

**STATE OF HAWAII
CAMPAIGN SPENDING COMMISSION**

235 SOUTH BERETANIA STREET, ROOM 300
HONOLULU, HAWAII 96813

July 15, 2020

Robert Lenhard, Esq.
Covington & Burling LLP
One CityCenter
850 Tenth Street, NW
Washington, DC 20001-4956

Re: Advisory Opinion 20-01

Dear Mr. Lenhard:

This is in response to your request for an advisory opinion and exhibits dated May 5, 2020.¹ Your request concerned the applicability of Hawaii Revised Statutes (“HRS”) §11-355, the state ban on government-contractor political contributions, on several types of pharmaceutical discount agreements. Your client is a pharmaceutical manufacturer that enters into these types of pharmaceutical discount agreements. For the reasons discussed below, the Hawaii Campaign Spending Commission (“Commission”) determines that HRS §11-355 does not apply to the pharmaceutical discount agreements described in your letter.²

HRS §11-355, entitled “Contributions by state and county contractors prohibited,” provides:

(a) It shall be unlawful for any person who enters into any contract with the State, any of the counties, or any department or agency thereof either for the rendition of personal services, the buying of property, or furnishing of any material, supplies, or equipment to the State, any of the counties, any department or agency thereof, or for selling any land or building to the State, any of the counties, or any department or agency thereof, if payment for the performance of the contract or payment for material, supplies, equipment, land, property, or building is to be made

¹ Attachment “A” is a copy of your request for an advisory opinion and exhibits. Attachment “B” is a copy of an email dated June 2, 2020 from staff to you requesting more information and a copy of your email dated June 9, 2020 to staff in response.

² Copies of the pharmaceutical discount agreements were not provided to the Commission. This Advisory Opinion only applies to the pharmaceutical manufacturer party to these agreements and not to any other entities that may receive state or county funds pursuant to these agreements.

in whole or in part from funds appropriated by the legislative body, at any time between the execution of the contract through the completion of the contract, to:

(1) Directly or indirectly make any contribution, or promise expressly or impliedly to make any contribution to any candidate committee or noncandidate committee, or to any candidate or to any person for any political purpose or use; or

(2) Knowingly solicit any contribution from any person for any purpose during any period.

(b) Except as provided in subsection (a), this section does not prohibit or make unlawful the establishment or administration of, or the solicitation of contributions to, any noncandidate committee by any person other than the state or county contractor for the purpose of influencing the nomination for election, or the election of any person to office.

(c) For purposes of this section, "completion of the contract" means that the parties to the government contract have either terminated the contract prior to completion of performance or fully performed the duties and obligations under the contract, no disputes relating to the performance and payment remain under the contract, and all disputed claims have been adjudicated and are final.

The Commission, in an administrative rule, has interpreted “personal services” to mean “the performance of services in the fields of health, law, engineering, architecture, construction, accounting, actuarial science, performing arts, or consulting.” Hawaii Administrative Rule (“HAR”) §3-160-37(h).

You asked whether the four types of agreements described in your letter, Medicaid Rebate Agreements, Medicaid Supplemental Rebate Agreements, Group Purchasing Organization agreements, and Minnesota Multistate Contracting Alliance for Pharmacy agreements³ are contracts subject to the ban on political contributions from state government contractors.

Medicaid Rebate Agreements and Medicaid Supplemental Rebate Agreements

Pharmaceutical manufacturers negotiate and enter into a national rebate agreement with the Centers for Medicare and Medicaid Services (“CMS”). CMS is a federal agency that provides health insurance to people through Medicare, Medicaid, the Children’s Health Insurance Program, and the Health Insurance Marketplace. <https://www.usa.gov/federal-agencies/centers-for-medicare-and-medicaid-services>. The Medicaid Rebate Agreement provides that Medicaid (funded by the federal and state governments) will pay a portion of the cost of covered prescription drugs purchased by Medicaid beneficiaries. The Medicaid payments are made directly to the pharmacies where the drugs were purchased. State funds are not paid to

³ In your June 9, 2020 email to staff, you removed State Patient Assistance Program Agreements and Minnesota Multistate Contracting Alliance for Pharmacy Supplemental Enrollment Agreements from your request for an advisory opinion.

the pharmaceutical manufacturer. Pursuant to the national rebate agreement, the pharmaceutical manufacturer is obligated to pay the state Medicaid program the negotiated rebate for each covered drug purchased. The state program is not a party to the Medicaid Rebate Agreement. Even if the state program was a party to the national rebate agreement, the agreement does not require the state to purchase personal services, property, material, supplies, equipment, land, or building, with funds appropriated by the legislative body.

In addition to the national rebate agreement with CMS, pharmaceutical manufacturers may enter into supplemental rebate agreements with state Medicaid programs.⁴ In those supplemental rebate agreements, the pharmaceutical manufacturer agrees to pay a further rebate to the state program in exchange for the state program placing the pharmaceutical manufacturer's drugs on "equal status" with the drugs in the same therapeutic class on the state program's preferred drug list. That is, the state program will not require the prior approval of the pharmaceutical manufacturer's drugs before the purchase by a Medicaid beneficiary. Again, state funds are not paid to the pharmaceutical manufacturer, but are paid directly to the pharmacy. Likewise, the Medicaid Supplemental Rebate Agreement does not obligate the state to purchase anything from the pharmaceutical manufacturer with funds appropriated by the legislative body.

The state is not a party to the Medicaid Rebate Agreement. Even if the state was a party to the national rebate agreement, the agreement does not require the state to purchase anything from the pharmaceutical manufacturer with funds appropriated from the legislative body. Although the state would be a party to a Medicaid Supplemental Rebate Agreement, the supplemental agreement does not require the state to pay any funds to the pharmaceutical manufacturer and does not obligate the state to purchase anything from the pharmaceutical manufacturer through the expenditure of funds appropriated by the legislative body. Thus, the government contractor ban on political contributions contained in HRS §11-355 does not apply to the Medicaid Rebate Agreements and the Medicaid Supplemental Rebate Agreements.

Group Purchasing Organization ("GPO") Agreements

Organizations, including state agencies like prison systems, that purchase large quantities of pharmaceutical products, may join a GPO that provide its members discounts on the price the members pay for products from participating pharmaceutical manufacturers. GPO agreements generally involve a pharmaceutical manufacturer agreeing to provide discounts to authorized distributors of the manufacturer's products to GPO members. In order for a GPO member to receive the discounts under the GPO agreement, the member must submit a signed "Designation Form" to the pharmaceutical manufacturer in which the member agrees to be covered by the GPO agreement, give the manufacturer's product equal status, to not distribute or resell the product to third parties, and to comply with all applicable laws and regulations governing the purchase and distribution of the pharmaceutical manufacturer's products.

⁴Four states, including Hawaii, do not have supplemental rebate agreements.

<https://www.medicaid.gov/medicaid-chip-program-information/by-topics/prescription-drugs/downloads/xxxxsupplemental-rebates-chart-current-qtr.pdf>.

The state is not a party to the GPO agreement. The GPO agreement is between the pharmaceutical manufacturer and a distributor of the manufacturer's products. Even if the state was considered a party to the GPO agreement, the agreement does not require the state to purchase anything from the pharmaceutical manufacturer with funds appropriated from the legislative body. Although the state as a GPO member, would be a party to the Designation Form, that form does not require the state to pay any funds to the pharmaceutical manufacturer and does not obligate the state to purchase anything from the pharmaceutical manufacturer through the expenditure of funds appropriated by the legislative body. Thus, the government contractor ban on political contributions contained in HRS §11-355 does not apply to GPO agreements.

Minnesota Multistate Contracting Alliance for Pharmacy ("MMCAP") Agreements

MMCAP is a group purchasing organization that is operated by the Minnesota procurement authority. The MMCAP enters into agreements with pharmaceutical manufacturers for a fixed price percent discount on the manufacturers' products when member facilities buy the products from a wholesaler or distributor. Member facilities are generally state and local government facilities, including state long-term healthcare facilities in Hawaii. Although member facilities are not direct parties to the MMCAP agreements, they agree to abide by the terms of the agreements as members of the MMCAP.

Under MMCAP agreements, payments for the product are not paid by the member facilities to the pharmaceutical manufacturers. The member facilities pay the wholesalers and distributors of the manufacturers' products. The pharmaceutical manufacturers will reimburse the wholesalers or distributors of the manufacturers' product the difference between the prices paid by the member facilities and the list price paid by the wholesalers or distributors of the product. The MMCAP agreements do not require the state to pay any funds to the pharmaceutical manufacturer and does not obligate the state to purchase anything from the pharmaceutical manufacturer through the expenditure of funds appropriated by the legislative body. Thus, the government contractor ban on political contributions contained in HRS §11-355 does not apply to MMCAP agreements.

The Commission provides this Advisory Opinion as a means of stating its current interpretation of the Hawaii campaign finance law in §11-301, *et seq.*, HRS, and the Commission's rules in chapter 3-160, Hawaii Administrative Rules. The Commission may adopt, revise, or revoke this Advisory Opinion if provisions of the campaign finance law or administrative rules are amended or repealed.

CAMPAIGN SPENDING COMMISSION



By: BRYAN LUKE
Its Chair

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COMMISSION

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RECEIVED

May 5, 2020

Gary Kam, Esq.
General Counsel
Hawaii Campaign Spending Commission
235 S. Beretania Street, Room 300
Honolulu, HI 96813

Re: Applicability of Hawaii Revised Statute § 11-355 to Pharmaceutical Discount Agreements

Dear Mr. Kam:

Pursuant to Hawaii Revised Statute § 11-315, we respectfully request that the Commission issue an advisory opinion regarding the application of Hawaii's "pay-to-play" statute to six types of pharmaceutical discount agreements. Specifically, we seek confirmation that Medicaid Rebate Agreements, Medicaid Supplemental Rebate Agreements, State Patient Assistance Program ("SPAP") agreements, Group Purchasing Organization ("GPO") agreements, Minnesota Multistate Contracting Alliance for Pharmacy ("MMCAP") agreements, and MMCAP supplemental enrollment agreements are not "contracts," as that term is used in Haw. Rev. Stat. § 11-355 and thus not subject to the contribution and solicitation prohibitions.

I. Overview

Pharmaceutical companies rarely sell their products directly to the end user. Instead, pharmaceutical companies normally sell their products to a pharmacy company, which resells them to individual patients, or to a wholesaler such as Cardinal Health or McKesson, which resells them to hospitals and other large purchasers, including pharmacies. In both cases, the decision to purchase and use a particular pharmaceutical product is generally made not by the party purchasing the pharmaceutical product from the manufacturer, but by a treating physician, based upon a patient's particular medical condition.

The costs of pharmaceutical products are frequently subsidized by the government or by an employer. This may result from the product's user being eligible for a government program because the user is a senior citizen, living below the poverty level, a veteran or otherwise eligible for medicine at reduced costs. The user's costs may also be subsidized because the user is an employee or retiree of a private or public sector employer. The cost of pharmaceutical products can also be reduced through bulk purchasing agreements, which private and public sector entities that pay for pharmaceutical products often join. Thus, the purchaser and consumer of a pharmaceutical product are usually different from the payer of the overwhelming share of the

cost of that product, and those payers have a variety of ways to reduce the cumulative costs of these purchases.

We are asking the Commission to issue an advisory opinion regarding the application of Hawaii's "pay-to-play" statute to six types of pharmaceutical discount agreements. These agreements generally take one of two forms. The first works much like a coupon one uses at the grocery store. Under these agreements, the manufacturer agrees to provide the purchaser or payer with a discount that will apply at the time the product is purchased from a third party, such as a pharmacy. The pharmaceutical company then reaches a separate agreement with the seller to reimburse it for the products it sells at the reduced price. The second approach is for the manufacturer to provide the payer with a rebate for a portion of the purchase price when the payer shows that it has purchased the product. This is similar to the rebate checks that manufacturers will sometimes offer to consumers, if they mail in a proof of purchase. As we will detail more fully below, Minnesota Multistate Contracting Alliance for Pharmacy ("MMCAP") agreements, MMCAP supplemental enrollment agreements, and Group Purchasing Organization ("GPO") agreements, tend to follow this first model, while Medicaid Rebate Agreements, Medicaid Supplemental Rebate Agreements, and State Patient Assistance Program ("SPAP") agreements, operate along the lines of the second model described above.

II. Agreements at Issue

A. Medicaid Rebate Agreements and Supplemental Rebate Agreements

Pharmaceutical companies that manufacture patented prescription drugs must negotiate a national rebate agreement with the Centers for Medicare and Medicaid Services ("CMS") before their drugs are eligible for Medicaid coverage. That agreement provides that the Medicaid program (which is jointly funded by the federal and state governments) will pay a portion of the cost of covered prescription drugs purchased by beneficiaries of that program. In return, the pharmaceutical company agrees to pay the state Medicaid program a negotiated rebate for each prescription filled.

