



State of New Jersey

ELECTION LAW ENFORCEMENT COMMISSION

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PUBLIC SESSION MINUTES

September 13, 2005

Chair English, Vice Chair Tober, Commissioner Burstein, Commissioner Davis, Counsel Wyse, and Senior Staff were present.

1. Open Public Meetings Statement

Chair English 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 July 19, 2005 and August 25, 2005

On a motion by Commissioner Davis, seconded by Commissioner Burstein and passed by a vote of 4-0, the Commission approved the Public Session Minutes of July 19, 2005 and August 25, 2005.

3. Executive Director's Report

A. Council on Governmental Ethics Laws (COGEL) Conference

Executive Director Herrmann announced that this year's conference is in Boston from December 4 to December 7, 2005. He said that ELEC usually sends up to five people and asked the Commissioners to advise whether or not any were interested in attending.

B. Northeastern Regional Conference on Lobbying (NORCOL)

The Executive Director reported that on July 27, 2005, Compliance Director Evelyn Ford and he attended the annual conference of NORCOL in Uncasville, Connecticut. Executive Director Herrmann noted that the session was held in

conjunction with the annual meeting of the Eastern Regional Conference of the Council of State Governments. He indicated that ethics officials from seven states and eight agencies in the northeast attended as well as a number of lobbyists.

Executive Director Herrmann stated that the featured speaker was Edward C. Wallace, a New York State lobbyist, who spoke on "Why Lobbyists Should Love Enforcement of Lobby Laws." The Executive Director advised the Commission that during the roundtable discussion of "Hot Topics in Lobbying," he reviewed the seven new lobbying laws that were part of last year's Ethics Reform Package.

The Executive Director also highlighted ELEC's newly proposed lobbying regulations and emphasized the importance to "true reform" of the adequate funding the Commission received to implement the new laws. He concluded his remarks by thanking Compliance Director Ford, Legal Director Massar, and Director of Systems Administration Carol Neiman for all of their wonderful work to implement the new legislation.

Executive Director Herrmann informed the Commission that Compliance Director Ford did an outstanding job with the forms and compliance manuals, Legal Director Massar with regulations, and Director of Systems Administration Neiman with the website.

In an important announcement, Executive Director Herrmann mentioned that during the business meeting, Compliance Director Ford was voted the new President-elect of NORCOL.

C. Staff Activities

Executive Director Herrmann reported that the California Voter Foundation and the Center for Governmental Studies will be republishing Deputy Director Brindle's excellent review from the COGEL Guardian of the foundation's annual, national survey of ethics agency websites. He added that on July 26, 2005, Legal Director Massar addressed a group of high school students from the Governor's School on Public Issues about the work of the Commission.

Executive Director Herrmann noted that on August 2, 2005, Legal Director Massar and he met with the Chief of Staff of the Department of the Treasury, Acting Governor Codey's Deputy Chief Counsel, and three senior members of the department's staff to discuss the implementation of the Pay-to-Play law's local provisions which take effect on January 1st, 2006. He indicated that he made a presentation emphasizing that the new law is primarily a procurement law not a campaign finance one. The Executive Director stated, moreover, that ELEC's expertise is in campaign finance while the Treasury's is in contracting.

At this point, the Executive Director complimented the department on its outstanding work administering the State level portions of Pay-to-Play.

According to Executive Director Herrmann, it was determined that, for the proper enforcement of the local campaign finance provisions of the new law, ELEC would need a determination by the relevant local official of when a contract is in effect similar to the determination that the Treasury now makes with the State portion. He suggested that a uniform state procedure and forms for local governments to use would be helpful. Executive Director Herrmann said that the Treasury officials believed that the Division of Local Government Services in the Department of Community Affairs might be able to guide local governments in their administration of Pay-to-Play contracting procedures. He added that Treasury will continue to deal with State level contracting, local governments will deal with local level contracting, and ELEC will administer the campaign finance aspects of the Pay-to-Play law at both levels. Executive Director Herrmann advised the Commissioners that they will be reviewing proposed Pay-to-Play regulations during the fall.

Executive Director Herrmann reported that on August 5, 2005, Assistant Compliance Officer Titus Kamal made a presentation on ELEC candidate campaign finance regulations at the 9th Annual New Jersey State AFL-CIO Labor Candidates School.

The Executive Director informed the Commission that the staff added eight gubernatorial public financing reports produced between 1977 and 1997 to the ELEC website. He said that over the years, the Commission has received numerous requests for these important collections of data and information. The Executive Director noted that it is important that this material should be preserved and made convenient to its many users. He expressed thanks to Administrative Assistant Elbia Zeppetelli and Executive Secretary Maureen Tilbury for their wonderful efforts over the summer to complete this highly useful project.

