



State of New Jersey

ELECTION LAW ENFORCEMENT COMMISSION

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DAVID LINETT
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COMMISSIONER

FREDERICK M. HERRMANN, PH.D.
EXECUTIVE DIRECTOR

JEFFREY M. BRINDLE
DEPUTY DIRECTOR

GREGORY E. NAGY
LEGAL DIRECTOR

EDWARD J. FARRELL
COUNSEL

PUBLIC SESSION MINUTES

JANUARY 16, 1990

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 9:30 a.m. at the Maplewood Municipal Building, Maplewood, New Jersey.

1. Approval of Public Session Minutes of December 19, 1989

On a motion by Commissioner Linett, seconded by Commissioner Mayo and passed by a vote of 4-0, the Commission approved the Public Session Minutes of December 19, 1989.

2. Executive Director's Report

A. Personnel/Budget Matters

Executive Director Herrmann announced that Elizabeth Ryan, Director of Review and Investigation, has resigned to become an Assistant Counsel to Governor Florio. He stated that Ms. Ryan will be greatly missed. She made many outstanding contributions to the work of the Commission.

The Executive Director added, however, that Associate Legal Director Judith Chamberlain has been named to replace Ms. Ryan as Director of Review and Investigation.

Executive Director Herrmann said, however, that the State has imposed a hiring freeze and that in order to replace Ms. Chamberlain in the position of Associate Legal Director, the Commission must get an exemption from the freeze for the position. He said that to promote Ms. Chamberlain internally from Associate Legal Director to Director of Review and Investigation did not constitute a problem, but acquiring an exemption to hire into her position may be difficult.

Executive Director Herrmann reported that the Commission is faced with a very tight situation as the result of its budgetary problems and the austerity measures imposed upon State government. He said that compounding the Commission's budgetary and staffing problems is the fact that public assistance requests have increased by 50 percent, from over 8,000 to over 12,000 requests in one year. To make matters worse, two out of four clerical positions have had to be left unfilled in the Compliance Section, making it exceedingly difficult to keep up with the demand for requests.

Executive Director Herrmann said that the increase in the financial activity of candidates and continuing political committees will also result in an increase in violations of the Campaign Act. He said, however, that budgetary problems will slow efforts in this area, impacting negatively upon the number of cases and their turnaround time. Executive Director Herrmann added that one desk auditor will soon be on maternity leave, exacerbating the situation further.

Chairman Bedford asked about fine collection efforts in 1989 and about how the review of the fine schedule is progressing. Executive Director Herrmann responded that the Commission collected \$40,000 in fines and that the legal staff is undertaking the review of the fine schedule and will provide a memorandum to the Commission containing recommendations for change.

Executive Director Herrmann said that the austerity measures would affect the hiring of consultants and thereby would impact negatively upon the Commission's ability to hire Dr. Herbert E. Alexander. Dr. Alexander would have become the consultant to the public financing report.

The Executive Director reported that the public financing audits would also be affected. He said that 50 percent of the audit money would be frozen under the austerity program. Executive Director Herrmann said that \$25,000 of the money dedicated to the completion of the audit is available and that the Commission would use it for the purpose of auditing the general election candidates. He advised that the Commission must get an exemption to free up the other \$25,000 for auditing purposes.

Commissioner Linett asked if the Commission would be invited to testify before the Joint Appropriations Committee (JAC), and indicated that the Commissioners be involved.

Executive Director Herrmann said that there have been times in the past when the Commission was invited by the JAC to testify. He said, however, that an invitation has not always been extended. Executive Director Herrmann indicated that if the Commission is invited to testify about its budget during the upcoming hearings, he would certainly welcome the participation of the members of the Commission.

Vice Chairman McNany suggested that a letter be sent to the Chairman of the JAC to request that the Commission have an opportunity to testify on its budget.

Executive Director Herrmann indicated that the appropriate time for making such a request would probably be in March. He also reported that the White Paper on Alternate Revenue Sources was well received by the press.

Executive Director Herrmann announced that another impact of the budgetary situation is that the possibility exists that the Commission will not have enough money in its Per Diem account to conduct a meeting in June. He said that funds may have to be transferred from one of the other operating accounts into the Per Diem account in order to pay for a June meeting. He said that the Commission would have to get special permission to transfer these funds, however.

Vice Chairman McNany added that the Per Diem account was cut in half a year or so ago because in the past there was always a surplus in this account. He said that only about 50 percent of the Per Diem account money was utilized.

Executive Director Herrmann concurred but remarked that the cut had been too large and the Commission has asked for a restoration of funding for three additional meetings for FY-91.

Continuing his report on the budget, Executive Director Herrmann reported that a new State post office policy has been imposed which affects ELEC's operations. The Executive Director said that all printed material must now be sent out bulk rate as opposed to first class mail. He said that this bulk rate policy may delay the delivery of important materials to candidates, etc., which would affect compliance and enforcement. Executive Director Herrmann said that this policy grew out of the Governor's Executive order.

Vice Chairman McNany said that he believed that it is illegal for the State to undertake such a policy. Commissioner Mayo concurred that this policy may encounter legal problems.

Executive Director Herrmann responded that the Commission would appeal the policy and bring the concerns of the Commission to the attention of the postmaster. Specifically, he said, the staff would inquire as to the legality of such a policy.

