



State of New Jersey

ELECTION LAW ENFORCEMENT COMMISSION

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PUBLIC SESSION MINUTES

OCTOBER 21, 1992

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 28 W. State Street, Trenton.

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

2. Executive Director's Report

Executive Director Herrmann expressed greetings from David Norcross, ELEC's first executive director.

A. COGEL Conference News

Executive Director Herrmann mentioned that ELEC was given the Council on Governmental Ethics Laws' (COGEL) Service Award for the contribution of the "COGEL Campaign Financing and Lobbying Bibliography" that he compiled.

The Executive Director reported that in COGEL's Annual Legislation/Litigation Update on campaign financing, ELEC was commended for its "courage" in producing advisory opinions in the area of campaign fund usage. The Update notes that New Jersey's statute is silent on this issue.

Executive Director Herrmann said also that the Update included attempts by states to develop "new revenue sources" for funding ethics agencies. He said that Kentucky, Michigan, Montana, and New Jersey were cited. He said that the Update holds that "reform or enforcement without adequate funding is really nothing at all."

Executive Director Herrmann reported that Jeffrey Garfield of Connecticut presented a national survey he had undertaken concerning budget cuts. The Executive Director said that sadly, ELEC ranked in the top five with California, Illinois, New York, and Connecticut.

Executive Director Herrmann advised the Commission that his COGEL presentation, entitled "Budget Crunch - Living With a Larger Mandate and a Smaller Budget" appeared to be well received. He said that he has received numerous requests for his notes and that the editor of the Guardian asked him to turn it into an article.

He reported that at the conference he was interviewed by "FEC Watch," a project of the Center for Responsive Politics. He noted that the Center is doing a comparative study of the structures and procedures of state agencies responsible for enforcement of campaign finance laws. He said that the study will be used to develop a model for federal use. The Executive Director mentioned many COGEL members had told "FEC Watch" that ELEC was "tops in the field."

According to the Executive Director, the 1993 COGEL conference will be held in St. Paul, Minnesota, and the 1994 conference in Kona, Hawaii.

B. SCI Report on Local Government Corruption

Executive Director Herrmann advised the Commission that the State Commission on Investigation (SCI) report on local government corruption calls for many reforms championed by ELEC notably: contributions limits, PAC registration, listing of contributor occupation/employer, ban on direct corporate/union contributions, and higher fines. The Executive Director said also that the report urges clear guidelines for usage of campaign funds and calls for ELEC jurisdiction over political identification of campaign literature.

Executive Director Herrmann said that the SCI report found that "ELEC should have sufficient staff and other resources to adequately enforce campaign laws. If the funding cannot be obtained from tax revenues, then it should come from fees imposed on lobbyists and PACs."

He noted that this finding is similar to ELEC's and to that expressed in testimony presented to Washington, D.C. municipal officials by ELEC's sister agency, the Washington, D.C. Office of Campaign Finance.

C. Legislative Update

Executive Director Herrmann reported that on October 8, 1992, he testified on A-645 (Martin/Russo) before the Senate State Government Committee. He advised that the bill modifies the length of terms and procedures for choosing Commission members. The Executive Director said that he testified that ELEC continues to support longer terms but is neutral on the other elements of the bill. He said that the bill was held and rescheduled for discussion on October 22, 1992.

Executive Director Herrmann advised the members of the Commission that also on October 8, 1992, the Senate Budget and Appropriations Committee posted S-1017 (Inverso/Kosco), an omnibus campaign finance reform bill based on the Rosenthal Commission's recommendations, and S-70 (Brown), a filing fee bill, for a vote. He said that it appears that the Senate Majority is seriously considering using filing fees as a supplemental source for funding ELEC. However, no vote or discussion took place.

Executive Director Herrmann said that on October 22, 1992, the Senate State Government Committee will review A-1460, a bill sponsored by several Assemblypersons (Anderson/Derman/Crecco/Corodemus). He noted that this bill requires unsolicited mailings by the Governor, Senate President, or Speaker to 200 or more people to be filed with ELEC with a statement describing "the universe of recipients" and the cost of the mailing. The Executive Director said that ELEC has no position on the bill.

D. Staff Activities

Executive Director Herrmann said that on October 28, 1992, he will address the national conference of the Foundation for Public Affairs (FPA) in Washington, D.C., on reforming state lobbying and campaign finance laws.

