



State of New Jersey

ELECTION LAW ENFORCEMENT COMMISSION

NATIONAL STATE BANK BLDG., 12th FLOOR
28 W. STATE STREET, CN 185
TRENTON, NEW JERSEY 08625-0185
(609) 292-8700

FREDERICK M. HERRMANN, PH.D.
EXECUTIVE DIRECTOR

JEFFREY M. BRINDLE
DEPUTY DIRECTOR

GREGORY E. NAGY
LEGAL DIRECTOR

EDWARD J. FARRELL
COUNSEL

PUBLIC SESSION MINUTES

FEBRUARY 19, 1992

All the Commissioners and senior staff were present.

Chairman McNany called the meeting to order and announced that pursuant to the "Open Public Meetings Act," N.J.S.A. 10:4-6 et seq., 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 10:10 a.m. at the Morristown Municipal Building, Morristown, New Jersey.

1. Approval of Public Session Minutes of January 22, 1992

On a motion by Commissioner Bedford, seconded by Commissioner Linett and passed by a vote of 3-0, the Commission approved the Public Session Minutes of January 22, 1992.

2. Executive Director's Report

Executive Director Herrmann advised the Commission that he spoke with Joseph Mania on February 13, 1992, at which time he was told that his (Mania's) appointment would not be approved. The Executive Director said that he subsequently learned that Ralph A. Skowron, M.D., of Mt. Laurel, Burlington County, has been nominated to replace Elliott Mayo.

A. Secretarial Vacancy

Executive Director Herrmann reported that the Commission has received permission to fill a vacant secretarial spot. He said that the Commission is served by only three secretaries. According to the Executive Director, the need for secretarial assistance has been heightened by the enactment of the new lobbying law. Executive Director Herrmann said that due to the fact that the Commission must hire from a list of 23 persons downgraded from a higher civil service position, the hiring process is very slow. The Executive Director added that the secretarial situation is exacerbated by the fact that one of the three remaining secretaries is facing surgery and extended sick leave. He reported that one of the professional staff has volunteered to type as needed. Executive Director Herrmann advised the Commissioners also that the office messenger and one of two data operators are both out on extended sick leave.

B. Initiative and Referendum

Executive Director Herrmann suggested that Initiative and Referendum may soon be an issue actively before the Legislature. He said that from the standpoint of the merits of I & R legislation, it is not an issue for ELEC. However, the Executive Director continued, it is an issue for ELEC from the standpoint of financial reporting that would result.

Executive Director Herrmann expressed the hope that the new Initiative and Referendum legislation would not create a separate reporting system for Initiative and Referendum campaign financing but would simply integrate I & R committee reporting into the current system. He noted that reform down the road would effect any campaign financing under I & R. Executive Director Herrmann added that a Times editorial pointed out that there are no contribution limits allowed for money given to a public question committee and no prohibitions on most corporate giving to such a committee. He said also that there is no prohibition on spending money for circulating petitions.

C. Legislative Activity

Executive Director Herrmann told the Commission that Chairman McNany and he appeared before the Assembly State Government Committee on February 3, 1992, to discuss ELEC's reform proposals.

The Executive Director noted also that on February 10, 1992, he appeared before the Senate State Government Committee to share ELEC's proposals. Executive Director Herrmann said further that this same committee posted S-70 (Brown) on February 13, 1992. This bill creates an independent fund to support ELEC. It allows the Commission to collect filing fees from continuing political committees, political committees and lobbyists; upgrades the fine scale; allows public donations; and maintains ELEC's current legislative appropriation. Executive Director Herrmann said that the legislation was based on ideas from White Paper Number Four (Ideas from Alternate Funding Source) and White Paper Number Six (Autonomy and Jurisdiction). The Executive Director said that the bill was held without discussion.

D. Ethics Forms

Executive Director Herrmann announced that the Commissioners are required to file their annual ethics forms by May 15, 1992. The forms are filed in duplicate with the Executive Commission on Ethical Standards and singly with the Governor's office.

E. Future Meetings

The Commission decided to hold its March meeting on the 25th in Maplewood and its April meeting on the 15th in Somerville.

3. Public Financing Report

Executive Director Herrmann asked Director of Public Financing Nedda Gold Massar to present an overview of her report on the gubernatorial public financing program entitled: New Jersey Gubernatorial Public Financing Revised: 1989 and Beyond. The Executive Director lauded the report, contending that its excellence resulted from Director Massar's mastery of the subject and hard work preparing the study.

