



State of New Jersey

ELECTION LAW ENFORCEMENT COMMISSION

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Vice Chairman

AMOS C. SAUNDERS
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Legal Director

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Compliance Director

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Legal Counsel

PUBLIC SESSION MINUTES

June 21, 2011

Chairman DeFilippis, Commissioner Saunders, Commissioner Weiss, Legal Counsel Wyse, and senior staff were present. Report Review Officer Lovinsky Joseph was present for the purpose of recording the minutes. Vice Chairman Timpone participated by telephone until end of the meeting as noted.

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.

2. Approval of Public Session Minutes of May 17, 2011

On a motion by Commissioner Weiss, seconded by Commissioner Saunders and passed by a vote of 4-0, the Commission approved the Public Session Minutes of May 17, 2011.

3. Executive Director's Report

A. Ethics Training

Executive Director Brindle reminded the Commissioners that an ethics training session facilitated by a representative from the State Ethics Commission would follow the meeting.

B. County Political Party Outreach

The Executive Director reported on the progress of the Commission's county political party outreach. He stated that eight training sessions had been held for the primary election, and more were planned for the general election. Executive Director Brindle further reported that the Bergen County Republican Organization has scheduled a session for August.

C. Division of Criminal Justice Corruption Bureau Training Program

The Executive Director informed the Commissioners that Compliance Director Amy Davis had provided an overview of the Commission and its partnerships with other prosecuting agencies. Director Davis made her presentation as part of the approved mandatory Continuing Legal Education program.

D. Federal Actions

Executive Director Brindle reported on developments relevant to campaign finance law on the federal level. He informed the Commissioners of the decision rendered on May 26, 2011 by Judge James C. Cacheris in the U.S. District Court for the Eastern District of Virginia, overturning the ban on direct contributions to federal candidates by corporations, a decision that was subsequently reconsidered with the same result.

The Executive Director noted that confusion had emerged relevant to federal campaign finance law due to contradictory rulings in federal courts. He provided as an example the decision rendered on May 16, 2011 by the U.S. Court of Appeals for the Eighth Circuit, which upheld a Minnesota law banning direct monetary contributions and requiring disclosure for independent expenditures.

Executive Director Brindle further illustrated the inconsistency in the federal courts by providing the example of the decision rendered on June 14, 2011 in Carey vs. FEC, which lifted a preliminary injunction to federal PACs that make independent expenditures, and allowed them to establish segregated bank accounts and receive unlimited contributions. He noted that this created a situation for candidates analogous to that which prompted the passage of the McCain-Feingold bill.

E. Analytical Press Releases

The Executive Director presented information compiled on the analytical press release issued on June 3, 2011 including data reported on 11-day preelection reports for the June 7, 2011 Primary election. He reported in the four years since the last Senate election, legislative candidates raised \$31 million and spent \$18 million. Executive Director Brindle further reported that for legislative candidates, Democrats had a 2-to-1 fundraising advantage over Republicans, an advantage that has remained from the 29-day preelection report period.

F. Legislation

The Executive Director informed the Commissioners about pending legislation relevant to the Commission. He reported on the progress of Assembly Bill 3097 in the State Government Committee, which applies pay-to-play regulation to county bridge commissions.

G. Pay-to-Play Seminars

Executive Director Brindle reported that the Commission would hold a series of pay-to-play seminars in order to inform the business community of the law and proper compliance procedures. He stated that 28 individuals had signed up for a June 24 session, 21 individuals for an August 5 session, and 20 individuals for a September 16 session.

H. Citizens' Campaign Seminar

The Executive Director informed the Commissioners that on June 8, 2011, Deputy Director Donohue and he participated in a discussion facilitated by the Citizens' Campaign, a civic participation and advocacy group, at Rutgers University in New Brunswick. He stated that the seminar was an informative discussion concerning county and municipal political parties.

I. Summer Meeting Schedule

- July 19, 2011 at 11:00 a.m. in Trenton;
- August 16, 2011 at 11:00 a.m. in Trenton (if needed); and,
- September 20, 2011 at 11:00 a.m. in Trenton.

Chairman DeFilippis asked if the pay-to-play seminars would be held at the Commission.

Executive Director Brindle replied in the affirmative.

The Chairman asked how the Commission intended to communicate notice of the seminars.

The Executive Director stated that the Commission would reach out to filers in its database and subscribers on the Commission e-mail list.

Legal Counsel Wyse asked if sending notice to chambers of commerce would be useful.

Executive Director Brindle replied in the affirmative.

Chairman DeFilippis suggested that the Commission contact both state and county chambers of commerce, and that the seminar could be taken on the road if successful.

4. Resolution to go into Executive Session

On a motion by Commissioner Saunders, seconded by Commissioner Weiss 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.

Return to Public Session

Vice Chairman Timpone was present at this point.

5. Discussion on Penalty Procedures

The Chairman asked about uniformity in monetary penalties. He added that he believed that the penalties received were too small in comparison to the cost incurred by staff in processing complaints.

Legal Director Hoekje noted that the current regulations provide that the Commission may consider aggravating and mitigating circumstances. She noted that the Legal Section is careful in its recommendations to treat cases in similar circumstances equally.

Commissioner Saunders stated that retaining discretion in determining penalties according to the Commission's regulations was necessary due to exceptions and special cases. He noted the problems associated with mandatory-sentencing laws in criminal justice.

Commissioner Weiss supported the continued use of discretion, but stated that penalties needed to be raised on a whole to keep pace with inflation.

Vice Chairman Timpone asked if aggravating and mitigating circumstances are explained when a fine is imposed.

Legal Director Hoekje replied in the affirmative. She stated that Final Decisions set forth the Commission's reasoning and they are available to the public on the Commission website. The Legal Director noted that the average penalty imposed may be perceived as low as many Final Decisions are from past cases or recent Form A-1 filers.

The Chairman stated that while he understood the past emphasis on disclosure, elected officials, as representatives of the public and responsible for public policy, should be held to a higher standard and vigorously called to account when in violation of Commission regulations.

Legal Director Hoekje recognized the Chairman's concerns. She noted that it was a constant challenge to balance large and small cases, and an increased emphasis on enforcement with smaller staffing.

Chairman DeFilippis suggested that increased penalties may help reduce the enforcement caseload by encouraging greater diligence among candidates and committees.

Vice Chairman Timpone stated that he liked the idea of a disclosure form for respondents seeking a fine reduction due to hardship.

Chairman DeFilippis stated that such a form need not be intrusive and only include basic information.

The Chairman stated that he had no disagreement with maintaining discretion, only seeking an increase in the entire range applicable for penalties.

Executive Director Brindle stated that this was an ideal time to examine these issues, well ahead of the 2012 elections.

Vice Chairman Timpone stated that public recognition of the Commission's ability to vigorously enforce its regulations would aid the mission of the agency.

6. Adjournment

On a motion by Commissioner Saunders, seconded by Commissioner Weiss and passed by a vote of 4-0, the Commission resolved to adjourn at 12:30 p.m.

Respectfully submitted as true
and correct,

Jeffrey M. Brindle
Executive Director

JMB/elz