



State of New Jersey

ELECTION LAW ENFORCEMENT COMMISSION

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COUNSEL

PUBLIC SESSION MINUTES

DECEMBER 19, 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 10:00 a.m. at the Commission Offices, 28 West State Street, Trenton, New Jersey.

1. Approval of Public Session Minutes of November 28, 1989

On a motion by Commissioner Mayo, seconded by Vice Chairman McNany and passed by a vote of 4-0, the Commission approved the Public Session Minutes of November 28, 1989.

2. Executive Director's Report

A. Gubernatorial Public Financing News

Executive Director Herrmann advised the Commission that staff was planning to approach Dr. Herbert E. Alexander of the Citizens Research Foundation (CRF), University of Southern California (USC), about being the consultant to the Commission's Gubernatorial Public Financing Report. Executive Director Herrmann said that Dr. Alexander helped to design the public financing program in the 1970's and served as the consultant for the 1986 report. The Executive Director said that Dr. Alexander would do editing and some writing and would testify at the February public hearing.

Chairman Bedford asked: how much will it cost the Commission to employ Dr. Alexander as a consultant?

Executive Director Herrmann responded that in 1986, Dr. Alexander charged \$30 per hour for his services and received about \$2,500 in total. He said that Dr. Alexander's charges are less than most consultants. Executive Director Herrmann indicated that Dr. Alexander's services would be particularly important because he is widely recognized as one of the foremost experts in the world on campaign financing.

Executive Director Herrmann also reported on the Eagleton Institute Public Financing Conference held last week in New Brunswick, N.J. The Executive Director noted that almost unanimously, except for representatives from National Common Cause, political scientists and other political experts seriously questioned the viability of expenditure limits.

Executive Director Herrmann also advised the Commission that various tax check-off ideas were discussed. Executive Director Herrmann said that an interesting variation of the check-off concept was offered by participants in the program. He said that the experts proposed that check-off programs be changed to require taxpayers to affirmatively check-off if they did not desire to participate in the program. He said that this approach differed from the present method, which requires taxpayers to affirmatively check-off if they wished to participate in the program. It was suggested that this reversal of the current check-off arrangement would bring in more revenue for public financing programs.

Executive Director Herrmann advised the Commission that he learned that in Minnesota there is a statutory mandate for income tax preparers to inform clients about the program. He said that staff had thought of contacting tax preparers to urge them to voluntarily inform clients about the New Jersey program.

Finally, Executive Director Herrmann noted that certain political scientists suggested that tax forms and booklets be revised to clarify that the check-off does not increase a taxpayer's liability.

Executive Director Herrmann told the Commission that he was mentioning these ideas for informational purposes.

B. COGEL Conference

Executive Director Herrmann said that at the Federal Election Commission's (FEC) session on national research efforts by COGEL member agencies, ELEC's research activities were referred to as the best in the nation. He said that the White Papers were especially praised as "unique and commendable." Executive Director Herrmann added that ELEC's enforcement record was also highly praised during the FEC session.

Executive Director Herrmann noted that he was asked by the COGEL Steering Committee to do the campaign finance update report for the 1990 conference. He said that this exercise would bring further prestige to the Commission while educating Commissioners and staff about the most recent activities in the field. Executive Director Herrmann indicated that the 50-state project would be undertaken by him with the aid of ELEC's professional staff.

Executive Director Herrmann said also that staff plans to bid for the 1992 COGEL conference. He said that Toronto, Canada will probably also bid to be the site of the 1992 conference. Executive Director Herrmann said that the site selection chair encouraged New Jersey to apply. He indicated that if New Jersey is not selected for 1992, then the Commission should consider bidding again for the 1994 conference.

C. Future Meeting

Executive Director Herrmann said that the next meeting of the Commission is scheduled for January 16, 1990 at 9:30 a.m. in Trenton, N.J. He said also that the Commission would meet in Trenton on February 20, 1990 at 9:00 a.m. for its regular meeting. He said that the gubernatorial public financing program public hearing would be held at 10:00 a.m. on that date. He said the February meeting and public financing hearing would be held at the State House. Executive Director Herrmann said that if a further public hearing is required, it would be held at the Commission meeting on March 20, 1989.

The Commission changed the location of the January 16, 1990 meeting to Maplewood, N.J. It will be held at 9:30 a.m.

D. Computer News

Executive Director Herrmann announced that in January or February, 1990, ELEC would become one of a handful of states that would receive FEC press releases.

3. White Paper Number Four - Alternate Funding Sources

Executive Director Herrmann noted that at the Eagleton-Institute seminar he was asked by Professor Stephen Salmore if the Commission had thought about raising money through filing fees. He said that he responded to Professor Salmore by mentioning the White Paper under consideration by the Commission.

