

NEW JERSEY ELECTION LAW ENFORCEMENT COMMISSION

PUBLIC SESSION MINUTES

MARCH 9, 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 10:20 a.m. at the Commission's offices at 28 West State Street, Trenton, New Jersey.

1. Approval of Public Session Minutes of February 23, 1988

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 February 23, 1988 as amended.

2. Executive Directors' Report

A. Computer Update

Executive Director Herrmann reported that the Commission's computer "crashed" recently. He said that the computer has been repaired and noted that the "crash" caused a slight delay in completing the P-87 project. He said, however, that staff is months ahead of schedule and that the delay would not hamper timely completion of this project.

Executive Director Herrmann recounted that Director of Compliance and Information, Evelyn Ford, created a computerized list of lobbyists' filings. He said this effort was another first for the Commission. Executive Director Herrmann said that this alphabetized list cross indexes legislative agents and their employer lobbyists.

Executive Director Herrmann announced that a ten-person delegation from the Connecticut Department of State and the Connecticut Elections Enforcement Commission will tour the Election Law Enforcement Commission (ELEC) office on Thursday, March 10, 1988 to observe the Commission's computer system. He said that a half-day program has been scheduled.

B. Personnel

Executive Director Herrmann stated that the Commission would soon lose the services of a senior examiner. He said, however, that longtime employee Sandy Magee, would, in all likelihood, be returning.

Executive Director Herrmann indicated that he is concerned with the turnover at the junior professional level. He said that the problem derives from a staff resource shortage and overwork of existing staff. He said that in addition to press releases, the Commission's small staff was responsible for processing 19,000 reports, 11,000 phone calls, 500 complaints and 100 investigations in 1987.

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Executive Director Herrmann also stated that the title freeze imposed by the Department of Personnel exacerbates the situation.

Executive Director Herrmann said that he is instituting an exit interview process to be conducted by the Administration Section. He said that the Administration Section will make recommendations to him as to how to retain staff.

Executive Director Herrmann said that, in addition to this initiative, he has already created internally more titles, has sought to improve existing working conditions, and has set the wheels in motion to move ELEC to its own building.

Executive Director Herrmann added that two new Report Examiners have been hired and will start together on Monday, March 14, 1988.

C. ELEC Move

Executive Director Herrmann reported that staff has been tentatively offered a building on West State Street to serve as the Commission's new headquarters. He said that the building is adjacent to the old Department of Community Affairs building and is about one block from the State House.

Executive Director Herrmann said that the structure is a beautiful old mansion-type building containing much needed space for offices and record storage. He said that it includes 45 parking spaces. The Commission is currently paying for employee parking.

Executive Director Herrmann said the new building will improve employee morale and provide desperately needed space. He said that some employees currently have work stations in the halls, a situation that only promises to get worse if the staff increases.

Executive Director Herrmann said that eleven new public financing employees will be hired in the summer and that the new building would allow them

to be immediately accessible. He said that, otherwise, new office space, separate from the existing offices, would have to be retained to house these staff. Such a situation would make it difficult to administer the public financing in an efficient manner.

Executive Director Herrmann said that he anticipates a move by late summer or early fall. He said that if the move conflicts with the busy campaign season, he will negotiate with the Bureau of Lease Management in the Department of Treasury to postpone it until after the general election.

D. Annual Report

Executive Director Herrmann explained that the text of the 1987 Annual Report is included in the Commissioner's folders. He said that Deputy Director Brindle is coordinating the project. Executive Director Herrmann indicated that he personally has been editing the text.

Executive Director Herrmann asked the Commissioners to review and return the text to him by March 25, 1988.

E. Meeting with Professor Steven Salmore of Eagleton Institute

Executive Director Herrmann noted that Deputy Director Brindle and he would be meeting with Professor Steven Salmore of Eagleton Institute on Friday, March 11, 1988. He said that the purpose of the meeting is to discuss how Professor Salmore can use ELEC's data to assist in the completion of an electoral study. He said it is part of the broadening of the "disclosure community" concept initiated by ELEC last year. Executive Director Herrmann said the three would also discuss an internship program.

F. Legislation

Executive Director Herrmann said three bills involving campaign finance reform and lobbying reform were posted for discussion before the Assembly State Government Committee on March 7, 1988.

