



State of New Jersey

ELECTION LAW ENFORCEMENT COMMISSION

JERRY FITZGERALD ENGLISH
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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

CAROL L. HOEKJE
Legal Director

EVELYN FORD
Compliance Director

JAMES P. WYSE
Legal Counsel

PUBLIC SESSION MINUTES

July 15, 2008

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

1. Open Public Meetings Statement

Chair English welcomed Commissioner Saunders to membership on the Commission.

On a motion by Commissioner Burstein, seconded by Commissioner Saunders and passed by a vote of 4-0, the Commission approved Chair English's request to have Vice Chair Tober chair the meeting because of a temporary health issue she was experiencing with her eyesight.

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 June 17, 2008

On a motion by Vice Chair Tober, seconded by Commissioner Burstein and passed by a vote of 3-0, the Commission approved the Public Session Minutes of June 17, 2008. Commissioner Saunders did not vote because he was not a Commission member at that time.

3. Executive Director's Report

A. Fiscal Year 2009 budget

Executive Director Herrmann reported that ELEC's operating budget for the new fiscal year will be \$4.6 million and that the amount represents a five percent cut of \$250,000 from the Commission's adjusted appropriation of \$4.9 million for Fiscal Year 2008. The Executive Director noted that the original budget recommendation was to cut \$750,000 and that \$500,000 was restored by the end of the budgetary process. According to Executive Director Herrmann, the restoration came in three areas:

- \$200,000 for staff;
- \$50,000 for supplies; and,
- \$250,000 for the computer, telephones, and postage.

He added that the administrative budget of \$600,000 for the Gubernatorial Public Financing Program remains reduced by 20 percent to \$480,000. Executive Director Herrmann stated that it is a very tight budget in an extremely difficult fiscal environment, but staff is confident that with careful planning the Commission will be able to perform its many responsibilities.

B. Legislative Developments

The Executive Director indicated that on June 19, 2008, he attended the Assembly Budget Committee meeting at which A-100 (Greenwald/Handlin/Johnson/Huttle), the 2009 Clean Elections Pilot Project bill, was scheduled to be heard. Executive Director Herrmann mentioned that the bill was held. Moreover, he said, it continues to provide that the Legislature shall appropriate the sums necessary to carry out its provisions, which expand this experiment in public financing to eight legislative districts for both the primary and general elections. Executive Director Herrmann said that according to the Asbury Park Press, the bill stalled in committee because "advocates and lawmakers . . . think \$150,000 isn't enough to fund campaigns in more competitive districts." He suggested that it still may be approved in the fall. The Executive Director added that language in the Appropriations Act supports the Pilot Project's implementation.

C. Staff Activities

Executive Director Herrmann announced that there are now 255 e-subscribers who are getting emails from the Commission on all press releases issued by ELEC. He noted that the media, good government groups, academics, and members of the public may sign up by going to the Commission's website. The Executive Director stated that this new program is an important communications tool, which expands access to the Commission's many activities.

D. Annual Northeastern Regional Conference on Lobbying (NORCOL)

Executive Director Herrmann reported that this year's nuts and bolts session for the staffs of lobbying agencies in New England, the Middle Atlantic States, Delaware, Maryland, West Virginia, Kentucky, and Washington, D.C. is being held in Atlantic City on August 12th. Executive Director Herrmann mentioned that Compliance Director Ford as NORCOL's President will be presiding and that he as NORCOL's Treasurer will also be in attendance and participating. Executive Director Herrmann added that he has prepared once again a publication, Lobbying in New Jersey 2008, which will be distributed on a CD to all attendees. He said that a draft copy of this document was sent to the Commissioners with the agenda mailing. The Executive Director thanked the various staff members who assisted him with this project, adding that details of the conference will be discussed at the September Commission meeting.

