



State of New Jersey

ELECTION LAW ENFORCEMENT COMMISSION

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Vice Chair

PAULA A. FRANZESE
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GREGORY E. NAGY
Legal Director

JAMES P. WYSE
Counsel

PUBLIC SESSION MINUTES

June 23, 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 11:00 a.m. in Trenton, New Jersey.

2. Executive Director's Report

A. Staff Activities

Executive Director Herrmann reported that Professor Larry J. Sabato, one of the leading campaign financing scholars in the nation, is using ELEC white papers in his classes at the University of Virginia. He added that White Paper #12 on county party committees received a very favorable review in the latest edition of the COGEL Guardian. Executive Director Herrmann said that it is great to see Deputy Director Brindle's work getting this sort of national recognition.

According to Executive Director Herrmann, he is planning to submit a proposal to Public Integrity to guest edit a series of papers as a campaign financing symposium. He said that Deputy Director Brindle has agreed to author one of the papers. Executive Director Herrmann mentioned that he is submitting a book review to Public Integrity on Thomas Gais and Michael Malbin's Day After Reform for publication next year.

The Executive Director announced that Compliance Officer, Amy Davis received the Richard L. Barbour, Jr. Scholarship Award at a banquet on May 14, 1998. He hailed the award as a tribute to her meritorious academic record at the College of New Jersey.

B. COGEL Conference

Executive Director Herrmann said that he will be involved with a number of programs at the 20th Annual Conference in Seattle from September 13 through September 16, 1998. He noted that he will be running a symposium on agency empowerment and that the discussion will center on strengthening ethics agencies through enhanced autonomy, budgets, and enforcement capability.

The Executive Director said that he will also be moderating a panel on public financing with panelists from the Federal Election Commission, New York City Campaign Finance Board, and a Washington State Good Government Group.

Executive Director Herrmann said that he has nominated Herbert E. Alexander, the Nation's foremost authority on political finance and a former ELEC consultant, for the COGEL Award. The Executive Director reported that Dr. Alexander retired this year and that no less an expert than Theodore White has referred to Dr. Alexander's work as "The Bible of Campaign Finance."

C. Computer Planning

Executive Director Herrmann advised the Commission that over the past half-decade, the Governor and both parties in the Legislature have been very supportive of ELEC's efforts to recomputerize and establish an electronic filing system. According to Executive Director Herrmann, by next year, ELEC is planning to have a state-of-the-art system in place that will put candidate reports on the internet before the election, allow New Jersey citizens to search ELEC's extensive database of contribution information online, and permit candidates to file reports by diskette starting with the 1999 general election for members of the General Assembly. He said that the staff is very hopeful that the Legislature will support Governor Whitman's \$1 million computer initiative to make this goal possible.

D. Summer Meeting Schedule

July 28, 1998 in Trenton, 10:00 a.m.;
August 12, 1998 in Trenton, 11:00 a.m. (if necessary);
September 18, 1998 in Trenton, 9:00 a.m.; and,
September 29, 1998 in Trenton, 2:00 p.m. (25th Anniversary Celebration).

3. Approval of Public Session Minutes of May 27, 1998

On a motion by Vice Chair Linett, seconded by Commissioner Ware, and passed by a vote of 3-0, the Commission approved the Public Session Minutes of May 27, 1998. Commissioner Franzese abstained because she was not present at the May 27, 1998 meeting.

4. Advisory Opinion Request No. 05-1998

Dr. Austin Ken Kutscher, a candidate for State Senate in the 1997 general election, requested an advisory opinion seeking permission to use his candidate committee funds to pay costs arising out of a car accident involving a vehicle being driven by a member of his campaign staff.

Dr. Kutscher indicated that a car was rented for the use of Matt Colbert, his 1997 general election campaign manager, and that the car was being driven on October 4, 1997 by the campaign manager to a campaign event at the time of the accident. Dr. Kutscher stated that the car was hit by a deer and sustained \$2,054.89 in damage, an amount below the \$2,500 deductible on his car insurance policy.

Staff recommended that Dr. Kutscher be advised that the use of candidate committee funds to pay costs related to the car accident is permissible as a campaign expense because the accident occurred while the campaign manager was employed by the campaign and on his way to a campaign event. Staff notes that this expenditure, like all other candidate committee expenditures, is subject to campaign reporting.

Chair Martin suggested that staff develop a definition of "campaign worker" for future use.

Commissioner Linett said that the Commission should propose changes to the statute to curtail the ever expanding uses of campaign funds. He said that when an individual contributes to a campaign, he or she expects the contribution to be used only for campaign purposes. He said that he doubted that contributors approve of the expanded purposes for which campaign money is now used.

Vice Chair Linett said, however, that the Commission must approve this response to the Advisory Opinion Request because current law permits such a use.

Commissioner Ware said that when a person gets involved in a campaign, he or she often does a considerable amount of traveling. She said that the Commission is discussing a much broader issue than it might think.

Chair Martin said that the candidate should get a rider on his or her insurance if the car is to be used in a campaign. He also stated that the response should be limited to the campaign staff member as described by Dr. Kutscher.

On a motion by Commissioner Ware, seconded by Vice Chair Linett and passed by a vote of 4-0, the Commission approved the staff recommendation and directed staff to issue a response limited to the campaign staff member as described by Dr. Kutscher pursuant to the Advisory Opinion Request.

5. Reimbursement of Lobbying Expenditures

At the April meeting, the Commission directed staff to draft a regulation that would permit reimbursed benefit-passing expenditures in *de minimis* amounts to be excluded from the Annual Reports of lobbyists. In response, staff 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 of \$200.

