



State of New Jersey

## ELECTION LAW ENFORCEMENT COMMISSION

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Chair

PETER J. TOBER  
Vice Chair

ALBERT BURSTEIN  
Commissioner

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Deputy Director

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Legal Director

EVELYN FORD  
Compliance Director

JAMES P. WYSE  
Legal Counsel

### PUBLIC SESSION MINUTES

June 17, 2008

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

#### 1. Open Public Meetings Statement

On a motion by Commissioner Burstein, seconded by Vice Chair Tober and passed by a vote of 3-0, the Commission approved Chair English's request to have Vice Chair Tober chair the meeting.

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 May 20, 2008

On a motion by Commissioner Burstein, seconded by Chair English and passed by a vote of 3-0, the Commission approved the Public Session Minutes of May 20, 2008.

#### 3. Executive Director's Report

##### A. Nomination of Fourth Commissioner

Executive Director Herrmann reported that on May 22, 2008, Governor Corzine nominated Amos C. Saunders, a retired Superior Court Judge from Passaic County, to serve as the fourth member of the Commission. He noted that the seat has been vacant since December, 2006. According to the Executive Director, Judge Saunders nomination has been referred to the Senate Judiciary Committee for review and is scheduled for the Committee's consideration on June 19, 2008. Executive Director Herrmann indicated that he sent a congratulatory form letter to the Judge on May 23, 2008, offering information, materials, and assistance.

B. Staff Activities

The Executive Director advised the Commission that Compliance manuals are no longer being mailed to every candidate as a major cost saving measure. He mentioned that, instead, a letter was sent to each of them encouraging electronic filing or the accessing of the relevant forms and instructions from the ELEC website. Executive Director Herrmann stated that the new system has worked well with the 2008 municipal and primary elections. The Executive Director noted that a candidate who remains a non-filer by the 20-day postelection report will receive a mailed manual so that the complaint process will remain unchanged. Executive Director Herrmann added that agencies throughout State government are being urged to make use of computer technology to save money whenever possible and that this initiative is in keeping with that cost-cutting approach. The Executive Director thanked Compliance Director Ford and her staff for their fine efforts on this important project.

Executive Director Herrmann informed the Commission that the Information Technology Section under Director Carol Neiman has redesigned the Pay-to-Play webpage so that members of the public can subscribe online to receive electronic notices. He said that over 800 filers are already on ELEC's Pay-to-Play email list. Moreover, gubernatorial candidates in 2009 will be able to file electronically over the Internet thanks to the efforts of the Information Technology Section.

According to Executive Director Herrmann, Compliance Division staff has been called on more and more to provide expert testimony in ethics law violation trials. The Executive Director cited Senior Compliance Officer Kim Key for the praise she won from the U.S. Attorney's Office and the F.B.I. for her professional demeanor on the stand and her cooperation throughout the pre-trial period during the James case. He mentioned that Director of Campaign Finance Todd Wojcik also performed admirably in lending assistance to prosecutors during the Delle Donna case.

C. Legislative Developments

Executive Director Herrmann announced that on June 12, 2008, Director of Special Programs Amy Davis and he attended an Assembly State Government Committee meeting at which A-100 (Greenwald/Handlin) was reviewed. He informed the Commission that this bill creates a 2009 Clean Elections Pilot Project, which is similar to the 2007 Project with a number of important differences. According to Executive Director Herrmann, in 2009, the program will:

- cover eight districts not three,
- include the primary as well as the general election,
- treat third party candidates more fairly, and
- provide uniform and lower funding for all districts.

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The Executive Director stated that he testified that this legislation will greatly increase the Commission's workload during the next fiscal year and that ELEC's small Special Programs Section, which is already responsible for the Gubernatorial Public Financing Program and the Pay-to-Play Disclosure Law, will have to administer Clean Elections as well. Executive Director Herrmann mentioned that he told the Committee that if this legislation is enacted, the Commission will have to be concerned with whether or not there would still be large cuts to ELEC's budget for the new fiscal year and whether or not ELEC would be permitted to hire staff to begin working on Clean Elections this summer.

Dr. Herrmann indicated that he commented on an expensive provision to mail copies of a Voter's Guide. He suggested that it could be replaced with a no cost alternative. Instead of mailing the Guide, language could be placed on the primary and general election sample ballots to direct voters to ELEC's Clean Elections website for extensive program information. He noted that the Voter's Guide merely provides the same information that will appear on the sample ballot, while ELEC's website will have a wealth of program information. Executive Director Herrmann said, moreover, that he also commented that the 2007 program did not require the Guide to be mailed but only to be placed on the website. Based on information received from a vendor, Dr. Herrmann told the Committee that the cost of the 2009 mailing would be about \$300,000 for the over one million guides that would have to be sent. Executive Director Herrmann said that the Committee released the bill by a vote of 4-1 without amendment.

