

NEW JERSEY ELECTION LAW ENFORCEMENT COMMISSION

PUBLIC SESSION MINUTES

NOVEMBER 19, 1986

Present

Andrew C. Axtell, Chairman
Alexander P. Waugh Jr., Vice Chairman
Haydn Proctor, Member
Owen V. McNany III, Member
Frederick M. Herrmann, Executive Director
Edward J. Farrell, General Counsel
Jeffrey M. Brindle, Deputy Director
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, 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 9:11 a.m., at the New Jersey Election Law Enforcement Commission office, Trenton, New Jersey.

1. Approval of Public Session Minutes of October 21, 1986

Vice Chairman Waugh suggested the public minutes be corrected concerning item (c) in the Executive Directors' Report. He said the vote to approve the budget request for FY '88 should be reflected as 3-0, because he was not present when the vote was taken. Vice Chairman Waugh also said that the vote to adjourn should be reflected as 3-0 for the same reason.

On a motion by Commissioner Proctor, seconded by Vice Chairman Waugh and a vote of 4-0, the Commission approved the public session minutes of October 21, 1986 as corrected.

2. Executive Directors' Report

I. Administration

- a. Executive Director Herrmann presented the 1987 meeting schedule, which the Commission, on a motion by Vice Chairman Waugh, seconded by Commissioner Proctor, approved by a vote of 4-0.
- b. Executive Director Herrmann presented the Commission with a new pay form to be completed on a quarterly basis. He also noted that the hallway was painted and that the new bookkeeper has been on staff for almost a month.
- c. Executive Director Herrmann related to the Commission that staff was exploring the possibility of purchasing an optical scanner for its computer. He said that the Office of Management and Budget in the

Department of Treasury recommended this possibility as an alternative to hiring additional data entry operators. Executive Director Herrmann indicated that staff would be evaluating whether an optical scanner is available which would be suitable to ELEC's operations. He suggested that the concept might be too "Star Warish."

II CONFERENCES

- a. Executive Director Herrmann announced that Evelyn Green and he would be consulting at the League of Municipalities Convention on Thursday, November 20, 1986.
- b. Executive Director Herrmann reported that Vice Chairman Waugh, General Counsel Farrell, Deputy Director Brindle, Staff Counsel Nagy, and he would attend the COGEL Conference in Hartford, Connecticut, during the first week of December. He said that he is on the Public Financing panel, and Mr. Nagy is on the lobbying panel.
- c. Executive Director Herrmann advised the Commission that the Eagleton Institute Public Financing Conference, of which he will serve as a panel member, has been postponed to the Spring of 1987.

III. Legislation

- a. Executive Director Herrmann stated that he testified before the Assembly State Government Committee meeting on October 27, 1986. He said that A-2970 (Martin) was released from committee. The Executive Director reported that A-2970 (Martin) increases the 48-hour reporting threshold to \$500. He said that the bill also increases the independent expenditure threshold for individuals to \$1,000, making this threshold consistent with that of political committees.
- b. Executive Director Herrmann reported that A-2971 (Martin) will be amended to conform to the Senate Committee Substitute for S-1866 (Van Wagner) and S-840 (Russo). He said that these bills contain most of the statutory changes recommended in ELEC's Annual Report for 1985. The Executive Director said that administrative termination would now be at a threshold of \$2,000 instead of \$1,000 and that the threshold for reporting the occupation and employer of a contributor would be set at \$250. He noted that the threshold for reporting only a contributor's name and address remains at \$100. He said that the bills would be released at the next Assembly State Government Committee meeting on November 24, 1986.
- c. Executive Director Herrmann next reported on A-2996 (Zimmer), a Public Financing bill. He said that his efforts in working with the sponsor helped to more closely conform the bill to the Commission's recommendations in its 1986 Report on the Public Financing program. He said that up to \$500 of every individual contribution would now count toward the qualifying threshold, and would be matched on a 2:1 basis. Formerly, the Zimmer bill made it very difficult for candidates to get public money because only up to \$250 of contributions from a limited pool of individuals would be counted towards qualifying and matching. He said that access to money by candidates will now be about the same for both the Zimmer bill and ELEC's recommended program. He said that the Zimmer legislation will make it a bit more difficult for candidates to qualify and

receive public funds, but not much. Executive Director Herrmann indicated that he had also reached a compromise with Assemblyman Zimmer on the State Commission of Investigation (SCI) proposal from its report on the Division of Motor Vehicles in the Department of Law and Public Safety. He said that under the compromise the Department of Treasury would provide a list of State contractors to the Commission on a monthly basis instead of placing the burden to file with the contractors.

General Counsel Edward Farrell asked whether the principals in a corporation would be identified. Executive Director Herrmann responded that in part this problem would be addressed through the Martin, Van Wagner, Russo compromise legislation which requires the identification of a contributors' employer and occupation on contributions amounting to more than \$250.

General Counsel Farrell asked what the Commission's position was on identification of employers. He stated that this requirement might have a chilling effect on political giving. Vice Chairman Waugh stated that the Commission should stake out positions on certain policy questions and saw no problem with expressing a position on this issue, provided it was done with discretion. Commissioner McNany suggested then that the Commission take the position that the identification of employer and occupation should be required on contributions of over \$100 to avoid confusion on the part of filers. He said that this threshold ought to be consistent with the \$100 threshold for identifying the name and address of a contributor. Executive Director Herrmann stated he had unsuccessfully made this point to the Committee. The Commission directed the Executive Director to restate this position to the Committee at its next meeting.

