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Ohio budget includes changes to ethics, campaign finance laws

IN THIS ISSUE

- **Ohio budget includes changes to ethics, campaign finance laws**
- **What went wrong? All in the family: father and son indicted on corruption charges**
- **Court upholds contribution ban on federal contractors**
- **General Assembly contemplates new avenues for misuse of taxpayer funds complaints**

By Marjorie J. Yano

On June 30, 2015, Ohio Governor John Kasich signed Ohio's biennial budget bill into law. The bill, House Bill 64, contains appropriations for the state's next two fiscal years as well as a number of policy changes.

Highlights of the \$71 billion budget include an additional 6.3 percent reduction in personal income tax rates and a reduction to the small business income tax. The bill modifies Ohio's school funding formula and institutes a pay raise for judges and county and township elected officials. The bill increases the maximum amount permitted in the state's rainy day fund and creates the Ohio 2020 Tax Policy Study Commission to review Ohio's tax policy and make recommendations for any action by the General Assembly.

With respect to Ohio's ethics laws, one minor change was made. The bill authorizes the Ohio State Board of Education to create a "Teacher of the Year" distinction and states that, under the state's ethics laws, a teacher recognized as "Teacher of the Year" may receive a gift or privilege as part of the recognition program. Ordinarily, Revised Code 2921.43(A) prohibits public servants (including teachers employed at public schools) from accepting additional compensation from someone or some entity other than their public employer for performing their public duties. The bill also states that a person or entity may make a voluntary contribution to the recognition program without running afoul of ethics laws.

The bill also allows a nonprofit corporation that is a tax exempt business organization — a 501(c)(6) under the Internal Revenue Code — to transfer contributions received as part of regular dues payments from its unincorporated member businesses to the organization's political action committee (PAC). The PAC is required to itemize these contributions and, when reporting, allocate the contributions to individuals. Current law prohibits a corporation from using the corporation's money, including dues, to aid a PAC, even the corporation's own PAC.

Two other relevant provisions were proposed during the budget process but were not included in the final version of the bill.

A proposal was included by the House of Representatives to repeal the income tax credit for contributions to the campaign committees of candidates for statewide offices, the Ohio General Assembly and the Ohio Board of Education. The repeal would have taken place starting with tax years on or after January 1, 2015.

The executive budget, proposed by the administration, included a proposal to expand the sales and use tax to cover lobbying services as well as the research and public polling services often used by campaigns. This language was removed and not included in the final version of the bill.

The Ohio General Assembly is now on summer recess but will reconvene for session and committee hearings in late September through the end of 2015.

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What went wrong? All in the family: father and son indicted on corruption charges

By **Katie Reardon**

Dean Skelos, a New York state senator and his son, Adam Skelos, were indicted by a grand jury on May 28, on extortion, wire fraud, conspiracy and bribe solicitation charges, the *New York Times* [reports](#). Sen. Skelos is suspected of taking “official actions to benefit a small Arizona environmental company, AbTech Industries, and a large New York developer, Glenwood Management, that had financial ties to AbTech.” According to the charges, Sen. Skelos requested that payments be made to his son in return for these actions. The indictment also accuses Sen. Skelos of receiving more than “\$100,000 in payments and health benefits from a medical malpractice insurer that provided his son

with a no-show job while it lobbied the senator on legislative matters.”

Sen. Skelos has maintained his innocence but stepped down from his senate leadership position a week after the arrest. He also took a leave of absence from the law firm where he is employed.

In this case, the senator, his son and the entities face scrutiny for their actions. This is a good reminder of the importance of corporate compliance officers. It is vital for compliance officers to create, educate and implement internal policies that make it easier to detect these types of unethical behaviors by public officials.

Court upholds contribution ban on federal contractors

By **Maria J. Armstrong**

The U.S. Court of Appeals for the District of Columbia Circuit unanimously upheld the ban on political contributions by federal contractors in its *Wagner v. Federal Election Commission* [ruling](#), which was issued July 7, 2015. Federal law makes it illegal for any person “who enters into any contract with the United States . . . directly or indirectly to make any contribution . . . to any political party, committee, or candidate for public office or to any person for any political purpose.” 52 U.S.C. § 30119(a)(1).

