

Commissioners:

Ronald DeFilippis, Chairman
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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 the fall election season before us, it is time for a refresher course on the dos and don'ts of New Jersey campaign finance law.

While the Legislature and Governor are not up for election, there are thousands of municipal and county candidates vying for office this year.

First and foremost any candidate raising money, and that is just about everyone, must establish a campaign committee bank account into which all funds must be deposited.

Moreover, any expenditure spent by the candidate on behalf of his or her campaign must be drawn from this account.

Information about the account must be filed with the Election Law Enforcement Commission on a Form D-1.

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Information contained on the D-1 includes:

1. The name of the candidate committee;
2. The name, mailing address, and telephone number of the person appointed as Chairperson;
3. The name, mailing address, and telephone number of the treasurer;
4. The name, mailing address and telephone number of the bank depository; and,
5. The name, mailing address, and telephone number of persons authorized to sign checks.

As the campaign progresses detailed records of all financial transactions must be maintained by the treasurer.

Record keeping is very important in that campaigns are to report their financial activity 29 and 11 days before the election, 20 days after the election and then quarterly until the campaign account is zeroed out and closed.

The identity of contributors making contributions, in the aggregate, in excess of \$300 are disclosed on the reports. Contributions of \$300 or less are reported as a lump sum, though the identity of those donors must be maintained by the campaign.

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Comments from the Chairman Ronald DeFilippis

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All expenditures must be reported as well as loans to the committee. All loans, except those from the candidate himself or herself, are subject to contribution limits.

In spending campaign dollars, candidates and treasurers must be cognizant of the fact that there are guidelines as to the proper use of those funds.

Obviously, campaign funds can be used in connection with the campaign. But in addition, they can be spent for administrative purposes and overhead, for contribution to other candidates, and for charity. Campaign funds may be returned to contributors on a pro rata basis, and if the candidate is an officeholder, may be used for the ordinary and necessary expense of holding public office.

On the other hand, campaign funds cannot be used for personal use.

The foregoing is but a snap shot of the guidelines for reporting and handling the financial aspects of a campaign.

For detailed information, treasurers should access the Compliance manual at the Commission's website www.elec.state.nj.us.

The Commission now has available two interactive training videos for treasurer training, one on reporting guidelines, and the other on forms.

All treasurers are encouraged to take advantage of the training that is available.

Executive Director's Thoughts Jeff Brindle

In at least two key ways, New Jersey's gubernatorial election next year has the potential for being different from any in the past.

First, there is likely to be a new record for a state election in the amount of money spent by independent, outside interest groups. Secondly, online technology also will be playing an ever-expanding role in New Jersey electoral politics just as it has in national campaigns.

New Jersey's past two elections- and more recent ones nationally- foreshadow the looming invasion by independent groups.

Last year's legislative contest witnessed \$1.3 million spent by outside groups in an attempt to influence the outcome of the election.

What's more, during the last gubernatorial cycle in 2009, independent expenditures by outside groups topped \$14 million.

Until now, independent spending has been the domain of 527, 501(c), and labor union groups. Now a new type of organization has emerged to augment, and in some cases supplant, the efforts of these earlier groups.

Super PACs are now dominating the electoral landscape. They were spawned by SpeechNow v. FEC and Carey v. FEC, two rulings by the D.C. District Court which followed the U.S. Supreme Court's decision in Citizen United.

Super PACs were major players in the recent presidential primary and the Wisconsin recall election.

Estimates are that approximately \$185 million has already been spent by Super PACs and other independent groups in the race for the presidency. The Wisconsin Democracy Campaign, an independent tracking group, estimates that more than \$31 million was spent by independent groups for and against the recall.

Both the activity in New Jersey and nationwide serve as a harbinger of things to come in next year's gubernatorial election.

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Executive Director's Thoughts Jeff Brindle

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But the potential for the proliferation of independent spending is not the only aspect of the campaign that will be different. Recent trends point to a significant increase in digital politics, or the use of online technology, in the next gubernatorial cycle.

The new digital politics may involve both the "air war" and the "ground war."

Using the airwaves, online advertising can be used to reach a broad audience, which includes journalists, bloggers, and opinion leaders.

To help mobilize campaign troops for the ground game, the new digital politics includes using online technology to line up supporters and contributors, and for get-out-the-vote efforts.

Wholesale and retail politics meet the digital age.

Unquestionably, the tried and true methods of campaigning, TV, radio, newspaper, direct mail, and now perhaps digital billboard advertising, will continue to dominate.

However, a more data driven campaign is sure to make its appearance in New Jersey in 2013. The changes to the electoral landscape potentially brought about by independent groups and the new digital age underscore the importance of disclosure.

In the coming months it is particularly important for the Legislature to pass legislation that will require the disclosure by independent groups of their donors and their spending.

Currently, state law does not require disclosure by these groups unless they expressly support or oppose a candidate. And even in this case, only spending [not contributions] is required to be reported as an independent expenditure.

The U.S. Supreme Court in Citizens United strongly endorsed disclosure so the Legislature has every right to require registration and disclosure of contributions and expenditures by these groups.