In addition to entering into a national rebate agreement with CMS, virtually all pharmaceutical companies whose drugs are eligible for Medicaid coverage offer additional "supplemental rebate" agreements with state governments in which the company agrees to pay an additional rebate to the state in exchange for the company's drugs having equal status on the state Medicaid program's preferred drug list. "Equal status" means that the state's Medicaid program will not disadvantage (e.g., require prior approval for) that company's listed drugs vis-à-vis other drugs in the same therapeutic class.

Under the supplemental rebate program, when a doctor prescribes a product covered by a Medicaid rebate or supplemental rebate agreement, the individual Medicaid beneficiary takes the prescription to a pharmacy and pays a co-payment in order to purchase it there. The pharmacy then submits a request for payment to the state for the balance of the cost of the drug,

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and the state makes that payment to the pharmacy. Having paid its share of the cost of the prescription, the state Medicaid program submits a request for a rebate to the pharmaceutical company. The pharmaceutical company then pays the state the agreed upon rebate, which is either (i) the rebate set under the Medicaid rebate agreement with CMS or (ii) that rebate plus an additional payment owed under a supplemental rebate agreement negotiated by the state.

B. SPAP Agreements

An SPAP is a state program designed to provide medical benefits to individuals who either do not qualify as beneficiaries under Medicaid or for whom the state has decided the Medicaid program provides insufficient coverage. An example is the Hawaii Rx Card program.¹

An SPAP beneficiary generally receives an identification card that he or she presents at a pharmacy to receive a discount on drug products or other medical benefits covered by the particular program. An SPAP may enter into rebate agreements with pharmaceutical companies to obtain discounts on covered drug products. However, the agreement does not obligate the state or pharmacies to purchase any drug products. Rather, under such an agreement, a pharmaceutical manufacturer agrees to pay the SPAP a rebate in exchange for its drugs having equal status on the SPAP's preferred drug list.² Pharmacies may then receive a reimbursement from the state if and when they dispense drugs to SPAP beneficiaries.

When a medical professional prescribes a drug product covered by an SPAP agreement, the individual program beneficiary (that is, the patient) fills the prescription at a pharmacy, sometimes paying a copayment to purchase it there. The pharmacy then submits a request for payment to the SPAP for the balance of the cost of the drug, and the SPAP makes that payment to the pharmacy. Having paid its share of the cost of the prescription, the SPAP submits a request for a rebate to the pharmaceutical manufacturer. The pharmaceutical manufacturer pays the state SPAP the agreed upon rebate, calculated based upon the number of SPAP beneficiaries who have been prescribed and purchased the covered drug and the volume of those purchases.

C. GPO Agreements

Organizations that purchase large quantities of pharmaceutical products, which can include state agencies (like prisons) or hospitals as well as private sector entities, can join Group Purchasing Organizations that provide discounts on the price their members pay for a participating manufacturer's pharmaceuticals. While GPO organizations have different agreements, the programs usually involve a manufacturer providing discounts to authorized distributors for purchases of products by group members. The authorized distributors, in turn, independently determine their actual selling prices to members. Members have no requirement

¹ See <http://www.hawaiiirxcard.com/index.php>

² "Equal status" means the SPAP will not disadvantage (e.g., require prior approval for) that manufacturer's drugs vis-à-vis other drugs in the same therapeutic class.

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to purchase any of the manufacturer's pharmaceuticals from the distributor, but if they do, they pay the distributor a reduced price because they are a GPO member.

For GPO Members to be eligible to participate in the Agreement and receive discounts on pharmaceutical products, they must submit to the pharmaceutical company a signed "Designation Form." The Designation Form states that the member intends to be covered by the Agreement, will give the products equal status, will not distribute or resell the products to third parties, and will comply with applicable laws and regulations regarding the purchase and distribution of pharmaceutical products.

D. MMCAP Agreements and Supplemental Enrollment Agreements

MMCAP is a group purchasing organization that enters into agreements with pharmaceutical companies for the benefit of its member facilities, which include state long-term healthcare facilities throughout the country, some of which are located in Hawaii. Members of MMCAP automatically receive a fixed price percent discount on covered drug products when the member purchases them from a wholesaler or distributor.

In addition, member facilities of MMCAP may enter into supplemental enrollment agreements with pharmaceutical manufacturers to obtain an additional upfront fixed price discount on specific drugs provided to patients in the facility. This supplemental discount is not negotiated with any facility; rather, all MMCAP member facilities are eligible for the additional fixed price discount, regardless of where the facility is located or what amount of drug products the facility may later decide to purchase. In return for this additional fixed price discount, a member facility will agree to allow physicians to prescribe the pharmaceutical product covered by the supplemental enrollment agreement without restriction and in a manner equal to other drugs in the same therapeutic class.

Neither MMCAP agreements nor supplemental enrollment agreements require a pharmaceutical manufacturer to actually sell any drug products to any particular MMCAP member facility or require any facility to actually buy any drug products from the manufacturer. Instead, these agreements operate like a coupon. If an MMCAP member facility chooses to purchase from a wholesaler a drug covered by such an agreement, the member facility will pay the wholesaler a discounted price, as set forth in the MMCAP agreement or, when available, a greater discount pursuant to a supplemental enrollment agreement. The wholesaler will then seek reimbursement from the pharmaceutical manufacturer for the difference between the discounted price paid by the MMCAP member facility and the list price the wholesaler paid when it purchased the drug products from the pharmaceutical manufacturer.

Although the wholesaler is neither bound by the agreement between the pharmaceutical manufacturer and MMCAP nor by any agreement between the manufacturer and any member facility, wholesalers often choose to honor the pricing arrangements set by these agreements. At no point does the state pay the pharmaceutical manufacturer for any drug product, nor does the

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pharmaceutical manufacturer pay the state. Instead, the agreement operates much as a coupon would at a grocery store, in that it provides the state with the opportunity to pay less than the normal price for the good it purchases from the wholesaler.

III. Analysis

A. Statute at Issue

Hawaii Revised Statute § 11-355 prohibits “any person who enters into any contract with the State, any of the counties, or any department or agency” from making or knowingly soliciting any campaign contributions to a political party, committee, or candidate during the course of the state or county contract. Haw. Rev. Stat. § 11-355. Specifically, the law regulates contracts “for the rendition of personal services, the buying of property, or furnishing of any material, supplies, or equipment to the State, . . . or for selling any land or building to the State” if appropriated funds are used to pay for at least part of the contract. *Id.* Regulations interpreting the substantively similar version of the law in existence prior to July 6, 2010, provided that the term “contract” meant a “written contract between any person and the State, any of its counties, or any department or agency thereof” as well as “[a]ny written contract modification.” Haw. Code R. § 3-160-37.

B. Application to Pharmaceutical Company Agreements

Medicaid rebate and supplemental rebate agreements, SPAP agreements, GPO agreements, MMCAP agreements and MMCAP supplemental agreements do not appear to fall within the scope of Haw. Rev. Stat. § 11-355.

None of these agreements constitute “contracts” with the State as that term is used in the statute because the agreements do not obligate a state facility to purchase any particular quantity of drugs, or even to purchase drugs at all. In fact, under the MMCAP and Medicaid Agreements, there is no contractual relationship between the pharmaceutical manufactures and the state. Rather, pharmaceutical companies enter into agreements with third parties such as the federal government and wholesalers designated by MMCAP. Wholesalers in these agreements act independently of the pharmaceutical company to set prices and fill orders. Moreover, under SPAP agreements, MMCAP supplemental agreements, Medicaid supplemental agreements, and GPO agreements, the state merely agrees to provide equal treatment of or nondiscrimination against a manufacturer’s products in exchange for reduced pricing or rebates.

These agreements are not contracts “for” the “furnishing [of] any material, supplies, or equipment” to the State. None of the agreements directly involve the purchase of goods by the State. They do not require a prescription drug manufacturer to sell or furnish any specific quantity of products to the Hawaii facilities and no actual purchase is required under the agreement. Instead, a manufacturer agrees that the state or a member facility may receive a

rebate or discount on any products that it might purchase or for which it might reimburse a pharmacy. Because the actual sale and furnishing of products is not directly addressed by the terms of the agreements between the State and the manufacturer but occurs instead between (i) the facility and the wholesaler in MMCAP, MMCAP Supplemental, and GPO Agreements or (ii) between the state and a pharmacy in Medicaid, Medicaid Supplemental, and SPAP agreements, this statute should not apply to these agreements.

Nor are payments under these agreements “made in whole or in part from funds appropriated by the legislative body” as required under the statute. Haw. Rev. Stat. § 11-355(a). Because these agreements do not require the state to make a purchase or payment of any kind from appropriated funds, this statutory requirement also has not been met.

Notably, many other states with similar “pay-to-play” statutes have concluded that they do not apply to the pharmaceutical discount programs described above:

- New Jersey has determined that agreements between pharmaceutical manufacturers and the State of New Jersey in relation to two New Jersey SPAPs—Pharmaceutical Assistance to the Aged and Disabled (“PAAD”) and Senior Gold—are not contract awards for purposes of application of New Jersey’s law prohibiting political contributions from state contractors because pharmaceutical manufacturers are required to enter into these agreements for their drugs “to be eligible for State funding when dispensed to PAAD or Senior Gold beneficiaries” and the provision of drugs under these programs is not subject to the State’s public bidding process. *See Exhibit A.*
- In 2011, the Kentucky Registry of Election Finance confirmed that MMCAP Supplemental Agreements are not covered by the Kentucky pay-to-play laws because “MMCAP creates no contractual relationship between” Kentucky and the pharmaceutical manufacturer and because “Commonwealth agencies do not purchase pharmaceuticals directly from” the manufacturer under the agreement. *See Exhibit B.*
- In 2010, the Pennsylvania Department of State concluded that the state’s pay-to-play statute did not apply to certain Medicaid supplemental rebate, SPAP, and MMCAP supplemental enrollment agreements. *See Exhibit C.*
- In 2010, the Rhode Island Board of Elections issued an advisory opinion explaining that SPAP agreements were not covered by the state’s pay-to-play law because “the financial benefit to the state is indirect and comes in the form of a rebate on the purchases by local pharmacies for the SPAP program.” With respect to MMCAP supplemental enrollment agreements, the board explained that the law does not apply either because “there is no express contract or agreement for the sale of any goods from” the manufacturer “to the State of Rhode Island.” “Rather,” the board concluded, “the State receives a discount when drug products are purchased from a third-party wholesaler. No state facility is

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obligated to purchase any type or amount of medication under the enrollment agreement." See Exhibit D.

- In 2011, the Connecticut State Elections Enforcement Commission concluded that commission staff would recommend no action in cases involving certain Medicaid supplemental rebate agreements and SPAP agreements. See Exhibit E.

In sum, Hawaii Revised Statute § 11-355 should not apply to the above mentioned agreements because the agreements do not involve the direct purchase or sale of a particular quantity of a pharmaceutical manufacturer's products by or to the State of Hawaii.

IV. Conclusion

In light of the foregoing analysis, we respectfully request an advisory opinion confirming that Medicaid Rebate Agreements, Medicaid Supplemental Rebate Agreements, SPAP agreements, GPO agreements, MMCAP agreements, and MMCAP supplemental enrollment agreements, as described herein, do not trigger the contribution and solicitation prohibitions in § 11-355. Please do not hesitate to contact us if you need any additional information.

Respectfully submitted,



Robert Lenhard

EXHIBIT A

Chapter 51/Executive Order 117 Q & A
Updated 8/26/15

These questions and answers have been updated to reflect all developments concerning Chapter 51 and Executive Order 117.
Please do not refer to any prior versions.

1. How are EO 134, Chapter 51 and EO 117 related?

Answer: Chapter 51 superseded EO 134 in 2005. EO 117 was issued in 2008 and is applied along with Chapter 51 to vendor contributions.

2. Do employee contributions disqualify the vendor or contractor from receiving a state contract award?

Answer: Employee contributions do not disqualify the employer, so long as the employee is not considered part of the business entity. See definition of business entity in the Information and Instructions for Completing the Two-Year Vendor Certification and Disclosure of Political Contributions form.

<http://www.state.nj.us/treasury/purchase/forms/eo134/Chapter51.pdf>

3. Who can make a request for a public exigency exception to Chapter 51?

Answer: Only the State agency that is procuring or otherwise entering the contract with the business entity can make a request for a public exigency.

4. Does Chapter 51 apply to grants given by covered agencies? Does it matter if it's for a for-profit entity?

Answer: In general no, even if it is for a grant to a for-profit entity. However, if a procurement transaction is called a grant but will result in the acquisition of goods and services from a for-profit entity, then Chapter 51 does apply.

