



State of New Jersey

ELECTION LAW ENFORCEMENT COMMISSION

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PUBLIC SESSION MINUTES

October 4, 2001

Senior Staff and Deputy Legal Director Nedda Gold Massar were present. Chair Martin, Vice Chair Franzese, Commissioner Ware, Commissioner Lederman, and Counsel Wyse participated by telephone conference call.

1. Open Public Meetings Statement

Executive Director Herrmann called the meeting to order after confirming the presence on the phone line of the Commissioners and Counsel Wyse, and stated 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 11:15 a.m. in Trenton, New Jersey.

A Court Reporter was present to record the Public Session discussion. The transcript will be available to the public upon request.

Executive Director Herrmann indicated that the single item for consideration on the agenda was a request for an advisory opinion received from James Bopp, Jr., Esq., on behalf of National Right to Life Committee, Inc., and New Jersey Committee for Life. Mr. Bopp indicated that the two entities plan separately to spend at least \$1,500 within 90 days of the 2001 general election to make issue advocacy communications, naming one or more gubernatorial candidates, to an audience comprised of persons eligible to vote in New Jersey. He has asked several questions concerning whether or not National Right to Life Committee (NRLC), Inc., and New Jersey Committee for Life (NJCL) acquire reporting obligations as a result of the contemplated issue advocacy communications and whether or not such communications must contain political identification information.

2. Advisory Opinion Request 10-2001.

Chair Martin indicated that the Commission had received a memorandum from staff concerning the request.

Legal Director Nagy stated that staff views the request as a hypothetical opinion request because the request states as a fact that the communications will be issue advocacy communications. Because the organizations stated in the submitted facts that the communications will not contain express advocacy text, Subsection 10.10(a) of the regulations does not apply. Similarly, because they stated as part of the fact record that the communications will not be coordinated with any candidate, Subsection 10.10(b) is not applicable. Because no specific text of a communication has been provided, this opinion is a very narrow one addressing only questions of law.

Mr. Nagy noted a possible discrepancy between the stated facts, which represented that NJCL does not file reports with the Commission, and Commission records, which indicate that an entity, New Jersey Committee for Life PAC, at the same address as provided in the request, files reports with the Commission as a continuing political committee.

Chair Martin stated that the Commission could therefore move solely on the request concerning NRLC.

Legal Director Nagy stated that the advisory opinion response can address the issue that the Commission's definitions of political committee and independent expenditure do not apply to issue advocacy speech because such speech does not specifically support or defeat a candidate. The controlling authority upon which the Commission must rely is the United States Supreme Court decision in Buckley, and the text of its political communication regulation.

Paul Josephson, Esq., General Counsel for the McGreevey 2001 for Governor, asked whether or not the opinion would define what is or is not issue advocacy speech under Subsection 10.10(b).

Legal Director Nagy responded that the 90-day period in Subsection 10.10(b) of the regulations only applies where there is coordination. NRLC has stated as part of the facts submitted that there will be no coordination. Therefore, if there is no coordination, Subsection 10.10(b) has no applicability.

Chair Martin stated that the response will be narrowly drawn to explain the Commission's regulations and that the Commission has not been asked to advise as to a particular text. He also clarified that the response cannot address the filing obligations of NJCL.

On a motion by Vice Chair Franzese, seconded by Commissioner Ware and passed by a vote of 4-0, the Commission voted to approve the staff recommendation and to decline to issue a response as to the New Jersey Committee for Life, and directed staff to issue the response.

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Adjournment

On a motion by Chair Martin, seconded by Vice Chair Franzese and passed by a vote of 4-0, the Commission voted to adjourn at 11:45 a.m.

Respectfully submitted,

Frederick M. Herrmann, Ph.D.
Executive Director

FMH/elz