



State of New Jersey

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Chairman

WALTER F. TIMPONE
Vice Chairman

AMOS C. SAUNDERS
Commissioner

ELECTION LAW ENFORCEMENT COMMISSION

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CAROL L. HOEKJE
Legal Director

AMY F. DAVIS
Compliance Director

JAMES P. WYSE
Legal Counsel

PUBLIC SESSION MINUTES

June 19, 2012

Chairman DeFilippis, Vice Chairman Timpone, Legal Counsel Wyse, 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. Commissioner Saunders participated by telephone.

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 15, 2012

On a motion by Chairman DeFilippis, seconded by Commissioner Saunders, and passed by a vote of 2-0, the Commission approved the Public Session Minutes of May 15, 2012. Vice Chairman Timpone did not vote as he was not present for the May 15, 2012 meeting.

3. Executive Director's Report

A. Training Sessions

Executive Director Brindle informed the Commissioners that staff has scheduled 12 training sessions, with a pay-to-play session on June 22, and a session for political party treasurers on June 27.

B. Montana Corrupt Practices Act

The Executive Director reported on the litigation concerning the Montana Corrupt Practices Act, a state law that banned corporate spending in elections. He stated that the law had been upheld by the Montana Supreme Court, but a stay had been imposed on enforcement by the U.S. Supreme Court (USSC). He further reported that the American Tradition Partnership, a 501(c)4 advocacy group, has petitioned the USSC to hear the case on appeal, with opposing groups filing *amici curiae* briefs in order to convince the USSC to reconsider the Citizens United decision.

Chairman DeFilippis asked if the Montana Corrupt Practices Act had been upheld by the Montana Supreme Court and then had a stay imposed by the USSC.

Executive Director Brindle replied in the affirmative.

C. Corporate Spending Studies

Executive Director Brindle informed the Commissioners of the publication of two studies on corporate spending on elections. He reported that a joint Rice University/Long Island University study indicated that the majority of donations and spending were by wealthy individuals, and that there was an inverse relationship between the amount of money spent for political purposes by corporations and economic performance.

The Executive Director further reported that a study completed by the Manhattan Institute, a public policy think tank, indicated that most corporate political spending came from highly regulated industries, and that such activity was beneficial to shareholders, with most money being distributed via political actions committees (PACs).

D. Assembly Bills

Executive Director Brindle reported on the advancement of bills relevant to campaign finance in the Assembly. He stated that Assemblyman Joseph Cryan has sponsored Bill A2992, which would require individuals who form and manage a political committee (PC) or continuing political committee (CPC) to provide additional information about affiliations with other committees and increase the number of people required to create a CPC or PC from 2 to 9.

The Executive Director informed the Commission of Bill A3009, sponsored by Assemblywoman Amy Handlin and Assemblywoman Valerie Vainieri Huttel, which would require candidates to keep detailed records of how campaign funds are spent for ordinary and necessary expenses of holding public office.

Executive Director Brindle further reported on the introduction of Bill A3112, sponsored by Assemblyman Ronald S. Dancer, which would require candidates convicted of crimes to return campaign contributions to donors and freeze the funds of candidates indicted for crimes.

The Executive Director noted that bills A2992 and A3009 are based on recommendations from the Commission.

E. Summer Meeting Schedule

- July 17, 2012 at 11:00 a.m. in Trenton;
- August 21, 2012 at 11:00 a.m. in Trenton (if necessary); and,
- September 11, 2012 at 11:00 a.m. in Trenton.

4. 2013 Cost Index Report

Executive Director Brindle presented to the Commissioners a draft of the 2013 Cost Index Report. The report describes calculation of the New Jersey Campaign Cost Index (NJCCI), which measures inflation in the costs of campaigns during the period from 2009 to 2012, and the resulting adjustments of the limits and thresholds applicable to gubernatorial candidates and committees, and adjustments of the thresholds applicable to non-gubernatorial candidates and committees. The report contains recommendations for adjustments to the contribution limits pertaining to non-gubernatorial candidates and committees. N.J.S.A. 19:44A-7.3, enacted by Public Law 2004, c.174, requires that the recommendations for adjustments to the contribution limits be issued in a report by the Commission no later than July 1, 2012, and delivered to the Legislature not later than July 15, 2012.

Executive Director Brindle recognized Deputy Director Joseph Donohue for performing the greatest share of work required to complete the report, and also recognized Legal Director Carol Hoekje, Compliance Director Amy Davis, Director of Finance and Administration Steven Dodson, and Administrative Assistant Elbia Zeppetelli for assisting in the production of the report.

