



State of New Jersey

ELECTION LAW ENFORCEMENT COMMISSION

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PUBLIC SESSION MINUTES

November 16, 2004

All of the Commissioners, Counsel Wyse, and Senior Staff were present.

1. Open Public Meetings Statement

Chair English called the meeting to order, and Executive Director Herrmann 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 October 19, 2004

On a motion by Vice Chair Tober, seconded by Commissioner Davis and passed by a vote of 4-0, the Commission approved the Public Session Minutes of October 19, 2004.

3. Executive Director's Report

A. Congratulations to Vice Chair Tober

Executive Director Herrmann congratulated the Vice Chair on behalf of the other Commissioners and the staff for having his reappointment to the Commission approved by the State Senate on October 25, 2004.

B. Conference on Governmental Ethics Laws (COGEL) News

Executive Director Herrmann reported that Legal Director Massar, Director of Systems Administration Carol Neiman, and he will represent the Commission at the COGEL Conference in San Francisco next month. The Executive Director said that he will present highlights of staff activity during the conference at the December meeting.

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Executive Director Herrmann mentioned that on October 18, 2004, he participated in an international conference call of the COGEL Awards Committee, on which he is a member. He added that the committee unanimously recommended to the Steering Committee that Dr. Herbert E. Alexander be the 2004 recipient of the COGEL Award. Executive Director Herrmann informed the Commission that the Council's most important award is given in recognition of the continued efforts of an individual to promote the highest level of ethical conduct amongst governmental officials and candidates for public office in the international arena. According to Executive Director Herrmann, Dr. Alexander is a Professor Emeritus at the University of Southern California and was the director of the Citizens' Research Foundation. He is also the author of 28 books and numerous articles on the subject of campaign finance. Moreover, he is a pioneer in the field. Executive Director Herrmann noted that he singularly attracted national and international attention to the issue of money in politics.

Executive Director Herrmann advised the Commission that Theodore H. White described Dr. Alexander's work as "The Bible of Campaign Finance," while Professor Larry J. Sabato of the University of Virginia, another noted expert in the field, wrote that "all of Herbert E. Alexander's works are required reading for students of campaign finance in American and foreign elections." He stated that Dr. Alexander is truly "the nation's leading academic expert in campaign finance reform." Executive Director Herrmann said that ELEC may take particular pride in his selection because Dr. Alexander served on three different occasions as a consultant to the Commission. He stated that the committee also recommended that the COGEL Service Award be given to Mitchell Pearlman, the Executive Director of the Connecticut Freedom of Information Commission. According to Executive Director Herrmann, Mr. Pearlman has had a distinguished career in governmental ethics and is being recognized for his many years of contributions to the activities of COGEL. Executive Director Herrmann indicated that he is especially proud of his achievements since he recruited Mr. Pearlman and other Freedom of Information Commission officers to join COGEL while he was serving as president of the Council 16 years ago.

C. National Computer News

The Executive Director informed the Commission that the National Campaign Disclosure Project has ranked the State of New Jersey 15th in the nation and that the project is aware of the Internet Study ELEC is undertaking pursuant to a legislative directive and the "many significant improvements" to the web site that are about to be unveiled. Executive Director Herrmann noted that the evaluation of New Jersey concludes very positively that "when these changes are put into place, the result will be a State that is providing excellent access to campaign finance records, both on paper and through the Internet." The Executive Director also noted that the report emphasizes that "adequate funding is a critical component of an electronic filing program." Executive Director Herrmann advised the Commission that over the past few years, ELEC's computer resources have actually been reduced because of State fiscal problems. He said, however, that fortunately, A-9, the Internet Site Study Bill, gave the Commission an opportunity to request more computer funding in the report

mandated by it. The Executive Director emphasized the Bill stated that “the report shall contain such recommendations for . . . appropriation as the Commission may deem necessary to accomplish the purpose of this Act.”

