

NEW JERSEY ELECTION LAW ENFORCEMENT COMMISSION

PUBLIC SESSION MINUTES

FEBRUARY 14, 1983

PRESENT

Andrew C. Axtell, Chairman  
M. Robert DeCotiis, Member  
Haydn Proctor, Member  
Scott A. Weiner, Executive Director  
William R. Schmidt, Asst. Executive Director  
Gregory E. Nagy, Staff Counsel  
Edward J. Farrell, General Counsel

ABSENT

Alexander P. Waugh, Jr., Member

Chairman Axtell called the meeting to order and announced that pursuant to the Open Public Meetings Law, P.L. 1975, c.231, special 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 1:10 p.m. at the office of the Commission's General Legal Counsel, Morristown, New Jersey.

1. Approval of Minutes of Public Session of Commission Meeting of January 26, 1983

On a motion by Commissioner DeCotiis, seconded by Commissioner Proctor and a vote of 3-0, the Commission approved the minutes of the Public Session of January 26, 1983.

2. Approval of Minutes of Public Session of Commission Meeting of February 2, 1983

The Executive Director distributed copies of the February 2, 1983 minutes for review by the Commissioners. On a motion by Commissioner DeCotiis, seconded by Commissioner Proctor and a vote of 3-0, the Commission approved the minutes of the Public Session of February 2, 1983.

3. Advisory Opinion 04-1983 Shell Oil Company

The Commission reviewed an advisory opinion request from Raymond T. Collins, attorney for the Shell Oil Company, Houston, Texas. Mr. Collins sought an opinion about two issues. First question was whether an integrated oil company, such as Shell Oil Company, is prohibited from making political contributions to state candidates. The second was whether the New Jersey prohibition of companies "having the right to condemn land" to make political contributions in New Jersey applied to a parent corporation where a wholly-owned subsidiary, having the right to condemn land to build some pipelines, is not licensed to transact business in New Jersey and does not operate within the state.

Executive Director Weiner introduced the discussion by pointing out that the Commission does not have jurisdiction on the issues raised by Mr. Collins. Commissioner DeCotiis asked why the Commission does not have jurisdiction. Mr. Farrell said that the law dealing with political contributions by certain regulated industries is in the criminal section of the law and thus is clearly within the jurisdiction of the Attorney General. Commissioner DeCotiis asked whether the Crum and Forster decision being considered by the Attorney General will be dispositive of the Shell Oil inquiry. Mr. Weiner said that the Crum and Forster decision will not necessarily be depositive.

On a motion by Commissioner DeCotiis, seconded by Commissioner Proctor and a vote of 3-0, the Commission authorized Staff Counsel Nagy and Mr. Weiner to prepare a draft response to Mr. Collins' advisory opinion request and forward the draft response to the Attorney General for his consideration.

Advisory Opinions 03-1983 and 05-1983 from Stephen J. Edelstein

The Commission first reviewed Advisory Opinion Request 05-1983, a February 1, 1983 letter from Stephen J. Edelstein, Esq., on behalf of Friends of Peter Shapiro. (Angelo Genova, Esq., attended and participated in the Commission discussion of Advisory Opinion 05-1983 and 03-1983.) In his February 1, 1983 letter, Mr. Edelstein asked whether contributions received by the Friends of Peter Shapiro had to be reported on a cumulative basis, i.e. including previous contributions by individuals to the 1982 primary and general election campaigns of Mr. Shapiro. During its discussion, the Commission noted that the campaign committee for Mr. Shapiro was a separate entity from the Friends of Peter Shapiro and that there was no evidence that the Friends of Peter Shapiro was set up for the purpose of avoiding disclosure. The Commission also noted that the mere consultation by the principals of Friends of Peter Shapiro with Mr. Shapiro is not enough for the Commission to compel the aggregation of individual contributions to the 1982 campaign committees and the Friends of Peter Shapiro. Furthermore, the Commission noted that at least 80 percent of the proceeds from the fund raiser held by Friends of Peter Shapiro would be going for purposes other than retiring the debts from the 1982 campaign. Chairman Axtell asked Mr. Genova what the basis was for the 20 percent estimate set forth in the February 1, 1983 letter. Mr. Genova responded that the amount of debt to be retired by a transfer of funds from Friends of Peter Shapiro to the 1982 general election campaign committee was approximately \$8,000 and that amount would represent less than 10 percent of the net proceeds from the Friends of Peter Shapiro fund raiser and about 6 percent of the gross proceeds.

Mr. Farrell noted another point that the two committees in question were not contemporary and this would argue against requiring the aggregation of individual contributions to the two committees.

On a motion by Commissioner Proctor, seconded by Commissioner DeCotiis and a vote of 3-0, the Commission directed Staff Counsel Nagy to prepare a response for Advisory Opinion 05-1983 to the effect that contributions to the Friends of Peter Shapiro Committee do not have to be reported on a cumulative basis with campaign contributions.

