



State of New Jersey

ELECTION LAW ENFORCEMENT COMMISSION

JERRY FITZGERALD ENGLISH
Chair

PETER J. TOBER
Vice Chair

ALBERT BURSTEIN
Commissioner

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Deputy Director

NEDDA G. MASSAR
Legal Director

EVELYN FORD
Compliance Director

JAMES P. WYSE
Legal Counsel

PUBLIC SESSION MINUTES

September 25, 2007

Chair English, Vice Chair Tober, Commissioner Burstein, 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 17, 2007 and September 11, 2007

On a motion by Commissioner Burstein, seconded by Vice Chair Tober and passed by a vote of 3-0, the Commission approved the Public Session Minutes of July 17, 2007 and September 11, 2007.

3. Executive Director's Report

A. Commissioner News

Former Commissioner Judge Theodore Z. Davis has been named by Governor Jon S. Corzine to be the Chief Operating Officer of the City of Camden. The Commission decided to issue a proclamation to commemorate his service at ELEC. Former Commissioner Davis was present at the beginning of the meeting.

B. Budget Update

Executive Director Herrmann reported that as part of the administration's management efficiency reduction plan, ELEC has been assessed \$193,000 for Fiscal Year 2008. He stated that staff will meet this assessment with funds from the materials and supplies account and the computer account.

C. Staff Activities

According to the Executive Director, the Compliance Division reports that there are now 886 trained treasurers and 1,036 lobbyists. Executive Director Herrmann added that on September 10, 2007, the Special Programs Section in the Legal Division held its third Pay-to-Play Disclosure Training session at the Mercer County Community College Conference Center. He noted that the first reports are due September 28, 2007 for calendar 2006 activity. Executive Director Herrmann advised the Commission that additional training is being made available for groups upon request in the high tech room.

D. Conference News

The Executive Director announced that ELEC hosted the 20th annual meeting of the Northeastern Regional Conference on Lobbying (NORCOL) at the State House Annex on August 3, 2007. Executive Director Herrmann mentioned that Compliance Director Evelyn Ford chaired the meeting as the current NORCOL President and that she did an outstanding job in setting up and running the program. The Executive Director also mentioned that Robin Hittie, the Chief Counsel of the Pennsylvania Ethics Commission, was the keynote speaker. He said that she made comprehensive remarks about the new Pennsylvania Lobbying Law. Executive Director Herrmann informed the Commission that he provided an update on the New Jersey Lobbying Law and the Executive Director of the West Virginia Ethics Commission and the Chief Counsel of the Connecticut Ethics Commission made similar presentations about their state's laws. According to Executive Director Herrmann, ELEC staffers in the audience participated in a lively discussion comparing the laws of the four states in attendance. He noted that he distributed copies of Lobbying in New Jersey 2007 for the participants to take home and stated that the report has also been posted on the ELEC website to reach a larger audience. Executive Director Herrmann advised the Commission that he was elected NORCOL treasurer and Compliance Director Ford will continue as NORCOL President for another year. He added that next year's session will also be in New Jersey at the CSG-ERC meeting in Atlantic City.

The Executive Director reported that from July 30th to August 3rd, 2007, Legal Director Nedda Massar attended the Conference of Canadian Election Officials' annual meeting in Iqaluit, Nunavut. He indicated that as this year's Council on Governmental Ethics Laws (COGEL) President, she was invited to participate and make a presentation. She addressed the group on current COGEL activities and Canadian-American participation and cooperation in COGEL programs.

Executive Director Herrmann noted that from September 16th to 19th, 2007, the Legal Director represented the Commission at the annual COGEL conference in Victoria, British Columbia. He added that as current COGEL President, she was responsible for running this year's meeting. Executive Director Herrmann said that he learned that the conference had many interesting sessions as usual on campaign finance and lobbying topics including: legislative/litigation updates, an electronic filing workshop, public financing, pay-to-play, and independent expenditures. The Executive Director informed the Commission that a searchable CD copy of the COGEL Campaign Financing & Lobbying Bibliography compiled by the Executive Director was made available to conference attendees. Finally, Executive Director Herrmann stated that former Canadian Prime Minister Joe Clark addressed a plenary session.

