



State of New Jersey

ELECTION LAW ENFORCEMENT COMMISSION

OWEN V. McNANY, III
CHAIRMAN
STANLEY G. BEDFORD
COMMISSIONER
DAVID LINETT
COMMISSIONER

NATIONAL STATE BANK BLDG., 12th FLOOR
28 W. STATE STREET, CN 185
TRENTON, NEW JERSEY 08625-0185
(609) 292-8700

FREDERICK M. HERRMANN, PH.D.
EXECUTIVE DIRECTOR
JEFFREY M. BRINDLE
DEPUTY DIRECTOR
GREGORY E. NAGY
LEGAL DIRECTOR
EDWARD J. FARRELL
COUNSEL

Public Session Minutes

March 19, 1991

All the Commissioners and senior staff were present.

Chairman McNany called the meeting to order and announced that pursuant to the "Open Public Meetings Act," N.J.S.A. 10:4-6 et seq., special 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. at the Somerset County Library in Bridgewater, New Jersey.

1. Approval of Public Session Minutes of February 20, 1991

On a motion by Commissioner Linett, seconded by Commissioner Bedford and passed by a vote of 3-0, the Commission approved the Public Session Minutes of February 20, 1991.

2. Executive Director's Report

Executive Director Herrmann advised the Commissioners that their Ethics Filings are due by May 15, 1991. He said that one copy is to be filed with the Governor's Office and two copies are to be filed with the Executive Commission on Ethical Standards.

A. Staff Activities

Executive Director Herrmann informed the Commission that on February 27, 1991, he addressed a delegation of members from the Australian New South Wales Parliament. The Executive Director said that to the Australians disclosure was very controversial but local public financing was completely accepted. Executive Director Herrmann indicated that he discussed COGEL membership with the delegation. The Australians were very receptive to joining COGEL, he added.

Executive Director Herrmann disclosed that on April 3 and 26, staff will conduct public information sessions for candidates and treasurers. He said that additional information sessions will be held for groups that request them.

Among other activities undertaken by staff, Executive Director Herrmann reported that Deputy Director Brindle initiated contact with building management to ensure that the 12th floor is painted and recarpeted

in conformity with the lease agreement. The landlord, who is required under state law to paint every three years, will be painting and recarpeting the 12th floor at no charge to the agency or the State.

Executive Director Herrmann conveyed to the Commission that Director of Administration Barbra Fasanella has issued the latest quarterly ethics memorandum. He said that the memorandum contains a restructuring of ELEC's "outside employment" policy. As part of this policy, continued Executive Director Herrmann, the Director of Administration has created a new form to keep track of this data.

The Executive Director reported that, sadly, Elaine Salit, ELEC's Fiscal Officer, broke her back while on vacation leave. She will be out for at least six weeks, he said. Executive Director Herrmann said that Fiscal Officer Salit will be missed; she has done an excellent job. The Executive Director noted, however, that Director of Administration Barbra Fasanella took the initiative and requested help from the Attorney General with respect to processing the Commission's fiscal paperwork. He said that the AG's staff has been very supportive and to date there are no backlogs in the fiscal area.

Executive Director Herrmann mentioned to the Commissioners that Acting Director of Compliance and Information Virginia Wilkes conducted an agency-wide meeting to improve procedures on filing nights.

According to the Executive Director, the suggestions were as follows:

- 1) to remove a manual verification of coding step by altering computer procedures;
- 2) to require staff to be generalists instead of specialists to eliminate downtime;
- 3) to establish a buddy system for problem support, eliminating the constant need to consult supervisors; and,
- 4) to establish a flex-time schedule to remove need for compensatory time that depletes staff resources later in the year.

Regarding the lobbying initiative with the Attorney General, Executive Director Herrmann told the Commission that Deputy Director Brindle and he met with two members of the AG's staff on March 1, 1991, to work out details of shifting the Department of Law and Public Safety's lobbying

functions to ELEC. The Executive Director said that the need for ELEC to receive adequate resources was stressed. Executive Director Herrmann noted that the AG's staff members agreed to send ELEC the names of the department staff who would meet with ELEC staff for planning purposes.

