



State of New Jersey

ELECTION LAW ENFORCEMENT COMMISSION

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PUBLIC SESSION MINUTES

OCTOBER 22, 1993

All the Commissioners, senior staff, and Director of Public Financing Nedda Gold 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 4:00 p.m. at the New Somerset County Administration Building, Somerville, New Jersey.

1. Advisory Opinion No. 09-1993

This advisory opinion request was submitted by Bruce R. Rosenberg, General Counsel for the Vote Yes for Sunday Shopping Committee, a political committee formed for the purpose of repealing the Sunday Blue Law in Bergen County.

Mr. Rosenberg states that on October 12, 1993, he transmitted a letter to Donna Kelly, Deputy Attorney General, requesting an opinion on the appropriateness of a proposed contribution to the political committee from a retailer. The contributor is a national corporation, which, while being the parent company of several retail stores, has also secured a federal bank charter for the purpose of issuing credit cards. Mr. Rosenberg is asking whether this corporation is prohibited from making contributions under N.J.S.A. 19:34-45, a statute that is not under the Commission's jurisdiction because it is not part of the Campaign Reporting Act.

Mr. Rosenberg indicated that Ms. Kelly directed him to first ask the Commission to consider this matter for the purpose of it referring the request to the Attorney General. Mr. Rosenberg said that he is requesting that the Commission refer the advisory opinion request to the Attorney General.

On a motion by Commissioner Eldridge, seconded by Commissioner Linett and passed by a vote of 3-0, the Commission approved the staff recommendation to refer the advisory opinion request to the Attorney General.

2. People For Whitman Request

Mr. Peter G. Verniero, Counsel for People for Whitman Committee, submitted a request to have the gubernatorial 11-day preelection report which is due for filing on October 22, 1993, available for inspection on Monday, October 25, 1993. He said that he desired to inspect the reports pursuant to this earlier timeframe for the sole purpose of seeing whether an allocation on President Clinton's visit to New Jersey was taken by the Florio campaign. He said that reviewing the material early would be important to the Whitman Complaint pursuant to this question; see People for Whitman Committee v. Florio '93, Inc., PF 05-93(G).

Mr. Verniero added that the Whitman campaign would give its 11-day preelection report to the Florio campaign early if so requested. Mr. Verniero said that there would be no undue advantage to either side in that the Florio campaign could have access to the Republican candidate's request early.

The Commission recognized Mr. Angelo J. Genova, Counsel for Florio '93, Inc. Mr. Genova said that he had no problem with the concept of early disclosure. He said, however, that he believed that in terms of policy the Commission was treading on dangerous territory. Mr. Genova said that the Commission should consider whether it would be opening up a "pandora's box" by granting Mr. Verniero's request. He suggested that the question becomes: "Will the Commission make exceptions to its policy in the future?"

Chairman McNany stated that the problem with acquiescing to the request is that the Commission will be hard pressed to not fulfill similar future requests.

Mr. Verniero stated that he believed the request to be a very simple one with no precedential ramifications attached to it. He indicated that it was a "no-brainer" in that the Commission, being a disclosure agency, has the discretion to determine when reports will be made public. He said that he merely desired to view one report for the single purpose of determining whether the "Clinton visit" allocation was made.

A discussion ensued relative to the procedure by which the Commission would release the report if it decided to do so. It concerned questions such as would copies be made, would staff characterize the report to the interested parties, and would the interested parties be allowed to inspect the reports in the presence of staff?

Commissioner Eldridge said that he hoped to not place staff in the position of interpreting the report.

He asked staff if it felt uncomfortable about playing the role of intermediary.

Director of Public Financing Nedda Massar said she did have concerns about staff involvement in interpreting reports but added that if the

Commission decided to release the entire report early, it would be possible to have copies made by Monday afternoon.

Commissioner Linett asked if the Florio campaign would be available to answer questions about their 11-day report.

Mr. Genova declined to permit his client to respond to early questioning about the Florio 11-day report.

Chairman McNany asked if it would be acceptable to the Whitman campaign to have the reports released on Tuesday instead of Wednesday.

Mr. Verniero responded that from the perspective of litigation a Tuesday release date would not benefit his client.

On a motion by Commissioner Linett, seconded by Commissioner Eldridge and passed by a vote of 3-0, the Commission directed staff to review the 11-day preelection report filed by Florio '93, Inc. and to advise Mr. Verniero by 4:00 p.m. on Monday, October 25, 1993, whether expenditures relating to the Clinton visit are included in the report. It also directed staff to be available for questions and to make enough copies of the 11-day preelection report at issue for distribution to the public at its meeting on October 25, 1993, Monday evening (if the Commission meets).

3. Florio '93, Inc. Complaints (Orders to Show Cause)

Legal Director Nagy reported that the Commission has received two complaints from Florio '93, Inc. against People for Whitman Committee. Florio '93, Inc. has requested that these two matters be handled on an emergent basis. These two complaints have been captioned PF 07-93(G) and PF 08-93(G). Mr. Nagy indicated that he had consulted earlier in the day with Chief Judge Jaynee LaVecchia at the Office of Administrative Law (OAL) who suggested that the two cases be heard on Orders to Show Cause with answers due on Monday, October 25, 1993, and hearings on Tuesday, October 26, 1993.

Peter G. Verniero, Esq., representing People for Whitman Committee, indicated that this was the first time he had seen the two complaints and that he could not agree at this time. Angelo J. Genova, Esq., counsel for Florio '93, Inc. explained that the two cases concerned application of the political communications regulation. Legal Director Nagy stated that if there is any chance to resolve these cases before the 1993 general election on November 2, 1993, hearings must be held no later than Tuesday, October 26, 1993.

