



State of New Jersey

ELECTION LAW ENFORCEMENT COMMISSION

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PUBLIC SESSION MINUTES

JANUARY 16, 1991

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 9:40 a.m. at the Commission offices, 28 West State Street, Trenton, New Jersey.

1. Approval of Public Session Minutes of December 19, 1990

On a motion by Commissioner Bedford, seconded by Commissioner Linett and passed by a vote of 3-0, the Commission approved the Public Session Minutes of December 19, 1990.

2. Executive Director's Report

A. Building Security

Executive Director Herrmann announced that building management has installed a new security system.

B. Staff Activity

Executive Director Herrmann reported that he was interviewed as part of a government ethics training tape being produced by Tony Scocozza of the Executive Commission on Ethical Standards

The Executive Director said that ELEC will be visited in February by an Australian delegation from the New South Wales Joint Select Committee upon the Process and Funding of the Electoral System.

C. Meeting with the Ad Hoc Commission on Legislative Ethics and Campaign Financing

Executive Director Herrmann said that he has received three more RSVP's. He said that Office of Legislative Services (OLS) staff member Frank Parisi will attend, OLS staff member Marci Hochman might attend, and Ad Hoc Commission member Michael Cole will not attend.

Executive Director Herrmann said that staff would provide background information for the Commissioners and would publicize the session with the media.

D. Legislative Action

Executive Director Herrmann said that the Senate State Government Committee considered A-2421 (Baer and Mazur) on January 10, 1991.

The Executive Director said that the bill extends the opportunity to sponsor a gubernatorial debate to public organizations like New Jersey Network and Rutgers University. It also extends sponsorship to news associations with a substantial membership or audience despite the fact that these organizations might not have previous experience with televising a debate.

Executive Director Herrmann said that ELEC had supported the bill in the Assembly State Government Committee on February 26, 1990. He said it passed in the Assembly by a vote of 73-3 on April 23, 1990.

Executive Director Herrmann reported that the bill was released by the Senate State Government Committee unanimously on January 10, 1991, with ELEC testifying in favor of it.

E. White Paper Number Six: ELEC Autonomy and Jurisdiction

Executive Director Herrmann announced that White Paper Number Six was released, with Commissioner Linett's changes, on Friday, January 11, 1991. He indicated that Marianne Coleman Niles, Director of the Office of Campaign Finance in Washington, D.C., is using White Papers Numbers Four and Six in a presentation to the D.C. City Council. He said that she is most interested in the filing fee idea. Executive Director Herrmann reported that the Pennsylvania Legislature is also interested in the papers and has requested several copies.

F. Future Meeting Schedule

Executive Director Herrmann said that the next meeting is scheduled for 9:30 a.m. on February 20, 1991, in Trenton with the Ad Hoc Commission on Campaign Finance and Legislative Ethics.

G. Filings with Executive Commission on Ethical Standards

Executive Director Herrmann advised the Commission that the date for filing financial disclosure forms is in April and that he should have the appropriate forms for them by the February meeting.

H. Bar Association Election Committee

The Executive Director mentioned that he has been working with the Bar Association Election Committee. He said that the Committee is focusing on two issues in 1991. Surplus funds reform and improved funding for ELEC.

With respect to the joint meeting with members of the Ad Hoc Commission on Campaign Finance and Legislative Ethics mentioned earlier, Commissioner Linett suggested that the purpose was to heighten public awareness of the Ad Hoc Commission's recommendations. In terms of ELEC's approach to the meeting, Commissioner Linett suggested that it attempt to join with Ad Hoc members in forming a consensus as to the most important of its (Ad Hoc Commission's) recommendations for reform of the campaign finance and lobbying laws.

Counsel Farrell added that ELEC should seek clarification regarding certain proposals included in the Ad Hoc Commission's report. He said that he would like Dr. Rosenthal to expand upon the detailed proposals for contribution limits. Counsel Farrell said that while the Commission (ELEC) supports the concept of contribution limits, it has never delved into the issue in detail.