D. New Space Update

Executive Director Herrmann announced that the Commission moved into its new space on the eighth floor just before Labor Day weekend. He stated that he will give the Commissioners a tour of the new space at the October meeting including a demonstration by Director of Systems Administration Neiman of the enhanced website in the new high tech training room.

E. Introduction of New Staff Members

Executive Director Herrmann introduced to the Commissioners the following new staff members:

- Mathew Krinsley, Assistant Review Officer
- Christopher Mistichelli, Assistant Review Officer
- Igor Milewski, Clerk
- Meggan Mathies, Clerk

F. Fall Meeting Schedule

- September 20, 2005 at 11:00 a.m. in Trenton;
(Lobbying Regulations Public Hearing)
- October 18, 2005 at 11:00 a.m. in Trenton; and,
- November 15, 2005 at 11:00 a.m. in Trenton.

4. 2005 Clean Elections Program Report

Legal Director Massar reported to the Commission on activities by staff, undertaken since the August 25, 2005 Commission meeting, to implement the New Jersey Fair and Clean Elections Pilot Project. She said that at its August 25th meeting, the Commission authorized issuance of Advisory Opinion 03-2005 to Assemblymen Louis Greenwald and Samuel Thompson, candidates seeking certification as Clean Elections candidates in the Sixth and Thirteenth Legislative Districts, respectively. The Advisory Opinion authorized the use of a “check card process” to collect qualifying contributions.

Legal Director Massar stated that following the meeting, staff worked with members of the Office of Treasury Technology to design and develop the website, managed by the Department of Treasury, on which contributors may make \$5 and \$30 on-line qualifying contributions to the Clean Elections candidates. She indicated that the website has been implemented and praised the Treasury Department for its cooperation.

Legal Director Massar reported that on September 6, 2005, the Commission received a letter from Thirteenth District Candidates William E. Flynn and Michael Dasaro praising the Clean Elections Pilot Project as a way to “help eliminate the corrupting influence of big money in politics,” but rescinding their Declarations of Intent to participate in the program. She said that at the request of the two candidates, staff contacted the Department of Treasury to request that the candidates’ names be removed from the on-line contribution website.

Staff explained that the Clean Elections Act is silent with regard to a candidate’s withdrawal from the Pilot Project prior to certification by the Commission as a Clean Elections candidate. Staff recommended that the Commission acknowledge receipt of the letter from Candidates Flynn and Dasaro rescinding their Declarations of Intent to be certified as Clean Elections candidates. She said that staff further recommends that the candidates be advised that they must file a report of any seed money they received and that they must forward to the Commission for deposit into the Clean Elections Fund and report any qualifying contribution checks or money orders remaining in their possession.

Chair English asked about the money trail regarding Flynn and Dasaro.

Legal Director Massar explained that there are no mandatory dates for filing a Clean Elections submission. Therefore the candidates were not required to file any report until an official submission was made, and Candidates Flynn and Dasaro had therefore not filed a report. She said that staff is recommending that Candidates Flynn and Dasaro provide the Commission with a report and submit remaining contributions to the Clean Elections Fund.

Commissioner Burstein asked whether or not the withdrawal of these two candidates was due to a flawed district selection process.

Executive Director Herrmann said that the program, including the district selection process, will be evaluated following the election by the New Jersey Citizens' Clean Elections Commission.

On a motion by Commissioner Davis, seconded by Commissioner Burstein and passed by a vote of 4-0, the Commission accepted the rescission letter from Candidates Flynn and Dasaro and directed staff to advise the candidates to return remaining qualifying contributions and to file a report of seed money contributions and expenditures.

Chair English stressed the fact that the Commission let the public know what it is doing in all respects with regard to the Clean Elections program.

5. 2005 General Election Gubernatorial Public Financing Program Report

Legal Director Massar advised the Commission that on the September 1st deadline, Candidates Hector Castillo and Jeffrey Pawlowski filed documentation to qualify for receipt of public funds or to participate in the public financing debates.

Candidate Hector Castillo

Candidate Castillo filed the Gubernatorial Candidate Matching Fund Claim (Form P-1), which reported that he had raised contributions eligible for match, totaling \$318,450. Staff review of documentation filed by Candidate Castillo, including copies of contracts and invoices, indicates that at least \$300,000 has been committed to be spent in the 2005 general election.

