



State of New Jersey

**ELECTION LAW ENFORCEMENT COMMISSION**

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PUBLIC SESSION MINUTES

JULY 18, 1989

Except for Commissioner Axtell, 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 meeting convened at 9:50 a.m., at the Commission Offices, at 28 West State Street, Trenton, New Jersey.

Chairman Bedford announced that Commissioner Axtell has retired to Florida. He said that a replacement has not yet been named and that until one is named, the Commission will have to function with three members.

1. Approval of Public Session Minutes of June 16, 1989

On a motion by Vice Chairman McNany, seconded by Commissioner Linett and passed by a vote of 3-0, the Commission approved the Public Session Minutes of June 16, 1989.

2. Approval of Public Session Minutes of July 6, 1989 - Telephone Conference

On a motion by Vice Chairman McNany, seconded by Commissioner Linett and passed by a vote of 3-0, the Commission approved the Public Session Minutes of July 6, 1989.

3. Executive Directors' Report

A. Evaluation Data and Budget

Executive Director Herrmann reported that the Commission's evaluation data for fiscal year 1989 is excellent. The Executive Director said that 101 investigations were completed, exceeding the target of 100. Executive

Director Herrmann reported that staff completed 620 complaints, far above the 550 target number. He said that more than \$32,000 in fines was collected, surpassing the \$25,000 target, and that staff responded to 9,462 public assistance requests, a figure remarkably close to the 9,500 target.

Executive Director Herrmann asserted, however, that it will be very difficult to sustain this record in fiscal year 1990 because the Commission has sustained a 13 percent cut from its original FY90 target base. Executive Director Herrmann said that the FY90 budget amounts to \$1.486 million overall, a cut of \$221,000. He said that the Commission received an appropriation of \$300,000 for public financing administration, representing a cut of \$130,000. Executive Director Herrmann added that \$15,000 was cut from the per diem account. He said that this reduction will make the budget very tight in terms of Commission meetings in FY90. Executive Director Herrmann said that the staff may have to transfer money from other accounts to pay for the Commissioners' per diem.

Executive Director Herrmann said that as a result of these cuts, staff will present a service cut plan for FY90 at the August meeting. In addition, said Executive Director Herrmann, the Commission's FY91 budget proposal will be presented at the August meeting.

In conclusion, Executive Director Herrmann said that for FY90 the Commission had originally asked for \$281,000 more than the original target, which itself was eventually cut by 13 percent. Therefore, added the Executive Director, the Commission has actually had its budget cut by a half million dollars. The funding level is approximately \$500,000 under the amount the Commission actually needs to maintain and improve current services.

#### B. Computer Improvement

Executive Director Herrmann reported that the Commission has purchased a new disc and tape-drive to speed processing time and avoid breakdowns.

The Executive Director said that a new air conditioning system will be installed in the computer room to avert overheating and prevent crashes. Moreover, Executive Director Herrmann said that for the first time all secretaries have access to a printer. Additionally, he reported that a new software program has been developed by Systems Administrator Warren Heins, in consultation with Director of Public Financing Nedda Massar, to analyze gubernatorial expenditures. The Executive Director said that through this development, more data will be retrieved more accurately and quickly. Further, he indicated that plans have been established to purge old data from the system, a process that will also help to speed-up the system. Executive Director Herrmann said that the bottom line is that the computer continues to be operated with great efficiency and professionalism.

C. COGEL Update from June Steering Committee Meeting

Executive Director Herrmann said that all COGEL conferences will now be held in September, including the Alaska conference in 1990. Executive Director Herrmann indicated that President Bush may be a speaker at the conference in 1990. Moreover, the Executive Director said that the COGEL conference will probably be held in Indiana in 1991 and that ELEC should consider bidding for the 1992 conference.

