

NEW JERSEY ELECTION LAW ENFORCEMENT COMMISSION

PUBLIC SESSION MINUTES

OCTOBER 12, 1982

PRESENT

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

*Thomas Cullen,
Associate Staff Counsel

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 10:35 a.m. at Commissioner DeCotiis' office, Elmwood Park, N. J.

1. Approval of Minutes of Public Session of Commission Meeting of September 24, 1982

On a motion by Commissioner DeCotiis, seconded by Commissioner Proctor and a vote of 4-0, the Commission approved the minutes of the public session of September 24, 1982.

2. Advisory Opinion No. 12-1982, Senator Richard Codey

Executive Director Weiner reported that Senator Codey had withdrawn his request for an advisory opinion.

3. Advisory Opinion No. 13-1982, Carole Hoffman, Esq.

The Commission reviewed the following documents:

- A September 20, 1982 letter from Carole F. Hoffman, Esq. requesting an advisory opinion on behalf of an undisclosed trade association and asking whether the trade association is a "political committee" and whether the trade association incurs reporting obligations in connection with its direct campaign contributions.
- An October 7, 1982 letter from Staff Counsel Nagy addressed to Ms. Hoffman in which Mr. Nagy summarized his telephonic conversation with Ms. Hoffman.
- A three page October 8, 1982 memorandum from Mr. Nagy concerning advisory opinion No. 13-1982.

*Mr. Cullen attended a portion of the executive session meeting.

Commissioner DeCotiis asked whether there was not a problem with issuing an advisory opinion to an unidentified requestor. General Legal Counsel Farrell said there were problems in doing so. He cited an example of candidate A asking for an advisory opinion about candidate B. Mr. Farrell said the thrust of advisory opinions has been to guide those who seek guidance. However, he said that anonymity alone is not necessarily a "bad" thing.

Commissioner Proctor observed that providing an advisory opinion to an unidentified group would probably not provide the normal advisory opinion protection.

The Commission then discussed the issue whether this unidentified trade association is a "political committee". Mr. Farrell noted the Commission's earlier decisions that a corporation is not a political committee. He also observed that a trade association is by definition more than two people. He said that he and former executive director Thurston worked out the idea that a group raising and spending money for elections was clearly a "political committee" but a group that makes contributions out of its general treasury is not a "political committee".

Executive Director Weiner noted that the unidentified trade association is not a normal business corporation but rather an entity created by five separate corporations. He noted that Ms. Hoffman stated that a very small percentage of the contributions will be spent in New Jersey; however, the group plans to be involved through political contributions in 31 states. Mr. Weiner observed that this unidentified group is similar to a PAC, not a qualified federal election PAC, but still similar to a PAC.

Mr. Farrell commented on a federal PAC case which involved a group of drug companies which set up an organization called "Committee for Good Government". Under New Jersey law, the "Committee for Good Government", when making political contributions, became a "political animal" and had to file election reports. However, under federal law, it was not a federal PAC and could not make contributions to federal candidates because the source of funds was from the corporations.

Executive Director Weiner asked rhetorically whether an entity is a political entity even if it contributes a relatively small percentage of its funds to New Jersey candidates. He asked whether there was not some way to limit the extent of reporting, possibly by creating a "New Jersey fund" so that only the receipts into that fund and the disbursements to New Jersey candidates would have to be reported.

Mr. Farrell said that in the set of facts before the Commission, he would suggest that the five corporations which paid the dues to the unidentified trade association be revealed through reports to

the Commission. He also noted prior decisions of the Commission which focused on the time frame in which receipts were generated and contributions made and suggested that a strong time relationship to an election cycle be the case when the Commission requires reporting. He said that he was comfortable with the idea to carve out the New Jersey portion of the unidentified trade association's activities to reduce the amount of unnecessary reporting. He observed that he was unable to tell from the facts before the Commission at this time whether the unidentified trade association is a PAC or a trade association incidentally making contributions. He also noted the "major purpose test" which the Commission developed on the nuclear freeze referendum case wherein more than half of an organization's disbursements are made on behalf of candidates or a public question which in turn triggers a reporting requirement.

Commissioner DeCotiis observed that the \$3,000 this unidentified trade association may contribute to New Jersey candidates is not much money. Mr. Farrell observed that the \$3,000 is not much money if the group is also spending, for example, another \$97,000 in other states and for other trade association purposes. However, if the group were to spend \$90,000 in contributions and \$5,000 or \$10,000 on trade association activities, then, in Mr. Farrell's judgment, the group clearly would have a filing requirement.

Mr. Farrell noted that federal law which prohibits corporate contributions requires a separate segregated fund for political purposes and thus federal law has encouraged the development of PACs which are political committees by definition. He noted, however, that the federal PACs are different from the set of facts before the Commission in this case. He also noted that when federal PACs make contributions to New Jersey candidates, those PACs need only file with the Commission the same reports as they file with the Federal Election Commission, for their 25 day report.

