



*State of New Jersey*

**ELECTION LAW ENFORCEMENT COMMISSION**

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DAVID LINETT  
Vice Chair  
  
PAULA A. FRANZESE  
Commissioner  
  
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PUBLIC SESSION MINUTES

March 24, 1999

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

1. Open Public Meetings Statement

Vice Chair Linett 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.

Chair Martin arrived as this point.

2. Approval of Public Session Minutes of February 24, 1999

On a motion by Commissioner Ware, seconded by Vice Chair Linett and passed by a vote of 3-0, the Commission approved the Public Session Minutes of February 24, 1999.

3. Executive Director's Report

A. Staff Activities

Executive Director Herrmann reported that on February 23, 1999, staff released the 1998 lobbying reports to the media. He said that Director of Compliance and Information Evelyn Ford and Director of Systems Administration Carol Neiman created an assortment of computerized lists containing alphabetized records of expenditures and benefit passing. The Executive Director noted that numerous media stories were based on their work.

Executive Director Herrmann mentioned that on February 24, 1999, Director Ford was a guest speaker at the Christine Todd Whitman Excellence in Public Service Series. According to the Executive Director, she discussed compliance with the campaign financing law.

Executive Director Herrmann advised the Commission that on February 25, 1999, he addressed a team participating in Leadership New Jersey's Seminar on government, politics, and the press. He said that he answered many excellent questions about the campaign financing and lobbying laws and ELEC's role in administering them. The Executive Director added that Commissioner Franzese is an alumna of Leadership New Jersey.

Executive Director Herrmann reported that Director Ford will be running two spring informational seminars on April 6 and April 29, 1999, in Trenton for candidates and treasurers participating in the primary election. According to Executive Director Herrmann, Director Ford initiated for the 1998 general election a third non-filer letter, which reduced the rate of non-filing in half.

B. Recomputerization

Executive Director Herrmann said that the electronic disclosure vendor has praised ELEC's staff for its willingness and effort to adapt to the Commission's new recomputerized environment. According to the Executive Director, the vendor has also commented about the incredible complexity of the work staff does on a daily basis.

Executive Director Herrmann noted that ELEC now has direct control over its homepage, thanks to the work of Assistant Systems Administrator Kim Vandegrift. He said that if the Commission wants to make changes, they can be done immediately without the intervention of the Office of Information Technology. According to Executive Director Herrmann, she is also involved with the ongoing redesign of the page to make it more user friendly. Executive Director Herrmann added that she recently fulfilled creatively a complicated media request for packaging lobbying data in a form that could be reformatted for varied applications.

C. Ethics Filing Reminder

Executive Director Herrmann reminded the Commissioners that their ethics forms have to be filed with the Executive Commission on Ethical Standards and the Governor's Chief Counsel before May 15, 1999. He mentioned that the final page of both copies must contain an original signature and an original notarization.

D. Spring Meeting Schedule

April 21, 1999 at 11:00 a.m. in Trenton (hearing date)

May 19, 1999 at 11:00 a.m. in Trenton.

June 24 or June 25 at 11:00 a.m. in Trenton

4. Gubernatorial Public Financing Recommendations

At its December 16, 1998 and February 24, 1999 meetings, the Commission reviewed additional staff recommendations for regulatory action concerning the gubernatorial public financing program and suggested further changes to several proposals. For detailed information, please see the Public Session Minutes of December 16, 1998 and February 24, 1999. Also see the memoranda from Gregory E. Nagy, Legal Director and Nedda Gold Massar, Deputy Legal Director, dated February 16, 1999 and March 16, 1999, to Frederick M. Herrmann, Ph.D., Executive Director and entitled in both instances, "Gubernatorial Public Financing Recommendations."

Vice Chair Linett said that he had asked staff to determine whether or not the national parties can operate independently of the gubernatorial candidate in the state. He said that he believes it is realistic to assume that the national party committees are not independent of gubernatorial candidates, and therefore if a national political party purchases an advertisement on behalf of a gubernatorial candidate it would have to be assumed that the effort is coordinated with the candidate.

The March 16 memorandum circulated by staff noted that federal and state court opinions have held that political party committees can make expenditures independently of their candidates, and therefore presuming coordination between a candidate and a party committee may prove problematic. Also, staff noted the term "national committee" of a political party is not defined in the Act, and federal law includes entities such as Congressional party campaign committees as well as the two national party committees. The memorandum suggested that the Commission recommend legislation in the area of national party expenditures before attempting to prohibit them by regulation.

Chair Martin stated it was his understanding that under the holding in the Kean case, the Commission cannot presume that a candidate has control over political advertising without some evidence of coordination between the party and the candidate.

Vice Chair Linett said that a national party committee is a legal entity, which is clearly affiliated with state party committees.

Executive Director Herrmann said that recent court decisions seem to suggest that parties have the ability to function independently. The court is protecting the free speech rights found in the First Amendment. He said that courts are not finding in favor of expenditure limitations.

