

NEW JERSEY ELECTION LAW ENFORCEMENT COMMISSION

PUBLIC SESSION MINUTES

MAY 14, 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 11:00 a.m. at the offices of Vice Chairman Alexander P. Waugh of Smith, Stratton, Wise, Heher and Brennan, Princeton, New Jersey.

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

On a motion by Commissioner McNany, seconded by Commissioner Proctor and a vote of 4-0, the Commission approved the public session minutes of May 7, 1985.

2. Executive Director's Report

Executive Director Herrmann reported on the progress of the computer project. He said that a major concern at this time is to have the campaign financing module up, running, and tested by July 1, 1985. (There are four modules: campaign financing, public financing, continuing political committees, and lobbying.) Mr. Herrmann said his concern is that the old system is not a budgeted item for the new fiscal year. He said that COGENT has been running behind schedule and could possibly miss the deadline, consequently creating a budgetary problem for FY-86.

Mr. Herrmann said that senior staff met with the COGENT president and the PRIME computer firm. COGENT agreed to guarantee in writing within two days that the system will be up by the July 1 deadline. The senior staff and the computer and software representatives will have weekly meetings each Monday to ensure that the deadline is met. COGENT/PRIME will give the Commission an additional in-house programmer for the last two weeks of June to test the program. COGENT also has the responsibility to test

30-days on site. Mr. Herrmann said that he will let the Commission know if there are any further problems regarding the computer.

Mr. Herrmann reported on the public funding program. He said that the appropriation in the 1985 budget for the 1985 primary is \$4 million. If all six candidates reach their maximum in public matching funds available per candidate, the cost will be \$3.9 million, allowing a cushion for administrative costs. **Administrative costs have been estimated at \$52,500.** Budget language for public funding in the 1986 general budget for the 1985 general election will allow for the use of general treasury funds, if needed.

Mr. Herrmann said that Wednesday, May 15, is the deadline for the budget resolution. Assemblyman Walter J. Kavanaugh put in a resolution for the Commission for \$85,000, \$25,000 more than the Commission requested. He said that Assemblyman Robert A. Ranieri is currently working on a proposal for \$60,000. Assemblyman Ranieri gave his permission for Mr. Herrmann to deliver the resolution to Mr. Fred Butler of the Joint Appropriations Committee staff.

Mr. Herrmann reported that the reception area is being refurbished. A Toshiba copier has been ordered as a backup to the large Xerox printer. The Commission may be upgrading its large printer which will not cost any more money for the upcoming fiscal year. Staff members will be contacting the State Museum about getting "loaner" paintings for the reception area, which is being repainted this week.

Mr. Herrmann said that the next Commission meeting is scheduled for 10:00 a.m. on Tuesday, May 21, 1985, in Trenton.

### 3. Director of Public Financing's Report

Director of Public Financing Nichols presented and reviewed four memoranda with the Commission.

#### Percentage Certification for Unreviewed Applications for Public Matching Funds

Mr. Nichols reviewed a memorandum dated May 13, 1985 regarding percentage certification for unreviewed applications for public matching funds. He proposed that the Commission consider adopting a pre-review certification policy similar to that used in 1981 for the three remaining preelection certification periods. He said that this procedure should not create an undue administrative burden for the public financing staff. Based on the track records established by the campaigns, he recommended a rate of 80 percent certification for all new submissions. **The percentage certifications would include any resubmissions, also.**

On a motion by Commissioner Proctor, seconded by Vice Chairman Waugh and a vote of 4-0, the Commission voted to accept the staff recommendation.

Private Campaign Funds Account Reimbursement from Public Funds Account

Mr. Nichols reviewed a memorandum dated May 13, 1985, regarding the reimbursement of private campaign fund accounts by public fund accounts. This issue deals with a situation that was not addressed at the Commission meeting of April 16, 1985, when the Commissioners decided to expand Advisory Opinion #0-37-77 to allow for "lump sum" wire transfers of public funds to the private campaign fund accounts. The issue that was not discussed at that meeting concerns cut-off dates for the making of such reimbursements. Mr. Nichols noted that the cut-off date outlined in the advisory opinion was based on the then effective 25- and 7-day preelection filing dates. Mr. Nichols stated that due to the amendments of 1984 and the creation of the new filing dates, the comparable cut-off date would be thirteen days prior to the election to allow for disclosure on the 11-day preelection report. Mr. Nichols further stated that pushing the cut-off date back may limit the campaign in the making of expenditures that are eligible for public funds usage in a critical period of the campaign.

