

NEW JERSEY ELECTION LAW ENFORCEMENT COMMISSION

PUBLIC SESSION MINUTES

JUNE 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

* Arrived after approval of Public Session Minutes

Chairman Axtell called the meeting to order and announced that pursuant to the "Open Public Meetings Act," P.L. 1974, 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 11:04 a.m. at Interlaken Borough Hall, Interlaken, New Jersey.

1. Approval of Public Session Minutes of May 20, 1987

General Counsel Farrell indicated changes he wished made to the minutes of May 20, 1987. He requested that Item No. 3, on page five of the Public Session Minutes of May 20, 1987 be amended as follows: in the fifth line of paragraph two he requested that the word "meaningful" be substituted for the word "adequate" and that "and cannot be considered to be the intent of the Legislature" be inserted following the word "disclosure." Therefore, the sentence which read, "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 adequate disclosure," now reads "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." He also requested that the first full sentence on page six of the Public Session Minutes of May 20, 1987 which read "He therefore indicated that any regulation or change in a regulation must apply prospectively only", be changed to read as follows: "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." The second sentence on page six which read "General Counsel Farrell stated that fees paid to an accountant-legislator or an attorney-legislator could have more political application than fees paid to a physican-legislator," should read as

follows: "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." General Counsel Farrell also requested that the last sentence on page six which read "General Counsel Farrell suggested a five-percent test," be amended to read as follows: "General Counsel Farrell suggested adding to that a five-percent test."

On a motion by Commissioner McNany, seconded by Commissioner Proctor and a vote of 3-0, the Commission approved the Public Session Minutes of May 20, 1987 as amended.

2. Executive Directors' Report

A. Budget

Executive Director Herrmann reported that the \$1.1 million budget recommended by Governor Kean for ELEC has remained unchanged in both the Senate and Assembly versions of the budget. He indicated that the budget was likely to be approved within the next two weeks for fiscal year 1988.

Computer Update

Executive Director Herrmann explained that the Commission is currently advertising for the position of computer analyst and he expects the position to be filled by August 1987. He reported that in an excellent memorandum prepared by Deputy Director Brindle, the Commission's computer history has been documented and several problems have been targeted concerning "bug" removal and program modification.

C. Staff Activities

Executive Director Herrmann reported that Director of Administration Richard Magee and Deputy Director Brindle attended a Political Finance Forum session in Washington, D.C. on May 29, 1987, with Dr. Herbert E. Alexander of the Citizens' Research Foundation of California. He also explained that on June 10, 1987, three staff members of the Illinois State Board of Elections visited the Commission offices. Commission staff presented an all-day program to the visitors on computer operations and public financing. He indicated that the exchange of ideas between the Illinois representatives and Commission staff was worthwhile.

Executive Director Herrmann noted that on July 29 and 30, 1987, Staff Counsel Nagy, and Director of Compliance and Information Evelyn Ford, and he are traveling to Washington, D.C. for a two-day tour of the Federal Election Commission (FEC). They will observe recordkeeping procedures and other operations. Executive Director Herrmann explained that he has been tentatively asked to moderate a panel in early August on Campaign Financing at the Council on State Governments' Eastern Regional Conference in Wilmington, Delaware.

D. Cogel

Executive Director Herrmann explained that he contacted Council on Governmental Ethics Laws (COGEL) Chairperson Steve Stover of Ohio about the recent Time magazine cover story on ethics and suggested that he submit a letter to the editor responsive to that article which would promote COGEL. He also stated that COGEL convention information is not yet available, but that he would like the Commissioners to start considering if they would like to attend.

E. Public Financing

Executive Director Herrmann reported that he testified on Thursday, June 11, 1987, before the Government Operations Subcommittee of the Assembly Appropriations Committee regarding A-2996 (Martin) which concerns public financing of gubernatorial elections, and was formerly Senator Richard A. Zimmer's bill. In his testimony, he supported the major provisions of the bill, which are the same as the Commission's 1985 report recommendations. These included the removal of the expenditure limit, alteration of the formula to preserve public money, and adjustment of the formula by the CPI (Consumer Price Index) for inflation. These provisions would result in savings of money to the State and, in addition, would make money available to candidates earlier. The bill has been released to the full committee.

