

NEW JERSEY ELECTION LAW ENFORCEMENT COMMISSION

PUBLIC SESSION MINUTES

MAY 5, 1982

PRESENT

Andrew C. Axtell, Member
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
Attorney General Irwin Kimmelman
Former Chairman Sidney Goldmann
Herbert Alexander, Consultant
Neil Upmeyer, Consultant

Acting Chairman Axtell 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, and the entire State House press corps.

The meeting convened at 10 a.m. at the Commission's offices, Trenton, N. J.

*Commissioner Waugh was absent for the first portion of this meeting.

1. Approval of Minutes of Public Session of Commission Meeting of April 12, 1982

The Commission reviewed the minutes and on a motion by Commissioner DeCotiis, seconded by Commissioner Proctor and a vote of 3-0 (Commissioner Waugh was absent), the Commission approved the minutes of the public session of the April 12, 1982 meeting.

2. Advisory Opinion No. 09-1982

The Commission reviewed an April 30, 1982 draft advisory opinion prepared in response to an April 19, 1982 letter from Philip J. Cocuzza, Executive Vice President, New Jersey Builders Association. In his letter, Mr. Cocuzza asked whether the New Jersey Builders Association which has established a political action committee known as "BPAC" may, consistent with the provisions of the Campaign Contributions and Expenditures Reporting Act, pay administrative costs of the political action committee it has established. In the draft opinion, Mr. Cocuzza was advised that nothing contained in the provisions of the Act prohibits an association, such as the New Jersey Builders Association, from

paying the administrative costs of its political action committee.

On a motion by Commissioner Proctor, seconded by Commissioner Axtell and a vote of 3-0, the Commission authorized the advisory opinion as drafted.

3. Executive Director's Report

The Executive Director directed the Commission's attention to a May 4, 1982 memorandum, prepared by Staff Counsel Nagy, concerning Reporting Act amendments. The Executive Director reported that the staff would continue its review of the Act and that he expected that staff reports on possible amendments would be submitted to the Commission for its consideration some time during June.

Mr. Weiner reported on the hearing before the Legislature's Joint Appropriations Committee on Tuesday, May 4, 1982. He reported that by the time Acting Chairman Axtell and he were able to testify before the Committee, only five members were still in attendance. He noted that the Commission's proposal that it receive \$33,000 in addition to the amount recommended by the Governor had been received favorably by those in attendance and by those members of the committee with whom he had spoken previously. Mr. Weiner reported that Assemblyman Byron Baer and Assemblyman Willie Brown had raised two issues. First dealt with the desirability of modifying the Act, particularly modifying the \$1,000 and \$100 reporting and contribution thresholds in light of the ten years' passage of time and inflation. The second point was a proposal from Assemblyman Baer that those required to file campaign financial reports also be required to pay a filing fee which in turn could be used to offset some of the administrative costs to the Commission for its processing the reports. General Legal Counsel Farrell noted that this raised a fundamental policy question including whether the Legislature would earmark such filing fees to the Commission or would use the proceeds more generally or for the general fund. Mr. Weiner noted that the Attorney General collects \$5 from legislative agents when they register. He also noted the Florida system requiring a filing fee based on the salary of the position for which the candidate is seeking. Commissioners Proctor and Axtell asked the staff to prepare a staff report on the pros and cons of Assemblyman Baer's filing fee proposal; and they asked that such a staff report include a legal opinion or analysis.

4. Lobbying Regulation

Staff Counsel Nagy reported on the Northeastern Conference on Lobbying held on Wednesday, April 28 and attended by him and by Juana Schultz, Director of Compliance and Review. The conference was sponsored by the New York Temporary Commission on Lobbying. Mr. Nagy said that he served on a panel on lobbying laws. He

said the meeting was very useful to him and to Ms. Schultz. He expressed his hope and the expectation of many of the attendees that working meetings of the group would continue which would be helpful on such questions as auditing of lobbyists and the development of a model lobbying disclosure act. Mr. Nagy noted that many lobbyists attended the conference and expressed their problems with various states' regulations which are difficult to comply with and sometimes are onerous.

5. Field Reviews of Lobbyists' and Legislative Agents' Records

The Executive Director reported on the status of the staff development of a field review manual and the selection of lobbyists and legislative agents to be reviewed in the field. In response to a question from Commissioner DeCotiis on how the staff are selecting lobbyists to be reviewed, Mr. Weiner said that the selection process was a random one among those who have filed to date. He went on to note that a greater problem is to determine from field work if the filing entities know what to do, how to complete the form and what records to maintain. He said that the issue at this point, the first year of receiving and reviewing lobbyists and legislative agent reports is a technical assistance issue more so than a compliance issue.

