



State of New Jersey

ELECTION LAW ENFORCEMENT COMMISSION

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Vice Chair

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PUBLIC SESSION MINUTES

February 27, 2004

Chair Martin, Commissioner Tober, Counsel Wyse, and Senior Staff were present. Vice Chair Franzese and Commissioner English 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.

2. Approval of Public Session Minutes of January 23, 2004

On a motion by Commissioner Tober, seconded by Commissioner English and passed by a vote of 4-0, the Commission approved the Public Session Minutes of January 23, 2004.

3. Executive Director's Report

A. National Ethics News

Executive Director Herrmann reported that the Maryland Study Commission on Public Funding of Campaigns is close to releasing a report that will recommend a comprehensive public financing plan for legislative campaigns and a more limited version for statewide races. He mentioned that the program for statewide candidates appears similar to the New Jersey Gubernatorial Public Financing System. According to the Executive Director, the program for legislative candidates is based on the Maine and Arizona "Clean Election Systems" wherein a candidate has to raise a large number of small contributions in order to qualify for public dollars. Executive Director Herrmann said that Maryland Governor Robert L. Ehrlich called the program a "nonstarter." The Executive Director noted that he had appeared as an "expert witness" before the Commission in September, 2002. At the time, added Executive Director

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Herrmann, he did not advocate any particular approach to public financing but simply discussed options. The Executive Director noted that one of the Commission members was former ELEC Consultant and campaign finance scholar, Dr. Herbert E. Alexander, who was responsible for designing the first Gubernatorial Public Financing Program in the nation while working with ELEC.

B. Computer Update

Executive Director Herrmann advised the Commission that homepage hits were more than double the calendar year 2003 target of 100,000 and that the use of our web site by the public and media is growing exponentially. He said that meanwhile, the staff is continuing the development of a “second generation” homepage and internet-based electronic filing for the next General Assembly general election.

C. Staff Activities

The Executive Director reported that on February 24, 2004, Director of Compliance and Information Evelyn Ford and Director of Systems Administration Carol Neiman ran a campaign financing program for the Christine Todd Whitman Excellence in Public Service Series. He explained that both directors have been participating to rave reviews in this program every year for half a decade.

Executive Director Herrmann informed the Commission that the Council on Governmental Ethics Laws (COGEL) President has asked him to conduct the “Kay Williams First Timers Session” at the annual COGEL conference this December in San Francisco. He reminded the Commission that he ran last year’s session in Austin and has agreed to do it again.

Executive Director Herrmann noted sadly that Assistant Legal Director Maria Novas-Ruiz left the staff on February 6, 2004, for a new position with the Rate Payer Advocate, adding that she was an outstanding colleague who will be greatly missed. He stated that staff wishes her the best for a happy and prosperous future.

The Executive Director advised the Commission that ELEC is sponsoring an Intern, Ben Schwab, from the Rutgers University Capitol City Internship Program. He said that he will be with us for the spring semester. According to Executive Director Herrmann, Deputy Director Brindle will be supervising his study of the campaign financing process. The Executive Director indicated that the student will be reviewing ELEC filings and materials, using the Commission web site, talking with staff members about their jobs and the work of the Commission, and attending relevant legislative committee hearings. The Executive Director said that he will also be sitting in on Commission meetings as his schedule and the Commission’s permits.

D. Budget

Executive Director Herrmann announced that Governor McGreevey gave his budget address on February 24, 2004. He recommended a continuation budget of \$2.9M for ELEC. The Executive Director mentioned that the Commission will also receive \$600,000 to administer the Gubernatorial Public Financing Program and adequate dollars to distribute to the candidates.

E. Spring Meeting Schedule

- March 19, 2004 at 11:00 a.m. in Trenton;
- April 23, 2004 at 11:00 a.m. in Trenton; and,
- May 18, 2004 at 11:00 a.m. in Trenton.

