



State of New Jersey

ELECTION LAW ENFORCEMENT COMMISSION

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PUBLIC SESSION MINUTES

February 21, 2001

Chair Martin, Commissioner Ware, Commissioner Lederman, Counsel Wyse, Senior Staff, and Deputy Legal Director Nedda Gold Massar were present. Vice Chair Franzese 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 January 17, 2001

On a motion by Commissioner Ware, seconded by Commissioner Lederman and passed by a vote of 4-0, the Commission approved the Public Session Minutes of January 17, 2001.

3. Executive Director's Report

A. Commission News

Executive Director Herrmann expressed congratulations to Commissioner Ware for being chosen Moorestown's Citizen of the Year.

The Executive Director reported that on January 29, 2001, Dr. Herbert E. Alexander visited the Commission's office. According to Executive Director Herrmann, Dr. Alexander was ELEC's consultant during 1973-1978, 1982, and 1986-1988. The Executive Director said that Dr. Alexander is probably the foremost expert in the world in campaign financing, helping to design ELEC's nationally acclaimed Gubernatorial Public Financing Program.

B. Staff Activities

Executive Director Herrmann said that ELEC will again be participating in the Public History Internship Program run by the History Department of Rutgers University. He noted that the Commission is one of over a hundred state, public, and private organizations that are part of this program. The Executive Director informed the Commission that students receive course credit for their experience and assist agencies in performing a wide variety of tasks. According to Executive Director Herrmann, ELEC has been an attractive site in the past because of its analytical publications and should now be even more attractive because of its web page.

Executive Director Herrmann announced that part two of the Campaign Financing Symposium edited by him appeared in the Winter, 2001 issue of Public Integrity. He said that the second series of articles features Ed Feigenbaum of the Indiana Insight Consulting Group on the COGEL Model Law, Craig Holman of the Brennan Center for Justice at the New York University School of Law and Bob Stern of the California Center for Governmental Studies on electronic filing (an essay that refers to ELEC's web site as one of the best disclosure systems in the country), and Ron Michaelson of the Illinois Board of Elections on campaign financing activity in the states. Executive Director Herrmann reported that Legal Director Nagy and Associate Legal Director Gail Shanker wrote the excellent appendix on selected court decisions. He added that also in the issue was a book review by him of Anthony Gierzynski's Money Rules: Financing Elections in America.

The Executive Director informed the Commission that Director of Administration Barbra Fasanella, Fiscal Officer Elaine Salit, and Administrative Assistant Elbia Zeppetelli have researched the purchasing of and purchased a new binding machine to replace our old one, which is no longer made and for which replacement parts are becoming harder and harder to attain. Executive Director Herrmann said that the new machine was half the price of the older one and produces a better product more efficiently. The Executive Director advised the Commission that instead of having to punch holes and then adding plastic binding strips, the new machine in a single step binds with a cloth strip that can be inscribed with a document's title. According to Executive Director Herrmann, ELEC is the first state agency to acquire this exciting new technology. Executive Director Herrmann reported that the salesperson, moreover, praised ELEC for the quality of its publications and felt the new machine would be a perfect fit. He said that by combining this new machine with Administrative Assistant Zeppetelli's desktop publishing skills, ELEC will have a state-of-the-art publications capacity.

Executive Director Herrmann advised the Commission that on February 9, 2001, he served as a judge for a statewide, high school competition sponsored by the New Jersey Center for Civic and Law-Related Education. He noted that the participating students were required to answer questions about the Constitution and Bill of Rights before a mock congressional committee comprised of the judges. He said that the judges were then required to evaluate and score the answers.

Executive Director Herrmann mentioned that on February 14, 2001, Systems Administrator Carol Neiman and Associate Director of Compliance and Information

Linda White spoke before the Whitman Series on Women in Government at Rutgers University on ELEC's rules and regulations and the use of the Commission's web site.

Executive Director Herrmann introduced Tamika Kinsey who joined the staff in February, 2001, as a Public Financing Data Entry Operator.

C. Legislative Developments

According to Executive Director Herrmann a recently introduced bill, S-2083 (Gormley), appropriates \$3 million to the Commission. He noted that it is based on the growth in campaign financing activity, particularly at the municipal/school board level as articulated in White Paper #14, the enactment of more complex campaign financing laws during the nineties, and the enhanced visibility of reporting because of the Internet. Executive Director Herrmann said that the bill was referred to the Senate Budget and Appropriations Committee.

