

NEW JERSEY ELECTION LAW ENFORCEMENT COMMISSION

PUBLIC SESSION MINUTES

SEPTEMBER 17, 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
Richard J. Magee, Director of Administration
Sandra L. Magee, Administrative Assistant

* Participated in the meeting via telephone intercom.

Chairman Axtell called the meeting to order and announced that pursuant to the "Open Public Meetings Act," P.L. 1974, 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 1:08 p.m. at the office of General Counsel Farrell of Farrell, Curtis, Carlin and Davidson, 43 Maple Avenue, Morristown, NJ.

1. Approval of Public Session Minutes of September 4, 1985

On a motion by Commissioner McNany, seconded by Commissioner Proctor and a vote of 3-0, the Commission approved the public session minutes of September 4, 1985.

2. Approval of Public Session Minutes of September 11, 1985

On a motion by Commissioner Proctor, seconded by Commissioner McNany and a vote of 3-0, the Commission approved the public session minutes of September 11, 1985.

3. Executive Director's Report

Executive Director Herrmann discussed four bills with the Commission.

- 1) S-2077 (Codey) was passed by the Senate the week of September 8, 1985. The bill prohibits agencies from purchasing television airtime for State officials prior to an election.
- 2) A-3925 (Mazur) has recently been introduced. This bill requires the Governor to submit an annual financial disclosure statement and divest himself of certain holdings (e.g. business regulated by the State).

Mr. Herrmann stated that the Governor already files with the Commission as a candidate, but this bill would require disclosure in non-election years and election years with the Executive Commission on Ethical Standards in the Department of Law and Public Safety.

- 3) SCR-133 (Zane) places on the ballot this November a proposed amendment to the State Constitution permitting legislative veto of agency regulations. The public question posed by this bill received considerable publicity recently because of a court case involving the interpretive statement. Mr. Herrmann said that the proposed amendment will limit the powers of the Executive branch.

*[Vice Chairman Waugh began to participate via telephone at this time.]

Vice Chairman Waugh said that under the existing State Constitution, the Legislature cannot pass a law negating a regulation without the concurrence of the Governor, or a two-thirds majority to override a veto. This bill would give the Legislature the authority to rescind a regulation by a simple majority vote in each House. Mr. Waugh asked if the change takes place, would the Legislature be able to invalidate regulations at any time?

Mr. Herrmann responded in the affirmative and quoted an excerpt from the bill. Mr. Herrmann said his remarks were advisory, and he was not recommending any action by the Commission.

- 4) S-3384 (Orechio) was introduced recently. The bill recommends creating a commission to study the gubernatorial public financing law's operation in 1985. Mr. Herrmann said the bill is establishing a commission to duplicate an important function of ELEC. He was concerned that an inference might be drawn by some people that the Commission is not doing its job in this area. The bill calls for setting up a bipartisan commission which would include nine members: Two Senators and two public members chosen by the Senate President, two members of the Assembly and two public members chosen by the Speaker, and the Executive Director of the Election Law Enforcement Commission.

Vice Chairman Waugh said this new commission would also study some issues that seem to be partisan, or quickly interpreted as partisan.

Mr. Herrmann said the new commission will be required to report its findings and recommendations six months after ELEC's final report, and therefore probably would be repeating the work of the Commission.

Commissioner Proctor stated that this bill seems to be "kind of an insult."

Vice Chairman Waugh stated that the sponsors are entitled to establish a commission that is going to look at public financing from the point of view of the Legislature and public. He said that it makes sense that they would wait until ELEC issues its report in order to utilize the statistical information contained in it. He said that he does not see any basis to feel that ELEC's competency is in question.

General Counsel Farrell asked whether the Commission has been asked to comment on this bill. Mr. Herrmann said that the Commission has not. The bill was just introduced but may be reviewed in committee in the near future. He said that his recommendation is that the Commission oppose it because of its redundancy.

Commissioner Proctor said he does not think the Commission should formally oppose it. Commissioner McNany suggested having Mr. Herrmann contact Senate President Orechio's office and the cosponsors to ask what the intent of the bill is.

Executive Director Herrmann agreed but said that he could more simply confer with Robert Noonan, Executive Director of the Senate Majority. The Commission directed Mr. Herrmann to call Executive Director Noonan.

