



State of New Jersey

ELECTION LAW ENFORCEMENT COMMISSION

NATIONAL STATE BANK BLDG., 12th FLOOR
28 W. STATE STREET, CN 185
TRENTON, NEW JERSEY 08625-0185
(609) 292-8700

STANLEY G. BEDFORD
CHAIRMAN

OWEN V. MCNANY, III
VICE CHAIRMAN

DAVID LINETT
COMMISSIONER

S. ELLIOTT MAYO
COMMISSIONER

FREDERICK M. HERRMANN, PH.D.
EXECUTIVE DIRECTOR

JEFFREY M. BRINDLE
DEPUTY DIRECTOR

GREGORY E. NAGY
LEGAL DIRECTOR

EDWARD J. FARRELL
COUNSEL

PUBLIC SESSION MINUTES

NOVEMBER 28, 1989

All of the Commissioners and senior staff were present.

Chairman Bedford called the meeting to order and announced that pursuant to the "Open Public Meetings Act," N.J.S.A. 10:4-8 et seq., 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 9:30 a.m. at the Commission Offices, 28 West State Street, Trenton, New Jersey.

Mr. Scott Weiner, Treasurer of "Florio for Governor, Inc.," on behalf of the campaign, expressed his thanks to the Commission and entire staff for their cooperation and fairness during the recent gubernatorial campaign. In particular, Mr. Weiner praised Director of Public Financing Nedda Massar for her performance and her accessibility, and for the cooperation of the Public Financing staff on a day-to-day operating level. Mr. Weiner said that while the campaign and Commission did not always agree on every issue, the staff's accessibility and cooperation were greatly appreciated. He said that he felt that it was the best run public financing program in the Commission's history.

1. Approval of Public Session Minutes of October 17, 1989

On a motion by Chairman Bedford, seconded by Vice Chairman McNany and passed by a vote of 4-0, the Commission approved the Public Session Minutes of October 17, 1989.

2. Executive Directors' Report

A. 13th Floor Move

Executive Director Herrmann reported that the Commission had to temporarily suspend its plans to expand its operations to the 13th floor. The Executive Director said that after the last Commission meeting he received a request from the Department of Treasury to use the space for three months to accommodate the new Governor's Transition Team. Executive Director Herrmann said that he told the Department of Treasury that ELEC would be happy to help the Governor-Elect by accommodating the Department's request. He reported, however, that he requested of the Treasury Department

that it reimburse ELEC for moving expenses that were already contracted and that it confirm in writing ELEC's claim to the space after three months. Executive Director Herrmann indicated that the Department concurred on both points. He said that the Department confirmed in writing that the space would be ELEC's and that the Commission needed the additional office space because of backfile storage, fire hazards and overcrowding, and contiguity to the Commission's existing office space because of the computer system. The Executive Director also stated that the Department permitted the Commission to retain its additional space on the 5th floor in the meantime.

B. Staff Activities

Executive Director Herrmann announced that filing night activities for the 29 and 11-day reports were a great success. He said that Director of Compliance and Information Evelyn Ford and her staff, with help from the other sections, did an outstanding job.

Executive Director Herrmann reported that on October 26, 1989 he attended an event sponsored by the Citizens' Research Foundation (CRF) to hear a talk by John Feerick, Chairman of the New York Commission on Government Integrity. He said that Mr. Feerick expressed concern that the resources of ethics agencies in New York were inadequate to enforce the law.

Executive Director Herrmann noted that he recently attended a League of Women Voters Campaign Watch meeting. The Executive Director said that the group discussed possible remedies to negative campaigning as well as the possibility of creating a private sector committee to monitor future campaigns for negativity. Executive Director Herrmann said that his role on the Committee is one of providing technical advice.

Executive Director Herrmann reported that on November 16, 1989, Director Ford, Assistant Director Virginia Wilkes, and Assistant Examiner M. Susan Carr staffed a table at the League of Municipalities Convention in Atlantic City, New Jersey.

The Executive Director said that on December 1, 1989, he would be attending the Eagleton Institute Assembly Elections Forum and that on December 14 and 15 he would be participating in the Eagleton Institute Symposium on public financing of political campaigns.

C. Spring 1990 Meeting with the New York Lobbying Commission

Executive Director Herrmann said that a possible meeting to discuss lobbying may be arranged between the Commission and the New York Lobbying Commission. He said that a possible site for the meeting may be the World Trade Center in New York City. Executive Director Herrmann noted that the event could take place in conjunction with the release of White Paper Number Five, which will be about lobbying reform. He said that more details will come later and that the Commissioners would be entitled to travel expenses but not the per diem.

