



ELEC tronic

An Election Law Enforcement Commission Newsletter

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Comments from the Chairman

Eric H. Jaso

The General Election is Over: Now What?

The November 6 General Election is over. What type of reports are required if a candidate won the election? What reports are required if a candidate lost?

Regardless of whether the candidate won or lost, if the candidate filed the long Form R-1, the Campaign Act requires a post-election report. This year, that report is due on November 26, 2018 and covers the time period from October 24 to November 23. A candidate must designate this report (or a report filed on April 15, 2019) as his or her final report for the election. When filing the final report, the candidate is required to complete a special section on the back of the Form R-1 titled "Declaration of Final Report."

The only exceptions to this rule are as follows:

- 1) The candidate has debt or net liabilities and will continue to raise money to pay the debt or net liabilities; or,
- 2) The candidate is maintaining the committee as a result of an election contest or recount; or,
- 3) The candidate is or will become an elected officeholder and has no intension of seeking re-election to a public office subject to the Campaign Act, and is maintaining the fund for the purpose of paying the ordinary and necessary expenses of holding public office. Such a candidate shall not receive contributions on or after the date when the candidate ceases to be an officeholder.

If the candidate lost the election and declines to raise money for a future election, the money left over should be spent according to six permissible uses set forth in the law.

A winning candidate may use the remaining funds for the "ordinary and necessary expenses of holding public

office." However, the candidate must file a final report for the 2018 General Election on November 26, 2018. At that time, the candidate is required to file Form D-1 or D-2 designating his or her next election, for example, "Primary 2020." On April 15, 2019 and each quarter thereafter, the candidate will file quarterly reports. The quarterly reports will disclose how the remaining funds are spent and will also disclose any new contributions and expenditures.

For example: Candidate Barbara Jones ran for Mayor in 2018. She has \$5,000 left in her account and decides to transfer the funds for her next run. On November 26, 2018, she will file Form R-1 with the last disbursement entry of \$5,000 transferred to her 2022 primary election account. Ms. Jones will then file quarterly reports until she is required to file primary 2022 reports.

To review the entire process in greater detail, refer to the "Compliance Manual for Candidates" which is available on ELEC's website at www.elec.state.nj.us or, contact the Compliance Division staff.

"Furthering the Interest of an Informed Citizenry"

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Executive Director's Thoughts

Jeff Brindle

Ban on NJ County Party Transfers Could be on Shakier Legal Ground Due to Missouri Court Ruling

Reprinted from insidernj.com

Could a recent ruling by the Eighth Circuit Court of Appeals spell trouble for New Jersey's ban on transfers of money between county party committees?

In November 2016, an amendment to Missouri's Constitution imposed a ban on contributions between political action committees (PACs). The amendment was approved by voters of Missouri.

Following the adoption of the amendment, Free and Fair Election Fund (FFEF) and the Association of Missouri Electric Cooperatives Political Action Committee (AMEC-PAC), challenged the prohibition on PAC-to-PAC transfers as a violation of the First and Fourteenth Amendments.

Missouri's Constitutional amendment read in part "Political Action Committees . . . shall be prohibited from receiving contributions from other political action committees . . ." The amendment was defended by the Missouri Ethics Commission.

After a hearing, the United States District Court for the Western District of Missouri – Jefferson City ruled that the State's amendment was "unconstitutional on its face under the First Amendment and unconstitutional as applied to FFEF."

The District Court enjoined, or permanently stopped the Missouri Ethics Commission from enforcing the provision.

In April 2018, the Missouri Ethics Commission appealed the District Court's ruling that permanently restricts the Commission's ability to prevent transfers of funds between PACs.

On September 10, 2018, the Eighth Circuit Court of Appeals, which has jurisdiction over cases in Arkansas, Iowa, Minnesota, Missouri, Nebraska, North Dakota, and South Dakota, upheld the decision of the District Court.

Circuit Court rulings are not binding on others because each district is independent. New Jersey belongs to the Third Circuit along with Delaware, Pennsylvania and the Virgin Islands. While not binding in that district, the Eighth Circuit case could lay out a legal roadmap for a successful challenge of New Jersey's law.

In its ruling, the Appeals Court stated "The district court properly enjoined enforcement of the transfer ban in its entirety. The amendment violated the First Amendment as applied to PACs that donate only to candidates and to PACs that both donate to candidates and make independent expenditures."

