



State of New Jersey

ELECTION LAW ENFORCEMENT COMMISSION

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GREGORY E. NAGY
Legal Director

JAMES P. WYSE
Counsel

PUBLIC SESSION MINUTES

July 11, 2002

All of the Commissioners, Senior Staff, and Deputy Legal Director Nedda Gold Massar were present. Counsel Wyse was not 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 11:00 a.m. in Trenton, New Jersey.

2. Approval of Public Session Minutes of June 20, 2002

On a motion by Commissioner Tober, seconded by Commissioner Lederman and passed by a vote of 3-0, the Commission approved the Public Session Minutes of June 20, 2002. Vice Chair Franzese abstained because she had not been present.

3. Executive Director's Report

A. Northeastern Regional Conference on Lobbying (NORCOL) Annual Conference

Executive Director Herrmann reported that along with Deputy Legal Director Nedda Massar and Director of Systems Administration Carol Neiman he is going to attend the annual NORCOL conference in Mystic, Connecticut on August 9, 2002. He stated that this yearly meeting features a half-day "nuts and bolts" session on regional lobbying laws for agency staffs. According to the Executive Director, Congressman Christopher Shays, a co-sponsor of the landmark Bipartisan Campaign Reform Act, will be delivering the keynote address. He noted that he will be preparing for the conference, with the able assistance of various staff members, an update of the annual publication "Lobbying in New Jersey." Executive Director Herrmann mentioned that he will also be making a presentation about lobbying reform activities in the State over the past year.

B. Staff

Executive Director Herrmann advised the Commission that the request to extend retiring Legal Director Nagy's tenure has been approved. He said that the Legal Director's continued service will give the staff a fair amount of time to conduct an orderly transition. According to the Executive Director, Mr. Nagy's extensive background will also prove useful in crafting ELEC's public financing recommendations this fall and adjusting to the new Open Public Records Act (OPRA) as well as the new Federal Bipartisan Campaign Reform Act.

C. Legislation

Executive Director Herrmann informed the Commission that the two Pay-to-Play contracting bills S-978 (Inverso/Furnari) and S-1387 (Kavanaugh/Baer) passed the Senate on June 24, 2002. He indicated that S-978 prohibits campaign contributions from large state contractors and limits those from others. The Executive Director noted that the bill also requires annual reporting to ELEC of the allowable contributions. For its part, added Executive Director Herrmann, S-1387 provides that persons influencing state contracts file with ELEC as lobbyists and all lobbyists be identified as such on campaign finance reports.

D. Budget

Executive Director Herrmann said that ELEC's Fiscal Year 2003 budget is \$2.8 million as expected. According to the Executive Director, the biggest current concern is getting additional money in the next fiscal year for various computer needs including:

- Replacing obsolete hardware,
- Upgrading scanning software to preserve the maintenance agreement, and
- Ongoing staff training.

Commissioner Lederman said that as part of the Public Financing report stemming from hearings to be held in the fall, the need for increased funding should be emphasized.

E. Council on Governmental Ethics Law (COGEL) Bibliography

Executive Director Herrmann informed the Commission that he has completed a draft of the fifth edition. He said that he sent it for review to the COGEL President, the COGEL Administrator, and the COGEL Publications Chair. Executive Director Herrmann said that the bibliography should be ready for distribution at the COGEL conference in Ottawa this September. The Executive Director mentioned that Research Associate Steven Kimmelman and Administrative Assistant Elbia Zeppetelli provided him with invaluable assistance on the project.

F. COGEL Conference

Executive Director Herrmann queried the Commissioners as to their interest in attending this year's COGEL conference. He stated that the annual meeting runs from September 28 to October 2, 2002. The Executive Director noted that the Commissioners will need to get an exemption from the State travel freeze to pay for attendance.

G. Eagleton Forum

Executive Director Herrmann announced that on June 27, 2002, Commissioner Lederman, Deputy Legal Director Massar, and he attended a presentation by Paul Taylor, the Executive Director of the Alliance for Better Campaigns. Executive Director Herrmann advised the Commission that Mr. Taylor discussed proposals to require broadcasters to provide free airtime to candidates in the weeks before elections as a condition of receiving their licenses to use the public airwaves.

H. Fall Meeting Schedule

- August 21, 2002, at 11:00 a.m. in Trenton (open date);
- September 18, 2002, at 11:00 a.m. in Trenton;
- October 23, 2002, at 11:00 a.m. in Trenton; and,
- November 20, 2002, at 11:00 a.m. in Trenton.

4. Advisory Opinion 02-2002

For a discussion of the Advisory Opinion Request, see Public Session Minutes for May 20, 2002.

