



State of New Jersey

ELECTION LAW ENFORCEMENT COMMISSION

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Counsel

PUBLIC SESSION MINUTES

May 17, 2005

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

1. Open Public Meetings Statement

Chair English 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 April 13 and April 19, 2005

On a motion by Commissioner Burstein, seconded by Vice Chair Tober and passed by a vote of 3-0, the Commission approved the Public Session Minutes of April 13 and April 19, 2005.

Commissioner Davis and Counsel Wyse arrived at this time.

3. Executive Director's Report

A. Staff Activities

Executive Director Herrmann stated that the Commission recently added Computer Assistant Ken Colandrea as a new staff member. He reported that staff has been extremely busy interviewing people for ELEC's many new positions and that Department of the Treasury officials have informed him that the eighth floor will be vacated by mid-June. He said that ELEC may move in shortly after July 4, 2005. Executive Director Herrmann indicated that it is planned that the Administration Section, the Public Financing Section, and the Data Entry staff will occupy this floor. The Executive Director reported that staff is planning for the creation of a "high

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technology” training room to instruct candidates, treasurers, and lobbyists in compliance procedures.

Executive Director Herrmann noted that on the evening of April 26, 2005, Director of Systems Administration Carol Neiman and he were speakers at the first of a three-part series entitled “Politics in New Jersey 2005,” held at the Princeton Public Library. He said that the session on “Money in Politics,” featured him speaking about the Campaign Act and ELEC’s role in administering and enforcing it as well as a presentation by Director Neiman of the new web site.

The Executive Director mentioned that also on the program was Common Cause Executive Director Lauren Skowronski who spoke about reform in general and pay-to-play in particular. He said that the program was coordinated by Ingrid W. Reed, the Director of the New Jersey Project at Rutgers Eagleton Institute of Politics. He said that both Director Reed and Executive Director Skowronski had wonderful things to say about ELEC’s new web site.

B. Citizen’s Clean Elections Commission Meeting

Executive Director Herrmann advised the Commission that during the afternoon of April 26, 2005, Legal Director Massar, Director of Public Financing Amy Davis, and he appeared before the Citizens’ Clean Elections Commission at Douglass College. He indicated that they briefed its Commissioners and staff on how ELEC plans to administer the Clean Elections Pilot Project. Executive Director Herrmann stated that he pointed out that the role of the Clean Elections Commission is primarily to evaluate the project, while ELEC’s primary role is to administer it.

According to the Executive Director, he began by giving some basic background about ELEC and then briefly summarized the current Campaign Act because the Clean Elections Commission needed to have a sense of the system that was being considered for replacement. He said that this discussion of the system was needed because parts of it will continue to apply to certified Clean Elections candidates, and because all of it will apply to candidates who do not become certified.

The Executive Director noted that he then went over the major elements of the Gubernatorial Public Financing Program to set a further context and concluded with an outline of the new Clean Elections Pilot Project.

Executive Director Herrmann informed the Commission that Legal Director Massar reviewed key features of ELEC’s proposed Clean Elections regulations that implement the program and presented answers to a list of basic questions about how the project would work.

Finally, he said, Director Davis discussed the planned day-to-day operation of the program and highlighted ELEC’s creation of new electronic filing software that will be made available to program participants.

Executive Director Herrmann mentioned that Legal Director Massar, Director Davis, and he then fielded numerous questions from the Commissioners. The Executive Director noted that Chairman Bill Schluter congratulated ELEC for its early preparations and stated that he was sure that based on its previous record ELEC would do a fine job. Moreover, the Executive Director stated, Chairman Schluter invited staff to attend future meetings of the Clean Elections Commission to provide technical support and coordination with ELEC.

