

NEW JERSEY ELECTION LAW ENFORCEMENT COMMISSION

PUBLIC SESSION MINUTES

NOVEMBER 8, 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
*Leslie G. London, Election Finance Analyst
Edward J. Farrell, General Counsel
Judge Sidney Goldmann, Consultant

* Ms. London attended the executive session.

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 1:30 p.m. at the Commission's office, Trenton, N. J.

1) Approval of Minutes of Public Session of Commission Meeting of October 25, 1982.

On a motion by Commissioner DeCotiis, seconded by Commissioner Waugh and a vote of 4-0, the Commission approved the minutes of the public session of October 25, 1982.

2) Advisory Opinion No. 12-1982

The Commission continued its review, begun at its October 25, 1982 meeting, of an October 18, 1982 letter from Michael J. Matthews, Mayor, City of Atlantic City, in which Mayor Matthews asked for an advisory opinion about the obligation for reporting contributions received to defray the expenses of two lawsuits.

General Legal Counsel orally presented an analysis of the issues before the Commission. Firstly, he summarized the Commission's decision concerning the Florio and Kean expenditures for the recount following the gubernatorial election in 1981. The Commission decided that the recount litigation expenses were properly campaign expenditures and, therefore, disclosure was appropriate. Both the Florio and Kean recount efforts generated new contributions and the Commission decided that those contributions were not within the gubernatorial contribution limit. The

Commission arrived at that decision on the basis of the great public interest in the outcome of the recount and that imposing a contribution limit on contributions for the recount would possibly thwart the recount. However, reporting was required.

Mr. Farrell then noted the concept of vote-getting and vote-keeping. Vote-getting activities are the normal expenditures for a campaign, for example, TV ads, direct mailings and billboards. He pointed out that litigation over the outcome, involving vote-keeping, is less usual and is not part of a campaign strategy. He noted that the Commission has decided that the use of surplus campaign funds for post-election litigation is a proper use of campaign funds but what is unresolved is what disclosure requirements, if any, fall on the participants in litigation which does not involve a recount but is concerned with changing the outcome of an election.

Mr. Farrell then introduced the idea of an "outcome of election" test. He suggested that if litigation could result in setting aside an election or changing an election result, then that litigation is closely tied to the election effort. On this basis, the Commission could defend a position that the contributions and expenditures for such litigation are subject to disclosure. Finally, Mayor Matthews has raised the issue whether participants in post-election litigation who are not candidates should have to disclose receipts and expenditures. Mr. Farrell said that both he and Mr. Weiner had concluded that the Commission should not make the distinction between candidate litigants and non-candidate litigants for purposes of requiring disclosure. Thus, he and Mr. Weiner were suggesting to the Commission that litigation for the purpose of setting aside an election is sufficiently campaign related to be subject to disclosure.

Mr. Weiner noted that, as to the issue of whether an individual litigant, unrelated to the candidates, should have to disclose receipts and expenditures, in a campaign setting, an "independent expenditure", is reportable by an individual.

Former Chairman Goldmann raised the following question. Assuming that the NAACP is one of the litigants, independent of the candidates, would it have a reporting requirement? Would the Commission apply a "major purpose" test? Assuming that the expenditures by the NAACP represented a minor portion of the organization's activity, former Chairman Goldmann asked whether the Commission would require disclosure. Mr. Weiner responded that possibly nothing would be required of the NAACP based on a "major purpose" test as was applied for the nuclear freeze referendum in the 1982 general election. Mr. Weiner noted that "Princeton Coalition" and S.A.N.E. spent substantially less than 50 percent of their receipts on the freeze referendum and thus did not have a reporting requirement. Mr. Weiner explained that reporting responsibilities should be determined by traditional or "political committee" analysis.

Commissioner Waugh said that, in his judgment, if the litigation has the potential to change the election results, then the parties in litigation have reporting requirements. He asked what the reporting dates would be, and Mr. Weiner said that the reporting dates would be 15 days plus every 60 days thereafter.

Mr. Weiner said that the two candidates, Usury and Matthews, are continuing to report and are doing so from their campaign accounts.

Commissioner Proctor asked the status of the court case, and Mr. Weiner said it is his understanding that the case is still going on with witnesses being called.

Commissioner Waugh moved and Commissioner Proctor seconded that the Commission adopt the staff recommendation to require disclosure reporting by litigants in the post-election contests.

The Commission then continued its discussion. Former Chairman Goldmann asked whether an individual, John Doe, would have to report if he were acting independently in bringing an action to set aside an election. General Legal Counsel Farrell said that Mr. Doe would not have to report as a political committee because he was an individual. However, if John Doe and Richard Roe initiated the suit to set aside an election, they may have to report if they met the test of being a "political committee", i.e. two or more persons aiding or promoting a candidacy. Mr. Farrell said the Commission should look to the purpose of litigation and if it is to change the outcome of an election, then there should be reporting by any political committee.

Chairman Axtell expressed his judgment that imposing reporting requirements on the litigants would be taking away the prerogative of individuals to contest an election. Mr. Farrell disagreed saying that the individuals could still contest an election through the courts but would simply be required to disclose contributions and expenditures.

Commissioner Proctor expressed his judgment that whether it's a single individual or a committee, they all should report contributions and expenditures. He further stated that in his judgment, the issues growing out of the Atlantic City case can be equated with a recount.

On Commissioner Waugh's motion, the Commission voted 2-2, with Commissioners Waugh and Proctor in the affirmative and Chairman Axtell and Commissioner DeCotiis in the negative. The motion failed.

Commissioner DeCotiis indicated that he would agree to reporting by non-candidate litigants if the relationship alleged by Mayor Matthews in fact existed.

