



*State of New Jersey*

**ELECTION LAW ENFORCEMENT COMMISSION**

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Vice Chair

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PUBLIC SESSION MINUTES

January 28, 1998

Chair Martin, Vice Chair Linett, Commissioner Franzese, the Counsel, Senior Staff, and Deputy Legal Director Nedda Gold Massar were present. Commissioner Ware was not present at the meeting.

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 10:00 a.m. at the Seton Hall University School of Law, Dean's Conference Room, One Newark Center, Newark, New Jersey.

2. Approval of Public Session Minutes of December 16, 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 December 16, 1997.

3. Executive Director's Report

A. Commission Affairs

Executive Director Herrmann advised the Commission that staff would like to hold a 25<sup>th</sup> Anniversary event for ELEC at the September 22<sup>nd</sup> meeting. He said that two possible speakers would be Frank Reiche, ELEC's first Chair and also a Chair of the FEC, and Senator Bill Schluter, the sponsor of the Commission's enabling legislation. Executive Director Herrmann said that it might also be appropriate to invite former Commissioners and ask them to make some brief remarks.

Executive Director Herrmann announced that former Vice Chair Alex Waugh has been nominated to the Superior Court by Governor Whitman.

B. Staff Activities

Executive Director Herrmann noted that Systems Administrator Carol Neiman has produced a computer masterplan which will be the basis for ongoing internal recomputerization planning. He said that staff will be creating a timetable for agency recomputerization that will be shared with the Office of Telecommunication and Information Systems (OTIS) in the Department of the Treasury. Executive Director Herrmann said that staff's goal is to have an electronic filing system available for assembly candidates to use in the 1999 general election. The Executive Director mentioned that scanning technology and searchable data bases for ELEC's home page are also part of the planning.

Executive Director Herrmann advised the Commission that on January 12, 1998, he spoke to a group from College Leadership New Jersey about the work of the Commission.

Executive Director Herrmann noted that on January 15, 1998, he spoke to the Moorestown Rotary Club on ELEC's role in regulating campaign financing. According to the Executive Director, he was introduced by Commissioner Ware, who is a member.

Executive Director Herrmann disclosed to the Commission that Andy Mersel of the Public Financing staff has left to take a job in the public sector. He said that the public financing positions are temporary, two-year jobs.

Executive Director Herrmann mentioned that Assistant Compliance Officer Amy Davis has written a fine book review for the next issue of the COGEL Guardian.

C. Budget Item

Executive Director Herrmann reported that the Department of the Treasury will be providing ELEC with \$195,000 to pay the County Clerks in full for the Ballot Statement Program. He said that the \$155,000 originally appropriated to the budget for this program did not cover all of the costs.

D. National Ethics News

Executive Director Herrmann noted that a Federal Judge recently voided a central part of California's new campaign financing law. He said that the Judge ruled that the contribution limits were set so low that they unconstitutionally infringed on a candidate's ability to get his or her message to voters. According to the Executive Director, the Judge stated that the law made it "impossible for the ordinary candidate to mount an effective campaign for office."

E. Winter Meeting Schedule

February 18, 1998 at 11:00 a.m., Seton Hall University School of Law

March 18, 1998, 11:00 a.m., Burlington County Board of Freeholders

4. Adoption of Legal Fees Regulation

The proposed new rule at N.J.A.C. 19:25-6.10, Use of funds for legal fees, concerns the use of candidate committee, joint candidates committee, and legislative leadership committee funds to pay for legal representation. Also see the memorandum dated January 20, 1998, from Gregory E. Nagy, Legal Director to Frederick M. Herrmann, Ph.D., Executive Director entitled, "Adoption of Legal Fees Regulation."

Legal Director Nagy explained that written comments had been received from Assemblywoman Marion Crecco, who favored adoption of the proposal, and from Paul Josephson, Esq. who suggested that additional examples of permissible legal expenses be included in the regulation.

Vice Chair Linett said that though he may not agree with all of Mr. Josephson's suggestions, he does see a need for providing more examples in an amended proposal sometime in the future. He said that he would support the adoption of the current proposal at this time, however.

Commissioner Franzese said that she would be concerned about adding examples. She indicated that by doing so the regulation could be interpreted as exclusionary. Commissioner Franzese said that with many examples being included, those actions not included as examples could be construed as excluded from being permitted under the regulation. She said that she preferred to leave the language broad and to be able to make future decisions via the advisory opinion process.

Chair Martin agreed with Commissioner Franzese.

On a motion by Vice Chair Linett, seconded by Commissioner Franzese and passed by a vote of 3-0, the Commission adopted the regulation and directed staff to file the adoption notice at the Office of Administrative Law.

5. Advisory Opinion Request of Kathleen Marchetti, Esq. (AO 01-1998)

Kathleen Marchetti, Esq., a shareholder and employee of a New Jersey law firm, Budd, Lerner, Gross, Rosenbaum, Greenberg & Sade, submitted this request for an advisory opinion. She asked whether or not she must register as a legislative agent if she submits written comments on a rule proposal on behalf of the law firm itself. Because this is a request for an opinion pursuant to the Legislative Activities Disclosure Act, the Commission was not subject to a 10-day response period.

