



State of New Jersey

ELECTION LAW ENFORCEMENT COMMISSION

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Owen V. McNany, III
Vice Chairman

David Linett
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GREGORY E. NAGY
LEGAL DIRECTOR

PUBLIC SESSION MINUTES

OCTOBER 18, 1994

Chairman Eldridge, Vice Chairman McNany, Commissioner Linett, senior staff, and Deputy Legal Director Nedda Gold Massar were present.

Chairman Eldridge 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.

Chairman Eldridge announced that Governor Whitman had appointed him Chairman, and presented outgoing Chairman Owen V. McNany with the gavel he used in presiding over the Commission. He praised former Chairman McNany for the outstanding job he did during his term.

Former Chairman McNany said that he enjoyed his tenure as Chairman and thanked his fellow Commissioners and the staff for their support.

1. Election of Vice Chairman

On a motion by Commissioner Linett, seconded by Chairman Eldridge, and passed by a vote of 3-0, Commissioner McNany was elected Vice Chairman.

Executive Director Herrmann noted that Governor Whitman also nominated Ellen Souter, a former Princeton Township Committeewoman, to be the fourth member of the Commission.

Chairman Eldridge directed the Executive Director to contact Ms. Souter for informational purposes.

2. Approval of Public Session Minutes of September 20, 1994

On a motion by Commissioner Linett, seconded by Vice Chairman McNany and passed by a vote of 3-0, the Commission approved the Public Session Minutes of September 20, 1994 as amended by Commissioner Linett.

3. Executive Directors' Report

A. Staff Activities

Executive Director Herrmann reported that the Commission's telephone system had been upgraded in September. He said that Legal Director Nagy spoke at Professor Frank Askin's law class at Rutgers University-Newark on campaign contributions from non-profit groups on October 11, 1994.

Executive Director Herrmann noted the hiring of Carol Hoekje, Director of Review and Investigation, and Irene Szedlmayer, Assistant Legal Director. The Executive Director reported that Elbia Zeppetelli has been hired as the new Legal Secretary and Jo Hall has become Executive Secretary. He mentioned that Laura Hutcheson has been interviewed and will serve as research intern until at least December.

Executive Director Herrmann added that staff would be recommending that the Commission amend its regulations to permit the faxing of 48-hour notices. He indicated that the time had come to permit last-minute contribution and expenditure information to be filed by fax. The Executive Director suggested that such an approach would enhance disclosure.

The Commission directed staff to move ahead with this initiative.

B. National Ethics News

Executive Director Herrmann reported that Citizens' Research Foundations' (CRF) new newsletter Political Moneyline had a story on the New Jersey Election Law Enforcement Commission's (ELEC) public financing reform proposals.

C. Legislative Activity

Executive Director Herrmann said that he testified before the Senate Oversight Committee on Advisory Opinion 07-1994 issued to Jersey City Mayor Brett Schundler. He said that he also testified on various legislative proposals made by Senator LaRossa, which may be incorporated into legislation.

The Executive Director said that while a candidate may not control a PAC, he or she could control a purely issue-oriented committee with no campaign activity. He mentioned that such a Committee is outside of ELEC's jurisdiction. The Executive Director said also that he discussed legislative proposals dealing with changing the definition of a candidate to exclude an officeholder, allowing candidates to establish personal PACs not for campaign purposes, and permitting candidate control of public question committees.

Executive Director Herrmann added that many of the Senators expressed concern with the contribution limits in the new law, stating that the best form of regulation is disclosure.

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The Executive Director said that staff believes there may be merit to the suggestion of permitting officeholders to control public question committees.

The Commission directed staff to hold firm against the two former proposals and protect the contribution limits.

Executive Director Herrmann advised the Commission that Congressman Toricelli has expressed his support of and Senator Adler has introduced a bill increasing the statutory fine caps in the Campaign Act. Executive Director Herrmann noted that Senator Adler's bill was precipitated by the fact that current law only permitted ELEC to fine the National Rifle Association (NRA) \$6,000 instead of a larger amount for the untimely filing of \$200,000 in expenditure information on two 48-hour notices.

Executive Director Herrmann said that the problem appears to be that the \$3,000 cap per violation works well for multiple violations involving small amounts of money but does not work well for single or double violations involving large amounts of money. He said that Senator Adler's bill calls for fines equal to the amount not disclosed and payment of the fines collected to the offended party. ELEC's current fine scale provides for a fine of ten percent of the undisclosed amount but is capped by the statutory limit of \$3,000 for a first offense.

The Commission, while suggesting that staff should review the question of increasing the penalties, expressed three concerns about the Adler approach. First, the Adler approach appears to be based on penalties being meted out prior to the election, which is not the case. Second, litigating matters involving such large fines will be very costly and time consuming. Third, the Commission expressed concern about which campaign entity would get the money if the penalty was exacted in a postelection setting.

D. Recomputerization

Executive Director Herrmann said that the Office of Telecommunications and Information Systems (OTIS) has completed the information-processing study that ELEC requested. He said that in the preliminary study, OTIS concurs with ELEC's evaluation in White Paper Number Eight Technology in the Future: Strengthening Disclosure (October, 1992) that it needs to upgrade its computer technology. Executive Director Herrmann said that in the study OTIS recommends that ELEC now initiate a detailed implementation study before it begins to undertake recomputerization. He said that such a study would necessitate an appropriation of about \$90,000. Executive Director Herrmann said that the Commission cannot make such a request under current budgetary procedures because of an Office of Management and Budget (OMB) directive that states that any new programs must be funded through cuts in other spending items and not through new spending measures. Executive Director Herrmann said that the Commission cannot therefore take the next step in its recomputerization efforts at this time. He suggested including the results of the study in ELEC's next annual report for informational purposes.

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E. Future Meetings

The Commission will meet on November 15, 1994 in Somerville and on December 13, 1994 in Maplewood at 9:00 a.m.

4. Adoption of Continuing Political Committee (CPC) Regulations

For detailed information please see the memorandum from Gregory E. Nagy, Legal Director to Frederick M. Herrmann, Ph.D., Executive Director, dated October 7, 1994 and entitled "Adoption of CPC and other Committee Reporting Regulations."

Legal Director Nagy noted that written comments were received on September 19, 1994 from James E. Cunningham, Treasurer, New Jersey Healthcare Political Action Committee (NJHCPAC). Mr. Cunningham proposed that the Commission amend the proposal to permit 48-hour notices to be faxed and to allow the postmark to be used to determine the date of filing.

Staff recommended that the Commission adopt the CPC proposal as proposed and at a later time amend these regulations to permit facsimile reports. Staff recommended that the Commission not permit the postmark to be used to determine the filing date of a report.

On a motion by Commissioner Linett, seconded by Vice Chairman McNany and passed by a vote of 3-0, the Commission adopted the CPC regulations without change and directed staff to file appropriate Adoption Notices for publication in the New Jersey Register.

5. Attorney General Opinion

Legal Director Nagy circulated the opinion issued by the Attorney General on the question of whether cogeneration companies were prohibited from making political contributions; see Advisory Opinion Request No. 03-1994, April 6, 1994 minutes, Item No. 4. The Attorney General ruled that cogenerators are prohibited from making political contributions.

6. Resolution To Go Into Executive Session

On a motion by Commissioner Linett, seconded by Vice Chairman McNany 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 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.

7. Adjournment

On a motion by Commissioner Linett, seconded by Chairman Eldridge and passed by a vote of 3-0, the Commission voted to adjourn at 10:35 a.m.

Respectfully submitted,



FREDERICK M. HERRMANN, PH.D.

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