Deputy Director Donohue recognized the Executive Director's efforts in creating the Cost Index report in the 1980s as a way to account for the higher rate of media market inflation relative to the general inflation rate. He reported that the Commission obtained the relevant media market inflation data from Universal McCann in previous years, but now used data from Magna Global for the current report. The Deputy Director informed the Commissioners that the cost index formula used reported data from three previous years and one year of projected data. He stated that the 2008-2012 inflation rate was 12.37 percent, slightly lower than the inflation rate measured for the previous 2004-2008 interval, and that mass media expenditures constituted 80 percent of all spending in the last gubernatorial contest. The 12.37 percent is applied to the mass communications cost component ($12.37 \times .80 = 9.9$).

Deputy Director Donohue informed the Commissioners that the Consumer Price Index (CPI) used to measure inflationary costs for campaign expenses other than mass communications was weighted to the northern New York/New Jersey region in order to reflect the higher proportion of the population in that area. He reported that 20 percent of funds spent in the gubernatorial public financing program were for administration. The weighted CPI of 8.9 percent is applied to the administration costs component ($8.9 \times .20 = 1.8$). The mass communication and administration components were added to yield a campaign cost index of 11.7 percent. The Cost Index Report presents the required adjustments and recommended adjustments multiplied by 11.7 percent. The Deputy Director noted that the increase of 11.7 percent for these costs was slightly less than in the previous gubernatorial election.

Chairman DeFilippis praised the content and presentation of the report.

Vice Chairman Timpone also praised the report.

The Chairman asked if the report required a vote for approval.

Executive Director Brindle replied in the affirmative.

On a motion by Vice Chairman Timpone, seconded by Commissioner Saunders and passed by a vote of 3-0, the Commission approved the 2013 Cost Index Report.

5. Request for an Advisory Opinion 01-2012

The Commission continued its discussion of the request for an Advisory Opinion received from Ralph Holmen, Esq., on behalf of the National Association of Realtors (NAR). The request concerns whether or not the making of independent expenditures in a New Jersey state or local election by the National Association of Realtors Fund, a segregated account filing as a Section 527 organization under the Internal Revenue Code, results in filing obligations as a political committee and imposition of contribution limits.

Chairman DeFilippis asked if there were any updates with regard to the Advisory Opinion.

Legal Director Carol Hoekje replied in the negative and noted that Mr. Holmen had indicated that he would not be available for this meeting. She provided the Commissioners with a summary of the Advisory Opinion Request.

The Legal Director reported that NAR was amenable to providing disclosure.

The Chairman recalled that the Commissioners had been informed at the last meeting that members contributing dues had no knowledge of how much dues money went to the NAR Fund, that dues contributions from individuals would fall well below the \$300 reporting threshold, and that the NAR Fund would not contribute directly to candidates. He asked if this information was correct.

Legal Director Hoekje replied in the affirmative.

Vice Chairman Timpone noted his preference for requiring disclosure.

The Legal Director stated that the main issue concerned contribution limits. Legal Director Hoekje noted that staff supports pending legislation that would create a specific reporting structure for "527" and "501(c)4" groups.

Executive Director Brindle said that current law requires that groups that expressly call for a candidate's defeat or election that spend independently must report those expenditures to the Commission. They are not required to disclose contributions.

The Executive Director stated that the pending legislation would require independent committees to report both contributions and expenditures to the Commission. He noted his concern about recent federal court decisions about the constitutionality of contribution limits applied to political committees making independent expenditures.

Chairman DeFilippis noted that Mr. Holmen had cited the Advisory Opinion issued by the Commission in response to the request by Better Education for Kids, Inc (BE).

Legal Director Hoekje stated that that Advisory Opinion did not cover the current facts, as BE did not advocate the election of candidates.

Chairman DeFilippis noted that as aggregate dues per individual would fall below the \$300 reporting threshold, there was no requirement for disclosure in existing regulations.

Legal Director Hoekje stated that in existing law, no distinction is made in the definition of a political committee between independent and non-independent expenditures as the basis for filing as a political committee when spending exceeds \$2,100. The Legal Director in particular expressed concern over cooperation with local affiliates.

The Deputy Director asked how the Commission determined that independent expenditures could form the basis of a political committee.

The Legal Director replied that in addition to the definition, the Commission has also applied a major purpose test.

Vice Chairman Timpone asked if a fifty-percent threshold were used in the analysis.

Legal Director Hoekje stated that the Commission has not set a percentage determination in its prior advisory opinions. She noted the percentages on the "Form D-4" Registration Statement.

The Chairman expressed his preference to have the NAR Fund file reports.

