



State of New Jersey

ELECTION LAW ENFORCEMENT COMMISSION

NATIONAL STATE BANK BLDG., SUITE 1215
28 W. STATE STREET, CN-185
TRENTON, NEW JERSEY 08625-0185
(609) 292-8700

STANLEY G. BEDFORD
CHAIRMAN

OWEN V. MCNANY, III
VICE CHAIRMAN

ANDREW C. AXTELL
COMMISSIONER

DAVID LINETT
COMMISSIONER

FREDERICK M. HERRMANN, PH.D.
EXECUTIVE DIRECTOR

JEFFREY M. BRINDLE
DEPUTY DIRECTOR

GREGORY E. NAGY
LEGAL DIRECTOR

EDWARD J. FARRELL
COUNSEL

PUBLIC SESSION MINUTES

MAY 16, 1989

All of the Commissioners and senior staff were present

Chairman Bedford called the meeting to order and announced that pursuant to the "Open Public Meetings Act," N.J.S.A. 10:4-8 et. seq., special notice of the meeting of the Commission had been filed with the Secretary of State's Office and distributed to the entire State House Press Corps.

The meeting convened at 9:40 a.m. at the Commission Offices, at 28 West State Street, Trenton, New Jersey.

1. Approval of Public Session Minutes of April 18, 1989

On a motion by Vice Chairman McNany, seconded by Commissioner Axtell and passed by a vote of 4-0, the Commission approved the Public Session Minutes of April 18, 1989.

2. Approval of Public Session Minutes of April 25, 1989 - Telephone Conference

On a motion by Commissioner Linett, seconded by Commissioner Axtell and passed by a vote of 4-0, the Commission approved the Public Session Minutes of April 25, 1989.

3. Approval of Public Session Minutes of May 4, 1989 - Telephone Conference

On a motion by Commissioner Axtell, seconded by Vice Chairman McNany and passed by a vote of 4-0, the Commission approved the Public Session Minutes of May 4, 1989.

4. Certification of Public Funds Submitted on May 8, 1989

1. Candidate Gerald Cardinale

At its meeting on May 10, 1989, the Commission certified 90 percent of the amounts submitted by the Cardinale Campaign on May 8, 1989 as eligible for match. The amount in public funds approved was \$86,130.

Subsequently, a complete review was completed by staff and it was determined that \$45,903 was eligible for match at a 2:1 ratio. Thus, Candidate Cardinale was eligible for \$91,806 in public funds. When subtracting the \$86,130 in public funds certified at the May 10, 1989 meeting from this amount, a balance of \$5,676 was recommended for certification to Candidate Cardinale.

On a motion by Commissioner Axtell, seconded by Vice Chairman McNany and passed by a vote of 4-0, the Commission certified \$5,676 in matching funds to Candidate Cardinale.

2. Candidate Alan Karcher

At its meeting on May 10, 1989, the Commission certified 90 percent of the amounts submitted by the Karcher Campaign on May 8, 1989 as eligible for match. The amount in public funds approved was \$23,947.20.

Subsequently, a complete review was completed by staff and it was determined that \$22,005 (including resubmissions) was eligible for match at a 2:1 ratio. Thus, Candidate Karcher was eligible for \$44,010 in matching funds. When subtracting the \$23,947.20 certified in public funds at the May 10, 1989 meeting from this amount, a balance of \$20,062.80 was recommended for certification to Candidate Karcher.

On a motion by Commissioner Linett, seconded by Commissioner Axtell and passed by a vote of 4-0, the Commission certified \$20,062.80 in matching funds to Candidate Karcher.

5. Certification of Public Funds Submitted on May 15, 1989

Staff recommended application of the automatic 90 percent certification to submissions from Candidates Gerald Cardinale, James Courter, William Gormley, Alan Karcher, and Barbara Sigmund.

