



State of New Jersey

ELECTION LAW ENFORCEMENT COMMISSION

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DEPUTY DIRECTOR

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LEGAL DIRECTOR

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COUNSEL

PUBLIC SESSION MINUTES

MAY 16, 1990

All of the Commissioners and senior staff were present.

Chairman McNany called the meeting to order and announced that pursuant to the "Open Public Meetings Act," N.J.S.A. 10:4-6 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 Metuchen Borough Hall, Metuchen, New Jersey.

1. Approval of Public Session Minutes of April 18, 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 April 18, 1990.

2. Executive Director's Report

A. Staff Activities

Executive Director Herrmann reported that on April 18, 1990, he addressed the New Jersey State Bar Association's Election Law Committee on the issue of campaign finance reform. The Executive Director stated that the Committee expressed concern about adequate funding for ELEC. Executive Director Herrmann noted that committee members extended greetings to Commissioner Linett, a former chairman of the committee. He reported also that Legal Director Nagy has been invited to serve on the Bar Association's Election Law Committee.

Executive Director Herrmann told the Commission that from April 28-30 he attended the Organization Planning and Coordinating Committee (OPACC) meeting of the Council of State Governments (CSG). Executive Director Herrmann represents the Conference on Governmental Ethics Laws (COGEL) on the Committee. According to the Executive Director, OPACC sets goals for

CSG and develops its programming. Executive Director Herrmann said that he is serving on the Private Sector Liaison Subcommittee, from which he will attempt to elicit ideas for possible COGEL financial support. He said that as a member of this Subcommittee he will seek ways for COGEL to acquire appropriate corporate support. Executive Director Herrmann noted that while attending the OPACC meeting, a Texas lobbyist praised the staff of the Election Law Enforcement Commission. He added that he serves on the OPACC committee along with other State officials and legislators.

B. Legislation

Executive Director Herrmann advised the Commission that A-2421 (Baer) passed the Assembly on April 23, 1990, by a vote of 73-3. He said that the bill expands debate sponsorship eligibility to special associations of news organizations without debate experience and public organizations such as New Jersey Network (NJN) and Rutgers University.

The Executive Director reported also that Assemblyman John Rooney has introduced legislation, A-3514, which is based on White Paper Number Four, Alternate Funding Sources. He said that Assemblyman Robert Martin, via A-3348 and A-3349, has also introduced measures that would permit ELEC to raise money through filing fees. Executive Director Herrmann, noting the wide-spread impact of the White Paper, indicated that there is even a bill before the Texas legislature that is apparently based upon its recommendations.

The Executive Director advised the Commission that the Rooney bill permits ELEC to impose filing fees for PACs, parties, non-candidate political committees, and lobbyists. Executive Director Herrmann commented that in the bill, the Commission's fine scale is increased to \$3,000/6,000, plus triple damages for non-disclosure. He said that the bill calls for these levels to be adjusted for inflation every four years.

Executive Director Herrmann said that the bill establishes a Financial Disclosure Law Enforcement Fund, into which fees and fines will be placed, and appropriates \$2 million for start-up costs.

The Executive Director noted also that the Attorney General is adopting a regulation which would increase from \$20 to \$100 the total lobbyist filing fee for filing with his office.

Commissioner Mayo commented that the fact that the Rooney bill carries a price tag of \$2 million will probably keep it at the "bottom of the barrel."

Executive Director Herrmann responded that under ordinary circumstances a bill carrying a price tag of \$2 million would indeed be reviewed with great concern. He said, however, that the Rooney bill could be the exception to the rule in that the filing fees and fines would offset the taxpayers' dollars. Executive Director Herrmann said that the bill would still require that an appropriation be made by the Legislature. He said,

however, that unlike the current situation, fees received during the ensuing year would go into the fund to offset the ELEC appropriation. He said that, in this way, the taxpayers will not bear the full burden of supporting the Commission, yet the Commission would nevertheless enjoy a budget commensurate with its needs.

Counsel Farrell said that it was important for the Commissioners to be aware of the fact that if the White Paper proposal is enacted into law it might be challenged in the courts as a possible abridgment of First Amendment Rights.

