

NEW JERSEY ELECTION LAW ENFORCEMENT COMMISSION

PUBLIC SESSION MINUTES

FEBRUARY 23, 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
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 11:16 a.m. at the Montclair Borough Hall, Montclair, New Jersey.

1. Approval of Public Session Minutes of January 19, 1988

On a motion by Vice Chairman McNany, seconded by Commissioner Axtell and a vote of 3-0, the Commission approved the Public Session minutes of January 19, 1988. Commissioner Linett was not present at the time of the vote.

2. Executive Director's Report

A. Informational Material

Executive Director Herrmann reported that the Federal Election Commission (FEC) Remote Access Project is very popular and inexpensive. He further reported that the fourth issue of the ELEC Report has been mailed and that a new candidate compliance manual is in the process of being printed. Executive Director Herrmann said that this manual is revised annually and that this year it contains a new description of forms and their use.

At this juncture Commissioner Linett arrived.

Executive Director Herrmann reported that photographs for the annual report and an updated brochure will be taken at the March 9, 1988 meeting of the Commission.

B. Staff Activities

Executive Director Herrmann said that on February 19, 1988, he was interviewed on the New Jersey Network program Front Page New Jersey. He added that on February 25, 1988, he would speak to the Somerville Rotary Club. Executive Director Herrmann reported that on March 10, 1988, members of the staffs of the Connecticut Election Enforcement Commission and the Connecticut Department of State will visit to observe and study the Commission's computer operation. He commented that ELEC is nationally recognized as a leader in ethics agency computerization. Last year, a group from Illinois visited the Commission's computer operation. Executive Director Herrmann said that on March 20, 1988, he will be in Florida chairing a COGEL Steering Committee meeting and that on April 26, 1988, he is scheduled to lecture to a Rutgers - Newark political science class.

C. Other

Executive Director Herrmann reported that Legal Director Nagy presented an excellent seminar on lobbying to the staff. He said that this exemplary session was part of the effort to provide professional training to ELEC staff. Executive Director Herrmann also mentioned the computer training sessions being conducted by Systems Administrator Warren Heins. Executive Director Herrmann reported that Director of Administration had taken an innovative step in acquiring a 9-digit zip code for the Commission. He said that the Commission was one of the leading State agencies in attempting to quicken the pace in which it receives mail. Executive Director Herrmann also reported that the expansion of the Commission's offices was moving ahead and that on February 29, 1988, the reception area would be moved to the front of the offices.

D. Forthcoming Articles

Executive Director Herrmann said that he would have an article published in the CSG State Government News on campaign reform in April. He said that Deputy Director Brindle would publish an article on the cost of campaigning in the COGEL Newsletter. He said that this article would be based on the gubernatorial campaign cost analysis report. Executive Director Herrmann added that this report has been reviewed by Dr. Herbert E. Alexander, Legal Director Nagy, and him and that it is in excellent shape.

Executive Director Herrmann further reported that Legal Director Nagy and Systems Administrator Heins would also prepare future articles for the COGEL Newsletter. He said that the Nagy article would concern lobbying and that the Heins article would deal with computers.

E. Legislation

Executive Director Herrmann said that he attended an Assembly State Government Committee meeting on February 8, 1988. He said that A-1705 (Martin), a bill to reform the public financing program was on the agenda but not heard.

Executive Director Herrmann reported that Senate President John F. Russo and Governor Thomas H. Kean were working on a public financing reform package. He said that he understands that the reform will resemble that proposed in the Commission's report on the gubernatorial elections of 1985 according to a story in the Philadelphia Inquirer.

Executive Director Herrmann said that Assemblyman William E. Schluter has introduced a four-bill disclosure package. He said that the package includes lobbying reform, Campaign Act reform, legislative public financing, and a study Commission. He said that staff has done much work on the bills and has made it known that the implementation of these bills would necessitate a precipitous increase in staffing.

F. Next Meetings

Executive Director Herrmann said that the next meeting of the Commission was scheduled for March 9, 1988 in Trenton. He said that the April meeting would be on April 19, 1988.

