



State of New Jersey

ELECTION LAW ENFORCEMENT COMMISSION

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PUBLIC SESSION MINUTES

DECEMBER 14, 1993

Chairman McNany, Commissioner Linett, Commissioner Eldridge, senior staff, and Director of Public Financing Nedda Gold Massar were present. Counsel Farrell did not attend.

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 9:30 a.m. at the Commission offices, Trenton.

1. Approval of Public Session Minutes of November 16, 1993 and the Telephonic Meeting of November 12, 1993

On a motion by Commissioner Linett, seconded by Commissioner Eldridge and passed by a vote of 3-0, the Commission approved the Public Session Minutes of November 16, 1993 and telephonic meeting of November 12, 1993.

2. Executive Director's Report

A. Staff Activities

Executive Director Herrmann announced that another very successful New Jersey State Employee Charitable Campaign drive at ELEC has been completed. He indicated that Chairperson Carol Neiman attained 100 percent participation. Executive Director Herrmann said that ELEC should get its second platinum award, granted to an agency for at least 75 percent participation and average annual contributions of over \$60.00.

Chairperson McNany praised the effort, stating that it is well known that we have a special group of employees comprising the Commission.

The Executive Director mentioned that on November 19, 1993, he was interviewed about campaign finance and lobbying issues by two students from Alan Rosenthal's class at Eagleton Institute.

Executive Director Herrmann said that he was interviewed on the Bob Aronson talk show (WTC New Brunswick) about ELEC recomputerization.

B. Praise for ELEC

Executive Director Herrmann reported that a letter was received from a member of the public complimenting the staff for its "genuine attitude of helpfulness." He noted that the letter also congratulates the Commission "for a job well done under the most trying of circumstances."

The Executive Director reported that on December 6, 1993, at a meeting of the Assembly State Government Committee, Speaker "Chuck" Haytaian praised ELEC for its performance administering the new law during the 1993 elections despite serious budgetary problems. He noted also that Assemblyman David Russo, the Chairman of the Committee, seconded the Speaker's remarks and added that he was particularly pleased with the new forms that ELEC created this fall for use in the general election.

C. Legislative Developments

Executive Director Herrmann advised the Commission that on December 2, 1993, he testified before the Joint Legislative Committee on Ethical Standards on surplus funds usage. He said that the committee voted that: 1) ELEC's statute supercedes the Conflicts of Interest Law in regard to surplus funds usage; and 2) legislative staff will work with ELEC staff in developing regulations in this area.

Executive Director Herrmann added that Chairman Schluter requested that ELEC do its surplus funds regulations separately from its overall revision of the regulations under the new law.

Executive Director Herrmann stated that on December 6, 1993, he testified before the Senate State Government Committee on the ACS for A-101/A-194 (Haytaian). He mentioned that this bill changes lobbying law terminology to clarify various definitions in the statute and adjusts various thresholds for inflation every four years. He said that ELEC and the Rosenthal Commission have both supported such changes in the past. Executive Director Herrmann said that the bill was released unanimously with technical amendments.

Executive Director Herrmann noted that on December 8, 1993, he also testified on A-2992 (Haytaian) before the Assembly State Government Committee. He said that this bill requires that all "street money" payments be made by check and not in cash. The Executive Director advised the Commission that the bill was released unanimously with one abstention and an amendment to include groups not filing with ELEC but involved in voter participation activities.

Executive Director Herrmann remarked that on December 13, 1993, he testified on S-2248 (Inverso) before the Senate State Government Committee. He said that this bill is the same as A-2292 with ACS. He stated that the bill was released unanimously with one abstention and language in the

committee statement to clarify that cash contributions of under \$200 to a fundraiser close to an election or on election day were not to be considered "street money."

The Executive Director said that on both "street money" bills, he stated that the Commissioners had not had the opportunity to review the legislation but it was the sense of staff that "requiring all payments to be made by check ...is a positive step towards better disclosure of such activity."

