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ELEC-Tronic

AN ELECTION LAW ENFORCEMENT COMMISSION NEWSLETTER

"Furthering the Interests of an Informed Citizenry"

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Comments from the Chairman Ronald DeFilippis

With this column I will revisit a topic I dealt with previously.

It involves the prohibition set forth in the Campaign Contributions and Expenditures Reporting Act on soliciting and making contributions on public property.

Initially, the law, first enacted in 2004, involved gubernatorial and legislative candidates and property owned by the State.

But in 2012, known as the Lesniak bill, the law was amended to include a prohibition on soliciting and making contributions on public property in general.

Thus, the Election Law Enforcement Commission, without benefit of an appropriation, was mandated to monitor this type of activity that might occur, not only on State property, but on property owned by municipalities, school boards, counties, fire districts, and authorities.

The intent of the law is to prevent state, municipal, county, school board, fire district, and authority employees from being pressured while on the job to make political donations.

It also was designed to prevent officials from using public property, i.e., copiers, computers, etc., for the purpose of soliciting contributions.

Interestingly, however, the law does contain an exemption found in N.J.S.A. 19:44A-19.1d. It reads:

In the event property exclusively owned or leased by the State, or any agency of the State, or by any county, municipality, board of education of a school district, fire district, authority, or other State or local entity, district or instrumentality or part thereof, is made available, through rent, reservation or otherwise, for the exclusive use of any group for a non-governmental purpose as a meeting location, the prohibition in subsection b. of this section shall not apply and the solicitation or making of contributions or funds of any nature from any or among or by the members of the group during the time the group is using the property made available as a meeting location is permitted.

And it is with this exemption language that a certain amount of confusion has occurred.

Thus, it was necessary for the Commission to clarify the provision and apply it in a commonsense manner through the issuance of an advisory opinion.

At its recent meeting, the Commission responded to an advisory opinion request from Morris County Freeholder Director Tom Mastrangelo.

Freeholder Mastrangelo asked "whether the prohibition set forth in N.J.S.A. 19:44A-19.1 on making or soliciting campaign contributions on public property categorically prohibit fundraising by a political campaign on public property, or can the exemption set forth in N.J.S.A. 19:44A-19.1d for a meeting for a non-governmental purpose apply."

INSIDE THIS ISSUE

1. [Comments from the Chairman](#)
2. [Executive Director's Thoughts](#)
3. [UPDATE: Advisory Opinion No. 01-2013](#)
3. [ELEC's 40th Anniversary](#)
4. [Gubernatorial and Legislative Campaign Finance Activity](#)
7. [Training Seminars](#)
7. [Lobbying Reporting Dates](#)
8. [Reporting Dates](#)

Specifically, the Freeholder desired to learn whether it was permissible to hold a fundraising event at a golf course owned by a municipality.

In its response, the Commission advised that the exemption does apply and that fundraisers are permitted on publicly owned property as long as every group is treated equally.

Moreover, the advisory opinion held that the applicable exemption would apply to a campaign fundraiser held on public property by pre arrangement with the owner for reservation, rental, and fees for service at the fair market value of that property for the exclusive use of the campaign.

Furthermore, the advisory opinion held that the contemplated activity would occur during a meeting for a political, non-governmental purpose. Under those circumstances, it would be permitted by the exemption.

Disclosure of contributor and expenditure information would be required and would be contained on campaign reports as required by law.

While this advisory opinion is generally applicable, it is always wise for individuals to contact the Commission for guidance if there is any doubt about its applicability.

The Compliance staff is available and can be contacted at the toll free no. 1-888-313-3532 (ELEC) to answer questions.

Executive Director's Thoughts Jeff Brindle

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The story of this year's election is likely to be an explosion of activity by outside, independent groups.

Even before the June 4 primary election, these groups have spent an estimated \$13.5 million. That's only a half-million dollars less than the \$14 million spent on the entire state election in 2009!

Between the 2008 and 2012 presidential campaigns, outside spending tripled to more than \$1.1 billion. If outside spending in the current New Jersey elections tripled from 2009, it would top \$42 million.