C. Legislative Developments

According to Executive Director Herrmann, on May 9, 2005, he attended the Senate Budget and Appropriations Committee hearing on the Department of Law and Public Safety. He mentioned that ELEC is “in but not of” the department and that there were no written or oral questions this year for the Commission. Executive Director Herrmann advised the Commission that the budget book shows a direct state services appropriation of \$6.5M for FY-2006 and that this level of funding, as stated, “includes continuation of a \$2M increase from a FY-2005 supplemental appropriation that will allow the Commission staff to double as it undertakes expanded oversight and enforcement duties.” He indicated that the \$6.5M includes \$1.5M for the Clean Elections Program and that, moreover, ELEC is receiving for the Gubernatorial Public Financing Program another \$1.025M of which \$600,000 is for administration expenses and \$425,000 is for the 500-Word Ballot Statement Program.

Executive Director Herrmann indicated that on May 12, 2005, Deputy Director Brindle attended the Assembly Budget Committee hearing on A-5269 (Roberts/Greenstein), which authorizes a State convention to reform the system of property taxation. He said that a section of the bill establishes stringent campaign financing provisions for the election of delegates and that the sponsors feel that campaign finance regulation of such delegates should be set at a higher standard than that for other types of candidates.

Executive Director Herrmann said that among the special provisions are a:

- \$250 contribution limit;
- \$6,250 aggregate contribution limit;
- \$50 disclosure threshold;
- Ban on corporate contributions;
- Ban on contributions from another committee controlled by a delegate candidate;
- \$25,000 voluntary expenditure limit;
- Provision for issue advocacy reporting; and,
- Reduced contribution limit and reporting threshold for political committees giving to delegate candidates.

Executive Director Herrmann noted that the bill was released from the Committee and was then passed by the General Assembly on May 16, 2005.

D. Summer Meeting Schedule

- June 21, 2005 at 11:00 a.m. in Trenton;
- July 19, 2005 at 11:00 a.m. in Trenton; and,
- August 16, 2005 (if needed) at 11:00 a.m. in Trenton.

3. Adoption of Proposed New Rules and Amendments to Implement New Campaign Laws and the “Sunset” Process

The Commission discussed the proposed new rules and amendments to implement changes to the New Jersey Campaign Contributions and Expenditures Reporting Act, N.J.S.A. 19:44A-1, et seq., and to comply with the periodic “Sunset” review requirement. The proposal was published in the March 7, 2005, New Jersey Register.

The changes reflected in the amendments and new rules include: requiring every currency contribution, regardless of amount, to be reported; requiring “professional campaign fund raisers” to register and file quarterly reports; requiring political identification information on telephone calls featuring a recorded message; prohibiting solicitation and making of campaign contributions on State property by gubernatorial and legislative candidates; requiring that certain campaign and organizational treasurers receive training offered by the Commission; expanding the 48-hour notice reporting requirement for expenditures; requiring that certain gubernatorial and legislative candidates file reports using the Commission’s electronic filing software; adjusting contribution limits to comport with recent legislation; and, amending the credit card reporting requirement.

Legal Director Massar reported that no persons testified at the April 19, 2005 public hearing, and no written comments were received by the May 6, 2005 comment deadline. She described an agency-initiated insubstantial change to the rule proposal to correct a typographical error, and recommended that the Commission adopt the amendments and new rules including the agency-initiated change.

On a motion by Commissioner Davis, seconded by Vice Chair Tober and passed by a vote of 4-0, the Commission voted to adopt the new rules and amendments to implement the new campaign laws and the “Sunset” process with an insubstantial change and to direct staff to file the adoption at the OAL.

4. Calculation of Clean Elections District Grant Totals

Legal Director Massar reported to the Commission on the calculation of the candidates’ initial grant amounts required by the New Jersey Fair and Clean Elections Pilot Project Act and described the methodology used to determine the grant amounts.

She said that a major innovation in the ethics reform legislation enacted by the Legislature in 2004 was the Clean Elections Act. According to Legal Director Massar, two legislative districts will be selected as the 2005 general election pilot project districts from among six districts (Districts 6, 7, 9, 11, 13, and 15). She said that a candidate who qualifies

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as a Clean Elections candidate is entitled to receive an initial grant of money from the New Jersey Fair and Clean Elections Fund which may not exceed \$100,000.