Executive Director Herrmann said that the transfer of functions to ELEC is supported by the Commission, by the AG, and by the Ad Hoc Commission on Legislative Ethics and Campaign Finance.

The Executive Director cited the reasons for consolidation of functions in ELEC as:

- 1) an independent agency should regulate this area;
- 2) campaign finance and lobbying are intricately related and should be regulated by only one agency; and
- 3) ELEC has the expertise because it has been regulating the major part of lobbying activity for years.

B. Legislation

Executive Director Herrmann informed the Commission that the Department of Treasury has pulled the plug statewide on subscriptions to the Capital Information Services bill tracking system that keeps staff current on all information pertaining to legislation.

The Executive Director explained that the Treasury's action was precipitated by the State's fiscal crisis. Executive Director Herrmann disclosed that staff is exploring alternatives to the system, with the Office of Legislative Services' (OLS) system a possible option. He said that it was important to know, as soon as possible, any information about legislation affecting ELEC that is being acted upon by the Legislature.

Executive Director Herrmann discussed the new Assembly Majority ethics and lobbying package that is based upon the Ad Hoc Commission's recommendations.

The Executive Director said that A-4617 (Spadoro & Kronick) amends the lobbying law to eliminate "expressly." He noted that A-4618 (Villapiano, Baer & Ford) consolidates lobbying regulation in one agency. Executive Director Herrmann said that A-4619 (Ford & Cohen) requires charitable fundraising by candidates to be reported to ELEC.

Executive Director Herrmann told the Commission that for the most part the bills appear to be "conceptually acceptable" to a reform agenda, but need important technical work if they are to conform to ELEC's legislative recommendations.

According to a staff analysis, A-4617 should be strengthened to guarantee that goodwill lobbying expenditures be reported pursuant to Ad Hoc Commission recommendation No. 16. Moreover, A-4618 should place all lobbying regulation in ELEC, not in the Department of Law and Public Safety, pursuant to Ad Hoc Commission recommendation No. 20. Finally, A-4619 should not require that charitable and campaign funds be intermixed.

Executive Director Herrmann stated the introduction of S-3349 (L. Brown) would implement ELEC's alternate funding plan. He said that this bill is very similar to A-3514 (Rooney) and A-3680 (McGreevey).

Following a brief discussion, the Commission authorized the Executive Director to point out the issues staff found with the bills to members of the Legislature and their staffs.

C. Next Meeting

The Commission determined that the next meeting will be held on Wednesday, April 24, 1991, at 9:30 a.m. in Nutley, New Jersey.

Executive Director Herrmann said that the Annual Report draft will be circulated at the April meeting. He said that the Annual Report is due to the Legislature prior to May 1, 1991.

3. Advisory Opinion Request No. 01-1991

This advisory opinion request was submitted by Edward T. Collins on behalf of Allstate Insurance Company.

The request asks the Commission to determine whether a mailing required of the company as a result of regulations issued by the Department of Insurance is political in nature. The request asks for further clarification as to any reporting responsibility the company or individual customers may incur with ELEC and as to any statutory contribution limits that may be exceeded as the result of expenditures made to implement the mailing. The mailing consists of two letters, one from Governor Jim Florio and one from Insurance Commissioner Samuel Fortunato, that the company is required to distribute to policyholders.

In its draft response, staff concluded that the letters are not political in nature and that no reporting requirements arise under the facts submitted.

Staff arrived at this conclusion because the letters do not meet the criteria set forth in N.J.A.C. 19:25-11.10 which determine whether a communication is "political in nature."

The criteria for deeming a communication political are:

- 1) if it contains an appeal for votes for a candidate in an upcoming election, or otherwise makes an unambiguous reference to an upcoming election; or
- 2) if the communication, in the absence of a direct appeal for votes, contains a statement or reference concerning governmental or political objectives or achievements of a candidate in an upcoming election and is circulated, in the case of a candidate for nomination for the office of Governor in a primary election, on or after January 1st in the year of that primary election.

