



State of New Jersey

ELECTION LAW ENFORCEMENT COMMISSION

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PUBLIC SESSION MINUTES

MAY 18, 1994

Chairman McNany, Vice Chairman Eldridge, Commissioner Linett, senior staff, and Director of Public Financing Nedda Gold Massar 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 9:15 a.m. in the Edward J. Farrell Memorial Conference Room at 28 West State Street, Trenton.

1. Approval of Public Session Minutes of April 13, 1994

On a motion by Commissioner Linett, seconded by Vice Chairman Eldridge and passed by a vote of 3-0, the Commission approved the Public Session Minutes of April 13, 1994.

2. Introduction of James P. Wyse, Esq.

Chairman McNany introduced James P. Wyse, an attorney with Schenck, Price, Smith and King, the law firm of the late Counsel Edward J. Farrell. Mr. Wyse will be serving the Commission in Mr. Farrell's stead.

Chairman McNany said that Counsel Farrell will be sorely missed and that a dedication ceremony will be held later in the meeting.

3. Executive Directors' Report

A. Staff Activities

Executive Director Herrmann announced that ELEC has once again won a Platinum Award for giving to the United Way. The Executive Director thanked Project Coordinator Carol Neiman.

Executive Director Herrmann reported that he was invited to attend an American Bar Association (ABA) Conference from April 15-17 in Maryland on

restructuring the Federal Election Commission (FEC). He added that an article in the April 23, 1994 edition of the National Journal by James A. Barnes entitled "Watching the Watchdog" reviewed the work of the conference.

Executive Director Herrmann said that FEC Chairman Trevor Potter was quoted as saying that "the problem we have faced is neglect." He noted that the article was critical of Congress' inattention to the budgetary needs of the FEC as a key part of the new campaign financing reform legislation being actively considered. Executive Director Herrmann said that the article asserted "that few on Capitol Hill have bothered to ask whether the FEC has the capacity and resources to oversee the substantial changes being contemplated." He added that the author noted that the ABA "has long been on record supporting an independent Commission with adequate resources to carry out its mission of regulating spending and fundraising."

Executive Director Herrmann mentioned that a May 11, 1994 article in the Political Finance and Lobby Reporter stated that the FEC "estimates that its annual budget will have to be increased by about \$13.4 million, roughly by half the size of its present budget, to meet new workload demands that will be placed on the agency if campaign reform legislation pending in Congress becomes law."

Executive Director Herrmann reported that Legal Director Nagy, Director of Public Financing Massar, Director of Compliance and Information Evelyn Ford, and he made presentations at the NJSBA's symposium/workshop on "Complying with New Jersey's Campaign Contribution and Reporting Rules" on April 18, 1994.

He advised the Commissioners that as part of the Commission's recomputerization study with the Office of Telecommunications Systems (OTIS) in the Department of the Treasury, Barbra Fasanella, Anthony Chianese and Joy Rattigan of OTIS visited the New York City Campaign Finance Board on April 20, 1994.

Executive Director Herrmann indicated that he addressed the annual conference of United We Stand - New Jersey (UWS-NJ) on campaign finance reform and also participated in a panel discussion. He further stated that in his role as Chairperson of the Northeastern Regional Conference on Lobbying (NORCOL) he met with Alan Sokolow, the Executive Director of the Council of State Governments - Eastern Regional Office (CSG-ERC) on April 26, 1994, in New York City to plan the NORCOL annual meeting on August 9, 1994, in Philadelphia.

Executive Director Herrmann said that on May 11, 1994, he was a guest on New Jersey Network (NJN) - Radio's New Jersey Today, with Sharon Benjamin. He said the topic was lobbying.

B. Legislative Developments

Executive Director Herrmann reported that on May 11, 1994, Deputy Director Brindle and Legal Director Nagy appeared before the Joint Committee

on Ethical Standards of the Legislature to discuss ELEC's draft regulations on the permissible use of campaign funds.

Executive Director Herrmann mentioned that on May 19, 1994, the Senate State Government Committee will be discussing S-363 (Schluter/Lynch), a bill that puts a \$100 cap on benefit passing to legislators and restricts to \$500 any payments for travel outside New Jersey by legislators or executive branch officials coming from non-state sources.

Executive Director Herrmann said that ELEC has not traditionally taken a position on restricting benefit passing, although it has strongly argued for disclosure.

