

NEW JERSEY ELECTION LAW ENFORCEMENT COMMISSION

PUBLIC SESSION MINUTES

JANUARY 29, 1985

PRESENT:

Andrew C. Axtell, Chairman
Alexander P. Waugh, Jr. Vice Chairman
Owen V. McNany, Member
Frederick M. Herrmann, Executive Director
Jeffrey M. Brindle, Designate Deputy Director
Edward J. Farrell, General Counsel
Gregory E. Nagy, Staff Counsel
Peter Nichols, Director of Public Financing

ABSENT:

Haydn Proctor, Member

Chairman Axtell called the meeting to order and announced that pursuant to the "Open Public Meetings Act," P.L. 1975, c.231, special notice of the meeting of the Commission has been filed with the Secretary of State's office and distributed to the entire State House press corps.

The meeting convened at 10:00 a.m. at the offices of the Commission, 28 West State Street, Trenton, New Jersey.

1. Approval of Public Session Minutes of January 7, 1985

On a motion by Commissioner McNany, seconded by Vice Chairman Axtell and a vote of 3-0, the Commission approved the public session minutes of January 7, 1985.

2. Advisory Opinion No. 02-1985 from Richard A. Zimmer, Esquire, Counsel to Friends of Governor Tom Kean

General Counsel Farrell discussed Advisory Opinion 02-1985 that he prepared and forwarded to Richard A. Zimmer, Esq., Counsel, "Friends of Governor Tom Kean." This political committee has been organized to raise funds for a possible 1985 gubernatorial candidacy by the incumbent Governor.

Mr. Farrell stated that he issued the Advisory Opinion in his capacity as legal counsel, and the Commission was authorized to issue advisory opinions through its legal counsel without conducting a special or emergency meeting. Mr. Zimmer's inquiry asked whether a proposed solicitation by the "Governor's Club," a not-for-profit New Jersey corporation, constituted a contribution to a possible re-election candidacy by Governor Kean. The "Governor's Club" proposed to solicit as a condition of membership an annual dues payment of \$500 for 1985 and require an \$800 political contribution. In 1984, the dues payment was \$1,000.

Mr. Farrell said that by changing its required dues the "Governor's Club" was providing a basis for quantifying the intangible value of membership. Therefore, he could not agree that the proposed solicitation was lawful.

Mr. Zimmer arrived at the meeting at approximately 10:20 a.m. General Counsel Farrell reiterated his views regarding the membership fee and contribution solicitation. Mr. Farrell said that the Commission found in the circumstances concerning the reduced annual dues a basis for making a quantitative judgment on the intangible value of membership in the Governor's Club. Therefore, the Commission was unable to agree with Mr. Zimmer that connecting membership with a mandatory contribution to a gubernatorial candidate did not comprise a contribution by the Governor's Club to the candidate.

Mr. Zimmer answered that he did not think it is the role of a government agency to attempt to measure intangible benefits of such a club. He said that the tangible benefits are entirely covered by the membership dues.

Commissioner McNany suggested "unbundling" the dues from the political contribution. General Counsel Farrell agreed that this would uncomplicate the problem, and that the solicitation could be reworded accordingly.

Mr. Zimmer said he would report back to the Governor's Club and determine if it wishes to submit an advisory opinion request predicated on a solicitation requesting the political contribution but not requiring it.

3. Advisory Opinion Request No. 03-1985 from Cathleen R. Litvack, Secretary
New Jersey Democrats

Mr. Nagy distributed a three-page draft response to an advisory opinion request from Cathleen R. Litvack, Secretary, by letter dated January 11, 1985. Ms. Litvack asked if an entity that she described as a testimonial dinner committee, "New Jersey Democrats", has acquired reporting requirements under "The New Jersey Campaign Contributions and Expenditures Reporting Act," N.J.S.A. 19:44A-1 et seq., in view of anticipated disbursements it plans to make to the New Jersey Democratic State Committee to help defray existing campaign debts. On a motion by Vice Chairman Waugh and seconded by Commissioner McNany and a vote of 3-0, the Commission approved the draft advisory opinion and directed Mr. Nagy to forward it to Ms. Litvack. The opinion advises "New Jersey Democrats" to file as a postelection fund raising committee pursuant to N.J.S.A. 19:44A-18.

4. Pending Request for Attorney General Opinion Concerning Use of Surplus
Campaign Funds

Staff Counsel Nagy reported on correspondence received from Assistant Attorney General Theodore Winard concerning the Commission's request for an opinion from the Attorney General whether the Commission may prohibit or otherwise regulate personal use by candidates of surplus campaign funds. In his correspondence, Mr. Winard stated that there is no basis for a criminal prosecution in the absence of a valid regulation of the Commission

unequivocally dealing with the subject. Mr. Nagy suggested the Commission respond to Mr. Winard by requesting that the Attorney General assist the Commission in preparing a valid regulation providing both criminal and civil penalties for private use of surplus funds; and, that subsequent to the enactment of such a regulation a procedure be established for the Commission to refer to the Division of Criminal Justice in the Department of Law and Public Safety any information that it receives concerning possible violations of the proposed regulation.

