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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

Recently there has been a spate of media stories involving expenditure reporting and the uses of campaign funds.

To clear up any misunderstanding, this column will deal with the state of the law regarding expenditure reporting and the Commission's educational efforts to assure compliance.

The law is very straight forward in stipulating that the following information must be reported:

1. The date the expenditure was made;
2. The full name and address of the payee;
3. The purpose of the expenditure;
4. The amount of the expenditure; and,
5. The number of the check.

Commission regulations go even further in providing specific examples of what is required in terms of setting forth the purpose of the expenditure.

The regulations stipulate that the "specific election-related reason for the expenditure shall be provided. In providing examples, the regulations state that descriptions such as newspaper advertising, telephone expense, postage, printing of campaign flyers, and headquarter rental are acceptable.

Similar reporting requirements exist with regard to expenditures made by credit card.

The regulations cite two uses of credit cards.

First, when a committee reimburses a person or entity for a charge made against that person or entities credit card, the following information is required:

1. The name of the credit card holder;
2. The name and address of the vendor;
3. The date of the purchase;
4. The purpose of the purchase which includes a specific itemization of the goods and services purchased;
5. The amount of the purchase; and,
6. The name of the payee; and the number, date, and amount of the reimbursement check.

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Comments from the Chairman Ronald DeFilippis

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When the committee itself uses a credit card, the following information is to be reported:

1. The name and address of the lending institution issuing the card;
2. The check number, payment date, and amount of expenditure paid to the issuer of the card; and,
3. An itemization of each purchase, including name and address of the vendor, date and amount of purchase, the purpose of the purchase, and goods and services acquired.

Similar information is required for debit card use.

It is important to note that the statute and regulations cover how candidates can use their campaign funds.

There are six permissible uses of campaign funds by candidates. They are: The payment of campaign expenses; the making of donations; contributions to other candidates; overhead expenses of the campaign; reimbursement of contributors; and the payment of ordinary and necessary expenses of holding public office.

The statute and regulations make clear that campaign funds are not to be used for personal use. The regulations provide clear guidance on what constitutes personal use.

In terms of educating candidates and committees regarding the guidelines vis-à-vis spending campaign dollars, the Commission provides online training for treasurers, training seminars, telephonic training on an individual basis, manuals and regulations. In each case, guidance is provided in terms of how campaigns should spend their money.

Executive Director's Thoughts Jeff Brindle

Super PACs used to pretend they operated at arm's length from the candidates they support.

Not anymore.

Even before last week, no one seriously believed Super PACs were independent. But it was nearly impossible to prove they coordinated their activities with candidates. You had to be a fly on the wall. Or at least had to own good eavesdropping equipment.

In recent days, however, the notion that Super PACs are independent has been rendered a total farce.

President Obama, who once denounced Super PACs, said he would permit members of the cabinet and senior aides to appear and raise money at their fundraising events.

Not to be out-done, Republican presidential primary contender Mitt Romney proclaimed that he would allow senior aides to attend events held by "Restore Our Future," the Romney Super PAC.

These cabinet members and advisors can ask donors for contributions of up to \$2,500 per election, or up to \$5,000 for the primary and general election.

The Wall Street Journal also reported that plans are being laid for members of Congress to appear at Super PAC fundraising events. So can presidential candidates be far behind?

Probably so, since the Federal Election Commission (FEC) has previously ruled that candidates can appear at Super PAC events. And they can raise money.

Super PACs became part of the vernacular and began dotting the electoral landscape after the U.S. Supreme Court decision Citizens United v. FEC and the D.C. Circuit Court of Appeals decision in SpeechNow.Org v. FEC.

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Executive Director's Thoughts Jeff Brindle

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The legal theory was that as long as these PACs engaged only in independent spending, they could take contributions in unlimited amounts and spend as much as they like.

It turns out that theory was based on a faulty and extremely naïve premise.

To say that these groups are operating independently is preposterous on its face. Especially with the latest developments.

When you have cabinet members and campaign advisors attending Super PAC events and even raising money, there is no independence. What it amounts to is a slap in the face of the public, and an insult to our collective intelligence.

However ridiculous, it is the state of current law. And Super PACs at least are operating in compliance with it.

If there is one potential silver lining, it is that the Citizens United and SpeechNow cases both strongly supported the principle of disclosure.

The SpeechNow case allowed Super PACs to be unregulated in terms of spending and contribution limits, but nevertheless required that they register with the FEC and report their financial activity.

This approach isn't full-proof. In fact, many Super PACs are raising bundles from non-profit groups that currently aren't required to disclose their contributors. In those cases, the public still doesn't know the ultimate contributors.

Still, a little sunlight is better than none at all.

New Jersey voters should be concerned about Super PACs because they soon could be coming in droves. Under current state law, only those groups whose advertisements use the magic words, "vote for" or "against," or the equivalent thereof, are required to report as an independent expenditure

committee. Groups can get around that by focusing solely on the positions candidates take on issues without explicitly mentioning the election.

For Super PACs and other groups that fail to expressly urge the election or defeat of candidates, there is no mechanism in the state for them to register and thoroughly report their financial activity.

The stage is set for an invasion of outside, independent group activity that will adversely impact candidates of both political parties, and do so anonymously.

The potential for Super PACs and other groups to dominate not only the State's political parties, but also the candidates themselves, is very real.

That is why it is critically important for state officials to follow the advice of federal judges in Citizens United and SpeechNow. They should enact legislation that requires disclosure by Super PACs, as well as 527 and 501(c) non-profits, in a pre-election setting.

Due Process and ELEC

[Re-Printed from ELEC-Tronic, Issue 6](#)

With the attention given by television to jury trials of a sensational nature, the term due process is becoming more and more familiar to the public.