Legal Director Massar said that it is the responsibility of the Commission to calculate the grant amount for each legislative district by a formula provided in the Clean Elections Act. The exact amount of the initial grant in a legislative district is 75 percent of the average amount of money spent by candidates who are members of the political parties and who ran for Assembly seats in that legislative district in the two immediately preceding general elections (2001 and 2003). The grant amount for each of the six legislative districts is as follows:

District	Grant Amount	Grant Amount Rounded
6	\$65,090.61	\$65,100
7	\$100,000.00	\$100,000
9	\$20,489.68	\$20,500
11	\$79,261.64	\$79,275
13	\$59,171.66	\$59,175
15	\$53,801.32	\$53,825

On a motion by Commissioner Davis, seconded by Vice Chair Tober and passed by a vote of 4-0, the Commission approved the staff calculation of the Clean Elections district grant totals.

5. 2005 Primary Election Matching Fund Submissions

Director of Public Financing Davis provided the following report on matching fund submissions processed by the Public Financing staff since the last such report, dated April 19, 2005.

Candidate Todd Caliguire

Submission #1

According to Director Davis, Candidate Caliguire filed his first matching fund submission on April 11, 2005, containing \$329,625.00 in net contributions submitted for match. She said that Candidate Caliguire filed a signed Statement of Agreement to participate in the 2005 primary election debates and a Candidate Certification of Non-Participation in Issue Advocacy Organizations. Staff completed its review and determined that the amount of \$216,705.00 in contributions was eligible for match at the statutory two-for-one ratio of public-to-private dollars. Therefore, stated Director Davis, public funds in the amount of \$433,410.00 were deposited into Candidate Caliguire's public funds account through the Department of the Treasury.

Candidate Steven Lonegan

Director Davis reported that the staff review of Candidate Lonegan's submissions 1, 2, and 3 determined that Candidate Lonegan submitted contributions eligible for match, totaling \$354,363.81, as follows:

Submission #1	\$238,487.81
Submission #2	\$26,668.50
Submission #3	<u>\$89,207.50</u>
	\$354,363.81

Director Davis stated that after deducting the first \$96,000, which is not matched according to the public financing law, staff determined that a total amount of \$258,363.81 in contributions was eligible for match and, at the statutory two-to-one ratio public funds in the amount of \$516,727.62 were deposited into Candidate Lonegan's public funds account through the Department of the Treasury.

Submission #4

Director Davis added that Candidate Lonegan filed a fourth matching fund submission on April 26, 2005, and reported \$12,827.74 in net contributions submitted for match. Staff's review indicated that the campaign had failed to include the reporting of two deposits for match. On May 10 and 16, 2005, Treasurer Colette Campbell provided staff with the missing deposits. When review of the submission is completed, staff will deposit the public matching funds and will report to the Commission on Submission #4 at the next Commission meeting.

Submission #5

The Director reported that Candidate Lonegan filed a fifth matching fund submission on May 10, 2005, and reported \$19,639.50 in net contributions submitted for match. She said that when review of the submission is completed, staff will deposit the public matching funds and will report to the Commission on Submission #5 at the next Commission meeting.

Candidate John Murphy

Submission #5

Director Davis stated that Candidate Murphy filed a fifth matching fund submission on May 3, 2005, and reported \$35,335.00 in net contributions submitted for match. This submission was filed at 1:50 p.m., after the noon deadline. Treasurer Debra Tedesco explained to staff that there was a miscommunication with the courier and that all future submissions would be filed timely. Since the delay did not create an administrative burden, Director Davis explained that staff accepted and processed the submission.

Staff completed its review of Submission #5 and determined that the amount of \$34,360.00 in contributions was eligible for match at the statutory two for one ratio of public to private dollars. Director Davis reported that public funds in the amount of \$68,720.00

were deposited into Candidate Murphy's public funds account through the Department of the Treasury.

Candidate Robert Schroeder

Submission #3

According to Director Davis, Candidate Schroeder filed a third matching fund submission on April 12, 2005, and reported \$23,340.00 in net contributions submitted for match. She said that staff completed its review and determined that the amount of \$20,090.00 in contributions was eligible for match at the statutory two for one ratio of public to private dollars. She stated, therefore, that public funds in the amount of \$40,180.00 were deposited into Candidate Schroeder's public funds account through the Department of the Treasury.

