



State of New Jersey

ELECTION LAW ENFORCEMENT COMMISSION

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PUBLIC SESSION MINUTES

October 28, 1998

Chair Martin, Commissioner Ware, 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. Approval of Public Session Minutes of September 29, 1998

On a motion by Commissioner Ware, seconded by Commissioner Franzese and passed by a vote of 3-0, the Commission approved the Public Session Minutes of September 29, 1998.

Vice Chair David Linett arrived at this point.

3. Executive Director's Report

A. Staff Activities

Executive Director Herrmann announced that he has been named to two COGEL committees for 1999, the Awards Committee and the Publications Committee. He said that the Awards Committee has the task of selecting the annual COGEL Award winner and a Service Award winner. In addition, said the Executive Director, next year it will also be redrafting the criteria for giving the COGEL Award. Executive Director Herrmann said that the Publications Committee is responsible for planning the development and distribution of COGEL's extensive research work. According to the

Executive Director, in 1999, the Committee will be reviewing COGEL's quarterly publication, The Guardian, looking for ways to improve its format. Executive Director Herrmann said that he has suggested to the Committee's co-chairs that marketing strategies also be studied.

The Executive Director said that he will be a panelist at a national conference being run by the New York City Campaign Finance Board on November 9, 1998, in New York City. According to Executive Director Herrmann, his panel is entitled "Is Sunshine Enough? The Limitations of Disclosure." Deputy Director Brindle will be attending as well, he said.

The Executive Director noted that he mailed out this month a request to all NORCOL members for lobbying forms, instructions, and statistical information to be used in the new edition of The NORCOL Lobbying Guidebook, which he is compiling.

Executive Director Herrmann mentioned that he also sent a proposal to the Editor-in-Chief of Public Integrity for a series of articles entitled "Campaign Financing Enters the New Millennium: Where We Should Be, Where We Are, Where We Are Going." According to Dr. Herrmann, the series will include six articles on the following topics:

- The COGEL Model Law,
- The Federal Election Campaign Act,
- The New Jersey Campaign Act (written by Deputy Director Brindle),
- The Seattle Campaign Act,
- Computerized Disclosure, and
- A National Survey of Recent Developments.

Executive Director Herrmann said that the series will probably be published in two parts during the year 2000 before the presidential general election.

B. Future Meetings

November 18, 1998 at 11:00 a.m. in Trenton; and
December 16, 1998 at 11:00 a.m. in Trenton.

Executive Director Herrmann advised the Commission that staff will prepare a 1999 schedule for Commissioner review at the next meeting.

4. Proposed Regulation: Reimbursement of Lobbying Expenditures

At the September meeting, a public hearing was conducted on a proposed regulation that would permit reimbursed benefit-passing expenditures in *de minimis* amounts to be excluded from the Annual Reports of lobbyists. The proposed regulation would permit a lobbyist to exclude identification of a benefit recipient who reimburses the lobbyist for the cost of the benefit if the cost of the reimbursed benefit was not in excess of \$50 above the statutory \$200 calendar year reporting threshold, a total therefore of \$250.00

Four witnesses testified at the hearing, and/or submitted written comments. They were:

- Senator William E. Schluter;
- Assemblyman Leonard Lance;
- Sandra L. Matsen, Vice President, League of Women Voters of New Jersey; and
- Robert A. Woodford.

The proposed regulation is at N.J.A.C. 19:25-20.13 Notice of Lobbying Benefit. A transcript is available regarding the testimony advanced by those who testified.

Chair Martin said that the Commission has three choices: 1) adopt the regulation, 2) allow it to expire, or 3) rescind the regulation.

Vice Chair Linett noted that there was a major misunderstanding about the nature of the proposal.

Vice Chair Linett said that he never did feel that it did much good. He indicated that he preferred to rescind the proposal.

Commissioner Ware said that she has come back to thinking that the responsibility for adjusting the thresholds is legislative. She said that she believed that the regulatory proposal ought to be allowed to expire.

Commissioner Franzese said that she preferred to have the regulation expire.

Chair Martin agreeing with Vice Chair Linett that there has been a misunderstanding about the proposal said that the proposed regulation should be allowed to expire.

Executive Director Herrmann said that any solution must be addressed statutorily.

On a motion by Commissioner Ware, seconded by Commissioner Franzese and passed by a vote of 3-0, the Commission determined that the proposal should not be adopted but should be allowed to expire. Vice Chair Linett abstained.

6. Public Hearing on Proposed Amendment and New Rule Concerning Contributions by Partnership Entities

Chair Martin explained that the hearing was being held to receive public comments on the Commission's proposal to relax contributor signature requirements applicable in the limited circumstance where the partners in a partnership entity contribute funds to a continuing political committee established and controlled by the partnership. The proposal continues to prohibit partnership entities, including limited liability companies, from making political contributions.

