



State of New Jersey

ELECTION LAW ENFORCEMENT COMMISSION

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PUBLIC SESSION MINUTES

JANUARY 16, 1996

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

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.

4. Executive Director's Report

Staff Activities

Executive Director Herrmann thanked Deputy Director Brindle, Legal Director Nagy, and Deputy Legal Director Massar for braving the blizzard of '96 to come in and get the agenda out without any clerical help on Tuesday, January 9.

The Executive Director announced that Senior Compliance Officer Carol Neiman has been named Systems Administrator to replace Tony Chianese and that Dianne Yurek, a Rutgers University graduate student in statistics, has become an intern.

Executive Director Herrmann advised the Commission that Executive Secretary Jo Hall retired at the end of December and that Legal Secretary Elbia Zeppetelli has been named to her position provisionally.

The Executive Director mentioned that on November 16, he had a meeting with Shinji Hirai, a representative of the Japanese government working for the Ministry of Home Affairs, to discuss how American citizens participate in their government.

Executive Director Herrmann thanked Carol Neiman, Chair of ELEC's NJ State Employees' Charitable Campaign, for another successful campaign. The Commission is once again a Platinum Award Winner, he said. Vice Chairman McNany suggested that the Commission present a resolution to Carol Neiman.

The Executive Director noted that on December 12, staff released filing statistics from the 1995 Assembly General Election to the media.

He said that it was reported that candidates raised \$12.7 Million and spent \$10.7 Million, which was a 36% increase over 1993.

Executive Director Herrmann said that possible explanations for the increase include:

- the historical upward direction of financial activity;
- the transference of "Personal PAC" money into candidate committees pursuant to the new law of 1993; and,
- the fact that 1995 was the first election since 1979 in which the Assembly ran alone.

National Ethics News

Executive Director Herrmann advised the Commission that a U.S. District Court invalidated an Oregon initiative that required State and local candidates to raise all of their campaign funds from residents of their election districts.

Executive Director Herrmann added that the U.S. Circuit Court of Appeals for D.C. held the FEC's "member rule" to be arbitrary and capricious. According to the Executive Director, under this rule, an organization is not required to file reports when it makes political communication to its membership only. However, these members must pay dues and have a right to vote for at least one member of the organization's highest governing body.

Executive Director Herrmann said that, clearly, the membership "exemption" from filing must be more broadly framed.

Legislative Developments

Executive Director Herrmann said that on December 4, he testified before the Assembly State Government Committee on A-3124 (Doria/Haytaian).

He mentioned that this bill reimplements the labeling of political communications so that such labeling is constitutional under the McIntyre decision.

Executive Director Herrmann said that this bill was amended to be identical to the SCS for S-981 (Schluter) and S-2230 (Lynch).

According to the Executive Director it was released by the Committee 6-1 and subsequently passed 79-0 by the Assembly on January 4, 1996. It was signed by Governor Whitman on January 12, 1996.

The Commissioners expressed concern over the lack of funding provided to ELEC to enforce this law and asked Deputy Director Brindle and Counsel Wyse to draft a resolution to be sent to the Legislature expressing concern over the lack of adequate funding contained in the bill and asking for a supplementary appropriation.

Winter Meeting Schedule

The Commission determined to meet on February 27, 1996* at 9:00 a.m. in Maplewood.

5. Public Session Minutes

On a motion by Vice Chairman McNany, seconded by Commissioner Linett, and passed by a vote of 4-0, the Commission approved the Public Session Minutes of January 2, 1996.

6. Advisory Opinion No. 01-1996

Legal Director Nagy explained that a request for an advisory opinion was received from Peter G. Sheridan, Esq. on behalf of the New Jersey Republican State Committee (RSC) concerning handling of contribution checks received by the RSC. The issue presented is whether or not the RSC may accept a check which is in excess of the contribution limit applicable to a state political party committee and deposit a portion of that check, not to exceed the state expenditure limit, in the state account and the remainder of the funds in a federal account maintained by the RSC. Legal Director Nagy said that the staff believed that this practice is not permissible under the Campaign Act and therefore recommended that the RSC must deposit the contribution into an account established under the Campaign Act in an amount subject to the state contribution limit. He explained further that the only exception to this procedure should be if the RSC receives a contribution in excess of the contribution limit and follows the Commission regulation governing return of excessive contribution amounts. He further stated the staff recommendation that two checks should be required by the RSC for deposit into its separate federal and state accounts.

Commissioner Linett indicated that one check should not be permissible in this situation. The RSC is a state-created body and therefore the check for its state election activity intended for deposit into its state account must be a separate check. He stated that he was not aware of any prohibition under state law to prevent the RSC from accepting a separate contribution check for deposit into its federal account.

