

Commissioners:

Ronald DeFilippis, Chairman
 Walter F. Timpone, Vice Chairman
 Amos C. Saunders, Commissioner
 Edwin R. Matthews, Legal Counsel

ELEC-Tronic

AN ELECTION LAW ENFORCEMENT COMMISSION NEWSLETTER

"Furthering the Interests of an Informed Citizenry"

Election Law Enforcement Commission, P.O. Box 185, Trenton, NJ 08625
www.elec.state.nj.us (609) 292-8700 - Toll Free Within NJ 1-888-313-ELEC (3532)

Directors:

Jeffrey M. Brindle
 Joseph W. Donohue
 Carol L. Hoekje
 Amy F. Davis
 Carol Neiman
 Linda White
 Todd J. Wojcik
 Steven M. Dodson
 Shreve Marshall

Comments from the Chairman Ronald DeFilippis

With the race for governor about to become front page news for New Jersey's newspapers, it is time again to review an important, but often misunderstood provision of campaign finance law.

This provision is commonly referred to as the 90-day rule, or more formally, the political communication regulation.

The 90-day rule comes into effect under the following conditions:

1. When the communication is made within 90-days of any election involving the candidates (in the case of the gubernatorial primary, January 1);
2. When the recipients are substantially made up of individuals eligible to vote for the candidate;

3. When the communication refers to the governmental objectives or achievements of the candidate; and,
4. When the communication is done with the cooperation or consent of the candidate.

In most instances, this rule has applied to communications produced by a governmental body, i.e., a municipal, county, or state government agency or office.

If the foregoing conditions are met, the cost of producing and disseminating the communication would constitute an in-kind contribution from the governmental body to the candidate and must be disclosed as such.

The Commission's role in matters of this kind would involve enforcement of the disclosure of the in-kind contribution.

On the other hand, the Commission has no jurisdiction over the question of the legality of using public funds for these purposes.

As with any rule, there are exceptions. For example, there is no requirement to report a communication by an incumbent officeholder seeking re-election if the communication is in writing and is made to a constituent in direct response to a prior communication from the constituent.

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Comments from the Chairman Ronald DeFilippis

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Further, there is no requirement to report a communication that is broadcast or circulated for the limited purpose of requiring constituents to make applications or take other actions before the date of the election, or providing information involving a public emergency.

Finally, there is no requirement to report a communication by a candidate running in the primary if the candidate is unopposed.

For the upcoming non-partisan elections held in May, the 90-day period begins on February 13, 2013. For the June primary, it begins on March 6, 2013, and for the general election in November, it begins on August 8, 2013.

Of course, for the gubernatorial election, it begins on January 1, 2013 for the primary, and the day after the primary for the general election.

The 90-day rule applies to all candidates, including fire district and school board.

So, if the county clerk's office sends out a mailer to residents of the county that touts the goals and achievements of the county clerk, and the distribution is within 90-days of the election, the cost of production and mailing must be disclosed to the Commission.

Questions of the permissibility of using county funds for that purpose, however, are not the purview of the Commission.

The Commission staff is available to assist with any questions related to the 90-day rule. They can be reached at 1-888-313-3532.

Requests for advisory opinions can also be submitted in writing to the Commission.

Finally, information is available on the Commission's website at www.elec.state.nj.us.

Executive Director's Thoughts Jeff Brindle

At times it is good to reflect upon the many blessings in your life.

This thought was driven home by the devastation brought by Hurricane Sandy and the unspeakable evil evident in the shootings in Newtown, Connecticut.

I count among the blessings in my life the opportunity to work for such upstanding Commissioners and with such a fine staff.

Chairman Ronald DeFilippis, Vice Chairman Walter Timpone, and Commissioner Amos Saunders have served the public with distinction and merit.

They have, without fail, acted to insure the integrity of the electoral process through strong compliance and enforcement.

Each has provided guidance when necessary, participated in lively discussions, and rendered decisions on policy in a fair and neutral manner.

In addition to the Commissioners, all credit for a very successful year goes to the staff. Again, staff has performed beyond all expectations.

While it is not feasible to single out all who have made significant contributions to the ongoing success story of the Commission, it is important to note that no one's efforts and achievements have gone unnoticed.

