

NEW JERSEY ELECTION LAW ENFORCEMENT COMMISSION

PUBLIC SESSION MINUTES

SEPTEMBER 13, 1982

PRESENT

Andrew C. Axtell, Chairman
M. Robert DeCotiis, Member
Haydn Proctor, Member
Alexander P. Waugh, Jr., Member
Scott A. Weiner, Executive Director
William R. Schmidt, Assistant Executive Director
Gregory E. Nagy, Staff Counsel
Edward J. Farrell, General Counsel
Judge Sidney Goldmann, Consultant

Chairman Axtell called the meeting to order and announced that pursuant to the Open Public Meetings Law, P.L. 1975, c.231, annual notice of the meetings of the Commission, as amended, has been filed with the Secretary of State's office, and that copies have been filed in the State House Annex, and mailed to the Newark Star Ledger, and the entire State House press corps.

The meeting convened at 10:05 a.m. at the Commission's office, Trenton, N. J.

1. Approval of Minutes of Public Session of Commission Meeting of August 11, 1982

Commissioner Waugh noted that on page 4, paragraph numbered 9, next to the last line, the word "the" should be added and the period after the word "executed" should be deleted. On a motion by Commissioner Proctor, seconded by Commissioner Waugh and a vote of 4-0, the Commission approved the minutes of the public session of the August 11, 1982 meeting, as amended.

2. Allocation of Expenditures by the Hudson County Dinner Committee to the Florio for Governor Committee

Nicholas A. Rudi, Finance Director, and E. Allen Nickerson, Esq., represented James J. Florio for Governor, Inc. before the Commission. Mr. Rudi distributed to the Commission his September 10, 1982 affidavit to which was attached an August 25, 1982 letter addressed to Mr. Nickerson.

By way of oral presentation and written affidavit, Mr. Rudi made the following points:

- (1) At no time did he authorize or have knowledge of any one else authorizing the Hudson County Democratic Dinner Committee to use the candidate's name in the Dinner Committee's expenditures on behalf of the candidate;
- (2) The Florio campaign used newspaper advertisements on a very limited basis and this fact supports the contention that the Florio Committee did not authorize and had no knowledge of the advertisements placed by the Hudson County Democratic Dinner Committee;

- (3) The Florio Committee reduced its final television expenditures by about \$25,000 during the final weeks of the campaign and did so in response to the allocation of telephone expenses from the Democratic State Committee; Mr. Rudi believes that this act demonstrated the Committee's good faith in meeting the Commission's requirements; and
- (4) Mr. Rudi had requested the Hudson County Business Men for Florio Committee, a predecessor committee to the Hudson County Dinner Committee, be dissolved to reduce any chance of complicating an already complicated budget situation because of the expenditure limit; Mr. Rudi cited this as demonstrating his continuing diligence.

In addition, Mr. Rudi noted that he had sent letters to the Democratic county committees and many municipal committees and had held meetings with candidates and local Democratic officials from the outset of the general election campaign to advise them not to spend any monies on behalf of the Florio candidacy without the approval of the Florio for Governor Committee. He noted that the Florio campaign had accepted allocations or had reimbursed legislative and local candidates for approximately \$10,000 to \$12,000 for such expenditures which were made with the knowledge and consent of or the acquiescence of the Florio for Governor Committee. Mr. Rudi said he attended the breakfast held by the Hudson County Democratic Dinner Committee but had no idea of what money was being raised or what it was going to be used for.

Mr. Nickerson and Mr. Rudi noted that candidate Florio attended many functions, held by local Democratic organizations and candidates. They stated that it was their clear understanding from discussions with the Commission during the summer of 1981 that the candidate's mere attendance at such functions would not generate an allocation to the candidate of the costs of those functions.

Executive Director Weiner noted that the issue before the Commission was whether the expenditures in question were "independent", i.e. not made with the cooperation or prior consent of or in consultation with or at the request or suggestion of, the candidate or any person or committee acting on behalf of the candidate.

Mr. Nickerson noted that the activities and actions of the Hudson County Democratic Dinner Committee were beyond the control of the Florio for Governor Committee. He cited as an example the activities of a staff member of the Florio for Governor Committee which resulted in an expenditure which the gubernatorial candidate eventually accepted as an expenditure on the candidate's behalf. The Florio for Governor Committee,

in this example, finally accepted that expenditure because it did have some control over its staff.

3. Executive Session

On a motion by Commissioner DeCotiis, seconded by Commissioner Waugh and a vote of 4-0, the Commission voted to resolve to go into executive session to deliberate on the allocation of expenditures by the Hudson County Democratic Dinner Committee to the Florio for Governor Committee.

4. Continuation of Discussion of Allocation of Expenditures by the Hudson County Democratic Dinner Committee

Chairman Axtell asked Mr. Rudi the length of time he spent at the Hudson County Dinner Committee's breakfast and how long candidate Florio spent at the Dinner Committee's dinner meeting. Mr. Rudi said he spent about one and one half hours at the breakfast which lasted an estimated two hours. Concerning the dinner meeting, Mr. Rudi said he did not know how long candidate Florio was there.

