

NEW JERSEY ELECTION LAW ENFORCEMENT COMMISSION

PUBLIC SESSION MINUTES

DECEMBER 15, 1987

Present

Stanley G. Bedford, Chairman
Owen V. McNany, III, Vice Chairman
Andrew C. Axtell, Commissioner
David Linett, Commissioner
Frederick M. Herrmann, Ph.D., Executive Director
Edward J. Farrell, Counsel
Jeffrey M. Brindle, Deputy Director
Gregory E. Nagy, Legal Director

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 10:07 a.m. at the Commission Offices, 28 West State Street, Trenton, N.J.

1. Approval of Public Session Minutes of November 17, 1987

On a motion by Commissioner Axtell, seconded by Vice Chairman McNany and a vote of 4-0, the Commission approved public session minutes of November 17, 1987.

2. Executive Director's Report

A. 1987 Summary of Legislative Statistical Analysis

Executive Director Herrmann reported that the statistical analyses undertaken by the Commission in 1987 were the most extensive in its history.

Specifically, Executive Director Herrmann said that the following press releases were prepared and distributed to the press during the past year:

1. May 1, 1987 - PAC release highlighting the top twenty receivers and spenders.

2. May 21, 1987 - 29-day preelection (primary) release highlighting the top twenty receivers and spenders in 1987 and 1985. This release included a candidate listing.
3. May 29, 1987 - 11-day preelection (primary) release updating the 29-day preelection information.
4. July 6, 1987 - 20-day postelection (primary) release updating the 11-day preelection information.
5. August 20, 1987 - press release on personal financial disclosure by legislative candidates. This release included 30 tables.
6. September 23, 1987 - PAC release which included a comparison of the top twenty PAC spenders in 1987 and 1985.
7. October 20, 1987 - 29-day preelection (general) release which detailed receipts and expenditures by all legislative candidates. This release ranked the candidates and compared '87 Assembly totals to 1985.
8. October 30, 1987 - 11-day preelection (general) release which detailed receipts and expenditures by all legislative candidates, updating the 29-day figures. This release ranked the candidates and compared '87 Assembly totals to 1985. **It also contained public question data.**
9. December 1, 1987 - Lobbying release calling for reform of the lobbying laws and providing comparative data back to 1982.
10. December 9, 1987 - 20-day postelection (general) release which detailed receipts and expenditures by all legislative candidates updating the 11-day figures. This release ranked the candidates and compared '87 Assembly totals to 1985. It also contained public question data.

Executive Director Herrmann stated that the Commission received very favorable press as the result of this effort and indicated that the staff did an excellent job in accomplishing these tasks during the previous months. He said that the analyses of the primary election were a first as was the development of personal financial disclosure statistics. He also said that the in-depth nature of the general election analysis went far beyond anything previously undertaken by the Commission.

Executive Director Herrmann said that the Commission, as the result of its initiatives, has received very positive recognition of late. He said that an article by Dr. Herbert Alexander in Governing Magazine (November 1987) cites the Commission as one of the top seven

states in the nation for producing analytical data. He added that a Star-Ledger editorial and cartoon on lobbying reform supported the Commission's position, as does a WOR-TV Channel 9 editorial featuring the Executive Director. Executive Director Herrmann added that the Commission received statewide coverage of its "no-name PAC release" as well.

B. Computerized Data

Executive Director Herrmann reported that 1985 primary and general contributor information would be available to the public in January. He said that it would be the first time that this contributor information would be publicly available. At this juncture, a set of six printouts for the primary and general 1985 elections was presented to the Commission by Warren Heins, System Administrator. These printouts included alpha lists of contributors, alpha lists of contributors by party, and alpha lists of contributors by candidate.

Executive Director Herrmann also reported that 1987 contributor information was scheduled to be ready for public consumption by December 1988. Moreover, the Executive Director reported that the Federal Election Commission (FEC) Remote Access Project would be operational at the Commission offices in the near future. The project will allow the public to access the FEC data bank to obtain information about the financial activity of federal candidates. Commissioner Linett asked whether the Commission had a mandate to keep federal records. Executive Director Herrmann said that the Division of Elections, Department of State, which is required by law to maintain the federal records is aware of the project and has no problem with it.

