



State of New Jersey

ELECTION LAW ENFORCEMENT COMMISSION

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PUBLIC SESSION MINUTES

May 20, 1997

Chair Martin, Vice Chair Linett, Commissioner Ware, the Counsel, 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., adequate 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 11:00 a.m. in Trenton, New Jersey.

2. Approval of Public Session Minutes of April 15, 1997

On a motion by Vice Chair Linett, seconded by Chair Martin and passed by a vote of 3-0, the Commission approved the Public Session Minutes of April 15, 1997. Commissioner Franzese arrived after this vote.

3. Report on 1997 Public Funds Distributed

Subsequent to the April 15, 1997 meeting, the public financing staff had concluded its review of 1997 primary election matching fund submissions as follows: four submissions for Candidate James E. McGreevey; one submission for Candidate Robert E. Andrews; and three submissions for Candidate Michael Murphy.

The following provides summary information regarding submissions made by each candidate:

McGreevey Campaign Submissions 4, 5, 6, 7, 8, and 9

Submission #	Total \$ Submitted for Match	Total \$ Eligible for Match at 2:1	Amount Deposited	Error Rate
4	\$102,325.00	\$102,075.00	\$204,150.00	0.6%
5	17,800.00	16,300.00	32,600.00	7.7%
6	89,575.00	87,275.00	174,550.00	5.3%
7	43,730.00	39,180.00	78,360.00	6.4%
8	81,700.00	76,100.00	152,200.00	5.6%
9	56,775.00	54,925.00	109,850.00	9.1%

During its review of the fifth submission filed by the McGreevey campaign, staff determined that public funds previously deposited into the separate public funds account had been transferred by the campaign to an interest bearing money market account. The statute strictly limits the use of public funds to seven purposes, including: production of campaign advertising, purchase of media time, payment for printing and mailing of campaign literature, and payment of legal and accounting costs incurred in complying with the public financing regulations. Transfer of public funds to an investment account is not among the permitted purposes. Staff therefore immediately contacted Treasurer Robert Long and advised him that unless corrective steps were taken, no further public funds would be awarded to the campaign.

Staff also advised Mr. Long not to spend any of the interest earned until further direction is provided by the Commission. The McGreevey campaign complied with the corrective measures and the deposit of public funds was resumed.

Staff recommended that the McGreevey campaign be instructed to return to the State within ten days interest generated as a result of the investment of the public funds. At the June meeting, staff will provide to the Commission draft text of amendments to the gubernatorial primary and general election regulations to specifically prohibit the transfer for investment of public funds.

Andrews Campaign Submissions 1, 2 and 3

Candidate Andrews' first submission for matching funds, filed on April 7, 1997, contained \$600,716.61 in net contributions submitted for match. Complete review of all items submitted for match resulted in ineligibility of 70 contribution items representing \$47,150.00. After subtraction of the \$69,000 of contributions which is not matched, it was determined that \$484,566.61 was eligible to be matched at the 2:1 ratio. Public funds in the amount of \$969,133.22 were therefore deposited for Submission #1. The ineligibility of 70 items submitted for match results in an error rate of 6.8 percent on the first submission.

Submission #	Total \$ Submitted	Total \$ Eligible for	Amount Deposited	Error Rate
	for Match	Match at 2:1		
2	\$ 112,600.00	\$ 111,500.00	\$ 223,000.00	1.0%
3	176,155.00	198,005.00	396,010.00	2.5%

Murphy Campaign Submissions 1, 2, 3, 4, & 5

Candidate Murphy's April 14, 1997 first application for matching funds contained \$275,070.00 in net contributions submitted for match. Complete review of all items submitted for match resulted in ineligibility of 72 contribution items representing \$35,475.00. After subtraction of the \$69,000 of contributions which is not matched, it was determined that \$170,595.00 was eligible to be matched at the 2:1 ratio. Public funds in the amount of \$341,190.00 were therefore deposited for Submission #1. The ineligibility of 72 items submitted for match results in an error rate of 12.2% percent on the first submission.

