



State of New Jersey

ELECTION LAW ENFORCEMENT COMMISSION

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

PUBLIC SESSION MINUTES

NOVEMBER 19, 1992

The Commissioners, senior staff, and Director of Public Financing Nedda Massar 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 Maplewood Municipal Building, Maplewood, New Jersey.

1. Approval of Public Session Minutes of October 21, 1992

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 October 21, 1992.

2. Executive Director's Report

A. Holiday Luncheon

Executive Director Herrmann expressed appreciation to the members of the Commission for their donations to subsidize the cost of the gala holiday luncheon. He said that as a result of these donations each staff member will only have to pay \$3.50.

B. 1993 Commission Meeting Schedule

On a motion by Commissioner Linett, seconded by Commissioner Bedford and passed by a vote of 3-0, the Commission approved the schedule of Commission meetings for 1993. Primarily, the meetings will be held on the third Tuesday of each month.

C. Public Financing Program

Executive Director Herrmann reported that on November 13, 1992, the Office of Management and Budget (OMB) lifted the hiring freeze on the twelve public financing positions. He indicated that staff is already taking steps to obtain candidates for those positions.

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Commissioner Linett asked: in light of this development, is it still necessary to discuss Director of Public Financing Nedda Gold Massar's memorandum outlining a contingency plan for administering the program?

Executive Director Herrmann said that it was still important to discuss the plans because of the paperwork involved in processing hirees, the training involved with new hirees, and the fact that the Commission is already way behind in getting people on board for the program. He said that the issue would be discussed in Executive Session.

Executive Director Herrmann reported that the Commission has not received a response to its July 14, 1992 letter to OMB and its October 27, 1992 letter to the Governor, legislative leadership and OMB requesting a transfer of money to the Gubernatorial Elections Fund from the General Fund. He noted that Chairman McNany had asked him to prepare a new draft letter to be sent to the Governor and legislative leadership concerning the transfer of funds and the vacancy and holdover position on the Commission.

Executive Director Herrmann said that in discussing this issue, the Commission should keep in mind that the first submission permitted under ELEC regulations would be January 4, 1993, and that there is no reason for money to be transferred into the account until that time. He further remarked that OMB may be keeping the money in the General Treasury for as long as possible because of the State's overall fiscal problems. Further, said the Executive Director, OMB has unofficially communicated to various members of ELEC staff

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that an exemption to the hiring freeze would not have been granted if there was not an intention to fund the program. Executive Director Herrmann suggested that the Commission might want to delay sending the letter until a better understanding of the situation can be obtained.

Commissioner Bedford suggested that the Commission should not delay in forwarding the letter.

Chairman McNany agreed and suggested that the final paragraph be stronger in calling for action on the vacant position and on the holdover status of Commissioner Bedford.

Commissioner Linett queried as to the purpose of the letter and said that the Commission should stay out of these disputes.

Chairman McNany disagreed, stating that the Commission has a responsibility to point out that a transfer of funds is required and that a vacancy still exists on the Commission.

Commissioner Bedford agreed with the Chairman.

Commissioner Linett said that he did not feel comfortable with a strongly-worded letter and would abstain on voting to send such a letter.

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Chairman McNany said that it was important for the Commissioners to all sign-off on the letter and in the interest of unanimity he would agree to sending the letter in its original form as opposed to a more strongly-worded version.

On a motion by Commissioner Bedford, seconded by Chairman McNany and passed by a vote of 3-0, the Commission approved the distribution of an additional letter urging the tranference of funds into the gubernatorial fund as well as action on the vacancy position and the holdover position.

D. FY94 Budget

Executive Director Herrmann advised the Commission that its base FY-1994 budget target will be \$913,000. He said that it is anticipated that an additional \$18,000 will be appropriated to cover salary increments beyond this year's \$895,000 budget.

Executive Director Herrmann said that in addition to the base budget the Commission has been appropriated \$430,000 to cover general election public financing costs. He noted that this appropriation, which is the same as for FY93, is short of the \$564,500 the Commission projected that it needs.

