



*State of New Jersey*

## **ELECTION LAW ENFORCEMENT COMMISSION**

RALPH V. MARTIN  
Chair

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Vice Chair

SUSAN S. LEDERMAN, Ph.D.  
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Acting Legal Director

JAMES P. WYSE  
Counsel

### PUBLIC SESSION MINUTES

February 24, 2003

Chair Martin, Vice Chair Franzese, Commissioner Lederman, Counsel Wyse, and Senior Staff were present. Commissioner Tober was not present for the Public Session.

#### 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 10:30 a.m. in Trenton, New Jersey.

#### 2. Approval of Public Session Minutes of January 24, 2003

On a motion by Commissioner Lederman, seconded by Vice Chair Franzese and passed by a vote of 3-0, the Commission approved the Public Session Minutes of January 24, 2003.

#### 3. Executive Director's Report

##### A. National News

Executive Director Herrmann reported that President Bush has increased the budget of the Federal Election Commission (FEC) by 11 percent to \$50 million to cover the additional costs created by the Bipartisan Campaign Reform Act (BCRA). According to the Executive Director, \$3 million will pay for the hiring of 30 new employees and \$1 million will pay for the communication costs to explain the requirements of the new law. Executive Director Herrmann stated that it is a great precedent for the states to consider when they give additional responsibilities to their campaign financing agencies.

B. Fiscal 2004 – Governor’s Recommended Budget

According to Executive Director Herrmann the Governor has recommended a continuation budget from this year of \$2.9 million. He said that although it is \$141,000 less than ELEC’s peak budget in Fiscal Year 2001; nonetheless, in such difficult budgetary times, it is good that our resources have almost remained stable.

The Executive Director mentioned that the Commission will have to leave to the future its request to have additional funding to better administer and enforce the Campaign Act at the local level.

C. Legislative Developments

Executive Director Herrmann noted that at the January 23<sup>rd</sup>, 2003 session of the General Assembly, Assemblyman Kean made a last unsuccessful effort to move his pay-to-play bill. He said, however, that Democratic leaders stated that they are planning to expand the bill’s provisions in committee to include other branches and levels of government.

D. Staff Activities

Executive Director Herrmann informed the Commission that on January 22, 2003, Director of Administration Barbra Fasanella went to the quarterly meeting of the State’s Ethics Liaison Officers. The Executive Director added that one of Director Fasanella’s job responsibilities is to serve as the Commission’s Ethics Officer. Executive Director Herrmann advised the Commission that because of ELEC’s mission, this role is one that is taken very seriously.

Executive Director Herrmann stated that on January 28, 2003, Director of Systems Administration Carol Neiman and her staff hosted a meeting of the State Filenet users group in the conference room. According to the Executive Director, she used Power Point to conduct a virtual tour of ELEC and its computer system.

Executive Director Herrmann added that on January 31, 2003, he lectured to Professor Dan Weissman’s Internship Seminar at the Rutgers University Trenton Academic Center on the role of ELEC in regulating campaign financing and lobbying. He noted that one of Weissman’s students, Peter Durichko, has been assigned to Deputy Director Brindle and Director of Compliance and Information Evelyn Ford as an intern and will be working on the creation of synopses for and a guide to the Commission’s advisory opinions.

Executive Director Herrmann informed the Commission that ELEC has also renewed its participation in the Rutgers University History Department’s Public Internship Program for 2003, adding that on February 5, 2003, he served as a Judge for the “We the People . . . The Citizen and the Constitution” statewide civics competition. The Executive Director mentioned that the event was held at the State House and was sponsored by the New Jersey Center for Civic and Law-Related Education.

The Executive Director informed the Commission that he sat on a panel with Ingrid Reed of the Eagleton Institute and Professor Carey McWilliams of the Rutgers University Political Science Department.

Executive Director Herrmann advised the Commission that the most recent edition of the New Jersey Reporter contains an outstanding article by Deputy Director Brindle on the possible impact of BCRA on our State's campaign financing system. He added that it also has a glowing review of Brindle's School Board Campaign Financing White Paper.

E. Ethics Forms

Executive Director Herrmann said that ethics forms are due May 15, 2003, adding that commissioners should file with the Executive Commission of Ethical Standards a notarized copy with an original signature.

