



State of New Jersey

ELECTION LAW ENFORCEMENT COMMISSION

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PUBLIC SESSION MINUTES

OCTOBER 17, 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 10:10 a.m. at the Maplewood Municipal Building, Maplewood, New Jersey.

1. Approval of Public Session Minutes of September 26, 1990

On a motion by Commissioner Bedford, seconded by Commissioner Mayo and passed by a vote of 4-0, the Commission approved the Public Session Minutes of September 26, 1990.

2. Advisory Opinion No. 09-1990

This advisory opinion request was submitted by Mr. Matti Prima in behalf of "Citizens for a Better New Jersey." The advisory opinion request, initially discussed by the Commission at its September 26, 1990 meeting, seeks approval for the use of "900 line" telephone service for fundraising purposes. Subsequent to the initial request in behalf of "Citizens for a Better New Jersey," and to the initial discussion of it by the Commission, Mr. Prima amended his request to ask that the opinion apply also to a separate organization entitled "Citizens Against Florio."

For a detailed review of the advisory opinion request please see the Public Session Minutes of September 26, 1990. Please see also the memorandum from Gregory E. Nagy, Legal Director and Nedda G. Massar, Director of Public Financing, dated October 12, 1990 and entitled "Response to Advisory Opinion Request No. 09-1990."

The discussion that ensued represents a continuation of the September 26, 1990 discussion by the Commission. Attending today's meeting for the purpose of testifying on Advisory Opinion No. 09 were Matti Prima, "Citizens for a Better New Jersey," William T. Maguire and Dennis J. Marshall, AT&T.

Chairman McNany asked Mr. Prima to comment on the request.

Mr. Prima said that the remaining unresolved issue is whether the "900 line" constitutes, in any way, a contribution from AT&T. He introduced Mr. Dennis J. Marshall, representing AT&T, for the purpose of explaining the service and discussing the issue of a contribution by AT&T.

Chairman McNany acknowledged Mr. Marshall.

Mr. Marshall stipulated that the service was strictly a business venture by AT&T. According to Mr. Marshall, the contract is a business contract and in no way constitutes a contribution from the utility. Mr. Marshall said that AT&T provides, through the "900 line," a media service. He indicated that Mr. Prima's package would include a message to the caller. He said that all "900 line" packages are required to include a message. Mr. Marshall advised the Commission that Mr. Prima's "900 line" message, to last for one minute, would inform the caller about Initiative and Referendum. Mr. Marshall told the Commission that an additional two minutes would be allotted to the caller for the purposes of leaving his/her name and address and for pledging an additional contribution. AT&T's representative advised the Commission that the utility had the network capability to terminate the call at any time. He said that under the terms of the Prima contract all calls would be ended at three minutes. Mr. Marshall said that the maximum cost for calling the Prima "900 line" would be \$5; \$3 for the first minute and \$1 for each additional minute.

Commissioner Mayo inquired as to the charges exacted by AT&T.

Mr. Marshall responded that AT&T would realize \$.30 for the first minute and \$.25 for each additional minute, for a maximum charge of \$.80. Mr. Marshall added that AT&T would also take ten percent of the total cost as a collection fee, for a maximum collection fee of \$.50. Thus, concluded Mr. Marshall, AT&T's portion of a maximum \$5 telephone charge would be \$1.30. Mr. Marshall said that for a three-minute call, "Citizens for a Better New Jersey" could gain \$3.70.

Mr. Marshall reiterated that AT&T's involvement in the "900 line" is strictly business. He said that the service is available to all groups and individuals. He added that the rate charged to Mr. Prima's group is the standard rate for this AT&T service. Mr. Marshall said that AT&T makes a profit on each call.

Commissioner Mayo asked: If I call this "900 line" service would I be aware that I am contributing to the group and also incurring a telephone charge?

Mr. Marshall responded that all advertising must display price-per-call information on it.

Commissioner Mayo asked: Does this mean that the information is made available at the time the "900 line service" is publicized, and not at the time the individual makes the call?

Mr. Marshall responded affirmatively.

Commissioner Mayo asked: If I wanted to build an animal shelter would AT&T provide the same service?

Mr. Marshall said that the same service would be available to a charitable organization as to a political organization.

