



State of New Jersey

ELECTION LAW ENFORCEMENT COMMISSION

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Vice Chair

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Counsel

PUBLIC SESSION MINUTES

June 20, 2002

Chair Martin, Commissioner Lederman, Commissioner Tober, Counsel Wyse, Senior Staff, and Deputy Legal Director Nedda Gold Massar were present. Vice Chair Franzese 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 May 20, 2002

On a motion by Commissioner Tober, seconded by Commissioner Lederman and passed by a vote of 3-0, the Commission approved the Public Session Minutes of May 20, 2002.

3. Executive Director's Report

A. National News

Executive Director Herrmann reported that in a recent survey, the Center for Public Integrity found that state-level lobbyists spent \$570,000 in the year 2000. He added that New Jersey ranked ninth in spending with \$18 million. According to Executive Director Herrmann, California at \$181 million, New York at \$66 million, and Massachusetts at \$48 million ranked first, second, and third. The Executive Director stated that also ranked ahead of New Jersey were Pennsylvania at \$47 million, Washington at \$31 million, Connecticut at \$30 million, Maryland at \$23 million, and Wisconsin at \$19 million.

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B. Budget Update

Executive Director Herrmann informed the Commission that for FY-2002, \$583,000 has been frozen and was unavailable for use at the end of the fiscal year. He said that the money came from the following sources:

- \$360,000 from the equipment account;
- \$100,000 from the Public Financing Administration;
- \$34,000 from the Ballot Statement Program; and,
- \$89,000 from the salary account.

The Executive Director suggested that of greatest concern was the reduction in equipment money, which would have been used to further the electronic filing project. He noted that fortunately, no staff was lost because of a number of vacant positions.

C. Legislative Developments

Executive Director Herrmann announced that on May 13, 2002, the Senate State Government Committee released S-978 (Inverso/Furnari), which prohibits campaign contributions from large state contractors and limits those from others. The Executive Director added that the bill also requires annual reporting to ELEC of the allowable contributions. According to Executive Director Herrmann, the bill was based on a recommendation by Common Cause and the Brennan Center for Justice at the New York University School of Law.

Executive Director Herrmann advised the Commission that on June 6, 2002, the Senate State Government Committee released S-1387 (Kavanaugh/Baer), which provides that all persons influencing state contracts file with ELEC as lobbyists and all lobbyists be identified as such on campaign finance reports. This bill was based on a report by the State Commission of Investigation issued in March and entitled "NJ Enhanced Motor Vehicle Contract."

Both pieces of legislation are so-called "Pay-to-Play" contracting bills. The Commission has long been on the record recommending that no corporations be allowed to contribute and that lobbyists should report attempts to influence contracts.

Both bills appear to be generally in tune with this point of view, and staff has been involved with clarifying their details.

D. COGEL Matters

The conference is in Ottawa from September 28 to October 2, 2002. All state travel money is currently frozen, and staff will have to wait until next month (FY-03) to ask permission for state payment of conference expenses. Executive Director Herrmann will hopefully be able to report more details at the July meeting. He said that he participated on May 22, 2002, in an international conference call of the Council on Governmental Ethics Laws (COGEL) Awards Committee. The Executive Director

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noted that choices were made for recommendations to the steering committee for the COGEL Award, the COGEL Outstanding Service Award, the Honorary Membership Award, and a Special Recognition Award. Executive Director Herrmann informed the Commission that Legal Director Gregory E. Nagy nominated the New York City Campaign Finance Board for the Special Recognition Award because of their courageous efforts after the 911 tragedy. According to Executive Director Herrmann, the awards will be presented at the conference.

E. Staff Activities

Executive Director Herrmann announced that ELEC has won a platinum award for employee giving in the Annual State Employees Charitable Campaign. He said that the platinum is the highest award an agency can receive. The Executive Director stated that special thanks must go to co-chairs Director of System Administration Carol Neiman and Associate Data Entry Technician Barbara Counts for their outstanding organizational efforts. Executive Director Herrmann mentioned that since 1990, ELEC has won 8 platinum awards, one gold award, and one silver award. He stated that it is an amazing testament to the generosity of our staff.

F. Future Meeting Schedule

July 11, 2002, at 11:00 a.m. in Trenton

August 15, 2002 at 11:00 a.m. in Trenton (if needed)

September 18, 2002 at 11:00 a.m. in Trenton

4. Adoption of Proposed New Rule and Amendments to Commission Regulations

It was recommended by staff that the Commission adopt two rulemaking proposals that were the subject of a public hearing conducted at the May 20, 2002 Commission meeting. The first proposal requires legislative agents to submit photographs for improved identification. The second proposal 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.

According to Deputy Legal Director Massar, no testimony was offered at the June 20, 2002 hearing concerning the proposal at 34 N.J.R. 1370(a) to require that each legislative agent supply photographs to be affixed to the statutorily-required name tag. No written comments were received by the May 31, 2002 deadline, and the proposal is now ripe for adoption.

Deputy Legal Director Massar noted that testimony concerning the contribution limit proposal was received at the June 20, 2002, public hearing before the sitting Commission from Roxane Vivanco, representing New Jersey Citizen Action. Ms. Vivanco had expressed concern over the costs of political campaigns in New Jersey and the belief of New Jersey Citizen Action that a Fair and Clean Elections System is necessary to reduce the influence of special interest contributions on candidates. Staff recommended that implementation of a

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“clean elections” system, such as that described by Ms. Vivanco, requires legislation and that amendments to the contribution limits regulations must be limited to those that implement the recent statutory changes. Deputy Legal Director Massar stated that the period for receipt of written comments concerning the contribution limit proposal at 34 N.J.R. 1367(a) expired on May 31, 2002, and no written comments were received. The proposal is now ripe for adoption.

