



State of New Jersey

DEPARTMENT OF THE TREASURY
DIVISION OF PURCHASE AND PROPERTY
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December 19, 2019

Via Electronic Mail [rfreed@genovaburns.com] and USPS Regular Mail

Rebecca Moll Freed, Esq.
Genova Burns LLC
494 Broad Street,
Newark, New Jersey 07102

Re: Request for Reconsideration of Ineligibility-Pennoni Associates Inc.-South Jersey Transportation Authority and Stockton University

Dear Ms. Freed,

This letter is in response to your correspondence, on behalf of Pennoni Associates Inc. ("Pennoni"), to the Acting Director of the Division of Purchase and Property (the "Division"), dated September 19, 2019 and December 6, 2019, requesting reconsideration of the Chapter 51 Review Unit's (the "Chapter 51 Unit") determination that Pennoni is ineligible for contracts awarded by the South Jersey Transportation Authority and Stockton University, and by Rowan University for On-Call Professional Services Contract.

By way of background, the Chapter 51 Unit initiated a review of information provided in Pennoni's Two-Year Chapter 51/Executive Order 117 Vendor Certification and Disclosure of Political Contributions ("Chapter 51 form"). On September 10, 2019, the Chapter 51 Unit determined Pennoni was ineligible for contract awards because of political contributions it made to the Essex County Democratic Committee, which is a county Political Party Committee (the "PPC"). (Chapter 51 Unit's Sept. 10, 2019 determination email). The Chapter 51 Unit summarized the "Part 2: Disclosure of Contributions by the business entity or any person or entity whose contributions are attributable to the business entity" of the Chapter 51 form as follows:

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
Unknown	Unknown	8/9/2018	\$500.00	Unknown	Essex Co. Democratic	Unknown

<p>Note: The Chapter 51 Review Unit presumes the contribution was made by the corporation and/or an officer of the corporation. The requested document(s) should provide the missing information.</p>					<p>Committee 2018</p> <p>Note: The vendor incorrectly describes this committee as a Continuing Political Committee (CPC).</p>	
<p>Unknown</p> <p>Note: The Chapter 51 Review Unit presumes the contribution was made by the corporation and/or an officer of the corporation. The requested document(s) should provide the missing information.</p>	<p>Unknown</p>	<p>4/4/2019</p>	<p>\$400.00</p>	<p>Unknown</p>	<p>Essex County Democratic Committee</p> <p>Note: The vendor incorrectly describes this committee as a Continuing Political Committee (CPC).</p>	<p>Unknown</p>

The Chapter 51 Unit determined Pennoni’s contributions to the PPC disqualified it from contract eligibility. *Ibid.* Further, the Chapter 51 Unit dismissed Pennoni’s arguments that both contributions were made to the Essex County Democratic Committee PAC Inc.,¹ which is a County Political Committee (the “CPC”), not the PPC, as evidenced by the handwritten “CPC” on both checks. *Ibid.* The Chapter 51 Unit determined Pennoni’s argument that its intent was to make contributions to the CPC rather than the PPC

¹ Essex County Democratic Committee PAC Inc. and Essex County Democratic Committee are two separate entities registered with the Election Law Enforcement Commission (the “ELEC”). They also share a treasurer.

was unsupported and non-credible because, as shown on the invitations, the events associated with each of the two (2) political contribution checks were held by the PPC, not the CPC. Ibid. The Chapter 51 Unit further noted that ELEC's reports show the complete name of the PPC was the "Essex County Democratic Committee" and the name of the CPC was "Essex Country Democratic Committee PAC Inc." Ibid. Finally, the Chapter 51 Unit concluded that there was no timely request for reimbursement of either political contribution as required by N.J.S.A. §19:44A-20.20; as such, Pennoni "will be ineligible for contract award(s) through approximately January 17, 2022 or the end of the term of Governor Phil Murphy." Ibid.

In its September 19, 2019 Request for Reconsideration, Pennoni asserts the Chapter 51 Unit's conclusion Pennoni contributed to the PPC is not supported by the evidence. (Pennoni's Request for Reconsideration at 9). Pennoni states it contributed a total of \$900 to the CPC. Id. at 2. Pennoni contends that CPC was handwritten on the check, while "Essex Co Democratic Committee" was typewritten on the checks, because the "Pennoni employee requesting the contribution does not typically know what type of committee is receiving the contribution." Ibid. Pennoni further argues that handwriting "CPC" on the checks is "the most important information on the check making clear that Pennoni intended to, and did, contribute to a continuing political committee with "Essex County Democratic Committee" in its name." Id. at 5. Pennoni argues the handwritten CPC is the most important information on the checks because, under the Uniform Commercial Code, "handwriting on a check prevails over typewriting which in turn prevails over printing." Ibid. (citing N.J.S.A. 12A:3-114).