On a motion by Commissioner Bedford, seconded by Commissioner Linett and passed by a vote of 3-0, the Commission approved the advisory opinion response drafted by staff.

5. Proposed Regulations

Political Communications

Staff circulated a memorandum proposing that the existing text of Commission Regulation N.J.A.C. 19:25-11.10, Political communications, be redrafted to conform more closely to the U.S. Supreme Court opinions which established the "express advocacy" standard for political communications; see Buckley v. Valeo and FEC v. Massachusetts Citizens for Life. The text of subsection (a) as redrafted clarifies the expressly standard by listing examples of such language, and providing that other similar explicit political directives would come under its scope.

Under the proposed amendment, subsection (b) is redrafted to address the status of communications which do not contain express advocacy language but because of the circumstances under which they are prepared and circulated are nevertheless subject to campaign reporting. Reporting would be required under the proposal when; 1) a communication (for non-gubernatorial candidates) is circulated within 90 days of the primary or general elections; 2) the communication is circulated to an audience that is

substantially comprised of persons eligible to vote for the candidate; and, 3) the candidate benefitting from the communication had some role to play in its preparation or circulation.

Legal Director Nagy said that the proposed amendment of the political communication regulation addresses the constitutional concerns that a candidate can only be held responsible for reporting if the communication was made with the candidate's consent, cooperation, or consultation.

Commissioner Linett asked: what has prompted the drafting of this regulation?

Legal Director Nagy said that after the gubernatorial election staff surveyed recent court opinions on "express advocacy," and the advisory opinion request on today's agenda prompted action at this time.

Legal Director Nagy said that it was a difficult area, but that it needed to be addressed. He said that what the regulation is intended primarily to address is those expenditures made by public officials using public funds for communications to voters shortly before an election.

On a motion by Commissioner Bedford, seconded by Commissioner Linett and passed by a vote of 3-0, the Commission approved the staff proposal.

6. Violations

A new regulation, N.J.A.C. 19:25-17.2, Violations, was proposed to permit the Commission to prosecute cases and impose penalties based on the number of "reporting transactions" contained in the late or non-filed report. Currently, the Commission imposes a single fine based on all transactions on a single late or non-filed report. Thus, a candidate who files a report containing only one contribution is fined the same amount as a candidate who files a report containing 20 contributions. The new scheme gives the Commission more flexibility in addressing violators.

On a motion by Commissioner Bedford, seconded by Commissioner Linett and passed by a vote of 3-0, the Commission approved the proposal.

7. Adoption of Proposed Regulations Amending the Definition of a Political Committee and the Revision of Copying Fees

The Commission's proposal notice to amend its regulations concerning the definition of a "political committee" and to increase the amount to be charged for copying services has been published in the New Jersey Register, and is ripe for final adoption consideration.

The proposed amendment to the definition of the term "political committee" excludes appointed public officials from its scope. Currently, only elected public officials are excluded. Under the regulation, expenditures of public funds by an appointed public body to promote or oppose a public question will not be deemed to be campaign expenditures subject to reporting if the expenditures are approved by that appointed public body.

Under the second amendment, fees for photocopying services will be increased from 15 cents per page to 50 cents per page for pages one through 10, and to 25 cents per page for pages 11 through 20. The fee remains at 15 cents per page for photocopying after 20 pages.

On a motion by Commissioner Linett, seconded by Commissioner Bedford and passed by a vote of 3-0, the Commission approved adoption of the regulations.

8. Resolution to go into Executive Session

On a resolution by Commissioner Bedford, seconded by Commissioner Linett and passed by a vote of 3-0, the Commission resolved to go into closed Executive Session to discuss the following matters:

1. Final Decision recommendations in violation proceedings which will not become public. However, the Final Decisions resulting from those recommendations will become public 15 days after mailing; and,
2. 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 30 days after mailing.

8. Adjournment

On a motion by Commissioner Linett, seconded by Commissioner Bedford and passed by a vote of 3-0 the Commission voted to adjourn at 11:59 a.m.

Respectfully submitted,



FREDERICK M. HERRMANN, PH.D.