



State of New Jersey

ELECTION LAW ENFORCEMENT COMMISSION

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Legal Director

EVELYN FORD
Compliance Director

JAMES P. WYSE
Counsel

PUBLIC SESSION MINUTES

March 15, 2005

All of the Commissioners, Counsel Wyse, and Senior Staff were present.

1. Open Public Meetings Statement

Chair English 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.

2. Approval of Public Session Minutes of February 15, 2005

On a motion by Commissioner Burstein, seconded by Commissioner Davis and passed by a vote of 4-0, the Commission approved the Public Session Minutes of February 15, 2005.

3. Executive Director's Report

A. Staff Activities

Executive Director Herrmann announced that longtime Director of Administration Barbra Fasanella will be leaving the Commission in April for a position with the Division of Highway Safety in the Department of Law and Public Safety. He added that she did an outstanding job as the head of ELEC's Administration Section for the past 17 years and that the entire staff wishes her well as she assumes her new position.

The Executive Director reported that ELEC's former Assistant Executive Director William R. Schmidt passed away in February. According to Executive Director Herrmann, he had served as the Commission's second highest ranking staffer from September, 1980 until December, 1984. He noted that Mr. Schmidt also had an extensive career in government service before and after working at ELEC and that he will be missed by all of us who knew him and had the privilege to work with him.

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Executive Director Herrmann advised the Commission that the Compliance and Computer staffs under the direction of Compliance Director Ford and Director of Systems Administration Carol Neiman released to ELEC's web site on February 25, 2005, a compendium of 2004 lobbying data. He mentioned that of particular interest the statistics showed that the \$62,931 in benefit passing was the lowest in a decade and that the \$9,303 in reimbursements was more than double the 2003 amount. Executive Director Herrmann stated that benefit passing is a major concern of the lobbying law and that it has the potential to unduly influence public officials. According to Executive Director Herrmann, the deep decline in benefit passing and the dramatic increase in reimbursements is a very healthy sign.

The Executive Director informed the Commission that among other information released, the media and public were given access to a searchable list of all benefits passed with information about providers, recipients, types of benefits, and amounts. He indicated that all of the staff involved are worthy of the highest praise for turning over a large amount of information from filed reports in a short period of time using evenings and weekends to finish the task. The Executive Director added that ELEC's data received Statewide press coverage with such headlines as "Freebies Given to New Jersey Legislators on the Decline."

B. Clean Elections Program Update

Executive Director Herrmann advised the Commission that on March 2, 2005, the New Jersey Citizens' Clean Elections Commission held its organizational meeting in Princeton. He noted that this nine-member body chaired by former State Senator William E. Schluter will monitor the Clean Elections Pilot Program this fall and will make recommendations for the program's future thereafter. He stated that the program for the general 2005 election will take place in two selected legislative districts and that Assembly candidates will qualify for public dollars by raising a large number of small contributions. According to Executive Director Herrmann, the concept is based on programs existing in Maine and Arizona. The Executive Director represented that staff will prepare regulations for Commissioner review at the April special meeting for selection of sponsors for the gubernatorial primary election debates and that a public hearing will take place at the regular June meeting. In addition, Executive Director Herrmann mentioned that ELEC staff will coordinate with the Clean Elections Commission to assist its members in tracking the program.

C. Legislative Developments

Executive Director Herrmann informed the Commission that on March 7, 2005, he testified before the Senate State Government Committee in support of S-2113 (Inverso), which requires greater disclosure for campaign advertisements within a time period shortly before an election. He said that such pieces are currently considered "outside" the campaign regulatory system if they do not "expressly" use such phrases as "vote for" or "support" in promoting a candidacy. The Executive Director indicated

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that this bill follows the lead of the “McCain-Feingold Act” and closes this longstanding loophole. It was released by a vote of 4-0.

