

NEW JERSEY ELECTION LAW ENFORCEMENT COMMISSION

NOVEMBER 20, 1984

PUBLIC SESSION MINUTES

PRESENT

Andrew C. Axtell, Chairman  
Alexander P. Waugh, Jr., Vice Chairman  
Haydn Proctor, Member  
Owen McNany, Member-Designate\*  
Frederick M. Herrmann, Executive Director  
William R. Schmidt, Assistant Executive Director  
Gregory E. Nagy, Staff Counsel  
Cheryl R. Clarke, Assistant Staff Counsel  
Edward J. Farrell, General Counsel

\* Commissioner-Designate McNany and Assistant Staff Counsel Clarke attended only the public session.

Chairman Axtell called the meeting to order and announced that pursuant to the "Open Public Meetings Act," P.L. 1975, c.231, special notice of the meeting of the Commission has been filed with the Secretary of State's office and distributed to the entire State House press corps.

The meeting convened at 9:15 a.m. at the offices of the Commission, 28 West State Street, Trenton, New Jersey.

1. Approval of Public Session Minutes of November 8, 1984

On a motion by Commissioner Waugh, seconded by Commissioner Proctor and a vote of 3-0, the Commission approved the public session minutes of November 8, 1984.

2. Executive Director's Report

Mr. Herrmann reported that Governor Kean had not yet signed S-1523, Senator Orechio's bill, to amend the public financing program. He said that the Governor has 45 days in which to take action which would be by early December. Mr. Herrmann said that the Governor may conditionally veto the bill. Mr. Herrmann said that he understands that there is some concern about the two-for-one match and the matching retroactively to \$50,000 after a candidate has submitted the threshold amount of \$125,000.

Mr. Herrmann advised the Commissioners that the men's room and the women's room on the 12th floor will be reversed. He said that this is being done because there are many more females on the Commission staff than there are males.

3. Advisory Opinion No. 18-1984, Robert S. Raymar

The Commission reviewed the following documents:

- An October 31, 1984 seven-page advisory opinion request submitted by Robert S. Raymar on behalf of Friends of John Russo, Inc.;

- An eight-page October 2, 1981 FEC Advisory Opinion No. 1981-32 signed by John Warren McGarry, chairman for the Federal Election Commission;
- A five-page November 14, 1984 supplemental letter from Robert S. Raymar; and
- A 15-page draft of the advisory opinion prepared by Staff Counsel Nagy and dated November 19, 1984.

In his advisory opinion request, Mr. Raymar asked several questions concerning the applicability of the New Jersey Campaign Contributions and Expenditures Reporting Act to activities planned by Senator Russo to assess the possibility of Senator Russo becoming a candidate for Governor. Mr. Raymar also inquired whether certain costs incurred by Senator Russo in his capacity of Senate Majority Leader and as a member of the State Senate are subject to reporting requirements under the Act.

Chairman Axtell noted the sixth point in Mr. Raymar's first letter about the printing and distribution of a "biographical brochure." The Chairman suggested the number of such brochures that would be printed and distributed is a key factor. He said that some number, such as 100, might be reasonable but more than 100 would represent campaigning and the Senator would no longer be "testing the waters." Mr. Nagy observed that specifying a number of brochures above which an individual would become a candidate is very difficult to set without other facts. Commissioner Proctor suggested that some line be drawn. Mr. Farrell noted that it is an issue of fact and the number of brochures would have to be considered in relation to other facts.

Mr. Farrell went on to advise the Commission that the issue of when an individual becomes a candidate used to be an acute problem for the Commission. Originally, the Commission concluded that expenditures for "testing the waters" were not reportable. However, in response to an advisory opinion request in 1983 on behalf of Peter Shapiro, County Executive from Essex County, the Committee changed its position and subsequently adopted regulations for "testing the waters" expenditures requiring their subsequent disclosure should the individual become a candidate. Therefore, the disclosure issue is no longer critical because the information is not going to be lost. The problem now faced by the Commission is if large sums of money are raised while an individual is "testing the waters", what then happens in terms of disclosure should that individual not become a candidate. The other critical problem faced by the Commission is defining "testing the waters activity" should an individual, who subsequently becomes a candidate, have his or her "testing the waters activity" expenditures challenged by an opponent for having been under-reported.

