



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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**FREDERICK M. HERRMANN, Ph.D.**  
Executive Director

**JEFFREY M. BRINDLE**  
Deputy Director

**GREGORY E. NAGY**  
Legal Director

**JAMES P. WYSE**  
Counsel

PUBLIC SESSION MINUTES

OCTOBER 22, 1996

Chair Martin, Vice Chair Linett, Senior Staff, and Deputy Legal Director Nedda Gold Massar were present.

1. Open Public Meetings Statement

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 September 10, 1996

On a motion by Vice Chair Linett, seconded by Chair Martin and passed by a vote of 2-0, the Commission approved the Public Session Minutes of September 10, 1996.

3. Executive Director's Report

A. Remarks on the career of former ELEC Commissioner, Justice Haydn Proctor

Executive Director Herrmann noted sadly that Justice Haydn Proctor passed away on October 2, 1996.

The Executive Director said that he had devoted many years to public service in New Jersey. According to Executive Director Herrmann, Justice Proctor served on the Commission from 1982 to 1987. The Executive Director advised the Commission that between 1936 and 1946, Justice Proctor was a member of the Legislature and that during these years, he distinguished himself as Chairman of the Joint Appropriations Committee, Senate Minority Leader, Senate President, and Acting Governor.

Executive Director Herrmann said that Governor Walter Edge even mentioned Justice Haydn Proctor's legislative contributions to Civil Service Reform in his autobiography.

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Executive Director Herrmann noted that in 1947, Justice Haydn Proctor was a delegate to the State constitutional convention that drafted the State's current fundamental law.

The Executive Director said that a decade later, in 1957, he was appointed to the State Supreme Court on which he served for 16 years.

Executive Director Herrmann said that staff remember the Justice as a wonderful man with a great love of Shakespeare and music.

Executive Director Herrmann said, moreover that he will be remembered for his marvelous sense of humor. Executive Director Herrmann said that the Commission and the citizens of New Jersey were fortunate to have been served by him.

B. Staff Activities

Executive Director Herrmann introduced Gail Shanker, Esq., who joined the staff as a legal assistant on September 30, 1996. He said that Gail is an attorney who will be helping the Legal Section with various matters, including fine collection.

Executive Director Herrmann announced that Elbia Zeppetelli, in recognition of her outstanding work, is now an Administrative Assistant. He remarked that in her new role, she will be involved in various computer projects and other activities.

Executive Director Herrmann informed the Commission that various staff members have been participating in on-going skills training. He said that Associate Report Examiner Brett Mead attended a training course for regulatory investigators and that Legal Assistant Gail Shanker and Assistant Legal Director Irene Szedlmayer will be going to a course on enforcing judgments. He added that System Administrator Carol Neiman will be participating in computer database training.

Executive Director Herrmann mentioned that on October 3rd and 4th, the Review and Investigation staff and the Compliance and Information staff met together for cross-training so that both staffs could better understand the overall work of the agency.

The Executive Director noted that ELEC staff, of course, also trains others. He said that Director of Compliance and Information Evelyn Ford is busy reworking the Compliance Manual for Campaign Reporting. According to Executive Director Herrmann, it is a herculean task that she is doing brilliantly.

The Executive Director said that Administrative Assistant Elbia Zeppetelli is using desktop publishing to enhance its appearance.

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Executive Director Herrmann reported that Director Ford and her staff conducted fall information seminars for candidates and treasurers on September 19, 1996, in Bergen County and on September 30, 1996, in Trenton.

Executive Director Herrmann praised Assistant Compliance Officer Andrew Mersel for doing an excellent job running both seminars.

The Executive Director reported that on October 21, 1996, Legal Director Gregory E. Nagy made his "annual" presentation before Professor Frank Askin's Election Law Seminar at Rutgers Law School in Newark.

Executive Director Herrmann said that on October 23, 1996, he will participate in a Campaign Financing Panel at Rutgers' Eagleton Institute of Politics with Senator William E. Schluter, Senator Robert J. Martin, and Joseph Gonzales, the Senior Vice President of the New Jersey Business & Industry Association.