As the result of staff review and subsequent remedial action by the candidate, staff determined that Candidate Castillo reported contributions eligible for match totaling \$298,450, an amount that is \$1,550 less than the \$300,000 contribution qualification threshold or under one percent of the \$300,000 qualification threshold. During the review of contributions, staff noted that Candidate Castillo deposited the \$25,000 maximum permissible amount of his own funds in his campaign depository. Commission regulations currently provide that a gubernatorial candidate may not count more than \$3,000 of his or her own funds in determining if the candidate is eligible to receive public matching funds.

Legal Director Massar said that as a result of staff review, Candidate Castillo's Form P-1 contains \$298,450 in contributions eligible for match, exclusive of his own personal funds. She noted that the statutory \$300,000 contribution qualification threshold is a test of a candidate's viability in a statewide campaign for the office of Governor. She said that the threshold serves the salutary purpose of limiting distribution of public money to only those candidates who can demonstrate that they have public support in the form of contributions from multiple contributors. Legal Director Massar indicated that staff believes that Candidate Castillo's Form P-1 demonstrates that he has significant public support and that his failure to meet the \$300,000 threshold by less than half of one percent should not preclude him from receipt of public funds.

According to Legal Director Massar, the public policy of the gubernatorial public financing program is to permit “persons of limited financial means . . . [to] seek election to the State’s highest office.” N.J.S.A. 19:44A-27. And that N.J.S.A. 19:44A-42 further provides that the public financing provisions “shall be construed liberally and applied so as to promote the purposes expressed herein.” She stated that staff believes that the \$1,550 deficit in contributions received by Candidate Castillo is *de minimis* in relation to the \$300,000 threshold, and therefore, recommends that the Commission construe the qualification threshold liberally to permit Candidate Castillo to participate in the 2005 general election public financing program.

Jay Boucher, representing gubernatorial candidate Jeffrey Pawlowski, asked to be heard. He urged the Commission to approve Candidate Castillo’s qualification to receive public funds and to participate in the public financing debates.

With regard to the Castillo qualification issue, Commissioner Burstein stated that he was inclined to construe the threshold guideline liberally. He said that the threshold is adjusted every four years by statute, indicating a desire on the part of the Legislature to provide flexibility in terms of interpreting the law.

Commissioner Davis said that he did not believe that a liberal interpretation was appropriate in terms of applying the \$300,000 qualification threshold. He said that by taking this course, the Commission was embarking on a slippery slope. “Where do you draw the line,” he said, “at \$12,000 below or \$50,000?” Commissioner Davis said that the Commission does not have the authority to change the threshold at this point in time.

Chair English suggested that the Commission view the question in the context of the regulatory process. She asked what discretion the Commission has to change its regulations?

Legal Director Massar said that the Commission has authority to use the regulatory process to amend its own regulations and is statutorily required to adjust the qualification threshold every four years.

On a motion by Commissioner Burstein, seconded by Vice Chair Tober and passed by a vote of 3-1, the Commission determined that Candidate Castillo was qualified to receive public matching funds. Commissioner Davis opposed the motion.

Candidate Jeffrey Pawlowski

Legal Director Massar commented on Candidate Jeffrey Pawlowski, who on September 1, 2005, filed the Gubernatorial Candidate Matching Fund Claim with the following text handwritten at the top of the form: “Submitted to Establish Eligibility for the Debates.” The Pawlowski campaign advised staff that the candidate was not applying for matching funds, but was seeking only to participate in the gubernatorial candidates’ debates.

Legal Director Massar advised the Commission that if only one gubernatorial candidate qualifies or elects to debate, no debates are required to be held.

According to Legal Director Massar, Candidate Pawlowski reported receipt of contributions totaling \$305,825.01 on Form P-1, and that of the \$305,825.01 total contribution amount, \$275,000.00 was reported on Schedule 3 (Receipts Not Submitted for Match, Including Loans) as received from Jeffrey Pawlowski on August 31, 2005. Legal Director Massar said that the report further disclosed on Schedule 4 (Reportable Disbursements) that on September 1, 2005, an expenditure in the amount of \$275,000 was made from the campaign depository account by check. She said that the check was made payable to "Jeffrey Pawlowski, 28 Miara Street, Parlin, NJ 08859," and that reported purpose of the expenditure was "Repay Candidate Loan."

As the result of a staff review, Legal Director Massar stated the staff recommendation that the Commission find that, based upon the contribution and expenditure information reported on his Form P-1, Candidate Jeffrey Pawlowski has not met the \$300,000 deposit and expenditure threshold to be a "qualified candidate" and therefore is ineligible to participate in the gubernatorial candidates' debates. She said that staff believes that the net effect of the candidate's personal loan and its repayment is that Candidate Pawlowski did not have \$300,000 to spend on his 2005 gubernatorial candidacy at the time he filed Form P-1.

