COUNTY OF MERCER, NEW JERSEY

ORDINANCE NO. 2004- 14

1st Reading..November..23,..2004....

2nd Reading..December..16,..2004....
Public Hearing...December..16,.. 2004

Date Adopted:

.....December 17, 2004.....

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Effective:....February..1,..2005

Date to County Executive..December..17, 2004

Date Returned.....

Date Resubmitted to Board.....

Approved as to Form and Legality

.....
Deputy County Counsel

FILED
MAY - 5 2006
NINA MITCHELL WELLS
SECRETARY OF STATE

AN ORDINANCE AMENDING THE ADMINISTRATIVE CODE OF MERCER COUNTY, NEW JERSEY, ESTABLISHING A PROHIBITION ON AWARDING PROFESSIONAL SERVICES CONTRACTS TO CERTAIN CONTRIBUTORS TO POLITICAL CAMPAIGNS (AMENDMENT NO. 9)

WHEREAS, the provisions of the New Jersey Local Public Contracts Law, N.J.S.A. 40A:11-1 *et seq.*, permits the awarding of professional service contracts without the requirement of public bidding; and,

RECORD OF VOTE

First Reading							Second Reading						
FREEHOLDER	Aye	Nay	N.V.	Abs.	Res.	Sec.	FREEHOLDER	Aye	Nay	N.V.	Abs.	Res.	Sec.
Cannon	X						Cannon	X				✓	
Carabelli	X					✓	Carabelli	X					✓
Colavita	X				✓		Colavita	X					
Hamilton	X						Hamilton	X					
Mack				X			Mack	X					
Walter	X						Walter	X					
Muoio	X						Muoio	X					

X—Indicates Vote Abs.—Absent N.V.—Not Voting
Res.—Resolution Moved Sec.—Resolution Seconded

Rejected ☐ By.....
Approved ☑ County Executive
Reconsidered
By Board.....

Override ☐ ☐
Vote Aye Nay

.....
President of the Board

.....
Clerk to the Board

WHEREAS, it has become common for professional business entities to make political contributions to the election campaigns of county government elected officers having substantial influence or responsibility for the awarding of professional service contracts, or other contracts or agreements which are not subject to public bidding; and,

WHEREAS, pursuant to N.J.S.A. 40A:11-5 and N.J.S.A. 40:48-2, Counties have the right to establish rules and procedures for contracting with professional business entities; now, therefore,

BE IT ORDAINED, that the policy of the County of Mercer will be to set maximum amounts that a professional business entity may contribute to Mercer County political campaigns per year beyond which the professional business entity shall be deemed ineligible to receive a public professional service contract from the County of Mercer unless formal bids are received for such a contract.

Section 1: Prohibition on Awarding Public Contracts to Certain Contributors to Political Campaigns

(a) Any other provision of law to the contrary notwithstanding, the County or any of its purchasing agents or agencies or those of its boards, independent authorities and commissions, as the case may be, shall not enter into a professional service contract or otherwise contract to procure services with any professional business entity, if that entity has solicited or made any contribution of money, or pledge of a contribution, including in-kind contributions, directly or indirectly, to a campaign committee or fund of any candidate for holder of a public office within Mercer County government having substantial influence or responsibility for the award of contracts, or to any Municipal or County party committee, or to any political action committee (PAC) that is organized for the purpose of promoting or supporting Mercer County candidates or officeholders, in excess of the thresholds specified in subsection (d) within one calendar year immediately preceding the date of the contract or agreement.

(b) No professional business entity which enters into negotiations for, or agrees to, any contract or agreement with the County or any department or agency thereof, or of its boards, independent authorities or commissions for the rendition of professional services or any other no-bid consulting, shall knowingly solicit or make any contribution of money, or pledge of a contribution, including in-kind contributions, directly or indirectly, to any Mercer County candidate or holder of public office having substantial influence or responsibility for the award of contracts, or to any Municipal or County party committee, or to any PAC that is organized for the purpose of promoting or supporting Mercer County candidates or County officeholders, between the time of first communications between that business entity and the County regarding a specific professional services agreement and the later of the termination of negotiations or the completion of the contract or agreement.

(c) 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, joint venture, limited liability company, association or other legal entity. The definition of a business entity includes all principals who own 10% or more of the equity in the corporation or business trust, partners, and officers in the aggregate employed by the entity as well as any subsidiaries directly controlled by the business entity.

