



State of New Jersey

ELECTION LAW ENFORCEMENT COMMISSION

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PUBLIC SESSION MINUTES

May 27, 1998

Chair Martin, Vice Chair Linett, Commissioner Ware, the Counsel, Senior Staff, and Deputy Legal Director Nedda Gold Massar were present. Commissioner Franzese was not present at the meeting.

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 April 22, 1998

On a motion by Commissioner Ware, seconded by Chair Martin and passed by a vote of 2-0, the Commission approved the Public Session Minutes of April 22, 1998.

3. Executive Director's Report

A. Computers

Executive Director Herrmann introduced Kim Vandegrift, hired in April as a Systems Analyst. Director Herrmann said that she is the first new person hired to strengthen the Computer Section and that she has already been of great assistance to Systems Administrator Carol Neiman with the recomputerization project.

According to the Executive Director, the public room now has an Internet hookup for visitors. He mentioned that citizens can connect with the Federal Election Commission (FEC) and ELEC homepages and print out desired information.

Executive Director Herrmann added that staff has updated the ELEC homepage to include statistical data for calendar year 1997 and filing dates for calendar year 98. Executive Director Herrmann noted that Commissioners' pictures from the Annual Report will soon be on the homepage too.

B. Staff Activities

Executive Director Herrmann advised the Commission that he has been renamed to the Editorial Board of Public Integrity. He said that the journal's objective is "to further the understanding of ethics in government by publishing articles of interest to public officials and scholars." According to the Executive Director, it is sponsored by the American Society for Public Administration, the International City/County Management Association, and the Council of State Governments. Executive Director Herrmann will be serving with 14 public officials and academics from across the country.

Executive Director Herrmann reported that Irene Szedlmayer, the Associate Legal Director, has left for a position with the Camden Regional Legal Services. He recounted that she performed a great deal of complicated litigation for the Commission and will be greatly missed.

Executive Director Herrmann noted that the Compliance and Information staff held four informational seminars for candidates and treasurers:

- March 28, 1998, in Passaic County
- April 1, 1998, in Essex County
- April 6 and April 9, 1998, in Trenton.

Executive Director Herrmann added that on April 23, 1998, he spoke to Leadership New Jersey about the state's campaign finance law and how it might be strengthened.

Executive Director Herrmann said that on April 24, 1998, he attended a half-day symposium on public history interns sponsored by the Rutgers University history department. The Executive Director mentioned that the panelists provided many useful pointers on how to administer and structure an intern program. Executive Director Herrmann informed the Commission that ELEC has made great use of students in the past, especially in helping Deputy Director Brindle with the white paper series.

The Executive Director noted that on May 14, 1998, he spoke to the semi-annual symposium of the Certified Public Managers Society of New Jersey on ELEC's role in promoting ethical government in the State. He added that on May 18, 1998, he addressed a group from College Leadership New Jersey on the work of the Commission.

C. Legislative Developments

Executive Director Herrmann advised the Commission that on May 7, 1998, he testified favorably before the Assembly State Government Committee on two bills. He said that A-555 (Russo) is based on an ELEC recommendation made in 1994 to increase the number of gubernatorial debates to three. According to the Executive Director, it also:

- Eliminates the previous sponsorship requirement;
- Permits cable television companies to sponsor debates;
- Requires ELEC to consider possible conflicts of interest before choosing a sponsor; and,
- Mandates that three commissioners vote for selecting a sponsor.

Executive Director Herrmann said that the bill was unanimously released.

Executive Director Herrmann said that the second bill, the ACS for A-1695 (Lefevre), strengthens ELEC's ability to administer the Campaign Act by:

- Increasing the Commission's operating budget by \$200,000;
- Raising statutory caps on various penalties;
- Allowing ELEC to call on the Attorney General for support at the discretion of the Commission.

This bill was also released unanimously.

D. Commission News

According to Executive Director Herrmann, ELEC is getting praise from across the country for our new Annual Report. He again thanked the staff and the Commissioners for their efforts.

Executive Director Herrmann noted that the political science literature often provides a report card on how ELEC is doing. He said that a new book entitled The Day After Reform: Sobering Campaign Finance Lessons from the American States, by Michael Malbin and Thomas Gais of the Rockefeller Institute of Government at the State University of New York (Albany), cites four ELEC white papers by Deputy Director Brindle and a survey article from the Book of the States that he

(Executive Director Herrmann) co-authored. Executive Director Herrmann said that the authors state in the chapter about political parties that they "decided not to have a separate section devoted to New Jersey . . . because New Jersey-ELEC has published two excellent white papers about political parties in recent years." Moreover, according to the Executive Director, the book also ranks ELEC among the top four disclosure agencies in the nation. Florida ranks first but has 2½ times the number of staff that ELEC does.

