



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.
EXECUTIVE DIRECTOR
JEFFREY M. BRINDLE
DEPUTY DIRECTOR
GREGORY E. NAGY
LEGAL DIRECTOR
EDWARD J. FARRELL
COUNSEL

PUBLIC SESSION MINUTES

JULY 22, 1992

All the Commissioners, senior staff, and Director of Public Financing Nedda Massar 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 Keyport Borough Hall, Keyport, New Jersey.

1. Approval of Public Session Minutes of June 16, 1992

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 June 16, 1992 as technically amended by Commissioner Linett.

2. Executive Director's Report

A. Budget and Evaluation Data

Executive Director Herrmann reported that the Commission's FY '93 budget appropriation is \$895,000. The Executive Director noted that the appropriation is down from \$965,000 in FY '92, which was down from the previous year. He said that the reduction includes a \$15,000 cut by the Legislature from the Governor's recommendations and a \$55,000 cut emanating from an interdepartmental assessment. He said that because of prudent management practices on the part of the Commission, ELEC is not anticipating any layoffs, although it will be a very tight year budgetarily.

Executive Director Herrmann recapped the FY '92 evaluation data for the Commissioners in the following manner:

Public Session Minutes
July 22, 1992
Page 2

	Target	Actual	FY-89*
Investigations	50	53	101
Agency-Initiated			
Civil Proceedings	225	219	620
Public Assistance Requests	10,250	12,077	9,462
Photocopies	110,000	210,982**	N/A

Executive Director Herrmann emphasized that the evaluation data indicates that the Compliance and Information Section continues to experience an increase in its workload, despite the fact that its staffing has not grown, but in fact, has decreased. Further, he said, the evaluation data indicates that the Review and Investigation Section has had to lower its enforcement and work production both as the result of staffing cutbacks and the necessity of assisting the Compliance and Information Section with its tasks.

Executive Director Herrmann advised the Commissioners that the Commission has been appropriated \$430,000 for administering the gubernatorial public financing program. He said that \$250,000 of the amount is slated for administrative costs and \$180,000 for the salaries of 12 staff. Executive Director Herrmann said that despite the fact that the appropriation has been made, the Commission is currently prevented from hiring public financing staff because of the recent absolute hiring freeze. The Executive Director said staff recommends that the Commission should alert the Governor and the Legislature to this critical situation if an administrative solution fails to be reached. He reported that he spoke personally with Richard Keevey, Director of the Office of Management and Budget (OMB), about the situation and followed up the conversation in writing explaining the situation further. Executive Director Herrmann, discussing a draft letter from the Commission to the Governor and Legislature which was contained in the Commissioners' agenda material, requested authorization to send the letter to the Governor and Legislature if the request for an exemption from the hiring freeze is rejected before the next Commission meeting. He emphasized that proper channels are being followed, stipulating that he is hopeful that the situation will be resolved administratively, thereby negating the need for the letter to be sent.

Chairman McNany said that he believes that the letter to the Governor and the Legislature must be sent no later than September 1, 1992, because of the critical need to hire and train staff in time to implement the program for the gubernatorial primary season. Commissioner Bedford also stressed the need for adequate time to hire and prepare public financing staff.

* Before recessionary budget cuts began (\$1.3 million budget)

** Does not include June, 1992

The Commission concurred with Chairman McNany and directed that the letter be sent to the Governor and the Legislature no later than September 1, 1992, in the absence of an administrative resolution to the problem by that time.

Executive Director Herrmann added that in addition to the letter asking for an exemption from the hiring freeze, he has also written to OMB to emphasize that the \$12.8 million requested in the FY93 budget document for distribution to primary election candidates be set aside as a loan to the Gubernatorial Elections Fund and be available by January 1, 1993, to cover the payments of public funds to the candidates.

B. Legislative News

Executive Director Herrmann reported that on June 15, 1992, A-1223 (Hartmann), which requires tougher reporting standards for all public question committees, was released unanimously by the Assembly State Government Committee. The Executive Director stated that the bill contains ELEC's technical amendments but no appropriation.

Executive Director Herrmann mentioned that on June 22, 1992, he testified before the Senate Judiciary Committee on campaign finance reform issues. Executive Director Herrmann noted that also testifying were: Dr. Alan Rosenthal of the Eagleton Institute; Edward McCool, Executive Director of New Jersey Common Cause; and, Rob Stuart of the Public Interest Research Group. The Executive Director advised the Commission that these witnesses and he explained the Rosenthal Commission findings to the Committee.

Executive Director Herrmann continued his report by stating that on June 29, 1992, the Assembly Committee Substitute for A-100 et al (Martin), an omnibus campaign finance reform bill, was posted for a vote in the General Assembly. The Executive Director said that the bill is essentially based on the Rosenthal Commission recommendations. However, it contains no appropriation and doubles ELEC's workload. Executive Director Herrmann said that the Assembly did not vote on the proposed legislation.