5. Executive Session

On a motion by Commissioner Waugh, seconded by Commissioner Proctor and a vote of 4-0, the Commission resolved to go into executive session to continue its deliberations on the Hudson County Democratic Dinner Committee expenditure allocation issue.

6. Decision on the Allocation of Expenditures by the Hudson County Democratic Dinner Committee to the Florio for Governor Committee .

On behalf of the Commission, Commissioner Waugh advised messrs. Rudi and Nickerson of the Commission's decision to the effect that none of the expenditures for newspaper advertisements, political literature and billboards was allocated to the Florio campaign but 20 percent of the fund raising and miscellaneous expenses of \$11,481 was allocated, resulting in a \$2,296.20 allocation to the Florio for Governor Committee.

7. Executive Session

On a motion by Commissioner Waugh, seconded by Commissioner DeCotiis and a vote of 4-0, the Commission voted to resolve to go into executive session to discuss investigations and enforcement actions, the results of which will be made public at their conclusion.

8. Proposed Amendments to the Campaign Contributions and Expenditures Reporting Act of 1973

The Commission reviewed the following:

- A September 1, 1982 draft for discussion of proposed changes (nine pages) prepared by General Legal Counsel Farrell;
- A September 7, 1982 memorandum from Cynthia Reinhard and addressed to General Legal Counsel Farrell (six pages) and discussing the issue of a candidate's affidavit and whether a candidate must appoint a campaign treasurer and spend money before he or she is required to file an affidavit;
- A September 9, 1982 memorandum from Executive Director Weiner addressed to the Commission and discussing proposed modifications to the campaign reporting program (four pages); and
- An August 13, 1982 memorandum from Juana M. Schultz, Director of Compliance and Review addressed to Executive Director Weiner and discussing statutory review statistics (two pages plus two tables).

The Commission reviewed the staff recommendations as numbered in Mr. Farrell's September 1, 1982 draft.

The Commission concurred in the recommendation to increase, from \$1,000 to \$2,000, the amount of money which may be spent by a candidate before the candidate must file a detailed R-1 report.

The Commission concurred in the second recommendation to increase from \$100 to \$200 the amount which may be contributed prior to requiring specific identification of the contributor.

The Commission concurred in the third recommendation to codify existing Commission policy that all candidates have a reporting obligation, including those candidates who do not raise or spend any money in their election campaign. During the discussion of this recommendation, the Commission reviewed the September 7, 1982 memorandum from Cynthia Reinhard to Mr. Farrell. The Commission discussed and concurred in the importance and reasonableness of requiring all candidates to file at least a Sworn Statement (Form A-1).

The Commission concurred in the fourth recommendation which would clarify the obligation of a candidate or committee to maintain records sufficient to corroborate information in their filed reports.

The Commission concurred in the fifth recommendation to prohibit cash contributions with the exception of cash raised as part of a "public solicitation" wherein the amount would be raised from \$10 to \$20.

The Commission concurred in the sixth recommendation which would clarify in the statute that identification of a contributor is based upon the total amount contributed and that when the total amount contributed exceeds the threshold, the total amount contributed by the contributor would be identified.

The Commission held an extensive discussion of the seventh staff recommendation to which General Legal Counsel Farrell dissented. The issue is what threshold amount would trigger campaign report filings by a committee which supports candidates having no R-1 reporting obligation under the Act. The present law provides that a Committee which supports such candidates has no reporting obligation. The staff recommended that this should be changed and that any committee for two or more candidates should have to report its contributions and expenditures at the same level, \$2,000, as candidates. Furthermore, the staff recommended that the Form C-1, Disclosure of Individual Contributors in Excess of the \$200 amount, should apply to such committees. Mr. Farrell disagreed; in his judgment, such requirements might unnecessarily discourage the traditional use of multi-candidate committees and that the individual contributor to such committees should have a higher level of disclosure, at least as to funds which are not earmarked. After a lengthy discussion, the Commission decided to table this issue until its next meeting.

The Commission concurred in the eighth recommendation which would allow candidates to file a one page statement, in lieu of formal R-1 reports, where all of the candidate's campaign finance activity is conducted through a joint campaign committee.

The Commission held a lengthy discussion on the ninth recommendation which would revise the filing dates to 30 days and 10 days prior to the election and 20 days following the election. The portion of the recommendation which generated the discussion was a recommended requirement of 48 hour notice to the Commission of any significantly large contributions, e.g. \$500, received by the campaign after the filing of the 10 day pre-election report. The Commission decided to table the recommendation until its next meeting.

The Commission concurred in the tenth recommendation to extend the time for filing the D-1 form until a time not later than 10 days following the establishment of a bank account and clarify the option to file an A-1 form prior to the filing deadline for the first pre-election report.

