



Cincinnati Law Library News

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New Pitfalls For Public Contractors: Ohio's Latest Political Contributions

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On December, 20, 2006, the Ohio Senate passed a new political contributions bill without a public hearing. Governor Taft signed the bill into law on January 2, 2007, before he left office. The new rules significantly affect the timing and allowable amounts of political contributions made by you, your business partners, your company's shareholders, your spouse and your children. The new rules are complex and the penalties for violations are costly. Although most of the rules are highlighted and summarized in this article, you should always consult with your attorney to understand how they apply in your particular circumstances.

Per person/Entity (Post -Award) Contribution Limits

Contractor Contribution Limits.

A public contractor can only make one or more political contributions totaling \$1,000 to a public officer who had "ultimate responsibility" for awarding the contractor a public contract.¹ Public contracts triggering this limit include any contract for the purchase of goods or services worth more than \$500 awarded by any agency or department of the state or most other political subdivisions (like

counties, cities, and townships).²

Related Party Contribution Limits.

The \$1,000 limit applies not only to the public contractor, but also to certain other persons and entities related to the contractor, each subject to their own \$1,000 limit. If the contractor is an individual, the limit also applies to his spouse and his children ages seven through 17.³ If the contractor is a corporation or business trust, the limit also applies to its owners of more than 20% of the corporation or trust, as well as their spouses and children ages seven through 17.⁴ If the contractor is a partnership or other unincorporated business, the limit also applies to its partners or owners, as well as their spouses and their children ages seven through 17.⁵ If the contractor is an association, the limit also applies to its shareholders, as well as their spouses and their children ages seven through 17.⁶

Limit Period.

The \$1,000 limits apply from the date the contract is awarded until one year following the conclusion of the contract.⁷ As a result, it could

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Getting a handle on viewing DVD files on a computer

Julie Koehne, Assistant Law Librarian

Many files on DVD are viewable using Media Player or Real Player. Due to the fact that not everyone uses the same software to “burn” a DVD, we sometimes come across files that are unreadable. To remedy this problem another player needs to be installed. Now the question is which player to choose? There are various kinds to install. Take a look at the following link for a comparison of software DVD players.

<http://www.videohelp.com/compdvdsoft.htm>

InterVideo® WinDVD® is highly recommended but will cost around \$40 to install. It can be downloaded at

<http://www.intervideo.com/WinDVD/>

The Law Library uses a FREE AVS DVD Player. It can be downloaded at

<http://www.avsmmedia.com/DVDPlayer/index.aspx>

When possible find out what software was used to burn the file and use the same software to view it.

The screenshot shows the AVS DVD Player website. At the top, there is a navigation menu with links for Home, Downloads, Support, Testimonials, Affiliates, Press Room, and Contact us. A language selection dropdown is also present. The main content area features a large banner for "FREE AVS DVD Player" with a sub-headline: "Play movie DVDs, video & audio right on your computer with FREE AVS DVD Player. Click here to download it now! It's absolutely free!". Below the banner, there is a "Download" section with a "DOWNLOAD" button. To the left of the download section, there is a sidebar with links for "AVS Special Offers", "Overview", "Download", "Requirements", "What's new", "Online Help", and "FAQ". At the bottom of the download section, technical specifications are listed: Current Version: 2.3.1.117, Release Date: 12/02/2007, File Size: 22.30 MB, License Status: Freeware, and Platforms: Windows 2000, XP, 2003 (no Mac OS or Linux support).

For additional consumer information on software DVD burners or other computer-related products check out the following links.

<http://www.howstuffworks.com/consumer-guide.htm>

<http://www.epinions.com/>

be difficult for contractors who perform many public contracts to keep track of when the limit has been reached or when new contributions can be made.

It is therefore important that contractors keep track of when they make their contributions and when a public official is “off limits” for political contributions. A centralized record keeping system and calendar are essential to ensuring compliance with the new law.

PAC Limits.

There is also a special limit for political action committees (PACs) that are affiliated with the contractor. PACs can only make one or more contributions totaling \$2,000 to either the public office holder who had ultimate responsibility for awarding the contract or the public officer’s campaign committee.⁸ This limit also applies from the date the contract is awarded until one year following the conclusion of the contract.⁹

Combined (Post-Award) Contribution Limits

The new law complicates keeping track of contributions even further by imposing combined contribution limits on public contractors and their related parties. It is not enough to ensure that the contractor and each of the related parties do not exceed the \$1,000 individual limit. Collectively, those contributions cannot exceed a total of \$2,000.¹⁰

For example, suppose the county awarded your partnership a paving contract for \$75,000 on April 1, 2007, and the contract was not completed until September 30, 2007. Your partnership itself could only contribute a total of \$1,000 to the county commissioner between April 1, 2007, and September 30, 2008. If you and your three other partners also wanted to make equal contributions, the most each of you could make during that period would be \$250. If your spouse or children or your partners’ spouses or children then also made contributions, or if one of your partners thought to add a little extra, then the \$2,000 combined contribution limit would be violated.

