



State of New Jersey

ELECTION LAW ENFORCEMENT COMMISSION

RALPH V. MARTIN
Chair

OWEN V. McNANY, III
Vice Chair

DAVID LINETT
Commissioner

WILLIAM H. ELDRIDGE
Commissioner

Respond to:

CN-185

Trenton, New Jersey 08625-0185
(609) 292-8700

FREDERICK M. HERRMANN, Ph.D
Executive Director

JEFFREY M. BRINDLE
Deputy Director

GREGORY E. NAGY
Legal Director

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Counsel

PUBLIC SESSION MINUTES

FEBRUARY 27, 1996

The Commissioners, Senior Staff, the Counsel, and Deputy Legal Director Nedda Gold Massar were present.

Chair 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.

EXECUTIVE DIRECTOR'S REPORT

1. Staff Activities

Executive Director Herrmann announced that a new messenger, Samira Wood, had been hired.

Executive Director Herrmann reported that on January 23, he spoke before the Rotary Club of Princeton on "Campaign Finance Law in New Jersey" and that on February 7, Legal Director Nagy and he attended a campaign finance conference in New York City sponsored by the New York City Campaign Finance Board and the J.M. Kaplan Center for New York City Affairs.

Executive Director Herrmann said that on February 20, he met with representatives from the League of Women Voters to discuss campaign finance reform.

2. Legislative Developments

Executive Director Herrmann noted that on February 5, he testified favorably on A-1222 (Augustine/Russo) before the Assembly State Government Committee.

According to the Executive Director, this bill, based on an idea recommended by ELEC, extends the filing dates for Personal Financial Disclosure Forms from the 10th day following the petition filing deadline (April 22 in 1996) to May 15.

He mentioned that it allows ELEC enough time to receive candidates' names from the Secretary of State and to mail out forms. At the same time, it provides candidates with enough time to receive these forms and send them back to ELEC.

Executive Director Herrmann said that the committee unanimously released this bill.

The Executive Director said that he also testified favorably on the Gubernatorial Public Financing Reform Package (A-1260 through A-1264 (Russo)), which is based on ELEC recommendations made in May, 1994.

According to the Executive Director, A-1260, which increases the number of debates in the Primary and General from two to three, was released unanimously.

He noted that A-1261, which modifies the \$1 checkoff to a \$1, \$3, or \$5 option, adjusted quadrennially for inflation, was released 6-1.

Executive Director Herrmann said that A-1262, which raises the Primary expenditure limit from \$2.6 Million to \$3.5 Million, was released 6-1 and that A-1263, which reduces the public finance cap in the Primary from \$1.6 Million to \$1 Million and the cap in the General from \$3.9 Million to \$2 Million, was released 5-2.

Finally, the Executive Director said that A-1264, which reduces the General matching ratio from 2:1 to 1:1, was released 5-2.

Executive Director Herrmann advised the Commission that all of the bills, except the debates bill (A-1260), were referred to the Assembly Appropriations Committee and were released from that committee on February 22, 1996. He said that A-1261 was released unanimously and A-1262 through A-1264 were released by an 8-4 vote.

Chair Eldridge noted the criticism leveled by some in the newspaper to the effect that the legislation favored the governor's re-election and was part of the administration's agenda was incorrect. He said that the Commission made these recommendations in the spirit of bi-partisanship, with the full Commission, two Democratic members and one Republican member, voting for them. Chair Eldridge said that the Commission voted unanimously in favor of these recommendations.

The Executive Director said that on February 22, he testified favorably on S-615 (Schluter) and S-616 (Schluter) before the Senate State Government Committee.

He noted that S-615, which increases the number of debates in the Primary and General elections from two to three, was held for further consideration.

He mentioned that S-616, which is identical to A-1261 (Russo) and increases the income tax checkoff, was released unanimously.

Executive Director Herrmann said that Chair Bubba also decided to hold S-611 (Bubba), which establishes a Truth-in-Campaign Commission, for future consideration.

3. Budget News

Executive Director Herrmann advised the Commission that the Administration did not reduce ELEC's FY-96 budget by eight percent (8%) as part of overall governmental contingency planning.

According to the Executive Director, ELEC can continue to move ahead with the recomputerization of the Commission.

He expressed special thanks to Deputy Director Brindle, Deputy Legal Director Massar, and Director of Administration Fasanella for their work with the Office of Management and Budget (OMB) in making ELEC's case for not having its budget cut.

