



State of New Jersey

ELECTION LAW ENFORCEMENT COMMISSION

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PUBLIC SESSION MINUTES

July 11, 2001

All of the Commissioners, 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 p.m. in Trenton, New Jersey.

2. Approval of Public Session Minutes of June 21, 2001

On a motion by Vice Chair Franzese, seconded by Commissioner Lederman and passed by a vote of 4-0, the Commission approved the Public Session Minutes of June 21, 2001.

3. Executive Director's Report

A. Budget Update

Executive Director Herrmann reported that ELEC's Fiscal Year 2002 budget will be a continuation one from last year. He noted that the operational budget is about \$3.1 million and that the Public Financing budget is \$1 million, with \$600,000 for administration and \$400,000 for the ballot statement program. The Executive Director added that the Commission also received \$10.1 million for distribution to publicly-funded general election candidates.

B. Northeastern Regional Conference on Lobbying (NORCOL) meeting

Executive Director Herrmann stated that ELEC staff will be participating in the annual NORCOL meeting, which is being hosted this year by the Connecticut State Ethics Commission. He said that the one-day nuts and bolts session will feature electronic filing demonstrations and legislation/litigation updates. According to Executive Director Herrmann, the meeting has always proved to be an excellent vehicle for regional staffs to get together to discuss relevant issues and current lobbying topics. The Executive Director reported that he has prepared an update of his annual publication "Lobbying In New Jersey" for distribution at the conference. He mentioned that it contains: a legislative history, a review of Commission legislative initiatives, statistics, current bills, a commentary on the lobbying law, a bibliography, and forms and instructions. The publication will also be made available to interested parties in New Jersey.

C. Future Meeting Schedule

August 15th (open date)
September 6, 2001 at 11:00 a.m. in Trenton;
October 18, 2001 at 11:00 a.m. in Trenton;
November 15, 2001 at 11:00 a.m. in Trenton; and
December 19, 2001 at 11:00 a.m. in Trenton.

4. Selection of 2001 Gubernatorial General Election Debate Sponsors

Six applications to sponsor the 2001 gubernatorial general election debates were received by the Commission. The applications were received from:

- The League of Women Voters of New Jersey Education Fund, WPVI-TV (Philadelphia), WABC-TV (New York), and The College of New Jersey;
- News 12 New Jersey in association with the Star-Ledger and the Eagleton Institute;
- New Jersey Network, the Philadelphia Inquirer, the New Jersey State Chamber of Commerce and its partners (New Jersey State League of Municipalities, Statewide Hispanic Chamber of Commerce, Metro-Trenton African-American Chamber of Commerce, and the New Jersey Association of Chamber of Commerce Executives);
- CN8-The Comcast Network, with NJ 101.5 Radio, C-SPAN, the Gannett Newspaper Group, Network Telemundo, and Monmouth University;
- William Paterson University, WABC-TV (New York), the Record, the Herald News, and AARP-New Jersey; and,
- Gloucester County Chamber of Commerce, the Gannett Newspaper Group, Rowan University, and the Gloucester County Times.

The deadline for candidates to file documentation to establish general election debate qualification is September 4, 2001. A gubernatorial candidate who is not participating in the public financing program may apply to participate in the general election debates by submitting, no later than the September 4th deadline, a statement of qualification demonstrating that the candidate has raised and spent \$260,000 in the 2001 general election. Staff will report to the Commission at the September meeting on the candidates who have qualified to participate in public financing in the 2001 general election and on those

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candidates who have filed statements of qualification to debate by the September 4th deadline.

The Commission is charged with deciding sponsorship based upon the following criteria:

- A sponsor must be unaffiliated with any political party or holder of or candidate for public office;
- A sponsor must not endorse any candidate in the pending general election, and must agree not to make any such endorsement until the completion of any debate sponsored by the organization; and,
- A sponsor must have previously sponsored one or more televised debates among candidates for statewide office since 1976, or be an association of two or more news publications or broadcasting outlets having between them a “substantial readership or audience in this state....”

The Commission was advised of each proposal through written applications which had been circulated to the Commissioners in advance of the meeting and by verbal comments provided by the representative groups at the meeting. The proposals were presented by the following individuals representing those groups applying for debate sponsorship:

- Patricia Tieman for the League of Women Voters of New Jersey Education Fund, Linda Munich for WPVI-TV, and Jesse Rosenbloom for the College of New Jersey;
- William Schlosser for News 12 New Jersey and its co-sponsors;
- Elizabeth Christophersen and William Jobes for New Jersey Network, and Joan Verplanck for the New Jersey State Chamber of Commerce, and their co-sponsors
- Lynn Doyle for CN8 and its co-sponsors;
- Dennis Santillo for William Paterson University and Barbara Johnson for WABC-TV and their co-sponsors; and,
- Ira Shafer for the Gloucester County Chamber of Commerce and its co-sponsors.