Executive Director Herrmann remarked that the Iowa Campaign Financial Disclosure Commission recently commented publicly on a new campaign finance reform law in that state, noting that "one of the most important considerations will be the cost, as it is anticipated that implementation will more than double the cost of the...Commission."

The Executive Director reported also that in recent telephone calls from the Nebraska Accountability and Disclosure Commission and the Maine Commission on Governmental Ethics and Election Practices, their directors told him that they were facing new laws with increased responsibilities while their budgets were being cut.

Executive Director Herrmann said that the moral of the story is that "we are not alone"!

Executive Director Herrmann told the Commission that on July 16, 1992, he testified before the Senate Judiciary Committee on S-1017 (Inverso/Kosco), which is an omnibus campaign finance reform bill similar to the ACS for A-100 et al (Martin), except that it has annual contribution limits instead of contribution limits per election cycle. He noted that like A-100, this bill does not contain an appropriation.

Executive Director Herrmann advised the Commission that S-1017 was unanimously released from committee with amendments. He said that the bill allows each candidate to form one joint committee in addition to his or her campaign committee. Executive Director Herrmann added that the bill places no limits on an individual's contributions to him or herself. The Executive Director noted that the contribution limit to county committees was raised from \$10,000 to \$25,000 and that recipients of "street money" must be reported when receiving more than \$25.00, not when receiving \$25.00 or more.

Executive Director Herrmann conveyed to the members of the Commission that ACS for A-100 et al (Martin) was again posted for a vote on July 20, 1992, but was carried forward for a possible floor vote on August 3, 1992.

The Executive Director reported that on July 20, 1992, the Assembly State Government Committee considered A-1460 (Anderson/Derman), a bill that requires all mailings of 200 or more pieces referring to the Governor to have a copy filed with ELEC along with a statement of cost and a description of the recipients.

He also said that A-1628 (Rooney), which amends the new lobbying law, was considered by the Committee as well. This bill allows a covered public official to solicit contributions from a lobbyist for charity without the contribution being considered a benefit pass to the official. According to Executive Director Herrmann, the bill also exempts a person representing a charitable group from filing if that person receives no compensation for lobbying other than reimbursement for necessary and actual travel expenses. He noted that both bills were released from Committee and that ELEC has not taken a position on them.

C. Future Meetings

The Commission will meet on September 16, 1992, in Trenton at 9:30 a.m., and on October 21, 1992, in Maplewood at 10:00 a.m.

D. COGEL Conference Update

Executive Director Herrmann announced to the Commission that he has been asked to lead a breakfast table topic discussion in addition to participating on the budget panel.

Executive Director Herrmann told the Commission that the Canadians have agreed to waive his registration fee and will pay for his hotel room. He added that he will pick up his full transportation cost out-of-pocket. Executive Director Herrmann, in thanking the Commissioners for allowing him

to not use his vacation time for the conference, said that the Department of Treasury has approved his attending the conference without any State reimbursement.

3. Proposed Amendments to Lobbying Regulations

The proposed changes to the lobbying regulations include amendments to N.J.A.C. 19:25-20.13 (Contents of annual report) and N.J.A.C. 19:25-20.11 (Expenditures).

For a complete review of the proposed amendments please see memorandum from Gregory E. Nagy, Legal Director, to Frederick M. Herrmann, Ph.D., Executive Director, dated July 15, 1992, and entitled Proposed Amendments to Lobbying Regulations which was circulated to the Commissioners with the agenda materials.

In summary, the proposed amendments eliminate the "specific event" reporting exemption, define the term "immediate family" as used in the context of benefit-passing reporting, and remove the requirement that the cost of entertainment or food and beverage for a legislative agent be included in the \$25 per day/\$200 per year calculation pertinent to benefits passed to covered officials.

The Commission is proposing the elimination of the "specific event" exemption because the existing regulations permit lobbyists to avoid identification on their annual reports of lawmakers or regulators who receive benefits from them if those benefits are provided in the context of a specific event, such as a reception. With the elimination of the exemption it will be clear that in all instances, a lobbyist must report the name of any lawmaker or regulator who receives a benefit in excess of \$25 per day or \$200 per year.

Legal Director Nagy said that this amendment constitutes an important development in disclosure of benefit-passing activity. The Legal Director added that the Commission policies developed in Advisory Opinion No. 03-1992 effectively removed the need for "specific event" exemption in the regulations. This advisory opinion stated that if a lobbyist sponsoring an event had neither actual or constructive knowledge of the presence of an uninvited lawmaker or regulator, there would not be any reporting obligation to disclose the identity of the lawmaker or regulator. A concern about the inability of a lobbyist to identify regulated State officials attending a "specific event" was the principal motivation for establishment of the exemption.

