

NEW JERSEY ELECTION LAW ENFORCEMENT COMMISSION

PUBLIC SESSION MINUTES

FEBRUARY 8, 1982

PRESENT

Andrew C. Axtell, Member  
M. Robert DeCotiis, Member  
Haydn Proctor, Member  
Alexander P. Waugh, Jr., Member  
Scott A. Weiner, Executive Director \*  
William R. Schmidt, Assistant Executive Director  
Edward J. Farrell, General Counsel

In the absence of a gubernatorially appointed chairman, the Commission designated Commissioner Axtell as Acting Chairman to guide the meeting. The Acting 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 10:05 a.m. at the Commission's offices.

1. Designation of Acting Chairman

On a motion by Commissioner DeCotiis, seconded by Commissioner Proctor and a vote of 4-0, the Commission voted to designate Commissioner Axtell as Acting Chairman pending Governor Kean appointing a Chairman.

2. Approval of Minutes of Public Session of Commission meeting of January 11, 1982

The Commission reviewed the minutes and on a motion by Commissioner Axtell and seconded by Commissioner DeCotiis and a vote of 2-0 (with Commissioners Proctor and Waugh not voting because they were not members of the Commission on January 11, 1982) the Commission approved the minutes of the public session of the above-cited meeting.

3. Approval of Minutes of Public Session of Commission Meeting of January 25, 1982

The Commission reviewed the minutes and on a motion by Commissioner Proctor, seconded by Commissioner Waugh and a vote of 3-0 (with Commissioner Axtell not voting because he was absent on January 25, 1982) the Commission approved the minutes of the public session of the above-cited meeting.

\*Mr. Weiner was not present for the first six items of the meeting.

4. Review and Discussion of Preliminary Staff Reports Concerning Public Financing

The Commission discussed the staff reports on the following public financing topics, distributed to the Commission members at the January 25, 1982 Commission meeting:

- Issue No. 4, Expenditure Limit;
- Issue No. 5, \$50,000 Limit on Bank Loans
- Issue No. 6, Limits on Purposes for Which Public Funds May Be Spent; and
- Issue No. 9, \$25,000 Limit on Candidate's Own Funds.

A discussion ensued on the impact of the expenditure limit on the gubernatorial primary and general election candidates. Assistant Executive Director Schmidt noted that there was no apparent impact on the primary candidates; none of the four candidates who came close to the expenditure limit refunded contributions because they were unable to spend the money and none reported pulling back on expenditures immediately before the election. This was not the case during the general election when both candidates, Congressman Florio and Governor Kean, refunded contributions in the ten day period prior to the date of the election and Congressman Florio's campaign withdrew \$30,000 of media advertisements the weekend before the election. Thus, both campaigns were unable to spend all of the contributions because of the expenditure limit and Congressman Florio's campaign had to cut back on spending immediately before the date of the election because the campaign was so close to the expenditure limit.

Commissioner Waugh asked if the campaigns would spend up to any expenditure limit. General Legal Counsel Farrell pointed out that the limit on the amount of contributions does limit the total amount of money a campaign can raise, even though most political campaigns will spend all or nearly all of what they raise.

General Legal Counsel Farrell pointed out that the Commission, following the 1977 general election public financing experience, came out against expenditure limits by a vote of 3-1, with former Commissioner Alexander in the negative. He also noted that it is the expenditure limit which is the basis for most of the questions on allocating expenditures between the gubernatorial candidate and candidates for local and legislative office. It was also noted that candidates who do not take public funds are not restrained by the expenditure limit; in the 1981 primary, Congressman Roe (D) and Joseph Sullivan (R) did not take public funds and both could have exceeded the expenditure limit although only Mr. Sullivan did so.

The Commission again discussed the \$50,000 threshold issue (Issue #2), discussing the question of the number of contributors needed to reach the threshold and the proposal to establish a series of thresholds for a candidate who meets the initial threshold.

The Commission discussed Issue #5, Limit on Bank Loans. Commissioner Axtell asked about the requirement that bank loans be repaid 20 days before the date of the election. Mr. Schmidt noted that no problems ensued during the primary in monitoring that requirement; he pointed out that campaigns had to certify to ELEC that any bank loan outstanding at the time of the 25 day pre-election report had been repaid on or before the 20th day before the election. Mr. Schmidt also noted that the bank loan provision had only been used four times by three candidates and that the bank loan had been taken out to "bridge" a cash flow problem faced by campaigns pending receipt of public funds for which the campaigns had made submissions of contributions to be matched.

