



State of New Jersey

**ELECTION LAW ENFORCEMENT COMMISSION**

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COUNSEL

Public Session Minutes

December 19, 1990

All the Commissioners and senior staff were present.

Chairman McNany called the meeting to order and announced that pursuant to the "Open Public Meetings Act," N.J.S.A. 10:4-6 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 9:35 a.m. at the Commission offices, 28 West State Street, Trenton, New Jersey.

1. Approval of Public Session Minutes of November 28, 1990

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 November 28, 1990.

2. Executive Director's Report

Executive Director Herrmann extended his congratulations to Commissioner Linett for his reappointment to the Commission for a three-year term. The Executive Director said that Commissioner Linett's nomination was unanimously confirmed by the Senate.

A. Meeting with the Ad Hoc Commission on Campaign Financing and Legislative Ethics

Executive Director Herrmann announced that the meeting with members of the Ad Hoc Commission on Campaign Financing and Legislative Ethics is scheduled for February 20, 1990. He reported that Dr. Alan Rosenthal, Assemblyman Chuck Haytaian, and Ms. Patricia Sheehan indicated that they would attend. Mr. Stanton sent his regrets for not being able to attend. Other members had not yet responded.

B. Staff News

Executive Director Herrmann reported that Nedda Massar has been appointed Associate Legal Director and holds the titles Associate Legal

Director and Director of Public Financing. The Executive Director remarked that this new status clarifies that Director Massar is the number two person on the Legal staff. Moreover, continued Executive Director Herrmann, the change clarifies that Director Massar is responsible for many more functions than just the public financing program.

Executive Director Herrmann announced that Review and Investigation Director Judith Shaw Chamberlain has returned from maternity leave. He said that she is working part-time in December and will resume a full-time schedule in January.

The Executive Director reported that thanks to Director of Administration Barbra Fasanella, ELEC was the first state agency to submit its budget to the Office of Management and Budget (OMB). Executive Director Herrmann noted also that Personnel Officer Donna Margetts will establish an "exit interview program" for departing employees.

Chairman McNany said that he would forward information about his bank's exit interview program to staff.

Executive Director Herrmann noted that on December 14, 1990, Legal Director Nagy conducted his lobbying law review seminar.

Regarding the 13th floor security system, Executive Director Herrmann said that it would cost \$1,500 to activate. The Executive Director said that for the purposes of insuring that ELEC's records are secure, the activation of the ADP System, which is linked to the police department, is a good idea.

Chairman McNany suggested that because of the \$1,500 cost, the staff should look into alternatives to this system. He queried whether a system that only sounded off on-site and was not linked to the police station was available.

Executive Director Herrmann mentioned the fact that computer security is under review as well. He said that the concern was internal as well as external. The Executive Director said that OTIS completed a security audit requested by ELEC in 1986 and that former Systems Administrator Warren Heins conducted one in early 1990. Executive Director Herrmann reported that newly appointed Systems Administrator Tony Chianese is reviewing computer security procedures and will be making suggestions for improvement if necessary. The Executive Director said that the new Systems Administrator has established a computer library filled with documentation important to ELEC's system.

C. National Interest in ELEC Research

Executive Director Herrmann said that he received a call recently from the Maine Commission on Governmental Ethics and Election Practices. He noted that the Maine Commission had much interest in White Paper Number Four: Alternate Funding Sources. Executive Director Herrmann said that Maine too has a budget crisis and that the idea of filing fees was attractive to Maine's ethics officials. The Executive Director reported also that the Maine Commission liked the idea of raising copying fees as is being proposed by the Commission through regulation. Executive Director Herrmann said that he also mentioned the fact that the New Jersey court system as well as the Department of Environmental Protection are also raising filing fees. He remarked that raising filing fees is getting to be a routine practice throughout State government.

Executive Director Herrmann reported that the New York Citizen's Budget Commission said that ELEC's gubernatorial analysis of 1986, much of it done by Deputy Director Brindle, is the best in the nation.

