



State of New Jersey

ELECTION LAW ENFORCEMENT COMMISSION

NATIONAL STATE BANK BLDG., 12th FLOOR
28 W. STATE STREET, CN 185
TRENTON, NEW JERSEY 08625-0185
(609) 292-8700

OWEN V. McNANY, III
CHAIRMAN

STANLEY G. BEDFORD
COMMISSIONER

DAVID LINETT
COMMISSIONER

FREDERICK M. HERRMANN, PH.D.
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DEPUTY DIRECTOR

GREGORY E. NAGY
LEGAL DIRECTOR

EDWARD J. FARRELL
COUNSEL

PUBLIC SESSION MINUTES

JUNE 16, 1992

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 10:20 a.m. at Nutley Town Hall, Nutley, New Jersey.

1. Approval of Public Session Minutes of May 20, 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 May 20, 1992.

2. Executive Director's Report

A. Staff Activities

Executive Director Herrmann announced that the annual ELEC picnic will be held on July 8 at "Chez Nagy" starting at 1:00 p.m., and invited the Commissioners to attend.

As a result of Chairman McNany's suggestion at the last meeting, a notice has now been placed in the public room outlining procedures for getting assistance in reading illegible reports. Posting of this notice, explained the Executive Director, was prompted by an inquiry concerning handwritten reports received from Dr. Meyer Schreiber. Chairman McNany also suggested that Dr. Schreiber be advised that such a notice has now been posted. Executive Director Herrmann said that he would send a letter to that effect.

The Executive Director reported to the Commission that an article entitled "Public Campaign Financing in New Jersey," by Professor Robert A. Cropf, was published in the April edition of Comparative State Politics. The article is largely based on ELEC publications including the recently published report on the 1989 gubernatorial elections.

On May 28, 1992, Executive Director Herrmann said that he addressed a group from Leadership New Jersey on campaign finance reform at a session held at Thomas Edison State College. Commissioner Linett asked for a description of Leadership New Jersey.

The Executive Director responded that it is a group of young leaders throughout New Jersey who participate in a one-year course designed to acquaint them with issues and topics relevant to New Jersey.

B. COGEL Conference

Executive Director Herrmann reported that the annual Council on Governmental Ethics Laws (COGEL) Conference will be held from September 22 to September 25, 1992, in Toronto. He advised the Commissioners that current State policy prohibits government reimbursement for the trip. He indicated that he would provide additional conference information as it becomes available to any Commissioner who might be interested in attending. The Executive Director said that the conference organizers have invited him to participate in a panel entitled "Budget Crunch - Living with a Larger Mandate and a Smaller Budget." They have also offered to waive his registration fee and to cover part of his transportation and hotel expenses. With Commission approval, the Director said he plans to attend, paying the remainder of his expenses out of his own pocket. He added that he intended to use his vacation time for such trips until State policy changes on conference travel.

Commissioner Linett stated he thought it unnecessary for Executive Director Herrmann to use his vacation time to participate in this important ethics conference.

Counsel Farrell said that it was Executive Director Herrmann's job to be at the conference.

Chairman McNany said that it was clearly within the responsibilities of the Executive Director of the Commission to represent ELEC at the COGEL Conference and that it was therefore appropriate not to use vacation time to attend. He noted that the Commission has participated in COGEL for at least 15 years. The Chairman recognized Executive Director Herrmann's eight years of active involvement in COGEL, including his service for three years on the Steering Committee and one year as Chairman of this international ethics group. Further, COGEL had specifically requested Executive Director Herrmann's participation in a conference program event. Chairman McNany stated that he therefore supported Executive Director Herrmann's attendance at the conference as part of his regular employment.

On a motion by Commissioner Bedford, seconded by Commissioner Linett and passed by a vote of 3-0, the Commission determined that attendance of Executive Director Herrmann at the September 1992 COGEL Conference was official business and that it was therefore appropriate for Executive Director Herrmann to attend the conference without using his vacation time.

C. Legislative Activity

Executive Director Herrmann reported that on June 4, 1992, the Assembly State Government Committee was scheduled to review A-1223 (Hartmann), but that the meeting was cancelled and the bill was rescheduled for consideration on June 15, 1992.

The Executive Director explained that this bill provides tougher standards for financial reporting by public question committees and would supposedly cover questions currently placed on the ballot by the Legislature and local governing bodies, as well as Initiative and Referendum questions should this procedure take effect.

