

NEW JERSEY ELECTION LAW ENFORCEMENT COMMISSION

PUBLIC SESSION MINUTES

JULY 17, 1985

PRESENT:

Andrew C. Axtell, Chairman
Alexander P. Waugh, Jr., Vice Chairman
Haydn Proctor, Member
Owen V. McNany, Member
Frederick M. Herrmann, Executive Director *
Jeffrey M. Brindle, Deputy Director
Edward J. Farrell, General Counsel
Gregory E. Nagy, Staff Counsel
Peter D. Nichols, Director of Public Financing

* Participated in the meeting via telephone

Chairman Axtell called the meeting to order and announced that pursuant to the "Open Public Meetings Act," P.L. 1974, c. 231, annual notice of the meeting of the Commission has been filed with the Secretary of State's office and distributed to the entire State House press corps.

The meeting convened at 10:00 a.m. at the office of the Commission, 28 West State Street, Trenton, New Jersey.

1. Approval of Public Session Minutes of July 10, 1985

On a motion by Commissioner Proctor, seconded by Commissioner McNany and a vote of 4-0, the Commission approved the public session minutes of July 10, 1985.

Advisory Opinion 10-1985

Present at the discussion of AO 10-1985 were: Edward McCool, Common Cause; Joseph Reardan, Common Cause; Frank Robinson; Assembly State Government Committee; William Palatucci, Friends of Governor Tom Kean; and Robert Schwaneberg, Star Ledger.

Chairman Axtell called upon Mr. Edward McCool of Common Cause for his comments. Mr. Axtell noted that Mr. McCool had indicated that he was interested in offering suggestions as to how to resolve the matter in question.

Mr. McCool began his remarks by suggesting that the Commission develop a mailing list for the purpose of notifying the public of its scheduled meetings. He said that legislative committees do this, and that the method is very effective. He said that he would have liked to have participated in the Commission's earlier discussions of this matter, but was unaware that the discussions were taking place.

At the suggestion of Vice Chairman Waugh, the Commission instructed staff to develop a mailing list for use at the next meeting. Executive

Director Herrmann asked if the list should include the State House press corps and the Commission answered in the affirmative.

Mr. McCool continued his remarks by stating that Common Cause was concerned that this issue was being raised in the context of an election campaign. He stated that it was the position of Common Cause that the Commission uphold its previous advisory opinion and postpone serious consideration of this matter until after election day. Mr. McCool set forth, however, what he termed a compromise proposal. He said that, in the event the Commission sees fit to modify its Advisory Opinion at this time, this proposal might be helpful.

Essentially, Mr. McCool said that the Commission should allow legislative and local candidates to use a ballot format to mention the name of their party's gubernatorial candidate. Mr. McCool stated that this reference to the party standard bearer would be applicable only to the printed media. He said it obviously would not apply to radio advertisements. Mr. McCool stated that anything more than the ballot format would be allocable on the basis of 25 percent or more.

Mr. McCool stated that Common Cause supported the expenditure limit and the use of the allocation rule as a means to enforce it. He said that these limits cause the public's money to bear a high percentage of campaign costs.

At this point, Vice Chairman Waugh asked Mr. Cool what he thought of Mr. Dowd's concern that Democratic legislators might identify themselves with the Republican Governor, whereas members of the Governor's own party could not. He asked him whether he felt this situation, if it occurs, should be allocated against the Governor's campaign.

Mr. McCool responded by stating that if this situation ever did occur, it would be absurd to cause expenditures of this nature to be allocated against the Governor's campaign.

Commissioner McNany asked Mr. McCool if his proposal would allow local and legislative candidates to mention their party's gubernatorial candidates in newspaper advertisements, as long as the reference was made in the context of a ballot reproduction.

Mr. McCool replied in the affirmative, stating that non-chargeable references would be restricted to the context of the ballot.

Chairman Axtell asked Mr. McCool his thoughts on reducing the allocation floor from 25 percent to a lower percentage level.

