



State of New Jersey

ELECTION LAW ENFORCEMENT COMMISSION

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DEPUTY DIRECTOR

GREGORY E. NAGY
LEGAL DIRECTOR

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COUNSEL

PUBLIC SESSION MINUTES

JUNE 13, 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 9:30 a.m. at the Commission offices, 28 W. State Street, Trenton, New Jersey.

1. Approval of Public Session Minutes

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 May 16, 1990.

2. Executive Director's Report

A. Ethics Form Reminder

Executive Director Herrmann advised the members of the Commission that their ethics disclosure forms are due to be submitted to the Ethical Standards Commission and the Governor's Office on Monday, June 18, 1990.

The Executive Director mentioned that two copies of the form are to be filed with the Ethical Standards Commission and one copy is to be filed with the Governor's Office.

Executive Director Herrmann stated that he had arranged for Rita Strmensky, Acting Executive Director of the Ethical Standards Commission, to be available for the members of the Commission to answer questions regarding the filing of their financial disclosure information.

B. Legislation

Executive Director Herrmann reported that the Ad Hoc Commission on Legislative Ethics and Campaign Finance met on May 16, 1990 and received testimony from Assemblymen William Schluter, Robert Martin, Thomas Foy and James McGreevey. He noted that each legislator pressed for increased funding for ELEC.

Executive Director Herrmann said that on May 17, 1990, he testified before the Assembly State Government Committee on A-534 (Cimino). The Executive Director indicated that the bill strengthens controls on loans pursuant to the Grand Jury Presentment, increases penalties for illegal contributions, requires the identification of a contributor's employer, and creates a PAC registration system.

Executive Director Herrmann said that during his testimony, he made various technical suggestions on PAC registration that were accepted by the Committee. He said also that he told the Committee that funding should accompany this type of legislation if it is to be enforced.

C. Staff Activities

Executive Director Herrmann advised the Commission that on May 17, 1990, the New York City Campaign Finance Board visited ELEC's offices and spent the day with the Public Financing staff learning about ELEC's submission review procedures and computer usage.

Executive Director Herrmann said that on June 6, 1990, he attended an Ad Hoc Commission on Legislative Ethics and Campaign Finance meeting. He said that he submitted written testimony summarizing ELEC's annual report recommendations. In addition, Executive Director Herrmann said that he distributed copies of White Paper Number Five: Lobbying Reform. The Executive Director informed the Commission that a panel of experts, including Dr. Herbert E. Alexander of the Citizens' Research Foundation, will testify on July 11, 1990.

Executive Director Herrmann advised the Commission that he met with the Atlantic City Press editorial board on June 12, 1990 about campaign finance reform.

Vice Chairman McNany requested that each Commissioner receive copies of the Executive Director's Ad Hoc Commission testimony.

Copies of the testimony were distributed.

D. Personnel News

Executive Director Herrmann announced that Systems Administrator, Warren Heins, will be leaving on July 6, 1990, to take a position in the private sector as a Systems Analyst. He said that Warren Heins did a truly outstanding job for the Commission over the last three years.

Executive Director Herrmann said that Donna Saczynski, Assistant Director of Public Financing, resigned recently as well. He said that Ms. Saczynski left to become the Governor's Deputy Director of Personnel Services. He added that Ms. Saczynski did an excellent job also.

Executive Director Herrmann noted that Ruth Ford has been hired as a secretary and that Andrew Roberts has been retained as an unpaid Intern until June when he will go to Washington, D.C. as an Intern for Senator Lautenberg.

Executive Director Herrmann said that because of good planning the Commission will be able to replace Mr. Heins. He said that the position left open for Ms. Saczynski, however, cannot be filled due to budgetary restraints.

Commissioner Linett asked: by how many positions is the Commission understaffed?

Deputy Director Brindle responded that after a replacement is found for the Heins position, the Commission will be understaffed by six positions. He said that the Commission's FY '91 salary account will only support 29 positions out of 35.