Executive Director Herrmann informed the Commission that Legal Director Nagy has prepared a chart outlining the Ad Hoc Commission's proposals for contribution limits and that it (the chart) would be provided to the Commissioners.

The Executive Director suggested that the Commission determine how it can best work with Dr. Rosenthal and the Ad Hoc Commission in order to promote the suggested reforms. He said that ELEC, which has supported many of these recommendations over the years, wants to see them become law.

Commissioner Linett asked staff to prepare a memorandum outlining the key recommendations in the report and the position ELEC has taken on these issues in the past.

3. Code of Ethics for Commissioners and Employees

Pursuant to a request by the Commission at its December 19, 1990, meeting, staff has prepared a proposal to amend the Code of Ethics to prohibit Commissioners from making contributions to federal candidates. Specifically the proposal would delete language in Section IV, paragraph 8(d) of the Code of Ethics that currently permits Commissioners to make contributions to federal candidates.

Commissioner Bedford asked: what is the genesis of this proposal?

Commissioner Linett responded that he raised the issue at the last meeting as a result of reading White Paper Number Six. He said that the paper noted the fact that while ELEC has a very stringent Code of Ethics, its rules for employees relative to federal contributions is more restrictive than for Commissioners.

Accordingly, continued the Commissioner, the Code should be strengthened to prohibit Commissioners as well as staff from contributing to federal candidates. Commissioner Linett indicated that he believed that the Code should be amended in this way because of the overlap of activity between State and federal electoral politics. He said that a candidate for federal office could easily be an officeholder on the state or local level. Conversely, said Commissioner Linett, a federal officeholder could run for Governor. Commissioner Linett suggested that because the two electoral levels were so intertwined it would behoove the Commission to restrict itself from contributing on the federal level.

Chairman McNany suggested that the Commission might want to wait until it has a fourth member to take action formally on the proposal.

Commissioner Bedford moved that the Commission postpone consideration of this matter until it is functioning with a fourth commissioner. Commissioner Linett seconded the motion and on a vote of 3-0, the Commission postponed consideration of the Code of Ethics change.

4. Proposed Regulation for "900 Line" Telephone Service

For detailed information, please see proposed regulation N.J.A.C. 19:25-11.12, Contributions by "900 Line" Telephone Service, as contained in memorandum from Gregory E. Nagy, Legal Director to Frederick M. Herrmann, Ph.D., Executive Director dated January 7, 1991, and entitled Proposed Regulation for "900 Line" Telephone Service.

Essentially, the proposed regulation defined a "900 Line" Telephone Service, qualifying the fact that contributions via this service cannot exceed \$20. The regulation also clarifies the fact that the reportable amount of the contribution is the total amount of the bill, that the contribution must be reported on the date that it is received by the fundraising entity, that costs associated with contracting for a "900 line" service shall be reported as operating expenses, and that a copy of the contract between the fundraising entity and the utility company must be filed with the Commission.

Commissioner Linett said that he recognized the fact that this regulation, because of the technology, is deceptively difficult to draft. He said, however, that the regulation does not prohibit the "900 line" if the contribution is over \$20. Commissioner Linett said that he believed that the Commission should prohibit contributions made through the "900 line" service if they exceeded \$20.

Commissioner Linett asked what information in regard to contributors would be available, and what the billing practices were.

Legal Director Nagy said that based on the information given by AT&T in regard to Advisory Opinion No. 09-1990, staff's understanding was that a telephone call to a "900 line" results in a charge based on the length of time of the call. The charge appears on the telephone bill of the phone from which the call was made. Payment is made to the telephone company, which in turn passes the proceeds to the "900 line" service provider. The provider then passes the proceeds, minus its charges, to the fundraising candidate or entity. The net amount of proceeds would have to be reported by the fundraising candidate or entity at the time those proceeds were received. He said he does not know precisely what records the fundraiser receives from the telephone company or the "900 line" provider.

Commissioner Linett said that a loophole exists vis-a-vis disclosure because someone could avoid having their contribution disclosed by making several telephone calls that in the aggregate exceeded \$100.00.

Legal Director Nagy said that it is true that slippage exists. He said that regulations are an attempt to balance the demands of full disclosure against the practicalities of operating a "900 line" system.

