OTHER AGENCIES

ELECTION LAW ENFORCEMENT COMMISSION

Regulations of the Election Law Enforcement Commission

Readoption with Amendments: N.J.A.C. 19:25


Adopted: March 25, 2010 by the Election Law Enforcement Commission, Jeffrey M. Brindle, Executive Director.

Filed: March 25, 2010 as R.2010 d.062, with substantive and technical changes not requiring additional public notice and comment (see N.J.A.C. 1:30-6.3).


Effective Dates: March 25, 2010, Readoption;


Expiration Date: March 25, 2015.

Summary of Hearing Officer’s Recommendations and Agency’s Response:

A public hearing on the proposal was conducted before the sitting New Jersey Election Law Enforcement Commission (hereafter, the Commission) on February 16, 2010 in the Edward J. Farrell Memorial Conference Room, 28 West State Street, 12th Floor, Trenton, New Jersey. No persons appeared to testify. Advance written notice of the hearing was circulated on or about January 5, 2010, to the Secretary of State, the County Clerks, the State House press corps and other interested individuals. A Notice of Administrative Correction: Revised Date for Reserving Time to Testify at the February 16, 2010 Public Hearing was circulated on or about January 14, 2010 to the Secretary of State, the County Clerks, the State House press corps and other interested individuals. The period for receipt of written comments expired on February 19, 2010, and two written comments were received from Stephen Adzima, Jr., Universal Electric and Edward J. Buzak, Esq. of the Buzak Law Group, L.L.C. After reviewing the comments received, the sitting Commission voted on March 23, 2010 to adopt the amendments as proposed, with changes not requiring reproposal (see comments below). The record of opportunity for the public to be heard may be reviewed by contacting Michelle R. Levy, Esq. Associate
Summary of Public Comments and Agency Responses:

The Commission wishes to thank the commenters for their valuable comments.

COMMENT: Stephen Adzima, Jr., of “Universal Electric,” wrote that any donations under $500.00 should not have to be “reportable.” Presumably the commenter means that contributions under $500.00 should not be considered “reportable by the recipient” for pay-to-play requirements.

RESPONSE: The pay-to-play legislation has imposed prohibition and disclosure requirements relevant to contributions “reportable by the recipient” under the New Jersey Campaign Contributions and Expenditures Reporting Act, N.J.S.A. 19:44A-1 et seq. (the Reporting Act). The Commission does not have the discretion to raise the reporting thresholds to amounts higher than those established in the Reporting Act for reporting of detailed contributor information. See N.J.S.A. 19:44A-8, 19:44A-16 and 19:44A-11.8.

COMMENT: Edward J. Buzak, Esq. of the Buzak Law Group, L.L.C., wrote that he does not believe that the Legislature, in enacting both the pay-to-play legislation (P.L. 2004 c. 19, [P.L. 2004 c. 51] and P.L. 2005 c. 271) and the currency reporting legislation (P.L. 2004 c. 28), intended that the restrictions of the latter should apply to the former. Mr. Buzak stated that it is his belief that the pay-to-play legislation intended that the “reportable contribution” threshold was an amount in excess of $300.00, and not a contribution in currency of an amount of $1.00 or $10.00. Therefore he asks that a distinction be made between a “reportable” contribution for the purposes of “monitoring various committees” and a “reportable” contribution for purposes of the pay-to-play requirements.

Mr. Buzak further commented, for example, that an “inadvertent” $10.00 cash payment for admission to a picnic held by a local political party committee, should not disqualify that individual from participating in a non-fair and open contract with the particular entity if a member of that political party were sitting on the elected governing body.

RESPONSE:

The Commission hereby adopts the proposed amendments to Subchapters 24, 25, and 26, to reflect the clear language of N.J.S.A. 19:44A-11.8 (“Additional reporting requirements”). The amendments to Subchapters 24, 25 and 26 of the Campaign Act are based upon the statutory requirement that detailed contributor information must be reported for all currency contributions, regardless of amount. This requirement has existed since January 1, 2005 as N.J.S.A. 19:44A-11.8, enacted in P.L. 2004 c. 28.

New Jersey’s pay-to-play laws have an intricate legislative history. The first “pay-to-play” legislation became effective on January 1, 2006, and contained “prohibition” restrictions concerning the making of contributions by business entities receiving contracts in the executive branch, legislative, county and municipal levels. The legislation applied these new prohibitions to contributions “reportable by the recipient under P.L. 1973, c. 83 (c. 19:44A-1 et seq.),” see prohibition restrictions at N.J.S.A.
19:44A-20.3, 20.4 and 20.5. No further definition or explanation was included or attached as an explanatory statement concerning the reference “reportable by the recipient.”

Subsequently, Executive Order No. 134 was issued by Governor McGreevey, effective October 15, 2004, and P.L. 2005, c. 51, was enacted on March 22, 2005. Both of these also provide that a “contribution” means “a contribution reportable by the recipient under the [Reporting Act],” without further explanation. See N.J.S.A. 19:44A-20.16 (Contribution defined).


