



*State of New Jersey*

## **ELECTION LAW ENFORCEMENT COMMISSION**

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### PUBLIC SESSION MINUTES

September 18, 2002

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 11:00 a.m. in Trenton, New Jersey.

#### 2. Approval of Public Session Minutes of July 11, 2002

On a motion by Vice Chair Franzese, seconded by Commissioner Lederman and passed by a vote of 4-0, the Commission approved the Public Session Minutes of July 11, 2002.

#### 3. Executive Director's Report

##### A. Northeastern Regional Conference on Lobbying (NORCOL) Conference

Executive Director Herrmann reported that the meeting was held on August 9, 2002, in Mystic, Connecticut. He indicated that Deputy Legal Director Massar, Director of Systems Administration Neiman, and he represented the Commission. According to Executive Director Herrmann, Representative Christopher Shays of Connecticut was the keynote speaker. The Executive Director noted that he spoke about the Landmark Shays-Meehan Campaign Finance Reform Legislation, which was enacted as the Bipartisan Campaign Finance Reform Act, and the importance of ethical behavior in the public and private sectors.

Executive Director Herrmann said that a panel discussion about the regulation of municipal lobbying followed. He went on to say that the end of the program featured

regional updates by all of the attending agencies. The Executive Director reported that he presented the year in New Jersey and reviewed suggested legislative changes, the lobbying photograph initiative, enforcement activity, two advisory opinions dealing with the State House Commission and grassroots lobbying, and future computer projects. Executive Director Herrmann added that the turnout was excellent. He said that 28 persons represented 10 agencies from 8 states and the District of Columbia. According to Executive Director Herrmann, 37 lobbyists, 6 municipal officials, and 5 special guests from as far away as Chicago and Kentucky also attended. The Executive Director stated that the proceedings were again broadcast by Connecticut State television. He mentioned that next year's conference will be in Harrisburg, Pennsylvania. Executive Director Herrmann advised the Commission that after 2003, NORCOL is planning to recouple with the Council of State Governments (CSG) Eastern Regional Conference, which will save the hosting agency a large expense and boost attendance.

B. Computer

Executive Director Herrmann announced that ELEC's homepage received 153,776 hits in fiscal year 2002. He noted that lobbying information on the site has been upgraded and that individuals can now search for legislative agent names, addresses, telephone numbers, clients, and recent registrations and terminations.

C. Budget

Executive Director Herrmann reported that the fiscal year 2004 target from the Office of Management and Budget is \$2,777,000 dollars. He said that this figure represents a 10 percent cut in the Commission's budget from the current fiscal year. The Executive Director indicated that ELEC's major area of concern will remain its computer system because in the future, ELEC must receive increased funding just to maintain and upgrade its system to assure that it remains operational. Executive Director Herrmann added that more fiscal support is also needed for ongoing computer staff training. He said that staff will make this situation known to the Office of Management and Budget and the Governor's office in the fall.

D. Staff Activities

The Executive Director reported that regrettably the remaining public financing program staff departed on June 30, 2002. According to Executive Director Herrmann, Analyst Rashan Canturk and Data Entry Technician Tamika Kinsey both did excellent work and will be missed. He noted that Director of Public Financing Massar and her entire staff once again flawlessly administered the Commission's most visible and complicated program.

Executive Director Herrmann announced that the COGEL Campaign Financing and Lobbying Bibliography was approved for publication by the COGEL president and chair of the publications committee. He stated that the president said it is a "wonderful" publication and thought the cover designed by Administrative Assistant

Elbia Zeppetelli was “incredible.” The Executive Director mentioned that the bibliography will be prominently displayed at the COGEL conference in Ottawa the first week in October. He noted with regret that he will be the sole ELEC representative at the conference this year due to the state’s current fiscal condition.

Executive Director Herrmann inform the Commission that Deputy Legal Director Massar, Director of Compliance and Information Ford, and Director of System Administration Neiman will be attending the first New Jersey Digital Government Summit from October 31 to November 1, 2002. He added that Associate Director of Compliance and Information Linda White and Assistant Compliance Officer Nancy Fitzpatrick will staff the consulting session at the New Jersey League of Municipalities conference on November 21, 2002.

