



*State of New Jersey*

## ELECTION LAW ENFORCEMENT COMMISSION

JERRY FITZGERALD ENGLISH  
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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

June 21, 2005

Chair English, Vice Chair Tober, Commissioner Burstein, Counsel Wyse, and Senior Staff were present. Commissioner Davis was absent.

#### 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 May 17, 2005

On a motion by Commissioner Burstein, seconded by Vice Chair Tober and passed by a vote of 3-0, the Commission approved the Public Session Minutes of May 17, 2005.

#### 3. Executive Director's Report

##### A. Commissioner News

Executive Director Herrmann congratulated Chair English and Commissioner Davis on their renominations by Acting Governor Richard J. Codey.

##### B. Staff Activities

The Executive Director announced that on May 13, 2005, he met with Representative Greg Vitali of the Pennsylvania State Legislature. He indicated that Representative Vitali is the sponsor of a gubernatorial public financing bill and met with him to discuss this year's primary gubernatorial election and its funding as well as the Clean Elections Pilot Project. Executive Director Herrmann noted that both Deputy Director Brindle and he have testified in the past before the Pennsylvania Legislature

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on New Jersey's Gubernatorial Program. The Executive Director stated that Representative Vitali was also very interested in last year's 25-Bill Ethics Reform Package and was very impressed by the additional funding ELEC received to administer and enforce it.

According to the Executive Director, on May 19, 2005, he attended the Assembly Budget Committee Hearing on the Department of Law and Public Safety. He said that there was no discussion of ELEC issues and that the Commission's full funding for FY-2006 remains on track.

Executive Director Herrmann reported that on May 20, 2005, Legal Director Massar was on a New Jersey Institute for Continuing Legal Education (ICLE) panel at the Bar Association's annual meeting in Atlantic City. He mentioned that she discussed the new campaign financing and lobbying laws enacted in 2004 as part of the reform package. The Executive Director indicated that the panel was entitled "Reforms, Referenda and Recounts: New Jersey Election Law."

Executive Director Herrmann advised the Commission that on May 23, 2005, he taught a seminar on "Campaign Finance and Legislative Ethics" to a group of students participating in the College Leadership New Jersey Program. He said that he went over ELEC's responsibilities and led a discussion about "Why Governmental Ethics Matter." The Executive Director noted that among the points made were:

- Public officials are role models for behavior;
- Corruption costs money and undermines public policy;
- The negative effect unethical activities have on the reputation of government;
- A lack of citizen trust in government is erosive to democracy; and,
- The hurtful consequences to a dishonest official's family, friends, and colleagues.

Executive Director Herrmann informed the Commission that on June 13, 2005, two new staff members joined the Commission. They are:

- Assistant Legal Director Amanda Haines, and
- Assistant Legal Director Leonard Gicas.

According to the Executive Director, on June 17, 2005, the eighth floor was vacated by two of the three agencies occupying it. He said that the third should be moving momentarily and that it should take about three weeks to get the floor prepared for ELEC staff to move in. The Executive Director stated that minor repairs, painting, and carpet cleaning will occur and that the Commission should be able to take over its new space after the July Fourth weekend. Executive Director Herrmann thanked Deputy Director Brindle and Director of Administration Gary Alpert for all of their hard work in facilitating this major operation.

Executive Director Herrmann mentioned that on June 17, 2005, Legal Director Massar and he attended the third meeting of the Clean Elections Commission. He noted that Ingrid Reed from the Eagleton Institute at Rutgers University briefed the Commission regarding the committee of academics who have formed to advise and assist the Commissioners. He also indicated that the Commission reviewed the primary election results in the six legislative districts that may host the program as well as ELEC's historical expenditure data for them. Executive Director Herrmann said that the Commission also asked him a number of questions about how the program will function.