As justification for its decision, the Appeals Court cited the "low risk of quid pro quo corruption stemming from PAC-to-PAC transfers" and the "existence of other campaign finance laws that facilitate transparency."

In response to the Ethics Commission's argument that without the ban it would be difficult to track funds comingled by PACs, the Court noted "If disclosure laws will not help the public discern who gave money to whom, then we are hard pressed to see how a candidate

would identify an original donor to create a risk of quid pro quo corruption."

Whether or not the ruling by the Eighth Circuit Court of Appeals is appealed and subsequently taken up by the U.S. Supreme Court, it nevertheless calls into question the constitutionality of New Jersey's ban on county party to county party contributions.

Under the State's Campaign Contributions and Expenditures Reporting Act (19:44A-11.3a), county party committees are prohibited from making contributions to each other during the primary election period.

The statute reads in part ". . . , between January 1 and June 30 of each year, a county committee of a political party shall not make a contribution to any other county committee of a political party, nor shall any such county committee accept a contribution from any other county committee during that period."

At the time, the reason for such a restriction was to prevent a wealthy donor from spreading large donations around to county parties only to have those committees in turn wheel the donation to other county committees in circumvention of contribution limits.

The ban on inter-party transfers may have made more sense when it became law in 2006. But just 12 years later, the provision is outdated and counterproductive. The political party system in New Jersey has become very weak during the past decade.

Parties and the entire electoral system face an ever-growing threat from Super PACs and other independent special interest groups, which, unlike parties, can raise unlimited funds and often operate with little or no disclosure. Steps must be taken to reinvigorate

parties so they can counter the influence of these independent spenders.

Furthermore, the logic set forth in *Free and Fair Election Fund v. Missouri's Ethics Commission* is applicable to the State's ban on county party transfers.

If it is unconstitutional to restrict PAC-to-PAC transfers, whether made to PACs that contribute to candidates or spend independently, why is it not unconstitutional to restrict county party-to-county party donations?

The New Jersey Election Law Enforcement Commission has put forth a pragmatic set of proposals to strengthen political parties, simplify and strengthen pay-to-play, and require disclosure and registration of independent groups.

One of the prongs of its recommendation to strengthen political parties is to end the ban on county party contributions to each other. In the wake of the recent Eighth Circuit Appeals Court decision and with the serious need to offset the clout of independent groups by strengthening political parties, now may be the time for the Legislature to reconsider the ban on county party transfers.

The Legislature also needs to consider moving the full package of proposals that, together, would improve the State's electoral system by strengthening political parties and shrinking the power of dark money groups.

The Story of the Alleged \$3 Million Campaign Contribution/Bribe and Why ELEC Matters

By Joe Donohue

Abner "Longie" Zwillman once dated actress Jean Harlow and was dubbed the "Al Capone of New Jersey".

He was born in Newark and lived in West Orange when he died of suicide in 1959.

While he tried to go "legit," he got his start doing business with such infamous associates as Bugsy Siegel, Lucky Luciano and Dutch Schultz.

One of the most fascinating revelations about Zwillman is that he allegedly offered the equivalent of \$3 million as a political donation to a New Jersey gubernatorial candidate in 1949, according to federal witnesses.

There was just one catch - he would get to pick the attorney general after the election.

The bribe/contribution was turned down by Elmer H. Wene, the Democratic gubernatorial candidate from Cumberland County, and a farmer-businessman celebrated as the "world's greatest expert on chickens."

Along with being a great yarn, this story offers a glimpse into the dark old days of New Jersey politics.

The bribe attempt occurred decades before the New Jersey Legislature created a strong inducement against such behavior when it enacted a 1973 state law requiring candidates to fully and timely disclose to voters their contributions and expenses.

Those that don't may face an investigation by the New Jersey Election Law Enforcement Commission or even the state Attorney General.

In 1949, politics in New Jersey was like the Wild West. Candidates faced little accountability for the funds they raised and spent.

Federal and state campaign finance laws were weak and rarely enforced before the Watergate scandal led to a major overhaul in the early 1970s.

President Lyndon Johnson, in his 1966 State of the Union message, said federal statutes "were more loophole than law. They invited evasion and circumvention."

New Jersey's laws were equally feeble. "A veil of secrecy shrouds much of this area," says the Interim Report of the Election Revision Commission in September 1970.

Added the late former state Senator William Schluter in memoirs: "Gaping loopholes in the then-governing law allowed virtually unlimited amounts of money to flow freely to a candidate just by channeling funds through a separate committee allied with the candidate." Such contributions did not have to be reported. Schluter authored the 1973 bill that created ELEC and imposed stronger disclosure laws.

