

NEW JERSEY ELECTION LAW ENFORCEMENT COMMISSION

PUBLIC SESSION MINUTES

SEPTEMBER 22, 1987

Present

Stanley G. Bedford, Chairman
Owen V. McNany, III, Vice Chairman
Andrew C. Axtell, Commissioner
Alexander P. Waugh, Jr., Commissioner
Frederick M. Herrmann, Ph.D., Executive Director
Edward J. Farrell, General Counsel
Jeffrey M. Brindle, Deputy Director
Gregory E. Nagy, Staff Counsel

Chairman Bedford 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 had been filed with the Secretary of State's office and distributed to the entire State House Press Corps.

The meeting convened at 9:18 a.m. at the law offices of Alexander P. Waugh, Jr., 600 College Road East, Princeton, New Jersey.

1. Consideration of Proposed Amendment to Personal Financial Disclosure Regulations N.J.A.C. 19:25-19.3

Written comments dated September 15, 1987 from Gordon MacInnes, candidate for State Senate (3 pages); from the New Jersey Dental Association, by letter dated September 15, 1987 from Arthur Meisel, Esq. (2 pages); and from the New Jersey Bar Association, by letter dated September 16, 1987 from Brian J. Kelly, Legislative Counsel (3 pages) were circulated to the Commissioners by mail prior to the meeting.

Chairman Bedford opened the discussion of the proposed regulation by asking for a motion to either adopt or not adopt the regulatory change.

Commissioner Axtell moved adoption of the regulation with Commissioner Waugh seconding. Chairman Bedford then asked for discussion on the motion.

Commissioner Axtell said that he had concerns about the provision in the regulation which requires candidates to disclose the sources of their children's earned income.

Chairman Bedford commented that the proposed regulation does not mention children. He said that the issue of disclosing children's sources of income would not be a matter for consideration during the present discussion.

Commissioner Waugh concurred, stating that there is no mention of children in the regulation.

Staff Counsel Nagy noted that it is the statute itself which requires disclosure of children's sources of income.

Chairman Bedford said that the Commission cannot address this particular issue because it is a matter of statutory law. He said that it would be up to the Legislature to address the question of whether or not to include the income of children on the personal financial disclosure reports.

Chairman Bedford interjected that the Commission has a number of options regarding action on the proposed regulation. Citing Staff Counsel Nagy's September 16, 1987 memorandum on options available to the Commission, Chairman Bedford said that the members can: 1) adopt the proposal without substantive change, 2) repropose the amendment with substantive changes, 3) reject the proposed amendment and withdraw it, or 4) take no action.

In resuming the discussion on the motion to adopt the proposed regulation, Commissioner Waugh said that it is clear that the Commission is reconsidering an issue that had been considered in 1983. He stated that in 1983 he had proposed a broad interpretation of the statute. More precisely, he had been of the belief that the Commission should "go behind the law firm, etc.," and require the identification of individual clients. Commissioner Waugh recalled that others, including former Commissioner and then consultant to the Commission, Judge Goldmann, believed otherwise. He said the 1983 Commission believed that it would be a breach of confidentiality to require the identification of individual clients. Commissioner Waugh said that the Commission adopted a narrow approach at that time, and has been enforcing the law on the basis of that interpretation since then. He said, however, that despite the Commission's previous decision, he still favors a broad interpretation of the statute.

Vice Chairman McNany stated that he too favored a broad interpretation of the statute.

Chairman Bedford said that he opposed the proposed regulation as drafted. He said that it would be a burden on lawyers, dentists and doctors, etc. when running for office. Chairman Bedford stated that while other members of the Commission might take a broad view of the statute he preferred to take a conservative view. The Chairman commented that he believes the statute is clear and that the legislature did not intend for personal financial disclosure to "go behind the law firm" and identify individual clients. He said that this change would necessitate a statutory amendment by the legislature. Chairman Bedford added that the legislature itself, in its Code of Ethics, does not require such extensive disclosure.

Chairman Bedford also said that he was impressed by Mr. McCool's comments that it would be illegal for the Commission to change the threshold dollar amount triggering the identification of clients as sources of income. He suggested that Mr. McCool could be right in suggesting that the Commission might have to go back to the legislature, both for an interpretation of the law and for changing the threshold amounts.

Speaking to the members of the Commission, Chairman Bedford said: "I think you would be wrong to so broaden our regulations. Things have gone along well for four years and there seems to be no reason to change now. This type of change would adversely affect the rights of patients, clients, and customers."

Commissioner Axtell queried whether the legislature ever delved into this issue in such depth.

Chairman Bedford responded that he did not know the answer to that question. He said that whether there was indepth discussion by the legislature, however, is irrelevant; the point is that "you cannot go beyond the law with your regulations."

Commissioner Waugh stated that in response to Mr. McCool's comments made at the public hearing the previous week, it was his belief that a governmental agency did have the ability to set new thresholds. He said that the New Jersey Supreme Court recognizes the inherent authority of a regulatory body such as ELEC to set higher thresholds.

General Counsel Farrell noted that the Commission was entitled to the interpretation that the Legislature did not pass an unconstitutional law and that as such since there was no limitation set by the legislature as to the threshold amount the Commission has the ability to set one.

Chairman Bedford responded that the legislature did set a threshold; and that it is \$1,000.

At this juncture, Chairman Bedford asked for a vote on the motion to adopt the proposed regulation. By a vote of 3-1, the Commission voted to adopt the proposed regulation. Vice Chairman McNany and Commissioners Axtell and Waugh voted for approval. Chairman Bedford voted against adopting the regulation.

