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Connecticut: Major Campaign Finance Changes on December 31, 2006

Wholesale changes to Connecticut's campaign finance laws will take effect on December 31, 2006. From that date forward, current and prospective state contractors no longer will be able to make or solicit campaign contributions to certain state candidates, political parties or most state political action committees (PACs).

The scope of the ban will depend on the type of state agency with which the current or prospective state contractor holds or seeks a contract. Furthermore, a state contractor's PACs (state and/or federal) and certain individuals within the contractor organization (such as the CEO, certain vice presidents and persons responsible for negotiating a state contract and their families) also will be subject to the same prohibition.

Under a different provision, a complete state contribution and solicitation ban will, on the same date, apply to all "communicator lobbyists," the lobbyists' immediate families and any PAC established or controlled by the lobbyists or their family members.

The above contractor contribution and solicitation ban applies to persons with contracts with the state, a state agency or a quasi-public agency. The ban also applies to prospective state contractors that submit bids or Request for Proposal responses or hold a valid prequalification certificate issued by the Commissioner of Administrative Services. Covered contracts include those for:

- The rendition of personal services.
- The furnishing of any material, supplies or equipment.
- The construction, alteration or repair of any public building or public work.
- The acquisition, sale or lease of any land or building.
- A licensing arrangement.
- A grant, loan or loan guarantee.

Even for non-contractors, the ability of corporations to purchase ads in political committee publications will be severely limited as of December 31, 2006. ■

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IN THIS ISSUE

FEC Proposes Embezzlement Enforcement Policy

Federal Election Commission (FEC) Vice Chairman Robert D. Lenhard has proposed a new policy aimed at curtailing misappropriation and embezzlement of political committee funds. Such cases often lead to the filing of inaccurate and false reports to the FEC. The proposal, which was unanimously approved for public comment, outlines a minimum for internal controls within a committee to protect against embezzlement of funds and states that the FEC will "not seek to impose liability on the political committee for filing incorrect reports due to the misappropriation of committee funds" if the "minimum safeguards" outlined are followed.

The proposed guidelines present a checklist of internal controls. Specifically, the guidelines require the following:

- All bank accounts must be in the name of the committee, not an individual.
- All checks over $1,000 and all wire transfers must be authorized in writing by two individuals named by the committee.
- All incoming checks must be handled by an individual who does not maintain accounting/banking duties for the committee. Incoming checks

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The Congressional Revolving Door Rules

With a congressional election being held next week, Washington may witness another turnover of officials in the legislature, regardless of who wins. Those who employ persons leaving government jobs must cast a careful eye toward rules and regulations that restrict legally permissible contact with previous employers.

Congressional restrictions last for one year and can affect a potential employee's utility. A brief discussion of the applicable rules follows.

Rules for Members of Congress

The employment restrictions of former legislative branch members are all one year in duration. The former employee's position is the only distinction that the law makes, with elected officials subject to the ban with the broadest scope. By federal law, all Members of Congress are banned from attempting to influence any Member, officer or employee of Congress, representing or advising a foreign entity or using confidential information obtained through trade and treaty negotiations in any private situation for one year.

Rules for Congressional Staff

As for non-elected congressional employees, only individuals who meet an annual salary threshold of 75% of the basic pay rate of a Member of Congress in any 60-day period during the final year of employment are covered by federal statutory restrictions upon post-employment activities (the 2006 threshold is $123,900).

The general rules for congressional staffers are as follows:

- A personal staff employee who meets the 75% threshold is banned for one year from seeking official action from his or her former employer and from any of the former employer's current staff members.
- A committee staff employee is barred for one year from seeking to influence anyone either involved with the specific committee during the last year of employment (including Members of Congress) or with the committee currently regarding any matter, not just those within the committee's jurisdiction.
- A leadership staff employee is restricted for one year from attempting to influence any current member of the chamber's leadership or any current leadership staff member.
- All other legislative employees are restricted for one year from lobbying any current member of the office in which the former employee worked.

Congressional staffers also are subject to certain restrictions related to using confidential information and to representing or aiding foreign governments and foreign political parties.

Additional Senate Rules

In addition to federal law, the Senate imposes rules of its own upon former senators and former Senate employees who become lobbyists. These rules cover *all* former employees, *regardless of salary threshold*—a scope of coverage greater than that of federal law. Former senators may not lobby any current senator or employee of the Senate for one year, while Senate employees may not lobby their former offices or any offices in which they held "substantive responsibilities" for that same period. "Substantive responsibilities" involve assisting with drafting committee bills or with hearings and mark-up, rather than merely monitoring a committee or serving as a liaison for a Member's personal office. Therefore, a personal Senate staff member is not necessarily free to lobby the committees on which his former employing senator sat. Rather, one must look at the staffer's past work and involvement with the committee.