C. ELEC Activities

Executive Director Herrmann stated that the meeting with the New York Lobbying Commission has been postponed. He said that the respective Commissioners will be able to meet together at the August 8, 1988 Northeastern Regional Conference on Lobbying (NORCOL) meeting to be held in New Jersey.

Executive Director Herrmann reported he recently attended and participated in an Eagleton Institute Conference on the 1987 Election. He also mentioned that he will be testifying before the Connecticut Campaign Financing Task Force in Hartford during the first week in January as well as speaking before the Nutley GOP Club on January 12, 1988.

D. January Commission Meeting

Executive Director Herrmann reported that the next meeting of the Commission is scheduled for Tuesday, January 19, 1988 at 10:00 a.m. in Trenton, N.J.

E. New Hires

Executive Director Herrmann reported that Ms. Kimberly Lance has been hired to fill the administrative assistant position left vacant by the departure of Mrs. Sandra Magee. He also reported that Ms. Elizabeth Ryan has been selected to fill the post of Director of Review and Investigation. Executive Director Herrmann reported that he spoke with former Commissioner Proctor, that he is doing well, and that he sends Christmas greetings to the members of the Commission and staff.

Chairman Bedford asked for a motion to accept the Executive Director's report, stating that congratulations were in order to Executive Director Herrmann and his entire staff for a job well done during the past year.

4. Municipal Political Party Regulations

Legal Director Gregory E. Nagy introduced a staff proposal to change the existing regulations involving the filings of municipal political party committees (see Dec. 7, 1987 memo, Municipal Party Committee Filings).

Legal Director Nagy said that municipal political party committees in small communities frequently are minimally active and the current regulations are unduly burdensome.

To correct this problem, Legal Director Nagy indicated that staff was recommending the following amendments to the Commission's regulations:

- 1) that the spending ceiling under which a municipal party committee may file a Form A-3 be raised from \$1,000 to \$2,500; and
- 2) that the number of times that the Form A-3 must be filed by reduced from twice a year (January 15 and July 15) to once a year (July 15 only).

Chairman Bedford asked whether this proposal, in the form of an amended regulation, had to be published. Legal Director Nagy answered in the affirmative.

Chairman Bedford asked whether the proposal envisioned the A-3 filing as retroactive or prospective. Legal Director Nagy responded that the proposal envisioned the A-3 filing to be prospective. Chairman Bedford asked, "What about a Municipal Committee that files an A-3 but eventually spends more than \$1,000, or in the case of amended regulations, spends more than \$2,500." Legal Director Nagy stated that an A-3 filing that is prospective would parallel the Commission's regulations governing candidates' filings. He said that in the case of a candidate spending more than \$2,000 after filing a Form A-1, the candidate merely incurs the full report filing obligation (Form R-1) in the report period in which the threshold is exceeded.

Commissioner Linett said that he had three concerns about the proposal. He said that the fact that he comes from a non-urban county might give him a different perspective on the problem from those Commissioners who live in the more urbanized regions of the State. Commissioner Linett said that his first concern was that in many small towns a small amount of money has a much bigger impact on an election than the same amount of money has on an election in a larger, more populated, community. Secondly, Commissioner Linett said that he did not necessarily agree with the assumption that some Municipal Committees are moribund. He said that he believed in strengthening the party system and that it was his belief that the current filing requirements had a "psychologically positive" effect on political parties at the local level. The fact that local people are required to file, he said, lends an air of importance to what they are doing. Commissioner Linett said that his third concern was that the filing date should be July 15th instead of October 15th, the later date being closer to election. He said that disclosure would be enhanced if municipal party committees filed when attention is focused on the upcoming election.

Executive Director Herrmann, responding to Commissioner Linett's concern about raising the A-3 reporting threshold for Municipal Committees, said that in part it is a question of equitable treatment. He said that currently under the statute all other CPC's have a \$2,500 reporting threshold whereas municipal political committees have no threshold at all. Under ELEC regulations, the burden on municipal committees has been eased somewhat by allowing A-3 filing subject to a \$1,000 threshold. By moving the threshold to \$2,500, it will move small-activity municipal committees closer to the reporting requirements of other CPC's.

