



## State of New Jersey

### ELECTION LAW ENFORCEMENT COMMISSION

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#### Public Session Minutes

February 20, 1991

All 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 January 16, 1991

On a motion by Commissioner Linett, seconded by Commissioner Bedford and passed by a vote of 3-0, the Commission approved the Public Session Minutes of January 16, 1991.

#### 2. Meeting with the Ad Hoc Commission

Chairman McNany introduced Dr. Alan Rosenthal, Chairman of the Ad Hoc Commission on Legislative Ethics and Campaign Finance and Director of the Eagleton Institute of Politics.

Dr. Rosenthal began by noting the assistance to the Ad Hoc Commission provided by the staff of ELEC. In particular, he cited Executive Director Herrmann, Deputy Director Brindle, and Legal Director Nagy for their contributions to the reform efforts of the Ad Hoc Commission.

Dr. Rosenthal stated that in formulating its recommendations, the Ad Hoc Commission relied heavily on the work of ELEC. He said that Office of Legislative Services staff members Frank Parisi and Marci Hochman deserve credit for their work as well.

According to Dr. Rosenthal, the Ad Hoc Commission operated as a collegial body. He added that in most instances, the votes were unanimous. Dr. Rosenthal said that in developing the recommendations for reform, the members of the Ad Hoc Commission accomplished a high degree of consensus.

In discussing the environment under which the Ad Hoc Commission operated, Dr. Rosenthal noted that certain conditions were present. He said

that members of the Commission, having much experience and knowledge relative to the political process, functioned with the understanding that legislators enjoyed their jobs, that they enjoyed being in the Legislature, and that they wanted to win election so that they could remain in that body. He said that it was understood that legislators operated in a very competitive environment, wherein winning is exceedingly important. Dr. Rosenthal said also that Ad Hoc Commission members realized that while all kinds of campaign technology are available for the purpose of getting a candidate's message to the voters, this objective is becoming exceedingly difficult to accomplish in modern times because of an electorate that is subject to all sorts of distractions. Moreover, he said this technology is expensive. In a word, he suggested that more and more legislators are forced into raising and spending large amounts of money to purchase campaign technology that may or may not help them overcome the distraction of voters and get their messages through to them.

Dr. Rosenthal noted that from the point of view of an incumbent legislator every race is competitive, even if he or she is considered to be in a safe district. He reminded the members of the Commission that there is always somebody out there ready to defeat an incumbent; at least this is the perception of incumbents, he said. He commented that it is common belief among incumbents that it is better to run a strong campaign even if statistics show that the district is safe for the legislator. Dr. Rosenthal added that to run a strong campaign in today's world costs a considerable amount of money.

Dr. Rosenthal next summarized the objectives of the Ad Hoc Commission as the members worked in the context of the environmental factors noted above.

Dr. Rosenthal said that objective number one was to develop a scheme of contribution limits that would work toward lessening the impact of money on individual legislators - a contribution scheme that would adequately spread the money around.

He said that secondly, the Ad Hoc Commission desired to avoid, by its actions, contributing to the problem of legislative candidates having to spend too much time raising money. It did not want to set contribution limits that were too low, for instance.

Dr. Rosenthal advised the Commission that the third objective of the Ad Hoc members was to remain cognizant of the public perception that too much money was being spent on campaigns and to frame recommendations that adequately dealt with that concern.

Fourthly, continued Dr. Rosenthal, the Ad Hoc Commission did not want to interfere by its actions with the ability of challengers to mount successful campaigns, thereby contributing to the uphill battle these candidates already faced.

The fifth objective of the Ad Hoc Commission, continued Dr. Rosenthal, was to contribute recommendations that would enhance disclosure and discourage evasion of the rules.

According to Dr. Rosenthal, as objective number six, the Ad Hoc members did not want to weaken the role of the political parties but rather strengthen them. And finally, concluded Dr. Rosenthal, the seventh objective of the Ad Hoc Commission was to provide a program of recommendations that would ensure that enough money is available to candidates to run effective campaigns.

Dr. Rosenthal said that some of these objectives are in conflict with each other, but that the Ad Hoc Commission sought to strike a balance between them.

At this juncture, Dr. Rosenthal paused to express his appreciation for the memorandum from Executive Director Herrmann summarizing the respective positions of ELEC and the Ad Hoc Commission. He said that the issues were set forth exceedingly well.

Dr. Rosenthal said that the Ad Hoc Commission, unlike ELEC, is not proposing public financing for legislative elections. He said that it was not the time for such a system to be proposed. Dr. Rosenthal said that some Commission members opposed the concept on the grounds that public financing was not the appropriate system for regulating legislative campaigns.

Dr. Rosenthal stated the Ad Hoc Commission endorsed a system of contribution limits that provided for an advantage to be given to political parties. This system would encourage parties to collect and allocate more of the campaign funds.

