



State of New Jersey

ELECTION LAW ENFORCEMENT COMMISSION

JERRY FITZGERALD ENGLISH
Chair

PETER J. TOBER
Vice Chair

ALBERT BURSTEIN
Commissioner

AMOS C. SAUNDERS
Commissioner

Respond to:
P.O. Box 185
Trenton, New Jersey 08625-0185

(609) 292-8700 or Toll Free Within NJ 1-888-313-ELEC (3532)

Website: <http://www.elec.state.nj.us/>

FREDERICK M. HERRMANN, Ph.D.
Executive Director

JEFFREY M. BRINDLE
Deputy Director

CAROL L. HOEKJE
Legal Director

EVELYN FORD
Compliance Director

JAMES P. WYSE
Legal Counsel

PUBLIC SESSION MINUTES

May 19, 2009

Chair English, Vice Chair Tober, Commissioner Burstein, Commissioner Saunders, Legal 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 April 20, 2009

On a motion by Commissioner Burstein, seconded by Commissioner Saunders and passed by a vote of 3-0, the Commission approved the Public Session Minutes of April 20, 2009. Vice Chair Tober did not vote because he was not present for the April 20, 2009 meeting.

3. Executive Director's Report

A. National News

Executive Director Herrmann mentioned that according to a recent report from a national Good Government Group, New Jersey has the strongest "ethics and transparency laws" in the country. The Executive Director noted that the Chicago-based Better Government Association found in a survey that the Garden State's statutes in this area are collectively more effective than similar laws in other states. He said that among the statutes reviewed were those covering: freedom of information, whistleblower protections, campaign financing limits, conflicts of interest, and open public meetings and records. Dr.

Public Session Minutes

May 19, 2009

Page 2

Herrmann indicated that New Jersey's number one rating was a huge improvement over the last report by the Association in 2002, when our State was ranked 12th.

According to the Executive Director, in December 2008, a United States District Court in Connecticut ruled in Green Party v. Garfield that the pay-to-play provisions of that State's 2005 Campaign Financing Report Act were constitutional. Dr. Herrmann stated that the Connecticut law is even more stringent than New Jersey's pay-to-play statutes in that it provides for a total ban on campaign contributions from State contractors. He reported that the Court found that the law did not violate rights of free speech, equal protection, and due process under both the United States and Connecticut constitutions. The Executive Director said that according to the decision, the pay-to-play ban could be imposed simply based on the State's need to "prevent the perception of corruption." Dr. Herrmann noted that the plaintiffs indicated in March 2009, that they had asked the Second Circuit Court of Appeals to review the case.

B. Budget Update

Executive Director Herrmann advised the Commission that on April 21, 2009, Deputy Director Brindle, Director of Finance and Administration Steve Dodson, and he attended the Assembly Budget Committee hearing on the Department of Law and Public Safety. He mentioned that Assemblywoman Alison Littell McHose asked him a series of questions, noting that she wanted to know the impact of the \$84,000 budget cut, which corresponds with the salary of the Director of Lobbying, and the decline in lobbying fee revenues caused by the reduced number of lobbyists. Executive Director Herrmann said, although there might be some consequences, ELEC still had the resources to fund and not lose that critical position. Dr. Herrmann informed the Commission that the Assemblywoman then inquired about the Commission's overall fiscal and staffing situation. Executive Director Herrmann said that the Ethics Reform Package of 2004 contained 17 bills that affected ELEC's work, and the Commission was supposed to have expanded to 88 staff members at that time. He added, however, that due to the State's ongoing fiscal problems, only 66 staff members are currently employed so that ELEC is missing 25 percent of its staff complement. According to Executive Director Herrmann, she then asked if the Commission could perform its mission with its depleted personnel contingent. The Executive Director indicated that he answered her question by quoting Samuel Johnson who was once asked if a dog could walk on its hind legs and responded "yes sir it can but not very well."

Dr. Herrmann advised the Commission that on April 22, 2009, Deputy Director Brindle, Director Dodson, and he attended the Senate Budget and Appropriations Committee hearing on the department. He said that at that meeting, there were no questions for ELEC.

C. Staff Activities

Executive Director Herrmann stated that the Compliance Division held three spring treasurer training programs on March 12, 16, and 31, 2009. He informed the Commission that on May 11, 2009, the staff released detailed fundraising data from the 29-day pre-election reports of candidates running in the General Assembly Primary. Dr. Herrmann indicated that the total amounts raised and spent increased slightly from the amounts reported in 2005, the last time the lower house ran without the Senate. He reported that the \$10.3 million raised in 2009 was seven percent greater than in 2005, while the \$5.5 million spent represented a six percent increase over that year. Executive Director Herrmann offered thanks to Compliance Director Ford, Director of Information Technology Carol Neiman, and their staffs for another job well done.