F. Winter Meeting Schedule

- March 25, 2003 at 11:30 a.m. (**will be held as an emergency meeting, if needed, by telephone**);
- April 14, 2003 at 10:30 a.m. in Trenton; and,
- May 19, 2003 at 11:00 a.m. in Trenton.

4. Advisory Opinion Request No. 01-2003

This request from John W. Bartlett, Esq., representing the Democratic State Committee, asked the following two questions:

- (A) Whether or not the New Jersey Democratic State Committee (NJDCS), a State political party committee, may borrow money by means of a "mortgage loan" to purchase or refinance an interest in real property, if the mortgage loan is from an entity in the business of lending money, contains arm's length terms, is secured by an interest in real property and is for the purpose of purchasing a building and the land beneath it; and,
- (B) Whether or not such a "mortgage loan" constitutes a "contribution," as that term is defined in the New Jersey Campaign Contributions and Expenditures Reporting Act.

Acting Legal Director Massar explained the staff recommendation that the Commission find that the NJDCS may borrow money by means of a mortgage loan to purchase an office building or to refinance its interest in that office building if the loan is made "in the ordinary course of business," which is defined to require that the mortgage loan:

- (A) Be from a banking or other institution in the business of making loans and authorized under New Jersey law to lend money that is secured by a mortgage;

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- (B) Be at the “market rate” of interest with terms that are usual and customary for other similar loans made during the same period of time;
- (C) Be made on a basis that guarantees repayment; and,
- (D) Be evidenced by a written agreement containing a due date or amortization schedule.

Staff recommended further that the Commission conclude that a mortgage loan obtained by the NJDSC “in the ordinary course of business” is not a “contribution,” as that term is defined in the Act, because such a loan is an arm’s length commercial transaction with no intent or opportunity that any portion of the loan proceeds will become a contribution to or exert undue influence upon the NJDSC.

On a motion by Vice Chair Franzese, seconded by Commissioner Lederman and passed by a vote of 3-0, the Commission approved the staff recommendation and directed staff to issue the advisory opinion response.

5. Advisory Opinions No. 02-2003

Rebecca G. Cox, Treasurer, requested an advisory opinion on behalf of the Continental Airlines, Inc. Employee Fund for a Better America (CEFBA). In her request, she asked whether or not CEFBA is an “association or group,” as those terms are used in the New Jersey Campaign Contributions and Expenditures Reporting Act subject to the contribution limits applicable to an “association or group,” or is a “political committee” or “continuing political committee” subject to the reporting and other requirements of the Campaign Reporting Act?

Acting Legal Director Massar explained the staff recommendation that the Commission find that CEFBA is an “association or group,” subject to the contribution limits for an “association or group.” Staff recommended that CEFBA does not meet the Campaign Reporting Act’s definitions of a political committee or continuing political committee, and therefore does not acquire a reporting obligation as either a political committee or continuing political committee. Staff recommended further that the Commission consider three factors in reaching this conclusion: 1) it does not appear to be a “major purpose” of CEFBA to aid or promote candidates or committees in New Jersey; 2) CEFBA does not solicit contributions specifically to make contributions to New Jersey candidates or committees; and, 3) CEFBA files monthly disclosure reports with the Federal Election Commission resulting in public disclosure of CEFBA contributions and expenditures.

On a motion by Commissioner Lederman, seconded by Vice Chair Franzese and passed by a vote of 2-0, the Commission approved the staff recommendation and directed staff to issue the advisory opinion response.

Chair Martin recused himself from this matter.

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6. Resolution to go into Executive Session

On a motion by Vice Chair Franzese, seconded by Commissioner Lederman 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.

7. Return to Public Session

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

8. Public Comment

Mr. John Zimmerman stated that he represents a group concerned about jet noise in Montgomery, New Jersey. He addressed the Commission concerning the Continental Airlines, Inc. Employee Fund for a Better America (CEFBA).

Executive Director Herrmann explained to Mr. Zimmerman that the Commission determined that CEFBA is an "association or group," which has a lower contribution limit than a political committee or continuing political committee but does not have a reporting obligation.

9. Adjournment

On a motion by Commissioner Lederman, seconded by Vice Chair Franzese and passed by a vote of 3-0, the Commission voted to adjourn at 12:30 p.m.

Respectfully submitted,

Frederick M. Herrmann, Ph.D.  
Executive Director