

NEW JERSEY ELECTION LAW ENFORCEMENT COMMISSION

PUBLIC SESSION MINUTES

MARCH 26, 1985

PRESENT:

Andrew C. Axtell, Chairman
Alexander P. Waugh, Jr., Vice Chairman
Haydn Proctor, Member
Owen V. McNany, Member
Frederick M. Herrmann, Executive Director
Jeffrey M. Brindle, Deputy Director
Edward J. Farrell, General Counsel
Gregory E. Nagy, Staff Counsel
Peter D. Nichols, Director of Public Financing*

* Attended the public session only

Chairman Axtell called the meeting to order and announced that pursuant to the "Open Public Meetings Act," P.L. 1974, c.231, special notice of the meeting of the Commission has been filed with the Secretary of State's office and distributed to the entire State House press corps.

The meeting convened at 2:25 p.m. at the offices of the Commission at 28 West State Street, Trenton, New Jersey.

1. Approval of Public Session Minutes of February 28, 1985

On a motion by Commissioner Proctor, seconded by Commissioner McNany and a vote of 4-0, the Commission approved the public session minutes of March 11, 1985.

2. Executive Director's Report

Executive Director Herrmann reported that a photographer was present to take pictures of the Commission to be incorporated in the Election Law Enforcement Commission brochure requested by Chairman Axtell several months ago. Deputy Director Jeffrey M. Brindle prepared a skeleton model of the brochure and it was circulated for the Commission's perusal. This booklet includes a message from the Chairman, a brief description of the Commission's activities, and pictures of the Commissioners and the staff. Mr. Herrmann said that this positive publicity should be of help to the Commission in the future.

Mr. Herrmann said that Deputy Director Brindle has also been in charge of the 1984 Annual Report with the input of the professional staff. He stated that Mr. Brindle did a fine job as the document is comprehensive but highly readable. Mr. Herrmann suggested that the Commissioners review the report and make any corrections and/or recommendations they deem necessary. The statutory deadline for its delivery to the Legislature is May 1. The

report is approximately thirty pages and includes messages from Chairman Axtell and Executive Director Herrmann, brief biographies of the Commissioners and staff, pertinent budget information, functions of the Commission, compilation of pertinent data, and suggested legislation. Mr. Herrmann stated that Staff Counsel Nagy put in most of the information regarding legislative changes the Commission desires.

Mr. Herrmann said that Director of Public Financing Peter Nichols expressed concern regarding changes in Commission meeting dates and how they may affect public financing certifications. At Mr. Herrmann's request, the Commission changed the April 30 Commission meeting to April 29 so that he would be free to address Pennsylvania Common Cause on public financing in Harrisburg.

Mr. Herrmann stated that Congressman James Florio dropped out of the gubernatorial primary race. He said that the Commission had some concern regarding the sufficiency of the primary funding budget, but with Mr. Florio out of the race it would be almost impossible to run out of public financing funds.

At this point Mr. Herrmann asked Staff Counsel Nagy to review memoranda which he prepared for the Commissions approval:

Independent Expenditure Limit Ruling - Staff Counsel Nagy said this memorandum concerns a United States Supreme Court decision (March 18, 1985) which sustained a lower court decision that declared a federal statute limiting independent expenditures in publicly-financed presidential elections to \$1,000 unconstitutional. New Jersey does not have a similar limit and the decision therefore has no immediate impact on the Commission's statutory provisions. Mr. Nagy stated that the principal difficulty in enforcing public financing provisions is in determining whether expenditures are truly independent of any candidate. The decision has no impact on the \$800 contribution limit and no impact on the total expenditure limit imposed on candidates accepting public financing.

A-3441 (Free Television Time) - Staff Counsel Nagy said that this memorandum concerns a bill that was introduced at the end of last month and was sponsored by Assemblyman Harry McEnroe. The bill states that a candidate for the Assembly may choose to receive free air time and/or a ballot statement (similar to the ballot statements gubernatorial candidates use). In exchange, the Assembly candidates must adhere to a campaign expenditures limit of \$50,000. Mr. Nagy said that this is a rather novel proposition and believes that it may raise administrative problems for the Commission in enforcing the expenditure limit especially because of the independent expenditures issue. Vice Chairman Waugh suggested that a fiscal note may be in order if the bill moves forward to permit the Commission to administer the bill.

A-3434 (Open Public Debate Act) - Staff Counsel Nagy said that this memorandum concerns a bill, recently introduced by Assembly Byron Baer and fourteen co-sponsors, which requires all gubernatorial candidates accepting public funds, to participate in at least six debates. Under the bill, the failure

of a candidate to participate in a debate would terminate that candidate's public financing. The bill proposes that an arbitration board be established to formulate the ground rules for the debates. Each candidate may select one member of the board and all the candidates must agree on an independent member. Any determination by the board that a candidate violated any rule must be reviewed by the Commission within 48 hours. This bill received "no reference" and the Assembly could vote on it at any time. Mr. Herrmann said that there is also a Senate version S-2833 sponsored by Senator Dumont.

Mr. Nagy said that the bill does not address what happens if one candidate accepts public funding and another does not. Would the candidate accepting public monies be compelled to debate an empty chair? Mr. Herrmann stated that the arbitration board may be able to administratively handle an issue of this sort. **With respect to the Commission's position on the legislation,** he said that the Commission may wish to stay neutral stating that the idea is novel and so may have hidden administrative problems. Moreover, the issue of whether a candidate should be forced to debate is beyond the Commission's area of competence. **A main concern for the Commission is with the cost of administering the bill.** Mr. Herrmann said that a fiscal note may be in order to come up with an estimated figure of the costs involved.

3. Director of Public Financing's Report

Peter Nichols, Director of Public Financing presented the Commission with three certifications.

He advised the Commission that Robert Del Tufo's first submission has been adjusted. He said that this submission, added to the first submission totals \$51,640. Mr. Del Tufo's error rate improved markedly. Chairman Axtell said that the time spent with the Del Tufo staff seemed to have been worthwhile.

Mr. Nichols said that Stephen Wiley's submission was "very clean." This submission amounted to \$14,876 in public funds, totalling \$260,526.

The third submission was the initial one from Kenneth Gibson, who submitted yesterday. Mr. Nichols said that this is the only campaign with which he has not met with any representatives.

Mr. Nichols reviewed the error ratio for the Commission, listing the major type of errors as technical. He said that the regulations and statute call for prompt approval and asked the Commission to come to a decision whether or not the staff will accept a submission without giving it a complete review. He suggested that in cases in which it was not possible to give a complete review, the Commission agree to certify 50% of each candidate's submission at the next Commission meeting. This procedure would be followed except when a candidate is qualifying for public funds for the first time, or when an excessive error rate, evidence of violation, or other extraordinary circumstance, leads the Commission to believe that certification of the 50% is not justified.

On a motion by Commissioner Proctor and seconded by Commissioner McNany, the Commission approved Mr. Nichols' suggestion for a 50% review and also approved the submissions for certification.

4. Executive Session

On a motion by Vice Chairman Waugh, seconded by Commissioner Proctor and a vote of 4-0, the Commission decided to go into executive session to discuss enforcement and investigative matters, the result of which will be made public at their conclusion.

5. Adjournment

On a motion by Commissioner Proctor, seconded by Commissioner McNany and a vote of 4-0, the Commission voted to adjourn.

Respectfully submitted,



FREDERICK M. HERRMANN