



State of New Jersey

ELECTION LAW ENFORCEMENT COMMISSION

RALPH V. MARTIN
Chair

DAVID LINETT
Vice Chair

PAULA A. FRANZESE
Commissioner

LYNNAN B. WARE
Commissioner

Respond to:
P.O. Box 185
Trenton, New Jersey 08625-0185

(609) 292-8700

Website: <http://www.state.nj.us/lps/elec/>

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 27, 1999

Chair Martin, Commissioner Franzese, Commissioner Ware, Counsel Wyse, Senior Staff, and Deputy Legal Director Nedda Gold Massar were present. Vice Chair Linett was not present at the meeting.

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 December 16, 1998 and January 7, 1999

On a motion by Commissioner Ware, seconded by Chair Martin and passed by a vote of 2-0, the Commission approved the Public Session Minutes of December 16, 1998 and January 7, 1999.

Commissioner Franzese arrived at this point.

3. Executive Director's Report

A. Electronic Disclosure Update

Executive Director Herrmann reported that numerous tasks have been completed. He said that the installation of hardware has been accomplished. According to Executive Director Herrmann, back-ups are now done each night automatically and all staff have upgraded PC's. Executive Director Herrmann said that Internet connections have been installed.

Certain tasks in progress were reviewed by Executive Director Herrmann. He said that work on the scanning and imaging of reports is progressing. The computer project team is working on the searchable database function as well as the function to establish downloadable databases. Executive Director Herrmann said that the development of electronic filing is moving ahead as well as the automation of various administrative functions.

Executive Director Herrmann said that staff has come to agree with General Eisenhower's observation before D-day that before a battle planning is everything but after the fighting starts you have to throw out the plans.

According to Executive Director Herrmann, staff has encountered numerous unexpected technical, legal, and personnel issues along the way. He said, however, that in the "immortal" words of Clint Eastwood's character in the Marine Corps Film Heartbreak Ridge, we have improvised, adapted, and overcome. The Executive Director noted that staff in the Governor's Office has been very helpful to ELEC when there was a need to contact them.

Executive Director Herrmann informed the Commission that due to the efforts of Systems Administrator Carol Neiman, Director of Compliance and Information Evelyn Ford, and Deputy Legal Director Massar the project is moving forward in a most satisfactory manner.

B. National Ethics News

Executive Director Herrmann advised the Commission that the U.S. Supreme Court has struck down a group of Colorado initiative regulations. He mentioned that the regulations call for persons circulating petitions to be registered voters, wear badges, and be disclosed in reports if paid. He said that the decision is being viewed as another indication that the court is not willing to lower the level of First Amendment scrutiny for campaign regulations in general.

Executive Director Herrmann noted that Justice Ginsberg, who wrote the Majority Opinion, said the First Amendment's Free Speech guarantee required the court to be "vigilant" in guarding against "undue hindrances to political conversations and the exchange of ideas."

C. Staff Activities

Executive Director Herrmann advised the Commission that on January 19, 1999, he participated in an international conference call of the COGEL Awards Committee to rewrite the rules for presenting the award. He recommended that the rules that prohibit a Steering Committee member from being considered for the award, nominating or formally endorsing a candidate for the award, or participating in the consideration of persons from their agencies be extended to the Awards Committee. According to the Executive Director, the recommendation was accepted unanimously.

D. Legislative Developments

Executive Director Herrmann reported that on January 21, 1999, he testified in favor of S-1394 (Schluter/O'Conner) and the Assembly Committee Substitute for A-2370 (Geist/Lance) before the Senate Judiciary Committee. He said that these bills require timely disclosure of contributions received and expenditures made by individuals involved in "testing-the-waters activity." According to Executive Director Herrmann, such activity is not required to be reported until candidacy is established. The Executive Director commented on potential first amendment ramifications for the proposals if the courts decide that testing activity is not close enough to candidacy to warrant regulation. He said the committee unanimously released both bills which will go to the Assembly for further action.

E. Winter – Early Spring Meeting Schedule

February 24, 1999 at 12:30 p.m. in the Somerset County Administration Building

March 24, 1999 at 11:00 a.m. in Trenton

April 21, 1999 at 11:00 a.m. in Trenton.

4. Proposed Regulations Regarding Contributor Identification

Rules prohibiting contributions from partnership entities, and enactment of new laws requiring reporting of the occupation and employer of individuals, have generated an increasing number of inquiries to the Compliance and Information Section concerning correct identification of contributor categories. Therefore, candidates and committees need guidance from ELEC's regulations on how to determine correct contributor categories. Legal Director Nagy explained that to accomplish this, staff is proposing that a definition of "contributor" be added to the general definitions at N.J.A.C. 19:25-1.7 and that a new rule, N.J.A.C. 19:25-10.15, Contributions made by check, be proposed. The proposed rule provides guidelines for recipient candidates, committees, and treasurers for determining the correct contributor for each contribution received by check.

Commissioner Ware asked whether or not the 10-day period in the new rule for ascertaining the correct contributor was too short. Legal Director Nagy indicated that it was derived from the statutory requirement that contributions be deposited within 10 days of receipt. Commissioner Ware suggested that the change, if adopted, be highlighted to campaigns.

Commissioner Franzese commented on the clarity of the proposal.

For details, please see the memorandum from Legal Director Nagy, entitled "Proposed Regulations Regarding Contributor Identification." The proposal will be scheduled for a public hearing at the April 21, 1999 meeting.

On a motion by Commissioner Franzese, seconded by Commissioner Ware and passed by a vote of 3-0, the Commission approved the proposal and directed staff to file the proposal with the Office of Administrative Law for publication in the New Jersey Register.

5. Resolution to Go Into Executive Session

On a motion by Commissioner Ware, 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. 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.
- 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.

6. Return to Public Session

On a motion by Commissioner Ware, seconded by Commissioner Franzese and passed by a vote of 3-0, the Commission voted to return to Public Session.

7. Adjournment

On a motion by Commissioner Franzese, seconded by Commissioner Ware and passed by a vote of 3-0, the Commission voted to adjourn at 1:00 p.m.

Respectfully submitted,

Frederick M. Herrmann, Ph.D.
Executive Director

FMH/elz