

NEW JERSEY ELECTION LAW ENFORCEMENT COMMISSION

PUBLIC AND EXECUTIVE SESSION MINUTES

NOVEMBER 12, 1981

PRESENT

Sidney Goldmann, Chairman
Josephine S. Margetts, Member
Andrew C. Axtell, Member
M. Robert DeCotiis, Member
Scott A. Weiner, Executive Director
William R. Schmidt, Assistant Executive Director
Edward J. Farrell, General Legal Counsel
Lisa Pollak, Esq.

The Chairman called the meeting to order and announced that pursuant to the Open Public Meetings Law, P.L. 1975, c.231, annual notice of the meetings of the Commission, as amended, has been filed with the Secretary of State's office, and that copies have been filed in the State House Annex, and mailed to the Newark Star Ledger, the Philadelphia Bulletin and the entire State House press corps.

The meeting convened at 10:10 a.m. at the offices of the General Counsel, 43 Maple Avenue, Morristown, N. J.

1. Approval of Minutes of Public and Executive Session of Commission meeting of October 29, 1981.

On a motion by Commissioner Axtell, seconded by Commissioner DeCotiis and a vote of 4-0, the Commission approved the minutes of the public and executive session of the above-cited meeting.

2. Certification of Public Matching Funds

The Commission reviewed a November 10, 1981 staff memorandum recommending the certification of public matching funds to Primary gubernatorial candidates Rafferty and Wallwork. Both candidates reported a net deficit in their second 60-day post-election report, both have outstanding obligations, eligible to be paid for with public funds, that exceed the amount of public funds for which the campaigns are eligible, and both campaigns are eligible for public funds that exceed their respective deficits.

On a motion by Commissioner DeCotiis, seconded by Commissioner Axtell and a vote of 4-0, the Commission voted to certify public matching funds as follows:

- John Rafferty (R)	\$3,814.90
- James Wallwork (R)	1,387.13
TOTAL	<u>\$5,202.03</u>

3. Gubernatorial General Election Recount Costs

Four representatives of the Democratic State Committee and James J. Florio for Governor, Inc. appeared before the Commission:

Angelo Genova, M. Allan Vogelsson, Roger Lowenstein and Nicholas Rudi. They appeared before the Commission to request approval of the spending of remaining campaign funds on the recount of votes in the gubernatorial election.

Mr. Lowenstein made the introductory remarks on behalf of the Democratic State Committee and James J. Florio for Governor, Inc. He stated that if the lead of approximately 1600 votes for Thomas Kean holds, then Congressman Florio will request a recount. The request for a recount will be on a statewide basis and it is currently estimated that it will cost in excess of \$150,000 in fees required by statute and in legal fees. Mr. Lowenstein stated that it is difficult to raise this kind of money to finance a recount and that there is no way to pay for the recount unless Congressman Florio is able to use the remaining moneys in the Florio campaign account.

In response to question from Chairman Goldman on how much money remained in the Florio campaign accounts, Mr. Rudi said that there is approximately \$75,000 to \$100,000 remaining, of which approximately \$27,000 had been deposited after the election on November 6.

Mr. Lowenstein continued his remarks that there has been nothing like this in the past and that there are very few precedents. He asserted that if the contributors to the Florio campaign were asked, that they would say "yes" to the use of their contributions for the recount. He said the closest analogy is to the cost of complying with the election law being outside of the expenditure limit. He went on to say that the Democratic State Committee is in debt and has already tapped every contributor; the committee is in debt to the National State Bank for \$250,000, and, as a result, the Democratic State Committee is both unwilling and unable to finance the recount.

Commissioner Axtell suggested that James J. Florio for Governor, Inc. be allowed to refund the \$27,000 to contributors or be allowed to transfer the funds to a recount account.

The Executive Director noted that the Florio campaign, prior to the election, had refunded over \$100,000. Mr. Rudi noted that the Democratic State Committee had filed a Form D-1 for a recount bank account and that the Democratic State Committee is attempting to raise funds.

Chairman Goldman asked where the Florio campaign would get the rest of the money if it were allowed to use the remaining campaign funds. Mr. Genova stated that the use of remaining campaign funds would provide "one foot on the ladder" because it would provide \$60,000 to \$70,000 or about 50 percent of the amount needed for the recount. He said the Florio campaign would turn to contributors

for additional funds, possibly on the basis that the additional contributions would be returned to them if the contributions were not needed for the recount.

In response to a question from the Executive Director, Mr. Rudi said that the administrative costs for keeping the office and campaign open will run approximately \$20,000 to \$25,000 per month without the legal fees for the recount.

Commissioner Axtell asked if the recount had to continue with all districts or if the campaign could stop the recount and get a refund from the state for its deposit; the answer was yes.

Mr. Genova asserted that the recount is not "in aid of the candidacy" but is beyond that. The recount is a unique situation and must be pursued in the "interest of the people".