Executive Director Herrmann stated that on March 10, 2005, he attended the Assembly State Government Committee Hearing on A-5269 (Roberts/Greenstein), which authorizes a state constitutional convention to reform the system of property taxation. The Executive Director noted that a section of the bill establishes stringent campaign financing provisions for the election of delegates. Moreover, he said, the sponsors feel that campaign financing regulation of such delegates should be set at a higher standard than that for other types of candidates. Executive Director Herrmann disclosed that among the special provisions are a:

- \$250 contribution limit;
- \$6,250 aggregate contribution limit;
- \$50 disclosure threshold;
- Ban on corporate contributions;
- \$25,000 voluntary expenditure limit; and,
- Requirement for issue advocacy reporting.

D. Budget News

Executive Director Herrmann reported that Acting Governor Codey has made “restoring confidence in State government” a hallmark of his fiscal year 2006 budget recommendations, and that, therefore, five ethics agencies, including ELEC, were targeted for helping to strengthen governmental accountability. He advised the Commission that the Commission’s pre-August 2004 operating budget will be increased by \$2 million to \$5 million allowing for the addition of 36 new staff positions to the current 54. Moreover, he said, \$1.5 million has been added to provide candidate funding for the general 2005 Clean Elections Pilot Program and \$1.025 million for the administration of the Gubernatorial Public Financing Program. The Executive Director noted that \$600,000 for staffing and equipment and \$425,000 for sample ballot statements is included in the \$1.025 million. Executive Director Herrmann added that the Governor’s budget recommendation for the Commission is the most significant increase in ELEC’s history and a keystone to the implementation of the changes in last year’s sweeping Ethics Reform Package.

E. Spring Meeting Schedule

- April 5, 2005 at 11:00 a.m. in Trenton
(Gubernatorial Primary Election Debates Sponsor Selection and Clean Elections Regulations Proposal);
- April 19, 2005 at 11:00 a.m. in Trenton
(Campaign Financing and “Sunset” Regulations Public Hearing);

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- May 17, 2005 at 11:00 a.m. in Trenton
(Lobbying Regulations will be revisited); and,
- June 21, 2005 at 11:00 a.m. in Trenton
(Clean Elections Public Hearing).

4. Advisory Opinion Requests No. 01-2005

The Commission received an advisory opinion request from Angelo C. Morresi, Esq., counsel to DiGaetano for Governor, Inc., the 2005 primary election candidate committee of publicly-financed gubernatorial candidate Paul DiGaetano. Mr. Morresi's questions concern the permissible uses of gubernatorial public matching funds. Specifically, Mr. Morresi asked whether or not gubernatorial public matching funds may be used to pay for the following: "development and operation of an Internet Web Site," producing and placing electronic communications on the Internet, sending "email messages to New Jersey voters," and purchasing "email lists of potential New Jersey voters for communication over the Internet." Upon the recommendation of staff, the Commission advised Mr. Morresi that, with the exception of the campaign's costs to develop and operate the Internet web site, it is permissible to use gubernatorial public matching funds for sending e-mail messages to New Jersey voters, for producing and placing electronic communications on the Internet, and for purchasing e-mail lists of potential New Jersey voters for communication over the Internet. Using public funds to develop the web site is allowable only to the extent that such use relates to communication with voters. Funds cannot be used in this way if the Internet site will be used for fundraising. The staff recommendation was based upon the statutory permissible uses of public funds, which are limited to paying for voter communications, legal and accounting costs for compliance with the public financing law, and specified telephone costs.

On a motion by Commissioner Davis, seconded by Commissioner Burstein and passed by a vote of 4-0, the Commission approved the staff recommendation and directed staff to issue the advisory opinion.

5. Public Hearing Concerning Proposed New Rules and Amendments to Implement New Lobbying Laws

Chair English announced that a public hearing was being conducted to receive testimony on proposed new rules and amendments to implement new lobbying laws, which, among other topics, expand lobbying to include "governmental processes," prohibit contingency fee lobbying, require reporting of "grassroots lobbying," and mandate random audits of the records of governmental affairs agents.