C. COGEL News

Executive Director Herrmann reported that retired Professor Herbert E. Alexander called him on May 10, 2005, to thank him for his introductory remarks made before the presentation of the Council on Governmental Ethics Laws (COGEL) award to Dr. Alexander at the San Francisco conference last December. He said that the Professor is the "Dean" of campaign finance scholars and served on three occasions as a consultant to ELEC. The Executive Director advised the Commission that, sadly, Professor Alexander recently had a serious bicycling accident but is now recovering at home after a major operation. Executive Director Herrmann informed the Commission that Dr. Alexander extends his greetings to the Commission and is very pleased by the substantial, recent increase in ELEC's budget. According to Dr. Herrmann, the Professor had written about ethics agency underfunding in the past and was delighted that New Jersey was leading the way in overcoming this serious problem.

Executive Director Herrmann announced that on May 12, 2005, he participated in an international conference call of the COGEL Publications Committee. He said that he initiated the meeting to discuss two issues:

- The marketing of COGEL publications; and,
- The future of COGEL's relationship with Public Integrity.

Executive Director Herrmann advised the Commission that COGEL for years has had an excellent publications program including annual legislation and litigation updates and the bibliography. He suggested, however, that there has never been much of a marketing effort and that he proposed that COGEL explore contacting academic and state libraries to promote sales.

With regard to Public Integrity, Executive Director Herrmann said that the COGEL President had discussed with him and Legal Director Massar, who is a member of the Steering Committee, her concerns with the journal. According to the Executive Director, the COGEL President said that numerous members have commented to her that it is costing COGEL too much (about \$6,000 per year) for what the organization is getting in return and that most of the articles were too theoretical to be of much practical use to COGEL members. Based on these concerns, Dr. Herrmann had

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suggested to the COGEL President that he meet with other members of the Publications Committee to develop some recommendations for the Steering Committee pertaining to COGEL's future with Public Integrity.

According to Executive Director Herrmann, he proposed four areas that the Publications Committee could bring to the attention of the Steering Committee:

1. Balancing academic with pragmatic articles;
2. Restoring COGEL to the level of a co-sponsor from its current status as only a "supporting entity";
3. Rotating the site of the annual editorial board meeting among the conferences of the current sponsor the American Society of Public Administration (ASPA) and all of the other affiliated entities instead of always holding it at ASPA conference; and,
4. Obtaining free advertising space for COGEL publications and membership materials in the pages of the journal.

The Executive Director said that the committee voted unanimously to take his suggestions to the Steering Committee for further consideration.

Executive Director Herrmann reported that he was invited by Professor Ruth Jones of Arizona State University to serve on a panel about clean election laws at the COGEL Conference in Boston in December. He noted that there is great national interest in New Jersey's experiment this fall with the public financing of legislative elections.

#### D. Summer Meeting Schedule

- July 19, 2005 at 11:00 a.m. in Trenton;
- August 16, 2005 (if needed) at 11:00 a.m. in Trenton; and,
- September 20, 2005 at 11:00 a.m. in Trenton.

#### 4. Reproposal of Proposed Amendments and New Rules to Implement New Lobbying Laws

According to Legal Director Massar, extensive amendments to the Commission's lobbying regulations and new lobbying rules were proposed in the January 18, 2005 edition of the New Jersey Register to implement the new lobbying laws enacted during 2004. She said that the amendments and new rules were the subject of hearings conducted at the February 15<sup>th</sup> and March 15<sup>th</sup> Commission meetings at which many persons testified.

Director Massar stated that numerous written comments were also received on the proposed rules. Director Massar indicated that in a memorandum submitted for the May 17, 2005, Commission agenda, staff reviewed the testimony and comments and presented draft text of further amendments that were suggested to address issues raised by the commenters. At the May 17, 2005 meeting, the Commission directed staff to present regulations for consideration as a reproposal at the June Commission meeting.

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Director Massar noted that because the testimony and comments received have prompted staff to recommend substantive changes to the original rule proposal, staff recommended that the Commission authorize reproposal at the Office of Administrative Law (OAL) of the new rules and amendments, which appeared in the New Jersey Register on January 18, 2005, with the further changes in the following areas:

- Exclusion of routine, ministerial contacts with government from the expansive scope of communications subject to reporting as “governmental processes”;
- Exclusion from lobbying activity of volunteer participation, at the request of the State, in task forces;
- Use of an expert, accompanying a governmental affairs agent, in lobbying;
- Attorney lobbying concerning governmental processes;
- Exclusion of the details of trade secrets from disclosure;
- Examination of the “level” of an Executive Branch official as a test for whether or not a lobbying contact has occurred; and,
- Clarification of the term “general public,” as used in the context of communications with the general public, or “grassroots” lobbying.