D. The Internet Study

In his remarks, the Executive Director thanked co-authors Deputy Director Brindle, and Director of Systems Administration Neiman as well as Legal Director Massar for their work on the ELEC Internet Site Report. Deputy Director Brindle mentioned that Executive Director Herrmann was deserving of much credit for contributing significantly to the report. Executive Director Herrmann stated that the report, entitled “Road to the Future: Improving the Convenience and Usefulness of ELEC’s Internet Site,” reviews and evaluates the Commission’s Internet site from the perspective of presentation, comprehensiveness, and user-friendliness. He added that very importantly, it recommends “an ongoing appropriation to ELEC’s operating account of an additional one million dollars each year to implement, maintain, and continually improve upon the initiatives” elaborated in the report. Executive Director Herrmann noted that among these initiatives are:

- An updated appearance of the web site,
- An electronic filing program including mandatory use by gubernatorial candidates and legislative candidates over a threshold amount,
- A local candidate database to allow computerized searching for contributors instead of the current manual review of reports for this information,
- Industry coding of contributions to allow the aggregation of special-interest giving by types of business,
- An expenditure reporting database,
- Internet treasurer training pursuant to a new legal requirement, and
- A redundant site for disaster recovery.

Executive Director Herrmann asked the Commissioners for any comments and for their approval of the report.

On a motion by Commissioner Burstein, seconded by Vice Chair Tober and passed by a vote of 4-0, the Commission approved the release of the report.

E. Staff Activities

Executive Director Herrmann announced that pursuant to the Chair’s suggestion, a new after-hours message has been recorded on ELEC’s main telephone line. He said that the message provides the Commission’s business hours and suggests to a person contacting ELEC after the office has closed that they call back during regular business hours. The Executive Director indicated that it also states that if this message is heard during normal working hours that a snow or other emergency closing is in effect.

Executive Director Herrmann reported that on October 26, 2004, Director of Public Financing Amy Davis attended a panel discussion on ethics in government held at Rutgers University. He advised that the forum was hosted by Assemblymen Kevin O'Toole and Wilfred Caraballo and included: U.S. Attorney Chris Christie, Attorney General Peter Harvey, Eagleton Institute Professor Alan Rosenthal, and other legal experts and scholars. Director Davis took extensive notes which she kindly shared with the office.

Executive Director Herrmann informed the Commission that staff continues to move forward with the hiring of additional personnel and the securing of additional space for them. He said that after securing approval for the creation of 36 new titles from the Governor's Office on October 28, 2004, staff sent a request to the Department of Personnel (DOP) to establish these titles. The Executive Director noted that the request emphasizes that "it is essential to implementation and enforcement" of the 17 new ethics laws enacted over the summer that "the Commission hire additional staff immediately." He added that staff is also continuing to work with the Office of Management and Budget (OMB) and the Treasury to secure additional space at 28 West State Street. Finally, the Executive Director stated that it appears that the bank space is not an option due to a variety of concerns: historical preservation, security, fire safety, and the cost of renovation.

F. Future Meeting Schedule

The final meeting of the year will be held on December 14, 2004 at 11:00 a.m. Executive Director Herrmann asked for approval by the Commissioners on next year's meeting schedule.

On a motion by Vice Chair Tober, seconded by Commissioner Burstein and passed by a vote of 4-0, the Commission approved the meeting schedule for 2005.

4. Adoption of the Cost Index Report

Legal Director Massar explained that the draft copy of the "2005 Cost Index Report" provided to the Commissioners briefly describes the history of the cost adjustment process and the calculation of the limits and thresholds using a formula proposed by the Commission in 1988. The calculation includes components for campaign-specific costs and the costs of all other goods. She noted that the Commission is statutorily required to report to the Legislature no later than December 15, 2004, the quadrennial cost adjustments to the contribution limits and thresholds applicable to candidates and committees.

Director Massar noted that legislation introduced in September by then-Senator Codey that would affect the cost adjustment process by freezing the contribution limits is still pending in the Legislature.

Commissioner Burstein asked what consequences would occur if the December 15th deadline for the Cost Index Report were not met, in light of the fact that Acting Governor and Senate President Richard J. Codey has introduced legislation that would lower the contribution limits.

