



State of New Jersey

ELECTION LAW ENFORCEMENT COMMISSION

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PUBLIC SESSION MINUTES

JUNE 14, 1994

Chairman McNany, Vice Chairman Eldridge, Commissioner Linett, Counsel James P. Wyse, 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 8:30 a.m. at the Maplewood Municipal Building, Maplewood.

1. Approval of Public Session Minutes of May 18, 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 May 18, 1994.

2. Executive Directors' Report

A. National Ethics News

Executive Director Herrmann reported that the Federal Election Commission (FEC) has recommended to Congress that a single contribution limit be applied to an election cycle. Executive Director Herrmann said that federal law currently provides for contribution limits in both the primary and general elections.

B. Staff Activities

Executive Director Herrmann told the Commission that he addressed College Leadership New Jersey on the work of the Election Law Enforcement Commission (ELEC). The Executive Director addressed the group on May 23, 1994.

Executive Director Herrmann announced that on May 24, 1994, he was a guest on the WCTC-New Brunswick's Bob Aronson show. He said that he discussed ELEC's public financing proposals.

#### C. Legislative Activity

Executive Director Herrmann said that on June 6, 1994, the Senate State Government Committee discussed S-825 (Kosco/Lesniak), which permits non-prohibited corporations affiliated with prohibited corporations to make political contributions.

Executive Director Herrmann said that ELEC does not have jurisdiction over this area but has long supported a ban on all corporate contributions. He noted that the federal government and 18 states have such a prohibition.

The Executive Director informed the Commission that A-1840 (Rooney), which allows certain county or municipal elective officials to establish joint candidates committees and permits such committees to be identified by jurisdiction and party as an alternative to candidate surname, was unanimously released on June 9 by the Senate State Government Committee with technical amendments supported by ELEC.

Executive Director Herrmann indicated that he testified in support of the bill and asked for two technical amendments: 1) a candidate committee should be identified by office sought, as well as surname, because of dual officeholding; and, 2) no two committees should have the same name.

Executive Director Herrmann reported that he also requested that the committee revisit the broader issue of permitting only one committee per candidate because of the fact that with joint candidates committees disclosure is obscured, contribution limits are difficult to administer and enforce, and joint fundraising efforts continue to be prohibited among various types of candidates.

#### D. Summer Meeting Schedule

The Commission determined to meet in Somerville on July 13, 1994, at 8:30 a.m. The Commission will conduct a public hearing at 10:00 a.m. on its proposed "permissible use" regulations.

The Commission tentatively scheduled a meeting for August 17, 1994. Also, the Commission determined to meet on September 20, 1994 in Trenton, on which date it will conduct a public hearing at 10:00 a.m. on its proposed regulations for continuing political committee, political party committee, and legislative leadership committee reporting.

Commissioner Linett asked: Is there a possibility of convincing the Legislature to change to a one committee limit?

Executive Director Herrmann said that it was difficult to know the answer to that question.

Vice Chairman Eldridge queried as to whether the Commission has jurisdiction over political advertising disclaimers.

Executive Director Herrmann responded that the Attorney General has jurisdiction over the disclosure of advertising. He said that ELEC has been trying unsuccessfully for years to have this jurisdiction transferred to it. Executive Director Herrmann noted that Senator Schluter has introduced a bill to transfer jurisdiction over "disclaimers" to ELEC.

The Commission indicated that at some point in the future it would like to discuss numerous issues, such as the disclaimer law, a prohibition on corporate and union contributions, and grassroots lobbying. The Commission indicated that it would be useful to reintroduce many of its proposals into the debate.

3. Advisory Opinion Request No. 04-1994

For a detailed review of the advisory opinion request and staff recommendations, please see the Public Session Minutes of May 18, 1994.

Basically, the advisory opinion request, submitted by Stephen J. Edelstein, Esq., on behalf of the Tom D'Alessio Campaign Committee and three continuing committees, inquires as to the permissibility of Mr. D'Alessio establishing a continuing political committee (CPC) and transferring all funds from his four existing committees into it.

Staff recommended in memoranda dated June 7 and May 11, 1994, that the Commission not allow this process to occur and to instead require Mr. D'Alessio to transfer all monies into his campaign committee. The campaign committee is subject to Section 17 permissible use guidelines.

Following a review of the staff memoranda by Legal Director Nagy, Mr. Edelstein was asked to comment.

