



State of New Jersey

ELECTION LAW ENFORCEMENT COMMISSION

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PUBLIC SESSION MINUTES

NOVEMBER 21, 1995

The Commissioners, Senior Staff, the Counsel, and Deputy Legal Director Nedda Gold Massar were present. Legal Director Nagy was absent.

Chairman Eldridge 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 9:00 p.m. at the Maplewood Municipal Building, Maplewood, New Jersey.

3. Approval of Public Session Minutes of October 20, 1995

On a motion by Vice Chairman McNany, seconded by Commissioner Linett and passed by a vote of 3-0, the Commission approved the Public Session Minutes of October 20, 1995.

4. Executive Director's Report

A. Recomputerization

Executive Director Herrmann reported that staff is planning to put aside some money from its operating accounts to move ahead with recomputerization.

He indicated that staff will be purchasing a new platform to replace the mini-mainframe, which is ten years old and antiquated.

He added that the current proprietary software will be migrated to a more sophisticated software completely under ELEC control.

Executive Director Herrmann said that these steps are basic as ELEC moves ahead toward electronic filing and remote accessing of data.

B. Staff Activities

Executive Director Herrmann told the Commission that on November 2, 1995, he spoke to the Legislative Bureau at Seton Hall Law School about campaign finance reform.

He noted that on November 6, 1995, he met with two of Alan Rosenthal's Eagleton Institute students to discuss lobbying reform.

Executive Director Herrmann advised the Commission that the Council on Governmental Ethics Laws (COGEL) is publishing a revised edition of his Campaign Financing and Lobbying Bibliography.

The Executive Director reported that Director of Compliance and Information Evelyn Ford and Senior Compliance Officer Carol Neiman ran a consulting table at the League of Municipalities Conference in Atlantic City on November 16, 1995.

C. Legislative Developments

Executive Director Herrmann said that he testified on November 9, 1995, on the Senate State Government Committee (SSGC) for S-981 (Schluter) and S-2230 (Lynch).

He commented that this bill establishes a political communications labeling requirement, which is designed to meet the "larger circumstances" test of the McIntyre v. Ohio decision.

According to the Executive Director it ties labeling to reporting with ELEC. He said that any entity that files a campaign report must label its communications.

Executive Director Herrmann mentioned that the bill has a section that requires communications made by independent expenditures to state that they are made without the cooperation of, consent of, or consultation with a candidate.

He said that the bill permits ELEC to relax labeling requirements in the case of "small, tangible items of de minimis value" such as "buttons, combs, and nail files"; "political program book[s] distributed at a fundraising event"; and addresses that are on file with ELEC.

Executive Director Herrmann said that staff recommended that the effective date be moved from "immediately" to "February 1st after enactment" so that the law does not change in the middle of an election.

He said also that staff recommended that a "personal expenditure report" required to be filed with ELEC after the making of an independent expenditure of over \$200 by an individual have its threshold changed to \$500 to pass constitutional muster under McIntyre.

Executive Director Herrmann said that he mentioned to the Committee that this bill would increase the Commission's investigative workload by 25 percent. The Executive Director told the Commission that the bill makes no appropriation.

According to Executive Director Herrmann the Senate State Government Committee released the bill 4-0. Senator Baer was absent.

D. Future Meeting Schedule

The Commission will hold its next meeting on December 19, 1995 at 9:00 a.m. in Maplewood. There will be a public hearing on partnership regulations at that time.

4. 1996 Commission Meeting Schedule

On a motion by Vice Chairman McNany, seconded by Commissioner Linett and passed by a vote of 3-0, the Commission approved the 1996 Commission meeting schedule for the third Tuesday of each month.

5. Chertoff Resolution

The Commission directed staff to forward a resolution to former Commissioner Michael Chertoff.

6. Consideration of Options for Recommendations Concerning Strengthening the Role of the Election Law Enforcement Commission, Gubernatorial Public Financing, and Contribution Limits

Based on testimony received at the two public hearings in September and October, Chairman Eldridge opened up a discussion on possible recommendations concerning strengthening the role of the Election Law Enforcement Commission, gubernatorial public financing, and contribution limits.

