

NEW JERSEY ELECTION LAW ENFORCEMENT COMMISSION

PUBLIC SESSION MINUTES

FEBRUARY 22, 1982

PRESENT

Andrew C. Axtell, Member  
Haydn Proctor, Member  
Alexander P. Waugh, Jr., Member  
Scott A. Weiner, Executive Director  
William R. Schmidt, Assistant Executive Director  
Gregory E. Nagy, Staff Counsel  
Edward J. Farrell, General Counsel

ABSENT

M. Robert DeCotiis, Member

Acting Chairman Axtell 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, and the entire State House press corps.

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

1. Approval of Minutes of Public Session of Commission meeting of February 8, 1982

The Commission reviewed the minutes and on the motion by Commissioner Waugh, seconded by Commissioner Axtell and a vote of 3-0, the Commission approved the minutes of the public session of the above-cited meeting.

2. Introduction of Student Interns

Executive Director Weiner introduced two students who are interning with the Commission this semester. They are: David Rousseau, a senior at Temple University majoring in political science and Robert Saypol, a law student at Seton Hall University.

3. Discussion Concerning Public Financing

The Executive Director distributed a three-page document titled "Summary of Editorial Comment on New Jersey Gubernatorial Election Public Financing Program", prepared by Mr. Rousseau. Mr. Rousseau orally presented his report, pointing out that only one editorial opposed public financing in its entirety while the remainder of the editorials and writers favor public financing but believe there should be some changes made in the program.

Mr. Rousseau noted that the editorial writers had commented on most of the issues for which "Issue Papers" have been prepared, specifically the \$800 Contribution Limit, the \$50,000 Threshold, the Two-For-One Matching Ration, the Restrictions on the Use of Public Funds, the Expenditures Limit, and the Repayment of Public Funds Should a Candidate Receive Less Than 5 Percent of the Vote.

Executive Director Weiner Commented on the reaction to the three "Issue Papers" that have been distributed publicly. He said that those who have commented have said that the papers provide detail beyond what was expected; overall, the comments have been favorable. Mr. Weiner also said that 11 individuals or organizations have said they will attend and testify at the Hackensack or Atlantic City public hearings. They include Senator Musto, Richard McGlynn, Republican candidate for Governor, former Secretary of State Donald Lan, Frank Capece, formally with the Secretary of State's office, Peter Levine, associated with the Roe campaign, Common Cause, James Roe, brother of Congressman Roe, James Maloney, Chairman of the Democratic State Committee, Assemblyman Zimmer, and the Republican State Committee. Mr. Weiner said that four of the "Issue Papers" are in final editing. He expects two papers, the one on expenditure limits and the one on bank loans to go to the printers in the next day or two. He noted that there are two reports being prepared by staff. One deals with the proposal that a candidate who receives less than 5 percent of the vote in the candidate's primary must repay the public funds he or she received. The second deals with the issue of funding political parties. Mr. Weiner mentioned that this latter issue has been discussed with representatives of the Democratic and Republican State Committees. Commissioner Proctor suggested that the issue of funding political parties might be the subject of a separate, third public hearing. Commissioner Axtell agreed that there would probably be very strong interest in this issue. Mr. Weiner said that the funding of political parties could be in addition to or in lieu of the present program of funding gubernatorial candidates. He said that one of the purposes of raising the issue of funding political parties was to encourage review of the entire process of how we elect Governors in New Jersey.

The Executive Director reported that pursuant to the Commission's authorization he and the Assistant Executive Director, William Schmidt, had met with Neil Upmeyer who has agreed to review the "Issue Papers" and provide the Commission with a critique. Mr. Upmeyer had agreed to a consulting fee of \$35.00 per hour up to a total of \$1,000.00. Mr. Weiner also reported that he had spoken with Herb Alexander who is interested in meeting with the staff and the Commission to review the issues.

Mr. Schmidt reported on inquiries about New Jersey's public financing program that have come in from the Alaska, California and New York State Legislatures and the New York State Common Cause.

#### 4. Pending Legislation

The Executive Director reported on the proposed bill dealing with surplus campaign funds. He said the proposed bill had been drafted by ELEC staff at the request of Senator Perskie. He noted that the Commission has issued many advisory opinions on surplus campaign funds, most recently at the request of Senator Perskie. The Election Law Enforcement Commission has no jurisdiction, at present, on this issue but has advised candidates that certain activities, particularly the personal use of surplus campaign funds, would be referred to the Attorney General, whereas other uses of surplus campaign funds, such as contribution to a charity would not be questioned by the Commission.