Mr. Edelstein said that he was not in great disagreement with the draft advisory opinion. Mr. Edelstein said that Mr. D'Alessio had control over four committee accounts. He indicated that one is a candidate committee and that three are CPCs. Mr. Edelstein said that it appeared that it is the goal of the Commission to consolidate these accounts. He expressed the position that it was Mr. D'Alessio's goal to consolidate the committees as well, suggesting that it was more practical to consolidate the four into a CPC rather than a candidate committee. Mr. Edelstein said that Mr. D'Alessio is no longer a candidate and will not be in the future. He added that the money would be spent in accordance with the guidelines for CPCs and would not be utilized for personal use. Mr. Edelstein repeated that he is not suggesting personal use as an alternative.

Mr. Edelstein remarked that the key concern is: Can these committees be consolidated without violating the contribution limits?

Commissioner Linett queried as to the purpose behind Mr. Edelstein's request to be permitted to consolidate the four committees into one.

Mr. Edelstein responded that the committee would be consolidated for the purposes as set forth for CPCs.

Commissioner Linett asked Legal Director Nagy about permissible transfers.

Legal Director Nagy said that under the 1993 amendments<sup>1</sup> to the Act, CPCs are not restricted in terms of use. He said that there was no disagreement on consolidation, except for the fact that staff believes that the committees should be consolidated into a candidate committee. He mentioned that candidate committees have statutory restrictions on the use of their funds, and personal use of campaign funds is prohibited.

Commissioner Linett asked if CPC funds can be expended for personal use.

Legal Director Nagy said that under current law CPC funds are not restricted in terms of use.

Mr. Edelstein noted that the statute and regulations do not clearly address the situation presented in the advisory opinion request. He said, however, that it would be more practical for these funds to be transferred into a CPC. He said that he did not know what would happen to the money if it was put into a campaign account. He said that it is clear as to how CPC funds would be utilized.

Commissioner Linett asked if it was permissible for a former candidate to establish a CPC fund.

Legal Director Nagy said that as he understood the Act, once a former candidate does not control funds raised during a candidacy then the former candidate could control a CPC. He said that any funds raised while an individual is a candidate or an officeholder are prohibited from being transferred into a CPC.

Commissioner Linett said that as a general rule, then, only new money, not money raised for a candidacy, or while an individual is an officeholder, can be used for the establishment of a post candidacy CPC.

Mr. Edelstein said that assuming that all four committees are consolidated, the funds would be subject to restrictions. He noted that the practical difficulty in consolidating four committees into the candidate committee derives from the fact that the candidate committee would be limited in terms of what it could spend on behalf of a candidate.

Vice Chairman Eldridge asked: What happens when an individual is no longer a candidate?

Legal Director Nagy responded that the Act does not address resignation specifically. Guidance in the statute may be found in the provision which continues the restrictions on candidate funds even after the demise of a candidate or officeholder, as cited in the staff memoranda.

Commissioner Linett stated that these funds are campaign funds. He said that the mere fact that a person resigns from office does not change the fact that the funds are subject to restrictions placed on a candidate.

Vice Chairman Eldridge said that he supports this advisory opinion because the conclusion is as it should be in the statute. He added that the provision presents the Commission with the opportunity to address an issue that is lacking in the statute, and to propose remedial legislation. He said that this issue should be on the docket for discussion at some future time.

Mr. Edelstein noted that campaign committees have the ability to spend money on their own behalf. He said, for instance, that candidates do polls for themselves, but if they do them on behalf of others, the spending would be subject to a contribution limit. He suggested that this committee, as a practical matter, could never spend on behalf of others without violating contribution limits.

Commissioner Linett pointed out this restriction is the same for all other committees. He said that contribution limits apply to PACs as well.

On a motion by Commissioner Linett, seconded by Vice Chairman Eldridge and passed by a vote of 3-0, the Commission directed Legal Director Nagy to issue an advisory opinion in accord with the staff memoranda.

4. Advisory Opinion Request No. 05-1994

This advisory opinion request was submitted by Francine Berra, Treasurer, on behalf of the Election Fund of Senator Richard J. Codey.

The advisory opinion request asks whether a candidate with an outstanding "debt" from a prior election may accept contributions toward payment of the prior debt as well as contributions for an upcoming election campaign without violating the contribution limit. In other words, could an individual who had not contributed in the 1993 general election contribute \$1,500 to retire that election's 1993 debt and then another \$1,500 toward the 1997 primary election?

The advisory opinion request relates to situations occurring in three separate elections, the 1991 and 1993 general elections and the 1993 primary election. Staff circulated a memorandum which noted the following:

On April 16, 1993, the 1991 general election eighth 60-day postelection report demonstrated that Friends of Codey had outstanding obligations of \$19,800 and net cash available of \$78,102.55. Thus, at that time, the account did not have any "net debt."

