



State of New Jersey

## ELECTION LAW ENFORCEMENT COMMISSION

JERRY FITZGERALD ENGLISH  
Chair

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Commissioner

THEODORE Z. DAVIS  
Commissioner

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Deputy Director

NEDDA G. MASSAR  
Legal Director

EVELYN FORD  
Compliance Director

JAMES P. WYSE  
Legal Counsel

### PUBLIC SESSION MINUTES

December 19, 2006

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

#### 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 11:15 a.m. in Trenton.

#### 2. Approval of Public Session Minutes of November 21, 2006

On a motion by Commissioner Burstein, seconded by Commissioner Davis and passed by a vote of 3-0, the Commission approved the Public Session Minutes of November 21, 2006.

#### 3. Executive Director's Report

##### A. Commissioner News

The Commission expressed congratulations to Judge Davis, who was named by Governor Jon S. Corzine as Interim Chief Operating Officer for the city of Camden on December 14, 2006. Commissioner Davis indicated that following the meeting he would tender his resignation from the Commission.

The Executive Director added that also on December 14, 2006, Chair English, Vice Chair Tober, and he met with representatives from the Governor's office and the State Treasury to discuss ELEC's budgetary and fiscal situation. He said that both Chair English and Vice Chair Tober very eloquently expressed the Commission's needs.

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B. National News

Executive Director Herrmann reported that according to national exit polls on Election Day 2006, when asked which issue was extremely important to their vote, more voters said corruption and ethics in government than any other issue including the Iraq war. According to the Executive Director, 42 percent of those interviewed said corruption and ethics were extremely important to their vote, while only 37 percent said Iraq.

C. Staff Activities

Executive Director Herrmann advised the Commission that Department of Law and Public Safety data ranks ELEC second among the department's 17 divisions in the total number of Open Public Records Act (OPRA) requests processed in 2006. He mentioned that as of October 31, 2006, ELEC received 119 requests, which is three more than the State Police. The Executive Director stated that the Division of Consumer Affairs had the largest number of requests with 262. Executive Director Herrmann extended thanks to Director Evelyn Ford and the Compliance Division for its excellent work in timely administering this heavy load of requests.

The Executive Director announced that the Pay-to-Play section of ELEC's website has been expanded to include a useful chart prepared by Legal Director Nedda Massar, which provides an overview of the various statutory elements of the law. He said that it is an additional tool to assist filers and the public in understanding this complex new program.

D. Legislative Developments

Executive Director Herrmann reported that on December 7, 2006, Director of Special Programs Amy Davis and he attended an Assembly State Government Committee hearing on A-100 (Roberts, Greenstein, Baroni, Greenwald, and Handlin), which creates a revised Clean Elections Pilot Project for general election 2007.

According to the Executive Director, the proposed program will cover three legislative districts and senate candidates as well as ones for the General Assembly. He indicated that the qualifying period for certification to receive public money would run from April 10, 2006 to September 30, 2006. The Executive Director noted that during that period, a candidate would be able to begin his or her campaign by accepting from individuals registered to vote in the State "seed money contributions" of \$500.00 or less up to a maximum amount of \$10,000. Executive Director Herrmann advised the Commission that all seed money contributors must be disclosed with their names, addresses, occupations, and employers and that "qualifying dollars" would be raised through \$10.00 contributions. The Executive Director mentioned that they would only come from registered voters within a candidate's district and that the contributor's name and address must be disclosed.

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According to Executive Director Herrmann, once a candidate is certified and receives public money by raising \$8,000 in qualifying contributions, he or she may not raise any additional funds. Executive Director Herrmann informed the Commission that no General Assembly candidate may receive public money if his or her running mate does not participate in the program and that a certified candidate's total grant of public money may not be greater than \$100,000 or a maximum amount calculated in the one district with mixed party representation. Executive Director Herrmann stated that alternative party candidates receive half of this amount and that additional amounts up to \$100,000 are given if a noncertified opponent raises more money than the total grant to a certified candidate or if there are independent expenditures.

The Executive Director noted that there are also candidate withdrawal provisions and penalty sections and that ELEC has various responsibilities including: insuring voter access to program information, preparing a voter's guide for its website, administering 250-word candidate statements that will appear on the sample ballots, and overseeing sponsor selection for candidate debates.

Executive Director Herrmann advised the Commission that the bill appropriates \$7.7 million of which \$250,000 is for ELEC administrative costs, \$75,000 is for the sample ballot statements, and \$600,000 is for ELEC to pay a public relations vendor to advertise the program.

