



## State of New Jersey

### ELECTION LAW ENFORCEMENT COMMISSION

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Commissioner

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#### PUBLIC SESSION MINUTES

APRIL 18, 1990

All of the Commissioners and senior staff were present with the exception of Deputy Director Brindle.

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

#### 1. Approval of Public Session Minutes of March 20, 1990

On a motion by Commissioner Mayo, seconded by Commissioner Linett and passed by a vote of 4-0, the Commission approved the Public Session Minutes of March 20, 1990.

#### 2. Hearing on Proposed Personal Interest Disclosure Statement Regulation

Chairman McNary asked whether any further interest had been expressed in response to the proposed Personal Interest Disclosure Statement regulation (see 22 N.J.R. 331 (a)). Executive Director Herrmann said that an additional written comment had been received on April 17, 1990 from Dennis Alan Auciello, Esq. Legal Director Nagy indicated that no individuals had signed in advance to testify.

Commissioner Linett asked whether those who had responded had suggested alternatives to the Commission proposal. Executive Director Herrmann reported that the written response from Assembly Speaker Doria and Assembly Minority Leader Haytaian contained substantive suggestions and were supportive of the proposal. He also noted that a letter from Assemblyman Foy was also supportive. (See discussion in minutes of March 20, 1990). Commissioner Bedford stated that he thought the personal interest disclosure statement should be filed only once. Commissioner Mayo suggested that a further obligation to file a personal interest disclosure statement should arise when there is a substantial change for a candidate to report. Legal Director Nagy indicated that redrafting might be necessary to accommodate these changes.

Commissioner Mayo observed that reporting of some very minute information was required by the regulation as currently drafted and that he believed a floor on the amount of an expenditure should be established to make reporting more reasonable.

Chairman McNary asked Executive Director Herrmann what should be done with the proposal at this time. The Executive Director explained that for budget and workload reasons, staff suggested postponing adoption and implementation of this regulation until next year. The Chairman asked what date staff was proposing. Executive Director Herrmann suggested the spring of 1991.

Commissioner Linett moved that implementation of the proposed personal interest disclosure statement regulation be postponed for consideration in November and that staff redraft the regulation to incorporate suggestions received that the filing be a one-time obligation per employee and that a floor of \$500 be incorporated. The motion was seconded by Commissioner Mayo and approved by a vote of 4-0.

Chairman McNary called for additional comment on the personal interest disclosure regulation. There being none, he closed the hearing.

3. Executive Director's Report

A. Staff Activities and Personnel News

Executive Director Herrmann reported that all directors had filed their disclosure forms pursuant to Executive Order Number 1-1990.

Commissioner Mayo asked why the Commissioners were not required to file. Commissioner Linett responded that the Commission was not listed in Executive Order Number 1 as having to file.

Executive Director Herrmann also reported that on March 27, he had participated as a panelist on a Rutgers University Forum television/radio broadcast with Ed McCool and Karen Kotvas on the topic of campaign and lobbying reform.

The Executive Director next reported on staff changes during the past month. Kim Aamodt has left the Administration Section for the Department of Health and Sandy Magee has left the Legal Section for the Board of Public Utilities. Both were senior employees and their loss will be sorely felt.

Executive Director Herrmann next introduced Lisa Fagan, the new Assistant Legal Director.

B. Annual Report

Executive Director Herrmann explained that the Commission's Annual Report is due to the Legislature on May 1, 1990. He called the Commissioners' attention to his April 9, 1990 memorandum concerning two additional suggested legislative items to include in the Annual Report.

One suggestion recommended that small municipal political party committees be relieved of all filing obligations if the committee did not spend over \$2,500 in a calendar year. He explained that the result would be that municipal political party committees would be treated the same as PACs. They would however acquire a reporting obligation if they spent over \$1,000 in an election cycle. Commissioner Mayo expressed his support for this proposal.

