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SMALL BUSINESS SOLUTIONS



Pay-to-Play: Fair or Not Far Enough?

>>> *Understanding the Governor's Executive Orders.* By **Laurence D. Laufer & Jisha V. Dymond**

Last September, Governor Corzine issued two Executive Orders. Executive Order 117 expands Chapter 51, which limited political contributions by prospective and current state contractors. Executive Order 118 limits contributions by parties/prospective parties to state redevelopment agreements. Both took effect on November 15, 2008. Among the questions we must ask ourselves is, “Do these new restrictions go too far – or not far enough?”

Executive Order 117 codified Governor McGreevy's Executive Order 134 (2004). For current and prospective state contractors, it established a \$300 per election limit for contributions to gubernatorial candidate committees and a \$300 per year limit to state and county political party committees during specified periods of time. Executive Order 117 now reaches contributions

to: Lieutenant Governor candidate committees (\$300 per election), municipal political party committees and legislative leadership committees (\$300 per year).

Executive Order 117 subjects new contributors to these limits. For example, in addition to principals, subsidiaries and IRC §527 organizations controlled by the business entity seeking or having a State contract, Executive Order 117 covers that entity's officers, partners, or LLC members, and, with some exceptions, their spouses, civil union partners and children.

Chapter 51 also limited contribution solicitation. It is unclear whether Ex-

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ecutive Order 117 includes or extends these solicitation restrictions.

Executive Order 118

The contribution limits of Executive Order 118 apply during specified time periods to the redeveloper and the same categories of associated persons and entities, as described above. But it goes further and limits contributions by firms that contract with the redeveloper to perform professional, consulting or lobbying services in connection with the project, making that subcontractor's compliance a condition of the redeveloper's eligibility for a state redevelopment agreement.

These contribution limits cover the same recipients as Executive Order 117, but also candidate committees for state legislative, county or municipal elective office in the jurisdiction where the redevelopment property is situated. Executive Order 118 does not purport to restrict contribution solicitations.

Contributions to Continuing Political Committees

These contribution (and solicitation) restrictions do not limit contributions to continuing political committees (“CPCs” a/k/a “PACs”), although these contributions must be reported under Chapter 51. Thus, the new restrictions may spur giving to CPCs that are not “directly or indirectly controlled” by a business entity that seeks or holds a state contract or redevelopment agreement.

Most trade association CPCs should therefore continue to be able to make contributions up to statutory maximums which are significantly higher than the \$300 “pay-to-play” limits. But this isn't necessarily true at the local level, where some ordinances

purport to restrict contributions to CPCs that “engage in the financial or in kind support of” local candidates or committees.

Both executive orders include safeguards against circumvention. A third party may not help a covered contributor disguise an excessive contribution to a covered recipient.

The passage of Chapter 51 clearly placed New Jersey at the forefront of pay-to-play regulation. But some argue that loopholes remain. Regardless, the compliance burden will continue to rise as new executive orders, statutes and local restrictions are adopted.

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