



State of New Jersey

ELECTION LAW ENFORCEMENT COMMISSION

JERRY FITZGERALD ENGLISH
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Executive Director

JEFFREY M. BRINDLE
Deputy Director

CAROL L. HOEKJE
Legal Director

EVELYN FORD
Compliance Director

JAMES P. WYSE
Legal Counsel

PUBLIC SESSION MINUTES

June 16, 2009

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

Chair English announced the appointment of Deputy Director Brindle as Executive Director to replace Frederick M. Herrmann, who is retiring June 30, 2009. Chair English stated that a press release will be distributed to the Press Corps and placed on the Commission's website.

2. Approval of Public Session Minutes of May 19, 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 May 19, 2009.

3. Approval of Public Session Minutes of May 27, 2009

On a motion by Commissioner Burstein, seconded by Commissioner Saunders and passed by a vote of 2-0, the Commission approved the Public Session Minutes of May 27, 2009. Chair English did not vote because she was not present for the May 27, 2009 meeting.

4. Executive Director's Report

A. Budget Update

Executive Director Herrmann stated that at this point, it still appears that the Commission's Fiscal Year 2010 operating budget will be \$4.355 million as reported at the April meeting. He said, however, there may be an \$85,000 reduction to the \$6.8 million budgeted for distribution to the publicly-financed gubernatorial candidates in the general election.

According to Dr. Herrmann, if the remaining \$6.72 million is insufficient to cover the needs of these candidates, the Campaign Act provides that the additional funds will be appropriated from the general treasury. He added, moreover, there may also be an \$84,000 reduction in the funding for the administration of the Gubernatorial Public Financing Program from \$480,000 to \$396,000. The Executive Director indicated that ELEC may also lose \$200,000 from the \$350,000 in its lobbying account, which is funded by governmental affairs agent fees, leaving \$150,000. He noted that none of these cuts will stop the Commission from performing its core mission, but ELEC will need to continue being very careful with how it spends its budget.

Executive Director Herrmann said that it should be further noted that an early June settlement between the Administration and union officials appears to have resulted in a Statewide wage freeze and 10 furlough days but no layoffs for the new fiscal year. He asserted that staff will report back to the Commission at the July meeting on ELEC's final budget numbers for the new fiscal year and with a personnel update.

B. Enabling Legislation for the Office of Lieutenant Governor

According to Executive Director Herrmann, A-3902 (Quigley), the enabling legislation creating the office of Lieutenant Governor, passed the General Assembly 45-29 on May 21, 2009.

Dr. Herrmann stated that Director of Special Programs Amy Davis and he attended the Senate State Government Committee meeting on June 11, 2009, that considered this bill and a nearly identical Senate version, S-2829 (Scutari) to provide technical assistance if requested. He mentioned that it is anticipated that the Legislature will pass a substitute for this legislation with clarifying amendments before the end of the month and the Governor will sign it shortly thereafter. The executive director said that upon enactment, ELEC will distribute a fact sheet detailing the major provisions of the new law for the candidates, media, and public. He reported that the fact sheet will mention:

- creation of one campaign committee for both the gubernatorial and lieutenant gubernatorial candidates with the same contribution and expenditure limits and public funds cap as under the original law,

Public Session Minutes

June 16, 2009

Page 3

- 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, and
- addition of Personal Financial Disclosure and Issue Advocacy Organization reporting requirements for lieutenant gubernatorial candidates to parallel the same provisions for gubernatorial candidates.

In addition, Executive Director Herrmann mentioned that staff is exploring the Commission's regulatory options under the new law and will report back to the Commission on them at the July meeting. He noted that the new law also gives ELEC specific authority to issue advisory opinions related to candidates for the office of Lieutenant Governor.

C. National News

The Executive Director informed the Commission that a new report by the Brennan Center for Justice at the New York University School of Law finds that low contribution limits as well as public financing increase electoral competition. He said that in 2006, the U.S. Supreme Court invalidated campaign financing reforms in Vermont partly because of the assumption that low contribution limits hurt challengers. Dr. Herrmann advised the Commission that in Randall v. Sorrell, the Court found Vermont's contribution limits unconstitutionally low. He mentioned, however, that this new study argues that low contribution limits benefit challengers not incumbents. It states that the Court incorrectly concluded that low contribution limits act as an "incumbency protection plan." The executive director said that such limits, according to the report, actually make elections more competitive. Moreover, he added, public financing is found to have a similar pro-competitive effect on elections. Executive Director Herrmann indicated that it should prove very interesting to see the impact of the Center's study on future court decisions in this vital area.

