



State of New Jersey

ELECTION LAW ENFORCEMENT COMMISSION

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Compliance Director

JAMES P. WYSE
Counsel

PUBLIC SESSION MINUTES

APRIL 19, 2005

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

1. Open Public Meetings Statement

Chair English 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.

2. Approval of Public Session Minutes of March 15 and April 5, 2005

On a motion by Commissioner Burstein, seconded by Commissioner Davis and passed by a vote of 4-0, the Commission approved the Public Session Minutes of March 15 and April 5, 2005.

3. Executive Director's Report

A. Annual Ethics Form Reminder

Executive Director Herrmann mentioned that the annual Commissioner's ethics form needs to be filed with the Executive Commission on Ethical Standards (ECES) by May 16, 2005. He said that it must contain an original signature and notarization.

B. Staff Activities

Executive Director Herrmann announced that ELEC has hired a number of new staffers:

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- Gary Alpert, Director of Administration;
- Anita Vaingankar, Fiscal Assistant;
- Kiet Nyugen, Associate Software Engineer;
- Aydan Altan, Assistant Software Engineer;
- Susan Danley, Assistant Data Entry Technician; and,
- Michelle Hackett, Assistant Data Entry Technician.

He said that for years the Commission has been inadequately staffed in the Administration and Computer sections. The Executive Director noted that fortunately, recent additional funding has at last allowed ELEC to address this serious situation by hiring critically needed new staff.

Executive Director Herrmann reported that the Council on Governmental Ethics Laws (COGEL) Program Committee has asked him to chair the Breakfast Table Topics Program starting with the 2006 conference. He mentioned that this program consists of discussion groups held on the second morning of the conference. He said that the discussions have become a COGEL fixture.

The Executive Director advised the Commission that he will work with current Chair Bonnie Williams, the Executive Director of the Florida Ethics Commission, in preparation for taking over next year.

Executive Director Herrmann informed the Commission that on April 7, 2005, he participated as a panelist at the Atlantic Builders' Convention in Atlantic City for a session entitled "Hot Topics: The Latest on Pay-to-Play and Ethics Laws." He stated that the other panelists were:

- Assemblyman Bill Baroni,
- Paul Josephson of Hill Wallack, and
- Heather Taylor of New Jersey Common Cause.

Executive Director Herrmann recounted that in a roundtable setting, there was a broad ranging discussion of: Pay-to-Play, the New Clean Elections Pilot Project, and even the impact on governmental ethics of a fulltime Legislature.

C. Computer News

Executive Director Herrmann proudly announced that ELEC's new web site was officially launched at 5:00 p.m. on Friday, April 8, 2005. He indicated that Director of Systems Administration, Carol Neiman, and her staff, spent a long year in making the transition from the five-year old former site to this new state-of-the-art one. The Executive Director stated that they did an outstanding job, and that the enhanced web site will place ELEC at the national forefront in computerized disclosure.

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The Executive Director reported that on April 12, 2005, Director Neiman taught a class in Newark for the reporting staff of the Star-Ledger on the use of the new site. He said that ELEC's accomplishment was very well received and that staff is planning to hold a demonstration for the Commissioners at a future meeting.

D. 2004 Annual Report

Executive Director Herrmann introduced a draft of the 2004 Annual Report, stating that Deputy Director Brindle once again did an outstanding job as the Project Manager for the Report. Executive Director Herrmann added that Administrative Assistant Elbia Zeppetelli did a splendid job on graphics. He said that one highlight of this year's version is a new organizational chart which depicts the development of a new staff structure to better implement the administration of last year's sweeping Ethics Reform Package.

The Executive Director noted that to better cope with ELEC's new workload and greater staff resources, three new divisions have been created to supervise an expanded grouping of sections. He said that the three new divisions are:

- Operations under Deputy Director Brindle,
- Law under Legal Director Massar, and
- Compliance under Compliance Director Ford.

According to the Executive Director, the Operations Division consists of: the Administration Section, the Systems Administration Section, and a Research Unit. He said that the Law Division consists of: the Legal Section, the Review and Investigation Section, and the Public Financing Section. Finally, he mentioned that the new Compliance Division will consist of: a Campaign Financing Section and a Lobbying Section.

