

NEW JERSEY ELECTION LAW ENFORCEMENT COMMISSION

PUBLIC SESSION MINUTES

NOVEMBER 9, 1981

PRESENT

Sidney Goldmann, Chairman
Josephine S. Margetts, Member
Andrew C. Axtell, Member
*M. Robert DeCotiis, Member
Scott A. Weiner, Executive Director
William R. Schmidt, Assistant Executive Director
Gregory E. Nagy, Staff Counsel
Michele Hoffman, Assistant Staff Counsel
Edward J. Farrell, General Legal Counsel
Lisa Pollak, Esq.

*Commissioner DeCotiis arrived at the meeting at 10:45 a.m.

The Chairman called the meeting to order and announced that pursuant to the Open Public Meetings Law, P.L. 1975, c.231, annual notice of the meetings of the Commission, as amended, has been filed with the Secretary of State's office, and that copies have been filed in the State House Annex, and mailed to the Newark Star Ledger, the Philadelphia Bulletin and the entire State House press corps.

The meeting convened at 10:10 a.m. at the Commission offices.

1. Approval of Minutes of Public Session of Commission meeting of October 28, 1981

The Commission reviewed the minutes and on a motion by Commissioner Axtell, seconded by Commissioner Margetts and a vote of 3-0, the Commission approved the minutes of the public session of the above-cited meeting. (Commissioner DeCotiis was not present for the review and vote on the minutes.)

2. Record Keeping and Reporting of Financial Activity Related to the Gubernatorial Recount

The unofficial margin of votes between the two major gubernatorial candidates, Thomas Kean (R) and James J. Florio (D) for the November 3 General Election is less than 2,000 votes out of 2.3 million votes cast. Because of the uncertainty of the outcome of the election, both campaigns have been incurring expenses associated with the official tabulation of votes and with an anticipated recount of votes. As a result of this unusual and unexpected outcome of the election and the unusual and unexpected expenses being incurred by both gubernatorial candidates' campaigns, the Commission undertook a lengthy discussion of the requirements,

if any, it would impose on both campaigns with respect to the expenditures, contributions to pay for the expenditures, and reporting of contributions and expenditures.

The Executive Director introduced the discussion by an oral presentation.

The Executive Director recommended that the financial transactions be treated as campaign related activity. He suggested that this would be consistent with Commission precedents on post-election recount activity and that it would recognize the unique setting presented by the fact that the gubernatorial campaigns were publicly financed. The General Legal Counsel pointed out that this issue has come up in the past and, through advisory opinions and advice to campaigns, the Commission has concluded that the legal and accounting expenses associated with recounts are sufficiently related to campaigns, that they could be paid for out of campaign funds and, correspondingly, such use of campaign funds requires filing reports on the expenditures with the Commission.

Secondly, the Executive Director recommended that the expenditures directly related to the recount should not be subject to the overall expenditure limit. He identified four types of costs: recount fees, legal expenses, staff costs and office and administrative costs for maintaining campaign offices beyond the end of the normal campaign. The Executive Director argued that exempting the recount costs from the expenditure limit would recognize the public purpose of the recount. Furthermore, not exempting the recount expenditures from the expenditure limit would unreasonably penalize both campaigns which have spent very close to the expenditure limit.

Thirdly, the Executive Director recommended that contributions for the recount activity should not be subject to the contribution limit of \$800. He argued that, although such contributions can be viewed as aiding a candidacy, it is appropriate to distinguish between pre-election campaign expenditures and post-election recount expenditures. Furthermore, he argued that recount expenditures acquire an "institutional" character because of the interests of the respective state political party committees and because of the interest of the public. He noted, however, that excluding contributions from the contribution limit presents an opportunity for large contributions by individuals or organizations. He also argued that neither candidate should be in a position of being unable to pay for recount expenses because of his inability to generate sufficient contributions of \$800 or less. The chairman noted that the recount procedure is not fully controlled by the candidate, but rather by the provisions in the law and by the public.