According to Executive Director Herrmann, David Freel, the Executive Director of the Ohio Ethics Commission, won the COGEL Award and Frank Daley, the Executive Director of the Nebraska Accountability and Disclosure Commission, received the COGEL Service Award. The Executive Director added that Jeanne Olson, the retiring Executive Director of the Minnesota Campaign Finance and Public Disclosure Board, was given an honorary lifetime membership.

The Commission presented Legal Director Massar with a Resolution commemorating her outstanding service over the past three years as COGEL President and member of the Steering Committee.

4. Application of Pay-to-Play Laws to Nonprofit Business Entities

At its March 6, 2007 meeting, the Commission voted to adopt regulations to implement the provisions of the pay-to-play disclosure law which requires a business entity that has received \$50,000 or more through government contracts in a calendar year to file an annual disclosure statement electronically with the Commission to report contract information and reportable contributions it has made. The disclosure statement filing requirement applies to all business entities, including for-profit and nonprofit ones. The disclosure requirement also extends to officers, directors, and their spouses of the business entities. The due date for the first annual disclosure report for calendar year 2006 is September 28, 2007.

On September 19, 2007, staff received copies of inquiries directed to the Office of the Attorney General from both the Division of Purchase and Property (Department of the Treasury) and the Division of Local Government Services (Department of Community Affairs) requesting guidance as to whether or not those Divisions may interpret the pay-to-play laws such that they would not apply to nonprofit business entities. Staff also received an email from Edward McBride, Deputy Chief Counsel to the Governor, acknowledging the administration's understanding that in adopting its pay-to-play regulations, the Commission relied upon statements to the public by the Treasury and Community Affairs that nonprofit business entities are subject to pay-to-play requirements.

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Based upon the information received during the past week, staff recommended that the Commission consider suspending the September 28th filing deadline for the business entity annual disclosure statement as applied only to nonprofit business entities. Staff stated that by exercising its authority to temporarily relax its rules and suspending the filing deadline, Commission application of the pay-to-play annual filing requirement would ultimately be consistent with the advice provided by the Office of the Attorney General.

Chair English asked that minutes and transcripts of Commission discussions related to the nonprofit disclosure issue be provided to the Attorney General. Chair English said that it is important that the Attorney General have the benefit of information on the process by which the Commission determined that nonprofit business entities are subject to the disclosure requirement.

Chair English asked for an explanation as to the difference between contracts and grants.

Legal Director Massar explained that the Commission has stated throughout the pay-to-play rulemaking process that ELEC does not have jurisdiction over or expertise in contracting issues such as whether or not both contracts and grants are subject to pay-to-play requirements. She further noted that there are many different kinds of contracts and grants administered at all levels of government which add to the complexity of the pay-to-play issues.

Staff reiterated that the Commission has authority to relax its rule requiring that nonprofit businesses file an annual pay-to-play disclosure statement on September 28, 2007.

Chair English said that the Commission is independent and the Commissioners make decisions based on their own legal advice.

Vice Chair Tober stated that there is a substantial amount of public money in contracts with nonprofit entities and that he believed that disclosure by these entities is important for the public. He said that he did not foresee himself changing his opinion in a month's time.

Commissioner Burstein said that any change in policy should be legislative. He said, however, that he sees no problem in relaxing the regulation until the next meeting.

Chair English agreed with establishing a delayed reporting deadline for nonprofit business entities to allow time to receive and review the anticipated Attorney General opinion.

Chair English asked for a motion to relax the rule involving nonprofits until the next meeting and indicated that she would reluctantly support the motion.

Commissioner Burstein made a motion to delay the filing deadline for disclosure by nonprofit business entities until the next meeting. The motion was seconded by Vice Chair Tober.