(d) Any individual meeting the definition of "professional business entity" under this section may annually contribute a maximum of $400.00 each for any purpose to any candidate for County Executive, Freeholder, County Clerk, Sheriff and Surrogate, or $400.00 to a Municipal or County party committee, or to a PAC referenced in this Ordinance, without violating subsection (b) of this section. However, any group of individuals meeting the definition of "professional business entity" under this section, including such principals, partners, and officers of the entity in the aggregate, may not annually contribute for any purpose in excess of $2,500.00 to all Mercer County candidates and officeholders having substantial influence or responsibility for the award of contracts, and all Municipal or County party committees and PACs referenced in this Ordinance combined, without violating subsection (b) of this section.

(e) For purposes of this section, the holder of a public office having substantial influence or responsibility for the award of any public contract shall be:

(1) The Mercer County Board of Chosen Freeholders, if the contract requires approval or appropriation from the Board of Freeholders;

(2) The Mercer County Executive, if the contract requires approval of the County Executive, or if a public officer who is responsible for the award of a contract is appointed by the County Executive; and,

(3) The Mercer County Sheriff, Surrogate and County Clerk, who may make recommendations for the award of a contract for a particular professional business entity.

(a) "Professional Services" shall have the same meaning as set forth in the Local Public Contracts Act, N.J.S.A. 40A:11-1 *et seq*.

(b) The limitations set forth in (d) shall not apply in the event the subject contract is offered to the lowest responsible, qualified bidder after public advertising for bids and quotes, pursuant to the provisions of the competitive contracting requirement of the Local Public Contract Act, N.J.S.A. 40A:11-1 *et seq*.

Section 2: Contributions Made Prior to the Effective Date

No contribution of money or any other thing of value, including in-kind contributions, directly or indirectly, made by a professional business entity to any candidate for County Executive, Freeholder, County Clerk, Sheriff or Surrogate, or Municipal or County party committee or PAC referenced in this Ordinance shall be deemed a violation of this section, nor shall an agreement for property, goods, or services, of any kind whatsoever, be disqualified thereby, if that contribution was made by the professional business entity prior to the effective date of this section.

Section 3: 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 County or any of its purchasing agents or agencies, boards, independent authorities or commissions, as the case may be, shall receive a sworn statement or certification from the professional business entity made under penalty of perjury that the bidder or offer has not made a contribution in violation of Section 1 of this Ordinance.

(b) The professional business entity shall have a continuing duty to report any violations of this Ordinance to the office of the Mercer County Inspector General that may occur during the negotiation or duration of a contract. The sworn statement or certification required under this subsection shall be made prior to entry into the contract or agreement with the County and shall be in addition to any other sworn statements or certifications that may be required by any other provision of law.

Section 4: Return of Excess Contributions:

(a) A professional business entity may cure a violation of Section 1 of this Ordinance if, within 30 days after the general election, the professional business entity notifies the Clerk to the Board of Freeholders in writing and seeks and receives reimbursement of a contribution from the County candidate, or Municipal or County party committee, or PAC referenced in this Ordinance.

(b) A County candidate or officeholder or Municipal or County party committee or PAC referenced in this Ordinance may cure a violation of section 1 of this Ordinance if, within 30 days after the general election, the County candidate or officeholder, or Municipal or County party committee, or PAC notifies the Clerk to the Board of Freeholders in writing and makes reimbursement of the contribution from the business entity referenced in this Ordinance.

Section 5: Penalty

(a) All Mercer County 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 in Section 1(c) to violate Section 1(b), 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 as defined in Section 1(c) 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 Mercer County contracts for a period of four calendar years from the date of the violation.

Section 6: Severability and Effectiveness Clause

If any sentence, paragraph or section of this Ordinance, or the application thereof to any persons or circumstances shall be adjudged by a Court of competent jurisdiction to be invalid, or if by legislative action any sentence, paragraph or section of this Ordinance shall lose its force and effect, such judgment or action shall not affect, impair or void the remainder of this Ordinance.

Section 7: Effective Date

This Ordinance shall become effective on February 1, 2005. The Office of the Mercer County Inspector General is hereby charged with the implementation of this Ordinance by the effective date.