3. 1981 Annual Report

Executive Director Weiner had distributed a draft copy of the 1981 annual report to the Commission at its October 25th meeting. Former Chairman Goldmann said he had given Mr. Weiner his comments. Mr. Weiner said that the staff will finalize the annual report and have it printed and distributed.

4. Discussion of the Definition of Political Committees

Mr. Weiner introduced the discussion by pointing out that the issue of what is a "political committee" arose from the advisory opinion request, No. 13-1982, from attorneys representing an undisclosed trade association. In addition, the issue came up during the Commission's deliberations on recommended changes to the Act and the Commission's decision to define "political committees" by regulation.

Mr. Weiner said that he and Mr. Farrell had recently discussed the issue of defining "political committees". He said that the current system recognizes at least four different types of "political committees";

- political party committees;
- inferred political party committees, that is committees that are inherently political and in some situations are the "alter egos" of the political party committee;
- non-candidate committees, for example PACs, a large majority of whose expenditures are for political financial activities; and
- "civic associations", for example S.A.N.E., the Mayor Gibson Civic Association, the George Otlowski Picnic Committee.

Mr. Weiner said the issues before the Commission include what thresholds of political activities must be crossed before the "political committee" has to disclose its receipts and expenditures and what then has to be reported.

Commissioner DeCotiis asked what kind of problems have come up. Mr. Weiner mentioned the undisclosed trade association which, through its attorneys, had asked for an advisory opinion. The trade association proposed to spend less than one percent of its political expenditures in New Jersey but to make much larger political expenditures in other states. Mr. Weiner noted that although we are missing some information on the undisclosed trade

association, the problem is do they have to report? At what point, if any, does the Commission tell an organization that its activity requires reporting?

Commissioner Proctor expressed his judgment that if the trade association contributes in New Jersey, then the contributors to the trade association should be divulged.

A question arose about the New Jersey Chamber of Commerce (which does not make political contributions in New Jersey). However, Mr. Weiner used the Chamber of Commerce as an example of the type of organization that the definition of "political committee" would attempt to deal with along with devising a modified reporting scheme, for example the names of contributors and the description of a contributor when any one contributor contributed more than, for example, 15 percent.

Commissioner Proctor said that he was concerned about the amount of money spent in the 1982 general election and that he believes even more disclosure is required.

General Legal Counsel Farrell said that the disclosure system can result in too much regulation. Using the example of the New Jersey Chamber of Commerce, Mr. Farrell noted that that organization carries out five or six different types of activities, for example, providing trade information, education and lobbying, while its impact on the election process might be only ten or 15 percent of its total activities.

It was noted that if the NJEA or the Chamber of Commerce gives \$500, then one knows where that money is coming from. The problem arises with organizations such as "Good Government Trade Association" wherein the name does not clearly explain the sources of funds or the interests represented. Mr. Farrell noted that very issue arose at the national level with a group called "Good Government Trade Association" which turned out to be a PAC with membership made up of 12 drug companies, and the sole purpose was to lobby against drug regulation. Without disclosure, the public would not know the purposes of the trade association because its name was unfamiliar as compared to the examples of the NJEA or the New Jersey Chamber of Commerce.

Commissioner DeCotiis asked whether a corporation in making political contributions should have to disclose its incorporators and the names of stockholders. Mr. Farrell said that the Commission dealt with that issue very early in its existence and the decision was that a corporation in making political contributions does not have to file disclosure reports.

Mr. Weiner said that he, Mr. Farrell and staff would continue their work on defining "political committees". He said that as of

yet there is no specific proposal but that he had included the item on the agenda to introduce the Commission to the issues and the difficulties arising from defining "political committees".

5. Pending Legislation

Mr. Weiner distributed the 27 page report entitled "Recommendations Proposing Amendments to the Campaign Contributions and Expenditures Reporting Act". He said that this report on the Commission's recommendations had been distributed to the Governor's office and to members of the Legislature as well as to the press and other interested parties. He said that Assemblyman Zimmer had called that morning to commend the Commission on its recommendations and to express his interest in sponsoring a bill to incorporate the recommendations.

Mr. Weiner reported that he had met with the Attorney General on the issue of moving the Commission from the Department of Law and Public Safety to the Secretary of State. Mr. Weiner distributed a two-page November 1, 1982 letter from Attorney General Kimmelman to Secretary of State Jane Burgio. In his letter, the Attorney General stated that his "...Department would vigorously oppose the transfer of the New Jersey Election Law Enforcement Commission from this Department to the Department of State." The Attorney General's basic reason is that election law enforcement should be separated from election law administration.

6. Executive Director's Report

Mr. Weiner said that he would be attending the League of Municipalities' Conference in Atlantic City on Wednesday and Thursday, November 17th and 18th. He said he would be participating in a Thursday afternoon session with the municipal clerks. Furthermore, Juana Schultz, Director of Compliance and Review will be staffing a consultation table as she did at the last conference.

Mr. Weiner reported that he had attended a Steering Committee meeting of the Northeastern Conference on Lobbying held in Boston. He noted that Staff Counsel Nagy and Director of Compliance and Review Schultz had attended the Conference last year in Albany. Mr. Weiner reported that the 1983 Conference will be held in Boston or in Newark.

7. Executive Session

On a motion by Commissioner Proctor, seconded by

Commissioner Waugh and a vote of 4-0, the Commission voted to resolve to go into executive session to review the executive session minutes of October 25, 1982 and to discuss investigations and enforcement actions, the results of which will be made public at their conclusion.

8. Adjournment

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

Respectfully submitted,



SCOTT A. WEINER
Executive Director