

NEW JERSEY ELECTION LAW ENFORCEMENT COMMISSION

PUBLIC SESSION MINUTES

OCTOBER 25, 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
Gregory E. Nagy, Staff Counsel
* Leslie G. London, Election Finance Analyst
Edward J. Farrell, General Counsel
Judge Sidney Goldmann, Consultant

*Thomas Cullen, Associate Counsel

* Ms. London attended the Executive Session. Mr. Cullen attended a portion of the Executive Session.

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 office, Trenton, N. J.

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

Commissioner Waugh pointed out a typographical error on page 8, paragraph No. 9, Executive Session, line 2, wherein the vote was recorded as 409 and it should be recorded 4-0.

On a motion by Commissioner Proctor, seconded by Commissioner Waugh and a vote of 4-0, the Commission approved the minutes, as amended, of the public session of October 12, 1982.

2. Request for an Advisory Opinion from the New Jersey Cable Television Association

The Commission reviewed an October 18, 1982 request for an advisory opinion submitted by Francis R. Perkins and Patricia F. Hernandez, attorneys for the New Jersey Cable Television Association. Executive Director Weiner suggested that the Commission decline to issue an advisory opinion because the Commission does not have jurisdiction on the issue raised by the Association. General Legal Counsel Farrell queried whether there was any way to help the Association, for example, by referring the Association to the Attorney General. However, it was noted that the Attorney General would not provide an advisory opinion on this issue. Commissioner Proctor noted that the Association should not be kept in "limbo". Commissioner Waugh asked whether the Commission could ask for an Attorney General's opinion directly or informally.

General Legal Counsel Farrell said he did not know. Mr. Weiner said the Commission could refer the letter to the Attorney General, but Mr. Farrell said that that would look as if the Commission were doing something when it really was not. Mr. Weiner noted that the issue raised by the Association had limited application; therefore, he was reluctant to pursue it with the Attorney General as the Commission is doing with respect to the issues raised by the insurance holding companies, specifically, Crumm and Forster. The Commission reached the consensus that the Executive Director should correspond with the representatives of the New Jersey Cable Television Association and advise the Association that the Commission does not have jurisdiction over the issue raised in the October 18, 1982 request for an advisory opinion.

3. Advisory Opinion No. 12-1982

The Commission reviewed an October 18, 1982 letter from Michael J. Matthews, Mayor, City of Atlantic City in which Mayor Matthews asked for an advisory opinion as to the obligation for the reporting of contributions received to defray the expenses of two law suits, namely Charles M. Tisdale vs. Mayor-Elect Michael J. Matthews and Bernard B. Fulton, Jr. et als vs. Michael Matthews, et als. Mayor Matthews stated his belief that the obligation to disclose should be applied not only to the Usry suit, addressed in the Commission's advisory opinion No. 12-1982, but also in the Tisdale and Fulton suits.

General Legal Counsel Farrell noted that the issue raised by the Mayor is not an easy problem. The issue involves post-election costs for litigation to set aside the results of an election, and the litigation involves three separate suits. One of those suits has been initiated by the Mayor's opponent and the other suits have been initiated by other parties. According to Mayor Matthews, the Tisdale and Fulton suits were consolidated with the Usry suit for purpose of trial and are now being tried together. Mr. Farrell said that the issue before the Commission is how far it can take and how far it should take the notion of post-election expenditures being subject to disclosure. He noted that the results of the suits could set aside the election and, therefore, theoretically and logically it could be argued that the contributions and expenditures for the court cases should be disclosed. Thus, the issue before the Commission is how far it can require disclosure and how far it can require disclosure of the names of contributors to the legal funds; Mr. Farrell noted that at some point the Commission might be going too far. Mr. Farrell noted that Mayor Matthews alleged in his letters that the Tisdale and Fulton suits are "...merely facades and a deliberate attempt to circumvent the mandates of the Campaign Contributions and Expenditures Reporting Act." Mr. Farrell said that the Commission could find out information to determine if the other two cases are

in fact "facades", and if the Commission reached that conclusion, that would be enough for the Commission to require disclosure of the contributions and expenditures. If the other two cases are merely "facades", then the participants in those cases would be subject to the same disclosure requirements as a candidate.

Commissioner Proctor said that, in his judgment, everyone should disclose. Commissioner Waugh asked if candidate Usry was disclosing and Mr. Weiner responded that he was, through one of his campaign accounts. Commissioner Waugh also asked if Mayor Matthews was disclosing and Mr. Weiner said Mayor Matthews was, also through one of his campaign accounts. Commissioner Waugh noted that Tisdale and Fulton were not candidates.

General Legal Counsel Farrell observed that the next logical problem would arise if Usry were to drop out of his suit. The Commission then would be faced with considering compelling disclosure by third parties, a situation not unlike the "independent expenditure" idea the Commission dealt with during the gubernatorial elections.

Chairman Axtell expressed his concern about the Commission imposing reporting requirements on private citizens who initiate court cases.

