

NEW JERSEY ELECTION LAW ENFORCEMENT COMMISSION

PUBLIC SESSION MINUTES

MARCH 5, 1984

PRESENT

Andrew C. Axtell, Chairman  
Alexander P. Waugh, Jr., Vice Chairman  
M. Robert DeCotiis, Member  
Haydn Proctor, Member  
Scott A. Weiner, Executive Director  
William R. Schmidt, Assistant Executive Director  
Gregory E. Nagy, Staff Counsel  
Edward J. Farrell, General Legal Counsel\*

\* Arrived late

Chairman Axtell called the meeting to order and announced that pursuant to the Open Public Meetings Law, P.L. 1975, c.231, annual 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 1:00 p.m. at the offices of the Commission, 28 West State Street, Trenton, N. J.

1. Approval of Minutes of Public Session of Commission Meeting of February 21, 1984

The Commissioners reviewed the minutes of the public session of February 21, 1984 which were distributed at the Commission meeting. On a motion by Commissioner DeCotiis, seconded by Commissioner Proctor and a vote of 4-0, the Commission approved the minutes of the public session of February 21, 1984.

2. Resolution Readopting Subchapters 12 and 16 (public financing) of the Commission's Regulations

On a motion by Commissioner Proctor, seconded by Commissioner Waugh and a vote of 4-0, the Commission readopted Subchapters 12 and 16 (public financing) of the Commission's regulations and directed the Executive Director to execute and file all appropriate notices, provided, that should any comments be received on or before March 8, 1984, those comments will be communicated to the Commission members prior to the filing of the readoption notice on or before March 15, 1984.

3. Executive Director's Report

Mr. Weiner reported that the Essex County Bar Association is holding a meeting on Saturday, March 10, 1984. The subject of the meeting is election law and campaign finance law. The legal counsels for both the Democratic State Committee and the Republican State Committee will be attending.

4. Atlantic City Recall Election

General Legal Counsel Farrell arrived at this point of the meeting.

The Commissioners reviewed a March 1, 1984 memorandum from Executive Director Weiner and accompanying "chronological listing of events leading to the Atlantic City Recall election" attached to Mr. Weiner's memorandum. The Commission also reviewed attachments labeled Item A through Item J as follows:

Item A - a September 21, 1982 letter signed by Staff Counsel Nagy concerning election reporting requirements and disclosure of contributions and expenditures related to post-election contest litigation;

Item B - a September 17, 1982 Advisory Opinion No. 12-1982 addressed to Matthew H. Powals, Esq., City Solicitor, City of Atlantic City;

Item C - a February 16, 1984 letter addressed to Mayor Michael Matthews, James Usry and John Pollillo, mayoral candidates in the March 13, 1984 recall election;

Item D - a February 16, 1984 letter from Executive Director Weiner and addressed to James Masland who served as treasurer, or in some other capacity, for a committee named "Committee to Make Mayor-Council Government Work";

Item E - a February 17, 1984 letter signed by Staff Counsel Nagy and addressed to Robert V. Paschon, Esq. and Counsel to the Committee to Make Mayor-Council Government Work;

Item F - a February 22, 1984 letter signed by Robert V. Paschon and addressed to Staff Counsel Nagy;

Item G - a February 17, 1984 letter signed by Mayor Michael J. Matthews and addressed to Mr. Weiner;

Item H - a Advisory Opinion, No. 07-80, and signed by Edward J. Farrell along with an attached copy of Advisory Opinion 42-76; and

NOTE: There was no Item I.

Item J - a October 5, 1981 Advisory Opinion, No. 41-1981, signed by Staff Counsel Nagy and addressed to James R. Decker.

The Commissioners also reviewed: (a) a March 1, 1984 letter signed by Robert V. Paschon and addressed to Staff Counsel Nagy in which Mr. Paschon set forth his arguments concerning the absence of filing requirements by the Citizens to Make Mayor-Council Government Work and (2) a letter dated February 2, 1984 (presumably meant to be March 2, 1984) in which Mayor Matthews acknowledged the February 27 notice of meeting and set forth his arguments as to why he should not have to disclose litigation expenses.

Mr. Weiner summarized the staff activity concerning the Atlantic City Mayoral recall election including staff meetings in Atlantic City. He directed the Commissioners' attention to Mayor Matthews' letter and to the letter from

Robert Paschon, the attorney for the Committee to Make Mayor-Council Government Work.