The General Legal Counsel pointed out to the Commission that the contribution limit issue is less clear and more complex than the other issues raised by the recount. If the recount expenditures are clearly and unambiguously "on behalf of the candidacy", then the \$800 contribution limit could be arguably maintained. The General Legal Counsel advised that the Commission has the authority to determine that the expenditures for the recount are not simply "in aid of the candidacy". He pointed out that pre-election campaign expenditures are made to get the voters to arrive at a decision; however, now the question is who won the election. Therefore, the expenditures for the recount take on a character beyond that of being "in aid of the candidacy". If the contributions are not made "in aid of the candidacy", then there is no contribution limit. On the other hand, General Legal Counsel pointed out the legislative history following the 1977 gubernatorial election experience. After the 1977 election, the Legislature imposed contribution limits on the Primary Election as well as the General Election and on inaugural activity. With this legislative history, it could be argued that some contribution limit be imposed on contributions for the recount. The General Legal Counsel went on to point out that both state political party committees and the state itself have sufficient interest in the recount. The Chairman noted that the reason for the \$800 contribution limit was to reduce the ability of contributors to buy influence and favor with gubernatorial candidates. However, it was noted that after the inauguration for Governor, it is perfectly legal for a testimonial dinner to be held on behalf of the Governor, the contributions to which could exceed \$800. Thus, there are limits to how far the Commission can extend the \$800 contribution limit.

The Commission considered if it were possible to differentiate between a pre-election \$800 contribution and a post-election \$800 contribution and whether it could impose a contribution limit, higher than \$800, for this post-election recount activity. A consensus developed within the Commission that it could not impose arbitrarily a higher contribution limit nor could it differentiate between pre-election and post-election contributions. Therefore, the issue narrowed to whether the \$800 contribution limit should be imposed on contributions used to pay for the recount. As it discussed the nature of the recount, the Commission concluded that the expenditures for the recount were not solely "in aid of the candidacy" and that the recount involved to a great extent an interest on the part of the two state political party committees, an interest on the part of state government itself and an interest on the part of the public.

The Executive Director's fourth recommendation was that separate, segregated accounts and records be maintained by the state political party committees and the gubernatorial campaign committees. Furthermore, he

recommended that reports be filed 15 days after the election and that subsequent reports be filed every 14 days thereafter until the recount is completed. The Commission in its discussion of this issue noted that even if the expenditures for the recount are not "in aid of the candidacy", they were election related, and therefore there is sufficient public interest and public purpose served in requiring the campaigns to report contributions and expenditures.

Finally, the Executive Director recommended that the Commission not regulate the financial activity related to transition expenditures during the recount period. The Executive Director pointed out that the Governor-elect is traditionally provided with financial assistance for staff expenses and with office space and equipment by the state to assist the Governor-elect in carrying out "transition" related activities. Neither Mr. Kean nor Mr. Florio has been provided with such assistance and resources because the outcome of the election is still in doubt. Consequently, transition activity is presently dependent on the resources available to each candidate or political party committee. The Executive Director argued that the transition activity is institutional and governmental in character and, thus, does not require regulation by the Commission.

The Commission conducted an extensive discussion of the issues and practical problems associated with the recount, following which it took the following actions:

- On a motion by Chairman Goldmann, seconded by Commissioner DeCotiis and a vote of 4-0, the Commission decided that the expenditures for the recount are not in aid of the candidacy of either gubernatorial candidate and that the expenditures are outside the expenditure limit.
- On a motion by Chairman Goldmann, seconded by Commissioner Margetts and a vote of 4-0, the Commission decided to impose no limits on recount expenditures.
- On a motion by Chairman Goldmann, seconded by Commissioner Axtell and vote of 4-0, the Commission decided that there is no limit on contributions used for the recount expenses by the gubernatorial candidate.
- On a motion by Chairman Goldmann, seconded by Commissioner Margetts and a vote of 4-0, the Commission voted to impose a reporting requirement on the gubernatorial candidates' campaign committees and the state political party committees so that both would file reports of contributions and expenditures 15 days after the recount is completed and 60 days thereafter and that the expenditures should be made out of separate segregated bank accounts.