The Executive Director reported that on November 5, 1992, he will discuss ELEC activities at the business meeting of the Lawrence Township League of Women Voters.

Executive Director Herrmann disclosed that the 1991 Gold Award ELEC won from United Way was the only one earned in the Department of Law and Public Safety. He said that the 1992 Charitable Campaign will again be chaired by Carol Neiman.

E. More Praise for ELEC

Executive Director Herrmann reported that in the August issue of Governing, Rob Gurwitt wrote that "watchdog disclosure agencies...are treated like poor stepchildren. They rarely have the staff or resources...." The Executive Director said that the article went on to say that ELEC was one of the two "most highly regarded campaign disclosure agencies in the country," but it has "had to withstand severe budget cuts over the past few years."

F. Public Financing Staff Update

Executive Director Herrmann said that there has been no response to ELEC's request to have the hiring freeze lifted to hire staff for the public financing program nor on its request for a supplemental appropriation to provide funds to candidates.

He said that ELEC continues to be concerned about its ability to review adequately millions of dollars for contribution limit infractions and matching dollar qualification without the twelve positions. The Executive Director

said that a late filing candidate just over the qualifying threshold of \$177,000 could be approved for debating and later be found not to qualify.

Executive Director Herrmann said that it appears that the Commission has exhausted all its administrative remedies. He said that staff suggests a memorandum to the Commission for November which will discuss how the program will function without staffing.

Chairman McNany said that the memorandum should certainly include how difficult it will be to administer the program in the absence of staff.

Commissioner Bedford concurred.

Chairman McNany then suggested that staff prepare a letter from the Commission to the Office of Management and Budget (OMB), with a carbon copy and cover letter to the Governor and the legislative leadership, which renews the request for public financing staff and funding. The Chairman further suggested that the cover letter also request the filling of the Republican vacancy and the Republican holdover position.

On a motion by Commissioner Bedford, seconded by Commissioner Linett and passed by a vote of 3-0, the Commission directed staff to issue letters to OMB and to the Governor and legislative leadership stressing the importance of an exemption from the hiring freeze for public financing staff and the need for an appropriation for funds, and also expressing the Commission's concern over the vacancy and holdover Commissioner position.

G. Future Meetings

The Commission determined that the November meeting would be on November 19, 1992, in Maplewood, New Jersey, at 10:00 a.m. The December meeting will be in Trenton on December 16, 1992, at 9:30 a.m., and the gala holiday season luncheon would follow the meeting.

3. Proposed Amendments to Implement Gubernatorial Primary Election Campaign Cost Adjustments

The Commission convened a public hearing to discuss proposed regulations to implement the Gubernatorial Primary Election Campaign Cost Adjustments.

A court reporter was present to record the proceedings, but no witnesses appeared to testify concerning the program cost adjustments.

For detailed information concerning the proposed campaign cost adjustments please see the Public Session Minutes of September 16, 1992, and a memorandum from Nedda Gold Massar, Director of Public Financing, to Frederick M. Herrmann, Ph.D., Executive Director, dated September 9, 1992, and entitled "Proposed Amendments to Implement Public Financing Cost Index."

On a motion by Commissioner Bedford, seconded by Commissioner Linett and passed by a vote of 3-0, the Commission voted to close the public hearing

concerning the proposed regulations to implement the Gubernatorial Primary Election Campaign Cost Adjustments.

Commissioner Linett said that it is important to note that the current Consumer Price Index (CPI) is slightly higher than the recommended cost adjustments. He said that the adjustments to the thresholds and limits are barely keeping pace with inflation.

The Commission also reviewed the 1993 Gubernatorial Cost Index Report and commended Director of Public Financing Nedda Gold Massar for her efforts in preparing the report.

On a motion by Commissioner Bedford, seconded by Commissioner Linett and a vote of 3-0, the Commission approved the 1993 Gubernatorial Cost Index Report for distribution to the Legislature for the December 1992 deadline.

4. Approval of Amendments to Gubernatorial Public Financing Primary Election Regulations

The Commission discussed the proposed amendments to the Gubernatorial Public Financing Primary Election Regulations at N.J.A.C. 19:25-3.1, 12.7, 16.3, 16.5, 16.16, 16.18, 16.24, 16.25, 16.27, 16.28, 16.29, 16.30, 16.39, 16.43, and 16.48.

