



State of New Jersey

ELECTION LAW ENFORCEMENT COMMISSION

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PUBLIC SESSION MINUTES

November 18, 1997

The Commissioners, 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 October 21, 1997

On a motion by Vice Chair Linett, seconded by Commissioner Franzese and passed by a vote of 4-0, the Commission approved the Public Session Minutes of October 21, 1997, as amended.

3. Executive Director's Report

A. National News

Executive Director Herrmann discussed a new book by Thomas Gais and Michael Malbin of the Rockefeller Institute entitled, The Day After Reform: Sobering Campaign Financing Lessons from the American States. The Executive Director said that the book reaches many important conclusions. Among the conclusions are that the authors found that "State agencies charged with administering campaign financing laws are woefully understaffed for performing even the simplest tasks given to them by their Legislatures" and that "no correlation between the complexity of the tasks in their statutes and the resources made available to do the job" exists.

According to Executive Director Herrmann, Trevor Potter, former Chair of the Federal Election Commission (FEC), recently commented about a similar lack of agency empowerment at the national level. He said that Mr. Potter stated that "it boggles the mind to think of the FEC . . . attempting to enforce even a tenth of the new regulations contained in the [McCain-Feingold] Bill." Executive Director Herrmann said that while the bill bestows a variety of new powers on the FEC "there is no evidence that the FEC would . . . have the resources . . . to exercise them."

Executive Director Herrmann said that we can certainly be proud in New Jersey that the Governor and Legislature gave ELEC more funding for its FY-98 budget.

B. Recomputerization

The Executive Director said that the first step of recomputerization is nearly completed. He noted that the office has been rewired, a local area PC network is in place, and the software from the old system has been converted to the new one. This phase took almost two years to complete. Executive Director Herrmann added that staff is now working toward creating some interactive applications for the internet and will continue planning for the electronic filing of reports. Executive Director Herrmann acknowledged that electronic filing will be a multi-year project and mentioned that two full-time programmers should be hired in the near future to assist in this effort and other computer initiatives.

C. Staff Activities

Executive Director Herrmann reported that on October 15, 1997, he was interviewed by Eric Westervelt of National Public Radio about campaign finance issues in the Gubernatorial election. He added that on the same date, he was interviewed by Adam Freed of News 12 New Jersey about issue advocacy and generic advertising.

Executive Director Herrmann stated that on October 20, 1997, Director of Compliance and Information Evelyn Ford and her staff circulated a comprehensive, analytical press release on money raised and spent in the legislative election. He noted that all candidates were rank ordered by the amounts they raised and spent and that various statistical breakdowns by party, house, and incumbent/challenger were provided.

Executive Director Herrmann said that the election will be the most expensive in State history though some of the increased spending reported is due to better disclosure under the 93 amendments to the Campaign Act.

The Executive Director added that in 1993, many candidates still had personal PACs that were spending money that did not show up on the candidates' main reports.

Executive Director Herrmann reported that White Paper #12 has been completed by Deputy Director Brindle. He said that it is a highly original study of campaign financing activity by county political party committees. Executive Director Herrmann suggested that the report should be of great interest at the national as well as the State level because local campaign financing studies are exceedingly rare and this one is very well done.

Executive Director Herrmann turned to Deputy Director Brindle who discussed the highlights of his analysis.

Deputy Director Brindle thanked numerous staff people for their contributions to the study. In particular, he thanked Frederick M. Herrmann, Executive Director; Gregory E. Nagy, Legal Director; Nedda G. Massar, Deputy Legal Director; Evelyn Ford, Director of Compliance and Information; Carol Neiman, Systems Administrator; Elbia Zeppetelli, Administrative Assistant; Steven Kimmelman, Research Assistant; and, Darlene Kozlowski and Pam Kinsey, Data Entry Operators.

Deputy Director Brindle provided a brief history of county party committees in New Jersey. He stated that the premise of the study is that county party committees, which had grown weak by the mid-1980's, are again important players in the electoral process in New Jersey. Deputy Director Brindle said that two events, the U.S. Supreme Court Eu decision in 1989 and the 1993 Campaign Finance Reform Act were catalysts for party revival. Deputy Director Brindle provided an overview of financial data included in the study, which support the theory that the county party committees are again an important part of the process. The report recommended that the contribution limit on donations to these committees be reduced from \$30,000 a year to \$10,000.

The Commissioners praised the work as an important contribution to the field.

D. Future Meetings

December 16, 1997, 10:00 a.m., Trenton (A photographer will be present).

