



State of New Jersey

ELECTION LAW ENFORCEMENT COMMISSION

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COUNSEL

PUBLIC SESSION MINUTES

APRIL 13, 1993

All 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 9:40 a.m. at the Commission offices, Trenton, New Jersey.

Chairman McNany welcomed Commissioner Eldridge to the Commission.

1. Approval of Public Session Minutes of March 15, 1993

On a motion by Commissioner Linett, seconded by Chairman McNany and passed by a vote of 3-0, the Commission approved the Public Session Minutes of March 15, 1993.

Approval of Public Session Minutes of March 23, 1993

On a motion by Commissioner Linett, seconded by Chairman McNany and passed by a vote of 3-0, the Commission approved the Public Session Minutes of March 23, 1993.

Approval of Public Session Minutes of Telephone Conference of April 6, 1993

On a motion by Commissioner Linett, seconded by Chairman McNany and passed by a vote of 3-0, the Commission approved the Public Session Minutes of the telephone conference of April 6, 1993.

2. Executive Director's Report

A. Ethics Forms Reminder

Executive Director Herrmann noted that the ethics forms are due by May

15, 1993. He said that two copies are required to be filed at the Executive Commission on Ethical Standards and one copy is required to be filed at the Governor's office. Executive Director Herrmann said that original signatures are required on all copies.

B. Staff Activities

Executive Director Herrmann reported that on April 6, 1993, he was interviewed by Bob Vosburgh on WCBS radio on the new campaign law. He added that on April 14, 1993, Legal Director Nagy, Director of Compliance and Information Evelyn Ford, Assistant Director of Compliance and Information Virginia Wilkes Tesser, Director of Public Financing Nedda Gold Massar, and he will participate in a New Jersey Bar Association panel on compliance with the new Act.

Executive Director Herrmann announced that he has been chosen as the 1993 COGEL Award recipient and will receive it at the September COGEL conference in St. Paul, Minnesota. He said that his receiving of this award should be considered a recognition of the work of the whole Commission and its efforts in the field of ethics.

The Commissioners expressed congratulations to the Executive Director.

C. Legislative Activities

Executive Director Herrmann said that on March 18, 1993, before the Assembly State Government Committee, he participated in a lengthy discussion of various ELEC filing fee proposals with Bob Woodford of NJBIA, Rob Stuart of PIRG, and Ed McCool of Common Cause. The Executive Director said that the Committee did not release a bill, but that S-70 (Brown) will probably be used as a model.

Executive Director Herrmann reported that on April 5, 1993, before the Senate State Government Committee, he testified on S-1664 (Inverso) which loans ELEC \$300,00 for FY94. He said that if S-70 (Brown), or "substantially similar legislation" is enacted, ELEC, under S-1664 (Inverso) would be required to pay back the \$300,000 from fees it would collect. Executive Director Herrmann informed the Commissioners that the bill was amended to allow ELEC to pay back the money over three years at \$100,000 per year. He added that S-1664 will be helpful if the filing fee legislation enacted raises an annual amount close to the \$600,000 projected for S-70 in its current form.

D. Bedford Resolution

Executive Director Herrmann said that Deputy Director Brindle prepared a Resolution to be presented to former Commissioner Stanley G. Bedford. Chairman McNany read the Resolution.

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

E. Annual Report

Executive Director Herrmann referred to the Annual Report in the Commissioners' packets. He asked for any changes to be submitted within the next week. Executive Director Herrmann said that Deputy Director Brindle had coordinated the project.

F. Future Meetings

Executive Director Herrmann said that meetings are planned for May 18, in Maplewood and requested that the June Commission meeting be held on June 18 in Trenton, at which time a public hearing on the proposed gubernatorial general election regulations to implement the new Campaign Act provisions will be conducted.

He said the Commission may have additional telephone meetings to certify public funds to gubernatorial candidates as well.

3. 1993 Gubernatorial Primary Election Debate Sponsor Selection

Director of Public Financing Nedda Gold Massar reported that the Commission has received two applications for debate sponsorship. She said that the New Jersey State Chamber of Commerce, in conjunction with New Jersey Network (NJN) and the New Jersey Association of Women Business Owners - South Central Region, also in conjunction with NJN, have applied for debate sponsorship.

Director Massar highlighted three statutory criteria applicable to sponsorship eligibility. She said that a sponsor must be unaffiliated with any political party or holder of or candidate for public office, must not have endorsed any candidate in the pending primary election prior to holding the debate, and must have sponsored one or more televised debates for candidates for Statewide office in New Jersey. Director Massar said that with NJN as co-sponsor both groups meet the criteria as set forth in the law.