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Vice Chair Tober asked whether or not the Commission could grant further extensions of the filing deadline. He suggested that the new disclosure date be on a date after the October 23rd meeting. Legal Director Massar said that the Commission could again relax its rule at the October 23rd meeting to delay the filing deadline as long as notice was provided to affected entities.

The Commission determined that the filing deadline for nonprofit business entities should be October 30, 2007.

Chair English asked for comments from the public.

John Rodgers, Vice President of the New Jersey Business and Industry Association, stated that the rules are very burdensome for the business community. He said that the business community is still struggling as to the question of what is a contract and what is a grant. He said that he is in favor of disclosure but that the law is burdensome and confusing. He applauded ELEC staff, however, for being responsive and helpful.

Chair English recognized Robert Polakowski, representing New Jersey Independent Colleges and Universities. Mr. Polakowski stated that he favors the motion to relax the disclosure requirement for nonprofits and added that the main issue is the confusion about contracts and grants.

Chair English recognized Linda Czipo, representing the Center for Nonprofits. Ms. Czipo stated that she supported the regulation and that her organization is doing its best to help nonprofits comply. She said that there are many unanswered questions and much confusion.

Chair English next recognized Mr. Harry Pozycki, Chair of the Center for Civic Responsibility. Mr. Pozycki stated that he supports allowing further deliberation with regard to the issue of nonprofits. He said that the pay-to-play legislation was developed in response to for-profit entities who make large contributions prior to receiving contracts. He also said there have been indictments of businesses, but not nonprofits. Mr. Pozycki said there may be a need for nonprofit businesses to disclose but that inclusion of nonprofit businesses was not discussed during the legislative process.

Commissioner Burstein said that having nonprofit entities report furthers the intent of the law.

Mr. Pozycki said that the legislation was a response to influence peddling by for-profit business entities, but that nonprofits were not discussed during the legislative process. He said nonprofit disclosure is worthwhile for consideration in the future.

Chair English said that she anticipates a timely response from the Attorney General because we are in the midst of a big election and the public has a right to know this information. She added that a Star-Ledger editorial supported ELEC on requiring pay-to-play disclosure by nonprofit business entities. She added that it is important to point out that the Commission needs adequate funding for software and for parity of staff pay with other sister agencies inside and outside of New Jersey.

Chair English stated that in the interest of comity between ELEC and the two other Executive Branch entities, she would support a delay of the filing deadline for nonprofit businesses to October 30, 2007.

Commissioner Burstein amended his motion to relax disclosure for nonprofit entities until October 30, 2007. On a vote of 3-0, the Commission approved the motion.

5. Report of the 2007 Fair and Clean Elections Pilot Project

Special Programs Director Amy Davis reported that advertisements have been running and will continue to run through September 30, 2007. She added that out of 20 candidates in Districts 14, 24, and 37, 15 are certified because they have raised a minimum of 400 qualifying contributions. Director Davis said that ballot statements with Spanish translations have been processed and forwarded to the applicable county clerks.

6. Code of Ethics for Commissioners and Employees

Consideration of the staff recommendations to supplement the State's Uniform Ethics Code was postponed until the next meeting of the Commission.

7. Executive Director's Report (Resumed)

Executive Director Herrmann resumed his report and reviewed the Fall meeting schedule with the Commissioners:

- October 23, 2007 at 11:00 a.m. in Trenton;
- November 20, 2007 at 11:00 a.m. in Trenton; and
- December 18, 2007 at 11:00 a.m. in Trenton.

8. Resolution to go into Executive Session

On a motion by Commissioner Burstein, seconded by Vice Chair Tober and passed by a vote of 3-0, 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.

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9. Adjournment

On a motion by Commissioner Burstein, seconded by Vice Chair Tober and passed by a vote of 3-0, the Commission voted to adjourn at 2:00 p.m.

Respectfully submitted,

Frederick M. Herrmann, Ph.D.
Executive Director

FMH/elz