



State of New Jersey

ELECTION LAW ENFORCEMENT COMMISSION

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PUBLIC SESSION MINUTES

NOVEMBER 16, 1993

All the Commissioners, Counsel Farrell, senior staff, and Director of Public Financing Nedda Gold 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 9:00 a.m. at the Maplewood Municipal Building, Maplewood, New Jersey.

1. Approval of Public Session Minutes of October 19, October 22, October 26, and October 28, 1993

On a motion by Chairman McNany, seconded by Commissioner Eldridge and passed by a vote of 3-0, the Commission approved the Public Session Minutes of October 19, October 22, October 26, and October 28, 1993.

2. Executive Director's Report

A. Staff Activities

Executive Director Herrmann announced that Legal Director Nagy will be working with the Seton Hall Law School's Legislative Journal to assist them in producing an annotated index of the Election Law Enforcement Commission's advisory opinions over the past decade.

The Executive Director added that this project is very important. He noted that the Commission has long desired to index advisory opinions. Executive Director Herrmann said that staff would also be exploring an internship program with Seton Hall Law School.

Executive Director Herrmann reported that he would be speaking at the State House on November 18 to the National Public Affairs Council on PAC and lobbying regulations in New Jersey.

The Executive Director added that he would be speaking on November 23 to

a class in the MPA program at Kean College on the New Jersey Campaign Finance and lobbying laws.

Executive Director Herrmann reported that two staff members have resigned. He said that the new executive secretary took a position with the **Department of Labor**. He mentioned that a gubernatorial data entry clerk also left for a new job. Executive Director Herrmann said that this data entry position does not need to be refilled.

Executive Director Herrmann reported that there was a new hiring freeze announced by Governor Florio on November 4, 1993. He said that prior to the hiring freeze the Commission was able to hire a new compliance officer, a compliance clerk, and a desk auditor. Executive Director Herrmann emphasized that the Commission still needs two request officers, a second desk auditor, and an executive secretary.

The Executive Director announced that staff is not planning to undertake the P93 project. Executive Director Herrmann explained that the project involves the entry of P93 campaign contributions into the computer after these contributors have been type-coded. He said that the project is being eliminated because there has been low demand for this kind of information and the primary was conducted under two different laws. He said that as a result of the change in the law this April contribution limits and occupation/employer information would not be uniformly covered. He mentioned the large number of complaints generated by the new law and staff shortages as entering into the decision to forego this project. Executive Director Herrmann said that the project is discretionary and is not related to investigative activity. The Executive Director said that he does not want to delay the G93 project, which is in high demand.

B. COGEL Conference

Executive Director Herrmann reported that many people felt that the recent conference was the best ever. He said that the COGEL Conference was held in St. Paul, Minnesota from September 19 - 22. Executive Director Herrmann noted that many former and present New Jerseyans participated in the program. Executive Director Herrmann advised the Commission that Dr. Herbert E. Alexander from the Citizens' Research Foundation, Randy Huwa from National Common Cause, Senator William Schluter from the State Senate, and Alan Rosenthal from Rutgers University participated.

Executive Director Herrmann advised the Commission that the Campaign Finance Legislation/Litigation Update was presented by Dr. Ron Michaelson of the Illinois State Board of Elections. He said that this Update will be the basis of an article by Dr. Michaelson and him to be published in the next Book of the States. He said that a second session involved a Disclosure v. Contribution Limits debate between Senator Schulter and an Illinois legislator. According to Executive Director Herrmann a third session involved the issue of media coverage of ethics issues. Executive Director Herrmann said that the above sessions were among those that he attended.

Executive Director Herrmann said that perhaps the most beneficial session was one on computerization. On this panel were experts from the Federal Elections Commission (FEC), the Washington State Public Disclosure Commission, and the New York City Campaign Finance Board. He noted that various technologies were reviewed. Executive Director Herrmann said that he has asked Systems Analyst Anthony Chianese to follow-up with the various presenters to help the Commission with its recomputerization planning.

The Executive Director reported that Liz Ebbet of Minnesota received the Lifetime Membership Award. He said that she mentioned Counsel Farrell's work in the "old days" in terms of reviewing campaign legislation and litigation for conference attendees. He reiterated that he greatly appreciated the Commission's Resolution and the very kind letters from Governor Florio and former Governor Kean, which were posted outside of the ballroom.

Executive Director Herrmann mentioned that it was pleasing to get Herbert Alexander's congratulatory letter calling ELEC "one of the few outstanding State Commissions." He told the Commission that the 1994 conference is in Kona, Hawaii next December and the 1995 conference is in Washington, DC in September.

C. National Ethics News

Executive Director Herrmann said that the FEC is currently seeking extra funding from Congress for electronic filing. He said that the goal is to speed-up the collection of campaign finance information and make public dissemination of this information faster.

He noted that the projected cost of the software is \$1.76 million, hardware should cost \$2.2 million, and that additional staff is projected to cost \$1.1 million. Executive Director Herrmann said that the timeframe for installation is two years.

The Executive Director added that of related interest is the fact that Orange County, Florida's Supervisor of Elections has introduced an imaging system. He said that this imaging system replaces a photocopying system similar to the one currently used by ELEC.

Executive Director Herrmann indicated that with Imaging, the public will have much quicker access to all hard copy reports that are stored on compact disks. He said that reports may be rapidly obtained with limited staff intervention at the same price per page as Florida now charges. Executive Director Herrmann said that as ELEC continues to plan its recomputerization, it must keep in mind necessary planning for getting the proper system, estimating expenses, and gauging time requirements.

