



State of New Jersey

ELECTION LAW ENFORCEMENT COMMISSION

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PUBLIC SESSION MINUTES

MARCH 15, 1993

Chairman McNany, Commissioner Linett, Counsel Farrell, senior staff, and Director of Public Financing Nedda Massar were present for the entire meeting. Commissioner Bedford arrived at 10:45 a.m.

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 10:20 a.m. at the Commission offices, Trenton, New Jersey.

1. Approval of Public Session Minutes of February 24, and February 25, 1993

On a motion by Commissioner Linett, seconded by Chairman McNany and passed by a vote of 2-0, the Commission approved the Public Session Minutes of February 24 and February 25, 1993.

2. Executive Director's Report

A. Ethics Forms Reminder

Executive Director Herrmann reminded the members of the Commission that their ethics forms are due on May 15, 1993. He advised them that the Executive Commission on Ethical Standards gets two copies and the Governor's office gets one copy. Executive Director Herrmann noted for the Commissioners that all copies need an original signature.

B. Staff Activities

Executive Director Herrmann informed the Commission that Lisa Fagan, Assistant Legal Director, was injured in a car accident and will be homebound for a while.

The Executive Director announced that two information sessions have been planned by staff for the primary election. He said the sessions, one for the

municipal, non-partisan election and one for the primary election, will be held in Trenton.

Executive Director Herrmann reported that Ed McCool of Common Cause and he conducted a seminar for "Leadership, N.J." on campaign finance reform. He said that the seminar was conducted at the Commission's headquarters.

Executive Director Herrmann announced that on March 3, 1993, he did a live interview about the Lobbying Law on WCTC New Brunswick's Bob Aronson radio show.

He added that on March 25, 1993, he will be participating in a New Jersey Bar Association panel on lobbying regulations and their impact on attorneys. Executive Director Herrmann said that on March 25, 1993, Legal Director Nagy will speak to the Essex County Conference of Mayors on the new campaign finance law at Essex County College.

According to Executive Director Herrmann, Legal Director Nagy, Director of Compliance and Information Evelyn Ford, Associate Director of Compliance and Information Virginia Wilkes Tesser, and he will give an encore performance to the New Jersey Bar Association as they participate in a panel discussion on campaign financing reporting rules. He said that the Bar Association reinvited the troupe after the success of last year's program.

C. Legislative Activities

Executive Director Herrmann said that on March 11, 1993, he testified on two bills before the Senate State Government Committee, ACS for A-101/A-194 (Haytaian) and A-645 (Martin/Russo).

According to the Executive Director ACS for A-101/A-194 (Haytaian) follows the ELEC/Rosenthal Commission recommendation to change lobbying law terminology to define more clearly various activities. Executive Director Herrmann said that the bill also adjusts various thresholds every four years for inflation. He advised the Commission that the bill was held.

Executive Director Herrmann said that A-645 (Martin/Russo) restructures the Commissioner selection process. He said that the bill provides for five year terms of the Commissioners, permits the Commission to select a Chairman and Vice Chairman, authorizes the appointment of alternate Commissioners to serve during vacancies, and requires the Governor to make appointments within 90 days of a vacancy at the end of a term.

3. Public Hearing on Proposed Amendments to the Gubernatorial Public Financing General Election Regulations

A public hearing was convened to receive testimony concerning the proposed amendments to the gubernatorial general election regulations which include the general election campaign cost adjustments at N.J.A.C. 19:25-15.3, 15.4, 15.5, 15.6, 15.10, 15.11, 15.12, 15.14, 15.16, 15.17, 15.21, 15.22, 15.24, 15.27, 15.28, 15.29, 15.30, 15.31, 15.32, 15.35, 15.43, 15.45, 15.48,

15.49, 15.50, 15.54, AND 15.64. A new rule is also being proposed at N.J.A.C. 19:25-15.65.

For details see the transcript provided by a court stenographer.

No witnesses appeared to testify concerning the general election regulations. Written comments may be submitted through March 31, 1993.

Commissioner Bedford arrived at 10:45 a.m.

4. 1993 Gubernatorial Public Financing Primary Election Certification Procedures

For detailed information please see the memorandum from Nedda Gold Massar, Director of Public Financing to Frederick M. Herrmann, Executive Director, dated March 15, 1993, and entitled "1993 Gubernatorial Public Financing Primary Election Certification Procedures."

In sum, the staff proposed a percentage certification procedure similar to that employed in the 1989 gubernatorial primary election. Following the first submission, after the candidate has qualified for public funds, submissions during April may be approved at an automatic 80 percent rate if a campaign demonstrates an error rate of less than 20 percent. The remaining 20 percent of the funds would be matched based upon a complete review of the submission. In May, it was recommended that the automatic approval rate would increase to 90 percent if a campaign had a "track record" of less than ten percent in errors.

A schedule of tentative telephone Commission meeting dates was offered to accommodate various public matching fund submission dates.

On a motion by Commissioner Linett, seconded by Chairman McNany and passed by a vote of 3-0, the Commission approved the percentage certification procedure.

