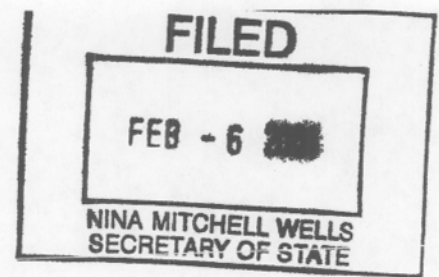


ORDINANCE NO.05-09

INTRODUCTION DATE 01-05-05

ADOPTION DATE 02-02-05



AN ORDINANCE AMENDING CHAPTER II (ADMINISTRATION), BY CREATING SECTION 2-61 (RESTRICTIONS ON AWARD OF PROFESSIONAL CONTRACTS) OF THE REVISED GENERAL ORDINANCES OF THE TOWNSHIP OF MILLSTONE, MONMOUTH COUNTY, NEW JERSEY

BE IT ORDAINED by the Township Committee of the Township of Millstone, County of Monmouth and State of New Jersey, as follows

I

Chapter II, Administration, Chapter 2-61, Restrictions on Award of Professional Contracts, is hereby created to read as follows:

2-61 RESTRICTIONS ON AWARD OF PROFESSIONAL CONTRACTS.

2-61.1 Restrictions on Award of Professional Contracts.

Whereas, professional business entities may make political contributions to the election campaigns of the local government elected officers and ultimately be awarded a professional service contract(s) or other contracts or agreements which are not subject to public bidding; and

Whereas, political contributions from professionals receiving discretionary contracts from the elected officials who receive such contributions raise concerns of the part of taxpayers as to their trust in the process of government and possibly the qualify and/or cost of services received; and

Whereas, pursuant to N.J.S.A. 40A:11-5 and N.J.S.A. 40:48-2, municipalities have the right to establish rules and procedures for contracting with business entities, therefore, we establish the following policy for Millstone Township and prohibit the appointment of/or entering into any contracts with professional business entity that contributed above the limits set forth herein (directly or indirectly through a third party such a as a Political Action Committee) to the election (or post-election) of any candidate (elected or not) for Township Committee.

2-6.2 Prohibition on Awarding Public Contracts to Certain Contributors.

a. Any other provision of law to the contrary notwithstanding, the municipality or any of its purchasing agents or agencies, including all boards, commissions and councils or any of its independent authorities, as the case may be, shall not enter into an agreement or otherwise contract to procure services, including banking services/relationships or insurance coverage services, from any professional business entity, if that entity made any “qualifying contributions.”

b. “Qualifying Contributions” are defined as:

Any contribution of money, or pledge (current or future) of a contribution, including, in-kind contributions which, in the aggregate, exceed the limits set forth in Section 2-61.3, to any municipal campaign, any Millstone municipal party committee; any party committee of any county (unless during the preceding calendar year, no Qualifying Contribution has been made to a local candidate or a Millstone Township municipal party committee by the county party committee to which the professional business entity may have contributed), or any political action committee (unless during the preceding calendar year, no Qualifying Contribution has been made to a local candidate or a Millstone Township municipal party committee by the political action committee to which the professional business entity may have contributed) within one calendar year immediately preceding the date of the contract or agreement or during the term of such a contract or agreement.

c. No professional business entity which enters into negotiations for, or agrees to, any contract, relationship or agreement with the municipality or any department, board, commission, council or agency thereof or of its independent authorities for the rendition of professional, banking or insurance coverage services shall knowingly solicit or make any Qualifying Contribution(s), which, in the aggregate, exceed the limits set forth in Section 2-61.3, between the time of first communications between that business entity and the Township regarding a specific professional services agreement and the later of the termination of negotiations or the completion of the contract or agreement.

d. For purposes of this Ordinance, a "professional business entity" seeking a public contract means an individual including the individual's spouse, if any, and any child living at home; person; firm; corporation; professional corporation; partnership; organization; or association. The definition of a business entity includes all principals who own 1% or more of the equity in the corporation or business trust; partner, and officers in the aggregate employed by the entity as well as any subsidiaries directly controlled by the business entity.

e. Any individual meeting the definition of "professional business entity" under this subsection is excluded from making any Qualifying Contribution(s) which, in the aggregate, exceed the limits set forth in Section 2-61.3, without violating this Ordinance.

f. For purposes of this subsection, the office that is considered to have ultimate responsibility for the award of the contract shall be the Township Committee. However, the restrictions of this

Ordinance apply to boards, commissions, councils or agencies of the Township whose appointments of professionals either requires the approval of the Township Committee or whose operating funds are subject to appropriation by the Township Committee.

