



State of New Jersey

ELECTION LAW ENFORCEMENT COMMISSION

RALPH V. MARTIN
Chair

DAVID LINETT
Vice Chair

PAULA A. FRANZESE
Commissioner

Respond to:
CN-185
Trenton, New Jersey 08625-0185

(609) 292-8700

FREDERICK M. HERRMANN, Ph.D.
Executive Director

JEFFREY M. BRINDLE
Deputy Director

GREGORY E. NAGY
Legal Director

JAMES P. WYSE
Counsel

PUBLIC SESSION MINUTES

March 25, 1997

Chair Martin and Commissioner Franzese, the Counsel, Senior Staff, and Deputy Legal Director Nedda Gold Massar were present.

1. Open Public Meetings Statement

Chair Martin called the meeting to order and announced that pursuant to the "Open Public Meetings Act," N.J.S.A. 10:4-6 et seq., adequate 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 11:00 a.m. in Trenton, New Jersey.

2. Advisory Opinion Request No. 01-1997

This Advisory Opinion Request was submitted by the New Jersey State League of Municipalities. The League, filing reports as a lobbyist organization, has asked for an advisory opinion pertaining to what costs must be included in calculating the amount to be reported on its annual reports as salary and other compensation paid to its legislative agents.

For detailed information, please see the Advisory Opinion Request and Advisory Opinion adopted by the Commission. The League, in its most recent annual lobbying report, filed on February 13, 1997, indicated that it employed four legislative agents. It reported on Schedule B as the "salary and other compensation paid" to the agents as \$234,081.70. It also reported in Schedule C - Support Personnel, spending \$36,187.01 for costs associated with salaries and compensation for support staff. In calculating these figures, the League asked whether or not it should include its contributions for the following items: Medical Insurance, Social Security, Medicare, Disability Insurance, and Pension and Life Insurance. In the request, the League indicated that it always includes this information as part of its disclosure of salaries and compensation.

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Staff recommended that the League be advised that the salary figure subject to lobbying reporting does not have to include the employer's contributions for medical insurance, Social Security, or Medicare because these items are excludable in calculation of wages and other compensation reported to Internal Revenue Service (IRS) on the W-2 form. Staff is advised that wages and compensation, as reported to the IRS, includes both cash and non-cash benefits and that figure therefore reflects the total compensation being paid to the employee except for those amounts that the employee is voluntarily deferring or excluding. Staff suggested that deferred compensation or employee participation in a pre-tax medical, day-care, or similar payment plan, for example, are separate and must be included in the figure reported as salary and compensation for lobbying reporting. Staff further recommended that employer payments for life or disability insurance, not included in the W-2 calculation, be included in the salary and compensation reported if any of those costs exceed \$1,000 in a calendar year.

The Commission recognized William Dressel, Executive Director of the League of Municipalities. Mr. Dressel said that the League was asking for more specificity in how salary and compensation should be reported. He said that the League has always taken great care in reporting the costs of salary and compensation. He said that the League has gone beyond what other lobbyists are doing. He said that the law should be clearer for contract lobbyists.

Chair Martin asked how the \$1,000 standard was arrived at?

Executive Director Herrmann said that the \$1,000 threshold that is used in the personal financial disclosure statute seemed to be a reasonable standard.

Vice Chair Linett arrived at this point. He said that while the staff is recommending that the Internal Revenue Service (IRS) standard be used, he would note that ELEC is a disclosure agency and should go beyond the IRS and require all these costs to be disclosed.

Counsel Wyse said that the statute does not speak in terms of a company's cost, but in terms of what is paid to an agent. He said that the statute does not use the terminology "paid on behalf of."

Executive Director Herrmann said that staff came up with a functional standard employed by the IRS.

Commissioner Franzese said that the statute was sufficiently broad to give the Commission the ability to interpret it in such a way as to exclude these costs from disclosure. She said to do otherwise would exact a substantial administrative burden on both staff and the filers.

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Vice Chair Linett said that he did not believe it to be a burdensome change to require this additional disclosure and asked whether staff knows how other lobbyists have reported.

Deputy Director Brindle said that each year staff does a thorough review for the lobbying press release and other purposes and that historically this additional information has not been reported by lobbyists.

Executive Director Herrmann added that the loss of any disclosure is de minimis but that the administrative burden would be substantial.

Legal Director Nagy, who prepared the recommendation, suggested that it was customary practice to use the IRS standard and that departure from IRS standards may result in confusion for reporting entities.

