



## State of New Jersey

### ELECTION LAW ENFORCEMENT COMMISSION

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#### PUBLIC SESSION MINUTES

OCTOBER 18, 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," N.J.S.A. 10:4-8 et seq., special notice of this meeting of the Commission has been filed with the Secretary of State's Office and distributed to the State House Press Corps.

The meeting convened at 11:10 a.m. at Glassboro State College Student Center, Glassboro, New Jersey.

1. Approval of Public Session Minutes of September 20, 1988.

On a motion by Commissioner Linett, seconded by Commissioner Axtell and passed by a vote of 4-0, the Commission approved the Public Session Minutes of September 20, 1988.

2. Advisory Opinion Request No. 13

This Advisory Opinion Request is from State Senator Donald T. DiFrancesco, Trustee of "Citizens for Fiscal Responsibility."

The request seeks the advice of the Commission on the question of whether "Citizens for Fiscal Responsibility" may sponsor television announcements that feature Assembly Speaker Chuck Hardwick. These announcements would be in support of state mandate/state pay referenda which are on the ballot in 17 counties. Specifically, it asks whether or not the Committee would be considered to be engaging in either "testing the waters" activity or gubernatorial election activity on behalf of Speaker Hardwick, who is a potential candidate for the office of Governor in 1989.

The request points out that Speaker Hardwick is not now a candidate for Governor. It stipulates, however, that Speaker Hardwick is the prime sponsor of legislation proposing a constitutional amendment to require state funding for all new state-mandated, local government programs.

Senator DiFrancesco, appearing before the Commission, said that he had submitted a letter which details the committee's plans.

Senator DiFrancesco said that as the result of efforts by Speaker Hardwick, the question is on the ballot in 17 of the 21 counties. The referenda ask whether or not the counties should urge the Legislature to place a constitutional amendment on the ballot that would require state funding of mandated local programs.

The central question in the advisory opinion concerns television ads, said Senator DiFrancesco. The television ads will feature Speaker Hardwick, he said. Ads will appear prior to November 8 and will explain the question to the public. Senator DiFrancesco said that if the referenda are passed they would be nonbinding, but would press the Legislature to place a public question on the ballot to make the above-mentioned constitutional change.

Commissioner Linett said that he did not know if the Commission has the authority to deal with this matter. "If a fellow is running for Congress, for example, and paying for an ad, we don't have the jurisdiction to deal with it," he said.

Senator DiFrancesco asked, with respect to any future campaign for Governor, whether there would be a problem with Speaker Hardwick appearing in these ads. He also asked, "would the expense of this advertising campaign count against his expenditure limit?"

Chairman Bedford said that if the ads do not expressly promote Chuck Hardwick for Governor there should not be a problem with his participation in them.

Counsel Farrell cited three standards of judgement in this area. The first is "proximity to the election," the second is "who is underwriting the ads," and the third is the question of "whether the ads relate to a bonafide activity and not to any campaign for Governor."

Legal Director Nagy asked what funds were being used to pay for the ads.

Senator DiFrancesco said that part of the money would derive from Speaker Hardwick's candidate PAC and part would derive from the committee's funds.

Vice Chairman McNany asked: "What is your budget?" Senator DiFrancesco said that the committee has raised \$80,000. He said it would be spending \$100,000 for this ad campaign. Senator DiFrancesco said that half of the expenditures would come from Assemblyman Hardwick's PAC and half from outside sources.

Commissioner Linett said that he would have no difficulty in arriving at a quick decision on this issue. He said: "the issue is, would any of these expenditures count against Speaker Hardwick's expenditure limit should he run for Governor. Given the facts, these expenditures appear permissible and would not count against Speaker Hardwick's gubernatorial expenditure limit."

Chairman Bedford agreed. He said that because the activity would occur before the date of the 1988 general election, the Commission would have difficulty applying the expenditure limit to it. It would infringe on First Amendment rights.

Executive Director Herrmann cited the example of a businessman who advertises his or her own business and perhaps plans to run for Governor in some future election. "Would the Commission be in a position to restrict this activity?", he asked.

Chairman Bedford asked Counsel Farrell for his opinion on how the Commission should proceed.

Counsel Farrell said that the Commission should hold a telephone meeting. The Commissioners should have the actual advisory opinion response in their hands before voting on the matter. Counsel Farrell said that this approach gives the public the ability to comment on the opinion.

The telephone meeting was scheduled for Friday, October 20, at 10:00 a.m.

### 3. Executive Director's Report

Executive Director Herrmann said that on October 28, 1988 he went to Albany, New York, to speak to a meeting of open public meetings officials about the Council on Governmental Ethics Laws (COGEL). Executive Director Herrmann said that there is a potential for 70 entities in this field to join COGEL.

