



State of New Jersey

ELECTION LAW ENFORCEMENT COMMISSION

ERIC H. JASO
Chairman

STEPHEN M. HOLDEN
Commissioner

MARGUERITE T. SIMON
Commissioner

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PUBLIC SESSION MINUTES

February 27, 2023

Chairman Eric Jaso, Commissioner Stephen Holden, Commissioner Marguerite Simon, Legal Counsel Edwin Matthews, Executive Director Jeffrey Brindle, Deputy Director Joseph Donohue, Legal Director Demery Roberts, Deputy Legal Director Amanda Haines, Compliance Director Stephanie Olivo, Review and Investigation Director Shreve Marshall, Legal Administrator of Review and Investigations Theresa Lelinski, IT Specialist Lou Solimeo, and IT Specialist Elias Amaya participated via GoToWebinar.

A court reporter was available to record the proceedings.

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

The meeting convened at 12:00 a.m. in Trenton.

1. Open Public Meetings Statement

Chairman Jaso called the meeting to order. Executive Director Brindle 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.

The Commission believes that it is in the public interest to act expeditiously upon a matter of importance and concern to the public interest. The Commission could not have reasonably foreseen the need for this meeting at a time when adequate notice could have been provided.

The meeting was announced for February 27, 2023, 12:00 P.M., via GoToWebinar, and was distributed at approximately 4:04 P.M. on February 24, 2023, to the entire State House press corps and was filed with the Secretary of State's Office. It was also posted on the Commission's website.

The Commission believes that it is in the public interest to act expeditiously upon this matter.

In light of the fact that notice for this special meeting was not given 48-hours prior to the meeting, I suggest that there be a motion and vote to enact a resolution authorizing the holding of this special meeting to establish that a delay for the purpose of providing adequate notice would result in substantial harm to the public interest.

On a motion by Commissioner Holden, seconded by Commissioner Simon, and passed by a vote of 3-0, the Commission resolved to hold the special meeting.

2. Public Comments

No public comments

3. Resolution Authorizing an Executive Session

Whereas, there exists a need to hold an Executive Session for the purpose of discussing the following matter/matters, which fall within the exceptions to the Open Public Meetings Act, N.J.S.A. 10:4-12 et seq. to wit.

Matter/Matters (OPMA Exception)

- Elections Transparency Act

Whereas, it is unknown at this time when such discussion to take place in Executive Session may be disclosed to the public.

Now Therefore Be It Resolved by the Election Law Enforcement Commission as follows:

1. This Executive Session Meeting of the Election Law Enforcement Commission shall be closed to the public for discussion of the aforesaid referenced matters.
2. The matters discussed during this Executive Session Meeting shall be disclosed to the public at such time when reason for discussing and acting on same in Executive Session shall no longer exist.

On a motion by Commissioner Simon, seconded by Commissioner Holden, and passed by a vote of 3-0, the Commission resolved to enter Executive Session to discuss a matter of importance and of concern to the public interest.

Return to Public Session

4. Public Comments

Bruce Affran, Esq.
(See Transcript)

5. Commission's Public Statement

Commissioner Holden

I have been very proud to be a Commissioner of ELEC, which has a 50-year history of nonpartisan purpose and pursuits. My concern with the change in the structure of the appointment of the executive director is one that makes me concerned about whether that independence, transparency and nonpartisan purpose is being eviscerated; not by any one individual and not by any particular animus, but because the way the matter is structured.

Much of the work of ELEC is undertaken by the executive director. The executive director themselves has to be beyond political obligation, reproach.

And it is hard to imagine that a direct appointee of any governor from either party would not have some sort of obligation or fealty and in the exercise of their discretion could pursue certain matters and chose not to.

The nonpartisan purpose and independence has been what has made ELEC, and, frankly, Mr. Brindle's actions as its executive, a shining light in election law enforcement in New Jersey and really the rest of the country.

That change in the statute challenges that, and I would hope that the Legislature would think more clearly about whether it's the unintended or the intended purpose. But nonetheless, it would have that effect.

There are several other elements of the proposed statutory change.

I'm very aware of the fact that we are creatures of statute, and the Legislature created a wonderful way to address the issues of transparency and political fundraising and campaigning, and some of the other elements may also present challenges to that.

I think, Mr. Chairman, that the existence and nonreporting requirements and control of the housekeeping moneys challenges the extent to which the Commission can keep on top of all of that. But those are legislative decisions.

