

NEW JERSEY ELECTION LAW ENFORCEMENT COMMISSION

PUBLIC SESSION MINUTES

NOVEMBER 17, 1987

Present

Stanley G. Bedford, Chairman
Owen V. McNany, III, Vice Chairman
Andrew C. Axtell, Commissioner
David Linett, Commissioner
Frederick M. Herrmann, Ph.D., Executive Director
Edward J. Farrell, General Counsel
Jeffrey M. Brindle, Deputy Director
Gregory E. Nagy, Legal Director

Chairman Bedford called the meeting to order and announced that pursuant to the "Open Public Meetings Act," P.L. 1974, 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 11:00 a.m. at the Maplewood, N.J. Municipal Building.

Chairman Bedford welcomed newly appointed Commissioner David Linett to the Commission. He said that his swearing-in on Monday, November 16, 1987 was quiet but very nice.

1. Executive Directors' Report

A. Press Releases

Executive Director Herrmann directed the Commission's attention to the press release urging the legislature to pass legislation that would require PAC's and party committees to identify their political or economic affiliation in their titles.

On a motion by Vice Chairman McNany, seconded by Commissioner Axtell and a vote of 4-0, the Commission directed Executive Director Herrmann to distribute the PAC identification press release.

Executive Director Herrmann next discussed the press release dealing with proposed changes to the lobbying law.

Chairman Bedford explained that under current law a lobbyist can take a legislator to dinner and not report it to the Commission, provided that no discussion of legislation took place. "In other words," he said "this goodwill lobbying is not reportable. Only expenditures for direct, express and intentional communication with legislators and/or the Governor and his staff about legislation are reportable."

Executive Director Herrmann added that the lobbying law is very weak and that the Commission has been urging changes in it since 1982.

Chairman Bedford asked whether a bill has been drafted encompassing the Commission's proposals.

Executive Director Herrmann responded that he has been working with the Attorney General on this issue. He said that lobbyists also should be consulted. Executive Director Herrmann said that the press release is a first step, designed to heighten public awareness of the need for change.

Chairman Bedford directed the Executive Director to distribute the lobbying press release.

Executive Director Herrmann reported that the Commission's final press release analyzing the legislative elections of 1987 will be ready by mid-December.

B. G-87 Activities by Staff

Executive Director Herrmann reported that the staff came through the general election of 1987 with "flying colors." He said that the Commission provided that best preelection analytical coverage in ELEC's history. He said that this coverage culminated with his interview on New Jersey Network News. Executive Director Herrmann said that all filing and coding was completed by the required deadlines and that massive amounts of xeroxing was done. He indicated that professional staff worked 398 hours of overtime in October.

Executive Director Herrmann said that these efforts were undertaken despite the unexpected absence of Evelyn Ford and the loss of three experienced professional staff members during the summer.

C. 1988 Commission Meeting Dates

On a motion by Commissioner Axtell, seconded by Vice Chairman McNany, and a vote of 4-0, the Commission approved the schedule for Commission meetings in 1988. This action was undertaken pursuant to the "Open Public Meetings Act."

D. Christmas Party

Executive Director Herrmann reported that plans have been finalized for the Christmas party on December 15, 1987. The annual event will be at the Glendale Inn, Ewing Township, following the business meeting of the Commission.

E. Upcoming Staff Activities

Executive Director Herrmann stated that he will be attending a New York City reception hosted by Dr. Herbert E. Alexander of the Citizen's Research Foundation on November 18, 1987.

He said that on November 19, 1987 he, along with two junior staff members, would be staffing a consulting table at the League of Municipalities Conference in Atlantic City.

Executive Director Herrmann said that he will be attending the Council of State Government's (CSG) National Conference in Boston, Massachusetts during the weekend of December 5, 1987. He said he will meet with CSG staff and begin planning of the 1988 COGEL Conference in Orlando, Florida.

F. Personnel Update

Executive Director Herrmann reported that the new Director of Review and Investigation resigned to join a law firm. He said that an Assistant Compliance Officer also resigned, taking a position with the administration. Executive Director Herrmann said that staff was close to replacing Sandy Magee, the former Administrative Assistant, but that Jo Hall, secretary to the Executive Director and Deputy Director, recently went on medical leave for an indefinite period of time.

