



State of New Jersey

ELECTION LAW ENFORCEMENT COMMISSION

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Vice Chair

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PUBLIC SESSION MINUTES

November 18, 2008

Chair English, Vice Chair Tober, Commissioner Burstein, Commissioner Saunders, 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 October 21, 2008

On a motion by Commissioner Saunders, seconded by Vice Chair Tober and passed by a vote of 3-0, the Commission approved the Public Session Minutes of October 21, 2008. Commissioner Burstein was not present for the vote on the Public Session Minutes.

3. Executive Director's Report

A. Staff Activities

Executive Director Herrmann reported that the Compliance Division ran three treasurer training programs in September. He stated that the Division has now performed mandatory training for 1,173 treasurers of gubernatorial and legislative candidate committees as well as those of political party committees, legislative leadership committees, and political action committees. According to the Executive Director, it is also monitoring the activities of 1,052 lobbyists, a number that has doubled since the extension of the Lobbying Law in 2004.

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Executive Director Herrmann mentioned that in October, a compliance review by the State Ethics Commission found ELEC “in substantial compliance with the reporting and documentation requirements of the New Jersey Conflicts of Interest Law [and various] executive orders and regulations issued thereunder.” He stated, furthermore, that it was mentioned that Director of Finance and Administration Steve Dodson, ELEC’s Ethics Liaison Officer, “performs his ethics duties in a conscientious and diligent manner.” Executive Director Herrmann expressed thanks to Director Dodson for his excellent performance in this vital area.

Chair English directed staff to write a letter of congratulations to Steve Dodson for the excellent work he has done as Ethics Liaison Officer.

B. Staffing and Workload History

Executive Director Herrmann advised the Commission that the 25-Bill Ethics Package of 2004 added 17 new laws to ELEC’s workload including:

- a Pay-to-Play Prohibition Law the coverage of which extends to all State agencies, the Legislature, all counties, and all municipalities; and,
- the most expansive Lobbying Law in the nation, which covers: administrative determinations as well as legislation, regulations, and indirect or grassroots lobbying.

Executive Director Herrmann noted that other lobbying laws in the package require: random auditing by the Commission of lobbying reports, banning contingency fee lobbying, and placing a one-year revolving door prohibition on lobbying by former governors, legislators, and cabinet officers.

The Executive Director added that the reform laws also included:

- a requirement for the Commission to train treasurers,
- an expansion of contributor reporting to cover all cash contributions and noncash contributions over \$300 instead of at a higher level accounting for inflation,
- a ban on the solicitation of campaign contributions on State property,
- an identification rule for recorded campaign telephone calls,
- the addition of expenditure reporting for 48-hour notices to all committees not just political action committees, and
- a filing requirement for professional campaign fundraisers.

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Dr. Herrmann indicated that the Commission received with the package a \$2 million increase to its \$3 million operating budget so that it could add 36 new staffers to its 54 positions for a total staff of 90 employees. He said, however, only 67 positions are now filled due to an ongoing hiring freeze. Moreover, Executive Director Herrmann stated ELEC was also directed by legislation in the package to do a computer study in which it would highlight plans for improving its website and request additional funding for its operating budget.

The Executive Director informed the Commission that in the report the Commission proposed: a local contributor database; expenditure coding; industry coding of contributors; and electronic filing for political action committees, political party committees, legislative leadership committees, and lobbyists. He added that to date, no funding has been received and existing funding has been cut due to the State's ongoing fiscal problems.

Finally, Executive Director Herrmann reported that Pay-to-Play and Clean Elections work has also held up progress. Dr. Herrmann mentioned that the Pay-to-Play Disclosure Law of 2006 was unfunded. According to the Executive Director, 1,865 vendors filed with ELEC annual information on: 22,227 contracts worth \$5.6 billion and \$15.9 million in campaign contributions. Moreover, he said, the Commission is responsible for monitoring vendor filings with every State agency, county, municipality, school district, and fire district.

Executive Director Herrmann advised the Commission that campaign spending continues to increase. He said, for example, the 2007 legislative races spent \$69 million, a 21 percent increase over 2003. The Executive Director stated that more spending means more information to review and process. Executive Director Herrmann noted that with all of this additional work ELEC is currently missing 25 percent of its staff and will need to redouble its efforts to stay afloat during these extremely difficult budgetary times for the State of New Jersey.