On May 15, 1989, the following net amounts were submitted for match: Candidate Cardinale, \$23,507; Candidate Courter, \$27,635; Candidate Gormley, \$36,795; Candidate Karcher, \$32,805; and Candidate Sigmund, \$19,499.

At an automatic 90 percent certification rate, the following amounts were deemed eligible for match at a 2:1 ratio: Candidate Cardinale, \$21,156.30, Candidate Courter, \$24,871.50; Candidate Gormley, \$33,115.50; Candidate Karcher, \$29,524.50; and Candidate Sigmund, \$17,549.10.

Thus, the staff recommended that the following amounts be certified in public funds: Candidate Cardinale, \$42,312.60; Candidate Courter, \$49,743; Candidate Gormley, \$66,231; Candidate Karcher, \$59,049; and Candidate Sigmund, \$35,098.20.

On a motion by Vice Chairman McNany, seconded by Commissioner Axtell and passed by a vote of 4-0, the Commission approved the above certifications of public funds totaling \$252,433.80.

In a related matter, the Commission, on a motion by Vice Chairman McNany, seconded by Commissioner Axtell and passed by a vote of 4-0, approved an automatic certification rate of 95 percent for all future preelection primary submissions.

The 95 percent automatic certification rate was recommended by staff.

Chairman Bedford asked that the time of the May 31, 1989 telephone meeting be changed to 9:00 a.m. The Commission concurred.

6. Public Hearing on Gubernatorial General Election Regulations

A public hearing was held on proposed gubernatorial general election regulations. The public hearing was recorded by a court stenographer and a transcript of the proceedings will be available to the public. The hearing began at 10:00 a.m.

J. Ross Bevis, representing the Greater Princeton and Mercer County Chambers of Commerce, questioned proposed N.J.A.C. 19:25-15.50(a)3 which requires debate sponsors to have experience in producing televised debates for Statewide office. Mr. Bevis was concerned that the effect of the proposed regulation was to exclude potential debate sponsors who had not produced televised debates.

Chairman Bedford asked whether the statute required experience with televised debates. Counsel Farrell responded that it did. Chairman Bedford therefore explained that the proposed regulation incorporated a statutory requirement. Commissioner Linett indicated that the Commission did not necessarily favor all of the statutory provisions.

Legal Director Nagy explained that the Commission will vote on adoption of the regulations at the June 1, 1989 Commission meeting.

7. Executive Directors' Report

A. Staff Activities

Executive Director Herrmann reported that he attended a breakfast meeting with Professors Steven Salmore and Alan Rosenthal of the Eagleton Institute of Politics to help plan their Campaign Finance Forum to be held on December 14 and 15, 1989. He said that Dr. Herbert E. Alexander of the

Citizens' Research Foundation, (CRF) University of Southern California, will submit a paper on public financing for the event.

Executive Director Herrmann reported that he attended a Citizens' Research Foundation Conference in Washington, D.C. on May 12, 1989. He said that the conference was entitled "Dollar Politics and Election Reform." The Executive Director said that he served on a panel called "State and Local Election Reform" along with Ron Michaelson, Executive Director of the Illinois State Board of Elections, and Nicole Gordon, Executive Director of the New York City Campaign Finance Board.

Executive Director Herrmann reported that Deputy Director Brindle will speak about the Commission before the Young Republicans State Convention on May 20, 1989 at the Parsippany Hilton, Parsippany-Troy Hills, New Jersey.

B. Legislative Activity

The Executive Director reported that he attended an Assembly State Government Committee Meeting on April 27, 1989. He said that the committee discussed campaign finance reform in general terms but did not arrive at a consensus as to the type of reform it would support. Executive Director Herrmann noted that the committee expressed an interest in legislative public financing and that he advised the committee that the Commission would discuss this issue (and its White Paper) at its regular June meeting.