D. Tax Check-Off Initiative

Executive Director Herrmann reported that the public financing tax check-off program has experienced a gradual drop in its rate from an average of 40 percent to 34 percent over the past few years. He said that this pattern followed a national trend. The Executive Director noted that New Jersey still had the highest rate in the nation but suggested that because of the decline in the check-off rate it may be time for the Commission to take action.

Executive Director Herrmann stated that it might be prudent for the Commission to undertake a campaign to promote the check-off program to the taxpayers. He suggested that staff issue a promotional press release in January and meet with the Division of Taxation to rewrite the tax booklet to include a message to taxpayers to explain the importance of the check-off. He also repeated an idea of Deputy Director Brindle that the Commission could reach out to entities like H & R Block and promote the program to preparers of tax returns. Executive Director Herrmann mentioned a Wisconsin initiative that allowed its Commission to keep three percent of the public funds collected to promote its public financing program. He also said that such efforts were timely from the standpoint that the Commission has already recommended an increase in the check-off to \$2 in order to compensate for the deficit in the fund derived from the increase in public funds payout resulting from the reform of the public financing law. He suggested the Commission might consider reviewing a reduction in the payout along the lines it recommended in its 1986 report on public financing of the 1985 gubernatorial race.

Chairman Bedford asked: "what is the purpose of the tax check-off program in that the program is not an add-on program and the money is derived from existing tax revenues?" The Chairman said that it really did not matter whether the program was funded by direct appropriation from the Legislature or the fund because it is all the same money.

Executive Director Herrmann responded that the check-off program is a useful barometer of public support for the program. He said that the people of New Jersey, by checking off at a higher rate than people in any other State, have demonstrated strong support for gubernatorial public financing. He said that it must be stressed that the program is not a tax add-on and does not add to a taxpayer's tax burden.

Chairman Bedford stated that the public financing program has been questioned by some in the press because of the negative tone of the recent gubernatorial campaign. He said that certain reporters are wondering whether public money should be going to support such campaigns. Chairman Bedford noted, however, that negative campaigns did not start with the most recent one and probably will not end with it.

Counsel Farrell expressed the belief that the Commission should refrain from monitoring messages in campaigns and agreed with the Executive Director on the usefulness of the check-off as a barometer.

Vice Chairman McNany suggested that the Commission should distance itself from the notion that the check-off is a barometer of public financing support. He said that public support for the check-off is declining and that if the rate of check-off is highlighted as a measure of public support for the public financing program, it could be argued that the public financing program is losing favor among the voters.

Chairman Bedford agreed, stating that the public is increasingly concerned about public money going to support negative campaigns. The Chairman said that the timing is not right with respect to promoting the check-off program.

Commissioner Linett asked if the check-off program was a topic for discussion at the public financing hearing.

Executive Director Herrmann responded that the check-off program would be discussed at the public hearing. He said that other issues to be discussed involved raising the check-off rate to \$2 and reconsideration of the amount of money distributed to candidates. Executive Director Herrmann noted that in its 1986 report, the Commission actually proposed reducing the amount of payout to candidates from that paid out in 1985, suggesting that the preservation of public money was a major concern.

He said that negative advertising has nothing to do with public financing. He said that the purpose of public financing is to eliminate undue influence, limit special interest money, keep spending under control, and permit qualified candidates of limited means to run for Governor.

Chairman Bedford said that the time was not ripe for a check-off promotional campaign and suggested that the Commission await the testimony voiced in the upcoming public hearing.

E. Budget Update

Executive Director Herrmann reported to the Commission that the Office of Management and Budget (OMB) in the Department of Treasury rejected the Commission's \$200,000 priority package request. He said that staff met with OMB staff on November 20 to discuss the Commission's budget request. Executive Director Herrmann said that he stressed the need for OMB to restore the \$76,000 it cut from the ELEC's fiscal year 1990 budget. He noted that these cuts included \$30,000 from salary money, \$30,000 from the data processing account, \$2,000 in equipment, and \$4,000 in miscellaneous items including parking and Counsel Farrell's contract. Executive Director Herrmann said that the Commission had also asked for an additional \$34,000 for printing, phones and postage; \$2,000 for raises and COLA for four converted positions; \$7,000 for an assistant computer analyst and secretary; and \$21,000 to raise the Commissioner's per diem to \$500 and to cover needed meetings. Losing this money, the Executive Director said, is a serious blow to ELEC's ability to perform at an optimum level.

Executive Director Herrmann said that while OMB rejected the Commission's requests, it did agree to permit the Commission to retain fine money. The Executive Director said that the retention of fine money would

give the Commission an additional \$30,000 per fiscal year that would prevent the loss of a professional staff position.

In a related matter, Executive Director Herrmann announced that plans were being made to begin charging governmental agencies for copies of reports. He said that currently governmental agencies are not being charged for copying requests. Executive Director Herrmann said that the policy would be changed to cover the costs of copying. He said that with the volume of requests increasing, particularly by governmental agencies, the Commission is losing money. He said that the situation is taking its toll on the Commission's budget as well as the staff's ability to process requests.

