



State of New Jersey

ELECTION LAW ENFORCEMENT COMMISSION

RALPH V. MARTIN
Chair

OWEN V. McNANY, III
Vice Chair

DAVID LINETT
Commissioner

WILLIAM H. ELDRIDGE
Commissioner

Respond to:
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

JAMES P. WYSE
Counsel

PUBLIC SESSION MINUTES

MARCH 26, 1996

The Commissioners, Senior Staff, the Counsel, and Deputy Legal Director Nedda Gold Massar were present.

Chair Martin 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 9:00 a.m. at the Maplewood Municipal Building, Maplewood, New Jersey.

Chair Martin presented outgoing Chair William H. Eldridge with his gavel. Chair Martin praised former Chair Eldridge for a job well done.

2. Approval of Public Session Minutes of February 27, 1996

On a motion by Vice Chair McNany, seconded by Commissioner Eldridge and passed by a vote of 4-0, the Commission approved the Public Session Minutes of February 27, 1996.

3. Executive Director's Report

A. Staff Activities

Executive Director Herrmann reported that Executive Secretary Elbia Zeppetelli is using desktop publishing software for various applications. He said that she is designing the new annual report as well as new letterhead.

The Executive Director announced that Associate Director of Review and Investigation Shreve Marshall and Associate Report Examiner Brett Mead are attending the State Criminal Justice Academy for training courses at no expense to ELEC.

Executive Director Herrmann advised the Commission that Director of Compliance and Information Evelyn Ford's staff will be conducting two spring training seminars for candidates and treasurers on April 9, 1996, for municipal elections and April 29, 1996, for primary elections.

The Executive Director noted that thanks to the ongoing efforts of Director of Public Financing Nedda Massar and the Division of Taxation, the tax booklet continues to highlight the Gubernatorial Public Financing checkoff program. He said that this year's booklet has the clearest explanation yet of the program and the form itself tells taxpayers that checking off will not cost them any money.

B. Ethics Form Reminder

Executive Director Herrmann reminded the Commissioners that their ethics forms are due May 15. He said that one copy is filed with the Executive Commission on Ethical Standards and one with the Governor's Chief Counsel. He added that it needs an original signature and original notarization on both copies.

C. Legislative Developments

Executive Director Herrmann reported that on February 29, 1996, Assembly Floor Amendments to Assemblyman Russo's Gubernatorial Public Financing package were made. He said that A-1260, the debate bill, was amended to:

- add cable TV companies as potential sponsors;
- require a majority vote of the entire ELEC membership to select a sponsor; and,
- mandate that ELEC consider possible conflicts of interest when choosing a sponsor.

Executive Director Herrmann informed the Commission that A-1262, which raises the Primary expenditure limit; A-1263, which lowers Primary and Gubernatorial Public Funds Caps; and A-1264, which reduces the General matching ratio to 1:1 were amended to provide that they will not take effect until the election of 2001.

Executive Director Herrmann said that on March 14, 1996, he testified before the Senate State Government Committee on S-615 (Schluter), the Gubernatorial Public Financing debates bill. He noted that it was amended to be identical to A-1260 (Russo), except that it contains stronger language to prevent sponsor conflicts of interest. He mentioned also that on March 18, 1996, the Assembly passed A-1222 (Augustine), which extends the Personal Financial Disclosure filing date, 76-0. The Executive Director said that the Election Law Enforcement Commission suggested this legislation.

D. National Ethics News

Executive Director Herrmann reported that the U.S. 8th Circuit Court of Appeals has struck down \$100 contribution limits per election cycle in Missouri as unconstitutional. He said that the Court held that limits must be set using a statistical basis to assure that the First Amendment is not violated by unduly reducing First Amendment rights of contributors. He said, moreover, that the Washington D.C. City Council is voting this month to restore the contribution limits which were reduced by a 1992 ballot initiative.

Executive Director Herrmann said that the mayoral limit had been reduced from \$2,000 to \$100 making D.C. the first jurisdiction in the nation to attempt this controversial reform.

He added that according to the D.C. City Council Chairman, the initiative "had a perverse and negative impact" on the 1994 election.

The Executive Director said ELEC will be studying how to implement its December, 1995 recommendation to reduce New Jersey's contribution limits by analyzing data from the 1995 election.

E. Future Meeting Schedule

The Commission discussed the issue of the location of its meetings. This discussion was requested by New Jersey Common Cause. The Commission determined that following past practice in general it would meet in Trenton when conducting a public hearing. Otherwise, it will continue to hold some of its meetings in other areas of the State including the capital. ELEC wishes to continue its policy of giving its work wider public exposure and increasing the diverse participation of the public at its meetings.