The subsequent submissions filed by the Murphy campaign are summarized below:

Submission #	Total \$ Submitted	Total \$ Eligible for	Amount Deposited	Error Rate
	for Match	Match at 2:1		
2	\$ 30,001.00	\$ 28,751.00	\$ 57,502.00	5.4%
3	22,750.00	21,650.00	43,300.00	8.5%
4	64,475.00	70,325.00	140,650.00	13.4%
5	38,340.00	35,010.00	70,020.00	11.7%

Total 1997 Primary Election Public Funds Distributed

Including the submissions described above, to date, public funds totaling \$5,926,324.38 have been certified for 1997 gubernatorial primary election candidates as follows:

Robert E. Andrews	\$1,588,143.22
James E. McGreevey	1,825,519.16
Michael Murphy	652,662.00
Christine Todd Whitman	<u>1,860,000.00*</u>
TOTAL	\$5,926,324.38

*P97 maximum public funds

Submissions Received May 19, 1997

The Commission received submissions on May 19, 1997, from Candidates Andrews, McGreevey, and Murphy. The candidates reported the following net amount of contributions submitted for match, including resubmitted items from prior submissions:

Robert E. Andrews (Submission 4)	\$69,580.00
James E. McGreevey (Submission 10)	\$49,595.00
Michael Murphy (Submission 6)	\$76,650.00

Staff recommends that these submissions be processed using the automatic percentage certification process approved by the Commission at its meeting on March 25, 1997. Based upon the error rates obtained in the 1997 primary election submissions processed to date, staff recommended that Submission 4 filed by the Andrews campaign immediately receive 90% of funds submitted or \$125,244.00, and that the Murphy campaign immediately receive 80% of funds submitted or \$127,440.00 for Submission 6. With the completion of 1997 primary election Submission 9, as discussed above, the McGreevey campaign has received \$1,825,519.16 in public matching funds, and requires \$34,480.84 to reach the \$1.86 million maximum in public funds. Staff recommended certification of this amount.

On a motion by Vice Chair Linett, seconded by Commissioner Ware and passed by a vote of 4-0, the Commission directed staff to contact the McGreevey campaign with instructions to return to the State all interest earned from the investment of public funds.

On a motion by Commissioner Franzese, seconded by Vice Chair Linett and passed by a vote of 4-0, the Commission approved the staff report on the distribution of public funds.

Chair Martin recognized Mr. Frank C. Marmo, a Democratic candidate for Governor, for the purposes of making a public comment.

Mr. Marmo complained about being excluded from the televised debate featuring Democratic candidates for governor.

Chair Martin explained that neither the Commission nor he was involved in discussions regarding who would take part in the debates.

The gubernatorial public financing law stipulates that only candidates who have met the criteria to qualify for receipt of public funds may participate in the debates in which sponsors are selected by the Commission.

4. Executive Director's Report

Frederick M. Herrmann, Executive Director, welcomed the new Commissioner, Lynn B. Ware.

A. Staff Activities

Executive Director Herrmann reported that Director of Compliance and Information Evelyn Ford produced a summary book of lobbying financial disclosure for the public room. He said that it has proven to be very popular. Moreover, said the Executive Director, there has been a big demand for the video training tape produced by Director Ford. He said that it is mentioned in the candidate compliance manual. The manual, in addition to being sent out, it is also being viewed by candidates in the public room. Executive Director Herrmann said that Director Ford and her staff have reduced by a third the one week turnaround time for releasing candidate's reports. He noted that computer labeling has replaced manual coding.

Executive Director Herrmann indicated that Director of Review and Investigation Carol Hoekje has developed a new Review for Investigation Form. This form will simplify the process of presenting these matters to the Commission.

Executive Director Herrmann presented a copy of the 1997 Edition of Public Integrity Annual which contains an article by him on empowering ethics agencies by increasing their autonomy, budgeting, and enforcement capability.

Executive Director Herrmann said that Director Ford and her staff ran two public training sessions on April 7 and April 28, 1997 for candidates and treasurers.

The Executive Director indicated that on April 17, 1997, he was the lead witness at a campaign finance reform hearing held by the Senate Judiciary Committee. He discussed the state of the current law and ELEC recommendations for improvements. Executive Director Herrmann said that he emphasized the need for funding of recomputerization and enforcement. The Executive Director advised the Commission that Senator Gormley, the Chair of the Committee, noted that there was a consensus to provide more funding to ELEC for recomputerization and enforcement.

Executive Director Herrmann reported that on April 18, 1997, Deputy Director Brindle, Legal Director Nagy, Deputy Legal Director Massar, and Director Ford attended a Federal Election Commission regional workshop in Trenton on the intermixture of federal and state political party money in campaigns. He added that on April 23, 1997, Legal Director Nagy and he attended a talk by former ELEC Chair and Federal Election Commission Chair Frank Reiche at the Nassau Club in Princeton. Mr. Reiche spoke about federal campaign finance reform.

