



# ELEC tronic

An Election Law Enforcement Commission Newsletter

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## Comments from the Chairman

**Eric H. Jaso**

### *The 90-Day Rule – Reporting Political Communication Contributions before a Primary or General Election*

Let’s say an incumbent mayor is running for re-election in Anytown, New Jersey.

A few weeks prior to the election, her campaign sends residents a direct mail piece with the mayor’s personal appeal for support on Election Day. Under the slogan “Making Anytown Great Again,” the flyer includes a flattering photo of the mayor surrounded by her family. It touts her achievements, promotes her goals, and calls her opponent “Sad!”

Under the New Jersey Campaign Contributions and Expenditures Reporting Act, this mailing is considered a political communication which must be disclosed to ELEC in pre-election reports.

But what if, right before the election, the Borough of Anytown itself prints and mails a newsletter to residents over the Mayor’s signature and official photo, touting her achievements, stating her goals, but with no slogan, request for votes, or mention of her opponent?

Despite the effort to disguise it as an official communication, the second mailing would also be considered reportable under the Act.

The provision that applies is the political communication regulation, commonly known as the “90-day rule.” That rule, which applies to all candidacies, including fire district and school board, requires reporting to ELEC under the following circumstances:

- If the communication is made within 90-days of any election involving the candidate;
- If most recipients are people 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.

Under the 90-day rule, Anytown’s cost of producing and distributing the second newsletter would constitute an in-kind contribution to its mayor’s campaign and must be disclosed as such.

ELEC enforces the Act’s requirement that individuals, organizations, or even governments disclose the existence and dollar amount of any such in-kind political communications contributions.

However, we are not empowered to determine when contributions are unlawful, such as when public monies are misused for political purposes, or to punish such transgressions.

Of course, any rule comes with exceptions. The Act does not apply to written communications responding to a constituent. Thus, it would not require the mayor to report a letter she writes a constituent in response to a phone call complaining about potholes.

Likewise, the Act does not require a campaign to report a communication reminding residents to submit applications or take other actions involving the government, or an announcement about a public emergency. Nor does the Act require a candidate running unopposed in a primary to report such communications.

For the upcoming non-partisan elections held in May, the 90-day period begins on February 7, 2018. The 90-day period for the June primary begins March 7, 2018 and for the general election in November, it begins on August 8, 2018.

Candidates and their campaigns should review ELEC’s Compliance Manual for Candidates, available on our website.

## “Furthering the Interest of an Informed Citizenry”

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## Executive Director's Thoughts

### Jeff Brindle

## NJ May Need Updated Law to Keep Up with Shadow Lobbying

Reprinted from Observer / PolitickerNJ.com

Just as the trend of independent spending in federal campaigns eventually made its way to state elections during the past decade, a new phenomenon called shadow lobbying has taken hold in Washington, D.C.

It, too, has implications for New Jersey.

At the federal level, both registration and reported revenues by lobbyists have dropped. It appears that the business of lobbying is becoming more secretive because lobbyist organizations are employing individuals who do not directly lobby officials even though they provide important services to the lobbying firm and enhance its potential to influence government policy.

The nature of lobbying has changed, becoming much more sophisticated. Although traditional, person-to-person lobbying remains central to the craft, new and varied methods and skills are now employed behind the scenes to help influence policy.

Firms are packing themselves with strategic planners, lawyers, political consultants, public relations professionals, pollsters, researchers, and digital experts.

The Center for Responsive Politics says the number of federal lobbyists peaked at 14,827 in 2007 and has steadily fallen to 10,963 during the current year, a 26 percent decline. Moreover, it recently found that nearly 2,100 federal lobbyists who were active in 2016 reported no lobbying activities during the first quarter of 2017, even though 58 percent of them still worked for the same employer.

"What has become more prevalent over the last decade are hordes of lobbyists deliberately moving into the shadows to avoid the consequences of registration," the center reported June 28.

"For years, our lobbying disclosure rules provided some confidence that Americans could see which forces were at work, who hired them and how much they spent to influence federal policy," said Sheila Krumholz, executive director of the Center for Responsive Politics. "Now it appears that our disclosure system is being gamed. It's time to revisit the rules and close the loopholes, so that disclosure is meaningful, providing comprehensive information, and not just the façade of transparency."

