



State of New Jersey

ELECTION LAW ENFORCEMENT COMMISSION

JERRY FITZGERALD ENGLISH
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Commissioner

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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

April 20, 2009

Chair English, Commissioner Burstein, Commissioner Saunders, Legal 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 11:00 a.m. in Trenton.

2. Approval of Public Session Minutes of March 17, 2009

On a motion by Commissioner Burstein, seconded by Commissioner Saunders and passed by a vote of 3-0, the Commission approved the Public Session Minutes of March 17, 2009.

3. Approval of Public Session Minutes of April 7, 2009

On a motion by Commissioner Saunders, seconded by Commissioner Burstein and passed by a vote of 3-0, the Commission approved the Public Session Minutes of April 7, 2009, as amended.

4. Approval of Public Session Minutes of April 14, 2009

On a motion by Commissioner Saunders, seconded by Commissioner Burstein and passed by a vote of 3-0, the Commission approved the Public Session Minutes of April 14, 2009.

5. Executive Director's Report

A. Commissioner News

Executive Director Herrmann reminded the Commissioners that their Financial Disclosure Statements for Calendar Year 2008 must be filed with the State Ethics Commission (SEC) by May 15, 2009. The Executive Director added that starting this year the statements have to be filed electronically and that forms and instructions are available on the SEC website. Dr. Herrmann noted that all of ELEC's directors must file similar forms on the same date; and, at the end of the filing process, he will certify to the Governor's Authorities Unit that ELEC's Commissioners and directors are in compliance.

B. Fiscal Year 2010 Budget Review

According to Executive Director Herrmann, the Fiscal Year 2010 Operating Budget recommended by the Governor is \$4.355 million. He said that this figure is two percent less than the adjusted budget for Fiscal Year 2009, which was \$4.439 million. The Executive Director reported that the \$84,000 reduction came from the salary account and represents the salary of the Director of Lobbying. He advised the Commission that the missing funds will be made up from lobbying fee revenue so the cut will not result in the loss of a key staff person. The Executive Director mentioned, however, that the Governor is proposing a continued hiring and salary freeze as well as 12 mandatory furlough days for the new fiscal year.

Dr. Herrmann indicated that the recommended budget for the Gubernatorial Public Financing Program is \$7.88 million of which \$6.8 million will go for the funds being distributed to the candidates. He said that if more money is needed for this purpose, the Campaign Act provides that the general treasury will provide it. The Executive Director informed the Commission that \$1.08 million will be used for administrative costs and the Ballot Statement Program, noting that of this amount \$480,000 is for staff and equipment and \$600,000 for the ballot statements.

According to Executive Director Herrmann, more cuts may happen during the year if the economy does not improve. The Executive Director advised the Commissioners that Deputy Director Brindle, Director of Finance and Administration Steve Dodson, and he will be attending the Department of Law and Public Safety's budget hearings before the Assembly Budget Committee on April 21, 2009, and Senate Budget and Appropriations Committee on April 22, 2009. He said that according to the Office of Legislative Services, it is not anticipated that ELEC will be receiving any oral questions during the hearings. Executive Director Herrmann stated that the Commission did receive some written questions about the impact of staff shortages and budget cuts on ELEC's ability to function, however. He mentioned that staff replied that two key missing legal positions and one computer vacancy will force the Commission to continue its efforts to reprioritize. Dr. Herrmann indicated that various computer projects have been deferred, offsite treasurer and lobbying training has been suspended, and enforcement efforts have been slowed. The Executive Director assured

the Commission that ELEC will be able to perform its core mission but under increasingly difficult conditions.

Executive Director Herrmann added that due to the State's ongoing fiscal problems, ELEC's water coolers will be removed by the end of the month.

C. Fiscal Year 2009 Mandatory Furlough Days

The Executive Director reported that ELEC will be closed for business on May 22 and June 19, 2009, which are mandatory furlough days. He said that May 22, 2009 is the 11-day report filing date, which will be postponed to the next business day, May 26, 2009, because the Capitol Post Office will be closed on May 22nd so that no mail can be delivered.

D. 2008 Annual Report

Executive Director Herrmann thanked the Project Manager, Deputy Director Brindle, and the other directors for their fine work on the report and also mentioned the excellent desktop publishing contribution of Administrator Elbia Zeppetelli and outstanding photographic work by Executive Software Engineer Brian Robbins. The Executive Director reminded the Commissioners that the report must be submitted to the Legislature prior to May 1, 2009, and asked if the Commissioners had any comments or questions for Deputy Director Brindle. Executive Director Herrmann asked for their approval of the draft, which had been sent to them for their review with the agenda package.

Chair English suggested technical amendments to the Compliance Section of the Annual Report. She complimented staff on a professional looking annual report.

