



State of New Jersey

**ELECTION LAW ENFORCEMENT COMMISSION**

RALPH V. MARTIN  
Chair

DAVID LINETT  
Vice Chair

PAULA A. FRANZESE  
Commissioner

Respond to:  
CN-185

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(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

JULY 16, 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 9:00 a.m. in Trenton, New Jersey.

2. Approval of Public Session Minutes of June 11, 1996

On a motion by Commissioner Linett, seconded by Commissioner Eldridge and passed by a vote of 4-0, the Commission approved the Public Session Minutes of June 11, 1996.

3. Executive Director's Report

A. Commission News

Executive Director Herrmann congratulated new Commissioner Paula A. Franzese on her appointment to the Commission.

The Executive Director also congratulated Chair Martin upon his renomination by Governor Whitman.

Executive Director Herrmann said that Kay Williams, the Executive Director of the Iowa Ethics and Campaign Disclosure Board and a member of the COGEL Steering Committee, has praised the quality of ELEC's new annual report and said she will be using parts of it as a model for her agency. The Executive Director praised Elbia Zeppetelli for her desktop publishing expertise which enabled her to design the report.

Executive Director Herrmann noted that ELEC was ranked third in the country in a national survey of the effectiveness of campaign finance disclosure agencies. He said that in our region, ELEC was overwhelmingly in first place. He also said that it is a great

tribute to ELEC's efforts that this achievement was accomplished with a flat budget for over a half-decade and an outdated computer system. Executive Director Herrmann said, moreover, that the survey did not take into account ELEC's recomputerization initiative which just got underway.

B. Budget Review

Executive Director Herrmann reported that ELEC's FY-1997 budget will be \$1.43 million, which is the same as FY-1996. He noted also that ELEC has been given a \$630,000 budget to administer the Gubernatorial Public Financing Program, \$155,000 of which is for an "electronic filing initiative" for the general election.

According to the Executive Director, ELEC will soon be hiring two more clericals to increase its staff size to 34, the same as in FY-1990. He stated that Maria Concepcion started on July 8, 1996, as a public room clerk, and, moreover, that 11 staffers will be hired to administer the Gubernatorial Public Financing Program.

C. Staff Activities

Executive Director Herrmann reported that Director of Administration Barbra Fasanella did a brilliant job orchestrating a major reorganization of the Commission's office space. He said that the new arrangement will provide the media and public with much better access to ELEC records in a greatly enlarged and better equipped public room. He noted also that Director of Compliance & Information Evelyn Ford has done a tremendous job in organizing this new public area.

The Executive Director said that ELEC's main entrance and the Compliance staff are now on the 13th floor. He also said that the Legal staff and Investigative staff has moved down to the 12th floor.

Executive Director Herrmann mentioned that on June 13 and 14, 1996, Deputy Legal Director Massar, Director of Compliance & Information Ford, and Systems Administrator Carol Neiman visited the Federal Election Commission in Washington, D.C., to study its computer system and public areas. He indicated that they brought back many ideas that staff will soon begin to implement.

Executive Director Herrmann added that in April, 1996, Deputy Legal Director Massar and Systems Administrator Neiman made a similar trip to the New York City Campaign Finance Board.

Executive Director Herrmann reported that on June 20, 1996, he conducted a campaign finance seminar for Leadership New Jersey at the State House with Senator William E. Schluter and Dennis Jaffe, the Executive Director of New Jersey Common Cause.

He said that on June 29, 1996, he attended part of the American Society for Public Administration Conference in Atlanta to participate in an Internet Workshop for public officials and the editorial board meeting of Public Integrity Annual.

According to the Executive Director, he has been invited to participate at the Counsel of State Government's expense in a working group at the National Conference of State Legislatures' Conference in St. Louis to "create a formal structure through which state officials could address ethics issues and the broader questions of public integrity." The conference is scheduled for July 29, 1996.

Executive Director Herrmann said that he has been asked to host a Breakfast Table Discussion at the COGEL Conference in Philadelphia on the wisdom of tying mandatory debate provisions to a public financing program. The Executive Director said that last June he made a presentation on this topic to the New York City Campaign Finance Board.

D. Legislative Developments

Executive Director Herrmann reported that A-1118 (Lance), the lobbyist benefit passing notification bill, passed the Assembly on June 27, 1996, 80-0.

He added that S-615 (Schluter), which adds a third debate as recommended by ELEC to the Gubernatorial Public Financing Program, has been referred to the Senate Budget and Appropriations Committee.

Executive Director Herrmann said that Senator Schluter and Senator Baer are proposing new committee amendments to clarify further ELEC's review of sponsor conflicts of interest.

