

MINUTES OF COMMISSION MEETING

December 18, 1975

PRESENT

Frank P. Reiche, Chairman
Archibald S. Alexander, Member
Sidney Goldmann, Vice-Chairman
Josephine S. Margetts, Member
Edward J. Farrell, Legal Counsel
David F. Norcross, Executive Director

ABSENT

None

Meeting convened at 9:30 a.m.

- 1) The Minutes of the December 4th meeting were approved.
- 2) The Form Revision Committee was discussed. The committee held an informal meeting on December 8, 1975 to organize. The committee consists of five members: Nancy Becker, Executive Director of Common Cause was selected by the Committee as Chairman; Barbara Berman, John Woolf, Leonard Fishman, representing the Democratic State Committee, and John Ewing, representing the Republican State Committee. The Committee indicated an interest in having a staff person from the Commission at its meetings. The next meeting date is January 17, 1976.
- 3) Commission vs. Carl Madsen C-23-75
Mr. Norcross brought to the attention of the Commission a letter dated December 16, 1975 from John Sheridan, attorney for the Respondent, Carl Madsen, requesting that the hearing scheduled for December 22, 1975 be permanently postponed and the matter be decided without further hearing, and that the charges of willfulness and knowledge be deleted. On Motion of Chairman Reiche, seconded by Commissioner Alexander, Mr. Sheridan's requests were denied; the hearing for December 22, 1975 will take place as scheduled. Vote 4-0.

The Director was requested to inform Mr. Sheridan of the Commission's decision by telephone and in writing.

- 4) The Director commented on the confusion and difficulties occasioned by charges of willfull, knowing violations under Section 21 of the Act. Hearing Officers and counsel appearing before them are confused by the dual nature of the proceedings which are a mixture of civil, administrative and criminal law. Defense counsel are troubled by the possibility of client self incrimination; among other things, hearing officers are concerned whether trial counsel to act on the Commission's behalf are necessary. This leads to some misconception as to the role of the Hearing Officer.

Because of the potential for fines and criminal sanctions our Hearing Officers are required to act more like traditional judges than fact finders. Perhaps this is desirable since the Commission itself embodies investigative, prosecutorial, fact finding and decision making roles in one institution. The Director said that these matters, particularly the last, were of increasing concern to him.

Chairman Reiche pointed out that other Commissions in Denver discussed this problem. If we had a staff counsel, as well as general counsel, it would be helpful in this regard. There are due process considerations involved of course.

5) Commission vs. Carl Madsen C-23-75

Mr. Norcross reported on the Somerset County Golf Outing. With regard to the \$500 (contribution) which was subsequently returned to the Somerset Trust Company; Mr. William McCafferty reported in a memorandum submitted to the Commission that he had spoken with John Ewing, who had been chairman of the Somerset County Republican Finance Committee since 1957. Ewing stated that he had closed this account in 1973 by issuing a check for the balance to the Republican Executive Committee and as a result of closing out this account the Republican Finance Committee was dissolved. As a consequence, no annual report was filed in 1973. The summary of Mr. McCafferty's report was: The Committee did not participate in the 1973 campaign other than as a contributor. The Commission felt that an obligation to file an Annual Report could exist. Mr. Norcross pointed out that at the time the Annual Report was due, they were no longer a committee. On Motion of Vice-Chairman Goldmann, seconded by Chairman Reiche, it was determined to prepare and send a letter to the Finance Committee of Somerset County requesting information as to why no report had been filed. Vote 4-0.

6) New Jersey Election Law Enforcement Commission vs. New Jersey Republican Finance Committee, Anthony J. Scala and Joseph Intile C-23-74

RESOLUTION:

The Commission having reviewed the Findings of Fact and Conclusions of Law of the hearing Officer, Martin L. Haines, Esq., and the Exceptions, Objections and Replies thereto submitted by counsel for Respondent Scala by letter dated November 30, 1975, and the Reply of the hearing officer to that letter dated November 26, 1975, the determination of the Commission is as follows:

1. Respondent Joseph Intile was charged with violating Section 20 of the Act. The hearing officer found that there was an agreement between Mr. Intile and Mr. Scala which, although informal, made Mr. Intile liable to Mr. Scala for payment of one-half of the \$20,000 and the existence of this agreement was acknowledged by Mr. Intile. This conclusion was supported by the testimony, including the placing of the name of Mr. Intile on the

back of the check in pursuance of his promise to be so liable, and the testimony of Patricia Larocca, a witness in the case, to the same effect. The hearing officer found that there was no violation of Section 20. This finding by the hearing officer is supported by the evidence as set forth in his report and the Commission accepts this finding by a vote of 3-1, Commissioner Alexander dissenting.

2. Respondent Anthony J. Scala was charged with violations of Section 8, Section 16, Section 20, Section 21(a), Section 21(b) and Section 22 of the Act. The hearing officer found that Mr. Scala was campaign treasurer of the New Jersey Republican Finance Committee and that he failed in the requirement of Section 8 to certify to the correctness of each of the Committee's report. The hearing officer found there was a violation of Section 8. This finding and conclusion of the hearing officer is supported by the evidence as set forth in his report and as described below, and the Commission unanimously accepts this finding.

