



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

February 11, 2014

Chairman DeFilippis, Commissioner Saunders, Legal Counsel Matthews, and senior staff were present. Director of Review and Investigation Shreve Marshall was also present. Special Programs Analyst Scott Fagerty was present for the purpose of recording the minutes. Vice Chairman Timpone participated via telephone.

The Public Session Minutes will be available online on 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. Letter of Recusal

Chairman DeFilippis read a letter from Vice Chairman Timpone announcing his recusal from the matter to be considered by the Commission. The Chairman asked Vice Chairman Timpone if the letter was accurately read. The Vice Chairman asserted that it was. At this point, Vice Chairman Timpone exited the meeting.

3. Request for an Advisory Opinion 01-2014

The Commission received a request for an Advisory Opinion from Mark Sheridan, Esq., on behalf of Chris Christie for Governor, Inc., the candidate committee of Governor Chris Christie participating in the gubernatorial public financing program in the 2013 general election. The request concerned whether or not the candidate committee may raise and spend campaign funds in a postelection setting to respond to subpoenas duces tecum issued by the Joint Legislative Select Committee on Investigations and the United States Attorney for the District of New Jersey.

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

The Legal Director explained that the Commission must answer three questions. First, are the expenditures permissible under the Reporting Act? Second, are the expenditures and fundraising permissible post election for a participating candidate under the public financing program, and if so, are these subject to the expenditure cap?

Legal Director Hoekje explained that all candidates are subject to the Reporting Act, and that publicly financed candidates are subject to additional requirements that traditional candidates are not, such as an expenditure limit. She continued that all gubernatorial candidates are subject to the same \$3800 contribution limit. The Legal Director further explained that postelection spending by publicly financed candidates is strictly limited.

Legal Director Hoekje stated that the Reporting Act allows for six uses of campaign funds, and also prohibits campaign funds to be expended for personal use. She further explained that not all six options are available postelection to the publicly financed candidates. Therefore, the most likely to apply are either the payment of campaign expenses or the payment of administrative costs.

Chairman DeFilippis noted that there is a vacancy on the Commission, and with Vice Chairman Timpone's recusal, only two members are able to vote on the Advisory Opinion. He asked if the Commission was in good standing to make a determination. Legal Director Hoekje cited to the Formal Opinion issued by the Attorney General concerning a vote of actual members. Legal Counsel Matthews also stated that he believed two members were sufficient to make a decision.

Mark Sheridan, Esq. addressed the Commission on behalf of Chris Christie for Governor, Inc. He stated that complying with subpoenas is an administrative act that any incorporated entity may have to face when going about its business, and costs related to complying with such subpoenas represent standard, ordinary expenses. He contended that the regulations specifically authorize the campaign to respond to the Joint Legislative Committee on Ethical Standards, or similar public body, and that the subpoena from the Joint Legislative Select Committee on Investigations clearly fits the understanding of "similar public body."

In regards to the subpoena from the US Attorney for New Jersey, Mr. Sheridan stated that unlike in past Advisory Opinions and cases in which the Commission had denied the use of campaign funds for payment of legal expenses, Chris Christie for Governor, Inc. has not been identified as a target of an investigation, but rather as a witness to an investigation. He further stated that the proposed use of campaign funds is distinct from the use for purposes of criminal defense.

Chairman DeFilippis read aloud one letter and one email that had been received by the Commission from members of the public. The letter, from Michael J. Epstein, and the email, from James J. Murphy, both urged the Commission to not approve the contemplated actions.

Legal Counsel Matthews inquired whether the Commission would ask Mr. Sheridan if he wanted the Advisory Opinion to also address any issues raised by the letter sent by Michael J. Epstein. Mr. Sheridan stated that he would prefer to treat any issues raised by the letter separately.

Commissioner Saunders asked Mr. Sheridan if he represents both the committee and individual committee members. Mr. Sheridan stated that he represents only the committee, and that he does not represent any individual committee members or employees.

Commissioner Saunders then asked Mr. Sheridan of the connection between the Commission, Chris Christie for Governor, Inc. and the Port Authority of New York and New Jersey. He added that the subpoena provided did not indicate a misuse of funds, or in other ways indicate the Commission's involvement. He asked plainly what Mr. Sheridan sought.

Mr. Sheridan answered that the Commission has oversight over expenditures of committee funds, and the committee requests the authority to make expenditures where the regulations do not specifically authorize them to do so.

Commissioner Saunders expressed his concern that allowing the requested use of funds could be indeterminate in nature. Mr. Sheridan replied that the committee would remain subject to disclosure requirements, and bound by Public Financing and Pay-to-Play rules.

Chairman DeFilippis noted that the Commission had previously granted the primary election committee of Barbara Buono for Governor permission to extend beyond the six month deadline to return funds to the State. Legal Director Hoekje stated that once a permissible use is found, then the Commission would be able to grant an extension.

