



State of New Jersey

ELECTION LAW ENFORCEMENT COMMISSION

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PUBLIC SESSION MINUTES

APRIL 18, 1989

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

1. Public Hearing on Proposed Gubernatorial Primary Election and Political Communications Regulations

This public hearing was recorded by a court reporter and a transcript will be made available to the public.

2. Adoption of Proposed Gubernatorial Primary Election and Political Communications Regulations

At the conclusion of the hearing, on a motion by Vice Chairman McNary, seconded by Commissioner Axtell and passed by a vote of 4-0, the Commission adopted without change the Gubernatorial Primary Election Regulations (see 21 N.J.R. 788(b), published March 20, 1989), on the condition that no written comments are received by the Commission through the end of business on April 19, 1989, the last day for written comments to be submitted. Staff was directed to file an adoption notice with the Office of Administrative Law (OAL) if no comments were received.

On a motion by Vice Chairman McNary, seconded by Commissioner Axtell and passed by a vote of 4-0, the Commission adopted, with a technical change, the proposed Political Communications regulations (see 21 N.J.R. 703(b), March 20, 1989). The change concerned the wording of paragraph 2 of subsection (b) in proposed new rule N.J.A.C. 19:25-11.10, Political

Communications, and was suggested by Clifford F. Pintak, representing the "Hardwick for Governor" campaign. The change clarifies that a communication to only a portion of the electorate may be deemed political in nature. The motion was adopted subject to the condition that no further written comments are received by the Commission through the end of business on April 19, 1989, the last day for written comments to be submitted. Staff was directed to file an adoption notice with the Office of Administrative Law (OAL) if no further comments were received.

Legal Director Nagy advised the Commission that the Coordinated Expenditure Regulation (see 21 N.J.R. 704(a)) had been withdrawn and superseded by the new proposal approved at the April 5, 1989 meeting, and will be published in the May 15, 1989 edition of the New Jersey Register. A public hearing will be held at 10:00 a.m. at the June 1, 1989 meeting at the Montclair Municipal Building.

3. Approval of Public Session Minutes of March 21, 1989

On a motion by Vice Chairman McNany, seconded by Commissioner Axtell and passed by a vote of 4-0, the Commission approved, with a technical amendment, the Public Session Minutes of March 21, 1989.

4. Approval of Public Session Minutes of April 5, 1989

On a motion by Commissioner Linett, seconded by Commissioner Axtell and passed by a vote of 4-0, the Commission approved, with a technical amendment, the Public Session Minutes of April 5, 1989.

5. Executive Directors' Report

A. Staff Activities

Executive Director Herrmann reported that on March 28, 1989, he attended another meeting of the League of Women Voters "Campaign Watch Committee."

The Executive Director said that he is participating to provide technical assistance to the forum. Executive Director Herrmann indicated that the "Campaign Watch Committee" discussed actions that might be taken to curb negative advertising in the fall gubernatorial campaign.

According to Executive Director Herrmann, he will be serving on a Citizens' Research Foundation (CRF) National Conference panel in Washington, D.C., on May 12, 1989. He said that the panel is entitled "Dollar Politics and Election Reform" and that he will be speaking about state election reform issues.

B. Legislative Activity

The Executive Director reported that on March 30, 1989, he testified before the Assembly State Government Committee on A-520 (Schuber).

He indicated that this bill is based on the State Commission on Investigations (SCI) recommendation which called for State contractors to file reports on their campaign contributions.

Executive Director Herrmann said that he recommended an amendment to the bill to require candidates to identify contributions by State contractors to their campaigns. He said that this change would enhance preelection disclosure. The committee agreed to this amendment but held the bill for further discussion.

C. COGEL Conference 1990

Executive Director Herrmann said that he recently contacted COGEL Chairman Graham Johnson to recommend that the 1990 Conference in Anchorage, Alaska be changed from June 1990 to August 1990. He said that having two conferences in the same fiscal year would adversely affect attendance at both the New Orleans, La. conference and the Alaska conference.