The new law also disqualifies public contractors from receiving a public contract worth more than \$500 if the contractor or any of its related parties have exceeded certain contribution limits in the two calendar years preceding the award of the contract. To ensure compliance, all such public contracts must now include a certification from the contractor that the “pre-award” limits have not been exceeded.¹¹

A public entity may not award a contract to a contractor if, in the two calendar years preceding the award, the contractor or any of its related parties made one or more individual political contributions totaling in excess of \$1,000 (or \$2,000 for

PACs¹²) to either the public officer with the ultimate authority for awarding the contract or the officer’s campaign committee.¹³ Also, a public entity may not award a contract to a contractor if, in the two calendar years preceding the award, the contractor and any of its related parties (including PACs) *combined* to make one or more political contributions totaling in excess of \$2,000 to either the public officer or the officer’s campaign committee.¹⁴ For contractors that are corporations and business trusts, these rules only consider those owners as related parties who were owners for the entire prior two calendar years.¹⁵

It is possible for a contractor to comply with the “post-award” contribution limits, but still disqualify itself from receiving a new public contract by violating the “pre-award” contribution limit due to the difference in timing of the two types of limits. For example, consider a contractor that is a partnership made a \$1,000 contribution to the governor on January 1, 2007, and then was subsequently awarded a contract from the governor’s office on February 1, 2007, which contract was completed by September 1, 2007. In October 2007 the contractor could make an additional \$1,000 contribution and one of the partners could

make a \$1,000 contribution to the governor, which would not violate the "post-award" contribution rules. However, the contractor would have disqualified itself from receiving a subsequent contract from the governor's office until January 1, 2009, under the "pre-award" contribution rules. As a result, public contractors must carefully track and monitor all political contributions to be sure they do not inadvertently prevent themselves from obtaining future public contracts.

No More Competitive Bidding Safe Harbor

Under the old political contribution laws, public contractors who had received their contracts through competitive bidding were not subject to the "pre-award" contribution limit rules. That safe harbor is eliminated under the new law. The "pre-award" contribution limits and accompanying disqualification rule apply regardless of whether the public entity is awarding the contract through competitive bidding.¹⁶

No More Exceptions for Other Political Subdivisions

Under the old political contribution laws, the "pre-award" contribution rules did not apply to contracts awarded by municipal legislative authorities, boards of education, boards of county commissioners, boards of township trustees or other boards, commissions,

committees, authorities, councils, boards of trustees, task forces or other such entities created by law. Contracts awarded by those entities are no longer exempt under the new law. The "pre-award" and the "post-award" contribution rules now apply to all contracts worth over \$500 awarded by these entities.¹⁷

Penalties

Violating the new political contribution laws can be costly. Anyone guilty of violating the "pre-award" contribution rules will be fined up to \$1,000, and the contract awarded in violation of those rules will be rescinded if its terms have not yet been performed.¹⁸ Anyone guilty of violating the "post-award" contribution rules will be fined three times the amount of the impermissible contributions, and the contract may be rescinded at the discretion of the elections commission.¹⁹

Conclusion

The sweeping changes to the political contribution laws dramatically change the rules governing the award of public contracts. Building contractors will need to vigilantly maintain accurate records of any political contributions that could disqualify them from obtaining future public contracts and result in fines or the rescission of their public contracts.

Moreover, other enterprising contractors in bid protests may also try to seize upon violations

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of the new laws to argue that the awarded contracts are illegal. All contractors who perform public projects are advised to familiarize themselves with the new law and to consult with their attorneys concerning their particular circumstances.

Footnotes

- 1. R.C. 3517.13(I)(2)(a).
- 2. Id.
- 3. R.C. 3517.13(I)(2)(a)(i) and (vii) and (viii).
- 4. R.C. 3517.13(J)(2)(a).
- 5. R.C. 3517.13(I)(2)(a)(ii) and (vii) and (viii).
- 6. R.C. 3517.13(I)(2)(a)(iii) and (vii) and (viii).
- 7. R.C. 3517.13(I)(2)(a).
- 8. R.C. 3517.13(I)(4)(b); R.C. 3517.13(J)(4)(b).
- 9. Id.
- 10. R.C. 3517.13(I)(2)(b); R.C. 3517.13(J)(2)(b).
- 11. R.C. 3517.13(I)(3); R.C. 3517.13(J)(3).
- 12. R.C. 3517.13(I)(4)(a); R.C. 3517.13(J)(4)(a).
- 13. R.C. 3517.13(I)(1)(a); R.C. 3517.13(J)(1)(a).
- 14. R.C. 3517.13(I)(1)(b); R.C. 3517.13(J)(1)(b).
- 15. R.C. 3517.13(J)(1)(a) and (b).
- 16. R.C. 3517.13(I)(1)(a); R.C. 3517.13(J)(1)(a) (deleting the phrase “other than one let by competitive bidding or a contract incidental to such contract or which is by force

account”).

