



State of New Jersey

ELECTION LAW ENFORCEMENT COMMISSION

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PUBLIC SESSION MINUTES

JULY 13, 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 8:30 a.m. at the New Somerset County Administration Building, Somerville.

1. Approval of Public Session Minutes of June 14, 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 June 14, 1994.

2. Executive Directors' Report

A. Budget Situation

Executive Director Herrmann reported that the Governor and Legislature restored \$300,000 to the New Jersey Election Law Enforcement Commission's (ELEC) budget. He said that the FY-94 budget was \$1.225 million at the beginning of the year but subsequently reduced to \$1.062 million. Executive Director Herrmann noted that ELEC was one of the few agencies that had its budget increased in FY-95. The Executive Director cautioned, however, that the Commission is still recovering from four straight years of budget decline starting in FY-89.

Executive Director Herrmann said that staff will start work on filling seven vacancies. He added, however, that with all seven vacancies filled, ELEC will still only have 34 staffers, which is the same number the Commission had in FY-90 prior to the enactment of the new lobbying and campaign financing laws.

The Executive Director said also that staff will move ahead with the hiring of a general counsel for FY-95 by placing an advertisement in the New Jersey Law Journal.

Executive Director Herrmann advised the Commission that after Labor Day, staff will present to the Commission a memorandum detailing the bids that are received.

Chairman McNany asked if the Commission could seek an opinion from the Attorney General as to the permissibility of acquiring the services of the late Edward Farrell's law firm.

Deputy Director Brindle responded that the issue has been thoroughly researched and that it has been determined that the Commission must go out to bid for the services of an outside legal counsel. He said that in the past, the Commission was able to obtain a "waiver of advertising" for the services of the late Counsel Farrell because of his special expertise in the field. Deputy Director Brindle said that with Counsel Farrell's passing it is no longer possible to obtain a "waiver of advertising." He added that the rules are tightening with respect to bidding for outside counsel and that even if Counsel Farrell was still alive it is quite possible that Purchase and Property would require the Commission to go out to bid.

The Commission directed staff to advertise for bids for its legal counsel in the New Jersey Law Journal.

Executive Director Herrmann said that the FY-95 budget is the largest budget in the Commission's history and that ELEC should be very pleased that the Governor and the Legislature made such a strong commitment to the Commission in a time of overall budgetary constraints.

B. Staff Activities

Executive Director Herrmann reported that staff has had a very busy spring. He noted that it has been found that most of the candidates in the local races were unaware that the law had changed in 1993. He mentioned that 1,067 telephone calls were processed in May. Executive Director Herrmann said that this figure is almost as high as last year's (1,339) when there were also gubernatorial, Senate, and Assembly races.

Executive Director Herrmann advised the Commission that a well-attended information seminar was held in May at the Roebling Building in Trenton. He said that Director of Compliance and Information Evelyn Ford and her staff did a great job, particularly since Associate Director Virginia Wilkes Tesser has been out on maternity leave.

Executive Director Herrmann said that on June 21, 1994, he addressed the annual meeting of the Lawrence Township League of Women Voters with Senator William Schluter and Edward McCool of Common Cause. He advised the Commission that great interest arose over the functioning of legislative leadership PACs.

The Executive Director reported that on June 24, 1992, he was the luncheon speaker at the monthly meeting of the Public Affairs Council's Washington Area State Relations Group (WASRG) held at the National Press Club. He mentioned that he reviewed the various state approaches to regulating lobbying. He said that many members of the group praised ELEC's staff on being the best in the nation for helpfulness and courtesy.

C. National News

Executive Director Herrmann conveyed to the Commission that a municipal government ethics agency in California debated the idea of mandating that its city council annually budget the agency at no less than a set percentage of the entire city budget.

The Executive Director reported that the FEC's "best efforts" rules for getting contributor occupation/employer information are now in place. He said that the steps include: requesting this information during the initial solicitation and making a follow-up request if necessary. Executive Director Herrmann noted that some states do not allow committees to cash-in contributions until occupation/employer information has been disclosed.

Executive Director Herrmann alerted the Commission to the fact that the Kansas Legislature has passed legislation which will increase the filing fees which candidates, lobbyists, and PACs have to pay. He indicated some sample fees: \$400 for statewide candidates and \$250 for lobbyists.

