



State of New Jersey

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***Re: Paulus, Sokolowski & Sartor, LLC
Reconsideration of Chapter 51/EO 117 Ineligibility, Montclair State University***

Dear Mr. Golum:

This letter is in response to your letters to me dated June 25 and July 15, 2015 (“Letters”). The Letters “appeal” or seek reconsideration of an initial ineligibility determination by the Chapter 51 Unit of the Division of Purchase and Property that a contribution made by Paulus, Sokolowski & Sartor, LLC (“PS&S”), to the North Bergen Democratic Municipal Committee (“NBDMC”) in the amount of \$700.00 on April 11, 2014, rendered PS&S ineligible for a contract award by Montclair State University (“University”). This period of ineligibility expires on October 11, 2015.

The pertinent statute, P.L. 2005, c. 51 (“Chapter 51”), prohibits the State of New Jersey (“State”) or any of its purchasing agents or agencies or its independent authorities from contracting with business entities that have solicited or made certain contributions of money to any candidate committee or election fund of any candidate for or any holder of the public office of the Governor, or to any State or county political party committee within specified time frames. Effective November 15, 2008, Executive Order Number 117, among other things, expanded upon Chapter 51 to include contributions made to any legislative leadership committee or any municipal political party committee in the same manner as those provisions apply to a contribution to any candidate committee, election fund, or State or county political party committee referenced in Chapter 51.

The legislative findings associated with Chapter 51 place the utmost importance on the State’s compelling interests in prohibiting the award of government contracts to business entities that are contributors to certain political parties and holders of public office. N.J.S.A. 19:44A-20.13. The State is charged with the duty of assuring the public that the selection of State contracts is based upon merit and not political contributions made by such contractors. Ibid. The legislative intent is to safeguard not only

against political contributions that pose the risk of improper influence or purchase of access, but also against those contributions that create the perception or appearance thereof. Ibid.

I begin with a brief review of the facts. The University sought a contract for engineering services related to an infiltration and inflow study. As a required part of the procurement process, PS&S submitted a New Jersey Division of Purchase and Property Two-Year Chapter 51/EO 117 Vendor Certification and Disclosure of Political Contributions (“Certification”) to the University. The University forwarded the Certification to the Chapter 51 Unit for review. PS&S’s Certification, certified by Renard E. Barnes, Esq., General Counsel/Assistant Secretary, disclosed that on April 11, 2014, John Sartor, President of PS&S, made a \$700.00 contribution (“Contribution”) to the NBDMC. The NBDMC is a municipal political party committee as referenced in Executive Order Number 117. The Chapter 51 Unit determined the Contribution to be disqualifying. This reconsideration request followed.

PS&S’s primary argument is that the Contribution was made inadvertently and, therefore, not disqualifying. Chapter 51 addresses directly inadvertent contributions but has no blanket “inadvertent” exception in the statute. The sole remedy to cure any inadvertent contribution is to request and receive a refund within 30 days after making the contribution.

PS&S contends that “the contribution error has been rectified by the return of the entire contribution.” In support of this contention, PS&S states that when the inadvertent contribution was discovered, PS&S sent a letter to the NBDMC dated August 12, 2014, requesting that the Contribution be returned. The Contribution was returned by the NBDMC to PS&S by the NBDMC’s check dated September 10, 2014.

As to PS&S’s refund contention, it is unpersuasive. Chapter 51 provides a narrow window within which a business entity may neutralize the effect of an inadvertent contribution and maintain its eligibility for State contracts. N.J.S.A. 19:44A-20.20 provides in part:

If a business entity inadvertently makes a contribution that would otherwise bar it from receiving a contract or makes a contribution during the term of a contract in violation of this act, the entity may request a full reimbursement from the recipient and, if such reimbursement is received within 30 days after the date on which the contribution was made, the business entity would again be eligible to receive a contract or would no longer be in violation, as appropriate.