Commissioner Mayo said that he was not inclined to support such a change in policy. He said that he did not see where charging other State agencies would make a difference in the State's budget, in that agencies would simply be shifting funds around from one to the other. He said that it is all taxpayers money and that it did not make a difference whether ELEC collected the additional monies from other governmental agencies.

Vice Chairman McNany suggested that the staff could cover copying costs by spreading them over other users, not by initiating a policy of charging sister agencies. He said that the charge to the public could perhaps be increased.

Legal Director Nagy said that representatives of other governmental entities, primarily the Legislature and the Governor's Office, are not just making simple requests, they are often making requests for huge numbers of reports. He said that it is often impossible to tell whether or not these requests are being made for governmental use or for political reasons. He said that for these reasons staff deemed it necessary to begin charging these entities.

Executive Director Herrmann said that the Commission has its own, independent budget, and that it is important that the cost of copying be covered. He said that if ELEC loses copying revenues, its budget is affected adversely.

Commissioner Mayo said that he would like to have more information available to him prior to making a decision to change the present policy. He suggested that staff provide a memorandum to the Commission outlining the rationale behind changing the fee policy toward governmental agencies.

Chairman Bedford instructed staff to leave the current policy in place until the Commission reconsiders the issue at its December meeting. He directed staff to provide the information requested by Commissioner Mayo.

G. Future Meetings

Executive Director Herrmann noted that the next regular meeting of the Commission is scheduled for December 19, 1989. He said that the annual Holiday party will be held on that day at the Yardley Inn, Yardley, Pa., at 1:30 p.m.

The Commissioners set 10:00 a.m. as the time of the December 19, 1989 meeting and contributed \$50 to the Holiday luncheon fund.

Executive Director Herrmann mentioned to the Commissioners that parking was now available to them in the parking deck at the rear of the building.

3. Approval of White Paper Number 4 - Alternate Funding Sources

Executive Director Herrmann unveiled a study of providing ELEC with enough money to do its job, saving the taxpayers money, and providing an additional measure of autonomy to the Commission.

The Executive Director noted that Deputy Director Brindle and Director of Administration Richard Magee met with staff from the Division of Taxation in the Department of Treasury and that the Taxation staff raised no technical problems with the proposals. In addition, said Executive Director Herrmann, Legal Director Nagy, Deputy Director Brindle, Director Magee and he met with staff from the Office of Management and Budget and encountered no resistance to the plan. He said that OMB is willing to immediately adopt the fine proposal and is very interested in the remaining proposals although they can take no action on their own.

Executive Director Herrmann, in outlining the proposal, stated that the elements include:

1. raising fine scales and keeping the money;
2. filing fees for lobbyists, PAC's and parties;
3. retaining a percentage of public funds for administration of the public financing program; and,
4. guaranteeing a base budget with an annual inflationary adjuster.

Executive Director Herrmann said that the paper presents some exciting options that deserve to be reviewed and discussed by governmental leaders. He said that the objective is to stimulate an appreciation of ELEC's budget problems and to present some possible solutions.

Chairman Bedford said that the paper was well written and thorough. He said that the new money from filing fees is very important. Chairman Bedford said that the utilization of user fees is widespread these days. He indicated that a reasonable filing fee system would be beneficial to ELEC's efforts to raise enough money to do its job properly. The Chairman said, however, that he had reservations about the proposal to retain fine money. Chairman Bedford said that he was uncomfortable with that notion in that it might be perceived as an incentive for ELEC to be excessive in its enforcement activity.

Commissioner Linett said that he views the paper as creative; one that addresses important problems. He said that unlike previous White Papers this one is not a research paper about campaign finance issues, but rather one that contains novel solutions to budgetary problems.

Commissioner Linett said that he had reservations about some of the proposals advanced in the paper. He said that he saw constitutional problems in the paper when it discusses exacting a tax on those entities that exercise their right of free speech.

He said it would be those entities that would pay for the system of disclosure and that he is not convinced that this approach is just.

Commissioner Linett added that he also saw an inherent conflict in the PAC and lobbyist fee proposal in that if it is the policy of the Commission and the State to place a lid on PAC spending, this proposal actually fuels the PAC spending industry. He said that he is not comfortable with this method of financing the Commission. He said that, in effect, the Commission is tying itself and its budget to the growth in PACs at the same time that it desires to limit their spending.

Executive Director Herrmann said that while the Commission has recommended contribution limits, it has not endorsed limits on PAC spending. He said that the fee proposal is designed to raise money from those entities that are fueling the ELEC's workload and to transfer the Commission's fiscal base of support from the taxpayers to these sources. He also noted that the paper was based on extensive research in proposals and activities of ethics agencies through the country and that the discussion in the paper did not concern a tax on PACs but the collection of a users' fee to cover ELEC's administrative costs.