5. Does the law apply only to procurement of services?

Answer: No, the law applies to the procurement of goods, commodities, services, materials, supplies and equipment, and the acquisition, sale or lease of land or buildings.

6. In what format will departments be notified once the Chapter 51 Review Unit completes the review of a vendor's Two-Year Chapter 51/Executive Order 117 Vendor Certification and Disclosure of Political Contributions form?

Answer: The Chapter 51 Review Unit will notify State agencies by email of a business entity's Chapter 51/Executive Order 117 compliance or to request additional information

if necessary. It is the State agency's responsibility to communicate that response to the potential vendor.

7. Does the \$17,500 threshold in Chapter 51 apply per individual transaction, or is it cumulative Statewide or by department or by division within a department?

Answer: The threshold is applicable per transaction executed cumulatively by a division within a department. However, if the agency becomes aware of a vendor receiving more than \$17,500 in contracts during the same fiscal year, the agency should obtain a Two-Year Vendor Certification and Disclosure of Political Contributions form from the vendor. Contracts should not be divided by dollar amount or between agencies to avoid the \$17,500 threshold.

8. In cases where the public exigency requires the immediate purchase of goods or services, what will the Chapter 51 Review Unit require in terms of justification and/or supporting documentation?

Answer: Chapter 51 provides that the Treasurer may exempt compliance from Chapter 51 and EO 117 in the case of a public exigency. Please see below for Public Exigency guidelines. Accordingly, agencies need not request that the vendor execute the Two-Year Chapter 51/Executive Order 117 Vendor Certification and Disclosure of Political Contributions form, but instead, should send a request to the Treasurer explaining why the Treasurer should exempt the procurement as a public exigency.

Public Exigency - must be an emergency that affects the public health, safety, or welfare or a critical agency mandate which requires the immediate delivery of goods or performance of services or involves a contract for specific goods or services that:

- a. Must be provided by a specific vendor; and,
- b. The timing of the procurement does not make compliance with Chapter 51 practical or possible; and
- c. The procurement is consistent with the intentions of pay-to-play laws.

An example of this would be a procurement where the goods or services are only available from a single source and the single source vendor's action prevents or stymies application of the law. In these cases, the public agency can request approval from the Treasurer.

9. With respect to Chapter 51, if an individual makes a contribution to a PAC and the PAC makes contributions, how does this affect the person's ability to enter into contracts with public agencies? Who receives credit for the contribution?

Answer: A "PAC" is not a legal term, but when people use it, they generally are referring to what is defined as a "continuing political committee" under New Jersey law. Assuming by "PAC" you are referring to a continuing political committee and not to a candidate committee or a political party committee, an individual's contribution to a PAC does not affect the individual's ability to contract with State agencies, unless (1) the individual directly or indirectly controls the PAC and the PAC itself makes a disqualifying

contribution, or (2) the Treasurer determines, under Section 6 of Chapter 51, that the individual's contribution to the PAC would constitute a breach of contract under Section 9 of the statute or would pose a conflict of interest.

10. Does Chapter 51 apply to DPA purchases of \$17,500 and less?

Answer: No, however it does apply to DPA purchases in excess of \$17,500.

11. Is there a contact person that I could speak to directly about compliance with Chapter 51 and Executive Order 117? We have a few questions that I need to discuss with someone, if possible.

Answer: No. Agencies and business entities are requested to submit all questions electronically to the following link:

<https://www.state.nj.us/treas/purchase/eo134questions.shtml>

This format eliminates responding to duplicate questions, provides the opportunity to share questions and answers with agencies, as well as the business community and expedites response.

12. What documentation is required to be submitted to the Chapter 51 Review Unit? Is it only the certification form or should the vendor quote also be included?

Agencies should submit the Two-Year Chapter 51/Executive Order 117 Vendor Certification and Disclosure of Political Contributions form to the Chapter 51 Unit. The form is available online at:

<http://www.state.nj.us/treasury/purchase/forms/eo134/Chapter51.pdf>.

If additional information is needed, the Chapter 51 Review Unit will send its request to the public agency to be forwarded to the business entity.

13. Can State Agencies submit the Two-Year Chapter 51/Executive Order 117 Vendor Certification and Disclosure of Political Contributions form as a scanned attachment (.pdf) via email?

Answer: Yes. We encourage submissions be sent electronically for review to: CD134@treas.nj.gov.

14. Do Chapter 51 and Executive Order 117 affect subcontractors of a vendor that we would like to contract with?

Answer: No. The prime contractor only – not its subcontractors – is responsible to be in compliance with Chapter 51 and Executive Order 117.

15. Are contracts to procure goods and services for school districts previously referred to as "Abbott districts" within the scope of Chapter 51 and EO 117?

Answer: Yes. Procurements by State agencies on behalf of the school districts formerly referred to as "Abbott districts" are within the scope of Chapter 51. Purchases made directly by a school district are not covered by Chapter 51 or EO 117.

16. Do we have to provide compliance documents repeatedly for vendors once we establish approval by the Treasurer or will we have to do this every time we award, especially for a DPA purchase? Many of our DPA purchases are to the same vendors again and again.

Answer: No, the Two-Year Chapter 51/Executive Order 117 Vendor Certification and Disclosure of Political Contributions form is valid for a two year period effective the date of approval. State agencies should first verify a business entity's compliance status with the Chapter 51 Review Unit prior to requesting the completion of a form. If approval has already been obtained, a new form is not required to be submitted for that vendor. If there is a change in the vendor's ownership status or if the vendor makes a political contribution(s) during the two-year period, the vendor is required to submit a new Two-Year Chapter 51/Executive Order 117 Vendor Certification and Disclosure of Political Contributions form for approval to the Chapter 51 Review Unit.

17. Is my corporation required to submit a separate Two-Year Chapter 51/Executive Order 117 Vendor Certification and Disclosure of Political Contributions form for each 10% or greater owner and their spouses and children (living at home)? In our case, this would require completion of 10 copies of each form. What is to be done if children are not of legal age?

Answer: Where the business entity is a corporation, a Two-Year Chapter 51/Executive Order 117 Vendor Certification and Disclosure of Political Contributions form is required from the business entity itself, each 10% or greater owner, officers of the corporation and each controlled subsidiary or Section 527 Political Organization.

As a matter of convenience, a business entity may submit only one form if its authorized representative completing and signing the form is certifying on behalf of the business entity and all individuals and/or entities whose contributions are attributable to the business entity. If the authorized representative completing the form is only certifying for the business entity itself, then separate forms must be completed and submitted along with the business entity's form from all other individuals and/or entities whose contributions are attributable to the business entity.

No form is required from children that are not of legal age or children that do not reside with an individual that falls under the definition of business entity. Additionally, it does not apply to a contribution made by a spouse, civil union partner, or child to a candidate for whom the contributor is entitled to vote or to a political party committee within whose jurisdiction the contributor resides.

18. We received in the mail a Vendor Certification and Disclosure of Political Contributions form (CH51.1 R1/21/2009). The form (Chapter 51 – Rev. 4/17/15) on the website also refers to Two-Year Chapter 51/Executive Order 117 Vendor Certification and Disclosure of Political Contributions form. Both are two year forms. Can we use the form on the website in place of the one we received in the mail?

Answer: Yes. The form on our website is always the most current and correct. This is the only form that will be accepted for review and approval.

19. My company is owned by another company. I understand that my company, and the company that owns my company, must complete the Two-Year Chapter 51/Executive Order 117 Vendor Certification and Disclosure of Political Contributions form. The owner company has 3 shareholders. Are these shareholders also required to complete the compliance forms?

Answer: You are correct that certification and disclosure is required from the contracted company and the company that owns the contracted company. However, the shareholders of the owner company are not considered "principals" of your company and, therefore, are not required to submit compliance documentation. Keep in mind, the Two-Year Chapter 51/Executive Order 117 Vendor Certification and Disclosure of Political Contributions form submitted is signed on behalf of the contracted company and any individuals and/or entities whose contributions are attributable to the contracted company. If the authorized representative completing the form is only certifying for the business entity itself, and not the parent company, which is the principle in your situation, a separate form must be completed and submitted along with the business entity's form from the parent company.

20. I am reviewing a contract between the Board of Public Utilities and a consulting company. The contractor will not be paid by BPU, but by the various utility companies that are involved in the project (for development of electronic data interchange processes). Would this be considered a "state contract" requiring compliance with Chapter 51?

Answer: Although the contractor will be paid by the various utility companies, the contract in place is between the Board of Public Utilities and the consulting company. If the expenses to be incurred by the various utility companies are expected to exceed \$17,500, Two-Year Chapter 51/Executive Order 117 Vendor Certification and Disclosure of Political Contributions forms are required.

21. Is the Two-Year Chapter 51/Executive Order 117 Vendor Certification and Disclosure of Political Contributions form required in the case of an assignment of an existing agreement, where the original vendor has been acquired by a third party and the assignee is the new corporate form of the original vendor? The term of the original agreement is not being extended, and the terms and conditions are unchanged, except for the assignment.

Answer: No.

22. I represent a State agency preparing to enter into a contract with a municipality. Is a municipality required to fill out the Two-Year Chapter 51/Executive Order 117 Vendor Certification and Disclosure of Political Contributions form prior to entering into a contract with the State? How about other State entities that are vendors, such as colleges and universities?

Answer: Municipalities and State entities are not required to comply with Chapter 51 and Executive Order 117 because they do not fall within the definition of a business entity. Additionally, colleges, universities and non-profit organizations are excluded from this definition and are, therefore, exempt from Chapter 51 and Executive Order 117 compliance.

23. Do Chapter 51 and Executive Order 117 apply to contracts with the Administrative Office of the Courts?

Answer: No.

24. Are extensions of contracts, subject to the terms of Chapter 51 and Executive Order 117?

Answer: Contract extensions are treated as exercises of existing contractual rights and are not subject to the requirements of Chapter 51 and Executive Order 117.

25. Are contract change orders subject to the terms of Chapter 51?

Answer: Contract change orders are treated as exercises of existing contractual rights and are not subject to the requirements of Chapter 51.

26. Is an amendment or change order to a contract that was originally below the \$17,500 threshold subject to the terms of Chapter 51 if the amendment brings the value of the agreement over \$17,500?

Answer: Yes.

27. Please define "any entity designated and organized as a "political organization" under 26 U.S.C.A. 527, that is also defined as "continuing political committee" under N.J.S.A. 19:44A-3(n) and N.J.A.C. 19:25-1.7." Is there a listing that can be provided for all "entities" that are organized under these criteria?

Answer: The simplest way to obtain information about the registration status of a political organization is to inquire of the organization itself. In addition, information regarding political organizations that are tax exempt under Section 527 of the Internal Revenue Code is available at the IRS website link:

<http://forms.irs.gov/politicalOrgsSearch/search/basicSearch.jsp?ck>

New Jersey Election Law Enforcement Commission (ELEC) maintains information regarding organizations which have registered as "continuing political committees" and is available at ELEC website link: <http://www.elec.state.nj.us/>

28. We request clarification of the language with respect to Chapter 51. The language states that each person or organization within the definition of business entity is required to provide certification and disclosure. We are a subsidiary of a publicly-held company listed on the NYSE. Our parent company has over 300 subsidiaries in the U.S. and it has a New Jersey PAC (continuing political committee). The definition of business entity would clearly include Bidder (our company) and its parent corporation.

The definition also includes any subsidiaries directly or indirectly controlled by the business entity. This seemingly includes all 300+ subsidiaries of our parent company, since parent is a business entity."

Would it be acceptable for our company to include with our bid proposal forms for our company and our parent company? Or would we need to include forms for all 300 subsidiaries of our parent company? Our parent company's PAC would certify, since it appears to fall under the definition of a business entity.

Answer: In your example, only the parent company and the PAC would be required to certify and disclose. However, if the authorized representative from your company can certify on behalf of the parent and the PAC as well, only one Two-Year Chapter 51/Executive Order 117 Vendor Certification and Disclosure of Political Contributions form must be submitted. Please see the answers to Question 17 and 19.

29. Would an agreement signed between a New Jersey landlord and the NJ Department of Community Affairs (DCA) to receive federal Section 8 rental assistance funding constitute a "contract" as defined in Chapter 51?

Answer: No. The Section 8 program is, essentially, a grant program, and therefore, Chapter 51 does not apply.

30. With regard to property and real estate matters, do Chapter 51 and Executive Order 117 apply to the date of the real estate closing or when the real estate contract was executed by all parties?

Answer: The applicable date would be the date when negotiations commenced.