He said that the campaign finance reform bills were A-2493 (Martin) and A-2529 (Schluter). He said the lobbying reform bill was A-2530 (Schluter).

Executive Director Herrmann said A-2493 (Martin) is a campaign reform package containing many of the ELEC's 1985 and 1986 annual report recommendations. He said that provisions of the bill include PAC registration, name identification in PAC titles, and surplus funds use guidelines. He said that this bill gives the Commission jurisdiction over prohibited contributions and identification statements on political advertising. Executive Director Herrmann said the bill also tightens the personal financial disclosure law.

Executive Director Herrmann said the bill failed to include an appropriation to implement the provisions, though. He said that as part of his remarks he recommended a \$750,000 appropriation to enable the Commission to implement the measure.

Executive Director Herrmann advised that A-2529 (Schluter) is a campaign finance reform bill that also includes recommendations from ELEC's 1985 and 1986 annual reports. Among these provisions is the requirement that PACs identify themselves in their titles. In addition to provisions from the annual reports, fostered through discussions with ELEC staff, the bill also contains various contribution limits, a prohibition on corporate and labor union giving, PAC registration requirements, and guidelines for surplus funds use. Executive Director Herrmann added the bill contains a \$1.5 million appropriation, the result of input from ELEC staff.

Executive Director Herrmann said that the third bill, A-2530 (Schluter), is a lobbying reform measure that is based on ELEC's

recommendations. He said the main objective of this legislation is to rid the current law of the word "expressly." He said that this word creates a major loophole in the law. It allows substantial personal benefit passing from lobbyists to legislators to go unreported.

Executive Director Herrmann said this bill gives ELEC exclusive jurisdiction over lobbying and requires lobbyists to file quarterly reports with it.

Executive Director Herrmann indicated that in discussions with legislators, as well as with the press and public, he has represented the Commission as positive toward reform without specifically committing the Commission to some of the more far-reaching ideas that raise fundamental policy questions. He said that the Schluter campaign finance reform bill, with its various limits and prohibitions, is especially far-reaching, constituting a major change in the law. Executive Director Herrmann said that the Commission's position has been that the Legislature must set overall public policy goals.

Chairman Bedford indicated agreement with that approach and suggested that the Executive Director attempt to persuade the sponsors of the campaign finance reform bills to include a provision which would link contribution limits to inflation. The Commission agreed with the Chairman's suggestion.

Executive Director Herrmann said he would do so.

#### G. Meeting Schedule

The future meetings schedule of the Commission is as follows: April 19, 1988, Trenton; May 17, 1988, Somerset County; June 21, 1988, Trenton; and July 19, 1988, Trenton. The Commission also indicated it would like to hold a future meeting in South Jersey. It cited the September meeting as a possible time for such a meeting.

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### 3. Surplus Campaign Funds

Regarding the surplus funds letter to the Governor and Legislative leadership, Executive Director Herrmann suggested that a sentence be added about Assemblyman Martin's and Assemblyman Schluter's recently introduced campaign finance bills which among other provisions regulate surplus funds. The Commission agreed to this change.

Vice Chairman McNany suggested that the majority leaders of each house be added to the list of people receiving this letter. The Commission agreed with this suggestion.

Chairman Bedford stated that he is very concerned about the surplus funds issue. He said he is concerned about certain candidates dipping into funds leftover from previous campaigns in order to dispense money to various candidates for the Legislature or local office. Chairman Bedford indicated these officeholders might assume the traditional role of the political parties. He said he is concerned about money not going through the established parties.

Both Commissioners Axtell and Linett agreed it was preferable for legislative candidates to obtain financial support through the existing political parties.

Vice Chairman McNany said that he would like to have the issue of whether or not surplus funds could be used for district offices decided. He said he believes that surplus campaign funds should not be used for this purpose. He said making this an allowable use would result in inequities among legislators in terms of constituent services.

At this juncture, the Commission directed Executive Director Herrmann to send the surplus funds letter as amended. It expressed the hope that the Legislature would act to clarify this important issue.

Commissioner Linett stated that he would like to submit suggested changes to the surplus funds press release. This press release was drafted in

order to publicize the Commission's position on this issue and its urging of legislative action.