E. Budget and Staffing Update

Executive Director Herrmann reported that at this point the Commission's funding is in great shape for next year. He stated that Acting Governor Codey has proposed a \$5M Operating Budget for FY-2006 as well as \$1.5M for the Clean Elections Program. In addition, Acting Governor Codey has proposed \$1.025M for the Gubernatorial Public Financing Program, including \$600,000 for Administration and \$425,000 for the Ballot Statement Program. According to Executive Director Herrmann, the greatly increased Operating Budget provides needed funding for the Commission to implement last year's sweeping Ethics Reform Package. He mentioned that Commission staff worked closely with the Governor's Office in adequately addressing ELEC's needs for the coming year and that staff is currently working with Legislative staff in preparation for next month's budget hearings. The Executive Director added that work continues on finding additional space for the 36 new staff members that the Commission is authorized to hire. He said that it is anticipated that the new space on the 8th floor will be available around July 1, 2005.

F. Spring/Summer Meeting Schedule

- May 17, 2005 at 11:00 a.m. in Trenton;
- June 21, 2005 at 11:00 a.m. in Trenton; and,
- July 19, 2005 at 11:00 a.m. in Trenton.

4. Public Hearing Concerning Proposed New Rules and Amendments to Implement New Campaign Laws and the “Sunset” Process

A public hearing was conducted to elicit public comment on proposed new rules and amendments to Commission regulations to implement recently-enacted legislation affecting candidates and committees and to undertake the periodic “Sunset” review of Commission rules. The following changes were included in the proposal:

- Requiring every currency contribution, regardless of amount, to be reported;
- Requiring “professional campaign fund raisers” to register and file quarterly reports;
- Requiring political identification information on telephone calls featuring a recorded message;
- Prohibiting solicitation and making of campaign contributions on State property by gubernatorial and legislative candidates;
- Requiring that certain campaign and organizational treasurers receive training offered by the Commission;
- Expanding the 48-hour notice reporting requirement to cover expenditures;
- Requiring that certain gubernatorial and legislative candidates file reports using the Commission’s electronic filing software;
- Adjusting contribution limits to comport with recent legislation; and,
- Amending the credit card reporting requirement.

The proposal notice appeared in the New Jersey Register on March 7, 2005 (37 N.J.R. 754).

No individuals appeared to testify on the proposed Commission rules.

A court reporter was available to record the proceedings.

On a motion by Commissioner Davis, seconded by Commissioner Burstein and passed by a vote of 4-0, the Commission voted to close the public hearing.

5. 2005 Primary Election Matching Fund Submissions

Director of Public Financing Amy Davis reported to the Commission on matching fund submissions processed by the Public Financing staff since the last such report, dated March 7, 2005.

Candidate Paul DiGaetano

Submission #2

According to Director Davis, Candidate DiGaetano filed a second matching fund submission on March 8, 2005, and reported \$28,800.00 in net contributions submitted for match. Staff determined that the amount of \$27,050.00 in contributions was eligible for match and that \$54,100.00 were deposited into Candidate DiGaetano's public funds account through the Department of the Treasury.

Submission #3

Director Davis reported that Candidate DiGaetano filed a third matching fund submission on April 5, 2005, and reported \$45,755.00 in net contributions submitted for match. Staff determined that \$39,505.00 in contributions was eligible for match at the statutory two for one ratio of public to private dollars; and that, therefore, public funds in the amount of \$79,010.00 were deposited into Candidate DiGaetano's public funds account through the Department of the Treasury.

Candidate Robert Schroeder

Submission #1

Director Davis stated that Candidate Schroeder filed his first matching fund submission on March 8, 2005, containing \$597,656.05 in net contributions submitted for match. Candidate Schroeder filed a signed Statement of Agreement to participate in the 2005 primary election debates and a Candidate Certification of Non-Participation in Issue Advocacy Organizations. Staff review of documentation filed by Candidate Schroeder indicates that at least \$300,000 had been spent in the 2005 primary election.

Director Davis noted that staff determined that \$314,531.05 in contributions was eligible for match.

