

NEW JERSEY ELECTION LAW ENFORCEMENT COMMISSION

PUBLIC SESSION MINUTES

APRIL 21, 1987

Present

Andrew C. Axtell, Chairman  
Alexander P. Waugh, Jr., Vice Chairman  
Haydn Proctor, Member  
Owen 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 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. Commission meeting

The Commission meeting date for May 19 has been changed to Wednesday, May 20, 1987 and will be held in Montclair, New Jersey at 11:00 a.m.

The June meeting of the Election Law Enforcement Commission will be held as scheduled on June 16, 1987, but will be in Interlaken, New Jersey at 11:00 a.m..

2. Approval of Public Session Minutes of March 16, 1987

On a motion by Vice Chairman Waugh, seconded by Commissioner Proctor and a vote of 4-0, the Commission approved the Public Session Minutes of March 16, 1987.

3. Executive Directors' Report

A. New Staff Research Initiative

Executive Director Herrmann reported that he recently wrote to all college political science departments in New Jersey and to the Graduate School of Political Management in New York City inviting their faculties and students to use ELEC data as a research resource. His letters indicated that ELEC staff would assist them in developing research projects and also stated that ELEC is interested in research interns. Executive Director Herrmann reported that there has already been a positive response from Rider College concerning a student

intern. This idea was adopted from Graham E. Johnson, Executive Director, Public Disclosure Commission of Washington State, whose agency publishes academic papers with the disclaimer that the views expressed should not be ascribed to the agency.

B. Federal Election Committee General Counsel Situation

Executive Director Herrmann reported that Larry Noble, the Deputy General Counsel of the FEC, is acting as General Counsel. Twenty-five applicants are being considered for the position of General Counsel.

C. Computer Update

It was reported by Executive Director Herrmann that on March 16, 1987 the Commission's full-time computer consultant resigned very suddenly for health reasons. Staff responded with immediate action and a consultant from the hardware contractor is being employed one-day-a-week. Executive Director Herrmann indicated that staff expects to have a computer person on staff by June 1, 1987. The search for this staff person is being conducted through Civil Service and has been complicated by the statewide title freeze.

The hardware problem experienced by staff has been resolved and 15 of 16 software problems have also been remedied. The 1985 data has been entered and is ready to be printed by the Commission's computer system. Executive Director Herrmann explained that there is still a need to test the printout of that data for possible contamination with data from other elections.

D. Annual Report

Executive Director Herrmann reported that the 1986 Annual Report is on schedule and has been returned to the printer. He indicated that Deputy Director Brindle did an outstanding job as "editor and publisher" of the Annual Report.

E. Office Space Expansion

Executive Director Herrmann reported that expansion work has already begun for the new reception area at the elevator. This expansion has been prompted by the need for additional space and security. The current layout of the Commission offices mandated reduction of public access to staff offices and files. The expansion project will be completed by July 1, 1987, after the 1987 primary election filing deadlines. Executive Director Herrmann also explained that staff is looking into the use of additional space on the 13th floor in anticipation of additional public financing staff.

F. Personnel Update

Evelyn Green, Director of Compliance and Information, had suggested and the Commission has hired 3 temporaries for a period of six weeks during the 1987 primary election filing period to relieve regular Commission staff from certain routine functions. Executive Director Herrmann reiterated that it is anticipated that the new computer specialist will be on staff by June 1, 1987. The Commission hired an Assistant Compliance Officer who began work on March 30, 1987 and a second Assistant Compliance Officer is expected to be hired by June 1, 1987. The addition of this staff will permit report review staff to concentrate on review functions and allow compliance staff to answer public and

phone inquiries and help the press and public in the public room. Executive Director Herrmann attributed the Commission's inability to fill these positions until now to the title freeze in State hiring. He also indicated that it is expected that Cheryl Clarke, Director of Review and Investigation, will return from maternity leave by June 1, 1987.

#### G. Outside Activities

Executive Director Herrmann indicated that Staff Counsel Gregory Nagy will be serving on a statewide internship study committee which will benefit the Commission as well as other entities. In addition, Staff Counsel Nagy and Executive Director Herrmann are planning to attend the Citizens' Research Foundation Conference on campaign financing in Washington, D. C. on April 29, 1987. Executive Director Herrmann also brought to the Commission's attention the fact that his article entitled, "Gubernatorial Public Financing: A New Jersey Institution" will be published by Campaigns and Elections Magazine this summer.

