



State of New Jersey

ELECTION LAW ENFORCEMENT COMMISSION

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PUBLIC SESSION MINUTES

October 20, 1999

Chair Martin, Commissioner Franzese, Commissioner Ware, Counsel Wyse, Senior Staff, and Deputy Legal Director Nedda Gold Massar were present. Vice Chair Linett was not present.

Carol Neiman, Director of Systems Administration, conducted a demonstration of the new ELEC Homepage, which featured 1999 primary and general election scanned reports and the searchable contributor database. The Commissioners praised Director Neiman for the advanced capabilities of the system.

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.

2. Approval of Public Session Minutes of September 13, 1999

On a motion by Commissioner Franzese, seconded by Commissioner Ware and passed by a vote of 3-0, the Commission approved the Public Session Minutes of September 13, 1999.

3. Advisory Opinion Request No. 05-1999

In this advisory opinion request, Stephen Q. Cornman, Esq., an attorney representing the Election Fund of James Treffinger, Essex County Executive, asked whether or not that candidate committee may use its campaign funds to pay for the costs of the attendance of the officeholder at the New Jersey State League of Municipalities Conference, and for the costs of a reception the officeholder proposes to conduct at that event.

In addressing the Commission, Mr. Cornman stated that Mr. Treffinger proposes to attend the New Jersey State League of Municipalities Conference on November 17, 1999, in Atlantic City, intending to pay for his applicable registration and lodging costs with funds from his candidate committee. Mr. Cornman said that Mr. Treffinger also plans to use his candidate committee funds to pay for a reception he is planning to conduct at the conference for public officials, staff, and vendors. Mr. Cornman stated that Mr. Treffinger recently declared his candidacy for the United States Senate, which election will be conducted next year. He emphasized that the reception will not be used as a fundraiser, nor will there be "advocacy" of Treffinger's candidacy for the United States Senate. There will be no signs or other Senate campaign paraphernalia displayed.

Mr. Cornman advised the Commission that none of the costs of Mr. Treffinger's attendance at the conference, or for the reception, will be paid for or reimbursed by the Essex County government or by any other public entity.

Mr. Cornman also told the Commission that he was in receipt of a letter from the Federal Election Commission (FEC) that concluded that there would be no violation of federal law if Mr. Treffinger undertakes these activities provided no advocacy of his United States Senate candidacy occurs.

Legal Director Nagy indicated that staff concluded that the use of Mr. Treffinger's candidate committee funds to pay for the reasonable costs of Mr. Treffinger's attendance at the New Jersey State League of Municipalities Conference and to conduct a reception is permissible pursuant to Commission regulations both as ordinary and necessary officeholding expenses and as campaign related expenses.

Chair Martin commented that ELEC and the FEC are two independent agencies and that the decisions of one are not binding on the other.

On a motion by Commissioner Franzese, seconded by Commissioner Ware and passed by a vote of 3-0, the Commission approved the staff recommendation and directed staff to issue the advisory opinion.

4. Executive Director's Report

A. Staff Activities

Executive Director Frederick M. Herrmann informed the Commission that Assistant Compliance Officer Amy Davis has streamlined the lobbyist registration process by creating a program to generate badges electronically.

Executive Director Herrmann mentioned that members from the Executive Commission of Ethical Standards visited the office in September to study the new scanning and imaging system. He said that the Executive Commission is planning to install a similar system. According to Executive Director Herrmann, the Ethical Standard's people were very impressed with the demonstration given by Director of Compliance and Information Evelyn Ford.

The Executive Director noted that Director of Compliance and Information Ford produced the Summary of Financial Disclosure by Lobbyists and Legislative Agents for 1999. He advised the Commission that this massive volume is a complete, computer-generated statistical summarization of ELEC's lobbying reports. Executive Director Herrmann said that it is available to the media and visitors in the public room and that many of its key elements are available on the Commission's web site.

Executive Director Herrmann mentioned that Deputy Legal Director Nedda Gold Massar and he attended a program at the Eagleton Institute of Rutgers University on September 13, 1999. He noted that Professor Alan Rosenthal shared his perspectives on educating citizens and rebuilding trust in government. According to the Executive Director, part of his discussion was about campaign financing reform.

