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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 Chair

### Jerry Fitzgerald English

#### Financial Activity Down

A trend predicted in the Commission's two most recent analytical reports has been corroborated in this General Election cycle.

White Papers No. 19 and No. 20, both of which analyzed campaign financial activity in the two most recent legislative elections, revealed a very definite slowing of financial activity by candidates for the Legislature.

The 2005 Assembly Election: New Trends on the Horizon? showed that Assembly receipts had increased by five percent and expenditures by eight percent over 2003.

Legislative General Elections 2007: An Analysis of Trends in State Senate and Assembly Elections likewise demonstrated that legislative receipts had risen by five percent and expenditures had decreased by two percent.

Of significance was the fact that the rate of increase in fundraising was so modest compared with increases having taken place between previous election cycles. Between 2001 and 2003, for instance, fundraising increased by 35 percent, a rate of increase commonly seen during at least a 20-year period.

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## The General Election is Over: Now What?

By Evelyn Ford, Compliance Director

The November 3<sup>rd</sup> General Election is over. What type of reports are required if a candidate won the election? What reports are required if a candidate lost?

Regardless of whether the candidate won or lost, if the candidate filed the long Form R-1, the Campaign Act requires a post-election report. This year, that report is due on November 23, 2009 and covers the time period from October 21<sup>st</sup> to November 20<sup>th</sup>. A candidate must designate this report (or a report filed on April 15, 2010) as his or her final report for the election. When filing the final report, the candidate is required to complete a special section on the back of the Form R-1 titled "Declaration of Final Report."

The only exceptions to this rule follow:

- 1) The candidate has debt or net liabilities and will continue to raise money to pay the debt or net liabilities; or,
- 2) The candidate is maintaining the committee as a result of an election contest or recount; or,
- 3) The candidate lost the election, but is an elected officeholder who has no intension of seeking re-election to a public office subject to the Campaign Act, and is maintaining the fund for the purpose of paying the ordinary and necessary expenses of holding public office while finishing out the term. Such a candidate shall **not** receive contributions on or after the date when the candidate ceases to be an officeholder.

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## Comments from the Chair

### Jerry Fitzgerald English

#### Financial Activity Down

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The analytical reports provided several explanations for the slowed rate of increase in financial activity, among them the spectre and then reality of pay-to-play laws.

Regarding the 2007 legislative election, the report stated:

It stands to reason that the pay-to-play reforms have had an impact on campaign financing in New Jersey. As noted in several past reports of the Commission, the State's electoral process had become dominated by political party entities, in particular the State and county committees. Pay-to-play appears to be changing the scenario. This can be seen in two ways. First, in the reduction of funds raised by State and county party committees; and, second, in the changes in contributor patterns, particularly within the political party category.

Analyses produced by the Commission in the pre-election phase of the recent General Election not only corroborate the findings published in the aforementioned reports but show that financial activity among Gubernatorial and Assembly candidates, the "big six" committees, and the county party committees has decreased, and decreased dramatically.

Thus, pay-to-play is not only impacting candidate financial activity but that of other players in the electoral system as well.

For example, 11-day reports show Gubernatorial fundraising down 15 percent and expenditures down 23 percent from 2005. These same reports show Assembly candidates have raised 25 percent less money in 2009 than in 2005 and have spent 32 percent less.

And, as a sign that it is not only candidates that are being affected, recent quarterly reports filed by the "big six" committees (State parties and legislative leadership committees) and county party organizations indicate their financial activity has decreased significantly as well.

The "big six" reported receipts down by 44 percent and spending down by 43 percent. The 42 county

party committees, meanwhile, experienced a 17 percent drop in receipts and an 18 percent decrease in expenditures.

As the Commission's Executive Director, Jeff Brindle, commented: "The economy and the Governor's race are certainly having an impact, but more significantly pay-to-play laws are depressing financial activity."

## The General Election is Over: Now What?

### By Evelyn Ford, Compliance Director

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If the candidate lost the election and doesn't want to begin raising money for any future election, all the money left over should be spent according to the six permissible uses such as donating to a charity, donating to another candidate or PAC, or returning the contributions to the contributors on a pro-rata basis.

If the candidate won the election, the candidate can use the remaining funds for the "ordinary and necessary expenses of holding public office." The candidate must still file a final report for the 2009 General Election on November 23, 2009. Then, the candidate will file either Form D-1 or D-2 designating his or her next election, for example, "Primary 2011." On April 15, 2010 and each quarter thereafter, the candidate will file quarterly reports. The quarterly reports will disclose how these remaining funds are spent and will also disclose any new contributions and expenditures.

Let's look at an example. Candidate John Jones ran for General Assembly in the 2009 General Election and won. He expects to run for General Assembly again in 2011. He has \$5,000 remaining at the end of this campaign and wishes to transfer this amount to his next election. On November 23, 2009 he will file a final Form R-1 and the last disbursement entry would be "\$5,000 transferred to the John Jones Committee, Primary 2011 Election." Candidate Jones will file quarterly reports on April 15, July 15, and October 15 of 2010 and again on January 15 of 2011. It will then be time to file 2011 Primary pre- and post-election reports.

