



State of New Jersey

## ELECTION LAW ENFORCEMENT COMMISSION

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### PUBLIC SESSION MINUTES

March 18, 2008

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 February 19, 2008

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 February 19, 2008.

#### 3. Executive Director’s Report

##### A. Praise for ELEC

Chair English advised the Commission that New Jersey Political Commentator Jim McQueeney wrote in the March 3<sup>rd</sup> edition of NJBIZ that ELEC is a “quietly efficient State entity” that has benefited the public more “than it could ever imagine” and that because of the Commission’s work over the past two decades “New Jersey politics and campaigns have gone from a dodge city environment to one where it is hard to dodge the law.” She pointed out that Executive Director Herrmann was cited as one of the “ten people who forever altered the political landscape in New Jersey over the past 20 years.”

B. 2008 Financial Disclosure Statements

Executive Director Herrmann reminded the Commissioners that the 2008 Financial Disclosure Statements are due at the State Ethics Commission (SEC) by May 15, 2008. He said that they may be filled out electronically or on paper. According to the Executive Director, staff has forwarded from the SEC paper copies of the forms to all of the Commissioners.

C. National Governmental Ethics News

Executive Director Herrmann noted that the Washington State Supreme Court recently ruled that a State law prohibiting false statements made with actual malice is unconstitutional. The Executive Director stated that the court upheld a lower appellate court's decision which found that the statute violated the First Amendment. Executive Director Herrmann advised the Commission that ELEC explored the issue of regulating negative advertising in the past but concluded that free speech concerns made it a very dubious proposition.

He mentioned that an independent group of citizens known as "SpeechNow.org" has filed a lawsuit in the U.S. District Court for the District of Columbia. The Executive Director informed the Commission that the lawsuit challenges the constitutionality of requiring a group of citizens, who are making independent expenditures but not campaign contributions, to register and organize as a political committee. He said that the group is not challenging the requirement that it fully disclose its contributions and expenditures but that it is bound by contribution limits on its citizen contributors. Executive Director Herrmann indicated that staff will monitor the progress of this case as it moves through the Federal court system.

D. Fiscal Year 2009 Recommended Budget

According to Executive Director Herrmann, the Administration has recommended a Fiscal Year 2009 budget for ELEC of \$4.1 million. He noted that this figure represents a significant reduction from the agency's Fiscal Year 2008 adjusted appropriation of \$4.9 million. Executive Director Herrmann stated that the computer account was lowered from \$432,000 to \$182,000 and the supplies account from \$60,000 to \$10,000. The Executive Director mentioned that ELEC's salary account was cut from \$4.4 million to \$3.9 million and that the gubernatorial public financing administration account, which is outside of the regular operating budget, was also cut from \$600,000 to \$480,000. Executive Director Herrmann stated that it is unquestionably a very hard time not only for ELEC but also all of State government. He said that staff believes that it may well be important to attempt a restoration of the lost funding especially for the computer system and supplies. The Executive Director noted that large cuts are felt more deeply by a small agency than large departments with more flexible resources.

Executive Director Herrmann added that if it is anticipated that the Clean Elections Program will be restored for the 2009 elections, the Commission will need a restoration before July 1, 2008, so that ELEC has the lead time to prepare for this

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important program. He committed staff to working with the Legislature through the budget process over the next few months to regain funding. He said that he will report its progress to the Commissioners at future meetings.

Chair English turned to Commissioner Burstein and asked that he work with staff concerning the budget issue. She also asked representatives of the good government groups to support the Commission's budget.

Commissioner Burstein asked staff to inform him as to the date of the budget hearing so that he could attend.

E. Legislative Developments

According to the Executive Director, on March 6, 2008, the Assembly State Government Committee released A-2447 (Webber/Quigley/Schaer), which prohibits current or former legislative aides and their immediate families from making campaign contributions to a legislator employing the aide. He stated that the bill provides a criminal penalty for such activity. Executive Director Herrmann reported that Assemblyman Jay Webber commented that similar campaign contributions by congressional aides are a violation of Federal law. He mentioned that he answered a technical question from Chair Joan Quigley about whether or not the bill covered contributions to a State legislator running for Federal office. Dr. Herrmann indicated that it did not. The Executive Director advised the Commission that the bill was released by a unanimous vote with an amendment prohibiting the solicitation of these types of campaign contributions from aides.

