



State of New Jersey

ELECTION LAW ENFORCEMENT COMMISSION

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PUBLIC SESSION MINUTES

April 18, 2001

All of the Commissioners, Counsel Wyse, Senior Staff, and Deputy Legal Director Nedda Gold Massar were present.

1. Open Public Meetings Statement

Chair Martin called the meeting to order and announced that pursuant to the "Open Public Meetings Act," N.J.S.A. 10:4-6 *et seq.*, adequate 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 10:00 a.m. in Trenton, New Jersey.

2. Approval of Public Session Minutes of April 4, 2001

On a motion by Vice Chair Franzese, seconded by Commissioner Ware and passed by a vote of 4-0, the Commission approved the Public Session Minutes of April 4, 2001.

3. Executive Director's Report

A. Commissioner News

Executive Director Herrmann reminded the Commissioners that Ethics Forms are due on May 15. He said that one copy goes to the Executive Commission on Ethical Standards and one copy to the Governor's Chief Counsel. The Executive Director said that both copies must be notarized with an original signature.

Executive Director Herrmann reported that former ELEC Commissioner Michael Chertoff has been nominated by President Bush to become the head of the Justice Department's Criminal Division.

B. Staff Activities

Executive Director Herrmann introduced Tamika Kinsey, a new staff person who is working as a Data Entry Operator for the Public Financing Program. He noted that White Paper #14 on Local Campaign Financing received a big write-up in the February-March Edition of New Jersey Reporter Magazine.

Executive Director Herrmann reported that the Compliance and Investigation Section is doing three training sessions for the spring elections on April 4, April 26, and May 4. The Executive Director mentioned that the Section is planning to videotape a session for use by candidates and treasurers who can't attend and wish to view the session in ELEC's public room, with a group in their communities, or even at home. He added that ELEC is one of the national pioneers in videotaping such sessions.

Executive Director Herrmann informed the Commission that on February 28, 2001, staff released computerized data on lobbying expenditures for 2000. He noted that Director of Compliance and Information, Evelyn Ford, Director of Systems Administration Carol Neiman, and Assistant Compliance Officer Titus Kamal did an excellent job in preparing these materials for release.

Executive Director Herrmann reported that on March 8, 2001, Deputy Director Brindle, Deputy Legal Director Massar, and he attended a talk by syndicated columnist David Broder at the Eagleton Institute. Executive Director Herrmann said that Mr. Broder discussed politics, elections, and campaign finance matters.

Executive Director Herrmann stated that on March 11, 2001, he attended the Annual Editorial Board Meeting of Public Integrity. He said that the meeting was held as part of the American Society for Public Administration (ASPA) Conference in Newark on the Rutgers University Campus. According to the Executive Director, the Editor-in-Chief and he welcomed the following new board members from the Council on Governmental Ethics Laws (COGEL).

- Professor Ruth Jones, a political scientist from Arizona State University and a member of the Arizona Clean Elections Committee;
- Professor David Schultz, a Public Administration Scholar from Hamline University in Minnesota and a former Member of Common Cause;
- Mark Davies, the Executive Director of the New York City Conflict of Interests Board and a Member of the COGEL Steering Committee; and
- Barbara Smith, the Counsel of the New York State Ethics Committee and a member of the Editorial Board of the Government and Law Policy Journal.

At the meeting, Executive Director Herrmann suggested that the COGEL and other sponsor's web sites be used to publish calls for papers. The Executive Director informed the Commission that he was also pleased to hear that there was a large demand for copies of the Campaign Finance Symposium that he edited and to which Deputy Director Brindle contributed an article. He said that it was announced that a transition would be occurring from Westview Press as the Journal's Publisher. The Executive Director noted that M.E. Sharpe is seriously considering whether or not to take over. He stated that its Executive Editor told the Board that his company is very pleased with Public Integrity's quality and would be making a decision within about a month. According to Executive Director Herrmann, M.E. Sharpe has much more experience in the journal publishing field than Westview since they publish 35 journals to Westview's three. He indicated that Westview felt that for business reasons it could not continue to publish Public Integrity. Executive Director Herrmann said that the Westview representative at the meeting specifically cited his company's lack of resources and expertise.

