

NEW JERSEY ELECTION LAW ENFORCEMENT COMMISSION

PUBLIC SESSION MINUTES

SEPTEMBER 6, 1983

PRESENT

Andrew C. Axtell, Chairman  
M. Robert DeCotiis, Member  
Alexander P. Waugh, Jr., Member  
Scott A. Weiner, Executive Director  
William R. Schmidt, Asst. Executive Director  
Gregory E. Nagy, Staff Counsel  
Edward J. Farrell, General Legal Counsel

ABSENT

Haydn Proctor, Member

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 10:40 a.m. at the Commission's office, Trenton, N. J.

1. Approval of Minutes of Public Session of Commission Meeting of August 4, 1983.

General Legal Counsel Farrell asked that the second full paragraph on page 2 under the second item, "Advisory Opinion 09-1983" be clarified, particularly the first sentence. Mr. Weiner said he would make the clarification.

On a motion by Commissioner DeCotiis, seconded by Chairman Axtell and a vote of 2-0 (with Commissioner Waugh not voting because he did not attend the public session), the Commission approved the minutes, as amended, of the public session of August 4, 1983.

2. Advisory Opinion 10-1983

The Commission reviewed an August 23, 1983 one-page advisory opinion request signed by Victor R. McDonald, III, Director of Research, Senate Minority. Attached to Mr. McDonald's letter was a one-page draft of a letter which a member of the State Senate proposed to send. Mr. McDonald asked whether the expenditures involved in mailing the letter would be reportable.

Mr. McDonald attended the Commission meeting during the Commission's discussion of his advisory opinion request.

Commissioner Waugh asked if the Commission, procedurally, can respond to an advisory opinion request from a third party. He noted that the Commission in a prior instance had decided that it could not. Mr. Farrell said that there are three types of advisory opinion requests. The first type is the most common, namely a request from someone who is presenting

facts directly pertaining to himself or to the Organization of which he is a member. The second type is a request on behalf of an unidentified client. The third type is a request about the requestor's adversary which does present problems; it was a case of this third type to which the Commission decided it could not respond. Mr. Farrell said the request before the Commission falls within the definition of the second type and can be viewed as a request on behalf of legislators similarly situated. Mr. Farrell said that, in his judgment, Mr. McDonald's request was a proper request.

Mr. Weiner distributed a draft of an advisory opinion, two pages long and dated September 6, 1983 which concluded that expenses associated with the mailing were not reportable as campaign expenses. Staff Counsel Nagy expressed his concern that the Commission not be too strict in imposing reporting requirements on incumbents and thus possibly deter such activity and communication by incumbents with their constituents. Mr. Weiner suggested the Commission focus on two aspects of the letter, namely, its timing and the extent to which it is viewed as self-laudatory. Mr. Weiner also commented that for the Commission to set a specific date before an election after which an incumbent could not send a letter to his constituents without the letter being considered campaign-related would be arbitrary and too restrictive. He also noted that in his judgment, the proposed letter did not meet the "self-laudatory" standard brought out in the Dawes case.

Commissioner Waugh expressed his disagreement with the draft advisory opinion. He said, in his judgment, the Senator's letter crossed over the line of being political in the context of a campaign. If the letter were sent only to those who had inquired about the specific issue, then he would have no problem with a decision that the letter was not campaign-related.

Commissioner DeCotiis noted that the letter is political but that nearly all communications by incumbents are political and elected officials have a right to communicate with their constituents.

General Legal Counsel Farrell summarized a federal court case concerning the use of the franking privilege by a member of Congress. Among the points made by the court was that letters mailed to "please the electorate" are not necessarily political and campaign-related.

Commissioner Waugh stated that he felt that additional information was required to render a decision. Among the other facts would be an understanding of the context in which the writer was being criticized and by whom, retailers or his opponent. Also, whether the Senator's opponent in the 1983 general election is a member of the General Assembly because the Senator proposes to send copies of both the Senate and General Assembly roll calls on the issue discussed in the letter.

Mr. Weiner suggested the Commission has three options, namely: (1) decide that the Senator's draft letter is not reportable; (2) decide that the Senator's draft letter is reportable; or (3) decide that the Commission

does not have enough facts to reach a decision at this time. He urged the Commission to avoid re-writing the Senator's letter by specifically suggesting or deleting language.