31. Under New Jersey law, partnerships cannot make political contributions to New Jersey candidates and political committees. See N.J.A.C. 19:25-11.10. However, partners can contribute and contributions can be made on partnership checks provided the contribution is allocated to a partner(s), i.e., comes from the partner's share of partnership funds, and such contribution is authorized in writing by the partner, and the written authorization accompanies the contribution when sent to a candidate or political committee. This being the case, is it correct

to assume reportable contributions (in excess of \$300.00) under Chapter 51 and Executive Order 117 are those made by equity partners in the partnership?

Answer: Yes.

32. I have been asked to act as placement agent for an agency's upcoming bond transaction. The placement is for the investment of the bond proceeds into guaranteed investment agreements. We have been asked to get each potential provider of an investment agreement to sign the Two-Year Chapter 51/Executive Order 117 Vendor Certification and Disclosure of Political Contributions form. The contract(s) will be signed with entities. These entities have or will shortly be submitting their forms under their corporate names. These entities, and others, have guarantors. I don't believe we need to have the guarantors also sign certification and disclosure forms. (They will never be the counterparty – just the backup credit in the event of a failure to perform by the signatory.) I want to confirm so that we don't have a problem at closing.

Answer: Since the guarantor does not have a contract with the State of New Jersey, it does not need to submit a Two-Year Chapter 51/Executive Order 117 Vendor Certification and Disclosure of Political Contributions form.

33. I understand Chapter 51 contains a provision so that it does not apply to certain federally funded contracts. Does this provision apply only to the NJ Department of Transportation for highway projects, or does it apply to all FTA-funded (Federal Transportation Authority) transit projects?

Answer: The exception is in N.J.S.A. 19:44A-20.25. This exception does not apply to all federally funded contracts, only those where the federal government or a court has determined Chapter 51's application would violate federal law. At present, we are aware that the exception applies to DOT contracts funded by the FHWA and to any other contracts funded in whole or in part, by the FHWA.

34. New Jersey law, N.J.S.A. 19:34-45 in particular, prohibits certain corporations, including banks and insurance companies, from making contributions to political candidates or parties. Given that it would appear that these companies were forbidden under law from making contributions covered under Chapter 51, is it necessary for these companies to provide a Two-Year Chapter 51/Executive Order 117 Vendor Certification and Disclosure of Political Contributions form?

Answer: Yes, the companies are required to file a Two-Year Chapter 51/Executive Order 117 Vendor Certification and Disclosure of Political Contributions form. The referenced statute does prohibit some contributions by certain corporations and their majority stockholders to or in support of political candidates and parties, but does not prohibit contributions by all of the individuals whose contributions are attributable to the business entity under Chapter 51 and may not prohibit contributions to all of the political committees within the scope of Chapter 51.

35. One of our vendor's owners died and the estate has not completed the probate process. Are we required to obtain a Two-Year Chapter 51/Executive Order 117 Vendor Certification and Disclosure of Political Contributions form from the estate?

Answer: No. Estates are not included in the definition of business entity.

36. Our company is a State contract vendor. Would the owner (who has a greater than 10% equity interest) of the company be allowed to be on the host committee for a gubernatorial fundraising event?

Answer: No, as that would violate the prohibition in the statute against solicitation of contributions by vendors' principals. Further, if as the host, the owner also paid any costs of or made in-kind contributions to the fundraising event with a value in excess of \$300.00, it would violate the prohibitions of the statute.

37. Would our Medicaid "fee for service" providers, who bill our system for reimbursement, be subject to Chapter 51? These providers have contracts with the HMOs to which the State is not a party, but which do prescribe certain parameters that must be met in the HMO contract. The fee for service providers have a simple provider agreement which certifies that they will comply with all applicable federal and state law, provide information regarding claims and keep records. There is no countersignature by the State. There is no acceptance process for service providers; all who apply and agree to the program's terms are accepted.

Answer: No, these providers are not subject to Chapter 51, as Medicaid has made no contract "award" to the fee for service providers.

38. Certain foreign entities – defined as "foreign nationals" – are prohibited by U.S. federal law from making political contributions in the United States. Based on this prohibition, are such businesses or foreign entities excused from compliance with Chapter 51?

Answer: No. The statute does not differentiate among business entities based on country of residence or origin, nor does the statute provide an exemption based upon compliance with other State or federal laws.

39. Our company is a state contract vendor. Our president is first vice-chair of a county political organization. As a state contract vendor, would our president be allowed to sign checks from the county political organization?

Answer: The signing of political organization checks does not alone disqualify a vendor under Chapter 51. However, as an executive with the county political organization, the company's president should be aware of the restrictions set forth in Chapter 51 on soliciting contributions. Those restrictions apply to state vendors and their principals. This company's president should also be aware of the possibility that services provided

to the county political organization may, if not voluntary personal services, be considered reportable "in-kind contributions" to the organization pursuant to N.J.S.A. 19:44A-3(f) and N.J.A.C. 19:25-1.7, which would have a potential Chapter 51 impact.

40. If a business entity responds that they have not contributed or solicited contributions, does the using agency have to submit the paperwork to the Chapter 51 Review Unit, or may they continue to process the contract without submission?

Answer: The paperwork must be submitted to the Chapter 51 Review Unit. We will confirm whether all of the required entities have submitted the required Two-Year Chapter 51/Executive Order 117 Vendor Certification and Disclosure of Political Contributions form, and will notify the using agency whether the business entity's documentation complies with the requirements of the statute.

41. For a professional corporation, does the definition of business entity include only principals who own or control more than 10 percent of the stock, or does it also include principals who own or control more than 10 percent of the profits or assets of a business entity?

Answer: It applies to both. Please refer to the Information and Instructions for Completing the Two-Year Chapter 51/Executive Order 117 Vendor Certification and Disclosure of Political Contributions form for the complete definition of business entity.

<http://www.state.nj.us/treasury/purchase/forms/eo134/Chapter51.pdf>

42. May two members of a corporation, neither of whom owns more than 10% of the stock of the corporation, but who in the aggregate own more than 10% of the stock of the corporation, make or solicit contributions subject to the statute.

Answer: Ownership in the corporation is not aggregated for purposes of determining the applicability of the statute.

43. Our agency utilizes New Jersey State contracts for a good portion of its procurement of goods and services. Please clarify whether our agency has to separately require that the vendors who have existing State Contracts comply with Chapter 51 before we can order?

Answer: Purchase Orders and other procurements against existing State contracts established by the Division of Purchase and Property, are not separately subject to the requirements of Chapter 51. Compliance with respect to such State contracts is the responsibility of the Division of Purchase and Property, Chapter 51 Unit.

44. Can a principal of a business entity give a power of attorney to another principal of the same business entity to sign as attorney-in-fact, the Two-Year Chapter 51/Executive Order 117 Vendor Certification and Disclosure of Political Contributions form?

Answer: Yes, authorized representatives are allowed to sign the Two-Year Chapter 51/Executive Order 117 Vendor Certification and Disclosure of Political Contributions form.

45. Is there any guidance as to how often and when our company should disclose any political contributions made after the award of a contract? Additionally, is there a special form to be filed to report these contributions?

Answer: A new Two-Year Chapter 51/Executive Order 117 Vendor Certification and Disclosure of Political Contributions form is required to be submitted for approval upon the making of any political contribution(s) aside from those disclosed on the original form and also to report changes in the ownership structure (including the appointment of a new officer within a corporation).

46. How should sole source purchases be handled with respect to Chapter 51?

Answer: The Two-Year Chapter 51/Executive Order 117 Vendor Certification and Disclosure of Political Contributions form is required even if it is a sole source contract. In the event that the sole source business entity has made a disqualifying contribution, the agency may request a public exigency from the State Treasurer.

Likewise, if you are inquiring whether or not your agency is entitled to receive an exemption from submitting documents because of the mere fact that you have received one bid or have one qualified bidder for services; the answer is No.

47. May a bidder safely use the Two-Year Chapter 51/Executive Order 117 Vendor Certification and Disclosure of Political Contributions form found on the Treasury website instead of the particular form included in the bid solicitation of the State agency?

Answer: Yes, the form on the Department of the Treasury website is the correct form for any type of procurement, including a publicly advertised bid. The location of the form on the web is: <http://www.state.nj.us/treasury/purchase/forms/eo134/Chapter51.pdf>

48. A business is a publicly traded company, and is owned in part by one or more financial firms, each of which owns more than 10% of the shares of the business. Is the business required to obtain a Two-Year Chapter 51/Executive Order 117 Vendor Certification and Disclosure of Political Contributions form from each financial firm?

Answer: Publicly traded companies are not required to obtain certification and disclosure forms from holders of 10% or more of their shares, where the holders of such shares are mutual funds, financial advisors, or other institutional investors that own the shares for the benefit of investors. However, financial firms or individuals that hold such shares for their own account are required to submit a Two-Year Chapter 51/Executive Order 117 Vendor Certification and Disclosure of Political Contributions form.

49. If a public company is required to obtain a Two-Year Chapter 51/Executive Order 117 Vendor Certification and Disclosure of Political Contributions form from a 10% shareholder where that shareholder is a mutual funds, financial advisor, or other institutional investor that owns the shares for its own account and such public company in good faith attempts to obtain the form, but is unable, does a public exigency exist to enable the state agency to still contract with the public company despite the lack of a certification and disclosure from the shareholder?

Answer: A public exigency is determined on a case by case basis by the State Treasurer. If the Treasurer determines that a public exigency requires the immediate delivery of goods or performance of services, the agency would not be precluded from contracting with the company.

50. Our company is currently under contract with the State of New Jersey. Is our company allowed under the provision of Chapter 51 and Executive Order 117 to contribute \$500.00 to a committee to re-elect a county Freeholder, or a State Assembly or State Senate candidate

Answer: Contributions to the election fund or committee of a county Freeholder, State Assembly or State Senate candidate are outside of the scope of Chapter 51 and Executive Order 117.

51. The Two-Year Chapter 51/Executive Order 117 Vendor Certification and Disclosure of Political Contributions form requires disclosure of contributions to "political organizations"; does this require a disclosure of groups and political organizations not covered by Chapter 51 and Executive Order 117?

Answer: The business entity is required to disclose any political contribution solicited or made in the preceding four years to any political organization organized under Section 527 of the Internal Revenue Code which also meets the definition of a continuing political committee, which is commonly referred to as a PAC (Refer to Question 27). Also, the form requires the disclosure of any contributions solicited or made during the preceding 5 ½ years to any:

Candidate committee/election fund for any Gubernatorial or Lieutenant Gubernatorial candidate,
State Political Party Committee,
County Political Party Committee; OR

Any contributions solicited or made during the preceding 18 months to any:

Municipal Political Party Committee,
Legislative Leadership Committee

52. Chapter 51 requires disclosure of contributions to the election fund of any candidate or current holder of public office of Governor or Lieutenant Governor

or State or county political party committee. EO 117 requires disclosure of contributions to municipal political party committees and legislative leadership committees. Does this apply to a contribution to the election fund for a city/township mayoral candidate? Also, would payment for dinner tickets be considered a "contribution" to such township election fund events under Chapter 51?

Answer: Payment for dinner tickets would be considered a contribution. Contributions to candidates for municipal offices are not subject to Chapter 51 or EO 117.

53. An incorporated trade association intends to register in New Jersey as a continuing political committee. Its members include corporations and individuals. Can the association accept contributions to its CPC from members who have contracts with the State and/or local jurisdictions, whose contributions will be used to make contributions to New Jersey candidates and political party committees?

Answer: Contributions to a CPC (Continuing Political Committee) are required to be disclosed by the contributor as part of the compliance process. Disclosure of such contributions will trigger a conflict of interest analysis under Chapter 51.

54. Is a Two-Year Chapter 51/Executive Order 117 Vendor Certification and Disclosure of Political Contributions form required for an annual dues assessment payment to a national association of which every state/territory government is a member? For example, NJ is a member of a national association which advocates for mental health issues. Each state/territory is represented by their respective Commissioner or Division Director for Mental Health. This organization advocates for mental health issues and legislation at the national level.

Answer: The described group is, effectively, a consortium of governmental entities that would not constitute a business entity for purposes of Chapter 51 or Executive Order 117. As such, the group would be exempted from the form requirement.

55. As a State agency, are we required to obtain a Two-Year Chapter 51/Executive Order 117 Vendor Certification and Disclosure of Political Contributions form if we purchase land from an estate?

Answer: No. An estate is not included in the definition of business entity under Chapter 51 and Executive Order 117.

56. Do Chapter 51 and EO 117 apply to a political contribution by a business entity to a particular county political party for purposes of funding the legislative election campaigns of that party's candidates, and where the contribution is not related to any gubernatorial campaign?

Answer: Contributions to a county political party committee are disqualifying contributions under Chapter 51 and EO 117. Contributions to separately established single or joint candidate committees are not subject to Chapter 51 and EO 117.

57. Do Chapter 51 and Executive Order 117 apply to a business entity's contribution to a gubernatorial campaign fund if that particular candidate was NOT elected?

