



State of New Jersey

**ELECTION LAW ENFORCEMENT COMMISSION**

NATIONAL STATE BANK BLDG., SUITE 1215  
28 W. STATE STREET, CN-185  
TRENTON, NEW JERSEY 08625-0185  
(609) 292-8700

STANLEY G. BEDFORD  
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OWEN V. MCNANY, III  
VICE CHAIRMAN

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COMMISSIONER

DAVID LINETT  
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DEPUTY DIRECTOR

GREGORY E. NAGY  
LEGAL DIRECTOR

EDWARD J. FARRELL  
COUNSEL

PUBLIC SESSION MINUTES

SEPTEMBER 20, 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 10:05 a.m. at the Commission's offices at 28 West State Street, Trenton, New Jersey.

1. Approval of Public Session Minutes of August 16, 1988

On a motion by Commissioner Linett, seconded by Commissioner Axtell, and a vote of 4-0, the Commission approved the Public Session Minutes of August 16, 1988.

2. Executive Director's Report

A. Personnel

Executive Director Herrmann reported that the Commission has hired two new employees to fill the positions of Assistant Compliance Officer and Assistant Examiner. Executive Director Herrmann said that Ms. Virginia Wilks, a past student intern with the Commission, has been hired as an Assistant Compliance Officer and that Ms. Susan Carr has been hired as an Assistant Examiner. He said that Ms. Carr has a statistical background which will prove helpful not only in reviewing reports but with the Commission's research efforts.

B. ELEC Visitors

Executive Director Herrmann said that Professor Doctor Karl-Heinz Nassmacher from the Institute of Comparative Politics, University of Oldenburg, Federal Republic of Germany met with Deputy Director Brindle and Director of Public Financing Nedda Massar in August. He said that the meeting focused on New Jersey's Public Financing program. Executive Director Herrmann said that Professor Doctor Nassmacher has an article in Dr. Herbert Alexander's latest book on international campaign finance.

Executive Director Herrmann said that Ms. Nicole Gordon, Executive Director of the New York City Campaign Finance Board, and Mr. Steven Bogart, Deputy Director, visited Trenton on September 14, 1988 to observe the Commission's operations.

Executive Director Herrmann said that Mr. Billie King, and three others from the Washington, D.C., Office of Campaign Finance, will visit the Commission on September 21, 1988. Mr. King is General Counsel of the Washington D.C. office. He said that the Washington D.C. contingent had heard of the fine international reputation of the Commission and wanted to observe its operations first-hand.

C. Staff Activities

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

Executive Director Herrmann said that he would be in Albany, New York on the same day. He said that he would be attending a COGEL meeting to recruit Open Public Records officials for the organization.

D. COGEL Conference

Executive Director Herrmann said that the COGEL Conference in Orlando, Florida will take place from Sunday to Wednesday, December 4 - 7. He said that on Sunday at 6:00 p.m. there will be a reception for all attendees. Executive Director Herrmann said that he needed to know the plans of the Commissioners concerning the conference. He said that flight plans and hotel accommodations had to be arranged. Executive Director Herrmann said that the conference will be held at the Hyatt in Orlando.

Executive Director Herrmann said that highlights of the Conference include: an appearance by the Deputy U.S. Attorney General, two model law sessions, legislation/litigation update sessions, breakfast table topic sessions, and a Luau and Awards Ceremony. He added that former ELEC Chairman and Federal Election Commission (FEC) Chairman Frank Reiche is writing a history of COGEL.

E. Other COGEL News

Executive Director Herrmann said that the COGEL newsletter subscriptions have been purchased for the Commissioners.

F. Future Meetings

Executive Director Herrmann said that the next meeting of the Commission will be at the Glassboro State College Student Center on October 18, 1988 at 11:00 a.m. He said that staff has contacted the school paper, the Political Science Department, and the Political Science Club of the College. He said that local media will be contacted also.

Commissioner Linett suggested that the White Paper be sent to the Political Science Club and that the county chairmen of the political parties in Gloucester County be contacted.