- On a motion by Chairman Goldman, seconded by Commissioner Axtell and a vote of 4-0, the Commission decided that expenditures for transition activities would be considered institutional and governmental and not reportable by either the state political party committees or by the gubernatorial candidates' campaign committees.

At this point, the Executive Director left the meeting temporarily to call both gubernatorial candidates' campaign committees and the state political party committees to advise them of the decisions made by the Commission.

3. Review of Proposed Lobbying Regulations

General Legal Counsel Farrell and Lisa J. Pollak, Esq., distributed copies of a 19 page summary of the comments made at the public hearing and staff summary of Commission responses along with a revised draft of the lobbyist regulations, dated November 5, 1981.

The Commission proceeded to review the revised proposed regulations page by page and conducted an extensive discussion on the difference between a "lobbyist" and a "legislative agent". It was stressed during the discussion that it is the statute which creates the differentiation whereby a "legislative agent" is someone who is employed, retained, designated or engaged by a "lobbyist" to influence legislation. During its review of the proposed regulations, the Commission took the following actions:

- On a motion by Commissioner Margetts, seconded by Chairman Goldman and a vote of 3-1 (with Commissioner DeCotiis in the negative), the Commission decided to leave the word "lobbyist" in the second line of page 6, N.J.A.C. 19:25-8.2, Definitions, "direct, express and intentional communication with legislators or the Governor or his staff undertaken for the specific purpose of effecting legislation".

- On a motion by Chairman Goldman, seconded by Commissioner Margetts and a vote of 4-0, the Commission decided that page 15, N.J.A.C. 19:25-8.6 (a) Calculation of Receipts should be amended so that in reporting the contributions, the reporting entity identifies contributions above \$100 but provides a separate list of those who contributed an amount in excess of \$100. (The precise wording is to be developed by General Legal Counsel Farrell and Ms. Pollak. The purpose of this change is to permit reporting entities to maintain the confidentiality of the amounts specific contributors contribute, although the names of such contributors will be revealed and the amounts contributed above \$100 would be revealed.)

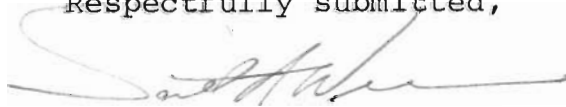
- On a motion by Commissioner DeCotiis, seconded by Commissioner Axtell and a vote of 4-0, the Commission decided that page 17, N.J.A.C. 19:25-8.7(a)(1) Calculation of Expenditures should be modified so that the phrase reads "In the case of a volunteer, the above calculation shall not include any calculation of the value of the time of the volunteer and shall only include that amount reimbursed to the volunteer for expenditures incurred in Direct Communication on behalf of the lobbyist."
- On a motion by Chairman Goldman, seconded by Commissioner Margetts and a vote of 4-0, the Commission inserted the phrase "or his staff" after the word "Governor" in the third line of N.J.A.C. 19:25-8.9(c)(4.) found on page 24.

The Executive Director and Staff Counsel Nagy distributed additional statements received from interested parties. The Commission will take final action on the lobbying regulations at its next meeting to be held on Thursday, November 12, 1981 in Morristown, N. J.

4. Executive Session

On a motion by Commissioner Margetts, seconded by Commissioner Axtell, and a vote of 4-0, the Commission voted to resolve to go into executive session to discuss the executive session minutes of the meeting of October 28, 1981 and to discuss investigations and enforcement actions, the results of which will be made public at their conclusion.

Respectfully submitted,



SCOTT A WEINER
Executive Director