



State of New Jersey

ELECTION LAW ENFORCEMENT COMMISSION

RALPH V. MARTIN
Chair

DAVID LINETT
Vice Chair

PAULA A. FRANZESE
Commissioner

Respond to:
CN-185

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FREDERICK M. HERRMANN, Ph.D.
Executive Director

JEFFREY M. BRINDLE
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GREGORY E. NAGY
Legal Director

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Counsel

PUBLIC SESSION MINUTES

SEPTEMBER 10, 1996

Chair Martin, Vice Chair Linett, Senior Staff, and Deputy Legal Director Nedda Gold Massar were present.

1. Open Public Meetings Statement

Chair Martin 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 10:00 a.m. in Trenton, New Jersey.

2. Approval of Public Session Minutes of July 16, 1996

On a motion by Vice Chair Linett, seconded by Chair Martin and passed by a vote of 2-0, the Commission approved the Public Session Minutes of July 16, 1996.

3. Executive Director's Report

A. Staff Activities

Executive Director Frederick M. Herrmann reported that Systems Administrator Carol Neiman and Associate Systems Administrator Brenda Brickhouse went for two weeks of computer training in New York City related to the operation of ELEC's new computer system. He added that Assistant Legal Director Irene Szedlmayer attended a three-day program on investigative analysis at the State's Criminal Justice Academy.

Executive Director Herrmann added further that Director of Administration Barbra Fasanella went to an internet training session sponsored by the Office of Telecommunications and Information Systems (OTIS) in the Department of the Treasury.

The Executive Director reported that rewiring for the recomputerization project has been completed.

B. Conferences

Executive Director Herrmann noted that on July 16, 1996, the annual Northeastern Regional Conference on Lobbying (NORCOL) was attended by Chair Ralph V. Martin, Deputy Director Jeffrey M. Brindle, Legal Director Gregory E. Nagy, Deputy Legal Director Nedda G. Massar, Director of Compliance and Information Evelyn Ford, and himself. He said that it was the best attended session in years, with about 150 people participating.

The Executive Director said that participants discussed capping and/or banning benefit passing as well as agency computerization. According to the Executive Director, NORCOL members also reviewed developments in each state.

Executive Director Herrmann said that his presentation included a legislative history of New Jersey Lobbying Law and possible initiatives for the future.

Executive Director Herrmann reported that he participated in a working group on ethics and public integrity sponsored by the Council on State Government (CSG) in St. Louis on July 29, 1996. He said that the purpose of the session was to lay the groundwork for the creation of a National Center for Integrity in Public Service.

The Executive Director noted that such a center would sponsor meetings, publish materials, do research, conduct training, and present awards. He mentioned that the group consisted of the former Executive Director of the National Center for State Legislatures (NCSL), CSG staff members, the Lieutenant Governor of Nebraska, a State Senator from Oregon, a staff member of the California State Senate, an Ohio ethics agency director, and himself.

According to Executive Director Herrmann, the consensus of the group was that there is a pressing need for a national discussion of the role of ethics in preserving governmental institutions.

4. Adoption of Advisory Opinion Procedure Regulations

For detailed information, please see the memorandum from Gregory E. Nagy, Legal Director to Frederick M. Herrmann, Executive Director, dated August 20, 1996 and entitled, "Adoption of Advisory Opinion Procedure Regulations." The Commission's proposed regulations on advisory opinion procedures were published in the June 3, 1996 edition of the New Jersey Register, and secondary notice by means of a press advisory and mailing to interested persons was circulated on June 11, 1996. A public hearing was conducted at the Commission's July 16 meeting. No testimony was given, and no written comments were submitted. The deadline for written comments was July 16, 1996. According to staff, the proposed regulations were ripe for adoption. Staff recommended that they be adopted without change.

Legal Director Nagy explained that the regulations are intended to establish uniform procedures for the submission of advisory opinion requests. They are intended to elicit more complete information from persons seeking the Commission's rulings. The statute requires that an advisory opinion be rendered within 10 days of a request. The proposed rules ask the applicant to indicate whether or not the applicant consents to a 30-day response period. In the past, applicants have generally consented to such extensions when no meeting is scheduled within 10 days of receipt of the request.

On a motion by Vice Chair Linett, seconded by Chair Martin and passed by a vote of 2-0, the Commission adopted the regulations as recommended by staff.

