

NEW JERSEY ELECTION LAW ENFORCEMENT COMMISSION

PUBLIC SESSION MINUTES

MAY 20, 1987

Present

Andrew C. Axtell, 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

Absent

Alexander P. Waugh, Jr.,
Vice Chairman

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 11:07 a.m. at the Montclair Municipal Building, Montclair, New Jersey.

1. Approval of Public Session Minutes of April 21, 1987

On a motion by Commissioner Proctor, seconded by Commissioner McNany and a vote of 3-0, the Commission approved the Public Session Minutes of April 21, 1987.

2. Executive Directors' Report

A. Computer Update

Executive Director Herrmann reported on a discussion he had with the vendor of the software used by Commission staff for legislative bill-tracking. He stated that he was told by the vendor that the Commission was the most efficient user of the service in the State of New Jersey. Executive Director Herrmann also explained that the Commission is now connected to the personnel system software network and that all personnel records are presently being computerized. Executive Director Herrmann explained that on May 13, 1987, the Commission received the applicable Civil Service list for hiring a computer specialist. He said that Civil Service approved the Commission's request for the establishment of an administrative analyst title. He stated that candidates on the Civil Service list will be interviewed shortly.

B. Other Administrative Activity

Executive Director Herrmann indicated the Annual Report was completed in time to meet the statutory deadline. It is being distributed to the Legislature and mailed to other recipients.

Ed McCool, Executive Director of Common Cause, telephoned the Commission to thank ELEC for responding to his concerns. He indicated to Director of Compliance and Information Evelyn Green his satisfaction with the press release schedule for 1987 as discussed and approved at the last Commission meeting. Executive Director Herrmann explained that the latest press release will be distributed tomorrow and copies will be sent to the Commissioners.

Executive Director Herrmann reported that the new reception area for the Commission offices will be completed in June. This modification to the Commission offices will address space needs and security concerns.

Two student interns, one from Trenton State College during the summer, and one from Rider College during the winter, will be working for the Commission at no cost to the Commission. ELEC staff must supervise these interns and grade their performance. Staff is looking forward to working with these interns.

C. Staff Activity

Executive Director Herrmann explained that he was invited to apply for a Toll Fellowship, the highest honor of the Council of State Governments. Thirty-two fellows from across the United States will be selected to spend a week in August in Kentucky exploring State Governments issues. The candidates will represent the executive, legislative and judicial branches of government.

On June 6, 1987, the executive director explained that he will be giving a presentation to Republican Senate candidates pursuant to their request on general election filing obligations. He indicated that he has been contacted by Alan Sokolow, Eastern Regional Executive Director of the Council of State Governments, who is planning a campaign financing program for the summer conference. Executive Director Herrmann has been asked to suggest participants as speakers and also to recommend possible topics for discussion. He suggested that Mr. Sokolow consult with Dr. Herbert E. Alexander of the Citizens' Research Foundation, for additional information. The topics suggested for discussion included surplus funds, the use of personal PAC's, and public financing. A discussion followed among the Commissioners on the increasing importance of personal PAC's. General Counsel Farrell said that Dr. Alexander believes personal PAC's will develop at the expense of political parties. Executive Director Herrmann noted that candidates possessing personal PAC's may want to use their funds for a future gubernatorial campaign. General Counsel Farrell said that use of money raised for personal PAC's for a later gubernatorial campaign raises serious legal issues.

Executive Director Herrmann said Commission staff anticipates preparation of a press release this summer concerning personal PAC's. The Commission further discussed the ability of top legislative leaders to attract great sums of money to their personal PAC's and how this ability could concentrate great power in certain political offices and negatively affect the political parties. Executive Director Herrmann indicated the significant role of press releases which serve to highlight such issues and reveal possible areas of public concern.

D. COGEL News

Executive Director Herrmann reported that he attended a COGEL (Council on

Governmental Ethics Laws) Steering Committee meeting for the purpose of arranging the September COGEL Conference. All Commissioners are encouraged to attend this meeting in September, 1987, and Executive Director Herrmann asked that they let him know if they are able to attend. He explained that as membership chairperson of COGEL, he has been involved in the one-third increase in COGEL membership since the Hartford annual meeting. There are now 123 members of COGEL, which figure represents a near doubling in membership during his two-year tenure on the membership committee. COGEL Chairperson Steven Stover praised Executive Director Herrmann at the COGEL meeting for his leadership in recruiting so many new members. Membership in COGEL now includes state judicial systems. Executive Director Herrmann initiated a change in the COGEL by-laws to permit wider membership, including judicial administrators.

