

COMMISSION MEETING

before

COMMISSION ON LEGISLATIVE ETHICS AND CAMPAIGN FINANCE

"Continue seeking agreement on what changes, if any, in current
State laws and regulations governing conflicts of interest
the Commission should recommend to the Legislature"

September 26, 1990
Room 334
State House Annex
Trenton, New Jersey

COMMISSION MEMBERS PRESENT:

Dr. Alan Rosenthal, Chairman
Albert Burstein
Patricia Sheehan
Michael Cole
Senator Donald T. DiFrancesco
Assemblyman Thomas J. Deverin
Assemblyman Garabed "Chuck" Haytaian

ALSO PRESENT:

Marci Levin Hochman
Assistant Counsel
Office of Legislative Services

Frank J. Parisi
Office of Legislative Services
Aide, Ad Hoc Commission on Legislative Ethics
and Campaign Finance

* * * * *

Meeting Recorded and Transcribed by
Office of Legislative Services
Public Information Office
Hearing Unit
State House Annex
CN 068
Trenton, New Jersey 08625



New Jersey State Legislature

AD HOC COMMISSION ON LEGISLATIVE ETHICS
AND CAMPAIGN FINANCE

Alan Rosenthal
Chairman
Albert Burstein
Michael Cole
Patricia Sheehan
Thomas Stanton, Jr.
Carmen A. Orechio
Senator
Donald T. DiFrancesco
Senator
Thomas J. Deverin
Assemblyman
Garabed "Chuck" Haytaian
Assemblyman

State House Annex, CN-068
Trenton, New Jersey 08625-0068
(609) 292-9106

John A. Lynch
President of the Senate
Joseph V. Doria, Jr.
Speaker of the
General Assembly

M E E T I N G N O T I C E

TO: MEMBERS OF THE AD HOC COMMISSION ON LEGISLATIVE
ETHICS AND CAMPAIGN FINANCE

FROM: ALAN ROSENTHAL, CHAIRMAN

SUBJECT: COMMISSION MEETING - September 26, 1990

*Anyone who wishes further information on the Commission meeting may
contact Marci L. Hochman, Aide to the Commission, at (609) 292-4625 or
Frank J. Parisi, Aide to the Commission, at (609) 292-9106.*

The Ad Hoc Commission on Legislative Ethics and Campaign Finance will
hold its next meeting on **Wednesday, September 26, 1990 beginning at 1:30
p.m. and ending at 4:00 p.m. in Room 334 of the State House Annex, Trenton,
New Jersey.**

The purpose of the meeting will be to review the preliminary draft of the
final report of the Commission and to respond to questions raised by the
President of the Senate and the Speaker of the General Assembly regarding the
recommendations made to date by the Commission.

Issued 9/19/90

TABLE OF CONTENTS

APPENDIX:	<u>Page</u>
Letter to the Commission from John A. Lynch Senate President and Joseph V. Doria, Jr. Speaker of the General Assembly	1x
Memorandum to Frank Parisi submitted by Gregory E. Nagy Legal Director New Jersey Election Law Enforcement Commission	4x
Memorandum to the Commission submitted by Marci L. Hochman and Frank J. Parisi Aides to the Commission	7x
Memorandum to the Commission submitted by Frank J. Parisi	10x
Memorandum No. 1 to the Commission submitted by Frederick M. Herrmann, Ph.D. Executive Director Election Law Enforcement Commission	15x
Memorandum No. 2 to the Commission submitted by Frederick M. Herrmann, Ph.D. Executive Director Election Law Enforcement Commission	18x

* * * * *

bgs: 1-34
hw: 35-64

(MEETING OPENS AT 1:45 p.m.)

DR. ALAN ROSENTHAL (Chairman): I assume that Senator DiFrancesco and Al Burstein are on their way, and if we start they will surely arrive. Frank, do you want to call the role?

MR. PARISI (Committee Aide): Okay. Chairman Rosenthal?

DR. ROSENTHAL: Here.

MR. PARISI: Al Burstein? He's not here yet. Michael Cole?

MR. COLE: Here.

MR. PARISI: Patricia Sheehan?

MS. SHEEHAN: Here.

MR. PARISI: Al Stanton's not here. Senator Orechio?

SENATOR ORECHIO: Here.

MR. PARISI: Senator DiFrancesco's not here. Assemblyman Deverin?

ASSEMBLYMAN DEVERIN: Here.

MR. PARISI: Assemblyman Haytaian?

ASSEMBLYMAN HAYTAIAN: Here.

DR. ROSENTHAL: What we'll be doing at this meeting, and very likely at next week's meeting -- next week's meeting will begin at 1:00 instead of 1:30, at the regular time-- What we'll be doing is going through the draft report, which you received several days ago, and a number of documents.

One document is a document sent to us by the presiding officers and it asks us for clarification on a number of recommendations that we made. A related document is a memo by Frank Parisi in which he addresses in a preliminary fashion, for our guidance, some of the issues -- all of the issues -- that were brought up by the Leadership. Parisi's memo on that is dated September 26th. In addition, we have and you've received these, a memo that we requested of Fred Herrmann of

ELEC and another memo from ELEC which we did not request, but got, from Gregory E. Nagy.

In addition, there is a memo that you have from Frank and Marci that brings up some points that need clarification that resulted from their drafting the report. So, we have the report and the various documents.

My suggestion is to take up the -- obviously anything the Commission members want to bring up -- but to probably work initially from the Leadership questions of the Commission, and Leadership questions as addressed in a preliminary fashion by Frank Parisi.

The first question that the Leadership had is whether specific contribution limits recommended by the Commission, the result of an analysis of contribution data by the Election Law Enforcement Commission-- And if you read Parisi's response there, you will see that the Fred Herrmann memo pretty well responds to that. I don't think it is necessary to go beyond the response that Parisi and Fred Herrmann have drafted.

If there are any questions about that-- (1)(b) is it the intent of the Commission that the \$1500 contribution limit will apply to all candidates for any public office? Frank's interpretation and -- is this the Commission's interpretation? -- is no. With the exception of a few recommendations, the Commission's recommendations only apply to legislative elections, candidates for members of the Legislature, or the legislative staff.

We did not -- except in a very few cases of, like campaign contributions to State political parties -- we did not talk about other elections, other candidates, and other limits. We felt that it was not within the-- Generally, we felt it was not within the Commission's jurisdiction and it would, of course, be appropriate for the Legislature to take our recommendations and apply or not apply them to other elections. Is that a correct sense of our discussions so far?

ASSEMBLYMAN HAYTAIAN: It was but I don't remember if we all agreed to that. I thought there was some disagreement as to the fact that it was just for legislative elections. Because, I remember pointing out officeholders -- dual officeholders, officeholders on a local or county level that would be able to raise money and come through a backdoor approach. And, in fact, in the letter that we have from both John Lynch and Joe Doria, in their general questions, (5)(a), they pointed out two questions here that I remember bringing up in our discussion here, and I don't know if Frank answered those general questions in his memo? I didn't see this letter until today. So, I'm not sure, Frank. Did you answer those general questions?

MR. PARISI: You mean the questions from the Leadership?

ASSEMBLYMAN HAYTAIAN: Yeah.

MR. PARISI: No, my feeling was that the Commission had only really talked about the recommendations in terms of the legislators and that they did not really address the questions -- the backdoor question; not that I can see from reading the transcript. Therefore, my conclusion was that it was something that the Commission would have to consider and at subsequent meetings.

ASSEMBLYMAN HAYTAIAN: Well, I think the fact that the Leadership of the presiding officers brought it up, the question was on their minds as it was on mine. I think we should discuss it. And maybe here is the proper place to discuss it because that \$1500 contribution limit should be, in my estimation, as I said in the past -- should apply to all candidates so that we can exclude this backdoor approach.

And the question also comes up about dual officeholders. Are they going to have separate campaign committees; one for mayor and one for legislator? Or are they going to have just one? Are we going to have a separate one for councilman and one for Senator, or just one? I think we

have to discuss that and we have to answer that question. Because then they'll have two and someone else will only have one. Can they transfer? Sure they can. They can transfer from one to the other as long as they stay within the limits of the guidelines that we've put in here; questions that have to be answered; practical questions that occur everyday.

DR. ROSENTHAL: All right. Let's address this.

ASSEMBLYMAN DEVERIN: I'm not sure that dual officeholding is a problem. I don't know how many dual officeholders we have in the 120 legislators, you know? And I would presume that if you ran for mayor you had to have a separate campaign fund for mayor, and when you ran for Assembly or Senate you had to have a separate campaign fund for that, and never the twain shall meet, you know.

I think we also talked at the final legislation -- the drafting of the final legislation -- a lot of things would be-- For instance, the contributions, whether they would be for local, and I think the opinion was that in the final legislation, even though we are not saying it, that the final legislation would, whatever limits you set on contributions for candidates, would be part of that package. If you can only get \$1500 to run for Senate, you should only get \$1500 to run for Governor -- or rather not Governor -- for mayor or for freeholder. I think that was--

SENATOR DiFRANCESCO: I don't think that was our intent.

ASSEMBLYMAN DEVERIN: It's not our intent but I think we left the matter--

DR. ROSENTHAL: No, I think we did not intend to apply these limits to other than legislative office. I mean, and I think the thinking -- and I know Assemblyman Haytaian disagreed -- the thinking was that our charge was to look at legislative elections, and it would be okay for the Legislature obviously, to look at anything it wanted. But this is the occasion to--

ASSEMBLYMAN HAYTAIAN: But we've extended our discussion to county committees and State committees, so we've done that already.

DR. ROSENTHAL: All right. I'm just telling you what it seemed to me our intent was, and now there is obviously some inconsistency because-- So, it's open. The question is, should we address other than legislative elections; should we discuss contribution limitations for county and local candidates as well?

SENATOR DiFRANCESCO: Well, the problem I have with that, Chuck, and I want to throw this up because you've probably been more involved than I have because I've only been involved in State office, but at a local level you were suggesting that an individual could not contribute more than \$1500. Correct?

ASSEMBLYMAN HAYTAIAN: Don't tell me at the local level you're not going to find people who contribute -- not too many people contribute \$1500 and more. I can go through ELEC reports with you for some mayors and some are very large municipalities that raise \$400,000, \$500,000 \$600,000 for elections.

SENATOR DiFRANCESCO: Well, I wouldn't want to prevent somebody from running for local election and having some close friend or relative finance their election, in effect. I think that's probably common in small towns, big towns. I know what you're saying about the big communities. In Jersey City and places like that, I'm sure there are a ton of contributions.

I'm thinking of the person who can't raise money any other way, but from a few handfuls of people at the local level. I mean I know you served locally, albeit it was a big community. I have not. I know how hard it is to raise money for local candidates because I have tried. And, I don't know, maybe you're right. Maybe the township attorney shouldn't be contributing \$10,000 to a campaign or the person's mother shouldn't be giving \$2000, or whatever. I know when I first

ran, my father basically, probably was the biggest contributor I had. And that was like, \$1000.

ASSEMBLYMAN HAYTAIAN: Well, when I ran the first time for freeholder, I was the biggest contributor because I couldn't raise a penny, and I didn't try to. And I put all of my own money into it and lost the first election.

SENATOR DiFRANCESCO: Well excluding that because you could spend whatever you wanted.

ASSEMBLYMAN HAYTAIAN: Well, the point is, if you really want to run for office and you think you should run, and it's the first time around, then you better be ready to spend your own money because that's what it's all about.

SENATOR DiFRANCESCO: It's true, I know that's what happens.

MS. SHEEHAN: But I think the problem here is, in effect, opening a whole new discussion in terms of applying the things, whether it's the contribution limit or other things, to local office. I mean, I agree with Alan. I don't think that was our charge. And I think, to begin to do that now, opens -- would require new discussion, some comment from local officials as to how it actually works or not works. I just think it's a mistake, at virtually the 11th hour, to take on another subject.

SENATOR DiFRANCESCO: But I think that, what Chuck is saying from a policy standpoint is, if it's good policy for State legislators, then why isn't it good policy for county freeholders and local government people?

ASSEMBLYMAN DEVERIN: Well it may be good policy but--

DR. ROSENTHAL: But it may not be.

ASSEMBLYMAN DEVERIN: --it may not be our charge, and when the legislation is finally drafted and put up for public discussion, the public hearings will be held -- whatever committee these bills are assigned to--

SENATOR DiFRANCESCO: Charged by who? Gentlemen John?

DR. ROSENTHAL: By the Leadership. Presiding officers.

SENATOR DiFRANCESCO: Don't think they would ask that question if they didn't think it was part of the--

ASSEMBLYMAN DEVERIN: They don't always ask the right questions. (laughter) But, I think Pat is right. If we start talking about boards of education and local, we'll never get this finished, but when the final legislation is drafted, if the people who put the bills in the Legislature themselves, think that the limit should be extended to local and county election, I'm sure that will be done. But at least we have a start.

DR. ROSENTHAL: My feeling is whether it's our charge or not, we have not really attended to it, and I feel inadequate in terms of information in not having invited people from those communities to give testimony. I think that we would really have to go on and, I agree with Pat, reopen things and pursue that path. I'm not sure that's worth doing at this point.

ASSEMBLYMAN HAYTAIAN: Al, I'm not suggesting we open it up, but I think we must address the question. If it's \$1500 contribution for a legislator, why should a local official be exempt? First of all, I agree with Donny. You probably get 98% of local officials don't even spend \$1500 on an election. I know in my area, generally it doesn't occur. The point is, for the 2%, you have a backdoor policy for that 2% who decide they want to run in the primary against the legislator, and so they have a free and open door to raise as much money as they want and could put that money, funnel it into their campaign account, run against the legislator for a primary. Why? Is that right? What are we, second-class citizens?

ASSEMBLYMAN DEVERIN: Mr. Chairman, excuse me. All the election laws now cover everybody that runs for public office. If we change the election law now, I'm sure in the legislation itself and the debate itself, will cover everybody to run, the same as it is now. The reporting of everything

over \$100 is for general -- for every single candidate that files in the State of New Jersey. The limits are for every candidate, and when we're done with this legislation, I'm sure it will do the same thing. But for us to start talking about local contributions and dual officeholding, we'll be here till next October, for God's sake.

SENATOR DiFRANCESCO: Tom is right. What we do to ourselves, we're bound to do to others down the road. An example would be Paul Contillo's Ethics Bill. Couldn't we have a statement in the report dealing with this issue? As a Commission, although we haven't--

DR. ROSENTHAL: Addressed it.

SENATOR DiFRANCESCO: --as you say, addressed it as direct as we should, that it certainly seems like a good idea and ought to be considered--

DR. ROSENTHAL: It ought to be explored. Another problem I have is, in terms of legislators, you know that each legislator comes from a district of the same size, but where you're dealing with municipalities, I mean, you're dealing with small municipalities and large municipalities; very different electoral bases. And you have the same kind of limits. I'm not sure. I'm not arguing. I'm just doubtful that we can take the same numbers and apply them universally.

ASSEMBLYMAN DEVERIN: There are some communities that if you made the limit \$1500 they would send you a letter and say, "Thanks, we didn't know we could get that much money."

ASSEMBLYMAN HAYTAIAN: The point is, you don't make rules and regulations for the people in that group because it doesn't matter. They'll never see it anyway. It's the small percentage of municipal officials or county officials who would then present a threat "to sitting legislators." And I don't think we should be behind the eight ball when they have a free and open reign.

DR. ROSENTHAL: You've always talked about evening out the playing field. So, this evens it out against incumbents.

SENATOR ORECHIO: Mr. Chairman, I think we all recognize this wasn't our charge, and maybe we should play it by ear and see what happens when the legislation moves through the hopper.

DR. ROSENTHAL: All right. Basically I think we will, in the report; language to the effect that we did not attend to this question but we do think it's something that has to be addressed by the Legislature.

(1)(c) is in the event that legislative candidates choose to have a joint campaign committee: Would each candidate be permitted to accept the maximum contribution? Further, in establishing a joint committee, would a candidate be required and/or permitted to transfer funds from an existing committee, assuming that it was comprised of contributions which conform to the limitation?

Frank writes that the first part of this question raises an issue that the Commission has not yet considered previously. The answer to the second part of the question is probably, yes, although this is another issue that the Commission has not considered previously. What about this issue?

