



State of New Jersey

ELECTION LAW ENFORCEMENT COMMISSION

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William H. Eldridge  
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Owen V. McNany, III  
Vice Chairman

David Linett  
Commissioner

Frederick M. Herrmann, Ph.D.  
Executive Director

Jeffrey M. Brindle  
Deputy Director

Gregory E. Nagy  
Legal Director

James P. Wyse  
Counsel

PUBLIC SESSION MINUTES

MARCH 21, 1995

Chairman Eldridge, Commissioner Linett, senior staff, Counsel Wyse, and Deputy Legal Director Nedda Gold Massar were present. Vice Chairman McNany arrived at 9:25 a.m.

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 9:20 a.m. at the Maplewood Municipal Building, Maplewood, New Jersey.

2. Approval of Public Session Minutes of February 14, 1995

On a motion by Chairman Eldridge, seconded by Commissioner Linett and passed by a vote of 2-0, the Commission approved the Public Session Minutes of February 14, 1995.

Vice Chairman McNany arrived.

Chairman Eldridge recognized Mr. Jerry Grant, an independent candidate for governor in the 1993 gubernatorial general election.

Mr. Grant contested a Final Decision issued against him by the Commission in regards to late filing of his Personal Financial Disclosure Statement in 1993.

Mr. Grant asked the Commission to rescind its decisions regarding matters involving two other independent candidates, Mr. Michael Ziruolo and Mr. Thomas Fuscaldo, and to rescind the Final Decision against himself.

The Commission said that it would consider Mr. Grant's request regarding the Final Decision issued against him.

3. Advisory Opinion No. 05-1995

This advisory opinion was submitted by Assemblyman Jack Collins of the Third Legislative District.

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The Assemblyman's request concerned the Commission's political communication regulations covering the 90-day period prior to the primary election at N.J.A.C. 19:25-11.10.

According to Assemblyman Collins, the language that exempts an unopposed incumbent from these regulations creates difficulty. The Assemblyman stated that it is not until the filing of a nominating petition by the 54th day before the primary that an incumbent actually knows that he or she is opposed, thereby making it possible to determine whether or not a communication would have to be reported as a political communication pursuant to the political communication regulation.

Assemblyman Collins recommended in his letter that the Commission interpret the regulation to mean that in the case of the primary election the requirement for an incumbent to report a mailing as a political communication would not be triggered until the filing of a nominating petition by an opponent on or before the statutory deadline.

In a memorandum circulated at the Commission meeting, staff recommended that subsection (d) of the regulation be understood to mean that the cost of a communication made by an incumbent officeholder within 90 days of a primary election not be reportable as long as at the time the communication is circulated no person has filed a petition for nomination for election in opposition to that incumbent in the primary election. The cost of such a communication, however, would be reportable if the officeholder has an opponent by virtue of a filed petition. The staff memorandum noted that subsection (d) exempts from the political communication rule any candidate in a primary election who is "not opposed."

Commissioner Linett remarked that he is not sure that the exemption regarding political communications by unopposed incumbents in primary election might not be giving incumbents an advantage over challengers. On the other hand, he added, the Commission must be cognizant of First Amendment rights of officeholders and their responsibility to communicate with constituents.

Executive Director Herrmann said that Assemblyman Collins believes a bright line test is necessary and that this test is when a petition is filed on behalf of an opponent.

Commissioner Linett asked: is an opponent one who files a petition or one who announces a candidacy?

Vice Chairman McNany said that the Commission should differentiate between a declaration of candidacy through an individual filing a D-1 with it and a public declaration of a candidacy through the filing of a petition.

Executive Director Herrmann said that the Commission must consider the constitutional rights of an officerholder.

Counsel Wyse said that if an opponent had a concern about this issue then he or she could file a petition earlier than 54 days prior to the primary.

Executive Director Herrmann introduced Barbara Hutchin, Esq., Counsel to the Assembly Republicans. Ms. Hutchin asked whether an incumbent officeholder would have a duty to inquire whether nominating petitions had been filed. Legal Director Nagy responded that a candidate would have such a duty if the candidate wished to utilize the exemption.

Commissioner Linett said that he could concur with Legal Director Nagy's approach.

On a motion by Commissioner Linett, seconded by Chairman McNany and passed by a vote of 3-0, the Commission approved the staff's recommendation for the advisory opinion.

4. Executive Directors' Report

A. Commission News

At the behest of Chairman Eldridge, Executive Director Herrmann placed the following report on the record.

Executive Director Herrmann noted that Governor Christine Todd Whitman has nominated former U.S. Attorney for the District of New Jersey, Michael Chertoff, to ELEC's vacant seat. The nomination, made March 2, 1995 was referred to the Senate State Government Committee on March 13, 1995.

B. Staff Activities

Executive Director Herrmann advised the Commission that on February 21, 1995, he spoke at a breakfast meeting of the Republican Association of Princeton on ELEC's mission and the new campaign law.

He stated that on February 23, 1995, he made a presentation about campaign financing issues to the 1995 class of Leadership New Jersey. Edward McCool of Common Cause, New Jersey, also spoke.

Executive Director Herrmann reported that Thomas Gais of the Nelson A. Rockefeller Institute of Government, who interviewed the Executive Director for a campaign financing study on February 10, 1995, wrote a letter to say that he "was very impressed with [our] operation."

The Executive Director announced that Steven Kimmelman has been hired as a Research Assistant. Mr. Kimmelman had been a member of the Public Financing staff. He holds an M.A. from Rutgers University in political science.