Director Massar noted that the application from the Chamber of Commerce/NJN was filed in a timely manner. She indicated that the New Jersey Association of Women Business Owners - South Central Region did not file a timely application. Director Massar said, however, that the fact that the co-sponsor is NJN, which had filed a timely application, and the fact that there are only two applicants may constitute mediating factors in permitting the application to be approved. The Director said that the law mandates participation in two debates for candidates receiving public funds in contested elections. Since presumably, she said, the Democratic primary will be uncontested, there is no statutory mandate for Democratic debates to be held. Director Massar said that two Republican candidates are eligible for the debates, since they have been qualified for public matching funds, and that after today a third Republican candidate will be added.

Director Massar said that Joanna Gregory of the New Jersey Association of Women Business Owners - South Central Region, William Healey of the New

Jersey Chamber of Commerce, and Daniel Noonan of NJN are in attendance to respond to any questions from the Commissioners.

Chairman McNany asked why the "Women Business Owners" were late in submitting their application.

Ms. Gregory responded that the group was very interested in sponsoring debates but that this would be the first time that the Association had pursued such a course. She indicated that she contacted a very helpful Dr. Herrmann two weeks ago and that he provided her with the necessary information which enabled her to put together an application.

Director Massar added that the co-sponsor, NJN, had its application in on time.

Chairman McNany asked Director Massar: based upon your research, do you see a problem with NJN modifying its application and including the "Women's Business Owners" in the application - in other words, extending the deadline for the submission of an application?

Commissioner Linett said that common sense would dictate that there should not be a problem given the fact that there are only two applicants. However, he said, if the deadline is in the statute there may be a problem.

Counsel Farrell said that his sense is that the fact that the deadline is in the statute makes it a stronger issue for the courts. He said, however, that there are a fair number of occasions where courts can waive certain statutory provisions, especially if it is not harmful to the public to do so. Counsel Farrell suggested that the Commission could decide whether it is harmful to the public to ease the statutory mandate. He indicated that in his opinion, this was not the kind of issue upon which the Commission was likely to be reversed by the court if it decided to relax the statutory mandate. The Counsel said that he was inclined to think that the Commission has leeway in this situation.

Director Massar said that despite the deadline for applications in the statute, the Commission is given a month following the deadline to select the sponsors. She said that because of this provision it is reasonable to suggest that the Commission could make an exception on this application. She added that the Commission has statutory authority to extend filing deadlines pursuant to N.J.S.A. 19:44A-6, so therefore it would seem to follow that the Commission's authority to relax the statute would extend to this deadline.

Commissioner Linett made a motion to the effect that the Commission waive the application deadline. Commissioner Eldridge seconded the motion. On a vote of 3-0, the Commission approved the motion.

Commissioner Linett asked if the Women's Business Owners Association has any experience with running debates.

Ms. Gregory responded that the Association purposely hooked-up with NJN because it does not have previous experience with debates. She added that she was confident that the debates would reach the citizens of New Jersey. Ms. Gregory said that the debate will be held at the Garden State Arts Center and that she is contacting radio stations for further coverage.

Commissioner Eldridge said that it was useful to have various groups participating in the electoral debate process. He commended the Women's Association for its interest.

Commissioner Linett asked Ms. Gregory whether her organization would make any endorsements.

Ms. Gregory said that the by-laws of her Association prohibit it from endorsing any candidates.

Counsel Farrell asked whether each debate would get the same coverage.

Daniel Noonan, representing NJN, responded in the affirmative. NJN's Executive Director for Public Affairs said that both debates would be aired Statewide, and would be fed to cable and radio stations throughout the State as well.

William Healey, representing the Chamber of Commerce, remarked that the Chamber's application is very complete. He said that the debate will be held on May 11 for 90 minutes in prime time. Mr. Healey said that he is proud of the Chamber's efforts and that all of the particulars about the debate are spelled out in the application.

Chamber of Commerce President Bill Faherty added that he personally met with ELEC's wonderful staff, Dr. Herrmann and Director Massar, and that they were very helpful in providing guidance with respect to completing the application.

Commissioner Linett asked if Channel 13 is part of the plan.

Mr. Noonan indicated that Channel 13 might pick up the debates. He said that if the network contacts NJN, then NJN would be glad to give Channel 13 a feed.

Chairman McNany inquired as to when the debates would be held.

Director Massar said that the Chamber debate is planned for May 11, 1993, and that the Women's Business Owners Association debate would be held during the week of May 24th.

Commissioner Linett commented that because of the way the statute is written there is an obvious loss of exposure for the Democratic candidate this year because of the lack of opposition.

On a motion by Commissioner Linett, seconded by Commissioner Eldridge and passed by a vote of 3-0, the Commission approved the debate sponsorships of the New Jersey State Chamber of Commerce with NJN and the New Jersey Association of Women Business Owners - South Central Region with NJN.

4. 1993 Gubernatorial Public Financing General Election Certification Regulations

Director Massar reported that the proposed amendments to the Public Financing General Election Regulations 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, and proposed new rule N.J.A.C. 19:25-15.65 are ripe for adoption consideration. The amendments and new rule implement cost index adjustments to the limits and thresholds applicable to the general election. The amendments require more specificity in the reporting of contribution and expenditures by publicly-financed gubernatorial campaigns and establish a procedure for filing a complaint alleging violation of the general election expenditure limit.