Executive Director Herrmann said that he also attended a meeting of the Assembly State Government Committee on May 15, 1989. He said he testified on A-4185 (Cimino/Martin), which contains a PAC registration program and recommendations proposed by the Grand Jury. The bill was released from the committee.

C. White Paper Number 2 "Trends in Legislative Campaign Finance: 1977-1987"

Executive Director Herrmann remarked that this White Paper does not make any recommendations for reform. He said that it provides the background statistics necessary for analyzing the way in which the system needs to be changed. Executive Director Herrmann noted that the paper provides statistics that might help Legislators determine at what level contribution and expenditure limits ought to be set. He said that the paper notes the growth of the State Parties' influence and the rise in importance of officeholder PACs.

Executive Director Herrmann thanked the paper's author Deputy Director Brindle and other members of the staff who helped complete the study.

D. Other News

Executive Director Herrmann said that staff is looking into the possibility of adding new space on the thirteenth floor as opposed to on the fifth floor. He said that the fifth floor is physically too far removed from the existing offices of the Commission and that it would be extremely difficult to hook up computer cables to that location.

Executive Director Herrmann noted that a National Common Cause Report on Campaign Financing in the states makes extensive use of ELEC published reports. The Executive Director reported that a staff member at Channel 6 News (Philadelphia) told him that ELEC's analytical data is the most useful in the Tri-State area regarding election administration. Executive Director Herrmann also reported that ELEC joined the "Ethics in Public Service Network" (ETHWET) of George Washington University. He said that the Network will facilitate an exchange of information on ethics issues and that it is free of charge.

E. Pre-Primary Meeting Schedule

Executive Director Herrmann announced the following meeting schedule:

1. May 23, 1989 10:00 a.m. - telephone
2. May 31, 1989 9:00 a.m. - telephone
3. June 1, 1989 10:00 a.m. - Montclair

8. Advisory Opinion No. 09-1989

This advisory opinion request is submitted by Joseph F. Carroll, Camden County Freeholder. In it, Freeholder Carroll asks if he can use funds from his continuing political committee to compensate himself for work done on behalf of the reelection of Robert Andrews, Democratic Freeholder candidate in Camden County, and James Florio, potentially the Democratic candidate for Governor. Freeholder Carroll indicated that the campaign work would be done during July.

This advisory opinion request also asks whether an individual can borrow from his continuing political committee and establish a pay-back schedule.

The draft response prepared by Legal Director Nagy indicates that a continuing political committee such as "Friends of Joe Carroll" may use its funds to compensate Freeholder Carroll for the campaign work cited. The draft advisory opinion states that there is no prohibition against the continuing political committee contributing funds directly to candidates, or employing any persons to work for the election of candidates. The draft response points out, however, that the continuing political committee must comply with certain reporting requirements.

The draft opinion advises the following:

- 1) that the employment expenditure must be reported on schedule of Form R-3 as a disbursement made on behalf of a candidate;
- 2) that a continuing political committee making an in-kind contribution to a candidate must immediately notify that candidate of the contribution;
- 3) that the recipient candidate must report the in-kind contribution on his report; and

- 4) that in the case of a gubernatorial candidate, unless an expenditure for campaign work is made independently of the candidate, the continuing political committee cannot make any in-kind contribution that exceeds the \$1,500 limit.

Finally, with respect to the question about "Friends of Joe Carroll" loaning money to Freeholder Carroll, the draft response advises that Commission regulations prohibit this activity on the basis that using continuing political committee funds for personal use is restricted. Regulation N.J.A.C. 19:25-7.2 provides that funds deposited in an organizational account maintained by a continuing political committee may not be converted to any personal use by a candidate or any other person.

Chairman Bedford suggested that the Commission issue the draft advisory opinion with the caveat that the Commission will review this issue and that its position may change at a later date. Pursuant to the discussion on Advisory Opinion No. 11, the Commission is concerned about the possible circumvention of its personal use prohibition that could result from permitting unfettered expenditures of PAC funds for salaries. It is particularly concerned that candidates do not pay themselves salaries for running for public office.