The other recommendation suggested that a special fund be created for the escheat of unexpended surplus campaign or continuing political committee funds. Commissioner Linett inquired how much money could be generated by the escheat of surplus funds. Executive Director Herrmann indicated that it is anticipated that our one current intern and two expected summer interns will research the surplus funds issue, and that research a few years ago indicated that about \$1 million may be available. Commissioner Linett noted that for an on-going organizational group escheat should not occur.

Chairman McNany asked what happens to funds remaining unused by a committee or candidate for a long period of time, and he called the Commission's attention to a New Jersey statute that provides for escheat of personal property that is unclaimed for ten years. Counsel Farrell added that corporate dividends escheat after seven years. Chairman McNany raised the issue of ownership of dormant funds. Commissioner Linett predicted that should an escheat provision be adopted, entities will dispose of funds to avoid escheat. Executive Director Herrmann noted that it would also be difficult to determine at what point to begin calculation of the escheat period. He suggested perhaps including transfer of surplus funds to ELEC as a possible enumerated use of such funds in the existing surplus funds regulation.

Commissioner Linett asked to discuss all of the legislative recommendations later on during the meeting.

C. Ad Hoc Commission on Ethics and Campaign Finance

Executive Director Herrmann reported that Senate President Lynch and Assembly Speaker Doria created an Ad Hoc Commission on Ethics and Campaign Finance to review campaign financing and lobbying among other ethical concerns. This Commission will provide an opportunity for ELEC to highlight its calls for reform over the years. The recommendations contained in each Annual Report can be emphasized along with our need for funding. The Ad Hoc Commission is scheduled to report back to the Legislature in the fall.

D. Request from Assemblyman Hardwick

Executive Director Herrmann explained that he had received a request from Assemblyman Chuck Hardwick to urge the Commission to write again to the Governor and legislative leadership concerning the surplus funds issue. Executive Director Herrmann suggested that the letter be prepared by staff for Commission review in May.

On a motion by Commissioner Bedford, seconded by Commissioner Mayo and passed by a vote of 4-0, the Commission voted to direct staff to prepare a

letter to the Governor and legislative leadership urging action on the issue of surplus funds and calling attention to the escheat issue previously discussed at this meeting.

Counsel Farrell reminded the Commissioners that the issue of on-going office expenses was not addressed in the Commission's prior letters to the Governor and legislative leadership on the surplus funds issue.

E. Report on Service Reductions Necessitated by Budget Situation

Based upon a memorandum prepared by Deputy Director Brindle, who has undertaken the responsibilities of the Administration Section, and circulated to the Commissioners, the Executive Director reported on the grim budget outlook for FY91. The Governor's recommended FY91 appropriation for ELEC is \$100,000 less than the appropriation for FY90, which had been cut 13 percent from the previous fiscal year. The new Commission target of \$1.1 million is about 50 percent of what staff had projected as adequate to perform all functions. "The prospect is very grim," reported Executive Director Herrmann.

Executive Director Herrmann indicated that on July 1, 1990, 30 of 35 existing staff positions will be filled compared to the 50 positions projected as the optimal number required to administer the current statute. Staff is now short by a director and administrative assistant in the Administration Section, by one of five agency secretaries, by one of three Compliance and Information Section clerks, and by one of three data entry positions. Director Herrmann went on to report that although the position target for ELEC is 31, the budget crisis will permit paying only 28 or 29. So, there has been a 20 percent loss of positions from the originally authorized 35. Meanwhile, he indicated that the workload was continually increasing. There are now twice as many special interest PACs as in 1985 which are contributing more than three times as much as in 1985. Public Financing distributed almost as much in 1989 as had been distributed in 1977, 1981, and 1985 combined.

Chairman McNany asked how administrative matters had been handled at ELEC before creation of the Administration Section. Executive Director Herrmann explained that only a secretary had acted in that capacity and that there was much confusion. The Chairman asked whether ELEC could use the administrative services of the Department of Law and Public Safety without compromising the Commission's autonomy. Executive Director Herrmann explained that this was not a good option, because of the independence issue and in view of the budget cuts suffered by the Department itself.