Executive Director Herrmann reported that ELEC's budget for FY-97 as recommended by the Governor is \$2.147 Million.

He said that this is a continuation budget, which includes \$630,000 to run the Gubernatorial Public Financing Program.

He noted that the public financing budget includes \$155,000 for an electronic filing initiative to be used in the general election of 1997.

4. Next Meeting

Executive Director Herrmann mentioned that the next meeting will be on March 26, 1996 at 9:00 a.m. in Maplewood.

5. Reconsideration of Advisory Opinion 01-1996

Peter G. Sheridan, Esq., on behalf of the New Jersey Republican State Committee (RSC), asked the Commission to reconsider Advisory Opinion 01-1996. This request concerned contributions to the RSC used for both federal and State election purposes.

On the basis of supporting materials presented to the Commission, staff recommended that the Commission amend its initial opinion and permit the RSC to receive and accept a contribution made by check or other written instrument and to allocate or divide the proceeds between an account established for federal election activity pursuant to the Federal Election Campaigns Act, and a bank account established pursuant to the New Jersey Campaign Contributions and Expenditures Reporting Act, subject to the following restrictions:

1. The RSC provide notice in its fundraising solicitations that the proceeds of contributions made by check payable to the RSC may be divided or allocated by the RSC between its federal account and its State account;

2. The RSC obtain prior acknowledgment signed by the contributor that the contributor is aware that the RSC may allocate the proceeds of the contributor's check, and the contributor has no objection;
3. The RSC make and maintain all records described in the additional material supplied by Evan Fenton of Deloittee & Touche Consulting Group with the addition of the full name of the contributor and check number to be noted on the deposit slip;
4. The RSC shall use for the purposes of establishing the date on which the contribution is received, the date on which the check conveying the proceeds for the State account is received by the RSC;
5. The RSC shall use for the purposes of establishing the amount of the contribution received the amount deposited into the State account; and,
6. Nothing contained in the opinion shall be construed as permitting the RSC to receive any contribution or aggregate contributions from a contributor which total an amount in excess of the contribution limits established by the Reporting Act.

Mr. Peter Haytaian appeared for the Republican State Committee.

Commissioner Linett asked if the Republican State Committee would permit the Commission to examine its federal account to determine an audit trail in the event of an investigation.

Mr. Haytaian indicated that the Republican State Committee would allow the Commission, as part of an investigation, to review its federal account. He said that in the letter written by Mr. Sheridan, this authorization is so stipulated.

Commissioner Linett asked: Will contributors provide written acknowledgements of the fact that the proceeds of their contributions would be allocated between the federal account and the state account?

Mr. Haytaian responded that contributors will provide the acknowledgements in question. He indicated that contributors already do provide this written acknowledgement.

Commissioner Linett, in addressing Legal Director Nagy, said that at the last meeting staff felt that it would be improper to deposit money in a state account that is intended for the federal account.

Legal Director Nagy said that staff was satisfied, now that detailed procedures are known, that funds intended for the RSC federal account are not being deposited into the RSC state account. He indicated that staff was concerned about the adequacy of an audit trail. He said also that staff at the time believed that the check itself constituted the contribution.

Legal Director Nagy indicated that staff was also satisfied that based on the separate deposit procedures described by the RSC that for purposes of the contribution limit the Commission can view the proceeds of a contribution check as the contribution rather than the check itself.

Commissioner Martin mentioned that he agreed with the legal analysis contained in staff's initial memorandum, which was presented to the Commission at the January meeting. He said that he would like to have a legal analysis undertaken in support of the new staff position. He indicated that he would like to see a justification of the staff position, not just on the basis of an audit trail, but also from the legal perspective.

Commissioner Martin asked Mr. Haytaian if the RSC retained a photocopy of each contribution check. Mr. Haytaian answered in the affirmative. Commissioner Martin suggested also that the Commission require the State Committee to retain a photocopy of the contributor's check as part of the accounting record. Legal Director Nagy responded that the requirement was incorporated in his memorandum.

Commissioner Linett suggested that a regulation be drafted containing the procedural steps to be taken by entities relative to this issue. He said that he was not sure that in this case an advisory opinion was the appropriate vehicle.

Vice Chair McNany said that the Commission should issue the advisory opinion and then follow it up with regulations.

