



State of New Jersey

ELECTION LAW ENFORCEMENT COMMISSION

JERRY FITZGERALD ENGLISH
Chair

PETER J. TOBER
Vice Chair

ALBERT BURSTEIN
Commissioner

Respond to:
P.O. Box 185
Trenton, New Jersey 08625-0185

(609) 292-8700 or Toll Free Within NJ 1-888-313-ELEC (3532)

Website: <http://www.elec.state.nj.us/>

FREDERICK M. HERRMANN, Ph.D.
Executive Director

JEFFREY M. BRINDLE
Deputy Director

NEDDA G. MASSAR
Legal Director

EVELYN FORD
Compliance Director

JAMES P. WYSE
Legal Counsel

PUBLIC SESSION MINUTES

October 23, 2007

Chair English, Vice Chair Tober, Commissioner Burstein, 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 September 25, 2007

On a motion by Commissioner Burstein, seconded by Vice Chair Tober and passed by a vote of 3-0, the Commission approved the Public Session Minutes of September 25, 2007.

3. Application of Pay-to-Play Disclosure to Nonprofit Business Entities

Chair English stated that the Commission was once again prepared to revisit the issue of whether or not nonprofit businesses are subject to pay-to-play disclosure rules enforced by the Election Law Enforcement Commission.

Chair English recognized Mr. Jeff Tittel, Executive Director of the New Jersey Chapter of the Sierra Club.

Mr. Tittel stated that he was in favor of the Commission going ahead with its regulation requiring nonprofits to disclose contribution and contract information because nonprofits get many contracts. He stated that he has witnessed suspicious contracts being approved and that there must be transparency for every group. He said that stronger disclosure rules result in more credibility for nonprofit groups.

Public Session Minutes

October 23, 2007

Page 2

Commissioner Burstein asked if Mr. Tittel had expressed this point of view in hearings with regard to pay-to-play disclosure.

Mr. Tittel answered in the affirmative, indicating that during the hearings on the bill the issue of nonprofits was discussed and he testified and expressed support for including nonprofits in the legislation.

Vice Chair Tober said that he considered it important that the status of nonprofits was discussed.

Chair English recognized Mr. John Rogers, representing the New Jersey Business and Industry Association.

Mr. Rogers said that his organization is in favor of transparency and disclosure but that Chapter 271 was not intended to reach nonprofits. He said that the entire matter is confusing and nonprofits were not aware of the burden of compliance with pay-to-play disclosure. He said that the issue of what is a grant and what is a contract under the law is confusing as is the fear that people will not want to volunteer for charitable work if they are subject to pay-to-play disclosure of their contributions. He said that nonprofits as an institution cannot make contributions.

Mr. Rogers requested that ELEC seek advice concerning whether or not grants are to be treated the same as contracts under Chapter 271.

Commissioner Burstein asked Mr. Rogers how he would respond to the previous witness who said that nonprofits get many contracts from the State. He asked: what is the public policy implication of not including nonprofits?

Mr. Rogers said that he is not sure what public policy is served by disclosing the same contribution in a number of places.

Commissioner Burstein pointed out that the media and public could not currently find contracting and contributing information for nonprofits without looking in multiple places.

Chair English recognized Mr. Bob Polakowski, representing New Jersey Independent Colleges and Universities.

Mr. Polakowski said that his main concern is obtaining clarification of whether or not grants are considered contracts for the purpose of pay-to-play disclosure. For example, is a grant for student support services a contract covered by pay-to-play disclosure requirements? He added that he has been to ELEC training sessions and that the staff has been very helpful.

Chair English asked if seeking clarification down the road and refining the law would help.

Mr. Polakowski said it was one approach to take. He said that he was for transparency but that the situation as it exists with regard to contracts and grants is muddled.

Public Session Minutes

October 23, 2007

Page 3

Chair English recognized Ms. Linda Czipo, Executive Director of the Center for Nonprofits.

Ms. Czipo thanked the Commission and staff for its accessibility. She reiterated that most of her members, as 501(c)3 charities, are not allowed to donate as institutions. She said that board members' individual contributions are made for reasons other than securing contracts and that nonprofits attempt to keep contributions at arms length.

