



## State of New Jersey

### ELECTION LAW ENFORCEMENT COMMISSION

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#### PUBLIC SESSION MINUTES

AUGUST 24, 1994

Chairman McNany, Vice Chairman Eldridge, Commissioner Linett, senior staff, and Deputy Legal Director Nedda Gold Massar 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 9:00 a.m. at the Maplewood Municipal Building, Maplewood, New Jersey.

1. Approval of Public Session Minutes of July 13, 1994

On a motion by Commissioner Linett, seconded by Vice Chairman Eldridge and passed by a vote of 3-0, the Commission approved the Public Session Minutes of July 13, 1994.

2. Advisory Opinion Request No. 07-1994

For a discussion of this matter please see the Public Session Minutes of July 13, 1994.

Peter Sheridan, Esq., writing on behalf of Schoolchildren First, inquired about the activities that the continuing political committee (CPC) anticipates undertaking to circulate the name and governmental or political ideas of Jersey City Mayor Bret Schundler, and to solicit contributions over his signature. The CPC asked if these activities would violate the statutory prohibition on direct or indirect participation by Mayor Schundler in the management or control of a CPC.

Although Schoolchildren had indicated at the July meeting it would be submitting further written arguments, Legal Director Nagy said Mr. Sheridan has advised him that no further submission would be made. Legal Director Nagy also indicated that Mr. Sheridan said that the CPC would not be pursuing the compromise of not circulating its communications in Jersey City, as proposed by Vice Chairman Eldridge at the July meeting.

On a motion by Commissioner Linett, seconded by Vice Chairman Eldridge and passed by a vote of 3-0, the Commission adopted the staff recommendation as drafted in a July 6, 1994 memorandum, entitled "Response to Advisory Opinion Request No. 07-1994," from Legal Director Nagy to Executive Director Frederick M. Herrmann, Ph.D., Executive Director, and directed Legal Director Nagy to issue an opinion as proposed in the memorandum.

In sum, the opinion concludes that Schoolchildren First, Inc., cannot list Mayor Schundler's name as its honorary chair, and use his signature on its fundraising communications, because of the statutory prohibition against a candidate being involved directly or indirectly in the management or control of a CPC.

3. Advisory Opinion No. 10-1994

This request was submitted by Thomas M. McCormack, Esq., Counsel to the campaign of Cardell Cooper, candidate in the 1994 Democratic primary election for Essex County Executive.

Mr. McCormack wrote that following the June 7, 1994 primary election, candidate Thomas T. Giblin filed a petition for a recount/recheck pursuant to N.J.S.A. 19:28-1, et seq. As a result of the recount, the Essex County Board of Elections declared the election to be a tie between Cooper and Giblin. Mr. McCormack said that both sides have been involved in election contest litigation proceedings pursuant to N.J.S.A. 19:29-1 et seq. He said that the litigation, court action, and related investigations are costly exercises. These costs have caused the Cooper campaign to incur sizeable debt.

Mr. McCormack's request asks for an advisory opinion as to the propriety of undertaking funding efforts that would be outside the contribution limits in the Campaign Act. Mr. McCormack added that the Cooper campaign proposes the creation of a legal defense fund for the prosecution and/or defense of claims by the Cooper campaign. He said that it is the intention to raise these funds outside of the campaign process because none of the funds to be expended and raised will be used for election purposes.

A draft response to the advisory opinion request was prepared by Deputy Legal Director Massar, and circulated. It held: 1) that funds raised and expenditures made to support the election contest litigation are required to be reported pursuant to the Act; 2) that the postelection contributions raised by the Cooper campaign to pay for its litigation expenses are subject to the contribution limit for the primary election under the provisions of the Act; and 3) that if professional, legal, accounting, or support services are provided to the Cooper campaign by individuals who are being compensated by their employer, the value of those services must be counted as contributions by the employer providing the compensation, subject to the 1994 primary election contribution limits.

In sum, the opinion states that the Cardell Cooper candidate committee may continue to raise contributions in the 1994 primary election setting for the limited purpose of paying for the "net liability" (see Advisory Opinion

No. 05-1994) reported on the 1994 primary election 20-day postelection report and for meeting the unanticipated postelection litigation expenses associated with the resolution of the 1994 primary election for Essex County Executive. All such contributions are subject to the 1994 primary election contribution limit.

Mr. McCormack was present and addressed the Commission. He said that an incredible amount of billable hours by associates in a law firm went into the Cooper effort on an emergent basis. Mr. McCormack indicated that the campaign was unsure as to how to deal with this situation in the context of contribution limits. He said that the campaign would like to establish a segregated fund to pay off debts arising from this unanticipated litigation, and that the election contest should be treated as an election itself with a separate contribution limit.

Commissioner Linett said that he was troubled by the distinction between a sole practitioner subject to no reporting, and associates who are required to have their contributions reported.

Chairman McNany said that the Cooper situation is similar to the situation that occurred after the gubernatorial election.

Legal Director Nagy said that his reading of the Act was that to the extent that a staff person is volunteering efforts, they are not "contributions" and not reportable, but to the extent they are compensated, the compensation is reportable as a contribution to the campaign from the law firm providing the compensation.

Mr. McCormack said that both the Cooper and the Giblin campaigns raised and spent approximately one-half million dollars. He said that both are now faced with this unanticipated expense that has nothing to do with the promotion of their candidacies. Mr. McCormack argued that the campaign only has a finite number of contributors and that now it has to tap those same contributors both to pay-off the debt and to run the general election campaign. He said that the Democratic campaign would be starting out at a clear disadvantage in the general election. Mr. McCormack said that the expense of election litigation is not promoting a candidacy, but trying to determine who won. He suggested that the Commission view the election contest litigation as a separate election, therefore allowing persons who contributed the maximum amount in the primary election to also contribute up to the maximum for the expenses of the election contest.

