



State of New Jersey

ELECTION LAW ENFORCEMENT COMMISSION

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PUBLIC SESSION MINUTES

AUGUST 16, 1988

All of the Commission members and senior staff were present.

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 10:10 a.m. at the Commission's offices at 28 West State Street, Trenton, New Jersey.

1. Approval of Public Session Minutes of July 19, 1988

On a motion by Commissioner Axtell, seconded by Commissioner Linett, and a vote of 4-0, the Commission voted to approve the July 19, 1988 Public Session Minutes as amended. The Commission substituted the word "Register" for "Reporter" in the last sentence of page number one. The sentence now reads: "Chairman Bedford convened the public hearing on the proposed

amendments to the regulations concerning public financing of gubernatorial primary elections which were published in the June 20, 1988 edition of the New Jersey Register.

2. Executive Director's Report

A. Approval of Changes to ELEC Code of Ethics

Executive Director Herrmann reported that changes to the Commission's Code of Ethics, which permit spouses of Commissioners and of staff to contribute to candidates, and which permit Commissioners to contribute to federal candidates, were approved by the Executive Commission on Ethical Standards.

Executive Director Herrmann said that he attended and participated in the July 20, 1988 meeting of the Executive Commission on Ethical Standards at which time the changes were approved.

B. Personnel

Executive Director Herrmann introduced Ms. Judith Chamberlain, who has been hired as the new Assistant Legal Director. He also recognized Ms. Nedda Gold Massar, who has become the Director of Public Financing, and Ms. Donna Saczynski, the new Assistant Director of Public Financing.

C. Staff Activities

Executive Director Herrmann said that he expects the Commission to be visited by Ms. Nicole Gordon, the Executive Director of the New York City Campaign Finance Board, in early September.

He added that Professor Dr. Karl-Heinz Nassmacher, from the Institute of Comparative Politics, University of Oldenburg, Federal Republic of Germany, will visit the Commission in late August. Executive Director Herrmann said that Dr. Nassmacher is doing a research project on public funding.

Executive Director Herrmann said that Deputy Director Brindle will attend the 10th Anniversary Symposium of the Massachusetts State Ethics Commission in Boston, Massachusetts, on September 28, 1988.

Executive Director Herrmann said that he will be attending a COGEL meeting in Albany, New York, to recruit Open Public Records Officials to join the organization. He said that the meeting is on September 28, 1988, and is paid for by COGEL.

D. COGEL

Executive Director Herrmann announced new members who joined COGEL. They are: Professor Frank Sorauf of the University of Minnesota, the Speaker of the Massachusetts House of Representatives, a state judge from Illinois, Shell Oil, Connoco Oil, Texas Instruments, Annheuser-Busch, Common Cause of West Virginia and New York, and two private Ethics Institutes.

E. Prince Edward Island Conference of Canadian Electoral Officials
25-29 July, 1988

Executive Director Herrmann said that the conference provided a very useful exchange of information. He said that he returned with a compendium of computerization, which he turned over to the Commission's System Administrator, Warren Heins. He said that included in the compendium was information on desk top publishing.

Executive Director Herrmann reported that he also obtained a pamphlet containing Canadian election terminology. He said that he hopes to get COGEL to publish a similar pamphlet for the United States.

Executive Director Herrmann said that he recruited the three Canadian Provinces currently not in COGEL for membership in the organization.

He said that Jean-Marc Hamel was made a lifetime member of COGEL. Executive Director Herrmann said that he spoke to John Surina, Staff Director of the Federal Election Commission (FEC), and various Canadian officials at length.

F. NORCOL Conference

Executive Director Herrmann reported for the record that the NORCOL Conference on August 8, 1988 at the Nassau Inn, Princeton, New Jersey, was a huge success. He said that approximately 75 people attended the conference and that the Associated Press did a story on it. Executive Director Herrmann said that the Conference received much praise from everyone. He thanked Chairman Bedford for his welcoming remarks and for his participation in the program.

