



State of New Jersey

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March 13, 2017

Lee M. Tesser, Esq.
Tesser & Cohen
946 Main Street
Hackensack, New Jersey 07601

**Re: SAL Electric Company, Inc.
Reconsideration of Chp. 51/ EO 117 Ineligibility Determination**

Dear Mr. Tesser:

This letter is in response to your letter to Robert A. Storino dated January 23, 2017 and subsequent email dated January 30, 2017 ("Letters"). The Letters "appeal" or seek reconsideration of an initial ineligibility determination made by the Chapter 51 Review Unit ("Review Unit") of the Division of Purchase and Property that the political contributions made by SAL Electric Company, Inc. ("SAL") to the Sayreville Democratic Organization, Inc. ("SDO") in the amount of \$300.00 on April 27, 2016 and \$300.00 on August 25, 2016 rendered SAL ineligible for a contract award by Ramapo College of New Jersey ("Ramapo College"). The Review Unit also determined that the period of ineligibility expires on February 25, 2018.

The pertinent statute, P.L. 2005, c. 51 ("Chapter 51") prohibits the State of New Jersey ("State"), 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 ("EO 117"), among other things, extended Chapter 51's limit on contracting with firms that have contributed, to include business entities contributing to any legislative leadership committee or any municipal political party committee ("MPPC") 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.

REVIEW OF FACTS

Ramapo College sought to purchase a replacement 200KW generator from the vendor/bidder, SAL, which was estimated to cost \$295,000.00. On December 28, 2016 as a required part of the procurement process, SAL completed and submitted the New Jersey Division of Purchase and Property Two-Year Chapter 51/Executive Order 117 Vendor Certification and Disclosure of Political Contributions ("Certification" or "Chapter 51 form") to Ramapo College. The college forwarded the Certification to the Chapter 51 Unit for review. SAL's Chapter 51 form, certified by Philip Chianetta, President/CEO of SAL, disclosed the following contributions ("Contributions") to the SDO:

Contributor Name	Relationship of Contributor to the Vendor	Date of Contribution	Amount of Contribution	Type of Contribution (i.e. currency, check, loan, in-kind)	Recipient (Full legal name)	Address of Recipient
SAL Electric Company, Inc.	Same	4/27/2016	\$300.00	Check No. 7737	Sayreville Democratic Organization, Inc.	10 Rosewood Court, Sayreville, NJ 08872
SAL Electric Company, Inc.	Same	8/25/2016	\$300.00	Check No. 8237	Sayreville Democratic Organization, Inc.	10 Rosewood Court, Sayreville, NJ 08872

The Sayreville Democratic Organization, Inc. is a MPPC as referenced in Executive Order Number 117. An inquiry search on the New Jersey Election Law Enforcement Commission ("ELEC") website confirmed that the "Passaic County Democratic Committee" is a MPCC. (See <http://www.elec.state.nj.us/ELECReport/SearchPacParty.aspx>).

The Review Unit requested that Ramapo College obtain copies of the cancelled checks for SAL's contributions to the MPPC. On January 3, 2017, Ramapo College forwarded copies of the checks to the Review Unit.

On January 13, 2017, the Review Unit determined that SAL was ineligible for contract award based upon the Contributions. The two (2) contributions were in excess of the \$300.00 threshold and made to a political party committee in the same calendar year.¹

As a result, SAL was determined to be ineligible and/or disqualified from the procurement with Ramapo College. The Letters requesting a reconsideration request followed.

¹ New Jersey Administrative Code provisions regarding the Election Law Enforcement Commission provide the relevant definition of contribution. N.J.A.C. 19:25-24.1 states:

"Contribution reportable by the recipient" shall mean a currency contribution in any amount or a contribution or contributions in excess of \$ 300.00 in the aggregate per election made to or received by a candidate committee or joint candidates committee or per calendar year made to or received by a political party committee or legislative leadership committee. (*Emphasis added*).

REVIEW OF ARGUMENT

SAL's primary arguments are that: 1) It inadvertently made the contribution(s) without knowledge of the statute and 2) It took immediate steps to obtain a refund of the contribution upon receipt of the notice of ineligibility. Based upon these points and the "*de minimis* amount of the contribution," SAL seeks a reconsideration of the ineligibility determination.

Chapter 51 directly addresses 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 thirty (30) days after making the contribution.

By email dated January 30, 2017, Lee M. Tesser, Esq., SAL's attorney forwarded a copy of the \$300.00 refund check dated January 24, 2017 from the SDO with a written memo stating "Refund 2016 Contribution."² SAL's attorney respectfully requests a reconsideration of the disqualification/ineligibility determination based on this and the statement that "this amount of money was an administrative oversight and the first and only offense incurred by Sal [sic] in its 45-year existence."

The refund obtained by SAL is inconsequential because it is out of time. 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. See also In Re Earle Asphalt, 401 N.J. Super. 310 (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). 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.

In the present matter, the disqualifying Contribution was made on August 25, 2016. The refund check was issued from the Sayreville Democratic Organization, Inc. on January 24, 2017, 152 days later. Thus, more than 30 days passed from SAL's Contribution until it received the refund. Furthermore, N.J.S.A. 19:44A-20.20 does not contain any "discovery" rule or relaxation provision which would a period greater than 30 days for receipt of the refund.

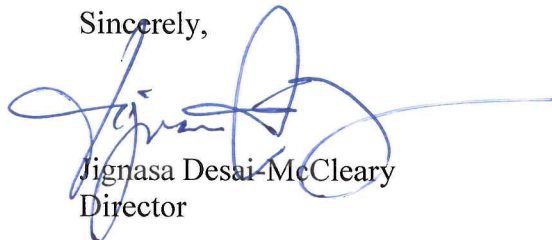
² As previously noted, there were two (2) political contributions of \$300.00 by SAL to this municipal party committee in 2016, which totaled \$600.00.

Lastly, SAL contends the \$300.00 prohibited contribution is *de minimis*. Chapter 51 provides: “[f]or the purposes of this act, a ‘contribution’ means a contribution reportable by the recipient under ‘The New Jersey Campaign Contributions and Expenditures Reporting Act,’ P.L.1973, c.83 (C.19:44A-1 et seq.) made on or after the effective date of this act. N.J.S.A. 19:44A-20.16. A “[c]ontribution reportable by the recipient” means, among other things, a contribution or contributions in excess of \$300.00 per calendar year to or received by a political party committee. N.J.A.C. 19:25-24.1. SAL exceeded the legal threshold when it made the second political contribution of \$300.00 to the SDO, for which it attempted, too late, to obtain a refund. The law does not permit any contribution in excess of the \$300.00 limit. Therefore, according to the law, the ineligibility determination cannot be reversed.

CONCLUSION

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 Review Unit in this matter. By copy of this letter, I am notifying Ramapo College of New Jersey of this decision.

Sincerely,



Jignasa Desai-McCleary
Director

C: Amy Davis, DPP
Maurice Griffin, DPP
Stephen Sondey, Ramapo College of New Jersey
Jill Kanan, Ramapo College of New Jersey