



State of New Jersey

ELECTION LAW ENFORCEMENT COMMISSION

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Vice Chair

ALBERT BURSTEIN
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PUBLIC SESSION MINUTES

June 19, 2007

Chair English, Vice Chair Tober, Commissioner Burstein, 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 May 15, 2007

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 May 15, 2007.

3. Executive Director’s Report

A. Computer Update

Executive Director Herrmann reported that the Department of State has added a list of all local Pay-to-Play ordinances to its website. He said that staff has added a link to this information on the ELEC website’s Pay-to-Play page.

According to the Executive Director, the Information Technology Section is working with the State homepage staff to place campaign financing, lobbying, pay-to-play, and clean elections links into the “How Do I ...” drop down menu and the “Online Services” drop down menu to facilitate easier citizen access to important

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Commission information. Executive Director Herrmann mentioned that this initiative is in keeping with Professor Ingrid Reed's Internet transparency conceptualization presented at the May meeting. Overall, he said, it should improve the availability of ELEC materials to the general public.

B. Staff Activities

The Executive Director noted that primary election statistical report Project Manager Evelyn Ford did an outstanding job in leading members of the Compliance Division and Information Technology Section staffs in producing pre-election legislative data. He stated that staff had to review hundreds of reports in a short period of time to compile data in a useful format that could be further formatted by computer for various types of statistical analysis. Executive Director Herrmann informed the Commission that on May 25, 2007, ELEC's data was featured in two PoliticsNJ.com stories with a link to the Commission's website.

The Executive Director announced that on May 9, 2007, Legal Director Nedda Massar attended a New Jersey Institute for Continuing Legal Education (ICLE) seminar on the new pay-to-play and lobbying laws. He said that a panel of private sector attorneys discussed the impact of this recent legislation on their clients conducting of business with government.

The Executive Director reported that on May 21, 2007, he hosted a group of students from College Leadership NJ and that he spoke about ELEC's role in administering the campaign financing and lobbying laws. Executive Director Herrmann advised the Commission that the students asked many good questions leading to a broad conversation about pay-to-play, clean elections, issue ads, and negative campaigning.

The Executive Director noted that on May 23, 2007, Special Programs Analyst Felice Fava spoke at a Public Purchasing Conference in Atlantic City, about pay-to-play and that on June 15, 2007, Assistant Compliance Officer Maite Urtasun and Special Programs Analyst Scott Fagerty spoke about campaign financing and pay-to-play at an ethics session at Brookdale Community College in Monmouth County. The session was sponsored by Assemblywoman Amy H. Handlin.

Executive Director Herrmann introduced Stanley Su who joined the staff in May as a member of the Information Technology Section. According to the Executive Director, he brings a wide array of important computer skills to his new position and is a welcome addition to the staff.

C. Legislative Developments

Executive Director Herrmann reported that on May 14, 2007, A-3338 (Fisher), which requires lobbyists retained by State government entities to file with ELEC, was reported out of the Assembly State Government Committee. He said that staff reviewed this legislation and determined that its requirement for ELEC to

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transmit effected reports to the Legislature a month after filing could be handled with current staffing levels.

The Executive Director informed the Commission that on May 21, 2007, S-222 (Karcher/Buono), which prohibits political contributions by all State and local public agencies, was reported out of the Assembly State Government Committee. He indicated that staff reviewed this legislation and determined that it would not impact upon ELEC's current resources. The legislation passed the Assembly 80-0 on June 11, 2007.

Executive Director Herrmann added that on June 11, 2007, S-2505 (Codey), which requires the reporting of lobbying on earmarks in appropriations bills, passed the Assembly 77-0 and S-2506 (Codey/Allen), which bars campaign contributions to charities that personally benefit candidates and officeholders, passed the Assembly 80-0.

D. Summer Meeting Schedule

- July 17, 2007 at 11:00 a.m. in Trenton;
- August 14, 2007 (if needed) at 11:00 a.m. in Trenton; and
- September 25, 2007 at 11:00 a.m. in Trenton.

