



State of New Jersey

ELECTION LAW ENFORCEMENT COMMISSION

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PUBLIC SESSION MINUTES

July 27, 2004

Commissioner Tober, Commissioner English, Commissioner Burstein, Commissioner Davis, and Senior Staff were present. Counsel Wyse was absent.

1. Open Public Meetings Statement

Commissioner Tober 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. The Commissioners and staff welcomed a new commissioner, Judge Theodore Z. Davis.

2. Approval of Public Session Minutes of June 22, 2004

On a motion by Commissioner Tober, seconded by Commissioner English and passed by a vote of 3-0 with Commissioner Davis abstaining, the Commission approved the Public Session Minutes of June 22, 2004.

On a motion by Commissioner English, seconded by Commissioner Burstein and passed by a vote of 3-0 with Commissioner Tober abstaining, Commissioner Tober was named Acting Chair due to the resignation of former Chair Ralph V. Martin effective June 25th.

3. Executive Director's Report

A. Staff Activities

Executive Director Herrmann reported that Donielle McBride, a graduate of Hampton University in Virginia, has been working as a summer intern reporting to Deputy Director Brindle. According to the Executive Director, she has been studying

campaign financing and lobbying websites across the nation searching for ways to continue improving and upgrading the Commission's highly regarded homepage.

Executive Director Herrmann mentioned that on June 25, 2004, Assistant Compliance Officer Titus Kamal staffed a seminar for the New Jersey AFL-CIO Cope at the Rutgers University Labor Education Center.

B. Legislative Developments

The Executive Director announced that on June 24, 2004, the Senate passed, by a vote of 40-0, A-26 (Roberts/Sires et al.), which increases ELEC's annual operating budget by \$2 million to \$5 million and provides a one-time \$50 assessment on lobbyists for the website. Executive Director Herrmann noted that A-26 is the main funding mechanism for the parts of the General Assembly's 25-Point Ethics Reform Plan that impact ELEC. He said that the bill is currently on the Governor's desk waiting for his signature.

C. An Overview of the 25-Point Ethics Reform Plan

Executive Director Herrmann stated that ELEC's operations are impacted by 17 bills contained in the Ethics Reform Plan. He said that the Legislature passed:

- **Pay-to-Play Fundraising Restrictions.** According to Executive Director Herrmann, no-bid governmental contractors with contracts in excess of \$17,500 are prohibited from making campaign contributions in the year before and during a contract. Executive Director Herrmann noted that the ban applies separately at four governmental access points:
 - the executive branch,
 - the legislative branch,
 - the county level, and
 - the municipal level.

The Executive Director stated that contractors may not give to candidates and political party committees at the same access point as the contract. Executive Director Herrmann mentioned that an anti-wheeling provision banning a county political party committee from contributing to other county political party committees during the first half of each calendar year in which the primary is held was also enacted.

- **Clean Elections.** The Executive Director reported on the clean elections legislation under which a pilot project for the general election 2005 will take place in two selected legislative districts. Under the clean elections law, he said, assembly candidates will qualify for public dollars after raising a large number of small contributions. Executive Director Herrmann advised the Commission that the project is based on programs

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used in Arizona and Maine. The Executive Director added that this legislation, along with the ELEC appropriation, is the only part of the Reform Plan that has not yet been signed by the Governor into law.

- **Other Reforms.** Executive Director Herrmann said that the reforms also require reporting of all contributions over \$300 (instead of the current \$400) and of all cash contributions as well as registering and reporting by professional campaign fundraisers. Executive Director Herrmann mentioned that other reforms require campaigns to politically identify recorded telephone calls and prohibit the solicitation of campaign contributions on State property. The Executive Director added that additional reforms also call for: reviewing ELEC's highly regarded website for the purpose of recommending further improvements, training of campaign and organizational treasurers, increasing penalties, and expanding the 48-hour expenditure reporting requirement. Executive Director Herrmann said that among the reforms impacting lobbyist regulation were:

- Grassroots lobbying reporting;
- Barring lobbying for a year by former governors, legislators, and department heads;
- Redefining lobbying to include: contracts, permits, penalties, and client assistance on them;
- Random auditing of lobbyists; and,
- Prohibiting contingency fees.

