



State of New Jersey

ELECTION LAW ENFORCEMENT COMMISSION

OWEN V. McNANY, III
CHAIRMAN

David Linett
COMMISSIONER

William H. Eldridge
COMMISSIONER

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

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 18, 1993

All the Commissioners, Counsel Farrell, 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 April 13, 1993 and Telephone Meetings of April 20, 27, May 4, and May 11, 1993

On a motion by Commissioner Linett, seconded by Commissioner Eldridge and passed by a vote of 3-0, the Commission approved the Public Session Minutes of April 13, 1993 and telephone meetings of April 20, 27, May 4, and May 11, 1993.

2. Executive Director's Report

A. Staff News

Executive Director Herrmann reported that Donna Bindas, Public Financing Computer Assistant, is leaving ELEC on May 21, 1993, because she is moving to Oregon. Executive Director Herrmann said that she has done a terrific job and will be missed.

According to the Executive Director, Legal Director Gregory Nagy, Compliance and Information Director Evelyn Ford, Compliance and Information Assistant Director Virginia Wilkes-Tesser, Public Financing Director Nedda Gold Massar, and he conducted a seminar on the new law on April 14, 1993, for the New Jersey State Bar Association. He indicated that over 100 attorneys and candidates were in attendance. Executive Director Herrmann said that these people are key players in the election process who need to know about new filing responsibilities.

Executive Director Herrmann announced that Andrew Mersel, of Rutgers University, will be an unpaid intern starting May 24, 1993.

The Executive Director reported that on April 30 and May 3, Director Ford and the compliance staff conducted information sessions on the new law. He said that well over 100 people attended the primary '93 session. He said that Director Ford and staff did a terrific job and that everyone who requested attendance was accommodated.

Executive Director Herrmann mentioned that on May 11, 1993, he attended the 35th anniversary dinner of Dr. Herbert E. Alexander's Citizens' Research Foundation in Washington, D.C. He indicated that numerous speakers discussed campaign finance reform initiatives at the federal level.

B. National Ethics News

Executive Director Herrmann informed the Commission that the April, 1993 issue of The Council of State Governments' (CSG) State Trends and Forecasts is about national campaign reform. He said that five policy options are discussed including the "empowering" of enforcement agencies. Executive Director Herrmann said that CSG concludes that the independence, authority, and capability of state ethics agencies need to be improved and recommends adequate staffing and budgeting if agencies' efforts to administer disclosure laws are to be meaningful.

According to Executive Director Herrmann, the Federal Election Commission (FEC) has asked Congress for a FY-94 budget of \$23.6 million - a \$2.6 million (12 percent) increase over the previous fiscal year. He noted that the FEC monitors 7,000 committees, whereas, ELEC monitors 6,000. Executive Director Herrmann said that according to a recent Newhouse News Service Report, "campaign spending has skyrocketed in recent years (at the federal level), and so has the FEC's workload, but its resources have not." He said that the news service believes that "extra funding and some new technology might do away with information overload." "But," it stated, "in a year when campaign finance reform is likely to further expand the FEC's responsibilities, it's chronically underfunded and understaffed."

Executive Director Herrmann said that an "overwhelmed" FEC official reported "we are understaffed and in desperate need of more bodies and more resources.... We're starting to see a backlog develop that has not been there before."

C. Legislative News

Executive Director Herrmann reported that on May 6, 1993, he testified before the Senate Budget and Appropriations Committee on S-1664 (Inverso) and before the Assembly State Government Committee on A-2431 (Martin). He indicated that these bills are identical in that they "loan" ELEC \$300,000 to be repaid in equal installments over a three-year period. Executive Director Herrmann noted that the loan is tied to S-70 (Brown), the filing fee bill, or

"substantially similar legislation," which is projected to raise \$600,000. He said that both bills passed unanimously.

Executive Director Herrmann reported that on May 10, 1993, he testified on A-2194 (Lance/Roberts) and A-2391 (Romano), which create new procedures for reporting the receipt of complimentary tickets. He noted that under the old Campaign Act, ELEC ruled in Advisory Number No. 05-1992, that the receipt of such tickets must be reported on either campaign or PFD reports.

Executive Director Herrmann said that he took no position but provided **technical advice on the bills**. The Executive Director suggested that whatever reporting requirements were established the bills should use the current reporting system instead of creating a special one for the use of complimentary tickets alone. Executive Director Herrmann said that the Committee amended A-2194 (Lance/Roberts) to require reporting complimentary tickets which are gifts from a purchaser using the current reporting cycles. In addition, said the Executive Director, it amended A-2391 (Romano) not to require reporting of complimentary tickets which are gifts from a sponsor of an event.

