



*State of New Jersey*

## ELECTION LAW ENFORCEMENT COMMISSION

JERRY FITZGERALD ENGLISH  
Chair

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Vice Chair

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Commissioner

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Commissioner

Respond to:  
P.O. Box 185  
Trenton, New Jersey 08625-0185

(609) 292-8700 or Toll Free Within NJ 1-888-313-ELEC (3532)

Website: <http://www.elec.state.nj.us/>

FREDERICK M. HERRMANN, Ph.D.  
Executive Director

JEFFREY M. BRINDLE  
Deputy Director

NEDDA G. MASSAR  
Legal Director

EVELYN FORD  
Compliance Director

JAMES P. WYSE  
Counsel

### PUBLIC SESSION MINUTES

December 14, 2004

All of the Commissioners, Counsel Wyse, and Senior Staff were present.

#### 1. Open Public Meetings Statement

Chair English called the meeting to order, and Deputy Director Brindle 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.

#### 2. Approval of Public Session Minutes of November 16, 2004

On a motion by Vice Chair Tober, seconded by Commissioner Davis and passed by a vote of 4-0, the Commission approved the Public Session Minutes of November 16, 2004.

#### 3. Executive Director's Report

##### A. Conference on Governmental Ethics Laws (COGEL)

Executive Director Herrmann advised the Commission that this year's conference in San Francisco from December 5<sup>th</sup> through 8<sup>th</sup>, 2004, was attended by Chair English, Legal Director Massar, Director of Systems Administration Carol Neiman, and him. The Executive Director mentioned that former ELEC Legal Director Gregory Nagy also attended part of the conference. According to the Executive Director, he ran the "Kay Williams First Timers' Session" at the beginning of the conference and spoke about the conference in general, pointing out that COGEL is a professional organization for agencies and individuals. Executive Director Herrmann stated that its members' responsibilities included:

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- Governmental Ethics,
- Elections,
- Campaign Finance,
- Freedom of Information, and
- Lobby Law Regulation.

At this juncture, Chair English described her experience at the COGEL conference as very fruitful. She spoke of the high regard conferees have of the Commission and of Executive Director Herrmann.

Executive Director Herrmann said that as part of his "First Timers" session, he went over the conference agenda, highlighted the information to be found on the COGEL web site, discussed COGEL publications, and reviewed the governing structure of COGEL, concentrating on the role and responsibilities of the Steering Committee, which is the organization's 11-member governing body. Executive Director Herrmann informed the Commission that conference attendees heard presentations by five outstanding plenary session speakers:

- Michael Josephson, Founder and President of the Josephson Institute of Ethics;
- Jerry Brown, the Mayor of Oakland and the former Governor of California;
- Karamjit Singh, a Commissioner on the United Kingdom Electoral Commission;
- Arianna Huffington, a Nationally Syndicated Columnist and former candidate for Governor of California; and,
- Kim Campbell, the first woman to become Prime Minister of Canada.

The Executive Director noted that of great interest were the annual update sessions on campaign financing and lobbying, which review new legislation and litigation across the United States and Canada. He advised the Commission that he spoke at the campaign financing update session about the recent legislative initiatives in New Jersey, emphasizing the unique increase in ELEC's funding to administer the many changes in the law. He stated that an update session on advances in electronic filing was of great value and that a broad range of topical panels were attended as well. The Executive Director indicated that these panels included:

- Preelection enforcement issues,
- A look at the first election held under the Bipartisan Campaign Reporting Act (BCRA),
- Pay-to-play regulation of contractors and consultants,
- The Campaign Finance Model Law, and
- Campaign auditing techniques.

In addition, Executive Director Herrmann mentioned that the breakfast table topic discussions in small interactive groups that were of particular interest included:

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- Clean Elections,
- 527 Organizations,
- Investigations, and
- Public education and training.

