

CITY OF HOBOKEN
Department of Administration
Office of Corporation Counsel

RAVINDER S. BHALLA

Mayor



BRIAN J. ALOIA, ESQ.
Corporation Counsel
ALYSSA BONGIOVANNI, ESQ.
Assistant Corporation Counsel
SCOTT DEROSA, ESQ.
Assistant Corporation Counsel

MEMORANDUM

To: Hoboken City Council

From: Alyssa L. Bongiovanni, Esq. Assistant Corporation Counsel

Re: Hoboken Pay-to-Play Concerns

Please accept this report in response to reported violations of Hoboken’s Pay-to-Play ordinance by City vendors Boswell Engineering, Inc. (“Boswell”) and Lite DePalma Greenberg, LLC (“Lite”).¹ I find that Boswell and Lite are in compliance with the City’s Pay-to-Play ordinance. The facts are as follows. Councilwoman Fisher reported during the City Council meeting potential violations from Boswell and Lite, who have current contracts with the City of Hoboken, and George Campion, Esq. who is an attorney on the prequalified list for General Litigation matters.

As an initial matter, the City has not and has no plans to award a contract to George Campion, Esq. at this time and therefore any Pay-to-Play review would be premature and the

¹ At this meeting, Councilman DeFusco also reported that an entity that was being recommended for a contract award, Prestige Environmental (“Prestige”), had made contributions in violation of Hoboken’s Pay-to-Play ordinance to the candidate committee of Ravinder S. Bhalla and to Team Bhalla for Hoboken. The City is no longer recommending a contract award to Prestige and therefore a Pay-to-Play review is not necessary, as the ordinance only applies to entities with contracts with the City.

results irrelevant. I have conducted a review as to Boswell and Lite as they are both currently under contract with the City, and I have determined that they have not made any contributions in violation of Hoboken's Pay-to-Play ordinance.

I have also received drafts of resolutions submitted by Councilwoman Fisher seeking to terminate the City's contracts with Boswell and Lite due to the alleged violations. Councilwoman Fisher's analysis relies on the assumption that Mayor Ravinder S. Bhalla ("Bhalla") created a new campaign committee when he announced that he was running for mayor, rather than for city council, in June 19, 2017, and this new committee started from scratch at zero donations. Councilwoman Fisher determines based upon this assumption, any contributions reported on his ELEC report must have occurred on or after June 19, 2017. Pursuant to my review of the ELEC reports, discussion with the Campaign Treasurer Judith Tutela, and independent investigation, Councilwoman Fisher's assumption is wrong. Although the name of the committee may have been amended to reflect Bhalla's running for mayor, contributions were carried over from the city council campaign, and therefore go back until at least 2015.

Hoboken's Pay-to-Play ordinance can be found in the Hoboken City Code at Chapter 20A (Professional Services Contracts), Article III (Public Contracting Reform). Chapter 20A prohibits awarding public contracts to entities that have made contributions to "to a candidate, candidate committee or joint candidates committee of any candidate for elective municipal office in Hoboken or any person serving in an elective municipal office in Hoboken or to any Hoboken or Hudson County political committee or political party committee or to any continuing political committee or political action committee that engaged in the support of Hoboken municipal or Hudson County elections and/or Hoboken municipal or Hudson County candidates, candidate

committees, joint candidate committees, political committees, political parties, political party committees, (hereinafter "PAC")..." in excess of the delineated thresholds one calendar year immediately preceding the date of the contract or agreement. This prohibition also applies to entities that have entered into contracts with the City during the term of the contract. The monetary thresholds are as follows:

1. \$300 each for any purpose to any candidate, candidate committee for elective municipal office in Hoboken, or any holder of elective municipal office in Hoboken;
2. \$500 to any joint candidates committee for elective municipal office in Hoboken or any holder of elective municipal office in Hoboken;
3. \$300 to any political committee or political party committee of the City of Hoboken;
4. \$500 to any Hudson County political committee or political party committee;
5. \$500 to any PAC;
6. \$2,500- the maximum annual contribution by an entity to any/all of the above, combined.

Entities governed by the Pay-to-Play ordinance may make a contribution within the limits described above ("unreportable" donations) each calendar year, which is the period of each year beginning January 1st and ending December 31st. Contributions are considered to have occurred on the date of transfer of the contribution/check from the donor to the recipient. Therefore donations could technically be made on December 31, 2017 and January 1, 2018 without violating the P2P ordinance so long as they do not exceed the thresholds above. This is the manner in which the ordinance has been enforced since at least October 2016, and this has been communicated to any individual, including councilmembers, who have requested an interpretation as to the definition of a calendar year.

Since the potential violations were reported at the Council meeting, I have reviewed contributions by both Boswell and Lite compared to the City's ordinance. As to Boswell, I have received completed Pay-to-Play forms which certify that no reportable donations have been made and disclose all 10% or more interest holders. Further, I have searched on the ELEC website for donations from both Boswell Engineering, Inc. and the listed 10% owners of the

company to Hoboken candidates/officials. The only reported donation was from Boswell Engineering to Dawn Zimmer for the 2013 General Election in the amount of \$300.00. In furtherance of my investigation, I spoke directly to Boswell Engineering who advised me of all unreportable contributions.

I understand that Councilwoman Fisher's contention is that on the April 15, 2018 quarterly ELEC report for the candidate committee of Bhalla, it indicates that there was a \$300 donation received in March 2018, and a \$600 "aggregate amount" for the election cycle. I have confirmed with Boswell Engineering that these donations were made as follows:

- January 2015: \$250
- February 2017: \$50
- March 2018: \$300

Due to the fact that unreportable contributions were made in three (3) different calendar years, there has been no violation of the Pay-to-Play ordinance. Further, in my conversations with Boswell Engineering, they indicated that as a policy they do not donate more than \$300 to a candidate per election cycle. They indicated that the check that they wrote in 2018 was made out to a different entity and they believed that it was for the next general election cycle for the mayoral election, whereas the previous donations in 2015/2017 were for the 2017 city council election cycle. I understand that this clerical error will be corrected.²

I have also investigated Councilwoman Fisher's allegation regarding Lite. Similar to Boswell, on the April 15, 2018 quarterly ELEC report for Bhalla's candidate committee, Victor Afanador, a 10% or more owner of Lite, is listed as having donated \$300 "this period" on March 29, 2018, with an aggregate amount of \$600 listed. I have received and reviewed updated Pay-to-Play forms from Lite which certify that there were no reportable contributions. Again I reviewed the ELEC website for donations from Lite (the company), Victor Afanador, and the other 10%

² Even if this clerical error were not corrected, there would still be no violation.

owners of the company, and no reportable contributions are listed. Further, it is my understanding that no unreportable donations were made from Victor Afanador and/or Lite in 2017 to Bhalla's candidate committee. Pursuant to the ELEC report, in addition to the \$300 donation in March 2018, there were other donations equating to \$300 which must have been made prior to 2017 and would not constitute a violation of Hoboken's Pay-to-Play ordinance.

In conclusion, Boswell and Lite are not in violation of Hoboken's Pay-to-Play ordinance. They have not made any contribution in excess of the limits in either the calendar year preceding the contract award or during the contract award. As indicated above, Councilwoman Fisher has failed to adequately analyze this matter or correctly apply the City's Pay-to-Play ordinance. Simply put, Councilwoman Fisher's resolution rests upon the assumption that the aggregate amounts on the ELEC report were donations made on or after June 19, 2017, which is not an accurate assumption.