C. Legislative Developments

Executive Director Herrmann reported that on February 26, 2001, he testified in front of the Senate Budget and Appropriations Committee on S-2083 (Gormley), which increases the operating budget on ELEC from \$3 million to \$6 million. The Executive Director advised the Commission that it was released by a unanimous vote. He added that on March 8, 2001, Assemblyman Russo introduced A-3276, which is identical to the Gormley bill. According to Executive Director Herrmann, it was referred to the Assembly State Government Committee. Executive Director Herrmann stated that enactment of the legislation would greatly improve ELEC's ability to administer the Act at the local level. He said that ELEC could create a local contributor data base, give a greater level of review to local reports, and provide desperately needed educational outreach assistance to candidates and treasurers at the local level who are struggling to comply with a complex law.

Executive Director Herrmann noted that in the April 2001 Issue of New Jersey Lawyer, Senate Majority Leader John Bennett, in an article updating legislative activity regarding election laws, strongly supports this legislation stating "clearly, ELEC's annual budget of \$3M is simply not enough to do the job properly." He said that in another piece in the magazine, veteran election lawyer and scholar, Donald Scarinci, calls as well for better funding of the Commission.

D. Future Meeting Schedule

May 23, 2001 at 11:00 a.m. in Trenton;
June 20, 2001 at 11:00 a.m. in Trenton; and
July 18, 2001 at 11:00 a.m. in Trenton.

4. Advisory Opinion Request No. 02-2001

This request for an Advisory Opinion was received on April 4, 2001, from McGreevey for Governor 2001, Inc. (MFG2001), represented by Paul P. Josephson, Esq., Treasurer and General Counsel. Mr. Josephson has asked several questions concerning whether or not Candidate McGreevey may make expenditures for 2001 general election fundraising activities prior to the day after the 2001 primary election. The advisory opinion concerns questions regarding permissible general election fundraising activity before the date of the primary election. In addition, MFG2001 has received "unsolicited inquiries" from persons who wish to make contributions to its 2001 general election account.

The Chair recognized Mr. Josephson.

Mr. Josephson said that because there is no serious opponent in the primary, the McGreevey campaign is looking ahead to the general election. Mr. Josephson said that the McGreevey Campaign is planning an event for the month of June. He said that the campaign is not interested in spending general election money but will have to enter into contractual agreements to reserve rooms and for entertainment, etc. He acknowledged that the law considers obligations as expenditures for the purpose of reporting. Mr. Josephson said that the McGreevey Campaign desires to comply with the law and therefore seeks guidance as to how to proceed.

Mr. Josephson noted that the statute permits administrative spending. He suggested that staff expenses for planning, etc., which would be reimbursed by general election funds are in the nature of administrative spending. Mr. Josephson mentioned also the possibility of the June primary being changed, which makes it all the more important for planning purposes to be allowed to spend minimal amounts prior to the primary election.

Chair Martin said that if the primary is changed, the fundraiser might have to be held in July.

Mr. Josephson said that currently the McGreevey Campaign is proceeding as if the primary will be held on June 5th.

In a memorandum circulated to the Commission, staff noted that Mr. Josephson described two scenarios which would result in expenditures made by MFG2001 before the day after 2001 primary election for general election fundraising activity: (1) expenditures related to unsolicited 2001 general election contributions; and (2) expenditures related to contributions received as a result of an event or solicitation by MFG2001 for general election contributions. Mr. Josephson asked whether or not MFG2001 may make such expenditures for 2001 general election fundraising activities prior to the primary election and has further asked how such expenditures, if permissible, are required to be reported. He has specifically stated that none of the contemplated activities discussed in the Advisory Opinion Request has been undertaken by MFG2001.

