



*State of New Jersey*

## **ELECTION LAW ENFORCEMENT COMMISSION**

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Chair

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Commissioner

JERRY FITZGERALD ENGLISH  
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### PUBLIC SESSION MINUTES

June 22, 2004

Commissioner Tober, Commissioner Burstein, Counsel Wyse, and Senior Staff were present. Chair Martin and Commissioner English participated by telephone.

#### 1. Open Public Meetings Statement

Commissioner Tober 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. The Commissioners and staff welcomed new Commissioner Albert Burstein.

#### 2. Approval of Public Session Minutes of May 18, 2004

On a motion by Commissioner Tober, seconded by Chair Martin and passed by a vote of 2-0, the Commission approved the Public Session Minutes of May 18, 2004.

#### 3. Executive Director's Report

##### A. Staff Activities

Executive Director Herrmann introduced Todd Wojcik who started with the Commission in May as an Assistant Compliance Officer. The Executive Director noted that Mr. Wojcik is a graduate of The College of New Jersey with a degree in computer engineering. He brings to the Commission a strong background in his field of study as well as previous job experience in customer relations. The Executive Director said that both skills are a perfect fit for his new ELEC position.

Executive Director Herrmann reported that on May 24, 2004, he met with a group of students from College Leadership New Jersey with whom he discussed the work of the Commission and the General Assembly's 25-Point Ethics Reform Package. He said

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that the students were delighted when he told them that they would actually see some of the bills in the package voted on in that afternoon's General Assembly session.

### B. Legislative Developments

Executive Director Herrmann advised the Commission that on May 17, 2004, he testified at the second public hearing of the Senate State Government Committee on a collection of bills concerning campaign finance reform. He stated that ELEC had suggested and continues to support the reform concepts embraced by the bills on the agenda. The bills involved:

- Expanding lobbyist disclosure,
- Reporting grassroots lobbying,
- Increasing penalties, and
- Funding the Commission adequately.

The Executive Director mentioned that in order for ethics reform to work the Commission has to be properly funded and called enlightened Assemblyman Roberts' simple approach of carefully spending "tax money to ensure that the process is as clean as it can be." The Executive Director commented that the State has a primary, moral responsibility to preserve open and honest government, which is the basic principle behind a functional democracy.

Executive Director Herrmann mentioned that on May 20, 2004, Legal Director Nedda Massar, Director of Public Financing Amy Davis, and he attended the fourth public hearing of the Assembly State Government Committee on the General Assembly's 25-Point Ethics Reform plan held at Montclair State University. He said that he testified in favor of 11 bills, which were released:

- A-5 (Voss), which lowers the contributor reporting threshold to \$300 from \$400 and requires reporting of all cash contributions;
- A-6 (Gusciora), which requires professional campaign fundraisers to register and file quarterly reports with ELEC;
- A-7 (Eagler), which requires political identification of recorded campaign telephone calls;
- A-9 (Gordon), which requires the Commission to study further improvements to its highly regarded website;
- A-10 (Greenwald), which requires the training of certain campaign and organizational treasurers;
- A-11 (Greenstein), which increases the Campaign Act's monetary penalties;
- A-12 (Wisniewski), which expands the 48-hour expenditure notice requirement;
- A-23 (Greenstein), which requires the random auditing of lobbying by ELEC;
- A-24 (Watson Coleman), which increases ELEC lobbying fees to \$425 from \$325;

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- A-25 (Fisher), which abolishes contingency fee lobbying agreements; and,
- A-26 (Roberts), which increases ELEC's annual operating budget by \$2 million to \$5 million.

Executive Director Herrmann informed the Commission that on May 24, 2004, the General Assembly passed by wide margins eight of the bills released by the Assembly State Government Committee on May 20, 2004. The Executive Director said that the bills concerning treasurer training, the prohibition of contingency fees, and ELEC's budget were not voted upon.

Executive Director Herrmann reported that on May 27, 2004, he testified before the Assembly Appropriations Committee on A-26 (Roberts). He indicated that he again commended Assemblyman Roberts for sponsoring this crucial legislation and emphasized the moral responsibility of the State to fund ELEC's administration of its old and new responsibilities. The Executive Director stated that the Commission would use the appropriation—along with other sources of future funding from the plan including:

- Increased lobbying fees,
- New fees on professional political fundraisers,
- Larger penalties,
- Recommendations from a website enhancement study; and,
- Review of the clean elections project - to create the strongest ethics program in the nation.

Executive Director Herrmann said that at the hearings he responded to a number of questions about how ELEC would use the money to carryout the multiple purposes of the 25-Point Ethics Reform Plan. He said that the committee voted 12-1 to release the bill.