E. National Ethics News

Executive Director Herrmann advised the Commission that on June 26, 1996, the United States Supreme Court in Colo. Republican Committee v. Federal Election Commission ruled that government may not limit how much political parties spend on their candidates unless it proves that the party and candidate are coordinating their efforts.

He said that the Court threw out a presumption by the Federal Election Committee that party expenditures are never made independent of candidates. The Executive Director noted that Legal Director Nagy has circulated a memorandum on the importance and impact of this major decision.

Executive Director Herrmann said that the U.S. Supreme Court also agreed to hear next year an 8th Circuit Case, Carver v. Nixon, which deals with the constitutionality of low contribution limits in Missouri.

The Executive Director reminded the Commissioners that the Northeastern Regional Conference on Lobbying (NORCOL) Conference is

this afternoon in Princeton. He said that ELEC's staff directors will be participating and Chair Martin will be attending. The Executive Director handed out to the Commissioners and Counsel an informational booklet he had prepared for this meeting.

F. Future Meetings

The next meeting is scheduled for August 20, 1996, at 10:00 a.m. in Trenton.

Executive Director Herrmann suggested that at the August meeting, the Commission can set its fall schedule.

G. White Paper Release

Executive Director Herrmann reviewed the white paper which analyzes state parties and legislative leadership committees. He said that Deputy Director Brindle did a great job in authoring this report and in providing the public with an in-depth study of the financial activity of these groups. Commissioner Franzese praised the effort as did Chair Martin. Deputy Director Brindle thanked Systems Administrator Carol Neiman and Research Assistant Steve Kimmelman for their efforts. He also thanked Elbia Zeppetelli for her typing and design.

On a motion by Commissioner Linett, seconded by Commissioner Eldridge and passed by a vote of 4-0, the Commission approved the white paper for publication.

4. Commissioner William H. Eldridge Resignation

Commissioner William H. Eldridge made a statement of resignation from the Commission. He said that his resignation would be effective at the close of today's meeting.

5. Election of Vice Chair

On a motion by Commissioner Eldridge, seconded by Commissioner Franzese and passed by a vote of 4-0, the Commission voted to name Commissioner Linett as Vice Chair of the Commission.

6. Adoption of Proposed Gubernatorial Primary Election Regulations

Deputy Legal Director Massar said that the Commission's proposed regulations concerning public financing of primary elections for Governor were published in the May 20, 1996 New Jersey Register and are ripe for adoption. She said that staff recommends that the proposal be adopted with two agency-initiated changes not requiring reproposal.

Deputy Legal Director Massar said that after secondary notice was distributed, a public hearing was conducted on June 11, 1996, and testimony was given by 1993 Independent gubernatorial candidates Thomas Fuscaldo and Jerry T. Grant. She said that staff prepared a summary of the testimony and suggested agency responses. Please see memorandum from Nedda G. Massar, Deputy Legal Director to Frederick M. Herrmann, Executive Director, dated July 8, 1996, and entitled Adoption of Proposed Gubernatorial Primary Election Regulations.

Mr. Fuscaldo stated that tax money should not be used to finance any campaign. Director Massar suggested that the Commission respond that Mr. Fuscaldo's comments be addressed to the Legislature which enacted the gubernatorial public financing program.

Mr. Jerry Grant said that the rules for participating in gubernatorial public financing debates do not refer to independent candidates. Deputy Legal Director Massar suggested that the Commission respond that the statute and therefore the rule do not recognize the possibility that an Independent party primary election might occur requiring inclusion of qualified Independent candidates in the gubernatorial primary election debates.

Director Massar indicated that staff has consulted with the Office of Administrative Law (OAL) concerning the possibility of further amending the regulation upon adoption to provide that a debate sponsor must also consult with the chairperson of any other political party which may qualify pursuant to N.J.S.A. 19:1-1 and N.J.S.A. 19:23-1, et seq., to hold a primary election and therefore participate in primary election debates. It was concluded that any reference to political parties other than the Republican or Democratic parties would exceed the scope of the statute which specifies that a gubernatorial primary election debate sponsor consult with the chairpersons of the Republican and Democratic State Committees. Any change that would go beyond the specific statutory text therefore appears impermissible.

As a result, the Commission therefore suggests that Mr. Grant address his comments to the Legislature which has the authority to amend N.J.S.A. 19:44A-46c to include a reference to other political parties in the gubernatorial primary election debate process.

The staff noted an inadvertent typographical error in the text and recommended that the error be corrected upon adoption in the text of proposed N.J.A.C. 19:25-16.30, Coordinated expenditures, by deleting the phrase "or legislative leadership committee" from subsection (i). Inclusion of the term "legislative leadership committee" in N.J.A.C. 19:25-16.30(i) is illogical when examined in light of the structure and purpose of the entire regulation. Staff recommended also that upon adoption, the ordering of paragraphs in N.J.A.C. 19:25-16.48 be corrected to comport with the official regulatory text.