Deputy Director Joseph Donohue has used his skills and considerable experience to put ELEC on the map. His tireless efforts working with the press and public, his analyses involving campaign financing, lobbying, and pay-to-play have redounded to the benefit of the Commission and the public.

He has also guided the efforts of Research Assistant Steve Kimmelman and College Intern Henry Coslick.

Working closely with the Deputy Director, all section's directors, and me has been Elbia Zeppetelli. Her efforts, and the efforts of her staff, have been indispensable to the smooth and efficient functioning of the Executive area.

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Executive Director's Thoughts

Jeff Brindle

Continued from page 2.

I certainly would be remiss if I did not acknowledge the triumphs of Legal Director Carol Hoekje and her staff. Carol's legal skills were on display in the Morris County Freeholder case when she successfully argued before the Appellate Court and preserved the Commission's jurisdiction over the Campaign Act.

Moreover, Carol and her staff of four attorneys (Gail Shanker, Michelle Levy, Amanda Haines, and Theresa Lelinsky) continued to do an excellent job adjudicating a myriad of cases, researching advisory opinions, preparing regulatory amendments, and drafting complaints and final decisions.

As the result of a reorganization of staff, the Special Programs section was incorporated into the Compliance section. This saved money but also added to the responsibilities of Compliance Director Amy Davis.

Amy ran the section, which includes Campaign Finance, Lobbying, Pay-to-Play, and now the Gubernatorial Public Financing Program, with her customary administrative skill and gusto.

Along with Director of Lobbying Linda White, and Director of Campaign Finance Todd Wojcik, Director Davis introduced new initiatives that are helping to enhance compliance with the laws to an extent not approached before.

My hat goes off to Shreve Marshall who stepped in to become Director of Review and Investigation. His years of experience working in the section have certainly shown through as he has guided his staff (Brett Mead, Christopher Guear, Matthew Krinsley, Christopher Mistichelli, and Lovinsky Joseph) through complex, important, and sometimes high profile investigations.

Shreve has been relentless in bringing violators of the Act to justice no matter how long or difficult the course may be.

It goes without saying that ELEC as a disclosure agency depends upon the Information Technology section to make disclosure a reality in these modern times.

Director of Information Technology Carol Neiman, seconded by Associate Director Kim Roman and Associate Systems Administrator Anthony Giancarli did an outstanding job introducing new initiatives into our computer operations.

Carol, with her knowledge and experience working for ELEC for many years, has done a splendid job leading her field of technological wizards in a way that has not only sustained, but as much as possible, brought up-to-date a 13-year old system that is in need of upgrade.

Also under Carol, is the Data Entry staff, which is headed by Brenda Brickhouse and Darlene Kozlowski. Thanks to their efforts, ELEC's database of important information is always expanding.

Certainly, the Commission could not operate without a crackerjack administrative staff headed by Director of Finance and Administration Steven Dodson. In these difficult financial times, Senior Fiscal Officer Elaine Salit, Personnel Officer Judy Sheridan, and he managed the budget and personnel areas with great proficiency.

And finally, the frontline of the Commission, receptionists Debbie Kostival, Irene Comiso, and back-up Aracelis Brown, provide that personal touch that distinguishes the Commission from other departments and agencies. You will hear their helpful responses when you call.

Before concluding this piece, I would like to welcome Edwin Matthews as our new Legal Counsel. Already Ed is contributing to the legal foundations of the Commission.

A final thanks to all for continuing to do your work with pride and diligence.

History of Public Financing

In the aftermath of Watergate, citizens became increasingly aware that politicians needed to be held accountable to the public. This was evident with the passing of campaign financial disclosure laws and the creation of public financing programs. Public Financing was first implemented at the federal level in the 1976 presidential election. In 1977, New Jersey became the first state to conduct a gubernatorial general election with public funds and in 1981 included public financing for the gubernatorial primary election.

The governorship of New Jersey is unique in two important respects. First, it is the only office in State government to be elected Statewide. Second, the Governor of New Jersey is regarded as one of the most powerful chief executives in the country. He or she appoints or approves every executive and judicial officer, except for the State Auditor. Thus, the posts that can be filled by the Governor, with the advice and consent of the Senate, include all department heads or the boards that chose them, many division heads; all county prosecutors; and members of the county boards of election and taxation. They also include various policy and advisory boards, executive commissions, State and regional authorities, and interstate agencies. By making numerous appointments at many different levels of government, the Governor has an enormous influence in areas not directly under his or her control.