On June 28, 1993, the 1993 20-day post-primary report showed that minus 1991 general election carry-over debt, the 1993 primary election outstanding obligations total would be \$47,077.23, less cash balance of \$6,189, for a total net liability of \$40,888.22.

On November 22, 1993, the 1993 20-day post-general report showed outstanding obligations of \$54,800. However, of this amount \$9,800 was incurred in the 1991 general election and \$40,000 in the primary election, leaving only \$5,000 of outstanding obligations incurred in the 1993 general election. The closing cash balance of \$26,451.71 for the general election would have been sufficient to pay the \$5,000 of outstanding obligations had Senator Codey not transferred the cash balance to the 1997 primary election account.

Staff recommended that the Commission permit a candidate to conduct fundraising for a past election occurring after the effective date of the 1993 amendments provided that the 20-day postelection report filed by the candidate committee reports outstanding liabilities in excess of the cash balance in the candidate committee account and any other assets of the committee. It recommended that the candidate, under such circumstances, may continue to receive contributions subject to the following:

1. The contributor designates in writing the specific election to which the contribution is to be applied;
2. Contributions toward the debt must be aggregated with other contributions made by the donor in the specified election; and,
3. The total amount of contributions received for a past election cannot exceed the amount of the net liabilities of the past election.

In the context of Senator Codey's request, the recommendation holds that he may raise funds to pay off net liabilities of \$40,882.22 incurred for the 1993 primary election. Further, he may not raise funds to pay off \$5,000 in outstanding obligations incurred in the 1993 general election because the cash balance for that general election exceeded the liabilities. Finally, staff recommended that because the Codey campaign was advised that a "grandfather" account could be established to pay off 1991 general election debt (and was not advised of the "net liability" requirement), the Commission should advise the campaign that it can raise up to \$5,000 to retire the 1991 debt. Staff recommended that this provision only apply to Senator Codey and three other candidates who were so advised, but not to any future candidates who confront the same situation. At the time, the advice was rendered the staff had not developed the "net liability test."

Commissioner Linett inquired as to the rationale for restricting fundraising to retirement of a net liability.

Legal Director Nagy said that the restriction protects contribution limits. He suggested that in the absence of such a restriction, a candidate

could roll-over assets from a prior election to a current campaign and receive contributions for the prior election.

Commissioner Linett said that the staff recommendation was a good result. He praised Legal Director Nagy for a job well done.

Vice Chairman Eldridge said that as usual the staff has done a very fine job. He said, however, that it was his belief that a candidate should somehow be penalized for debt.

Commissioner Linett moved the staff recommendation with Chairman McNany seconding the motion.

Vice Chairman Eldridge said that he is not in favor of allowing candidates to create debt.

Vice Chairman Eldridge said that he believes that it would look terrible to the public for ELEC to say that it will permit individuals to have more influence by contributing to a candidate's debt retirement.

Vice Chairman Eldridge commented that as a strictly legal issue, it is possible that ELEC could answer this question in the negative. He said that the matter comes down to a question of policy.

Legal Director Nagy agreed that the Act could be interpreted in the manner suggested by the Vice Chairman.

Deputy Director Brindle said that by not permitting candidates to retire debt through fundraising attributable to a previous election, the Commission might be further disadvantaging challengers. He said that in a close election, given the importance of money in modern campaigns, it may be critical for a campaign to go into debt in order to communicate with voters and take the campaign over the top.

Chairman McNany agreed.

Commissioner Linett said that debt was a way of doing business in the United States and that further, the Commission had no business interfering with the conduct of a campaign.

Vice Chairman Eldridge said that he was concerned that the Commission would be encouraging debt, somehow suggesting that it would be alright for elected officials to incur public debt once they were in office. He said that the Commission's policy might not be received well by the public.

Deputy Director Brindle said that the debt would be disclosed, as well as the funds raised to retire the debt, and that the process would be self-regulatory. He said that if the public, or contributors, did not react well to candidates' debt it would be made known to the candidates.

Executive Director Herrmann said that the matter was a judgment call by the Commission. He said, however, that the Commission might consider the fact that the Legislature did contemplate debt retirement by instituting the "grandfather" provision. He said that with respect to debt incurred before the new law the Legislature surely felt it was appropriate to retire past debt through contributions not subject to the limits.

Counsel Wyse said that it seemed to him that if the intent was to cut off debt then the Legislature would not have put the "grandfather" clause in the statute.

