



State of New Jersey

ELECTION LAW ENFORCEMENT COMMISSION

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PUBLIC SESSION MINUTES

April 26, 2011

Chairman DeFilippis, Vice Chairman Timpone, Commissioner Saunders, Commissioner Weiss, Legal Counsel Wyse, Executive Director Jeffrey M. Brindle and senior staff were present. Director of Review and Investigation Shreve Marshall was also present. Report Review Officer Lovinsky Joseph was present for the purpose of recording the minutes.

The Public Session Minutes will be available online in the Commission's website at: <http://www.elec.state.nj.us>.

The meeting convened at 11:00 a.m. in Trenton.

1. Open Public Meetings Statement

Chairman DeFilippis 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. It was also posted on the Commission's website.

The Chairman welcomed new Commissioner Lawrence Weiss and praised his background and accomplishments.

2. Approval of Public Session Minutes of March 15, 2011

On a motion by Commissioner Saunders, seconded by Vice Chairman Timpone and passed by a vote of 3-0, the Commission approved the Public Session Minutes of February 15, 2011. Commissioner Weiss recused himself from this vote.

3. Executive Director's Report

A. Budget Hearings

Executive Director Brindle informed the Commissioners of his attendance with Director of Finance and Administration Steven Dodson at the State Senate Appropriations Committee meeting on April 11, 2011. He reported that the Attorney General was also in

attendance and no questions had been asked relevant to the Commission. The Executive Director stated that the Commission retained a stable budget of \$4.281 million, enough to maintain the current level of service.

Executive Director Brindle reported that he would attend the Assembly Budget Committee meeting on May 5th.

B. Television Interviews

The Executive Director reported that he had been interviewed by News 12 for the program “Power and Politics” hosted by Jim McQueeney. He stated that the segment concerned lobbying, and that he was invited back for a subsequent interview on April 21 on “pay-to-play” reform.

C. Analytical Press Releases

Executive Director Brindle informed the Commissioners of recently issued analytical press releases. He stated that the Commission had issued an analytical press release relevant to pay-to-play activity by public contractors on April 6. The Executive Director reported that contractors had contributed \$9.4 million to candidates and committees in 2010, a 13 percent decrease from 2009, and a 38 percent decrease from 2006, the year pay-to-play reform was first enacted. He stated that this decline was an indication of the law’s effectiveness in reducing even the appearance of impropriety.

Executive Director Brindle further reported that \$5.8 billion in public contracts had been expended in 2010, a decline of 4 percent from 2009, and a 10 percent decline from 2006. He attributed the decline in public contracts to cuts in state aid, increased scrutiny from the public, and the underperforming economy.

The Executive Director informed the Commissioners of the analytical press release issued on April 19, 2011 relevant to the “Big Six” state political party and legislative leadership committees. He reported that a total of \$1.7 million had been raised and \$778,000 spent by all of these committees for the first quarter of 2011. Executive Director Brindle noted that this year was the first since 1999 that Republicans have raised and spent more money than Democrats.

D. Arizona Public Financing Law Challenge

The Executive Director informed the Commissioners of a case being heard by the U.S. Supreme Court challenging Arizona’s public financing law. He noted that arguments had commenced on March 28, 2011. Executive Director Brindle explained that the law provided extra “rescue” money to candidates running against self-funded opponents, and was intended to balance the funding advantage of independently wealthy candidates.

The Executive Director anticipated that the Supreme Court would overturn the Arizona law, but there would be little danger to the New Jersey Public Financing Program.

E. Gubernatorial Public Financing Debate Working Group

Executive Director Brindle presented the report compiled following the final meeting of the Gubernatorial Public Financing Debate Working Group. He reported that Sandra Matsen of the League of Women Voters of New Jersey, Ben Dworkin, Director of the Rebovich Institute, Mark Magyar of the Daggett Campaign, and Ingrid Reed, formerly of the Eagleton Institute had been in attendance.

The Executive Director reported that the main focus of the working group was devising strategies to better promote the gubernatorial debates. He stated that the working group discussed seeking appropriations to promote the debates as the most practical and realistic option. Executive Director Brindle further reported that the working group proposed eliminating the ballot statement program and allocating the \$600,000 traditionally appropriated for it to a debate promotion effort.

F. Outreach to County Parties

The Executive Director informed the Commissioners of further informative seminars with county political parties. He reported that the Commission had recently held seminars for the Atlantic County Democratic Committee, in which 30 individuals attended, and the Camden County Democratic Committee, in which 41 individuals were in attendance.