G. Contribution Limit Legislation

Executive Director Herrmann said that two bills, A-2581 (Martin) and A-2529 (Schluter), which contain contribution limits, are posted for discussion on Thursday, September 22, 1988 before the Assembly State Government Committee.

Executive Director Herrmann said that both bills establish a complex set of contribution limits. He said that staff recommends that, as part of the discussion on the white paper, the Commission

adopt a position in support of the concept of contribution limits. Executive Director Herrmann said that with respect to the different limits contained in the bills in question, both represent acceptable variations after certain technical amendments are made.

Executive Director Herrmann said that the staff further recommends that the Commission support a ban on all corporate and union contributions, except from PACs formed by employees or members of these entities. He said that as shown in the white paper, there is no sense in singling out certain corporations for the ban. Unlike in 1911, he said, when the New Jersey ban on corporate giving by regulated industries was enacted, all corporations are highly regulated today. Executive Director Herrmann said that campaigns would be able to raise adequate sums of money because PACs could be formed.

Executive Director Herrmann said that the third staff recommendation is that the Commission be granted an adequate appropriation to enforce these changes in the law.

Chairman Bedford said that the \$500 contribution limit contained in the Schluter bill seemed to be too low.

Executive Director Herrmann said that, as mentioned in the white paper, it is a concern of the staff that contribution limits not be set too low. He said, however, that with some technical amendments, both the Schluter and Martin bills are acceptable variations.

Chairman Bedford continued: "Provided contribution limits are imposed, is it necessary to prohibit corporate and union contributions?"

Executive Director Herrmann said that it still would be important to ban these contributions because disclosure of information is so important and the non-uniformity of reporting these contributions makes it difficult to disclose what is going on. He said that it is often difficult to figure out who is giving what. For example, he said, if some corporations make contributions directly, and also through their PACs, it is extremely difficult for staff to analyze from where all of the contributions derive. Simply reporting all PAC contributions is only part of the special interest story since corporations themselves do not have a filing obligation. Requiring all money spent to go through PACs will give the public a complete picture. Moreover, if PACs are required to register, the Commission will be able to curtail the proliferation of subsidiary contributions that would evade the contribution limit.

Chairman Bedford asked whether either the Martin bill or the Schluter bill contain a provision banning corporate and union contributions.

Executive Director Herrmann said that the provision is in the Schluter bill but not the Martin bill. Executive Director Herrmann said that there is much support for this concept.

Vice Chairman McNany asked: "What is the cycle on contribution limits contained in the Martin bill?"

Executive Director Herrmann said that this was one of the changes that the staff would like to make in the bill. He said that the language should be tightened. Executive Director Herrmann said that most states have a limit for the primary and a limit for the general election. Executive Director Herrmann said that the Martin bill allows cumulative annual contributions in the off-years before a primary.

Chairman Bedford asked if the contribution limit for other races should be the same as the contribution limit for governor.

Executive Director Herrmann said that under the concept envisioned by the Commission, there would be a two-tier system. He said that gubernatorial contribution limits would be lower because public financing is available to candidates and that it is easier for candidates running for this only statewide office to raise funds than it is for legislative candidates.

Chairman Bedford asked if there was an overall cap on the total amount people can give to all candidates. He asked if either bill contained this provision.

Executive Director Herrmann said that the Schluter bill does.

Vice Chairman McNany asked if the Commission had any statistics regarding contribution levels in previous elections.

Executive Director Herrmann said that the white paper contained pertinent statistics.

Chairman Bedford asked whether or not the bills placed limits on contributing to political parties.

Executive Director Herrmann said that the Martin bill contains no political party restrictions. He said, however, that the Schluter bill does contain limits on party-related activity. He said that the

Schluter bill limits are less stringent for contributions to parties than to other entities. He said the limits on the contributions that parties can make to candidates are also higher than what other contributors can give to candidates.

