



State of New Jersey

ELECTION LAW ENFORCEMENT COMMISSION

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PUBLIC SESSION MINUTES

December 21, 2000

Chair Martin, Vice Chair Franzese, Commissioner Lederman, Counsel Wyse, Senior Staff, and Deputy Legal Director Nedda Gold Massar were present. Commissioner Ware 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 November 21, 2000

On a motion by Commissioner Lederman, seconded by Commissioner Ware and passed by a vote of 3-0, the Commission approved the Public Session Minutes of November 21, 2000.

3. Executive Director's Report

Vice Chair Franzese arrived at this point in the meeting.

A. Staff Activities

Executive Director Herrmann reported that Director of Compliance and Information Evelyn Ford has completely revised the PAC Compliance Manual. He said that as part of its distribution, a copy will be placed on the web site.

The Executive Director noted that on October 14, and October 15, 2000, Director Ford testified during the trial of Camden Mayor Milton Milan in Federal District Court about ELEC filing requirements. Executive Director Herrmann stated that on October 16, 2000, Assistant Director of Compliance and Information Linda White and Assistant Compliance Officer Robyn Rich staffed a consulting table at the Annual League of Municipalities conference in Atlantic City.

Executive Director Herrmann introduced two new staffers who recently joined the Commission. They are:

- Brian Robbins – Assistant Systems Developer, and
- Lauren Yarosheski – Assistant Public Finance Analyst.

B. COGEL Conference

Executive Director Herrmann reported that Commissioner Ware, Legal Director Nagy, Deputy Legal Director Massar, and he attended the 22nd annual COGEL Conference in Tampa, Florida.

According to the Executive Director, they attended a number of sessions including:

- A lobbying legislation update,
- A campaign financing legislation update,
- Cyber campaigning,
- Soft money,
- Electronic filing,
- Internet disclosure,
- Issue advocacy spending,
- An analysis of the 2000 election, and
- Insulating board members from political pressures.

Executive Director Herrmann suggested that, based on the last-mentioned session, and the fact that ELEC is entering a gubernatorial election cycle, it may be a good idea to have staff review agency communications policy at the January meeting.

The Executive Director advised the Commission that among the speakers were:

- Governor Jesse Ventura of Minnesota,
- Former Governor Ruben Askew of Florida, and

- Professor Larry Sabato of the University of Virginia, who is referred to by the Wall Street Journal as the most quoted college professor in America. (Executive Director Herrmann noted that Professor Sabato mentioned to him what a great job Deputy Director Brindle has done on the white papers).
- Curtis Gans – Director of the Committee for the study of the American Electorate,
- Trevor Potter – former Chair of the Federal Election Commission, and
- New Jersey State Senator William Schluter.

Executive Director Herrmann informed the Commission that many ELEC-authored publications were featured in the display area including:

- The Annual Report,
- White Paper #14 – Local Campaign Financing,
- Lobbying in New Jersey 2000,
- The Cost Index Report,
- NORCOL Lobbying Guidebook,
- COGEL Campaign Financing and Lobbying Bibliography, and
- The latest edition of Public Integrity with articles by Deputy Director Brindle and himself.

The Executive Director noted that he served as a discussion leader at a breakfast table discussion about the role of executive directors. Executive Director Herrmann mentioned that he was also recognized for his service on two COGEL committees (Awards and Publications).

C. Legislative Developments

The Executive Director related that on December 14, 2000, he testified before the Senate State Government Committee on S-1985 (Cardinale), which proposes a number of modifications to the Gubernatorial Public Financing Program designed to “level the playing field” especially when personally-rich or well-connected candidates run without accepting public money and the expenditure limit. According to Executive Director Herrmann the bill makes the following changes:

1. out-of-state and undisclosed contributions are not counted toward qualifying of matching,
2. a candidate must take public financing in the Primary and General elections,
3. a non-participating candidate (NPC) must file additional reports including 48-hour notices for all contributions of over \$500 received after raising various threshold amounts,
4. the opponent of an NPC is granted an expanded expenditure limit of \$6 million in the primary (instead of \$3.8 million) and \$11 million in the general

(instead of \$8.4 million) when the NPC raises the trigger amounts of \$1.234 million in the primary and \$2.884 million in the general (these are the amounts needed to be raised to hit the public financing cap of \$2.3 million in the primary and \$5.6 million in the general), and

5. The opponent of an NPC is allowed to receive additional public funds up to another \$1.2 million in the primary and \$1.3 million in the general at a 1:1 matching ratio.