Commissioner Linett said that he was not convinced that eliminating the last sentence in N.J.A.C. 19:25-20.13(b) is the most effective way to accomplish the goal of removing the specific event loophole. He said that it would be better for the regulations to be as specific as possible in terms of providing guidance to lobbyists for reporting specific events. He suggested that the last sentence in (b) be retained and the words "must be allocated" substituted for "need not be allocated."

Public Session Minutes
July 22, 1992
Page 6

Legal Director Nagy noted that the Commission would be reviewing all of the proposed amendments in September when it conducts its public hearing. The process for proposal and adoption takes about four months, and written comments can be submitted up to October 8, 1992. The Commission will have an opportunity at its September public hearing and its October meeting to consider any changes. However, he noted that major changes would require **reproposal**. Therefore, Legal Director Nagy said if the Commission wished to defer action on the proposal until its August meeting, there would still be time to adopt the regulation by January 1st.

Commissioner Bedford asked if the written comments would be mailed in advance to the members of the Commission.

Legal Director Nagy answered in the affirmative

The Commission also discussed the proposed definition of "immediate family," which means the spouse of a candidate residing in the same domicile and any dependent children. The members also discussed the reporting change that excludes the cost of the entertainment or food and beverage for a legislative agent when calculating the benefit passed to a legislator or regulator.

Commissioner Linett said that inherent in this regulatory change, which separates benefits to the legislative agent from those bestowed upon the legislator/regulator, is a certain difficulty in enforcement. He said that under the proposed reporting arrangement it will be difficult to know whether a legislator was benefitted. He said that on a credit card bill, for instance, there will be one lump sum amount showing, which will not be delineated in terms of whom the payment benefitted. He said that his question is: how is the Commission going to prove that money was spent on a legislator or regulator.

Counsel Farrell said that the Commission always has had this problem when faced with this type of issue. He said that the Commission must work under the assumption that lobbyists are reporting honestly. He said that he has difficulty with benefits to legislative agents being reported as benefits to legislators. Counsel Farrell said that the cost of a legislative agent's meal can be considered and reported as "overhead."

Commissioner Bedford said that enforceability of the law should not be the standard by which a regulation or law is adopted. He said that the Commission must assume that there is honesty in reporting.

Commissioner Linett moved the regulatory proposal as amended and according to the adoption schedule set forth in Legal Director Nagy's memorandum. Seconded by Commissioner Bedford, the Commission, on a vote of 3-0, proposed the amendments to the lobbying regulations.

4. Proposed Amendments to Gubernatorial Public Financing Primary Election Regulations

The proposed changes to the Gubernatorial Public Financing Primary Election Regulations include amendments to N.J.A.C. 19:25-12.7 (Independent expenditures), 19:25-16.3 (Definitions for this subchapter), 19:25-16.5 (Pre-candidacy activity), 19:25-16.16 (Political party committee contributions prohibited), 19:25-16.18 (Matching of funds), and 19:25-16.25 (Use of public funds).

For a complete review of the proposed amendments please see memorandum from Nedda Gold Massar, Director of Public Financing to Frederick M. Herrmann, Ph.D., Executive Director, dated July 15, 1992, entitled Proposed Amendments to Gubernatorial Public Financing Primary Election Regulations which was circulated to the Commissioners with the agenda materials.

In summary, the amendments include the term "continuing political committee" (CPC) being added to Section 12.7 (Independent expenditures) to clarify that an independent expenditure by a CPC is subject to the disclosure and other requirements of the Act and Commission regulations.

Section 16.3 (Definition for this subchapter) has been amended to include the definition of "principial campaign committee." Additionally, Section 16.5 (Pre-candidacy activity) has been amended to implement statutory changes concerning pre-candidacy or "testing the waters" activity. These changes clarify that funds received and expenditures made while "testing the waters" are to be counted as subject to the gubernatorial contribution and expenditure limits if the individual becomes a gubernatorial candidate.

Section 16.16 (Political party committee contributions prohibited) has been deleted to comply with recent United States Supreme Court and New Jersey Court decisions. Further, Section 16.18 (Matching of funds) has been amended to require that the bank account established by a publicly-financed gubernatorial campaign for the deposit of contributions eligible to be matched with public funds be specifically named the "Matching fund account of." In this same section, the proposal would require that lists of contributors submitted for match with public funds be alphabetized and segregated by type of contributor to speed the processing of candidate submissions for public matching funds. It is also requiring that additional copies of all public funds submission documents be filed with each request for public funds.

A new subsection (c) has been added to Section 16.25 (Use of public funds) to require that publicly-financed campaigns obtain media affidavits from radio and television outlets at the time their advertisements are broadcast certifying that the media time paid for with public funds was actually aired. Moreover, the Commission is adding a new subsection (d) requiring that the purpose of each disbursement from the candidate's public funds account be specifically identified on campaign reports and public funds submissions. Finally, a new subsection (e) has been established to

impose strict campaign and submission reporting requirements which apply when a publicly-financed campaign reimburses with public funds any non-public fund account for a disbursement which might have been made with public funds.