On a motion by Commissioner Linett, seconded by Commissioner Axtell and passed by a vote of 4-0, the Commission approved the draft advisory opinion as amended by Chairman Bedford, and directed Legal Director Nagy to mail it.

9. Advisory Opinion No. 10-1989

This advisory opinion request was submitted by Laila B. Soares, Assistant General Counsel, Avco Financial Services, on behalf of Avco Financial Services Management Company.

The request indicates that Avco Financial Services Management Company desires to make contributions to individual candidates or political action committees (PACs) in New Jersey. It asks if this course of action is proper given the fact that Avco Financial Services Management Company is a subsidiary of Avco Financial Services, Inc., a Delaware corporation, which is admitted as a foreign insurance company in New Jersey. N.J.S.A. 19:34-32 prohibits an insurance corporation from making political contributions and N.J.S.A. 19:34-45 prohibits banks from doing the same.

The draft response to the advisory opinion request states that the matter is not under the jurisdiction of the Commission and that the Commission will refer the advisory opinion request to the Attorney General for a response.

On a motion by Commissioner Linett, seconded by Commissioner Axtell and passed by a vote of 4-0, the Commission approved the draft advisory opinion response, and directed Legal Director Nagy to mail it.

10. Advisory Opinion No. 11-1989

This advisory opinion request, from Thomas Quattrochi, Treasurer of "Continue Progress with Primas Committee," concerns the use of campaign funds for the payment of a salary to the campaign Executive Director and Treasurer.

The draft response prepared by Legal Director Nagy states that the payment of compensation to salaried employees and political consultants for services that aid or promote the election campaign are not specifically restricted by the Act, and are a common campaign practice.

The draft makes clear, however, that such expenditures, while permissible, are subject to full reporting and any disbursement for such a purpose should be clearly reported on Schedule D of the Form R-1.

Commissioner Axtell asked if there is any limitation on the amount in salary the Executive Director can be paid. He expressed the concern that the Executive Director could conceivably take all the money in salary.

Vice Chairman McNany said that this situation would be self-regulating in that the candidates would not allow that to happen. They would want the money spent on their campaigns, he added.

Counsel Farrell said that in an attempt to avoid the type of situation envisioned by Commissioner Axtell, the Commission could perhaps set forth a requirement that the salary be arranged for at the onset of the campaign. He said that there could be some prior agreement made to this effect.

Commissioner Linett agreed that requiring the salary to be set forth and the payment to be set forth would be a good requirement.

Chairman Bedford said that he believed that the Commission should adopt a regulation setting forth a requirement that salaries and payment for campaign work should be arranged for in advance.

Executive Director Herrmann said that Common Cause has recommended restrictions on the way PACs spend their money and that noted scholar, Larry Sabato, has done an article regarding this problem. Executive Director Herrmann said, however, that at this time, there may be a question of whether or not ELEC has any statutory authority to act on this matter. He suggested that the Commission might consider recommending an amendment to the law.

Vice Chairman McNany said that he was still uncomfortable about the Advisory Opinion No. 9 matter, which, he said, is related to the questions posed in Advisory Opinion No. 11. He said that an individual could make a contribution out of his campaign fund to another candidate and then go to work for the candidate and receive the money back as compensation for the campaign work. Vice Chairman McNany said that there is the possibility of "laundering" money from one's campaign account through another's campaign account, to be received by the individual at a later time. In effect, this scenario would be using surplus campaign money for personal use, in violation of the Commission's regulation against personal use of surplus campaign funds. Vice Chairman McNany said that it would be very difficult to prove

that the individual was not working on the second campaign. Moreover, said the Vice Chairman, if the individual is also a candidate, he could, in effect, be paying himself for his candidacy and not working at all on the other candidate's campaign.