4. Adoption of Amendments to Commission Rules Concerning Lobbying

Legal Director Massar advised the Commission that at its December, 2006 meeting, the Commission approved proposal of amendments to Subchapter 20, Lobbyists and Governmental Affairs Agents, N.J.A.C. 19:25-20, to further clarify the lobbying reporting requirements. She said that the amendments were published in the February 20, 2007 New Jersey Register, 39 N.J.R. 626(a).

Legal Director Massar noted that among the proposed amendments were the following:

- Clarification that the term "member" can mean an organization as well as an individual;
- Clarification of lobbying terminology by adding a new definition, "reporting entity," to have the same meaning as "lobbyist";
- Provision of a definition for the "administrative proceeding" exemption from lobbying reporting requirements;
- Clarification of recordkeeping requirements for persons who undertake communications with the general public; and,
- Requirement of a consent to service of process from a governmental affairs agent or lobbyist who is not a resident of New Jersey, is not a New Jersey corporation, or is not authorized to do business in New Jersey.

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Staff noted that the testimony and comments received indicated that proposed N.J.A.C. 19:25-20.3(c), establishing a definition of the term “administrative proceeding with the State,” did not provide the intended clarification of that term. Staff therefore recommended that the Commission approve adoption of the proposed amendments to the lobbying rules, with the exception of the amendment at N.J.A.C. 19:25-20.3(c) which defines the term “administrative proceeding.” She further recommended that the Commission revisit the definition in a future rulemaking

Commissioner Burstein asked whether or not any thought was given to waiting until advisory opinions are issued to develop of a body of law that would result in an adequate definition.

Legal Director Massar said that the *status quo* can be maintained until such time as the advisory opinion process can be used to build a body of law as suggested by Commissioner Burstein.

On a motion by Vice Chair Tober, seconded by Commissioner Burstein and passed by a vote of 3-0, the Commission adopted the amendments to the lobbying rules, with the exception of the amendment at N.J.A.C. 19:25-20.3(c), which defines “administrative proceeding with the State.” The Commission directed staff to file the Notice of Adoption with the Office of Administrative Law (OAL).

5. Advisory Opinion Request No. 01-2007

The Commission considered a request for an advisory opinion from Ms. Patricia Lynn Hero, a candidate in the 2006 general election for the office of City Council in the First Ward in the City of Linden (Union County).

In the Advisory Opinion Request, Ms. Hero has asked whether or not she may use funds remaining in her 2006 general election campaign depository to pay medical costs arising from an injury she sustained while conducting campaign activity during the 2006 general election, which costs have been charged to her personal credit card.

Staff recommended that Ms. Hero be advised that in the unique circumstances of her injury, use of her 2006 general election candidate committee funds to pay \$1,168.80 in medical costs is permissible as a 2006 general election campaign expense pursuant to the New Jersey Campaign Contributions and Expenditures Reporting Act, N.J.S.A. 19:44A-1 et seq. and Commission regulations. Staff further recommended that Ms. Hero be advised that she is permitted to use candidate committee funds to reimburse herself for payments she has made to her credit card account from personal funds to pay for the medical expenses related to her injury. In October 2006, while undertaking door-to-door campaigning, Ms. Hero fell on the sidewalk and sustained an injury which required emergency care at Robert Wood Johnson Hospital in Rahway.

On a motion by Commissioner Burstein, seconded by Vice Chair Tober and passed by a vote of 3-0, the Commission approved the staff recommendation in the foregoing Advisory Opinion Request. Chair English, noting the exception to personal use and the unique circumstances, supported the advisory opinion with reluctance.

6. Advisory Opinion Request No. 02-2007

Legal Director Massar stated that an Advisory Opinion Request was received on June 5, 2007, from New Jersey Organization for a Better State (NEW JOBS), a continuing political committee (CPC), seeking advice concerning application of the annual pay-to-play disclosure requirements of N.J.S.A. 19:44A-20.27 and N.J.A.C. 19:25-26.6 to NEW JOBS. On June 11, 2007, a letter of representation was received from Gregory E. Nagy, Esq., indicating that he represented NEW JOBS. On June 13, 2007, staff received a letter from Mr. Nagy indicating that he represented Cooper, Levenson, April, Niedelman, Wagenheim, P.A. (Cooper Levenson), a law firm that had received \$50,000 or more in 2006 from New Jersey government entities, and requesting to join Cooper Levenson as a party to the NEW JOBS advisory opinion request.

