



State of New Jersey

ELECTION LAW ENFORCEMENT COMMISSION

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GREGORY E. NAGY
Legal Director

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Counsel

PUBLIC SESSION MINUTES

May 20, 2002

All of the Commissioners, Senior Staff, and Deputy Legal Director Nedda Gold Massar were present. Counsel Wyse was not 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 April 18, 2002

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 April 18, 2002.

3. Executive Director's Report

A. Staff Activities

Executive Director Herrmann reported that on April 15, 2002, the day before the school board elections, the Commission released its most recent White Paper, School Board Campaign Financing, written by Deputy Director Brindle. He noted that the white paper was the subject of a comprehensive story by the Associated Press. Executive Director Herrmann stated that school board spending according to the paper increased by 230 percent in the decade of the nineties, an increase which is quite remarkable when compared to the 60 percent increase in legislative candidate expenditures during the same period. The Executive Director reminded the Commission that over the past half decade, ELEC has issued two other white papers on

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local spending: a 1997 study of county political party committees and a 2000 study of local elections. He said that all three papers demonstrated significant increases in campaign finance activity at the local level. Executive Director Herrmann added also that the school board paper demonstrated a noticeable increase in partisan involvement in the traditionally non-partisan school board elections and noted that budget approval rates increased as voter turnout declined and partisan activity increased.

Executive Director Herrmann reported that the Legal and Computer staffs have added a new search function to the ELEC web site. According to the Executive Director, the new "alphabetical list of final decisions" now makes it much easier for the media and the public to search for these important enforcement documents. The Executive Director mentioned that each decision listed is hyperlinked to its complete text.

Executive Director Herrmann advised the Commission that on March 16, 2002, Associate Director of Compliance and Information Linda White and Associate Compliance Officer Kim Key ran a filing seminar in Passaic County. He said that two other seminars were conducted by Compliance and Information staff at the Roebling Building in Trenton on April 5, and May 1st, 2002.

Executive Director Herrmann informed the Commission that the Compliance and Information staff is moving ahead in the implementation of the new Lobbyist Photo-ID Program to help insure state house security. According to the Executive Director, ELEC will issue a laminated ID card using pictures that lobbyists will be required to file with the Commission. He noted that the staff will also provide each lobbyist with a chain necklace to hold and display the badge. Executive Director Herrmann reported that Assistant Compliance Officer Michelle McDevitt left the Commission on May 3, 2002, and that we all wish her well with her new position in the insurance industry.

B. Budget News

Executive Director Herrmann stated that on April 29, and May 7, 2002, Deputy Director Brindle, Director of Administration Barbra Fasanella, and he attended respectively the Senate and Assembly Budget Hearings for the Department of Law and Public Safety. He said that ELEC received no questions at either hearing this year nor did it receive a written question from the Office of Legislative Services. The Executive Director mentioned that Assemblyman Thomas H. Kean, Jr. (R-21) did comment to the Attorney General about whether or not the Commission had the necessary resources to enforce the law if the state decides to crack down on pay-to-play activities. The Executive Director reiterated that ELEC's budget for next year will probably be \$2.8 million, or five percent less than its downwardly adjusted appropriation for FY-2002. He said that this cut equals the average across the board reduction that all governmental agencies are experiencing during the state's current fiscal difficulties.

Executive Director Herrmann emphasized that ELEC's ongoing concern about the lack of adequate administration and enforcement of campaign finance laws at the local level should be heightened by recent federal indictments as well as the findings of its white papers that were cited earlier. He added that the Commission's call for a

doubling of its budget after the state's fiscal condition improves seems more necessary than ever. The Executive Director noted that ELEC would use the additional funding to create a local contributions/expenditures database, more thoroughly review local reports, and initiate a local educational outreach program.

C. Public Financing Study

Executive Director Herrmann mentioned to the Commissioners that staff suggests that the Commission begin to discuss its recommendations for its comprehensive gubernatorial public financing report at the July meeting. He said that by then, the staff will have had time to digest the testimony given at the Commission's two hearings. The Executive Director informed the Commission that over the summer, the independent review by an accounting firm of gubernatorial expenditures will proceed providing additional information for the report, which should be issued in the Fall.

D. Summer Meeting Schedule

June 20, 2002, at 11:00 a.m. in Trenton; and
July 11, 2002, at 11:00 a.m. in Trenton.

4. Public Hearing Concerning Proposed Amendments to Commission Regulations

A public hearing concerning two proposals for amendments to the Commission's regulations was conducted. The first proposal requires legislative agents to submit photographs for improved identification. The second implements recently-enacted statutory changes to contribution limits that became effective on January 8, 2002, and proposes a new rule that clarifies that Commission penalty proceedings are subject to the provisions of the Administrative Procedure Act.

A court reporter was present to record the public hearing discussion. Roxanne Vivanco, New Jersey Citizen Action, offered testimony. Copies of the transcript will be available upon request.

Legal Director Nagy noted that the proposals will be ripe for adoption at the Commission's June meeting. He advised the Commission that there will be an agency-initiated change in N.J.A.C. 19:25-11.2, the contribution limit chart, to establish the contribution limit from a national party committee to a legislative leadership committee at \$25,000 per year, not \$37,000 per year as appeared in the proposal.