Further, as the new digital age impacts New Jersey's campaigns in a significant way, due diligence is required in terms of monitoring this new development and ensuring that timely and effective disclosure is accomplished.

This, of course, presents new challenges for the Election Law Enforcement Commission. To stay on top of these new developments it first requires an awareness of the issue, something the Commission is very much on top of.

The Commission continues to be cognizant of the ever changing nature of campaigns and it will be its responsibility to ensure that complete and thorough disclosure is the order of the day in the upcoming campaign.

Transparency is very important in elections, with the public interest very much served by a thorough and consistent scheme of disclosure, one that with the registration of independent, outside groups will be complete.

Superior Court Ruling: [Campaign Contributions to Fund Personal Criminal Defense Costs](#)

An Essex County Superior Court judge has ruled that former Newark Mayor and state Senator Sharpe James violated state campaign finance laws when he took \$94,004 from a campaign account to pay for criminal defense costs, said Executive Director Jeff Brindle.

In a decision issued Friday August 17, Judge Harriet F. Klein granted a summary judgment motion to the New Jersey Election Law Enforcement Commission and ordered James to reimburse \$94,004 to the campaign fund. She also imposed a \$30,000 fine and enjoined James from further violations. James has a right to appeal.

"As I said when we filed this law suit in 2011, candidates who disregard the law must face the consequences," Brindle said. "Sometimes it takes longer than we would like. But in the end, the Commission aggressively enforces campaign finance law and that is what has happened here."

The suit named as defendants Sharpe James; Cheryl Johnson, his treasurer; and the Election Fund of Sharpe James. It alleged that the defendants violated the New Jersey Campaign Contributions

and Expenditures Reporting Act and breached their fiduciary duties to the contributors of James' mayoral campaign.

The Complaint alleges that the campaign funds were expended in connection with criminal investigations by the United States Attorney's Office and the Attorney General's office in New Jersey. James was indicted, and subsequently convicted in federal court on April 16, 2008.

Brindle said ELEC filed the lawsuit in conjunction with the Attorney General's office. He added that he appreciated its assistance in the case, particularly the work of Deputy Attorney General Brian O. Lipman. Lipman is Assistant Section Chief of the Board of Public Utilities.

Brindle also praised the efforts of ELEC staff members for their work on the case, including Carol Hoekje, ELEC's Legal Director, and Shreve Marshall, Director of Review and Investigation.

Public Hearings

September 11, 2012

Inflationary campaign cost adjustments

The Commission is proposing amendments concerning inflationary campaign cost adjustments for non-Gubernatorial and Gubernatorial candidates and committees.

The proposed amendments were published in the New Jersey Register on August 20, 2012, and are currently available on the Commission's website at www.elec.state.nj.us. Copies of the Commission's proposal may also be obtained by calling the Commission at (609) 292-8700.

The Commission will conduct a hearing to elicit public comment concerning the proposal on **Tuesday, September 11, 2012** at 11:15 A.M.

The Commission invites participation in this hearing and requests that any testimony be limited to no more than ten minutes. Persons wishing to testify at the September 11, 2012 hearing are requested to reserve time to speak by contacting Administrative Assistant Elbia L. Zeppetelli at (609) 292-8700 no later than **Tuesday, September 4, 2012**.

Submit written comments by September 19, 2012.

October 16, 2012

Electronic filing of annual reports, and "represented entity" substituted for "lobbyist"

The Commission is proposing amendments concerning electronic filing of annual reports (represented entities and governmental affairs agents, and persons communicating with the general public), and "represented entity" substituted for "lobbyist."

Posting Personal Financial Disclosure Statements on the Commission's website and eliminating the need to file copies

The Commission is proposing amendments concerning posting Personal Financial Disclosure Statements on the Commission's website and eliminating the need to file copies.

The proposed amendments were published in the New Jersey Register on August 6, 2012, and are currently available on the Commission's website at www.elec.state.nj.us. Copies of the Commission's proposal may also be obtained by calling the Commission at (609) 292-8700.

The Commission will conduct the hearings to elicit public comment concerning the proposals on **Tuesday, October 16, 2012** at 11:15 A.M.

The Commission invites participation in these hearings and requests that any testimony be limited to no more than ten minutes. Persons wishing to testify at the October 16, 2012 hearings are requested to reserve time to speak by contacting Administrative Assistant Elbia L. Zeppetelli at (609) 292-8700 no later than **Tuesday, October 9, 2012**.

Submit written comments by October 16, 2012.

Send all written comments to:

Michelle R. Levy, Associate Legal Director
Election Law Enforcement Commission
P. O. Box 185
Trenton, New Jersey 08625-0185

Advisory Opinions Archive Dating back to 1973

Copies of all 650 advisory opinions issued by the New Jersey Election Law Enforcement Commission (ELEC) since 1973 now can be viewed on the agency's website, said ELEC's Executive Director Jeff Brindle.

While many of the older opinions no longer apply due to changes in the law, the agency has made them available for historical or legal research, and as part of a general effort to be as transparent as possible.

