



State of New Jersey

ELECTION LAW ENFORCEMENT COMMISSION

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Legal Director

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Compliance Director

JAMES P. WYSE
Counsel

PUBLIC SESSION MINUTES

October 19, 2004

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

1. Open Public Meetings Statement

Chair English 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.

On a motion by Commissioner Burstein, seconded by Commissioner Davis and passed by a vote of 3-0, the Commission named Commissioner Tober as Vice Chair. The Commissioners and staff congratulated Vice Chair Tober on his new position.

2. Approval of Public Session Minutes of September 22, 2004

On a motion by Vice Chair Tober, seconded by Commissioner Davis and passed by a vote of 4-0, the Commission approved the Public Session Minutes of September 22, 2004.

3. Executive Director's Report

A. Pay-to-Play Executive Order

Executive Director Herrmann reported that on September 22, 2004, Governor McGreevey signed Executive Order 134, which forbids "a contractor with the State ... from contributing to a gubernatorial candidate or any State or county political organization." He said that the Order applies to competitively bid contracts as well as no-bid contracts. According to Executive Director Herrmann, contractors are also required to report all contributions made during the four years preceding the award of a contract to any PAC. The Executive Director noted that under the Executive Order,

ELEC is charged to work with the State Treasurer on reporting and regulations related to this provision.

B. Legislative Developments

Executive Director Herrmann mentioned that on October 4, 2004, he testified before the Senate State Government Committee on S-27 (Codey/Karcher), which freezes campaign contribution limits in 2004 for all committees except candidate committees. He stated that without this bill, ELEC would be required by law to adjust these limits for inflation this year. According to the Executive Director, under the bill, the Commission would adjust contribution limits in the law every four years but the adjustments will be made as suggestions to the Legislature not as mandated changes. He advised the Commission that News 12 NJ interviewed him on camera about his testimony.

C. Staff Activities

Executive Director Herrmann informed the Commission that on September 27, 2004, Legal Director Massar and he attended a talk about the impact of the McCain-Feingold Legislation on this year's presidential race given by former Federal Election Commission Chairman Trevor Potter at the Eagleton Institute of Politics of Rutgers University. He said that also in attendance were former ELEC Commissioner Susan Lederman, former ELEC Executive Director Scott Weiner, and the sponsor of ELEC's enabling legislation former Senator William Schluter.

The Executive Director advised the Commission that on September 28, 2004, he made a presentation on the new lobbying and campaign finance laws to the Government Affairs Committee of the New Jersey Business and Industry Association (NJBIA). Executive Director Herrmann told the Commission that he explained the various bills and ELEC's regulatory process in implementing them and asked the group of about 100 agents to participate actively in that process because ELEC would need their comments to help in producing workable new rules. The Executive Director assured the committee that ELEC's goal is to achieve the purposes of the new legislation in as non-invasive a manner as possible. He also stated that the Commission's initial emphasis would be on education not enforcement.

Executive Director Herrmann noted that on September 28, 2004, Legal Director Massar and he met at the invitation of State Treasurer John McCormac with his staff and him to discuss Governor McGreevey's Executive Order 134. He informed the Commission that pursuant to the Order, staff will advise the Treasurer on how to administer state vendor reporting of PAC contributions in the four years prior to the awarding of a contract. Executive Director Herrmann stated that staff will also be assisting the Treasurer with various database issues.

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The Executive Director mentioned that on October 5, 2004, Legal Director Massar and former Legal Director Gregory Nagy met with Professor Frank Askin's class at Rutgers University Law School in Newark to discuss the first amendment aspects of campaign finance law. He said that former Legal Director Nagy had served on ELEC's staff for nearly a quarter of a century and is one of the most knowledgeable persons in the country in the field of campaign finance law.

Executive Director Herrmann added that on October 6, 2004, Legal Director Massar attended an Institute for Continuing Legal Education (ICLE) seminar on federal and state campaign finance laws.

