



State of New Jersey

ELECTION LAW ENFORCEMENT COMMISSION

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PUBLIC SESSION MINUTES

MARCH 25, 1992

OWEN V. McNANY, III
CHAIRMAN

STANLEY G. BEDFORD
COMMISSIONER

DAVID LINETT
COMMISSIONER

FREDERICK M. HERRMANN, PH.D.
EXECUTIVE DIRECTOR

JEFFREY M. BRINDLE
DEPUTY DIRECTOR

GREGORY E. NAGY
LEGAL DIRECTOR

EDWARD J. FARRELL
COUNSEL

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

1. Approval of Public Session Minutes of February 19, 1992

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 February 19, 1992.

2. Executive Director's Report

Executive Director Herrmann introduced Commissioner-Designate Dr. Ralph A. Skowron.

A. Staff Activities

Executive Director Herrmann said that on February 29, 1992, he was a guest on "Upbeat New Jersey" hosted by Senator Leanna Brown on Cable Television Network (CTN). He advised the Commission that he discussed campaign finance reform with Assembly State Government Committee Chairman Robert Martin and the Senator.

The Executive Director said that on March 5, 1992, the staff produced its first computer summary of quarterly filing statistics since the transition of lobbying quarterly report filing from the Attorney General to ELEC. Executive Director Herrmann said that the next summary report will show regulator lobbying activities for the first time. The Executive Director cited the great job done by Evelyn Ford, Anthony Chianese, Barbra Fasanella, Donna Margetts, and other staff members in completing a very successful transition.

Executive Director Herrmann announced that Director of Public Financing Nedda Massar sent ten letters to Accounting and CPA Professional Associations to explain the gubernatorial public financing program in the hope of aiding the check-off rate.

The Executive Director reported that he directed Systems Administrator Anthony Chianese to contact the Office of Telecommunications and Information Systems (OTIS) for an anti-virus program to protect ELEC's, PCs from the Michelangelo virus. Executive Director Herrmann said that the Commission did not encounter any problems with its computers.

Executive Director Herrmann announced that Carol Neiman, ELEC administrator of the State Workers' United Way Fund drive, earned the Commission a "Gold Award."

Chairman McNany asked that a resolution be drafted to be presented to Ms. Neiman by the Commission.

B. Budget Update FY 1993

Executive Director Herrmann said that the Governor has recommended an appropriation for FY93 of \$965,000 for ELEC. He said that this budget represents a continuation of the FY 1992 appropriation. Executive Director Herrmann added that the Governor recommended an additional appropriation of \$430,000 for the administration of the public financing program. The Executive Director said that staff projects that \$150,000 in lobbying filing fees will be received as well. These fees will be utilized to cover ELEC's responsibilities in this area, said Executive Director Herrmann.

Executive Director Herrmann advised the Commission that ELEC has 34 positions, of which 21 are full-time, 3 are part-time, and 10 are vacant.

C. Legislative News

Executive Director Herrmann said that on February 27, 1992, he testified before the Senate State Government Committee on S-70 (Brown), which allows ELEC to collect filing fees from continuing political committees (CPCs). He said that the bill upgrades the fine scale as well. Executive Director Herrmann, stating that he had supported the concept behind the bill but not all of its specifics, noted that the bill was held.

Chairman McNany, speaking about the issue of fines, queried as to the extent of unpaid fines to the Commission. He suggested that if the amount was significant it might be worth it for the Commission to undertake efforts to collect on those outstanding fines. Chairman McNany suggested that a press release be published, listing the names of outstanding violators. He also suggested that the Commission might contract with a collection firm to help with the collection of outstanding fines.

Legal Director Nagy noted that the Commission had published a press release relative to outstanding fines last summer, but discontinued the

program after the Review and Investigation staff was reduced to one person because of resignations. He said also that the administrative staff had explored the possibility of contracting with a collection agency, but such a contract would have to be advertised for bids. At one point, the Department of Treasury indicated it would collectively handle the bidding arrangements for small State agencies such as ELEC, but Treasury dropped this program. He also noted that the Debt Service Section of the Attorney General's office was not accepting smaller fines.

Legal Director Nagy said that a few cases involving larger fines from repeat violators had been forwarded to Counsel Farrell for collection.

Chairman McNany said that the Commission ought to be able to go into the current campaign of a candidate to satisfy an outstanding fine.