Mr. Weiner noted that the discussion on the use of surplus campaign funds began in late 1981 with Senator Perskie. The draft bill would impose a reporting requirement on office holders. The ELEC draft did not include this provision which was added at the request of Senator Perskie. The ELEC draft did not include the provision because the inclusion of such a provision was not necessary to the enactment of a bill which addresses permissible uses of surplus funds. In addition, to have done so would appear to be presumptuous of the Senator's policy prerogative. Mr. Weiner also said that he would recommend that the filing of quarterly reports be done two weeks after the end of the quarter. This would alleviate the problem of having to report activity in an account the same day or the day after the activity has taken place and would allow the reporting entity time to review the account and prepare the report.

On a motion by Commissioner Proctor, seconded by Commissioner Waugh and a vote of 3-0, the Commission voted to recommend the bill to the Legislature.

The Executive Director reported on S-911, Senator Perskie's bill which would establish contribution limits for legislative campaigns. Mr. Weiner said that the computer-prepared contributor reports were produced a couple weeks ago and that ELEC staff are analyzing those contributor reports to ascertain what impact a contribution limit would have had on the last election. Mr. Weiner said that from a cursory review of six legislative campaigns, a contribution limit of \$2,500, as proposed in S-911, would have affected only one contributor.

Commissioner Waugh asked why the limit was set at \$2,500 as compared to the \$800 limit for gubernatorial candidates. Mr. Weiner said that his understanding was that the \$2,500 was arrived at by adding the \$800 limit for gubernatorial candidates plus the \$1,600 in public funds that would be generated by an \$800 contribution to arrive at \$2,400 which was rounded up to \$2,500. General Legal Counsel Farrell noted that \$800 for a gubernatorial candidate is not really equal to \$2,400.

Commissioner Waugh asked what the average contribution to legislative candidates was in the 1981 election. Mr. Weiner said that the information on average contributions is still being developed from the computer-printed report.

Mr. Weiner went on to note the impact of S-911 on the state political party committees in that the state committees would be limited to \$2,500 per candidate in the amount of support they could give to their respective legislative candidates. Mr. Farrell said that if there is an interest in strengthening political parties then S-911 cuts the wrong way. Conceivably, the enactment of S-911 might require the two state political party committees to set up 120 separate bank accounts.

Mr. Weiner said that Senator Perskie is interested in the Commission's comments on S-911. Furthermore, Mr. Weiner said that he does not recommend the Commission endorse the bill at this time. Concerning the contribution limit amount of \$2,500, he noted five issues that he would suggest be raised with Senator Perskie as follows: that the gubernatorial contribution limit of \$800 plus \$1,600 in public funds as a point of comparison with legislative candidates is not necessarily appropriate; whatever the limit placed on contributions to legislative candidates may have some impact on the limit placed on contributions to gubernatorial candidates; the limits imposed by federal law on contributions to candidates for federal office might be used as another point of comparison; the role of the political party committees and the ease of administering the reporting of contributions for the two state political party committees need to be considered; and the practical administrative problems for the political party committees, the candidate committees and ELEC also need to be considered.

The Executive Director provided the Commission with data on contributions of \$1,000 and more to the Republican State Committee and the Democratic State Committee. The data will be included in a report on contributions to the two political party committees. He noted that 32 percent of the contributions received by the Republican State Committee was in amounts of \$1,000 or more whereas the percentage for the Democratic State Committee was 60 percent.

The Commission authorized the Executive Director to meet with Senator Perskie to discuss the Commission's concerns about S-911.

##### 5. Lobbying Disclosure

General Legal Counsel Farrell distributed a five page memorandum addressed to the Commissioners, entitled "Applicability of Lobbying Disclosure Reporting Requirement to Ancillary Activity" and dated February 19, 1982. Mr. Farrell had prepared the memorandum at the direction of the Commission at its February 8, 1982 meeting to aid the Commission in resolving the responses to questions 13 and 15 arising from the lobbyist seminar held on

January 22, 1982.

After a lengthy discussion of the legislative history, of the linkage between the word "expressly" and benefits to a legislator or the Governor and to other lobbying expenditures, and of the example of a legislative agent who spends one hour appearing before a legislative committee and seven hours at the State House, on a motion by Commissioner Proctor, seconded by Commissioner Waugh and a vote of 3-0, the Commission decided that the normal activities of the lobbyist shall be includable in the report, including, for example, the time spent in the legislature observing, and time spent keeping track of legislation and informing clients. The Commission directed Mr. Farrell and Mr. Weiner to redraft the response to questions 13 and 15 in accordance with this decision.

6. Advisory Opinion No. 02-1982

The Commission reviewed a draft advisory opinion prepared in response to a request from Ms. Kathryn Brock, representing the Women's Political Caucus of New Jersey. The Commission held a lengthy discussion on the issues raised by this advisory opinion request, chiefly the issue of what constitutes a "political committee" and what activities of such a "political committee" would result in the committee having to file reports. Mr. Nagy noted that the mere act of making a contribution is insufficient justification to require submission of a report. He also suggested that the words "aid or promote" require some limiting definition, otherwise the Commission could be legally attacked for "overbreadth" as was the case with the original lobbyist regulations.

