



State of New Jersey

ELECTION LAW ENFORCEMENT COMMISSION

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PUBLIC SESSION MINUTES

SEPTEMBER 20, 1994

Chairman McNany, Vice Chairman Eldridge, Commissioner Linett, senior staff, and Deputy Legal Director 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 Commission offices, 28 W. State Street, Trenton, New Jersey.

1. Approval of Public Session Minutes of August 24, 1994

On a motion by Commissioner Linett, seconded by Vice Chairman Eldridge and passed by a vote of 3-0, the Commission approved the Public Session Minutes of August 24, 1994.

2. Advisory Opinion Request No. 07-1994

This advisory opinion request was submitted by Manny Grova, Jr., a candidate for City Council in the First Ward of the City of Elizabeth in the 1994 general election. Mr. Grova asked to be advised on whether or not the Campaign Reporting Act would permit him to establish and solicit donations for a neighborhood organization entitled the First Ward Development Fund. Mr. Grova stipulated that none of the money received by the fund will be used for "political donations."

Legal Director Nagy discussed a staff memorandum which had been circulated to the Commission. The 1993 amendments restrict a candidate to the establishment of a candidate and/or joint candidates committee and specifically prohibit a candidate from establishing or controlling any political committee or continuing political committee (CPC).

The legal issue is: May a candidate establish, solicit donations for, and control or manage a neighborhood association which makes no "political

contributions" and is created to undertake civic projects without violating the statute?

By way of background, the United States Court of Appeals for the District of Columbia upheld a ruling by the Federal Election Commission (FEC) which permitted a Congressman to participate in an issue committee provided no election-related activity is undertaken by the committee in question. Specifically, the Court upheld an FEC two-part test to determine whether an activity is political: 1) does express advocacy occur; and 2) does solicitation of campaign funds occur?

Staff recommended that the Commission advise Mr. Grova that he may establish a civic association provided no political activity is undertaken by the Development Fund. It recommended that the FEC's two-part test be adopted as the standard by which it can be determined whether political activity by an association has taken place.

Legal Director Nagy pointed out also that the Charitable Registration and Investigation Act sets requirements for charitable fundraising activities. He said that the law mandates that these committees register and disclose their financial activity with the Division of Consumer Affairs within the Department of Law and Public Safety.

Commissioner Linett said that the Commission had no choice but to permit Mr. Grova to establish a civic association because the statute obviously permits charitable contributions.

On a motion by Vice Chairman Eldridge, seconded by Commissioner Linett and passed by a vote of 3-0, the Commission directed Legal Director Nagy to issue an advisory opinion as recommended in the memorandum.

### 3. Adoption of Permissible Use Regulations

For detailed review of the regulatory proposals at N.J.A.C. 19:25-6.5, Use or disposition of campaign funds; N.J.A.C. 19:25-6.6 Limitation on permissible expenses; N.J.A.C. 19:25-6.7 Ordinary and necessary officeholding expenses; N.J.A.C. 19:25-6.8 Vehicle use; and, N.J.A.C. 19:25-6.9 Funds remaining unspent at the death of a candidate, please see the memorandum from Gregory E. Nagy, Legal Director, to Frederick M. Herrmann, Ph.D., Executive Director, dated March 9, 1994 and entitled "Draft Regulations on Permissible Use of Campaign Funds." Also please see the March 16, 1994 and May 18, 1994 Public Session Minutes. Finally, please see the memorandum from Gregory E. Nagy, Legal Director, to Frederick M. Herrmann, Ph.D., Executive Director, dated September 13, 1994 and entitled "Adoption of Permissible Use Regulations."

Legal Director Nagy advised the Commission that on June 20, 1994, the Commission received a letter from Senator William Schluter, Chairman of the Joint Committee on Ethical Standards, in which he requested that the regulations address a "laundry list" of 17 specific uses of campaign funds by indicating whether they would be authorized as permissible "ordinary and

necessary expenses of holding public office." In his memorandum Legal Director Nagy included a revised text for Section 6.7(e) that addresses the items submitted by Senator Schluter, thereby setting forth which of the items can be underwritten with campaign funds and which cannot be underwritten in that manner. Legal Director Nagy said that he had contacted the Office of Administrative Law (OAL) and was advised that the revision to the text of the regulations as proposed would be of a technical nature and would not necessitate the reproposal of the regulations.

Commissioner Linett said that he has concerns about the approach taken in the statute and regulations. He said that he questions why the Legislature does not allow campaign money to be spent for staffing, office equipment, and operations but allows campaign money to be used for other things.

