



## State of New Jersey

### ELECTION LAW ENFORCEMENT COMMISSION

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JEFFREY M. BRINDLE  
DEPUTY DIRECTOR

GREGORY E. NAGY  
LEGAL DIRECTOR

EDWARD J. FARRELL  
COUNSEL

#### PUBLIC SESSION MINUTES

APRIL 15, 1992

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 10:10 a.m. at the Somerset County Library, Somerville, New Jersey.

#### 1. Approval of Public Session Minutes of March 25, 1992

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 March 25, 1992.

#### 2. Executive Director's Report

##### A. Staff Activities

Executive Director Herrmann reported that on March 27, 1992, staff held a Lobbyist Training Seminar at the Trenton City Hall. The Executive Director said that over 180 lobbyists attended the seminar. Executive Director Herrmann noted that the staff reviewed new regulations and forms, distributing prototype annual forms that will be finalized over the summer following input from the lobbyists and other interested parties. The Executive Director said that Director of Compliance and Information Evelyn Ford was the principal speaker and the designer of the new forms. Executive Director Herrmann praised Director Ford for again doing a terrific job. The Executive Director reported also that Legal Director Nagy and he spoke briefly while Deputy Director Brindle and Director of Public Financing Nedda Massar helped field questions after the seminar. Compliance Officer Kimberly Key and Messenger Elizabeth Michael provided essential administrative support.

Executive Director Herrmann told the Commission that on April 9, 1992,

ELEC staff participated in the New Jersey Bar Association's Election Law Committee Symposium on "Complying with New Jersey's Campaign Contribution and Reporting Rules." He said that among the speakers (in addition to himself) were Legal Director Nagy, Director Ford and Assistant Director of Compliance and Information Virginia Wilkes. The Executive Director noted that over 75 people attended.

Chairman McNany inquired as to any additional seminars<sup>4</sup> in which the staff may be participating. Executive Director Herrmann said that the Chamber of Commerce will be conducting a lobbyist seminar on Friday, April 24, 1992, in Cranford, New Jersey, and that Director Ford and he were invited to participate.

Chairman McNany, as did Commissioner Bedford, indicated that he might be interested in attending the Chamber seminar and asked that information be provided.

Executive Director Herrmann mentioned to the Commissioners that a new initiative has been undertaken to save staff time and money. He said that ELEC was now utilizing the State print shop on large photocopying jobs, with the first project being the Gubernatorial Public Financing Report. Executive Director Herrmann noted that the report came out very nicely and will be sold to the public for only \$5 as opposed to over \$20 if staff itself photocopied the report.

Executive Director Herrmann advised the Commission that the Council on Governmental Laws (COGEL) published last month the "Campaign Financing and Lobbying Bibliography" that he compiled. He said that the COGEL publication is based on his "ELEC Guide to Campaign Financing and Lobbying Law" printed last year.

#### B. Legislative News

Executive Director Herrmann said that on March 30, 1992, he testified before the Assembly State Government Committee on a committee substitute for A-563 (Rooney)/A-642 (Martin) that permits ELEC to collect a flat filing fee from candidates, PACs, and parties to supplement its budget. He said that the Committee decided not to release the bill pending further consideration. Executive Director Herrmann said that the Committee also discussed eight other bills concerning campaign financing and lobbying reform.

Executive Director Herrmann reported that on April 2, 1992, he testified before the Senate State Government Committee on a committee substitute for S-70 (Brown) that permits ELEC to collect a flat filing fee from candidates, PACs, and parties to supplement its budget. He noted that the bill is very similar to the committee substitute in the Assembly State Government Committee. The bill was released unanimously, he said.

C. Ethics Reminder

Executive Director Herrmann reminded the Commissioners that their financial disclosure forms have to be filed with the Executive Commission on Ethical Standards (2 copies) and with the Governor's office (1 copy) by May 15, 1992.

At this juncture, Commissioner Linett said that he had some concerns with respect to the subject of legislation. He said that when the Commission first discussed the fee issue, it did so in the context of being self-sufficient through the imposition of fees on PACs and parties. Commissioner Linett noted that the Commission never discussed fees on candidates. Commissioner Linett asked if ELEC should have a position with respect to candidate fees and in regard to the fact that only \$300,000 would be raised through this program.

