



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  
JAMES P. WYSE  
Counsel

PUBLIC SESSION MINUTES

APRIL 19, 1996

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

Chair Martin 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 10:00 a.m. in Trenton, New Jersey.

2. Approval of Public Session Minutes of March 26, 1996

On a motion by Vice Chair McNany, seconded by Commissioner Eldridge and passed by a vote of 4-0, the Commission approved the Public Session Minutes of March 26, 1996.

3. Executive Director's Report

A. Ethics Form Reminder

Executive Director Herrmann reminded the Commissioners that their ethics forms are due May 15, 1996. He said that one copy is submitted to the Executive Commission on Ethical Standards and one copy to the Governor's Chief Counsel. He added that both copies must have original signatures and notarizations.

B. National Ethics News

Executive Director Herrmann reported that the Federal Election Commission (FEC) is estimating a shortfall of as high as 50 percent in the Presidential Election Fund. He noted that based on a similar concern, ELEC has called for reductions in payouts to gubernatorial candidates and an increase in the income tax checkoff.

C. Recomputerization

Executive Director Herrmann announced that staff recently spent \$67,000 for new hardware, which should be delivered in June. He said that another \$170,000 will be spent this fiscal year for software migration to the new system. The Executive Director said that this project will take one year to implement and that ELEC's next cost will be about \$50,000 for rewiring the agency.

Executive Director Herrmann said that the Office of Telecommunications and Information Systems (OTIS) in the Department of the Treasury and the Office of Management and Budget (OMB) in the Department of the Treasury have approved all of these innovations. He added that all of the funding is coming from the Commission's operational budget and that ELEC has not received any additional funding for this project. According to the Executive Director, the new system will reduce ELEC's annual maintenance charges and software changes will be cheaper because ELEC will now own the software.

Executive Director Herrmann said that these changes represent the first step toward developing an infrastructure for electronic filing and remote accessing.

He said that as part of ELEC's gubernatorial public funding budget, it is asking for funding to create an electronic filing system for the 1997 gubernatorial general election.

D. Staff Activities

Executive Director Herrmann said that on March 25, 1996, he was the guest on "Target New Jersey," a radio program syndicated to stations throughout North Jersey. He indicated that he discussed the role and mission of ELEC.

The Executive Director advised the Commission that on April 13, 1996, the Compliance and Information staff released to the media and the public detailed, computer-generated data on 1995 lobbying activity in New Jersey. He said that lobbyists spent \$13.4 million, a new record high.

Executive Director Herrmann noted that various lists were placed in the public room including:

- Lobby Firm and Special Interest Expenditures in descending order,
- benefit passing recipients in alphabetical order, and
- lobbyists sitting on various boards and commissions in alphabetical order.

Executive Director Herrmann announced that staff is planning to close the office the week of July 1st to facilitate a major reorganization of office space. He said that this week is optimal because:

- it's a holiday week;
- it's past the primary election and the old fiscal year; and,
- it's a non-gubernatorial/legislative election year.

According to Executive Director Herrmann, this reorganization will make ELEC more efficient and user friendly with an expanded public room.

E. Annual Report

Executive Director Herrmann expressed appreciation to Deputy Director Jeffrey M. Brindle and all section directors for their efforts on the 1995 annual report. He also offered special thanks to Executive Secretary Elbia Zeppetelli for the agency's first annual report produced with desktop publishing technology. He said that the report must be submitted to the Legislature by May 1, 1996. He asked that the Commissioners make their changes by Tuesday, April 23, 1996.

F. Future Meetings

The Commission set the following meeting schedule:

May 7, 1996 at 8:30 a.m.  
Engineering Room, Somerville

June 11, 1996 at 10:00 a.m.  
Trenton

He announced also that the Northeastern Regional Conference on Lobbying (NORCOL) Conference is tentatively scheduled for:

July 16, 1996 at the Princeton Marriott

4. Proposed Advisory Opinion Regulations

For detailed information, please see the memorandum from Legal Director Gregory E. Nagy to Executive Director Frederick M. Herrmann, dated April 19, 1996 and entitled, "Proposed Advisory Opinion Regulations." In a word, these draft regulations are proposed to establish uniform criteria for the submission and issuance of advisory opinions. The intent of the proposal is to elicit more complete information from persons seeking advisory opinions from the Commission, and to clarify the procedures for responding.

