



State of New Jersey

ELECTION LAW ENFORCEMENT COMMISSION

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PUBLIC SESSION MINUTES

JULY 18, 1990

All of the Commissioners and senior staff except Commissioner Mayo were present throughout the entire meeting. Commissioner Mayo joined the meeting by telephone at 11:03 a.m.

Chairman McNany called the meeting to order and announced that pursuant to the "Open Public Meetings Act," N.J.S.A. 10:4-6 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 10:25 a.m. at City Hall, New Brunswick, New Jersey.

1. Approval of Public Session Minutes

On a motion by Commissioner Bedford, seconded by Commissioner Linett and passed by a vote of 3-0, the Commission approved the Public Session Minutes of June 13, 1990.

2. Executive Director's Report

A. Ethics Disclosure Forms

Executive Director Herrmann reported that all of the Commissioners filed their financial disclosure forms with the Ethical Standards Commission on a timely basis.

B. Ad Hoc Commission on Legislative Ethics and Campaign Finance

The Executive Director noted that at the June 6, 1990, meeting of the Ad Hoc Commission on Legislative Ethics and Campaign Finance, a lobbyist testified that ELEC should be better funded.

Executive Director Herrmann added that at the Ad Hoc Commission's June 20, 1990, meeting, a representative from PIRG commented favorably on ELEC's

alternate funding proposal. The Executive Director said that ELEC was even suggested as a source for the disposition of surplus campaign funds.

Executive Director Herrmann reported that on July 11, 1990, the Ad Hoc Commission received testimony from experts in the field of campaign finance. He said that Professors Herbert E. Alexander, Larry Sabato, Ruth Jones, and Steven Salmore testified before the Ad Hoc Commission. Executive Director Herrmann noted that Professors Jones and Sabato believed the alternate funding idea to be a good one. He said that Professor Salmore said also that ELEC must have better funding. He noted that Professor Salmore had independently advanced his own funding proposal at an earlier time.

Executive Director Herrmann reported that at the Ad Hoc Commission meeting, Professor Sabato testified that ELEC provides the best research materials in the nation and that he utilizes these materials in his classes at the University of Virginia.

Executive Director Herrmann mentioned to the Commissioners that the next meeting of the Ad Hoc Commission will be on July 25, 1990, at which time it will conduct a working session to review possible reform. He said that Legal Director Nagy, Deputy Director Brindle, and he will monitor the session.

C. Legislation

Executive Director Herrmann reported that Assemblyman James McGreevey recently introduced a bill which provides ELEC with an annual appropriation of approximately \$2 million to be offset by fines and the imposition of filing fees. He said that A-3680 was based on the ideas contained in White Paper Number Four: Ideas for an Alternate Funding Source. The Executive Director added that, on the basis of White Paper Number Four, four bills have been introduced in New Jersey and one in Texas.

Commissioner Linett asked: Are any bills regarding campaign finance reform moving in the Legislature?

Executive Director Herrmann responded that a PAC registration bill introduced by Assemblyman "Skip" Cimino has been released from the Assembly State Government Committee.

Commissioner Linett expressed an interest in the findings of the Ad Hoc Commission and asked that copies of any report it may publish be forwarded to the ELEC Commissioners.

Executive Director Herrmann assured the Commissioners that they will be provided with copies of the report as soon as it is available.

D. Budget

Executive Director Herrmann, in an update on the Commission's budget, told the Commissioners that \$1.1 million had been approved for ELEC's FY91

budget. He said that as part of the budget language, ELEC is now permitted to retain fine money. The Executive Director said, however, that money raised through fines will be held until the end of the fiscal year to be used for whatever purpose is deemed a priority at the time. Executive Director Herrmann confirmed the fact that ELEC's FY91 budget is extremely tight and reported that a total of \$15,000 out of its non-salary accounts had already been frozen.

Commissioner Mayo joined the meeting by telephone at this juncture.

E. COGEL Conference

Executive Director Herrmann informed the Commissioners that COGEL packets were included in their meeting folders. The Executive Director reported that the administration had changed its policy on out-of-state travel and would now permit two people from an agency to attend an out-of-state conference. Executive Director Herrmann indicated that pursuant to a discussion with Chairman McNany he would be attending the conference in Alaska, at which he will be presenting this year's Campaign Finance Legislation/Litigation Update. He said that the Chairman might also attend. He added, however, that in the current budget climate it would not be in the interest of frugality for the Commission to have the State assume the entire cost of the conference for two individuals. Executive Director Herrmann said that consequently he suggested to the Chairman that individuals attending the Alaska conference pay for the airfare themselves and not have the State assume the cost. The Executive Director said that food, lodging, ground transportation, and registration could be assumed for two ELEC attendees in that these costs would be no different than if the conference were held in New Jersey. Executive Director Herrmann said that in his case, some of the airfare costs might be assumed by COGEL because of his participation in the OPACC meeting being held in Denver the weekend before the conference.