Executive Director Herrmann said that both bills are designed to help political parties.

Commissioner Axtell asked how decisions are made by PACs as to which candidate to contribute.

Executive Director Herrmann said that it varies from PAC to PAC, but that usually a governing board decides. Executive Director Herrmann said that in the context of the discussion, he would like to raise a related issue. He said that there are an increasing number of candidates who establish several campaign committees. He said that under these circumstances, it is difficult for staff and the public to figure out from where the money is coming and the \$100 reporting threshold is endangered. Moreover, should contribution limits be enacted, multiple affiliated committees could be used to evade them. Executive Director Herrmann said that staff would like to see the Commission recommend that legislation be enacted requiring candidates to establish one campaign committee to report all financial activity by the candidate.

Chairman Bedford said that he believes that transferring money from one campaign fund to another is a bad practice. He suggested that a recommendation be included in the white paper to restrict this activity.

Vice Chairman McNany said that in the same context, the Commission would have to address the surplus funds issue.

Commissioner Linett asked: "Should we make a recommendation on these matters or wait until the next meeting when perhaps the Commission can get input from the public and experts in the field of political science?"

Executive Director Herrmann said that it would be best if the Commission made a recommendation now, prior to the committee hearing. He said that it would be helpful to have recommendations on contribution limits, prohibited contributions, and adequate funding. He said that the Commission could add a fourth recommendation as suggested by the Chairman. This recommendation would involve the matters of requiring one campaign committee to total up all the money spent by committees in behalf of a candidate and also of prohibiting transfers of money from one candidate to another.

Commissioner Linett said that as a matter of principle, he believes that contribution limits should be limited. He said, however, that some of these bills are worse than others. He said that if the Commission takes a position on contribution limits it may give the public the impression that it supports certain of these deficient schemes.

Executive Director Herrmann said that there are numerous ways of approaching the issue of contribution limits. He said that by the Commission supporting the concept of contribution limits, the Commission would not necessarily be endorsing bad approaches.

Commissioner Linett said that he was concerned that if contribution limits were imposed it might encourage people to circumvent the law. He said that spouses, children, and relatives might be encouraged to make contributions. He said that his point was that sometimes these reforms can raise false expectations.

Executive Director Herrmann said that the most important factors in enforcing contribution limits is that the enforcement agency have adequate staff resources to enforce them and limits be not set at unreasonable levels that might encourage cheating.

Chairman Bedford asked if there was a motion before the Commission to accept the recommendations of the staff.

Commissioner Linett asked: "Would it be disadvantageous to wait to make a decision on these issues until after we hear from the public?"

Chairman Bedford said that for the Commission not to act now would leave the Executive Director in a difficult situation relative to the Assembly State Government Committee meeting on Thursday. Chairman Bedford asked if any of the Commissioners would care to move the staff's recommendations.

Commissioner Linett said that he would move the recommendation provided that all three recommendations be approved together as one unit. He further recommended that a fourth recommendation banning transfers of money from one committee to another and requiring that all candidates designate one committee to report be enacted. He said that a candidate can have a number of different committees, but only one committee would report all the financial activity.

Vice Chairman McNany said that regarding the last recommendation as suggested by Commissioner Linett, there would be little need for it if contribution limits are enacted. Contribution limits, he said, would limit transfer activity by these committees.

Legal Director Nagy said that what the staff was addressing in this fourth recommendation are those situations when a number of committees are controlled by a candidate and each of them is receiving contributions or making expenditures on behalf of that candidate.

Chairman Bedford suggested that the Commission adopt the three recommendations originally proposed by staff and simultaneously raise the issue of transferring funds from one committee to another as a possible talking point for the Legislature. He said that the issues of contribution limits and prohibited contributors are complicated enough without further complicating matters with this fourth recommendation.

Commissioner Linett said that he would withdraw the transfer restriction recommendation from the motion. He said that he would like, however, to add the following language to staff recommendation number one: "and provided that sufficient safeguards are enacted to prevent evasion of contribution limits."