Commissioner Lederman asked Ms. Tieman of the League of Women Voters as to plans for newspaper involvement in advertising the debates. Ms. Tieman indicated that efforts will be made to involve the print media in promotional activities. She added that the League would underwrite these efforts with Schumann Foundation funds, the broadcast outlets would underwrite the production costs, and debate logistics would be handled by the College of New Jersey.

Commissioner Ware expressed the need to have South Jersey participation in the debates and asked if involvement by Rowan University would be possible. Linda Munich, of the WPVI, answered in the affirmative.

Vice Chair Franzese asked about the time of rebroadcast. Ms. Munich indicated that rebroadcast would be on the following Sunday morning but that no time has been set.

With regard to the application by News Channel 12, Vice Chair Franzese asked about the “extent of the reach of News 12?”

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Mr. Schlosser stated that News Channel 12 reaches 1.7 million homes in New Jersey, and that if selected the debate will reach Mercer County and through the southern tip of Ocean County. He said that the broadcast will be made available to other outlets via satellite for simulcast.

Commissioner Ware stated her concern that there be sufficient publicity for each debate. She stated that many homes still do not have cable and noted that she believed that the Commission has a mandate that the debate reach all New Jersey residents. Commissioner Ware reiterated her concerns about South Jersey's involvement.

Regarding the New Jersey Network proposal, Commissioner Lederman and Chair Martin expressed concern about the pre-debate dinner fee and asked whether or not people who did not plan to attend the dinner would have access to being part of the debate audience. Commissioner Lederman asked whether or not there would be any audience bias inherent in a paying audience.

Ms. Verplanck from the State Chamber of Commerce indicated that a \$65 dinner fee will be charged for attendees at the NJ PAC location in Newark but not for the audience in Trenton. She added that she believed that the urban setting for the debate would bring balance to the audience.

Commissioner Ware stated her concern with the \$65 dinner fee. Ms. Verplanck indicated that the Chamber of Commerce can address that concern with free tickets to the debate that do not include dinner.

With regard to the proposal from CN8, Commissioner Ware asked representative Lynn Doyle whether CN8 can partner with an entity containing a South Jersey venue.

Ms. Doyle responded that by partnering with Monmouth University and by anticipating an audience of 700 people, CN8 was offering a venue that is different from any offered now or in the past. She also indicated that the multi-media approach offered in the proposal would take the debates into the 21st century and provide increased access to the debates.

Vice Chair Franzese stated that she appreciated the multi-media approach.

The Commission next asked questions of Dennis Santillo, representing the William Patterson University application.

In particular, Commissioner Lederman expressed concern about the fee being charged for attendance at the debate and about the extent of audience participation and access.

Mr. Santillo stated that the fee was being charged for the purpose of underwriting the costs of the event and translation into Spanish. He added that the debate is available free of charge to all via television. He said that the audience would primarily be comprised of subscribers of the Distinguished Lecturer Series, students, and members of AARP-NJ.

Commissioner Lederman asked about live broadcast.

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Mr. Santillo said that the debate will be aired live by WABC-NY and rebroadcast by WPVI-Philadelphia on Sunday.

Vice Chair Franzese inquired about television audience size on Friday evening.

Barbara Johnson of WABC-TV (NY) said that studies show that the highest viewership takes place between 7:00-8:00 p.m. on Monday through Friday.

The Commissioners asked questions of Ira Shaffer, the Gloucester County Chamber of Commerce representatives.

Commissioner Lederman asked if this organization ever negotiated debates.

Mr. Hailey of the Courier-Post stated that a debate between Senate candidates Corzine and Franks was organized and conducted by the editorial board last year.

Commissioner Ware stated that "as you know I am a proponent of South Jersey involvement." She said that despite this fact she did not see an assurance in this proposal of a major broadcast outlet being involved. Commissioner Ware stated that television saturation was an important criterion that had to be considered by the Commission.

Mr. Shaffer stated that a major broadcaster is interested and will provide financial support if the Commission awards the debate to his organization.

The Commission discussed the various proposals and the applicable statutory and regulatory criteria.

