



State of New Jersey

ELECTION LAW ENFORCEMENT COMMISSION

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Vice Chair

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THEODORE Z. DAVIS
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PUBLIC SESSION MINUTES

October 18, 2005

Chair English, Vice Chair Tober, Commissioner Burstein, Commissioner Davis, and Counsel Wyse participated by telephone. Executive Director Herrmann, Deputy Director Brindle, and Legal Director Nedda Massar 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. Advisory Opinion Request No. 04-2005

The Commission received a request for an advisory opinion from Amy Handlin and Samuel D. Thompson, State Assembly candidates in the Thirteenth Legislative District. After filing New Jersey Fair and Clean Elections Pilot Project Declarations of Intent indicating that each was seeking to become certified as a Clean Elections candidate in the 2005 general election, Candidates Handlin and Thompson were unable to meet the criteria for certification.

Candidates Handlin and Thompson have asked if they may return Clean Elections qualifying contributions to their contributors and present an option to each individual who made a Clean Elections qualifying contribution to either request return of the contribution to the contributor or to turn over the contribution to the Clean Elections Fund.

In light of apparently conflicting statutory texts, and in the absence of any specific statutory provision dealing with candidates who have not been certified as Clean Elections candidates, staff recommended that it may be appropriate for the Commission to authorize Candidates Handlin and Thompson to return qualifying contributions to those contributors who so choose. Staff recommended that any legislation to reauthorize the Clean Elections

Pilot Project in 2007 provide specific statutory guidance for disposition of qualifying contributions by a candidate who does not qualify for the program.

Staff noted that if the Commission authorizes the return of qualifying contributions, then Candidates Handlin and Thompson be instructed to turn over to the Commission for deposit into the Fund any qualifying contributions that are not returned to the contributors. Staff mentioned that the candidates must also file a report of the contributions that are not returned and of any seed money contributions received and expenditures made. Further, staff noted that if the Commission does not authorize the return of qualifying contributions, the candidates should be instructed to turn over and report all qualifying contributions and to report all seed money contributions and expenditures.

Chair English recognized Assemblyman Samuel D. Thompson, a candidate who attempted to qualify for the Clean Elections Program.

Assemblyman Thompson stated that contributors made contributions to support his runningmate, Amy Handlin, and him. He said donors did not contribute with the idea that they were supporting other candidates in the program. Assemblyman Thompson said that since the pair did not qualify for the program they intended to return the contributions to the contributors with a letter advising them that, if they desired, the money could go instead into the Clean Elections Fund.

Chair English recognized Freeholder Amy Handlin, Assemblyman Thompson's running mate, who also attempted to qualify for the program. Freeholder Handlin reiterated the position of Assemblyman Thompson.

Chair English asked the candidates to speak to the merits of the Clean Elections Program.

Assemblyman Thompson stated that the pair undertook 12 weeks of door-to-door campaigning in an attempt to acquire the necessary threshold amount of contributions. He said that during that time they were forced to forego other campaign activities.

Assemblyman Thompson stated that it is not a solution to extend the time for soliciting qualifying contributions. Extending the time period back to the primary would not afford very much more time and therefore accomplish little, and adding time closer to the election would leave even less time to run a campaign and raise money if candidates failed to qualify.

Commissioner Burstein asked: how close did you come to reaching the threshold amount?

Assemblyman Thompson indicated the pair approached 50 percent. Assemblyman Thompson said also that he would like to see the Commission loosen the rules in terms of allowing other organizations to help voluntarily. He said he saw no difference between an organization sending out fliers and an organization sending a notice about the program.

Freeholder Handlin noted that the opponents in the 13th district apparently took it upon themselves to return money to contributors when they dropped out of the program. She said that her contributors should be treated similarly. Freeholder Handlin asked whether or not money contributed electronically will be returned?

Vice Chair Tober asked whether staff has reached out to the opponents?

Legal Director Massar stated that with regard to checks filed electronically, it would be the Treasury Department that would have to deal with this matter. She said that staff would contact the Treasury as to the Freeholder's concern.

Chair English recognized Mr. William Castner, Chief Counsel to the Assembly Democratic Majority, representing Majority Leader Joseph Roberts. Also, present was Kay Henderson of the Assembly Democratic Majority staff.

Mr. Castner said that Majority Leader Roberts appreciates the efforts of the Commission for its work to help the program succeed. He mentioned that the emergency meeting to consider an advisory opinion concerning receipt of qualifying contributions by "check cards" was very important, thanking Executive Director Herrmann and Legal Director Massar specifically for their efforts on behalf of the program. He said the Majority Leader supports the idea that checks go back to donors. He said, however, that before this happens the Majority Leader believes an inventory of the donations should occur. Mr. Castner indicated that it would help in terms of improving the program in the future.

Assemblyman Thompson said that their information was keyed into ELEC's software and that the data would be made available.