### D. Vacant Position Summary

The Executive Director said that pursuant to a request by the Commissioners at the May meeting, he would discuss a written summary of ELEC's vacant positions. Dr. Herrmann noted that at present, the Commission has 68 full-time staff positions filled from a complement of 88 positions authorized by the Department of Personnel after ELEC received an additional \$2 million for its operating budget following the enactment of the 2004 Ethics Reform Package. He added that the Package contained 17 bills impacting the Commission's work. The Executive Director mentioned that there are now 20 vacancies and that the Fiscal Year 2009 budget, assuming it includes the Governor's \$500,000 restoration to his original proposed cut of \$750,000, would allow for the hiring of four staff members out of these 20 vacancies. Moreover, he stated that staff has still not received approval of an offer made in January to fill an Assistant Legal Director position. Dr. Herrmann remarked that should the Clean Elections Pilot Project be renewed for the new fiscal year, it is hoped that additional funds for personnel and permission to hire more staff will be provided. Finally, he said ELEC has budget language that allocates funding to hire six temporary staff to administer the Gubernatorial Public Financing Program.

Dr. Herrmann stated that staff will report at the next Commission meeting on the Commission's approved budget for Fiscal Year 2009 and the status of the continued Clean Elections program. He mentioned that it should be noted that not only will the Commission need funding to fill some of its vacant positions but also approval from the Administration to hire. Executive Director Herrmann concluded by saying that undoubtedly Fiscal Year 2009 will be a very difficult year in which to operate and great caution and skill will be needed to carry out the Commission's numerous mandates.

E. Summer Meeting Schedule

- July 15, 2008 at 11:00 a.m. in Trenton;
- August 13, 2008 (if needed) at 11:00 a.m. in Trenton; and,
- September 30, 2008 at 11:00 a.m. in Trenton.

Chair English stated that she was very pleased about the nomination of Judge Saunders to the Commission by the Governor. She suggested that a letter of thanks be sent to Governor Corzine and added that the letter should include a request for exemptions to the hiring freeze for hiring into vacant positions that are vital to the Commission's operations.

Chair English recommended also that the Executive Director send a copy of his testimony regarding the proposed Clean Elections bill to Governor's Counsel.

Executive Director Herrmann responded that he had received a phone call from the Governor's Office to discuss the Clean Elections bill and that he will discuss his testimony when he returns the call.

On a motion by Chair English, seconded by Commissioner Burstein and passed by a vote of 3-0, the Commission directed staff to send the above mentioned letter to the Governor.

Commissioner Burstein stated that after the budget is adopted, the Legislature sometimes passes appropriations to supplement the budget. He asked whether or not the staff would be able to track such action.

Steve Dodson, Director of Finance and Administration, answered in the affirmative.

4. 2009 Cost Index Report

Deputy Director Brindle reviewed the process for determining the campaign cost index to be used for adjusting the thresholds and limits involving the Gubernatorial Public Financing Program, the thresholds involving non-gubernatorial candidates and committees, and the recommended contribution limits involving non-gubernatorial candidates and committees. He stated that the 2009 Cost Index Report differs slightly from previous Cost Index reports in that it adjusts the gubernatorial thresholds and limits and non-gubernatorial thresholds but contains only recommendations for the non-gubernatorial limits. Therefore, the report has two parts, the gubernatorial and the non-gubernatorial.

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Deputy Director Brindle stated that the campaign cost multiplier for 2009 as determined through the application of the statutory formula is 1.1331. The same formula was used as in the past. He said that this multiplier, derived through the use of the Universal-McCann Composite Index for mass advertising and the Consumer Price Indexes for New York/New Jersey and Pennsylvania/New Jersey, was applied to the various thresholds and limits to provide the adjusted and recommended adjustment amounts for the four-year cycle beginning in 2009.

Chair English complimented the report as being very in-depth.

Chair English asked about the status of the Lieutenant Governor position and whether or not consideration was given to this issue in the report.

Deputy Director Brindle stated that the Governor and Lieutenant Governor will run as a team like the President and Vice President and that the public financing provisions will apply to them jointly. There is no separate public financing program for Lieutenant Governor, he said.

Chair English asked whether or not the threshold and limit adjustments would apply to gubernatorial candidates who do not take public financing.

Deputy Director Brindle said that the contribution limit adjustments would apply to non-participating candidates while the various other thresholds and limits would not. He added that non-participating candidates, for example, are not subject to expenditure limits.

Commissioner Burstein asked Deputy Director Brindle to comment upon the reference in the report about major party candidates not participating in the program in the 2005 general election as being unfortunate.

Deputy Director Brindle responded that the comment was meant not as criticism of any candidate who chooses not to participate but as a general comment about the importance of the program and its role in permitting qualified candidates of limited means to run effective campaigns for governor. He said that in a time when potentially more and more candidates may decide to exercise their right to opt out of public financing, the program becomes all the more important.

On a motion by Commissioner Burstein, seconded by Chair English and passed by a vote of 3-0, the Commission approved the 2009 Cost Index Report.

Vice Chair Tober requested comments from the public. There were none.

5. Resolution to go into Executive Session

On a motion by Commissioner Burstein, seconded by Chair English and passed by a vote of 3-0, the Commission resolved to go into Executive Session to discuss anticipated litigation, which will become public as follows:

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- 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

Chair English praised Vice Chair Tober for the manner in which he conducted the meeting.

On a motion by Commissioner Burstein, seconded by Chair English and passed by a vote of 3-0, the Commission voted to adjourn at 12:00 p.m.

Respectfully submitted,

Frederick M. Herrmann, Ph.D.  
Executive Director

FMH/elz