



State of New Jersey

ELECTION LAW ENFORCEMENT COMMISSION

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Vice Chairman

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PUBLIC SESSION MINUTES

APRIL 13, 1994

Chairman McNany, Vice Chairman Eldridge, Commissioner Linett, senior staff, and Director of Public Financing Nedda Gold 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 8:45 a.m. at the New Providence Municipal Center, New Providence, New Jersey.

1. Approval of Public Session Minutes of March 16, 1994

On a motion by Commissioner Linett, seconded by Vice Chairman Eldridge and passed by a vote of 3-0, the Commission approved the Public Session Minutes of March 16, 1994.

2. Executive Director's Report

A. Staff Activities

Executive Director Herrmann reported that on March 23, 1994, he was a guest speaker at the monthly meeting of the League of Women Voters of the Greater Red Bank area. He reported further that on March 30, 1994, he was the guest speaker at the weekly meeting of the Old Guard of Princeton.

Executive Director Herrmann noted that on April 4, 1994, Carol Neiman, Kim Key, and Andrew Mersel of the Compliance staff conducted a well-attended seminar in Trenton for the May Municipal election.

The Executive Director said that on April 7, 1994, he was the guest on the Bob Aronson show of WCTC-New Brunswick. He indicated that he discussed the 1993 lobbying data released by the Commission.

B. Legislative Action

Executive Director Herrmann remarked that A-1497 (Russo), the filing fee bill, was released unanimously by the Assembly State Government Committee. He noted that he testified in favor of the bill and answered questions. Executive Director Herrmann said that this bill along with the Senate version, S-332 (DiFrancesco), has now been released this session from the Assembly State Government Committee, the Senate State Government Committee, and the Senate Budget and Appropriations Committee.

C. National Ethics News

Executive Director Herrmann reported that the Rhode Island Ethics Commission has had its autonomy boosted by the State Supreme Court. He said that the court upheld the Commission's regulations as having the force of a statute. Executive Director Herrmann advised the Commission that the Legislature has the concurrent ability to write laws but, if there is a conflict, the Commission's regulations prevail.

Executive Director Herrmann informed the Commission that the New York City Campaign Finance Board's chairman was fired last December by outgoing Mayor Dinkens, whose campaign had been fined \$320,000. He said that Mayor Guiliani has restored the chairman to his position.

Executive Director Herrmann reported that the Montana Legislature increased that state's lobbyist registration fees five-fold to \$50.00.

The Executive Director noted that Dr. Herbert E. Alexander, from the Citizens' Research Foundation, Los Angeles, in a new white paper on election reform ends the report by saying that "the FEC would need a greatly increased budget to administer and enforce" the changes being proposed at the national level.

D. ELEC's Budget

Executive Director Herrmann said that ELEC's FY-95 budget has been cut to \$1.062 million from the FY-94 budget of \$1.225 million. Executive Director Herrmann noted that the difference is a 13 percent decrease from last year, or \$163,000. Executive Director Herrmann mentioned that staff is expecting an interdepartmental assessment that will cut the budget for FY-95 still further.

The Executive Director said that the latest budget cuts will force new efficiencies at ELEC that will of necessity reduce services further. Executive Director Herrmann said that possible cuts would involve: 1) slowing and possibly halting the G93 computer project that enters legislative contributor data into the data base; 2) scaling back the public photocopying operation; 3) delaying the implementation of PAC registration; and 4) continuing the moratorium on new-law advisory opinions. Executive Director Herrmann added, however, that enforcement will be maintained at current levels if possible.

E. Ethics Form Reminder

Executive Director Herrmann reminded the Commissioners that their ethics forms are due on May 18, 1994. He said that one copy should be submitted to the Executive Commission on Ethical Standards, and one copy to the Chief Counsel. Executive Director Herrmann said that both submissions should be submitted with original signatures.

F. Farrell Farewell Dedication Ceremony

Executive Director Herrmann announced that the family of Counsel Farrell has been invited to the May 18th meeting to participate in the dedication of the conference room to his memory. He said that directions to Trenton have already been sent to Mrs. Farrell.

G. Future Meeting Schedule

The Commission will meet on May 18, 1994 in Trenton at 9:15 a.m. and June 19, 1994 in Maplewood at 8:30 a.m.

H. 1993 Annual Report

Executive Director Herrmann presented the 1993 annual report. He noted that Deputy Director Brindle served as project coordinator and that each Director contributed to the project.

3. Louise Palagano and Nicholas A. Rizzitello Matter

Louise Palagano, an Essex County Freeholder, appeared before the Commission to complain about an article in the Nutley Journal/Belleville Post which she believed "defamed" her character. The article was written by Russell Roemmele and contained an account of campaign contributions made to her by prominent Essex County Democrats. Ms. Palagano requested that the Commission release the name of the person who requested her campaign reports from ELEC.