E. Legislative Activity

Executive Director Herrmann reported that on October 22, 1992, he testified again on A-645 (Martin/Russo) before the Senate State Government Committee. The Executive Director remarked that the bill provides for longer terms and changes procedures for Commissioner selection. Executive Director Herrmann reminded the Commission that ELEC supports the longer term provision.

Executive Director Herrmann advised the Commission that the bill was held again. He said, however, that new amendments were adopted. Executive Director Herrmann said that under the changes legislative leaders make nominations to the Governor, not party leaders. He said that Senator Schluter questioned the constitutionality of this provision.

Counsel Farrell indicated that the bill could run into a constitutional problem from the standpoint of separation of powers.

Executive Director Herrmann said that due to another amendment the bill also calls for the Commission to select its chairman, not the Governor.

The Executive Director mentioned that A-1460 (Anderson/Derman) was also before the Committee on October 22, 1992. He said that the bill requires a copy of material mailed by the Governor or legislative leadership to be filed at ELEC along with a description of the universe of recipients and the cost to taxpayers. Executive Director Herrmann, noting that he did not testify on the

bill, said that ELEC had no position on the bill. The Executive Director said that the bill was amended to make the filing requirement retroactive to January, 1992.

Executive Director Herrmann reported that on November 12, 1992, the General Assembly passed AR-5 (Hartmann/Geist), which petitions the Governor to waive the hiring freeze on the public financing staff.

The Executive Director said that the voters approved the public question on the legislative veto, meaning that agency regulations, including ELEC's, could be overturned by the Legislature without the participation of the Governor.

F. High Tech News from COGEL Sister Agencies

Executive Director Herrmann advised the Commission that the Texas Ethics Commission will go on-line with an information database in January. He said that citizens will be able to access records by computer.

The Executive Director reported that the Washington State Public Disclosure Commission (PDC) has hired a consultant to study the feasibility of electronic filing. He noted, however, the Washington State PDC recently suffered a 20 percent cut in its budget, which may result in the cancellation of the project and lead to staff reductions. Various compliance and information functions, including training seminars, may be ended.

Executive Director Herrmann reported that the U. S. Secretary of the Senate's office of Public Records is purchasing an optical imaging system.

The Executive Director said that all of these technologies were reviewed in ELEC's White Paper Number Eight Technology in the Future: Strengthening Disclosure.

Executive Director Herrmann indicated that there has been much interest in White Paper Number Eight written by Deputy Director Brindle. He said that the staff of the Joint Committee on Information Systems Technology has requested copies. According to Executive Director Herrmann, this committee was established by the Governor and the legislative leadership to study upgrading high technology usage in State government. The staff of this committee has suggested that White Paper Number Eight may well be useful to state agencies beyond ELEC. Further, said the Executive Director, Dr. Tom Terry of the committee is scheduled to visit ELEC next week to review the Commission's technology needs.

G. Staff Activities

On November 10, 1992, Executive Director Herrmann lectured in a course entitled "Ethics in Public Policy" at the Masters' Program in Public Administration at Kean College. He also reported that Director of Compliance and Information Evelyn Ford and Associate Director of Compliance and

Information Virginia Wilkes Tesser participated in the League of Municipalities Annual Conference in Atlantic City.

Associate Director Tesser is, according to the Executive Director, running ELEC's intern program. He said that the Commission is scheduled to have an "intern" and an "extern" beginning in January, as well as an intern for the summer. He said that all of these individuals will come from Rutgers University.

Executive Director Herrmann praised Director Ford and her staff for a "great job" in completing the General Election 1992 processing of reports. He added that Director Ford put together an in-house manual on the new lobbying law.

H. Future Meetings

The next meeting will be in Trenton on December 16, 1992, at 9:30 a.m. The holiday luncheon will follow at Mastoris' Restaurant, Trenton, at 1:00 p.m.