Concerning the next Commission meeting date, Executive Director Herrmann recommended a telephone conference on September 24, 1985 in the event it is needed to certify public funds for gubernatorial candidate Peter Shapiro. The Commissioners will be notified if the Shapiro Campaign makes its submission on Monday, September 23, 1985. General Counsel Farrell will be available if needed on this date. The October 1, 1985 meeting will take place in Interlaken Borough Hall, New Jersey at 10:00 a.m.

Mr. Herrmann reported on two speaking engagements. On September 10, 1985 he testified before the Pennsylvania House State Government Committee on public financing. He said that the hearing was quite interesting and he was called upon to testify and answer questions for 90 minutes. He testified that Pennsylvania's and New Jersey's programs are difficult to compare. His major message in general terms was that Pennsylvania should be careful not to expend too much money. Mr. Herrmann suggested that public financing cannot be effective if too many elective offices are included and as a result only limited funding is available for each office even though a large amount of money is being spent in total.

Executive Director Herrmann reported on the 1987 budget recommendations. He introduced Richard Magee, Director of Administration, who has been with the Commission for three weeks. Mr. Magee and Dianne Shiffler, Fiscal Officer, have prepared the ELEC preliminary budget sheets, and Mr. Herrmann praised their efforts.

Mr. Herrmann reviewed the major new proposed spending areas for the next fiscal year:

- The Commissioners' compensation will be brought up to \$300 per diem, an increase of \$50.00 each meeting, starting July 1, 1986. This increase is in keeping with with inflation and pay raises for the commissioners of the State Commission of Investigation. The number of meetings have been estimated at 30. Vice Chairman Waugh asked what would happen to the per diem appropriation if it were not entirely used. Mr. Herrmann responded that the Commission has flexibility in this area to transfer the remaining funds to other accounts.

- \$75,000 was requested for new positions which would include one secretary, one computer expert, and two compliance officers (this measure should be a cost-saving one by boosting compliance.)
- \$44,500 for computer-related items, such as software money, the Federal Election Commission Remote Access program, word processing, and computer security.

The new items amount to a total increase of \$125,000 (14.7%) over the last fiscal year. Nevertheless, this increase is lower than the prior year's increase. Also, for three prior years the Commission did not get any increase. The total increase, including the new items, is \$133,000.

On a motion by Commissioner Proctor, seconded by Commissioner McNany and a vote of 4-0, the Commission approved the Budget Request for Fiscal Year 1987.

Mr. Herrmann stated the budget request may need some modification as it proceeds for review by the Office of Management and Budget in the Department of Treasury. He said he would keep the Commission abreast of any changes that occur.

Executive Director Herrmann presented a proposed regulation in memorandum form regarding anonymous complaints. He said that current policy is informal and subjective, and recommended that the Commission should uniformly not pursue anonymous complaints because they invite irresponsible complaints and the staff is unable to follow-up thoroughly. Also, Mr. Herrmann stated that he is concerned there may someday be an appearance of staff abuse in terms of selecting which complaints merit investigation. Furthermore, Commission policy should be clearly reflected in the regulations. Mr. Herrmann said that the Federal Election Commission (FEC) does not investigate unsigned complaints, and does not investigate signed complaints in which the complainant requests that his or her name remain anonymous. He said that Albert Porroni, Executive Director, Office of Legislative Services, and the staff person of the Joint Committee on Ethical Standards in the Legislature counseled him that anonymous complaints should not be used to generate investigative activity.

Vice Chairman Waugh replied that he would find it disturbing if the Commission received information of substantial magnitude from an anonymous complainant and found that this regulation blocked Commission action. Chairman Axtell said that sometimes because of someone's position he or she would want to remain anonymous.

Staff Counsel Nagy expressed concern that the Commission should not permit itself to be manipulated into embarrassing or damaging a candidate subject to a baseless complaint from an unknown source. For example, the only way the Commission could investigate a complaint of unreported contributions is to approach the contributors. Such action could embarrass a candidate and jeopardize the candidate's ability to attract other contributions.

Vice Chairman Waugh offered an example of a complaint that included a copy of a check from an unreported source with the anonymous complaint. Mr. Nagy said that this would help to some extent to provide concrete evidence that might be

investigated with a bank, or the candidate directly before approaching the purported contributor.

General Counsel Farrell said he does not think the Commission should have regulations blocking its own discretion and tying its hands. If something looks suspicious, the Commission should look into it. Moreover, he was not of the opinion that copying the FEC was necessarily a good thing.