G. Future Meetings

Executive Director Herrmann stated that there will be meetings of the Commission on September 20, 1988 at 10:00 a.m. in Trenton, and October 18, 1988 at 11:00 a.m. at Glassboro State College, Glassboro, New Jersey.

H. Information Sessions

Executive Director Herrmann announced that Fall Information Sessions will be held as follows: September 7, Morristown; September 14, Woodbury; September 15, Mount Holly; September 22, Hackensack; and September 27, Freehold.

3. ELEC White Paper Regarding Contribution Limits and Prohibited Contributions

Chairman Bedford recognized Assemblyman William Schluter.

Assemblyman Schluter said that he did not intend to address the issues of contribution limits and prohibited contributions directly, but rather intended to address the more general question of the Commission taking positions on issues.

Assemblyman Schluter said that, in the past, the Commission has taken positions when it was in its best interest to do so. He said that traditionally, the Commission has been above politics. It has a non-partisan tradition. He said that he believes that the people look to the Commission to take positions on issues and would urge the Commission to begin doing so.

Assemblyman Schluter said that, in the past, the Commission took positions on issues, such as against the expenditure limit in the public financing law and for the elimination of the loophole in the lobbying law. He said that the Commission has urged that the regulation of lobbying be brought under its jurisdiction.

Assemblyman Schluter said that the Commission cannot help but express viewpoints. He said that if the Legislature does not accept the Commission's views, so be it.

Assemblyman Schluter said that he believes, and always has believed, that the Commission should serve as a policy resource. He said that the Commission should take a position on important issues.

Assemblyman Schluter said that there are five issues on which he would like to see the Commission take a position. He said that the issues go to the heart of reforming the system.

Assemblyman Schluter said that the first major policy question involved the issue of the lobbying loophole. He said that on this issue the Commission has set forth its views.

Assemblyman Schluter said, however, that the Commission needs to address the issue of regulating PACs. He said that PACs are playing an increasing role in State elections and that guidelines are needed to control their influence, spelling out the rules by which they must conform.

Assemblymen Schluter said that the Commission should address the issue of prohibiting corporate and union contributions. He said that, in his opinion, the law should conform to the federal model.

Chairman Bedford asked: Are you talking about prohibiting these contributions where public money is available?

Assemblyman Schluter answered in the negative. He said that whether public money is available or not, there are limits on federal candidates. He said that in New Jersey there are no limits on contributors, except for on regulated industries.

Assemblyman Schluter continued that the fourth area of concern that ought to be addressed by the Commission involves the transfer of money between candidates. He said that this activity has become an art form. He said that inter-candidate transfers should be banned.

Assemblyman Schluter said that the surplus funds issue should be closely regulated. He said that personal use should be prohibited.

Assemblyman Schluter said that there are pro's and con's to using these funds to support district offices. He said that this issue requires more study. He said, however, that the district use issue is a very important one and that the Commission should speak out on it.

Executive Director Herrmann said that the Commission adopted a regulation on surplus funds use last year. He said also that bills by Assemblymen Schluter and Martin address this question, requiring continuous reporting.

Assemblyman Schluter said that the final issue the Commission should address is that of contribution limits. He said that five newspapers have editorialized in favor of contribution limits. He said that these newspapers have supported the approach taken in his legislation limiting contributions.

Assemblyman Schluter said contributions are the key to eliminating excesses. He said that federal candidates can only receive \$1,000, whereas the people running in New Jersey for mayor, freeholder or the Legislature, for example, can receive an unlimited amount in contributions. He said

that in New Jersey, the sky's the limit. He said that the law relative to candidates in New Jersey should "get in line" with that governing gubernatorial elections and federal elections.

Commissioner Linett said that he wanted to discuss the role of the Commission in making policy. He asked what Assemblyman Schluter meant when he said that if the Commission takes a stand on an issue, and the Legislature does not accept it, "so be it." "Does this mean that the Commission should be confrontational," he asked.

Assemblyman Schluter said that he did not mean to suggest that the Commission be confrontational. He said that the Commission has not been in the past.

Assemblyman Schluter said that he was merely suggesting that the Commission take a position vis-a-vis the electoral finance process.