The lobbyist toolbox includes social media, earned and paid media, issue advocacy, and fundraising for political campaigns. As Peter Overby of NPR maintains, "Super PACs — those groups that collect unlimited and corporate contributions — are becoming tools of lobbyists."

Given the technological revolution, changes of this sort are inevitable. The nature of lobbying was bound to change. The question then becomes, Shouldn't disclosure laws change as well?

Actually, it has happened before, when legislators revised the law to reflect previous expansions of lobbying activities. As the Election Law Enforcement Commission's deputy director in 1990, in "White Paper 5- Lobbying Reform," I called for the elimination of the "expressly" loophole that limited lobbyist disclosure, disclosure of efforts to influence the executive branch and disclosure of "grassroots" lobbying that depended on direct appeals to the public.

All became law.

During the current legislative session, a new bill sponsored by Senate Majority Leader Loretta Weinberg (D-Bergen) and recommended by ELEC was enacted into law. This new law requires disclosure of lobbying on behalf of local governments. Another pending proposal from ELEC would require lobbying of local government by paid professional lobbyists to be reported.

In recent years, professionals in New Jersey's lobbying community, just like their federal colleagues, have become increasingly sophisticated, suggesting that shadow lobbying has begun to filter down from the federal level to the state.

The average number of registered lobbyists also is down in New Jersey, although not at the same rate as in the federal government. Last year, there were about 935 registered lobbyists in the state. That total is 10 percent below the peak of 1,043 in 2008, compared with the 26 percent federal decline.

Although 2017 lobbying activity will not be reported until February, over \$68 million was spent by the state's lobbying professionals in 2016. More

than \$10 million was spent on issue advocacy, a sign that the lobbying community is enlisting the services of public relations specialists, advertising consultants, and other skilled operatives.

Individuals who once registered as lobbyists may be choosing not to do so now because they view their duties as not entailing direct lobbying. Along with the difficult economy in recent years, this development may explain the drop in registered lobbyists in New Jersey.

If the growing sophistication of lobbying means more people are working outside the scope of current disclosure laws, it is not necessarily illegal. Lobbying is protected under the First Amendment, which guarantees the right to “petition the government for a redress of grievances.”

However, if the decline in registered lobbyists at the federal and state levels is the inescapable result of so-called shadow lobbying, the result means less transparency. Voters have a right to know as much as possible about who is trying to influence the officials they elect.

Given the trend toward shadow lobbying, perhaps it may be time to take a fresh look at New Jersey’s lobbying law to reform it in a way that will not only show the extent of lobbying at all levels of government but will also disclose behind-the-scenes activity that contributes to successful efforts to influence public policy.

It is in the best interest of the public to be ahead of the curve when it comes to trends that may affect the state’s disclosure laws.

## Advisory Opinion No. 01-2018

During a telephonic meeting on January 9, 2018, the Election Law Enforcement Commission (ELEC) voted 3-0 to approve an advisory opinion requested on behalf of Celebrate New Jersey Now, Inc. (CNJN).

The request pertained to whether the limitations and requirements of N.J.S.A. 19:44A-18.1 and N.J.A.C. 19:25-15.59 apply to CNJN’s activities in connection with gubernatorial inaugural fundraising events. Specifically, the request asked whether CNJN can accept donations in excess of the \$500 contribution limit and accept assistance for gubernatorial inaugural fundraising events from individuals associated with the Governor-elect’s inaugural committee. The request asked whether CNJN is subject to the reporting requirements of N.J.S.A. 19:44A-18.1(c) and N.J.A.C. 19:25-15.59(d).

The Commission advised that CNJN may accept donations in excess of the \$500 contribution limit set forth in N.J.S.A. 19:44A-18.1 (a) and that CNJN does not have reporting obligations pursuant to N.J.S.A. 19:44A-18.1(c) and N.J.A.C. 19:25-15.59(d). Further, CNJN is able to obtain assistance from individuals associated with the inaugural committee for the fundraising events specifically addressed in this Advisory Opinion.