The case was brought by three individuals who wanted to make contributions to federal candidates in 2012 but could not because of the federal contribution ban. The named plaintiff, Wendy Wagner, is a law professor who was hired as a consultant by a federal agency to prepare a report about science and regulation. Two additional plaintiffs were former federal employees who returned to work for their federal agency under personal services contracts after retirement. At issue before the court was the constitutionality of the ban on individuals making contributions to federal candidates and political parties.

Citing dozens of instances of corruption in federal and state government — from Watergate to Ohio’s Tom Noe scandal — the court concluded that the government has a compelling interest in regulating political contributions by federal contractors. The plaintiffs argued that the government’s interest was not furthered by the contribution ban for two reasons: (1) the advent of formalized competitive bidding procedures enacted after the contribution ban went into effect; and (2) the evidence of corruption presented by the Federal Election Commission largely focused on activities of corporations and other kinds of firms as opposed to individual subcontractors. The court squarely rejected the plaintiffs’ arguments and concluded that the law, under the narrow issues challenged in the case, is constitutional.

Notably, the court did not have before it the question of federal contractors’ contributions to “ideological PACs that, in turn, contribute to candidates.” However, the court did examine and reject the plaintiffs’ contention that the law was unconstitutional because, while both corporate and individual federal contractors were barred from

making political contributions, corporate officers and corporate-controlled PACs could make contributions. The plaintiffs also challenged the law on the basis that most federal employees are permitted to make contributions while individual federal consultants, who, like Professor Wagner, may only earn a fraction of their income from federal contracts, cannot. The court rejected that argument as well.

Wagner represents the latest in a series of cases highlighting the legal tug of war underway in the courts, as they work to balance individual First Amendment rights against the government's interest to prevent corruption in elections. It also includes an interesting summary of the political events, laws and cases that have shaped this area of law.

General Assembly contemplates new avenues for misuse of taxpayer funds complaints

By **Maria J. Armstrong**

On June 16, the Senate introduced Senate Bill 186 (S.B. 186), which would authorize the Ohio Elections Commission to hear complaints regarding violations of the laws prohibiting use of public funds to support or oppose a candidate campaign or the passage of a levy or bond issue. The provisions in Ohio law that prohibit such activity remain essentially unchanged, but the addition of jurisdiction for the Ohio Elections Commission, referrals to local prosecutors and the penalty provisions are new.

Ohio Revised Code Section 9.03 (R.C. 9.03) prohibits the use of public funds to communicate information that “supports or opposes the nomination or election of a candidate for public office, the investigation, prosecution, or recall of a public official, or the passage of a levy or bond issue.” R.C. 9.03 also prohibits the use of funds to compensate a public employee for activity to influence the outcome of an election. The law is clear, however, that public employees are permitted to attend meetings to present information about the political subdivision's finances, activities and governmental actions even though an election issue is discussed or debated at the meeting, so long as the presentation is not designed to influence the outcome of the election.

S.B. 186 also impacts R.C. 3315.07, which contains similar prohibitions related to school district expenditures. Existing law remains unchanged and provides that a board of education cannot use public funds to support or oppose the passage of a school levy or bond issue or to compensate an employee for time spent to influence an election. However, the statute gives school districts broad latitude to provide “information the board considers helpful in keeping students, parents, employees, and residents aware of the operation of the school district.”

Amendments made to S.B. 186 would give the Ohio Elections Commission jurisdiction over complaints related to alleged violations of these laws. If passed as currently drafted, the Elections Commission could assess administrative fines or order those who violate the law to pay restitution. The proposed legislation would also require the Commission to send a copy of a complaint to the appropriate prosecutor's office. Creating an exception to other election law violations, S.B. 185 would allow a prosecutor to start a prosecution “before, during, or after” the Ohio Election Commission's proceedings. A copy of the bill as introduced can be found [here](#).