The Executive Director testified that ELEC had never before reviewed most of the ideas in the bill except for the out-of-state matching provisions. He stated that on that issue the Commission stated in its 1998 annual report that it would leave any policy determination to the Legislature. He said that he advised the committee he would present the bill to the Commission at today's meeting for its review. Executive Director Herrmann noted that ELEC has traditionally made recommendations to change the program only after conducting postelection hearings. The Executive Director reported that the committee released the bill without recommendation and with two amendments:

- to not provide the additional public funding, and
- to double the trigger amount needed for activating the expanded expenditure limit.

Executive Director Herrmann stated that there were a number of criticisms of the bill from members of the committee including:

- opposition to requiring participation in both the primary and general,
- a challenge to only applying the expanded expenditure limit in the primary to members of the party with an NPC,
- taking issue with not matching out-of-state contributors as unfair to minorities, and
- a fairness concern based on changing the program "late in the day" and not having consultation between the two parties prior to the committee meeting about changing the "rules of the game."

The Executive Director mentioned that there were also questions of constitutionality. He advised the Commission that on December 18, 2000, S-1985 passed the Senate 22-17.

Mark Edgerton, a 2001 gubernatorial candidate, addressed the Commission. He stated that at no time in the past have out-of-state contributions been excluded from the public fund matching process, and that to exclude them at this late date is inappropriate

and possibly unconstitutional. He also noted that an average contributor is concerned that his or her employer will know about contributions to candidates. Therefore, for undisclosed contributions to be ineligible for match is a problem.

Executive Director Herrmann reported that on December 14, 2000, he also testified before the Senate State Government Committee on S-1986 (Allen/Inverso) which requires that a candidate who contributes more than \$100,000 of personal funds to his or her own campaign must file his or her most recent Federal Income Tax return with ELEC. He stated that ELEC had never reviewed this issue either but did agree with two of the senators who raised concern about: constitutionality, federal preemption, and federal law protecting the privacy of tax returns. According to the Executive Director, the bill was not released.

Executive Director Herrmann noted that on December 18, 2000, A-2647 (Weingarten/O'Toole), which requires that publicly-financed candidates for governor disclose donors to any 527 committee or similar organizations with which they are affiliated, passed the Senate 39-1.

With regard to the pending legislation mentioned by Executive Director Herrmann, Chair Martin stated that the Commission has always cherished its neutrality. He said the Commission has never made recommendations except in a non-election setting.

Commissioner Lederman added that she agreed with the focus of neutrality but that the Executive Director should be permitted to provide technical information.

Vice Chair Franzese said that the Commission's role in this setting should be one of informing, not influencing.

Commissioner Ware said that she shared the concern for maintaining neutrality.

D. Winter Meeting Schedule

January 17, 2001, 11:00 a.m. in Trenton,
February 21, 2001, 11:00 a.m. in Trenton, and
March 21, 2001, 11:00 a.m. in Trenton.

4. 2001 Gubernatorial Public Financing Program Preparation

Deputy Legal Director Nedda G. Massar presented a memorandum describing steps which have been taken by staff to prepare for the 2001 public financing program and to outline proposed procedures for certification by staff of public matching funds to participating candidates. Deputy Legal Director Massar reviewed how the staff has prepared for the program and noted that a Data Entry Operator will be hired in the near future. She indicated that all other staff have been hired and are being trained. She said also that the

existing public financing computer module has been examined and simulated submissions will be performed as part of training of new staff members. She added that new procedures have been developed for receipt of matching funds submissions and gubernatorial campaign reports by electronic filing. Among other tasks, Deputy Legal Director Massar said that public matching fund submission forms have been reviewed and revised and that a letter was mailed to all individuals identified as interested in the gubernatorial primary election announcing the availability of staff for one-on-one training sessions.