The Commission determined not to amend the original proposal with regard to:

- Adequacy of the 20-hour threshold for lobbying registration contained in the definition of a “governmental affairs agent,” pursuant to N.J.A.C. 19:25-20.2; and,
- Exclusion of “rate setting” from the scope of “governmental processes.”

On a motion by Vice Chair Tober, seconded by Commissioner Burstein and passed by a vote of 3-0, the Commission approved reproposal of the lobbying new rules and amendments with the changes recommended by staff and directed staff to file the reproposal at the OAL.

5. 2005 Primary Election Matching Fund Submissions

Legal Director Massar summarized the matching fund submissions processed by the Public Financing staff since the last report to the Commission, dated May 16, 2005. Public matching funds totaling \$1,553,886.22 were deposited, as follows:

<u>Candidate</u>	<u>Public Funds Deposited</u>
Todd Caliguire	\$54,700.00
Paul DiGaetano	\$99,130.00
Steven Lonagan	\$175,290.14
John Murphy	\$159,230.34
Robert Schroeder	\$324,100.00
Bret Schundler	\$741,435.00

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According to Legal Director Massar to date, public matching funds totaling \$5,744,825.62 have been deposited for 2005 gubernatorial primary election candidates as follows:

<u>Candidate</u>	<u>Total Public Funds Deposited</u>
Todd Caliguire	\$488,110.00
Paul DiGaetano	\$720,540.00
Steven Lonegan	\$692,017.76
John Murphy	\$944,235.42
Robert Schroeder	\$1,220,442.10
Bret Schundler	\$1,679,480.34

Legal Director Massar, added that matching fund submissions were filed on June 7, 2005, by gubernatorial candidates John Murphy, Robert Schroeder, and Bret Schundler. Candidate Steven Lonegan filed a matching fund submission on June 14, 2005.

Legal Director Massar explained the staff recommendation that distribution of public matching funds for the submissions received on June 7<sup>th</sup> and June 14<sup>th</sup> not occur until staff has reviewed the candidates' 20-day postelection reports, due for filing on June 27, 2005. Unless a candidate reports that there is net debt remaining from the 2005 primary election that could be paid with public funds or that the campaign is eligible to make public fund reimbursements for non-public funds expenditures, pursuant to N.J.A.C. 19:25-16.25(e), no further public fund payments should be made to a candidate.

On a motion by Commissioner Burstein, seconded by Vice Chair Tober and passed by a vote of 3-0, the Commission approved the staff report on the distribution of public matching funds to 2005 primary election gubernatorial candidates.

6. Public Hearing Concerning Proposed New Rules to Implement the 2005 General Election Clean Elections Pilot Project

A public hearing was held at 11:15 a.m. on June 21, 2005, to elicit public comment on proposed new rules to implement the recently-enacted legislation creating a public financing pilot project for specific legislative districts in the 2005 general election.

Marilyn Carpintiero, representing New Jersey Citizen Action, and Mark Sheridan, esq., representing the New Jersey Republican State Committee, appeared to testify. A court reporter was in attendance to record the proceedings. A transcript will be made available to the public upon receipt.

On a motion by Commissioner Burstein, seconded by Vice Chair Tober and passed by a vote of 3-0, the Commission voted to close the public hearing.

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7. Resolution to go into Executive Session

On a motion by Vice Chair Tober, seconded by Commissioner Burstein and passed by a vote of 3-0, the Commission resolved to go into Executive Session to discuss anticipated litigation and 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. Adjournment

On a motion by Commissioner Burstein, seconded by Vice Chair Tober and passed by a vote of 3-0, the Commission voted to adjourn at 1:45 p.m.

Respectfully submitted,

Frederick M. Herrmann, Ph.D.  
Executive Director

FMH/elz