

NEW JERSEY ELECTION LAW ENFORCEMENT COMMISSION  
PUBLIC SESSION MINUTES  
JULY 16, 1986

Present

Andrew C. Axtell, Chairman  
Alexander P. Waugh, Jr., Vice Chairman  
Haydn Proctor, Member  
Owen McNany, III, Member  
Frederick M. Herrmann, Executive Director  
Jeffrey M. Brindle, Deputy Director  
Gregory E. Nagy, Staff Counsel  
Edward J. Farrell, General Counsel

Chairman Axtell called the meeting to order and announced that pursuant to the the "Open Public Meetings Act," P.L. 1974, c. 231, special notice of the meeting of the Commission had been filed with the Secretary of State's office and distributed to the entire State House Press corps.

The meeting convened at 11:12 a.m. at the Interlaken Municipal Building, Interlaken, New Jersey.

1. Approval of Public Session Minutes of June 4, 1986.

On a motion by Commissioner McNany, seconded by Commissioner Proctor, the Commission approved the public session minutes of June 4, 1986 by a vote of 4-0.

2. Executive Director's Report

a. Administrative - Executive Director Herrmann reported that a new Assistant Staff Counsel, Nedda Gold Massar, was hired. Ms. Massar was hired to replace Margaret McCarthy, who recently resigned.

b. Office Refurnishing - Executive Director Herrmann told the Commissioners that the Administrative Section targeted leftover FY '86 funds for the purpose of replacing worn out furnishings within the Commission's Offices. According to the Executive Director, the public area is being refurnished with new desks, chairs and curtains and the Commissioner's meeting room is being supplied with judges chairs and matching black armchairs.

c. Office of Telecommunications and Information Systems (OTIS) Study - Executive Director Herrmann reported that an OTIS study of wordprocessing needs that he requested was recently completed. He said that as a result of the study, the Commission will obtain four IBM personal computers, which can tie into the main frame Prime computer terminal, two laser printers and an Okidata printer.

d. Employee Materials and Bulletin Board - Executive Director Herrmann announced that the Personnel Unit has devised new employee orientation materials and established a personnel bulletin board. This bulletin board contains information important to State employees.

e. G-83 Report Distributor - The Executive Director reported that most of

the remaining copies of the G-83 report have been sent to libraries throughout the State.

f. ELEC Newsletter - Executive Director Herrmann announced that the first edition ever of an ELEC newsletter will be sent to interested parties within the State as well as to members of COGEL. He said that staff had developed a mailing list of 3,000 individuals and agencies. He said that the newsletter will be useful in terms of Compliance information and in terms of its Public Relations value to the Commission.

g. OLS Audit Request - Executive Director Herrmann reported that he has requested OLS to perform an audit of the Commission's fiscal management procedures. The Executive Director related that an audit of this type has not been performed in years and that it would help the Commission to continue to update its procedures.

h. Budget - Executive Director Herrmann told the Commission that the Legislature increased the Commission's budget by \$60,000 for the purpose of establishing three new positions. The Executive Director stated that this action means that an administrative unit is now a guaranteed reality. He said that ELEC was the only State Government agency to receive money for something other than a new program. Executive Director Herrmann reported that the Commission also received \$20,000 for a new legal software program, and \$20,000 for software maintenance. He said that the FY '87 budget represents the Commission's first million dollar budget.

i. Outside Activities - The Executive Director reported that he would be at the Council of State Government Conference in Parsippany, New Jersey next week and at a Northeastern States Lobbying Conference in Baltimore on the 12th of August.

Executive Director Herrmann announced that as chairman of the regional membership drive for COGEL, his efforts placed the region in the number one spot in terms of recruitment of new members. He also reported that an article on ELEC's reorganization, written by Deputy Director Brindle, was published in a recent COGEL newsletter.