Executive Director Herrmann said that the Minnesota Legislature has passed legislation prohibiting nearly all gifts from lobbyists and their employers to public officials. He said that the exemptions include: campaign contributions, mementos such as plaques, informational material of small value, and food or beverages given to an official making a speech or participating in a meeting.

Executive Director Herrmann announced that ELEC's gubernatorial public financing recommendations were publicized in two national newsletters. They appeared in the June 13 issue of Election Administration Reports and the June 22 issue of the Political Finance and Lobbying Reporter. He added that Assemblyman David Russo, Chairman of the Assembly State government Committee, recently introduced a package of legislation based on the recommendations.

D. Future Meetings

Future meetings of the Commission are slated for August 16, 1994, in Maplewood and September 20, 1994, in Trenton. Vice Chairman Eldridge requested that the Commission consider at its August meeting the issue of raising of funds by officeholders.

3. Advisory Opinion Request No. 07-1994

This advisory opinion request was made by Peter G. Sheridan, Esq., representing Schoolchildren First, Inc., a continuing political committee (CPC). Mr. Sheridan inquired into the activities a CPC may undertake to circulate the name and governmental or political ideas of a candidate or officeholder without violating the statutory prohibition on direct or indirect participation by a candidate in the management or control of a CPC.

Specifically, Mr. Sheridan writes that the group anticipates appointing Jersey City Mayor Bret Schundler as its honorary chairperson. In this capacity, Mayor Schundler will have his name on letterhead and literature and will sign a fundraising letter. According to Mr. Sheridan, the fundraising letter will include a discussion of Mayor Schundler's contributions to educational reform. Mr. Sheridan pointed out also that Mayor Schundler will be the principal spokesperson in a direct mail or mass media program developed to promote school choice legislation in New Jersey.

The request for an advisory opinion asserts that Mayor Schundler would have no authority to direct or control the implementation of the direct mail or media programs.

The staff memorandum in regard to the request notes that N.J.S.A. 19:44A-9h(1) holds that "on and after the 366th day following the effective date of P.L. 1993, c.65, no candidate shall establish, authorize the establishment of, maintain, or participate directly or indirectly in the management or control of, any political committee or any continuing political committee."

The memorandum states that the term "candidate" as defined in the Act means an individual who has been elected to office and who receives contributions and makes expenditures for the campaign purposes authorized in the Act. According to the staff memorandum, Mayor Schundler fits the definition of a candidate and is subject to the prohibition against a candidate participating directly or indirectly in the management or control of a CPC.

The staff memorandum recommends that Mayor Schundler should not be permitted to authorize Schoolchildren First, Inc. to list his name on its letterhead and literature as its "honorary chair." Such a title would be a signal that the candidate consented to be identified with the organizational goals and principles of the CPC. Further, the memorandum recommends that Mayor Schundler should not be permitted to authorize the use of his signature by Schoolchildren First, Inc. for a fundraising communication because a candidate who consents to the use of his or her name and signature for CPC fundraising would be directly participating in the management or control of the CPC within the meaning of the statutory prohibition. With regard to Schoolchildren First, Inc.'s activity of sending a fundraising letter, nothing would prohibit a CPC from making reference to the policies of a candidate or officeholder in communications it makes to the public. According to the memorandum the "political communication" regulation at N.J.A.C. 19:25-11.10(b)

might be applicable under the scenario. Finally, the memorandum states that with respect to direct mail and media campaigns, to the extent that the spokesperson (Mayor Schundler) will be engaged in direct or indirect management or control of the CPC, that activity is prohibited. The memorandum stipulates that to the extent that the CPC airs Mayor Schundler's views, the CPC's attention should be directed toward the "political communication regulations."