3. The hearing officer found that Mr. Scala had violated Section 16 of the Act. That section is applicable to a campaign treasurer on behalf of a candidate. There is no evidence that Mr. Scala served as campaign treasurer of a candidate and therefore the Commission unanimously finds that there was no violation of Section 16 by Mr. Scala.

4. With respect to Section 21(a), the hearing officer did not find violations made "willfully and knowingly and with intent to conceal or misrepresent." The Commission unanimously accepts the determination of the hearing officer as being supported by the evidence in the case and does not find a basis for further action with respect to an alleged violation by Mr. Scala of Section 21(a).

5. The hearing officer found a violation of Section 21(b) of the Act. Section 21(b) is a criminal section. The Commission unanimously finds that there is sufficient evidence to require the Commission to forward the question of possible violation of Section 21(b) to the Attorney General in accordance with 6.b(10) of the Act.

6. With respect to Section 22 of the Act, the Commission unanimously finds on the basis of the report of the hearing officer that, although the transaction referred to involved a single transfer of a sum of \$20,000, Anthony Scala violated Section 22 of the Act with respect to three separate reports. The first is Report Form R-1, filed on behalf of the Republican Finance Committee and dated October 30, 1973. That report failed to disclose the \$20,000 as a contribution or a loan, as required by Section 8 of the Act. The second is Report Form R-1, dated November 20, 1973, by the Republican Finance Committee and signed by Anthony J. Scala. It does not list the \$20,000 as a contribution or a loan and makes no reference to the repayment of \$10,000

to the bank by the Republican Finance Committee, as required by Section 8 of the Act. The third is Report Form R-1, dated April 26, 1974, by the Republican Finance Committee and signed by Anthony Scala which shows a loan of \$10,000 from Livingston National Bank and fails to make reference to the \$20,000 as a contribution or loan or to the fact of repayment of \$10,000, in violation of Section 8 of the Act. While there are other reports filed by the Republican Finance Committee and signed by Anthony Scala, these additional reports are deemed by the Commission to be sufficiently similar to the other reports described in this paragraph as not to constitute separate violations of Section 22.

7. With respect to the violation of Section 22 by virtue of failure to disclose the transaction on the Republican Finance Committee Report dated October 30, 1973, the Commission unanimously imposes a civil penalty of \$500 upon Anthony J. Scala personally. In addition to the foregoing, with respect to the violation of Section 22 by virtue of failure to disclose the transaction on the Republican Finance Committee Report dated November 20, 1973, the Commission imposes an additional civil penalty of \$750 upon Anthony J. Scala personally. With respect to the violation of Section 22 by virtue of failure to disclose the transaction on the Republican Finance Committee Report dated April 26, 1974, the Commission imposes an additional civil penalty of \$1,000 upon Anthony J. Scala personally.

8. With respect to respondent, New Jersey Republican Finance Committee, the Commission has determined that the actions of its Treasurer, Anthony J. Scala, as its agent, are imputed to that Committee. In addition, the course of conduct of the New Jersey Republican Finance Committee in permitting its affairs to be conducted in such manner as to permit Mr. Scala to violate the Act as here found by the Commission, constitutes such gross negligence as to render the Committee liable for the actions of respondent Anthony J. Scala for that additional reason, in the circumstances of this case. The Commission hereby unanimously imposes upon the New Jersey Republican Finance Committee a single civil penalty in the total amount of \$1,000.

- 7) Commission vs. Phillip Starner C-06-75
After further discussion by members and counsel Vice-Chairman Goldmann moved that the Commission find a violation of Section 7 of the Act; that the violation is found to be serious in nature since it arose from expenditures of more than twice the permitted amount; that while the precise provisions of Section 22 will not obtain to the facts of this case, the Respondent be strongly reprimanded for the violation committed. The motion was seconded by the Chairman and passed four in favor, none opposed.
- 8) Commission vs. Gilroy
Mr. Farrell submitted drafts of Complaints to the Commission which were approved and ordered issued. Gerald Miller, Esq. was assigned as Hearing Officer.

- 9) Essex County Grand Jury - The Executive Director reported that the investigation of the matters set forth in the Grand Jury Report revealed that the Key witness in the case was deceased. This witness is to the satisfaction of our investigators the only person who actually knew where the funds which had been received were distributed. He further reported that a similar fund-raising scheme had been used in 1975 in Essex County and that the Commission was investigating the campaign in which it had occurred. He recommended and the Commission agreed the closing of this file as to the 1973 General Election.
- 10) John L. Vanderipe, Jr. - The Commission after considering the facts in the matter determined that no further action was necessary and closed the file.
- 11) The Commission considered a draft of the Chairman's letter on Title 19A to the Governor.

The meeting was adjourned at 4:00 p.m.

Respectfully submitted,


DAVID F. NORCROSS
Executive Director