



*State of New Jersey*

## **ELECTION LAW ENFORCEMENT COMMISSION**

**JERRY FITZGERALD ENGLISH**  
Chair

**PETER J. TOBER**  
Vice Chair

**ALBERT BURSTEIN**  
Commissioner

**AMOS C. SAUNDERS**  
Commissioner

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Compliance Director

**JAMES P. WYSE**  
Legal Counsel

### PUBLIC SESSION MINUTES

July 21, 2009

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

The meeting convened at 11:00 a.m. in Trenton.

#### 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.

#### 2. Approval of Public Session Minutes of June 16, 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 June 16, 2009. Vice Chair Tober did not vote because he was not present for the June 16, 2009 meeting.

Chair English introduced Assistant Report Examiner Lovinsky Joseph as the new recorder of minutes.

#### 3. Selection of 2009 Gubernatorial and Lieutenant Gubernatorial General Election Debate Sponsors

Chair English announced that a public hearing was being conducted for the purpose of selecting sponsors for the 2009 Gubernatorial and Lieutenant Gubernatorial General Election Debates.

A court reporter was available to record the proceedings.

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The applicants were:

- The League of Women Voters of New Jersey Education Fund, WPVI-TV, WABC-TV, and The College of New Jersey;
- NJN-New Jersey Public Television and Radio, the Philadelphia Inquirer, and the Gannett New Jersey newspaper group;
- News 12 New Jersey LLC;
- Seton Hall College Republicans and Seton Hall College Democrats;
- William Paterson University;
- The Rebovich Institute for NJ Politics and WNBC-TV New York and affiliated NBC entities); and,
- Leadership New Jersey Consortium (Leadership NJ, News 12 NJ, 101.5 FM, Gannett newspapers).

Following presentations by the debate sponsor applicants to sponsor the two gubernatorial and one lieutenant gubernatorial 2009 general election debates and an ensuing discussion by Commissioners and staff, the Commission selected the following sponsors:

On a motion by Vice Chair Tober, seconded by Commissioner Saunders and passed by a vote of 4-0, the Commission selected William Paterson University with WWOR-TV, WTXF-TV and Fox News to sponsor one 2009 gubernatorial general election debate.

On a motion by Commissioner Saunders, seconded by Vice Chair Tober and passed by a vote of 4-0, the Commission selected NJN – New Jersey Public Television and Radio, with the Philadelphia Inquirer, and the Gannett New Jersey newspaper group to sponsor a second 2009 gubernatorial general election debate.

On a motion by Commissioner Burstein, seconded by Commissioner Saunders and passed by a vote of 4-0, the Commission selected Leadership New Jersey Consortium (Leadership New Jersey, News 12 New Jersey, NJ 101.5 FM, and the Gannett newspaper chain) to sponsor the lieutenant gubernatorial general election debate.

4. Executive Director's Report

A. Enabling Legislation for the Office of Lieutenant Governor

According to Executive Director Brindle, the enabling legislation creating the office of Lieutenant Governor was enacted by P.L. 2009, c.66, on June 26, 2009. The Executive Director said that the enabling legislation establishes that the governor and lieutenant governor must run jointly as a single candidate. He said that the lieutenant governor candidates must be named by July 27, 2009. The Executive Director informed the Commission that Special Programs Director Amy Davis distributed a fact sheet detailing the major provisions of the new law for candidates, media, and public. The fact sheet was also posted on the Commission's website.

B. Fiscal Year 2010 Budget

Executive Director Brindle stated that the Commission's Fiscal Year 2010 operating budget is \$4.355 million. He said, however, that this budget represents a reduction of \$84,000, or 2 percent from Fiscal Year 2009. The Executive Director said that cuts are not desirable, but the amount is sufficient to maintain the current level of services. According to Executive Director Brindle, \$7.88 million is available for the administration of the Gubernatorial Public Financing Program. He stated that \$6.88 million is available to candidates and \$1.08 million for the administration of the program, which includes salaries. According to the Executive Director, \$600,000 is available for ballot statements. He mentioned that language in the Fiscal Year 2010 Appropriations Act provides for additional funds to be allocated, if needed, for publicly-financed candidates.

C. Ballot Statement

According to Executive Director Brindle, A-3214 was passed by both houses but has not yet been signed into law. The Executive Director stated that this bill eliminates required mailing of sample ballots to inactive voters. In addition, Executive Director Brindle mentioned that the bill addresses issues raised in a letter submitted to the Commission by John M. Carbone, Esq. The Executive Director said that ballot statements must be submitted by candidates by August 17, 2009.

Commissioner Saunders asked if the Commission could do any more to help control the cost of ballot statements.

