



State of New Jersey

ELECTION LAW ENFORCEMENT COMMISSION

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Counsel

PUBLIC SESSION MINUTES

March 21, 2006

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 10:00 a.m. in Trenton.

2. Approval of Public Session Minutes of February 21, 2006

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 February 21, 2006.

3. Executive Director's Report

A. Commissioner News

Executive Director Herrmann reported that former ELEC Vice Chair Paula A. Franzese has been named by Governor Jon S. Corzine to serve as Chair of the State Ethics Commission. According to the Executive Director, other new members are:

- Former Attorney General John Farmer,
- Former State Senator William E. Schluter, and
- Former President of the New Jersey State Bar Association Karol Corbin Walker.

Executive Director Herrmann informed the Commission that the due date for Personal Financial Disclosure Statements required by Executive Order No. 1 of 2006, has been moved up from May 17th to May 1st, 2006. He said that the statements

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should be filed with the State Ethics Commission and need to be notarized with an original signature.

B. National News

Executive Director Herrmann indicated that on February 28th, 2006, the United States Supreme Court heard oral arguments on the 1997 Vermont Law that set low contribution limits and established expenditure limits without public financing. He noted that court observers believe Vermont's spending limits would fail and possibly its low contribution limits. The Executive Director mentioned that questioning by Chief Justice John Roberts and Associate Justice Stephen Breyer challenged a direct link between campaign contributions and legislative voting and raised concerns about incumbency protection.

C. Staff Activities

Executive Director Herrmann reported that in late February, the Information Technology staff created a new look for ELEC's Homepage. According to the Executive Director, the new format is "cleaner" in appearance and easier to navigate.

Executive Director Herrmann said that during the second week in March, the installation of ELEC's new telephone system was completed. He advised the Commission that with its state-of-the-art technology, the public, filers, and the media will have even better access to Commission staff than in the past.

The Executive Director stated that staff offices on the 12th floor have been reorganized and that all of the Division Director offices are now together. Executive Director Herrmann noted that the Legal staff offices have also been consolidated and that the Senior Systems Administration staff have had their offices moved next to each other as well.

The Executive Director informed the Commission that on February 23rd, 2006, he taught a journalism class at Rutgers University for Professor Dan Weissman, during which he gave a general overview of New Jersey campaign finance law and ELEC's role in administering and enforcing it. The Executive Director said that he included in his remarks a description of the new Pay-to-Play laws and the Clean Elections Pilot Project and participated in a mock press conference.

Executive Director Herrmann reported that on February 28th, 2006, he lectured at Rutgers University for Professor John Glascock's New Jersey Politics Class. The Executive Director spoke about the New Jersey campaign finance regulatory system and highlighted the recent new laws enacted from 2004-2006, including pay-to-play and clean elections.

According to the Executive Director, on February 28th, 2006, Legal Director Nedda Massar and Director of Special Programs Amy Davis attended a meeting of the Clean Elections Commission at the State House. He mentioned that various citizen groups presented their views on the program's future.

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Executive Director Herrmann advised the Commission that on the weekend of March 3rd through 5th, 2006, Legal Director Massar, who is the President-Elect of the Council on Governmental Ethics Laws (COGEL), participated in an onsite meeting of the Programs Committee in New Orleans. He stated that extended planning was done for this December's conference and that due to the State's fiscal situation Legal Director Massar paid her own way.

Dr. Herrmann informed the Commission that on March 14th, 2006, Director of Special Programs Davis spoke at the Association of Environmental Authorities Conference in Atlantic City on the new pay-to-play laws. Executive Director Herrmann said that her staff will be regularly involved in such programs as part of ELEC's educational efforts in this area.

D. Spring Meeting Schedule

- April 18, 2006 (Gubernatorial Public Financing Hearing on other issues) at 10:00 a.m. in Trenton;
- May 16, 2006 at 11:00 a.m. in Trenton; and
- June 20, 2006 at 11:00 a.m. in Trenton.

4. Advisory Opinion Request No. 01-2006

Thaddaeus Diggs, Special Assistant to the Vice President of Government Affairs at the University of Medicine and Dentistry of New Jersey (UMDNJ), asked whether or not the UMDNJ is subject to the requirements of the Legislative and Governmental Process Activities Disclosure Act, which requires a lobbyist organization to file an annual financial report and a governmental affairs agent to file a quarterly activities report.

Staff recommended that Mr. Diggs be advised that the Commission views UMDNJ as an instrumentality of New Jersey State government, and that it is therefore exempt from the reporting requirements of the Lobbying Act pursuant to N.J.S.A. 52:13C-27 and N.J.A.C. 19:25-20.3. Staff further noted that as an instrumentality of State government, those lobbying on behalf of the UMDNJ are not required to file quarterly lobbying activity reports, and the UMDNJ is not required to file the annual lobbying financial report. Staff recommended that Mr. Diggs be advised that application of the advisory opinion response is limited to the UMDNJ, and that the Commission makes no determination regarding other organizations, hospitals, foundations, or ventures that may be associated or affiliated with UMDNJ since the status of these entities is not the subject matter of this Advisory Opinion.

Commissioner Burstein asked for a comparison with Rutgers University.

Legal Director Massar stated that Rutgers University is exempt from lobbying registration as well.

Commissioner Burstein, recognizing that the Commission is constrained by statute, nevertheless stated that he was concerned about public entities hiring outside lobbyists who

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otherwise would have to report but are not required to when representing the public entity. He said that he was not sure that because an entity gets money from the State that it should be exempted from the lobbying disclosure requirements. He suggested inclusion in the annual report of a recommendation that the Legislature study expansion of lobbying reporting to include government entities.