Executive Director Herrmann acknowledged the possibility of a court challenge, noting that the White Paper itself mentioned it. He said that it was the belief of staff that the proposal could be successfully defended because the fees are "user" fees that would only cover the operational cost of ELEC's official business. The Executive Director added that if serious thought is given to challenging the proposal in court, knowledge of it would be gained during the legislative process. He said that as of this moment there has been no discussion of a challenge in court.

C. Commissioner Ethics Filing

Executive Director Herrmann reviewed Executive Order Number 9, which extends financial disclosure filing to the Commissioners. Under the order, added the Executive Director, Counsel Farrell is not required to file.

Executive Director Herrmann mentioned that on April 19, 1990, he sent disclosure forms to the members of the Commission. He advised that the forms must be submitted (two to the Ethical Standards Commission and one to the Governor's office) by June 18, 1990. According to Executive Director Herrmann, any questions should be addressed to Ms. Rita Strmensky, Acting Executive Director of Ethical Standards Commission at (609) 292-1892. Also, the Executive Director advised the Commissioners to obtain receipts when filing these forms, and, as corroboration of filing, to return an advisory memorandum prepared by him to the Commission offices at the time of filing in a self-addressed stamped envelope that staff had provided.

D. Ad Hoc Commission on Legislative Ethics and Campaign Finance

Executive Director Herrmann reported that Legal Director Nagy and he attended a work session of the Ad Hoc Commission on May 2, 1990 to serve as consultants and answer questions. He said that formal hearings of the Ad Hoc Commission begin today, as testimony is given by members of the Legislature. Executive Director Herrmann added that he, along with representatives of other groups, such as Common Cause, will testify on June 6, 1990. The Executive Director reported that other meetings are scheduled for June 20, July 11 and 25, August 8 and 22, and September 5 and 19, 1990. Executive Director Herrmann noted that included among the key figures invited by the Ad Hoc Commission to testify this summer is Dr. Herbert T. Alexander.

E. Future Workload Concern

Executive Director Herrmann said that the Commission currently is understaffed in the secretarial area. He said that although staff will be hiring an additional secretary in an entry level position, the recent resignation of two secretaries leaves the secretarial staff short by one position. He said that this position cannot be filled because of budgetary considerations. He said that the shortage of secretarial staff places the Commission in a vulnerable position, particularly during periods when the remaining secretarial staff is out due to vacation or illness.

Executive Director Herrmann added that in the fall two directors will be on a leave of absence due to pregnancy. He indicated that out of four director positions, only one director will be available during that time period. Executive Director Herrmann reminded the Commissioners that because of budget cuts the position of Director of Administration, vacated by Richard Magee, cannot be filled. The Executive Director said that for the rest of the calendar year the Commission's operations would be very tight. He said that temporary employees could not be hired to fill vacancies because of the hiring freeze.

F. 13th Floor Move

Executive Director Herrmann told the Commission that the first phase of the move to the 13th floor was completed on May 11 and that the second phase will be completed on May 22. The Executive Director said that the move should be entirely complete by the end of June. Executive Director Herrmann noted that for security purposes, and at the behest of staff, the Treasury built a new storage room and rekeyed all door locks. Additional security measures will be put into place to protect all equipment in common areas.

G. White Paper Number Five "Lobbying Reform"

Executive Director Herrmann reviewed White Paper Number Five, stating that it is a very comprehensive analysis of "where we have been," "where we are," and "where we should be" relative to the disclosure of lobbying activity.

Executive Director Herrmann noted that Deputy Director Brindle wrote the paper and Research Intern Steve Kimmelman provided background material. He said that he served as editor of the project and contributed background material.

The Executive Director said that the paper covers the legislative history of the current law, describes the current law and its weaknesses, and reviews legislation in other states for reform ideas.

Executive Director Herrmann noted that the paper calls for various improvements in the law, all of which are covered in the 1989 Annual Report just released. He said that the paper calls for:

1. removal of the "expressly" loophole,
2. coverage of legislative staff,
3. reporting of "executive branch lobbying,"
4. reporting of "grassroots lobbying,"
5. the administration of the program by ELEC, and
6. sufficient funding for administrative purposes.

