

NEW JERSEY ELECTION LAW ENFORCEMENT COMMISSION

PUBLIC SESSION MINUTES

JUNE 6, 1983

PRESENT

Andrew C. Axtell, Chairman
Haydn Proctor, Member
Alexander P. Waugh, Jr., Member
Scott A. Weiner, Executive Director
William R. Schmidt, Asst. Executive Director
Gregory E. Nagy, Staff Counsel
Edward J. Farrell, General Counsel

ABSENT

M. Robert DeCotiis, Member
Sidney Goldmann, Consultant

Chairman Axtell called the meeting to order and announced that pursuant to the Open Public Meetings Law, L. 1975, c. 231, annual notice of the meetings of the Commission, as amended, has been filed with the Secretary of State's office, and distributed to the entire State House Press Corps.

The meeting convened at 10:08 a.m. at the office of the Commission, Trenton, New Jersey.

Approval of Minutes of Public Session of Commission Meeting of May 11, 1983

On a motion by Commissioner Proctor, seconded by Chairman Axtell and a vote of 2-0, the Commission approved the minutes of the Public Session of May 11, 1983. Commissioner Waugh did not vote on the minutes because he did not attend the Public Session of the May 11, 1983 Commission meeting.

2. Approval of Minutes of Public Session of Commission Meeting of May 23, 1983

On a motion by Commissioner Waugh, seconded by Commissioner Proctor and a vote of 3-0, the Commission approved the minutes of the Public Session of May 23, 1983.

3. Discussion of Pre-candidacy Activity "Testing the Waters" Regulations

Not all of the Commissioners had received a copy of the transcript of the May 11, 1983 public hearing. Therefore, the Commission decided to postpone taking action on the proposed regulations.

Commissioner Waugh asked if the Commission could statutorily impose the \$800 contribution limit on individuals who raise funds to "test the waters" for gubernatorial candidacy. General Legal Counsel Farrell said it is an untested question and noted that there is a distinction between "testing the waters" and candidacy. He also noted that there is a difference between an incumbent considering candidacy for the Governorship, on one hand and, for example, five citizens who band together to look for a potential candidate. Mr. Farrell said it is uncertain if the courts would differentiate under

the First Amendment. Commissioner Proctor observed that the time element might have some bearing on this issue.

Executive Director Weiner observed that the Commission tentatively rejected the proposal set forth by FEC Commissioner Frank Reiche and by Neil Upmeyer that the Commission impose the contribution limit from the outset on individuals who raise funds for testing the waters for a possible gubernatorial candidacy. Mr. Farrell said there is a possibility that the Commission could decide not to match the \$800 which was a portion of a larger contribution. Mr. Weiner asked what the state would gain by not matching the \$800 of a larger contribution. Mr. Weiner said the issue raised by Mr. Upmeyer would be to adjust for the value of the money the potential candidate had use of before returning the excess over \$800.

Mr. Weiner observed that the Commission had reached a tentative concensus against establishing an arbitrary date as suggested by Assembly Minority Leader Dean Gallo, who had suggested a time period of 6 months or 18 months before which contributions and activities would not be considered candidacy related. Mr. Weiner suggested that the decision should be made in a factual context and the Commission should leave itself some flexibility and not impose an arbitrary date. Commissioner Proctor suggested that a time period of one year, for example, would place some burden of proof on the candidate. Mr. Farrell said that the burden of proof would be on the Commission if it were to establish by regulation an arbitrary earlier date. Concerning the time issue, Mr. Weiner noted Mr. Upmeyer's point that it takes upwards of two years of working a mailing list for that list to be useful in raising campaign funds. Mr. Weiner said that this is a new area for the Commission and he urged the Commission not to establish a specific time frame. Commissioner Waugh observed that if Essex County Executive Director Shapiro becomes a candidate, the Commission will then have to decide if something Mr. Shapiro is doing now is "testing the waters" or is related to his position as County Executive. Mr. Weiner observed that if there is a dispute, it will be a factual question to be decided by the Commission.

Mr. Weiner said the third issue is that of allocating expenditures between "testing the waters" activities and other activities, for example, allocating the cost of travelling around the state.