6. Meeting With the Attorney General

The Executive Director reported on his recent meeting with the Attorney General. Among the issues discussed was that of the possible transfer from the Attorney General's office to the Commission of the responsibility for administering the "red badge" law which requires the registration of legislative agents. Mr. Weiner reported that in the next couple of weeks a follow up meeting would be held with the Attorney General's office. Attorney General Kimmelman commented that he is interested in transferring responsibility from his office to the Election Law Enforcement Commission.

At the end of this discussion, Attorney General Kimmelman left the meeting. Soon thereafter, Commissioner Waugh arrived to attend the meeting.

7. Executive Session

On a motion by Commissioner DeCotiis, seconded by Commissioner Proctor and a vote of 3-0, the Commission voted to resolve to go into executive session to review the executive session minutes of April 12, 1982 and to discuss investigations and enforcement actions, the results of which will be made public at their conclusion.

At this point, Messrs Goldman, Alexander and Upmeyer left the meeting, returning for the public financing discussion.

8. Public Financing - Assemblyman Zimmer's Proposal

Assistant Executive Director Schmidt distributed a six page paper entitled "Analysis of Proposal to Match Only the First \$100 or \$250 of Each Campaign Contribution" along with four supporting statistical tables. He reported that he had prepared this analysis as a response to a February 12, 1982 letter from Assemblyman Richard A. Zimmer who requested an analysis of the consequences in counting only the first \$100 or \$250 of each campaign contribution toward the \$50,000 threshold and for purposes of matching. Mr. Schmidt noted that Assemblyman Zimmer, in his letter, set forth three reasons for his proposal, namely that it might conserve public funds, deter marginal candidates, and encourage candidates to reach a far larger constituency of contributors.

Mr. Schmidt summarized the results of the analysis of the proposal as follows:

- Using the 1981 gubernatorial campaigns as a model for analysis, only candidate Ann Klein (D), under the \$100 provision, would never have reached the \$50,000 threshold and only one other campaign, that of candidate Barbara McConnell, under the \$100 proposal may have reached the \$50,000 threshold too late to effectively mount a campaign. Thus, only one and possibly two candidates would have been deterred from securing public funds.

- Matching only the first \$250 or the first \$100 would probably result in a reduction in public funds of about \$1.9 million under the \$250 provision and \$5.4 million under the \$100 provision.

- The data and the analysis do not provide a basis for reaching a conclusion whether any candidates, other than candidate Klein, would have been deterred from applying for public funds.

- Gubernatorial candidates, under either the \$250 or \$100 provision, clearly would be encouraged to seek out a larger constituency of contributors simply because of the need to raise enough funds to run a "viable" campaign statewide. Mr. Schmidt said that it is more likely that at least some of the campaigns would have been able to increase the number of contributors sufficiently under the \$250 provision but that the increase in the number of contributors (about 1½ times) under the \$100 provision probably is unrealistic to achieve.

Finally, Mr. Schmidt suggested that it might be easier for the state to achieve the objectives sought by Assemblyman Zimmer through other changes in the law that would be less burdensome administratively for the campaigns and for the Commission, e.g. reducing the matching formula or reducing the cap on public funds and/or raising the threshold amount.

Executive Director Weiner said that he would be contacting Assemblyman Zimmer early in the week of May 10 to review the analysis with the Assemblyman and to ensure that we have not overlooked any key points in the Assemblyman's proposal.

9. Discussion of Public Financing Issues

There ensued a discussion by the Commission, its staff, its General Legal Counsel and its consultants, former Chairman Goldmann, Herbert Alexander and Neil Upmeyer, on public financing issues.

Mr. Alexander stated that he disagrees with the two-for-one matching system and that it should be one-for-one. Furthermore, he asserted that the matching of the entire contribution is too high thus making large contributions too attractive. He noted that at the national level, an individual can contribute \$1,000 to a presidential primary candidate but that the government matches only the first \$250 of that contribution on a one-to-one basis. On the other hand, Mr. Alexander said that he believes the \$800 contribution is too low. Mr. Weiner, on the issue of the match ratio, asked why the system should not be more direct, i.e. a one-to-one match rather than a two-for-one match instead of one favoring smaller contributions. He also noted that the two-for-one match encourages larger contributions, including PAC's which can leverage an \$800 contribution to \$2400.

Next, there was a discussion of the expenditure limit. It was noted that four years ago, both the Commission and Common Cause came out against the expenditure limit. Mr. Alexander noted that he had never favored the expenditure limit. However, Governor Byrne, in his pocket veto of the amendments to the public financing program, insisted on the retention of the expenditure limit which was then enacted by the legislature in 1980. Mr. Alexander said that the expenditure limit was probably desirable when the program was initially proposed in 1973 and 1974. Without a formal cap on the public funds, the expenditure limit in 1977 provided an indirect way of holding down the amount of public funds for the two general election candidates, Governor Byrne and Senator Bateman.

