

NEW JERSEY ELECTION LAW ENFORCEMENT COMMISSION

PUBLIC SESSION MINUTES

JANUARY 26, 1983

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
Judge Sidney Goldmann, Consultant

Chairman Axtell called the meeting to order and announced that pursuant to the Open Public Meetings Law, 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 10:13 a.m. at the Commission's office, Trenton, NJ.

1. Approval of Minutes of Public Session of Commission Meeting of January 12, 1983

On a motion by Commissioner DeCotiis, seconded by Commissioner Proctor and a vote of 3-0 (with Commissioner Waugh absent), the Commission approved the minutes of the public session of January 12, 1983.

2. Election of Vice Chairman

On a motion by Commissioner Proctor, seconded by Chairman Axtell and a vote of 4-0, the Commission elected Commissioner DeCotiis as Vice Chairman.

3. Executive Session

On a motion by Commissioner Proctor, seconded by Commissioner DeCotiis and a vote of 4-0, the Commission voted to resolve to go into the Executive Session to discuss personnel and consultation matters, the results of which will be made public at their conclusion.

The Commission returned to Public Session after its discussion in Executive Session.

4. Consultation Services From Former Chairman Sidney Goldmann

Chairman Axtell reported on the Commission's decision in Executive Session to increase from \$1,000 to \$2,000 the amount to be paid to former Chairman Sidney Goldmann during the period of January through June 1983. Furthermore, the Commission and its Executive Director and former Chairman Goldmann will decide which meetings Judge Goldmann will attend based on the relative importance of the issues before the Commission at any particular meeting.

5. Review of Personal Financial Disclosure Regulations

General Legal Counsel Farrell had previously distributed a six-page draft, dated January 21, 1983, of proposed regulations entitled "Personal Financial Disclosure Statements by Candidates for the Office of Governor or the Legislature". The citation for these proposed regulations will be N.J.A.C. 19:25-19.1 et seq.

Mr. Farrell pointed out that the Commission has jurisdiction over candidates for the Office of Governor and the Legislature but the Legislature's Committee on Ethics also has jurisdiction over successful candidates, that is incumbents, concerning personal financial disclosure statements.

The first issue raised by General Legal Counsel Farrell and Executive Director Weiner was that of how to define "income", both "earned income" and "unearned income". The issue before the Commission is how expansive it can be in defining "income".

Mr. Farrell presented the "earned income" example of a lawyer who is a member of the Legislature. The question is what is the source of the lawyer's income, the law partnership or the firm's clients? Staff Counsel Nagy suggested that the Commission could not go behind the law firm itself. Commissioner Waugh cited the example of a legislator who is a doctor and said that he felt the Commission should not go behind the doctor's firm or the doctor's practice to require the identity of the doctor's patients. However, Commissioner Waugh said he was more concerned about lawyers and he offered as a suggestion that a law firm receiving more than 5 percent of its income from a single client would require the lawyer/legislator to identify such clients.

Former Chairman Goldmann expressed his concern that requiring the names of clients might go too far and invade the privacy of lawyer-legislators.

Commissioner DeCotiis said that he believed the law is very clear and that the Commission cannot go beyond the first source of income, in this case the law firm. General Legal Counsel Farrell said that in his judgment the law is ambiguous and the Commission could examine the legislative purpose of the law and arrive at a conclusion that the clients of a law firm would have to be identified.

Commissioner Proctor asked how the Commission got involved in personal financial disclosure. Staff Counsel Nagy explained the history of the law, namely that the Legislature realized that it imposed on itself a requirement that members of the Legislature reveal the sources of their income but had not imposed a similar requirement on candidates for the Legislature. Thus, in the spring of 1981, the Legislature enacted the law requiring personal financial disclosure by candidates for Governor and the Legislature and gave the Commission responsibility for administering the law.

Commissioner DeCotiis asked whether the Commission would be writing law rather than making policy if it were to use the expansive definition of income. Mr. Farrell said that in his judgment the definition of "income" as set forth in the law is open to some interpretation. Mr. Farrell said he can appreciate Commissioner DeCotiis' argument but he also noted that the definition then might be too narrow with the result that the statements filed by legislative and gubernatorial candidates would mean little.

Commissioner Proctor asked about the bases for the New Jersey law. Mr. Farrell said he was unsure although the United States Congress does have some form of personal financial disclosure and the New Jersey law may have been based on the federal program.