Commissioner Ware said that she is reluctant to adopt regulations that prohibit national party committees from making independent expenditures. She said that if a prohibition on independent expenditures by national parties is to be accomplished, it should be done through legislation, not by regulation.

Vice Chair Linett said that New Jersey has expenditure limits and ELEC should try to do everything it can to prevent the circumvention of those limits. He asked whether or not the Federal Election Commission has prohibited independent expenditures. Legal Director Nagy responded that staff is not aware of any FEC or state prohibition of independent expenditures by national party committees.

Chair Martin suggested that the Commission solve this issue by considering a reporting mechanism for national party committees that would better enable the Commission to determine whether or not spending by them is independent. He suggested that the Commission should first recommend to the Legislature that it provide in the statute a definition of national party committee. The Commission agreed.

On a different subject, Vice Chair Linett suggested that N.J.S.A. 19:25-15.30, Coordinated expenditures, include as a criterion a "reference to a gubernatorial campaign or election." After a short discussion, the Commission did not accept this suggestion.

Deputy Legal Director Massar asked the Commission whether or not it intended to propose N.J.S.A. 19:25-16.29, Prohibition on independent expenditures by state party committees, which regulation would prohibit independent expenditures by a state party committee which voted to endorse a candidate in the primary election. The Commission indicated that this proposal should be included in the proposed regulations.

Vice Chair Linett said that overall the proposed amendments to the public financing regulations constitute an improvement over the current regulations.

On a motion by Vice Chair Linett, seconded by Commissioner Ware and passed by a vote of 3-0, the Commission directed staff to propose the gubernatorial public financing regulations with the Office of Administrative Law as amended in both substantive and technical form.

##### 5. Advisory Opinion No. 01-1999 (New Jersey Credit Union League)

The New Jersey Credit Union League (NJCUL) asked the Commission to seek on its behalf an advisory opinion from the State Attorney General regarding the possible applicability to its contemplated activity of the statutory prohibition on political contributions by a corporation carrying on the business of a bank as set forth in N.J.S.A. 19:34-45.

The request, submitted by Michael A. Colodney, Esq., representing the New Jersey Credit Union League, presented two questions. First, Mr. Colodney asked if the prohibition statute extends to a trade association consisting of corporations prohibited from making contributions. Second, he asked if the continuing political committee (CPC) established by the association may solicit contributions from individual members of the credit unions that are members of the trade association.

Staff recommended that the Commission forward the request to the Attorney General for his consideration because it raises substantial questions concerning political activity by credit union businesses.

On a motion by Vice Chair Linett, seconded by Commissioner Ware and passed by a vote of 3-0, the Commission directed staff to refer the request to the Office of the Attorney General.

6. Public Session

Janice Presser, Ph.D., Chair of the New Jersey Libertarian Party, read into the record a letter she sent to Executive Director Herrmann regarding representation by alternative parties on the Commission.

Chair Martin took exception to the contents of the letter. He said that the suggestion that Commissioners represent the views of the political parties represented on the Commission is totally inaccurate. He said that Commissioners do not contact representatives of political parties. He said that the Commissioners act in a completely neutral manner.

Dr. Presser said that the Commissioners were people of good will but that the perception of the public is that the Commission is made up of Republicans and Democrats who represent their party's position. She suggested that relevant statutes be amended to allow for alternative party membership on the Commission, even if it is in an advisory capacity.

Vice Chair Linett said that there is nothing in the statute that precludes alternative party candidates from being appointed to the Commission.

Chair Martin said that it is totally inaccurate to say that partisanship exists on the Commission. To reinforce this point, he noted that the Commission ruled properly that the Libertarian candidate did qualify for public funds in the 1997 gubernatorial election despite a serious, technical issue of law.

Dr. Presser said that the public financing law was inequitable in terms of the amount of money that alternative party candidates can receive.

Chair Martin noted that how much money a candidate receives depends on how much private money he or she can raise. He added that there is no provision in the gubernatorial program, other than the public funds cap, which restricts the amount of money an alternative party candidate can receive relative to a major party candidate. All candidates, he said, must qualify and are treated equally.

Dr. Presser said that while this Commission is comprised of people of good will, the perception is that alternative parties are shut out of the political process.

Dr. Leonard Flynn, representing the Libertarian Party, said that he wanted to correct one statement. He said that in the 1997 general election the Libertarian candidate had to fight to get his money and undergo a long process, involving the Office of Administrative Law, before receiving a favorable decision. He said that this process set the campaign back by three weeks.

Commissioner Ware took exception to these remarks. She said that the Libertarian campaign did not strictly comply with the letter of the law. She noted that the Commission listened and held special meetings. Commissioner Ware indicated that the Commission referred the matter to the Office of Administrative Law because the letter of the law was not complied with by the Libertarian candidate.

The Commission advised Dr. Presser that it would take her correspondence under advisement.

7. Resolution to Go Into Executive Session

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

8. Return to Public Session

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

9. Adjournment

On a motion by Vice Chair Linett, 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