Commissioner Linett asked, "Where do you draw the line?"

Assemblyman Schluter said that it may mean that the Commission does not lobby as some other agencies do. He said, however, that the Commission can make recommendations.

Chairman Bedford said that the Commission would want to know how receptive the Legislature would be. The question, he said, is how far the Commission should go.

Commissioner Linett asked, "Do you think the Commission should take a position on contribution limits?"

Assemblyman Schluter said that if the Legislature wants to reduce the expenditures arms race, it can be done through contribution limits. He said that the high cost of campaigning thwarts public confidence in the process.

Commissioner Linett again asked, "But do you think the Commission should take a position on this issue?"

Assemblyman Schluter said that he thought the Commission should do so. He said that it could do so in a way that did not put it at direct odds with the Legislature.

Chairman Bedford said that he believed the Commission should take a position, but should not take the lead on an issue. He said the Commission should contribute its expertise.

Executive Director Herrmann said the Commission has taken positions in the past. Holding up the recent Annual Report of the Commission, Executive Director Herrmann pointed to numerous recommendations made by the Commission. He said, however, that what he understands Assemblyman Schluter to be suggesting is that the Commission should go further in certain areas.

Assemblyman Schluter said that the Commission has done a marvelous job on the gubernatorial end. He said that he would like to see other levels of the electoral process brought up to that standard.

Chairman Bedford thanked Assemblyman Schluter for his comments. He said that, with respect to the ELEC white paper, his thinking is that it be released in order to get people thinking about this issue. Chairman Bedford said that, following this exercise, the Commission might take a position as Assemblyman Schluter suggests.

Chairman Bedford said that the ELEC white paper represented an excellent piece of work. He said that the paper may give "lead-ins" on how to limit contributions. He said that the Commission should take a bit more time to familiarize itself with the information contained in it and consider it at the next meeting.

Executive Director Herrmann said that the ELEC white paper is the result of a staff effort. He said that Deputy Director Brindle wrote the first draft and Legal Director Nagy and he did the editing. Executive Director Herrmann said that he also wrote a part of the text, adding to the original draft. He said the Compliance and Information Director Evelyn Ford also had input into the project.

The Commission carried consideration of the ELEC white paper over until the September meeting.

4. Amendments to Public Financing Regulations

Executive Director Herrmann reported that the Commission received additional letters on the amendment proposals since the Commission held its public hearing on August 11, 1988. The letters were submitted by Assemblyman Thomas P. Foy, General Counsel, N.J. AFL-CIO PAC, and Alan C. Staller, Esq. Copies of these letters, the transcript of the August 11, 1988 hearing and staff's draft summary of the comments and agency responses were circulated by express mail to the Commissioners prior to the meeting.

Executive Director Herrmann explained for the record that on page 34 of the public hearing transcript of August 11, 1988 is a reference to an "off the record discussion." He explained that the discussion was "off the record" only in the sense that the court reporter stopped recording the discussion at that juncture. Executive Director Herrmann said the discussion was open to the public and three journalists were present during the discussion. The discussion involved the Commission instructing staff to draft changes to the "testing-the-waters" proposal.

Discussion, and final action, pursuant to the proposed amendments to the public financing regulations for the gubernatorial primary elections followed in the following manner:

1. N.J.A.C. 19:25-16.4 - Appointment of Treasurers and Depositories

This amendment involved a technical change to the existing regulations. On a motion by Commissioner Linett, seconded by Chairman Bedford and a vote of 4-0 the Commission adopted the amendment to N.J.A.C. 19:25-16.4.

2. N.J. 19:25-16.5 - Pre-candidacy Activity

Chairman Bedford said that it seemed to be the consensus of the Commission that the Commission would be overreaching its authority

authority by requiring quarterly reporting of pre-candidacy activity. He said that the limit of our power was to require a notice of depository.