The schedule of meetings for the next three meetings is as follows:

April 19, 1996, Trenton, at 10:00 a.m.
May 7, 1996, Somerville, at 8:30 a.m.
June 11, Trenton, at 10:00 a.m.

4. Advisory Opinion No. 03-1996

This advisory opinion request was submitted by Mr. Theodore J. Romankow, Esq. on behalf of a group of friends of John T. Gregorio, the Mayor of the City of Linden, who will be celebrating his 70th birthday. The group has formed a committee that is planning an event. Tickets at a price of \$200 each will be sold. According to the request, about one-half of this sum will be used for expenses, and the other half will be given to the Mayor as a gift for his personal use. The tickets will state that the proceeds are not intended to be used as election campaign funds.

The question posed by Mr. Romankow is whether or not the group will be subject to the requirements of the Campaign Contributions and Expenditures Reporting Act.

The Commission noted that although the letterhead on which this request was submitted lists ELEC Commissioner William H. Eldridge as a member of the law firm, Mr. Romankow subsequently advised the Commission that Commissioner Eldridge is not currently associated with the firm.

The Commission reviewed a draft response to Mr. Romankow prepared by staff which had been circulated to the Commissioners. The draft response concluded that since no portion of the funds solicited for this event are to be used for any election-related purpose, none of the reporting, contribution limit, recordkeeping, or other requirements of the Reporting Act have applicability. The provisions of the Reporting Act apply only in a State or local election. If none of the funds to be solicited are intended nor in fact are used to make cash or non-cash (that is, "in-kind") contributions to a candidate in an election, or are not intended to be contributed nor in fact are contributed to any committee subject to reporting (that is, a candidate committee, joint candidates committee, continuing political committee, political party committee, or legislative leadership committee), none of the requirements of the Act can be applied to the fundraising activity.

The draft response noted that the Local Government Ethics Law requires local government elected officials to file annual financial disclosure statements disclosing the source of any gift they receive having an aggregate value of \$400 or more from a single source, see N.J.S.A. 40A-9-22.6. It stated that the Commission has no statutory jurisdiction over local government disclosure statements, and any questions should be directed to the Local Finance Board in the Division of Local Government Services, New Jersey Department of Community Affairs, CN-258, Trenton, New Jersey 08625.

Commissioner Linett said that while the law is clear, he is not happy with it. He said the Commission has no choice but to rule in the manner recommended by staff.

On a motion by Commissioner Linett, seconded by Vice Chair McNany and passed by a vote of 4-0, the Commission approved the draft response prepared by staff in Advisory Opinion 03-1996 and directed that it be issued to Mr. Romankow.

5. Proposed Political Identification Regulations (McIntyre legislation)

Please see the memorandum from Gregory E. Nagy, Legal Director to Frederick M. Herrmann, dated March 26, 1996, and entitled, "Proposed Political Identification Regulations (McIntyre legislation)."

The proposed regulations implement political identification requirements enacted earlier this year, and assigned to ELEC to administer. Essentially, the new law reestablishes the requirement that persons paying for campaign literature or broadcasts must identify themselves, and substitutes most criminal penalties for civil penalties under ELEC's jurisdiction. The proposed regulation clarifies the statute. In order to protect the constitutionality of the law, the draft regulations seek to realize the legislative intent that its reach be clearly limited to entities under the

jurisdiction of the Reporting Act, such as a candidate or a political committee, or a person making an independent expenditure in an amount greater than \$500 in an election.

Commissioner Linett made some suggestions. He said that press releases should be exempt but that ads in political programs should not. He also said that record keeping by printers will be difficult.

The Commission directed staff to include a monetary threshold of \$50 for triggering labeling of program advertisements.

On a motion by Commissioner Linett, seconded by Vice Chair McNany and passed by a vote of 4-0, the Commission approved the draft text, as modified, of the Political Identification Regulations and directed staff to file the proposal with the office of Administrative Law.

6. Resolution to Go Into Executive Session

On a motion by Vice Chair McNany, seconded by Commissioner Linett and passed by a vote of 4-0, 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 no later than 35 days after mailing.
2. 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 no later than 50 days after mailing.
3. Consider applications for outside legal counsel.

7. Return to Public Session: Appointment of Legal Counsel

On a motion by Commissioner Eldridge, seconded by Vice Chair McNany and passed by a vote of 4-0, the Commission voted to return to public session and to appoint James P. Wyse of Schenck, Price, Smith & King as its outside legal counsel.

8. Adjournment

On a motion by Commissioner Linett, seconded by Vice Chair McNany and passed by a vote of 4-0, the Commission voted to adjourn at 11:00 a.m.

Respectfully submitted,



FREDERICK M. HERRMANN, PH.D.