Executive Director Herrmann said that Mr. Johnson agreed to the change. The 1990 conference will now be held in August of 1990.

D. White Paper No. ³2 - Legislative Public Financing 

Executive Director Herrmann said that Deputy Director Brindle authored this White Paper. He thanked the Deputy Director and those staff members who provided input for an outstanding job. Director of Compliance and Information Evelyn Ford and Legal Director Nagy proofread the paper suggesting changes, and Executive Director Herrmann served as the overall editor. Executive Director Herrmann suggested inclusion of the appendix on the New York City program and prepared the appendix recommending a scheme for New Jersey.

The Executive Director said that the work is well researched with 19 footnotes and two appendices. Executive Director Herrmann indicated that the work contained a review of legislative public funding programs in other states and proposed New Jersey Legislation.

He said that one appendix summarized the New York City program and the other suggests a possible scheme for setting up a New Jersey program. Executive Director Herrmann said the paper discusses administrative costs which are often overlooked.

Executive Director Herrmann stated that the paper strongly recommends that New Jersey adopt a legislative public financing program. He said that such a program will: 1) help candidates of limited means, 2) free campaigns

from the improper influence of special interests, and 3) increase public trust in the electoral process and in government.

The Executive Director said that the administrative costs for legislative public financing would be reasonable, comparable to the expenses for the gubernatorial program and to the advertising budget of the Division of Tourism, in the Department of Commerce.

He mentioned that in today's Star-Ledger an editorial came out in favor of congressional public financing.

Commissioner Linett said that he tended to support the concept of legislative public financing. He said, however, that he did not think the Commission should adopt the recommendation today because it has not had enough time to think about the issue.

Chairman Bedford said that he too tended to support the concept. He emphasized that any program should have realistic contribution and expenditure limits, and adequate funding to support its administration. He said that at this time he did not support any particular proposal.

Commissioner Axtell said that he believed that the Commission should postpone consideration of this issue until after the primary election.

Chairman Bedford concurred. He said that the paper provided an excellent history and analysis of legislative public financing but that the Commission should take a little longer to think about it.

Vice Chairman McNany agreed that the item should be put on the agenda after the primary election.

Pursuant to Commissioner Linett's suggestion, White Paper Number ~~Two~~ ^{Three} will be placed on the June meeting agenda. *Two*

E. Future Meetings

The Commission directed staff to schedule future meetings as follows: April 25, (telephone), 2:00 p.m.; May 4, (telephone), 2:00 p.m.; and May 16, 9:30 a.m.; Trenton, New Jersey.

F. Former Commissioner Waugh Nomination

Executive Director Herrmann reported that former Commissioner Alex Waugh recently was named Counsel to the Attorney General and that he sends his regards.

G. Office Expansion

The Executive Director said that the Commission will expand its offices in the building and will probably acquire this additional space by July 1, 1989.

6. Approval of Public Financing Funds

Executive Director Herrmann reviewed the circumstances surrounding the public funds submission by candidate Barbara Sigmund on April 13, 1989.

The Executive Director said that April 13 was the statutory deadline for gubernatorial candidates to demonstrate that they have raised and spent at least \$150,000 in order to be eligible to participate in the statutorily-mandated debates.

Executive Director Herrmann said that by regulation the Commission established 5:00 p.m. as the deadline for submissions on that date. He said that the Sigmund campaign filed its submissions nine minutes late. The Executive Director said that the Commission could relax its regulation and accept the submission as timely. He said that it was up to the Commission to decide this question. Executive Director Herrmann indicated that on two previous occasions in the 1989 primary election the Commission accepted late public financing filings. Both, he said, were within one hour of the deadline.

On a motion by Commissioner Linett, seconded by Commissioner Axtell and passed by a vote of 4-0, the Commission waived the regulatory deadline and considered the Sigmund submission to be filed timely.

7. Certification of Public Funds

Director of Public Financing Nedda G. Massar reviewed the applications for public matching funds. She said that on April 3, 1989, the Commission received six submissions for matching funds. She said that the submissions were from primary election Candidates Gerald Cardinale, Cary Edwards, William Gornley, Chuck Hardwick, James Florio, and James Courter.