On a motion by Vice Chair Linett, seconded by Commissioner Franzese and passed by a vote of 4-0, the Commission voted to adopt the proposed Gubernatorial Primary Election regulations with agency-initiated changes not requiring reproposal and directed staff to file with the Office of Administrative Law (OAL) the Certificate of Adoption, Adoption Notice, and Record of Opportunity for the public to be heard.

7. Adoption of Political Identification Regulations

Please see the memorandum from Gregory E. Nagy, Legal Director to Frederick M. Herrmann, Executive Director, dated July 16, 1996 and entitled, Adoption of Political Identification Regulations (McIntyre opinion). The Commission's proposed regulations to implement the political identification requirements enacted into law earlier this year are ripe for adoption. Staff recommends the proposed regulations be adopted, with one agency-initiated change not requiring reproposal.

Legal Director Nagy indicated that the change specifies that write-in candidates and school board candidates be added to the entities that must include political identification labels on their advertisements.

The effect of this change would be to clarify that school board candidates, and write-in candidates, expending \$2,000 or less in an election and therefore relieved of the requirement to file a certified statement in lieu of campaign reports, must nevertheless comply with the political identification requirement.

The proposed regulations were published in the May 20, 1996 edition of the New Jersey Register and after secondary notice was distributed the Commission conducted a hearing at its June 11, 1996 public meeting. No witnesses appeared to testify, and no written comments have been received. The public comment deadline expired on June 19, 1996.

The legislative impetus for the McIntyre bill was a United States Supreme Court opinion that struck down on First Amendment grounds an Ohio statute compelling persons circulating campaign literature to identify themselves in the literature; McIntyre v. Ohio Elections Commission. The New Jersey statute seeks to distinguish itself from the one struck down in the opinion by limiting the identification requirements to only political communications undertaken by candidates, committees, or persons subject to the Campaign Reporting Act.

On a motion by Commissioner Eldridge, seconded by Vice Chair Linett and passed by a vote of 4-0, the Commission voted to adopt the proposed regulation with the agency-initiated change and directed staff to file with the Office of Administrative Law (OAL) the Certificate of Adoption, Adoption Notice, and Record of Opportunity for the public to be heard.

8. Regulations concerning contributions by limited liability companies and limited liability partnerships

Please see the memorandum from James P. Wyse, Counsel, to Gregory Nagy, Legal Director, dated June 25, 1996, and entitled, Regulations concerning contributions by limited liability companies and limited liability partnerships.

The proposed amendment to N.J.A.C. 19:25-11.2 seeks to clarify the treatment of contributions made by limited liability companies and limited liability partnerships.

The proposal defines the term "partnership" to include general partnerships, limited partnerships, limited liability partnerships, and limited partnership associations. A separate subsection applies only to limited liability companies, and would be worded in a manner similar to the recently adopted partnership regulation, N.J.A.C. 19:25-11.2(d).

Chair Martin suggested that the word "person" in the context of the person signing the contribution check be made plural. Counsel Wyse said he would redraft the proposed text accordingly.

On a motion by Commission Eldridge, seconded by Commissioner Franzese and passed by a vote of 4-0, the Commission voted to propose the regulation (including the use of the plural) and directed staff to file the proposal with the Office of Administrative Law.

9. Public Hearing on Proposed Advisory Opinion Procedure Regulations

A public hearing was opened at approximately 10:00 a.m. on the Proposed Advisory Opinion Procedure Regulations.

The intent of the proposed regulations is to establish uniform procedures for the submission of advisory opinion requests, and to elicit more complete information from persons seeking the Commission's rulings. The proposed changes appeared in the June 3, 1996 New Jersey Register.

A court reporter was present to record the public hearing. No witnesses appeared.

On a motion by Commissioner Eldridge, seconded by Vice Chair Linett and passed by a vote of 4-0, the Commission voted to close the public hearing.

10. Resolution to Go Into Executive Session

On a motion by Vice Chair Linett, seconded by Commissioner Eldridge 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.

11. Return to Public Session:

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

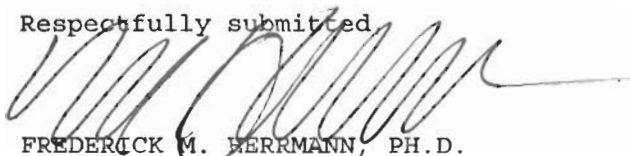
12. Proclamation

Deputy Director Brindle read the Commission's Proclamation recognizing the services of outgoing Commissioner Owen V. McNany, III.

13. Adjournment

On a motion by Vice Chair Linett, seconded by Commissioner Eldridge 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.