Chairman Axtell asked what would happen in the case of the wife of an employee. He asked whether her contribution would have to name the employer of her husband. Vice Chairman Waugh suggested that in his opinion the courts would have a problem with such a requirement.

General Counsel Farrell stated that he would be concerned about this sort of provision if employer and occupation identification information were required for contributions at lower levels because some people may not want their employers to know that they gave to a particular candidate.

3. Adoption of Surplus Funds Regulations

General Counsel Farrell presented a draft of a letter to Mr. Edward McCool, Executive Director of New Jersey Common Cause, in reply to a letter Mr. McCool sent to the Commission advocating that surplus campaign funds be prohibited from being used by legislators to support their district offices. The Commission, in order to adopt these regulations, is required to describe the issues and points of controversy raised during the public comment period, and must state its reasons for accepting or rejecting any of the comments. Mr. Farrell's letter, which states that the Commission concludes that it is not appropriate for the Commission to provide a regulation on this question, satisfies this requirement. The members of the Commission directed the General Counsel to forward the letter to Mr. McCool at the Common Cause office.

General Counsel Farrell next offered the Commission a draft of an

amendment of the proposed surplus funds regulations as outlined in the minutes of the September 16, 1986 Commission meeting. The amendment 19:25-7.4(c) as drafted read: "The Commission takes no position on the question whether surplus campaign funds may be used for the operation and staffing of legislative offices."

Commissioner Proctor commented that he had concerns about stating in the regulations that the Commission has no opinion on this issue. He asked why the Commission could not just limit itself to the issue of the question being out of its jurisdiction.

Vice Chairman Waugh remarked that by publishing the regulations in their present form, even with the addition of the amendatory language, the Commission would still be subject to questions regarding this issue.

General Counsel Farrell stated that it is a problem because the Commission has no jurisdiction over the question of whether surplus campaign funds can be used to operate legislative offices. Commissioner McNany asked why the Commission could not just "out and out" prohibit this use. He said that by doing this, the Commission would force the issue.

General Counsel Farrell suggested that this course of action was not advisable because it was his considered opinion that the Commission lacked authority in this area.

At this juncture, Deputy Director Brindle suggested that the phrase "has no jurisdiction over" be substituted for the phrase "takes no position on" in the amendatory language. He said that this would clarify the Commission's lack of authority in this area. Staff Counsel Nagy further suggested that language be added to the amendatory statement, which would effectively discourage legislators from using leftover campaign funds for their district offices. He said that this would address Commissioner McNany's concern without directly prohibiting legislators from such use. The added language suggested by Staff Counsel Nagy was, "If a report discloses funds used for a legislative district office, the Commission will forward the information to the Joint Legislative Committee on Ethical Standards."

Vice Chairman Waugh objected because he did not agree that this use of surplus funds should be discouraged.

At this juncture, Vice Chairman Waugh moved the adoption of the surplus funds regulations, including the new subsection N.J.A.C. 19:25-7.4(c) containing the phrase "has no jurisdiction over" substituted for the phrase "takes no position on." Commissioner Proctor seconded this motion. On a vote of 4-0, the Commission adopted the regulations as amended.

Vice Chairman Waugh next suggested that the Executive Director send a letter to legislative leaders to advise them on the Commissions' surplus funds regulations. The Commission instructed the Executive Director to do so at the time the adoption of the regulation is published in the New Jersey Register.

4. Advisory Opinion Request 10-1986

General Counsel Edward Farrell discussed the publication distributed by the Committee for Truth in Government, P. O. Box 103, Grenloch, New Jersey. Counsel Farrell stated that in his opinion this publication is patently political, therefore subjecting this non-profit committee to reporting requirements if its expenditures exceeded \$1,000 during an election. He said that the publication met the two tests guiding the Commission in this area: proximity to the election and nature of the material.

On a motion by Commissioner Proctor, seconded by Commissioner McNany, the Commission voted 4-0 to approve an Advisory Opinion based on General Counsel Farrell's recommendation. It thereby directed General Counsel Farrell to draft the appropriate response to the Committee.

5. Advisory Opinion Request 09-1986

General Counsel Edward Farrell indicated that the request for an advisory opinion from the manager or the Township of Scotch Plains was not so clear cut. He stated that the Commission would have to exercise considerable judgement in determining whether a reporting obligation existed vis-a-vis this Township newsletter.

General Counsel Farrell reported that Scotch Plains Township published this newsletter in the Spring and Fall in each of the last fourteen years. He said that the Commission might be stretching the issue to require reporting, although the publication could be construed to be for political purposes because the Fall issue was distributed the week before election.

General Counsel Farrell suggested that because a complaint had also been lodged by the Democratic Municipal Chairman regarding this issue, the Commission should treat the matter as a complaint and refrain from issuing an advisory opinion. He said that a routine investigation should proceed.

Vice Chairman Waugh recommended that a letter be sent to the Township Manager specifying that a complaint has been lodged with the Commission on this matter, and that therefore, the Commission cannot render an advisory opinion. The letter, he said, should also state that the Commission cannot determine at this time whether a reporting requirement exists. Vice Chairman Waugh made a motion to this effect which was seconded by Commissioner Proctor. On a vote of 4-0, the Commission decided not to render an advisory opinion, to proceed with an investigation, and to direct General Counsel Farrell to inform the Township Manager of the status of his request.

6. 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 and enforcement matters, the result of which will be made public at their conclusion.

7. Adjournment

On a motion by Commissioner Proctor, seconded by Commissioner McNany and a vote of 4-0, the Commission voted to adjourn at 11:15 a.m.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "FM Herrmann".

FREDERICK M. HERRMANN

FMH/jah