Executive Director Herrmann noted that the last three Executive Directors of the Commission have been members of the COGEL Steering Committee, and ELEC and Minnesota have each been represented for eight years on the COGEL Steering Committee, which lengths of service are the longest of any member state or province.

E. Commission Meeting

The June meeting of the Election Law Enforcement Commission is scheduled for June 16, 1987 at 11:00 a.m. in Interlaken, New Jersey.

3. Advisory Opinion Request 05-1987

Chairman Axtell recognized the attendance of two members of the public interested in Advisory Opinion Request 05-1987. General Counsel Farrell explained that this request for an advisory opinion from Senator John H. Dorsey concerned disclosure of the source of legal fees on his personal financial disclosure statement filed pursuant to N.J.S.A. 19:44B-1. Senator Dorsey sought a clarification of the regulations pertaining to reporting of fees.

General Counsel Farrell explained that the statutory purpose was to provide meaningful information concerning the sources of money paid to legislators. He said it is possible to interpret the regulation to require reporting of fees paid from a law firm and not from an individual as the source, but such reporting would not provide meaningful disclosure, and cannot be considered to be the intent of the Legislature. General Counsel Farrell therefore concluded that the issue becomes how far the legislature intended to require reporting of sources of fees. Reporting of all sources over \$100 would raise significant privacy issues and also result in overreporting creating unnecessary disclosure. He therefore explained that it is necessary to establish a test with a threshold which represents a significant portion of a legislator's income. Disclosure of that significant sum would meet the statutory purpose and avoid problems of overreporting.

Commissioner Proctor approved that approach and indicated that \$5,000 as a threshold was reasonable. Commissioner McNany requested input concerning other filings. General Counsel Farrell responded that a review of prior personal financial disclosure filings showed most legislators list law firms as the sources of their income but do not identify clients. He therefore indicated that the Commission should consider whether any regulation or change in a

regulation should apply prospectively only, if the Commission considered it not unreasonable for a legislator to have reported fees in that manner in the past. General Counsel Farrell stated that fees paid to an accountant-legislator or an attorney-legislator could have different political significance than fees paid to a physician-legislator, but that distinctions between sources of fees did not appear justifiable under the statute. Staff Counsel Nagy reported that a survey of past filings revealed no legislators listing clients specifically as the sources of their fees. Commissioner McNany responded that clients should have been listed.

Chairman Axtell inquired whether the fees should be listed. General Counsel Farrell responded that only the name of the source of the fee is required by the statute. There is no requirement to indicate the amount of the fee. He then suggested that \$5,000 or \$10,000 would be an appropriate threshold. Staff Counsel Nagy noted concerns about the privacy issues involved in reporting sources of medical fees where the physician-spouse of a legislator might be compelled to provide the identity of any patient providing more than \$100 in fees. He suggested such a list would have little or no disclosure significance and would raise significant privacy issues.

Commissioner Proctor then suggested it would be necessary to distinguish between a physician and an attorney in requiring disclosure of names of sources of fees. General Counsel Farrell responded that these concerns present difficult drafting problems. Commissioner Proctor inquired whether a bill or regulation is needed to effect these changes. General Counsel Farrell responded that a regulation was necessary. Commissioner Proctor suggested a \$10,000 threshold for reporting of such fees. General Counsel Farrell suggested adding to that a five-percent test. Commissioner McNany asked whether a \$5,000 threshold is too onerous. Commissioner Proctor reiterated his belief that a \$10,000 test would be appropriate.

General Counsel Farrell indicated he would draft a regulation for the Commission to review at its next meeting in order to begin the regulation proposal process.

On a motion by Commissioner McNany, seconded by Commissioner Proctor and a vote of 3-0, the Commission directed General Counsel Farrell to prepare a draft of a new regulation for review at the June Commission meeting which establishes requirements for reporting of fees on personal financial disclosure statements.

4. Executive Session

On a motion by Commissioner Proctor, seconded by Commissioner McNany and a vote of 3-0, 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.

5. Adjournment

On a motion by Commissioner McNany, seconded by Commissioner Proctor and a vote of 3-0, the Commission voted to adjourn at 12:05 p.m.

Respectfully submitted,



FREDERICK M. HERRMANN, Ph.D.