So, I'm beginning to rethink my earlier prediction that \$25 million would be spent independently this year in New Jersey. It may be too low. Especially since new groups seem to be forming regularly.

We know independent spending already has topped \$25 million in at least three other gubernatorial elections in other states. It has even reached that level in the recent MAYORAL campaign in Los Angeles.

These outside groups, known as 527's, 501(c)'s and super PACs, will operate mostly in secret. The public will be kept in the dark regarding their financial backers. And their spending will be anonymous unless they use language that expressly supports or opposes candidates, which is unlikely.

Given the fact that this year's campaign already is nearly half over, it is doubtful that legislation will take effect this year.

The more likely scenario is that any change to the law won't apply until next year after candidates on both sides of the aisle feel the brunt of their attacks.

Two bills have been introduced that would require disclosure by these independent spending only groups: one by Assemblyman Reed Gusciora (D-Mercer) and the other by State Senator James Beach (D-Camden).

The Gusciora bill (A-3863) focuses solely on registration and disclosure by independent only committees. It has been moved out of the Assembly State Government Committee but awaits further action.

The Beach bill (S-2748), while containing a provision for disclosure by outside groups, is more comprehensive.

In addition to regulating independent expenditure groups, the proposed legislation would bring greatly needed reforms to the pay-to-play law.

Most importantly, the pay-to-play provision would establish one state law, a very necessary change in order to bring sense to what is now a confusing and convoluted set of statutes, executive orders and local ordinances.

Both disclosure by independent groups and reform of pay-to-play have been advocated by the Commission. These changes are necessary and can

be fully implemented by the Commission even with an aging computer system and funding constraints.

Other provisions in the Beach bill not among ELEC's recommendations would be harder to achieve.

One such provision would mandate electronic filing for all entities. That means candidates, political parties, legislative leadership committees, PACs, political committees, and independent groups all would be required to report by electronic means.

Secondly, the bill requires real time reporting of contributions and expenditures of more than \$3,000. Therefore, every filing entity would be required to electronically disclose every contribution and expenditure of more than \$3,000 within 48-hours.

While meritorious, these rapid disclosure provisions would strain the agency. Much of ELEC's computer software is more than a decade old. Particularly to implement electronic filing for all filers, a major upgrade would be necessary. Currently, there is no appropriation in the bill to achieve that goal.

It is hoped that the Legislature will take these concerns under consideration, when, and if, it deliberates upon these bills.

UPDATE: Advisory Opinion No. 01-2013 *Fund for Jobs, Growth & Security on Independent Expenditures*

The NJ Election Law Enforcement Commission (ELEC) has agreed to comply with a temporary court injunction removing contribution limits from a political committee that plans to make only in independent campaign expenditures this year in New Jersey elections. A permanent injunction is pending.

The agreement between ELEC and Fund for Jobs, Growth, & Security, a Washington, DC-based group, must be approved by the United States District Court for the District of New Jersey. It was prompted by Fund for Jobs, Growth & Security v. New Jersey Election Law Enforcement Commission et al. Civil Action No. 3:13-CV-02177-MAS-LHG.

Fund for Jobs, Growth & Security filed its lawsuit April 5 in response to an advisory opinion approved 2-1 by the Commission at its March 19 meeting.

The Commission majority decided it could not waive contribution limits for a political committee that was

planning to engage only in independent expenditures even though the U.S. Supreme Court in the 2010 Citizens United v. FEC case struck down a ban on unlimited independent spending by corporations and unions. Majority members felt only the Legislature or the courts have the authority to permit such a waiver.

Under current law, if a group intends to spend more than \$2,400 on a New Jersey election, and the major purpose is that more than half of its funds are spent in New Jersey, it must register with ELEC as a political committee. ELEC staff and members agreed Fund for Jobs, Growth & Security fits this category.

Political committees are short-term committees that assemble for no more than one election cycle. They file regular reports with the Commission that list both their contributions and expenditures.