Next, Pennoni contends it contributed to an alternative recipient, the CPC, even though the event was held by the PPC. Id. at 4. Pennoni also argues several more factors show the contributions were made to the CPC not the PPC, including: 1) Pennoni's disclosure of the contributions on its Chapter 51 form; 2) the PPC's amended third quarter report filed with ELEC; 3) the CPC's current amended report filed with ELEC; and 4) the PPC's treasurer's return of Pennoni's check upon learning of the incorrect account deposit. Ibid. Pennoni argues it is not "responsible for the fact that its check made payable to ECDC CPC was erroneously and without authorization deposited into the ECDC PPC's account after the check left Pennoni's hand." Id. at 5.

On December 9, 2019, Pennoni wrote to the Hearing Unit, requesting that its September 19, 2019 Request for Reconsideration is supplemented to include Rowan University's decision not to move forward with its award of On -Call Professional Services Contract (RFP 20-280) to Pennoni. (See Pennoni's December 9, 2019 email). It is the Hearing Unit's understanding that Pennoni was found ineligible for the Rowan University's On -Call Professional Services Contract (RFP 20-280) based on the September 10, 2019 Chapter 51 Unit's determination that Pennoni was ineligible for contract awards because of political contributions it made to the Essex County Democratic Committee, which is a county PPC for the duration of Governor Murphy's term. Id.

In consideration of Pennoni's Request for Reconsideration, I reviewed the record and the relevant statutes, regulations, and case law. This review has provided me with the information necessary to determine the facts of this matter and to render an informed final agency decision on the merits. I set forth herein my final agency decision.

The pertinent statute, L. 2005, c. 51 ("Chapter 51"), codified at N.J.S.A. 19:44A-20.13 to -20.25, prohibits the State of New Jersey (the "State") or any of the State's purchasing agents or agencies or its independent authorities from contracting with business entities that have solicited or made any contribution 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. Executive Order Number 117, effective November 15, 2008, 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 identified 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. On August 20, 2018, Pennoni attended an event organized by the PPC. (August 20, 2018 invitation). Pennoni made a \$500.00 donation via check as shown below:

Pennoni
1900 Market Street • Suite 300
Philadelphia, PA 19103

***500 and ***00/100 DOLLARS

PAY TO THE ORDER OF

Essex Co Democratic Committee 2018, *CPC*
80 Main Street, Suite 280
West Orange, NJ 07082 US

PNC Bank, N.A.
NEW JERSEY
246301 ⁵⁵/₂₇₇ 312

VOID AFTER 60 DAYS FROM DATE

DATE	CHECK NO.	PAY THIS AMOUNT
8/9/2018	246301	*****500.00

[Signature]
AUTHORIZED SIGNATURE

⑆ 246301⑆ ⑆031000053⑆ 8612132377⑆

On April 13, 2019, Pennoni attended another event organized by the PPC. (April 13, 2019 invitation). Pennoni made a \$400.00 donation via check as shown below:

Pennoni
1900 Market Street • Suite 300
Philadelphia, PA 19103

***400 and ***00/100 DOLLARS

PAY TO THE ORDER OF

Essex Co Democratic Committee, *CPC*
80 Main Street, Suite 280
West Orange, NJ 07082 US

PNC Bank, N.A.
NEW JERSEY
253035 ⁵⁵/₂₇₇ 312

VOID AFTER 60 DAYS FROM DATE

DATE	CHECK NO.	PAY THIS AMOUNT
4/4/2019	253035	*****400.00

[Signature]
AUTHORIZED SIGNATURE

⑆ 253035⑆ ⑆031000053⑆ 8612132377⑆

As shown on the checks and noted by Chapter 51 Unit, “CPC” was handwritten on the check, while “Essex Co Democratic Committee 2018” / “Essex Co Democratic Committee” was printed. Pennoni’s Chapter 51 form, filed with ELEC, disclosed contributions to the “Essex Co. Democratic Committee 2018, CPC” and the “Essex County Democratic Committee, CPC” in 2018 and 2019, respectively.