Director Massar explained that Mr. Nagy asked whether or not Cooper Levenson, as a “business entity,” is required by N.J.A.C. 19:25-26.6 to report on its business entity annual disclosure statement, filed pursuant to N.J.A.C. 19:25-26.4 and 19:25-26.5, each contribution in excess of \$300.00 made in 2006 by NEW JOBS to New Jersey candidates and committees. Ms. Massar stated that this request is the first to require application of the new pay-to-play disclosure law.

Legal Director Massar stated that N.J.S.A. 19:44A-20.27 and N.J.A.C. 19:25-26.6 require that if a “business entity” directly or indirectly controls a CPC, reportable contributions made by that CPC are deemed to be contributions made by the “business entity” and are required to be reported by the “business entity” on its annual disclosure statement.

Legal Director Massar further explained the staff recommendation that participation by Cooper Levenson, as described in the inquiry, in the organization, decision-making, and policy-making activities of NEW JOBS, is not sufficient to constitute direct or indirect control of NEW JOBS, and that Cooper Levenson does not meet the criteria, established at N.J.A.C. 19:25-26.6(d), for direct or indirect control of a CPC. She said, therefore, that staff did not believe that contributions made by NEW JOBS should be deemed, pursuant to N.J.S.A. 19:44A-20.27d and N.J.A.C. 19:25-26.6, to be contributions by Cooper Levenson and are therefore not required to be reported by Cooper Levenson on its business entity annual disclosure statement.

Chair English called on Mr. Nagy and Kenneth J. Calemno, Esq., Chief Operating Officer of Cooper Levenson and a Trustee of NEW JOBS, to speak to the Advisory Opinion Request.

Mr. Nagy stated that he agreed with the staff recommendation. He said that it would be a misapplication of statute to require Cooper Levenson to report contributions made by NEW JOBS. He said that the advisory opinion, if approved by the Commission, would provide guidance to collective membership groups in general. Mr. Calemno agreed with Mr. Nagy.

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Commissioner Burstein asked whether, because control is central to this question, collective membership CPC's have by-laws that certify who has control.

Mr. Nagy stated that NEW JOBS has by-laws. He said that he cannot speak to other associations but would assume that they do have by-laws.

Vice Chair Tober asked about a CPC that was industry specific. He asked: Would the same analysis apply?

Mr. Nagy said that it would, because within an industry there are competing interests, an association of this type would be representing a wide array of businesses, in competition with each other for contracts.

On a motion by Commissioner Burstein, seconded by Vice Chair Tober and passed by a vote of 3-0, the Commission approved the Advisory Opinion response as recommended by staff.

7. Report on the 2007 Fair and Clean Elections Project

Amy Davis, Director of Special Programs, reported that 12 candidates have thus far filed Declarations of Intent to participate in the program. These candidates, from all three districts, have filed weekly submissions of their activities. Director Davis said that thus far no candidate has been certified. She said that two training sessions have been held and that another is planned for June 26, 2007. Director Davis indicated that 75 percent of the candidates will be using E-filing software. She added that the Clean Elections website has been redesigned, that T.V. and radio spots have begun, and candidate information is on the website. Director Davis said that newspaper ads will soon appear. She added that because of the money spent on broadcast advertising, free bonus spots will be aired by media outlets.

Chair English asked Ms. Sandy Matsen, League of Women Voters, Ms. Marilyn Carpinteyro, Citizen Action, and Mr. Jim Leonard, State Chamber of Commerce for comments. All three indicated satisfaction with the progress being made and commented on the citizen friendly website. Each indicated that his or her respective organization will be doing mailings promoting the program.

8. Resolution to go into Executive Session

On a motion by Commissioner Burstein, seconded by Vice Chair Tober and passed by a vote of 3-0, 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.

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- 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.

9. Adjournment

On a motion by Commissioner Burstein, seconded by Vice Chair Tober and passed by a vote of 3-0, the Commission voted to adjourn at 1:15 p.m.

Respectfully submitted,

Frederick M. Herrmann, Ph.D.
Executive Director

FMH/elz