Chairman McNany commented that it makes sense to require a paper trail for monitoring the expenditure of large amounts of money.

Commissioner Eldridge said that he would like to see "street money" banned because it has a corrupting influence on the process.

#### D. National Ethics News

Executive Director Herrmann informed the Commissioners that the Federal Election Commission (FEC) has announced a new enforcement plan to focus its limited resources. He noted that the FEC's workload, like ELEC's, has continuously increased because of the growth in campaign finance activity and more complex enforcement situations. The Executive Director explained that the FEC Chairman described the situation as overwhelming.

Executive Director Herrmann said that in the past the FEC had attempted as ELEC once did to handle virtually each enforcement case. He noted that the FEC, like ELEC, has now concluded that such an approach is impossible. Executive Director Herrmann said that decisions to open cases will now be based on their importance and the cost of prosecution. He suggested that the FEC's goal, like ELEC's, is to operate more efficiently by pursuing only the most significant cases.

#### E. Suggestions for Obtaining Adequate Funding

Executive Director Herrmann said that pursuant to Commissioner Linett's suggestion, staff has compiled some ideas about obtaining adequate funding. He mentioned that according to a Council on Governmental Ethics Laws (COGEL) survey over the past half-decade ELEC absorbed the largest percentage budget cut in the nation losing 22 percent of its funding.

Executive Director Herrmann said that to remedy the situation staff suggests:

1. Highlighting ELEC's budget needs in the next annual report,
2. Presenting a recomputerization plan to the Governor and Legislature in the spring,
3. Continuing to support the filing fee bill,

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4. Exploring the lifting of the hiring and spending freeze with the new administration, and
5. Working with the transition team.

Executive Director Herrmann noted that only three out of seven positions have been filled and only about one-third of the additional appropriation of \$300,000 was spent due to the new hiring and spending freeze.

Executive Director Herrmann added that Deputy Director<sup>1</sup> Brindle, Legal Director Nagy, Director of Public Financing Nedda G. Massar and he met with Ed Gross and Lisa Randall of the transition team on December 10, 1993, to discuss various ELEC issues such as recomputerization, workload, budgetary needs, and effects of the new law on the agency.

The Executive Director commented that staff would continue to work with the media on their stories about ELEC's role and needs. He noted that a December 6, 1993 Star Ledger story by Joe Donohue on recomputerization drew a great deal of positive attention to ELEC's situation.

3. Approval of Public Financing Funds

Jim Wallwork P93 Submission 11

Director of Public Financing Massar reported that staff requested and received from the Wallwork P93 campaign updated information on outstanding campaign obligations and cash-on-hand.

The Wallwork campaign has demonstrated a postelection need for additional public funds based upon its outstanding campaign debt. These funds may be used to pay appropriate obligations, to reimburse the non-public fund account, and to pay for postelection audit expenses.

Staff has completed its review of Candidate Jim Wallwork's eleventh submission for 1993 gubernatorial primary election public funds. Staff notes that the November 15, 1993 submission was filed at 12:31 p.m., after the 12:00 noon deadline, within the one-hour grace period previously permitted by the Commission.

The November 15, 1993 submission included a net amount of \$41,950 in contributions eligible for match at the 2:1 ratio. All contribution items were found to be eligible for match. Staff recommended, therefore, certification of \$83,900 in primary election matching funds.

On a motion by Commissioner Linett, seconded by Commissioner Eldridge and passed by a vote of 3-0, the Commission permitted the late filing of the public funds submission.

On a motion by Commissioner Eldridge, seconded by Commissioner Linett and passed by a vote of 3-0, the Commission certified \$83,900 in public funds to 1993 primary election candidate Wallwork.

4. Advisory Opinion Number 10-1993

This advisory opinion request was submitted by Mark W. Musser, Esq., on behalf of Inaugural Committee '94, the gubernatorial inaugural fundraising committee of Governor-elect Christine Todd Whitman.

