



State of New Jersey

ELECTION LAW ENFORCEMENT COMMISSION

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NEW JERSEY ELECTION LAW ENFORCEMENT COMMISSION

PUBLIC SESSION MINUTES

JUNE 21, 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 10:20 a.m. at the Commission's offices at 28 West State Street, Trenton, New Jersey.

1. Approval of Public Session Minutes of May 17, 1988

On a motion by Commissioner Axtell, seconded by Commissioner Linett and a vote of 3-0, the Commission approved the Public Session Minutes of May 17, 1988. Vice Chairman McNany did not vote because he was not in attendance at the May 17, 1988 meeting.

2. Public Comment

Chairman Bedford recognized Assemblyman William Schluter.

Assemblyman Schluter began his commentary by stating that he has great respect for the Commission and great faith in its mission. He said that for this reason, he decided to appear before the Commission to inquire about the role of the Commission in the process of reform.

Assemblyman Schluter said that he believes strongly in the need for reform in the area of campaign finance. He said that major excesses exist in the campaign process, especially for election to the Legislature. Assemblyman Schluter cited statistics which indicate that in New Jersey spending on races for the State Senate and Assembly more than doubled since 1983. He said that he was also very concerned about the rise in PAC activity. PACs have doubled their spending and come on very strong in the process recently, he said.

Assemblyman Schluter said that he has introduced a package of four bills which collectively address these major issues as well as the issue of lobbyist disclosure.

He said that his bills embrace the recommendations made by the Commission in its annual reports to the Legislature. Moreover, he said that

his campaign finance reform bill contains limits on contributions. He also said that one of the bills would establish a public financing program for legislative elections.

Assemblyman Schluter said that Assemblyman Robert Martin, Chairman of the Assembly State Government Committee, also has introduced legislation to change the campaign finance law.

He said that one of Assemblyman Martin's bills also contain many of the suggestions from ELEC. Assemblyman Schluter said, however, that Mr. Martin's campaign finance bill does not go to the heart of reform. He said that it does not address the question of regulating PACs and does not include contribution limits. He said that by not containing contribution limits, the bill continues to allow lobbyists to buy access to legislators and perhaps adversely influence legislation.

Assemblyman Schluter said that his package contains specific contribution limits of \$500 for individuals and PACs. He said that political parties would be allowed to contribute more money, and his bill recognizes the importance of political parties. He said that by permitting them to contribute more money to a candidate, it would help to strengthen the role they play in the process.

Assemblyman Schluter said that his bill regulates PACs in the manner that they are regulated in the federal system. He said that in like manner, his bill prohibits corporate and union contributions and limits the transfer of funds from one candidate to another.

Assemblyman Schluter said his legislative package also contains a bill that would close the "expressly" loophole in the lobbyist law and give the Commission complete control over the regulation of lobbyists. He said that he also has another bill that would create a legislative public financing program. He said that without public financing there is no way that an expenditure limit can be imposed and the unconscionable spending on legislative campaigns will continue to escalate.

Assemblyman Schluter said that five major newspapers editorialized in favor of these major reforms when the package was introduced. He also cited the recently published Eagleton Institute/Star-Ledger poll which indicated that the public overwhelmingly favors spending and contribution limits.

Assemblyman Schluter said that basically there are two different approaches to changing the law. He said that the first approach, the Martin approach, proposes to fine-tune the law. He said that his approach, on the other hand, is to perform major surgery on the law. He said that his experience showed him that in terms of reforming the law "you only get one bite at the apple." He said that it should be a "big bite" and not a "nibble." He said that if one does not attempt major reform, the

opportunity for that reform will pass away. He said that the atmosphere was now right for major reform.

Assemblyman Schluter, by way of background, added that initially his bill and the Martin bill were posted before the Assembly State Government Committee in March. He said that all of a sudden his bill was dropped and the emphasis became refinement of the law. Assemblyman Schluter said that this was unfortunate; referring to a letter sent out by several groups urging the committee to consider the whole area of reform. He said that despite this fact, only the Martin bill is posted for Thursday, June 23, 1988.

