

NEW JERSEY ELECTION LAW ENFORCEMENT COMMISSION

PUBLIC SESSION MINUTES

JULY 12, 1982

PRESENT

Andrew C. Axtell, Chairman
M. Robert DeCotiis, Member
Haydn Proctor, Member
Alexander P. Waugh, Jr., Member
Scott A. Weiner, Executive Director
William R. Schmidt, Assistant Executive Director
Edward J. Farrell, General Counsel
Sidney Goldmann, Former Chairman

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 1:35 p.m. at the Commission's offices, Trenton, N. J.

1. Approval of Minutes of Public Session of Commission Meeting of June 28, 1982

On page 4, second paragraph, last line the word "appeared" should be "appealed". On a motion by Commissioner DeCotiis, seconded by Commissioner Waugh and a vote of 4-0, the Commission approved the minutes, as amended, of the public session of the June 28, 1982 meeting.

2. Discussion Concerning the Applicability of the Reporting Act to the Nuclear Freeze Referendum

Executive Director Weiner noted that the first issue is whether this nuclear freeze referendum is within the definition of "public question" so that the Contributions and Expenditures Reporting Act would apply. General Legal Counsel Farrell noted that there were three arguments against applying the Act to the nuclear freeze referendum: (1) the referendum is "non-binding"; (2) the referendum is addressed to federal officials, i.e. the President and the U.S. Senate and not directed to New Jersey officials, and (3) that as an advisory referendum it may not fit in the meaning of "public question". Mr. Farrell said he did not find either the first two arguments persuasive and the issue then hinges on whether the nuclear freeze referendum was "required" to be placed on the ballot. He noted that while all referenda require formal action to be placed on a ballot there are certain types of referenda which requires voter approval to be enacted, namely constitutional amendments and bond issues. In the case of the nuclear freeze referendum, however, the legislative action was required only to place the referendum on a statewide ballot. Thus, there is an

open question if the nuclear freeze referendum meets the test of being "required" to be placed on the ballot. General Legal Counsel Farrell and Executive Director Weiner urged the Commission to take the more restrictive view that the nuclear freeze referendum meets the test of being "required" to be placed on the ballot and thus meets the test of being a "public question". Mr. Farrell said that in his judgment there is no legal basis for the Commission determining that the nuclear freeze referendum is outside the provisions of the Reporting Act. He also feels that as a matter of policy, the referendum is within the requirements of the Reporting Act.

If the nuclear freeze referendum meets the test of being a "public question", then the issue is who and what types of groups are required to report their contributions and expenditures. Mr. Weiner noted that a Committee is being organized on a statewide basis by former State Senator Anne Martindale and that Committee, in Mr. Weiner's judgment, whose sole purpose is to support the referendum, clearly must report its contributions and expenditures as would any similar group organized solely for the purpose of supporting a referendum. Mr. Weiner noted that the problem arises with organizations which have been in existence for a number of years and who raise money specifically for the referendum or make a sizeable contribution. This raises the question of a "major purpose test", i.e. what percent of the organization's funds are used for referendum purposes. Mr. Weiner suggested that the threshold should be 50 percent. He said that in his discussions with former Attorney General Zazzalli, who is serving as counsel to the statewide committee in support of the referendum, he has suggested that such groups either set up a separate referendum account or not deposit the funds but transfer them directly to the statewide committee. If, however, such organizations deposit the funds in their regular organization account, the question whether the organization has to file a report with this office will be a factual question to be decided through field investigation.

Commissioner Waugh asked if any litigation on this issue has surfaced and Mr. Farrell said he was not aware of any. Commissioner Waugh suggested that General Legal Counsel Farrell prepare an opinion on this issue, but Mr. Farrell suggested that he not do so in light of the possibility the issue might be litigated.

Following further discussion, the Commission reached a consensus that the nuclear freeze referendum is within the meaning of "public question" and those supporting and opposing the referendum must report their contributions and expenditures in accordance with the provisions of the Reporting Act. Furthermore, the Commission reached a consensus that except for specific fund raising activity or earmarked contributions a "major purpose test" would be applied to organizations engaging in activity not solely for the purpose of supporting or opposing the referendum and the threshold for the "major purpose test" will be 50 percent of their receipts.

3. Advisory Opinion 10-82 from the Kean for Governor Committee

The Commission reviewed a June 24, 1982 letter from Martin S. Barber, treasurer for the Tom Kean for Governor Campaign Committee (general election) and deputy treasurer for the Tom Kean Recount Committee. In his letter, Mr. Barber asked four questions regarding the need for his reporting his own volunteered hours of service as an in-kind contribution to the Tom Kean for Governor Committee, the need to report the services of Mr. Barber's firm's staff as in-kind contributions to the Tom Kean for Governor Campaign Committee, the extent to which a cost overrun by a vendor whose contract was negotiated for a fixed dollar amount is an in-kind contribution, and the need to report as in-kind contributions professional and other volunteer services rendered in behalf of the Tom Kean for Governor Recount Committee.