D. Enabling Legislation for the Office of Lieutenant Governor

Executive Director Herrmann told the Commission that Director of Special Programs Amy Davis and he attended the Assembly State Government Committee meeting on May 11, 2009, that considered A-3902 (Quigley), the enabling legislation creating the office of lieutenant governor. He said that the major provisions of the bill are the:

- creation of one campaign committee for both the gubernatorial and lieutenant gubernatorial candidates with the same contribution and expenditure limits as under the existing law,
- permission for each of the candidates to contribute \$25,000 of personal funds to this committee,
- establishment of an additional debate for lieutenant gubernatorial candidates,
- addition of Personal Financial Disclosure and Issue Advocacy Organization reporting requirements for lieutenant gubernatorial candidates to parallel the same provisions for gubernatorial candidates, and
- ability of ELEC to issue regulations including temporary regulations on an emergency basis and issue advisory opinions related to candidates for the office of Lieutenant Governor.

Dr. Herrmann added that he was asked by Chair Joan M. Quigley to provide some descriptive and explanatory testimony to the committee. According to the executive director, the bill was unanimously released with technical amendments and is on the General Assembly board list for May 21, 2009.

E. Summer Meeting Schedule

- June 16, 2009 at 11:00 a.m. in Trenton;
- July 21, 2009 at 11:00 a.m. (General Election Gubernatorial Debate sponsor selection) in Trenton; and,
- August 18, 2009 at 11:00 a.m. (if needed) in Trenton.

4. 2009 Gubernatorial Public Financing Program Update

Lonegan - Submissions 7 through 10

Special Programs Director Amy Davis stated that staff received and completed its review of Candidate Steven Lonegan's submissions seven through ten and issued public funds totaling \$497,260.24. She said that Candidate Lonegan has received a total of \$1.4 million in public funds, adding that Candidate Lonegan filed an eleventh submission on May 12, 2009. Director Davis said that staff will report to the Commission on Submission eleven at the next Commission meeting.

Christie - Submissions 6 and 7

According to Director Davis, staff completed its review of Candidate Chris Christie's sixth and seventh submissions and issued public funds totaling \$355,274.58. She noted that Candidate Christie has received the maximum amount of funds for the primary election, a total of \$3.1 million.

Debate Plans

Director Davis mentioned that the two ELEC sponsored primary debates aired and that staff is already preparing for the general election debates by placing the debate sponsor application on the Commission's website and sending an informational packet to potential debate sponsors. Moreover, she said that a question has been added to the debate sponsor application asking whether or not each potential sponsor would be willing to sponsor a lieutenant gubernatorial debate. She said this would be in addition to one or two gubernatorial debates. Director Davis advised that the sponsor application deadline is July 1, 2009, and that staff will provide the Commissioners with copies of applications received in advance of the July 21, 2009 Commission meeting, at which the sponsors will be selected.

Application for Finalization with Net Liabilities

Director Davis noted that recently the Commission adopted new regulations that allow for a past gubernatorial campaign with outstanding obligations to apply to the Commission to finalize campaign reporting. She said that as a result, an application was received from 2001 primary election gubernatorial candidate, Bob Franks. The Director said that former candidate Franks currently has \$132,174.31 in outstanding obligations and reports the campaign has been unsuccessful in raising funds to extinguish the debt. Director Davis informed the Commission that staff has reviewed the application and has determined it meets the regulatory requirements to be able to finalize. She said that if the Commission has no objection, staff will contact the campaign

and notify them they may file a final report with required certifications. The Commission had no questions about this application.

5. Lieutenant Governor

Chair English asked, with regard to the potential enactment of the lieutenant gubernatorial bill, the process by which regulations would be adopted. She asked whether or not there would be an interim period when no regulations would be in place.

Legal Director Hoekje stated that the promulgation period for adopting regulations is lengthy and would likely be several months even under emergency rulemaking. She said that in the meantime the Commission could issue advisory opinions if necessary.

Executive Director Herrmann added that a fact sheet would be immediately prepared upon enactment providing questions and answers involving the new law.

Chair English asked about training for candidates and whether or not training for non-gubernatorial candidates was the same as for publicly-funded gubernatorial candidates.

Director of Compliance and Information Ford indicated that treasurer training for legislative candidates was mandatory.

Director Davis responded that training for publicly-financed gubernatorial candidates was more extensive.

6. Resolution to go into Executive Session

On a motion by Commissioner Saunders, seconded by Commissioner Burstein and passed by a vote of 4-0, 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.

Public Session Minutes

May 19, 2009

Page 6

7. Adjournment

On a motion by Commissioner Saunders, seconded by Commissioner Burstein and passed by a vote of 4-0, the Commission voted to adjourn at 1:00 p.m.

Respectfully submitted as true
and correct,

Frederick M. Herrmann, Ph.D.
Executive Director

FMH/elz