



State of New Jersey

ELECTION LAW ENFORCEMENT COMMISSION

JERRY FITZGERALD ENGLISH
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Commissioner

THEODORE Z. DAVIS
Commissioner

Respond to:
P.O. Box 185
Trenton, New Jersey 08625-0185

(609) 292-8700 or Toll Free Within NJ 1-888-313-ELEC (3532)

Website: <http://www.elec.state.nj.us/>

FREDERICK M. HERRMANN, Ph.D.
Executive Director

JEFFREY M. BRINDLE
Deputy Director

NEDDA G. MASSAR
Legal Director

EVELYN FORD
Compliance Director

JAMES P. WYSE
Counsel

PUBLIC SESSION MINUTES

June 20, 2006

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 Minute of June 6, 2006

On a motion by Commissioner Burstein, seconded by Commissioner Davis and passed by a vote of 3-0, the Commission approved the Public Session Minutes of June 6, 2006.

3. Executive Director's Report

A. Commission News

Executive Director Herrmann advised the Commission that former ELEC Vice Chair Paula A. Franzese was the recipient of the 2006 Medal of Honor from the New Jersey State Bar Association at a dinner reception on June 15th, 2006. According to the Executive Director, she emailed him that "she read with immense pride ELEC's superb Annual Report The Commission [sets] the standard for excellence, integrity, and true innovation." He added that former ELEC and Federal Election Commission Chair Frank P. Reiche called to say that he found the Annual Report to be outstanding and first rate. Mr. Reiche stated that it is a wonderful, positive reflection on the work of the Commission.

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B. Staff Activities

Executive Director Herrmann informed the Commission that to further pay-to-play compliance, staff has created a new Pay-to-Play page on ELEC's website. He noted that this page includes a: Fact Sheet, Power Point Presentation, Plain Language Chart, and new Plain Language Outline. According to the Executive Director, users are directed to ELEC's toll free telephone number to contact the Special Programs Section with questions.

Executive Director Herrmann reported that on May 18th, 2006, Legal Director Nedda Massar served on a panel sponsored by the Election Committee at the annual meeting of the New Jersey Bar Association in Atlantic City. The Executive Director said that her topic was clean elections and gubernatorial public financing.

Executive Director Herrmann indicated that on May 22nd, 2006, he met with a group of students from College Leadership New Jersey to discuss the role of ELEC in administering the campaign financing and lobbying laws and that on June 3rd, 2006, Legal Director Massar, who is the president-elect of the Council on Governmental Ethics Laws (COGEL), participated in a meeting of the Steering Committee in New Orleans.

Executive Director Herrmann mentioned that on June 13th, 2006, he took part in a conference call of the COGEL Awards Committee to plan its work for this year. He said that COGEL gives out three awards annually:

- The COGEL Award for contributions to promoting ethical conduct among governmental officials and candidates for public office in the international arena,
- The COGEL Service Award for contributions to COGEL, and
- The Honorary Lifetime Membership Award for outstanding contributions to governmental ethics over the course of a person's career.

The Executive Director advised the Commission that on June 14th, 2006, he was a panelist at a New Jersey Institute of Continuing Legal Education conference entitled: "Pay-To-Play: The New Rules of the Game," held at the Woodbridge Sheraton. He stated that he spoke about candidate committees and the general role of the Commission in regulating campaign financing. Executive Director Herrmann reported that on the panel were:

- Paul Josephson, speaking about State level pay-to-play;
- John Kraft, speaking about local level pay-to-play;
- Former ELEC Legal Director Gregory E. Nagy, speaking about lobbying regulation; and,
- Steve Sholk, speaking about 501(c)(3) organizations.

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According to the Executive Director, there were also four commentators on the program:

- Assemblyman Kevin O'Toole,
- Assemblywoman Linda Greenstein,
- Heather Taylor from the Center for Civic Responsibility,
- Ingrid Reed from the Eagleton Institute, and
- John Rogers from New Jersey Business & Industry Association.

Executive Director Herrmann noted that there were a number of very positive comments made about ELEC. For example, he said, the moderator Steve Sholk told the audience that the quality of ELEC's advisory opinions was better than those of the Federal Election Commission. He added that Ingrid Reed praised the Commission's new pay-to-play page on the ELEC website for its usefulness to ordinary citizens seeking a plain language understanding of the new laws and that a member of gubernatorial candidate John Murphy's staff told him during a break that ELEC's Gubernatorial Public Financing and Information Technology staff members were the best persons with whom she had ever worked in State government. Executive Director Herrmann stated that she particularly mentioned the work of Director of Special Programs Amy Davis and Associate Computer Technician Lou Solimeo.