D. Spring Meeting Schedule

April 4, 2001, 10:00 a.m. in Trenton;
April 18, 2001, 10:00 a.m. in Trenton;
May 23, 2001, 11:00 a.m. in Trenton; and,
June 20, 2001, 11:00 a.m. in Trenton.

4. Advisory Opinion Request from DiFrancesco for Governor, Inc. No. 01-2001

Peter G. Sheridan, Esq., representing DiFrancesco for Governor, stated that Lewis Eisenberg was asked to serve as campaign chair in a part-time, voluntary capacity. In that capacity, Mr. Eisenberg will be asked to conduct fundraising for DiFrancesco for Governor, Inc. (DFG) but will not have any other duties or responsibilities. According to DFG, the candidate, Senate President DiFrancesco, along with the campaign staff, will be making all campaign expenditure decisions and the persons listed as "staff" provided by the DFG do not include Mr. Eisenberg's name. Mr. Sheridan also reported that Mr. Eisenberg was associated with an organization named the Republican Leadership Council (RLC) until Mr. Eisenberg resigned from that body last year. Mr. Sheridan indicated that Mr. Eisenberg wishes to resume some role at the RLC, and simultaneously raise money for the DFG. Mr. Eisenberg has notified RLC that he would like to resume his participation in RLC, but he has specifically recused himself from all activities concerning New Jersey, if any, for the year 2001.

In his request for an advisory opinion, Mr. Sheridan asked whether or not Mr. Eisenberg's potential involvement with the RLC would constitute coordination between the DFG and the RLC. Specifically, the question involves whether or not Mr. Eisenberg can be a member of both committees and not have his membership result in coordination between the DFG and the RLC.

Mr. Peter G. Sheridan was recognized by Chair Martin. Mr. Sheridan stated that Mr. Eisenberg will not have any decision-making authority with the DiFrancesco Campaign and will not have any involvement with expenditures. He has no position presently with the

RLC. He added that if Mr. Eisenberg assumes a role with the RLC, he will have no involvement with any matter dealing with New Jersey.

Commissioner Lederman asked: will Mr. Eisenberg's fundraising be limited to outside of New Jersey for the RLC?

Mr. Sheridan answered that Mr. Eisenberg will not undertake any fundraising inside or outside of New Jersey for the RLC.

Chair Martin directed that the advisory opinion note the fact that the response is fact sensitive.

Commissioner Lederman added that she is concerned that money is fungible.

Legal Director Nagy stated that coordination is a question of conduct not appearance. Under the facts presented, because Mr. Eisenberg is not participating in RLC fundraising or expenditures for New Jersey campaigns, the coordination rule does not apply. Legal Director Nagy cautioned that other facts might yield different results.

Staff therefore recommended that, under the facts submitted, the dual role of Mr. Eisenberg, as Chair of DFG and as a participant in the RLC, does not establish coordination pursuant to the provisions of N.J.A.C. 19:25-16.30.

On a motion by Commissioner Ware, seconded by Vice Chair Franzese and passed by vote of 4-0, the Commission approved the staff's recommendation in the foregoing matter.

5. Issue Advocacy Organization Reporting by Publicly-Financed Gubernatorial Candidates

Legal Director Nagy explained that on January 30, 2001, Governor Christine Todd Whitman signed into law a bill that requires gubernatorial candidates, as a condition of receipt of public matching funds, to disclose contributions to and expenditures by issue advocacy organizations in which they have been involved. To implement the new law, staff prepared Forms P-2A (Candidate Certification of Non-Participation in Issue Advocacy Organization) and P-2 (Issue Advocacy Organization Report of Contributions and Expenditures) for use by 2001 gubernatorial candidates. A gubernatorial candidate must disclose his or her participation or non-participation in issue advocacy organizations before public matching funds may be certified to the campaign. Staff circulated the attached forms to all 2001 gubernatorial candidates who have filed reports with the Commission.

The new law vests authority in the Commission to determine whether or not issue advocacy groups organized under sections other than 527 or 501(c)(4) of the IRS Code are subject to reporting of contributions and expenditures.

