



State of New Jersey

ELECTION LAW ENFORCEMENT COMMISSION

RALPH V. MARTIN
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GREGORY E. NAGY
Legal Director

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Counsel

PUBLIC SESSION MINUTES

October 18, 2001

All of the Commissioners, Counsel Wyse, 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 September 6, September 7, September 20, and October 4, 2001

On a motion by Vice Chair Franzese, seconded by Commissioner Lederman and passed by a vote of 3-0, the Commission approved the Public Session Minutes of September 6, September 7, September 20, and October 4, 2001.

Commissioner Ware arrived at this point.

3. Executive Director's Report

A. Staff Activities

Executive Director Herrmann reported that ELEC's recomputerization initiative has played a major role in disclosing campaign financing information in the general election. He stated that the two mandatory gubernatorial debates were prominently advertised on the Commission's web site. Moreover, the Executive Director noted that the 500-word ballot statements of the nine gubernatorial candidates were also available on the site in both English and Spanish. Executive Director Herrmann mentioned that

both of the publicly-financed gubernatorial candidates filed electronically for the first time in state history and that electronic filing was also available to all legislative candidates for the first time. Executive Director Herrmann announced that on September 25th, Legal Director Nagy was the guest lecturer on campaign financing law at the Rutgers University Law School in Newark. Executive Director Herrmann reported that he was accompanied by Assistant Legal Director Michelle Levy. According to the Executive Director, Professor Frank Askin of the Law School thanked the Legal Director for a terrific job.

Executive Director Herrmann said that the tragedy of September 11th has had an impact on ELEC as well as the rest of our society. He mentioned, for example, that on September 11th, he was scheduled for a lobbying talk, which had to be cancelled, before the New Jersey American Water Company. Also, he said, his scheduled appearance on a Hunterdon County Radio Station on September 18th to discuss campaign financing reform was postponed. Executive Director Herrmann reported to the Commission that on October 10th, 28 West State Street experienced an environmental scare when one of ELEC's employees opened a package, which emitted a white powdery substance. He said that employees were quarantined for hours and sent home early but fortunately the substance tested negatively. Executive Director Herrmann advised the Commission that on October 16th, ELEC had a second incident involving a threatening letter in a stained envelope with no return address.

The Executive Director stated that the staff is taking steps to prepare itself for future emergency situations. Executive Director Herrmann mentioned that an agency emergency plan is being developed. He said it will contain: information on building evacuation, the designation of floor leaders, the identification of available fire extinguishers and alarms, floor maps showing exits, procedures for staff with special needs, and a rallying point away from the building. Executive Director Herrmann noted that the plan will be posted on the staff intranet site so that all staff may review it. The Executive Director advised the Commission that Director of Compliance and Information Evelyn Ford has already instituted procedures for mail processing based on Center for Disease Control and State Health Department guidelines to assure the safety of her staff. Executive Director Herrmann thanked Deputy Director Brindle and Director Ford for their invaluable efforts on behalf of staff's safety over the past few weeks.

B. COGEL Conference

Executive Director Herrmann reminded the Commission that the Council on Governmental Ethics Laws (COGEL) Conference will be held in Lexington, Kentucky from December 1st through December 6th. He said that Legal Director Nagy has been scheduled to lead a breakfast table discussion on investigative techniques. He asked if any of the Commissioners were interested in attending?

C. Future Meeting Schedule

November 15, 2001 at 11:00 a.m. in Trenton; and,
December 19, 2001 at 11:00 a.m. in Trenton.

Staff will prepare a 2002 meeting schedule for Commission approval at the November meeting

4. Advisory Opinion Request No. 11-2001

This advisory opinion request was submitted by James Bopp, Jr., on behalf of the New Jersey Committee for Life (NJCL). Mr. Bopp described this committee as separate, but related to the New Jersey Committee for Life PAC (NJCL PAC), a continuing political committee that files reports with the Commission. Mr. Bopp indicated that NJCL plans to make issue advocacy communications within 90 days of the general election. These communications will mention a gubernatorial candidate and that an audience comprised of persons eligible to vote in New Jersey will be exposed to them. Mr. Bopp asked whether or not such communications must be reported to the Commission and contain political identification information.

