

SYLLABUS

(This syllabus is not part of the opinion of the Court. It has been prepared by the Office of the Clerk for the convenience of the reader. It has been neither reviewed nor approved by the Supreme Court. Please note that, in the interests of brevity, portions of any opinion may not have been summarized).

IMO the Appeal by Earle Asphalt Company (A-37-08)

(NOTE: This Court wrote no full opinion in this case. Rather, the Court's affirmance of the judgment of the Appellate Division is based substantially on the reasons expressed in Judge Skillman's written opinion below.)

Argued November 5, 2008 -- Decided January 15, 2009

PER CURIAM

Earle Asphalt Company challenges to the constitutionality of a 2005 amendment to the Campaign Contributions and Expenditure Reporting Act (Chapter 51), which prohibits any state agency from awarding a contract with a value over \$17,500 to a business entity that has contributed more than \$300 during the preceding eighteen months to the Governor, a candidate for Governor or any State or county political party committee.

Earle Asphalt is engaged in the road construction business. One of its sources of business is state highway construction projects. In June 2007, former State Senate President John Bennett solicited Walter Earle, II, President of Earle Asphalt, for a contribution to the Monmouth County Republican Committee (Republican Committee) in exchange for tickets to an August 1, 2007 cocktail party. Earle agreed to make the contribution and purchased three tickets for \$1,500. The Republican Committee cashed Earle Asphalt's check on July 6, 2007.

Upon learning that the contribution to the Republican Committee might conflict with "pay-to-play" laws, Earle telephoned Bennett on July 20, 2007 to request a refund of the \$1,500 contribution. Earle claims that he called Bennett multiple times to inquire about the status of the refund, and Bennett alleges that he contacted various Republican Committee officials to expedite the refund. On August 10, 2007, twenty-one days after Earle's initial refund request to Bennett and forty-one days after the contribution was made, the Republican Committee issued Earle Asphalt a refund check for \$1,500.

Thereafter, Earle Asphalt submitted a bid to the New Jersey Department of Transportation (DOT) for the award of a contract for roadwork on a section of Interstate 195. Once DOT notified Earle Asphalt that it was the low bidder and was therefore entitled to award of the contract, Earle Asphalt submitted to DOT the "Contractor Certification and Disclosure of Political Contributions" form required under Chapter 51. Earle Asphalt disclosed the June 30, 2007 contribution to the Republican Committee on this form.

On January 23, 2008, the Department of Treasury (Treasury) notified Earle Asphalt that, following a review by the Chapter 51 Review Unit, it was found to be disqualified from award of the Interstate 195 contract. That same day, Earle Asphalt's attorney sent a letter to the Acting Director of the Division of Purchase and Property within Treasury requesting the restoration of Earle Asphalt's eligibility because it had promptly requested a refund of the contribution and received the refund shortly thereafter.

In a February 4, 2008 letter, the Acting Director declined Earle Asphalt's request for reinstatement, concluding that it was clear on the face of the statute establishing the exemption from the Chapter 51 disqualification that the refund must be received within thirty days of the contribution and that, although the request was arguably made within the thirty days, the refund was not received until ten days after the thirty-day time period had expired.

Earle Asphalt appealed Treasury's decision to the Appellate Division and moved for a stay pending the outcome of the appeal. The Appellate Division granted both the stay and accelerated the appeal. Before the Appellate Division, Earle Asphalt argued that Chapter 51 violates the constitutional rights of free speech and association. Earle Asphalt also claimed that, even if Chapter 51 is constitutional, its request for return of the

contribution to the Republican Committee entitled it to the statutory exemption from the disqualification from bidding on State contracts.

After finding that Earle Asphalt's constitutional challenge was properly before it despite it having been raised for the first time on appeal, the Appellate Division upheld the constitutionality of Chapter 51. The appellate panel reasoned that the State's interest in insulating the negotiation and award of State contracts from political contributions that pose the risk of improper influence, purchase of access, or the appearance thereof, is a sufficiently important interest to justify a limitation on political contributions. The panel further found that the \$300 limitation on contributions to gubernatorial candidates and political committees by businesses and principals of businesses who enter into substantial State contracts constitutes a "means" of protecting this interest that is "closely drawn to avoid unnecessary abridgement of association freedoms."

