



State of New Jersey

ELECTION LAW ENFORCEMENT COMMISSION

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PUBLIC SESSION MINUTES

JANUARY 18, 1994

Chairman McNany, Commissioner Linett, senior staff, and Director of Public Financing Nedda Gold Massar were present. Commissioner Eldridge participated by telephone beginning at 10:50 a.m. Counsel Farrell did not attend.

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 Somerset County Administration Building, Somerville.

1. Approval of Public Session Minutes of December 14, 1993

On a motion by Chairman McNany, seconded by Commissioner Linett and passed by a vote of 2-0, the Commission approved the Public Session Minutes of December 14, 1993.

2. Advisory Opinion No. 12-1993

This advisory opinion request was submitted by Andrew C. Hodulik on behalf of Middlesex County Freeholder-Elect David B. Crabiel.

Mr. Hodulik inquired as to whether funds raised for the purpose of offsetting expenses related to a swearing-in reception would be considered "outside of the requirements of the Campaign Contribution and Expenditures Reporting Act."

Mr. Hodulik advised the Commission that a reception hosted by Freeholder Crabiel would take place following his induction as Middlesex County Freeholder. He noted that the evening is planned as a non-political affair and that funds raised for the event will be used solely for the affair. Mr. Hodulik said that at this point it is undetermined whether Mr. Crabiel will seek another term following this three-year term.

In the draft response which had been circulated to the Commissioners, staff recommended that such expenditures be considered subject to the provisions of the Act. Legal Director Nagy said that the definitions of the term "candidate" has been expanded by the new amendments to include an officeholder making "ordinary and necessary expenses of holding public office," and swearing-in ceremonies and receptions fell within that term. He noted that it is a customary practice for many elected public officials to celebrate their assuming the duties of public office, an activity that may have a beneficial governmental and social impact. Furthermore, as the draft opinion noted, permitting persons to provide donations to an elected officeholder without subjecting those donations to the reporting and contribution limit provisions of the Act raises a substantial risk of undue influence over the officeholder.

Commissioner Linett asked: "If Freeholder Crabiel paid for it himself, would his contribution be subject to the contribution limits and to reporting?"

Legal Director Nagy said that a contribution made personally by the officeholder would be reportable. He added, however, that there would be no limit on what the officeholder can give to himself.

Commissioner Linett said that it is clear that when money derives from the campaign account, it should be disclosed. He said, however, that it is not clear that when an expenditure derives from a candidate's personal funds it is reportable.

Chairman McNany expressed the opinion that if an individual makes a contribution to his own event, to a candidate, or to charity out of his own personal funds the contribution should not have to be reported by his candidate committee. He added that there would be many surprised individuals if the Commission concluded that contributions made out of personal funds had to be reported through the officeholder's candidate committee.

Executive Director Herrmann said that the definition of a candidate in the new campaign financing law is changed from that in the old law. He said that under the new law an officeholder is considered a candidate for the purposes of raising and spending funds. He said that if any money were raised or spent by the officeholder for the reasons set forth in Section 17 of the new law, it would be subject to the new contribution limits and full disclosure to the public.

Chairman McNany said that if an officeholder is a candidate then Advisory Opinion 13-1993 regarding the Governor would be affected.

Deputy Legal Director Massar said that there is a distinction between a Governor and other elected officials because the Act requires that the campaign committee of a publicly-financed gubernatorial campaign must close down within six months of the election. Further, spending by a publicly-financed campaign in the postelection setting is strictly limited to obligations incurred on or prior to the date of the election and costs

necessary to close the campaign. A gubernatorial committee may not continue to exist in the same way that a candidate committee or joint candidates committee may. Therefore, gubernatorial candidates are distinguishable in this regard.

Commissioner Linett said that the advisory opinion should state that "even a contribution from an officeholder himself would have to be reported" through the candidate committee. He offered an additional sentence as an amendment.

On a motion by Commissioner Linett, seconded by Chairman McNany and passed by a vote of 2-0, the Commission approved the advisory opinion with the addition by Commissioner Linett to reflect the fact that personal contributions from the officeholder must be reported.

3. Advisory Opinion Number 13-1993

This advisory opinion request was submitted by Edward Gross, Esq., General Counsel to the Republican State Committee (RSC).

In his advisory opinion request, Mr. Gross inquired as to whether the RSC may pay certain expenses of Governor-elect Whitman during the transition period and thereafter as Governor of the State of New Jersey.

Mr. Gross advised the Commission that Governor Whitman will engage in activities and incur expenses for communications both written and via the electronic media, as well as travel, food, and lodging connected with Republican events. He said that as leader of the party she will be encouraged to do so by the RSC in connection with its party-building activities. According to Mr. Gross, these expenses should not be paid by the State nor should they be considered expenses of the Governor's election committee which will be wound-up early in her term. Mr. Gross added that such expenses should not be considered in furtherance of her candidacy since they will be incurred, not in a candidate capacity, but in the capacity of leader of the New Jersey Republican party. He noted that the proper organization to defray such expenses is the RSC.

