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Atlantic County Pays For Pay-To-Play Ordinance: Fox Rothschild.

I work with New Jersey's pay-to-play laws on a regular basis and anyone else who wades the muddy waters of this area understands that these laws are an intricate, confusing, and often conflicting web of rules, regulations, statutes, and executive orders that apply to mayoral, county, legislative, and gubernatorial elections – except when they don't. Because every county and municipality has the legal authority to promulgate their own pay-to-play rules, things can get even more interesting. Until now, there has been very little case law or guidance on New Jersey's local pay-to-play laws. That changed last week when the judiciary published an opinion on the topic.

Like many counties, Atlantic County has its own pay-to-play law that prohibits persons seeking or holding county contracts from making political contributions to anyone running for or holding county office, including the sheriff's office. When Sherriff Frank Balles decided to run for state senate, he found no harm in taking a political contribution from Ford-Scott, a county contractor. In approving Ford-Scott's contract, the Atlantic County Board of Freeholders determined that Ford-Scott was not prohibited from being awarded a county contract because Balles was not running for county office and the contribution made by Ford-Scott was specifically made towards Balles' senate bid.

Without getting into details that might make the reader's head explode, it is sufficient to say that, under normal circumstance, a person can legally contribute to a political candidate running for an office as long as the contributor does not have a contract with the particular body of government for which the candidate is running. It is for this reason that the Freeholders determined that Ford-Scott could legally take the county contract. In the first published opinion on local pay-to-play laws, the Law Division of the Superior Court disagreed.

Although the court was careful to restrict its analysis to the county pay-to-play law, its ruling was based primarily on the legislative intent. And, in one of those ironies that we see in legal opinions from time to time, the court determined that the same county governing body which wrote the pay-to-play law and approved the Ford-Scott contract actually intended for its law to preclude such contracts. The important part of this opinion lies in the reasoning behind pay-to-play laws – reducing actual and perceived government impropriety – which is the same policy behind all pay-to-play laws regardless of whether they apply locally or statewide. In other words, this precedential opinion will likely apply to any similar case under any pay-to-play law in New Jersey.

The practical impact of this opinion is widespread. For example, if Jersey City Mayor Steven Fulop decided to run for governor, and Jersey City had a local pay-to-play ordinance with similar language to the law in Atlantic County (which it does), this case could act to prevent any person who contracts with Jersey City or plans to contract with Jersey City in the future from contributing to Fulop's gubernatorial campaign. Thus, this will be an important decision for all public contractors in the future. And, as an aside, now that this opinion is public and precedential, there exists a potential for future cases on this issue to include an action under the New Jersey False Claims Act.

The content of this article is intended to provide a general guide to the subject matter. Specialist

advice should be sought about your specific circumstances.

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