



*State of New Jersey*

**ELECTION LAW ENFORCEMENT COMMISSION**

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Legal Director  
  
JAMES P. WYSE  
Counsel

PUBLIC SESSION MINUTES

February 18, 1998

The Commissioners, the Counsel, 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., 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 10:00 a.m. at the Seton Hall University School of Law, Dean's Conference Room, One Newark Center, Newark, New Jersey.

2. Approval of Public Session Minutes of January 28, 1998

On a motion by Vice Chair Linett, seconded by Commissioner Franzese and passed by a vote of 4-0, the Commission approved the Public Session Minutes of January 28, 1998.

3. Executive Director's Report

A. FY-99 Budget

Executive Director Herrmann reported that ELEC's recommended budget for FY-99 is \$2,982,000.00. He noted that Governor Whitman has included an additional \$1,000,000 for ongoing data processing enhancements. The Executive Director said that this money, if approved by the Legislature, will provide a major boost to ELEC's recomputerization efforts.

B. National Disclosure Stories

According to Executive Director Herrmann, the Washington State Public Disclosure Commission is pushing for a higher maximum fine. He said that the current maximum is \$2,500.00 and that the Public Disclosure Commission believes it should be \$10,000.00.

Executive Director Herrmann related that Melissa Wahrheit, the Executive Director of the Public Disclosure Commission, told the Portland Oregonian:

We are dealing now with political parties and PACs that raise and spend millions. The penalties are not meaningful to them and in order to have meaningful enforcement, there must be meaningful consequences.

Executive Director Herrmann noted that the maximum fine in New Jersey is \$3,500 for a first offense and \$7,000 for a second and each subsequent offense. According to the Executive Director, New Jersey also has higher fines for contribution limit violations.

Executive Director Herrmann advised the Commission that a recent Campaigns and Elections Magazine/ZOGBY international poll found voters prefer by a nearly 2:1 margin more effective enforcement of existing campaign financing laws over passing new ones. He added that a new study by two political scientists claims that redistricting, not money, is the key factor in deciding elections to the House of Representatives. Executive Director Herrmann said that the study concludes that money doesn't buy elections although it does buy access.

Executive Director Herrmann reported that a United States District Court Judge in Washington, D.C. has ordered a lobbyist, who made illegal campaign contributions, to write a paper about the meaning of campaign financing laws and mail it at his expense within three months to 2000 lobbyist and fundraising groups. He added that the lobbyist, as a more traditional punishment, must also pay a fine of \$150,000.

Executive Director Herrmann reported that lobbyist spending in Illinois is on the decline. He noted that the state's Secretary of State attributed the decline in overall lobbyist spending to tighter regulations on gifts to public officials.

According to the Executive Director, ELEC will be releasing New Jersey lobbying data early next week.

C. Commission News

Executive Director Herrmann stated that the Christian Science Monitor has reported very favorably on the New Jersey Gubernatorial Public Financing Program. The Executive Director said that nationally recognized expert Dr. Herbert E. Alexander of the Citizens' Research Foundation and the University of Southern California was quoted as saying "New Jersey has one of the more successful programs. Its 2:1 match is the most generous of any state...and it is one of the only states to require two debates."

Executive Director Herrmann announced that Senator Bill Schluter, the sponsor of ELEC's enabling legislation, and Frank Reiche, ELEC's first Chair and former member of the Federal Election Commission, have agreed to be the featured speakers at the Commission's 25<sup>th</sup> Anniversary Event. He mentioned that because of the Jewish holiday, the date has been changed from September 22<sup>nd</sup> to September 29<sup>th</sup>. He said that staff will prepare two resolutions to honor both speakers for their role in creating the Commission.

D. Staff Activities

Executive Director Herrmann reported that he has completed the Third Edition of the COGEL Campaign Financing and Lobbying Bibliography. He thanked Research Assistant Steven Kimmelman and Administrative Assistant Elbia Zepetelli for their vital help on this project.

Chair Martin praised the work as an outstanding contribution to the field.

E. Computer Developments

Executive Director Herrmann said that a leading producer of electronic filing systems has made a number of suggestions to ELEC on how to proceed with its recomputerization project:

- Voluntary electronic filing should be a prelude to mandatory filing;
- An agency should start small to allow inevitable bugs to be worked out before the bulk of filers enter the system; and,
- A system should then be expanded as experience is gained.

According to the Executive Director, it was strongly suggested that technical support be contracted out and that the need for technically involved staff who can do programming was emphasized.