Chair English recognized Evelyn Liebman, Program Director, New Jersey Citizen Action. Ms. Liebman stated that she supported the Majority Leader's suggestion about data collection. She said that as much as possible should be learned to enable the program to be improved.

Chair English recognized Mr. Louis M. Stefanelli, Treasurer, Pawlowski for Governor campaign, who stated that donors were giving to individual candidates and not to the Clean Elections Program.

On a motion by Commissioner Davis, seconded by Commissioner Burstein and passed by a vote of 4-0, the Commission approved issuance of an advisory opinion, as described by staff, to permit the candidates to return qualifying contributions to contributors with an option for them to give their contributions to the Clean Elections Fund.

Apart from the motion, the Commission requested that data be collected.

3. 2005 General Election Gubernatorial Candidates' Debate

Staff advised the Commission of correspondence received by fax, on October 4, 2005, from Louis M. Stefanelli, Treasurer, on behalf of 2005 general election gubernatorial Candidate Jeffrey Pawlowski. In his letter, Treasurer Stefanelli raised questions about the

debate sponsored by New Jersey Network (NJN) that is scheduled for October 20, 2005. Treasurer Stefanelli noted that the arrangements made by NJN for the October 20th debate differ from the plans provided in the debate sponsor application filed by NJN. Treasurer Stefanelli stated in his letter that NJN's actions are "an abuse of the debate process and an abrogation of their debate sponsorship responsibilities." He asked the Commission to insist that NJN comply with the information in the debate sponsor application, or, in the alternative, censure NJN, resolve not to select NJN as a debate sponsor in future elections, demand an explanation from NJN, or "pull the debate from NJ Network and award it to another applicant."

Staff reported that it contacted William Jobes, NJN Director of News and Public Affairs, who filed the sponsor application on behalf of NJN and its co-sponsors. Mr. Jobes stated that, as indicated in its application, NJN will carry the debate on its four over-the-air broadcast stations and its Public Radio Network stations. NJN will offer the October 20th debate to C-SPAN and WNET-TV for broadcast and to its co-sponsors, Gannett News and the Philadelphia Inquirer, for their websites. He indicated that there had been no change in these plans from the information provided in the sponsor application filed on June 27, 2005. NJN will offer the debate to these additional media outlets, but cannot compel them to carry the debate.

Staff noted that the Commission has no statutory or regulatory basis to provide the relief sought by Treasurer Stefanelli because NJN continues to meet the statutory and regulatory requirements for a debate sponsor and will provide a one-hour debate for the two qualified candidates.

Staff explained that the provisions of the Act, as implemented in the Commission's regulations, define and limit the role of the Commission in the gubernatorial candidates' debates to selection of the debate sponsors and monitoring of the debate calendar.

Staff concluded that it cannot find any authority in the Act or the rules for the Commission to compel NJN to modify its debate arrangements, as requested by Treasurer Stefanelli. Because NJN continues to meet the three requirements for a debate sponsor, and because it will provide a one-hour debate for the two qualified candidates, as required by the Act and regulations, staff does not believe NJN can be disqualified as a debate sponsor.

Legal Director Massar stated that at the request of Chair English, she contacted NJN and the League of Women Voters. In speaking with representatives from NJN and the League of Women Voters, Legal Director Massar said that she learned that the League changed the date of its debate as the result of negotiations with the campaigns of two non-publicly-financed candidates. She said that because the new date conflicted with NJN's scheduled debate, NJN was forced to change its original date for its debate.

Chair English stated that she is concerned that the Commission was not kept involved or told of any change in plans.

Commissioner Burstein said that there is a vast difference between a live debate and a taped debate. He said that changing from a live debate to a taped debate is problematical to him because one of the reasons he voted for NJN was because of the live format.

Chair English said there are differences in how candidates prepare for a live debate compared to a taped debate.

Commissioner Davis stated that he agreed with Chair English and Commissioner Burstein. He said, however, that he would not go so far as to remove sponsorship. He said it would be impractical at this point. Commissioner Davis said that the Commission should be informed of any conflict. He said it would be up to the Commission if further steps should be taken.

Chair English recognized Mr. Louis Stefanelli, Treasurer of the Pawlowski for Governor campaign. Mr. Stefanelli stated that the Commission should require NJN to comply with the guidelines for the debate as set forth in the stations' application submitted in July of 2005. He said that they are not living up to the terms of sponsorship, in particular in offering to conduct a live debate. Mr. Stefanelli indicated that the League of Women Voters complied with the terms of its application.

On a motion by Vice Chair Tober, seconded by Commissioner Burstein and passed by a vote of 4-0, the Commission directed staff to draft a letter to NJN for Commission review indicating the Commission's concern that they were not informed of changes in the debate format that differed significantly from the original application.

4. Adjournment

On a motion by Commissioner Davis, seconded by Commissioner Burstein and passed by a vote of 4-0, the Commission voted to adjourn at 12:30 p.m.

Respectfully submitted,

Frederick M. Herrmann, Ph.D.
Executive Director

FMH/elz