Executive Director Herrmann said that pursuant to a suggestion by him the COGEL conference will now have exhibits, provided by computer firms, publishers, office equipment manufacturers, etc. The Executive Director reported that the model laws will be completed this summer and that the COGEL award will be presented to Pierre Côté of Quebec.

D. Legislative Update

Executive Director Herrmann reported that A-4681 (Martin), a bill which raises ELEC's fine scale base to \$3,000/\$6,000 was released from the Assembly State Government Committee on June 22, 1989. He said that this bill also provides fines in an amount equal to triple the total of contributions or expenditures not reported. The bill adjusts the fine scale by the consumer price index every four years. Executive Director Herrmann said that Legal Director Nagy testified on this bill, which is based on ELEC annual report recommendations.

Executive Director Herrmann reported that S-3627 (Van Wagner), a bill that expands debate sponsorship to news organizations that have not sponsored any previous debates, was released from the Senate State Government Committee on June 29, 1989. He noted that Deputy Director Brindle testified in support of the bill, asking the committee to clarify whether New Jersey Network (NJN) may sponsor a debate under the legislation. The committee indicated that the bill will be amended on the Senate floor to clarify that NJN, a publicly owned station, will be eligible to sponsor gubernatorial debates.

E. Praise for ELEC

Executive Director Herrmann said that the National Journal, in an article, listed the New Jersey Public Financing Program as a success story.

The Executive Director noted that Assemblyman Schluter sent a letter to the Commission praising White Paper Number Two "for focusing the attention of New Jersey on emerging trends in the financing of elections."

F. Meeting Schedule

Executive Director Herrmann advised the Commission that it will meet on August 15, 1989, at 9:30 a.m., in Trenton, New Jersey. He noted that the ELEC summer picnic will be held on August 18, 1989 at Legal Director Nagy's home.

4. Debate Sponsorship

Assistant Director of Public Financing Donna Saczynski outlined the process for selecting general election debate sponsors and reviewed the seven applications for sponsorship.

In addition, Ms. Saczynski set forth the statutory criteria for selecting the debate sponsors. The criteria are: 1) that sponsors be private organizations which are not affiliated with any political party or holder of or candidate for public office; 2) that sponsors have not endorsed any candidate in the pending primary election; and 3) that sponsors have previously sponsored one or more televised debates for statewide office in New Jersey since 1976.

The applicants for sponsorship were: the Mercer County Chamber of Commerce in conjunction with the West Windsor Division of the Princeton area and Mercer County Chamber of Commerce; the Asbury Park Press in conjunction with WWOR/TV9; WNET/TV13; the New Jersey State Chamber of Commerce; the South Jersey Confederation; WPVI/TV6, Philadelphia in conjunction with WABC/TV7, New York; and the League of Women Voters New Jersey Education Fund.

The Commission proceeded to review the applications for sponsorship.

Commissioner Linett asked Mr. J. Ross Bevis of the Mercer/Princeton Chamber of Commerce if any progress had been made in obtaining commitments from television stations for television coverage.

Mr. Bevis responded that no commitments had been obtained. He said that the television stations contacted by the Mercer County Chamber of Commerce indicated that they would not commit to coverage until after the sponsors were chosen.

Chairman Bedford recognized Mr. Gary Deckelnick of the Asbury Park Press to discuss the newspaper's application.

Mr. Deckelnick introduced Ms. Cynthia Harrison, Ms. Penny Pinsker and Mr. Thomas Petner of WWOR/TV9, Mr. Jim Zeiss of the Asbury Park Press and Ms. Sondra Eisen of CTN Cable TV, New Jersey.

Chairman Bedford asked the group if it had a time-slot in mind during which the debate would be aired.

Ms. Harrison said that WWOR was looking at September 25th or October 24th, between 8:00 p.m. and 9:00 p.m.

Commissioner Linett asked if the WWOR signal reached South Jersey.