In the area of disclosure, the Ad Hoc Commission advanced proposals for truth in labeling for PACs, for ELEC to have responsibility for registering lobbyists, and for the "expressly" loophole in the lobbying law to be eliminated. Dr. Rosenthal said also that the Ad Hoc Commission proposed that ELEC receive greater resources, although it did not specify how those resources should be provided.

Dr. Rosenthal concluded by saying that the recommendations of the Ad Hoc Commission are moderate, sensible, and reasonable. He said that it must

be realized that members of the Legislature are comfortable with what is in place right now and dubious about any changes in the law that might jeopardize their careers. He said that there was a natural inertia in the Legislature when it comes to campaign finance reform that has to be overcome.

Commissioner Linett asked why the Ad Hoc Commission does not favor prohibiting contributions from corporations and unions as ELEC does?

Dr. Rosenthal said that the Ad Hoc Commission did not spend much time on this issue and did not take a vote on it. He said that it was his sense that these prohibitions on the federal level were not effective and that there were problems with groups evading the law. He said that the Ad Hoc Commission desires a system under which contributions can be tracked. The members do not want to see contributions going through the "back door."

Assemblyman Thomas Deverin, a member of the Ad Hoc Commission, who also attended the meeting, said that there were too many loopholes found in the federal law which prohibited corporate and union contributions.

Commissioner Bedford, in noting that ELEC has expressed a preference for contribution limits that are higher than \$1,500, asked why the Ad Hoc Commission chose that amount as its proposed limit on contributions?

Dr. Rosenthal said that there is no precise measure for determining the proper contribution limit range. He said that the gubernatorial limits provided a precedent and that the Ad Hoc Commission viewed \$1,500 as reasonable.

Chairman McNany asked why the Ad Hoc Commission did not endorse the concept of earmarking funds raised through fees for the Commission?

Dr. Rosenthal said Commissioner Michael Cole was the foremost opponent of dedicating funds. He strongly believed that the Legislature and Governor should retain the flexibility to allocate funds as they see fit.

Assemblyman Deverin said that most members agreed that raising money through fines and fees was a great way to support the Commission. However, he said, they were dubious about dedicating those funds to ELEC, seemingly preferring to continue funding the Commission through the general fund, though at higher levels.

Executive Director Herrmann suggested that there may be some confusion surrounding ELEC's proposal for alternative funding. He said that it was not suggesting that the funds generated through filing fees be dedicated.

The Commission was suggesting, rather, that the funds raised through filing fees would allow for the Legislature to appropriate more money to ELEC because the fees would offset the additional funding. Executive Director Herrmann suggested that filing fees would result in a savings to taxpayers and at the same time permit ELEC to have the funding base it needs to do the job.

Commissioner Linett asked how the Ad Hoc members felt about filing fees being charged against committees.

Dr. Rosenthal and Assemblyman Deverin supported the concept.

Chairman McNany asked how the reform agenda could be moved ahead by the Ad Hoc Commission and ELEC.

Assemblyman Deverin said that many recommendations are in draft form and should be introduced before the end of March.

Commissioner Linett asked about the chances for passage.

Assemblyman Deverin said that in his estimation, there is a good chance that reforms will pass. He said that they are trying to put everything into tight form in a way that all interested parties can accept. He said that everyone in the Legislature had a deep feeling for campaign finance reform.

Dr. Rosenthal, in concluding remarks, lauded the Ad Hoc Commission members, stating that it was the best commission on which he has served.

Assemblyman Deverin concurred.

Dr. Rosenthal again thanked Executive Director Herrmann for his participation. He also acknowledged various experts who testified before the Commission as well as those who staffed the effort.

Chairman McNany asked if there was a role for ELEC in attempting to get legislation passed.

Assemblyman Deverin suggested that once the hearing process began, ELEC would play a major role.

Commissioner Bedford said that newspaper columnists like David Wald, who obviously support reform, would be very helpful in the reform effort.

Commissioner Linett said that he would like to commend the Ad Hoc Commission on its fine report. He said that he was happy to see that the report recognized that ELEC needed greater resources.

Dr. Rosenthal agreed that the Commission needed to be more adequately funded.

Executive Director Herrmann praised the work of the Ad Hoc Commission and said that in all the years he has spent in government, he has never seen a better functioning special committee. He also thanked Deputy Director Brindle and Legal Director Nagy for all of their support in preparing various research documents for the Ad Hoc Commission over the past half year.

