



*State of New Jersey*

**ELECTION LAW ENFORCEMENT COMMISSION**

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Vice Chair

PAULA A. FRANZESE  
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Deputy Director

GREGORY E. NAGY  
Legal Director

JAMES P. WYSE  
Counsel

PUBLIC SESSION MINUTES

September 29, 1998

The Commissioners, the Counsel, Senior Staff except Deputy Director Brindle, 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 10:00 a.m. in Trenton, New Jersey.

2. Approval of Public Session Minutes of July 28, 1998

On a motion by Vice Chair Linett, seconded by Commissioner Franzese and passed by a vote of 4-0, the Commission approved the Public Session Minutes of July 28, 1998.

3. Executive Director's Report

A. Staff Activities

Executive Director Herrmann introduced four new staff members, they are:

Pamela Hamilton, Assistant Compliance Officer,  
Harry Ravenel, Assistant Review Officer,  
Scott Johnkins, Legal Assistant, and  
Desiree DeVito, Messenger.

The Executive Director reported that on September 2, 1998, he was interviewed by Karla Roth of News 12 - NJ as part of a feature story on campaign financing. He

added that on September 10, 1998, he was interviewed by Per Carlson of Fox News Channel about the reimbursement regulation.

Executive Director Herrmann noted that on October 6, 1998, Legal Director Nagy will talk to Professor Frank Askin's Election Law Seminar at Rutgers University Law School in Newark.

B. Legislative Developments

The Executive Director said that on September 17, 1998, Deputy Director Brindle testified before the Assembly State Government Committee on the ACS for A-2370 (Geist/Lance). According to the Executive Director, this bill provides for the full disclosure of Testing-the-Waters activity. He said that such activity would be disclosed and regulated in the same way as candidate activity. The Executive Director added that no position was taken on the bill, but that the issue of the constitutionality of requiring reporting by non-candidates was raised.

C. Conferences: Northeastern Regional Conference on Lobbying (NORCOL) and the Council on Governmental Ethics Laws (COGEL)

Executive Director Herrmann reported that Legal Director Nagy, Deputy Legal Director Massar, Director of Compliance and Information Evelyn Ford, and he represented ELEC at the NORCOL conference on August 11, 1998. He noted that ten agencies from seven states, two counties, and the city of Baltimore participated in the conference. According to the Executive Director, over 50 people were present including lobbyists and legislators. Executive Director Herrmann said that the guest speaker was Kent C. Cooper, a consultant for the Center for Responsive Politics. Mr. Cooper discussed the impact of computer technology on lobbying disclosure. Executive Director Herrmann reported that the represented agencies then made presentations about recent statutory, regulatory, and judicial developments in their respective jurisdictions. Executive Director Herrmann concluded by noting that the members asked him to compile a new edition of the NORCOL Lobbying Guidebook, which will be published in early 1999.

Executive Director Herrmann stated that almost 300 attendees came from across the United States and Canada to attend the annual COGEL conference. He mentioned that there were also representatives from the United Kingdom, Mexico, the United Nations, and the World Bank. He added that Legal Director Nagy and he represented the Commission. According to the Executive Director, two members of the Executive Commission on Ethical Standards staff attended as well as Senator William E. Schluter, former Chair of the Joint Legislative Ethics Committee. Executive Director Herrmann stressed that Legal Director Nagy and he attended numerous sessions including a campaign finance update, a lobbying update, and

four electronic filing programs. The Executive Director said that he ran an "agency empowerment symposium" on how to strengthen ethics agencies and moderated a panel on public financing. Executive Director Herrmann reported that after the symposium, he learned that his "Bricks Without Straw" article, which was the basis for the agency empowerment program, would be used before the Miami, Florida City Council and by the United Kingdom's Committee on Standards in Public Life. He noted further that COGEL officials were very pleased with Legal Director Nagy's Campaign Finance Case Law Study and are planning to publish it. Finally, Executive Director Herrmann said that a Canadian publication highlighted at the conference, The Mandate and Initiative for the Examination of Lobbying Initiatives in Quebec, cites White Paper Number Five - Lobbying Reform written by Deputy Director Brindle. This report is written in French only, he said.