Commissioner Waugh asked the theory behind the limit on bank loans. General Legal Counsel Farrell noted that the bank loan provision enables a campaign to borrow for "startup" money purposes and that the \$50,000 amount was arbitrary. He also noted that campaigns, prior to the public financing program, frequently ended up in debt. This placed a difficult burden on the candidates to raise contributions after an election but when those candidates were in office, their raising funds created potential for "undue influence" by the contributors.

The Commission discussed Issue #9, the \$25,000 Limit on a Candidate's Own Funds. This limit is imposed only on candidates who accept public funds. Mr. Schmidt pointed out that only six of the gubernatorial primary public funds candidates contributed more than \$800 to their own campaigns, and most of those contributions appeared early in the campaign and were presumably used as "startup" money. Mr. Schmidt also noted that only five gubernatorial primary public funds candidates loaned their campaigns money and that the loans are either used as "startup" funds early in the campaign or were made late in the campaign when there was a cash flow problem shortly before the election.

The Commission then discussed Issue #6, Limits on the Purposes For Which Public Funds May Be Spent. General Legal Counsel noted that New Jersey has the most restrictive law on the use of public funds. Mr. Schmidt noted that there has been some criticism of the limits on public funds and that it is argued that those limits on public funds force campaigns to direct their spending for radio and TV broadcast time and direct mail. Mr. Schmidt noted, however, that in the general election, both Congressman Florio and Governor Kean spent over \$600,000 of their privately raised funds on broadcast time and direct mail, above the amount of public funds spent on those purposes.

There was some discussion of the comments made by gubernatorial candidates and their treasurers in response to the ELEC questionnaire circulated among primary candidates and treasurers. Mr. Schmidt said that the views of some of those who had not responded would be solicited by the Executive Director and himself and that candidates, treasurers and other campaign staff would be invited to testify at the Commission's public hearings. Mr. Schmidt also noted that the first three Issue papers had been edited and sent out to the press, the legislative leadership and interested parties on Friday, February 5, 1982. He also said that the Executive Director was at that time appearing before the Senate State Government Committee to present the first three Issue papers to aid the Committee in its deliberations on the public financing program.

5. Selection of Dates for Public Hearings Concerning Public Financing

The Commission reviewed the proposed dates for public hearings concerning public financing as set forth in a February 3, 1982 memorandum from the Executive Director to Commission members. The Commission agreed on Friday, March 12, 1982 for the public hearing to be held at the Bergen County Court House, Freeholders Meeting Room, Hackensack, N. J. and Friday, March 19, 1982 for the Atlantic County public hearing to be held at the Atlantic City Municipal Court House, Commission Meeting Room, Atlantic City, N. J. The former meeting is to be scheduled at 11 a.m. and the latter meeting at 1 p.m.

6. Review of Questions and Answers Concerning Lobbyist Reporting

The Commission reviewed a nine page document entitled "Questions and Answers from the Lobbyist Seminar on January 22, 1982". The Commission reviewed each question in order as set forth below:

Question No. 1

Commissioner Axtell asked if it would not be desirable to have lobbyist organizations, with total expenditures less than \$2500, still file a statement to the effect that they did not have expenditures of \$2500 or more. This would be similar to the Form A-1 filing by candidates wherein they state they do not expect to spend more than \$1,000. General Legal Counsel Farrell pointed out that such a "negative filing" might have too great a chilling effect and that the Commission would still have to draw some line, for example \$1,000 or \$500. Thus, he counseled against instituting some type of "negative filing". In relation to question No. 1, the Commission also discussed question No. 3 and on what basis the Commission and its staff would initiate compliance review of the lobbying organizations which do not file. It was noted that known lobbying organizations and legislative agents who do not file might very well

be reviewed by the Commission; furthermore, inquiries might very well be made by third parties as to why a particular lobbyist or legislative agent did not file, not unlike the type of inquiry the Commission receives from citizens and opponents of candidates. It was suggested that the response to question No. 3 might be expanded to clarify how it would come about that the Commission's compliance review would result in the Commission contacting lobbying organizations or legislative agents who did not file.

Question No. 2 was satisfactory.

Question No. 3 (see discussion of Question No. 1 above.)

Question No. 4 was satisfactory.

Question No. 5.