Executive Director Herrmann informed the Commission that on March 9, 2008, the Assembly State Government Committee released A-2495 (Roberts/DeCroce), which prohibits a person with a criminal record working as a lobbyist. He stated that the bill provides for a maximum fine of \$10,000 enforced by ELEC. During the session, he said, Chair Quigley and Assemblyman Webber questioned him about how the Commission would administer the bill if it became law. According to Executive Director Herrmann, he explained that ELEC would notify all current lobbyists about the statutory provisions and require a certification on all Commission lobbying forms to assure compliance. He noted that the bill was released by a unanimous vote and that on March 13, 2008, it passed the Assembly 78-0.

With regard to A-2495, Chair English inquired with respect to the issue of criminal jurisdiction. Chair English also expressed concern as to how the Commission would determine whether or not the applicant has been convicted in another State.

Commissioner Burstein suggested that the questions be discussed with a staff person on the Senate side.

Executive Director Herrmann stated that he would be in touch with a Senate staff person to discuss the issue before it gets to Committee.

F. Spring Meeting Schedule

- April 15, 2008 at 10:00 a.m. in Trenton;
- May 20, 2008 at 11:00 a.m. in Trenton, and,
- June 17, 2008 at 11:00 a.m. in Trenton.

Chair English mentioned for the record the note from the Governor's Chief Counsel Edward J. McBride, Jr., who responded to the congratulatory note sent to him by the Commission. He indicated that he looked forward to working with the Commission in the future.

4. 2007 Fair and Clean Elections Report (March 28, 2008)

Chair English turned to Deputy Director Jeffrey M. Brindle, asking him to review the Clean Elections Report.

Deputy Director Brindle said that the report was the result of a collective effort with significant contributions made by various members of the staff. He said that in following the statute, the report contains no recommendations and provides factual information only. Deputy Director Brindle said that the report would be delivered to Legislative Leaders on March 28, 2008.

Deputy Director Brindle, in reviewing the report, mentioned the chapters: recounting the history of public financing in New Jersey, summarizing the comments made by citizens at the Commission's December 18, 2007 public hearing, containing important statistical information regarding the 2007 program, reviewing the efforts to promote the program, and discussing the issues that arose during the 2007 legislative general election campaign.

Chair English congratulated the staff for a very professional and comprehensive report. Both Vice Chair Tober and Commissioner Burstein echoed those sentiments.

5. Proposed Amendments and New Rules Concerning Gubernatorial Public Financing

The Commission considered proposed amendments and new rules to the gubernatorial public financing provisions of the regulations. The proposed amendments and new rules were based upon the experience of the Commission and Commission staff in administering the gubernatorial public financing program in the 2005 primary and general elections and an advisory opinion issued concerning public financing. Legal Director Carol L. Hoekje noted that upon the Commission's approval of the proposal, the proposal notice will be submitted to the Office of Administrative Law for publication in the April 21, 2008 edition of the New Jersey Register. Secondary notice will be accompanied by: posting the proposal on the Commission's website, mailing a notice of the proposal to interested individuals, and circulating a press advisory to the State House press corps.

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A public hearing will be scheduled for the Commission's June 17, 2008 meeting. The written comment period expires on June 20, 2008. The rules will be ripe for adoption at the Commission's July 15, 2008 meeting, with an anticipated effective date of August 18, 2008.

Legal Director Hoekje reviewed the proposed amendments and new rules at:

- N.J.A.C. 19:25-15.49 Statement of candidates electing to participate in debates,
- N.J.A.C. 19:25-15.10 Non-participating candidates,
- N.J.A.C. 19:25-15.52A Notification to Commission of change in debate plans,
- N.J.A.C. 19:25-15.51 Selection of debate sponsor,
- N.J.A.C. 19:25-15.17 Matching of funds,
- N.J.A.C. 19:25-16.19 Dates of submission,
- N.J.A.C. 19:25-15.49 Statement of candidates electing to participate in debates,
- N.J.A.C. 19:25-16.38 Statement of candidates electing to participate in debates,
- N.J.A.C. 19:25-16.8 Non-participating candidates,
- N.J.A.C. 19:25-16.40 Selection of debate sponsor,
- N.J.A.C. 19:25-16.41A Notification to Commission of change in debate plans,
- N.J.A.C. 19:25-16.18 Matching of funds, and
- N.J.A.C. 19:25-16.19 Dates of submission.