Ms. Harrison said that while WWOR does not reach all of South Jersey, its station is carried on cable in that region of the State. She said that

its programming is carried on cable TV throughout 95 percent of New Jersey. Ms. Harrison said that WWOR programming reaches 100 percent of the cable households in New Jersey and that the overall cable penetration into the television market in the State is quite extensive.

Ms. Sondra Eisen of CTN Cable TV, New Jersey, added that cable TV is interconnected throughout the State and that the debates would get widespread coverage.

Commissioner Linett asked: "What part of New Jersey falls into the five percent category that does not have access to cable TV?"

Ms. Harrison said that only a very small pocket of the State is devoid of cable TV. She reiterated that every cable system carries Channel 9. Ms. Harrison said that Channel 9 would make its signal available to any station that would want it and that it would also air the debate over radio.

Commissioner Linett followed up his question by asking: "Does WWOR endorse candidates?"

Mr. Petner stated that WWOR would not endorse any candidates.

In response to this question, Mr. Deckelnick said that while the Asbury Park Press would exercise its long-held tradition of endorsing candidates, it would withhold its endorsement until after both debates are concluded. He said that the press usually endorses two Sundays before election day.

Commissioner Linett further asked: "Who will devise the format for the debate?"

Mr. Deckelnick said that the Press would establish the format in consultation with the candidates. He said that in previous debates the Press never had a problem with this issue.

Chairman Bedford asked WWOR representatives if they knew the proportion of cable TV households to commercial television households [in the State of New Jersey].

Ms. Eisen said that she would attempt to ascertain this information before the Commission makes its selection.

Chairman Bedford recognized Mr. Michael Cascio, representing WPVI/TV6 Philadelphia and WABC/TV7 New York.

Mr. Cascio said that in his opinion, the most important consideration for the Commission to take in selecting a sponsor is "coverage." He added that it was the station's experience that to reach a large audience, promotion of the event was critical. He said that WPVI and WABC can guarantee that the debates will be amply promoted and that the debate audience will be large.

Mr. Cascio said that WPVI and WABC will make its signal available to other stations and will air the debate live on October 11th between 7:00 p.m. and 8:00 p.m.

Chairman Bedford next called on Ms. Ann Auerbach of the League of Women Voters of New Jersey.

Ms. Auerbach said that the League's application speaks for itself as does its previous experience in running debates. She said that the League is non-partisan and does not endorse candidates. Ms. Auerbach said that the League planned to hold the debate on October 19th between 8:00 p.m. and 9:00 p.m. She said the debate will be tape-delayed, broadcast on WCBS/TV2, New York and WCAU/TV10, Philadelphia at 11:30 p.m. Ms. Auerbach said that these stations may yet agree to carry the debates live between 8:00 p.m. and 9:00 p.m.

Commissioner Linett asked if WCBS and WCAU would be willing to broadcast the debates live.

Ms. Auerbach indicated that the stations would not make any commitment to this effect.

Commissioner Linett asked for comment regarding the research that shows more people would watch the debates at 11:30 p.m.

Ms. Auerbach said that research done by WCAU 10/Philadelphia indicates that more of the viewing audience would be inclined to watch news oriented programming at 11:30 p.m. than during prime time.

Chairman Bedford recognized Mr. William R. Healey, representing the New Jersey Chamber of Commerce.

Mr. Healey said that the State Chamber of Commerce has a track record of 25 years of sponsoring debates. He said, however, that the Chamber had not obtained any commitments from television stations for live television coverage.

Chairman Bedford asked if the Chamber had any date in mind.

Mr. Healey said that the Chamber was not proposing any specific date at this time. He said that it would be done in consultation with the candidates and the Commission.

Chairman Bedford returned to the Asbury Park Press/WWOR proposal and the specific question addressed to Ms. Eisen of CTN Cable TV. He asked: "Have you obtained any information regarding the proportion of cable households?"

Ms. Eisen said that there are 36 cable networks, and 1.3 million subscribers.

