



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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PUBLIC SESSION MINUTES

September 11, 2012

Chairman DeFilippis, Vice Chairman Timpone, Commissioner Saunders, and senior staff were present. Director of Review and Investigation Shreve Marshall was also present. Assistant Report Examiner 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.

At this juncture, the Chairman requested a moment of silence in memory of the victims of the September 11, 2001 terrorist attacks.

2. Approval of Public Session Minutes of July 17, 2012

On a motion by Vice Chairman Timpone, seconded by Commissioner Saunders, and passed by a vote of 3-0, the Commission approved the Public Session Minutes of July 17, 2012.

3. Executive Director's Report

A. Compliance Seminars

Executive Director Brindle informed the Commissioners of forthcoming compliance seminars. He stated that pay-to-play sessions would be held on September 14 and November

16, 2012; treasurer training sessions on September 11, September 24, and October 2, 2012; and political party and PAC training on September 28, 2012.

B. Conferences

The Executive Director reported that Assistant Compliance Officer Danielle Hacker and Assistant Compliance Officer Joseph Barish will attend the League of Municipalities conference on November 13, 2012.

Executive Director Brindle announced that he will participate in a League of Women Voters panel discussion on September 22, 2012, and an ICLE seminar on October 18, 2012.

C. PAC Report

The Executive Director reported that the Commission will release a comprehensive report on Special interest political action committees (PACs) financial activity in New Jersey in 2011 on September 12, 2012.

D. New Public Financing Staff

Executive Director Brindle introduced the newly hired Public Financing staff: Jennifer Kirby, Elias Amaya, Ivette Franco, David Pennant, and Eric Solomon. He noted that Ms. Kirby and Mr. Amaya have previously worked as members of the Public Financing staff at the Commission.

Chairman DeFilippis welcomed the new Public Financing staff.

E. Legislation

The Executive Director informed the Commissioners of legislation to be introduced based on the Commission's recommendations:

1. Require school board candidates to file short form A-1s;
2. Expand 48-hour notice requirement for expenditures made by continuing political committees (CPCs) in municipal, runoff, school, and special elections;
3. Change Personal Financial Disclosure (PFD) deadline to May 15;
4. Eliminate requirement that municipal and county candidates file reports with county clerks;
5. Lengthen terms of ELEC Commissioners to 6 years; and
6. Eliminate gubernatorial ballot statements on sample ballots and require county clerks to post them on an official website.

The Chairman asked if paper sample ballots would continue to be produced even without the gubernatorial statements.

The Executive Director replied in the affirmative.

Vice Chairman Timpone asked about the websites to replace the printed ballot statements.

Executive Director Brindle replied that the county clerks would be responsible for creating and maintaining websites to display gubernatorial statements.

F. Federal and State Decisions

Executive Director Brindle reported that the state of campaign law continues to be muddled by a host of decisions at the federal and state levels.

He informed the Commissioners of the new rules relevant to disclosure by issue advocacy groups resulting from the decision by U.S. District Judge Amy Berman Jackson in Van Hollen v. FEC. The Executive Director noted that the new rules have an ironic dimension to them, as groups running issue ads that do not mention the name of a candidate must now disclose donors and expenditures, but outside groups that run ads for specific candidates do not have to disclose donors, thus creating a loophole that is being exploited.

Executive Director Brindle further reported that the U.S. District Court for the Southern District of West Virginia ruled that the State of West Virginia may not limit contributions to PACs that act independently.

Additionally, he stated that the Attorney General of New Hampshire has issued an advisory opinion that the state's \$5,000 contribution limit cannot be enforced against independent-only committees.

The Executive Director noted that the U.S. Court of Appeals for the Eighth Circuit has ruled that Minnesota's campaign finance reporting requirements for independent expenditures were overly burdensome for corporations and associations that spend independently.

Executive Director Brindle expressed his opinion that in light of such developments, the Commission had made the correct decision in Advisory Opinion No. 01-2012, requested by the National Association of Realtors.

G. Fall/Winter Meeting Schedule

- October 16, 2012 at 11:00 a.m. in Trenton;
- November 20, 2012 at 11:00 a.m. in Trenton; and,
- December 18, 2012 at 11:00 a.m. in Trenton.

4. Adoption of Proposed New Rules and Amendments to the Gubernatorial Public Financing Regulations

The Commission discussed the adoption of amendments and new rules involving the Gubernatorial Public Financing Program.