Executive Director Herrmann stated that the Commission has a statutory obligation to proceed and to deliver the Cost Index Report in the absence of the enactment of legislation that would supersede the regulation.

Legal Director Massar added that the thresholds and limits contained in the report will not become effective until December 20, 2004, for gubernatorial candidates and January 1, 2005, for non-gubernatorial candidates and committees.

Commissioner Burstein suggested that staff contact the Assembly State Government Committee and the Speaker highlighting the issue.

Chair English, acknowledging Commissioner Burstein's concern, suggested that reference to Senate President Codey's pending legislation be included at the front of the Report. She also suggested that the Report express appreciation to Ms. Maureen Reid and Senate President Codey for the comments they submitted on the rule proposal to implement the cost adjustments and for their interest in the Commission.

On a motion by Commissioner Burstein, seconded by Commissioner Davis and passed by a vote of 4-0, the Commission approved the Cost Index Report as amended.

5. Adoption of Proposed Amendments to Implement Campaign Cost Adjustments

On July 27, 2004, the Commission authorized proposal of amendments to regulations to implement the statutory quadrennial campaign cost adjustment process for gubernatorial and non-gubernatorial candidates and committees. Subsequently, the amendments were published in the New Jersey Register on September 7, 2004, as two proposals, one for gubernatorial candidates and one for all other candidates and committees. A public hearing was conducted at its September 22, 2004 meeting. Ms. Ingrid Reed, representing the Eagleton Institute of Politics, offered testimony. Written comments were received from Senator Richard J. Codey and Ms. Maureen Reid.

The following charts summarize the proposed campaign cost index adjustments:

Gubernatorial Cost Index Adjustments

Limit/Threshold	1997 Amount	Cost Index Multiplier	Sum	2005 Rounded Amount (pursuant to <u>N.J.S.A. 19:44A-7.1b</u>)
<i>Contribution Limit</i>	\$ 2,600.00	1.1385	\$2,960.10	\$3,000.00
<i>Qualification Threshold</i>	\$ 260,000.00	1.1385	\$296,010.00	\$300,000.00
<i>Amount Not Matched</i>	\$ 84,000.00	1.1385	\$95,634.00	\$96,000.00
<i>Primary Public Fund Cap</i>	\$2,300,000.00	1.1385	\$2,618,550.00	\$2,700,000.00
<i>Primary Expenditure Limit</i>	\$3,800,000.00	1.1385	\$4,326,300.00	\$4,400,000.00
<i>General Public Fund Cap</i>	\$5,600,000.00	1.1385	\$6,375,600.00	\$6,400,000.00
<i>General Expenditure Limit</i>	\$8,400,000.00	1.1385	\$9,563,400.00	\$9,600,000.00

2005 Proposed Adjustments for Non-gubernatorial Candidates and Committees

Limit/Threshold	2001 Amount	Cost Index Multiplier	Sum	2005 Rounded Amount (pursuant to <u>N.J.S.A. 19:44A-7.1b</u>)
<i>Political Committee Reporting Threshold</i>	\$1,500.00	1.1385	\$1,707.75	\$1,800.00
<i>Continuing Political Committee Reporting Threshold</i>	\$3,700.00	1.1385	\$4,212.45	\$4,300.00
<i>Contribution Reporting Threshold</i>	\$400	N/A	N/A	\$300.00 ¹
<i>48-Hour Notice/Contribution Threshold</i>	\$800.00	1.1385	\$910.80	\$1,000.00
<i>48-Hour Notice/Expenditure Threshold</i>	\$800.00	1.1385	\$910.80	\$1,000.00
<i>Joint Candidates Committee Thresholds</i>	\$5,800.00 \$8,500.00	1.1385 1.1385	\$6,603.30 \$9,677.25	\$6,700.00 \$9,700.00
<i>Form A-3 Threshold</i>	\$3,700.00	1.1385	\$4,212.45	\$4,300.00
<i>Form A-1 Threshold & School Board/Write-in Threshold</i>	\$3,000.00	1.1385	\$3,415.50	\$3,500.00
<i>Independent Expenditure Threshold</i>	\$800.00	1.1385	\$910.80	\$1,000.00
<i>Section 20.1 Penalties</i>	\$4,300.00/ \$8,500.00	N/A	N/A	\$6,000.00/ \$12,000.00 ²
<i>Section 22 Penalties</i>	\$4,300.00/ \$8,500.00	N/A	N/A	\$6,000.00/ \$12,000.00 ²
<i>Pro rata Return of Contributions</i>	\$400	N/A	N/A	\$300.00 ³

¹Change mandated by P.L.2004, c.28.