Commissioner Waugh suggested the Commission not issue advisory opinions to anonymous entities on principal. Commissioner DeCotiis concurred in Commissioner Waugh's suggestion.

Commissioner Waugh asked Staff Counsel Nagy whether he could informally advise Ms. Hoffman. Mr. Nagy said that he would not know what to advise without Commission criteria for requiring reporting.

General Legal Counsel Farrell suggested that if the Commission wishes to resolve the question before it that it will need to define "major purpose" and "political committee."

Commissioner DeCotiis noted that the Commission does have some information, for example, the annual dues and how they are apportioned. Mr. Farrell observed that when two or more people get together and spend 5 percent of their receipts, there is an open question whether those two individuals constitute a political committee. However, if those same two or more people contribute, for example, 55 percent of the receipts, those two or more individuals are clearly a political committee.

Commissioner DeCotiis suggested that a threshold based on the amount of money be developed. Commissioner Waugh noted the ambiguity in the law and that it might be desirable to clear up the ambiguity by developing and promulgating a regulation. Mr. Farrell noted that the Commission does have the authority to do so. He further noted that the Commission has not developed such regulation in the past and has instead dealt with each case and set of facts as they have come before it.

Commissioner DeCotiis raised the example of a law firm of five lawyers who are partners and he asked whether this set of facts would constitute a political committee. Mr. Farrell observed that in this case the political contributions are incidental to the law firm's operations and the Commission would not normally require a report from the law firm.

On a motion by Commissioner Waugh, seconded by Commissioner Proctor and a vote of 4-0, the Commission voted not to respond to anonymous requests for advisory opinions and to have the staff develop a regulation on this issue of defining a "political committee" and its reporting requirements. Mr. Farrell and Mr. Nagy said that it would take approximately a month to develop the regulation, at which time, assuming Commission concurrence, Mr. Nagy could advise Ms. Hoffman of the Commission's decision. It was noted that until formal action and publication, the regulation would not be in effect, but the requesting party could still be advised of the Commission's decision.

4. Proposed Surcharge for Unpaid Fines

The Commission reviewed a September 30, 1982 one page memorandum from Greg Nagy to Mr. Weiner in which Mr. Nagy recommended surcharge penalties for unpaid fines.

Commissioner Waugh asked what amount of time would lapse before the surcharge for failing to pay the fine would be triggered. Commissioner Waugh suggested that the time period be 60 days.

Mr. Farrell suggested that the letter that goes to respondents, the Final Decision, include reference that unless the fine is paid within 60 days, the failure to pay the fine would be considered by the Commission in future actions.

Commissioner DeCotiis asked how successful we have been with the new system of a smaller fine if it is paid within 30 days. Mr. Nagy said he did not have figures before him, but would prepare a report for the Commission's next meeting.

Commissioner DeCotiis and Mr. Farrell asked for clarification on Mr. Nagy's recommendation on the amount for two unpaid fines. Mr. Nagy recommended \$100 and Commissioner DeCotiis and Mr. Farrell wanted to know whether that \$100 included the \$50 for one unpaid fine or was the \$100 in addition to the \$50 for one unpaid fine. After extensive discussion, the Commission reached a consensus that the surcharge for one unpaid fine should be \$50, the surcharge for two unpaid fines should be \$100 so that the total surcharge for two unpaid fines should be \$150. In addition, Mr. Nagy recommended that the surcharge for three or more unpaid fines should read "amount to be determined", similar to the existing surcharge for previous violations. Chairman Axtell asked that the surcharge penalties for unpaid fines be rewritten based on the discussion. On a motion by Commissioner Waugh, seconded by Commissioner Proctor and a vote of 4-0, the Commission approved the recommended surcharges for unpaid fines as amended.

5. Pending Legislation

Executive Director Weiner reported on A-1875, the bill which would increase the contribution limit for gubernatorial candidates who do not take public funds. He reported that the chairman of the Assembly State Government Committee had advised him that she does not expect the bill to be brought up soon in her committee; furthermore, she shared all of the same concerns as ELEC. She also advised Mr. Weiner that she is willing to help Congressman Roe so long as there is no negative impact on the public financing program. Mr. Weiner said that he had also spoken with James Roe, Congressman Roe's brother, and with Assemblyman Pellecchia, the sponsor of A-1875, in addition to the staff of the Assembly Speaker. In summary, Mr. Weiner said that he does not expect that A-1875 will be moved quickly in the Assembly.

Mr. Weiner reported that the State Government Committee is not meeting until after the November election. He said that he will confer during the week of October 18th with the chairman of the Assembly State Government Committee and with other legislative leaders concerning the public financing program amendments. He said that the chairman of the Assembly State Government Committee had advised him that she will be developing a substitute bill on public financing to be introduced in mid-November.

