

c. Budget

Executive Director Herrmann reported that he is proceeding with a \$110,000 budget resolution to get four administrative staff positions. He stated that the Commission has 24 line positions but no staff positions. Mr. Herrmann indicated that currently he is using line positions to do administrative work. He said that the Department of Law and Public Safety has loaned the Commission a fiscal consultant who agrees that these positions are needed.

d. Administration

Executive Director Herrmann stated that Director of Compliance and Information Evelyn Green's staff held 17 informational seminars throughout New Jersey and she has received very favorable comments from attendees. Mr. Herrmann next praised the League of Municipalities magazine article on the Commission which was written by Deputy Director Brindle. Executive Director Herrmann reported that he had invited OTIS (Office of Telecommunications and Information Systems) in the Department of the Treasury to perform a physical and data security audit of the computer. The audit revealed that adequate controls are in place. In addition, the staff is implementing a number of useful suggestions that were made by OTIS.

e. Conferences

Mr. Herrmann told the Commission that Mr. Brindle and he attended a Political Finance Forum in Washington, D. C. on April 11, 1986. The subject of the forum was congressional proposals to reform the Federal Election Campaign Act. Mr. Herrmann further reported that the Eastern Regional Conference of the Council on State Governments (CSG) will meet in Parsippany, N. J. He said that he would be attending.

Executive Director Herrmann stated that the Northeast Regional Conference on Lobbying, of which he is Vice Chairman, will hold a one-day conference in Baltimore, Md. in August. He said that four or five members of the staff will be participating in panel discussions.

f. New Project

Executive Director Herrmann reported that General Counsel Farrell suggested that the Commission review old Advisory Opinions with an eye toward writing some new regulations. Mr. Herrmann said that this project is very important.

g. East Coast Membership Chairman of the Council on Governmental Ethics Laws (COGEL)

Mr. Herrmann told the Commission that he has been selected as the East Coast Membership Chairman of COGEL. He said that staff has targeted over 150 potential new members. He said that Staff Counsel Gregory Nagy has been a great help with this project. It will be completed in late May.

h. Future Meetings

Mr. Herrmann reviewed the summer meeting schedule. The Commission then decided to cancel the May 20 meeting, the June 17 meeting, and both meetings in July. The Commission will hold a meeting in Maplewood at 11:00 a.m., Tuesday, June 3, and in Interlaken at 11:00 a.m. on June 24. While not formally decided upon, the Commission gave indications that it would cancel meetings in August and hold two meetings in September. The dates of those future meetings will be decided upon at the June meetings of the Commission.

4. Adoption of Regulations

Staff Counsel Nagy requested authorization from the Commission to adopt without change four amendments to the Commission's regulations that were proposed in the April 7, 1986 New Jersey Register. The amendments proposed by the Commission were:

1. Campaign treasurers as well as candidates will be liable for late filing or non-filing by political committees designated by candidates to file their campaign reports;
2. Continuing political committees will be relieved of filing certain 48-hour notices of major contributions over \$250 in the period after the quarterly report before an election is submitted by filing a cumulative report 11 days before the election; but, after the closing date of the 11-day preelection report (i.e. 13 days before the election) until the date of the election, 48-hour notices will still be necessary;
3. Contributions from joint checking accounts, from affiliated corporations or unions, and from partnerships or unincorporated associations that are subject to a \$250 contribution limit for inaugural fund raising events will be attributed to contributors in the same manner as is used for administering the \$800 contribution limit for gubernatorial candidates; and
4. Candidates or other persons not answering written complaints of the Commission charging violations of campaign, personal financial or lobbying reporting will be subject to default if no answer is filed within 20 days after service of the complaint.

On a motion by Commissioner Proctor, and seconded by Vice Chairman Waugh, the Commission adopted the regulations on a vote of 4-0.

5. Advisory Opinion No. 4

Staff Counsel Nagy explained that AO-4 is requested by John F. Boyle, a school board candidate in Ridgewood. The opinion written by Mr. Nagy deals with the issue of whether or not the production and distribution of a newsletter by a local citizen's group should be reported by the candidate. The newsletter, in one of its articles, endorses Mr. Boyle, who asks whether or not this newsletter should be considered an in-kind contribution to his campaign.

In the opinion, the Commission finds that Mr. Boyle did receive an in-kind contribution and therefore is subject to the reporting requirements of the "New Jersey Campaign Contributions and Expenditures Reporting Act." Vice Chairman Waugh moved the opinion.

Seconded by Commissioner McNany, the Commission voted 4-0 to direct Mr. Boyle to report the newsletter as an in-kind contribution.

6. Advisory Opinion No. 5

Advisory Opinion No. 5 was requested by Stephen J. Edelstein, Counsel to the Shapiro '85 General Election Committee, and involves the disposing of unspent campaign funds and the settling of unpaid outstanding obligations.

As per N.J.S.A. 19:44A-35(c) and N.J.A.C. 19:25-15.46, gubernatorial campaigns that receive public funds are obligated to return the balance of funds retained after the election within six months.

In his request, Mr. Edelstein acknowledges the fact that his committee retains funds from the campaign and has not yet returned them to the State. However, he asks guidance from the Commission with respect to the obligation to return monies in light of the fact that certain items remain unresolved. These items are:

- (1) outstanding obligations reflected on the 60-day postelection report totaling \$2,038.00;
- (2) continuing consulting fees for audit preparation and responses estimated at \$5,000; and
- (3) potential lawsuit exposure, including fees and other costs estimated at up to \$25,000.