The Governor can also exert substantial legislative influence through an extensive veto power. As in most other states, the Governor has an absolute veto. However, the New Jersey Constitution also permits him or her to exercise a conditional veto. If the Governor wishes only to amend a bill, he or she may issue a conditional veto setting forth specific amendments. The Legislature can then concur in those amendments by a majority vote in each house. The power to veto conditionally provides a flexible tool to fashion legislation. Finally, New Jersey's Governor also can issue a line item veto, reducing one or more individual appropriations in a bill.

Because of the extensive appointive and veto powers which the Constitution confers upon the Governor and because the office is the only one in State Government filled by a Statewide vote, the concern that large contributions from a single source might exercise undue influence and that persons with limited financial resources be prevented from running is particularly compelling. New Jersey's Public Financing Program is designed to ensure that the people of New Jersey can elect a Governor who is free from improper influences. At the same time, it ensures that potential candidates are not prevented from seeking office because of a lack of personal fortune or access to sources of wealth.

Once a candidate has qualified, each dollar of a contribution to his or her election campaign is matched with two dollars in public funds. In order to qualify for public financing, a candidate in the primary or general election must satisfy several requirements. The candidate must apply for public financing before the designated deadline, submit proof that the qualification threshold has been reached, complete a statement of agreement to participate in two debates, and file a report to disclose whether or not he or she has participated in any issue advocacy groups for the four years before the candidate committee was formed.

Candidates may decline to take public funds and defray their campaign costs entirely with private contributions. In such cases, a candidate is still subject to the contribution limit, but is not subject to the overall expenditure limit, the limit on usage of a candidate's personal funds, or the limit on bank loans. The Public Financing Program is supported through the general treasury and the State income tax check-off provision. Taxpayers elect to contribute to the "Gubernatorial Elections Fund" by checking off a box on their State income tax form. Checking the box does not increase a citizen's tax bill. For individual returns, one dollar goes to the fund and on joint returns, spouses may contribute one dollar each.

For a complete overview of the Gubernatorial Public Financing Program, please visit: http://www.elec.state.nj.us/pdf/files/publicfinancedocs/gpf_manual.pdf

School Board Elections

Spending on 2012 school elections fell to the lowest point since 2001 due to a change in state law that led to far fewer school districts holding public votes on their budgets.

According to an analysis prepared by the New Jersey Election Law Enforcement Commission (ELEC), school board candidates and others spent just under \$600,000 in elections that, for the first time, were held in both April and November. Previous elections were held only in April.

Table 1

Annual Fundraising and Spending in New Jersey School Elections

| Year | Raised | Spent |
|------|-------------|-------------|
| 2012 | \$1,521,280 | \$ 597,664 |
| 2011 | \$1,610,364 | \$1,532,896 |
| 2010 | \$1,384,244 | \$ 922,009 |
| 2009 | \$1,481,435 | \$1,365,683 |
| 2008 | \$1,446,691 | \$1,242,057 |
| 2007 | \$1,429,301 | \$ 952,667 |
| 2006 | \$1,594,909 | \$1,249,311 |
| 2005 | \$1,307,126 | \$ 906,521 |
| 2004 | \$1,503,464 | \$1,011,427 |
| 2003 | \$1,265,900 | \$ 771,341 |
| 2002 | \$1,056,692 | \$ 909,700 |
| 2001 | \$ 686,412 | \$ 584,579 |
| 2000 | \$ 757,929 | \$ 630,481 |

Legislation signed by Gov. Chris Christie on January 17, 2012, and co-sponsored by Assembly Majority Leader Louis Greenwald and Sen. Donald Norcross (both D-Camden), let school districts move their elections to November.

The law gave school districts a special incentive to hold November elections by ending a long-standing requirement that they post their budgets for a public vote provided their budgets fall within the State's 2 percent annual cap.

More than 86 percent of all districts switched their elections to November, according to the New Jersey School Boards Association.

"This is a case where a change in state law had an immediate and direct impact on campaign spending," said Jeff Brindle, ELEC's Executive Director. "Rarely is the impact so obvious- or dramatic."