Mr. McCool indicated that the 25 percent level is high, but that it causes candidates to think twice about circumventing the expenditure limit.

At this juncture, Chairman Axtell asked if any member of the audience had additional comments to make. Hearing none, the Chairman ended the public discussion of the matter.

The Commission took up the matter of a memorandum prepared by General Counsel Edward Farrell, which delineated which campaign activities should be allocated against the expenditure limit of gubernatorial campaigns and which should not. Basically, the memorandum permits local and legislative candidates to use photographs of themselves with their party's gubernatorial candidate in any visual format, provided the photograph was taken at a public event where the gubernatorial candidate appears as a public official. The photograph would also have had to be taken prior to the primary election and not in a campaign setting.

The memorandum also permits the gubernatorial candidate's name to be mentioned in the context of a speech or bonafide press release. All other references to the gubernatorial candidate would have to be allocated against the expenditure limit.

Vice Chairman Waugh moved that the Commission reaffirm Advisory Opinion 10-1981, with the modifications suggested on the Farrell memorandum. Chairman Axtell stated that he could not vote for the motion if it did not include a provision to lower the 25 percent allocation floor. He proposed that the minimum allocation should be 15 percent. He said that he believed this should be so because campaign costs have risen substantially during the last four years.

Vice Chairman Waugh amended his motion to include the lowering of the allocation base. The motion was seconded by Commissioner Proctor. On a vote of 4-0, the Commission reaffirmed its earlier Advisory Opinion with the modifications set forth above.

3. Request for Advisory Opinion 12-1985

General Counsel Farrell reviewed an advisory opinion request dated July 8, 1985 from Tina C. Mayro, Esq., concerning the Brigantine Women's Republican Club. The inquirer asked whether the organization would be a political committee if it raises or expends \$1,000 or more for political purposes annually. Mr. Farrell stated that the statutory definition of "political committee" contained a threshold of \$1,000 or more in an election, not on an annual basis.

Ms. Mayro also asked whether the organization might be a "continuing political committee." Mr. Farrell stated that this answer would depend on whether or not it could be considered the political party committee in that municipality. He said that the letter does not contain enough information to make a judgment on that question, and that he would work up a list of questions that he would submit to Ms. Mayro by letter. Depending on the answers to those questions, Mr. Farrell said he would make a recommendation whether this organization should be considered as the political party committee in that municipality.

On a motion by Vice Chairman Waugh, seconded by Commissioner Proctor and a vote of 4-0, the Commission authorized Mr. Farrell to submit a list of

questions to this organization for the purpose of determining whether or not it should be considered as the political party committee in the municipality.

4. Executive Director's Report

While Executive Director Herrmann participated in the meeting via telephone hookup from a conference in Maine, Deputy Director Jeffrey M. Brindle gave the Executive Director's report.

Deputy Director Brindle stated that as he emphasized in his remarks to the Commission in April regarding the reorganization of the Review and Investigations sections, the new employee training program has been implemented. This training program, he said, was devised by Cheryl Clarke and John Hulick, and involves a two-week intensive course for Report Examiners who are new hirees. He said that the program is a first of its kind for the Election Law Enforcement Commission and it represents a professionalization of the Agency.

Deputy Director Brindle next reported that a public financing program questionnaire was developed by Director of Public Financing Peter D. Nichols, and that the questionnaire would be sent to all gubernatorial primary candidates. He said that the questionnaire will help the Commission to evaluate the program in order to make recommendations for its future improvement.

Deputy Director Brindle reported that he has spoken to Larry O'Reilley of the Governor's office about the Governor's signing of the supplemental appropriations bill. He said that Mr. O'Reilley stated that the Governor may sign it on Friday, July 19, 1985, but certainly no sooner than that.

5. Executive Session

On a motion by Commissioner Proctor, seconded by Chairman Waugh and a vote of 4-0, the Commission voted to go into executive session.

6. Adjournment

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

Respectfully submitted,


JEFFREY M. BRINDLE
Deputy Director