

SUBCHAPTER 7. PROHIBITED POLITICAL CONTRIBUTIONS

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19:40-7.1 Statement of governing principles

(a) Pursuant to N.J.S.A. 5:12-138, casino licensees and other entities and persons closely aligned therewith are prohibited from making contributions of money or things of value to candidates for public office and political organizations in New Jersey. This prohibition is designed to protect the public interest in both the fact and the appearance of the independence of the political process, and the insulation of the government institutions that are responsible for the supervision of the casino industry, from the uniquely powerful economic force that is presented by that industry. The protection of these interests is critical to the maintenance of public confidence and trust in the regulation of casino gaming in New Jersey.

(b) The statutory prohibition was narrowly drawn in order to preserve the fundamental rights of all persons to express themselves as they see fit with regard to questions of political and public interest, including specifically the advocacy of the election or defeat of candidates for public office. No prohibition on the right of any person to join any political organization or movement, or to advocate the election or defeat of any candidate, was intended or effected by the statutory provision or the rules contained in this subchapter.

(c) Between the right of free expression and the necessary prohibition of certain contributions lies a range of conduct that should be identified as acceptable, or prohibited, in accordance with the public interest, the policies of the Act, and the fundamental rights of all citizens. In addition to the standards established in this subchapter, the declaratory ruling procedure set forth at

N.J.A.C. 19:40-3.7 is available to assist all affected persons in understanding and complying with these provisions.

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19:40-7.2 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings unless the context clearly indicates otherwise:

“Candidate” means a person seeking nomination or election to any local, county or State public office in New Jersey, but shall not include a person seeking nomination or election to any federal public office.

“Contribution” means a payment, transfer or pledge of money or a thing of value to or for the benefit of a candidate or political organization.

“Dependent person” means a person who is:

1. An employee or co-employee of a prohibited person;
2. An employee or co-employee of a person affiliated with a prohibited person; or
3. An enterprise or firm, or an officer, director, partner, owner or principal employee of an enterprise or firm, that is a party to any contract with, or is bidding for or seeking to enter any contract with, or regularly represents or provides services to, a prohibited person.

“Money” means cash or instruments that are convertible to cash in any negotiable currency.

“Political organization” means any committee of any political party in this State, as structured and defined in accordance with the provisions of N.J.S.A. 19:1-1 et seq., or any group, committee, or association organized in support of such political party or any candidate.

“Prohibited person” means an applicant for or holder of a casino license, or any holding, intermediary or subsidiary company thereof; or any officer, director, casino key employee or principal employee of any of these companies;

or any person or agent acting on behalf of any of these companies or persons.

“Solicitation” means a request, suggestion or recommendation made to a particular person, by any means of communication, that the person make a contribution; provided, however, that a statement to a person expressing support for or opposition to the election of any candidate, or support for or opposition to any political organization, which is made without reference to a contribution, or a statement intended for and given public dissemination encouraging all persons to make contributions to any candidate or political organization, is not a solicitation.

“Thing of value” means:

1. An item of real, personal or intellectual property that may be converted into money by selling it or pledging it as security for a loan or other advance of funds;
2. A loan of assets, property, personnel or facilities for use by a candidate or political organization, such as, without limitation, office space, automobiles, telephones or telephone services, or the time and effort of employees or consultants who are paid by the person making the contribution;
3. A personal or professional service that is not incidental to the expression of a person's ideological beliefs or membership in a political organization, and that has a value to the candidate or political organization;
4. A non-reimbursed expense that is not incidental to the expression of a person's ideological beliefs or membership in a political organization, and is of the type normally incurred by the candidate or political organization; or
5. Any thing, service, expense or other item of value similar to that identified in 1 through 4 above which may be identified by the Commission in a declaratory ruling or other appropriate proceeding.

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19:40-7.3 Prohibited contributions and solicitations

(a) No prohibited person shall, directly or indirectly, make any contribution or solicit any person to make a contribution on behalf of a prohibited person.