4. Proposed Amendments to Commission Regulations and New Rules Concerning Reporting Requirements and Other Changes

Legal Director Massar introduced the draft text of staff recommendations for proposed amendments to the regulations and proposed new rules. She explained that if approved by the Commission, a proposal notice will be filed with the Office of Administrative Law (OAL), and a public hearing will be announced for the Commission's May 18, 2004 meeting in Trenton. The 60-day period for receipt of written public comments will expire on June 18, 2004.

The proposed new rules include:

- A. N.J.A.C. 19:25-3.1 Application for registration number and personal identification number. This proposed new rule establishes requirements for electronic filing by candidate committees, joint candidates committees, political committees, political party committees, continuing political committees, and legislative leadership committees. It requires these entities to apply to the Commission for a registration number and personal identification number (PIN) prior to using the Commission's electronic filing software.
- B. N.J.A.C. 19:25-3.2 Filing of an electronic report. This proposed new rule requires that the Commission accept only electronically filed reports that have been prepared using the Commission's computer software and that the most current version of the software be utilized. The proposal also requires that electronic reports must be filed using the security methodology embedded in the Commission's software which uses the confidential registration and personal identification number (PIN) and any other means of identification required from the candidate or candidates and the campaign treasurer. It also requires that each filing entity maintain as part of its records an exact copy of each report that has been filed electronically.

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Staff suggested amendments to the following existing regulations:

- N.J.A.C. 19:25-5.2, Qualifications of depositories, to require that an investment account be an additional depository;
- N.J.A.C. 19:25-7.1, Record keeping requirements, to specify the records that must be maintained for expenditures;
- N.J.A.C. 19:25-7.3, Period of retention, to clarify that all records are subject to the four-year record retention period;
- N.J.A.C. 19:25-8.7, Termination of candidate reporting, to clarify that once a candidate has left office, he or she cannot accept new contributions;
- N.J.A.C. 19:25-11.3, Candidate contributions, to clarify that mayor and council candidates in the same municipality and same election may make unlimited contributions to each other;
- N.J.A.C. 19:25-11.9, Contributions from affiliated corporations, associations or labor organizations, to conform to recently-enacted contribution limits from corporations and unions to continuing political committees and political committees; and,
- N.J.A.C. 19:25-12.4 Expenditures made by credit card, to clarify reporting requirements for expenditure transactions made by means of a credit card owned by and issued in the name of a filing entity. The proposed amendment also requires that the filing entity report to the Commission as an outstanding obligation any amount owed on a credit card account issued to the filing entity.

Commissioner English asked whether or not the proposed amendment to N.J.A.C. 19:25-8.7, Termination of candidate reporting, should include a specific date when a former officeholder must conclude all expenditure activity. Executive Director Herrmann explained that as a result of the 1993 amendments to the Campaign Reporting Act, a former officeholder must continue to file reports until any balance in a campaign account has been disbursed and that all expenditures are therefore disclosed. He also explained that the expenditures are subject to the permissible use restrictions.

Commissioner English expressed her concern that an open account creates a credibility issue. Legal Director Massar suggested that the Commission consider the issue of a date to conclude spending in a subsequent proposal.

Commissioner English asked whether or not the electronic filing software has been used by candidates. Legal Director Massar responded that gubernatorial candidates used the Commission's electronic filing software in 2001 and that legislative candidates participated in an electronic filing pilot project.

Commissioner English recommended that the Commission proposal include a reference to the use of the electronic filing software by candidates in the Commission's pilot projects.

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On a motion by Vice Chair Franzese, seconded by Commissioner Tober and passed by a vote of 4-0, the Commission approved the draft text of proposed new rules and amendments concerning reporting requirements and other changes and directed staff to file the proposal with the Office of Administrative Law.

5. Resolution to go into Executive Session

On a motion by Commissioner Tober, seconded by Vice Chair Franzese 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.
- 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.

6. Return to Public Session

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

7. Adjournment

On a motion by Commissioner Tober, seconded by Commissioner English 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