MS. SHEEHAN: Well, we talked about that, we talked about in some districts, the Assemblypersons have a joint committee and other districts there was the possibility to join up with the Senator and have one group. And I, for one, assumed in that discussion that we were talking about campaigning combinations and therefore assumed that the limit was still per person per legislator. Ergo, if you had two in your joint -- you had twice \$1500, and if you had one, you had \$1500, and if you had three you had \$3500.

DR. ROSENTHAL: That would be my assumption. I think we did assume that.

SENATOR DiFRANCESCO: If you don't do it that way they're all going to be individual accounts, that's for sure.

DR. ROSENTHAL: Yes. Right. So I think that's clear. This is what we mean: That a joint account would be each individual's maximum contributions.

ASSEMBLYMAN DEVERIN: While we're on that, Mr. Chairman -- (b) in the draft report -- (b) requires that such legislative candidates be limited to only one campaign committee or continuing. Now, if I remember, I thought there was one campaign committee and a continuing committee.

SENATOR DiFRANCESCO: It is.

ASSEMBLYMAN DEVERIN: They would be allowed to have a campaign committee and one--

ASSEMBLYMAN HAYTAIAN: Just one.

DR. ROSENTHAL: No. One campaign committee.

MS. SHEEHAN: Remember Fred Herrmann talked about changing the reporting requirements so that you weren't walking into yourselves with reporting.

SENATOR DiFRANCESCO: I don't recall that, but my impression was that I could have two, too. I even wrote on my draft that it should be "and," and not "or."

DR. ROSENTHAL: Where's the recommendation as listed in the draft report? I think we very specifically said one committee.

MS. SHEEHAN: As a matter of fact, Mr. Chairman, I was going to suggest, because I get so confused by the terminology that's used here, that when we refer to it in the report that we could use the term that's used in other jurisdictions, "one authorized committee," because I think it's confusing to say "campaign committee," "continuing committee," etc. I mean, if we're talking one committee, I think we should call it one thing. That's my suggestion.

ASSEMBLYMAN DEVERIN: It could be an individual candidate, too.

DR. ROSENTHAL: Yes. Assemblyman Haytaian?

ASSEMBLYMAN HAYTAIAN: One problem with joint committees, and this is where the Senators would be impacted. If they can only raise \$1500 per election -- that's every four years they have an election-- If they have joint committees with Assemblypeople, now they're in a two-year term versus a four-year term. You now have a problem. I just point out the reality of the situation to you. I don't know how we solve it? I don't think Senators will then go in a joint committee. I know my Senator didn't. He always had his own. In fact, my Assemblyman had his own, and I had my own. But where they do combine it, there could be a problem.

DR. ROSENTHAL: Currently under our recommendations, Senators can only raise \$1500 per election, right?

SENATOR DiFRANCESCO: Yes, primary and general, \$3000.

DR. ROSENTHAL: Or take \$1500 or \$5000 per election, primary and general. For Senators an election occurs every four years.

MR. BURSTEIN: Except the decennial year.

DR. ROSENTHAL: So Senators essentially would be authorized to raise less money than would Assemblypeople because they have fewer elections. Therefore, it would seem to me, if Senators combined in a campaign committee or in an authorized committee with two Assemblypersons, that wouldn't change their eligibility to raise money. They would still only be eligible to raise money three times for primaries and three times for general elections in a 10-year period. So Senators would be in the same position whether they have a combined committee or a single committee.

SENATOR DiFRANCESCO: That will never pass, by the way.

DR. ROSENTHAL: What?

SENATOR DiFRANCESCO: Us raising less money than ever.

DR. ROSENTHAL: Why don't you have two-year terms?
(laughter)

SENATOR DiFRANCESCO: Why don't they have four-year terms?

ASSEMBLYMAN HAYTAIAN: Or give us two for four--

ASSEMBLYMAN DEVERIN: And they do less work than we do, anyway.

DR. ROSENTHAL: Some people don't think Senators should be allowed to raise any money.

SENATOR DiFRANCESCO: I know and maybe they shouldn't. But I don't know about the mechanics of that because if you start raising money-- If I start raising money and assuming that I win in '91, if I start raising money immediately after the '91, am I raising it for the primary?

ASSEMBLYMAN HAYTAIAN: Yes, the '93 primary.

SENATOR DiFRANCESCO: I'm raising it for the '93 primary. Now, am I raising it in a campaign-- Now getting back to this other thing because I totally disagree with the war situation, am I raising it in a campaign fund now? I have a fund-raiser one month after my election--

ASSEMBLYMAN HAYTAIAN: It doesn't matter. It will be called "Friends of Donny DiFrancesco PAC," or a-

SENATOR DiFRANCESCO: Or a campaign account.

MS. SHEEHAN: One account. You're only allowed one account. You can call it anything you want.

DR. ROSENTHAL: Campaign account. It's one campaign account.

SENATOR DiFRANCESCO: I don't understand the point behind having only one. I disagree. I think you have to have two.

DR. ROSENTHAL: Why do you have to have two?

ASSEMBLYMAN HAYTAIAN: We voted on that.

SENATOR DiFRANCESCO: We did vote on that? Then I must have been asleep. When did you do that? When I was in Nashville? (laughter)

ASSEMBLYMAN DEVERIN: I based my-- I thought it was an add to because of what Fred said. For instance, you close out your account; you go into limbo.

SENATOR DiFRANCESCO: How are you going to stop people from raising money for me even if I can't, independently, under any name of a political action committee?

ASSEMBLYMAN HAYTAIAN: Well, that would be against the law.

SENATOR DiFRANCESCO: How?

DR. ROSENTHAL: An independent committee could raise money and spend the money, but they can't--

SENATOR DiFRANCESCO: I don't think it will fly. You know, I'm just thinking about all the legislators, generally. Everybody has--

DR. ROSENTHAL: Why do you need two or more committees?

MR. COLE: What can you do with two that you can't do with one, Donny?

SENATOR DiFRANCESCO: I don't know. Fred's not here. I don't know if-- You know, that's one of the questions I had. What are the differences between having a political action committee and a campaign account?

ASSEMBLYMAN HAYTAIAN: Different reporting requirements. The campaign committee is 29 days before, 11 days before, and 20 days after. It's 60 days if you continue it thereafter. A political action committee is quarterly. You start it January 1st; you provide a report then on April 1st and straight through: July 1st, October 1st, then again, January 1st.

The reporting requirements would have to change with one PAC or whatever it's called, because the question would be -- and I discussed this with Gregg-- If you have an off-year election for the Assembly-- Let's assume this year is our off-year election; it would be quarterly reporting. And as soon as you get into a campaign mode, which is January --

although I'm in a campaign mode because a guy indicated he's running in the primary against me in '91 already, so that's fine--

MS. SHEEHAN: Fred answers that in that September 18th one that you faxed us. It says right there--

DR. ROSENTHAL: Right, we have a recommendation from ELEC which would deal with the reporting requirements. It is memorandum No. 2 from Fred Herrmann, September 18th and it would be under (a) right on the first page. The Commission believes that the reporting cycle should be changed to begin with the candidate's initial campaign related fund--

MS. SHEEHAN: And in off-years it would jump to the quarterly.

ASSEMBLYMAN HAYTAIAN: That's right. This is exactly what we had discussed.

DR. ROSENTHAL: And this is what we discussed.

ASSEMBLYMAN HAYTAIAN: Which means that during an election year if we had an ongoing committee or an ongoing PAC or an ongoing campaign fund, whatever you want to call it, then starting in January of 1991 we would not report until May 6th, which is 29 days before the June primary. So that means now instead of reporting on April 1st as we normally would do, it would then be extended to May 6th for that campaign year. So you'd report 29 days and you then have an 11 day, and you'd have the 20 day after, and you'd have the 60 day until the 29 day report is then due for the general election, which is fine. At least we then would know the requirements for reporting; we'd know the dates and we wouldn't get penalized if we screwed up on a date. And that's what happens, quite frankly. And, this is proper. This is the way to do it.

SENATOR DiFRANCESCO: Well, here's my problem: Chuck Haytaian can have a political action committee, under your proposal, and a campaign account.

MS. SHEEHAN: No.

SENATOR DiFRANCESCO: He's the Minority Leader. He's the Minority Leader.

MR. BURSTEIN: That's a Leadership account.

DR. ROSENTHAL: Well, that's a Leadership committee. That's different. That's not Chuck Haytaian; it would be an Assembly Minority Committee.

SENATOR DiFRANCESCO: You mean it wasn't John Russo? And it wasn't Chuck Hardwick? You've got to be kidding me.

DR. ROSENTHAL: Well, yes. But it would be a Leadership committee.

ASSEMBLYMAN HAYTAIAN: Well, that's the individuals involved. This is a Leadership-- We have an ARM '90 -- '91, or whatever it's called.

SENATOR DiFRANCESCO: Then we're giving more rights to Chuck Haytaian than you are to Don DiFrancesco.

DR. ROSENTHAL: We're basically authorizing four Leadership committees.

SENATOR DiFRANCESCO: That's what you're doing, unless you can restrict the use of that money.

ASSEMBLYMAN HAYTAIAN: Except that if that money in the ARM is used to pay campaign debts for Chuck Haytaian or campaign expenditures for Chuck Haytaian, it could only be \$1500, per our rules. So, you can't play the game. It could only be--

DR. ROSENTHAL: No, the Leadership funds can give as much money as they want to candidates.

SENATOR DiFRANCESCO: Well, I guess I'd better get back into Leadership. I guess the answer is I've got to run for Leadership.

DR. ROSENTHAL: Well, I mean this is a Leadership caucus responsibility.

SENATOR DiFRANCESCO: Alan, that was the point for the whole Commission; to get you to run for Leadership. I don't care. It's okay. I mean, we're looking at things that I-- I

would suggest that we look at suggestions that might pass. I don't see how you're going to now ask people to eliminate every single political action committee that we now have opened. And almost every legislator that's been around for a couple of years has a political action committee.

ASSEMBLYMAN HAYTAIAN: But that's not going to change.

SENATOR DiFRANCESCO: It is going to change.

MR. BURSTEIN: Mr. Chairman, I don't understand what the problem is, from the standpoint of the individual legislator in having just one committee? He can raise money as he would in two committees and dispense as he would in two committees. So, I don't know what the real problem that's being addressed is? And, insofar as the Leadership fund is concerned, I think that there are inherent restrictions, if not express restrictions, with regard to the usages that can be made of that money; that a leader will not be a leader administering a fund for too long if that kind of money was misused. We can't spell out everything for every possible situation and I think we're overburdening the law if we attempt to do so.

SENATOR DiFRANCESCO: I withdraw all my comments.
(laughter)

DR. ROSENTHAL: You can't; they're part of the record.

SENATOR DiFRANCESCO: I defer to Judge Burstein.

MR. BURSTEIN: I think he's setting me up for something.

DR. ROSENTHAL: All right. The second point of that question (1)(c) is in establishing a joint committee: Would a candidate be required and/or permitted to transfer funds from an existing committee assuming it was comprised of a contribution which conformed to limitation? And the answer would be, "Yes." If you go from a single committee to a joint committee with other candidates, you can transfer funds. You still are limited in how much you can take and the size of campaign contributions, but you can transfer--

ASSEMBLYMAN DEVERIN: But if you're in the single committee you can transfer. If you're running with John Johnson and Mike, you can transfer.

DR. ROSENTHAL: Sure.

MR. COLE: Well, don't you have to transfer, Al? We're only allowing one committee, be that as individual or joint. So if you go into a joint, you can't retain your individual committee.

DR. ROSENTHAL: Yeah. Then you transfer, but you can just keep your individual. You would transfer from an individual into a joint.

ASSEMBLYMAN DEVERIN: If you have an individual-- For instance, if the account is Deverin and DiFrancesco and we want to put billboards up, we either have to pay our share, or he has to transfer to me and I pay the bill. That's permissible.

MR. BURSTEIN: This a bipartisan ticket?

ASSEMBLYMAN DEVERIN: Well, he's not going to run anymore anyway.

DR. ROSENTHAL: Let me just turn to John Russo -- Dave Russo, I'm sorry -- from the Senate Majority staff. And you are expressing the views of Senator Lynch and what we meant by this first question, (1)(c).

MR. RUSSO (Senate Majority staff): It brings up the point, I think, that the Commission has agreed that it would be \$4500 to a joint committee that has two Assemblymen and a Senator in the committee. Now, it brings up the second issue of does the contributor have to make a conscious decision to write three separate \$1500 checks, making that decision that he's making a contribution of \$1500 to Assemblyman A, \$1500 to Assemblyman B, and \$1500 to Senator A, rather than just making a \$4500 contribution, which is really in the name of one of the three, which brings up that issue?

MS. SHEEHAN: It would have to be in the three names.

SENATOR ORECHIO: Wouldn't their account be structured that way?

MR. RUSSO: Right now I would think that most PACs, if they were making -- or anybody-- If an individual was making a contribution to the Haytaian, Littell -- whatever the third candidate would be -- would write the check out to "The Committee to Elect Haytaian, Littell, and Whoever," for \$4500. Now, is the intent of that contributor to make a \$4500 contribution to Chuck Haytaian, or is it the intent of that contributor to make three \$1500 contributions; one to each candidate?

MR. BURSTEIN: I really don't think it makes any difference. If you have established a joint campaign or a joint campaign fund account, the check would be made payable to that account, so that inherently you're going to have a three-way division, and what the intent of the giver is, is really immaterial.

SENATOR ORECHIO: Because each one is not going to have an individual account; they're going to have a joint account.

DR. ROSENTHAL: Right. The bookkeeping problem is to recognize that Senators have less drawing power over the course of time than the Assemblymen, because they're running less frequently and I think that could be calculated. But it could be one check to a campaign account or it could be three checks, if somebody so chooses to do it that way.

MR. BURSTEIN: I don't know what the experience is with regard to joint campaign funds involving Senators and Assemblymen in the sense that whether or not they continue after the election in which all three are running. My own recollection is that if there were that kind of an account, it terminated at the end of that election and then thereafter, the people went off on their own. Now I don't know if that's changed in recent years; it may have been.

SENATOR ORECHIO: Al, those who have joint accounts and choose to do that, physically they also have joint offices. So I think there's some continuity as well. I don't think it's abandoned after the campaign gets the contributions; they maintain that same relationship.

ASSEMBLYMAN HAYTAIAN: The only problem, and I see this as a problem in a four-year term for a Senator -- joint committee, two Assemblymen and a Senator, 1993 the election for the Assembly and the Senate -- then 1995, we have an election for the Assembly. Is that joint committee eligible now for that \$4500 or \$3000?

DR. ROSENTHAL: Three thousand dollars. Three thousand dollars and \$3000. So I say that's the bookkeeping adjustment.

ASSEMBLYMAN HAYTAIAN: Okay. That's what we meant, I'm sure.

DR. ROSENTHAL: Do you want to just stay there and you can comment on these as we take them up, in terms of the meeting of the Senate Presiding Officer?

MR. RUSSO: Okay.

DR. ROSENTHAL: We're down to (1)(d). Does the \$5000 limitation on contributions from other candidates apply to all candidates for State and local office or only to other candidates for the Legislature? Does this special category of contributions establish candidates as a separate class of contributors similar to PACs? Does this suggest that such transactions should be specifically designated as transfers rather than contributions?

Mr. Parisi writes a review of the transcript of the August 8th meeting of the Commission suggests that the \$5000 limitation was meant to apply only to legislative candidates. The Commission may wish to consider the issues raised in the second and third parts of the question, as they were not considered previously. So, I think we've settled on only legislative candidates.

The second is does this special category of contributions establish candidates as a separate class of contributor similar to PACs?

MS. SHEEHAN: Aren't they bound by the same \$1500 per person?

DR. ROSENTHAL: The candidates can take -- contribute \$5000 from their authorized campaign fund to another candidate.

MS. SHEEHAN: Yeah, but a candidate for mayor would just be a person. I mean, if I were running for mayor, I couldn't come under that because I'm not a legislative candidate. I'm a person, and I'm \$1500. That prevents the stuff that Chuck was worried about. The local candidate-- You know, the local candidate comes in as a person.

ASSEMBLYMAN HAYTAIAN: Suppose the candidate for mayor is also running for the Legislature?

ASSEMBLYMAN DEVERIN: Then he has to have a separate account.

ASSEMBLYMAN HAYTAIAN: Can he then transfer from that committee to the other committee, and how much?