Mr. Alexander introduced the concept of public funding as a "floor", not a "ceiling". He also expressed the judgment that campaigns are actually under-financed and are not too expensive. He said that the United States provides very few resources to politics. He also noted that political advertisements in the press

and in the broadcast media must compete with every other type of advertisement in order to reach a mass audience. He questioned the effectiveness and desirability of an expenditure limit because it can encourage "independent expenditures" on the part of outside groups.

It was noted that expenditure limits were imposed to further the concept of "equity", but that hope was blasted by the Supreme Court's decision in the Buckley case. Since that decision, there has been a large growth in independent expenditures. Mr. Alexander distributed a copy of a table (Table IV, "Sources of Funds in 1980 General Election - Major Party Candidates") from a paper he has drafted; that table showed the total amounts spent on behalf of President Reagan and former President Carter in the 1980 election and noted that less than half came from the federal grant and that over \$10 million, in the form of "independent expenditures" was spent on behalf of President Reagan. Mr. Alexander urged the Commission not to have an expenditure limit which creates the illusion of limiting expenditures which, in Mr. Alexander's judgment, is the case at the national level.

Mr. Alexander pointed out the experience in New Jersey in 1977 when Senator Bateman was unable to "shift gears" three weeks before the election when the polls showed Governor Byrne catching up to the Senator in voter approval. By that time, the Bateman campaign had already spent or committed too much money to campaign expenditures which could not be changed to enable Senator Bateman to counter the Byrne campaign. In Mr. Alexander's judgment, the expenditure limit experienced in 1977 showed that an expenditure limit rigidified the system.

Mr. Alexander then suggested that public financing and public policy should be to provide "floors" and not "ceilings" on political campaigns. That public funds should enable candidates to gain access to the electorate. He asserted that ceilings on expenditures are illusory and not desirable.

Mr. Alexander mentioned his own interest in strengthening political parties and mentioned the conference he recently attended on that very issue in Harriman, New York. He noted that among the recommendations of that conference for the national program were recommendations that there be no contribution limits or expenditure limits on parties. Furthermore, the recommendations aimed to tie parties closer to candidates. He noted that many of the reforms instituted in the last 10 to 15 years, including the reforms of campaign disclosure, have isolated candidates from their parties and have isolated candidates from candidates for other offices. He asserted that political parties bring people together rather than isolating candidates. He objected to the effect of many of the reforms, including public financing with expenditure limits which deter candidates from carrying out activities jointly.

Mr. Alexander brought forth the notion that expenditure limits are regulations that are totally arbitrary and represent over regulation by government. In this era of "deregulation", this notion might serve as another argument for doing away with the expenditure limit.

Neil Upmeyer noted that he worked for Common Cause in Washington prior to his joining the Commission staff as director of public financing in January 1977. He said that the Common Cause position in the early 70's was in favor of expenditure limits as a way of holding down campaign costs. Furthermore, Common Cause sought "equity" in campaigning and believed that expenditure limits would further the objective of "equity" between candidates. Mr. Upmeyer said that in his judgment, expenditure limits should be repealed because such limits actually work against rather than for "equity". He noted, however, that he had attended the meeting of the New Jersey Common Cause Steering Committee earlier this year when that committee took a stand in favor of expenditure limits. He said there was strong feeling among the Steering Committee members that an incumbent has a natural fund raising ability that can only be overcome by limiting expenditures for both the incumbent and the challenger. Furthermore, Mr. Upmeyer asserted that if a challenger has access to money, he or she should be able to spend it and that a challenger needs money to reach the level of the incumbent's name recognition.

(Note: At this point in the discussion, Commissioner Waugh left the Commission meeting.) It was noted that public funds can serve as a plateau to start from for a challenger and unless he or she can prove that there is a chance to win, it is very difficult for the challenger to raise additional funds.

It was noted that even if the Commission reached an agreement to recommend the elimination of expenditure limits, the proposal might be hard to sell to the Legislature. Mr. Alexander said that one of the strongest arguments for the repeal of expenditure limits is the 1977 experience and precedents. Also, the Commission itself recommended elimination of expenditure limits after the 1977 experience and the Legislature subsequently agreed to the proposal only to be thwarted by Governor Byrne's pocket veto. Another argument for elimination of expenditure limits is that they tend to encourage "independent expenditures" that actually bring about no expenditure limit while maintaining the illusion of an expenditure limit.

Mr. Farrell said that if the Commission reaches a conclusion that expenditure limits should be eliminated, he believed there were two strong arguments, namely the Commission's own practical experience in 1977 and 1981 and the public policy point that expenditure limits encourage or provide a temptation for evasion.

Another point was the deregulation consideration that expenditure limits equal more regulation, are arbitrary and are hard to justify.