Executive Director Herrmann said that staff will be heeding these recommendations as the recomputerization project proceeds.

F. Legislative Developments

Executive Director Herrmann said that on February 10, 1998, he testified favorably on A-556 (Russo) before the Assembly State Government Committee. According to the Executive Director this bill, as amended, increases the income tax checkoff for the Gubernatorial Public Financing Program from \$1 to \$5 and adjusts the checkoff for inflation in future years. He said this change is necessary because the amount of public funds given to candidates is adjusted for inflation and there is no longer enough money being collected by the checkoff (which has remained unchanged since its inception in 1976) to cover the increases.

According to Executive Director Herrmann the bill was released by the Committee.

G. Spring Meeting Schedule

March 18, 1998 - Burlington County Office Building at 11:00 a.m.

April 22, 1998 - Trenton

May 27, 1998 - Trenton

4. Gubernatorial Public Financing Hearing

Chair Martin acknowledged that the Commission received a letter and proposed legislation concerning contributions to publicly-financed candidates from Senate President Donald DiFrancesco. The correspondence will be made part of the record.

For discussion, please see transcript recorded by a Court Reporter. Testifying at the hearing were:

- Madelyn Hoffmann, Green Party Candidate for Governor;
- Louis M. Stefanelli, Treasurer, Sabrin for Governor;
- Emerson Ellet, Ocean, New Jersey;
- Earl Gray, Green Party, Policy Committee Members;
- Ingrid W. Reed, Director, Eagleton New Jersey Project, Eagleton Institute of Politics;
- Mary Jo Christian, State Chair, Natural Law Party;
- Joseph Mosley, New Brunswick, New Jersey; and
- Rena Amada, Green Party Member.

5. Advisory Opinion No. 03-1998

Legal Director Nagy explained that Peter J. Tober, Assistant Counsel, Office of the Governor, submitted a request for an advisory opinion on behalf of Governor Christine Todd Whitman. Mr. Tober requested that this inquiry be treated as a request made on behalf of Governor Whitman in her capacity as an elected officeholder.

According to Mr. Tober, Hallmark Cards, Inc., proposes to donate to the State in 1998 and 1999 an unspecified number of congratulatory cards to be delivered at State expense to parents of newborn children. The purpose of the cards is to remind parents to immunize their children during the first two years of life. The cards will contain a message written over the name of Governor Whitman. The greeting card company states that the immunization information contained in the cards is based on the recommendations of the Center for Disease Control and Prevention's Advisory Committee on Immunization Practices, the American Academy of Pediatrics, and the American Academy of Family Physicians.

Legal Director Nagy indicated that the pertinent questions are:

1. Does the donation of the cards to the State by the greeting card company constitute a contribution to a candidate or elected officeholder under the Campaign Reporting Act?
2. Does the donation of the cards to the State by the greeting card company constitute a lobbying expenditure under the Legislative Activities Disclosure Act?

Director Nagy discussed the staff memorandum concerning the request which had been circulated to the Commissioners and recommended that the Commission advise Mr. Tober that the donation of the immunization cards to the State does not constitute a contribution to the 1997 candidacies of Governor Whitman. Staff added that the Commission cannot exclude the possibility that future donations to other Governors may constitute an in-kind contribution to a candidate if the message contained in those cards contains an election-advocacy text.

Staff also recommended that the Commission advise Mr. Tober that the donation of the immunization cards to the State is not a personal benefit to Governor Whitman within the meaning of the Legislative Activities Disclosure Act, and therefore the registration and reporting requirements of that Act are not applicable to the donor.

Vice Chair Linett suggested that the advisory opinion response answer the two questions and not discuss hypothetical situations.

Commissioner Ware suggested that language be included to note that the opinion applies only to this Governor and that given a different set of circumstances a different opinion might be rendered in the future.

On a motion by Vice Chair Linett, seconded by Commissioner Franzese and passed by a vote of 4-0, the Commission approved the Advisory Opinion with changes as suggested by the two Commissioners.

6. Resolution to Go Into Executive Session

On a motion by Vice Chair Linett, seconded by Commissioner Franzese and passed by a vote of 3-0, 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.

7. Adjournment

On a motion by Vice Chair Linett, seconded by Commissioner Franzese and passed by a vote of 4-0, the Commission voted to adjourn at 1:30 p.m.

Respectfully submitted,

Frederick M. Herrmann, Ph.D.  
Executive Director

FMH/elz