

NEW JERSEY ELECTION LAW ENFORCEMENT COMMISSION

PUBLIC SESSION MINUTES

MARCH 16, 1987

Present

Andrew C. Axtell, Chairman  
Alexander P. Waugh, Jr., Vice Chairman  
Haydn Proctor, Member  
Owen V. McNany III, Member  
Frederick M. Herrmann, Ph.D., Executive Director  
Edward J. Farrell, General Counsel  
Jeffrey M. Brindle, Deputy Director  
Gregory E. Nagy, Staff Counsel  
Nedda Gold Massar, Assistant Staff Counsel

Chairman Axtell called the meeting to order and announced that pursuant to the "Open Public Meetings Act," 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 10:02 a.m. at the New Jersey Election Law Enforcement Commission office, 28 West State Street, Trenton, New Jersey.

1. Approval of Public Session Minutes of February 18, 1987

Vice Chairman Waugh said that in item no. 11 (Identification of Members of the Public) in the public session minutes of February 18, 1987 it was he, not Chairman Axtell, who had commented on the suggestion concerning identification of the public. Therefore the second sentence should state: "General Counsel Farrell agreed with Vice Chairman Waugh who responded that it would be inappropriate to require members of the public to identify themselves."

On a motion by Commissioner Proctor, seconded by Vice Chairman Waugh and a vote of 4-0, the Commission approved the public session minutes of February 18, 1987 as amended.

2. Executive Directors' Report

A. Federal Elections Commission

Executive Director Herrmann reported that Charles Steele, General Counsel to the Federal Elections Commission, has recently resigned. He also reported that the Commission expects to activate the remote access hookup with the Federal Elections Commission during the summer of 1987. As a result of the remote access hookup, data on federal candidates should be available in Trenton and there will be no need to go to Washington, D.C. to access this information.

### ELEC Bulletin

Executive Director Herrmann reported that Volume 1, No. 2 of the ELEC Bulletin is ready to be mailed to more than two thousand recipients. This issue introduces the new ELEC logo and provides information on newly-adopted regulations. Also included are 1987 election dates along with articles of interest to the public.

### C. Annual Report

Executive Director Herrmann explained that the annual Commission report to the Legislature, required by statute to be presented by May 1 of every year, is ready in draft form. He asked the Commissioners to review the draft and submit their comments and corrections.

Executive Director Herrmann pointed to the highlights of the annual report of 1986. The biographical information about the Commissioners has been updated and the report contains messages from Chairman Axtell and Executive Director Herrmann. The 1986 Annual Report explains the newly-implemented system for assistance to county and municipal clerks which aids in their distribution of ELEC materials.

In recording the accomplishments of the Commission for 1986, the report explains that 18 information sessions were presented by staff in 1986, 16,000 reports were processed, the ELEC bulletin was created and mailed to 2,000 recipients, a computer access guidebook was prepared, and a record high of 628 complaints were initiated by the legal section.

Vice Chairman Waugh asked Staff Counsel Nagy what percentage of the complaints resulted in referrals to the Office of Administrative Law (OAL) in the Department of State. Staff Counsel Nagy responded that less than one percent of the cases were litigated, resulting in approximately a dozen trials per year. Staff Counsel Nagy indicated that few hearing requests are received anymore. General Counsel Farrell added that those cases which are litigated usually involve legal issues or a mixture of factual and legal issues.

In the section of the Annual Report devoted to legislative issues and suggested legislation, Executive Director Herrmann explained that the public financing bill, which is currently in the Assembly Appropriations Committee, is substantially similar in most aspects to that proposed by the Commission. He indicated that this bill, as amended by the Assembly State Government Committee, represents an improvement over current law.

Three inter-related bills (A-2970, A-2971 and S-840/1866) are currently waiting to be scheduled for a third reading in the Assembly. These bills would extend the jurisdiction of the Commission, simplify reporting requirements, and provide more response time for advisory opinions. These changes were all advocated in the 1984 and 1985 Annual Reports. In addition to the legislation suggested in the 1985 Annual Report, the 1986 Annual Report will suggest that legislation be adopted to adjust penalty provisions to reflect inflation and deflation.