On a motion by Commissioner McNany, seconded by Vice Chairman Waugh and a vote of 3-0, the Commission moved to have General Counsel Farrell draft regulations for its review at the next Commission meeting on February 11, 1985. Mr. Farrell was directed to contact the Attorney General's office to advise Mr. Winard that the Commission will be taking its suggestion and be asking for a review of the Commission's draft regulations. Vice Chairman Waugh suggested that the Commission ask the Attorney General's office to expedite its recommendations.

6. Executive Director's Report

Executive Director Herrmann reported on the status of S-1523 to the Commissioners. He said that the Governor and Senate President Orechio have had a number of meetings, but there has been no resolution so far. They have advised Mr. Herrmann that they have received all the technical information that they require from the Commission. Mr. Herrmann suggested to them that if the compromise bill fails they may want to: 1) enact amendments for the general election, 2) enact amendments for 1989, or 3) enact a technical bill including a section for additional primary election funding.

Mr. Herrmann reported on the budget. He said for the gubernatorial public funding there is a FY86 request for \$3 million for the general election and \$4 million from the FY85 budget for the primary election (the Commission asked for approximately \$9 million for both combined). He said that the Commission may need more than this amount, and that he would obtain clarification concerning the language contained in the Governor's budget proposal. Mr. Herrmann said he wanted assurance that the budget's language would permit the Commission to draw from the General Fund sufficient amounts to insure public funding for all eligible candidates.

Mr. Herrmann also reported on the \$30,000 allocation in the budget for the Commissioners' salaries. This figure contemplates compensation at \$250 per diem for each Commissioner

The Executive Director advised the Commission that a calendar of operational deadlines has been prepared by the Review Section.

Mr. Herrmann reviewed a draft of the new organizational chart for the Commission. Chairman Axtell asked that staff names be included on the chart along with a description of the responsibilities of each title. He advised the Commissioners that Lawrence J. Hopkins has rescinded his resignation and will work in the capacity of Associate Investigator and Continuing Political Committee and Personal Financial Disclosure Coordinator.

Mr. Herrmann thanked Staff Counsel Nagy for his excellent work in acting as the interim Deputy Director. The Executive Director introduced Mr. Jeff Brindle, who has been hired as the new Deputy Director. He will start on February 18, 1985. There were 167 resumes received for this position and five finalists interviewed.

Mr. Herrmann stated that the computer project is now on schedule. He said his major concern was budgetary since the services of the Treasury computer must be discontinued by the end of this fiscal year.

The Executive Director stated that he will be addressing the Municipal Clerks' Association on Saturday, February 2, 1985, at the Tinton Falls Hilton. He has also been invited by the League of Women's Voters to speak on PACs on April 27, 1985, and by the Pennsylvania Common Cause to speak on public financing on April 30, 1985 in Harrisburg.

Mr. Herrmann asked General Counsel Farrell to prepare regulations concerning use of a signature stamp (facsimile) for both Chairman Axtell and Vice Chairman Waugh's signatures on Final Decisions issued by the Commission.

General Counsel Farrell reported that he would draft regulations clarifying that continuing political committees are subject to public financing contribution limits.

7. Suggested Extension on Civil Jurisdiction

Staff Counsel Nagy reviewed a one-page memorandum from himself to Executive Director Herrmann regarding suggested extension of civil jurisdiction. Mr. Herrmann reported that he will recommend that the prohibition against certain political contributions, the requirement that the identity of persons paying for campaign literature, and the regulation of personal use of surplus campaign funds be listed in the Annual Report to the Legislature as possible areas where statutory amendments might be made to give civil jurisdiction to the Commission.

8. Director of Public Financing's Report

Peter Nichols, the Director of Public Financing, gave the Commission an update on the public financing program. Mr. Nichols distributed duplicates of Candidate Wiley's certification forms and recommended that Mr. Wiley receive public funds in the amount of \$162,800. There was only a 3% error ratio in the submission. On a motion by Vice Chairman Waugh, seconded by Commissioner McNany and a vote of 3-0, the Commission approved the submission and authorized Chairman Axtell to execute the certification. Mr. Nichols also reported that he has been meeting with campaign committees that are contemplating applying for public funds.

9. Executive Session

On a motion by Vice Chairman Waugh, seconded by Commissioner McNany and a vote of 3-0, the Commission decided to go into executive session to discuss enforcement and investigative matters, the results of which will be made public at their conclusion.

10. Adjournment

On a motion by Commissioner McNany, seconded by Vice Chairman Waugh and a vote of 3-0, the Commission voted to adjourn.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "F M Herrmann", written in dark ink on a light background.

FREDERICK M. HERRMANN