Counsel Wyse said that in his opinion it should be crystal clear that each contributor indicate that it was his or her intent at the time the contribution was made to have the contribution be allocated between the federal and state accounts.

Commissioner Linett said that it is important that the contributor agree to the allocation ahead of time.

Mr. Haytaian said that this procedure is already followed. He said that the contributor is contacted by the State Committee by telephone. Mr. Haytaian said that a verbal acknowledgment is provided by the contributor.

Commissioner Linett said that he would like to have the acknowledgment provided by the contributor in writing ahead of time, or that the written acknowledgment received after allocation state that prior verbal approval had been obtained.

Adding the "prior consent" provision to the staff recommendation on the advisory opinion, Commissioner Linett moved the advisory opinion reconsideration recommendation. Vice Chair McNany seconded the motion. On a vote of 4-0, the Commission passed the advisory opinion recommendation and directed staff to issue an amended advisory opinion.

6. Advisory Opinion No. 02-1996

This advisory opinion request was submitted by Assemblyman E. Scott Garrett and Assemblyman Guy R. Gregg. They have asked the Commission for an advisory opinion concerning the possible applicability of the Campaign Contributions and Expenditures Reporting Act, the Legislative Activities Disclosure Act, and the Candidate Disclosure Statement Act to an organization of legislators they propose to establish.

Assemblyman Garrett and Assemblyman Gregg wrote that they are considering establishing an organization composed of State legislators, organized along ideological or philosophical grounds, but not necessarily organized by political party affiliation. The purpose of the organization would be to conduct research on public policy, to issue position papers, and to advocate positions on legislation, public questions, and public policy issues. To accomplish these purposes, the organization would solicit funds, employ staff, and make expenditures to carry out its purposes. It would not spend money on election-related purposes.

On the basis of additional information requested by staff, Legal Director Nagy stated that staff suggests that the organization would not acquire reporting obligations or be subject to contribution limits under the Campaign Reporting Act because no election activity was being undertaken. Assemblyman Garrett and Assemblyman Gregg are not prohibited from establishing or participating in the organization by the Campaign Reporting Act because the activity described by Assemblymen Garrett and Gregg was outside its scope.

In regard to the possible application of the Legislative Activities Disclosure Act, staff observes that nothing contained in the Act provides that an organization established or operated by elected legislators is exempt from the requirements of that Act, nor have the legislators submitting this request suggested any legal argument in support of such a conclusion.

The staff suggested that the Commission may wish to note that it has no jurisdiction to determine whether or not the Conflicts of Interest Law or the Legislative Code of Ethics may have any possible application in regard to legislators establishing or participating in the organization, and the legislators should be advised that any inquiry concerning those provisions should be directed to the Office of Legislative Services and the Joint Legislative Committee on Ethical Standards.

In regards to whether or not funds solicited by the organization should be reported as gifts under the PFD law, in the absence of some personal financial interest of a gubernatorial or legislative candidate in the operations of the organization, staff recommends that the Commission conclude that the candidate has not "received" money or any other thing of value within the meaning of the statute, and therefore donations received by the organization are not reportable gifts to the candidate under the Act.

Commissioner Linett acknowledged that there was not much under the law that the Commission could do to prevent this group from forming. Commissioner Linett said, however, that the establishment of such a committee provides a way around the contribution limit law.

Commissioner Martin suggested that advisory opinions be brief and on point. He said that they should not lay out all kinds of information for people and that the Commission can not be a research facility. While praising Legal Director Nagy for his scholarly work on the advisory opinion background memoranda, which he stated were very helpful to him as a Commissioner, he suggested that the actual advisory opinions only answer the questions asked.

Commissioner Linett concurred, saying that it was pointless to worry about "if" and "why."

Counsel Wyse said that the IRS, in answering questions, is very fact specific.

Commissioner Martin said that the advisory opinions should just answer the facts.

Legal Director Nagy said the discussion of "election-advocacy" and "issue advocacy" activity was intended as informational, and would be deleted from the opinion letter.

In terms of the possibility that the group may be exempted from having a filing obligation under the lobbying law, Commissioner Linett asked: Isn't this part of a legislator's duty to try to persuade others?