Executive Director Herrmann said that for years the staff has been asking for a computer backup position but has been denied that request. He said that plans were for Donna Saczynski to be trained as an assistant in the computer area but that they fell through with her departure.

Chairman McNany expressed concern about the problems the Commission will encounter during the period it is without a Systems Analyst.

Executive Director Herrmann said that it would be a difficult period but that priority matters will be undertaken. He said that staff is already acting to find a replacement for Mr. Heins. Moreover, there has been extensive ongoing training of staff members in basic computer operations.

E. Future Meetings

The Commission scheduled a meeting for July 18, 1990, the location of the meeting is to be determined. The Commission scheduled meetings for August 15, 1990 and September 26, 1990. The August meeting is subject to cancellation.

Executive Director Herrmann announced that the picnic is slated for July 20 at Chez Nagy, and that he would take the Commissioners on a tour of new office space on the thirteenth floor at the end of the meeting.

3. Readoption of Commission Regulations

For details please see memorandum from Gregory E. Nagy, Legal Director, to Frederick M. Herrmann, Executive Director, Ph.D., dated June 1, 1990, and entitled Readoption of Commission Regulations. Also, please see Proposed Readoption with Amendments: N.J.A.C. 19:25.

According to Executive Order No. 66 (1978) (Sunset Order), the Commission's regulations are scheduled to expire on January 9, 1991. Pursuant to this Executive Order, the Commission is required to readopt these amendments prior to this date.

As part of the readoption process, all directors reviewed the existing regulations and identified rules which over the past years became unnecessary, inadequate, unreasonable, or not responsive to the purpose for which they were originally adopted. Based on these suggestions, a draft readoption proposal, with amendments, was prepared for publication in the New Jersey Register.

Commissioner Mayo noted that the proposed amendments set forth the fact that a report is considered filed when it is actually received by the Commission. He queried whether this fact is made clear in the Commission's instructional manuals. Executive Director Herrmann responded that the instructional materials do contain this information.

Commissioner Mayo asked how filers provide the Commission with 48-hour notices within that specified period of time. Executive Director Herrmann responded that overnight mail service is used.

Commissioner Linett suggested that candidates be permitted to fax 48-hour notices to the Commission.

Deputy Director Brindle said that the Commission could not initiate such a policy because allowing faxed 48-hour notices would result in an unmanageable situation. He said that volumes of 48-hour notices arrive during a very short period of time and that the Commission would need several fax machines to accommodate these reports.

Counsel Farrell said that he agreed that faxed reports should not be accepted. He said that overnight mail service ensures delivery of the 48-hour notices. He suggested, however, that the Commission clarify in its regulations that faxed reports are not acceptable.

On a motion by Commissioner Bedford, seconded by Commissioner Mayo and passed by a vote of 4-0, the Commission approved the amendments and reproposal as drafted by staff. The amendment stated specifically that faxed reports are not acceptable.

4. Advisory Opinion No. 04-1990

This advisory opinion request, submitted by Frank Salsano, Campaign Treasurer for Friends of Luis A. Quintana, asks whether it is permissible to use \$1,500 in campaign funds to defray the funeral expenses of a campaign worker who was fatally injured while hanging signs for the campaign.

In a phrase, the issue raised by this advisory opinion request concerns whether the Reporting Act, or Commission regulations, prohibit a candidate from making such a payment.

In its analysis, staff indicated that it does not view the payment of a funeral expense of a non-relative to be a personal use of campaign funds by a candidate because no personal gain for the candidate is apparent. Staff therefore recommended that the Commission approve the use of said funds for funeral expenses as specified, stating that the expenditure is lawful and within the spirit, if not the letter, of the permitted use of surplus funds for a charitable organization.

Commissioner Linett commented that the advisory opinion request involved a very unusual set of facts. The Commissioner said that he was unsure about how deeply the Commission should involve itself in this matter.

Commissioner Linett indicated that he would prefer that the Commission's response be brief as opposed to involved. He suggested that staff respond by saying only that "because of the unusual facts presented" the use of this campaign money for the "purpose of defraying the funeral costs" of the campaign worker is permissible.