C. Future Meetings

The Commission determined to hold meetings on June 16, 1994 in Maplewood at 8:30 a.m., and on July 13, 1994, in Somerville at 8:30 a.m.

D. Ethics Forms

Executive Director Herrmann reminded the Commission that their ethics forms are due today with the Executive Commission on Ethical Standards and the Governor's office.

4. Budget News

Chairman McNany said that he was pleased to hear from the Executive Director that the Commission would not be required to lay-off any employees due to the work of Deputy Director Brindle and Director of Administration Barbra Fasanella and that the budget situation appeared to be moving in the right direction. He commended the Deputy Director and the Director of Administration for their successful efforts toward helping the Commission avoid lay-offs.

Chairman McNany suggested that a letter be drafted requesting the restoration of \$163,000 to the Commission's budget and expressing appreciation for the reinstatement of staff positions.

5. Advisory Opinion No. 04-1994

This advisory opinion request was submitted by Stephen J. Edelstein, Esq., on behalf of the Tom D'Alessio Campaign Committee and three continuing political committees.

The request asks the Commission to approve the consolidation of all funds remaining unexpended in the campaign committee and the three continuing political committees into a single continuing political committee (CPC) under the control of Mr. D'Alessio.

Legal Director Nagy discussed a staff memorandum which had been circulated to the Commission and recommended that Mr. D'Alessio not be

permitted to consolidate all of the accounts into a single CPC. Legal Director Nagy explained that consolidation of the funds into a single CPC controlled by Mr. D'Alessio would mean that the funds are not subject to the permissible use requirements of Section 17 of the 1993 amendments to the Campaign Act.

Legal Director Nagy indicated that the Tom D'Alessio Campaign Fund was designated by Mr. D'Alessio as his candidate committee for the 1994 primary election and as such is subject to the restrictions on use of funds in Section 17. He noted that permitting Mr. D'Alessio to withdraw the funds in this account for deposit into a CPC not subject to Section 17 regulations would effectively circumvent the restrictions on the permissible uses of these funds, including the restriction against personal use of campaign funds.

Staff recommended that the obligation of Mr. D'Alessio to expend these campaign funds in accordance with the restrictions in Section 17 also attached to funds in the three continuing political committees on the effective date of the 1993 amendments to the Campaign Act in April, 1993. Mr. D'Alessio was a candidate within the statutory definition on the effective date of the amendments. He therefore acquired an obligation to transfer within one year the funds from the three CPC accounts into his candidate committee, notwithstanding his subsequent resignation as an elected officeholder. Director Nagy also noted that the statute specifically provides that campaign funds remain subject to Section 17 spending restrictions even after the death of an officeholder, and therefore the Commission can find a legislative intent that such restrictions also continue after the resignation of an officeholder.

Staff recommended that the Commission's opinion should rule that funds in the three continuing political committees controlled by Mr. D'Alessio must be deposited into the 1994 primary election candidate committee established by Mr. D'Alessio. Staff suggested that once the funds are transferred from the "personal PACs" and deposited into the candidate committee account, these funds also are subject to restrictions of Section 17.

Legal Director Nagy stated that Mr. Edelstein had advised him that he would not attend the meeting today, but that he had consented orally to a one-month extension of the request if the Commission desired to hear from him personally.

Chairman McNany asked: Is it the opinion of counsel that Mr. Edelstein would have anything to add to his request?

Legal Director Nagy said that he could not speak for Mr. Edelstein, but he would assume that Mr. Edelstein probably would have comments.

Commissioner Linett said that he did not oppose delaying action on this advisory opinion until the next meeting. Commissioner Linett said that a candidate could give the campaign funds to another CPC under Section 17.

Legal Director Nagy responded that contribution limits apply to transfers by a candidate committee to a CPC. Further, he said that he would

not assume that Section 17 permitted a candidate to transfer campaign funds to a CPC controlled by the same candidate, a result that would appear to be contrary to the legislative intent to preclude "personal use" of campaign funds. He noted that as of April 8, 1994, no candidate is permitted to have a CPC.

Commissioner Linett asked: Does Mr. D'Alessio show up as controlling or as an officer on the CPCs?