Executive Director Herrmann said that a new hiring freeze has prevented the hiring of two more clericals.

C. Legislative Developments

Executive Director Herrmann said that on February 9, 1995, the Senate amended on the floor A-25 (Haytaian), the Recall Bill. He said that the amendments added a Recall Committee registration provision paralleling current PAC registration requirements.

He indicated that staff supported this change, which will heighten disclosure.

Executive Director Herrmann added that the Recall bill passed the Senate on March 2, 1995. He noted that the bill passed the Assembly on March 13, 1995.

D. National Ethics Stories

The Executive Director announced that Chairman Eldridge's book review on the American Bar Association (ABA) report on Restructuring the Federal Election Commission (FEC) was printed in the March issue of the COGEL Guardian.

The Executive Director added that two news stories recounting the Chairman's efforts on behalf of regulating negative advertising were also reproduced.

Executive Director Herrmann reported that Florida public officials are accepting fewer and fewer gifts from special interests. A new state law prohibits the acceptance of gifts worth more than \$100 and requires disclosure of gifts worth more than \$25. The Executive Director said that 15 states restrict benefit passing to \$100 or less.

Executive Director Herrmann reported also that Congressional members and their staff may not accept gifts worth over \$250. The Congressional Ethics Committee may waive this prohibition, however.

5. Future Meetings

The Commission will meet on April 18, 1995, in Summit; on May 16, 1995 and June 20, 1995 in Maplewood.

The Executive Director presented the following matters orally.

A. Document Release Policy

Executive Director Herrmann noted that recent publicized cases have stimulated media interest in the Commission's document release policy.

He said that certain media outlets have suggested that the Commission should revamp its procedures to notify better the media and the public of offenses. Executive Director Herrmann advised the Commission that complaints and final decisions are currently placed in the public room on an ongoing

basis. He said that on any given day a case or a number of cases might be released.

Executive Director Herrmann said that ELEC could replace this procedure by batching complaints and final decisions for release in the public room twice a month on a set day. The Executive Director said that this new method should further enhance the public announcement of complaints and fines.

The Commission approved the recommended change in policy.

B. Commission Ethics Forms

Executive Director Herrmann reminded the Commissioners that these ethics forms are due May 15, 1995. He said that one copy is to be submitted to Ethical Standards and one copy to the Governor's Chief Counsel, with an original signature on both.

C. White Paper Number Ten

Executive Director Herrmann reported that Deputy Director Brindle completed writing Nonconnected Ideological PACs in the Garden State, an analysis of the role of these PACs in the State's electoral process. He said that the Paper is in the Commissioners' meeting packet and praised the Deputy Director for his outstanding work product.

On a motion by Vice Chairman McNany, seconded by Commissioner Linett and passed by a vote of 3-0, the Commission approved the White Paper and its distribution.

6. Adoption of Contribution Reporting and Contribution Limit Regulations

Legal Director Nagy reported that no written comments had been received.

On a motion by Commissioner Linett, seconded by Vice Chairman McNany and passed by a vote of 3-0, the Commission approved adopted new rules at N.J.A.C. 19:25-10 (Contribution Reporting), adopted amendments at N.J.A.C. 19:25-1.7, 9.2, and 9.3; and adopted repeal and new rules at N.J.A.C. 19:25-11 (Contribution Limits), and directed that a Certificate of Proposal, Adoption and Promulgation and a Notice of Adoption be filed at the Office of Administrative Law (OAL).

7. Advisory Opinion No. 02-1995

This advisory opinion request was submitted by State Senator John O. Bennett. Senator Bennett asked whether or not it is acceptable to pay for the purchase of a television and for cable installation with campaign funds. The television and cable would be installed at his district office in order for the Senator to have access to New Jersey Network (NJN) and ultimately to gavel-to-gavel coverage of the New Jersey Legislature.

Legal Director Nagy discussed a draft response which had been circulated to the Commissioners.

The draft recommended that the Commission find that the use of campaign funds to cover the cost of a television set and cable installation to be an impermissible use. The rationale for the recommendation stems from the fact that the television set comes under the plain language of "furniture" and "equipment" and the cable installation is covered under the utility expense provision.

Commissioner Linett suggested that the Legislature should either determine that campaign dollars can either be used or not be used in connection with their official duties and strike the prohibition against "furnishing, staffing or operation" of an office.

8. Advisory Opinion No. 03-1995

This advisory opinion request was submitted by Keith Douglas Slack, treasurer of the Warren County Democratic Committee.

Mr. Slack asks whether he must resign his position as Treasurer of the Warren County Democratic Committee if he establishes a candidate committee and seeks the nomination to run for Town Council.

The draft response prepared by Legal Director Nagy and circulated to the Commission indicated that nothing contained in the Reporting Act prohibits the treasurer of a political party committee from establishing a candidate committee and running for office.

9. Advisory Opinion No. 04-1995

This advisory opinion request was submitted by William DiDonato of the Waterford Township Committee.

Mr. DiDonato asks if campaign money can be utilized by him to run for Camden County Committee.

The draft response which had been circulated to the Commissioners stated that campaign funds cannot be used to support a campaign for party office.

Chairman Eldridge called for a combined vote on the three advisory opinion matters.

On a motion by Commissioner Linett, seconded by Vice Chairman McNany and passed by a vote of 3-0, the Commission approved the responses in the three advisory opinion matters (Items 7, 8 and 9).

10. Resolution to Go Into Executive Session

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

11. Adjournment

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