



*State of New Jersey*

## ELECTION LAW ENFORCEMENT COMMISSION

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Chair  
  
PAULA A. FRANZESE  
Vice Chair  
  
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Deputy Director

NEDDA G. MASSAR  
Legal Director

JAMES P. WYSE  
Counsel

### PUBLIC SESSION MINUTES

May 19, 2003

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

#### 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 April 14, 2003

On a motion by Commissioner Lederman, seconded by Vice Chair Franzese and passed by a vote of 4-0, the Commission approved the Public Session Minutes of April 14, 2003.

#### 3. Executive Director's Report

##### A. Staff Activities

Executive Director Herrmann reported that the Campaign Financing and Lobbying Bibliography has been added to the COGEL web site in a downloadable format. He stated that it is now searchable. Executive Director Herrmann noted that on April 11, 2003, Bob Henley of New York City Public Radio interviewed Deputy Director Brindle about the School Board Campaign Finance White Paper. He said that the Deputy Director mentioned that the paper's major findings were that over the decade of the nineties spending had more than doubled, partisan activity had increased, more budgets were being passed, and voter turnout remained low.

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The Executive Director informed the Commission that on April 16, 2003, he attended the Alain Daniels Civic Responsibility Dinner honoring Justice Gary Stein and Dr. Clement A. Price of Rutgers University. Executive Director Herrmann stated that the event was held in New Brunswick and sponsored by New Jersey Common Cause and the Center for Civic Responsibility. The Executive Director added that a number of the speakers commented on the need to enact the pay-to-play legislation currently before the Legislature. Executive Director Herrmann advised the Commission that Commissioner Lederman received special recognition as a former national president of the League of Women Voters.

The Executive Director reported that on April 24, 2003, he participated in a campaign finance reform discussion panel moderated by Assemblyman John Wisniewski. He said that the other panelist was Senator Tom Kean, Jr. According to Executive Director Herrmann, he reviewed the role of ELEC, the current provisions of the Campaign Act, and some suggestions for improving the law. He noted that Senator Kean commented on his pay-to-play legislation.

Executive Director Herrmann informed the Commission that the Compliance and Information staff held two training seminars in Trenton on April 4 and April 30, 2003 for the primary election. He stated that another session was held on April 5<sup>th</sup> in Passaic County at the request of the county clerk. Executive Director Herrmann reported that for the first time, staff used PowerPoint to make its presentation. He said that Assistant Compliance Office Titus Kamal designed the new application, which will be a major tool used by staff for years to come.

According to Executive Director Herrmann, a Star-Ledger (Newark) story by Joe Donohue on May 10, 2003, used ELEC data from the 29-day legislative pre-election reports. Executive Director Herrmann noted that it showed that candidates for the Legislature raised \$19.6 million, which amount was almost 24 percent greater than the \$16 million raised in 2001. He said that Deputy Director Brindle explained that the increase was due to several contested primaries and the very competitive nature of this year's battle for control of both houses in a situation with an evenly divided Senate and a closely divided General Assembly.

Executive Director Herrmann added that Politicsnj.com highlighted on its web page ELEC's statistical summary of legislative campaign financing information allowing users to link directly to the Commission's compiled data. The Executive Director praised Director of Compliance and Information Evelyn Ford, Director of Systems Administration Carol Neiman, and their staffs for their magnificent job of putting together all of this material in an accurate and timely manner.

B. Budget News

Executive Director Herrmann stated that on April 28, 2003, Deputy Director Brindle, Director of Administration Barbra Fasanella and he attended the Senate Budget Committee's Hearing on the Department of Law and Public Safety. He advised the Commission that none of the Senators asked any questions about the Commission.

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The Executive Director noted that on May 6, 2003, Director of Administration Fasanella and he also attended the Assembly Budget Committee's Hearing on the Department. He stated that no questions were asked about ELEC at that hearing either.

C. Summer Meeting Schedule

- June 18, 2003 at 3:00 p.m. in Trenton;
- July 17, 2003 at 11:00 a.m. in Trenton; and
- August 20, 11:00 a.m. in Trenton. (Open Date)

4. Adoption of Proposed Amendments to Commission Regulations and New Rules

Legal Director Massar explained that because the proposed amendments and new rules concern three separate statutes administered by the Commission, that is, the Campaign Reporting, Lobbying, and Personal Financial Disclosure Acts, three separate proposals were filed with the Office of Administrative Law (OAL). The proposed amendments and new rules are ripe for adoption by the Commission and include the following:

- An amendment to clarify that, under certain conditions, the cost of a meal provided to an invited speaker at an event sponsored by a lobbying entity is not required to be reported as benefit passing;
- New rules concerning the opportunity for a hearing and default proceedings in complaints brought pursuant to the Legislative Activities Disclosure Act and the Gubernatorial Legislative Disclosure Statement Act;
- A new rule requiring county political party committees and their organizational treasurers to file an annual report identifying the municipal political party committees in their county; and,
- New rules and amendments to articulate standards for imposition of penalties for many of the offenses that arise under the New Jersey Campaign Contributions and Expenditures Reporting Act.

Summaries of written comments and suggested Commission responses for filing with the OAL were presented to the Commission.

