



State of New Jersey

**ELECTION LAW ENFORCEMENT COMMISSION**

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PUBLIC SESSION MINUTES

SEPTEMBER 17, 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 August 2, 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 August 2, 1991.

2. Executive Director's Report

A. Staff Activities

Executive Director Herrmann reported that Director of Compliance and Information Evelyn Ford has designed a new form for registering PACs that withhold employee contributions pursuant to S-895 (Cowan). The Executive Director said that the Department of Labor has approved the form.

Executive Director Herrmann informed the Commission that in a conversation he had with Kent Cooper, Assistant Staff Director at the Federal Election Commission (FEC), Mr. Cooper had high praise for the White Paper series and for its author, Deputy Director Brindle. Mr. Cooper said that "no other ethics agency, including the FEC, does anything like it." Executive Director Herrmann said that Kent Cooper runs the annual COGEL conference session on national research on campaign finance and lobbying topics. The Executive Director added that, sadly, because of the fiscal crisis, ELEC is not sending anyone to the COGEL conference. He also said that the State fiscal crisis will result in the White Paper series being temporarily discontinued after the completion of White Paper Number Seven: PACs.

Executive Director praised Legal Director Nagy and his staff for doing a terrific job on the lobbying regulations and for preparing them so quickly. He noted that Evelyn Ford also contributed to the effort.

Executive Director Herrmann reported that on August 5, 1991, Commissioner Linett, Deputy Director Brindle, Legal Director Nagy and he attended the Governor's bill signing ceremony for A-4617 and A-4618. The Executive Director said that the new law made major improvements in the lobbying statutes, and, for the first time, allows ELEC to collect filing fees. Executive Director Herrmann added, however, that while this provision constitutes a major breakthrough, ELEC will probably only get \$40,000 from the Attorney General for 1991 fees. He noted that ELEC lost about \$85,000 in its salary account. Executive Director Herrmann mentioned that Governor Florio was very kind in citing his (Executive Director Herrmann's) efforts in promoting lobbying reform.

Executive Director Herrmann reported that on September 12, 1991, he addressed the County Clerk's Section of the County Officer's Association at the group's annual meeting in Atlantic City. He said that he spoke about new developments in campaign finance reform. Executive Director Herrmann said that the clerks praised the staff of ELEC, stating that ELEC is one of the best state agencies.

Executive Director Herrmann asked the Commissioners for approval to provide a text to the Division of Taxation in the Department of Treasury that will expand the explanatory language about the gubernatorial public financing program in the income tax booklet. He said that the text explains the goals of the program and emphasizes that there is no tax liability in participating in the check-off program.

Executive Director Herrmann said that on September 16, 1991, Deputy Director Brindle and he met with Public Strategies, Impact, and PSE&G to get input on the new lobbying regulations. He noted that the information stemming from these meetings has been useful in drafting the regulations in a reasonable manner. The Executive Director said that many good ideas have come out of the sessions.

#### B. Staffing and Budget Matters

The Executive Director reported that Assistant Director of Review and Investigation Susan Williams resigned effective September 6, 1991 to take a job at Thomas A. Edison State College. The Executive Director said that Ms. Williams was the Commission's last desk auditor. Desk auditors generally review reports, generate complaint recommendations, and assist in enforcement by acting as witnesses. Executive Director Herrmann said that there are currently fewer staff members than in FY-85. He advised the Commission that there were now 27 people on staff, with three of them on part-time voluntary furlough including one director. Executive Director Herrmann said that in addition to there being a statewide hiring freeze, the Commission's budget situation would not allow replacing Ms. Williams at this time. He indicated that staff will readjust once again its priorities to

deal with this new gap. Executive Director Herrmann noted for comparative purposes that ELEC's budget is now at the same level as Washington State's Public Disclosure Commission. He said that five years ago ELEC's budget was twice as much as that of the Washington commission. The Executive Director noted also that New Jersey has almost twice as many people as the state of Washington.

Executive Director Herrmann went on to state that Assemblyman George Spadaro had called him to express an interest in working with ELEC after the election to improve its budget situation. Assemblyman Spadaro is the sponsor of A-4617 that Governor Florio recently signed to reform the lobbying law. Executive Director Herrmann mentioned that he sent the assemblyman various ELEC budget materials to study.

