

NEW JERSEY ELECTION LAW ENFORCEMENT COMMISSION

PUBLIC SESSION MINUTES

JANUARY 19, 1988

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  
Gregory E. Nagy, Legal Director  
Nedda Gold Massar, Assistant Staff Counsel

Absent

Jeffrey M. Brindle, Deputy 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 10:18 a.m. at the Commission Offices, 28 West State Street, Trenton, N.J.

The Commissioners agreed to hold their next meeting at the Montclair Borough Hall on Tuesday, February 23, 1988 at 11:00 a.m. They further rescheduled the March meeting in Trenton to Wednesday the 9th instead of Tuesday the 15th.

Executive Director Herrmann explained that Deputy Director Brindle was absent due to jury duty.

1. Approval of Public Session Minutes of December 15, 1987

On a motion by Commissioner Axtell, seconded by Vice Chairman McNany and a vote of 4-0, the Commission approved the public session minutes of December 15, 1987.

2. Executive Director's Report

A. Budget

Executive Director Herrmann reported that the Office of Management and Budget in the Department of Treasury (OMB) recently made its decision on

the Commission's budget request for FY 89. He said \$8 million was approved for the 1989 primary election public financing program. Executive Director Herrmann explained that the Commission had requested \$10 million, but that the approved figure does not constitute a problem because the Commission can request more funding from the Treasury if the program runs out of money. Executive Director Herrmann indicated that in addition to the \$8 million appropriation, OMB approved an additional \$362,000 in the Commission's regular operating account for administration of the program. Finally, Executive Director Herrmann reported that OMB approved the Commission's request for a permanent Director of Public Financing, a permanent secretary, and nine temporary analysts (two-year appointments).

Regarding requests submitted for the Commission's regular budget, Executive Director Herrmann said that OMB approved a new data entry operator position but rejected requests for a desk auditor, field auditor, fiscal auditor and research analyst. Executive Director Herrmann said that the Commission in the future needs an additional assistant counsel and another compliance officer. Executive Director Herrmann added that a Commission request for \$10,000 State aid program that would help universities and public interest groups do research was also rejected.

#### B. Various Projects

Executive Director Herrmann said that a first draft of the Gubernatorial Campaign Cost Analysis Report has been completed by Deputy Director Brindle. He said that Dr. Herbert E. Alexander was at the Commission offices on January 7th consulting on the report and approved the first draft. He said that the report analyzes trends in the cost of campaigning and contains statistics vis-a-vis general inflation and media inflation. He said that the report is due by statute on June 1, 1988.

Executive Director Herrmann said that the Commission's 1987 Annual Report is due on May 1, 1988. He said that 18,683 reports were processed in 1987, 103 investigations closed, 518 complaints completed, 10,560 public assistance requests handled and \$27,000 in fines collected. He said that these figures are due partly to increasing campaign activity and spending. Executive Director Herrmann said that the Commission needs more staff to keep abreast of this trend.

Executive Director Herrmann said that these statistics show why ELEC has such a strong enforcement reputation throughout the United States. He said that there are 85 sister agencies in the country and that ELEC is listed among the top in terms of enforcement. Executive Director Herrmann added that in addition to the Commission's reputation for enforcement, the Commission is gaining a reputation for analytical research, having been cited nationally for being one of the few ethics agencies that compiles data in useable form.

Executive Director Herrmann added that the winter '88 ELEC Report will be available shortly. He said that 2,000 copies will be mailed to interested parties throughout the State.

C. 1985 Primary and General Summary Data

Executive Director Herrmann reported that 1985 primary and general election computer generated summary data is now available in the public room. He said that there is a printout containing an overall alphabetical list of contributors and two additional printouts containing these contributors broken down alphabetically by party and by candidate. Executive Director Herrmann said that these printouts in tandem with the 1985 data presented in the 1987 press releases complete ELEC's analysis of the 1985 legislative election.

