

NEW JERSEY ELECTION LAW ENFORCEMENT COMMISSION

PUBLIC SESSION MINUTES

MAY 24, 1982

PRESENT

Andrew C. Axtell, Chairman
M. Robert DeCotiis, Member
Haydn Proctor, Member
Scott A. Weiner, Executive Director
William R. Schmidt, Assistant Executive Director
Edward J. Farrell, General Counsel
Sidney Goldmann, Former Chairman

ABSENT

Alexander P. Waugh, Jr.,
Member

Chairman Axtell 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, and the entire State House press corps.

The meeting convened at 1:40 p.m. at the Commission's offices, Trenton, N. J.

1. Approval of Minutes of Public Session of Commission Meeting of May 5, 1982

The Commission reviewed the minutes and on a motion by Commissioner Proctor, seconded by Commissioner DeCotiis and a vote of 3-0, the Commission approved the minutes of the public session of the May 5, 1982 meeting.

2. Discussion of Proposal to Impose Filing Fees Upon Campaign Reports

The Executive Director noted that a May 18, 1982 memorandum, prepared by Staff Counsel Nagy and entitled "Filing Fee Proposal" had been distributed previously to the Commission. Mr. Weiner noted that Mr. Nagy had discussed the filing fee proposal with Albert Porroni, Counsel to the Legislature, who had advised that the imposition of a filing fee could not be done as a budget footnote. Mr. Weiner reported that he had spoken with Assemblyman Byron Baer, who had proposed the filing fee during the Joint Appropriations Committee hearings on the ELEC budget, and that he had advised the Assemblyman of the legal opinions.

The Commission discussed the public policy questions of the filing fee proposal. It was noted that the filing fee proposal runs counter to the purposes of disclosure. Furthermore, it was noted that there would be potentially serious administrative problems with collecting the fees. Mr. Weiner noted that Assemblyman Baer understands the legal positions but disagrees with the policy. Mr. Weiner also noted that lobbyists, when registering with the Attorney General's office, must pay a \$5 registration fee.

After discussion of Mr. Nagy's May 18, 1982 memorandum and the public policy questions, it was the sense of the Commission that a candidate should not have to pay a fee for filing campaign contributions and expenditures reports.

3. ELEC Budget

Executive Director reported that Senator Feldman (D) and Senator Ewing (R) had both introduced resolutions to reinstate the \$33,000 requested by the Commission. Mr. Weiner reported that the resolutions were introduced and would probably be approved if there is no budget shortfall and new taxes are enacted to eliminate the shortfall. Mr. Weiner reported that he had spoken with the chairman of the Joint Appropriations Committee, Senator Weiss, along with Senators Feldman, Ewing and Foran.

4. Executive Director's Report

Mr. Weiner reported that Barbara Havard had started work with the office, replacing Helen Letts.

Mr. Weiner reported that S-1195 had been reported out by the Assembly State Government Committee. This is the bill that deals with leftover campaign funds, and establishment of reporting requirements for office accounts.

5. Executive Session

On a motion by Commissioner Proctor, seconded by Commissioner DeCotiis and a vote of 3-0, the Commission voted to resolve to go into executive session to review the executive session minutes of May 5, 1982 and to discuss investigations and enforcement actions, the results of which will be made public at their conclusion.

At this point, Former Chairman Goldman left the meeting, returning for the public financing discussion.

6. Discussion of Draft Public Financing Report

Executive Director Weiner distributed a "discussion outline", dated May 24, 1982. He also referred the Commission to the draft of the public financing report which had been distributed to the Commission previously.

The first item of discussion was the financial impact of the staff's recommendations. Mr. Weiner noted that applying the staff's recommendations to the 1981 primary and general election experience would have resulted in public funds representing 36 percent of total receipts for the publicly funded

candidates. This percentage compares to the average percentage of 51 percent in 1981 and 64 percent in 1977. Mr. Weiner noted that some might argue that the proposed percentage should be higher. He further noted that there are alternative ways to bring about an increase in the percentage of total receipts represented by public funds. One example would be to change the matching formula for the general election at \$500,000 rather than \$250,000. Another way to affect the percentage would be to start matching at the \$50,000 amount rather than the \$100,000 amount as recommended by staff. This second approach would have the effect of raising the percentage of total receipts represented by public funds to 42 percent.

The Executive Director then suggested the Commission discuss the draft report section by section. He noted that the draft report has many instances where the Commission reaches conclusions, in addition to the specific recommendations.

The Commission first discussed the introduction. Chairman Axtell noted there was some repetitious material. Mr. Weiner noted the need to synopsize the recommendations very early in the report. Commissioner Proctor suggested that the synopsis be in the table of contents. There was a note that in the introduction, page 2, the reference to "costs" should be modified by adding the words "in public dollars".

Next, the Commission discussed Part I, Goals, Objectives and Public Policy. Mr. Weiner noted that the draft report noted a shifting in possible public policy because of the concern with total public funds expenditures. He further noted that the concern with total costs may conflict with the public policy set forth in the 1974 statute. Mr. Weiner reported on his conversation with Commissioner Waugh who observed that the language in the draft report on this perceived conflict was too strong and that the wording should be amended to encompass the idea of "potential for conflict".