Executive Director Herrmann noted that Deputy Director Brindle, Deputy Legal Director Massar, Director of Administration Barbra Fasanella and he attended on April 29, 1997, the Assembly Budget Hearing on the Department of Law and Public Safety. He said that Chair Kavanaugh concluded the session with the comment that ELEC needs additional funding to bring its computer system and enforcement into the 21st century.

The Executive Director mentioned that on April 29, 1997, he went to an Eagleton Institute Seminar to hear Professor Michael Malbin speak about his new book on campaign finance reform. According to the Executive Director, Professor Malbin emphasized strongly the need for better-funded campaign finance agencies, stating that, "unadministered laws are useless." Executive Director Herrmann said that Professor Malbin also argued against "unrealistic limits" in the law because they encourage problems such as:

- Independent spending;
- Bundling; and,
- Issue advocacy.

Finally, said the Executive Director, Professor Malbin praised Deputy Director Brindle's work on the political party committee white paper.

Executive Director Herrmann stated that on May 2, 1997, Deputy Director Brindle, Deputy Legal Director Massar, Direct of Administration Fasanella, and he attended the Senate Budget Hearing on the Department of Law and Public Safety. He noted that Chair Littell asked him about ELEC's budgetary needs for recomputerization. He indicated that he responded that to continue ELEC's progress toward electronic filing, remote accessing, and scanning, the Commission would require an additional \$500K in its annual operating budget.

B. Future Meetings before General Election

June 26, 1997, at 11:00 a.m., Trenton;
July 22, 1997, at 11:00 a.m., Trenton;
August 22, 1997, at 11:00 a.m., Trenton (if needed);
September 9, 1997, at 11:00 a.m., Trenton; and
October 21, 1997, at 11:00 a.m., Trenton.

5. Advisory Opinion Request No. 03-1997

Douglas F. Doyle, Esq., on behalf of the Cary Edwards' 1993 Committee, a candidate committee filing reports for Mr. Edwards' 1993 gubernatorial primary election candidacy, has asked whether or not a candidate appointed to a public office and subject to ethical restrictions that preclude the candidate from knowing the identity of contributors and other information pertinent to the candidate's campaign reports can comply with the Campaign

Reporting Act's requirement that a candidate personally certify the correctness of the candidate's reports.

W. Cary Edwards was a candidate in the 1993 primary election for Governor who qualified for and accepted public financing. His committee continues to have substantial debt.

Mr. Doyle writes that Mr. Edwards has recently been appointed as a Commissioner of the State Commission of Investigation (SCI). He states that Rule 11 of the SCI Code of Ethics prohibits a Commissioner from making or soliciting a contribution to a candidate. Mr. Doyle therefore concludes that Mr. Edwards as a SCI Commissioner can no longer raise money or have knowledge of contributions to his 1993 election candidate committee without violating the SCI Code. He said that Mr. Edwards has ceased all fundraising efforts for the Edwards Committee.

In order to comply with the SCI Code, Mr. Doyle proposes to establish a committee to continue soliciting contributions and making expenditures to reduce its debt. Mr. Doyle states that Mr. Edwards would "...prevent and prohibit himself from gaining access to all future contribution or expenditure information..." and in lieu of certifying the correctness of future reports would submit an affidavit to the effect that the Committee and its Treasurer had represented to him that the reports were accurate and correct. Alternatively, Mr. Doyle proposes that Mr. Edwards be regarded as a former candidate pursuant to N.J.S.A. 19:44A-18, a statute that permits a committee or group on behalf of a former candidate to conduct a testimonial fundraising affair on behalf of the former candidate after a final report for that candidate is filed. Reports filed by a Section 18 fundraising committee would not necessarily require the personal certification of the former candidate.

Legal Director Nagy explained the staff recommendation that the Edwards Committee be advised that a candidate cannot substitute an affidavit to the effect that third persons have advised the candidate that the contents of the candidate's campaign report is correct for the candidate's personal certification of correctness. However, assuming the Commission wished to provide some relief in order that Mr. Edwards could serve on the SCI, he might be required to provide for review of his reports by a Certified Public Accountant working independently of the Treasurer, and submit an affidavit in which Mr. Edwards agrees to be liable for errors or omissions appearing on all candidate committee reports filed without his personal certification as to correctness.

Further, staff recommended that the Edwards Committee be advised that Section 18 does not have applicability to an individual who is still conducting fundraising as a candidate.

