



ELEC *tronic*

An Election Law Enforcement Commission Newsletter

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Comments from the Chairman

Ronald DeFilippis

With the primary and general election for Governor, Assembly and various local races looming, it is important to review the so-called 90-day rule.

The 90-day rule, or the political communication regulation, is effective under the following conditions:

1. When the communication is made within 90-days of any election involving the candidates;
2. When the recipients are substantially comprised of individuals eligible to vote for the candidates;
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 the majority of cases, the rule has applied to communications produced

by a governmental body such as a municipal, county, or state government agency.

If the above conditions are met, the cost of producing and disseminating the communication would be an in-kind contribution from the governmental body to the candidate.

This expenditure would be required to be disclosed by the candidate as an in-kind contribution.

While the Commission is authorized to enforce disclosure of this activity, it does not, however, have jurisdiction over the issue of the legality of using taxpayer funds for this purpose.

As with any law or regulation 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.

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.

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

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

Requests for advisory opinions can be submitted in writing to the Commission at ELEC, P.O. Box 185, Trenton, NJ 08625.

Information is also available at www.elec.state.nj.us.

"Furthering the Interest of an Informed Citizenry"

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Executive Director's Thoughts

Jeff Brindle

CONFUSING PAY-TO-PLAY LAWS, THOUGH WELL-INTENTIONED, CAN HURT BUSINESS AND JOBS

Reprinted from Observer.com

One of the most frustrating things about pay-to-play law is its stunning inconsistency. Because of loopholes, a firm in one place can make many contributions and still receive a lucrative contract, while another can make a single, minor contribution and be forced to give up its public work.

Two recent New Jersey examples illustrate this problem.

Last September, the Paterson Press reported that Classic Towing received a one-year contract from the city of Paterson that "could reap more than \$1.8 million."

It noted that the company contributed upwards of \$100,000 to various Passaic County officials over a 20-year span.

Yet, despite the state pay-to-play law that in many cases restricts public contractors to donations of \$300 or less, Classic Towing has not run afoul of the law.

Why? Because state law allows local governments to relax their contribution limits if the municipal or county government awards contracts through public bids, which Paterson did.

On the other hand, there is the case involving a Union County firm.

Recently, Della Pello Paving, Inc. forfeited a \$7 million state contract because it was found to have made a \$500 contribution to Somerset County Republican Organization.

A ruling by the Appellate Division upheld the decision made by the departments of Transportation and Treasury to rescind the contract awarded to the Union county based firm.

Under state law, the decision was correct. Pay-to-play prevents companies that have donated more than \$300 to officials, candidates, and even state and local parties, from receiving state contracts. The laudable goal is to prevent firms from using large political contributions as bait for public contracts.

Nevertheless, this case shows the complicated law can be overly burdensome. It can potentially put a company out of business, cause people to lose their jobs, and hurt the economy.

Is it really fair that a modest \$500 contribution to a county political party results in the forfeiture of a \$7 million contract? Not to me.

Two other situations further expose the contradictions in the state pay-to-play law as written.

Two New Jersey municipalities, Plainfield and Glen Rock, are currently in the process of passing ordinances which change their local pay-to-play laws.

State law allows municipalities to opt out of the state pay-to-play law if they

enact their own ordinances. Some 158 or so have done so.

Glen Rock is strengthening its law. Plainfield, on the other hand, is loosening its law.

In Glen Rock, a business would be ineligible to receive a contract in excess of \$17,500 if it donates more than \$300 to Mayor or council candidates, \$500 to municipal joint candidate committees, or \$500 to Bergen county political committees or political action committees.

In Plainfield, council members plan to repeal the city ordinance that caps public contractor donations at \$300 and change the law to allow \$2,600 contributions under a "fair and open" competitive bidding process.

Clearly, these examples highlight why the state's pay-to-play law needs to be reformed.

It is convoluted and complicated. The law is hard to understand and therefore hard to enforce. The law causes honest business people to make simple mistakes and less than straightforward ones to find ways around it, diminishing transparency.

Existing law includes officials, candidates and parties at all levels. It limits donations to \$300 on contracts of \$17,500 or more. It requires disclosure of contributions and contracts when a contractor receives \$50,000 or more in contracts statewide.

On the other hand, the law is replete with loopholes. It allows local governments to opt out of pay-to-play if it passes its own ordinance, no matter if the ordinance is stronger or weaker than state law.

It also includes the “fair and open loophole,” which allows local governments to bypass state law by simply going out to public bid.

And finally, the law does not include PACs (political action committees) or independent groups, undermining transparency and encouraging contractors to legally circumvent the pay-to-play strictures.

The New Jersey Election Law Enforcement Commission has put forth a plan to simplify and strengthen the state’s pay-to-play law.