Finally, Executive Director Herrmann reported that he recently met with Mr. Mickey Fagen of the Florio Transition Team. The Executive Director said that Mr. Fagen complimented ELEC on the White Paper series, its budget proposal, and its neutrality over the years. He said that ELEC was also praised on the promptness of completing its transition report.

B. Move to the 13th Floor

Executive Director Herrmann said that the Transition Team will be vacating the 13th floor by mid-February and that the Commission should be reclaiming its offices on that floor by that time.

C. COGEL News

Executive Director Herrmann announced that the COGEL Steering Committee has named him as the representative to the Council on State Governments' (CSG's) Organizational Planning and Coordinating Committee (OPACC). He said that this is the second most important CSG committee. Executive Director Herrmann said that he would probably be required to attend three meetings, which will be paid for by COGEL.

D. Public Financing Hearing

Executive Director Herrmann suggested that the gubernatorial public financing hearing on February 20, 1990, be held at 10:30 a.m. instead of 10:00 a.m. He said that this new time would give the Commission more time to conduct its regular meeting prior to the hearing.

Executive Herrmann advised the Commission that the austerity program would eliminate the possibility of lunch being paid for by the State. He said that the State cafeteria may be an appropriate place for the Commissioners to have lunch.

Vice Chairman McNany suggested that the Commission begin its regular meeting at 9:00 a.m., its hearing at 10:00 a.m., and complete the Executive Session of the regular meeting during lunch. He said that the Commissioners could send out for sandwiches.

Commissioner Linett asked if the public hearing will be widely publicized and if the staff expected a large turnout.

Executive Director Herrmann responded that he anticipated much interest and that the hearing would be adequately publicized.

E. Instructional Letter Language

Executive Director Herrmann advised the Commission that a complaint was received from Drew Britchard regarding language appearing in the "letter of instruction" issued by the Commission to certain respondents. He said that Mr. Britchard, who filed a complaint against Mayor Priore, objected to the language "may have violated the law." He said that this phrase appears as "boiler plate" language in all letters of instruction and that perhaps the Commission could consider rephrasing this language.

Counsel Farrell said that the letter of instruction to the respondent noted that the Commission found evidence of a violation of law and then proceeded to say that there is insufficient evidence for the Commission to issue a complaint. Counsel Farrell said that he did not see any problem with the phraseology in the letter. He said that part of the Commission's function is to educate. However, he was comfortable with rephrasing the Commission's boilerplate language.

Commissioner Linett said that the controversial word is "violated" and that the Commission may substitute the phrase "failed to comply fully" for it.

Chairman Bedford suggested that staff change the language to eliminate the phrase "may have violated." He indicated that Commissioner Linett's suggested language was appropriate.

F. Kean State of the State Address

Executive Director Herrmann noted that that in Governor Kean's final "State of the State Address," he mentioned campaign financing in a list of New Jersey "firsts."

3. Code of Ethics Review

In response to the Attorney General's request that the Commission review the new departmental Code of Ethics for possible use by ELEC, Counsel Farrell indicated that it was his belief that the Commission was better off keeping its code intact and not bringing in pieces of the Attorney General's code. He said that to attempt to incorporate the Attorney General's code would create confusion. Counsel Farrell said that because of the particular concerns of the Commission there is no need to alter its Code of Ethics.

Chairman Bedford said that the Attorney General's Code of Ethics did not appear especially relevant to the Commission's code.

Counsel Farrell said that it was important to keep the Commission's historical status of independence intact and guard it jealously. He said that there is really nothing in the Attorney General's code to add to ELEC's. He said that ELEC's code is in very good shape and is appropriate to its mission.

Commissioner Linett asked which code was stricter.

Counsel Farrell responded that in the areas that are important to ELEC, the Commission's code is tougher.

Commissioner Linett asked if the Commission would be weakened in any way by not adopting the Attorney General's code.

Counsel Farrell said that ELEC's code is most appropriate for its purposes.

Commissioner Mayo said that the Attorney General's code spoke generally about integrity but that ELEC's code was more specific in detailing what conduct is permissible for Commissioners and employees and what is not.

On a motion by Commissioner Linett, seconded by Commissioner Mayo and passed by a vote of 4-0, the Commission voted to retain its current Code of Ethics, suggesting that it was already well suited to its needs.

The Commission also directed Counsel Farrell to prepare a response to the Attorney General's request for the Chairman's signature.

4. Resolution to go into Executive Session

On a resolution by Commissioner Mayo, seconded by Vice Chairman McNany and passed by a vote of 4-0, the Commission resolved to go into closed Executive Session to discuss the following matters which will become public as follows:

1. Executive Session Minutes of December 19, 1989, which minutes will only become public if various matters discussed or acted upon become public;
2. Final Decision recommendations in violation proceedings which will not become public. However, the Final Decisions resulting from those recommendations will become public 15 days after mailing; and
3. Investigative Reports of possible violations, which reports will not become public. However, any Complaint generated as the result of an Investigative Report will become public 30 days after mailing.

5. Adjournment

On a motion by Vice Chairman McNany, seconded by Commissioner Mayo and passed by a vote of 4-0, the Commission voted to adjourn at 11:50 a.m.

Respectfully submitted,



FREDERICK M. HERRMANN, PH.D.