Staff reported that a written comment was received from James Beach and Donald Norcross, co-Chairs of the Camden County Democratic Committee, concerning proposed new rule N.J.A.C. 19:25-9.7, Identification of municipal political party committees. The commenters raised significant issues concerning the governance of the county and municipal party committees that would make enforcement of the proposed new rule problematic. Staff therefore recommended that the Commission withdraw the proposed new rule for further consideration of the issues raised by the commenters.

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On a motion by Vice Chair Franzese, seconded by Commissioner Lederman and passed by a vote of 4-0, the Commission voted to adopt the Campaign Reporting Act amendments and new rules as proposed, with the exception of N.J.A.C. 19:25-9.7, which was not adopted, and directed staff to file the Notice of Adoption with the OAL.

Staff reported that a written comment was received from Robert A. DeSando, Director, Governmental Relations, of the New Jersey School Boards Association, concerning the proposed amendment to N.J.A.C. 19:25-20.11(b)(2), which provides that the cost of food and beverages is not required to be reported as a lobbying benefit to an "invited speaker" when the "invited speaker" receives the same food and beverages as "all" persons who attend. Mr. DeSando requested that the word "all" be deleted from the proposed rule.

Staff recommended that the Commission not adopt Mr. DeSando's comment because it might expand the scope of an exemption to a statutory reporting requirement.

On a motion by Commissioner Lederman, seconded by Commissioner Tober and passed by a vote of 4-0, the Commission voted to adopt the Lobbying Act proposal without change and directed staff to file the Notice of Adoption with the OAL.

Legal Director Massar reported that no comments were received on the proposed amendments to the Personal Financial Disclosure Act.

On a motion by Commissioner Lederman, seconded by Commissioner Tober and passed by a vote of 4-0, the Commission voted to adopt the Personal Financial Disclosure Act proposal without change and directed staff to file the Notice of Adoption with the OAL..

5. Advisory Opinion Request No. 03-2003

The Commission received a request for an advisory opinion from Robert A. Schwartz, Esq., on behalf of Fred A. Daibes. Mr. Schwartz asked whether or not Mr. Daibes, who owns stock in a New Jersey-chartered commercial bank, is subject to the prohibition on making political contributions contained in N.J.S.A. 19:34-45. That statute prohibits certain regulated corporations, including corporations carrying on the business of a bank, and persons "owning or holding the majority of stock" in such corporations, from making political contributions to a candidate or political party and provides criminal penalties.

Staff advised Mr. Schartz that the Commission does not have jurisdiction to respond to this request and that it would recommend that the Commission consider referral of his inquiry to the Office of the Attorney General which has jurisdiction over the statutory section.

Staff recommended that the Commission forward this request to the Acting Attorney General for his consideration because it raises a question that does not appear to have been previously addressed in prior Attorney General opinions concerning this statute.

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On a motion by Vice Chair Franzese, seconded by Commissioner Tober and passed by a vote of 4-0, the Commission approve the staff recommendation in Advisory Opinion Request No. 03-2003 to refer this matter to the Acting Attorney General for his response.

6. Advisory Opinion Request No. 04-2003

The Commission has received a request for an advisory opinion from Ki P. Hong, Esq., on behalf of BP America Inc. Mr. Hong has asked whether or not BP is subject to the prohibition on making political contributions contained in N.J.S.A. 19:34-45, which prohibits certain regulated corporations, such as “gas, electric light, heat or power” corporations, from making political contributions to a candidate or political party and provides criminal penalties.

Since that statutory provision is not part of the Campaign Contributions and Expenditures Reporting Act, the question presented is not within the Commission’s subject matter jurisdiction. Staff therefore advised Andrew E. Weis, Esq., Mr. Hong’s co-counsel in this matter, that the Commission does not have jurisdiction to respond to the request and stated that it would recommend that the Commission consider referral of his inquiry to the Office of the Attorney General which has jurisdiction over the statutory section.

Staff recommended that the Commission forward this request to the Acting Attorney General for his consideration because the facts presented do not appear to have been specifically addressed in prior Attorney General opinions concerning this statute.

On a motion by Vice Chair Franzese, seconded by Commissioner Tober and passed by a vote of 3-0, the Commission approved the staff recommendation in Advisory Opinion Request No. 04-2003 to forward this request to the Acting Attorney General for his response.

Chair Martin recused himself from participating in this matter.

7. Advisory Opinion No. 05-2003

This request, from Lynn Schundler, Treasurer SchundlerOrg. Inc., involves the question of whether or not, under the provisions of the New Jersey Campaign Contributions and Expenditures Reporting Act, N.J.S.A. 19:44A-1 et seq., Bret Schundler may participate in the establishment of a continuing political committee (CPC).

The Commission considered the fact the Bret Schundler is currently filing 2001 Gubernatorial Election Financial Summary Reports (Forms G-1) with the Commission for his 2001 primary and general election gubernatorial candidacies to report contributions received and expenditures made. The Commission concluded, based upon the Form G-1 reports filed, that Bret Schundler is a “candidate,” as that term is defined in N.J.S.A. 19:44A-3c, and that as a “candidate,” pursuant to N.J.S.A. 19:44A-9h, he may not “establish, authorize the establishment of, maintain, or participate directly or indirectly in the management or control of, any . . . continuing political committee.”

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On a motion by Commissioner Lederman, seconded by Vice Chair Franzese and passed by a vote of 4-0, the Commission approved the staff recommendation in Advisory Opinion Request No. 05-2003 and directed staff to issue a response.

8. Resolution to go into Executive Session

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

9. Return to Public Session

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

10. Adjournment

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