Executive Director Herrmann said that the Commission will be providing this data and other information to the Eagleton Institute for research purposes. He said that this cooperative effort is part of our "disclosure community" concept, whereby the Commission provides data in useable form for analysis by universities and public interest groups.

Executive Director Herrmann announced that the Federal Election Commission's Remote Access Project is now operational. Commissioner Linett asked about the budget impact of this project. Executive Director Herrmann said that the new data entry person to be hired as per OMB's approval would be able to handle this project. He said that ELEC will be charged only for phone calls via the FEC local network number and that since he did not expect the response from the public to be overwhelming, the budgetary impact should be negligible. Furthermore, said Executive Director Herrmann, busy FEC years are not the same as busy ELEC years. At this point Chairman Bedford asked Executive Director Herrmann to monitor use of the FEC hookup for possible budget impact.

D. Connecticut Campaign Finance Task Force

Executive Director Herrmann reported that on January 6, 1988, he testified along with Dr. Herbert E. Alexander and others, on public financing and other campaign financing issues in Hartford, Connecticut. On February 25, 1988, he will speak before the Somerville, N.J., Rotary Club.

E. New Hires

At this time, Executive Director Herrmann asked Legal Director Gregory Nagy to introduce Elizabeth Ryan, recently hired as Director of Review and Investigation. Legal Director Nagy explained that Ms. Ryan graduated from Seton Hall Law School, in which she served as Associate Editor of the Legislative Journal. She has served as judicial clerk to Assignment Judge Samuel Lenox in Mercer County and has been employed by a Mount Holly law firm.

3. Personal Financial Disclosure Regulation, N.J.A.C. 19:25-19.3

The Commission undertook a review of Counsel Farrell's draft Summary of Public Comments Received and Agency Responses for approval for publication in the New Jersey Register. The Summary concerns the proposed changes to the regulation (N.J.A.C. 19:25.3) which would require candidates for State office and their family members to identify in their personal financial disclosure reports certain clients providing fee or commission income.

Chairman Bedford explained that on September 22, 1987, the Commission, by a 3-1 vote, adopted the regulation requiring the reporting of professional fees. Prior to that time, he said, the Commission did not require reporting of the source of income beyond the name of the law firm or professional practice. Chairman Bedford said that a public hearing was held, at which time testimony was heard from Mr. Edward McCool, representing Common Cause of New Jersey, Mr. Gordon MacInnes, and Mr. Brian Kelly of the New Jersey Bar Association. In addition to the responses of these individuals, Mr. Arthur Meisel, Esq., submitted a response on behalf of the New Jersey Dental Association. Chairman Bedford said that the next step in the process is to publish the Summary of Public Comments Received and Agency Responses in the New Jersey Register.

Chairman Bedford said that he remained strongly opposed to the regulation. He said that it could discourage qualified individuals from running for office and that compliance with the regulation would present a complex problem for a large law firm. Chairman Bedford asked whether the regulation is asking for identification of a type of industry or of names of individual clients. In addition, Chairman Bedford said that both Mr. McCool and he questioned whether or not the Commission had the authority to raise the threshold level to \$10,000. He queried whether it should not be the Legislature that should act on this matter. At this time, Chairman Bedford introduced a motion to withdraw the regulation approved September 22, 1987. Commissioner Axtell seconded the motion.

Commissioner Linett said that although he was still orienting himself to the work of the Commission, he did read the transcript and agrees with the Chairman's proposal. Commissioner Linett said that the proposed regulation goes beyond the statutory authority given to ELEC by the Legislature. He said that the disclosure required of sitting legislators does not require clients to be identified. He said that it is not the Commission's duty to expand upon the intent of the Legislature.

