



State of New Jersey

ELECTION LAW ENFORCEMENT COMMISSION

NATIONAL STATE BANK BLDG., 12th FLOOR
28 W. STATE STREET, CN 185
TRENTON, NEW JERSEY 08625-0185
(609) 292-8700

OWEN V. McNANY, III
CHAIRMAN

STANLEY G. BEDFORD
COMMISSIONER

DAVID LINETT
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

May 22, 1991

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 9:40 a.m. at the Commission offices, 28 West State Street, Trenton, New Jersey.

1. Approval of Public Session Minutes of April 24, 1991

On a motion by Chairman McNany, seconded by Commissioner Bedford and passed by a vote of 2-0, the Commission approved the Public Session Minutes of April 24, 1991. Commissioner Linett had not arrived at the time of the vote.

2. Executive Director's Report

A. Ethics Forms

Executive Director Herrmann announced that all Commissioners and staff filed their ethics forms prior to the May 15, 1991 deadline.

B. Staff Activities

Executive Director Herrmann reported that Fiscal Officer Elaine Salit will return to work after the Memorial Day weekend. The Executive Director said that Director of Administration Barbra Fasanella did an "incredible" job in assuming Ms. Salit's responsibilities for a period of three and a half months. In effect, continued Executive Director Herrmann, Director Fasanella performed two jobs during this period of time. He said that the Administrative Section did "not miss a beat."

The Executive Director noted that he had received lavish praise for the work of Director of Compliance and Information Evelyn Ford, and Director of Review and Investigation Judith Shaw Chamberlain, from people they had helped in the course of their duties. He said that both staff persons were called "knowledgeable," "efficient" and "polite."

Executive Director Herrmann reported that on April 22, 1991, he was invited to meet with the Republican Senate Ethics/Campaign Finance Subcommittee to provide technical advice on certain reform proposals due to come out of that committee. He said that the proposals were closely akin to the Ad Hoc Commission's proposals. He noted that he told the Republican committee that he could not commit the Commission to supporting the proposals.

Executive Director Herrmann said that on April 26, 1991, the staff held its second information session of the primary season. He said that the session was very crowded, with about 60 people attending, and that the staff received a great deal of praise for its efforts. Executive Director Herrmann remarked that numerous attendees commented that ELEC is "not a typical government bureaucracy" and that its staff is very "friendly and helpful."

The Executive Director commented that on May 3, 1991, he retaped a segment of Tony Scocozza's training film on Ethics in Government. He noted that Evelyn Ford and Virginia Wilkes had cameo roles in the film too.

Executive Director Herrmann advised the Commissioners that the Office of Legislative Services (OLS) asked Legal Director Nagy, Deputy Director Brindle and him to attend a Department of Law and Public Safety hearing before the Senate Revenue, Finance and Appropriations Committee. He said that no questions were asked of the ELEC staff. The hearing was held on May 8, 1991.

The Executive Director mentioned that by invitation he met with the Assembly Republican Caucus on May 9, 1991, to discuss the newly proposed political communications regulation. Executive Director Herrmann said that the caucus members were concerned about three issues: the time frame embodied by the proposal, whether communications sent to constituents in response to their letters would be required to be disclosed, and whether expenditures made on constituent communications when the candidate has no opponent must be reported.

The Commission directed staff to give notice that at the June meeting there would be a public hearing on its proposed amendments to the political communications regulation; N.J.A.C. 19:25-11-10.

C. Legislation

Executive Director Herrmann advised the Commission that Governor Jim Florio has conditionally vetoed S-895 (Cowan).

The Executive Director said that the bill allows employers to withhold a portion of their employees' wages for PAC's.

Executive Director Herrmann noted that the conditional veto establishes a PAC Registration Program for PACs that utilize such a fund-raising mechanism. He said that the Governor's Office asked for his technical assistance in drafting their new language.

D. "ELEC Guide to Campaign Financing and Lobbying Literature"

Executive Director Herrmann said that he has compiled a campaign financing and lobbying bibliography, which is a first of its kind, from materials collected for White Papers, ELEC's office file on relevant publications, and some additional efforts. The Executive Director indicated that the bibliography will be useful for future research for new White Papers, special reports, and other projects that require substantive research.

E. Summer Schedule

Executive Director Herrmann said that the June 19, 1991 meeting will be held in Trenton. He said that other summer meetings are scheduled for July 17, 1991 and August 21, 1991.