Commissioner Waugh suggested that the first sentence in the response be changed to read as follows: "If the company is under the \$2500 threshold, it has no obligation to file any report."

Questions 6 through 12 were satisfactory.

Questions 13 and 15.

General Legal Counsel pointed out that there is a real problem with the issue raised in Question 15. He noted that prior to the addition of the word "expressly" all of the time spent at the Legislature merely observing and not actively communicating was clearly reportable. With the addition of the word "expressly" a difficult policy question has come up. He said that if the \$2500 threshold is met through direct communication, then the inclusion of the time spent merely observing and not actively communicating or time spent in formulating legislative policy within an organization and committee or preparing summaries of legislation in which a lobbying position would be based could be counted and although that position may be vulnerable it is still defensible. He said, however, that if the only expenditure is for observing and none for direct communicating, then there is no reporting requirement. Concerning the response to question 13, General Legal Counsel Farrell suggested that if a lobbying organization spent more than \$2500 on "direct communication", then all of a legislative agent's time is includable in the report. After lengthy discussion among the Commissioners, the Commission decided that General Legal Counsel Farrell should prepare a legal memorandum on this point for review by the Commission.

Question 14.

It was suggested that in the last line of the response, the word "reportable" be inserted before the word "expenditures".

Questions 16 through 18 are satisfactory.

Question 19.

Before the word "employee" in the first line of the question, change the word from "a" to "an".

Question 20.

In the second line of the question, after the word "legislative" add the word "agent".

Questions 21 through 24 are satisfactory.

Question 25.

Commissioner Axtell asked why political contributions are not reportable. General Legal Counsel Farrell said that political contributions are reportable by candidates or campaign committees. Commissioner DeCotiis expressed his concern that if a lobbyist or legislative agent were to report a political contribution on a lobbyist report, thus suggesting the linkage between a political contribution and a "direct communication", that it would suggest bribery. Commissioner Waugh suggested one solution might be to simply leave the question out. On a motion by Commissioner Axtell, seconded by Commissioner Waugh and a vote of 3-1, with Commissioner DeCotiis in the negative, the Commission decided to leave the question and the response unchanged.

Question 26.

This question and the response were discussed in conjunction with discussion of question 25. It was suggested that the response be phrased in the positive rather than the negative. Thus, the response would read something to the effect that "contributions to a political dinner, where no discussion of legislation takes place, would be reportable by the candidate, the candidate committee or the campaign committee, as appropriate."

Question 27.

Commissioner Waugh asked whether mailing lists for an organization's newsletter are reportable when the newsletter updates members of the organization on legislative developments and is mailed to legislators or the Governor. General Legal Counsel Farrell

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suggested that such costs of mailing to the Governor or legislator are not reportable because having to report would cut into the exclusion of communicating with an organization's members. Furthermore, the costs involved are almost de minimis. On a motion by Commissioner DeCotiis, seconded by Commissioner Axtell and a vote of 3-1, with Commissioner Waugh in the negative, the Commission agreed to make no change in the response to Question 27.

Questions 28 through 31 were satisfactory.

Question 32. (see discussion of Question 25 above)

Questions 33 through 45 were satisfactory.

It was pointed out that the questions and answers will be distributed to lobbyists and published in the New Jersey Register. The Commission agreed to consider a revised draft of the questions and answers at its next meeting, February 22, 1982.

Executive Director Weiner and Staff Counsel Nagy joined the meeting toward the end of the discussion of questions and answers.

## 7. Reports on Pending Legislation

Executive Director Weiner reported on his meeting with the Senate State Government Committee, held during the morning of Monday, February 8, 1982. He reported that the Committee considered and reported out Senator Perskie's bill S-911, which would place a \$2500 limit on legislative candidates. He said the figure of \$2500 was arrived at by using the \$800 contribution limit to gubernatorial candidates plus the \$1600 public fund matching amount for gubernatorial candidates.

Executive Director Weiner reported that it will be two weeks before the Senate votes on the bill. Assuming the bill passes the Senate, the bill will then be referred to the Assembly State Government Committee. Executive Director Weiner said he had discussed the bill with Senator Perskie and Senator Cardinale after the meeting and offered to work with Senator Perskie in identifying the possible impact of S-911. Mr. Weiner also noted that another bill has been introduced which provides for an inflation factor measured by the Consumer Price Index (CPI) to adjust the contribution limits periodically. The Executive Director commented that the CPI is not necessarily an appropriate measure of inflation for campaign costs.

