



*State of New Jersey*

## ELECTION LAW ENFORCEMENT COMMISSION

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Legal Director

EVELYN FORD  
Compliance Director

JAMES P. WYSE  
Counsel

### PUBLIC SESSION MINUTES

December 20, 2005

All of the Commissioners, Counsel Wyse, and Senior Staff were present.

#### 1. Open Public Meetings Statement

Vice Chair 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 11:25 a.m. in Trenton.

Chair English arrived at this point.

#### 2. Approval of Public Session Minutes of November 3, 2005 and November 15, 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 November 3, 2005 and November 15, 2005.

#### 3. Executive Director's Report

##### A. New Staff Members

Executive Director Herrmann introduced the following new staff members:

- Joseph Barish, Assistant Compliance Officer;
- Milene Matos, Assistant Compliance Officer; and,
- Linda Lopez, Fiscal Assistant.

B. Staff Activities

The Executive Director reported that on November 17, 2005, Assistant Compliance Officer Nancy Fitzpatrick worked at a consulting table during the annual meeting of the New Jersey League of Municipalities. He said that staff participation at the meeting provides ELEC with an opportunity for personal contact with local candidates.

According to the Executive Director, the Compliance Division staff will launch ELEC's new Internet treasurer training site this month pursuant to P.L. 2004, c.22. Executive Director Herrmann indicated that this law mandates training for gubernatorial and legislative treasurers and those of the two State political party committees and the four legislative leadership committees. Executive Director Herrmann advised the Commission that other treasurers may be trained and that the site will be an ongoing resource for the training of new treasurers.

The Executive Director said that the Compliance Division staff has also moved ahead with the preparation of forms and materials for professional campaign fundraiser registration and filing. Executive Director Herrmann informed the Commissioners that a "professional campaign fundraiser certificate" will be distributed to each fundraiser during registration.

Executive Director Herrmann reported that on November 30, 2005, Legal Director Massar, Compliance Director Ford, Director of Systems Administration Carol Neiman and he attended an Ethics Reform Program in New Brunswick sponsored by the Eagleton Institute of Rutgers University and the New Jersey Chamber of Commerce. He said that former ELEC Vice Chair Paula A. Franzese; retired State Supreme Court Justice, Daniel J. O'Hern; Executive Commission on Ethical Standards Executive Director Rita L. Strmensky; and ethics officials from Ohio and Pennsylvania served on the panel. The Executive Director mentioned that the Moderator, Professor Ingrid Reed of the Eagleton Institute, asked him to address the audience after the panel discussion. Executive Director Herrmann stated that he commented that ethics reform was not just about fundamentals but was also about funds. Moreover, the Executive Director mentioned the ELEC Computer Report from 2004 that recommended an ongoing \$1M appropriation for computer maintenance and upgrades.

According to Executive Director Herrmann, one of the key upgrades would be for "pay-to-play transparency" in the form of a local contributor database that would allow for the electronic monitoring of county and municipal campaign contributions from contractors. The Executive Director said that such a database would be particularly timely with the pay-to-play law's local provisions taking effect on January 1, 2006. Executive Director Herrmann noted that this recommendation conforms to a similar one made in a report by Professor Franzese and Justice O'Hern to Acting Governor Richard J. Codey on how to improve governmental ethics in New Jersey.

The Executive Director announced that during November and December, Legal Director Massar, Director of Public Financing Amy Davis, and he attended the meetings of the New Jersey Citizens' Clean Elections Commission. He advised the Commission that ELEC staff has been called upon throughout the Clean Elections Commission's review process to provide expert technical assistance. Executive Director Herrmann informed the Commission that the Clean Elections Commission is scheduled to report its findings on the future of the Clean Elections Pilot Project to the Legislature next year.

C. Ethics Training

Executive Director Herrmann reported that the Commissioners and he have completed their required training on Ethics and Fiscal Controls under Executive Order 41. He stated that he will certify to the Director of the Governor's Authorities Unit that Commissioners Burstein and Davis attended training on November 14, 2005, while Vice Chair Tober and he attended the November 21, 2005 session. He said that he will also certify that Chair English could not attend because she was out of the country and that she was sent all the session materials to review.

D. Council on Governmental Ethics Laws (COGEL) Conference

Executive Director Herrmann noted that this year's conference was held in Boston from December 3<sup>rd</sup> through December 7<sup>th</sup>, 2005. Executive Director said that Legal Director Massar and he represented ELEC. According to Dr. Herrmann, the program consisted of three and a half days of plenary and concurrent sessions on such topics as:

- Electronic filing,
- Campaign financing and lobbying law updates,
- The COGEL model laws,
- Pay-to-play, and
- Public financing.