5. Implementation of the New Law

Executive Director Herrmann said that the new Campaign Financing Act was signed into law on March 8, 1993, and goes into effect April 7.

The Executive Director said that staff had been working on an implementation plan and that he would outline major aspects of the plan. He said that the plan is comprised of three phases.

Executive Director Herrmann noted that Phase I of the plan would cover the primary election. Executive Director Herrmann said that this phase would include sending all filing entities a fact sheet explaining the new law before their first filing deadline. He mentioned that the Commissioners will receive a copy for their review with the April meeting agenda and before the sheet is mailed to filing entities.

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Executive Director Herrmann said that under Phase I the Commission would continue doing advisory opinions pertaining to the old law but collect written questions in lieu of formal advisory opinion requests concerning the new law. The Executive Director added that the Commission would discontinue providing complimentary photocopies to government agencies in order to save money. According to Executive Director Herrmann, the staff will begin researching and drafting new regulations and produce new Gubernatorial Public Financing Regulations based on A-100 changes. He added that the staff would not attempt to apply the new law to May municipal and run-off elections because the first filing date is only five days after the new law's effective date. The Executive Director said that school board elections would be exempted for the same general reason.

Executive Director Herrmann said that during Phase I he would also approach the Legislature with staffing and budgetary needs. He suggested that the Commission support the filing fee bill that should provide ELEC with an "additional source" of steady funds for the future. Moreover, Executive Director Herrmann suggested that the Commission support a \$300,000 start-up appropriation being discussed for FY-94. He noted that the filing fee bill will not be able to raise usable funds for at least a year.

Executive Director Herrmann said that the additional funding will be used primarily to fill some of ELEC's ten vacant positions. The Executive Director mentioned that the Commission needs more staff immediately to deal with the flood of questions about how to report under the new law and to review reports. The Executive Director said that following the receipt of the money, the Commission should approach the administration to lift the hiring freeze and allow expedited hiring procedures.

In explaining Phase II, which will cover the general election, Executive Director Herrmann said that the first step would be to update the fact sheet. He advised the Commission that staff would present the Commissioners with draft regulations in stages between June and December, making use of the written questions and staff research.

According to Executive Director Herrmann, Phase III would follow in the spring of 1994. He said that at that time staff would design new forms and write new manuals and answer advisory opinions on the basis of the new regulations. Executive Director Herrmann added that during Phase III the Commission would approach the Legislature for a one-time special appropriation with carryover language for a new combined electronic reporting-image retrieval system.

In sum, Executive Director Herrmann said that 1993 will be the most busy election year since 1981, with a Gubernatorial, Senate, and Assembly election happening at the same time. He advised the Commission that its budget has been reduced by one-third in inflated dollars in the last half-decade. Likewise, continued the Executive Director, about one-third of its staff has been lost during that time. Executive Director Herrmann said that regrettably, ELEC has to implement a complex, new law with virtually no lead time. He cautioned the Commission that the only responsible way to deal with

this situation is to phase the new law in deliberately over a reasonable period. Executive Director Herrmann explained that good planning is absolutely essential.

The Executive Director advised the Commission that each phase will be done sequentially in logical order with the goal of giving filing entities as much guidance as quickly as possible. According to the Executive Director, fact sheets come first, followed by the regulations, followed by new forms and manuals, and then followed by a new computer system.

"ELEC cannot do everything at the same time," declared the Executive Director, "everything must be done in order so as not to put the cart before the horse."

Executive Director Herrmann emphasized that staff believes that if the plan is followed it will be able to accomplish the purposes of the new campaign finance law in the best and fairest manner possible.

Chairman McNany asked: What impact will electronic reporting and image processing have on staffing levels and ELEC's workload?

Executive Director Herrmann said that the immediate need for increased staff would remain; it would just not be as great in the long run. Executive Director Herrmann said that the biggest impact of such a system would be on disclosure. He said that it would save on the time it would take to get raw information to the press and the public. Executive Director Herrmann said that computers are a wonderful tool that will greatly speed-up many aspects of the Commission's operation and would reduce the need for manual work. But, he stated, more staff will still be necessary due to the years of staffing reductions and the need for "people" to assist filers with their myriad of questions, to analyze the raw data collected, to review reports for accuracy, and to deal with the agency's heavy legal workload. Thus, more staff will surely be needed especially at the outset; but, when a new or upgraded computer system is installed in the future, growth of staff would certainly be lessened.

Commissioner Linett said that the biggest advantage of an enhanced system is that it will improve disclosure by speeding-up the process of turning over raw information to the public.

Chairman McNany asked about what happens to the implementation plan if the funding is not forthcoming.

Executive Director Herrmann warned that the staff would be very strapped. He responded that the law would be implemented, but not very well.

Chairman McNany said that since a major element of the implementation plan seems to be the computer system, he would like to know how much lead time is needed for the installation of such a system.