The Executive Director then advised the Commission that Secretary of State Joan Haberle provided him with a preliminary report of the Georgia Blue Ribbon Ethics Campaign Finance Reform Committee. He said that previously he had sent Georgia officials copies of various White Papers. Executive Director Herrmann said that the findings included the following: "The administration of ethics laws and regulations by an agency under the direction of any elected official is inappropriate. The Committee recommends that the State Ethics Commission be adequately funded and that its funding be derived in a way that is not subject to annual appropriations by those whom the Commission is empowered to regulate." Executive Director Herrmann said that the report goes on to recommend charging fees for filing.

Commissioner Linett asked: is there any good news on the PAC fee proposal?

Executive Director Herrmann said that several bills have been introduced to implement the proposal but so far none have been acted upon.

Chairman McNany asked how the proposal would work.

Executive Director Herrmann said that the Commission would be able to charge a fee based on a percentage of a committee's gross receipts. He said that the Commission ideally would receive funding in an amount tied to a guaranteed base budget, as in California. He said further that the fees would be used to offset an appropriation. He said that the system would allow for a larger amount of money to be appropriated to the Commission at no additional cost to taxpayers.

Commissioner Linett asked how would ELEC change its budget if it had filing fees?

Executive Director Herrmann said ELEC needs \$2 million a year to operate effectively, and today we have less than one-half of that amount. He said ELEC should have a guaranteed annual appropriation, and revenues from filing fees, fines and other activity would work to reduce the net appropriation amount.

Legal Director Nagy noted that because of the reduced personnel, the new fine scale discussed at the August meeting would not be immediately implemented.

Commissioner Linett said that it was a "Catch 22" situation. We could get more fine revenue, but we need more budget to replace staff.

C. Future Meetings

Executive Director Herrmann said that future meetings of the Commission will be held on October 22, 1991, November 20, 1991, and December 18, 1991.

Executive Director Herrmann said that the public hearing on the lobbying regulations will be held on November 20, 1991. He mentioned that consideration of the "900 line" telephone regulations is slated for that date as well and that the Commission might want to consider postponing the "900 line" regulation hearing until January.

On a motion by Commissioner Linett, seconded by Commissioner Bedford and passed by a vote of 2-0, the Commission voted to postpone the "900 line" hearing until the January meeting.

Chairman McNany had stepped out of the room and did not vote on the motion.

3. Proposed Lobbying Regulations

For detailed information, please see memorandum from Gregory E. Nagy, Legal Director, to Frederick M. Herrmann, Ph.D. Executive Director, dated September 9, 1991 and entitled "Lobbying Regulations." Also please see the draft proposal regarding the lobbying regulations.

Legal Director Nagy summarized the tentative timetable for adopting the proposed regulations, the effective date of the new rules being January 1, 1992. The Legal Director stated that the timetable assumes that on November 20, 1992, the Commission will have reviewed all comments, conducted a public hearing, and adopted a final text. Legal Director Nagy indicated that if these goals prove impossible to meet in one day, the next possible effective date would be January 21, 1992. Legal Director Nagy said that he did not foresee any major problem with an effective date of January 21, 1992, or 21 days after the Act takes effect. Counsel Farrell concurred, stating that the Commission's regulatory intentions would be known by that time and that, in any event, the only impact on the ability of lobbyists to comply with the law would occur with respect to recordkeeping for a period of three weeks. He said that he did not foresee the Commission viewing that possibility as a major issue.

Legal Director Nagy reviewed the principal changes to the lobbying regulations. These changes involve the proposed repeal of N.J.A.C. 13:1A-1.1, et seq. They also involve the promulgation of new rules at N.J.A.C. 19:25-20.4, Legislative Agent Notice of Representation; N.J.A.C. 19:25-20.5, Legislative Agent Quarterly Report; N.J.A.C. 19:25-20.6, Name Tags; N.J.A.C. 19:25-20.7, Notice of Termination; and N.J.A.C. 19:25-20.8, Voluntary Statements; and N.J.A.C. 19:25-20.19, Annual Fees. According to Legal Director Nagy, repeal of N.J.A.C. 13:1A-1.1, et seq., and the promulgation of the new rules stems from the fact that the Commission will assume responsibility for administration over the registration and quarterly reporting of legislative agents. Heretofore, this responsibility came under the jurisdiction of the Attorney General.