According to Executive Director Herrmann, the committee accepted two technical ELEC staff recommendations: one to waive the cost of the Commission for procuring voter registration rolls so that ELEC can vet the legitimacy of contributions, which must come from registered voters; and the second to expedite the contracting process so that ELEC could hire the public relations vendor in a timely fashion.

The Executive Director reported that the bill was released 4-0 with one abstention and that on December 11, 2006, the bill was amended on the floor of the General Assembly to establish "in-but-not-of" ELEC a Clean Elections Advisory Committee. He said that this separate entity would be comprised of five members with one member each appointed by the Governor and the four legislative leaders. He added that it would provide advice to ELEC on the administration of the 2007 pilot program and would serve as an advocate of it. Executive Director Herrmann said that this committee within the Commission would meet at least bimonthly and would hold a public hearing after the election followed by a report. The Executive Director noted that on December 14, 2006, the bill passed the General Assembly 67-11.

Commissioner Burstein noted that there was still an opportunity to express the Commission's concern to the Legislature about the separate Clean Elections Advisory Committee.

Chair English said that it would be helpful to advise the Senate of the Commissioners' concerns that the separate entity would complicate administration of the pilot program. She asked staff to prepare for her a letter to Senate President Codey that includes issues related to the Clean Elections Advisory Committee and comments

about the Commission's critical lack of resources. She requested that a similar letter be sent to Assembly Speaker Roberts to explain these concerns and that the two letters be made part of the minutes.

On a motion by Commissioner Burstein, seconded by Commissioner Davis and passed by a vote of 3-0, the Commission authorized staff to issue the letters to the Senate President and Assembly Speaker.

E. Council on Governmental Ethics Laws Conference (COGEL)

Executive Director Herrmann advised the Commission that Legal Director Massar represented the Commission at this year's COGEL Conference in New Orleans, noting that she had a very busy schedule serving on two panels, one about Pay-to-Play and the other about the Federal Bipartisan Campaign Reform Act; leading a breakfast table topics discussion on candidate debates; attending a model laws workshop; and introducing State Ethics Commission Chair Paula Franzese, who addressed a plenary session on the "Anatomy of Ethics Reform in New Jersey."

Executive Director Herrmann stated that moreover, Legal Director Massar became the President of COGEL at the end of the conference bringing great credit not only to herself but also to the Commission.

F. Winter Meeting Schedule

- January 16, 2007 at 10:00 a.m. in Trenton;
- February 20, 2007 at 10:00 a.m. in Trenton; and,
- March 20, 2007 at 10:00 a.m. in Trenton.

4. Proposed Amendments to Commission Rules Concerning Lobbying

Legal Director Massar discussed proposal of amendments to Subchapter 20, Lobbyists and Governmental Affairs Agents, to clarify the lobbying rules and reporting requirements. As presented by Legal Director Massar, the staff recommended amendments to the following rules:

- **N.J.A.C. 19:25-20.2 Definitions**

Under this section, as recommended by Commissioner Burstein and concurred in by the Commission, the Commission determined to amend the definitions of "lobbyist" and "member," but not to amend the definition of "communication with the general public."

- **N.J.A.C. 19:25-20.3 Exemptions from the Act**

Staff recommended proposal of new paragraph (c) to define the term "administrative proceeding." Counsel Wyse suggested that the paragraph requiring a transcript of the proceeding be amended to include an exception if access to a transcript is "otherwise restricted by law." The Commission concurred.

- **N.J.A.C. 19:25-20.9 Annual report**
- **N.J.A.C. 19:25-20.10 Receipts**
- **N.J.A.C. 19:25-20.11 Expenditures**

Staff recommended that the text of these three rules be amended to clarify that reportable lobbying activity includes attempts to influence legislation and regulation, as well as activity to influence governmental processes and to conduct communications with the general public.

- **N.J.A.C. 19:25-20.9A Annual report of communication with the general public**
- **N.J.A.C. 19:25-20.15 Audit by commission; recordkeeping**

Staff recommended that the rules be amended to clarify recordkeeping requirements for persons and legislative agents who undertake communications with the general public.

- **N.J.A.C. 19:25-20.19 Nonresident governmental affairs agents or lobbyists**

Staff recommended that the rule be amended to require that a person outside New Jersey who conducts communications with the general public be required to file the consent to service of process.

On a motion by Commissioner Burstein, seconded by Commissioner Davis and passed by a vote of 3-0, the Commission directed staff to file the proposed amendments to the lobbying rules, with changes made by the Commissioners, at the Office of Administrative Law.

5. Resolution to go into Executive Session

On a motion by Commissioner Burstein, seconded by Commissioner Davis 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. 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. Adjournment

On a motion by Commissioner Burstein, seconded by Commissioner Davis 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