Counsel Farrell agreed saying that it is easy to conceive a simple "laundering" scheme being set-up. He said that in one year, Freeholder X gives to Freeholder candidate Y a contribution out of his surplus account. In turn, Freeholder Y hires Freeholder X to work on his campaign. The next year, when Freeholder X is a candidate, he provides the same benefit to Freeholder Y.

Vice Chairman McNany said that the Commission should prohibit expenditures to a person from any fund over which that person has control.

Counsel Farrell agreed that the Commission should adopt a regulation addressing this issue. He said that perhaps the Commission does not have the jurisdiction, but that a court will provide that answer.

Chairman Bedford said that he believed that the Commission should issue the draft opinion on Advisory Opinion No. 11 with the caveat that it will review this issue and that its position may change.

Chairman Bedford asked staff to present a memorandum on this issue at its June 20, 1989 meeting. As noted in Advisory Opinion No. 9, the same caveat was included therein.

Commissioner Linett said that while he shares Vice Chairman McNany's concern, he does not know how the Commission can regulate this area given the present statutory language.

On a motion by Commissioner Axtell, seconded by Commissioner Linett and passed by a vote of 4-0, the Commission approved the advisory opinion as drafted with the above-mentioned caveat included, and directed Legal Director Nagy to mail it.

11. Advisory Opinion No. 12-1989

This advisory opinion request from William Eldridge, Chairman of the Republican Committee of Union County, concerns party-building activity during a gubernatorial primary election.

In its draft response prepared by Counsel Farrell, the Commission concluded that voter registration efforts intended to aid all the candidates for office in the primary election of that party, so long as those activities do not benefit one or more of the candidates to the detriment of others, are not prohibited by the Act.

The draft response to the question of get-out-the-vote efforts was left open for direction from the Commission.

Counsel Farrell said that this advisory opinion, in part, dealt with the same issue as that dealt with in Advisory Opinion No. 5-1989, which was requested by the Democratic State Committee.

Counsel Farrell said that get-out-the vote efforts in the primary conducted by county party committees, such as the Union County Republican committee, would have no impact except in gubernatorial years.

Chairman Bedford said that he did not believe that the Commission could restrict county organizations. He said, however, that while the advisory opinion should not restrict the county organizations with respect to get-out-the-vote efforts, it should contain a cautionary note stipulating that these efforts should not benefit one candidate over the other.

Counsel Farrell said that this advisory opinion brings the Commission squarely to the question of the permissibility of get-out-the-vote efforts by the parties in the primary.

Executive Director Herrmann said that as long as the county party organizations's effort is supportive of all candidates in the primary it should be allowable.

Chairman Bedford said that he was in favor of permitting county party organizations to register voters and to get-out-the-vote.

Commissioner Linett said that the statute prohibits expenditure of funds by the parties on behalf of any candidate in the primary. He said that he was not sure that it is a proper exercise of the party to pay "street money" to get-out-the-vote. He said that it is not realistic to say, for instance, that county committee people are not supporting anyone in this type of election. Commissioner Linett said that he did not believe that party money should be spent on get-out-the-vote efforts in the primary.

Vice Chairman McNany said that the Commission had to be careful because the party can get independents out to vote on primary day which could benefit one candidate over another and most certainly would help the party's candidates in the general election.

Chairman Bedford suggested that Counsel Farrell add to the opinion permission for the Union County Republican Organization to expend money to get-out-the vote. He said, however, that the advisory opinion should contain strong language that the effort should not favor one candidate over the other.

On a motion by Vice Chairman McNany, seconded by Chairman Bedford and passed by a vote of 3-0, the Commission approved the advisory opinion response as amended by Chairman Bedford, and directed Counsel Farrell to mail it. Commissioner Axtell abstained.

12. Advisory Opinion No. 13-1989

This advisory opinion request is from R. S. Petterson, Administrator of the New Jersey Bell State PAC (NJB SPAC).