Commissioner Linett said that he was concerned about the word "operation." He said that it does not mean anything if it does not mean paper, etc. Commissioner Linett added that if the Commission is to follow the statute, then we should not permit paying for paper goods, supplies, etc.

The Commission recognized Marci Hochman, Legal Counsel to the Legislative Joint Committee on Ethical Standards.

Ms. Hochman said that it was the concern with similar offices that formed the basis of this statutory language requiring staffing and operation costs to be paid for by the State. She said that the Legislature does have oversight but that it essentially lies with this agency to clarify what expenditures are allowable under the Campaign Act.

Commissioner Linett said that by restricting the prohibition against use of funds for office operations to rent and utilities, etc., the Commission would be giving a very narrow interpretation to the statute. Commissioner Linett added that "operation" also means office supplies and equipment. He suggested that he was only concerned with what occurs in the office, not with what is expended outside of the office.

Chairman McNany inquired as to the permissibility of paying for direct mail with campaign dollars.

Legal Director Nagy suggested that the Commission should weigh its duty to enforce the statutory prohibition and the interest the elected officeholders and public have in communications to constituents.

Vice Chairman Eldridge said that the State does not budget a great deal for legislative offices and that it does not bother him that campaign dollars might be used for direct mail.

Commissioner Linett said that the reason why it is difficult to draft a regulation is because of the law itself, which is written in broad terms and without specific guidelines.

Executive Director Herrmann said that Commissioner Linett's statement is correct. He said that the problem is that the word "operation" can be defined to include everything. He said that in the final analysis every function can be construed as falling under the category of office operations, but that such an extreme result could not have been the intent of the Legislature, which was attempting to exclude certain "ordinary and necessary expenditures" but not all of them. He said that an important concern was that the Commission not get itself into a "runny egg" situation, wherein it looks unreasonable in attempting to restrict expenditures such as washroom supplies<sup>4</sup>.

Commissioner Linett offered some changes as follows:

1. That the words "and the operational expense of telephone" be removed from the revised text of N.J.A.C. 19:25-6.7(e)1i to read:

i. The production, circulation and postage of newsletters, mailings or other written materials for officeholding duties;

2. That the word "nominal" be inserted in the revised text of N.J.A.C. 19:25-6.7(e)1v to read:

v. The nominal purchase of memorial or get-well gifts, flowers, party favors, or similar items for constituents or other persons involved in the execution of the officeholder's duties;

3. That the word "items" replace the words "equipment and supplies" in N.J.A.C. 19:25-6.7(e)2 and that the word "portable" and the phrase "including a telephone" be inserted in the revised text of N.J.A.C. 19:25-6.7(e)2i to read:

2. Purchase of items including:

i. A portable telephone, including a telephone in the vehicle used by the officeholder for official travel; and,

4. That the word "paper" be removed and replaced by the word "janitorial" in the revised text of N.J.A.C. 19:25-6.7(e)2iii to read:

iii. Janitorial supplies and other consumables for the office used in connection with the officeholder's official duties, and funding of a "petty cash" account established pursuant to N.J.A.C. 19:25-6.4(b) for that purpose.

On a motion by Commissioner Linett, seconded by Vice Chairman Eldridge and passed by a vote of 3-0, the Commission adopted the regulations as amended by Commissioner Linett and directed staff to file the Notice of Adoption with the OAL.

4. Advisory Opinion No. 01-1994

This advisory opinion request was submitted by Joseph S. Suliga, Assemblyman, Legislative District 20.

Assemblyman Suliga inquired as to the appropriateness of using campaign funds for the following purposes: reimbursement for car lease; gasoline and tolls commuting for legislative business; car phone used in connection with legislative business; and, entertainment expenses including dinners, lunches and tickets in conjunction with legislative business.

Legal Director Nagy suggested that the Commission base its advisory opinion response to Assemblyman Suliga upon the permissible use regulations adopted at today's meeting. He indicated that pursuant to the provisions of N.J.A.C. 19:25-6.8, Vehicle Use a candidate may receive reimbursement for use of a personally-owned vehicle or a candidate committee may, in the alternative, purchase or lease a vehicle under the conditions specified in the regulation.

Legal Director Nagy explained that N.J.A.C. 19:25-6.7(e)2i permits as an ordinary and necessary expense of officeholding the use of candidate funds for expenses related to a car phone used for legislative business.

In response to Assemblyman Suliga's inquiry concerning use of candidate funds for entertainment expenses for dinner, lunches and tickets, Legal Director Nagy indicated that each purchase must be separately examined applying the criteria established at N.J.A.C. 19:25-6.7(a), defining the "ordinary and necessary expenses of holding public office," and at N.J.A.C. 19:25-6.5(c), defining "personal use." He indicated that the Commission would consider any specific set of facts that Assemblyman Suliga might present.