Chair Martin said that he had no problem with the recommendations. He suggested, however, that the Advisory Opinion be clear about the \$1,000 threshold and that it be specific as to the categories excluded from inclusion in reporting.

On a motion by Commissioner Franzese, seconded by Chair Martin and passed by a vote of 2-0, with Vice Chair Linett abstaining, the Commission approved the recommendation, including Chair Martin's directive of specificity.

3. Public Hearing Scheduled for the March 25, 1997 Commission Meeting

A public hearing was held at 11:30 a.m. on the Commission's proposed amendments to its rules for publicly-financed gubernatorial candidates which clarify criteria for determining affiliation between or among corporate contributors. The proposal also corrected a typographical error in N.J.A.C. 19:25-16.30, Coordinated expenditures, to replace an erroneous reference to the general election with the proper reference to the primary election.

A press advisory and mailing (secondary notice) concerning the proposal were issued on February 26, 1997. No individuals testified at the hearing.

A Court Reporter was present to record the proceedings.

4. Approval of Public Session Minutes of February 18, 1997

On a motion by Vice Chair Linett, seconded by Commissioner Franzese and passed by a vote of 3-0, the Commission approved the Public Session Minutes of February 18, 1997.

5. Executive Director's Report

A. New Commissioner

Executive Director Herrmann reported that Lynn B. Ware was confirmed by the Senate to fill the seat on the Commission vacated by former Commissioner William Eldridge.

B. Staff Activities

Executive Director Herrmann mentioned that on February 19, 1997, he was interviewed by Jim Hooker on NJN about independent spending by political party committees during the gubernatorial election. He said that he told Mr. Hooker that the Colorado case does not apply to publicly-financed elections and that NJ law prevents such spending in a general election.

Executive Director Herrmann advised the Commission that on February 25, 1997, Associate Report Examiner Brett Mead attended a training course on financial investigative analysis at the Division of Criminal Justice in Sea Girt.

Executive Director Herrmann added that on February 27, 1997, Director of Compliance and Information Evelyn Ford spoke to the most recent class of Leadership New Jersey about campaign financing. He noted that on the program with her was Dennis Jaffe, the Executive Director of New Jersey Common Cause.

Executive Director Herrmann said that on February 28, 1997, he was a panel member at a conference sponsored by the New Jersey Society of Association Executives, where he spoke about the regulation of PACs under the Campaign Act.

The Executive Director said that on March 5, 1997, he addressed the Nutley Republican Club about campaign financing reform in New Jersey. He reported that the session was attended by former ELEC Chair Stanley Bedford, Assembly Majority Leader Paul Digaetano, and Assemblyman Jack Kelly.

Executive Director Herrmann said that on March 10, 1997, he participated on a Rutgers University panel concerning "career options for students." According to the Executive Director, he spoke about his job responsibilities and offered employment advice to the participating graduate students.

Executive Director Herrmann announced that Director of Compliance and Information Ford has completed a new quarterly compliance manual. He said that it represents a terrific effort on her part and is of the same quality as her previous outstanding effort on the candidates' manual.

Executive Director Herrmann said that the Editor of Public Integrity Annual has asked him to be on a panel at the American Society for Public Administration

(ASPA) conference in Philadelphia this July to discuss his new article on the need to empower governmental ethics agencies.

C. Recomputerization

Executive Director Herrmann reported that the LAN is in place and that most of the staff has PCs hooked up to the new system. He said that templates have been created for various ELEC forms.

The Executive Director noted that ELEC is now wired to the Internet, with one hookup site on each floor. He said that staff has already made use of this important research tool.

D. Financial Disclosure Statements

Executive Director Herrmann reminded the Commissioners that financial disclosure forms are due on or before May 15. He said that an original must be filed with the Executive Commission on Ethical Standards and that a copy is to be filed with the Chief Counsel to the Governor. Executive Director Herrmann said that the final page of both copies must contain an original signature and an original notarization.

E. Spring Meeting Schedule

April 15, 1997 at 11:00 a.m. in Trenton;
May 20, 1997 at 11:00 a.m. in Trenton; and
June 17, 1997 at 11:00 a.m. in Trenton.

The Commissioners decided to reset the June meeting date at the April meeting.