Chair English said that there is the assumption that people give because they want good government. So what is the problem if a contribution is disclosed?

Ms. Czipo said that there is no problem if the contribution is disclosed as an individual contribution by the recipient, but pay-to-play disclosure leads to incorrect conclusions about why a contribution has been made.

Chair English recognized Mr. Tittel who stated that board members often attend fundraisers. He said that this fact makes one wonder when it comes to contracts.

Chair English recognized Ms. Heather Taylor, Communications Director of Citizens' Campaign.

Ms. Taylor stated that she attended all pay-to-play legislative hearings, and no one considered nonprofits during the process. She said her group was now looking into the issue in other states.

Vice Chair Tober said that Ms. Taylor's comment contradicts the statement made by the previous speaker.

Mr. Tittel added that he was very much engaged with the Legislature in regard to nonprofits.

Chair English said that the legislative process is complex, and the two speakers may not have been in the same room at the same time.

4. Resolution to go into First Executive Session

Chair English stated that the Commission would now go into Executive Session to hear the Attorney General's Opinion, which is a privileged document. She said that the Governor's Office would have to lift the privilege in order for it to become public. Chair English said that the Commission would hear the view of its counsel, which is subject to attorney-client privilege.

On a motion by Commissioner Burstein, seconded by Vice Chair Tober, the Commission resolved to go into Executive Session to obtain legal advice.

Return to Public Session

5. Application of Pay-to-Play Disclosure to Nonprofit Business Entities (Continued)

Legal Counsel Wyse reiterated that the Executive Session discussion was limited to matters subject to the attorney-client privilege.

Vice Chair Tober said that given the fact that the statement in the Attorney General's Opinion only advised that the law could be interpreted to exclude nonprofit businesses, he was less than convinced that nonprofits should be excluded from disclosure. Vice Chair Tober said that it was his opinion that nonprofits should be included. Vice Chair Tober said that from his own review of the State statutes the term "for profit" was used over 300 times. He said that if the Legislature intended to limit its definition it could have included the term for profit but it did not. He said, however, that given the circumstances he would be willing to extend the deadline for filing to November 30, 2007.

Commissioner Burstein said that the Commission has been trying to interpret what the Legislature intended. He said that it was not clear. His conclusion is that clarification should be provided by the Legislature and that it should revisit the issue. He said that in the meantime his position is that the Commission should adhere to the Attorney General's Opinion and exclude nonprofits. He said to do otherwise would create confusion. Commissioner Burstein wished to add: 1) from a policy standpoint that he favors reporting by non-profit entities and 2) with regards to the Attorney General Opinion, in general, deference should be paid to an Attorney General Opinion by another State agency.

Chair English said that it is not a question of what the Legislature intended but rather what it did say. She said that there is no legislative history to consider. She thanked the individuals who testified. Chair English noted that the Treasury and Department of Community Affairs websites have said that nonprofits are covered by pay-to-play. She has reviewed the law and cannot find an exclusion for any segment of businesses.

Chair English said that the Attorney General's Opinion was far from definitive and that as an independent agency, the Commission was not bound to follow a less than definitive opinion. She said that the Commission has its own legal counsel independent of the Attorney General. She said that she agreed with Vice Chair Tober that nonprofits should file and would agree to an extension of time to November 30, 2007.

On a motion by Vice Chair Tober, seconded by Commissioner Burstein for the purpose of bringing the matter to a vote, the Commission, by a vote of 2-1, required nonprofits to comply with the requirement to file an annual disclosure statement, but postponed the date of disclosure to November 30, 2007. Commissioner Burstein voted in the negative.

6. 2007 Clean Elections Program Report

Special Programs Director Amy Davis stated that since her last report to the Commission, one additional candidate, Jason Schereur in District 14, has raised a minimum of 400 qualifying contributions to become a Certified Clean Elections candidate on September 26, 2007, and has received public funds totaling \$23,521. She said there are a total of 16 certified Clean Elections Candidates who have received grant funds. Director Davis stated that in addition to the grant funds that have been dispersed, certified candidates can apply for additional public funds called "rescue money." She indicated that on October 12, 2007, ELEC received the first request for rescue money from Candidate Linda Greenstein. She added that based upon the candidate's certification and evidence submitted of an independent expenditure that subjected the candidate to "unfavorable campaign publicity," staff provided Candidate Greenstein with \$100,000 in rescue money, which is the maximum amount under the law.

