



State of New Jersey

ELECTION LAW ENFORCEMENT COMMISSION

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PUBLIC SESSION MINUTES

MARCH 20, 1990

Owen V. McNary, III
Chairman

Stanley G. Bedford
Commissioner

David Linett
Commissioner

S. Elliott Mayo
Commissioner

FREDERICK M. HERRMANN, PH.D.
EXECUTIVE DIRECTOR

JEFFREY M. BRINOLE
DEPUTY DIRECTOR

GREGORY E. NAGY
LEGAL DIRECTOR

EDWARD J. FARRELL
COUNSEL

All of the Commissioners and senior staff were present.

Chairman McNary 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, 28 West State Street, Trenton, New Jersey.

1. Approval of Public Session Minutes of February 20, 1990

On a motion by Commissioner Linett, seconded by Commissioner Bedford and passed by a vote of 4-0, the Commission approved the Public Session Minutes of February 20, 1990.

2. Executive Director's Report

A. Public Financing Audit Approved

Executive Director Herrmann reported that of the \$60,000 appropriated for undertaking an audit of the public financing program, the Treasury had frozen approximately \$35,000 of that money.

The Executive Director said, however, that as a result of the Commission's request for an exemption from the policy of placing the audit money into reserve, the Commission received permission from Treasurer Douglas C. Berman to use the full \$60,000 appropriation for the completion of a public financing audit. He said that staff was proceeding to make arrangements for an outside, independent firm to begin the audit process.

Executive Director Herrmann praised the Treasurer's decision as an important one because it is essential to monitor fully the \$15.3 million in public funds given to gubernatorial candidates.

B. Governor's Ethics Initiative

Executive Director Herrmann reported that Governor Florio's executive branch ethics initiative requires all directors to file personal financial disclosure reports but does not require the Commissioners or Counsel Farrell to file these reports. The Executive Director said all directors will file the reports on time. The due date is April 18, 1990.

C. Personnel News

Executive Director Herrmann announced that Ms. Lisa Fagan has been hired as the new Assistant Legal Director. He said that Ms. Fagan will start work next Monday.

The Executive Director noted further that Richard Magee has resigned to take a position in the Department of Health. Executive Director Herrmann praised Mr. Magee for making a real contribution to ELEC in organizing the Administration Section, of which he was the first director. Executive Director Herrmann noted that under Mr. Magee's leadership, administration passed every audit.

Chairman McNany thanked Mr. Magee for his service and wished him well in the future.

D. Staff News

Executive Director Herrmann reported that he testified before the Assembly State Government Committee on A-2421 (Baer) on February 26, 1990. He said that the bill broadens the eligibility for debate sponsorship to news organizations that lack television experience. Executive Director Herrmann said that the bill was amended in committee to allow New Jersey Network (NJN) and Rutgers University to apply for sponsorship as well. In effect, continued the Executive Director, the bill broadens the field of potential sponsors.

Executive Director Herrmann said that he met recently with Ron LaDel, Chairman of the New Jersey Bar Association's Election Law Committee. He reported that campaign reform was discussed as well as adequate funding for ELEC. Executive Director Herrmann said that the Committee strongly supports more funding for the Commission.

The Executive Director reported that he was invited by former ELEC Executive Director Lewis Thurston to teach a Masters in Public Administration class at Kean College. He said that he discussed the topic of campaign finance in New Jersey and the United States. He said that he taught the class on February 28, 1990.

Executive Director Herrmann indicated that he recently initiated a meeting with Ms. Midge Trainor, the new head of the Division of Elections in the Department of State. He said that Evelyn Ford, Director of Compliance and Information, and he met with Ms. Trainor and her staff. Executive

Director Herrmann said that the meeting was important because ELEC coordinates numerous activities with the Division.

The Executive Director reported that on March 7, 1990, he was a guest on the Manhattan-at-Large program on New York City Cable-TV. Executive Director Herrmann said that the topic was "Campaign Finance: National and Local Views." He advised the Commission that the program was hosted by Father Joseph A. O'Hare, Chairman of the New York City Campaign Finance Board. The Executive Director said that other guests included: Nicole Gordon, Executive Director of the New York City Campaign Finance Board, John Surina, Federal Elections Commission (FEC) Staff Director, and Abraham Gerges, New York City Councilman. He said that there was much interest in gubernatorial debates and that New Jersey was praised for leading the nation in this regard. Executive Director Herrmann noted that Assemblyman Byron Baer had sponsored this change.