- **New Funding Sources.** Executive Director Herrmann informed the Commission that the legislative package also included new funding sources. He said that these funding sources include:

- A \$2 million addition to ELEC's \$3 million annual operating budget (not yet enacted);
- A \$100 increase in the annual \$325 lobbying fee;
- A onetime \$50 assessment on lobbyists for the website (not yet enacted); and,
- A professional campaign fundraiser fee.

He said that the package also includes a call for:

- Recommendations from a website enhancement study and
- Review of the Clean Elections Pilot Project (not yet enacted),

both of which could lead to additional funding.

- **Planning for Implementation of the New Laws.** Executive Director Herrmann advised the Commission of plans to implement the new law. He said that in order to implement these sweeping changes to the campaign finance and lobbying laws, staff is planning to rely on procedures developed in 1993 for the major changes that occurred in the Campaign Finance Act at that time. He mentioned that the 1993 plan was comprised of three phases.

According to Executive Director Herrmann, phase one included sending all filing entities a “fact sheet” explaining the new law and how the Commission would proceed in implementing it. He said that since the 2004 changes affect lobbying as well as campaign finance, two fact sheets will be created. Executive Director Herrmann noted that under this phase, the Commission collected written questions concerning the new law in lieu of formal advisory opinions to allow the accelerated organization of issues to create new regulations.

The Executive Director stated that phase two consisted of the drafting of new regulations and that staff will proceed with this phase by doing regulations in step with the various effective dates of the new laws. Executive Director Herrmann advised the Commission that phase three involved the designing of new forms, the writing of new manuals, and the answering of advisory opinions on the basis of the new regulations. He added that during this phase, staff will also be making software changes that were not a concern in 1993 prior to the existence of electronic filing and a website.

Executive Director Herrmann said that the only responsible way to deal with this situation is to phase the new laws in deliberately over a reasonable period of time and that good planning will be absolutely essential. He noted that as in 1993, each phase will be done sequentially in logical order with the goal of giving filing entities as much guidance as possible as quickly as possible. In sum, said Executive Director Herrmann, fact sheets come first; followed by regulations; and then followed by new forms, manuals, and software. He said that ELEC cannot do everything at the same time – its new responsibilities must be handled in a rational, carefully planned way. Executive Director Herrmann allowed that, if the plan is followed, the Commission will be able to accomplish the purposes of the new campaign financing and lobbying laws in the best and fairest manner. The Executive Director stated, moreover, that when A-26 is enacted, the Commission will be able to double its present professional staff as well as add a number of clerical and data entry positions. The Executive Director said that consequently, planning will also be done by staff for: more space, the creation of new positions, and some restructuring of current ones.

- **Initial Steps to Implement the New Laws.** According to Executive Director Herrmann, staff has already begun the implementation process and that preliminary implementation dates have been set for the various bills and a preliminary schedule for drafting regulations has started to take shape. He stated that staff has mailed and placed on the website letters to candidates running in upcoming elections and a letter to lobbyists explaining that: the Commission has started the implementation process; lobbyists should continue to follow the pre-reform law for the time being; and that ELEC will be getting the lobbyists “fact sheets” with details about the new laws, Commission progress with regard to regulations and forms, and coming responsibilities. He noted that copies of all the new laws were also placed on the website. Finally, said Executive Director Herrmann, the regulatory process is actually starting at this meeting. At this point, the Executive Director thanked ELEC’s Directors for “rolling up their proverbial sleeves” and getting the Commission off to a fine start in a complex process.

D. Fall Meeting Schedule

- August 24, 2004 at 11:00 a.m. in Trenton (if needed);
- September 22, 2004 at 11:00 a.m. in Trenton;
- October 19, 2004 at 11:00 a.m. in Trenton; and,
- November 16, 2004 at 11:00 a.m. in Trenton.

