



State of New Jersey

ELECTION LAW ENFORCEMENT COMMISSION

JERRY FITZGERALD ENGLISH
Chair

PETER J. TOBER
Vice Chair

ALBERT BURSTEIN
Commissioner

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Deputy Director

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Legal Director

EVELYN FORD
Compliance Director

JAMES P. WYSE
Legal Counsel

PUBLIC SESSION MINUTES

April 15, 2008

Chair English, Vice Chair Tober, Commissioner Burstein, Legal 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 March 18, 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 March 18, 2008.

3. Executive Director's Report

Deputy Director Brindle delivered the Executive Director's Report prepared by Dr. Herrmann, who was recovering from oral surgery.

A. 2008 Financial Disclosure Statements

The report reminded the Commissioners that the 2008 Financial Disclosure Statements are due at the State Ethics Commission by May 15, 2008. It said that they may be filed electronically or on paper.

B. Staff Activities

According to the report, the Special Programs Section under Director Amy Davis has created a Pay-to-Play email registry to inform filers, the public, the media, and good government advocates about regulatory and administrative activities in the Pay-to-Play area.

It noted that the registry should prove an invaluable communication's tool especially in a period of very tight budgeting.

The Information Technology Section has completely redesigned the ELEC website. It now has a much cleaner look, is more user-friendly, and has an expenditure database. The report praised Director Carol Neiman, Associate Director Kim Vandegrift, Principal Webmaster Maryanne Garcia, and the rest of the Information Technology staff for their outstanding contribution to the work of the Commission. Executive Director Herrmann has already received many compliments from the media and good government groups about this major improvement.

On March 26, 2008, the Deputy Director was a guest lecturer for Professor Dan Weissman's "Politics and the Media" course at Rutgers University, where he spoke to the students about the work of the Commission.

On April 1, 2008, Executive Director Herrmann presented a lecture on the history of New Jersey Campaign Finance Law to Professor John Weingart's "Process of Politics" course at the Eagleton Institute of Rutgers University. He also met with some students after class to talk more specifically about the structure and functions of the Commission. Moreover, that evening, Executive Director Herrmann attended an Eagleton Reception celebrating the publication of Dean Barbara G. Salmore's new book New Jersey Politics and Government: The Suburbs Come of Age. Executive Director Herrmann, Deputy Director Brindle, and Research Associate Steven Kimmelman assisted Dean Salmore with her research on New Jersey's Campaign Financing and Lobbying laws. Her book footnotes various white papers written by the Deputy Director, Executive Director Herrmann's doctoral dissertation, and an article by Dr. Herrmann on the New Jersey Constitution of 1844.

C. Lobbying Update

On March 11, 2008, staff released Calendar Year 2007 Lobbying Data to the media. The total amount spent on lobbying last year was \$53.5 million and represents a three percent drop from the \$55.3 million spent in 2006. Although lobbying expenditures have continued to rise historically, there have been a few periods in which spending was somewhat lower from one year to another. The Executive Director had explained the most recent decrease and previous ones to the media by saying that "lobbyist costs are issue driven." He had added that "when spending drops, you can conclude that there were not as many important issues." Benefit passing numbers were also lower in 2007 than 2006, decreasing 30 percent from

\$45,508 in 2006, to only \$31,666 in 2007, the smallest amount in 15 years. One current lobbyist explained this decline to the Star-Ledger remarking that “public sentiment has prompted lawmakers to almost universally decline any meals or other benefits from lobbyists.”

D. National Campaign Financing News

The U.S. District Court for the District of Connecticut is reviewing whether or not the funding of candidates under the State’s Clean Elections Program must be “party neutral” to protect the “political opportunity” of alternate party candidates. It was noted that the court has studied other state public funding laws and found almost all of them were party neutral. Interestingly, there was no review of the 2007 New Jersey Pilot Program which treated alternate party candidates differently than major party candidates who received funding at a higher level.

E. Dr. Herbert E. Alexander

On a sad note, the Commissioners were told that on April 3, 2008, Dr. Herbert E. Alexander passed away. He was a distinguished scholar who authored 20 books and more than 375 articles and monographs on campaign financing topics. For 40 years, he was the director of the Citizens’ Research Foundation, which was dedicated to the study of political finance. Dr. Alexander served in 1961 and 1962 as the Executive Director of President Kennedy’s Commission on Campaign Costs, which initiated the modern era of political finance reform and also served as a consultant to many agencies including ELEC. Noted political scientist Dr. Larry J. Sabato wrote, he was “America’s foremost authority on campaign finance” and that his “body of work will forever guide those in the field.” The Commissioners were reminded that ELEC fittingly dedicated its 2007 Fair and Clean Elections Report to his memory. Executive Director Herrmann and his wife attended Dr. Alexander’s funeral in Rockville, Maryland on April 6, 2008.

Many important figures from the field of political financing were present including: Professor Michael Malbin of the Campaign Finance Institute, Kent Cooper formerly of the Federal Election Commission, Joseph Cantor formerly of the Library of Congress, and Gloria Cornette formerly of the Citizens’ Research Foundation and Dr. Alexander’s longtime assistant. Executive Director Herrmann gave the Alexander family a copy of the dedicated Clean Elections Report, which was displayed after the funeral services at the home of one of Dr. Alexander’s sons.