MS. SHEEHAN: He can transfer from the legislative committee up to \$5000 because you've said that was allowed, but for the mayor's committee only \$1500.

DR. ROSENTHAL: I think what we mean is, that a legislative candidate, out of his or her campaign fund, can only transfer \$5000 to another legislative candidate and not to a candidate for county or municipal office.

ASSEMBLYMAN HAYTAIAN: No, I don't think we said that.

DR. ROSENTHAL: You don't think we mean that?

ASSEMBLYMAN HAYTAIAN: I don't think we said that.

DR. ROSENTHAL: Well, let's figure out if we mean it. Whatever we said, do we mean that? My thinking was that we were dealing with legislative candidates.

ASSEMBLYMAN HAYTAIAN: Yeah, but we do. I think all of us that are legislators will tell you-- For instance, I

help out county and municipal candidates out of my present pay. I go to a dinner for the county committee and I'll buy a table, and so now, that's to a county committee. Then I'll go to a freeholder candidate--

DR. ROSENTHAL: Then the question is, should your campaign account be the equivalent of the PAC so that the limitation that applies to PAC contribution also applies to you?

ASSEMBLYMAN DEVERIN: But it's also-- If he weren't running for office or still in office, he wouldn't buy those tickets. So that's actually an expenditure for his campaign. The only reason he buys a ticket; he makes himself a big guy -- or I make myself a big guy. Even though you're helping, it's part of your campaign expenses.

DR. ROSENTHAL: What about the thought on that? Should a legislative candidate be allowed to contribute at the same limits as a PAC, or should a legislator be allowed to contribute as any other individual or corporation with a \$1500 cap?

Or thirdly, -- and this is what I had in mind -- that a legislator can contribute \$5000 to another legislative candidate but can only contribute \$1500 as an individual or a corporation to candidates for any other public office.

ASSEMBLYMAN DEVERIN: That's going to need a lot of interpretation because--

DR. ROSENTHAL: Well, play around with it--

MR. BURSTEIN: I would opt for treating the legislator's contribution as a PAC contribution. We're really not talking about something that is a common problem or is commonly done. It's probably done in relatively rare circumstances out of the total body of legislators. I don't see any real problem in keeping them at the same level. I think administratively, it would probably be easier, among other things.

DR. ROSENTHAL: So, \$5000, the equivalent of a PAC limitation and \$5000 to any candidate.

MR. BURSTEIN: Right.

SENATOR DiFRANCESCO: But what about if I want to give to the freeholder campaign; I want to give \$10,000?

ASSEMBLYMAN HAYTAIAN: You can't.

SENATOR DiFRANCESCO: Why not? It's a county party. The purpose of our--

MS. SHEEHAN: Well, if you were giving it to the county committee as an individual you have a different limit. That's where we had the \$10,000. Contribution limits to the county committee was \$10,000.

SENATOR ORECHIO: It's still \$5000.

SENATOR DiFRANCESCO: Our concern was the amount of money being spent in these legislative races. It was so much money -- hundreds of thousands of dollars-- And that's because everybody's transferring money. And I was one of those people. I can see it in those races, but if I want to give to the Union County Republican committee-- You know, I want to give \$10,000. I should be able to donate \$20,000. Party building.

MS. SHEEHAN: I mean, I don't disagree. I'm only saying what we said.

SENATOR DiFRANCESCO: I'm sure the Democrats are going to have a lot more problems than I'm going to have with that kind of issue. I think it's a legitimate concern about when you start restricting--

DR. ROSENTHAL: It seems to me that if your campaign account was equivalent to a PAC, you would be able to contribute \$25,000 to the State party, \$10,000 to the county committee and \$5000 to a municipal committee, and you could contribute \$5000 to any candidate.

ASSEMBLYMAN DEVERIN: The limits you just read sound fine.

DR. ROSENTHAL: Is that agreeable then, that interpretation? An interpretation of the PACs, and to be sort of governed by the PAC in terms of contributions?

MR. BURSTEIN: Yes, I think so. I think the concern that Don has would probably be met if people are really interested in beefing up the party's ability to fund campaigns with the contribution made directly to the party, and the party has the unrestricted opportunity to use the money any way they wish.

DR. ROSENTHAL: I think there are very few legislative candidates who will be wanting to contribute more than \$5000 to a campaign.

SENATOR DiFRANCESCO: In some counties, the county party runs the legislative elections.

MR. COLE: Are we being consistent here? I mean we're saying a legislator can't contribute more than \$5000 to a local candidate -- candidate for mayor. I thought we just answered another question from the Leadership saying we didn't intend the other limits to apply to local candidates, the \$1500. If a legislator can't contribute more than \$5000, I mean we haven't imposed any limits on PACs or individual contributors to municipal candidates.

So, maybe Chuck had a point. Maybe doing it piecemeal is just leading us into walls every time we turn around.

DR. ROSENTHAL: Well, I think either way we've got a little problem. Yes, there's some problem with inconsistency, but I think there are places where we can be inconsistent. I don't think we can take on the entire business of contributions -- contribution limits at the local levels. I don't think we can take that on, but I think we can try to straighten out, insofar as possible, the campaign committee of a legislator. We do have-- We're already inconsistent because we have a recommendation in terms of giving to local and county parties.

SENATOR ORECHIO: Al, since this is a preliminary draft, is there anyway we can have Fred Herrmann give us some stats with respect to contributions, legislators, local elections?

ASSEMBLYMAN HAYTAIAN: Alan. Alan and Senator Orechio, we have ELEC laws that all candidates conform to. It's the same law. I mean you don't see differences in law presently. You don't have classes of candidates. You don't. So we're doing it here for legislators. In essence we're saying, "Baby, this is across-the-board." And that's really what we mean.

ASSEMBLYMAN DEVERIN: And that's how the Legislature will come out. I guarantee it.

ASSEMBLYMAN HAYTAIAN: It's got to come out.

DR. ROSENTHAL: That's all right. We do have classes because we have public financing for gubernatorial elections and not for legislative elections.

ASSEMBLYMAN HAYTAIAN: We can put on the preamble to this report, although our charge was for legislators, the intent is for all candidates across-the-board.

ASSEMBLYMAN DEVERIN: It's recommended.

ASSEMBLYMAN HAYTAIAN: Or, it's recommended.

MR. BURSTEIN: The trouble as was pointed out before is -- and Alan, I think, hit it on the head -- is that we really don't have that body of knowledge upon which to base that type recommendation across-the-board in municipal campaigns. Other campaigns are easier where you're dealing with cities of the first class where contributions can mount very heavily from an individual to a mayoral candidate, as an example; or a commission form of government where nobody runs for mayor, but for the commission. You have different categories of forms of government among other things, and different sizes of communities where one contribution limit

might make no sense whatever in "city 1" as opposed to "suburban 2."

ASSEMBLYMAN HAYTAIAN: Except that I have to differ with that because I think we're looking at contributions in general, and I don't really care how big a city is and what class it is. If \$1500 is too much to a legislator or more than \$1500, then by God, that's too much for a mayoral candidate and I don't care what size the city is. Because what we're talking about is contributions and the effect -- I thought that's what we were here for -- the effect and influence of those contributions on that candidate. Well, that's how this all started; so what difference does it make?

MR. BURSTEIN: Except that the size of the electorate has a direct relationship to the amount of money that you need in order to run a campaign.

ASSEMBLYMAN HAYTAIAN: Except \$1500 for Governor and he runs statewide. No, Al, I don't agree with that.

MS. SHEEHAN: And he gets public financing as well.

SENATOR DiFRANCESCO: Should the attorney for the utilities authority be able to give an unlimited amount of money to a candidate and not a legislator?

ASSEMBLYMAN HAYTAIAN: I can't agree with that.

MR. BURSTEIN: An attorney for a utility company -- is that in an individual capacity?

SENATOR DiFRANCESCO: Attorney, investment broker--

MR. BURSTEIN: If he's doing it on his own individual capacity, that's something else. Obviously, the utility itself is barred by statute.

SENATOR ORECHIO: Al, doesn't the situation take care of itself? If you're running for local office you get no salary. And in some municipalities nobody gets a salary; in some cases \$1500, \$2000. Isn't the degree of contribution really measured by the office, part-time, and so forth? There are a lot of factors that come into play.

The big cities, I think, have a different situation. They're going to have a larger limit, and we cover the limit. But what do we have for legislative elections? But I think in most cases for the smaller communities-- We're talking roughly, probably around 560 communities, 555 maybe. I mean we only have about six or eight communities you have to worry about in terms of size--

DR. ROSENTHAL: Obviously if you have these contribution limits for small communities they're irrelevant. The real issue is how would these contribution limits affect the largest communities? In Newark, for example, how would these contribution limits affect the race for mayor in Newark or another large community? What kinds of contributions are made now?

ASSEMBLYMAN HAYTAIAN: Do we care? But there are two municipalities, maybe three, that Gregg and I were talking about, that are larger than a legislative district. One is Newark; the second one is Jersey City. What's the difference? Does bigness make a difference? Because the municipality is big that means they should have more contributions from a single individual, or are we saying, "Oh yeah, that's necessary because the influence has to be greater"?

SENATOR DiFRANCESCO: Certainly Alan wouldn't say that.

DR. ROSENTHAL: No.

ASSEMBLYMAN DEVERIN: Mr. Chairman, really and truly, we've never drawn a piece of election law enforcement legislation that passed that didn't cover everybody-- That is not EMPC for the Legislature or the Senate or the Assembly; it's for everybody who runs for public office. And the end result of these contributions will, when they're written, I'm sure, cover every public office; one way or the other. So, I don't know--

SENATOR DiFRANCESCO: Well, shouldn't we recommend that, if we feel that way?

ASSEMBLYMAN DEVERIN: Well, early in the meeting, we said we were going to put it after that paragraph that we recommend this be for all candidates. We said that early in the meeting today, I think.

MR. BURSTEIN: I don't think we said it quite as specifically. I think what we said is--

DR. ROSENTHAL: It should be explored. Considered. Explored.

ASSEMBLYMAN DEVERIN: Okay. See, at my age you're allowed to skip a word here and there.

SENATOR ORECHIO: I think some impact from Fred Herrmann might help, too, with respect to what's really happening.

DR. ROSENTHAL: We're talking about the cities that are larger than legislative districts, and whether or not this would be a reasonable contribution limitation.

I'm not-- Assemblyman Haytaian, you'll be very surprised to hear this, but you're coming pretty close to convincing me. (laughter) That will make you change your position.

ASSEMBLYMAN HAYTAIAN: No, I don't think so. I think we're on target.

DR. ROSENTHAL: Well, let's look at that. But I'm going to assume now that what we mean is the case of the legislator will be treated as a PAC and the \$5000 PAC contribution to candidates. And \$10,000 -- \$5000 to a local party committee. Ten thousand dollars--

MR. COLE: I assume what we're saying is we're putting restrictions on transfer from his campaign account -- whatever it's called; otherwise, he could give out of his own pocket if we don't impose a limit on local candidates. Chuck Haytaian from his personal funds could give \$50,000, \$100,000.

DR. ROSENTHAL: Right.

MR. COLE: So, unless we decide to broaden our scope, we're dealing only with transfers from the campaign account.

DR. ROSENTHAL: Right. That's correct.

(1)(d) -- oh no, (1)(e). We've gotten to (1)(e). Do the Commission recommendations anticipate that the contribution limitations would be subject to the campaign cost index and coordination prohibitions on PACs and corporations established in the Gubernatorial Public Financing Law? If so, should the index be implemented for each General Assembly election or only in the gubernatorial election year? Would minimum increments be advisable?

And Frank writes, "The Commission may wish to consider whether all campaign contribution limitation amounts should be adjusted periodically." It recommended an adjustment only for the \$200 threshold for triggering the disclosure of campaign contributions, although there was some discussion of applying an adjustment mechanism to all contribution limits.

MR. PARISI: Also, if I can jump in here, just for a second. There's a recommendation from ELEC, Greg Nagy's memo, which says that ELEC believes that if you're going to adjust the amounts, that the amount adjusted -- the triggering amount -- the \$200 should be adjusted once every 10 years as opposed to once every four years. Their feeling is that if you adjust too often it would make it extremely difficult to have any kind of statistical analysis. It would be confusing for candidates and contributors, and it would present a tremendous administrative problem for ELEC who would have to print new forms, and so forth. So, their feeling is that if you're going to adjust the trigger, it's a good idea, but adjust that every 10 years even though you may want to adjust other specific contribution amounts more often.

MS. SHEEHAN: But, Frank, when we talked-- When Fred was here I thought we talked in terms of the already existing

trigger on the gubernatorial and match that. I mean, this 10-year came out of the sky, as far as I'm concerned.

MR. PARISI: Well, this proposal, ten years, is new. There was some discussion of having it every four years, but there was never a formal vote or formal agreement by the commission on whether or not other amounts should be adjusted and I just wanted clarify with the commission. And I think that's what the Leadership is talking about here, also.

DR. ROSENTHAL: So basically, what ELEC is saying that adjusting it every four years is administratively difficult and would discourage good analysis of the data.

MS. SHEEHAN: They have to do it for the gubernatorial.

MR. BURSTEIN: Yeah, what does the law now say on the gubernatorial?

MR. PARISI: Well, the gubernatorial, that particular threshold, is not adjusted for the gubernatorial, as far as I know. I don't believe it is. What they do adjust is the contribution amount; for instance, the \$1500 individual contribution. That is adjusted.

MS. SHEEHAN: Every four years?

MR. PARISI: Every four years, correct.

MR. BURSTEIN: I don't know why that would be so administratively difficult to do for the legislators. Because a ten year stretch is a fairly lengthy period, as we all know. Taking a look back 10 years to 1980, we've got a marked increase in the index and everything else remains stationary.

MR. PARISI: This was the argument that Fred gave to me, in that he felt as though the triggering threshold should be every 10 years because otherwise, as he said, it just makes it more difficult for statistical analysis. He told me that he felt the commission could live with an adjustment every four years but that they would prefer to have it every ten years. That's the commission's call on that.

DR. ROSENTHAL: I think Fred wants a larger appropriation to be able to do statistical analysis on an every four year adjustment. That's what he's--

ASSEMBLYMAN HAYTAIAN: Well, I think he deserves it.
(laughter)

MR. BURSTEIN: Did that get on the record?

ASSEMBLYMAN HAYTAIAN: Well, I wanted to put a constitutional amendment in-- (laughter)

DR. ROSENTHAL: What is your pleasure?

ASSEMBLYMAN HAYTAIAN: I think, Mr. Chairman, we ought to do it every four years. I think if they do it for the gubernatorial election every four years, I think we should also--

DR. ROSENTHAL: I think we should--

MR. PARISI: Now, this is for all contribution limits amounts? So, in other words--

ASSEMBLYMAN HAYTAIAN: All the thresholds.

MR. PARISI: All the thresholds and all the amounts?

ASSEMBLYMAN HAYTAIAN: Absolutely.

MR. BURSTEIN: Rounded to the nearest hundred dollars? We don't want to have \$5.98 as an add-on.

MR. PARISI: And this would include the threshold for disclosing contributions, so keep it as the recommendations?

MR. EDWARDS (Aide to Assembly Republicans): Does that include legislative State salaries, Mr. Chairman? (laughter)

MR. PARISI: Definitely not. (laughter)

DR. ROSENTHAL: We're now up to 2, whatever.

MR. PARISI: Number two.

DR. ROSENTHAL: Would payments by a candidate for services, polling, consulting, media, etc. provided by a State, county, local, or Leadership committee be considered an exception to the \$5000 limitation on contributions which such a committee is permitted to accept? The question raises two issues.

A) Whether the \$5000 limit on contributions from one candidate to another applies also to contributions from the candidate to a State, county or municipal committee of a political party or a Leadership committee. We have dealt with that, it seems to me. It's not \$5000, but it's \$5000, \$10,000, \$25,000.

MR. PARISI: Right.

DR. ROSENTHAL: B) If the \$5000 limit does apply whether payments by a candidate for services provided by the State, county or municipal committee of a political party or Leadership committee, would be exempt from the limitation?

ASSEMBLYMAN HAYTAIAN: I think it should be. And the reason I say that is because I know we've conducted polls with ARM and I know the State has conducted polls and some mailings have occurred where the candidate receiving those services would pay for them. That's not a contribution to ARM and it's not contribution to the State party. It's for services rendered and you have to spell that out. If it's for polling, or if it's for mailing or whatever; it should not be considered a contribution.