Link to the full advisory opinion:  
<http://www.elec.state.nj.us/pdffiles/ao/2018/ao012018.pdf>

## Inflationary Campaign Cost Index Adjustments

At its regular meeting of January 16, 2018, the Commission voted 3-0 to adopt amendments to implement the Campaign Cost Index Adjustments to the gubernatorial and non-gubernatorial reporting thresholds and limits. The proposal appeared in the New Jersey Register on November 6, 2017. The amended rules will become effective upon publication in the New Jersey Register on or about February 20, 2018.

Increases under the campaign cost index apply to elections in 2017-2020.

For the full language of the proposal notice, please visit:

**Campaign Cost Index Adjustments: Public Financing, General and Primary Elections for the Office of Governor and Lieutenant Governor** ►  
[http://www.elec.state.nj.us/pdffiles/regulations/OAL\\_prop\\_PRN2017\\_260.pdf](http://www.elec.state.nj.us/pdffiles/regulations/OAL_prop_PRN2017_260.pdf)

and,

**Campaign Cost Index Adjustments: Non Gubernatorial** ►  
[http://www.elec.state.nj.us/pdffiles/regulations/OAL\\_prop\\_PRN2017\\_261.pdf](http://www.elec.state.nj.us/pdffiles/regulations/OAL_prop_PRN2017_261.pdf)

## Byrne Impact on ELEC Still Resonates

By Joe Donohue

When former Governor Brendan Byrne died January 4, 2018 at the age of 93, pinelands protection, legalization of Atlantic City casinos and the imposition of a state income tax were understandably cited as his chief legacies.

But his full influence was even broader.

Less remembered is the fact that he also enacted key laws involving campaign finance and lobbying. These, in turn, have had a major impact on the New Jersey Election Law Enforcement Commission (ELEC).

On May 6, 1974, Byrne signed a law that created the nation’s first program for providing public financing to gubernatorial candidates who agreed to limit their overall spending.

The governor called it a “first giant step toward removing the evil of large, private contributions from gubernatorial elections.” The law was sponsored by former Assembly Majority Leader Albert Burstein (D-37), who later served on the Commission.

“In the four decades since the creation of the public financing program, gubernatorial elections that have been issue-oriented and scandal-free. Governor Byrne’s legacy also includes cleaner elections in New Jersey,” said Jeff Brindle, ELEC’s Executive Director.

Byrne and the late state Sen Raymond Bateman became the first two candidates to receive funding from the program. Byrne received \$1,050,569 for the general election in 1977- \$4.2 million in 2017 dollars. Bateman qualified for \$4.1 million.

A few years later, Byrne on July 23, 1980 enacted a bill extending the public financing program to primary campaigns. Sixteen candidates from both parties- still a record- qualified for public financing in the 1981 primary.

In another significant action, Byrne also shifted the responsibility for lobbyists to file annual reports from the Attorney General’s Office to ELEC in legislation that took effect May 22, 1981.

## Training Seminars

The seminars listed below will be held at the Election Law Enforcement Commission, 25 South Stockton Street, 1<sup>st</sup> Floor, Trenton, New Jersey at 10:00 a.m.

Please register for the seminar you would like to attend:

**Training Reservation Form** ►

<http://www.elec.state.nj.us/TreasTrain/TTTSeminar.html>

<b>ANNUAL LOBBYING TRAINING SEMINAR</b>	
January 24, 2018	10:00 a.m.
February 1, 2018	10:00 a.m.
<b>PAY-TO-PLAY TRAINING SEMINAR</b>	
February 8, 2018	10:00 a.m.
March 13, 2018	10:00 a.m.
<b>QUARTERLY LOBBYING TRAINING SEMINAR</b>	
March 15, 2018	10:00 a.m.
<b>CAMPAIGN TRAINING SEMINAR</b>	
April 3, 2018	10:00 a.m.
April 17, 2018	10:00 a.m.
September 12, 2018	10:00 a.m.
October 2, 2018	10:00 a.m.
<b>PAC (CPC/PPC) TRAINING SEMINAR</b>	
March 8, 2018	10:00 a.m.
June 14, 2018	10:00 a.m.
September 25, 2018	10:00 a.m.
October 4, 2018	10:00 a.m.
<b>REFS (R-1) ELECTRONIC FILING) TRAINING SEMINAR</b>	
March 22, 2018	10:00 a.m.
July 19, 2018	10:00 a.m.