E. Red X Memorandum

Executive Director Herrmann reviewed the letter to Treasurer Berman, which asks that the Commission be exempted from the policy that prohibits State agencies from utilizing first-class mail. The Executive Director also reviewed the memorandum from Deputy Director Brindle expressing the staff's recommendation that the Commission reconsider the issue and not ask for an exemption from this policy. Executive Director Herrmann said that the staff, after considering the issue further, does not believe that the new postal policy will hurt compliance.

Deputy Director Brindle said that in upwards of 93 percent of the time, Red X letters go out at the same time as first-class. He said further that staff will mail out materials two days sooner than in the past in order to compensate for any delays.

Commissioner Mayo said that the most compelling argument advanced in the memorandum is that there may be other more important issues to deal with in the future and that it may be in the best interest of the Commission to forego requesting an exemption to the Red X policy at this time.

The Commission directed staff not to ask for an exemption to the Red X policy.

F. More Praise for ELEC

Executive Director Herrmann reported that in a national survey of State Ethics Agencies, the North Carolina Center for Public Policy Research concluded in its March 1990 report: 1) that the New Jersey Election Law Enforcement Commission does the best job of all the states in providing information to the public; and 2) that ELEC's press releases, newsletters, and annual reports are extensive and excellent. Executive Director Herrmann added that data used in this report did not even include the white papers.

G. Budget News

Executive Director Herrmann reported that due to New Jersey's current fiscal crisis a bad year budgetarily was ahead for ELEC as well as for the rest of State government.

He said that staff will do an analysis of its FY-1991 budget and will evaluate its staff resources and ability to maintain current service levels. He said that this analysis will be presented to the Commission at the April meeting.

H. Future Meetings

The Commission scheduled the next meeting for April 18, 1990 at 9:30 a.m. in Trenton. The Commission decided further to schedule a public hearing on the proposed Personal Interest Disclosure Regulations for the April 18, 1990 meeting.

3. Advisory Opinion Request No. 2-1990

This advisory opinion request was submitted by Assemblywoman Maureen Ogden. The request concerns the possible use of funds from a continuing political committee for a nonpartisan environmental forum which will be organized by the Assembly Republican Office. Assemblywoman Ogden said that it is hoped that the State House Annex facilities will be used for the event.

The advisory opinion request asks specifically: can Assembly Republican members utilize money from their continuing political committee accounts to pay for the expenses of the event? In addition, the request asks if it is permissible for Republican Assembly members to pay expenses out-of-pocket and then reimburse themselves from their campaign accounts.

Finally, the opinion asks for instructions relative to reporting if the expenditures are deemed appropriate.

The advisory opinion response concluded that on the basis of the facts submitted it is permissible for the continuing political committees to expend money and for the Republican Members to be reimbursed for out-of-pocket expenses. The opinion states that reimbursements should only be permitted under circumstances when the demands of time make it impractical for the person who made the purchase to obtain the expenditure directly from the organizational treasurer.

The Commission noted that all of this activity should be reported on quarterly reports filed by the continuing political committee in question.

Commissioner Linett asked if the advisory opinion response insinuates that a large out-of-pocket expenditure by a legislator, which is subsequently reimbursed, is improper.

Legal Director Nagy said that the response does indicate that large out-of-pocket expenditures would be improper.

Commissioner Linett inquired as to the monetary range staff considered to be large.

Counsel Farrell said that as a practical matter the Commission would have to determine on a case-by-case basis whether an out-of-pocket expense was too large. He said that the Commission would have to take the specific facts of each particular expenditure into account. Counsel Farrell said that as a general matter he would advise against setting forth in the regulations as to what specific amount would constitute a large out-of-pocket expense.

On a motion by Commissioner Mayo, seconded by Commissioner Bedford and passed by a vote of 4-0, the Commission approved the advisory opinion response.

4. Personal Financial Interest Disclosure Statement Proposal

Please see memorandum from Gregory E. Nagy, Legal Director to Frederick M. Herrmann, Executive Director, dated March 11, 1990 and entitled "Personal Financial Interest Disclosure Regulation Proposal."

Essentially, this memorandum, which includes comments from Assembly Speaker Joseph V. Doria, Jr., and Assembly Minority Leader Garabed "Chuck" Haytaian, and Assemblyman Thomas P. Foy, recommends that the Commission defer action on the proposed regulation and schedule a public hearing for April 17, 1990.

Legal Director Nagy suggested that if the Commission adopts a Personal Interest Disclosure Regulation in May then the staff would have enough time to prepare forms by the end of the summer and thereby provide instructional material to candidates prior to the 1990 general election. He said that notification is very important, especially when new requirements are involved.