Answer: Yes. The success of the candidate does not affect the application of Chapter 51 or Executive Order 117, but it does potentially affect the length of disqualification.

58. If a disqualifying contribution was made without awareness of the Chapter 51 implications and the candidate committee fails to return the contribution within the required 30 days, can a vendor be awarded State contracts?

Answer: No, Chapter 51 requires inadvertent contributions be refunded within 30 days after the date on which the contribution was made. There is no exception in the law for a contributor's delay in requesting or the committee's failure to timely refund a contribution.

59. Is a Two-Year Chapter 51/Executive Order 117 Vendor Certification and Disclosure of Political Contributions form required for non-profit corporations organized under the New Jersey Nonprofit Corporation Act (N.J.S.A. 15A:1-1 et. seq.), and refers to commercial entities.

Answer: Non-profit entities are not considered business entities and, therefore, exempt from Chapter 51 and Executive Order 117 compliance.

60. I am the executive director of a business with State contracts. If I bought a ticket to a birthday party for a Freeholder (\$150) and an assembly person (\$100) in one year, is that a reportable contribution required to be reported on the Two-Year Chapter 51/Executive Order 117 Vendor Certification and Disclosure of Political Contributions form?

Answer: Contributions to County Freeholders or members of the State Assembly are outside the scope of Chapter 51 and Executive Order 117.

61. As a business entity organized as a Limited Liability Partnership, we are prohibited from making or soliciting certain political contributions under the provisions of Chapter 51. Our partnership has partners with 10% and greater and partners with less than 10% equity interest. May these partners utilize certain facilities of the partnership such as fax machines, telephones, Xerox machines, personal computers, etc., to solicit political contributions for a campaign if the value of such administrative cost is less than the \$300 amount of a reportable contribution in the aggregate?

Answer: Yes, in your example, the value of the in-kind contributions does not exceed the \$300 reportable amount and will not disqualify the LLP from contracting with a State agency.

62. May a business entity established as a partnership make a political contribution to a county political party using a partnership check so long as the contribution is accompanied by an appropriate letter allocating the contribution to individual partners and so long as the allocation for each partner is \$300 or less?

Answer: Yes. Consistent with the Election Law Enforcement Commission (ELEC) regulations and procedures, use of the partnership check is not determinative, provided that the contribution check is accompanied by a clear allocation to individual partners, as is required by ELEC.

63. May a partner of a Limited Partnership contribute under the reportable amount?

Answer: Yes, individual partners can each contribute \$300 or less, and such contributions are not attributed to the partnership provided the contribution was not given in cash. For cash contributions, any amount is considered reportable.

64. May a spouse of a LLP partner contribute more than the reportable amount?

Answer: Spouses residing with an officer of a corporation, partner of a LLP, LP or general partnership, member of a LLC and shareholder or officer of a PC, are also precluded from contributing more than \$300 to a political committee or election fund. However, Executive Order 117 does not apply to the spouse, civil union partner or child when contributions are made to a candidate for whom the contributor is entitled to vote or to a political party committee within the jurisdiction the contributor resides.

65. If a company has a current State contract can they contribute to a county political party?

Answer: Pursuant to N.J.S.A. 19:44A-20.21, it is a breach of contract to make a reportable contribution (meaning a contribution in excess of \$300 or a contribution in cash) to county political party committees during the term of the contract.

66. Are employees employed by the company allowed to contribute to a county political party while the company has a current State contract?

Answer: An employee may contribute to a county political party provided that the employee is not an officer of the company and does not have a 10% or greater ownership interest if the business entity is a corporation or does not have any equity interest if the business entity is a LLP, LP, LLC, GP or PC. However, pursuant to N.J.S.A. 19:44A-20.21, if an employer makes or solicits contributions directly or indirectly through its employees or reimburses an employee in order to circumvent the

effects of the statute by concealing the source of a contribution it is a breach of the contract

67. Our political action committee (PAC) has contributed to a State political party committee and one of the PAC member's has a contract with the State. Would Chapter 51 apply to the member with the State contract? What if the member contributes to our PAC, and in turn our PAC makes a contribution?

Answer: There are several ways in which your committee's members could be impacted by Chapter 51:

If the PAC is determined to be controlled by one or more members that have State contract(s), then the PAC's contributions would be attributed to the member(s) as part of the member's business entity under Chapter 51.

In addition, assuming the PAC is a "Continuing Political Committee" under NJ law, contributions to the PAC by your members would be required to be disclosed in accordance with Chapter 51. The disclosure would trigger a "conflict of interest" review, in which we would take into consideration: whether the contributions were given to the PAC as a means of circumventing the restrictions of Chapter 51, which would be a violation of the statute; and whether there are other factual indications that would raise "conflict of interest" concerns with respect to the contribution from the member to the PAC, and subsequent contributions from the PAC to political committees.

68. Chapter 51 includes a section on eminent domain. It specifically states that the provisions of the statute shall not prevent agencies "from complying with all of the requirements, conditions and obligations of the "Eminent Domain Act of 1971..." What is the process that our agency has to follow with respect to the requirements of the statute? Can we negotiate the purchase of property without the filing of a complaint under the Eminent Domain Act?

Answer: The exemption in Chapter 51 of acquisitions accomplished in compliance with the Eminent Domain Act was intended to allow agencies to conduct the bona fide negotiations required by the Act. As such, the positive results of any negotiations conducted in compliance with the mandates of the Act are outside the purview Chapter 51.

69. The owner of our company held a fundraising dinner for one of the Republican candidates for Governor and personally contributed an amount over the \$300 reportable threshold. If this candidate withdraws from the race or fails to secure the party nomination to run for Governor, do Chapter 51 and Executive Order 117 restrictions apply?

Answer: Yes, both apply. Chapter 51 is interpreted consistent with Election Law Enforcement Commission (ELEC) laws in that a candidate who has sought election for a primary or general election is a candidate regardless of his/her success or failure in that election. Moreover, an individual seeking election in this instance would also be

considered a candidate for purposes of reporting under ELEC laws when that candidate has received funds or other benefits (i.e. contributions from a fundraising dinner) in order to make a decision on whether to run for a primary or general election.

70. If a vendor has a contract with the State of New Jersey and the vendor intends to make contributions to continuing political committees (CPC's), to whom must the Two-Year Chapter 51/Executive Order 117 Vendor Certification and Disclosure of Political Contributions form be addressed for review and approval?

Answer: If the vendor already has a current Chapter 51/EO 117 Two-Year Certification form on file and has made a contribution to a CPC, the vendor is required to complete a new form and send it to the Chapter 51 Review Unit for review. The vendor can also send a new form directly to the Chapter 51 Review Unit if it is approaching the end of their two year certification and wishes to renew for another two years. All other submittals must be sent directly to the State Agency which you are seeking a contract and addressed to the contact person for that agency.

71. Is the Two-Year Chapter 51/Executive Order 117 Vendor Certification and Disclosure of Political Contributions form required to be notarized?

Answer: No, however the form calls for the authorized representative to certify the responses, which means that the authorized representative is certifying that the statements on the form are true and that if any statement is willfully false, the representative may be subject to punishment.

72. We are the concessionaire at certain venues within the State of New Jersey. Many of our contracts with the owner/operators of such venues provide that we are to be the exclusive food and beverage provider at such venues. Since there is no bid process, and the State agency is required to use our company for its food and beverage needs should it decide to schedule an event at such venue, it would appear that the rationale behind Chapter 51 wouldn't be implicated (i.e., that the fair bidding process shouldn't be compromised through the use of political donations). In other words, there is no bid process, there are no alternative suppliers, and accordingly, there is no opportunity for a vendor to gain favor through contributions. In such an "exclusive rights" circumstance, must we as the service provider still comply with Chapter 51?

Answer: Under the circumstances described, it appears that the relevant contracts for Chapter 51 purposes would be the agreements between your company and the public agencies or authorities that are the owners/operators of the venues, if applicable, not a State agency which may schedule events at the venues.

73. The New Jersey Sports Authority has collective bargaining agreements with 13 different unions. Are the unions subject to the provisions of Chapter 51 and Executive Order 117?

Answer: No. Collective bargaining agreements are not transactions subject to Chapter 51 or EO 117.

74. For purposes of determining the principals of a limited liability company (LLC) that holds a state contract valued over \$17,500, would a corporation which owns 1% of the LLC be considered a principal subject to the restrictions and reporting requirements of Chapter 51?

Answer: A limited liability company is a for profit company and any equity member is subject to the restrictions and reporting requirements of Chapter 51.

75. I represent a limited liability partnership that has a lease agreement with a State agency with a value in excess of \$17,500. This lease is still in effect. Can owners of this partnership contribute to current gubernatorial campaigns, and state or county political parties?

Answer: Unless the lease agreement was signed prior to October 15, 2004, partnership principals are prohibited from making such contributions prior to the completion of the contract or agreement.

76. I represent several entities which are limited liability companies and limited liability partnerships that have contracts with a value above \$17,500 with the State. Members and partners of these entities are subject to the restrictions and reporting requirements in Chapter 51 and Executive Order 117. Because business entity is defined to include a natural person, and because, "if a business entity is a natural person, that person's spouse or child, residing therewith, are also included in this definition," are the spouses and at-home children of equity members and partners in limited liability companies and limited liability partnerships subject to Chapter 51 and Executive Order 117?

Answer: Effective November 15, 2008, Executive Order 117 revised the definition of business entity to include the spouse, civil union partner or child residing with an individual who is included within the definition of business entity. However, the Executive Order does not apply to the spouse, civil union partner or child when contributions are made to a candidate for whom the contributor is entitled to vote or to a political party committee within the jurisdiction the contributor resides.

77. Does Chapter 51 apply to Federal Social Services Block Grant funding received through DYFS?

Answer: If this funding is a true grant, this grant is not subject to Chapter 51.

This funding could be construed differently, however, if the procurement transaction designated as a 'grant' is, in fact, a contract for goods or services or if the State has a substantial role in the funded activity. In that instance, the restrictions of Chapter 51 would apply.

78. Our agency receives electricity and natural gas from a BPU regulated utility company. Billings for these services are based on tariffs established by the BPU. Is it necessary to have these utility companies complete the Two-Year Chapter 51/Executive Order 117 Vendor Certification and Disclosure of Political Contributions form?

Answer: Utility companies that are providing a BPU-regulated service (e.g. electricity, natural gas, cable) are outside the scope of Chapter 51.

79. Our firm will be merging to form a new firm with two additional principals. Since December 2007 our firm has been a vendor, under a contract with a State agency. Our contract will end at the end of this month. My question is, if one of our firm's new partners has made a contribution to a state party committee, county party committee, candidate for Governor or Lieutenant Governor, legislative leadership committee or municipal political party committee in the past year, would the new firm be eligible to receive a State contract?

Answer: In order to be awarded a State contract, the new firm will have to submit a Two-Year Chapter 51/Executive Order 117 Vendor Certification and Disclosure of Political Contributions form. As such, each equity partner's contributions would be attributable to the partnership and must be disclosed. If one or more of the firm's partners, as a result of the merger, has made a reportable contribution, your firm would not be eligible for any new contract awards until the period of disqualification expired. However, if the reportable contribution was made before the merger by someone who was a partner only as a result of the merger, it would not be considered a breach of the contract pursuant to N.J.S.A. 19:44A-20.21.

80. Under federal law, pharmaceutical manufacturers are required to enter into an agreement with the Center for Medicare and Medicaid (CMS) to provide rebates for their drug products paid for by Medicaid. Manufacturers that do not sign an agreement with CMS are not eligible for Medicaid Coverage of their product(s). Since the State Medicaid rebate agreements are required under federal law, is it correct to assume that the pharmaceutical manufacturers that execute Medicaid rebate agreements are not prohibited from making political contributions under Chapter 51 and Executive Order 117?

Answer: The State Medicaid rebate agreement does not constitute contract awards, and therefore are not subject to and do not trigger the restrictions of Chapter 51 and Executive Order 117.

81. The State has a similar form agreement to the Medicaid rebate agreement concerning the PAAD and Senior Gold programs. Signature of the New Jersey drug rebate agreement is mandated in order for the drugs produced by a manufacturer to be eligible for State funding when dispensed to PAAD or Senior Gold beneficiaries. The provision of drugs in these two programs is not subject to the public bidding provisions. Is it correct to assume that the pharmaceutical manufacturers that enter into rebate agreements with the Department of Health

and Senior Services are not prohibited from making political contributions under Chapter 51 and Executive Order 117?

Answer: The State rebate agreements under the referenced programs do not constitute contract awards, and therefore are not subject to and do not trigger the restrictions of Chapter 51 and Executive Order 117.

82. If a manufacturer is prohibited from making certain political contributions under Chapter 51 and Executive Order 117, does the prohibition apply to a PAC or continuing political committee formed by a pharmaceutical manufacturer?