3. Approval of Regulatory Amendments to Implement Gubernatorial Primary Election Campaign Cost Adjustments

For information concerning the proposed campaign cost adjustments please see the Public Session Minutes of September 16, 1992, and October 21, 1992,

and a memorandum from Nedda Gold Massar, Director of Public Financing, to Frederick M. Herrmann, Ph.D., Executive Director, dated September 9, 1992, entitled "Proposed Amendments to Implement Public Financing Cost Index." In a memorandum to Frederick M. Herrmann, Ph.D., Executive Director, dated November 12, 1992, entitled "Approval of Regulatory Amendments to Implement Gubernatorial Primary Election Campaign Cost Adjustments," and circulated to the Commissioners, Director Massar explained that no written comments concerning the primary election cost adjustments had been received by the November 18, 1992, deadline

On a motion by Commissioner Bedford, seconded by Commissioner Linett and passed by a vote of 3-0, the Commission adopted the amendments implementing gubernatorial primary election campaign cost adjustments and directed staff to file the necessary adoption notices with the Office of Administrative Law.

4. Report on Fundraising for Non-Campaign Purposes

For detailed information see the memorandum from Gregory E. Nagy, Legal Director, to Frederick M. Herrmann, Ph.D., Executive Director, dated November 12, 1992, and entitled "Fundraising for Other Than Campaign Purposes."

At its October meeting, the Commission requested of staff an analysis of the feasibility of regulating fundraising activity that has no campaign or election-related purpose but is undertaken by a candidate or former candidate.

In the memorandum, Legal Director Nagy, while pointing out that regulating this area is potentially beyond the Commission's jurisdiction, suggested that if the Commission wished to proceed, certain guidelines should be adhered to in formulating the regulation. He suggested that if a fundraising solicitation reasonably appeared to be related to a campaign, the Commission might have a basis for asserting regulatory jurisdiction.

Legal Director Nagy said that the guidelines for requiring reporting might be as follows:

1. The solicitation is made by, or on behalf of, a person who is presently a candidate or who was formerly a candidate;
2. The solicitation contains a statement or reference concerning the elective public office currently or previously held or sought by the recipient, or concerning governmental or political objectives or achievements of the recipients;
3. The solicitation is circulated or broadcast to an audience substantially comprised of persons eligible to vote for the candidate or former candidate; and,
4. The solicitation contains no statement to rebut the inference that all, or part of, any proceeds generated from the solicitation will

be used to aid or promote a present or future election candidacy of the recipient.

Legal Director Nagy stated that in determining whether it should proceed to have regulations drafted, the Commission should consider questions of jurisdictional authority as well as questions of whether staff would be able to enforce the regulation.

Chairman McNany complimented Legal Director Nagy on the memorandum, stating that he was happy with the finished product.

Commissioner Bedford expressed his satisfaction with the memorandum as well.

Commissioner Linett said that the issue is one of presumption that the event in question is political if there is no information on the fundraising ticket to the contrary. He suggested that the emphasis to candidates would be that if there is any question about the event being political, the candidate should file. Commissioner Linett said that concern about whether the event is political should take place after a filing is completed. He said that if a candidate want to play it safe he or she should withdraw a filing after he or she can show definitively that the event was not political in nature.

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Legal Director Nagy said that he tried to narrow the scope of the guidelines for the regulations so that not everybody who conducted any type of fundraising would have to file.

Counsel Farrell said: suppose an event looks like it could be a campaign event, because there is no disclaimer to the contrary on the tickets, but actually is not a campaign event? Counsel Farrell said that in this scenario no money would be used for campaign purposes. Counsel Farrell asked rhetorically: if there is no filing then the individual and/or entity would be in violation of the regulation.

Executive Director Herrmann commented that the individual or entity could be reprimanded because of a lack of disclaimer.

On a motion by Commissioner Bedford, seconded by Commissioner Linett and passed by a vote of 3-0, the Commission directed staff to draft a regulation consistent with the recommendation of Legal Director Nagy.

Chairman McNany, with the support of the Commission, directed that the memorandum be made available to the press.

Advisory Opinion No. 10-1992

This advisory opinion request was submitted by George R. Gilmore, Chairman, Friends of Connors, Moran and Connors, Ocean County.