Legal Director Nagy said that the proposed regulations extend disclosure to activity by lobbyists and legislative agents for the purpose of influencing rulemaking. The regulations require this activity to be disclosed on Notices of Representation filed by legislative agents. They also require disclosure of rulemaking activity on quarterly reports and annual financial reports. Legal Director Nagy said that the statute fails to mention specifically rulemaking activity as reportable on quarterly reports, but that the Commission views this omission as legislative oversight because the statutory structure of the Act contemplates that quarterly reports serve as periodic updates of the information on the original Notice of Representation. That information includes rulemaking activity.

Legal Director Nagy noted that the proposed regulations reflect the statutory change which eliminates the "expressly loophole." He said that expenditures by lobbyists and legislative agents made to communicate with a lawmaker or rulemaker will become subject to financial disclosure irrespective of whether the communication is made "expressly" for the purpose of influencing a bill or regulation. He also said that a membership organization or corporation whose name or occupation does not reveal its primary, economic, social, political or other interest will be required to provide this information in the legislative agent's Notice of Representation. Legal Director Nagy said that the regulatory proposal reflects this statutory provision.

Legal Director Nagy noted an exception to the requirement that lobbyists report all "benefit passing" to public officials that has been included in the regulatory proposal. He said that the proposed regulations carve out an exception to reporting gifts if the recipient of the gift is a household member or relative of the legislative agent, and if the gift was purchased with personal funds.

Commissioner Linett said that he did not agree with this proposal. The Commissioner said that in his opinion, an exception like this one would look bad to the public. He said that it looks bad enough if a public official has a relative who is a lobbyist. Commissioner Linett said that permitting gifts from the lobbyist to his or her public official relative to go undisclosed makes the situation even worse.

The Legal Director said that the position taken by Commissioner Linett certainly represents a very important concern. However, staff proposed the exception because there was some consideration that gifts exchanged between family members, paid out of personal funds, did not truly constitute lobbying activity, but might be motivated by the family relationship itself.

Commissioner Linett said that he had genuine reservations about this approach. He suggested that at the very least the Commission should limit the relationship to members of the more immediate family and exclude uncles, aunts and nephews, etc., from the exemption.

Commissioner Bedford said that he disagreed with Commissioner Linett. He said that not to carve out an exception for relatives would open the Commission up to ridicule for being overly zealous about its regulatory authority. He said that he favored the regulation as written and believed that to do otherwise would result in the Commission "driving the subject into the ground."

Chairman McNany said that instead of requiring lobbyists to disclose gifts to public official relatives, it might be a good idea for the Commission simply to require lobbyists to list all relatives who are public officials and subject to lobbying activity. In this way, he said, the public's interest in disclosure would be served, yet the Commission would not be in the position of requiring lobbyists to report birthday gifts to relatives.

Counsel Farrell suggested that a second approach would be represented by the Commission instituting a threshold amount, above which lobbyists would have to report gifts to lobbyists.

Commissioner Bedford said that he could consider a threshold approach but that he truly favored leaving the exception the way it is.

Commissioner Linett agreed to leave the proposal intact, stating that the Commission could always amend the proposal at a later time if there was sufficient and meritorious public comment with regard to it.

In continuing his summary of the proposed regulatory changes, Legal Director Nagy noted that the regulations reflect the statutory requirement that lobbyists appointed to Commissions, boards, and authorities, etc., report this information. He also said that the regulations based on the statute adopt a "transaction" approach to civil penalties. Each failure to report timely or in a manner prescribed by law any event or transaction required to be reported constitutes a separate violation, as opposed to treating multiple incorrectly reported or omitted transactions on one report as a single violation.

Legal Director Nagy indicated that the proposed regulations reflect the legislative agent registration requirements of the Act. He said that as the result of discussions with the Attorney General's staff as well as ELEC staff members Judith Chamberlain and Evelyn Ford, the proposal set forth holds that name tags will be issued only if a legislative agent has paid the

annual fee for the following year and has filed all required Notices of Representation and quarterly reports for the prior 12-month period. He added that legislative agents will be terminated from the agent list if they fail to renew their badges on a yearly basis.