On a motion by Commissioner Linett, seconded by Commissioner Axtell, and a vote of 4-0, the Commission approved the following recommendation to be included in the white paper:

The Commission recommends that contribution limits be enacted, provided that such limits are set high enough to permit candidates to raise enough money to run effective campaigns, and provided that sufficient safeguards are enacted to prevent the evasion of contribution limits.

On a motion by Commissioner Linett, seconded by Commissioner Axtell, and a vote of 4-0, the Commission approved the following recommendation to be included in the white paper:

The Commission recommends that corporations and labor unions be prohibited from contributing, except through political action committees (PACs).

On a motion by Commissioner Linett, seconded by Commissioner Axtell, and a vote of 4-0, the Commission approved the following recommendation to be included in the white paper:

The Commission recommends that it receive an adequate appropriation to enforce these changes to the law.

At this point, Commissioner Linett said that he had attended an information session of the Commission in Morristown. He said that he would like to commend staff for a job well done.

3. Proposed Amendments to Public Financing Regulations - General Election

Legal Director Nagy circulated proposed amendments to the Public Financing regulations for the general election which he said are in substance the same as those approved for the primary election (see August 16, 1988 public session minutes for summary). He explained two technical amendments which differed from the primary election regulations. Proposed N.J.A.C. 19:25-15.4 provides for a designation by a candidate of his or her primary election campaign committee. Proposed N.J.A.C. 19:25-15.16(b) does not specifically mention "dinner" since that term is included in the definition of "testimonial affair" included in N.J.A.C. 19:25-1.7.

Commissioner Linett suggested that the Commission hold a public hearing on these regulations at its November 1988 meeting. The Commission agreed.

On a motion by Vice Chairman McNary, seconded by Commissioner Axtell, and a vote of 4-0, the Commission formally proposed the amendments to the public financing regulations for the general election.

4. Proposed Amendments to Various Regulations

Counsel Farrell discussed the following proposed amendments to the regulations (see memorandum of September 13, 1988, from Executive Director Herrmann to the Commissioners).

1. N.J.A.C. 19:25-1.7

This amendment deletes language in the definition of "political committee" making pure contributors of \$10,000 or more political committees. This amendment eliminates the filing requirement of these entities.

On a motion by Vice Chairman McNany, seconded by Chairman Bedford, and a vote of 4-0, the Commission formally proposed this regulatory amendment.

2. N.J.A.C. 19:25-4.6

This amendment eliminates the language requiring pure contributors of \$10,000 or more to file a statement of organization as a continuing political committee.

On a motion by Vice Chairman McNany, seconded by Chairman Bedford, and a vote of 4-0, the Commission formally proposed this regulatory amendment.

3. N.J.A.C. 19:25-10.8

This amendment permits a continuing political committee to file an affidavit instead of quarterly reports if it spends no more than \$2,500 in a fiscal year (July 1 to June 30).

Legal Director Nagy suggested that the draft subsections (a) and (b) be combined into a single subsection including all continuing political committees, not just municipal political party committees. He said the proposed language creates two different thresholds, one at \$1,000 per year and another at \$2,500 per year, and that was not the staff intention.

On a motion by Vice Chairman McNany, seconded by Chairman Bedford, and a vote of 4-0, the Commission formally proposed this regulatory amendment with the changes suggested by Legal Director Nagy.

4. N.J.A.C. 19:25-11.6

This amendment stipulates that a contribution is not anonymous if the identity of the contributor was known to the candidate or treasurer at the time that the contribution was made even though the campaign may be unable to later identify the contributor because of the destruction of records.

The purpose of the amendment is to conform the regulation to the decision of the New Jersey Supreme Court in N.J. Election Law Enforcement Commission v. Citizens, 107 N.J. 380 (1987).

Legal Director Nagy suggested that the regulation include a requirement that the Treasurer provide an affidavit in cases where he or she cannot identify the contribution.