I think the reduction of the statute from 10 years to two years presents real, mechanical and investigatory problems.

The staff of ELEC work very hard. Some of the reason that there are delays has to do with the reality that complaints and concerns only come to the Commission through public awareness and the public raising those concerns.

And it takes more than a year, or maybe even two, for that information to become -- to be made aware to the public, and so it shortens the timeline for the potential enforcement and may well overtax the resources available.

Retroactivity, to the extent that it appears with the property right, is a problem, and we heard Mr. Brindle's personal lawyer talk about that a little.

It would certainly undo a number of findings, complaints, decisions that the Commission made over the last several years for events that occurred prior to 2020.

Once again, we are creatures of the statute. And if that's what the Legislature wishes, then I suppose notwithstanding any property right violations, that's what has to happen.

But I think there's an interesting detail that concerns me.

This is not a turf war between the Governor's Office and ELEC. This is a concern by the commissioners to provide due process to the issues and to the parties involved.

The Commission has always expressed a desire and an intention to investigate and examine those concerns that were raised by the Governor's Office. If they are true, if there are problems, then they can't be trivialized.

But as a Commission who had the responsibility to hire and fire under the continuing appointment, we have been unable to gather or be provided with any information to permit us to do our job.

It's a very important job. The Legislature gave us that job.

We have a responsibility to the Commission, and we have a responsibility to our staff and our executive director to investigate, to pursue, to understand that element. And we haven't been afforded that opportunity, although through our counsel we've asked for it.

Of course, depending upon what happens, what the outcome is, we continue with that obligation to our position and our office.

And I would like to be able to find a way of resolving the issue -- if there is an issue -- in a way that is less destructive to the process, less destructive to the organization.

Thank you.

Chairman Jaso

Thank you, Judge.

I would just add that -- going back to the issue of the statute of limitations being limited to two years and the retroactive application of the statute of limitations -- as Judge Holden correctly observed, ELEC, in my view, has been -- at least in the past in some instances correctly criticized for taking time to investigate and to act in its enforcement capacity.

Part of that was, of course, prior to our becoming commissioners, there was a period of time where the Commission could not act because of only two commissioners being appointed.

But it has been my goal as Chairman, as the staff well knows, along with my fellow commissioners, to make ELEC a more agile and time-sensitive enforcement agency, and add teeth to its penalties, and -- all that being said, and so I think our staff, as we can show over the last couple of years have reflected that. We no longer have sort of years-long delays and more time lapses, I guess more aptly said, between an election and enforcement actions that are taken with regard to campaign finance violations in regard to a particular election.

So we have made progress in that regard.

That being said, two years is simply an insufficient amount of time to prosecute and investigate and prosecute what are oftentimes complex cases.

And I would hasten to add as a former federal prosecutor, the most complex cases involving fraud and misconduct often include sort of by nature of the violations an effort to conceal the misconduct, which only makes it more difficult and time consuming for investigators to do their jobs and for enforcement agencies like ours to take action.

So it also, as I think Judge Holden alluded to, would effectively eliminate and moot many of the enforcement actions that we've recently taken, including against some of the Big Six -- both Republican and Democratic committees.

So that causes concern on an independence and efficacy level.

And there is a certain amount of irony that the Elections Transparency Act has at an 11th hour effort by the Governor made ELEC's -- or threatens to make ELEC's charge -- which is primarily for transparency -- difficult, if not insurmountable for us to conduct and achieve the goals that the Legislature originally gave us back in the early '70s.

So with that being said -- and I would also add that unless any of the commissioners objects otherwise, what Judge Holden and I have articulated -- we are making these statements on behalf of the Commission unanimously.

Judge Simon, obviously you're welcome to add your piece. But we have two Democrats and one Republican, myself, who are standing virtually arm-in-arm in making these statements and expressing these concerns.

Commissioner Simon

I would like to add that one of the pleasures of working in this group -- hardworking and intelligent is that we've all worked towards what's right, what's transparent, with really no regard of our political background and appointment.

And it's been a pleasure working with everyone, and we're looking to continue that way if possible.

And I would say that both of my colleagues have given a comprehensive and eloquent overview of our position, and I have no objection to anything, and I certainly join in general with all of the comments made.

Thank you.

6. Adjournment

On a motion by Commissioner Simon, seconded by Commissioner Holden, and passed by a vote of 3-0, the Commission resolved to adjourn at 1:06 pm.

Respectfully submitted as true
and correct,

Jeffrey M. Brindle
Executive Director

JMB/elz