Chairman Bedford next turned to Marlene Asselta, representing the South Jersey Confederation application.

Ms. Asselta said that the application made by the South Jersey Confederation marked the first time that all of the organizations mentioned in the application have worked together.

With respect to the television coverage, Ms. Asselta said that the Confederation had received preliminary commitments from WKYW/TV3 in Philadelphia and WPIX/TV11 in New York.

Chairman Bedford asked if there was a problem with Glassboro State College being a sponsor since it is not a private organization and the statute calls for sponsors to be private organizations and not public.

Counsel Farrell said that Glassboro State College would be prohibited from sponsorship under the statute.

Mr. Robert Harris of the South Jersey Confederation said that Glassboro State College would withdraw as a sponsor. He said, however, that the college would offer a site on the campus for the debate.

Vice Chairman McNany asked if the State Chamber of Commerce would have any involvement with the South Jersey Confederation if the Confederation were chosen.

Mr. Healey said that there had been no discussion of joint sponsorship but that the State Chamber would certainly consult and advise if asked to do so by the Confederation.

Chairman Bedford last turned to Mr. Dan Dubno of WNET/TV13.

Mr. Dubno said that WNET was interested in creating synergy between other entities and itself. He said that it was the intention of WNET to broadcast the debates live. Mr. Dubno said that WNET offered wide viewership on public television.

Commissioner Linett asked if the representatives of the campaign wished to comment on this issue.

Mr. Angelo Genova of the Florio Campaign said that in his opinion, the key phrase in the statute was "consultation with the campaigns." He said that he had received feedback during the primary campaign that the degree of consultation with the campaigns was perfunctory. Mr. Genova said that the consultation that took place was less than the candidates would have liked. He noted that only one sponsor representative had mentioned the importance of consultation in his remarks. Mr. Genova said that he hopes that the sponsors would be mindful of the need to consult with the campaigns in the general election because of the time constraints on the candidates. He said that the

candidates will have busy schedules and that it will be critical to have genuine consultation vis-a-vis time, place, dates and format.

Commissioner Linett pointed out that in the primary the law required the sponsors to consult with the parties, and not the candidates.

Commissioner Linett asked Mr. Genova what he thought about airing the debate at 11:30 p.m.

Mr. Genova indicated that in his opinion, 11:30 p.m. was too late.

Commissioner Linett said that 11:30 p.m. was discriminatory against the working person who would, in all probability, not be awake at that hour.

Commissioner Linett asked if the Courter Campaign had any comments.

Mr. Verniero said that the Courter Campaign had faith in the Commission's ability to select the best sponsors. He said, however, that it was important for the time and date to be established early because of the busy congressional and gubernatorial campaign schedules.

Mr. Deckelnick of the Asbury Park Press said that he was aware of this concern. He said that the Press had begun this process already and that Mr. Courter had agreed to September 25th. He said the Florio Campaign had not yet committed to a date.

Chairman Bedford asked if the sponsors had taken the various sporting events, such as the World Series, into account when establishing times and dates.

The sponsors indicated that these factors had been taken into account.

Chairman Bedford said that he would now close the public comment portion of the meeting in order for the Commission to make its selection.

Commissioner Linett said that this was a most difficult decision for the Commission to make. He said that all of the groups are publicly-spirited and deserve the thanks of the Commission for submitting applications. He said, however, that a key consideration of the Commission has to be the breadth of coverage.

Commissioner Linett said that he would nominate WPVI/TV6, Philadelphia and WABC/TV7, New York to sponsor one of the debates.

Vice Chairman McNany, saying that it is a very difficult choice and that he would like to give all of the organizations the opportunity to sponsor the debates, seconded the motion. On a vote of 3-0, the Commission selected WPVI and WABC to sponsor one general election debate.

Chairman Bedford asked if the Commissioners would like to entertain a motion on the second sponsor.