Commissioner Proctor asked for further discussion of the idea of conflicting public policy. Mr. Farrell noted that the stated purpose in the law is to provide enough financing in an amount so that candidates may conduct their campaigns free from improper influence so that persons of limited financial means may seek election to the governorship. On the other hand, there is the potential for candidates, with little chance of success, applying for and securing public funds. Mr. Farrell stated he did not believe that the conflict was inherent. The State can reasonably screen out candidates without "viability", but still provide early seed money for candidates with "limited financial means".

It was generally agreed to revise the language in the draft report to convey the idea of potential conflict.

Mr. Weiner noted two themes in the part on Goals, Objectives and Public Policy, namely the themes of strengthening political parties and not hindering individual participation in the process.

Commissioner DeCotiis noted that the draft talks about seeking to simplify the administration of the program and asked what recommendations would lead to a simplified program, particularly for the candidates' campaign committees. Mr. Schmidt said that none of the recommendations would lead to a simplified program. Instead, he said that the theme was really more of avoiding complications. Former Chairman Goldmann suggested that toward the end of paragraph 2 on page 9 of Part I, a sentence be added generally to the effect that: "The Commission is sympathetic to proposals to simplify record keeping for gubernatorial campaign committees and intends to act upon such proposals."

The Commission then discussed each of the recommendations as proposed by the staff.

The first recommendation was that the contribution limit be raised from \$800 to \$1,000. Mr. Farrell expressed the judgment that the contribution could be raised to as high as \$2500, if the only consideration was to stay within the intent of having gubernatorial candidates conduct their campaigns "free from improper influence". Mr. Weiner said that a key part of the recommendation and a key factor to be considered by the Commission is how much of a contribution is to be matched. Should all of the contribution or only the first part of a contribution be matched? If the contribution limit were raised to a relatively high amount, that action would argue for only matching the first portion of the contribution. For example, the first \$250 or \$500, similar to the proposal made by Assemblyman Zimmer. On the other hand, if the contribution limit is not raised that much, then the entire contribution could be matched.

Both Commissioner Proctor and Commissioner DeCotiis suggested a contribution limit of \$1200. Former Chairman Goldmann noted that a contribution of \$1200 matched on a one-for-one basis would equal \$2400, an amount the same as in 1981 when an \$800 contribution was matched two-for-one. Mr. Farrell noted that the matching ratio is another key factor. Commissioner Proctor noted that both campaign costs and the contribution limit are bound to go up to a level higher than 1981.

Mr. Weiner noted that Commissioner Waugh, in his conversation with Mr. Weiner, said he had no problem with the \$1,000 contribution limit. He also suggested that the contribution limit be indexed. Mr. Weiner said that he had argued against indexing the contribution limit. He noted there is a provision in the law requiring the Commission to report the year before the next primary election on the costs of campaigning and the extent to which they have risen since the last election. Mr. Schmidt noted that there is no agreed upon index for campaign costs and that the Consumer Price Index is a completely inadequate guide in this regard.

After extensive discussion on the contribution limit, the Commission reached a consensus for a \$1200 contribution limit.

On page No. 1.4, concerning political parties, Mr. Farrell suggested that there is a need to add the thought of repealing the expenditure limit.

There was also a discussion of the idea of limiting contributions from families. Mr. Weiner and Mr. Schmidt pointed out the difficulties in defining "family" and the additional administrative burden this would place on the campaign committees.

The Commission then discussed Proposed Recommendation No. 2 to raise the threshold from \$50,000 to \$150,000. Mr. Farrell noted that there have been proposals to retain the \$50,000 threshold but add a petition signature requirement. Mr. Farrell said that in his judgment, a threshold of \$100,000 or \$150,000 would be acceptable politically.

Mr. Weiner noted that the threshold is a screening device. Increasing the threshold creates a higher barrier in the process.

Commissioner Proctor suggested a threshold of \$120,000 which would represent 100 contributors contributing \$1200 each.

Mr. Farrell asked when matching should start and noted that this is a very important question. Mr. Weiner noted that the entire threshold question is a rite of passage and asked what level is necessary for a candidate to pass through to get into the public financing process.

Former Chairman Goldmann suggested a threshold of \$100,000 and suggested that matching begin at \$100,000. After further discussion of Former Chairman Goldmann's suggestion, the Commission reached a consensus of a threshold of \$100,000 and beginning matching at \$100,000.

Another part of the threshold recommendation was that after a candidate reaches the initial threshold that he or she continue to reach staged thresholds of \$25,000. The Commission entered into a lengthy discussion of the staged threshold proposal. Chairman Axtell related instances from his experience of candidates who gained momentum late in a campaign and similar instances of front running candidates who "stumbled" and subsequently lost the election. Commissioner DeCotiis expressed a concern that \$25,000 was too high for the staged threshold. Mr. Schmidt distributed copies of a table which showed the submissions made by gubernatorial primary candidates from January 5th through June 1, 1981. The table showed how certain candidates who initially came in with relatively large initial submissions, e.g. \$150,000, subsequently made only small submissions of less than \$15,000 while two candidates, Mayor Gibson (D) and Senator Wallwork (R) started slowly and peaked in their submissions right before the date of the primary.

