

Ordinance 2004-25

BOROUGH OF HIGHTSTOWN
COUNTY OF MERCER
STATE OF NEW JERSEY

AN ORDINANCE REQUIRING PUBLIC CONTRACTING REFORM, AND AMENDING AND SUPPLEMENTING SECTION 2-54A (ARTICLE IV), "ADMINISTRATIVE POLICIES AND PROCEDURES," OF CHAPTER 2, "ADMINISTRATION," OF THE "REVISED GENERAL ORDINANCES OF THE BOROUGH OF HIGHTSTOWN, NEW JERSEY," IN ORDER TO CREATE A NEW SECTION THEREOF TO BE KNOWN AS SECTION 2-59, ENTITLED, "AWARDING OF PUBLIC PROFESSIONAL SERVICE CONTRACTS"

WHEREAS, professional service contracts are exempt from public bidding requirements under the New Jersey Local Public Contracts Law, N.J.S.A. 40A:11-1, et seq.; and

WHEREAS, it has become common for professional service providers to make substantial political contributions, whether directly or through intermediaries, including but not limited to Mercer County Party Committees, to the election campaigns of the local government elected officers who are ultimately responsible for awarding professional service contracts or other contracts or agreements which are not subject to public bidding; and

WHEREAS, local political contributions from professionals receiving discretionary contracts from the elected officials who receive such contributions may raise reasonable concerns on the part of taxpayers as to their trust in the process of local government, if not the quality or cost of services received; and

WHEREAS, pursuant to N.J.S.A. 40A:11-5 and N.J.S.A. 40:48-2, municipalities have the right to establish rules and procedures for contracting with professional business entities; and

WHEREAS, nothing contained herein shall be interpreted to impair in any way the right of a professional service provider secured by the First Amendment of the Constitution of the United States of America and further secured by Article 1, Paragraph 6 of the Constitution of the State of New Jersey to exercise its right to freedom of speech and its right to speak, write and publish its sentiments on all subjects.

INTRO DATE: 10/18/04							ADOPT DATE: 11/1/04						
	Move	2nd	Aye	Nay	Abstain	Absent		Move	2nd	Aye	Nay	Abstain	Absent
HOLTZCLAW			✓							✓			
LAUDENBERGER	✓		✓					✓		✓			
QUATTRONE		✓	✓					✓		✓			
SCHNEIDER			✓							✓			
SIKORSKI			✓							✓			
THOMPSON			✓							✓			
PATTEN													

ADVERTISE INTRO: 10/21/04

ADVERTISE ADOPT: 11/4/04

EFFECTIVE DATE: 11/4/04

NOW, THEREFORE, BE AND IT IS HEREBY ORDAINED, by the Borough Council of the Borough of Hightstown, in the County of Mercer and State of New Jersey, that the policy of the Borough of Hightstown will be to create such a regulation which states that a professional service provider which makes political contributions to elected officials who are responsible for awarding professional service contracts shall be ineligible to receive a public professional service contract from the Borough of Hightstown.

BE IT FURTHER ORDAINED, that Section 2-54A (Article IV), entitled "Administrative Policies and Procedures," of Chapter 2, "Administration," of the "Revised General Ordinances of the Borough of Hightstown, New Jersey," is hereby amended and supplemented in order to establish a Borough policy for the awarding of public professional services contracts, to be located within a new section thereof to be known as Section 2-59 as follows:

SECTION 2-59 AWARDING OF PUBLIC PROFESSIONAL SERVICE CONTRACTS.

Subsection 2-59.1 Prohibition on Awarding Public Contracts to Certain Contributors.