Executive Director Herrmann noted that the Newark Star Ledger did a story on the Martin bill and in an editorial on June 15, 1987, the Trenton Times supported the bill and stressed the need for finetuning of the public finance system. Executive Director Herrmann reported that in his testimony he emphasized the popularity of the public financing program as indicated by the 40 percent check-off rate in New Jersey, which is the best in the nation. He also explained that the success of the New Jersey public financing program may be tied to the fact that in New Jersey the gubernatorial race is the only statewide race and occurs in non-federal election years. The public financing check-off is not an "add-on" to the taxpayer, but is a diversion of tax revenues.

Chairman Axtell asked whether the check-off is covering the cost of the elections. Executive Director Herrmann explained how each year the fund accumulates \$1.5 million with a total of \$6 million collected in a four-year cycle. However, the program will always be at a deficit because it had no opportunity to accumulate funds for its first election cycle. The rate at which the voting public in New Jersey employs the check-off is a barometer of the popularity of the program. Chairman Axtell stressed that he wanted it to be made clear that voters are not paying extra for the program. Vice Chairman Waugh indicated that the income tax form makes that fact clear. Executive Director Herrmann stressed that the high check-off rate shows a general understanding and approval of the program among the public.

F. Other News

Executive Director Herrmann reported that the expansion of the Commission office space on the 12th floor is under way. The new entrance to the new Commission offices will vastly improve security.

In a recent study of Florida laws prepared by a professor in Florida, Executive Director Herrmann reported that he was cited for his suggestions and the Commission was mentioned because of its structure "in but not of" the

Department of Law and Public Safety. This arrangement may be adopted in Florida.

Executive Director Herrmann announced that the ELEC picnic will be held on August 7, 1987 at the home of Staff Counsel Nagy.

Executive Director Herrmann explained that he was contacted by an Associated Press reporter who told him that he was pleased with the Commission's preelection press releases. Commissioner McNany inquired about the clipping service used by the Commission. Executive Director Herrmann explained that the Commission uses a service which forwards any article containing a reference to the Election Law Enforcement Commission. Delays can occur in receiving articles, but Executive Director Herrmann explained that faster services are far more costly.

G. Commission Meeting

The next Commission meeting will be held July 21, 1987 at the Commission offices in Trenton, at 10:00 a.m.

3. Advisory Opinion Request 05-1987

The Commission next considered Senator Dorsey's request regarding the reporting on the Personal Financial Disclosure Statement of sources of fees paid to his law firm. General Counsel Farrell circulated the text of a proposed regulation he drafted amending Commission regulation 19:25-19.3(b) and entitled "Reporting of earned income" (see attachment).

General Counsel Farrell also circulated a draft of his response to Senator Dorsey's request (also attached).

On a motion by Commissioner Proctor, seconded by Commissioner McNany and a vote of 4-0, the Commission voted to proceed with the regulation proposal process and to approve the response to Senator Dorsey.

Chairman Axtell recognized Gordon MacInnes, a Senatorial candidate, who circulated comments concerning the proposed regulation. Mr. MacInnes expressed his approval of the new form of the regulation, and indicated he supported the \$10,000 proposed threshold. He urged the Commission to distinguish between candidates for the General Assembly and for the State Senate because of the latter body's power to approve appointments. He listed certain categories of fees which he believed should be reported when they exceed a \$1,000 threshold amount. These included all fees generated by representation of public and quasi-public bodies, all fees from representation of public employees, and all fees generated from the representation of regulated utilities or financial institutions. Because of the power of advice and consent which resides in every Senator to confirm a gubernatorial appointee, Mr. MacInnes recommended that Senator-lawyers report fees from all clients which resulted from litigation before untenured judges, fees from clients which resulted from appearances before county boards of taxation, and fees resulting from representation before county election boards or superintendents. Such reporting, he concluded, would moderate the power of Senatorial courtesy and remove any appearances of conflict (see attachment).