It calls for one state law to apply across the board at all levels of government. It calls for the elimination of the fair and open loophole and for strengthening disclosure by requiring all contracts of \$17,500 to be disclosed. The proposal would increase the contribution limit to \$1,000 and would include PACs under the law. Moreover, contributions by contractors to independent groups would be disclosed and more accountable. Contributions to more accountable political parties would be exempt from the law, meaning the situation faced by Della Pello wouldn’t happen in the future.

These commonsense reforms would strengthen disclosure, bring understanding to a less than understandable law, improve enforcement, increase trust in the process by which contracts are awarded, and may even help the economy.

PAY-TO-PLAY 2016

For the third consecutive year, political contributions made by public contractors declined in 2016 to \$8.1 million, the second lowest total since pay-to-play contribution restrictions began, according to an Election Law Enforcement Commission (ELEC) analysis of annual disclosure reports filed recently.

Table 1
Campaign Contributions Reported by Public Contractors in Annual Disclosure Reports

YEAR	AMOUNT	CHANGE-\$	CHANGE-%
2016*	\$ 8,135,595	\$ (1,047,268)	-11%
2015	\$ 9,182,863	\$ (646,856)	-6%
2014	\$ 9,829,719	\$ (877,382)	-8%
2013	\$ 10,707,101	\$ 2,719,219	34%
2012	\$ 7,987,882	\$ (1,992,564)	-20%
2011	\$ 9,980,446	\$ 254,524	3%
2010	\$ 9,725,922	\$ (1,352,791)	-12%
2009	\$ 11,078,713	\$ (1,042,210)	-9%
2008	\$ 12,120,923	\$ (4,315,116)	-26%
2007	\$ 16,436,039	\$ 1,278,098	8%
2006	\$ 15,157,941		

*Preliminary

Jeff Brindle, ELEC’s Executive Director, said the falloff in part may reflect the lack of gubernatorial or legislative elections in 2016. But a longer-term decline suggests the complexity of the law also is not only discouraging contractors from contributing directly to candidates and parties, but also encouraging them to circumvent the law by giving to independent groups, he said.

“While there definitely was less incentive to give last year, a clear trend is emerging. Contributions from contractors are less than half their peak in 2007,” he said.

The top ten contractors ranked by their contributions gave a combined \$2.4 million in 2016, representing 29 percent of all contributions.

Table 2
Business Entities that Made Most Contributions in 2016

BUSINESS NAME	AMOUNT
Remington & Vernick Engineers, Inc.	\$430,920
CME Associates	\$374,750
Alaimo Group	\$360,250
T&M Associates	\$341,425
Pennoni Associates Inc	\$263,850
Archer & Greiner PC	\$137,200
Capehart Scatchard PA	\$129,950
Fairview Insurance Agency Associates Inc.	\$121,300
French & Parrello Associates PA	\$116,125
Waters McPherson McNeill PC	\$114,355

Most of the major beneficiaries of contractor contributions in 2016 were county candidates in Camden, Gloucester, and Middlesex Counties.

Table 3
Top Ten Recipients of Contractor Contributions in 2016

RECIPIENT	AMOUNT
Frank DiMarco & Daniel Christy for Freeholder (Gloucester County)	\$198,100
Charles Kenny for Freeholder (Middlesex County)	\$119,475
Edward McDonnell for Freeholder (Camden County)	\$112,050
Blue PAC	\$111,400
Mildred Scott for Sheriff (Middlesex County)	\$110,375
Kenneth Armwood for Freeholder (Middlesex County)	\$109,625
Blanquita Valenti for Freeholder (Middlesex County)	\$ 80,525
GOPAC	\$ 77,300
Constructors For Good Government PAC	\$ 75,676
Forward NJ PAC	\$ 75,000

While contractor contributions overall were down, a group promoting a 2016 ballot question received some checks. Forward NJ, a labor-business coalition that helped win voter approval of a ballot question tied to a new state transportation improvement program, received \$75,000.

Contributions also went to committees aligned with one 2017 gubernatorial candidate and two other elected officials who opted not to run for governor this year.

Contractors reported sending \$24,550 to the Democratic gubernatorial campaign of Phil Murphy, former Ambassador and Goldman Sachs partner. Republican Assemblyman Jack Ciattarelli received \$17,200 and Assemblyman John Wisniewski, a Democrat, received \$3,550 for their gubernatorial campaigns. †

Two federal Super PACs set up by supporters of two Democrats who decided not to run also received contributions. New Jerseyans for a Better Tomorrow, a federal Super PAC formed by supporters of Senate President Stephen Sweeney, collected \$63,600 from contractors.