In summarizing the report, Director Massar asserted that though strongly supporting the program, the study nevertheless points out that the financial impact of the 1989 amendments upon the program was enormous. She said that because the 1989 amendments resulted in the inability of the voluntary income tax check-off to sustain amounts paid to candidates, the study is recommending revisions in the program to make it fiscally viable in the future. Director Massar said that the heart of the report is the Commission's recommendations to restructure the program for financial reasons.

Director Massar indicted that the report makes eleven recommendations for reforming the program. She said, however, that the first three recommendations form the basis of the Commission's recommendations for making the program fiscally sound.

According to Director Massar, the study first calls for the tax check-off to be raised from \$1 to \$2 for the purposes of doubling the amount of money that goes into the gubernatorial elections fund.

Commissioner Linett asked whether the check-off had covered the program in the past.

Director Massar responded that until the 1989 contest the check-off had just about covered the cost of the program.

Commissioner Linett said that he was not sure that the time was right for increasing the check-off.

Commissioner Bedford asked rhetorically: why bother with the check-off? What does it tell us? It is just a paper transaction and is simply money set aside from general tax revenues.

Director Massar said that while it is true that in reality the check-off is just a paper transaction, its existence, nevertheless, does indicate the level of public support for the program in comparison with other jurisdictions.

Executive Director Herrmann said that the check-off program serves as a barometer of public support for gubernatorial public financing.

Commissioner Linett said that a call for an increase in the check-off would suggest that the program is in trouble and be perceived by the public

and the powers-that-be as a call by the Commission for spending more money on public financing. He said that the wrong signal would be sent by the Commission at the wrong time. Commissioner Linett noted that the public would not be receptive to such recommendation at a time of budget crisis.

Commissioner Bedford said that he tended to agree with the position taken by Commissioner Linett, suggesting that it did not matter what happened to the check-off because the money really comes out of the "same pot" as all tax revenues anyway.

Chairman McNany said that he considered the deficit in the gubernatorial fund to be a serious problem that ought to be brought to the attention of the Legislature. He said that if the Commissioners do not bring forth this problem, no one will.

Counsel Farrell said that the check-off gives people the feeling that they are participating in the process. He said that it also serves as a vehicle for demonstrating the extent of support for the program in New Jersey as compared with the federal program or other programs.

Commissioner Linett reiterated his position, suggesting that the Commission is playing with fire by sending this signal at this particular time.

Legal Director Nagy suggested that one of the reasons the Commission needs to urge that the check-off be increased is demonstrated in Table VI on page 83. He said that since 1980, the rate of taxpayer participation has slowly dropped from 41.7 percent to 31.9 percent. He said that this decline, coupled with the fact that the 1989 amendments drastically increased the amount of public dollars paid out to candidates, has resulted in the fiscal shortfall.

Commissioner Linett asked the staff's opinion as to whether a 25 percent check-off at two dollars or a 33 percent check-off at one dollar is better for the program.

Executive Director Herrmann said that more money would be available to the fund if 25 percent of the taxpayers participated at a check-off rate of two dollars than if 33 percent of the taxpayers participated at a check-off rate of one dollar.

Chairman McNany asked: based on the experiences of other states, what would be the effect of raising the check-off amount to two dollars ?

Executive Director Herrmann said that the check-off percentage might go down but the total amount of money in the fund would increase.

Commissioner Bedford said that the check-off does not prove anything. He said that the money is just set aside from general revenues. Commissioner Bedford said that he would prefer to see public funds go to the parties mainly and to a lesser extent, individual candidates.

Executive Director Herrmann said that in some states, the bulk of public funds does go to the political parties. However, continued the Executive Director, Dr. Herbert Alexander, a nationally-recognized campaign financing expert, would consider New Jersey's system to be the best.

Counsel Farrell said that he believed that there was something to the notion that there was money in the pot for public financing.

Commissioner Linett said that while it is true that the check-off does not add to the cost borne by taxpayers, the public does not understand this fact. He suggested that the perception will be that the Commission is asking for more money. Commissioner Linett said that he is not sure how the public will respond to this recommendation.

Chairman McNany said that he felt that the check-off program did amount to a vote of confidence in public financing by the public and therefore agreed with staff that the check-off amount should be raised.

Legal Director Nagy said he understood that the program was originally set up to be self-sustaining, in the sense that check-off revenues were intended to cover funds distributed to candidates, and up until the 1989 elections it was self-sustaining.

Executive Director Herrmann said that he feared that this program might be killed if the check-off runs very much of a deficit and a large appropriation is required.

