda and did not affect limitations on contributions to candidates.

The Commission next discussed the Issue of the \$50,000 threshold. Commissioner Waugh suggested that consideration be given to requiring a specific number of contributors as well as a specific dollar amount in order for a candidate to receive public matching funds. Executive Director Weiner noted that one of the legislative proposals increases the number of signatures on a gubernatorial candidate's petition and a variation of this proposal is to require a certain percentage of signatures from each county. This proposal was incorporated in a bill introduced by former Assemblyman Burstein. The Executive Director noted that this type of proposal might run counter to the tradition in New Jersey of easy access to the ballot.

Former Chairman Goldman noted that public financing has diminished the importance of party organizations.

General Legal Counsel Farrell noted that New Jersey has the strictest limits on the use of public funds.

Former Chairman Goldman noted the Commission's policy, growing out of its experience with the 1977 general election, of eliminating the expenditure limit.

The Commission returned to the discussion of the qualification threshold. It was noted that proposals in the legislature would raise the threshold to \$100,000 or \$150,000 but start the matching at \$50,000. It was also noted that there is a proposal, included in the discussion of Issue No. 2, \$50,000 Threshold, to establish a series of thresholds. The effect would be to slow down the flow of cash in a campaign and enable a candidate to stay in the race but receive no more public funds if he or she did not reach the next threshold level. General Legal Counsel Farrell pointed out that the program could be set up with a threshold requirement for a specific number of contributions from various counties throughout the state; this would be similar to the proposal to change the number of signatures required for petitions and to require a specific percentage from all or a majority of the counties in the state.

The Commission discussed the repayment proposal contained in the bill introduced by former Senate President Merlino and Senator Perskie whereby a candidate who does not receive a specific percentage of the vote, e.g. 5 percent, would have to return public funds received to the state. It was observed that Senator Perskie views this or some other negative incentive to taking public funds, as an important amendment.

There followed a discussion of the degree to which candidates feel compelled to stay in the race having once accepted public funds. It was noted that some of the respondents to the gubernatorial questionnaire said as much, that once a candidate had taken public funds, they were unwilling to withdraw. This may have been further reinforced by the negative publicity associated with Secretary of State's Lan's withdrawal from the race after he had accepted public funds. It was also noted that with the \$800 contribution limit, a candidate who withdraws can no longer give financial support to another candidate. There was general agreement that a public financing program should not inhibit the withdrawal of a candidate.

The last issue discussed was the Two for One Matching Ratio. Assistant Executive Director Schmidt noted that some critics of the program viewed the matching ratio of two for one as too generous. Commissioners Proctor and Waugh both agreed that the two for one appeared to be too generous. Commissioner Proctor suggested a one to one ratio.

Former Chairman Goldmann departed upon the conclusion of this discussion and was not present for the remainder of the meeting.

3. Report on Lobbyist Seminar Held on January 22, 1982

The Executive Director reported on the lobbyist seminar held by ELEC at Thomas Edison College, Trenton, on Friday, January 22, 1982. An estimated 100 individuals attended the seminar led by the Executive Director with the assistance of the General Legal Counsel. The Executive Director said that some of the attendees learned that they had no filing obligation. He noted that he had observed no "bitter animosity" and that this may be due to the fact that the lobbyists and legislative agents have had a year to live with the concept of disclosure. General Counsel Farrell commented that lobbyists may also feel that the current reporting program is considerably better than that of a year ago. The Executive Director said that quite a bit of discussion focused on the meaning of the word "expressly" added by the enactment of S3474. The Executive Director said that he and Mr. Farrell introduced to the lobbyists the concept of continuity in time to create a connection between the communication on specific legislation and the expenditure of money. In general, the continuity of time test would not exceed 24 hours. Commissioner Waugh raised a hypothetical example of a lobbyist who entertains a legislator with the specific intent to influence a specific piece of legislation by taking the legislator out to lunch or paying for a ticket to a sporting event, then not speaking with the legislator about the specific piece of legislation until the next week. General Legal Counsel Farrell noted that the effect of the amendment inserting the word "expressly" would probably preclude the

Commission requiring the disclosure of the expenditure as set forth in the hypothetical example by Commissioner Waugh. The Commission then reviewed carefully the language of the amendment and the language of the sponsor's statement attached to the bill as to the legislative intent of the amendment. Commissioner Proctor noted that the amendment "has pulled the reins in completely". Executive Director Weiner observed that Commissioner Waugh's example might present facts where continuity would extend beyond 24 hours.

