



State of New Jersey

ELECTION LAW ENFORCEMENT COMMISSION

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PUBLIC SESSION MINUTES

December 16, 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 10:00 a.m. in Trenton, New Jersey.

2. Approval of Public Session Minutes of November 18, 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 November 18, 1997.

3. Executive Director's Report

A. Staff Activities

Executive Director Herrmann announced that Assistant Compliance Officer Amy Davis is preparing a new brochure for the public room. He said that it will provide an outline of materials and services that are available there for its many users.

The Executive Director reported that on November 13, 1997, he attended a panel discussion about the gubernatorial election at the Eagleton Institute. Executive Director Herrmann said that on the panel were political consultants Roger Bodman, Harold Hodes, and Brad Lawrence; Gregg Edwards, the Executive Director of the Senate; and Martha McKay, a reporter for the Home News & Tribune. According to

the Executive Director among the topics reviewed were: the effects of the expenditure limit on the campaign and the role of Murray Sabrin's third party candidacy.

Executive Director Herrmann noted that on November 19, 1997, he spoke to the Public Affairs Council's New Jersey State Government Relations Workshop in Trenton on the topic "Legal Constraints: Corporate PACs and Lobbying Registration." He said that other speakers for the two-day program were: Professor Steven Salmore of the Eagleton Institute, Michael Aron of the New Jersey Network, Governor Whitman's Chief Counsel Mike Torpey, and Joseph Gonzales of the New Jersey Business and Industry Association.

Executive Director Herrmann informed the Commission that on November 20, 1997, Associate Compliance Officer Linda White and Assistant Compliance Officer Amy Davis staffed an ELEC consulting table at the annual meeting of the New Jersey League of Municipalities in Atlantic City.

Executive Director Herrmann advised the Commission that on December 10, 1997, Director of Compliance and Information Evelyn Ford and her staff circulated a comprehensive, analytical press release on the money raised and spent in the Legislative election. He said that all candidates were ranked by the amounts they raised and spent. According to Executive Director Herrmann various statistical breakdowns by party, house, and incumbent/challenger were provided.

Executive Director Herrmann noted that this election was the most expensive in State history and that contributing to the spending was the participation of State, county, and leadership party committees. The Executive Director reported that these 48 entities have the ability to receive contributions of up to \$30,000 per year. Executive Director Herrmann mentioned that ELEC has recommended that this amount be reduced to \$10,000.

B. Winter Meeting Schedule

- January 28, 1998, at 10:00 a.m. - Seton Hall Law School
- February 18, 1998, at 11:00 a.m. - Seton Hall Law School
- March 18, 1998, at 11:00 a.m. - Burlington County Board of Freeholders

4. Initial Decision in Whitman for Governor v. CWA Local 1037, McGreevey for Governor '97, Inc., and James E. McGreevey, PF 05-97(G), OAL Dkt. No. ELE 9695-97

Staff recommended that the Commission adopt as its Final Decision the Initial Decision of the Honorable Edith Klinger, Administrative Law Judge, in Whitman for Governor v. CWA Local 1037, McGreevey for Governor '97, Inc., and James E. McGreevey. This case originated with a two-count complaint filed on October 10, 1997, alleging that expenditures

by the respondent union for an internet Website, materials, and rally were expenditures coordinated with the McGreevey campaign, and that costs attributable to those expenditures should be allocated against Candidate McGreevey's \$6.9 million 1997 gubernatorial general election expenditure limit. The case was referred to the Office of Administrative Law on an Order to Show Cause on October 14, 1997, for hearing only as to allegations constituting violations of the gubernatorial expenditure limit. The Initial Decision incorporates and approves the parties' Consent Order of Dismissal With Prejudice. Staff has independently verified that the Website at issue now contains a statement that it was not prepared with the cooperation, consent, or in consultation with the McGreevey campaign, and that a certification of independence of expenditures has been filed pursuant to N.J.A.C. 19:25-15.28.

On a motion by Vice Chair Linett, seconded by Commissioner Ware and passed by a vote of 4-0, the Commission adopted the Initial Decision of Administrative Law Judge Klingler as its Final Decision and directed staff to issue the Final Decision.