Vice Chairman McNany asked if certain applicants would agree to collectively sponsor one of the debates. He asked, for instance, if the New Jersey Chamber of Commerce, the South Jersey Confederation and WNET/13 would consider jointly sponsoring a debate.

The applicants indicated that they would be agreeable to this approach.

Commissioner Linett said that he was leaning toward the Asbury Park Press and WWOR.

Vice Chairman McNany said that the problem with this applicant was the fact that the Asbury Park Press still planned to endorse a candidate. He said that all of the other applicants have agreed not to endorse.

Chairman Bedford said that this bothered him a little, but not terribly much. He said that the Commission cannot blame the Press for wanting to endorse as per its tradition.

Chairman Bedford said that he was also leaning toward the Asbury Park Press and WWOR. He said that he has great respect for the League of Women Voters but that the 11:30 p.m. time-slot is troublesome.

Chairman Bedford said that he would move that the Asbury Park Press and WWOR be selected as the sponsor. Commissioner Linett seconded the motion. On a vote of 3-0, the Commission selected the Asbury Park Press and WWOR to sponsor one of the gubernatorial debates.

Commissioner Linett suggested that each applicant be sent a thank-you letter.

5. White Paper No. 3

Chairman Bedford said that while he did not agree with every statement contained in the paper, it is nevertheless an excellent study of legislative public financing. He said that if the Commission concurred, he was prepared to release it.

Commissioner Linett suggested that a disclaimer be added to the effect that while the Commission does not endorse any particular plan, this paper is an analytical study designed to stimulate public debate on the issue of legislative public financing. The Commission concurred.

On a motion by Chairman Bedford, seconded by Commissioner Linett and passed by a vote of 3-0, the Commission approved release of the White Paper, including the disclaimer language.

6. Coordinated Expenditures Regulation

The Commission resumed its discussion of the proposed amendment to the coordinated expenditures regulation that began at its meeting on June 16, 1989 and continued at its meeting on July 6, 1989. For complete details of the discussion and the proposed amendment as presented, see the Public Session Minutes of June 16, 1989 and July 6, 1989, and the memorandum from Gregory E. Nagy, Legal Director to Frederick M. Herrmann, Executive Director, dated July 11, 1989, and entitled "Proposed Amendments to Coordinated Expenditure Regulation."

Mr. Scott Weiner of the Florio Campaign asked to be recognized. Mr. Weiner said that whether it was the intention of the Commission or not, in presenting its latest proposal, it has excluded one type of multi-candidate committee from being able to coordinate its activity with the gubernatorial campaign. Mr. Weiner said that it was a matter of political reality that Assembly candidates create their own committees plus joint committees. He said that candidates take this approach because it is often beneficial to their fundraising efforts. For instance, some contributors will contribute only to them and not to their running mate. On the other hand, some contributors will make donations only to their running mates, and not to them. Finally, certain contributors prefer to give only to a joint committee and not to either legislative candidate individually. He said that by arranging matters in this way, the candidate can maximize his or her campaign receipts, and at the same time, expend money collectively with his or her running mate if so desired. Mr. Weiner said that the effect of the Commission's regulation would be to exclude non-designated committees established in this manner from the regulatory exception that would allow them to coordinate their activity with the gubernatorial campaign. He said that it did not seem to him that it was the intent of the Commission to preclude these hybrid committees from coordinating certain activities with the gubernatorial campaign of the party's standard-bearer.

Chairman Bedford recognized Mr. Peter Verniero on behalf of the Courter Campaign for comment.

Mr. Verniero opposed the change suggested by Mr. Weiner. He said that Mr. Weiner's suggestion might lead to a hypothetical situation whereby all Assembly candidates could come together under one committee and have this committee spend large amounts of money in a coordinated way with the gubernatorial candidate. He said that this would open up a large loophole. Mr. Verniero said that it is his belief that in order for a candidate to take advantage of the regulations, he or she should at least have to designate either a singular committee or a joint committee.

