

NEW JERSEY ELECTION LAW ENFORCEMENT COMMISSION

PUBLIC SESSION MINUTES

DECEMBER 5, 1983

PRESENT

Andrew C. Axtell, Chairman
Alexander P. Waugh, Jr., Vice Chairman*
M. Robert DeCotiis, Member
Haydn Proctor, Member
Scott A. Weiner, Executive Director
Gregory E. Nagy, Staff Counsel
Edward J. Farrell, Counsel

ABSENT

William J. Schmidt, Asst. Exec. Dir.

* Commissioner Waugh arrived at the meeting at 10:15 A.M.

Chairman Axtell called the meeting to order and announced that pursuant to the Open Public Meetings Law, P.L. 1975, c.231, special notice of the meeting of the Commission had been filed with the Secretary of State's office, and distributed to the entire State House press corps.

The meeting convened at 10:05 a.m. at the offices of the Commission, 28 West State Street, Trenton, N. J.

1. Approval of Minutes of Public Sessions of Commission Meetings of October 5, 1983 and November 15, 1983

On a motion by Commissioner DeCotiis, seconded by Commissioner Proctor, and a vote of 3-0 (with Commissioner Waugh absent), the Commission approved the minutes of the public sessions of October 5, 1983 and November 15, 1983.

2. Discussion Concerning Readoption of Various Regulations in Accordance With Sunset Procedures

The Commission reviewed a memorandum dated November 29, 1983 from Staff Counsel Nagy concerning the pending expiration of three sub-chapters of the Commission's regulations. Subchapter 12 (Reporting of Expenditures; Testimonial Affairs), Subchapter 16 (Public Financing; Primary Election for the Office of Governor) and Subchapter 17 (Complaints and Other Proceedings) are scheduled to expire on March 15, 1984 pursuant to Executive Order 66. Executive Director Weiner stated that Subchapter 12 had been reviewed by Juana Schultz, Director of Compliance and Review, for the purpose of determining if any changes should be made. Although some technical changes may be made as part of a comprehensive review of regulations, Mr. Weiner recommended that the Subchapter be adopted in its present form pending final legislative action amending the Reporting Act. In regard to Subchapter 16, which concerns public financing of the primary election, Mr. Weiner again recommended that the Subchapter be readopted in its present form pending legislative action regarding the statute. He reported that he anticipates the State legislature will undertake changes in the public financing statutes early in the next legislative session. However, he recommended that the regulations be readopted in their present form until such time as the Legislature acts. In regard to Subchapter 17, Mr. Weiner recommended that this Subchapter be permitted to lapse. Mr. Nagy stated that the great majority of the regulations of that subchapter concern procedures for the conduct of hearing contested cases,

superceded by regulations enacted by the Office of Administrative Law. Specifically, Mr. Nagy referred to N.J.A.C. 1:1-1.1 et seq. Mr. Weiner also observed that the regulations are outdated in regard to the procedures for handling allegations of violations of the Act brought to the attention of the Commission by the public. Mr. Weiner stated that by the first Commission meeting in January, new regulations will be proposed for allegations received from the public.

On a motion by Commissioner DeCotiis, seconded by Commissioner Proctor and a vote of 3-0 (Commissioner Waugh being absent), the Commission voted to readopt Subchapters 12 and 16 and to permit Subchapter 17 to expire.

3. Executive Director's Report

Mr. Weiner reported that he has had a meeting with Al Fasola, Director of the Office of Management and Budget concerning problems the Commission has experienced with computer programming services provided to date. Mr. Fasola has assigned a member of his staff to provide technical assistance.

Mr. Weiner reported that he had a meeting recently with Senate President Carmen Orechio concerning the amendments to the Reporting Act. Senator Orechio indicated he would attempt to bring the amendments to a Senate floor vote before the end of the legislative session.

In regard to legislation enacted in the State Senate but pending in the Assembly which would regulate the use of leftover campaign funds, Mr. Weiner noted that over \$1 million was reported as unspent by candidates in the 1983 general election.

Commissioner Waugh arrived at this point in the meeting.

4. Advisory Opinion No. 19-1983

The Commission reviewed two letters from Senator Gerald Cardinale, the first of which was dated November 9, 1983, and the second was dated November 18, 1983. The Commission also reviewed a two-page draft advisory opinion.

Senator Cardinale asked whether the expense of newspaper advertisements that he had placed in newspapers that generally did not circulate within the legislative district in which he was seeking re-election should be reported by him as campaign expenditures. Commissioner DeCotiis questioned whether the cost of the advertising should be attributed to Senator Cardinale's campaign if it did not circulate within the Senator's legislative district. Commissioner Waugh stated that the Advisory Opinion should reflect that the expenditures were principally made not for the purpose of promoting Senator Cardinale's campaign, but in opposition to the campaign of other senators in other legislative districts. Mr. Waugh stated that since the advertisements did not expressly advocate a vote against any candidate in any election, the decision in Buckley v. Valeo compelled the Commission to find that they were not reportable as

independent expenditures. However, to the extent that the advertisements circulated within Senator Cardinale's legislative district, they could be viewed as aiding or promoting his candidacy in that district for re-election to the State Senate and therefore would be reportable only to the extent that they circulated in the district.

