



State of New Jersey

ELECTION LAW ENFORCEMENT COMMISSION

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NEW JERSEY ELECTION LAW ENFORCEMENT COMMISSION

PUBLIC SESSION MINUTES

MAY 9, 1988

All of the Commission members and senior staff were present.

Chairman Bedford 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 9:35 a.m. at the Commission's offices at 28 West State Street, Trenton, New Jersey.

1. Approval of Public Session Minutes of April 19, 1988

On a motion by Commissioner Axtell, seconded by Vice Chairman McNany and a vote of 4-0, the Commission approved the Public Session Minutes of April 19, 1988.

2. Advisory Opinion No. 04-1988

This Advisory Opinion request from New Jersey Financial Services Association has been withdrawn. No further action by the Commission is required.

3. Advisory Opinion No. 05-1988

On a motion by Commissioner Axtell, seconded by Vice Chairman McNany and a vote of 4-0, the Commission approved the response to AO-05-1988 as written by Legal Director Nagy.

This response to Assemblyman Frank A. LoBiondo states that the Commission has no jurisdiction over the use of surplus funds for the operating and staffing of district offices and suggests that the Assemblyman may wish to refer his inquiry to the Joint Legislative Committee on Ethical Standards.

Commissioner Linett recommended that the agenda item entitled Public Comment should be moved forward in future meetings.

4. Discussion of Public Financing Regulations

See May 2, 1988 draft proposals for changes to the gubernatorial primary election public financing regulations as prepared by Legal Director Nagy. These draft proposals served as the basis for the following discussion.

The first proposal calls for limiting the matching of public funds to only funds raised specifically for a gubernatorial campaign.

Chairman Bedford said that under the proposed amendment only new money raised specifically for a gubernatorial candidate could be matched with public funds. He said that funds given to a gubernatorial candidate for a prior election or for a personal PAC controlled by the candidate could not be submitted for match.

Chairman Bedford asked Executive Director Herrmann to clarify for the Commission what type of funds could be matched.

Executive Director Herrmann said that primarily the program matches contributions by checks. He said that the public financing staff cannot match loans to the campaign, or in-kind contributions, for example. And, he said, if this proposal is approved it will be clear that surplus funds and personal PAC money beyond \$800 cannot be eligible for match.

Commissioner Linett asked if, through the use of the language "was seeking or had sought nomination for election for the office of governor" the Commission is excluding money collected for testing the waters from the limitations included in this particular proposal.

Legal Director Nagy responded that this money would be excluded from these limitations. He said that a contribution received and deposited pursuant to N.J.A.C. 19:25-3.1 and 19:25-16.5 would eventually become reportable if the person becomes a candidate. Moreover, testing the waters money is eligible for matching.

Commissioner Linett said that he is not convinced that testing the waters is the right approach. He said that perhaps it would benefit the Commissioners to consider the testing the waters proposal first.

Vice Chairman McNany asked: in this proposed regulation, what money is being eliminated for match?

Legal Director Nagy said that any money raised for a purpose other than a gubernatorial campaign would be excluded from match. He said that the burden would be on the candidate to show that certain funds were raised during the testing the waters period or during the time that he or she was a candidate for governor.

Executive Director Herrmann added that the proposal would not, however, prohibit receipt of an \$800 contribution from a candidate's prior campaign committee or personal PAC.

At this point, the Commission agreed to consider the proposed regulation concerning testing the waters before acting on any of the other proposals.

This proposal calls for limiting the amount of money expended for testing the waters to no more than \$50,000.

Legal Director Nagy indicated that the reason for the testing the waters concept is to require a gubernatorial candidate to report any money raised and spent exploring the feasibility of a candidacy. He said that the Commission has always wanted testing the waters activity to be reported.

Commissioner Linett asked if the law required an individual who is testing the waters to have a bank account.

Legal Director Nagy answered in the affirmative.

Commissioner Linett asked if reporting is required during this period.