Legal Director Nagy said that in his view the statutory exemption for a public officer of the State carrying out official duties was inapplicable. He said that staff believed there was a distinction between a legislator trying to persuade fellow legislators through debate or testimony, and setting up an organization to solicit funds and employ legislative agents. The latter activity is not within the scope of the regular duties of a legislator.

On a motion by Vice Chair McNany, seconded by Commissioner Martin and passed by a vote of 4-0, the Commission approved the staff recommendation and directed staff to issue a response in Advisory Opinion Request Number Two.

7. Adoption of Regulation Prohibiting Partnership Contributions

The Commission's proposal to adopt a regulation prohibiting contributions by partnerships was published in the December 4, 1995 New Jersey Register and is now ripe for adoption. Staff recommended the proposal be adopted without change.

A public hearing was conducted on January 2, 1996. Testimony was received from Ronald S. Ladell, Esq., and New Jersey Common Cause Executive Director Dennis Jaffe. Mr. Jaffe also submitted a letter with comments. The proposed amendment is at N.J.A.C. 19:25-11.2. Staff recommended also that the Commission direct staff to consider future amendments to address the issue of limited liability companies and limited liability partnerships raised at the hearing.

The regulation will become effective on publication of the adoption notice on April 1, 1996.

On a motion by Vice Chair McNany, seconded by Commissioner Linett and passed by a vote of 4-0, the Commission voted to adopt the Partnership regulation and directed staff to file the adoption notice with the Office of Administrative Law (OAL).

8. Proposed Amendments Concerning Joint Candidates Committees

Legal Director Nagy discussed a draft Notice of Proposed Rulemaking to amend regulations concerning establishment of joint candidates committees, and to delete the requirement that bank accounts be named, "Election fund of (name of filing entity)." These changes implement statutory changes made during 1995.

The statutory change permits candidates running for different offices in the same county or same municipality to form a joint candidates committee. Under the 1993 amendments, only candidates for the same local office could form a joint candidates committee. The new law also relaxed the requirement that the surnames of all candidates appear in a joint candidates committee's name by allowing the use of political party and jurisdictional terminology, but requires that the chosen name be consistently used for fundraising, reporting, and all other purposes. The law also changed the requirement that the name of a candidate committee include the name of the candidate, changing it to include only the candidate's surname.

A separate law deleted the requirement that the bank account established by a filing entity be named "Election fund of..." The proposed amendments (N.J.A.C. 19:25-1.7, 4.1, 4.2) and proposed repeal (N.J.A.C. 19:25-5.3) reflect the changes in the law. Staff did not recommend that the proposal be submitted for a public hearing because the amendments are intended principally to implement statutory changes, and staff does not anticipate wide public interest.

On a motion by Vice Chair McNany, seconded by Commissioner Martin and passed by a vote of 4-0, the Commission voted to propose the joint candidates committee and bank account regulation changes and directed staff to file the proposal to the OAL.

9. Commission policies on release of staff-generated materials

Please see the memorandum from Gregory E. Nagy to Frederick M. Herrmann, dated February 14, 1996 entitled "Commission policies on release of staff-generated materials." As a result of a meeting between Counsel James P. Wyse; Gregory E. Nagy; Dennis Jaffe, Executive Director, New Jersey Common Cause; and Frank Campbell, Esq. concerning development of Commission policies regarding release of staff-generated materials, the following was presented for Commission consideration:

1. The Commission will continue its practice of posting with the Secretary of State and circulating approximately one week in advance of its meetings a list of the items to be discussed and possibly acted upon in public session.

2. Staff memoranda, drafts, or other written communications circulated to the Commission prior to a public meeting do not become public records merely as the result of such circulation.
3. The Commission is under a legal duty to articulate in public and on the record its reasoning in support of its actions, including any reasoning derived from staff-generated communications.
4. After convening a public meeting, the Commission may entertain at a time the Commission deems suitable, a request from the public for copies of staff-generated written communications pertinent to any item on the public agenda.
5. In considering whether or not to release a staff-generated document, the Commission may wish to consider whether or not the document would be of assistance to the public in understanding the reasoning of the Commission pertinent to a public Commission action. If staff-generated materials are not yet sufficiently developed or articulated and the Commission concludes that the release of those materials would tend to obscure the Commission's reasons for an action, the equities may not weigh in favor of release.
6. If the Commission perceives a need for release decisions to be made without the necessity of holding a meeting, the Commission could perhaps adopt an operating procedure permitting its Executive Director, on consultation with the Chair and Vice Chair, to release such documents.
7. Common Cause suggested that the Commission may wish to consider "first and second readings" procedures. In the interim, staff-generated materials that reflected Commission reasoning pertinent to the action could be released, and the Commission could in its discretion permit comment on those materials prior to its final action.