Chapter 51 requires that a refund must be received within 30 days after the contribution is made. In Re Earle Asphalt Co., 401 N.J. Super. 310, 326-28 (App. Div. 2008), aff’d o.b., 198 N.J. 143 (2009) (affirming that both the request for reimbursement and actual receipt of reimbursement must occur within 30 days of the disqualifying contribution). Here the disqualifying Contribution was made on April 11, 2014. The reconsideration request acknowledges and attaches documentation that shows that the NBDMC refund check was not issued until September 10, 2014. More than 30 days had passed from PS&S’s Contribution until it received the NBDMC’s refund. Therefore, according to law, the ineligibility determination cannot be reversed.

PS&S also contends that while Chapter 51 specifies a 30-day time period in which an error may be rectified, Executive Order Number 117 specifies no such time period. Therefore, PS&S contends that Executive Order Number 117 has been satisfied by the Contribution’s return approximately 5 months after it was made. I must disagree. Executive Order Number 117, Paragraph 3, requires:

[a]ny Executive Branch department, agency, authority or independent State authority charged with implementing and enforcing Chapter 51 shall apply its provisions to a

legislative leadership committee or a municipal political party committee in the same manner as those provisions apply to a contribution to any candidate committee, election fund or political party committee identified in Chapter 51.

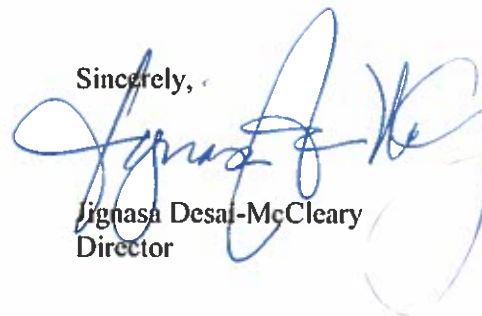
Since the Chapter 51 inadvertent contribution rule (return of the contribution within 30 days) applies to State or county political party committees, it must also apply to municipal political party committees.

PS&S further contends that, to the extent Executive Order Number 117 applies and disqualifies PS&S from State contracting, such Executive Order is invalid because the extension of Chapter 51's scope to municipal political party committees should have been done by statute, not by Executive Order. The same or a similar contention was raised before, but rejected by the Appellate Division of the Superior Court of New Jersey. In Re Langan Eng'g & Env't Servs., Inc., 425 N.J. Super. 577, 585-87 (App. Div. 2012). In Langan, the Appellate Division considered the closely related issue of whether Executive Order Number 117's provision about contributions to legislative leadership committees (Paragraph 3) was invalid because it allegedly should have been done by statute, and upheld Executive Order Number 117. Ibid. I must apply Chapter 51's provisions equally to both legislative leadership committees and municipal political party committees.

PS&S finally contends that to bar PS&S from State contracting on these facts is unconstitutional under federal and State law. This last contention is without specificity or cited authority. However, to the extent that PS&S asserts a constitutional challenge that Chapter 51 violates its rights as to free speech and association, the New Jersey Supreme Court considered them in Earle Asphalt, supra, and upheld the constitutionality of Chapter 51. To the extent that PS&S asserts a constitutional challenge to Executive Order Number 117's inclusion of municipal political party committees, the Appellate Division implicitly considered them in Langan, supra, and upheld the constitutionality of the Executive Order Number. To the extent that PS&S asserts a procedural due process constitutional challenge, it lacks merit. There is meaningful opportunity for PS&S to be heard, including the Chapter 51 Unit's notice of ineligibility, this right to request reconsideration, any appeal of this reconsideration decision to the State Treasurer, as well as other administrative or appellate review. N.J.A.C. 17:12-5.5, -5.6. Finally, to the extent that any other constitutional challenge was intended, it is not sufficiently identified to respond.

I have reviewed the information submitted as it relates to the provisions of Chapter 51 and Executive Order Number 117. Based upon this review and for the reasons discussed above, I am without discretion to overturn the initial ineligibility determination rendered by the Chapter 51 Unit in this matter. By copy of this letter, I am notifying Montclair State University of this decision.

Sincerely,



Jignasa Desai-McCleary
Director

C Amy Davis, DPP
Robert Shaughnessy, DPMC
Cecilia Hetzer, Montclair State University