Commissioner Mayo asked if a charitable group would be treated any differently than a political organization.

Mr. Marshall said that while the service is available to charitable groups, there are some differences with respect to how charitable groups can advertise and with respect to the message to the caller. He said that these differences resulted from rules that AT&T is bound by, not from rules made by AT&T. Mr. Marshall said that a charitable organization's message must contain "value added" information in it. He said that the message must contain more information about the charity than the mere fact that it is soliciting a donation. Mr. Marshall indicated that a charitable group must identify "where the money from the contribution would go" and perhaps discuss volunteer activities the caller could undertake to assist the charity. In the case of an animal shelter, said Mr. Marshall, the message must identify that the proceeds would go toward building the shelter, for instance. He said that the message might also specify that the individual could volunteer to work at the shelter.

Commissioner Mayo asked Mr. Prima if the "Citizens" message would inform the caller of "where the funds would go." Mr. Prima responded that the message on his "900 line" would advise citizens that the money raised would represent contributions to "Citizens for a Better New Jersey."

Commissioner Linett asked if the rates are negotiable or the same for every "900 line" contractee.

Mr. Marshall advised the Commission that AT&T's rates were static. He said they are tariff rates and are not negotiable. Mr. Marshall said that the part of the agreement that deals with a group's profit margin is flexible. He indicated that this margin is up to the group to decide.

Commissioner Linett said that he assumed that AT&T makes a profit on every call and is not subsidizing "Citizens for a Better New Jersey."

Mr. Marshall said that the "900 line" is AT&T's highest profit margin service and that there is no subsidization involved.

Counsel Farrell said that the issue concerned two questions for the Commission to consider. He said that the Commission required assurance that AT&T was not making a contribution. He said also that the Commission needed to know that contributions and expenditures could be identified. Counsel Farrell suggested that the identification of a contributor of \$5 would not be a problem but one of \$500 would be.

Mr. Marshall responded that no contribution would be made by AT&T and that no charge to the caller of as much as \$5.00 would result from the "900 line" service.

Commissioner Bedford suggested that the contract between AT&T and "Citizens for a Better New Jersey" be filed with the Commission.

Neither Mr. Prima nor Mr. Marshall voiced any objection to Commissioner Bedford's suggestion.

Chairman McNany asked: How are the charges from the local companies applied to the caller?

Mr. Marshall answered that Mr. Prima would not receive a bill from the local company. He said that these charges are built into AT&T bills. He said that AT&T passes money due the local company onto the local company.

Commissioner Mayo asked: What about an employee who uses a business phone to make calls to the "900" number. He said that there is potential abuse in this situation as well as the problem of identifying the true identity of the contributor.

Mr. Marshall responded that most businesses have switchboards, that have the capability to internally block calls to "900" numbers. He said that most companies utilize this capability and block these calls.

Legal Director Nagy asked Mr. Prima if his group would have any difficulty with an advisory opinion which limits the charge to no more than \$20.

Mr. Prima said that he would not have a problem with such a limitation.

Legal Director Nagy asked Mr. Prima if he had any difficulty with filing a copy of the contract with ELEC.

Mr. Prima indicated that he would file a copy of the contract with the Commission.

Mr. Marshall said that AT&T did not object to the agreement being filed with the Commission.

Legal Director Nagy queried as to the status of "Citizens Against Florio." He said that "Citizens for a Better New Jersey" has filed as a continuing political committee (CPC). Legal Director Nagy said that there has been no such filing from "Citizens Against Florio."

Mr. Prima said that "Citizens Against Florio" was in the formative stage and that he was contemplating making it into a CPC at a later date.

Legal Director Nagy said that in the absence of a definitive statement as to the status of "Citizens Against Florio," the Commission would have to limit its advisory opinion to the facts submitted pursuant to "Citizens for a Better New Jersey."

Commissioner Mayo revealed that he was not clear as to whether or not a call would be cut off and how a contribution would reach \$20.

Mr. Prima said that the proceeds to "Citizens for a Better New Jersey" per call would not reach \$20. He said that a maximum charge would amount to \$5.

Executive Director Herrmann advised the Commissioner that the \$20 figure was derived from the public solicitation language in the statute.