Mr. Josephson's questions are summarized as follows:

- (1) May MFG2001 pay for administrative and compliance costs associated with receipt of unsolicited 2001 general election contributions received prior to the day after the 2001 primary election with 2001 primary election funds, and how should these expenditures be reported?
- (2) May MFG2001 make expenditures prior to the day after the 2001 primary election from primary or general election funds to solicit 2001 general election contributions?
- (3) May MFG2001 engage in "limited planning activities" for 2001 general election fundraising activity, including spending staff time on event planning, entering into contracts, and making expenditures from 2001 primary or general election funds for deposits for facilities, food, and entertainment, prior to the day after the 2001 primary election?

Staff recommended that, pursuant to N.J.A.C. 19:25-16.15(e) and (f), that the administrative and compliance costs associated with receipt of unsolicited 2001 general election contributions prior to the primary election are ordinary office expenses that must be paid with 2001 primary election funds and must later be reimbursed with general election funds. N.J.A.C. 19:25-16.15(f) lists salaries and equipment rental among the strictly limited expenditures that are reimbursable with general election funds, and staff believes that these are the "attendant salary and overhead costs" contemplated by Mr. Josephson.

Commissioner Lederman said that in terms of the staff recommendations, the McGreevey Campaign could engage in planning but not in contractual agreements.

Deputy Legal Director Massar answered in the affirmative, stating that the regulations and statute prohibit obligations for the general election to be made prior to the day after the primary election.

On a motion by Vice Chair Franzese, seconded by Commissioner Ware and passed by a vote of 4-0, the Commission directed staff to issue a response to the advisory opinion request prohibiting general election expenditures before the day after the primary election, including entering contractual agreements, except for those expenditures associated with the administrative and compliance costs associated with the receipt of unsolicited 2001 general election contributions and staff time spent on 2001 general election event planning.

5. Advisory Opinion Request No. 03-2001

Herman T. Costello, Mayor of the City of Burlington, has asked the Commission for an Advisory Opinion concerning the use of his campaign funds to make and purchase a video history of the municipality. The request noted that a family member of the Mayor, his son, Mark del Costello, is undertaking the production of the video at the Mayor's request and will receive payment from Mayor Costello's campaign committee for that work.

The following information was also submitted pursuant to the request.

- (1) Mr. del Costello is Mayor Costello's son, and Mayor Costello has no legal or financial responsibility for him. Mr. del Costello lives independently of Mayor Costello, and is self-supporting.
- (2) Mayor Costello has no intention to seek reelection, and accordingly wishes to close his campaign account which has a balance of \$2,248.
- (3) The Art Institute of Philadelphia will be the recipient of Mayor Costello's campaign committee funds for production of the video. Among the individuals listed in Mayor Costello's letter as being recipients of payments from the Art Institute of Philadelphia is his son, Mr. del Costello.
- (4) The Mayor represents that he has no financial interest in any person or entity that is listed as a payee.
- (5) The video will become the property of the City of Burlington.

Staff recommended that the Commission find that the use of a municipal officeholder's campaign funds to produce and purchase a historical video of the type described in this request is a permissible officeholding expense contemplated under N.J.S.A. 19:44A-11.2. It recommended further that the circumstance that a family member of the officeholder will be a recipient of those funds for services provided by that family member in connection with the production of the video does not prohibit the expenditure as personal use of those funds by that officeholder where that family member is financially independent of the officeholder, the officeholder has no legal or financial obligation for that family member's support, and the amount of payment for the provided services is reasonable and consistent with fair market value for those services.

On a motion by Commissioner Ware, seconded by Commissioner Lederman and passed by a vote of 4-0, the Commission approved the staff recommendation.