Vice Chairman McNany said that it is true that PACs are fueling the Commission's workload and that he did not object to a reasonable filing fee for these entities.

Counsel Farrell said that the Commission should be fully aware that the proposals pose potential legal problems. He said that constitutional issues such as equity and freedom of speech are raised by the paper's discussion.

Chairman Bedford said that he was not troubled by a reasonable fee being imposed on PACs and lobbyists. He said that he believed that the filing fee would be deemed constitutional. He reiterated, however, that he was not convinced that the Commission should retain its fines. Chairman Bedford stated that overall, though, the paper represents a good analysis of ELEC's need for alternative funding sources.

Chairman Bedford said that he would move that the paper be released with the caveat that the Commission is not endorsing any specific proposal.

Commissioner Mayo said that he was concerned about the political climate in the small community. He said that he found there to be a growing problem with people, particularly young people, getting involved in the political process. Commissioner Mayo said that he would not support any proposal that would put any obstacle in the path of people getting involved. Any obstacle, he said, however small, is going in the wrong direction. He said that even a fee of \$100 would be an impediment to some of the small community based groups that are involved in the process. He said that

perhaps this problem could be dealt with by placing a floor of \$10,000, under which committees would not be subject to the fee system.

Deputy Director Brindle stated that Commissioner Mayo had expressed a very legitimate concern and that indeed the Paper suggested that a threshold amount of \$10,000 be considered as a means of exempting the smaller, less wealthy committees from the fee system.

Commissioner Linett said that he finds it very difficult to vote for release of the paper if it does not contain a disclaimer to the effect that the Commission is not endorsing any specific proposal contained in the Paper and that it is merely offering these ideas to stimulate debate.

Executive Director Herrmann said that the purpose of the paper is to contribute to the marketplace of ideas and to generate discussion of ELEC's budgetary problems among the State's political and governmental leadership. He said that he fully expects the proposals to be modified during the course of the process of debate. He would also not rule out the possibility of counter proposals. All of this, he said, would be healthy.

Chairman Bedford suggested that the Commission hold a vote on the paper over to the December meeting. He suggested that during the intervening period staff include a disclaimer in the paper and also modify it to reflect the fact that the Commission is not endorsing any set of specific proposals but merely offering ideas to stimulate debate on its budgetary problems.

Executive Director Herrmann asked if the Commission would vote on OMB's offer to allow ELEC to retain its fines.

On a motion by Vice Chairman McNany, seconded by Commissioner Mayo and passed by a vote of 4-0, the Commission authorized OMB's proposal for allowing the Commission to retain its fines.

4. Adoption of 1990 Meeting Dates

See memorandum from Frederick M. Herrmann, Executive Director to the Commission, dated November 15, 1989 and entitled "1990 Commission Schedule." This schedule calls for regular meetings of the Commission to be held on the third Tuesday of each month.

On a motion by Vice Chairman McNany, seconded by Chairman Bedford and passed by a vote of 4-0, the Commission approved the meeting schedule for 1990, and directed it be circulated pursuant to the Open Public Meetings Act, N.J.S.A. 10:4-7 et seq.

5. Approval of Primary Election Public Financing Funds

See memorandum from Nedda Massar, Director of Public Financing, to the Commissioners, dated November 20, 1989 and entitled "Primary Election Submissions for Public Matching Funds." In this memorandum Director Massar

points out that regarding public funds submissions made in the postelection setting, a campaign must demonstrate that it has either existing preelection debt for campaign expenses or postelection closing costs. This information supplements the normal review criteria observed in processing public funds submissions.

At this juncture, Director Massar reviewed the applications for public matching funds. She said that on October 30, 1989, the Cardinale campaign submitted its eleventh application for 1989 primary election public matching funds. She also reported that on November 13, 1989, the last date for 1989 primary election public funds submissions, the Sigmund campaign filed its sixth public funds submission.

1. Candidate Gerald Cardinale

The net amount submitted by Candidate Cardinale for match was \$9,565.00. No Submission Eleven items required temporary refusal. Including resubmissions, a total amount of \$12,585 was determined to be eligible for match at a 2:1 ratio.

Staff recommended that the Commission certify \$25,220.00 to the Cardinale Campaign, which amount includes \$50.00 to correct a Submission Ten item. Since this was Candidate Cardinale's eleventh submission, the Commission has now certified a total of \$728,990.50 in matching funds to this candidate.

On a motion by Commissioner Linett, seconded by Commissioner Mayo and passed by a vote of 4-0, the Commission certified \$25,220.00 in matching funds to Candidate Gerald Cardinale.