General Counsel Farrell stated that he did not believe it prudent for the Commission to change the rules of the game in the middle of the contest.

Vice Chairman Waugh suggested that the cut-off date be moved closer to the date of the election and any transactions occurring between the cut-off date for the last preelection report and the new cut-off date be reported to the Commission by way of a 48-hour notification similar to that use for receipt activity.

On a motion by Vice Chairman Waugh, seconded by Commissioner Proctor and a vote of 4-0, the Commission voted to modify Advisory Opinion #0-37-77 to have a 5-day cut-off date, with the stipulation that when a transfer takes place between the thirteenth day and the fifth day prior to the election, then a 48-hour notice would be required.

Contributions Made by Minors

Mr. Nichols reviewed a memorandum dated May 13, 1985, regarding a contribution in the amount of \$1,200 made by a minor to the "Russo for Governor, Inc." Attached to the memorandum is a statement signed by the child that states the child was aware and fully approves of the allocation. The child's date of birth was November 25, 1973.

Vice Chairman Waugh said that he does not feel satisfied with the child's statement and perhaps the Commission should ask for an affidavit from the child's parents. General Counsel Farrell suggested that the statement is insufficient because it does not show "independence."

On a motion by Vice Chairman Waugh, seconded by Commissioner Proctor and a vote of 4-0, the Commission voted to disapprove the contribution as it appears that it was the parents' decision and not the child's. The Commission will require the campaign to submit documentation from the

child that clearly shows that the decision to make the contribution was that of the child. The documentation need not include an affidavit.

#### Trust Account Contributions

Mr. Nichols reviewed a memorandum dated May 13, 1985, regarding a contribution in the amount of \$800 received from a trust fund of an individual over 21 years of age and mentally retarded. Attached to the memorandum was a copy of a statement prepared by the campaign and signed the contributor. Mr. Nichols said that he was not convinced the contributor was totally aware of what she signed or if she wanted to make a contribution. He asked that the Commission make a determination if this sort of contribution should be allowed.

Vice Chairman Waugh said that it would depend upon the contributor's degree of retardation to see if she were aware that she was making a contribution. General Counsel Farrell said that if the Commission finds that the state of retardation is so severe that the person could not make an independent decision, it should not be accepted.

On a motion by Vice Chairman Waugh, seconded by Commissioner Proctor and a vote of 4-0, the Commission voted to reject the contribution until such time when evidence is submitted to the Commission that shows that the individual not only is competent to make such a contribution, but also did in fact make an independent decision to do so.

#### Certifications

Mr. Nichols recommended that the submission received be certified. The amounts recommended for certification were as follows:

Robert J. Del Tufo	\$ 41,850.00
Kenneth A. Gibson	53,515.22
Thomas H. Kean	17,600.00
John F. Russo	212,442.40
Peter Shapiro	201,204.80
Stephen B. Wiley	103,523.55

To date, the total public matching funds that have been certified to candidates are:

John F. Russo	\$643,572.40
Thomas H. Kean	641,366.80
Peter Shapiro	578,772.80
Stephen B. Wiley	497,231.55
Kenneth Gibson	490,358.54
Robert J. Del Tufo	<u>282,346.42</u>
	\$3,133,648.51

On a motion by Commissioner Proctor, seconded by Commissioner McNany and a vote of 4-0, the Commission voted to approve the submission for certification.

5. Request for an Advisory Opinion 08-1985

General Counsel Farrell distributed and reviewed an advisory opinion request and his draft response of May 14, 1985 to Anita Timko, Legislative Aide to Assemblyman S. Marsella. Ms. Timko inquired about the legality of a proposed fund-raising plan involving "Celebrity Card."

Mr. Farrell responded in draft advisory opinion 08-1985 that the Commission expresses no opinion as to whether or not the fund-raising proposal would constitute unlawful contributions and suggested that she contact the Casino Control Commission to determine whether or not this proposal would constitute an unlawful contribution by a casino or casino-related group.

Secondly, Mr. Farrell suggested that she contact the Internal Revenue Service or the N.J. Department of Taxation regarding whether or not the contribution is, in fact, tax deductible. He said that in the event her approach is to be used, the committee must report the entire amount received, subject to in-kind contribution reporting requirements.

On a motion by Vice Chairman Waugh, seconded by Commissioner Proctor and a vote of 4-0, the Commission voted to approve General Counsel Farrell's suggestions.

6. Executive Session

On a motion by Vice Chairman Waugh, seconded by Commissioner Proctor 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.

7. Adjournment

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

Respectfully submitted,



FREDERICK M. HERRMANN