



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
Deputy Director

GREGORY E. NAGY
Legal Director

JAMES P. WYSE
Counsel

PUBLIC SESSION MINUTES

January 17, 1997

The Commissioners, the Counsel, Senior Staff, and Deputy Legal Director Nedda Gold Massar were present. Legal Director Gregory E. Nagy was not in attendance.

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 10:30 a.m. at the Seton Hall University School of Law, Newark, New Jersey. Several students attended the meeting.

2. Approval of Public Session Minutes of December 17, 1996

On a motion by Vice Chair Linett, seconded by Commissioner Franzese and passed by a vote of 3-0, the Commission approved the Public Session Minutes of December 17, 1996.

3. Executive Director's Report

The Executive Director advised the Commission of Legal Director Nagy's surgery. He is expected to return to work in late February.

A. Greetings

Executive Director Herrmann reported that he spoke with Judge Stanley Bedford, a former ELEC Chair, over the holidays and that he sends his regards to the Commissioners and the staff.

Public Session Minutes

January 17, 1997

Page 2

B National Ethic News

The Executive Director noted that the American Civil Liberties Union (ACLU) is planning to mount a massive public education campaign to explain why campaign finance reform proposals, while having a populist "good government" appeal, are actually harmful to the country's basic constitutional rights of free speech and association.

Executive Director Herrmann disclosed that all of the members of the Kentucky Legislative Ethics Commission recently resigned to protest their Legislature amending the law to weaken the agency's powers. He said that among other changes, the amended law will not allow the Commission to conduct an investigation without a sworn complaint being filed first.

C. Budget

Executive Director Herrmann reported that the Office of Management and Budget (OMB) has directed ELEC to change its FY-1998 budget request for the Ballot Statement Program from \$400,000 to \$155,000.

According to the Executive Director, this program allows all candidates in the general election to place a 500-word statement on the sample ballots sent to all voters. He suggested that the difference in funding may be made up by ELEC by requesting from the Office of Management and Budget additional funds from the Gubernatorial Elections Fund.

Executive Director Herrmann said that ELEC has a regulation which allows the prorating of payments to county clerks for the statements if there is insufficient money for full funding.

D. Legislative Developments

The Executive Director mentioned that A-1118 (Lance) was signed into law on December 20, 1996, and took effect on January 1, 1997.

Executive Director Herrmann represented that this law directs lobbyists to notify public officials about the reporting of benefit passing to them before filing with ELEC. He informed the Commission that ELEC had taken no position on this legislation previously.

Executive Director Herrmann advised the Commission that the Senate Committee Substitute for S-615 (Schluter), which increases the number of debates in the

Primary and General from two to three, was unanimously released from the Senate Budget and Appropriations Committee on January 14, 1997. He noted that ELEC recommended in May, 1994, that the additional debates be added.

The Executive Director said that the bill also:

- clarifies that Cable TV stations may sponsor debates,
- removes the prior sponsorship requirement to sponsor a debate,
- assures sponsors have no conflicts of interest and are impartial, and
- requires a majority vote of ELEC's authorized membership (3 votes) to select a sponsor.

E. Recomputerization

Executive Director Herrmann reported that the Recomputerization Project is moving ahead on schedule. He said that staff is meeting regularly with the Office of Telecommunications and Information Systems (OTIS) and the vendor to keep the project on track. According to the Executive Director, Systems Administrator Carol Neiman has completed the G-95 project by the January, 1997 deadline. He informed the Commission that all contributor information for the 1995 general election is now available to the public in a computerized format. He noted the tremendous effort by Systems Administrator Neiman.

Commissioner Franzese proposed that a resolution be presented to Ms. Neiman in recognition of her outstanding effort. The Commission concurred.

F. Staff Activities

Executive Director Herrmann noted that staff is planning a full series of analytical press releases for 1997. He said that the Public Financing staff will issue a variety of statistical releases on gubernatorial campaign finances and that the annual lobbying release will be produced in the spring with detailed data on lobbyist expenditures.

The Executive Director added that two comprehensive releases on G-97 will be done one before and one after the election.