Mr. Musser requested advice on the following questions:

1. Will an inaugural committee be treated as a political committee, a continuing political committee, political party committee, joint candidates committee or legislative leadership committee or some other type of committee;
2. May a State party committee loan money to an inaugural committee;
3. In what amount can "surplus" funds be transferred by an inaugural committee to a State party committee after the last event is held and the affairs of the inaugural committee are ready to be wound up;
4. What contributor information must be reported? Specifically, does occupation and employer information have to be disclosed regarding individual contributors;
5. How must an inaugural committee report following the statutorily required 45 days;
6. In what amount can surplus funds be contributed to a charitable organization; and,
7. To what extent can an inaugural committee be involved in assisting a charity in arranging and financing an inaugural event featuring the Governor-elect when all proceeds of the event are paid directly to that charity?

Legal Director Nagy reviewed a staff memorandum in response to Mr. Musser's questions, which had been circulated to the Commissioners. The memorandum recommended that the Commission refrain from categorizing an inaugural event sponsor as a "political committee" because the inaugural sponsor does not meet the statutory requirements of such a committee. The memorandum stipulated that the applicable statutory provisions in terms of reporting are contained in the inaugural statute itself, N.J.S.A. 19:44A-18.1.

The memorandum also indicated that the contribution limits established by the 1993 amendments to the Campaign Act are not applicable to a transfer from the inaugural committee to a State party committee and that there are no restrictions on loans from the State parties to inaugural committees.

While noting that there is no provision that would require an inaugural committee report to list the occupation and employer of individual contributors, the memorandum nevertheless recommended that the Commission encourage these committees to disclose this information voluntarily.

The staff memorandum also advised that inaugural reports must be filed 45 days after the inaugural event and every 60 days thereafter until the committee's business is concluded.

Finally, the memorandum asserted that there are no limits on inaugural committees' contributions to charity or on an inaugural event sponsor assisting a charitable organization in conducting a fundraising event.

Mr. Musser, attorney for the Inaugural Committee '94, provided his account of the legislative history of the statute relative to inaugural committees and stated that he agreed with staff's analysis. He indicated N.J.S.A. 19:44A-18.1 was not modified at all in the 1993 amendments to the Campaign Act. Therefore, he stated that no other limitations in the Act should be extended to the Inaugural Committee.

Commissioner Linett asked if the 1994 Inaugural committee would voluntarily provide information on occupation and employer of individual contributors.

Mr. Musser said that the committee would attempt to provide this information if the Commission requested it to do so.

On a motion by Commissioner Linett, seconded by Commissioner Eldridge and passed by a vote of 3-0, the Commission directed staff to issue an advisory opinion based upon the responses indicated in the staff memorandum.

5. Advisory Opinion No. 11-1993

This advisory opinion request was submitted by Michael R. Cole, Esq., on behalf of People for Whitman Committee (PFW), the 1993 general election committee of publicly-financed gubernatorial candidate Christine Todd Whitman.

Mr. Cole requested advice on the following questions:

1. May PFW continue to raise funds after the election and use them to pay legal fees and costs in connection with certain postelection litigation and proceedings;
2. May PFW now deposit checks into its campaign account which were received near election day but which were not deposited into the campaign account within ten days because they were intended to be returned to the contributors; and,
3. May lawyers, law firms, accountants, and accounting firms make "in-kind" contributions to PFW of professional services even though they as individuals, or through their partners or affiliated professional/corporations, already contributed the maximum \$1,800 contribution to PFW.

In a staff memorandum which had been circulated to the Commissioners, staff recommended that PFW be permitted to continue to raise funds in the postelection setting, but that the \$1,800 contribution limit must be observed.

The memorandum indicated that fees spent for legal defense in connection with the gubernatorial election would be considered outside of the 1993 general election expenditure cap and would be permissible expenditures in the postelection setting if there existed some reasonable nexus to the candidacy or reporting requirements of the Whitman campaign.

