



State of New Jersey

**ELECTION LAW ENFORCEMENT COMMISSION**

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PUBLIC SESSION MINUTES

FEBRUARY 24, 1993

Chairman McNany, Commissioner Linett, Counsel Farrell, senior staff, and Director of Public Financing Nedda Massar were present. Commissioner Bedford was absent.

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. This meeting had been rescheduled from February 16 because of a snow storm.

The meeting convened at 10:00 a.m. at the Morristown Municipal Building, 110 South Street, Morristown, New Jersey.

1. Approval of Public Session Minutes of January 19, 1993

On a motion by Commissioner Linett, seconded by Chairman McNany and passed by a vote of 2-0, the Commission approved the Public Session Minutes of January 19, 1993.

2. Campaign Finance Reform

Senator William Schluter addressed the Commission on A-100 (Martin), the campaign finance reform bill passed by the Legislature.

The Senator advised the Commission that he had voted against the legislation because he did not consider it to be representative of meaningful reform.

Senator Schluter outlined six provisions in the bill he had identified as being problematical during the course of debate on the legislation:

1. Senator Schluter had opposed the inclusion of a provision which lifted the historical ban on contributing by regulated industries. The provision was subsequently amended and the prohibition reinstated;

2. Senator Schluter had opposed the annual contribution limit contained

in the bill on the grounds that it would be declared unconstitutional. The annual limits were subsequently changed and replaced by per election limits;

3. Senator Schluter maintained that the legislation permits giving by both an individual (who is the head of a corporation) and his or her corporation, permitting the individual to circumvent the contribution limit;

4. Senator Schluter maintained that the contribution limits contained in the legislation are too high;

5. Senator Schluter had supported a total ban on corporate and union giving, as had the Commission. He stated that this ban is not part of the bill; and,

6. Senator Schluter had opposed the provision establishing leadership committees. The Senator had maintained that this provision would change the landscape of campaign giving, granting great power to the four leaders in the Legislature. Senator Schluter held that the party system would be further weakened by this provision. Senator Schluter had proposed that the structure of leadership committees should be more democratic, with at least four members from the party caucus presiding on the governing board.

Commissioner Linett questioned Senator Schluter about his concern over the leadership committee provision. Commissioner Linett asked: How does this provision affect campaign giving?

Senator Schluter responded that special interests want to get legislation posted. He said that these interests first go to the legislative leaders, and, subsequently to the rest of the members of the Legislature. Senator Schluter said that under the provisions of A-100, money would flow to the leaders in large amounts, out of proportion to other members. He said that these leaders will, in turn, be able to dominate the situation by directing money to backbenchers. He said that in controlling most of the money the leaders will dominate the parties as well. Senator Schluter said that by concentrating power in these few hands, the legislation is fundamentally changing the governmental structure and traditions, permitting leadership to dominate the process and remain in power indefinitely.

Senator Schluter concluded his remarks by commending the Commission on its important role in the election process. He said that while there were many critical issues that had to be dealt with, for him the defining issue is campaign finance reform. He said that how the Legislature will legislate in other important areas depends on the adequacy of campaign finance laws.

Chairman McNany thanked Senator Schluter for his remarks. He asked Senator Schluter for his opinion on what the Commission's role should be in the legislative process.

Senator Schluter said that he assumed that the Commission's policy is to speak out on technical issues but not on policy ones.

Chairman McNany queried Senator Schluter on the issue of prohibiting corporate contributions and the impact such a ban would have on PAC activity.

Senator Schluter said that in banning corporate and union contributions more PACs would surely be created. He added, however, that as the Commission pointed out in one of its white papers, having money flow through PACs instead of corporations and unions would enhance disclosure. He said that PACs are required to report whereas corporations and unions are not. This disclosure coupled with a strong PAC registration program would be in the best interest of the public.

Executive Director Herrmann noted that one of the Commission's white papers had called for a ban on corporate and union giving.

Commissioner Linett said that the Commission's role has never been limited to taking positions on technical issues. He said that the Commission's goals have been to strengthen disclosure and the role of political parties. Commissioner Linett said that his personal belief is that it should be the role of the Commission to speak out on policy matters.

Commissioner Linett asked Senator Schluter if this bill is, overall, better than existing law.

Senator Schluter said that his answer lay in his vote against the bill. He said that the bill has many defects.

Commissioner Linett said that an obvious concern of the Commission was the fact that there is no funding accompanying this legislation to enable the Commission to enforce it. He held that the bill, without adequate funding, is a fraud on the public.

Senator Schluter said that he believed that the Commission needed the resources to enforce campaign finance laws.

Executive Director Herrmann added that Senator Schluter has long supported the Commission's call for additional funding. He said that in every campaign finance measure sponsored by the Senator there is an accompanying appropriation.