General Counsel Farrell thanked Mr. MacInnes for what Mr. Farrell said were excellent comments and requested that they be presented to the public at the hearing which will be held on the proposed regulations. General Counsel Farrell mentioned that regulated industries are not within the Commission's jurisdiction. He was therefore not sure that the Commission could make these categories reportable as suggested by Mr. MacInnes. General Counsel Farrell suggested that the Legislature was the appropriate forum for consideration of that suggestion.

Staff Counsel Nagy asked whether General Counsel Farrell was proposing a hearing to be held on the regulation or whether the normal comment process be employed for adoption of the regulation. Vice Chairman Waugh and General Counsel Farrell responded that a hearing would be appropriate. Vice Chairman Waugh called the Commissioners' attention to a recent article by Rick Sinding in the June 1987 New Jersey Reporter. The item highlighted fundraising strategies to meet the increasing costs of legislative races and the shift of attention from the gubernatorial to the legislative campaigns. Staff Counsel Nagy then suggested that a date be set for the public hearing. General Counsel Farrell indicated he would prepare the summary statement required for the hearing process. Executive Director Herrmann asked whether the hearing could be incorporated into a regular Commission meeting. Staff Counsel Nagy answered in the affirmative.

On a motion by Vice Chairman Waugh, seconded by Commissioner McNany and a vote of 4-0, the Commission voted to hold a public hearing on the proposed regulations concerning Personal Financial Disclosure Statements during the Commission meeting to be held in September, 1987.

4. Advisory Opinion Request 06-1987

General Counsel Farrell indicated that a request has been received from Ruth Duenser, Counsel to Exxon, U.S.A., regarding the legality of Exxon Company, U.S.A. making political contributions. Ms. Duenser specifically inquired whether the prohibitions contained in N.J.S.A. 19:34-32 and 19:34-45, which prohibit insurance companies and those companies with the power to condemn land within New Jersey from making political contributions, apply to Exxon Company, U.S.A. General Counsel Farrell explained that although regulated industries and those with the power of eminent domain may not make political contributions, these statutory restrictions were not within the jurisdiction of the Commission. He explained, however, that the Commission may ask the Attorney General to issue an opinion in this matter because the answer is of significance to the Commission. The office of the Attorney General will not provide such opinions to private individuals, but will respond to such requests from state agencies. General Counsel Farrell circulated a draft letter to the Attorney General asking him to consider the issue raised by Ms. Duenser on behalf of Exxon Company, U.S.A. Vice Chairman Waugh asked whether similar treatment may be given to an advisory opinion request submitted by Kidder Peabody to the Commission; see Advisory Opinion Request 08-1987, below. General Counsel Farrell indicated that such treatment would be appropriate. However he recommended that two separate requests be made since the issues involved were different.

Vice Chairman Waugh recognized that Ms. Duenser was in attendance at the Commission meeting and asked whether she wished to make any comments. Ms. Duenser responded that she was present to answer questions which the

Commissioners might have. She indicated that Exxon is interested in participating in the political process in New Jersey but wished to do so without any legal ambiguities.

On a motion by Commissioner Proctor, seconded by Vice Chairman Waugh and a vote of 4-0, the Commission approved the draft letter from General Counsel Farrell requesting an opinion of the Attorney General in response to Exxon's request and further approved a letter of response to Ms. Duenser indicating the Commission's action.

5. Advisory Opinion Request 08-1987

This request from Sherrie M. Cooksey, Counsel to Kidder Peabody Group, Inc., concerns the applicability of N.J.S.A. 19:34-45 to the Kidder Peabody Group, Inc. and its subsidiaries. It inquires whether the prohibition on political contributions to state and local candidates should apply to Kidder Peabody, which is a financial services company.

On a motion by Vice Chairman Waugh, seconded by Commissioner Proctor and a vote of 4-0, the Commission voted to direct General Counsel Farrell to submit this request for an advisory opinion to the Attorney General of the State of New Jersey.