By way of further clarification, Vice Chairman McNany added the amendatory language contained in N.J.A.C. 19:25-16.5(a) reading "and the individual, or committee, controlling that depository shall file quarterly reports with the Commission in the manner and on the dates set forth in N.J.A.C. 19:25-10.1" would be dropped. He said that the amendatory language in N.J.A.C. 19:25-16.5(b), "An individual, or a committee on that individual's behalf, shall file with the Commission a notice containing the name, address and account number of the depository established pursuant to (a) above not later than 10 days after the receipt of funds for the purpose of determining whether that individual should become a candidate," would be retained.

Commissioner Linett asked if the filing requirement did not duplicate N.J.A.C. 19:25-16.4.

Legal Director Nagy said that it did not because section 16.4 pertained to actual candidates whereas section 16.5 pertains to pre-candidacy activity.

On a motion by Commissioner Linett, seconded by Commissioner Axtell, and a vote of 4-0, the Commission adopted the amendments to N.J.A.C. 19:25-16.5, except that it withdrew the quarterly reporting requirement.

3. N.J.A.C. 19:25-16.6(c)

Commissioner Linett said that following the public hearing on August 11, 1988, the Commission appeared to favor withdrawing the proposed regulatory amendment which prohibits children under the age of 18 from contributing to gubernatorial candidates. He said that though he voted initially to approve the proposal for further consideration, he has always harbored doubts about its constitutionality. He said that, at this point, he favored withdrawing the amendment and reverting to the existing regulation, which permits contributions by children under 18.

Commissioner Linett stated in the section of the Summary of Public Comments and Agency Responses which deals with this proposal, language should be added to the effect that contributions by children under the age of 18 should not be attributed to the parents.

On a motion by Commissioner Axtell, seconded by Commissioner Linett, and a vote of 4-0, the Commission voted to withdraw the proposed amendment.

4. N.J.A.C. 19:25-16.11(a)

On a motion by Vice Chairman McNany, seconded by Commissioner Axtell, and a vote of 4-0, the Commission voted to approve the regulatory amendment which clarifies that a contribution can only be matched with public dollars if it has been received by the candidate at a time when that candidate was seeking or had sought nomination for election for governor, or

had been received and deposited pursuant to N.J.A.C. 19:25-16.5 (Pre-candidacy activity) for the purpose of determining whether an individual should become a candidate for governor.

5. N.J.A.C. 19:25-16.11(f)

On a motion by Commissioner Linett, seconded by Vice Chairman McNany, and a vote of 4-0, the Commission adopted this proposed amendment which makes eligible for match direct contributions to a gubernatorial candidate from a contributing member of a political committee, which has also given to that candidate, provided that the political committee is a bona fide political entity with at least 15 contributing members. This amendment is designed to prevent groups from forming for the purpose of circumventing the contribution limit.

6. N.J.A.C. 19:25-16.14

Legal Director Nagy stated that the staff recommendation is to adopt this amendment to the regulations, which would establish the purchase price paid to a candidate for a fund raising event as the amount of the contribution made to such candidate.

Commissioner Linett, by way of clarification, asked how the contribution limit of \$800 would be applied to a situation whereby a celebrity donates his or her services for a concert. He said that under normal circumstances, a celebrity such as Frank Sinatra, for example, would command a substantial fee for a concert performance. He said that this fee would certainly exceed the \$800 contribution limit.

Legal Director Nagy said an entertainer probably can donate personal services that have substantial value without violating the contribution limit; see N.J.S.A. 19:44A-3(f) defining "paid personal services." However, the purpose of this proposed regulation is to prevent a purchaser of tickets to such an event from purchasing more than \$800 and thereby circumventing the contribution limit. He said that the regulation would deem the amount of the purchase price as the contribution to the campaign and prevent further purchases from the same individual once the contributor has reached the \$800 limit.

At this juncture, Counsel Farrell offered new language which he said would simplify the proposed amendatory language but maintain the principle that the purchase price of a ticket to a fund-raising event shall be considered to be the contribution made to the campaign. The new language, which is a technical change, inserts "dinner" in part (b). It reads:

A contribution in the form of a purchase price paid for admission to a dinner or testimonial affair as defined in N.J.A.C. 19:25-1.7 shall be a contribution eligible for match and for purposes of the \$800.00 limitation.