Submission #4

Director Davis further reported that Candidate Schroeder filed a fourth matching fund submission on May 3, 2005, and reported \$20,115.00 in net contributions submitted for match. Director Davis said that when review of the submission is completed, staff will deposit the public matching funds and will report to the Commission on Submission #4 at the next Commission meeting.

Submission #5

Finally, Director Davis reported that Candidate Schroeder filed a fifth matching fund submission on May 10, 2005, and reported \$54,175 in net contributions submitted for match. She said that when review of the submission is completed, staff will deposit the public matching funds and will report to the Commission on Submission #5 at the next Commission meeting.

Candidate Paul DiGaetano

Submission #3

Director Davis advised the Commission that Candidate DiGaetano filed a third matching fund submission on April 26, 2005, and reported \$38,800.00 in net contributions submitted for match. She said that staff completed its review and determined that the amount of \$39,505.00 in contributions was eligible for match at the statutory two for one ratio of public to private dollars. Therefore, public funds in the amount of \$79,010.00 were deposited into Candidate DiGaetano's public funds account through the Department of the Treasury.

Candidate Bret Schundler

Submission #4

The Director noted that Candidate Schundler filed a fourth matching fund submission on April 12, 2005, and reported \$124,956.63 in net contributions submitted for match. She

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said, therefore, public funds in the amount of \$198,789.26 were deposited into Candidate Schundler's public funds account through the Department of the Treasury.

Submission #5

Finally, Director Davis informed the Commission that Candidate Schundler filed a fifth matching fund submission on May 10, 2005, and reported \$124,956.63 in net contributions submitted for match. When review of the submission is completed, staff will deposit the public matching funds and will report to the Commission on Submission #5 at the next Commission meeting.

On a motion by Commissioner Burstein, seconded by Commissioner Davis and passed by a vote of 4-0, the Commission accepted the public funds report.

6. Resolution to go into Executive Session

On a motion by Commissioner Davis, seconded by Commissioner Burstein and passed by a vote of 4-0, the Commission resolved to go into Executive Session to discuss anticipated litigation and 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.

7. Return to Public Session

8. Reproposal of Proposed Amendments and New Rules to Implement New Lobbying Laws

Legal Director Massar provided the Commissioners with a summary of the concerns raised by commenters in written comments received and the testimony offered at the February 15 and March 15, 2005 hearings concerning the proposed new rules and amendments.

The Legal Director noted that the testimony and comments received prompted staff to consider significant changes to the original rule proposal. She said that staff recommends that the Commission consider reproposal at the Office of Administrative Law (OAL) of the new rules and amendments with substantial changes. She indicated that the reproposal process permits an agency to reconsider, modify, and revise its pending rule proposal in response to issues raised by commenters. Legal Director Massar said that the reproposal will provide for a hearing and new period for receipt of written comments.

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The following major issues were raised by the commenters:

- Exclusion of routine, ministerial contacts with government from the expansive scope of communications subject to reporting as “governmental processes”;
- Exclusion from lobbying activity of volunteer participation, at the request of the State, in task forces;
- Use of an expert, accompanying a governmental affairs agent, in lobbying;
- Adequacy of the 20-hour threshold for lobbying registration contained in the definition of a “governmental affairs agent”;
- Examination of the “level” of an Executive Branch official as a test for whether or not a lobbying contact has occurred;
- Exclusion of “rate setting” from scope of “governmental processes”; and,
- Clarification of the term “general public,” as used in the context of communications with the general public, or “grassroots” lobbying.

On a motion by Vice Chair Tober, seconded by Commissioner Davis and passed by a vote of 4-0, the Commission directed staff to present regulations for consideration as a reproposal at the next Commission meeting to address the commenters’ concerns, including the issue of attorneys who lobby on governmental processes.

9. Adjournment

On a motion by Commissioner Davis, seconded by Vice Chair Tober and passed by a vote of 4-0, the Commission voted to adjourn at 1:45 p.m.

Respectfully submitted,

Frederick M. Herrmann, Ph.D.
Executive Director

FMH/elz