MS. SHEEHAN: I would think that was a campaign expense.

DR. ROSENTHAL: Sure.

MS. SHEEHAN: If Joe Good's Printing sent you a bill to your campaign, or the Republican State Committee sent you a bill, that's not a contribution; that's payment for services.

DR. ROSENTHAL: Obviously, if you're paying less than the cost of the services, that's a contribution. No, if you're paying more than the cost of the services, you would be making a contribution.

ASSEMBLYMAN HAYTAIAN: Yes. That's correct.

DR. ROSENTHAL: More than the fair cost of the services.

ASSEMBLYMAN HAYTAIAN: And normally you wouldn't do the campaign--

DR. ROSENTHAL: No, normally-- I think we all agree that that is not a contribution. That's reimbursement for services.

MR. PARISI: So, it would be an exception.

DR. ROSENTHAL: Yeah. Well, it's a different category.

3A. What is the benefit of increasing the threshold for reporting contributions for \$100 to \$200? Won't this make it difficult to determine the aggregate contributions for the purpose of ensuring compliance with the contribution limit?

The commission recommends the change in the threshold in order to avoid flooding ELEC with a sea of relatively insignificant disclosure reports and to adjust the threshold for inflation. The \$100 figure has not been adjusted since the Reporting Act was established in 1973. See pages 17 to 18. You recall when we changed that figure. Is this a satisfactory answer to explain why we changed the figure from \$100 to \$200?

MS. SHEEHAN: I don't think it makes it--

MR. BURSTEIN: I'm sorry. I was just concerned. Maybe we ought to find out why the Leadership thinks that's of any significance?

MR. RUSSO: I'm not sure the Leadership thinks it's of any significance. It's just an issue that was raised.

DR. ROSENTHAL: Why?

MR. RUSSO: Yeah, why? In other words, you are now, in essence, saying that the contribution limit is potentially \$1700 monitoring-wise. That first \$200 that the person gives -- and that's all the Leadership is doing, is just raising the issue, not saying one way or the other, just making sure that that issue was addressed -- that it's really going to be \$1700.

MS. SHEEHAN: No, it isn't. Why would it be \$1700?

MR. RUSSO: The only way -- from a monitoring standpoint -- when ELEC reviews the reports, if I myself made a

contribution first of \$150 during a first report, or something like that, that's going to show up in the under \$100 category and not disclosed. Later on, I start making multiple contributions and all of a sudden, I'm up to my \$1500 maximum. ELEC will not be able to see that by looking at old forms. Now, they will be able to see it if they go out and do -- if some random audit-type thing is built in.

ASSEMBLYMAN HAYTAIAN: If there's an audit. Absolutely.

DR. ROSENTHAL: Well, you're arguing that if you make a-- You can make \$2100 contributions and they'd never be disclosed.

MR. RUSSO: Well, no, because the way the Reporting Act reads is that that contribution where you're over the threshold, then even if it's under the threshold, you still have to report it.

ASSEMBLYMAN DEVERIN: That's the law now.

MS. SHEEHAN: Yeah, it's the same thing now.

MR. RUSSO: In that first contribution, though. Let's say that I make \$150 in -- right now -- to Assemblyman Haytaian, and next month I make -- and he files a report next week; that contribution is in the under \$200 category. Next month, I give him a \$1500 contribution. I've gone over the threshold.

ASSEMBLYMAN HAYTAIAN: Okay.

DR. ROSENTHAL: You've gone over the threshold.

ASSEMBLYMAN HAYTAIAN: But I can't accept that.

MR. RUSSO: He cannot accept that. That's true. I'm just saying that this is-- You're allowing for a little bit of slippage that is-- We're just raising the issue.

ASSEMBLYMAN HAYTAIAN: Well, I can accept \$1350, and I'll give you back the \$150.

MS. SHEEHAN: Wait. It is no different now, except that the limit is \$100, and you have to aggregate, for example,

contributions to a pact. Payroll deduction, they give you \$5 this month, \$5-- You know, they only show up in the aggregate until they hit the trigger. And so, it's not saying that \$1700 is the limit. I mean--

ASSEMBLYMAN HAYTAIAN: Anything under the threshold, we're required to keep track of the donation. It's not up to ELEC, because ELEC, in fact, receives on -- I guess it's schedule (a)(1)-- It says, "Contributions under \$100" -- and it's the cumulative, from all sources, under \$100. It may be that Donor A, Donor B, Donor C, give \$75, \$50 and \$25.00. So you add it all up together. It's \$150.00, but that's from three different people. You're supposed to keep the records, or we are, as candidates. ELEC doesn't even know unless they have the audit. Because I know in my case, when a contribution comes in, I make a copy of the check. I have the date when it was received; I have the check. So if there's an audit -- and that's record keeping -- that's what ELEC wants, and that's really up to the candidates, or the legislator, or whomever. The officeholder.

DR. ROSENTHAL: I think we've responded to that question. Would the proposed recommendation prohibiting legislators from raising money, except through their campaign committee, preclude the use of a legislator's name in connection with fundraising events for other candidates or bona fide charity? We discussed that, at length, and it's explained in here. I don't think there's really any issue. It would not, as long as the legislator does not get the check made out to him, or her.

(3)(c): Does the imposition of contribution limits in the election cycle suggest that the reporting cycle should be changed to begin with a candidate's initial campaign-related fund-raising, or expenditures, and continue with some interval in non election years? We have dealt with that, and the Fred Herrmann memo deals with that.

The imposition of contribution limits suggests that the 48-hour notice requirement for contributions in excess of \$250 be raised or eliminated. This question raises an issue which has not been considered previously by the Commission. In memo No. 2, Dr. Herrmann suggests that this requirement should not be eliminated, but should instead be increased to \$500 to account for inflationary pressure.

That is memo No. 2, from Herrmann--

ASSEMBLYMAN HAYTAIAN: Mr. Chairman?

DR. ROSENTHAL: Yes.

ASSEMBLYMAN HAYTAIAN: This 48-hour requirement is a requirement that most candidates don't understand. The law is quite confusing. In fact, if I were to ask any one of the three legislators here, "When is a 48-hour notice required?" the answer to it would be, "As soon as you donate to any candidate in any election cycle, it's then required."

Most candidates and most elected officials don't know that. Because there's a limitation of \$250, they tell you-- You know, the law is so confusing that that 48-hour notice is one that has to be clarified and has to be extended to all people who are running, so that they truly understand that as soon as a \$50 donation, or you buy a ticket for a candidate's election, that triggers a 48-hour notice, and each one of us is required to do that in any election cycle that you give a donation. That causes problems.

ASSEMBLYMAN DEVERIN: I don't find it confusing. I think it says that if you gave me a check for \$250, the second day before election, or the first day, I have 48 hours to notify the ELEC that I got the \$250 from you.

ASSEMBLYMAN HAYTAIAN: Wrong. Unless you donate it to a campaign in that election cycle, you don't have to do it until the next quarterly report.

ASSEMBLYMAN DEVERIN: Oh, no.

ASSEMBLYMAN HAYTAIAN: Oh, yes, sir. Believe me. Absolutely. That's the law.

ASSEMBLYMAN DEVERIN: If I receive a check two days before election?

ASSEMBLYMAN HAYTAIAN: You're not running, and you haven't donated to anybody in that election cycle--

ASSEMBLYMAN DEVERIN: No, no. I am running.

ASSEMBLYMAN HAYTAIAN: Oh, that's different; that's different.

ASSEMBLYMAN DEVERIN: What are you talking about?

ASSEMBLYMAN HAYTAIAN: I'm talking about a continuing PAC that we have -- that we presently have. The rule is that if you-- For instance, we're all not running this year. Now if you've donated to--

SENATOR DiFRANCESCO: I had a fund-raiser.

ASSEMBLYMAN HAYTAIAN: You had a fund-raiser? Fine. You have a quarterly report. That's fine. But, after October 6th of this year, because that's 29 days before the election, if you receive any donations of more than \$250, and you've donated to any candidate in this election cycle, you're required to have a 48-hour notice. Most people don't know that.

ASSEMBLYMAN DEVERIN: You mean the guy who contributes has to notify?

ASSEMBLYMAN HAYTAIAN: The guy that receives it.

ASSEMBLYMAN DEVERIN: I thought it was only for the guy--

ASSEMBLYMAN HAYTAIAN: That's what I'm saying. No, no, it's-- So this is why the 48-hour notice is confusing.

ASSEMBLYMAN DEVERIN: You know, when that rule came out, the explanation to everybody was, they want to see if somebody pours a lot of money into your house a couple of days before election. If he's not running, what the hell do they want a report from him for?

ASSEMBLYMAN HAYTAIAN: Because he donated to someone else. Let's assume he's not running, and the money comes to you and you take it-- (indiscernible; several members of Commission talking at once) You have to have a 48-hour notice.

SENATOR DiFRANCESCO: I have to?

ASSEMBLYMAN HAYTAIAN: Absolutely.

SENATOR DiFRANCESCO: To do what, because I don't give away money, but--

ASSEMBLYMAN HAYTAIAN: Even though you're not running. Let me explain.

SENATOR DiFRANCESCO: I give \$250 to Jimmy Cafiero.

ASSEMBLYMAN HAYTAIAN: No. Forget about \$250. You've donated \$50 to Jimmy Cafiero, and you donated it to him last month.

SENATOR DiFRANCESCO: Right.

ASSEMBLYMAN HAYTAIAN: You are now in the November election cycle for your PAC, okay? If you receive a \$250 or more -- or not \$250-- If you receive more than a \$250 contribution on, say, October 10th, you are supposed to report.

SENATOR DiFRANCESCO: If I receive it?

ASSEMBLYMAN HAYTAIAN: That's correct.

SENATOR DiFRANCESCO: Okay.

ASSEMBLYMAN HAYTAIAN: But you're not running, but you've donated \$50 to Jimmy Cafiero in the month of September, that's what you have to do.

DR. ROSENTHAL: Okay, the question here in Fred Herrmann's response, I think, is based on the assumption that the candidate is running in this particular case. And what Fred is suggesting is that the 48-hour notice is important and that it not be dispensed with, but that the trigger mechanism be \$500 instead of \$250.

ASSEMBLYMAN HAYTAIAN: That's correct, because the 48-hour notice is, quite frankly, for laundering the moneys. In other words, if a person who is not running has a PAC and receives an awful lot of money before an election and, in fact, is excluded from the 48-hour notice, then he could take that money and just give it to anybody.

Well, naturally, a candidate has to do it--

DR. ROSENTHAL: Right.

ASSEMBLYMAN HAYTAIAN: --but the person receiving the money that's not running doesn't have to do a thing. They want to know who's taking the money and who's getting it, and who's giving it. And that's the way it should be.

DR. ROSENTHAL: So how do we-- I mean, the response of the Commission is that the 48-hour notice should be kept?

SEVERAL MEMBERS OF COMMISSION: Yes, yes.

ASSEMBLYMAN DEVERIN: And raise to \$500--

DR. ROSENTHAL: And what about going to the \$500 threshold?

MR. BURSTEIN: Accept his recommendation, yes.

DR. ROSENTHAL: Okay.

ASSEMBLYMAN HAYTAIAN: Because now we have a limitation of \$1500, so therefore, that's the reason why it was suggested, that it could be eliminated, because in the past it was unlimited. Now, we've limited it to \$1500, but I think we should still keep the 48-hour notice.

SENATOR DiFRANCESCO: We never know about these things in the Senate. This doesn't happen.

ASSEMBLYMAN HAYTAIAN: Well, you run every four years. What do you care?

SENATOR DiFRANCESCO: It's been so long since I've run for office, I can't remember-- Oh, this only applies to when I'm not running. This applies when I'm not running and I receive money from somebody after October 6? (several members of Commission speaking at once; indiscernible to transcriber)

DR. ROSENTHAL: Question (4) from the Leadership: Did the ELEC provide any evidence of widespread noncompliance with the existing reporting requirements? How does ELEC exercise its discretion with respect to establishing a penalty? What is the average fine currently imposed? Is there any evidence that increasing the penalties will improve compliance?

ASSEMBLYMAN DEVERIN: Which one is that, Alan?

DR. ROSENTHAL: Number 4 on page 4, at the top. We have a memo. Memo No. 1, from Herrmann, that addresses that question. What is the intent of the question?

MR. RUSSO: The intent was just to get some data for the Legislature to be able to use when addressing the bill. The one piece of information that is lacking from Fred's response, and I think we would request that we get at some point, is what the average fine actually is. It brings up the discussion that if the average fine is \$200 currently, and you've got a \$1000 maximum, why do you really need to raise the maximum? If the average fine is \$900, and you have a \$1000 maximum, that lays more credence to having to raise the higher level of the fine.

It's just a request to get more data.

DR. ROSENTHAL: Let's see if we can clarify that with Fred. We'll try to clarify that.

MS. SHEEHAN: I would suggest that the average fine is really not what we want, or what would be helpful to the Leadership. It would have to be the category of the offense. I mean, if you're talking one or two days' late filing, averaging that in with failure to report at all are two different things, so I think you want to look at the categories of the offenses.

DR. ROSENTHAL: Point (5)(a): "Is the recommendation of the Commission that these proposals apply only to legislative elections and candidates, or to all elections?" I think we've been dealing with that, and we may revisit it next week.

What would be the rationale? We've dealt with that. Should the recommendations be bifurcated with respect to their applicability? Now, is it the intent of the Leadership to get recommendations on county and local candidates, as well?

MR. RUSSO: I think the intent is that you have opened the door when you went to county and local party committees. The door was opened. That the rationale that it wasn't the

charge, you've opened the door, and I think that you've addressed it earlier by saying that-- I think you've all agreed, somewhat, that there would be a statement in the report that although it may not have been our charge, we have looked at this and we feel that these should be all the way down.

DR. ROSENTHAL: No, our-- Right now, it's that the Legislature should explore or consider applying these across-the-board. Explore or consider, without making a recommendation.

Now, we may revisit this next week, but for now, we'll go on.

"If the recommendations apply to all candidates"? Well, we'll leave that out.

Point (5)(c): "Does the Commission anticipate that its recommendations will be prospective?" If not, I think our sense is that they would not apply sooner than the 1993 elections. They're certainly not going to apply to the 1991 elections. That was-- We're agreed to that.

Would the-- Point (5)(d): "Would a candidate be permitted to roll over surplus campaign funds for use in the next election cycle?" The Commission discussed at length the acceptable uses for surplus campaign funds, and agreed upon five specific uses. None of these provides explicitly that the funds may be rolled over for use in subsequent elections, but that use is implied. "The Commission may wish," says Parisi, "to make clear that such a use is acceptable."

ASSEMBLYMAN HAYTAIAN: Well, if we're only going to have one campaign fund, and we're only--

ASSEMBLYMAN DEVERIN: And consider reporting--

ASSEMBLYMAN HAYTAIAN: That's it, that's another--

MS. SHEEHAN: It continues.

ASSEMBLYMAN HAYTAIAN: So, it continually reports--
(several members of Commission talking at once; indiscernible to transcriber)

DR. ROSENTHAL: A continuation.

MR. PARISI: So, you don't want it listed as a separate category?

DR. ROSENTHAL: No, but it should be pointed out in the explanation that you don't roll over the funds because the campaign account is a continuing account.

ASSEMBLYMAN DEVERIN: There's no such thing as closing an account.

DR. ROSENTHAL: Right.

ASSEMBLYMAN HAYTAIAN: That's right. You close the account when you die or--

DR. ROSENTHAL: Did the Commission--

MR. PARISI: Wait a minute. Before you move on to another-- On that same issue, on surplus campaign funds, this is something that had been brought up before, and that is -- and this is in the memo that I had done -- and that is the question of, what is the specific method for the disposal of surplus campaign funds or a candidate account if a candidate withdraws, dies in office, or otherwise abandons his campaign?

So, in other words, if a person decides to leave his campaign and he has a war chest of \$20,000, what happens to the money?

ASSEMBLYMAN DEVERIN: What do you mean, a war chest?

MR. PARISI: This is from the memo that I did.

DR. ROSENTHAL: This is the memo dated September 26, 1990.

ASSEMBLYMAN HAYTAIAN: What do congressmen do with it now?