The initial request, submitted by Peter G. Sheridan, Esq., on behalf of the Republican National Committee (RNC) asked whether or not the RNC could pay approximately \$100,000 of legal expenses "incurred by New Jersey republicans" arising out of litigation undertaken in the spring of 2001 to challenge the apportionment of legislative districts in this State, and if so whether or not those payments would be subject to reporting or contribution limits under the Campaign Contributions and Expenditures Reporting Act.

Chair Martin asked Mr. Sheridan whether he had any remarks to make beyond those made at the May 20, 2002 meeting.

Mr. Sheridan stated that he would primarily rely on his earlier comments. He said, however, that he wanted to make note of the fact that in two New Jersey Supreme Court decisions involving ELEC, the Chamber of Commerce case concerning lobbying, and the Friends of Tom Kean case, concerning the gubernatorial public financing law, the Court narrowly construed the Campaign Reporting Act, showing great concern for the First Amendment. He said that he believes that the statute should similarly be narrowly construed in the pending matter because reapportionment is a constitutionally mandated matter, which happens only every ten years. He stated that he does not see the issue in this case as a

contribution limit issue, and the RNC expenditures for redistricting should not be construed as in-kind contributions.

Legal Director Nagy said that while he understands that exceptions exist in federal law for reapportionment expenditures, no such exception exists in the Campaign Reporting Act. Legal Director Nagy explained that the RNC files with the Commission as a continuing political committee (CPC), and that Section 8 of the Campaign Reporting Act requires that all expenditures by a CPC be reported. Further, an expenditure by a CPC to satisfy the obligation of a legislative leadership committee or State committee would be an in-kind contribution, as the term "contribution" is defined in the Act.

Legal Director Nagy said that the issue in the Advisory Opinion request is distinguishable from the Chamber of Commerce and Kean cases. The Court was called upon to interpret the constitutionality of the lobbying law in the Chamber case, and in Kean, to determine whether or not the public financing expenditure limit applied to expenditures made by legislative candidates who were running in the same political party as a publicly-financed gubernatorial candidate, but made the expenditures independently of the gubernatorial candidate.

Legal Director Nagy said that staff believes the answer to the Advisory Opinion request is compelled by the Campaign Reporting Act, and that if an expenditure for redistricting is to be excepted from reporting and contribution limits, any such change should be done by the Legislature.

Vice Chair Franzese stated that Mr. Sheridan had a well-crafted, cohesive argument, but that the New Jersey statutes do not permit the Commission to allow an exception for these expenditures.

Vice Chair Franzese moved the staff recommendation to require that expenditures by the RNC for redistricting litigation are reportable contributions subject to the limits on contributions from the National Party Committee to the State political party and legislative leadership committees.

Commissioner Lederman seconded the motion.

On a motion by Vice Chair Franzese, seconded by Commissioner Lederman and passed by a vote of 4-0, the Commission approved the staff recommendation in this matter and directed staff to issue a written opinion accordingly.

5. Proposed Regulation Amendments on Copying Fees and Public Access

The Commission considered a draft text of possible regulatory amendments implementing recently enacted statutory changes to copying fees under the Open Public Records Act (OPRA), and establishing a uniform release date for public access to reports filed before various statutory reporting dates.

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Staff indicated that if approved by the Commission, a proposal notice will be submitted to the Office of Administrative Law (OAL) for publication in the August 19, 2002 edition of the New Jersey Register. Secondary notice will be accomplished by posting the proposals on the Commission's Internet Website, by posting in the Commission's public room, and by circulating a press advisory to the State House press corps. Copies of the proposal will be mailed or faxed to any person requesting them.

Further, a public hearing will be announced for the Commission's September 18, 2002 meeting in Trenton. In sum, the proposals are intended to:

1. Bring the cost of copying ELEC documents in line with statutory fees provided by OPRA; and
2. Establish that reports required to be filed with the Commission will be accessible to the public within seven days of the statutory deadline for filing reports.

Both changes are in conformance with OPRA requirements. These amendments are at N.J.A.C. 19:25-2.3 and N.J.A.C. 19:25-2.4. Staff recommended these proposed amendments.

On a motion by Commissioner Lederman, seconded by Vice Chair Franzese and passed by a vote of 4-0, the Commission approved the staff recommendations in the Proposed Regulation Amendments on Copying Fees and Public Access.

6. Resolution to go into Executive Session

On a motion by Commissioner Lederman, seconded by Commissioner Tober and passed by a vote of 3-0, 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.
- 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 not later than seven business days after mailing to the named respondents.

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7. Return to Public Session

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

8. Adjournment

On a motion by Commissioner Tober, seconded by Commissioner Lederman and passed by a vote of 4-0, the Commission voted to adjourn at 1:00 p.m.

Respectfully submitted,

Frederick M. Herrmann, Ph.D.
Executive Director

FMH/elz