On a motion by Commissioner Waugh, seconded by Commissioner DeCotiis and a vote of 3-0, the Commission decided it was unable to render an advisory opinion based upon the fact record presented.

3. Advisory Opinion 11-1983

The Commission reviewed two on-page letters from Helen Ransky, president, New Jersey Chapter, American Physical Therapy Association. The first letter was dated August 9, 1983 and the second letter was dated August 26, 1983. Mr. Weiner distributed a two-page draft advisory opinion dated September 6, 1983.

Ms. Ransky asked whether the New Jersey Chapter of the American Physical Therapy Association must report as a lobbying expenditure the cost of a small gift made by the Association to each legislator after the enactment of the Physical Therapist Licensing Act, L. 1983, c.296.

Commissioner DeCotiis asked whether an expenditure such as that made by the Physical Therapy Association must have been made before the enactment of the law to be considered a "direct communication" and therefore be reportable as a lobbying expense. Mr. Weiner responded in the positive and said that the issue before the Commission demonstrates one of the problems with the law.

On a motion by Commissioner Waugh, seconded by Commissioner DeCotiis and a vote of 3-0, the Commission decided that the expenditures in question were not reportable and approved the draft advisory opinion.

4. Fiscal Year 1985 Budget

Mr. Weiner reviewed the FY85 planning documents which had been previously distributed to the Commission. He said the first phase of the FY85 budget process is the submission of the planning documents in early September to the Office of Management and Budget. He noted that OMB and the Governor's office had given the Commission an FY85 target of \$732,000 as compared to the \$712,000 appropriation for FY84. Mr. Weiner said the Commission must justify any amount above \$732,000 and called the Commissioners' attention to the planning documents dealing with the following: Public Financing of the 1985 Gubernatorial Elections; Microfilming which would save filing space and floor rental costs; Postage; Overtime which reflects the Commission's specific overtime requirements for filing nights; and Data Processing. On the latter item, Mr. Weiner noted that the Commission has not yet received the report being prepared by the Consultant to OMB.

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Mr. Weiner said the second stage of the FY85 budget process is the submission of the detailed budget documents by October 1. Mr. Weiner distributed a budget report and worksheets detailing the prior year's spending and FY85 proposals. He suggested the Commission take action by approving final request levels at its next meeting on September 19th so that budget documents can be prepared and submitted by October 1, 1983.

The Commission concurred in Mr. Weiner's submitting the planning documents to OMB.

5. Executive Director's Report

Mr. Weiner reported that a regional lobbying conference will be held on Friday, October 28, 1983 in Newark with the Commission serving as host.

Mr. Weiner noted that the staff are conducting pre-election training seminars for candidates and treasurers on how to fill out the campaign finance reports. He said the staff are conducting seven such seminars in various counties along with a seminar being conducted at the Democratic State Committee Conference in Atlantic City on September 13, 1983, and another seminar being conducted at the request of a county political party committee. Mr. Weiner noted that he had written all 42 county political party committee chairmen, but only one, the Bergen County Democrats, had responded.

Mr. Weiner observed that Governor Kean's next two months' agenda, which was recently discussed in the newspapers, includes revision of the public financing law.

6. Executive Session

On a motion by Commissioner Waugh, seconded by Commissioner DeCotiis and a vote of 3-0, the Commission voted to go into executive session to review the executive session minutes of August 4, 1983 and to discuss enforcement actions and investigative matters, the results of which will be made public at their conclusion.

7. Condolences to Mrs. Sidney Goldmann

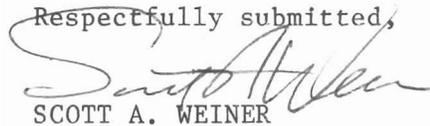
Commissioner Waugh moved that the Chairman, on behalf of the Commission express the Commission's condolences to Mrs. Sidney Goldmann on the death of Judge Goldmann and express the Commission's appreciation for his long and conscientious service to the Election Law Enforcement Commission. The Commission approved the motion and Mr. Weiner said he would take steps to have an appropriate document prepared for the Chairman to convey the Commission's sentiments to Mrs. Goldmann.

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8. Adjournment

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

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Scott A. Weiner", is written over a light-colored rectangular background.

SCOTT A. WEINER  
Executive Director