The Executive Director announced that Dr. Herbert E. Alexander is writing a new book on Campaign Financing Reform in the States. Executive Director Herrmann said that Deputy Director Brindle, Legal Director Nagy, and he were proofreading various chapters for Dr. Alexander. Executive Director Herrmann noted that the book makes extensive use of ELEC research from the White Papers, press releases, and other reports such as the 1985 public financing report, the Campaign Finance Update that he did for COGEL, and the 1989 Annual Report. Executive Director Herrmann said that the book cites ELEC as one of the few agencies that issue "commendable comprehensive reports." He remarked that the book further cites ELEC and the California Fair Political Practices Commission as the "best of the bunch." Executive Director Herrmann said that he believed that this comparison is incredible because of the fact that California has a guaranteed base budget and a much larger staff than ELEC.

Executive Director Herrmann reported that the Council of State Governments (CSG) has published the conference edition of his Campaign Finance Update from the COGEL Conference.

Commissioner Linett said that he was proud of the fact that the Commission's research efforts are recognized.

D. Meeting Schedule

Executive Director Herrmann noted that the Holiday Luncheon would be held today at Mastori's Diner. The Executive Director thanked the

Commissioners and Counsel Farrell for subsidizing the luncheon, stating that as a result the cost to staff was only \$3.00 per person.

Executive Director Herrmann mentioned that the next meeting would be held on January 16, 1990 in Trenton. The February meeting, he said, would be held on February 20, 1990, in Trenton and will feature the Ad Hoc Commission.

E. Fine Procedure Change

Executive Director Herrmann outlined a proposal for changing the 50 percent reduction scheme for early payment of fines to 25 percent and for changing the 30-day period for payment of reduced fines to 20 days. He said that the new system would make the fine collection effort more efficient and effective.

F. 13th Floor

Executive Director Herrmann said that ELEC has moved into the 13th floor space vacated by BPU. He said that the additional space provided ELEC with room for files in an area that is now reasonably secure. Executive Director Herrmann mentioned he would take the Commissioners on a tour of the 13th floor following the meeting.

G. White Paper Number Six

Executive Director Herrmann said that White Paper Number Six puts forward ideas to strengthen ELEC's independence and for modifying its jurisdiction. He said that many of the ideas are based on previous suggestions, with the paper putting them together in a neat, comprehensive package.

Executive Director Herrmann said that by publishing this paper, the Commission will be on record as to reviewing both sides of a responsible approach to the current budget crisis.

The Executive Director said ELEC is both proposing to increase staffing with the support of filing fees and to reduce its workload with jurisdictional changes in areas of least concern about corruption.

Executive Director Herrmann said that the White Paper proposes six-year Commission terms, salary-based pay for Commissioners, and filing fees to strengthen the Commission's autonomy.

The Executive Director also summarized the proposals for narrowing the Commission's jurisdiction. He said that school board candidates and special district candidates should be exempt from filing on the State level, that May municipal and run-off election filings should be merged, and that short forms should be part of candidate petitions.

Executive Director Herrmann said that other changes included:

- 1) placing jurisdiction over prohibited contributors and political advertising identification under ELEC;
- 2) changing the name of the Commission to the Disclosure Law Enforcement Commission (DLEC) to clarify that the Commission does not have responsibility for election administration;
- 3) placing surplus funds guidelines in the statutes;
- 4) placing jurisdiction over lobbying solely with ELEC;
- 5) changing the Personal Financial Law to show amounts, and not just sources, of gifts and honoraria; and
- 6) doubling the contributor thresholds for reporting.

Commissioner Linett said that he had two concerns about the White Paper. First, he said that he disagreed with changing the name of the Commission. He said that ELEC may not be the ideal name, but at least the public understands that the Commission has something to do with elections. Secondly, Commissioner Linett felt that the acknowledgement page had to be changed to reflect more clearly the fact that the Commission is not taking positions on the issues but is merely publishing them for purposes of public discussion.

Counsel Farrell said that he understood the feeling that the name of the Commission should be changed to more accurately reflect the fact that it is a disclosure agency. He said that former Commissioner Sidney Goldmann always warned against merging disclosure with election administration. He said that to confuse the two functions only takes away from the enforcement efforts of ELEC. He said, however, that the Legislature deliberately put election in the Commission's title to connote the fact that it was designed to regulate aspects of the electoral process.

Commissioner Linett said that if he had his "druthers," he would not tamper with the Commission's name. He said, however, that if the name were changed, it should be changed to the Commission on Campaign Financing and Lobbying, not to Disclosure Law Enforcement Commission.