MR. PARISI: It depends a lot on when they are elected.

ASSEMBLYMAN HAYTAIAN: Yes, suppose they were elected before 1978?

MR. PARISI: They keep it.

ASSEMBLYMAN HAYTAIAN: They keep it. They pay income tax on it and they keep it.

ASSEMBLYMAN DEVERIN: They have to be finished by the election of 1990.

ASSEMBLYMAN HAYTAIAN: Yeah, then they have to get out. That's why we're going to see a lot of people leaving.

SENATOR DiFRANCESCO: What's that, '93?

ASSEMBLYMAN HAYTAIAN: Sure, '92.

MR. BURSTEIN: I think it should escheat to the State.

DR. ROSENTHAL: So, what is your suggestion?

MR. BURSTEIN: I said, let's escheat it to the State.

ASSEMBLYMAN HAYTAIAN: To the State? Do you mean State government, or to the State Committee?

MR. BURSTEIN: State of New Jersey, yeah.

ASSEMBLYMAN HAYTAIAN: State of New Jersey?

MR. BURSTEIN: Yeah, like an abandoned account in a bank.

ASSEMBLYMAN HAYTAIAN: Will the State of New Jersey then finance a new candidate who comes in, with that money?

MR. BURSTEIN: You're asking complicated questions I cannot answer.

ASSEMBLYMAN HAYTAIAN: Maybe we ought to have public financing with that money?

MR. BURSTEIN: Well, I really-- In all seriousness, I don't believe that the individual or family of the person involved should benefit from the use of that fund. That was for a specific purpose, a campaign, so it's really not income to them and should not be the personal possession of the family.

MR. COLE: The question really is, who makes the decision as to which of the five acceptable categories of expenditure should happen? Who makes that decision if the individual dies?

MR. BURSTEIN: Perhaps it ought to be the Legislative Ethics Commission?

ASSEMBLYMAN HAYTAIAN: Well, either that, or it could be, Mr. Chairman, if you're a legislator it would go to the

Leadership fund, because that's ongoing. If you're a county freeholder, it would go to the County Committee, because that's an ongoing -- or the State Committee if it's a legislator, rather than the State.

I think it should stay within the party, because people who donated are partisan, generally. I mean, Republicans donate to Republican candidates and Democrats donate to Democrats, and then there are lobbyists who donate to everybody. I mean, you know, we can't distinguish it.

The point is, I think it should go to the party committees. What are the categories? The State Party Committee, the County Party Committee, the Leadership Committee. But I don't believe the State should get it, quite frankly, because then the State gets involved in receiving campaign funds or giving out campaign funds. I don't think they should.

MR. BURSTEIN: It was just a takeoff point for argument.

ASSEMBLYMAN HAYTAIAN: Good. Good argument.

MR. COLE: You can make the same argument for giving it back prorated.

ASSEMBLYMAN HAYTAIAN: To whom? To the people who gave it to you?

MR. COLE: To the contributor.

DR. ROSENTHAL: Pat?

MS. SHEEHAN: Two questions that I would have with regard to what happens now is: A) Particularly if the candidate dies, what about the mechanism-- What exists now to pay the outstanding bills, or obligations; rent or printing and whatever? What happens now with that?

ASSEMBLYMAN DEVERIN: His campaign chairman--

MS. SHEEHAN: And 2), related to that, a new candidate is appointed or runs or however. Does he have any access? Does he or she get only the obligations, or do they also get the money?

ASSEMBLYMAN DEVERIN: If a candidate dies, the treasurer of that campaign fund can pay whatever bills the candidate had, but when his bills are paid, what to do with that money, is the question.

SENATOR DiFRANCESCO: It's the candidate's money, isn't it?

ASSEMBLYMAN DEVERIN: Whether we can give it to the--

SENATOR DiFRANCESCO: Declare it as income, pay taxes on it--

MR. BURSTEIN: Yeah, but the point that Mike has raised is the critical one: Who's going to make the decision as to which of the categories that money goes to?

DR. ROSENTHAL: Well, no. It could go to a party committee.

MR. BURSTEIN: Well, if you make it absolute, yeah, but why should that money go to a party committee as distinguished from--

MR. COLE: Going back to the contributors or going to charity--

MR. BURSTEIN: Yes, and to the categories that we've already established.

MR. COLE: We've got five categories.

ASSEMBLYMAN HAYTAIAN: Only because it's easier. I mean you're talking about-- How far back do you go? Do you go back for all the years that person was a candidate?

MR. BURSTEIN: Whatever the fund has.

ASSEMBLYMAN HAYTAIAN: Well, wait a minute. We've had-- We have-- It's not called rollover. It's now contingent. But let's assume that -- and I'll use myself -- as a candidate in 1983, '85, '87, '89, now, whatever dollars are in my ongoing committee are dollars that have either been spent or have been accumulated during those years. How can I categorize what I have now as being just from last year's election? I can't, because it's not--

MR. BURSTEIN: You don't. You do it in bulk.

ASSEMBLYMAN HAYTAIAN: So that means I have to go back to all or whomever-- Assuming I die, the treasurer then has to go to all of the contributors in the last 10 years, and say, "Okay, we'll prorate it so everybody gets \$2 apiece.

MR. BURSTEIN: No, but that would be the kind of decision that would be made by somebody like the Legislative Ethics Commission.

ASSEMBLYMAN HAYTAIAN: But isn't it easier--

MR. BURSTEIN: If it's impractical they would then say, "Okay, let's not do it that way, let's take another category. Give it to a charity." Something of that sort.

ASSEMBLYMAN HAYTAIAN: Isn't it easier, though, Al, because we're in a situation where it's a political committee or a candidate, or an ongoing committee or a PAC for a candidate, for an elected official, that it go to the party committee, so that if a new person is then appointed -- because under the laws that we have today, a person is appointed by the county committees of that party -- that that candidate would then have the benefit in the next election if he or she has to run within 30 or 60 days, or whatever the requirements are, that there be dollars available for that candidate? I think it's only proper.

MR. BURSTEIN: Yeah. I think you have to look at, however, from the standpoint of the donor's intention, the people who make the contribution were making it for the specific individual; not for anybody else, not for the county committee, not for any other purpose except for the candidate himself, or herself.

ASSEMBLYMAN HAYTAIAN: Then why give it to charity?

MR. BURSTEIN: As a result, I don't know why we would not treat it in the same fashion for redistribution as we already have in the categories that we agreed upon before? I don't see it going back to a county or a State or whatever committee.

Once you get a new candidate in the picture, they start from scratch with a clean slate. They have to raise their money. They have to do whatever has to be done in order to run for office.

ASSEMBLYMAN HAYTAIAN: Well, we have four legislative Leadership PACs, and this is concerning legislators. Throw them into the legislative Leadership PACs; it takes care of the problem. It's for candidates of the Republican party in the Legislature. It's for candidates in the Democratic Party in the Legislature. You've got four individual ones, throw it there. If it's an Assemblyman, throw it to the Assembly Leadership PAC; if it's a Senator, throw it into the Senate Leadership PAC.

Why should we throw it into a charity? Maybe the donor didn't want it to go into a charity. I can argue that.

MR. BURSTEIN: Well, I was frankly thinking of another situation, where the candidate has in his will, made a specific bequest of his campaign fund.

SENATOR DiFRANCESCO: Suppose I-- Now that you raise the question, I'm going to write a new will. Suppose I want to endow a chair at Rutgers, for Al Burstein? Can I do that?

MR. BURSTEIN: No, not anymore. My name is mud there.

DR. ROSENTHAL: Yes. I mean, sure you can. We'll take money for anybody's chair. (laughter) And particularly this year.

SENATOR DiFRANCESCO: Are you talking about adding a new category? Is that what you're talking about?

ASSEMBLYMAN HAYTAIAN: Only in the case of death.

SENATOR DiFRANCESCO: Only in the case of death? Where the donor's intent is lacking, or does it matter?

ASSEMBLYMAN HAYTAIAN: Or in the case where a candidate or an elected official loses an election. I mean, there's leftover campaign funds, or leftover funds in a campaign and there's no outstanding debts.

MR. COLE: But if he loses it, Chuck, he decides which of the five categories it goes to. You're only dealing with the event of death.

DR. ROSENTHAL: Where it goes. Only in the event of death.

ASSEMBLYMAN HAYTAIAN: I agree. Then, it's only in the event of death.

DR. ROSENTHAL: I mean, I--

ASSEMBLYMAN HAYTAIAN: You're agreeing too much with me today.

DR. ROSENTHAL: Yes-- (laughter) No, I think that Assemblyman Haytaian's idea makes some sense.

MR. BURSTEIN: Is that right?

DR. ROSENTHAL: That it revert to either the legislative Leadership Committee or to the State Committee.

MR. BURSTEIN: Vote, vote. Let's have a vote.

DR. ROSENTHAL: This is not going as a recommendation, but as an explanation in the--

ASSEMBLYMAN HAYTAIAN: But it is going to have to be specific in the law?

DR. ROSENTHAL: Yeah, yeah. Would members agree to -- that in the case of a candidate's death, that that money would--

SENATOR DiFRANCESCO: Is that an asset, Al? Would that be treated as an asset?

MR. BURSTEIN: I don't think so. I don't think so.

MR. COLE: He has no personal right to it.

MR. BURSTEIN: That's right. It's more in the nature of a trust or an escrow fund than anything else.

DR. ROSENTHAL: And then it-- Does that fund revert to the legislative party committee?

MR. BURSTEIN: That's not my view. I would not agree to that.

SENATOR DiFRANCESCO: I would not want to do that.

DR. ROSENTHAL: You wouldn't want to do that?

SENATOR DiFRANCESCO: I mean, I would not want it to happen that way, but I guess-- It is certainly a valid point. I would prefer to have these options.

DR. ROSENTHAL: Who would decide on the options?

SENATOR DiFRANCESCO: Who controls it?

ASSEMBLYMAN DEVERIN: The campaign treasurer controls the account.

SENATOR DiFRANCESCO: I mean, you know, I might want to leave it to charity.

DR. ROSENTHAL: Would you let the campaign treasurer make the decision? (several members of Commission conferring at once; indiscernible to transcriber)

MR. BURSTEIN: Sure, restrict them to the same options.

MR. COLE: Say it's a lot of exceptions, because otherwise you have to say you're limited to a \$25,000 limitation as a contribution to a State Committee except in the case of death.

DR. ROSENTHAL: So there's a real incentive to die, you can get--

MR. BURSTEIN: Or shoot the candidate.

DR. ROSENTHAL: --past the--

All right. We don't have a decision yet; we've got two alternative proposals. Assemblyman Haytaian suggests that the money revert to the legislative campaign committee, and the alternative proposal is that the treasurer of the campaign make the decision as to how to dispose of--

ASSEMBLYMAN DEVERIN: From the options?

DR. ROSENTHAL: Along the same optional lines as set forth. How many just--

MR. EDWARDS: Alan, the only thing I want to point out is that if you have a large pot of money, in the event of death you're then restricted because of the contribution limits, maybe, about where you can give it. So you might want to say, if you wanted to give it to a party committee -- say to a

municipal party committee -- and it was in excess of \$5000, because it was a one-shot deal, you could just give it all at one time. Otherwise, you have to artificially, in a sense, break it all up.

ASSEMBLYMAN DEVERIN: They'd be excluded from campaign limitations?

MR. EDWARDS: Right, in the event of a death distribution.

ASSEMBLYMAN HAYTAIAN: Suppose, suppose-- Are we ready for-- Can we take any motions today, Alan?

DR. ROSENTHAL: Yeah, make a motion.

ASSEMBLYMAN HAYTAIAN: I make a motion that in the case of death of an elected official or a candidate, that the ongoing committee, or PAC, or whatever it's going to be called, revert to the Leadership committee of that elected official.

ASSEMBLYMAN DEVERIN: Why can't we leave it go as Mr. Burstein just said?

DR. ROSENTHAL: Well, then let's vote against--

ASSEMBLYMAN DEVERIN: If we add this as an option and then let the treasurer or the chairman of the campaign decide where it goes as one of the options.

DR. ROSENTHAL: Well, then vote against Haytaian's proposal, and then we'll bring up--

Okay, why don't you call the roll on the Haytaian proposal that the money will revert to the legislative party committee of the candidate?

ASSEMBLYMAN DEVERIN: If he dies?

DR. ROSENTHAL: Yeah, if the candidate dies. I was going to make a proposal that the money revert to ELEC but--

ASSEMBLYMAN HAYTAIAN: You know, I'll tell you, that's not a bad idea. I may make that as a second, if this doesn't pass.

MR. PARISI: All right, the question is: That the Commission recommends that at the death of a candidate, surplus

campaign funds in his campaign account shall revert to the legislative party committee of the candidate.

Okay, Assemblyman Haytaian?

ASSEMBLYMAN HAYTAIAN: Yes.

MR. PARISI: Assemblyman Deverin?

ASSEMBLYMAN DEVERIN: I'm going to vote only for the fact that I have no objections to that being one of the options, but I don't see making it mandatory. No.

MR. PARISI: Senator DiFrancesco?

SENATOR DiFRANCESCO: Come back to me.

MR. PARISI: Senator Orechio is out of the room. Tom Stanton is absent.

Pat Sheehan?

MS. SHEEHAN: No.

MR. PARISI: Michael Cole?

MR. COLE: No.

MR. PARISI: Al Burstein?

MR. BURSTEIN: No.

MR. PARISI: Chairman Rosenthal?

DR. ROSENTHAL: No.

ASSEMBLYMAN HAYTAIAN: DiFrancesco is still not--

SENATOR DiFRANCESCO: Yes, yes.

ASSEMBLYMAN DEVERIN: When are you changing parties?

SENATOR DiFRANCESCO: I'm trying to trip him up.

DR. ROSENTHAL: Let's take a vote on the Burstein--
Do you want to make a motion?

MR. BURSTEIN: Yeah. I move that in the event of the death of a candidate, that the money be designated within the already settled upon categories by his campaign treasurer or campaign chairman, whoever has control of the fund.

MR. COLE: I'll second it.

MR. PARISI: Assemblyman Haytaian?

ASSEMBLYMAN HAYTAIAN: No.

MR. PARISI: Assemblyman Deverin?

ASSEMBLYMAN DEVERIN: Yes.

MR. PARISI: Senator DiFrancesco?

SENATOR DiFRANCESCO: Yes.

MR. PARISI: Okay, the question is: Shall the Commission recommend that at the death of a candidate the surplus campaign funds in his account shall be disbursed among the designated categories by the campaign treasurer?

SENATOR ORECHIO: Yes.

SENATOR DiFRANCESCO: You didn't even hear the first part of the discussion. How could you vote?

MR. PARISI: Patricia Sheehan?

MS. SHEEHAN: Yes.

MR. PARISI: Michael Cole?

MR. COLE: Yes.

MR. PARISI: Al Burstein?

MR. BURSTEIN: Yes.

MR. PARISI: Chairman Rosenthal?

DR. ROSENTHAL: Yes.

MR. PARISI: Do you want to make this a separate recommendation, or will this be part of the recommendation on use of surplus campaign funds?

MR. RUSSO: Alan, I would just make one suggestion. You say the treasurer or the officer of the committee, in the case where the treasurer is the same as the candidate, which there are--

MR. BURSTEIN: I said whomever has control of the campaign fund.

DR. ROSENTHAL: Or whoever has control of--

MR. RUSSO: Or whoever has control of campaign funds.

MS. SHEEHAN: Yeah, Al said, and Frank--

MR. BURSTEIN: Yeah, he interspersed that.

DR. ROSENTHAL: (5)(e): "Did the Commission receive any testimony which suggested that a blackout period, a specific time frame during which certain activity would be

prohibited, for either contributions, expenditures, or campaign activity was desirable?" And the answer, as Parisi notes, is, "Yes, we did consider it and we did not think that such a blackout period would work."

Finally from the Leadership: "Does the Commission intend to submit its recommendations in the form of a draft bill?" To my understanding, we never intended to do that. Is that correct? We do not intend to submit a draft bill. We will submit the recommendations and it is up to the Legislature to draft whatever legislation it so desires.

Now, there are other issues -- is that correct? -- that Frank and Marci have identified in drafting the report and several issues that Greg Nagy has identified, and why don't we take up those issues? Frank, or Marci, are there-- Let's go to your memorandum, the Parisi/Hochman memorandum.