Submission #2

The Director reported that Candidate Schroeder filed a second submission on April 5, 2005, submitting \$96,085.00 for match. It was determined that the amount of \$93,910.00 in contributions was eligible for match and that \$187,820.00 was deposited into Candidate Schroeder's public funds account through the Department of the Treasury.

Submission #3

Candidate Schroeder also filed a third matching fund submission on April 12, 2005, submitting \$23,340.00 in net contributions for match. When the review is completed, staff will deposit the public matching funds and will report to the Commission on Submission #3.

Candidate Bret Schundler

According to Director Davis, Candidate Schundler filed a second matching fund submission on March 8, 2005, and reported \$93,201.00 in net contributions. Upon review, it was determined that the amount of \$83,489.00 in contributions was eligible for match at the statutory two for one ratio of public to private dollars. Therefore, public funds in the amount of \$166,978.00 were deposited into Candidate Schundler's public funds account.

Submission #4

Director Davis stated that Candidate Schundler filed a fourth matching fund submission on April 12, 2005, and reported \$124,956.63 in net contributions submitted for match. When review of the submission is completed, staff will deposit the public matching funds and will report to the Commission on Submission #4.

Candidate Steve Lonigan

Submission #1

The Director explained that Candidate Lonigan filed his first matching fund submission on March 22, 2005, which contained \$313,245.54 in net contributions submitted for match. She indicated that Candidate Lonigan filed a signed Statement of Agreement to participate in the 2005 primary election debates and a Candidate Certification of Non-Participation in Issue Advocacy Organizations. Director Davis noted that Candidate Lonigan provided expenditure threshold documentation after the date of his March 22, 2005, first submission.

Based upon the public policy of the public financing program, staff recommended that the Commission find that Candidate Lonigan has met the expenditure qualification threshold for the 2005 primary election and that a delay in providing copies of expenditure threshold documentation should not preclude the Lonigan campaign from qualification to receive public matching funds.

After completing its review of Submission #1, staff determined that Candidate Lonigan did not qualify to receive public funds for this submission because the amount of contributions eligible for match totaled \$238,487.81, an amount less than the \$300,000 qualification threshold. Staff informed the campaign that it could cure and resubmit rejected contribution items and submit any additional contributions by April 11, 2005.

Submission #2

Director Davis said that Candidate Lonigan filed a second matching fund submission on April 5, 2005, and reported \$37,625.00 in net contributions submitted for match. Upon review, it was determined that the amount of \$26,668.50 in contributions was eligible to count toward Candidate Lonigan's qualification threshold of \$300,000. Because Candidate Lonigan was still not eligible to receive public funds, staff informed the campaign that it may cure and resubmit rejected contributions and submit any additional contributions for match by April 11, 2005.

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Submission #3

On April 11, 2005, Candidate Lonegan filed a third matching fund submission, and submitted \$103,491.63 in net contributions submitted for match. When review of the contributions is completed, and if it is determined that submissions one, two and three contain a total amount of \$300,000 in contributions eligible for match, staff will certify the public fund total to the Department of Treasury and deposit the public funds. Staff will report to the Commission on Submission #3 at the next Commission meeting.

Candidate John Murphy

Submission #4

Director Davis recounted that Candidate Murphy filed a fourth matching fund submission on April 5, 2005, submitting \$48,824.56 in net contributions for match. Staff determined that the amount of \$44,084.56 was eligible for match and, therefore, public funds in the amount of \$88,169.12 were deposited into Candidate Murphy's public funds account.

Candidate Todd Caliguire

Submission #1

According to the Director, Candidate Caliguire filed his first matching fund submission on April 11, 2005, containing \$329,625.00 in net contributions. Candidate Caliguire filed a signed Statement of Agreement to participate in the 2005 primary election debates and a Candidate Certification of Non-Participation in Issue Advocacy Organizations.

Based upon the public policy of the public financing program, staff recommended that the Commission find that Candidate Caliguire has met the expenditure qualification threshold for the 2005 primary election and that a delay of two days in providing a copy of the amended contract should not preclude the Caliguire campaign from qualification to receive public matching funds.