Executive Director Herrmann informed the Commission that on December 18 and 19, 1996, Director of Public Financing and Deputy Legal Director Massar ran

Public Session Minutes

January 17, 1997

Page 4

informational sessions for representatives of gubernatorial candidates. A true tour de force; praised by participants. He said that Gregory Nagy and he made brief introductory remarks.

Executive Director Herrmann said that on January 9, 1997, he conducted a campaign finance session for College Leadership New Jersey.

Executive Director Herrmann announced the hiring of the following new staff members:

- Leila Sabitsana - started January 6, 1997, as the Computer Assistant for the Public Financing Section; and,
- Erin Kasa - started as a Clerk for the Compliance and Information Section.

G. Winter Meeting Schedule

The following winter meeting schedule was determined by the Commission:

- February 18, 1997 at 11:00 a.m. in Trenton; and,
- March 25, 1997 at 11:00 a.m. in Trenton.

4. Adoption of Proposed New Rule Concerning Contributions from Affiliated Corporations, Associations, or Labor Organizations

Deputy Legal Director Massar said that the Commission's proposed new rule, N.J.S.A. 19:25-11.9, Contributions from affiliated corporations, associations, or labor organizations, was published in the December 2, 1996 New Jersey Register and is now ripe for adoption. A hearing was conducted at the December 17, 1996 Commission meeting and two individuals asked questions concerning application of the proposed regulation. Staff recommended that the proposal be adopted without change. The proposed rule will become effective upon publication in the New Jersey Register on February 18, 1997.

The purpose of the Commission's proposed new rule is to prevent entities which are commonly-owned or controlled from making contributions which in the aggregate exceed the contribution limits established in the New Jersey Campaign Contributions and Expenditures Reporting Act. The new rule provides three criteria for determining affiliation between entities which include: the "degree of control or common ownership" of the corporations, associations or labor organization at the time of the contribution; the "source and control" of the funds used for the contributions; and the degree to which contribution decisions are made independently. The

rule indicates that other criteria may also be considered. In addition, the new rule provides specific standards for candidates and committees to use in making a determination whether or not two corporations are affiliated and therefore subject to a single application of the contribution limit.

On a motion by Commissioner Franzese, seconded by Vice Chair Linett and passed by a vote of 3-0, the Commission adopted the proposed new rule without change and directed staff to file the adoption at the Office of Administrative Law.

5. Adoption of Proposed Amendments Prohibiting Contributions from Limited Liability Entities

Counsel Wyse recommended the adoption without change of the amendments to N.J.A.C. 19:25-11.2 which specify that limited liability partnerships, limited liability companies, and other limited liability entities are not permitted to make contributions to candidates and committees. Contributions from these entities will be allocated against the contribution limitations applicable to the individual partners. A hearing was conducted at the November 19, 1996 Commission meeting and comments were received from one individual, Ron Ladell, Esq. Please see memorandum dated January 10, 1997, from Counsel James P. Wyse to the Chair and Members of the Commission summarizing Mr. Ladell's comments and recommending that the Commission maintain its position that contributions from limited liability entities should be prohibited and treated in the same fashion as contributions from partnerships. Counsel Wyse explained his recommendation that the economics of limited liability entities are akin to partnerships.

Vice Chair Linett said that he is pleased that the Commission is prohibiting contributions from these entities.

On a motion by Commissioner Franzese, seconded by Vice Chair Linett and passed by a vote of 3-0, the Commission adopted the proposed amendments without change and directed staff to file the adoption at the Office of Administrative Law.

6. Proposed Amendments to Gubernatorial Regulations Concerning Contributions from Affiliated Corporations, Associations, and Labor Organizations

Deputy Legal Director Massar recommended that the Commission consider proposing amendments to the gubernatorial public financing regulations at N.J.A.C. 19:25-15.12 and 16.10 to clarify further the criteria for determining corporate affiliation. A determination of corporate affiliation is necessary to prevent two or more corporations which are commonly-owned or controlled and therefore closely affiliated with each other from making contributions which in the aggregate exceed the gubernatorial contribution limit established in the Reporting Act. The contribution limit for the 1997 gubernatorial primary and general elections is \$2,100.00.

