

NEW JERSEY ELECTION LAW ENFORCEMENT COMMISSION

PUBLIC SESSION MINUTES

JUNE 25, 1984

PRESENT:

Andrew C. Axtell, Chairman
Alexander P. Waugh, Jr., Vice Chairman*
Haydn Proctor, Member
William R. Schmidt, Acting Executive Director
Gregory E. Nagy, Staff Counsel
Juana M. Schultz, Director of Compliance and Review**
Edward J. Farrell, General Legal Counsel

* Commissioner Waugh arrived at the meeting at approximately 11:15 a.m.

** Ms. Schultz attended only the public session.

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 10:25 a.m. at the offices of the Commission, 28 West State Street, Trenton, New Jersey.

1. Approval of Minutes of Public Session of Commission Meeting of June 18, 1984

On a motion by Commissioner Proctor, seconded by Chairman Axtell and a vote of 2-0, the Commission approved the minutes of the public session of June 18, 1984.

2. Advisory Opinion Request No. 14-1984 from Arthur L. Raynes

The Commission reviewed a two-page June 18, 1984, advisory opinion from Arthur L. Raynes, Esquire on behalf of Friends of Steve Wiley. Mr. Raynes asked whether his voluntary personal service to the Friends of Steve Wiley had to be considered as an in-kind contribution and should the paid personal services of Mr. Raynes' secretary be reported as an in-kind contribution of the partnership or of one or more of the partners of the law firm.

General Legal Counsel Farrell provided background on how the Commission in the past treated voluntary personal service by attorneys and accountants and by aides of elected officials. With respect to attorneys and accountants, Mr. Farrell noted that all examples in the past dealt with partners and not associates of a firm. Furthermore, he noted that in the past the time of the secretary of a partner or a practitioner was treated as an in-kind contribution of the practitioner. He noted that the Commission in the past had ignored the value of the partner's time in voluntarily participating in a campaign and had ignored the specifics of how the secretary was paid. He further explained that aides of elected officials had stressed that they worked evenings and weekends as well as during the day and thus their time spent on behalf of election activity for their employers was treated as voluntary personal service.

After extensive discussion about the way in which an associate's time would be treated, the Commission agreed to authorize the release of the advisory opinion with an amendment stressing that the advisory opinion applied to the facts set forth in Mr. Rayne's advisory opinion request. Concerning the issue of whether the partnership as a business entity or one or more of the partners should be considered the contributor of the value of the secretary's time, the Commission reviewed what was done in the 1981 public-financed gubernatorial election, namely that no partnerships were treated as contributors but rather any contribution from a partnership had to be attributed to one or more of the partners and accompanied by a signature or signatures of the partners making the contribution. The Commission decided that in the set of the facts before it, the in-kind contribution of the value of the secretary's time would be attributable to one or more partners and not to the partnership.

On a motion by Commissioner Proctor, seconded by Chairman Axtell and a vote of 2-0, the Commission authorized the release of the draft advisory opinion, as amended.

3. Advisory Opinion Request 15-1984 from Richard B. McGlynn

The Commission reviewed a three-page June 21, 1984, advisory opinion request from Richard B. McGlynn, Esquire on behalf of "New Jersey Citizens for Better Schools". In his request, Mr. McGlynn asked what portion, if any, of the expenditures by the organization for producing and broadcasting of TV commercials in support of the organization's purpose and in which Governor Kean will appear would be attributable to the Governor's reelection campaign, in the event he decides to stand for reelection. Mr. McGlynn stated that the TV commercials will begin to air shortly after July, 1984, and will conclude no later than the third week of September, 1984.

