



## State of New Jersey

### ELECTION LAW ENFORCEMENT COMMISSION

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#### PUBLIC SESSION MINUTES

JULY 6, 1989

#### TELEPHONE CONFERENCE

All of the Commissioners 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 telephone meeting convened at 10:05 a.m., at the Commission Offices, at 28 West State Street, Trenton, New Jersey.

1. Advisory Opinion No. 15

This advisory opinion, initially discussed at the June 16, 1989 Commission meeting, concerns the permissibility of a PAC expending funds for the purchase of a car phone, which is to be used by a public official.

Specifically, the advisory opinion request, submitted by Joseph J. Bell, Esq., on behalf of "Mayor Lombardo's Coalition for Excellence," asks if this continuing political committee can purchase a car phone to be used by Mayor Charles C. Lombardo of Rockaway Township. Mr. Bell states that the mayor will use it for political purposes.

The Commission considered the advisory opinion draft prepared by Legal Director Nagy which states that the lease of the phone is permissible provided that the car phone is not converted to any personal use and provided that the phone calls related to any personal use are not paid for by the continuing political committee. The draft also states that any phone calls concerning Mr. Lombardo's official duties as mayor cannot be paid for with continuing political committee funds.

Chairman Bedford asked: "Who or what entity will purchase the car phone?"

Legal Director Nagy said that funds from the "Mayor Lombardo's Coalition for Excellence" PAC would purchase the equipment.

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Chairman Bedford said that he was troubled by the fact that the PAC funds would be used to purchase the phone. He said that not only would the phone be used by the Mayor for political purposes but also by Mr. Lombardo in his capacity as a public official. He said that the PAC funds should not be used to support him in his capacity as Mayor.

Vice Chairman McNany suggested that the Commission require the phone to be leased.

Chairman Bedford agreed that leasing would improve the situation.

Counsel Farrell said that he does not see any problem with requiring that the car phone be leased. Also he said that in requiring the continuing political committee to be reimbursed for non-political purpose phone calls, the Commission would be acting properly. Moreover, Counsel Farrell suggested that the advisory opinion state that the Commission cannot approve calls made in the context of the Mayor's official duties. Counsel Farrell said that for the Mayor to utilize the car phone in this way would represent an improper use of campaign funds. He said that this would be precariously close to utilizing these funds for personal use.

Chairman Bedford indicated that he was not troubled by a continuing political committee leasing a phone. He said: "A secondary problem involves the question of during what time period the leasing of the phone should be limited."

Vice Chairman McNany said that he believed that the leasing of the phone, since it is to be used for political purposes, should be limited to the period which entails the mayor's political campaign. He suggested that the period include the January of the election year, or the date of filing a petition, through election day.

Commissioner Linett said that he believed that the Commission should not prescribe "time-period restrictions" as long as the phone is used for political purposes only.

Executive Director Herrmann said that the issue of the use of a car phone is related to the issue of utilizing surplus campaign funds, or PAC funds, to support legislative district offices. He said that the Commission has maintained that it has no jurisdiction over the permissibility of using these funds to support legislative district office operations. Executive Director Herrmann said that the Commission might consider being silent on this aspect of the advisory opinion request.

Counsel Farrell suggested that the Commission draft an opinion that states that the phone should be leased only for the campaign period. He said however, that the Commission should be vague as to what constitutes that period. He said that the opinion should state that the phone must be removed after the termination of campaign activity, leaving open the question of when that activity ends.

Vice Chairman McNany suggested that in order for the Commission to be consistent with prior opinions it should stipulate that the phone should be removed after election day. The Vice Chairman indicated that it would be best for the advisory opinion to state clearly that the phone must be leased, not purchased, and for only the period commencing on January 1 of the election year, or on the petition filing date, and ending the day after election. Vice Chairman McNany said that if the Commission felt that this language would be too restrictive it could give the campaign thirty days after the election to remove the phone.

Counsel Farrell said that he believed it might be better for the Commission to draw the conclusion that there are limits, without giving strict guidelines.

Vice Chairman McNany said that unless the Commission provided guidelines, the regulation would be interpreted too liberally.

Legal Director Nagy suggested that attempting to fix specific time periods at which a campaign could buy or lease equipment or make other expenditures could result in more regulation over campaign activities than the Commission would want to exert.

Chairman Bedford said that Legal Director Nagy should redraft the opinion to stipulate: 1) that the phone must be leased, 2) that the period of the lease should be from the commencement of the campaign to the end of the campaign, but no specific dates should be mandated, and 3) that the record keeping requirements should be noted.

He suggested that the Commission postpone action on this matter until the next meeting.

On a motion by Vice Chairman McNany, seconded by Chairman Bedford and passed by a vote of 3-0, the Commission voted to carry Advisory Opinion No. 15 over to the next meeting.

## 2. Coordinated Expenditures Regulation

The Commission continued its discussion of the proposed amendment to the coordinated expenditures regulation that began at its meeting on June 16, 1989. For complete details of the discussion and the proposed amendment as presented, see the Public Session Minutes of June 16, 1989 and the memorandum from Gregory E. Nagy, Legal Director, to Frederick M. Herrmann, Executive Director, Ph.D., dated June 29, 1989, and entitled "Coordinated Expenditure Regulation." This memorandum package also includes proposals from the Courter Campaign and the Florio Campaign.

Chairman Bedford said that he is concerned about the loophole created by this proposed regulation regarding direct mail. He said that the Commission has been attempting to encourage volunteerism through its changes to the

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regulation. He said that in his opinion, allowing political committees to be permitted to undertake direct mail efforts that are consistent with the guidelines set forth in the proposed amendment would be opening up a huge loophole. He said that direct mail is a commodity that is paid for and does not embrace the old-fashioned idea of door-to-door distribution of campaign literature by volunteers.

