



*State of New Jersey*

## ELECTION LAW ENFORCEMENT COMMISSION

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Compliance Director

JAMES P. WYSE  
Counsel

### PUBLIC SESSION MINUTES

November 15, 2005

Vice Chair Tober, Commissioner Burstein, Commissioner Davis, Counsel Wyse, and Senior Staff were present. Chair English was absent.

#### 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 October 18, 2005, October 25, 2005, and October 28, 2005

On a motion by Commissioner Davis, seconded by Commissioner Burstein and passed by a vote of 3-0, the Commission approved the Public Session Minutes of October 18, 2005, October 25, 2005, and October 28, 2005.

#### 3. Executive Director's Report

##### A. Staff Activities

Executive Director Herrmann reported that the new Internet Treasurer Training Program is nearing completion. He stated that pursuant to P.L. 2004, c.22, ELEC is charged to train certain campaign and organizational treasurers. According to the Executive Director, the bill specifically mandates training for gubernatorial and legislative treasurers and those for the two State political party committees and the four legislative leadership committees. Executive Director Herrmann noted that other treasurers may be trained and that the Internet component is mandated to be in effect by December, one-year after the law's enactment.

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Executive Director Herrmann mentioned that as of the end of September, the Compliance Division had trained 326 treasurers. The Executive Director said that the Compliance Division is also beginning lobbyist training in the new high tech room in December.

Executive Director Herrmann indicated that the new lobbying regulations will be explained and ELEC's new forms will be reviewed for groups of up to 30 persons at a time. He said that it is anticipated that regular training sessions will continue for several months.

The Executive Director stated that on November 2, 2005, Legal Director Massar met with officials from the Division of Local Government Services in the Department of Community Affairs to discuss implementation of the new pay-to-play law. He noted that she learned that the division is working on materials to assist county and municipal governments in administering the program that will take effect on January 1, 2006.

Executive Director Herrmann informed the Commission that ELEC's new regulations will cover the campaign finance aspects of pay-to-play while the Division will be responsible for guiding local governments on the rules for contracting. The Executive Director mentioned that Legal Director Massar has also reached out to the legislative staff about its role in enforcing pay-to-play rules for legislative contracts.

### B. Computer News

Executive Director Herrmann reported that a national state disclosure survey again gave New Jersey a high national ranking for the third year in a row. He said that according to the comprehensive and detailed study, "there were in fact many changes in the State's Campaign Disclosure Program and more improvements are under way." According to the Executive Director, it stated that "access to disclosure data improved again in 2005" and that the survey also mentioned ELEC's computer study published in late 2004 that "detailed the agency's plans for further enhancing the State's disclosure site."

Executive Director Herrmann thanked Director of Systems Administration Carol Neiman and her staff for all of their efforts in maintaining ELEC's well-respected website. He indicated that the staff is hopeful that if the Governor and Legislature adopt ELEC's request in its study for additional computer funding further advances in web-based disclosure can be made including the creation of a local contributor database that will establish "pay-to-play transparency" when the pay-to-play law takes effect for county and municipal governments on January 1<sup>st</sup>.

### C. COGEL Conference Preview

According to Executive Director Herrmann, the Council on Governmental Ethics Laws (COGEL) conference is being held in Boston from December 3<sup>rd</sup> to December 7<sup>th</sup>, 2005. He stated that Legal Director Massar and he will be representing ELEC there this year. Executive Director Herrmann advised the Commission that he is on a public financing panel on which he will be discussing New Jersey's Clean Elections Program.

The Executive Director mentioned that William Schluter, the Chair of New Jersey's Clean Elections Commission, will be in attendance and is scheduled to meet with the executive directors and officials from other states to further discuss clean election laws across the country. Executive Director Herrmann noted that he is also a facilitator at a Breakfast Table Topics session for executive directors.

Executive Director Herrmann reported that Legal Director Massar will be participating in several meetings of the Steering Committee of which she is a member and will also be a Breakfast Table Topic facilitator on the subject of the COGEL Model Lobbying Law. She will also be participating in a panel discussion of the entire COGEL Model Law project.