5. Report on Return of Unexpended Funds by 1997 Gubernatorial Primary Election Campaigns

Following the 1997 gubernatorial primary election, and again following receipt of quarterly postelection reports on October 15, 1997, staff advised Candidates Robert Andrews, James McGreevey, Michael Murphy, and Christine Todd Whitman in writing of the restrictions on postelection spending, the continuing requirement to file postelection quarterly reports, the obligation to observe the contribution limit if further fundraising activity is necessary, and the obligation to return to the State all funds remaining unexpended after the liquidation of all obligations.

The following summarizes the status of each primary campaign with regard to unexpended primary campaigns:

Candidate Christine Todd Whitman

The unaudited October 15, 1997 quarterly report filed by the Whitman primary election campaign indicated that no funds are available for return to the State because outstanding obligations (\$35,297.17) exceed cash-on-hand (\$18,597.75). Staff recommended that the campaign be advised in writing of the continuing obligation to file postelection quarterly reports, the postelection spending restrictions, the requirement to observe the \$2,100 primary election contribution limit in any future fundraising, and the continuing obligation to return to the State any funds which may become available once outstanding obligations are liquidated.

Candidates Michael Murphy, Robert Andrews and James McGreevey

The October 15, 1997 quarterly report filed by Candidate Michael Murphy indicated that outstanding obligations exceeded cash-on-hand. Candidate Murphy subsequently

provided additional information concerning account balances indicating that as of December 4, 1997, cash-on-hand exceeds outstanding obligations by \$1,308,68. Candidate Murphy therefore refunded \$1,308.68 to the State. He further indicated that he expects estimated future receipts in the amount of \$10,886.84 from refund of deposits and the sale of equipment, and characterized that amount as an estimated refund due to the State.

Summary information contained in the October 15, 1997 quarterly reports filed by Candidates Andrews and McGreevey disclosed balances eligible for return to the State in the amounts of \$96.70 and \$10,105.93, respectively. In correspondence received on November 14, 1997, Ann Marie Donio, treasurer for Robert Andrews, requested Commission authorization to retain the balance to pay for audit-related expenses and for possible return of contribution items still under review. In letters dated November 24 and December 4, 1997, McGreevey campaign treasurer Robert J. Long requested permission to retain the account balances to cover the costs of reporting and compliance tasks and to pay audit-related expenses.

Staff recommended that the Commission approve retention of funds by the Andrews and McGreevey campaigns in the amounts discussed above to meet audit and other expenses necessary to close the 1997 primary election campaigns. It recommended that each campaign be advised in writing of the Commission's decision, and of the requirements to observe postelection restrictions on spending pursuant to N.J.A.C. 19:25-16.33 and 34, file postelection quarterly reports, and return unspent balances to the State at the conclusion of audit activity.

On a motion by Commissioner Ware, seconded by Commissioner Franzese and passed by a vote of 4-0, the Commission approved the staff recommendations regarding unexpended 1997 gubernatorial primary election funds.

6. Planning for Hearings Concerning the 1997 Public Financing Program

Staff suggested that hearings be held on February 18 and March 18, 1998, which are regularly scheduled Commission meetings.

Staff suggested that the hearing announcements seek comments on witnesses' experiences with the Public Financing Program and suggestions for statutory and regulatory changes. Staff will advise the Commission of progress on the hearing arrangements at the January 28, 1998 Commission meeting and will supply the Commissioners with a list of suggested topics for questions to be asked of witnesses at the hearing.

Vice Chair Linett suggested that the Commissioners be faxed a preliminary list of topics for discussion at the hearings.

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

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.

9. Public Hearing on Proposed Legal Fees Regulations

The Commission opened a public hearing at 11:15 A.M. on its proposed regulation governing permissible use of candidate funds to pay for legal fees arising out of an election candidacy or carrying out officeholding duties. Please see a copy of the proposal notice which appeared in the December 1, 1997 New Jersey Register.

A Court Reporter was present to record the hearing. No individuals appeared to offer testimony on the proposed rule. For discussion, please see the transcript as provided by the Court Reporter. Legal Director Nagy explained that the comment period will expire on December 31, 1997, and therefore the proposal will be ripe for adoption at the January 28, 1998 Commission meeting.

10. 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 12:00 p.m.

Respectfully submitted,

Frederick M. Herrmann, Ph.D.
Executive Director