Director Massar said that there was no written testimony submitted by the March 31, 1993 deadline relative to the proposed amendments.

On a motion by Commissioner Eldridge, seconded by Commissioner Linett and passed by a vote of 3-0, the Commission adopted the amendments to the Gubernatorial Public Financing General Election Regulations.

5. Proposed Amendments to 1993 Gubernatorial Public Financing General Election Regulations

For detailed information please see memorandum from Nedda Gold Massar, Director of Public Financing, to Frederick M. Herrmann, Ph.D., Executive Director, dated April 5, 1993 and entitled "Proposed Amendments to Gubernatorial Public Financing General Election Regulations."

The proposed changes are at N.J.A.C. 19:25-15.17, Matching of Funds, and N.J.A.C. 19:25-15.48, Candidate statement of qualification before participation in public financing.

Director Massar explained that the proposed regulations would require publicly-funded gubernatorial candidates in the general election to disclose an individual contributor's occupation, his or her employer and employer's address on submissions for matching funds. She stated that this information is required on candidate reports and that the regulations would extend this requirement to submissions for public funds.

Commissioner Linett queried as to whether these regulations, if adopted, would constitute a hardship for gubernatorial campaigns.

Director Massar said that the campaigns are required to obtain this information for pre and postelection reports anyway. She did not see it as constituting a hardship, therefore.

Chairman McNany queried as to the effect of the proposals on the primary election.

Director Massar said that because submissions have already been made the Commission would not require this information on primary submissions. She said it would be required on their campaign reports, however, for contributions in excess of \$200 received on or after April 7, 1993, and the campaigns have been advised of this.

On a motion by Commissioner Linett, seconded by Commissioner Eldridge and passed by a vote of 3-0, the Commission proposed the amendments to the gubernatorial public financing general election regulations.

6. Certification of Public Matching Funds

Public Financing Director Nedda Gold Massar reviewed an application for public matching funds received from gubernatorial candidate Jim Wallwork. Copies of the printout which indicated that Mr. Wallwork submitted \$210,938.35 for match had been distributed to the members of the Commission.

A complete review of all items submitted for match resulted in the ineligibility of 30 contribution items representing \$21,700. Thus, after subtraction of the \$59,000 of contributions which is not matched, it was determined that \$130,238.35 was eligible to be matched at the 2:1 ratio. Thus, it was recommended by Director Massar that the Commission certify a total of \$260,476.70 in public matching funds.

The \$260,476.70 figure was arrived at by subtracting \$59,000 from \$189,238.35 (\$210,938.35 - \$21,700) and multiplying the resultant figure of \$130,238.35 by two, which is the number of public dollars distributed for every one dollar submitted.

On a motion by Commissioner Eldridge, seconded by Commissioner Linett and passed by a vote of 3-0, the Commission certified \$260,476.70 in public matching funds to candidate Jim Wallwork.

7. Fact Sheet

Director of Compliance and Information Evelyn Ford said that she would summarize the contents of the Fact Sheet and provide an overview for the Commissioners as to how it was developed. Director Ford said that the legislation is 53 pages long and because of this she attempted, for the purposes of the Fact sheet, to pull out all the important points that candidates and various other filing entities need to know immediately in order to comply with the new law. Director Ford indicated that in order to accomplish this task, staff analyzed the bill, researched relevant case law, contacted the FEC and other State agencies, and discussed the legislation with

staff of the Legislature. She said that the objective was to devise a concise information piece that would be helpful to candidates in their task of complying with the new law and contribution limits. Director Ford said that the Fact Sheet was a first step in helping filing entities comply with the new law and would be followed up by other informational packets.

Chairman McNany asked if staff envisioned doing any information sessions.

Director Ford said that an information session is scheduled for April 30, 1993, at the Mary Roebling building next door.

Chairman McNany suggested that additional information sessions be held in North Jersey and South Jersey.

Executive Director Herrmann said that when the Commission undertook out-of-Trenton sessions in the past there often were few people in attendance. He said that such sessions were eliminated a few years ago as part of a service reduction plan precipitated by severe budget cuts. Executive Director Herrmann indicated that the Commission would make every effort, including mailings and telephone assistance and the possibility of additional Trenton sessions, to help people get familiar with the basics of the new law.

Commissioner Eldridge said that having dealt with the law as both an attorney and a candidate in the past he can attest to the fact that the campaign act is often hard to follow. He said he would like to congratulate staff on the approach it has chosen to take in helping candidates comply as opposed to seeking to penalize good people when they inadvertently violate the Act.

Chairman McNany congratulated Director Ford on her efforts toward completing the Fact Sheet.

On a motion by Commissioner Eldridge, seconded by Commissioner Linett and passed by a vote of 3-0, the Commission approved the Fact Sheet for distribution.

8. 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.

9. 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 12:54 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.

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