F. P-89 29-Day Report

Deputy Director Brindle reported that despite the pressures on staff, filing night was run very successfully. He said that Virginia Wilkes, who was Acting Director of Compliance and Information during Director Ford's maternity leave, did a splendid job in organizing and coordinating filing night. Deputy Director Brindle said that the entire staff is to be commended for pulling together and working for a period of a week on processing reports, responding to telephone inquiries, and preparing mailings. He said that the 29-day press release, which was coordinated by Director Ford, was also completed during this period. The Deputy Director said that in mobilizing the staff for this single effort of completing the filing night process, time was necessarily taken away from other tasks. He said that upwards of 2,000 reports were filed, processed and made ready for public inspection. Deputy Director Brindle said that a compliance rate of between 80 and 90 percent was realized, with this number edging upward as late filing notices were sent out.

3. "900 Line" Telephone Service Regulation

Commissioner Linett arrived at 10:17 a.m.

For a detailed discussion of this proposed regulation, please see memorandum from Gregory E. Nagy, Legal Director, to Frederick M. Herrmann, Ph.D., Executive Director, dated May 15, 1991, and entitled Regulation Concerning "900 Line" Telephone Service.

Also see comments from Sarah E. McCandless, Special Assistant to the Attorney General, dated May 9, 1991, and New Jersey Bell Telephone Company, dated May 1, 1991.

The proposed regulation sets forth a definition of the "900 line service," and stipulates that no treasurer may accept any contribution via the service from any contributor of more than \$20.

The proposed regulation was undertaken in response to an advisory opinion request that was received in late 1990 from Matti Prima, Chairperson, Citizens for a Better New Jersey. In that opinion, No. 09-1990, the Commission decided that such a service could be established for the purpose of soliciting contributions provided that no single phone call resulted in a contribution exceeding \$20 and that a copy of the executed contract between the organization and the service provider be filed with the Commission.

The regulation as proposed provides that the date of receipt of the contribution would be the date upon which the candidate or entity receives the proceeds from the service provider, and that any cost associated with the "900 line service" is reportable as an operating expense of a candidate or entity. Also, the proposed regulation requires the candidate or entity to file a copy of the executed contract with the Commission along with authorization permitting the Commission to obtain from the service provider copies of records or documents pertinent to the establishment and operation of the service. Under the regulation, the treasurer must obtain records from the service provider that include the telephone numbers from which all contributions were made, and those records must be maintained for not less than four years after receipt of the contributions.

The Commission, in proposing the \$20 limit, maintained that the "900 line service" was analogous to the "public solicitation" situation as envisioned in the statute.

In her commentary, Special Assistant Sarah E. McCandless expressed consumer fraud concerns regarding "900 line services" used for political fund-raising purposes. In sum, Ms. McCandless suggested that the proposed

rule will not adequately ensure compliance with the Reporting Act. She also expressed concern that candidates will establish "900 lines" that purport to "sell" information about themselves rather than to solicit campaign contributions. Ms. McCandless also voiced concern about the ramifications of these lines in terms of the selling, trading, and using of the telephone numbers of callers.

Special Assistant McCandless urged the Commission not to adopt the rule as proposed and instead either to prohibit the use of 900 numbers or require more complete recordkeeping with respect to the identity of the contributors.

New Jersey Bell, through Patricia A. Meyers, an attorney, objected to the proposal, and suggested that the rule should be clarified to "clearly exclude the local exchange company from the terms 'provider of the telecommunications service' and 'telecommunication service provider.'" In a word, New Jersey Bell does not believe it should have any recordkeeping responsibilities under the proposed regulation.

Legal Director Nagy noted that the Commission does not have any jurisdiction to impose controls relative to the consumer fraud issues involved with "900 line services." He suggested that because so many consumer fraud concerns were voiced relative to the Commission's proposal, it might be appropriate for the Commission to defer action until other authorities rule on the consumer fraud aspects of the service. He said that the intent of the proposed regulation was to promote small contributions. He said that in drafting these regulations there was no intention to hinder efforts to regulate consumer fraud. Legal Director Nagy said that political fundraising is a small part of the "900 line service" spectrum.

Commissioner Linett said that the Commission cannot defer action because it has already permitted the use of "900 line services" through its advisory opinion.

Legal Director Nagy said that an advisory opinion only has applicability to the person or entity requesting the opinion and to the particular situation in question.