Counsel Farrell said that the Commission would probably be able to take that course of action because the payment of debts can be levied against the assets of a debtor. He said he was holding the fine cases that had been referred to him until the Commission made further policy decisions.

Chairman McNany restated his position that the Commission should prepare another press release, publishing the names of violators who have not paid their fines.

Legal Director Nagy pointed out that the Commission only had one investigator to undertake the assignment. He suggested that the Commission may have to put aside other activities.

Commissioner Bedford suggested that the task would not be as difficult as the Commission might think, stating that he supported such an approach.

Chairman McNany said that the press release approach is a fine compliance tool, one which would motivate other filers to file and pay fines on a timely basis.

Commissioner Linett said that he was uncomfortable with the notion of publicizing the names of people who have not paid their fines. He said that he would rather enlist the services of a collection agency provided that the bidding process is not too unwieldy.

Counsel Farrell suggested that he may be able to subcontract with a collection firm through his contract with the Commission.

Deputy Director Brindle suggested that there may be some restriction with respect to this approach and that he would like to inquire into the bidding laws to determine just what is required. He said that he would do so and contact Counsel Farrell as to the guidelines for direct bidding as well as subcontractors.

Chairman McNany said that he disagreed with Commissioner Linett on the press release and urged the Commission to undertake such an effort. He

suggested that the Commission go back six years with respect to who is included on this list.

Commissioner Linett said that the Commission should keep in mind that these individuals are not criminals. He suggested that this approach might be a bit heavy-handed, and in any case, should be backed up by the collection efforts of a collection agency. He said that it is no good to threaten and not be able to carry out the threat. If the Commission publicizes these names, it should be able to back this action up with collection efforts.

Commissioner Bedford suggested that the issue be carried to the next meeting and that staff, in the meanwhile, look further into the matter and report back to the Commission at the next meeting. He said that he generally favored a press release but that the Commission should explore the issue further.

Commissioner Bedford made a motion to that effect and upon the seconding of the motion by Commissioner Linett, the Commission voted 3-0 to carry the issue over to the next meeting.

Continuing his report, Executive Director Herrmann said that Deputy Director Brindle and he testified on A-645 (Martin/Russo) before the Assembly State Government Committee on February 27, 1992. He said that this bill lengthens the terms of the Commissioners to six years and modifies the appointment process. Executive Director Herrmann said that the bill was held and that while neutral on most of the bill, he did support longer terms as proposed in White Paper Number Six and ELEC's annual reports since 1984. The Executive Director said that he testified on the bill again on March 9, 1992, when the bill was released from the Committee by a vote of 6-0 with one abstention. The Executive Director reported that the bill released from the Committee was amended to include 5-year Commission terms. He said also that the power of the Governor to appoint Commissioners was reinserted.

Executive Director Herrmann advised the Commission that on February 27, 1992, he testified on A-783 (Stuhltrager) as well. The Executive Director stated that this bill prohibits public officials from making public service announcements 90 days before an election. Executive Director Herrmann indicated that he did not plan to address this bill until he was advised, while at the Committee meeting, that amendments to the bill gave ELEC jurisdiction over administering it. The Executive Director said that he took a neutral position on the bill but pointed out that the legislation expanded the role of the Commission to one of regulating public officials as well as candidates. He also said that he pointed out that the bill did not contain an appropriation to permit ELEC to be able to enforce the measure effectively. Executive Director Herrmann said that the bill was held.

Commissioner Bedford said that the requirements of this bill appear unreasonable and that the Commission should oppose it.

Counsel Farrell added that the provisions are questionable from a First Amendment point of view.

Executive Director Herrmann reported that he testified on another bill before the Assembly State Government Committee on March 9, 1992. He said that he made remarks on A-563 (Rooney) and A-642 (Martin). He noted that both are variations of S-70 (Brown) to allow ELEC to collect filing fees. Executive Director Herrmann said that he testified that such a proposal should be: fair to large and small candidates and committees, easy to comply with and to administer, and designed to enable ELEC to raise enough additional money beyond its current appropriation to allow the Commission to fill its vacancies and replace archaic equipment.

Executive Director Herrmann said that, as was the case with the hearing on the Brown bill, this Committee engaged in a discussion of fines. He said that some believe that ELEC might become a bounty hunter if allowed to retain fees. Still others, he added, did not like ELEC's 25 percent discount policy for payment of a fine within 20 days of receipt of the Final Decision.