Chairman McNany said that he did not favor leaving this suggestion for a name change in the report. He said that it was one of the least important suggestions that may detract from the more important recommendations.

The Commission directed staff to remove the suggestion for a name change from the report and to modify the acknowledgement page.

Commissioner Linett said that in reading through the report, he drew the conclusion that it was not a good idea for the Commission's Code of Ethics to permit Commissioner contributions to federal campaigns. He suggested that the Commission review the issue at a future meeting and perhaps amend the Code.

Commissioner Mayo said that he agreed with reviewing the issue because there was an inconsistency in disallowing state contributions, but permitting Commissioners to make contributions to federal candidates and committees.

Commissioner Bedford agreed that the issue should be reviewed and the Code strengthened.

The Commission instructed staff to draft a proposal for prohibiting federal contributions by Commissioners.

On a motion by Commissioner Linett, seconded by Commissioner Mayo and passed by a vote of 4-0, the Commission authorized distribution of the White Paper with amendments.

Commissioner Mayo offered a motion to authorize a policy change relative to fine collection procedures to provide that if fines are paid within 20 days, they will be reduced by 25 percent. The motion was seconded by Commissioner Bedford and passed by a vote of 4-0.

### 3. Political Committee Definition Amendment

This proposal would amend N.J.A.C. 19:25-1.7, Definitions, to clarify that appointed public officials, such as authority or commission members acting in their official capacity, should not be required to file campaign reports for expenditures of public funds to communicate their views on public questions to their constituents. The current regulation excludes only elected public officials who communicate to their constituents on public questions from the definition of political committee.

The proposal sets forth, however, that appointed public officials would be considered a political committee with respect to a public question by

virtue of fund-raising or other election-related activities respecting such public questions.

On a motion by Commissioner Mayo, seconded by Commissioner Bedford and passed by a vote of 4-0, the Commission approved the proposed regulatory amendments.

4. Copying Fee Amendments

This proposed change to N.J.A.C. 19:25-2.4, Copies of Documents; Fees, would increase the copying fees charged by the Commission from 15 cents per page to 50 cents per page for the first 10 pages, 25 cents per page for the next 20 pages, and 15 cents per page thereafter.

Specifically subsection 2.4 (a) of this regulation is amended.

On a motion by Commissioner Mayo, seconded by Commissioner Bedford and passed by a vote of 4-0, the Commission approved the proposed regulatory amendment.

5. Advisory Opinion No. 11-1990

This advisory opinion request was submitted by Carol Goodheart, Ed.D., on behalf of the New Jersey Psychology PAC. Dr. Goodheart is president of the PAC.

In her request, Dr. Goodheart asks whether it is permissible for contributors to use credit cards to make contributions to the PAC.

In his response, Legal Director Nagy noted that the "New Jersey Campaign Contributions and Expenditures Reporting Act" does not explicitly mention contributions made by credit cards. The Legal Director wrote, however, that the term "contributions" is defined to include all pledges or other commitments to make any transfer of money or other thing of value, and for the purposes of reports required under the Reporting Act, such a commitment shall be deemed to have been made upon the date that the commitment is made.

Based upon the statute, Legal Director Nagy concluded that a contribution made by credit card is a transaction that can be described as a pledge, or a commitment to make a transfer of funds; therefore permitting NJP\*PAC to utilize credit card technology for the purpose of receiving contributions is consistent with the provisions of the Reporting Act.

The following procedures and restrictions of record keeping and reporting were set forth by Legal Director Nagy:

- 1) the date that a contribution made by credit card is received by the PAC is the date on which the credit card holder authorizes it to charge his or her credit account;
- 2) the amount subject to reporting is the total amount credited to the account;
- 3) any fee imposed by the credit card company must be reported as a disbursement to the company from NJP\*PAC;
- 4) NJP\*PAC must return a record of each contribution it receives, including the name and address of the contributor and the amount and date of the contribution; and,
- 5) any contribution made by credit card must be from a contributor authorized to use the credit card.

In his response, Legal Director Nagy counselled NJP\*PAC that it may want to seek an advisory opinion from the State Attorney General in regards to any possible applicability of N.J.S.A. 19:34-32, concerning prohibited contributors, prior to NJP\*PAC's entering into a contract with any credit corporation, etc., that may be subject to this provision in the law. ELEC has no jurisdiction over the prohibited contributor issue.

