



State of New Jersey

ELECTION LAW ENFORCEMENT COMMISSION

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JEFFREY M. BRINDLE
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GREGORY E. NAGY
LEGAL DIRECTOR
EDWARD J. FARRELL
COUNSEL

PUBLIC SESSION MINUTES

NOVEMBER 20, 1991

All the Commissioners and senior staff were present. Commissioner-designate Joseph J. Mania, III was also in attendance.

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 9:35 a.m. at the Commission offices, 28 W. State Street, Trenton, New Jersey.

1. Approval of Public Session Minutes of October 22, 1991

On a motion by Commissioner Bedford, seconded by Commissioner Linett and passed by a vote of 3-0, the Commission approved the Public Session Minutes of October 22, 1991.

2. Executive Director's Report

A. Staff Activities

Executive Director Herrmann advised the Commission that on November 4, 1991, he spoke at the Rutgers University History Club career night. The Executive Director's theme was: Is there a future for those who study the past?

Executive Director Herrmann said that on November 7, 1991, he appeared on a panel which discussed the new lobbying law. The panel was sponsored by the State Chamber of Commerce and the Marcus Group. He said that joining him on the panel were Department of Environmental Protection and Energy Commissioner Scott Weiner and Common Cause Executive Director Edward McCool.

The Executive Director indicated that Director of Compliance and Information Evelyn Ford, Assistant Director of Compliance and Information Virginia Wilkes, and he appeared in an ethics film produced by Tony Scocozza of the New Jersey Executive Commission on Ethical Standards, entitled "I Didn't Know That." Executive Director Herrmann said that the film will be shown to all State employees.

B. Other News

Executive Director Herrmann thanked the staff of the Commission, who, under the direction of Director of Compliance and Information Evelyn Ford, did a terrific job in releasing the 11-day reports in a timely fashion. There were hundreds of requests for photocopying thousands of pages of information.

Executive Director Herrmann reported that the staff worked early mornings and late evenings on a flextime schedule to accomplish this task. He noted that the reports were released four days before the election and that stories ran in all major newspapers.

Executive Director Herrmann announced that one week before the election, radio station New Jersey 101.5 did a series of campaign spending stories based on ELEC reports. In those stories, ELEC's staff was praised for doing a terrific job despite budget cuts. Debra Kostival and Kim Key were specifically cited during one of the broadcasts.

Executive Director Herrmann noted that a South Jersey candidate had been referred to ELEC by the Courier Post because "the Commission is not only non-partisan but also ethical."

He announced that the Second Annual ELEC Ethics seminar will be held on December 6, 1991. He mentioned that the speaker is ELEC's first chairman and former FEC chairman, Frank P. Reiche. The purpose of the program is to heighten staff awareness of its obligation to be nonpartisan, honest, and fair in all its dealings.

Executive Director Herrmann said that Deputy Director Brindle was quoted in a national Common Cause study on campaign finance reform, which went on to say that New Jersey and Michigan have "the most successful of the State public financing laws."

C. Budget and Staffing

Executive Director Herrmann reported that Director of Review and Investigation Judy Chamberlain resigned effective November 15, 1991, to move back to Maine. According to the Executive Director she was a model employee and will be sorely missed. Executive Director Herrmann said that her departure means that the investigative staff has been reduced by 80 percent in only a two-year period and that only one person remains to do all investigative and report review tasks. The Executive Director informed the Commission that staff would be developing revised enforcement goals for discussion at the December meeting for dealing with this crisis.

Executive Director Herrmann advised the Commission that Deputy Chief of Staff Samuel Crane invited him to meet on October 28, 1991, to review ELEC's timeframe for releasing the 11-day reports. The Executive Director said that during the meeting he explained to Mr. Crane the effects of ELEC's lack of staff, its inability to pay overtime, and its inability to

hire temporary employees. He said that he also explained that photocopying had to be done off-site because of ELEC's antiquated copier machine. The Executive Director said, however, that he told Mr. Crane that despite these difficulties, the release date chosen was responsible, realistic, and most importantly, timely.

Executive Director Herrmann stated that Mr. Crane kindly offered to meet with Chairman McNany and him after the election to discuss ELEC's financial, staffing and equipment problems. He said that the meeting would be held today at 3:30 p.m.

Executive Director Herrmann noted that on election night eve, Dr. Alan Rosenthal said on NJN's campaign finance reform forum that perhaps the most important recommendation of the Ad Hoc Commission on Legislative Ethics and Campaign Finance Reform was adequate funding for ELEC.

D. White Paper Number Seven Release

Executive Director Herrmann said that Deputy Director Brindle, who authored White Paper Number Seven: Is There a PAC Plague in New Jersey? would briefly summarize the paper's findings.

Deputy Director Brindle stated that the paper analyzed PAC activity relative to Assembly candidates in the 1985 and 1989 general elections.