Executive Director Herrmann advised the Commission that he served as a panelist on the Public Financing Program and discussed New Jersey's Clean Elections Pilot Project. He stated that former State Senator and Chair of the New Jersey Citizens' Clean Elections Commission, William E. Schluter, was in attendance. Executive Director Herrmann also served as a panelist on a management roundtable for executive directors.

Executive Director Herrmann informed the Commission that Legal Director Massar, who is a member of the COGEL Steering Committee, participated as a panelist in a session about the COGEL model laws. He added that she also was a discussion leader at a Breakfast Table Topic session on the COGEL Model Lobbying Law. In an important announcement, Executive Director Herrmann reported that at the end of the conference, Legal Director Massar was chosen to be the President-Elect of COGEL.

E. Winter Meeting Schedule

- January 17, 2006, at 11:00 a.m. in Trenton;
- February 21, 2006, at 11:00 a.m. in Trenton; and,
- March 21, 2006, at 11:00 a.m. in Trenton.

On a motion by Commissioner Burstein, seconded by Commissioner Davis and passed by a vote of 4-0, the Commission approved its 2006 meeting schedule.

F. White Paper No. 18 – Local Campaign Financing: An Analysis of Trends In Communities Large and Small

Executive Director Herrmann stated that Deputy Director Brindle has done an outstanding job in producing another report for the white paper series. The Executive Director asked the Commissioners if they had any comments or suggestions for the Executive Director.

On a motion by Commissioner Burstein, seconded by Vice Chair Tober and passed by a vote of 4-0, the Commission thanked Deputy Director Brindle and his staff for their fine efforts and the outstanding quality of the work. The Commission approved publication of the white paper as presented.

4. Advisory Opinion Request No. 05-2005

Honorable Bonnie Watson Coleman, Chair of New Jersey Democratic State Committee (NJDCS), and Peter D. Nichols, Treasurer of Inaugural 2006, Inc., asked whether or not the Inaugural Committee may accept an unlimited amount of monetary and in-kind contributions from the NJDCS. Staff discussed a draft response to the request and recommended that the Commission conclude that contributions to the Inaugural Committee from the NJDCS are not subject to the \$500.00 inaugural event contribution limit, and that the Inaugural Committee may accept an unlimited amount of monetary and in-kind contributions from NJDCS. Neither the statutory text creating the \$500.00 contribution limit in N.J.S.A. 19:44A-18.1a, nor the regulation, N.J.A.C. 19:25-15.59(a), includes the State political party committee among the entities that are subject to the \$500.00 inaugural event contribution limit.

It was noted that in Advisory Opinion 10-1993, the Commission examined the relationship between a State political party committee and an inaugural event committee and concluded that the State political party committee was permitted to make a contribution in the form of a loan, in excess of the \$500.00 limit, to the 1994 inaugural committee.

On a motion by Commissioner Davis, seconded by Vice Chair Tober, and passed by a vote of 4-0, the Commission approved the Advisory Opinion draft text as recommended by staff and directed staff to issue the opinion.

5. Planning for Hearings Concerning the 2005 Public Financing Program

Staff recommended that the Commission schedule hearings in March and April, 2006, concerning the 2005 gubernatorial public financing program. Staff recommended further that the March hearing be devoted entirely to issues concerning the public financing program debates, and that the April hearing address issues concerning the administration of the program.

Commissioner Burstein stated that he approved of the draft letters to the general election debate sponsors. He requested that, prior to the hearings, staff provide to the Commissioners information related to the debates and other issues that may be addressed during the hearings.

Staff provided the Commission with a letter received from Matthew Prusik, Jr., Esq., counsel to gubernatorial candidate Jeffrey Pawlowski, reiterating his concerns about the gubernatorial candidates' debates. Staff also provided the Commission with a draft response to Mr. Prusik indicating that Commission shares his desire to improve the gubernatorial public financing debate process and inviting his participation in the hearing.

On a motion by Commissioner Davis, seconded by Commissioner Burstein and passed by a vote of 4-0, the Commission approved the plans for the public financing hearings and issuance of the letters to the debate sponsors and Mr. Prusik.

6. 2005 Gubernatorial Public Financing Report

Amy Davis, Director of Public Financing, recommended that the Commission accept the following report on submissions received and public funds distributed since November 10, 2005.

2005 Primary Election

According to Director Davis, staff completed its review of the final 2005 primary election gubernatorial submissions and deposited public funds on November 17, 2005, as follows:

<u>Candidate</u>	<u>Submission #</u>	<u>Amount Eligible For Match</u>	<u>Public Funds Deposited</u>
Steven Lonagan	14	\$62,570	\$125,140.00
John Murphy	9	\$13,248.85	\$26,497.70
Robert Schroeder	11	\$31,650	\$63,300.00
Bret Schundler	13	\$22,252	\$44,504.00

Director Davis noted a total of \$6,478,277.90 in public matching funds was distributed to 2005 primary election gubernatorial candidates.