But current law also prohibits political committees from accepting contributions larger than \$7,200 per election unless they are formed to solely support or oppose ballot questions. Ballot question committees are exempt from contribution limits under a 1978 Supreme Court ruling.

Organizers of Fund for Jobs, Growth and Security filed a lawsuit to try to win a similar exemption for non-ballot question political committees that spend independent of candidates and parties.

On April 26, the Court issued a preliminary junction order that suspended contribution limits for the Fund for Jobs, Growth & Security.

On May 24, Funds for Jobs, Growth & Security filed a registration statement and an 11-day pre-election report with ELEC that disclosed \$1.75 million in contributions and \$215,776 in spending.

ELEC's 40th Anniversary

Current and past members of the New Jersey Election Law Enforcement Commission will be among those gathering at 1 p.m. Tuesday June 18 to commemorate the agency's 40th year of public service. The event will be held in the eighth floor conference room.

Governor William Cahill enacted the New Jersey Campaign Contributions and Expenditures Reporting Act, which created the Commission and established the state's first program to disclose campaign finance activity, on April 24, 1973.

Gubernatorial and Legislative Campaign Finance Activity

With the June 4 primary looming, gubernatorial and legislative candidates, along with independent committees, so far have raised nearly \$47 million and spent nearly \$32 million, according to the latest reports filed with the New Jersey Election Law Enforcement Commission.

Reports submitted 11 days before the primary indicate that the four gubernatorial candidates have raised \$8.8 million and spent \$6.9 million while putting aside just under \$2 million for further campaigning.

Legislative candidates have raised \$24.3 million, spent \$12.4 million and have tucked away \$12 million, most of which is likely to be carried over into the general election.

Table 1
Combined Campaign Finance Activity to Date for Gubernatorial and Legislative Candidates and Independent Groups for the 2013 Election Cycle

Type	Raised	Spent	Cash-on-Hand
Gubernatorial	\$ 8,831,605	\$ 6,896,389	\$ 1,961,642
Legislative	\$24,294,733	\$12,396,732	\$12,023,939
Independent Committees	\$13,819,064	\$12,284,840	na
Total	\$46,945,402	\$31,577,961	\$13,985,581

Since the election began, Governor Chris Christie has dominated other candidates in fundraising and spending, and has a major cash advantage.

"Other than self-financed candidates, namely former Governor Jon Corzine and opponent Douglas Forrester, the Governor has raised more in private dollars than any previous candidate participating in the primary or general election for the State's highest office," said Jeff Brindle, ELEC's executive director.

"However, during the period following the 29-day pre-election reports, State Senator Barbara Buono, presumed Democratic candidate, has raised the most money," he added.

Table 2
Campaign Finance Activity by Gubernatorial Candidates through May 24

Candidate	Party	Latest Raised	Latest Spent	Raised-to-Date	Spent-to-Date	Cash-on-Hand
Chris Christie	R	\$336,463	\$2,017,432	\$ 6,502,620	\$ 4,707,698	\$1,795,586
Barbara Buono	D	\$439,515	\$1,400,224	\$ 2,317,505	\$ 2,177,989	\$ 165,400
Seth Grossman	R	\$ 2,540	\$ 3,032	\$ 11,480	\$ 10,702	\$ 656
Troy Webster*	D	na	na	na	na	na
Totals		\$778,518	\$3,420,688	\$ 8,831,605	\$ 6,896,389	\$1,961,642

* Does not plan to spend more than \$4,500 for primary

Also in the campaign for governor, fundraising, spending and cash-on-hand all are down compared to the same point in the 2009 primary election. There were six candidates in that primary, and former Gov. Corzine declined public financing and was able to tap his considerable personal wealth with no spending limits.

Table 3
Comparison of Campaign Finance Activity for All
Gubernatorial Candidates up to 11 Days before Primary Election

Year	Raised	Spent	Cash-on-Hand
2013	\$ 8,831,605	\$6,896,389	\$1,961,642
2009	\$11,341,629	\$8,694,842	\$2,648,049
Difference	-22%	-21%	-26%

In the legislative elections, Democrats maintained a roughly two-to-one fundraising advantage both short term and since fundraising began for the election. They control about two-thirds of the seats in the two houses- 24 to 16 in the Senate, and 48 to 32 in the Assembly.