Counsel Farrell asked why the person in whose name the card is issued cannot be considered the contributor.

Legal Director Nagy said that the Commission can take that position, but that staff believes that anyone authorized to use the credit card be listed as the contributor if the contribution is made by that person. He said that this allows for the spouse of a cardholder to make a contribution and for this contribution to be disclosed accurately.

Commissioner Linett said that the Commission has to be responsive to changing technology. He suggested that staff draft a regulation addressing this credit card issue, and make this fact known in its response to the advisory opinion request.

Counsel Farrell suggested also that the last paragraph be toned down so as to not leave the requester with the notion that he or she might at some point be in violation of law and subject to investigation by the Attorney General. He said that while the Attorney General may have some interest in matters such as these, it is the sense of the Commission that this activity is normal activity relative to commercial credit and is not in violation of the prohibited contributor statutes.

On a motion by Commissioner Bedford, seconded by Commissioner Mayo and passed by a vote of 4-0, the Commission approved the advisory opinion as per the suggested amendment by Counsel Farrell. It further instructed staff to prepare a regulation on the use of credit cards.



6. Advisory Opinion No. 12-1990

This advisory opinion request was submitted by Maureen Lopes on behalf of the New Jersey Business and Industry Association.

Ms. Lopes stated that the New Jersey Business and Industry Association has entered into a coalition with other business associations in order to work cooperatively on legislative issues related to health care costs.

Ms. Lopes noted that all of the individual members of the coalition termed Help Establish Affordable Health Care Laws (HEAL) are registered legislative agents. She said also that HEAL has retained the Marcus Group, Inc., to assist with the lobbying efforts, coordinate meetings, and provide public relation services. Ms. Lopes stated that Alan Marcus is the registered legislative agent for HEAL.

According to the advisory opinion request, payment to the Marcus Group for its services is being shared by the member associations according to a fee schedule based on the organization's ability to pay. Ms. Lopes said no political contributions will be made with the HEAL money.

Specifically, the advisory opinion asks the following questions:

- 1) Since no HEAL funds are used for political contributions, does HEAL have to file as a lobbyist?
- 2) If HEAL must report as a lobbyist, can Alan Marcus, as the legislative agent, file one report or do the individual members have to file?
- 3) If each member association and/or HEAL is required to file reports must member companies that contributed to the payment of the Marcus Group be identified?

In response to the advisory opinion request, Legal Director Nagy wrote that HEAL would be required to file an annual lobbying report (L-1) if it expends more than \$2,500 in any calendar year for the purpose of direct, express or intentional communication with legislators or their staffs or the Governor or his staff undertaken for the specific purpose of effecting legislation.

According to the proposed advisory opinion response, HEAL would be permitted to file one report summarizing all of its financial activity relative to direct communication on specific legislation. The individual member associations, which are all lobbyists, would have to continue to file reports which relate to their individual lobbying activity. Moreover, if they lobbied individually on the same issues as HEAL they would have to individually report that activity.

Finally, Legal Director Nagy responded that Alan Marcus, who has been retained by HEAL, may file a lobbying report on behalf of HEAL. In submitting the report, it must be determined what percentage of the amounts it collects are attributable specifically to lobbying, and the aggregate total must be reported on line 16. According to the Legal Director, if any member association's payment, attributable to lobbying, exceeds \$100 for the calendar year, the name, address, and date of receipt of the payment must be reported on the schedule provided for such information.

Counsel Farrell said that he had no problem with the advisory opinion response because the issue was one of reporting and not one of policy.

On a motion by Chairman McNany, seconded by Commissioner Linett and passed by a vote of 4-0, the Commission approved the advisory opinion response as presented by staff.

7. Resolution to go into Executive Session

On a resolution by Commissioner Bedford, seconded by Commissioner Mayo 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. 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,
2. 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.

8. Adjournment

On a motion by Commissioner Mayo, seconded by Commissioner Bedford and passed by a vote of 4-0 the Commission voted to adjourn at 11:59 a.m.

Respectfully submitted,



FREDERICK M. HERRMANN, PH.D.