



*State of New Jersey*

## ELECTION LAW ENFORCEMENT COMMISSION

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### PUBLIC SESSION MINUTES

January 18, 2005

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

#### 1. Open Public Meetings Statement

Vice Chair Tober 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.

#### 2. Approval of Public Session Minutes of December 14, 2004

On a motion by Commissioner Burstein, seconded by Commissioner Davis and passed by a vote of 4-0, the Commission approved the Public Session Minutes of December 14, 2004.

#### 3. Executive Director's Report

##### A. Staff Activities

Executive Director Herrmann reported that the Commission recently added two new staff members:

- Aydan Altan, Assistant Systems Developer, and
- Tamika McCoy, Assistant Data Entry Technician.

The Executive Director also noted with regret that Public Financing Analyst Helen Staton has left ELEC for a job at the Department of Health. He said that she did outstanding work as part of the gubernatorial public financing staff, and we all wish her well in her new position.

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Executive Director Herrmann advised the Commission that on December 17, 2004, he appeared for a second time as an expert witness before the Property Tax Convention Task Force, which met at Douglass College in New Brunswick. According to the Executive Director, he provided information about current campaign disclosure and contribution limit practices. He said that the Task Force needed this information to craft recommendations for the Legislature in regard to the campaign funding of convention delegates. Executive Director Herrmann informed the Commission that the Task Force proposed a uniform \$500 contribution limit from all contributing entities. He mentioned that he had testified that the Gubernatorial Public Financing Program uses a uniform contribution limit model.

Executive Director Herrmann noted that PoliticsNJ.Com featured a reading list link to ELEC materials, which included: the Computer Report, "Road to the Future: Improving the Usefulness and Convenience of ELEC's Internet Site"; "The 2005 Cost Index Report"; and, the Homepage summary of the new campaign financing and lobbying laws.

### B. Legislative Developments

The Executive Director reported that Acting Governor Richard J. Codey signed S-27 (Codey/Karcher) into law on December 15, 2004, as P.L. 2004, C. 174. He said that this bill freezes contribution limits for all committees except those for candidates. Executive Director Herrmann advised the Commission that staff issued the "2005 Cost Index Report" with a new appendix containing a revised contribution limit chart reflecting the changes made by S-27. According to the Executive Director, he did an interview with NJN Nightly News about the new law the day it was signed.

Executive Director Herrmann stated that on January 3, 2005, Jerry Henry of NJN Nightly News interviewed him about A-5 (Voss *et al.*) and A-11 (Greenstein *et al.*), which both took effect on January 1, 2005. He said that A-5 lowers the disclosure threshold for contributors from \$500 to \$300 and requires that allowable currency contributions, those of \$200 or less, be disclosed as well. He added that A-11 increases various penalties in the Campaign Act. Executive Director Herrmann remarked that these two important bills were a step forward in improving the State's regulation of campaign financing.

### C. Budget News

The Executive Director reported that the Department of Personnel (DOP) recently approved the creation of 16 new positions at ELEC based on the additional funding the Commission received from the 25-Point Ethics Reform Package enacted last year. He noted that staff has begun the process for hiring new persons to fill various computer, legal, and personnel positions. Executive Director Herrmann commented that DOP is also reviewing a Commission request to create an additional 20 positions for the Compliance and Review staffs.

The Executive Director reported also that because of serious state budgetary problems, ELEC's Fiscal Year 2005 budget has been reduced by 15 percent, or \$750,000 to \$4.25 million. He suggested that staff does not believe that these reductions will adversely impact the Commission's operations for the rest of this fiscal year since none of the new 36 positions was able to be filled in the first half of the fiscal year because of title creation and space considerations. Executive Director Herrmann stated that it is anticipated that the Fiscal Year 2006 operating budget will not have these cuts in it so that ELEC can move ahead and implement the sweeping reforms that were legislated in 2004.

D. Winter – Early Spring Meeting Schedule

- February 15, 2005 at 11:00 a.m. in Trenton (First Lobbying Regulations Hearing);
- March 15, 2005 at 11:00 a.m. in Trenton (Second Lobbying Regulations Hearing);
- April 5, 2005 at 11:00 a.m. in Trenton (Gubernatorial Primary Debate Sponsor Selection); and,
- April 19, 2005 at 11:00 a.m. in Trenton (Sunset and Campaign Financing Regulations Hearing).