## “Big Six” Committees 4<sup>th</sup> Quarter 2017

Spending by the so-called “Big Six” committees totaled \$13.3 million in 2017 but the amount was dwarfed by independent special interest spending, according to an analysis by the New Jersey Election Law Enforcement Commission (ELEC).

Independent groups spent **\$47.5** million on last year’s election, more than triple the sum spent by the two state parties and four legislative leadership committees. The governor’s seat and all 120 legislative seats were up for reelection.

**Table 1**  
**Spending by Big Six Committees Versus**  
**Independent Groups During Election Years**

Election Year	Combined Big Six Spending	Independent Spending	Total	Percent Big Six	Offices on Ballot
2007	\$23,367,064	\$ 165,000	\$ 23,532,064	99%	Senate, Assembly
2009	\$12,919,862*	\$ 14,096,167	\$ 27,016,029	48%	Gubernatorial, Assembly
2011	\$15,547,359	\$ 1,835,500	\$ 17,382,859	89%	Senate, Assembly
2013	\$14,727,957	\$ 38,802,531	\$ 53,530,488	28%	Gubernatorial, Senate, Assembly
2015	\$ 8,661,126	\$ 11,649,010	\$ 20,310,136	43%	Assembly
2017	\$13,348,131	<b>\$ 47,530,869</b>	<b>\$ 60,879,000</b>	<b>22%</b>	Gubernatorial, Senate, Assembly
Total- 2007-2017	<b>\$88,571,499</b>	<b>\$114,079,077</b>	<b>\$202,650,576</b>	<b>44%</b>	

\*\$14,761,634 if adjusted for inflation

“Party committees are now regularly out-gunned by independent groups during New Jersey’s statewide elections,” said Jeff Brindle, ELEC’s Executive Director.

In 2007, Big Six committees spent 142 times more than independent groups in the election. By 2017, independent committees spent more than three times the Big Six total. Of the total amount spent by the two groups, the **22** percent share by the Big Six was its lowest ever.

If the 2009 Big Six spending total is adjusted for inflation, the \$13.3 million spent by Big Six committees in 2017 also is the lowest sum spent in the last decade except for 2015, when just the state Assembly faced reelection.

“Traditional committees used by the two major parties to raise funds for New Jersey elections seem to be in relentless decline. Legislative reforms are needed to try to reverse this trend and create a more balanced electoral landscape,” he said.

While independent groups usually are aligned with one of the two parties, they legally must operate outside the control of party leaders. Unlike the party committees, they face no contribution limits, and, under current state law, they are less accountable because they can hide where they get their money.

“Party committees are more accountable and transparent. That is why political contributors need to be encouraged to go back to supporting parties directly,” Brindle said.

“Some independent groups should be commended because they have voluntarily disclosed their contributions in recent elections. But the fact is, New Jersey’s law is so antiquated that nearly all **\$114** million spent independently since 2007 could have been done with zero donor disclosure,” Brindle said.

**Table 2**  
**Campaign Finance Activity by “Big Six” January 1 through December 31**

Year	Raised	Spent*	Cash-On-Hand	Net Worth**	Statewide Elections
2007	\$19,177,655	\$23,367,064	\$ 377,324	\$ (521,409)	Senate and Assembly
2008	\$ 6,653,676	\$ 5,186,294	\$1,844,704	\$1,669,848	
2009	\$12,368,082	\$12,919,862	\$1,297,457	\$1,107,532	Governor and Assembly
2010	\$ 6,180,605	\$ 5,918,029	\$1,540,032	\$1,305,667	
2011	\$15,035,468	\$15,547,359	\$1,028,142	\$ 705,787	Senate and Assembly
2012	\$ 7,063,133	\$ 6,391,757	\$1,684,525	\$1,516,187	
2013	\$13,885,028	\$14,727,957	\$ 841,599	\$ 755,419	Governor and Both Houses
2014	\$ 4,872,907	\$ 4,048,955	\$1,662,052	\$1,008,612	
2015	\$ 8,027,793	\$ 8,661,126	\$ 979,220	\$ 262,353	Assembly Only
2016	\$ 4,518,172	\$ 3,842,223	\$1,667,465	\$1,511,597	
2017	\$12,243,328	\$13,348,131	\$ 738,454	\$ 629,952	Governor and Both Houses

\*Spending may exceed fundraising due to use of reserves. \*\*Cash-on-hand adjusted for debts owed to or by the committee.