Commissioner Linett said that he believes that political party committees should be exempt from the limits.

Counsel Farrell said that the Commission should be clear that the New Jersey Supreme Court decision covers uncoordinated expenditures, permitting those expenditures by independent committees.

He said that what the Commission is attempting to do is regulate coordinated expenditures. He said the Commission is carving out exceptions for certain coordinated expenditures.

Counsel Farrell said that at its previous meeting, the Commission directed staff to draft a regulation that allows political party committees and multi-candidate designated committees to be excepted from the coordinated expenditure regulations but requires coordinated activity undertaken by PACs and other committees to be subject to the expenditure limits.

Vice Chairman McNany said that it was important to promote volunteerism. He said that party-building should be allowed.

The Commission next entertained comments from the public.

Mr. Peter Verniero, Deputy Campaign Director for the Courter gubernatorial campaign stated that he agreed with Counsel Farrell's conclusions. He said that the Commission's policy considerations should involve the drafting of language that encourages volunteerism but avoids opening loopholes. Mr. Verniero suggested that the proposal submitted by the Courter campaign accomplishes that goal.

Mr. Verniero said that if the Commission accepts language contained in subsection(a) of 19:25-15.29, then by definition, it must accept the other changes proposed by the Courter campaign for successive subsections. He said that these changes close any loopholes that would permit PACs and other entities to coordinate their activities with the gubernatorial campaigns and not be subject to expenditure limitations.

Legal Director Nagy said that at its last meeting the Commission directed staff to draft the regulation to allow political committees as well as non-gubernatorial candidates to be excepted from the expenditure limits. He suggested that the Commission consider the technical argument made to him on the telephone by Mr. John Sheridan of the Courter Campaign regarding subsection(a) before adopting any regulations containing the political committee language. He said that Mr. Sheridan suggested that if the

Commission mentioned the political committees specifically, the failure to mention continuing political committees may suggest that those entities are excluded from the expenditure limits entirely. That result was not the Commission's intent.

Mr. Sheridan, attending the meeting as Counsel to the Courter Campaign, said that in principle the regulation should not just be limited to non-gubernatorial candidates. He said that in terms of allocating coordinated expenditures against the expenditure limits, the Commission should capture continuing political committees as well as entities such as corporations, unions and associations. He said that this effort should take place in subsection(a). Mr. Sheridan said that thereafter, in successive subsections, the Commission should identify specifically those exceptions it wants to carve out. He said that those exceptions should include non-gubernatorial candidates, designated multi-candidate committees, and county and State political party committees.

Mr. Steven Edelstein, Counsel to the Democratic State Committee asked to be recognized. Mr. Edelstein said that other than PACs, the Democratic State Committee agrees that State and county party committees should be excluded from the expenditure limits, just as should multi-candidates committees. He said that this would promote party-building.

Chairman Bedford said that he agreed with Mr. Sheridan's comments that political party committees should be allowed to participate without being subject to the expenditure limitations.

Counsel Farrell said that subsection(h) in the Courter letter describes the Commission's collective thinking accurately. He suggested that the Commission adopt this language.

The counter proposal for subsection(h) reads: "For the purposes of this section, N.J.A.C. 25-15.29, the term "non-gubernatorial candidate" shall mean any candidate, other than a gubernatorial candidate, acting alone under a single campaign committee or jointly with other candidates under a designated multi-candidate joint campaign committee, but shall not mean any political committee, as defined in N.J.S.A. 19:44A-3(i), or a continuing political committee as defined in N.J.S.A. 19:44A-3(n), or any other corporation, partnership, incorporated or incorporated association, or part thereof."

Commissioner Linett said that he was not sure that the Commission should limit the exceptions as in subsection(h). He said that any committee should be able to participate.

Vice Chairman McNany said that he had no difficulty with subsection(h) as proposed by the Courter campaign.

Chairman Bedford said that he agreed that the exclusion should be limited to the party committees.

The Commission recognized Mr. Angelo Genova of the Florio for Governor Committee. Mr. Genova said that the Florio campaign was not troubled by the Courter proposal and endorsed it.

Mr. Peter Verniero said that he would like to make a point of clarification. He said that it is important to note that it is not just subsection(h) solely that must be considered by the Commission but rather the changes made to other subsections by the Courter campaign. He said that all of the subsections interrelate. He said, for instance, that "political committee" language was deleted from the remainder of the text.

Vice Chairman McNany recommended that staff redraft the proposal to include subsection(h) as well as the other changes proposed in the Courter text.

Legal Director Nagy pointed out that the only changes that would be made to the Courter text would involve subsection (c) paragraphs (1), (2) and (3). He said that the Commission had amended these subsections at its previous meeting and to keep the regulation consistent with those amendments, the staff's drafted language should be maintained.

The Commission concurred, directing Legal Director Nagy to draft the regulation to conform to the Courter proposal, except for subsection(c) paragraphs (1), (2) and (3), which would reflect the staff's proposed language.

The Commission decided to carry the matter over for a vote at its July 18, 1989 meeting.

At this point, Mr. Sheridan suggested that the Commission seek emergency adoption of the proposed regulation, provided that the Commission proposed the change at its next meeting.

Chairman Bedford said that this suggestion could also be considered at the next meeting.

On a motion by Commissioner Linett and passed by a vote of 3-0, the Commission voted to postpone a vote on the proposal until its next meeting on July 18, 1989.

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3. Adjournment

On a motion by Vice Chairman McNany, seconded by Chairman Bedford and passed by a vote of 3-0, the Commission voted to adjourn at 10:52 a.m.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "F. M. Herrmann", written in black ink on a light-colored background.

FREDERICK M. HERRMANN, PH.D.

FMH/jah