Assemblyman Schluter asked rhetorically: How does all of this affect the Commission? He displayed a copy of Executive Director Herrmann's testimony dated March 7, 1988, which referred to both his bill and the Martin bill as important for reforming the system. He said that this testimony was prepared at the time both bills were posted for consideration before the Assembly State Government Committee.

Assemblyman Schluter said that he objected to the testimony Executive Director Herrmann plans to give, relative to the Martin bill on Thursday, now that his bill has been dropped. He said that the testimony contains the same language on reform.

Reiterating his earlier comments, he said that the Commission is highly respected by both the members of the Legislature and the public. He said that because of this respect, if the Commission expresses high praise for a bill it will invariably be injected into future campaigns for the Legislature. He said that he was also concerned that praise for the Martin bill by the Commission would also have the effect of limiting reform.

Assemblyman Schluter said that he believes that the Commission should ask the sponsors of legislation to come before it to explain their bill before ELEC takes a position on it. He said that with respect to the Martin bill, or other bills that merely refine the law, the Commission should limit its comments to what the bill does. He said it should not use praiseworthy language.

Chairman Bedford said that while he realized that these bills are fundamental bills, it would be an impossible task to have all sponsors come in and explain their legislation in detail. He said that there are some 80 bills that in some way deal with the Commission. Chairman Bedford said that the Legislature has to make policy changes. The Commission does not "lead the parade", he said. Chairman Bedford asked Assembly Schluter whether he was criticizing the Commission for not taking strong stands.

Assemblyman Schluter said he was not, but merely suggesting that by using praiseworthy language the Commission was giving grist for the mill to those who would say, after a bill like Martin's is passed, that we have reform, when in reality we do not.

Chairman Bedford said that Assemblyman Martin and Speaker Hardwick post bills. He said that the Commission has to deal with the bill that is posted. In this case, it is the Martin bill.

Assemblyman Schluter said that he was objecting to the Commission characterizing this bill as a model of reform particularly since it contains a loophole which would remove the prohibition on contributions by banks. He said that he objects to this change.

Commissioner Linett asked the Assemblyman what he would like the Commission to do.

Assemblyman Schluter said that on a routine bill the Commission should just treat it as routine. He said that it should give objective testimony and not use gushy language in support of it. He repeated that the Commission should hear from the sponsors.

Executive Director Herrmann commented that on the issue of contributions by banks, the Commission does not have jurisdiction. Therefore, it is not appropriate for the Commission to testify on this issue.

Chairman Bedford added that he did not like the word reform, anyway. He said that mostly things are just changed, not reformed.

Assemblyman Schluter said that by praising the Martin bill, the Commission's comments might be interpreted as the last word on reform.

Vice Chairman McNany, addressing the issue of whether or not banks ought to be able to contribute, said that he did not know if it would be appropriate for the Commission to take a position on policy ahead of time. He said that perhaps the Commission should wait to see how the Legislature moves.

Chairman Bedford said that campaign finance reform is very important, but that the question is how to do it within the limits of the Constitution, especially with respect to contribution limits.

Commissioner Linett said that he thinks the issue raised is one that was raised earlier by the Commission. He said that he has known Assemblyman Schluter a long time and that he has always had high regard for him and his efforts to reform the process.

The question, he said, is what is the Commission's role? Commissioner Linett said that the Commission must administer the law. He said that on an issue basis it should also use its experience and make recommendations. He said that the Commission is not equipped to comment on each and every bill.

Commissioner Linett said that the Martin bill is being moved so the Commission must address it. He said that the Commission's effectiveness would not be enhanced by getting into the middle of legislative fights.

Assemblyman Schluter said that if this is the Commission's role then it should be careful in the language it uses to describe legislation.