It was noted that any proposal for repealing expenditure limits would have to be coupled with a clear explanation of the mechanisms for controlling public funds, e.g. the cap on public funds, the match ratio, the threshold, etc.

It was noted that there is a public perception that public funds are paying for the great amount of T.V. advertising and in turn the public turns against public financing because of this.

Mr. Farrell noted that the expenditure limit and the cap on public funds are confused by the public.

Executive Director Weiner asked the rhetorical question of "What are we trying to achieve?" Was the problem too much public money, or was the problem too many candidacies. And how do we draw the line.

On the point of "too many candidates", Mr. Upmeyer noted that the current field of candidates in the Democratic primary for the U. S. Senate race is large and there is no public financing involved with that race. This might aid the Commission in arguing that public financing did not cause the large field.

Mr. Upmeyer noted his agreement with Mr. Alexander's concept that a primary goal of the program should be to put a floor under candidacies and then another primary goal of public financing should be participation. He said that it is desirable to put a floor under candidates to give them adequate financing to get going. He said the issue in the 1981 primary was not the large number of candidates, but the ability of failing campaigns to continue to be able to draw on public funds. Mr. Upmeyer then reiterated his proposal for a staged threshold system which would give candidates a way out of the campaign when cash flow problems reached a point that there was no other choice but to either withdraw from the campaign or cease applying for public funds.

Mr. Farrell noted that in 1977 the state only funded the two general election candidates, Byrne and Bateman, and that there was no public financing for the primary. From that experience, the Commission and the Legislature concluded that the two elections, i.e. the primary and the general, were a continuation and if the state were to publicly finance the general election, then the concept had to be applied to the primary.

On the issue of limits on contributions, Mr. Alexander noted that a low contribution limit compels campaigns to start fund raising earlier because of the need to garner more contributors to enable a candidate to qualify for public financing in the primaries. This is particularly the case at the national level where only \$250 of a contributor's contribution is matched with public funds. Mr. Alexander noted that the low contribution limit (total of \$1,000 with only \$250 matched) does clearly force candidates to broaden their contribution base. He noted that there is clearly a shift toward the "big solicitor" rather than the "big giver". Mr. Alexander also noted that contribution limits at the national level added to the momentum to developing PACs. He said there is an increasing premium on lists of potential contributors. This in turn encourages membership organizations to contribute to political campaigns.

Mr. Alexander noted that at the national level, the federal government only matches contributions from individuals. Mr. Upmeyer noted that in New Jersey corporations and unions are permitted to make political contributions which is not the case at the national level.

Mr. Alexander noted that contribution limit must be high enough to enable candidates to raise enough money. He also expressed an opinion that it is "good" to force candidates to go to the people and to widen their contribution base.

Commissioner DeCotiis asked what benefit there is to a candidate to spend time raising money. Mr. Upmeyer said that it is "time well spent" and that it is good to force candidates to go to many people. It forces the candidate to communicate.

Mr. Weiner noted that during the Roe primary election campaign in 1981 that the candidate and the campaign workers, whenever they spoke or appeared before a group, always asked for money because Congressman Roe decided not to take public funds and wanted to show that a campaign could be mounted without public funds.

Commissioner Axtell asked about the status of the checkoff system on income tax. Executive Director Weiner noted that over 40 percent of the taxpayers do check off for the gubernatorial election fund and that that percentage is one of the highest, if not the highest, in the United States. Mr. Weiner also noted that the fund generates in excess of \$1.6 million per year but that the fund will always be in debt because the income tax was not instituted in 1976 and the first public financing program was in 1977. Thus, there is a deficit position simply by virtue of the timing of the enactment of the income tax and the first use of the fund for public financing of an election.

Mr. Weiner said that on Thursday, May 6, 1982, he, Mr. Alexander and Assistant Executive Director Schmidt would meet to continue the discussion of the issues and of alternative proposals for amending the public financing program. He also reported that on Friday morning, May 7, 1982, he, Assistant Executive Director Schmidt, Mr. Alexander and Mr. Upmeyer would be meeting at Eagleton, Rutgers University, with former Assemblyman Albert Burstein and with two or three political scientists from Rutgers University to continue the discussion of issues and alternatives. He reported that a draft report on recommendations would be submitted to the Commission prior to its next meeting to enable the Commission to review and reach conclusions at that meeting, scheduled for Monday, May 24.

The Executive Director noted two newspaper articles distributed to the Commission. One was an article published in the Newark Star Ledger on April 18, 1982 entitled "ELEC is trying to digest data on public funds"; the article was written by David Wald. The second article, published April 13, 1982 in the Newark Star Ledger was entitled "Election Commission Studies Pros and Cons of Publicly Funded Parties".

10. Adjournment

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

Respectfully submitted,



SCOTT A. WEINER
Executive Director