



State of New Jersey

ELECTION LAW ENFORCEMENT COMMISSION

JERRY FITZGERALD ENGLISH
Chair

PETER J. TOBER
Vice Chair

ALBERT BURSTEIN
Commissioner

AMOS C. SAUNDERS
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

CAROL L. HOEKJE
Legal Director

EVELYN FORD
Compliance Director

JAMES P. WYSE
Legal Counsel

PUBLIC SESSION MINUTES

January 20, 2009

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 10:00 a.m. in Trenton.

2. Approval of Public Session Minutes of December 16, 2008

On a motion by Commissioner Saunders, seconded by Commissioner Burstein and passed by a vote of 3-0, the Commission approved the Public Session Minutes of December 16, 2008.

Vice Chair Tober arrived at this point.

3. Executive Director's Report

A. National Campaign Financing News

Executive Director Herrmann stated that in December, a U.S. District Court Judge upheld the constitutionality of Connecticut's ban on campaign contributions by lobbyists and state contractors. The Executive Director mentioned that the court dismissed a challenge brought by lobbyists who claimed the ban was overbroad and violated their free speech rights. According to Executive Director Herrmann, this prohibition was part of broad campaign financing reforms, including a clean elections

Public Session Minutes

January 20, 2009

Page 2

program, that were enacted in Connecticut in 2005. He noted that the judge concluded that “in light of Connecticut’s recent history of corruption scandals involving high-ranking state politicians, . . . the Legislature had a constitutional, sufficiently important interest in combating actual and perceived corruption by eliminating contributions from individuals with the means and motive to exercise undue influence over elected officials.”

Dr. Herrmann mentioned Connecticut’s American Civil Liberties Union expects that it will appeal because the decision “broadly restricts the rights of a very large group of citizens in a way that is unprecedented in the United States.” He advised the Commission that State’s attorney general on the other hand believes the decision “rightly regards giving political money to a candidate as at the fringe of free speech and expression, not a core first amendment activity.” Executive Director Herrmann said this case will have ramifications in other states, and it should be noted that New Jersey’s current pay-to-play laws do not place a complete ban on government contractor contributions as they allow donations of \$300 or less and New Jersey lobbyists are allowed to make campaign contributions.

B. Staff Activities

Executive Director Herrmann advised the Commission that Director of Information Technology Carol Neiman and Associate Data Entry Technicians Barbara Counts and Pam Kinsey once again led ELEC’s highly successful participation in the New Jersey State Employees Charitable Campaign. He indicated that this year the staff contributed over \$5,000 and a highlight of the campaign was a session for staff featuring representatives from three of the charities involved. The Executive Director said the session was a very rewarding experience for the staff and helped the success of the campaign by giving everyone a sense of the wonderful ways in which their donated money would be used.

C. New Non-Gubernatorial Thresholds for Reporting and Penalties

Dr. Herrmann informed the Commission that based on the “2009 Cost Index Report,” new non-gubernatorial thresholds are now in place as of January 1, 2009. He stated the new thresholds are as follows:

- candidate committee reporting (R-1) - \$4,000 up from \$3,500,
- political committee reporting - \$2,100 up from \$1,800,
- continuing political committee reporting - \$4,900 up from \$4,300,
- 48-hour notice reporting for contributions and expenditures - \$1,200 up from \$1,000,
- joint candidates committee reporting with two candidates - \$7,600 up from \$6,700,
- joint candidates committee reporting with three or more candidates - \$11,000 up from \$9,700,
- independent expenditure reporting - \$1,200 up from \$1,000,

Public Session Minutes

January 20, 2009

Page 3

- A-1 threshold - \$4,000 up from \$3,500,
- A-3 threshold - \$4,900 up from \$4,300, and
- penalty thresholds for first offense/second and each subsequent offense - \$6,800/\$13,600 up from \$6,000/\$12,000.

The contributor reporting threshold remains frozen at over \$300. Moreover, the Governor and Legislature have not raised the contribution limits for 2009 based on the report's recommendations.

D. Budget Update

According to the Executive Director, on January 5, 2009, the Department of the Treasury released a list of \$812 million in spending reductions planned by Governor Jon S. Corzine as part of a larger set of solutions to closing an estimated \$2.1 billion shortfall in the Fiscal Year 2009 budget.

