



State of New Jersey

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Chairman

WALTER F. TIMPONE
Vice Chairman

AMOS C. SAUNDERS
Commissioner

ELECTION LAW ENFORCEMENT COMMISSION

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JEFFREY M. BRINDLE
Executive Director

JOSEPH W. DONOHUE
Deputy Director

CAROL L. HOEKJE
Legal Director

AMY F. DAVIS
Compliance Director

JAMES P. WYSE
Legal Counsel

PUBLIC SESSION MINUTES

May 15, 2012

Chairman DeFilippis, Legal Counsel Wyse, and senior staff were present. Director of Review and Investigation Shreve Marshall was also present. Report Review Officer Lovinsky Joseph was present for the purpose of recording the minutes. Commissioner Saunders participated by telephone. Vice Chairman Timpone was absent.

The Public Session Minutes will be available online in the Commission's website at: <http://www.elec.state.nj.us>.

The meeting convened at 10:00 a.m. in Trenton.

1. Open Public Meetings Statement

Chairman DeFilippis 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. It was also posted on the Commission's website.

2. Approval of Public Session Minutes of April 10, 2012

On a motion by Commissioner Saunders, seconded by Chairman DeFilippis and passed by a vote of 2-0, the Commission approved the Public Session Minutes of April 10, 2012.

3. Executive Director's Report

A. Budget

Executive Director Brindle reported that the Law and Public Safety budget hearings had taken place without any questions regarding the Commission. He stated that the Commission's budget remained intact, at \$4.254 million. The Executive Director noted that \$6.2 million has been allocated for the Gubernatorial Public Financing Program, including \$480,000 for administration and staff.

B. Legislation

Executive Director Brindle informed the Commissioners of pending legislation in the Assembly relevant to the Commission. He reported that there were proposed bills to require disclosure of independent groups, tighten rules on use of campaign funds and recordkeeping, and address the issue of PAC proliferation.

C. May Municipal Spending

The Executive Director reported that spending among the 20 municipalities holding elections was slightly over \$1 million, with the majority of funds spent in the City of Orange Township.

D. Montana Ban on Corporate Contribution and Independent Spending

Executive Director Brindle informed the Commission of developments concerning Montana's ban on corporate contributions and independent spending. The Executive Director reported that the ban had been ruled unconstitutional by the Montana District Court, but had been upheld by the Montana Supreme Court. He stated that the U.S. Supreme Court had imposed a stay on the ban until it determines whether or not to hear the case on appeal.

E. Electronic Transmission of Publications

Executive Director Brindle reported that the Legislature had passed a bill requiring State agencies to provide all publications required by law in electronic format.

F. Interactive Training Video Presentation

The Executive Director recognized Director of Campaign Financing Todd Wojcik and Assistant Compliance Officer Danielle Hacker for their work in producing the interactive training module. He further recognized Associate Compliance Officer Nancy Fitzpatrick, Associate Compliance Officer Titus Kamal, Assistant Computer Technician Ken Colandrea, and Principal Webmaster Maryanne Garcia for assisting in this project.

At this juncture, Director Wojcik directed the attention of the Commissioners to a projected demonstration of the interactive video training module. He displayed several slides in order to show features available to candidates as well as a treasurer training quiz to be taken after completing the module.

Chairman DeFilippis asked when the module would be available.

Director Wojcik replied that it was already up and running.

Legal Counsel Wyse asked if the Commission had received any feedback.

Director Wojcik stated that one individual had expressed his satisfaction with the training module.

Executive Director Brindle thanked Director Wojcik for the presentation and work in completing the training program.

G. Summer Meeting Schedule

- June 19, 2012 at 11:00 a.m. in Trenton;
- July 17, 2012 at 11:00 a.m. in Trenton; and,
- August 21, 2012 at 11:00 a.m. in Trenton (if necessary).

4. Request for an Advisory Opinion 01-2012

The Commission continued its discussion of the request for an Advisory Opinion received from Ralph Holmen, Esq., on behalf of the National Association of Realtors (NAR). The request concerns whether or not the making of independent expenditures in a New Jersey state or local election by the National Association of Realtors Fund, a segregated account filing as a Section 527 organization under the Internal Revenue Code, results in filing obligations as a political committee and imposition of contribution limits.