D. Staff Activities

According to the Executive Director, on May 28, 2009, the staff released detailed fundraising data from the 11-day pre-election reports of candidates running in the General Assembly primary. He reported 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 noted that the \$11.2 million raised in 2009 was three percent greater than in 2005, while the \$6 million spent represented a four percent increase over that year. Executive Director Herrmann expressed special thanks to Compliance Director Ford, Director of Information Technology Carol Neiman, and their staffs for a job very well done in an exceedingly short timeframe.

Public Session Minutes

June 16, 2009

Page 4

The Executive Director advised the Commission that on June 4th and June 11th, staff from all of ELEC's divisions held special training sessions for staff members of the Department of Law and Public Safety to familiarize them with the Commission's work and procedures. He stated that the program also allowed Commission staff to build a closer working relationship with their peers at the Department. The Executive Director again expressed thanks to Compliance Director Ford for setting up the program and Legal Director Hoekje, Director of Special Programs Davis, Director of Review and Investigation Leonard Gicas, Director of Information Technology Neiman, and Senior Compliance Officer Kimberly Key for leading various sessions along with Compliance Director Ford.

According to Dr. Herrmann, Director of Information Technology Neiman and her staff have designed a new "quick link" on the website to create direct access to gubernatorial candidate reports. He indicated that this innovation makes it simpler for the public, media, academics, and good government groups to find and review these critically important documents.

E. Summer Meeting Schedule

- July 21, 2009 at 11:00 a.m. (General Election Gubernatorial Debate sponsor selection) in Trenton;
- August 18, 2009 at 11:00 a.m. (if needed) in Trenton; and
- September 15, 2009 at 11:00 a.m.

5. 2009 Gubernatorial Public Financing Program Update

Lonegan - Submissions 11 through 14

Special Programs Director Davis stated that since the last Commission meeting, staff has received and completed its review of Candidate Steven Lonegan's submissions 11 through 14 and issued public funds totaling \$570,767.52. She said that Candidate Lonegan has received a total of \$2,057,502.84 in public funds. According to Director Davis, Candidate Lonegan may file submissions until November 4th for the 2009 primary election.

2009 General Election

Director Davis indicated that the first date any 2009 general election candidate could apply for public funds was June 9, 2009. She said that to date, no applications have been received and added that the next date for filing matching fund submissions is Tuesday, June 23rd. Director Davis noted that the Commission will also conduct its selection of 2009 general election debate sponsors at its July meeting and that the deadline for receipt of debate sponsor applications is July 1st.

6. Request for Advisory Opinion No. 01-2009

The Commission received a request for an advisory opinion from Margaret F. Catalano, Esq., on behalf of Daggett for Governor, Inc., an independent candidate for Governor. Ms. Catalano asked the Commission about reporting obligations in connection with the proposed sale of merchandise as a means of promoting the candidate.

Specifically, the Daggett campaign asked whether or not it could sell merchandise as a means of promoting information about the candidate. The campaign asked the following: 1) how does the campaign report expenditures associated with the sale of merchandise, and 2) are any or all portions of the receipts from such sale reportable as “contributions.”

After reviewing the foregoing question, Legal Director Hoekje said that staff recommended that the Commission advise the Daggett campaign that the proposed transactions are reportable events. Legal Director Hoekje added that all expenditures from the sale of the merchandise must be reported as operating disbursements of the campaign, and all receipts from the proposed transactions involving the sale of merchandise by the campaign must be reported as contributions as that term is defined in the Reporting Act. She said that contributions would be subject to the contribution limit, the reporting of contributor information, and the requirements of the pay-to-play laws. She also stated that public financing monies could not be used for fundraising purposes, and contributions eligible for match would only be eligible to the extent that the amount of the contribution exceeded the cost.