Special Programs Director Davis stated that the concerns address potential cuts in funding to county clerks and lack of advance knowledge of county reimbursements.

Commissioner Burstein stated that the county clerks should have a general idea of costs involved from experience.

Executive Director Brindle informed the Commission that \$150,000 more had been allocated for ballot statements compared to four years ago. He did not anticipate any funding problems.

Special Programs Director Davis added that the Commission had anticipated increased postage costs over time.

Commissioner Saunders inquired as to the source of the additional funds.

Executive Director Brindle responded that the funds are derived from the Fiscal Year 2010 budget and are part of the special appropriation supporting the Gubernatorial Public Financing Program.

D. Furloughs

The Executive Director informed the Commission that State employees are required to take a total of ten unpaid furlough days. He said that one day was already taken in May. Executive Director Brindle indicated that two required days are to be taken on the day after Thanksgiving and the day after Lincoln's Birthday. He said that of the seven remaining days, three must be taken in calendar year 2009. The Director mentioned that furlough requests will be processed through the Finance and Administration Section in a similar fashion to standard leave requests.

E. Monthly Newsletter ELEC-Tronic

The Executive Director informed the Commission that ELEC-Tronic represents part of an effort to make the public more aware of the Commission and its work. He indicated that the newsletter is delivered via email to approximately 350 subscribers as well as on press release distribution list. He said that the newsletter is available on the Commission's website and will be issued on a monthly basis.

Executive Director Brindle discussed a potential YouTube account to link with the Commission website.

Chair English asked if YouTube account could be used to promote Commission-sponsored debates.

Executive Director Brindle replied that the YouTube account may not be up and running in time for the gubernatorial debates. He added, however, that if the project is launched in time it certainly could be used for that purpose.

Special Programs Director Davis stated that debates would be advertised on Commission website.

Executive Director Brindle added that debates would also be advertised in press releases.

Chair English stated that she wanted to bring attention to the efforts of staff involved in public financing and selection of debate sponsors. The Chair praised the newsletter as a way to publicize ELEC activities, stating that the inclusion of charts and other reference materials was helpful to the citizens.

Chair English acknowledged that furloughs, hiring freeze, and lack of promotions places stress on employees.

Chair English suggested a future article on integrity and professionalism in public service.

F. Potential U.S. Supreme Court Action Regarding Campaign Financing

Executive Director Brindle advised the Commission that Citizens United v. Federal Election Commission is a case that will probably be heard by the U.S. Supreme Court this fall. He said the case concerns a documentary about Hillary Clinton and whether the Federal Election Commission (FEC) was empowered to apply Section 203 restrictions to it. Section 203 is part of the Bipartisan Campaign Reform Act (BCRA). Director Brindle indicated that Section 203 prohibits “electioneering communications” within 30 days of a primary election and 60 days of a general election. He said that Section 203 also restricts independent expenditures by corporations and unions if the communication expresses support or opposition to a federal candidate.

Executive Director Brindle advised the Commission that the U.S. Supreme Court now is asking for supplemental briefs involving a 1990 decision Austin v. Michigan Chamber of Commerce, which was a decision that upheld restrictions on corporate campaign expenditures. The Court may also be reviewing the Section 203 in general.

The Executive Director said that after upholding BCRA in 2003, the U.S. Supreme Court has been increasingly challenging the law, reflecting the Court’s recent tendency towards addressing First Amendment principles. Examples of U.S. Supreme Court erosion of BCRA include FEC v. Wisconsin Right to Life (2007), which modified Section 203, and Davis v. FEC (2008), which struck down the “Millionaires’ Amendment” intended to level the playing field between self-funded candidates and non self-funded candidates.

Executive Director Brindle stated that the staff will monitor the upcoming case to ascertain whether it has any implications for the New Jersey Campaign Contributions and Expenditures Reporting Act or “Pay-to-Play” regulations.

G. Summer/Fall Meeting Schedule

- August 18, 2009 at 11:00 a.m. (if needed) in Trenton;
- September 15, 2009 at 11:00 a.m. in Trenton; and,
- October 20, 2009 at 11:00 a.m. in Trenton

5. 2009 Gubernatorial Public Financing Program Update

**Steven Lonegan P2009 - Submissions 15 through 16**

Special Programs Director Davis stated that on June 23, 2009, staff received Candidate Lonegan’s Submission 15 that contained \$96,794.10 in contributions submitted for match. She said that staff completed its review and issued public matching funds totaling \$150,857. Director Davis said that on July 7, 2009, staff received Submission 16 that contained \$26,199.82 in contributions submitted for match. She will report to the Commission at its next meeting on September 15, 2009 on the status of Submission 16 and on any other submissions received and public funds disbursed.

