



ELEC *tronic*

An Election Law Enforcement Commission Newsletter

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Revised

Comments from the Chairman

Ronald DeFilippis

With the race for governor about to become front page news for New Jersey’s newspapers, it is time again to review an important, but often misunderstood provision of campaign finance law.

This provision is commonly referred to as the 90-day rule, or more formally, the political communication regulation.

The 90-day rule comes into effect under the following conditions:

1. When the communication is made within 90-days of any election involving the candidates (in the case of the gubernatorial primary, January 1);
2. When the recipients are substantially made up of individuals eligible to vote for the candidate;

3. When the communication refers to the governmental objectives or achievements of the candidate; and,
4. When the communication is done with the cooperation or consent of the candidate.

In most instances, this rule has applied to communications produced by a governmental body, i.e., a municipal, county, or state government agency or office.

If the foregoing conditions are met, the cost of producing and disseminating the communication would constitute an in-kind contribution from the governmental body to the candidate and must be disclosed as such.

The Commission’s role in matters of this kind would involve enforcement of the disclosure of the in-kind contribution.

On the other hand, the Commission has no jurisdiction over the question of the legality of using public funds for these purposes.

As with any rule, there are exceptions. For example, there is no requirement to report a communication by an incumbent officeholder seeking re-election if the communication is in writing and is made to a constituent in direct response to a prior communication from the constituent.

Further, there is no requirement to report a communication that is broadcast or circulated for the limited purpose of requiring constituents to make applications or take other actions before the date of the election, or providing information involving a public emergency.

Finally, there is no requirement to report a communication by a candidate running in the primary if the candidate is unopposed.

For the upcoming non-partisan elections held in May, the 90-day period begins on February 8, 2017. For the June primary, it begins on March 8, 2017, and for the general election in November, it begins on August 9, 2017.

“Furthering the Interest of an Informed Citizenry”

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COMMISSIONERS:

Ronald DeFilippis, Chairman
Edwin R. Matthews, Legal Counsel

Of course, for the gubernatorial election, it begins on January 1, 2017 for the primary, and the day after the primary for the general election.

The 90-day rule applies to all candidates, including fire district and school board.

So, if the county clerk's office sends out a mailer to residents of the county that touts the goals and achievements of the county clerk, and the distribution is within 90-days of the election, the cost of production and mailing must be disclosed to the Commission.

Questions of the permissibility of using county funds for that purpose, however, are not the purview of the Commission.

The Commission staff is available to assist with any questions related to the 90-day rule. They can be reached at 1-888-313-3532.

Requests for advisory opinions can also be submitted in writing to the Commission.

Finally, information is available on the Commission's website at www.elec.state.nj.us.

Executive Director's Thoughts

Jeff Brindle

ALABAMA CASE COULD SIGNAL MORE TURMOIL IN CAMPAIGN FINANCE LAW

[Reprinted from observer.politickernj.com](http://observer.politickernj.com)

The fact that campaign finance law is in an unsettled state was underscored recently by the United States Court of Appeals, Eleventh District, when it upheld Alabama's ban on transfers of money between political action committees (PACs).

In *Alabama Democratic Conference (ADC) vs. Attorney General, State of Alabama*, the appeals court rejected a challenge to a new Alabama law that bans one PAC from contributing to another.

ADC, a large grassroots organization in Alabama, is committed to encouraging voters of African-American descent to support candidates the ADC believes supports the interest of the black community.

Not unlike many grassroots political organizations, ADC raises and spends money to elect candidates it endorses for Alabama state elections.

Other PACs, including the Alabama Democratic Party, historically were a rich source of money for the organization.

In 2010, the Alabama State Legislature passed legislation, ultimately enacted into law, that banned transfers of funds from one PAC to another.

In other words, PACs could give to candidates but they could not give to each other.

Besides the ban on PAC to PAC giving, the law explicitly prohibited ADC from receiving contributions from the Alabama Democratic Party, despite being independent of that entity.

In order to comply with the law and still be able to access its traditional sources of funding, the ADC established separate bank accounts, one for candidate contributions and one for independent expenditures.

When this restructuring was still disallowed, ADC sued the State of Alabama in 2011, arguing that the new law "violated its First and Fourteenth Amendment rights."

The ADC maintained that under *Citizens United vs. FEC*, the State of Alabama could not regulate independent expenditures.

Initially, the challenge went ADC's way. The United States District Court for the Northern District of Alabama granted summary judgment on behalf of ADC, enjoining the State from enforcing the law.

Alabama appealed the ruling and the Eleventh District Appeals Court reversed the ruling of the District Court.

It's ruling asserted "in prohibiting limits on independent expenditures, Citizens United heavily emphasized the independent, uncoordinated nature of those expenditures, which alleviates concerns about corruption. But the independence of an organization like the ADC, which both makes independent expenditures and contributes directly to candidates, may be called into question and concerns of corruption may reappear."