Executive Director Herrmann said that he has the greatest respect for Assemblyman Schluter. He said that they have worked together on many issues. Executive Director Herrmann said that when all of the bills were in committee he referred to them all as models of reform. He said that now only the Martin bill is being considered and he is referring to it in the same way that he did previously. Executive Director Herrmann said that in comparing this bill to earlier reforms, this bill represented solid reform. Indeed, it implements almost every recommendation that ELEC advocated in its most recent annual report, which contains two pages of suggested changes affecting the campaign act, the lobbying act, and the personal financial disclosure act. He said that very importantly, this bill gives the Commission an adequate appropriation. Earlier modifications of the law did not carry with them money to implement their changes. Executive Director Herrmann said that Assemblyman Schluter has led the way. He said that since Assemblyman Schluter introduced bills which included appropriations, Assemblyman Martin has included an appropriation package in his bills as well. Also he has included provisions to reform the lobbying law. Executive Director Herrmann said that therefore Mr. Schluter has already had a favorable impact on reform.

Chairman Bedford recognized Edward McCool, Executive Director of New Jersey Common Cause, who asked to speak. Mr. McCool said that he respected the Commission's interest in change and in fine-tuning the law. He said,

however, that the Commission can be used in the process because the Commission was in danger of supporting something which contains provisions it may not like. He said that the Commission was too highly regarded to be placed in a position of looking like it was thwarting reform.

3. Executive Director's Report

A. Personnel News

Executive Director Herrmann reported that Assistant Legal Director Nedda Massar has been named Director of Public Financing. He said that she has already produced, with Legal Director Nagy, an excellent two-year planning schedule. He said that Ms. Massar will be hiring an Assistant Director and other staff. He said that Sandra McGee has been hired as secretary.

Executive Director Herrmann announced that Senior Investigator Sheila Becker, the Commission's only field investigator, will retire in July. He said that Civil Services rules prevent the Commission from

hiring a replacement until mid-September. Executive Director Herrmann said that this retirement and the temporary vacancy left by Ms. Massar's appointment will put an obvious strain on enforcement in the short run.

B. Staff Activities

Executive Director Herrmann said that the Gubernatorial Cost Analysis Report was published and distributed. He said that it received excellent press coverage and is being hailed as a significant contribution to the debate on updating the law. Executive Director Herrmann said that it should have a national impact as a unique study that creates a "campaign cost inflation index."

C. Public Hearing on Primary Public Financing
Scheduled for July 19, 1988

Executive Director Herrmann said that a room is being reserved if needed at the State House Annex. He said that a court reporter has also been reserved and that coffee and donuts will be provided.

D. NORCOL Conference

Executive Director Herrmann reported that planning for the NORCOL Conference is on schedule. He said that the panels are all set and that advertising is progressing. He said that a brochure has been widely distributed, as well as a press release. In addition, ads for the conference have appeared in the COGEL Newsletter and the Washington, D.C. based PACs & Lobbies newsletter. Executive Director Herrmann said that there seems to be much interest in the Conference and that he expects a good turnout. He said that the Commissioners and Counsel Farrell will be able to attend at no charge to themselves.

E. COGEL News

Executive Director Herrmann said that he would be chairing his second COGEL Steering Committee meeting this weekend in Chicago, Illinois. He said that under his leadership COGEL has increased its membership by 25 percent since its conference in Quebec, Canada. He said that COGEL now has 187 members. Executive Director Herrmann said that the Governor of Hawaii has joined COGEL. Also, Executive Director Herrmann said that he personally recruited the first non-North American member. He said that the new member, a professor of political science

from Britain, published a 1987 article, distributed throughout Europe, in which mention of ELEC is made. He said that the reference to ELEC in "Campaign Finance in American State Elections" was based on a 1985 interview with himself.

F. Executive Director's Activities

Executive Director Herrmann said that on June 3, 1988, he addressed a group of visiting West German students on campaign finance.

Executive Director Herrmann said that on June 8, 1988, he met with Senor Juan Ramallo Massanet, a member of Spain's Congress to discuss campaign finance issues. Executive Director Herrmann said that Senor Massanet was also interested in COGEL and will seek to recruit Spanish members.

Executive Director Herrmann reported that in a discussion with Jeff Garfield, Executive Director of the Connecticut Elections Enforcement Commission and a former COGEL chair, ELEC received praise for its LOGO.

