



State of New Jersey

ELECTION LAW ENFORCEMENT COMMISSION

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CAROL L. HOEKJE
Legal Director

EVELYN FORD
Compliance Director

JAMES P. WYSE
Legal Counsel

PUBLIC SESSION MINUTES

September 30, 2008

Chair English, Vice Chair Tober, Commissioner Saunders, Legal Counsel Wyse, and Senior Staff were present. Commissioner Burstein was absent.

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 15, 2008

On a motion by Commissioner Saunders, seconded by Vice Chair Tober and passed by a vote of 3-0, the Commission approved the Public Session Minutes of July 15, 2008.

3. Executive Director's Report

A. Staff Activities

According to Executive Director Herrmann, the Council on Governmental Ethics Laws (COGEL) administrator has asked ELEC to provide him with an electronic copy of the 2009 Cost Index Report for posting on the COGEL website. The Executive Director stated that he said that the report "could be very interesting to other jurisdictions and aid them in their efforts to adjust critical campaign financing limits and thresholds." Executive Director Herrmann suggested to him that COGEL also review ELEC's website for other major studies such as: The 2007 Fair and Clean Elections Report and Lobbying in New Jersey 2008.

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Executive Director Herrmann announced that Legal Secretary Ruth Ford retired from the Commission on July 31, 2008, under the Early Retirement Incentive Program. He added that Ruth worked loyally for ELEC for 18 years and will greatly be missed by all of her friends and colleagues on the staff who wish her a very happy retirement. Executive Director Herrmann noted that with the loss of this position, ELEC is down to 67 permanent staff persons.

The Commission recognized the accomplishments of Ruth Ford and her work on behalf of the Commission. The Commission wished Mrs. Ford the best in her retirement.

The Executive Director mentioned that on September 29, 2008, five of the anticipated six provisional staffers for the Gubernatorial Public Financing Program started work with the Commission. According to Executive Director Herrmann, they are:

- Public Financing Analyst Kristen Auricchio,
- Public Financing Analyst Jennifer Kirby,
- Public Financing Analyst Julie Latsko,
- Information Technology Specialist Kap Sin, and
- Information Technology Specialist Elias Amaya.

Executive Director Herrmann stated that under the supervision of Special Programs Director Amy Davis, they will be responsible for administering the oldest Public Financing Program in the nation. He advised the Commission that they are an outstanding group and will continue the very high standards set over three decades by their predecessors. Executive Director Herrmann pointed out that Commissioner Burstein was the sponsor of the 1974 law that established the program and Chair English as the legislative counsel to Governor Brendan T. Byrne was involved with its enactment.

B. Northeastern Regional Conference on Lobbying (NORCOL) Conference

The Executive Director informed the Commission that on August 12, 2008, Compliance Director Evelyn Ford and he attended the annual meeting of NORCOL held at the Council of State Governments-Eastern Regional Conference Convention in Atlantic City. He mentioned that Compliance Director Ford as the current NORCOL President organized and hosted the program. Executive Director Herrmann served as the organization's treasurer. Compliance Director Ford began the program with some opening remarks. Executive Director Herrmann spoke about recent trends in the New Jersey lobbying law as part of the "Updates from the States" segment of the proceedings. The Executive Director also handed out a CD version of Lobbying in New Jersey 2008, the most recent version of a study that he prepares each year for the meeting. He noted that the session concluded with a general discussion of various lobbying topics including: grassroots lobbying, executive

branch lobbying, gift restrictions, electronic filing, and agency funding. According to Executive Director Herrmann, representatives from five State agencies: Connecticut, Delaware, New Jersey, Pennsylvania, and West Virginia attended the conference along with representatives from the District of Columbia. Executive Director Herrmann indicated that the Commission should be very proud of the outstanding job Compliance Director Ford did putting the program together and running NORCOL so ably during her two-year term as President.

C. Clean Elections

Executive Director Herrmann advised the Commission that an Office of Legislative Services (OLS) Legal Opinion on July 21, 2008 for William Castner, the Executive Director of the Assembly Majority Office, found that the rescue money provisions of A-100 (Greenwald/Handlin/Johnson/Huttle), the 2009 Clean Elections Pilot Project bill, would probably be found by future courts to be violative of the First Amendment. He remarked that under this legislation, so-called rescue money would be provided to a clean candidate if he or she is outspent by a traditional opponent or the target of an independent expenditure. The Executive Director said that based on the U.S. Supreme Court's June 26, 2008 decision in the "Millionaire's Amendment Case," OLS reasoned that future courts would probably find that rescue money would create fundraising disadvantages for traditional candidates. Executive Director Herrmann informed the Commission that the OLS Opinion concludes that generally public financing programs like Clean Elections will continue to be found by the courts to be constitutional because they enhance public discussion without censoring free speech. The Executive Director noted, however, rescue money provisions would likely be found to be unconstitutional because they "deter freedom of speech" by placing a "burden [on] a [traditional] candidate's ability to spend his or her own campaign funds."