2. Candidate Barbara Sigmund

The net amount submitted by Candidate Sigmund for match was \$16,249.00. A complete review of all items resulted in temporary refusal of four items. Including resubmissions, a total amount of \$18,624.00 was determined to be eligible for match at a 2:1 ratio.

Staff recommended that the Commission certify \$37,248.00 in public funds. Since this was Candidate Sigmund's sixth submission, the Commission has now certified a total of \$420,459.72 in matching funds to this candidate.

On a motion by Commissioner Linett, seconded by Commissioner Mayo and passed by a vote of 4-0, the Commission certified \$37,248.00 in matching funds to Candidate Sigmund.

6. Approval of General Election Public Financing Funds

Director Massar reviewed the application for public funds submitted by Candidate Jim Courter on October 16, 1989. Director Massar said that at its October 17, 1989 meeting the Commission certified \$160,677 to Candidate Courter. The net amount submitted for match by Candidate Courter on that

date was \$96,225.00. The \$160,677, certified to the campaign on October 17, 1989, though not equal to the 90 percent automatic percentage certification rate, was the amount necessary to bring the Courter campaign to the \$3.3 million maximum in public funds for the 1989 general election. Accordingly, staff recommended that no additional public funds be certified to the Courter campaign.

7. Public Financing Hearing and Audit Plans

Director Massar outlined plans for the gubernatorial public financing program public hearing and for the gubernatorial public financing audit.

Director Massar proposed that the hearing be scheduled for February 20, 1990, which is a regular Commission meeting date. She also suggested that the March 20, 1990 Commission date be reserved for public hearing purposes in the event that a continuation of the February public hearing is necessary. It is proposed that both hearings be held in Trenton.

Regarding the public financing audit, Director Massar said that in the past, the Commission permitted the campaign to retain funds for audit costs and legal fees. She said that the Commission has permitted campaigns to retain funds until the completion of the audit. Director Massar said that she would recommend allowing the campaigns to retain up to \$5,000 in their account for this purpose. She said that the amount was consistent with past policy.

Mr. Scott Weiner said that the Florio campaign may need to retain more than \$5,000. He said that the primary and general audits would be done simultaneously and that monies are to be allocated between the two audits. He said that he was interested in knowing the procedure for retaining more than \$5,000. Director Massar said that if the \$5,000 amount was not enough, the campaigns should write to the Commission explaining why they need to retain more money and asking for authorization to do so.

For additional details involving planning for the public hearing see memorandum from Nedda G. Massar, Director of Public Financing to Frederick M. Herrmann, Executive Director, dated November 13, 1989 and entitled "Planning for Public Hearing Concerning the 1989 Gubernatorial Public Financing Program."

Commissioner Linett questioned the wisdom of holding the hearing on the same day as the regular meeting.

Executive Director Herrmann said that this approach was being taken because of budgetary consideration. The ELEC budget has been cut, and the paid number of meetings per year was reduced from 30 to 15.

Chairman Bedford said that he would like to have staff cut down on the agenda. He said that the agenda today was exceedingly lengthy.

Executive Director Herrmann said that the lengthy agenda resulted from the recent gubernatorial election and that the fact that the Commission has not met for over a month.

Chairman Bedford said that it is particularly important to shorten the agenda for the meeting to be held on the public hearing day.

Commissioner Linett suggested starting the regular meeting at 9:00 a.m. and the public hearing at 10:00 a.m.

Commissioner Mayo queried as to whether there was sufficient interest in this hearing.

Executive Director Herrmann responded in the affirmative.

Commissioner Linett wondered whether it would be a good idea to hold the hearing in a different part of the State.

Executive Director Herrmann said that it is certainly a possibility but that the media is in Trenton.

Chairman Bedford said that an event like this should be held in Trenton.

Chairman Bedford asked for a vote on Director Massar's policy recommendation that campaigns be allowed to retain \$5,000 in funds.

On a motion by Vice Chairman McNany, seconded by Commissioner Mayo and passed by a vote of 4-0, the Commission approved the recommended policy on the retention of campaign funds for audit-related expenses by gubernatorial candidates.

8. Adoption of Amendment to Form A-3 Regulation

This issue involves the adoption of proposed amendments to the regulation concerning the filing of continuing political committees (CPCs) A-3 forms on September 15, 1989. The proposal changes the September 15 filing date to January 15 because the September 15 date is not consistent with the statute and is in practice "unworkable." The A-3 form was established to relax the statute, which requires quarterly reporting by CPC's on a calendar year basis even in those cases when only de minimis activity occurs.

Please see the Public Session Minutes of August 15, 1989, the memorandum from Evelyn Ford, Director of Compliance and Information to Jeffrey M. Brindle, Deputy Director, dated August 8, 1989 and memorandum from Gregory E. Nagy, Legal Director to Frederick M. Herrmann, Executive Director, dated November 20, 1989 and entitled "Adoption of Amendment to Form A-3 Regulation."