The proposed regulations require that a full and complete fact record be submitted before the 10-day period can begin. The fact record must affirmatively state that the contemplated activity has not already been undertaken, thereby eliminating immunity for any actions that were made in the past without seeking prior Commission advisory opinion review. Also, the fact record must demonstrate that the person or committee seeking the opinion has standing to ask for the opinion, that is, the person or committee itself is contemplating the activity and will be affected by the result.

The proposal also holds that in the event no Commission meeting is scheduled within 10 days of receipt of a request for an advisory opinion, the Commission authorize its Executive Director, with the approval of the Chair and Vice Chair, to direct legal staff to issue the opinion. According to the proposal, this procedure would be resorted to only when the Chair and Vice Chair determine that the opinion request does not justify scheduling a special meeting and they are satisfied with the result staff proposes in the response.

Upon Commission approval, staff will prepare a proposal notice for publication in the New Jersey Register on June 3, 1996, and a public hearing will be scheduled for the June 11, 1996 Commission meeting in Trenton.

The proposed text is at N.J.A.C. 19:25-18.1: Requests for Advisory Opinions.

Commissioner Linett suggested that 18.2c be expanded to require the requestor of an advisory opinion to indicate whether or not the requestor consents to an extension of time for the Commission to answer.

Chair Martin asked whether or not there are many rejections of extensions of time.

Legal Director Nagy said that normally those who request advisory opinions consent to an extension of time. He said that the problem arises when an advisory opinion request is made immediately prior to or after a Commission meeting and there is not enough time to prepare a draft response and conduct a meeting. He said that in this situation, more than ten days will inevitably elapse before the Commission can hear the request. He said that some mechanism should exist for issuing advisory opinions in emergency situations when the Commission is unable to meet. However, he suggested that rather than to propose a regulation, the Commission may wish to establish an operating policy.

Commissioner Linett said that he would prefer to have the entire Commission involved in issuing advisory opinions. He suggested that the regulations provide that a requesting person indicate whether or not there is consent for a 30-day extension of time for responding to advisory opinions.

On a motion by Vice Chair McNany, seconded by Commissioner Eldridge and passed by a vote of 4-0, the Commission approved the Proposed Advisory Opinion Regulations, with the additional provision that a requestor indicate whether or not there is consent for a 30-day response time, and without provision of a formal procedure for issuing opinions without a meeting.

5. Proposed Amendments to Gubernatorial Public Financing Primary Election Regulations (Subchapter 16)

Please see the memorandum from Deputy Legal Director Nedda G. Massar to Executive Director Frederick M. Herrmann, dated April 11, 1996 and entitled, "Proposed Amendments to Gubernatorial Public Financing Primary Election Regulations (Subchapter 16)." The proposals are derived from statutory changes contained in the 1993 amendments to the Act, the experience of staff in administering the program, litigation which occurred during the 1993 gubernatorial election cycle, and advisory opinions issued by the Commission involving public financing issues.

The proposed changes are at N.J.A.C. 19:25-16.

In the proposal, the definition of "debate sponsor" appearing in N.J.A.C. 19:25-16.3 has been changed to delete the reference to the requirement that a sponsor be a "private" organization. The definition of "person" has been amended to clarify which entities are eligible to contribute to a gubernatorial candidate.

In addition, the extensive amendment and recodification of Commission regulations conducted since the 1993 amendments to the Act requires that sections of Subchapter 16, appearing in the regulatory text, be amended to correct regulatory citations to new analogous sections:

In N.J.A.C. 19:25-16.26, the citation to N.J.A.C. 19:25-7.3, Transmittal of deposited funds to another candidate, political committee, or continuing political committee, has been changed to N.J.A.C. 19:25-6.2, Transfer of funds without deposit;

In N.J.A.C. 19:25-16.27(a)3, the citation to N.J.A.C. 19:25-12.2(b), Expenditures for election-related activity, has been changed to N.J.A.C. 19:25-12.2, Expenditures reporting; and,

In N.J.A.C. 19:25-16.35(b), the citation to N.J.A.C. 19:25-11.10, Political communications, has been changed to N.J.A.C. 19:25-10.10, Political communication contributions.