Executive Director Herrmann stated that Director of Compliance and Information Ford and her staff have produced a tape of a recent public information session for distribution to candidates and committees that could view it in ELEC's public room or at an off-site location. He said that the tape is an efficient and inexpensive way to promote compliance with the law.

The Executive Director advised the Commission that a David Wald story appearing in the October 3, 1999, Sunday Star-Ledger made excellent use of Deputy Director Jeffrey M. Brindle's findings in White Paper #13 on how legislative candidates spend their money. He added that Herbert E. Alexander, the senior campaign financing scholar in the country, is among the many people who have praised Deputy Director Brindle's work. According to the Executive Director, Dr. Alexander said that ELEC remains one of the few ethics agencies in the nation that produces such analyses.

Executive Director Herrmann announced that on October 7, 1999, Legal Director Gregory E. Nagy, Deputy Legal Director Nedda Gold Massar, and Assistant Legal Director Gail Shanker attended a reception celebrating the 20th Anniversary of the Office of Administrative Law.

B. Recomputerization

Executive Director Herrmann stated that ELEC has helped the Governor to keep her promise to the people of New Jersey for electronic disclosure of campaign financing information by introducing a revolutionary tool. He said that responding to Governor Whitman's call in her 1998 budget message to improve government through the use of technology and to make government more accountable to the public, the Commission has implemented, with the support of the Governor and both parties in the Legislature, the Governor's proposal to bring campaign financial disclosure to the Internet. The Executive Director said that electronic disclosure on the Commission's new web site (www.elec.state.nj.us) activated on October 6, 1999, will include the following elements:

- Viewable campaign financing disclosure reports from May, 1999, forward for gubernatorial, legislative, county, local, and school district elections.
- A search mechanism for finding contributors to gubernatorial and legislative candidates as well as political party committees and legislative leadership committees.
- A downloadable data base so that citizens may arrange contributor data in a variety of formats and electronically file reports (a voluntary pilot project includes five percent of the legislative candidates).

Executive Director Herrmann said that in the future, staff plans to expand its efforts to provide increasingly more data to the public and expand the number of candidates filing electronically. He said that for now, staff would appreciate all comments and suggestions for improvement that the Commissioners, public, media, and campaign participants would care to make. The Executive Director suggested that the Governor's computer initiative is an on-going project that will continue to be improved, upgraded, and enhanced.

Using phraseology invented by Deputy Legal Director Massar, the Executive Director said that the Commission is no longer simply a **storehouse of information** but has become **an electronic marketplace**.

Executive Director Herrmann informed the Commission that the health of our democracy depends on a fully informed citizenry and that the use of modern, computer technology will promote open and honest government in New Jersey as the Garden State enters the next millennium. He thanked Director of Systems Administration Neiman, Director of Compliance and Information Ford, and Deputy Legal Director Massar for all of their fine work and extra efforts in bringing the Governor's computer initiative to fruition.

C. Future Meeting Schedule

November 17, 1999 at 11:00 a.m. at Seton Hall University Law School

December 15, 1999 at 11:00 a.m. in Trenton

5. Advisory Opinion Request No. 04-1999

In this advisory opinion request, Jordan Lieberman, Campaign Manager for the Election Fund of E. Martin Davidoff, inquired as to whether or not this candidate committee could accept a contribution from an estate.

Mr. Lieberman advised staff that the contribution is from the estate of the candidate's mother. He stated that although there is a will, no specific bequest for the contribution had been made and it is the executor of the estate, who is the candidate's brother, who has indicated he wishes to make the contribution to the candidate from his mother's estate. According to Mr. Lieberman, none of the beneficiaries has any objection.