Legal Director Massar discussed Advisory Opinion 02-2005, issued to primary election gubernatorial candidate Douglas Forrester who sought qualification to participate in the gubernatorial primary election debates, even though he had not applied to receive matching funds. She pointed out that at the time of his request for an advisory opinion, Candidate Forrester had reported making loans to his campaign totaling \$1,784,569.65, and making campaign-related expenditures totaling \$720,417.97. She said that none of the expenditures reported by Candidate Forrester was for the purpose of repayment of his loans to his campaign. The reports filed by Candidate Forrester prior to the April 11, 2005 primary election qualification deadline disclosed that the full amount of Candidate Forrester's personal contributions was available to make campaign-related expenditures. Based upon this information, the Commission determined in Advisory Opinion 02-2005, that Candidate Forrester could use an unlimited amount of his personal funds to meet the \$300,000 contribution and expenditure qualification threshold.

Legal Director Massar stated that in contrast, with the exception of the \$275,000 expenditure made to repay his loan on September 1, 2005, Candidate Pawlowski had made 2005 general election campaign-related expenditures totaling only \$28,467.84. The Commission should not interpret Candidate Pawlowski's loan and repayment to meet the "deposited and expended" test for a "qualified candidate." She said that staff does not believe the Legislature intended the "deposited and expended" test to be applied in this fashion.

Chair English recognized Mr. Jay Boucher, affiliated with the Pawlowski campaign. Mr. Boucher stated that during the primary season he commented in favor of Candidate Forrester being allowed in the publicly financed debates. He said, at the time he hoped the same consideration would be made in the general election. He said that the Palowski campaign followed the rules, adding that the statute is silent on whether or not a candidate can use his own money to qualify for a debate. Mr. Boucher said the campaign was not asking for special treatment, only equal protection. He said this application parallels Forrester.

Mr. Pawlowski, the candidate, addressed the Commission. He said that if the statute is unclear, the Commission should ask the Legislature to change the law. He said his campaign adhered to established procedures. Mr. Pawlowski said that as a candidate, he simply wants to be part of the process. Mr. Pawlowski said that he worked hard to make himself a viable candidate and that the Commission is here to expand choice in the election. Mr. Pawlowski said that by denying his right to debate would also be denying Mr. Castillo's right to debate. He said that wisdom and fairness should rule.

Commissioner Burstein said that the Commission needed to balance the principles of allowing people of limited means to run for Governor with the responsibility of guarding public funds.

Chair English asked whether or not the media groups are committed to holding publicly sponsored debates. She suggested that they either invite the two independent candidates or the two major party candidates to participate in publicly sponsored debates.

Commissioner Burstein said that the spirit of the law was designed to foster debate.

Vice Chair Tober said that he was initially inclined to accept staff's conclusion but after listening to the discussion he was not so sure.

On a motion by Commissioner Burstein, seconded by Commissioner Davis and passed by a vote of 4-0, the Commission moved to table the issue.

6. Resolution to go into Executive Session

On a motion by Vice Chair Tober, seconded by Commissioner Burstein and passed by a vote of 4-0, the Commission resolved to go into Executive Session to discuss anticipated litigation and 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.

Return to Public Session

7. 2005 General Election Gubernatorial Public Financing Program Report (continued)

The Commission continued the discussion concerning Candidate Jeffrey Pawlowski's qualification to participate in the 2005 general election gubernatorial candidates' debates.

Chair English asked whether or not the Commission desired to decide the Pawlowski matter.

On a motion by Commissioner Burstein, seconded by Commissioner Davis and passed by a vote of 4-0, the Commission determined that Mr. Pawlowski was a qualified candidate.

Commissioner Burstein stated that it was important to note that in the future, the Commission should address the issue, either through pressing for statutory changes or through its regulatory process, of requiring documentation that spending to reach the gubernatorial qualification threshold must be for specific campaign-related expenditures.

Chair English directed staff to advise the media outlets already selected as to their responsibility to include the independents in a gubernatorial debate. She said that the Commission is a deliberative body that listens to what everyone has to say.

8. Adjournment

On a motion by Commissioner Burstein, seconded by Vice Chair Tober and passed by a vote of 4-0, the Commission voted to adjourn at 1:45 p.m.

Respectfully submitted,

Frederick M. Herrmann, Ph.D.
Executive Director

FMH/elz