The bill requires: monthly reporting, committee registration with ELEC, more detailed contributor disclosure information including occupation and employer, and contributor reporting if a contributor has given or expended over \$5,000. The Executive Director noted that no contribution limits are allowed for public question committee reporting.

Commissioner Linett asked whether the bill contained any appropriation. Executive Director Herrmann said that none was included. Commissioner Linett then inquired whether reporting by public question committees was currently required under the Campaign Act. The Executive Director explained that it was, but that the bill contained more onerous requirements with monthly reports that would add to the Commission workload. Further, it is burdensome to have different reporting cycles for different committee types.

Commissioner Linett observed that the bill would also create different financial thresholds and standards within the same law.

Executive Director Herrmann stated that staff took no position on the bill but did suggest technical amendments to: 1) have ELEC responsible for preparing regulations (not the Department of State as recited in the bill); and 2) conform various filing deadlines to current law in the last month of reporting before an election.

Chairman McNany stated that he believed the Commission ought to maintain a low profile at this time regarding A-1223.

Executive Director Herrmann next reported that the Assembly Committee Substitute for A-101/194 (Haytaian/Franks) passed in the Assembly on May 28, 1992 by a vote of 75-0. The bill changes lobbying law terminology according to ELEC recommendations with one result being that a "legislative agent" would be called a "lobbyist." It also provides for various thresholds to be adjusted for inflation every four years.

Regarding the Assembly Committee Substitute for A-100/195/196/646/659/869 (Haytaian/Franks), Executive Director Herrmann noted that the bill was released from the Committee, but has not yet been passed by the Assembly. This bill is the comprehensive campaign finance reform

bill based on recommendations by the Rosenthal Commission. Executive Director Herrmann indicated that there is staff concern about ELEC's ability to administer the increased responsibilities if the bill passes in December for implementation in 1993.

Chairman McNany suggested the Commission communicate its concern to the Governor and the Legislature that it be given adequate time to implement the provisions of any new comprehensive campaign finance legislation. The Executive Director indicated that he would prepare a letter to express those concerns.

D. Personnel Audit

Executive Director Herrmann advised the Commissioners that the Department of Personnel official in charge of the audit informed him that no major problems were found and that he would meet with the Executive Director to share his findings before making his report to the Merit System Board.

E. Future Meetings

The Commission will hold its next meeting on July 22, 1992, at 9:30 a.m. in Keyport. The Commission decided not to schedule an August meeting, but will reserve the date of August 19 if a meeting becomes necessary.

Meetings will be held on September 16, 1992 and October 21, 1992, in Trenton because the Commission may be holding public hearings on proposed gubernatorial public financing and lobbying regulations.

F. Vacant Commissioner Position

Commissioner Linett asked whether any information is available on the progress of the nominee to the vacant position. The Executive Director said that nothing has been heard. Counsel Farrell reiterated the importance of a full complement of Commissioners.

3. Advisory Opinion No. 05-1992

This advisory opinion request was submitted by Assemblyman Louis A. Romano.

Assemblyman Romano has asked whether he is required to report on campaign reports, on continuing political committee reports or on financial disclosure statements complimentary tickets to political events which have been given to him for his use. Assemblyman Romano addressed his inquiry to the Joint Legislative Committee on Ethical Standards with an indicated copy to the Commission.

Legal Director Nagy circulated a staff memorandum that noted that the Commission has jurisdiction to issue an opinion concerning reporting requirements under the Campaign Act (N.J.S.A. 19:44A-6f) and the Personal

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Financial Disclosure Act (N.J.A.C. 19:25-19.5), but not the Legislative Code of Ethics.

In his memorandum circulated to the Commissioners, Legal Director Nagy noted that in Advisory Opinion No. 06-1980, the Commission approved the expenditure of campaign funds to purchase tickets to political and social events if attendance at those events advanced a candidacy. Similarly, staff reasoned the receipt by a candidate of complimentary tickets to a political event may advance a candidacy and therefore constitute a contribution of an "other thing of value" to a candidate pursuant to N.J.S.A. 19:44A-16a. Staff concluded that it was therefore appropriate for Assemblyman Romano to report the receipt of such complimentary tickets as "in-kind" contributions on campaign reports when attendance at the events was campaign-related.

Staff also concluded that it is appropriate for receipt of such tickets to be reported as an "in-kind" contribution on continuing political committee quarterly reports filed by an officeholder or prospective candidate.