Executive Director Herrmann noted that on June 3, 2004, Legal Director Massar and he attended an historic joint meeting of the Senate State Government and Assembly State Government committees to consider the 25-Point Ethics Reform plan. The Executive Director said that he was the last person to testify in a marathon 5-1/2 hour meeting, where he again expressed ELEC's strong support for the concepts embraced in the package. In all, according to Executive Director Herrmann, eighteen bills were released including two that had not been previously considered on the topics of pay-to-play and clean elections. Executive Director Herrmann advised the Commission that the last bill voted out was S-26 (Coniglio/Kean), which is the Senate version of Assemblyman Robert's \$2 million ELEC appropriation legislation found in A-26.

The Executive Director reported that on June 10, 2004, both the Senate and General Assembly passed all of the legislation in the 25-Point Ethics Reform Plan except a dual officeholding study Commission bill and S-26, which had been referred to the Senate Budget and Appropriations Committee. Executive Director Herrmann

stated that A-26, however, did pass the Assembly by the wide margin of 75-2. On June 16, 2004, the Governor signed all of the passed legislation into law except the clean elections bill, which is expected to be signed at a later date.

The Executive Director mentioned that on June 18, 2004, the Senate Budget and Appropriations Committee released S-26 unanimously. Executive Director Herrmann said that on June 21, 2004, he appeared before the Senate Budget and Appropriations Committee on A-26, which was also unanimously released.

Executive Director Herrmann thanked Legal Director Massar for her many hours of invaluable help in analyzing over 50 bills with him often late into the night during the months of legislative ethics reform activity.

C. White Paper No. 17 – Legislative Election 2003: The Rise of Party-Oriented Campaigning

Executive Director Herrmann stated that Deputy Director Brindle has again contributed an outstanding piece of research to the ongoing white paper series which began in 1988. The Executive Director asked the Commissioners if they had any questions or comments for the Deputy Director.

On a motion by Commissioner Burstein, seconded by Commissioner English and passed by a vote of 4-0, the Commission approved publication of the White Paper as presented.

D. Summer Meeting Schedule

- July 27, 2004 at 11:00 a.m. in Trenton; and,
- August 24, 2004 at 11:00 a.m. in Trenton (if needed).

4. Advisory Opinion Request 01-2004

This Advisory Opinion Request was submitted by Bret Schundler, a publicly financed gubernatorial candidate in the 2001 primary and general elections. Mr. Schundler asked four questions concerning disposition of outstanding obligations remaining from his 2001 primary and general election candidacies. Legal Director Massar explained the four questions and the responses recommended by staff. She stated that a publicly financed candidate is subject to statutory restrictions that are not imposed on other candidates. For example, a publicly financed candidate must preserve funds for return to the State and therefore may not transfer funds to a future election.

**Question No. 1:** May Candidate Schundler establish a candidate committee for nomination for the office of Governor in the 2005 primary election while continuing to file quarterly reports which disclose outstanding obligations for his 2001 gubernatorial primary and general election candidacies?

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Regarding Question No. 1, staff recommended that the Commission advise Candidate Schundler that there is no statutory basis to prohibit the establishment of a candidate committee for a 2005 primary election gubernatorial candidacy. Staff recommended further that Candidate Schundler be advised to continue to observe the postelection restrictions on contributions and expenditures applicable to a publicly financed candidate, and, pursuant to N.J.S.A. 19:44A-16b, to continue to file postelection quarterly reports for his primary and general election candidacies until such time as each candidate committee has wound up its business and been dissolved.

**Question No. 2:** May Candidate Schundler transfer the outstanding obligations from his 2001 primary and general election candidate committees to a future gubernatorial election candidacy?

In response to Question No. 2, staff recommended that Candidate Schundler be advised that, as a candidate who accepted gubernatorial public matching funds in 2001, he may not transfer the outstanding obligations of his 2001 gubernatorial primary or general candidate committee to a candidate committee for a future election.

**Question No. 3:** May Candidate Schundler “settle the debts” reported on his 2001 primary and general election reports for less than the full amount reported as owed to the creditors? In the alternative, he asked whether or not the “creditors’ personal services can be donated to the campaign pursuant to N.J.A.C. 19:25-10.4.”

Regarding Question No. 3, staff recommended that Candidate Schundler be advised that there is no statutory basis to conclude that settlement of or forgiveness of a debt in an amount in excess of \$2,600 is distinguishable from any other contribution in excess of the \$2,600 limit, and the contribution limit requirements of the gubernatorial public financing program would be undermined by permitting a candidate committee to “settle debts” for less than the full amount owed to creditors. Staff recommended further that Candidate Schundler be advised that he may not convert outstanding obligations to non-compensated, unreported, voluntary personal services.

**Question No. 4:** Candidate Schundler asked whether or not specific “disputed debts” may be “discharged” if the vendor is no longer seeking payment.

In response to Question No. 4, staff recommended that Candidate Schundler may terminate reporting of several of these debts, after filing the July, 2004, quarterly report for 2001 general election, because these items were either returned by or not received by his candidate committee, or were the obligations of entities other than his candidate committee.