Executive Director Herrmann stated that those staff shortages, coupled with some backlog in investigations caused by the press releases, means that final figures on G-87 might be delayed by two weeks. He added that the Commission's FY89 budget request contains a proposal for a researcher, the fulfillment of which would help alleviate this type of problem in the future. Executive Director Herrmann said that the request also calls for an additional field investigator. Currently the Commission has one field investigator to cover the entire State. He said that given this situation, along with staff shortages throughout the year in the investigations area, Legal Director Nagy has done a great job in not only keeping the section afloat but also maintaining its high level of enforcement activity.

G. VISA Card Regulation

Executive Director Herrmann suggested that the Commission institute a regulation prohibiting candidates from simply listing payments to credit cards as expenditures. He said that the regulation should require backup documentation to be provided which would explain for what the credit card was used.

Chairman Bedford said that it was important to move ahead on this regulation.

H. Meeting with the New York Temporary Commission on Lobbying

Executive Director Herrmann asked whether the Commissioners were interested in participating in a joint meeting with the New York Temporary Commission on Lobbying. He said that the regular January business meeting of the Commission could coincide with this meeting. He said that it would be held at the World Trade Center in New York City for the purpose of discussing mutual concerns in the area of regulating lobbyists.

General Counsel Farrell said that it might not be a good idea to hold a business meeting out of State. Executive Director Herrmann stated that staff had checked with the Attorney General's Office and learned that an out-of-state meeting was permissible. General Counsel Farrell said that while not questioning the legality of such a meeting, he was concerned about the impression it would leave with the public. The Commission agreed that the business meeting should be held in New Jersey and separate from the joint conference. It also agreed that attendance at the New York meeting should be optional for Commissioners.

I. Computer Update

Executive Director Herrmann stated that report retrieval time of the computer has been improved dramatically, from two hours to 20 minutes. He also reported that with respect to the legislative program, a minor allocation bug remained to be fixed.

2. Approval of Public Session Minutes of October 20, 1987

On a motion by Commissioner Axtell, seconded by Chairman Bedford, and a vote of 2-0, the Commission approved the Public Session Minutes of October 20, 1987.

3. Advisory Opinion Requests No. 12, 14 and 15 Collectively

Advisory Opinion Requests No. 12, 14, and 15 involve the same basic question: Does a business entity incur a filing obligation and become a political committee or a continuing political committee when it makes political contributions of \$2,500 or more per calendar year or expects to make contributions of \$2,500 or more for two or more years?

General Counsel Farrell stated that a policy decision on this issue was required by the Commission. He said that he had drafted a response to Advisory Opinion No. 12, which was also applicable to Advisory Opinions 14 and 15, for consideration by the Commission. In essence, the draft recommended that business entities should no longer be required to report contributions they make. It suggested that the Commission temporarily required this reporting to enhance disclosure until its computer system was operational.

After reading General Counsel Farrell's response, Chairman Bedford, for the Commission asked Mr. John P. Sheridan, attorney with Riker, Danzig, Scherer, Hyland & Perretti, the firm on whose behalf Advisory Opinion Request No. 12 was made, if he would comment.

Mr. Sheridan stated that he was unaware of what the draft concluded and as such would have difficulty responding to it.

General Counsel Farrell stated that the draft's conclusion was favorable to Mr. Sheridan's point of view. He said that for a temporary period of time the Commission required business entities to report aggregate contributions of more than \$10,000. These entities presently are considered peripheral CPC's.

General Counsel Farrell said that now that the computer is on line the unusual stand of requiring contributor reporting is no longer necessary. He said that the draft suggests that the requirement is no longer needed and should be eliminated from now on. General Counsel Farrell said that the Commission should have an across the board rule that it will not require pure contributor reporting.

Chairman Bedford asked Mr. Sheridan for his comments.

Mr. Sheridan stated that his advisory opinion request letter set forth his arguments succinctly. He said that he would paraphrase it for the Commission.

