



State of New Jersey

ELECTION LAW ENFORCEMENT COMMISSION

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PUBLIC SESSION MINUTES

December 16, 1998

Chair Martin and Commissioner Ware, the Counsel, Senior Staff, and Deputy Legal Director Nedda Gold Massar were present. Commissioner Franzese 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 11:00 a.m. in Trenton, New Jersey.

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

On a motion by Commissioner Ware, seconded by Chair Martin and passed by a vote of 2-0, the Commission approved the Public Session Minutes of November 18, 1998.

3. Executive Director's Report

A. National Ethics News

Executive Director Herrmann reported that the U.S. Supreme Court in November rejected appeals in two campaign finance cases. He noted that one case dealt with a Cincinnati ordinance that established expenditure limits. In that case, he continued, the lower courts had ruled the limits were unconstitutional under the First Amendment. Executive Director Herrmann said that reform advocates had hoped that this case would be the vehicle for reopening the Buckley ruling against expenditure limits.

According to the Executive Director, the second case from Arkansas concerned a voter initiative that reduced contribution limits for statewide officials from \$1,000 to \$300. Executive Director Herrmann stated that a lower court ruling against these limits held that they were “too low to allow meaningful participation in protected speech and association.”

Executive Director Herrmann reported that in another case the 8th U.S. Circuit Court of Appeals upheld a District Court which overturned a law adopted by the Missouri Legislature in 1994. He said that the law capped individual contribution limits to statewide candidates and legislative candidates. Executive Director Herrmann said that the Court, citing the need to show a “compelling interest” in restricting campaign contributions, said that the Legislature’s assertion that large campaign contributions corrupt elections is just speculation.

B. Staff Activities

Executive Director Herrmann said that Systems Administrator Carol Neiman and Associate Data Entry Operator Barbara Counts led this year’s state employee’s charitable campaign for ELEC. He advised the Commission that because of their fine efforts and the generosity of the staff, ELEC once again achieved 100 percent compliance. The Executive Director said that he is very proud of Carol, Barbara, and the entire staff for their support of this worthwhile program.

Executive Director Herrmann advised that Legal Director Nagy and Assistant Legal Director Gail Shanker, with the aid of Legal Assistant Scott Johnkins, have completed Campaign Financing and Lobbying Case Law Summaries. He said that COGEL will be placing the Summaries on its website. Moreover, he continued, the lobbying part will also appear as part of the new edition of the NORCOL Lobbying Guidebook. Executive Director Herrmann said that he has completed much of the Guidebook, which is scheduled for publication in February 1999. He said that the missing part is the section on forms and instructions, which could not be finished until all of the jurisdictions involved had sent their materials. According to Executive Director Herrmann, completed sections include: an essay on lobbying law provisions throughout the nation, background on NORCOL, a contact list for NORCOL members, homepages of NORCOL members, regional lobbying data, a bibliography, and the Case Law Summary.

C. Winter Meeting Schedule

January 27, 1999 at 11:00 a.m. in Trenton;
February 17, 1999 at 11:00 a.m. in Trenton; and,
March 24, 1999 at 11:00 a.m. in Trenton.

Commissioner Ware congratulated Commissioner Franzese, who was not present, on her recent appointment to the Essex County Human Rights Commission.

4. Comments from Public

Vice Chair Linett arrived at this time.

Chair Martin recognized members of the public for comment.

Mr. Charles Garrod of Piscataway, New Jersey addressed the Commission. He advised the Commission about a complaint that he has filed with the investigative staff. He asked the Commission to review its policy with regards to individuals who establish candidate committees on the basis of ELEC regulations, raise and spend money, but never file petitions and become actual candidates. He indicated that it is his belief that the system should not allow this practice and that only actual candidates who file petitions should be able to raise money and draw down against their accounts. Mr. Garrod said that in the case of the individual in question, he has been drawing down against \$65,000 in his account and purchasing such items as telephones and fax machines. Other expenditures have been in the form of contributions and charity.

Ms. Ingrid Reed, representing Eagleton Institute of Politics at Rutgers University, spoke of the Eagleton New Jersey project. She said the project is focussing on getting better campaigns in New Jersey. Ms. Reed said that New Jersey has done a great job with gubernatorial public financing and that Eagleton stands ready to work with staff to improve the process, especially in the area of the gubernatorial debates. She said that the Institute can bring people together to brainstorm and that she would formally like to offer the Institute's assistance to the Commission.

Chair Martin expressed appreciation to Ms. Reed for Eagleton's interest in participating in this process and for its ongoing seminars in the area of elections. He also suggested that these issues be addressed by Eagleton to the Legislature.

Mr. Leonard Flynn addressed the Commission. He said that the issue of prohibiting out-of-state contributions for match with public funds and from counting these contributions toward the qualification threshold is a very serious issue. He said that the Libertarian party will be analyzing what effect a prohibition on out-of-state contributions would have on candidates reaching the public financing qualification threshold. He said that Director of Public Financing Massar will be providing data necessary for the study.