General Counsel Farrell presented his tentative analysis. He said that if the Commission decided that the recount activity is "in aid of the candidacy" then the \$800 contribution limit would apply. He noted that although the recount activity is "of benefit to the candidate", there is also a separate public interest in finding out who won the election. He said that although there is a distinction, it is not a black or white distinction. Furthermore, he stated that if there were no public financing involved, then there would be no question about using available campaign funds for the recount. However, with public financing and in light of the Commission's decision in October in response to the advisory opinion request from the Degnan campaign, all leftover funds in the campaign accounts are to return to the state. The Commission, however, has an area of discretion in deciding if leftover campaign funds can be used for a recount.

Mr. Genova urged that more emphasis be given to the use of the funds instead of the state's interest in recapturing remaining funds.

4. Executive Session

On a motion by Commissioner DeCotiis, seconded by Commissioner Margetts and a vote of 4-0, the Commission voted to resolve to go into executive session, the results of which will be made public at the conclusion of the meeting.

Following a full discussion of the issues presented, and of alternatives, the Commission arrived at its determination which is set forth below.

In its discussion of the issues and alternatives, the Commission considered permitting the campaign to loan the money to the recount activity and have those funds repaid, but decided that there was no difference in permitting the campaign to loan the funds and in permitting the campaign to give the funds to the recount activity. It also considered separating the state mandated costs, i.e. the filing fees for recounting districts, from the costs for the office, staff and counsel, but decided that such separation would not be appropriate

5. Return to Public Session - Presentation of Determinations

On a motion by Commissioner Axtell, seconded by Chairman Goldman and a vote of 4-0, the Commission voted to return to public session.

On a motion by Chairman Goldman, seconded by Commissioner Axtell and a vote of 4-0, the Commission voted to permit a gubernatorial candidate to transfer remaining unused campaign funds to a recount bank account to be used for recount activity, based on the recognition that although the recount is campaign related and election connected, it is still a unique situation and that the closeness of the vote calls for a recount by either side because of the great public concern and interest. *SAH*

Chairman Goldman, in presenting the determinations of the Commission to the representatives of the Democratic State Committee and James J. Florio for Governor, Inc., urged them to be prudent in the spending of the remaining funds on the recount activity.

6. Lobbyist Regulations

The Commission reviewed the final draft of the lobbyist regulation, a 26 page document. The Commission reviewed the changes incorporated in the proposed regulations, including the following:

- page 3, second line the elimination of the words "lobbyist or" in N.J.A.C. 19:25-8.2 definitions, "direct, express and intentional communication with legislators or the Governor or his staff undertaken for the specific purpose of affecting legislation". Chairman Goldman raised a hypothetical example of a lobbyist who spends less than \$2500 on a legislative agent but spends more than \$2500 on gifts to legislators, the

Governor or his staff and makes one or two communications for the purpose of affecting legislation. General Counsel Farrell, in discussing the reasons for deleting the words "lobbyist or" first stressed that it is the law which defines a lobbyist as someone who employs a legislative agent. General Counsel Farrell then went on to say that the changes made on pages 5 and 6, including the inclusion of the example about ABC Corporation, N.J.A.C. 19:25-8.2 definitions, "legislative agents" deals with Chairman Goldmann's example through the threshold requirement of a percent of time or hours (10 percent and 180 hours).

- page 5, last paragraph, fourth line, the deletion of the word "reportable" and the addition of the words "of the kind described in N.J.A.C. 19:25-8.6 and 8.7 exceeding".
- on page 12, first paragraph, N.J.A.C. 19:25-8.6(a)(2) calculation of receipts wherein the changes remove the requirement of linking up contributions and contributors, in accordance with the Commission's decision at a previous meeting.
- page 14, second paragraph, N.J.A.C. 19:25-8.7(a)(1), wherein the value of the time of volunteer is not to be included in any calculation of expenditures. In this paragraph, in the last line, the words "incurred in" were changed to "related to".
- page 18, first paragraph, N.J.A.C. 19:25-8.7(b) wherein the paragraph has been reworded in the negative with respect to reimbursement and deduction as a business expense on any state or federal tax return.
- pages 23 and 24, N.J.A.C. 19:25-8.11(c) responsibilities for filing annual reports; certification, wherein words have been added to make clear that a lobbyist organization may file on behalf of its employees and may file one report.

The Commission also reviewed the third paragraph on page 18, N.J.A.C. 19:25-8.7(b)(2) which deals with food and beverages provided to legislators, the Governor or his staff, paid for by a lobbyist or legislative agent, as well as food and beverages for the legislative agent when in the company of the legislator. On a motion by Commissioner Margetts, seconded by Commissioner DeCotiis and a vote of 4-0, the Commission decided not to include the cost of food and beverages for the legislative agent when in the company of the legislator when the legislative agent does not pay for the food and beverage of the legislator.

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On a motion by Chairman Goldmann, seconded by Commissioner Axtell and a vote of 4-0, the Commission adopted the proposed regulations, as drafted, including all amendments.

Respectfully Submitted,



SCOTT A. WEINER
Executive Director

SAW/cm