Executive Director Brindle noted that the seminars were facilitated by Senior Compliance Officer Kim Key and Associate Compliance Officer Nancy Fitzpatrick. He reported that the Bergen County Republican Organization has also signed up for a seminar in the near future, making a total of 8 county political party committees that have attended or will attend Commission information sessions.

G. Annual Report

Executive Director Brindle informed the Commissioners that their approval was required in order to deliver the Annual Report to the Legislature by the May 1st due date.

On a motion by Commissioner Saunders, seconded by Vice Chairman Timpone and passed by a vote of 4-0, the Commission approved the Annual Report and authorized its submission to the Legislature.

H. State Ethics Commission - Financial Disclosure Statements

The Executive Director reminded the Commissioners that they were required to submit a Financial Disclosure Statement to the State Ethics Commission by May 15th. He noted that as Commissioner Weiss has only recently joined the Commission, he had 120 days to submit the form.

I. Former Commissioner English to Visit Commission

Executive Director Brindle reported that former Commissioner English will attend the Commission's May 17th meeting. He stated that the Commission would present her with a proclamation honoring her service.

J. Spring/Summer Meeting Schedule

- May 17, 2011 at 11:00 a.m. in Trenton;
- June 21, 2011 at 11:00 a.m. in Trenton; and
- July 19, 2011 at 11:00 a.m. in Trenton.

Chairman DeFilippis asked Executive Director Brindle if the decrease in public contracts was for calendar year 2010.

The Executive Director answered in the affirmative.

The Chairman noted that there was no easy way to determine how much of that decline was due to the underperforming economy or the impact of pay-to-play reform.

Executive Director Brindle stated that he had made this point clear in the News 12 New Jersey interview.

Chairman DeFilippis proposed that the decline was likely a combination of both factors.

Executive Director Brindle agreed with that assessment.

The Chairman asked if the Arizona public financing law under review by the Supreme Court received funds for the program by a tax check-off or from the State's general fund.

Deputy Director Donohue replied that the program receives its revenue from the State's general fund.

Vice Chairman Timpone asked what is the threshold for activation of rescue money in the Arizona program.

The Deputy Director replied that once a non-participating candidate spent more than the public financing expenditure limit the rescue money provision went into effect.

4. Request for an Advisory Opinion 01-2011

The Commission received a request for an Advisory Opinion from Gregory Nagy, Esq., on behalf of "Better Education for New Jersey Kids." The request concerns reporting obligations for the making of independent expenditures, additional filing obligations as a political committee or continuing political committee, and imposition of contribution limits.

Legal Director Carol Hoekje provided a background summary of the Advisory Opinion request.

The Legal Director provided a summary of the relevant sections of the Reporting Act. She stated that staff had first examined the definition of an “independent expenditure” under the Act.

Legal Director Hoekje stated that the Act defines an independent expenditure as an expenditure to “support or defeat” a candidate or public question in an election. She noted that the monetary threshold for reporting independent expenditures is updated every four years pursuant to the cost-index adjustments, and currently stands at \$1,200.

The Legal Director emphasized that an independent expenditure may not be coordinated with a candidate committee. She added that this activity may be initiated by an individual or entity, or by a filing entity; an entity already reporting with the Commission must report the information on its campaign or quarterly reports; an entity or individual not filing with the Commission, must submit a separate expenditure reporting form, which does not report contributor information.

Legal Director Hoekje reported that the Commission had looked at the language referencing the “support or defeat” of a candidate or public question in connection with the U.S. Supreme Court decision in Buckley v. Valeo, in which government regulation of communications was upheld for explicit election advocacy, but not issue advocacy. The Legal Director noted that the stated goals of Better Education include possible activity for communications containing explicit election advocacy, or “political communications.” Therefore, Better Education would incur a filing obligation for independent expenditures.

Legal Director Hoekje next discussed the criteria for filing as a “political committee” or as a “continuing political committee.” Under the Act and Commission regulations, a group must raise or spend \$2,100 or more to support or defeat a candidate or public question. A continuing political committee is a group or any corporation, or any other incorporated or unincorporated entity contributing at least \$4,900 in a calendar year to promote the election of a candidate or passage or defeat of a public question.

Legal Director Hoekje reported that the Commission in its Advisory Opinions had looked to the Buckley decision for guidance on determining when a group exceeding an expenditure threshold becomes a political committee or a continuing political committee. Under this approach, the Commission has examined the “major purpose” of an entity or group making expenditures in an election.