Commissioner Waugh inquired about the reporting requirements for PAC's. Mr. Farrell noted that there is no definition in our Act of a PAC but that we treat a PAC as a species of a political committee.

Executive Director Weiner noted that the staff have been reviewing the issue of what reporting requirements may be imposed upon "civic associations" when they make political contributions and noted that one idea being considered is a "major purpose test" similar to the "major purpose test" introduced in the lobbyist regulations.

General Legal Counsel Farrell pointed out that early in its history, the Commission reached the conclusion that the act of making a political contribution by two or more individuals does not render them a political committee. Specifically, he noted that the Commission concluded that a corporation or a partnership that makes a political contribution or a husband and wife who make a political contribution from a joint checking account were not considered to be "political committees". Part of the Commission's reasoning at the time was that to impose a reporting requirement in such circumstances would place too much of a burden on a contributor. He also noted that in the case of PAC's, their principal business is soliciting

funds to make political contributions and when they reach a threshold of \$750, they do have to file.

On a motion by Commissioner Proctor, seconded by Commissioner Waugh and a vote of 3-0, the Commission authorized the release of the advisory opinion as drafted.

7. Advisory Opinion No. 03-1982

The Commission reviewed a draft advisory opinion prepared in response to a request from James C. Morford, Director of Governmental Relations, New Jersey State Chamber of Commerce. The request concerned a "legislative breakfast", sponsored by the Chamber of Commerce and attended by governmental affairs representatives for the purpose of meeting with legislators and exchanging views on legislation. Mr. Morford asked whether the New Jersey State Chamber of Commerce must include, in its annual report of lobbying activity, expenditures relating to the "legislative breakfast", the expense of which is directly reimbursed to the Chamber of Commerce by attending members.

On a motion by Commissioner Proctor, seconded by Commissioner Waugh and a vote of 3-0, the Commission authorized the release of the advisory opinion as drafted.

8. Advisory Opinion No. 04-1982

The Commission reviewed a draft advisory opinion prepared in response to a request from Joseph W. Katz, President, The Joseph W. Katz Company. On a motion by Commissioner Proctor, seconded by Commissioner Waugh and a vote of 3-0, the Commission directed the staff to secure more facts from Mr. Katz on the issue he raised.

9. Advisory Opinion No. 05-1982

The Commission reviewed a draft advisory opinion prepared in response to a request from Richard K. Weinroth, Esq., Sterns, Herbert and Weinroth. Mr. Weinroth inquired whether legislative agents should report lobbying activity in the calendar year in which the activity is undertaken or in the calendar year in which it is billed and paid.

On a motion by Commissioner Proctor, seconded by Commissioner Waugh and a vote of 3-0, the Commission authorized the release of the advisory opinion as drafted.

10. Executive Director's Report

Executive Director Weiner distributed copies of bills which have been introduced in the legislature. S-362 (Stockman) would amend the public financing of gubernatorial primary campaigns by raising the threshold from \$50,000 to \$100,000; reducing the matching

ratio to one-to-one; raising the contribution limit to \$1,000; repealing the expenditure limits for both the primary and general elections; and requiring, as a new qualifying standard, that a candidate obtain signatures on his or her nominating petition equal in number to at least one/tenth of one percent of all legally qualified voters in each county of the state who are registered to vote in the county in the last Presidential election. S-759 (Kennedy, Gagliano, Vreeland and Dorsey) would increase the threshold to \$150,000. A-134 (Weidel) would institute an annual adjustment, based on the Consumer Price Index, of the amount of a contributor's contribution below which the name and address of the contributor need not be reported on campaign and annual reports.

S-222 (Orechio, Russo and Feldman) would establish an Office of Elections to unify the administration of New Jersey election law within one state-level office having responsibility for affirmative and uniform direction of elections. This bill would not incorporate the Election Law Enforcement Commission. Mr. Weiner noted that former Secretary of State Lan's transition report recommended that the election division in the Secretary of State's office be transferred to the Election Law Enforcement Commission.

S-115 (Russo and Gagliano) would create a Fair Campaign Practices Commission which would be responsible for promulgating a code of fair campaign practices.

The Executive Director reported that he had spoken with Dennis Bliss from the Attorney General's office about ELEC's enforcement of the lobbying disclosure act. Mr. Weiner noted that there is some interest in the Attorney General's office to merge the lobby registration requirements with the lobby disclosure requirements.

#### 11. Executive Session

On a motion by Commissioner Proctor, seconded by Commissioner Waugh and a vote of 3-0, the Commission voted to resolve to go into executive session to review the executive session minutes of February 8, 1982 and to discuss investigations and enforcement actions, the results of which will be made public at their conclusion.

12. Adjournment - On a motion by Commissioner Proctor, seconded by Commissioner Waugh and a vote of 3-0, the Commission voted to adjourn.

Respectfully submitted



SCOTT A. WEINER  
Executive Director