To review this entire process in greater detail, refer to the "Compliance Manual for Candidates" which is available on ELEC's website at [www.elec.state.nj.us](http://www.elec.state.nj.us) or, contact the Compliance Division staff.

## Executive Director's Thoughts

### Jeff Brindle

#### Unpredictable Nature of Campaign Finance

Predicting developments in campaign financing is often as unpredictable as predicting the weather.

With a decision on the horizon by the U.S. Supreme Court in Citizens United v. Federal Election Commission uncertainty grows.

For those in the field of regulating campaign financial activity it's as if they are storm chasers, tracking the erratic path of a tornado bent on creating havoc.

All the more reason why strong disclosure is a necessity. In the current climate, it is essential for agencies like the New Jersey Election Law Enforcement Commission (ELEC) to redouble efforts to ensure transparency.

To this end, new measures are being set into motion to provide the public with information about who is contributing, how much, and where the money is going.

Beyond merely placing candidate, political party, legislative leadership committee, and county political party organization reports on-line, ELEC now accompanies this process with snap-shot analyses of the financial activity of these entities.

Further, ELEC now publishes a monthly on-line newsletter designed to inform the public about trends and developments in this important area.

Other initiatives as well have been, or will be undertaken, to keep the public up-to-date on electoral trends and to provide training to candidates and campaign treasurers to assure compliance with campaign laws.

Without strong measures to provide accurate and useful information to the public, the darkened clouds already dampening the public trust will turn cyclonic, upending the still core belief in government yet remaining.

In order to stay ahead of any whirlwind changes in campaign financing and to amplify the public's understanding of trends in this area, staff is monitoring court proceedings; analyzing trends in financial activity of candidates and committees; and becoming familiar

with the status of various and sundry groups that directly, or indirectly, impinge upon the electoral and governmental processes.

Two of those developments follow:

- Emily's List v. Federal Election Commission

An appeals court for the District of Columbia found that independent expenditures by 527 issue advocacy groups cannot be restricted.

- Citizens United v. Federal Election Commission

This case, before the U.S. Supreme Court, will be decided soon. It involves the Bipartisan Campaign Reform Act (BCRA) Section 203 restrictions on electioneering communications. This imminent decision may loosen BCRA restrictions on corporate and union spending.

Commission staff is also familiarizing itself with the various groups spawned by various campaign finance reform laws. Among them are:

- 527 Issue Advocacy Groups

These groups report to the IRS and are unlimited in terms of their spending on advertising as long as they do not call for the election or defeat of a candidate.

- 501(c)(4) Groups

These groups are tax-exempt and must function solely to promote the well being of the country. These groups are engaged in substantial lobbying. However, individual contributions to these groups are not deductible.

- 501(c)(3) Groups

These groups maintain tax-exempt status and individual donations are tax-exempt as long as lobbying is not carried out in any significant way. These groups can provide governmental agencies with information on pending legislation.

## News Regarding 2010 Treasurer Training at Locations Around the State

The New Jersey Election Law Enforcement Commission (ELEC) is pleased to announce that staff of the Compliance Division will be available to travel to your location to conduct a candidate/treasurer training seminar.

Treasurer training seminars provide an overview of the campaign finance laws and regulations with an emphasis on reporting, record-keeping, and contribution limitations. Materials and forms are provided at the seminars. Please let us know if you would like a session that focuses on candidate compliance or PAC compliance.

If you are interested in having a member of the Compliance staff conduct a seminar at your next meeting or event, please contact Kim Key at (609) 292-8700 and she will help you with these arrangements. We look forward to working with you and hope that this initiative provides support and assistance to candidates and treasurers who will be filing reports with ELEC in the coming months and years.

## Lobbying Seminars Scheduled in 2010

The New Jersey Election Law Enforcement Commission (ELEC) has scheduled two seminars to review the annual lobbying reporting requirements. These seminars are designed for those governmental affairs agents who have never filed the annual report forms in the past and need assistance. However, any one may attend the seminar. Annual report forms are due to be filed on February 16, 2010.

The first seminar is scheduled to occur on Friday, January 8, 2010, and the second seminar will occur on Tuesday, January 26, 2010. Both seminars will be held at 10:00 a.m. at ELEC's offices in Trenton, New Jersey.

These informational seminars provide an overview of the lobbying annual reporting laws and regulations with an emphasis on reporting, benefit passing, and record-keeping. Materials and forms are provided at the seminar.

If you are interested in attending one of these seminars, please complete a reservation form that is found on ELEC's website and fax the form to ELEC in advance of the seminar date.

## The Different Types of PACS in New Jersey

There are three different types of "PACS" that file reports with the New Jersey Election Law Enforcement Commission.

The most common type of PAC is the political party committee or "PPC." A "political party committee" is the State, county, or municipal committee of a political party. Since New Jersey has 21 counties and hundreds of towns, there are numerous political party committee reports filed with ELEC.