He said that today he is appearing on the Rutgers University Forum television show. The topic is campaign finance reform. He said that he is appearing with Senator Richard Van Wagner and Common Cause Director Edward McCool.

Executive Director Herrmann reported that staff would be conducting a seminar for the Society of Professional Journalists on November 16, 1988.

The Executive Director said that on November 17, 1988 he would be attending the League of Municipalities Convention in Atlantic City, New Jersey.

Executive Director Herrmann mentioned that Evelyn Ford, Director of Compliance and Information, has developed a filing night handbook for staff. He said that this is a welcome addition to the Commission's efforts to codify internal procedures.

He said that Commission has hired Brett Mead as a public financing analyst. He said that he is particularly pleased with this appointment because Mr. Mead was referred to Public Financing Director Nedda Masser by a current staff member who said that ELEC was a great place to work. He said that staff morale is high.

According to the Executive Director, the Commission's move to new headquarters has been postponed until next summer. He said that the move would be subsequent to the primary election of 1989.

He said that with respect to legislation there are no new developments on reform of the Gubernatorial Public Financing program. He said that staff was concerned for the program's survival because there are potentially too many

candidates who would opt to forego public financing because of the program's unrealistically low thresholds and limits.

Executive Director Herrmann said that he was also concerned about the preparedness issue. He said that if public financing reform is enacted, the Commission would have to act quickly to develop new regulations and forms. In addition, he said, changes to the program would necessitate software modifications.

He said that staff has prepared a letter for the Commission to send legislative leaders and the Governor urging the enactment of public financing reform. Executive Director Herrmann said the letter stipulated that the Commission would need \$75,000 to cover the costs of developing new forms and software on an expedited basis.

Commissioner Linett wondered if the letter could be more specific.

Executive Director Herrmann said that the letter would alert members of the Legislature that "time is of the essence" in considering reform of the program. He said that the Commission must inform legislative leaders and the Governor that the design and testing of software in a short time span is very costly. He said that it is important to advise them that if legislation is enacted too close to January, when public financing officially begins, much of the initial review work will have to be done manually.

Vice Chairman McNany said that the letter was sufficiently strong. He said that he could not predict whether the Legislature will respond, but in his opinion, the letter clearly sets forth the Commission's concerns.

Chairman Bedford asked for a motion. Vice Chairman McNany made a motion for approval of the letter. Commissioner Axtell seconded the motion and on a vote of 3-0, the Commission approved the letter for distribution to the legislative leadership and the Governor. Commissioner Linett abstained from voting but agreed to sign the letter.

Executive Director Herrmann said that he testified yesterday before the Assembly State Government Committee on contribution limits. He said that he testified that A-2259 (Schluter), A-2581 (Martin), and A-1413 (Randall) were all acceptable variations within the spectrum of contribution limit reform. He said that he testified that all the bills contain loopholes that need to be changed.

Executive Director Herrmann said that on Thursday, October 20, 1988, he was testifying before the Senate State Government Committee on two bills that deal with legislative public financing. He cited these two bills as S-2211 (Lynch) and S-1828 (Van Wagner).

He said that this is the first time that bills establishing legislative public financing programs have been posted. Executive Director Herrmann said that Deputy Director Brindle had done research on legislative public financing that would be included in a more comprehensive study on the subject in White Paper Number Three. He said that presently he would like to testify that the Commission will be doing a study on this subject and would be "keeping the door"

open on this type of reform. He said that he would testify that the Commission had a conceptual interest in legislative public financing, and would emphasize the need for adequate administrative funding. Executive Director Herrmann said that on the same day he will also be testifying on S-1828 (Dorsey), which is a contribution limit bill identical to A-1413 (Randall).

Executive Director Herrmann mentioned that with respect to the computer, the Commission will install an upgrade in December, 1988, that will give the Commission four times the computer capacity it has now. He said that this is necessary because of the addition of the new word processing system and terminals for the public financing program. He said that the additional hardware without the upgrade would slow down the present system greatly.

Executive Director Herrmann said that meetings with the software company, Cogent, have resulted in certain breakthroughs. He said that Cogent will now be responding to our problems more quickly. He said that a second and major breakthrough involves agreement by Cogent to amend its maintenance contract. The amendment would allow enhancements to the software to be made by the Commission's systems administrator. He said that Cogent would have to review the specifications on these changes but would continue to cover the changes in the maintenance contract. Executive Director Herrmann said that Deputy Director Brindle headed the negotiations with Cogent.

He announced that the next regular meeting of the Commission will be on November 15, 1988. He said that the December meeting will be on the twentieth, with the annual holiday luncheon to follow.

#### 4. Proposed Regulation Amendments

Legal Director Nagy reviewed the following proposed amendments to the regulations:

##### (1) 19:25 - 1.7 Definitions

This proposed change to the regulations deletes political clubs from the definition of political party. This deletion relaxes the filing requirements of political clubs by not requiring quarterly reports unless they expend more than \$2,500 annually, treating political clubs like other continuing political committees.

