



State of New Jersey

ELECTION LAW ENFORCEMENT COMMISSION

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Vice Chair

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Commissioner

THEODORE Z. DAVIS
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Executive Director

JEFFREY M. BRINDLE
Deputy Director

NEDDA G. MASSAR
Legal Director

EVELYN FORD
Compliance Director

JAMES P. WYSE
Counsel

PUBLIC SESSION MINUTES

April 18, 2006

All of the Commissioners, 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 10:00 a.m. in Trenton.

2. Approval of Public Session Minutes of March 21, 2006

On a motion by Commissioner Burstein, seconded by Commissioner Davis and passed by a vote of 4-0, the Commission approved the Public Session Minutes of March 21, 2006.

3. Executive Director's Report

A. Budget News

Executive Director Herrmann announced that the Governor has recommended a continuation budget for the Election Law Enforcement Commission (ELEC) of \$5.03 million. He said that the State's current fiscal situation has led to much more severe budgets for other agencies. According to the Executive Director, the Commission's salary account was cut \$110,000 and non-salary accounts \$9,000. Executive Director Herrmann noted that the total \$119,000 cut represents only 2.3 percent of ELEC's budget. He stated that two vacant positions were also lost, reducing the Commission's position count from 90 to 88. Executive Director Herrmann indicated that ELEC's reduction appears to be the lowest one in State government and that these cuts are very minor and should not impact negatively on the work of the Commission. The Executive Director said that in light of the State's overall financial condition, the Commission has done very well.

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Executive Director Herrmann mentioned that staff will be participating in the Legislative budget process by answering written questions from the Office of Legislative Services (OLS) and attending the Senate and Assembly hearings on the Department of Law and Public Safety.

B. Staff Activities

The Executive Director reported that the Compliance Division continues to train treasurers for gubernatorial and legislative candidates, State political party committees, and the four legislative leadership committees pursuant to legislation enacted in 2004. According to Dr. Herrmann, eight more sessions have been scheduled for April, May, and June, 2006, and that to date 367 training certificates have been issued.

Executive Director Herrmann advised the Commission that Director of Finance and Administration Gary Alpert and his staff have put together ELEC's first Employee Handbook, which is a compendium of essential information for Commission employees. The handbook includes sections about: Employee Conduct, Ethics Rules, Benefits, Compensation, and Training. The Executive Director said that it is another important step forward in ELEC's ongoing professionalization of its human resources responsibilities. He thanked Director Alpert and his staff for a job well done.

Executive Director Herrmann reported that on March 28th and April 10th, 2006, Legal Director Nedda Massar, Director of Special Programs Amy Davis, and he continued their work with the Clean Elections Commission by providing technical assistance during its Executive Sessions to prepare the Commission's final report due in May.

Dr. Herrmann informed the Commission that on March 31st, 2006, Legal Director Massar and he attended a program entitled "Partnering Between The Public And Private Sector For Good Government: Can We Restore Trust By Ethics Reform?" He mentioned that the program was held at the Prudential Business Ethics Center at Rutgers University in Newark. According to the Executive Director, the keynote speaker was former ELEC Vice Chair Paula A. Franzese, who is now the Chair of the State Ethics Commission (SEC). He said that the program also featured a panel discussion led by Ingrid Reed, the Director of the New Jersey Project at the Eagleton Institute of Rutgers University. Executive Director Herrmann advised the Commission that the three panel members were:

- Former New Jersey Labor Commissioner Ray Bramucci,
- New Jersey League of Municipalities General Counsel William Kearns, and
- New Jersey Foundation for Open Government (FOG) President Elizabeth Abruze Mason.

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The Executive Director noted that on April 12th, 2006, Deputy Director Brindle attended the 6th Biannual Public History Internship Symposium at Monmouth County Library. He stated that ELEC has been participating in this program for many years as part of its ongoing commitment to giving college students an opportunity to explore government service.

C. Personal Financial Disclosure Statement Reminder

The Executive Director reminded the Commissioners that their Personal Financial Disclosure Statements required by Executive Order No. 1 of 2006, are due at the State Ethics Commission by May 1st, 2006.

D. Annual Report

The Executive Director reviewed the draft of the Annual Report with the Commissioners. He thanked Deputy Director Brindle, the report's Project Manager, for another fine effort and also the various staff who worked on it with him. The Commission paid particular attention to the Legislative Recommendation Section, making amendments noted in the gubernatorial public financing public hearing transcript.

E. Spring Meeting Schedule

- May 16, 2006 at 11:00 a.m. in Trenton; and
- June 20, 2006 at 11:00 a.m. in Trenton.

4. Advisory Opinion Request No. 03-2006

Legal Director Massar stated that a request for an advisory opinion was received from Mark D. Sheridan, Esq., General Counsel to the New Jersey Republican State Committee (NJRSC).

Mr. Sheridan has asked whether or not contributions that are deposited into the NJRSC's Federal account, established pursuant to federal law and reported to the Federal Election Commission (FEC), are subject to the provisions of the Campaign Reporting Act and Commission regulations. Legal Director Massar added that Mr. Sheridan also asked whether or not contributions deposited into the NJRSC's Federal account are subject to New Jersey contribution limits established by the Campaign Reporting Act. According to Legal Director Massar, in each question, Mr. Sheridan specifically stated that his inquiry does not concern a "Levin account."