Executive Director Herrmann informed the Commission that on May 13, 1993, the Senate passed S-1664 (Inverso) by a vote of 32-0, and sent it to the Assembly Appropriations Committee.

Chairman McNany then suggested that the staff draft a letter on behalf of the Commissioners to the Governor and Legislative leadership urging them to enact the loan bill and the filing fee bill by July 1, 1993, and also to lift the hiring freeze by that date. The two other Commissioners concurred.

D. Workload under the New Law

Executive Director Herrmann advised the Commission that the combination of the new law taking effect immediately with its many new requirements and no additional staff and budgetary resources has put an overwhelming strain on the staff in dealing with an incredibly heavy volume of telephone calls and requests for information. He said that various office procedures have been adjusted to help relieve the stress and manage the workflow effectively but the pressures still remain at an extremely high level.

Executive Director Herrmann said that for the first time since he has been with the Commission, staff is experiencing major difficulties in providing information to the candidates, media, and the public.

E. Future Meetings

The Commission set the following schedule for meetings: June 18, Trenton; July 20, Keyport; and August 17, in Berkeley Heights.

F. Former Commissioner

Chairman McNary presented former Commissioner Stanley G. Bedford with a plaque commemorating his service to the Commission and to society.

3. Approval of Public Financing Funds

Jim Wallwork Submission No. 04

Director Massar reported that a complete staff review of the May 10, 1993 submission determined that a net amount of \$25,930 in contributions was deemed eligible for match at a 2:1 ratio. The review determined that 16 contribution items were ineligible for match, representing an ineligibility rate of 7.62 percent. Based on the net amount of \$25,930 determined to be eligible for match at a 2:1 ratio, staff recommended certification of \$51,860 in 1993 primary election public matching funds to Candidate Jim Wallwork.

On a motion by Commissioner Eldridge, seconded by Commissioner Linett and passed by a vote of 3-0, the Commission certified \$51,860 in 1993 primary election funds to Candidate Wallwork.

Christine Todd Whitman Submission No. 02

A complete review of all items in the May 10, 1993 submission determined that a total of \$133,676.00 in contributions was eligible for match at a 2:1 ratio. This amount included items resubmitted from the prior submission. It was also determined that 11 contributions were ineligible for match. These items amounted to \$5,325 representing an ineligibility rate of 4.62 percent. Applying the 2:1 matching ratio to \$133,676 results in public funds of \$267,352, of which \$153,076 is necessary to bring the Whitman campaign to the \$1.6 million 1993 primary election public funds maximum. Thus, staff recommended that \$153,076 in public funds be certified to Candidate Whitman.

On a motion by Commissioner Linett, seconded by Commissioner Eldridge and passed by a vote of 3-0, the Commission approved the certification of \$153,076 in public matching funds to Candidate Whitman.

May 17, 1993 Wallwork Submission No. 05

Director Massar reported that the fifth submission was received from the Wallwork campaign at 12:16 p.m. on Monday, May 17, 1993. She advised the Commission that pursuant to regulation submissions are to be filed by 12:00 noon on submission dates. The noon deadline is regulatory, not statutory, and Director Massar indicated that the Commission accepted submissions filed less than one hour late during the 1989 primary election. She requested permission to proceed with review of the Wallwork fifth submission for certification by the Commission at a telephone conference meeting on Friday, May 21, 1993.

On a motion by Commissioner Eldridge, seconded by Commissioner Linett and passed by a vote of 3-0, the Commission voted to accept and consider the May 10, 1993 submission filed at 12:16 p.m. by the Wallwork campaign.

Contribution Limit Inquiry

For detailed information please see memorandum from Nedda Gold Massar, Director of Public Financing to Frederick M. Herrmann, Ph.D., Executive Director, dated May 7, 1993, and entitled "Contribution Limit Inquiry - Affiliated Corporations."

Staff requested Commission guidance in responding to contribution limit questions concerning issues of corporate affiliation. This request was prompted by the review of the submission of a publicly-financed 1993 gubernatorial primary election candidate in which staff identified contributions from two corporations which it considered might be affiliated corporations because the two corporations shared the same address. It was subsequently determined that the first corporation was owned 100 percent by one individual and the second corporation was owned 18 percent by that same individual and 82 percent by another individual.

By way of guidance, in the absence of a specific regulation in this area, staff suggested that where an individual owns interest in two corporations and where the combined ownership by that individual exceeds 120 percent in the two corporations, the contribution limit is sufficiently jeopardized to require that the contributions from the two corporations may not exceed \$1,800. Staff suggested further that where one corporation owns more than 20 percent of the stock of another, the corporation should be considered affiliated and limited to contributing no more than \$1,800 in the aggregate.

Chairman McNany asked if the Commission would be able to provide campaigns with a format ahead of time if guidelines are adopted.