D. Future Meetings

The last meeting of the year will be on December 20<sup>th</sup>, 2005. At that time, staff will present the Commissioners with a memorandum containing the meeting schedule for 2006.

4. Proposed New Rules to Implement "Pay-to-Play" Legislation

Legal Director Massar discussed proposed new rules designed to implement recently enacted legislation known as "pay-to-play." If approved by the Commission, the proposal notice will be filed with the Office of Administrative Law (OAL) for publication in the New Jersey Register. According to Legal Director Massar, secondary notice will be accomplished by posting the proposal on the Commission's Internet Website and in the Commission's public room, by mailing a notice of the proposal to interested individuals, and by circulating a press advisory to the State House press corps. She said that copies of the proposal will be mailed to any person requesting them and that it is anticipated that a public hearing will be conducted at the February, 2006 Commission meeting.

Legal Director Massar stated that the provisions of the law applicable to Executive Branch contracts differ in significant respects from the provisions, enacted in June, 2004, that are applicable to contracts with State agencies in the Legislative Branch, and with counties and municipalities and their agencies and instrumentalities. She said that staff recommends that the new rules to implement the "pay-to-play" laws therefore be separated into two subchapters, one to deal with Executive Branch contracts, and the other to address contracts with State agencies in the Legislative Branch, counties, and municipalities.

Further, Director Massar explained the staff understanding that regulation of "pay-to-play" contributions is primarily a matter of government procurement law and not within the Commission's jurisdiction. She said that many of the new "pay-to-play" provisions concern the process before a government contract is awarded and involve contracting activities for which the Commission has no responsibility.

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Legal Director Massar stated that the role of the Commission under the new “pay-to-play” laws begins once a business entity has been awarded a contract with a New Jersey government entity. She said that at that point, and upon receipt of evidence that a contract in excess of \$17,500 exists, the Commission is empowered to determine whether or not a business entity has made a prohibited contribution and whether or not a candidate or committee has accepted a prohibited contribution. She noted that the Commission is authorized to impose penalties for violations of the law. Legal Director Massar indicated that the draft text of new rules is intended to clarify the limited scope of Commission responsibility for enforcement of the new “pay-to-play” laws. The proposed new rules include the following:

- N.J.A.C. 19:25-11.7A Limitations on contributions between county political party committees
- Subchapter 24: State Contractor Contributions Prohibited
  - N.J.A.C. 19:25-24.1 Definitions,
  - N.J.A.C. 19:25-24.2 Contributions by business entities prohibited,
  - N.J.A.C. 19:25-24.3 Business entity defined,
  - N.J.A.C. 19:25-24.4 Request for repayment of a contribution,
  - N.J.A.C. 19:25-24.5 Applicability to State agencies and authorities,
  - N.J.A.C. 19:25-24.6 Inapplicability under federal law or eminent domain,
  - N.J.A.C. 19:25-24.7 Penalties for violation by a business entity,
  - N.J.A.C. 19:25-24.8 Penalty for acceptance of an unlawful contribution,
  - N.J.A.C. 19:25-24.9 Allegation of a violation,
  - N.J.A.C. 19:25-24.10 Opportunity for hearing,
  - N.J.A.C. 19:25-24.11 Default for failure to answer complaint,
- Subchapter 25: Legislative, County and Municipal Contractor Contributions Prohibited
  - N.J.A.C. 19:25-25.1 Definitions,
  - N.J.A.C. 19:25-25.2 Contributions by business entities prohibited,
  - N.J.A.C. 19:25-25.3 Prohibition on acceptance of contributions from a business entity,
  - N.J.A.C. 19:25-25.4 Contribution deemed to be a contribution by business entity,
  - N.J.A.C. 19:25-25.5 Business entity duty to report to Commission,
  - N.J.A.C. 19:25-25.6 Repayment of a contribution,
  - N.J.A.C. 19:25-25.7 Penalty for a violation by a business entity,
  - N.J.A.C. 19:25-25.8 Penalty for acceptance of an unlawful contribution,
  - N.J.A.C. 19:25-25.9 Allegation of a violation,
  - N.J.A.C. 19:25-25.10 Opportunity for hearing, and
  - N.J.A.C. 19:25-25.11 Default for failure to answer complaint.