Legal Director Carol L. Hoekje stated that the proposed amendments and new rules were published in the New Jersey Register on May 21, 2012 and were the subject of a public hearing on July 17, 2012. No witnesses appeared to testify at the July 17, 2012 public hearing, and no written comments were received by the July 20, 2012 deadline.

The proposed new rules and amendments primarily include the candidate for office of Lieutenant Governor in the Commission's regulations in accordance with statutory changes which became effective in 2009. They also remove reference to specific languages for prepared statements on behalf of gubernatorial candidates, include internet advertisements, certain website and email communications, and the purchase of lists of email addresses to the list of permissible uses of matching funds by gubernatorial candidates, and concern identification of the contributor where the maker of a check drawn on a joint checking account is different from the individual who signs the accompanying written instrument.

The Legal Director noted that staff had made additional edits in accordance with a suggestion by Commissioner Saunders concerning elimination of references to "his or her" candidacy, but that staff suggested that such changes might result in a more awkward construction.

Commissioner Saunders stated that he understood the awkwardness of phrases such as "candidate's candidacy," but expressed his belief that the Commission use gender-neutral language. He added that he did not want to hold up adoption.

The Vice Chairman indicated that he agreed with Commissioner Saunders.

Associate Legal Director Michelle Levy informed the Commissioners that she could work on the draft during Executive Session and return it to the Commissioners with changes after.

Commissioner Saunders asked if waiting until the end of the meeting was acceptable.

The Legal Director replied in the affirmative.

5. Public Hearing on Proposed Amendments to Implement Inflationary Campaign Cost Index Adjustments

Chairman DeFilippis announced that a public hearing was being conducted to elicit public comment concerning proposed amendments to limits and thresholds applicable to gubernatorial candidates, and thresholds applicable to non-gubernatorial candidates and committees. N.J.S.A. 19:44A-7.1 and 7.2 require that the Commission calculate the change in campaign costs over the past four years and propose amendments to limits and thresholds applicable to gubernatorial candidates, and thresholds applicable to non-gubernatorial candidates and committees. The Commission has determined that costs relevant to campaigning in New Jersey have risen since 2009, and has applied an index of 11.7 percent to the various limits and thresholds required to be adjusted, as well as several other thresholds in order to maintain consistency.

A court reporter was present to record the testimony. The transcript will be available to the public upon request.

The Chairman reported that there had been no requests to offer testimony, and asked if any members of the public wished to comment. Seeing none, he requested a motion to close the public hearing.

On a motion by Vice Chairman Timpone, seconded by Commissioner Saunders and passed by a vote of 3-0, the Commission closed the Public Hearing on Proposed Amendments to Implement Inflationary Campaign Cost Index Adjustments.

6. Public Comments

Chairman DeFilippis asked if any members of the public wished to comment. Seeing none, he requested a motion to close Public Session and enter into Executive Session.

7. Resolution to go into Executive Session

On a motion by Commissioner Saunders, seconded by Vice Chairman Timpone 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. 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.
- C. Personnel matters concerning the hiring of outside legal counsel, which will become public upon appointment of such counsel.

Return to Public Session

8. Adoption of Proposed New Rules and Amendments to the Gubernatorial Public Financing Regulations, continued

Associate Legal Director Michelle Levy presented the Commissioners with revised copies of the draft. Legal Director Hoekje asked for time to review the new suggested language for conformance with the statute.

Associate Legal Director Levy suggested that the Commissioners could adopt the proposed new rules and amendments pending staff approval of the suggested edits.

Commissioner Saunders voiced his approval of the suggestion.

On a motion by Commissioner Saunders, seconded by Vice Chairman Timpone and passed by a vote of 3-0, the Commission approved the Adoption of Proposed New Rules and Amendments to the Gubernatorial Public Financing Regulations pending approval of staff.

Commissioner Saunders inquired as to reforming the language in the remainder of the Commission's regulations.

Associate Legal Director Levy replied that attending to the rest of the regulations could be done when the Commission's "sunset" regulations were due for renewal.

Legal Director Hoekje thanked Associate Legal Director Levy for her assistance.

Chairman DeFilippis also thanked the Associate Legal Director for her assistance.

9. 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 12:30 p.m.

Respectfully submitted as true
and correct,

Jeffrey M. Brindle
Executive Director

JMB/elz