Director Davis noted that staff posted a Voter's Guide for each Legislative District on its website listing each candidate's name, office sought, and whether or not they are certified or noncertified.

Director Davis reported that all 16 certified candidates submitted their debate plans by the deadline and that staff posted the debate information on the Commission's website and distributed a press release announcing the dates, locations, and sponsors of the debates in each legislative district.

Finally, she advised that staff projects that a public hearing concerning the 2007 Clean Elections Pilot Project will take place at the Commission's December meeting.

Chair English asked Ms. Sandra L. Matsen of the League of Women Voters to comment on the program.

Ms. Matsen said that unquestionably money for promoting the program helped. She said that there was more in the way of negotiations about debates than she anticipated. She said, however, that in the end all went well. Ms. Matsen said that she was basically very pleased and that generally the program was working.

Vice Chair Tober asked if the radio spots, which were paid for with independent expenditures, were discontinued, would there be an ability for ELEC to recoup some of the rescue money? He said that \$100,000 in taxpayer money is quite significant and that there should be a mechanism for recouping money if necessary.

Executive Director Herrmann said that the law requires a certification from the candidate of the cost of a communication and a copy of it demonstrating that the communication was made on behalf of an opponent. He said that the law requires a review of this material to be done in 24 hours. ELEC provides full funding after a communication begins to be made.

Commissioner Burstein said that there is a section in the law that any money remaining must be returned to the State.

Chair English asked if the rescue money was in 'lock box' meaning that it must be spent on responding to the charges in the independent ad.

Legal Director Massar said that there is no such restriction in the law. Clean Elections spending is subject to the permissible use restrictions in the Campaign Act that are applicable to all candidates.

7. Code of Ethics for Commissioners and Employees

Legal Director Massar stated that recent legislation mandated a Uniform Ethics Code (UEC) for all State employees and that the UEC may be supplemented to meet the particular needs of an agency. With that in mind, staff reviewed the UEC and the ELEC Code of Ethics for Commissioners and Employees.

Legal Director Massar discussed proposed supplementary text for the UEC, based on the ELEC Code, to emphasize that Commissioners and staff must be free from any suggestion of partisanship in order to carry out the Commission's many statutory responsibilities. Ms. Massar recommended that the UEC "Foreword" be amended with text from the Commission Code to stress that the Commission must be publicly perceived to be free from partisan influence and from conflicts of interests.

She further recommended that the UEC text be supplemented with two specialized provisions from the Commission Code that prohibit Commissioners and employees from engaging in any business, trade, or profession that is regulated by ELEC and that restrict political activity by all ELEC employees, officers, and special State officers.

Finally, the Legal Director suggested that the UEC be supplemented with a specific provision, modeled after one adopted by the Department of Law and Public Safety, to prohibit ELEC staff attorneys from engaging in outside legal employment. She explained that all ELEC staff attorneys are advised of the prohibition on private practice prior to employment with the Commission, and all current staff attorneys observe this prohibition.

On a motion by Commissioner Burstein, seconded by Vice Chair Tober and passed by a vote of 3-0, the Commission approved the modifications to the State Ethics Code as applicable to staff and Commissioners at ELEC.

8. Executive Director's Report

A. Staff Activities

Executive Director Herrmann introduced Steve Dodson who has been named ELEC's new Director of Finance and Administration Section. According to the Executive Director, he comes to the Commission with a strong background in his field and many years of State government service. Executive Director Herrmann said

Public Session Minutes

October 23, 2007

Page 7

that Director Dodson worked as ELEC's budget analyst at the Office of Management and Budget for five years and holds an MBA with a specialization in finance from LaSalle University. He added that the Operations Division now has two directors, Director Dodson and Director of Information Technology Carol Neiman, reporting to Deputy Director Brindle.

Executive Director Herrmann advised the Commission that Assistant Legal Director Leonard Gicas has been promoted to Director of Review and Investigation in recognition of his outstanding work and demonstrated leadership skills. The Executive Director said that he is a graduate of the University of Wisconsin and the Seton Hall Law School. Executive Director Herrmann noted that the Law Division now has two section directors, Director Gicas and Director of Special Programs Amy Davis, reporting to Legal Director Massar.