Deputy Legal Director Massar next reviewed matching fund procedures. She said that once a candidate is qualified, all submissions will be subject to a thorough review process. She said that staff anticipates that the detailed submission review process for initial submissions received from each campaign, will take a minimum of three weeks and that the time required for staff to process a submission is also affected by the number of candidates making submissions received on each submission date. Deputy Legal Director Massar noted that as campaigns become familiar with the complex public financing submission requirements, later submissions usually contain fewer errors and therefore can be reviewed more quickly. She said that staff will report on the status of any submissions received on January 8, 2001.

Deputy Legal Director Massar next discussed the process for certification of public funds amounts to Treasury by the staff. At this point, she asked, in the interest of an efficient certification process that the Commission specifically authorize it to certify public fund amounts to the Department of Treasury for payment upon completion of its review of a submission. She said that matching fund checks will then be available from the Department of Treasury for deposit into a candidate's public funds bank account and that complete contributor lists will be made available to the public on the Commission's web site at the same time that funds are deposited for a candidate. Deputy Legal Director Massar said that at each Commission meeting, staff will report on the status of public funds submissions received.

The Deputy Legal Director reviewed the process for proceeding with gubernatorial debates stipulating that to qualify for receipt of public matching funds, each gubernatorial candidate must sign an agreement to participate in two debates. Included in the review was a chronology of events applicable to the 2001 gubernatorial debates. They include:

- Debate sponsor application deadline,
- Debate sponsor selection deadline,
- Last date to qualify to debate,
- Earliest date for debate,
- Latest data for debate, and
- "Emergency" debate deadline.

Deputy Legal Director Massar also discussed the guidelines for applicants to apply for sponsorship of debates.

Finally, Deputy Legal Director Massar reviewed the processes of expenditure compliance and expenditure limit litigation.

Mr. Paul Josephson, Counsel to gubernatorial candidate Jim McGreevey was recognized by the Chair. He praised the work of Deputy Legal Director Massar and the public financing staff stating that he has been working with the Director and acquiring training vis-à-vis the system.

Chair Martin recognized Ms. Patricia Teeman, Executive Director of the New Jersey League of Women Voters. Ms. Teeman asked if an association sponsoring a primary gubernatorial debate would be precluded from sponsoring a general election debate.

Chair Martin responded that an association would not be precluded from sponsoring both primary and general election debates.

Commissioner Lederman asked if the meeting to determine debate sponsors could be pushed up to March instead of April. Commissioner Lederman stated that it takes some time to plan a debate effectively. Deputy Legal Director Massar indicated that there would be no problem in changing the debate sponsorship selection meeting.

On a motion by Commissioner Lederman, seconded by Vice Chair Franzese and passed by a vote of 4-0, the Commission approved the public financing procedures for 2001.

Deputy Legal Director Massar reported that no further information has been received from Cleta Mitchell, Esq., concerning the Advisory Opinion Request on behalf of eContributor.com, Inc., and that the request is being considered as withdrawn.

5. Resolution to go into Executive Session

On a motion by Vice Chair Franzese, seconded by Commissioner Lederman and passed by a vote of 4-0, the Commission resolved to go into 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 Vice Chair Franzese, seconded by Commissioner Lederman and passed by a vote of 4-0, the Commission voted to return to Public Session.

7. Adjournment

On a motion by Commissioner Lederman, seconded by Vice Chair Franzese and passed by a vote of 4-0, the Commission voted to adjourn at 1:00 p.m.

Respectfully submitted,

Frederick M. Herrmann, Ph.D.
Executive Director

FMH/elz