Legal Director Nagy said that the text of Mr. Edelstein's letter is ambiguous on that point, stating only that the three CPCs "are associated with" Mr. D'Alessio. Mr. D'Alessio does not appear as chairman or treasurer on the Statements of Organization, (Form CPC-1) filed by the CPCs.

Chairman McNany asked: Why would it be assumed that he does not control the committees?

Legal Director Nagy suggested that for the purposes of this request, the Commission should assume that Mr. D'Alessio controls the CPCs because in the absence of Mr. D'Alessio's control it would not be possible for him to consolidate the CPCs as proposed in Mr. Edelstein's letter.

Commissioner Linett said that this issue is a difficult policy issue because it is not covered by statute. He suggested that ELEC recommend that the statute be amended to cover this type of situation to prevent a convicted person from controlling funds raised while he was a candidate.

On a motion by Vice Chairman Eldridge, seconded by Commissioner Linett and passed by a vote of 3-0, based upon the consent of Mr. Edelstein, the Commission decided to postpone consideration of the advisory opinion until the June meeting.

6. Conference Room Dedication

Chairman McNany noted the arrival of the Farrell family.

At this juncture, the Commission dedicated its conference room to the memory of its late Counsel Edward J. Farrell. Chairman McNany read a Resolution which declared that the Commission's meeting room be heretofore referred to as the Edward J. Farrell Memorial Conference Room.

On a motion by Vice Chairman Eldridge, seconded by Commissioner Linett and passed by a vote of 3-0, the Commission adopted the Resolution. Numerous individuals spoke about their association with the late Counsel Edward J. Farrell.

7. Public Financing Program Recommendations

The Commission reviewed the Gubernatorial Public Financing Recommendations and the press release announcing those recommendations. The Commission's recommendations are:

1. Reduce the primary and general election public funds caps in 1997 to \$1 million and \$2 million respectively, adjusted for inflation;
2. Lower the general election matching ratio of public-to-private dollars from two-for-one to one-for-one;
3. Increase the income tax check-off to \$3;
4. Increase the primary election expenditure limit to \$3.5 million in 1997;
5. Require three debates of publicly-financed candidates in each election; and,
6. Prohibit deliberately false political advertising.

On a motion by Vice Chairman Eldridge, seconded by Commissioner Linett and passed by a vote of 3-0, the Commission approved the gubernatorial public financing program recommendations and press release.

8. Draft Regulations on Permissible Uses of Campaign Funds

For background information please see the Public Session minutes of the March 16, 1994 meeting of the Commission. Also see the letter from Senator Richard J. Codey and Senator John A. Adler.

Legal Director Nagy suggested a change to the draft regulations. He said that on page 7, in subsection (b), the word equipment should be added after the word "furniture" and before the word "or," to have the phrase read "furniture, equipment or other appointments." He also suggested language be added at the end of this subsection to clarify that the prohibition is not applicable to office furniture or equipment situated in the residence of an officeholder when that equipment is used for an officeholder's office duties.

Executive Director Herrmann indicated that this change reflects concern for candidates for local office who only have offices at home.

Commissioner Linett said that he felt that the added language could open up a Pandora's box in terms of personal use. He asked: How would this be policed? Commissioner Linett said that he does not know if the Commission should include the additional language.

Commissioner Linett continued by asking whether the Legislature intended that "furnishing" be restricted to the physical office.

Legal Director Nagy said that the statute is ambiguous and open-ended. He said that a division of opinion exists among legislators how to apply "furnishing," but the text "furnishing, staffing or operation of an office used in connection with that person's official duties as an elected public official" suggests the physical office site.

Executive Director Herrmann said that he spoke with Senator Littell who asked him to pass along his comments to the Commission that the Commission should not get too restrictive with these regulations.

Commissioner Linett asked Ms. Marci Hochman, representing the Joint Legislative Committee on Ethical Standards of the Legislature, if she had a comment to make.

Ms. Hochman thanked the Commission for its efforts in resolving these difficult issues, and said that the members are confused as to the proper use of these funds. She said that the members needed the statute to be clarified as to how they can use these funds. She said that she cannot represent a consensus, because there is no consensus. Ms. Hochman said^d that the members simply wanted to make sure that officeholders do not have an opportunity to benefit personally from campaign funds.

Executive Director Herrmann thanked Ms. Hochman for her invaluable assistance to the Commission in preparing the draft regulations.