Executive Director Herrmann said that the authors praise New Jersey's public financing program as one of the significant ones in the country.

E. Summer Meeting Schedule

June 23, 1998 in Trenton at 11:00 a.m.

July 28, 1998 in Trenton at 10:00 a.m.

August 12, 1998 in Trenton at 11:00 a.m. (if necessary)

September 29, 1998 in Trenton at 11:00 a.m. (25th Anniversary Celebration at 2:00 p.m.)

Vice Chair David Linett arrived at this point.

4. Report on Return of Unexpended Funds by 1997 Gubernatorial General Election Campaigns

Staff recommended that the Commission approve retention of unspent funds by the Whitman, McGreevey, and Sabrin 1997 general election campaigns.

Staff also recommended that each campaign treasurer be advised in writing of the Commission's decision, and of the requirements to observe postelection restrictions on spending pursuant to N.J.A.C. 19:25-15.45 and 47, to file postelection quarterly reports, and to return to the State any funds which may remain available after the audit and all compliance reviews by staff are concluded.

The following summarizes each candidate's financial situation:

Candidate Christine Todd Whitman

The unaudited April 15, 1998 quarterly report filed by the Whitman general election campaign indicated that the campaign had cash-on-hand in the amount of \$80,228.48 and outstanding obligations, including estimated audit-related costs, in the amount of \$76,250.00. Therefore, staff calculated that \$3,978.48 was available for refund to the State. On May 11, 1998, the Whitman campaign submitted a check in the amount of \$4,000.00 as a refund to the State. At that time, Treasurer William J. Morrison requested permission to retain the remaining funds to make refunds of contributions where instructed to do so by Commission staff or as a result of the audit and to pay audit-related costs and costs associated with closing the campaign.

Candidate James McGreevey

The unaudited April 15, 1998 quarterly report filed by the McGreevey general election campaign indicated that the campaign had cash-on-hand in the amount of \$38,046.44 and outstanding obligations in the amount of \$6,000.00. Therefore, staff calculated that \$32,046.44 was available for refund to the State. In correspondence received on May 8, 1998, Treasurer Robert J. Long requested Commission authorization to retain the \$32,046.44 balance to make reimbursements of contributions which are the subject of pending Commission investigations, to pay costs of legal representation associated with those investigations, and to meet audit-related and campaign closing expenses.

Candidate Murray Sabrin

The amended, unaudited quarterly report filed by the Sabrin general election campaign on April 20, 1998, indicated that the campaign had cash-on-hand in the amount of \$787.30 and outstanding obligations in the amount of \$52,813.52. At its meeting on April 22, 1998, the Commission authorized distribution to the Sabrin campaign of additional public matching funds in the amount of \$52,026.22. In correspondence received on May 15, 1998, Treasurer Louis M. Stefanelli requested Commission authorization to retain the balance of funds to pay outstanding obligations totaling \$34,061.52 and audit-related and campaign closing costs of approximately \$18,700.00.

On a motion by Commissioner Ware, seconded by Vice Chair Linett and passed by a vote of 3-0, the Commission authorized temporary retention of unexpended 1997 general election funds for the specific purposes described by the three gubernatorial campaigns.

5. Contributions from Limited Liability Companies

Mr. Elmer M. Matthews, Esq., representing Ernst and Young, appeared to ask the Commission to reconsider its regulation vis-à-vis Limited Liability Companies.

Mr. Matthews summarized comments he made in a memorandum submitted to the Election Law Enforcement Commission.

For detailed information, please see the memorandum submitted to the Commission from Mr. Matthews on May 19, 1998, entitled "Treatment of Limited Liability Partnerships Under ELEC Regulations."

In brief, Mr. Matthews indicated that he was involved in designing the Limited Liability Partnership Act, which carved out a separate identity in the law for certain professional firms such as accountant firms and law firms. He said that unlike general partnerships these entities are unlimited in terms of the number of members and are subject to registration requirements with the Secretary of State. Mr. Matthews said that in removing as much liability from the members as possible, the Limited Liability Company is more akin to

a corporation. He said that ELEC should view these entities more as a corporation than as a partnership for purposes of contribution activity and disclosure.