On a motion by Vice Chairman McNany, seconded by Commissioner Axtell and passed by a vote of 4-0, the Commission approved the regulatory amendment for proposal.

##### (2) 19:25-4.7 Write-in Candidates

Section 4.7 has been added to define "write-in candidates" and to relieve such candidates who spend \$2,000 or less from the sworn statement filing requirement.

On a motion by Commissioner Linett, seconded by Commissioner Axtell, and a vote of 4-0, the Commission voted to approve the regulatory amendment for proposal.

(3) 19:25-8.3 Affidavit for missing records

This regulatory change adds a new section to the recordkeeping regulations which require a campaign or continuing political committee treasurer to file an affidavit with the Commission if records have been lost.

Commissioner Linett said that the Commission should require treasurers to unearth the facts and provide said facts as part of the affidavit. He said that the regulation is not specific enough in addressing this issue. Commissioner Linett said that the affidavit should include a reconstruction of the facts to the greatest degree possible.

Chairman Bedford suggested that further consideration of this proposed amendment should be held until the telephone conference meeting on Friday, October 21, 1988. He requested that staff draft language that would satisfy Commissioner Linett's concern.

The Commission agreed to hold this matter over for consideration at the special meeting on Friday, October 21, 1988.

(4) 19.25-9.6 Expenditures on behalf of candidates

This proposed amendment, covering section 9.6 relative to political committees, and section 10.4, relative to continuing political committees, requires that within 48 hours written notice be given to candidates of "in-kind contributions." It also requires the candidate to either include an "in-kind" contribution of more than \$100 in the candidate's report, or forward the written notice within 48 hours to ELEC with a statement rejecting the "in-kind" contribution.

On a motion by Commissioner Axtell, seconded by Vice Chairman McNany and passed by a vote of 4-0, the Commission approved the proposed regulatory amendment for proposal.

(5) 19:25-11.9 Contribution by check

This regulatory amendment entails a new section that has been added to clarify both that the owner of a checking account is the contributor and also that a contribution of \$100 from a joint checking account must be reported.

Commissioner Linett asked vis-a-vis subsection(a), "if more than one person owns an account, who reports?"

Legal Director Nagy said that in the example cited, subsection(a) would consider both individuals to be owners of the account.

Commissioner Linett said that the question is whether or not both owners of a joint account must be reported.

Counsel Farrell said that subsection(a) does not address the question of a joint checking account. He said that it addresses the question of incorrectly considering the person signing the check as the contributor rather than the account owner.

Chairman Bedford suggested that the Commission face the joint ownership reporting question when the occasion arises. Chairman Bedford asked for a motion on the proposed regulatory amendment as written.

On a motion by Vice Chairman McNany, seconded by Commissioner Axtell and passed by a vote of 4-0, the Commission approved the proposed regulatory amendment for proposal.

(6) 19:25-12.2

This proposed regulatory change creates a new subsection(d) to specify the reporting requirements when a candidate purchases goods or services by credit card.

On a motion by Commissioner Linett, seconded by Commissioner Axtell and passed by a vote of 4-0, the Commission approved the regulatory change for proposal.

#### 5. Advisory Opinion Request No. 10

This advisory opinion request from State Senator Richard J. Codey asked whether or not unexpended campaign funds remaining from his 1987 Senate primary and general election campaigns may be used for the purpose of determining whether or not he should become a candidate for Governor. State Senator Codey also asked whether or not funds expended on such pre-candidacy activities prior to the effective date of the promulgation of amendments to the gubernatorial regulations are exempt from the reporting requirements established in those amendments.

Legal Director Nagy said that the proposed draft response to the Advisory Opinion request stipulates that the leftover campaign funds may be used for "testing the waters" subject to the condition that if Senator Codey becomes a candidate, his gubernatorial campaign fund would have to reimburse the Senate campaign committee for all such expenditures above \$800. He said that this would be required in order to protect the integrity of the \$800 contribution limit in gubernatorial campaigns.

Legal Director Nagy said that with respect to the filing for "testing the waters" committees, the advisory opinion response advises that an individual, or a committee on behalf of such an individual, must file with the Commission a notice containing the name, address and account number of the depository established for pre-candidacy activity no later than ten days after the receipt of funds for the purpose of conducting such activity. He suggested, however, that since the regulation is new, the Commission should establish November 1, 1988 as the deadline for individuals and committees already undertaking pre-candidacy activity for 1989 to file.

Vice Chairman McNany asked if leftover money can be given back to the contributors.

Counsel Farrell said that in an earlier case the Commission decided such an action was permissible.

Vice Chairman McNany asked if the gubernatorial committee could contact contributors to the Senate campaign committee and ask if their earlier contributions could be transferred to the gubernatorial account.