Dr. Herrmann stated that according to a Gannett story on July 23, 2008, Assembly Speaker Joseph J. Roberts, Jr. was planning in August "to reconvene a bipartisan group of lawmakers to try to salvage the proposal." The Executive Director mentioned that on August 29, 2008, a United States District Court in Arizona ruled that under the Grand Canyon State's Clean Elections Program "rescue money provisions that allow clean candidates to counter third party attacks" are unconstitutional. A-100 contains similar provisions. Consequently, Speaker Roberts announced that "the federal courts have imposed obstacles [to the New Jersey program] that are insurmountable" for next year and "clean elections simply needs a time-out." The Executive Director said that the Speaker believes that suspending the current program for now "will give Congress and the courts more time to sort out the many issues that have been raised and the ability to give states clear guidelines to follow."

D. Governor's Comprehensive Ethics Reform Plan

Executive Director Herrmann announced that on September 24, 2008, he attended a press conference at which Governor Jon S. Corzine unveiled a "Comprehensive Ethics Reform Plan." Dr. Herrmann advised the Commission that the plan will be accomplished through a combination of executive orders and legislation and that many of its provisions will impact the work of the Commission. He informed the Commission that among the plan's highlights are:

- a new pay-to-play ban on contributions from redevelopers and auditors;
- an extension of the State pay-to-play ban on contractor contributions to legislative leadership committees and municipal political party committees supplementing the current ban to gubernatorial candidates, State political party committees, and county political party committees;
- an extension of the State pay-to-play ban to regional utility authorities;
- an extension of the State pay-to-play ban to contributions from partners, officers, shareholders, and members of professional service firms who own 10 percent or less of their companies;
- removal of the competitive bidding exception to play-to-play;
- an extension of the local pay-to-play ban on contractor contributions to cover county and municipal candidates and committees together not separately;
- an extension of the local pay-to-play ban to school boards;
- the elimination of county and municipal pay-to-play ordinances because of the new uniform and comprehensive State law;
- an extension of the wheeling ban on county political party committees from the primary to the general;
- a reduction of the annual contribution limit to county political party committees from \$37,000 to \$25,000;
- the disclosure of issue ads;
- bans and reduced contribution limits for various entities making campaign contributions; and,
- authority to ELEC to establish a schedule of penalties for late filing and other administrative violations.

Chair English asked about the Commission's role in these new proposals.

Executive Director Herrmann said that as legislation is introduced and moves through the Legislature, the staff will keep the Commissioners informed of its content and progress.

E. Fall Meeting Schedule

- October 21, 2008 at 11:00 a.m. in Trenton;
- November 18, 2008 at 11:00 a.m. in Trenton; and,
- December 16, 2008 at 11:00 a.m. in Trenton.

4. Public Hearing on Proposed Amendments to Implement Inflationary Campaign Cost Adjustments

Chair English announced that a public hearing was being conducted to elicit public comment concerning proposed amendments to limits and thresholds applicable to gubernatorial candidates, and thresholds applicable to non-gubernatorial candidates and committees. N.J.S.A. 19:44A-7.1 and 7.2 require that the Commission calculate the change in campaign costs over the past four years and propose amendments to limits and thresholds applicable to gubernatorial candidates, and thresholds applicable to non-gubernatorial candidates and committees. The Commission has determined that costs relevant to campaigning in New Jersey have risen since 2005, and has applied an index of 13.31 percent to the various limits and thresholds required to be adjusted, as well as several other thresholds in order to maintain consistency.

No persons appeared to offer testimony. 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 Commissioner Saunders, seconded by Vice Chair Tober and passed by a vote of 3-0, the Commission adjourned the public hearing.

5. Adoption of Proposed New Rules and Amendments to the Gubernatorial Public Financing Regulations

This matter involved the adoption of amendments and new rules involving the Gubernatorial Public Financing Program. The amendments under consideration are at N.J.A.C. 19:25-15.10, 15.17, 15.49, 15.51, 16.8, 16.18, 16.19, 16.38, and 16.40. The new rules are at N.J.A.C. 19:25-15.52A, and 16.41A. The topics involved in the amendments and new rules included the: use of personal funds by non-publicly financed candidates as contributions to qualify for participation in debates, prohibition on loan repayments by non-publicly financed candidates for use as expenditures to qualify for participation in debates, and selection of debate sponsors and notification to the Commission of change in debate plans.

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Legal Director Carol L. Hoekje stated that the amendments and new rules were published in the June 16, 2008 New Jersey Register and were the subject of a public hearing on July 15, 2008. She stated that three witnesses from the New Jersey League of Women Voters appeared to testify; and one witness, Professor Ingrid Reed, Director of the New Jersey Project at the Eagleton Institute of Politics at Rutgers University, submitted a written statement. No additional public comments were received. Legal Director Hoekje discussed the suggested responses to comments made during the hearing.

With regard to the suggestion that the staff respond within 48-hours to a notice of sponsor change, Vice Chair Tober stated that he understands the concerns on both sides of the issue and believes the Commission has done a good job striking a balance. He said, however, that he continues to believe that as a practical matter fulfilling the requirements of a 48-hour review, etc. of any changes in the debate format by a sponsor will be difficult.