Staff Counsel Nagy and General Legal Counsel Farrell briefed the Commissioners on previous advisory opinions which had some bearing on the issues raised by Mr. McGlynn. In 1981, there was Advisory Opinion No. 33-1981 addressed to both the Republican State Committee and the Democratic State Committee in dealing with the bases on which the expenditures by the state political party committees would be allocable to their party's gubernatorial candidates in the general election. The second opinion was Advisory Opinion No. 12-1983 in which the Commission decided that expenditures by the Republican State Committee in which the Governor would appear would not be allocable to a future reelection campaign by Governor Kean, chiefly on the basis that the Governor is the head of the Republican party and the election in 1983 was two years before the next gubernatorial election. The issue before the Commission with Advisory Opinion request 15-1984 is whether the proposed TV advertisements using Governor Kean to be aired in the Summer of 1984 and to be paid for by an organization which is not a political party committee would warrant allocating some or all of the costs to the Governor's reelection campaign, should he decide to stand for reelection.

The Commission focussed on the time frame, namely that the proposed advertisements to be aired by the "New Jersey Citizens for Better Schools" will be aired in the Summer and early Fall of 1984, approximately five to six months before calendar-year 1985 begins. On that basis, Commissioners Proctor and Axtell agreed that the expenditures by the "New Jersey Citizens for Better

Schools" would not be allocable to Governor Kean. Commissioners Proctor and Axtell decided to not reach a final decision pending the participation in the discussion by Commissioner Waugh.

4. Acting Executive Director's Report

Acting Executive Director Schmidt reported that Ms. Schultz and he had met with both computer vendors which had submitted proposals. Furthermore, they will be meeting with a representative of the firm of Information Spectrum on Tuesday, June 25th to review that firm's proposals concerning software development using Wang equipment. These meetings have also been attended by Gerald Doran from the Office of Management and Budget. Mr. Schmidt said he anticipated that amendments to the proposals will be submitted during the week and that Ms. Schultz and he, with the assistance of Mr. Doran, will be making a decision on which of the two basic proposals to accept. He said the money for the new computer system is in the 1985 Appropriations Act. Assuming the Legislature passes the appropriations bill and the Governor signs it, Mr. Schmidt said he would be in a position to execute the agreement during the first week in July. He noted the urgency to act quickly because of the need to have the gubernatorial public financing computer program designed and tested by late November, 1984, and the need to have the computer program for the campaign finance disclosure program up and tested by the end of the year.

Mr. Schmidt reported that the 20 day post-election reports for the 1984 primary election were due today. He anticipated the reports would be filed and ready for public access on Tuesday, June 26 at noon.

Mr. Schmidt advised the Commission that quarterly reporting instructions and forms were being mailed to continuing political committees later in the week; the second quarterly report for calendar-year 1984 is due on July 15 and the designation of treasurer and depository is due July 1.

Mr. Schmidt reported that Senate Bill No. 1523, sponsored by Senate President Carmen Orechio which would amend the public financing program, had not been posted for a vote in the State Senate. Because of that, he said that he did not expect the legislation to be passed by the Legislature prior to its Summer recess which begins the first week in July. He noted that former Executive Director Weiner had urged the Commission to take all appropriate steps should the Legislature fail to enact the amendments to the public financing program before it recessed for the Summer. He said that at the Commission's next meeting on July 16 he would have recommendations for possible steps for the Commission to take on this matter.

5. Proposed Regulations and Staff Comments

Prior to the discussion of the proposed regulations, the following memoranda prepared by Staff Counsel Nagy had been distributed to the Commissioners:

- Seven-page June 8, 1984, memorandum, summarizing comments from and proposed responses to the Monsanto Citizenship Fund and to Kraft and Hughes, attorneys-at-law, along with staff comments;

- Two-page June 8, 1984, memorandum, summarizing comments received from Assemblyman Chuck Hardwick and the proposed responses;
- One-page June 11, 1984, memorandum correcting the proposed response to Assemblyman Chuck Hardwick's fourth comment; and
- Six-page June 21, 1984, memorandum summarizing comments and proposed responses to the comments made at the June 12, 1984, public hearing.

The discussion followed the order suggested by Acting Executive Director Schmidt in a list distributed to the Commissioners at the meeting.