Chairman Bedford said that he would like the Commission to adopt the amendment to the regulation as it currently is written. He said that he is hesitant about opening the door to broader exceptions.

Chairman Bedford said that he was prepared now to vote on this regulation.

Commissioner Linett said that he believed that the proposed amendments are an advance in the Commission's evolving realization of the practicability of campaigning. He said that he agreed with the Chairman's position.

Chairman Bedford recognized Mr. Angelo Genova. Mr. Genova asked for a point of clarification on the Commission's intent in writing these regulations. He said that he understood the regulation to define non-gubernatorial candidates as single candidate committees, designated multi-candidate committees, and political party committees.

The Commission concurred in this assessment.

Mr. Genova asked for further clarification with respect to the political party committee exception. Mr. Genova asked: "If a political party forms a special fund, and it is operated under the auspices of the state political party, are expenditures made out of this fund in accordance with the regulatory guidelines exempt from the gubernatorial expenditure limits?"

The Commission indicated that these type of expenditures, in conformance with the regulation, would be appropriate.

On a motion by Commissioner Linett, seconded by Vice Chairman McNany and passed by a vote of 3-0, the Commission approved the proposal to amend the coordinated expenditure regulation and directed staff to seek approval from the Governor for an emergency regulatory adoption and concurrent proposal. The Commission also approved filing of the amendment as a proposed regulation in the event emergency adoption is not granted by the Governor.

7. Certification of Public Funds for Submissions Made on July 10, 1989

On July 10, 1989, an application for public matching funds was submitted by Candidate Alan Karcher. This submission was the ninth for Candidate Karcher.

On an amended 20-day postelection report, the Karcher campaign reported outstanding obligations of \$73,068.05, of which \$40,488 are appropriate public fund expenditures. In addition, \$45,000 of media fees were paid for by the campaign with non-public fund monies, and the campaign expects to reimburse the matching fund account once public funds are received.

Complete review of the Karcher submission shows that out of \$25,587 submitted on July 10, 1989, a total of \$29,056.10 is deemed eligible for match. At a 2-1 matching ratio, staff therefore recommended that \$58,112.20 in public funds be certified to the Karcher campaign.

On a motion by Vice Chairman McNany, seconded by Chairman Bedford and passed by a vote of 3-0, the Commission approved the certification of \$58,112.20 in public funds to the Karcher campaign.

8. Advisory Opinion No. 15-1989

This advisory opinion, initially discussed at the June 16, 1989 Commission meeting and continued at the July 6, 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.

The request was submitted by Joseph J. Bell, Esq., on behalf of "Mayor Lombardo's Coalition for Excellence."

Upon the Commission's directive at the June 16, 1989 meeting, staff circulated a draft response containing the following provisions: 1) that the phone could not be purchased but could 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.

On a motion by Chairman Bedford, seconded by Commissioner Linett and passed by a vote of 3-0, the Commission approved the draft advisory opinion response.

9. Executive Session

On a motion by Vice Chairman McNany, seconded by Commissioner Linett and passed by a vote of 3-0, 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. Return to Public Session

Executive Director Herrmann stated that a newspaper reporter indicated his understanding of the Sunshine Law to require that the Commission state, prior to each Executive Session, the purpose for going into such session, and to state when the results of deliberations will be released. Counsel Farrell responded that it is sufficient to state that information will be available at the close of each matter.

The Commission also discussed the need to go into Executive Session by resolution rather than by motion. Commissioner Linett asked Counsel Farrell to prepare a statement to be read into the minutes at each meeting when the Commission goes into Executive Session.

10. Adjournment

On a motion by Commissioner Linett, seconded by Vice Chairman McNany and passed by a vote of 3-0, the Commission voted to adjourn at 12:55 p.m.

Respectfully submitted,



FREDERICK M. HERRMANN, PH.D.

FMH/jah