Mr. Sheridan said that it has been the sense of most of the people in Trenton who deal with contributions that reporting by business entities was not required. He said that, with one exception, these professional fund-raiser types were totally surprised at the interpretation of the statutes and regulations which called for reporting by pure contributors.

Mr. Sheridan stated that when his law firm began looking at the question, the conclusion was that while certain language in the statutes and regulations may indicate the possibility of reporting by pure contributors, the overall sense of the statutes gives the impression that this reporting was not required.

Mr. Sheridan said that neither the statute nor the legislative history contain any indication that the Legislature intended that corporations, partnerships or other organizations making contributions be classified as continuing political committees. He said that the argument is supported by the Governor's press release in 1983 announcing the enactment of changes in the law. He said that this press release states that "Political Action Committees (PACs) and similar organizations file cumulative quarterly reports." He said the Governor did not envision the phrase "similar organizations" as applying to every business entity contributing more than \$2,500.

Mr. Sheridan reiterated that a business organization making contributions should not be classified as a CPC. He said that the statute in several sections indicates that CPCs have treasurers, raise money, and make expenditures. He said that they do not perform functions similar to political committees and PACs. He said that according to N.J.S.A. 19:44A-3(n), an entity, in order to

be a CPC, must contribute \$2,500, expect to contribute \$2,500 during a subsequent election, and be determined to be a continuing political committee by ELEC. He said that the fact that there is a certification process indicates that something more than merely contributing money is required to be classified as a CPC, thus incurring a reporting obligation.

In addition, he said that if the Commission requires corporations to report, but not other pure contributors, the policy would be "unconstitutionally discriminatory." He said that there is no reason to distinguish between a one-person proprietorship and a corporation. He said that under this policy, if read literally, a husband and wife would have to report after making contributions of \$2,500. Mr. Sheridan stated that he "can't believe this to be the legislative intent."

Chairman Bedford asked why the Commission instituted the requirement that corporations making contributions in the aggregate of \$10,000 be required to report.

Executive Director Herrmann said that the staff was divided on the issue at the time it was enacted. According to Executive Director Herrmann one argument held that throughout its history the Commission had never required pure contributors to report and that to do so now would have a chilling effect on the electoral process. He said that the counter-argument was that such a requirement would improve the public's ability to identify the candidates that are being supported by major contributors. Executive Director Herrmann said that the trouble with the second approach, the one that was adopted by the Commission, is that the public does not obtain the information until after the election because the fourth quarterly report that covers the month before the general election is not filed until January 15 of the following year.

Chairman Bedford added that the effect of the ruling is to provide the Commission with a double check. He said that reporting by these entities can be compared to the reports filed by candidates.

Commissioner Linett asked the question: Assuming a partnership solicited its partners to contribute to candidates, would Mr. Sheridan change his opinion?

Mr. Sheridan replied that his opinion would not change.

Commissioner Linett, in extrapolating upon his earlier question, commented: Suppose J. & J. went to executives and asked them to come up with money to contribute to candidates; in effect forming a committee?

Mr. Sheridan responded: "That is a PAC. They are fund-raising. This is different from what our firm does."

Commissioner McNany added that in his opinion J. & J., or any company doing this, would be acting as a PAC.

Mr. Sheridan said that if his firm solicited and collected money to put into a fund it would be establishing a PAC. He said that in that case, he would

change his answer. Mr. Sheridan said, however, that if contributions are made from the corporation's treasury and it is not soliciting, then there should be no requirement for it to file.

Commissioner McNany said that there is a question of when disclosure comes about.

Executive Director Herrmann said that under the current regulation disclosure will not result until after the election.

General Counsel Farrell said that the real issue is that prior to this regulation, the Commission never required reporting by pure contributors.

Chairman Bedford asked whether anyone else in the audience wanted to comment.

Thomas V. O'Neil, Executive Vice President of The Marcus Group, Inc., Public Affairs Counsel, asked to speak. Mr. O'Neil said that from a "factual, equitable perspective", after working ten years in Trenton, he could say that no one in the Trenton Community was aware of this regulation. He said that people were shocked that the regulation exists. He said that this goes for trade association people as well as people in the business community.