3. Withdrawal Notice of Personal Financial Disclosure Regulation Amendment

On a motion by Commissioner Linett, seconded by Commissioner Axtell and a vote of 3-1, the Commission approved the text of the Withdrawal Notice of the Personal Financial Disclosure Amendment drafted by Legal Director Nagy. Vice Chairman McNany opposed the motion. The Commission further instructed staff to process the Notice with the Office of Administrative Law in the Department of State.

4. Advisory Opinion Request No. 18-1987

Counsel Farrell indicated that the response in AO-18 should be that the Commission does not object to Assemblyman Albohn's proposal for dispensing with surplus campaign funds, but that the Assemblyman should be aware of questions it may raise with respect to tax law.

The advisory opinion deals with the issue of surplus funds distribution following the death of a legislator. Specifically, Assemblyman Albohn asks whether or not, upon his death, his excess campaign funds could be used to support a cemetery endowment managed by Hanover Township. The Assemblyman would be interred in the cemetery.

Chairman Bedford said that the Commission needs direction from the Legislature with respect to the allowable uses of surplus campaign funds. He said that he does not believe that surplus funds should be permitted to be given to charity. He also said that surplus funds should not be allowed to be transferred to other committees. He said that these funds should either escheat to the State, be given to local political parties, or be used by the candidate in future campaigns. Judge Bedford said that the Commission ought to rethink its regulations and that the Legislature should be urged to give guidance in this matter.

Counsel Farrell said that Section 12 of the Act does allow the transfer of excess funds to other committees. In saying that these funds could not be used for personal use, however, the Commission led the way even though it had no clear direction in law. Counsel Farrell said that on the transfer issue, the Commission is given some guidance in the law.

Counsel Farrell said that the most prominent issue is whether these funds can be used to support district offices. He said that the statute gives the Commission no guidance whatsoever in this matter.

Commissioner McNany asked how, when a legislator had died, surplus campaign funds were handled in the past?

Legal Director Nagy indicated that in some cases the treasurer writes to the Commission and reveals how he or she is dispensing the money.

Chairman Bedford asked whether in the future, the Commission can write to the estate of the deceased to determine the dispensation of surplus funds.

Vice Chairman McNany suggested that the Commission was looking at the matter from only the standpoint of when a legislator dies. He asked what the Commission was doing in the case of legislators that raised more money than they spent and have funds leftover following their most recent campaign. "Is it possible," asked Vice Chairman McNany, "to have a regulation requiring that the funds be dispensed within six months?"

Executive Director Herrmann said that the law requires postelection reporting every 60-days after the final 20-day postelection report is submitted. He said that Assemblyman Martin has a bill in that would require quarterly reporting until the money is dispensed. He said a loophole in the present law is, however, that these funds can be transferred into an outside account and not be reported until the next campaign, if then.

Counsel Farrell said that the purpose of the disclosure statute is to prevent undue influence. He said that surplus funds regulations take place after the election and have little to do with improper influence of elections.

Chairman Bedford asked Legal Director Nagy to prepare a summary of the surplus funds regulations, describe what they do, and point out what changes in these regulations the Commission ought to seek.

Vice Chairman McNany said that he would like the Commission to take an even more radical approach to regulating surplus campaign funds. He suggested that a fund be established whereby the Commission would deposit surplus campaign funds that were not used within six months. Vice Chairman McNany said that the interest on these funds could subsidize ELEC's operations or go to the General Treasury. He said that in this way if the funds are not used they would automatically escheat to the State.

Commissioner Linett said that this would be an invitation for these candidates to form another committee because no candidate wants to lose surplus campaign funds.

Chairman Bedford polled the members as to whether they would approve the use of Assemblyman Albohn's surplus funds being contributed to the Hanover Township cemetery fund if the action were taken now.

Commissioner Linett said that approval of that use under the current law is the approach the Commission wanted to take. He said that the statute allows surplus funds to be turned over to tax-exempt charities. He said that there is no use speculating what the law will hold in the future.

Chairman Bedford asked: will we not, then, object to the Assemblyman giving the money to the Township for the Cemetery Trust?

Counsel Farrell said that as of now this use is acceptable but we cannot say what the law will be in the future.

Commissioner Axtell said that he would abstain on the issue.