Executive Director Herrmann said that he pointed out that ELEC retains fines now, and that they only amount to three percent of the budget. Moreover, he stated the discount policy in a sense could also be viewed as a surcharge policy; that is a late payment made after 20 days results in a 25 percent surcharge.

Executive Director Herrmann said that on March 16, 1992, he testified again on a committee substitute for the Brown bill before the Senate State Government Committee. He said that SCS-S70 (Brown) is a variation of a flat fee proposal staff worked out with Common Cause, the Torok Group, NJBIA and others. Executive Director Herrmann indicated that the bill was held for further adjustments.

D. Ethics Reminder

Executive Director Herrmann reminded the Commissioners that their ethics forms are due with the Governor (1 copy) and with the Commission on Ethical Standards (2 copies) by the 15th of May.

E. Future Meetings

The Commission will meet on April 15, 1992, in Somerville at 10:00 a.m. It will meet on May 20, 1992, in Trenton at 10:00 a.m., and on June 19, 1992, in Nutley at 10:00 a.m.

3. Advisory Opinion No. 02-1992

This advisory opinion request was submitted by State Senator C. Louis Bassano. Senator Bassano inquired as to the permissibility of using campaign funds to pay federal and State taxes on dividends generated by those funds.

Senator Bassano recently filed a final report for the 1991 general election in which he indicated that funds in the amount of \$73,636.60 left over from the general election account had been transferred to a primary 1993 account entitled "Citizens for Bassano Campaign Fund." He also indicated that during 1991 this money generated gross dividends of \$4,991.23. The taxes would be paid on the \$4,991.23 earned from the campaign money, which is in a Fidelity Cash Reserves Account.

Staff recommended that since the Commission permits a candidate to invest surplus funds in equity accounts such as Fidelity Investments, the payment of the tax liability generated by the dividends is an appropriate use of those funds.

The staff recommended also that since Senator Bassano had transferred the 1991 surplus funds to a 1993 primary election account, thereby indicating that he would be a candidate in 1993, the Commission advise Senator Bassano that he should file a Form D-1 (Designation of Campaign Treasurer and Depository) with the Commission. This recommendation is consistent with the Commission's policy as stipulated in Advisory Opinion 01-1990.

On a motion by Commissioner Bedford, seconded by Commissioner Linett and passed by a vote of 3-0, the Commission approved the staff recommendation on the response to Advisory Opinion 02-1992.

4. Advisory Opinion No. 03-1992

This advisory opinion was submitted by Jane F. Kelly on behalf of the New Jersey Utilities Association, a lobbyist organization.

The Association has inquired as to its reporting responsibilities under the "Legislative Activities Disclosure Act" in regard to sponsoring events intended to showcase issues but not influence legislation or regulations. The Association indicated that local officials, industry representatives, or other private citizens will be invited to these events, but not legislators or regulators. It pointed out, however, that area legislators may appear at an event and receive some benefit, even though they are not invited. The Association asked how these events should be reported.

Two legal questions are raised by this advisory opinion request. First: does the attendance of a legislator at a meeting or conference sponsored by a lobbyist organization give rise to reporting requirements for the lobbyist organization even if the legislator was not invited to attend, and if so, what are those requirements? Second: what lobbying reporting requirements arise if a lobbyist organization invites a legislator to attend a meeting or conference it is paying for or sponsoring?

Staff recommended that the New Jersey Utilities Association be advised that the expenses it incurs for benefit passing activity to legislators or regulators, must be reported. Further, overhead expenses pertinent to a

meeting or conference where legislators or regulators have been invited to attend are subject to reporting of the pro rata portion of the overhead costs that can fairly be attributed to a lobbying purpose.

Commissioner Linett said that he is not so sure that it is necessary for lobbyists to report overhead expenses.

Legal Director Nagy said that Commissioner Linett's concerns are well taken, but that the new law requires that communication costs be disclosed.

Commissioner Linett said that to him the test should be: is it a lobbying event? He said that if the event is a lobbying event then the cost should be included. On the other hand, he said, if the event is not considered to be lobbying in nature then no overhead costs should have to be disclosed.

