



State of New Jersey

ELECTION LAW ENFORCEMENT COMMISSION

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

OWEN V. McNANY, III
CHAIRMAN

STANLEY G. BEDFORD
COMMISSIONER

DAVID LINETT
COMMISSIONER

FREDERICK M. HERRMANN, PH.D
EXECUTIVE DIRECTOR

JEFFREY M. BRINDLE
DEPUTY DIRECTOR

GREGORY E. NAGY
LEGAL DIRECTOR

EDWARD J. FARRELL
COUNSEL

PUBLIC SESSION MINUTES

MAY 20, 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 10:00 a.m. at the Commission offices, 28 W. State Street, Trenton.

1. Approval of Public Session Minutes of April 15, 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 April 15, 1992, with an amendment made by Commissioner Linett.

2. Executive Director's Report

A. Former Commissioner Andrew C. Axtell's Health

Executive Director Herrmann advised the Commission that he recently spoke with former Commissioner Andrew C. Axtell about his health. The Executive Director assured the members of the Commission that "rumors of Andy's illness were greatly exaggerated."

B. Staff Activities

The Executive Director reported that on April 21, 1992, he lectured at a Rutgers University political science class taught by David Kehler. Executive Director Herrmann said that he discussed campaign finance reform. He noted that he may have recruited a future intern in the process.

Executive Director Herrmann said that Director of Compliance and Information Evelyn Ford and he addressed the State Chamber of Commerce's Lobbying Conference "Learning to Live with the Lobbying Regulations" on April 24, 1992. He said that approximately 40 people attended.

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The Executive Director advised the Commissioners that Compliance Officers Carol Neiman and Kimberly Key conducted at the Commission a well-attended public information seminar for primary election campaign treasurers also on April 24.

At this juncture, Chairman McNany presented Carol Neiman with a resolution commemorating her work on behalf of the State Employees Charitable Campaign.

Chairman McNany said that State employees are often maligned these days and that with this award he was happy to be able to focus on the positive accomplishments of State employees. He congratulated Carol Neiman for her years of dedicated service to the State and her work on behalf of charity.

Carol Neiman thanked the Commission for the award and added that if it was not for the cooperation of her fellow employees she could not have been successful in this endeavor.

C. Legislative Activity

Executive Director Herrmann noted that on April 29, 1992, at the invitation of the Attorney General, staff attended the Department of Law and Public Safety's hearing before the Senate Budget and Appropriations Committee to respond to any ELEC questions that might be asked. The Executive Director said that along with him, Deputy Director Brindle, Director of Public Financing Nedda Massar, and Director of Administration Barbra Fasanella attended.

Executive Director Herrmann indicated that he received some questions about the Public Financing Program and ELEC's new recommendations. He noted that he was asked about an Office of Legislative Services (OLS) recommendation to eliminate ELEC's \$430,000 to administer the program. Executive Director Herrmann said that OLS considered the program a new program that was to be cut across-the-board with various other new programs. OLS believed that regular ELEC staff could assume the administration of the program as an additional duty.

Executive Director Herrmann explained that he responded that the Public Financing Program is not a new program but rather a recurring one. He said that he told the Committee that ELEC's current staff is very low because of the recession and could not possibly absorb the responsibilities of 12 new people with the existing 24. Executive Director Herrmann said that he advised the Senate Committee that only \$180,000 of the \$430,000 is for staff and explained that the remaining quarter million dollars is for administrative overhead, including printing, supplies, telephone, postage, a photocopying machine, computer equipment, and filing cabinets, etc. Executive Director Herrmann said that he told the Committee that in 1989, the public financing staff saved an estimated \$365,000 for the State by not matching various rejected contributions and collecting leftover public

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dollars after the primary election. He said that this savings was greater than the \$362,000 budgeted for the 1989 primary election.

Executive Director Herrmann conveyed to the Commissioners that on May 11, 1992, the Assembly State Government Committee met to discuss again the eight campaign finance reform bills previously considered. He noted that he was asked to make some brief introductory remarks at the beginning of the session. Executive Director Herrmann said that he told the Committee that ELEC supported the Rosenthal Commission recommendations completely and also supported a ban on corporate and union contributions except through PACs. The Commission's Executive Director said that such a ban is especially important with contribution limits because it is difficult to separate connected corporations and unions.

Executive Director Herrmann noted that on May 14, 1992, the Assembly State Committee released an Assembly Committee Substitute for A-100, A-195, A-196, A-646, A-659, and A-869 (Martin/Haytaian/Franks). He said that the vote was unanimous.