Assemblyman Hardwick's Comment No. 1:

The Commission concurred in the staff response to Assemblyman Hardwick's first comment concerning the \$2,500 threshold being too low and municipal political party committees being too small to be required to file quarterly reports. The response notes that both the \$2,500 threshold and the requirement that municipal political party committees file quarterly reports are legislatively mandated. In addition, the response notes that the prior statute required all municipal political party committees to file annual reports plus campaign reports for elections in which they participated. With the quarterly reporting system, such committees will only file quarterly reports unless they are designated as the campaign committee by one or more candidates; if that is the case, then such committees will file campaign reports as well.

Commissioner Waugh arrived at the meeting at this time.

Assemblyman Hardwick's Comment No. 2:

The Commission decided to add Mailgrams as an example of a way to meet the 48-hour notice provision; the addition of Mailgrams would be in the response but not in the regulations. This is in response to Assemblyman Hardwick's concern that the 48-hour notice provision requires the use of a personal messenger at a cost of \$50 to \$100.

Assemblyman Hardwick's Comment No. 3:

The Commission concurred in the response to the effect that it is a statutory mandate that municipal political party committees are included in the definition of continuing political committees.

Assemblyman Hardwick's Comment No. 4:

The Commission concurred in the staff response to the effect that a continuing political committee in estimating its expenditures for a forthcoming calendar-year can base its estimate on a projected budget or base its estimate on the committee's actual experience in one or more prior years. Assemblyman Hardwick had found the classification of continuing political committees confusing and had asked how a continuing political committee would know at the beginning of a calendar-year what its expenditures would be for election-related activities.

Assemblyman Hardwick's Comment No. 5:

The Commission decided to increase from five to ten the number of days within which the Commission must be notified after the death, resignation, or removal of a treasurer. Assemblyman Hardwick had expressed his belief that the requirement that the Commission be notified within five days is onerous.

Assemblyman Hardwick's Comment No. 6:

The Commission concurred in the staff response that the dollar amount for the 48-hour notice is required by statute; also the Commission had recommended \$500 while the Legislature set the figure at \$250. **This response is to Assemblyman Hardwick's comment that the 48-hour notice requirement should be limited to contributions exceeding \$1,000.**

Assemblyman Hardwick's Comment No. 7:

The Commission concurred in the staff response that the current language permitting public solicitation reporting for ". . . items having some tangible value as merchandise . . ." is sufficiently clear to permit the cash purchase under \$20 for food or beverage at a political event.

Assemblyman Hardwick's Comment No. 8:

The Commission concurred in the staff response to the effect that continuing political committees do not have to allocate the cost of fund-raising events to candidates in the committee's quarterly report unless the fund-raising event is held specifically for the benefit of one or more candidates. Furthermore, only political committees have to allocate fund raising expenses to candidates and that has been the case under existing policy.

Lanzara Comment No. 1:

The Commission concurred in the staff recommendation to permit political party committees and certain political clubs to file a "short form" or sworn statement to the effect that such a committee is raising and spending no money during a calendar year or is raising no more than \$1,000 during a calendar year. The staff also proposed that such a sworn statement be filed both on January 15 for the forthcoming calendar year and again on July 15 to reaffirm the January 15 certification. The Commission concurred in the proposal that any such committee filing a "short form" or sworn statement also be required to file the equivalent of a Form C-1 identifying any contributor of more than \$100 in the aggregate, with such a filing occurring on the appropriate filing date. **In addition, any such committee having filed a sworn statement and finding itself exceeding \$1,000 in receipts and expenditures would then have to file a quarterly report on the next quarterly report filing date and the report would have to go back and capture all information from January 1 of the calendar year involved.** This proposal was in response, in part, to Mr. Lanzara's concern that municipal political party committees should not be obligated to file quarterly reports unless their annual election-related expenditures exceeded \$10,000.

Lanzara Comment No. 2:

The Commission concurred in the staff response to the effect that the quarterly report filing dates are specifically established in the Act and that the filing entities have a reasonably substantial period of time to complete and file their reports, namely 15 days. This was in response to Mr. Lanzara's concern that the quarterly report filing dates are inconvenient for a variety of reasons.