Coalition for Progress, a Super PAC affiliated with Jersey City Mayor Steven Fulop, received \$3,000. Sweeney and Fulop did not become gubernatorial candidates.

While political action committees (PACs) and independent groups received slightly less from contractors in 2016, Brindle said a substantial portion of contractor contributions- 16 percent- still went to these groups, which are not subject to pay-to-play restrictions.

Table 4
Contributions to PACs and Independent Groups

YEAR	AMOUNT	CHANGE-%	% OF TOTAL CONTRIBUTIONS
2016	\$1,286,280	-1%	16%
2015	\$1,300,622	-30%	14%
2014	\$1,863,693	16%	19%
2013	\$1,604,014	58%	15%
2012	\$1,017,353	-42%	13%
2011	\$1,746,947		18%

One result is that state and county party committees have seen a sharp decline in their fundraising since pay-to-play rules began curbing contractor contributions.

A set of legislative recommendations developed by Brindle and supported by ELEC on a bipartisan basis seek to reverse this trend while greatly simplifying the rules. Pending bills by both parties would implement many of these recommendations.

The reform plan would consolidate pay-to-play restrictions into a single state law; raise from \$300 to \$1,000 the amount contractors could give without jeopardizing their contracts; wave the \$1,000 limit for party committees, though contractors still would be subject to contribution limits that apply to all other donors; and require more contractors to file annual reports with ELEC detailing their contracts and contributions. The proposal also would restrict the amount contractors could give to PACs.

“Without changes, party fundraising will continue to sink while the warchests of independent groups will

keep swelling. The public will be the losers since independent groups can more easily hide what they raise and spend,” Brindle said.

Contracts totals were up 4 percent in 2016 to nearly \$8.6 billion.

The numbers in this report reflect information available to the Commission through April 4, 2017 and

Table 5
Total Value of Contracts Reported Annually by Business Entities Subject to Pay-to-Play Law

YEAR	AMOUNT	CHANGE-\$	CHANGE %
2016*	\$ 8,591,679,591	\$ 313,633,421	4%
2015	\$ 8,278,046,170	\$ 1,295,721,929	19%
2014	\$ 6,982,324,241	\$ 410,018,278	6%
2013	\$ 6,572,305,963	\$ 618,617,899	10%
2012	\$ 5,953,688,064	\$ 444,848,248	8%
2011	\$ 5,508,839,816	\$ (322,590,939)	-6%
2010	\$ 5,831,430,755	\$ (229,983,148)	-4%
2009	\$ 6,061,413,903	\$ 1,057,944,238	21%
2008	\$ 5,003,469,665	\$ (682,923,351)	-12%
2007	\$ 5,686,393,016	\$ (4,710,365,819)	-45%
2006	\$ 10,396,758,835		

*Preliminary

should be considered preliminary. Some contractors are likely to submit reports or amendments after that date that could change the totals. Numbers earlier than 2016 reflect these revisions and could differ from those reported in prior press releases. All reports are available at ELEC’s website at www.elec.state.nj.us.

GUBERNATORIAL PRIMARY DEBATES

Final details are now available for four gubernatorial primary debates.

The first two debates- one for Democrats, one for Republicans- will be held at Stockton University on May 9. One debate will be held at 6:30 pm, while the other is set for 8 pm. School officials will randomly decide which party goes first. Both debates will be one hour.

The debates will be held in the Campus Theatre, 101 Vera King Ferris Drive, Galloway Township, NJ. They are being broadcast live via Facebook Live and will be rebroadcast by NJTV. The debates are being sponsored by the William J. Hughes Center for Public Policy at Stockton University.

Two other hour-long debates are being sponsored by NJTV Public Media of NJ and NJ Spotlight. Democrats will meet May 11 while the Republican debate will be held May 18. Both will be held at 8 pm at the Agnes Varris Studio, 2 Gateway Center, Newark.

The debates will be broadcast live by NJTV, NJ Spotlight, WNET and C-SPAN. The same group will rebroadcast the debates along with potentially WHYY public radio, WNYC public radio and WBGO public radio.

Under state law, all candidates who qualify for public matching funds must participate in at least two debates during each election. Candidates not seeking public funds who commit to raising and spending at least \$430,000 also can participate.

This year’s Republican debates will include Lt. Governor Kimberly Guadagno and Assemblyman Jack Ciattarelli. The Democratic debates include former ambassador Phil Murphy, former US Treasury Department official Jim Johnson, Senator Raymond Lesniak, and Assemblyman John Wisniewski.

The primary election is June 6.

Training Seminars

The seminars listed below will be held at the Offices of the Commission, located at 28 West State St., Trenton, NJ. Since space is limited, you must reserve a seat in order to attend. Please visit ELEC’s website at <http://www.elec.state.nj.us> for more information on training seminar registration.