Chair English said that she was sure that staff will pay attention to this situation because she is certain the Commission will be confronted with it more and more in the future.

Vice Chair Tober clarified that private lobbyists, when representing public entities, do not have to file reports. He then asked whether or not any of these agencies on their own file with the Commission.

Legal Director Massar indicated that some do but that it is not required. She said that UMDNJ has sporadically reported. Legal Director Massar mentioned that UMDNJ is now asking for clarification on that point.

Chair English thanked Mr. Diggs, who was present at the meeting, for his request.

On a motion by Commissioner Davis, seconded by Commissioner Burstein and passed by a vote of 4-0, the Commission approved the staff recommendation and directed staff to issue Advisory Opinion No. 1-2006, and to include language concerning the voluntary filing of lobbying reports.

5. Adoption of Proposed New Rules to Implement Pay-to-Play Legislation

The Commission considered the adoption of proposed pay-to-play rules, which were published in the January 3, 2006 edition of the New Jersey Register at 38 N.J.R. 111(a).

At its November 15, 2005 meeting, the Commission approved proposal of new rules to implement “pay-to-play” ethics reform legislation signed by then-Governor James E. McGreevey on June 16, 2004. This legislation regulated contracts by business entities with State, Legislative, county, and municipal governments. In August, 2004, Governor McGreevey signed Executive Order 134, which imposed “pay-to-play” restrictions on Executive Branch contracts that were stronger than the restrictions in the June, 2004 legislation. The Executive Order became effective on October 15, 2004. On March 22, 2005, Acting Governor Richard Codey signed legislation that codified the provisions of Executive Order 134.

According to Legal Director Massar, the provisions of the law now applicable to Executive Branch contracts differ in significant respects from the provisions enacted in June, 2004, that are applicable to contracts with State agencies in the Legislative Branch, and with counties and municipalities and their agencies and instrumentalities. She said that the rules proposed by the Commission in the New Jersey Register therefore included two separate subchapters; one to deal with Executive Branch contracts, and the other to address contracts with State agencies in the Legislative Branch, counties, and municipalities.

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She further noted that the current proposal does not include rules to implement the additional “pay-to-play” disclosure provisions that were signed into law by Governor Codey on January 5, 2006.

Legal Director Massar stated that as indicated in its proposal, regulation of “pay-to-play” contributions is primarily a matter of government procurement law and not within the Commission’s jurisdiction. She said many of the new “pay-to-play” provisions concern the process before a government contract is awarded and involve contracting activities for which the Commission has no responsibility. She said that other provisions require that a business entity file certifications of contributions to a government entity so that the government entity can determine whether or not a conflict of interest exists to prevent the business entity from receiving the contract.

Legal Director Massar said therefore that the proposed rules provide that the Commission’s role under the “pay-to-play” laws begins once a business entity has been awarded a contract with a New Jersey government entity. She said that the rules clarify the limited scope of Commission responsibility for enforcement of the new “pay-to-play” laws.

Finally, Legal Director Massar noted that the Commission conducted a public hearing at its meeting on February 21, 2006, and testimony was offered by R. Garry Mundy, Esq., First Assistant Township Attorney, Township of Dover. She said that two additional written comments were received.

Legal Director Massar explained that staff recommends a technical change to the regulations upon adoption based upon the comments received. She said that the definitions of “contribution reportable by the recipient” in the regulations should be clarified by including the phrases “per election” and “per calendar year.” This change will make the pay-to-play regulations conform to the existing text of the rules and provide certainty for candidates and committees.

Director Massar acknowledged that the specific change was included in comments from Genova, Burns, and Vernoia. Chair English asked Gregory Nagy, representing Genova, Burns, and Vernoia, to comment on the technical change.

Mr. Nagy stated that he agreed with the change, stating that the change will make the pay-to-play regulations consistent with the text of the statute and regulations. He said that in particular the change will clear up any confusion on the part of contributing entities. He also commended the Commission for tackling this comprehensive and complex issue, indicating that staff did a tremendous job.

On a motion by Commissioner Burstein, seconded by Commissioner Davis and passed by a vote of 4-0, the Commission adopted the pay-to-play regulations with the technical change and directed staff to file the adoption with the OAL.

6. Resolution to go into Executive Session

On a motion by Commissioner Burstein, seconded by Vice Chair Tober and passed by a vote of 4-0, 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.

7. Hearing on Gubernatorial Public Financing Debates

Chair English announced that a public hearing was being conducted to elicit public comment concerning the New Jersey gubernatorial public financing program, specifically the gubernatorial candidates' debates. The hearing is being conducted as part of the Commission's review and analysis of the public financing program and is intended to obtain witnesses' recommendations for statutory and regulatory changes. Testimony was received from Matthew Thieke, Vice Chair of the Green Party of New Jersey.

The following persons were in attendance and responded to questions from the Commissioners:

- H. Patricia Tieman, Debate Manager, League of Women Voters of New Jersey Education Fund; and,
- Linda Munick, Director of Public Affairs, WPVI-TV.

Chair English noted for the record that a letter was being sent to Attorney General Zulima Farber regarding the New Jersey Network sponsorship of the 2005 general election gubernatorial public financing debates.

A Court Reporter was present to record the Public Session discussion. The transcript will be available for inspection to the public upon request.

On a motion by Vice Chair Tober, seconded by Commissioner Burstein and passed by a vote of 4-0, the Commission adjourned the public hearing.

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8. Adjournment

On a motion by Commissioner Davis, seconded by Commissioner Burstein 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