



State of New Jersey

ELECTION LAW ENFORCEMENT COMMISSION

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PUBLIC SESSION MINUTES

TELEPHONE CONFERENCE

MAY 21, 1993

Commissioner Linett, Commissioner Eldridge, Counsel Farrell, senior staff, and Director of Public Financing Nedda Massar participated in the telephone conference. Chairman McNany was absent.

Commissioner Linett as the senior member 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 by telephone at 10:00 a.m. at the Commission offices, Trenton, New Jersey.

1. Public Matching Funds

Candidate Jim Wallwork/Submission 05

Following a complete staff review of the submission, a net amount of \$14,170 in contributions was deemed eligible for match at a 2:1 ratio. The net submission includes resubmitted items. The review determined that four contribution items were ineligible for match, representing a 4.49 percent ineligibility rate.

Based on the net amount of \$14,170 determined to be eligible for match at a 2:1 ratio, staff recommended certification of \$28,340 in primary matching funds to Candidate Jim Wallwork.

On a motion by Commissioner Eldridge, seconded by Commissioner Linett and passed by a vote of 2-0, the Commission approved the certification of \$28,340 in primary matching funds to Candidate Jim Wallwork.

2. Democratic State Committee Request

For detailed information please see the letter from Stephen J. Edelstein, Esq., Special Counsel to the New Jersey Democratic State Committee (DSC), dated May 19, 1993, to Director of Public Financing Nedda Gold Massar, and the letter from Edward Gross, Esq., Counsel to the New Jersey Republican State Committee (RSC), dated May 20, 1993, to Director Massar.

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The DSC, upon learning that the RSC will begin a series of television and radio commercials attacking Governor Jim Florio, followed up its request for an advisory opinion (AO-04-1993) by submitting a complaint attesting to the fact that the RSC expenditure should be allocated against the expenditure limit of the ultimate winner of the Republican gubernatorial primary election. Mr. Edelstein, for the DSC, reasoned that the Commission should consider the issue anew in light of the fact that there now exists an "actual case or controversy contemplated by the Commission."

In effect, the DSC maintained that the advertising expenditures by the RSC are not independent of the campaigns of the GOP candidates for Governor and should be allocated against the ultimate winner of the Republican primary election. The DSC wanted its letter to be considered a complaint challenging the non-allocation.

Mr. Gross maintained that the Commission issued Advisory Opinion No. 04-1993 on March 24, 1993, stating that the expenditures are not allocable unless undertaken in consultation or coordination with one or more GOP gubernatorial campaigns. Mr. Gross maintained that the DSC has not brought forth any facts demonstrating coordination or consultation and that the request for a complaint hearing is "nothing more than an attempt to re-argue the Commission's determination made in Advisory Opinion 04-1993 and 02-1993."

Executive Director Herrmann opened the discussion of the issue by suggesting that the Commission hear from Mr. Edelstein and Mr. Peter Verniero, representing the campaign of Christine Todd Whitman, who, though not the Respondent in the complaint, has an interest in its outcome. Both Mr. Edelstein and Mr. Verniero were in attendance at the meeting.

Commissioner Eldridge suggested that there was no immediate urgency in the Commission addressing this issue and that he would prefer that the matter be discussed at a regular meeting of the Commission, not at a telephone conference meeting.

Counsel Farrell agreed that there was a disadvantage in telephone discussion, stating that he believes that it is important for the Commissioners to have a sense of the nuance of a discussion.

Commissioner Eldridge said that he believed that the Commission should meet to discuss the issue.

Commissioner Linett asked: What is the nature of the complaint?

Counsel Farrell asked Mr. Edelstein to address the Commission.

Mr. Edelstein said that the matter before the Commission was different from the matter brought before the Commission in March, 1993. He said that at that time the question of coordination was irrelevant. According to Mr. Edelstein, now that an actual media campaign is underway this same question of coordination is no longer irrelevant. He argued that in March the Commission was dealing in the abstract. He said that under current circumstance the Commission is dealing with a specific case.

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Commissioner Eldridge asked Mr. Edelstein if he viewed this matter as one which had to be decided immediately.

Mr. Edelstein responded that he was not seeking to ban the advertising campaign. Rather, continued Mr. Edelstein, he was seeking to insure that those expenditures are allocated properly. The Commission did not have to decide the case immediately.

Counsel Farrell said that based on Mr. Edelstein's assertion, he believed that the Commission should consider the issue at its regular meeting.

Mr. Verniero asked to be recognized. He reiterated that he is Counsel to the Whitman campaign and that the Whitman campaign is not the Respondent. He noted that the RSC is the Respondent.

Counsel Farrell said that he understands that Mrs. Whitman is not the Respondent but that her campaign does have an interest in the matter. He said that the "burden of proof" is not on the Whitman campaign.

Mr. Verniero said that he was concerned about the procedure evolving at today's meeting. He noted that Mr. Edelstein has no facts and is simply saying that the airing of advertisements necessitates a hearing. Mr. Verniero said that the Commission has already determined that independent expenditures are not allocable. He said that the Commission should not hear this matter until some evidence of coordination is presented by the DSC.

Counsel Farrell said that the Commission has to decide if there is a basis for a hearing. The question to be decided is procedural, he added.

Commissioner Linett said that he had anticipated that the DSC would provide facts and make allegations. He said that the DSC is just making a presumption that there is coordination.

The Commission decided upon a schedule for the presentation of a formal complaint, the response to the complaint, and a hearing if it is determined that the complaint is valid.

On a motion by Commissioner Eldridge, seconded by Commissioner Linett and passed by a vote of 2-0, the Commission established the following procedure:

1. Complaint presented - June 1, 1993;
2. Response by Respondent, - June 10, 1993; and,
3. Hearing - June 18, 1993.

3. Adjournment

On a motion by Commissioner Linett, seconded by Commissioner Eldridge and passed by a vote of 2-0, the Commission voted to adjourn at 10:20 a.m.

Respectfully submitted,



FREDERICK M. HERRMANN, PH.D.

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