The 1986 annual report section devoted to the Review and Investigation Section will show the greatly increased numbers of investigations completed. In 1986, 128 investigative matters were brought to completion. That number

represents a 94 percent increase over the number of investigations completed in 1984. A training manual for new ELEC staff was also created during 1986.

The 1986 annual report will also document the publication by the Commission in September, 1986 of the report entitled, "New Jersey Public Financing, 1985 Gubernatorial Elections." Executive Director Herrmann reported that the Commission has received many requests for this 46-page document. Chairman Axtell inquired regarding the source of these requests. Executive Director Herrmann responded that requests have come from individuals in New Jersey and in other states.

Vice Chairman Waugh commented that when he attended discussions at the recent COGEL conference, he learned that many public financing programs have New Jersey elements and he noted the New Jersey public financing system appears to be the most comprehensive.

Executive Director Herrmann requested that the Commissioners return their comments on the Annual Report draft by April 1, 1987.

#### D. Statewide Awards Program

Executive Director Herrmann explained the suggestion of the Commission personnel officer that awards for length of service be presented to staff members once a year in a more personal fashion. Chairman Axtell suggested that this could be accomplished at the annual Christmas luncheon held for the Commission staff.

#### 3. Commission Meeting

The next Commission meeting will be held as scheduled on Tuesday, April 21, 1987.

#### 4. Public Disclosure Policies

Staff Counsel Nagy explained the need to establish a standard practice for the public release of executive session minutes as they pertain to investigations and final decision actions of the Commission. Staff Counsel Nagy recommended that any new policy regarding release of executive session minutes be implemented prospectively because of the administrative difficulties involved in reviewing and editing 14 years of executive session minutes. However, he explained that if any request is made for executive session minutes from a prior meeting, the staff will bring the request to the Commission's attention and the Commission can review any such request on an ad hoc basis.

Staff Counsel Nagy suggested that, in the future, executive session minutes be released after they have been approved by the Commission and after the authorized complaint or final decision actions have been undertaken.

General Counsel Farrell responded that this was a sound way to deal with the executive session minutes. He indicated his concern that investigative materials inappropriate for release should always be excluded.

Chairman Axtell inquired whether or not some final decisions can be withheld pursuant to this policy. Staff Counsel Nagy responded that in any

investigation or final decision recommendation in which the Commission deemed it appropriate, the Commission could provide an extension of the release date of the executive session minutes on a case-by-case basis.

General Counsel Farrell repeated his concern that the unfounded and frivolous allegations which occasionally form the basis of investigative matters should not be made public. He indicated his belief that the usual executive session minutes would be the appropriate way to provide public release of such cases. Staff Counsel Nagy suggested a resolution by the Commissioners to adopt the policy regarding the release of executive session minutes.

On a motion by Commissioner Proctor, seconded by Vice Chairman Waugh and a vote of 4-0, the Commission adopted the suggested policy regarding release of executive session minutes on a prospective basis.

#### 5. Response to Common Cause

Chairman Axtell asked Executive Director Herrmann to read the Commission's draft letter of response to Mr. Edward McCool, Executive Director, New Jersey Common Cause; see attached.

In the letter, Mr. McCool was assured that the Commission shares his commitment and concern that campaign information be effectively disseminated to the public. The letter stresses the Commission's statutory mandate to enforce reporting requirements and noted the agency's increased enforcement activity in 1986 attributable to its efforts to improve its filing, reviewing, and investigating functions.

The letter describes the complexity of the installation of the Commission's in-house, on-site computer system and the absolute necessity for staff time to be devoted primarily to this task rather than to the production of analyses of 1985 information. The letter stated that the budget and staff increase cited by Mr. McCool were necessary to meet state-mandated salary adjustments, to create a much needed administrative unit within the Commission, and to purchase computer services. It concluded that none of the increase was devoted to data analysis.

The letter further stated the Commission is dedicated to the enhancement of the press and the public's ability to access preelection data. A secondary objective is to conduct periodic historical studies which have wide public appeal. To this end, staff will provide at the April Commission meeting a list of possible topics for press releases during the 1987 primary and general elections.

Chairman Axtell then made his comments to Mr. McCool; see attached also.