Chair Martin recognized Douglas F. Doyle, Esq., representing the Cary Edwards' 1993 Committee. Mr. Edwards was a candidate for governor in the Primary 1993.

Mr. Doyle said that Mr. Edwards had made a promise to those who provided services to the campaign that he would pay all debts and he intends to keep that promise. He said that when asked to serve on the SCI, Mr. Edwards immediately ceased all fundraising because of his concern for the integrity and credibility of that agency. Mr. Doyle added that Rule 11 of the SCI prohibits political activity, in particular fundraising.

Mr. Doyle said that it is the intention of Mr. Edwards to establish something akin to a blind trust. Under this scenario, the Committee would continue to raise money to pay off the debt but Mr. Edwards would be shielded from knowing from whom contributions derived.

Vice Chair Linett said that the Commission has continually given extensions to the Edwards Committee to raise money to pay off the debt but that it has not raised much money recently and is still more than \$90,000 in debt. He asked: Why shouldn't the Committee wrap up its business?

Mr. Doyle said that the Commission would have to allow it to end its existence with outstanding debt but that in any event, Mr. Edwards desires to pay off his obligations.

Vice Chair Linett said that the Commission has no authority over the debt, provided all public funds are accounted for, which they have been. He asked if Mr. Edwards has asked the SCI for an exception to its rule?

Mr. Doyle said that there is no need to ask for a ruling in that the code is clear.

Chair Martin said that however the situation is remedied the campaign statute is clear that Mr. Edwards would have to sign reports.

Mr. Doyle said that Mr. Edwards would be accountable and that he would accept the word of the Treasurer that the reports are accurate.

Commissioner Franzese asked: Given the SCI Code, how could Mr. Edwards have accepted the appointment?

Mr. Doyle said that Mr. Edwards immediately stopped fundraising and participation in the Committee.

Vice Chair Linett asked if Mr. Doyle would agree to an extension to give Mr. Doyle more time to further explore the issue, and consult with staff to derive a satisfactory remedy. Mr. Doyle consented to deferral of his request until the June, 1997 Commission meeting. He noted that a quarterly report will be due by July 15, 1997.

Commissioner Franzese said that she found it commendable that Mr. Edwards desires to pay off all the campaign debts.

The Commission deferred making a decision in this matter pending further discussions between Mr. Doyle and staff, and directed the matter be placed on its June, 1997 meeting agenda.

6. Advisory Opinion Request No. 04-1997

The Committee to Re-elect Mayor Brett Schundler, Inc. in requesting an advisory opinion, has asked whether a mayoral candidate running with a slate of council candidates in a municipal election may make contributions without limit to those candidates who are participating in the June 10th runoff election. The question presumes that the mayoral candidate will not be running in the runoff election.

Brett Schundler, the Mayoral candidate has both a candidate committee and a joint candidates committee in the May municipal election, and expects to have a surplus in his candidate committee account after the May 13th municipal election. If there are runoffs for any of his council running mates, Mayor Schundler proposes to support his teammates in the runoff by making unlimited contributions with funds in his candidate's account.

The Advisory Opinion Request states that the Schundler candidates have formed a joint candidates committee for the May municipal election, but because that slate will not exist as a slate in the future, that committee, which is incorporated, is scheduled to dissolve shortly after the May election. Unlike a candidate's committee which can be converted into the next election cycle, the request states that this joint candidates committee cannot because the association was formed for the sole purpose of this Municipal election. Because of this, all fundraising and spending was designed so that the account would have a zero balance at the end of the May campaign.

Legal Director Nagy explained the staff recommendation that a contribution made by Mayor Schundler's municipal election candidate committee to a Council candidate in the 1997 run-off election is subject to the contribution limit applicable to a candidate committee contributing to another candidate committee, that is \$5,900 in the aggregate per election; see N.J.S.A. 19:44A-11.3c, which provides a \$5,000 aggregate limit per election, and N.J.S.A. 19:44A-7.2 which provides for adjustment of that limit to its present level of \$5,900. This result is reached because the facts presented in this request assume that Mayor Schundler is not a candidate in the run-off election, and since the municipal and run-off elections are two separate elections for all purposes of the Reporting Act, the candidate contribution limit exception in paragraph c(4) is inapplicable to contributions made in the run-off election by the Schundler Municipal Committee.

On a motion by Vice Chair Linett, seconded by Commissioner Ware and passed by a vote of 3-0, the Commission approved the staff recommendation. Commissioner Franzese recused herself.