4. Proposed Amendments and New Rules to Implement New Campaign Laws and the "Sunset" Process

Legal Director Massar noted that the "sunset" process, mandated in Executive Order No. 66, requires the Commission to readopt its regulations (N.J.A.C. 19:25) on or prior to July 17, 2005. If readoption does not occur the regulations will expire. Director Massar said that if, pursuant to recently-enacted amendments to the Administrative Procedure Act, N.J.S.A. 52:14B-1, *et seq.*, and Office of Administrative Law (OAL) rules, the Commission files a notice of proposal to readopt its rules prior to July 17, 2005, the expiration date will be extended for 180 days. She said that to prepare for the "sunset" of the rules, staff has examined the text of the rules and, with the few exceptions noted in the staff memorandum circulated to the Commissioners and the amendments recommended regarding recently enacted legislation, staff recommends that the rules are necessary, reasonable, and proper for the purpose for which they were promulgated, as required by Executive Order 66. The new rules regarding recently enacted reform legislation will be incorporated into the "sunset" process. Director Massar said that if the Commission approves the proposed new rules and amendments, the proposal notice will be filed at the OAL for publication in the New Jersey Register. She said that secondary notice will be accomplished by: posting the proposal on the Commission's Internet Website and in the Commission's public room, mailing a notice of the proposal to interested individuals, and circulating a press advisory to the State House press corps. Legal Director Massar stated that under this proposed schedule, which includes a 60-day period for receipt of written comments, a hearing will be scheduled for the April 19, 2005 meeting.

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Legal Director Massar next summarized the recommended changes to the rules arising from new laws. The new rules involve the following new laws:

- Reporting of All Currency Contributions (P.L. 2004, c.28);
- Registration and Reporting by Professional Campaign Fund Raisers (P.L. 2004, c.29);
- Inclusion of Political Identification Information on Recorded Telephone Calls (P.L. 2004, c.30);
- Prohibition of Solicitation on State Property (P.L. 2004, c.21);
- Required Treasurer Training (P.L. 2004, c.22); and,
- Expansion of 48-hour Expenditure Reporting (P.L. 2004, c.33).

Following her recitation of the new laws for which amendments to the rules are being offered, Director Massar noted proposed "sunset" changes. These changes involve:

- Required Electronic Filing;
- Adjusted Contribution Limits;
- Credit Card Reporting.

Commissioner Burstein, regarding the professional fundraiser amendments, asked for clarification of what constitutes a professional fundraiser.

Legal Director Massar stated that first an individual must be paid at least \$5,000 for the purpose of raising funds. She said that second, the individual must raise a threshold amount of money equal to the candidate contribution limit or attend three fundraising events. She said that staff believes an individual simply collecting tickets at an event would not be considered a professional fundraiser.

Executive Director Herrmann said that a key concept derives from the word "professional." He added that New Jersey is the first State to require registration and reporting by professional campaign fund raisers and that ELEC would probably rely on the advisory opinion process to further clarify requirements applicable to the fundraisers.

Commissioner Davis suggested that the proposed fee charged to professional fundraisers is too low. He suggested that the fee be increased to \$1,000 because these individuals raise large amounts of money.

Chair English and Vice Chair Tober agreed.

Commissioner Burstein said that he would support \$1,000 as a proposal but wanted to listen to what is said during the hearing process. He said that some fundraisers and fundraising events bring in large amounts of money but others do not. He said that \$1,000 might be disproportionate in terms of the fundraiser who does not raise lots of money.

Chair English asked for a definition of currency to be further enunciated in the regulations.

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Legal Director Massar suggested that currency be defined as United States government notes and coins.

Counsel Wyse suggested that the regulations also state that a candidate cannot accept foreign currency.

The Commission agreed.

Chair English suggested that in the regulations dealing with penalties that it be reiterated that individuals could be subject to criminal penalties if in purposeful violation of the statutes. She stated that she realizes that the Commission has civil jurisdiction but that it does not hurt to state the fact that criminal sanctions by the Attorney General are available.

Chair English suggested that language be included in the rule summary that the Commission contacts vendors during the audit process.

Chair English suggested also that with regard to the 48-hour notice requirement that an example be included in the text to make sure that people understand that the 48-hour period includes weekends and holidays.

Chair English further suggested that mandatory electronic filing for legislative candidates begin with the current election cycle rather than the 2007 election cycle.

Executive Director Herrmann explained that a currently unavailable technical assistance support capability is required to enable the program to be accomplished. He also stated that there has never been a busier time for the Commission in terms of implementing new laws, upgrading its computer hardware and software, and hiring new staff. Moreover, a great deal of additional computer work needs to be done to support electronic filing over the Internet.

