

NEW JERSEY ELECTION LAW ENFORCEMENT COMMISSION

PUBLIC SESSION MINUTES

SEPTEMBER 4, 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
Cynthia H. Reinhard, General Counsel's Staff
Gregory E. Nagy, Staff Counsel

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 10:05 a.m. at the office of the Commission, 28 West State Street, Trenton, New Jersey.

1. Approval of Public Session Minutes of August 22, 1985

On a motion by Vice Chairman Waugh, seconded by Commissioner Proctor and a vote of 4-0, the Commission approved the public session minutes of August 22, 1985.

2. Executive Director's Report

Executive Director Herrmann discussed the fall meeting schedule. He said that the Commission has meetings scheduled every week until mid-November because of the public funding of gubernatorial candidates. However, since Governor Kean has reached his maximum in matching monies, only Democratic candidate Peter Shapiro remains in applying for these funds. As a result, Mr. Herrmann suggested that the Commission establish a new schedule of biweekly meetings. He said that in the event that a meeting is required during an off week to certify public funds, staff would arrange for a telephone conference of the Commission. Mr. Herrmann said that telephonic conferences would meet the requirements of the Open Public Meetings Act and save taxpayers' money.

On a motion by Vice Chairman Waugh, seconded by Commissioner Proctor and a vote of 4-0, the Commission approved Mr. Herrmann's recommendation for conducting telephone conferences in lieu of weekly meetings. In the same motion, the Commission voted to certify automatically submissions by the

Shapiro campaign at a rate of 75%. The remaining amount would be certified at the next scheduled meeting if possible. The percentage figure might also be raised in the future depending on the quality of the early submissions. Vice Chairman Waugh asked that if a problem does arise, and a meeting is necessary, the Commission be advised. Mr. Herrmann agreed. Mr. Herrmann said that in the event that the Shapiro campaign makes a submission on Monday, September 9, 1985, the Commissioners will be contacted by an AT&T operator just before 10:00 a.m. for a "conference call" on September 11, 1985. General Counsel Farrell will be on standby in case a legal opinion is necessary. Chairman Axtell's signature stamp will be used for the certification and the other commissioners will sign-off on the certification at the subsequent meeting.

Mr. Herrmann advised that the Tuesday, September 17 meeting will be held at the office of General Counsel Farrell - Farrell, Curtis, Carlin & Davidson, 43 Maple Avenue, Morristown.

Mr. Herrmann stated that the Commission FY87 budget is due at the Office of Management & Budget in the Department of Treasury on October 1. He said that the budget will be mailed with the September 17 agenda for the Commission's review. He said that it will be discussed at that meeting. This timeframe allows for a two-week cushion for any changes that may be needed. He said that there do not appear to be any monumental issues.

Mr. Herrmann reported that he will be testifying about public financing before the Pennsylvania Legislature in Harrisburg on September 10. The Legislature will try to reimburse him for his travel, hotel, and food. Chairman Axtell stated that if the Legislature cannot, then the Commission would reimburse Mr. Herrmann for these expenses.

Mr. Herrmann said that he will meet with the State Bar Association at the Woodbridge-Hilton on Wednesday, September 11, 1985, to discuss the workings of the Commission and its goals for the future.

Mr. Herrmann called the Commission's attention to a letter received from Frank P. Reiche, former Election Law Enforcement Commission (ELEC) Chairman and former Commissioner of the Federal Election Commission, thanking ELEC for its letter of good wishes on August 22, 1985. Mr. Reiche stated that, ". . . if I have been faithful to the Goldmann, Margetts, Alexander, Farrell and Thurston tradition, then my service here in Washington will have been well worth any small effort on my part." Chairman Axtell asked that a copy of this letter be forwarded to Ms. Josephine Margetts, Judge Goldmann's wife, Herbert Alexander, and Lewis P. Thurston.

Mr. Herrmann reviewed several pieces of legislation that have been addressed by Governor Kean:

- S-2124 (Russo) was signed into law by Governor Kean and is now P.L. 1985, c.288. This bill dealt with fire districts setting a uniform date for these elections and requiring a filing reminder notice on petitions. The Commission had supported this bill because it would make administering the Act easier. The Commission urged in committee,

however, that the Legislature enact legislation disinvolving it from the regulation of special district elections.

- S-2900 (O'Connor) which prohibits unopposed candidates from receiving public funds in gubernatorial primaries was vetoed by the Governor. Two reasons were cited:
 - concern about possible fraud
 - the possible need for a candidate running unopposed to receive public money.

The Commission had been neutral regarding this bill.

- S-3434 (Baer) tied debating to public funding and was vetoed by the Governor because the Governor believes that debating is a campaign decision and should not be mandated by the law. The Commission had been neutral on this bill.

3. Executive Session

On a motion by Commissioner Proctor, seconded by Commissioner McNany and a vote of 4-0, the Commission voted to go into executive session.

4. Friends of Tom Kean v. The New Jersey Election Law Enforcement Commission

General Counsel Farrell announced to the public after the executive session that the Commission by a vote of 3-1 (Chairman Axtell in the negative), directed him to appeal the Appellate Division's decision in the above-captioned matter to the New Jersey Supreme Court.

Mr. Farrell suggested that it is entirely appropriate for the Commission to resolve its position regarding Advisory Opinion 10-1985 by amending N.J.A.C. 19:25-15.28.

Mr. Farrell said the purpose of his suggested regulatory change is to address the main concern of the Appellate Division's decision. Mr. Farrell said that by his rewording of the regulation, it would make it clear that expenditures by candidates of the same political party as the gubernatorial candidate are not to be considered independent of the gubernatorial campaign. He said that his amended regulation clearly states that these expenditures should be allocated.

Staff Counsel Nagy suggested a technical change in the language to clarify that the regulation was applicable to candidates of the same political party running for offices other than Governor in the same election as the gubernatorial candidate. Also, Mr. Nagy asked whether the formal proposal process should be undertaken in view of the holding of the Appellate Division to the effect that no allocation could be made to a gubernatorial candidate. Vice Chairman Waugh said if the Supreme Court affirms the decision the proposal will be withdrawn.

On a motion by Vice Chairman Waugh, seconded by Commissioner Proctor and a vote of 3-0-1 (Chairman Axtell abstaining), the Commission approved the regulation as modified for filing with the Office of Administrative Law as a proposed amendment to N.J.A.C. 19:25-15,28.

5. Adjournment

On a motion by Vice Chairman Waugh, seconded by Commissioner Proctor and a vote of 4-0, the Commission voted to adjourn at 11:10 a.m.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "F. M. Herrmann", with a long horizontal flourish extending to the right.

FREDERICK M. HERRMANN
Executive Director