Mr. Weiner and Mr. Schmidt pointed out that the staged threshold would tend to favor the candidates whose fund raising is accelerating while discouraging candidates whose fund raising is slowing down, from applying for more public funds.

The Commission tentatively approved the staged threshold proposal on a vote of 2-1 (with Chairman Axtell on the negative) (also, Mr. Weiner noted that Commissioner Waugh had expressed no concern about the staged threshold proposal). Furthermore, the Commission agreed to discuss the staged threshold proposal additionally at its next meeting.

The Commission then discussed Recommendation #3 concerning the matching ratio. Staff were recommending changing the matching ratio from two-to-one to one-to-one. In addition, the staff were recommending that after a candidate received \$250,000 in public funds, the matching ratio would drop to one-half-to-one. Mr. Weiner said the reason for a more favorable match for the first \$250,000 of public funds was to provide the "seed money" for candidates of "limited financial means".

After lengthy discussion, the Commission reached a consensus that the matching formula should be one-to-one throughout, without any drop in the matching ratio. Furthermore, the Commission reached a consensus that the entire contribution should be matched.

The Commission next discussed Recommendation #4, the cap on public funds, wherein the staff recommended a \$500,000 cap on public funds for the primary and a million dollar cap on public funds for the general election. After limited discussion, the Commission reached a consensus concurring with the staff recommendation. The Commission then discussed Recommendation #5, concerning the expenditure limit and the proposal that the expenditure limit be repealed. The staff recommended the repeal of the expenditure limit. After discussion, the Commission concurred in the staff recommendation.

Next, the Commission discussed Recommendation #6, concerning the limits on the use of public funds wherein the staff recommended no change be made in the list of seven items for which public funds may be spent. During the discussion, it was noted that every publicly aided candidate spent some of his or her privately raised moneys on one or more of the permitted uses of public funds. Thus, it is difficult to agree with the conclusion that it is the public funds which drive the campaigns to use broadcast imprint media and direct mail.

After discussion, the Commission concurred in the staff recommendation #6.

The Commission then reviewed the other Recommendations dealing with the following topics:

- Recommendation #7 - the \$50,000 limit on bank loans wherein the staff recommended the limit and the 20 day repayment requirement be retained.
- Recommendation #8 - the limit of \$25,000 on contributions by publicly funded gubernatorial candidates, wherein the staff recommended the provision should be retained.
- Recommendation #9 - concerning the amount a person can contribute to a gubernatorial inaugural fund raising event wherein the staff recommended the amount should be increased to \$500.
- Recommendation #10 - concerning the amount county committees and municipal committees of a political party may spend in aid of a gubernatorial general election candidate wherein the staff recommended that the amount for any one county or municipal committee should remain at \$10,000 and the aggregate of all such committees should remain at \$100,000.

- Recommendation #11 - concerning the provision permitting the State Political Party Committee to set up a special gubernatorial account wherein the staff recommended that the provision be repealed.
- Recommendation #12 - concerning the period after an election during which a candidate may retain public funds wherein the staff recommended the period should be increased to nine months.
- Recommendation #13 - concerning the provision that all moneys remaining available to the candidate who accepted public funds shall be repaid to the New Jersey Gubernatorial Election Fund wherein the staff recommended that the law should be amended to specify clearly that all moneys, regardless of source, shall be repaid.

The Commission concurred in the above staff recommendations.

Mr. Weiner pointed out that the draft report makes no comment about the requirement for the 500 word statement by gubernatorial general election candidates or for free television time by New Jersey Public Broadcasting. The Commission reached a consensus not to include recommendations concerning either of these items in its report.

Mr. Weiner noted that the report is also silent on the proposal to match only contributions from individuals. This idea arose during discussions following the last Commission meeting. Mr. Schmidt noted that an analysis of the contributions by type of contributor to the primary and general election candidates revealed that a substantial majority, in most cases, more than 70 percent of the money and more than 80 percent of the contributors, were individuals. He noted that this would tend to argue against matching only contributions from individuals inasmuch as individuals make up the large majority of contributors already. Furthermore, such provision would be a complicating provision for the campaign committees to administer. The Commission reached a consensus not to include a discussion of the proposal to match only contributions from individuals.

The Executive Director reported that the Interim Reports have been taken to the print shop for typesetting and that the target date for printing of the report is Monday, June 14. He said a revised draft of the report would be sent to the Commission for its review and approval at its next meeting scheduled for Monday, June 7.

7. Adjournment

On a motion by Commissioner DeCotiis, seconded by Commissioner Proctor and a vote of 3-0, the Commission voted to adjourn.

Respectfully submitted,



SCOTT A. WEINER
Executive Director

SAW/cm-wrs