



## State of New Jersey

### ELECTION LAW ENFORCEMENT COMMISSION

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#### PUBLIC SESSION MINUTES

NOVEMBER 15, 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 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 10:03 a.m. at the Commission's offices at 28 West State Street, Trenton, New Jersey.

1. Approval of Public Session Minutes of October 18, 1988 and October 21, 1988 telephone meeting.

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 October 18, 1988 and the October 21, 1988 telephone meeting.

2. Public Finance Hearing

Chairman Bedford convened the public hearing on the proposed amendments to the regulations concerning public financing of gubernatorial general elections. Notice of the hearing was published in the New Jersey Law Journal on October 27, 1988 and in the New Jersey Register on November 7, 1988. No witnesses appeared, and at 10:30 a.m. the hearing was closed and the stenographer excused.

3. Executive Director's Report

- A. COGEL Conference

Executive Director Herrmann said that the COGEL Conference is scheduled for December 4 - 7, 1988 at the Orlando Hyatt, Orlando, Florida.

Executive Director Herrmann reported that scheduled speakers at the conference include: the Deputy U.S. Attorney General; the Executive Director of the National Ethics Resource Center; the former Governor of Florida, Reubin Askew; the Secretary of State of Florida, James Smith; the Dean of the Florida State University Law School; and Wall Street Journal reporter, Brooks Jackson.

He said that highlights of the conference include: two sessions on model laws, involving campaign finance, ethics, and lobbying; legislation and litigation updates; breakfast table topics; and the fourth annual COGEL Award Presentation Ceremony. Executive Director Herrmann also reported that a history of COGEL, written by Frank Reiche, the first ELEC Chairman, will be available at the conference.

The Executive Director stated that as of November 9, 1988, 265 people had registered for the conference. He said that last year only 225 people attended.

#### B. Fax Machine

Executive Director Herrmann informed the Commission that, a fax machine will cost an estimated \$3,000. He said that this figure includes \$1,500 for the machine, \$500 for maintenance and \$1,000 for rental of a dedicated phone line.

He indicated that the benefits of purchasing a machine include: faxing emergency materials to Counsel Farrell and the Commissioners, sending and receiving materials to and from other state agencies and COGEL members, and receiving names and addresses of candidates in the primary from municipal and county clerks. The benefits also include faxing advisory opinion requests and investigative materials.

Executive Director Herrmann suggested, however, that the fax machine would not be useful for sending agenda materials because of time restraints and cost.

Chairman Bedford suggested that if a decision is made to purchase a fax machine, the Commission should notify filers that faxing is not an acceptable way to file. He said that the machine should not be used for this purpose.

Legal Director Gregory Nagy stated that even though the fax machine would not be used for filing reports, it would be helpful in the area of compliance because the county clerks could fax candidate lists to the Commission.

Chairman Bedford suggested that a final decision should be postponed until the Commission has more facts about the equipment. He said that he would like to know what brands are available, if the State has a contract with any vendor, and what exactly the machine can do for the Commission.

Vice Chairman McNany said that a fax machine is almost a necessity in doing business in these times.

Executive Director Herrmann indicated that staff would explore further the issue of purchasing a fax machine. He said that he would report back to the Commission in December before making a decision on the matter.

#### C. Staff Activities

Executive Director Herrmann reported that on October 26, 1988, he attended a luncheon at the Nassau Club in Princeton, New Jersey, during which he heard Mr. Frank Reiche, former ELEC and Federal Election Commission (FEC) Commissioner, speak on campaign financing. During his remarks, Mr. Reiche praised ELEC as a model for all ethics agencies.

Executive Director Herrmann said that on November 10, 1988, Director of Public Financing Nedda Massar, Legal Director Gregory Nagy and he attended the Political Finance Forum in Washington, D.C. He indicated that the discussion involved campaign finance issues from the 1988 election, public funding and contribution and expenditure limits.

The Executive Director informed the Commission that on November 16, 1988, staff would conduct a seminar for the Society of Professional Journalists. He added that on November 17, 1988, Director of Compliance and Information Evelyn Ford, Director of Review and Investigation Elizabeth Ryan, Assistant Director of Compliance Rachel Herman and he would staff a consulting table at the League of Municipalities Conference in Atlantic City, New Jersey.

#### D. Legislation

Executive Director Herrmann said that he testified before the Senate State Government Committee on October 27, 1988 on several bills involving both contribution limits and legislative public financing.

