

NEW JERSEY ELECTION LAW ENFORCEMENT COMMISSION

PUBLIC SESSION MINUTES

SEPTEMBER 15, 1987

Present

Stanley G. Bedford, Chairman
Owen V. McNany, III, Vice Chairman
Andrew C. Axtell, Commissioner
Alexander P. Waugh, Jr., Commissioner
Frederick M. Herrmann, Ph.D., Executive Director
Edward J. Farrell, General Counsel
Jeffrey M. Brindle, Deputy Director
Gregory E. Nagy, Staff Counsel

Chairman Bedford 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 10:16 a.m. at 28 West State Street, Trenton, New Jersey.

1. Public Hearing on Personal Financial Disclosure Reporting of Fees or Commissions

A verbatim transcript of the public hearing was prepared by Richard A. Merlino & Associates, certified court reporters.

Judge Stanley G. Bedford, Chairman, made a brief opening statement. Chairman Bedford remarked that the proposed amendment to N.J.A.C. 19:25-19.3 deals with the extent to which gubernatorial and legislative candidates, and their spouses and children, must identify the sources of fees and commissions paid to the professional or business entities they own or that employ them.

Chairman Bedford said that the "heart of the suggested amendment" is subsection "c" of the proposed regulatory change. It reads: "Each source within any category of fees or commissions which exceeds \$1000 must be identified by name, except that identification of name and address shall not be required as to any source unless:

- (1) that source totals more than \$10,000 for the year; or
- (2) that source represents more than five percent (5%) of the total receipts from all sources within that category for the year."

He said that this proposal, if enacted, which requires identification of clients, patients, and customers of law firms, dental practices, real estate agencies, etc., when either threshold amount is met, represents a departure from previous Commission policy. Chairman Bedford added that it is the desire of the

Commission to weigh this amendment carefully and consider all of the consequences and ramifications of such an action.

In total, three members of the public, Mr. Gordon MacInnes, a candidate for State Senate in District 25, Mr. Edward McCool, representing Common Cause of New Jersey, and Mr. Brian Kelly, representing the New Jersey Bar Association, provided testimony.

Mr. MacInnes recommended that in terms of lawyer legislators, billings as well as bills paid be included in the personal financial disclosure statement of these candidates. He also recommended that payments from all public bodies to lawyer legislators be reported in actual amounts, whether or not the amount exceeds the threshold amounts as contained in the proposed regulatory change. Finally, Mr. MacInnes suggested that the Commission adopt a separate rule for State Senators who are lawyers, namely that they provide detailed information to the Commission on all cases that they tried before untenured judges. Mr. MacInnes believes that the advice and consent power of the Senate, combined with the unwritten rule of senatorial courtesy, places a lawyer legislator in a potential conflict of interest situation when that senator tries a case before an untenured judge. The inherent conflict of interest situation, according to Mr. MacInnes, would arise if that lawyer-legislator later must vote on the reappointment of the untenured judge before which he had tried a case in law.

Mr. Edward McCool, in his testimony, stated that he believes that it was the intention of the Legislature to require the disclosure of the relationship between a client and a legislator. He suggested, moreover, that instead of changing the threshold for disclosing the source of fees within a category of earned income that exceeds \$1,000 from \$100 to \$10,000, the Commission should consider a threshold of \$2,000. Mr. McCool said that he understood that \$100 is not worth what it was six years ago but that the \$2,000 threshold would take that fact into account and yet provide meaningful disclosure. He suggested that there was no sound basis for increasing the threshold reporting amount to either \$10,000, or 5 percent of the total receipts from all sources from within a category for the year.