Recognizing that cases may arise in the future in which an applicant does not consent to an extension, and no Commission meeting is scheduled within 10 days of receipt of the applicant's request, staff recommended that the Commission, in addition to adopting these regulations, also consider adopting a resolution delegating to its Chair and Vice Chair the authority to approve collectively a response to be issued by staff without conducting a special meeting of the full Commission. The Commission reviewed the draft resolution which follows prepared by Counsel Wyse:

BE IT RESOLVED, by the Commissioners of the New Jersey Election Law Enforcement Commission, as follows:

Upon receipt of a request for an advisory opinion, the Commission staff shall determine, in accordance with the regulations of the Commission, whether the person requesting the opinion has consented or will consent to an extension of time for the issuance of the advisory opinion and, if no such extension has been or will be consented to, then the date on which the 10 day time period for issuance of the requested advisory opinion will expire. If the 10 day period will expire before the next regularly scheduled meeting of the Commission, the staff shall so notify the Chairman and the Vice Chairman, who shall be authorized in such circumstances to consider the advisory opinion request and approve and issue the advisory opinion on behalf of the full Commission. In the event of the unavailability of the Chairman or the Vice Chairman, another member of the Commission shall be authorized to act on such advisory opinion request in his or her place and stead. If possible, such other Commissioner shall be of the same political party affiliation as the said Chairman or Vice Chairman who is unavailable. If the two Commissioners are unable to agree, or if the question is deemed by them to be of particular public importance, then the Chairman or Vice Chairman shall call a special meeting of the entire Commission, to be held within the 10 day time period for issuance of the advisory opinion, for the purpose of acting upon such advisory opinion request.

Vice Chair Linett recommended that consent to an emergent advisory opinion response by the Commissioners be obtained in writing.

On a motion by Vice Chair Linett to approve the resolution with the addition of the requirement to obtain written consent to an emergent advisory opinion response, seconded by Chair Martin and passed by a vote of 2-0, the Commission adopted the by-law for issuance of emergent advisory opinions.

5. Proposed Amendments to Implement Inflationary Campaign Cost Adjustments and Other Regulatory Changes

Commissioner Franzese was now in attendance at the meeting.

Please see the memorandum from Nedda G. Massar, Deputy Legal Director to Frederick M. Herrmann, Executive Director, dated August 12, 1996, and entitled, "Proposed Amendments to Implement Inflationary Campaign Cost Adjustments and Other Regulatory Changes." Also, please see September 3, 1996 memorandum from Nedda G. Massar, Deputy Legal Director to Frederick M. Herrmann, Executive Director, and entitled, "Revisions to Proposed Amendments to Implement Inflationary Campaign Cost Adjustments." Draft proposals were presented for amendments to Commission regulations implementing the statutorily-required inflationary adjustment of the various limits and thresholds in the Campaign Contributions and Expenditures Reporting Act, N.J.S.A. 19:44A-1, et seq. The proposed regulations are divided into two parts. The first deals with non-gubernatorial candidates and committees, while the second contains the public financing provisions. The quadrennial cost adjustment calculation was explained in detail and will be the subject of a Cost Index Report to be presented to the Commission in the fall.

In addition to proposed amendments implementing the campaign cost adjustments for inflation, further amendments to the regulations were recommended by staff and were explained in comments throughout the draft text.

Staff will file the proposal with the Office of Administrative Law (OAL) in the Department of State and the proposal will be published in the October 7, 1996 edition of the New Jersey Register. Staff recommended that the October Commission meeting date be rescheduled for October 22, 1996, and that a public hearing on the proposed regulations be conducted on that date.

Statutory changes enacted in January, 1989, require that the Commission "establish an index reflecting the changes occurring in the general level of prices of particular goods and services . . . directly affecting the overall costs of election campaigning in this State." The Commission must then use that index to adjust on a quadrennial basis the following components of the gubernatorial public financing program: the gubernatorial contribution limit, the threshold for candidate qualification to receive public matching funds, the threshold amount of contributions for which no public matching funds are awarded, the gubernatorial expenditure limits, and the maximum public funds that may be given to a qualified gubernatorial primary or general election candidate.