At this point, the Commission reviewed the submissions and certified them individually. They were:

1. Candidate Gerald Cardinale

The net amount submitted by Candidate Cardinale for match was \$16,122. A complete review of all items resulted in temporary refusal of 5 contribution items. In addition, \$8,250 was resubmitted for match and accepted, for a total amount eligible for match of \$24,087.

Staff therefore recommended that the Commission certify \$48,174 in matching funds. Since this submission is Candidate Cardinale's third, the Commission has now certified a total of \$288,174 in matching funds to this candidate.

On a motion by Vice Chairman McNary, seconded by Commissioner Axtell and passed by a vote of 4-0, the Commission certified \$48,174 in matching funds to Candidate Gerald Cardinale.

2. Candidate James Courter

The net amount submitted by Candidate Courter for match was \$731,398.81. This submission was Candidate Courter's first, and based on its review, staff deemed this candidate to be eligible for matching funds. A complete review of all items resulted in temporary refusal of 58 contribution items. After subtracting \$50,000, it was determined that \$647,623.81 was eligible for match at the 2:1 ratio.

Staff therefore recommended that the Commission certify \$1,295,247.62 in matching funds. Since this submission is Candidate Courter's first, the Commission has now certified a total of \$1,295,247.62 in matching funds to this candidate.

On a motion by Vice Chairman McNary, seconded by Commissioner Axtell and passed by a vote of 4-0, the Commission certified \$1,295,247.62 in matching funds to Candidate Jim Courter.

3. Candidate Cary Edwards

The net amount submitted by Candidate Edwards for match was \$72,170. A complete review of all items resulted in temporary refusal of 7 contribution items. It was determined that \$64,170 was eligible for match at the 2:1 ratio.

Staff therefore recommended that the Commission certify \$128,340 in matching funds. Since this submission is Candidate Edward's third, the Commission has now certified a total of \$1,268,000 in matching funds to this candidate.

On a motion by Vice Chairman McNary, seconded by Commissioner Axtell and passed by a vote of 4-0, the Commission certified \$128,340 in matching funds to Candidate Cary Edwards.

4. Candidate James Florio

The net amount submitted for match was \$303,475. This submission was Candidate Florio's first and based on its review, staff deemed this candidate to be qualified to receive matching funds.

Staff temporarily refused 12 contribution items for match, bringing the total accepted toward qualification to \$290,325. After subtracting \$50,000, staff deemed \$240,325 to be eligible for matching at a 2:1 ratio.

Staff therefore recommended that \$480,650 be certified by the Commission in matching funds.

On a motion by Vice Chairman McNary, seconded by Commissioner Axtell and passed by a vote of 4-0, the Commission certified \$480,650 in matching funds to Candidate James Florio.

5. Candidate William Gormley

The net amount submitted by Candidate Gormley for match was \$109,115. A complete review of all items resulted in temporary refusal of 42 contribution items. In addition \$93,450 was resubmitted for match and accepted. A total amount of \$188,135 was determined to be eligible for match.

Staff therefore recommended that the Commission certify \$376,270 in matching funds. Since this submission is candidate Gormley's second, the Commission has now certified a total of \$993,980 in matching funds to this candidate.

On a motion by Vice Chairman McNary, seconded by Commissioner Axtell and passed by a vote of 4-0, the Commission certified \$376,270 in matching funds to Candidate William Gormley.

6. Candidate Chuck Hardwick

The net amount submitted by Candidate Hardwick for match was \$115,978. A complete review of all items resulted in temporary refusal of 23 contribution items. In addition, \$32,415 was resubmitted for match and accepted for a total amount eligible for match of \$134,238.

Staff therefore recommended that the Commission certify \$268,476 in matching funds. Since this submission is Candidate Hardwick's fourth, the Commission has now certified a total of \$1,165,927 in matching funds to this candidate.

