



State of New Jersey

ELECTION LAW ENFORCEMENT COMMISSION

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Vice Chair

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Legal Director

JAMES P. WYSE
Counsel

PUBLIC SESSION MINUTES

February 24, 1999

The Commissioners, Counsel Wyse, 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 12:30 p.m. in the New Somerset County Administration Building, Somerville, New Jersey.

2. Approval of Public Session Minutes of January 27, 1999

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 January 27, 1999. Vice Chair Linett abstained.

3. Executive Director's Report

A. Commission News

Executive Director Herrmann announced sadly that Former Chair William H. Eldridge passed away in late January. According to the Executive Director, he had a distinguished career in Government and academia and was the author of a number of books on business management and law. Executive Director Herrmann said that he was the former Mayor of Berkely Heights, a former Union County Freeholder, an Army Veteran, and a valued member of the faculty at Kean University. The Executive Director mentioned that the former Chair and his wife participated together in various civic projects. Executive Director Herrmann said that all at ELEC will remember him

with fondness. As Chair, he had many accomplishments, including his efforts to take the negativism out of political campaigning.

B. Budget

Executive Director Herrmann said that the Governor has recommended a \$2.5M operating budget for FY-00. He noted that in FY-99, ELEC had received an additional \$1M for electronic disclosure. According to the Executive Director, the Governor's recommendation in the new operating budget includes a \$500,000 increase in ELEC's regular budget to continue the project. Executive Director Herrmann said that computerization is a continuous process and the money will be needed to maintain and upgrade the Commission's new system.

C. National News

Executive Director Herrmann reported that the US Supreme Court has agreed to decide whether or not strict contribution limits are constitutionally valid. He advised the Commission that the Court will be reviewing in the fall the Missouri case which addressed a law that set a \$1,000 contribution limit.

D. Legislative Developments

Executive Director Herrmann said that on January 28, 1999, the Testing-the-Waters bill passed the Senate 36-0. He noted that on February 18, 1999, it passed the Assembly 77-0.

E. Staff Activities

Executive Director Herrmann reported that on February 9, 1999, Legal Director Nagy, Deputy Legal Director Massar, and he attended an Eagleton Institute Campaign Forum seminar on reforming campaign conduct and campaign finance. He explained that the speakers were Paul Taylor of the Alliance for Better Campaigns and Glenn Moramarco of the Brennan Center for Justice at the New York University Law School. Executive Director Herrmann said that they reviewed various federal and state reform efforts and recent court cases. Executive Director Herrmann added that on February 17, 1999, he was interviewed by Karla Roth of News 12 NJ as part of a television series entitled, "State House 2001: The Governor's Race".

The Executive Director advised the Commission that on February 19, 1999, he participated in a discussion on campaign financing with a group of Russian legislators. He said that the program was sponsored by the International Foundation for Election Systems (IFES) in Washington, D.C. According to the Executive Director, the Russians asked detailed questions that applied to their ongoing work with the Duma's Electoral Law Committee. Executive Director Herrmann said that IFES has sent copies of ELEC's Compliance Manual, some white papers, and the COGEL Campaign Financing and Lobbying Bibliography to its Moscow Resource Center.

F. Financial Disclosure Forms

Executive Director Herrmann handed out the Financial Disclosure Forms stating that they must be returned by the Commissioners to the Executive Commission on Ethical Standards and the Governor's Chief Counsel on or before May 15, 1999. He said that the final page of both copies must contain an original signature and an original notarization.

G. Spring Meeting Schedule

March 24, 1999 at 11:00 a.m. in Trenton

April 21, 1999 at 11:00 a.m. in Trenton

May 19, 1999 at 11:00 a.m. in Trenton

Vice Chair Linett commended Executive Director Herrmann on compiling the NORCOL Lobbying Guidebook. He said it is a credit to the agency.

4. Gubernatorial Public Financing Recommendations

At its December 16, 1998 meeting, the Commission reviewed additional staff recommendations for regulatory action concerning the gubernatorial public financing program and suggested further changes to several of the proposals. For detailed information about these proposed regulatory actions and the Commission suggested changes, please see the memorandum from Gregory E. Nagy, Legal Director and Nedda G. Massar, Deputy Legal Director, dated February 16, 1999 to Frederick M. Herrmann, Ph.D., Executive Director and entitled, "Gubernatorial Public Financing Recommendations."

Deputy Legal Director Massar indicated that staff reviewed the independent expenditure and coordinated expenditures rules as directed by the Commission. Staff proposed to make the prohibition on general election independent expenditures by state party committees and legislative leadership committees a separate rule. Staff also recommended that the coordinated expenditures rule be split into two rules, the first defining coordinated expenditures that count toward a gubernatorial candidate's expenditure limit, and the second establishing the exceptions to the coordinated expenditure rule. The proposal also discussed expenditure threshold documentation and debate sponsor selection.

Vice Chair Linett said that with regard to N.J.S.A. 19:25-15.30, Coordinated expenditures, he has been thinking that in addition to a "reference to a gubernatorial candidate" that staff should include a reference to a gubernatorial campaign or election among the criteria for a coordinated expenditure.

Deputy Legal Director Massar said that staff had considered this issue and that the concern is that a "reference to a campaign or election" criterion is too broad and the Commission would be placing itself again in the position of having to make a subjective judgment. She asserted that it was staff's belief that the more measurable references in the draft proposed regulation are more enforceable.

Vice Chair Linett turned his attention to the question of whether or not a party committee could make independent expenditures in the primary. He said that the rule that it cannot make expenditures independent of the gubernatorial candidate in the general election should be extended to the primary election. He said there should be a prohibition against independent expenditures when a party endorses a candidate in the primary.

Legal Director Nagy noted that typically the state party committees do not endorse a particular gubernatorial candidate in a primary election, but could not exclude the possibility.

Commissioner Ware noted that a state committee would have to take a vote to endorse a candidate in a primary election.

Vice Chair Linett asked about the national committees and their ability to make independent expenditures. Vice Chair Linett suggested that the national committees should not be assumed to be independent of the gubernatorial candidate.

Deputy Legal Director Massar said that there is case law to suggest that there may be a First Amendment problem to prohibit independent expenditures by a party in a primary election.

Executive Director Herrmann said that the Commission has plenty of time to act on these regulations. He said that staff would reexamine these issues during the next month.

The Commission directed staff to reexamine independent party expenditures in the primary election and N.J.S.A. 19:25-15.30, Coordinated expenditures.

Chair Martin offered several amendments of a technical nature to the text.

5. Resolution to Go Into Executive Session

On a motion by Commissioner Ware, seconded by Commissioner Franzese 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.

6. Return to Public Session

On a motion by Commissioner Ware, seconded by Commissioner Franzese and passed by a vote of 4-0, the Commission voted to return to Public Session.

7. Adjournment

On a motion by Commissioner Franzese, seconded by Commissioner Ware and passed by a vote of 4-0, the Commission voted to adjourn at 2:30 p.m.

Respectfully submitted,

Frederick M. Herrmann, Ph.D.
Executive Director

FMH/elz