The Commission reviewed a July 12, 1982 draft of an advisory opinion prepared by Staff Counsel Nagy. Mr. Weiner summarized the issues and the proposed responses. Mr. Weiner said that Mr. Barber's volunteered services are not reportable but the services of Mr. Barber's firm's staff are reportable as in-kind contributions and are subject to the \$800 contribution limit for gubernatorial campaigns. Concerning the overrun on a fixed cost contract, so long as the contract was a bona fide arm's length transaction, then the cost overrun is not reportable as an in-kind contribution. If the campaign committee should settle for a portion of the cost overrun, the portion that is paid is reportable as an expenditure but the portion that is not paid is not reportable as an in-kind contribution. The donated professional and volunteer staff for the recount effort is reportable as an in-kind contribution. Mr. Weiner noted that after receiving the letter from Mr. Barber, he received a telephone call from Al Fasola who pointed out that the number of attorneys involved in the recount effort was in excess of 500. Those attorneys and their staff may not have kept accurate records of the time devoted to the recount effort. Mr. Weiner said he had advised Mr. Fasola that the reporting of the in-kind contributions has to pass a test of reasonableness; as a result, a good faith and reasonable estimate of the time and the value of the time of the in-kind contribution in the form of donated staff time would satisfy such a requirement.

After additional discussion, on a motion by Commissioner Waugh, seconded by Commissioner Proctor and a vote of 4-0, the Commission approved the draft advisory opinion subject to it being reviewed by Mr. Farrell with Mr. Nagy prior to its release to Mr. Barber.

4. Request from the New Jersey School Board's Association for a Declaratory Ruling Concerning the Application of Lobbyist Reporting Requirements.

The Commission reviewed a July 2, 1982 letter from the New Jersey School Board's Association, signed by David W. Carroll, Assistant Executive Director and General Counsel. Mr. Carroll, on behalf of the New Jersey School Board's Association, asserted the position of the School Board's Association that its activities are exempt from coverage of the Legislative Activities Disclosure Act because the Association is a statutory organization whose legal status is as a political subdivision. Furthermore, the Association believes it is exempt because, in all of its lobbying activities, it acts solely as an agent for other political subdivisions - namely, its member boards of education. Mr. Carroll went on to state that the Association is most anxious to resolve the issue and after reviewing the advisory opinion procedure set forth in N.J.A.C. 19:25-8.12 and the declaratory ruling section of the Administrative Procedure Act N.J.S.A. 52:14b-8, the Association finds the declaratory ruling section preferable inasmuch as it provides for a direct appeal to the Appellate Division.

Commissioner DeCotiis asked who holds the hearing for the declaratory ruling, ELEC or an Administrative Judge? Mr. Farrell responded that either could hold the hearing.

Mr. Farrell noted that a key issue is the extent to which the School Board's Association is a statutorily based agency.

Commissioner Waugh noted that an advisory opinion may not be appealable in this situation because it is "advisory". Mr. Farrell said he was not sure of that point since an advisory opinion represents the final action of an administrative agency.

Commissioner Proctor suggested the Commission hold the issue over until its August meeting and that the staff prepare an initial analysis of whether the School Board's Association may be exempt from filing with ELEC. After that analysis, the Commission would be in a better position to reach a conclusion as to whether an advisory opinion would satisfy the request of the School Board Association. The Commission concurred in Commissioner Proctor's suggestion.

5. Executive Director's Report

Mr. Weiner noted that Assemblywoman Barbara Kalik, chairwoman of the Assembly State Government Committee had developed a "working proposal" for modifying the public financing statute. The provisions of her "working proposal" had been distributed to the Commission at its previous meeting in a memorandum from the Executive Director dated June 25, 1982. The key provisions of Assemblywoman Kalik's "working proposal" were to increase the contribution limit to \$1,000, to increase the threshold to \$150,000, to impose an expenditure limit which would be 25 percent higher than the limit for 1981, to have any profits from inaugural fund raisers be returned to the New Jersey Gubernatorial Election Fund, and to have expenditures by county and municipal political party committees in the general election be outside of the expenditure limit, although the dollar amounts would remain the same. Furthermore, Assemblyman Zimmer asked the Commission to consider alternative methods to promote more contributions from contributors of small amounts.

A July 12, 1982 memorandum from Assistant Executive Director Schmidt analyzing the fiscal impact of the proposals made by Assemblywoman Kalik was distributed to the Commission. Mr. Schmidt summarized the key points of his analysis. Firstly, the State Government Committee proposals would save approximately \$2 million in public funds as compared to the saving resulting from the Commission's recommendations of \$2.2 million. He said that the State Government Committee proposals, in comparison with the ELEC proposals, result in more public funds overall and for most candidates, with the exception of candidate McConnell (D) who did not reach the \$150,000 threshold and the four primary and two general election candidates who reached a maximum public funds, namely, Degnan, Florio, Kean and Kramer in the primary and Florio and Kean in the general election. In percentage terms, the State Government Committee proposals would result in a reduction of 22.5 percent as compared to the 25.5 percent reduction resulting from the ELEC recommendations.