A second type of PAC is the "legislative leadership committee" or "LLC." A legislative leadership committee is a committee established by the President of the Senate, the Minority Leader of the Senate, the Speaker of the General Assembly, or the Minority Leader of the General Assembly. Accordingly, there are currently four of these committees.

Finally, there is the "continuing political committee" or "CPC." This type of committee is more commonly thought of as a "special interest" PAC. Technically, a CPC is defined as a group of two or more persons acting jointly which contributes or expects to contribute at least \$4,900 in a calendar year to aid or promote the candidacy of any individual for elective public office, or the passage or defeat of a public question, and which may be expected to do so in the future.

All three types of PACS, the PPC, LLC, and the CPC file campaign finance reports with ELEC on a quarterly basis. During calendar year 2009, a total of 1,750 PACS were active. If you wish to view the quarterly reports filed by PACS from your town or any special interest PACS, go to ELEC's homepage and click on "Public Information" and "View a Party or PAC Report."

## Request for an Investigation

By: Leonard Gicas, Director of Review and Investigation

You are an opposing candidate or concerned citizen and have noticed that a candidate running for public office has potentially violated the Campaign Reporting Act, the Lobbying Act, the Personal Financial Disclosure Act, or the Uniform Recall Election Law. What can you do about it? **The Answer:** File a Request for an Investigation with the members of the Commission.

Any person may request that the Commissioners undertake a confidential investigation by submitting an Investigation Request Form or a signed written statement setting forth an allegation. The Commission's website has made the process very simple by providing a form that can be filled out, saved, and printed for submission. Please note that the Commissioners will only accept a request for an investigation via mail. Faxed copies will be held until the mailed copy has been received in the Commission's offices.

The Commissioners request that the complainant submit a detailed allegation(s) and provide specific relevant facts which form the basis for the request for an investigation. Listed below are common potential violations and the evidence the Commissioners request when considering an investigation request.

POTENTIAL VIOLATION	EVIDENCE REQUESTED
Reporting Error	Copies of the specific report containing the error and highlight the area the potential violation has occurred.
Exceeding an expenditure threshold	1) Information relevant to incurred costs (e.g. volume of literature produced and circulated, costs of advertising, etc.) and 2) Documentary evidence (i.e. copies of campaign literature, pictures of campaign signs, invoices for advertisement costs).
"Paid for by" statement	Picture of the sign/copy of the ad or literature in question and an estimate of the number circulated or distributed.

POTENTIAL VIOLATION	EVIDENCE REQUESTED
Failure to file or Late reporting	Specify candidate(s), location, report, office sought, election type, and election year.
Pay-to-Play	Copy of the Resolution adopting the award of the contract, information showing the monetary value of the contract, and evidence of political contributions.

All written requests for investigation will be acknowledged by the Review and Investigation Section, and, if within the jurisdiction of the Commission, it will be presented to the Commissioners in approximately 90 days of receipt for a determination whether or not to open an investigation. As listed in the chart below, the Commissioners receive approximately 100-150 investigation requests per year and open approximately 45-55 new investigations per year as a result of those requests. The Review and Investigation Section, consisting of five investigators and one report examiner, receives all requests and presents the requests to the Commissioners for their review.

YEAR	INVESTIGATION REQUESTS	INVESTIGATIONS OPENED
2006	139	49
2007	127	47
2008	107	52
2009 (As of 9/30/09)	96	33

At the conclusion of an investigation, the Commissioners may determine to take no further action, to issue a letter of correction, or to undertake formal complaint action for an alleged violation and seek imposition of civil penalties.

- It should be noted that the Commissioners also initiate investigations as a result of staff review of reports filed with the Commission and media reports about potential reporting violations.

## Dates to Remember

QUARTERLY	
<b>Who Files</b>	Political Parties, Legislative Leadership Committees, PACs/CPCs, and Future and Past Candidates
<b>What Report</b>	Fourth Quarter
<b>When</b>	January 15th
<b>Period Covered</b>	October 1 <sup>st</sup> through December 31 <sup>st</sup>

LOBBYIST QUARTERLY	
<b>Who Files</b>	Governmental Affairs Agents (Lobbyists)
<b>What Report</b>	Fourth Quarter
<b>When</b>	January 11 <sup>th</sup>
<b>Period Covered</b>	October 1 <sup>st</sup> through December 31 <sup>st</sup>

Late and non-filing of reports are subject to civil penalties determined by the Commissioners.

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### *ELEC Directors*

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- Jeffrey M. Brindle .....Executive Director
- Joseph W. Donohue ....Deputy Director
- Carol L. Hoekje .....Legal Director
- Evelyn Ford .....Compliance Director
- Carol Neiman .....Director of Information Technology
- Amy F. Davis.....Director of Special Programs
- Linda White .....Director of Lobbying
- Leonard Gicas .....Director of Review & Investigation
- Todd J. Wojcik.....Director of Campaign Financing
- Steven M. Dodson.....Director of Finance & Administration