According to Executive Director Herrmann, a large number of ELEC reports were placed in the publications and vendor display area including:

- The 2003 Annual Report,
- White Paper Number 17 “Legislative Election 2003: The Rise of Party-Oriented Campaigning,”
- “Road to the Future: Improving the Convenience and Usefulness of ELEC’s Internet Site,”
- “Lobbying in New Jersey 2004,”
- “The NORCOL Lobbying Guidebook – Third Edition,” and
- “The COGEL Campaign Financing and Lobbying Bibliography – Fifth Edition.”

The Executive Director added that three recent articles by him were available. These articles were:

- “Empowering Governmental Ethics Agencies” (Council of State Governments (CSG) Spectrum – 2004);
- “Sweeping Ethics Reform, New Jersey Style” (COGEL Guardian, 2004); and,
- “Ethical Leadership Lessons from the Boardroom and the Battlefield” (COGEL Guardian, 2003).

Executive Director Herrmann noted that he had the honor of introducing Dr. Herbert E. Alexander and presenting him with the 2004 COGEL Award during the COGEL Awards Banquet. He said that Dr. Alexander is the world’s foremost academic expert in campaign financing who had served as a consultant to the Commission on three different occasions.

The Executive Director reported that at the annual business meeting on the last day of the conference, it was announced that Legal Director Massar had been selected to the Steering Committee and that her selection is not only a great honor for her but also for the Commission. According to Executive Director Herrmann, Legal Director Massar is the first New Jersey member of the Steering Committee in over a decade and a half. He stated that ELEC has had three previous staff members serve on the Committee and that the Founding Father of COGEL, Frank P. Reiche, was the Commission’s first Chair. He added that there is no question that Legal Director Massar will continue this tradition of service and will make countless contributions of her own. Executive Director Herrmann mentioned that she has already been appointed as Chair of the Model Law Committee and a member of the International Fund Board. In addition, Executive Director Herrmann stated that Director of Systems Administration Carol Neiman further added to ELEC honors when she was chosen for the Technology Committee.

B. Staff Activities

Executive Director Herrmann announced that ELEC's new webmaster Maryanne Garcia recently designed and improved the "Employee Intranet Site," adding that it is filled with important information regularly needed by the staff. Information on the Intranet includes:

- Work calendars,
- Phone lists,
- Policies,
- Personnel information,
- Employee news,
- Links, and
- Emergency materials.

The Executive Director reported that on November 18, 2004, ELEC had a consulting table at the League of Municipalities Convention. He noted that the table gives the Commission an annual opportunity to have direct contact with local elected officials. Executive Director Herrmann informed the Commission that Associate Director of Compliance and Information Linda White and Assistant Compliance Officer Nancy Fitzpatrick staffed the table this year.

The Executive Director indicated that Director of Gubernatorial Public Financing Amy Davis and her staff have begun the training of gubernatorial campaigns for the upcoming primary. He said that a first session was held in the conference room on November 22, 2004, and a second one will be held on December 17, 2004. According to Executive Director Herrmann, staff discussed public financing procedures and regulations governing the qualification and submission process for receipt of gubernatorial matching funds and new regulations concerning campaign reporting and gubernatorial public financing. He mentioned that time was provided for questions and various materials were distributed. According to the Executive Director, the session featured introductory remarks by Legal Director Massar. Executive Director Herrmann informed the Commission that as part of the new laws enacted in 2004 (P.L. 2004, C. 22), the training of gubernatorial treasurers is mandatory and that staff has begun the process of mandatory treasurer training under that law for other treasurers as well. He advised the Commission that training sessions were held on December 8, and December 10, 2004, for treasurers of the Republican and Democratic State Committees and the four Legislative Leadership Committees, noting that four dates have been reserved in January and February to start the training of legislative candidate treasurers. The Executive Director added that by December of next year, training will also be available on the web site.