Section 16.27 has been amended to correct a citation. A new subsection (c) has been added to Section 16.28 (Travel expenses) to clarify that reporting requirements attach to a candidate's use of a State-owned vehicle and to establish the appropriate method for valuation of such expenditures for transportation. This subsection requires that reimbursement to a government entity for the use of government vehicles must be made immediately.

Section 16.29 (Independent expenditures) has been changed to include within its requirements independent expenditures made by continuing political committees. In addition, the text of Section 16.30 (Coordinated expenditures) has been conformed to the coordinated expenditures regulation adopted by the Commission for the 1989 general election. Finally, Section 16.39 (a) has been amended to modify the policy on endorsement of gubernatorial candidates by a sponsor organization to conform with the general election regulation and a new subsection (b) has been added to include a new category of debate sponsor.

A new Section 16.48 (Complaint alleging violation of primary election expenditure limit) has been added to establish procedural steps which must be taken by a party requesting Commission consideration of an alleged violation of the primary election expenditure limit.

In referring to the amendment which requires campaigns to alphabetize contributors, Commissioner Linett said that this provision may handicap those primary candidates whose campaigns are not wealthy enough to afford computers. He said that many gubernatorial campaigns do not have the means to computerize and that this provision would therefore require a significant effort on the part of the campaign staff to accomplish.

Legal Director Nagy said that the Commission may not have the staff to review and key the gubernatorial contribution information into the computer and thereby create alphabetized contributor lists, which are critical to monitoring contribution limits.

Director of Public Financing Nedda Massar said that the proposed regulation requiring alphabetized contributor lists offers the Commission the ability to provide some level of compliance review of contributions submitted for match with public funds in the absence of a staff and the capacity to computerize.

Executive Director Herrmann said that the proposed regulation will also permit, in the absence of a public financing staff, the Commission to provide contributor lists to the public.

Public Session Minutes
July 22, 1992
Page 9

Commissioner Linett asked whether there existed a general waiver provision for candidates who demonstrate a hardship.

Director Massar answered in the negative, but stated that the Commission could take certain cases under advisement and individually waive the requirement.

Commissioner Linett suggested that staff consider adding language to the regulation to the effect that "upon application to the Commission by a gubernatorial candidate the Commission can for good cause waive compliance with the regulation."

Executive Director Herrmann mentioned that it should be kept in mind that the contributor lists would only be provided by candidates receiving public funding.

Commissioner Linett then suggested that Section 16.18 be amended to require publicly-financed candidates for Governor to provide an alphabetized master cumulative list of all contributors as well as the alphabetized list of all contributors included within a particular deposit.

Vis-a-vis the "testing the waters" proposal, Commissioner Linett asked if the Commission had the right to require that "testing" records be kept for four years even if the potential candidate does not become a candidate.

Legal Director Nagy said that the general provisions of the Campaign Act relative to recordkeeping do not currently apply to "testing the waters."

Legal Director Nagy suggested that staff examine the regulations to determine whether Section 8.1 could be amended to include testing. The Commission concurred with that suggestion.

Commissioner Linett asked: with respect to the proposed regulation dealing with the reporting of transportation costs and the reimbursement to the State for the cost of a candidate using a government vehicle, does the Commission have the authority to require reimbursement to the State?

Commissioner Linett stated further that he believed that it would be difficult to determine valuation in terms of the cost of transportation.

Counsel Farrell said that determining the cost of transportation would be easier than allocating a portion of the coordinated cost of advertising to a gubernatorial candidate, yet the Commission is able to accomplish this task. He said that the Commission could consult with a commercial carrier to determine valuation of the cost of transportation.

Commissioner Linett said that it seemed like the "valuation" concept was vague, but that he would support the proposed amendment if the Commission believes it is enforceable. Director Massar noted that Section 16.35 (Computation of value of goods and services) currently provides an example of valuation technique for candidate transportation expenses.

Commissioner Linett proposed several changes to the proposed amendments which were technical in nature.

The Commission concurred with these technical amendments as well as in certain substantive amendments as enumerated above.

Commissioner Bedford moved the adoption of the proposed regulatory changes as amended by Commissioner Linett. Seconded by Commissioner Linett and passed by a vote of 3-0, the Commission approved the proposal in accordance with the adoption schedule contained in Director Massar's memorandum.

5. 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.

6. Adjournment

On a motion by Commissioner Bedford, seconded by Commissioner Linett and passed by a vote of 3-0, the Commission voted to adjourn at 12:05 p.m.

Respectfully submitted,



FREDERICK M. HERRMANN, PH.D.