The Chairman recognized Peter Haytaian, Esq. appearing on behalf the RSC. He explained that if the RSC receives a \$30,000.00 check it proposes to use separate deposit slips for its federal and state accounts, and therefore no excessive amount would be deposited into the two accounts. He further advised that there would be no commingling of funds.

Commissioner Linett indicated that he saw two problems with the procedures proposed by Mr. Haytaian. For enforcement purposes, it would be difficult to track funds deposited pursuant to such a procedure and the RSC would be unable to ascertain the intention of a donor in such a situation. He reiterated his belief that the RSC should require two separate checks for its state and federal accounts so that a contributor knows clearly where his or her funds are being deposited. Mr. Haytaian responded by explaining that the RSC proposes to have a disclaimer in its fund raising materials to describe its deposit procedures.

Commissioner Martin stated that he was concerned that the request for an advisory opinion did not have clear information and that staff had to make assumptions in providing its response. He further questioned how the RSC could account to a contributor who did not see its disclaimer provisions because there was no way to know that a contributor had read and understood those procedures.

Legal Director Nagy indicated that staff is concerned about the ability to reconcile accounts during an audit where an auditor will only have a deposit slip.

Commissioner Linett indicated that he did not believe it was a big burden to ask for two checks from a contributor who intended to give to both the federal and state accounts of the RSC. He further stated that he did not believe it was appropriate to put federal funds intended for a federal account into a state account even if a transfer was contemplated.

Commissioner Linett stated that he believed that the procedure proposed by the RSC in its request for an advisory opinion violates the intent of New Jersey contribution limits because receipt of a check in excess of the contribution limit has the appearance of exerting influence.

Chairman Eldridge said he did not see a problem in asking for separate checks for the federal and state accounts from contributors who contemplated given these large amounts of money. The Chairman further stated that he believed that the state political party committees should be involved in state and not federal elections.

Commissioner Martin questioned whether or not the Commission had to provide a response to this request for an advisory opinion.

Chairman Eldridge asked whether or not the Commission can decline to give an opinion.

Legal Director Nagy stated that the Campaign Act requires the Commission to issue an advisory opinion within ten days or else immunity from prosecution is conferred upon the party requesting the advisory opinion.

Executive Director Herrmann asked whether or not the RSC maintained more than two accounts.

Legal Director Nagy responded that at the current time there are four accounts being reported on quarterly reports filed by the RSC with the Commission.

Mr. Haytaian commented that the RSC really only has three accounts now, but that he was not sure how the accounts were being used.

Legal Director Nagy suggested that the advisory opinion state that contribution checks received for state election activity be deposited into a state account subject to state contribution limits. If any contributions are received in excess of state contribution limits, the excess must be returned to the donor pursuant to the Commission regulation dealing with excessive contributions.

Commissioner Linett added that he believed the opinion should state that no New Jersey law prohibits the RSC from establishing a separate account and receiving separate checks for federal purposes. He asked Mr. Haytaian if this issue comes up all the time. Mr. Haytaian responded that many contributors would give \$30,000.00. He asked whether or not the Commission's response called into question the RSC's accounting procedure and whether or not the RSC must first put contribution amounts intended for state activity into its state account. Legal Director Nagy responded in the affirmative that a contribution means a check or written instrument deposited into the RSC state account.

Commissioner Linett stated that he believed the Commission should issue an advisory opinion requiring separate checks for the RSC federal and state accounts.

On a motion by Commissioner Linett, seconded by Commissioner Martin and passed by a vote of 4-0, the Commission directed staff to issue an advisory opinion to the RSC directing that: (1) a contribution check or other written instrument to the RSC for state election purposes is a contribution under the Reporting Act and must observe state contribution limits and be deposited into an account maintained pursuant to state law; (2) any amount in excess of the applicable contribution limit must be returned to the contributor pursuant to the Commission regulation; and, (3) nothing in the Campaign Act would prohibit the RSC from accepting separate contributions for deposit into its account maintained for federal election purposes.

7. Legislative Agent Reports

On a motion by Commissioner Linett, seconded by Vice Chairman McNany, and passed by a vote of 4-0, the Commission voted to permit Legislative Agents to file quarterly reports for the fourth quarter of 1995 by January 25, 1996 and have them considered "timely filed." This extension of time is due to the inclement weather.

8. Resolution on Labeling Law

On a motion by Commissioner Linett, seconded by Commissioner Martin and passed by a vote of 4-0, the Commission approved the resolution drafted by Counsel Wyse and Deputy Director Brindle regarding adequate funding to enforce the labeling law. Chairman Eldridge directed the Executive Director to produce a press release to accompany the resolution.

9. 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. 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 no later than 50 days after mailing.

10. 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,



FREDERICK M. HERRMANN, PH.D.

FMH/elz