Mr. Weiner reported that a series of bills that would amend public financing are being developed by legislators. He also reported that he had formally advised the Senate State Government Committee of the Commission's schedule on preparing the report on public financing. He reported that Assemblywoman Kalik will delay any action on bills to amend public financing until May, awaiting ELEC's report. Mr. Weiner reported a positive reaction to the interim reports on the part of the legislators at the Senate State Government Committee.

#### 8. Executive Director's Report

The Executive Director reported that the staff are reviewing the lobbyist reports, filed on February 1, 1982, for internal consistency and validity on their face. He noted that the lobbyists and legislative agents are reporting very little specific money spent for the benefit of legislators, but that we do not know if this is the result of the enactment of Senator Bedell's bill or not. He also said that he had granted extensions to six out of the seven lobbyist organizations or legislative agents who had requested extensions. The one denial was because the requesting party gave no reason for requesting an extension.

The Executive Director reported that Henry Ramer, Counsel to the Kramer for Governor Committee, submitted a request for an extension until March 31, 1982 to refund the excess contributions arising out of the Commission's determinations concerning Cape May County, Atlantic County and Bergen County. On a motion by Commissioner DeCotiis, seconded by Commissioner Waugh and a vote of 4-0, the Commission approved the extension until March 31, 1982.

The Executive Director reported that he had been invited to be a panelist at a seminar being held by Society for Environmental Economic Development which also offered to pay for the Executive Director's hotel room. The Commission discussed the appropriateness for the Executive Director to accept a free room from an organization which the Commission regulated and on a motion by Commissioner Proctor, seconded by Commissioner DeCotiis and a vote of 4-0, the Commission authorized the Executive Director to attend the seminar but decided that the Commission would pay the Executive Director's expenses associated with attending the seminar. The Commission also advised the Executive Director that he was authorized to incur such costs, by attending and participating in conferences, as part of his administrative authority.

The Executive Director reported on the Chamber of Commerce train excursion to Washington, D.C. on Wednesday, February 3, 1982.

The Executive Director reported on his visit to the Federal Election Commission offices in Washington, D.C. on Thursday, February 4, 1982. He reported that he saw Frank Reiche, FEC chairman

and former chairman of ELEC. He said he spent five hours with key staff, including the FEC director and that he met with the audit director and the assistant staff counsel. He said that over the coming weeks, he hopes to send Assistant Executive Director Schmidt, Staff Counsel Nagy, and Director of Compliance and Review Schultz to meet with the staff of the FEC.

The Executive Director reported on the proposed dinner for former Chairman Sidney Goldmann and former Commissioner Josephine Margetts. He said that he and former Executive Directors Norcross and Thurston are planning to host the dinner honoring former Commissioners Goldmann and Margetts. The date of the dinner is planned for some time in May, and Helen Letts of the ELEC staff will coordinate the plans for the dinner.

9. Executive Session

On a motion by Commissioner Waugh, seconded by Commissioner Proctor and a vote of 4-0, the Commission voted to resolve to go into executive session to review the executive session minutes of January 11 and January 25, 1982, to discuss personnel matters, and to discuss investigations and enforcement actions, the results of which will be made public at their conclusion.

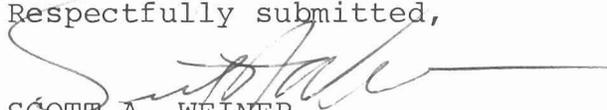
10. Personnel

Executive Director Weiner discussed possible consultants for the public financing study and mentioned the possibility of retaining Herbert Alexander and Ruth Jones to meet with staff and the Commission to discuss the issues and proposed changes in the public financing law. The Commission authorized the Executive Director to pursue such arrangement with any appropriate consultant and to report to the Commission.

The Executive Director discussed the proposal from Neil Upmeyer to provide consulting services on the public financing study. After discussion, the Commission authorized the Executive Director to propose to Mr. Upmeyer a contract whereby he would review the Issue papers and provide advice on facts or alternatives that could be added to make the Issue papers more helpful in the debate and discussion on public financing. The total contract would be at a maximum of \$1,000.

11. Adjournment - On a motion by Commissioner Waugh, seconded by Commissioner DeCotiis and a vote of 4-0, the Commission voted to adjourn.

Respectfully submitted,

  
SCOTT A. WEINER  
Executive Director