Chairman Axtell assured Mr. McCool that the other Commissioners and he desired that campaign information be easily available to the public. He explained that it was therefore necessary to make a short-term "sacrifice in research analysis so that much more information could be processed in the future" by computerization. Chairman Axtell explained that he understood Mr. McCool's situation but indicated that when he had served as a Port Authority Commissioner, it had been necessary to inconvenience citizens temporarily in order to provide for future growth.

Chairman Axtell said that despite temporary roadblocks, he was pleased that the Commission had continued to provide all essential services. He concluded that "the other Commissioners and I are proud of ELEC's efforts in installing a computer. We knew that there would be temporary hardships in adding this informational tool but were sure that the public would appreciate and applaud our concern for the future."

Vice Chairman Waugh commented that the Commission has made a slight shift in emphasis, with which he agreed, toward prompt enforcement action and away from publishing reports. He asked that staff consider items which have been prepared and released in the past when preparing its April report of items to be released.

Executive Director Herrmann reported that staff vacancies have hampered computer operations, but the vacancies are being filled as quickly as possible. Furthermore, the new computer is currently performing all essential functions and already beginning to work on various informational requests.

Chairman Axtell commented that much of the increase in ELEC's budget pointed to by Mr. McCool arose out of state-mandated salary increases and was therefore out of the Commission's control. He stated the agency had not increased its resources for analysis of data.

Commissioner McNany asked Executive Director Herrmann whether any 1985 data will be available in April. Executive Director Herrmann responded that some 1985 data is already available and that 1987 data will be ready before the primary election. Executive Director Herrmann said considerable time had to be taken in shifting over to the Commission's own computer system, and noted that staff must continue to be very careful not to lose time analyzing inordinate amounts of 1985 data at the expense of 1987 information.

Executive Director Herrmann explained that since members of both the Senate and the Assembly are up for election in Fall, 1987, the approaching election cycle will probably be the heaviest filing in a decade.

Commissioner Proctor asked whether any "bugs" still remain in the computer system, to which Executive Director Herrmann responded in the affirmative. Executive Director Herrmann indicated that the implementation of the gubernatorial public financing computer module had been the first priority of the Commission staff, and that module was completed in early 1985. Other computer modules are still being installed and tested.

Commissioner McNany asked about the input and quality of the 1985 data already in the system. He wished to know how much time was needed until that information could be used. Executive Director Herrmann indicated that all of the data had been entered by staff for 1985 but that "bugs" still remain. Staff time is still required to verify all of the information printed out by the computer and it has been learned that some data from other election years is mixed in with data from the 1985 election. Therefore, considerable work is still necessary in order to process the 1985 data.

Executive Director Herrmann reiterated that the Commission's first priority must be to make 1987 data available. It would then be appropriate later in the year to evaluate the computer's overall application in producing data, and to

determine for planning purposes what information would most likely be requested in future years by a majority of users. He explained the Commissioners and staff must evaluate and determine what information is most wanted in order to decide what data to produce. Staff must also determine what kinds of new software will be required because currently some raw data must be manually processed.

Chairman Axtell stated he was proud of the accomplishments of the Commission in its pioneering computer efforts despite the hardships of implementation. He indicated that other states have called upon ELEC regarding its computer experience. Executive Director Herrmann reported that he will speak at the COGEL Conference in the fall about ELEC's computerization.

Commissioner McNany reaffirmed the Commission's desire to work with entities such as Common Cause to develop and provide analytical output. He expressed the hope that some 1985 data would be available in order to make comparison possible with 1987 data. Executive Director Herrmann said the staff will certainly consider this need.

Vice Chairman Waugh addressed Mr. McCool's comments concerning the Commission's position on increasing contributor reporting thresholds. He indicated it has been the Commission's position since 1982 that the contributor identification threshold be raised from \$100 to \$200. The increased threshold reflects inflation and a need for change from the \$100 threshold which was established in 1973. Executive Director Herrmann noted that the Federal Election Commission's (FEC) threshold is \$200.

