



State of New Jersey

ELECTION LAW ENFORCEMENT COMMISSION

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Legal Director

EVELYN FORD
Compliance Director

JAMES P. WYSE
Counsel

PUBLIC SESSION MINUTES

September 19, 2006

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.

2. Approval of Public Session Minutes of August 15, 2006

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 August 15, 2006.

3. Executive Director's Report

A. Staff Activities

Executive Director Herrmann reported that on June 12, 2006, the Finance and Administration Section hosted a State library seminar for the staff in the high tech room. He mentioned that a library representative presented a program on the extensive resources of the library and how to use its website. According to the Executive Director, over 20 staffers attended and will now be much better equipped to conduct various research projects.

Executive Director Herrmann advised the Commission that in August, 2006, Assistant Compliance Officer Sylvette Seay and Compliance Secretary Michelle Hackett left ELEC to take jobs with the Federal Election Commission and State Judiciary, respectively. The Executive Director made note of the fact that they were outstanding employees who made numerous contributions to the work of the Commission and will be greatly missed.

Executive Director Herrmann added that in September, 2006, the Office of Management and Budget (OMB) cut ELEC's salary account by \$95,000 as a "management efficiency reduction."

B. Council on Governmental Ethics Laws (COGEL) Update

The Executive Director stated that in July, 2006, he sorted out and took an inventory of 16 boxes of unprocessed archival material from the past two decades. He said that he is serving as the Co-chair of the COGEL Subcommittee on Restoration and Preservation of Records. The Executive Director informed the Commission that he created a 22-page catalogue detailing the contents of the boxes, noting that this document will be used by the Steering Committee to determine which materials should be saved and/or scanned to the COGEL website. Executive Director Herrmann recommended that COGEL locate funding to better support its clerical staff so that such a serious backlog does not develop in the future. He indicated that COGEL President-elect Nedda Massar is working on a follow-up review before the boxes are sent back to the COGEL Secretariat staff. He remarked that because of the State's fiscal situation and current travel policy, staff plans only to request that Legal Director Massar be allowed to attend the December COGEL conference in New Orleans as she will become the head of COGEL at the end of the meeting.

C. Northeastern Regional Conference on Lobbying (NORCOL) Conference

The Executive Director noted that on August 1, 2006, Legal Director Massar, Compliance Director Ford, Director of Information Technology Carol Neiman, and he attended the annual NORCOL meeting held in conjunction with the Council of State Governments-Eastern Regional Conference (CSG-ERC) annual meeting in Philadelphia. He said that due to State finances and travel policy, all of the staff paid their own expenses. According to Executive Director Herrmann, the meeting was attended by representatives of three state agencies and seven lobbyists. The Executive Director advised the Commission that after he presented some introductory remarks, while filling in for the absent NORCOL President, the first segment of the program was dedicated to reports on the previous year's activities from the state agencies. At the session, Executive Director Herrmann reviewed New Jersey's seven new lobbying laws and ELEC's ongoing efforts to implement them through the regulatory process. Dr. Herrmann indicated that a New Jersey lobbyist in the audience praised ELEC for its efforts. Executive Director Herrmann commented that a representative from the Connecticut Office of State Ethics discussed the creation of her agency which replaced another body that was terminated last year and that the counsel to the Pennsylvania Ethics Commission reviewed her State's attempts to enact a new lobbying law so that Pennsylvania does not remain the only state in the nation without provisions to regulate lobbying.

According to the Executive Director, the next part of the program was a discussion between regulators and lobbyists touching on numerous issues of general concern. He said that in the final segment, a business meeting was held at which Compliance Director Ford became NORCOL's new President, and it was decided that next year's meeting will be held in Trenton, followed by Atlantic City in 2008. The Executive Director reported that the Trenton meeting in 2007 will be held apart from CSG-ERC because its meeting will be in Canada, but that in 2008, NORCOL will rejoin CSG-ERC when it meets in New Jersey.

The Executive Director advised the Commission that Compliance Director Ford will be in charge of both NORCOL meetings and has already begun her planning. Executive Director Herrmann mentioned that copies of Lobbying in New Jersey 2006 were handed out to all attendees and the report is now also available on ELEC's website. He noted that former Chair Ralph Martin and former Vice Chair Paula Franzese both complimented the Commission on the quality of the report.

D. Computer News

Executive Director Herrmann announced that in August, 2006, the Information Technology Section completed its short form electronic filing project for candidates, and that now, these forms may be filed over the Internet. He said that this major accomplishment is a big step forward in ELEC's creation of a state-of-the-art 21st century system for campaign financing and lobbying disclosure. Executive Director Herrmann expressed special thanks to Director of Information Technology Neiman, her staff, and Associate Compliance Officer Nancy Fitzpatrick for their significant work on this project.

The Executive Director added that in August, 2006, OMB cut ELEC's Information Technology budget almost one-third by taking \$190,000 as an "efficiency reduction." He suggested that such a large decrease will unfortunately slow the progress of other scheduled computer initiatives.