Executive Director Herrmann said that Chair Martin and he will be attending the Council on Governmental Ethics Laws (COGEL) Conference in Philadelphia between December 8 and December 11, 1996. He noted also that various ELEC directors will be attending on certain days at a new daily rate. According to the Executive Director, there will be a number of important programs on computer usage and other relevant topics. He said that the conference is a great opportunity for further staff training and that it is the closest this international meeting has ever been to New Jersey.

Executive Director Herrmann said that he is serving on a COGEL Subcommittee involved with COGEL's Support of Member Agencies. He noted that he has drafted a report for the Steering Committee on planning a role for COGEL in taking policy positions on major issues in governmental ethics. Also, serving with the Executive Director are Melissa Warheit, the Executive Director of the Washington State Public Disclosure Commission and COGEL Secretary, and Amanda Nixon White, the Director and General Counsel of the Arkansas Ethics Committee.

Council James P. Wyse arrived at this point.

C. Legislative Developments

Executive Director Herrmann reported that on October 3, 1996, the Senate State Government Committee released A-1118 (Lance), which requires lobbyists to notify benefit-passing recipients of their being listed on annual financial reports before their submission to ELEC. He said that the purpose of the legislation is to assure the accuracy of benefit-passing reporting. He mentioned that ELEC took no position but staff did provide technical assistance.

D. Future Schedule of Meetings

November 19, 1996, 10:30 a.m., Trenton

December 17, 1996, 11:00 a.m., Trenton

At the November meeting, staff will present a proposed schedule for meetings in 1997.

4. Proposed New Regulation Concerning Contributions to Non-gubernatorial Candidates and Committees from Affiliated Corporations, Associations, and Labor Organizations

Please see the memorandum from Nedda G. Massar, Deputy Legal Director to Frederick M. Herrmann, Ph.D., Executive Director, dated September 30, 1996, and entitled, "Proposed New Regulation Concerning Contributions to Non-gubernatorial Candidates and Committees from Affiliated Corporations, Associations, and Labor Organizations." The memorandum recommends that the Commission consider proposal of a new rule, N.J.S.A. 19:25-11.9, Contributions from affiliated corporations, associations, or labor organizations, which rule concerns receipt of contributions by non-gubernatorial candidates and committees from affiliated corporations, associations, and labor organizations. The purpose of the proposed new rule is to prevent multiple entities which are commonly-owned or controlled and therefore closely affiliated with each other from making contributions which in the aggregate exceed the contribution limits established in the Reporting Act.

Prior to this time, rules concerning contributions from affiliated entities have appeared only in the regulations applicable to publicly-financed gubernatorial candidates because these candidates have been subject to contribution limits since 1977. Not until the 1993 amendments were contribution limits imposed upon non-gubernatorial candidates and committees. Staff therefore recommended that this rule be established for application to contributions to non-gubernatorial candidates and committees.

The Commission reviewed the draft proposal which establishes criteria for examining whether or not two or more corporations, associations, or labor organizations are affiliated. It stipulates that if, after application of the criteria, the entities are considered affiliated, their combined contributions to a non-gubernatorial candidate or committee may not exceed the applicable contribution limit. The following criteria are proposed to be used in determining whether or not entities are affiliated: the "degree of control or common ownership" of the corporations, associations or labor organization at the time of the contribution; the "source and control" of the funds used for the contributions; and the degree to which contribution decisions are made independently.

As part of the proposal, staff recommended that where one corporation owns more than a 30 percent interest in each of one or more corporations, the corporations be considered affiliated. There is no specific statutory authority for the 30 percent figure, but gubernatorial campaigns have consistently requested that a "bright line" test be established for use in reviewing the many corporate contributions they receive.

Vice Chair Linett noted that Counsel Wyse had made a proposal about limited liability companies and partnerships, and asked whether or not these entities are dealt with in this proposal.

Deputy Legal Director Nedda G. Massar, who had summarized the proposal, indicated that limited liability companies and partnerships cannot make contributions and therefore are not dealt with in this proposed regulation.