4. 1997 General Election Matching Fund Submissions and Return of Unexpended Funds by 1997 Primary Election Campaigns

Deputy Legal Director Nedda G. Massar reported that staff has completed its review of the submissions received on October 14, 20, and 27 and November 3, 1997, from Candidates James E. McGreevey and Murray Sabrin. The results are:

McGreevey General Election Submissions 8 and 9

Submission #	Total \$ Submitted for Match	Total \$ Eligible for Match at 2:1*	Amount Deposited	Error Rate
8	\$162,255.00	\$160,770.00	\$305,711.00	8.2%
9	\$ 48,620.00	\$ 68,095.00	\$ 88,691.34**	4.8%

The \$305,711.00 deposited for McGreevey Submission 8 represents an 85% automatic percentage certification. Before staff concluded its detailed review of Submission 8, the McGreevey campaign reached the \$4.6 million maximum in 1997 general election public funds as a result of automatic certification of 60.7 percent, or \$88,691.34, on Submission 9. Staff has now concluded detailed review of Submissions 8 and 9 and verified that the amounts deposited were supported by the submission documents.

Sabrin General Election Submissions 2, 3, 4, and 5

Submission #	Total \$ Submitted for Match	Total \$ Eligible for Match at 2:1*	Amount Deposited	Error Rate
2	\$36,764.59	\$26,364.59	\$52,729.18	19.8%
3	\$45,992.81	\$34,902.32	\$69,804.64	16.4%
4	\$38,450.11	\$32,662.11	\$65,324.22	16.4%
5	\$ 8,068.00	\$13,229.00	\$26,458.00	15.2%

*Total eligible for match after deduction of rejected items in this submission, and addition of items resubmitted for match in this submission and accepted.

**Amount needed to reach the \$4.6 million maximum in 1997 general election public matching funds.

Including submissions received through November 3, 1997, public funds totaling \$9,737,107.80 have been certified for 1997 gubernatorial general election candidates as follows:

James E. McGreevey	\$4,600,000.00
Murray Sabrin	537,107.80
Christine Todd Whitman	<u>4,600,000.00</u>
TOTAL	\$9,737,107.80

Staff will report to the Commission on December 16, 1997, on any additional submissions received.

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

Return of Unexpended Funds by 1997 Primary Election Campaigns

Immediately following the primary election, staff sent letters to the four candidates participating in the public financing program about the restrictions on postelection spending, the requirement to file postelection quarterly reports, and the obligation to return to the State all funds remaining unexpended after the liquidation of all obligations. The deadline for return of unexpended funds by 1997 gubernatorial primary election publicly-financed candidates is December 3, 1997.

5. Initial Decision in Gubernatorial Expenditure Limit Cases

For detailed information, please see the memorandum from Gregory E. Nagy, Legal Director and Nedda G. Massar, Deputy Legal Director to Frederick M. Herrmann, Ph.D., Executive Director, dated November 6, 1997 and entitled "Initial Decision in McGreevey for Governor '97, Inc. v. Whitman for Governor, PF 01-97(G), Dkt. No. ELE 08163-97 and Whitman for Governor v. McGreevey for Governor '97 Inc. and James E. McGreevey, PF 02-97(G), OAL Dkt. No. 08162-97. Also, see the Initial Decision Settlement decided on October 20, 1997, by Administrative Law Judge Beatrice S. Tylutki.

Legal Director Nagy explained that the complaints in the two gubernatorial expenditure limit cases which are the subject of Judge Tylutki's Initial Decision concern allegations that various political communications should be counted toward the \$6.9 million 1997 general election expenditure limit applicable to the Whitman and McGreevey campaigns. While the parties have agreed to withdraw their complaints, staff is concerned that portions of the settlement approved by Judge Tylutki exceed the Commission's jurisdiction and might bind non-parties from cooperating in future Commission investigations. Staff therefore recommended that the Commission adopt the parts of the Initial Decision that withdraw the two complaints and reject those portions that are beyond the Commission's jurisdiction and that preclude non-parties from future cooperation in matters brought to the Commission.

Chair Martin recognized Paul Josephson, Esq., General Counsel for McGreevey for Governor '97, Inc. Mr. Josephson urged the Commission to accept the Initial Decision by Judge Tylutki in which the parties to the complaints released the complaints against each other. He said that the agreement does not preclude the Commission from conducting its own investigation.

Vice Chair Linett said that the Commission should modify Judge Tylutki's decision by stipulating that nothing in the Final Decision is intended to prohibit the Commission from undertaking its own investigation into matters raised in the complaints or other matters.

Both Commissioner Franzese and Chair Martin believed the Final Decision draft proposed by staff stipulated that the Commission could undertake its own future investigation.