In the era of truly dark money decades ago, Zwillman, through intermediaries, allegedly approached Democratic state Senator Wene, who besides being a prosperous chicken farmer was a former congressman and his party's nominee for governor in 1949.

The racketeer made an offer through an associate of \$300,000- more than \$3 million in 2018 dollars- if he got to pick the attorney general, according to "Final Report of the Special Committee to Investigate Organized Crime in Interstate Commerce, United States Senate, August 31, 1951."

When Zwillman offered his contribution, there were no limits. Under current laws, the most an individual contributor could give a

gubernatorial candidate in 2017 was \$4,300 per election.

The largest known legal contribution to a gubernatorial candidate (not counting contributions by wealthy candidates to their own campaigns) occurred in the 1977 primary election. It was the last gubernatorial primary without contribution limits. Developer Peter Levine gave \$331,753 to unsuccessful Democratic primary candidate Robert Roe, an amount worth nearly \$1.4 million in current dollars.

In case you are wondering how Zwillman could afford such a large bribe to Wene, federal investigators said just his boot-legging operations earned more than \$50 million during the Prohibition era.

He personally testified that the contribution offer “never existed.” Keep in mind that Zwillman was described in a story about his death as a “master at covering his traces, financial, political and otherwise.” Also, according to an FBI memo to J. Edgar Hoover, he once gave \$300,000 to “men in the Internal Revenue Department to squash a tax claim in a liquor firm.”

Zwillman also allegedly offered former Congressman Peter Rodino \$100,000 to run for Newark mayor and even agreed to pay \$50,000 to any person who would help locate the Charles Lindbergh baby.

James A. Bishop of Teaneck, a Wene aide and former reporter, testified before the investigatory panel that he was told the \$300,000 was offered because “Zwillman does not want the Wene administration to hurt him...that is all he asks.” Earl A. Baldwin, a retired income tax inspector, also testified the bribe offer was made.

The surprise is that the candidate spurned the gesture in an era when such the money could have been easily hidden. “It is to Mr. Wene’s great credit that he turned this offer down flatly, without even permitting the proposal to

be fully explained to him,” says the report.

Wene may have had the luxury of being honest because he was a prosperous businessman.

In a profession where the “rubber chicken circuit” is a cliché, the poultry-raising farmer once provided his fellow Congressional members with such dinners, according to his January 27, 1957 obituary. At one point, Wene’s farms produced 5 million chickens annually.

After forsaking Zwillman’s offer, Wene paid a price for his integrity. He lost to incumbent Republican Governor Alfred Driscoll in part because “insurgent” Hudson County Democrats rallied behind Driscoll, who became the first Republican since Warren Harding to carry Jersey City.

“...there is a strong chance that Zwillman had something to do with having that vote swing away from Wene,” says the investigative report.

Wene ran again in 1953 and lost the primary by less than 1,600 votes to Robert Meyner, who would go on to become governor.

While today’s laws may not totally stop illegal donations, they create a huge penalty- forfeiture of office- for someone who gets caught accepting \$50,000 or more in illegal contributions.

A little-known provision in ELEC’s law allows the commission to remove any candidate who takes more than \$50,000 in illegal contributions if it determines the violation “had a significant impact on the outcome of the election.” The commission has never had to invoke this clause during its 45-year history. Lesser penalties can lead to stiff fines.

There are always going to be some people who break the law. Some people commit murder even though they may face the death penalty. Some are going to make illegal campaign contributions

or even direct bribes despite existing prohibitions.

Even with tougher campaign finance laws, there have been some well-known examples of illegal donations/bribes since 1949 though the amounts pale in comparison to Zwillman’s offer.

The Abscam undercover operation of the late 1970s led to the convictions of one U.S. senator, six U.S. representatives and several local officials on various bribery and corruption charges. The biggest cash payments were about \$125,000- worth nearly half-million dollars today but not close to \$3 million dangled by Zwillman.

Operation Bid Rig, a major corruption investigation conducted by the FBI, IRS and US Attorney’s Office, culminated in the arrest of 44 people in New Jersey and New York in July 2009 and led to numerous convictions. Those implicated in the probe accepted as little as \$1,000 to about \$72,000. Most were in the \$10,000 to \$30,000 range.