E. White Paper Number 19

Executive Director Herrmann indicated that Deputy Director Brindle has completed a draft of his latest White Paper, entitled "The 2005 Assembly Election: New Trends on the Horizon?" He said that this report should prove of great interest as New Jersey enters the 2007 legislative election cycle.

The Executive Director advised the Commission that after Commissioner approval staff will circulate the study to the media, good government groups, governmental and campaign officials, libraries, and the general public.

On a motion by Commissioner Burstein, seconded by Vice Chair Tober and passed by a vote of 4-0, the Commission approved distribution of White Paper Number 19.

F. Fall Meeting Schedule

October 17, 2006 at 11:00 a.m. in Trenton;
November 21, 2006 at 11:00 a.m. in Trenton; and,
December 19, 2006 at 11:00 a.m. in Trenton.

4. Proposed New Rules to Implement “Pay-to-Play” Disclosure Legislation

Legal Director Massar provided the Commissioners with a description of legislation, enacted in January, 2006, which requires expanded disclosure of political contributions made by business entities involved in contracts with New Jersey government entities. In addition, she explained a draft proposal of new rules to implement the legislation. She said that if the Commission approves proposal of the new rules, the proposal notice will be filed with the Office of Administrative Law (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, by mailing a notice of the proposal to interested individuals, and by circulating a press advisory to the State House press corps. Legal Director Massar said that copies of the proposal will be mailed to any person requesting them. A public hearing will be conducted at the November 21, 2006 Commission meeting.

The draft text of the proposed new subchapter included the following rules:

Subchapter 26. Business Entity Disclosure

- 19:25-26.1 Definitions
- 19:25-26.2 Business entity disclosure to a State agency
- 19:25-26.3 Business entity disclosure to a local unit
- 19:25-26.4 Business entity annual disclosure statement
- 19:25-26.5 Filing the business entity annual disclosure statement
- 19:25-26.6 Contribution deemed to be a contribution by a business entity
- 19:25-26.7 Allegation of a violation; fine
- 19:25-26.8 Opportunity for hearing
- 19:25-26.9 Default for failure to answer complaint

Legal Director Massar summarized the two distinct parts of the Pay-to-Play Law. The first is the Prohibition Law, for which rules were recently adopted, which restricts the award of a contract by a New Jersey government entity to a business if that business entity has made certain political contributions. The Disclosure Law, enacted in January, 2006, is the second phase and requires that a business entity file pre-contract disclosure with the appropriate governmental entity for non-fair and open contracts, and file an annual disclosure statement with the Commission if the business receives \$50,000 or more in a year through government contracts, regardless of whether or not a contract was obtained through the “fair

and open” process. The Legal Director noted that the Commission does not have jurisdiction over the procurement process by which a government entity awards a contract to a business entity. Legal Director Massar indicated that the new law allows local units of government to create their own pay-to-play laws as long as they are not less restrictive than State law.

Commissioner Burstein suggested that the Commission may wish in the future to request further legislation to clarify terms used in the new disclosure law. The Legal Director indicated that such issues may be identified during the public hearing scheduled on the proposed rules.

Counsel Wyse stated that his concern with the proposal was its impact on nonprofit organizations. He stated that he represents numerous nonprofit organizations and that the proposal may impact them in a way that would change the way they operate. Counsel Wyse stated that those in the nonprofit sector do not see themselves as business entities and that he did not read the legislation as including nonprofit organizations in the law.

Legal Director Massar explained that staff has confirmed that the Departments of Treasury and Community Affairs have both concluded that nonprofit entities are subject to the provisions of the law.

Commissioner Davis agreed that nonprofits are often big businesses that operate in the same way as for-profit corporations. Though not subject to tax provisions, they nevertheless functioned as business, he said.

Counsel Wyse suggested that the proposed regulations be amended to clarify that nonprofits are subject to the law and the regulations.

It was suggested by Commissioner Davis that the term not-for-profit organization be added to the definition of business entity. Legal Director Massar indicated that she would modify the text of the rules to clarify that not-for-profit entities are included in the regulations and circulate the changes to the Commissioners before filing with the OAL.

Chair English and Vice Chair Tober both congratulated Legal Director Massar on an excellent job, noting that the finished product dealt in an effective way with a complex law.

On a motion by Commissioner Burstein, seconded by Vice Chair Tober and passed by a vote of 4-0, the Commission approved the rule proposal designed to implement pay-to-play disclosure and directed staff to file the proposal with the OAL.

5. Resolution to go into Executive Session

On a motion by Commissioner Burstein, seconded by Vice Chair Tober and passed by a vote of 4-0, the Commission resolved to go into Executive Session to discuss anticipated litigation and the following matters, which will become public as follows:

Public Session Minutes

September 19, 2006

Page 6

- 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.

6. Adjournment

On a motion by Commissioner Davis, seconded by Commissioner Burstein 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