Commissioner Mayo said that the comments made in regard to the proposed regulation seem to suggest that the Commission should concern itself with the question of whether the service was actually provided rather than with the question of whether the individual possessed the appropriate qualifications. He also said that he was interested in setting forth a threshold amount, over which expenditure information would be required.

Legal Director Nagy said that a good suggestion made by the Speaker and Minority Leader involved the matter of requiring detailed information about the family member to be reported only at the time that the initial expenditure is made. He suggested after reporting an initial expenditure to a family member, it may be unnecessary to duplicate the detailed reporting of family member profiles.

The Commission, at this point, reiterated its decision to hold a public hearing on the matter at the April 18, 1990 meeting and to refrain from further comment until that time.

5. Regulation of Municipal Political Party Committees

Please see memorandum from Gregory E. Nagy, Legal Director, to Frederick M. Herrmann, Executive Director, dated March 13, 1990 entitled "Regulation of Political Party Committees."

In the memorandum, staff is recommending that the Commission support a statutory amendment of N.J.S.A. 19:44A-3(n) so that the political party committees may be treated as any other continuing political committee and be required to file only if they expend \$2,500 or more annually to aid or promote State or local candidates.

Executive Director Herrmann said that the proposal is designed to remove the filing burden on small political party committees that spend insignificant amounts of money. He said that the threshold under consideration is \$2,500.

Commissioner Linett asked if contributors making contributions of more than \$100 would be identified even if the political party committee did not spend more than \$2,500.

Executive Director Herrmann said that the Commission, as part of its proposal, could urge a statutory change that would raise the reporting threshold for political party committees to \$2,500 but at the same time require those political party committees that have no filing responsibility to report the identity of contributors making contributions over a certain threshold amount. He said that the current threshold amount for identifying contributors is over \$100. Executive Director Herrmann said that one option would be to include the over \$100 threshold amount as part of its legislative proposal. Executive Director Herrmann added, however, that in past annual reports the Commission had proposed that the contribution threshold for reporting the name of a contributor be raised from over \$100 to over \$200. He suggested that as a second option, the Commission might want to propose changing the contribution reporting threshold amount to over \$200 and suggest that contributors making contributions in excess of this amount be identified by those political party committees that do not otherwise have to report.

Commissioner Linett noted that in a small community a contribution of \$100, or \$500, for instance, has more impact than in a larger municipality. He said that he was somewhat concerned that under the current proposal there would not be any reporting of the names of the larger donors who would have a major impact in a small town. Commissioner Linett suggested that the remedy might be the one suggested by the Executive Director.

At this point, the Commission determined that the matter should be postponed until the April meeting in order to allow staff to formulate a new proposal based on the Commission's concern for requiring contributions over a certain amount to be identified by contributor.

6. Public Hearing

On a motion by Chairman McNany, seconded by Commissioner Mayo and passed by a vote of 4-0, the Commission voted to conduct the public hearing on the Gubernatorial Public Financing Program.

At 10:35 a.m., the Commission convened the public hearing on the Gubernatorial Public Financing Program. The proceedings were recorded by a court reporter, whose transcript will be made available to the public. The public hearing was recessed at 12:40 a.m.

8. Resolution to go into Executive Session

On a resolution by Commissioner Mayo, seconded by Chairman McNany and passed by a vote of 4-0, the Commission resolved to go into closed Executive Session to discuss the following matters which will become public as follows:

1. Executive Session Minutes of February 20, 1990, which minutes will only become public if various matters discussed or acted upon become public;
2. Final Decision recommendations in violation proceedings which will not become public. However, the Final Decisions resulting from those recommendations will become public 15 days after mailing; and,
3. Investigative Reports of possible violations, which reports will not become public. However, any Complaint generated as the result of an Investigative Report will become public 30 days after mailing.

9. Return to Public Session

On a motion by Chairman McNany, seconded by Commissioner Mayo and passed by a vote of 4-0, the Commission voted to return to public session for the purpose of adjourning.

10. Adjournment

Before adjourning, Chairman McNany presented Commissioner Bedford with the gavel he used as former Chairman. The Chairman praised Commissioner Bedford for his years of service as head of the Commission.

On a motion by Chairman McNany, seconded by Commissioner Linett and passed by a vote of 4-0, the Commission voted to adjourn at 1:05 p.m.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "F. M. Herrmann", written in black ink on a light-colored background.

FREDERICK M. HERRMANN, PH.D.

FMH/jah