Mr. Weiner noted the Commission is faced with an important policy question whether it should make a broad reading of the law and the legislative intent to effect personal financial disclosure of legislative and gubernatorial candidates.

Commissioner Waugh opined that the personal financial disclosure statement program is not worth doing unless the public can secure more complete disclosure from lawyers. He cited as an example attorneys who receive a significant portion of their income from automobile accident litigation. If only the name of the firm is revealed and not the sources of income for the firm, then the public would not have an accurate picture of the potential financial and legislative interest of legislative candidates on the issue of no-fault automobile insurance. Mr. Farrell said that in his judgment the Commission could not ask for the names of individuals who are clients of the law firm in matrimonial and criminal cases, for example, similar to the analogy of doctors wherein the Commission would not ask for the names of individual patients. However, Mr. Farrell noted that such limitation would then most likely screen out automobile accident litigants.

Commissioner Proctor said that he supported the more narrow definition, in recognition of the specific statutory language.

Mr. Weiner said that adoption procedures for the regulations provide for a public hearing after the Commission publishes its proposed regulations. Furthermore, regulations as proposed would be circulated to members of the Legislature and legislative candidates and any other interested parties.

Commissioner Waugh suggested an alternative of adopting the narrow definition but then specifically asking for debate on the question during the public hearing stage. He then asked if that would permit the Commission to subsequently tighten up the regulations, i.e. expand the definition. Mr. Farrell suggested that approach would likely not be successful within the limited time frame; another course of action would be for the Commission to propose the expanded definition and then after the public hearing go back to the more narrow definition. Otherwise, the Commission would have to start the whole regulation drafting and hearing process all over again because the Commission cannot make changes in proposed regulations unless they are not substantial changes.

Mr. Farrell said that the Commission could forego adopting regulations now and still secure filing by candidates for the 1983 primary.

Commissioner Waugh suggested that the desirable policy calls for a broad definition of "income" but that construction of the law probably requires a narrow definition.

Mr. Farrell then directed the Commission's attention to the provisions in the law. He had previously distributed a copy of the Second Official Copy Reprint of Senate Bill No. 1286. Mr. Farrell directed the Commission's attention to page 2 paragraph 4 lines 1 through 7 wherein the law first speaks of "the sources of income" and then, in paragraph 4.a, refers to "...the following categories of earned income totalling more than \$1,000...". He said one interpretation could be that if the income from any one category exceeds more than \$1,000, then the sources of income within that category would need to be identified. He used an example of a candidate receiving \$2,000 in dividends made up of \$1,500 from one corporation and the remaining \$500 from 20 other corporations. With this interpretation all 21 corporations would have to be listed.

Former Chairman Goldman said the Commission needed to focus on the word "totalling" in the phrase: "each of the following categories of earned income totalling more than \$1,000..."

Staff Counsel Nagy suggested the Commission has three alternatives in interpreting the law with respect to thresholds for reporting: it can do so solely on source of income; by category of income; or by source and category.

Commissioner Waugh asked whether the Commission could establish a threshold of \$1,000 for any category of income and a \$500 threshold, for example, for reporting sources within a category that exceeds \$1,000. General Legal Counsel Farrell said that the source of the Commission's authority to establish thresholds is the State Chamber of Commerce case.

STW

Former Chairman Goldmann suggested that if a category has more than \$1,000, then the candidate should report the sources that make up that \$1,000. Commissioner DeCotiis suggested to the contrary of a category of \$1,000 and a source of \$1,000. Commissioner Waugh suggested that there is a need for some disclosure of sources below \$1,000 but not de minimus.

Commissioner Waugh moved with Commissioner Proctor seconding the motion that if the amount of income within a category exceeds \$1,000, then the sources of income in that category should be reported when any individual source exceeds \$500 or more. The motion failed on a vote of 1-2-1, with Commissioners DeCotiis and Proctor voting in the negative and Chairman Axtell abstaining.

Former Chairman Goldmann directed the Commission's attention to the phrase "named corporation" which is found in the definition of "earned income" but is not found in the definition of "unearned income". He suggested that as a "strict constructionist" he would read the law that a candidate would have to receive at least \$1,000 per source and \$1,000 per category before having to report the sources of income.