Answer: A continuing political committee formed by and under the control of a manufacturer would be considered part of the business entity of the manufacturer. Accordingly, the restrictions applicable to the manufacturer would be applicable to the committee, and contributions by the committee would be attributable to and required to be reported by the manufacturer.

83. May an individual, corporation, limited liability corporation or limited partnership that has a contract with the State of New Jersey exceeding \$17,500 make a contribution to the following committees: 1. Senate Democratic Majority; 2. Senate Republican Majority; 3. Democratic Assembly Campaign Committee; 4. Assembly Republican Victory?

Answer: The four committees listed are all legislative leadership committees and are restricted under EO117. A business entity with a State contract which was entered into after November 15, 2008, the effective date of EO117, will be prohibited from making a reportable contribution to any of the four committees.

84. State, county and municipal agencies and authorities will often advertise, obtain membership, sponsor and or attend a specific trade association's events or publications. The fees paid for these advertisements, memberships, sponsorships, and attendance fees often exceed \$17,500. We recognize that the Department has previously responded that Chapter 51 "applies to the purchase of services, materials, supplies and equipment, and the acquisition, sale or lease of land or buildings." Are the fees paid for advertisements, memberships, sponsorships and attendance fees of the trade association equivalent to entering into an "agreement or contract" or considered a "transaction" for the purposes of Chapter 51?

Answer: Fees paid to a trade association for memberships and/or sponsorships are not considered contracts to procure goods or services. In addition, fees paid to place advertising in a trade circulation or in the general media would not be considered contracts to procure goods or services and would not trigger Chapter 51 or Executive Order 117. However, fees paid to a business entity (such as an advertisement/marketing company) to secure the placement of ads on behalf of the State Agency, are within the scope of the law and a Two-Year Chapter 51/Executive

Order 117 Vendor Certification and Disclosure of Political Contributions form would be required.

85. If fees paid to a trade association for advertisements, memberships, and/or sponsorships are outside the scope of Chapter 51, is it correct to assume that the trade association would not be precluded from making political contributions to gubernatorial candidates or county or State political party committees or legislative leadership committees?

Answer: Although fees paid to a trade association for advertisements, memberships, and/or sponsorships are outside the scope of Chapter 51, a trade association's contributions to gubernatorial candidates or county or State political party committees or legislative leadership committees would affect its eligibility for contract awards.

86. I have read newspaper accounts that indicate giving to a State political party is not a Chapter 51 violation if the contribution is directed specifically to the federal account; is this accurate?

Answer: The New Jersey Election Law Enforcement Commission (ELEC) issued an Advisory Opinion (No. 03-2006) stating that contributions to the federal account of a New Jersey State political party committee are outside of the jurisdiction of ELEC, so long as the funds in the "federal account" are used exclusively for federal election purposes and are not spent on State candidates or elections. See the ELEC Advisory Opinion at: <http://www.elec.state.nj.us/legalresources/advisory.htm>

Thus, if the contribution to the federal account of a State political party is handled in accordance with those limits, the answer is yes.

87. If a vendor has made an inadvertent contribution and it was refunded beyond the 30 day limit that reverses disqualification, what is the exact time the vendor is not eligible for State contract awards?

Answer: Your question raises two separate issues.

First, Chapter 51 states that an inadvertent contribution may be returned to the contributor, and eligibility for State contract award restored, if the refund is obtained within thirty days of the contribution. A refund obtained more than thirty days after the date of the contribution will not restore the eligibility of the vendor. Contributions made within 60 days of a gubernatorial primary or general election are not considered inadvertent, and a refund obtained within the 30 day timeframe would not restore eligibility.

Second, the period of ineligibility depends upon the timing of the contribution, and the committee to which the contribution was made. As a general rule, there is an eighteen (18) month period during which the contributor is not eligible for State contract award when contributions are to the following political entities:

Candidate Committee/Election Fund for candidate for Governor or Lieutenant Governor
County Political Party Committee
State Political Party Committee
Municipal Political Party Committee
Legislative Leadership Committee

There are longer periods of disqualification for contributions to some of these entities, in the following circumstances. Where the contribution is made to a candidate committee or election fund of a sitting Governor or Lieutenant Governor, or to the State or county political party committee of the party which nominated the sitting Governor and Lieutenant Governor, and the contribution is made during the Governor's term of office, the contributor is ineligible for State contract award for the remainder of the Governor's term of office or 18 months whichever is longer.

Finally, where the contribution is made to a candidate committee or election fund of a sitting Governor or Lieutenant Governor, or to the State or county political party committee of the party which nominated the sitting Governor and Lieutenant Governor, and the contribution is made during the last eighteen months of the Governor's term of office, the period of ineligibility could extend through the next gubernatorial term if the sitting Governor is elected to a second term of office.

88. For State term contracts issued by the Division of Purchase and Property, does the \$17,500 transaction threshold amount established by the statute pertain to each individual purchase made by each term contract user or to the aggregate purchases made by all term contract users combined?

Answer: The \$17,500 transaction threshold applies to the aggregate purchases made, or expected to be made, by all users of the individual State contract. When the Division of Purchase and Property prepares to award a term contract to a vendor, that agency obtains a Two-Year Chapter 51/Executive Order 117 Vendor Certification and Disclosure of Political Contributions form from the intended awardees. For this reason, using agencies need not obtain certification and disclosure forms for purchases from contracts already awarded by the Division of Purchase and Property.

89. Do all potential vendors have to send in the Two-Year Chapter 51/Executive Order 117 Vendor Certification and Disclosure of Political Contributions form with their bids?

Answer: If you are responding to an RFP, RFQ or other contract solicitation, you should follow the specific directions provided. When the Division of Purchase and Property conducts a procurement, it only requires the form from the intended awardee(s).

90. Does EO 117 extend restrictions only to "equity partners" (the actual "owners" of partnerships and like entities) or do they affect non-equity partners, their spouses and resident children?

Answer: EO 117 applies to any partner with an ownership interest and by extension their spouse or civil union partner and resident children. EO 117 does not apply to people who hold the title of "partner" but do not actually have an ownership interest in the business entity. This is consistent with the Election Law Enforcement Commission (ELEC), which defines partner as one of two or more natural persons or other entities, including a corporation, who or which are joint owners of and carry on a business for profit, and which business is organized under the laws of this State or of any other state or foreign jurisdiction, as a general partnership, limited partnership, limited liability partnership, limited liability company, limited partnership association, or other such form of business organization. N.J.A.C. 19:25-26.1.

91. May partners with an ownership interest solicit multiple contributions of \$300 or less?

Answer: Yes. Chapter 51 prohibits the State from contracting with business entities that have solicited or made any "contribution" of money to certain candidates or committees. A "contribution" means a contribution reportable by the recipient under the New Jersey Campaign Contributions and Expenditures Reporting Act (CCERA). Reportable contributions under the CCERA are currently those in excess of \$300 from a single source in the aggregate per election for a candidate committee and per calendar year for a continuing political committee.

92. I wanted to clarify the contribution restrictions under Chapter 51 for companies that do business with the State. How is the \$300 reportable contribution threshold applied regarding a limited liability company? Is the \$300 limit applied only to the limited liability company (LLC) or can each member (10% owner) also contribute \$300?

Answer: A limited liability company (LLC) organized pursuant to N.J.S.A. 42:2B-1, et seq., with a State contract is not permitted to make contributions as an entity but instead, its contributions may be attributed to its members. N.J.A.C. 19:25-10.15, N.J.A.C. 19:25-11.10. For Chapter 51 purposes, a reportable contribution is any contribution made by check in excess of \$300 in the aggregate made by any member of the LLC, or a contribution of any amount made in cash, including those members with less than 10% ownership interest. Each member of the LLC may make a contribution by check of \$300.

93. If a corporation makes a reportable contribution to a non-incumbent candidate for Governor, how long is it disqualified from bidding on public contracts?

Answer: Contributions to a successful candidate for Governor made prior to the candidate's inauguration, disqualify a business entity for 18 months from the date of the contribution. Contributions made to the holder of the public office of Governor, disqualify the business entity for the remainder of the term of the governor. If the contribution is made during the last 18 months of the Governor's current term, the period of ineligibility would extend through the next term if the Governor is reelected for

a second term. Contributions to an unsuccessful candidate will disqualify a business entity for 18 months from the date of contribution.

94. Can each member of a limited liability company with a State contract make a \$300 contribution to a gubernatorial candidate, or are the contributions aggregated for purposes of the \$300 limit towards the company? In other words, is the \$300 limit attributable to the company or to each partner/member?

Answer: Each member of the LLC is allowed to make a \$300 contribution to a gubernatorial candidate except if the contribution is given in cash. Any contribution over \$300 from any equity member would be a breach of contract. A limited liability company organized pursuant to N.J.S.A. 42:2B-1, et seq., is not permitted to make contributions as an entity. N.J.A.C. 19:25-10.15. For more detailed information, please refer to New Jersey Administrative Code N.J.A.C. 19:25-1.1, et seq.

95. Is there any limit on the spouse of an officer of a company with a State contract contributing to a gubernatorial candidate?

Answer: Spouses or civil union partners and any child over 18 residing with the officer are allowed to contribute to a candidate for whom they are entitled to vote or to a political party committee within whose jurisdiction the contributor resides. This would include a gubernatorial candidate.

96. I have filled out the Two-Year Chapter 51/Executive Order 117 Vendor Certification and Disclosure of Political Contributions form and I need to know where I can email this form or if I can't email it to whom and where do I mail it.

Answer: Vendor Certification and Disclosure of Political Contributions forms are to be submitted to the contracting State Agency. The contracting State Agency is required to email the forms to: CD134@treas.nj.gov

Forms submitted by mail from the State agency should be sent to:

**Dept. of the Treasury
Chapter 51 Review Unit
PO Box 230
Trenton, NJ 08625**

The Two-Year Chapter 51/Executive Order 117 Vendor Certification and Disclosure of Political Contributions form is available at:

<http://www.state.nj.us/treasury/purchase/forms/eo134/Chapter51.pdf>

97. We are a State agency planning on contracting with a company that has an individual stock owner who owns more than 10% of the company's stock but this individual is not an active principal of the company. Must we require a Two-Year Chapter 51/Executive Order 117 Vendor Certification and Disclosure of Political Contributions form from this individual? Accordingly, if we have an ownership

disclosure form which lists four individuals as having equal stock ownership, if two of those individuals are "active" principals and the other two are "inactive", do we require forms for the two inactive stockholders? Thus, are the two inactive stockholders considered "principals"?

Answer: Chapter 51 and Executive Order 117 do not make a distinction between active or inactive principals within a business entity. Therefore, both the active and inactive principals are subject to the requirements.

98. Do we have to supply a separate Two-Year Chapter 51/Executive Order 117 Vendor Certification and Disclosure of Political Contributions form for each member of an LLC; even our members with less than 10% equity interest?

Answer: The Two-Year Chapter 51/Executive Order 117 Vendor Certification and Disclosure of Political Contributions form can be signed by one authorized representative on behalf of the business entity and any individual or business entity whose contributions would be attributed to the business entity. In your particular case, the representative can sign on behalf of the LLC and all equity members of the LLC, including those with less than 10% equity interest. If the representative does not wish to authorize this type of certification, separate forms must be obtained from those individuals/entities that certification is not being provided for.

99. May a state contractor subject to pay-to-play restrictions freely make contributions to the newly formed Republican Governors Public Policy Committee (RGPPC), 1747 Penn. Ave., Suite 250, Washington, D.C. 20006? It purports to be a 501(c)(4) organization under Internal Revenue Code and advises that it does not contribute to candidates or engage in elections on the local, state or national level. Is any contribution to RGPPC even required to be disclosed by a State contractor at time of competitive bids or in its annual report?

Answer: The Republican Governors Public Policy Committee, an affiliate of the Republican Governors Association, is not within the scope of Chapter 51 or Executive Order 117 and contributions to it would not be prohibited or required to be disclosed.

100. We are a corporation that provides professional services to the State. I believe we fall into the business type category of a "corporation". There is also a "Professional Corporation" category. Can you please confirm that the professional corporation category does not apply to a corporation that supplies professional services?

Answer: On the Two-Year Chapter 51/Executive Order 117 Vendor Certification and Disclosure of Political Contributions form under "Part 1: Business Entity Information," there are 5 business types listed. If your business is a legally formed corporation, you should check the Corporation box. Only vendors that are legally formed as a P.C. (professional corporation) should check the Professional Corporation box.

101. Regarding the Two-Year Chapter 51/Executive Order 117 Vendor Certification and Disclosure of Political Contributions form, "Part 2: Disclosure of Contributions," we have already filed an Annual Statement with ELEC (Election Law Enforcement Commission). Should we just list those contributions made since the filing of our annual statement? Otherwise, what is the starting date for listing contributions?

