



*State of New Jersey*

**ELECTION LAW ENFORCEMENT COMMISSION**

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PUBLIC SESSION MINUTES

June 26, 1997

Chair Martin, Vice Chair Linett, Commissioner Ware, the Counsel, Senior Staff, and Deputy Legal Director Nedda Gold Massar were present. Commissioner Franzese participated by telephone.

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., adequate 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 11:00 a.m. in Trenton, New Jersey.

2. Approval of Public Session Minutes of May 20, 1997

On a motion by Vice Chair Linett, seconded by Chair Martin and passed by a vote of 4-0, the Commission approved the Public Session Minutes of May 20, 1997, as amended by Vice Chair Linett.

3. Executive Director's Report

A. Staff Activities

Executive Director Herrmann reported that Director of Compliance and Information Evelyn Ford had gotten permission from the State Museum to display art work in the public room. He said that Director Ford has also purchased a State and a national flag for display.

Executive Director Herrmann noted that Director Ford had initiated the use of labels from the Division of Elections in the Department of State for the Primary mailings. He said that this new procedure expedited the mailing process.

The Executive Director mentioned that on May 20, 1997, he spoke to a group of Trenton High School girls participating in the "Preparation for Success Program." At the event, he discussed how to develop job seeking skills.

Executive Director Herrmann advised the Commission that on May 21, 1997, Director Ford and he went to the Political Finance Forum in Washington, D.C. He said that representatives from the ACLU, the Brookings Institute, and various congressional staffs discussed campaign finance reform.

The Executive Director informed the Commission that on May 22, 1997, Director Ford spoke to College Leadership New Jersey. He said that her talk was very well received by the students.

At this juncture, the Executive Director passed out to the Commissioners a publication entitled, "Lobbying in New Jersey" that he prepared for the NORCOL conference in Maine next month.

#### B. National Ethics News

Executive Director Herrmann reported that Governor Ridge of Pennsylvania has put \$370,000 in his State budget for computerization of the Election Bureau so that campaign reports may be filed electronically. He said that a blue-ribbon commission in Wisconsin made numerous proposals to improve the campaign finance law in that state.

The Executive Director advised the Commissioners that the Blue Ribbon Commission proposed:

- Partial public financing for state offices,
- Spending Limits, and
- The Computerization of campaign finance records.

The Executive Director mentioned that the Chair of the Commission said that of all the recommendations "the most important may be requiring the computerized filing of data."

Executive Director Herrmann informed the Commissioners that six states now have electronic filing. He said they are: Maryland, Florida, Hawaii, Missouri, Kentucky, and Washington.

#### C. Budget

Executive Director Herrmann said that ELEC requested this spring that the Legislature add funding to its annual operating budget so that the Commission can develop electronic filing and other advanced technologies. He said that also requested was money for enhanced enforcement.

The Executive Director reminded the Commissioners that although five new laws have been enacted for the Commission to enforce since 1990 (including the Comprehensive Campaign Reform Act of 1993 that added statewide contribution limits), ELEC has one fewer staff member than it did in that year. He noted that the new appropriations bill adds \$500,000 to the annual operating budget.

According to the Executive Director, staff has forwarded a request from the county clerks to the Office of Management and Budget (OMB) in the Department of Treasury for more funding for the ballot statement program. Executive Director Herrmann said that ELEC has \$155,000 in its budget for this purpose and the clerks estimate that \$484,000 is needed.

#### D. Computers

Executive Director Herrmann announced that the Flashfax will be operating on July 1<sup>st</sup>, 1997. According to the Executive Director, the public, media, and candidates will now be able to have forms, instructions, advisory opinions, complaints, final decisions, analytical press releases, and other materials faxed 24 hours a day, seven days a week.

Executive Director Herrmann added that the Philadelphia Inquirer has established a Webpage with gubernatorial contributor data provided by ELEC.

#### E. Legislative Developments

Executive Director Herrmann informed the Commissioners that on June 12, 1997, he testified favorably on A-3038 (O'Toole and Geist) before the Assembly State Government Committee. The bill provides that gubernatorial debates be televised "live" throughout the State and eliminates the prior sponsorship provision. The Executive Director said that he suggested that the live broadcast requirement was unnecessary and might make it more difficult to find enough sponsors especially in a Primary. According to Executive Director Herrmann, the bill was released unanimously with an amendment to delete the new, live provision.