He said that the biggest contributor in both years was the PACs. He said, however, that the paper did not conclude that special interest PACs are individually responsible for driving up spending in these years.

Deputy Director Brindle said that other contributor types paralleled the PACs in increasing their contributions. He noted that parties and political committees were as or more responsible for the increase in Assembly contributions between these years. He said that political parties were responsible for 23 percent of the increase, the same percentage as the PACs. Political committees were responsible for 30 percent of the increase.

Deputy Director Brindle added that the research found that non-PAC contributors exhibited the same pattern of giving as the PACs. They gave to incumbents, to candidates in targeted districts, and to winners.

The Deputy Director said that PACs did not dominate financial activity relative to parties and legislative party committees. He said that the changed nature of campaigns, from party-oriented to candidate-centered, is what is driving up the cost of elections along with a shift from volunteerism to high technology.

Deputy Director Brindle said that the paper considered the PACs to be a major player in elections and suggested that they be more tightly regulated to enhance disclosure. He also said that the paper suggested

contribution limits on PACs, PAC filing fees, a ban on direct contributions from corporations and unions, and a PAC registration program.

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

3. "900 Line" Number Regulations

Legal Director Nagy indicated that pursuant to Chairman McNany's request, he contacted Emma Byrne, Director of the Division of Consumer Affairs, regarding the Division's approach to the "900 line" regulation. Legal Director Nagy said that Director Byrne indicated that the Division was open to exploring with ELEC responsible approaches to an ELEC "900 line" regulation.

Commissioner Bedford asked if there has been any interest expressed in the political uses of "900 lines."

Executive Director Herrmann said that there has been no interest by anyone in setting up a "900 line."

On a motion by Commissioner Bedford, seconded by Chairman McNany and passed by a vote of 3-0, the Commission tabled the public hearing on the "900 line" until further notice.

4. Public Hearing

On a motion by Chairman McNany, seconded by Commissioner Bedford and passed by a vote of 3-0, the Commission voted to conduct the public hearing on the proposed Lobbying Regulations. A transcript of the public hearing was made and is available for public inspection.

5. Advisory Opinion Request No. 07-1991

Advisory Opinion Request No. 07-1991 was submitted by Frank M. Pelly, formerly a member of the General Assembly and now Executive Director of the New Jersey Lottery Commission.

Mr. Pelly outlined four circumstances under which he would like to expend unused personal PAC funds. He asked for the Commission's guidance in terms of the appropriateness of their use in these circumstances.

The circumstances are:

1. the purchase of tickets for theatre and sporting events for former staff and constituent use as a gesture of appreciation;
2. to host a "thank-you" dinner or social for former constituents, staff, supporters, etc;

3. to purchase tickets for political events, retirement dinners, testimonial dinners; and,
4. the payment of expenses associated with his current position as Director of the New Jersey Lottery Commission, such as attending conferences, professional organization meetings, etc.

Legal Director Nagy drafted a memorandum suggesting a response to the advisory opinion request. He suggested that the Commission draw a distinction between those uses of unspent "personal PAC" funds that may be reasonably related to Mr. Pelly's past role as a candidate and an officeholder and his current position as Director of the State Lottery. He suggested that expenditures by Mr. Pelly's CPC related to his activities as a former candidate and elected officeholder would be permitted, but expenditures related to Mr. Pelly's current position might be prohibited as personal use.

Commissioner Bedford said that he agreed with that approach. He said that it spelled out a good distinction between expenses in relation to being a candidate and expenses in relation to Mr. Pelly's position in the Executive Branch.

Counsel Farrell said that Mr. Pelly could take the balance of the money and transfer it to another campaign. He said that the Commission has asked the Legislature to clarify the uses of surplus funds but thus far, it has not. Counsel Farrell said that previously the Commission, while regulating against excess money being put to personal use, has shied away from stipulating whether these funds could be used for ones official duties in office. He said that the Commission always said that this issue had to be decided by the Legislature. Counsel Farrell suggested that the Commission's response be less specific, only ruling out the use of this money for personal reasons. He said that an argument could be made that Mr. Pelly, in spending the money on purposes seemingly in connection with his current position, was actually spending it on behalf of some future campaign. He said that this specific expenditure of money falls in that gray area associated with the issue of spending it on furtherance of ones' duties in office.

Commissioner Linett said that he would place more responsibility on Mr. Pelly to make sure that the money is spent only on activities related to his previous position. He suggested that the opinion stress that the money can only be used in relation to elective office and that personal use of the money is prohibited. He said that he would be reluctant to provide guidelines beyond stipulating that personal use is banned.

Legal Director Nagy said he would draft the opinion and circulate it for comments and edits by the end of the week, and would mail it after the Commissioners reviewed it.

6. Discussion of Public Disclosure of Executive Session Vote

Please see memorandum from Gregory E. Nagy, Legal Director, to Frederick M. Herrmann, Ph.D., Executive Director, dated November 13, 1991, and entitled "Public Disclosure of Executive Session Vote."