With far fewer budget votes on the public ballot, there was a steep drop in spending by the New Jersey Education Association, which historically has been the largest spender in school elections and heavy promoter of school budgets.

The NJEA School Elections Committee spent just \$24,605 in 2012, all during the April elections.

Since 2000, the union has spent a high of \$767,712 on 2011 school elections, and a low of \$155,160 in 2000.

Table 2

Spending by NJEA School Elections Committee

| Year | NJEA Spending | NJEA % of Total School Election Spending |
|------|---------------|--|
| 2012 | \$ 24,605 | 4% |
| 2011 | \$767,712 | 51% |
| 2010 | \$478,759 | 52% |
| 2009 | \$744,512 | 55% |
| 2008 | \$504,798 | 41% |
| 2007 | \$276,188 | 29% |
| 2006 | \$378,099 | 30% |
| 2005 | \$340,364 | 38% |
| 2004 | \$203,125 | 20% |
| 2003 | \$228,123 | 30% |
| 2002 | \$524,414 | 58% |
| 2001 | \$189,239 | 32% |
| 2000 | \$155,160 | 25% |

Elections in the Newark school district, one of the state's largest, generated the most spending.

Table 3

Five School Districts with Highest Spending in 2012

| District | Amount |
|---------------|----------|
| Newark | \$67,368 |
| New Brunswick | \$51,792 |
| Toms River | \$42,301 |
| Carteret | \$37,048 |
| Garfield | \$36,790 |

The numbers in this analysis are based on reports filed by 2 p.m. Wednesday, December 5, 2012. Those reports have yet to be verified by ELEC and should be considered preliminary.

Individual reports filed by school board candidates and committees are available on ELEC's website at www.elec.state.nj.us. ELEC also can be accessed on Facebook (www.facebook.com/NJElectionLaw) and Twitter (www.twitter.com/elecny).

Training Seminars

The seminars listed below will be held at the Offices of the Commission, located at 28 West State St., Trenton, NJ. Please visit ELEC's website at <http://www.elec.state.nj.us> for more information on training seminar registration.

| BUSINESS ENTITY PAY-TO-PLAY TRAINING | |
|--|------------|
| January 25, 2013 | 10:00 a.m. |
| February 22, 2013 | 10:00 a.m. |
| March 15, 2013 | 10:00 a.m. |
| LOBBYING TRAINING | |
| January 4, 2013 | 10:00 a.m. |
| January 8, 2013 | 10:00 a.m. |
| January 14, 2013 | 10:00 a.m. |
| January 24, 2013 | 10:00 a.m. |
| January 30, 2013 | 10:00 a.m. |
| February 4, 2013 | 10:00 a.m. |
| TREASURER TRAINING FOR CANDIDATES AND JOINT CANDIDATES COMMITTEES | |
| March 11, 2013 | 10:00 a.m. |
| April 1, 2013 | 10:00 a.m. |
| April 18, 2013 | 10:00 a.m. |
| April 25, 2013 | 10:00 a.m. |
| September 10, 2013 | 10:00 a.m. |
| September 25, 2013 | 10:00 a.m. |
| September 30, 2013 | 10:00 a.m. |
| TREASURER TRAINING FOR POLITICAL PARTY COMMITTEES AND PACS | |
| March 21, 2013 | 10:00 a.m. |
| June 20, 2013 | 10:00 a.m. |
| September 16, 2013 | 10:00 a.m. |
| December 11, 2013 | 10:00 a.m. |
| R-1 ELECTRONIC FILING SOFTWARE (REFS) TRAINING | |
| March 13, 2013 | 10:00 a.m. |
| April 2, 2013 | 10:00 a.m. |
| April 24, 2013 | 10:00 a.m. |
| April 29, 2013 | 10:00 a.m. |
| July 24, 2013 | 10:00 a.m. |
| September 11, 2013 | 10:00 a.m. |
| September 19, 2013 | 10:00 a.m. |
| October 2, 2013 | 10:00 a.m. |

2013 Lobbying Reporting Dates

| | INCLUSION DATES | ELEC DUE DATE |
|----------------------------------|------------------------|----------------------|
| Lobbying Quarterly Filing | | |
| 1 st Quarter | 1/1/13 – 3/31/13 | 4/10/13 |
| 2 nd Quarter | 4/1/13 – 6/30/13 | 7/10/13 |
| 3 rd Quarter | 7/1/13 – 9/30/13 | 10/10/13 |
| 4 th Quarter | 10/1/13 – 12/31/13 | 1/10/14 |