6. Procedures for Expedited Handling of Petitions Seeking Emergent Relief

The Commission's rules provide that a gubernatorial candidate in a primary or general election may seek emergent relief if that candidate has a basis to believe another gubernatorial candidate participating in public financing is exceeding the expenditure limit applicable to that candidate. Unlike all other alleged violations investigated by the Commission, a Verified Complaint by a gubernatorial candidate seeking such emergent relief must be adjudicated prior to the date of the election. In order to expedite the treatment of such a Verified Petition, staff recommended the following procedures for possible adoption:

- (1) Upon receipt of a Verified Petition which on its face does not conform with the requirements of either of the primary or general election expenditure limit complaint rules, the Executive Director of the Commission, or his or her designee, shall be authorized to find that the petition as submitted is deficient under the

applicable expenditure limit rule, and therefore the Verified Petition shall not be referred to the Commission for emergent hearing consideration. A statement of the reasons for the finding of deficiency shall be provided to the petitioner. The petitioner shall have the option to resubmit the Verified Complaint upon curing the deficiency.

- (2) In the event that the Verified Petition on its face conforms to the gubernatorial expenditure limit complaint rules, the Executive Director of the Commission, or his or her designee, shall be authorized to accept the Verified Petition and refer it expeditiously to the Commission for emergent hearing consideration.

A complete copy of the rules for handling petition seeking emergent relief can be obtained from the Commission.

On a motion by Vice Chair Franzese, seconded by Commissioner Lederman and passed by a vote of 4-0, the Commission adopted the proposed rules on emergent relief.

7. Advisory Opinion Request No. 04-2001

This request for an Advisory Opinion was received on April 16, 2001, from William W. Pascoe, III, Campaign Manager, on behalf of Bret Schundler, a 2001 primary election gubernatorial candidate. In the Advisory Opinion Request, Mr. Pascoe asked whether or not the Schundler gubernatorial candidate committee may accept contributions by means of the Internet and whether or not those contributions will qualify for match with public funds. Mr. Pascoe, indicated in the request that Candidate Schundler “does not plan to seek public funds for the primary election.” He also stated that none of the activities described in the Advisory Opinion Request has been undertaken by the candidate committee.

It was also noted that on April 12, 2001, Candidate Schundler submitted documentation to establish his qualification to participate in the 2001 primary election Republican gubernatorial candidates’ debates and to qualify to apply for primary election matching funds at a later date, but he has not applied, as of this date, to receive 2001 primary election public matching funds.

Staff recommended that Candidate Schundler be advised that a candidate committee may accept contributions over the Internet and may submit those contributions for match with gubernatorial public matching funds provided that the requirements of the New Jersey Campaign Contributions and Expenditures Reporting Act and Commission regulations, for receipt and deposit of the contributions, and recordkeeping for the contributions and related expenditures are entirely observed.

These requirements include:

- (1) Establishment of a separate depository account and deposit of each contribution directly into the separate account within ten days of receipt,
- (2) That a New Jersey candidate's funds may not be commingled at any time with funds of any other candidate or committee,
- (3) That a merchant account for receipt of Internet contributions must be established as a candidate committee depository account,
- (4) That each contribution be identified on the contributor's credit card statement as a contribution to the candidate, and
- (5) That monies are deposited into bank authorized to do business in New Jersey.

With regard to contribution and expenditure reporting and recordkeeping, the following information must be retained:

- (1) The contribution date of receipt is the date on which the account owner authorizes the contribution,
- (2) The contribution amount is the full amount of the contribution authorized by the contributor and that amount shall not be reduced by any transaction fees,
- (3) Fees related to receipt of Internet contributions must be itemized and reported as expenditures,
- (4) The campaign must maintain a written record of each contribution, including the name of the account to which the contribution is charged,
- (5) Four-year record retention requirements must be adhered to, and
- (6) Documentation of deposit of all contributions must be maintained.

In addition, candidates and treasurers are responsible for compliance with the all requirements of the Campaign Reporting Act and Commission regulations.

With regard to contributions eligible for match with public funds, the following additional requirements are applicable:

- (1) The signature requirement must be adhered to for each contribution from an individual submitted for match,
- (2) A separate account for deposit of Internet contributions intended for match with public funds must be maintained, and

- (3) A record equivalent to a bank deposit slip, specifically identifying the contributor, must be maintained and provided to the Commission when an Internet contribution is submitted for match.