Executive Director Herrmann told the Commission that on November 23, 2004, he testified as an “expert witness” before the New Jersey Property Tax Convention Task Force at Rutgers University in New Brunswick. He stated that he answered questions about contribution limits and public financing in the context of electing convention delegates. Executive Director Herrmann indicated that over the past few months, he has also been providing the Task Force staff with additional background materials about the State’s campaign finance laws.

The Executive Director reported that on December 10, 2004, Compliance Director Ford appeared as a panelist at an Institute of Continuing Legal Education (ICLE) seminar in Trenton where she discussed the State’s lobbying laws and regulations with an emphasis on the recent changes and the Commission’s plans for implementing them.

C. Legislative Developments

Executive Director Herrmann informed the Commission that on December 6, 2004, Deputy Director Brindle testified before the Assembly State Government Committee in favor of A-3434 (Steele/Hackett) and S-27 (Codey/Karcher), which freeze contribution limits in 2004 for all committees except candidate committees. He said that S-27 had passed the Senate 36-0 on October 25, 2004; the bills were released unanimously by the Assembly State Government Committee; and, on December 13, 2004, S-27 passed the General Assembly by a vote of 77-1.

D. Winter Meeting Schedule

January 18, 2005, at 11:00 a.m. in Trenton;  
February 15, 2005, at 11:00 a.m. in Trenton; and,  
March 15, 2005, at 11:00 a.m. in Trenton.

4. 2005 Gubernatorial Public Financing Program Preparation

Legal Director Massar summarized steps taken by staff to prepare for the 2005 Public Financing Program, as well as procedures for certification by staff of matching funds to participating candidates. According to Legal Director Massar, a computer assistant and four public financing analysts, who are responsible for review of all public matching fund submission documents, have been hired and are being trained in public financing procedures, including the Gubernatorial Electronic Filing System (GEFS). She said that the first date for submitting a claim for 2005 primary election matching funds is January 4, 2005, adding that an existing public financing computer module has been reviewed and simulated submissions will be performed as part of training of new staff members.

Matching Fund Procedures

Legal Director Massar stated that when an initial submission for matching funds is received, staff must determine whether or not the candidate is qualified to receive public funds. A candidate is qualified if he or she has raised and spent \$300,000 in contributions subject to the contribution limit (\$3,000) and has agreed in writing to participate in two

gubernatorial primary election debates. Other criteria must be met as well, she said, including compliance with issue advocacy organization disclosure. During the submission review process, each contribution in each submission and its supporting documentation will be reviewed by staff for conformity with statutory and regulatory criteria. She said that staff anticipates that the detailed submission review process for initial submissions received from each campaign, which at first may be very large, will take a minimum of three weeks. She noted that the time required for staff to process a submission is also affected by the number of candidates making submissions received on each submission date. As campaigns become familiar with the complex public financing submission requirements, later submissions usually contain fewer errors and can be reviewed more quickly, she said. Legal Director Massar stated that once staff has completed its detailed examination of a submission and all data is entered into the computer and verified, a computer calculation is made to determine the exact amount of public funds to be certified to the candidate for the submission.

Finally, Legal Director Massar requested that the Commission specifically authorize staff to certify public fund amounts to the Department of Treasury for payment upon completion of its review of a submission in order to certify public matching fund amounts to candidates as quickly as possible and therefore to make public funds promptly available.

#### Gubernatorial Debates

Legal Director Massar continued her discussion by commenting on the debate process. She said that to qualify for receipt of public matching funds, each gubernatorial candidate must sign an agreement to participate in two debates. She said that no primary election debate is required to be held if only one candidate for the party nomination qualifies to participate in the debates. When debates are to be held, the Commission is responsible for selection of the gubernatorial debate sponsor, who must not be affiliated with any holder of or candidate for elective public office. She indicated that sponsors must agree not to endorse any candidate in the pending primary or general election until completion of the debate, and must demonstrate prior debate experience with candidates for Statewide office in New Jersey.