Commissioner Linett said that he felt that the study was interesting and comprehensive, but that it needed a "Statement of Purpose" to be included at the beginning.

Chairman McNany agreed and added that the Commissioners should sign the "Statement of Purpose."

On a motion by Commissioner Bedford, seconded by Commissioner Linett and passed by a vote of 4-0, the Commission directed a "Statement of Purpose" to be added to the White Paper.

On a motion by Commissioner Linett, seconded by Commissioner Mayo and passed by a vote of 4-0, the Commission approved the release of the White Paper.

H. Next meeting

The Commission scheduled the next meeting for June 13, 1990 at 9:30 a.m. at the ELEC office in Trenton.

3. Surplus Funds

At its April 18, 1990, meeting, the Commission directed staff to draft a letter to the Governor and legislative leaders in regard to the use of surplus campaign funds.

In reviewing the draft letter, Executive Director Herrmann noted that the Commission is urging the Governor and legislative leaders to set forth statutory guidelines as to the permissible uses of leftover campaign funds. He said also that ELEC is seeking statutory clarification as to whether surplus funds may pass through the estate of a deceased candidate or escheat to the State. Executive Director Herrmann said further that in the draft letter the Commission is also requesting that State leaders address the issue of whether or not campaign funds may be used to support the expenses of holding public office.

According to the Executive Director, the draft letter summarizes bills that have been introduced in the current legislative session that include provisions regulating surplus funds. Executive Director Herrmann said that the draft indicates that the Commission takes no position with respect to specific legislation, but hopes that these bills will serve as a catalyst for the Governor and Legislature to enact legislation to provide guidance to

candidates and the public as to which uses are permissible and which are not.

Executive Director Herrmann said that the draft letter reiterates the fact that the Commission has been concerned about this issue for years and has written to previous Governors and legislative leaders on several occasions. He said that the letter states firmly that the Commission believes that a statute should be enacted that specifies the permissible uses of surplus funds, prohibits personal use, provides for escheat of such funds to ELEC after the death of a candidate or under other compelling circumstances, and decides the district office use question.

Commissioner Mayo offered a technical amendment, suggesting that language in the last sentence be altered to note the fact that the Commission has urged clarification of the surplus funds issue in past annual reports and letters.

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

4. Return of Unexpended 1989 General Election Funds and Public Financing Audit

For details, please see memorandum from Nedda Massar, Director of Public Financing to Frederick M. Herrmann, Executive Director, dated May 11, 1990.

The memorandum reports on the return to ELEC of unexpended 1989 general election funds by the publicly-financed campaigns. Funds remaining are required to be returned to the State six months after the general election.

According to Legal Director Nagy, who reported on the return of funds, the Courter campaign did not refund any money to the Commission. Legal Director Nagy said that the Florio campaign returned \$131,763.34 to ELEC.

Legal Director Nagy added that \$17,110.58 was retained by the Courter campaign and \$29,173.52 was retained by the Florio campaign. The funds retained by the campaigns are for anticipated audit, legal, and accounting expenses.

On a motion by Commissioner Linett, seconded by Commissioner Bedford and passed by a vote of 4-0, the Commission approved the retention of \$17,110.58 in funds by the Courter campaign and \$29,173.52 in funds by the Florio campaign. It also acknowledged the receipt of \$131,763.34 in surplus funds from the Florio campaign.

Regarding the audit of the public financing program, Legal Director Nagy reported that the Division of Purchase and Property, in the Department

of Treasury, had circulated requests for bids and that the deadline for receipt of proposals is May 25, 1990. He said that it is projected that a contract will be awarded by the end of June, audits of the general election completed by the end of July, and audits of the primary election completed by the end of August. Legal Director Nagy reported that the Request for Proposal indicated that 100 percent of the public funds expenditures will be audited, and that non-public funds expenditures will be audited according to generally accepted accounting standards. Legal Director Nagy said that an audit to determine if campaigns had complied with the contribution limit will not be undertaken because staff has already completed this review.

5. 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 April 18, 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.

6. 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 12:05 p.m.

Respectfully submitted,



FREDERICK M. HERRMANN, PH.D.