Mr. Josephson asked that the Final Decision hold that the Commission approves the Stipulation of Dismissal between the parties to the complaints.

Legal Director Nagy explained that staff recommends that Paragraphs A, B, E, and G of the agreement among the parties be adopted because they dispose of the issues over which the Commission has jurisdiction. Paragraphs C, D, and F should be rejected because they concern areas of law beyond the Commission's jurisdiction and referral of matters which were specifically excluded from the issues heard before the Office of Administrative Law. He also explained the staff recommendation that Paragraph H be rejected because it is

overbroad in seeking to bind persons or entities which are not parties to the cases and to preclude their cooperation in proceedings which may come before the Commission.

The Commission determined that it would add the following sentence to the proposed Final Decision: "The Final Decision is not intended to disturb the Settlement Agreement reached among the parties."

On a motion by Commissioner Franzese, seconded by Commissioner Ware and passed by a vote of 4-0, the Commission adopted as its Final Decision the Initial Decision of the Honorable Beatrice S. Tylutki only as to Paragraphs A, B, E, and G of the Consent Stipulation of Dismissal With Prejudice incorporated in the Initial Decision. The Commission rejected Paragraphs C, D, F, and H of the Consent Stipulation of Dismissal With Prejudice as incorporated in the Initial Decision because those provisions concern matters which are outside the jurisdiction of the Act and beyond the scope of the referral of these consolidated cases to the Office of Administrative Law and because they seek to bind persons or entities who are not litigants in these consolidated cases.

6. Advisory Opinion Request No. 06-1997

Assemblyman Alex DeCroce (District 26), Deputy Speaker of the General Assembly, requested an advisory opinion on whether or not it is permissible to use his candidate committee funds to pay expenses incurred by his spouse and children who accompanied him during his attendance at the Eastern Regional Conference of the Council of State Governments (ERC/CSG) annual meeting held in Portland, Maine from July 27 through 30, 1997. Please see Advisory Opinion Request No. 06-1997, and Assemblyman DeCroce's supplemental September 2, 1997 letter for further information.

At its September 9, 1997 meeting, the Commission directed staff to seek the views of the New Jersey Legislature's Joint Committee on Ethical Standards because of that body's past comments on Commission rules regulating "ordinary and necessary" officeholding expenses.

After reviewing the transcript of proceedings of the Ethical Standards Committee and after researching the law in other States, the staff noted that there is a wide divergence of views among the Committee members and in other States. In a memorandum from Legal Director Nagy circulated to the Commission, staff recommended that the Commission permit such expenses to be paid out of campaign funds only when the officeholder demonstrates a bona fide campaign or officeholding purpose in a family member's attendance.

In this request, Assemblyman DeCroce is seeking to use his campaign funds to pay for registration expenses of \$300 for his wife and two children, and a hotel expense of \$545.20 for those persons. The sole reason he has offered for the attendance of his family was for his family to spend time with him while he was attending. He has not suggested that his spouse had any role to play in the carrying out of his officeholding duties at the conference. In the absence of any such supporting role for Assemblyman DeCroce's officeholding duties, and

on the ground that the Assemblyman's family attended because of his wish to have the company of his family, staff suggested that no bona fide officeholding reason for their attendance has been offered. For this reason, the staff recommended that Assemblyman DeCroce be advised the use he has submitted in this request is not permissible.

Chair Martin recognized Marci Hochman, Esq., Assistant Legislative Counsel to the Joint Legislative Committee on Ethical Standards, who reiterated that the Committee members could not reach a consensus on use of candidate funds for family travel.

Chair Martin said that while he believes that the request needs a broader discussion, in this instance, he would support the Advisory Opinion Request.

Commissioner Ware agreed.

Vice Chair Linett said that he agreed completely with staff's proposed response to the Advisory Opinion. He said, however, that while the Commission should vote on this request it should also consider regulations in this area in the future.

On a motion by Vice Chair Linett, seconded by Commissioner Ware and passed by a vote of 4-0, the Commission voted to advise Assemblyman DeCroce that his candidate committee funds could not be used to pay his family's travel expenses under the facts submitted and directed staff to issue the response to this Advisory Opinion Request.

7. Resolution to Go Into Executive Session

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

8. Return to Public Session

1998 Commission Meeting Schedule Approval

On a motion by Commissioner Ware, seconded by Commissioner Franzese and passed by a vote of 4-0, the Commission approved the 1998 Commission Meeting Schedule.

9. 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 1:00 p.m.

Respectfully submitted,

Frederick M. Herrmann, Ph.D.
Executive Director

FMH/elz