Director Massar said that she was concerned about providing guidance in a generalized way because the Commission has not adopted a specific regulation in connection with this issue.

Counsel Farrell said that the first issue for the Commission is to solve the immediate question regarding the two contribution items. He said that the second issue for the Commission is whether to adopt a regulation.

Commissioner Linett said that he can understand staff's desire for guidance but could not support the proposal of combined ownership of 120 percent. He said that under this proposal, an individual can own 55 percent of two corporations and give twice.

Commissioner Linett said that he believes the issue should be handled on a case-by-case basis. He indicated that affiliation should be done on the basis of an ownership of a corporation and not combined ownership. He said that if the same person owns more than 30 percent of a corporation it should be considered affiliated with another corporation in which the same individual owns more than 30 percent.

Chairman McNany expressed support for Director Massar's approach.

Commissioner Linett reiterated that the "combined" approach will not work. He said that an individual could own a large percentage of several corporations under staff's proposal, thereby circumventing the contribution limit many times over. He said that the 120 percent test violates the spirit of the law. Commissioner Linett said that the Commission needs a "safe harbor test."

Counsel Farrell said that the Commission should limit its decision today to what staff should do about these two contributors. He said that the Commission did not want to get into making a policy decision about affiliation at today's meeting.

Commissioner Linett indicated that he believed that the Commission should adopt a policy whereby anyone owning 30 percent or less of a corporation does not have to concern himself with the affiliation issue. He said that in this particular instance, staff should not consider the two corporations affiliated because the same individual does not meet the 30 percent standard.

Counsel Farrell commented "legally it is a plausible position."

On a motion by Commissioner Linett, seconded by Commissioner Eldridge and passed by a vote of 3-0, the Commission adopted the policy that the standard for affiliation must be ownership by an individual or corporation of more than 30 percent in each of two or more corporations.

5. Regulatory Amendments

As the result of the enactment of A-100, the Commission continued the process of proposing amendments to its campaign financing regulations. Legal Director Nagy presented a 91-page draft of proposed amendments to subchapters one through seven. These subchapters deal with the establishment of the various types of reporting entities created by the new law. Director Nagy said that if approved by the Commission at its June meeting he would begin the process of formally proposing these amendments, as well as further amendments on reporting requirements to be presented at that meeting.

For detailed information please see draft memorandum from Gregory E. Nagy, Legal Director, to Frederick M. Herrmann, Ph.D., Executive Director, dated May 10, 1993 and entitled "Proposed Amendments to ELEC Regulations."

Legal Director Nagy also set forth a schedule for formal adoption of the amendments which if followed, would effectuate the amendments on October 4, 1993.

Legal Director Nagy said that the regulatory amendments, subchapters one through seven, involve definitions, pre-candidacy activity, establishment of various committees, the establishment of depositories, registration statements, and the permissible uses of campaign funds.

Commissioner Linett said that he wanted to commend Legal Director Nagy and other staff members who contributed in tackling this task and going beyond the "call of duty" to carry it out in a timely fashion.

On a motion by Commissioner Linett, seconded by Commissioner Eldridge and passed by a vote of 3-0, the Commission directed staff to release the draft amendments to the public.

6. Advisory Opinion Request No. 05-1993

This advisory opinion request was submitted by Donald Scarinci, Esq., on behalf of "The F.A.I.R. Committee."

Mr. Scarinci wrote that in advance of his candidacy for the Office of Commissioner in the Town of West New York, Anthony M. DeFino, an attorney with law offices in West New York, allowed space of approximately two-thirds of his law office to be used for six months for his campaign. He additionally allowed his law office telephones to be used for the campaign. The advisory opinion request asks if Mr. DeFino can be reimbursed for monies spent by his law firm in aid of his candidacy despite the fact that no outstanding obligation to Mr. DeFino was reported by the committee, which Mr. DeFino had designated as his campaign reporting committee.

Mr. Scarinci, in his request, failed to state that Mr. DeFino had already been reimbursed by the committee and the opinion was being submitted after the fact.

Staff recommended that Mr. Scarinci be advised that the Commission will not issue an opinion because "The F.A.I.R. Committee" has made the reimbursement payment that is the subject of its inquiry. It suggested that Mr. Scarinci be advised that "The F.A.I.R. Committee" should amend its past reports to reflect the existence of the outstanding obligations.

On a motion by Commissioner Linett, seconded by Commissioner Eldridge and passed by a vote of 3-0, the Commission approved the staff recommendation in the advisory opinion, and directed Legal Director Nagy to issue a letter accordingly.

7. 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.

8. 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 12:05 p.m.

Respectfully submitted,



FREDERICK M. HERRMANN, PH.D.

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