Mr. Weiner then reported on proposed revisions to Title 19. He distributed a two page October 9, 1982 memorandum from himself concerning "Revision of Title 19 - Amendments Proposed by the Secretary of State" along with an 18 page draft of the revisions

as proposed by the Secretary of State. He noted that the Secretary of State's proposal would move the Election Law Enforcement Commission from the Attorney General's office to the Secretary of State as an "in but not of" agency. He asked rhetorically what problems this would present to the Commission.

Mr. Farrell noted that in the history of the Commission, the Attorney General has not been a source of political interference. He said he did not know what the answer to that issue would be if the Commission were "in but not of" the Secretary of State's office.

Mr. Weiner noted that in his own experience, since becoming Executive Director, that the Attorney General has allowed the Election Law Enforcement Commission to function independently, although the Attorney General's office has been available for technical assistance to the Commission's staff. He said that both Attorney General Zazzali and Attorney General Kimmelman have been very sensitive to the independence of the Commission.

Mr. Weiner noted that while the Secretary of State's proposals were being drafted, no one from that office called him. He said that he had secured a copy of the proposals from the chairman of the Assembly State Government Committee to whom the draft proposals had been submitted. Mr. Weiner said that what he would like to do is write the Secretary of State, noting the proposed change and "looking forward" to working with the Secretary of State and her staff on this issue. Commissioners Proctor and Waugh and General Legal Counsel Farrell urged that the communication to the Secretary of State not categorize the proposed change as a "major" or "significant" change. The Commission reached a concensus for the Executive Director to write the Secretary of State. Mr. Weiner noted that there will be a hearing toward the end of October on the proposed changes to Title 19.

6. Reports on 25 Day Pre-Election Report Filing.

Mr. Weiner reported that the filing of the 25 day pre-election reports on Friday ran smoothly. He reported that the staff had worked until after 1 p.m. on Saturday to code, key, and initially review the reports. He said that the staff had expected approximately 2,000 reports and by Saturday morning, all but 10 percent or 200 had been received. He said this was a very good ratio of filing.

He reported that the new short form, the SR-1 form, worked well when it was used correctly. The use of the short form speeded up the filing night activities. He said no major problems had been identified during the initial reviews of the reports, at least no major problems requiring major intervention immediately. He reported that notices of delinquent filings were being mailed

today, October 12, and that a packet of instructions and forms was mailed over the weekend to all candidates and committees which filed 25 day pre-election reports.

7. Retention Period for Duplicate Campaign Reports Maintained by County Clerks

Mr. Weiner reported that there is no systematic basis on which reports filed with the county clerks are destroyed. Some, if not all, county clerks have been keeping reports since 1973. He noted that the Act is silent on how long reports have to be kept. Staff Counsel Nagy noted that there is a law on the maintenance of official election records; it was noted however, that the ELEC is the depository of campaign finance reports.

General Legal Counsel Farrell suggested that the Attorney General or the county counsel were the responsible parties to advise the county clerks on records retention; however, the campaign finance reports are not county records, but state records. Mr. Farrell then cited the provision in the law on maintenance of records but noted that the law clearly meant the candidates. He suggested, however, that the Commission might include county clerks in that time period set by the law. He observed that the purpose of having reports filed with the county clerks is to make those reports immediately available throughout the state to interested parties. Mr. Weiner said the staff checked with the county clerks in those cases when someone asserts that he or she filed a report with the county clerk even though we aren't able to find the report in our files. It was noted that the campaign reports are not like other county records, such as deeds and mortgages.

The Commission discussed extensively the usefulness of having reports in the county clerks' offices and focused on the desirable time period for reports to be kept by the county clerks. The Commission reached a concensus that the county clerks should keep reports for four years, thus covering a full election cycle of county officials.

8. Insurance Company PACs/Crumm and Forster

Commissioner DeCotiis inquired what had happened to the Crumm and Forster issue. Mr. Weiner said that a year ago he had sent a letter to the then insurance commissioner and forwarded the initial letter from Crumm and Forster. Furthermore, he took the Crumm and Forster letter to the Attorney General. Mr. Weiner said that based on the discussion of the last meeting, he would return the new letter to Crumm and Forster and suggest they correspond directly with the insurance commissioner. Mr. Weiner observed that the Attorney General is looking for ELEC's help in putting the issue together. On a motion by Commissioner DeCotiis, seconded

by Commissioner Proctor and a vote of 4-0, the Commission authorized Mr. Weiner to assemble factual information to aid the Attorney General but directed the Executive Director to present the information in a neutral fashion so as not to infer any opinion on behalf of the Commission and clearly leaving the decision to the Attorney General.

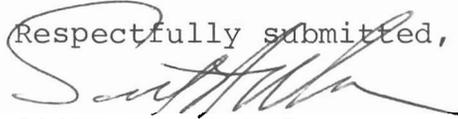
9. Executive Session

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 September 24, 1982 and to discuss investigations and enforcement actions, the results of which will be made public at their conclusion.

10. Adjournment

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

Respectfully submitted,



SCOTT A. WEINER
Executive Director