Executive Director Herrmann added that ELEC's operational budget was not cut. The Executive Director mentioned that about \$300 million set aside for the administration of the defunct 2009 Clean Elections Pilot Project lapsed. Executive Director Herrmann cautioned, however, that given the state of the economy, the Governor may have to continue the spending reduction process should fiscal conditions warrant further cuts. He promised that staff will keep the Commissioners informed of any further budget developments for this fiscal year at future meetings.

E. White Paper Number 20

Executive Director Herrmann asked the Commissioners if they had any questions for Deputy Director Brindle about his draft of White Paper Number 20, entitled "Legislative General Elections 2009: An Analysis of Trends in State Senate and Assembly Elections." After a brief discussion, Executive Director Herrmann asked for a vote by the Commissioners to release the White Paper.

On a motion by Commissioner Burstein, seconded by Commissioner Saunders and passed by a vote of 4-0, the Commission approved distribution of White Paper Number 20.

F. Winter Meeting Schedule

- February 17, 2009 at 10:00 a.m. in Trenton; and,
- March 17, 2009 at 10:00 a.m. in Trenton.

4. 2009 Gubernatorial Public Financing Program Update

Director of Special Programs Amy Davis gave the following report. She said that the first 2009 primary election matching fund submission date was on January 6, 2009. Director Davis reported that ELEC received one submission from Candidate Steven Longan, containing \$384,450.35 in net contributions submitted for match (an amount in excess of the

Public Session Minutes

January 20, 2009

Page 4

\$340,000 required threshold). She added that Candidate Lonigan filed a signed Statement of Agreement to participate in the 2009 primary election debates and a Candidate Certification of Non-Participation in Issue Advocacy Organizations (Form P-2A). Moreover, said Director Davis, the expenditure information provided by the Lonigan campaign indicated that expenditures had been made or committed to be made in excess of the \$340,000 expenditure qualification threshold.

Director Davis noted that when the review of the contributions is completed, and it is determined that the submission contains a total amount of at least \$340,000 in contributions eligible for match, staff will certify the public fund total to the Department of the Treasury and deposit the public funds. She stated that staff will report to the Commission on Submission #1 at the next Commission meeting.

Director Davis concluded by announcing that the next date for filing matching fund submissions is January 20, 2009. She said that staff will report to the Commission at the meeting on February 17, 2009, on the status of any submissions received.

5. Finalization of Campaign Debt

Legal Director Hoekje advised the Commission that Lynn Schundler, Esq. agreed to a further extension for her advisory opinion request involving finalization of campaign debt. The extension is needed to allow for the regulatory process to be completed.

Legal Director Hoekje advised the Commission that Commissioner Burstein had suggested in a letter to her a slight revision to the proposed amendment to N.J.A.C. 19:25-6.10(b). The proposed amendatory language is as follows:

“(b) Permissible use of funds for legal fees and expenses shall not include legal fees and expenses for ~~criminal~~ defense of a candidate or officeholder, ~~including defense in~~ [who is the subject of] a criminal inquiry or criminal investigation, ~~and~~ [or] defense of a criminal indictment or other criminal proceeding.”

The change is technical in nature and the Commission decided to make the change at the time of adoption.

6. Resolution to go into First Executive Session

On a motion by Vice Chair Tober, seconded by Commissioner Burstein and passed by a vote of 4-0, the Commission resolved to go into Executive Session to discuss anticipated litigation and the following matter, which will become public as follows:

A. A report on requests from the public for investigations of possible violations, which report will not become public in order to protect the identity of informants and maintain the integrity of investigative procedures and priorities. However, any complaint alleging violations, which complaint may be generated as a result of a request for investigation, will become public not later than seven business days after mailing to the named respondents.

Return to Public Session

7. Public Hearing Concerning Proposed Amendments for Finalization by Publicly-Financed Gubernatorial Candidates with Debt

Chair English announced that a public hearing was being conducted to elicit public comment concerning the proposed amendments related to finalization by publicly-financed gubernatorial candidates with debt.

No individuals appeared to testify on the proposed amendments.

A court reporter was available to record the proceedings. The transcript will be available to the public for inspection upon request.

On a motion by Commissioner Saunders, seconded by Commissioner Burstein and passed by a vote of 4-0, the Commission adjourned the public hearing.

Resolution to go into Second Executive Session

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

8. Adjournment

On a motion by Commissioner Burstein, seconded by Commissioner Saunders and passed by a vote of 4-0, the Commission voted to adjourn at 12:00 p.m.

Respectfully submitted as true
and correct,

Frederick M. Herrmann, Ph.D.
Executive Director