



State of New Jersey

ELECTION LAW ENFORCEMENT COMMISSION

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LYNNAN B. WARE
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Counsel

PUBLIC SESSION MINUTES

January 17, 2001

Chair Martin, Vice Chair Franzese, Commissioner Ware, Commissioner Lederman, Counsel Wyse, 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. Approval of Public Session Minutes of December 21, 2000

On a motion by Vice Chair Franzese, seconded by Commissioner Ware and passed by a vote of 4-0, the Commission approved the Public Session Minutes of December 21, 2000.

3. Executive Director's Report

A. Staff Activities

- Executive Director Herrmann mentioned that Deputy Director Brindle was interviewed by NJ 101.5 Radio about White Paper #14 Local Campaign Financing on December 27, 2000. He indicated that a major finding of the study was that political party committees are overwhelmingly the dominant source of contributions to county and municipal candidates. The Executive Director said, moreover, the paper found that there is an exponential growth in local campaigns spending. According to Executive Director Herrmann, in the past decade, county and municipal spending has increased at the same level as legislative spending by almost 60 percent. He added that school board spending has increased even more dramatically by an astounding 215 percent.

- Executive Director Herrmann reported that staff accomplished the first “reprinting” in Commission history of an ELEC report reproducing the now classic 1982 Public Financing Study. He noted that after nearly two decades, this analysis is still in demand and ELEC’s supply was down to about five copies. Executive Director Herrmann stated that the continued usefulness of this report is a great credit to the staff members who worked on it including current staffers: Legal Director Gregory E. Nagy, Director of Systems Administration Carol Neiman, Senior Data Entry Operator Shirley Bryant, and Principal Receptionist Debra Kostival. He mentioned also that Legal Secretary Ruth Ford did a magnificent job in republishing the manuscript.
- Executive Director Herrmann announced that he has been renamed to both the COGEL Awards Committee and the Publications Committee. The Executive Director said that the latter committee last year redesigned COGEL’s quarterly publication the Guardian into a weekly electronic legislative update and a quarterly features edition with articles and book reviews.
- According to Executive Director Herrmann, the Committee also oversaw COGEL’s inclusion as a co-sponsor of Public Integrity which all members will now get as an additional benefit of membership.

B. Computer News

The Executive Director reported that ELEC’s web site was very favorably featured in a cover story about digital democracy in the December 2000 issue of the New Jersey Reporter. He advised the Commission that the site is at the cutting edge of the expansion of political information on the Internet. Executive Director Herrmann noted that staff is working on so-called “fill-in forms” for the web site. He informed the Commission that filers will be able to complete their forms on-screen and then print them out and mail them to the Commission. Executive Director Herrmann stated that the advantage to the filer is an easy method for filling out and filing ELEC forms. He added that the advantage to the public, the media, and ELEC is fewer hard-to-read handwritten forms being filed. Executive Director Herrmann acknowledged that Director of Systems Administration Neiman got the idea from the I.R.S. web site.

Executive Director Herrmann advised the Commission that ELEC has entered its Computer Project Initiative into an awards competition sponsored by the John F. Kennedy School of Government at Harvard University. He said that awards are given annually for “creative governmental initiatives that are especially effective in addressing vital public concerns.”

C. Winter/Early Spring Meeting Schedule

February 21, 2001, 11:00 a.m. in Trenton,
April 4, 2001, 11:00 a.m. in Trenton, and
April 18, 2001, 11:00 a.m. in Trenton.
May 23, 2001, 11:00 a.m. in Trenton

4. Ex Parte and Public Communications

Counsel Wyse presented proposed policies related to public communications to and by the Commission. The issues involved included: (1) ex parte communications to the Commissioners by persons who are interested in pending Commission investigations or complaints, or who have other business before the Commission, and (2) public statements by or on behalf of the Commission related to matters pending before the Commission. Counsel Wyse's presentation restated policies adopted by the Commissioners in November, 1995, and proposed additional policies to be adhered to by Commissioners and agency staff. For details on current policies, see memorandum from Counsel Wyse to the Commissioners dated November 8, 1995. The revised policies on ex parte and public communications as recommended by Counsel Wyse are as follows:

- (1) No Commissioner or employee of the Commission shall comment in public or make any statement to any member of the public about any pending or impending investigation, litigation, or other proceeding involving the Commission as an investigating or prosecuting agency, or any pending or impending advisory opinion request, rulemaking or legislative proposal, audit, application for public financing, request for selection to sponsor a gubernatorial public debate, or other matter requiring the exercise of authority or discretion by the Commissioners, or the discharge by the Commission of its statutory responsibilities. This policy shall not prevent the Commissioners or appropriate members of the Commission staff from making public statements concerning matters of public record in the course of carrying out their official duties or from explaining for public informational purposes the general hearing and investigation procedures of the Commission, or the general nature or procedural status of any pending rulemaking, contested case, or other agency proceeding, provided that no comment is made regarding the substance or merits thereof. Furthermore, the foregoing shall not prevent the Executive Director, or his designee, from issuing routine informational statements about the agency, its official actions and other matters of public record in his or her capacity as spokesperson for the Commission.
- (2) No Commissioner or employee of the Commission involved in the decisional process shall initiate, willingly participate in, or give consideration to any ex parte communication with any third party regarding any pending or impending contested case, proceeding or investigation in which the Commission is the investigating or prosecuting agency, or any pending advisory opinion request, rulemaking, application for public financing, or other matter involving prospective action by the Commissioners in their official capacity, except as expressly authorized by law, and except to the extent required for the proper and lawful disposition of the matter in question in the ordinary course. Ex parte communication does not include statements by any person publicly made in a public forum, or statements or inquiries by any person limited to the procedural status of a pending matter or proceeding.
- (3) If any Commissioner or employee of the Commission shall receive any verbal or written ex parte communication prohibited by this policy, the person receiving

same shall, if the communication is verbal, immediately inform the party making the communication that such ex parte communications are prohibited and that the communication will not be considered. As soon thereafter as is reasonably practicable, the recipient of the ex parte communication shall report the substance and circumstances of the communication to the other Commissioners and to the Executive Director. If the ex parte communication is written, the recipient shall promptly deliver the same to the Executive Director for placement in the Commission's files and shall report the fact of its receipt to the other Commissioners.

- (4) The Executive Director, or a staff person designated by the Executive Director, shall be responsible for handling all public communications and inquiries (including communications with and inquiries by the press) concerning any business before the Commission, including those matters referred to in Paragraph 1 above. All public statements on behalf of the Commission concerning Commission business shall be communicated through the Executive Director or other designated spokesperson, and if any inquiry or request for information concerning such matters shall be made to a Commissioner, the same shall be referred to the Executive Director or designated spokesperson.
- (5) The Commissioners and Commission staff shall at all times observe the Guidelines on Public Disclosure of Commission Documents in connection with communications related to pending or impending investigations and proceedings covered by these guidelines.

Chair Martin suggested that the policy recommendations seem to prevent Commissioners from even discussing procedural matters and that they may be too restrictive.

Commissioner Lederman agreed with Chair Martin. She acknowledged the fact that Commissioners perform the function of judges but noted that there was a public policy dimension to their role as well. Commissioner Lederman queried whether or not the policy recommendations would result in Commissioners being perceived as too far out of touch with the public. She suggested that the provisions be relaxed in so far as procedural questions are concerned.

Commissioner Ware commented that the policy guidelines were established for the Commissioners' own protection. She said that she would not be adverse to relaxing the guidelines in so far as procedural questions were concerned.

Commissioner Lederman expressed the concern that the Commissioners would be insulating themselves from the public to a greater degree than necessary.

Counsel Wyse stated that the thrust of the proposal was to address concerns vis-à-vis potential attempts to influence Commissioners regarding advisory opinions, regulations, and pending cases.

Executive Director Herrmann stated that the necessity of revisiting the Commission's communication policy was precipitated by a seminar conducted at the COGEL conference.

Legal Director Nagy added that the proposal is designed to further insulate Commissioners from public pressure. He said that as a practical matter, in terms of discussing matters with the public, the line should be drawn at the point where it is discerned that implicit or explicit threats or attempts to influence are being made.

Commissioner Lederman queried as to why the Commission feels it should change the 1995 policy, which is directed toward litigation matters, and extend the policy to advisory opinions and other policy matters. She said that placing litigation matters and policy matters on the same weighty plane is where the difficulty comes in. Commissioner Lederman said that public policy should be distinguished from litigation matters.

Vice Chair Franzese stated that she believed that the proposal was not too restrictive and would not prevent Commissioners from speaking about public policy matters of the Commission at seminars or in the class room, etc. She said also that it would not restrict Commissioners from talking about procedural matters. Vice Chair Franzese said that prudence and first amendment concerns should govern. She suggested inserting "such" between concerning and Commission in paragraph 4, line 5, and substituting the word "substantive" for "such" in paragraph 4, line 7.

Executive Director Herrmann stated that the policy recommendations are meant for the Commissioners' protection and not to be overly restrictive.

On a motion by Commissioner Lederman, seconded by Commissioner Ware and passed by a vote of 4-0, the Commission approved the communication guidelines as amended to clarify that the guidelines would not restrict the Commissioners from speaking about procedural matters or public policy matters not directly before the Commission.

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.

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- C. A report on written requests for investigations of possible violations, which report will not become public. However, any complaint which may be generated as a result of a request for an investigation 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 Ware 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