Executive Director Herrmann said that it would be a long-term process and that a computer installation would have to be carefully planned as the one in the mid-80's was. ELEC cannot possibly begin an installation until it has reworked its current procedures, regulations, forms, and manuals that will be the basis for designing new software and ordering new hardware. A mistake in such planning could cost tens of thousands of dollars if a system did not work and would have to be replaced. At least a year of experience under the new law will be necessary before the Commission can responsibly determine its new computer and related equipment needs. After that period, the time for the installation itself could not be determined right now, but at least a couple of years would appear to be the norm.

Commissioner Linett added that the Commission would require customized software because of the uniqueness of New Jersey's law.

Commissioner Linett said that he believed the Executive Director and staff have developed a reasonable approach to implementing the law. He said that, overall, it is a good plan. Commissioner Linett said, however, that he was not sure of the wisdom of collecting questions instead of responding to advisory opinion requests. Commissioner Linett said that he believed the Commission is mandated to respond to advisory opinion requests within ten days and did not know if it has the authority to alter this responsibility.

Legal Director Nagy said that the Commission may have little choice but to take this approach because so many advisory opinion requests may be submitted. Moreover, compiling questions will enable the Commission to put them in an organizational framework. Also, regulations should be in place before advisory opinions on the law can be rendered. According to Legal Director Nagy, the questions will help staff identify areas where regulations must explain the new law. He said that this is similar to the approach that was taken with respect to the new lobbying law.

Commissioner Linett asked: Suppose someone specifically asks for an advisory opinion, does the statute authorize converting the request into a collection of questions and answers? He said that it seemed to him that the Commission needs to answer peoples' questions.

Counsel Farrell said that the Commission has little choice but to take the approach outlined by Legal Director Nagy. He said that it seemed reasonable that under the circumstances the Commission modify the advisory opinion procedure.

Counsel Farrell said that the Commission would have to recognize that persons asking for advisory opinions would be protected from prosecution during the period at which the question remains unanswered.

Commissioner Linett suggested that perhaps staff's responses to the advisory opinions should be shortened during this period. He said that many of ELEC's advisory opinions have been quite lengthy. He noted that when the courts become backlogged, they often shorten their written opinions.

Legal Director Nagy said that the desire to shorten the advisory opinion responses is partially what motivated this approach.

Commissioner Linett asked: to what extent would the absence of regulations hinder ELEC's enforcement efforts?

Executive Director Herrmann said that the absence of regulations will adversely affect enforcement. He added, however, that the Commission has no choice. He said that it is not an optimum situation but there is no other way to approach the implementation of the new law.

Counsel Farrell said that enforcement will depend on the situation. He said that to the extent the issue is clear in the statute, enforcement will not be hindered. Counsel Farrell said that, on the other hand, to the extent the issue is a borderline question there would be a problem with enforcement. He said that in certain areas there may not be any enforcement for a while but in other areas the Commission will be able to continue with its efforts.

Legal Director Nagy suggested that enforcement would be hindered more by the absence of staff than by the absence of regulations.

Chairman McNany said that the problem of implementation would demonstrate that without additional funding and staff the process will be fraught with many problems.

Commissioner Bedford said that he believed the staff should be congratulated for the planning it has done.

Chairman McNany commended the Executive Director for his presentation.

Commissioner Linett said that despite ELEC's feelings about the law, it will do its best to implement it.

6. Advisory Opinion No. 03-1993

This advisory opinion was submitted by John S. Wisniewski. The advisory opinion concerned the question of whether activities anticipated by Mr. Wisniewski to be undertaken for the purposes of obtaining the support or endorsement of the Middlesex County Democratic Organization for the 1993 primary Assembly election are subject to the requirements of the Campaign Contributions and Expenditures Reporting Act.

The staff draft response held that the activities envisioned by Mr. Wisniewski were in furtherance of his candidacy and were therefore subject to the requirements of the Reporting Act.

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 as drafted by staff.

7. Advisory Opinion No. 04-1993

This advisory opinion request was submitted by Stephen J. Edelstein, Esq., special counsel to the New Jersey Democratic State Committee (DSC). Mr. Edelstein asked the Commission to advise the DSC concerning the effect of independent expenditures by the New Jersey Republican State Committee (RSC) for a media campaign during the 1993 primary election on the general election contribution and expenditure limits of the Republican nominee; see Advisory Opinion No. 02-1993.

Chairman McNany announced that the request would be considered at a special meeting of the Commission on March 23, 1993.

8. Future Meetings

The Commission will hold meetings on March 23, 1993, in Branchburg, New Jersey, April 13, 1993, in Trenton, at 9:30 a.m., at which time debate sponsors will be selected. It will also hold meetings on May 18, 1993, which is the last meeting before the primary, and on June 15, 1993. There will also be special, unpaid telephone meetings for the gubernatorial public financing program.

Executive Director Herrmann reported that Patricia Martin and Julia Tirado have been hired as Data Entry staff for the Gubernatorial Public Financing Program.

9. Resolution To Go Into Executive Session

On a resolution by Chairman McNany, 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 which will become public as follows:

1. Final Decisions 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 Linett, seconded by Chairman McNany and passed by a vote of 3-0, the Commission voted to adjourn at 12:15 p.m.

Respectfully submitted,



FREDERICK M. HERRMANN, PH.D.