E. Legislative Developments

Executive Director Herrmann reported that the Senate State Government Committee has placed S-1525 (Coniglio) on its agenda for September 19, 2002. He advised the Commission that this bill bans legislative benefit passing by lobbyists. He noted that currently, four other states prohibit this sort of activity. Executive Director Herrmann said that it would seem appropriate for the Commission to support this legislation

F. Fall Meeting Schedule

- October 21, 2002, at 11:00 a.m. in Trenton;
- November 18, 2002, at 11:00 a.m. in Trenton; and,
- December 18, 2002, at 11:00 a.m. in Trenton.

4. Public Hearing Concerning Proposed Amendments to Commission Regulations on Copying Fees and Release of Documents

Legal Director Nagy explained that the proposed amendments to the regulations concerning copying fees and release of documents are intended to implement the new Open Public Records Act, and that they will be ripe for adoption at the October 21, 2002 meeting. A Court Reporter was present to record the public hearing. No persons offered testimony.

On a motion by Vice Chair Franzese, seconded by Commissioner Lederman and passed by a vote of 4-0, the Commission voted to close the public hearing.

5. Proposed Amendments to Commission Regulations and New Rule Concerning Reporting Requirements and Other Changes

Legal Director Nagy explained that this was a staff-initiated proposal to make “housekeeping” changes to the Commission’s regulations. He indicated that if approved by the Commission, the proposal would be filed with the Office of Administrative Law (OAL), and a public hearing will be scheduled for the November meeting. The Commission considered the following proposed regulatory changes that:

- Clarify the periods of time covered by the election-cycle reports; quarterly reports; reports of contributions in excess of \$400; 48-hour notices of contributions (Forms C-1 and C-3); and 48-hour notices of expenditures.
- Add a requirement that candidates and committees retain an exact copy of each report as that report has been filed with the Commission.
- Require that the check number be reported for each expenditure.
- Clarify that joint candidates committees may make unlimited contributions to candidate committees or joint candidates committees where the candidates are seeking the same elective office in the same political subdivision.
- Add a new rule to establish reporting requirements for expenditures made by means of a debit card owned by and issued in the name of the reporting entity.

On a motion by Vice Chair Franzese, seconded by Commissioner Lederman and passed by a vote of 4-0, the Commission approved the proposed amendments and new rule and directed staff to file the proposal with the OAL.

6. Summary of Testimony Received at Gubernatorial Public Financing Hearings

Deputy Legal Director Massar presented a memorandum that summarized the testimony received at the gubernatorial public financing hearings conducted on March 18 and April 18, 2002. In preparing the summary, staff reviewed the transcripts of the two hearings, the written testimony received from the persons who testified at the hearings, and the additional written comment submitted by one commenter who did not appear at the hearings. Staff also included suggested responses and information for the Commission's consideration. The comments and responses are as follows:

Mr. William Baroni, Esq., suggested that candidates be required, as a condition of receipt of public funds, to return immediately to the State amounts found by the Commission to have been spent in excess of the expenditure limit.

In response, staff noted that the Campaign Reporting Act and Commission regulations contained several provisions to address the potential violations discussed by Mr. Baroni. The regulations currently provide that the relief available in an action to enforce the gubernatorial expenditure limit is a finding that an expenditure must be counted toward a candidate's expenditure limit and/or a finding that a candidate must return public matching funds to the State. Commission regulations also provide for postelection proceedings for reimbursement if there has been a violation of the expenditure limit or if public funds have been impermissibly spent.

Ms. Ingrid Reed, Director, Eagleton New Jersey Project, discussed the importance of the mandatory gubernatorial debates to New Jersey voters as a means for getting information on gubernatorial campaigns and the difficulty in finding information about the debates in

newspapers. Ms. Reed suggested the efficacy of “modern marketing strategies in connection with the debates” and proposed using a small portion of public funds in the future to conduct an advertising campaign for the gubernatorial debates.