On October 15, 2018, both the PPC and the CPC submitted amended reports for the third quarter of 2018 to ELEC. The PPC’s amended report does not list Pennoni as a contributor. (ELEC report for the PPC). The CPC’s amended report lists a \$500 contribution by Pennoni. (ELEC report for the CPC). The

PPC's ELEC report for 2019 does not list Pennoni as a contributor. (ELEC report for the PPC.) The record further reveals the PPC returned \$400.00 to Pennoni on June 20, 2019.²

The Chapter 51 Unit found the evidence "fail[ed] to lend support and credibility" to Pennoni's argument that its "intent was to make political contributions" to the CPC because both events were organized by the PPC. (Chapter 51 Unit's Sept. 10, 2019 email). The Chapter 51 Unit also stated "a review of ELEC reports shows that the complete name of the PPC was the 'Essex County Democratic Committee;' and the complete name of the CPC was 'Essex County Democratic Committee PAC Inc.'" *Ibid.*

Even if I accept for the sake of argument that the handwritten "CPC" on the checks and Pennoni's past donations to CPCs demonstrate Pennoni intent to donate to the CPC, the Chapter 51 Unit's determination must still be upheld because N.J.S.A. 19:44A-20.14 contains no language concerning the business entity's intent. The only language concerning intent or state of mind in Chapter 51 appears in N.J.S.A. 19:44A-20.20 and -20.21. N.J.S.A. 19:44A-20.21 addresses eight situations, in addition to those outlined in N.J.S.A. 19:44A-20.14, where a business entity's conduct surrounding contributions is also disqualifying or a breach of contract³. None of those eight situations are applicable to this matter. N.J.S.A. 19:44A-20.20 provides contributors who also are, or wish to be, State contractors with a "safe harbor" of sorts: If a business entity makes an "inadvertent contribution," it can nonetheless remain eligible for the award of public contracts if it receives a refund of the contribution within 30 days of the date of the inadvertent contribution. Here, however, Pennoni did not request or receive a refund within the statutorily permitted 30 days.

The first published decision to address N.J.S.A. 19:44A-20.14, *In re Earle Asphalt Co.*, 401 N.J. Super. 310 (2008), *aff'd o.b.*, 198 N.J. 143 (2009), also addressed N.J.S.A. 19:44A-20.20. Although Pennoni attempts to distinguish this case, I am not persuaded. In *Earle*, a paving contractor company's president donated \$1500 to a PPC. *Id.* at 315. Approximately three weeks later, Earle's president learned his contribution could disqualify the company from the award of any state contract and requested a refund. *Id.* at 315-16. The refund was issue forty-one days after the donation was made. *Id.* at 316. Thereafter, the Chapter 51 Unit determined Earle was ineligible for the award of state contracts after it was the low bidder for a roadwork contract. *Ibid.* Earle then appealed the final agency decision that upheld the Chapter 51 Unit's determination. *Id.* at 316-17. On appeal, Earle argued Chapter 51 was unconstitutional. *Id.* at

² According to Pennoni, this was returned due to unauthorized deposit into the PPC's account rather than the CPC's. (Pennoni's Request for Reconsideration at 4).

³ N.J.S.A. 19:44A-20.21 Breach of terms of government contract concerning contributions. It shall be a breach of the terms of the government contract for a business entity to: (i) make or solicit a contribution in violation of this act; (ii) knowingly conceal or misrepresent a contribution given or received; (iii) make or solicit contributions through intermediaries for the purpose of concealing or misrepresenting the source of the contribution; (iv) make or solicit any contribution on the condition or with the agreement that it will be contributed to a campaign committee of any candidate or holder of the public office of Governor or Lieutenant Governor, or to any State or county party committee; (v) engage or employ a lobbyist or consultant with the intent or understanding that such lobbyist or consultant would make or solicit any contribution, which if made or solicited by the business entity itself, would subject that entity to the restrictions of this act; (vi) fund contributions made by third parties, including consultants, attorneys, family members, and employees; (vii) engage in any exchange or contributions to circumvent the intent of this act; or (viii) directly or indirectly, through or by any other person or means, do any act which would subject that entity to the restrictions of this act.

315. Earle also argued it was entitled to an exemption from disqualification because it requested the refund within thirty days. Ibid.

The court held Chapter 51 was constitutional. Ibid. The court also held “the only reasonable interpretation of N.J.S.A. 19:44A-20.20” “require[d] both the request for reimbursement and actual receipt of reimbursement to occur within thirty days of a disqualifying contribution.” Id. at 328. As such, the court found “the Department of Treasury properly rejected [Earle’s] claim to an exemption from the disqualification because, even though [Earle] undertook steps to obtain reimbursement of its disqualifying contribution within thirty days, it did not receive reimbursement within that period.” Id. at 315.