The staff received a request for the disclosure of the vote taken in an investigative matter which had resulted in the issuance of a "no action" letter. The staff recommended that the Commission authorize disclosure of the vote of the Commission at the time it informs parties to an investigation of its result regardless of whether the vote is to take "no action," to issue a letter of correction, or to institute complaint proceedings.

Commissioner Linett asked staff to identify the individual making the request.

Executive Director Herrmann said that Common Cause of New Jersey had made the request.

Chairman McNany inquired as to when the vote normally becomes public.

Legal Director Nagy indicated that the vote becomes public after the approval of the Executive Session Minutes which contain information about an investigative matter.

The Legal Director said that the staff's recommendation would authorize the release of the vote at the time the letter to the respondent and the complainant regarding the disposition of the matter is sent, which usually occurs before the Commission meets to approve Executive Session minutes.

Commissioner Linett said that since this particular matter was discussed in the press, there is no reason not to release the vote immediately.

Chairman McNany suggested that the current policy of releasing the vote following the approval of the Executive Session Minutes be left intact.

Commissioner Linett moved that the Commission adopt the policy that the letter to the respondent and complainant in investigative matters contain a record of the vote by the Commission.

The motion was seconded by Commissioner Bedford and passed by a vote of 3-0.

The Commission clarified the fact that the motion referred to the matter before it today as well as all future matters.

Chairman McNany announced that the vote in the Doria matter was unanimous (3-0).

7. Future Meetings

The Commission scheduled its next meeting for December 18, 1991, at 9:30 a.m.

The Commission adopted its 1992 meeting schedule. The meetings are scheduled for the third Wednesday of each month.

8. Resumption of Public Hearing

The Commission resumed its public hearing at 12:34 p.m.

The Commission resumed the public session of its meeting for the purposes of a brief discussion of the proposed lobbying regulations.

Commissioner Linett asked about the schedule for the adoption of the proposed regulations.

Legal Director Nagy said that the transcript of the hearing would be available in approximately two weeks. He said that staff would prepare a summary of the comments as well as responses to those comments. Legal Director Nagy said that if the Commission adopts the regulations at its December 18, 1991 meeting, the regulations will become effective on January 21, 1992.

Legal Director Nagy indicated that the summary and responses to the comments would be circulated in advance of the next meeting, and the Commission directed that they be made available to the public in advance of the meeting.

Commissioner Linett said that he was not optimistic about finalizing the regulations by December 18, 1991. He said that this was a complicated law and that the Commission should not be hasty in adopting the regulations.

Commissioner Bedford asked Legal Director Nagy why the one percent/20 hour threshold was chosen with respect to the issue of when an individual becomes a legislative agent.

Legal Director Nagy said that it may prove very difficult to set a standard for both the registration or "red badge" component and the financial disclosure component. The Legal Director said that the 20 hours was the Attorney General's regulation for requiring registration of legislative agents. To permit a person to conduct one-on-one lobbying for more than 20 hours in a year without registering, and without wearing the identification badge, might appear to be creating too wide an exception for "isolated, exceptional or infrequent" activity. He suggested that perhaps

one standard be set for registration and wearing the identification badge of a lobbyist, and another for reporting financial activity on annual reports.

Commissioner Linett suggested that the Commission should set a threshold solely in terms of hours spent lobbying and eliminate altogether the reference to percent of time. He said that tying registration to the percentage of one's time spent lobbying make no sense. Commissioner Linett said that under the percentage scheme, one person might work longer hours than another, and thereby be permitted to spend more time lobbying without having to report that activity or register as an agent.

Executive Director Herrmann said that there may be some confusion in the lobbying community as to support personnel becoming lobbyists. He indicated that if there is never any contact with a legislator or member of the Executive Branch, etc., then a person will never become a registered agent. Only a portion of that person's salary would have to be reported on the annual report, he added.

Chairman McNany said that it was still the Commission's intention to adopt the regulations on December 18, 1991. The Chairman directed Legal Director Nagy to make comments relative to the hearing available to the individuals who participated in the public hearing.

Executive Director Herrmann said that the adoption of the lobbying regulations would be an ongoing process. He said that as with the campaign finance law, modification to these regulations will continue to be made through the years.

9. Resolution To Go Into Executive Session

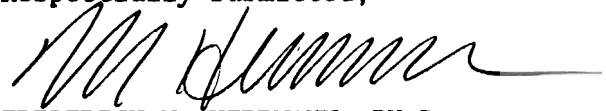
On a resolution by Commissioner Linett, seconded by Commissioner Bedford and passed by a vote of 3-0, the Commission resolved to go into closed Executive Session to discuss the following matters which will become public as follows:

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.

4. 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 1:16 p.m.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'F. M. Herrmann', with a long horizontal flourish extending to the right.

FREDERICK M. HERRMANN, PH.D.

FMH/jah