G. Legislative Activity

Executive Director Herrmann said that A-2493 (Martin), the omnibus reform bill based on ELEC recommendations was posted but not discussed at a meeting of the Assembly State Government Committee on May 23, 1988. He said that it is scheduled again for June 23, 1988. He said the bill has been amended to remove the "expressly" provision from the Lobbying law and to give ELEC sole jurisdiction over lobbyists. He said that the bill contains an adequate appropriation of \$1.3 million.

Executive Director Herrmann said in regard to gubernatorial public financing reform, the Senate State Government Committee released S-2488 (Van Wagner) and S-187 (Zimmer). He said that the Zimmer bill was released without recommendation.

Executive Director Herrmann said that both bills are acceptable variations to ELEC's recommendations. He said that the Van Wagner bill has been amended to use the ELEC campaign cost index and to statutorily allow "testing the waters" without reporting. He said that the floor vote was 24-12 in favor.

Executive Director Herrmann reported that Assemblyman Martin has recently introduced a public financing bill. He said that this bill is also an acceptable variation on ELEC proposals. He said that it also

prohibits testing the waters reporting. This bill is posted for discussion at the June 23, 1988 Assembly State Government Committee meeting with the Van Wagner and Zimmer bill.

Chairman Bedford requested that Executive Director Herrmann contact Senator Van Wagner and Assemblyman Martin concerning the Commission's testing the waters proposed regulation. He said that he wanted the legislators to be apprised of the direction the Commission was proposing to move relative to testing the waters.

Chairman Bedford asked: Is there anything the Commission should do relative to the provision in the Martin bill which would permit banks to contribute to campaigns?

Executive Director Herrmann reiterated that the Commission does not have jurisdiction over this matter. He said that traditionally, the Commission has not commented on matters over which it has no jurisdiction.

Counsel Farrell said that an argument could be made in this case, however, that because the provision would give ELEC jurisdiction over prohibited contributors, ELEC could take a position on it.

Vice Chairman McNany indicated that he did not think there would be anything wrong with the Commission taking a position now, before the fact, rather than after the fact in the annual report.

Chairman Bedford said that the Commission has to walk a delicate line. He said that he is not so sure that allowing banks to contribute is such a bad thing anyway.

Counsel Farrell said that perhaps the basis of the comment should be an analysis of the effect of such a provision; not that it is good or bad.

Chairman Bedford said that he would rather be accused of not acting in advance than being criticized for being out in front.

Commissioner Linett said that he agreed with Vice Chairman McNany. He said that he thinks it would be a step backward to allow banks to contribute.

Vice Chairman McNany said that he would oppose allowing banks to contribute.

Commissioner Linett suggested that the issues of contribution limits and prohibited contributors be placed on the agenda for this summer. He asked staff to provide background information.

Chairman Bedford asked the Executive Director to alert Assemblyman Schluter to the Commission's plan to discuss the prohibited contribution issue and the issue of contribution limits.

H. Future Meeting

Executive Director Herrmann reported that the Commission will meet on July 19, 1988, when it will hold its public hearing on the proposals to amend the public financing regulations. He said that the Commission will also meet on August 16, 1988 and will have its summer picnic at Legal Director Nagy's home afterwards.

4. Code of Ethics Amendment

On a motion by Commissioner Linett, seconded by Commissioner Axtell and a vote of 4-0, the Commission approved Deputy Attorney General Charles Markey's amendment relative to spousal contributions. In the same motion, it approved the recommendation that with regard to contributions by Commissioners to federal candidates and committees, they expressly request in writing that the funds which they contribute should only be used for federal election expenses of the donee federal candidate or committee.

The Commission, in the same motion, rejected as impractical and unenforceable the optional amendment requirement that if a donation is used to support New Jersey State on local candidates, the contribution should revert back to the donor-member.

3. Executive Session

On a motion by Commissioner Axtell, seconded by Vice Chairman 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.

4. Adjournment

On a motion by Commissioner Axtell, seconded by Commissioner Linett and a vote of 4-0, the Commission voted to adjourn at 12:36 p.m.

Respectfully submitted,



FREDERICK M. HERRMANN, PH.D.