



State of New Jersey

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Chairman

WALTER F. TIMPONE
Vice Chairman

AMOS C. SAUNDERS
Commissioner

ELECTION LAW ENFORCEMENT COMMISSION

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PUBLIC SESSION MINUTES

October 25, 2012

Chairman DeFilippis, Vice Chairman Timpone, and Commissioner Saunders participated by telephone. Executive Director Brindle, Deputy Director Donohue, and Legal Director Hoekje were present. Director of Review and Investigation Shreve Marshall was also present. Assistant Report Examiner Lovinsky Joseph was present for the purpose of recording the minutes.

The meeting convened at 1:00 p.m. in Trenton.

1. Open Public Meetings Statement

Chairman DeFilippis called the meeting to order, and Executive Director Brindle announced that pursuant to the Open Public Meetings Act, N.J.S.A. 10:4-6 et seq., notice of this telephonic meeting of the Election Law Enforcement Commission was announced for October 25, 2012, at 1:00 P.M., at the Commission's offices, and was distributed at approximately 2:30 p.m., on October 19, 2012, to the entire State House press corps and was filed with the Secretary of State's Office. It was also posted on the Commission's website.

2. Advisory Opinion Request No. 02-2012

The Commission received a request for an Advisory Opinion from Gregory Nagy, Esq., on behalf of Sharpe James, Cheryl Johnson, and the Election Fund of Sharpe James. Mr. Nagy requested a determination on whether or not Sharpe James, Cheryl Johnson, and/or the Election Fund of Sharpe James may use funds in that Election Fund to pay reasonable fees and expenses of legal representation in the appeal of a civil order entered in the Superior Court Order in ELEC v. James, Dkt. No. C-131-11, adjudging them liable for violations of the New Jersey Campaign Contributions and Expenditures Reporting Act.

Legal Director Carol Hoekje provided a background summary of the Advisory Opinion Request. The Legal Director outlined the provisions of the Reporting Act and Commission Regulation N.J.A.C. 19:25-6.10. The Legal Director noted that the regulation specifically provides at N.J.A.C. 19:25-6.10(a)3 as an allowable expense, "the defense of a civil action or administrative proceeding alleging a violation of the Act." Based upon the language of the regulation, staff recommended that the proposed use was permissible.

Mr. Gregory Nagy greeted the Commissioners and stated that he agreed with the staff recommendation. He stated that denial of the request would prevent adequate legal representation for his client, as funds from the campaign account were necessary for the appeal.

Chairman DeFilippis asked if any members of the public were present and wished to comment.

Executive Director Brindle replied in the negative.

Vice Chairman Timpone stated that it seemed strange to allow campaign funds to be used for civil litigation stemming from the impermissible use of campaign funds to pay criminal defense legal fees, but that he understood the regulation's distinction between criminal and civil proceedings.

Commissioner Saunders stated that it did not make sense to fine Mr. James for using campaign funds to pay criminal defense legal fees while allowing him to use campaign funds to pay for new litigation concerning such use. He also noted that the allowance for civil litigation could allow a candidate to spend campaign funds for legal fees far in excess of an imposed penalty. He stated that he did not believe the regulation as amended intended such a result.

Mr. Nagy stated his view that Mr. James' situation was not the same as in the Wayne Bryant case, noting that Mr. Bryant sought to use campaign funds for defense against a criminal indictment, while Mr. James had spent campaign funds pre-indictment. He further noted that as Mr. James' campaign fund was a party to the litigation, it should be allowed to disburse its own funds to pay for the appeal and preserve the right to representation.

Mr. Nagy stated that the statute is straightforward in its allowance for campaign funds to be used for civil litigation. He indicated that if the Commission was not satisfied with the rule, it could later seek a change.

The Vice Chairman expressed his disagreement with Mr. Nagy's assertion that the right to legal representation was at stake in this matter, stating that the true issue was where the funds to pay for the representation would come from. He stated that the regulation did appear to allow campaign funds to be used for the civil appeal.

Chairman DeFilippis expressed his agreement with Vice Chairman Timpone, stating that the regulation seem to clearly allow campaign funds to be used for the appeal in this civil matter, even if the Commissioners had reservations concerning the propriety of this use.

On a motion by Vice Chairman Timpone, seconded by Chairman DeFilippis and passed by a vote of 2-1, Commissioner Saunders voting against, the Commission approved staff's recommendation that the contemplated use of campaign funds is permissible under the Reporting Act and Commission Regulation N.J.A.C. 19:25-6.10(a)3.

Mr. Nagy thanked the Commissioners.

The Vice Chairman noted that the statute calls for "reasonable fees" relevant to the use of campaign funds for civil litigation.

Chairman DeFilippis stated that the Commission should look into amending the regulation.

3. Adjournment

On a motion by Vice Chairman Timpone, seconded by Commissioner Saunders and passed by a vote of 3-0, the Commission resolved to adjourn at 1:20 p.m.

Respectfully submitted as true
and correct,

Jeffrey M. Brindle
Executive Director

JMB/elz