Following her discussion of the debate selection process, Legal Director Massar discussed compliance with expenditure rules and the adjudication of expenditure limit complaints.

Commissioner Burstein asked about the status of the Public Financing Program if both general election candidates decide not to take public funds.

Executive Director Herrmann stated that it has historically been the position of the Commission to wait until the conclusion of the gubernatorial election to evaluate the process. He said that following the period of evaluation, which includes public hearings, the Commission issues a report.

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Commissioner Burstein queried as to whether or not expenditure limits or public funds caps could be lifted for participating candidates competing against candidates who opt out of the program.

Legal Director Massar indicated that the Commission has recommended legislation to that effect in its Annual Reports.

Commissioner Burstein said that the amount of money provided by the program is adequate for enabling candidates to get out their message. He suggested that the purpose of the program was to level the playing field somewhat and that the introduction of wealthy candidates somewhat defeats the goals of the program.

Commissioner Burstein then asked whether or not the debate criterion, which requires sponsors to have prior experience at running debates, presents a problem by narrowing the field of potential debate sponsors.

Legal Director Massar indicated that because there have now been debates in four gubernatorial election cycles and experienced sponsors have partnered with organizations without debate experience, the pool of sponsor organizations with qualifying debate experience has therefore been expanded. She concluded that she believes there is not a problem finding sponsor organizations with debate experience.

Initiated by Chair English, the Commission discussed how to make the debate process strong, with particular attention paid to the issue of commercial sponsorship.

Chair English asked Commissioner Burstein to look into the subject of public financing to come up with recommendations for enhancing the program.

Chair English asked whether or not the Commission needs to adopt regulations regarding the possible Constitutional Convention on Property Taxes.

Executive Director Herrmann stated that it is not clear whether or not a convention will be held or what the financing scheme will be and that, therefore, there are no regulations that the Commission can undertake at this time. Further, an election of convention delegates might be covered by existing rules.

Chair English asked Commissioner Tober to be the point person on the Commission for the Property Tax Convention.

On a motion by Commissioner Davis, seconded by Commissioner Burstein and passed by a vote of 4-0, the Commission approved the staff report on the 2005 Gubernatorial Public Financing Program.

5. Code of Ethics

The Commission briefly discussed the Commission's Code of Ethics, in particular with regard to Commissioner membership in organizations that are open to the general public.

Chair English asked Deputy Director Brindle to clarify this issue with Rita Strmensky, executive director of the Executive Commission on Ethical Standards.

Commissioner Burstein asked if the subjective language in paragraph seven of the Code of Ethics, which creates a standard of "an impression or suspicion among the public," can be eliminated from the Code of Ethics. He said that similar language has been removed from the law profession's Rules of Professional Conduct (RPC) because it was found to be too subjective and difficult to administer.

Commissioner Davis said that he has no difficulty leaving this language in the Code of Ethics because during his years as a judge he always used this phrase as a moral anchor.

Commissioner Burstein stated that he understood Commissioner Davis' position, but noted he believes the more specific provisions of the Commission's Code of Ethics address the possible conflicts that may arise for a Commissioner. He expressed his discomfort when a decision is based upon an appearance or impression that conduct may be unethical.

Commissioner Davis stated that he saw the Commissioner's point with regard to the specific language in the Code of Ethics.

Again, the Executive Commission on Ethical Standards will be consulted.

Commissioner Burstein noted a typographical error in paragraph seven. The word "or" will be corrected to "of."

Chair English asked Commissioner Davis to think about issues involving the Code of Ethics.

6. Resolution to go into Executive Session

On a motion by Vice Chair Tober, seconded by Commissioner Burstein 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.



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- 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.

7. Return to Public Session

On a motion by Commissioner Davis, seconded by Commissioner Burstein and passed by a vote of 4-0, the Commission voted to return to Public Session.

8. Adjournment

On a motion by Commissioner Burstein, seconded by Vice Chair Tober 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