Finally, he said, Associate Compliance Officer Todd Wojcik has been promoted to Director of Campaign Financing in recognition of his many fine contributions to the agency and leadership abilities. According to the Executive Director, he is a graduate of the College of New Jersey. Executive Director Herrmann informed the Commission that the Compliance Division now has two section directors, Director Wojcik and Director of Lobbying Linda White, reporting to Compliance Director Ford.

Executive Director Herrmann mentioned that the Compliance Division reports that ELEC has trained 927 treasurers and has 1,033 lobbyists filing with the Commission. The Executive Director reported that the staff has added to the ELEC website campaign finance opinions issued by the Attorney General since 1998. He said that these are valuable legal documents that are often requested and used and that their availability online should be of great value to those interested in campaign finance law.

B. Upcoming Commission Publications

Executive Director Herrmann advised the Commission that Deputy Director Brindle will be the author and project manager for three reports due this spring. The reports are:

- The Clean Elections Pilot Project Report – due March 28, 2008;
- The ELEC Annual Report – due May 1, 2008; and,
- The Cost Analysis Report – due July 1, 2008.

According to Executive Director Herrmann, the Cost Analysis Report creates a campaign cost inflation index that will automatically adjust all non-gubernatorial election thresholds except for contribution limits, which may be adjusted by the Governor and Legislature using the index for guidance, and the \$300 disclosure threshold, which is permanently established. He said that in addition, the index automatically adjusts all gubernatorial thresholds.

C. Pay-to-Play Disclosure Reporting

Executive Director Herrmann reported that on October 10, 2007, the staff released to the public and media the Pay-to-Play Disclosure reports that had to be filed by September 28, 2007. He informed the Commission that there were almost 1,700 reports filed disclosing 21,000 contracts worth \$5.2 billion and about \$12 million in campaign contributions.

The Executive Director stated that the staff received many compliments on the electronic Form BE and pay-to-play web pages that it created. The Executive Director noted that the disclosure forms are searchable by:

- Business entity,
- Contributor, and
- Recipient committee.

The Executive Director expressed special thanks to Director of Information Technology Neiman and her staff for designing outstanding software for the pay-to-play disclosure program. He added that the Special Programs Section, which is also responsible for the Clean Elections Pilot Project, was literally swamped with work. He said, for example, on one day during the week of the filing deadline before the reports were due, the four staff members of the Section received 200 telephone calls. The Executive Director noted that the norm for the entire agency is 200 to 250 per week. He indicated that pay-to-play is truly a “labor intensive program” and recognized Director Davis and her four staff members:

- Christine Aquilante,
- Laura Jurkiewicz,
- Scott Fagerty, and
- Felice Fava.

D. Legislative Financial Activity in the Fall Election

According to Executive Director Herrmann on October 12, 2007, the staff released data from the 29-day general election reports for the legislative races. He reported that about one month before the election, \$27.9 million had been raised and \$14.1 million spent. The Executive Director informed the Commission that these figures, compared to the \$20.2 million raised and \$10.4 million spent in 2003, the last election in which both houses were running, indicate that this year’s legislative election will become the most expensive in State history.

Executive Director Herrmann expressed special thanks to Compliance Director Ford, Director of Information Technology Neiman, and their staffs for compiling this data during a very short and hectic turnaround period. He stated that the data was put to good use by various media outlets that ran numerous election stories over the weekend following the data’s release.

E. End-of the-Year Meeting Schedule

- November 20, 2007 at 11:00 a.m. in Trenton; and
- December 18, 2007 at 11:00 a.m. in Trenton.

9. Legal Director Massar Retirement

The Commission presented Legal Director Massar with a proclamation upon her retirement commemorating her many years of devoted service to ELEC. Ms. Massar thanked the Commission for the wonderful opportunity to work in such an exciting and productive public service environment.

10. Resolution to go into Second Executive Session

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

11. 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 2:40 p.m.

Respectfully submitted,

Frederick M. Herrmann, Ph.D.
Executive Director