Staff recommended that Mr. Sheridan be advised that the Commission finds it has no jurisdiction over the NJRSC's Federal account, which is used to fund federal election activity and has been established pursuant to the provisions of the Federal Election Campaign Act. Staff recommended that the Commission advise Mr. Sheridan therefore that ELEC has no jurisdiction over contributions that are deposited into the NJRSC's Federal account, and the State political party contribution limits of the Campaign Reporting Act do not apply to contributions deposited into that account.

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Commissioner Burstein asked: can an amount contributed to a federal account be turned over to a Levin account or some other account?

Legal Director Massar responded that she did not believe that contributions directed to the federal account can go into the Levin account. She said that there are methods by which transfers can be made between accounts, but that this process is subject to federal guidelines.

Chair English queried whether or not there are restrictions against money contributed to a federal account being transferred to a federal candidate who in turn gives it back to the State committee.

Legal Director Massar said that money is fungible but that if there was clear evidence of earmarking sanctions might be imposed. She said that New Jersey law prohibits earmarking and that there are limits on contributions made from a federal candidate to a New Jersey candidate or political party committee.

Commissioner Burstein said that a reference to Levin accounts should be made in the advisory opinion even though the request did not include a question about them.

On a motion by Commissioner Burstein, seconded by Commissioner Davis and passed by a vote of 3-0, the Commission approved the Advisory Opinion as amended by Commissioner Burstein as to Levin accounts. Chair English abstained.

5. Advisory Opinion Request No. 02-2006

Legal Director Massar stated that the Commission received a request for an advisory opinion from Kenneth E. Pringle, who stated that he intends to form a joint candidates committee for his re-election to the office of Mayor in the Borough of Belmar, Monmouth County, in 2006. Mr. Pringle asked several questions concerning the use of "PolitiCheck.com," a "web-based online political contribution service" that he would like to offer to his supporters to make contributions by "remotely created checks" (RCCs). He also indicated that he is the majority shareholder in InfoLoop, LLC, which owns "PolitiCheck.com," and that InfoLoop will offer "PolitiCheck.com's online contribution services to the public at large."

Mr. Pringle asked whether a RCC received through "PolitiCheck.com" is to be treated for the purposes of compliance with the New Jersey Campaign Contributions and Expenditures Reporting Act and Commission regulations, as a check, pursuant to N.J.A.C. 19:25-10.15, Contributions made by check, or as an electronic transfer of funds, pursuant to N.J.A.C. 19:25-10.16, Contributions by electronic transfer of funds.

Second, Mr. Pringle asked whether or not a candidate receiving a contribution by RCC may rely upon the "unsigned information provided by the contributor simultaneously with the authorization of the contribution."

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Moreover, Mr. Pringle asked what rules apply to determine the actual contributor of a contribution made by credit card or RCC. Finally, he has asked whether or not the requirements of N.J.A.C. 19:25-10.15, Contributions made by check, apply to contributions received via "PolitiCheck.com" on the Internet.

Staff recommended that Mr. Pringle be advised that he may use "PolitiCheck.com" to receive credit card and RCC contributions for his 2006 candidacy. Staff stated that all contributions received by this method must observe the contribution limits established in the Act and regulations and the statutory and regulatory recordkeeping and reporting requirements. Further, if Mr. Pringle participates in a candidate committee and a joint candidates committee, all contributions received, including those received by credit card or RCC, are subject to the equal attribution rule. Staff noted that, pursuant to N.J.A.C. 19:25-10.16(b) and 19:25-12.2, fees or costs associated with receipt of a contribution by "PolitiCheck.com" must be reported as an expenditure on campaign reports.

Staff further recommended that the response to Mr. Pringle indicate that while it is permissible for a candidate to obtain contribution information from "PolitiCheck.com," if the information is incomplete or insufficient in any way, it remains the responsibility of the candidate and treasurer to obtain all required contribution information. Staff referred to Advisory Opinion 04-2001, concerning contributions received by the Internet, in which the Commission found that the presence of an Internet vendor, who handles contributions for a candidate, does not remove a candidate's or treasurer's legal responsibility for compliance with the Campaign Reporting Act and Commission regulations.

Staff explained that existing rules for reporting the correct identity of a contributor should apply to contributions received by RCC or credit card.

Chair English asked whether or not Mr. Pringle's business was tantamount to a banking operation?

Legal Director Massar said that Mr. Pringle stated that "PolitiCheck.com" acts as a conduit for contribution information, but performs no banking operation at all.

Vice Chair Tober supported Legal Director Massar's contention, noting that he had just attended a seminar on that very same issue.

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

6. Hearing on Gubernatorial Public Financing Debates

Chair English announced that a public hearing was being conducted to elicit public comment concerning the administration of the 2005 New Jersey gubernatorial public financing program. The hearing is being conducted as part of the Commission's review and analysis of the public financing program and is intended to obtain witnesses' recommendations for statutory and regulatory changes.

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No individuals appeared to testify on the administration of the gubernatorial public financing program.

A court reporter was available to record the proceedings. The transcript will be available to the public for inspection upon request.

On a motion by Vice Chair Tober, seconded by Commissioner Davis and passed by a vote of 4-0, the Commission adjourned the public hearing.

7. Resolution to go into Executive Session

On a motion by Commissioner Burstein, seconded by Vice Chair Tober 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.
- 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.

8. 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 1:00 p.m.

Respectfully submitted,

Frederick M. Herrmann, Ph.D.
Executive Director

FMH/elz