Executive Director Herrmann said that on June 23, 1997, he testified favorably on S-2020 (Gormley and McNamara) before the Senate Judiciary Committee. According to the Executive Director, the bill provides budgetary increases for recomputerization and enforcement, stiffens the penalties for various violations, and reduces the contribution limit to legislative leadership committees from \$30,000 to \$10,000 per year. He said that an amendment was proposed to have electronic filing operational within 90 days. The Executive Director stated that this timeframe would be impossible to meet and that, therefore, the amendment was changed to make the new filing procedure operational for the 1998 general election. Executive Director Herrmann apprised the Commission that the bill was then released. He said that staff will study the feasibility of the change to develop comments whenever the bill continues to move through the process.

#### F. Future Meetings before the general election

- July 22, 1997 at 11:00 a.m.;
- August 22, 1997 at 11:00 a.m. (if needed);
- September 9, 1997 at 11:00 a.m.; and,
- October 21, 1997 at 11:00 a.m.

4. Advisory Opinion Request No. 03-1997

Douglas F. Doyle, Esq., on behalf of the Cary Edwards '93 Committee, a candidate committee filing reports for Mr. Edwards' 1993 gubernatorial primary election candidacy, had asked whether or not a candidate appointed to a public office and subject to ethical restrictions imposed by an appointive office he has taken with the State Commission of Investigation (SCI) that preclude the candidate from knowing the identity of contributors and other information pertinent to the candidate's campaign reports can comply with the Campaign Reporting Act's requirement that a candidate personally certify the correctness of the candidate's reports.

At the Commission's May meeting, Mr. Doyle agreed to an extension of this request to the Commission's June meeting in order to provide time to consult with staff. Staff suggested the possibility of the appointment of a Certified Public Accountant. In response to a letter dated May 22, 1997, from the Commission to Mr. Doyle, he asked if it would be permissible for a new committee to be formed to assume the 1993 candidate committee debts without Mr. Edwards' participation, and without being subject to the contribution limits applicable to Mr. Edwards' 1993 gubernatorial candidacy. Staff indicated that it believes the Act does not permit the establishment of a new committee for such a purpose.

With regard to this request, staff recommended that the Edwards Committee be advised that a candidate cannot substitute an affidavit to the effect that third persons have advised the candidate that the contents of the candidate's campaign report is correct for the statutory requirement that a candidate personally certify the correctness of the candidate's reports. Instead, staff has suggested that Mr. Edwards pursue with the SCI the possibility of fashioning some relief from the Code that specifically addresses candidate debt acquired prior to assumption of a seat on the SCI by a person who is no longer seeking elected office. Staff in providing an alternative suggested again that Mr. Edwards could be required to provide for review of his reports by a Certified Public Accountant independent of the candidate committee treasurer and to submit an affidavit in which he agrees to be liable for errors or omissions appearing on all candidate committee reports filed without his personal knowledge as to correctness.

Moreover, staff said that the Cary Edwards '93 Committee cannot be dissolved and Mr. Edwards cannot be deemed a "former candidate" because his candidate committee still has outstanding obligations in excess of the amounts specified in the Act for termination of committee reporting, and the candidate committee must continue to observe the contribution limits applicable to it in conducting fundraising.

Mr. Douglas F. Doyle, representing Mr. Edwards asked to be recognized.

Mr. Doyle explained that after being charged by the Commission to develop alternatives as to how to resolve the problem before it, discussions were held with Legal Director Nagy. One approach developed involved the establishment of a Section 18, Committee. Mr. Doyle said, however, that eventually it was determined that a Section 18 approach would not be feasible. Mr. Doyle indicated that Mr. Edwards supports the blind trust approach, which provides the accountability the Commission is seeking. He said that Mr. Edward's would appoint a Certified Public Accountant to assume responsibility for the Committee but that Mr. Edwards, who would not have knowledge of contributions, would nevertheless sign the disclosure reports and agree in advance to be responsible for any liability resulting from the filings and to waive defenses to any enforcement action.

Vice Chair Linett said that it has been four years since the election and that during this time Mr. Edwards has not been able to raise the money to retire his debt. He said that it would be unrealistic to assume that debt retirement could now be accomplished without his knowledge.

Mr. Doyle noted that there is no statutory limit as to when debt must be eliminated. He added that the Committee has received commitments for contributions which would suggest that the debt will be eliminated after this year is over.

Vice Chair Linett said that there are two issues for the Commission to consider. The first, said Vice Chair Linett, is whether the Commission should extend the time for debt retirement and the second, whether or not a campaign account can exist without a candidate being involved.

Vice Chair Linnet said that the Commission was straining to accommodate the candidate's desire to serve on the SCI and not be in violation of its code.