In addition, the 1993 amendments to the Act require that the cost index calculated for the gubernatorial public financing program be applied to various limits and thresholds applicable to candidates, candidate committees, joint candidates committees, political committees, continuing political committees, political party committees, legislative leadership committees, and

other entities. Such adjustment apply to the political committee reporting threshold, the continuing political committee reporting threshold, the joint candidates committee Sworn Statement (Form A-2) reporting thresholds, the candidate committee Sworn Statement (Form A-1) reporting threshold, the contribution reporting threshold, the threshold for 48-hour notice reporting of contributions and expenditures, the independent expenditure reporting threshold, the limits on contributions, and the maximum penalty amounts for certain violations of the Act.

In addition to the cost index changes in the above-described statutory thresholds, staff recommended application of the cost index to adjust the Form A-3 \$2,500.00 calendar year regulatory threshold.

N.J.S.A. 19:44A-7.2b(5) also calls for adjustment of the \$200.00 amount that triggers reporting by a person "not acting in concert with any other person or group" who raises funds through a public solicitation to "spend personally or under his personal direction" in support of or opposition to a candidate or public question. Staff recommended that this threshold amount not be included in the proposed cost index changes because this fundraising mechanism is seldom if ever used.

After application of the 1997 New Jersey Campaign Cost Index (NJCCI) of the various limits and thresholds, the resulting amounts were rounded pursuant to N.J.S.A. 19:44A-7.1b. As a result of this analysis, staff recommended that references in the regulations be amended as follows:

<u>Limit/Threshold</u>	<u>Current Amount</u>	<u>1997 Adjusted Amount</u>
Political Committee Reporting Threshold	\$1,000	\$1,200
CPC Reporting Threshold	\$2,500	\$2,800
Contribution Reporting Threshold	\$ 200	\$ 300
48-hour Notice Reporting Threshold	\$ 500	\$ 600
Joint Candidates Committee Thresholds	\$4,000 \$6,000	\$4,500 \$6,700
CPC A-3 Threshold	\$2,500	\$2,800
Candidate A-1 Threshold	\$2,000	\$2,300
School Board Threshold	\$2,000	\$2,300
Independent Expenditure Threshold	\$ 500	\$ 600
Contribution Limits	See <u>N.J.A.C.</u> 19:25-11.2(a)	
Penalties	\$3,000/\$6,000	\$3,400/\$6,700

Staff recommended further that references in Subchapters 15 and 16 to the gubernatorial public financing limits and thresholds be amended as follows:

<u>Limit/Threshold</u>	<u>Current Amount</u>	<u>1997 Adjusted Amount</u>
Contribution Limit	\$ 1,800	\$ 2,100
Qualification Threshold	\$ 177,000	\$ 197,000
Primary Expenditure Limit	\$2,600,000	\$2,900,000
General Expenditure Limit	\$5,900,000	\$6,600,000
Amount Not Matched	\$ 59,000	\$ 66,000
Primary Election Public Funds Cap	\$1,600,000	\$1,780,000
General Election Public Funds Cap	\$3,900,000	\$4,400,000

Director Massar indicated that the amendments also provide that political party committees and legislative leadership committees be prohibited from making independent expenditures in the gubernatorial general election. The proposal also clarifies procedures for reimbursements to the county clerks for gubernatorial ballot statement costs.

Vice Chair Linett said that he recognized the fact that the Commission is statutorily bound to adjust these thresholds and limits and that the formula for making these adjustments is contained in the statute. He said, however, that he is concerned about the magnitude of the adjustments, especially as they will affect local candidates. He said that he has always felt that while a \$300 contribution may not have a significant impact at the State level, it does have an impact locally.

On a motion by Commissioner Franzese, seconded by Vice Chair Linett and passed by a vote of 3-0, the Commission proposed the above regulatory changes.

6. Proposed Amendment to "Street Money" Regulation

Counsel Wyse arrived during this discussion.

For detailed information, please see the memorandum from Gregory E. Nagy, Legal Director to Frederick M. Herrmann, Executive Director, dated August 20, 1996 and entitled, "Proposed Amendment to 'Street Money' Regulation." The proposal amends the Commission's "street-money" regulation so that a candidate or committee that pays an outside group a lump sum to make street money payments on its behalf is required to report the identity of all street money recipients. Without this amendment, a candidate or committee making such a payment to a vendor or other group is not specifically required to report the

identity of individuals receiving "street money." The proposed amendment is at N.J.A.C. 19:25-12.6.

Legal Director Nagy explained the proposal to amend N.J.A.C. 19:25-12.6(b) (hereafter, subsection b)) so that it explicitly requires the candidate or committee making the street money payment to a vendor to make the payment by check payable to that vendor out of its depository account, and additionally to report not only the payment but the identity of each individual receiving street money, and the date and amount of the payment.