The Commission recognized Brian McAlindin, Esq., representing Mr. Schundler, and Mr. Schundler. Mr. McAlindin, noted that no guidance existed within the statute about the question of whether or not a campaign can transfer debt from one cycle to another. He said that Mr. Schundler wants to satisfy his campaign debts, and this approach is one way to do it. He said that in the absence of guidance, the Legislature has left it to the Commission to undertake this task. Mr. McAlindin added that with regard to settlement of debts, there is also a void in the statute which would indicate that the Commission could fill that void

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through its decision making power. He said it is better to have businesses work out a solution instead of the nuisance of having campaigns continually report. Mr. McAlindin suggested that the Commission look to the Federal Election Commission for guidance. He said further that as a creditor of the Schundler campaign, he sees a need to resolve and conclude campaign affairs.

Commissioner Burstein thanked Mr. McAlindin for bringing the matter to the attention of the Commission. He said that this issue needs to be addressed by the Legislature and should be contained in recommendations the Commission makes to the Legislature.

Chair Martin agreed that it is a legislative problem. He stated further that the Commission is a statutory creature and that exceeding its statutory authority would create future problems.

Commissioner Burstein said the Commission can only act within the ambit of the statute and that regulatory bodies are always faced with the limits of their statutory authority.

Commissioner English agreed.

Mr. Schundler stated that the Legislature has been mute on the issue of debt settlement as well as on the issue of what constitutes a volunteer. The law does not say that one can only volunteer before the process begins nor does it prohibit one from altering one's status to that of volunteer once the process starts. Mr. Schundler said that because the statute does not provide guidance on these issues, the Commission is empowered to do so.

On a motion by Commissioner Burstein, seconded by Commissioner English and passed by a vote of 4-0, the Commission approved the staff recommendation on the Advisory Opinion and directed staff to issue the response.

5. Adoption of Proposed New Rules and Amendments to Commission Regulations

Legal Director Massar recommended that the Commission adopt without change the amendments to the regulations and new rules that were the subject of the public hearing conducted at the May 18, 2004 Commission meeting. Legal Director Massar added that the proposal includes new rules implementing electronic filing of reports as well as amendments as follows: requiring that a candidate or committee establish a separate account for investment of funds; establishing recordkeeping requirements for expenditures; clarifying the period of retention for records; prohibiting new fundraising by former officeholders; clarifying that contributions between candidates for mayor and member of the municipal governing body within a municipality and in the same election are unlimited; implementing recently-enacted contribution limits from corporations, unions, and groups to continuing political committees and political committees; and clarifying reporting of expenditures made by credit card.

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Legal Director Massar submitted for the record written comments received from Carrie L. Bromeland, representing Vocus, Inc., and from Eric DeGesero, Executive Vice President of the Fuel Merchants Association of New Jersey. Ms. Bromeland indicated that the requirement in the proposed rule to use software prepared by the Commission might create a financial burden for candidates and committees and lead to increased reporting errors. Legal Director Massar explained that staff believes using the Commission-prepared software might decrease reporting errors. Further, the software is supplied free-of-charge, and Commission staff is available for training and help desk support at no cost to candidates and committees.

Mr. DeGesero expressed the hope that the Commission would extend electronic filing to lobbyists. Ms. Massar explained that while the software is not available at the current time, staff expects in the future to design software to permit electronic filing of lobbying reports.

On a motion by Chair Martin, seconded by Commissioner Burstein and passed by a vote of 4-0, the Commission approved adoption of the Proposed New Rules and Amendments to Commission Regulations without change and directed staff to file the proposal with the Office of Administrative Law.

6. Revisions to the Records Retention and Disposition Schedule

Director of Compliance and Information Evelyn Ford presented recommendations for revisions to the Records Retention and Disposition Schedule. She said that currently the Commission's schedule provides for a 65-year retention period for reports filed with the Commission. Director Ford recommended that the retention period for records of Statewide and Legislative candidates/committees be reduced to 14 years, that the retention period for local candidates/committees and lobbyists be reduced to 8 years, and that the retention period for legal and investigative records also be reduced. Director Ford cited four reasons for such a change:

- Laws governing the records,
- Practices of other States,
- Maintenance and retention of records and space/costs associated with storage, and
- The value of information diminishes over time.

Director Ford stated that she feels confident that these revised retention schedules follow the statutory mandates concerning preserving records and carefully balance the Commission's need to maintain records for disclosure purposes with the need to exercise reasonable and cost-efficient records storage and management.

Commissioner Burstein asked whether or not reports could be scanned?

Director Ford responded that the Commission does scan all reports.

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On a motion by Chair Martin, seconded by Commissioner Burstein and passed by a vote of 4-0, the Commission approved the new retention schedule presented by staff and directed staff to seek approval from the Division of Archives and Records Management.

7. Resolution to go into Executive Session

On a motion by Commissioner Tober, seconded by Commissioner English 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.

8. 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.

9. 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