Commissioner Linett said that he would like to add a word of commendation to Senator Schluter for his dedicated efforts to bring about meaningful campaign finance reform.

Chairman McNany also commended Senator Schluter, stating that the Commission is cognizant of his long standing efforts toward reform.

Chairman McNany said that it would be appropriate for the Commission to review the arguments made by Senator Schluter during its discussion of A-100.

3. Executive Director's Report

A. Ethics Forms

Executive Director Herrmann reminded the members of the Commission that their ethics forms are due to the Commission on Ethical Standards by May 15.

B. Nominations to ELEC

Executive Director Herrmann announced that Governor Florio has made two nominations to ELEC: Raymond P. Marzulli of Bloomfield, and William H. Eldridge of Summit.

C. Staff Activities

Executive Director Herrmann said that he has been asked to become the book review editor of the COGEL Guardian. He also mentioned that the Commission has obtained the services of two interns for the spring semester. The interns are Kapil Sharma, from Rutgers University, who will be working on lobbying statistics, and Michael Harrigan, Rider College, who is working on legislative expenditure statistics. Executive Director Herrmann added that many students are now contacting ELEC about the three-credit intern program.

Executive Director Herrmann reported that he had participated in a national expert brainstorming session on campaign finance reform convened by the Council of State Governments (CSG) in Lexington, Kentucky, to discuss campaign finance reform from February 5-7.

The Executive Director advised the Commission that Donna Bindas, Computer Assistant; Christopher Guear, Public Finance Analyst; and Bernette Pettit, Data Entry Operator have joined the public financing staff.

D. ELEC in the News

Executive Director Herrmann reported that a recent study by national Common Cause referred to ELEC as "one of the strongest [ethics] agencies in the country" but lamented that recent budget cuts have seriously hurt the Commission's ability to administer the law. The Executive Director added that Alan Rosenthal told the Philadelphia Inquirer that ELEC "is not funded very well.... It's important for the agency to get the kind of funding that is necessary to make disclosure a practical reality, not a theoretical requirement."

E. Legislative Activities

Executive Director Herrmann said that due to the fact that major legislation concerning ELEC was being reviewed by the Senate and Assembly on February 1, 1993, he cancelled his trip to Washington, D.C., to attend committee meetings in Trenton. He noted that he had been scheduled to participate in a national panel discussion on creating a "model campaign finance regulatory agency," sponsored by the Center for Responsive Politics.

The Executive Director reported that at the Senate Judiciary Committee (SJC) meeting, A-100 (Martin) was released with various amendments. These amendments included: a \$50,000 contribution limit for national committee giving to the state party committees, an aggregate contribution limit established for giving to a candidate who has an individual and joint campaign committee, the re-establishment of the prohibited contributor ban, and the removal of a hiring freeze ban because such a decision is the Governor's prerogative.

Executive Director Herrmann noted that the Commission<sup>1</sup> has called for a total ban on corporate and union giving.

According to the Executive Director S-70 (Brown), the ELEC filing bill, was also released from the SJC on February 1, 1993. The Executive Director said that at the Senate State Government Committee (SSGC) meeting of the same date, A-645 (Martin/Russo), a bill that restructures the selection process for ELEC Commissioners, was held.

Executive Director Herrmann continued by stating that on February 9, 1993, A-100 was amended in the Senate to remove annual contribution limits and replace them with election-cycle contribution limits. The Executive Director said that the Office of Legislative Services (OLS) had written a legal opinion that annual limits were unconstitutional because of unfairness to challengers. Executive Director Herrmann said that the Senate scheduled a floor vote for February 18, 1993. He said that S-70, the filing fee bill, passed the Senate 36-1 and is headed to the Assembly State Government Committee (ASGC).

Executive Director Herrmann reported that A-100 passed both houses of the Legislature on February 18, 1993.

#### F. Future Meetings

The Commission will conduct meetings on March 15 in Trenton and April 13 in Trenton.

#### 4. Discussion of the 1993 Revision of the Campaign Act

Executive Director Herrmann presented an outline, which he prepared over the weekend, of the highlights of the revised Campaign Act. He suggested that the outline and the contribution table, produced by Legal Director Nagy and Public Financing Director Massar, should be helpful in terms of understanding the proposed law.

Executive Director Herrmann said that the legislation contains a complex scheme of contribution limits. He indicated that each candidate may use a candidate committee and/or a joint candidates committee. Executive Director Herrmann said that ELEC and the Rosenthal Commission had suggested one committee-per-candidate. The Executive Director said that such a scheme would have still allowed joint fundraising but with much simpler reporting and contribution limit overtones.

Executive Director Herrmann said that the legislation contains a three-tiered limit for county committees contributing to legislative candidates. He said that some sources are calling this provision unconstitutional. Executive Director Herrmann said that the legislation does not contain any limitations on individual, corporate, or union contributions to PACs.