Chairman McNany asked: What if the judge had declared a new election?

Legal Director Nagy said that new contribution limits would probably apply, as in a runoff election. He added that the campaign has an unlimited amount of time to pay off the debt. He also observed that the statutory definition of the term "election" in N.J.S.A. 19:1-1 does not contemplate that postelection litigation be treated as a separate election in itself.

Vice Chairman Eldridge said that he believed the draft opinion to be correct. He said that the place for remedial action is with the Legislature.

Mr. McCormack said that he believed that this is the first time that this has occurred at the county level.

Commissioner Linett said that he would like to find a solution that would help out the campaign with its debts.

Legal Director Nagy said that the Commission was constrained by the statutory restrictions, and said that if expenses of election litigation merited relief from the "per election" contribution limits, the Legislature would have to amend the statute.

Executive Director Herrmann suggested that a source of revenue for paying off the debt could be the county and State parties.

Mr. McCormack remarked that there is a finite number of contributors. He said that a candidate with postelection litigation in a primary starts out at a disadvantage in the general election.

Chairman McNany asked: What is the single largest outstanding debt?

Mr. McCormack estimated that one law firm could be owed as much as \$80,000.

Commissioner Linett suggested that staff revisit the issue and give the Commission an opinion as to whether it could consider this process as a separate election. He suggested that a recount is not part of an election because it does not promote a candidacy.

Mr. McCormack said that the draft opinion handcuffs a candidate going into the general election, creating an uneven playing field. He said that these are unanticipated costs that have nothing to do with a candidacy. Mr. McCormack said that the legal costs incurred are unanticipated.

Legal Director Nagy suggested that perhaps the same dilemma faces any candidate who is in a heated primary versus those in a non-contested primary. Non-contested candidates can transfer money from the primary to general and perhaps start out at an advantage over opponents who spent most or all of their primary money in a heated contest.

Vice Chairman Eldridge pointed out the Commission has contribution limits to uphold. He said that he felt the draft opinion to be the correct solution.

Chairman McNany said that the Commission should establish a basis for permitting money to be raised outside of the cap.

Commissioner Linett said that the Commission could rule that the recount is not campaign-related.

Legal Director Nagy noted that as Executive Director Herrmann had suggested the political party committee could undertake efforts to raise funds to retire the debt of its two candidates. He said political parties can contribute unlimited amounts to candidates. Also, the primary election campaign can continue to raise funds for an unlimited time, and is not required to pay the debt before the general election.

Executive Director Herrmann commented that the Commission has issued numerous advisory opinions over the years ruling that postelection litigation relating to an election is campaign-related and consequently would be an allowable expenditure of a candidate's funds.

Mr. McCormack commented that he would need guidelines on the party situation because Mr. Giblin is the county Democratic chairman.

Deputy Director Brindle pointed out that the statute permits a candidate with a candidate committee to also be the chairman of a party committee. He said that fact, coupled with the fact that there is no limit on party-giving, suggests a way for the party to raise funds to retire the debt.

Commissioner Linett made a motion to adopt the staff's draft response and moved that staff also draft a letter to the Governor and the Legislature asking for remedial legislation for the Commission's review at its next meeting. Vice Chairman Eldridge seconded the motion and on a vote of 3-0, the motion passed.

#### 4. Legislative Recommendation on Fundraising by Officeholders

At the July Commission meeting, Vice Chairman Eldridge asked staff to prepare a memorandum on the subject of possible legislation to limit fundraising by elected officeholders.

For complete discussion of the staff's proposal please see the memorandum from Gregory E. Nagy, Legal Director, to Frederick M. Herrmann, Ph.D., Executive Director, dated August 8, 1994 and entitled, "Legislative Recommendations on Fundraising by Officeholders."

In sum, while recognizing that there are constitutional barriers to establishing caps on incumbent officeholder fundraising, staff suggested that the Commission urge the Legislature to enact legislation that would require all fundraising by candidates or officeholders to be subject to the Campaign Reporting Act unless the solicitations contain notice affirmatively stating the non-election related purpose to which the funds will be applied, and notice that the donations are not subject to campaign disclosure.

Vice Chairman Eldridge agreed with the recommendation.

Commissioner Linett said that legislation was not needed, suggesting the policy could be accomplished by rulemaking.

Chairman McNany said that the check should be made out to the charity and not to the candidate when a charitable contribution is made through a candidate. He said that if a contribution is made to the candidate then it should be reported as a contribution to the campaign. Chairman McNany added, however, that it is permissible for a candidate to establish a charitable foundation wherein no money is used in an election.

The Commission accepted the staff's recommendation. ,

Commissioner Linett asked if staff still anticipated rulemaking with regard to gubernatorial elections.

Deputy Legal Director Massar said that those issues would be addressed following completion of regulations having to do with the new Campaign Act.

5. Future Meetings

The Commission agreed that its next meeting, scheduled for September 20, 1994 at the Commission offices in Trenton, would begin at 9:00 a.m., and the public hearing on proposed continuing political committee regulations would begin at 10:00 a.m.

6. Resolution To Go Into Executive Session


On a motion by Commissioner Linett, seconded by Vice Chairman Eldridge and passed by a vote of 3-0, the Commission moved 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. 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.
3. A report on a written request for investigation 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.

7. Adjournment

On a motion by Commissioner Linett, seconded by Vice Chairman Eldridge and passed by a vote of 3-0, the Commission voted to adjourn at 11:20 a.m.

Respectfully submitted,



FREDERICK M. HERRMANN, PH.D.