For further information please see the Public Session Minutes of September 16, 1992, the transcript from the public hearing held on that date, and the memorandum to Frederick M. Herrmann, Ph.D., Executive Director, from Nedda Gold Massar, Director of Public Financing dated October 14, 1992, and entitled "Approval of Gubernatorial Public Financing Primary Election Regulations." This memorandum contains a summary of public commentary received as well as a staff recommendation to adopt the proposed amendments with substantive and technical changes not requiring reproposal.

Commissioner Linett, in regard to N.J.A.C. 19:25-16.48 (Complaint alleging violation of primary election expenditure limit), said that the suggestion in the public comments that the ground rules for filing a complaint be determined early on is a good one. He said that it would not be a healthy situation for the Commission to be fighting over procedures after the campaign has begun. He suggested that the Commission add language to the proposed amendment which would clarify that upon the filing of a complaint the Administrative Procedures Act governs the proceedings.

Counsel Farrell said that it is not a requirement of law that the Commission refer matters to the Office of Administrative Law (OAL) in the Department of State. He said that the Commission can make a unilateral decision on enforcement matters.

Commissioner Bedford suggested that the Commission state that it "may" send a matter to OAL.

Counsel Farrell said that he does not want the Commission to preclude itself from being able to adjudicate a matter on its own and independent of the OAL.

Commissioner Linett said that the commenter has a justifiable concern that the Commission is acting simultaneously as investigator, prosecutor, judge, and jury, etc.

Counsel Farrell responded that it is in the nature of the Commission's role to perform all of these functions. He said that upon an appeal from a respondent, the Appellate Court can review ELEC's procedures in terms of fairness. He said that there is no alternative to this situation.

Commissioner Bedford suggested that language be inserted into the proposed amendment at N.J.A.C. 19:25-16.48, clarifying that a matter could be sent to the OAL but, at the same time, does not need to be. He said that it is important that the Commission not be precluded from deciding a case entirely on its own. Legal Director Nagy suggested that staff would, as it had in 1989, write to the Honorable Jaynee LaVecchia, A.L.J., Director of the OAL, to establish procedures for emergent resolution of complaints concerning gubernatorial public financing.

The Commission added the following language to the text of N.J.A.C. 19:25-16.48 to clarify that the Uniform Administrative Procedure Rules apply in a hearing conducted by the Commission for an expenditure limit complaint: "(c) Any hearing conducted by the Commission arising from a complaint filed pursuant to this subsection shall be governed by the New Jersey Uniform Administrative Procedure Rules (N.J.A.C. 1.1)."

On a motion by Commissioner Bedford, seconded by Commissioner Linett and passed by a vote of 3-0, the Commission adopted the amendments to the public financing regulations as amended by Commissioner Bedford and directed staff to file the adoption with the OAL.

5. Approval of Lobbying Regulations

The Commission discussed the proposed amendments to the Lobbying Regulations at N.J.A.C. 19:25-20.11 and 20.13.

For further information please see the Public Session Minutes of September 16, 1992, and the public hearing transcript of that date. Also, see the memorandum from Gregory E. Nagy, Legal Director, to Frederick M. Herrmann, Ph.D., Executive Director, dated October 14, 1992, and entitled "Approval of Lobbying Regulations." The memorandum also included responses to individuals who provided testimony vis-a-vis the regulations.

Commissioner Linett said that he questioned the \$5.00 threshold inserted by staff under which recordkeeping for benefit-passing is not required. He said that by imposing this threshold the Commission is modifying its own law by creating its own exemption. He suggested that the Commission, in taking such action, would be going beyond its statutory authority.

Commissioner Bedford said that the new threshold was inserted to ease recordkeeping functions.

Executive Director Herrmann noted that the Commission has already enacted a \$5.00 exemption for recordkeeping regarding communication expenditures. He said that this proposal creates a parallel situation for benefit-passing.

Commissioner Linett asked: Are we really addressing any issue of substance in making this change? Has the Commission the right to take this action under the statute?

Legal Director Nagy responded that, under the statute, there is no express authorization for a recordkeeping threshold. He said, however, that a de minimis exemption carved out with respect to recordkeeping would seem to be defensible.

Commissioner Linett doubted that the Commission should address this issue at all. He suggested that it would not be prudent for the Commission to affirm the fact that it is alright for individuals to not keep records of expenditures under \$5.00.