In the draft advisory opinion, which had been circulated to the Commissioners, the staff recommended that the expenses of the Governor-elect and Governor of the kinds described by Mr. Gross may be paid for by the RSC as long as the Governor is not a candidate for elective office in New Jersey, or is not "testing the waters" or assessing a candidacy for New Jersey elective office.

The draft opinion states that the Commission recognizes that the Governor-elect and Governor is the leader of the party and maintains that there is no perceived undue influence that the party can hold over the Governor-elect or Governor.

The draft opinion states also that expenditures for written or media communications featuring the Governor-elect or Governor are permissible State

political party committee expenditures if the communications expenditures are made by the RSC at a time when the Governor is not a candidate for or not exploring a future candidacy for New Jersey elected public office. The draft notes that expenditures for travel, food, and lodging of the Governor-elect and Governor are permissible subject to the same conditions as above. The draft opinion invites further inquiry by the RSC under circumstances of testing and future candidacy.

Commissioner Linett asked if this opinion is directed toward the Governor only.

Director Massar said that it was intended only as a reply to the specific question posed by Mr. Gross concerning the Governor-elect and Governor.

Commissioner Linett said that he did not know if the first full paragraph on page two of the draft response is necessary. That paragraph discussed the Commission response in Advisory Opinion 10-1993 noting the absence of undue influence arising from loans to the Inaugural Committee from the RSC. Commissioner Linett expressed his concern that possible undue influence could occur if money is passed through the State Committee for the purpose of supporting the Governor's activities, and therefore suggested that the paragraph be removed.

Commissioner Linett also said that the final paragraph of the draft response should be removed because it was unnecessary to the response.

On a motion by Commissioner Linett, seconded by Chairman McNany and passed by a vote of 2-0, the Commission approved the draft opinion as amended by Commissioner Linett.

#### 4. 1993 Gubernatorial Ballot Statement Program

Director Massar introduced a draft of a letter to Assemblyman Richard H. Bagger in response to his letter inquiring about the funding for reimbursement to the county clerks for gubernatorial ballot statement costs.

The letter from Executive Director Herrmann notes that the Commission has approximately \$165,000 available to refund the county clerks for the ballot statements.

According to the draft letter, staff has estimated that a total of approximately \$400,000 would be needed to reimburse fully all 21 counties for gubernatorial ballot statement costs. Director Massar explained that this number was arrived at by adding the \$237,360.36 in total known claims to \$161,000, an amount projected by staff as necessary to meet the costs for the six counties for which no ballot statement claim amounts are known. The number of registered voters in the six counties (805,000) was multiplied by an estimated cost per voter of 20 cents to project the \$161,000 needed to reimburse the six counties. The draft response to Assemblyman Bagger therefore indicates that an additional appropriation of \$235,000 would be

necessary to fund the program in full when added to the \$165,000 currently available in the FY 1994 budget.

At the December meeting, the Commission voted to reimburse 11 counties that had submitted claim forms by the December 1, 1993 deadline. The Commission determined that the 11 counties should be reimbursed, but on a pro rata basis from the \$165,000 available.

Director Massar reported that Somerset County has submitted a copy of its reimbursement claim in the amount of \$3,607 and that the claim was dated November 10, 1993, prior to the December 1, 1993 deadline. Director Massar said that because a similar situation existed for Middlesex County (dated prior to December 1, 1993, but received by the Commission after that date), and the Commission authorized reimbursement for this county, the Commission might want to consider including Somerset County among the counties receiving reimbursement.

Commissioner Linett said that he was concerned about the four counties that filed but were late as opposed to the six that filed nothing at all. Director Massar clarified that the Commission had been advised of the total amount of the claims of four counties, (Burlington, Monmouth, Passaic, and Somerset) but that of the four only Somerset County had filed the required claim form. Cumberland, Hudson, Hunterdon, Mercer, Morris, and Warren counties also have filed no reimbursement claim.

At this juncture, Commissioner Eldridge participated in the meeting by telephone.

Commissioner Linett said that he would like to add Somerset County to the list of counties receiving reimbursement for the ballot statement program.

Commissioner Eldridge agreed as did Chairman McNany.

On a motion by Commissioner Linett, seconded by Chairman McNany and passed by a vote of 3-0, the Commission authorized the inclusion of Somerset County among the counties to be reimbursed for the ballot statement program.

Commissioner Eldridge said that he would suggest that the letter to Assemblyman Bagger clarify that the additional monies for the ballot statement program should not come out of Commission funds but should derive from a supplemental appropriation.

On a motion by Commissioner Eldridge, seconded by Commissioner Linett and passed by a vote of 3-0, the Commission approved the letter to Assemblyman Bagger as clarified by Commissioner Eldridge.

Commissioner Eldridge stated at this point that he approved of Advisory Opinions Numbers 12 and 13.