Vice Chairman McNany said that ELEC should serve the public, not the legislators. He said the convenience of legislative candidates should not be the basis of not requiring disclosure. "Shouldn't all sources be named?" he asked. Chairman Bedford said that under the existing statute it is not necessary to list anything other than a firm name as the source of fees and commissions. Vice Chairman McNany said that he believed it to be important that the public know the actual sources of a candidate's income. He said "perhaps it is important for the Legislature to address this problem, but without ELEC action it won't be addressed."

Chairman Bedford said that just as the courts do, the Commission must balance disclosure against the right of privacy.

Vice Chairman McNany mentioned the letter from Mr. Brian Kelly of the New Jersey State Bar Association which discussed In Re Advisory Opinion 544, 103 N.J. 399 (1986). He said that Mr. Kelly's letter dealt with confidentiality in regard to the Casino Control Commission's request for attorney records. He stated his belief that there are certain sacrifices that an individual seeking public office must make, and that when a candidate receives more than a certain dollar amount from a client, he must disclose the name of that client.

Commissioner Linett said that the real question is whether or not the Legislature itself has gone that far. He answered that it has not and that the amendment to the regulation is a strained interpretation of the statute. He said that the statute contains a \$1,000 threshold.

On a vote of 3-1, with Vice Chairman McNany in the opposition, the Commission voted to approve Chairman Bedford's motion to withdraw the amendment to the regulations as approved on September 22, 1987.

Commissioner Linett asked if the withdrawal would be published in the New Jersey Register. Counsel Farrell indicated that it would have to be published. Legal Director Nagy said that he recommended that the withdrawal be published with the explanation that the amended regulation exceeded statutory authority. The Commission directed Counsel Farrell to draft the withdrawal language for review by the Commissioners at the next meeting.

#### 4. Advisory Opinion Request Nos. 12-1987, 14-1987 and 15-1987

Chairman Bedford read Counsel Farrell's draft responses to the three advisory opinion requests concerning the reporting by corporations whose contributions exceed \$10,000.

Counsel Farrell said that the Commission should make a uniform rule that a business entity does not become a political committee solely by making contributions to candidates. He said that much more is involved in an entity qualifying as a political committee or continuing political committee. Counsel Farrell said that the next step, not mentioned in the responses to the groups which submitted AO's 12, 14 and 15, is an amendment to the existing regulation.

Commissioner Linett said that he agreed with Counsel Farrell. He said that he was concerned with having a regulation on the books that might go beyond its statutory authority. He said that the advisory opinion response should say that the current regulation requires reporting by business entities contributing more than \$10,000, but that the Commission is moving to delete the requirement.

Counsel Farrell said that the Commission should direct the staff to withdraw the regulation. Legal Director Nagy explained that the regulation must be formally repealed and that it is necessary to amend the regulation to strike the requirement that pure contributors of over \$10,000 file reports with the Commission.

Counsel Farrell said that the three requests were from different groups which provided factual differences in their individual cases. He said, however, that the issue was the same in all three instances and that the response to all three would be the same. Legal Director Nagy said that the Commission has received an additional request, AO 2-1988, which addresses the same issue.

Chairman Bedford made a motion to approve Counsel Farrell's responses to AO's 12, 14 and 15. The motion also directed Counsel Farrell to draft the same response to AO 2-1988. Commissioner Axtell seconded the motion. On a vote of 4-0, the Commission approved the draft responses by Counsel Farrell, and directed him to issue them.

Executive Director Herrmann asked the Commission about what action should be taken in the event that any investigations concerning this issue are in progress or arise in the future. Legal Director Nagy suggested that any investigations of this nature be closed. Commissioner Linett made a motion to have Counsel Farrell begin the process of repeal and to have the matter ready for a vote at the February meeting. Commissioner Axtell seconded the motion.

Commissioner Linett asked whether the Commission needed the authority to ask for information from the business entities to decide if they must report. Counsel Farrell indicated that the Commission possessed the authority. He suggested amending the CPC-1 Form to include the additional question regarding political activity. He said that the additional question would give us the ability to assess whether further inquiry of a pure contributor is needed. Commissioner Linett suggested that the Commission needed more than one general question. He said that the questionnaire should require the delineation of types of activity. Counsel Farrell said that a business corporation making contributions may also have a PAC. He said that this fact does not necessarily require the corporation to report.