Commissioner Linett said that in his opinion the question is not an appropriate one for an opinion because of its lack of clarity.

Vice Chairman McNany added that it is too speculative of a proposition; too futuristic.

Commissioner Linett suggested that Counsel Farrell telephone Assemblyman Albohn to clarify what he wants to do with the money. Does he want to contribute it to the Cemetery Trust now, or following his death?

Vice Chairman McNany agreed. He said that he was unclear as to whether or not Assemblyman Albohn wanted to contribute the money now.

Commissioner Linett said that if the money were contributed now and it is a charity, then it would be permissible.

Vice Chairman McNany asked: can surplus funds be given to a municipality? Is that considered a charity?

Counsel Farrell answered in the affirmative.

Commissioner Linett said that one of the problems with many of the advisory opinion requests is that they are being submitted to the Commission without sufficient facts.

Chairman Bedford concluded the discussion of AO 18-1987 by directing Counsel Farrell to telephone Assemblyman Albohn to ascertain more facts and determine what question he wants answered. He also directed Counsel Farrell to write a letter to the Commissioners prior to the next meeting outlining his findings. Chairman Bedford asked that Counsel Farrell specifically address the question of whether the funds would be contributed now or later.

5. Response to Comments on Advisory Opinion Request No. 1-1988

The Commission considered Counsel Farrell's response to comments made by Stewart M. Hutt, Esq., regarding AO 1-1988. This opinion permitted the New Jersey Builders Association PAC to use PAC funds to support litigation of interest to its membership. Mr. Hutt complained that the association and he received notice of the Commission's decision only after an article describing the Commission's response appeared in the Star-Ledger. He said that the association was troubled with the sequence of events and believed it should have been notified before any information was released.

In his reply, Counsel Farrell related that an advisory opinion request is part of the public session, and required to be so under the Open Public Meetings Act. He explained that the Commission does not release opinions to the press or to other persons prior to providing them to the person seeking the advisory opinion. He wrote that the Commission followed these procedures in this case. Counsel Farrell indicated that a member of the press and a representative of Common Cause were present at the meeting and heard the discussion of this issue. This fact, he suggested, precipitated the news article.

With respect to Mr. Hutt's urging of the Commission to permit anonymous advisory opinion requests, Counsel Farrell explained that the Commission has generally declined to respond to requests of this kind. He said that among the reasons for this view was the desire to avoid the use of the advisory opinion procedure by a candidate to lure the Commission into criticizing the conduct of that candidate's opponent.

Chairman Bedford recommended that in the future the Commission notify the party making the advisory opinion request of when and where it is going to be discussed. He said that this could be made a normal part of agenda preparation.

The members of the Commission agreed with this approach and directed staff accordingly.

6. Advisory Opinion Request No. 3-1988

This advisory opinion involves a request by Peter J. Tamburro, Jr., treasurer, Friends of Robert J. Martin, for advice on what reporting procedures should be used for a combined fund-raising function planned by Assemblymen Martin and Loveys. Mr. Tamburro said that the legislators planned to establish a separate joint committee to handle the expenses and

receipts of the fundraiser. He said that at the end of the committees "life" the proceeds would be divided equally between the two legislators and deposited into their respective "Friends" continuing political committee accounts. Mr. Tamburro queried whether the new joint account should report quarterly or whether the proceeds should be reported using the R-1 procedure.

Counsel Farrell, in his memorandum to the Commission, suggested that this matter was a question for staff. In other words, he said, which is the better procedure administratively? He said that in the case of a county party committee that creates a separate county finance committee, the Commission has provided reporting options. He said that one option allowed the county party committee to report the activity of its finance committee and the other option permitted the finance committee to report separately. He said that the only difference in this case is that two CPCs have another committee raising money for it.

Legal Director Nagy said that in his opinion the Commission should require the joint committee to file quarterly and show the proceeds distributed to the two CPCs. He said the issue was whether the fund raising entity meets the statutory definition of a CPC since it is contributing to other CPCs rather than candidates.

Counsel Farrell said that this approach would be technically complicated. He said, however, that it was probably the approach the Commission should pursue.

Chairman Bedford asked if there were any comments from the Commissioners on Counsel Farrell's memo of February 18, 1988.