With regard to the suggestion that the Commission issue a final report at the conclusion of the debates, Chair English agreed with staff that a contemporaneous public hearing would serve that purpose. Chair English added that a public hearing would also be a vehicle for the Commission to express its views as well.

Regarding the suggestion that the Commission should tell sponsors in advance to reach out proactively to gubernatorial candidates not participating in the Public Financing Program urging their participation in the debates, Legal Director Hoekje said that the statute does not authorize or direct the Commission to require sponsors to take such action. She said that the law allows, but does not require, non-participating gubernatorial candidates who otherwise meet the qualification standards of public financing to participate in the interactive debates.

Commissioner Saunders agreed with the idea that the suggestion should be part of the application process. He said, ideally, debates should be inclusive.

Vice Chair Tober agreed and said that there should be a concern for inclusiveness.

Chair English agreed and asked how the Commission could deal with this issue.

Special Programs Director Davis said that a question could be included on the application form that involved this issue.

With regard to the suggestion by Professor Reed that the voters might be better served by a State Debate Commission that would arrange the debates and publicize them, staff stated that the Commission does not have authority under the Reporting Act to act upon Professor Reed's concerns, which could be presented to the Legislature.

Staff recommended further that the Commission thank all commenters for their input in the regulatory process.

On a motion by Vice Chair Tober, seconded by Commissioner Saunders and passed by a vote of 3-0, the Commission adopted the amendments and new rules without change. Legal Director Hoekje stated that the rules will become effective upon publication in the New Jersey Register on or about November 3, 2008.

6. Proposed New Rules regarding Finalization by Publicly-financed Gubernatorial Candidates with Net Liabilities

Legal Director Hoekje provided a detailed account of the proposal, which allows publicly-financed gubernatorial candidates, who have not been able to retire all campaign debts, to apply to the Commission after seven years to finalize reporting.

The Legal Director stated that staff drafted two new rules each that are applicable to subchapter 15, dealing with the general election, and subchapter 16, involving the primary election. The proposed rules for the general election are N.J.A.C. 19:25-15.47B - Application for termination of reporting with net liabilities by publicly-financed candidates and N.J.A.C. 19:25-15.47C - Final report certification with net liabilities for publicly-financed candidates. The proposed new rules for the primary election contain similar language and are found at N.J.A.C. 19:25-16.34A and 16.34B.

In explaining the proposal, Legal Director Hoekje stated that staff attempted to balance the goal of protecting the contribution limits with a practical approach for a campaign which is unable to raise funds to pay off outstanding debt. Candidates, according to the Legal Director, would have to: provide information regarding the debts, indicate how they attempted to retire the debt, state that they would not be receiving additional contributions, mention that all assets have been liquidated with any proceeds applied to the debt, and report that no further expenditures will be made except to bring any remaining balance to zero.

Legal Director Hoekje stated that the proposal calls for a Commission review and decision as to whether or not the former gubernatorial candidate may finalize his or her report. She stated that upon Commission approval the proposal calls for the candidate to file a final Report Certification Form containing information about net liabilities.

Legal Director Hoekje provided the following suggested modifications to the proposal as suggested by Commissioner Burstein:

- amend the statement describing the efforts made to retire outstanding obligations to include without limitation efforts to compromise or resolve the debt with the vendor or service provider,
- have all reports required by the Reporting Act and Commission regulations be timely filed and correctly stated except for good cause shown, and
- allow “any authorized person” to make the required certifications.

Vice Chair Tober asked: With regard to the treasurer and candidate certifying a final report, what happens if one or the other is not available for some reason? What if they have died or moved away?

Legal Counsel Wyse suggested that it might be able to be dealt with under the “any other authorized person” language.

Chair English asked whether or not the accounts are interest bearing

Special Programs Director Davis said that the accounts are not interest bearing.

On a motion by Commissioner Saunders, seconded by Vice Chair Tober, the Commission, by a vote of 3-0, proposed the new rules with Commissioner Burstein’s recommendations.

7. Public Comments

Appearing before the Commission were: Pittsgrove Municipal Office candidate Christine Seeney, Pittsgrove Mayor Peter Voros, and Pittsgrove Democratic Municipal Chairman Joseph Lindmeier.

Ms. Seeney discussed a filing situation in which she maintained that as a candidate she made every effort to obtain documents from the treasurer, but to no avail. Mayor Voros and Chairman Lindmeier supported Ms. Seeney’s account. They told the Commission that they had always filed all required reports correctly.

The Commission thanked the three for their comments.

8. Resolution to go into Executive Session

On a motion by Commissioner Saunders, 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, 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 Vice Chair Tober, seconded by Commissioner Saunders and passed by a vote of 3-0, the Commission voted to adjourn at 1:50 p.m.

Respectfully submitted,

Frederick M. Herrmann, Ph.D.
Executive Director

FMH/elz