On a motion by Vice Chairman McNary, seconded by Commissioner Linett and passed by a vote of 4-0, the Commission certified \$268,476 in matching funds to Candidate Chuck Hardwick.

Director Massar next reviewed the applications for public matching funds submitted on April 17, 1989. The Commission received five submissions for matching funds on this date. She said that the submissions were from primary election Candidates Gerald Cardinale, Cary Edwards, James Florio, Chuck Hardwick and Alan Karcher.

At this point, the Commission reviewed the submissions and certified them individually. They were:

1. Candidate Gerald Cardinale

The net amount submitted by Candidate Hardwick for match was \$18,562. A complete review of all items resulted in temporary refusal of 3 contribution items. In addition, \$4,105 was resubmitted for match and accepted, for a total amount eligible for match of \$22,492.

Staff therefore recommended that the Commission certify \$44,984 in matching funds. Since this submission is Candidate Cardinale's fourth, the Commission has now certified a total of \$333,158 in matching funds to this candidate.

On a motion by Vice Chairman McNary, seconded by Commissioner Axtell and passed by a vote of 4-0, the Commission certified \$44,984 in matching funds to Candidate Gerald Cardinale.

2. Candidate Cary Edwards

Candidate Edwards did not submit any new funds for match. Candidate Edwards resubmitted \$162,015 in funds that were accepted.

Staff recommended that the Commission certify only \$82,000 of this money in matching funds because to have certified \$162,015 at 2:1 match would have caused Candidate Edwards to exceed the public funds cap.

The Commission now has certified a total of \$1,350,000 to this candidate.

On a motion by Vice Chairman McNary, seconded by Commissioner Axtell and passed by a vote of 4-0, the Commission certified \$82,000 in matching funds to Candidate Cary Edwards.

3. Candidate Chuck Hardwick

The net amount submitted by Candidate Hardwick for match was \$69,558.87. A complete review of all items resulted in temporary refusal of 22 contribution items. It was determined that \$60,258.87 was eligible for match at the 2:1 ratio.

Staff therefore recommended that the Commission certify \$120,517.74 in matching funds. Since this submission is Candidate Hardwick's fifth, the Commission has now certified a total of \$1,286,444.74 in matching funds to this candidate.

On a motion by Vice Chairman McNary, seconded by Commissioner Axtell and passed by a vote of 4-0, the Commission certified \$120,517.74 in matching funds to Candidate Chuck Hardwick.

4. Candidate Alan Karcher

The net amount submitted by Candidate Karcher for match was \$73,090. A complete review of all items resulted in temporary refusal of 21 contribution items. In addition, \$7,900 was resubmitted for match and accepted, for a total amount eligible for match of \$73,165.

Staff therefore recommended that the Commission certify \$146,330 in matching funds. Since this submission is Candidate Karcher's second, the Commission has now certified a total of \$348,878 in matching funds to this candidate.

On a motion by Vice Chairman McNary, seconded by Commissioner Axtell and passed by a vote of 4-0, the Commission certified \$146,330 in matching funds to Candidate Alan Karcher.

5. Candidate James Florio

Director Massar said that the staff as anticipated because of two large back-to-back submissions during the one week submission cycle did not complete the review of the second submission by Candidate Florio. Director Massar said that Candidate Florio submitted \$320,900 for match on April 10, 1989. She recommended that the Commission certify 80 percent of these funds for match, based on the fact that it is Candidate Florio's second submission and the Commission previously approved an 80 percent automatic certification procedure for submissions made in April.

Director Massar said that based on this procedure, \$513,440 in matching funds would be certified to Candidate Florio.

On a motion by Vice Chairman McNary, seconded by Commissioner Linett and passed by a vote of 4-0, the Commission certified \$513,440 in matching funds to Candidate Florio.

Following the certification of public funds process, Director Masser noted that the error rate report shows that overall, campaigns are improving.

Chairman Bedford commended Director Masser on a "marvelous" report.

8. Change of Debate Location and Date

Chairman Bedford recognized Ms. Anne Auerbach, President-elect of the League of Women Voters of New Jersey.