Executive Director Herrmann noted that the restriction of debt retirement is not a purpose of the Act. He said, however, that limiting contributions is an intent of the law. If the Legislature had intended to restrict the repayment of debt, the law would have clearly addressed this issue. If the Commission feels that collecting money after an election as requested by Senator Codey is not detrimental to the contribution limits then it should allow such a practice. He noted that the staff did not believe that collecting money from contributors up to the contribution limit after an election impacted negatively on the law's intent to reduce undue influence through contribution limits.

Vice Chairman Eldridge said that he would vote in favor of the staff recommendation provided that the Commission go back to the Legislature and ask for clarification on the issue of debt. He said that he would vote for the recommendation on this condition.

On a vote of 3-0, the Commission directed Legal Director Nagy to issue an advisory opinion in accord with the staff memorandum.

5. Advisory Opinion Request No. 06-1994

This advisory opinion request was submitted by John F. Gaffney, Assemblyman, District 2. The request asks if campaign funds can be utilized to pay for the cost of attending the "Strategic Leadership for State Executives" Conference at Duke University during June 5 - 10.

Staff noted that it has informed Assemblyman Gaffney that the Commission has indicated in prior similar requests that until its regulations on permissible use of campaign funds are in place it will defer issuing any opinions. Staff further noted that it advised the Assemblyman that until such time as the Commission is able to respond, the Commission shall be precluded from instituting any proceeding for the imposition of any penalty based upon the facts contained in the request. Staff indicated that reasonable costs of tuition, travel, and room and board for the program would come under this protection. It also acknowledged that the Commission would not be meeting until after the conference had been completed.

Staff suggested that the Commission request of Assemblyman Gaffney a specific listing of the expenses incurred by the campaign account for attendance at this conference.



The Commission considered the advisory opinion, but did not vote on the matter, accepting the staff's recommended approach.

6. Regulatory Workload

For detailed information please see the memorandum from Gregory E. Nagy, Legal Director, to Frederick M. Herrmann, Ph.D., Executive Director, dated June 8, 1994 and entitled "Regulatory Workload."

The memorandum outlines the major areas of Commission regulations requiring revision as a result of the 1993 amendments to the Campaign Reporting Act. The memorandum also suggests amendments to public financing regulations to be considered prior to the 1997 election.

The Commission considered the memorandum and accepted it.

7. Proposed Regulations for Continuing Political Committee Reporting

The proposed regulations being considered by the Commission are at Subchapter 9, Continuing political committee, political party committee and legislative leadership committee reporting. The proposed regulatory changes are at N.J.S.A. 19:25-9.1 Quarterly reports; 19:25-9.2 Certified statement (Form A-3); 19:25-9.3 Contributions received immediately before an election; 19:25-9.4 Continuing political committee expenditures made immediately before a primary or general election; 19:25-9.5 Termination of continuing political committee reporting; and, 19:25-9.6 Time and place of filing reports.

If the Commission approves the proposed text, a public hearing could be scheduled for the August or September meetings. Depending on how quickly a final text is approved, the regulations could be effective by October.

Commissioner Linett suggested that with regard to the word "cumulative" at N.J.S.A. 19:25-9.1(a) it be deleted or defined in the regulations.

The Commissioner also suggested that the regulations be amended at N.J.S.A. 19:25-9.1(a) to stipulate that reports must be filed before "12:01 a.m." instead of "12:00 a.m."

Commissioner Linett further suggested that at N.J.S.A. 19:25-9.2 the Commission think about reducing the \$2,500 filing threshold for political parties to file affidavits. He said that by requiring more political parties to file, disclosure will be enhanced and local parties will be encouraged to become more viable.

Vice Chairman Eldridge said that he disagreed with this proposition. He asserted that, on the contrary, the Commission should consider increasing the filing threshold for political parties. He said that it has been his experience that the problem lies in trying to get people involved in this day of increased public scrutiny. He suggested that increased filing requirements for local parties would be counter-productive because it would further the feeling that the process is too burdensome.

Vice Chairman Eldridge said that he would make the threshold \$5,000.

The Commission decided for the time being to leave the threshold at \$2,500.

Commissioner Linett further suggested that at N.J.S.A. 19:25-9.4 the regulation be written to clarify that an expenditure of \$500 means aggregate or cumulative expenditure.

On a motion by Commissioner Linett, seconded by Vice Chairman Eldridge and passed by a vote of 3-0, the Commission proposed the regulations as amended.

8. 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.

9. 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 11:00 a.m.

Respectfully submitted,



FREDERICK M. HERRMANN, PH.D.

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