Counsel Farrell said that the decision of the Commission in an earlier situation would allow the Senate Committee to return contributions. In turn, these contributors could use this money to make contributions to the gubernatorial committee. He said that the gubernatorial contributions could be up to \$800.

Commissioner Linett said that he was concerned about the part of the advisory response which states that this advisory opinion, with Senator Cody's name on it, will be sent to potential candidates all over the state. He said that if it were he, he would be sensitive to the Commission doing this. Commissioner Linett suggested removing this language and sending, instead, a separate advisory letter to the other candidates.

On a motion by Commissioner Linett, seconded by Commissioner Axtell and passed by a vote of 4-0, the Commission approved the advisory opinion response, approved the November 1, 1988 filing date, and removed the above-mentioned language from the advisory opinion.

#### 6. Advisory Opinion Request No. 11

Legal Director Nagy explained that this advisory opinion request from Harold W. Borden, Jr., of Public Service Electric and Gas Company (PSE&G), concerns the application of N.J.S.A. 19:34-45 and N.J.S.A. 34:11-4.4 to contemplated activities of the Utility Executives for Responsible Government (UERG), a political action committee established by certain management employees of PSE&G.

Legal Director Nagy recommended that the advisory opinion request be referred to the State Attorney General who has jurisdiction over enforcement of the above-cited statutes.

On a motion by Commissioner Linett, seconded by Commissioner Axtell and passed by a vote of 4-0, the Commission directed the advisory opinion request to be referred to the Attorney General and approved the response.

#### Advisory Opinion Request No. 12

Advisory Opinion Request No. 12 is from Mr. Todd Caliguire, representing a group of individuals wishing to support the possible candidacy of Attorney General Cary Edwards for the office of Governor in 1989. The request seeks answers to five questions:

- (1) may funds be raised and expended for "testing the waters" activities by a committee formed for such purposes on behalf of an individual who is not affiliated with such a committee?
- (2) what is the schedule pursuant to which such a committee must report amounts raised and expenditures made for such purposes?

- (3) may such a committee accept contributions in excess of the contribution limit imposed on an individual pursuant to N.J.S.A. 19:44A-29(a) and, if so, how must such contributions be treated in the event such possible candidate does, in fact, become a candidate?
- (4) may such a committee borrow money from a lending institution or individual and, if so, are there limits on such borrowing?
- (5) will all expenditures incurred for "testing the waters" purposes prior to the time an individual becomes a candidate for Governor be included in determining the amount of permitted expenditures by such candidate pursuant to N.J.S.A. 19:44A-7?

Counsel Farrell said that this committee may be established. He said, however, that if the Attorney General becomes a candidate, the Attorney General would incur a filing responsibility.

Chairman Bedford suggested that the draft opinion be simplified.

Commissioner Linett agreed, suggesting that the opinion should be written so that the average person, not just a lawyer, can understand it.

Legal Director Nagy suggested that removing the final paragraph under question number two would simplify the response.

Counsel Farrell suggested also that an earlier advisory opinion response to Representative Jim Courter be cited in this response.

Commissioner Linett said that with respect to the fifth question of whether or not the expenditures by this committee will be counted against Attorney General Edwards, the advisory opinion fails to provide an answer. He said that the request states that this committee is not associated with the Attorney General.

Counsel Farrell agreed that this aspect of the advisory opinion request is not answered. He said that it is not known if the Attorney General, when becoming a candidate, will claim association with this committee and place claim to the money. He said that if the assertion is made that the committee is truly independent, it would be difficult to prove otherwise.

Legal Director Nagy suggested that, with respect to question five, the Commission should not, at this time, take a position as to whether expenditures by an independent committee, designed to "test the waters" for a potential gubernatorial candidate, should be counted against the potential candidate's expenditure limit should he or she decide to run for Governor. He suggested that a statement be included in the opinion to that effect. He said that the answer would depend upon that committee being totally independent at all times of the candidate but at this time any answer would be overly conjectural. The Commission postponed action on this request until the special meeting on Friday, October 21, 1988.

A reporter from the Gloucester County Times, asked if there was any potential candidate besides Representative Courter that the Commission would be looking at with respect to the cost of political advertisements being counted against the expenditure limit.

Executive Director Herrmann said that the Commission would be advised of the Courter matter in Executive Session. He said, however, that the Commission would neither confirm or deny any possible investigative action on this matter or any other related ones.

8. Executive Session

On a motion by Commissioner Linett, seconded by Commissioner Axtell and passed by 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.

9. Adjournment

On a motion by Vice Chairman McNany, seconded by Commissioner Axtell, and passed by a vote of 4-0, the Commission voted to adjourn at 2:20 p.m.

Respectfully submitted,



FREDERICK M. HERRMANN, PH.D.

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