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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

### 90-Day Rule

Let's say an incumbent mayor is running for re-election.

In the weeks prior to the election, he sends out a direct mail piece containing an explicit appeal for support on Election Day.

This piece is clearly a political communication and is reportable as such in pre-election reports.

On the other hand, take the case where a newsletter is distributed by the municipality to residents in the weeks prior to the primary or general election but contains no direct appeal for votes. The newsletter, however, touts the goals and achievements of the mayor and has been consented to by the mayor.

Are there ramifications to this course of action involving the Campaign Act? The simple answer is yes.

The provision that comes into play is commonly known as the 90-day rule, or the political communication regulation.

Below are the conditions under which the 90-day rule applies:

- If the communication is made within 90-days of any election involving the candidates;
- If the recipients are substantially made up of individuals eligible to vote for the candidate;
- The communication refers to the governmental objectives or achievements of the candidate; and,
- The communication is done with the cooperation or consent of the candidate.

If these conditions are met the cost of producing and distributing the newsletter would constitute an in-kind contribution from the municipality to the mayor's campaign and must be disclosed as such.

In this instance, the Commission is involved with enforcing disclosure of the in-kind contribution from the municipality to the mayor.

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## Comments from the Chairman Ronald DeFilippis

### 90-Day Rule

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However, the Commission has no jurisdiction to consider the legality of the use of public funds in this manner.

Certainly, 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.

Moreover, 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 election if that candidate is unopposed.

For the upcoming non-partisan elections held in May, the 90-day period begins on February 9, 2011. The 90-day period for the June primary begins March 10, 2011 and for the general election in November, it begins on August 11, 2011.

It is important for candidates to be aware of this rule in that it does contain disclosure requirements and importantly may carry with it issues concerning the proper use of public funds.

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

## Executive Director's Thoughts Jeff Brindle

The upcoming election for State Senate and Assembly raises several questions.

How will the new legislative district map look? Will the reapportionment process place any two incumbents in the same district, forcing a primary contest? And, of course, which party will benefit from the redrawn district lines?

Interesting questions, but ones that can't be answered yet.

One aspect of the coming campaign does lend itself to making a prediction – how the campaign will be funded.

First, direct fundraising and spending by legislative candidates themselves will continue to stutter. Why? The State's pay-to-play law has inhibited fundraising in the previous three legislative elections.

Overall spending, though, may well increase over past levels. And if it does it will be due to the emergence of outside, independent groups operating in New Jersey.

The 2009 election for Assembly witnessed a 26 percent decrease in receipts by Assembly candidates and a 28 percent drop in their expenditures compared to the prior campaign.

Based on the 20-day post-election reports filed with the Election Law Enforcement Commission (ELEC), Assembly candidates raised \$18 million and spent \$15.8 million. In 2005, a similar election year, during which there was an election for Governor and Assembly, candidates for the lower House raised \$24.4 million and spent \$22 million.

This downward trend was first noted in two ELEC White Papers, the first analyzing the Assembly election of 2005 and the second analyzing the Senate and Assembly election of 2007.

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## Executive Director's Thoughts Jeff Brindle

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What both showed was a distinct break from past legislative fundraising patterns. Election cycles had always shown significant increases, but now the rate of increase had slowed to just 5 percent.

Legislative General Elections 2007: An Analysis of Trends in State Senate and Assembly Elections, White Paper Number 20, states: ". . . candidates for the State Senate and Assembly in 2007 raised \$50.4 million, which represented a five percent increase over 2003, . . . In the same way that previous elections for Legislature set new records for contributor activity, so too did this one. There was, however, one difference . . . financial activity grew at a much more modest pace than between previous election intervals."

The explanation for the more modest increase in 2007 and the substantial decrease in Assembly financial activity in 2009 was placed at the doorstep of the pay-to-play reforms, effective in 2006.

There is a direct connection between the effective date of the reforms and the reduction in financial activity by legislative candidates.

This trend should continue this year.

But that doesn't mean that overall spending in this year's election won't be substantial. Given the growth of outside 527 and 501(c) groups spawned by McCain/Feingold and the Citizen's United case, there is every reason to believe that New Jersey will experience this activity in this very important contest for control of the Legislature.

State contests last year, including those for the Legislature, show the trend is spreading fast.