In commenting upon the request, Legal Director Nagy indicated that this request is a follow-up to Advisory Opinion No. 10-2001. Mr. Nagy indicated that Mr. Bopp provided additional information concerning NJCL and the NJCL PAC. According to Mr. Bopp, NJCL does not commingle its funds with NJCL-PAC, and NJCL PAC solicits its funds separately from NJCL. Legal Director Nagy stated that it was the recommendation of staff that based upon the facts as presented by Mr. Bopp, NJCL has the constitutional right to make issue advocacy communications without incurring any filing obligation.

The advisory opinion request contained an additional question as to whether or not the issue advocacy communications contemplated by NJCL would be political communications within N.J.A.C. 19:25-10.11(c). Legal Director Nagy explained that an issue advocacy communication that is not coordinated with a candidate does not come within the scope of N.J.A.C. 19:25-10.11(a) or (b), and similarly such a communication cannot come within the scope of subparagraph (c) of the regulation.

Commissioner Lederman asked for clarification as to whether NJCL and NJCL PAC had separate decision-making bodies.

Legal Director Nagy said that it was immaterial. He said that the law requires that these entities be independent of any candidate in order to make the issue advocacy communications, but that there is no provision in law which would require them to be independent of a continuing political committee such as NJCL or that would prevent the same individuals from serving on both committees. He said the facts as represented indicate that there will be no commingling of funds and that all solicitations of contributions will be done separately.

Chair Martin said that the committee must live with the facts represented by their attorney. If the facts turn out differently, he said, then the Commission's response may be different.

On a motion by Commissioner Lederman, seconded by Vice Chair Franzese and passed by a vote of 4-0, the Commission approved the staff's recommendation based upon the facts as represented by Mr. Bopp and directed staff to issue a response.

5. Report on 2001 Gubernatorial General Election Matching Fund Submissions

Candidate James E. McGreevey, Submission 2

Since the last report to the Commission, staff completed its review of Candidate McGreevey's second matching fund submission, filed on August 27, 2001. Staff determined that Candidate McGreevey's second submission contained \$162,178.00 in contributions eligible for match, which resulted in a public funds total of \$324,356.00 at the 2:1 matching ratio. This amount was in excess of the \$262,180.30 needed by Candidate McGreevey to reach the 2001 general election \$5.6 million public funds maximum. On September 21, 2001, staff therefore deposited \$262,180.30 into Candidate McGreevey's public funds account, which was the amount necessary to reach the \$5.6 million maximum in 2001 general election public matching funds.

Candidate Bret Schundler, Submissions 2, 3, 4, 5, and 6

Since the last report to the Commission, staff completed review of Candidate Schundler's second, third, fourth, and fifth submissions. Staff has deposited matching funds totaling \$1,186,662.00 for Submissions 2, 3, and 4 into the separate public funds account established through the Department of the Treasury. Staff expects to make the deposit of \$416,472.00 for Submission 5 on October 19, 2001.

Candidate Schundler's sixth submission, filed October 15, 2001, reported \$399,648.24 in net contributions eligible for match. Using the percentage certification process, approved by the Commission on July 11, 2001, staff expects to deposit 80% of the anticipated public funds for Submission Six, that is \$639,437.18, on October 19, 2001. When review of this submission is completed, staff will deposit any remaining amounts owed to the Schundler campaign.

Including the public fund amounts that will be deposited for Submissions 5 and 6, Candidate Schundler will have received \$4,756,933.66 in general election matching funds.

On a motion by Commissioner Ware, seconded by Vice Chair Franzese and passed by a vote of 4-0, the Commission approved the report on 2001 general election matching funds.

6. Resolution to go into Executive Session

On a motion by Vice Chair Franzese, seconded by Commissioner Ware and passed by a vote of 4-0, the Commission resolved to go into 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 requests from the public for investigations of possible violations, which report will not become public in order to protect identity of informants and maintain integrity of investigative procedures and priorities. However, any complaint alleging violations, which complaint may be generated as a result of a request for investigation, will become public no later than 50 days after mailing.

7. Return to Public Session

On a motion by Commissioner Lederman, seconded by Commissioner Ware and passed by a vote of 4-0, the Commission voted to return to Public Session.

8. Adjournment

On a motion by Commissioner Ware, seconded by Commissioner Lederman and passed by a vote of 4-0, the Commission voted to adjourn at 11:00 a.m.

Respectfully submitted,

Frederick M. Herrmann, Ph.D.
Executive Director

FMH/elz