Regarding the Shapiro request, Mr. Nagy outlined three options that could be taken by the Commission. They were:

- (1) to request that the Shapiro campaign return all the money as per the statute;
- (2) to set a time limit (30 days) for the campaign to pay \$2,000 in outstanding obligations, to leave the campaign \$5,000 for an audit, a retainer for the firm working on its lawsuit, and to return the rest to the State;
- (3) to allow the campaign to retain the entire \$32,000 until all matters are settled.

At this point, Vice Chairman Waugh stated that he had trouble reading the statutory language in any way that would give the Commission flexibility. Mr. Nagy added that he felt the law intends that all money should be turned over within 6 months of the election. Commissioner Proctor stated that the law does not specifically address the question of outstanding obligations after the 6 month cut-off date. Vice Chairman Waugh then asked if the Commission could authorize the Shapiro Campaign to pay its law firm a retainer. Mr. Nagy responded that he did not see why not. Mr. Waugh then stated that whatever money is left over after paying the legal retainer and outstanding obligations could be returned to the State.

At this juncture, Commissioner Proctor stated that his reading of the law suggests to him that the campaign is required to repay all surplus funds now that the 6-month period has passed. Chairman Axtell agreed. Commissioner Proctor then moved that the Commission advise the Shapiro campaign that it must return all money to the State, and that the money would be placed in an escrow account to allow the campaign to pay its debts. He stated that there is precedent for this action in a 1982 action of the Commission, and Ms. Reinhard suggested that perhaps an escrow provision could be added to the regulations. The motion was seconded by Chairman Axtell.

At this point, Commissioner McNany reopened discussion of the matter. He asked Peter D. Nichols, former Director of Public Financing, for his opinion. Mr. Nichols indicated that he believed that it was permissible for the campaign to use the money for the lawsuit because the campaign has enough private money left over. He also indicated that it would be permissible for the Commission to require prepayment of only that portion of the money not earmarked for outstanding obligations, the audit, and the lawsuit.

Based upon this commentary, Vice Chairman Waugh made a motion that superceded the previous motion. Mr. Waugh's motion contained the following provisions:

- (1) that the campaign be allowed to keep \$2,000 for 30 days to pay outstanding obligations,
- (2) that the campaign be allowed to keep \$5,000 to pay for the audit consulting fee,
- (3) that the campaign be allowed to keep \$10,000 for payment on good faith legal fee estimates, and
- (4) that the remaining \$8,000 in surplus funds be returned to the State to be kept in escrow.

Mr. McNany seconded this motion, and on a vote of 4-0, the Commission directed the Staff Counsel to advise the Shapiro campaign of same.

7. Personal Use Regulations

Ms. Reinhardt presented proposed Personal Use Regulations for the Commission's approval. Mr. Nagy made some technical suggestions.

On a motion by Commissioner Proctor, seconded by Commissioner McNany, the Commission voted 4-0 to submit the proposed regulations to the Office of Administrative Law in the Department of State for publication in the New Jersey Register as a formal rule proposal.

8. Public Financing Report

Executive Director Herrmann introduced the Commission's Public Financing Consultant, Dr. Alexander, from the University of Southern California and the Citizen's Research Foundation, to discuss the staff's recommendations for 1985.

Dr. Alexander thoroughly discussed the recommendations, which remained largely the same as the 1982 report. One new recommendation, however, involved a proposal to link all thresholds to the Consumer Price Index (CPI) beginning in the gubernatorial election of 1989. Dr. Alexander stated that part of this proposal was very inovative in that no other state, or the federal government, ties the CPI to the contribution limit. He said that various thresholds in the Presidential Public Financing Program are tied to the CPI, but not the contribution limit. Dr. Alexander said that in the year preceding the year of a gubernatorial election, the New Jersey Office of Economic Policy in the Department of Commerce and Economic Development could report on the CPI. Campaigns starting early could operate on this basis. In the year of the election, the thresholds would be adjusted again in accordance with the CPI of January of that year. Dr. Alexander said that campaigns, for example, could ask for additional contributions (in the case of inflation) from individuals who had already given the maximum contribution. Likewise they could return portions of contributions in the case of deflation.

At this point, Vice Chairman Waugh suggested that the limits in the election year only be adjusted for inflation and not deflation. The Commission agreed and directed staff to amend the draft accordingly. A lengthy discussion of incremental thresholds followed but the Commission decided not to change the draft regarding them.

Dr. Alexander then discussed the fiscal impact of the recommendations, saying that while the numbers cannot be precise, it is nevertheless clear that the recommendations will result in the preservation of public funds by the State.

The Commission then instructed staff to proceed with finalizing the first draft pursuant to Mr. Herrmann's timetable and to provide it with a copy of same prior to the next meeting. However, the Commission asked Mr. Herrmann not to do a press release and expressed its desire that the Supreme Court issue its written decision on the joint expenditures issue before the report is published so that its ruling may be included.

9. 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 investigative, enforcement, and personnel matters, the results of which will be made public at their conclusion.

10 Adjournment

On a motion by Vice Chairman Waugh, seconded by Commissioner McNany and a vote of 3-0, the Commission voted to adjourn at 12:55 p.m.

Respectfully submitted,



FREDERICK M. HERRMANN