Executive Director Weiner suggested that a candidate be required to indicate that a category exceeded \$1,000 but only identify those sources which exceeded \$1,000. STW

The Commission continued a lengthy discussion of the three alternative ways of interpreting the definition of income and the reporting requirements by sources and by categories. On a motion by Commissioner Proctor, seconded by Commissioner DeCotiis and a vote of 3-1, with Commissioner Waugh in the negative, the Commission decided that the \$1,000 threshold would have to be reached both by source and by category before the candidate would have to report the sources of income. In discussing the motion, General Legal Counsel Farrell set forth an example of a candidate who receives \$3,600 in corporate dividends, \$900 from each of four different corporations; in this example, the candidate would not have to report anything.

Staff Counsel Nagy raised two questions concerning deferred income and whether it is reported in the year earned or in the year it is received and whether advances are reported on the basis of the year in which they are received or on the basis of the year in which they are earned. Mr. Farrell said that such deferred income or such advances should be reported on the basis on which they are actually received based upon a cash or accrued accounting system.

Mr. Nagy also suggested the inclusion of a section on advisory opinions and a reference to incumbent candidates filing with the Legislature's Committee on Ethics.

Commissioner DeCotiis suggested that receipts in the form of student loans and alimony should not be reported due to wording of the statute. STW

The Commission then had a discussion whether it wanted to try to enact the regulations in time for the 1983 primary. After extensive discussion, the Commission decided to meet in Morristown at Mr. Farrell's office on Wednesday, February 2, 1983 at 1:00 p.m. solely for the purpose of approving proposed regulations. GATW

6. Advisory Opinion 01-1983

The Commission reviewed a two-page January 6, 1983 request for an advisory opinion from Richard I. Samuel concerning the continuing filing requirements of Citizens for Jordan, a political committee which supported Paul Jordan in his 1977 gubernatorial primary campaign. Staff Counsel Nagy distributed a proposed opinion which the Commission reviewed. A motion by Commissioner DeCotiis, seconded by Commissioner Waugh and a vote of 4-0, the Commission authorized the Advisory Opinion as drafted.

7. Advisory Opinion Request from James B. Appleton

Executive Director Weiner distributed a one-page advisory opinion request, dated January 21, 1983, from Mr. Appleton on behalf of William J. Kohm Associates, Inc. Mr. Appleton raised three questions concerning lobbyist financial disclosure reports. Staff Counsel Nagy explained the answers to the three questions. The Commission concurred in the responses and authorized Mr. Nagy to prepare and release the Advisory Opinion.

8. Review of Floor Plans for Office Relocation

Executive Director Weiner displayed the existing layout of the 12th floor space to which the Commission will be moving shortly and the proposed floor plan. The Commission discussed its possible need for a room divider in the Commission meeting room and decided not to have such a divider installed at this time. The Commission also expressed its approval of the proposed layout.

9. Executive Director's Report

Executive Director Weiner reported on the activity in the Legislature on amending the Reporting Act. He said that the Assembly Democrats have introduced a bill which differs from the bills introduced by Assemblyman Zimmer and by the Senate Democrats. He said the Assembly Democratic bill keeps the contribution threshold at \$100, provides for the 48 hour notice but for contributions of more than \$100 rather than \$500 as recommended by the Commission. He said the bill as presently drafted provides for "optional quarterly reports" by continuing political committees. Mr. Weiner said that there may be some drafting problems in the bill and that he and Staff Counsel Nagy are working with representatives of the Office of Legislative Services. He said there may be legislative action in early February on amending the Reporting Act. GATW

He next reported on the costs of data processing which are running over 100 percent of the amount appropriated for Fiscal Year 1983. The reason for the overrun is the necessity of a conversion arising from the fact that IBM has withdrawn its support for the video system presently in use. Thus, the costs which are approaching \$50,000 to \$70,000 do not result from any action taken by the Commission but rather represent costs being imposed on the Commission. Mr. Weiner distributed his memorandum addressed to Lewis B. Thurston, III, Chief of Staff in the Governor's Office and Edward Hofgesang, Director of the Division of Budget and Accounting.

10. Executive Session

SAW

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 January 12, 1983 and to discuss investigations and enforcement actions, the results of which will be made public at their conclusion.

After the Executive Session, the Commission returned to Public Session to adjourn.

11. Adjournment

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

ly submitted,

SCOTT A. WEINER
Executive Director