Finally, Mr. Brian Kelly testified that the issue for lawyers is not that they do not want to disclose their clients, but rather that there are ethical constraints upon attorneys with respect to identifying their clients. He said that for the Commission to require the identification of clients would possibly discourage lawyers from running for the legislature. He said that lawyers would be faced with the choice of asking for their clients' consent to disclose their identity or of not running for office. Mr. Kelly suggested that under these circumstances, lawyers may be forced into a position of losing clients in order to run for public office, a situation, which in his opinion, is unfair. Mr. Kelly also cited two precedents for the Commission's attention. These are: (1) New Jersey Supreme Court opinion, In re Advisory Opinion No. 544 of the New Jersey Supreme Court Advisory Committee on Professional Ethics 103 N.J. 399; and (2) Advisory Opinion No. 431 of the Advisory Committee on Professional (1986) Ethics.

At this juncture, Chairman Bedford thanked the participants for their commentaries and suggested that the Commissioners take up the issue at the next Commission meeting.

The members of the Commission agreed to consider the testimony and discuss the issue at the next meeting.

Commissioner Waugh asked if State Senator Dorsey's letter of response to the proposed regulation would be put into the record along with a New Jersey Reporter article he had distributed to the Commissioners at the meeting in Interlaken, June 16, 1987. Commissioner Waugh also requested that the Public Session Minutes of January 26, 1983, February 2, 1983 and March 23, 1983 be made part of the public hearing record as well.

Chairman Bedford directed that this material be made part of the record.

2. Approval of Public Session Minutes of July 28, 1987

On a motion by Commissioner Axtell, seconded by Vice Chairman McNany and a vote of 4-0, the Commission approved the Public Session Minutes of July 28, 1987 as written.

3. Executive Directors' Report

A. Public Financing Budget Update

Executive Director Herrmann reported that the FY-89 budget request for public financing administrative costs was raised from \$260,000 to \$362,000. He said that this new figure more accurately reflects the cost for administering the gubernatorial primary. The Executive Director said that the additional money is to insure that there is necessary staffing to administer this program in a time when there may well be a large field of candidates.

Executive Director Herrmann also said that a footnote was added to the budget proposal to allow more funding if needed. He said that this language is necessary because the legislature cannot be expected to appropriate more money in the middle of a campaign, and the number of candidates is unknown and the prime factor for increasing costs. He said that the proposed budgetary language would require that any additional funding be justified administratively. He said that this footnote is a necessary safeguard against the fund running out of money in the middle of the campaign.

B. Recent Hirings

Executive Director Herrmann introduced new hirees: Steve Field, Director of Review and Investigation; Warren Heins, Computer Analyst; Linda Owens and Rachel Herman, Assistant Examiners; and Mark Virgilio and Donna Saczinski, Compliance Officers. Executive Director Herrmann also mentioned that Administrative Assistant Sandy Magee is leaving the Commission.

C. Upcoming Activities

Executive Director Herrmann mentioned the upcoming COGEL Conference to be held September 26-30 in Quebec, Canada. He said that five delegates from ELEC will attend, including Judge Bedford. The director said that Staff Counsel Nagy will participate in an enforcement panel and that he would talk on computer use in regulatory agencies himself.

D. NORCOL Meeting

Executive Director Herrmann reported that he has organized a meeting of the Northeast Conference on Lobbying (NORCOL), which will take place during the COGEL Conference. He said that he is organizing it as Executive Vice Chairperson, as the Chairman will not be attending. Executive Director Herrmann said that he will urge the members to hold a one-day lobbying conference in New Jersey in August, 1988.

E. League of Municipalities Conference

Executive Director Herrmann said that Evelyn Ford, Director of Compliance and Information, and he would again consult at the conference.

F. Voter Slogan Committee

The Executive Director noted that he had been selected by the Secretary of State to be a member of the statewide committee to select a voter registration slogan for the coming year. He said that the winning slogan will be used in New Jersey plus compete for national honors.

G. Appearance before New York Panel

Executive Director Herrmann reported that he has been asked to speak before the Committee on Government Integrity on October 21 in New York City, New York, and on October 23 in Buffalo, New York. He said that his topic will be the need for an independent authority to insure the enforcement of ethics laws.

H. Press releases

Executive Director Herrmann announced the upcoming schedule for press releases. The planned schedule is:

- a. September - analysis of PAC financial activity
- b. October - analysis of legislative campaign financial activity
- c. November - analysis of lobbying activity
- d. Postelection analytical review of financial activity in the legislative elections.

