



State of New Jersey

ELECTION LAW ENFORCEMENT COMMISSION

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PUBLIC SESSION MINUTES

JANUARY 19, 1993

All the Commissioners, senior staff, and Director of Public Financing Nedda Massar were present. Counsel Farrell was absent.

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 9:30 a.m. at the Commission offices, 28 W. State Street, Trenton, New Jersey.

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

2. Executive Director's Report

A. New Commissioner Designate

Executive Director Herrmann announced that Raymond P. Marzulli of Bloomfield has been nominated to fill the Mayo vacancy.

B. Computerization News

Executive Director Herrmann reported that the Texas Ethics Commission is combining campaign finance, PFD, and lobbying information into a single database. Executive Director Herrmann said that the Director of the Texas Ethics Commission characterized the project as "the single biggest ethics reform" to emerge from an omnibus 1991 reform bill. According to Executive Director Herrmann the Texas Director continued "... when you have an ethics system that is based on public disclosure ... it makes sense to have that information as ... available to the public as you can."

Executive Director Herrmann noted that Dr. Thomas J. Terry of the New Jersey Institute of Technology (NJIT) completed a computer and efficiency audit of ELEC in early January at the request of Senator Robert Littell. He said that Dr. Terry concluded that "the Commission cannot perform a truly effective job with the present staffing, budget, and computer system." Executive Director Herrmann noted also that Dr. Terry concluded that ELEC today has 58 percent of the budget in real dollars and 71 percent of the staff that it had in FY-89.

C. Staff Activities

Executive Director Herrmann reported that four members of the public financing staff have been hired. He said that Brett Mead, as Assistant Director, and Steven Kimmelman and Jeff Schneider, as Analysts, began working on January 11, 1993. The Executive Director added that Donna Bindas will start on January 25, 1993.

Executive Director Herrmann highlighted his remarks by advising the Commission that Mr. Mead and Ms. Bindas worked in the 1989 program. He noted that hiring of another Analyst and Data Entry person are in the pipeline.

Executive Director Herrmann informed the Commission that during the week of January 11, 1993, ELEC had its first Extern from Rutgers. He said that the Extern, Lona Valmore, met with all directors to learn what they do and to observe various activities of the Commission first-hand. The Executive Director mentioned that Associate Director of Compliance and Information Virginia Wilkes-Tesser is doing a great job running the program.

Executive Director Herrmann told the Commission that he was delighted to announce that Rutgers has established a three-credit ELEC internship. He noted that an intern starts on January 22, 1993, and will be working on every Friday for three months.

Executive Director Herrmann said that on February 1, 1993, he will be participating in a national conference sponsored by the Center for Responsive Politics in Washington, D.C. The meeting consists of a discussion by a 16-member panel of Federal and State experts, out of which, according to the Executive Director, will be developed a structure for a model campaign finance regulatory agency.

Executive Director Herrmann advised the Commission that on February 5-7, he will be participating in a national conference sponsored by the Council on State Governments in Lexington, Kentucky. He said that the meeting will consist of a discussion by a seven-member panel of national experts on campaign finance reform that will be published in State Trends and Forecasts.

D. Legislation

Executive Director Herrmann said that on December 21, 1992, the Assembly passed A-60 (Collins/Bryant), a bill which gives ELEC a \$12.5 million appropriation for the public financing program. He noted that on January 7.

1993, the Senate Budget and Appropriation Committee released S-1440 (Littell), the Senate version of the bill. According to the Executive Director, the Governor signed the bill on January 13, 1993. Executive Director Herrmann added that an amendment to put money into the Shore Protection Fund had been dropped from consideration.

Executive Director Herrmann reported that on January 7, 1993, he testified in the Senate Budget and Appropriations Committee on S-70 (Brown). This bill is a filing fee bill that may raise as much as \$700,000 a year from PACs, parties and candidates. He said that it was released by a unanimous vote. Executive Director Herrmann informed the Commission that S-70 is tied to the Rosenthal Commission Reform bills as a funding source.