In responding to Mr. McCool's comments concerning surplus campaign funds, Vice Chairman Waugh stated that the recently enacted surplus funds regulations were an attempt to codify prior advisory opinions into regulatory form. General Counsel Farrell explained the surplus funds regulations dealt with areas in which the Commission decided it could legally concern itself. He further explained that regulations should be enacted and advisory opinions avoided when permanent policies of the Commission are involved.

Executive Director Herrmann commented that the only area in which the Commission did not act was in the use of surplus campaign funds for legislative district offices. He reported that he suggested in a letter to the Legislature, written at the request of the Commissioners, that this issue should be dealt with by the Legislature rather than by the Commission.

Commissioner McNany inquired what expense was involved to provide Common Cause with the data it requires which cannot be provided by computer. Executive Director Herrmann indicated that the Commission's copying charges are set by regulation. Mr. McCool interjected that he recently paid \$47.50 for a lengthy report which had been submitted by a PAC to the Commission and which was a copy of its federal report. He noted that his organization did not need the federal report. Mr. McCool said under present laws some entities are involved in campaign cycle reporting and other entities file quarterly reports. He concluded that gaps and problems occur in reporting. He cited a report of the Dental PAC as illustrative of a double counting of operational expenditures.

Executive Director Herrmann responded that Mr. McCool never spoke with anyone on staff regarding his concern with the PAC report and indicated that

credit was certainly possible for the cost of the federal report. Commissioner McNany then suggested that the staff find a way to work with the cost factor. Executive Director Herrmann responded in the affirmative.

Mr. McCool asked why the decision was made by the Commission not to publish a 1985 surplus campaign funds report. He argued that it was needed as a basis for ELEC's surplus funds regulations. Vice Chairman Waugh responded that the regulations were not dependant on knowing precisely the total amount of surplus campaign funds. Their promulgation was based rather upon the large number of relevant advisory opinion requests which indicated that the need existed for regulatory treatment. Executive Director Herrmann added that the surplus campaign funds report only covered the 1983 legislative general election and could in no way be considered a complete picture of all candidates leftover money. Mr. McCool then demanded to know when it was decided not to create a report on surplus campaign funds for the 1985 legislative races. Executive Director Herrmann asked why Mr. McCool had not raised that issue two years ago when the Commission could have effectively considered his concern. He also stated that the staff's major priority at the time had been installing ELEC's computer.

Mr. McCool asked when the Commission made the policy decision not to publish press releases of delinquent filers. He asked specifically for the date when this matter appeared on the Commission agenda. Commissioner McNany responded that changes in practice and procedure are not necessarily policy changes which require Commission action.

Staff Counsel Nagy asked Mr. McCool whether he was assuming that once a press release or report was prepared by the Commission, it must always be done in the future. Mr. McCool pointed to the Commission's "long pattern" of two-volume reports on legislative elections and concluded that the issuance of reports in 1981 and 1983 were based on a policy. Staff Counsel Nagy suggested that if there was any decision as such, it would necessarily be contingent on staff resources being available to carry it out.

Mr. McCool insisted that decisions not to do reports and press releases should be subject to public comment and should be listed on Commission agendas. Vice Chairman Waugh inquired whether Mr. McCool received the Commission's public session minutes. He explained that discussions often arise at Commission meetings which are not anticipated in the preparation of the agenda, but which if discussed at Commission meetings are reflected in the minutes. He suggested that Mr. McCool could read the minutes as soon as they became available after a meeting and then ask the Commission to reconsider any matter which had been discussed and for which he had not provided any comment.

Vice Chairman Waugh pointed out that the 1985 press release decision had received no public comment until this point in time. Mr. McCool again asked whether revisions in procedures are discussed by the Commission. General Counsel Farrell answered that it is not a violation of the Sunshine Law to make decisions based upon staffing considerations. Mr. McCool again demanded to know when the decision was made not to publish a list of late filers and of final decisions. Executive Director Herrmann asked how the Commission can remedy in 1987 what was not done in 1985 and wished that Mr. McCool had expressed himself to the Commission in person or in writing two years earlier. Moreover, the first issue of the ELEC Bulletin last summer called the press and public's

attention to Commission records and how to obtain them. This announcement was a more effective and efficient way of disseminating the same information. General Counsel Farrell stated that it is not a violation of the "Open Public Meetings Act" for the Commission to have decided not to publish a press release of non-filers.