The staff's eleventh recommendation was to apply the reporting requirements to all official elections; at present, school board candidates need not file unless they spend more than \$1,000. Former Chairman Goldmann said that the Commission did not object to the amendment which excluded the school board candidates at the time the amendment was proposed because the Commission concluded that requiring school board candidates to file a "negative report", (Form A-1) has minimal benefits for public disclosure. The staff and Mr. Farrell argued for an affirmative reporting requirement, i.e. requiring the filing of a Form A-1 of school board candidates because the absence of such a filing prevents the Commission staff from establishing a clear identification of which candidates have failed to comply with a reporting obligation, thereby making enforcement more difficult. Commissioner DeCotiis said that he found the proposed reporting requirement for school board candidates to be burdensome. On a motion by Commissioner DeCotiis, seconded by Commissioner Proctor and a vote of 3-1, with Commissioner Waugh in the negative, the Commission decided to keep the law as it is and not accept the staff recommendation.

The Commission concurred in the twelfth staff recommendation concerning "testing the waters" whereby once a candidate becomes a candidate, all expenses of "testing the waters" polls become **expenses of the candidacy**. Also, **expenses associated with such efforts to obtain petition signatures for a public question would be included.**

The Commission concurred in the thirteenth staff recommendation to codify existing Commission policy allowing for the assumption of outstanding obligations, continuing after the termination of a campaign, by an ongoing political committee, e.g. a county political party committee.

The Commission held an extensive discussion of the fourteenth staff recommendation to revise the reporting requirements for ongoing political committees by eliminating annual reports and campaign reports and imposing, in their stead, regular quarterly reports. In addition, the staff recommended the 48 hour notice provision for significant contributions received by such a committee when that committee is making contributions to a candidate. The Commission concurred in this recommendation subject to its additional consideration of the 48 hour notice provision in the ninth recommendation.

The Commission concurred in the fifteenth staff recommendation to simplify reporting requirements for a candidate spending limited sums of money by combining Commission forms into one multi-part form.

In addition, the Commission considered two additional recommendations set forth in Mr. Weiner's September 9, 1982 memorandum.

The Commission concurred in the first recommendation to revise the R-1 form to provide for reporting of aggregate financial activity.

The Commission concurred in the second recommendation to amend the penalty sections to clarify the liability of a candidate or a committee treasurer for the accuracy of the committee reports.

Executive Director Weiner said that the recommendations as considered, revised and concurred in by the Commission, would be drafted into a formal document for additional discussion with the Commission and for more formal transmittal to the legislature.

9. Review of a New Short Form for Candidates Whose Campaigns Are Completely Financed by a Joint Campaign Committee

The Commission reviewed the draft "Candidate Designation and Certification of a Joint Campaign Fund" form which the staff recommended be used for the 1982 general election by candidates whose campaigns are exclusively financed by a joint campaign committee. The Commission concurred in the implementation of this form for the 1982 general election.

10. Advisory Opinion Request from Matthew H. Powals, City Solicitor of Atlantic City

The Commission reviewed an August 31, 1982 request for an advisory opinion from Matthew H. Powals, City Solicitor, Atlantic City and a September 9, 1982 memorandum from Mr. Weiner on the subject of the request for an advisory opinion. The key issue in this advisory opinion request is whether a party who is not involved with either campaign may ask for an advisory opinion. General Legal Counsel Farrell pointed out that the purpose of the advisory opinion provision of the law is to protect the requesting party from liability. Mr. Farrell pointed out that the City Solicitor is not a party in the dispute between Mayor Matthews and the Mayor's opponent, James Usry. Mr. Farrell also noted that past policy of the Commission was not to respond with an advisory opinion from such a requestor.

Mr. Weiner suggested that the Commission write both parties, Mayor Matthews and Mr. Usry, and advise them that it is Commission policy that the funds raised and spent for the legal costs of challenging and defending the May election are subject to reporting.

On a motion by Commissioner Proctor, seconded by Commissioner DeCotiis and a vote of 4-0, the Commission authorized the Executive Director to write Mayor Matthews and Mr. Usry and to advise Mr. Powals that the Commission was not responding with a formal advisory opinion.

11. Executive Session

On a motion by Commissioner Waugh, seconded by Commissioner DeCotiis and a vote of 4-0, the Commission voted to resolve to go into executive session to review the executive session minutes of August 11, 1982 and to discuss investigations and enforcement actions, the results which will be made public at their conclusion.

12. Fiscal Year 1984 Budget

Executive Director Weiner distributed a September 13, 1982 memorandum summarizing staff recommendations for the 1984 fiscal year budget request. He then reviewed the recommendations and the supporting documentation and advised the Commission that final decisions on the FY'84 budget would have to be made at its next meeting, Friday, September 24.

13. Adjournment

On a motion by Commissioner Waugh, seconded by Commissioner DeCotiis and a vote of 4-0, the Commission voted to adjourn.

Respectfully submitted,



SCOTT A. WEINER
Executive Director