MR. PARISI: Okay, number one on this, I think we've dealt with since that was the question of whether or not there should be an adjustment on the other amounts -- other dollar amounts -- for limits and for thresholds. That was taken care of.

SENATOR DiFRANCESCO: Where are we?

DR. ROSENTHAL: This is the memo of September 26th from Hochman and Parisi?

MR. PARISI: Right, it would be the one of the-- Campaign costs--

The second recommendation is the one regarding surplus campaign funds that has just been dealt with.

The third recommendation is the question of whether or not new reporting requirements should be established for a candidate's campaign fund? That's also been dealt with.

The fourth one has to do with the fact that the recommendations already recommended by the Commission deal with contributions to individual candidates by individuals, and contributions to individual candidates by continuing political

committees, but there is another category in the law, of a committee known as a political committee, and that was never really addressed. The question is whether or not there should be a limit placed on contributions by a political committee and if so, what should that limit be?

A political committee, as you know, is an entity which is formed by a group of two or more people for the purpose of one specific campaign. Usually they're formed for a public question; a campaign on behalf of, or to favor the defeat of a public question, but sometimes, as Fred Herrmann has pointed out, they are formed by two candidates who are running for a legislative position for the first time; for instance, two challengers who would be challenging an existing two candidates from a particular district.

MS. SHEEHAN: The candidates, we've covered them, right? Regardless of what they call themselves, a candidate can have one committee and it has contribution limits whether they join together or singly, I mean, that's covered.

MR. PARISI: Right.

MS. SHEEHAN: That existing political committee--

MR. PARISI: Right.

MS. SHEEHAN: --as it might refer to candidates has, in effect, been done away with by our recommendation. Isn't that correct?

MR. PARISI: I guess it would be, but the question is that people-- I spoke to Fred about this, and his recommendation was that the limits on political committees should be the same as limits on continuing political committees, because if you have them be different it would be opening up a loophole, and people would be establishing political committees for just one campaign and then they would be closing them and establishing another one for another campaign. So, his recommendation was to have the same amount for political committees and continuing political committees.

ASSEMBLYMAN HAYTAIAN: For instance, Frank-- Let me try to give an example: Bob Littell and Chuck Haytaian are running this year for the Legislature. We have a joint committee. Joe Doe decides that he wants to raise moneys -- spend moneys on our behalf -- and has a political committee. He would not be under the same requirements that we are, because he is now a political committee? Is that what you are saying?

MR. PARISI: No. I guess, perhaps, that's not.

MR. EDWARDS: Well, that's what you are saying if we don't have--

ASSEMBLYMAN HAYTAIAN: Yeah, that's what I thought. If we don't cover it, then it's different.

I think we should cover it. For instance, if Bob Littell and Chuck Haytaian have a political committee, then there cannot be anybody raising money on our behalf, a separate committee, I don't care what you call it, other than a Leadership committee. Period.

DR. ROSENTHAL: No. Right. I think--

ASSEMBLYMAN HAYTAIAN: But now, the question then comes up, what about these committees -- and that's expanded our charge that was in there, or questions on the ballots; for instance, there are all sorts of committees that crop up because of different questions on the ballot. Are they going to be limited by-- I would assume they'll be limited by these rules, if it's across-the-board. If it's not, then they can do whatever they want on questions, I would assume.

ASSEMBLYMAN DEVERIN: How about the good government committee.

DR. ROSENTHAL: Limited to what contributions they-- The contribution limits and so forth?

ASSEMBLYMAN HAYTAIAN: I think whatever you call it -- whatever the committee is called -- it should be under the same "Commissions for Legislators," period; whether it's a political committee or an ongoing committee or whatever it's called.

ASSEMBLYMAN DEVERIN: It should all be the same.

ASSEMBLYMAN HAYTAIAN: That's right.

MR. COLE: All PACs should be the same?

ASSEMBLYMAN HAYTAIAN: That's correct.

MS. SHEEHAN: I have a couple of problems with that. One, the nomenclature gives me a little problem, but I understand that if it's a candidate, regardless of whether they are lined up jointly or unjointly, we've taken care of that, they have-- So that the question then, in my mind at least, is, "political committee" now refers only to ballot questions and public questions. It doesn't refer to candidates.

MR. PARISI: If the recommendations are adopted.

MS. SHEEHAN: Okay. I would have-- I would ask, I guess, that the Committee review their thinking on contributions. The several public questions that I have been involved in have all been very short in duration -- transportation bond issue, the Green Acres, that kind of thing -- and generally we have been what I would consider a big contributor -- \$5000 or \$10,000 contribution from a whole variety of companies to put ads in the paper and do all that kind of thing. I'm not saying it shouldn't be regulated, but I think the \$1500 per election is unrealistic to the needs of a campaign -- for or against -- a ballot issue.

It's a constricted period of time and the dollar amount-- I mean, if you're going to take an ad out in the statewide papers you can't do that. I mean, you wouldn't be able to do it. I think that you want to think about the applications.

The education bond issue. We had people from Rutgers, from--

DR. ROSENTHAL: I think we're getting into a situation that is a little analogous to the county and local candidates, where we're not-- We have less information. We haven't thought about it a heck of a lot.

MR. EDWARDS: Alan, though, I think-- Pat Sheehan may be right, but there is another problem, I think, the Committee has to consider -- the Commission has to consider, in light of its recommendations on contribution limits. You're going to have a situation in this State, because you propose to institute contribution limits that we've never had before; and that's independent expenditures. You cannot prevent someone, or a committee from organizing, and if you don't cover them under this, you're going to have a situation where someone could raise as much money from whatever sources as he or she wanted to, either for or against a candidate, and that will be -- mark my words -- a primary way to get around these contribution limits.

MS. SHEEHAN: Well, in that case, I think we should meet that issue head-on, and not kind of hide it under political committee, where no one would understand it, and attempt to regulate or suggest some guidelines for independent expenditures. I mean, that's what the public understands.

ASSEMBLYMAN HAYTAIAN: Well, let's give another example. Let's assume that there is a group opposed to incineration in a county, and a legislator gets involved in the controversy with incineration for disposal of solid waste, and that candidate is for incineration and the committee is against. If the committee against incineration has no guidelines, they can raise money, spend money against that candidate.

Is that fair? I don't think it is. I think they should be under the same guidelines.

DR. ROSENTHAL: In terms of raising money?

ASSEMBLYMAN HAYTAIAN: Sure, raising and-- Yes, absolutely in terms of raising.

DR. ROSENTHAL: We don't have any limits on expenditures.

MR. EDWARDS: The problem is if you start treating them different from ballot questions and other things, now you've got -- now you're opening the number of different types of committees.

ASSEMBLYMAN HAYTAIAN: And you could-- That's right.

DR. ROSENTHAL: They're already opened.

ASSEMBLYMAN HAYTAIAN: Let's face it, the parties will then know: Here's the loophole; so form a committee against incineration and go against the Democratic or Republican candidate because there's no limitations on contributions. That's wrong. That's absolutely wrong. Call it by whatever name you want.

SENATOR ORECHIO: We've been victim of that already. The NRA, for example, will go out and spend 20,000 or 25,000 to beat somebody over issues, so you're going to have that.

ASSEMBLYMAN DEVERIN: You know, we don't even know how much that goes on.

MR. EDWARDS: It doesn't go on now, but my point is it will probably happen a lot more. Look at the Federal level. That was the whole issue of independent expenditures that happened as a result of opposing contributions.

DR. ROSENTHAL: Well, it happens where the contribution limits are so onerous that they don't provide for enough funding or funding sources to run an election, and therefore you revert to independent committees, and that defuses responsibility and it's certainly a place where you don't want to go.

I think we should address it. Maybe we should pass over-- Maybe at our next meeting we should revisit committees and local and county candidates and see if we can make some progress, or we may not be able to make progress, and leave it to the Legislature, but we should attempt it at our next week's meeting.

Let's try and clean up some of the other things if we can, and put those issues on the agenda for next week. What else, Frank?

MR. PARISI: Okay, this is about a point that Pat had brought up, No. 5. Recommendation (a) in the lobbying section of the report calls for the elimination of the "Expressly provision" in the current lobbying law, as it applies to members of the Legislature. The lobbying law, however, applies to the Governor and his staff as well as to members of the Legislature, so the recommendation is: "Should the recommendation be extended to cover the Governor and his staff, or only be limited to members of the Legislature?"

If you-- What you are doing here is, you can be splitting it and say that the Governor and his staff are subject to one kind of a disclosure -- or lobbyists who communicate with the Governor's staff would be subject to one kind of a disclosure requirement, whereas members of the Legislature and their staff would be subject to a different kind of disclosure requirement. So you may want to make it uniform for both.

MR. COLE: I think it's too confusing to have separate disclosure requirements.

MR. RUSSO: Alan, these recommendations-- We haven't had a chance to respond to you in writing on these, but yesterday in a discussion, that was brought up; the fact that you would have two separate lobbying laws. Then another issue that I'm not sure if the Commission addressed was the issue of the other lobbying that goes on in State government right now; that when the first lobbying regs were set up, there wasn't much regulatory lobbying going on, But there are now firms across the street that half of their business is dealing with regulatory agencies on regs and everything like that, and whether or not the Commission should address that issue would have been a question that we would raise.

MR. COLE: Didn't we discuss that and decide not to.

DR. ROSENTHAL: We decided not to. I think-- You know, we can't be perfectly consistent. I think we shouldn't even strive to be perfectly consistent. I think in this case I'd agree with Michael. We ought to make the recommendation. Since the law applies to both the Governor and his Office, as well as the Legislature, we ought to make the recommendation apply to both.

Does anyone have that objection? But we still, probably, shouldn't get into the lobbying executive branch and agencies.

SENATOR ORECHIO: It goes beyond the scope of this.

DR. ROSENTHAL: Yeah, but so does this, but sometimes you jump out of the scope and sometimes you stay in it.

All right, so then we agree that it should apply to both.

MR. PARISI: Okay, the next one points out the fact that current law requires each candidate for the Office of Governor and each candidate for member of the Legislature must file a financial disclosure statement on or before the 10th day following the last day for filing a petition to appear on the ballot.

The question here is, and this is one Alan had raised, that since the Commission is recommending that legislative staff be subject to the same disclosure laws as legislators in connection with expenditures made on their behalf by lobbyists, and the question is, should the Commission also require legislative staff to be the subject of the same disclosure requirements as candidates for members of the Legislature, and should these requirements be the same for partisan and nonpartisan staff?

DR. ROSENTHAL: Assemblyman Haytaian, you're shaking your head.

ASSEMBLYMAN HAYTAIAN: Alan, I think--

DR. ROSENTHAL: This isn't a proposal--

ASSEMBLYMAN DEVERIN: Who is asking the question?

ASSEMBLYMAN HAYTAIAN: No, I just think it--

ASSEMBLYMAN DEVERIN: Who's asking that question, you
or--

MR. PARISI: I am, I am.

ASSEMBLYMAN HAYTAIAN: I don't know. I think what
we're doing is-- I don't think anybody is going to work for
anybody in this Legislature. I don't think you're going to get
too many candidates running. I mean, it's getting to a point
where-- And I haven't talked to my members about this, I mean--

DR. ROSENTHAL: This is staff. We're saying, should
staff file as well as legislators?

ASSEMBLYMAN HAYTAIAN: I don't think so. I think then
it becomes--

ASSEMBLYMAN DEVERIN: Do you mean the partisan staff?

DR. ROSENTHAL: I would mean, well-- Then you would
discriminate among staffs, or you could talk about all staffs.
I don't see how you could just limit it to partisan staff. You
would be--

Should legislative staff file the same kinds of
disclosure statements?

SENATOR DiFRANCESCO: People on my--

ASSEMBLYMAN DEVERIN: District offices you mean?

ASSEMBLYMAN HAYTAIAN: Everywhere, sure, we're talking
about everywhere.

SENATOR DiFRANCESCO: Staff is staff.

DR. ROSENTHAL: All right, all right. I get the sense
that this is from the Commission, that this--

ASSEMBLYMAN DEVERIN: That wasn't too good of one, Al.

DR. ROSENTHAL: No, okay, we can pass that one quickly.

MR. EDWARDS: It covered the Chairmen of Ad Hoc
Commissions. I would say--

DR. ROSENTHAL: Those are the powerful people around here, the staff. They're completely unaccountable and we don't know what their income or assets or debts are, and--

SENATOR DiFRANCESCO: Well, we know their liabilities.

DR. ROSENTHAL: --they get away with it again.

MR. PARISI: Two more, No. 7: Should the Reporting Act, specifically N.J.S.A. 19:44A-20, be amended to prohibit any person from making loans to any other person for the purpose of inducing that person to make campaign contributions? This was a recommendation that was made in the presentment of the State Grand Jury of October 6th, 1988 regarding the Reporting Act. It also has appeared in ELEC's recommendations in the past.

MS. SHEEHAN: Is it only under Federal law that that's illegal now? I mean, you can't--

MR. PARISI: I guess so.

SENATOR DiFRANCESCO: It's not illegal now.

MR. PARISI: Well, it's not illegal--

ASSEMBLYMAN DEVERIN: Give me a hypothetical case of it.

MR. PARISI: I guess you would-- A hypothetical case would be I'm an employer. I have given a contribution to candidate Jones. I go to one of my employees and say, "Listen, I know you want to buy a house. I'll give you a mortgage for 5% if you will make a campaign contribution to that fellow."

ASSEMBLYMAN HAYTAIAN: Haven't we imposed limits on that by limitations on the amount donated, and also the fact that people have to put their employer's name and occupation down? Haven't we covered part of that?

MR. PARISI: You've covered part of it, certainly.

MS. SHEEHAN: Well, the way it worked with Keating was that he had some -- whatever the limit is, 20,000 or 25,000-- He'd given the limit, so then he doles out all this money to all these mysterious strangers and he gives another 40 million

or 50 million, etc. It's his money. I mean, that's illegal. At least, it is at the Federal level. I mean, I can't imagine allowing that.

MR. COLE: Why not? Why not make that recommendation? It seems pretty clear.

DR. ROSENTHAL: Yeah.

MR. COLE: I'm surprised that it isn't already proscribed.

SENATOR DiFRANCESCO: What you said as a hypothetical is--

MR. PARISI: Apparently, this had occurred.

ASSEMBLYMAN DEVERIN: It sounds illegal, but hypothetically it-- (indiscernible) (laughter)

ASSEMBLYMAN HAYTAIAN: Why don't we make a recommendation? That's what we should do.

DR. ROSENTHAL: I think if it's going to be a recommendation we ought to vote on it. Why don't you call the roll and just copy the language in No. 7.

MR. PARISI: Okay. Assemblyman Haytaian?

ASSEMBLYMAN HAYTAIAN: Yes.

MR. PARISI: Assemblyman Deverin?

ASSEMBLYMAN DEVERIN: Yes.

MR. PARISI: Senator DiFrancesco?

SENATOR DiFRANCESCO: Yes.

MR. PARISI: Senator Orechio?

SENATOR ORECHIO: Yes.

MR. PARISI: Patricia Sheehan?

MS. SHEEHAN: Yes.

MR. PARISI: Michael Cole?

MR. COLE: Yes.

MR. PARISI: Al Burstein is not here. Chairman Rosenthal?

DR. ROSENTHAL: Yes.

I think maybe now is the time to conclude. Meet again next week, and we will--

ASSEMBLYMAN HAYTAIAN: Are you going to look at 8?

MR. COLE: Yeah, we have 8.

DR. ROSENTHAL: Oh, I'm sorry, I'm sorry. You're right.

"Should ELEC be given civil jurisdiction over the enforcement of certain elections law, which are currently under the jurisdiction of the Attorney General?"

ASSEMBLYMAN HAYTAIAN: Yes, I think they should, Mr. Chairman.

MR. COLE: What does the AG think about this? Have we asked him?

ASSEMBLYMAN HAYTAIAN: I think he agreed.

MR. COLE: He agreed on the reporting.

DR. ROSENTHAL: On the reporting.

ASSEMBLYMAN HAYTAIAN: Oh, I see. Okay.

DR. ROSENTHAL: I think, before we do anything, why don't we query the AG, and we can revisit this next week.

MS. SHEEHAN: Yeah, because there's banks, and there's utilities, and there's a lot of different ones, aren't there?