Vice Chairman Waugh observed that Commission staff must be free to make decisions. Executive Director Herrmann explained that decisions have to be made within budgetary constraints, and staff must find the most effective way to meet the Commission's statutory obligations.

Mr. McCool again stated that his concern arises when operational decisions cross over into policy changes. He listed his concerns as the availability of 1985 election data and analysis, the availability of 1987 data and its date of publication, and public knowledge of when items are to be discussed at Commission meetings.

Vice Chairman Waugh responded that staff will outline at the April Commission meeting what data will be prepared in 1987. Mr. McCool then indicated that he would like answers regarding the 1985 and 1987 data in April. Vice Chairman Waugh stated that the Commission would be happy to have Mr. McCool attend the next meeting for his answers. Mr. McCool said he could not make it but would have a representative attend.

Vice Chairman Waugh again stressed that thoughtful allocation of staff time is always an issue to be considered. If reports are not filed, coded, and reviewed properly; the resulting data will be of little use.

Commissioner McNany reiterated the Commission's desire to cooperate with entities like Common Cause. He indicated that it would have been preferable if Mr. McCool had come in to discuss his concerns with the staff before confronting the Commission at its meeting. Such discussions with staff would certainly have resulted in his concerns being placed upon the agenda if necessary to their resolution. Probably, they could have been resolved more simply.

Mr. McCool explained that the basis of his original letter was his assumption that the decision regarding the 1985 data had been a Commission decision indicating a change of policy.

Vice Chairman Waugh disagreed with Mr. McCool and stated that there had been no change in the Commission's policy. He further stated that individuals can always approach the Commission with their concerns at the monthly meetings. Mr. McCool then thanked the Commission and stated Common Cause has always appreciated its good relations with the Commission. Vice Chairman Waugh replied that ELEC felt the same about its relationship with Common Cause but remained puzzled about the negative approach of Mr. McCool's February remarks.

A discussion followed concerning the release of the draft letter to Mr. McCool. Vice Chairman Waugh suggested that the Commission wait until April for more information before releasing the letter.

On a motion by Commissioner Proctor, seconded by Commissioner McNany and a vote of 4-0, the Commission voted to delay its response to Mr. McCool until the April meeting.

6. Executive Session

On a motion by Vice Chairman Waugh, seconded by Commissioner Proctor and a vote of 4-0, the Commission voted to go into executive session to discuss investigative and enforcement matters, the results of which will be made public at their conclusion.

7. Adjournment

On a motion by Vice Chairman Waugh, seconded by Chairman Axtell and a vote of 4-0, the Commission voted to adjourn at 12:05 p.m.

Respectfully submitted,



FREDERICK M. HERRMANN, Ph.D.

FMH/jah



## State of New Jersey

### ELECTION LAW ENFORCEMENT COMMISSION

#### COMMISSIONERS

ANDREW C. AXTELL  
CHAIRMAN  
ALEXANDER P. WAUGH, JR.  
VICE-CHAIRMAN  
HAYDN PROCTOR  
OWEN V. MC NANY

NATIONAL STATE BANK BLDG., SUITE 1215  
28 W. STATE STREET, CN-185  
TRENTON, NEW JERSEY 08608  
(609) 292-8700

FREDERICK M. HERRMANN  
EXECUTIVE DIRECTOR

EDWARD J. FARRELL  
COUNSEL

March 16, 1987

Mr. Edward McCool  
Executive Director  
NEW JERSEY COMMON CAUSE  
110 W. State Street  
Trenton, NJ 08608

Dear Mr. McCool:

The members of the Commission wish to thank you for your recent statement, which urges the Commission to resume publication of certain types of analytical information. ELEC assures you that it shares your commitment and concern that campaign information be disseminated to the public as effectively as possible. ELEC's vision of how this process will be accomplished is as follows:

First, ELEC must carry out its statutory mandate to enforce the reporting requirements of the law. If reports are not timely and accurately filed, there is obviously no reliable data available to the public. To accomplish this goal, ELEC has spent a great deal of time over the last three years reorganizing its filing, reviewing and investigating staff. Last year, ELEC initiated 628 complaints for late or incomplete filing, a new agency high and the best measure of the Commission's active role as a watchdog.