Commissioner Linett's changes included emphasizing the personal use issue. He said the Legislature has failed to prohibit personal use and the need for it to fill this gap should be stressed in the press release.

The Commission consented to Commissioner Linett's changes and instructed the executive director to release the information to the press.

Commissioner Axtell suggested that ELEC should be referred to as "N.J.- ELEC" in press releases. He said that this would avoid confusion as to whether the article referred to this agency or an agency from some other state.

With respect to the March 2, 1988 memorandum entitled, "Reporting of Surplus Campaign Funds" from Legal Director Nagy to Executive Director Herrmann, Chairman Bedford noted that this document was for informational purposes only. He said that the statutory recommendations for tightening postelection reporting of surplus funds should be pursued, but no new regulations should be proposed at this time in the absence of legislative action.

Vice Chairman McNany agreed. He said it was his belief that the Commission had reached a consensus that these funds should be pursued as far as possible. He said a final accounting of surplus campaign funds should be required by the Commission.

Chairman Bedford asked if a consensus existed on this matter. The Commissioners answered in the affirmative.

At this juncture, Commissioner Linett indicated he believed that the Commission should study the various bills affecting campaign finance and lobbying and take positions on them. He said that he did not understand the Commission's function in this area. "Are we here for technical advice or policy advice?" asked Commissioner Linett.



Chairman Bedford said that it is his understanding that the Commission has taken the position that the Legislature should set policy.

Executive Director Herrmann said that traditionally when the Commission had statutory recommendations, it promoted them in its annual report. "In this way, it would give legislators ideas for changing the law," he said. Executive Director Herrmann said the Commission does not actively lobby by contacting lawmakers to introduce specific bills. He said, however, that if a member of the legislature approaches ELEC, then staff would provide technical assistance.

Counsel Farrell added that the Commission has avoided lobbying. He said the Commission should be outside the process. Counsel Farrell said that while there is no rule against the Commission becoming more active in this area, the agency has limited itself to advising on technical matters and on cost issues.

Chairman Bedford said that he believes it is not appropriate for the Commission to take the lead in changing legislative policy.

Commissioner Linett said that he is not sure that it is so easy to draw the line between administrative advice and policy advice.

Executive Director Herrmann said the Commission has to be careful to not get in the middle of policy disagreements between legislators.

Commissioner Linett suggested there was no one better equipped than the Commission to take positions.

Chairman Bedford concluded by saying he believed that all of the members of the Commission could agree on one thing: that they should be familiar with the content of legislation.

4. Advisory Opinion Request No. 18-1987

The Commission reviewed Counsel Farrell's draft response to the advisory opinion request from Assemblyman Arthur R. Albohn, discussed at the January and February meetings of the Commission.

Counsel Farrell stated he spoke with Assemblyman Albohn with respect to the question of whether he planned to transfer the money now or at some later time. Counsel Farrell said the Assemblyman indicated that he intended to transfer the money at a future date through his will.

Chairman Bedford suggested that Counsel Farrell's response should be revised to state that the transfer of these surplus funds to the cemetery endowment fund would be permissible now under existing law and regulations. He said that it should further state that the Commission cannot predict what the law will be in the future and cannot say that this would be a permissible use at the time of the Assemblyman's death.

Commissioner Linett added that there is substantial doubt as to whether a will can be used for this purpose.

On a motion by Commissioner Linett, seconded by Commissioner Axtell and a vote of 4-0, the Commission approved as amended Counsel Farrell's response which permits transfer now under current law but indicates that the Commission cannot predict what the law will be in the future.

5. Advisory Opinion Request No. 3-1988

The Commission reviewed Counsel Farrell's response to an advisory opinion request from Peter J. Tamburro, Jr., Friends of (Assemblyman) Robert J. Martin, concerning a contemplated fundraising event for continuing political committees of Assemblymen Martin and Loveys.

On a motion by Commissioner Linett, seconded by Commissioner Axtell and a vote of 4-0, the Commission approved Counsel Farrell's reply, amended to

include language instructing Mr. Tamburro to file a designation of bank account and treasurer for the new committee.

The response advised Mr. Tamburro to establish a separate Continuing Political Committee (CPC) for this fundraising purpose and to report on a quarterly basis.