E. National Campaign Financing News

The Executive Director advised the Commission that on June 26, 2008, the U.S. Supreme Court overturned in a five to four decision Section 319 of the Bipartisan Campaign Reform Act (BCRA) of 2002 also known as the McCain-Feingold Law. He noted that this Section, often referred to as the "millionaire's amendment," is triggered when a Congressional candidate spends a large amount of personal funds. The Executive Director informed the Commission that the candidate's opponent is then allowed to accept larger contributions than the law would normally allow. According to Executive Director Herrmann, the Court ruled in rejecting the Section that it "has never upheld the constitutionality of a law that imposes different contribution limits for candidates competing against each other." Further, he said, the majority agreed with the candidate challenging the Section that it "impermissibly burdens his First Amendment right to spend his own money for campaign speech."

Executive Director Herrmann indicated that the Court disagreed with the Federal Election Commission's argument that the Section "is justified because it ameliorates the deleterious effects resulting from the tight limits federal election law places on individual campaign contributions." Executive Director Herrmann cautioned, however, that the Court's decision may obstruct New Jersey's proposed Clean Elections Pilot Program for 2009. He said that there may be an onerous parallel between allowing different contribution limits and providing Clean Elections rescue money. Executive Director Herrmann added that the so-called rescue money is given to a Clean candidate if he or she is outspent by an opponent or the target of an independent expenditure. According to the Executive Director, the Office of Legislative Services has been asked to provide an opinion on whether or not the decision undermines the program.

F. Pay-to-Play Court Case

The Executive Director reported that on June 30, 2008, a unanimous State Appellate Court upheld the constitutionality of the Pay-to-Play Prohibition Law. He advised the Commission that in the law's first test in a State court, the Appellate Panel ruled that "the State's interest in 'insulat[ing] the negotiation and award of state contracts from political contributions that pose the risk of improper influence, purchase of access, or the appearance thereof[,] is a 'sufficiently important interest' to justify a limitation upon political contributions." The Executive Director remarked that the judges agreed that the State can prohibit the giving of a contract worth more than \$17,500 to a vendor that has donated over \$300 to a gubernatorial candidate or any State of county political party committee within a specified period. Moreover, he said, the court found that the requested reimbursement of a contribution by the appellant fell outside the law's 30-day grace period. Executive Director Herrmann noted that the period is activated when the return of a contribution is received not when it is requested.

G. Fall Meeting Schedule

- August 13, 2008 (reserved if a meeting is necessary);
- September 30, 2008 at 11:00 a.m. in Trenton;
- October 21, 2008 at 11:00 a.m. in Trenton; and,
- November 18, 2008 at 11:00 a.m. in Trenton.

4. Public Hearing on Proposed New Rules and Amendments

Vice Chair Tober announced that a public hearing was being conducted to elicit public comment concerning proposed new rules and amendments to the Commission's regulations concerning the Gubernatorial Public Financing Program. The proposed amendments and new rules concern: the use of personal funds by non-publicly financed candidates as contributions to qualify for participation in debates; a prohibition on a loan repayment by a non-publicly financed candidate for use as an expenditure to qualify for participation in the debates; and the selection of debate sponsors and notification to the Commission of a change in debate plans.

The following individuals appeared and offered testimony:

- Sandra Matsen, League of Women Voters of New Jersey;
- Anne Ruach Nicolas, Executive Director, League of Women Voters of New Jersey; and
- Pat Tiemann, Manager, League of Women Voters of New Jersey.

A court reporter was present to record the testimony. The transcript will be available to the public upon request.

On a motion by Commissioner Burstein, seconded by Commissioner Saunders and passed by a vote of 4-0, the Commission adjourned the public hearing.

5. Proposed Amendments to Implement Inflationary Campaign Cost Adjustments

Legal Director Hoekje stated that at its June 17, 2008 meeting, the Commission approved the 2009 Cost Index Report, which presents the percentage of inflationary change in election costs which the Commission is required to calculate every four years prior to the next publicly-financed gubernatorial election. She added that the Commission is also required to calculate and make adjustments to gubernatorial thresholds and limits and non-gubernatorial thresholds except the contribution reporting threshold by December 15, 2008. Legal Director Hoekje then reviewed the Commission's proposed amendments to the regulations to implement the inflationary campaign cost adjustments. She said that the method used to determine the inflation rate and arrive at the cost adjustment figures is more fully described in the 2009 Cost Index Report, issued July 1, 2008. Legal Director Hoekje indicated that if the proposed regulations implementing the adjustments are approved by the Commission at the July 15, 2008 meeting, staff will file the proposal with the Office of Administrative Law (OAL) and the proposal will be published in the August 18, 2008 edition of the New Jersey Register. She said that a public hearing will be conducted at the September 30, 2008 Commission meeting. The proposal containing the gubernatorial rules will become effective upon publication in the New Jersey Register on December 1, 2008. The proposal affecting non-gubernatorial candidates and committees will become operative on January 1, 2009.