Contrary to Pennoni’s claims, Earle is not easily distinguishable from the situation at hand. (Pennoni’s Request for Reconsideration at 7). Even though in Earle the donation was intended for the PPC, while Pennoni argues that its donation was intended for the CPC, that factual distinction does not change the application of N.J.S.A. 19:44A-20.20. Pennoni, similar to Earle, failed to request and receive a refund within the statutorily permitted 30 days.

Despite Pennoni’s assertions, I find this matter analogous to Della Pello Paving, Inc. v. State Department of Treasury, No. A-3774-15 (App. Div. Feb. 9, 2017). In Della Pello, a paving contractor received “an invitation to a cocktail party for which tickets were offered at \$500 per person. The enclosed reply card instructed that checks were to be made payable to either the Somerset County Republican Organization or the Committee to Elect Palmer and Zaborowski.” Id. at 2. Della Pello replied and enclosed a \$500 check payable “Somerset County Republican Org to Elect Provenzano.” Id. at 2-3. The check was endorsed by, and deposited into the bank account of, the sponsor of the cocktail party, the Somerset County Republican Executive Committee. Id. at 3. As a result of the donation, the Chapter 51 Unit determined Della Pello was ineligible for contract awards. Ibid.

Della Pello sought reconsideration. Ibid. Della Pello argued it was error for the Chapter 51 Unit to find “the check was made payable to the Somerset County Republican Committee” when it “was instead made payable to ‘Somerset County Republican Org to Elect Provenzano.’” Id. at 4-5. Della Pello asserted it only learned the check was “improperly endorsed and deposited into the Somerset County Republican Committee’s own bank account rather than into the election fund for which the check had been made out” after it received notice from the State that Della Pello was ineligible. Id. at 5.

The Division denied Della Pello’s request for reconsideration. Ibid. The Director noted, among other reasons, that the “the event [wa]s sponsored and paid for by the Somerset County Republican Organization.” Ibid. The Director was also “unpersua[ded]” by Della Pello’s argument because Sheriff Provenzano was not on the ballot in 2014. Id. at 5-6.

Della Pello appealed to the Treasurer, and argued: (1) it did not intend to contribute to the PPC; (2) the PPC’s unauthorized deposit of the check into its account should not disqualify Della Pello; and (3) the disqualifying contribution was cured because Della Pello requested a refund as soon as it learned the check was deposited into the PPC’s account. Id. at 8-9. The Treasurer’s final agency decision upheld the Director’s decision to exclude Della Pello from any award of State contracts because of its violation of Chapter 51. Id. at 8. The Treasurer’s decision indicated that assuming arguendo Della Pello did not intend to contribute to the PPC, that would merely make its contribution to the PPC “‘inadvertent’ within the meaning of N.J.S.A. 19:44A-20.20” and since “Della Pello failed to request and receive full reimbursement within thirty days of the contribution, the statute provides no remedy for such ‘inadvertence.’” Id. at 10. On appeal, the Appellate Division held Della Pello’s arguments lacked sufficient merit to warrant discussion in a written opinion and affirmed. Id. at 12.

Here, as in Earle and Della Pello, the inadvertent contributions were not returned to Pennoni within the statutorily allowed timeframe. Since its “inadvertent” contributions were not refunded within 30 days after being made, Pennoni failed to satisfy the “safe harbor” test within N.J.S.A. 19:44A-20.20, and therefore, such contributions made Pennoni ineligible to receive a public contract. Moreover, Pennoni’s attempts to implicate N.J.S.A. 12A:3-110 and -114 of the Uniform Commercial Code – Negotiable Instruments are unpersuasive because the depository bank’s conduct is not the issue in this matter. Because Pennoni’s contributions were made during Governor Philip D. Murphy’s term in office, N.J.S.A. 19:44A-20.20 requires that Pennoni be disqualified for the duration of Governor Murphy’s term.

Based upon the foregoing, I sustain the Chapter 51 Unit’s determination. This is my final agency decision with respect to the Request for Reconsideration submitted by Pennoni.

Thank you for registering your company with **NJSTART** at www.njstart.gov, the State of New Jersey’s eProcurement system. I look forward to your company’s continuing interest in doing business with the State of New Jersey.

Sincerely,



Maurice A. Griffin
Acting Director

MAG: RD

c: R. Storino