Commissioner Bedford stated that all the Commissioners supported the need for additional increased funding and he urged that this need be continually publicized.

Executive Director Herrmann outlined the steps either taken or proposed by staff to meet the budget and staffing crisis. The premise which underlies the entire approach is the need to keep the Commission infrastructure in tact while remaining responsive to the public. "We must be sure that records are kept, phones answered, and files maintained; and,

must avoid putting ourselves further behind," he stressed. Since we cannot expect restoration of funds during FY91, we must "not only tighten our belt, but also adjust the buckle."

Staff is looking at many options, some of which have already been instituted as a result of current vacancies and previous cuts. Release of information and materials from prior elections and progress on large projects will be delayed. The newsletter will be eliminated and research activity will be curtailed.

Commissioner Bedford applauded the white papers. Executive Director Herrmann said staff would aim to keep up as much research as possible.

Commissioner Linett asked whether ELEC appears before the Joint Appropriations Committee. Executive Director Herrmann indicated that ELEC does not usually receive an invitation separate from the Attorney General and that State Treasurer Berman would be appearing this year to represent the Department of Law and Public Safety.

The Commission will not enter a bid for the 1992 COGEL Conference. The Executive Director explained that holding the conference would require the outlay of money and extensive staff work. Moreover, symbolically it is important not to make such a bid when the Commission is cutting back on various services.

Executive Director Herrmann said staff proposed to eliminate the candidate and treasurer information sessions. Commissioner Mayo asked about the magnitude of the response to the sessions, to which the Executive Director responded 40 to 50 people attended recent sessions held here in Trenton. Commissioner Linett expressed his reluctance to end the information sessions. Commissioners Bedford and Mayo agreed. The Executive Director said staff would do everything possible not to eliminate the information sessions.

The Personal Interest Disclosure Statement regulation would be postponed and publication of the Public Financing Report will be delayed to late fall.

Public access to the Commission offices might have to be closed one afternoon per week, from noon to 5:00 p.m. The Chairman asked if it would be better to open each day at 10:00 a.m. Executive Director Herrmann answered that staff believed one entire afternoon would be more productive. Chairman McNany asked how staff would decide which day to close. The Executive Director indicated that Wednesday seemed workable and that an inexpensive tape recording machine would be purchased to indicate closing.

"No funds exist for overtime staffing," reported Executive Director Herrmann. "At peak filing times, this problem will be a major headache," he said. Reallocation of staff resources as suggested by the Chairman should reduce this concern.

Commissioner Bedford asked whether fines are being paid and whether judgments are being obtained. The Executive Director reported that most are

being paid. Chairman McNany asked whether the task of obtaining judgments can be referred to the Attorney General. Legal Director Nagy explained that ELEC had arranged with the Office of the Attorney General that once ELEC obtained a judgment, they would attempt to collect. Periodically, amounts are paid on these judgments when respondents attempt to sell property or obtain mortgages.

The Chairman observed that from the standpoint of cost effectiveness, the relatively small amounts of the fines do not cover the collection costs involved. Executive Director Herrmann reminded the Commissioners that ELEC is still part of the small agency fine collection initiative, but that it, too, is delayed for budgetary reasons. He also expressed his belief that the Ad Hoc Commission on Legislative Ethics and Campaign Finance will permit ELEC to highlight its work and reported that ELEC alternate funding ideas are catching on. Two bills, A-3348 and A-3349 have been introduced by Assemblyman Martin which are variations on the alternate funding suggestions proposed by the Commission.