With respect to whether PFW may deposit into its campaign bank account contribution checks received more than ten days ago, the memorandum stipulated that a literal application of N.J.S.A. 19:44A-9 to the facts would require that PFW return the contributions which have not been timely deposited. It pointed out, however, that after returning those contributions PFW could solicit the same contributions for deposit and use toward its legal expenses. As a practical matter, the memorandum suggested that the Commission may wish to find that the statutory purpose of prompt deposit and timely reporting of contributions would not be frustrated in these unique circumstances by permitting these funds to be deposited and subsequently disclosed without having to first return them to contributors.

Finally, the memorandum recommends that PFW be advised that if professional legal, accounting and support services are paid for as "in-kind" contributions, such services should be counted against the contribution limit. Each professional corporation and each partnership, including each partner in an accounting firm or law firm, can contribute up to \$1,800 per election. The opinion stated, however, the services rendered by individuals on a completely voluntary basis are not considered "in-kind" contributions and are therefore not counted against the contribution limit.

Mr. Musser, representing PFW, said that he concurred with the draft opinion except for the finding that postelection fundraising for legal defense purposes should be subject to the \$1,800 contribution limit. He said that he believed it was an analogous situation to the one in 1981, when funding was needed for legal fees for the gubernatorial election recount, and the Commission exempted contributions raised for that purpose from the contribution limits.

Chairman McNany said that he did see some merit to the argument that postelection fundraising was not in aid of a candidacy and should not be subject to contribution limits.

Commissioner Eldridge said that he differed with Chairman McNany and agreed with the draft advisory opinion. He said that the purpose of the law is to prevent an individual from exercising undue influence because of excessive contributions. He said that allowing contributions beyond the limit could result in individuals and organizations attempting to buy influence in the Governor's office, something the limits are designed to prevent.

Commissioner Linett said that he opposed lifting the limits.

On a motion by Commissioner Eldridge, seconded by Commissioner Linett and passed by a vote of 3-0, the Commission directed staff to issue an advisory opinion based upon the responses outlined in the staff memorandum.

6. Return of Unexpended 1993 Primary Election Funds

For detailed information please see the memorandum from Nedda G. Massar, Director of Public Financing to Frederick M. Herrmann, Ph.D., Executive Director, dated December 10, 1993 and entitled "Return of Unexpended 1993 Primary Election Funds."

According to Director Massar, the Wallwork campaign expects to have \$4,800 in funds remaining after its receipt of public funds from its final submission certified earlier in this meeting. The campaign has asked to retain the funds for costs associated with the Election Law Enforcement Commission (ELEC) audit and staff recommended that it be permitted to do so.

Florio '93, Inc., on October 19, 1993, refunded primary election campaign funds in the amount of \$69,264.02. Florio '93, Inc., still has approximately \$13,000 cash-on-hand and has requested that this amount be retained to satisfy obligations and postelection audit expenses. Staff recommended that Florio '93, Inc. be permitted to retain this amount.

People for Whitman has a balance of \$241.37 of primary election funds and has asked to retain them for audit purposes. The campaign has asked about the propriety of raising additional funds to meet those expenses.

Staff recommended that PFW be permitted to retain \$241.37 because N.J.A.C. 19:25-16.33 permits a publicly-financed campaign to raise additional funds after the date of the election to meet expenses subject to the contribution limit of \$1,800.

On a motion by Commissioner Linett, seconded by Commissioner Eldridge and passed by a vote of 3-0, the Commission approved the staff recommendations regarding retention of the unexpended 1993 primary election funds.

7. 1993 Gubernatorial Ballot Statement Program

For further information please see the memorandum from Nedda G. Massar, Director of Public Financing to Frederick M. Herrmann, Ph.D., Executive Director, dated December 13, 1993 and entitled "1993 Gubernatorial Ballot Statement Program."