In response staff agreed that the Eagleton experience advertising the 2001 gubernatorial debates is most helpful and will contact Ms. Reed and others for detailed information. It further recommended that the Commission’s budget request in Fiscal Years 2005 and 2006 include a request for funds to pay for newspaper advertising of the gubernatorial debates.

Mr. William Schluter, 2002 gubernatorial candidate, raised two issues for the Commission’s consideration.

- That the qualification threshold (\$260,000 in 2001) for participation in gubernatorial public financing was too high and suggested that there might be other ways for candidates to demonstrate sufficient support to qualify for receipt of public funds. He suggested that a fair amount might be \$150,000; and,
- That use of the gubernatorial electronic filing system (GEFS) by a smaller campaign, such as his, was very difficult.

In response, staff stated that the contribution qualification threshold functions as a useful barometer of public support and serves the important function of determining whether or not a candidate is a viable gubernatorial candidate. Staff stated, however, that elimination of the expenditure qualification threshold would reduce governmental involvement in campaign spending decisions. Also, staff indicated that it appreciates that Mr. Schluter’s campaign had difficulty using the Commission’s electronic filing system, but continues to believe that it is an essential tool in processing the voluminous data filed by a publicly-financed candidate.

Mr. Harry Pozycki, Chairman, New Jersey Common Cause, and Dr. Craig Holman, Brennan Center, questioned whether or not public financing continues to provide “a level playing field” or insulates gubernatorial candidates from large contributions. He suggested an “overhaul of the public financing system” to address the following issues:

- Closing the “multiple entity loophole” that permits individuals to make contributions through “subsidiaries that they own or control”;
- Eliminating “non-profit fundraising”;
- Eliminating “national party interference” that upsets the gubernatorial level playing field;
- Prohibiting fundraising for political parties by gubernatorial candidates who have raised sufficient funds for the gubernatorial race;
- Reducing the impact of the independently wealthy candidate; and
- Increasing ELEC penalties to provide sufficient funds for enforcement.

He further recommended mandatory electronic filing for candidates who have reached a predetermined threshold amount.

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Dr. Holman, recommended that the Commission eliminate what he calls the “affiliated entity” loophole that permits individuals to make contributions through “subsidiaries that they own or control.”

In response to Mr. Pozycki and Dr. Holman, staff responded that the Act permits each individual to make a \$2,600 contribution to a gubernatorial candidate in an election and that Commission regulations currently prohibit all contributions from partnership entities. Further, if a contribution is received by means of a check drawn on a partnership account, it is deemed by the regulations to be the contribution of the partner or partners who signed the check or who signed the written instructions attributing the contribution. The result of these rules is that no partner is permitted to give more than the \$2,600 individual contribution limit to a gubernatorial candidate, regardless of whether or not the contribution was received by means of a personal check, a partnership check, or a combination of both. Staff believes the existing statutory limit on individual contributions effectively restricts the amount that may be contributed by any individual.

Dr. Holman stated that the effect of “non-profit committees” controlled by candidates is a “growing problem.” He proposed that this situation be corrected by requiring the contribution and expenditure activity of all “candidate-controlled committees” to be aggregated for the purpose of contribution and expenditure limits.

Staff believes that the Campaign Reporting Act and existing regulations address the problem described by Dr. Holman and would not permit this scenario to occur in a New Jersey gubernatorial race. All candidates are prohibited from participating directly or indirectly in a political committee or continuing political committee. And prior to applying to participate in the public financing program, if a political communication is made with the cooperation or consent of a gubernatorial candidate or in consultation with the candidate, the communication must be reported by the gubernatorial candidate as a campaign contribution. Finally, the regulations provide that when a publicly-financed gubernatorial candidate consents to, authorizes, or controls a communication referencing the candidate that is paid for by another entity, whether the entity is a for-profit or not-for-profit entity, the expenditure is deemed to be coordinated and counts against the gubernatorial contribution and expenditure limits.