Ms. Auerbach reported that at the last meeting between the League and WCAU/10 Philadelphia, the station indicated that, from a technical point of view, it preferred that all of the debates be held at the Nicholas Music Center, Douglass College, in New Brunswick.

Previously, the Democratic debate was scheduled for May 11, 1989 at the Labor Education Center at Douglass College. The Republican debate is scheduled for May 17 at the Nicholas Music Center. As the result of WCAU's recommendation, the Democratic debate is now scheduled for May 15, 1989 (8-9 p.m.), at the Nicholas Music Center. According to Ms. Auerbach, the Nicholas Music Center is not available for use on the original Democratic debate date of May 11, 1989.

On a motion by Vice Chairman McNary, seconded by Commissioner Axtell and passed by a vote of 4-0, the Commission approved the change of date and location of the League's Democratic debate.

At this juncture, Chairman Bedford asked Ms. Auerbach to respond to Republican gubernatorial candidate William Gormley's complaint that television coverage of the League's Republican debate favored candidates from Northern New Jersey over candidates from Southern New Jersey because television coverage in North Jersey would not be as extensive as that in South Jersey. WCAU/10 Philadelphia will cover the debates live and thus provide extensive coverage in South Jersey. The network's affiliate in New York will not be televising the event, however.

Ms. Auerbach responded that the situation has changed since the time that the Gormley letter was written. She said that the debates will be adequately televised in North Jersey. Ms. Auerbach reported that WCAU and New Jersey Network (NJN) will each broadcast the debates live. Moreover, Ms. Auerbach said that NJN will also provide a tape-delayed broadcast of the event. She indicated that the League is still in contact with Channel 5 and Channel 13 and is hoping that one, or both, of these networks will televise the debates. Ms. Auerbach added that WOR Radio has also agreed to broadcast the debates.

Chairman Bedford said that it was very important to provide coverage in North Jersey.

Ms. Auerbach agreed and reiterated that since the time of the Gormley letter, WCAU and NJN have come to a different arrangement.

Chairman Bedford said that the Gormley letter raises the issue of Commission authority in the debate process. He said that many people believe that the Commission has substantial authority to involve itself in the process of arranging for the debates.

Chairman Bedford said that the statute specifically states that the Commission selects a private organization to sponsor the debates. He said, however, that the statute is clear that this is the only authority given to the Commission in this matter. Chairman Bedford stated that pursuant to the statute, the rules of the debate are solely the responsibility of the sponsor, not to be made final without consulting with the State Party Committees.

Chairman Bedford said that the original bill provided that the Commission could run the debates or select a sponsoring organization. He said that the bill that became law was amended, removing the authority of the Commission to run the debates, and giving the Commission the authority only to select a debate sponsor.

Chairman Bedford asked Counsel Farrell for his opinion on this matter.

Counsel Farrell said that the language giving the Commission authority to run the debates was removed from the bill which became law. He said that the Commission has regulations but they are consistent with selecting the sponsors and monitoring the debate schedule for conflicts in scheduling. Counsel Farrell said that in terms of the rules the Commission has no authority.

Commissioner Linett said that he does not often disagree with the Chairman. He said, however, that the intention of the statute is to have televised debates and that while we have no authority to determine rules, we do have the authority to approve the time and place. As such, continued Commissioner Linett, the Commission should express itself regarding the importance of complete television coverage.

Ms. Auerbach said that the Commission should be assured that the League would not want to associate itself with a debate that was in any way unbalanced. She said that the League has secured the time, date, and location, and that it hopes it can provide additional television coverage through Channel 13 and Channel 5. She said that it already had complete coverage through WCAU and NJN.

Commissioner Linett asked if the League was pursuing any additional stations.

Ms. Auerbach said that WCAU had been asked to contact its New York affiliate. She said also that all affiliates of NJN would cover the debates. She said, however, that Channels 13 and 5 are being pursued because NJN's signal in North Jersey is not always that strong.

Chairman Bedford said that he believes the League has done an excellent job. He added that the League is very experienced in arranging debates and has always done a fine job.