On a motion by Commissioner Mayo, seconded by Commissioner Linett and passed by a vote of 4-0, the Commission adopted the Amendment to the Form A-3 Regulation as proposed, and directed staff to file the Adoption Notice with the Office of Administrative Law.

9. Amendments to Copying Fee Regulation

At its October 17, 1989 meeting, the Commission proposed a regulation to raise the fees for copying and producing computer-generated data. The draft advanced to the Commission at that time contained a textual discrepancy in that the intent of the staff was that the fee for computer-generated labels would be \$.10 per label, not \$.10 per page of labels. Accordingly, a new text was drafted that corrected the label fee, and contains specific descriptions of what is meant by the term "page" of data, and what is meant by the term "computer tape." See memorandum from Gregory E. Nagy, Legal Director, to Frederick M. Herrmann, Executive Director, dated November 17, 1989 and entitled "Amendments to Copying Fee Regulation."

Commissioner Mayo said that he was concerned that \$.10 per label was excessive. He said that in Middlesex County the public can obtain labels for \$.01 each.

Deputy Director Brindle said that the proposal is being made on the basis of input from Director of Administration Richard Magee and Systems Administrator Warren Heins. He said that factored into the cost are: the actual cost of the labels, computer maintenance, and service and labor costs. He said that the proposal is being made simply to cover the agency's costs of producing computer labels.

Chairman Bedford said that Essex County charges in the area of \$.10 per label.

On a motion by Commissioner Linett, seconded by Vice Chairman McNany and passed by a vote of 4-0, the Commission approved the proposed amendments to the copying fee regulation.

10. Personal Interest Disclosure Regulations

Legal Director Nagy introduced a regulatory proposal to create a new reporting requirement for candidate or committee expenditures in which the candidate or some other person may have a "personal interest." In effect, every "personal interest" disbursement cited on a report would necessitate reporting on a Personal Interest Disclosure Statement. The statement would require disclosure of substantial information which presently is unreportable, such as: a full description of goods or services provided, rate of compensation, cost per item of goods, fair market value of services or goods, and the relationship between the candidate or other person and the payee.

Legal Director Nagy said that the purpose of the proposed regulation is to discourage candidates from making any "personal interest"

expenditures; to provide staff and the public with more information about "personal interest" expenditures so that possible "personal use" violations become more apparent; and to establish legal authority to prosecute cases where "personal interest" statements are not filed, or are incomplete.

See memorandum from Gregory E. Nagy, Legal Director to Frederick M. Herrmann, Executive Director, dated November 21, 1989 and entitled "Personal Interest Disclosure Regulations." He suggested that the Commission allow more time for refinements before formally proposing it as a regulation.

Legal Director Nagy said, for example, that a key question is whether the Commission wants to limit required reporting of expenditures to immediate family members who are financially dependent on the candidate, or remove the financial dependency test and rely solely on family status.

Counsel Farrell concurred, stating that the Commission has to decide where it wants to draw the line on this reporting. He said that to do otherwise would be to run the risk of enacting a regulation that was too onerous and unenforceable.

Counsel Farrell said that limiting the scope of the regulation to family members that are financially dependent tracks closely the definition of immediate family members in the "Personal Financial Disclosure Act."

Commissioner Linett said that he had reservations about this proposal. He said that it would be difficult to administer these regulations and to prove financial dependence. Commissioner Linett also suggested that the definition of immediate family member be left in the proposal but that definitions "two and three" be eliminated as too bureaucratic. Commissioner Linett questioned, for instance, the meaning of "substantial financial interest." "How is it defined?" he asked.

Counsel Farrell agreed, stating that "substantial financial interest" requires a good definition. He said that he would research the Securities and Exchange law to determine if there is a definition suitable to the Commission's purposes, and provide a draft for the next meeting.

Commissioner Linett suggested that on the Commission's forms, a box be added to indicate whether there is any spending on a family member. He said that if this box is checked, it would simply trigger the filing of the form under the proposed regulation. He said that the Commission need not take such a complicated approach.

Chairman Bedford asked if the Commission had the authority to enact this regulation and whether it could exact penalties for violations of it.

Counsel Farrell said that the authority for the regulation and the consequent disclosure derives from a candidate conceding that a disbursement was made to a family member.

In response to Judge Bedford's question, Legal Director Nagy said that unlike the regulations prohibiting personal use of campaign funds, this regulation limits itself to only full disclosure of expenditures in which

there is "personal interest." Therefore, since only disclosure is required, the regulation probably has a stronger statutory base.

Commissioner Linett suggested that the word "goods" in subsection(7) be defined because more than mere "goods" is involved. He also suggested that the provision dealing with "fair market value" be eliminated as overly complicated. Commissioner Linett said that the purpose of the regulation is to enhance disclosure and not to attempt to determine the "fair market value of goods and services."