5. Public Financing Hearing Preparations

Director Massar summarized the staff's preparations for the Public Financing Public Hearing. Director Massar reported that 200 announcements had been sent out to interested individuals and that two notices had appeared in the New Jersey Register. Additional notices will be placed in the New Jersey Law Journal and New Jersey Lawyer. She said that the hearings will be held on February 15, 1994, in Room 319 of the Statehouse and on March 15, 1994 in Maplewood.

The March hearing date was changed to Wednesday, the 16th, upon the request of Commissioner Eldridge.

Commissioner Eldridge also indicated that he would like to have the issue of negative advertising as it relates to public money introduced into the hearing as a topic for discussion.

Chairman McNany said that four years ago the Commission discussed this issue and determined that truthful negative advertising was helpful in that it points out negative aspects of an opponent.

The Commission convened into Executive Session.

6. Resolution To Go Into Executive Session

On a motion by Commissioner Linett, seconded by Commissioner Eldridge and passed by a vote of 3-0, the Commission moved 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.
3. A report on written requests for investigations of possible violations, which report will not become public. However, any complaint which may be generated as a result of a request for an investigation will become public 30 days after mailing.

7. Return to Public Session

On a motion by Commissioner Linett, seconded by Commissioner Eldridge and passed by a vote of 3-0, the Commission voted to return to Public Session.

8. Executive Director's Report

Due to time constraints created by the inclement weather, Executive Director Herrmann introduced the following report into the record after briefly summarizing it for the Commissioners.

A. Staff Activities

Executive Director Herrmann reported that Virginia Wilkes Tesser and Carol Neiman staffed a consulting table at the League of Municipalities Annual Conference in Atlantic City in November.

He also reported that ELEC was the only division associated with the Department of Law and Public Safety to win a Platinum Award for its participation in the New Jersey Employees Charitable Campaign. Executive Director Herrmann expressed special thanks to Chairperson Carol Neiman and all of ELEC's employees.

Executive Director Herrmann pointed out that on January 10, 1994, he attended a publication reception at the State Museum for Michael Aron's new book on the 1993 Governor's race. He added that on January 11, 1994, he addressed the Monmouth Chapter of "United We Stand" on ELEC's role in the election process and the recent changes to the Campaign Finance and Lobbying Laws.

Executive Director Herrmann reported that on January 12, 1994, Legal Director Nagy and he met with Marci Hochman, the staffer to the Joint Legislative Committee on Ethical Standards to discuss the drafting of ELEC's regulations on campaign fund usage. He pointed out also that Deputy Director Brindle, Director of Administration Barbra Fasanella, Systems Administrator Anthony Chianese, and he met with OTIS staff later that day to begin a review of the recomputerization of ELEC. The Executive Director said that the goal was to develop a plan of what ELEC needs, how much it will cost, and how long it will take to become operational.

B. Legislative News

Executive Director Herrmann said that on January 7, 1994, Governor Florio signed legislation S-2248 (Inverso)/A-2992 (Haytaian) that requires "street money" to be paid by check.

Executive Director Herrmann noted that Governor Florio said that "this is a basic, remedial, good government initiative that will enhance the integrity of the election process." Like ELEC, the Governor was convinced that creating a "paper trail" would lead to more "accountability."

Executive Director Herrmann noted that an Asbury Park Press Sunday editorial on December 12, 1993, entitled "Election Law Panel Needs Money To Do Its Job" advocated the funding of ELEC recomputerization and the enacting of the filing fee bill. He said that the fee bill is cited as an example of a

"creative (approach) in dealing with the State budget." The Whitman Administration is "called on to push similar legislation next year."

C. National Ethics News

Executive Director Herrmann reported that the Bureau of Elections in the Michigan Department of State is currently reviewing, like ELEC, the state of its automation and what technology is available to improve public access to its files. He asserted that an immediate goal is an electronic filing system to handle applications for public funding from gubernatorial candidates.

Executive Director Herrmann advised the Commission that the California Fair Political Practices Commission issued a fine for \$722,000, the largest civil judgment in United States history for a case involving political ethics violations. He mentioned that the lawsuit involved the laundering of over \$130,000 in campaign contributions to six City Council candidates. Executive Director Herrmann added that Governor Engler of Michigan was fined \$25,000 for exceeding his state's expenditure limits by \$46,000.

Commissioner Eldridge advised the Commission that he had asked Deputy Director Brindle to prepare a report of ELEC's achievements. He said that he has forwarded that report to legislators.

Commissioner Eldridge stated that he believes it is important for the Commission to explore and discuss the whole issue of tenure for Commissioners after the first term. He said this issue should be raised at the hearing.

Chairman McNary said that it was an issue for the Commission to discuss but perhaps not at the public financing hearing.

Commissioner Linett said that he supported longer terms but not necessarily tenure.

9. Adjournment

On a motion by Commissioner Eldridge, seconded by Commissioner Linett and passed by a vote of 3-0, the Commission voted to adjourn at 12:00 p.m.

Respectfully submitted,



FREDERICK M. HERRMANN, PH.D.

FMH/jah