#### Executive Director's Report

##### A. Budget Review FY-92

Executive Director Herrmann reported that the Governor's final budget recommendation for ELEC amounts to \$1.052 million. He said that because of the State's ongoing fiscal crisis, the Commission is being cut for the third year in a row, down by 15 percent from FY-89. Executive Director Herrmann noted that ELEC's staff has been reduced by 20 percent, from 35 to 28 staff members. He indicated that 28 is the same number of staff as in 1985, even though the workload today is vastly greater than in 1985.

Executive Director Herrmann next provided an overview of the workload increases of the Commission in the context of an increase in spending by various filing entities. The Executive Director reported that spending by Assembly candidates between 1985 and 1989 rose from \$6.2 million to \$8.8 million, an increase of 50 percent. He added that lobbying expenditures doubled during that period, from \$4.3 million to \$8.6 million. According to the Executive Director, gubernatorial spending went up by 2 1/2 times, from \$10.4 million to \$25 million. Executive Director Herrmann said that spending by State parties and leadership PACs almost tripled from \$5.8 million to \$15.6 million. He noted, moreover, that PAC spending tripled between 1985 and 1989, from \$2.2 million to \$7 million. In large part because of this burgeoning activity, continued Executive Director Herrmann, the number of public assistance requests has increased tremendously; by 64 percent, for example, between 1988 and 1990.

Executive Director said that the statistics demonstrate that more than ever ELEC needs adequate funding. He remarked that interestingly, a new book by CNN's Brooks Jackson, entitled, Broken Promises: Why the FEC Failed, recommends in strong terms more funding for the FEC and suggests the

use of a guaranteed base budget, similar to ELEC's idea contained in White Paper Number Four. Executive Director Herrmann said that Jackson warns that if "new duties are heaped upon the Commission . . . [its] budget will need to double or triple."

Executive Director Herrmann reported that ELEC's projections for additional budgeting and staffing are consistent with Jackson's sentiments. He mentioned that without a law change, staff projects that ELEC needs an additional \$3/4 million and 20 additional staff to do the job to the fullest. He advised that with a law change along the lines of the Ad Hoc Commission recommendations, the Commission would need an added \$1.5 million and 40 additional staff.

Executive Director Herrmann said that currently other State departments and divisions are raising service fees to meet their shortfalls. For instance, he said, the Attorney General recently increased lobbyist filing fees from \$5 to \$100. Moreover, a recent national study by the Center for Policy Alternatives mentions that campaign financing disclosure costs "can be . . . financed by PACs [and] campaigns."

Executive Director Herrmann said that he hoped that due to White Papers Numbers Four and Six, the Legislature will give serious consideration to the four bills before it to allow ELEC similarly to charge filing fees to PACs, parties, and lobbyists. He indicated that he was very concerned about the possibility of ELEC losing more staff in the future or acquiring new functions without funding.

#### B. Staff Activities

Executive Director Herrmann disclosed to the Commission that Director of Administration Barbra Fasanella completed an Administrative Manual, which, like the Review and Investigative Manuals, will be made available to other COGEL agencies

The Executive Director informed the Commission that a savings in the operating account of the Commission of \$4,000 was made through reducing the size of the "Compliance Manual for Campaign Reporting" as well as through utilizing a cheaper binding process in its production.

Executive Director Herrmann said that this savings demonstrated that the staff continues to explore ways to save dollars without eroding services.

Next, Executive Director Herrmann shared with the Commissioners the fact that the Commission is the recipient of the "Silver Award for

Charitable Campaign Activity." He expressed appreciation to Assistant Compliance Officer Carol Neiman for coordinating the effort on this United Way project.

The Executive Director explained that he would be serving on a panel for Leadership New Jersey entitled "American Government in Politics" on February 21, 1991 and noted the fact that on February 12, 1991, he was a guest on Jack Ellery's Morning Show on WCTC Radio, New Brunswick. He said that the topic was ELEC's declining budget; a topic which was covered also in a Home News editorial and Star-Ledger reporter David Wald's column.

C. Ethics Forms Due May 15

Executive Director Herrmann told the Commission that ethics forms will be distributed as soon as they are available.

D. Next Meeting

The Commission scheduled its next meeting for March 20, 1991, in a place to be determined in Somerset County.

E. All Lobbying in ELEC

Executive Director Herrmann reported that the Attorney General's staff has discussed with staff the moving of its lobbying responsibilities to ELEC. He said that this view has been held by ELEC and the Attorney General since 1982. Executive Director Herrmann indicated that staff would like to go ahead with such a proposal and would like to initiate meetings with the Attorney General to discuss adequate financial and staff support. The Executive Director said that the new functions would include: quarterly activities reports, issuing registration ID badges, preparing and mailing quarterly lobbyists lists, and preparing annual reports to give to the Governor and Legislature.

Commissioner Linett said that he was concerned about the legislation to accomplish this consolidation carrying with it adequate funding to do the job.