Mr. O'Neil said that the regulation is discriminatory in nature. He said that a law firm, for instance, could collect contributions, contribute much more under these circumstances, and not have to report. He said that a company undertaking activity akin to the J. & J. example would have to report, however. He said it all depends upon how contributions are organized.

Commissioner Linett said that it is clear that the statute does not require pure contributors to report. He said that the Commission must try to make sure that our rules do not require mere contributors to report. He said, however, that he is concerned about the issue of a corporate group forming and supporting legislators. He said that he is concerned about how the Commission would enforce compliance with the filing requirements in this case.

Executive Director Herrmann said that the CPC-1 Form, asks pertinent questions about an association's plans for raising money. He said that from this form ELEC determines whether a group is a CPC.

Chairman Bedford asked whether the current regulation requiring corporations making donations in the aggregate of \$10,000 serves any purpose.

Executive Director Herrmann answered in the negative. With respect to the computer question raised by General Counsel Farrell, Executive Director Herrmann said that he wanted to clarify that the computer is not totally operational at this point. He said that in the near future, it will be and that the necessary contributor information will be available. He said, however, that financial activity is more importantly disclosed in a preelection setting. The computer,

he said, will not provide information on major contributors until after the election anyway. Executive Director Herrmann added that the real source of preelection disclosure derives from the candidates' reports.

Commissioner Linett asked staff whether it would look into a company that made \$75,000 in contributions, for instance.

Executive Director Herrmann said that the computer will provide an alphabetical list of contributors, and therefore readily identify entities that were contributing substantial sums.

General Counsel Farrell asked whether the computer could provide a printout of those entities making contributions in an amount above a certain threshold.

Executive Director Herrmann said that from the printout, this task could be done manually. He said that the computer cannot aggregate.

Commissioner Axtell asked to whom these printouts would be available to. Executive Director Herrmann said that the printouts would be available to the public.

Vice Chairman McNany asked whether the computer would have the ability to print out an alpha list within 6-7 months after an election. Executive Director Herrmann answered in the affirmative. Commissioner McNany asked if the Commission could review one of these printouts when they are available. Deputy Director Brindle said that conservatively speaking, the Commission could review an alpha list of G-85 legislative contributors at its January meeting.

Chairman Bedford asked whether the Commissioners would like to vote on the pure contributor matter. He said that it was his preference to consider the matter further at the next meeting. Commissioner Axtell said that he preferred to hold the matter over to the next meeting. Vice Chairman McNany indicated that he was prepared to vote on the issue today but that he had no problem with holding it over until the December meeting. Commissioner Linett asked if the staff could come up with a proposal to discuss at the next meeting. General Counsel Farrell said that staff and he could work together on this suggestion.

Chairman Bedford asked for a motion to table the matter until the next Commission meeting. On a motion by Commissioner Axtell, seconded by Vice Chairman McNany and a vote of 4-0, the Commission opted to table the matter until the December meeting. Chairman Bedford asked General Counsel Farrell to write letters to the sponsors of Advisory Opinions 14 and 15 as well as 12 to advise them of the Commission's action.

4. Advisory Opinion No. 13

On a motion by Commissioner Linett, seconded by Commissioner Axtell, and a vote of 4-0, the Commission approved General Counsel Farrell's letter to Jeffrey L. Reiner, Esq., of Meyner and Landis which states that Advisory Opinion Request No. 13 has been forwarded to the Attorney General of New Jersey.

5. Executive Session

On a motion by Commissioner Axtell, seconded by Vice Chairman McNany and a vote of 4-0, the Commission voted to go into Executive Session to discuss personnel, investigative, and enforcement matters, the results of which will be made public at their conclusion.

6. Adjournment

On a motion by Commissioner Axtell, seconded by Commissioner Linett and a vote of 4-0, the Commission voted to adjourn at 1:03 p.m.

Respectfully submitted,



FREDERICK M. HERRMANN, Ph.D.

FMH/ck