Executive Director Herrmann said that in a phone call from the Attorney General's Office in Kentucky, he learned that Kentucky was interested in user fees for filing entities. He said that his office was considering a variation of the user fee idea under which PACs would be incorporated and charged a corporate income tax. Executive Director Herrmann said that experts generally agree that adequate funding is needed by ethics agencies and that creative thinking about revenue sources is required. Finally, Executive Director Herrmann said that during a meeting with the staff of the New Jersey Attorney General's Office regarding a lobbying initiative, he was asked if the Commission has considered fees. Again, continued the Executive Director, he advised the Attorney General's representative that the Commission was considering such an idea in its fourth white paper.

The Commissioners directed staff to separate the disclaimer from the textual footnotes, and place it on an individual page at the beginning of the report. The disclaimer indicated that the Commission was not making any specific proposals but rather offering alternate funding ideas for discussion purposes only.

Commissioner Linett said that the disclaimer language and the removal of the word "proposal" from the text made the report acceptable to him.

For a complete discussion of the contents of the White Paper see the November 28, 1989 Public Session Minutes.

On a motion by Commissioner Mayo, seconded by Vice Chairman McNany, and passed by a vote of 4-0, the Commission approved the release of White Paper Number Four - Alternate Funding Sources.

Public Financing Report on Primary Election Funds

Please see memorandum from Director of Public Financing, Nedda G. Massar to Executive Director Frederick M. Herrmann, Ph.D., dated December 18, 1989, entitled "Return of Unexpended 1989 Primary Election Funds."

Director Massar said that December 6, 1989 was the statutory date for primary campaigns to return unexpended primary election funds for the State. Director Massar said that five campaigns reported outstanding obligations that exceeded their cash balances. She said that while no money is required to be returned to the State by these campaigns at the present time, she indicated that she advised the campaigns that any further money raised that exceeded the outstanding obligations would be returnable to the State.

Director Massar said that the Florio, Courter and Hardwick campaigns have returned funds to the State. She said that the Florio campaign refunded \$16,486.81, the Courter campaign refunded \$58,982.83, and the Hardwick campaign refunded \$25,817.62 to the State. Director Massar reported that the Florio, Courter and Hardwick campaigns retained \$13,141.50, \$28,220.00 and \$9,088.26 respectively. She indicated that these amounts were retained to pay outstanding obligations and for the purpose of conducting audits.

Upon completing her report, Director Massar recommended approval of the retention of the above mentioned amounts by the Florio, Courter and Hardwick primary election campaigns.

On a motion by Commissioner Mayo, seconded by Commissioner Linett and passed by a vote of 4-0, the Commission approved the retention of \$13,141.50, \$28,220.00 and \$9,088.26 by the Florio, Courter and Hardwick campaigns respectively.

5. Advisory Opinion Request No. 27-1989

For a detailed discussion of this request, by Jay Angoff, Chairman of Citizen's Auto Revolt (CAR), please see the Public Session Minutes of November 28, 1989, page 30.

Pursuant to the Commission's directive, Legal Director Nagy redrafted the opinion response to instruct Mr. Angoff that CAR had a filing obligation in the 1989 general election. Mr. Angoff had inquired as to whether or not 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 to be removed from the 1989 general election ballot.

The opinion notes that it is the Commission's presumption that the funds were raised and spent by CAR in anticipation of promoting approval of the non-binding referendum in each county. The opinion concludes, therefore, that CAR is required to file reports as a political committee. Because of the timing of the request, the Commission stipulated that it would be precluded from imposing any penalty on CAR for the late filing of the reports.

Legal Director Nagy, in an attachment to the draft opinion, noted, however, that he is concerned that the draft opinion is at odds with the State Supreme Court opinion which removed the referendum from the ballot. Legal Director Nagy said that while the State Supreme Court disqualified the referendum from the ballot, the Commission, to the contrary, is considering this referendum to be a public question for the purposes of requiring reporting under the campaign Act.

Commissioner Linett said that the Commission should promote disclosure. He said, therefore, that the Commission should take a liberal view of the matter in attempting to promote as much disclosure as possible. Commissioner Linett said that the issue decided by the Court of whether or not the public question was legal is irrelevant vis-a-vis the disclosure question. He said the funds were raised by CAR for the purposes of promoting the question and therefore should be subject to reporting.

Commissioner Mayo agreed with Commissioner Linett.

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

6. Proposed Regulations for Personal Interest Disclosure Statements

For a detailed discussion of the proposed regulations see the Public Session Minutes of November 28, 1989, page 24. In essence, the proposed regulation would create a new reporting requirement for candidate or committee expenditures in which the candidate or some other person may have a "personal interest." Pursuant to the regulation all "personal interest" disbursements by candidates or committees would trigger reporting on a Personal Interest Disclosure Statement. The statement would require disclosure of substantial information which presently is not required to be reported: a full description of goods or services provided, rate of compensation, cost per item of goods, and the relationship between the candidate or other person and the payee.