Chairman McNany asked whether the Commission should communicate its need now to the Governor and Legislature. Executive Director Herrmann indicated that now is probably not the time given the current budget crisis and the overall needs of State government. He remarked that it is in ELEC's interest for the Governor and Legislature to stabilize the State budget situation and that ELEC should "bite the bullet" with other agencies for the short run. The Commission has been very careful with its resources leaving certain positions vacant and reprioritizing its workload. Hence its infrastructure is in tact and no layoffs will be necessary. It has also suggested funding sources for the future. The Chairman asked that the Commissioners be kept apprised of all budget information.

#### F. Future Meetings

The Commission scheduled its next meeting for Wednesday, May 16, 1990, at 10:00 a.m. in Metuchen. Commissioner Mayo will advise staff of the location of the meeting.

#### G. Public Financing Report on Return of Funds

Director of Public Financing Nedda Massar reported that May 7, 1990 is the deadline for return of any unexpended 1989 general election funds by publicly-financed campaigns. The Florio and Courter campaigns have, on their second 60-day postelection reports filed with the Commission, indicated that funds are being reserved as outstanding obligations to cover audit-related expenses. These funds, if not used for audit expenses, would be returned to the State. Director Massar indicated that the Commission approved similar retention of funds for the primary election at the November and December 1989 meetings. The Commissioners indicated their approval of the retention of funds to cover general election audit expenses.

#### H. Continued Discussion of Suggested Legislation

Discussion of the legislative objectives in the Annual Report resumed. Executive Director Herrmann noted that the recommendation to establish filing fees reiterates the substance of ELEC White Paper Number Four. Commissioner Linett wanted to know if political party committees were included in the proposal to generate fees. The Executive Director responded in the affirmative and explained that the two bills already introduced by Assemblyman Martin were inspired by the White Paper. Commissioner Linett suggested that fees might be imposed for candidates' reports, and Chairman McNany added that candidate reports over a certain dollar amount might be assessed. Commissioner Bedford and Executive Director Herrmann expressed their concern over charging for candidates' filings. Commissioner Mayo asked whether the filing fee proposal extends to local committees. Executive Director Herrmann indicated that the Commission proposal talked about exempting smaller committees.

Commissioner Bedford asked what percentage was suggested by ELEC as a filing fee. The Executive Director explained that probably four percent would generate an amount appropriate to cover the Commission's operating expenses, and that it was expected that the State would make up any short-fall not generated by the ELEC income generating mechanisms.

Executive Director Herrmann indicated that the second recommendation concerned contribution limits which the Commission had already supported. Commissioner Linett suggested that a reference be inserted to mention specifically that contribution limits apply to legislative campaigns. Executive Director Herrmann noted that the Commission was recommending across the board limits on all candidates and suggested that the phrase "beyond gubernatorial candidates" be inserted for clarification.

The Executive Director noted that the third recommendation involved prohibiting contributions from corporations and unions, unless made through their PACs.

The fourth legislative recommendation was for comprehensive revisions to the Campaign Contributions and Expenditures Reporting Act. Executive Director Herrmann reminded the Commission that a letter will be prepared on the surplus campaign funds issue. The Commission was requesting civil jurisdiction to enforce political advertising identification rules. PAC identification reporting was also being recommended. Executive Director Herrmann reported that a discussion with Assemblyman Byron Baer alerted him to the Constitutional problems of PAC identification. Legal Director Nagy indicated that the Federal Elections Commission (FEC) also acknowledged concern over PAC identification since it is constitutionally a problem to compel some groups to specify a purpose. He stated that he believed employment information could be required for those individuals who control a PAC, but that a statement of the group's purpose would have to be voluntary.

Commissioner Bedford asked whether PAC identification had ever been tested. Counsel Farrell said that much disclosure could be accomplished with the employer information from those who control a PAC. He also explained that a statement of a PAC's major purpose can be required and

withstand a constitutional challenge. Executive Director Herrmann said that Assemblyman Baer was considering disclosure of the general identification of the type of PAC (e.g., union, corporate, officeholder, etc.), the occupations of those who control the PAC, and identification of contributors' employers.