D. Future Meetings

October 28, 1998 at 11:00 a.m.  
November 18, 1998 at 11:00 a.m., and  
December 16, 1998 at 11:00 a.m.

4. Advisory Opinion Request No. 07-1998 (Assemblyman Arnone)

This Advisory Opinion Request was submitted by Dr. Michael J. Arnone, State Assemblyman, District 12. In his request, Assemblyman Arnone asked whether or not he could use his candidate committee funds to pay for costs arising out of an automobile accident which occurred when he was traveling in his personal vehicle to attend a voting session of the State Legislature and to conduct political campaign activities.

Assemblyman Arnone stated that on July 30, 1998, while traveling to attend a voting session of the New Jersey Legislature in Trenton as well as campaign activities, his vehicle was involved in an accident on the Garden State Parkway. He stated that rather than involving his or the other driver's automobile liability insurance carriers, he offered to pay the costs of repairing both his and the other vehicle. The estimated costs are \$400.00 for his vehicle, and \$650.00 for the other vehicle. He states that no one suffered any injury. There is no indication in this request that any party was charged with any violation of motor vehicle laws. Assemblyman Arnone stated that he is not reimbursed by the State for his travel expenses in commuting to and from sessions of the Legislature, and staff is advised that he is not provided with a State-owned vehicle for that purpose.

Legal Director Nagy stated that this request is similar to the question in Advisory Opinion 05-1998. In that matter, the Commission permitted a candidate to use campaign funds to pay costs of an automobile accident which occurred when a paid campaign manager was traveling in a leased car to a campaign event. Legal Director Nagy said that the question to be addressed is whether or not the accident costs are "ordinary and necessary" expenses of holding public office. Relying on the precedent in Advisory Opinion 05-1998, staff recommended that Assemblyman Arnone be advised that the use of candidate committee

funds to pay costs related to the car accident is permissible as an "ordinary and necessary" expense of holding public office. He noted further that Commission rules permit use of candidate funds for reimbursement of travel expenses as an expense that arises out of the execution of the duties of an elected public officeholder.

Legal Director Nagy suggested that the permissible use statute reflects an apparent legislative intent in favor of permitting candidates to use their candidate committee funds for officeholding expenses so that elected officials not be dependent on personal wealth for meeting officeholding responsibilities.

Chair Martin noted that in Advisory Opinion 05-1998 no insurance coverage was available to pay the costs of the accident. He stated that Assemblyman Arnone's case is different and the Commission should not approve the use of campaign funds to pay accident costs if there is a personal insurance policy available to cover the loss.

Commissioner Ware suggested that Assemblyman Arnone's insurance deductible may be higher than the costs of this accident.

Vice Chair Linett said that the statute is open-ended regarding the uses of campaign funds and that insurance coverage is not the issue. He said he hopes the Legislature will in the future more closely examine and restrict the permissible uses of campaign funds, but that existing law appears to permit this use.

Commissioner Franzese asked whether or not campaign funds should be used to pay for damage to the other vehicle in the accident just because Assemblyman Arnone is willing to pay.

Legal Director Nagy suggested that the Commission could approve payment only for Assemblyman Arnone's damages.

Vice Chair Linett said that the Commission does not have all the facts and directed staff to obtain further information on Assemblyman Arnone's insurance coverage.

On a motion by Vice Chair Linett, seconded by Commissioner Ware and passed by a vote of 4-0, the Commission directed staff to contact Assemblyman Arnone for information on his insurance coverage and deferred issuing a response to this request until the October Commission meeting.

5. Public Hearing on Proposed Amendment to N.J.A.C. 19:25-20.13 concerning Lobbying Reporting of Reimbursed Benefits

A Court Reporter was present to record the hearing. A transcript will be made available to the public. Oral testimony was given by the following:

Senator William E. Schluter, District 23;  
Assemblyman Leonard Lance, District 23; and,  
Sandra L. Matsen, League of Women Voters of New Jersey.

Robert A. Woodford of the New Jersey Business and Industry Association provided written testimony.

