



State of New Jersey

ELECTION LAW ENFORCEMENT COMMISSION

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PUBLIC SESSION MINUTES

January 23, 2004

Commissioner Tober, Commissioner English, Counsel Wyse, and Senior Staff were present. Chair Martin and Vice Chair Franzese participated by telephone.

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 11:30 a.m. in Trenton. The Commissioners and staff welcomed new Commissioner Jerry Fitzgerald English.

2. Approval of Public Session Minutes of December 10, 2003

On a motion by Commissioner Tober, seconded by Vice Chair Franzese and passed by a vote of 3-0, the Commission approved the Public Session Minutes of December 10, 2003. Commissioner English abstained.

3. Executive Director's Report

A. Staff Activities

Executive Director Herrmann announced that he has been reappointed by the Council on Governmental Ethics Law (COGEL) to the Public Integrity editorial board. Serving since 1996, he is the only remaining original member of the board. The Executive Director stated that during his tenure, he has authored one article about the structuring of governmental ethics agencies, edited a two-issue symposium on campaign financing reform, and written a number of book reviews.

Executive Director Herrmann reported that Assistant Compliance Officers Nancy Fitzpatrick and Lauren Yarosheski staffed an ELEC consultation table at the League of Municipalities conference in November, 2003. He mentioned that numerous people

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visited the table and that staff's presence at this major and highly attended conference is an important educational outreach tool for assisting local candidates. According to the Executive Director, since the conference, Ms. Yarosheski has resigned from the staff to take another position in State government. He said that she did a fine job as part of the Gubernatorial Public Financing staff and later as a Compliance Officer and that we all wish her well in her future endeavors.

B. Computer Update

Executive Director Herrmann informed the Commission that ELEC received a final total of 56 electronically filed reports for the 2003 general election and that planning continues for a full roll out of Internet electronic filing for the next legislative general election in 2005. He advised the Commission that the 2003 reports were filed by disk.

Executive Director Herrmann indicated that Director of Systems Administration Carol Neiman and Assistant Systems Administrator Kim Vandegrift attended the second annual New Jersey Digital Summit in November and did some valuable networking with the Office of Information Technology staff. The Executive Director said that they also attended a State FileNet users group meeting where they requested some relevant training classes for ELEC's computer staff.

C. Gubernatorial Public Financing News

Executive Director Herrmann noted that the most recent check-off data for the Gubernatorial Public Financing Program shows the first increase in 16 years. He reported that the rate climbed from 16.8% in 2000 to 17.1% in 2001. According to the Executive Director, ELEC has recommended in the past that the checkoff amount of one dollar be increased to provide additional funding for the program. He explained that a previous change in the law indexed for inflation the amount of public funds given to candidates, but did not increase or index the amount checked off to fund the distribution. He stated that, based on the experience in other states, a change in the check-off amount might reduce the participation rate somewhat but would provide more funding.

D. Legislative Developments

Executive Director Herrmann advised the Commission that the Governor signed S-1756 (Lance/Kyrillos), which makes various changes to the state conflicts of interest law including a \$250 cap on benefit passing and a \$500 cap on reimbursement for out-of-state travel. He noted that ELEC has been recommending a benefit-passing cap for many years. The Executive Director said that staff will begin to review the new Act to determine the need for possible regulatory action.

E. National News

Executive Director Herrmann told the Commissioners that the U.S. Supreme Court issued its long-awaited decision concerning the Bipartisan Campaign Reform Act (BCRA) on December 10th, 2003. According to the Executive Director, the Court shifted its philosophical view of what constitutes “corruption” from establishing a quid pro quo or an appearance of a quid pro quo to gaining access. He said that it also posited that “anti-circumvention” of contribution limits is a basis for regulation. More specifically, the Court upheld BCRA’s two principal, complementary features: the control of soft money and the regulation of issue advocacy. The Executive Director said that, in New Jersey, the ruling could allow for enhanced reporting of certain kinds of political communication and anti-wheeling legislation.

Executive Director Herrmann advised that staff will explore developing a new issue advocacy regulation for Commission consideration to require the reporting by special interest groups of broadcast communication that mention a candidate 30 days before a primary election and 60 days before a general election. He said that staff will also prepare for Commission consideration recommendations to the Legislature for amending the Campaign Act to regulate county/municipal political party committees wheeling of campaign funds and to lower the other contribution amounts that state and county political party committee’s and legislative leadership committees can accept.

Executive Director Herrmann read a proclamation citing the service of former Commissioner Susan S. Lederman. On a motion by Commissioner Tober, seconded by Commissioner English and passed by a vote of 4-0, the Commission approved the proclamation honoring former Commissioner Lederman.

F. Winter Schedule

- February 27, 2004 at 11:00 a.m. in Trenton;
- March 19, 2004 at 11:00 a.m. in Trenton; and,
- April 23, 2004 at 11:00 a.m. in Trenton.

4. Proposed Rulemaking Activity in 2004

Legal Director Massar presented a memorandum that advised the Commission of rulemaking activity which staff expects to occur during 2004. She noted three proposals for the Commission’s consideration:

- Various “housekeeping” amendments to the regulations and a possible new rule to address issue advocacy communication in light of the recent United States Supreme Court Decision in McConnell et al. v. Federal Election Commission et al., 540 U.S. ____ (2003);
- Amendments to the gubernatorial public financing primary and general election regulations; and,

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- Amendments to implement the quadrennial cost index adjustments to the limits and thresholds applicable to publicly-financed gubernatorial candidates and to non-gubernatorial candidates and committees; see N.J.S.A. 19:44A-7.1 and 7.2. Legal Director Massar requested that the Commission authorize staff to publish a rulemaking calendar in the New Jersey Register that provides for a 30-day comment period for the cost index regulations instead of a 60-day period. Director Massar explained that a 30-day period was necessary in order to complete the regulation process by the December deadline for establishing the quadrennial cost adjustments.

Commissioner English expressed concern about the shortened public comment period regarding the public financing cost index adjustment.

Legal Director Massar explained that it is necessary to use the latest consumer price index data and media indexes that will not be available until July, 2004. This situation, she explained, limits the time period for public comment. Legal Director Massar noted that a 30-day public comment period was the norm in previous years and that the Commission specifically contacts interested individuals about the public comment period and posts all regulatory activity on the web site.

On a motion by Vice Chair Franzese, seconded by Chair Martin and passed by a vote of 4-0, the Commission approved the proposed rulemaking activity in 2004 as indicated by staff and authorized staff to publish a rulemaking calendar in the New Jersey Register for the cost index regulations.

5. Resolution to go into Executive Session

On a motion by Commissioner Tober, seconded by Vice Chair Franzese 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.
- C. A report on requests from the public for investigations of possible violations, which report will not become public in order to protect the identity of informants and maintain the 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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6. Return to Public Session

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

7. Adjournment

On a motion by Commissioner Tober, seconded by Commissioner English and passed by a vote of 4-0, the Commission voted to adjourn at 1:30 p.m.

Respectfully submitted,

Frederick M. Herrmann, Ph.D.
Executive Director

FMH/elz