An extensive probe by the state Attorney General’s office led to multiple convictions of employees of Birdsall Services Group for giving more than \$1 million in illegal political contributions between 2006 and 2012. The funds were given to scores of New Jersey candidates and committees to secure about \$84 million in public contracts. The biggest issue with the contributions is that the employees were illegally reimbursed. The size of the checks individually- \$300 or less- actually were small.

While abuses may sometimes occur, most people are going to think twice knowing they face fines or even jail-time.

Maybe even Longie himself if he was still around.

“Big Six” Fundraising Committees

The so-called Big Six ended the first three quarters of the year with the best fund-raising totals since 2012 when comparing other recent years without statewide, non-federal elections, according to new reports filed with the New Jersey Election Law Enforcement Commission (ELEC).

The two major parties and four legislative leadership committees have raised a combined \$3.8 million so far this year. That figure is less than 34 percent of the \$5.8 million raised last year, when both the governor’s seat and both legislative houses were in contention.

It is typical for fund-raising to taper off between elections. Even so, the amount raised so far this year is 75 percent more than the \$2.2 million raised at this point in 2016, and 57 percent more than the \$2.4 million collected in 2014. Those years also lacked statewide, non-federal elections.

Table 1
Campaign Finance Activity by “Big Six”
January 1 through September 30, 2018

BOTH PARTIES	RAISED	SPENT	CASH-ON-HAND	NET WORTH	STATEWIDE ELECTION (NON-FEDERAL)
2007	\$9,322,604	\$6,713,165	\$7,368,421	\$7,095,891	Senate and Assembly
2008	\$4,457,887	\$3,508,376	\$1,519,083	\$1,134,427	
2009	\$6,309,496	\$5,098,191	\$3,073,241	\$2,746,784	Governor and Assembly
2010	\$3,160,458	\$2,859,927	\$1,664,237	\$1,457,787	
2011	\$6,913,921	\$5,025,694	\$3,428,259	\$3,123,885	Senate and Assembly
2012	\$4,083,910	\$3,971,806	\$1,331,432	\$1,192,473	
2013	\$7,203,008	\$5,917,331	\$2,970,203	\$2,884,025	Governor and Both Houses
2014	\$2,444,799	\$1,887,661	\$1,388,946	\$ 765,268	
2015	\$3,896,539	\$3,579,018	\$1,984,629	\$1,346,849	Assembly only
2016	\$2,195,300	\$1,985,370	\$1,188,706	\$1,039,918	
2017	\$5,835,574	\$5,354,876	\$2,317,953	\$2,233,450	Governor and Both Houses
2018	\$3,846,796	\$3,293,435	\$1,298,934	\$1,214,430	

While the two state parties are participating in this year’s congressional elections, they use both federal and state accounts to raise funds and pay for expenses. This analysis includes only the campaign finance activity reported for their state accounts.

Jeff Brindle, ELEC’s Executive Director, said it is a good sign that the Big Six committees are doing better compared to recent off-election years. But their fundraising still is down drastically since the early 2000s. Party coffers have declined steadily since tight restrictions on contributions by public contractors took effect around 2005, and court rulings prompted special interest groups to spend more money independently instead of funneling it through parties.

Bi-partisan legislation pending in the Legislature recommended by ELEC could strengthen the state’s political parties by allowing them to accept larger contributions, freeing them from pay-to-play restrictions and mandating that independent spenders fully disclose their campaign finance activities just like parties and candidates.

“As parties weaken, independent groups that are far less accountable and transparent are taking over the electoral process in New Jersey and nationally,” Brindle said. “ELEC’s legislative fixes may not be the perfect cure but they will help reverse this trend.”

With the inauguration of Democrat Phil Murphy in January after eight years of rule by Republican Governor Chris Christie, Democratic fund-raising has out-paced Republicans this year. Democrats, who also control both legislative houses, have raised and spent nearly five times more money through September 30, 2018, and reported more than twice as much cash in the bank.