Executive Director Herrmann advised the Commission that at the same time, Deputy Director Brindle testified on S-1017 (Inverso/Kosco) and A-100 (Martin), before the Senate Judiciary Committee. These bills, which were held for further discussion on January 12, 1993, are the Rosenthal Commission reform legislation.

Executive Director Herrmann disclosed that on January 12, 1993, he testified before the Judiciary Committee on the Rosenthal bills, noting that ELEC would need more time and money to do an adequate job. He said he presented testimony that an immediate effective date would make it very difficult for ELEC to draft regulations, produce forms and manuals, and reconfigure the computer in an optimal manner. Executive Director Herrmann said that he also testified that ELEC needed a start-up appropriation of at least \$300,000 because of the fact that it would take a considerable amount of time to realize any revenue from the Brown bill.

Executive Director Herrmann advised the Commission that the bill was released with various amendments. He said that the amendments included:

- a new 48-hour notice provision to cover independent expenditures as suggested by the Executive Director as an alternative to shifting CPC filing dates to the election cycle;
- a lifting of the ban on prohibited contributors (except for casinos);
- a provision that allows unlimited contributions to pay off pre-reform debts;
- the lifting of the hiring freeze for ELEC;
- the imposition of super civil penalties for major violations and the tripling of current levels; and,
- the implementation of annual contribution limits.

Executive Director Herrmann added that Senator Gormley said at the meeting that other legislative leaders and he would work to get ELEC adequate funding.

E. Future Meetings

The Commission will meet February 16, 1993 in Morristown, March 16, 1993 in Trenton, and April 13, 1993 in Trenton. On March 16, 1993, a public hearing will be held. The April meeting was changed to April 13, 1993, because the selection of debate sponsors is required by April 14, 1993.

3. Proposed Amendments to Gubernatorial Public Financing General Election Regulations

For detailed information please see memorandum from Nedda Gold Massar, Director of Public Financing, to Frederick M. Herrmann, Ph.D., Executive Director, dated January 11, 1993, and circulated to the Commission, entitled "Proposed Amendments to Gubernatorial Public Financing General Election Regulations."

The changes recommended by staff are similar to changes adopted by the Commission for the gubernatorial primary election.

The amendments are summarized in the memorandum noted above.

On a motion by Commissioner Bedford, seconded by Commissioner Linett and passed by a vote of 3-0, the Commission accepted the proposed amendments to the general election public financing regulations and directed staff to file the proposal with the Office of Administrative Law.

4. Proposed New Rule on Fundraising Communications

For detailed information please see memorandum from Gregory E. Nagy, Legal Director, to Frederick M. Herrmann, Ph.D., Executive Director, dated January 11, 1993, and circulated to the Commission, entitled "Proposed New Rule on Fundraising Communications." Also please see the memorandum presented to the Commission by Legal Director Nagy at the Commission's November 1992 meeting.

The text of the proposed rule assumes that when an elected officeholder or candidate conducts fundraising for any purpose, the public perception is that the fundraising is specifically for an election-related purpose. However, there are times when a fundraising event is conducted by an elected official or candidate which is not for an election-related purpose. The proposal sets forth guidelines under which an elected official or candidate is required to explicitly state in the fundraising solicitation what use will be made of the proceeds and, if other than election-related, that the campaign reporting provisions of the Act are not applicable. In other words, an officeholder or candidate must put the public on notice that a fundraiser is not being conducted in relation to any election, and therefore will not be conducted under the provisions of the Act.

Commissioner Linett, noting that the proposal was raised by the Chairman, said that upon reflection, the proposal opens up a large loophole for candidates. In providing an example to demonstrate his concerns, Commissioner Linett said that a candidate who runs a charitable fundraiser during a campaign would be able to avoid reporting the event, even though he or she would benefit politically from it. He stated that with this proposal the Commission would be carving out a loophole for candidates in terms of avoiding reporting.

Commissioner Linett suggested that the word "candidate" be deleted from parts (b) and (c) of the proposal, using the term "officeholder" instead. He further suggested that the emphasis in these provisions be put on the presumption that when an "officeholder" holds an event it is political unless he complies with the guidelines as outlined in parts (b) and (c).