Second, ELEC must facilitate public access to meaningful campaign financial data. Towards this end, ELEC has embarked upon the installation of an in-house, on-site computer capacity to provide readily the kind of statistical data you and other members of the public seek. As staff has told you, installing a new computer system has been a major priority. Consequently, ELEC had to decide that certain analytical work, which was previously performed but was not essential to its overall mission to provide access to its reporting documents, would have to be temporarily reduced. Time was not available to do both. In other words, a short-range sacrifice was made to produce less analysis in 1985, 1986, and possibly 1987 so that much more could be provided in the future.

You made the observation that ELEC's budget has increased by \$300,000 and its staff by four persons, and you are correct. The Commission must, however, strongly dispute your correlation of these increases to what you perceive as diminished efforts to inform the public. ELEC is answering more phone calls, receiving more press attention, and making more mailings of forms and information than ever before. ELEC has begun the publication of an informational newsletter which is circulated to over 2,000 recipients. To improve public access, ELEC has cataloged and removed to outside storage

hundreds of boxes of old records and it has established an excellent record of servicing hundreds of requests for information in the agency's public room. Moreover, ELEC used the four positions you list to create a desperately needed administrative unit at a cost of about \$110,000 in salaries. The rest of the budget increase went primarily to state-mandated salary adjustments and inflationary increases in other accounts, with about \$50,000 for computer maintenance services and legal software development. None of these dollars have anything to do with data analysis!

In the coming years, ELEC's informational priority will be developing the capacity for the press and the public to access preelection data and assemble it as they see fit. A secondary objective will be to conduct periodic historical studies such as an analysis of a previous legislative election when they seem to have wide appeal. Specifically for 1987, the staff will provide at the Commission's April meeting, a list of possible topics for press releases during the 1987 primary and general elections.

In the meantime, the Commission believes you will continue to find that staff will be happy to provide you with whatever information is available.

Very truly yours,

FREDERICK M. HERRMANN

FMH/jah



## State of New Jersey

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28 W. STATE STREET, CN-185  
TRENTON, NEW JERSEY 08608  
(609) 292-8700

FREDERICK M. HERRMANN  
EXECUTIVE DIRECTOR

EDWARD J. FARRELL  
COUNSEL

#### COMMISSIONERS

ANDREW C. AXTELL  
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VICE-CHAIRMAN  
HAYDN PROCTOR  
OWEN V. MC NANY

March 16, 1987

#### REMARKS OF CHAIRMAN AXTELL to Ed McCool of Common Cause

Mr. McCool, I want to assure you as Chairman of this Commission that ELEC shares your commitment and concern that campaign information be disseminated to the public as effectively as possible.

To that end, the other Commissioners and I began a total computerization of this agency. This decision meant there would be a short-range sacrifice in research analysis so that much more information could be processed in the future.

As a former Commissioner of the Port Authority of New York and New Jersey, I can understand your situation. At the port authority, decisions had to be made whether or not to modernize tunnels and bridges in order to provide for the ever growing volume of traffic. The necessary construction undertaken always led to complaints from some motorists that it took longer to cross the bridge or drive through the tunnel while improvements were being made. But, as a Port Authority Commissioner, I had to think of the grave consequences of not being concerned about future traffic patterns.

Here at ELEC, the process and concerns are similar. The flow of information had to be temporarily slowed so that vital improvements could be made. I am extremely pleased that as with the port authority all "emergency vehicles" have made it over the bridge and through the tunnel without any delay during construction. ELEC has managed to continue processing 16,000 forms a year during the installation of its computer without any break in service. The press and public continue to receive information from the Commission's reports as they always have.

ELEC today is a recognized national leader among ethics agencies entering the computer age. The executive director has received numerous inquiries about the new computer system and has even been invited to speak at a national Conference about this topic.

In sum, the other Commissioners and I are proud of ELEC's efforts in installing a computer. We knew that there would be temporary hardships in adding this marvelous informational tool but were sure that the public would appreciate and applaud our concern for the future.