Counsel Farrell agreed, stating that he was unsure that the Commission would get anything out of asking for "fair market value." In addition, he said, "such a provision would be hard to administer."

Chairman Bedford suggested that the proposed regulation be held over until the December meeting. Commissioner Linett agreed, stating that he would like to see a redraft of the proposal which would include the suggestions made during the current discussion.

On a motion by Vice Chairman McNany, seconded by Commissioner Mayo and passed by a vote of 4-0, the Commission decided to hold the proposal over to the December meeting.

11. Advisory Opinion No. 25-1989

This advisory opinion request, submitted by Brian W. Fahey, Chairman of the Union County Freeholder Board, concerns the issue of whether an article appearing in the Summer, 1989 edition of the Union County Freeholder Bulletin would be considered a "political communication" which added or promoted the candidacy of Mr. Fahey for the State Assembly in District 21.

The draft response to the advisory opinion request, submitted by Legal Director Nagy, declares that the Commission is satisfied that the article in question complies with N.J.A.C. 19:25-11.10(c) and therefore is not reportable as a campaign communication.

N.J.A.C. 19:25-11.10(c) reads: "nothing contained in (b) above shall be construed to require reporting of a communication by an incumbent officeholder seeking reelection which communication is circulated to constituents for the sole and limited purpose of communicating governmental events requiring those constituents to make applications or take other actions within a specified time period, or for the sole and limited purpose of communicating facts relevant to a bonafide public emergency."

In drafting the response, the article and other pertinent facts were examined. In addition to a finding that the article was in compliance with subsection(c), Director Nagy noted that the article deals with a significant governmental event, and had the effect of notifying county residents of the existence of a possible referendum question.

Commissioner Linett said that he believed that the draft opinion took too narrow a view of events in that the two people in the photograph were

the very same people who were candidates. The Commissioner stated that he believed the piece was political.

Commissioner Mayo said that he did not have any difficulty with the opinion as drafted. He added that to do otherwise would be to inhibit freeholders and other elected officials from getting information to the public.

On a motion by Commissioner Mayo, seconded by Vice Chairman McNany and passed by a vote of 4-0, the Commission approved the opinion as drafted.

12. Advisory Opinion No. 26-1989

This advisory opinion request, submitted by Steven Rogers, Republican candidate for South Brunswick Township Committee, concerns an inquiry as to whether the costs of several newspaper advertisements not authorized or paid for by the candidate must be reported by him as an in-kind political contribution.

The draft response, written by Legal Director Gregory E. Nagy, concludes that the expenditures were undertaken independently of the campaign of Mr. Rogers, and therefore are not reportable as campaign contributions by the Rogers campaign. The draft response concludes that Mr. Rogers had no control over the content or timing of the newspaper advertisements and that he never approved of or otherwise acquiesced in their content.

Commissioner Linett said that he agreed with the opinion. He suggested, however, that on page two the phrase "under the circumstances" be amended to read "based on the facts."

On a motion by Commissioner Linett, seconded by Vice Chairman McNany and passed by a vote of 4-0, the Commission approved the opinion as amended.

13. Advisory Opinion No. 27-1989

This advisory opinion request, submitted by Jay Angoff, Chairman of Citizens Auto Revolt (CAR) inquires as to whether a political committee that had been advocating the adoption of a non-binding county referendum question must file campaign reports even though the New Jersey State Supreme Court declared the referendum illegal and ordered it off the 1989 general election ballot.

CAR filed a 29-day preelection report on October 10, 1989, showing receipts of \$61,346 and expenditures of \$59,795. Mr. Angoff maintains that as a result of the September 22, 1989 Supreme Court decision the purpose for which the CAR political committee was formed no longer exists. He states that CAR has instead been seeking to persuade candidates for office to co-sponsor a bill that would implement the recommendations contained in the referendum.

In a draft response, Legal Director Nagy notes that "in order to be subject to reporting requirements as a 'political committee' a committee must be aiding or promoting ... the passage or defeat of a public question in any election (see N.J.S.A. 19:44A-3(i))" Accordingly, since the Supreme Court decision removed the referendum from the ballot, the Commission found no basis for imposing reporting responsibilities on CAR as a political committee.

The draft opinion notes, however, that the opinion should not be construed to exempt CAR from filing responsibilities resulting from contributions made to it or expenditures made by it to aid or promote candidates in any election. It further notes that CAR should be aware of reporting requirements pursuant to the Legislative Activities Disclosure Act, N.J.S.A. 52:13C-18, et. seq., should it conduct activities to persuade legislators to sponsor or take other action in regard to legislation.

Chairman Bedford said that it bothered him that the draft opinion concluded that CAR did not have to file. He said that he believed that CAR should file in that the entity raised and spent money in an effort to get the question on the ballot.