Commissioner Linett said that he would like to see the Commission obtain contribution information sooner than the 60-day processing period as described by AT&T representatives.

Counsel Farrell suggested that the regulation might be restructured to permit the "900 line" service, permitting contributions of \$20 and under to be made but not subject to disclosure (except for aggregate amounts), and contributions of over \$20 the subject of record keeping.

Counsel Farrell indicated that for checking purposes, the Commission must obtain the billing information. He said that even if this process was delayed, the Commission should still be able to obtain the requisite information. Counsel Farrell said that the Commission could also require that the contract be submitted to it.

Chairman McNany queried whether the Commission could prohibit non-residential lines to be used for the purpose of calling the "900 line" service.

Counsel Farrell said that it would be difficult to restrict use of the service to residential numbers because, under New Jersey law,¹ corporations can make political contributions. Therefore, he continued, there would be legal problems with limiting the service in this way.

Commissioner Bedford suggested that the Commission give the proposed regulation an opportunity to play out. In this way, continued Commissioner Bedford, the Commission can determine how it works. Commissioner Bedford suggested that if problems ensue with respect to the "900 line" service, then the Commission can modify its regulation.

Counsel Farrell asked: can the regulation be extended to prohibit contributions over \$20 when made over the "900 line" service?

Commissioner Bedford suggested that the Commission might consider prohibiting contributions over \$20 via the "900 line" service.

Chairman McNany said that he believed that the "900 line" service held great potential as a fundraiser and that the Commission ought to take the necessary steps up front to devise an effective regulation containing proper controls.

Commissioner Linett said that the statute is clear about reporting and that the Commission must insure that disclosure of "900 line" fundraising is disclosed in accordance with the requirements of the law.

Counsel Farrell suggested that the Commission might want to leave the concept espoused in the regulation in place and require that the appropriate information be disclosed when available.

Director of Review and Investigation Judith Chamberlain indicated that communications with AT&T by staff indicate that AT&T would not disclose all the information the Commission requires. She indicated that AT&T would not provide the names and addresses of the individuals calling the "900 line" service.

Chairman McNany queried whether there was some way to require AT&T to release pertinent information to ELEC.

Counsel Farrell said that in his opinion, ELEC could not regulate AT&T and require it to disclose the information in question. He said that the

information presented by Director Chamberlain places a new light on the issue. He said that the Commission might want to consider prohibiting "900 line" fundraising if contributor information is truly unavailable.

Commissioner Linett moved that a vote on the regulation be deferred until more complete information is available. Seconded by Commissioner Bedford and passed by a vote of 3-0, the Commission voted to postpone consideration of the issue.

5. Advisory Opinion No. 13-1990

For detailed information, see the memorandum from Legal Director Nagy to Executive Director Herrmann dated January 8, 1991, and entitled Response to Advisory Opinion Request No. 13-1990.

This advisory opinion involved three issues: whether an advisory opinion can be issued retroactively, whether campaign funds can be used to purchase clothing for a candidate, and whether campaign funds can be used for the purchase of refreshments for campaign workers and potential appointees attending a League of Municipalities convention at Atlantic City. The articles of clothing cost \$573.50 and the refreshments \$300.

In its analysis, staff noted that the statutory language anticipates prospective application of Commission advice, not retroactive approval of past conduct. With regard to the questions involved, the campaign transactions that are the subject of the request occurred on March 29, 1990, and November 13, 1990, and are therefore too late for prospective application. Accordingly, the statutory immunity provisions become inapplicable. While noting that the individual (Mr. McGuckin) who requested the advisory opinion would not be immune from prosecution for any violations of the campaign act, and that advisory opinions cannot be issued retroactively, the staff indicated that the Commission may want to render an opinion on this matter for the purpose of providing guidance to candidates in the future. Moreover, suggested staff, through its decisions in this case, the Commission may want to use the advisory opinion as a vehicle to establish remedial action.