Vice Chair Linett said that he does not believe that a Certified Public Accountant can replace a candidate. He said that the Commission is being asked to set a bad precedent. He said that he believes that if a candidate wants to raise funds he or she should be involved.

Chair Martin asked: Did Mr. Edwards ever approach the SCI to ask whether or not he could recuse himself on certain matters.

Mr. Doyle stated that the SCI code requires that a member must be completely removed from knowledge of people contributing to a committee under his control involved in candidate activity. Mr. Doyle said that if this were not the case, it would hurt the credibility of the SCI. Further, said Mr. Doyle, Mr. Edwards broached this question with the SCI's Executive Director and found that under its code any knowledge of political fundraising is forbidden.

Mr. Doyle said that the blind trust approach as proposed by Mr. Nagy accomplishes three goals: it helps Mr. Edwards pay back the debt, it assures disclosure and accountability, and it permits Mr. Edwards to serve on the SCI. Mr. Doyle added that as a practical matter, Certified Public Accountants all the time are helping candidates. He said that these candidates are not aware of every contribution that is received but rely on trusted staff to manage the finances appropriately. He said that despite not being involved, the candidates still sign reports.

Legal Director Nagy said that he wanted to make clear that he is not proposing the blind trust approach. The Legal Director said that staff was merely exploring the original proposal submitted by Mr. Edwards that he would certify his reports based upon his treasurer's representations. Legal Director Nagy said that staff was uncomfortable with the approach but that staff had sought to find some way of accommodating legally the situation.

Legal Director Nagy said that it seemed to him that the difficulty lies with the SCI Code. He suggested that perhaps the SCI could set up a screening committee to monitor contributions to Mr. Edwards' Committee to eliminate the problem of potential influence.

Commissioner Ware said that while understanding the problem the Commission faces in resolving this matter, she is concerned about the business people who have not been paid. She indicated that she believes that it is laudable for Mr. Edwards to desire to pay his debts. Commissioner Ware expressed the desire to find a technical way by which Mr. Edwards would pay his creditors, still be accountable for his Committee, yet not be a signatory.

Vice Chair Linett said that he feels that the candidate has the obligation to be responsible and knowledgeable about fundraising activities. He said, furthermore, that it is hard to believe that Mr. Edwards could remain totally blind to the sources of contributions to his Committee given the fact that the reports will be made public.

Commissioner Franzese said that she believes it is important to know what the legislative intent behind the passage of the statute. She said that it appears as if it is the intent of the statute that the candidate be responsible and that therefore she would agree with Vice Chair Linett that the Commission would be establishing a bad precedent by permitting a blind-trust situation to exist.

Chair Martin said that he believes that it is the intent of the statute to require that candidates be involved in fundraising, and thereby knowledgeable about it.

Commissioner Franzese said that she agreed with Chair Martin.

Executive Director Herrmann said that it would seem as if it would be in the best interest of Mr. Edwards to have knowledge about who is contributing to his Committee and to recuse himself with regard to any matter investigated by the SCI that involves a contributor. He suggested that perhaps the difficulty lies in the fact that the SCI and ELEC have different ways of defining the word candidate. Executive Director Herrmann said that it may be possible for the SCI to conclude that Mr. Edwards is not an active candidate in

relation to its Code even though he remains a candidate under ELEC's statutory provisions for disclosure and contribution limit purposes.

Counsel Wyse suggested that perhaps Section 18 could be revisited. Legal Director Nagy responded that two problems exist with a Section 18 Committee. The absence of the candidate removes his accountability and contribution limits do not apply.

Chair Martin suggested that ELEC serve as a liaison between the SCI and Mr. Edwards in an attempt to resolve this problem. He suggested that copies of Mr. Edwards' reports could be provided to the SCI, which could then assure that Mr. Edwards recuse himself where necessary.

He said that just as important as the credibility of SCI was the credibility of the Election Law Enforcement Commission.

Mr. Doyle asked how the Committee would deal with the July 15th filing. He said that money had already been raised without Mr. Edward's knowledge.

Executive Director Herrmann suggested that the Commission give Mr. Edwards a 10-day extension on filing the Committee's report until three days after the next Commission meeting.

On a motion by Vice Chair Linett, seconded by Commissioner Ware and passed by a vote of 4-0, the Commission provided the 10-day extension to the Edwards' Committee. The Commission directed staff to meet with the SCI and Mr. Doyle in an attempt to determine whether or not there might be a solution to Mr. Edward's situation under the SCI Code.

#### 5. Resolution to Go Into Executive Session

On a motion by Vice Chair Linett, seconded by Commissioner Ware 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:

- A. 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.
- B. 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.