Mr. Farrell pointed out that the Act requires reporting not only by candidates for office, but also by individuals in groups "in opposition to" candidates or public issues.

Commissioner Waugh said that he did not think the Commission should decide this issue on Mayor Matthews' premise that the Tisdale and Fulton suits were "mere facades".

Mr. Farrell said that he was uncomfortable with requiring Mayor Matthews to report and not requiring the Mayor's opponents to report; but he noted he did have some problems with requiring the opponents to report.

Former Chairman Goldmann said that the setting of this issue is post-election and that the actions being taken do not represent an attempt to influence an election.

Mr. Farrell said that if either Mayor Matthews or Mr. Usry uses campaign funds for legal costs, it is alright under the law but those expenditures have to be reported. Mr. Farrell said that in his judgment, if either Mayor Matthews or Mr. Usry raise more money to pay for the legal costs, then both would have to report.

Commissioner Waugh said that he favored responding to Mayor Matthews' request for an advisory opinion but in doing so to tell the Mayor that the Commission found no basis for the Mayor's assertion that the Tisdale and Fulton matters represent a deliberate attempt to circumvent the mandates of the Act. However, Commissioner Waugh said he favored the Commission requiring reporting by both sides. If the Commission cannot reach that conclusion, then there should be no reporting requirement for anyone.

Mr. Weiner asked whether there are not certain types of post-election activities that do not have to be reported and whether the Commission can draw a specific line.

Commissioner Proctor pointed out that all three cases, the Usry case, Tisdale case and the Fulton case, all seek to upset the results of the May municipal election in Atlantic City.

Mr. Farrell suggested that disclosure be required for litigation that seeks to upset the results of an election but not be required for a libel suit, as a way of drawing the line.

Mr. Weiner asked whether the Commission should distinguish the Tisdale and Fulton suits because the issues raised in those suits include the issue of dual office holding and the issue of the operation of the election itself. Mr. Weiner said that in his judgment, if the Commission says to Mayor Matthews that he has to disclose his defense fund, then the others should have to disclose their funds.

Former Chairman Goldmann said that for the Commission to take that position would represent a "very long reach and would be skirting constitutional rights".

Chairman Axtell said that he did not think the Commission should impose the disclosure requirements on the Tisdale and Fulton cases and possibly the Commission should rescind Advisory Opinion 12-1982.

Commissioner DeCotiis asked if the Mayor was using city funds for his defense. Mr. Weiner said that the Mayor says he is not doing so.

Commissioner Waugh said that in his judgment, if there is a public interest in disclosure prior to an election, then there is public interest in disclosure after the election has taken place.

Chairman Axtell expressed his judgment that requiring disclosure would stop court cases "dead in their tracks".

Mr. Farrell said that the Commission would not be preventing anyone from bringing a challenge. Mr. Farrell said that in his judgment, a much greater chilling effect is when counsel advises a client that the case cannot be won.

Commissioner Waugh moved and Commissioner Proctor seconded the motion that the Commission reply to Mayor Matthews by first disassociating the Commission from the "facade" argument but advising the Mayor of the obligation by both sides to report contributions received to defray the expenses of the Tinsdale and Fulton suits. Commissioners Waugh and Proctor voted in favor; Chairman Axtell and Commissioner DeCotiis voted in the negative. and the motion failed.

The Commission continued the discussion of the issue before it. Mr. Weiner recalled for the Commission the gubernatorial recount issue wherein the Commission required both the candidates, Congressman Florio and Governor Kean, and the state political party committees to report contributions and expenditures for the recount. Commissioner DeCotiis noted, however, that in that setting, Congressman Florio and Governor Kean were still candidates. Commissioner Proctor asked what the difference is between the recount setting and the Atlantic City case.

Commissioner Waugh suggested that the Commission write Mayor Matthews and advise him that the Commission is unable to give an opinion and that the Commission is evenly split on the question.

General Legal Counsel Farrell said that if the Commission were correct on the recount issue, then candidates Matthews and Usry should have to report in the Atlantic City case.

Staff Counsel Nagy noted that a recount suit and a challenge suit are not that dissimilar. He said a recount suit is an arithmetic proceeding of counting votes and a challenge suit involves exchanging votes. Both types of suits change the vote total.

Commissioner DeCotiis asked if the Commission's decision on the recount issue was a mistake and Mr. Farrell said that in his judgment, it was not.

Mr. Farrell said that if the Commission is looking for a narrow "fairness" answer, it could respond that campaign monies would have to be reported.

Staff Counsel Nagy said that the Federal Election Commission has ruled on a post-election litigation fund. In a divided opinion, the FEC has required reporting.

Mr. Farrell noted that in the gubernatorial election reporting with the spending limit, the law and Commission advisory opinions have removed compliance and litigation costs from the expenditure limit.

Commissioner Waugh asked that General Legal Counsel Farrell prepare a memorandum on statutory requirements for the Commission's consideration at its next meeting.

