

NEW JERSEY ELECTION LAW ENFORCEMENT COMMISSION

PUBLIC SESSION MINUTES

MAY 23, 1983

PRESENT

Andrew C. Axtell, Chairman
M. Robert DeCotiis, Member
Haydn Proctor, Member
Alexander P. Waugh, Jr., Member
Scott A. Weiner, Executive Director
Edward J. Farrell, Counsel
William R. Schmidt, Asst. Executive Director
Gregory E. Nagy, Staff Counsel
Leslie G. London, Election Finance Analyst*
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 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 10:20 a.m. at the office of the New Jersey Commission on Ethical Standards, 28 West State Street, 12th Floor, Trenton, New Jersey.

1. Approval of Minutes of Public Session of Commission Meeting of May 2, 1983

Commissioner Waugh noted a typographical error on page 2, section numbered 5, paragraph 2, line 2, wherein the word "is" should read "if".

On a motion by Commissioner Waugh, seconded by Commissioner Proctor and a vote of 3-0, the Commission approved the minutes, as amended, of the Public Session of May 2, 1983. Commissioner DeCotiis did not vote on the minutes because he did not attend the May 2, 1983 Commission meeting.

2. Advisory Opinion 08-1983

The Commission reviewed a two-page May 9, 1983 advisory opinion request from Richard P. Daingerfield, Esq., and a two-page draft opinion dated May 23, 1983, and prepared by Staff Counsel Nagy. Mr. Daingerfield, on behalf of the First National State Bank-Edison, asked what were the filing requirements of banks under N.J.S.A. 19:44A-12 and N.J.S.A. 19:44A-17.

Mr. Weiner explained that banks used to file reports with the Commission but that some years ago the Commission decided it was not appropriate to compel banks to file because such filing was duplicative of the filings by candidates and political committees. Therefore, the Commission instituted a policy whereby the Commission would forego enforcement of the requirements imposed by N.J.S.A. 19:44A-17 when a bank agrees to supply the Commission with the information which

* Ms. London attended a major portion of the Executive Session.

otherwise would be filed. Chairman Axtell said that it appeared from reading Mr. Daingerfield's letter that the statute is very explicit and clear on the requirements of banks to file reports with the Commission. Mr. Farrell explained that the statutory requirement is that the banks file a report within 15 days after the election. Mr. Farrell said that about 1974 the Commission was faced with the problem of what to do with the filings from the banks and decided that banks were being penalized for being depositories for candidates and political committees. Therefore the Commission arrived at the policy of accepting the cooperation of the banks in lieu of the banks filing the reports. Chairman Goldmann said that the Commission at that time believed that the filing requirement on the banks was very onerous. Mr. Nagy also noted that the Commission has never devised the form for use by banks in reporting to the Commission.

On a motion by Commissioner Proctor, seconded by Commissioner Waugh and a vote of 4-0, the Commission approved the draft advisory opinion for release.

3. Legislative Initiatives of the Division of Criminal Justice

Mr. Weiner distributed his two-page May 19, 1983 memorandum to the Commissioners on this subject along with a one-page May 6, 1983 letter from Donald R. Belsole, Director, Division of Criminal Justice, along with a copy of a "legislative initiative" prepared by the Division of Criminal Justice. The "legislative initiative" would amend and supplement Title 19 and would provide for a new general civil penalty section to be enforced by the Election Law Enforcement Commission. Mr. Belsole asked Mr. Weiner and the Commission to provide the Division of Criminal Justice with any comments the Commission might have on the "legislative initiative". (The "legislative initiative" is made up of 54 pages.)

Mr. Weiner said the "legislative initiative" would streamline the criminal sections of Title 19 and would create some new civil remedies with enforcement lodged with the Commission. He said that the "initiative" represents the Division's proposals and it has not been introduced or presented for introduction into the Legislature.

Both Mr. Farrell and Mr. Nagy said that much of the criminal portion of the Title 19 is largely unenforceable and that is the rationale for providing civil remedies which are, presumably, more enforceable. Mr. Nagy said he believes there is a need for more elastic remedies; for example, when a political advertisement does not include the disclosure of the person or committee paying for the ad the only remedy now is to refer the question to the county prosecutor or the Attorney General.

Mr. Weiner noted that the Division's proposals would provide civil remedies on voter registration, party declaration and absentee ballot provisions which are now only enforced through criminal action.

Mr. Farrell suggested that the Commission keep in mind that the Attorney General's view may not be as sound as it may appear to the Attorney General. Some of the proposed changes might get the Commission into election administration which may be too far away from financial disclosure. Mr. Weiner noted that whoever is drafting the "legislative initiative" is working with a broad concept of providing civil remedies for infractions of Title 19 and to do so in one piece of legislation. However, Mr. Weiner believed that the proposals as now drafted need a great deal of refinement and discussion before being presented to the Legislature.

Commissioner Proctor noted that the adoption of the proposals from the Division of Criminal Justice would greatly expand the jurisdiction and work of the Commission and its staff. Commissioner Proctor suggested that the proposals are at least theoretically a good idea, and Mr. Farrell said that the basic proposal does make more sense. Chairman Axtell expressed his concern about the difficulty that might arise in finding Commissioners who could devote the time since more and longer meetings might be required.

Mr. Weiner said that he will meet with Director Belsole along with Mr. Nagy and Mr. Farrell to obtain a clearer understanding of the proposals and to prepare a summary report of the "legislative initiative".