Executive Director Herrmann updated the Commission on relevant legislative action. He said that there had been a series of versions of the fee proposal before the Legislature and that the inclusion of the candidates in the proposal approved by the Senate Committee came about because of a compromise between numerous groups and ELEC staff as well as the thoughts of various committee members. Many felt that a proposal that charged a fee to PACs and parties only as ELEC had recommended would be inequitable. Executive Director Herrmann said also that initial versions of the bill that would have made ELEC self-sufficient would not have raised enough money for that purpose because of various suggested amendments. Executive Director Herrmann said that he went along with the final proposal because it became the only ELEC funding plan being considered and it would raise about a quarter of a million dollars to supplement ELEC's budget.

Commissioner Linett said that he was philosophically opposed to filing fees on candidates. He said that he believed it to be inappropriate for the Commission to charge a fee on individuals running for public office. Commissioner Linett said that he realized the Commission needed additional funding, but that he did not believe this was the way to obtain that funding level.

Counsel Farrell cited potential First Amendment problems with having candidates pay filing fees. He said that having candidates pay filing fees was light years away from imposing these fees on PACs and even parties. Counsel Farrell said that this proposal would be exceedingly difficult to defend in court because some very profound constitutional arguments can be made against it.

Legal Director Nagy noted that the legislative process is unpredictable and that it is very difficult, if not impossible, to control the substance of bills. Legislation has a tendency to take on a life of its own.

Counsel Farrell said that the cost of defending unsuccessfully the constitutional issue must be considered. He said that if this measure is

enacted by the Governor and Legislature, it would be the Commission that is sued.

Chairman McNany indicated that he did not disapprove of candidates paying a fee. He said that he was not too concerned about the constitutionality issue because the fees are low, and even with the \$100 fee on legislative candidates, this amount was only 2.5 percent of \$4,000, the new threshold for detailed reporting under the proposal.

Counsel Farrell said that a challenge to this proposal will center around the issue of whether the fees are a violation of the First Amendment. He said that there are very serious constitutional questions with regard to candidates that will be argued in court.

Executive Director Herrmann mentioned that fees are charged in other states relative to ballot access. He also noted that Kansas charges candidates fees for filing financial disclosure reports.

Legal Director Nagy added that the legislation contains a waiver provision which would allow the Commission to waive the filing fee for any candidate who demonstrates good cause, such as inability to pay the \$15 filing fee charged a small campaign. He said staff suggested this provision to the Assembly State Government Committee in order to ameliorate the concern over burdens on First Amendment rights.

Commissioner Linett said that even if the fee initiative is constitutional he is not wild about charging candidates.

Counsel Farrell said that he wanted to make it clear that paying to get on the ballot when you have the option to file a petition instead is not the same issue as the filing fee proposal.

Commissioner Bedford said that he did not oppose charging candidates a fee to file. He indicated that he was not aware of any case law that prevented it.

Chairman McNany said that it was ironic that there is an objection to charging a candidate a fee, when there is no objection to paying a fee to have a baby born and the birth duly recorded.

Commissioner Bedford said that despite the fact that he personally has no problem with candidate fees, he does not believe that the Commission should support or oppose the provision.

Commissioner Linett said that the Commission should take a position that it simply needs adequate funding, offering no specifics on how this goal should be accomplished.

Commissioner Bedford said that the Commission should permit the Legislature to develop the funding mechanism and itself remain neutral.

Chairman McNany said that he would like the Commission to have a special meeting on the telephone prior to the Assembly State Government Committee posting filing fee legislation again in order to discuss this issue further.

Deputy Director Brindle said that he wanted to point out that an audit conducted by the Office of Legislative Services frowned upon the payment of the Commissioner's per diem for telephone meetings. He said that the Department of Treasury was not keen about this expenditure either. The Commission agreed to forego the per diem payment with respect to telephone meetings.

D. Future Meeting Schedule

The Commission will meet on May 20, 1992 in Trenton at 10:00 a.m., and on June 17, 1992, in Nutley at 10:00 a.m.

E. Annual Report

Executive Director Herrmann presented the Commission's 1991 Annual Report.

Commissioner Linett offered amendments and said that he would respond within a week with any further changes.

Chairman McNany suggested changes to the public financing section to highlight the fact that the Commission has offered recommendations for improving the program and preserving money. He said that a press release should accompany the distribution of the report and should contain quotes from all of the Commissioners to emphasize the importance of the recommendations.