A Court Reporter was present to record the proceedings, but no persons offered any testimony.

Legal Director Nagy indicated that the proposal will be ripe for adoption at the November Commission meeting.

7. Gubernatorial Public Financing Legislative and Regulatory Recommendations

Please see the memorandum from Nedda G. Massar, Deputy Legal Director to Frederick M. Herrmann, Ph.D., Executive Director dated October 20, 1998 and entitled, "Gubernatorial Public Financing Legislative and Regulatory Recommendations." This memorandum outlines specific recommendations for legislative and regulatory changes which are derived from past experience in administration of the gubernatorial public financing program and from comments received during the three gubernatorial public financing hearings conducted in February, March, and April, 1998.

The recommendations and Commission discussion regarding legislative action are as follows:

- 1) **The elimination of the statutory requirement that a gubernatorial candidate spend the qualification threshold amount by the qualification deadline.**

Vice Chair Linett and Commissioner Ware agreed that this recommendation was an excellent idea.

- 2) **That the Commission take no position on whether or not out-of-state contributions should be counted toward the public financing qualification threshold or be matched with public funds.**

Regarding the recommendation to take no position on whether out-of-state contributions should be counted toward qualification and matched with public funds, Commissioner Ware expressed support for this recommendation.

Vice Chair Linett said that the Commission has the responsibility to point out the administrative difficulty of enforcing such a policy in regard to entities that do not have resident addresses, such as corporations, unions and associations. He suggested that the Commission reiterate its prior recommendation to prohibit corporate and union contributions.

Commissioner Ware suggested that this point be stressed in the annual report.

- 3) **That the Commission recommend to the Legislature that N.J.S.A. 19:44A-46 be amended to make October 1st the earliest date for a gubernatorial general election debate.**

Vice Chair Linett expressed support for this recommendation. He added however, that the Commission needs statutory authority to determine the date of the debates to prevent all debates from occurring in a short span of time.

- 4) **That the Commission recommend to the Legislature that N.J.S.A. 19:44A-18.1 be amended to require disclosure of occupation and employer information for contributions from individuals in the aggregate in excess of the \$300 disclosure threshold on reports filed by an Inaugural event committee.**

The Commissioners agreed that this recommendation is a sound one.

- 5) **That the Legislature undertake a study to determine whether or not the gubernatorial ballot statements provided in N.J.S.A. 19:44A-37 are an effective means of communicating the candidates' messages to New Jersey voters and to recommend legislative alternatives to the ballot statement program.**

With regard to the question of a need to undertake a study of the ballot statement program, Vice Chair Linett indicated that he had reservations. He said that the only negative involves the cost to the state of the program. He said that this program is one of the only ways that third parties can express their views.

Chair Martin questioned the effectiveness of the ballot program and suggested that it would be important to undertake a study. He added that the issue of the program's cost to the taxpayers should not be dismissed.

Commissioner Ware suggested that it would be more appropriate for the county clerks to propose changes regarding the ballot statement program.

Chair Martin said he was leaning toward the recommendation that a study be undertaken.

Vice Chair Linett questioned the effectiveness of using the Internet. He said the ballot program provides third party candidates with the opportunity to get their message to the voters.

Executive Director Herrmann said that it is the Commission's intention to help the third parties participate in the process. He said a study could determine the most effective way both from the message point of view and the cost point of view to continue this program.

Commissioner Ware said that a study is a good idea as long as it is done with the goal in mind to promote third party candidates.

- 6) **That the Commission reiterate its recommendation, first made at the conclusion of the 1993 gubernatorial election, that the number of required debates for publicly-financed candidates be increased from two to three in the primary and general elections.**

Regarding the recommendation to add a third debate to the requirement vis-à-vis qualifying for public funds, the Commission agreed unanimously that this was a good idea.

- 7) **That the Commission reiterate its recommendation, first made in March, 1992, after experience with the first gubernatorial debates, that the earliest date for a primary election debate be changed from 48 to 44 days before the election.**

The Commission considered the recommendation that the earliest date for a primary date be changed from 48 to 44 days prior to election to be a meritorious one.

- 8) **That in those cases where application of the campaign cost index multiplier to a statutory limit of \$1,000 or less produced an increment of \$50 or less, no upward adjustment be made, and that where no adjustment is required, the base for the next quadrennial adjustment be the unadjusted product from the prior cycle. Further, that the Legislature examine the impact of the rounding provisions in N.J.S.A. 1944A-7.1b on the limits and thresholds in the Act for non-gubernatorial candidates and committees to determine whether or not further modification of the rounding process was warranted.**

The Commission agreed that the above recommendation was an important one.

- 9) **That the general election matching ratio of public-to-private dollars be reduced from two-to-one to one-to-one.**

Commissioner Ware said that perhaps the Commission should address the issue of why the primary matching funds ratio should not be changed to 1:1 as well.