On a motion by Commissioner Tober, seconded by Commissioner Lederman and passed by a vote of 4-0, the Commission voted to close the public hearing.

5. Advisory Opinion 01-2002

A request for an Advisory Opinion was received on April 12, 2002, from Thomas V. O'Neil, Executive Vice President, The Marcus Group, Inc. (TMG), a firm that is registered as a legislative agent under the Legislative Activities Disclosure Act. Mr. O'Neil asked whether or not "lobbying activity" to support or oppose a "grant resolution" before the State

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House Commission (SHC) is subject to reporting pursuant to the Legislative Activities Disclosure Act. The Commission reviews the “sale and leasing of state owned properties.” Though the Act does not specifically authorize the Election Law Enforcement Commission to issue advisory opinions concerning lobbying, ELEC regulations provide that the ELEC may, in its discretion, provide an advisory opinion concerning the applicability of the Lobbying Act to a specific set of facts and circumstances.

Mr. O’Neil writes that the SHC was created by the Legislature in 1953, and that “the majority of the Commission’s membership comes from the legislative branch of government.” According to Mr. O’Neil, the SHC for example, might be asked to approve “Green Acres property for private use.” Prior to consideration by the SHC and prior to its approval of a “grant resolution,” presumably a resolution to authorize the private use of Green Acres property, the proposal would be reviewed by the New Jersey Department of Environmental Protection (NJDEP).

Mr. O’Neil indicated that TMG might conduct “lobbying activity” to support or oppose a “grant resolution” before the SHC or the NJDEP. Staff noted that by use of the term “lobbying activity,” Mr. O’Neil means that legislative agents employed by TMG or their clients will communicate with members or staff of the SHC or with members or staff of NJDEP to influence the approval or disapproval of the “grant resolutions.”

In its response, staff suggested that ELEC advise Mr. O’Neil that communications undertaken by a legislative agent before either the SHC or NJDEP to support or oppose a “grant resolution” for State-owned property are activities to influence legislation and are subject to the requirements of the Lobbying Act and ELEC regulations.

Legal Director Nagy explained that the term “legislature” is defined by the Lobbying Act to include “the Senate and General Assembly of the State of New Jersey and all committees and commissions established by the Legislature or by either House thereof.” Further, he noted that the Lobbying Act defines the term “legislation” to include “...all bills, resolutions, amendments, nominations and appointments pending or proposed in either House of the Legislature, and all bills and resolutions which, having passed both Houses, are pending approval by the Governor.” Accordingly, the definition of “legislation” includes “all...resolutions,” and does not distinguish or otherwise exclude specific categories of resolutions, such as the “grant resolutions” described by Mr. O’Neil. Therefore, there is no basis to exclude “grant resolutions” from the scope of the definition in the view of staff.

In conclusion, Legal Director Nagy indicated that staff recommended that ELEC advise Mr. O’Neil that all communications with the SHC or NJDEP by a legislative agent to secure or prevent a “grant resolution” are subject to the requirements of the Lobbying Act and ELEC regulations as attempts to influence legislation.

A court reporter was present to record the discussion of Advisory Opinion 01-2002. Copies of the transcript will be available upon request.

On a motion by Commissioner Lederman, seconded by Vice Chair Franzese and passed by a vote of 4-0, the Commission approved the recommendation and directed staff to issue the advisory opinion.

6. Advisory Opinion 02-2002

Peter G. Sheridan, Esq., representing the Republican National Committee (RNC) submitted an advisory opinion request on March 27, 2002. It was noted that by letter dated April 2nd, staff requested an amplification of the fact record, and Mr. Sheridan submitted a letter on April 12th with the requested information.

The request submitted by the RNC asked whether or not it could pay approximately \$100,000 of legal expenses “incurred by New Jersey republicans” arising out of litigation undertaken in the spring of 2001 to challenge the apportionment of legislative districts in this State, and if so whether or not those payments would be subject to reporting or contribution limits under the Campaign Contributions and Expenditures Reporting Act.

The plaintiffs included several minority voters in several legislative districts and the State Senate Republican Majority (SRM) and Assembly Republican Majority (ARM). SRM and ARM are registered as and file reports with the Commission as legislative leadership committees of the Republican party leadership of the New Jersey Senate and Assembly, respectively.

Staff recommended that the expenditures made by the RNC in regards to this litigation be reported as in-kind contributions to the RSC and the two respective republican legislative committees. The in-kind contributions are subject to contribution limits on a national political party committee contained in the Act and regulations. For further detail, see the Advisory Opinion memorandum.

A court reporter was present to record the discussion of Advisory Opinion 02-2002. Copies of the transcript will be available upon request.

Mr. Sheridan consented to an extension of the time to issue a response to his request for an advisory opinion and agreed that the request be considered at the Commission’s June, 2002 meeting.

On a motion by Commissioner Tober, seconded by Vice Chair Franzese and passed by a vote of 4-0, the Commission determined to carry the discussion of Advisory Opinion Request No. 02-2002 for its June, 2002 meeting.

7. Resolution to go into Executive Session

On a motion by Commissioner Lederman, seconded by Commissioner Tober 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 not later than seven business days after mailing to the named respondents.

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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 not later than seven business days after mailing to the named respondents.

8. Return to Public Session

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

9. Adjournment

On a motion by Vice Chair Franzese, seconded by Commissioner Lederman 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