The Commission reviewed the revised proposal. The major revisions considered by the Commission included: the deletion of the provision dealing with "fair market value" and the definition of "substantial financial interest" as provided by Counsel Farrell. The definition reads: "Substantial financial interest means 10 percent or greater legal or

beneficial ownership of a business or other income producing enterprise which provided to the person in the prior calendar year a total of more than \$1,000 of earned and unearned income."

Commissioner Linett said that the draft is much improved, and, while it is not perfect, it does move the Commission in the right direction in trying to enhance disclosure.

Chairman Bedford suggested that the example of 100 percent ownership as utilized in subsection (b) 5 of the regulation be revised to 10 percent to be consistent with Counsel Farrell's definition of substantial financial interest. **Subsection 5 now reads: "The nature of the relationship of the immediate family member and the reporting candidate or entity making the expenditure (e.g., father of the candidate) or the nature of the substantial financial interest in a business or other income producing enterprise of the reporting candidate or entity making the expenditure (e.g., in excess of 10 percent ownership by a candidate)."**

Commissioner Mayo stated rhetorically that normally a parent would not be considered immediate family, but for the Commission's purposes it is including parents in its definition.

On a motion by Commissioner Linett, seconded by Commissioner Mayo and passed by a vote of 4-0, the Commission approved the proposed regulation as amended and directed staff to file it with the Office of Administrative Law (OAL) in the Department of State as a rule proposal.

7. Archives Memorandum

See memorandum from Jeffrey M. Brindle, Deputy Director, to Frederick M. Herrmann, Ph.D., Executive Director, dated November 1, 1989 and entitled "Archives."

At its October meeting, the Commission discussed the possibility of reducing the period of time it retains its historical records. It presently retains its records for 20 years.

Deputy Director Brindle said that he would recommend that the Commission refrain from reducing its records retention period from 20 years. He said that he is making this recommendation for two reasons:

1. upon the expansion of the Commission's offices to the 13th floor, there will be absolutely no cost to the Commission for retaining records; and
2. it is extremely important to maintain these records for historical purposes.

Commissioner Linett asked if any university in New Jersey might serve as a depository for historical records.

Executive Director Herrmann said that to his knowledge there are four such depositories at the State Library, the Historical Society, Princeton University, and Rutgers, The State University.

Vice Chairman McNany said that businesses retained records for a much shorter period of time. He queried as to why the Commission had to retain records for twenty years.

Deputy Director Brindle responded that the Commission had to be distinguished from a business. He said that, as a government agency, the Commission must be cognizant of its special role as a depository for important campaign records. He said that the Commission, by retaining its records for 20 years, is serving not only the public, but the press and academia as well. Deputy Director Brindle said that businesses represent special interests as opposed to the public interest represented by the Commission. Deputy Director Brindle suggested that campaign finance issues are increasing in importance and because of this fact it is even more essential for the Commission to recognize its responsibility to maintain historical records for an adequate period of time.

On a motion by Chairman Bedford, seconded by Commissioner Mayo and passed by a vote of 4-0, the Commission approved the staff recommendation.

8. Policy on Complimentary Photocopying

See memorandum from Evelyn Ford, Director of Compliance and Information to Frederick M. Herrmann, Ph.D., dated December 8, 1989 and entitled "Policy on Complimentary Photocopying."

Director Ford said that following the Commission's discussion at its November meeting she researched the issue of complimentary photocopying for governmental agencies. Director Ford said that based on that inquiry she is recommending that the policy undertaken by the FEC be implemented by ELEC. She said that the policy would allow complimentary photocopying when the request is sent in writing, on official letterhead, signed by the officeholder, and stating that the request is being made for a legitimate governmental purpose. Director Ford indicated that the FEC found that this policy discourages frivolous requests for information.

On a motion by Commissioner Linett, seconded by Commissioner Mayo and passed by a vote of 4-0, the Commission approved the staff recommendation on the policy change as explained by Director Ford.

Commissioner Linett added that it was important for the Commission to make information freely available when it was for a legitimate governmental purpose.

9. Resolution to go into Executive Session

On a resolution by Commissioner Mayo, seconded by Vice Chairman McNary 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 November 28, 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.

10. Adjournment

On a motion by Commissioner Linett, seconded by Commissioner Mayo and passed by a vote of 4-0, the Commission voted to adjourn at 12:50 p.m.

Respectfully submitted,



FREDERICK M. HERRMANN, PH.D.