Chair Martin thanked each applicant for the outstanding proposals and indicated that it was very difficult to choose between them. He said, however, that the law requires two publicly sponsored debates and asked the Commissioners for a motion to select said sponsors.

At this juncture, Commissioner Lederman stated her preference for the League of Women Voters proposal and the New Jersey Network proposal.

Chair Martin stated that he supported the New Jersey Network proposal and the William Patterson College proposal.

Vice Chair Franzese indicated that she preferred the League of Women Voters proposal and the New Jersey Network proposal, stating that the Commission must select sponsors on the basis of which proposals contain the potential for attracting the widest T.V. audience.

On a motion by Vice Chair Franzese, seconded by Commissioner Lederman and passed by a vote of 3-1, the Commission selected the League of Women Voters proposal to sponsor one gubernatorial general election debate. Chair Martin opposed the selection and indicated his preference for the William Paterson University proposal.

On a motion by Vice Chair Franzese, seconded by Commissioner Lederman and passed by a vote of 4-0, the Commission selected the proposal of New Jersey Network and its co-sponsors for one gubernatorial general election debate.

5. Advisory Opinion Request No. 06-2001

This Advisory Opinion Request was submitted by James Lamb, Esq., Counsel, on behalf of the Democratic Governors' Association (DGA). Mr. Lamb asked the Commission for an Advisory Opinion concerning DGA's possible reporting requirements under the New Jersey Campaign Contributions and Expenditures Reporting Act. This request was originally submitted on June 4, 2001, but subsequently withdrawn by Mr. Lamb prior to the June 21 Commission meeting. In a letter dated June 26, 2001, Mr. Lamb resubmitted the request for consideration by the Commission.

Mr. Lamb represented that the DGA is a private, nonprofit association composed of all Governors of the states and territories who are members of the Democratic Party. He stated that it is organized for the purpose of promoting Democratic policies and supporting the election of Democratic Governors. DGA conducts policy conference for its Governor members, works with the various representatives from the Governors' states in Washington, D.C., publishes policy reports, and makes contributions to gubernatorial candidates and State political party committees. In this calendar year, the DGA made a single contribution of \$37,000 to the New Jersey Democratic Party, and anticipates making a contribution to the Democratic gubernatorial candidate in New Jersey.

Mr. Lamb writes that DGA has no intention of making any further contributions to New Jersey committees or candidates in the next election following the 2001 general election.

Based on these facts, Mr. Lamb posed the following question:

Is the DGA subject to the reporting and other requirements of the Act as either a "political committee," or as a "continuing political committee," as those terms are defined in the Reporting Act?

Under the facts submitted, staff suggested that the DGA does not come within the statutory definition of a political committee or a continuing political committee, subject to the reporting and other requirements in the Reporting Act for those committees. Rather, the staff suggested that the contribution made to the State political party committee this year, and the anticipated contribution to be made by DGA to a New Jersey gubernatorial candidate are contributions from an association, not contributions from a political committee, or from a continuing political committee. Therefore, staff recommended that the DGA be treated as an association and that contributions from this entity be subject to the lower contribution limits pursuant to associations and reported as such by recipient entities.

Legal Director Nagy indicated that if the DGA were to solicit contributions with the stated or principal purpose of making contributions to New Jersey candidates or committees, or if the extent of the DGA's overall activities and expenditures made it apparent that its

“major purpose” was to aid or promote New Jersey candidates or committees, the PC or CPC definitions would become applicable.

Vice Chair Franzese stated that this result is consistent with the Buckley line of cases.

On a motion by Vice Chair Franzese, seconded by Commissioner Ware and passed by a vote of 4-0, the Commission approved the response recommended by staff and directed staff to issue a response to the Advisory Opinion request.

6. Report on 2001 Gubernatorial Primary Election Matching Fund Submissions

The following summarizes all 2001 primary election matching fund submissions received and reported to the Commission by Deputy Legal Director Nedda Gold Massar.

Candidate James E. McGreevey

Candidate McGreevey received the \$3.7 million public funds maximum established for the 2001 primary election. According to Deputy Legal Director Massar, staff completed its review of Candidate McGreevey's sixth submission, filed on June 18, 2001, and determined that Candidate McGreevey was eligible to receive public funds in the amount of \$143,160.00, an amount in excess of the \$73,012.00 needed by Candidate McGreevey to reach the \$3.7 million public funds maximum. Staff noted that the error rate on the submission was below ten percent.