Concerning the impact on total receipts, the State Government Committee proposals, in comparison with ELEC recommendations, result in more total receipts for most candidates with the exception of candidate McConnell, who loses public funds, and the four primary and two general election candidates who reached the maximum. The chief reason the latter six candidates would have less total receipts is the change in the contribution limit from \$1,200 to \$1,000. In percentage terms, the State Government Committee proposals would result in a 7.9 percent reduction in total receipts whereas the ELEC recommendations would result in a reduction of 5.2 percent. However, those candidates who had relatively more \$800 contributions in 1981 (Degnan, Florio, and Kean in the primary and Florio and Kean in the general election) would have a reduction in

total receipts under the State Government Committee proposals as opposed to an increase in total receipts under the ELEC proposals.

Concerning the impact on percentage of total receipts represented by total funds, the State Government Committee proposals, in comparison with ELEC recommendations, result in a higher proportion of total receipts represented by public funds. This is chiefly due to the State Government Committee proposal to begin matching at the first dollar after the threshold has been reached.

However, candidates would receive less than half of their money in public funds as compared to the overall average in 1981 of 54.2 percent of total receipts represented by public funds. Furthermore, taking into consideration the money needed to enable campaigns to reach the expenditure limit results in campaigns that reached the maximum in 1981 having public funds representing 35 to 40 percent of their total receipts. Thus, with inflation and with the caps on public funds for both the primary and the general election, public funds will play a decreasing role as measured as a percentage of total receipts.

The Assembly State Government Committee proposes a 25 percent increase in the expenditure limit which Mr. Schmidt calculated as being \$260,500 for the primary and \$525,000 for the general election. In total dollars, the limit in the primary would be \$1,312,500 and for the general election the limit would be \$2,625,000. Mr. Schmidt noted that the State Government Committee's proposed increase is equivalent to only a 5.74 percent annual increase compounded and that the Committee's proposed increase from \$800 to \$1,000 in the contribution limit is also equivalent to a 5.74 percent annual increase compounded. This compares with the ELEC proposed increase from \$800 to \$1,200 which is equivalent to a 10.7 percent annual increase compounded. Mr. Schmidt noted that for candidates who reached the maximum in 1981 to reach the maximum under the State Government Committee's proposals on contribution and expenditure limits would require a 38 to 46.5 percent increase in the number of contributors of average contributions if the average contribution amount does not increase. In numbers this would require candidates to secure additional contributors arranging from 865 for the Florio primary campaign to 2,244 for the Florio general election campaign. Mr. Schmidt expressed his judgment that campaigns would have difficulty achieving such a large increase in the number of contributors or a similar increase in the average contribution. This would tend to argue for a higher contribution limit or an increase in the amount of public funds. On the other hand, the Commission also discussed the likelihood that the amount of a contribution and the number of contributors would increase in 1985. Finally, in response to Assemblyman Zimmer's request the Commission consider alternative methods to promote the increase in the number of contributors of small contributions, Mr. Schmidt noted three possible methods. One would be to increase the matching ratio for the first \$100 or \$250 of each contribution, a proposal which was discussed in appendix 10 of the report. **A second alternative would be to match only the first \$250 or \$500 of a contributor's contribution and to match that amount at a two for one basis.**

A final alternative would be to eliminate the expenditure limit which would provide an incentive to seek out more small contributions on the assumption that there is a limited number of large contributions.

Mr. Weiner noted that Mr. Schmidt's analysis would be forwarded to Assemblywoman Kalik and the members of the Assembly State Government Committee.

Mr. Weiner then reported that representatives of the Florio for Governor General Election Campaign had asked for an extension until the Commission's August meeting to present the Committee's arguments concerning the Commission's allocation of certain expenditures by the Hudson County Democratic Dinner Committee and the Jersey City Democratic Committee to the Florio for Governor Campaign. Mr. Weiner explained that the key officials of the Florio for Governor Campaign Committee were all involved in other commitments for July 12 and that was the reason they asked for an extension.

Mr. Weiner reported that the staff review of the Reporting Act was progressing and that a meeting involving General Legal Counsel Farrell, Juana Schultz, William Schmidt, Staff Counsel Nagy and himself had been held to go over various proposals for amending the Act. He reported that Mr. Farrell is preparing a summary of the proposals which will be transmitted to the Commission for its initial discussion and review.

Mr. Weiner reported that he had met with a representative of the Attorney General and a representative of the Governor's Counsel and they, along with ELEC staff, are preparing recommendations concerning lobbyist registration and lobbyist disclosure. Mr. Weiner has said he expects a staff report to be available within four to six weeks.

6. Executive Session

On a motion by Commissioner Proctor, seconded by Commissioner DeCotiis and a vote of 4-0, the Commission voted to resolve to go into executive session to review the executive session minutes of June 28, 1982 and to discuss investigations and enforcement actions, the results of which will be made public at their conclusion.

7. Adjournment

On a motion by Commissioner Waugh, seconded

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Adjournment -cont'd.

by Commissioner Proctor and a vote of 4-0, the Commission
voted to adjourn.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Scott A. Weiner".

SCOTT A. WEINER
Executive Director

SAW/cm