Legal Director Nagy noted further that not all complimentary tickets are intended to benefit or promote a candidacy. Complimentary tickets to events with no correlation to or relevance to a present or future candidacy should be reported by Assemblyman Romano as gifts on the Personal Financial Disclosure Statement (Form PFD-1).

Staff also indicated that the Assemblyman should be advised that the face value or purchase price of the tickets is the correct method of valuation for reporting the tickets pursuant to Commission Regulation; see N.J.A.C. 19:25-11.5(a).

Commissioner Linett suggested that all complimentary tickets to political events should be reported.

Commissioner Bedford indicated that he understood that all such complimentary tickets should be reported.

Counsel Farrell stated that a complimentary ticket is not a "gift" if it is a campaign contribution and indicated that Commission policy should be that it is important to report these receipts.

Legal Director Nagy explained that the staff of the Joint Legislative Committee on Ethical Standards has expressed concern that if receipt of complimentary tickets is reported on reports filed with ELEC, legislators may not have to report the tickets as gifts on the annual reports required to be filed with the Joint Legislative Committee. Legal Director Nagy also told the Commissioners that the Joint Legislative Committee may take a different approach to valuation requiring instead that the reportable value of a ticket is the actual cost of the food and beverages consumed at an event.

Counsel Farrell responded that the purpose of reporting to ELEC is different. Chairman McNary stated that the purchase price of a ticket is the most convenient way to establish valuation.

Commissioner Linett stated that he is unhappy that different valuation standards may exist between ELEC and the Joint Legislative Committee. Counsel Farrell stated that it is more important for ELEC to be consistent in its approach to valuation.

Commissioner Bedford pointed out that the real value of a ticket is the unmeasurable value of the public exposure achieved at an event.

Commissioner Linett indicated that if a candidate attends many dinners on complimentary tickets, the result may be an overstatement of campaign receipts.

Legal Director Nagy indicated that because the disclosure threshold is \$250 for a gift to be reported on a personal financial disclosure statement filed with ELEC, and because such reports are only relevant to the one calendar year preceding a legislative or gubernatorial candidacy, some disclosure will be lost if complimentary tickets are only required to be reported as gifts on Form PFD-1.

Commissioner Linett indicated that the response to this advisory opinion should instruct Assemblyman Romano that he must report the receipt of complimentary tickets as the Commission discussed.

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

4. Advisory Opinion No. 06-1992

This advisory opinion request was submitted by John M. Lindemann, a legislative agent for Integrated Waste Services Association (IWSA).

Mr. Lindemann has asked whether representatives of four IWSA member corporations who have been invited by the Department of Environmental Protection and Energy (DEPE) to serve on a DEPE task force establishing statewide mercury emission standards must register with ELEC as legislative agents. It is anticipated that the industry representatives will serve over 20 hours a year in this role.

Staff circulated a memorandum which recommended that the Commission issue its advisory opinion to require registration of the four "industry representatives" as "legislative agents," unless all communications to State regulators covered by the Lobbying Act were to be made through another person who would register and report his or her activities as a "legislative agent." Legal Director Nagy reiterated the Commission policy that it is critical to the registration and disclosure process that a public record be

made of all communications that impact upon regulatory activities at all stages of the regulatory process. He noted that the Commission decided when adopting the lobbying regulations that registration and reporting requirements attach where it is reasonably foreseeable that a communication may influence future regulatory actions.

Legal Director Nagy explained that the DEPE task force was created within the framework of the regulatory process. He further indicated that while the purpose of the task force is labeled as technical or fact-finding, the result is still that by their participation, four selected industry representatives are in a position to exert influence on the regulatory process. As described in Mr. Lindemann's request, each industry representative is a management-level individual in a position to make or execute policy within his employer corporation.

Commissioner Linett asked what would happen if the management-level representatives were to bring assistants to the task force meetings. Counsel Farrell responded that their time would be counted and reported as "support personnel" subject to the 450-hour test. Commissioner Linett agreed stating that not everyone who attends a meeting where regulatory activity is under discussion is automatically a legislative agent.

On a motion by Commissioner Linett, seconded by Commissioner Bedford and passed by a vote of 3-0, the Commission directed staff to prepare a draft response based on the staff memorandum, circulate copies to the Commissioners and then to issue an advisory opinion finding the four industry representatives to be legislative agents.