On a vote of 4-0, the Commission voted to approve Commissioner Linett's motion to begin the repeal process for the current regulation.

5. Advisory Opinion Request No. 17-1987

Counsel Farrell explained that this advisory opinion request was from Carol G. Cimilluca on behalf of municipal candidates in Summit, N.J. Ms. Cimilluca is proposing the use of surplus campaign funds to pay for a long range planning seminar for elected officials and staff in the city of Summit.

Counsel Farrell said that the Commission has always viewed the surplus funds issue in terms of personal use vs. non-personal use, although it is difficult to apply this test to this general request. He said that contributions to the city or state are permissible, both by our law and federal tax laws. Counsel Farrell said that if the Commission accepts the request at face value, it must assume that the expenditure will not involve personal use and therefore is allowable.

Commissioner Linett asked whether \$1,000 in surplus funds could be used if the conference were conducted in a vacation resort such as the Poconos? Counsel Farrell said that it is generally permissible to have a thank-you party at **election time because that activity is considered a political one.** Commissioner Linett asked whether having such an event four months after an election was permissible. Counsel Farrell said that although he could not give an unqualified yes to that question, no specific time frame on these activities exists.

Commissioner Linett said that he was concerned with the precedent being set for other municipalities. He said that he would be comfortable if the money was being given to the city, or to a civic group. Commissioner Linett said that the surplus funds perhaps should go through a charitable entity.

Vice Chairman McNany said that he doesn't see this as a junket. He said that corporations do strategic planning in settings removed from their daily activity. Commissioner Linett asked who would be the sponsor of the seminar and whether there is a potential for abuse.

Vice Chairman McNany responded that an election-night party can be done in moderation, or in excess. Chairman Bedford said that he was in favor of allowing leftover campaign funds to be put to such a use. Commissioner Linett asked whether the Commission could request additional information concerning the proposed seminar.

Chairman Bedford asked whether the Commissioners want to see the program before approving the expenditure? Counsel Farrell said that the Commission can ask for such information.

Commissioner Linett said that the Commission could suggest that the money be donated to the town. Vice Chairman McNany said that the expenditure would be a matter of public record because it would be reported as an expense on the campaign reports. He suggested that prohibiting the use of the funds would have a chilling effect on the process.

Counsel Farrell said that the response to Ms. Cimilluca can indicate that her request does not contain enough information for a definitive answer. However, assuming that no personal use is involved and that the money will be used for a public purpose, an expenditure of surplus funds of this type would be acceptable. Vice Chairman McNany said that perhaps the campaign can donate the money to the city and the city in turn can send the group to the conference.

Commissioner Linett said that Counsel Farrell's opinion is sufficient. Chairman Bedford suggested that Counsel Farrell could include in the response the qualification that approval of this type of expenditure is based on the facts presented and set forth in the letter from Ms. Cimilluca.

Vice Chairman McNany moved to approve Counsel Farrell's draft response with the addition of the above-mentioned qualification. Commissioner Axtell seconded the motion. On a vote of 4-0, the Commission approved the motion, and directed Counsel Farrell to send out his response.

#### 6. Advisory Opinion No. 18-1987

This advisory opinion request concerns a proposal from Assemblyman Arthur R. Albohn to dedicate any surplus campaign funds remaining at his death to an endowment which would pay maintenance costs of historic Whippany Cemetery. Whippany Cemetery has been given to the Township of Hanover and will be used for interment of former mayors of Hanover Township and their spouses. The Assemblyman was a mayor of the township.

Counsel Farrell said that the governing body has acted on the issue and that Assemblyman Albohn wants to give his surplus campaign funds to the town. Chairman Bedford asked who owns the cemetery? Counsel Farrell said that the answer is unclear. He said, however, that Mr. Albohn wants the money to go to the township.