TREASURER TRAINING FOR CANDIDATES AND COMMITTEES	
Wednesday, September 13 th	10:00
Tuesday, October 3 rd	10:00
TREASURER TRAINING FOR POLITICAL COMMITTEES AND PACS	
Wednesday, June 21 st	10:00
Tuesday, September 26 th	10:00
Tuesday, December 12 th	10:00
R-1 ELECTRONIC FILING SOFTWARE (REFS) TRAINING	
Wednesday, July 26 th	10:00
Tuesday, September 19 th	10:00
Wednesday, October 4 th	10:00

Lobbying Reporting Dates

INCLUSION DATES		ELEC DUE DATE
Lobbying Quarterly		
1st Quarter	1/1/17 – 3/31/17	4/10/17
2nd Quarter	4/1/17 – 6/30/17	7/10/17
3rd Quarter	7/1/17 – 9/30/17	10/10/17
4th Quarter	10/1/17 – 12/31/17	1/10/18

Reporting Dates

ELECTION	48-HOUR START DATE	INCLUSION DATES	REPORT DUE DATE
FIRE COMMISSIONER -2/18/2017	2/5/2017- through 2/18/2017		
29-day Preelection Reporting Date		Inception of campaign* - 1/17/17	1/20/2017
11-day Preelection Reporting Date		1/18/17 - 2/4/17	2/7/2017
20-day Postelection Reporting Date		2/5/17 - 3/7/17	3/10/2017
APRIL SCHOOL BOARD- 4/25/2017	4/12/2017 through 4/25/2017		
29-day Preelection Reporting Date		Inception of campaign* - 3/24/17	3/27/2017
11-day Preelection Reporting Date		3/25/17 - 4/11/17	4/17/2017
20-day Postelection Reporting Date		4/12/17 - 5/12/17	5/15/2017
MAY MUNICIPAL – 5/9/2017	4/26/2017 through 5/9/2017		
29-day Preelection Reporting Date		Inception of campaign* - 4/7/17	4/10/2017
11-day Preelection Reporting Date		4/8/17 - 4/25/17	4/28/2017
20-day Postelection Reporting Date		4/26/17 - 5/26/17	5/30/2017
RUNOFF (JUNE)**- 6/13/2017	5/31/2017 through 6/13/2017		
29-day Preelection Reporting Date		No Report Required for this Period	
11-day Preelection Reporting Date		4/26/17 - 5/30/17	6/2/2017
20-day Postelection Reporting Date		5/31/17 - 6/30/17	7/3/2017
PRIMARY (90 DAY START DATE: 3/8/2017)***	5/24/2017 through 6/6/2017		
29-day Preelection Reporting Date		Inception of campaign* - 5/5/17	5/8/2017
11-day Preelection Reporting Date		5/6/17 - 5/23/17	5/26/2017
20-day Postelection Reporting Date		5/24/17 - 6/23/17	6/26/2017
GENERAL (90 DAY START DATE: 8/9/2017)***	10/25/2017 through 11/7/2017		
29-day Preelection Reporting Date		6/24/17 - 10/6/17	10/10/2017
11-day Preelection Reporting Date		10/7/17 - 10/24/17	10/27/2017
20-day Postelection Reporting Date		10/25/17 - 11/24/17	11/27/2017
RUNOFF (DECEMBER)**- 12/5/2017	11/22/2017 through 12/5/2017		
29-day Preelection Reporting Date		No Report Required for this Period	
11-day Preelection Reporting Date		10/25/17 - 11/21/17	11/24/2017
20-day Postelection Reporting Date		11/22/17 - 12/22/17	12/26/2017
PACs, PCFRs & CAMPAIGN QUARTERLY FILERS			
1st Quarter		1/1/17 - 3/31/17	4/17/2017
2nd Quarter		4/1/17 - 6/30/17	7/17/2017
3rd Quarter		7/1/17 - 9/30/17	10/16/2017
4th Quarter		10/1/17 - 12/31/17	1/16/2018

* Inception Date of Campaign (first time filers) or from January 1, 2017 (Quarterly filers).

** A candidate committee or joint candidates committee that is filing in a 2017 Runoff election is not required to file a 20-day postelection report for the corresponding prior election (May Municipal or General).

*** Form PFD-1 is due on April 13, 2017 for Primary Election Candidates and June 16, 2017 for Independent General Election Candidates.

Note: A fourth quarter 2016 filing is needed for Primary 2017 candidates if they started their campaign prior to December 8, 2016. A second quarter 2017 filing is needed by Independent/Non-Partisan General Election candidates if they started their campaign prior to May 10, 2017.

HOW TO CONTACT ELEC

www.elec.state.nj.us

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