Chairman Bedford indicated that candidate Gommley's complaint should be responded to and directed Counsel Farrell to send out a written response.

Vice Chairman McNary next suggested a course of action for the League to pursue in attempting to get additional television coverage. He suggested that the League get a commercial sponsor to underwrite the debates. He said that corporate sponsorship might entice more stations to cover the debates.

Chairman Bedford asked Ms. Auerbach to comment on the circumstances surrounding gubernatorial candidate Lois Rand's invitation to participate in the League-sponsored Republican debate.

Ms. Auerbach said that while the League was in the process of applying to sponsor the debates, it sent letters inviting all candidates to participate. Ms. Auerbach said that the League had an incorrect understanding of the statute and did not realize that there is a \$150,000 qualification requirement for debate participation. Ms. Auerbach said that now that the matter has been clarified the League will comply with the statute and limit participation in the debates to only those candidates who qualify.

Chairman Bedford said that it was the intent of the Legislature, when enacting the public financing reform bill, to limit participation in the debates to viable candidates. He said that the test of a serious candidacy involves raising and spending a threshold amount of money, in this case, \$150,000.

Ms. Auerbach said that the League has been wrestling with this question for years with respect to minor candidates. She said that she is delighted that minor candidates are now defined.

Chairman Bedford directed Counsel Farrell to respond in writing to the Lois Rand campaign, indicating that Ms. Rand is not eligible to participate in the Republican debates.

9. Advisory Opinion No.08-1989

This advisory opinion request, submitted by Assemblywoman Marion Crecco, asks whether investments in two rental properties, which have not yet realized a profit, are required to be reported on the personal financial disclosure form filed with the Commission.

In a telephone conversation with Legal Director Nagy, which occurred subsequent to the written request, Assemblywoman Crecco advised that in 1988, one of these properties, a condominium, did not produce any income, and the second, a rental house, produced income but expenses exceeded that income.

The advisory opinion response stipulated that Assemblywoman Crecco is required to report the source of income for the one property that produced rent, but no reporting is required of the property that produced no income.

Commissioner Linett asked if the statute specifically mentions gross income as reportable.

Legal Director Nagy said that the statute defines the term "income" but does not specifically mention gross income, or expenses related to income.

Chairman Bedford said that the statute is ambiguous about this question.

Commissioner Linett asked: "If a law firm takes in "x" amount of dollars in receipts, and realizes a profit of one-fourth of that amount, would the net profit be reported or the gross receipts?"

Counsel Farrell said that he cannot recall any situation where the Commission allowed an individual to "net-out."

Vice Chairman McNary said that the Personal Financial Disclosure (PFD) law only requires the source of funds to be reported, not amounts.

Commissioner Linett asked about a situation where there is a large gross income but a low net profit. He asked what amount would be reportable.

Legal Director Nagy indicated that only the source of income over \$1,000 is listed, not amounts.

Vice Chairman McNary asked Legal Director Nagy how, from the telephone conversation with Assemblywoman Crecco, he drew the conclusion that the Assemblywoman was talking about gross income.

Commissioner Linett said that this assumption could be made from the letter, in which it was stated that no profit was realized from the rental properties.

Counsel Farrell said that Assemblywoman Crecco was probably talking about a condominium that was unoccupied and a rental house that produced income but not profit. Counsel Farrell said that the Commission has always required the source of gross income over \$1,000 to be reported and has not allowed the filer to "net-out."

Executive Director Herrmann said that the PFD law is a weak law, that the Commission has consistently called for it to be strengthened in its annual reports, and that it might be in the public interest for the Commission to strengthen this law by requiring the source of gross income to be reported.

Chairman Bedford said that language should be added to the advisory opinion response that calls attention to the Act being silent on the reporting of gross income sources and speaks to the purpose of the Act, which is disclosure.

On a motion by Vice Chairman McNary, seconded by Commissioner Axtell and passed by a vote of 4-0, the Commission approved the advisory opinion response, including the additional language as suggested by Chairman Bedford.

9. 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.

10. Adjournment

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

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