Vice Chairman McNany said that it would be simpler to treat the event as a fund-raiser with the money then given to two committees.

Executive Director Herrmann said that a possible problem with that approach is that the identity of contributors could be concealed. He said that a \$150 contribution might be divided in half allowing the two CPCs not to report the identity of the contributor. He said that more complete disclosure would probably result if the fund raising committee reported as a CPC.

Commissioner Linett agreed that it would be better to show everything in one committee.

The Commission instructed Counsel Farrell to inform Mr. Tamburro that the fund raising committee must report as a CPC.

7. Municipal Political Party Committee Filing Requirements

Chairman Bedford stated that the Commission has approved increasing the threshold under which municipal party committees would file A-3's to \$2,500. He said that the Commission also adopted a policy of requiring only one A-3 filing instead of two. He said that this filing would be required on October 15th.

Chairman Bedford asked the Commission to reconsider the October 15th date in light of Director of Compliance and Information Evelyn Ford's memorandum.

Executive Director Herrmann, in summarizing Director Ford's concerns, said that Director Ford believes that the new date will make it more difficult to get non-filers to file prior to election. He said that Director Ford also envisions an administrative burden because this October 15th date falls at the Commission's busiest time.

Commissioner Linett said that he still favors the fall date. He said that in July nobody knows how much money they are going to have and whether they are going to spend it or not.

Executive Director Herrmann said that a compromise date suggested by Director Ford was September 15th instead of October 15.

Commissioner Linett said that September 15th was acceptable to him.

On a motion by Commissioner Linett, seconded by Vice Chairman McNany and a vote of 4-0, the Commission changed the A-3 filing date for municipal party committees to September 15th.

8. Pending Regulatory Changes

Counsel Farrell provided the Commission with a text of proposed regulatory changes (see attached).

During Counsel Farrell's review of the proposed regulatory language, the Commission made several technical changes. The changes were to the following:

1. N.J.A.C. 19:25-10.8(b) - add language which would clarify the period of time covered by an A-3 filed by a municipal party committee and substitute "September 15" for "October 15",
2. N.J.A.C. 19:25-11.1(c) - delete and "campaign" and substitute "treasurer,"
3. N.J.A.C. 19:25-11.9(d) - delete the words "source" and "funds" and substitute for them the words "owner" and "account" respectively, and
4. N.J.A.C. 19:25-12.10 - delete the word "victory" and substitute the word "postelection" for it and in (1) add the word "primarily" before the word "by."

Vice Chairman McNany moved the proposed regulations as amended. The motion was seconded by Commissioner Axtell. On a vote of 4-0, the Commission adopted the motion and directed Counsel Farrell to begin the process of official adoption.

Commissioner Linett added at this point that with the gubernatorial contest approaching, he believed that the Commission should begin to think about changes to the public financing regulations. He said that the "testing the waters" regulation was very general, for instance, and that the concept was difficult to define. He said that he believes that this regulation and others should be dealt with at greater length.

Counsel Farrell said that he would overhaul the public financing regulations and that he would provide the Commission with his recommendations at the April meeting.

10. Surplus Funds Letter

Chairman Bedford directed that the surplus funds letter be sent out over all the Commissioners signatures. He directed that the letter also be sent to the minority leaders of both houses in addition to the Governor, Assembly Speaker, and Senate President.

Vice Chairman McNany suggested that a press release be distributed regarding the letter. The Commission agreed and directed staff to prepare a press release for the next meeting.

Chairman Bedford concluded the meeting by stating that in addition to the Commission considering regulatory changes it must also move to codify advisory opinions into regulations.

Executive Director Herrmann suggested that "political clubs" should be deleted from the regulations so that the regulations conform to the statutory definition of a continuing political committee.

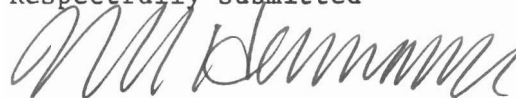
11. Executive Session

On a motion by Vice Chairman McNany, seconded by Commissioner Linett 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 1:21 p.m.

Respectfully submitted



FREDERICK M. HERRMANN, Ph.D.