Commissioner Linett suggested that the Commission proceed with this proposal and have staff develop a further recommendation dealing with the affidavit issue. The Commission agreed.

On a motion by Commissioner Linett, seconded by Commissioner Axtell, and a vote of 4-0, the Commission formally proposed the amendatory language.

5. N.J.A.C. 19:25-11.9(d) and (e)

These amendments seek to clarify attribution and reporting requirements as to certain contributions made from organizational entities or from joint checking accounts.

This proposal was held for further discussion at the October Commission meeting.

6. N.J.A.C. 19:25-12.2

This amendment seeks to clarify reporting requirements where expenditures are made by credit card.

This proposal was held for further discussion at the October Commission meeting.

7. N.J.A.C. 19:25-12.4

This amendment further removes language that would require a pure contributor of \$10,000 or more to file as a political committee.

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

8. N.J.A.C. 19:25-12.10

This amendment would limit the time period within which funds would otherwise be returned to the Treasury of the State of New Jersey may be used for victory celebrations or postelection parties for campaign supporters.

This proposal was withdrawn as unnecessary. The provision was included in the public financing regulatory changes.

The following regulatory proposals were discussed by Legal Director Nagy:

N.J.A.C. 19:25-4.7 Write-in Candidates

This section defines "write-in candidates" and relieves such candidates who spend \$2,000 or less from the Sworn Statement (Form A-1) filing requirement.

Chairman Bedford stated that the amendment should be specific in terms of when to file. He said that the use of the word "immediately" to describe the time when a write-in candidate must file Form C-1 to disclose contributions of \$100 or less was not precise enough. The write-in candidate who spends less than \$2,000 and incurs no reporting obligation would file Form C-1 for contributions of \$100 or less.

The Commission decided to hold the matter for further clarification and discussion at the October meeting.

N.J.A.C. 19:25-8.1

This amendment specifies that a record of the date of receipt of a contribution must be maintained.

Commissioner Linett asked staff to prepare a regulation providing for an affidavit procedure if records are lost or otherwise not provided.

On a motion by Vice Chairman McNany, seconded by Commissioner Axtell, and a vote of 4-0, the Commission formally proposed the amendment.

N.J.A.C. 19:25-9.6 and 19:25-10.4

These amendments cover political committees and continuing political committees and require immediate written notice of "in-kind" contributions. They also require candidates to include an "in-kind" contribution of more than \$100 in the candidate's report or forward the written notice to ELEC with a statement rejecting the "in-kind" contribution.

The Commission decided to hold the matter for further clarification and specificity until the October meeting.

Commissioner Linett asked about new language to the public financing anti-proliferation regulation affecting corporations and unions.

Legal Director Nagy said that staff recommends leaving the existing regulations as is.

5. White Paper

Chairman Bedford asked for a motion to release the white paper with the recommendations. He praised the paper as well written and thorough.

On a motion by Commissioner Linett, seconded by Commissioner Axtell and a vote of 4-0, the Commission approved release of the white paper.

6. Remarks of Chairman Bedford

At this juncture, Chairman Bedford said that he would like to address his fellow Commissioners, the public, and press about a complaint filed against him with the State Commission on Ethical Standards by Mr. Edward McCool, Executive Director of Common Cause of New Jersey. He said that the complaint involved two \$150 contributions to the Republican State Committee allegedly made by him during the time he served as a commissioner. He said that the complaint cited him in violation of the Election Law Enforcement Commission's Code of Ethics. Chairman Bedford said that on the surface, the complaint is correct. He said that the records indicate that two checks in the amount of \$150 each were made out on two separate dates and drawn from a joint account shared equally by his wife Ruth and himself.

Chairman Bedford said that his wife signed the check dated September 24, 1987 and that he signed a check dated March 4, 1988. He acknowledged that both checks were contributions to the Republican State Committee. He

said that both contributions were actually from his wife Ruth. Chairman Bedford produced copies of the checks.