Executive Director Herrmann said that perhaps keeping the 2:1 matching ratio in the general election actually makes more sense. He said candidates would take longer to raise the money in the context of a 1:1 match and would have less flexibility in running their campaigns.

Vice Chair Linett said that candidates would have to spend more time fundraising under the 1:1 match scenario. He said there would be a greater reliance on soft money if public money is restricted.

Commissioner Ware suggested that the 1:1 matching ratio recommendation should be withdrawn. The Commission agreed.

Recommendations to leave statutory provisions unchanged are as follows:

- 10) **Staff believes that the statutory qualification deadline for qualifying to debate must remain unchanged so that the Commission has adequate time in advance of the first primary election debate to determine which candidates are required to participate in the debates and to resolve complex issues of candidate qualification and that the disclosure of contributors should be required; that the first \$69,000 in contributions received by a gubernatorial candidate should not be matched; that the \$210,000 statutory qualification threshold should remain; and that the gubernatorial public financing program should be maintained and strengthened.**

The Commission agreed that the above provisions should remain unchanged.

Proposed regulatory changes are as follows:

- 11) **Proposed public financing regulation. Since the term "unambiguous reference" has not proven helpful in analyzing whether or not the cost of political advertising is allocable against gubernatorial spending limits pursuant to N.J.A.C. 19:25-15.29, staff proposed deleting it from the coordinated expenditures regulation and replacing it with more specific criteria.**

Commissioner Ware agreed that the word "unambiguous" should be eliminated and replaced by specific words that serve as a true test for determining whether or not an advertisement is generic or not. She said she strongly agreed with the recommendation.

Vice Chair Linett said that there should be a presumption that if a state party committee mentions a gubernatorial candidate the effort is coordinated.

Chair Martin said that there should be "rebuttable presumption" language in the regulation when referring to a state party's use of a gubernatorial candidate name or likeness in an advertisement. In other words, in a non-generic advertisement the state party would have the burden of proof to establish that the effort was not coordinated with the gubernatorial candidate.

The Commission indicated it would await a draft of a proposed regulation.

- 12) **That N.J.A.C. 19:25-15.50 be amended to require disclosure of more detailed information on the debate sponsor application concerning debate time and location, distribution of tickets, any fees or admission charges, specific format including any interactive exchanges among candidates, and plans to disseminate information to the public on the date, time, location, and media outlets airing the debate.**

Executive Director Herrmann related to the Commission that Eagleton Institute may be sponsoring a task force to study the debate process. He said that staff would be pleased to provide any technical assistance that is requested.

Chair Martin said that he is against allowing a sponsor of a debate to charge a fee for attending the debate. He said that he would like to see this issue addressed.

Commissioner Ware said that she would like to see the question of a geographical distribution of the debates be discussed.

Commissioner Franzese said that perhaps it would be a good idea to require sponsors to provide a justification when they propose charging a fee for a debate. She said that this issue could be addressed in N.J.A.C. 19:25-15.50 (d).

- 13) That the definition of "expended" in N.J.A.C. 19:25-15.17(c) which relies in part on the text "irrevocably committed by a legally binding commitment" be deleted.**

With regard to expenditure threshold documentation, Counsel Wyse said that he is not sure that it is good to require the campaign to have actually paid for an advertisement rather than simply make a commitment. He said that by doing this the Commission is forcing campaigns to make spending decisions too early. He suggested that perhaps the use of the word "irrevocably" should be deleted.

- 14) That amendments to N.J.A.C. 19:25-15.65 to clarify and limit the parties and relief available in the emergent preelection setting to serious expenditure limit issues be adopted.**

The Commission approved this recommendation.

- 15) That existing regulations that mention the various means of communicating political messages be amended to include electronic media, including but not limited to the Internet.**

The Commission approved this recommendation stating that it was an excellent proposal.

- 16) That N.J.A.C. 19:25-15.24 be amended to prohibit specifically investment of public matching funds.**

The Commission approved this recommendation.

- 17) That a new rule, N.J.A.C. 19:25-10.15, Credit card contributions, be proposed to set forth reporting and recordkeeping requirements for each contribution received by means of a credit card and amend N.J.A.C. 19:25-15.15 to specify the requirements for matching a credit card contribution.**

The Commission approved this recommendation. Chair Martin suggested that the issue of debit cards be addressed.

- 18) That references to lotteries and raffles in N.J.A.C. 19:25-15.16(c) be deleted to remove the impression that the Commission endorses, supports, or has the authority to regulate such events.**

The Commission approved this recommendation.

8. Advisory Opinion Request No. 07-1998

Legal Director Gregory E. Nagy reported that Advisory Opinion Request No. 07-1998 has been withdrawn by Assemblyman Michael Arnone.

9. 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.
- 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.

10. 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 1:00 p.m.

Respectfully submitted,

Frederick M. Herrmann, Ph.D.
Executive Director