Counsel Farrell said that by applying the public solicitation language to the "900 line" issue the Commission would be stretching the law. He said, however, that the facts presented by Mr. Prima regarding the "Citizens for a Better New Jersey" "900 line" made this fundraising approach more analogous to a public solicitation effort than any other fundraising effort. He said that provided the proceeds per call to the group are under \$20, the contribution amount is de minimis, and therefore recordkeeping would be unnecessary by "Citizens." Counsel Farrell said that "in any case" a record of phone calls would be available from AT&T and that disclosure could be accomplished if necessary. The tape of the callers to the "900 line" would constitute a record for disclosure purposes.

Commissioner Mayo said that he was concerned about enthusiastic callers making calls on someone else's line, or on their own, and exceeding the \$20 amount.

Legal Director Nagy wanted to know how long it would take for "Citizens for a Better New Jersey" to realize any proceeds from the "900 line."

Mr. Marshall said that there would be a 60-day period between when the call is made and when the group receives the proceeds from the call.

Chairman McNany asked: How is the caller billed?

Mr. Marshall said that the "900 line" bill would be part of the regular bill.

Chairman McNany asked how a caller would be billed if he or she were not a customer of AT&T.

Mr. Marshall said that the customer would be billed as part of the local telephone bill.

Commissioner Linett asked: When are you not required to report the name of the contributor under public solicitation?

Legal Director Nagy said that if a cash contribution of under \$20 is made in response to a public solicitation, disclosure of the individual contributor is not required.

Commissioner Linett asked if the "900 line" service was truly an analogous situation. Counsel Farrell reiterated that to a degree it is an analogous situation. He said that the Commission is actually more capable of getting disclosure of a contribution from AT&T if necessary than it would be able to in a public solicitation. He said that the level of disclosure is close to the level of comfort vis-a-vis disclosure that the Commission is used to.

Commissioner Bedford recommended that staff develop a regulation regarding "900 line" telephone services.

Chairman McNany agreed and said that the venture seems to be profitable and that there is no forgiveness in it. "You call and AT&T gets paid," he said.

Legal Director Nagy said that a cautious approach would be to adopt the \$20 ceiling contained in the public solicitation definition, thereby excluding larger contributions from the "900 line" opinion. He said that under the public solicitation statute there is less recordkeeping involved. Legal Director Nagy said that Mr. Prima will not obtain the AT&T records or proceeds for 60 days, and therefore, compliance with the more rigorous and time-sensitive requirements of the Act which are necessary for larger contributions may be impractical, or even impossible.

Counsel Farrell said that the public solicitation language does not fit the facts. He said, however, that the analogy fits well for purposes of regulation.

Chairman McNany suggested that staff draft an opinion based on the public solicitation provision and the \$20 limit. Chairman McNany directed staff to provide copies of the advisory opinion to the Commissioners before it is released.

On a motion by Commissioner Bedford, seconded by Commissioner Linett and passed by a vote of 4-0, the Commission approved an advisory opinion permitting the "900 line," authorizing the use of the service under the public solicitation language in the statute.

Counsel Farrell said that he believed it to be important for a regulation to be adopted by the Commission relative to "900 line" service. He said that in court, the Commission would need a regulation in order to have any clout. He said that an advisory opinion would not have any clout in court.

Chairman McNany asked how long it would take to adopt a regulation.

Legal Director Nagy stated that the process takes about four months.

Commissioner Mayo asked whether this advisory opinion was limited to "Citizens for a Better New Jersey" or applied also to "Citizens Against Florio."

Counsel Farrell said that the advisory opinion was limited to "Citizens for a Better New Jersey."

Counsel Farrell recommended that the advisory opinion contain language stipulating that the Commission assumes that AT&T makes a profit on this service and is not making a contribution.

Legal Director Nagy said that the advisory opinion will be sent by the end of the week to the Commissioners by fax, and that he will refrain from mailing it until Wednesday morning, (October 24, 1990), so that the Commissioners and Counsel Farrell can provide him with any corrections or comments before its release.

