



State of New Jersey

ELECTION LAW ENFORCEMENT COMMISSION

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Vice Chair

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PUBLIC SESSION MINUTES

April 22, 1998

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

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. in Trenton, New Jersey.

2. Approval of Public Session Minutes of March 18, 1998

On a motion by Vice Chair Linett, seconded by Commissioner Ware and passed by a vote of 3-0, the Commission approved the Public Session Minutes of March 18, 1998.

3. Executive Director's Report

A. Commission News

Executive Director Herrmann noted that Commissioner Franzese recently published an article in the Maine Law Review entitled, "To Be the Change: Finding Higher Ground in the Law." According to the Executive Director, it is a profound and inspirational appeal for restoring "High Ideals" to the practice of the law. He said that the article has become mandatory reading for the staff.

Executive Director Herrmann reported sadly that the wife of former Chair Andrew C. Axtell recently informed him that he had passed away a number of years ago in Florida. The Executive Director mentioned that Mr. Axtell had devoted many years to public and civic positions including service as: a Commissioner of the Port Authority of New York and New Jersey, a Trustee of the E. Orange General Hospital, Chair of the Essex County Republican Party, and Mayor of Livingston. Former Chair Axtell had served for four terms as an ELEC Commissioner.

B. Staff Activities

Executive Director Herrmann advised the Commission that Kim McCubbin, a Public Financing Analyst, left in March for a position in the health-care industry. The Executive Director said that the analyst positions are temporary, two-year jobs so turnover is a routine occurrence.

According to Executive Director Herrmann, Legal Director Nagy and he have been helping the American Bar Association (ABA) Task Force on Lawyers' Political Contributions to draft a proposal for tightening this area of the law. Executive Director Herrmann said that of particular concern to the task force has been campaign contributions to Judges, which is not an issue for New Jersey's appointed judiciary.

The Executive Director reported that on March 27, 1998, he lectured to a New Jersey politics class at Rutgers University about the State's Campaign Financing System.

Executive Director Herrmann noted that on March 31, 1998, Deputy Legal Director Nedda G. Massar and he met with the Chief Electoral Officer of South Africa; a representative from the National Institute for International Affairs (NDI); and Neil Upmeyer, the first Director of ELEC's Gubernatorial Public Financing Program, to discuss the program. The Executive Director advised the Commission that the Chief Electoral Officer and the representative also visited the Federal Election Commission and the New York City Campaign Finance Board to review public financing programs at the federal and municipal levels.

Executive Director Herrmann said that the National Institute for International Affairs sent a thank you note, which stated that the Chief Electoral Officer and its representative "were both thoroughly impressed with the operational capacity of the . . . Commission."

Executive Director Herrmann extended thanks to Deputy Legal Director Massar and her staff for once again doing an outstanding job with our Public Financing Program. The Executive Director said that in the words of her supervisor, Legal Director Nagy, in a recent commendation of her, "there was not a single instance of an incorrect distribution or delay in meeting the compressed turn-around schedule

for delivery of funds to a candidate. Candidates and their staffs universally commended her courtesy . . . [and her professionalism]."

C. Budgetary Developments

According to Executive Director Herrmann, Deputy Director Jeffrey M. Brindle, Director of Administration Barbra Fasanella, and he attended the Assembly Budget Hearing on April 16, 1998, and the Senate Budget Hearing on April 20, 1998, for the Department of Law and Public Safety. He advised the Commission that staff had answered one written Office of Legislative Services' question on how ELEC was planning to implement the Governor's \$1 Million initiative for making campaign financing reports available on the Internet.

Executive Director Herrmann and Deputy Director Brindle thanked Director of Administration Fasanella for her outstanding efforts working on this year's budget. The Executive Director stated that because of the Governor's \$1 Million Internet initiative, the FY-1999 budget was one of the most important in Commission history. Executive Director Herrmann said that Director of Administration Fasanella rose to the occasion and did a great job in providing support to the Executive Director and Deputy Director.

D. Annual Ethics Forms

Executive Director Herrmann said that the Annual Ethics Forms are due by May 15th with one copy to the Executive Commission on Ethical Standards and one to the Governor's Chief Counsel. He said that original signature and notarization on both copies is required.

E. Spring Meeting Schedule

May 27, 1998 in Trenton at 11:00 a.m.

June 23, 1998 in Trenton at 11:00 a.m.

4. 1997 General Election Public Matching Fund Submission

The Sabrin 1997 general election campaign filed a submission for matching funds which included \$27,170.49 in contributions eligible for match. The results of staff review of Submission 6 are summarized below:

Submission #	Total \$ Submitted for Match	Total \$ Eligible for Match at 2:1*	Public Funds Total	Error Rate
6	\$27,735.49	\$27,170.49	\$54,340.98	9.1%

Deputy Legal Director Massar reported that in prior elections, postelection distribution of public funds was approved by the Commission where two criteria were met: 1) The

campaign reported net debt and therefore a continuing need for funds to meet its outstanding obligations; and 2) the campaign reported expenditures that had been made with non-public funds that could have been made with public funds and were therefore eligible for reimbursement with public funds pursuant to N.J.A.C. 19:25-15.24(e).

Staff reviewed reports filed by the Sabrin campaign and determined that the two criteria were met. The campaign has net debt as of March 31, 1998, in the amount of \$52,026.22. The 1997 general election postelection quarterly report, filed April 15, 1998, reported outstanding obligations in the amount of \$52,813.52 and a closing cash balance of \$787.30. On its 29-day and 11-day preelection and 20-day postelection reports, the Sabrin campaign disclosed expenditures of non-public funds, including \$97,300 for media time, which may be reimbursed at this time with public funds pursuant to N.J.A.C. 19:25-24(e) and used to pay the outstanding obligations of the campaign.