The Commission then began its discussion of Mr. Edelstein's January 24, 1983 letter and advisory opinion request, Advisory Opinion 03-1983. In his letter, Mr. Edelstein asked three questions, namely:

What, if any, are the reporting requirements for expenditures incurred either for general purposes or for "testing the waters", such as polling, for a 1985 gubernatorial primary election campaign?

Assuming that Friends of Peter Shapiro were to establish a separate bank account into which only contributions fully complying with the requirements and limitations of N.J.S.A. 19:44A-29 were deposited, could that account be designated as Mr. Shapiro's qualified election bank account for a gubernatorial campaign and would contributors to Friends of Peter Shapiro act lawfully if they thereafter made their full, maximum contribution to Mr. Shapiro's candidacy?

To what extent are general expenditures or expenditures incurred in "testing the waters" prior to the time that an individual becomes a candidate for Governor excluded from the expenditures used to compute the amount of maximum permissible expenditures pursuant to N.J.S.A. 19:44A-7?

Mr. Weiner introduced the discussion by noting that he, Judge Goldmann, Assistant Executive Director Schmidt, Staff Counsel Nagy and Legal Counsel Farrell had met on Thursday, February 10, to review Mr. Edelstein's letters, the issues raised, prior Commission and Federal Election Commission precedents, and alternative responses and developed a staff recommendation. Mr. Farrell continued the discussion. He first noted that the only case of "testing the waters" that arose with the 1981 gubernatorial elections came from the Kramer for Governor primary campaign. In late 1979, a group of individuals raised approximately \$15,000 and conducted a poll to "test the waters" for a possible candidacy by Mayor Kramer in the 1981 Republican primary. Most of the money was spent on a poll with small amounts spent for refreshments for a small fund raiser and another small amount spent for Mr. Kramer's travel expenses. After reviewing information on the amount of contributions and after reviewing the poll questionnaire itself, the Commission in 1980 determined that the expenditures in question represented a limited area of testing the waters, were not campaign related and thus were not reportable and no limits on contributions applied.

Mr. Farrell said the Commission decided that the Kramer "testing the waters" was not election activity and that the poll in question represented a genuine testing the waters. He said the Commission in its review of the Kramer "testing the waters" case during the fall of 1980 through February of 1981, also considered the application of the First Amendment and also gave consideration to the fact that the gubernatorial primary election public financing law was not signed until July 1980. Furthermore, the Kramer "testing the waters" activity terminated at the end of 1979.

Mr. Farrell then set forth the staff's suggestion for the response to Advisory Opinion Request 05-1983. First, Mr. Farrell said that the New Jersey Statute is not clear and thus the issue before the Commission represents a policy determination. He said the Commission could take one of three positions. The first possible position is that all "testing the waters" expenditures and thus contributions to the "testing the waters" activity are outside of the Reporting Act and the contribution and expenditure limitations imposed on gubernatorial candidates. The second position could be that all such contributions and expenditures really represent activities associated with a candidacy for Governor and thus the contributions and expenditures are disclosable, the contributions are limited from the outset to \$800 but are matchable with public funds. Mr. Farrell noted that there is a legal issue with this second position in the instance when the person who is testing the waters does not become a candidate. Mr. Farrell said there is a third position which he termed the "FEC position" whereby all "testing the waters" activities are not disclosable or limited until and unless the person becomes a candidate for Governor. It is this third position the staff is suggesting the Commission adopt.

Mr. Farrell went on to say that there are issues with all three possible positions. He noted that with the third position, the "FEC position", an individual who becomes a candidate could accept contributions of far in excess of \$800 and this would run counter to one of the purposes of the limitation on contributions to gubernatorial candidates, namely to reduce "undue influence" of individuals who make large contributions. However, under the "FEC position" and individual who accepts a contribution in excess of \$800 would have to refund the amount in excess of \$800 at the time the individual becomes a candidate for Governor. Mr. Farrell said that the FEC has decided that "testing the waters" expenditures and contributions are not disclosable and are not limited until the person becomes a candidate, after which time the candidate has a ten-day period to refund contributions in excess of the federal contribution limit and the funds remaining are matchable. He noted that the most recent Federal Election Commission "testing the waters" decision concerned Senator Alan Cranston of California who has subsequently announced his candidacy for the Presidency.

Commissioner DeCotiis noted that he tentatively preferred the position taken by the Commission in the Kramer case as opposed to the position suggested by the staff. He asked how the Commission could define "candidacy" if it held to the Kramer decision position for the 1985 gubernatorial election. Mr. Weiner said that there is an infinite variety of fact situations in which "candidacy" could arise and that it would be a problem for it would compel the Commission to make retrospective decisions on the definition of "candidacy" and those decisions would be made, most likely, during the late stages of the primary election campaign period.