"One of our main missions is disclosure, and we take that mission very seriously," said Brindle. "Where possible, the agency is attempting to use its website to expand public access to documents maintained by the Commission."

Under the law, anyone can request an advisory opinion to determine whether or not a contemplated action or set of facts incurs a responsibility to report campaign or lobbying activity.

"Our laws are complex and they have evolved over the nearly 40 years since ELEC's creation," Brindle said. "It is impossible to anticipate every application of the law. Sometimes candidates and lobbyists need further guidance to determine whether or not their activities fall within our jurisdiction."

Until now, only the 60 most recent advisory opinions issued since 1998 were available on the website www.elec.state.nj.us/legalresources.htm. Now, an additional 590 earlier opinions are viewable.

Brindle credited the creation of the advisory opinion archive to the collaboration of several members of ELEC's staff. They include Administrative Assistant Elbia Zeppetelli, Executive Secretary Maureen Tilbury, Legal Secretary Renee Zach, Principal Webmaster Maryanne Garcia, and Research Associate Steven Kimmelman.

"Our staff represents one of our greatest resources. Its efforts have made ELEC one of the most responsive agencies in state government," Brindle said.

Interactive Guide to Forms

Many candidates and treasurers now can quickly figure out what forms they need to file with the NJ Election Law Enforcement Commission (ELEC) using a new electronic short-cut available on the agency's website.

Todd Wojcik, Director of Campaign Financing, said at least 30 to 40 percent of the telephone calls received by the agency involve questions about what forms candidates or treasurers have to fill out to comply with campaign finance reporting requirements.

While the information is available in compliance manuals that are available online, ELEC staff decided to develop an easier, faster way to determine form-filing responsibilities, he said, adding that it should save time for ELEC employees, candidates and treasurers.

The interactive slideshow, which takes only a few minutes to complete, is available at: www.elec.state.nj.us/forcandidates/cf_forms.htm.

"I thought if it was interactive, more people would be inclined to use it," said Wojcik, who developed the electronic guide with assistance from Assistant Compliance Officers Danielle Hacker and Joseph Barish.

Wojcik said the form-finding tool compliments another interactive, web-based training session on basic campaign finance reporting requirements that was launched in April.

Jeff Brindle, ELEC's Executive Director, praised the initiative of ELEC's staff, and said their efforts represent another step toward making compliance as painless as possible.

"Nobody likes to fill out government paperwork. We are trying to do all we can to make compliance as easy as possible. Over time, these efforts should lead to less aggravation for candidates and treasurers, and even better compliance," said Brindle.

TRAINING SEMINARS

Please provide the information requested below and return the **entire reservation form** to ELEC. Since space is limited, you must reserve a seat in order to attend. The seminars listed below will be held at the Offices of the Commission, located at 28 West State St., Trenton, NJ. You may mail the form back to ELEC, Compliance and Information Section, P.O. Box 185, Trenton, NJ 08625-0185. Or, you may fax the form to ELEC at (609) 633-9854. For directions, contact the Compliance and Information staff.

BUSINESS ENTITY PAY-TO-PLAY TRAINING	
Please contact the Special Programs staff for information at (609) 292-8700. Pay-To-Play Reservation Form*	
September 14, 2012 (full)	10:00 a.m.
November 16, 2012 (full)	10:00 a.m.
TREASURER TRAINING FOR CANDIDATES AND JOINT CANDIDATES COMMITTEES	
Treasurer Training for Candidates Reservation Form**	
September 11, 2012	10:00 a.m.
September 24, 2012	10:00 a.m.
October 2, 2012	10:00 a.m.
TREASURER TRAINING FOR POLITICAL PARTY COMMITTEES AND PACS	
Treasurer Training for Political Parties Reservation Form**	
September 28, 2012	10:00 a.m.
December 12, 2012	10:00 a.m.
R-1 ELECTRONIC FILING SOFTWARE (REFS) TRAINING	
REFS Training Reservation Form**	
September 19, 2012	10:00 a.m.
October 3, 2012	10:00 a.m.

REPORTING DATES

ELECTION	48 HOUR START DATE	INCLUSION DATES	FILING DATE
GENERAL** (90 DAY START DATE: 8/8/12)	10/24/12		11/6/2012
29-day Preelection Reporting Date		6/23/12 - 10/5/12	10/9/2012
11-day Preelection Reporting Date		10/6/12 - 10/23/12	10/26/2012
20-day Postelection Reporting Date		10/24/12 - 11/23/12	11/26/2012
RUNOFF (DECEMBER)*	11/21/12		12/4/2012
29-day Preelection Reporting Date		No Report Required for this Period	
11-day Preelection Reporting Date		10/24/12 - 11/20/12	11/23/2012
20-day Postelection Reporting Date		11/21/12 - 12/21/12	12/24/2012
PACs & CAMPAIGN QUARTERLY FILERS			
3rd Quarter		7/1/12 - 9/30/12	10/15/2012
4th Quarter		10/1/12 - 12/31/12	1/15/2013

* A candidate committee or joint candidates committee that is filing in a 2012 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 12, 2012 for Primary Election Candidates and June 15, 2012 for Independent General Election Candidates.