Pay to Play and New Jersey Non-Profits

This document is for informational purposes only and does not constitute legal advice or a legal opinion. For answers to specific questions concerning your situation, you should consult a knowledgeable attorney who can advise you regarding your particular circumstances.

Background
The Pay to Play laws and regulations are designed to reduce the influence of campaign contributions on the awarding of public contracts. The laws restrict state, county and local government’s ability to enter into contracts with a "business entity" if that entity has made certain "reportable" campaign contributions (generally $300 or more) to various political candidates and committees. This paper provides a brief summary of the applicability of these laws and regulations to New Jersey 501(c)(3) organizations.

The “Pay to Play” laws are rather complicated, but key provisions include the following:

County/Local Contracting Prohibition (P.L.2004, c.19)
Prohibits campaign contributions by certain business entities performing State, county and local contracts; prohibits certain contributions by county political party committees. A municipal or county government agency (including instrumentalities, subdivisions and fire districts) cannot award a contract in excess of $17,500 without using a "fair and open process" if the contractor is a contributor to a candidate committee or a political party committee where a member of the party is serving in an elective public office of that municipality or county, and, either:
- made "reportable" contributions (those in excess of $300) during the year prior to the award; and/or
- makes contributions during the life of the contract.

Non-profit connection: At the request of the Center for Non-Profits, the NJ Department of Community Affairs has clarified that county and local government ban on non-fair and open contracts applies to contributions made by the business entity and/or persons that control 10% or more of the assets of the organization - a situation that does not apply to the typical 501(c)(3) organization, because 501(c)(3) organizations are prohibited from contributing to political campaigns, and because legally individuals do not control the assets of a non-profit corporation. Although it is less likely that 501(c)(3) organizations would be covered under these conditions, organizations should consult with legal counsel to be sure, particularly if for-profit subsidiaries or other unusual circumstances are involved.

State Contracting Prohibition (P.L.2005, c.51)
Restricts certain campaign contributions by business entities seeking and receiving State contracts. Under this portion of the pay-to-play statute, state agencies are barred from entering into contracts, lease or purchase agreements in excess of $17,500 with business entities that have made reportable contributions to a gubernatorial candidate committee or to any State or county political party committee within the previous eighteen months. Businesses with contracts in excess of $17,500 are prohibited from contributing to such campaigns prior to the completion of the contract period. These provisions apply to all State contracts regardless of whether they are “fair and open.”

Non-profit connection: Like the county and local contracting prohibition, this law covers contributions by the business entity or by any person with an interest of 10% or greater in the business entity. Although it is less likely that 501(c)(3) organizations would be covered under these conditions, organizations should consult with legal counsel to be sure, particularly if for-profit subsidiaries or other unusual circumstances are involved.
State/County/Local Disclosure and Annual Reporting to ELEC (P.L.2005, c.271)
Requires business entity disclosure of political contributions prior to entering a government contract; also
requires a business entity receiving $50,000 or more in a calendar year through agreements or contracts to file
an annual statement with the NJ Election Law Enforcement Commission (ELEC). C. 271 has two relevant
disclosure requirements:

1) Disclosure to government contracting entity - Prior to entering a contract with a State, legislative,
county or municipal governmental entity of more than $17,500 that is not publicly advertised, a business
entity must disclose to that governmental entity reportable contributions made during the past year.
The disclosure applies to contributions made by the business entity as well as its “principals, partners,
officers or directs” or their spouses. The disclosure must be made at least 10 days prior to the
execution of the contract. If the process is “fair and open” (i.e., publicly advertised and bid), this
disclosure requirement does not apply.

2) Annual report to ELEC -- The law requires a business entity with public contracts [state (including
some federal pass-throughs), county, local, legislative, school or fire districts] of $50,000 or more in a
calendar year to file an annual disclosure statement with the Election Law Enforcement Commission
(ELEC) to report contract information and reportable contributions (generally $300 or more). The
disclosure applies to contributions made by the business entity as well as its “principals, partners,
officers or directors” or their spouses. This requirement applies to all contracts, whether publicly advertised
or not.

Non-Profit Connection – On January 13, 2008, Governor Corzine signed into law legislation [S-3025
(Lesniak/Kyrillos)/A-4660 (Quigley/Cryan)] championed by the Center for Non-Profits and other advocates,
to clarify that the pay-to-play disclosure laws do not apply to non-profit entities. The new law, P.L.
2007, c. 304, takes effect immediately.

As a result of this legislation, non-profits that contract with government agencies are no longer required to
file annual disclosure statements with the Election Law Enforcement Commission (ELEC) regarding
individual campaign contributions made by their directors, officers, trustees and respective spouses. Non-
profits are also exempt from the requirement that similar disclosures be made with the government
contracting agency prior to execution of a given contract. Federal law prohibits 501(c)(3) organizations from
making campaign contributions or otherwise intervening in campaigns for public office, and it is vital that
non-profits adhere to this restriction. Board members, non-profit executives, spouses and the like may
contribute to candidates in their individual capacities. If such contributions are considered reportable, they
will still be disclosed and searchable on ELEC’s online database. For an individual who is an employee of a
non-profit, this means that the non-profit employer will be identified. However, this disclosure is
completely separate from the organization’s eligibility for a government contract.

For More Information
The text of the statute exempting non-profits from pay-to-play disclosure can be found at
www.njleg.state.nj.us/2006/Bills/AL07/304_.PDF. For additional background on the pay-to-play regulations
and other non-profit issues, visit the Center’s Web site at www.njnonprofits.org/Advocacy.html. For more
information about non-profit advocacy, pay-to-play or permissible and prohibited election-related activities
for 501(c)(3) organizations, contact the Center at 732-227-0800 or email center@njnonprofits.org.

NJ Government Pay to Play Web Sites
- Election Law Enforcement Commission - "Pay to Play" information pages:
  http://www.elec.state.nj.us/PayToPlay/ptp_main.html and https://www.net1.state.nj.us/lpd/elec/ptp/laws.html
- NJ Department of Community Affairs - County and Local Pay to Play Information:
  http://www.nj.gov/dca/lgs/p2p/
- NJ Department of Treasury - State Pay to Play Information:
  http://www.state.nj.us/treasury/purchase/execorder134.htm