(b) A contribution shall be considered to have been made on behalf of a prohibited person if, without limitation, it is made:

1. With money or a thing of value that is owned or controlled by a prohibited person; or
2. By any person in response to a solicitation by a prohibited person and under such circumstances as establish that the contribution was involuntary or would not have been made but for the influence of the prohibited person over the person making the contribution.

(c) In determining whether a contribution was made by a person on behalf of a prohibited person pursuant to (b)2 above, the Commission shall consider all relevant facts and circumstances, including, but not limited to, the following:

1. Whether the person making the contribution is a dependent person with regard to the prohibited person;
2. The nature and importance of any economic, business, personal, familial or other relationship between the person making the contribution and the prohibited person that currently exists, that existed at the time the contribution was solicited and made, or that is reasonably anticipated to exist in the foreseeable future;
3. The timing and nature of any communications that may have occurred between the person making the contribution and the prohibited person regarding the prohibited person's desire to raise funds for the candidate or political organization that received the contribution;
4. The ability or inability of the prohibited person to control or affect the actions of the person making the contribution, and any evidence that any such ability played a role in the decision to make the contribution;

5. Any prior contributions to or expressions of support for the candidate or political organization that was the recipient of the contribution by the person making the contribution, and the timing of any such prior contributions or expressions in relation to the establishment of the relationship between the prohibited person and the person making the contribution;

6. Whether the person making the contribution is a resident of New Jersey or has significant property or business interests in this State;

7. The timing and nature of any communications that may have occurred between the person making the contribution and the recipient of the contribution regarding the prohibited person's solicitations on behalf of or expressions of support for the candidate or political organization;

8. Whether there is a pattern or regular course of conduct involving contributions to one or more candidates or political organizations by the person making the contribution;

9. Whether there is a pattern or regular course of conduct involving contributions to one or more candidates or political organizations on the part of employees, contractors or other dependent persons of a prohibited person or any affiliated person or entity thereof; and

10. Whether the prohibited person has, directly or indirectly, reimbursed or offered to reimburse the person making the contribution for all or any portion of the contribution.

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19:40-7.4 Solicitations by prohibited persons; records; reports

(a) Each prohibited person that solicits a contribution from any person shall prepare a written or computerized record of the solicitation that contains, at a minimum, the following information:

1. The name, address and employer of the prohibited person making the solicitation;

2. The name, address and employer of the person from whom the contribution was solicited;

3. The means of communication by which the contribution was solicited, including a summary of any oral communication or a copy of any written or electronic communication;

4. The name of the candidate or political organization for whose benefit the contribution was solicited; and

5. The date of the solicitation.

(b) Each prohibited person that prepares a record required by (a) above shall transmit a copy of the record to the casino licensee or applicant for a casino license with which that prohibited person is associated within seven calendar days of the solicitation.

(c) Each casino licensee shall maintain on the premises of its casino hotel facility, and each applicant for a casino license shall maintain in a location in New Jersey approved by the Commission, a copy of each record prepared pursuant to (a) above by any prohibited person associated with that casino licensee or applicant. Such records shall be made available for inspection by agents of the Commission or Division upon request.

(d) Each casino licensee and applicant for a casino license shall file a report with the Commission and Division on May 1 and October 15 of each year containing, in a format approved by the Commission, a copy of each of the records prepared pursuant to (a) above since the filing of the last report.

(e) If a prohibited person fails to prepare or submit the record required by (a) and (b) above and a contribution is made to the candidate or political organization by the person as a result of the solicitation, the contribution shall be presumed, for purposes of N.J.A.C. 19:40-7.3(b)2, to have been made involuntarily or solely as a result of the influence of the prohibited person over the person making the contribution. This presumption shall apply to the conduct of the prohibited person making the solicitation, but not the person making the contribution, and may be overcome by an evaluation of all of the

relevant circumstances.

(f) Each casino licensee or applicant for a casino license shall be responsible for assuring that each prohibited person associated with that casino licensee or applicant is aware of the prohibitions and obligations established by N.J.S.A. 5:12-138 and this subchapter.

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