All parties agreed that the Commission will strive to promote as full and as informed participation by the public as orderly conduct of business allows.

Counsel Wyse said that because memoranda to the Commissioners supply extensive legal analysis relevant to advisory opinion requests beyond that which will appear in the response, the Commission might want to consider as part of this public release policy the assumption that staff memoranda providing background on advisory opinions not be subject to release. He suggested that such memoranda providing background information be labeled as "confidential."

On a motion by Vice Chair McNany, seconded by Commissioner Linett and passed by a vote of 4-0, the Commission approved the public release policy, with the addition of counsel Wyse's provision, but did not adopt "first and second readings" procedures as set forth in paragraph 7.

10. W. Cary Edwards' 1993 Gubernatorial Primary Election Campaign

Please see the memorandum from Nedda G. Massar to Frederick M. Herrmann, dated February 5, 1996 and entitled "W. Cary Edwards' 1993 Gubernatorial Primary Election Campaign." The memorandum states that Mr. Edwards has asked the Commission to permit him to wait "until mid-year" to close his 1993 gubernatorial primary election campaign. The most recent postelection quarterly report filed by his campaign on January 11, 1996, reports outstanding obligations totaling \$93,833.82, which exceed the balance of cash-on-hand in the amount of \$459.81.

Deputy Legal Director Massar indicated that as part of the gubernatorial postelection audit process, staff reported to the Commission in May, 1995, that the quarterly postelection report filed in April, 1995, by the Edwards 1993 primary election campaign disclosed outstanding obligations in the amount of \$99,390.11, which exceeded cash-on-hand in the amount of \$1,170.88. The Commission directed staff to contact the Edwards campaign to request a timetable for plans to satisfy the outstanding obligations. In response to the staff inquiry, in correspondence dated June 21, 1995, Mr. Edwards indicated that he expected to eliminate remaining outstanding obligations and close his 1993 primary election campaign account by February, 1996.

The February deadline will not be met because Mr. Edwards stated he was unable to raise funds during the time he served as Chair of a panel reviewing the State Commission on Investigation. Mr. Edwards has therefore requested that he be given until mid-year to continue to raise funds to pay his campaign debt. Staff recommended that the Commission authorize issuance of a letter to Mr. Edwards and his campaign treasurer, Ray Mark, accepting a July 1, 1996 date for conclusion of all 1993 primary election campaign activity. Staff further recommended that the letter reiterate that all funds raised must observe the 1993 primary election gubernatorial contribution limit (\$1,800.00), that a quarterly postelection report is due for filing on April 15, 1996, and that a final postelection report should be filed by July 15, 1996.

On a motion by Vice Chair McNany, seconded by Commissioner Linett and passed by a vote of 4-0, the Commission granted an extension to July 1, 1996, to the campaign of Cary Edwards to conclude its 1993 campaign activity.

11. Resolution to Go Into Executive Session

On a motion by Vice Chair McNany, seconded by Commissioner Linett and passed by a vote of 4-0, the Commission resolved to go into closed Executive Session to discuss the following matters which will become public as follows:

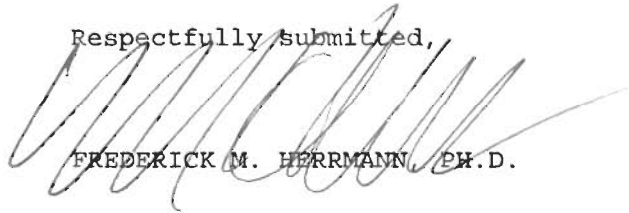
1. Final Decision Recommendations in violation proceedings which will not become public. However, the Final Decisions resulting from those recommendations will become public no later than 35 days after mailing.

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 no later than 50 days after mailing.

12. Adjournment

On a motion by Commissioner Linett, seconded by Vice Chair McNany and passed by a vote of 4-0, the Commission voted to adjourn at 11:00 a.m.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read 'F. M. Herrmann', is written over the typed name below.

FREDERICK M. HERRMANN, PH.D.

FMH/elz