Lanzara Comment No. 3:

The Commission concurred in the proposed staff response and recommendation to the effect of allowing political party committees and certain political clubs to file a "sworn statement" or "short form" when their expenditures do not exceed \$1,000. This is the same proposal as set forth in the response to Lanzara Comment No. 1 and is in response to Mr. Lanzara's concern that small political party committees, especially at the municipal level, should be given the option of filing annual reports rather than quarterly reports if they so desire.

Lanzara Comment No. 6:

The Commission concurred in the proposed response to the effect that the \$250 threshold for the 48-hour notice is expressly established by amendment to the Act. This is response to Mr. Lanzara's suggestion that the contribution be raised in excess of \$250 to \$1,000.

Lanzara Comment No. 7:

The Commission concurred in the staff response to the effect that the requirement that contributions in excess of \$100 be identified is established by statute and furthermore the Commission had recommended the amount to be in excess of \$200. This is in response to Mr. Lanzara's suggestion that the threshold for reporting a substantial contributor on a Form C-1 be raised from more than \$100 to more than \$200.

Lanzara Comment No. 8:

The Commission concurred in the staff response to the effect that the sale of incidental items, such as hot dogs at a picnic, would not require the committee to obtain the signature of the purchaser because the threshold for "public solicitation" sales had been increased from \$10 to \$20 and the purchase of incidental items, such as hot dogs at a picnic, falls within the definition of "public solicitation". This response is to Mr. Lanzara's concern that the sale by a political party committee or political club of incidental items should be considered within the definition of "public solicitation" and thus be an exception to the prohibition against receiving currency contributions except when the contributor or payee provides his or her signature.

Lanzara Comment No. 9:

The Commission concurred in the staff response that the regulations do not require continuing political committees to allocate fund-raising expenditures to candidates with the exception of fund-raising events held specifically for one or more candidates. In most cases, fund-raising expenses for continuing political committees would be reported as an operating expense and would not be allocated to candidates. This is response to Mr. Lanzara comment to the effect that the cost of conducting fund-raising activities by a political party committee should not have to be allocated to candidates.

Staff Comment No. 6:

The Commission concurred in the staff recommendation that a continuing political committee should be compelled by regulation to establish a campaign depository separate from its organizational depository when the continuing political committee is designated as the principal campaign depository by one or more candidates. The staff recommendation was in response to an issue raised by the staff about whether a continuing political committee that is designated as a candidate's sole campaign depository is required to establish a separate campaign account for that candidate. Under the proposed regulations as published, a continuing political committee would not be so required.

Staff Comment No. 7:

This comment concerned the definition of "public solicitation" and whether that definition permits a continuing political committee or any political committee to accept up to \$20 in cash for items having tangible value without obtaining the name or signature of the purchaser. This issue was also raised by Assemblyman Hardwick and by Mr. Lanzara.

Staff Comment No. 8:

The Commission concurred in the staff recommendation that ticket sales of under \$20 for a committee-sponsored event, such as a picnic, be placed within the definition of "public solicitation" so long as no contributor purchases more than \$20 in tickets in the aggregate per event.

Lanzara Comments 4 and 5:

After extensive discussion, the Commission decided to permit continuing political committees to make communications concerning candidates to bona fide members of the committee without requiring those organizations to allocate such expenditures to candidates. The Commission stressed that a member must be someone who has taken an affirmative step to join the club and should not include, for example, all registered members of a political party in a community. This response was to two comments raised by Mr. Lanzara in which he suggested that political clubs should not be required to allocate costs to candidates of printing and mailing newsletters when the newsletters are sent solely to the members of the club.