Legal Director Nagy said that there was no specific statutory provision requiring reporting during this period.

Commissioner Linett asked: what is the definition of a candidate?

Legal Director Nagy said that essentially it is a person who raises or spends money to seek office.

Chairman Bedford queried as to why the Commission should be concerned about the financial activity of an individual who does not run for office. He said that even if the individual raises \$50,000, the Commission should not be concerned about it unless the person becomes a candidate for governor.

Legal Director Nagy stated that the concern is disclosure. He said that if an individual raises significant amounts of money for possible political purposes there would be a public interest in its accounting.

Chairman Bedford questioned: but why do we care if he or she doesn't become a candidate? He said that if an individual does not become a candidate he or she cannot be corrupted as a public official. At what point does the individual go over the line and become a concern?

Legal Director Nagy asserted that the Chairman's comment went to the heart of this regulation. He said that staff feels that at the point at which the person spends \$50,000 he or she qualifies as a candidate. He said that this \$50,000 figure parallels the \$50,000 qualifying threshold for matching funds.

Executive Director Herrmann said that after an individual spends more than the qualifying threshold he or she might be construed to be a candidate.

Commissioner Linett asked: "Why would a person tell us about testing if there is no requirement to report?"

Legal Director Nagy indicated that there is an incentive to report this activity and the incentive is that the candidate would want to receive matching funds for donations received for "testing."

Commissioner Linett stated that testing the waters activity is the only political activity that is not reported.

Counsel Farrell said that testing the waters is an accepted concept on both the State and federal levels.

Commissioner Linett said that several options were open to the Commission in containing testing the waters financial activity and enhancing disclosure. He said that the Commission can put a cap on spending; it can establish a date after which any person engaging in this testing the waters activity automatically becomes a candidate; and/or it can require that any person who solicits or receives money must create a committee.

Chairman Bedford asked why the proposed regulation requires only that the person spend \$50,000 and overlooks the activity of collecting it.

Executive Director Herrmann responded that a person can raise money for any purpose. Spending, however, reveals a political purpose.

Vice Chairman McNany said that one cannot raise money for an unspecified purpose. He said that one has to raise money for a certain purpose. He said that fund raising efforts always indicate the purpose for collecting donations, otherwise they would not be successful. Vice Chairman McNany said that he believes that raising and spending money are both important.

Legal Director Nagy said that when money is raised it is not always clear that it is for a political purpose. He cited the example of fund raising for religious or philosophical purposes. He said that the fund raising appeal can be for the purposes of promoting certain religious or philosophical values. He said that until this money is spent it is not clear that the money is promoting political purposes.

Commissioner Linett said that the way to contain testing the waters activity could involve the requirement that a political committee be established and the placement of a limit on spending.

Chairman Bedford said that he was inclined toward this approach. He said that he was also inclined to feel that \$50,000 threshold should be considered in terms of receipts and expenditures, not just expenditures.

Vice Chairman McNany said that he agreed with the Chairman.

Chairman Bedford said that as a practical matter, once a committee was established it could be determined if it was raising money for a political purpose.

Legal Director Nagy said that it is difficult to prove the motives people have for raising money. He said money could be raised for religious or philosophical purposes, for instance, but the spending test is easier to apply.

Counsel Farrell suggested that what the Commission was currently discussing might fall into a third category. He said that this question might involve the issue of certain persons getting together and trying to determine if they can come up with a candidate to run for governor. He said that it is different than the candidate testing the waters himself. He said that there might be a constitutional question involved. Counsel Farrell said that as a practical matter, the candidate is not going to want to get around reporting because he's going to want testing the waters money matched.

Chairman Bedford said that he still believed that the word "raised" should be included in the regulatory language.

Commissioner Linett asked if the Commission was still thinking about combining the threshold with the requirement of forming a committee and designating a treasurer. He said that if the committee is required to file a designation of treasurer form and fails to do so at the time it is required, then the testing the waters committee would default on future matching funds.