Executive Director Herrmann announced that the Commission has hired seven new staff members recently. They are:

- Brian Tripp – Public Finance Computer Assistant,
- Chritine Aquilante – Public Finance Analyst,
- Scott Fagerty – Public Finance Analyst,
- Felice Fava – Public Finance Analyst,
- Laura Jurkiewicz – Public Finance Analyst,
- Maryanne Garcia – Webmaster, and
- Maureen Tilbury – Assistant Data Entry Operator.

D. Conference on Governmental Ethics Laws (COGEL)

Executive Director Herrmann noted that as mentioned at the last meeting, the annual COGEL conference is being held in San Francisco from December 5th through 8th, 2004. He noted that ELEC may send up to five persons. The Executive Director asked if any of the Commissioners would be able to attend.

E. End of the Year Meeting Schedule

- November 16, 2004 at 11:00 a.m. in Trenton; and,
- December 14, 2004 at 11:00 a.m. in Trenton;

Executive Director Herrmann noted that at the November meeting the Commission would approve its meeting schedule for 2005.

Regarding the Pay-to-Play Executive Order, Chair English asked whether or not ELEC is in any way involved with the discontinuance of a contract.

Legal Director Massar indicated that the Treasurer is responsible for that procedure.

Chair English asked about the response from NJBIA to the new lobbying reform measures. She asked this question in the context of Executive Director Herrmann's address to this group.

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Executive Director Herrmann indicated that they were concerned and apprehensive. He said that he reassured the group that ELEC would be taking a very measured, rational approach toward implementing the reforms and that the regulatory process will be very open and public.

Chair English asked: what is the goal of the process?

Executive Director Herrmann responded that the goal of the reforms and the regulatory process is greater transparency.

Commissioner Burstein asked about the process of adopting regulations.

Legal Director Massar stated that staff is currently researching statutes and regulations in other jurisdictions concerning the expanded scope of the lobbying law. Staff expects to present draft regulation text concerning the new lobbying laws for the Commissioners' review in the near future.

Executive Director Herrmann said that the regulatory process was much like the legislative process in that ELEC's staff, akin to legislative services, prepares regulatory proposals and presents them to the Commission. The Commission then reviews the proposed changes, in some instances changes the proposals, then introduces the amended rules, and ultimately adopts the proposed regulations in some form. He said that the Commissioners make policy. Executive Director Herrmann said that the process is very public and includes public hearings.

Commissioner Davis queried about the 20-hour threshold with regard to lobbying.

Executive Director Herrmann explained that if time spent in preparation, travel, and actual communication with a public official adds up to 20 hours, a paid individual becomes a governmental affairs agent and must register with the Commission. Legal Director Massar stated also that once an individual is a paid governmental affairs agent, that individual must file quarterly and annual reports with the Commission.

Commissioner Burstein stated that it seemed as if there is an honor system at play with regard to potential individuals reporting the time they spend on lobbying activity.

Executive Director Herrmann said that while Commission staff cannot monitor lobbyists with regard to all their activities, there is a record keeping requirement.

Commissioner Burstein, with regard to legislation introduced by Senate President Richard J. Codey, that would remove from the Commission the authority to adjust thresholds and limits every four years, stated that because of the Commission's unique position in the process, he assumes the Commission must be careful in terms of taking a position on this bill or any other legislation. He asked if he was correct in assuming that this was the case.

Legal Director Massar noted that the bill does not cover the gubernatorial public financing program and that the Commission retains authority to adjust the limits and thresholds with regard to the gubernatorial program.

Executive Director Herrmann concurred with Commissioner Burstein, remarking that the staff often provides technical assistance and will reiterate and apply Commission positions at legislative hearings based on recommendations made in ELEC's annual reports. He said that the Codey proposal provides ELEC with an important role to play in the process. The Director stated that it is significant that the Legislature is continuing to require the Commission to produce a report that includes the new numbers that would provide the basis for any legislative adjustments.

4. Resolution to go into Executive Session

On a motion by Vice Chair Tober, seconded by Commissioner Burstein 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.

5. Return to Public Session

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

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6. Adjournment

On a motion by Commissioner Burstein, seconded by Vice Chair Tober 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