Executive Director Herrmann stated that Eagleton Institute and ELEC will sponsor a panel discussion on the Public Financing law in November.

j. Legislation and Public Financing Report - Executive Director Herrmann reported that Initiative and Referendum will not be on the ballot this year.

The Executive Director told the Commission that the revised Public Financing Report will be sent to Dr. Herbert Alexander for final review within a few days.

k. Future Meetings Dates - Executive Director Herrmann suggested that the Commission hold meetings in Trenton on Tuesday, September 16, 1986, and Tuesday, October 7, 1986. The members of the Commission concurred.

3. Public Financing Legislation (A-2996)

Executive Director Herrmann now referred the Commission to a memorandum

(see attached) written by Staff Counsel Nagy regarding Public Financing Legislation (A-2996) introduced by Assemblyman Richard Zimmer. A discussion of said legislation ensued.

General Counsel Farrell offered the suggestion that the Commission limit itself to providing technical assistance to Mr. Zimmer as to his proposals. He suggested that even if the Commission's report is not completed by the time the Assembly State Government Committee considers his legislation, staff could provide the Assemblyman with a preprinted copy of the report. He said that this would be helpful to Mr. Zimmer and the Legislative Committee considering the proposed legislation.

At this point, Vice Chairman Waugh stated that he had difficulty with several provisions of the bill and that, in addition to providing technical assistance, staff should also point out to the Committee objections the Commission has with certain aspects of the legislation, especially where the bill differs with the Commission's Public Financing Report. Mr. Farrell responded by saying that the Commission historically has taken a neutral stand on legislation of a policy nature. Vice Chairman Waugh stated that in publishing the Public Financing Report, the Commission was in fact making recommendations on policy. He said that certain provisions of the proposed legislation run counter to the Commission's recommendations, and therefore, the staff should point out the Commission's objections.

Staff Counsel Nagy now reviewed his memorandum. With respect to the bill's qualification threshold, the bill would make it much more difficult for candidates to participate in the program. A principle purpose of the Public Finance Program is to provide candidates with the seed money to launch a campaign. That purpose has been hurt by this provision of the proposed legislation because only \$250 of any contribution will be counted towards meeting the \$50,000 threshold. General Counsel Farrell stated that this may be deliberate. He said that there is a lot of argument that there are too many non-viable candidates who qualify for public funds under the existing law, and that this provision may be a way of limiting the field. At this point, Justice Proctor stated that he saw this provision as "keeping the little guy out". He said that only candidates who would have been well established before the primary campaign begins would be able to run. He said that minor candidates would be excluded.

Mr. Nagy reviewed points two and three of his memo, the \$25,000 subsequent qualification threshold provision and the matching ratio provision. He said that with respect to the subsequent qualification threshold, the \$250 individual contribution provision of the Zimmer bill would make it additionally difficult for less well financed campaigns to qualify for further public funds. Also, the Zimmer bill appears to require that a candidate meet the initial \$50,000 threshold and a \$25,000 subsequent threshold before any public money is provided. With respect to the matching ratio, which under the Zimmer bill is 2-1, a maximum \$1,200 matchable contribution would generate only \$500 of matching funds because

of the \$250 limit. Therefore, the flow of public money into a campaign will be significantly slower than under the Commission's recommendations. Regarding point four of his memo, Mr. Nagy said that it is ironic that the Zimmer bill, which severely limits the distribution of public funds, increases the public funds cap above the cap recommended by the Commission in its forthcoming report.

With regard to point five of the memo, Mr. Nagy stated that Assemblyman Zimmer's bill proposes major changes in the treatment of joint advertising expenses that benefit both a gubernatorial and non-gubernatorial candidate. He said that the proposal goes beyond the scope of the recent New Jersey Supreme Court decision concerning allocation of advertising expense to a gubernatorial candidate because it stipulates that not only must the advertisement be coordinated between the gubernatorial and non-gubernatorial candidate, but that the "predominant theme" of the advertisement be an appeal for the gubernatorial candidate.