Staff recommended that the Commission adopt a policy similar to that adopted by the Federal Election Commission (FEC). Under the FEC rule, the contribution must be reported as being made by the decedent's estate, subject to the contribution limit applicable to the decedent as an individual making a contribution to a candidate committee. An alternative policy suggested by staff holds that the Commission might set forth that the candidate committee can accept a contribution from an estate, but that the committee treasurer first must determine whether or not the executor is making the contribution pursuant to a specific bequest in a will. Under that approach, the treasurer would be required to reject a contribution from the estate if definitive evidence of the testator's intent was not produced.

Chair Martin said that he would support the staff's recommendation as long as the estate is admitted to probate at the time the contribution is made. He asked: what happens if the probate takes years? Can a contribution be made from the estate each year?

Legal Director Nagy said that it was his belief that an estate could make annual contributions provided the contributions are in compliance with contribution limits.

Counsel Wyse said that he differed with parts of the staff's recommendation. He said that when there is no bequest in a will to make a contribution from the assets of the estate, the result is a situation whereby the beneficiaries are making the decision. They can in effect double their contribution, thereby circumventing contribution limits.

Commissioner Franzese said that three conditions should be met: (1) that the contribution is consistent with the decedent's intent, (2) that the will is in probate, and (3) that contribution limits are observed.

Legal Director Nagy said that a practical concern is the burden placed upon a treasurer to obtain this information.

Chair Martin said that a statement from the Executor, which states that there is a bequest in the will and that the will is in probate should accompany the contribution. He said that the treasurer would be allowed to rely on the statement. Chair Martin said that in the absence of such documentation the contribution must be rejected.

On a motion by Commissioner Ware, seconded by Commissioner Franzese and passed by a vote of 3-0, the Commission approved the Chair's recommendation and directed staff to issue the advisory opinion permitting a candidate committee to accept a contribution from an estate if the contribution is accompanied by the executor's statement that there is a specific bequest to make a contribution and if the will has been admitted to probate.

6. Investment of Campaign Funds

At its July meeting, the Commission issued Advisory Opinion No. 02-1999 in which it ruled that a candidate could establish accounts for investment of their campaign funds.

The opinion contained the caveat that pending further study "...the Commission is inclined to be against investment in more speculative securities such as stocks and bonds." The Commission then asked staff to report at the October meeting on rules in other

jurisdictions. Research Assistant Steven Kimmelman summarized a wide range of positions taken by the Federal Election Commission (FEC) and other election commissions in a memorandum submitted to the Commission. They are:

- Establish an absolute ban on investment of candidate committee funds and restrict them to deposit into an account in a banking institution authorized to do business in New Jersey;
- Permit investment of campaign funds only in perceived low-risk instruments that will lessen the impact of inflation, such as possibly a certificate of deposit, a money market fund, or securities specifically approved for investment by fiduciaries of trusts; or,
- Do not restrict investment options as long as all reporting requirements are complied with and personal use of conflict of interest uses are prohibited.

In a word, staff believed that some accommodation for inflationary pressures on campaign funds held for long periods of time is appropriate, but has reservations that unrestricted investment of such funds in highly speculative securities is appropriate.

Commissioner Ware said that her concern was for the average contributor who does not realize that candidates hold onto large sums of money. Contributors expect their contributions to be spent during the campaign and not invested in highly speculative stocks.

Commissioner Ware said that in this day, the Commission should not be so restrictive as to allow funds to be only deposited in a bank account. She suggested that the Commission allow the investment of campaign funds but only in FDIC insured investments such as CD's.

Commissioner Franzese said that it would be inappropriate to invest campaign funds in speculative instruments.

Counsel Wyse stated that the statute does say deposit in a bank. He suggested that the Commission adhere to the letter of the law until the Legislature acts and allows other types of investments.

The Commission directed staff to draft a regulation that permits the investment of campaign funds, but only in FDIC or FSLIC insured investments.

7. Resolution to Go Into Executive Session

On a motion by Commissioner Franzese, 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.

8. Adjournment

On a motion by Commissioner Ware, seconded by Commissioner Franzese and passed by a vote of 3-0, the Commission voted to adjourn at 12:30 p.m.

Respectfully submitted,

Frederick M. Herrmann, Ph.D.
Executive Director

FMH/elz