This advisory opinion request concerns the permissibility of the expenditure of funds from the Friends of Connors, Moran and Connors to pay the cost of lunches incurred by legislators while attending party caucus meetings in Trenton.

In the draft opinion, written by Legal Director Nagy, the "reasonable cost of a luncheon for a legislator participating in the caucus of his political party during a legislative day may be paid by a continuing political committee maintained by or on behalf of that legislator." The draft opinion also suggests that prior to using continuing political funds for the payment of lunches, "the affected legislators should seek an opinion from the Joint Legislative Committee on Ethical Standards as to any possible violation that may be raised within its jurisdiction."

Chairman McNany asked if the Commission could refer the matter to the Joint Legislative Committee on Ethical Standards.

Legal Director Nagy responded that the Commission does not have standing to refer the matter to the committee. He said that a request to the committee would have to be made by an individual legislator. The Legal Director suggested that the Commission's perspective on the purchase of working lunches by a CPC should be that such a de minimis purchase is not what is meant by personal use.

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Counsel Farrell said that in the past, the Commission has largely determined that it cannot decide on the issue of officeholding. He said that this opinion seems to run counter to that policy.

Commissioner Linett pointed out that in the car phone opinion, the Commission went so far as to prohibit the use of a car phone for mayoralty duties, permitting the use thereof for only campaign purposes. He said that now with respect to legislative lunches, staff is suggesting the opposite policy, permitting this type of expenditure on the grounds that it is de minimis.

Commissioner Linett said that the issue really is: can campaign funds be used for officeholding?

Chairman McNany said that initially he viewed this simply as a question of whether a legislator can pay for his own lunch with continuing political committee funds. He said that he now realizes that the use of these funds may be more extensive than he originally thought. Chairman McNany said that at issue is whether staff lunches can be purchased with CPC funds and whether these lunches can be more elaborate than something comparable to a "brown bag" lunch. The Chairman said that he is not certain that the Commission should sanction the use of CPC money for lunches.

Commissioner Linett said that he believes that permitting legislators to purchase lunches with campaign funds would be inconsistent with the car phone

advisory opinion wherein the Commission directed that the municipality would have to cover the cost of the car phone for mayoralty work. Commissioner Linett said that the only issue for the Commission to decide is whether paying for legislative lunches constitutes personal use. He said that whether or not campaign money can be used for official business is not in ELEC's jurisdiction.

Counsel Farrell said that the Commission's normal response would be that this usage is not personal and that the Commission has no jurisdiction over office use.

Commissioner Linett said that it does not seem as if the Commission is being clear on what the issue is in this matter. He said that the only question to decide is whether the personal use prohibition would be violated. Commissioner Linett said that in his opinion the Commission should state that the money is not being utilized for personal reasons. Having established this fact the Commission should go on to say that the issue of office use is not under its jurisdiction.

Counsel Farrell said that the Commission should state clearly that it has no jurisdiction over the office use question.

On a motion by Commissioner Bedford, seconded by Commissioner Linett and passed by a vote of 3-0, the Commission approved an advisory opinion with edits suggested by Commissioner Linett and Counsel Farrell. The edits clarify

that the Commission does not construe the expenditure of CPC funds for legislative lunches to be personal use, and that the Commission has no jurisdiction over the office use question.

6. Special Meetings of the Commission in Gubernatorial Years

Chairman McNany inquired as to the status of possible additional meetings in 1993 if the Commission is required to adjudicate public financing questions on a more than once a month basis.

Executive Director Herrmann said that because of savings from the vacancy it will be possible to hold about five extra meetings if necessary. He said, however, that the auditors will not allow these meetings to be conducted by telephone; ELEC will have to have the meetings in person.

7. 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;

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.

10. Adjournment

On a motion by Commissioner Bedford, seconded by Commissioner Linett and passed by a vote of 3-0, the Commission voted to adjourn at 11:45 a.m.

Respectfully submitted,

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

FREDERICK M. HERRMANN, PH.D.

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