- 17. R.C. 3517.13(M)(1) (deleting the listed entities from the exceptions to the application of the contribution rules).
- 18. R.C. 3517.992(R)(1).
- 19. R.C. 3517.992(R)(2).

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Lawyers tend to take a more sanguine approach, as shown by respondents to the American Bar Association's 2006 Legal Technology Survey Report.

The majority of small firm respondents replace hardware only when it is outdated or needs an upgrade — or when it breaks

A regular replacement schedule can take some of the mystery out of technology purchasing. It also reduces impulse purchases, such as buying a new PC to meet the needs of a just-released operating system that you covet.

By establishing a regular buying schedule, you can start to make time for planning and research (or have your staff or network consultant do it) well in advance of making any decisions. Of course, there may be occasional breakage, but you can use your warranty to cover those incidents.

3. Add Storage Devices. Your firm may already have computers that meet most of your needs, but a frequent complaint is that an aging computer no longer has enough storage memory.

This is now also one of the easiest hardware issues to remedy. Network- attached (NAS) and USB or Firewire storage are both good options if your firm needs more hard drive storage, or for an individual or solo who needs more space on a desktop.

They eliminate the need to invest in new hard drives for a PC or server that you may not be keeping in the future. Instead, you have storage devices that stand alone. For

example, a 500 GB Maxtor Shared Storage II drive from Seagate Technology can plug into your network, instantly expanding storage space for backups and other data needs.

4. Open a case. There are good options for making minor upgrades to your hardware, whether it's buying additional random access memory (RAM) for your PC or installing a faster network card to take advantage of your office's new network wiring. Check out websites such as crucial.com, to help you identify the RAM that will work with your computer, and eliminate much of the mystery that surrounds memory upgrades.

Not sure what is in your PC? Crucial will scan your system and tell you what you have, and how much memory your PC can handle. Numerous websites from Pricegrabber.com to Froogle.com can help you identify competitive pricing on PC parts.

5. Simplify through complexity. Hardware purchases can be made with an eye towards simplifying your technology environment. Multifunction devices (MFDs) are becoming a fundamental technology in any law firm. They help your support staff fax without creating paper, and print from and scan to the appropriate PC.

Look for business-oriented MFDs that are more likely to meet your needs, both in cost, output, and usable life. It takes the scanner out of the individual's office and enables anyone to scan. And everyone can see if faxes were sent without leaving their desks.

The MFD is more complex than a single device. but it gives everyone

an opportunity to be more productive. The long life of an MFD – even five to 10 years – make them an ideal technology to lease.

6. Manage the Pain. We have probably all felt the sinking feeling when we realize we have a major hardware purchase to make — and have not budgeted the expenditure.

There are many pros and cons to leasing or using financing to purchase technology. They are an excellent tool, however, to ensure that your firm is making the necessary investment in its technology and can be matched to the refresh schedules for your printers, copiers, and PCs.

Small firms have tools and resources that enable them to make the same, informed, planned purchase decisions as large firms. Whether it is following a PC refresh schedule or adding network-attached storage, the more hardware purchasing becomes a business necessity, the better small firms will be at managing technology change.

Small Firm Focus: Buying Blunders By David Whelan

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Small firms may not have the buying power of larger practices, but they have a number of tools and resources available to improve this fundamental business activity. Here are six tips to help you maximize your purchase power and avoid buying blunders:

1. Buy business technology, not equipment intended for family use. The "small medium business" (SMB) market for technology vendors is growing, and they are designing products with configurations that focus on networking and productivity, not entertainment and games. For example, you can select and customize a Dell Inc. Dimension E521 desktop PC from its website (www.dell.com). Home users are prompted to add a TV controller and photo printer; small business customers see laser printers and shared network storage options.

SMB offerings are more closely tailored to your business needs and you will have access to features that are unavailable in consumer products.

2. Establish buying cycles. A rule of thumb for purchasing new hardware is to buy new every three to four years. This is due, in part, to hardware failure increasing by that time, which is also often beyond the computer's warranty.

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