Executive Director Herrmann informed the Commission that in August 2006, Terry Draver, from the United States Government Accounting Office, and he, acting as the co-chairs of COGEL's Subcommittee on Restoration and Preservation of Records, will be reviewing 16 boxes of material for purposes of cataloging their contents and re-filing them in new boxes. He said that it is intended that after this process is concluded a list of missing materials will be provided to COGEL members to see if gaps may be filled. The Executive Director noted that it is crucial for COGEL to have a complete set of its records for auditing and planning purposes.

Executive Director Herrmann reported that the staff once again had an excellent participation level in the New Jersey State Employee Charitable Campaign. He said that ELEC raised \$6,134.00 from 53 staff members, with a per capita campaign contribution of \$116.00. Executive Director Herrmann thanked Director of Information Technology Carol Neiman and Associate Data Entry Technicians Barbara Counts and Pam Kinsey for their hard work in making this program such a success.

C. Northeastern Regional Conference on Lobbying (NORCOL) Meeting

Executive Director Herrmann announced that the annual NORCOL meeting for lobbying commission staffs is scheduled for the afternoon of August 1st, 2006. He said that it will be held as part of the Eastern Regional Conference of the Council of State Governments in Philadelphia. The Executive Director said that he has prepared a draft of his annual publication describing the regulation of lobbying in New Jersey. The Executive Director asked the Commissioners to review it over the next couple of weeks and please let him know if they have any changes.

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D. Summer Meeting Schedule

- July 17, 2006 at 11:00 a.m. in Trenton; and,
- August 15, 2006 at 11:00 a.m. in Trenton (if needed).

Vice Chair Tober arrived at this point in the meeting.

4. Approval of Public Session Minutes of May 16, 2006

On a motion by Commissioner Burstein, seconded by Commissioner Davis and passed by a vote of 3-0, the Commission approved the Public Session Minutes of May 16, 2006. Chair English abstained from voting, having not been present at the May 16th meeting.

5. Advisory Opinion Request No. 05-2006

The Commission received an advisory opinion from Angelo J. Genova, Esq., on behalf of Joseph DiVincenzo, a 2006 general election candidate for Essex County Executive, and Armando Fontoura, a 2006 general election candidate for Essex County Sheriff.

Mr. Genova asked whether or not Candidates DiVincenzo and Fontoura are permitted by the Campaign Reporting Act to form a joint candidates committee for the 2006 general election.

The New Jersey Campaign Contributions and Expenditures Reporting Act, N.J.S.A. 19:44A-1 et seq., does not contain any text to permit explicitly candidates for the offices of county executive and county sheriff in a county to form a joint candidates committee (JCC). According to Legal Director Massar, Mr. Genova advanced several reasons to support his request that the two candidates be permitted to form a JCC pursuant to Section 9 of the Act. Mr. Genova urged that the definition of the term “joint candidates committee” in the Act requires that Candidates DiVincenzo and Fontoura be permitted to form a JCC in the 2006 general election. Mr. Genova stated that Section 9 of the Act “provides candidates with broad associational discretion in selecting their running mates and establishing joint candidate funding vehicles.”

Staff noted, however, that “the term ‘joint candidates committee’ means a committee established pursuant to subsection a. of section 9 by at least two candidates for the same elective public offices in the same election in a legislative district, county, municipality or school district For the purpose of this subsection: the offices of member of the Senate and members of the General Assembly shall be deemed to be the same elective public offices in a legislative district; the offices of member of the board of chosen freeholders and county executive shall be deemed to be the same elective public offices in a county; and the offices of mayor and member of the municipal governing body shall be deemed to be the same elective public offices in a municipality.”

Mr. Genova urged the Commission to consider the associational rights of candidates under the First and Fourteenth Amendments as a basis for authorizing candidates for county executive and sheriff to form a JCC.

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Staff recommended that the Commission find it does not have the authority as an administrative agency to permit Candidates Joseph DiVincenzo and Armondo Fontoura to form a JCC because to do so would effectively expand the scope of the Act by adding the office of sheriff to the “same elective offices” in a county in N.J.S.A. 19:44A-3r.