Counsel Farrell said that in his view, the Commission's insertion of a \$5.00 threshold is defensible. He said that the Commission is encumbered by the necessity of responding to the issue because an individual asked the question and it is up to the Commission to educate as to how to go about recordkeeping.

Commissioner Linett asked if the question of how a lobbyist is to allocate benefits that derive from a specific event has been addressed.

Legal Director Nagy answered in the affirmative, stating that only actual benefits, and not administrative costs, such as overhead, are chargeable to the official.

On a motion by Commissioner Linett, seconded by Commissioner Bedford and passed by a vote of 3-0, the Commission approved the proposed amendments to the lobbying regulations.

6. White Paper

Deputy Director Brindle presented White Paper Number Eight entitled Technology in the Future: Strengthening Disclosure.

In providing an overview of the paper, the Deputy Director said that it was written to demonstrate how technology can enhance disclosure and improve operational efficiency. He said that it was written so that the Commission would have a blueprint for investing in technology when the economic situation improves and the Commission receives the funds for this purpose.

Chairman McNany commended Deputy Director Brindle and all who assisted with the paper for completing the document.

The Commission directed, by a vote of 3-0, that the paper be published.

7. Advisory Opinion Request No. 09-1992

This advisory opinion request was made by Maria M. LaFiandra, Esq., on behalf of the New Jersey Republican State Committee (RSC). A draft opinion was circulated by staff.

Ms. LaFiandra asked whether it would be permissible for the RSC to receive a contribution from the National Republican Congressional Committee (NRCC) which itself has received contributions from entities prohibited from making direct contributions to political campaigns in New Jersey.

Ms. LaFiandra also asked whether the NRCC would incur a filing responsibility in New Jersey.

In the response prepared by Legal Director Nagy, staff suggested that the question of prohibited contributors be forwarded to the Attorney General, who has jurisdiction over these matters, if Ms. LaFiandra provides more information. Regarding any filing obligation on the part of the NRCC, staff suggested that Ms. LaFiandra does not have standing to ask this question, indicating that the Commission would only respond to the request for filing information if the request is made by the NRCC.

On a motion by Commissioner Bedford, seconded by Commissioner Linett and passed by a vote of 3-0, the Commission approved the draft of the advisory opinion, and authorized its issuance.

8. Discussion of Fundraising by Elected Officials

This discussion was initiated by Chairman McNany, who suggested that the Commission may have a role in monitoring fundraising done for the personal benefit of officeholders.

Chairman McNany said that officeholders often get involved in campaign fundraising with charities and in efforts to raise money for their own personal benefit. He asked whether it is possible for the Commission to adopt guidelines for officials involved in fundraising that is not undertaken for a campaign or for a charity.

Commissioner Bedford said that he concurred with the Chairman's concern but suggested that there are regulatory prohibitions against personal use.

Chairman McNany asked if the Commission could impose requirements which hold that any future fundraising by a one-time candidate that is not intended for a campaign, or intended to be reported, should be disclosed in some fashion with the Commission.

Commissioner Linett asked if there was legislation in the hopper that addresses this issue.

Executive Director Herrmann said that fundraising for an officeholders' benefit would have to be disclosed under provisions of a number of bills pending before the Legislature. He said that the activity would not be prohibited, but would be required to be disclosed.

Counsel Farrell said that it is difficult to find a basis in the statute for requiring non-campaign related reporting.

Chairman McNany said that the guideline he is contemplating would not prohibit this activity, but would require disclosure.

Commissioner Bedford said that the issue is one of who decides what is political and what is not. He said that right now ELEC does not make this decision.

Chairman McNany said that perhaps the Commission could require an entity to write to ELEC and state that a certain fundraising endeavor is not political.

Legal Director Nagy said that disclosure of gifts is now required by ELEC at the gubernatorial and legislative levels through personal financial disclosure. He indicated that local officials must file financial disclosure forms with the Department of Community Affairs.

Counsel Farrell said that he is having a jurisdictional problem with this issue.

Chairman McNany said: Why can't the Commission require a statement to the effect that an event is not political, but personal?

Commissioner Bedford suggested that a regulation be proposed that would have these groups write to ELEC and declare that their activities are not political.

Chairman McNany suggested that staff review the issue and provide a memorandum to the Commission at the next meeting.

The Commission directed staff to prepare a memorandum in review of this matter.

9. 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.

10. 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 11:45 a.m.

Respectfully submitted,



FREDERICK M. HERRMANN, PH.D.

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