According to Black's Law Dictionary, due process refers to the "conduct of legal proceedings according to established rules and principles for the protection and enforcement of private rights, including notice and the right to a fair hearing before a tribunal with the power to decide the case."

While most people perceive the New Jersey Election Law Enforcement Commission (ELEC) as a disclosure agency, which of course it is, what is often overlooked is that it serves a quasi-judicial function as well.

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Due Process and ELEC

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In any given year, the Commission imposes numerous civil fines for violations of the Campaign Act and lobbying law.

When a request of an investigation is filed with the Commission the process includes the following: (1) Investigation; (2) Determination by the Commission to issue a complaint; (3) Issuance of a complaint; (4) Notice to the respondent who has the right to a hearing in the Administrative courts or to waive that right; and, (5) Final decision by the Commission.

To the point where a complaint is issued, the matter is considered confidential and staff, pursuant to the policy of the Commission and the standard practice of law enforcement agencies, is not at liberty to discuss the matter.

As part of its investigative and quasi-judicial roles, the Commission takes its due process responsibilities very seriously, protecting the rights of respondents who are targets of complaints. It does this in part by not speaking publicly about investigative matters until complaints and final decisions are issued.

The reason for this is clear. During the heat of a campaign, complaints are flying fast and furious between opposing candidates and campaigns. While many of the complaints prove to be with merit, many others are frivolous, or are just plain lacking in sufficient reasons to pursue the matter further.

In some instances, there is a misreading of what constitutes a violation of the campaign law accompanied by the erroneous expectation that the Commission can immediately take action.

Moreover, the Commission would not wish to inadvertently prejudice the outcome of an election, state or local.

For all of these reasons the Commission refrains from any public discussion about pending investigations until the process has been completed and they are ripe for public discussion.

Training Seminars

The seminars listed below will be held at the Election Law Enforcement Commission, 28 West State Street, 8th Floor, Trenton, New Jersey at 10:00 a.m.

To attend a seminar, you must reserve a seat. Space will be limited. Fill out the reservation form below and be sure **to circle the date you wish to attend**. Return the entire reservation form to the Commission. You may mail the form back to ELEC, PO Box 185, Trenton, NJ 08625-0185. Or, you may fax the form to ELEC at (609) 633-9854.

TREASURER TRAINING FOR CANDIDATES AND JOINT CANDIDATES COMMITTEES	
Treasurer Training Reservation Form	
Wednesday	March 14, 2012
Tuesday	April 3, 2012
Wednesday	April 11, 2012
Tuesday	April 24, 2012
Tuesday	September 11, 2012
Monday	September 24, 2012
Tuesday	October 2, 2012

TREASURER TRAINING FOR POLITICAL PARTY COMMITTEES AND PACS	
Treasurer Training Reservation Form	
Monday	March 26, 2012
Wednesday	June 27, 2012
Friday	September 28, 2012
Wednesday	December 12, 2012

R-1 ELECTRONIC FILING SOFTWARE (REFS) TRAINING	
REFS Training Reservation Form	
Wednesday	March 28, 2012
Thursday	April 12, 2012
Wednesday	April 25, 2012
Wednesday	July 25, 2012
Wednesday	September 19, 2012
Wednesday	October 3, 2012

DATES TO REMEMBER

Reporting Dates

ELECTION	48 HOUR START DATE	INCLUSION DATES	ELEC DATE
FIRE COMMISSIONER	2/5/12		2/18/2012
29-day Preelection Reporting Date		Inception of campaign* - 1/17/12	1/20/2012
11-day Preelection Reporting Date		1/18/12 - 2/4/12	2/7/2012
20-day Postelection Reporting Date		2/5/12 - 3/6/12	3/9/2012
SCHOOL BOARD	4/4/12		4/17/2012
29-day Preelection Reporting Date		Inception of campaign* - 3/16/12	3/19/2012
11-day Preelection Reporting Date		3/17/12 - 4/3/12	4/9/2012
20-day Postelection Reporting Date		4/4/12 - 5/4/12	5/7/2012
MAY MUNICIPAL (90 DAY START DATE: 2/8/12)	4/25/12		5/8/2012
29-day Preelection Reporting Date		Inception of campaign* - 4/6/12	4/9/2012
11-day Preelection Reporting Date		4/7/12 - 4/24/12	4/27/2012
20-day Postelection Reporting Date		4/25/12 - 5/25/12	5/29/2012
RUNOFF (JUNE)**	5/30/12		6/12/2012
29-day Preelection Reporting Date		No Report Required for this Period	
11-day Preelection Reporting Date		4/25/12 - 5/29/12	6/1/2012
20-day Postelection Reporting Date		5/30/12-6/29/12	7/2/2012
PRIMARY*** (90 DAY START DATE: 3/7/12)	5/23/12		6/5/2012
29-day Preelection Reporting Date		Inception of campaign* - 5/4/12	5/7/2012
11-day Preelection Reporting Date		5/5/12 - 5/22/12	5/25/2012
20-day Postelection Reporting Date		5/23/12 - 6/22/12	6/25/2012
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, PCFRS & CAMPAIGN QUARTERLY FILERS			
1st Quarter		1/1/12 - 3/31/12	4/16/2012
2nd Quarter****		4/1/12 - 6/30/12	7/16/2012
3rd Quarter		7/1/12 - 9/30/12	10/15/2012
4th Quarter		10/1/12 - 12/31/12	1/15/2013

* Inception Date of Campaign (first time filers) or from January 1, 2012 (Quarterly filers).

** 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.

**** A second quarter report is needed by Independent General Election candidates if they started their campaign before 5/9/2012.