Also language reading:

or in the form of the purchase price paid for the admission to any activity that primarily confers private benefits to the contributor in the form of entertainment (such as a concert, motion picture or theatrical performance)

would be added to part (c).

The new part (c) now reads:

The purchase price paid to a candidate for a fund-raising event, lottery, raffle or admission to any activity that primarily confers private benefits to the contributor in the form of entertainment (such as a concert, motion picture or theatrical performance) shall be deemed the amount of the contribution made to such candidate. The tickets for such an event or lottery and the promotional materials shall state that the purchase price represents a political contribution to the candidate.

On a motion by Commissioner Axtell, seconded by Commissioner Linett, and a vote of 4-0, the Commission adopted the amendment containing the new language.

7. N.J.A.C. 19:25-16.18(i)

On a motion by Commissioner Linett, seconded by Commissioner Axtell, and a vote of 4-0, the Commission adopted the amendment requiring submissions for public funds to not be handwritten.

8. N.J.A.C. 19:25-16.20

A new draft of N.J.A.C. 19:25-16.20 was circulated.

Chairman Bedford said that the Commission changed part (b) of the proposal slightly to require a disbursement report from publicly funded candidates each time they make a submission for public funds as opposed to requiring such a report every other Monday following the fourth Monday following January 1.

Commissioner Linett, with respect to part (c) of the draft circulated, said that he was not enthusiastic about the \$5,000 threshold contained therein. He said that candidates should simply report for what media consultants have spent money or for what, in good faith, they plan to spend it. He said that additionally, the word "categorizing" should be substituted for "itemizing." He said that the Commission is interested in the type of media being bought, not in itemizing every bill. Part (c), he suggested, should read:

Any report filed pursuant to this section disclosing an expenditure for the purpose of purchase of media consultant services or other services shall be accompanied by a certification from the payee categorizing media advertising purchases or other services provided, and shall certify such funds are or will be expended in compliance with N.J.A.C. 19:35-16.25.

The amended proposal also contained new language specifying that the report would not be made public.

On a motion by Vice Chairman McNany, seconded by Commissioner Axtell, and a vote of 4-0, the Commission adopted the amendment changing the word "itemizing" to "categorizing" in part (c), retaining the \$5,000 threshold contained in the draft circulated, and adding part (d) which specifies that the reports will not be made public.

Legal Director Nagy noted that he believed that the proposal not to make these reports public is a good one. He said that making them public would discriminate against publicly financed candidates as opposed to non-publicly financed candidates by providing non-publicly financed candidates with insight into the strategy decisions of opposing campaigns. He noted that this proposal was made by members of the public at the recent public hearing.

9. N.J.A.C. 19:25-16.27

On a motion by Commissioner Linett, seconded by Vice Chairman McNany, and a vote of 4-0, the Commission adopted the amendment exempting election night celebration or event expenses incurred pursuant to proposed N.J.A.C. 19:25-16.33(c) from the expenditure limit.

10. N.J.A.C. 19:25-16.33(b) and (c)

On a motion by Vice Chairman McNany, seconded by Commissioner Axtell, and a vote of 4-0, the Commission adopted the amendments which limit the expenditures of publicly financed candidates after the date of the election to paying off prior debts and paying the costs of closing the campaign. By this motion, the Commission also adopted language which clarifies that an election night celebration or event would be considered a necessary and reasonable cost of closing the campaign.

11. N.J.A.C. 19:25-16.10(c)

Chairman Bedford noted that the Commission entertained considerable testimony on this proposal. He said that public comment suggested that the proposal was unrealistic and represented a lack of understanding as to how unions are organized. Citing testimony from Assemblyman Alan Karcher, who noted that, despite the fact that most local unions could be taken over by the parent union for certain reasons, local unions act independently with respect to contributions to candidates, Chairman Bedford said that it was the consensus of the Commission that the proposed regulation was unrealistic about the structure of unions. Chairman Bedford suggested that the proposal as written would impact negatively on the rights of working men and women to participate in the political process.