The gubernatorial cost adjustments are provided in the following tables.

2009 Campaign Cost Index (NJCCI) Calculation

As more fully described in the 2009 Cost Index Report, a total New Jersey Campaign Cost Index (NJCCI) of **13.31** percent has been calculated as set forth in the chart below:

Expenditure Category	Percent of 2005 General Election Spending	Four-Year Increase In Costs	Component of Campaign Index*
<i>Mass Communication Costs</i>	83.7%	13.0	10.88
<i>Other Campaign Costs</i>	16.3%	14.9	2.43
<i>Campaign Cost Increase</i>			13.31

*Percent of 2005 general election spending multiplied by four-year change in costs

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Based upon the cost index multiplier, adjustments are recommended as follows:

2009 Gubernatorial Cost Index Adjustments

Limit/Threshold	2005 Amount	Cost Index Multiplier	Sum	2009 Rounded Amount (pursuant to <u>N.J.S.A. 19:44A-7.1b</u>)
<i>Contribution Limit</i>	\$3,000	1.1331	\$3,399.30	\$3,400
<i>Qualification Threshold</i>	\$300,000	1.1331	\$339,930	\$340,000
<i>Amount not Matched</i>	\$96,000	1.1331	\$108,777.60	\$109,000
<i>Primary Public Fund Cap</i>	\$2.7 million	1.1331	\$3,059,370	\$3.1 million
<i>Primary Expenditure Limit</i>	\$4.4 million	1.1331	\$4,985,640	\$5.0 million
<i>General Public Fund Cap</i>	\$6.4 million	1.1331	\$7,251,840	\$7.3 million
<i>General Expenditure Limit</i>	\$9.6 million	1.1331	\$10,877,760	\$10.9 million

2009 Adjustments for Non-gubernatorial Candidates and Committees

	2005 Amount	Cost Index Multiplier	Sum	2009 Rounded Amount (pursuant to <u>N.J.S.A. 19:44A-7.1b</u>)
<i>Political Committee Reporting Threshold</i>	\$1,800	1.1331	\$2,039.58	\$2,100
<i>Continuing Political Committee Reporting Threshold</i>	\$4,300	1.1331	\$4,872.33	\$4,900
<i>48-Hour Notice/Contribution Threshold</i>	\$1,000	1.1331	\$1,133.10	\$1,200
<i>48-Hour Notice/ Expenditure Threshold</i>	\$1,000	1.1331	\$1,133.10	\$1,200

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<i>Joint Candidates Committee Thresholds</i>	\$6,700 \$9,700	1.1331	\$7,591.77 \$10,991.07	\$7,600 \$11,000
<i>Form A-3 Threshold</i>	\$4,300	1.1331	\$4,872.33	\$4,900
<i>Form A-1 Threshold & School Board/ Write-in Threshold</i>	\$3,500	1.1331	\$3,965.85	\$4,000
<i>Independent Expenditure Threshold</i>	\$1,000	1.1331	\$1,133.10	\$1,200
<i>Section 20.1 Penalties</i>	\$6,000 \$12,000	1.1331	\$6,798.60 \$13,597.20	\$6,800 \$13,600
<i>Section 22 Penalties</i>	\$6,000 \$12,000	1.1331	\$6,798.60 \$13,597.20	\$6,800 \$13,600

Legal Director Hoekje stated that pursuant to legislation enacted in 2004, the Commission was to recommend adjustments to non-gubernatorial contribution limits.

On a motion by Commissioner Burstein, seconded by Commissioner Saunders and passed by a vote of 4-0, the Commission proposed amendments to the regulation to adjust gubernatorial thresholds and limits and to adjust non-gubernatorial thresholds.