On a motion by Chairman DeFilippis, seconded by Commissioner Saunders and passed by a vote of 2-0, the Commission voted to grant to Chris Christie for Governor Inc. an extension of business beyond the six month deadline to return funds to the State until all business is concluded.

The Chairman then identified the next issue as the ability of Chris Christie for Governor, Inc. to continue to raise funds. Commissioner Saunders asked if the money raised could only be used for legal cost associated with complying with the subpoena. Legal Director Hoekje replied in the affirmative. Commissioner Saunders then asked how funds remaining after subpoenas were complied with would be disposed. Legal Director Hoekje responded that the committee would be obligated to return those funds to the State.

Commissioner Saunders suggested that any requests for contributions should indicate that contributions may only be used for costs associated with complying with the subpoenas.

On a motion by Chairman DeFilippis, seconded by Commissioner Saunders, and approved by a vote of 2-0, the Commission voted to allow Chris Christie for Governor, Inc. to continue to raise funds subject to the \$3,800 contribution limit and regulations; and that solicitations of contributions shall note that proceeds are specifically for payments of vendors to comply with subpoenas and related issues.

The Chairman noted that if the Commission allows the committee to continue to raise funds, it follows that it should also allow the committee to make the necessary expenditures.

On a motion by Chairman DeFilippis, seconded by Commissioner Saunders, and passed by a vote of 2-0, the Commission determined to exempt from the expenditure limit costs associated with the process of complying with subpoenas.

With respect to complying with the subpoenas issued by the Joint Legislative Select Committee on Investigations, the Chairman stated that the mission of the Election Law Enforcement Commission is informative in nature. He expressed his belief that it is critical that all information be made available to authorities and to the public swiftly.

On a motion by Chairman DeFilippis seconded by Commissioner Saunders, and passed by vote of 2-0, the Commission voted to allow Chris Christie for Governor, Inc. to make expenditures postelection for the purpose of complying with the subpoena duces tecum from the Joint Legislative Select Committee on Investigations.

Chairman DeFilippis moved to the subject of the subpoena from the US Attorney for the State of New Jersey. He noted that the issuance of such a subpoena does not imply criminality. He stated that corporations are often subpoenaed without being the target of investigations.

Legal Director Hoekje stated that when the Commission amended the regulation on use of funds for legal fees rising from ordinary and necessary office-holding expenses, the amendment did not distinguish between pre- or post-indictment, but rather drew a line at whether the use was for criminal defense. She noted the Commission in the past sought to draw a line between civil and criminal use.

Commissioner Saunders asked if the regulation covers this question.

Legal Director Hoekje stated that the amendment addressed use for criminal defense by an officeholder and does not address the specific question asked in the request for an advisory opinion.

Legal Counsel Matthews stated that the Commission has not seen the subpoena from the US Attorney, and the Commission does not know if the campaign is a target. He asked if documents get produced and implicate an employee, would that not also implicate the committee?

Mr. Sheridan replied if that were to happen, it would create circumstances different from those under which the current Advisory Opinion is sought. He stated at that point, he would notify the Commission and seek additional advice. He then noted that in no case, has the campaign committee been charged. Rather, charges are typically brought against an officeholder or employee.

Chairman DeFilippis asked Legal Director Hoekje if it were possible to craft permission to use funds to comply with the US Attorney's subpoena until the time that the committee is a target.

Legal Director Hoekje suggested that the Commission could consider language granting permission to use funds under the understanding that neither Chris Christie for Governor, Inc. and nor its employees were targets, and that Mr. Sheridan would then come back to the Commission upon learning anything to the contrary. She asked if it was customary to receive a target letter as notification, and Mr. Sheridan answered in the affirmative.

Commissioner Saunders expressed reluctance to “sign a blank check” but added that he was satisfied that the return of funds to the State provided an adequate safeguard. Legal Director Hoekje clarified that the committee would be obligated to return all funds up to the amount that was received from the State.

Legal Counsel Matthews suggested that the motion also provide that granting the Commission’s consent for Chris Christie for Governor, Inc.’s request to use funds to comply with the subpoena from the US Attorney for New Jersey would not set a precedent for other individual matters. Chairman DeFilippis agreed.

On a motion by Chairman DeFilippis seconded by Commissioner Saunders, and passed by vote of 2-0, the Commission voted to allow Chris Christie for Governor, Inc. to make expenditures postelection for the purpose of complying with the subpoena duces tecum from the US Attorney for the State of New Jersey, with the Commission’s understanding that Chris Christie for Governor, Inc. is not a target of an investigation, and that the committee will return for further advice should it receive notice that it has become a target.

4. Adjournment

On a motion by Commissioner Saunders, seconded by Chairman DeFilippis and passed by a vote of 2-0, the Commission resolved to adjourn at 12:29 p.m.

Respectfully submitted as true
and correct,

Jeffrey M. Brindle
Executive Director

JMB/elz