William Hoatson, Esq., an attorney with Cullen and Dykman, appeared for Mr. Sheridan and spoke on behalf of Schoolchildren First, Inc. Mr. Hoatson said that because of the new Campaign Act the group is bringing this matter before the Commission. He said that Schoolchildren, First, Inc. desires to be on solid ground before it undertakes certain activities. Mr. Hoatson said that the Commission should focus on the phrase "management and control" when deciding this issue. He claimed that none of the activities described in the request involved "management or control" by Mayor Schundler. Mr. Hoatson said that the participants in Schoolchildren First, Inc., all notable individuals, would assure the Commission that there would be no benefit to Mayor Schundler from a monetary standpoint. He asserted that individuals involved with the CPC would participate on a pro bono basis. Mr. Hoatson said that there are serious problems with the educational system in New Jersey and it is important for Mayor Schundler's views on school choice to be heard. He said that he understood the Commission's responsibility to protect the contribution limits but that the Commission could be assured that there will be no financial gain to the Mayor.

Commissioner Linett said that Mayor Schundler would benefit politically, if not financially, from the activities described.

Mr. Hoatson said that he is not sure about the political benefit. He said that Mayor Schundler could lose political support through this issue.

Commissioner Linett asked: Would not contributors to this group be currying favor with the Mayor through their donations to a committee promoting his main issue? He said that the statute should not be read so narrowly as to suggest that an individual must make direct decisions to have management control over an entity. He said that further questions stem from the fact that this entity can give to candidates and other CPCs.

Vice Chairman Eldridge said that the problem for the Commission is a statute that states that a candidate cannot control a CPC or political committee.

Commissioner Linett asked: How is it possible that the Mayor would not have control over the committee? He is the leader of it.

Chairman McNany said that, under the circumstances, it is difficult to imagine Mayor Schundler not having control over the committee.

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Commissioner Linett expressed the view that control and management are not the same. He said that one could participate in management and not have control. He said, however, that the Commission is sensitive to free speech.

Legal Director Nagy suggested that having the power to resign or withdraw consent to use a candidate's name in fundraising efforts of a CPC is in effect indirect control over that CPC. He noted that the purpose of the statutory prohibition against candidate management or control of a CPC is to protect the viability of the candidate contribution limits.

Vice Chairman Eldridge said that he was sensitive to the issue of free speech and that it is nonsensical to proscribe that right for candidates and officeholders. He queried whether the Commission could carve out an exception to the rule and allow Mayor Schundler to undertake the stated activities outside of Jersey City, where he is a candidate, but not within the city's borders.

Commissioner Linett said that he did not view that as a feasible alternative.

Mr. Hoatson asked if the matter could be held until August in order for the Committee to submit a further letter to devise an acceptable approach to the problem, and consented to an extension of the time period for response to the request. He said that a further written proposal would be made by Schoolchildren First, Inc. by August 6, 1994, to circulate in advance of the August meeting.

Vice Chairman Eldridge reiterated that he was not comfortable with disallowing the request. He said that Jersey City, and perhaps Hudson County, could be isolated.

On a motion by Commissioner Linett, seconded by Vice Chairman Eldridge and passed by a vote of 3-0, the Commission deferred action until the August meeting.

4. Advisory Opinion Request No. 08-1994

This advisory opinion request was submitted by Manny Grova, Jr., candidate for the First Ward City Council position in the City of Elizabeth.

Mr. Grova asks whether it is permissible to create a fund that would benefit clean-up projects in the ward. He said that no money from the fund would be used for political purposes.

On a motion by Vice Chairman Eldridge, seconded by Commissioner Linett and passed by a vote of 3-0, the Commission voted to postpone consideration of the request until the September meeting.

5. Advisory Opinion Request No. 09-1994

This advisory opinion request was submitted by Assemblyman Jeff Warsh. Assemblyman Warsh asked if it is permissible to use campaign funds to pay for expenses associated with the National Conference of State Legislatures (NCSL), and other similar national legislative organizational meetings.

On a motion by Chairman McNany, seconded by Vice Chairman Eldridge and passed by a vote of 3-0, the Commission voted to postpone consideration of the request until the regulations on permissible uses of campaign funds are completed.

6. Permissible Use Regulations

The Commission began the public hearing at 10:05 a.m. A court transcriber was present to record the public hearing. No one appeared to testify. The comment period will expire on August 4, 1994. Final adoption of the regulations will be scheduled for consideration at the September meeting.

7. 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.
3. A report on written requests for investigations of possible violations, which report will not become public. However, any complaint which may be generated as a result of a request for an investigation will become public 30 days after mailing.

8. 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 11:58 a.m.

Respectfully submitted,



FREDERICK M. HERRMANN, PH.D.

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