As a result of the Commission adopting the amendments to the personal financial disclosure regulations, the Chairman directed General Counsel Farrell to prepare a summary of the public comments as well as to prepare the agency responses to those comments. General Counsel Farrell will send letters to the witnesses and to persons submitting written comments outlining the Commission's responses. Following receipt of these materials, Staff Counsel Nagy will prepare and file the Certificate of Adoption, the Record of Opportunity for the Public to be Heard, and the Notice of Adoption that will appear in the New Jersey Register.

2. Advisory Opinion No. 11-1987

General Counsel Farrell queried whether the Commissioners would want him to broaden the advisory opinion to include guidance on lobbying activity disclosure. He said that while the advisory opinion request asks only for guidance on PAC reporting requirements it was his opinion that the organization was the type that would also engage in lobbying.

Staff Counsel Nagy noted that lobbying disclosure requirements are quite different from the requirements for PAC filing. He suggested that the letter of response should advise that the Commission would require a printout of individual contributors as suggested in the inquiry and would require reporting as a continuing political committee.

The advisory opinion request comes from Pamela Mandel, Esq., representing the Coalition of Opticians. Ms. Mandel states that the Association set up a

PAC to be funded through a pre-existing buying group. She asks whether it is sufficient to provide the buying group operator's name on the PAC reporting form or whether the members of the buying group should be identified on the reports by furnishing a computer printout.

Chairman Bedford indicated that he would prefer to limit the response to the subject of PACs.

General Counsel Farrell said that he would so respond.

3. Approval of Public Session Minutes of September 15, 1987

On a motion by Vice Chairman McNany, seconded by Commisisoner Axtell and a vote of 4-0, the Commission approved the Public Session Minutes of September 15, 1987 with technical amendments.

Executive Directors' Report

Executive Director Herrmann indicated to the members of the Commission that he would be providing general background for informational purposes on the issues of limiting contributions and expenditures in legislative campaigns and on publicly financing legislative campaigns. He said that the issues received discussion by some legislators over the summer; but, that to date, no bills have been reviewed in committee.

Regarding legislative contribution and expenditure limits, Executive Director Herrmann advised the Commissioners that expenditures cannot be limited unless public funding, or an equivalent such as free TV time, is voluntarily accepted by a candidate.

Executive Director Herrmann stated that the expenditure limitation issue involves the question of whether it is desirable to limit spending in legislative elections. He said that vis-a-vis publicly funded gubernatorial elections, ELEC has opposed expenditure limits. The Executive Director said that the Commission has held that spending limits reduce voter communication, encourage independent expenditures, hurt challengers, and harm campaign flexibility.

With respect to the issue of limiting contributions to legislative campaigns, Executive Director Herrmann suggested that any limit should be high enough to allow adequate funding of campaigns. He said, however, that the limit should also be low enough to eliminate excessive contributions. He said, for instance, that a \$30,000 contribution from a single source would certainly appear excessive to many. Executive Director Herrmann suggested that a contribution limit in the range of \$2,500-\$5,000 seemed fair. He said that research undertaken by Deputy Director Brindle indicates that in the 1983 and 1985 legislative races, contributions were mostly under these levels.

Commissioner Waugh asked why the executive director felt it necessary to have a higher contribution limit in legislative elections than in gubernatorial races. Executive Director Herrmann responded that it is harder for candidates for the legislature to raise money than for candidates for governor.

Executive Director Herrmann said that enforcement would be possible using the computer to target violators. He said that additional staff would be required, however. He said that one area of difficulty would be in the area of monitoring contributions by affiliated corporations.

Executive Director Herrmann said that the Commission may feel that political parties should be exempt from the contribution limit. He said that through the years various reforms have seriously weakened the political parties and that many political scientists have expressed concern over this development. He said that two bills that have been introduced in the legislature do not place a limit on the amount of money political parties can contribute to legislative candidates. Executive Director Herrmann said that under these bills the contribution limit does apply, however, to the amount PACs can contribute to other PACs. He said that this provision appears necessary.

Executive Director Herrmann also pointed out that there was a downside to contribution limits. He said that contribution limits may increase independent expenditures, thereby decreasing disclosure. He said that contributions limits may also encourage different forms of giving to officeholders. He said that it is conceivable that the limits may trigger more honoraria, gifts, and personal loans to candidates because of the weak lobbying law.

Regarding the issue of public financing of legislative races, Executive Director Herrmann said that an argument for it is that it would enable the establishment of an expenditure limit. He said that it would be designed to help candidates of limited means run for the legislature as well as keep out special interest money.

Executive Director Herrmann said that on the negative side, the program might be expensive to finance and administer. He said that a grant program would probably be better than a matching program because the latter type requires an exhaustive review of all contributions in a short period of time. The executive director said that the cost of running campaigns varies from legislative district to legislative district and that because of this fact much attention should be given to devising a funding formula for distributing grants. He said, however, that a suitable formula could be developed.

General Counsel Farrell stated that it would be difficult to have a grant program in the primary because of the importance of weeding out the viable candidates from the non-viable.

Executive Director Herrmann said that any public financing program for legislative races must provide meaningful amounts of money to candidates. He said, however, that the Commission might suggest to the Legislature that it fine-tune the gubernatorial public financing program before it embarks on creating an entirely new public financing program. He said that this suggestion derived from a discussion he had earlier in the week with Staff Counsel Nagy.

Following the conclusion of the Executive Directors' report, Chairman Bedford announced that the next Commission meeting would be held on Tuesday, October 20, 1987 at 10:00 a.m., in Trenton, New Jersey. He said that the following meeting would be November 17, 1987, in Maplewood, New Jersey.

5. Adjournment

On a motion by Commissioner Axtell, seconded by Vice Chairman McNany and a vote of 4-0, the Commission voted to adjourn at 10:55 a.m.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "F. M. Herrmann".

FREDERICK M. HERRMANN, Ph.D.

FMH/jah