2-61.3 Limits of Contributions

In any calendar year, a professional business entity may make Qualifying Contribution(s) not exceeding the following limitations without being considered in violation of the Ordinance:

- a. \$100.00 total, in the aggregate, to candidates for Millstone Township Committee.
- b. \$200.00 total, in the aggregate, to Millstone Township political party committees and/or political action committees (unless during the preceding year no “qualifying contribution” has been made to any candidate for Millstone Township Committee or to any Millstone Township party committee from a Monmouth County party committee to which the professional business entity may have contributed).
- c. \$200.00, in the aggregate, to Monmouth County political party committees (unless during the preceding year no “qualifying contribution” has been made to any candidate for Millstone Township committee or to any Millstone Township party committee from a Monmouth County party committee to which the professional business entity may have contributed).

2-61.4 Contributions Made Prior to the Effective Date.

Any Qualifying Contribution made prior to the adoption of this Ordinance by a professional business entity shall not be deemed a violation of this Ordinance.

2-61.5 Contribution Statement by Professional Business Entity.

- a. Prior to awarding any contract or agreement to procure services, including banking or insurance coverage services, with any professional business entity, the Township or any of its purchasing agents or agencies, as they case may be, shall receive a sworn statement from the professional business entity made under penalty of perjury that the bidder or offeror has not

made a Qualifying Contribution in violation of this Ordinance and has not made or solicited contributions through intermediaries for the purpose of concealing the source of the contribution(s).

b. The professional business entity shall have a continuing duty to report any violations of this Ordinance that may occur during the negotiation or duration of a contract or relationship. The certification required under this subsection shall be made prior to entry into the contract or agreement with the Township and shall be in addition to any other certifications that may be required by any other provision of law.

2-61.6 Return of Excess Contributions.

A professional business entity may cure a violation of this Ordinance, if, within 30 days after the general election, the professional business entity notifies the Township Committee in writing and seeks and receives reimbursement of any excess contribution.

2-61.7 Retroactivity of Future Clarifications Adopted.

It is anticipated that there may be some professional business entities which determine to attempt a legalistic adherence to the letter, rather than the spirit of this Ordinance. It is the declared intent of this municipal governing body to remain vigilant to recognize such attempts to subvert the underlying purposes for which this Ordinance was adopted. Any professional business entity which may attempt such creative subversion does so at its peril. If and in the event creative actions are taken in order to defeat the purposes of this Ordinance, it is the intention of the governing body to enact appropriate clarification of this Ordinance, which clarification shall be retroactive to the initial effective date of this Ordinance thereby disqualifying such creative professional business entities from serving the Township. Changes to this Ordinance which are not for purposes of clarification, but which are amendments to the provisions hereto, shall become effective upon adoption and publication according to law.

2-61.8 Vote Necessary for Ordinance Repeal.

This Ordinance may be repealed only upon four (4) affirmative votes of the governing body.

2-61.9 Penalty.

a. All Township professional service agreements shall provide that it shall be a breach of the terms of the government contract for a professional business entity as defined herein to violate this Ordinance or to knowingly conceal or misrepresent contributions given or received, or to make or solicit contributions through intermediaries for the purpose of concealing or misrepresenting the source of the contribution.

b. Any professional business entity herein who knowingly fails to reveal a contribution made in violation of this Ordinance, or who knowingly makes or solicits contributions through intermediaries for the purpose of concealing or misrepresenting the source of the contribution, shall be disqualified from eligibility for future Township contracts for a period of four calendar years from the date of the violation.

c. Notwithstanding the foregoing paragraphs a. and b., any person or entity who violates any provision of this Ordinance shall, upon conviction, be liable for the penalties set forth in Section 1-5 of the Revised General Ordinances of the Township.

2-61.10 Severability.

If any provision of this Ordinance, or the application of any such provision to any person or circumstances, shall be held invalid, the remainder of this Ordinance to the extent it can be given effect, or the application of such provision to persons or circumstances other than those to which it is held invalid, shall not be affected thereby, and to this extent the provisions of this law are severable.

II

All Ordinances and parts of Ordinances inconsistent herewith are hereby repealed.

III

This Ordinance shall take effect upon adoption and publication according to law.

EXPLANATORY STATEMENT: This Ordinance establishes the following policy on professional business entities that contribute to Township Committee candidates' political campaigns, township employees, appointees, as well as municipal and county political

committees, beyond which they become ineligible to receive public professional services contracts or other contracts which are not subject to public bidding from Millstone Township.