Negotiating with Departing Members and Staffers

Special care must be taken in negotiating future employment with departing Members and staffers. Among other things and according to the ethics committees, it would be improper for a staffer or Member to permit the prospect of future employment to influence their official actions. Moreover, staffers and Members are still subject to bribery and gratuity rules. Finally, negotiations for future employment may make it necessary for a Member to abstain from a vote or other official action that might affect the outside party with which the Member is negotiating. Employment negotiations likewise may trigger abstention or disclosure requirements on the part of a staffer. ■

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How to Respond to an FEC Complaint

It's election time again. The season in a two-year cycle when industrious and energetic people, working for upright candidates and political action committees (PACs) and taking advantage of First Amendment rights, may get hit between the eyes—with a complaint filed with the Federal Election Commission (FEC).

Often there is no substance to these complaints, but, nevertheless, they must be dealt with in order to clear one's name. As the election approaches and passes, the FEC processes the complaint and sends it on to the accused party (or respondent) for a response. Below are some guidelines to assist respondents in this unpleasant endeavor.

Relax

If the complainant is mistaken or making charges without any substantiation or if the error was an honest mistake, the filing of a complaint is not the end of the world. Any individual with a notary, no matter how partisan or misinformed, can file a complaint. Usually, a complaint is for the press hit a few days before the election. The FEC's forwarding of the complaint to the respondent does not mean that the agency thinks the complaint has substance.

Confidentiality

After the complainant gets his or her anticipated press hit, the whole process becomes confidential. Until the administrative process ends (either by dismissal, negotiated conciliation agreement or federal suit), the complainant will not learn of anything about the case. The complainant will have no idea about the response, the FEC's analysis or possible conciliation agreements. Unless the respondent makes statements to the public, there will be no public information about the case until it is finalized.

Responding

The FEC gives respondents 15 days to respond to a complaint, and respondents may ask for some additional time. Even if one takes additional time, he or she should make sure to respond directly to the complaint (although figuring out what the complaint actually asserts as a legal issue often takes some time and head scratching). The response should be made with the assistance of legal counsel and should address both factual and legal issues. Simplistic responses that focus on the partisan nature of the complaint or the fact that the FEC should butt out are little more than useless.

Waiting

Unless the respondent opts to use the Alternate Dispute Resolution process, it may take awhile for the FEC to respond. Although the agency has increased its efficiency lately, the process can still take years. The FEC response is determined based on the complaint, other information it has gathered and the respondent's response. If the FEC has a reason to believe a violation of federal campaign finance laws exists, then the process will move toward negotiating a conciliation agreement or to the probable cause stage. If not, then the case will be dismissed. ■

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SPEECHES AND ARTICLES

Presentation: A Campaign Finance, Lobbying and Ethics Primer for Government Affairs and Political Action Professionals

Event: NABPAC 2006 Post-Election Conference: PACs, Politics and Public Policy: Insights for Success in the 110th Congress

Nov. 15–17, 2006 | Palm Beach, FL

Speaker: Jan Witold Baran

Presentations: PAC Legal Quick Start: Understanding the Federal Campaign Finance Law

Legal Update and Open Discussion: Unraveling the Intricacies of the Federal Campaign Finance Law

Event: Innovate to Motivate's 6th Annual National Conference for Political Involvement Professionals

Jan. 30–Feb. 2, 2007 | St. Pete Beach, FL

Speaker: Carol A. Laham

Article: Compliance Issues for Executives in an Election Year

Publication: *Executive Counsel Magazine* (Sept./Oct. 2006)

Author: Jan Witold Baran

Congressman Ney Pleads Guilty, Awaits Sentencing on Abramoff-Related Charges

On October 13, 2006, Representative Bob Ney (R-Ohio) pled guilty in federal court to corruption charges after federal investigators determined that Ney had performed a number of official acts in exchange for gifts, trips and campaign contributions from former lobbyist Jack Abramoff and his associates.

The indictment charged that Ney conspired to violate several federal statutes, including his obligations to provide "honest services" to the public and to make truthful statements in his travel and annual financial disclosure forms. As part of the plea agreement, Ney admitted to accepting numerous free meals and drinks at various Washington, DC area restaurants and receiving free use of Abramoff's suites at the MCI Center Arena, Camden Yards Stadium and Signatures restaurant. Ney also acknowledged accepting trips worth over $170,000 to Scotland, New Orleans and Lake George, NY in exchange for various official actions.

The plea agreement even detailed Ney's efforts to conceal his gambling winnings on one London excursion by asking a staff member to carry thousands of dollars worth of British pounds through a U.S. Customs Service checkpoint.

Ney admitted to soliciting and accepting these things of value in exchange for a number of acts that benefited Abramoff's clients, including the insertion of language into the Help America Vote Act of 2002 to lift an existing commercial gaming ban for a pair of Abramoff's tribal clients. Ney also contacted numerous executive branch agencies at Abramoff's request and inserted language into the *Congressional Record* supporting a license application for an Abramoff client seeking a multi million dollar contract in connection with the installation of a wireless telephone infrastructure for Congress.

Despite his guilty plea and calls from the House leadership to resign, Ney has refused to step down from his post, although he is not a candidate for reelection. Ney will be sentenced in January 2007 and, if the judge accepts the government's recommendation, will serve 27 months in prison. ■

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UPCOMING DATES TO REMEMBER

November 7, 2006
- Election Day. End of corporate blackout period for electioneering communications except as to candidates involved in runoffs, special runoffs or special elections.