4. Public Hearing Concerning Proposed New Rules and Amendments to Gubernatorial Public Financing Regulations

Acting Chair Tober announced that a public hearing was being conducted to solicit public comment on proposed amendments and new rules concerning gubernatorial public financing in the primary and general elections.

A court reporter was present to record the Public Session discussion. Assemblyman William Baroni (R-14) appeared to offer testimony. The transcript will be available to the public upon request.

5. Proposed Amendments to Implement Inflationary Campaign Cost Adjustments

Legal Director Massar stated that every four years the Commission is required by law to conduct a study of the impact of inflation on election costs and to make adjustments to the various reporting, contribution limit, and other thresholds and ceilings in the New Jersey Campaign Contributions and Expenditures Reporting Act, N.J.S.A. 19:44A-1 et seq. (hereafter, the Campaign Reporting Act or Act), no later than December 1st. The formula to be used for calculating these adjustments is described in the statute, she added.

The new thresholds and limits are being proposed through the regulatory process. Legal Director Massar said that the proposed regulations are divided into two parts. The first part addresses non-gubernatorial candidates and committees; the second addresses

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gubernatorial public financing. She said that the method used to determine the inflation rate and arrive at the cost adjustment figures is explained in the rulemaking proposal that was circulated to the Commissioners and that will be described in the statutorily-mandated Cost Index Report to be prepared by staff for Commission review in the fall.

Legal Director Massar noted that if the proposed regulations are approved by the Commission at this meeting, staff will file the proposal with the Office of Administrative Law (OAL) in the Department of State and the proposal will be published in the September 7, 2004 edition of the New Jersey Register. A public hearing will be conducted at either the September or October, 2004 Commission meeting. The proposal containing the gubernatorial rules will become effective upon publication of the adoption in the New Jersey Register in late November or December. The proposal affecting non-gubernatorial candidates and committees will become operative on January 1, 2005.

Legal Director Massar drew the Commission's attention to the charts containing new figures for thresholds and limits. The charts are attached.

2005 Gubernatorial Cost Index Adjustments

Limit/Threshold	1997 Amount	Cost Index Multiplier	Sum	2005 Rounded Amount (pursuant to <u>N.J.S.A.</u> <u>19:44A-7.1b</u>)
<i>Contribution Limit</i>	\$ 2,600.00	1.1385	\$2,960.10	\$3,000.00
<i>Qualification Threshold</i>	\$ 260,000.00	1.1385	\$296,010.00	\$300,000.00
<i>Amount Not Matched</i>	\$ 84,000.00	1.1385	\$95,634.00	\$96,000.00
<i>Primary Public Fund Cap</i>	\$2,300,000.00*	1.1385	\$2,618,550.00	\$2,700,000.00
<i>Primary Expenditure Limit</i>	\$3,800,000.00*	1.1385	\$4,326,300.00	\$4,400,000.00
<i>General Public Fund Cap</i>	\$5,600,000.00	1.1385	\$6,375,600.00	\$6,400,000.00
<i>General Expenditure Limit</i>	\$8,400,000.00	1.1385	\$9,563,400.00	\$9,600,000.00

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*Staff recommends that the Commission use the \$2.3 million public funds maximum established in N.J.A.C. 19:25-16.22(b) for the 2001 primary election as the basis for the 2004 adjustment of the primary election public fund cap; see N.J.A.C. 19:25-16.22(b), as adopted at 32 N.J.R. 4117(a) (November 20, 2000). Staff does not recommend using the \$3.7 million public funds cap, established pursuant to P.L. 2001, c.73 (eff. April 23, 2001), because the higher public fund amount was enacted in response to the change in the 2001 primary election date from June 5, 2001 to June 26, 2001. Similarly, staff recommends using the \$3.8 million expenditure limit, established in N.J.A.C. 19:25-16.9(a)3 for the 2001 primary election, as the basis for the 2004 adjustment and does not recommend using the \$5.9 million expenditure limit enacted in April, 2001.