The Legal Director asked if the Chairman meant that reporting would be for expenditures only.

Chairman DeFilippis replied in the affirmative, noting that aggregate dues contributions per member would fall short of the \$300 reporting threshold.

Executive Director Brindle suggested that the safest approach would be to allow the NAR Fund to file an independent expenditure report in order to prevent a lawsuit, until the pending legislation addressing such entities is passed.

The Chairman asked if such a filing status would be free of spending limits.

The Executive Director replied in the affirmative.

Legal Director Hoekje noted the Reporting Act limits concern contributions, and not expenditures.

Vice Chairman Timpone asked if there was any potential for pay-to-play regulation to be involved.

Executive Director Brindle replied in the negative, adding that independent expenditures are not regulated under the pay-to-play statute.

On a motion by Vice Chairman Timpone, seconded by Commissioner Saunders and passed by a vote of 3-0, the Commission authorized an Advisory Opinion in response to the request by NAR that would permit the NAR Fund to file with the Commission to report independent expenditures-only.

6. Proposed Amendments and New Rules Concerning Lobbying Reporting Obligations

Legal Director Carol Hoekje presented the proposed amendments and proposed new rules concerning lobbying provisions under the Legislative and Governmental Process Activities Disclosure Act, N.J.S.A. 52:13C et seq. She reported that the proposed amendments and new rules would require electronic filing of annual reports using software provided by the Commission and would substitute the term “represented entity” for the term “lobbyist” in the Commission’s regulations.

Vice Chairman Timpone asked for additional explanation concerning the substitution of the term “represented entity” for the term “lobbyist” in the Commission’s regulations.

The Legal Director replied that this action was the conclusion of a process of clarification that had begun in 2007 because of public confusion over the overlapping popular interpretations of “lobbyists” as both individuals who perform lobbying activities and the organizations that employ such individuals.

Chairman DeFilippis asked if individual agents will receive a personal identification number (PIN).

Legal Director Hoekje stated that any responsible individual with the authority to sign off on forms would be assigned a PIN.

On a motion by Vice Chairman Timpone, seconded by Commissioner Saunders and passed by a vote of 3-0, the Commission approved the proposed amendments and proposed new rules concerning lobbying provisions under the Legislative and Governmental Process Activities Disclosure Act.

7. Proposed Amendments Concerning the Personal Financial Disclosure Statements

Legal Director Carol Hoekje presented the proposed amendments concerning the Personal Financial Disclosure (PFD) Statements required to be filed by candidates for the offices of Governor and Lieutenant Governor and for Senate and Assembly, pursuant to N.J.S.A. 19:44B-1 et seq. She informed the Commissioners that the proposed amendments would eliminate the requirement to file two copies of the PFD Statement along with the original, and would provide that the Commission post the PFD Statements on the Commission’s website within seven business days of receipt.

The Legal Director stated that placing PFD Statements online would help increase transparency. She noted that financial disclosure statements from the Ethics Commission and Legislature were already available online.

Vice Chairman Timpone inquired if the Commission should include the term “civil union partner” in addition to “spouse” in the disclosure statement form.

Associate Legal Director Michelle Levy noted that the civil union statute automatically includes civil union partners in existing regulations and official documents bearing the word “spouse.”

Compliance Director Amy Davis stated that staff could make an addition to the form’s instructions.

On a motion by Vice Chairman Timpone, seconded by Commissioner Saunders and passed by a vote of 3-0, the Commission approved the proposed amendments concerning the Personal Financial Disclosure (PFD) Statements.

Legal Director Hoekje also stated that staff acknowledged the Vice Chairman’s concerns with regard to the inclusion of civil unions in the language of the PFD Statements and would look into the matter.

8. Public Comments

Chairman DeFilippis asked if any members of the public wished to comment.

No comments from the public were received.

9. Resolution to go into Executive Session

On a motion by Vice Chairman Timpone, seconded by Commissioner Saunders and passed by a vote of 3-0, the Commission resolved to go into Executive Session to discuss anticipated litigation and current litigation, which will become public as follows:

- A. Final Decision Recommendations in complaint 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. The reports 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.
- C. Matters under current litigation, the substance of discussions of which will not become public in order to protect the attorney-client privilege and the deliberative process. However, any litigation in which the Commission is currently a party is a public matter and will become public subject to the above limitations and privileges.

Return to Public Session

10. Adjournment

On a motion by Vice Chairman Timpone, seconded by Commissioner Saunders and passed by a vote of 3-0, the Commission resolved to adjourn at 12:54 p.m.

Respectfully submitted as true
and correct,

Jeffrey M. Brindle
Executive Director

JMB/elz