General Counsel Farrell stated that this proposal is of little concern if, as the Commission has recommended, the expenditure limit is eliminated. He said that the fact that the provision might result in the contribution limit being circumvented is certainly an issue, but that it is not as consequential as the issue of the expenditure limit being circumvented. With respect to the issue of limiting communications between corporations and their stockholders, and unions and their members, to expenditures of \$1,200 (point six), Staff Counsel Nagy said that this proposal changes the concept of permitting such communication without restrictions. General Counsel Farrell added that this provision would have to be narrowly constructed, because the First Amendment protects much of this activity. Regarding point seven, which deals with the requirement that businesses under contract with the State to perform services worth more than \$25,000, report to the Commission not only contributions but also summary details of the work being done, Vice Chairman Waugh said that this provision would be very onerous to administer. In fact, he said it would be an almost impossible task. Executive Director Herrmann said that he too was very concerned about this proposal. He said that it was taken from the State Commission of Investigation (SCI) report, which contained a recommendation for changing "our" law. He said ELEC was not consulted by the SCI, however. The Executive Director said that it would create an added administrative burden and would not provide the public with any more information than is already available. Vice Chairman Waugh agreed. Chairman Axtell, acknowledging the concerns of the Commission, asked the Commissioners their opinion as to what should be done. Vice Chairman Waugh suggested that the Executive Director begin preparing testimony to be circulated to the Commission, which addresses the concerns of the Commission.

The Commission agreed and directed the Executive Director to do so.

4. Advisory Opinion No. 07-1986

The Commission next considered an Advisory Opinion written by Staff Counsel

Nagy in response to a request from Melanie L. Willoughby, President, New Jersey Retail Merchants Association.

The request asked for guidance on the following questions:

1. Are there any restrictions for an association to financially contribute to a state legislator if that association has a small percentage of its members that are restricted from making contributions - i.e., Sears?
2. Are there any limits on the amount of money an association can directly contribute to a candidate?
3. Are there separate requirements for reporting when an association directly contributes to a candidate and when the PAC directly contributes to a candidate?
4. How does an association report member contributions to the association that are specified for inclusion in a collective association contribution to a specific legislator?

The Commission discussed only question number three. Mr. Nagy expressed two concerns with permitting or encouraging a single organization to make political contributions from both its general bank account and from its PAC account. First, the \$2,500 reporting threshold for a continuing political committee could be circumvented if its political contributions were dispersed among two or more accounts, none of which exceeded the \$2,500 threshold. Second, use of the general bank account might result in the reporting of financial transactions that have no relevance to political contributions.

General Counsel Farrell stated that he believed the association and the PAC could each give up to \$10,000 without reporting because they were restricting their activity to making contributions and no other political activity.

Vice Chairman Waugh stated that an association can make a contribution out of its own funds without reporting until it reaches the \$10,000 threshold. He added, however, that the association should know that if ELEC became aware that an association and PAC were dividing funds to avoid reporting, then the Commission would take a different view. He suggested that a regulation be prepared that an association can make a contribution, but that it must notify its PAC of said contribution. The PAC then must report the contribution.

Commissioner McNany suggested that the opinion state that any contributions made by the association must be included in the PAC reports.

On a motion by Vice Chairman Waugh, seconded by Commissioner Proctor, the Commission voted 4-0 to approve the Advisory Opinion with the recommended change in language in response to question three. The Commission also directed the General Counsel to draft a regulation as proposed by Vice Chairman Waugh.

5. Executive Session

On a motion by Vice Chairman Waugh, seconded by Commissioner McNany and a vote of 4-0, the Commission voted to go into executive session to discuss investigative, enforcement, and personnel matters, the result of which will be made public at their conclusion.

6. Adjournment

On a motion by Commissioner McNany, seconded by Vice Chairman Waugh and a vote of 4-0, the Commission voted to adjourn at 12:45 p.m.

Respectfully submitted,



FREDERICK M. HERRMANN

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