Executive Director Herrmann noted that by taking this step the Commission might be forcing potential candidates to raise money in small amounts. He said that currently candidate's testing the waters activity can be supported with large donations. Executive Director Herrmann said that he thought the Commissioners might wish to consider whether or not this step would inhibit a potential candidate of limited means from running for governor.

Commissioner Linett asked if a time limit on the filing of designation of treasurer form was needed. He said that raising \$50,000 is not hard these days.

Counsel Farrell added that there could be a problem with the courts if the Commission required filing a report at the beginning of the testing the waters process.

Commissioner Linett indicated that he did not foresee such a problem.

Executive Director Herrmann said that testing the waters was a political reality.

Legal Director Nagy reiterated Judge Bedford's point about the lack of disclosure interest in someone who never becomes a candidate. He also said that he was concerned about the jurisdictional problems of requiring filing before an individual becomes a candidate.

Commissioner Linett said that with regard to constitutionality of the proposal, the Commission should be able to require a filing if a candidate wants matching funds for money raised during this period.

Chairman Bedford proposed that the regulation read: No more than \$50,000 may be raised from a separate depository established pursuant to subsection (b) above.

Commissioner Linett said that he could support this proposal if the regulation also requires filing of a report identifying the account at the inception of testing the waters activity. He said that the regulation should contain the following elements: 1) requirement that a designation of treasurer and account form be filed at inception of testing the waters activity; 2) that testing the waters activity ends and a person becomes a gubernatorial candidate after raising \$50,000; and 3) that testing the waters be completed at a date specified by the Commission, perhaps November 15th of the year preceding the gubernatorial election.

Commissioner Linett moved this proposal and it was seconded by Commissioner Axtell. On a vote of 4-0, the Commission partially approved the motion calling for the regulation to contain the filing requirement and the \$50,000 receipt provision; and further that staff should study the time limit.

The Commission turned to reconsider the proposed amendment to the primary election public financing regulations which would limit the matching of public funds to funds raised specifically for a gubernatorial campaign.

Commissioner Linett said that the proposed amendatory language was now suitable to him based on the Commission's previous decision vis-a-vis testing the waters.

Commissioner Linett made a motion to approve the amendment as drafted by Legal Director Nagy, adding a new subsection to N.J.A.C. 19:25-16.11. The motion was seconded by Commissioner Axtell and approved on a vote of 4-0.

The Commission next considered the proposed regulation which would require public disclosure of contributors of \$100 or less used to generate public funds.

Legal Director Nagy stated that the law permits any candidate to exclude the names of contributors of \$100 or less from his or her reports. He said that a candidate does not have to do this, however. The candidate can identify those contributors if he or she desires.

Legal Director Nagy said that under public financing, a candidate must provide the name and address of contributors of \$100 or less to the Commission. He said that otherwise staff could not enforce the \$800 contribution limit and administer the program. Legal Director Nagy said, however, that the Commission previously would not release the names of these small donors to the public if the campaigns objected. He said that most candidates have not objected to the Commission releasing the names of the small contributors.

Commissioner Linett asked if this change was being requested by anyone in particular.

Legal Director Nagy said that the public and press in the past had expressed interest in knowing the identity of all contributors.

Commissioner Linett said that there are good reasons to retain the present policy. He said that the Legislature clearly believed that contributions of up to \$100 need not be reported. He said that as a practical matter, many of the small contributors do not want their names disclosed. Commissioner Linett said that the policy would be discouraging to small contributors.

Chairman Bedford moved that the Commission not adopt the proposed amendment and retain the present policy instead. The motion was seconded by Vice Chairman McNany and approved on a vote of 4-0.

The Commission continued by considering the proposed regulation termed the anti-proliferation regulation, which would clarify the rules prohibiting affiliated entities such as corporations and unions from each contributing \$800 to a gubernatorial candidate.

Chairman Bedford asked whether this type of thing really happens or if the staff was raising a strawman.