Staff Counsel Nagy suggested that if an individual raises "substantial" sums of money, that fact may in itself trigger a reporting requirement because the activity of raising "substantial" sums of money could be deemed to have triggered a candidacy.

Commissioner Proctor asked whether the Commission had previously considered this issue. Mr. Farrell said the issue was considered in the 1981 primary as applied to former Mayor Lawrence Kramer. Mr. Schmidt provided the facts of the situation, namely that Mayor Kramer had raised funds in December 1979 from five or six individuals in the amount of approximately \$15,000 and those funds were expended on a name recognition poll. After extensive review of the poll and other related information, the Commission decided that that activity was "testing the waters" and, under Commission policy at that time, did not have to be disclosed by candidate Kramer.

Commissioner Proctor suggested that some monetary threshold be established to define "substantial" sums of money raised and that the Commission place the burden on the individual to prove that he or she has not become a candidate by virtue of raising "substantial" sums of money.

The Commissioners and staff then held an extensive discussion of the issue of requiring disclosure when an individual is "testing the waters" and raises large sums of money. The Commission concluded that such moneys did not have to be disclosed unless the individual became a candidate. If the funds were used subsequently for private purposes not related to political activity, then the Commission could not require disclosure. If, however, the individual subsequently donated the funds, or a portion thereof, to another political committee, then the Commission would, under current law and regulations, require disclosure.

Commissioner Waugh suggested that the draft advisory opinion include specific language that all expenditures for "testing the waters activities" are reportable.

On a motion by Commissioner Proctor, seconded by Commissioner Waugh and a vote of 3-0, the Commission authorized the advisory opinion, as amended.

#### 4. Fine Collection Report

The Commission reviewed a one-page November 15, 1984 memorandum from Cheryl R. Clarke, Assistant Staff Counsel, on the subject of fine collection progress. Attached to the memorandum was a one-page table entitled "Fine Collection Overview - November 15, 1984." Ms. Clarke also distributed copies of a "Bi-weekly Fine Collection Report" (two pages) dated November 1 to November 15, 1984. The Commissioners noted the significant progress made over the last 15½ months in reducing the backlog of outstanding cases from 114 as of July 5, 1983 to 59 by November 15, 1984. Of those 59, 30 have been forwarded to the Collection Unit of the Attorney's General's office for further collection. In summary, the total number of outstanding cases currently in the ELEC fine collection system is 29.

5. Resolution to Enter Executive Session

On a motion by Commissioner Proctor, seconded by Commissioner Waugh and a vote of 3-0, the Commission decided to go into executive session to review the executive session minutes of November 8, 1984 and to discuss investigative and legislative matters, the results of which will be made public at their conclusion.

6. Public Hearing on Proposed Amendments to N.J.A.C. 19:25-15 and 19:25-16, Public Financing of Campaigns, Primary and General Elections for the Office of Governor

At the request of Chairman Axtell, Vice Chairman Waugh opened the public hearing.

No one appeared to testify. Mr. Nagy reported that no one had submitted written comments for the Commission's consideration.

On a motion by Commissioner Proctor, seconded by Commissioner Waugh and a vote of 3-0, the Commission closed the public hearing.

7. Adoption of Proposed Regulations

On a motion by Commissioner Waugh, seconded by Commissioner Proctor and a vote of 3-0, the Commission authorized Executive Director Herrmann to execute the Certification of Adoption of the proposed regulations and to authorize Mr. Herrmann to publish the proposed regulations dealing with public financing of campaigns of primary and general elections for the office of Governor.

8. Adjournment

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

Respectfully submitted,



FREDERICK M. HERRMANN  
Executive Director