A court reporter was present to record the Public Session discussion. The following persons appeared and offered testimony:

1. Lendel Jones, Vice President Government Relations and Corporate Communications, New Jersey American Water;

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2. Robert Tillmann, Director of Division of Banking, Department of Banking and Insurance;
3. Richard Stokes, Regional Manager & Counsel, Property Casualty Insurers Association;
4. Bruce Cohen, Vice President and General Counsel, Verizon;
5. Timothy McGough, President, New Jersey Society of Professional Engineers;
6. Fred Abbate, Ph.D., Executive Director, New Jersey Utilities Association;
7. Frederick DiSanti, Vice President of External Affairs for Public Service Electric & Gas, Public Service Enterprise Group;
8. Richard Goldberg, President, Commerce & Industry Association of New Jersey;
9. Paul Josephson, Esq., New Jersey State Bar Association;
10. Cherie Gillen, Government Relations, New Jersey Chamber of Commerce;
11. Elizabeth Ryan, Esq., Chief Operating Officer and General Counsel, New Jersey Hospital Association;
12. William Deane, Vice President, Consulting Engineers Council of New Jersey;
13. Linda Kellner, Chief of Staff; Tracey Thayer, Director of Regulatory Affairs; and Craig Lynch, Director of Distribution; New Jersey Natural Gas;
14. Robert Broderick, Associate Director, New Jersey Education Association;
15. Richard Van Wagner, Esq., Sterns & Weinroth;
16. Mary Katheryn Roberts, Esq. and James Harkness, Esq., Riker Danzig;
17. Frank Boenning, Esq., Lowenstein Sandler;
18. Laurie Ehlbeck, Director of Government Affairs, New Jersey Food Council
19. Robert Marshall, Manager of NJ State Relations, Connective Power Delivery,
20. John Rogers, Vice President/Human Resources, New Jersey Business and Industry Association;
21. Leonardo DePinto, President, Associated General Contractors of New Jersey;
22. Amy Hansen, Policy Analyst, New Jersey Conservation Foundation;
23. Brendan H. Peppard, Research Director, New Jersey Association of Health Plans;
24. Linda Czipo, Executive Director, The Center for Non Profit Corporations, Inc., and,
25. Peter Allen, Executive Director, Consulting Engineers Council of New Jersey.

The transcript will be available to the public upon request.

On a motion by Commissioner Davis, seconded by Vice Chair Tober and passed by a vote of 4-0, the Commission adjourned the public hearing.

6. 2005 Primary Election Matching Fund Submissions

Amy Davis, Director of Public Financing, reported to the Commission on matching fund submissions processed by the Public Financing staff since the last such report, dated February 14, 2005. The matching fund submissions processed since the last report are:

Candidate John Murphy Submission #3

Candidate Murphy, in his third submission, reported \$64,994.99 in net contributions submitted for match. Staff completed its review and determined that the amount of \$63,469.99 in contributions was eligible for match at the statutory two for one ratio of public to private dollars. Thus, public funds in the amount of \$126,939.98 were deposited into Candidate Murphy's public funds account through the Department of the Treasury.

Candidate Bret Schundler Submission #2

Candidate Schundler's second matching fund submission on February 22, 2005, amounted to \$82,764.00 in net contributions submitted for match. Upon its review, it was determined that \$81,964.00 in contributions was eligible for match at the statutory two for one ratio of public to private dollars. Therefore, public funds in the amount of \$163,928.00 were deposited into Candidate Schundler's public funds account through the Department of the Treasury.

On a motion by Commissioner Burstein, seconded by Commissioner Davis and passed by a vote of 4-0, the Commission approved the report on 2005 primary election matching fund submissions.

7. Resolution to go into Executive Session

On a motion by Vice Chair Tober, seconded by Commissioner Burstein 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 not later than seven business days after mailing to the named respondents.
- 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 not later than seven business days after mailing to the named respondents.

8. Return to Public Session

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

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9. Adjournment

On a motion by Commissioner Davis, seconded by Vice Chair Tober and passed by a vote of 4-0, the Commission voted to adjourn at 5:00 p.m.

Respectfully submitted,

Frederick M. Herrmann, Ph.D.
Executive Director

FMH/elz