C. Legislative Developments

The Executive Director informed the Commission that on November 13, 2008, he testified at an Assembly State Government Committee meeting that considered S-2235 (Weinberg), which requires disclosure to ELEC of campaign contributions received and expenditures made by individuals seeking election to a political party committee office. He said that he did not take a position on the bill because he had not discussed it with the Commissioners. Dr. Herrmann noted that he did share staff concerns with the constitutionality of regulating party officials who are not running for public office. The Executive Director mentioned that Senator Nicholas P. Scutari, the Chair of the Committee, asked the Office of Legislative Services (OLS) to review the legislation for possible First Amendment issues. According to Executive Director Herrmann, the bill does not contain an appropriation but was amended to clarify that it only covers party officers not all committee members, an issue that he had raised with Committee staff. The Executive Director said that the bill was released unanimously.

D. Clean Elections Press Conference

Executive Director Herrmann advised the Commission that he also attended on November 13, 2008, a State House Press Conference on a new Clean Elections publication from the Eagleton Institute of Politics at Rutgers University. He said that Clean Elections: Public Financing in Six States including New Jersey's Pilot Projects was written by Benjamin T. Brickner with Naomi Mueller. The Executive Director added that Professor Ingrid Reed and the authors made presentations, at which time the Eagleton professor graciously thanked the Commission for its able administration of the two experimental programs. Executive Director Herrmann suggested that the various good government organizations involved with the project hope that it will be rejuvenated for the 2011 election.

E. Winter Meeting Schedule

- December 16, 2008 at 11:00 a.m. in Trenton;
- January 20, 2009 at 10:00 a.m. in Trenton; and,
- February 17, 2009 at 10:00 a.m. in Trenton.

F. Proposed Meeting Schedule for 2009

Executive Director Herrmann presented the Commissioners, for their approval, the 2009 proposed meeting schedule.

On a motion by Vice Chair Tober, seconded by Commissioner Saunders and passed by a vote of 3-0, the Commission approved the 2009 meeting schedule, as amended.

Chair English acknowledged Professor Ingrid Reed, Director of the New Jersey Project at the Eagleton Institute of Politics of Rutgers University. Professor Reed asked to address the Commission.

Professor Reed provided the Commission with copies of the Clean Elections report mentioned by Dr. Herrmann. She stated that Eagleton will continue to follow Clean Elections and that it planned to do forums on campaign financing in the spring. Professor Reed said that it would be useful to do something on Gubernatorial Public Financing and that the Institute would certainly be taking a look at the New Jersey program to understand how it works.

Commissioner Burstein arrived at this point (11:37 a.m.).

Chair English asked Professor Reed to summarize the aim of the forums.

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Professor Reed said that there is a concern about how elections are funded in New Jersey. She said that at the federal level there are more small donations while in New Jersey larger donations seem to fuel the campaign war chests. Professor Reed said that it was also an aim to look at both models of public financing, matching funds and clean elections, to see if either model is better. She added that perhaps there was a third way.

Commissioner Burstein asked if there will be any discussion of candidates opting out of the program.

Professor Reed admitted that Commissioner Burstein had posed an interesting question. She said that there is real interest in what is fair in funding campaigns and leveling the playing field. It is important according to Professor Reed to create an avenue for individuals to run evenly though they may not have as much money as an opponent. She noted that a recent U.S. Supreme Court case [Davis v. Federal Election Commission] found that it was not allowable to permit a self-financed candidate to raise more money with higher contribution limits just because that candidate ran against a wealthy opponent. She said that this case should not apply to public funding in a Clean Elections Program. The impact of the Davis case's application going forward may well effect participation in future programs.

Executive Director Herrmann added that in any forums or further talks about a Clean Elections program it would be important that the need to fund the administration of the program be reviewed.

4. Resolution to go into Executive Session

On a motion by Commissioner Saunders, seconded by Commissioner Burstein and passed by a vote of 4-0, 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.

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5. Adjournment

On a motion by Vice Chair Tober, seconded by Commissioner Saunders 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