James E. McGreevey, a 2001 gubernatorial primary election candidate, filed his first application for public matching funds on January 29, 2001, and staff therefore provided copies of Form P-2 and P-2A to him. In response, Candidate McGreevey filed a Candidate Certification of Non-Participation in Issue Advocacy Organizations on February 13, 2001,

certifying that during the four years prior to becoming a 2001 gubernatorial primary election candidate, he has not been and is not now involved in any issue advocacy organizations.

Mr. Paul Josephson, Treasurer and Counsel to the McGreevey Campaign, stated in a letter that several years ago Candidate McGreevey formed the Committee for Working Families, a federal political action committee, and that though the PAC was formed under Section 527 of the Internal Revenue Code, it is not an "issue advocacy organization" for purposes of the new law. He noted further that the Committee for Working Families has since its formation fully disclosed all contributions and expenditures as required by the Federal Election Commission (FEC).

Staff recommended with regard to its review of the McGreevey filing Form P-2A that the Commission accept the Form P-2A filed by Candidate McGreevey as compliant with the provisions of the new law. Staff believes that in as much as the McGreevey Committee has been registered and filing as a federal PAC, it does not qualify as an issue committee under the new law.

Mr. Sheridan noted that when the State party files with the FEC, it is required to file a copy of the report with the New Jersey Secretary of State. Mr. Sheridan asked: why not establish the same requirement in this case.

Mr. Paul Josephson, Counsel to the McGreevey Campaign, indicated that the McGreevey committee in question is registered as a federal PAC and has been reporting since its inception to the FEC. He indicated that full disclosure of CWF has always been Candidate McGreevey's goal. He noted that the reports are already available on the FEC's web site. He stated that Mr. McGreevey has been a strong supporter of disclosure and has satisfied federal law. He noted that he doesn't believe a separate filing with the Commission is necessary.

Commissioner Lederman praised the McGreevey Campaign for its interest in disclosure but asked: how can it be made even more transparent for New Jersey citizens? She suggested that the McGreevey filing be highlighted on the Commission's web site with regard to its link to the FEC.

Executive Director Herrmann suggested that the Commission may not want to be involved in choosing which committees should be highlighted and which should not. ELEC should look for an approach with general application.

Commissioner Lederman stated that in enacting this law the Legislature indicated that committees of this type should be disclosed. For this reason, the Commission should find a way to highlight these committees on the web site.

Mr. Josephson said that he shares the concern about the Commission choosing which committees to highlight but that the McGreevey Campaign would have no objection to being included on a list of all federal committees held by gubernatorial candidates that may be highlighted on the web site.

Commissioner Ware indicated that a statement of where the report is located and information is available would be sufficient.

Executive Director Herrmann said the Commission's web site already contains a link to the FEC and the IRS.

Mr. Josephson noted that the IRS has determined that if a Section 527 organization is filing with the FEC, there is no obligation to file with the IRS. He also stated that CWF is being wound down now and that any such federal PAC or issue advocacy organization operating after January 1, 2001 would have a problem with ELEC's coordinated expenditure rules. Mr. Josephson pointed out that federal PAC schedules and forms are different from the IRS disclosure.

Commissioner Lederman stated that New Jersey residents may want all information available in one location on the ELEC web site.

Deputy Legal Director Massar suggested that Mr. Josephson amend the Form P-2A with an addendum to indicate how to locate CWF reports on the FEC web site. She also indicated that staff would modify Form P-2A to include disclosure of any Section 527 or other IRS organization filing reports with the FEC or the Commission.

On a motion by Commissioner Lederman, seconded by Commissioner Ware and passed by a vote of 4-0, the Commission voted to accept the Form P-2A filed by Candidate McGreevey with the amendment and directed staff to amend Form P-2A to require candidates to list all organizations organized under Section 527, 501(c)(4) or other similar IRS Code Sections that have since inception filed with the FEC or ELEC.

Deputy Legal Director Massar reported that following a complete review of gubernatorial Candidate James E. McGreevey's January 29, 2001 first application for public funds, staff determined that the campaign is eligible to receive matching funds in the amount of \$2.3 million, the maximum in 2001 primary election matching funds.

6. Resolution to go into Executive Session

On a motion by Commissioner Ware, 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.

7. Return to Public Session

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On a motion by Commissioner Lederman, seconded by Commissioner Ware and passed by a vote of 4-0, the Commission voted to return to Public Session.

8. Adjournment

On a motion by Commissioner Lederman, seconded by Commissioner Ware 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