Finally, Legal Director Nagy said that staff was proposing that the regulations not require lobbyists and legislative agents to make or obtain a record of an expenditure of \$25.00 or less. Legal Director Nagy said that this regulation would permit lobbyists and legislative agents to avoid maintaining a record of a small expenditure, but that such small expenditure would still be included in the aggregate totals reported.

Commissioner Linett suggested that the language in proposed N.J.A.C. 19:25-20.14, Audit by Commission; Recordkeeping, be tightened to make it clear that all receipts and records must be maintained. The Commission agreed to tighten the language to clarify that each lobbyist and legislative agent shall "make or obtain" and maintain for a period of three years all records and documents relating to its activity in influencing legislation or regulations, but the \$25.00 expenditure exemption should be retained.

Commissioner Linett recommended grammatical changes to the summary. The Commission agreed to those changes.

Counsel Farrell suggested that it be stated earlier in the text that lobbying disclosure now extends to Executive Branch lobbying.

Counsel Farrell noted also that the Commission may want to further define the word "regulation" to clarify that the intent of the statute is not to require the reporting of activity in relation to licenses, permits and grants.

Chairman McNany suggested that the issue of excluding lobbying on licenses and grants from disclosure would be best addressed in an advisory opinion.

The Commission agreed.

Legal Director Nagy noted that he had a few other technical changes to the text that he will be incorporating before filing.

On a motion by Commissioner Bedford, seconded by Commissioner Linett and passed by a vote of 3-0, the Commission approved the proposal, including the changes agreed to during the discussion.

#### 4. Advisory Opinion No. 05-1991

For detailed information, please see memorandum from Legal Director Nagy, to Executive Director Herrmann, dated September 9, 1991, entitled "Response to Advisory Opinion Request No. 05-1991."

This advisory opinion request was submitted by Richard S. Cohen on behalf of Jersey Central Power & Light Company. Specifically, the request asks whether the JCP&L/GPU employee's political action committee, a non-profit, unincorporated association that solicits and receives voluntary contributions from management level employees of JCP&L and various subsidiary companies, can utilize facilities of JCP&L or certain services of that company. JCP&L is a public utility that is prohibited from making political donations. The PAC is a separate and distinct entity. It plans to reimburse JCP&L for the cost of using any of its facilities or services.

Staff recommended that the request be referred to the Attorney General. The Commission has no jurisdiction over prohibited contribution questions. It also recommended that the referral be accompanied by a statement that the Commission has no objection to permitting JCP&L to provide the uses and services described in the request, provided that all such uses and services are reimbursed and subject to the disclosure requirements of the Campaign Reporting Act.

Commissioner Linett said that he would feel better if the Commission referred the matter to the Attorney General without rendering its advice on how the issue should be decided. He said that the Commission had no jurisdiction over the matter and would be well advised not to offer an opinion.

Counsel Farrell said that federal law gives precedence to allowing administrative costs to be assumed by corporations and unions. He said also that the Attorney General has invited the Commission to give its input on these type of questions because of the Commission's expertise in the area. He added that it was also in the Commission's interest to provide guidance for the purposes of insuring that a sensible advisory opinion response is forthcoming.

On a motion by Commissioner Bedford, seconded by Chairman McNany and passed by a vote of 2-1, the Commission approved the staff recommendation on the advisory opinion and directed staff to refer the request to the Attorney General. Commissioner Linett opposed the motion, stipulating that he believed the advisory opinion should be referred to the Attorney General without comment.

5. Advisory Opinion No. 06-1991

Legal Director Nagy advised the Commission that this request has been withdrawn and required no action by the Commission.

6. Other Business

Commissioner Linett noted for the Commissioners and staff that at a recent charitable ball he spoke with a legislative agent who had high praise for the Commission's staff. Commissioner Linett said that the agent told



him that he has dealt with many state agencies and that ELEC is the best. He said that staff goes out of their way to be cooperative and helpful.

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; 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.

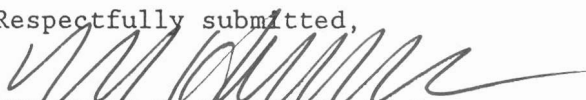
8. Return to Public Session

Judge Bedford suggested, and the Commission concurred, that the word "may" appearing at N.J.A.C. 19:25-20.7(b) of the proposed lobbying regulation text be changed to "shall."

9. 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 12:35 p.m.

Respectfully submitted,



FREDERICK M. MERRMANN, PH.D.