Despite spending a combined \$1.1 million, the two parties also managed to boost their combined reserves to \$12 million- about \$600,000 more than the total reported a few weeks earlier.

Table 4
Campaign Finance Activity by
Legislative Candidates through May 24

Party	Latest Raised	Latest Spent	Cumulative Raised	Cumulative Spent	Cash-on-Hand
Democrats	\$1,149,631	\$ 776,409	\$16,770,785	\$ 8,721,918	\$ 8,187,155
Republicans	\$ 441,665	\$ 294,923	\$ 7,523,949	\$ 3,674,814	\$ 3,836,784
Both Parties	\$1,591,296	\$1,071,332	\$24,294,733	\$12,396,732	\$12,023,939

Incumbents continue to have a major edge in fundraising but challengers have more reserves than the \$486,891 reported May 6.

Table 5
Cash-on-Hand Reserves of Incumbents
and Challengers as of May 24

Group	Cash-on-Hand
Incumbents	\$11,290,642
Challengers	\$ 733,297
Both Groups	\$12,023,939

While there are 80 Assembly members and only 40 Senators, upper house members are sitting on a larger reserve.

Table 6
Cash-on-Hand Balances by Legislative House

Group	Cash-on-Hand
Senate Candidates	\$ 7,328,080
Assembly Candidates	\$ 4,695,860
Total	\$12,023,939

"Independent, outside groups, which do not coordinate with candidates or parties, are emerging at an accelerated rate this year. Thus far they have raised almost \$14 million and spent \$12.3 million," said Brindle.

"The rate of independent spending thus far is a real phenomenon, given the lack of competitive primary contests," he added.

"Outside groups in New Jersey spent an estimated \$14 million in 2009, the last time there was a race for governor. Even before the primary, we already are nearing that mark based on fundraising totals," said Brindle.

Table 7
Spending by Outside Groups to Promote or Oppose
Gubernatorial or Legislative Candidates in This Year's Election

Group	Raised*	Spent	Source
Committee for Our Children's Future	\$ 7,800,000	\$ 7,800,000	Committee officials
One New Jersey	\$ 1,800,000	\$ 1,800,000	Media
Republican Governors Association	\$ 1,725,000	\$ 1,725,000	Independent Expenditure Reports
Garden State Forward	\$ 584,897	\$ 584,897	Independent Expenditure Reports
Fund for Jobs, Growth and Security	\$ 1,767,080	\$ 232,856	11-Day Pre-Election Report and Independent Expenditure Reports
National Association of Realtors	\$ 142,087	\$ 142,087	Independent Expenditure Reports
NJ Workers' Voices	0	0	Registration Statement
Total	\$13,819,064	\$12,284,840	

*Since most outside groups are not required to disclose their fundraising, some totals are same as reported spending.

The numbers in this report should be considered preliminary. The analysis is based on legislative fundraising reports received by noon May 29, 2013.

Reports filed by legislative candidates are available online on ELEC's website at www.elec.state.nj.us. A downloadable summary of data from those reports is available in both spreadsheet and PDF formats at www.elec.state.nj.us/publicinformation/statistics.htm. ELEC also can be accessed on Facebook (www.facebook.com/NJElectionLaw) and Twitter (www.twitter.com/elecnj).

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	
June 17 th , 2013	10:00 a.m.
September 23 rd , 2013	10:00 a.m.
November 18 th , 2013	10:00 a.m.

TREASURER TRAINING FOR CANDIDATES AND JOINT CANDIDATES COMMITTEES	
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	
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	
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.

Lobbying Reporting Dates

LOBBYING QUARTERLY FILING	INCLUSION DATES	ELEC DUE DATE
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

Reporting Dates

INCLUSION DATES		REPORT DUE DATE
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	5/1/13 - 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