**Chris Daggett G2009 - Submission 1**

Director Davis indicated that on July 7, 2009, ELEC received the first 2009 general election submission from Candidate Daggett, containing \$352,537 in net contributions submitted for match (an amount in excess of the \$340,000 required threshold). She said that Candidate Daggett filed a signed Statement of Agreement to Participate in the 2009 Gubernatorial General Election Debates and a Candidate Certification of Non-Participation in Issue Advocacy Organizations (Form P-2A). Director Davis stated that the expenditure information provided by the Daggett campaign indicated that expenditures had been made or committed to be made in excess of the \$340,000 expenditure qualification threshold. According to Director Davis, staff has completed its review and has informed the campaign that staff may not issue any public funds until the Commission considers the following issue.

Director Davis stated that the following was at issue:

Whether the Daggett campaign may receive public funds without having selected a lieutenant gubernatorial candidate, without having submitted the required statement of agreement to participate in one lieutenant gubernatorial debate, and without having submitted the required issue advocacy information?

Director Davis said that as a result of recently enacted legislation (P.L.2009, c.66) concerning gubernatorial/lieutenant gubernatorial candidates, each general election gubernatorial candidate must select his or her lieutenant gubernatorial candidate no later than 30 days after the Secretary of State certifies the gubernatorial candidate names for the general election ballot. She said, therefore, that each gubernatorial candidate must select a lieutenant gubernatorial candidate no later than July 27<sup>th</sup>.

Director Davis stated that the law as amended now specifies that "joint candidates" for election to the offices of Governor and Lieutenant Governor shall be eligible to receive public funding upon application to the Commission, which includes proof that they have deposited and expended \$340,000. Both the gubernatorial and lieutenant gubernatorial candidate must disclose participation in an issue advocacy organization, and sign a statement of agreement to participate in interactive gubernatorial election debates. She noted that the new law as amended does not address or provide for the situation of a gubernatorial candidate applying for public funds without having selected a lieutenant gubernatorial candidate.

Commissioner Saunders asked if Candidate Christie was receiving public funds for the 2009 general election.

Director Davis replied that Candidate Christie was not yet receiving public funds but was expected to apply for public matching funds.

Vice Chair Tober asked if there had been any problems with distribution of public funds.

Director Davis replied that there had not.

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Director Davis stated that a review had been completed, and the Commission was awaiting a decision by the Daggett campaign for the office of Lieutenant Governor, after which public funds would be distributed.

Chair English asked Director Davis if she had had any communication with the Daggett campaign.

Director Davis replied that a representative from the Daggett Campaign, Thomas Johnson, was present.

Mr. Johnson from the Daggett Campaign addressed the Commission and thanked the Commissioners for their time. He stated that the campaign would file the paperwork for Lieutenant Governor in the next few days.

On a motion by Commissioner Burstein, seconded by Commissioner Saunders and passed by a vote of 4-0, the Commission voted to release funds to the Daggett Campaign after submission of the required paperwork.

6. Request for Advisory Opinion No. 01-2009

The Commission continued its discussion of the Advisory Opinion Request from the Daggett campaign. Legal Director Hoekje thanked the campaign for its extension of time to answer.

Commissioner Saunders asked if the problem at hand was due to small items, such as buttons and other miscellaneous merchandise, sold at fairs and other public events, and reporting requirements therein.

Legal Director Hoekje replied in the affirmative.

Commissioner Saunders expressed hope for a future regulation to allow *de minimis* exceptions to detailed reporting.

Vice Chair Tober asked whether or not receipts from the sale of a campaign button would impact the contribution limits.

Legal Director Hoekje replied in the affirmative.

Legal Director Hoekje cautioned that the advisory opinion was limited to the specific items proposed for sale. Legal Director Hoekje restated the staff recommendation that all receipts from the sale of items be reported as contributions and all expenditures in connection with the sale be reported as expenditures. She also recommended that all receipts could be considered eligible for matching public funds.

Chair English stated that while resolution was not perfect, it was the most equitable decision that could be made without a change in rules. The Chair thanked Mr. Johnson on behalf of the campaign for coming to the Commission in a timely fashion.

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On a motion by Commissioner Burstein, seconded by Vice Chair Tober and passed by a vote of 4-0, the Commission advise the campaign that all receipts from the proposed sale of merchandise are subject to reporting as contributions, that all expenditures must be reported, that public funds may not be used for a fundraising purpose, and that all receipts could be considered eligible for submission for public matching funds.

7. Resolution to go into Executive Session

On a motion by Vice Chair Tober, seconded by Commissioner Burstein 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 2:43 p.m.

Respectfully submitted as true  
and correct,

Jeffrey M. Brindle  
Executive Director

JMB/elz