- (a) Any other provision of law to the contrary notwithstanding, the Borough or any of its purchasing agents or agencies or those of its independent authorities, as the case may be, shall not enter into an agreement or otherwise contract to procure services, including banking services/relationships or insurance coverage services, from any professional service provider, if that provider has solicited or made any contribution of money, or pledge of a contribution, including in-kind contributions, to a campaign committee of any Borough of Hightstown candidate or holder of the public office having ultimate responsibility for the award of the contract, or to any Borough of Hightstown or Mercer County Party Committee, or to any political action committee (PAC) that is organized for the primary purpose of promoting or supporting Borough of Hightstown municipal candidates or municipal officeholders, within one (1) calendar year immediately preceding the date of the contract or agreement.
- (b) No professional service provider which enters into negotiations for, or agrees to, any contract or agreement with the Borough or any department or agency thereof or of its independent authorities for the rendition of professional, banking or insurance coverage services or any other no-bid consultants shall knowingly solicit or make any contribution of money, or pledge of a contribution, including in-kind contributions, to any Borough of Hightstown candidate or holder of the public office within the Borough having ultimate responsibility for the award of the contract, or to any Borough of Hightstown or Mercer County Party Committee, or to any PAC that is organized for the primary purpose of promoting or supporting Borough of Hightstown municipal candidates or municipal officeholders between the time of first communications between that service provider and the Borough regarding a specific professional services agreement and the later of the termination of negotiations or the completion of the contract or agreement.
- (c) For purposes of this section, a "professional service provider" seeking a public contract means: an individual, including the individual's spouse, if any, and any child living at home; person; firm; corporation; professional corporation; partnership; organization; or association. The definition of a service provider includes all principals who own one percent (1%) or more of the equity in the corporation or business trust, partners, and officers in the aggregate employed by the provider as well as any subsidiaries directly controlled by the service provider.
- (d) For purposes of this section, the office that is considered to have ultimate responsibility for the award of the contract shall be:

1. The Borough of Hightstown Council, if the contract requires approval or appropriation from the Council or a public officer who is responsible for the award of a contract if that public officer is appointed by Council; or
2. The Mayor of the Borough of Hightstown, if the contract requires the approval of the Mayor or a public officer who is responsible for the award of a contract if that public officer is appointed by the Mayor; or
3. Both number one and two.

Subsection 2-59.2 Contributions Made Prior to the Effective Date.

No contribution of money or any other thing of value, including in-kind contributions, made by a professional service provider to any Borough of Hightstown candidate for Mayor or Council, or municipal or county party committee or PAC referenced in this Ordinance shall be deemed a violation of this section, nor shall an agreement for property, goods, or services, of any kind whatsoever, be disqualified thereby, if that contribution or agreement was made by the professional service provider prior to the effective date of this section.

Subsection 2-59.3 Contribution Statement By Professional Service Provider.

- (a) Prior to awarding any contract or agreement to procure services, including banking or insurance coverage services, with any professional service provider, the Borough or any of its purchasing agents or agencies, as the case may be, shall receive a sworn statement from the professional service provider made under penalty of perjury that the bidder or offeror has not made a contribution in violation of Subsection 2-59.1 hereof;
- (b) The professional service provider shall have a continuing duty to report any violations of this section that may occur during the negotiation or duration of a contract. The certification required under this subsection shall be made prior to entry into the contract or agreement with the Borough and shall be in addition to any other certifications that may be required by any other provisions of law.

Subsection 2-59.4 Penalty.

- (a) All Borough of Hightstown professional service agreements shall provide that it shall be a breach of the terms of the government contract for a professional service provider, as defined in Subsection 2-59.1(c), to violate Subsection 2-59.1(b) or to knowingly conceal or misrepresent contributions given or received, or to make or solicit contributions through intermediaries or any Mercer County Party Committee for the purpose of concealing or misrepresenting the source of the contribution.
- (b) Any professional service provider, as defined in Subsection 2-33.1(c), who knowingly fails to reveal a contribution made in violation of this section, or who knowingly makes or solicits contributions through an intermediary, including but not limited to a Mercer County Party Committee, for the purpose of concealing or misrepresenting the source of the contribution, shall be disqualified from eligibility for future Borough of Hightstown contracts for a period of four (4) calendar years from the date of the violation.

BE IT FURTHER ORDAINED, that the provisions of this Ordinance shall be severable. In the event that any portion of this Ordinance is found to be invalid for any reason by any Court of competent jurisdiction, such judgment shall be limited in its effect only to the portion of the Ordinance actually adjudged invalid and shall not be deemed to affect the operation of any other portion thereof, which shall remain in full force and effect.

BE IT FURTHER ORDAINED, that this Ordinance shall take effect immediately upon final passage and publication in accordance with the law.

BE IT FURTHER ORDAINED, that all other Ordinances or parts of Ordinances inconsistent herewith are hereby repealed to the extent of such inconsistency.

ATTEST:

Candace B. Gallagher
Municipal Clerk

Robert F. Patten
Mayor