In North Carolina, the Associated Press reported that outside groups spent \$1.7 million and "targeted more than 20 incumbents" seeking reelection to the Legislature.

The Wisconsin Democracy campaign estimated that \$20 million was spent by outside groups to influence contests in Wisconsin.

And Free Press columnist Brian Dickerson asserted that hundreds of thousands of dollars were spent by outside groups in Michigan to influence the race for governor.

In the Iowa judicial elections, the New Jersey Law Journal reported that "well-funded antigay-marriage groups poured more than \$1 million, most of it raised out-of-state, into a targeted campaign to remove three justices because they joined in a 2009 unanimous ruling that the State Constitution required recognition of same-sex marriages."

In last year's congressional races, outside groups nationally spent at least \$280 million, according to the Campaign Finance Institute. And non-profit groups also participated in New Jersey's own governor's race in 2009.

All these trends suggest that New Jerseyans should expect significant involvement by independent groups in this year's legislative elections.

The First Amendment allows for participation in the electoral process by all groups. It was reinforced by the U.S. Supreme Court's decision in Citizen's United, which makes it easier for unions and corporations to spend money on elections. However, the judges in Citizen's United also strongly endorsed disclosure.

With a potential wave of independent spending heading towards New Jersey, the Legislature should move to require disclosure of the campaign activity of outside, independent 527 and 501(c) groups of all ideological and economic persuasions.

**The above article by Jeff Brindle appeared in [NewJerseyNewsroom.com](http://NewJerseyNewsroom.com) on January 21, 2011**

## "Big Six" Fourth Quarter 2010

The New Jersey's two major political parties and four Legislative Leadership Committees together raised \$6.2 million last year and spent \$5.9 million, according to the latest reports filed with the New Jersey Election Law Enforcement Commission.

The reports show the three Democratic committees raised and spent more campaign money than Republicans. However, with a major election for all 120 legislative seats looming this fall, Republican committees had nearly three times more money in the bank.

Fundraising reports filed January 18<sup>th</sup> also show that combined "big six" fundraising activity generally was down compared to four years earlier. Gross receipts fell 14 percent overall compared to similar reports for 2006, which, like 2010, also preceded an election for all 120 Legislative seats. Spending was up 13 percent but combined net worth was down 70 percent for the six fundraising committees.

The Reports show that fundraising activity has improved for Republicans while declining for Democrats since 2006. After the State was ruled for eight years by a Democratic Governor, a Republican Governor took office in January, 2010. Since then, fundraising has become more competitive.

The net worth of both parties fell over the past four years, though the drop was steeper for Democrats. Net worth is cash-on-hand adjusted for debts owed to or by the committee.

State Party Committees and Legislative Leadership Committees are required to report their financial activity to the Commission on a quarterly basis. The reports are available on ELEC's website at [www.elec.state.nj.us](http://www.elec.state.nj.us).

## Advisory Opinion No. 02-2010

The Commission, at its December meeting, approved an advisory opinion in response to a request from Hugh E. DeFazio, representing Michael Luther, former Mayor of Parsippany-Troy Hills Township.

The request concerned the resolution of outstanding obligations owed by the 2005 candidate committee of the Mayor. It involved the question of whether a candidate and a creditor may engage in a settlement of outstanding obligations at less than the billed amount.

It is important to note that the outstanding obligations were incurred in the context of litigation involving defense of a challenge to the election. They are in the form of legal fees.

In its response, the Commission approved the settlement, stating that the settlement does not result in a reportable in-kind contribution to the Mayor.

The advisory opinion made clear that the decision was based on the particular facts presented in the case and in no way should be considered precedential.

## Pay-to-Play Annual Report Filing

Any business entity that has received \$50,000 or more through government contracts in a calendar year must file the Business Entity Annual Statement (Form BE) electronically with the Commission to report contract and contribution information. The next due date for the report is March 30<sup>th</sup> and will report activity for the 2010 calendar year.

The Form BE, Instructions and other Pay-to-Play information are available on the Commission's website. Annual reports filed for previous years and specific information reported is also searchable online. The reports filed to report activity for calendar year 2010, will be disclosed on the Commission's website after the March 30<sup>th</sup> deadline.

