



State of New Jersey

ELECTION LAW ENFORCEMENT COMMISSION

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PUBLIC SESSION MINUTES

September 15, 1997

Chair Martin, Commissioner Ware, the Counsel, Senior Staff, and Deputy Legal Director Nedda Gold Massar were present. Vice Chair Linett, Commissioner Franzese, and Executive Director Frederick M. Herrmann participated by telephone.

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 6:00 p.m. in Trenton, New Jersey.

2. Consideration of the Office of Administrative Law Decision Re: Sabrin for Governor

Legal Director Gregory E. Nagy noted that both Richard E. Collier, Jr., Esq., counsel for Sabrin for Governor and he have waived the six-day period for filing exceptions. He said that exceptions would be presented orally.

Chair Martin recognized Mr. Collier.

Mr. Collier said that he agreed with the conclusion but disagreed with certain points made by Beatrice Tylutki, ALJ.

First, Mr. Collier said that the Sabrin campaign took exception to the conclusion of the Judge that the statute requires gubernatorial campaigns to raise and spend \$210,000 by September 2, 1997. He said that this requirement does not appear in the statutes. He said, it appears in the regulations.

Mr. Collier stated that to the extent that the September 1st deadline appears in the statutes (subsection 3m), it has nothing to do with the issue of raising and spending the threshold amount.

Mr. Collier stated that the campaign also takes issue with the staff's definition of what constitutes an expenditure. He said that the statute uses the word "commitment" as part of its definition of expenditure and that this word is a different word with a different meaning than "contract." Mr. Collier said that the staff is trying to make the word "commitment" mean the same as "contract" when the two words must be given separate meanings.

Mr. Collier stated that all individuals involved in the campaign believed the agreement with the media consultant, along with the media proposal to be a binding commitment. He said that under the statute, the campaign met the requirements of qualification.

Mr. Collier added that the requirement to provide documentation pursuant to ELEC's regulations does not appear in the statutes. He said that Section 17(g), which mentions contracts, checks or the like is a creature of ELEC's regulations.

Mr. Collier said that the Sabrin application is an unprecedented application and that there is obviously substantial ambiguity and doubt surrounding this whole issue. He said that the statute calls for public financing of gubernatorial campaigns and that, therefore, the Commission should decide this case on the merits in favor of the campaign. Mr. Collier said that the Commission should grant a waiver to the campaign in the interest of justice. He thanked the staff for their cooperation in accelerating this matter.

Legal Director Nagy presented the staff's exceptions to the decision of Beatrice Tylutki, ALJ. He said that Counsel James P. Wyse has also participated in this matter.

Legal Director Nagy said that the staff takes exception to the decision rendered by Judge Tylutki. He said that he agreed with the Judge that the statute is not ambiguous and requires candidates to raise and spend \$210,000 by the September 1st deadline. He said that ELEC's regulations are consistent with the statute.

The Legal Director said that he agreed also that the documents presented did not constitute an irrevocable commitment.

Legal Director Nagy said that staff does not agree with the conclusion that staff should grant the Sabrin Campaign a waiver nor does it agree that there exists a legally binding commitment. He said that as part of its review, staff must treat all submissions on an equal footing. He said that inexperience can not be taken into consideration in evaluating submissions.

Legal Director Nagy said that if the Commission accepted proposals as proof that expenditures were made, then the spending thresholds would be compromised.

Legal Director Nagy said that one party's belief that there is a binding commitment is not enough to constitute a binding contract.

Legal Director Nagy urged the Commission to reject Judge Tylutki's stated conclusions of law.

Commissioner Franzese said that it is a difficult case in terms of balancing access to the process and concerns about the integrity of the expenditure threshold. She asked if there is a way of fashioning a waiver that would not result in precedent.

Legal Director Nagy said that staff does not see this idea as an option at this time. He said that perhaps in the future staff could consider media as a separate category.

Mr. Collier said that in the interest of justice, the Commission can relax any regulation to effectuate the liberal construction of the Act.

Chair Martin said that the Commission can adopt, modify, or reject the Administrative Law Judge's initial decision in this matter.

3. Resolution to Go Into Executive Session

On a motion by Chair Martin, seconded by Commissioner Ware and passed by a vote of 4-0, the Commission resolved to go into closed Executive Session to discuss the eligibility of Gubernatorial Candidate Murray Sabrin for receipt of matching funds. Chair Martin asked Counsel James P. Wyse, Legal Director Gregory E. Nagy, and Deputy Legal Director Nedda G. Massar to recuse themselves from participating in the Executive Session discussion.

4. Return to Public Session

On a motion by Chair Martin, seconded by Commissioner Ware and passed by a vote of 3-0, the Commission voted to reconvene on September 19, 1997 at 4:00 p.m. for purposes of reaching a decision after review of all of the exhibits. Vice Chair Linett did not vote.

6 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 8:00 p.m.

Respectfully submitted,

Frederick M. Herrmann, Ph.D.
Executive Director