



State of New Jersey

ELECTION LAW ENFORCEMENT COMMISSION

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PUBLIC SESSION MINUTES

TELEPHONE CONFERENCE

SEPTEMBER 8, 1993

Chairman McNany, Commissioner Linett, Commissioner Eldridge, Counsel Farrell, senior staff, and Director of Public Financing Nedda Gold Massar participated in the telephone conference.

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 10:00 a.m. at the Commission Office, 28 West State Street, Trenton, New Jersey.

Commissioner Linett was not available at the beginning of the meeting

1. Approval of Public Financing Funds

Candidate Christine Todd Whitman/Submission 2

The staff completed a review of Candidate Christine Todd Whitman's second submission for 1993 gubernatorial general election public matching funds and concluded that a net amount of \$553,087 in contributions was eligible for match at a 2:1 ratio. Staff therefore recommended certification of \$1,106,174 in general election matching funds.

During the review, staff determined that 70 contribution items representing \$32,972 to be ineligible for match. The disqualification of 70 items submitted for match resulted in an ineligibility rate of 4.45 percent.

Staff also reviewed the second Whitman general election submission to evaluate compliance with the requirement to report occupation and employer information for each individual contributor whose aggregate contributions on the second submission exceeded \$200.00. It was determined that the campaign had a 90 percent compliance rate.

On a motion by Commissioner Eldridge, seconded by Commissioner Linett and passed by a vote of 2-0, the Commission certified \$1,106,174 in general election public funds to Candidate Whitman.

2. Complaint of People for Whitman

For detailed information please see the letter from Peter Verniero, Esq., Counsel, People for Whitman to Frederick M. Herrmann, Ph.D., Executive Director, dated August 9, 1993, regarding the People for Whitman Committee v. Florio '93, Inc. Also see the verified complaint of People for Whitman Committee, Complainant v. Florio, '93, Inc. Respondent. Further see public session minutes of August 17, 1993 and August 24, 1993.

Commissioner Eldridge commented that it was his belief that it would be better for the Commission to discuss the issue of referral of this complaint to the Office of Administrative Law (OAL) in person rather than as part of a telephonic meeting. Commissioner Eldridge said that telephonic meetings are held for the purpose of approving public funds.

Counsel Farrell noted that the Commission has the discretionary authority to decide the matters that will be discussed in a telephonic meeting.

The Commission recognized Mr. Peter Verniero, Counsel to the Whitman campaign.

Mr. Verniero strongly urged the Commission to exercise its discretion to refer the "Cruz" matter to the OAL. He noted that the matter is on the Commission's agenda for today and that at the previous meeting the Commission determined that it would deal with the matter following receipt of an answer from the Florio campaign. He said that the Commission, at its previous meeting, indicated that it would decide the matter at its next meeting. Mr. Verniero said that the Commission knew the meeting would be held over the telephone.

Mr. Verniero pointed out that the meeting is open to the public and that both the Florio and Whitman campaigns anticipated that the matter would be decided at today's meeting.

Mr. Verniero proposed that the Commission also consider recommending that the proceedings in the "Fortunato" matter be accelerated. He noted that the Judge indicated that if the parties will agree to acceleration then the court would also agree to an expedited hearing. Mr. Verniero said that even with accelerated service the timeframe is tight in terms of these matters and that it was now questionable as to whether they could be adjudicated before election day.

Lynn Deegan, Esq., representing the Florio campaign, said that the Florio campaign is not in a position to respond to the request for an accelerated hearing. She indicated that the Florio camp only received

notification of the request last night and has not been able to formulate a response. Further, Ms. Deegan added, this matter is not on today's agenda.

Counsel Farrell said that whether or not official notice has been given these cases are normally placed at the top of the list. Election cases, he added, are usually expedited.

Counsel Farrell said that in terms of the question of referring the "Cruz" matter to the OAL it was not necessary for the Commission to delay action until its next meeting. He said that the question of an "expedited hearing" however, was another matter. He indicated that it was a matter not for discussion at this time. He said that the Commission did not have to discuss this because it was a matter between the parties and the court.

Legal Director Nagy said that the rule concerning an accelerated proceeding (N.J.A.C. 1:1-9.4) requires only that the transmitting agency agree to give its final decision within 15 days of receipt of the initial decision. This consent is a prerequisite before the administrative law court can consider the application for an accelerated hearing schedule.

Mr. Verniero said that three issues had to be settled today. He said that the "Cruz" matter should be authorized for referral to the OAL, and that in making the referral the Commission should request acceleration service. He said further that the Commission should ask for acceleration on the "Fortunato" complaint.

Chairman McNany said that referrals like this one constitute a two-step process.

Legal Director Nagy, in clarifying the Commission's role, said that all the Commission would be doing in requesting acceleration would be agreeing to issue a final decision within 15 days of the initial decision of the OAL.

Chairman McNany asked: "Is there any reason not to agree to that?"

Counsel Farrell said that the only issue is whether the Commission should wait to act until next Tuesday.

At this point Commissioner Linett joined the meeting.

Commissioner Linett said that as a matter of policy the Commission should not act on these matters on the telephone. He said it has always been the Commission's policy to deal with weighty matters in person.

For Commissioner Linett's benefit, who just joined the meeting, Mr. Verniero reiterated his previous comments about the urgency in referring the "Cruz" complaint to the OAL.

Commissioner Eldridge said that he agreed with Commissioner Linett that it is important to decide these matters in person. He indicated that he would

be willing to meet before next Tuesday in a special meeting if necessary to deal with these urgent questions.

Chairman McNany said that he agreed that it was extremely difficult to deal with these matters over the telephone. He said that this meeting was for the approval of public funds.

Commissioner Eldridge moved that the matter be postponed until the September 14, 1993 Commission meeting. On a vote of 3-0, the Commission determined that it would decide the matters at the next meeting.

3. County Clerks' Complaint

Independent Candidate Tom Blomquist spoke in defense of the ballot statement law. He indicated that he would appear on Friday in opposition to the plaintiff's motion. He said that this provision in the public financing law, which gives millions of dollars to major party candidates, permits minor party candidates to get their messages to the voters. He criticized the clerks for arrogance of power in attempting to silence the independent candidates.

Candidate Blomquist urged the Commission to vigorously oppose this motion.

The Commission recognized Jerry Grant, Independent Candidate for Governor.

Mr. Grant said that he resented being called a minor candidate and charged the Commission, the Governor, and the Legislature with being unduly prejudiced against independent candidates.

4. Adjournment

On a motion by Chairman McNany, seconded by Commissioner Linett and passed by a vote of 3-0, the Commission voted to adjourn at 11:00 a.m.

Respectfully submitted,



FREDERICK M. HERRMANN, PH.D.