

Pay-to-Play Spotlight

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Increasingly, states and localities are implementing "pay-to-play" laws that limit the ability of government contractors to make campaign contributions to state and local candidates and officeholders.

Depending on the jurisdiction, these prohibitions can extend years before and years after the actual contracting period. Further, the application of such laws can extend beyond the contractor itself to its officers, employees, parent and subsidiaries.

As a result of such pay-to-play laws, contracting or attempting to contract with states and localities involves ensuring that political contributions do not render a contractor unable to bid on a contract or cause the contractor to lose a contract that it already has won. The following discussion of local pay-to-play ordinances in New Jersey commences a new feature in Election Law News: the "Pay-to-Play Spotlight." Each issue, we will focus on a different pay-to-play situation from around the country.

In New Jersey, it is imperative that businesses holding or seeking contracts at the local level consult not only applicable state pay-to-play laws, but also the locality's own pay-to-play ordinances. These laws are often stricter and vary in their scope and application from jurisdiction to jurisdiction.

Within the past two years, New Jersey has instituted pay-to-play prohibitions for business entities having or seeking contracts in excess of \$17,500 with the state, a New Jersey county, or a New Jersey municipality.

On the county level, New Jersey state law prohibits contractors with county contracts in excess of \$17,500 from making contributions to an

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elected county official or to his or her county party. Similarly, on the municipal level, New Jersey state law prohibits contributions from contractors with municipal contracts in excess of \$17,500 to elected municipal officials and their municipal party committees. Under state law, the county and municipal prohibitions only extend to those contracts that were not procured under a "fair and open" process.

New Jersey counties and municipalities, though, are permitted to have their own, often more stringent, pay-to-play provisions. The New Jersey Secretary of State's office has collected links to various county and municipality provisions, available at <http://www.state.nj.us/state/secretary/ordinance.html>.

In Monmouth County, New Jersey, for example, the County Board of Chosen Freeholders recently implemented much broader and more far-reaching pay-to-play prohibitions than those the state imposes. First, unlike state law, the prohibitions extend to all contracts, even those that were procured under a "fair and open" process. Second, the Monmouth County prohibitions cover not only those contributions prohibited under state law, but also contributions made to municipal party committees in the county, as well as to any committee, PAC or 527 organization that has supported a Monmouth County municipal or county candidate in the past year. Third, certain individuals who work for the contractor are limited to contributing \$300 per calendar year to each covered candidate, committee, PAC or 527 organization. Finally, all covered individuals are prohibited from contributing more than \$2,500 in the aggregate to all covered candidates, committees, PACs or 527 organization.

These strict local rules, therefore, are traps for the unwary. As with state law, violations can result in the loss of government contracts and bans on future government business. These local laws also have the unfortunate tendency to be loosely drafted and to use vague terminology. Nonetheless, they are becoming part of the government contract landscape in New Jersey and around the country.