Mr. Holmen was present and greeted the Commissioners. Mr. Holmen stated that he had studied the Advisory Opinion issued by the Commission in response to a request by Better Education for Kids, Inc. in order to craft its own Advisory Opinion Request. He stated that NAR desired a resolution with regard to three main issues: 1) whether or not the NAR Fund would be required to file as a political committee as an independent expenditure-only entity; 2) whether or not the NAR Fund would be classified as a political committee if it collaborated with local affiliates such as the New Jersey Association of Realtors to make independent expenditures for political communications; and 3) the effect of Citizens United in the classification of the NAR Fund, particularly with respect to contribution limits. He noted that other states have chosen not to enforce limits on independent expenditure committees in consideration of the decision. Mr. Holmen then solicited questions from Commissioners and staff.

Chairman DeFilippis asked if the membership dues paid to the NAR Fund were automatic or voluntary, and if members were informed of how funds were designated.

Mr. Holmen replied that the dues were automatic, and that the dues statement given members did not designate the uses of funds.

Executive Director Brindle asked if the NAR Fund would make direct contributions to candidates.

Mr. Holmen replied in the negative, and added that the NAR Fund would only make independent expenditures.

Legal Counsel Wyse asked if members were aware that dues would be used for independent expenditures in elections.

Mr. Holmen replied in the affirmative. He noted that the amount spent on independent expenditures was contingent on local conditions.

The Executive Director asked if the NAR Fund would be soliciting donations in New Jersey.

Mr. Holmen stated that the NAR Fund would not receive any funds in New Jersey other than dues from its members.

Legal Director Carol Hoekje asked if the NAR Fund would keep its funds separate in the making of expenditures or pool resources when collaborating with local affiliated organizations.

Mr. Holmen replied that he did not know what course the NAR Fund would take in advance, and anticipated that the Fund's decision may be guided by the Commission's course of action and other local conditions.

Deputy Director Donohue asked what states had waived campaign limits administratively.

Mr. Holmen reported that the District of Columbia, Kentucky, and Oklahoma had issued advisory opinions or otherwise given notice that campaign limits would not be enforced for independent expenditure-only committees, and that Texas had waived limits for corporations.

Commissioner Saunders noted that under the Commission's regulations, accepting contributions from another committee is a criterion for designation as a political committee.

Mr. Holmen acknowledged Commissioner Saunders' observation, and indicated that NAR would be happy to comply with whatever regulations the Commission deemed applicable, but that NAR is seeking a determination that the contribution limits do not apply.

Legal Director Hoekje noted that the Commission was in the midst of a dilemma, as there has not yet been a ruling from the Third Circuit or U.S. Supreme Court on the specific issue of contribution limits for political committees making only independent expenditures. She noted that the SpeechNow decision had cited to the Buckley and Citizens United decisions and determined that the government does not have a valid interest in preventing corruption in imposing such limits.

Mr. Holmen related his experience in his home state of Illinois, where a state law restricting the amount of money that could be raised by independent expenditure-only PACs was struck down as unconstitutional. He noted that the District of Columbia has chosen not to enforce limits on such committees, and anticipated that a lawsuit would be filed if the Commission imposed such limits.

Mr. Holmen suggested that the Commission could use prosecutorial discretion in order to prevent litigation. He noted that NAR itself could make the same independent expenditures, and created the NAR Fund solely for tax purposes.

Chairman DeFilippis asked if the dues from members could be classified as reportable contributions.

Director of Review and Investigation Shreve Marshall replied that the Commission could not pro-rate dues as contributions after the fact, as dues would be comingled. He asked if members were required to sign a card when submitting dues.

Mr. Holmen replied that members paid local affiliates which in turn transferred funds to the national organization.

Director Marshall stated that attempting to divide individual contributions from the total would be impossible as the receipts from various affiliates would not be equal.

Legal Director Hoekje noted that an argument could be made that the organization would need to disclose individual membership dues if they exceeded the threshold for itemized contributions and were used for the purpose of making independent expenditures in New Jersey.

Chairman DeFilippis asked if NAR had additional sources of funding.

Mr. Holmen replied that NAR received other income from retail products, but stated that such income would not be used for political expenditures.