**2005 NON-GUBERNATORIAL CONTRIBUTION LIMIT AMOUNT
ADJUSTMENTS**

2001 CONTRIBUTION AMOUNT	COST INDEX MULTIPLIER	SUM	2005 ROUNDED AMOUNT (pursuant to <u>N.J.S.A.</u> <u>19:44A-7.1b</u>)
\$2,200.00	1.1385	\$2,504.70	\$2,600.00
\$7,200.00	1.1385	\$8,197.20	\$8,200.00
\$25,000.00	1.1385	\$28,462.50	\$29,000.00
\$37,000.00	1.1385	\$42,124.50	\$43,000.00
\$72,000.00	1.1385	\$81,972.00	\$82,000.00

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2005 Adjustments for Non-gubernatorial Candidates and Committees

Limit/Threshold	2001 Amount	Cost Index Multiplier	Sum	2005 Rounded Amount (pursuant to <u>N.J.S.A. 19:44A-7.1b</u>)
<i>Political Committee Reporting Threshold</i>	\$1,500.00	1.1385	\$1,707.75	\$1,800.00
<i>Continuing Political Committee Reporting Threshold</i>	\$3,700.00	1.1385	\$4,212.45	\$4,300.00
<i>Contribution Reporting Threshold</i>	\$400	N/A ¹	N/A ¹	\$300.00
<i>48-Hour Notice/Contribution Threshold</i>	\$800.00	1.1385	\$910.80	\$1,000.00
<i>48-Hour Notice/Expenditure Threshold</i>	\$800.00	1.1385	\$910.80	\$1,000.00
<i>Joint Candidates Committee Thresholds</i>	\$5,800.00 \$8,500.00	1.1385 1.1385	\$6,603.30 \$9,677.25	\$6,700.00 \$9,700.00
<i>Form A-3 Threshold</i>	\$3,700.00	1.1385	\$4,212.45	\$4,300.00
<i>Form A-1 Threshold & School Board/Write-in Threshold</i>	\$3,000.00	1.1385	\$3,415.50	\$3,500.00
<i>Independent Expenditure Threshold</i>	\$800.00	1.1385	\$910.80	\$1,000.00
<i>Section 20.1 Penalties</i>	\$4,300.00/ \$8,500.00	N/A ²	N/A ²	\$6,000.00/ \$12,000.00
<i>Section 22 Penalties</i>	\$4,300.00/ \$8,500.00	N/A ²	N/A ²	\$6,000.00/ \$12,000.00
<i>Pro rata Return of Contributions</i>	\$400	N/A	N/A	\$300.00

¹Change mandated by P.L. 2004, c.28.

²Change mandated by P.L. 2004, c.32.

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Additional recommendations for regulatory amendments include reducing the contribution reporting threshold to \$300 and increasing the maximum penalty amounts to conform to new legislation.

On a motion by Commissioner Burstein, seconded by Commissioner Davis and passed by a vote of 4-0, the Commission approved the proposed rulemaking and directed staff to file the proposal with the OAL.

6. Resolution to go into Executive Session

On a motion by Commissioner Burstein, seconded by Commissioner English and passed by a vote of 4-0, the Commission resolved to go into 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 not later than seven business days after mailing to the named respondents.
- 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 not later than seven business days after mailing to the named respondents.
- C. A report on requests from the public for investigations of possible violations, which report will not become public in order to protect the identity of informants and maintain the integrity of investigative procedures and priorities. However, any complaint alleging violations, which complaint may be generated as a result of a request for investigation, will become public not later than seven business days after mailing to the named respondents.

7. Return to Public Session

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

8. Adjournment

On a motion by Commissioner Burstein, seconded by Commissioner English and passed by a vote of 4-0, the Commission voted to adjourn at 1:30 p.m.

Respectfully submitted,

Frederick M. Herrmann, Ph.D.
Executive Director