Commissioner Saunders stated that he was pleased with the legislative recommendations section of the report.

Commissioner Burstein recommended that the transmittal letter to the Legislature include the fact that the 2008 annual report is dedicated to Dr. Frederick M. Herrmann.

Chair English stated that the dedication of the report to Dr. Herrmann be reflected in the minutes.

On a motion by Commissioner Saunders, seconded by Commissioner Burstein and passed by a vote of 3-0, the Commission approved the 2008 Annual Report, which is dedicated to Dr. Frederick M. Herrmann, who is retiring on June 30th as Executive Director of the Commission.

Pursuant to the Executive Director's report about the budget and staffing needs, Chair English asked about whether or not a process exists for requesting exemptions to the hiring freeze. She pointed out that the Commission needs to fill the Deputy Legal Director position and other legal and computer positions.

Deputy Director Brindle stated that while those positions need to be filled at this juncture the Commission's budget would not support such hiring. He suggested that the budget needed to be increased first and then requests for hiring freeze exemptions could follow.

Commissioner Burstein stated that the timing may not be right for making such a request.

Chair English stated that the Commission must continue to make known its budgetary needs, its important role in the political process, and its staffing needs.

E. Spring Meeting Schedule

- May 19, 2009 at 11:00 a.m. in Trenton; and,
- June 16, 2009 at 11:00 a.m. in Trenton.

6. 2009 Gubernatorial Public Financing Program Update

Lonegan - Submissions 5, 6, and 7

Special Programs Director Amy Davis stated that staff completed its review of Candidate Steven Lonegan's fifth and sixth submissions and issued public funds totaling \$100,834.66 and \$116,824.78 on March 19 and April 15, 2009, respectively. She said that Candidate Lonegan filed a seventh submission on April 7, 2009, on which she will report to the Commission at the next meeting.

Christie - Submissions 3, 4, and 5

According to Special Programs Director Davis, staff completed its review of Candidate Chris Christie's third, fourth, and fifth submissions. She added that on March 19, March 31, and April 15, 2009, public funds in the amounts of \$592,180, \$376,670, and \$388,708, respectively, were disbursed to the campaign.

She noted that the next date for filing matching fund submissions is April 22nd and that staff will report to the Commission at its meeting on May 19th the status of any submissions received and public funds disbursed.

Debate Plans

Director Davis reported that, as required, both debate sponsors provided staff and the two participating candidates with written notice of their debate plans. She said that the New Jersey Network (NJN) has informed staff of one change from its submitted application concerning the time of rebroadcast. The Director noted that originally NJN stated it would rebroadcast the debate on May 17, 2009; but, since that is the same day the League of Women Voters Education Fund is airing its debate, NJN has changed the rebroadcast date to Friday, May 15, 2009 at 10:00 p.m.

Chair English asked if this notification was due to ELEC's 48-hour regulation.

Director Davis answered in the affirmative.

7. Adoption of Proposed Amendments to N.J.A.C. 19:25-6.10

Legal Director Hoekje summarized the proposed amendments at N.J.A.C. 19:25-6.10, stating that the proposal contains three amendments. Legal Director Hoekje said that N.J.A.C. 19:25-6.10(a) as amended would specify that the need for legal representation must arise from the ordinary and necessary duties of holding public office. She added that N.J.A.C. 19:25-6.10(a)3 as amended clarifies that legal fees can be used to defend violations of the Act in a civil or administrative proceeding. Finally, Legal Director Hoekje stated that a new section, N.J.A.C. 19:25-6.10(b) was proposed that would specifically prohibit the use of campaign funds for legal fees and expenses in connection with criminal defense of a candidate or officeholder. The section as amended by Commissioner Burstein reads:

(b) Permissible use of funds for legal fees and expenses shall not include legal fees and expenses for [criminal] defense of a candidate or officeholder, [including defense in] who is the subject of a criminal inquiry or criminal investigation, or [and] defense of a criminal indictment or other criminal proceeding.

On a motion by Commissioner Saunders, seconded by Commissioner Burstein and passed by a vote of 3-0, the Commission approved the proposed amendments as amended by Commissioner Burstein.

Commissioner Saunders suggested that the Supreme Court be notified of the adoption of the regulation regarding use of legal fees.

Legal Counsel Wyse agreed that the new regulations should certainly be brought to the Court's attention. He said that he would send a letter to the clerk of the Court.

8. Resolution to go into Executive Session

On a motion by Commissioner Saunders, seconded by Commissioner Burstein 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:

- 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.

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- 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.

9. Adjournment

On a motion by Commissioner Saunders, seconded by Commissioner Burstein and passed by a vote of 3-0, the Commission voted to adjourn at 12:30 p.m.

Respectfully submitted as true
and correct,

Frederick M. Herrmann, Ph.D.
Executive Director

FMH/elz