5. Discussion of Possible Adoption of Regulations Concerning Testing the Waters Activity

Mr. Weiner said the transcript of the May 11th Public Hearing would be available in a week or so. Commissioner Waugh, who was absent from the May 11th Public Hearing, asked that he be able to read the transcript before the Commission takes final action. Mr. Weiner noted that he had distributed with the agenda two written statements. The first was a one-and-a-half page May 16, 1983 letter from Common Cause of New Jersey and signed by Jo-Ann C. Oser, Executive Director. The second was five-page May 18, 1983 letter from Stephan J. Edelstein, Esq., on behalf of Friends of Peter Shapiro.

Mr. Farrell said that Mr. Edelstein and Assembly Minority Leader Gallo had made a point which the Commission should consider concerning the time frame whereby activities prior to a specific date are outside of any reporting requirements and activities after that date are under the requirements for reporting as well as contribution limits and other restrictions for gubernatorial candidates. Mr. Farrell said there is some theoretical basis for the proposal.

Mr. Weiner said there are three fundamental issues before the Commission on the "testing the waters" proposed regulations. The first is the time issue referred to by Mr. Farrell. The second is the proposal set forth by Federal Election Commissioner Frank Reiche to the effect that the contribution limits and other restrictions

applicable to gubernatorial candidates would apply from the onset of an individual considering candidacy for Governor. The third issue is that of how to allocate expenditures between an elected official's official duties and "testing the waters" activity.

Former Chairman Goldmann said that the fixed time proposal theoretically has some attraction. Commissioner Proctor noted that "candidacy" has to represent an overt act.

Mr. Weiner said he had spoken with his counterpart in Michigan which has a public financing law. The Michigan law requires someone to go back to the earliest point and to include any money raised or spent under the restrictions on a publicly funded candidate. Thus, in essence, Michigan has no provision for "testing the waters".

Former Chairman Goldmann expressed his concern about establishing a fixed time frame and asked if that would not lead to "hipper-dipper" or slight of hand whereby someone considering running for Governor would "shuffle the cards fast".

Commissioner DeCotiis said that he was not in favor of a specific time frame. Mr. Weiner said the Commission could decide if an activity is "testing the waters" or if an individual has become a candidate based on the specific facts.

Commissioner Proctor suggested that some presumption about the time when an activity is taken might not be unreasonable. He suggested that there should be some burden on the Commission and that all of the burden should not rest on the individual who is contemplating a candidacy.

Mr. Weiner noted that when an action is taken by an individual contemplating candidacy has a different weight depending on how close that time is to the date of the election.

Commissioner Proctor said that the six months time period suggested by Assembly Minority Leader Gallo "sounds very good". Mr. Weiner suggested the Commission should not restrict itself to a specific time frame.

Mr. Weiner asked if there was any support in the Commission for the position taken by Federal Election Commissioner Reiche. Former Chairman Goldmann said he did not support the proposal. Commissioner DeCotiis said whether an individual is a candidate is a factual determination. Mr. Farrell said that over the years he has disagreed with Commissioner Reiche on this issue. Mr. Farrell said that Commissioner Reiche's position is basically that "testing the waters" and candidacy are so closely allied that there is no constitutional separation of the two activities.

Former Chairman Goldmann noted that when an individual becomes a candidate is a very subjective decision. Mr. Farrell noted that most public officials are regularly running for office in one way or another.

The Commission reached a consensus to not take any action until June 6, 1983.

6. Executive Director's Report

Mr. Weiner said that Friday, May 13th, was the date for the 25 day pre-election reports for the 1983 primary. There are over 2,400 candidates 313 of whom are legislative candidates. To date, the Commission has received 2,045 reports and there are 405 nonfilers. That number represents 16.5% of the total. Mr. Weiner said the staff had sent a second warning notice to the nonfilers today.

Mr. Weiner reported that the May 18th Northeast Conference on Lobbying had been postponed. He said there are 13 states plus the federal government in the northeast region, of which seven could attend but six could not. Therefore, it was decided to postpone the conference until September or October to enable more of the various jurisdictions to send representatives.

Mr. Weiner noted that the move of the Commission's office had been delayed until Friday, May 27th.

Mr. Weiner distributed a copy of the 1982 Annual Report which has now arrived from the printer's. He said a special copy had been sent to the legislative leadership and he will send the printed version to the remainder of the Legislature and to our regular distribution list.

Mr. Weiner noted that at the last meeting he had discussed the status of the amendments to the Reporting Act. He said subsequently he had met with the staff of the Assembly leadership who indicated that the Legislature would take action before the end of June and that the amendments would be enacted by July 1983. He said that Staff Counsel Nagy and he had met with Assemblyman Bocchini and that a public hearing had been tentatively scheduled for May 26. However, that public hearing was not scheduled and the Assembly committee is looking for a new date. Mr. Weiner said that his skepticism is growing that the Legislature will act in time for the amendments to take effect for the 1983 general election. In light of the lack of activity, the Commission requested that Mr. Weiner immediately communicate with the legislative leadership as directed by the Commission at its May 2nd meeting.

7. Executive Session

On a motion by Commissioner Proctor, seconded by Commissioner Waugh and a vote of 4-0, the Commission voted to go into Executive

Session to review the Executive Session minutes of May 2, 1983 and to discuss investigations and enforcement actions, the results of which will be made public at their conclusion.

8. Approval of Executive Director's Expense Voucher

After returning to Public Session, on a motion by Commissioner DeCotiis, seconded by Commissioner Proctor and a vote of 4-0, the Commission authorized Chairman Axtell to approve an expense voucher in the amount of \$163.85 for Executive Director Weiner, chiefly for expenses associated with attending the 25th anniversary of the Citizen's Research Foundation in Washington, DC.

9. 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