The decision by the Eleventh District further adds to the unsettled state of campaign finance law in America. Other courts throughout the nation have weighed in on this issue, some supportive of the court's decision, some in conflict with it.

For example, in *Carey vs. Federal Elections Commission*, 2011, the D.C. District Court dealt with a similar issue and rendered a decision that ushered in the era of Super PACs.

The Court allowed corporations and unions to create PACs that contained one account for making contributions to candidates and a separate, segregated account for independent expenditures only. This decision came after the D.C. Court of Appeals in *Speech Now*, 2010, allowed unlimited contributions to and spending by PACs provided their activity was independent.

Furthermore, the Tenth Circuit Court of Appeals, in *Republican Party of N.M. vs King*, found that "separate bank accounts are sufficient to alleviate corruption concerns."

On the other hand, the Second and Fifth Circuits, in *Vermont Right to Life Committee, Inc. vs. Sorrell* and *Catholic Leadership Coalition of Texas vs. Reisman* respectively, found that "a separate bank account was not sufficient to alleviate a state's corruption concern" and that a state had a "valid anti-corruption interest" in protecting contribution limits.

In essence, the courts are trying to decide- when is a political fund-raising committee truly independent in this post-Citizens United era.

Because of the conflicting opinions and the importance of the issue, it is quite possible that this question will reach the U.S. Supreme Court. If the high court comes out with a new precedent, it could even have a ripple effect in New Jersey if a future legislature moves to ban PAC-to-PAC transfers.

How the court will decide may well depend on the outcome of the presidential election and the individual who becomes the ninth member of the High Court.

But for now, this and other issues related to campaign finance law leaves the field in a state of uncertainty and flux.

Todd J. Wojcik Leaves ELEC

A long-time ELEC employee, Associate Director of Compliance Todd Wojcik left ELEC to pursue a new endeavor.

Todd, who worked at the agency for more than 12 years, left December 23, 2016 to take a job with the Alcoholic Beverage Control.

Todd was well known in the regulated community since he often answered questions posed by candidates, treasurers or lobbyists and conducted in-house and offsite seminars.

"Todd will be missed," said Jeff Brindle, ELEC's Executive Director. "We wish him well in his new position."

ELEC Welcomes Public Financing Staff

A very important responsibility of the Commission is to administer the State's highly regarded Gubernatorial Public Financing Program.

In preparation of the upcoming election, ELEC hired and trained six public financing staff to assure the public that there will be no interruption in the administration of the program.

ELEC also prepared the "2017 Cost Index Report" in fulfillment of the Commission's statutory responsibility to adjust for inflation the thresholds and limits pertaining to the public financing program. The Report can be accessed at: www.elec.state.nj.us/

On behalf of ELEC, welcome aboard!

2017 Compliance Seminar Training Schedule

The seminars listed below will be held at the offices of the Commission, located at 28 West State St., Trenton, NJ. Please contact a member of the Compliance staff at (609) 292-8700 for more information on training seminar registration or visit ELEC at www.elec.state.nj.us.

| | |
|---|--------------------------------|
| JANUARY | FEBRUARY |
| January 10, 2017 – REFS | February 9, 2017 – Pay-to-Play |
| January 12, 2017 – Annual Lobbying | |
| January 26, 2017 – Annual Lobbying | |
| MARCH | APRIL |
| March 14, 2017 – CPC | April 4, 2017 – Campaign |
| March 15, 2017 – Quarterly Lobbying – Electronic Filing | April 6, 2017 – REFS |
| March 16, 2017 – Pay-to-Play | |
| March 28, 2017 – REFS | |
| MAY | JUNE |
| None | June 21, 2017 – CPC |
| JULY | AUGUST |
| July 26, 2017 – REFS | None |
| SEPTEMBER | OCTOBER |
| September 13, 2017 – Campaign | October 3, 2017 – Campaign |
| September 19, 2017 – REFS | October 4, 2017 – REFS |
| September 26, 2017 – CPC | |
| NOVEMBER | DECEMBER |
| None | December 12, 2017 – CPC |

2017 COMMISSION MEETING SCHEDULE

Unless otherwise indicated in the future, meetings will be held at the Commission’s offices at 28 West State Street, 12th Floor, in Trenton. It is anticipated that meetings will begin at 11:00 a.m., unless otherwise indicated.

| | | | |
|----------|----|-----------|----------------|
| January | 17 | July | 18 |
| February | 21 | August | 15 (if needed) |
| March | 21 | September | 19 |
| April | 18 | October | 17 |
| May | 16 | November | 21 |
| June | 20 | December | 19 |

