

NEW JERSEY ELECTION LAW ENFORCEMENT COMMISSION

PUBLIC SESSION MINUTES

FEBRUARY 18, 1987

Present

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

Chairman Axtell called the meeting to order and announced that pursuant to the "Open Public Meetings Act," L. 1975, 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 9:04 a.m. at the New Jersey Election Law Enforcement Commission office, 28 West State Street, Trenton, New Jersey.

1. Approval of Public Session Minutes of January 30, 1987

On a motion by Vice Chairman Waugh, seconded by Commissioner Proctor and a vote of 4-0, the Commission approved the public session minutes of January 30, 1987.

2. Statement by Mr. Edward McCool, Executive Director, Common Cause of New Jersey

Mr. McCool thanked the Commission for the opportunity to present some concerns of his organization and he read from a prepared statement to the Commissioners. He commented on the absence of press advisories by the Commission in the 1985 Legislative races and inquired about the availability of information from the Commission regarding the 1985 elections. He requested data on surplus campaign funds following the 1985 legislative campaign and expressed the concern of his organization over the Commission's position on the proposed increase in the contribution threshold embodied in A-2970.

Chairman Axtell thanked Mr. McCool for his comments and indicated that he had raised important points. Chairman Axtell explained that the Commission could not give Mr. McCool an immediate answer, to which Mr. McCool responded that he would be delighted to have a response at the next Commission meeting.

Commissioners McNany and Proctor indicated that consideration should be given by the Commission to Mr. McCool's comments. Executive Director Herrmann said that the Commission would provide a response to Mr. McCool's statement at its next meeting.

3. Executive Directors' Report

A. Legislation

Executive Director Herrmann reported that public financing legislation, A-2996 (Zimmer), is currently in the Assembly Appropriations Committee having been released earlier from the Assembly State Government Committee. Executive Director Herrmann said that Governor Kean, in his recent annual message, urged passage of various bills including "reform of our gubernatorial financing laws as suggested by Assemblyman Zimmer." He related a recent statement by Senate President Russo questioning the need for public financing of the gubernatorial primaries. Executive Director Herrmann indicated that Assembly Speaker Hardwick has recently urged tightening of the law making it more difficult to qualify for public funds.

On January 13, 1987, ACR-53 (Zimmer), the initiative and referendum bill, was released by the Senate State Government Committee. On January 22, 1987, it was defeated in the Senate by a vote of 20-11.

Vice Chairman Waugh directed a question to General Counsel Farrell concerning Section 16 of A-2996. He inquired whether Section 16 embodied the New Jersey Supreme Court ruling on the Kean campaign issue. General Counsel Farrell and Staff Counsel Nagy agreed that Section 16 goes beyond the ruling in the Kean campaign case. Vice Chairman Waugh observed that the bill seems to create a loophole by placing some coordinated expenditures with legislative candidates outside of the gubernatorial candidate expenditure limit. General Counsel Farrell responded that any Commission challenge to uncoordinated expenditures between candidates would seem to be precluded. A discussion followed on the proposed predominant theme and coordinated efforts tests contained in the bill. Commissioner Proctor noted that the predominant theme test would be difficult to apply.

B. National and State Activities

Executive Director Herrmann reported that he attended his first Council on Governmental Ethics Laws (COGEL) Steering Committee meeting in Washington, D.C. on the weekend of February 14th during which plans for the September COGEL Conference were made. Dr. Herrmann reported that on February 19th he will be traveling to Providence, Rhode Island, to consult with Governor DiPrete and his staff regarding public financing. He explained that Rhode Island is developing a new Constitution which mandates the passage of legislation to establish a public financing system.

Executive Director Herrmann further reported that he will be speaking to the Election Committee of the New Jersey State Bar Association on March 11, 1987, also on the topic of public financing.

4. Commission Meeting

After a discussion, the Commissioners established March 12, 1987 at 10:00 a.m. for the next Commission meeting which had originally been scheduled for March 17, 1987.

5. Public Disclosure Policies

Staff Counsel Nagy explained that a recent request from the press for release of executive session minutes has prompted a review of our public disclosure policies. General Counsel Farrell expressed approval of the

Commission's current 30-day delay before release of complaints to the public. Staff Counsel Nagy explained that the 30-day period was necessary to accomplish service upon parties and General Counsel Farrell indicated that considerations of fairness to parties were also necessary.