Candidate Robert Franks

Deputy Legal Director Massar advised the Commission that staff completed its review of Candidate Franks' fifth submission, filed on June 11, 2001, and on June 22, 2001, deposited additional public funds in the amount of \$37,571.60. She said that using the percentage certification process, on June 28, 2001, staff deposited \$152,073.42 in public funds, that is, 80% of the anticipated public funds for Candidate Franks' seventh submission, filed on June 25, 2001. This amount was the amount necessary to reach the \$3.7 million maximum in 2001 primary election public funds. She said that staff completed its review of Candidate Franks' sixth submission, but no additional public funds were deposited because he had already received the maximum in primary election matching funds. The error rate on Submission Six was below ten percent.

Candidate Brett Schundler

According to Deputy Legal Director Massar, staff completed its review of Candidate Schundler's third submission, filed on June 11, 2001, and will deposit public matching funds in the amount of \$3,387.56. This amount is the amount necessary to reach the \$3.7 million public funds maximum. Staff notes that the error rate on Submission Three was below ten percent.

2001 Primary Election Continuing Compliance Review

Deputy Legal Director Massar added that on June 27, 2001, staff mailed a letter to the treasurer of each publicly financed primary election campaign concerning the restrictions on postelection spending pursuant to N.J.S.A. 19:44A-35 and N.J.A.C. 19:25-16.33 and 16.34.

7. Gubernatorial Public Financing Percentage Certification Process for the 2001 General Election

As presented by Deputy Legal Director Massar, staff sought Commission approval of guidelines for percentage certification of public funds to qualified 2001 gubernatorial general election candidates. The pre-review automatic percentage certification process has been successfully used in prior gubernatorial elections, including the 2001 primary election, to permit the Commission to provide promptly public matching funds to gubernatorial campaigns which have demonstrated a proven "track record" as established by a consistently low submission error rate.

Therefore, staff recommended that automatic percentage certification procedures similar to those adopted for the 2001 primary election be established for the 2001 general election and that the following conditions be observed:

- The automatic percentage certification process should not be applied to a first submission regardless of its date of receipt, and campaigns will be advised that all 2001 general election first submissions require at least a three-week turnaround time.
- Because it is preferable to conduct complete review of a submission prior to distribution of public funds, automatic certification percentage procedures should therefore be used in September, 2001, only if staff finds that it is unable to conduct complete submission review within two weeks. If necessary, an automatic percentage certification of 75 percent may be applied in September if a campaign establishes an ineligible rate consistently below 20 percent. If a campaign has an ineligible rate that is between 20 and 25 percent, its automatic certification will be set at 70 percent. A campaign with an ineligible rate higher than 25 percent will be separately evaluated.
- The automatic certification percentage for a campaign should be adjusted upward in October to 80 percent only if the campaign has produced diminished ineligible rates.
- N.J.S.A. 19:44A-33b requires that each public matching funds submission contain at least \$12,500 in contributions eligible for match, therefore, submissions should not be certified using the automatic percentage process if the \$12,500 incremental submission threshold is in jeopardy.
- Staff will report each month to the Commission on all submissions processed, including amounts of public matching funds distributed to candidates, error rate data, and submissions for which a percentage certification has been made.

On a motion by Commissioner Ware, seconded by Commissioner Lederman and passed by a vote of 4-0, the Commission approved the Gubernatorial Public Financing Percentage Certification Process for the 2001 General Election.

8. Change of filing date for Political Party Committees

Legal Director Nagy reported that as a consequence of the change of the primary election date from June 5, 2001 to June 26, 2001, legislation was signed on June 26, 2001 to

extend the date for State, county, and municipal political party committees to conduct their organizational meetings to July 17, 2001, that is 21 days following the June 26th primary election.

Legal Director Nagy recommended therefore that the Commission extend the date by which political party committees are required to file the Form D-3 designation from July 10 to July 31, 2001. He said that such an extension permits a political party committee to conduct its organizational meeting as late as July 17 as allowed by the new law, and provides a period of 14 days after that date to file the Form D-3. He added that these changes only apply to the current year 2001. He said that pre-existing filing deadline will be reinstated for all future elections.

On a motion by Commissioner Ware, seconded by Vice Chair Franzese and passed by a vote of 4-0, the Commission approved the staff recommendation to extend the Form D-3 filing date for 2001 to July 31, 2001.

9. 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.
- 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.

10. 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.

11. 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 1:45 p.m.

Respectfully submitted,

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Frederick M. Herrmann, Ph.D.
Executive Director

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