Mr. Weiner said that the position suggested by the staff is attractive because it helps to maintain the integrity of the \$800 contribution limit and the integrity of the limit on expenditures. He also noted that travel expenditures for an individual who becomes a candidate are exempt from the expenditure limit so that it would be chiefly the polling costs which would apply to the expenditures within the expenditure limit. Thus, an individual contemplating a gubernatorial candidacy would have to decide when and with what frequency he or she would conduct "testing the waters" polls because the costs of those polls would apply to the expenditure limit.

Chairman Axtell asked how polling by county political party committees might be handled. It was observed that such polls probably costs very little if any money as opposed to the professionally prepared and conducted polls, such as the one conducted by Mayor Kramer during his "testing the waters" period.

Mr. Weiner said that the response to the advisory opinion request would enable the Commission to "send signals" in 1983 to all of those contemplating a 1985 gubernatorial candidacy. He said, however, that the Commission should proceed swiftly to draft regulations on this issue of "testing the waters" and thus provide for public hearings whereby interested parties could present their ideas and objections to what the Commission is proposing. The key point, however, is to attempt to resolve this issue as early as possible so that those contemplating a gubernatorial campaign in 1985 can plan with some assurance.

Mr. Weiner noted that a prospective candidate, under the staff's suggested position, could "test the waters" without any limitation on the amount of contributions. However, after a candidacy has occurred, then the amount of contributions in excess of \$800 would have to be refunded, all "testing the waters" expenditures would become subject to the expenditure limit (except where such expenditures are clearly outside the expenditure limit, for example travel expenses for the candidate) and the money raised would be eligible to be matched with public funds.

Chairman Axtell asked how the travelling costs of someone such as Mr. Shapiro would be handled. Mr. Weiner noted that certain travel costs would clearly represent an extension of Mr. Shapiro's public position as County Executive for Essex County. The same would apply for any other elected official, such as a member of Congress or a member of the New Jersey Legislature. The extent to which such travel would be considered a "testing the waters" expenditure would depend on the specific facts.

Commissioner Proctor suggested that the staff draft an advisory opinion along the lines of the position suggested by the staff and that the Commission consider the draft advisory opinion at its next meeting on Wednesday, February 23, 1983.

Mr. Weiner assured Mr. Genova that so long as the Friends of Peter Shapiro kept adequate detailed records, it would be protected under the provisions of the Advisory Opinion Request Clause. Mr. Genova said that the concern of the Friends of Peter Shapiro was with the "relation back option". He expressed two concerns. First, he said that Friends of Peter Shapiro have set up a separate, segregated fund and anticipate using that fund, in part, to increase the name recognition of Mr. Shapiro. Once such name recognition has been achieved and assuming a gubernatorial candidacy is viable, then a gubernatorial campaign committee would be established. The concern is with how much, if any, of those expenditures to increase the name recognition of Mr. Shapiro would be charged as campaign expenditures and possibly be charged to the expenditures within the expenditure limit. He cited another example of a quarterly mailing and asked how much of such a mailing might be allocable to "testing the waters" or ultimately to the candidacy for Governor.

Commissioner DeCotiis asked that the staff provide the Commission with copies of FEC opinions that pertain to "testing the waters". He also asked General Legal Counsel Farrell for a legal memorandum on precandidacy expenditures and the legal basis for requiring such expenditures to be reportable and requiring that contributions to pay for such expenditures be limited to the \$800 contribution limit.

#### 5. Report on Pending Legislation

Mr. Weiner reported that the Legislature has taken no action on amending the Campaign Contributions and Expenditures Reporting Act. He said he was seeking a meeting with Assembly Speaker Karcher and had hoped to meet with Speaker Karcher in the morning before the Commission meeting but the Speaker was not available. Mr. Weiner said that it appears that the Legislature will not act fast enough to amend the Act for the 1983 primary election as had been hoped.