7. Proposed Regulation on Lobbying Benefit Notices

Late last year, a new law was enacted requiring lobbyists and legislative agents to provide written notice of any benefits that lobbyists or agents provided to legislators or other regulated persons.

Under the Legislative Activities Disclosure Act, a lobbyist or agent must file an Annual Report of its financial activity in the preceding calendar year by the following February 15th. Among the information that must be disclosed is any benefit provided to a legislator or other covered person if the value of the benefit exceeded \$25 in a day, or \$200 in a calendar year. Under the existing regulations, this information includes the name of the benefit recipient, the date and type of expenditure, the amount, and the name of payee.

The new law requires that no later than February 1st, the lobbyist or agent provide a written and certified report with this information to the benefit recipient. There is no requirement that this report be filed with the Commission. Among the legislative purposes of the law is an apparent intention to provide the recipient with an opportunity to correct any error that may exist in this information before it is publicly reported on February 15th, or possibly to reimburse the lobbyist or agent for the cost or value prior to the reporting deadline.

To implement the new law, staff circulated draft amendments of N.J.A.C. 19:25-20.11, Expenditures, and N.J.A.C. 19:25-20.12, Valuation of contributions and expenditures, and a new rule N.J.A.C. 19:25-20.13, Notice of lobbying benefit.

N.J.A.C. 19:25-20.11 describes the information a lobbyist or agent must report on its Annual Report for lobbying expenditures that provide benefits to legislators or other covered persons. The amendment requires disclosure of the reasonable commercial value and of any cost incurred in providing the benefit.

Vice Chair Linett suggested that the position held by the benefit recipient also be required to be disclosed.

N.J.A.C. 19:25-20.12 stipulates that where a contribution of goods or services is made to a lobbyist or legislative agent to influence legislation, or to influence regulation, the value of such receipt shall be its reasonable commercial value to the lobbyist or legislative agent receiving it. Moreover, where an expenditure of goods or services, including travel, is made by a lobbyist or legislative agent to any member of the Legislature, legislative staff, the Governor, the Governor's staff, or an officer or staff member of the Executive Branch, the value of the expenditure shall be its reasonable commercial value to the benefit recipient receiving it.

Proposed N.J.A.C. 19:25-20.13 contains the new requirements of the benefit notice law. Subsection (a) paraphrases the statutory requirements, and specifically mandates that the notice information and the Annual Report information be identical. Subsection (b) establishes a proof of service requirement. Subsection (c), permitting all benefits during the year to a recipient to be reported in one notice, is taken directly from the statute, and seems to be an appropriate efficiency. Subsection (d), concerning reimbursement by a recipient to a lobbyist or agent for a benefit received, is not explicitly contained in the new law. Staff suggested that the Commission use these regulations to address the subject of reimbursements, which appear to be becoming more common. Under the rule, the transaction cannot be treated as a "wash" and not reported. The lobbyist must report both the fact that a benefit was provided during a year, and that the legislator has made the reimbursement.

On a motion by Vice Chair Linett, seconded by Commissioner Franzese and passed by a vote of 4-0, the Commission directed staff to file the proposal as amended with the Office of Administrative Law.

8. Ballot Statement Program

Director Massar discussed the methodology for prorating the reimbursements to the county clerks for the ballot statement program pursuant to the Commission's FY-'98 gubernatorial public financing appropriation and recommended that the same methodology for reimbursement be used in 1997 as was used in 1993. Pursuant to N.J.A.C. 19:25-15.44(e), ballot statement claims are required to be filed by the county clerks no later than December 15, 1997. Once the total amount of the ballot statement claims is known, staff proposes to divide the total amount available in the budget (\$155,000 less translation and typesetting costs) by the total of the timely claims. The resulting percentage will be applied to each timely-filed reimbursement request. Each of the counties will therefore be paid that proportion of its total claim for reimbursement of gubernatorial ballot statement costs. Director Massar said that the clerks will be notified in the fall.

On a motion by Commissioner Ware, seconded by Commissioner Franzese and passed by a vote of 4-0, the Commission approved the ballot statement reimbursement methodology.

9. Resolution to Go Into Executive Session

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

- A. 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.

- B. 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 Commissioner Ware and passed by a vote of 4-0, 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 4-0, the Commission voted to adjourn at 1:30 p.m.

Respectfully submitted,

Frederick M. Herrmann, Ph.D.
Executive Director

FMH/elz