

GOVERNMENT TRANSPARENCY

NO MORE SECRECY

Cash settlements involving state taxpayer funds should be made public

Linda Stamato and Sanford Jaffe *Guest Columnists*

"Transparency and accessibility ... ensure accountability of state government.... It is especially necessary and in the public's interest when such conduct concerns matters of public health, safety and welfare, and when the decisions involve the receipt and expenditure of public money."

— Gov. Chris Christie, June 23

We couldn't agree more. We'd extend the principle beyond what the governor has endorsed, however, to embrace all cases in which the government is involved and public funds are used to secure a settlement. Currently, no such requirement exists. In fact, confidentiality is the name of the game.

Christie was making the case to explain his recent executive order that requires all state agencies to post fines levied against organizations they regulate, a move that many believe is aimed at Horizon Blue Cross and Blue Shield, the insurer that the governor pressed to "contribute" to the state's coffers.

That intention aside, the principle the governor enunciates — that transparency and accessibility ensure accountability — is right on target. So, then why not apply it also to whistleblower lawsuits against government agencies that are now shrouded in secrecy? And, in fact, why not apply it to all cases in which agencies of government are sued and public funds are used to settle them?

The New Jersey Legislature attempted to deal with whistleblower suits in the current session. The Assembly passed a bill (A4243) — unanimously — to bar public entities and public employees from entering into confidential settlements of "whistleblower" claims and to establish that such settlements constitute public records. It would also require the state's attorney general to publish online a list of all such state settlements with details, including whether fees were paid to outside counsel.

How Christie would deal with this bill remains to be seen because Senate approval is required before a final bill (SB3155) reaches his desk.

Having enunciated the principle, though, wouldn't the governor be likely to sign off on it? Perhaps not, as the legislation was inspired by a lawsuit against the Christie administration by a former county assistant prosecutor, Bennett Barlyn, who claims he was fired for complaining about charges being dropped against individuals with ties to the governor. We may never get to the bottom of the Barlyn case — he was required by the terms of his settlement not to divulge any privileged information — so we don't know whether it was public corruption that led to the dismissal of the indictment he had sought and that the attorney general quashed. We do know, however, that the cost to the taxpayers amounted to some \$5.3 million — over \$3 million in

legal costs and \$1.5 million to Barlyn to basically go away in silence after five years trying to get the public's attention.

It was this case that prompted Assemblyman John F. McKeon (D-Essex) to propose A4243, the bill that passed with no objections.

"To fire a career prosecutor who spoke out against what looked like wrongdoing is absurd," he said. "I'm outraged — as any taxpayer would be — that this amount of money would be paid out and then the documents be sealed."

rather than being corrected, or deterred; taxpayer funds seal the deal, but the public, to which government ought to be accountable, is left clueless.

The Pew Charitable Trust's "Stateline" examined this issue recently, and found a trend toward greater transparency initiated by governors, state attorneys general and legislatures. With the notable exception of the McKeon bill, New Jersey is behind other states in dealing with this urgent public matter.

While there are some concerns with transparency, there are ways to deal with them. Matters such as national security, public safety or private personal information can be kept confidential by court order. Where confidentiality should be protected, in short, it can be. But, the public's right to know is the overarching, compelling principle.

The governor has come out in strong support of the principle and, as noted, so have 73 voting members of the Assembly. For New Jersey to fail to provide greater transparency and accessibility — to ensure accountable government — is simply unacceptable.

The Barlyn case has brought whistleblower settlements to the attention of the Legislature in fairly stark terms, but the principle applies far more broadly than in these cases alone. The state must move aggressively to prohibit sealing any settlements that involve public entities that draw funds from the public trough. Hiding problems hardly contributes to the public good. We have a need, and, indeed, a right to know.

Linda Stamato, a regular contributor to The Star-Ledger, and Sanford Jaffe are co-directors of the Center for Negotiation and Conflict Resolution at the Edward J. Bloustein School for Planning and Public Policy and faculty fellows at Rutgers University.

It's the principle that counts here and the governor has just affirmed it.

Whistleblower statutes, moreover, exist to protect the public, to make government accountable and to deter future behavior that violates the public trust. Those statutes are less effective, to say the least, if confidentiality agreements muzzle those who blow the whistle.

When secret agreements include government entities as parties, potentially endemic problems are covered up

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