Compared to 2013, the last year when the governors seat and both houses faced reelection, Democratic fundraising, spending and cash reserves showed improvement. Republican numbers have declined since the 2013 election.

**Table 3**  
**Campaign Finance Activity by “Big Six” Committees 2013 Versus 2017**

Republicans	Raised	Spent	Cash-On-Hand	Net Worth
New Jersey Republican State Committee	\$ 2,272,417	\$ 2,286,855	\$ 96,686	\$ 96,686
Senate Republican Majority	\$ 878,275	\$ 1,416,976	\$ 67,185	\$ 67,185
Assembly Republican Victory	\$ 569,565	\$ 834,950	\$ 90,319	\$ 90,319
<b>Sub Total- Republicans-2017</b>	<b>\$ 3,720,257</b>	<b>\$ 4,538,781</b>	<b>\$ 254,190</b>	<b>\$ 254,190</b>
Versus 2013 (Dollars)	\$(3,352,995)	\$(2,982,658)	\$(255,121)	\$(242,621)
Versus 2013 (%)	-47%	-40%	-50%	-49%
<b>Democrats</b>				
New Jersey Democratic State Committee	\$ 6,224,034	\$ 5,952,250	\$ 386,196	\$ 352,132
Senate Democratic Majority	\$ 1,148,723	\$ 1,580,603	\$ 71,207	\$ 51,207
Democratic Assembly Campaign Committee	\$ 1,150,314	\$ 1,276,497	\$ 26,861	\$ (27,577)
<b>Sub Total- Democrats- 2017</b>	<b>\$ 8,523,071</b>	<b>\$ 8,809,350</b>	<b>\$ 484,264</b>	<b>\$ 375,762</b>
Versus 2013 (Dollars)	\$ 1,711,295	\$ 1,602,832	\$ 151,976	\$ 117,154
Versus 2013 (%)	25%	22%	46%	45%
<b>Both Parties</b>				
<b>Total- 2017</b>	<b>\$ 12,243,328</b>	<b>\$13,348,131</b>	<b>\$ 738,454</b>	<b>\$ 629,952</b>
Versus 2013 (Dollars)	\$(1,641,700)	\$(1,379,826)	\$(103,145)	\$(125,467)
Versus 2013 (%)	-12%	-9%	-12%	-17%

Brindle said members of both parties have expressed support for ELEC-recommended legislation that could strengthen party committees.

Among the changes: raising the size of contributions that party committees can accept, exempting parties from pay-to-play restrictions, and requiring independent committees to fully disclose their campaign finance activities in New Jersey.

“We are hoping the new administration will seriously consider these changes and we will continue to work with both parties to bring about these needed reforms,” said Brindle.

State parties 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). ELEC also can be accessed on Facebook ([www.facebook.com/NJElectionLaw](http://www.facebook.com/NJElectionLaw)) and Twitter ([www.twitter.com/elecnj](http://www.twitter.com/elecnj)).

