



State of New Jersey

ELECTION LAW ENFORCEMENT COMMISSION

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William H. Eldridge  
Chairman

Owen V. McNany, III  
Vice Chairman

David Linett  
Commissioner

Ralph V. Martin  
Commissioner

Frederick M. Herrmann, Ph.D.  
Executive Director

Jeffrey M. Brindle  
Deputy Director

Gregory E. Nagy  
Legal Director

James P. Wyse  
Counsel

PUBLIC SESSION MINUTES

JANUARY 2, 1996

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

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 a.m. at the Maplewood Municipal Building, Maplewood, New Jersey.

Chairman Eldridge welcomed former Judge Ralph V. Martin to the Commission.

3. Approval of Public Session Minutes of November 21, 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 November 21, 1995. Commissioner Martin did not vote because he was not on the Commission at the time of the last meeting.

4. Advisory Opinion Request No. 13-1995

This request was submitted by Senate Deputy Majority Leader Gerald Cardinale who asked for an advisory opinion concerning use of his candidate committee funds to pay legal expenses for his defense in a complaint pending before the Joint Legislative Committee on Ethical Standards.

Legal Director Nagy explained that Senator Cardinale proposes to use funds from Friends of Senator Cardinale, his 1997 primary election candidate committee, to pay for legal expenses in connection with his representation before the Joint Legislative Committee on Ethical Standards.

Senator Cardinale asked the following questions:

1. May an elected officeholder use funds from his or her candidate committee to pay the legal expenses of defending against a complaint pending before a public body.

2. May an elected officeholder establish a legal defense fund to pay for such legal expenses and solicit donations that are not subject to contribution limits. This legal defense fund would not be subject to campaign reporting.

Staff recommended that Senator Cardinale be advised that he may use the funds of his candidate committee, Friends of Senator Cardinale, for legal expenses in connection with his defending against a complaint filed against him with the Joint Legislative Committee on Ethical Standards. Staff also recommended that the Commission decline to answer the second question because Senator Cardinale will be permitted to use campaign funds to meet his legal expenses arising out of the defense of a proceeding before the Joint Legislative Committee.

With regard to the question of whether or not the Senator could use candidate committee funds, staff concluded that a legislator incurring expenses to mount a defense to accusations pending before the Joint Legislative Committee is incurring ordinary and necessary officeholding expenses within the meaning of the statute and regulation.

Staff noted that nothing contained in the recommendation is intended to serve as precedent for permitting the use of candidate committee funds for the legal defense of an officeholder facing any civil or criminal charge in any court of law or other forum. Commissioner Martin noted that this holding is intended to be applicable only when an officeholder is required to answer charges related to his or her fitness as an officeholder before a body that has statutory authority to adjudicate that officeholder's fitness for that office, but not necessarily intended to address the question of whether or not campaign funds can be used for underwriting an affirmative action taken by one officeholder in issuing a complaint against another.

On a motion by Commissioner Linett, seconded by Vice Chairman McNany, and passed by a vote of 4-0, the Commission directed staff to issue an advisory opinion in accordance with its recommendations.

5. Recommendations for Modifying the Campaign Act

Please see the memorandum from Jeffrey M. Brindle, Deputy Director, to Frederick M. Herrmann, Ph.D., Executive Director dated December 5, 1995, and entitled "Recommendations for Modifying the Campaign Act."

In sum, the Commission recommended the following:

1. The Commission should have a guaranteed base budget;
2. Commissioner terms should be lengthened to seven years, subject to reappointment;
3. Contribution limits should be reduced;
4. Filing thresholds for candidates and committees spending little money should be raised;

5. The Gubernatorial Public Financing Program recommendations of May, 1994, should be retained;
6. The Commission may desire to address the issue of increased penalties; and
7. Leadership PACs should be the subject of a white paper research project.

On a motion by Commissioner Linett, seconded by Commissioner McNany, and passed by a vote of 3-0, the Commission approved the recommendations in modifying the Campaign Act. Moreover, on the suggestion of Commissioner Linett, it reiterated an earlier recommendation that corporate and union contributions be banned. The Commission also added a recommendation that the Commission be given authority to impose current statutory penalties or a fine amount equal to the amount of missing information, whichever is greater.

6. Public Hearing on Proposed Regulation Prohibiting Contributions by Partnerships

The public hearing began at 9:30 a.m.

A court reporter recorded the hearing. A transcript of the public hearing will be made available to the public. The hearing was conducted for the purpose of receiving testimony on the proposed amendment to N.J.A.C. 19:25-11.2, which prohibits contributions by partnerships.

