

NEW JERSEY ELECTION LAW ENFORCEMENT COMMISSION

PUBLIC SESSION MINUTES

APRIL 16, 1985

PRESENT:

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

\* Attended the public session only

Chairman Axtell called the meeting to order and announced that pursuant to the "Open Public Meetings Act," P.L. 1974, c. 231, annual 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, Trenton, New Jersey.

1. Approval of Public Session Minutes of April 10, 1985

On a motion by Commissioner Proctor, seconded by Commissioner McNany and a vote of 4-0, the Commission approved the public session minutes of April 10, 1985.

2. Executive Director's Report

Executive Director Herrmann reported that Assembly Bill A-3434 (Open Public Debate Act) was before the General Assembly yesterday, but no action was taken. The bill requires at least six debates for a gubernatorial candidate to get public funding.

Mr. Herrmann said that he spoke with Assemblyman Byron M. Baer regarding the Commission's concern about the money involved to administer this bill. One possibility would be to use public funding money rather than monies from the Commission's budget. Mr. Herrmann said that he proposed amending this bill on the floor, but Assemblyman Baer said that although he liked the idea of using public funds, he felt that an amendment would slow the bill's passage. Assemblyman Baer agreed to add the supplemental language for public funding in separate legislation after the bill becomes law.

Mr. Herrmann stated that Congressman Joseph G. Minish (11th District) is being considered for the Federal Election Commission.

3. Advisory Opinion No. 04-1985

Staff Counsel Gregory Nagy distributed a revised three-page draft response to an advisory opinion request from Mr. Bart Erbach on behalf of three legislators representing the 32nd Legislative District (Hudson County), dated March 27, 1985, regarding a newsletter that will be published by them. This draft response was originally distributed at the Commission's April 10, 1985 meeting.

Mr. Nagy said that he revised the advisory opinion to stress the time-frame issue. It now states that if a future edition of the newsletter is published before the general election the same principles outlined in this advisory opinion apply, but the Commission expresses no opinion after the general election.

On a motion by Commissioner Proctor, seconded by Commissioner McNany and a vote of 4-0, the Commission approved the Advisory Opinion No. 04-1985.

4. Advisory Opinion No. 05-1985

Staff Counsel Nagy reviewed a draft three-page advisory opinion response to a request from Bradley S. Brewster, Counsel to the Assembly Minority. This request regards newsletters some Assembly Minority members anticipate mailing to their constituents. These newsletters will include pictures of the Governor and make reference to his accomplishments and views. This request raises the question whether or not part of these expenditures should be allocated to the primary election campaign of the Governor.

Mr. Nagy distributed Advisory Opinion No. 33-1981, stating that when a joint advertisement takes place (gubernatorial and non-gubernatorial) at least 25% of the cost should be allocated to the gubernatorial candidate. Each item should be considered on its own merits because it may require more than 25% allocation.

Mr. Nagy said the Commission has never taken the position that since a gubernatorial primary is not contested, such expenses should not be allocated.

He said Advisory Opinion No. 05-1985 reaffirms Advisory Opinion Nos. 04-1985 and 33-1981.

On a motion by Commissioner Proctor, seconded by Vice Chairman Waugh and a vote of 4-0, the Commission approved staff's recommendation regarding Advisory Opinion No. 05-1985.

5. Director of Public Financing's Report

Director of Public Financing Peter Nichols distributed folders containing two memoranda to Executive Director Herrmann, dated April 15, 1985, along with public financing certification materials. Mr. Nichols asked the Commission to review these memoranda and asked for its approval.

The first memorandum concerned "Gubernatorial Statements and Certifications and Disclosure of Information." Computer lists of receipt activity taken from the statements and certifications filed with the Commission by gubernatorial candidates applying for public matching funds have been released to the public. These computer lists contained the names of contributors donating more than \$100 whether or not they were approved for matching funds, and the aggregate amount of contributors of less than \$100. This procedure was the same as in 1981, perhaps disclosing more receipt activity than is required by Commission Regulation N.J.A.C. 19:25-16.24. Mr. Nichols recommended providing information in the same manner as has been provided in the past. Further, he recommended deleting "for each contribution approved for match" from the regulation so that the provision of more substantial information is allowed. At this point, Staff Counsel Nagy rendered the opinion that the names of all contributors, even those that contribute less than \$100, be made public. He stated that this policy would be in the spirit of disclosure and in the best interest of the public. Commissioner Proctor concurred.

General Counsel Farrell stated that he does not foresee a problem with what has been released so far. He said that the way this came up so narrowly was because the public financing program was a product of a system the Commission set up to safeguard public funds. On the matter of disclosing the names of all contributors, Mr. Farrell said that he is not sure that the Commission would want to lose its discretionary privileges. He said that the Commission should not change its policy of keeping private the names of contributors of less than \$100. Mr. Farrell said that there are many people who do not want their identities disclosed for whatever reasons.

On a motion by Vice Chairman Waugh, seconded by Commissioner Proctor and a vote of 4-0, General Counsel Farrell was directed to draft an amendment to N.J.A.C. 19:25-25.42 to permit matching fund submissions to be released publicly to the extent they report contributions over \$100. The matter of whether the regulation protecting the identity of contributors of less than \$100 should be amended, was left unresolved by the Commission.

The second memorandum concerned private campaign fund accounts being reimbursed from public matching fund accounts. Mr. Nichols asked that the Commission expand on Advisory Opinion #0-37-77 so that it would allow for "lump sum" checks and/or wire transfers from the public fund accounts

to cover the disbursements of private funds eligible for public fund usage.

Mr. Nichols said that the reports that candidates will be filing with the Commission will have schedules set up for public fund disbursements and for non-public fund disbursements, each including check numbers. Mr. Nichols stated that as long as the public funds reimbursement check disclosed on campaign financial reports identifies the check(s) from the non-public funds account that is being reimbursed, then there will be no loss to disclosure. Also, a clear audit trail will still exist. In addition, Mr. Nichols noted that many campaigns make use of the wire transfer and that to require campaigns to make such transfers on a check-for-check (transfer) basis could become costly to the campaign. Commissioner McNany noted that wire transfers allow for one-day transfers instead of a three-day delay when using checks. On a motion by Vice Chairman Waugh, seconded by Commissioner Proctor and a vote of 4-0, Advisory Opinion #0-37-77 will be expanded to allow for "lump sum" wire transfers of public funds to private campaign fund accounts for those disbursements that meet the eligibility requirements for public funds usage. Mr. Nichols will advise candidates of this change.

At this point, Mr. Nichols presented the Commission with the public financing certifications. He said that his staff received two submissions and completed a review of both. He said that the problems are basically the same.

The Gibson campaign has not submitted any corrections at this time. The rejected contributions have not been matched and will not be until the corrections are made.

The Wiley campaign's certification had an adjustment made to a prior submission (two contributors appeared to be affiliated). The Wiley campaign has been made aware of this correction.

The certification amounts recommended by the public financing staff are:

Kenneth A. Gibson -	\$ 69,570 (\$301,319.98 - aggregate)
Stephen B. Wiley -	\$ 14,200 (\$314,860.00 - aggregate)

On a motion by Vice Chairman Waugh, seconded by Commissioner McNany and a vote of 4-0, the Commission voted to approved the submission for certification.

#### 6. Executive Session

On a motion by Vice Chairman Waugh, seconded by Commissioner McNany and a vote of 4-0, the Commission voted to go into executive session to discuss enforcement and investigative matters, the results of which will be made public at their conclusion.

Respectfully submitted,

  
FREDERICK M. HERRMANN