Commissioner Linett said that he is concerned that if the Commission provides a detailed analysis of its advisory opinion response, this very unusual case might serve as a precedent for future cases.

Counsel Farrell indicated that he agreed with the rationale, provided that the advisory opinion response contain language specifying that "absent personal use" the expenditure of campaign funds for funeral expenses is permissible.

Commissioner Linett said that the Commission should not make any grand pronouncements about its policy in this matter because issues such as these contain the potential for abuse. He said that though the Commission considers this use of funds to be charitable in nature, in actuality, it would be difficult to show whether or not the use of funds is in reality charitable. Commissioner Linett suggested staff send a short letter in response stipulating only that the Commission has no objection to the expressed use of funds.

On a motion by Commissioner Bedford, seconded by Commissioner Linett and passed by a vote of 4-0, the Commission approved the staff's recommendation that Mr. Quintana's campaign be permitted to expend campaign funds to defray the funeral costs of a volunteer worker. The Commission

specified that the response be brief, containing no rationale for its decision.

5. Advisory Opinion No. 05-1990

Legal Director Nagy said that staff has provided a memorandum to the Commissioners outlining the issues raised by the advisory opinion request and containing an analysis suggesting how the Commission might respond. He noted that this memorandum is not the draft response.

This advisory opinion request, submitted by Michael T. Hartsough, an attorney for West Windsor Township (Mercer County), involves the question of whether or not West Windsor Township, which has budgeted \$29,000 to pay for a public referendum has assumed the status of a political committee with the responsibility for filing campaign reports with ELEC. Part of the \$29,000 has also been used for the purpose of distributing advisory material to the public which contains "express advocacy" language.

Essentially, the issue raised by the advisory opinion request is whether or not a political subdivision in New Jersey acquires a reporting obligation under the Campaign Act if it expends public funds to advocate adoption by the electorate of a public question.

In its analysis, the staff concluded that county and municipal governments are not political committees for reporting purposes. Furthermore, the staff concluded that the statute as well as various court opinions do not invest the Commission with any jurisdictional authority to enforce or administer any restraint on the expenditure of public funds by public bodies. Staff suggested that since local government budgets are approved by the State Department of Community Affairs, an aggrieved taxpayer of West Windsor Township could seek the assistance of that Department's Division of Local Government Services regarding the propriety of expenditures for a communication advocating the adoption of a public question, or seek judicial review of the appropriation.

Chairman McNany asked if any member of the public wished to be heard on the matter of Advisory Opinion No. 05-1989.

Chairman McNany recognized Mr. Michael T. Hartsough, who submitted the advisory opinion request. He is the attorney for West Windsor Township.

Mr. Hartsough indicated that the facts outlined in the request remained the same as when presented. He suggested that the key question for the Commission to answer is whether or not West Windsor Township can be deemed a political committee. He said that once the issue is resolved the connected issue of filing responsibilities can be addressed.

Chairman McNany recognized Ms. Jacqueline Alberts, Esq., who appeared on behalf of herself as a citizen.

Ms. Alberts indicated that she had submitted a complaint about this matter to Director of Review and Investigation Judith Chamberlain. She stated that she trusted that the advisory opinion rendered today would not prejudice the outcome of a separate investigation into this matter. Ms. Alberts said that she fully understood that the issue of the propriety of the expenditure of taxpayer money was not under the Commission's jurisdiction. She said, however, that for the record she would like to state that it was her belief that the resources of government should not be used in a political campaign.

Ms. Alberts said that she was aware of the body of law which stipulated that a municipal government could not be construed to be a private body. She urged, however, that the Commission consider the issue of whether certain municipal officials, as individuals, could be construed to be acting as a political committee and therefore incur a filing responsibility.

Ms. Alberts recounted that the State Supreme Court declared that a public body should not use public money in express advocacy or referenda. She said that the public funds rule forbids expenditures of public money when "express communication" is involved. Ms. Alberts said that the court's decision has served the public well for 35 years. She indicated that this decision has been reinforced by other court decisions and by a ruling in 1975 by then Acting Attorney General Del Tufo.