Counsel Farrell said that if the cemetery was to be turned over to the township, use of the surplus campaign funds for maintenance of the cemetery would be acceptable. He said that in such a case the personal funds issue dissolves because Assemblyman Albohn has a right to be buried in the cemetery whether or not he dedicates his surplus campaign funds to the cemetery's maintenance.

Chairman Bedford asked how this endowment would be established upon the Assemblyman's death. He said that if these funds pass through Assemblyman Albohn's estate, they would have to be considered personal funds. Counsel Farrell indicated that these funds are campaign funds, not personal funds. He said that they therefore cannot pass through the personal estate. He said that the campaign treasurer could disburse the funds at the time of the legislator's death in the manner directed and the funds would not go through the estate.

Counsel Farrell said that the issue is a narrow one. The use of surplus funds for this purpose is acceptable unless the Commission considers a contribution to a municipality to be a personal use. Vice Chairman McNany inquired if any other candidates ever designated future use of funds. Counsel Farrell said that the only issue he can recall involved transferring funds to a new committee in preparation for a future campaign.

Vice Chairman McNany asked: is it permissible to designate the use of future campaign funds and the means by which they would be disbursed? Counsel Farrell indicated that it is if authorization is given to the campaign treasurer to disburse the funds, but not if the funds are disbursed from the will.

Vice Chairman McNany asked if the Commission has ever dealt with the funds of other deceased candidates. Counsel Farrell indicated that to his knowledge, the Commission has never dealt with the issue of surplus funds of any deceased candidate.

Vice Chairman McNany asked if the treasurer is permitted to make decisions regarding the use of excess funds in the event of a candidate's death. Executive Director Herrmann said that the Commission has recommended that the Legislature enact a provision to require treasurers to keep reporting. Executive Director Herrmann said that Legal Director Nagy has suggested that one option the Legislature might consider is requiring surplus campaign funds to escheat to the State rather than be included in the personal estate of a former candidate.

Chairman Bedford said that in essence the Assemblyman is proposing holding these funds in trust for the donors. He queried whether the Commissioners wanted to think about the issue some more. Commissioner Linett said that he had no problem with the idea of an endowment. He said that the Commission need not worry about events after a candidate's death.



Commissioner Axtell asked what would happen to the interest accrued by these surplus fund accounts. Chairman Bedford said that the interest accumulates for future campaign use.

Vice Chairman McNany asked whether ELEC was tracking the funds of legislators who have died. Executive Director Herrmann said that it is impossible to do so if a candidate had already stopped reporting and legislative direction is needed to resolve the issue. Vice Chairman McNany asked whether the treasurer had the right to select the recipient of surplus funds upon a candidate's death. Counsel Farrell said that in his opinion, the treasurer must receive clear direction from the candidate.

Commissioner Linett suggested that a letter be sent to Assemblyman Albohn stating that under current law the use of excess campaign funds for charitable purposes is permissible but that the Commission cannot respond to speculative uses based on future events such as the death of a candidate. Vice Chairman McNany said that he agreed with this approach. Chairman Bedford said that he would like to request an extension on this matter until next meeting when the Commission would consider a draft response to Assemblyman Albohn based on the aforementioned approach.

Chairman Bedford asked whether staff follows up on use of excess funds after the death of a candidate. Executive Director Herrmann said that there is a problem with tracking funds and that the Commission needs a statute that would tighten reporting requirements vis-a-vis surplus funds of campaigns that have ended. He said that he has asked the Legislature to require continuing reporting or the disposal of excess funds within a specified period of time. Chairman Bedford asked Executive Director Herrmann to consider petitioning the Legislature again on this issue.