Besides proposing a new text for subsection (b), staff also proposed technical amendments to subsection (a) to clarify that the candidate committee check must be payable from its depository account, and to provide more specific examples of what constitutes street money activity.

Vice Chair Linett stated that he did not think the statute contemplated the use of a "middleman" or vendor in making street money payments. He suggested that N.J.A.C. 19:25-12.6(d)3 be amended to replace "the recipient" with "any recipient."

Following a discussion of the regulation, Commissioner Franzese moved the proposed street money regulations with the change suggested by Vice Chair Linett. Seconded by Vice Chair Linett, the motion passed by a vote of 3-0.

7. W. Cary Edwards' 1993 Gubernatorial Primary Election Campaign

Please see the memorandum from Nedda G. Massar, Deputy Legal Director to Frederick M. Herrmann, Executive Director, dated August 5, 1996, and entitled, "W. Cary Edwards' 1993 Gubernatorial Primary Election Campaign." Douglas F. Doyle, Esq., asked the Commission to extend further the time during which Mr. Edwards can raise funds to satisfy the outstanding obligations of his 1993 primary election publicly-financed campaign. The most recent postelection quarterly report filed by the Edwards campaign on July 15, 1996, reports outstanding obligations totaling \$93,833.82, which exceed the balance of cash-on-hand in the amount of \$448.18.

N.J.S.A. 19:44A-35c and N.J.A.C. 19:25-16.34 require that a publicly-financed gubernatorial campaign return all unspent campaign funds to the State no later than six months after the date of the election. However, Commission regulations specifically contemplate that a publicly-financed primary election candidate may continue to receive contributions after the date of the primary election for the express purpose of liquidating obligations; see N.J.A.C. 19:25-16.33. The Commission has therefore permitted publicly-financed campaigns to retain funds for longer than six months to pay outstanding obligations.

Deputy Legal Director Massar recommended that the Commission authorize issuance of a letter to Mr. Doyle advising that the Edwards campaign may continue to raise funds for an additional six-month period as indicated in Mr. Doyle's letter, and that it must observe the 1993 primary election gubernatorial contribution limit (\$1,800.00), and must continue to file quarterly postelection reports until all financial activity is concluded.

On a motion by Vice Chair Linett, seconded by Commissioner Franzese and passed by a vote of 3-0, the Commission approved the staff recommendation allowing Mr. Edwards to continue raising funds.

Executive Director's Report (continued)

Executive Director Herrmann advised the Commissioners that December 8 through 11 are the dates for the Council on Governmental Ethics Laws (COGEL) Conference in Philadelphia. He said that the keynote speaker will be former United States Attorney General and former Pennsylvania Governor Richard Thornburgh.

Executive Director Herrmann noted that COGEL has added a daily rate for registration of which ELEC will take advantage. He reported that he has been asked to lead a breakfast discussion group on debates as part of a public financing program.

Executive Director Herrmann asked members of the Commission to let him know by Tuesday, October 1, 1996, if they desire to attend.

C. Fall Meeting Schedule

The following represents the remainder of the fall meeting schedule:

- October 22, 1996 at 10:00 a.m. in Trenton
- November 19, 1996 at 10:00 a.m. in Trenton

Executive Director Herrmann said that following the meeting he would conduct a tour of the agency, which will highlight recent changes in office utilization.

8. Advisory Opinion Request 04-1996

The Commission acknowledged receipt of a request for an advisory opinion from Assemblyman Joseph V. Doria, Jr., concerning the possible transfer of unexpected funds remaining from his 1995 Assembly candidacy to a possible future State Senate candidacy, and establishment of an exploratory committee account for a State Senate candidacy. The Commission determined to discuss this request at the October 22, 1996 meeting.

9. Resolution to Go Into Executive Session

On a motion by Vice Chair Linett, seconded by Commissioner Franzese 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.

10. Return to Public Session:

On a motion by Commissioner Franzese, seconded by Vice Chair Linett and passed by a vote of 3-0, the Commission voted to return to public session.

11. Adjournment

On a motion by Vice Chair Linett, seconded by Commissioner Franzese and passed by a vote of 3-0, the Commission voted to adjourn at 12:00 p.m.

Respectfully submitted,



FREDERICK M. HERRMANN, D.H.D.

FMH/elz