On the issue of the timeliness of its request for reimbursement of the contribution to the Republican Committee, Earle Asphalt argued that the word received is ambiguous and its request for reimbursement should be deemed constructive receipt, entitling the contractor to the exemption from the Chapter 51 disqualification. In addition, Earle Asphalt contended that its request for reimbursement within thirty days constituted substantial compliance and that Treasury did not give "fair notice" of its interpretation of the term "received" used in the statute. The Appellate Division rejected these arguments, concluding that the plain language of the exemption to Chapter 51 requires that the reimbursement of the disqualifying contribution be received within thirty days.

The Supreme Court granted certification.

HELD: Judgment of the Appellate Division is **AFFIRMED** substantially for the reasons expressed in Judge Skillman's written opinion. Chapter 51 of the Campaign Contributions and Expenditure Reporting Act is constitutional. The Department of Treasury properly rejected Earle Asphalt's claim to an exemption from the disqualification because, even though the contractor undertook steps to obtain reimbursement of its disqualifying contribution within thirty days, it did not receive that reimbursement within that thirty-day period.

CHIEF JUSTICE RABNER and JUSTICES LONG, LaVECCHIA, ALBIN, WALLACE, RIVERA-SOTO, and HOENS join in this opinion.

SUPREME COURT OF NEW JERSEY
A-37 September Term 2008

IN THE MATTER OF THE APPEAL

BY EARLE ASPHALT COMPANY

OF THE FINAL AGENCY ACTION
BY THE ACTING STATE TREASURER
AFFIRMING THE INELIGIBILITY
DECISION BY THE NEW JERSEY
DEPARTMENT OF THE TREASURY,
DIVISION OF PURCHASE AND
PROPERTY, CONTRACT COMPLIANCE
AND AUDIT UNIT (CCAU).

Argued November 5, 2008 - Decided January 15, 2008

On certification to the Superior Court,
Appellate Division, whose opinion is
reported at 401 N.J. Super. 310 (2008).

Steven E. Brawer argued the cause for
appellant Earle Asphalt Company (Lowenstein
Sandler, attorneys; Mr. Brawer, Michael T.G.
Long and Kristin A. Muir, on the briefs).

Susan R. Roop, Assistant Attorney General,
argued the cause for respondent New Jersey
Department of the Treasury (Anne Milgram,
Attorney General of New Jersey, attorney;
Cynthia Hackett, Deputy Attorney General, on
the brief).

David J. Frizell argued the cause for amicus
curiae The Center for Civic Responsibility,
Inc. (Frizell & Samuels, attorneys; Michael
S. Stein, on the brief).

Noah Bronkesh submitted letters in lieu of
brief on behalf of respondent Arawak Paving
Co., Inc. (Sills Cummis & Gross, attorneys).

PER CURIAM

The judgment is affirmed, substantially for the reasons expressed in Judge Skillman's opinion of the Appellate Division, reported at 401 N.J. Super. 310 (2008).

CHIEF JUSTICE RABNER and JUSTICES LONG, LaVECCHIA, ALBIN, WALLACE, RIVERA-SOTO and HOENS join in this opinion.

SUPREME COURT OF NEW JERSEY

NO. A-37

SEPTEMBER TERM 2008

ON CERTIFICATION TO Appellate Division, Superior Court

IN THE MATTER OF THE APPEAL

BY EARLE ASPHALT COMPANY

OF THE FINAL AGENCY ACTION
BY THE ACTING STATE TREASURER
AFFIRMING THE INELIGIBILITY
DECISION BY THE NEW JERSEY
DEPARTMENT OF THE TREASURY,
DIVISION OF PURCHASE AND
PROPERTY, CONTRACT COMPLIANCE
AND AUDIT UNIT (CCAU).

DECIDED January 15, 2009
Chief Justice Rabner PRESIDING

OPINION BY Per Curiam

CONCURRING/DISSENTING OPINIONS BY _____

DISSENTING OPINION BY _____

CHECKLIST	AFFIRM	
CHIEF JUSTICE RABNER	X	
JUSTICE LONG	X	
JUSTICE LaVECCHIA	X	
JUSTICE ALBIN	X	
JUSTICE WALLACE	X	
JUSTICE RIVERA-SOTO	X	
JUSTICE HOENS	X	
TOTALS	7	