2005 General Election

Director Davis reported that Candidate Castillo filed his second matching fund submission on November 9, 2005, and reported \$15,975 in net contributions for match. Staff completed its review and determined that Candidate Castillo submitted \$13,475 in contributions eligible for match and that public funds in the amount of \$26,950 were deposited into Candidate Castillo's public fund account on November 21, 2005. She said that staff will report to the Commission if Candidate Castillo files any additional submissions.

7. Report on Return of Funds by 2005 Gubernatorial Primary Election Candidates

According to Director Davis, a publicly-financed gubernatorial candidate in the 2005 primary election is required to return to the State all funds remaining unspent at the conclusion of the campaign by December 7, 2005, and to observe postelection restrictions on spending. N.J.A.C. 19:25-16.33 and 16.34 permit postelection expenditures of campaign funds only to satisfy obligations incurred on or before the date of the primary election and to pay the reasonable and necessary costs of closing the campaign. Director Davis said that each publicly-financed campaign is also required to continue to file certified postelection quarterly reports until there is no remaining balance in any campaign depository and all outstanding obligations are satisfied.

Director Davis said that the October 17, 2005 quarterly reports filed by the Lonagan, Schroeder, and Schundler primary election campaigns indicated that there are no funds available for return to the State because each campaign's outstanding obligations exceed cash-on-hand as follows:

<u>Candidate</u>	<u>Cash-On-Hand</u>	<u>Outstanding Obligations</u>
Steven Lonagan	\$14,829.30	\$186,650.22
Robert Schroeder	\$5,521.62	\$114,698.14
Bret Schundler	\$48,284.68	\$151,312.97

Director Davis reported that unspent funds were returned as follows:

<u>Candidate</u>	<u>Amount Returned</u>
Todd Caliguire	\$8,850.77
Paul DiGaetano	\$270.69
John Murphy	\$13,425.25

**John Murphy**

Director Davis advised the Commission that Debra Tedesco, Treasurer for publicly-financed gubernatorial primary election candidate John Murphy, requested that the campaign be permitted to retain \$7,819.19 for anticipated audit-related expenses. Director Davis reported that since 1985, no publicly-financed gubernatorial campaign has been able to conclude its business in the six-month period provided in N.J.S.A. 19:44A-35c. Therefore,

she explained that since 1985 and pursuant to the authority in N.J.S.A. 19:44A-42, the Commission has approved campaigns' requests to extend the period for retention of unspent funds to meet outstanding obligations and audit and compliance expenses. Director Davis recommended that the Commission approve retention of these funds by the Murphy campaign for the limited purpose of meeting outstanding obligations and paying audit and other expenses necessary to close their campaign.

She further recommended that all six 2005 publicly-financed primary election campaigns again be advised in writing of the continuing obligation to file quarterly reports, the restrictions on postelection spending, the requirement to observe the \$3,000 primary election contribution limit in any future fundraising, and the continuing obligation to return to the State any funds which may become available once outstanding obligations are liquidated.

On a motion by Commissioner Davis, seconded by Vice Chair Tober and passed by a vote of 4-0, the Commission approved the staff recommendations.

8. Executive Order 122

Staff explained the provisions of Executive Order 122, requiring creation of an independent Audit Committee, and suggested that the requirements of the Executive Order do not apply to the Commission because the Commission is not an independent authority, as that term is used in the Executive Order. Further, the Commission's fiscal operations are subject to oversight by the Office of Management and Budget (OMB) in the Department of Treasury and subject to regular audits by the Office of the State Auditor. Staff recommended that the Commission write to Verice M. Mason, Director of the Authorities Unit in the Office of the Governor, to confirm that the Commission is not subject to the requirements of Executive Order 122.

Chair English, Deputy Director Brindle, Legal Director Massar, and Director Gary Alpert discussed the Commission's fiscal status and examples of supervision on a daily basis by the OMB. Commissioners Burstein and Davis discussed their experience with the recent Ethics and Audit training sessions and indicated their understanding that the separate audit requirements in the Executive Order were not intended to apply to ELEC.

Commissioner Burstein stated that it would be redundant to have another audit process.

On a motion by Commissioner Burstein, seconded by Commissioner Davis and passed by a vote of 4-0, the Commission approved the staff recommendation.

9. Tour of the Eighth Floor

On a motion by Commissioner Davis, seconded by Vice Chair Tober and passed by a vote of 4-0, the Commission recessed to take a computer demonstration of ELEC's new Website and a tour of the new office space on the eighth floor.

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10. Resolution to go into Executive Session

On a motion by Commissioner Burstein, seconded by Commissioner Davis 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.

11. Adjournment

On a motion by Commissioner Burstein, seconded by Commissioner Davis and passed by a vote of 4-0, the Commission voted to adjourn at 2:45 p.m.

Respectfully submitted,

Frederick M. Herrmann, Ph.D.  
Executive Director

FMH/elz