## Lobbying Manual

[By Amy Davis, Compliance Director](#)

Did you know lobbyists in New Jersey are not actually called lobbyists?

Check the new Lobbying Manual published by the New Jersey Election Law Enforcement Commission (ELEC) and you will learn their technical name is "governmental affairs agent."

Available on ELEC's website at ([www.elec.state.nj.us](http://www.elec.state.nj.us)), the 122-page manual provides a laymen's explanation of what constitutes a governmental affairs agent and other basic information about lobbyists, such as activities they have to report.

For instance, registered agents must report efforts to influence pending legislation and governmental processes like state regulations or contracts. Anyone who spends more than \$2,500 communicating directly with the public on legislation is engaging in "grassroots" lobbying and must file an annual report.

However, a person who testifies on legislation who is uncompensated isn't affected by the disclosure law.

Other matters that do not have to be divulged to the public are those considered routine and ministerial, such as inquiries made by professional lobbyists about the delivery of services or materials under a public contract that previously had been awarded to a client.

The manual also provides easy access to all forms that may have to be filed by lobbyists, key advisory opinions that pertain to the practice of lobbying and other reference material, such as the list of subjects that should be used by lobbyists when they submit quarterly reports on their activities. These range the gamut from "aircraft noise" to "rent control" to "urban enterprise zones."

"We thought we would try to provide "one-stop-shopping" convenience by combining all key information about lobbying into a single

document," said Amy Davis, ELEC's Compliance Director. Similar manuals already exist for candidates and those who set up other types of fundraising committees.

"The new manual for lobbyists hopefully will be helpful reference not only for governmental affairs agents, particularly new ones, but also to the general public, public officials and the media."

The new manual is being made available online just before the state's 1,000 governmental affairs agents file annual reports on their activities for 2010.

The annual reports, which include detailed information such as client names, fees and gifts given to legislators and other government officials, must be filed by February 15<sup>th</sup>. A detailed summary of the information found in these reports will be published online soon afterward. Scanned copies of the annual reports also will be posted on ELEC's website in the spring.

Lobbying is a major industry in New Jersey. Last year's annual reports found that even with the economy in a slump, lobbyists spent \$57.6 million in 2009, a record high.

## Donations by IT Staff

[By Carol Neiman, Director of Information Technology](#)

Members of ELEC's Information Technology Section are used to making donations. But the kind they make are not political contributions.

Each year for the past five years, the staff members have made donations to a Trenton-area charity. They do this instead of exchanging gifts during the holidays. The donations are rotated yearly among different charities to spread the good will around. A few of the recipients have been the Trenton Area Soup Kitchen and the Mercer Street Friends.

This year, the staff made a contribution to the Trenton Area Soup Kitchen.

"It's our way of spreading a little good cheer beyond our offices during the holiday season," said Carol Neiman, Director of Information Technology.

## Igor Milewski "Profile"

### Clerk

Igor Milewski knows first-hand the meaning of freedom.

As a child in Warsaw, Poland, he grew up behind the Iron Curtain. Stores had short supplies and long lines.

"When I was a kid, stores were almost empty. There was a big black market," said Milewski, a Clerk at ELEC.

Few western films or television shows were available. And travel was mostly restricted unless you wanted to visit Bulgaria, Hungary or other Eastern Europe nations.

After the wall came down in 1990, freedom grew in Poland and citizens became better aware of western culture. Eight years later, Milewski emigrated to America with his mother and other relatives.

He began working for ELEC five years ago and describes as "awesome" his experience at the agency.

"Ever since I got here, I felt welcome. No one made me feel like I was from a different country or different background," he said. "It gives me satisfaction to work for an agency that does such an important job for the State."

Milewski is a self-described "jack-of-all-trades." He helps open and distribute the deluge of mail that arrives at ELEC's offices each week. He transfers boxes of documents that are archived off-site and retrieves them when necessary.

Milewski, who recently received his associate's degree in business administration from Thomas Edison State College, also assists Steven Dodson, Director of Finance and Administration, and Elaine Salit, Senior Fiscal Officer, with financial paperwork.

Milewski worked at CompUSA before securing a job at ELEC and he still enjoys tinkering with computer hardware in his spare time.

He grew up playing soccer in Europe and began playing regularly again last year in a league in Ewing Township.