#### 6. Return to Public Session

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

7. Advisory Opinion Request No. 05-1997

Mark John Peterson, treasurer of Sabrin for Governor, a candidate committee established by Murray Sabrin, Libertarian Party candidate for Governor in the 1997 general election, has asked whether or not the committee may accept contributions made by credit card, and whether or not contributions made by credit card would be accepted for matching funds.

Legal Director Nagy explained the staff recommendation that Mr. Peterson be advised that the Sabrin for Governor candidate committee may receive contributions made by a credit card transaction, provided the recordkeeping and reporting provisions of the Campaign Reporting Act are observed.

Further, staff recommended that Mr. Peterson be advised that a contribution received by means of a credit card transaction may be considered for match with gubernatorial matching funds, and therefore may count toward the \$210,000 qualification threshold for receipt of public funds in the 1997 general election, provided that the contribution meets the recordkeeping and reporting requirements which apply to receipt of a currency contribution pursuant to N.J.A.C. 19:25-10.6 and 15.14. Staff also recommended that additional requirements be met. These include the requirement to create a written statement including a contributor's signature, to be filed as part of a matching fund submission. A gubernatorial candidate must also include credit card account information in the written statement to verify that the contributor is the owner of the credit card account, must include occupation and employer information for each contributor who is an individual and whose aggregate contributions to the candidate exceed \$300, and must provide a receipt that contributions for match were deposited into a separate matching fund account.

Staff recommended that the Commission consider amending N.J.A.C. 19:25-15.14 and 15.17 at the conclusion of the 1997 gubernatorial public financing program to specifically include provisions for receipt of contributions by credit card which may be submitted for match.

On a motion by Vice Chair Linett, seconded by Commissioner Ware and passed by a vote of 4-0, the Commission approved the staff recommendations and directed staff to issue a response to the Advisory Opinion Request.

8. Report on 1997 Public Funds Distributed

Deputy Legal Director Massar reported that since preparation of the report on distribution of public funds dated May 19, 1997, staff has completed its review of the submissions received on May 19 and 27, 1997, and June 2 and 9, 1997, from Candidates Robert E. Andrews, James E. McGreevey, and Michael Murphy. The results of that review are summarized below.

**Andrews Campaign Submissions 4, 5, and 6**

Submission #	Total \$ Submitted for Match	Total \$ Eligible for Match at 2:1	Total Amount Deposited	Error Rate
4	\$ 58,705.00	\$ 69,480.00	\$ 138,960.00	0.6%
5	43,845.00	45,345.00	90,690.00	0.0%
6	41,514.66	43,764.66	42,206.78	4.8%

**McGreevey Campaign Submission 10**

Submission #	Total \$ Submitted for Match	Total \$ Eligible for Match at 2:1	Total Amount Deposited	Error Rate
10	\$ 42,245.00	\$ 46,895.00	\$ 34,480.84	8.0%

**Murphy Campaign Submissions 6, 7, and 8**

Submission #	Total \$ Submitted for Match	Total \$ Eligible for Match at 2:1	Total Amount Deposited	Error Rate
6	\$ 57,025.00	\$ 69,050.00	\$ 138,100.00	8.7%
7	71,035.00	63,000.00	126,000.00	14.5%
8	34,811.00	38,686.00	77,372.00	14.8%
9	15,731.00	19,316.00	38,632.00	11.6%

**Total 1997 Primary Election Public Funds Distributed**

Director Massar reported that including the submissions described above, to date, public funds totaling \$6,612,766.00 have been certified for 1997 gubernatorial primary election candidates as follows:

Robert E. Andrews	\$1,860,000.00
James E. McGreevey	1,860,000.00
Michael Murphy	1,032,766.00
Christine Todd Whitman	<u>1,860,000.00</u>
TOTAL	\$6,612,766.00

Director Massar indicated that Candidates Andrews, McGreevey, and Whitman have received the \$1.86 million maximum in 1997 primary election matching funds.

9. Public Comment

The Chair recognized Robert Long, Treasurer of the McGreevey gubernatorial campaign. Mr. Long asked whether or not the 1997 gubernatorial general election candidates would have an opportunity to comment on selection of the general election debate sponsors.

Chair Martin suggested that Mr. Long write to the Commission expressing any concerns about the debate process.

10. Adjournment

On a motion by Vice Chair Linett, seconded by Commissioner Ware and passed by a vote of 4-0, the Commission voted to adjourn at 2:00 p.m.

Respectfully submitted,

Frederick M. Herrmann, Ph.D.  
Executive Director

FMH/elz