He reported that he testified on S-1828 (Dorsey), which is identical to A-1413 (Randall), that would impose a \$2,500 limit on PAC contributions to legislative candidates. He said that he also testified on S-2211 (Lynch) and S-2486 (Van Wagner), two bills that would establish a legislative public financing program. With respect to contribution limits, the Executive Director said that the Commission supports them. Regarding legislative public financing, he said the Commission is interested in the concept. Executive Director Herrmann testified, however, that ELEC would need a sizeable appropriation to implement legislative public financing. Moreover, he added that there is questionable public support for such a program, citing a recent Star Ledger/Eagleton Institute poll. Executive Director Herrmann suggested that it was important that the Legislature and Governor first modify the gubernatorial public financing program before enacting a legislative one.

Commissioner Linett asked what the Commission could do to highlight the fact that there is an urgent need to change the gubernatorial public funding program.

Chairman Bedford said that the Commission has been very active in attempting to get the law changed. He mentioned the recent letter from the Commission to legislative leaders and the Governor, the numerous times the Executive Director has testified on the subject, and the two gubernatorial reports published by the Commission, as evidence of the Commission's active role.

Commissioner Linett agreed, but suggested that the Commission try to arrange a meeting with the Governor and legislative leaders to emphasize the urgency of the situation.

Chairman Bedford suggested that the Governor and legislative leaders already know where the Commission stands on this issue.

Commissioner Linett said that the purpose of such a meeting would not be to persuade the Governor to change the law, but to demonstrate the Commission's support for his position that the program be changed.

Chairman Bedford suggested that instead of a meeting, the Commission might consider sending another letter to the Governor and legislative leaders urging immediate action.

Vice Chairman McNany recommended that rather than send a letter, the Commission pass a resolution urging immediate changes to the public financing law.

The Commission concurred with this suggestion. Accordingly, the Commissioners asked Director of Public Finance Nedda Massar to prepare a resolution for their approval.

Continuing with his report, Executive Director Herrmann reported that vis-a-vis gubernatorial public financing, A-3886 (Martin) was on the Assembly Board list on October 27, 1988. He said that the bill, an acceptable variation, was a no-reference bill, and was not voted on at that time.

Executive Director Herrmann said that on November 3, 1988, he testified before the Assembly State Government Committee on A-3953 (Martin) and A-3955 (Crecco). He said that the Martin public financing bill represented another acceptable variation. He reported that the Crecco bill is a companion bill which appropriates \$75,000 to ELEC for emergency computer help and staffing should the law be changed at this late date. He said that the appropriation was in response to the Commission's letter of last month. He said that he had indicated that it was crucial to raise the qualification and expenditure thresholds now.

#### E. Christmas Party

Executive Director Herrmann announced that the annual Christmas party would be held at Scanticon, Princeton, New Jersey, following the December 20, 1988 Commission meeting.

The Commissioners agreed to help subsidize the party. They also asked staff to explore the possibility of holding the December meeting at the Scanticon Conference Center.

#### F. ELEC Report

Executive Director Herrmann announced that as per Commissioner Axtell's excellent suggestion, articles in the next ELEC Report will be shortened.

#### G. Introduction of New Staff

Executive Director Herrmann introduced new staff members: Brett Mead, Public Finance Analyst; Susan Carr, Assistant Examiner; and Virginia Wilkes, Assistant Compliance Officer to the members of the Commission.

#### H. Public Finance Information Sessions

The Executive Director told the Commission that on December 14, 1988, and December 15, 1988, public financing staff will hold seminars to train gubernatorial candidate's campaign staffs on preparing submissions for match and on filing reports. He said that other special sessions will be held as needed.

#### 3. Advisory Opinion No. 14-1988

This advisory opinion asks whether unexpended campaign funds of a deceased candidate, which were transferred into his CPC, may be spent either for the candidate's hospital bills or for a scholarship fund in his name.

The advisory opinion draft, as presented to the Commission by Legal Director Nagy, stated that the funds could not be used to pay the candidate's hospital bills because this would be considered personal use. Personal use of campaign funds is prohibited under the Commission's regulations.

The draft indicated, however, that use of said money to establish a scholarship fund in the candidate's name would be permissible. The draft stated that use of leftover funds for charitable purposes is permissible under the Commission's regulations.

Commissioner Linett said that the surplus funds issue represents a very troubling area with which the Commission must deal. He said that he is concerned about the theories being expounded in this opinion. Commissioner Linett said that he was not certain that the Commission had the authority to regulate personal use. Commissioner Linett added that he is not sure it is desirable to use the terminology "agent on behalf of the late candidate" to describe the role of the treasurer of the continuing political committee in question. He said also that the reference to a charitable organization as "bona fide" made it seem as if a charitable organization had to be in existence prior to the death of the candidate in order for campaign funds to be transferred to it. Commissioner Linett added that in this sense, the last paragraph of the advisory opinion was inconsistent with the opinion rendered.