Executive Director Herrmann said that under the legislation contribution limits must be "knowingly" violated for purposes of civil prosecution by ELEC. Moreover, added the Executive Director, various prosecutorial standards exist for different types of violations, including: knowingly (civil); purposely (criminal); intentionally (civil) and willfully and intentionally (civil).

Executive Director Herrmann said that the legislation calls for last minute expenditures by PACs to be reported within 48 hours. The Executive Director said that he had suggested this procedure for only independent expenditures as coordinated expenditures would be picked up by the recipient candidate. He said that the original legislative proposal had been for PACs to file on the same schedule as the candidates.

Executive Director Herrmann said that the biggest administrative challenge is the lack of time to prepare. He said that the primary has already begun for fundraising purposes and that time is needed to do regulations, forms, compliance manuals, staff and candidate training, and computer reconfiguration.

The Executive Director noted that the second biggest challenge is lack of money. Executive Director Herrmann mentioned that the Assembly has not yet acted on the filing fee bill that passed the Senate. He said that there is no appropriation attached to A-100.

Executive Director Herrmann said that even if a filing fee bill is enacted, it will take a year and a half to accumulate any usable dollars and ELEC will need at least two new staff members to process the fees. He indicated that an FY-94 supplementary appropriation is crucial if ELEC is to function adequately, whether or not a filing fee bill is enacted.

Executive Director Herrmann said that at the March meeting he will present a preliminary report on how ELEC can best administer and enforce the new law with its limited resources.

In concluding his remarks, the Executive Director said that there were some late amendments to the bill and that he had not taken a public position on them because the Commission had not considered them.

Commissioner Linett asked "originally did the proposal restrict candidates to one committee?"

Legal Director Nagy said that for most of the life of the bill there was a provision to restrict candidates to one committee.

Executive Director Herrmann added that he had told both legislators and legislative staff that a provision allowing only one committee per candidate would not prevent candidates from having joint fundraisers. He said that the money could be divided up and reported through one committee.

Commissioner Linett asked if the Commission would be prepared to implement the new law by the general election if the effective date was this year's general election.

Executive Director Herrmann said that he would never say that the Commission could not accomplish this task. However, he continued, it would be difficult and that staff would make its best effort.

Commissioner Linett asked about the status of the filing fee bill.

Executive Director Herrmann responded that it was currently in the Assembly State Government Committee. He noted that there have been questions about its constitutionality because "revenue-raising bills" must originate in the Assembly, not the Senate. A simple solution would be for the Assembly to do a substitute bill and send it back to the Senate. He noted again that there is no appropriation attached to A-100 even though the Commission needs "seed money" to get started.

Commissioner Linett asked: "how much revenue is anticipated from the fee bill?"

Executive Director Herrmann said that the staff estimates roughly that between \$500,000 - \$750,000 might be collected. He said that PACs, parties, and candidates would be subject to the fee under the legislation.

Legal Director Nagy said one of the main concerns of staff is answering all of the telephone calls that will come in as a result of the new law. He said that the Commission does not have enough staff to provide telephone assistance.

Commissioner Linett queried as to the difficulty of monitoring the contribution limits.

Legal Director Nagy indicated that it would be difficult to develop software to accommodate the complexity of contribution limits contained in the bill passed by the Legislature.

Deputy Director Brindle added that beyond developing software, a further difficulty lay in having enough staff to code contributors and key these contributors into the computer. He said that before contributions can be monitored they have to be keyed into the computer. Deputy Director Brindle said that to code and key contributors into the computer on every candidate in New Jersey would be a mammoth undertaking.

Executive Director Herrmann, in summing up the bill, said that while there are many good provisions in the bill, it has some problems as well.

Commissioner Linett asked: "in view of the problems with the bill what should the Commission do?"

Executive Director Herrmann presented a letter to the Governor he was directed to draft by Chairman McNany. The Executive Director said that the draft letter outlined the complexity of the contribution limits and the "knowingly standard" and emphasized that the Commission needs additional time and funding to be able to administer and enforce the new law adequately.

Commissioner Linett said that the proposed letter was not strong enough. He said that the letter should emphasize the other defects in the bill such as the joint committee provision, the leadership committee provision, and the lack of a ban on corporate and union giving. Commissioner Linett said that the letter should more forcefully stress the effective date problem and the lack of money.

Chairman McNany, in agreeing that the letter was not strong enough, asked: how effective are we in simply going to the Governor with a list of defects? He suggested that the Commission urge that the defects in the bill be remedied before the new law goes into effect.

Executive Director Herrmann said that staff had questions about the "knowingly" standard. He said that this standard might make it difficult to prosecute those candidates who accept excessive contributions.