#### Chairman's Comment on Analytical Reports

Chairman Axtell mentioned the existence of a two-volume study produced in 1975 by Common Cause of New Jersey concerning the 1973 elections. He noted that the acknowledgment of that report stated that it took 20 volunteers and three Common Cause staff people over a year to produce it. Executive Director Herrmann responded that he hoped that both ELEC and Common Cause would be producing valuable reports in the future and that these reports certainly were labor intensive. The Executive Director also remarked that the responsibility to do such reports falls upon an entire "disclosure community" including not only ELEC and Common Cause but also various other good government groups and academic institutions.

#### 5. Advisory Opinion Request - 05 - 1987

General Counsel Farrell reported that the Commission received a request for an advisory opinion from Senator John H. Dorsey regarding disclosure of the source of legal fees on his Personal Financial Disclosure statement. General Counsel Farrell said that the financial disclosure statute had been enacted by the Legislature without Commission input, and the Commission was assigned enforcement of that statute. The purpose of the Personal Financial Disclosure statement is to reveal sources of income to legislators which might produce conflicts of interest and exert influence upon them.

The statute requires disclosure of fees as a category. General Counsel Farrell said Senator Dorsey must report the name of each client whose aggregate fees totals over \$1,000 to his law firm for 1986. Commissioner Proctor expressed concern over clients' needs for privacy, especially in the areas of criminal practice or divorce practice. Staff Counsel Nagy suggested a similar disclosure problem for patients would be faced by physicians and psychologists who also serve as legislators.

Chairman Axtell asked how a fee would be treated if a lawyer/legislator never dealt with a particular matter within his or her firm, to which General Counsel Farrell responded it would be necessary to track the fee through money attributed to each attorney in the firm. Commissioner McNany pointed to the

possibility that applying a formula to fees paid to a large enough firm might result in diluting and non-reporting of certain fees.

Vice Chairman Waugh indicated he believed Senator Dorsey's request should be answered in the affirmative. He further stated that disclosure of clients as sources of fees is one of the liabilities of serving as both an attorney and legislator. Staff Counsel Nagy noted that disclosure is required where a fee is over \$100 under the Commission regulations. Vice Chairman Waugh inquired whether the Commission can fine-tune its regulations concerning the \$100 threshold. General Counsel Farrell said such revisions would be appropriate. Staff Counsel Nagy asked whether an associate or partner in a large law firm who is also a legislator must disclose all clients of the firm paying more than \$100 to that firm in legal fees. General Counsel Farrell responded in the affirmative.

Vice Chairman Waugh suggested that while staff should respond in the affirmative to Senator Dorsey's inquiry, it should also consider whether any change in policy is desirable. Such change could then be discussed at a Commission public session which might trigger a change in the regulations concerning personal financial disclosure.

General Counsel Farrell said that it is necessary to look at the need to protect clients and also suggested that staff check how reporting is being accomplished by other legislators who are also attorneys. Executive Director Herrmann suggested that the Commission hold any response to this advisory opinion request until the next meeting while looking into the matter before answering Senator Dorsey. General Counsel Farrell stated he will contact Senator Dorsey to inform him that there will be a one-month delay in responding to his request.

On a motion by Vice Chairman Waugh, seconded by Commissioner Proctor and a vote of 4-0, the Commission directed staff to look into the personal financial disclosure reporting of fees and to prepare a response for the next Commission meeting on May 20.

#### 6. Public Disclosure Request

Staff Counsel Nagy circulated a memo regarding a request from a newspaper reporter for copies of correspondence between former Executive Director Lewis B. Thurston and Judd S. Levy, campaign treasurer of the 1977 "Byrne for Governor" committee. Staff Counsel Nagy reported that General Counsel Farrell, Executive Director Herrmann, and he agreed that the correspondence, although not formally designated an advisory opinion, had a similar effect to that of an advisory opinion and that as such it could be released to the reporter. He therefore requested retroactive approval from the Commission for this release of correspondence. He further sought the Commission's approval of this staff-agreement procedure for dealing with future similar requests to Commission staff.