Director Massar said that the program also calls for the matching ratio to be changed from 2:1 to 1:1 as a means of preserving public funds and making the fund solvent. The director said that the Commission has historically labeled the 2:1 matching ratio as too generous, and that the Commission has viewed the public funding program to be one of partial financing. This recommendation to reduce the matching ratio should work to reduce the dependence of campaigns on public money.

Director Massar advised the Commission that the third recommendation dealing with the fiscal condition of the fund consists of reducing the public funds caps. She said that the caps were increased tremendously with the passage of the 1989 amendments. Director Massar said that the three approaches together should put the public financing program on more sound financial footing.

Commissioner Linett asked: how do these proposals further the aims of the program as set forth by the statute, namely, to allow persons of limited means to run for governor and to eliminate undue influence from the process? Further, where in the statute is there a goal of preserving funds?

Commissioner Linett suggested that the recommendations would return the election to the days when only wealthy people could run for governor.

Counsel Farrell said that although this objective is not spelled out in the statute, in practice the program has worked out this way. He said that in earlier times, the public funds cap was lower and so was the mix of public funds to private funds. Counsel Farrell said that it was with the 1989 amendments that more public dollars were poured into the program.

Director Massar said that the percentage of public dollars to private dollars increased with the new amendments. She said that these recommendations should redress that balance.

Commissioner Linett expressed the opinion that changing the matching ratio to 1:1 would constitute a big reduction.

Counsel Farrell maintained that there has always been tension between the purposes of the program and how much money should be distributed. He noted that the Commission has always struggled with the issue of viability in a candidacy.

Commissioner Linett inquired as to the federal matching ratio.

Legal Director Nagy said that the presidential primary elections operated as a matching program, but the general election operated as a grant program.

Commissioner Linett said that one of the evils of the current system is that candidates have to spend an inordinate amount of time raising money. He suggested that the recommendations would exacerbate that situation. Commissioner Linett said that none of the goals, undue influence, etc., are furthered by these recommendations.

Counsel Farrell said that the undue influence issue is addressed in the contribution limitations.

Commissioner Linett said that the Commission's proposals would place too many limits on candidates.

Commissioner Bedford said that he did not necessarily have any objections to the recommendations going out. He cautioned the Commission, however, from thinking that it has any control over what happens to them once they are released. He said that the Commission had no involvement in the formulation of the 1989 amendments.

Commissioner Linett asked: if the caps are reduced, why is it necessary to reduce the matching ratio? He said that this action would not accomplish anything except making it more difficult to raise money. The Commissioner said that he had problems with the first three recommendations. Commissioner Linett said that this Commission was now made up of different individuals from that of 1986 and therefore should not be bound by its prior recommendations.

Commissioner Bedford made a motion to approve the staff recommendations with recommendations Number One and Number Three reversed to emphasize that the thrust of ELEC's suggestions was to save taxpayer money.

Commissioner Linett said that he would have difficulty in supporting recommendation Number One relative to the check-off. He said that he could support a change in the matching ratio provided that the change to 1:1 only applied to the general election, with the 2:1 ratio in the primary election remaining intact. Commissioner Linett said that recommendation Number Three was probably acceptable.

Commissioner Bedford modified his motion to contain a 1:1 match applicable only to the general election, and to reverse the order of Recommendations One and Three. The motion was seconded by Chairman McNany. On a vote of 3-0, the public financing report was approved.

4. N.J.A.C. 19:25-20.8 and 20.19 Proposed Amendments

On a motion by Commissioner Bedford, seconded by Commissioner Linett and passed by a vote of 3-0, the Commission approved the proposed regulatory amendments to raise the annual lobbying filing fee from \$100 to \$200, and the Commission directed staff to file the proposal notice with the Office of Administrative Law.

5. Resolution To Go Into Executive Session

On a resolution by Commissioner Linett, seconded by Commissioner Bedford and passed by a vote of 3-0, the Commission resolved to go into closed Executive Session to discuss the following matters which will become public as follows:

1. Final Decision Recommendations in violation proceedings which will not become public. However, the Final Decisions resulting from those recommendations will become public 15 days after mailing; and,
2. 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 30 days after mailing.

6. Adjournment

On a motion by Commissioner Linett, seconded by Commissioner Bedford and passed by a vote of 3-0, the Commission voted to adjourn at 12:25 p.m.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "F. M. Herrmann", written in black ink.

FREDERICK M. HERRMANN, PH.D.

FMH/jah