Commissioner Linett indicated that the Commission has no control over the newspaper, and asked Ms. Palagano what she was asking the Commission to do.

Ms. Palagano responded that the Commission should change its policy and permit her to obtain the name of the person who examined her reports. She contended that when a person misrepresents the character of a person, an individual should have recourse.

Chairman McNany suggested that candidates should approach the newspaper to determine what the policy is on responding to articles like this. Chairman McNany said that any filing information reported to the Commission is a public record.

Commissioner Linett asked: Are the contribution figures correct?

Ms. Palagano indicated that the figures are correct.

Commissioner Linett said that all of us who have been involved in the political process have at some time met up with articles that are disagreeable. He said, however, that the press is free and that ELEC has no control over how the press uses information filed with it.

Commissioner Linett asked why Ms. Palagano felt she needed the information.

Ms. Palagano said that she needed it so that she could adequately respond to the newspaper.

Chairman McNany said that perhaps the Commission could review its policy.

Legal Director Nagy said that Ms. Palagano is asking the Commission to determine if a newspaper is fair, and that the Commission cannot make such a judgment. He also said that the Commission may protect the identity of persons seeking access to public records, and to do otherwise would have a chilling effect on the disclosure process. He said that legally the Commission is not bound to provide a candidate with the identity of the persons who may have reviewed campaign reports.

Vice Chairman Eldridge said that he sympathized with Ms. Palagano but that the Commission has no control over how newspapers decide to present information. He said that as a former freeholder he found that the best way to deal with unfair press is not to overreact and to ignore it basically.

Ms. Palagano also explained that Dr. Nicholas A. Rizzitello was the subject of similar articles. Dr. Rizzitello asked the Commission what he could do about a candidate who distributed campaign literature but who had not filed campaign reports. Legal Director Nagy explained that the Commission will respond to anyone who makes a written request for investigation of a candidate's filing obligations.

The Commission determined that it would not change its policy of protecting the identity of individuals who request information.

4. Advisory Opinion Request No. 03-1994

This advisory opinion request, from Dean Armandroff, Executive Director of the New Jersey Republican State Committee (RSC) on behalf of that committee, was referred to the Commission from the Honorable Lonna Hooks, Secretary of State.

In a memorandum from staff, dated April 14, 1994 and circulated to the Commissioners, staff reported that the Commission has been asked to seek an advisory opinion from the Attorney General concerning the possible applicability of the statutory prohibition against political contributions by certain corporations. Specifically, the RSC is asking whether it may accept

contributions from companies in the cogeneration business. The Public Service Electric and Gas Company (PSE&G) argues that cogeneration companies should be prohibited.

Staff has advised both the RSC and PSE&G that ELEC does not have jurisdiction to interpret N.J.S.A. 19:35-45. The Commission has referred questions like this to the Attorney General in the past and staff recommended that the Commission do so in this matter.

Staff noted that consistent with past policy, the Commission might wish to include its viewpoint on the substantive question. Along these lines, staff noted that cogeneration companies would seem to fall under the term "electric light, heat or power" company as used in the statute containing the prohibition.

Mr. Robert Hollenbeck, representing PSE&G concurred with the staff interpretation. He added that cogeneration companies are also in the steam business.

Commissioner Linett made a motion to refer the matter to the Attorney General along with a recommendation that cogeneration companies be held subject to the prohibition. The motion was seconded by Vice Chairman Eldridge and on a vote of 3-0 approved.

Mr. Peter Sheridan, representing the RSC, asked that the motion be reconsidered. He said that without a hearing it was his belief that it was premature for the Commission to render an opinion that would accompany the referral to the Attorney General. He said that the motion should be limited to forwarding the matter to the Attorney General.

Commissioner Linett said that the Commission's action does not constitute a decision. He said that the Commission was merely making a recommendation to the Attorney General.

Mr. Sheridan said that if the Commission is going to make a recommendation to the Attorney General it should hold a substantive hearing.

Legal Director Nagy said that adequate notice of this public meeting was provided to interested parties.

Commissioner Linett said that he would modify his motion to delete the inclusion of a Commission recommendation to the Attorney General.

Commissioner Linett moved that the matter be referred to the Attorney General without the recommendation to prohibit cogeneration companies from making campaign contributions. He moved also that the staff memorandum be included with the referral. Vice Chairman Eldridge seconded the motion to modify the first motion. On a vote of 3-0, the Commission approved the motion to modify its first motion and delete the reference to a recommendation to the Attorney General.