There was a discussion of the impact of the amendment on the reporting of salaries and compensation. The Executive Director and General Legal Counsel Farrell had concluded that the amendment had no impact on the reporting of salaries and compensation. They cited the example of a legislative agent who spends a quarter of an hour appearing before a legislative committee and spends the rest of the day, 7 3/4 hours, waiting in the State House to appear before that committee. In the Executive Director's and the General Legal Counsel's judgment, the cost of the entire eight hours is reportable. Commissioner DeCotiis and General Legal Counsel Farrell noted that this conclusion could be subject to a successful Court challenge. Mr. Farrell acknowledged that the insertion of the word "expressly" clearly had a shrinking effect on what was reportable. However, he said that the Commission would have a defensible position in court in requiring the reporting of all salaries but would not have a defensible position, in light of legislative lobbying on the reporting of all expenditures which benefit a legislator. It is Mr. Farrell's judgment that the insertion of the word "expressly" chiefly affects the benefit side of reporting.

Mr. Weiner suggested that some legislative initiative might come about this year both to tighten the law or to loosen it up, with pressures coming both from the lobbyists and from those interested in more disclosure, such as Common Cause.

Commissioner Waugh suggested that the Commission put its interpretations of the amendment in the form of regulations. With legislative review of all proposed regulations, this would enable the legislature to review and concur in or change the interpretation.

Mr. Farrell noted that the term "expressly" means "plainly" and that the word "direct" means "fact to face" or "voice to voice".

The Executive Director had suggested that the written questions that were submitted at the seminar and the answers would be typed and circulated quickly with the Commission and with the lobbyists and the legislative agents. In addition, a draft policy statement would be prepared for the Commission's review and eventual adoption.

Mr. Farrell discussed the issue that has arisen with lawyers who are also legislative agents. The Courts prohibit an audit of an attorney's books. He noted that a legislative agent-attorney had contacted Justice Pashman to have the State Supreme Court give some guidance. The suggestion is to have the Administrative Office of the Court conduct an audit for ELEC, if necessary. This is intended to avoid a conflict between the ELEC regulation and the court rules. Some attorneys have expressed concern about having the Court's Ethics Committee conduct an audit because of the implication associated with audits conducted by the Ethics Committee that something unethical or illegal has taken place.

Mr. Farrell also commented that a legal challenge could come from a legislative agent representing certain religious organizations. The challenge would be on First Amendment grounds that such organizations do not have to disclose expenditures because of their First Amendment protection.

4. Report by Juana Schultz, Director of Compliance and Review

Ms. Schultz presented a summary of the work the Division of Compliance and Review including:

- review of annual reports filed by lobbyists and legislative agents
- review of annual reports filed by about 850 political party committees and certain political clubs
- review of campaign reports filed by candidates and campaign committees.

The Executive Director noted that the Commission's regulations and forms, as well as the statute itself, were ripe for review and that one of the projects scheduled for the current year was such a review so that amendments could be implemented prior to the 1983 legislative campaigns.

5. Presentation by Gregory E. Nagy, Staff Counsel, of Administrative Enforcement Procedures

Mr. Nagy presented a summary of administrative enforcement procedures, including:

- filing requirement of candidates;
- procedures on cases of non-filing;
- procedures on cases of late filing, including the

Commission's fine schedule; and

- role of the Office of Administrative Law.

6. Executive Director's Report

The Executive Director reported that Senator Perskie's proposed bill on the use of surplus campaign funds is still being revised by Legislative Services staff. Among the issues being worked on is the role of the Election Law Enforcement Commission and the extent and nature of reporting, particularly if the funds are used to pay office expenses of office holders.

The Executive Director distributed a January 25, 1981 memorandum on inaugural events legislation (S-3503 and S3508).

The Executive Director reported that the two bills were passed and signed by Governor Byrne on January 11, 1982. S-3503 created a Gubernatorial Commission and appropriated \$40,000 for "official" state activities.

S-3508 shortened the "inaugural period" during which the contribution limit is effective from 30 days to 15 days after the inauguration and excluded from the definition of "inaugural events" certain fund raising events sponsored by non-profit institutions. The latter provision codifies the advisory opinion issued to the Kean Inaugural Committee concerning this subject. The Executive Director distributed copies of both bills to the Commission.

7. 1982 Commission Meeting Schedule

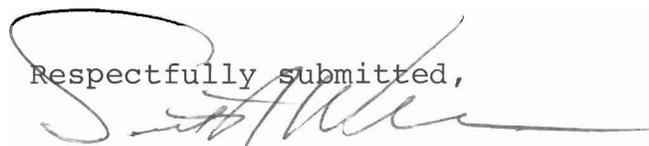
The Commission reviewed the 1982 Commission meeting schedule and changed one date. The meeting on Friday, February 5, 1982 has been changed to Monday, February 8, 1982.

8. Executive Session

On a motion by Commissioner Waugh, seconded by Commissioner DeCotiis and a vote of 3-0, the Commission voted to resolve to go into executive session to discuss investigations and enforcement actions, the results of which will be made public at their conclusion.

9. Adjournment - On a motion by Commissioner Proctor, seconded by Commissioner Waugh and a vote of 3-0, the Commission voted to adjourn.

Respectfully submitted,



SCOTT A. WEINER
Executive Director