Mr. Weiner noted that the three newspapers carrying the ads in all probability had only de minimis circulation within Senator Cardinale's legislative district. Commissioner Waugh suggested that the staff discover what the circulation was, and if it was de minimis, the Advisory Opinion should hold that the expense is not reportable.

On a motion by Commissioner Waugh, seconded by Commissioner Proctor and a vote of 4-0, the Commission decided that Counsel Edward Farrell should prepare a draft Advisory Opinion in accordance with Commissioner Waugh's proposal. Commissioner Waugh further observed that he participated and voted in this matter because he does not believe it presented any conflict of interest, as was the case when he disqualified himself from consideration of allegations raised by Senator Cardinale and considered at the public meeting of the Commission of October 26, 1983.

5. Consideration of Reporting Requirements on the Keansburgh Bus Co. With Respect to Advertisements and Circulars Published During the 1983 General Election

The Commission reviewed a five-page memorandum from Leslie G. London, Election Finance Analyst, dated November 30, 1983. The memorandum concluded that the N.Y. Keansburgh-Long Branch Bus Co., Inc. did not have reporting responsibilities for advertisements and flyers it circulated praising Senator Gallagher's efforts to obtain additional buses for the Company. General Counsel Farrell reported that the circulars did not expressly advocate the election of Senator Gallagher or any other candidate, and therefore, under the Buckley v. Valeo opinion would appear not to be reportable. However, Mr. Farrell stated that the purchase or assignment of additional buses was not a public issue at the time of the circulation of the flyers and therefore it might be possible for the Commission to distinguish this case from other cases where the courts have held that discussion of public issues by independent groups cannot be subject to campaign reporting in the absence of express advocacy of an election candidate.

Commissioner Waugh stated that he might be tempted to follow Mr. Farrell's theory in an appropriate case. However, he felt this matter did not justify an attempt by the Commission to impose reporting requirements. Commissioner Proctor stated that he felt that the additions of buses was not a genuine public issue, and therefore, that the rationale of Buckley v. Valeo would not apply. However, he agreed that this case did not merit further action.

On a motion by Commissioner Waugh, seconded by Commissioner DeCotiis and a vote of 4-0, the Commission decided to take no further action.

6. Advisory Opinion No. 20-1983

The Commission reviewed a November 22, 1983, one-page letter signed by Michael J. Volk, a candidate for State Assembly in the 1983 general election. Mr. Volk asked what uses he might make of campaign funds remaining in his campaign account at the termination of his candidacy. The Commission also reviewed a two-page draft advisory opinion prepared by Staff Counsel Nagy. The substance of the opinion was that the Commission had no jurisdiction to advise on the permissible uses of campaign funds remaining after the termination of a candidacy because the Reporting Act does not address this issue.

Mr. Weiner stated that the Advisory Opinion should specifically indicate that the use of leftover campaign funds for a party for campaign workers would not be considered personal use and therefore would not be referred to the Attorney General.

On a motion by Commissioner Proctor, seconded by Commissioner Waugh and a vote of 4-0, the Commission decided to approve the draft Advisory Opinion, as amended by Mr. Weiner's statement.

7. Consideration of Commission Policies Concerning Conflicts of Interest

Mr. Weiner stated that at the time Senator Cardinale appeared before the Commission, he requested that the members consider the adoption of a conflict of interest policy which would address lobbying before the Legislature by Commission members during an election period. Specifically, the Senator feels that members of the Commission should not appear before legislative bodies or actively lobby members of the Legislature during the course of an election.

Commissioner Waugh stated that he generally would favor establishment of internal policies on political contributions by members of the Commission, and on limitations on appearance before the Legislature on issues that might come before the Commission. He suggested that General Counsel Farrell draft a policy for the next Commission meeting. Chairman Axtell suggested that the policy address contributions not only to State candidates, but also federal candidates.

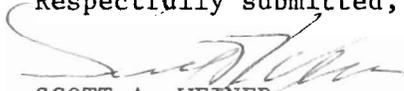
8. Executive Session

On a motion by Commissioner Waugh, seconded by Commissioner DeCotiis and a vote of 4-0, the Commission went into Executive Session to discuss enforcement actions and investigative matters, the results of which will be made public at their conclusion.

9. Adjournment

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

Respectfully submitted,



SCOTT A. WEINER
Executive Director