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NEW JERSEY ELECTION LAW ENFORCEMENT COMMISSION

PUBLIC SESSION MINUTES

OCTOBER 30, 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

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 10:30 a.m. at the Montclair Municipal Building, Montclair, New Jersey.

1. Approval of Public Session Minutes of October 16, 1985.

   On a motion by Commissioner McNany, seconded by Vice chairman Waugh and a vote of 4-0, the Commission approved the public session minutes of October 16, 1985.

2. Approval of Public Session Minutes of October 22, 1985.

   On a motion by Commissioner Proctor, seconded by Vice Chairman Waugh and a vote of 3-0-1 (Commissioner McNany abstaining), the Commission approved the public session minutes of October 22, 1985.

3. Public Financing Certification

   On the suggestion of Vice Chairman Waugh, the Commission changed the order of business as outlined in the agenda, and thereby considered Public Financing as item number three instead of item number four. The suggestion was made in order to expedite the processing of the Public Financing certification for the Democratic campaign of gubernatorial candidate Peter Shapiro. In this way, the Commission could avoid any unnecessary delay in providing Mr. Shapiro with the public funds due to his campaign. Mr. Paul Bograd, Mr. Shapiro's campaign manager, had telephoned Executive Director Frederick Herrmann earlier and expressed the concern that the Shapiro campaign might not receive the public funds in an expeditious manner.

Mr. Bograd also complained that the Commission had changed its regular meeting day from Tuesday to Wednesday, and that the campaign was not aware of this change. Mr. Herrmann reported to the Commission that he informed Mr. Bograd that with respect to the change in meeting dates, adequate public notice was given. He said that he also assured Mr. Bograd that there would be no delay in processing Mr. Shapiro's public funds. Chairman Axtell added that the meeting was originally scheduled for Tuesday, October 29th, but that on Tuesday, October 1, the meeting was changed to Wednesday, October 30th. General Counsel Farrell stated that this was ample time for all interested parties to learn about the change and to adjust their schedules accordingly.

At this juncture, Public Financing Director Peter Nichols reported that a cursory review of the sixth application for public matching funds by the Shapiro '85 Committee, Inc. revealed no significant deficiencies or problems. The application totals to $60,260.00, which represents $57,580.00 in new contributions for match and $2,680.00 in corrections of contributions previously rejected for match. The total application equates to $120,520.00 in public matching funds if all contributions are found to be documented properly.

In accordance with the Commission's prereview certification policy, Mr. Nichols recommended the Commission certify 85% of the sixth Shapiro '85 Committee, Inc. application, or $102,442.00.

The prereview certification figure was derived as follows:

	NEW	AMENDMENT(S)	TOTAL
Submitted	$57,580.00	$2,680.00	$60,260.00
Match Percentage	x .85	x .85	x .85
85% Matchable Amount	$48,943.00	$2,278.00	$ 51,221.00
Match Rate	x 2	x 2	x 2
Amount for Certification	$97,886.00	$4,556.00	$102,442.00

Further, the Shapiro '85 Committee, Inc.'s fifth application for public matching funds has been thoroughly reviewed by the public financing staff and it has been determined that the campaign qualifies for an additional $13,551.88 in public matching funds for that application.

Thus, a total of $115,993.88 in public matching funds was recommended for certification to the Shapiro '85 Committee, Inc.

The total certification figure was derived as follows:

Amount of 10/28/85 Submission	1.7 for 1.0 for 10/28/85 Submission (85%)	10/21/85 Submission Minus 10/22/85 Pre-Review Certification	Total Amount to be Certified 10/30/85
$60,260.00	$102,442.00	$13,551.88	$115,993.88

On a motion by Commissioner Proctor, seconded by Commissioner McNany and a vote of 4-0, the Commission approved the certification of $115,993.88 in public matching funds for the Shapiro '85 Committee.

4. Executive Director's Report

1) Executive Director Herrmann reported that he was asked to serve on a panel to be conducted at the COGEL conference in Chicago, December 2 thru 6. The panel will discuss "Trends in Campaign Finance Regulation: Passive Disclosure v. Substantive Enforcement."