Chairman Eldridge said that he felt strongly that the Commissioners should be insulated from the political process as much as possible and that the best way of doing it involved a recommendation to have initial appointments be for seven years with subsequent appointment to be for life.

Commissioner Linett said that to lock Commissioners in for life is inappropriate.

Vice Chairman McNany said that he is against lifetime tenure.

Commissioner Linett suggested a one-time only appointment of eight years.

Chairman Eldridge said that he wanted to avoid a repeat of the current situation, whereby Commissioners remain in holdover status. He said that he equated the Commissioners to judges, who are accorded lifetime tenure. The

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Chairman said that he was concerned about the independence of the Commissioners and that lifetime tenure would assure their autonomy.

Commissioner Linett said that it was his belief that regardless of the current situation the Commission should always make the correct recommendations. He said in his view longer terms subject to reappointment is preferable.

Counsel Wyse suggested that a provision in the law stipulating that Commissioners would be automatically reappointed if a nomination was not made within 90 days of the end of their current term would be advisable.

Vice Chairman McNany suggested that Commissioner terms be lengthened from three to seven years and indicated that he supported Counsel Wyse's proposal.

The Commission agreed that the seven-year term and a reappointment provision as suggested by Counsel Wyse were meritorious.

Commissioner Linett noted that the issue of leadership PACs was not addressed. Executive Director Herrmann said that because leadership PACs were so new it was determined that they should be the subject of further study. The Executive Director said that this subject would be good as a white paper topic.

The Commission determined that a study of leadership PACs in a White Paper is advisable.

Commissioner Linett said also that the Commission should reiterate its call for a ban on corporate and union contributions.

The Commission discussed a recommendation to lower the contribution limits.

Commissioner Linett said that he was not in favor of contribution limits that are too low. He cited a column by columnist David Broder who suggested that contribution limits that are too low would hurt challengers and insure the reelection of incumbents.

Executive Director Herrmann suggested that further study by staff vis-a-vis contribution limits might be needed and in the best interest of the public. He recommended that it be part of the Leadership PAC White Paper.

The Commission decided that further study on the level of contribution limits in the White Paper is required.

The Commission addressed recommendations to provide for greater funding for ELEC and greater autonomy in the budget process.

Chairman Eldridge said that an approach he favored was for the Commission's budget to be pegged to \$.50 per registered voter. He said that this would provide for a budget of about \$2 million.

Commissioner Linett said that he preferred a guaranteed budget of \$2 million with an annual inflationary adjuster.

Vice Chairman McNany said that a guaranteed budget approach seemed to bring more stability to the budget process than one tied to the number of registered voters, which fluctuates from year to year.

Chairman Eldridge said that he believed that the cents-per-voter proposal would be favored more readily by the Legislature than one that calls for a \$2 million budget.

Deputy Director Brindle said that registration figures do fluctuate from year to year and that the Commission's budget could change by as much as \$100,000 between years under the cents-per-voter approach. He said further that as time goes by the Commission's budget is likely to remain static at between \$1.9 million and \$2 million because registration figures have historically remained at about 3.8 to 3.9 million voters. Deputy Director Brindle added that the public financing program used to be tied to a cents-per-voter standard but that this was changed to a campaign cost index standard in the late 1980's.

Executive Director Herrmann said that the California model of a guaranteed base budget, adjusted for inflation, seemed to be an excellent approach. He said that ELEC could promote a \$2 million base budget by explaining that this amount would be equivalent at this time to \$.50 per registered voter.

Commissioner Linett said that he did not favor tying the budget to a standard that keeps declining.

The Commission opted for a recommendation of a guaranteed base budget.

The Commission based its discussion on options for recommendations presented in a preliminary memorandum from Deputy Director Jeffrey M. Brindle to Executive Director Frederick M. Herrmann dated November 14, 1995.

The Commission determined to consider some recommendations for reforming the Campaign Act at its next meeting and to adopt formally said recommendations.

7. Adoption of Proposed Regulations Implementing "Uniform Recall Election Law"

On a motion by Commissioner Linett, seconded by Vice Chairman McNany and passed by a vote of 3-0, the Commission approved without change adoption of the regulations implementing the "Uniform Recall Election Law" and authorized staff to file the Notice of Adoption with the Office of Administrative Law.