Table 2
Fundraising by "Big Six" Committees
January 1 through September 30, 2018

ACTIVITY FIRST THREE QUARTERS 2018				
REPUBLICANS	RAISED	SPENT	CASH-ON-HAND	NET WORTH
New Jersey Republican State Committee	\$ 280,285	\$ 292,259	\$ 90,816	\$ 90,816
Senate Republican Majority	\$ 242,084	\$ 145,897	\$ 163,372	\$ 163,372
Assembly Republican Victory	\$ 150,800	\$ 133,701	\$ 107,418	\$ 107,418
SUB TOTAL- REPUBLICANS	\$ 673,169	\$ 571,857	\$ 361,606	\$ 361,606
DEMOCRATS				
New Jersey Democratic State Committee	\$2,260,211	\$2,076,697	\$ 569,710	\$ 535,646
Senate Democratic Majority	\$ 241,488	\$ 159,373	\$ 154,336	\$ 134,335
Democratic Assembly Campaign Committee	\$ 671,928	\$ 485,508	\$ 213,282	\$ 182,843
SUB-TOTAL- DEMOCRATS	\$3,173,627	\$2,721,578	\$ 937,328	\$ 852,824
TOTAL- BOTH PARTIES	\$3,846,796	\$3,293,435	\$1,298,934	\$1,214,430

A side-by-side look at comparable numbers four years ago shows Democratic fundraising, spending and cash-on-hand all are up. All Republican totals are down during that same period.

Table 3
Fundraising by "Big Six" Committees
through September 30-
2018 versus 2014

REPUBLICANS	RAISED	SPENT	CASH-ON-HAND	NET WORTH
2014	\$ 1,565,717	\$ 1,040,757	\$ 1,034,270	\$ 473,571
2018	\$ 673,169	\$ 571,857	\$ 361,606	\$ 361,606
Difference-Dollars	\$ (892,548)	\$ (468,900)	\$ (672,664)	\$ (111,965)
Difference-%	-57%	-45%	-65%	-24%
DEMOCRATS				
2014	\$ 879,082	\$ 846,904	\$ 354,676	\$ 291,697
2018	\$3,173,627	\$2,721,578	\$ 937,328	\$ 852,824
Difference-Dollars	\$2,294,545	\$1,874,674	\$ 582,652	\$ 561,127
Difference-%	261%	221%	164%	192%
BOTH PARTIES				
2014	\$2,444,799	\$1,887,661	\$1,388,946	\$ 765,268
2018	\$3,846,796	\$3,293,435	\$1,298,934	\$1,214,430
Difference-Dollars	\$1,401,997	\$1,405,774	\$ (90,012)	\$ 449,162
Difference-%	57%	74%	-6%	59%

State Parties and Legislative Leadership Committees are required to report their financial activity to the Commission on a quarterly basis. The reports are available on ELEC's website at www.elec.state.nj.us. ELEC also can be accessed on Facebook (www.facebook.com/NJElectionLaw) and Twitter (www.twitter.com/elecnj).

Reporting Dates Reminder

	INCLUSION DATES	REPORT DUE DATE
GENERAL (90-DAY START DATE: AUGUST 8, 2018)*** - NOVEMBER 6, 2018		
29-day Preelection Reporting Date	6/23/2018 - 10/5/2018	10/9/2018
11-day Preelection Reporting Date	10/6/2018 - 10/23/2018	10/26/2018
20-day Postelection Reporting Date	10/24/2018 - 11/23/2018	11/26/2018
48-Hour Notice Reporting Starts on 10/24/2018 through 11/6/2018		
RUNOFF (DECEMBER)** - DECEMBER 4, 2018		
29-day Preelection Reporting Date	No Report Required for this Period	
11-day Preelection Reporting Date	10/24/2018 - 11/20/2018	11/23/2018
20-day Postelection Reporting Date	11/21/2018 - 12/21/2018	12/24/2018
48-Hour Notice Reporting Starts on 11/21/2018 through 12/4/2018		
PACS, PCFRS & CAMPAIGN QUARTERLY FILERS		
3 rd Quarter	7/1/2018 - 9/30/2018	10/15/2018
4 th Quarter	10/1/2018 - 12/31/2018	1/15/2019
GOVERNMENTAL AFFAIRS AGENTS (Q-4)		
3 rd Quarter	7/1/2018 - 9/30/2018	10/10/2018
4 th Quarter	10/1/2018 - 12/31/2018	1/10/2019

* Inception Date of Campaign (first time filers) or from January 1, 2018 (Quarterly filers).

** A candidate committee or joint candidates committee that is filing in a 2018 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 12, 2018 for Primary Election Candidates and June 15, 2018 for Independent General Election Candidates.

Note: A fourth quarter 2017 filing is needed for Primary 2018 candidates if they started their campaign prior to December 7, 2017. A second quarter 2018 filing is needed by Independent/Non-Partisan General Election candidates if they started their campaign prior to May 9, 2018.

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