Ms. Marchetti wrote that she prepared written comments on behalf of her law firm in regard to the proposed readoption with amendments of rules of the Department of Environmental Protection concerning the processing of damage claims pursuant to the Spill

Compensation and Control Act. The time, however, to submit comments on this proposal had expired without these comments being submitted.

Ms. Marchetti stated that the law firm and she in the past have provided services to clients in the subject area of the proposed regulations. Neither she nor the law firm had been engaged by any client to submit comments in regard to this particular proposal. The proposed regulations do not involve the administration of the law firm or the practice of law, but would, if adopted, impact on whether or not clients could receive reimbursements for certain legal services from the New Jersey Spill Compensation Fund.

Ms. Marchetti is not registered as a legislative agent, and the law firm is not filing Annual Reports as a lobbyist.

In a memorandum circulated to the Commissioners, staff suggested that the fact that Ms. Marchetti is conducting lobbying activity on behalf of her law firm does not exclude her from the definition of a "legislative agent" under the Lobbying Act and regulations. Staff therefore concluded that she must both register and file quarterly reports as a "legislative agent" if her lobbying activity compensation exceeds the thresholds established in the statutory definition at N.J.S.A. 52:13C-20g, and the regulatory definition at N.J.A.C. 19:25-20.2. Staff also noted that by compensating Ms. Marchetti to conduct lobbying on its behalf, the law firm that is employing her is engaging a legislative agent to influence regulations and therefore is a "lobbyist" as that term is defined in the Lobbying Act. A lobbyist is not required to "register" as suggested in the question, but is required to file annual reports pursuant to N.J.S.A. 52:13C-22.1 if it exceeds the \$2,500 calendar year threshold for lobbying contributions or expenditures set forth in the statute.

Counsel Wyse said that he was bothered by the suggested response to the advisory opinion request. He said that it would have a chilling effect on a person commenting on a public matter.

Chair Martin indicated that he had no quarrel with staff's interpretation of the statute. He said, however, that he too is troubled by the outcome. He said that by taking this approach, the Commission would be eliminating a valuable resource in terms of public comment.

Vice Chair Linett said that he agreed with staff in that the law firm was paying its lawyer to lobby on its behalf. He said that the fact that she is compensated for lobbying is the key. He suggested that the Commission attach a disclaimer to the opinion stating that the opinion is intended only to provide guidance in this specific situation.

Counsel Wyse stated that he would assume that her compensation for lobbying is no greater than her share of the partnership.

Commissioner Franzese suggested that the response be kept narrow and be based on the facts provided.

Legal Director Nagy expressed the staff's interest that the Commission not inadvertently create an exception for attorneys that might be construed to give license to

other entities to not register as agents or file as lobbyists. Specifically, he suggested that an in-house employee who lobbies on behalf of his or her employer might fall within any exception created for an attorney-employee lobbying on behalf of his or her employer law firm.

Vice Chair Linett recommended that, because the matter was moot, the Commission decline to issue an advisory opinion. He suggested that staff consider proposing a regulation in the future to deal with this issue.

On a motion by Vice Chair Linett, seconded by Commissioner Franzese and passed by a vote of 3-0, the Commission directed staff to advise Ms. Marchetti that it declined to respond to the request because it is moot and directed staff to consider preparing a regulation at a later time.

6. Advisory Opinion Request of Sabrin for Governor (A.O. 02-1998)

This advisory Opinion Request was submitted by Len Flynn, Deputy Treasurer for Sabrin for Governor (SFG), the 1997 general election candidate committee of Murray Sabrin, a gubernatorial candidate who participated in public financing.

Deputy Treasurer Flynn wrote that the purpose of the request was to clarify the status of refunds of contributions, which refunds were sought by contributors after the date of the election. He indicated that the candidate committee had received a request from a contributor for a refund because the contributor recently discovered that his employment was jeopardized by the making of the contribution. The identity of the contributor, the amount contributed and the reasons that the contributor's employment was placed in jeopardy have not been provided.

Staff recommended that SFG be advised that postelection refunds of contributions by a publicly financed gubernatorial candidate are prohibited by public financing regulations which protect the interest of the State in the return to it of unspent contributions up to the amount awarded to a publicly financed candidate. Staff suggested, however, that if there are compelling reasons why the Commission should waive the prohibition to permit the refund of this specific contribution, the identity of the contributor and the particular facts surrounding the circumstances should be submitted to the Commission for its consideration of a waiver.

Commissioner Franzese said that she supports the notion of leaving the door open for a waiver regarding this particular situation. She said that it does not jeopardize the Commission's ability to require the return of public funds to the State, yet allows it to waive the provision on the basis of extenuating circumstances.

State Senator Robert Martin, attending the meeting, expressed concern for the preservation of public funds, and suggested that if the contribution was matched with public funds, the public funds amount should be returned to the State. He said that the Commission should be careful to not open the door to a future scam.

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 in the Advisory Opinion Request and directed staff to issue the response.

7. Student's Comments from Seton Hall University School of Law

Chair Martin asked Seton Hall University students whether they had any comments to make.

The students made comments in relation to the topics discussed at the meeting.

8. 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.
- C. A report on written requests for investigations of possible violations, which report will not become public. However, any complaint which may be generated as a result of a request for an investigation will become public no later than 50 days after mailing.

9. 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 12:00 p.m.

Respectfully submitted,

Frederick M. Herrmann, Ph.D.  
Executive Director