Chairman Bedford stated that he takes this matter very seriously. He said that he is embarrassed by the incident and that it represents a very foolish lapse on his part. He said that the contributions were from his wife Ruth and that he made a silly mistake in signing one of them. He said that his wife Ruth was also the person acknowledged by then Republican State Chairman Frank Holman as having made the contributions.

Chairman Bedford said that his wife and he have always conducted their financial business in a way that would corroborate separate assets. He said that although the checks derived from a joint account, his wife and he have always kept internal records which indicate that they have independent funds.

Chairman Bedford said that what is so embarrassing is that though the contributions were charged to his wife's fund, the code nevertheless does say that contributions by spouses of Commissioners can not come out of a joint account. On the surface, he said, these funds did come from a joint account. He said that the violation represents a technical violation of the code.

Chairman Bedford said that the matter reflects on his good sense. He said that he hoped it did not reflect on his integrity.

Chairman Bedford said that all of this began with the case In re Gaulkin, which applied to the judiciary. He said that this case acknowledges the First Amendment Rights of spouses of members of the judiciary to contribute to campaigns and be involved politically. He said that this reasoning was inadvertently applied to the present situation. He added that this case disallows the use of the home (if in a joint name) for political purposes. He said that his home has never been used for this purpose.

Chairman Bedford reiterated that he was embarrassed by this lapse in judgement and that he apologized to the members of the Commission for it. He said that he did not intentionally violate the code and that he would never intentionally do any thing to harm the Commission. He said that he believes strongly in its work and the need for Commissioners and staff to be above the fray.

Commissioner Axtell said that he has known the Chairman for thirty years and that he forgave him for everything.

Chairman Bedford said: "Does that include stupidity?"

Chairman Bedford said that he believes that everyone should await the judgement of the Ethical Standards Commission.

Mr. Craig McCoy, a reporter for the Philadelphia Inquirer, asked the judge to clarify when the checks were signed and by whom.

Chairman Bedford said that the September 24, 1987 check was typed and signed by his wife. He said that the March 4, 1988 check was signed by him.

Mr. McCoy said both of these checks are from a joint checking account. he asked: "As your wife, should she be giving?"

Chairman Bedford said that it was her constitutional right to do so. He said, "Yes, she is my wife. But she is also an individual." Chairman Bedford said that the judiciary has recognized this principle in the Gaulkin case.

Mr. McCoy asked if Chairman Bedford believed that he should not have signed the check; that the violation was in his signing the check.

Chairman Bedford acknowledged that he should not have signed the check.

Mr. McCoy asked what Chairman Bedford meant by a joint account.

Chairman Bedford said that in a joint account, either person could clean out the account. He said that in his case, within the account itself, his wife and he keep internal records. He said that these contributions were charged to her private records. He said that both his wife and he are entitled to the money in this account. He said that they have operated this way for years.

Mr. McCoy asked if Chairman Bedford would request a refund.

Chairman Bedford said that he would not unless the Ethical Standards Commission of New Jersey directs him to do so. He said that he will cooperate fully with that Commission.

Vice Chairman McNany thanked Chairman Bedford for bringing this matter to the attention of the Commission.

Mr. Robert Schwaneberg, a reporter from the Star-Ledger, asked whether or not this was a violation of law or an internal code.

Chairman Bedford said that it was a violation of an internal code, not of an election statute. He said that the rules are not contained in the campaign finance law, for instance.

Mr. McCoy asked about what penalties are contained in the Code.

Executive Director Herrmann said that the question should be asked of the Ethical Standards Commission.

Chairman Bedford concluded by saying that he does not take this matter lightly and that he had not intended to violate the Code. He said that he had been insensitive to the joint account issue.

9. Executive Session

On a motion by Commissioner Linett, 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.

10. Adjournment

On a motion by Vice Chairman McNany, seconded by Commissioner Axtell and a vote of 4-0, the Commission voted to adjourn at 1:16 p.m.

Respectfully submitted,

  
FREDERICK M. HERRMANN, PH.D.

FMH/ck