**1/29/2018 Revised in bold-faced italics.**

## Reporting Dates

	INCLUSION DATES	REPORT DUE DATE
<b>FIRE COMMISSIONER - FEBRUARY 17, 2018</b>		
29-day Preelection Reporting Date	Inception of campaign* - 1/16/18	1/19/2018
11-day Preelection Reporting Date	1/17/2018 - 2/3/2018	2/6/2018
20-day Postelection Reporting Date	2/4/2018 - 3/6/2018	3/9/2018
48-Hour Notice Reports Start on 2/4/2018 through 2/17/2018		
<b>APRIL SCHOOL BOARD - APRIL 17, 2018</b>		
29-day Preelection Reporting Date	Inception of campaign* - 3/16/2018	3/19/2018
11-day Preelection Reporting Date	3/17/2018 - 4/3/2018	4/6/2018
20-day Postelection Reporting Date	4/4/2018 - 5/4/2018	5/7/2018
48-Hour Notice Reports Start on 4/4/2018 through 4/17/2018		
<b>MAY MUNICIPAL - MAY 8, 2018</b>		
29-day Preelection Reporting Date	Inception of campaign* - 4/6/2018	4/9/2018
11-day Preelection Reporting Date	4/7/2018 - 4/24/2018	4/27/2018
20-day Postelection Reporting Date	4/25/2018 - 5/25/2018	5/29/2018
48-Hour Notice Reporting Starts on 4/25/2018 through 5/8/2018		
<b>RUNOFF (JUNE) ** - JUNE 12, 2018</b>		
29-day Preelection Reporting Date	No Report Required for this Period	
11-day Preelection Reporting Date	4/25/2018 - 5/29/2018	6/1/2018
20-day Postelection Reporting Date	5/30/2018 - 6/29/2018	7/2/2018
48-Hour Notice Reporting Starts on 5/30/2018 through 6/12/2018		
<b>PRIMARY (90-DAY START DATE: MARCH 7,2018)*** - JUNE 5, 2018</b>		
29-day Preelection Reporting Date	Inception of campaign* - 5/4/2018	5/7/2018
11-day Preelection Reporting Date	5/5/2018 -5/22/2018	5/25/2018
20-day Postelection Reporting Date	5/23/2018 - 6/22/2018	6/25/2018
48-Hour Notice Reporting Starts on 5/23/2018 through 6/5/2018		
<b>GENERAL (90-DAY START DATE: AUGUST 8, 2018)*** - NOVEMBER 6, 2018</b>		
29-day Preelection Reporting Date	6/23/2018 - 10/5/2018	10/9/2018
11-day Preelection Reporting Date	10/6/2018 - 10/23/2018	10/26/2018
20-day Postelection Reporting Date	10/24/2018 - 11/23/2018	11/26/2018
48-Hour Notice Reporting Starts on 10/24/2018 through 11/6/2018		

**RUNOFF (DECEMBER)\*\* - DECEMBER 4, 2018**

29-day Preelection Reporting Date	No Report Required for this Period	
11-day Preelection Reporting Date	10/24/2018 - 11/20/2018	11/23/2018
20-day Postelection Reporting Date	11/21/2018 - 12/21/2018	12/24/2018
48-Hour Notice Reporting Starts on 11/21/2018 through 12/4/2018		

**PACS, PCFRS & CAMPAIGN QUARTERLY FILERS**

1 <sup>st</sup> Quarter	1/1/2018 - 3/31/2018	4/16/2018
2 <sup>nd</sup> Quarter	4/1/2018 - 6/30/2018	7/16/2018
3 <sup>rd</sup> Quarter	7/1/2018 - 9/30/2018	10/15/2018
4 <sup>th</sup> Quarter	10/1/2018 - 12/31/2018	1/15/2019

**GOVERNMENTAL AFFAIRS AGENTS (Q-4)**

1 <sup>st</sup> Quarter	1/1/2018 - 3/31/2018	4/10/2018
2 <sup>nd</sup> Quarter	4/1/2018 - 6/30/2018	7/10/2018
3 <sup>rd</sup> Quarter	7/1/2018 - 9/30/2018	10/10/2018
4 <sup>th</sup> Quarter	10/1/2018 - 12/31/2018	1/10/2019

\*Inception Date of Campaign (first time filers) or from January 1, 2018 (Quarterly filers).

\*\*A candidate committee or joint candidates committee that is filing in a 2018 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, 2018 for Primary Election Candidates and June 15, 2018 for Independent General Election Candidates.

Note: A fourth quarter 2017 filing is needed for Primary 2018 candidates if they started their campaign prior to December 7, 2017. A second quarter 2018 filing is needed by Independent/Non-Partisan General Election candidates if they started their campaign prior to May 9, 2018.

**HOW TO CONTACT ELEC**

[www.elec.state.nj.us](http://www.elec.state.nj.us)

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