Report on Budget and Expenditures

Mr. Weiner distributed copies of a January 26, 1983 two-page letter from Lewis B. Thurston, III, Chief of Staff, Office of the Governor and a January 26, 1983 one-page memorandum from Edward G. Hofgesang, Director, Division of Budget and Accounting. Both the letter and the memorandum dealt with the issue raised by Mr. Weiner in his letter of January 24, 1983 about the projected deficit for Fiscal Year 1983 in the Commission's Data Processing Account; that deficit is projected to be in the range of \$40,000 to \$60,000 and arises from the costs of converting our data processing and entry programs with the conversion required because IBM has withdrawn its support for the currently used program. Mr. Weiner noted that neither Mr. Thurston's nor Mr. Hofgesang's response resolved the issue he had raised. Mr. Weiner reported that he had spoken with Mr. Thurston while they were both in Washington but that Mr. Thurston has been ill and not available for appointment. Mr. Weiner also said that he had spoken with Mr. Hofgesang to arrange for a meeting to clarify whether the Commission has the authorization to incur the projected deficit in the Data Processing Account. Mr. Weiner noted that neither Mr. Thurston's nor Mr. Hofgesang's response contained any such authorization to incur the projected deficit. Mr. Weiner noted that the Commission cannot be in a position of incurring that level of liability without authorization from the Division of Budget and Accounting and/or the Governor's Office. Mr. Weiner said that if he does not receive a conclusive response from either Mr. Hofgesang or Mr. Thurston within the next week to ten days he would then recommend that the Chairman correspond with appropriate state officials and that the Commission plan to turn off its computers when expenditures reach the \$40,000 level, the amount appropriated for data processing for Fiscal Year 1983. Mr. Weiner stressed the extreme seriousness of this problem and the necessity to resolve it in the very near future. He noted that the expenditures for data processing, exclusive of the conversion costs, are projected to come in at or below the \$40,000 figure. Thus, this problem has arisen solely from a decision external from the Commission creating the necessity for the Division of Data Processing to convert our system if it is to be usable after July 1. However, Mr. Weiner stressed that neither the Governor's Office nor the Division of Budget and Accounting has yet clarified where the funds are coming from to pay for the cost of the conversion and have not yet clarified whether the Commission can incur the deficit to be repaid from future appropriations.

Mr. Weiner reported that the Legislature will shortly adjourn to permit the Joint Appropriations Committee of the Legislature to begin its review of the Governor's Fiscal Year 1984 budget. He reported that present plans of the Legislature are to initiate that review in early March.

7. Executive Director's Report

Mr. Weiner distributed to the members of the Commission copies of the Commission's report entitled "The 1981 N.J. Legislative General Election Contributions and Expenditures Volume 1: General Summary Information" (213 pages). He said the report had been sent to members of the Legislature, the two state political committees and to the Press Corps. He noted the extraordinary amount and quality of work put into the report by Juana Schultz, Director of Compliance and Review and two Report Examiners, Peter D. Nichols and R. David Rousseau. He said that Volume 2 which will provide information on each individual candidate should be available from the printer within one to two weeks.

Mr. Weiner reported that he had been invited to attend the second annual meeting of the Society of Environmental and Economic Development (SEEDS) which again will be held in Atlantic City. Mr. Weiner said that SEEDS had been organized by the New Jersey Chamber of Commerce and the AFL-CIO to foster communication between business and labor in the state. He will be on panels concerning campaign finance, lobbyist reporting and PACs.

Mr. Weiner reported that a seminar is being held on Saturday, March 5th in Bergen County with Municipal Clerks and elected officials. He said that he and Juana Schultz will conduct the seminar.

He said that plans were going forward for seminars to be held throughout the state on campaign finance reporting requirements. This is being done, in part, in anticipation of changes in the law. The seminars will be conducted with campaign treasurers and other interested parties.

8. Florio for Governor - Request for Disbursement to Nicholas Rudi

Mr. Weiner distributed his one-page February 14, 1983 memorandum concerning a request for a payment to Nicholas Rudi, Finance Director of the Florio for Governor primary and general election campaign committees. Attached to Mr. Weiner's memorandum was a two-page January 21, 1983 letter from Thomas A. Cucinotta, Treasurer of the Jim Florio for Governor Committee. Mr. Cucinotta asked the Commission to authorize payment of \$1,100 to Mr. Rudi out of the \$1,513 returned to the State and deposited in an escrow account for the Florio for Governor primary campaign. Mr. Cucinotta noted that the refund check came in from the media consultant for the Jim Florio for Governor primary election campaign after the campaign committee had closed out its account and submitted a final report. Mr. Cucinotta also asserted that Mr. Rudi had provided services to the committee both before the final report was submitted and after the final report had been submitted and it was for those services that Mr. Cucinotta asked the Commission to authorize a payment of \$1,100 to Mr. Rudi.

On a motion by Commissioner DeCotiis, seconded by Commissioner Proctor and a vote of 3-0, the Commission authorized the payment of \$1,100 from the escrow account maintained by the state on behalf of the Jim Florio for Governor primary election campaign committee to Nicholas Rudi for compensation for services related to the primary election.

9. Executive Session

On a motion by Commissioner Proctor, seconded by Commissioner DeCotiis and a vote of 3-0, the Commission voted to resolve to go into Executive Session to review the Executive Session Minutes of January 26, 1983 and to discuss investigations and enforcement actions, the results of which will be made public at their conclusion.

10. Adjournment

After returning to Public Session, on a motion by Commissioner DeCotiis, seconded by Commissioner Proctor and a vote of 3-0, the Commission voted to adjourn.

Respectfully submitted,



SCOTT A. WEINER  
Executive Director