Commissioner Linett recommended that the section of part (c) dealing with labor unions be withdrawn.

Counsel Farrell suggested that a specific phrase about local money be added to (c). He said that this would add a degree of specificity to the regulation.

Legal Director Nagy asked whether he was proposing to revert to the existing regulation with language added referring to local source of funds. Legal Director Nagy noted that the phrase "source and control of funds" is contained in the existing text of the regulation.

Chairman Bedford asked for a motion to withdraw the proposed regulation as published. He said that the Commission would be withdrawing N.J.A.C. 19:25-16.10(c) and N.J.A.C. 19:25-16.11(e), which deals with the requirement that union contributors and corporate contributors certify that they are not in violation of the anti-proliferation restrictions contained in N.J.A.C. 19:25-16.10(c).

Executive Director Herrmann said that the "degree of control" language in the existing regulations is the test for determining who controls the fund from which contributions derive. He said that this language provides the Commission with the authority to determine the source of funds. He suggested that this may be as far as the Commission feels it may want to go.

On a motion by Commissioner Axtell, seconded by Vice Chairman McNany, and a vote of 4-0, the Commission withdrew N.J.A.C. 19:25-16.10(c) and 19:25-16.11(e). It instructed staff to consider a new proposal for the September, 1988 meeting.

Commissioner Linett added that he thought the public comments were most helpful to the Commission in deciding the issues. He said that they were most appreciated and showed that the process does work.

Legal Director Nagy expressed his appreciation to Public Financing Director Nedda Massar for her assistance in preparing the draft summary of public comments and agency responses for distribution by August 12th.

5. Advisory Opinion No. 8-1988

Advisory Opinion No. 8-1988 involves the question of whether funds from a New Jersey elected official's campaign account can be used to pay the costs of the elected official's attendance at a national political nominating convention as a delegate. The draft opinion prepared by Legal Director Nagy advises that nothing contained in "The New Jersey Campaign Contributions and Expenditures Reporting Act," N.J.S.A. 19:44A-1 et seq. precludes the use of a campaign account for the reasonable expenses in attending the convention. The opinion also advises that Mr. Richard L. Wooster, the individual making the request, consult with the Federal Election Commission (FEC) concerning federal restrictions on the source of funds used to cover delegate expenses.

Commissioner Linett indicated that Legal Director Nagy was correct in his opinion but that he, personally, has a problem with campaign money being used in this way.

On a motion by Commissioner Linett, seconded by Commissioner Axtell, and a vote of 4-0, the Commission approved the Advisory Opinion as drafted.

6. Advisory Opinion No. 9-1988

This Advisory Opinion, requested by Assemblyman Walter M. D. Kern, Jr., involves the question of whether or not the Assemblyman can make a disbursement from his campaign funds to the Bergen County Republican Organization for the purpose of paying a portion of a salary of a political employee.

The draft opinion prepared by Legal Director Nagy states that use of campaign funds in this way is permissible pursuant to the surplus funds regulation, N.J.A.C. 19:25-7.4. The opinion also advises that Assemblyman Kern file a supplemental 60-day postelection report to disclose the disbursement and adjust the closing balance in his 1987 campaign account because the Assemblyman filed a final campaign report for general election 1987 on January 21, 1988.

On a motion by Vice Chairman McNany, seconded by Commissioner Linett, and a vote of 4-0, the Commission approved the Advisory Opinion as amended. At the suggestion of Commissioner Linett, the Commission deleted the word "county" from the phrase "county political committee," which appeared in the second sentence of the first paragraph of the Advisory Opinion.

The sentence now reads:

You have asked whether you may make a disbursement from your campaign funds to the Bergen County Republican Organization for the purpose of paying a portion of a salary of a political employee.

7. Executive Session

On a motion by Vice Chairman McNany, seconded by Commissioner Axtell, 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.

8. Adjournment

On a motion by Commissioner Axtell, seconded by Vice Chairman McNany,
and a vote of 4-0, the Commission voted to adjourn at 12:50 p.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/ck