On a motion by Commissioner Eldridge, seconded by Commissioner Linett and passed by a vote of 3-0, the Commission approved issuance of Orders to Show Cause in PF 07-93(G) and PF 08-93(G). The Answer is due at 4:00 p.m. on October 25, 1993 in PF 07-93(G) with a hearing at 9:00 a.m. on October 26, 1993. In PF 08-93(G), the Answer is due at 9:00 a.m. on October 26, 1993 with a hearing at 1:00 p.m. on the same date.

Mr. Verniero indicated that he reserves the right to object and request extensions on the Orders to Show Cause.

4. People for Whitman Committee v. Florio '93, Inc., PF 01-93(G)

The Commission reviewed the Initial Decision in the People for Whitman Committee, Complainant, v. Florio '93, Inc., Respondent, issued by Judge Beatrice S. Tylutki, October 20, 1993. Executive Director Herrmann recused himself and excused himself from the meeting prior to the consideration of this case.

The attorney for the complainant was Peter G. Verniero, Esq., and the attorney for the respondent was Angelo J. Genova, Esq.

The verified complaint by the People for Whitman Committee, which was filed with the Commission on July 30, 1993, alleges that a letter sent on or about June 10, 1993, by Samuel F. Fortunato, Commissioner of Insurance, constitutes a political communication as defined by N.J.A.C. 19:25-11.10 (b). The complainant also alleges that since the Fortunato letter is a political communication, the cost of sending the letter must be allocated against the expenditure limit for the Democratic gubernatorial candidate pursuant to N.J.A.C. 19:25-11.11 and the New Jersey Campaign Contributions and Expenditures Reporting Act, N.J.S.A. 19:44A-1.

The respondent filed an Answer denying the allegations, and contended that the letter does not constitute a political communication pursuant to N.J.A.C. 19:25-11.10(b), and that this regulation is constitutionally overbroad, that the letter is exempt pursuant to N.J.A.C. 19:25-11.10(c), and that the letter is exempt as a corporate communication pursuant to N.J.S.A. 19:44A-29 and N.J.S.A. 19:25-15.13.

N.J.A.C. 19:25-11.10(b) provides a four-part test for political communications. N.J.A.C. 19:25-11.10(c) exempts the reporting of a communication in writing that is made to a constituent as a direct response to a prior communication or that is circulated for the purpose of communicating governmental events requiring constituents to take action before the date of the election. N.J.S.A. 19:44A-29 and 19:25-15.13 provide exemptions for corporate communications to stockholders.

Judge Tylutki concluded in her Initial Decision that communication meets the four-part test of a political communication and is therefore a political communication. Judge Tylutki concluded also that the Fortunato letter is not exempt as a responsive communication to constituents, and that the Fortunato letter is not exempt from the regulations as a communication from a corporation to its stockholders because the letter did not go to stockholders of the corporation. Judge Tylutki did not address the issue of the constitutionality of N.J.A.C. 19:25-11.10. Judge Tylutki concluded, however, that the Fortunato letter, though a political communication, is exempt pursuant to N.J.A.C. 19:25-11.10(c) because the letter is a communication announcing governmental events requiring constituents to take action.

Judge Tylutki concluded in her initial decision that the verified complaint filed by the People for Whitman Committee should be Dismissed with Prejudice.

For further elaboration, please see the Initial Decision, OAL Docket No. ELE 8004-93, Agency Docket No. PF 01-93(G).

Exceptions to the Initial Decision were submitted to the Commission by Peter G. Verniero, Legal Counsel for People for Whitman. Please see letter dated October 21, 1993, from Peter G. Verniero, Legal Counsel for People for Whitman Committee to Gregory E. Nagy, Legal Counsel re: The Fortunato Letter Initial Decision.

The exceptions were circulated to the Commissioners in advance of the meeting, and the case file of the OAL was available for consultation at the meeting.

A certified shorthand reporter was in attendance to record the arguments that Mr. Verniero and Mr. Genova made to the Commission, and a transcript of the proceedings is available for public inspection at the Commission offices.

5. Executive Session

On a motion by Commissioner Linett, seconded by Commissioner Eldridge, the Commission convened in Executive Session for the purposes of deliberating on a Final Decision in People for Whitman Committee v. Florio: 93, Inc. PF 01-93(G).

6. Return to Public Session

Upon returning from Executive Session, on a motion by Commissioner Linett, seconded by Commissioner Eldridge and passed by a vote of 3-0, the Commission adopted the Initial Decision of the OAL in People for Whitman Committee v. Florio '93, Inc., PF 01-93(G) as its Final Decision in the case, and directed staff to issue a written Final Decision on the following Monday (October 25, 1993).

7. Oral Argument Limitation

Executive Director Herrmann returned to the meeting.

Chairman McNany advised counsel that oral arguments in gubernatorial cases anticipated next week should be limited to five minutes, with no rebuttal.

8. Meeting Dates

The Commission announced that it would reschedule a meeting that had been scheduled for October 25, 1993 at 7:00 p.m. in Berkeley Heights to October 26, 1993 at 9:30 p.m. at a site to be announced. Other public meetings were announced for October 27, 1993 at 9:30 p.m., and October 28, 1993 at 9:00 p.m.

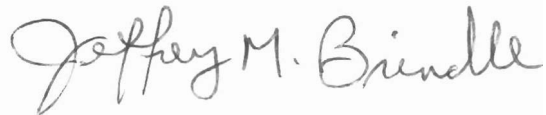
9. Adjournment

On a motion by Commissioner Linett, seconded by Commissioner Eldridge and passed by a vote of 3-0, the Commission voted to adjourn at 6:46 p.m.

Respectfully submitted,



FREDERICK M. HERRMANN, PH.D



JEFFREY M. BRINDLE (Items 4, 5 and 6)