Director Massar reported that eleven counties submitted timely claim forms: Atlantic, Bergen, Camden, Cape May, Essex, Gloucester, Middlesex, Ocean, Salem, Sussex, and Union. Staff considered the Middlesex County claim timely because though it was not filed with the Commission by December 1, 1993, it was filed, though erroneously, with the Secretary of State on time. The Commission received it December 3rd and had sufficient time for review.



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The total amount in claims from the eleven counties which have filed claim forms equalled \$201,688.36.

Staff requested Commission authorization to contact the clerks whose claims indicated a per voter cost greater than the \$.08 per voter average to obtain further information to support their claims. Staff also requested Commission authorization to contact the counties which have indicated bilingual statements were printed to request further explanation and information about costs.

Director Massar reported that she received a letter from John Carbone, Esq., on December 2, 1993, which included ballot statement claim totals for eight counties, four of which had already filed completed reimbursement forms. She said none of the required supporting information had been filed by four of the counties listed by Mr. Carbone (Burlington, Monmouth, Passaic, and Somerset).

Staff requested Commission authorization to contact Mr. Carbone and other county clerks who have not yet applied for reimbursement to ask them to file application forms no later than December 30, 1993 for possible consideration by the Commission.

Staff indicated that it has approximately \$165,000 for reimbursement for the counties and therefore cannot reimburse them 100 percent. Director Massar said that if approved, staff will calculate a pro-rata reimbursement amount based upon all claims received by December 30, 1993.

Chairman McNany indicated that he was inclined to support staff's recommendation and consider additional claims by those clerks who have not yet applied. He said that counties would have to be reimbursed on a pro-rata basis.

Commissioner Eldridge disagreed, stating that no exception should be granted for counties which had not filed claims by the December 1, 1993 deadline.

Commissioner Eldridge commented that if the clerks missed the deadline they should not be reimbursed.

Commissioner Linett agreed, stating that the Commission should not have to pursue the county clerks to submit their claims for money.

Commissioner Eldridge said that he would not notify those counties that have not submitted claims and would not reward them with reimbursement if they do.

On a motion by Commissioner Eldridge, seconded by Commissioner Linett and passed by a vote of 3-0, the Commission determined that it would consider only the eleven counties that have submitted claims and take no further action with the remaining counties. The Commission directed staff to obtain further

information from the counties with per voter costs in excess of \$.08 and the counties with bilingual ballot programs.

8. 1994 Meeting Schedule

On a motion by Commissioner Linett, seconded by Commissioner Eldridge and passed by a vote of 3-0, the Commission approved the 1994 meeting schedule.

9. Public Financing Hearing Preparations

Director of Public Financing Nedda G. Massar reviewed the Gubernatorial Public Financing Program Hearing Schedule and preparations for same. Director Massar stated that the hearings would be held on February 15 and March 15, 1994, the regularly scheduled meeting dates of the Commission offices in Trenton.

At the direction of Chairman McNany and the concurrence of the Commission, the Commission directed staff to arrange for the February meeting to be held at the State House in Trenton and for the March hearing to be held in Maplewood at the Municipal Building.

The Commission also determined that the January 18, 1994 Commission meeting will be held at the Somerset County Administration Building in Somerville.

10. Request for Reimbursement

The Commission directed staff to request reimbursement for the Commissioners for the telephonic meetings on September 8, 1993 and November 12, 1993, because of their long duration. The Commission does not request per diem reimbursement for telephonic meetings of a routine nature, such as ones for the approval of public funds.

11. Resolution To Go Into Executive Session

On a resolution by Commissioner Linett, seconded by Commissioner Eldridge 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.
2. A report on written requests for investigations of possible violations, which report will not become public. However, any complaint which may be generated as a result of a request for an investigation will become public 30 days after mailing.

12. Adjournment

On a motion by Commissioner Eldridge, seconded by Commissioner Linett and passed by a vote of 3-0, the Commission voted to adjourn at 12:46 p.m.

Respectfully submitted,



FREDERICK M. HERRMANN, PH.D.

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