

2007-11

AN ORDINANCE CONCERNING "PAY-TO-PLAY" REGULATIONS AND AMENDING THE "CODE OF THE TOWNSHIP OF PRINCETON, NEW JERSEY, 1968"

WHEREAS, the New Jersey Local Public Contracts Law, N.J.S.A. 40A:11-1 et seq., permits a governing body to award professional services contracts without competitive public bidding; and

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

WHEREAS, pursuant to P.L. 2005, c. 271, a municipality is authorized to adopt by ordinance measures limiting the awarding of public contracts to business entities that have made political contributions and limiting the contributions that the holders of a contract can make during the term of a contract; and

WHEREAS, the Township Committee of the Township of Princeton with to establish a policy which will set maximum amounts that professional business entities may contribute politically beyond which they become ineligible to receive a public professional service contract from the Township Committee.

NOW, THEREFORE, BE IT ORDAINED by the Princeton Township Committee, County of Mercer, and State of New Jersey, as follows:

1. Chapter 2 of the "Code of the Township of Princeton, New Jersey, 1968" is amended by adding thereto the following NEW Article XXI establishing "Pay-to-Play" regulations for the Township of Princeton and shall read as follows;

ARTICLE XXI. PAY-TO-PLAY REGULATIONS

Section 2-87: Prohibition on Awarding Public Contracts to Certain Contributors.

(a) Any other provision of law to the contrary notwithstanding, the township or any of its purchasing agents or agencies or those of its independent authorities, as the case may be, shall not enter into an agreement or otherwise contract to procure professional, banking, insurance coverage services or any other consulting services, including those awarded pursuant to a "fair and open" bid process, from any professional business entity, if that entity has solicited or made any contribution of money, or pledge of a contribution, including in-kind contributions, and/or loans, to a municipal campaign committee or fund of any candidate, or holder of, a public office within the township having ultimate responsibility for the award of the contract, or campaign committee financially supporting such candidate or officeholder, or to any township or Mercer County party committee, or to any political action committee (PAC) that regularly engages in the support of municipal elections and/or municipal parties in excess of the thresholds specified in subsection (d) within one (1) 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 township or any department or agency thereof or of its independent authorities for the rendition of professional, banking or insurance coverage services or any other consulting services, including those awarded pursuant to a "fair and open" bid process, shall violate this section by making or soliciting any contribution of money, or pledge of a contribution, including in-kind contributions, or loans, to a municipal campaign committee or fund of any candidate for, or holder of, a township public office having ultimate responsibility for the award of the contract, or campaign committee financially supporting such candidate or officeholder, or to any political action committee

(PAC) that engages in the support of municipal elections and/or municipal parties, or to any Township municipal or Mercer County party committee, between the time of first communications between that business entity and the township 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; or association. 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) An individual meeting the definition of "professional business entity" under this section may annually contribute during the twelve month period prior to local government contract negotiations a maximum of \$300 each for a municipal campaign committee or fund of any candidate, or holder of, the township public office having the ultimate responsibility for the award of a professional services contract, and a maximum of \$300 to any township municipal or Mercer County party committee. 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 to a municipal campaign committee or fund of all township candidates, township municipal and/or Mercer County political parties, and PACs referenced in this ordinance combined, during the twelve month period prior to local government contract negotiations.

(e) "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.

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

Section 2-88: Contributions Made Prior to the Effective Date.

No contribution of money or any other thing of value, including in-kind contributions, made by a professional business entity to any municipal candidate for township committee or office holder, or any township municipal or Mercer 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 2-89: Contribution and Disclosure 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 township or any of its purchasing agents or agencies, as the case may be, shall receive a sworn statement from the professional business entity made under penalty of perjury that the professional business entity has not made a contribution in excess of the limits contained in Section 2-87(d), or in violation of the time period and recipients specified in Section 2-87(a) and (b).

(b) The professional business entity shall have a continuing duty to report any violations of this Article that may occur during the negotiation or duration of a professional services contract. The certification required under this subsection shall be made prior to entry into the contract or agreement

with the township and shall be in addition to any other certifications that may be required by any other provision of law.

(c) The professional business entity shall append a "Contribution Disclosure Statement" to its sworn certification, which statement shall be a list specifying the amount, date, and the recipient of any and all contributions reportable under N.J.S.A. 19:44A-1 et seq., made by the entity and its principals to or on behalf of any candidate, candidate committee, joint candidates committee, continuing political committee, or political party committee of, or within Mercer County for the time period reference in Sections 2-87 and 2-88 above. The professional business entity shall have a continuing duty to update said statement during the course of negotiations and/or contract performance, as the case may be. No contract shall issue if the entity has failed to submit a Contribution Disclosure Statement.

Section 2-90: Return of Excess Contributions.

A professional business entity or township candidate or officeholder or municipal or county party committee or PAC referenced in this ordinance may cure a contribution which violates Section 2-87(b) or is in excess of the limits contained in Section 2-87(d), if, within thirty (30) days after the general election following any such contribution, or upon written notice of violation from the township, whichever occurs sooner, the professional business entity notifies the township committee in writing and seeks and receives reimbursement of a contribution from the municipal committee or fund of a township candidate or office holder, or any township municipal or Mercer county political party or PAC referenced in this ordinance.

Section 2-91: Penalty.

(a) All township professional services contracts shall provide that it shall be a breach of the terms of the contract for a professional business entity to: (I) make or solicit a contribution in violation of this

Article; (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, or the intended beneficiary; (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 the township; (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 ordinance; (vi) fund contributions made by third parties, including consultants, attorneys, family members, and employees; (vii) engage in any exchange of contributions to circumvent the intent of this ordinance; 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 Article.

(b) Any professional business entity who violates (a) ii-viii shall be disqualified from eligibility for future township contracts for a period of four calendar years from the date of the violation.

(c) It shall be a rebuttable presumption that failure to disclose a contribution made in violation of this article is a knowing and intentional act.

Section 2-92: Severability and Effectiveness Clause.

(a) If any section, subsection, sentence, clause or phrase of this Article is for any reason held to be unconstitutional, invalid, or unenforceable by a court of competent jurisdiction, such decision shall not affect the remaining portions of this Article.

(b) And any ordinance inconsistent with the terms of this Article is hereby repealed to the extent of such inconsistency.

Section 2-93: Effective Date.

This ordinance shall become effective per passage and publication as provided for by law

I, Kathleen Brzezynski, Deputy Clerk of the Township of Princeton, County of Mercer, State of New Jersey, do hereby certify that the foregoing is a true copy of an ordinance adopted by Township Committee at its meeting held June 11, 2007.

A handwritten signature in cursive script that reads "Kathleen K. Brzezynski".

Kathleen Brzezynski
Deputy Clerk