The Commissioners agreed that it would be in the best interest of the public for those individuals from the Commission who are attending the Alaska conference to assume the travel costs themselves.

F. Personnel and Miscellaneous

Executive Director Herrmann reported that Deputy Director Brindle has interviewed 12 people for the computer position vacated recently by Warren Heins. He said that four finalists were sent to OTIS for a second interview and that two of the four were interviewed by him personally. Executive Director Herrmann indicated that a candidate for the position will be selected by the end of the week and that the processing of the necessary paperwork will be initiated at that time.

Chairman McNany queried as to how long it will take to obtain approvals for hiring into the computer position.

Deputy Director Brindle responded that it could take upwards of three weeks. He explained that a new policy just went into effect under which the hiring of new employees into project specialist positions requires approvals from the Department of Personnel, the Department of the Treasury, and the Governor's office. Deputy Director Brindle added that additional restrictions have been imposed on establishing project specialist positions. He said that to establish a project specialist position requires in-depth justification.

Chairman McNany said that he was concerned that the delay in hiring might result in the prospective employee finding another job.

Executive Director Herrmann expressed similar concern.

Commissioner Linett asked about the salary range of the computer-related position.

Deputy Director Brindle said that the Commission could fund the position at the \$30,000-\$35,000 range.

Commissioner Linett queried whether at that salary the Commission could obtain the services of a quality computer person.

Deputy Director Brindle said that he interviewed many qualified individuals. He explained that due to the economic slowdown, many qualified computer specialists who otherwise would receive higher salaries are very willing to take a position with the State paying \$30,000 to \$35,000.

Executive Director Herrmann reported that an administrative manual was being prepared which would contain forms, procedures, and contact persons. He said that this manual will complement desk and field audit manuals already produced.

Executive Director Herrmann reported that Chairman McNany recently suggested the installation of a linoleum floor in the computer room. He said that former Systems Administrator Warren Heins agreed that a linoleum floor would constitute an important change. Executive Director Herrmann said, however, that budget restraints prevent the Commission from making such a capital improvement at this time.

The Executive Director confirmed that the ELEC annual picnic will be held on Friday, July 20, at Chez Nagy. He said that the raindate is set for Monday, July 23, 1990.

Executive Director Herrmann announced that Primary '89 data from the computer has been released.

G. Future Meetings

The Commission set the following dates for future meetings: September 26, 1990, October 17, 1990, November 14, 1990, and December 19, 1990.

H. Office Space

Executive Director Herrmann said that Chairman McNany and he had discussions with the Board of Public Utilities (BPU) regarding the temporary use of ELEC floor space on the 13th floor. He said that BPU will utilize two more offices on that floor.

The Executive Director said that BPU President Scott Weiner has agreed to pay all ELEC moving expenses and has assured the Commission that he will be leaving the floor entirely in under a year, at which time ELEC will have the whole floor as originally planned.

Chairman McNany said that he wanted to take this opportunity to commend Executive Director Herrmann for the manner in which he handled the situation with BPU. Chairman McNany praised the Executive Director's unselfishness and his willingness to give up office space for the overall good of State government. He said that Executive Director Herrmann has saved the State money through his approach.

3. Advisory Opinion No. 06-1990

This advisory opinion request was submitted by State Senator C. Louis Bassano. In his request, Senator Bassano asked whether the cost of letters mailed over his wife's signature to "fellow Republicans in Union Township" is reportable to the Commission. Senator Bassano indicated that the mailing, costing about \$700, was an intraparty mailing.

Staff determined that the mailing was undertaken in the context of a municipal political party committee election and not in the context of a primary or general election. As such, staff suggested that the cost of the party mailing is not reportable to the Commission.

Candidates for political party committees at the State, county, or municipal level are not subject to the reporting requirements of the Act; see N.J.S.A. 19:44A-3(c) and N.J.S.A. 19:44A-4(d). N.J.S.A. 19:44A-3(c) excludes individuals seeking part office from the definitive "candidate" and N.J.S.A. 19:44A-4(d) excludes elections for party office from the jurisdiction of the Act.

Commissioner Linett noted that the Commissioners have been receiving only memoranda which provide a staff analysis of an advisory opinion request and possible response. He suggested that staff provide the Commissioners with copies of the advisory opinion itself once it is prepared.