The Legal Director reiterated that the decision in Buckley prevented controls over issue advocacy. She noted that the stated objective of Better Education was to influence public opinion in the realm of public education policy, and directed the Commissioners’ attention to the full description in the Advisory Opinion Request. She noted that Better Education did not have as its major purpose to seek to support or oppose individual candidates and that Better Education would refrain from referencing specific candidates in its communications and its fundraising. Based upon the information supplied, it was not the major purpose, or a major purpose of Better Education to make expenditures for communications containing explicit election advocacy.

Therefore, staff recommended that the entity did not have a filing obligation as a PC or as a CPC. The Legal Director noted pending legislation in the Legislature to extend filing obligations to issue advocacy organizations seeking to influence elections in New Jersey. She also stated that Better Education may still have a filing obligation for grassroots lobbying.

Legal Director Hoekje stated that staff was aware of recent federal case law including the Citizens United v. FEC and SpeechNow.org v. FEC decisions in 2010. She noted the distinctions in definitions of “political committee” between State and federal law which defines as a political committee a group or entity that receives contributions or makes expenditures in excess of \$1,000 in a calendar year to influence an election.

Chairman DeFilippis stated that he was not as familiar with the independent expenditure form as with most of the other reporting forms, and asked for a description of the document.

Legal Director Hoekje replied that the independent expenditure form required reporting of expenditure information and occupation/employer information if the expenditure is made by an individual. She also stated that 48-hour reporting requirements applied, and reporting dates mirrored those of political committees.

Vice Chairman Timpone thanked Legal Director Hoekje for the quality of her analysis in the Advisory Opinion request.

Chairman DeFilippis asked if there were any further questions or comments from the Commissioners or members of the public. He then invited Mr. Gregory Nagy to address the Commission.

Mr. Nagy greeted all parties present, and introduced Mr. Michael Lilly, president of Better Education, to the Commissioners. He stated that Better Education would be at a substantial disadvantage if treated any differently than any other entity making independent expenditures.

Mr. Nagy read the definition of an independent expenditure as stated in the Reporting Act, and noted his disappointment that there was no mention of other associations such as corporations in the staff analysis. He stated that the use of the third person in the definition was significant, and had believed that federal law cited would be pertinent to the State regulation as well as the Commission’s definition.

Mr. Nagy expressed the opinion that the Commission’s own definition of an independent expenditure clearly indicates that Better Education would not be subject to contribution limits as with a PC or CPC. He added that treatment as a CPC would impose contribution limits and thus a significant disadvantage compared to other groups.

Mr. Nagy stated that he agreed with staff’s conclusion, but suggested that there was a potential conflict between the federal case law and the Commission’s own definitions. Mr. Nagy informed the Commissioners that study of these issues would be of great benefit to the regulated community. He suggested a regulation on the major purpose test.

Mr. Nagy concluded his statement by reaffirming the position that Better Education was entitled to have its expenditures classed as independent expenditures and did not meet the criteria for classification as a PC or CPC.

Vice Chairman Timpone asked for clarification of the apparent dispute.

Legal Director Hoekje replied that there was no fundamental conflict between the Commission and Better Education. She stated staff's belief that the status of Better Education as a corporation was irrelevant to this request. She noted further that the Reporting Act does not contain a definition of a "person." The Legal Director noted that a federal prohibition on corporate spending was overturned by the Citizens United decision, but that New Jersey had never had such a prohibition.

Commissioner Saunders stated that he saw no fundamental conflict, but understood the desire of members of the regulated community to seek clarification by coming to the Commission in order to remain in compliance.

Mr. Nagy agreed with Commissioner Saunders and stated that Better Education sought to scrupulously obey all of the Commission's laws. He reiterated that the independent expenditures to be made by Better Education would not be controlled by or coordinated with candidates in any way, and could even prove detrimental to a candidate.

Chairman DeFilippis asked if there were any comments from members of the public, and then asked the Commissioners for a motion.

On a motion by Vice Chairman Timpone, seconded by Commissioner Saunders and passed by a vote of 4-0, the Commission moved to accept the staff recommendation in the Advisory Opinion request.

5. Resolution to go into Executive Session

On a motion by Chairman DeFilippis, seconded by Vice Chairman Timpone and passed by a vote of 4-0, the Commission resolved to go into Executive Session to discuss anticipated litigation, 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.

6. Adjournment

On a motion by Commissioner Weiss, seconded by Commissioner Saunders and passed by a vote of 4-0, the Commission resolved to adjourn at 1:24 p.m.

Respectfully submitted as true
and correct,

Jeffrey M. Brindle
Executive Director

JMB/elz