The test for corporate affiliation applicable to gubernatorial campaigns appears in N.J.A.C. 19:25-15.12 and 16.10. These rules were recently amended to incorporate a "30 percent test" for corporate affiliation which was established by the Commission during the 1993 gubernatorial primary election. The Commission voted earlier in the meeting to adopt these criteria for non-gubernatorial candidates and committees. Staff recommended that the gubernatorial regulations be amended to conform to the new rule for non-gubernatorial candidates and committees.

Staff also recommended that the Commission amend N.J.A.C. 19:25-16.30, Coordinated expenditures, to replace an erroneous reference to the general election with the proper reference to the primary election.

On a motion by Vice Chair Linett, seconded by Commissioner Franzese and passed by a vote of 3-0, the Commission voted to propose the amendments and directed staff to file the proposal at the Office of Administrative Law.

7. Advisory Opinion No. 08-1996

The Commission considered a request for an advisory opinion from Senator Edward T. O'Connor, Jr., on behalf of the Committee to Re-elect Ed O'Connor at the December 17, 1996 Commission meeting. In this request, Senator O'Connor asked several questions concerning the proceeds of a winning raffle ticket purchased with funds of his candidate committee. At its December 17, 1996 meeting, the Commission concluded that additional information was needed in order to make a determination. The Commission requested that Senator O'Connor advise as to the candidate committee's intent and purpose in making the ticket purchase.

In response to the Commission's request for additional information, Senator O'Connor spoke with the Executive Director, advising that the raffle ticket was purchased for the sole purpose of helping the Boys' and Girls' Club of Hudson County. The Commission subsequently received a letter from Senator O'Connor dated January 6, 1997, in which he confirms this statement and advises that the candidate committee has told the Boys' and Girls' Club to retain the prize money.

For additional information and discussion, please refer to the Public Session Minutes of December 17, 1996.

Counsel James Wyse presented the issue to the Commission. He said that it should be noted that the Commission does not ordinarily give advisory opinions concerning matters which have already taken place. Moreover, continued Counsel Wyse, since the Commission's December 17, 1996 meeting, Senator O'Connor's candidate committee has in fact disclaimed the winnings from the raffle in favor of the Boys' and Girls' Club. He said that several factors

Public Session Minutes

January 17, 1997

Page 7

however argue in favor of disposing of this issue in an advisory opinion. He said that first, this opinion was initially requested before any disposition of the raffle proceeds had been made and second, considerable discussion by the Commission had already taken place, and the Commission's concerns over whether or not the purchase of raffle tickets constitutes gambling by candidate committees has been reported in the media. Permitting the matter to go unresolved at this juncture may have an unintended chilling effect on candidates' willingness to make this type of contribution to charitable organizations, concluded Counsel Wyse.

Staff and counsel recommended advising Senator O'Connor that the purchase of the raffle ticket represents a permissible expenditure of campaign funds provided that it was purchased with the sole intent of making a charitable contribution and all opportunity to recoup the amount spent or receive a financial gain is completely and irrevocably waived and disclaimed by the candidate committee. Further, the staff did not offer any opinion regarding what method should be used to accomplish such a waiver and disclaimer, nor did it render an opinion as to the effect, if any, which such a waiver and disclaimer might have under the laws which govern charitable raffles.

Chair Martin said that he was not necessarily happy about the result. He said that with regard to the issue of whether or not purchasing a raffle ticket is gambling, the Commission seems to be "punting." He said, however, that he would support the Advisory Opinion as proposed in that it at least requires that the money be returned to the charity.

Vice Chair Linett Commented that the Commission only has authority to rule on legal questions not moral ones.

On a motion by Commissioner Franzese, seconded by Vice Chair Linett and passed by a vote of 3-0, the Commission approved the Advisory Opinion and directed Counsel Wyse to issue the response.

8. 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:

- A. 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.
- B. 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

Public Session Minutes

January 17, 1997

Page 8

result of a request for an investigation will become public no later than 50 days after mailing.

- C. 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.

9. 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.

10. 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 12:30 p.m.

Respectfully submitted,



Frederick M. Herrmann, Ph.D.
Executive Director

FMH/elz