Vice Chair Linett said that the proposal seems to suggest that if a corporation owns less than 30 percent of another corporation, it is never subject to the rules nor to be considered affiliated. He said that it should be clarified in the regulation that though a corporation may hold less than a 30 percent interest in another corporation it may be subject to the affiliation rule.

Chair Martin suggested that language to the effect of "in considering the test above, if a corporation or individual owns 30 percent or more of a corporation, the entities will be deemed to be affiliated. However, if ownership is below 30 percent, it may still be considered affiliated," be incorporated into the proposed regulation.

Vice Chair Linett suggested that associations and labor unions be included in subsection B as in subsection A.

The Commission directed staff to draft additional language to meet their concerns. It determined to consider the proposal at a later time in the meeting.

5. Public Hearing on Campaign Cost Index Adjustments

Please see the memorandum from Nedda G. Massar, Deputy Legal Director to Frederick M. Herrmann, Ph.D., Executive Director, dated October 10, 1996 and entitled, "Public Hearing Scheduled for the October 22, 1996 Commission Meeting." The public hearing began at 10:30 a.m. on the Commission's proposed regulations to implement the statutorily-required quadrennial campaign cost adjustments for gubernatorial and non-gubernatorial candidates and committees. The proposed regulations also concerned public financing of general elections for Governor.

The determination of the proposed campaign cost index adjustments is required by N.J.S.A. 19:44A-7.1 for gubernatorial candidates and by N.J.S.A. 19:44A-7.2 for non-gubernatorial candidates and committees. The proposed general election public financing regulations are based upon statutory changes, litigation which occurred during the 1993 gubernatorial election cycle, advisory opinions issued by the Commission, and the Commission's experience in administering the gubernatorial public financing program.

The deadline for receipt of written comments on the two proposals is November 6, 1996. The regulations will be ripe for adoption at the November 19, 1996 Commission meeting.

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A Court Reporter was present to record the public hearing. Transcripts of the public hearing will be available through the Commission. Testimony was offered by the following four individuals:

Dorothy Dunfee, Campaign Finance Reform Specialist, League of Women Voters of New Jersey; Honorable Reed Gusciora, Assemblyman, 15th Legislative District; Curtis Fisher, Program Director, New Jersey Public Interest Research Group; and Dennis Jaffe, Executive Director, New Jersey Common Cause.

6. Proposed Response to Advisory Opinion Request No. 04-1996

Please see the memorandum from Gregory E. Nagy, Legal Director to Frederick M. Herrmann, Ph.D., Executive Director, dated For October agenda, and entitled, "Proposed Response to Advisory Opinion Request No. 04-1996." Assemblyman Joseph V. Doria, Jr., submitted a request for an advisory opinion in which he asked several questions concerning the possibility that he may explore the feasibility of or undertake a candidacy for State Senate. Among the questions he raised were whether or not he may transfer campaign funds remaining unexpended in his 1995 Assembly general election account to a State Senate account.

Assemblyman Doria asked the following three questions:

1. At what point is an Assembly member considered a Senate candidate?
2. Can a current Assembly committee be designated as a Senate account? If yes, what steps must be taken, and are all funds in the Assembly account transferable to the Senate account?
3. How does a current member of the Assembly, who maintains an Assembly election account and who is "exploring" a State Senate candidacy handle contributions and expenditures up until a formal declaration of a Senate bid is made?

Legal Director Nagy explained that in terms of acquiring candidate status for the purpose of the Campaign Reporting Act, the receipt of an initial contribution or the making of an expenditure to aid or promote a candidacy for an elected public office would give rise to the requirements to establish a candidate committee for reporting and other purposes; see N.J.S.A. 19:44A-9.

The Legal Director suggested also that if Assemblyman Doria were to receive a contribution or make an expenditure for another office, such as presumably the 1997 primary election for State Senate, and he continued to maintain his 1995 Assembly general election account, he would become a candidate in relation to two or more public offices in separate elections. He would therefore be required to establish a separate candidate committee and/or joint candidates committee for those contributions received for his nomination for election to the State Senate in the 1997 primary election.