On a motion by Commissioner Proctor, seconded by Commissioner McNany and a vote of 4-0, the Commission retroactively approved the release of this correspondence and further approved application of this procedure to similar requests in the future.

7. Press Release Memo

Executive Director Herrmann circulated a memorandum containing a schedule of press releases for 1987 prepared by Evelyn Green, Director of Compliance and Information. The memo proposed publication of press releases during the week of April 27, 1987 concerning activity by continuing political committees in the period covering January 1, 1986 through March 31, 1987. The number of continuing political committees, the number of statewide continuing political committees, the number of statewide partisan PAC's, the receipts and expenditures of these entities, and the top ten recipients and spenders of statewide continuing political committees and partisan PACs would be provided. A press release concerning candidates' campaign activity and based upon preelection reports due May 4, 1987 would be prepared for the week of May 18, 1987. Similar press releases would be possible following the 11-day preelection report and 20-day postelection report due dates and the second quarterly continuing political committee report deadline.

The memo also outlined data concerning continuing political committees and campaign activity which could be the subject of a schedule of press releases beginning October 19, 1987 for the 1987 general election reporting cycle. These press releases would be similar in content to those proposed for the primary election period. A summary analysis of press release data was proposed for release on April 1, 1988. Information concerning lobbying activity, spending related to statewide public questions, and 1987 PAC activity might also form the basis of additional press releases.

Executive Director Herrmann indicated that the schedule establishes the information that will be provided to the press and to the public. He pointed out that a summary report on the 1987 legislative elections to be issued on April 1, 1988 will complete dissemination of 1987 data almost one year before the elections of 1989.

Executive Director Herrmann explained that the staff has examined research performed since 1973 and has selected information with the greatest appeal as the basis for the press releases suggested in the memorandum. He also indicated that staff expected suggestions for other press releases would be forthcoming. Chairman Axtell indicated his approval of the press releases as suggested in the memorandum. Executive Director Herrmann said that pre-1987 data will be supplied wherever possible. He expressed as a caveat that reporting requirements have changed over the years, that no CPC reporting existed before 1984, and that the absence of a senatorial election in 1985 would limit the data available for comparison purposes.

Executive Director Herrmann noted the necessity to create a consistent data base for the purpose of making meaningful comparisons over time. He also noted that campaign financial issues vary from year to year. Staff also must evaluate input from its new computer specialist regarding additional software that will be required for more extensive press releases in the future.

Executive Director Herrmann reiterated that 1985 data still needs testing before its release in computer format. He noted that staff has prepared a manual on the use of computer information.

Chairman Axtell suggested including the press release memorandum as presented to the Commission with the proposed response to Mr. McCool.

Vice Chairman Waugh asked whether it would be possible to produce data concerning the top 20 PACs rather than only ten as proposed. Ms. Green responded affirmatively. Commissioner McNany inquired whether there was still concern over the correctness of 1985 information as provided by the computer. Executive Director Herrmann answered that testing is still necessary to check printout accuracy and that staff would use sampling techniques to test the 1985 data. Chairman Axtell asked who was responsible for preparation of press releases. Executive Director Herrmann explained that until recently the responsibility was solely that of the Director of Compliance and Information, Evelyn Green, but that now additional professional staff would be assisting her in that task. Ms. Green said that staff would mostly review manually all reports before press releases were disseminated. She indicated that her staff would not rely upon computer produced data until they were certain it was verified. Chairman Axtell thanked all staff for its work in preparation of the press release memo.

8. Approval of Response to Common Cause

Commissioner McNany suggested thanking Mr. McCool and Common Cause for their input, comments, and concerns.

On a motion by Commissioner Proctor, seconded by Commissioner McNany and a vote of 4-0, the Commission approved release of the letter of response to Mr. McCool with the press release memo as an attachment.

9. 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.

10. Adjournment

On a motion by Commissioner Proctor, seconded by Commissioner McNany and a vote of 4-0, the Commission voted to adjourn at 11:37 a.m.

Respectfully submitted,



FREDERICK M. HERRMANN, Ph.D.