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

Executive Director Herrmann said that copies of the response would be circulated.

4. Advisory Opinion No. 07-1990

This advisory opinion was submitted by Sanford Schneider, an attorney for the firm of Kraft and McManimon.

Mr. Schneider related the fact that the firm of Kraft and McManimon is counsel to a number of companies actively involved in the development, ownership, and operation of cogenerative, small power production and independent power facilities.

Mr. Schneider said that a new class of Alternate Power Producers (APP), independent of those subsidiary companies of the three investor-owned public utility companies in New Jersey, has emerged in the State of New Jersey. He described these companies as the "independent power producers."

Mr. Schneider, in his advisory opinion request, asked whether these independent alternate power producers would be considered "electric light, heat and power companies" that would be prohibited from making political contributions within the scope of N.J.S.A. 19:34-45. This provision states:

"No corporation carrying on the business of a ... electric light, heat or power ... company, or having the right to condemn land, or to exercise franchises in public ways granted by the State or any county or municipality ... shall pay or contribute money or thing of value in order to aid or promote the nomination or election of any person, or in order to aid or promote the interests, success or defeat of any political party."

Essentially, the question posed is: "Does N.J.S.A. 10:34-45 prohibit political contributions by "qualifying cogenators," "qualifying small power producers," or "independent power producers," because they sell electric power and thermal energy?"

Legal Director Nagy made two comments in regard to this advisory opinion. Director Nagy said that Mr. Schneider has not identified the entities on whose behalf the request is being made. He said that the Commission has always required this information before taking official action on advisory opinions. In addition, the Legal Director said that the Commission had received a number of similar advisory opinion requests in the past. He said that this type of request has become more and more frequent and complex. Moreover, said Legal Director Nagy, it has been the Commission's experience that the Attorney General, who has jurisdiction over matters involving prohibited contributor questions, has been unable to respond quickly. Legal Director Nagy suggested that it might be time for the Commission to consider advising persons or entities who make requests for this category of advisory opinion that the Commission has no jurisdiction in these matters and that they might consider declaratory judgment proceedings.

Chairman McNany queried whether the Commission could meet with the Attorney General to discuss this situation.

Counsel Farrell said that this would be a good idea because the Attorney General's answers to these questions have tended to be extremely detailed. Counsel Farrell suggested that if the Commission had jurisdiction over prohibited contributions it would not offer similar opinions. Counsel Farrell said that a meeting with the new Attorney General, Robert Del Tufo, would be useful in that it would provide the Commission with the opportunity to establish a framework for the Attorney General to work from in responding to these advisory opinions. Counsel Farrell said that he would want to participate in the meeting. Executive Director Herrmann said he would set it up.

Commissioner Bedford suggested that, in the meantime, staff obtain the identity of Mr. Schneider's clients so that the Commission could respond in some way to the advisory opinion request. He suggested that staff obtain this information by the next meeting.

Chairman McNany agreed that staff should obtain the additional information required in order for the Commission to provide guidance on the advisory opinion request from Mr. Schneider. Chairman McNany said that once the information is obtained, the Commission could express an unofficial opinion on the request based on the Attorney General's previous opinions.

Commissioner Linett said that he did not believe that the Commission ought to express any opinion, official or unofficial, because it did not have jurisdiction in these matters.

On a motion by Commissioner Linett, seconded by Chairman McNany and passed by a vote of 4-0, the Commission directed Executive Director Herrmann to arrange for a meeting with the Attorney General. It also directed staff to obtain the information required to respond to the advisory opinion request.

Public Financing Audit

Legal Director Nagy reported to the Commission that the public financing audit process was proceeding in a timely fashion. He said that the Audit Bid Evaluation Committee had submitted its written recommendation to the Division of Purchase and Property in the Department of the Treasury.

Legal Director Nagy, at this juncture, praised former public financing staff members, Brett Mead and Kap Chul Sin, for their outstanding job performance and their dedicated service to the Commission. Funding for their positions as Public Financing Analysts ended on June 30, 1990, and Legal Director Nagy said that they had worked enthusiastically and diligently through the last day of their employment.

6. 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 June 13, 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;
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; and,
4. Specific results of the Audit Review Committee, which will become public when the successful bid is announced by the Division of Purchase and Property.

6. Adjournment

On a motion by Commissioner Bedford, seconded by Commissioner Mayo and passed by a vote of 4-0 the Commission voted to adjourn at 12:01 p.m.

Respectfully submitted,



FREDERICK M. HERRMANN, PH.D.

FMH/jah