In reviewing the proposal, Legal Director Hoekje stated that staff recommended that the Commission amend N.J.A.C. 19:25-15.49 and 16.38 to provide that a non-publicly financed gubernatorial candidate may use personal funds to meet all or a part of the threshold qualifying amount of deposited contributions.

In addition, she said that staff recommended that the Commission amend N.J.A.C. 19:25-15.49 and 16.38 to prevent a non-participating candidate who does not elect to accept public financing, but who wishes to participate in the series of gubernatorial debates, from using repayment of any loan amount to meet any part of the threshold expenditure amount for purposes of qualifying to participate in the debates. She said that staff also recommended that the Commission propose that these restrictions be included as amendments at N.J.A.C. 19:25-15.10(d) and 16.8(d), which sections summarize restrictions and limitations on non-participating candidates.

With regard to the rules for sponsoring debates, Legal Director Hoekje provided the staff's recommendation that the Commission propose to add new rules N.J.A.C. 19:25-15.52A and 16.41A, to require notification within 48-hours of changes and to allow the Commission to review and approve any such changes to the information provided in the debate sponsor application. She added that staff recommended that the Commission propose amendments to N.J.A.C. 19:25-15.51, Selection of debate sponsor, and the parallel primary election provision at N.J.A.C. 19:25-16.40, to provide that where the number of eligible applicants exceeds the number of debates, the Commission consider the application information in making the selection. She noted that such a provision would serve to codify what staff believes is a current Commission practice. She mentioned that staff also recommended that the Commission propose to amend N.J.A.C. 19:25-15.51 and 16.40, to

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authorize the Commission to consider as part of the selection process whether or not in a previous gubernatorial election the sponsor of a debate had made and notified the Commission of changes and received approval of such changes for the prior debate.

Finally, Legal Director Hoekje reviewed proposed amendments of a more technical nature involving debate selection and participation by candidates.

On a motion by Commissioner Burstein, seconded by Vice Chair Tober, the Commission approved, by a vote of 3-0, the proposed amendments concerning the gubernatorial public financing regulations. The proposal contains technical amendments as proposed by Commissioner Burstein relevant to proposed language at N.J.A.C. 19:25-15.49(c) and (d) and 19:25-15.51(c), and the parallel amendments. Chair English noted that the public hearing on the proposed amendments will provide an opportunity for interested parties to testify.

Chair English asked if any member of the public wished to address the Commission.

Chair English recognized Ms. Ingrid Reed, Director of the New Jersey Project at the Eagleton Institute of Politics. Ms. Reed indicated that she would like to help with the Commission's budget and asked if a document was available for her use.

Executive Director Herrmann responded that the Commission's budget is on-line but that the Commission did not have a written document from the Office of Management and Budget. He said that the information was presented to the Commission orally as part of the Executive Director's report.

Chair English and Commissioner Burstein expressed appreciation to Ms. Reed for her offer to help with the budget.

Ms. Reed asked about the process involved with the Clean Elections Report.

Executive Director Herrmann stated that it would be delivered to Legislative Leaders on March 28<sup>th</sup> at about 10:00 am. He said that the report would then be made available to the public in hard copy and on the Commission's website.

Ms. Reed asked for a copy of the transcript of the December 18, 2007 public hearing.

Executive Director Herrmann said that staff would double check but that he believed that proprietary rights were involved, so that the Commission is not permitted by the vendor to make copies and distribute them. He said a copy is available for the public to review at the Commission's offices. Moreover, the report summarizes the observations of the various witnesses at the hearing.

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6. 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, 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. 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 1:25 p.m.

Respectfully submitted,

Frederick M. Herrmann, Ph.D.  
Executive Director

FMH/elz