8. Communications Concerning Investigations and Complaints

Please see memorandum from James P. Wyse, Esq., to the Chairman and Commissioners of the New Jersey Election Law Enforcement Commission, dated November 8, 1995, and entitled "Public Communications Concerning ELEC investigations and complaints, and circumstances under which a Commissioner should disqualify himself or herself from participating in agency decisions.

On a motion by Commissioner Linett, seconded by Chairman Eldridge and passed by a vote of 2-0, the Commission approved the foregoing procedures.

Vice Chairman McNany had stepped out of the room during the discussion of this item.

9. Chairman Conference Trip

Chairman Eldridge said that he had been accepted to give a paper at an international conference on ethics.

He said that the conference will be held in London, England. Chairman Eldridge said that he wanted to bring this matter to the attention of the Commissioners and to seek their approval for ELEC to subsidize the trip. He estimated that the cost to ELEC would be in the area of \$1,800. Chairman Eldridge said that he was also seeking financial support from Kean College. He said that ELEC is an ethics agency and that it is a positive thing for the State of New Jersey for an individual such as himself to present a paper at an international ethics conference.

Commissioner Linett proposed that the Commission financially support the Chairman's trip to the conference. Vice Chairman McNany seconded the motion.

Dennis Jaffe, Executive Director of New Jersey Common Cause asked to be recognized.

Mr. Jaffe first apologized for Common Cause not giving greater support to funding for ELEC in the past. He indicated that he had only been on the job for two months, but that Common Cause plans to be pushing for ELEC's budget in the future.

Mr. Jaffe said, however, that Common Cause could not support greater funding for ELEC if paying a trip to a conference that appears to bear no relation to campaign financing and lobbying issues is approved. He said that it did not appear that these issues were driving the request, and that ELEC had no jurisdiction over ethical issues in general. Mr. Jaffe said that he would urge that the trip not be paid for with funds from ELEC's budget.

Chairman Eldridge responded that he had placed this item on the agenda precisely because he was trying to do the ethical thing. He reiterated that the Commission is an ethics agency and that there is a clear link between it and an international conference on ethics.

Commissioner Linett said that the Chairman is a very ethical person. He said that unfortunately these issues get blown out of proportion.

Mr. Jaffe said that while attendance at the conference might be academically meritorious and that the dollar amount might be relatively small, he opposed the trip on the principle that the Chairman had not demonstrated its relationship to ELEC's work.

Chairman Eldridge said that while he strongly disagreed with Mr. Jaffe's argument, he nevertheless did not want to jeopardize Common Cause's support of ELEC's budget. He said that he also did not want anyone to even question his ethics. Therefore, he said that even though he saw nothing whatsoever improper in attending the ethics conference with State funds he would withdraw his proposal.

Mr. Jaffe asked to be recognized to address another area concerning ELEC.

Chairman Eldridge again recognized Mr. Jaffe.

Mr. Jaffe said that he has been working with Executive Director Herrmann for the last couple of months, during which Mr. Herrmann has demonstrated his commitment and competence in the area of election law.

He said, however, that while he had respect for Mr. Herrmann and the staff, he nevertheless believed that because of a lack of funding and personnel there was much that ELEC should be doing that it is unable to do. He added that ELEC should tell the Legislature that it needs more funding to do the job adequately. He said that when added duties for the Commission are proposed, the Commission should always indicate that more resources are needed. According to Mr. Jaffe, the Commission should state publicly that it does not want additional responsibilities without the funding to carry them out.

Mr. Jaffe said that he has faith in the staff but not in the budget. He said he would be out there urging greater funding.

Mr. Jaffe said that he was glad to hear that ELEC would be studying leadership PACs and made several suggestions as to what research should be undertaken.

10. Resolution to Go Into Executive Session

On a motion by Vice 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 Decision Recommendations in violation proceedings which will not become public. However, the Final Decisions resulting from those recommendations will become public no later than 35 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 no later than 50 days after mailing.

11. Adjournment

On a motion by Commissioner Linett, seconded by Vice Chairman McNany and passed by a vote of 3-0, the Commission voted to adjourn at 11:45 a.m.

Respectfully submitted,



FREDERICK M. HERRMANN, PH.D.

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