Executive Director Herrmann said that the Commission would build upon White Paper Number Eight and work with the Office of Management and Budget (OMB) and the Office of Telecommunications and Information Systems (OTIS) to establish final plans beginning in January.

Commissioner Linett suggested that Executive Director Herrmann report to the Commission on strategies to obtain adequate funding.

D. Future Meetings

The Commission will meet on December 14, 1993 at 9:30 a.m. in Trenton. The holiday luncheon will follow at Mastoris' Restaurant.

The staff will provide a proposed 1994 meeting schedule at the December meeting.

3. Approval of Public Financing Funds

Director of Public Financing Nedda Gold Massar reported that on its first quarterly postelection report of October 15, 1993, the Wallwork campaign reported outstanding campaign obligations in the amount of \$140,982.91 and a balance of \$718.40 cash-on-hand. Director Massar said that staff estimates that of the outstanding obligations at least \$53,850 are appropriate public fund expenditures. She indicated that the campaign has therefore demonstrated a continuing need for additional public funds in the postelection setting which may be used for appropriate unpaid obligations.

The 10th 1993 primary election public matching fund submission of Candidate Jim Wallwork was filed at 1:48 p.m., after the 12:00 noon regulatory deadline. It was recommended that the tenth submission be considered by the Commission for certification regardless of the late filing because the campaign could have filed the same information on the next primary election submission filing deadline of November 1, 1993.

Upon completion of a review it was determined that the tenth Wallwork submission included a net amount of \$13,270 in contributions eligible for match at the 2:1 ratio. Resubmitted items are included in that amount. Staff recommended that the Commission certify \$26,540 in primary election matching funds.

On a motion by Commissioner Eldridge, seconded by Commissioner Linett and passed by a vote of 3-0, the Commission certified \$26,540 in primary election matching funds.

4. People for Whitman Committee v. Florio '93, Inc., PF 02-93(G) (Cruz Letter)

Angelo Genova, Counsel for Florio '93, Inc. in a letter dated November 1, 1993 asked for clarification on the Commission's Final Decision in the "Cruz" matter. Specifically, Mr. Genova indicated that he believed the spirit of the Commission's determination was to require Florio '93, Inc. to disclose on the 20-day postelection report an allocation of the cost attendant to the "Cruz" mailing issue. He further stated that he understood the Commission to determine that the value of the mailing is for the campaign to determine subject to possible future challenge.

Mr. Genova sought clarification because the written decision indicated that Florio '93, Inc. preelection reports should be amended to reflect the allocation on the basis that the cost was incurred during this period. Mr. Genova maintained that the cost was incurred when the Commission made the decision and should be reported in the 20-day postelection period.

Commissioner Eldridge stated that because of the timeframe and the fact that preelection disclosure is not an issue at this point his recommendation would be to permit the allocation to be reported on the 20-day postelection report. He said it is a technical point at this juncture.

On a motion by Commissioner Eldridge, seconded by Commissioner Linett and passed by a vote of 3-0, the Commission agreed to allow the Florio campaign to report the allocation on the 20-day postelection report. The motion stipulated that the Commission is not in agreement with Mr. Genova's reasoning but because of the timing of the matter it has decided to permit this type of reporting.

5. People for Whitman Committee v. Florio '93, Inc., PF 05-93(G) (Pre-Primary Election Expenditures)

The Commission received a request from Peter Verniero, Counsel for People for Whitman, for release of the Executive Session Minutes of October 26, 1993.

On a motion by Commissioner Linett, seconded by Commissioner Eldridge and passed by a vote of 3-0, the Commission approved the release of the October 26, 1993 Executive Session Minutes to Peter Verniero.

6. Commissioner Linett's Suggested Regulations

Commissioner Linett suggested that the Commission undertake regulatory changes in three key areas. He suggested that the Commission should reconsider its political communication regulation with an eye toward addressing the question of what is a communication done in the ordinary course of governmental business. He suggested also the Commission develop a regulation clarifying the pre-primary general election spending guidelines for gubernatorial candidates, including fundraising. He further suggested that the Commission address the question of the propriety of corporate sponsorship of ELEC-mandated debates.

Commissioner Eldridge added that he would like the whole issue of "street money" explored.

The Commissioners determined that it would pursue the foregoing requests in conjunction with issues arising out of its gubernatorial public financing hearing in February.

7. Legislative Joint Committee on Ethical Standards

The Legislative Joint Committee on Ethical Standards sought an advisory opinion from the Commission as to whether 17 various uses of political contributions by legislators would be appropriate. Please see the letter from Albert Porróni, Secretary and Counsel to the Committee, to Frederick M. Herrmann, Ph.D., Executive Director, dated November 5, 1993 and containing 17 hypotheticals.

The Commission directed staff to advise Mr. Porróni that it would be happy to meet with the Committee but that the 17 proposed uses should be addressed in the context of rulemaking rather than through the advisory opinion process.

8. Resolution To Go Into Executive Session

On a resolution by Commissioner Linett, seconded by Commissioner Eldridge 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.

9. Adjournment

On a motion by Commissioner Eldridge, seconded by Commissioner Linett and passed by a vote of 3-0, the Commission voted to adjourn at 11:50 a.m.

Respectfully submitted,



FREDERICK M. HERRMANN, PH.D.