3. Advisory Opinion No 03-1992

This advisory opinion request was submitted by Jane F. Kelly on behalf of the New Jersey Utilities Association, a lobbyist organization.

For detailed discussion of this advisory opinion request please see the public session minutes of March 25, 1992.

Legal Director Nagy said that he prepared a draft response as the **result of the discussion at the last meeting**. The Legal Director added that with respect to lobbyist advisory opinion requests, the Commission is not under the same statutory 10-day response time restraint that exists under the Campaign Act.

Counsel Farrell said that the point is well taken but that to the greatest degree possible the Commission should try to parallel the Campaign Act. He said that by doing so the Commission would be on more solid ground if it ever has to go to court with respect to lobbyist advisory opinions.

Commissioner Linett said that he had difficulty with the formula language included in the advisory opinion. He suggested that the formula be total cost divided by the number of attendees multiplied by the number of affected individuals.

Counsel Farrell said that he commended Legal Director Nagy on the opinion and said that his leaving the formula for reporting the specific event open-ended was wise.

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

The Commission amended the draft opinion to include Commissioner Linett's suggested change in the formula language.

4. Advisory Opinion No. 04-1992

For a detailed discussion of this advisory opinion request, submitted by Edward A. Hogan, Esq., an attorney for Porzio, Bromberg and Newman, see the public session minutes of the March 25, 1992 meeting.

Legal Director Nagy said that the draft opinion he prepared is based on the discussion occurring at the last Commission meeting.

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

5. Fine Collection

For detailed information please see memorandum from Nedda Gold Massar, Director of Public Financing, to Gregory E. Nagy, Legal Director, dated April 1, 1992 and entitled "Fine Collection Activities."

Commissioner Linett asked: How much time does someone get between the notice of delinquency and the press release?

Legal Director Nagy answered more than one month.

Chairman McNany queried as to when the letters with respect to the 1989, 1990, and 1991 delinquent payers will be sent.

Legal Director Nagy said that the letters with respect to delinquencies in 1989 and 1990 have gone out and a press release can be distributed before the next Commission meeting. The Legal Director said that the 1991 delinquency letter will be going out with a press release distributed about a month or two after the mailing.

Chairman McNany asked about when the last quarter of 1991 delinquencies would be sent out and about the time lag with respect to the press release.

Legal Director Nagy said that a lag time of one or two months usually occurs between letters and press releases.

Commissioner Linett said that he still has serious reservations about this policy, especially if the Commission releases information about a candidate immediately before a primary or general election. He said that he was not sure the Commission should make a campaign issue in this way. He said it is not as if these people are criminals.

Chairman McNany said that a press release could constitute a tremendous incentive to candidates to pay fines. If they know that their name might be in the paper, they would have a real incentive to clear up their outstanding debts.

Legal Director Nagy said that a press release would be prepared prior to the next meeting and that letters would be sent to the next round of delinquents.

The Commission directed staff to proceed with the press release and letters.

Chairman McNany asked whether the Commission could proceed with a policy of distributing press releases to the regional newspapers of candidates delinquent on fines. He queried whether the computer could be useful in this regard.

Deputy Director Brindle said that use of the computer to assist with such an effort would be looked into.

Counsel Farrell brought up another matter with respect to the collection of unpaid fines. He said that he had spoken with Deputy Director Brindle the previous week and the two discussed the fact that it was permissible for his firm to subcontract out for collection activity. He said that his firm would undertake such activity as part of its efforts to collect for hospitals and that the payment would come as part of his regular contract.

Chairman McNany asked Counsel Farrell to estimate the cost involved.

#### 6. Resolution To Go Into Executive Session

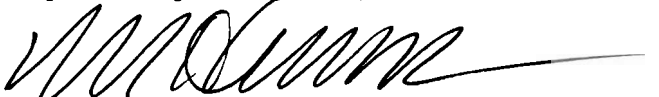
On a resolution by Commissioner Linett, seconded by Commissioner Bedford and passed by a vote of 3-0, the Commission resolved to go into closed Executive Session to discuss the following matters which will become public as follows:

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.

7. 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 12:25 p.m.

Respectfully submitted,



FREDERICK M. HERRMANN, PH.D.

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