Legal Director Nagy said that it is a real problem.

Chairman Bedford said that he had trouble asking a treasurer to certify the correctness of a corporate or union contribution. He said that it was not fair to place this burden on a campaign treasurer.

Legal Director Nagy said that staff needed to obtain information about affiliated corporations and unions to protect the integrity of the contribution limit.

Chairman Bedford said that in this time of conglomerates it is very difficult to recognize affiliation. He asked how staff could get at this information.

Legal Director Nagy stated that the Federal Election Commission apparently suggests that campaign treasurers keep a list of corporate contributors and that treasurers must obtain information on which

corporations are affiliated. As a practical matter, he said, a treasurer often will know when small corporations are controlled by the same person. He said that a treasurer would have to make some kind of inquiry as to corporate directors and majority membership.

Chairman Bedford said that he has difficulty with putting the burden on the treasurer. He said that it would be better to require this type of information from the contributor.

Commissioner Linett suggested that a form could be drawn up for corporate donors. He said that he thinks there is a good argument for prohibiting corporate contributions, but the Legislature has left us with a situation which allows corporate contributions.

Chairman Bedford asked for a motion that would call for the regulation to be drafted in such a way as to shift the burden to the corporate or union giver.

Vice Chairman McNany made a motion to this effect, which was seconded by Commissioner Axtell. On a vote of 4-0 the motion carried.

The next regulatory change under consideration would require all candidates seeking to qualify for or receive public funds to submit typed documents.

Commissioner Linett suggested that the word "printed" be left in the text of the amendment and the sentence "the submission documents shall not be handwritten" be added to the amendatory language.

On a motion by Vice Chairman McNany, seconded by Commissioner Axtell, the Commission voted 4-0 to prohibit handwritten submissions from being matched.

The Commission considered next the proposal to establish the actual price of tickets to fund raising events and for fund raising lotteries as the standard for the amount of the contributions. In the past, the Commission set the fair market value of the ticket as the standard for the amount of the contribution.

Legal Director Nagy said that by approving this amendment to the public financing regulations the Commission would be moving closer to the federal position. He said that it was the staff's belief that the actual price of the ticket should represent the contribution because attempting to establish a fair market value for tickets to entertainment or other fund raisers presented substantial valuation difficulties for candidates and staff. He said that the Federal Election Commission also recommends that the ticket state that the price is a political contribution to the candidate.

Chairman Bedford directed Legal Director Nagy to include this disclaimer provision in the proposed regulation.

On a motion by Commissioner Linett, seconded by Vice Chairman McNany and a vote of 4-0, the Commission approved the staff's recommendation with the added disclaimer language.

The Commission considered a proposal to require earlier and more complete disclosure of public fund account expenditures.

Legal Director Nagy stated that the purpose of this proposal is to "lock the barn door before the horses escape." In other words, he said, the present system which requires a publicly funded candidate to report public fund expenditures only at 29 days before election, 11 days before election, and 20 days after election does not allow the Commission adequate time to take corrective action if public funds are not spent in accordance with the statutory requirements. He said that if the Commission adopts this proposal to require publicly funded candidates to report their expenditure activity every two weeks, the Commission will be in a better position to curtail any possible misspending because it will be able to cut off further public funds to that candidate until the situation is corrected.

Commissioner Linett said that he believes that where public funds are being spent, the Commission can require further reporting.

Vice Chairman McNany asked what would happen if a campaign spent \$40,000 for a poll.

Legal Director Nagy said that the campaign would have to disclose a specific purpose. For example, if the public fund expenditure was for name recognition, it would probably be an impermissible use. If however, the poll was related to preparation of advertising it would be permissible.

Chairman Bedford asked what the Commission would do if the purpose of a public fund expenditure is not adequately explained.

Legal Director Nagy said the Commission would withhold further public funds.