Legal Director Nagy said that the statute defines a public question as a question that is submitted to the voters. He said that this question was removed from the ballot and thus was never submitted to the voters. Legal Director Nagy concluded therefore that the Commission's authority to require reporting does not extend to entities that support efforts to get questions on the ballot if the question is not ultimately presented to the voters.

Commissioner Linett said that he was not sure he agreed with the draft opinion. He suggested that in all probability, the group raised money to promote a public question and as such should file reports.

On a motion by Chairman Bedford, seconded by Commissioner Linett and passed by a vote of 4-0, the Commission directed staff to revise the opinion to require CAR to submit campaign reports. The Commission also determined to act on the opinion at its December meeting.

14. Advisory Opinion No. 28-1989

This advisory opinion was submitted by Donald E. Jump, Treasurer of the Russo-Lynch Victory Fund.

Essentially, the advisory opinion request asks for advice as to how this committee is to file and whether funds raised and disbursed by the Committee should be allocated to the continuing political committees of Senators Lynch and Russo.

In his request, Mr. Jump states that Senator Russo and Senator Lynch have lent their names to the Russo-Lynch Victory Fund Committee in an effort to raise funds to be used for some future political need. Mr. Jump stated that the proceeds of the fund will be transferred to the continuing

political committees of the two Senators and may then be used to make contributions to candidates participating in the 1989 general election.

The draft response to the advisory opinion request, written by Legal Director Nagy, advises Mr. Jump that the Russo-Lynch Victory Fund should file as a continuing political committee because its purpose is to raise funds for the continuing political committees established by Senators Russo and Lynch. The response advises Mr. Jump that a precedent for this opinion was set by the Commission in Advisory Opinion No. 03-1988. A copy of that opinion is enclosed.

Additionally, the advisory opinion response states that in the absence of any existing or imminent candidacy by Senators Russo or Lynch, or any activity relative to the 1989 general election candidates, the Russo-Lynch Victory Fund is not required to allocate to the continuing political committees of Senators Lynch and Russo.

Counsel Farrell said that he concurred with the opinion. He said that the Commission has always maintained that if there are no candidates benefitting from a committee's action there is no allocation required. He said that, for example, if a county organization runs a Lincoln Day dinner when it has no candidates, there is no allocation of fundraising costs, even if the organization later supports candidates. On the other hand, he said, if a county organization holds a fundraising event at the time it is supporting candidates, allocation is required.

On a motion by Commissioner Linett, seconded by Commissioner Mayo and passed by a vote of 4-0, the Commission approved the opinion as technically amended.

15. Advisory Opinion No. 29-1989

This advisory opinion was submitted by Arthur Silverstein, Treasurer, Stop Tax Oppression Promptly, Inc. (STOP).

The advisory opinion request inquires as to whether the legal fees paid by STOP for the purpose of contesting a municipal ordinance passed by the Manchester Township Committee, is reportable. The STOP Committee was formed to promote the passage of a referendum to change the township form of government. Subsequent to the formation of STOP, the township committee passed an ordinance to establish a Charter Study Commission to make a recommendation for a change of government. STOP retained the services of an attorney to challenge the legality of the adoption of the ordinance on the basis that the township committee violated the "Open Public Meetings Act" N.J.S.A. 10:4-6 et seq. As a result of the litigation, this ordinance was overturned and the STOP Committee succeeded in having its petitions certified for a special election on January 9, 1990.

In a draft response, Legal Director Nagy finds that the litigation fee expenditure is reportable by STOP. The draft response indicates that there is no distinction for campaign reporting purposes between those expenditures paid to circulate petitions to place a public question on the ballot, and

those expenditures undertaken for legal expenses to insure that those petitions result in the holding of a special election on the public question.

On a motion by Vice Chairman McNany, seconded by Commissioner Mayo and passed by a vote of 4-0, the Commission approved the opinion as drafted.

16. Resolution To Go Into Executive Session

On a resolution by Chairman Bedford, seconded by Vice Chairman McNany and passed by a vote of 4-0, the Commission resolved to go into closed, Executive Session to discuss the following matters which will become public as follows:

1. Executive Session Minutes of October 17, 1989, which minutes will only become public if various matters discussed or acted upon become public;
2. Final Decision recommendations in violation proceedings which will not become public. However, the Final Decisions resulting from those recommendations will become public 15 days after mailing; and
3. Investigative Reports of possible violations, which reports will not become public. However, any Complaint generated as the result of an Investigative Report will become public 30 days after mailing.

17. Adjournment

On a motion by Chairman Bedford, seconded by Commissioner Linett and passed by a vote of 4-0, the Commission voted to adjourn at 1:35 p.m.

Respectfully submitted,



FREDERICK M. HERRMANN, PH.D