²Change mandated by P.L.2004, c.32.

³Change made to conform to statutory contribution reporting threshold; see P.L.2004, c.28.

2005 Non-Gubernatorial Contribution Limit Amount Adjustments

2001 Contribution Amount	Cost Index Multiplier	Sum	2005 Rounded Amount (pursuant to <u>N.J.S.A.</u> <u>19:44A-7.1b</u>)
\$2,200.00	1.1385	\$2,504.70	\$2,600.00
\$7,200.00	1.1385	\$8,197.20	\$8,200.00
\$25,000.00	1.1385	\$28,462.50	\$29,000.00
\$37,000.00	1.1385	\$42,124.50	\$43,000.00
\$72,000.00	1.1385	\$81,972.00	\$82,000.00

Staff recommended that the Commission approve adoption of the campaign cost index amendments without change.

The Commission discussed the statutory mandate to adjust the limits and thresholds in the law and the impact of the legislation introduced by Acting Governor and Senate President Codey to reduce the contribution limits.

Executive Director Herrmann stated that the Campaign Act requires the Commission to proceed and to adopt the rules. If the legislation is adopted later, it would supersede the regulations.

Chair English asked for public comments.

Mr. Kent St. John of New Jersey Network News asked if the Commission supported Senate President Codey's legislation to reduce the thresholds and limits.

Executive Director Herrmann responded that the Commission supports the pending legislation, but said that the Commission must observe the statutory mandate.

Commissioner Burstein asked if it were appropriate for the Commission to support legislation.

Executive Director Herrmann explained that it has been the policy of the Commission to take a position on legislation if the Commission as a body agrees. He added that the Commission makes recommendations for legislative change in its annual reports.

On a motion by Commissioner Burstein, seconded by Vice Chair Tober and passed by a vote of 4-0, the Commission voted to adopt without change the proposed regulations adjusting the gubernatorial and non-gubernatorial thresholds and limits and authorized staff to file the adoption notices at the Office of Administrative Law.

6. Proposed Amendments and New Rules to Implement New Lobbying Laws

Legal Director Massar discussed the memorandum, provided to the Commissioners, that summarized recently enacted lobbying legislation and included a draft text of new rules and amendments designed to implement the new legislation. The scope of the lobbying law has been expanded significantly to include governmental processes (contracts, grants, rate setting, etc.) and "grassroots" lobbying.

Among the amendments to the rules to implement the lobbying law are the following:

- That the name of the Act be amended at N.J.A.C. 19:25-20.1, Authority to read "Legislative and Governmental Process Activities Disclosure Act" and in the definition of the term "Act" in N.J.A.C. 19:25-20.2, Definitions;
- That each reference to the term "legislative agent" in Subchapter 20 be amended to "governmental affairs agent" and that new statutory definitions of the terms "governmental process," and "public contract," be added at N.J.A.C. 19:25-20.2, Definitions;
- That the term "influence governmental processes" be defined in the law at N.J.S.A. 52:13C-20;
- That the definition of "influencing governmental processes" should be read in the framework of existing rules and Commission advisory opinions that have distinguished between an agent engaged in direct communications and those whose

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work supports the agent, that is, “support personnel.” Under existing rules, personnel who assist a governmental affairs agent (formerly a legislative agent) in the conduct of his or her attempts to influence legislation and regulation are considered “support personnel;” see N.J.A.C. 19:25-20.11(a)6;