Mr. Weiner said that the staff recommendation is that the Commission leave the regulations as is and that it not impose any limits on the receipts and expenditures for testing the waters, that it not define any period before which activities would not be considered "testing the waters", and that it not attempt to define any further the types of expenditures or the allocation of expenditures.

4. Pending Legislation

Mr. Weiner reported on pending amendments to the Reporting Act. First he distributed a three-page June 6, 1983 memorandum concerning the two bills now pending before the Assembly, namely A-2290, introduced by Assemblyman Zimmer, and A-3099, introduced by Assemblyman Bocchini. Mr. Weiner's memorandum summarized the anticipated schedule of legislative activity and reviewed the distinctions between the Commission's recommendations and A-3099.

The Commission then discussed the chief differences between its recommendations and A-3099. The Commission agreed to maintain its recommendation to raise the threshold for the disclosure of contributors from \$100 to \$200. The Commission also agreed that the Executive Director should urge that the amount of a contribution which needs to be disclosed within 48 hours of receipt between the date of the last campaign report and the date of the election be higher than the amount proposed in A-3099, namely, \$100; the Commission had recommended that the amount be in excess of \$500. The Commission also agreed that the Executive Director should seek legislative approval of the Commission's recommendation concerning cash contributions and public solicitations. The Commission also agreed that Mr. Weiner should urge the Legislature to delete references to "testing the waters" inasmuch as the Commission is in the process of developing and adopting regulations concerning "testing the waters". The Commission also agreed that the Executive Director should seek to have the Commission's recommendation concerning debt assumption included in the bill before the Legislature. Finally, the Commission agreed that the Executive Director should seek to have the bill as introduced amended to clarify the power of the Governor to designate any member of the Commission as chairman without that appointment being subject to the advice and consent of the Senate.

Mr. Weiner noted that General Legal Counsel Farrell and Staff Counsel Nagy would be meeting on Tuesday, June 7, 1983, to review the proposed legislation and to develop comments and recommendations for consideration by the Legislature.

Mr. Weiner distributed copies of Assembly Bill 3580 which would impose an \$800 contribution limit on contributions to legislative candidates with the exception of state political party committees and county political party committees, each of which would be able to contribute up to \$8,000 per candidate. Mr. Weiner said that a companion bill has been introduced in the Senate. He said that a hearing by the Assembly State Government Committee is scheduled on June 10th.

5. Executive Director's Report

Mr. Weiner reported that the Federal Election Commission is holding a three-day conference at the end of September in

Albany, New York, on election laws and campaign financing. He asked those Commissioners who might be interested in attending to advise him because it is necessary that all attendees pre-register.

Mr. Weiner said that the Joint Appropriations Committee of the Legislature will be voting on the appropriations bill on Thursday and Friday, June 9th and 10th. He said that resolutions have been introduced to provide the Commission with more money for data processing and to convert two positions. Mr. Weiner said that he has spoken with the chairman, Senator Weiss, and with Senator Hardwick and Assemblyman Brown on these issues.

Mr. Weiner said that he has been invited to be a panelist at the conference to be held in San Antonio by the National Conference of State Legislatures. He will be on a panel on state regulation of PACs. Mr. Weiner said that NCSL will be paying for his air fare to San Antonio.

Mr. Weiner distributed a copy of Neil Upmeyer's article entitled "The Sunshine Boys" from the most recent issue of the New Jersey Reporter. Mr. Weiner said that he and Mr. Upmeyer had taped a program for Channel 9 which will appear at 9:00 a.m. on Thursday, June 9th.

6. Executive Session

On a motion by Commissioner Proctor, seconded by Commissioner Waugh and a vote of 3-0, the Commission voted to go into Executive Session to review the Executive Session minutes of May 11th and May 23rd and to discuss enforcement actions, the results of which will be made public at their conclusion.

7. Adjournment

On a motion by Commissioner Waugh, seconded by Commissioner Proctor and a vote of 3-0, the Commission voted to adjourn.

Respectfully submitted,



SCOTT A. WEINER
Executive Director