Legal Director Massar reiterated the staff understanding that there are two phases to the “pay-to-play” law. She said that the first part deals with the procurement process prior to awarding of a government contract. She said that staff believes the Commission has no jurisdiction over the awarding of government contracts. Legal Director Massar stated that the second part has to do with contributions that are made after the contract is in effect. She indicated that staff believes the Commission is responsible for administration of this part of the law.

Commissioner Burstein asked about the “fair and open process” language, stating that there can be many different standards applied.

Executive Director Herrmann stated that the Local Finance Board, under the Department of Community Affairs, is apparently attempting to assist counties and municipalities to define the requirements of a “fair and open” contract process.

Commissioner Davis suggested that with regard to the provision in the regulations involving allegation of a violation, that the individual making the allegation state the amount of the contribution so that it will be known whether the contribution amount is above the threshold.

Commissioner Burstein recommended that the text of the proposed rules in Subchapter 24 recite the definition of a “business entity” before stating the prohibition on “business entity” contributions.

Legal Director Massar replied that the changes suggested by Commissioners Davis and Burstein would be made to the proposal.

On a motion by Commissioner Burstein, seconded by Commissioner Davis and passed by a vote of 3-0, the Commission approved the draft text of the “pay-to-play” rules, with additions offered by the Commissioners, and directed staff to file the proposal at the OAL.

5. 2005 Gubernatorial Public Financing Report

Director of Public Financing, Amy F. Davis presented the following report:

2005 Primary Election

**Bret Schundler**

Director of Public Financing Davis said that Candidate Schundler filed his twelfth matching fund submission on September 20, 2005, and reported \$45,088.00 in net contributions submitted for match. After review, public funds in the amount of \$83,766 were deposited into Candidate Schundler’s public fund account on November 4, 2005, she said.

**Final P2005 Submissions Received**

According to Director Davis, the following submissions were received:

<u>Candidate</u>	<u>Submission Number</u>	<u>Amount Submitted For Match</u>
Steven Lonegan	14	\$64,115.00
John Murphy	9	\$13,248.85
Robert Schroeder	11	\$31,650.00
Bret Schundler	13	\$22,252.00

She said that when the review is completed, staff will deposit the public matching funds and will report to the Commission at its next meeting.

2005 General Election

**Hector Castillo**

Director Davis advised the Commission that Candidate Castillo filed his second matching fund submission on November 9, 2005, and reported \$15,975 in net contributions for match. She said that staff will report to the Commission on the status of the submission at its next meeting.

On a motion by Commissioner Davis, seconded by Commissioner Burstein and passed by a vote of 3-0, the Commission accepted the Clean Elections report.

6. Resolution to go into Executive Session

On a motion by Vice Chair Tober, seconded by Commissioner Burstein and passed by a vote of 3-0, the Commission resolved to go into Executive Session to discuss anticipated litigation and 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.

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Return to Public Session

Legal Director Massar suggested that one of the gubernatorial public financing postelection hearings to be held in the spring be devoted entirely to the issues concerning the gubernatorial debates and the sponsor selection process. She explained that hearings in the past were not dedicated to specific topics. She also recommended that the letters to be sent to all parties involved with the recent public financing debate specifically ask the sponsors to participate in the hearing regarding gubernatorial debates.

The Commission agreed and suggested that the hearings also include a discussion of the process to qualify to debate. It was also agreed that the Commission would review the debate letters at the December meeting when the Chair would be able to participate.

7. Adjournment

On a motion by Commissioner Burstein, seconded by Vice Chair Tober and passed by a vote of 3-0, the Commission voted to adjourn at 12:15 p.m.

Respectfully submitted,

Frederick M. Herrmann, Ph.D.  
Executive Director

FMH/elz