On a motion by Commissioner Ware, seconded by Commissioner Lederman and passed by a vote of 4-0, the Commission approved the advisory opinion response as proposed by staff.

8. Donald T. DiFrancesco 2001 Primary Election Matching Fund Submission #2

Submission #2

The public financing staff concluded its review of the second public matching fund submission filed by 2001 gubernatorial primary election candidate Donald T. DiFrancesco. On the basis of its review of the submission, public matching funds in the amount of \$1,339,370.00 will be deposited into the separate public funds account established through the Department of the Treasury.

Candidate DiFrancesco's March 26, 2001 second application for matching funds contained \$682,385.00 in net contributions submitted for match. With certification of Submission #2, he will have received 2001 primary election matching funds totaling \$2,015,470.00.

On April 2, 2001, Candidate DiFrancesco filed the Issue Advocacy Organization Report of Contributions and Expenditures (Form P-2) for Submission #2 to disclose contributions to and expenditures by "Solutions for a New Century, Inc.," an issue advocacy organization organized under Section 527 of the Internal Revenue Code. On the Form P-2, Candidate DiFrancesco reported that "Solutions for a New Century, Inc." made expenditures totaling \$12,217.40 during the period of time from February 18, 2001 through March 12, 2001, and received no contributions. The form was certified as correct by Candidate DiFrancesco.

Submission #3

Candidate DiFrancesco filed a third matching fund submission on April 2, 2001. Public financing staff will conduct complete review of Submission #3 prior to certification of matching funds to the campaign.

9. Annual Report

On a motion by Vice Chair Franzese, seconded by Commissioner Ware and passed by a vote of 4-0, the Commission approved publication of the 2000 Annual Report.

Commissioner Ware said that in light of the possible reform of the campaign financing laws at the federal level and its implications on soft money to parties, the Commission might want to revisit its recommendations with regard to decreasing the limits on contributions made to party entities.

10. Bret Schundler Documentation to Qualify to Debate

Deputy Legal Director Massar reported that Candidate Bret Schundler submitted documentation on April 12, 2001, to qualify to participate in the 2001 gubernatorial primary election debates and to preserve his right to apply on a later date to receive primary election matching funds. Ms. Massar indicated that the public financing staff is still reviewing the contribution items submitted by Candidate Schundler and advised the Commission that steps were being taken to resolve questions concerning contribution items.

On a motion by Vice Chair Franzese, seconded by Commissioner Lederman and passed by a vote of 4-0, the Commission gave the campaign of Candidate Schundler until 5:00 p.m. on April 26, 2001 to cure all unresolved issues. The Commission further stipulated that in the event all issues are not cured by that time, staff is authorized to poll the Commissioners in terms of providing further time to correct said problems.

11. Resolution to go into Executive Session

On a motion by Vice Chair Franzese, seconded by Commissioner Lederman and passed by a vote of 4-0, the Commission resolved to go into Executive Session to discuss the following matters which will become public as follows:

- A. Final Decision Recommendations in violation proceedings which will not become public. However, the Final Decisions resulting from those recommendations will become public no later than 35 days after mailing.
- B. 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 no later than 50 days after mailing.
- C. A report on written requests for investigations of possible violations, which report will not become public. However, any complaint which may be generated as a result of a request for an investigation will become public no later than 50 days after mailing.

12. Return to Public Session

On a motion by Vice Chair Franzese, seconded by Commissioner Ware and passed by a vote of 4-0, the Commission voted to return to Public Session.

13. Adjournment

On a motion by Commissioner Lederman, seconded by Vice Chair Franzese and passed by a vote of 4-0, the Commission voted to adjourn at 1:00 p.m.

Respectfully submitted,

Frederick M. Herrmann, Ph.D.
Executive Director

FMH/elz