Deputy Director Donohue asked if NAR was the same organization as the New Jersey chapter, noting that they had similar bylaws.

Mr. Holmen stated that the two organizations had a very close relationship, but were separate entities.

The Deputy Director stated his opinion that although the NAR and the New Jersey affiliate maintained separate expense accounts, they were essentially the same in composition.

Legal Counsel Wyse noted that they were incorporated separately.

Director Marshall asked if there would be complications if dues to the national organization exceeded \$300 per person.

Legal Director Hoekje also noted that threshold would require the NAR Fund to file itemized reports.

Mr. Holmen informed the Commissioners that the amount given per person would fall far below that amount.

Legal Counsel Wyse stated that joint filing between the NAR Fund and a local affiliate could be problematic.

Director Marshall noted that two or more individuals cooperating to support a candidacy are considered to constitute a political committee in the Commission regulations.

Deputy Director Donohue suggested that as long as actions were not coordinated, the NAR Fund and local affiliates could engage in separate independent expenditures without incurring a filing obligation as a political committee.

Mr. Holmen reported that some states have suggested that approach, although it was not NAR's preferred course. He stated that the NAR Fund's activity would be episodic, not continuing.

Legal Director Hoekje noted that the Commission's regulations differentiate between political committees and continuing political committees. She affirmed that the First Amendment guaranteed the right of the NAR Fund and its affiliates to plan and strategize, but that the issue resulting in a filing obligation was the spending of money which meets Reporting Act definitions of a political committee.

The Executive Director expressed his concern that the Commission could become subject to a lawsuit that could potentially strike down the political committee reporting requirement altogether.

Mr. Holmen stated that NAR was only concerned with campaign limits, not reporting requirements.

Deputy Director Donohue stated his view that limits would not be applicable as long as there was no collaboration.

Mr. Holmen stated that the Deputy Director was correct, but added that no collaboration would be less practical for NAR's goal of a unified message and not a preferred option. He noted that the appearance of an out-of-state entity participating in elections would be disagreeable to local voters.

Chairman DeFilippis stated that he had an adequate grasp of the matter at hand, but was uncomfortable voting on a course of action with only two commissioners in attendance. He asked if the decision could be postponed until next month.

Commissioner Saunders expressed his preference for all commissioners to be present.

Mr. Holmen stated that NAR would prefer to have the matter resolved as soon as possible, noting future elections. He asked when the primary election was to be held.

Legal Director Hoekje replied that the primary election will be on June 5.

Mr. Holmen noted that it was too late for the NAR Fund to participate in the primary election in any case, and stated that postponing a decision until the next meeting was acceptable as long as it did not approach the date of the general election.

Chairman DeFilippis apologized for the lack of a full complement of commissioners at the meeting.

The Legal Director asked if tabling the matter was acceptable.

Mr. Holmen replied in the affirmative.

Mr. Holmen stated that he would be unable to attend on the date of the next meeting, but could call the Commission on an alternate date. He asked what the Commission procedure was with regard to Advisory Opinions, and how soon decisions were effective after approval.

Legal Director Hoekje replied that staff issues an Advisory Opinion as directed by the Commissioners, and as determined at the meeting. She stated that the response is customarily published within a few days.

On a motion by Commissioner Saunders, seconded by Chairman DeFilippis and passed by a vote of 2-0, the Commission resolved to defer action on the Advisory Opinion until the next meeting.

The Chairman asked for any comments from the public.

No other comments from the public were received.

5. Resolution to go into Executive Session

On a motion by Commissioner Saunders, seconded by Chairman DeFilippis and passed by a vote of 2-0, the Commission resolved to go into Executive Session to discuss anticipated litigation and current litigation, which will become public as follows:

- A. Final Decision Recommendations in complaint 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.
- C. Matters under current litigation, the substance of discussions of which will not become public in order to protect the attorney-client privilege and the deliberative process. However, any litigation in which the Commission is currently a party is a public matter and will become public subject to the above limitations and privileges.

Return to Public Session

6. Adjournment

On a motion by Commissioner Saunders, seconded by Chairman DeFilippis and passed by a vote of 2-0, the Commission resolved to adjourn at 11:11 a.m.

Respectfully submitted as true
and correct,

Jeffrey M. Brindle
Executive Director

JMB/elz