Another legislative recommendation which the Commission had made in prior years was to raise the threshold for specific identification of contributors in excess of \$100 to contributors in excess of \$200.

Executive Director Herrmann next described the Commission's recommendation to raise the statutory threshold from \$100 to \$1,000 for requiring reporting by individuals of independent expenditures. Commissioner Linett expressed his concern about the impact of an expenditure of less than \$1,000 in a small town election. Executive Director Herrmann pointed out that Commission regulations already include the \$1,000 individual independent expenditure threshold. Commissioner Linett repeated his concern that a \$250 independent expenditure by an individual could have a great impact and go unreported. Counsel Farrell pointed out that an independent expenditure carries little clout with a candidate.

Commissioner Linett stated his belief that the \$100 threshold for contributor identification and that for reporting of independent expenditures should be the same. Executive Director Herrmann then proposed and it was agreed by the Commission that the language "raise the threshold for requiring reporting by persons making independent expenditures from \$100 to \$1,000" be deleted from Item 4(e) of the "Suggested Legislation" section of the Annual Report.

Executive Director Herrmann reported that the next legislative suggestion required active candidates and committees to file quarterly reports before and after campaign cycle reports. He explained that candidates active now for 1991 elections under such a provision would be filing and providing disclosure now.

Executive Director Herrmann noted that the suggestion to lengthen the advisory opinion response time had been proposed for many years. Legislation to increase fines imposed by the Commission and to retain fines collected were the substance of White Paper Number Four. The recommendation that candidates for municipal charter study commissions and special taxing districts be exempted from reporting requirements had also been made in prior years.

The next suggested legislation embodied recommendations, supported by ELEC, which were contained in the Grand Jury Presentment, dated October 6, 1988. Lobbying reform, which is the subject of White Paper Number Five, due for release next month, is contained in the legislative recommendations. In response to a question from Commissioner Mayo, Counsel Farrell explained that much lobbying activity goes unreported because it is not connected to express discussions of legislation, and this statutory problem should be corrected.

Modification of the personal financial disclosure law is also being repropsoed. The legislative recommendations also suggest that school board nominating petitions contain notice of ELEC filing requirements. Executive Director Herrmann continued to explain that repeal of certain superfluous reporting requirements for municipal candidates was being suggested. The next suggestion was to increase the Commissioners' per diem compensation.

Executive Director Herrmann explained that recommendations for legislative action concerning gubernatorial public financing will be contained in the report to be published in the fall.

Commissioner Linett asked when the Annual Report was due to the Legislature. The Executive Director explained that it was due on May 1, 1990, and that staff could add the legislative recommendations concerning elimination of reporting by small municipal political party committees and the escheat provision including the Chairman's suggestion regarding dormant funds.

Commissioner Linett observed that he believed all municipal committees should file annually even if small amounts were spent during a calendar year, and that he did not wish to abandon the annual affidavit (Form A-3) requirement because of budgetary concerns. Executive Director Herrmann explained that budgetary reasons were not the motivation to remove this filing obligation, but that an attempt was being made not to be overly bureaucratic. Commissioner Linett reiterated his desire to keep small municipal political party committees on record. He stated that without reports, there is no record at all of what is being spent. Chairman McNany added that he thought the annual affidavit filing requirement is a good thing.

On a motion by Commissioner Linett, seconded by Commissioner Bedford, and a vote of 4-0, the Commission determined to include in the Annual Report a legislative recommendation to provide a special fund for escheat of unexpended surplus funds to the Commission and not to include a suggestion that would entirely eliminate filing requirements for municipal political party committees spending \$2,500 or less in a calendar year.

#### Appearance by Joe Donahue

Executive Director Herrmann introduced Joe Donahue of the Atlantic City Press, who is currently president of the New Jersey Correspondents' Club and was the first reporter to write about the Commission's budget needs.