Mr. Matthews said that in representing the accounting firm of Ernst and Young he is representing a Limited Liability Partnership with approximately 2,000 members. He said that getting the signatures from 2,000 members as currently required by Commission regulations, which treat the limited liability entity as a partnership, is difficult at best and that in terms of disclosure treating them as a corporation would be preferable. He said that this approach would seem to fit within the spirit and framework of the ELEC law.

Counsel Wyse hypothetically posed the idea of a Limited Liability Company operating agreement, by which all members would agree to abide by the contribution decisions of the executive committee. These members would agree to an allocation against these individuals' contribution limit. The company would file a notice with ELEC to this effect.

Mr. Matthews indicated that the management structure of the Limited Liability Company that he is involved in already does, as Mr. Wyse has suggested, and that he is very open to considering that proposal.

Vice Chair Linett said that treating Limited Liability Companies as corporations would do violation to the contribution limitations that the Commission is charged with upholding. He said that the Commission has proposed banning corporate contributions.

Executive Director Herrmann added that 42 states and the federal government ban corporate contributions.

Vice Chair Linett suggested that the Commission leave it to the legislators to address this issue. He said that for now the Commission should not go beyond its authority in equating Limited Liability Companies with corporations.

Chair Martin suggested that this might be the best approach.

Mr. Matthews said that his experience taught him that turning something over to the Legislature that was in the power of the agency to execute is not the most practical approach. He said that what you think you are going to get is not what you often end up getting from the legislative process. Mr. Matthews suggested that Mr. Wyse's approach seems the best solution. He said that the present method of dealing with these entities was administratively burdensome and has resulted in a situation wherein these entities have decided that it is too cumbersome a process to justify making contributions. He said that he did not believe the mission of the Commission was to discourage giving.

Vice Chair Linett said that the staff has received input from both Mr. Matthews and the Commissioners. He suggested that staff draft a proposal for review at the next meeting.

On a motion by Commissioner Ware, seconded by Vice Chair Linett and passed by a vote of 3-0, the Commission agreed to review a proposal on contributions from Limited Liability Companies at the June Commission meeting.

6. Reimbursement of Lobbying Expenditures

As directed by the Commission in April, staff has drafted a proposed regulation permitting a lobbyist to exclude identification of a benefit recipient who reimburses the lobbyist, provided that the reimbursed benefit is not in excess of \$50 above the calendar year reporting threshold.

Assemblyman Richard Bagger had written to the Commission suggesting consideration of a change in lobbying reporting requirements so that an officeholder who reimburses a lobbyist or legislative agent for a small gift is no longer reported as a benefit recipient. Assemblyman Leonard Lance wrote that as sponsor of the 1996 amendments of the Legislative Activities Disclosure Act his intent was that no reporting be required if the recipient reimburses the lobbyist for the item prior to the Annual Report filing due date.

Staff noted that there may be sound public policy arguments for encouraging officeholders to make reimbursements for lobbying benefits they received. Reimbursement of the full value of an item by the officeholder minimizes his or her pecuniary interest in that item. If full reimbursement is made, the benefit of receiving it becomes only the interest-free use of the item until the reimbursement is paid.

The following is the text of the proposed regulation:

19:25-20.13 Notice of lobbying benefit

(d) In the event that a lobbyist or legislative agent receives payment [reimbursement] from any benefit recipient as reimbursement for the reasonable commercial value of any benefit required to be reported on its Annual Report pursuant to N.J.A.C. 19:25-20.14, the lobbyist or legislative agent shall report the receipt and amount of such reimbursement in the Annual Report in which the benefit is required to be reported. The making of such a reimbursement does not remove or alter the requirement that the lobbyist or legislative agent report the expenditure and the benefit recipient on its Annual Report pursuant to N.J.A.C. [19:25-20.14.] 19:25-20.14(b), except that a reportable expenditure or aggregate expenditures providing a benefit or benefits to a benefit recipient may be excluded from the Annual Report if all the following conditions are met:

1. The reasonable commercial value of all benefits provided by the lobbyist or the legislative agent to the benefit recipient in the calendar year of the Annual Report does not exceed \$50.00 above the \$200.00 per calendar year reporting threshold set forth in N.J.A.C. 19:25-20.14(b), that is does not exceed a total of \$250.00 for the calendar year; and

2. Full payment in reimbursement of all benefits provided to the benefit recipient up to \$250.00 for the calendar year is received by the lobbyist or legislative agent from the benefit recipient on or prior to the due date for filing of that Annual Report.

Vice Chair Linett said that he was less enthusiastic about the proposed easing of the lobbying benefit passing regulation than he was last month.

He said that he thought that if a benefit of \$250 was passed only \$50 would have to be reimbursed, not the entire \$200.