The Executive Director called the legislation a model reform bill containing contribution limits, PAC registration, disclosure of employer/occupation of contributors, and campaign fund usage guidelines. Executive Director Herrmann mentioned that Chairman Martin noted that Speaker Haytaian favors an adequate appropriation but is still studying the exact amount needed. Moreover, continued the Executive Director, Minority Leader Doria testified that his staff is preparing legislation to create a simple user fee system, agreeing that ELEC needs adequate funding but arguing that it should come from the special interests not the public.

Executive Director Herrmann related to the Commission that ELEC completed a fiscal note at the request of OLS that estimated that \$1.3 million in addition to the current budget would be needed to implement the Rosenthal Commission Report. He added that A-195 (Russo), which is part of the substitute and also implements the Rosenthal Commission Report, contained an appropriation of \$1.5 million. Executive Director Herrmann said that the \$1.5 million figure is probably correct based on additional ELEC budget cuts caused by the recession and inflation since the original fiscal note was drafted approximately one-and-one-half years ago.

Executive Director Herrmann announced also that Assembly Committee Substitute for A-101/194 (Haytaian/Franks/Russo) changes lobbying terminology per ELEC recommendations and adjusts thresholds every four years for inflation. He reported that while ELEC has taken no position on the bill staff recommends support for it because the first part is ELEC's idea and the second part is consistent with ELEC's inflation adjustment position on the campaign finance reform bill and the Gubernatorial Public Financing Program procedure.

Executive Director Herrmann advised the Commission that A-645 (Martin/Franks) passed the Assembly on May 18, 1992. The Commission's Executive Director said that the bill sets five-year commissioner terms,

bans staff involvement in campaigns for a year after leaving ELEC employment, and modifies Commission membership selection practices and structure. Executive Director Herrmann said that ELEC has only supported longer terms and has been neutral on the rest.

D. Personnel Audit

Executive Director Herrmann reported that ELEC is undergoing a personnel audit at the request of the Merit System Board in the Department of Personnel. He remarked that Director of Administration Barbra Fasanella and her staff have been required to do a great deal of paperwork for the audit. He added that, as usual, they have done a great job. Executive Director Herrmann said that the Commissioner of Personnel assured him that the audit is just routine. The Executive Director said that he will report to the Commission any recommendations made. He added that ELEC has passed all previous fiscal and personnel audits with "flying colors."

E. Future Meetings

The Commission decided to meet on June 17, 1992, in Nutley, and July 22, 1992 in Keyport, New Jersey.

The Commission decided to not schedule an August meeting, holding open the date of August 19 if a meeting proves necessary.

F. Ethics Forms

Executive Director Herrmann reported that all Commissioners and senior staff filed in a timely manner with the Executive Commission on Ethical Standards and with the Governor's office. He told the Commissioners that he learned that a postmark may not be used as proof of a timely filing. Executive Director Herrmann said that in order for a form to be considered timely filed it must be received by the filing deadline. Executive Director Herrmann said that if the Governor's office does not have a copy, the procedure is to obtain one from Ethical Standards. He said that while there is no problem when this type of situation occurs, he would still recommend that everyone file timely in both places.

3. Philadelphia Inquirer Issue

Journalist Dan DeLuc of the Philadelphia Inquirer was recognized by Chairman McNany.

Mr. DeLuc said that he was speaking on behalf of the newspaper's request for a copy of the Commission's front door sign-in records. He said that he asked the paper's attorneys for advice on the status of such records under the public right-to-know law. Mr. DeLuc told the Commission that the Inquirer's attorneys advised him that it was the Commission's duty to take steps to disseminate information to the public. He advised the Commission that under the administrative code every document for filing should be maintained as a public record. He said that these documents are maintained

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for budgetary purposes and noted that the Commission does not charge other governmental agencies the copying fee it charges the public. Mr. DeLuc explained that the paper's lawyers believed the Commission would be required to disclose these records, as well as telephone logs, to the public.

Commissioner Bedford said that it seemed as if the objective of the request was to determine who made the request more so than what the request involved.

Counsel Farrell said that he would place this request in the category of a policy question rather than one of a right-to-know request. He said that the right-to-know law involves documents that are required to be kept. Counsel Farrell said that visitation logs are not required to be kept and as such are not required to be disclosed under the right-to-know law. He explained that it really comes down to the question of whether the Commission should adopt a policy of disclosing the information, not whether it must.

Counsel Farrell said that he recognizes the fact that the Commission would be in a peculiar position if it declines to disclose this information in that it is a disclosure agency. However, he continued, the Commission must weigh that fact against the chilling effect such a disclosure policy might have on people being willing to utilize the Commission's information in the future.

Counsel Farrell indicated that it is a different situation relative to another enforcement agency making a similar request. He said that in this case, the Attorney General, F.B.I., etc. is making the request as part of an official investigation and the information is kept confidential. He said ELEC keeps these records for budgetary and security reasons not because it is required to.