Legal Director Nagy gave the example of a conference on a topic such as fiber optics. He said that in his example, five legislators attend and that there is no overt intent to lobbying them. However, these legislators listen to a nationally renowned expert on fiber optics who talks about the benefits of fiber optics on the State's economy. This expert is paid a significant fee by the lobbyist organization sponsoring the conference for speaking to the group. Legal Director Nagy said that although no overt lobbying of the legislators took place and there was no request to support a specific bill, the communication did set the stage for a favorable hearing of the fiber optics issue that eventually would be considered by the Legislature. Legal Director Nagy asked: "Shouldn't a portion of the overhead costs (including the speaker's fee) be reported with respect to this event?"

Commissioner Linett queried: "What public interest is lost by not reporting overhead." He said that he agrees that benefit passing to the legislators, such as lunch costs, should be reported.

Counsel Farrell said that he believed that some kind of pro rata reporting of overhead had to be required. He said that while the lobbying effort is very subtle in this example, it is nevertheless important and effective.

Commissioner Bedford asked: "I assume this requirement applies to regulators as well?"

Legal Director Nagy responded in the affirmative.

Chairman McNany said that the test ought to be whether or not a legislator or regulator attends an event. If the individual is in attendance, then reporting should take place.

Commissioner Linett said that the statute is obviously a very difficult one to enforce. He cautioned, however, that the Commission should not go overboard in trying to enforce this very important law.

Counsel Farrell responded that the draft advisory opinion response is an attempt to be reasonable. He said that by requiring only a portion of overhead costs to be reported, as opposed to the entire costs, effectively prevents reported expenditures from being inflated.

Chairman McNany said that he thought Legal Director Nagy's approach is rational.

Legal Director Nagy said that it had to be remembered that the "expressly" provision in the old law that required a specific reference to legislation in order for a communication to be a reportable lobbying expense had been eliminated by the 1991 amendments.

Commissioner Linett said that he believes the Commission is on the right track but that the guidelines for reporting have to be phrased better. He indicated that a test for disclosure of expenditures for these events should be more clearly defined.

On a motion by Commissioner Linett, seconded by Commissioner Bedford and passed by a vote of 3-0, the Commission postponed action on the request and directed Legal Director Nagy to draft a response based on the analysis in the memorandum he circulated for the agenda.

5. Advisory Opinion No. 04-1992

This advisory opinion request was submitted by Edward A. Hogan, Esq., an attorney for Porzio, Bromberg and Newman.

Essentially, Mr. Hogan asked two questions with regard to lobbying activity and legislative agent status. First, Mr. Hogan inquired as to whether he must register as a legislative agent if he lobbies on behalf of a client in an amount of time exceeding 20 hours but undertakes such activity on a pro bono basis. Second, Mr. Hogan asked whether an attorney who prepares lobbying materials for a client but does not make any communication to a regulator on behalf of that client must register and file Notices of Representation for that client.

Staff recommended in a memorandum circulated for the agenda that the Commission advise Mr. Hogan that pro bono lobbying services do require the filing of a Notice of Representation for each client on whose behalf such services are performed. Staff also recommended that the Commission advise Mr. Hogan that in the absence of any lobbying communication to a regulator, a Notice of Representation is not required to be filed, nor does the attorney become a legislative agent in regard to the client. The client, however, as a lobbyist, would have to report the cost of such support services.

Commissioner Bedford said that what the advisory opinion request involves is volunteerism. He said that the issue did not involve the services of a volunteer organization, but rather the services of an individual doing volunteer work.

Legal Director Nagy noted that this person is holding himself out to be in the business of lobbying, which is one of the statutory definitions of a "legislative agent."

Counsel Farrell indicated that he interprets this request to be from an attorney who believes he is doing pro bono work for a firm from which he is being paid. However, said Counsel Farrell, this individual might be hoping to get paid work later on. Therefore, Counsel Farrell said that he believes that Mr. Hogan may be misuing the phrase pro bono.

On a motion by Commissioner Bedford, seconded by Commissioner Linett and passed by a vote of 3-0, the Commission approved the staff recommendation as set forth in the memorandum and directed an opinion letter be prepared and delivered by Legal Director Nagy.

6. Resolution To Go Into Executive Session

On a resolution by Commissioner Linett, seconded by Commissioner Bedford 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.

6. 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 12:25 p.m.

Respectfully submitted,



FREDERICK M. HERRMANN, PH.D.