Staff recommended further that Assemblyman Doria may redesignate his existing 1995 Assembly general election account as his account for a candidacy for nomination for election in the 1997 Senate primary election. He may accomplish this by filing a Form D-1 redesignating his 1995 Assembly general

election account as his 1997 Senate primary election account. All funds are subject to transference; however, any contributions received after the close of his 20-day postelection report for the Assembly 1995 general election must be counted against the 1997 Senate primary election contribution limit of that contributor unless the contribution is specifically expended to retire 1995 Assembly general election net outstanding obligations existing as of the date of the close of that 20-day postelection reporting period. \*

Finally, Legal Director Nagy explained the staff recommendation that Assemblyman Doria may establish an exploratory or "testing-the-waters" committee for the office of member of the State Senate pursuant to N.J.S.A. 19:44A-11.1 and N.J.A.C. 19:25-3. In the event that he ultimately becomes a candidate for Senate, he would however be required to treat all funds received as contributions subject to the limits in the Act, and any funds received in excess of those limits would be subject to refund procedures set forth in N.J.A.C. 19:25-11.8.

The Executive Director of New Jersey Common Cause, Dennis Jaffe, expressed concern that contributions given to support a candidacy for one office could now be used to further the individual's aspirations to gain a different office. He urged that the Commission lobby the Legislature to outlaw this misleading practice.

On a motion by Vice Chair Linett, seconded by Chair Martin and passed by a vote of 2-0, the Commission approved the Advisory Opinion as drafted by staff and directed that the response be issued to Assemblyman Doria.

7. Public Hearing on Cost Index Adjustments (continued)

The hearing resumed to receive the testimony of Thomas Byrne, Chairman, New Jersey Democratic State Committee. A Court Reporter recorded the resumed hearing.

8. Affiliated Corporate Regulation (continued)

Counsel Wyse offered the following amendatory language for the Commission's consideration:

"In considering the criteria set forth in (a) above, two or more corporations shall be conclusively deemed to be affiliated if (i) any individual, corporation, partnership, company, association, or other entity owns, directly or indirectly, more than a 30% interest in each of such corporations or (ii) one such corporation owns, directly or indirectly, more than a 30 percent interest in the other such corporation."

On a motion by Vice Chair Linett, seconded by Chair Martin and passed by a vote of 2-0, the Commission voted to propose the above regulation as amended and directed staff to file the proposal with the Office of Administrative Law.

Commissioner Linett also made a motion to extend this regulatory proposal to that Section of Gubernatorial Public Financing Regulations dealing with affiliated corporations.

On a motion by Chair Martin, seconded by Vice Chair Linett and passed by a vote of 2-0, the Commission proposed that the gubernatorial public financing regulations dealing with affiliated corporations be amended pursuant to the above proposal.

At the behest of Vice Chair Linett, the Commission directed staff to develop recommendations pursuant to the comments made during the public hearing on the proposed regulations adjusting the thresholds and limits of the Gubernatorial Public Financing law and the campaign Act.

9. Resolution to Go Into Executive Session

On a motion by Vice Chair Linett, seconded by Chair Martin and passed by a vote of 2-0, the Commission resolved to go into closed Executive Session to discuss the following matters which will become public as follows:

1. 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.
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.

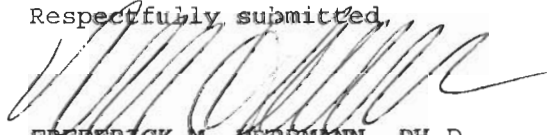
10. Return to Public Session:

On a motion by Chair Martin, seconded by Vice Chair Linett and passed by a vote of 2-0, the Commission voted to return to public session.

11. Adjournment

On a motion by Vice Chair Linett, seconded by Chair Martin and passed by a vote of 2-0, the Commission voted to adjourn at 12:00 p.m.

Respectfully submitted,



FREDERICK M. HERRMANN, PH.D.