Chairman McNany said that an analogous situation involves complaint actions taken by the Commission. The Chairman noted that what is not eventually released to the public is the name of the complainant.

Mr. DeLuc said that he would like to outline the other side of the weighing issue. He said that people are paid for what they are supposed to be doing in state government, adding that if these people are at ELEC when they should not be, it is in the public interest for this activity to be revealed.

Commissioner Linett said that the Commission is in the business of encouraging people to get information. He theorized that adopting a policy of revealing the visitors log would have a negative impact on people coming forward to get information.

Chairman McNany asked whether, as a compromise, the Commission could provide the names of people who received a waiver as payment for governmental use.

Counsel Farrell said that he would have to look carefully at that question.

Commissioner Linett suggested that the Commission really needs something in writing to be able to deliberate on this matter effectively.

Commissioner Bedford agreed that the issue should be outlined in writing. He said that the Commission should know the scope of what is being requested. Commissioner Bedford said that a telephone call, for instance, could be easily misconstrued.

Mr. DeLuc asked for a written policy on disclosure. The Commission directed Legal Director Nagy to provide Mr. DeLuc with a copy of the Commission's disclosure policy.

The Commission asked Mr. DeLuc to put his request in writing for its consideration.

4. Lobbying Fee Regulation Amendments

Legal Director Nagy noted that the Commission's proposed amendments to N.J.A.C. 19:25-20.8 and 20.19 were ripe for adoption; see 24 N.J.R. 1245(a), April 6, 1992. He noted written comments were received from four persons, and circulated the comments and a draft summary of those comments and agency responses. The amendments increase from \$100 to \$200 the annual registration and filing fee charged legislative agents, but exempts voluntary filings from any fees. He said staff recommends adoption of the amendments, without change.

Commissioner Bedford moved and Commissioner Linett seconded the motion for final adoption, and directed staff to file with the Office of Administrative Law (OAL) the Notice of Adoption and summary of comments and responses.

Commissioner Linett said that the crux of the comments against the proposed regulation is that ELEC is creating a bureaucracy and hurting small legislative agents. Commissioner Linett said that his sense was that this was not the case.

Legal Director Nagy noted that the Act exempted persons who receive no or very limited compensation, or organizations that are exempt from sales and use taxes.

On a vote of 3-0, the Commission adopted the amendments to N.J.A.C. 19:25-20.8 and 20.19 and directed staff to file the Notice of Adoption with the Office of Administrative Law (OAL) in the Department of State.

5. Legislation

Commissioner Linett said that he would like to return to the discussion of A-645 (Martin/Franks) for a moment.

Commissioner Linett said that he did not know whether the proposed system of having the party chairmen and Governor agree on appointments is a workable one with respect to reappointments. He said that it is probably workable for initial appointments but not for reappointments. He asked whether the Commission supports this change.

Executive Director Herrmann said that the Commission has been neutral on this provision.

Commissioner Bedford asked if the provision would affect the current commissioners.

Executive Director Herrmann said that current commissioners would be allowed to serve two more terms if reappointed. He said that he had asked the Assembly State Government Committee that the status of current commissioners be taken into consideration.

Chairman McNany asked if the one-year ban on campaign activity extended to commissioners.

Executive Director Herrmann said that this provision only covered staff.

Commissioner Bedford said that this provision was a silly one.

6. Requirements for Typewritten Reports

Executive Director Herrmann asked Counsel Farrell if the Commission could discuss the specifics of this issue in public.

Counsel Farrell said that it was a public session matter.

Commissioner Linett asked if a major problem existed with respect to illegible reports.

Executive Director Herrmann said that it is his understanding that the Commission does not have a major problem with illegibility. He outlined the procedure followed in the event a member of the public complains of an illegible report.

Commissioner Linett said that he was not sure that it would be a burden to require campaigns to use a typewriter in filling out reports.

Chairman McNany asked: how frequently are reports typewritten?

Associate Director of Review and Investigation Shreve Marshall said that in actuality larger reports are often computer-generated and typewritten reports constituted only ten percent of all reports submitted.

Chairman McNany said that a requirement such as this would have a chilling effect on participation in the process, particularly as it involved the recruitment of treasurers.

Legal Director Nagy noted that the Federal Election Commission (FEC) does not require candidates for U.S. Congress to type their reports.

Commissioner Bedford added that based on the testimony of staff this is not a big problem, therefore, the Commission should leave matters alone.

Chairman McNany suggested that staff place instructional material in the public room instructing members of the public to seek assistance if they cannot read a report.

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 12:16 p.m.

Respectfully submitted,



FREDERICK M. HERRMANN, PH.D.