The staff suggested that a proposed change concerning pre-candidacy activity be withdrawn at this time for further consideration. Changes were suggested for the following sections of the regulations:

- 19:25-16.3 Definitions for this subchapter
- 19:25-16.4 Appointment of treasurers and depositories
- 19:25-16.6 Contribution limits; applicability
- 19:25-16.8 Non-participating candidates [; generally]
- 19:25-16.9 Limitations on participating candidates
- 19:25-16.10 Who may or may not contribute [; generally]
- 19:25-16.11 Contributions eligible for match [; generally]
- 19:25-16.12 Contributions and loans prior to candidacy
- 19:25-16.13 Contributions eligible for match; checks and instruments
- 19:25-16.15 Contributions; primary and general elections
- 19:25-16.16 [Reserved] Expenditure Reporting
- 19:25-16.18 Matching of funds
- 19:25-16.24 Disclosure of information
- 19:25-16.25 Use of public funds
- 19:25-16.29 Independent expenditures
- 19:25-16.30 Coordinated expenditures
- 19:25-16.31 Borrowing of funds; repayment
- 19:25-16.33 Postelection contributions; postelection payment of expenses
- 19:25-16.37 Candidate statement of qualification before participation in public financing
- 19:25-16.39 Application to sponsor debates
- 19:25-16.40 Selection of debate sponsor
- 19:25-16.42 Rules for conduct of debates
- 19:25-16.48 Complaint alleging violation of primary election expenditure limit

Legal Director Nagy suggested that the pre-candidacy testing activity section of the proposed regulations be withdrawn because it is not clear the statute intended to prohibit a possible candidate for governor from conducting testing if that person maintained a candidate committee for some other office.

Commissioner Linett expressed concern about the proposal dealing with affiliated corporations at N.J.A.C. 19:25-16.10. He indicated that he does not believe that the 30 percent test effectively deals with the issue of affiliated corporations. He said that he fears that this regulation opens up a loophole for certain corporations, which have a significant interest in two or more other corporations, but not 30 percent, to circumvent the contribution limitations of the law governing gubernatorial elections.

Counsel Wyse agreed that there is a gap in the law created by the 30 percent rule. He suggested that at the very least the language should be changed to "where one corporation owns more than a 30 percent interest in each of one or more corporations" from "two or more corporations."

Counsel Wyse said that perhaps the family attribution rule should apply to corporations. He said that the IRS applies this rule to stock owned by family members. In other words, he said stock owned by one family member can be attributed to other family members.

Commissioner Linett said that the real problem is that corporations are not banned from making political contributions in New Jersey. He said that the Commission should attempt to get the legislature to ban corporate contributions.

Legal Director Nagy suggested that the 30 percent regulation be left in place for the primary with the change to "one or more corporations," and then fine tuned for the general election.

Vice Chair McNany agreed with Legal Director Nagy's suggestion.

On a motion by Vice Chair McNany, seconded by Commissioner Eldridge and passed by a vote of 4-0, the Commission approved the proposed recommendations with two changes: the Commission withdrew the proposal on pre-candidacy testing activity, and proposed the affiliated corporation regulation for the primary election with the change to "one or more corporations" and with the intention of modifying it, if necessary, for the 1997 general election for governor.

6. Public Comment

Dennis Jaffe, Executive Director of New Jersey Common Cause, asked questions concerning the proposed advisory opinion request and primary election public financing regulations. He requested that the Commission provide to him copies of the staff memoranda and draft texts of those regulations. Mr. Jaffe then read a statement concerning the location of Commission meetings that urged the Commission to adopt a policy of regularly meeting in Trenton unless there is a demonstrated public need to meet elsewhere.

7. 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. 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 no later than 50 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 no later than 50 days after mailing.
4. The release, pursuant to the Open Public Meetings Act, to Dennis Jaffe, Executive Director of New Jersey Common Cause, of the staff memoranda and draft texts of proposed regulations concerning requests for advisory opinions and proposed regulations concerning public financing of primary elections for governor (Subchapter 16). Mr. Jaffe will be advised of the Commission's decision at the conclusion of the Executive Session.

8. Return to Public Session:

On a motion by Commissioner Eldridge, seconded by Vice Chair McNany and passed by a vote of 4-0, the Commission voted to return to public session.

9. 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 12:00 p.m.

Respectfully submitted,



FREDERICK M. HERRMANN, PH.D.

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