- That a new subsection (b) be added to N.J.A.C. 19:25-20.3, Exemptions from the Act, to include specifically the two statutory exemptions of attorney-client privilege and matters concerning collective negotiations;
- That a governmental affairs agent file a notice of representation before influencing a governmental process of N.J.A.C. 19:25-20.4;
- That subsections (b) and (c) of N.J.A.C. 19:25-20.5, Governmental affairs agent quarterly report, be amended to include the obligation to report governmental processes. And that references to governmental processes be added to subsections (a) and (d) of N.J.A.C. 19:25-20.7, Notice of termination; and
- That references to governmental processes be added to the following rules which deal with the annual report filing obligation: N.J.A.C. 19:25-20.9, Annual report; N.J.A.C. 19:25-20.10, Receipts; N.J.A.C. 19:25-20.11, Expenditures, and N.J.A.C. 19:25-20.14, Contents of annual report.

Also included in the staff recommendation were the following amendments to the regulations in order to implement further statutory changes to the lobbying law enacted in June, 2004:

- Prohibition on Contingent Fees (N.J.A.C. 19:25-20.10A),
- \$250 Annual Gift Cap (N.J.A.C. 19:25-20.3A and 11(c)),
- Reporting of Grassroots Lobbying (N.J.A.C. 19:25-20.2),
- One-Year Lobbying Prohibition (N.J.A.C. 19:25-10.18C),
- Random Lobbying Audits (N.J.A.C. 19:25-20.15),
- \$100 Additional Annual Fee (N.J.A.C. 19:25-20.20(a)(b)), and
- One-time \$50 Assessment.

Commissioner Davis asked for clarification on the \$425.00 lobbying registration fee. He asked whether or not the fee was prospective.

Legal Director Massar responded in the affirmative.

Commissioner Burstein asked how the new rules will be publicized.

Legal Director Massar suggested that the Commission conduct two public hearings, at the February and March, 2005 meetings, concerning the proposed lobbying rules. She said that there would be notice of the hearings in the New Jersey Register and that this general notice would also be sent to registered agents and to people who have expressed an interest in Commission regulatory activity. She added also that notices will be placed in communications reaching the legal community and that press releases will be distributed to the State House Press Corps.

Commissioner Burstein suggested that the regulators be contacted.

Executive Director Herrmann said that this was a very good idea and that staff could get input on the proposals from them.

Chair English expressed concern about "grassroots" lobbying. She queried whether or not groups like the League of Women Voters taking a position on an issue would come under grassroots reporting.

Legal Director Massar indicated that she expects such issues would be raised by public comments and would be addressed during the regulatory process. She also suggested that once rules are adopted, the advisory opinion process would afford an opportunity to address such questions.

Legal Director Massar stated that the proposal is the starting point for implementing the lobbying reforms and that modifications will continue to be made into the future.

Chair English asked about organizations sending mail to their members.

Legal Director Massar said that question may involve constitutional issues. The definition of "general public" may have to be refined and distinguished from communications made to members of an organization.

Chair English recognized Mr. John Rogers, representing the New Jersey Business and Industry Association (NJBIA). Mr. Rogers said that there is a good deal of confusion among the lobbying community now about all the new laws. He said that he represents thousands of people who may be required to register as agents if the rules are too broadly drafted. He indicated that it was his belief that it was not the legislative intent that every person who applies for a permit, for example, become a governmental affairs agent because he or she had contact with a government agency. Mr. Rogers expressed a desire to work with the Commission during the rulemaking process.

On a motion by Commissioner Burstein, seconded by Commissioner Davis and passed by a vote of 4-0, the Commission approved proposal of amendments to the lobbying rules to implement the new laws and directed staff to file the proposal at the Office of Administrative Law.

7. Resolution to go into Executive Session

On a motion by Vice Chair Tober, seconded by Commissioner Burstein 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:

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- 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 Davis, seconded by Commissioner Burstein and passed by a vote of 4-0, the Commission voted to return to Public Session.

9. Adjournment

On a motion by Commissioner Burstein, seconded by Vice Chair Tober and passed by a vote of 4-0, the Commission voted to adjourn at 1:15 p.m.

Respectfully submitted,

Frederick M. Herrmann, Ph.D.
Executive Director

FMH/elz