Answer: The Business Entity Annual Disclosure Statement is required to be filed with ELEC and is not used in the review process of the Two-Year Chapter 51/Executive Order 117 Vendor Certification and Disclosure of Political Contributions form. Please refer to the Information and Instructions form for a complete list of all contributions required to be disclosed.

102. We are a corporation with our president having 100% ownership. On the Vendor Certification and Disclosure for Political Contributions form, specifically page 2, it references certifying on behalf of the business entity and all individuals and/or entities whose contributions are attributable to the business entity. Who all does this cover and is our VP able to sign?

Answer: Where the business entity is a corporation, it covers each 10% or greater shareholder, all officers of the corporation, each controlled subsidiary or Section 527 Political Organization and spouses and children of legal age (18 years and older) residing with a shareholder or officer. An authorized representative may complete only one form on behalf of all of these people and entities if the authorized representative has the requisite authority. Please see Question #98 for more information.

103. Would a contribution given to a political committee restricted under Chapter 51 or EO 117 be considered disqualifying if the total amount was \$300 or less, but given in cash?

Answer: Yes, a contribution reportable by the recipient shall mean a currency contribution in any amount or a contribution or contributions in excess of \$300 in the aggregate per election made to or received by a candidate committee or joint candidates committee or per calendar year made to or received by a political party committee or legislative leadership committee.

104. I represent a business that was previously majority owned by a large financial company (its former parent company). The business was spun-off and is now an independent publicly traded company. The former parent company no longer owns any shares of the business in its own accounts, so as of today it would not be considered a 10% owner for purposes of the NJ campaign contribution disclosure requirements. However, as of a year ago the former parent company would have fallen within the 10% owner definition. Are the former parent and its officers subject to the contribution disclosure requirements?

Answer: In respect to corporations, Chapter 51 and Executive Order 117 apply to the corporation itself, all officers of the corporation, any 10% or greater shareholders of the corporation and the spouses or civil union partners and any children who reside with the officers. Assuming negotiations started after the business was spun off, the former parent company would not be included in the definition of business entity.

105. Would it be appropriate under Chapter 51 and EO 117 for one of our managing directors to host and/or attend an event for a presidential candidate that currently is the holder of the public office of Governor? Also, would it be appropriate for him to make a contribution to a federal Super PAC supporting the Governor's candidacy for president?

Answer: Chapter 51 and EO 117 do not apply to a federal candidate election fund, regardless of the State office the candidate currently holds. Additionally, contributions to a federal Super PAC, also known as an "independent expenditure-only committee," are also not restricted under Chapter 51 and EO 117.

EXHIBIT B



STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

July 18, 2011

Robert Lenhard
Covington & Burling LLP
1201 Pennsylvania Avenue, NW
Washington, D.C. 20004-2401
(202) 662-5940
rlenhard@cov.com

**Opinion of Counsel 2011-11: Application of the State Contractor
Contribution and Solicitation Provisions to a Pharmaceutical Manufacturer
That Takes Part in Medicaid Supplemental Rebate Agreements and State
Patient Assistant Program Agreements with the State**

Dear Attorney Lenhard,

You have asked whether your client Eli Lilly Co. ("Lilly"), a pharmaceutical manufacturer that is a party to various Medicaid supplemental rebate agreements and State Patient Assistant Programs with the state, is a state contractor¹ subject to the state contractor contribution and solicitation provisions in General Statutes § 9-612 (g).

¹ General Statutes § 9-612 (g) (1), defines the terms "state contract" and "state contractor" as follows:

(C) "State contract" means an agreement or contract with the state or any state agency or any quasi-public agency, let through a procurement process or otherwise, having a value of fifty thousand dollars or more, or a combination or series of such agreements or contracts having a value of one hundred thousand dollars or more in a calendar year, for (i) the rendition of services, (ii) the furnishing of any goods, material, supplies, equipment or any items of any kind, (iii) the construction, alteration or repair of any public building or public work, (iv) the acquisition, sale or lease of any land or building, (v) a licensing arrangement, or (vi) a grant, loan or loan guarantee. "State contract" does not include any agreement or contract with the state, any state agency or any quasi-public agency that is exclusively federally funded, an education loan, a loan to an individual for other than commercial purposes or any agreement or contract between the state or any state agency and the United States Department of the Navy or the United States Department of Defense.

(D) "State contractor" means a person, business entity or nonprofit organization that enters into a state contract. Such person, business entity or nonprofit organization shall be deemed to be a state contractor until December thirty-first of the year in which such contract terminates. "State contractor" does not include a municipality or any other political subdivision of the state, including any entities or associations duly created by the municipality or political subdivision exclusively amongst themselves to further any purpose authorized by statute or charter, or an employee in the executive or legislative

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www.ct.gov/seec

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Page 2 of 4
Opinion of Counsel 2011-11 (Robert Lenhard)
July 18, 2011

More specifically, you ask the following:

Lilly seeks confirmation that Medical supplemental rebate agreements and State Patient Assistant Program ("SPAP") agreements are not "state contracts" covered by Conn. Gen. Stat. § 9-612 (g). . . . Both Medicaid supplemental rebate agreements and SPAP agreements provide discounts on drug products dispensed to Connecticut residents under programs funded, in whole or in part, by the State of Connecticut. The agreements involve patented products that are never, to our knowledge, purchased by the state through a competitive bidding process.

You provide detailed information about the nature of the agreements and the rebate procedures, including copies of agreements between Lilly and the Connecticut Department of Social Services ("DSS").

As an initial matter, we note that it is conceivable that Lilly may have a contract with the State that is unrelated to its arrangement under the Medicaid supplemental rebate or SPAP agreements. This opinion of counsel does not address such contracts and, if the amount of such a non-Medicaid supplemental rebate or non-SPAP related contract or contracts meets or exceeds the \$50,000 (for a single contract) or \$100,000 (for multiple contracts), then Lilly would be considered a state contractor under the law and its principals would be prohibited from making contributions to or soliciting contributions for committees covered by the provisions.

With respect to Lilly's Medicaid supplemental rebate agreements and SPAP agreements with the State, however, due to the complexity of interactions between the DSS, the federal Centers for Medicare & Medicaid Services, and Lilly, the staff of the State Elections Enforcement Commission believes that this question deserves careful analysis with a full understanding gained before guidance may be given. We intend to examine this issue further and work with DSS – the agency charged with administering Medicaid – to ascertain who, among the many parties involved in the variety of Medicaid-related agreements, may be considered state contractors for the purposes of the state contractor bans articulated in General Statutes § 9-612 (g) (2) (A) & (B).² In addition, we intend to seek legislative guidance on this issue.

branch of state government or a quasi-public agency, whether in the classified or unclassified service and full or part-time, and only in such person's capacity as a state or quasi-public agency employee.

² General Statutes § 9-612 (g) (2) provides:

Until the Commission is able to issue clarification on this matter, or the legislature clarifies the law, the Commission staff will recommend no action against those individuals who are principals of Lilly who make contributions to or solicit contributions for committees covered by the state contractor provisions, and such individuals may certify that they are not principals of state contractors on such committees' contribution certification forms.³

The foregoing advice is an Opinion of Counsel and not a formal Declaratory Ruling or Advisory Opinion of the Commission. An Opinion of Counsel differs in effect from the latter in that it is not binding on the Commission; however, the person to whom an Opinion of Counsel is rendered may rely upon the opinion with respect to any matter brought before the Commission based upon the same facts and circumstances. The Commission emphasizes that if there is an omission or change in any of the facts or assumptions presented, and such omission, fact or assumption is material to the conclusion or conclusions presented in this Opinion of Counsel, then the requestor may not rely on that conclusion as support for its proposed activity.

(2) (A) No state contractor, prospective state contractor, principal of a state contractor or principal of a prospective state contractor, with regard to a state contract or a state contract solicitation with or from a state agency in the executive branch or a quasi-public agency or a holder, or principal of a holder of a valid prequalification certificate, shall make a contribution to, or, on and after January 1, 2011, knowingly solicit contributions from the state contractor's or prospective state contractor's employees or from a subcontractor or principals of the subcontractor on behalf of (i) an exploratory committee or candidate committee established by a candidate for nomination or election to the office of Governor, Lieutenant Governor, Attorney General, State Comptroller, Secretary of the State or State Treasurer, (ii) a political committee authorized to make contributions or expenditures to or for the benefit of such candidates, or (iii) a party committee;

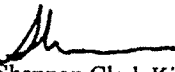
(B) No state contractor, prospective state contractor, principal of a state contractor or principal of a prospective state contractor, with regard to a state contract or a state contract solicitation with or from the General Assembly or a holder, or principal of a holder, of a valid prequalification certificate, shall make a contribution to, or, on and after January 1, 2011, knowingly solicit contributions from the state contractor's or prospective state contractor's employees or from a subcontractor or principals of the subcontractor on behalf of (i) an exploratory committee or candidate committee established by a candidate for nomination or election to the office of state senator or state representative, (ii) a political committee authorized to make contributions or expenditures to or for the benefit of such candidates, or (iii) a party committee;

³ As discussed in this opinion, there may be other facts outside Lilly's Medicaid supplemental rebate agreements and SPAP agreements with the state that subject Lilly and its principals to the state contractor provisions.

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Opinion of Counsel 2011-11 (Robert Lenhard)
July 18, 2011

Please contact me if you have any additional questions or if we can be of further assistance. I may be reached via telephone at 860/256-2975.

Very truly yours,



Shannon Clark Kief
Legal Compliance Director

EXHIBIT C

**KENTUCKY REGISTRY OF ELECTION FINANCE**

Steven L. Beshear
Governor

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Frankfort, Kentucky 40601-3240
Phone: (502) 573-2226
Fax: (502) 573-5622
www.kref.ky.gov

Craig C. Dilger
Chairman

David R. Martin
Vice-Chairman

Sarah M. Jackson
Executive Director

Rhonda K. Farmer
Assistant Executive Director

Emily Dennis
General Counsel

ADVISORY OPINION 2011-001

Any Advisory Opinion rendered by the Registry under subsection (1) or (2) of this section may be relied upon only by the person or committee involved in the specific transaction or activity with respect to which the Advisory Opinion is required. KRS 121.135(4).

February 16, 2011

VIA FACSIMILE – 202.778.5581
AND FIRST CLASS U.S. MAIL

Ms. Melanie D. Reed
Covington & Burling LLP
1201 Pennsylvania Ave. NW
Washington, DC 20004-2401

In re: Applicability of KRS 121.056 and KRS 121.330 to pharmaceutical pricing agreements

Dear Ms. Reed:

By letter dated January 20, 2011, you requested an Advisory Opinion on behalf of pharmaceutical manufacturer Eli Lilly Co. ("Eli Lilly"). You specifically request the Registry to confirm the following:

1. That the Minnesota Multistate Contracting Alliance for Pharmacy ("MMCAP") supplemental enrollment agreements are not "nonbid contracts" within the meaning of KRS 121.330(2) and (4); and
2. That MMCAP supplemental enrollment agreements are not "contracts" within the meaning of KRS 121.056(2).

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Page 2
Ms. Melanie D. Reed
February 16, 2011

In re: Applicability of KRS 121.056 and KRS 121.330 to pharmaceutical pricing agreements (AO 2011-001)

The Registry of Election Finance ("Registry") received your request on January 21, 2011. Your request was posted for public comment on January 27, 2011 in accordance with KRS 121.135(5)(a). No public comments were received.

In your request, you stated a very thorough, helpful explanation of the above-referenced agreements and also included copies for reference to assist in our review of your request. You correctly note that the terms "nonbid contract" and "contract" are not defined in KRS Chapter 121. The term "nonbid contract" is likewise not defined in the Kentucky Model Procurement Code. See KRS Chapter 45A.005, et seq., see also Advisory Opinion 2010-007, found at www.kref.ky.gov/. However, "contract" is defined at KRS 45A.030(7). As the Registry has no jurisdiction to interpret KRS Chapter 45A, we must defer to the authority and expertise of the Finance Cabinet in matters involving state contracts and procurement procedures. The determination of what constitutes a "contract" or even a "nonbid contract" with a state executive branch agency is a determination that falls more squarely within the authority of the Finance Cabinet, not the Registry.

Upon inquiry to the Finance Cabinet, the Registry was advised that the MMCAP is a cooperative purchase agreement. However, Commonwealth agencies do not purchase pharmaceuticals directly from Eli Lilly. Instead, all purchases are made from a separate pharmaceutical wholesaler, AmerisourceBergen, which then purchases items directly from Eli Lilly. The contract with AmerisourceBergen was competitively bid according to Minnesota State procurement laws and regulations and in satisfaction of Kentucky's cooperative purchasing statutes set forth in KRS 45A.295-320.