Commissioner Linett suggested that the proposal be redrafted so as to eliminate the loophole created by the use of the word "candidate." Commissioner Linett added that the real problem for the Commission would occur during a campaign. He said that in using the word "candidate," the Commission would be inadvertently creating a vehicle by which candidates could avoid reporting certain fundraising activities.

Chairman McNany said that he did not see a problem with the regulation as drafted nor with a candidate heading up a charitable event as long as all checks are made out to the charity.

Commissioner Bedford said that he did not have a problem with the proposal as written.

Legal Director Nagy said that a candidate conducting non-election related fundraising under the existing law and regulations does not now have a duty to deposit funds received from the solicitation in a campaign account, or to file campaign reports accounting for those funds. The proposed regulation is intended only to require that if a candidate, or an elected officeholder, conducts such non-election fundraising, he or she must give notice in their solicitations of the purpose of the fundraising, and give notice of the fact that the proceeds are not subject to regulation and disclosure under the Reporting Act. If the term "candidate" is deleted from the regulation, the result is a candidate can continue avoiding reporting, and is not under an obligation to give notice that ELEC reporting is inapplicable.

Commissioner Linett suggested that because it is not critical for the Commission to adopt this proposal immediately, and because there is such a diversity of opinion on the Commission, the Commission should postpone consideration of this issue until February. He suggested that staff use this time to reconsider the proposal.

On a motion by Commissioner Bedford, seconded by Commissioner Linett and passed by a vote of 3-0, the Commission carried the matter over to the February meeting.

5. Advisory Opinion No. 01-1993

This advisory opinion request was submitted by Anthony Marino on behalf of the Anthony T. Blasi Civic Association, Inc. Mr. Marino asks whether the Anthony T. Blasi Civic Association must file reports pursuant to the Campaign Contributions and Reporting Act for funds received and expenses incurred in connection with a testimonial dinner it will be conducting for Mr. Blasi, an elected officeholder. Mr. Marino stated that proceeds from the ticket sales will be used to pay the various expenses associated with the affair, and for a gift for Mr. Blasi.

The Commission reviewed a draft response prepared by Legal Director Nagy which stated that there is no requirement that an organization that is raising funds for the personal benefit of an elected officeholder file reports with ELEC in the absence of any activity that could be construed as aiding or promoting a candidate in an election. The Commission determined that if there is no election-related purpose to the event and no proceeds will be used to aid or promote a candidate, the Act does not provide any reporting obligation.

The Commission noted for the record that the officeholder might be subject to the local government ethics law in terms of reporting the gift and that the Commission would shortly be proposing regulations containing guidelines for officeholders to follow if they do not want to report proceeds generated by this type of event.

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

Advisory Opinion No. 02-1993

This advisory opinion request was submitted by Edward Gross, Esq., on behalf of the New Jersey Republican State Committee (RSC).

Mr. Gross asked for an opinion as to the allocability and valuation of expenditures by the RSC against the contribution and expenditure limits of Republican primary election candidates for Governor under the circumstances of independence or coordination. The RSC is contemplating a pre-primary media campaign against opposition party candidates for nomination to the Office of Governor.

The Commission reviewed a draft response prepared by Director of Public Financing Nedda Massar which concluded that RSC expenditures, which are coordinated with a Republican primary election gubernatorial candidate, are limited because of the contribution limit to no more than \$1,800.

The Commission further concluded that independent expenditures made by the RSC without the consent of, consultation with, or coordination with any gubernatorial primary election candidate, are constitutionally protected free

speech that may not be limited in total amount and may not be treated as contributions to any candidate.

The Commission concluded also that in the case of an independent expenditure by the RSC, there is no applicability of the contribution limit nor the expenditure limit. In the case of a coordinated expenditure, the Commission concluded that the \$1,800 contribution limit would apply and that an amount up to \$1,800 spent would be allocated against the gubernatorial candidate on the basis of the reasonable commercial value of the goods and services provided to the candidate.

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

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.

8. Adjournment

On a motion by Commissioner Bedford, seconded by Commissioner Linett and passed by a vote of 2-0, the Commission voted to adjourn at 11:45 a.m.

Respectfully submitted,



FREDERICK M. HERRMANN, PH.D.

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