Deputy Legal Director Massar explained the staff recommendation that the contribution limit proposal be adopted with an agency-initiated substantive change not requiring additional public notice and comment (see N.J.A.C. 1:30-6.3). The contribution limit in N.J.A.C. 19:25-11.2(a) from a national political party committee to a legislative leadership committee must be changed from \$37,000 per year to \$25,000 per year, to conform to the changes mandated in the new law.

On a motion by Commissioner Lederman, seconded by Commissioner Tober and passed by a vote of 3-0, the Commission approved the adoption of the proposal concerning legislative agent name tags and the proposal with an agency-initiated change, concerning contribution limits, and directed staff to file the adoption notices at the Office of Administrative Law.

5. Advisory Opinion 02-2002

With the consent of Peter G. Sheridan, Esq., representing the Republican National Committee, the Commission postponed consideration of the Advisory Opinion until the July 11, 2002 meeting.

6. Advisory Opinion 03-2002

The Pharmaceutical Research and Manufacturers of America (“PhRMA”), through its attorney, James P. Ryan, Esq., submitted a request for an advisory opinion. PhRMA is a national trade association, and conducts lobbying activity in New Jersey. PhRMA has asked whether or not so-called “grassroots” lobbying activity that it anticipates conducting in New Jersey is subject to the requirements of the Legislative Activities Disclosure Act. Legal Director Nagy noted that the Lobbying Act does not specifically authorize the Commission to issue advisory opinions in regard to lobbying activities, in contrast to the authority provided to the Commission in the Campaign Contributions and Expenditures Reporting Act to issue opinions in regard to campaign reporting. However, in order to be responsive to requests concerning application of the Lobbying Act, the Commission regulation at N.J.A.C. 19:25-20.17, Advisory Opinions, provides that the Commission may, in its discretion, provide an advisory opinion concerning the applicability of the Lobbying Act to a specific set of facts and circumstances.

Mr. Ryan writes that the PhRMA anticipates “... engaging professionals and in-house employees to orchestrate a grassroots letter-writing campaign to New Jersey legislators.” The trade association, he states, will pay professionals to contact New Jersey citizens, “educate them” about a particular issue before the legislature, and provide them with the text of letters, faxes, or other communications to be sent to New Jersey legislators. The professionals and in-house employees will not communicate directly with legislators.

Mr. Ryan further writes that the individuals being solicited to sign and send these letters, faxes or other communications may indicate that they are “members of a consumer coalition.” The citizens so solicited by PhRMA will “not be paid” for submitting the letters or communications to legislators. Further, PhRMA will not reveal its identity to either the citizens who are solicited, or to the legislators.

The question posed in this request involves whether the expenses that PhRMA will incur for its contemplated “grassroots letter-writing campaign” will be subject to the reporting requirements of the Lobbying Act?

Legal Director Nagy explained that the Lobbying Act requires reporting of expenditures made by a lobbyist organization for communications through its legislative agents to legislators, but does not provide for reporting of communications made by a lobbyist organization to citizens urging the public to communicate with legislators. Accordingly, staff recommended that the Commission advise Mr. Ryan that expenses incurred by PhRMA for its contemplated “grassroots letter-writing campaign” are not subject to reporting under the Lobbying Act.

Legal Director Nagy indicated that the Commission has recommended in its White Papers and Annual Reports that “grassroots” lobbying be included as reportable activity under the Lobbying Act.

Commissioner Lederman stated that the Lobbying Act makes a distinction between types of communication. She then asked: Would this type of activity come under any election campaign reporting statute?

Legal Director Nagy answered in the negative because the activity contemplated did not include contributions to candidates or political committees.

Chair Martin stated that the advisory opinion should emphasize the fact that the law does not provide for this type of lobbying to be disclosed but that the Commission has long proposed that the law be amended to capture grassroots lobbying.

On a motion by Commissioner Lederman, seconded by Commissioner Tober and passed by a vote of 3-0, the Commission approved the staff recommendation for Advisory Opinion 03-2002, and directed staff to issue a response.

7. Mandatory Review of Agency Code of Ethics

Legal Director Nagy advised the Commission that pursuant to Executive Order No. 10, the Executive Commission on Ethical Standards has reviewed the New Jersey Election Law Enforcement Commission’s Code of Ethics and suggested technical changes which had been circulated to the Commissioners. If approved by the Commission, the changes will be submitted to the Executive Commission on Ethical Standards for final review and approval by the Attorney General.

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On a motion by Commissioner Lederman, seconded by Commissioner Tober and passed by a vote of 3-0, the Commission approved modifications to the Agency Code of Ethics.

8. Resolution to go into Executive Session

On a motion by Commissioner Lederman, seconded by Commissioner Tober and passed by a vote of 3-0, 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.
- 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.

9. Return to Public Session

On a motion by Commissioner Lederman, seconded by Commissioner Tober and passed by a vote of 3-0, the Commission voted to return to Public Session.

10. Adjournment

On a motion by Commissioner Tober, seconded by Commissioner Lederman and passed by a vote of 3-0, the Commission voted to adjourn at 12:30 p.m.

Respectfully submitted,

Frederick M. Herrmann, Ph.D.
Executive Director

FMH/elz