Ms. Alberts said that if the Commission determines that a political committee exists, then she urged that penalties be imposed on individuals and not the taxpayers of West Windsor Township. Ms. Alberts said that the taxpayers have suffered enough.

Commissioner Linett said that he believed the issues were clear:

1. Is a municipal corporation in some circumstances a political committee; and
2. can public funds be used for "express advocacy"?

Commissioner Linett agreed with the staff's analysis that the Act does not intend that municipal corporations be considered political committees. He also said that the issue of public funds expenditures is outside of ELEC's jurisdiction.

Commissioner Linett suggested that the Commission respond that West Windsor Township does not have a filing obligation.

Legal Director Nagy said that the Campaign Act did not intend that municipal officials, acting in their official capacities, be deemed to fit the statutory definition of a political committee. However, if individuals act to raise and spend money for a political purpose beyond their official capacity, they may collectively be deemed as a political committee. He said that in the case of the West Windsor officials under the facts they

submitted they acted in accordance with their official duties and therefore cannot be deemed to be a political committee.

Counsel Farrell suggested that a municipality must have far greater latitude in pushing one side of an issue as opposed to the other. He said, however, that support for public referenda must be distinguished from support for a candidate. Counsel Farrell said that if a municipality published a newsletter, for instance, that, within three weeks of an election, clearly supported an official running for reelection, the Commission could require some type of reporting of the cost of that newsletter. The cost of that newsletter could be construed as a contribution to the candidate, the counsel said.

Counsel Farrell indicated that he agreed that in the case of a public question the Commission was correct in not requiring reporting. Counsel Farrell advised that the Commission's role is to decide the narrow question of whether a decision by a group of municipal officials to spend money is reasonably related to the duties of public office. He said that expenditures containing "express advocacy," as long as they were made in the context of a group's official duties, do not make that group of individuals a political committee, Counsel Farrell said that the West Windsor issue is a taxpayer issue not a public disclosure issue. He added that there is clearly a distinction between candidate advocacy and public question advocacy.

Commissioner Linett said that the Commission should not be too expansive in this matter.

Commissioner Mayo agreed.

Commissioner Bedford said that the matter of whether this is a proper expenditure of public money should be left to the courts.

Counsel Farrell asked if, given the Commission's feeling that municipal governments are not to be construed as political committees, the Commissioners believed that individual public officials are immune from reporting.

Commissioner Bedford said that the Commission did not have to respond to that issue but that he personally believed that if an action is taken by an individual in his or her official capacity, he or she should be immune from disclosure requirements.

On a motion by Commissioner Bedford, seconded by Commissioner Linett and passed by a vote of 4-0, the Commission directed staff to advise the Township of West Windsor that it did not incur a filing responsibility as a political committee.

6. Public Financing Audit

For detailed information, please see memorandum from Nedda Gold Massar, Director of Public Financing, to Frederick M. Herrmann, Ph.D., Executive Director, dated May 30, 1990, and entitled Audits of Publicly-Financed Campaigns.

Director Massar advised the Commissioners that eleven bids have been received by the Division of Purchase and Property in the Department of Treasury and that several have come in below the budgeted amount.

Director Massar said that an evaluation committee composed of public financing staff and staff of the Division of Purchase and Property will review the proposals during June. She said that the evaluation committee will submit a written award recommendation to the Division of Purchase and Property, who will award the contract in July.

7. Resolution to go into Executive Session

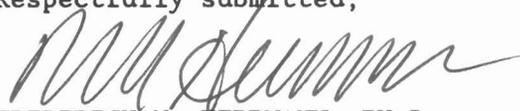
On a resolution by Commissioner Mayo, seconded by Chairman McNany and passed by a vote of 4-0, the Commission resolved to go into closed Executive Session to discuss the following matters which will become public as follows:

1. Executive Session Minutes of May 16, 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 Compliant generated as the result of an Investigative Report will become public 30 days after mailing.

8. 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.