RIKER DANZIG SCHERER HYLAND PERRETTI LLP

ELEC PAY-TO-PLAY REGULATIONS

The New Jersey Election Law Enforcement Commission (ELEC) recently adopted regulations which implement one of the State's pay-to-play provisions, N.J.S.A 19:44A-20.26 and 20.27, P.L. 2005, c.271 (Chapter 271). That statute established two separate "pay-to-play" disclosure requirements: (1) to a public entity no less than 10 days prior to contract execution; and (2) to ELEC if a contractor has earned $50,000 or more in a year from government contracts.

The newly adopted Chapter 271 regulations, N.J.A.C. 19:25-26.1 et seq., can be accessed on ELEC's website at http://www.elec.state.nj.us/Regulations/OAL_Adopt_04102007.pdf and can also be found in the April 16, 2007 New Jersey Register at 39 N.J.R. 1498. The regulations took effect up on publication on April 16, 2007.

Chapter 271 supplemented two prior State pay-to-play statutes, N.J.S.A. 19:44A-20.2 et seq., P.L. 2004, c.19 (local governments) and N.J.S.A 19:44A-20.13 et seq., P.L. 2005, c.51 (State government) and Executive Order No. 134 (McGreevey).

ELEC received considerable comment following the original proposal of the Chapter 271 regulations. The most controversial aspect of the proposal was its application to nonprofit entities. ELEC, however, declined to limit the application for nonprofits. It made the following two limited changes to the rules as proposed:

- The annual ELEC disclosure statement for calendar year 2006 is now due on September 28, 2007. The proposed regulations originally had a June 2007 filing date. For calendar year 2007 and thereafter, the annual disclosure statement will be due to ELEC on March 30th. A disclosure form has not yet been developed by ELEC.

- The definition of the term "officer" was amended to clarify that it includes only vice presidents with "senior management responsibility." This is significant because the personal contributions of officers, directors, principals, partners and their spouses may be reportable under Chapter 271, N.J.S.A. 19:44A-20.26 and 20.27.

It should be noted that ELEC also advised that future rulemaking is warranted in the case of trade association PACs. ELEC does not believe Chapter 271 intended to treat a trade association PAC in the same manner as a specific corporation's PAC on the issue of "control". The issue of control is significant because the contributions of an affiliated PAC may be attributed to the business entity if sufficient control is established. ELEC noted that it will attempt to redefine a "trade association" PAC in future rulemaking.

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