This request indicates that NJB SPAC is planning to ask New Jersey Bell Telephone Company, a regulated public utility, to match all voluntary individual personal contributions made to NJB SPAC with an equal amount to be given to charity.

According to the request, the plan would allow each individual NJB SPAC member to designate any 501(c) charity as the recipient of a company contribution equal to the sum of the member's previous year contribution to NJB SPAC.

This proposal is designed to encourage more participation in the State PAC by employees of New Jersey Bell.

The advisory opinion request asks if this plan is permissible given the fact that New Jersey Bell Telephone Company is a utility and prohibited from contributing to candidates under New Jersey law.

The draft response prepared by Legal Director Nagy indicates that matched contributions to charity by New Jersey Bell Telephone would be considered an in-kind contribution by the company to NJ SPAC because the charitable contributions would have the effect of increasing participation in NJ SPAC. The draft response states that this contribution must be reported by the NJ SPAC in its quarterly reports.

In addition, the draft response advises Mr. Petterson to request an advisory opinion from the Attorney General in that the matter implicates the statute prohibiting contributions by a utility company.

On a motion by Commissioner Linett, seconded by Commissioner Axtell and passed by a vote of 4-0, the Commission approved the advisory opinion response, and directed Legal Director Nagy to mail it.

13. Advisory Opinion No. 14-1989

This advisory opinion request was submitted by John W. Indyk of the Senator Bill Gormley for Governor Committee.

The advisory opinion request asks whether the cost of film footage obtained prior to Candidate Gormley's declaration of candidacy, and used in his gubernatorial commercials, must be allocated against Candidate Gormley's expenditure limit.

According to Mr. Indyk, the footage consists of two or three seconds of frames showing the candidate and his wife walking on a beach. The footage was obtained under the direction of Campaign Consultants, Inc., for the candidate's State Senate campaign.

The advisory opinion further asks: if the cost of the footage is allocable, then what criteria should be used to determine the cost?

Counsel Farrell said that the worst case scenario would hold that footage shot in a previous campaign could be used in its entirety in a future gubernatorial campaign. He said that the best case scenario would be that the footage used, and its cost, would be de minimus.

Chairman Bedford asked how the market value of film footage would be calculated.

Counsel Farrell said that this information can be obtained from the media consultant.

Vice Chairman McNany suggested that the amount of money to be allocated against a gubernatorial campaign could be obtained by determining the ratio of the seconds of old footage used in the gubernatorial commercial to the total number of seconds comprising that commercial. Vice Chairman McNany suggested that this ratio then be applied to the total cost of production of the old commercial. He said that the amount of money derived at by applying the ratio to the cost of producing the old commercial would constitute the amount of money to be allocated against the gubernatorial expenditure limit of the candidate.

For example, if the gubernatorial commercial spot is 30 seconds long and the amount of footage used from a previous campaign's commercial comes to 3 seconds, the ratio to be applied to the previous commercials' cost of production would be 1/10th, or 10 percent. If the cost of producing the previous campaign's commercial was \$5,000, the amount to be allocated against the gubernatorial expenditure limit would be \$500 (10 percent of \$5,000).

Counsel Farrell agreed with this approach. He said that it was important for the Commission to do everything in its power to prevent gubernatorial candidates from circumventing the expenditure limit.

On a motion by Commissioner Axtell, seconded by Vice Chairman McNany and passed by a vote of 3-0, the Commission directed Counsel Farrell to respond to the advisory opinion request by stipulating that gubernatorial candidates must apply the above allocation formula when utilizing footage from old commercials in their gubernatorial campaigns. Commissioner Linett abstained.

14. Executive Session

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

15. Adjournment

On a motion by Commissioner Linett, seconded by Vice Chairman Axtell and passed by a vote of 4-0, the Commission voted to adjourn at 1:35 p.m.

Respectfully submitted,



FREDERICK M. HERRMANN, PH.D.

FMH/jah