2013 Reporting Dates

| INCLUSION DATES | | REPORT DUE DATE |
|--|------------------------------------|-----------------|
| Fire Commissioner - 2/16/2013 | | |
| 29-day pre-election | Inception of campaign* - 1/15/13 | 1/18/2013 |
| 11-day pre-election | 1/16/13 - 2/2/13 | 2/5/2013 |
| 20-day post-election | 2/3/13 - 3/5/13 | 3/8/2013 |
| 48 Hour Notice Reports Start on 2/3/2013 through 2/16/2013 | | |
| School Board Election - 4/16/2013 | | |
| 29-day pre-election | Inception of campaign* - 3/15/13 | 3/18/2013 |
| 11-day pre-election | 3/16/13 - 4/2/13 | 4/5/2013 |
| 20-day post-election | 4/3/13 - 5/3/13 | 5/6/2013 |
| 48 Hour Notice Reports Start on 4/3/2013 through 4/16/2013 | | |
| School Board Candidates running in November should follow the General Election Schedule. | | |
| Municipal Election - 5/14/2013 | | |
| 29-day pre-election | Inception of campaign* - 4/12/13 | 4/15/2013 |
| 11-day pre-election | 4/13/13 - 4/30/13 | 5/3/2013 |
| **20-day post-election | 5/1/13 - 5/31/13 | 6/3/2013 |
| 48 Hour Notice Reports Start on 5/1/2013 through 5/14/2013 | | |
| 90 Day Start Date: 2/13/2013 | | |
| Runoff Election** - 6/11/2013 | | |
| 29-day pre-election | No Report Required for this Period | |
| 11-day pre-election | 4/24/13 - 5/28/13 | 5/31/2013 |
| 20-day post-election | 5/29/13-6/28/13 | 7/1/2013 |
| 48 Hour Notice Reports Start on 5/29/13 through 6/11/13 | | |
| Primary Election*** - 6/4/2013 | | |
| 29-day pre-election | Inception of campaign* - 5/3/13 | 5/6/2013 |
| 11-day pre-election | 5/4/13 - 5/21/13 | 5/24/2013 |
| 20-day post-election | 5/22/13 - 6/21/13 | 6/24/2013 |
| 48 Hour Notice Reports Start on 5/22/13 through 6/4/13 | | |
| 90 Day Start Date: 3/6/13 | | |
| General Election*** - 11/5/2013 | | |
| 29-day pre-election | 6/22/13 - 10/4/13 | 10/7/2013 |
| 11-day pre-election | 10/5/13 - 10/22/13 | 10/25/2013 |
| 20-day post-election | 10/23/13 - 11/22/13 | 11/25/2013 |
| 48 Hour Notice Reports Start on 10/23/13 through 11/5/13 | | |
| 90 Day Start Date: 8/7/13 | | |
| Runoff Election** - 12/3/2013 | | |
| 29-day pre-election | No Report Required for this Period | |
| 11-day pre-election | 10/23/13 - 11/19/13 | 11/22/2013 |
| 20-day post-election | 11/20/13 - 12/20/13 | 12/23/2013 |
| 48 Hour Notice Reports Start on 11/20/13 through 12/3/13 | | |
| PACs, PCFRs & Campaign Quarterly Filers | | |
| 1 st Quarter | 1/1/13 - 3/31/13 | 4/15/2013 |
| 2 nd Quarter | 4/1/13 - 6/30/13 | 7/15/2013 |
| 3 rd Quarter | 7/1/13 - 9/30/13 | 10/15/2013 |
| 4 th Quarter | 10/1/13 - 12/31/13 | 1/15/2014 |

* Inception Date of Campaign (first time filers) or from January 1, 2013 (Quarterly filers).

** A candidate committee or joint candidates committee that is filing in a 2013 Runoff election is not required to file a 20-day post-election report for the corresponding prior election (May Municipal or General).

*** Form PFD-1 is due on April 11, 2013 for Primary Election Candidates and June 14, 2013 for Independent General Election Candidates.

**** A second quarter report is needed by Independent General Election candidates if they started their campaign before May 7, 2013