The commenter’s assertion regarding the legislative history of the pay-to-play requirements is therefore not substantiated by either the language of the legislation or any interpretive text. The language of the pay-to-play statutes clearly refers to contributions “reportable by the recipient” under the Reporting Act, and the legislative history provides no exemption for the reporting of currency contributions. In the absence of specific or further guidance by the Legislature, these amendments are consistent with the requirements of the entire Reporting Act concerning reporting of detailed contributor information.

The Commission began its pay-to-play rulemaking with Subchapters 24 and 25, concerning the prohibition requirements, see 38 N.J.R. 111(a), 1864(a) (May 1, 2006), followed by Subchapter 26, see 38 N.J.R. 4661(a), 39 N.J.R. 1498(a) (April 16, 2007). Noting the absence of legislative guidance, the Commission looked to the requirements of N.J.S.A. 19:44A-8 and 19:44AA-16, concerning reporting of contributor information. In this rulemaking, the Commission addresses, for the first time, the applicability of the requirement of N.J.S.A. 19:44A-11.8, concerning the reporting of contributor information for currency contributions in the pay-to-play context.

The Commission notes that the Legislature could have carved out a pay-to-play exemption for the currency contribution reporting requirements of N.J.S.A. 19:44A-11.8 by specifically referencing only the requirements of N.J.S.A. 19:44A-16 and 19:44A-8, but as of this date, it has not done so. In the absence of an exemption from the Legislature, the Commission believes it is appropriate to adopt these amendments in Subchapters, 24, 25 and 26, to reflect the clear language of N.J.S.A. 19:44A-11.8, which requires reporting of contributor information for currency contributions in any amount, without exception.

These amendments do not preclude vendors from participating in the contracting process. The Commission notes that the commenter is correct that the amendments would prohibit a $10.00 currency contribution during the term of an applicable government contract and result in possible disqualification from a future contract. However, an individual or business entity may make contributions of $300.00 or less in the aggregate by check, without jeopardizing his or her ability to participate in a contract at the State level, or in a non-fair and open contract at the local level.
The Commission also notes that since January 1, 2005, the political party committees, candidates and other reporting entities have been required to report contributor information for all currency contributions, and therefore are already currently subject to recordkeeping and reporting provisions concerning receipt of currency contributions.

While these adopted amendments may impact the practices of business entities involved in the contracting process at the State, county and local government levels, any negative effects are outweighed by the beneficial social impact of increased integrity of the procurement process, which promote the principles of accessible information and transparency in the decision-making process in government contracting, and by following the clear language of N.J.S.A. 19:44A-11.8.

Summary of Agency- Initiated Changes:
1. At N.J.A.C. 19:25-3.3(a), a change is made to correct a reference to “N.J.A.C. 19:25-3,” which should be “this subchapter,” as was done at subsections (b) through (e).
2. The Commission discovered an error in the notice of proposal at N.J.A.C. 19:25-15.18 and 16.19, where it changed “Nothing herein contained” to the more appropriate “Nothing in this section,” but inadvertently did not delete the word “contained” and such deletion is made upon adoption.
3. The Commission discovered a further error in the notice of proposal at N.J.A.C. 19:25-17.2, where it changed “act” to “Act” and “regulations” to “this chapter.” The words “this chapter” were not included to replace “regulations,” as was clearly done throughout the notice of proposal. Therefore, as proposed the rule currently reads “... by the Act or shall ...” and upon adoption is corrected to read “... by the Act or this chapter shall ...”

Federal Standards Statement
A Federal standards analysis is not required because the rules readopted with amendments and the new rule concern New Jersey filing entities. The rules are not subject to any Federal requirements of standards.

Full text of the readopted rules can be found in the New Jersey Administrative Code at N.J.A.C. 19:25.

Full text of the adopted amendments and new rule follows (additions to proposal indicated in boldface with asterisks *thus*; deletions from proposal indicated in brackets with asterisks *[thus]*):

19:25-3.3 Required electronic filing
   (a) A candidate for election to the office of member of the Senate or the office of member of the General Assembly who raises or spends, or expects to raise or spend in excess of $100,00 in a general election, shall file election fund reports, as defined in N.J.A.C. 19:25-8.2(b), and quarterly reports, as defined in N.J.A.C. 19:25-8.3(b), using
electronic filing software supplied to the candidate by the Commission pursuant to *[N.J.A.C. 19:25-3]* *this subchapter*.

(b) – (e) (No change from proposal.)

19:25-15.18 Dates of submission

(a) – (c) (No change from proposal.)

(d) Nothing in this section *[contained]* shall relieve any candidate or committee from the preelection or post-election reporting requirements contained in N.J.S.A. 19:44A-8 or 19:44A-16.

19:25-16.19 Dates of submission

(a) – (c) (No change from proposal.)

(d) Nothing in this section *[contained]* shall relieve any candidate or committee from the preelection or post-election reporting requirements contained in N.J.S.A. 19:44A-8 or 19:44A-16.

19:25-17.2 Offenses

(a) – (b) (No change from proposal.)

(c) Each reporting transaction that is not reported in the manner or not filed on the date established for reporting or filing by the Act or *this chapter* shall constitute an offense pursuant to the Act subject to the penalties provided in N.J.S.A. 19:44A-22.

(d) -(e) (No change from proposal.)