On a motion by Commissioner DeCotiis, seconded by Commissioner Proctor and a vote of 4-0, the Commission denied the separate requests of Mayor Matthews and Mr. Paschon to not hold a hearing on the campaign finance disclosure requirements concerning the recall election in Atlantic City.

Staff Counsel Nagy reviewed the chronology distributed to the Commissioners. He pointed out that new information had been acquired after the preparation of the summary to the effect that the Committee to Make Mayor-Council Government Work did not establish a new bank account, contrary to what was stated in paragraph No. 12 on page 2 of the chronology.

Commissioner Waugh asked if those who circulated petitions the second time were the same as those who circulated petitions the first time. Mr. Weiner said that some of the same names showed up as circulators in both petition efforts. Commissioner Waugh asked what the staff position was on the issue of whether there were two separate recall efforts or whether both efforts were really one and the same. Mr. Weiner said that staff position is that both recall efforts were really one and the same effort.

Commissioner DeCotiis asked what other indices there were, besides a single bank account, to support the contention that both recall efforts were really one and the same. Mr. Weiner cited the following factors: the office used for both recall efforts was the same; Mr. Masland played a prominent role in the first recall effort as he did in the second effort; the other individuals who were principals in the first recall effort are listed as payees in the report filed by the Committee to Make Mayor-Council Government Work; the ultimate purpose of both recall efforts was the same, namely the recall of Mayor Matthews; and that the establishment of a separate recall committee or effort appeared to be primarily a litigation strategy to avoid a collateral attack on the petitions but did not represent a new, independent endeavor as far as disclosure requirements.

Commissioner DeCotiis asked whether the expenditures by the recall committee are candidate related or only represent expenditures for a public question. Mr. Nagy said that the expenditures by the recall committee should be viewed as candidate related.

Commissioner Waugh asked whether the Committee to Make Mayor-Council Government Work is backing any candidate. Mr. Weiner said that for the purposes of this meeting it is assumed that the Committee's activities are unrelated to any candidate activity. But, that does not preclude an eventual determination of non-independence of the Committee to Make Mayor-Council Government Work.

Commissioner DeCotiis noted that the Commission in prior Advisory Opinions (07-80 and 42-76) articulated a different policy, namely that expenditures, involved in the effort to have a matter placed on the ballot as a public question, made or incurred prior to the time the question has been certified to be placed on the ballot, and are not subject to the reporting or other

requirements of the Act. Mr. Weiner said that since 1980 the Commission has evolved and applied a different policy effectively reversing its prior position. This is evidenced and expressed in its 1982 report recommending amendments to the Reporting Act, other Advisory Opinions and the development of the Testing the Waters regulations.

Commissioner DeCotiis noted that the first recall effort did not result in an election. Under the "Testing the Waters" idea, the first recall effort did not result in a "candidacy". Commissioner DeCotiis noted that if an individual never becomes a candidate, that individual never has to file reports with us. Mr. Weiner said that in the Atlantic City recall efforts, the two separate recall efforts are inextricably related and thus became one.

Commissioner Proctor said that in his judgment there is one event and one identity.

Commissioner DeCotiis observed that Mayor Matthews argues the point that he is not a candidate but is serving as an elected official in opposing the recall effort and therefore the expenditures are not campaign expenses and are not reportable. The Commission observed that litigation expenses relating to an election are clearly reportable.

On a motion by Commissioner DeCotiis, seconded by Commissioner Proctor and a vote of 3-0, with Chairman Axtell abstaining, the Commission decided that both the Committee to Make Mayor-Council Government Work and Mayor Matthews must report their activities in favor of and in opposition to the recall public question since the inception of the activity to place the issue on the ballot.

#### 5. Executive Session

On a motion by Commissioner DeCotiis, seconded by Commissioner Proctor and a vote of 4-0, the Commission voted to go into executive session to discuss the methods of enforcement of today's discussions, the results of which will be made public at their conclusion.

#### 6. Meeting Schedule

The Commission decided to hold its next meeting on Friday, March 16, 1984 at 9:00 a.m. in Morristown at Mr. Farrell's office and to cancel the regularly scheduled meeting for Monday, March 19, 1984. At the next meeting, the Commissioners will review the revised draft of the proposed regulations concerning quarterly reporting by "continuing political committees".

#### 7. Adjournment

On a motion by Commissioner Waugh, seconded by Commissioner Proctor and a vote of 4-0, the Commission voted to adjourn.

Respectfully submitted,



SCOTT A. WEINER  
Executive Director