3. Executive Director's Report

A. Ad Hoc Commission on Legislative Ethics and Campaign Finance

Executive Director Herrmann reported that Deputy Director Brindle, Director of Public Financing Nedda Massar and he attended the final meeting of the Ad Hoc Commission on October 3, 1990.

He said that the Commission decided to highlight ELEC's need for additional funding by placing its proposal concerning ELEC's need for funds at the end as its final recommendation. The Executive Director said that

the funding recommendation was originally included in the middle of the report.

Executive Director Herrmann said that the final report would probably be released next week.

B. Staff Activities

Executive Director Herrmann advised the Commissioners that he met with two Eagleton Institute students on October 2, 1990, about ELEC's functions and the need for reform.

He added that on October 4, 1990, Deputy Director Brindle and he attended a session of the Political Finance Forum in Washington, D.C. The Executive Director said that an excellent discussion took place regarding current campaign finance reform on the federal level.

Executive Director Herrmann told the Commission that on October 23, 1990, he will address the Public Affairs Council on Lobbying and PAC Laws. He added that on October 24, 1990, he will address the Jersey Central Power and Light (JCP&L) Seminar on Trenton Government Relations on the issue of campaign finance reform.

Executive Director Herrmann advised the Commission that on October 24, 1990, representatives from the California Fair Political Practices Commission will visit ELEC to study the New Jersey gubernatorial public funding program and its administration. The Executive Director indicated that these representatives consider New Jersey's program to be a model in this area. He said that there is currently a public financing initiative on the ballot in California that covers State officers and the Legislature.

C. Personnel News

Executive Director Herrmann reported that Anthony Chianese has started work as the Systems Analyst. He said that one of his projects is to enhance ELEC's written procedural documentation in the area of the computer.

Executive Director Herrmann said that Acting Director of Compliance and Information Virginia Wilkes did a great job running the 29-day report filing period. He also congratulated the entire staff for doing a great job during this period without the advantage of overtime. Executive Director Herrmann said that Ms. Wilkes is filling in for Evelyn Ford, who is on maternity leave.

D. Future Meetings

The Commission will hold its next meeting on November 28, 1990, in Trenton at 9:30 a.m. Its December meeting will be on December 19, 1990, in

Trenton at 9:30 a.m. The holiday luncheon will be held on this meeting date.

4. Advisory Opinion No. 10-1990

This advisory opinion request was made by Christine Farrington, Esq., in behalf of six Republican candidates for municipal office in Saddle Brook (Bergen County). The request asks whether a discount coupon, distributed to 4,000 households as part of a campaign flyer, constitutes a contribution to the campaign. The discount coupon is for \$1.00 off a large pizza at any one of three participating restaurants. The coupon is printed on the flyer. The flyer is paid for by the campaign. Further, no money is to be paid or returned to the campaign committee by the participating restaurants, and no money has been paid to the participating restaurants by the candidates or their committee. No personal or family relationship exists between any of the candidates and the owner or owners of the pizza restaurants. The restaurants view the discount coupon as an "advertising gimmick," a marketing technique by the establishments. If requested to do so, the pizza establishments would permit candidates from both parties to distribute the coupons as part of their campaign literature.

On the basis of the information presented in the advisory opinion request, staff believes that no measurable transfer of funds or "thing of value" has been provided to the Saddle Brook Republican candidates as the result of printing and distributing discount coupons on their flyer. In addition, staff believes that no reportable contribution arises from the proposed campaign flyer containing the \$1.00 discount coupon. Staff suggests that an attempt to assess a true value of the coupons would be extremely difficult and would result in a determination that the contribution, if any, by each of the participating pizza restaurants is de minimis.

Commissioner Linett said that he believed that the discount coupon constituted a "thing of value" from the pizza establishments to the campaign. He said that the value exists in terms of publicity. Commissioner Linett asked: Why would the candidates include the coupon if the coupon had no value to their campaign?

Counsel Farrell said that a value is transferred from the pizza establishment to the recipient of the flyer. He added that there was a value to the commercial enterprise as well.

Counsel Farrell said that neither of these two value tests is sufficient to require the candidates to report the coupon as a contribution. He said that the Commission needed to determine the value to the campaign in order to establish a reporting obligation vis-a-vis these coupons.