December 7, 2006
- 30-day Post-General FEC report due for federal PACs filing monthly and quarterly and for candidate committees.

December 7, 2006
- 30-day Post-General IRS Form 8872 due for nonfederal PACs filing monthly and quarterly.*

January 31, 2007
- Year-end FEC report due for federal PACs filing monthly and quarterly, for federal candidates and for candidate committees.

January 31, 2007
- Year-end IRS Form 8872 due for nonfederal PACs filing monthly and quarterly.*

Deadlines are not extended if they fall on a weekend.

* Note: Qualified state and local political organizations are not required to file Form 8872 with the IRS.

Tennessee: New Lobbying Rules Take Effect

On October 1, 2006, new lobbying laws took effect in Tennessee, as did emergency regulations promulgated under the new laws and issued by the newly created Tennessee Ethics Commission (TEC). The new rules made a number of changes, which are summarized below.

First, lobbyist employers need to register with the TEC and pay a $150 registration fee. Lobbyist employers also must provide copies of the TEC's *Manual for Lobbyists and Employers of Lobbyists* to its lobbyists.

Second, lobbyists, even if already registered with the Tennessee Registry of Election Finance (TREF), must re-register with the TEC and pay a $150 registration fee. TREF is no longer responsible for lobbying matters and will focus on campaign finance issues.

Third, lobbyists' employers will now be the persons responsible for filing semiannual lobbying reports with the TEC. Reports are due May 15, 2007 and November 14, 2007.

Fourth, each lobbyist and lobbyist employer must complete an ethics training course each year.

Fifth, the TEC is required by state law to audit 2% of registration statements and disclosure reports.

The TEC's website is located at www.state.tn.us/sos/tec/index.htm. The TEC's *Manual for Lobbyists and Employers of Lobbyists* can be found at www.state.tn.us/sos/tec/forms/manual.pdf. ■

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Embezzlement Enforcement Policy

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should also receive a restrictive endorsement (*i.e.*, "For Deposit Only") along with the account number.

- Bank statements must be reconciled monthly with the accounting records by an individual who handles neither of those responsibilities.
- The committee must use an imprest system if they have a petty cash fund with no more than $200 outstanding at any time. An imprest system "involves replenishing petty cash only when properly approved vouchers and/or petty cash log entries are presented justifying all expenditures. Only one person should be in charge of the fund."

The proposal requires that, in addition to abiding by the above safeguards, the committee must apprise relevant law enforcement of any misappropriation, immediately notify the FEC and voluntarily amend their filings with the FEC in order to be free from liability for false reports.

Along with the short checklist, a second document was approved for public comment. The Audit Division of the FEC produced an "educational piece" that goes into great detail about how a political committee should implement internal controls to avoid misappropriation of funds. Included in this document are detailed descriptions of how to set up and monitor bank accounts and how to handle receipts, disbursements, petty cash and much more.

The FEC is making these documents available for public comment in response to a growing number of misappropriation and embezzlement cases that have recently plagued political committees. In July 2006, the FEC fined Lockheed Martin's political action committee $27,000 after they failed to have internal controls in place to prevent their committee administrator and assistant treasurer from embezzling close to $90,000. Other recent misappropriation and embezzlement cases have included the campaigns of Sen. Joseph Biden (D-DE), Sen. Elizabeth Dole (R-NC) and House Majority Leader John Boehner (R-OH).

The FEC will be receiving comments on these documents for 30 days. ■

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Spotlight: Increased Focus on Personal Financial Disclosure

Over the past few months the personal financial disclosure reports of public officials—including Members of Congress and federal judges—have made national headlines.

Incomplete or inaccurate financial disclosure reports can draw unwanted attention not only from the media and constituents, but also from congressional investigators and federal prosecutors. The penalties can be severe: for knowingly filing a false report, a filer may face felony charges and criminal penalties of five years' imprisonment and a $250,000 fine. Similar penalties apply if the undisclosed holdings constitute a conflict of interest.

To ensure the accuracy of their financial disclosure reports, public officials should be aware of common pitfalls in financial disclosures. One recurring theme in the recent media reports is the filer's lack of understanding of the disclosure rules for stock options, real estate holdings and gifts. Of these three, stock options are particularly prone to misunderstanding. Stock options are not specifically cited in the federal ethics statute or regulations and receive only a brief mention in congressional ethics manuals. Yet they qualify as securities that must be disclosed—often repeatedly—on a financial disclosure report. For example, an option must be disclosed as an asset if it is valued above $1,000 at the close of a reporting period or has produced income of more than $200 during that period. The exercise of an option also must be disclosed as a transaction if the sale or purchase of the underlying stock exceeds $1,000. Moreover, an option received as compensation may be subject to disclosure as a employment-related arrangement—regardless of its value—or as compensation exceeding $5,000 from a single source.

Stock options are just one pitfall along the complicated road to financial disclosure. For more information on public financial disclosure requirements, see www.house.gov/ethics/Ethicforward.html, www.ethics.senate.gov/downloads/pdffiles/manual.pdf and www.usoge.gov/home.html. ■

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