On a motion by Vice Chairman Eldridge, seconded by Commissioner Linett and passed by a vote of 3-0, the Commission authorized staff to prepare an advisory opinion based on the regulations.

5. Advisory Opinion No. 02-1994

This advisory opinion request was submitted by Donald J. Lenner, Treasurer, Friends of Ken Zisa.

Mr. Lenner asked if it would be permissible for campaign funds to be used to purchase newspapers and journals for delivery either to the Assemblyman Zisa's house or legislative district office.

On a motion by Vice Chairman Eldridge, seconded by Commissioner Linett and passed by a vote of 3-0, the Commission authorized staff to prepare an advisory opinion stipulating that pursuant to the permissible use regulations the purchase of newspapers and journals constituted a permissible use of campaign funds.

6. Advisory Opinion No. 06-1994

This advisory opinion request was submitted by John F. Gaffney, Assemblyman, Legislative District 2.

Assemblyman Gaffney inquired as to the permissibility of utilizing campaign funds to underwrite his attendance at the Strategic Leadership for State Executives Conference at Duke University.

On a motion by Vice Chairman Eldridge seconded by Commissioner Linett and passed by a vote of 3-0, the Commission authorized staff to prepare an advisory opinion stipulating that pursuant to the permissible use regulations the use of campaign funds to underwrite the Duke conference is permissible.

7. Advisory Opinion No. 09-1994

This advisory opinion request was submitted by Jeff Warsh, Assemblyman, Legislative District 18.

Assemblyman Warsh inquired as to the permissibility of using campaign funds to underwrite the costs of attending the National Conference of State Legislatures (NCSL) Annual Meeting, July 23-28, 1994.

On a motion by Vice Chairman Eldridge seconded by Commissioner Linett and passed by a vote of 3-0, the Commission authorized staff to prepare an advisory opinion stipulating that pursuant to the permissible use regulations the use of campaign funds to underwrite the costs of attending the NCSL Conference is permissible.

8. Public Hearing on CPC Regulatory Proposal

The public hearing began at 10:20 a.m. No persons appeared to testify. Legal Director Nagy advised the Commission that secondary notice of the hearing had been provided. He further explained that written comments had been received on September 19, 1994 from James E. Cunningham, Treasurer, New Jersey Health Care Political Action Committee. Mr. Cunningham asked the Commission to consider accepting 48-hour notices by facsimile transmission. Executive Director Herrmann suggested that the issue be discussed at the October Commission meeting.

On a motion by Commissioner Linett, seconded by Chairman McNany and passed by a vote of 2-0, the Commission voted to close the public hearing.

Executive Director's Report

A. Staff Activities

Executive Director Herrmann announced that Assistant Legal Director Lisa Fagan resigned to take a position in the private sector. He reported that her position has been offered to an attorney who has just concluded a clerkship at the Office of Administrative Law. Executive Director Herrmann added that the position of Director of Review and Investigation is also being filled. He said that a former SCI attorney has been offered that position.

Executive Director Herrmann advised the Commission that Deputy Director Brindle testified on public financing before the Pennsylvania House of Representatives' State Government Committee.

The Executive Director noted that the Compliance and Information staff ran summer training sessions in Salem County on August 8, 1994 and Camden and Gloucester Counties on August 30, 1994. Executive Director Herrmann related that Deputy Director Brindle, Legal Director Nagy, Deputy Legal Director Nedda Massar, Director of Compliance and Information Evelyn Ford and he participated in the Seventh Annual NORCOL meeting in Philadelphia. He said that nine agencies attended representing seven states, the federal government and the District of Columbia. He added that 13 lobbyists and a member of the Quebec National Assembly were also present.

Executive Director Herrmann advised the Commission that he will continue as NORCOL Chairperson until the 1995 meeting.

#### B. ELEC Publications

Executive Director Herrmann noted that Vice Chairman Eldridge has submitted an analysis to the Council on Governmental Ethics Laws' COGEL Guardian of a report by the American Bar Association (ABA) Standing Committee on Election Law concerning the restructuring of the Federal Election Commission (FEC).

The Executive Director mentioned that the New Jersey Reporter will be publishing an article by Deputy Director Brindle on grassroots lobbying. He said that the Deputy Director is also researching White Paper Number Ten: Ideological PACs.

Executive Director Herrmann reported that his article, co-authored with Ron Michaelson, Executive Director of the Illinois State Board of Elections, has been published in the 1994-95 edition of The Book of the States. The article is entitled "Financing State and Local Elections: Recent Developments."