5. Gubernatorial Public Financing Legislative and Regulatory Recommendations

For further information see the Public Session minutes of November 18, 1998, and the memorandum dated December 8, 1998 from Deputy Legal Director Massar to Executive Director Herrmann, entitled "Gubernatorial Public Financing Legislative and Regulatory Recommendations."

The Proposed Amendments to Commission Regulations concerned:

- "Unambiguous reference" test in the "coordinated expenditures" regulation;
- Debate Sponsor Selection;
- Expenditure Threshold Documentation;
- Emergent Preelection Expenditure Limit Complaints;
- Regulation Requiring Return of Funds;
- Electronic Communications;
- Prohibition on Investment of Public Funds;
- Credit Card Contributions; and,
- Removal of References to Lotteries and Raffles.

The Recommendations for Legislative Action include:

- Eliminate the expenditure threshold requirement;
- Take no position on receipt of out-of-state contributions;
- Increase the number of debates;
- Modify the first date for a general election debate;
- Modify the first date for a primary election debate;
- Study the effectiveness of the gubernatorial candidate's ballot statement program;
- Require disclosure of occupation and employer information for Inaugural event contributors;
- Modify the rounding provisions of the quadrennial cost adjustment process; and,
- Withdraw the recommendation to change the general election matching ratio.

The Recommendations to Leave Statutory Provisions Unchanged include:

- That the primary election qualification deadline for receipt of primary election public matching funds remain at the nominating petition filing deadline;
- That 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 contribution qualification threshold remain the same; and,
- That the gubernatorial public financing program should continue.

Vice Chair Linett asked: What is staff's position on rebuttable presumption with regard to complaints about political party spending on behalf of their gubernatorial candidates in so-called independent advertisements? He said that Chair Martin had expressed support for this concept.

Legal Director Nagy noted that in the general election, ELEC's regulations protect the expenditure limit by prohibiting the state committees from making independent expenditures that would benefit their gubernatorial candidate. Under ELEC coordinated expenditure regulations, if a state committee pays for an advertisement, some limited references to the gubernatorial candidate are permitted. However, beyond those specific coordinated expenditure exceptions, a reference to the candidate or the office of the governor in an advertisement would possibly make the cost of the advertisement subject to allocation against the gubernatorial expenditure limit. If the advertisement is not coordinated with the gubernatorial candidates, that is, the advertisement is an independent expenditure by a state committee, the state committee has violated ELEC regulations prohibiting such independent expenditures.

Deputy Legal Director Massar explained that in the 1997 gubernatorial election, the Commission deemed the "Hands" advertisements to be generic party building advertisements that did not contain a reference to a gubernatorial candidate and were not allocable against the gubernatorial expenditure limit. Therefore, neither the coordinated expenditure rule nor the prohibition against independent expenditures on behalf of a gubernatorial candidate applied.

Vice Chair Linett said that when a state committee makes an expenditure that refers to the candidate there should be a presumption of coordination.

Legal Director Nagy suggested that the addition of a "rebuttable presumption" to the coordinated expenditure rule might actually weaken the existing flat prohibition against independent expenditure advertising for a gubernatorial candidate by state parties. The problem is that a rebuttable presumption suggests that a state party is permitted to make an advertisement referring to a gubernatorial candidate as long as the advertisement is not coordinated whereas in fact such a non-coordinated or independent advertisement is flatly prohibited.

Chair Martin suggested that some connection between the coordinated expenditure regulation, N.J.A.C. 19:25-15.29, Coordinated expenditures, and the regulation prohibiting independent expenditures by the parties, N.J.A.C. 19:25-15.28(d), should be made. He said the structure is not working, a concern also noted by Vice Chair Linett.

Staff suggested that staff reexamine the proposal, and the Commission recommended additional technical amendments which will be included in the final draft. Staff indicated it would rework the recommendations to meet the Commission's suggestions.

Executive Director Herrmann noted that campaign financing excesses at the federal level could not happen in New Jersey gubernatorial elections because "soft money" is not permissible and the regulations prohibit independent expenditures by the state parties and leadership committees.

Chair Martin suggested that N.J.S.A. 19:25-15.17(g) be further modified to clarify that the threshold amount be spent no later than the date of the election.

The Commissioners also suggested that the debate sponsor application include the sponsor's plans for interaction with an audience if an audience is contemplated.

Vice Chair Linett requested that the discussion of out-of-state contributions in the Annual Report specifically note the problems inherent in determining whether or not a multi-national or multi-state corporation is a New Jersey or an out-of-state corporation.

6. 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.

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 voted to return to Public Session.

8. Adjournment

On a motion by Vice Chair Linett, seconded by Commissioner Ware and passed by a vote of 3-0, the Commission voted to adjourn at 1:30 p.m.

Respectfully submitted,

Frederick M. Herrmann, Ph.D.
Executive Director