Commissioner Linett said that there were two issues that the Commission must decide. He said that first the Commission must decide whether it should add the language suggested by Legal Director Nagy. Second, the Commission must review the issue of permitting a candidate to reimburse himself or herself for the use of rental property. This issue was raised in a letter from Senator Richard J. Codey and Senator John A. Adler.

Commissioner Linett said that perhaps the Commission should consider a total ban on self-dealing, that is permitting a candidate to use campaign funds to pay for rental of a campaign headquarters in a building the candidate owns.

Legal Director Nagy noted that a candidate who owned a business would, under such a rule, be compelled to use a competitor if that candidate could not purchase the services of the business he owned. For example, a candidate owning a printing business would be compelled to purchase campaign leaflets from another printer. He suggested that if Section 17 was intended by the Legislature to preclude a candidate from purchasing items or services from a business the candidate owned, it might have stated that specifically.

Deputy Director Brindle noted that it would seem unreasonable for a candidate who owned a public relations firm to enlist the services of a competitor firm for his/her campaign purposes. He said that the candidate would feel much more comfortable with members of his/her own firm who know him/her better than with employees of a competitor firm. He said that there is a distinction between reimbursing yourself for rental space used in a campaign, or public relations work used in a campaign, and utilizing a campaign vehicle to go on vacation.

Deputy Director Brindle said that in the one case a service is provided relative to a campaign and in the other case an activity is undertaken which is purely personal.

Executive Director Herrmann said that staff did not see a problem with a candidate being reimbursed for services related to the campaign, as long as it was at fair market value.

Commissioner Linett asked Emery Ungrady, Counsel, Senate Minority, and Robbie Miller, Counsel, Assembly Minority, for comments.

Mr. Ungrady said that his comments would be consistent with the comments contained in the letter from Senators Codey and Adler.

Commissioner Linett proposed also that the Commission address the suggestion of Senators Codey and Adler and add language to clarify that the cost of newsletters, printing, and mailing are permissible uses under the regulations. He said that the phrase "includes, but not limited to, newsletters and mailings" should be added to the definition of "ordinary and necessary expenses of holding public office."

On a motion by Commissioner Linett, seconded by Vice Chairman Eldridge and passed by a vote of 3-0, the Commission approved the proposed regulations as amended by Commissioner Linett and directed staff to file the proposal with the Office of Administrative Law.

9. Return of Unexpended 1993 General Election Funds

For detailed information see memorandum circulated to the Commissioners from Nedda Gold Massar, Director of Public Financing to Frederick M. Herrmann, Ph.D., Executive Director, dated May 16, 1994 and entitled "Return of Unexpended 1993 General Election Funds."

Director Massar reported that according to the most recent report filed on April 15, 1994, Florio '93, Inc. has outstanding obligations in the amount of \$20,280.80, which exceed cash-on-hand in the amount of \$14,295.95. She indicated that the campaign was advised of its continuing obligation to return funds to the State should funds become available to it.

Director Massar stated that on the report filed on April 15, 1994, People for Whitman reported no outstanding obligations for the 1993 general election and a closing cash balance of \$103,372.47, of which \$29,891.36 remains in the public funds account and \$73,481.11 remains in non-public funds.

Staff recommended that the campaign be advised to refund immediately the unexpended balance of \$29,891.36 in public funds. People for Whitman has indicated that funds are still needed for possible return of ineligible contributions, audit expenses, maintenance of records, and compliance costs. Staff therefore recommended that People for Whitman be advised that it may retain the unexpended 1993 general election non-public fund balance of \$73,481.11 until June 30, 1994, for the purposes it has described. After that date, People for Whitman must return remaining funds to the State or specifically advise the Commission in writing of its continuing need for retention of remaining non-public funds.

On a motion by Vice Chairman Eldridge, seconded by Commissioner Linett and passed by a vote of 3-0, the Commission approved the staff recommendations.

10. Resolution To Go Into Executive Session

On a motion by Commissioner Linett, seconded by Vice Chairman Eldridge and passed by a vote of 3-0, the Commission moved 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.
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.

11. Adjournment

On a motion by Commissioner Linett, seconded by Vice Chairman Eldridge and passed by a vote of 3-0, the Commission voted to adjourn at 11:46 a.m.

Respectfully submitted,



FREDERICK M. HERRMANN, PH.D.

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