Executive Director Herrmann said that the COGEL Guardian will be publishing another of his articles later this year. This article, he said, is entitled "Lobbying Reporting in the States."

The Executive Director added that COGEL has asked him to do a revised edition of his COGEL Campaign Finance and Lobbying Bibliography.

#### C. National Ethics News

Executive Director Herrmann reported that the Massachusetts Supreme Court stated that a law requiring candidates to "zero out" their war chests at the start of each election year would not be constitutional because of a candidate's right to free speech.

D. Future Meetings

The Commission will meet on October 18, 1994 in Maplewood; on November 15, 1994 in Somerville or Summit; and on December 13, 1994 in Maplewood. All meetings will begin at 9:00 a.m.

10. Advisory Opinion No. 11-1994

This advisory opinion request was submitted by David C. Russo, Assemblyman, Legislative District 40.

Assemblyman Russo said that he was selected as one of the two members of the State Legislature to represent Governor Whitman at a conference in the Netherlands, August 6 through August 13, 1994.

He said that the conference would deal with environmental issues. Assemblyman Russo noted that he had been advised that the cost of the conference is being underwritten by grants from the Geraldine R. Dodge Foundation and/or from the German Marshall Fund. Assemblyman Russo said that both are charitable organizations and that the grants are being made to the New Jersey Department of Environmental Protection. The Assemblyman indicated that he would be reimbursed for travel and lodging expenses by the Department.

Assemblyman Russo inquired as to his reporting obligations under the above-described scenario.

Legal Director Nagy discussed the draft response which had been circulated to the Commission. The draft stated that nothing contained in the provisions of the Campaign Reporting Act necessitates reporting of any payment received from the State for travel and lodging expenses incurred in the capacity of representative of the State at a conference.

The draft recommendation further states that the Legislative Activities Disclosure Act does not apply to the particular situation since neither of the entities providing funds are registered lobbyists and no lobbying communication will have taken place.

In regard to disclosure on personal financial disclosure forms, the Legal Director's recommendation states that since "these entities presumably are non-profit organizations within the meaning of N.J.S.A. 19:44B-4(d) any reimbursement received from them, or from the Department of Environmental Protection acting as a conduit for the reimbursement, is not subject to personal financial disclosure reporting."

On a motion by Commissioner Linett, seconded by Vice Chairman Eldridge and passed by a vote of 3-0, the Commission approved the advisory opinion response recommended by staff.

11. Resolution To Go Into Executive Session

On a motion by Commissioner Linett, seconded by Vice Chairman Eldridge and passed by a vote of 3-0, the Commission moved 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.
3. An employment matter.

12. General Counsel Selection

Upon reconvening the Public Session, the Commission discussed selection of a General Counsel. The Commission received three public bids for the position of General Counsel.

On a motion by Vice Chairman Eldridge, seconded by Commissioner Linett and passed by a vote of 3-0, the Commission selected James Wyse, Esq., as its new General Counsel. Mr. Wyse submitted the lowest bid at \$95.00 per hour.

13. Legislative Recommendation

Commissioner Linett noted that at the last meeting the Commission had suggested proposing remedial legislation with regard to election recounts. He said that the Commission could suggest that the Campaign Act be amended to permit money to be raised outside of the contribution limits for the purpose of paying the costs of legal bills associated with election recounts, which are unanticipated.

Commissioner Linett said that subsequent to the meeting he received a memorandum from Legal Director Nagy suggesting that the Commission take more time in studying the issue before recommending legislation.

Commissioner Linett said that he believes the situation deserves some type of remedial action.

Legal Director Nagy suggested that the Commission be cautious before making a recommendation which weakens contribution limits. He said that, at any rate, the Commission usually makes recommendations as part of its Annual Report and that it makes sense to make this proposal as part of comprehensive recommendations.

Chairman McNany said it is important to the attorneys who might want to be reimbursed to act quickly.

Legal Director Nagy noted prior discussions that possibly the county party committee might be involved in raising funds for this purpose. In any event, he suggested the situation is still evolving and that it might be better to review developments after the general election.

Commissioner Linett said that he is not sure that the party solution is the ultimate one and that the parties are not necessarily going to undertake these tasks. He added that earmarking of contributions might also be a problem.

Commissioner Linett suggested the issue be put on the agenda for December.

14. Adjournment

On a motion by Commissioner Linett, seconded by Vice Chairman Eldridge and passed by a vote of 3-0, the Commission voted to adjourn at 12:14 a.m.

Respectfully submitted,



FREDERICK M. HERRMANN, PH.D.

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