Commissioner Linett asked: If a local party committee doesn't raise more than \$1,000 but receives a \$150 contribution, does the contribution have to be reported?

Executive Director Herrmann responded in the affirmative by stating any contributions of over \$100 received by the committee would have to be reported.

Commissioner Linett asked: What about expenditures, do they have to be reported in this case?

Executive Director Herrmann answered in the negative, but added that the expenditure would be reported by the candidate if the expenditure were in the form of a contribution of over \$100.

Commissioner Linett said that it was important to know the source of contributions and that disclosure of this information in a timely fashion was necessary.

Executive Director Herrmann agreed. He said, however, that at a certain point it is de minimis. He said that the issue is: at what point does the burden of reporting outweigh the public benefit of disclosure? Besides, he commented that raising the A-3's threshold for municipal party committees to \$2,500 would not mean the loss of significant reporting because all contributors over \$100 would still have to be reported by the committee and any contribution to candidates over \$100 would be reported by the candidates.

Legal Director Nagy said that he would advise against moving the filing date to the fall. In his view, it is important that a new treasurer elected at a June reorganization meeting be impressed with the fact that the treasurer has a filing obligation and ELEC should be advised of the identity of the newly elected treasurer as soon as possible.

Commissioner Linett said that he is not convinced that July 15th is such a psychological date because people's thoughts turn to reporting in the fall.

Counsel Farrell said that theoretically there is an advantage to the fall reporting. He added, however, that on another level, Legal Director Nagy's argument made sense.

Commissioner Linett said that the question comes down to: What is the public interest, to have these groups report in July or near election? He said that he believes the public interest is served by reporting in the fall.

Executive Director Herrmann added that the issue is also one of staff resources. Are we spending too much time on these small committees?

Vice Chairman McNany asked: How much of a reduction in filings would result from this proposal?

Executive Director Herrmann said that the information would be provided to the Commissioners. He said that the concern from an administrative point of view is: Do we want to spend time on these small municipal committees that spend little money?

Chairman Bedford asked for a motion on the matter.

Vice Chairman McNany moved that the matter be tabled until the next meeting. Commissioner Axtell seconded the motion. On a vote of 4-0 the Commission decided to table the matter until the meeting of January 19, 1988.

At this point Commissioner Linett asked if the John Doe Social Club was affected by this proposed regulatory change. Legal Director Nagy answered in the negative because such an entity is not a municipal political party committee.

5. Advisory Opinion Requests No. 12, 14, and 15

Counsel Farrell presented a memorandum to the Commissioners concerning the identification of additional political activity on the part of "pure contributors" (see Dec. 13, 1987 memorandum).

Counsel Farrell said that the issue involves the question of whether or not to adopt a policy that no person or organization becomes a political committee or otherwise incurs a filing obligation merely by making campaign contributions in amounts permitted by law to a candidate, committee or political organization.

He said that a related issue concerned whether the Commission could determine whether corporations or other organizations described as "pure contributors" were in fact engaging in other political activity, which might require reporting.

Counsel Farrell indicated that amending the CPC-1 Form, which is the CPC Statement of Organization, would "perhaps go a long way toward resolving the problem" (determining whether an organization that was considered a pure contributor was in fact engaging in other political activity). The amendment would be the addition of the question: "What political activity other than contributions to candidates, committees and political organizations does your organization engage in?" He said that the form then could be used to provide the information of concern to the Commission.

Chairman Bedford asked: "To whom are we going to send the questionnaires?"

Counsel Farrell indicated that the questionnaires could be sent to corporations.

Chairman Bedford asked: How can we send the form to corporations if we eliminate reporting by them?

Commissioner Linett added: What would trigger the form?

Counsel Farrell said that corporations would be targeted to receive the forms through the Commission's auditing of campaign reports and contributor printouts. He said that when a corporation is seen to be making large amounts of contributions it would be sent the questionnaire to determine if its status has changed from pure contributor to CPC.

Commissioner Linett asked: What would be the standard?

Counsel Farrell said that the Commission would set the standard. He said that he is not sure that it would be monetary. He cited the example of a corporation lending its premises to candidates. In doing this, he suggested, it might lose its status as a pure contributor.