Dr. Holman stated that “national (political) party interference” upsets the gubernatorial election level playing field. He proposed that, as a condition for receipts of public matching funds, a gubernatorial candidate “shall solicit and receive a binding contract” with the national political party committee agreeing not to “attempt to influence the outcome of the gubernatorial general election.”

Staff believes that any attempt to restrict independent expenditures by a national political party committee presents potential constitutional problems. Moreover, it is unfair to assume that a gubernatorial candidate can bind the spending decisions of his or her national committee.

Dr. Holman proposed that as a condition of receiving public funds, gubernatorial candidates be prohibited from soliciting funds for State and local party committees.

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Staff noted that McCain-Feingold provisions prohibiting solicitations of party funds by candidates are currently being challenged on constitutional grounds, and staff recommended that the Commission wait to review the outcome of the legal challenges to the Bipartisan Campaign Reform Act of 2002 before considering such restrictions for New Jersey gubernatorial candidates. Staff noted that it has historically been the role of New Jersey gubernatorial candidates, as titular heads of their parties, to assist county and local candidates in their fundraising.

Dr. Holman proposed to double the expenditure limit of the publicly-financed candidate when the non-participating candidate raises or spends 75% or more of the expenditure limit. He further proposed to double the expenditure limit for participating candidates who are “targeted by substantial independent expenditures,” that is, where independence expenditure committees spend more than 50% of the expenditure limit.

Staff believes that the addition of any provision to increase the expenditure limit or to make additional public matching funds available to a candidate would require legislative action.

Staff believes that it would be impractical to implement Dr. Holman’s recommendation to provide additional public funds to a participating candidate who is “targeted” by independent expenditure committees and that the remedy would most likely come too late to benefit the targeted candidate.

Dr. Holman proposed to increase ELEC penalties to “three times the amount of the violation” so that violations will not be seen as “a cost of doing business.”

Staff concurred with Dr. Holman’s position that gubernatorial penalties should be increased.

Dr. Holman praised the Commission’s electronic filing software and recommended that electronic filing be made mandatory.

In response, as discussed in response to Mr. Schluter’s comments, staff recommended that gubernatorial candidates be strongly encouraged to use the GEFS software to file public financing matching funds submissions and campaign reports.

Dr. Holman recommended that “local party soft money” be restricted in gubernatorial elections and that county and municipal political party committees be prohibited from making expenditures for gubernatorial candidates.

Staff noted that expenditures by New Jersey political party committees for publicly-financed gubernatorial candidates, as set forth below, are restricted by the existing provisions of the Campaign Reporting Act and Commission regulations, and staff therefore does not believe that any further regulation is necessary.

Ms. Sandra Matsen, President, League of Women Voters, recommended that general election gubernatorial candidates be required to participate in four debates, and that the debates be held one each week for the month before the election.

In response, staff stated that the Commission has recommended in its Annual Reports that gubernatorial candidates be required to participate in three debates as a condition of receipt of public matching funds.

Mr. Robert Smith, Vice President of Public Affairs, Comcast Cable, asked the Commission to consider the important role in the electoral process played by New Jersey's cable television operators and cable television programming.

In response, staff acknowledged the increasing importance of cable television as a source of New Jersey news programming.

Ms. Dena Mottola, Acting Director, New Jersey Public Interest Research Group, indicated her support for the recommendations offered by Mr. Pozycki and Dr. Holman.

Commissioner Lederman suggested that the Commission consider proposing that the qualifying threshold for gubernatorial candidates to participate in the gubernatorial public financing program be lowered. She suggested that different states be surveyed to determine if there are other ways of testing viability.

On a motion by Commissioner Tober, seconded by Commissioner Lederman and passed by a vote of 4-0, the Commission accepted the staff summary.

7. Resolution to go into Executive Session

On a motion by Commissioner Lederman, seconded by Commissioner Tober 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 not later than seven business days after mailing to the named respondents.
- 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 not later than seven business days after mailing to the named respondents.

8. Return to Public Session

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



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9. Adjournment

On a motion by Commissioner Tober, seconded by Commissioner Lederman 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

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