5. Advisory Opinion No. 07-19882

This advisory opinion request was submitted by James C. Morford on behalf of the New Jersey Food Council (NJFC).

Mr. Morford explained that NJFC anticipated providing a gift bag with food samples donated by its member companies to New Jersey delegates to the 1992 Democratic and Republican National Conventions. He asked what reporting requirements would arise under Commission regulations for the NJFC and its member companies as a result of distribution of the food sample bags.

Legal Director Nagy reviewed a draft response letter prepared by staff. The draft explained that if NJFC meets the statutory requirements as a "lobbyist" for calendar year 1992, reporting requirements may be generated by its distribution of the samples if any of the recipients of the food samples are public officials included under the Lobbying Act. Expenditures of a lobbyist providing benefits to such officials must be reported in the aggregate by category in the Annual Report filed by a lobbyist.

Legal Director Nagy explained that if the aggregate expenditures on behalf of any individual covered by the Lobbying Act exceed \$25.00 per day, or exceed \$200.00 for the calendar year, the expenditures together with the

name of the intended recipient of the benefit must be reported along with the date and type of each expenditure, the amount of each expenditure, and the name of the person on whose behalf it was made. The goods must be valued at their reasonable commercial value to the recipient. Further, costs incurred by NJFC to prepare the food samples would be reportable.

The draft response indicated that NJFC member companies donating foods for the gift bags would not be required to file an annual lobbying report solely because the food was donated to NJFC. However, if any such company is conducting lobbying activity that is not included in the report filed on behalf of the NJFC, and if that activity exceeds \$2,500 in a calendar year, the NJFC member company would be required to file lobbying disclosure reports. Moreover, NJFC must identify in its annual report any member who provides products which in the aggregate have a value of more than \$100 in a calendar year.

The draft response also cautioned those recipients of the NJFC food bags who might be 1993 gubernatorial or legislative candidates that gifts exceeding \$250 must be disclosed on 1992 financial disclosure statements required to be filed with the Commission.

On a motion by Commissioner Linett, seconded by Commissioner Bedford and passed by a vote of 3-0, the Commission approved the staff recommendation and directed that a response be issued as drafted.

6. Advisory Opinion No. 08-1992

This advisory opinion request was submitted by George R. Gilmore, Finance Chairman of the Ocean County Republican Chairman's Club.

Mr. Gilmore has asked whether the Ocean County Republican Chairman's Club, a continuing political committee filing quarterly reports with the Commission, may use its funds to pay travel and lodging costs of delegates, alternate delegates, district delegates and alternate district delegates to the August, 1992, Republican National Convention.

Legal Director Nagy reviewed a draft response which was circulated to the Commissioners at the meeting. Staff recommended in the draft response that nothing in the Campaign Reporting Act or Commission regulations promulgated pursuant to the Act precluded the use of continuing political committee funds as described by Mr. Gilmore. Further, recognizing that the attendance of delegates at national party conventions can be an important activity of State or local political party committees, the draft response concluded that payment of reasonable delegate expenses would not under normal circumstances create an issue of personal use of funds.

Mr. Gilmore had indicated in his inquiry that he did not expect to be personally reimbursed for costs arising from his attendance at the Convention. In the draft response, Mr. Gilmore, who serves as finance chairman, was told that he was not precluded from receiving reimbursement for his expenses.

Commissioner Linett commented that the draft response was exceptionally well-written.

On a motion by Commissioner Linett, seconded by Commissioner Bedford and passed by a vote of 3-0, the Commission directed staff to issue the advisory opinion as drafted.

7. Resolution To Go Into Executive Session

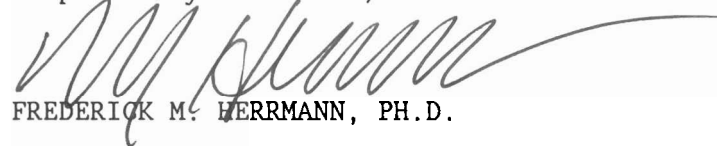
On a resolution by Commissioner Linett, seconded by Commissioner Bedford and passed by a vote of 3-0, the Commission resolved to go into closed Executive Session to discuss the following matters which will become public as follows:

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;
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; and,
3. A report on written requests for investigations of possible violations, which report will not become public. However, any complaint which may be generated as a result of a request for an investigation 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 11:50 a.m.

Respectfully submitted,



FREDERICK M. HERRMANN, PH.D.