Vice Chair Linett said that the more he thinks about it the more he thinks the Commission should leave the regulation alone. He said that if the Legislature wants it changed, let it be done through legislation.

Commissioner Ware said that in all these issues, she likes to look at the big picture. She said that this particular issue does not seem to carry with it any ethical concern. Commissioner Ware said that because of this reason, she strongly believes that the Commission should take the practical approach and raise the threshold under which a reimbursed benefit would not have to be reported. She said she strongly supports the proposal as written.

Counsel Wyse suggested a logarithmic approach from the starting point of the \$25 per day threshold.

Chair Martin said that that approach would be administratively burdensome.

Vice Chair Linett said that even if a lunch is reimbursed six months after the event, it is still appreciated by the recipient of the benefit.

Commissioner Ware said that the Commission must be sensitive to political reality and to the pressure from the media exerted on elected officials. She said that a \$25 lunch might become represented in some instances as some kind of evil. Commissioner Ware said that after attending an event and having a minimal benefit passed to him or her, a legislator might find his or her name in the paper with the impression left that he or she has been the recipient of a significant benefit when in fact the benefit passed was of no consequence whatsoever.

Chair Martin said that there is something in everything said to day. He said, however, that the Legislature created the situation, the standard, and that perhaps it should be it that addresses the problem.

Commissioner Ware said that she strongly endorses the proposal, believing the Commission should take the practical approach toward resolving this issue.

Vice Chair Linett said that he was unsure of his support for this proposal because of the uncertainty of the nature of the public interest.

Commissioner Ware said that on the contrary, the public interest is in the Commission not taking any action that would further discourage good people from running for office.

On a motion by Vice Chair Linett seconded by Commissioner Ware, the Commission decided to postpone a decision on the matter until the June Commission meeting when Commissioner Franzese would be present.

7. Advisory Opinion Request No. 04-1998

Senator Robert J. Martin, Chair of the Senate Education Committee, requested an advisory opinion seeking permission to use his candidate committee funds to pay a portion of his tuition expense for a graduate program in educational administration.

Senator Martin wrote that on the recommendation of a New Jersey legislator who is a professional educator, he has enrolled in the "Inquiry Program in Educational Administrative Practice" at the Teacher's College of Columbia University in New York City. The courses are taught in July for two summers and during several weekends, and are primarily designed to provide "state-of-the-art" thinking on such topics as public school funding and school choice. Senator Martin states that he is currently a law professor at Seton Hall University School of Law holding degrees for his position, so his purpose in attending the Teacher's College program is not to advance his professional career but "... solely to make me more knowledgeable in my work as a legislative leader in the field of public education." He anticipates that the program will be of "extreme value" to his legislative responsibilities, and notes that Senate President Donald DiFrancesco wrote a letter in support of his enrollment.

Legal Director Nagy indicated that staff recommended that Senator Martin be advised that the proposed use is permissible, with the proviso that all tuition payments made from candidate committee funds be for courses specifically pertinent to public school education or administration. All candidate committee expenditures for this purpose are subject to reporting.

Chair Martin clarified that Senator Martin was not a relative of his and that he was free to participate in this matter.

Vice Chair Linett said that he does not doubt the sincerity of Senator Martin in this matter. However, he said that education is his career and that contributors would be paying for him to acquire a degree. He said that he calls it the "truth in campaign giving." Vice Chair Linett said that he doubts contributors have been contributing to Senator Martin so that the Senator can get an education degree.

Chair Martin said that the loophole is getting bigger and bigger but because of the "ordinary and necessary" statutory language this use seems permissible. He suggested that the response specifically note Senator Martin's status as Chair of the Senate Education Committee, that it require that the program Senator Martin attends be accredited, and that Senator Martin offer to share all course materials with the committee.

Commissioner Ware said that while she believes campaign funds should be used mainly for campaigns the law does seem to allow this use. She said that in many ways it is laudable that Senator Martin wants to learn more about this area. She said she supports the request.

On a motion by Vice Chair Linett, seconded by Commissioner Ware and passed by voted of 3-0, the Commission approved the request of Senator Robert J. Martin and directed staff to issue the response written narrowly with the specific conditions noted by Chair Martin.

8. Resolution to Go Into Executive Session

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

9. Adjournment

On a motion by Vice Chair Linett, seconded by Commissioner Ware and passed by a vote of 3-0, the Commission voted to adjourn at 1:30 p.m.

Respectfully submitted,

Frederick M. Herrmann, Ph.D.
Executive Director

FMH/elz