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NEWSLETTER

Changes in the States

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California

Limits Imposed on Contributions to Ballot Measure Committees
On June 25, 2004, the California Fair Political Practices Commission (FPPC) instituted limits on contributions to ballot measure committees that are controlled by state candidates. The highest state candidate contribution limit applies to ballot measure committees that are controlled by more than one candidate. The new rules become effective on November 3, 2004.

Another new FPPC regulation, effective upon filing with the Secretary of State, imposes limits on persons that pay for certain communications that feature, but do not expressly advocate for or against, a candidate and are made at the behest of the candidate.

Connecticut

Changes to Gift Law and Government Contracts
On June 1, 2004, Governor Rowland of Connecticut signed former House Bill No. 5025 into law. In Public Act 04-425, the state changes one of its gift rules and adds a provision dealing with contracts and gifts.

First, the state eliminates the "major life event" exception from the definition of "gift" for gifts from persons "(i) doing business with or seeking to do business with the department or agency in which the official or employee is employed or (ii) is engaged in activities which are directly regulated by such department or agency." Major life events include weddings, bar mitzvahs and the birth of a child.

Second, the state attaches gift disclosure requirements to those seeking and receiving contracts. All persons, corporations and firms bidding on or proposing contracts with state agencies or quasi-public agencies must now submit sworn affidavits, subject to the penalties for false statements, if the contract is a "large state contract." These affidavits must include the following information:

Whether or not (A) such person, firm, corporation, (B) any principals and key personnel of the person, firm or corporation, who participated substantially in preparing the bid or proposal, or (C) any agent of such person, firm, corporation or principals and key personnel, who participated substantially in preparing the bid or proposal, provided a gift during the two-year period preceding the submission of such bid or proposal, to (i) any public official or state employee of the state agency or quasi-public agency soliciting bids or proposals for the contract, who participated substantially in the preparation of the bid solicitation or request for proposals for the contract, or (ii) any public official or state employee of any other state agency, who has supervisory or appointing authority over such state agency or quasi-public agency.

The affidavits also must attest that "no such principals and key personnel of the person, firm or corporation or agent of such person, firm, corporation or principals and key personnel knows of any action by the person, firm or corporation to circumvent the requirements of this subdivision by providing for any other principals and key personnel, official, employee or agent of the person, firm or corporation to provide a gift to any such public official or state employee." If any gift described had been provided, the affidavit must include the name of the recipient, a description of the gift and the value and approximate date of the gift.

Moreover, the state agency or quasi-public agency must obtain from any person, firm or corporation executing a large public contract a sworn affidavit, subject to the penalties for false statements, that attests to whether or not gifts were provided by the same persons between the date of the bid or proposal affidavit and the date of execution of the contract, to "(i) any public official or state employee of the state agency or quasi-public agency soliciting bids or proposals for the contract, who participated substantially in the preparation of the bid solicitation or request for proposals for the contract or the negotiation or award of the contract; or (ii) any public official or state employee of any other state agency, who has supervisory or appointing authority over such state agency or quasi-public agency." If any such gift was provided, the affidavit shall include the name of the recipient, a description of the gift and the value and approximate date of the gift.

Indiana

Changes Made to Lobbying and Ethics Laws

On April 27, 2004, the Governor of Indiana issued Executive Order 04-08 and Executive Order 04-11, which make three changes to the state's ethics and lobbying rules. The pertinent provisions of these Executive Orders took effect on July 5, 2004.

First, Executive Order 04-08 prohibits state agency employees from accepting gifts, favors, services, entertainment, food or drink in any amount from a person who has a business relationship with the employee's agency. This prohibition is also extended to independent corporate and political bodies of the state. Importantly, the many gift exceptions found in the state ethics statute are also applicable to the Executive Order.

Second, the Governor now requires that all contracts with state agencies "contain a provision requiring that the contractor and its agents...abide by all ethical requirements that apply to persons who have a business relationship with an agency." An agency may terminate a contract if the contractor or its agents violate any applicable ethics standard.

Third, the Governor ordered the Commissioner of the Indiana Department of Administration to promulgate rules requiring the registration of individuals who lobby the Executive Branch. According to Executive Order 04-11, the term "lobby" must mean "contacts made to promote, support, influence, modify, oppose, or delay the outcome of an Executive Branch action by direct communication with designated Executive Branch officials and employees." Reporting must be at least semi-annually.