6. Adoption of Proposed New Rule and Amendments Concerning Contributions by Minors

Deputy Legal Director Massar indicated that the Commission's proposed new rule, N.J.A.C. 19:25-10.14, Contributions by minors, and amendments to its rules concerning contributions from children, were published in the February 3, 1997 New Jersey Register and are now ripe for adoption. Staff recommended that the proposal be adopted without change. If the Commission votes to adopt the new rule and amendments, they will become effective upon publication in the New Jersey Register on April 21, 1997.

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A public hearing on the proposal was conducted on February 18, 1997, and no persons offered testimony. The deadline for public comment was March 5, 1997, and no written comments were received.

On a motion by Commissioner Franzese, seconded by Chair Martin and passed by a vote of 3-0, the Commission adopted the regulations.

7. Request for Advisory Opinion 02-1997

This Advisory Opinion Request was submitted by the JCP&L/GPU Employees' Political Action Committee, which is currently filing reports as a continuing political committee. It asked the Commission whether or not it may receive certain contributions pursuant to N.J.S.A. 19:34-45 from an out-of-state PAC, and a federal PAC, established by the same utility company that established it. The statute prohibits a corporation carrying on the business of a utility company from making contributions to aid or promote New Jersey candidates or political parties. Since this statute is not part of the Campaign Reporting Act, the Commission has no jurisdiction to rule on its applicability. Staff, therefore, recommended that this request be referred to the Attorney General.

Legal Director Nagy referred the Commission to the Attorney General's recently-issued opinion dated March 21, 1997, that was enclosed in the Commissioners' packet of materials. It deals with a similar question regarding insurance companies, that was referred to the Attorney General by the Commission.

On a motion by Commissioner Franzese, seconded by Vice Chair Linett and passed by a vote of 3-0, the Commission directed staff to refer the request to the Attorney General.

8. Public Disclosure Policy for Amended Complaints

Please see the memorandum from Legal Director Gregory E. Nagy to Executive Director Frederick M. Herrmann, Ph.D., dated March 18, 1997, and entitled, "Public Disclosure Policy for Amended Complaints." The recommendation was made to establish a public disclosure policy for amended complaints. Staff recommended that in cases where an amended complaint is issued, the amended complaint become public on the next regularly scheduled public release date that falls at least five days after its mailing to the respondent.

The existing release policy for a complaint is the regularly scheduled release date that falls no less than 30 days after mailing to the respondents. In the case of an amended complaint, service of process of the underlying complaint has already been accomplished and therefore the need for an extended period of time to give notice to respondents does not appear necessary.

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Staff also proposes that if an amendment occurs in a case pending before the Office of Administrative Law (OAL), the amended complaint will be released on the next regularly scheduled release date that falls following receipt of the Administrative Law Judge's Order allowing the amendment.

On a motion by Vice Chair Linett, seconded by Commissioner Franzese and passed by a vote of 3-0, the Commission approved the staff recommendation.

9. Report of 1997 Gubernatorial Public Funds Distributed

Director of Public Financing Nedda G. Massar reported that the public financing staff has concluded its review of the first public matching fund submission filed by 1997 gubernatorial primary election Candidate James E. McGreevey. She said that on the basis of its review of the submission, public matching funds in the amount of \$505,050.36 were deposited into the separate public funds account established through the Department of the Treasury.

Director Massar reported that Candidate McGreevey's February 10, 1997 application for matching funds contained \$336,925.18 in contributions eligible for match. A complete review of all items submitted for match resulted in ineligibility of 19 contribution items representing \$15,400.00. After subtraction of the \$69,000.00 of contributions which is not matched, it was determined that \$252,525.18 was eligible to be matched at the 2:1 ratio.

Director Massar said that Candidate McGreevey has filed a signed Statement of Agreement to participate in the 1997 primary election debates and has provided documentation that at least \$210,000.00 has been spent or irrevocably committed for the 1997 primary election.

Director Massar reported that staff is in the process of reviewing an initial submission by Candidate Whitman and a second submission by Candidate McGreevey. A second submission by Candidate Whitman and a third by Candidate McGreevey were submitted on March 24, 1997, she said.

Director Massar also reported that the Commission has received four applications to sponsor primary debates. She said that the applications will be submitted to the Commission for action at the April 15, 1997 meeting. At that time, the Commission will select the sponsors of the debates.

Director Massar also advised the Commission that two announced candidates have not yet filed submissions for or qualified for public funds. She said that the last date for qualifying for public funds and for the debates is April 10, 1997.