Executive Director Herrmann said that the text of the new question has not been formulated yet. He said that it is possible to review the filing status of various CPC's and business organizations and contact the entities, asking them to complete the new form for a reevaluation of their status.

Chairman Bedford asked Counsel Farrell if he was speaking in favor of eliminating the regulation which requires corporations to file reports with the Commission if they contribute more than \$10,000 even though they do not carry out any other political activity. Counsel Farrell answered in the affirmative.

Chairman Bedford said that the only advantage to the regulation is in cross-checking campaign reports filed by candidates. The Chairman asked for a motion.

Commissioner Linett made a motion to repeal the regulation requiring businesses to report when contributing \$10,000 or more. The motion also directed Counsel Farrell in conjunction with the staff, in preparation for sending out CPC-1 Forms, to prepare the text of the question which would amend this form.

Commissioner Axtell seconded the motion. On a vote of 4-0 the Commission approved the motion of Commissioner Linett. Counsel Farrell was directed to prepare draft responses and circulate the drafts to the Commission.

6. Advisory Opinion Request No. 16

Counsel Farrell introduced Advisory Opinion Request No. 16, which has been submitted by the law firm of McCarter & English. The request is on behalf of one of their clients which is a non-insurance subsidiary of a parent corporation which owns another subsidiary authorized to transact the business of insurance in New Jersey.

The Advisory Opinion Request involves the question of how a political committee is to be established by a regulated corporation without violating the prohibition on use of corporate funds "to establish, administer or solicit contributions." The Attorney General has ruled that regulated corporations, which are prohibited from making corporate campaign funds in New Jersey, can establish political action committees. These committees would be funded by voluntary contributions.

The law firm of McCarter & English proposes that their client's Multi-State Committee qualify as a New Jersey political committee, make contributions in New Jersey, and report contributions and expenditures in accordance with the New Jersey Campaign Contributions and Expenditures Reporting Act.

Under this arrangement, however, the Multi-State Committee's administrative expenses, direct and indirect, would continue to be paid by the corporation, which is the client of McCarter & English. In order to insure that their client not violate the statute prohibiting contributions by regulated corporations, McCarter & English proposes the following:

- 1) that the pro-rata portion of all direct and indirect expenses attributable to New Jersey activities would be based on the ratio of the amount of political contributions made by the Multi-State Committee in New Jersey to the total amount of political contributions made by the corporation and its political committees in all states and federally;
- and 2) that such pro-rata portion of total expenses would be reimbursed to the corporation by the Multi-State Committee. The reimbursement would be made from funds provided by voluntary contributions.

McCarter & English asks whether this proposal complies with the Attorney General's directive that corporate funds may not be used to establish, administer or solicit contributions in New Jersey.

Counsel Farrell suggested that the question did not come under the purview of the Commission and that the request be forwarded to the Attorney General.

Counsel Farrell said that the client of the law firm of McCarter & English is not named and that the Commission has a long-standing tradition of not giving anonymous advisory opinions. Counsel Farrell added, however, that in this case, the Commission is not rendering the opinion itself, but is merely passing it along to the Attorney General. He said that the request is fairly detailed and that if the Attorney General had a problem he could reject it.

Chairman Bedford asked Counsel Farrell to point out the fact that the entity is not named in his letter to the Attorney General

Vice Chairman McNany moved that the matter be passed along to the Attorney General. Commissioner Axtell seconded the motion. On a vote of 4-0, the Commission directed Counsel Farrell to send the Advisory Opinion to the Attorney General for an opinion.

Commissioner Linett requested that staff prepare a list of bills supporting legislative initiatives in which the Commission is interested, and also a list of regulatory proposals that are being drafted.

7. Executive Session

On a motion by Vice Chairman McNany, seconded by Commissioner Axtell and a vote of 4-0, the Commission voted to go into Executive Session to discuss investigative and enforcement matters, the results of which will be made public at their conclusion.

6. Adjournment

On a motion by Commissioner Linett, seconded by Vice Chairman McNany and a vote of 4-0, the Commission voted to adjourn at 12:23 p.m.

Respectfully submitted



FREDERICK M. HERRMANN, Ph.D.

FMH/ck