The proposed amendment provides that a partnership is not permitted to make a contribution as an entity to a candidate or committee. The proposed subsection further states that a contribution from a partnership received by a campaign or organizational treasurer must be deemed to have been made by the individual partner or partners executing the check or written instrument. If a partnership contribution is to be allocated to a partner who has not signed the partnership check or other instrument, the proposed amendment requires that written instructions concerning allocation of the partnership contribution be provided to the campaign or organizational treasurer.

Testimony was offered by Ron Ladell, Esq. and by Dennis Jaffe, Executive Director, New Jersey Common Cause.

Legal Director Nagy thanked Mr. Ladell and Mr. Jaffe for their participation. He noted that the deadline for receipt of written comments on the proposal is January 3, 1996, and indicated that staff will review the comments and make recommendations to the Commission in February or March.

7. Public Disclosure of Internal Documents Issue

Executive Director Herrmann said that Mr. Dennis Jaffe, Executive Director, Common Cause New Jersey, had requested that the Commission review its approach toward releasing working documents to the public.

The Executive Director said that Legal Director Nagy and Counsel Wyse have been working on this issue.

Legal Director Nagy said that after consulting with Counsel Wyse and the Attorney General's Office, he believes that the Commission has been correct in maintaining that it is a matter of discretion as to whether or not it will release certain documents to the public. Legal Director Nagy added that as a practical matter the Commission has not denied access to documents such as memoranda, etc. when asked to do so by a member of the public. The Legal Director said that it was a matter of Commission discretion, not legal compulsion, in terms of which working documents it would release.

Legal Director Nagy said that it is the position of the Attorney General that the Open Public Meetings Act does not require that working documents, such as staff recommendations, be provided before, or even after, a meeting occurs. According to the Attorney General, only public records are required to be released. Legal Director Nagy said that Commission discussions are to be held in public, which reflect the thinking process of the Commission.

Counsel Wyse said that after researching the issue, the Open Public Meetings Act clearly does not apply to this situation. He said, however, that under common law principles it is conceivable that some staff memoranda might be required to be disclosed. He said that the precedent in case law is that documents such as staff memoranda on matters for which no action has been taken are not required to be disclosed either before or after meetings.

Executive Director Herrmann advised the Commission that the staff memorandum involving recommendations vis-a-vis modifying the Campaign Act was released to Mr. Jaffe at the behest of Chairman Eldridge.

Commissioner Linett asked whether or not the Commission should formalize its policy regarding the release of documents.

Legal Director Nagy said that the policy has been not to release documents prior to a meeting but at the Commission's discretion to release them during and after meetings. He indicated that the Commission has never refused to disclose documents. Legal Director Nagy added, however, that the Commission does have the discretionary authority to do so.

Mr. Dennis Jaffe, Executive Director, Common Cause New Jersey, was recognized.

Mr. Jaffe urged the Commission to adopt a policy that would authorize the release of staff memorandum and other documents prior to meetings. He said that it is impossible to comment intelligently upon issues during the public comment period without access to documents. He suggested that the day after staff sends materials to the Commissioners individuals should be provided with access to working documents. He said that it is simply unacceptable that the Commission has no formal policy regarding this issue.

Vice Chairman McNany said that at various times during the meeting the Chairman permits commentary by the public.

Chairman Eldridge indicated that by law the public has ample notice with regard to regulations. He said that with regard to memoranda the Commission could make them available on the day of the meeting, which is essentially what occurs now.

Vice Chairman McNany said that unfortunately this is an imperfect world. He said that Commissioners themselves often only see advisory opinions the day of the meeting. He said that requests for these opinions are often submitted at the last minute. Vice Chairman McNany said that as a practical matter it is often difficult to provide material to the public prior to a meeting.

Mr. Jaffe said that he understands the Vice Chairman's point, but said that as a general rule information should be available at the Commission's office prior to meetings.

Vice Chairman McNany asked how other agencies in state government handle this issue.

Mr. Jaffe said that he was unsure but that the local school board he served on provided access to materials prior to the meeting so that the public would be able to participate.

Chairman Eldridge suggested that staff work with Mr. Jaffe to develop a recommendation on a formal policy.

He suggested that the Commission review this policy recommendation at a future meeting.

8. Resolution to Go Into Executive Session

On a motion by Vice Chairman McNany, seconded by Commissioner Linett and passed by a vote of 4-0, 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.

9. Adjournment

On a motion by Commissioner Linett, seconded by Vice Chairman McNany and passed by a vote of 4-0, the Commission voted to adjourn at 11:00 a.m.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read 'F. M. Herrmann', is written over a light gray rectangular background.

FREDERICK M. HERRMANN, PH.D.

FMH/elz