

New Jersey Pay-to-Play Law Ensnares Another Contractor: Business Loses \$7 Million in Contracts Over \$500 'Inadvertent' Contribution

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A New Jersey paving contractor recently learned firsthand why New Jersey's pay-to-play laws have a reputation for being among the harshest in the country. Last month, an appellate court upheld the state's decision to rescind its contracts with Della Pello Paving, Inc. (Della Pello)—valued at nearly \$7 million—over a \$500 contribution that Della Pello inadvertently made to the Somerset County Republicans. Della Pello is also barred from receiving any new state contracts for the remainder of Governor Chris Christie's term. New Jersey's pay-to-play law and Executive Order prohibit companies with government contracts of \$17,500 or more from making political contributions over \$300 to the governor (or lieutenant governor), a candidate for governor (or lieutenant governor), a legislative leadership committee, or any state or local political party.

According to the court's opinion, in April 2014 Della Pello received an invitation to attend a fundraising event on behalf of the Somerset County Republican Organization, a local political party, and the Committee to Elect Palmer and Zaborowski, a local candidate committee. The event invitation stated that contribution checks could be made payable to either committee. Della Pello's \$500 contribution check was made payable to the "Somerset County Republican Org to Elect Provenzano." (Provenzano was a local candidate who was not running for reelection that year.) The contribution check was deposited into the local political party's bank account, and Della Pello reported the contribution on its next pay-to-play contribution report.

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It wasn't until Della Pello received a letter from the New Jersey Department of Transportation notifying the company that it was rescinding a recently awarded \$3 million paving contract that Della Pello realized the error. According to the opinion, the company had intended to support the candidate committee, which would have been legal. Della Pello sought reconsideration, but the Department of Transportation, State Treasurer, and eventually a state appellate court, found their arguments unpersuasive. (During the appeal process, the Department of Transportation rescinded a second paving contract worth approximately \$4 million.)

Although New Jersey's pay-to-play law provides a safe harbor for such "inadvertent" contributions, it requires that the donor request and receive a refund of the contributions within 30 days of when the contribution was made. Della Pello promptly requested and received a refund once it learned of its error, but because this was done more than a year after the contribution was made, the safe harbor wasn't available to the company.

Della Pello isn't the only contractor to recently become ensnared by New Jersey's pay-to-play laws. As we previously reported, the CEO of a state contractor was sentenced to four years in prison for his role in a scheme to evade New Jersey's pay-to-play laws by reimbursing employees for their contributions.

As these cases demonstrate, New Jersey's pay-to-play laws leave no room for error. Wiley Rein's Election Law and Government Ethics Practice has extensive experience assisting companies seeking or holding state contracts in complying with New Jersey's state and local pay-to-play laws.