As the MMCAP creates no contractual relationship between the Commonwealth of Kentucky and Eli Lilly, the provisions of KRS 121.330(2) and (4) and KRS 121.056(2) do not apply to Eli Lilly based on the existence of the MMCAP.

Please keep in mind that this Advisory Opinion is based on the specific facts set forth in your written request and does not cover past conduct. If you have any questions concerning this Advisory Opinion, please do not hesitate to contact the Registry. Thank you.

Very truly yours,



EMILY DENNIS
General Counsel

Enclosures

Cc: Registry Members
Sarah M. Jackson, Executive Director

EXHIBIT D



COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BUREAU OF COMMISSIONS, ELECTIONS AND LEGISLATION
210 NORTH OFFICE BUILDING
HARRISBURG, PENNSYLVANIA 17120-0029
TELEPHONE (717) 787-5280 FAX (717) 705-0721

SHERRY J. MESSIMER
Chief, Division of Campaign Finance and
Lobbying Disclosure
shmessimer@state.pa.us

August 12, 2010

Melanie D. Reed
1201 Pennsylvania Avenue NW
Washington, DC 20004-2401

Dear Ms. Reed:

We are in receipt of your letter dated March 22, 2010, regarding the applicability of section 1641(a) of the Pennsylvania Election Code, 25 P.S. § 3260a, to your client, a pharmaceutical company. We have reviewed your request and found the following.

Pennsylvania Regulations at 4 Pa. Code § 174.2(b) states:

"Excluded are services performed by business entities which may automatically participate in programs subject to governmental regulation; such as pharmacies participating in the paid prescription plan..."

Therefore, in accordance with our regulations your client, a pharmaceutical company, appears to fall under this exception and would not be required to report political contributions with the Department of State.

Should you have any further questions, please do not hesitate to contact our division at 717-787-5280.

Sincerely,

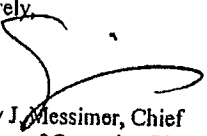

Sherry J. Messimer, Chief
Division of Campaign Finance and
Lobbying Disclosure

EXHIBIT E



STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

BOARD OF ELECTIONS

50 Branch Avenue
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October 6, 2010

Robert D. Lenhard, Esquire
Melanie D. Reed, Esquire
COVINGTON & BURLING LLP
1201 Pennsylvania Avenue NW
Washington, DC 20004-2401

Re: Advisory Opinion No. 10 -

Dear Ms. Reed and Mr. Lenhard:

The following constitutes the advisory opinion of the Board of Elections ("Board") in response to the question raised in your letter of September 16, 2010, which is appended to and made a part of this advisory opinion.

Your letter refers only to Eli Lilly Co. ("Lilly"), which is statutorily prohibited from making any contribution to a candidate, political action committee or political party. Rhode Island General Laws § 17-25-10.1(h)(1). It is assumed that there is a person who is legally permitted to make such a contribution, such as an executive officer of Lilly. I understand that you wish to know whether Lilly is a "business entity that sells goods or provides services" to a state agency. R.I. Gen. Laws § 17-25-2(7). The facts set forth in your letter are assumed to be true. The Board has not made an independent determination with respect to the validity of those facts. In the event that any statement made in your letter of September 16 is inaccurate, this advisory opinion will be subject to change without notice.

For purposes of this analysis, it is understood that Lilly has entered two agreements with the State of Rhode Island: State Patient Assistance Program ("SPAP") and Minnesota Multistate Contracting Alliance for Pharmacy ("MMCAP") agreements. It is further understood that these pharmaceutical agreements do not result in the purchase by the State of any pharmaceutical products through a competitive bidding process. The SPAP is a program that assists individuals

who do not qualify for Medicaid or for whom Medicaid does not provide sufficient coverage. Beneficiaries under the SPAP program receive a discount on drug products. When a beneficiary of the SPAP program has a prescription filled by a pharmacy, the pharmacy submits a request for payment to the SPAP. The SPAP then contacts the pharmaceutical manufacturer and requests a rebate for that prescription payment. According to your September 16, 2010 letter, the manufacturer calculates the amount of the rebate based upon the number of beneficiaries under the SPAP program who have purchased the drug in question, as well as based upon the volume of those purchases.

MMCAP is an entity made up of different organizations that form a group for the purpose of purchasing drug products from pharmaceutical manufacturers. Some of those members are state long-term health care facilities that are located in the State of Rhode Island. The State does not pay Lilly for the purchase of any drug. Rather, members of MMCAP receive a discounted price for the purchase of the drug products. Apparently, some members of the MMCAP also have supplemental enrollment agreements with the pharmaceutical manufacturer, which provide additional discounts for specific drugs provided to patients at the long-term health care facilities.

Title 17, Chapter 27 of the Rhode Island General Laws, governs the reporting requirements of political contributions. Where goods or services are provided at a cost of \$5,000 or more between a "state vendor" and a state agency:

the state vendor shall execute, under oath, an affidavit concerning reportable contributions pursuant to Chapter 25 of this title. If the state vendor has, within the twenty-four (24) months preceding the date of the contract, contributed an aggregate amount in excess of two hundred fifty dollars (\$250) within a calendar year to any general officer, any candidate for a general office, or any political party; the state vendor shall file the affidavit with the board of elections and shall list the name of the general officer or candidate or political party, the amount and date of each contribution made during the preceding twenty-four (24) months and the total gross amount, in dollars, of contracts entered into between the state vendor and all state agencies during that period of time.

R.I. Gen. Laws § 17-27-2.

A state vendor includes any "person or business entity that sells goods or provides services to any state agency..." R.I. Gen. Laws § 17-27-1(7). The state vendor is required to file a State Vendor Affidavit with the Board of Elections.

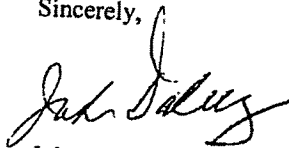
It is the opinion of the Board that the obligations under the Act are not triggered by Lilly's participation in either SPAP agreements or MMCAP agreements. Specifically, there are no direct payments for goods or services between Lilly and any state agency. The purchases are made by independent, medical professionals. The purchases are made from local pharmacies to the beneficiaries. The financial benefit to the state is indirect and comes in the form of a rebate on the purchases by local pharmacies for the SPAP program.

Likewise, with respect to MMCAP enrollment agreements, there is no express contract or agreement for the sale of any goods from Lilly to the State of Rhode Island. Rather, the State receives a discount when drug products are purchased from a third-party wholesaler. No state facility is obligated to purchase any type or amount of medication under the enrollment agreement. The MMCAP member facility purchases the drug products from a wholesaler at a discount. That wholesaler may request a refund for the discount amount from the pharmaceutical manufacturer. There is, once again, no sale of goods directly to the State.

For each of the reasons set forth above, it is the opinion of the Board that your client is not obligated to file a State Vendor Affidavit since Lilly has no direct sales of any goods or services to the State of Rhode Island.

This advisory opinion only addresses the reporting requirements set forth in R.I. Gen. Laws § 17-27-1, *et seq.* This letter does not address any other reporting obligation for campaign contributions that may also apply.

Sincerely,



John A. Daluz
Chairman

gary

From: Lenhard, Robert <rlenhard@cov.com>
Sent: Tuesday, June 2, 2020 1:02 PM
To: Kam, Gary K <gary.k.kam@hawaii.gov>
Subject: [EXTERNAL] RE: Request for Advisory Opinion-Hawaii Campaign Spending Commission

Mr. Kam:

Thank you for your attention to this matter. We will provide answers to your questions below shortly.

All the best,

Bob

Robert Lenhard

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From: Kam, Gary K <gary.k.kam@hawaii.gov>
Sent: Tuesday, June 2, 2020 5:06 PM
To: Lenhard, Robert <rlenhard@cov.com>
Subject: Request for Advisory Opinion-Hawaii Campaign Spending Commission

[EXTERNAL]

Aloha Mr. Lenhard,

I am working on your request for an advisory opinion from the Hawaii Campaign

Spending Commission and I have a few questions for you.:

1. Based upon your exhibits, I assume that your client is a pharmaceutical manufacturer. Can you confirm that?
2. In regard to the State Patient Assistance Program ("SPAP") agreements, you cited the Hawaii RX Card program as an example. However, when I checked the website for the program that you provided, it appears that the program is not a state government program. See bottom of website at <https://hawaii rxcard.com/>. So I don't believe a government contract is involved with the Hawaii RX Card program. Also, I couldn't find a reference to a State **Patient** Assistance Program. However, I did find references to a State **Pharmaceutical** Assistance Program, which according to the Medicare Program website (<https://www.medicare.gov/pharmaceutical-assistance-program/#state-programs>), Hawaii does not have one, and to a **Patient** Assistance Program, which does not appear to have state government participation (<https://www.ncoa.org/economic-security/benefits/prescriptions/spaps-paps/#intraPageNav3>). Can you clarify for me the Hawaii government contract you want the Commission to examine?
3. In regard to Group Purchasing Organization ("GPO") agreements, are these agreements between the pharmaceutical manufacturer and drug distributors? In which case, how would a state government be involved? Or is the "Designation Form" that GPO members must submit to the pharmaceutical manufacturer the government contract that you want the Commission to consider?
4. Please confirm that the Minnesota Multistate Contracting Alliance for Pharmacy ("MMCAP") agreements are not state government contracts. That these are contracts between a group purchasing organization and pharmaceutical manufacturers. Also, please confirm (and identify) that a Hawaii governmental agency is a "member facility" of a group purchasing organization and that this state entity has a MMCAP Supplemental Enrollment Agreement with a pharmaceutical manufacturer.

Thank you for your attention to this matter. If I receive your response soon enough, I will try to bring your request for an advisory opinion before the Commission at the June 10th agency meeting.

Sincerely,
Gary Kam



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From: Kam, Gary K <gary.k.kam@hawaii.gov>
Subject: Fw: Request for Advisory Opinion-Hawaii Campaign
Spending Commission
Date: Jun 15, 2020 at 7:24:41 AM
To: garykhkam@gmail.com

From: Lenhard, Robert <rlenhard@cov.com>
Sent: Tuesday, June 9, 2020 10:20 AM
To: Kam, Gary K <gary.k.kam@hawaii.gov>
Cc: Parks, Zachary <zparks@cov.com>
Subject: [EXTERNAL] RE: Request for Advisory Opinion-Hawaii Campaign Spending Commission

Aloha Gary:

I wanted to follow up on the questions you raised and also to confirm our matter had been moved to the July meeting. I see we are still listed on the agenda for tomorrow, and wanted to check on that. If we are set for the July agenda, we would suggest that Covington submit a new request that incorporates the information below.

We can confirm the following:

1. Our client is a pharmaceutical manufacturer.
2. While there is some confusion in some documents, we agree with your assessment that the Hawaii RX Card program is not a State Patient Assistance Program and therefore withdraw that part of the request.
3. Group Purchasing Organization ("GPO") agreements are agreements between the pharmaceutical manufacturer and the GPO, entities that state governmental agencies can join, and benefit from the terms the GPO has negotiated. We don't think the declarations form that state entities sign is a government contract, but would like the Commission to consider the question.
4. Minnesota Multistate Contracting Alliance for Pharmacy ("MMCAP") agreements are not agreements directly with state governmental entities in Hawaii. The MMCAP program is administered by the Minnesota Department of State Procurement. Based on information from MMCAP, ([Link](#) and spreadsheet attached), we understand that a variety of Hawaiian state entities are MMCAP members, including the Hawaii State Department of Education, the Hawaii Department of Health, including its Alcohol, and Drug Abuse Division, and its Epidemiology Branch/Immunization Program, the Kauai Community Correctional Center, and the Halawa Correctional Facility, among others. After review, we have not been able to identify a Hawaii governmental agency that has a MMCAP Supplemental Enrollment Agreement with the pharmaceutical manufacturer, and so withdraw that portion of our request.

Please let me know if we are set for July, if a clean request incorporating these changes is appropriate and if you have any other questions.

All the best,

Bob

Robert Lenhard

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From: Kam, Gary K <gary.k.kam@hawaii.gov>
Sent: Friday, June 5, 2020 7:53 PM
To: Lenhard, Robert <rlenhard@cov.com>
Subject: Re: Request for Advisory Opinion-Hawaii Campaign Spending Commission

[EXTERNAL]
Aloha Bob,

Thank you for your quick response. We will place your request for an advisory opinion on the Commission's July meeting agenda.

gary

From: Lenhard, Robert <rlenhard@cov.com>
Sent: Friday, June 5, 2020 1:10 PM
To: Kam, Gary K <gary.k.kam@hawaii.gov>
Subject: [EXTERNAL] RE: Request for Advisory Opinion-Hawaii Campaign Spending Commission