General Counsel Farrell stated that since investigative materials were not required to be filed and therefore were not required to be made public, there was no reason to release investigative materials and no law compelling such release. General Counsel Farrell indicated that the problem arises with non-disclosure of investigations which do not result in complaint actions and he suggested, as did Staff Counsel Nagy, that the Commission pick a time after which it would release executive session minutes. General Counsel Farrell explained that the best approach would be to release the executive session minutes without certain investigative materials. Staff Counsel Nagy suggested that if the Commission receives a request for information concerning a closed investigation that did not warrant complaint action, the Commission can release the relevant portion of its executive session minutes.

Commissioner McNany voiced concern over the brevity of the information regarding an investigative matter which does not result in complaint action. General Counsel Farrell responded that Commission staff should feel free to prepare and present an investigative matter without concern for the release of all materials. Commissioner McNany suggested that the minutes should contain complete summary information. As a result of this discussion, General Counsel Farrell suggested that the Commission staff prepare a sample of the executive session minutes that would be released and that the Commission review the sample at its next meeting.

6. Advisory Opinion Request 02-1987

Casper P. Boehm, Jr., Esq. inquired whether or not a local political party made up of the county committee persons can make expenditures on behalf of primary election candidates. General Counsel Farrell explained that an advisory opinion was issued (AO-32-1981) concluding that the Commission did not have jurisdiction in the matter. Since that opinion, the Reporting Act has been amended to extend civil jurisdiction to the Commission. N.J.S.A. 19:44A-11 prohibits any state, county or municipal committee of any political party from making expenditures on behalf of candidates in a primary election setting. General Counsel Farrell said that although the committee cannot make such expenditures, the same individuals using their own funds and acting in a private capacity can spend on behalf of candidates in a primary election.

On a motion by Vice Chairman Waugh, seconded by Commissioner McNany and a vote of 4-0, the Commission directed General Counsel Farrell to prepare a response as orally outlined by him.

7. Advisory Opinion Request 03-1987

Bradley S. Brewster, Council to the General Assembly of the State of New Jersey, inquired whether a letter written by Lawyers Encouraging Government and Law (LEGAL) which was sent to its membership was a violation of any statute within the Commission's jurisdiction. General Counsel Farrell explained that there was no reporting obligation in this situation and there was no wrongdoing apparent since the letter issued by LEGAL was a correspondence by an organization to its members. Such correspondence is outside the jurisdiction of the Commission. General Counsel Farrell further explained that the Commission

does not issue advisory opinions in situations which appear to involve adversary circumstances and he concluded that it would not be appropriate for the Commission to comment further in this matter.

On a motion by Commissioner Proctor, seconded by Chairman Axtell and a vote of 4-0, the Commission directed General Counsel Farrell to respond accordingly.

8. Advisory Opinion Request 01-1987

Michael L. Redpath, President, Management Systems Associates of Toms River, New Jersey requested clarification of the lobbying reporting requirements for members of a trade association. General Counsel Farrell explained in response that an individual member of an association not acting on his or her own behalf, and acting exclusively through a legislative agent, could designate the agent to file its report. Staff Counsel Nagy suggested that the Commission examine the applicable regulation on designation of legislative agents to be sure that all lobbying activity is mandated to be included within the reporting requirements of the regulation.

On a motion by Vice Chairman Waugh, seconded by Commissioner Proctor and a vote of 4-0, the Commission voted to direct General Counsel Farrell to issue a response as orally outlined by him.

9. Advisory Opinion Request 4-1987

Laurence M. Merlis, President, East Orange General Hospital, requested advice for determining whether or not the hospital and its affiliated corporations can make political contributions. General Counsel Farrell responded that this matter is not within the jurisdiction of the Commission but that it belonged instead within Title 15 and, in addition, concerned tax questions. He indicated that he would correspond with Mr. Merlis to this effect.

On a motion by Commissioner Proctor, seconded by Commissioner McNany and a vote of 4-0, the Commission voted to direct General Counsel Farrell to respond accordingly.

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

11. Identification of Members of the Public

Commissioner McNany inquired whether the Commission has a policy asking the members of the public present attending Commission meetings to identify themselves. General Counsel Farrell agreed with Vice Chairman Waugh who responded that it would be inappropriate to require members of the public to identify themselves. Identification would have a chilling effect on public participation. General Counsel Farrell indicated that normally members of the public identify themselves only when they ask to speak before the Commission.

12. Adjournment

On a motion by Vice Chairman Waugh, seconded by Commissioner Proctor and a vote of 4-0, the Commission voted to adjourn at 10:50 a.m.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "F. M. Herrmann", written in black ink on a light-colored background.

FREDERICK M. HERRMANN, Ph.D.

FMH/jah