DR. ROSENTHAL: Next week we will revisit the independent committees and whether or not the recommendations we make should apply to local candidates, which we've discussed. If you have any other issues you want to bring up based on the draft report, we will bring them up next week. We also have some other suggestions from ELEC, so we will be busy next week.

We will try to get the information from ELEC on contributions at the municipal level, particularly in the larger cities.

MS. SHEEHAN: Mr. Chairman, I may have some questions and comments as we go along when we get to it, but I think that the record should show that Marci -- in particular, I guess, and maybe Frank gave a hand -- did a fantastic job in making any sense out of this series of meetings. Really, it's great.

DR. ROSENTHAL: Yes, I think they did, but I don't think now is the time for commendation. They still have to revise this.

SENATOR DiFRANCESCO: Who's that?

ASSEMBLYMAN DEVERIN: We'd take them to lunch, but it's against the rules.

DR. ROSENTHAL: Marci and Frank, right. I don't think we should commend them until this is all over.

SENATOR DiFRANCESCO: No way.

DR. ROSENTHAL: So far they've done an adequate job.
(laughter)

SENATOR DiFRANCESCO: Exactly.

ASSEMBLYMAN HAYTAIAN: Boy, I tell you. I'd hate to take a course under you.

DR. ROSENTHAL: That's the way all of the students feel, too.

(MEETING CONCLUDED AT 3:40 p.m.)

APPENDIX



STATE OF NEW JERSEY

JOHN A. LYNCH
PRESIDENT, NEW JERSEY SENATE

JOSEPH V. DORIA JR.
SPEAKER, NEW JERSEY ASSEMBLY

STATE HOUSE
TRENTON, NEW JERSEY 08625

September 14, 1990

Dr. Alan Rosenthal, Chairman
Ad Hoc Commission on Legislative Ethics
and Campaign Finance
State House Annex
CN 068
Trenton, New Jersey 08625-0068

Dear Dr. Rosenthal:

We have followed the Commission's activities with interest and appreciate the discipline and dedication of the members in adhering to your ambitious schedule.

The Commission's tentative recommendations on campaign finance reform are generally consistent with the various bills introduced on this subject in the Legislature. We hope that our action to appoint the Ad Hoc Commission will be viewed as a serious attempt on our part to adopt a reform package this session.

Our efforts to do so will be facilitated by ensuring that the Commission's recommendations are both comprehensive and workable. To that end, we request that the Commission consider the following questions raised by the tentative recommendations.

(1) Contribution Limits by Individuals, Corporations and Political Action Committees

(a) Were the specific contribution limits recommended by the Commission the result of an analysis of contribution data by the Election Law Enforcement Commission (ELEC)?

(b) Is it the intent of the Commission that the \$1,500 contribution limit will apply to all candidates for any public office?

(c) In the event that legislative candidates choose to have a joint campaign committee, would each candidate be permitted to accept the maximum contribution? Further, in establishing a joint committee would a candidate be required and/or permitted to transfer funds from an existing committee assuming that it was comprised of contributions which conformed to the limitation?

1x

(d) Does the \$5,000 limitation on contributions from other candidates apply to all candidates for state and local office or only to other candidates for the Legislature? Does this special category of contribution establish candidates as a separate class of contributor similar to PACS? Does this suggest that such transactions should be specifically designated as transfers rather than contributions?

(e) Do the Commission recommendations anticipate that the contribution limitations would be subject to the campaign cost index and coordination prohibitions on PACs and corporations established in the gubernatorial campaign finance law? If so, should the index be implemented for each General Assembly election or only in the gubernatorial election year? Would minimum increments be advisable?

(2) Contribution Limits to Continuing Political Committees

(a) Would payments by a candidate for services (polling, consulting, media, etc.) provided by a state, county, local or leadership committee be considered an exception to the \$5,000 limitation on contributions which such a committee is permitted to accept?

(3) Disclosure

(a) What is the benefit of increasing the threshold for reporting contributions from \$100 to \$200? Won't this make it more difficult to determine aggregate contributions for the purpose of ensuring compliance with the contribution limit?

(b) Would the proposed recommendation prohibiting legislators from raising money except through their campaign committee preclude the use of a legislator's name in connection with fundraising events for other candidates or a bonafide charity?

(c) Does the imposition of contribution limits in the election cycle suggest that the reporting cycle should be changed to begin with a candidate's initial campaign related fundraising or expenditure and continue at some interval in non-election years?

(d) Does the imposition of contribution limits suggest that the 48 hour notice requirement for contributions in excess of \$250 be raised or eliminated?

2x .

(4) ELEC

(a) Did the ELEC provide any evidence of widespread noncompliance with the existing reporting requirements? How does the ELEC exercise its discretion with respect to establishing a penalty? What is the average fine currently imposed? Is there any evidence that increasing the penalties will improve compliance?

(5) GENERAL QUESTIONS

Finally, we would like to raise a few general questions regarding to scope of the Commission recommendations.

(a) Is it the recommendation of the Commission that these proposals apply only to legislative elections and candidates or to all elections? Would the exclusion of local candidates from the limitation open a "back door" for unauthorized contributions? What would be the rationale for limiting these changes to legislative elections? Should the recommendations be bifurcated with respect to their applicability?

(b) If the recommendations apply to all candidates how would a public official who holds both state and local office be impacted; specifically, would such an individual be permitted to maintain separate committees for both offices?

(c) Does the Commission anticipate that its recommendations will be prospective? If not, is it feasible to make them effective in the middle of an election cycle when fundraising would have been actively underway for 12 to 15 months? Would such a timetable place challengers at a significant disadvantage?


(d) Would a candidate be permitted to "roll over" surplus campaign funds for use in the next election cycle?

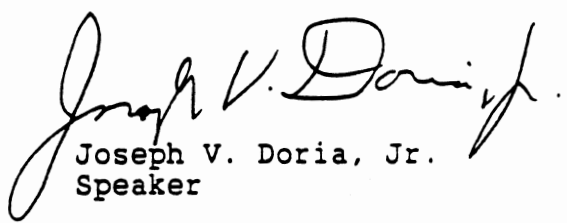
(e) Did the Commission receive any testimony which suggested that a "blackout" period (a specific time frame during which certain activity would be prohibited) for either contributions, expenditures or campaign activity was desirable?

(f) Does the Commission intend to submit its recommendations in the form of a draft bill?

We would appreciate your circulating our letter to the other members of the commission so that we can have the benefit of your consensus on these issues. Thank you for your cooperation.

Very truly yours,


John A. Lynch
Senate President


Joseph V. Doria, Jr.
Speaker

3x



State of New Jersey

ELECTION LAW ENFORCEMENT COMMISSION

NATIONAL STATE BANK BLDG., 12TH FLOOR
28 W. STATE STREET, CN 185
TRENTON, NEW JERSEY 08625-0185
(609) 292-8700

OWEN V. McNANY, III
CHAIRMAN

STANLEY G. BEDFORD
COMMISSIONER

DAVID LINETT
COMMISSIONER

S. ELLIOTT MAYO
COMMISSIONER

FREDERICK M. HERRMANN, PH.D.
EXECUTIVE DIRECTOR

JEFFREY M. BRINDLE
DEPUTY DIRECTOR

GREGORY E. NAGY
LEGAL DIRECTOR

EDWARD J. FARRELL
COUNSEL

MEMORANDUM

TO: FRANK PARISI
Committee Aide
Ad Hoc Commission on Legislative Ethics and Campaign Finance

FROM: GREGORY E. NAGY *GN*
Legal Director, N.J. Election Law Enforcement Commission

DATE: SEPTEMBER 24, 1990

RE: COMMENTS ON DRAFT REPORT

Executive Director Frederick M. Herrmann has asked me to forward to you our comments on the draft report of the Ad Hoc Commission that you circulated to us on Friday. These comments have not been approved by our Commissioners, and represent only staff comments. I have arranged our comments in the order in which they appear in the draft report, as follows:

- On page 9, the discussion of the contribution limits applicable to legislative candidates begins. We suggest that some comment be made on the fact that non-legislative candidates will not be subject to any contribution limits. The disparity may result in some difficulty in applying the contribution limits uniformly if a legislative candidate is simultaneously a candidate for local office. The Commission may wish to consider what restrictions, if any, should be placed on a candidate running for both a legislative and non-legislative office in terms of transfer of campaign funds from a non-legislative to a legislative campaign account.

- Also on page 9, first paragraph, second sentence, is in error because N.J.S.A. 19:44A-11 contains a flat prohibition on any currency contribution in excess of \$100, regardless of identification of the contributor.

- On page 12, the language concerning the recommendations to limit the amount that may be given in a year to a political party committee and/or legislative leadership committee is ambiguous. We were unable to discern whether an individual could give in a year a total of \$25,000 to state political party and leadership committees collectively, or whether an individual could give \$25,000 each to a state political party committee, another \$25,000 to an Assembly leadership committee, and another \$25,000 to a Senate leadership committee. In our view, the recommendation language needs to be clarified.

4x

- On page 14, last paragraph, second sentence, we suggest the following clarification: "These members note that such annual limits would be extremely difficult for ELEC to enforce, while per-election limits would be much easier to monitor and administer."

- On page 15, the Commission recommends uses for surplus campaign funds but ignores retention of such funds for a future campaign as an option. We assume that the intent of the Commission is that a candidate may retain surplus funds as long as the candidate continues to file quarterly reports. If that is in fact the intent of the Commission, we think it would be advisable to state that specifically. Also, the Commission may want to provide that surplus funds being returned to contributors be done on a pro rata basis. In the absence of such a qualification, some contributors may be selected to receive complete refunds whereas others receive none.

- On page 16, paragraph three, the second sentence staff notes that continuing political committees do not re-register every time they file a quarterly report, and this language should be deleted.

- On page 17, the recommendation that the threshold be raised from \$100 to \$200 and thereafter be adjusted quadrennially is a good one, except that we would recommend that the adjustment be made once a decade. Adjusting the threshold every four years will result in unnecessary confusion from one election to another, and also will make statistical comparisons from one election campaign to another extremely difficult. Making the adjustment only once a decade correlates to reapportionment. Also, we were surprised that there is no recommendation to raise the "48-hour notice" requirement from \$250 to \$500. This filing requirement is a much greater burden for campaigns and results in many more violations. Please note that the actual thresholds are "in excess of \$100" and "in excess of \$250."

- On page 18, the recommendation for charitable fundraising as written appears to be identical to current law. Candidates must deposit checks made out to their campaigns in their campaign fund, and they are permitted to make charitable contributions from their campaign funds. We surmise that the intent is that candidates be prohibited from establishing separate, non-campaign accounts for charitable purposes. Presumably, candidates will still be permitted to act as honorary chairperson of charitable drives.

- On page 19, second paragraph, last sentence, the statement that it is not clear from current law who has jurisdiction is incorrect. Jurisdiction lies with criminal prosecutorial authorities, such as the Attorney General or the County Prosecutors.

5X

Frank Parisi
September 24, 1990
Page 3

- On page 23, the second paragraph of the explanation indicates that the quarterly threshold is being lowered to \$100 per person. In fact, the current threshold is \$200 per person per calendar year. The proposed threshold of \$100 per quarter is actually an increase because the aggregate in a calendar year could be \$400 before reporting is required. We suggest that there be some discussion of whether calendar year aggregating will be retained. For example, if \$75 is expended in the first quarter and again in the second, it is not clear that a reportable expenditure in the aggregate over \$100 has to be reported.

- On page 28 are the recommendations for financial disclosure which are applicable not only to members of the Legislature, but also to candidates generally; see N.J.S.A. 19:44B-1. The Commission is recommending that specific dollar amounts of income be disclosed on these statements. We believe that it would be equally important to recommend disclosure of dollar amounts of gifts, fees, honorarium, etc.

I apologize for any lack of clarity or incompleteness on my part, but obviously this memorandum has been prepared in great haste. Please thank the Commission for this opportunity to comment on its draft report.

GEN/ck

6x



New Jersey State Legislature

AD HOC COMMISSION ON LEGISLATIVE ETHICS
AND CAMPAIGN FINANCE

Alan Rosenthal
Chairman
Albert Burstein
Michael Cole
Patricia Sheehan
Thomas Stanton, Jr.
Carmen A. Orechio
Senator
Donald T. DiFrancesco
Senator
Thomas J. Deverin
Assemblyman
Garabed "Chuck" Haytaian
Assemblyman

State House Annex, CN-068
Trenton, New Jersey 08625-0068
(609) 292-9106

John A. Lynch
President of the Senate
Joseph V. Doria, Jr.
Speaker of the
General Assembly

M E M O R A N D U M

TO: MEMBERS OF THE AD HOC COMMISSION ON
LEGISLATIVE ETHICS AND CAMPAIGN FINANCE

FROM: MARCI L. HOCHMAN AND FRANK J. PARISI,
AIDES TO THE COMMISSION

DATE: SEPTEMBER 26, 1990

SUBJECT: OPEN ISSUES IN DRAFT RECOMMENDATIONS MADE
TO DATE BY THE COMMISSION

The following is a list of open issues in its draft recommendations which the Commission may wish to consider in its final report.

1) Recommendation j. in the campaign finance section of the summary of recommendations calls for the threshold amount which triggers the disclosure of campaign contributions to be raised from \$100 to \$200, with that amount adjusted quadrennially to reflect changes in the Consumer Price Index (CPI).

Should all of the other dollar amounts in the Reporting Act, in the Lobbying Act and in the Conflict of Interest laws, including those dollar amounts which would be changed as a result of the adoption of these recommendations, also be adjusted quadrennially to reflect changes in the CPI?

2) Recommendation g. in the campaign finance section of the summary establishes five methods for the disposal of surplus campaign funds.

Should this recommendation provide explicitly that surplus funds may be deposited by a candidate in his campaign committee account for use in a future election and thus constitute a sixth acceptable method for the disposal of such funds?

7x

Should this recommendation provide a specific method for the disposal of the surplus funds of a candidate who withdraws, dies in office or otherwise abandons his campaign? Should ELEC be given the authority to create a special fund for the escheat of the surplus funds of such candidates?

3) Recommendation b. in the campaign finance section of the summary recommends that each legislative candidate be limited to only one campaign committee or continuing political committee.

Since, under current law, the reporting requirements for candidates and political committees or continuing political committees differ, should new reporting requirements for a candidate's campaign committee be established?

4) Recommendations a., c. and d. in the campaign finance section of the summary place limits on the amounts of money that may be contributed to a candidate, a State, county or municipal committee of a political party or a legislative leadership committee by a candidate's campaign committee or a continuing political committee.

This recommendation does not appear to place limits on the amounts of money that may be contributed to these entities by a political committee. Should a limit be placed on contributions by a political committee? If so, what should that limit be?

5) Recommendation a. in the lobbying section of the summary calls for the elimination of the "expressly" provision in current lobbying law as it applies to members of the Legislature.

All current lobbying law, however, applies the Governor and his staff as well as the members of the Legislature. Should the recommendation be extended to cover the Governor and his staff or be limited to members of the Legislature?

6) Current law requires that each candidate for the office of Governor and each candidate for member of the Legislature must file with ELEC a financial disclosure statement on or before the tenth day following the last day for filing a petition to appear on the ballot. (N.J.S.A. 19:44B-1 et seq.)

Since the Commission is recommending that legislative staff be subject to the same disclosure laws as legislators in connection with expenditures made on their behalf by lobbyists, should the Commission also require legislative staff to be subject to the same financial disclosure requirements as candidates for member of the Legislature? Should these disclosure requirements be the same for partisan and non-partisan staff?

8x

7) Should the Reporting Act (specifically, N.J.S.A. 19:44A-20) be amended to prohibit any person from making loans to any other person for the purpose of inducing that person to make campaign contributions? (This was a recommendation made in the Presentment of the State Grand Jury of October 6, 1988 regarding the Reporting Act.)

8) Should ELEC be given civil jurisdiction over the enforcement of certain elections law (i.e., N.J.S.A. 19:34-32, which prohibits campaign contributions by insurance corporations) which are currently under the jurisdiction of the Attorney General?