Chairman Bedford suggested that Commissioner Linett might be taking too restrictive a view of a charitable organization.

Vice Chairman McNany suggested that any failure of the deceased to have given a directive as to how these funds should be dispersed following death, as in this case, creates legal problems as to what should happen to this money and who should make this decision.

Vice Chairman McNany argued that the regulations allow candidates to give surplus campaign funds to charity during their lifetime. He said, however, that they do not address the question of whether the candidate can legally give this money to charity through the instrument of his will.

He said that, in any case, since these funds were not designated by the deceased before death, the money should escheat to the State. He said that in this matter, the Commission did not have to address the issue of dedicating usage of campaign funds through a will.

Chairman Bedford suggested that the key question to be answered is the one of whether the treasurer has the authority to act as the agent of a deceased candidate. He said that if it is determined that the treasurer can do so, then the reasoning in the advisory opinion would be correct.

Legal Director Nagy said that the money from the campaign committee was transferred into a continuing political committee. He said that the treasurer controls these funds, and the treasurer of a campaign committee does have authority to dispense campaign funds and act as an agent of the candidate. He said that since the Commission holds the treasurer, along with the candidate, responsible for violations of the Campaign Act, the treasurer would have the responsibility and authority to dispense leftover campaign funds consistent with the Commission's regulations.

Chairman Bedford said that in the absence of guidance from the Legislature on the question of permissible use of surplus campaign funds, the Commission should follow the reasoning as set forth in the advisory opinion.

Commissioner Linett suggested that the issue was perhaps not as complicated as it first seemed to be. He suggested that the Commission approve an advisory opinion redrafted to read:

- 1) that personal use of the funds is not permitted,
- 2) that charitable use is permitted, and
- 3) that in the absence of decision making mechanism by a political committee, the treasurer is permitted to dispense the funds in the event of the death of the candidate.

Commissioner Linett made a motion to this effect, which was seconded by Vice Chairman McNany.

Commissioner Axtell said that he would oppose this motion because he has always differed with the idea that one individual should have the power to control the flow of campaign money. He said that he has always believed that leftover funds should escheat to the State.

Chairman Bedford called a vote on the motion. By a vote of 3-1, with Commissioner Axtell opposed, the Commission passed the motion approving the advisory opinion as drafted pursuant to Commissioner Linett's recommendations. Before the close of the meeting, the redrafted text was circulated to the Commission and approved.

#### 4. Advisory Opinion No. 15

This advisory opinion request, from Mr. David Samson of the Mobil Oil Corporation, dealt with the application of the statutory prohibitions against political contributions by certain regulated corporations.

On a motion by Vice Chairman McNany, seconded by Commissioner Axtell and passed by a vote of 4-0, the Commission approved the staff recommendation to refer this matter to the Attorney General of New Jersey.

5. Public Financing Resolution

At this time, the Commission was presented with a draft of the resolution calling on the Governor and the Legislature to amend the gubernatorial public financing program.

Chairman Bedford said that the time limit for changing this program was very short. He said that any number of bills that have been introduced are acceptable variations to the Commission's recommendations. He said that the Commission simply will not be able to gear up for any public financing reform in time for the primary elections if they are not made quickly.

Commissioner Linett said that it is crystal clear to the public that the program will be destroyed if its thresholds and limits are not adjusted for inflation.

The Commission made certain amendments to the draft.

On a motion by Vice Chairman McNany, seconded by Commissioner Axtell and passed by a vote of 4-0, the Commission approved the resolution as amended. It directed staff to distribute copies to the Governor, leaders of the Legislature, other members of the Legislature, State House Press, and the editorial boards of major daily newspapers.

6. Regulations on Advertising

Commissioner Linett, at this time, asked the Legal staff and Counsel to establish a regulation regarding advertising practices prior to active candidacy. He said that the regulation should contain a timeframe as to when it is permissible for a potential candidate to undertake an advertising campaign and not have it count against his or her expenditure limit if he or she becomes a gubernatorial candidate. He said that he would like to see other guidelines relative to this question included as well. Chairman Bedford asked staff to report back at a future meeting on a possible regulation.

7. 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.

6. 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 1:10 p.m.

Respectfully submitted,



FREDERICK M. HERRMANN, PH.D.