

Citizens Clean Elections Commission, May 19, 2016 Meeting Notes

By Rivko Knox

Present from LWV: Anne Pyron and Rivko Knox.

As always, this reflects what I thought was important and I urge Anne to correct, add, clarify etc.

\* The meeting was attended by only three Commissioners (one via teleconference), which just made a quorum.

\* The verbal component of the Executive Director's report was brief and focused on the upcoming primary election and the voter information pamphlets (candidate statements plus generic voting information) that CCEC staff will be sending out. Tom Collins, the ED, said that tho they are using the same printer that was used for Special Election, they do not anticipate problems.

\* The main focus of the meeting – about which the Commission went into Executive Session after the public discussion – was the twin issues of:

A. The Governor's Regulatory Review Commission (GRRC) response to the CCEC's 5 Year Report and rules promulgated by the CCEC during the past year; and

B. The Commission's next steps relating to the impact of SB1516, SB2296 and SB2297 (the latter two bills having been passed in the last 'flurry' of Legislative activity shortly before adjournment) and the impact of such on the administration and enforcement of the Clean Elections Act including reporting, penalties and campaign finance limits.

A. I have reported on this issue in prior reports to LWVAZ (and MP) but to quickly reiterate:

1) The GRRC, which is appointed only by the Governor, is mandated to review regulations promulgated by all state agencies to ensure these are necessary/not too onerous for the business community and the public.

2) Every agency has to submit a 5 year report to them; thus CCEC has submitted several since it's creation in 1998 (by initiative), without any problems although CCEC asserts that due to the Voter Protection Act (VPA), the GRRC does not have authority over the CCEC's rule making powers.

3) However, when it submitted the report in 2015, using the same format and covering the same topics as in prior years' reports, the GRRC rejected the report without any explanation as to why (what its defects were) and required the CCEC to rescind any new rules passed, with a primary focus on Rule 109 (definition of a political committee and resulting reporting requirements) with a response due from CCEC by June 30.

4) Joe Roth, CCEC attorney, attended the most recent GRRC meeting (Collins was ill that day) but the GRRC did not provide any more information/a rationale as to the defects in the report or the legal basis for rescinding the rules. Actually the GRRC did not even issue an order to repeal or provide any information/dates to appeal.

- 5) As it turns out, this most recent GRRC meeting was not recorded but the minutes do not provide any more information relating to the GRRC's actions.
- 6) The term 'Kafka-esh' was used to describe the situation with the GRRC, which, Collins stated, was different from any other administrative hearings in which he has ever been involved, both in terms of substance and procedure although the date for the CCEC to resubmit the report and rescind the rules was moved to August 2.
- 7) Collins said he and Roth will try to meet one more time with the GRRC, to show good faith, and to try to get some specific information as to how the report should be revised and why the rules rescinded.
- 8) However meanwhile, Collins said, the CCEC website has a statement by CCEC saying that due to the VPA the rules, promulgated following CCEC written procedures remain valid and the GRRC does not have the authority to rewrite the Clean Elections law.

B. This is new tho something that Collins stated at the last meeting would be done by staff prior to the next Commission meeting (at the prior meeting only SB1516 had been passed.)

- 1) Collins prepared a memo explaining in detail the potential impact of the three laws (bill numbers above) on the CCEC as well as the sections of ARS relating to campaign finance, which he said has really been, for all intents and purposes, deregulated.
- 2) One of the unfortunate implications of these laws is that there are many cross references in the bills to existing ARS so the question arises: if something is covered by VPA are all the cross references in the statutes also VPA protected?
- 3) For example, SB2296, which basically repeats almost everything in SB1516 --- but also made it all retroactive to June 1 so it will apply to the August and November 2016 elections --- says that 501(C)3s no longer have to file reports (tho it was pointed out that by law these tax exempt organizations should not be involved with political activity period). However Clean Elections requires any person/entity who spends above a certain amount to file a report with CCEC and the SOS is supposed to provide these on-line reports to the CCEC. However, that report format is no longer on the SOS's web site so?????
- 4) The memo outlined three areas of concern for CCEC due to the three new laws: a) some provisions in the new laws purport to limit the administration and enforcement of the Act; b) some provisions amend or enact new definitions of terms used in the Act; and c) some sections to which the Act refers have been repealed.
- 5) Finally the memo outlines 3 options for the Commission: a) adopt the new provisions despite the legal issues; b) main or adopt a rule contrary to the new laws but consistent with the Clean Elections Act and VPA or 3) consider some form of affirmative litigation.
- 6) The memo ends with a statement that "In the June meeting, the Commission will need to give serious consideration to accepting the changes, despite legal issues re: reporting issues and penalties identified with respect to tax exempt entities as well as the joint fundraising rule."
- 7) In response to a call to the public for comments, two of us spoke:
  - a) Samantha Pstross, AzAN, said how much AzAN supports Clean Elections, that it was created basically to protect Clean Elections, and that if the Commission decides to revise

its rules, as the memo indicated was one option, there might be litigation against AzAN for its violation of the VPA.

b) Rivko Knox, LWVAZ, talked about the League's history with Clean Elections, that we not only helped write the initiative but that League members collected more signatures for it (20,000) than any other volunteer organization; that LWV spoke against SB 1516; that LWV supports disclosure and that before any changes are made in CCEC rules, the Commission ought to take into consideration the fact that there is an initiative, the CAE, that might repeal many elements of SB 1516, 2296 and 97.

8) The Commission then went into Executive Session to discuss A and B, with no information reported when it reconvened.

\* Gina Roberts, head of the Voter Education aspect of the Commission, spoke about: what the Commission did to educate the public re the special election to include very heavy use of social media, which was very successful; and what will be done in preparation for the primary and general elections, to include that this year's General Election voter information pamphlet will include the results of the Citizens Initiative Review (CIR) process.

NOTE: Barbara Klein, past LWVAZ president, was instrumental in getting LWVAZ involved with CIR and represented LWVAZ on the Advisory Commission for a long while until she appointed Rivko Knox, who now represents LWVAZ.

Prepared by Rivko Knox