Staff recommended that public funds in the amount of \$52,026.22, the amount of outstanding obligations less the amount of cash-on-hand reported on April 15, 1998, be deposited into the Sabrin 1997 general election public funds account. No further public funds may be received by the Sabrin 1997 general election campaign.

On a motion by Vice Chair Linett, seconded by Commissioner Ware and passed by a vote of 3-0, the Commission approved distribution of \$52,026.22 in public funds to the Sabrin campaign.

5. Reimbursement of Lobbying Expenditures

Assemblyman Richard Bagger asked the Commission to consider a change in lobbying reporting requirements so that an officeholder who reimburses a lobbyist or legislative agent for a small gift is no longer reported as a benefit recipient.

Assemblyman Bagger's letter suggested that the Commission should permit an officeholder to accept an item from a lobbyist and avoid being identified as a benefit recipient on the lobbyist's Annual Report if the officeholder makes reimbursement for the item, particularly when the item is not of great value. Under current regulations, even if the officeholder later reimburses the lobbyist for the value of a meal, the officeholder's name must be reported if its value exceeds the statutory thresholds for benefit recipient reporting.

Staff noted that the Legislative Activities Disclosure Act mandates that a lobbyist report the name of all benefit recipients above the \$25 per day or \$200 per calendar year threshold, and no exception is contained in the Act for a reimbursed benefit. The Act is silent in regard to reimbursements. An amendment was enacted to the lobbying law that required lobbyists to provide advance written notice to a benefit recipient that his or her name would appear on the lobbyist's Annual Report. The notice must be sent no later than February 1st of the year following the calendar year in which the gift was made, a date that is about two weeks before the February 15 Annual Report filing deadline. The apparent intent of the new law was to

give a benefit recipient an opportunity to contest or correct any erroneous statement before that statement was included in the lobbyist's Annual Report. Moreover, some lawmakers believe that under the new law if reimbursement was made to the lobbyist the recipient would not be named in the lobbyist's Annual Report.

The Commission has authority to adopt rules that effectuate the purposes of the Legislative Activities Act. Staff said, therefore, whether or not the Commission has authority to promulgate a rule that excludes from disclosure reimbursed items of limited value may become an arguable legal question, turning on whether or not the making of the reimbursement removes the item from being a benefit at all.

Staff's best judgment is that as long as the present law permits officeholders to accept benefits, encouraging reimbursements may be a good policy. Most reimbursements will probably be made from candidate committee funds that are subject to full disclosure. It is conceivable that an officeholder who reimburses the full value of a small item within a short period of time has not received any real pecuniary benefit.

Vice Chair Linett said that the problem consisted of the questions of disclosure and valuation. He asked rhetorically: Who makes the judgment as to value? He said that the public may never know of a benefit having been provided under this situation.

Executive Director Herrmann asked Director of Compliance and Information Evelyn Ford what standard is applied in determining the value of a benefit. Director Ford stated that a fair market value standard is used.

Legal Director Nagy noted that expensive benefits would still be disclosed. He said that only benefits of a de minimis nature would be exempt from reporting, provided the benefit is reimbursed.

Chair Martin acknowledged receipt of a letter from Assemblyman Leonard Lance concerning reimbursement of benefits. Assemblyman Lance stated that his recent lobbying legislation did not intend to require reporting of reimbursed benefits.

Commissioner Ware said that she could easily imagine a situation whereby a person would be embarrassed to not accept a gift presented after speaking to a group. She said that even if the person reimbursed the group later for the gift, that officeholder's name still would be disclosed as having received a benefit.

Executive Director Herrmann said that the discussion centers around gifts of de minimis value. He said that very often the recipients do not even realize that they received a benefit. Executive Director Herrmann recounted a situation when two ELEC Commissioners attended one of the publicly financed gubernatorial debates, only had coffee, and then were reported as having received a \$40 benefit.

Vice Chair Linett said that perhaps the Commission could propose that an amount of \$50 above the current thresholds, which is reimbursed, would not have to be disclosed.

Commissioner Ware said that she would increase that figure to \$100.

Executive Director Herrmann said that the Commission should keep in mind that the exemption thresholds in the statute of \$25 per day and \$200 per calendar year have not been adjusted since 1981.

Chair Martin asked: What if a number of gifts are given over the course of the year and each is \$50 over the threshold and then reimbursed?

Legal Director Nagy said that the aggregate rule would apply, and therefore reimbursed benefits above the amount established by the Commission would remain subject to reporting.

Commissioner Ware said that it is a good policy to encourage reimbursements.

Vice Chair Linett recommended that staff draft a regulation along the lines discussed today by the Commission. He said it should be flexible enough so that the Commission would not have to revisit the issue every year.

6. Resolution to Go Into Executive Session

On a motion by Vice Chair Linett, seconded by Commissioner Ware 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.

7. Return to Public Session

On a motion by Commissioner Ware, seconded by Vice Chair Linett and passed by a vote of 3-0, the Commission resolved to return to Public Session.

Commissioner Franzese arrived at this point.

8. Gubernatorial Public Financing Hearing

The following people testified at the Gubernatorial Public Financing Hearing. For the discussion, please see the transcript recorded by a Court Reporter.

- Dennis Jaffe, Executive Director, New Jersey Common Cause
- Steve Salmore
- Beverly Kidder, Reform Party
- Janice Presser, State Chair, New Jersey Libertarian Party

9. Adjournment

On a motion by Vice Chair Linett, seconded by Commissioner Franzese and passed by a vote of 4-0, the Commission voted to adjourn at 12:00 p.m.

Respectfully submitted,

Frederick M. Herrmann, Ph.D.
Executive Director

FMH/elz