Vice Chairman McNany asked whether the Commission could not tighten the law by regulation. Counsel Farrell indicated that he was unsure at this point. Chairman Bedford again asked staff to look into the possibility of petitioning the Legislature. Executive Director Herrmann asked whether Chairman Bedford wanted staff to draft a letter to the legislative leadership. Chairman Bedford said that the matter would be carried over until the February meeting and directed staff to prepare a letter to leadership.

#### 7. Advisory Opinion Request No. 1-1988

The Commission reviewed Counsel Farrell's draft response to an advisory opinion request from the law firm of Hutt, Berkow & Jankowski, on behalf of the Builders Political Action Committee of New Jersey. The request asked whether funds collected by the PAC can be used to instigate or support litigation.

Counsel Farrell said that the funds could be used for this purpose. He said that the Commission has answered similar questions related to campaign funds and campaign-related litigation in the affirmative.

Commissioner Axtell moved to approve the draft response as prepared by Counsel Farrell. Vice Chairman McNany seconded the motion and by a vote of 4-0 the Commission approved Counsel Farrell's response to the Builders PAC inquiry concerning use of funds for litigation purposes, and directed Counsel Farrell to issue the response.

#### 8. Municipal Political Party Committee Filing Requirements

Chairman Bedford indicated that Commissioner Linett had expressed concern over the proposal to eliminate one A-3 filing for Municipal Political Party Committees and to raise the detailed reporting threshold for these committees to \$2,500. Commissioner Linett said that he was dropping his objection to the proposal, but that he still favored an October 15 reporting date rather than a July 15 reporting date.

Executive Director Herrmann said that a concern was that Municipal Political Party Committees file immediately following their reorganization in June. He said that this feature of the regulations helps local party treasurers to get in the habit of reporting and provides ELEC and the public with the names of new treasurers as soon as possible. Executive Director Herrmann said that an October filing would have no impact on the general election because no vital information is contained on the A-3 Form. Commissioner Linett observed that public awareness of campaigns was heightened in the fall.

Chairman Bedford asked how to effect the proposed changes in the reporting requirements. Legal Director Nagy said that the Commission needed to propose an amendment to the regulations.

Chairman Bedford asked which deadline date, July 15 or October 15, the Commission wished to propose? Commissioner Axtell said that he didn't care one way or the other. Commissioner Linett said that he would like to see the October date which would be closer to the election.

Chairman Bedford directed Counsel Farrell to prepare an amendment to the regulations incorporating the October 15 filing date.

#### 9. Election Night Celebrations

Executive Director Herrmann indicated that he would like to turn the Commission's attention momentarily to the question of election night parties. Executive Director Herrmann said that the issue needed to be clarified at some point. He said that the question of a time frame especially had to be defined.

Counsel Farrell said that the issue always involved fact questions, and for that reason, the issue was never tackled in the past. Executive Director Herrmann said that he believed these activities should be confined to election night only. Chairman Bedford said that the matter should be put on the agenda for the next meeting.

10. Public Comment

Edward McCool, Executive Director of Common Cause for New Jersey, asked whether any regulations existed regarding the use of PAC funds.

Chairman Bedford responded that advisory opinions exist. Counsel Farrell agreed, saying that advisory opinions exist but not regulations.

Mr. McCool said that the Builders PAC would use the money referred to in AO-1 for litigation expenses to oppose the New Jersey Planning Commission. He said that this was not a political use and in his view regulations were needed that provided guidelines for the use of PAC funds. Chairman Bedford said that the Legislature should be petitioned to amend the statute regarding the use of all surplus campaign funds. Executive Director Herrmann said that the staff would prepare a letter on surplus funds to be sent to legislative leadership.

11. Executive Session

On a motion by Commissioner Axtell, seconded by Vice Chairman McNany 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.

12. Adjournment

On a motion by Vice Chairman McNany, seconded by Commissioner Axtell and a vote of 4-0, the Commission voted to adjourn at 12:30 p.m.

Respectfully submitted



FREDERICK M. HERRMANN, Ph.D.