Chair English spoke about the importance of the Public Financing Program and the history of how ELEC has dealt with various public financing issues. She said that she is pleased that the first issue the Commission is dealing with this time around is in the form of an advisory opinion request.

Chair English invited Margaret Catalano, Esq. to address the Commission concerning the request.

Ms. Catalano stated that she understands the concerns about disclosure and is keenly aware of the need to regulate it. She said, however, that in this case there is no specific regulation with regard to merchandising. Ms. Catalano said that the campaign was merely trying to communicate with voters. She said that the campaign desired to sell merchandise like tee shirts at cost and believes that it is not really an expense or contribution. She said it is something of a hybrid.

Public Session Minutes

June 16, 2009

Page 6

Ms. Catalano stated that there is no monetary benefit to the campaign but merely one of communication. She said she understands how it can be construed as an expense but not a contribution and added that it basically comes down to a “wash.” Ms. Catalano said that the campaign, which is a grassroots, independent campaign, is likely to not undertake this project if it is not a wash from a financial and disclosure point of view.

Commissioner Burstein asked if this situation was similar to the use of dollar bills as a fundraising device.

Legal Director Hoekje answered in the negative in that the law prohibits the use of money as an inducement to solicit contributions.

Commissioner Burstein asked whether or not the proposed transactions would impact in-kind contributions. Legal Director Hoekje answered in the affirmative.

Commissioner Saunders asked about someone giving \$10,000 for merchandise. Legal Director Hoekje stated that the amount in excess of \$3,400 would constitute an excessive contribution.

Commissioner Saunders stated that he understood staff’s position and agreed with it but that he does see how it could be burdensome and onerous when dealing with items of *de minimis* value.

Legal Director Hoekje stated that contributor information is not required to be reported for contributions received in amounts of \$300 or less, but that contributions submitted for matching public funds by gubernatorial candidates must include such documentation.

Director of Special Programs Davis said that in public financing records must always be maintained because at some point a contributor, in the aggregate, may reach or exceed the contribution limit.

Ms. Catalano said that it is impractical to think a campaign can sell 250 buttons at a rally and keep records.

Commissioner Burstein asked how ELEC would know the specific costs.

Ms. Catalano stated that the campaign would maintain invoices and records of the transactions.

Commissioner Burstein expressed his sympathy for the problems that arise for the independent campaigns.

Chair English said that the Commission’s staff should examine the issue further and asked if the campaign would grant an extension of time to answer until the July meeting.

Public Session Minutes

June 16, 2009

Page 7

Legal Director Hoekje noted that the Advisory Opinion request was received on June 2, 2009, and that the campaign had previously granted a 30-day extension of time to answer.

Counsel Wyse noted that if the campaign does not grant a further extension, the Commission must decide by the deadline (July 2, 2009).

On a motion by Commissioner Saunders, seconded by Commissioner Burstein and passed by a vote of 3-0, the Commission voted to postpone a decision on the matter pending further discussion.

Ms. Catalano will respond to the request for further extension upon consulting with the campaign and inform staff.

7. Executive Director Herrmann's Retirement

The Commission presented Executive Director Herrmann with a: Resolution from Governor Jon S. Corzine, Joint Resolution from the Senate and General Assembly, and Proclamation from ELEC upon his retirement commemorating his many valuable years of public service and dedication to the Commission and the citizens of New Jersey. In honoring Dr. Herrmann, numerous guests were featured, including former ELEC Commissioners. Attending the event were:

- William E. Schluter, former State Senator and the sponsor of ELEC's enabling legislation;
- Frank P. Reiche, the First Chair of ELEC and a former Chair of the Federal Election Commission;
- Susan S. Lederman, former Commissioner and former National President of the League of Women Voters;
- Gregory E. Nagy, former Legal Director;
- Arthur F. Herrmann, family member;
- Susan K. Herrmann, family member; and,
- various ELEC directors and staff members.

8. Resolution to go into Executive Session

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

Public Session Minutes

June 16, 2009

Page 8

- 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.

9. Adjournment

On a motion by Commissioner Saunders, seconded by Commissioner Burstein and passed by a vote of 3-0, the Commission voted to adjourn at 2:45 p.m.

Respectfully submitted as true
and correct,

Jeffrey M. Brindle
Executive Director

JMB/elz