Director Massar said that given these facts, the staff would propose three steps in the event that submissions are made at the last minute. She said that a provisional review would be given upon submission to determine if the candidate qualifies preliminarily for public funds by raising and spending \$210,000. The staff would subsequently undertake a complete review to determine absolute qualification for funds and debates. Director Massar also said that she is proposing that candidates be notified now that if on or after April 10, 1997, their eligible contributions and expenditures dip below the \$210,000 threshold, then they would not be eligible for public funds or for participation in the two required debates.

On a motion by Vice Chair Linett, seconded by Commissioner Franzese and passed by a vote of 3-0, the Commission accepted Director Massar's report and proposal of notification to candidates.

10. Gubernatorial Public Financing Percentage Certification Process

Director of Public Financing Nedda G. Massar discussed implementation of guidelines for percentage certification of public funds to qualified 1997 gubernatorial primary election candidates. She said that the pre-review automatic certification process occurs under strictly limited circumstances. A payment of a fixed percentage of public funds is made to a qualified candidate for a submission before staff has concluded detailed examination of all contribution items. After staff has an opportunity to completely review the submission, and the exact total of public funds to be certified is determined, the amount certified on the percentage basis is subtracted from the amount actually owing to the campaign. The next amount is then certified for distribution to the publicly-financed candidate. Automatic percentage certification has never been permitted by the Commission if a submission was a candidate's initial submission in an election, or if prior submissions demonstrated an excessive error rate.

The pre-review automatic percentage certification process permits the Commission to promptly provide public matching funds to gubernatorial campaigns which have demonstrated a proven "track record" as established by a consistently low submission error rate.

Staff recommended that automatic percentage certification procedures similar to those adopted in 1993 be established for the 1997 primary election and that the following conditions be observed:

1. The automatic percentage certification process should not be applied to a first submission regardless of its date of receipt, and campaigns will be advised that all 1997 primary election first submissions require at least a two-week turnaround time. This procedure is necessitated by the increased volume of transactions in all initial submissions.

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2. An automatic certification percentage should be used in April only if staff finds that it is unable to conduct complete submission review because several large matching fund submissions have been filed on the same submission date and the submission is not an initial submission. Weekly submissions are permitted beginning in April. An automatic percentage certification of 80 percent may be applied in April if the "track record" of a campaign establishes an ineligible rate consistently below 20 percent. Moreover, according to Director Massar, if any campaign has an ineligible rate which remains between 20 percent and 25 percent, its automatic certification should be set at 75 percent.
3. Director Massar said that the automatic certification percentage for a campaign should be adjusted upward in May to 85 percent only if the campaign has produced diminishing ineligible rates. An even higher percentage may be recommended for later.

For detailed information, please see the memorandum from Nedda G. Massar, Deputy Legal Director to Frederick M. Herrmann, Ph.D., Executive Director, dated March 17, 1997, and entitled, "Gubernatorial Public Financing Percentage Certification Process."

Chair Martin suggested that the 75 percent automatic certification be changed to 70 percent. The Commission agreed.

On a motion by Vice Chair Linett, seconded by Commissioner Franzese and passed by a vote of 3-0, the Commission approved the automatic certification process as amended by Chair Martin.

Vice Chair Linett said that in the past the Commission certified all public funds. He said that while he totally trusts staff, he is concerned that the Commission is abrogating its responsibility in this area.

Chair Martin said that the Commission authorized the procedure for administrative reasons in December.

Vice Chair Linett said that the Commission should at least ratify the staff's distribution of the funds.

On a motion by Commissioner Franzese, seconded by Vice Chair Linett and passed by a vote of 3-0, the Commission ratified the certification of funds to candidate McGreevey.

11. Resolution to Go Into Executive Session

On a motion by Vice Chair Linett, seconded by Commissioner Franzese 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:

- A. Final Decision Recommendations in violation proceedings which will not become public. However, the Final Decisions resulting from those recommendations will become public no later than 35 days after mailing.
- B. 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 no later than 50 days after mailing.

12. Return to Public Session

On a motion by Commissioner Franzese, seconded by Vice Chair Linett and passed by a vote of 3-0, the Commission voted to return to public session.

13. Adjournment

On a motion by Vice Chair Linett, seconded by Commissioner Franzese and passed by a vote of 3-0, the Commission voted to adjourn at 1:00 p.m.

Respectfully submitted,

Frederick M. Herrmann, Ph.D.
Executive Director

FMH/elz