Calendar 2017

| | | |
|--|---|--|
| JANUARY <small>Su Mo Tu We Th Fr Sa</small> 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 | FEBRUARY <small>Su Mo Tu We Th Fr Sa</small> 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 | MARCH <small>Su Mo Tu We Th Fr Sa</small> 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 |
| APRIL <small>Su Mo Tu We Th Fr Sa</small> 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 | MAY <small>Su Mo Tu We Th Fr Sa</small> 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 | JUNE <small>Su Mo Tu We Th Fr Sa</small> 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 |
| JULY <small>Su Mo Tu We Th Fr Sa</small> 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 | AUGUST <small>Su Mo Tu We Th Fr Sa</small> 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 | SEPTEMBER <small>Su Mo Tu We Th Fr Sa</small> 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 |
| OCTOBER <small>Su Mo Tu We Th Fr Sa</small> 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 | NOVEMBER <small>Su Mo Tu We Th Fr Sa</small> 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 | DECEMBER <small>Su Mo Tu We Th Fr Sa</small> 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 |

REPORTING DATES

| ELECTION | 48-HOUR START DATE | INCLUSION DATES | REPORT DUE DATE |
|--|------------------------------|------------------------------------|-----------------|
| FIRE COMMISSIONER -2/18/2017 | | | |
| | 2/5/2017- through 2/18/2017 | | |
| 29-day Preelection Reporting Date | | Inception of campaign* - 1/17/17 | 1/20/2017 |
| 11-day Preelection Reporting Date | | 1/18/17 - 2/4/17 | 2/7/2017 |
| 20-day Postelection Reporting Date | | 2/5/17 - 3/7/17 | 3/10/2017 |
| APRIL SCHOOL BOARD- 4/25/2017 | | | |
| | 4/12/2017 through 4/25/2017 | | |
| 29-day Preelection Reporting Date | | Inception of campaign* - 3/24/17 | 3/27/2017 |
| 11-day Preelection Reporting Date | | 3/25/17 - 4/11/17 | 4/17/2017 |
| 20-day Postelection Reporting Date | | 4/12/17 - 5/12/17 | 5/15/2017 |
| MAY MUNICIPAL – 5/9/2017 | | | |
| | 4/26/2017 through 5/9/2017 | | |
| 29-day Preelection Reporting Date | | Inception of campaign* - 4/7/17 | 4/10/2017 |
| 11-day Preelection Reporting Date | | 4/8/17 - 4/25/17 | 4/28/2017 |
| 20-day Postelection Reporting Date | | 4/26/17 - 5/26/17 | 5/30/2017 |
| RUNOFF (JUNE)**- 6/13/2017 | | | |
| | 5/31/2017 through 6/13/2017 | | |
| 29-day Preelection Reporting Date | | No Report Required for this Period | |
| 11-day Preelection Reporting Date | | 4/26/17 - 5/30/17 | 6/2/2017 |
| 20-day Postelection Reporting Date | | 5/31/17 - 6/30/17 | 7/3/2017 |
| PRIMARY (90 DAY START DATE: 3/8/2017)*** | | | |
| | 5/24/2017 through 6/6/2017 | | |
| 29-day Preelection Reporting Date | | Inception of campaign* - 5/5/17 | 5/8/2017 |
| 11-day Preelection Reporting Date | | 5/6/17 - 5/23/17 | 5/26/2017 |
| 20-day Postelection Reporting Date | | 5/24/17 - 6/23/17 | 6/26/2017 |
| GENERAL (90 DAY START DATE: 8/9/2017)*** | | | |
| | 10/25/2017 through 11/7/2017 | | |
| 29-day Preelection Reporting Date | | 6/24/17 - 10/6/17 | 10/10/2017 |
| 11-day Preelection Reporting Date | | 10/7/17 - 10/24/17 | 10/27/2017 |
| 20-day Postelection Reporting Date | | 10/25/17 - 11/24/17 | 11/27/2017 |
| RUNOFF (DECEMBER)**- 12/5/2017 | | | |
| | 11/22/2017 through 12/5/2017 | | |
| 29-day Preelection Reporting Date | | No Report Required for this Period | |
| 11-day Preelection Reporting Date | | 10/25/17 - 11/21/17 | 11/24/2017 |
| 20-day Postelection Reporting Date | | 11/22/17 - 12/22/17 | 12/26/2017 |
| PACs, PCFRs & CAMPAIGN QUARTERLY FILERS | | | |
| 1st Quarter | | 1/1/17 - 3/31/17 | 4/17/2017 |
| 2nd Quarter | | 4/1/17 - 6/30/17 | 7/17/2017 |
| 3rd Quarter | | 7/1/17 - 9/30/17 | 10/16/2017 |
| 4th Quarter | | 10/1/17 - 12/31/17 | 1/16/2018 |

* Inception Date of Campaign (first time filers) or from January 1, 2017 (Quarterly filers).

** A candidate committee or joint candidates committee that is filing in a 2017 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 13, 2017 for Primary Election Candidates and June 16, 2017 for Independent General Election Candidates.

Note: A fourth quarter 2016 filing is needed for Primary 2017 candidates if they started their campaign prior to December 8, 2016. A second quarter 2017 filing is needed by Independent/Non-Partisan General Election candidates if they started their campaign prior to May 10, 2017.

HOW TO CONTACT ELEC

www.elec.state.nj.us

In Person: 28 W. State Street, Trenton, NJ
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