Though he never entered the ring himself, Milewski is a big fan of boxing and once saw Polish champion Tomasz Adamek win a bout in Newark.

He is eagerly awaiting a matchup between Adamek and Wladimir Klitschko, the world heavyweight champion from the Ukraine.

## Seminar Training Dates

Seminars are conducted at 10:00 a.m. at the Commission's offices at 28 West State Street, 8<sup>th</sup> floor, in Trenton.

Treasurer Training for Candidates and Joint Candidates Committees	
March 23, 2011	May 18, 2011
April 4, 2011	September 12, 2011
April 20, 2011	September 27, 2011
May 3, 2011	October 3, 2011

Treasurer Training for Political Party Committees and PACs	
March 30, 2011	September 21, 2011
June 30, 2011	December 14, 2011

Electronic Filing Training (REFS)	
April 5, 2011	July 27, 2011
April 26, 2011	September 14, 2011
May 5, 2011	September 26, 2011
May 17, 2011	October 4, 2011

## DATES TO REMEMBER

### Reporting Dates

	PERIOD COVERED	REPORT DUE DATE
<b>FIRE COMMISSIONER - FEBRUARY 19, 2011</b>		
29-day pre-election	Inception of campaign* - 1/18/11	1/21/2011
11-day pre-election	1/19/11 - 2/5/11	2/8/2011
20-day post-election	2/6/11 - 3/8/11	3/11/2011
48 Hour Notice Reports Start on 2/6/11 through 2/19/11		
<b>SCHOOL BOARD ELECTION - APRIL 27, 2011</b>		
29-day pre-election	Inception of campaign* - 3/26/11	3/29/2011
11-day pre-election	3/27/11 - 4/13/11	4/18/2011
20-day post-election	4/14/11 - 5/14/11	5/17/2011
48 Hour Notice Reports Start on 4/14/11 through 4/27/11		
<b>MUNICIPAL ELECTION - MAY 10, 2011</b>		
29-day pre-election	Inception of campaign* - 4/8/11	4/11/2011
11-day pre-election	4/9/11 - 4/26/11	4/29/2011
**20-day post-election	4/27/11 - 5/27/11	5/31/2011
48 Hour Notice Reports Start on 4/27/11 through 5/10/11		
<b>RUNOFF ELECTION** - JUNE 14, 2011</b>		
29-day pre-election	No Report Required for this Period	
11-day pre-election	4/27/11 - 5/31/11	6/3/2011
20-day post-election	6/1/11-7/1/11	7/5/2011
48 Hour Notice Reports Start on 6/1/11 through 6/14/11		
<b>PRIMARY ELECTION*** - JUNE 7, 2011</b>		
29-day pre-election	Inception of campaign* - 5/6/11	5/9/2011
11-day pre-election	5/7/11 - 5/24/11	5/27/2011
20-day post-election	5/25/11 - 6/24/11	6/27/2011
48 Hour Notice Reports Start on 5/25/11 through 6/7/11		
<b>GENERAL ELECTION*** - NOVEMBER 8, 2011</b>		
29-day pre-election	6/25/11 - 10/7/11	10/11/2011
11-day pre-election	10/8/11 - 10/25/11	10/28/2011
20-day post-election	10/26/11 - 11/25/11	11/28/2011
48 Hour Notice Reports Start on 10/26/11 through 11/8/11		
<b>PACS &amp; CAMPAIGN QUARTERLY FILERS</b>		
1 <sup>st</sup> Quarter	1/1/11 - 3/31/11	4/15/2011
2 <sup>nd</sup> Quarter	4/1/11 - 6/30/11	7/15/2011
3 <sup>rd</sup> Quarter	7/1/11 - 9/30/11	10/17/2011
4 <sup>th</sup> Quarter	10/1/11 - 12/31/11	1/17/2012

\* Inception Date of Campaign (first time filers) or from January 1, 2011 (Quarterly filers).

\*\* A candidate committee or joint candidates committee that is filing in the 2011 Runoff election is not required to file a 20-day postelection report for the 2011 Municipal election.

\*\*\* Form PFD-1 is due on April 21, 2011 for Primary Election Candidates and June 17, 2011 for Independent General Election Candidates.

[Late and non-filing of reports are subject to civil penalties determined by the Commissioners](#)