6. Advisory Opinion Request 02-2008

Legal Director Hoekje stated that the Commission received a request for an advisory opinion from Lynn Schundler, Esq., on behalf of the Schundler for Governor 2001 Primary Election Campaign, the single candidate committee of Bret Schundler, a gubernatorial candidate in the 2001 primary election. She said that Ms. Schundler has asked that the 2001 Primary Campaign, which has continued to file quarterly reports with the Commission to report outstanding obligations, be permitted to file a final report to disclose zero obligations. She noted that a supplemental memorandum signed by Bret Schundler on behalf of the 2001 Primary Campaign was also received.

According to the Legal Director, the opinion request queried whether or not a publicly-financed gubernatorial candidate may terminate postelection reporting of outstanding obligations based upon the theory that the obligations are no longer enforceable in the State of New Jersey.

Staff recommended that the Commission advise the gubernatorial candidate that absent legislative guidance and in view of the significance of the contribution limits to the gubernatorial public financing programs, the 2001 Primary Campaign must continue to file postelection quarterly reports to report its outstanding obligations incurred relevant to the 2001 primary election.

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Lynn Schundler, Esq., on behalf of the Schundler for Governor 2001 Primary Election Campaign, spoke to the Commission regarding the Advisory Opinion Request. Ms. Schundler reiterated the points made in the request submitted by the campaign. She mentioned that the campaign has made every effort to repay the debts, that the creditors in question were repaid a substantial portion of the debt, but that the campaign is unable to raise any more funds and has an approximate balance of \$6,000. Ms. Schundler stated that the statute of limitations has run out on the debts and therefore the Commission should no longer consider them as an obligation of the campaign.

Commissioner Burstein asked for an explanation of the policy reason for not allowing the Schundler Campaign to close the account.

Legal Director Hoekje stated that at present the Commission has no statutory or regulatory authority to permit the campaign to close its books and discontinue reporting. The Legal Director added that there is also a concern for protecting the contribution limits.

Chair English said that at this point the Commission is inhibited by statute and regulation from making an affirmative decision in favor of the Schundler request.

Vice Chair Tober asked whether or not there is an issue of the vendor providing advertising with the intention of forgiving the debt down the road, thereby circumventing the contribution limits.

Ms. Schundler stated that she appreciated the Commission's concern that it could constitute a way around the contribution limits. She said, however, that in this case the vendor could have forgiven the debt prior to the statutory limit expiring, but did not.

Commissioner Saunders asked about the balance in the Campaign and what would happen to any left-over money if the Campaign account was closed.

Ms. Schundler stated that about \$6,000 remained in the account and that it would be returned to the State upon the account being closed. Otherwise, she said, the account would be open in perpetuity.

Commissioner Saunders said that it makes no practical sense to keep the account open and for the campaign to keep reporting. He asked if any other past campaigns are in the same situation.

Legal Director Hoekje said that the 1993 Edwards Campaign is still reporting.

Commissioner Burstein said that the Commission needs to go back to the drawing board on this issue. He suggested that staff draft regulations that would include standards and guidelines for allowing campaigns to close accounts under similar circumstances.

The Commission asked Ms. Schundler if she would grant the Commission an extension on responding to the request.

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Ms. Schundler answered in the affirmative, allowing the Commission six months to address the issue and go through the regulatory proposal process. Ms. Schundler added that the current process inhibits the First Amendment rights of former candidates from participating in the political process because of restrictions placed on them.

On a motion by Commissioner Burstein, seconded by Commissioner Saunders and passed by a vote of 4-0, the Commission directed staff to revisit the issue and prepare a regulatory proposal.

7. Resolution to go into Executive Session

On a motion by Commissioner Burstein, seconded by Chair English and passed by a vote of 4-0, the Commission resolved to go into Executive Session to discuss anticipated litigation, 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.

8. Adjournment

On a motion by Vice Chair Tober, seconded by Commissioner Burstein and passed by a vote of 4-0, the Commission voted to adjourn at 2:00 p.m.

Respectfully submitted,

Frederick M. Herrmann, Ph.D.
Executive Director