6. Advisory Opinion Request No. 08-1998

Edward T. Gallagher, treasurer of a 1999 primary election joint candidates committee, "Election Fund of Conners-Conaway for Assembly," submitted a request for an advisory opinion concerning the proposed transfer of its funds to a single candidate committee to be established for the 1998 special general election candidacy of Assemblyman John F. Conners, Sr. The special general election was court-ordered and will be conducted on November 3, 1998, for the unexpired term of a seat in the Seventh Legislative District in the 1998-1999 General Assembly.

Assemblyman Conners and Assemblyman Herbert C. Conaway, Jr., formed a joint candidates committee (JCC) for their candidacies for the two seats in the State Assembly representing the 7<sup>th</sup> District in the 1997 general election. Neither candidate established a single candidate committee, and therefore the 1997 general election Conners-Conaway JCC was the candidates' sole financing vehicle in that election. The results of the 1997 general election appeared to be that both candidates were elected to seats in the 1998-99 General Assembly representing the 7<sup>th</sup> District. However, on September 10, 1998, the Honorable Harold B. Wells, III, A.J.S.C., set aside the results of the November 4, 1997 general election and annulled the Certificate of Election issued to Assemblyman Conners. The Order also established a special general election to be held on November 3, 1998, to fill the vacancy for the unexpired term.

Legal Director Nagy referred to a chart provided to the Commissioners which summarized two alternatives described in a staff memorandum. First, staff recommended that the 1999 primary election Conners-Conaway JCC is permitted to contribute the same amount as any other joint candidates committee could to Candidate Conners in the 1998 special general election. Because the 1999 primary election Conners-Conaway JCC is comprised of two candidates, the Campaign Reporting Act permits it to contribute up to twice the \$5,900 limit, or no more than \$11,800, to the 1998 special general election Conners Committee.

As an alternative, staff suggested that the 1999 primary election Conners-Conaway JCC could transfer all of its funds to the 1998 special general election Conners Committee, provided it complies with the two transfer restrictions set forth in Advisory Opinion Nos. 06-1995 and 04-1996: dissolving the 1999 primary election Conners-Conaway JCC and transferring all of its funds to the 1998 special general election Conners Committee. Under that course of action, contributions received by the 1999 primary election Conners-Conaway JCC and by the 1998 special general election Conners Committee would be required to be

aggregated for contribution limit purposes. Staff noted that at the conclusion of Mr. Conners' 1998 special general election candidacy and the dissolution of his 1998 special general election candidate committee, new contribution limits would be available for any 1999 primary election candidate committee established by Mr. Conners alone.

Commissioner Ware stated that the candidates will be confused about applying contribution limits in these alternatives.

Vice Chair Linett said it appeared clear that Candidate Conners wanted to rollover funds because he needs the money and that the Commission should ask him how much he intends to rollover. He said he agreed with the analysis and application of contribution limits in the staff alternatives.

Chair Martin stated that by using the word "transfer" in the inquiry, he thinks Mr. Conners intends to keep open the 1999 primary election JCC.

Executive Director Herrmann commented that Mr. Conners has not waived the 10-day response time and that he wants an immediate answer.

Chair Martin said that he does not think the Commission should have to ask additional questions. The Commission should give a simple answer based on the available information and advise Mr. Conners that he is permitted to make a transfer of no more than \$11,800.

Vice Chair Linett said that if Candidate Conners can use the entire balance in the JCC, the \$11,800 option is confusing.

On a motion by Vice Chair Linett, seconded by Commissioner Ware and passed by a vote of 3-1, the Commission approved the staff recommendation and directed staff to issue a response to the advisory opinion request.

#### 7. Resolution to Go Into Executive Session

On a motion by Vice Chair Linett, seconded by Commissioner Ware and passed by a vote of 4-0, 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.

8. Adjournment

On a motion by Vice Chair Linett, seconded by Commissioner Ware and passed by a vote of 4-0, the Commission voted to adjourn at 12:30 p.m.

Respectfully submitted,

Frederick M. Herrmann, Ph.D.  
Executive Director

FMH/elz