

NEW JERSEY ELECTION LAW ENFORCEMENT COMMISSION

PUBLIC SESSION MINUTES

JUNE 12, 1985

PRESENT:

Attended Public Session Only

Andrew C. Axtell, Chairman
Alexander P. Waugh, Jr., Vice Chairman
Haydn Proctor, Member
Owen V. McNany, Member
Frederick M. Herrmann, Executive Director
Jeffrey M. Brindle, Deputy Director
Edward J. Farrell, General Counsel
Gregory E. Nagy, Staff Counsel

Peter D. Nichols, Director of
Public Financing

Vice Chairman Waugh called the meeting to order and announced that pursuant to the "Open Public Meetings Act," P.L. 1974, 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 10:00 a.m. at the Maplewood, N.J. Municipal Building.

1. Approval of Public Session Minutes of June 3, 1985

On a motion by Commissioner Proctor, seconded by Vice Chairman Waugh and a vote of 4-0, the Commission approved the public session minutes of June 3, 1985.

2. Executive Director's Report

Executive Director Herrmann reported that, despite intense lobbying on his part, the Commission's \$60,000 budget resolution was not approved as part of the Fiscal Year '86 budget. Mr. Herrmann said, however, that the legislature would be acting upon a \$2-3 million dollar supplemental appropriation bill and that he would seek to have the Commission's request included in it.

The Executive Director cautioned that the supplemental appropriation is not part of the budget and therefore may not be acted upon by July 1, 1985. He said that even if the Commission's request is included in the supplemental there is no sure way of determining when the appropriation bill will be enacted. Mr. Herrmann also stated that there is no guarantee that upon passage the Governor would sign the legislation, although the Commission's \$60,000 request, as well as many other items to be included in the supplemental appropriation, is reputed to be on the Governor's critical needs list.

Mr. Herrmann concluded by stating that, all in all, his main objective has been met; namely, that by proposing a budget resolution he had averted any reductions in the Commission's original budget request. He said that next year, this money, along with requests for money for additional

positions, would be built into the budget and not be requested in the form of a budget resolution.

Executive Director Herrmann stated that he was interviewed on New Jersey Public Broadcasting. He said that he used the opportunity to articulate the Commission's recommendations for reforming the Public Financing program.

Along these same lines, Mr. Herrmann reported on press reports that Democratic Gubernatorial candidate Peter Shapiro had offered to negotiate with Republican Gubernatorial candidate Thomas H. Kean on changing the program. Mr. Herrmann said, however, that Mr. Shapiro stated that he will take public funds whether or not the law is changed. The Executive Director said that the Commission is prepared to adjust to any change in the law if it occurs within a reasonable time frame.

Executive Director Herrmann next raised the question of telephonic conferences. He said that the Commission might want to consider this approach to certifying public funds in September and October, as opposed to weekly meetings, called solely for the purpose of certifying public funds. He indicated that the logistics would have to be worked out but that this method of certifying the funds might prove more efficient and equally effective.

Commissioner McNany suggested that staff could contact Bell Telephone to set up a conference call. He said that it was merely a question of accessing the system.

Vice Chairman Waugh then indicated that his office could possibly be used for a conference call. The Commission then asked for General Counsel Farrell's opinion as to whether Vice Chairman Waugh could sign off on the public financing and whether it was legally necessary for all the Commissioners to sign off on the certification form.

Mr. Farrell provided a history of the decision on having all the Commissioners sign the certification. In brief, General Counsel Farrell stated that the policy on certification sign-off's was set up with caution in mind - to assure the public that the entire Commission is behind the sign-off. He said, however, that the policy is not cast in stone, nor is it legally binding, and that the Commission certainly could change its policy. He said that, in any case, if the Commissioners were to certify public funds via telephonic conferences, it is important that they have the complete information package before them. The Commissioners directed Mr. Herrmann to look into the matter further.

Mr. Herrmann next introduced a new complaint form to be used in the future. Commissioner McNany suggested that the office sought should be included on the form. General Counsel Farrell suggested that the form date be included at the bottom of the form.

Executive Director Herrmann next raised two public financing issues for consideration by the Commissioners:

1. Kean rebate issue:

Executive Director Herrmann circulated a memo by Director of Public Financing Peter Nichols, outlining the facts which pertain to this matter. According to Mr. Herrmann, the facts in this case are as follows:

- A. Upon its first submission, the Kean campaign notified the Commission of \$92,000 in reimbursements to contributors.
- B. At the time of the 29-day preelection report, the Kean campaign reported that an additional \$38,000 was returned to contributors.
- C. None of this total \$135,000 was submitted for match, nor were any of the contributions matched with public funds.
- D. In general election 1981, Democratic candidate James Florio refunded contributions of \$151,175, and the Republican candidate, Thomas Kean, refunded \$88,150.
- E. These actions were not questioned by the Commission in 1981.
- F. A recent oral inquiry by the Kean campaign treasurer was in regard to refunding contributions in a postelection setting and not in regard to the preelection refund of contributions.

General Counsel Farrell stated that the Commission must have decided affirmatively in 1981 that insofar as any limitations on refunds are concerned, they must apply only to money submitted for match and funds returned after election day. Mr. Farrell stated that it was his opinion that unless the Commission decided to change policy in mid-stream, there would be no basis for challenging the Kean campaign on their decision to return these excess funds prior to the primary election.

At this juncture, Vice Chairman Waugh stated that the issue raised two questions for future consideration by the Commission. They are:

- A. If a candidate raises more private funds than he or she can spend, should that candidate have to spend the private money in lieu of public funds?
- B. If a candidate chooses to return a large sum of money to contributors, should that be done on a pro rata basis?

The Commission agreed to consider these questions in the future.

2. Transfer Issue:

Executive Director Herrmann circulated a memorandum by Director of Public Financing Peter Nichols, outlining the facts in this matter.

Mr. Herrmann reported that, contrary to the Commission's recollection at the previous meeting, the minutes of the May 14, 1985 meeting state that the Commission decided upon a 5-day cut off for the transfer of public funds into the private funds accounts of gubernatorial candidates.

General Counsel Farrell said that although his recollection is different from what the minutes state, the minutes, nevertheless, rule. He recommended that the Commission change the policy to eliminate the 5-day cut off rule.

On a motion by Vice Chairman Waugh, seconded by Commissioner McNany, the Commission approved by a vote of 4-0 the recommendation that the 5-day rule be eliminated. In addition, the Commission approved the provision that 48-hour notice of transfers be given by gubernatorial candidates between 11 days prior to the election and election day.

3. Director of Public Financing's Report

- Director of Public Financing, Peter Nichols, recommended that the Commission discontinue the 90 percent certification rate and certify the remaining amount of the previous week's submission. Mr. Nichols stated that his staff will now review submissions in their entirety because it is no longer critical to certify at the 90 percent rate without review.

The amount certified is as follows:

Robert J. Del Tufo (D)	\$1,849.00
Kenneth A. Gibson (D)	444.22

On a motion by Vice Chairman Waugh, seconded by Commissioner Proctor, the Commission voted 4-0 to approve the certification.

4. Adjournment

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

Respectfully submitted,



FREDERICK M. HERRMANN