Executive Director Herrmann also stated that staff may prepare a release on the largest contributions in the 1983-85 legislative races.

I. Evaluation Data

Executive Director Herrmann presented the following evaluation data used in the State's budget for ELEC:

	Actual	Target	Jul-Aug
	FY-87	FY-88	FY-88
Investigations	107	100	20
Complaints	660	550	104
Public Assistance Requests	7,276	7,500	925
Total Reports	16,097	18,137	1492
Advisory Opinions	13	20	0

The Executive Director noted the new line in the evaluation data; namely, public assistance requests. He stated that public assistance is a very important part of the Commission's work and it was essential to add this line to reflect the efforts made by staff in this regard. He also noted the fine job done by Staff Counsel Nagy in maintaining the workflow during a period of staff shortage in the Review and Investigation area.

J. Discussion of Issues Before the Legislature Concerning the Financing of Legislative Races

Executive Director Herrmann said that he would like to discuss these major legislative issues in broad terms. Chairman Bedford asked if it would be possible to discuss these issues at the next meeting. Executive Director Herrmann answered in the affirmative.

K. Meeting Schedule

Executive Director Herrmann reported on the meeting schedule for the next three months. The schedule is Tuesday, October 20, 1987; Tuesday, November 17, 1987; and Tuesday, December 15, 1987. He said that the annual Christmas party would be held December 15, 1987.

Chairman Bedford asked the members of the Commission whether it was their opinion that a meeting should be held prior to October 20, 1987 to consider the proposed change in the personal financial disclosure regulations. The Commissioners responded that it was important to do. The Commission decided to hold a meeting on Tuesday, September 22, 1987 at 9:00 a.m. at the law offices of Commissioner Waugh for the purpose of considering the regulatory change.

The Commission also discussed the possibility of holding the October or November meeting in Maplewood, New Jersey.

4. Advisory Opinion 10 - 1987

The Commission discussed an advisory opinion request from Princeton Public Affairs Group, representing the New Jersey Association of HMO's. The request involves the question of whether or not members of the Association can make political contributions if they are subsidiaries of state regulated organizations.

General Counsel Farrell reported that the matter does not come under the jurisdiction of the Commission. He said that as this request is similar to requests received in the past, he has already written to the Attorney General asking for an opinion on the matter.

5. Advisory Opinion 11 - 1987

The Commission discussed an advisory opinion request from Pamela Mandel, Esq., representing the Coalition of Opticians. In her request, Ms. Mandel states that the Association has set up a PAC which will be funded through a pre-existing buying group. Ms. Mandel asks whether it is sufficient to provide the buying group operator's name on the reporting form or whether the members of the buying group should be identified on the report. She states that if necessary, she could provide a printout of the members in the buying group, and the amount each member contributed to the PAC.

Commissioner Waugh said that the question is, "what is the reporting obligation of the members." He indicated that he felt that it would not be enough to simply list the buying group as the contributor. He said that, in his opinion, the individual members should be listed.

Staff Counsel Nagy said that this position would be consistent with the alternative presented by Ms. Mandel whereby the PAC would provide a printout of the contributions from its members.

Chairman Bedford suggested that General Counsel Farrell draft a response to Ms. Mandel stipulating that the Opticians PAC should list individual member contributors.

Vice Chairman McNany introduced a motion directing General Counsel Farrell to draft a response calling on the Opticians PAC to identify their member contributors.

On a motion by Vice Chairman McNany, seconded by Commissioner Axtell and a vote of 4-0, the Commission approved the motion directing the General Counsel to prepare a draft response for review at the next meeting.

6. Executive Session

Chairman Bedford called a ten minute recess, after which the Commission would move into Executive Session.

7. Adjournment

On a motion by Commissioner Waugh, seconded by Commissioner Axtell and a vote of 4-0, the Commission voted to adjourn at 12:20 p.m.

Respectfully Submitted,



FREDERICK M. HERRMANN, Ph.D.