To view the Governor's executive orders, or for more information visit www.in.gov/gov/execorders.

New Jersey

Dramatic Expansion of Lobbying Law
On June 16, 2004, Governor McGreevey of New Jersey signed into law several amendments to the state's lobbying and campaign finance statutory requirements. Effective immediately, five amendments are of particular interest in the way they expand the coverage of the lobbying laws (applicable to lobbyists, who are now known as "governmental affairs agents") or give new powers to the lobbying enforcement agency. Several other amendments change the campaign finance laws. Finally, the state created a broad "Pay to Play" policy, but this new policy does not become effective until January 1, 2006.

First, the state commences regulation of attempts to influence "governmental processes," which include a whole host of governmental activities such as the negotiation and award of public contracts, procedures for purchasing decisions, ratemaking, etc. This expansion of lobbyist regulation goes beyond the previous areas of legislation and regulation and requires registration within 30 days of the enactment of these amendments.

Second, the state expands certain lobbyist reporting requirements to include expenditures for certain public grassroots communications. Covered communications are those disseminated to the general public through direct mail or in the form of a paid advertisement in a newspaper, magazine or other printed publication of general circulation or aired on radio, television or other broadcast medium. Communications covered by the new lobbying provisions also must explicitly support or oppose a particular item or items of legislation or regulation or be reasonably understood, irrespective of whether the communication is addressed to the general public or to persons in public office or employment, as intended to influence legislation or to influence regulation.

In addition, the state specifically allows random audits of lobbyists' records and eliminates the ability of lobbyists to be compensated on a contingent basis. Finally, the state imposes a lobbyist registration fee. The state's enforcement agency, the New Jersey Election Law Enforcement Commission (ELEC), is still digesting how to enact each of these laws, but plans to post updates on procedures and new regulations on its website at www.elec.state.nj.us.

Changes to Campaign Finance Laws

The state, through legislation signed on June 16, 2004, also changed various aspects of the campaign finance regime. First and among other things, the state created a registration system for certain political fundraisers who raise more than $5,000 per year for political entities in the state. Second, the state lowered the itemization threshold for certain campaign finance reports. Third, the state prohibited contributions on state-owned land. Fourth, the state added telephone calls with recorded messages to its campaign advertisement policy.

"Pay to Play"

On January 1, 2006, a "Pay to Play" statutory regime will become effective in New Jersey. In short, this regime will restrict the ability of certain businesses that contract with the state, a county or a municipality to give certain campaign contributions and prohibits those that do give such contributions from entering into certain contracts with the state, a county or a municipality. More details will be provided in future *Election Law News* as the effective date approaches.

Oklahoma

New "Levin Fund" Rule and Other Changes

On July 1, 2004, several campaign finance changes made by the Oklahoma Ethics Commission (Commission) became effective. These changes are part of an annual review conducted by the Commission. Pertinent changes are summarized below.

First, the Commission sets at $10,000 per year the contribution limit for individual contributions to the "Levin Funds" of state, district and local political party committees. Although the figure $10,000 does not appear in the text of the new rule, the synopsis of the rule changes shows the limit as $10,000, *see* Commission, *Synopsis of 2004 Amendments* (Feb. 3, 2004), and the Executive Director of the Commission has indicated that a $10,000 limit was the intent of the rule change. Moreover, contributions to these Levin Funds are not aggregated with other contributions to state parties for purposes of the individual and family yearly contribution limits. Levin Funds or Levin Accounts are those accounts created by the BCRA from which state, district and local party committees may spend money on certain "federal election activities," such as voter registration within 120 days of a federal election, get-out-the-vote activities, and voter identification activities.

Second, last minute reports of contributions, receipts and independent expenditures no longer may be filed on diskette.

Finally, PACs in Oklahoma are no longer required to file paper reports after filing reports electronically.

The Oklahoma Ethics Commission Annual Review can be found at www.ethics.state.ok.us/finalrules04.pdf. *Synopsis of 2004 Amendments* (Feb. 3, 2004) is available at www.ethics.state.ok.us/synopsis04.pdf.