Executive Director Herrmann said that the consolidation would be accomplished through an Executive Order from the Governor under the government reorganization statute enacted in 1969. The order would provide for resources to be transferred along with the new functions.

Commissioner Bedford reemphasized that it was important for the Commission to receive the resources to do the job.

Executive Director Herrmann said that staff would negotiate the details with the Attorney General's staff to assure adequate resources were received.

On a motion by Commissioner Bedford, seconded by Commissioner Linett, and passed by a vote of 3-0 the Commission approved the consolidation of lobbying regulation in ELEC. The Commission approved the motion with the qualification that the transfer of functions be accompanied by the transfer of adequate resources to do the job.

### 3. "900" Line Regulation

For additional information, please see the Public Session Minutes of January 16, 1991, and 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. Also please see the draft regulation contained in the memorandum from Gregory E. Nagy, Legal Director, to Frederick M. Herrmann, Ph.D., dated February 8, 1991, and entitled Proposed Regulation for "900" Line Telephone Service.

Specifically, the proposed regulation defines the "900" line telephone service, stipulates that contributions via this service to a campaign entity cannot exceed \$20 in the aggregate per calendar year, that contributions are reportable on the date the proceeds are received, that the contribution amount reportable is the total paid to the service provided by the contributor, that any cost associated with the operation of a "900" line service is reportable as an operating expense, that the Commission shall be provided with a copy of an executed contract and a signed authorization permitting the Commission to obtain from the service provider all pertinent records, and that the fundraising entity must obtain records from the provider and retain them for four years.

Commissioner Bedford asked if the telephone company will provide the name and phone number of contributors?

Legal Director Nagy said that staff determined that the campaign or committee can identify contributions from telephone numbers provided, but that there would be some slippage because information on unlisted numbers would not be obtained.

Commissioner Bedford said that he would make a motion to accept the proposed regulation as presented by staff. Commissioner Linett seconded the motion.

Legal Director Nagy said that a "consumer protection" bill is before the Legislature regarding proper identification of the recipient of funds on all promotional materials and providing an opportunity for the caller to disengage the call before any charge is levied. Legal Director Nagy then explained that the proposed regulation did not contemplate a system which was interactive, that is a system which permitted the caller to pledge or contribute amounts in excess of the charge for the phone call. A caller would therefore not be able to press a button or speak to an operator to make a contribution or pledge beyond the cost of the call. He said that the regulation limits contributions to \$20 or less and envisions some slippage in that contributors using unlistedbers would not be identified.

Legal Director Nagy explained that staff is not advocating this specific proposed regulation as the complete solution to questions raised by use of this technology. He pointed out that the Federal Election Commission has to date not offered specific regulations for reporting "900" line contributions. Instead, all FEC reporting requirements apply to "900" line contributions just as they do other contribution sources. However, the FEC places no special limit on "900" line contributions, except for those that apply to all other contributions on the federal level.

Legal Director Nagy explained that ELEC's \$20 maximum was predicated upon ELEC's existing statutory exemption in the Reporting Act for public solicitations. Such solicitations permit a contribution not exceeding \$20 from an unidentified contributor, and the proposed regulation extends the legislative philosophy of public solicitation to the new telephone technology.

Commissioner Bedford said that he approved of the way the regulations are written. Reiterating his sentiments of the previous meetings, the Commissioner said that the proposed regulations should be given a test without too much concern about slippage. Commissioner Bedford said that as a practical matter, anyone making a big contribution wants to be recognized by the candidate and does not want to make the contribution via the circuitous route of making numerous phone calls to a "900" line number.

Counsel Farrell suggested that part (b) of the regulation be amended so that it is clear that the \$20 limit only applies to a contributor when he or she is making a contribution using the "900" line. He said that it should

be clear and that it is permissible for a contributor to make additional contributions not using the service.

The Commission agreed and made a technical amendment to the regulation substituting "through the use of" for "using" in paragraphs (b) and (c).

Chairman McNany asked how the Commission was to keep control over the \$20 limit.

Legal Director Nagy said that the campaign or committee should check its records and return any contributions that exceed the \$20 limit to the contributor.

Chairman McNany asked: Are we clear on the phone company's record retention policy?

Counsel Farrell responded that part (h) answers this concern. He suggested that perhaps (h) could even go further by requiring that the campaign or organizational treasurer obtain from the telecommunications service provider all records, including phone numbers.

On a vote of 3-0, the Commission approved the proposed regulation as drafted with the stipulation that it include the two amendments proposed by Counsel Farrell.

#### 4. 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; and,
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.

5. Adjournment

On a motion by Commissioner Linett, seconded by Commissioner Bedford and passed by a vote of 3-0 the Commission voted to adjourn at 12:15 p.m.

Respectfully submitted,



FREDERICK M. HERRMANN, PH.D.

FMH/ck