Executive Director Herrmann said that without this regulation the Commission might not find out until after election for what an expenditure was made and then would be severely limited in applying a remedy if the expenditure were inappropriate.

Counsel Farrell said that in the case of a media consultant, for instance, if he or she did not provide detail on their spending plan, the Commission could withhold public funds.

Chairman Bedford asked if media consultants always know in advance the manner in which they are going to spend their money.

Legal Director Nagy responded that they might not know in advance, but they should at least certify that whatever the ultimate use will be, that use will be for a purpose permitted by the statute.

On a motion by Vice Chairman McNany, seconded by Commissioner Axtell and a vote of 4-0, the Commission approved the staff recommendation.

The Commission considered the proposal to clarify that the contribution limit permits a maximum \$800 contribution from a PAC and also from a contributing member of that PAC.

Commissioner Linett said that his only concern with the proposal was that the phrase "bona fide political entity" was too vague. He said that he was concerned that the Commission was creating a situation that would be impossible to administer.

After limited discussion, the Commission agreed to clarify the regulation by amending the language of the phrase to read "is a bona fide political entity consisting of at least 15 members not created to circumvent the contribution limit contained in the act."

On a motion by Chairman Bedford, seconded by Vice Chairman McNany and a vote of 4-0, the Commission approved the proposal with the addition of the words "consisting of at least 15 members" situated in the phrase as mentioned above.

The Commission considered the proposal to restrict money spent by publicly financed candidates for postelection celebrations.

Commissioner Linett asked if public funds can be used for this purpose. He said that he thought that public funds could not be used for this reason.

Executive Director Herrmann said that Commissioner Linett was correct, and that after an election all funds up to the amount received in public funding became the property of the State.

Chairman Bedford asked if the time period during which election night activities could be held could be extended to 96 hours.

Commissioner Linett said that he could go along with the proposed change in the regulations, but that he believes that expenditure for the purposes being discussed should be limited to election night.

Vice Chairman McNany said that he favored limiting the activity to election night.

Chairman Bedford said that upon reflection, he was inclined to limit these parties to election night.

Commissioner Linett said that the intent of the regulation is to avoid a situation where lots of leftover money is available and used for parties. If we are the keeper of the purse, we should limit these parties to election night.

Commissioner Axtell said that he was opposed to limiting this activity to election night.

Commissioner Linett moved the proposal, with the change that election night parties would be limited to election night only. The motion was seconded by Vice Chairman McNany and approved by a vote of 3-1, with Commissioner Axtell opposed.

Vice Chairman McNany said that he would like to make a proposal to amend the public financing regulations that is not included on the staff's list of proposed changes. Vice Chairman McNany suggested that the Commission conform to the FEC position on prohibiting contributions from individuals who are under the age of 18. He said that specifically N.J.A.C. 19:25-16.6(c) should be modified to prevent people under 18 from contributing to gubernatorial candidates. He said that the Commission would be protecting the integrity of the contribution limit because in all likelihood it would be the parents who would actually be making the contribution, but in the name of the child. He said that most people this age do not have this kind of money and are not that involved in the political process.

Legal Director Nagy said that this change might lead to a constitutional question.

The Commission directed Legal Director Nagy to prepare a draft on this issue and to look into the constitutional question.

Executive Director Herrmann added that there might not be a constitutional question because of the fact that only those 18 and older can vote.

Finally, the Commission considered staff's proposal to prohibit publicly financed candidates from matching postelection expenditures other than those which are reasonable and necessary for the closing of their campaigns, or other than those necessary to pay outstanding obligations incurred before the date of the election for campaign related purposes.

On a motion by Vice Chairman McNany, seconded by Commissioner Axtell and a vote of 4-0, the Commission approved the staff's recommended change.

5. Adjournment

On a motion by Commissioner Axtell, seconded by Vice Chairman McNany and a vote of 4-0, the Commission voted to adjourn at 12:10 p.m.

Respectfully submitted,



FREDERICK M. HERRMANN, Ph.D.