9x



New Jersey State Legislature

AD HOC COMMISSION ON LEGISLATIVE ETHICS
AND CAMPAIGN FINANCE

Alan Rosenthal
Chairman
Albert Burstein
Michael Cole
Patricia Sheehan
Thomas Stanton, Jr.
Carmen A. Drechio
Senator
Donald T. DiFrancesco
Senator
Thomas J. Deverin
Assemblyman
Garabed "Chuck" Haytaian
Assemblyman

State House Annex, CN-068
Trenton, New Jersey 08625-0068
(609) 292-9106

John A. Lynch
President of the Senate
Joseph V. Doria, Jr.
Speaker of the
General Assembly

MEMORANDUM

TO: MEMBERS OF THE AD HOC COMMISSION ON
LEGISLATIVE ETHICS AND CAMPAIGN FINANCE

FROM: FRANK J. PARISI, AIDE TO THE COMMISSION *FJP*

DATE: SEPTEMBER 26, 1990

SUBJECT: QUESTIONS FROM LEGISLATIVE LEADERSHIP IN
CONNECTION WITH DRAFT RECOMMENDATIONS
OF THE COMMISSION

The following is information in response to the questions from Senate President Lynch and Assembly Speaker Doria in connection with the draft recommendations of the Commission.

(1) (a) Were the specific contribution limits recommended by the Commission the result of an analysis of contribution data by the Election Law Enforcement Commission?

The Commission recommends the proposed contribution limits for several different reasons. For example, the \$1,500 limit on contributions to candidates by individuals, unions, corporations and groups (other than political committees or continuing political committees) is recommended because the \$1,500 figure matches the amount in current law for contributions to gubernatorial candidates. For a fuller explanation of the rationale behind the recommended contribution limits, see pages 10 through 13 of the preliminary draft of the final report of the commission. See also memo #1 (attached) from Dr. Fred Herrmann, Executive Director of ELEC.

(1) (b) Is it the intent of the Commission that the \$1,500 contribution limit will apply to all candidates for any public office?

No. With the exception of a few recommendations, the Commission's recommendations apply only to legislative elections, candidates for member of the Legislature or to legislative staff.

10 x

(1) (c) In the event that legislative candidates choose to have a joint campaign committee, would each candidate be permitted to accept the maximum contribution? Further, in establishing a joint committee would a candidate be required and/or permitted to transfer funds from an existing committee assuming that it was comprised of contributions which conformed to the limitation?

The first part of this question raises an issue that the Commission has not considered previously. The answer to the second part of the question is probably yes, although this is another issue that the Commission has not considered previously.

(1) (d) Does the \$5,000 limitation on contributions from other candidates apply to all candidates for State and local office or only to other candidates for the Legislature? Does this special category of contribution establish candidates as a separate class of contributor similar to PACS? Does this suggest that such transactions should be specifically designated as transfers rather than contributions?

A review of the transcript of the August 8th meeting of the Commission suggests that the \$5,000 limitation was meant to apply only to legislative candidates (see pp. 67-72). The Commission may wish to consider the issues raised in the second and third parts of this question, as they were not considered previously.

(1) (e) Do the Commission recommendations anticipate that the contribution limitations would be subject to the campaign cost index and coordination prohibitions on PACS and corporations established in the gubernatorial public financing law? If so, should the index be implemented for each General Assembly election or only in the gubernatorial election year? Would minimum increments be advisable?

The Commission may wish to consider whether all campaign contribution limitation amounts should be adjusted periodically. It recommended an adjustment only for the \$200 threshold for triggering the disclosure of campaign contributions, although there was some discussion of applying an adjustment mechanism to all contribution limits.

(2) Would payments by a candidate for services (polling, consulting, media, etc.) provided by a state, county, local or leadership committee be considered an exception to the \$5,000 limitation on contributions which such a committee is permitted to accept?

This question raises two issues: a) whether the \$5,000 limit on contributions from one candidate to another applies also to contributions from a candidate to a State, county or municipal committee of a political party or a leadership committee; and b) if the \$5,000 limit does apply, whether payments by a candidate for services provided by a State, county or municipal committee of a political party or a leadership committee would be exempt from the limitation. Neither of these issues has been considered previously by the Commission.

11 x

(3) (a) What is the benefit of increasing the threshold for reporting contributions from \$100 to \$200? Won't this make it more difficult to determine the aggregate contributions for the purpose of ensuring compliance with the contribution limit?

The Commission recommended the change in the threshold in order to avoid flooding ELEC with a sea of relatively insignificant disclosure reports and to adjust the threshold for inflation. (The \$100 figure has not been adjusted since the Reporting Act was established in 1973.) See pp. 17-18 of the preliminary draft of the final report.

(3) (b) Would the proposed recommendation prohibiting legislators from raising money except through their campaign committee preclude the use of a legislator's name in connection with fundraising events for other candidates or a bona fide charity?

No. Not all of the money raised by a candidate or an elected official would be required to be filtered through his campaign committee before being remitted to the charity or other entity for which it was raised. Nothing in this recommendation would prevent a candidate or an elected official from serving in an official capacity for a non-campaign entity and from receiving contributions for that entity which would not go through his campaign committee—provided that the contributions were clearly designated for or in the form of checks made out to that entity and not in checks made out to or given in the name of the candidate or elected official. See p. 18 of preliminary draft of the final report.

(3) (c) Does the imposition of contribution limits in the election cycle suggest that the reporting cycle should be changed to begin with a candidate's initial campaign related fundraising or expenditure and continue at some interval in non-election years?

During the discussion of establishing a single campaign committee for each candidate, several members of the Commission noted that since there were different reporting requirements for candidates and political committees or continuing political committees there was a need to establishing a new reporting scheme for campaign committees. However, no recommendation was made for such a reporting scheme. In memo #2 (see attached), Dr. Herrmann suggests that a new reporting scheme should provide for quarterly reporting in non-election years and for reports 29 and 11 days before an election and 20 days after that election in election years.

(3) (d) Does the imposition of contribution limits suggest that the 48 hour notice requirement for contributions in excess of \$250 be raised or eliminated?

This question raises an issue which has not been considered previously by the Commission. In memo #2 (see attached), Dr. Herrmann suggests that this requirement should not be eliminated, but should instead be increased to \$500 to account for inflationary pressure.

(4) Did the ELEC provide any evidence of widespread noncompliance with the existing reporting requirements? How does ELEC exercise its discretion with respect to establishing a penalty? What is the average fine currently imposed? Is there any evidence that increasing the penalties will improve compliance?

During his appearances before the Commission, Dr. Herrmann was not specifically asked for, nor did he provide, any information on compliance with existing reporting requirements. However, in memo #1 (see attached) he notes that while ELEC has the authority to exercise discretion in particular cases as a result of mitigating circumstances, it generally adheres to objective criteria and a predetermined fine scale in imposing penalties on violators of the act.

(5) (a) Is the recommendation of the Commission that these proposals apply only to legislative elections and candidates or to all elections? Would the exclusion of local candidates from the limitation open a "back door" for unauthorized contributions? What would be the rationale for limiting these changes to legislative elections? Should the recommendations be bifurcated with respect to their applicability?

The Commission recommends that its proposals apply only to legislators, legislative elections and legislative staff because it believes that its mandate to suggest changes in the current campaign finance system extends to only those persons and events. (See page 2 of the preliminary draft of the final report.) The issues raised in the other parts of this question have not been considered previously by the Commission.

(5) (b) If the recommendations apply to all candidates how would a public official who holds both State and local office be impacted? Specifically, would such an individual be permitted to maintain separate committees for both offices?

See response to (5) (a), above.

(5) (c) Does the Commission anticipate that its recommendations will be prospective? If not, is it feasible to make them effective in the middle of an election cycle when fundraising would have been underway for 12 to 15 months? Would such a timetable place challengers at a significant disadvantage?

Although the issue this question raises was not discussed specifically by the Commission, common sense would seem to dictate that the recommendations should be made prospective and applicable no earlier than the 1993 elections.

(5) (d) Would a candidate be permitted to "roll over" surplus campaign funds for use in the next election cycle?

13x

The Commission discussed at length the acceptable uses for surplus campaign funds and agreed upon five specific uses. None of these provides explicitly that the funds may be "rolled over" for use in a subsequent election, but that use is implied. The Commission may wish to make clear that such a use is acceptable.

(5) (e) Did the Commission receive any testimony which suggested that a "blackout" period (a specific time frame during which certain activity would be prohibited) for either contributions, expenditures or campaign activity was desirable?

"Blackout" periods were discussed by both the academic experts who appeared before the Commission and by the members themselves. All who discussed the issue believed that such periods were counter-productive and relatively easy to evade and as a result, should not be recommended. (See transcript of the August 8th meeting of the commission, pp. 136-37.)

(5) (f) Does the Commission intend to submit its recommendations in the form of a draft bill?

This question has not been considered previously by the Commission. It would obviously take some time to prepare such a bill.



State of New Jersey

ELECTION LAW ENFORCEMENT COMMISSION

NATIONAL STATE BANK BLDG., 12th FLOOR
28 W. STATE STREET, CN 185
TRENTON, NEW JERSEY 08625-0185
(609) 292-8700

OWEN V. McNANY, III
CHAIRMAN

STANLEY G. BEDFORD
COMMISSIONER

DAVID LINETT
COMMISSIONER

S ELLIOTT MAYO
COMMISSIONER

FREDERICK M. HERRMANN, PH.D.
EXECUTIVE DIRECTOR

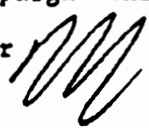
JEFFREY M. BRINDLE
DEPUTY DIRECTOR

GREGORY E. NADY
LEGAL DIRECTOR

EDWARD J. FARRELL
COUNSEL

MEMORANDUM #1

TO: Dr. Alan Rosenthal, Chairman
Ad Hoc Commission on Legislative Ethics and Campaign Finance

FROM: Frederick M. Herrmann, Ph.D., Executive Director 

DATE: September 18, 1990

RE: Questions from President John A. Lynch
and Speaker Joseph V. Doria, Jr.

As per your request this memorandum represents ELEC's response to the following questions from President Lynch and Speaker Doria:

A.

(1) (a) Were the specific contribution limits recommended by the Commission the result of an analysis of contribution data by the Election Law Enforcement Commission?

The Election Law Enforcement Commission provided copies of ELEC White Paper Number One: "Contribution Limits and Prohibited Contributions" and ELEC White Paper Number Two: Trends in Legislative Campaign Financing: 1977-1987 to the Ad Hoc Commission.

White Paper Number One, which discusses the pros and cons of contribution limits, contains statistical information about average and median contributions to legislative candidates in the 1985 primary and general elections and the average contribution in the 1987 primary election. White Paper Number Two contains statistical information about the average contribution to legislative candidate in the 1983 general election and the average and median contribution in the 1987 general election. White Paper Number Two contains a table on contribution ranges in the 1987 legislative general election. The following charts summarize the Commission's analysis:

15X

**Average and Median Contributions
to Legislative Candidates**

	<u>1983</u>		<u>1985</u>		<u>1987</u>	
	Average	Median	Average	Median	Average	Median
Primary	-	-	\$425	\$200	\$531	\$200
General	\$595	-	\$769	\$250	\$936	\$250

Contribution Ranges: 1987

	no. of contributions	percent
over \$2,500	940	6%
\$2,001 - \$2,500	1,130	7%
\$501 - \$2,000	4,086	24%
\$101 - \$500	10,385	62%
under \$100	<u>472</u>	<u>3%</u>
	16,715	102%*

*the percentage does not total 100 percent because of rounding.

Based upon its statistical material and based upon the premise that contribution limits should be low enough to prevent any appearance of impropriety yet high enough to withstand any First Amendment challenge on the grounds that the limit does not permit candidates to raise adequate funds to get their message to the voters, the Commission suggested that the limits might fall between \$2,000 - \$2,500. It is assumed that in formulating its various limits the Ad Hoc Commission took the Commission's analysis into consideration.

B.

4 (a) Did the ELEC provide any evidence of widespread non-compliance with the existing reporting requirements? How does the ELEC exercise its discretion with respect to establishing a penalty? What is the average fine currently imposed? Is there any evidence that increasing the penalties will improve compliance?

While the Commission does have the authority to exercise discretion in particular cases as the result of mitigating circumstances, it generally adheres to objective criteria and a predetermined fine scale in exacting penalties on violators of the Act.

16x

Typically, maximum penalties are employed where a candidate or committee persists in not filing a report notwithstanding warning letters and formal Complaint proceedings. Cases of persistent non-filing are rare. Most cases involve reports filed late, or in response to formal Complaints, and those cases result in penalties substantially less than the maximum. A fine scale has been established and is based on the type of report and violation, and number of days late. The Commission believes that in order to provide filing entities with some incentive to file reports at all, the penalties it imposes for late filing must be substantially below the \$1,000 maximum it can impose for non-filing. Therefore, if the maximum \$1,000 non-filing fine is increased, the Commission will be able to impose larger fines for late filing while still maintaining incentives for the entity to comply with filing requirements.

The Commission believes that increasing the penalties the ELEC can exact will contribute to improved compliance. Certainly fine levels that are realistically high enough will serve as a real incentive for filers to comply with the reporting requirement. Fine scales that are too low, as is the case today, may contribute to less enthusiasm for compliance with the law.

In a word, the penalty provisions of the Campaign Reporting Act have not been changed since the Act was adopted in 1973. Inflation alone justifies an increase from the current \$1,000 maximum (\$2,000 for previous violators); see N.J.S.A. 19:44A-22. Certainly, fines ranging from \$25 - \$1,000 in 1973, were more meaningful at that time than they are today. In addition, the Commission testified the \$1,000 maximum is not sufficient for larger campaigns that have received contributions of hundreds of thousands of dollars. Rather than incur the expense of recordkeeping and reporting, it may be more cost effective for a large campaign to be fined \$1,000, and not report at all. Therefore, the Commission advocates that it be authorized to not only exact higher fines for general non-compliance but to impose a penalty in an amount not to exceed three times the amount of unreported contributions. Such a penalty would have a correlation to the actual severity of the substantive reporting violation, which under current law is very difficult to achieve.

FMH/jah

17x



State of New Jersey

ELECTION LAW ENFORCEMENT COMMISSION

NATIONAL STATE BANK BLDG., 12th FLOOR
28 W. STATE STREET, CN 185
TRENTON, NEW JERSEY 08625-0185
(609) 292-8700

OWEN V. McNAMY, III
CHAIRMAN

STANLEY G. BEDFORD
COMMISSIONER

DAVID LINETT
COMMISSIONER

W. ELLIOTT MAYO
COMMISSIONER

FREDERICK M. HERRMANN, PH.D.
EXECUTIVE DIRECTOR

JEFFREY M. BRADLE
DEPUTY DIRECTOR

GREGORY E. NADY
LEGAL DIRECTOR

EDWARD J. FARRELL
COUNSEL

MEMORANDUM #2

TO: Dr. Alan Rosenthal, Chairman
Ad Hoc Commission on Legislative Ethics and Campaign Finance

FROM: Frederick M. Herrmann, Ph.D., Executive Director *MF*

DATE: September 18, 1990

RE: Questions from President John A. Lynch and
Speaker Joseph V. Doria, Jr.

As per your request this memorandum represents the Election Law Enforcement Commission's thinking on the following questions from President Lynch and Speaker Doria:

A.

(3) Disclosure

(c) Does the imposition of contribution limits in the election cycle suggest that the reporting cycle should be changed to begin with a candidate's initial campaign-related fundraising or expenditure and continue at some interval in non-election years?

The Commission believes that the reporting cycle should be changed to begin with a candidate's initial campaign-related fundraising or expenditure and continue at some interval in non-election years. Specifically, in off-years, the Commission believes that candidates should file on a quarterly basis. Filing should commence at the first quarterly reporting date following the receipt of the first contribution to the campaign or the making of an initial campaign expenditure. During election years the candidate should file pursuant to the normal campaign schedule of 29 and 11 days before election and 20 days after election. Following the 20-day post filing, the candidate should resume filing on a quarterly basis until the account is closed.

18x

B.

(d) Does the imposition of contribution limits suggest that the 48-hour notice requirement for contributions in excess of \$250 be raised or eliminated?

The Commission does not believe that this requirement should be eliminated but rather the reporting threshold should be increased to \$500 to account for inflationary pressures. To eliminate this requirement would be to create a loophole in preelection disclosure in that many sizeable contributions are made during the period between 13 days before election and election day.

If you have any questions on the foregoing responses from the Commission, please do not hesitate to contact me. ELEC is grateful for the opportunity to provide input into the process of reforming the campaign finance laws.

FMH/jah

19x