The Commission reached a consensus to have the Executive Director write Mayor Matthews and advise him that his October 18, 1982 letter and request for an advisory opinion will be on the agenda for the next Commission meeting to be held on Monday, November 8, 1982.

4. Executive Session

On a motion by Commissioner DeCotiis, seconded by Commissioner Waugh and a vote of 4-0, the Commission voted to resolve to go into executive session to discuss an investigation, the results of which will be made public at its conclusion.

5. Discussion of Letter Addressed to Mayor Michael Matthews

The Commission reviewed an October 22, 1982 draft of a letter addressed to Mayor Michael Matthews. The draft letter was prepared as a response to an inquiry from Mayor Matthews concerning the Commission's review of the pre- and post-election reports filed by Friends of Matthews for the 1982 municipal election.

The Commission decided the letter should be sent over the signature of the Executive Director and authorized the letter as drafted.

6. Discussion of Timeliness of Filings with County Clerks Following the Filing Deadline

The Commission reviewed an October 21, 1982 memorandum (2 pages) from Executive Director Weiner concerning a limited but recurring problem which arises when candidates delinquently file reports with the county clerk rather than directly with the Commission. Mr. Weiner recommended that the Commission disregard the date a delinquent report is filed in the office of the county clerk because the statute and regulations require original reports to be filed at the Commission's office and because filing with the county clerk was instituted as a convenience for the candidates on the day of the filing deadline only. He also recommended that future correspondence from the Commission, advising candidates and treasurers of the filing deadlines, include a statement that reports filed after the filing deadline will only be considered as filed after being received at the Commission offices.

The Commission concurred in the Executive Director's recommendations except that disregarding the date a delinquent report is filed in the office of a county clerk will be done prospectively and not retrospectively.

7. Draft of the 1981 Annual Report

Executive Director Weiner distributed a 24 page draft of the Commission's 1981 annual report. He asked the Commissioners to review it and communicate their comments to him. The 1981 annual report will be on the Commission's agenda for its next meeting on November 8th.

8. Pending Legislation - Title 19B

Executive Director Weiner reported that Assemblywoman Barbara Kalik chaired a public hearing of her Assembly State Government Committee on October 20, 1982. At the hearing, the Committee discussed the proposals developed by staff of the Secretary of State. Mr. Weiner said that Assemblywoman Kalik is attempting to get a set of proposals before her committee for discussion purposes and had directed her staff to take the proposals from the Secretary of State's office and put them in the form of a draft bill. Mr. Weiner also reported that the Attorney General's executive assistant and he have discussed some of the issues raised by the proposals and that he has requested a review meeting with the Attorney General.

9. Pending Legislation/A-1847

Executive Director Weiner distributed his October 22nd memorandum (2 pages) in which he discussed Assembly Bill 1847 which would require incumbent legislators to file Sworn Statements listing, in addition to sources of income, a description of assets and proprietary interests in state regulated businesses. Mr. Weiner noted that Assembly Bill 1847, if enacted, would create disparities between the requirements imposed upon state legislators and imposed upon the state legislative candidates under the Disclosure Act administered by the Commission.

The Commission concurred in Mr. Weiner's suggestion that he be authorized to approach the sponsors of Assembly Bill 1847 and the State Government Committee for the purpose of resolving the discrepancies.

10. Pending Legislation/A-1853

Mr. Weiner distributed a one-page October 22, 1982 memorandum from himself concerning Assembly Bill 1853 which provides that the Commission administer a procedure for circulating to the public selected statements supporting and opposing state-wide public

questions. Mr. Weiner noted that A-1853, introduced by Assemblyman Zimmer, is a companion bill to the Initiative and Referendum bill and would put the Commission in an editorial role with respect to initiatives and referenda. Commissioner Waugh suggested that the Executive Director prepare an estimate of costs for the Commission to administer the proposal set forth in A-1853.

11. Executive Director's Report

Mr. Weiner reminded the Commissioners of the forthcoming conference to be held in Columbus, Ohio during the first full week in December. He asked that any Commissioner who intends to go to the conference advise him so that reservations can be made.

Mr. Weiner reported that the staff group from the Attorney General's office and ELEC will again be meeting on the issue of lobbyist disclosure.

Mr. Weiner reported that the analysis of the 1981 legislative campaign contributions and expenditures is moving along and should be ready for publication during November. He noted that a separate analysis concerning PACs is being prepared and should be available for publication in early November.

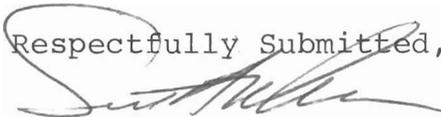
12. Executive Session

On a motion by Commissioner DeCotiis, seconded by Commissioner Proctor and a vote of 4-0, the Commission voted to resolve to go into executive session to review the executive session minutes of October 12, 1982 and to discuss investigations and enforcement actions, the results of which will be made public at their conclusion.

13. Adjournment

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

Respectfully Submitted,



SCOTT A. WEINER
Executive Director