Director Davis noted that the candidate's April 11, 2005 submission facially contained contributions totaling \$329,625.00, an amount in excess of the \$300,000 qualification threshold. To advance the public policy of the gubernatorial public financing program to assist candidates of limited means, staff recommended that the Commission not preclude Candidate Caliguire from qualification to receive public matching funds or from participating in the debates provided all documentation is submitted on or before April 22, 2005. Staff notes the April 22, 2005 deadline is necessary to allow adequate time for staff to determine whether or not a candidate is qualified to participate in the debates.

Commissioner Burstein stated that he believed staff acted within its administrative authority in taking the steps to process the submissions submitted by Candidate Lonegan.

On a motion by Vice Chair Tober, seconded by Commissioner Davis and passed by a vote of 4-0, the Commission voted to accept the staff report as to Candidates DiGaetano, Murphy, Schroeder, and Schundler.

On a motion by Commissioner Burstein, seconded by Commissioner Davis and passed by a vote of 4-0, the Commission approved the staff recommendation as to Candidate Caliguire and established April 22, 2005, as the deadline for Candidate Caliguire to submit information to qualify for the 2005 primary election matching funds program.

6. Gubernatorial Public Financing Percentage Certification Process

Legal Director Massar described the public financing percentage certification process. As part of the discussion, she sought approval of guidelines for application of the process to qualified 2005 gubernatorial primary election candidates.

According to the Legal Director, the pre-review automatic percentage certification process has been successfully used in prior gubernatorial elections since 1985, to permit the Commission to provide public matching funds to a gubernatorial candidate within two to three days after filing a matching fund submission if the candidate has demonstrated a proven "track record" with a consistently low submission error rate.

She said that until this point in the 2005 primary election matching fund program, no public funds have been distributed to a candidate until staff has examined all contribution items in a submission. Legal Director Massar said that under the proposed percentage certification process, payment of a pre-approved fixed percentage of public funds is made to a qualified candidate before staff has concluded detailed examination of all contribution items contained in the submission. She indicated that historically, the Commission has approved the percentage certification process in past elections based upon the belief that it is reasonable to distribute a portion of public matching funds to a candidate, if the candidate's past submissions have demonstrated a low error rate.

Legal Director Massar noted that under the percentage certification process, after staff has completed its review of the submission, and the exact total of public funds to be certified is determined, the amount paid on the percentage basis is subtracted from the amount actually owing to the campaign. She said that the net balance is then certified for distribution to the publicly-financed candidate.

Staff summarized the following automatic percentage certification procedures, similar to those adopted in the 2001 primary election, and recommended their use for the 2005 primary election.

1. The automatic percentage certification process will not be applied to a candidate's first submission, regardless of its date of receipt.
2. It is preferable to conduct complete review of a submission prior to distribution of public funds. An automatic certification percentage should therefore be used for submissions received on May 3, 10, and 17, 2005, only if staff finds that it is unable to conduct complete submission review within two weeks because several large matching fund submissions have been filed on the same submission date. If necessary, an automatic percentage certification of 75 percent will be applied to submissions received on May 3, 10, and 17 if the campaign's error rate

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consistently below 20 percent. If any campaign has an error rate which remains between 20 percent and 25 percent, its automatic certification should be set at 65 percent. Campaigns with error rates higher than 25 percent should be separately evaluated and training sessions suggested to the campaigns.

3. If staff is unable to conduct complete review of submissions received on May 24 and 31, 2005, within one week, the automatic certification process described above should be applied.

On a motion by Commissioner Davis, seconded by Commissioner Burstein and passed by a vote of 4-0, the Commission approved the automatic percentage certification procedures presented by staff for the 2005 primary election.

7. 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.
- 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.
- C. A report on requests from the public for investigations of possible violations, which report will not become public in order to protect the identity of informants and maintain the integrity of investigative procedures and priorities. However, any complaint alleging violations, which complaint may be generated as a result of a request for investigation, will become public not later than seven business days after mailing to the named respondents.

8. Return to Public Session

On a motion by Commissioner Burstein, seconded by Commissioner Davis 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 Davis, 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