The Commission agreed to propose rules consistent with mandatory filing by certain gubernatorial and legislative candidates beginning in 2007.

Executive Director Herrmann stated that the Commission was being very proactive in implementing electronic filing at this time and reminded that ELEC's recent computer report asked for additional funding to accomplish such filing and other planned programs.

On a motion by Commissioner Burstein, seconded by Commission Davis and passed by a vote of 4-0, the Commission directed staff to file with the OAL the proposed amendments and new rules to implement the new campaign laws and the "Sunset" process, as amended.

5. Gubernatorial Public Financing Report

Director of Public Financing Amy Davis reported that 2005 primary election candidate John Murphy filed his first matching fund submission on January 4, 2005, containing \$349,457.99 in net contributions submitted for match. Candidate Murphy filed a signed

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Statement of Agreement to participate in the 2005 primary election debates and a Candidate Certification of Non-Participation in Issue Advocacy Organizations (Form P-2A).

Director Davis reported that staff review of the submission indicated that 203 of the 918 contribution items submitted for match on Submission #1, totaling \$76,350.00, were deposited into the campaign account more than ten days after receipt of the contributions by the campaign. The Campaign Reporting Act requires that all funds received by a campaign treasurer be deposited into the campaign depository no later than ten days after receipt. Debra Tedesco, Candidate Murphy's campaign treasurer, provided a written explanation that the delay in deposit of these contributions occurred early in the campaign, and that since her appointment as treasurer on September 13, 2004, she has implemented a new system to be used when handling the deposit of contributions.

Director Davis explained that staff understands the purpose of the ten-day deposit rule is to prevent campaigns from delaying deposit of contributions in order to prevent timely disclosure of contribution information. Because a publicly financed gubernatorial campaign must report all contributions on its preelection quarterly reports and because the Murphy campaign has filed preelection quarterly reports since April 15, 2004, there has been preelection disclosure of the contributions even though deposit of some contributions was delayed. Staff therefore recommended that, in the absence of any other compliance defects, the 203 contributions to 2005 primary election candidate John Murphy be eligible for match with 2005 public matching funds. Director Davis advised the Commission at its April 15, 1997 meeting, the Commission similarly approved matching contributions to Michael Murphy's 1997 primary election campaign that were deposited more than ten days after receipt.

Director Davis further advised the Commission that the Murphy campaign provided copies of expenditure checks to document a portion of the \$300,000 expenditure qualification threshold on January 7, 2004, three days after the submission date. Staff recommended that a delay of three days in providing copies of expenditure checks should not preclude the Murphy campaign from qualification to receive public matching funds because the campaign reported expenditure information in excess of \$300,000 on January 4, 2005, as part of its first matching fund submission.

Staff will report at the next Commission meeting on the results of its review of Submission #1 filed by Candidate Murphy.

On a motion by Commissioner Davis, seconded by Commissioner Burstein and passed by a vote of 4-0, the Commission approved the staff recommendations concerning the first matching fund submission of 2005 primary election candidate John Murphy.

6. Commission Code of Ethics

Legal Director Massar stated that the Executive Commission on Ethical Standards (ECES) is responsible for administration and enforcement of the New Jersey Conflicts of Interest Law, N.J.S.A. 52:13D-12 et seq., and for enforcement of the "Code of Ethics for Commissioners and Employees of the New Jersey Election Law Enforcement Commission."

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As the result of its periodic review of ELEC's code, the ECES has asked the Commission to amend its Code of Ethics. She explained that the amended Code would be submitted to the ECES for approval. The amendments are:

- A new paragraph 11, at Section IV, to prohibit the Executive Director, Deputy Executive Director, Legal Director, and Compliance Director from having any personal contractual or business relationship with another officer or employee or member of the Commission;
- An amendment to Section V to require that Commissioners must annually disclose outside employment and/or business interests; and,
- A new Section VI, stating that all employees and Commissioners are subject to the restrictions on travel reimbursements provided in N.J.S.A. 19:61-6.4.

On a motion by Commissioner Davis, seconded by Commissioner Burstein and passed by a vote of 4-0, the Commission approved the amendments to the Commission Code of Ethics.

7. 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.

8. Return to Public Session

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

At this point in time, Chair English excused herself and left the telephone meeting.

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9. Adjournment

On a motion by Commissioner Davis, seconded by Vice Chair Tober and passed by a vote of 3-0, the Commission voted to adjourn at 1:00 p.m.

Respectfully submitted,

Frederick M. Herrmann, Ph.D.  
Executive Director

FMH/elz