Staff had noted that there are sound public policy arguments for encouraging officeholders to make reimbursements for lobbying benefits they receive. Reimbursement of the full value of an item by the officeholder minimizes his or her pecuniary interest in that item.

The text of the proposed regulation is at **N.J.A.C. 19:25-20.13 Notification of lobbying benefit**. For further information, please see the minutes of the May 27, 1998 Commission meeting.

Vice Chair Linett repeated his reservations expressed at the May 27, 1998 meeting. Vice Chair Linett said that the recipient of the benefit should only have to pay back the \$50 amount over the \$200 threshold amount, not the entire amount. He said that the Commission's earlier discussions did not contemplate a reimbursement of the full amount. Vice Chair Linett said that the Legislature should address this issue, not the Commission. He suggested that the thresholds be left as they are and that the Commission should not tinker with the statutory thresholds in the way staff is suggesting in the proposed regulation.

Legal Director Nagy noted that the staff is attempting to encourage reimbursements by permitting only *de minimis* benefits to be reimbursed, and thereby not disclosed. Legal Director Nagy said that the Commission would be relaxing the threshold by \$50 but that the price to be paid would be full reimbursement of all benefits received by the recipient, up to \$250 in a calendar year.

Commissioner Ware said that she believes this approach to definitely be in the public interest. She said that good people must be encouraged to run for public office. She said that to the extent that the media blows these matters out of proportion it is beneficial to permit candidates to reimburse *de minimis* amounts so as to not have to be identified as receiving them.

Vice Chair Linett stated that it really comes down to the legislative purpose.

Commissioner Ware said that there is no reason for a candidate or officeholder to be portrayed as a recipient of a benefit which carries a negative connotation when the value of a reimbursed item is so insignificant.

Vice Chair Linett said that he would support proposing the amendment in the interest of receiving public comments.

Commissioner Franzese said that she supports the proposal, stating that it is a healthy step to allow public officials to reimburse small amounts and avoid the appearance of impropriety.

On a motion by Vice Chair Linett, seconded by Commissioner Franzese and passed by a vote of 4-0, the Commission approved the draft proposal, and directed staff to file the proposal with the Office of Administrative Law for publication in the August 3, 1998 New Jersey Register. A public hearing will be scheduled for the September 18, 1998 meeting.

6. Limited Liability Partnerships

Please see the May 27, 1998 Public Session Minutes for details.

Counsel Wyse indicated that much consideration has been given to this issue. He said that one approach offered is that Limited Liability Partnerships be treated like corporations. He said that a second approach would be to treat them as partnerships but to eliminate the requirement that the individual partner's signature accompany each contribution and allocation. Counsel Wyse said that the Commission might allow one individual, such as a managing partner, to certify the contribution and provide a list of contributors and the allocation formula for each contribution rendered to candidates and committees in New Jersey. He said that the certification and list of contributors would apply to each check.

Counsel Wyse said that the exception to this rule would be in the case of gubernatorial contributions that are matched with public dollars. He said that in this case individual signatures and an allocation form would still be required for each contribution.

Legal Director Nagy said that he has reservations about applying this approach to contributions from partnerships to candidates. He said that he has concerns for disclosure. Legal Director Nagy indicated that a large contribution could be made from a Limited Liability Partnership to a candidate with the result that none of the partners is identified on reports because their allocated amount would be under \$300.00. He said that in this case, neither the entity, nor the partners would be disclosed on reports.

Vice Chair Linett said that it is not the Commission's problem to worry about internal governance.

Mr. Elmer Matthews, on behalf of Ernst and Young, Limited Liability Partnership, said that the Limited Liability Partnership's main office in Maryland would write a check to the Ernst and Young Continuing Political Committee (CPC) in the State of New Jersey and the Continuing Political Committee would contribute to candidates. He said that he was still unsure as to how to direct the main office. Mr. Matthews said that as of now no contributions were being made by the Continuing Political Committee in New Jersey until this matter is resolved.

Commissioner Ware said that she was in agreement with reducing the administrative burden on Limited Liability Partnerships. However, she added, the Commission must consider how to obtain disclosures of large contributions by large entities while easing the administrative burden.

Mr. Matthews said that current regulation has a chilling effect on professional giving.

Legal Director Nagy said that he has no problem with requiring a certification of a managing partner in the scenario mapped out by Mr. Matthews where a Limited Liability Partnership entity made a contribution to its own Continuing Political Committee. He said, however, he was concerned with the direct giving to candidates by a Limited Liability Partnership and the lack of disclosure that would result.

Chair Martin suggested that the proposed regulation deal only with the narrow issue of the procedure when the parent Limited Liability Partnership makes a contribution to its Continuing Political Committee and the Continuing Political Committee in turn makes contributions to candidates.

On a motion by Vice Chair Linett, seconded by Commissioner Ware and passed by a vote of 4-0, the Commission agreed upon this approach and directed Counsel Wyse to prepare a proposal for the July agenda only addressing the issue of how a Limited Liability Partnership may certify the allocation of its individual partners when making contributions to its Continuing Political Committee and the procedure by which this is accomplished. In other words, the proposed amendments to the existing regulations should cover only Limited Liability Partnership contributions made to its Continuing Political Committee and contributions by its Continuing Political Committee to candidates. The issue of direct contributions from the Limited Liability Partnership to candidates will not be addressed in this proposal.

7. 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.

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- 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.

8. 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 1:30 p.m.

Respectfully submitted,

Frederick M. Herrmann, Ph.D.
Executive Director

FMH/elz