6. Advisory Opinion Request 07-1987

General Counsel Farrell explained that the accounting firm for the 1987 Senate Democratic Committee requested an advisory opinion on its proposed method of allocating fundraising and administrative costs. He explained that the request involved treatment of housekeeping expenditures and that the Committee proposed to allocate general fundraising and administrative expenses equally among the candidates being supported by the committee. General Counsel Farrell indicated he believed this suggestion was sensible. He explained the issue becomes how to deal in reporting with the fact that campaign money is concentrated upon hotly contested races. A further issue arises when a candidate is running against the party and will not accept allocations. He explained the Commission has told candidates they do not have to accept allocations and that the Commission will give confirmations of refusals of money.

Staff Counsel Nagy indicated that he believed the Committee should make an attempt to allocate fundraising and administrative costs proportionately to the amount of money being spent on candidates it supports. He expressed concern that if most of the campaign expenditures were made in close races for a limited number of candidates, it would be inaccurate to divide fundraising and administrative costs equally among all candidates supported. General Counsel Farrell proposed that the committee be told it may report with equal allocations, but with the caveat that if the 1987 Senate Democratic Majority Committee becomes a vehicle for a small number of candidates, it may then have to allocate its fundraising and administrative costs on a proportional basis. Staff Counsel Nagy indicated his approval of that approach.

On a motion by Vice Chairman Waugh, seconded by Commissioner McNany and a vote of 4-0, the Commission approved the response to the accounting firm for the

1987 Senate Democratic Majority and directed General Counsel Farrell to respond accordingly.

7. Advisory Opinion Request 09-1987

General Counsel Farrell explained that the Commission has been requested by Isadore I. Zlotkin, Assistant Monmouth County Counsel, to provide advice as to the legality of the appointment and funding of a committee by the Board of Freeholders to promote a non-binding referendum which will appear on the ballot in November. General Counsel Farrell responded that there is nothing in the Commission's statute to prohibit the Monmouth County Freeholders from appointing such a committee. He indicated however, that if the Committee spends money, it may have a reporting obligation. General Counsel Farrell then made a distinction between the spending of public money to educate as opposed to such spending advocating a position on the referendum.

Staff Counsel Nagy asked if it would be possible to advise the committee whether or not it has a reporting obligation. Vice Chairman Waugh indicated the decision would turn on the amount of money spent. Staff Counsel Nagy explained that the Commission's regulations define "political committee" at N.J.A.C. 19:25-1.7 to exclude public bodies from the definition. However, he further explained that under that definition such public bodies may become political committees with respect to public questions by virtue of fundraising or other election-related activities.

General Counsel Farrell indicated he did not believe an answer was possible to this request based upon the information provided. Vice Chairman Waugh said he believed that Mr. Zlotkin should be informed of the possible reporting implications. Commissioner McNany asked whether a public body can encourage voter participation and educate voters. Staff Counsel Nagy responded that the question was addressed in a 1953 decision by the New Jersey Supreme Court, Citizens to Protect Public Funds (etc.) v. Parsippany-Troy Hills Board of Education, 13 N.J. 172 (1953). Mr. Nagy also said the Attorney General has advised State agencies that they may spend public funds for informational communications, but may not make expenditures to advocate a public question election result; see Formal Opinion 21-1975.

On a motion by Vice Chairman Waugh, seconded by Commissioner McNany and a vote of 4-0, the Commission voted to direct General Counsel Farrell to respond in this matter advising Mr. Zlotkin of the possibilities discussed.

8. Executive Session

On a motion by Vice Chairman Waugh, seconded by Commissioner McNany 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.

9. Resignation and Election

Upon returning to public session, Vice Chairman Waugh submitted his resignation as Vice Chairman to the Commissioners. He then nominated Commissioner Owen McNany to serve as Vice Chairman.

On a motion by Vice Chairman Waugh, seconded by Chairman Axtell and a vote of 4-0, the Commission elected Commissioner Owen McNany as Vice Chairman. Vice Chairman McNany indicated his acceptance of the office with mixed emotion as he regretted the departure of Commissioner Waugh.

10. Adjournment

On a motion by Commissioner Proctor, seconded by Commissioner McNany and a vote of 4-0, the Commission voted to adjourn at 1:04 p.m.

Respectfully submitted,



FREDERICK M. HERRMANN, Ph.D.

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