

NEW JERSEY ELECTION LAW ENFORCEMENT COMMISSION

PUBLIC SESSION MINUTES

AUGUST 4, 1983

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, Asst. Executive Director  
Gregory E. Nagy, Staff Counsel  
Cheryl Clarke, Associate Staff Counsel  
Edward J. Farrell, Counsel

ABSENT

Sidney Goldmann, Consultant

\* Commissioner Waugh participated in 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 meeting of the Commission, as amended, had been filed with the Secretary of State's office, and distributed to the entire State House Press Corps.

The meeting convened at 10:20 a.m. at the Commission's office, Trenton, N. J.

1. Approval of Minutes of Public Session of Commission Meeting of July 6, 1983.

Assistant Executive Director Schmidt pointed out a typographical error on page 2, paragraph 3, next to the last line; a comma should be inserted after the word "guidance" and the comma after the word "but" should be deleted.

On a motion by Commissioner DeCotiis, seconded by Commissioner Proctor and a vote of 3-0, the Commission approved the minutes, as amended, of the public session of July 6, 1983.

2. Advisory Opinion 09-1983

The Commission reviewed a July 18, 1983 one-page advisory opinion request signed by Frank S. Kerno, Executive Director, South Jersey Mechanical Contractors Assoc., Inc. Mr. Weiner distributed a two-page August 4, 1983 draft of the advisory opinion.

Mr. Kerno asked whether the Industry Fund of the Association would have a filing requirement in light of, among other facts, the fact that less than 10 percent of the Fund would be used for campaign purposes.

Commissioner DeCotiis asked whether there is a dollar amount threshold which would trigger a filing requirement by the Association. Mr. Farrell noted that the nature and type of solicitation of funds for the

Industry Fund would be the key whether the Fund would have to file. Commissioner DeCotiis asked whether the number of contributions made by the Fund would make a difference. Mr. Farrell and Mr. Weiner answered in the negative. Mr. Farrell went on to note that it is not necessary to know the source of revenue for the Fund under the set of facts presented in the advisory opinion request.

Commissioner Proctor asked whether it would make a difference if the percentage were 30 percent rather than 10 percent. Mr. Nagy answered "yes" because at that point the Fund might be viewed as taking on a "substantial political purpose". Now the Fund can be viewed as being used to promote the business interest of the Association.

Mr. Farrell noted that early in its history, the Commission concluded that the Reporting Act did not intend to impose reporting requirements as a result of the mere act by two or more persons of collectively making a contribution, without any other act in furtherance of the candidacy, such as soliciting contributions from other persons. Hence, a contribution from a joint checking account or a corporation, for example, would not result in a filing obligation with actions "in aid of" a candidacy. Therefore, the theory underlying the proposed response to Mr. Kern's request for an advisory opinion started with the Commission's decision not to impose filing requirements on corporations when corporations make campaign contributions. Mr. Weiner noted that the Commission is striving to have the law amended to define a "continuing committee" and to require disclosure above a certain amount of expenditures and campaign contributions. Mr. Farrell noted that the less than 10 percent figure used in the advisory opinion request emanates from a general feeling that the Association does not have a filing requirement based upon a view of the organization's purpose. In response to the question "whose general feeling", Mr. Farrell responded that it was the staff's general feeling.

Commissioner Proctor posed a hypothetical question that if this Association had \$100,000 in its fund and made a \$10,000 contribution to a candidate, would it have to report and shouldn't it have to report? Mr. Farrell said that the \$10,000 would be reported by the recipient(s) but under the proposed response to the advisory opinion request, the contributing association would not have to report unless it had specifically solicited funds for political purposes. Commissioner Proctor expressed his concern with that response and asked what problems would ensue if the Commission were to take the opposite position. Mr. Weiner said there would be problems since it would mark a significant and far reaching change in Commission policy on the eve of a legislative election. He also noted again that the Commission has sought to have the law amended so that the phrase "continuing political committee" would be defined. Mr. Weiner said that the proposed advisory opinion would be consistent with what the Commission has done in the past with unions, trade associations and corporations. Mr. Farrell noted the Commission's decision concerning corporations and that requiring corporations to file election reports would be extremely burdensome. Mr. Weiner noted that the bill pending before the Legislature would require an organization to file some form of disclosure report if it contributed \$2,500 or more a year.

Commissioner DeCotiis asked whether the Association had contributed last year. Mr. Weiner said that it had not. Mr. Weiner noted that most likely the Association had asked for an advisory opinion because it is one of many groups gearing up for the 1983 legislative election.

Mr. Weiner noted that the Industry Fund is a separate fund and carries out many activities apart from political activity. Thus, according to Mr. Kerno's letter, the Fund spends or plans to spend less than 10 percent for political purposes but spends 90 or more percent for other activities.

Commissioner Proctor asked what percent or dollar amount would trigger a filing requirement. Mr. Weiner and Mr. Farrell noted that that question remains unanswered. Mr. Farrell suggested another extreme of, for example, 60 percent, but said that he did not know where the line should be drawn but that 10 percent or less does not meet a "substantial" test.

Commissioner Proctor said that he was not completely satisfied with the resulting decision and looked forward to legislative action on the subject matter.

On a motion by Commissioner DeCotiis, seconded by Commissioner Proctor and a vote of 3-0, the Commission approved the draft opinion subject to some editorial changes in the last paragraph on page 2.

### 3. Executive Director's Report

Mr. Weiner said that former Chairman Sidney Goldmann is very ill and that his wife has said that she would welcome telephone calls and visitors.

Mr. Weiner said that the staff have settled into the office and that the three secretaries are training on the word processing equipment and are now doing some work on the machines.

Concerning the budget for fiscal year 1985, Mr. Weiner said he would be presenting a proposed budget for the Commission's consideration in September. He noted that the fiscal year 1985 budget will include a proposed appropriation for public financing in the 1985 gubernatorial election.

Concerning fiscal year 1984, Mr. Weiner said that the Administration is still negotiating contracts with the unions and, among the issues not yet resolved, is that of salary adjustments and cost of living adjustments. Mr. Weiner said that there will be no increases for salary adjustments for cost of living until the State signs the contract with the unions.

Mr. Weiner reminded the Commission that he is attending the National Conference State Legislatures' conference in San Antonio, Texas on Tuesday and Wednesday, August 9 and 10. He will be participating as a panelist in discussions on state regulation of PACs. He noted that NCSL is paying his expenses to the Conference.

Mr. Weiner reported that he will be meeting with representatives from New York, Massachusetts and other states on Wednesday, August 17 to discuss the pending fall conference on lobbying regulations in the Northeast. The Commission approved Mr. Weiner's paying for the visitors' lunch.

#### 4. Executive Session

On a motion by Commissioner DeCotiis, seconded by Commissioner Proctor and a vote of 3-0, the Commission voted to go into executive session to review the executive session minutes of July 6, 1983 and to discuss personnel matters, enforcement actions and investigative matters, the results of which will be made public at their conclusion.

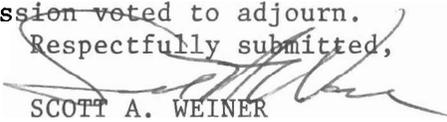
#### 5. Memorandum on Limitations on Campaign Contributions

Chairman Axtell noted that Mr. Weiner had prepared for him a four-page memorandum, dated July 21, 1983, concerning "limitations upon campaign contributions received or made by political party committees." Mr. Weiner said he had done so to aid the Chairman in responding to inquiries from various political party officials. With the concurrence of the Chairman, Mr. Weiner said he would make copies available to the other three Commissioners.

#### 6. 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