4. Modification to Proposal Notice for Proposed Amendments and New Rules Concerning Gubernatorial Public Financing

The Commission considered a modification to the proposed new rule that would require sponsor notification to the Commission of changes in debate plans. The modification is at N.J.A.C. 19:25-15.52A (Notification to Commission of change in debate plans). Staff also recommended an amendment at N.J.A.C. 19:25-15.51(d) (Selection of debate sponsor).

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Commissioner Burstein stated that the proposal at 15.52A leaves the matter of a change in debate plans standing by itself and does not include a set of standards for the Commission to use in determining whether or not to approve the change.

Legal Director Hoekje responded that in drafting the regulation staff tried to think in general terms so as to not limit the Commission decision making to a limited set of standards.

Commissioner Burstein stated that what is at issue is the effectiveness of the debate structure. He added that there were unilateral changes made in the last gubernatorial election that caused problems.

Vice Chair Tober stated that the Commission's power is limited by statute. The Vice Chair said that if a sponsor changes debate arrangements, the Commission cannot do anything anyway. Vice Chair Tober said that the power the Commission has is to not award the debate to the sponsor the next time.

Chair English said that when she made her decision on debate sponsorship, she was making it on the basis of the application and the concern for an interactive debate. Chair English said that if standards are put into the regulation requiring notification of any changes made, then perhaps 48-hours is not enough time. She added that it is useless to say to the sponsor four years later that the change made in the debate format was no good. Chair English said that the Commission should not be inflexible; but it serves the public to know if the format has been changed.

Legal Director Hoekje stated that the Commission has responsibility for reviewing the application. She said that the statute gives the sponsor the latitude to decide the time, date, and rules of the debate. She said that there are many areas where the statute gives the sponsor significant authority.

Commissioner Burstein said that when sponsors come before the Commission they have specific dates in mind. He said that they are before us when we as a Commission make an initial determination. Commissioner Burstein said that the Commission, therefore, should be fleshing out the statute. He said that in doing so the Commission can address new concerns. He said that while sanctions are not the purpose, ELEC should set forth a framework for operation. Commissioner Burstein said that it is important to get debate information to the public and that added language can help with this effort.

Chair English said that such notification should not be later than 48-hours but as soon as possible.

Vice Chair Tober came back to his original question which was what can the Commission do if a sponsor changes the terms of the debate? As a practical matter, are we going to take the debate away from them? How will we obtain a substitute sponsor on perhaps short notice?

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Chair English said that she was not so sure that the Commission would be unable to accomplish this task.

Commissioner Burstein said that if it takes a new sponsor, so be it.

Vice Chair Tober said that notification was important but that as a practical matter he was not sure the Commission could take a debate away from a selected sponsor.

At this point, Chair English asked the public to comment.

Ms. Ingrid Reed, Director of the New Jersey Project at the Eagleton Institute of Politics addressed the Commission. Professor Reed stated that the whole way that debates are presented has changed. She said that the Commission makes the choice of sponsors very early and that these sponsors have a tough job. Professor Reed said that much depends on how much money a sponsor can raise to fund the debate. She said that it would be great if the public funded debates. Professor Reed said that it was no longer germane as to how many people attend a debate. She said that what is important is how wide an audience — through television, replays of the debate, and internet streaming — is able to view the debates. Professor Reed said that proper notice to the public and information on the website is important. Professor Reed told the Commission not to worry about the size of the live audience but rather how many people view the debates through electronic means.

Commissioner Burstein said that he appreciated the input and asked Professor Reed if it would be helpful to have standards.

Professor Reed said that the audience in attendance is not important. She said standards should involve requirements for publicity two weeks before the debates, outreach efforts, and internet streaming.

Chair English acknowledged Mr. Donald Dinsmore, Assistant Chief Counsel for the Assembly Republicans.

Mr. Dinsmore asked if any consideration has been given as to how to deal with the Lieutenant Governor situation in the context of the debates.

Executive Director Herrmann said that the Legislature must pass enabling legislation. He said that one idea might be to have a third debate. Dr. Herrmann stated that this would require a statutory change.

Commissioner Burstein suggested that there be a contractual aspect to the sponsorship situation so that everyone understands their obligations.

Director of Special Programs Amy Davis addressed the Commission. She stated that having been in the trenches, she looks at the issue from a practical standpoint. She said that every case is fact specific and that new issues always arise. Director Davis said that notification was the most important thing because as a practical matter there would not be enough time to drop a sponsor and select a new one.

On a motion by Commissioner Burstein, seconded by Vice Chair Tober and passed by a vote of 3-0, the Commission directed staff to resubmit the proposal based on comments made at the meeting.

5. 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.

Return to Public Session

A. 2007 Annual Report

Deputy Director Brindle asked the Commissioners for their approval of the staff's draft of the report which is due to be delivered to the Legislature on May 1, 2008. With modifications the Commission directed staff to present the report to the Legislature.

B. Spring Meeting Schedule

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

C. Budget

The Commissioners asked about the Fiscal Year 2009 budget process.

Commissioner Burstein indicated that he would attend the Senate Budget Committee hearing of April 21st.

Executive Director Herrmann stated that the Assembly Budget Committee hearing is scheduled for Thursday, April 17th.

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6. 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 2:00 p.m.

Respectfully submitted,

Frederick M. Herrmann, Ph.D.
Executive Director

FMH/elz