Regarding the use of campaign funds to purchase clothing, staff said that the Commission has not rendered any previous opinions which address this issue specifically. Numerous opinions have been rendered in which the personal use and surplus funds regulation have been applied, however. Staff indicated that the closest precedent may be the opinions that addressed the computer and car phone purchases because those items, like clothing, can be readily used for both inappropriate personal as well as appropriate campaign purposes. Staff said that in those instances, the Commission permitted the purchase or leasing of the items, but with restrictions intended to insure

that the uses would be campaign-related and not related to officeholding or personal activities. Staff suggested restrictions the Commission may want to include if it deems the purchase of clothing a legitimate campaign expenditure. Staff also suggested that if the Commission decides that the purchase of clothing is personal use, then it may want to prohibit it and require the candidate to reimburse his campaign fund.

Regarding the use of campaign funds for the purchase of refreshments at the League of Municipalities convention, staff noted that two prior opinions approved the use of campaign funds for purchasing refreshments for a victory party. Though there may be an issue regarding the use of campaign funds to purchase refreshments for "potential appointees" because this activity may be in the nature of officeholding, staff maintained that the Commission may wish to approve this particular expenditure with the restriction that future entertainment expenditures not include "potential appointees" unless they are also campaign workers.

Legal Director Nagy added, at this point, that Mr. McGuckin was still a candidate for office because the election was declared a tie. He said a special election has been ordered by the courts.

Commissioner Bedford said that the Commission had two choices with respect to the clothing question: either forbid the use of campaign funds for the purpose altogether or require the individual to donate the suits to charity.

Executive Director Herrmann said that a critical question was whether the Commission would want to render an advisory opinion after the fact. He said that advisory opinions have always been prospective in nature, with the Commission refusing to give retroactive approval for candidate's actions.

Counsel Farrell said that there was no reason why the Commission could not give advice to people retroactively for the purpose of correcting reporting.

Commissioner Linett said that he was hesitant to give advice retroactively. Commissioner Linett said that his personal opinion was that Mr. McGuckin crossed the line into personal use but that it was not the place of the Commission to specify that retroactively in an advisory opinion.

Counsel Farrell said that he too believed that the matter could be construed as a personal use of campaign funds.

Executive Director Herrmann said that the main problem for the Commission is that the statute is silent on personal use. He said that even though the Commission has a regulation that prohibits personal use, the fact that the statute is silent on the issue still places the question in a very gray area.

Counsel Farrell said that the Commission should have confidence in its own regulation and enforce it. He wondered why the Commission would have enacted a regulation if it did not intend to use it.

Commissioner Bedford concurred with Executive Director Herrmann in regard to the fact that the Commission's ability to regulate personal use matters is questionable.

Commissioner Linett suggested that the Commission forego issuing a formal opinion and direct staff to provide an informal response to Mr. McGuckin. He said that the Commission should not render formal opinions retroactively.

On a motion by Commissioner Bedford, seconded by Commissioner Linett and passed by a vote of 3-0, the Commission directed staff to advise Mr. McGuckin that an advisory opinion would not be given in a retroactive time setting.

Enforcement Activity Article

At this juncture, the Commission briefly discussed an article printed by the Star-Ledger regarding the Commission's enforcement activity relative to candidates who fail to file Form A-1's or short forms.

Commissioner Linett queried whether the Commission could beef up its educational effort relative to informing candidates of their responsibilities to file reports with the Commission.

Executive Director Herrmann explained that the Commission undertakes quite an extensive educational and compliance effort. He emphasized that the Form A-1 is a simple, short filing, and without it the Commission and the public have no campaign disclosure from a candidate.

Commissioner Bedford expressed satisfaction with the Commission's educational efforts. The Commission concurred with Commissioner Bedford's statement.

7. Resolution to go into Executive Session

On a resolution by Commissioner Bedford, seconded by Commissioner Linett and passed by a vote of 3-0, the Commission resolved to go into closed Executive Session to discuss the following matters which will become public as follows:

1. 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;
2. 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 Linett and passed by a vote of 3-0, the Commission voted to adjourn at 12:30 p.m.

Respectfully submitted,



FREDERICK M. HERRMANN, PH.D.