Mr. Donahue stated that since he spends a considerable amount of time poring over ELEC reports, he is most aware of what is necessary to do a thorough analysis of campaign records. Mr. Donahue stated that if information were more easily accessible, reporting on campaign finance issues would be improved. He suggested that in this electronic society, reporters should be able to access all campaign finance data by computer.

Executive Director Herrmann explained that ELEC is working to provide a terminal in the public room for access to data, but that staff is limited by a lack of data entry capacity.

Mr. Donahue explained that today's huge campaigns generate too much data and that patterns are only discernible by combining several years of information. It was necessary for him to review 20,000 contributions to do one article. Other reporters share his concern that raw data alone is not very useful, but must be accessible in useful form. He, therefore, supports all Commission proposals that would provide more contributor information. Now only gubernatorial data is completely available and those contributions are capped.

For the first time this year, Mr. Donahue continued, his paper purchased computer tapes from ELEC and it then took ten days to have the data in useful form. Since parties and lobbyists are becoming more sophisticated, the Commission should continue to promote increased computer access. Mr. Donahue concluded by urging the Commission to support optimum reform.

Executive Director Herrmann reported that the goal of White Paper Number Four was to provide funds to do such tasks. He noted that the Commission needed more staff to provide the kind of data Mr. Donahue requested. Commissioner Linett told Mr. Donahue that the goals of the Commission are the same as his goals. Mr. Donahue responded that Executive Director Herrmann and the staff "have been great," and that the concerns discussed should be taken to the Ad Hoc Commission. The Executive Director pointed out that the Commission currently has the same number of data entry staff as it had in 1977. He then thanked Mr. Donahue for his support.

5. Advisory Opinion Request No. 03-1990

This advisory opinion request was submitted by Judie M. Conti, treasurer of the Anthony J. Conti Booster Club, a continuing political committee filing quarterly reports. The request concerns the proposed use of CPC funds to purchase a computer and printer.

Legal Director Nagy referred to his memorandum dated April 10, 1990, to Executive Director Herrmann which had been circulated to the Commissioners. He stated that he believed the Conti Booster Club could purchase the computer equipment in the name of the CPC without violating personal use restrictions as long as the uses were restricted to those listed in the request. When the Booster Club ceases to exist, Legal Director Nagy explained that the equipment would have to be liquidated with no personal use to be made of the proceeds.

Commissioner Bedford asked whether ELEC could supervise the use of such equipment by surprise visits. Counsel Farrell explained that the Internal Revenue Service has loosened regulation of home offices and now requires an affidavit that no personal or non-business use is being made of the space. He suggested that the Commission consider a sworn statement that no non-political use will be made of the equipment.

Commissioner Bedford stated that this request differs from the advisory opinion request concerning purchase of a car phone recently considered by the Commission. Chairman McNany pointed out that there is no audit trail for computer equipment as there would be with a telephone bill.

Counsel Farrell stated his preference for the use of an affidavit. The Commission would then not have to deal with the issue of officeholder activity. Legal Director Nagy indicated that Mr. Conti was a municipal and not a legislative officeholder, and that the Commission has approved the use of CPC funds for such things as municipal information seminars.

Commissioner Bedford indicated his approval of the purchase of the computer equipment if an affidavit is filed. Chairman McNany stated that he believed CPC's have been purchasing such equipment for years.

On a motion by Commissioner Bedford, seconded by Commissioner Mayo and passed by a vote of 4-0, the Commission directed staff to issue a response approving the use of the funds of the Anthony J. Conti Booster Club to purchase computer equipment and requiring the filing of a yearly affidavit certifying that no personal use will be made of the equipment.

6. Resolution to go into Executive Session

On a resolution by Commissioner Mayo, seconded by 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 March 20, 1990, 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.

7. Adjournment

On a motion by Commissioner Bedford, seconded by Commissioner Mayo and passed by a vote of 4-0, the Commission voted to adjourn at 12:35 p.m.

Respectfully submitted,



FREDERICK M. HERRMANN, PH.D.

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