#### 6. Ethical Compliance

With respect to this issue, see the Commission's Code of Ethics adopted pursuant to the Conflicts of Interest Law (N.J.S.A. 52:13D-12 et seq.).

Staff recommends that: 1) the Commission formally authorize the Executive Director to administer over all subordinate staff compliance with the Code of Ethics and the Conflicts of Interest Law, 2) an Ethical Liaison Officer (ELO) be appointed by the Executive Director to monitor ethical compliance, and 3) that the ELO establish and administer uniform procedures for regulating and guiding ethical conduct.

Commissioner Axtell said that pursuant to the Ethics Code the Commission passed a resolution two years ago stipulating that spouses of Commissioners cannot make political contributions.

Chairman Bedford said that he would like to see this provision changed. He said that it is unconstitutional to prohibit spouses from making political contributions. He said that the Commission should not trample on spouses' rights. Chairman Bedford said that his wife and he conduct their financial business separately. He said that it is wrong to prohibit her from political giving.

Chairman Bedford said that while the Commission's Code of Ethics does not specifically prohibit spouses from making political contributions, the Commission has taken the view that spousal activity should be restricted. He

said that the Commission should resolve this issue of whether a spouse of a Commissioner can contribute to political campaigns.

Counsel Farrell asked Chairman Bedford if it was his sense that a spouse should be able to contribute from a joint account.

Chairman Bedford replied in the affirmative.

Commissioner Linett said that he had no problem with allowing spouses to make political contributions. He said, however, that he opposed the idea of allowing them to contribute from joint accounts. Commissioner Linett said that a Commissioner and spouse should have clearly separate property.

Commissioner Linett next broached another issue. He asked why, since the Commission has no authority over federal campaigns, Commissioners are prohibited from contributing to federal candidates.

Chairman Bedford said that it would be sensible to permit members of the Commission to contribute to campaigns for federal office.

Counsel Farrell suggested that with respect to this question, there are sufficiently gray areas. He said that, for instance, there are groups under the aegis of the Federal Election Commission (FEC) that nevertheless have impact in New Jersey. He said that it is a matter of public perception. Counsel Farrell said a Commissioner might be involved in contributing to groups that impact on groups the Commission regulates.

Commissioner Linett said the Commission is a bi-partisan Commission, not a non-partisan one. He said the Commissioners were selected because they were identified with one party or the other. He said that it did not make sense that they are now told that they cannot support those parties.

Counsel Farrell said that over the years, a public perception has evolved that the Commission is a non-partisan body.

Chairman Bedford asked Counsel Farrell whether he, as Counsel, and his law firm, are also subject to the Commission's Code of Ethics.

Counsel Farrell replied that the firm and he are subject to the same prohibitions as Commissioners and staff.

Chairman Bedford indicated that he believed Counsel Farrell's position is too purist. He said that it is unnecessary for the Commission to be in a more restricted position than the State judiciary. He said that he would like to propose amendments to the Code of Ethics that would permit Commissioners to make federal contributions.

Executive Director Herrmann suggested that staff could do more background studies on the issue of federal contributions by contacting the Council on Governmental Ethics Laws (COGEL), the FEC, and other states to determine what ethical restrictions are applied by those entities.

Commissioner Linett said that the question of Commissioners making contributions to federal campaigns could be postponed until the May meeting. He suggested, however, that an amendment to the Code of Ethics be drafted to allow spousal contributions. He said it seemed to be the consensus of the Commission that it supported such a change.

On the issue of implementing improved monitoring and compliance with the Commission's Code of Ethics, Commissioner Linett moved that: 1) the Executive Director be authorized to administer staff compliance with the Code of Ethics, 2) an Ethical Liaison Officer (ELO) be appointed by the Executive Director to monitor compliance, and 3) the ELO establish and administer uniform procedures for regulating and guiding ethical conduct.

The motion was seconded by Commissioner Axtell and on a vote of 4-0, was approved.

## 7. 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.

8. Adjournment

On a motion by Vice Chairman McNany, seconded by Commissioner Axtell and a vote of 4-0, the Commission voted to adjourn at 12:46 p.m.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "F M Herrmann", written in a cursive style.

FREDERICK M. HERRMANN, Ph.D.

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