Commissioner Proctor said the Commission should look into anonymous complaints on an ad hoc basis. If the complaint has some substance to it, Commissioner Proctor said the Commission should be made aware of it. Vice Chairman Waugh concurred that there will be instances where the complaints should be brought to the Commission's attention. Mr. Waugh asked how many anonymous complaints come up in a year, and Mr. Nagy estimated approximately 5-10 cases per year.

Commissioner McNany said that if there are communications of wrongdoing, he does not feel the Commission should be inhibited.

Mr. Herrmann said that he will leave the review of these cases to the Director of Review and Investigation, Cheryl R. Clarke. If Ms. Clarke finds something that looks like it has substance, she will bring it to the Commission's attention through him.

Mr. Herrmann stated that Commission staff met with members of the Shapiro Campaign staff, Juana M. Schultz and Angelo Genova during the week of September 8, 1985. They stated that they may ask for an advisory opinion regarding the allocation issue of joint campaign advertisements. Mr. Herrmann told them that the issue is in limbo, but as soon as the Commission hears from the New Jersey Supreme Court it will have to meet and decide on a course of action. The Shapiro staff was told that ELEC cannot direct their candidate at this time because it doesn't not know what the rules will be.

Vice Chairman Waugh suggested that in the event of a reversal of the Appellate Division's decision, gubernatorial candidates be encouraged to seek advisory opinions concerning advertising undertaken prior to that reversal but after the Appellate Division decision. Mr. Farrell said that he expected the court to give guidance concerning the interim period.

Mr. Herrmann stated that the Commission has hired Margaret McCarthy as a new Assistant Staff Counsel. She will start on October 7, 1985. She is now working for the American Law Institute. Ms. McCarthy lives in Lindenwold and is a member of the New Jersey Bar Association and the Pennsylvania Bar Association.

There will be a Council of State Governmental Ethics Laws (C.O.G.E.L.) conference in Chicago on December 3-6, 1985. Mr. Herrmann encouraged the Commission members to attend if possible. The staff will circulate details of the trip and the costs at the next meeting.

5. Director of Public Financing's Report

Peter Nichols, Director of Public Financing, circulated last week's certification payment form. The amount approved for the Shapiro Campaign was \$375,000. The staff agreed to stop at Vice Chairman Waugh's Princeton office so that he, too, could sign the form.

Mr. Nichols said his staff reviewed all of Shapiro '85 Committee's first submission. After the review, his staff found that an additional \$99,220 in public matching funds could be certified for initial submission. There was an error ratio of 4.3%. Mr. Nichols stated that, if approved, the total amount certified to the Shapiro Campaign for the general election would be \$474,220. Mr. Nichols said the most that could be certified for the initial submission was \$500,000.

On a motion by Commissioner McNany, seconded by Commissioner Proctor and a vote of 4-0, the Commission approved the submission and authorized Chairman Axtell to execute the certification.

Mr. Nichols said that the Commission may want to consider, given the 4.3% error rate, increasing the pre-review certification percentage. On a motion by Commissioner McNany, seconded by Commissioner Proctor and a vote of 4-0, the Commission decided to raise the pre-review certification percentage to 85%.

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

General Counsel Farrell reiterated that oral argument for the above-captioned case will be heard before the New Jersey Supreme Court on Monday, September 23, 1985 at 10:00 a.m. He said the Court did grant an acceleration, but denied the application for a stay.

7. Regulation 19:25-1.7

General Counsel Farrell asked for authorization to promulgate a regulation to change the phrase "during any calendar year" to read "in any election" in the definition of "political committee" (paragraph 2). He stated that he wanted this change in keeping with recent advisory opinions he drafted, and as discussed by Mr. Nagy at the August 22, 1985 meeting.

On a motion by Commissioner Proctor, seconded by Commissioner McNany and a vote of 4-0, the Commission voted to authorize staff to propose an amendment to this regulation.

8. Harrisburg Trip

On a motion by Commissioner McNany, seconded by Commissioner Proctor and a vote of 4-0, the Commission voted to have Chairman Axtell execute a travel voucher for Mr. Herrmann's trip to Harrisburg on September 9 & 10, 1985.

9. Executive Session

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

10. Adjournment

On a motion by Commissioner Proctor, seconded by Commissioner McNany and a vote of 4-0, the Commission voted to adjourn at 2:35 p.m.

Respectfully submitted,



FREDERICK M. HERRMANN
Executive Director