2) Executive Director Herrmann stated that he had nothing to report vis-a-vis legislative activity in the State. He said, however, that two federal issues would be of interest to the Commissioners, both of which involve the tax simplification measure under consideration by the House of Representatives Ways and Means Committee. He said that the actions taken by the Committee do not directly affect ELEC but could serve as a model for State officials to follow.

According to Mr. Herrmann, the Ways and Means Committee preserved the presidential check-off provision in the income tax reform measure. This action was taken despite the fact that President Reagan had removed it in his proposal. Mr. Herrmann said that the Committee's efforts toward preserving the check-off provision was crucial to the survival of the national public financing program. Mr. Herrmann said that indirectly, preservation of the federal program would positively impact upon the future survival of the State's public financing program.

Executive Herrmann also reported that the Committee eliminated the tax credit provision (50% credit up to $50.00 per spouse for contributions to State and federal candidates). He said that this action would discourage small contributions. He said that while this credit is not contained in the New Jersey income tax form, it is something that the New Jersey Legislature might consider doing in the future. He said that small contributions constitute a healthy part of the political process and should be encouraged at all levels.

3) Executive Director Herrmann next informed the Commission about future meeting dates. He said that the Commission would meet on Wednesday, November 13, and on Tuesday, November 26, in Trenton. He said that the Commission would meet twice in December.

4) Chairman Axtell next asked Mr. Herrmann to determine the cost of the Christmas party because the Commissioner's would share in the cost of it.

5) At this point, Vice Chairman Waugh asked whether or not Assemblyman Richard Zimmer would attend the Commission meeting to request an advisory opinion on an allocation issue. Executive Director Herrmann responded that he did not know if the Assemblyman would appear. He said that when he spoke to Mr. Zimmer yesterday, the Assemblyman was noncommital as to whether or not he would attend the meeting and present the matter to the Commission.

Commissioner Proctor asked the Executive Director to explain the issue. Mr. Herrmann stated that Assemblyman Zimmer is involved with a group opposing public question number 7 (legislative veto), which is on the November 5th ballot. He said that the group might promote its position through using advertisements featuring Governor Kean, and perhaps Democratic Candidate Peter Shapiro, along with the four living, previous Governors. Mr. Herrmann stated that Mr. Zimmer's question concerned whether or not a portion of the cost of these advertisements would have to be allocated against the gubernatorial campaigns.

General Counsel Farrell interjected that it is a very gray area, primarily because the Supreme Court has not issued its written opinion, thereby failing to provide the Commission with guidelines for action. He said, however, that it seemed to him that advertisements featuring the gubernatorial candidates would imply coordination between them and the group funding the ad. Mr. Farrell qualified this statement by saying that allocation would be probable in a situation where one gubernatorial candidate appeared in the ad and not the other. In this case, the participating candidate would benefit from the ad at the expense of the other. "The situation is not so clear," said Mr. Farrell, "if both gubernatorial candidates participate. In this fact situation, neither candidate benefits over the other and it is possible that neither would have an allocation responsibility."

At this juncture, Vice Chairman Waugh asked Mr. Farrell if he, as General Counsel, had the authority to issue advisory opinions directly, without approval of the Commission. Mr. Waugh said that he was asking the question to determine if Mr. Zimmer could call Mr. Farrell directly for an opinion. Mr. Farrell stated that the statute gives him the authority to issue advisory opinions. He said that although he has the legal authority to issue an advisory opinion without the Commission, as a practical matter, he would usually defer to the Commission, particularly with regard to complex questions.

At this point, Executive Director Herrmann indicated that Assemblyman Zimmer had asked if he could call Mr. Farrell directly. The Director said he had told the Assemblyman that it would be better to have the general counsel contacted by the staff than the public. Mr. Farrell agreed with Mr. Herrmann's response stating that, generally, all business should be handled through the Executive Director.

5. 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.

6. Adjournment

On a motion by Vice Chairman Waugh, seconded by Commissioner McNany and a vote of 4-0, the Commission voted to adjourn at 11:41 a.m.

Respectfully submitted,

FREDERICK M. HERRMANN