Commissioner Linett asked Counsel Farrell about the "knowingly" standard.

Counsel Farrell said that the Commission could live with this standard if the burden of proving "knowingly" was placed by the bill on the respondent. He said, however, that the burden of proof is currently on ELEC.

Commissioner Linett said that he expected many more cases to be contested with the "knowingly" standard in the bill.

Chairman McNany suggested that the Commission call for the Governor to conditionally veto the legislation unless changes are made to it.

Commissioner Linett agreed that the Commission should ask for a conditional veto based on the problems discussed today. He suggested that the Commission recess following action on the last two agenda items for the purpose of redrafting the letter.

##### 5. Proposed New Rule on Fundraising Communications

For detailed information please see memorandum from Gregory E. Nagy, Legal Director, to Frederick M. Herrmann, Ph.D., Executive Director, dated February 8, 1993, and entitled "Proposed New Rule on Fundraising Communications."



The memorandum contains the revised text for a new rule to regulate non-election related fundraising activity by a person holding elective public office. The revised text of the regulation deletes "candidate" from its coverage as suggested by Commissioner Linett, and includes a presumption that fundraising is election-related unless the solicitation states otherwise.

Commissioner Linett, acknowledging that he had problems with this regulation in the past, said that more and more he is thinking that ELEC needs legislation to do something about this problem. He questioned whether the Commission currently has jurisdiction over this area.

Commissioner Linett suggested that the Commission might be wise to wait a while before addressing this issue.

Chairman McNany said that he agreed that legislation is more desirable. He said, however, that personal use of funds raised by politicians through "non-political" testimonial dinners is a big problem and that this regulation is a start in terms of requiring proper disclosure of that activity. He said that at least it requires disclosure to persons being solicited that the event is not for political purposes, and therefore will not be subject to reporting.

Commissioner Linett suggested that the Commission postpone action on this regulation at least until the new law is signed. He said that the Commission could revisit the issue at that time, after it is determined if the new law has any ramifications relative to this issue.

Commissioner Linett moved that the matter be deferred.

The motion was seconded by Chairman McNany.

On a vote of 2-0, the motion to defer action on this issue was deferred.

6. 1993 Gubernatorial Debate Sponsor Selection

Please see memorandum from Nedda Gold Massar, Director of Public Financing, to Frederick M. Herrmann, Ph.D., Executive Director, dated February 8, 1993 and entitled "1993 Gubernatorial Debate Sponsor Selection."

Attached to the memorandum is an application form for use by organizations seeking to sponsor the 1993 gubernatorial primary election debates. The memorandum outlines the criteria for selecting debate sponsors and contains the relevant sponsor application and debate deadlines.

On a motion by Commissioner Linett, seconded by Chairman McNany and passed by a vote of 2-0, the Commission approved the debate sponsor form and enclosed memorandum.

The Commission announced it would recess the public meeting until the following day, February 25, 1993, at 2:00 p.m., for the purpose of drafting a letter to the Governor, urging the Governor to conditionally veto A-100. The recessed portion will be conducted by telephone conference call, and public

participation would be available by attendance at the Commission's Trenton offices.

7. Resolution To Go Into Executive Session

On a resolution by Chairman McNany, seconded by Commissioner Linett and passed by a vote of 2-0, the Commission resolved to go into closed Executive Session to discuss the following matters which will become public as follows:

1. 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. Public Session Continued

The Commission reconvened the public session of February 24, 1993, on February 25, 1993, at 2:00 p.m. by telephone conference. Public participation was available by speaker phone located at the Commission's Trenton offices.

Chairman McNany, Commissioner Linett, Commissioner Bedford, Executive Director Herrmann, Legal Director Nagy, and Deputy Director Brindle participated in a telephone conference conducted on February 25, 1993, and beginning at 2:00 p.m. Counsel Farrell did not participate.

Commissioner Bedford said that he did not have any major problems with the letter as written. He suggested, however, that the contribution chart be attached to it.

On a motion by Commissioner Bedford, seconded by Chairman McNany and approved by a vote of 3-0, the Commission directed staff to send the letter urging a conditional veto of A-100 to Governor Florio. The Commission also directed staff to release the letters to the public and the press.

Upon the suggestion of Chairman McNany, the Commission directed staff to prepare a "Letter to the Editor" based upon the letter to the Governor and to send the letter to major newspapers throughout the State.

9. Resolution To Go Into Executive Session

On a resolution by Chairman McNany, seconded by Commissioner Linett and passed by a vote of 3-0 at the February 25, 1993 meeting, 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.

10. Adjournment

On a motion by Commissioner Linett, seconded by Chairman McNany and passed by a vote of 3-0, the Commission voted to adjourn at 2:20 p.m.

Respectfully submitted,



FREDERICK M. HERRMANN, PH.D.