Chairman McNany said that regulation, by not requiring the retention of records, forces the Commission into a position of assuming that the subscriber is the contributor. He said also that any thorough reporting system would be dependent on the ability of the system to aggregate calls and contributions. Otherwise, he continued, the \$20 limit could be easily circumvented, with the same caller making numerous contributions by making several calls to the "900 line service."

Counsel Farrell said that the Commission might possibly solve that problem by limiting the contribution to \$20 per telephone number. He said that in that way, the situation whereby several calls are made from the same phone number in avoidance of the \$20 limit, is eliminated.

Counsel Farrell went on to say that under any "900 line" system there will be a time lag between the time of the contribution and the time that the candidate learns of it, thus affecting timely disclosure.

Counsel Farrell indicated, however, that it would be difficult for the Commission to prohibit the use of this technology for political fundraising. In any event, he said, it is not clear how closely related the consumer fraud issue is to the efforts of political campaign organizations, compared with other types of efforts.

Counsel Farrell said that the Commission has promulgated a regulation and the Attorney General has responded. He said that the Commission must remember that it is not bound by the Attorney General's comment. He said that instead of prohibiting the use of "900 line" services perhaps the Commission should tighten up its \$20 limit language. He suggested that one approach is to limit contributions to \$20 per telephone number. He said that the Commission should only be concerned with disclosure.

Legal Director Nagy said that in terms of obtaining adequate information for recordkeeping it is, in all probability, a necessity for the fundraiser to procure an interactive system. He said that the proposed regulation, in attempting to encourage small contributions, does not contemplate an expensive system but rather a less sophisticated, inexpensive system that contains no means for interacting with the caller.

Chairman McNany said that there is no reason why a touchtone phone system cannot be used to get information about a caller. He said that touchtone phones are not expensive.

Commissioner Linett said that he was not sure that the Commission could prohibit the use of "900 lines" for political fundraising purposes. He said that in his opinion as long as records can be provided, it meets the statute. Commissioner Linett said that he thought that the Attorney General made some good points. He said, however, that he was not sure that the Commission has the authority to require a candidate to identify where the money is going. He said that the issue for the Commission is primarily one of disclosure and not consumer fraud. Commissioner Linett said that he continues to believe the Commission should regulate in this area. He suggested, however, that instead of pressing forward with the proposed regulation, the staff should go back to the drawing boards and redraft the proposal.

Chairman McNany asked: what about New Jersey Bell's comments?

Legal Director Nagy said that in including local exchange carriers under the regulation, the Commission might effectively be preventing this technology from being used for political fundraising purposes. He said that the candidate has to contract with an interexchange carrier, and not New Jersey Bell. Therefore, the candidate would have little leverage over New Jersey Bell in attempting to obtain authorization for records, which records should be provided by the contracting telephone carrier.

Chairman McNany said that in its contract with AT&T, New Jersey Bell, as the intermediary, performs the function of recordkeeping.

Legal Director Nagy affirmed the Chairman's comments, adding that New Jersey Bell then passes the records on to AT&T.

Counsel Farrell said that as a practical matter, the Commission would not be losing disclosure by excluding local exchange carriers from the regulation. Counsel Farrell said that if the Commission were to investigate, it would have to obtain information from AT&T and not New Jersey Bell because of the time lag situation. New Jersey Bell would have passed the records on to AT&T by the time the information is needed for investigative purposes, he said.

Commissioner Linett said that he was not in favor of waiting for consumer fraud regulations to be adopted. He moved that staff redraft the regulation, and consider today's comments in the process. Commissioner Bedford seconded the motion. On a vote of 3-0, the Commission approved the motion directing staff to redraft the regulation for consideration at the June or July meeting. The Commission also approved Executive Director Herrmann's suggestion to have ELEC's staff consult with the Attorney General's office while working on the redraft.

4. Resolution To Go Into Executive Session

On a resolution by Commissioner Bedford, seconded by Commissioner Linett and passed by a vote of 3-0, 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.

5. Return to Public Session

After returning to Public Session, the Commission discussed that a Republican vacancy existed on the Commission since January 8 and expressed concern that this position be filled in time for the general election season.

On the recommendation of Chairman McNany, the Commission unanimously decided to send a letter to the Governor pointing out that a Republican vacancy exists on the Commission and that it is important that the vacancy be filled in order to assure the public that the Commission's actions are completely impartial.

6. Adjournment

On a motion by Commissioner Linett, seconded by Commissioner Bedford and passed by a vote of 3-0 the Commission voted to adjourn at 12:15 p.m.

Respectfully submitted,



FREDERICK M. HERRMANN, PH.D.