Staff suggested that if the Commission were to permit the formation of a JCC including candidates for the offices of county executive and sheriff, the Commission would be expanding, not merely interpreting or clarifying, the Act. Staff therefore recommended that Mr. Genova be advised that there is no provision in the Act to authorize such a JCC.

The Chair recognized Gregory E. Nagy, Esq., of Genova, Burns, & Vernioia, who appeared on behalf of Joseph DiVincenzo and Armando Fontoura. Mr. Nagy admitted that the statute does not authorize a county executive candidate and a sheriff candidate to form a joint candidates committee. He added, however, that neither does the statute prohibit it. Mr. Nagy said that this fact compels the question: Why can't they form joint candidates committees?

Mr. Nagy said that the Act promotes the associational rights of candidates in allowing them to form joint candidates committees. He asked rhetorically: if certain candidates within a county can run with each other, why can't other ones? Mr. Nagy reiterated that nothing in the statute or in the legislative history prohibits county candidates from forming joint committees. He stated that no legislative purpose is served in limiting participation in joint candidates committees. He noted that this restriction runs a foul of the United States Supreme Court decision in Eu, which instructs that statutes cannot infringe upon the associational rights of candidates. Mr. Nagy compared this request to an advisory opinion during the 2005 gubernatorial primary election, in which opinion the Commission allowed a candidate, who used his own money to meet the qualifying threshold, into the ELEC sponsored debates. He stated that the Commission should again take the initiative and fill a statutory gap. He added that permitting Mr. DiVincenzo and Mr. Fontoura to form a joint committee does not harm contribution limits because both would be subject to the equal attribution rule.

Chair English asked if contribution limits apply to in-kind contributions.

Mr. Nagy answered in the affirmative.

Chair English followed up her question by asking about the consequences of an Independent and Democrat running together. Are there associational rights involved in that situation, she asked?

Mr. Nagy again answered in the affirmative.

Commissioner Davis suggested that the Legislature was mindful of all these facts when it decided to limit the candidates who may form a joint candidates committee. He stated that it was the role of the Legislature to fill the gap and not the Commission. He also said that the statute considered last year in the gubernatorial advisory opinion was unclear concerning the gubernatorial candidate's participation in the gubernatorial debates. The situation concerning Candidates DiVincenzo and Fontoura is distinguishable because the statute at issue in the

pending request contains a specific limitation, and Candidates DiVincenzo and Fontoura will not be prevented from running.

Chair English stated that the candidates could put out collective literature even if they did not form a joint committee.

Mr. Nagy responded that by not allowing a joint committee to be formed in this way puts control of the campaign in the hands of the political party.

Commissioner Burstein stated that a court of law might be able to take this action but not the Commission. He said that the Legislature specifically addressed in the statute what candidates are permitted to form joint committees. Commissioner Burstein said that he might agree that not allowing all candidates to form joint committees is illogical but that the Commission has no power to change the law. He said that the Legislature should be petitioned.

Counsel Wyse said that Mr. Nagy's characterization of this situation being the same as the one last year in the gubernatorial advisory opinion is incorrect. He said that the two matters involved distinctly different policy considerations. Further, to achieve the result suggested by Mr. Nagy would require the Commission to ignore specific statutory text, which was not the case in the gubernatorial advisory opinion last year. He added that the Legislature was specific in limiting the composition of joint candidates committees, and the Commission would be ignoring the statute and nullifying contribution limits if it allowed a joint committee to be formed in this situation.

Chair English said that she viewed county executive and sheriff as two separate offices unlike county executive and freeholder.

6. Resolution to go into Executive Session

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

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7. Return to Public Session

Decision on Advisory Opinion Request No. 05-2006

Commissioner Burstein said that he was disturbed that the Commission would have to reject this request because the limitation on joint committee participation seems illogical. Nevertheless, he said, the statute requires the Commission to maintain the limitation on the formation of joint committees. He suggested that as part of the Advisory Opinion the Commission suggest that the Legislature address this issue.

On a motion by Commissioner Davis, seconded by Vice Chair Tober and passed by a vote of 4-0, the Commission directed staff to issue a response based upon the recommendation that the Commission did not have the authority to allow Candidates DiVincenzo and Fontoura to form a joint candidates committee. It incorporated Commissioner Burstein's comment concerning the need for legislative action in the Advisory Opinion response.

8. Adjournment

On a motion by Commissioner Burstein, seconded by Commissioner Davis 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