Public Session Minutes

April 13, 1994

Page 6

Commissioner Linett also moved that the staff memorandum to Executive Director Herrmann, from Legal Director Nagy, dated April 14, 1994, be released to the public. The motion was seconded by Vice Chairman Eldridge and passed by a vote of 3-0.

Mr. Hollenbeck asked to comment upon the reconsideration of the first motion, stating that this was the appropriate course to follow.

Chairman McNany said that the Commission can reconsider its motion without public comment.

5. Suggested Legislative Recommendations Concerning Gubernatorial Public Financing

For detailed information, please see the Public Session Minutes of March 16, 1994, and the memorandum from Gregory E. Nagy, Legal Director, and Nedda Gold Massar, Director of Public Financing, to Frederick M. Herrmann, Ph.D., Executive Director, dated April 5, 1994, circulated to the Commission, and entitled "Suggested Legislative Recommendations Concerning Gubernatorial Public Financing."

This memorandum summarizes the recommendations made by the Commission in its 1992 report and illustrates the impact that those recommendations would have had on the 1993 public financing program if they had been passed into law.

The 1992 recommendations were: 1) reduce the primary and general election public funds caps; 2) lower the general election matching ratio of public-to-private dollars from two-for-one to one-for-one; and 3) increase the income tax check-off to \$3 and eliminate the primary and general election expenditure limits.

The memorandum also contains two additional recommendations at the behest of Commissioner Linett and Vice Chairman Eldridge. Commissioner Linett asked for consideration of a proposal to require three debates in the general election and Vice Chairman Eldridge has advanced a proposal to prohibit intentionally false political advertising.

The Commission concurred with recommendations one through three.

Vice Chairman Eldridge said that he believed that the public was in favor of expenditure limits. He indicated that he believed that it was more important to have a higher limit in the primary than in the general election.

Commissioner Linett said that no expenditure limits, or at least ones that are high enough, would encourage people to participate in the public funding program.

Vice Chairman Eldridge said that by the general election the candidates are better known and therefore need to spend less money. He said that the public generally supports expenditure limits.

Commissioner Linett suggested that the expenditure limit be adjusted upward to \$3.5 million for primary 1997 irrespective of the inflation adjustment. He said that the general election expenditure limit should remain the same except that it should be adjusted for inflation.

The Commission concurred with Commissioner Linett's recommendation regarding recommendation number four concerning expenditure limits.

The Commission modified recommendation number five regarding debates by suggesting that there should be three debates in the primary and the general elections.

Vice Chairman Eldridge contended that negative advertising is driving people out of the process. He said that this type of advertising is particularly annoying if public money is being used for this purpose. Vice Chairman Eldridge commended Legal Director Nagy for his work in researching this issue and preparing the proposal.

Commissioner Linett said that he would not like to sit on the Commission that would have to judge political advertising. He said that perhaps the recommendation should be delayed until it is determined whether the Washington State courts uphold the Washington State law.

Vice Chairman Eldridge suggested that it did no harm for ELEC to make this recommendation. He said that a statute providing guidelines for intentionally false advertising would serve as a deterrent to negative advertising, which is turning so many people off to the electoral process and helping to erode faith in government.

The Commission concurred with the recommendation.

Vice Chairman Eldridge suggested that the recommendations be made public at the Commission meeting in May in Trenton.

Commissioner Linett contended that the process was incomplete. He said that the Commission should wait to make public its recommendations until the public financing report was completed.

Executive Director Herrmann said that the Commission was not planning to do an extensive report. He said that these recommendations were to serve as the report.

Chairman McNany said that the staff could do a 15-page report instead of a 150-page report. He said, however, that a report which took into account the public hearings as well as suggestions for regulatory change should be completed.

Commissioner Linett suggested that a copy of the proposals be sent out to the candidates for their input.

Executive Director Herrmann said that the Commission therefore might wish to defer this matter until hearings on the regulations dealing with amendments to the Campaign Act were in place.

Commissioner Linett said that he was particularly concerned with companies who sponsor the debates taking advantage of the process for their commercial purposes.

Chairman McNany said that he too was concerned about corporate sponsorship of debates. He suggested that the Commission look into the process of determining sponsorship of these debates to eliminate the commercialization of them.

Director of Public Financing Massar said that staff will send letters to 1993 debate sponsors asking for information on underwriting of the cost of the debates and the process of sponsorship selection. She said that she will report to the Commission once responses are received.

6. Resolution To Go Into Executive Session

On a motion by Commissioner Linett, seconded by Vice Chairman 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. Adjournment

On a motion by Commissioner Linett, seconded by Vice Chairman Eldridge and passed by a vote of 3-0, the Commission voted to adjourn at 11:46 a.m.

Respectfully submitted,



FREDERICK M. HERRMANN, PH.D.

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