Counsel Farrell agreed with Commissioner Linett that there is a value to the campaign in terms of exposure. He asked, however, how the Commission can quantify this value in terms it can utilize. Counsel Farrell said that the flyer is being paid for by the campaign so that it, in itself, cannot be considered a contribution from the pizza establishment.

Commissioner Linett said that there is an intrinsic value to the campaign of having the names on the flyer. He said it could be construed as if the pizza establishments are endorsing the candidates.

Counsel Farrell suggested that the Commission keep in mind that it deals with the reporting of receipts and expenditures. He said that it has never attached a value to endorsements.

Commissioner Linett said that he would support the staff recommendation that the coupons need not be reported as contribution to the campaign, but on the basis that the value of them is de minimis, not on the basis that they do not constitute a contribution.

Counsel Farrell said that he too was somewhat uneasy about the notion that the coupon did not constitute a contribution. He suggested that in the advisory opinion the staff spell out the qualification that the discount coupon be commercially reasonable in order for this advisory opinion to apply.

Commissioner Bedford said that the discount coupon, in this instance, appears commercially viable.

Commissioner Linett suggested that the advisory opinion be circulated to the Commissioners before being released.

Chairman McNany suggested that the discount coupon contain a disclaimer that stipulates that the flyer containing the coupon is paid for by the campaign and not the pizza establishments. He suggested that the campaign also clarify that it is not paying for the coupon.

Counsel Farrell suggested that the advisory opinion caution the candidates that they should clarify that they are not paying for the coupon.

Chairman McNany recommended that the disclaimer state: "Printing of this flyer is paid for by the campaign." He said that this statement would make clear both that the campaign is not paying for the coupon and that the pizza establishments are not paying for the flyer. He said it would let the people know that the flyer is paid for by the campaign.

Commissioner Linett suggested that the advisory opinion contain language stating that if the coupons represent a contribution, it is de minimis and need not be reported. He also suggested that the advisory opinion caution the campaign that it should clarify the fact that it is

paying for the flyer and not for the coupons, but that the opinion need not suggest the exact wording.

On a motion by Commissioner Linett, seconded by Commissioner Bedford and passed by a vote of 4-0, the Commission approved the draft response as articulated by Commissioner Linett. The Commission directed staff to circulate the advisory opinion before releasing it.

5. Personal Interest Disclosure Statements

Please see memorandum from Frederick M. Herrmann, Ph.D., Executive Director, dated October 9, 1990, and entitled "Personal Interest Disclosure Statement Regulation."

In sum, the staff is asking that the regulation proposal be permitted to expire at this time, and be considered at a later date. It cited staff shortages and budget cuts as its reasoning for making the recommendation.

Commissioner Linett said that he agreed that the regulation should be allowed to lapse. He said that the proposed regulation, at any rate, needed to be rewritten. He said he would therefore support permitting the proposal to expire.

Chairman McNany asked: When would the Commission repropose the regulation?

Executive Director Herrmann proposed that the regulation be reconsidered for implementation in 1992. He said that 1991 was a legislative year, one that would be extremely taxing for staff.

Chairman Bedford moved that the regulation be withdrawn pending reconsideration in 1992. Seconded by Commissioner Linett, the motion to withdraw was adopted by a vote of 4-0.

While not to be included in the withdrawal language in the public register, the Commission cited budget cuts and staff shortages as its reason for withdrawing the proposal.

6. General Election Independent Audits of Courter and Florio Campaigns

For information please see memorandum from Nedda Massar, Director of Public Financing to Frederick M. Herrmann, Executive Director, dated October 2, 1990, and entitled "Independent Audits of Courter and Florio G89 Campaigns."

The auditors did not uncover any problems with either campaign. Therefore, staff recommended that the Courter and Florio 1989 general

election publicly-financed campaigns be instructed to file final reports and, after payment of audit-related expenses, to refund any remaining balance to the State as per the statute.

On a motion by Commissioner Linett, seconded by Commissioner Bedford and passed by a vote of 4-0, the Commission approved the audit reports and adopted the staff's recommendation.

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 September 26, 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;
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.

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 12:30 p.m.

Respectfully submitted,



FREDERICK M. HERRMANN, PH.D.