Muschal Comment No. 1 and Kraft and Hughes Comment No. 1:

The Commission held an extensive discussion on whether an entity that confines its election activity to only making contributions should be required to file quarterly reports under any circumstances. These entities (i.e. a "pure contributor") are businesses and unions that use their general treasury to make political contributions but do not undertake any fund raising or other election-related activity. If such an entity makes contributions of more than \$2,500, it would meet the definition of a continuing political committee and, under the proposed regulations, as published, would be required to file a Statement of Organization (Form GPC-1) and, if it contributes more than \$10,000 to candidates, it would be required to file quarterly reports (Form R-3) as a "peripheral continuing political committee". The Commission decided to retain the requirement in the proposed regulations that such "pure contributors" file quarterly reports (Form R-3) when such contributors make contributions of more than \$10,000 in the aggregate to candidates or political committees. The Commission decided not to require such entities to file Statements of Organization (GPC-1) until they exceed the \$10,000 threshold rather than the currently proposed \$2,500 threshold. It was noted during the discussion that the proposed computer system, if sufficiently manned with data entry operators, should be able to produce lists of contributors before an election. Now the Commission produces such lists two to four months after an election. If the computer system works as expected, this proposed regulation may be unnecessary.

Monsanto Comments 2 and 3:

The Commission decided to accept a staff recommendation that proposed N.J.A.C.19:25-5.1 be liberalized to permit national committees to designate out-of-state depositories when such committees do not file as a continuing political committee but rather file as a political committee on a campaign cycle. This recommendation was in response to Monsanto Comment No. 2 which asked whether a national political action committee that is not filing as a continuing political committee but files as a political committee can designate an out-of-state depository. Under the proposed regulations, as published, the national PAC could not designate an out-of-state depository. In addition, Monsanto Comment No. 3 asked whether a national PAC that voluntarily elects to file as a continuing political committee can designate an out-of-state depository to which the response is "yes".

Monsanto Comments No. 1, 4A, 4B and 5 and Staff Comments 1, 2, 3, 4, 5 and 9:

All of these comments raised questions about the filing requirements for "national PACS", i.e. political committees organized at the national level and making contributions to both New Jersey candidates and non-New Jersey local and federal candidates. After extensive discussion, the Commission decided to establish a fourth category of "continuing political committees" for national PACs. The definition for this fourth category will be political committees which register and file reports with the Federal Election Commission. Under this proposal, if such PACs register and file reports with the Federal Election Commission and if they expend more than \$2,500 in New Jersey during a calendar year, their filing requirements with New Jersey will be on a quarterly basis. Their reports will include a report of all contributions to New Jersey candidates or expenditures on behalf of New Jersey candidates along with the identification of all New Jersey contributors contributing in excess of \$100.

The Commission decided to defer taking formal action on the proposed regulations and the responses to comments made by the public until its meeting on July 16, 1984. In the interim, Staff Counsel Nagy will prepare revisions to the proposed regulations to incorporate the changes agreed to at the Commission's June 25th meeting along with revised responses to the comments made by the public concerning the proposed regulations.

On a motion by Commissioner Waugh, seconded by Commissioner Proctor and a vote of 3-0, the Commission authorized the staff to immediately implement the policy of a "short form" for political party committees and certain political clubs which either raise and spend no money or raise and spend \$1,000 or less, with such short forms to be filed on January 15 and July 15 of each calendar year.

6. Commission Meeting Schedule

Commissioner Proctor invited the Commissioners to hold their first August meeting in Asbury Park to be held on Tuesday, August 7 instead of the regularly scheduled Monday, August 6. The Commission agreed to change its meeting schedule accordingly.

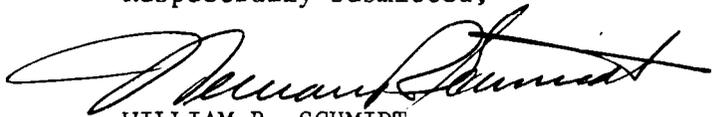
7. Resolution to Enter Executive Session

On a motion by Commissioner Waugh, seconded by Commissioner Proctor and a vote of 3-0, the Commission decided to go into executive session to discuss investigative, enforcement and personnel matters, the results of which will be made public at their conclusion.

8. Adjournment

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

Respectfully submitted,



WILLIAM R. SCHMIDT
Acting Executive Director