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February 10, 2012

William M. Gardner
Secretary of State
107 North Main Street
Concord, NH 03301

Re: Political Contributions

Dear Secretary Gardner:

On October 7, 2010, the Attorney General's Office issued a letter regarding political contribution limits for the 2010 election cycle. We issued the letter to reconcile differing interpretations of the contribution limits for the 2010 primary election and general election that had been given verbally by state officials to gubernatorial candidates and their political committees. This Office also referenced the well-documented ambiguities that have made it difficult to discern a clear interpretation of the statute over time. Noting repeated requests by the Attorney General's Office and the Secretary of State's Office for legislative clarification throughout the past decade, we renewed that request and expressed our intention to issue a comprehensive public document interpreting the statute prior to the next election absent legislative clarification. The Legislature has not amended the applicable laws since we issued the October 7, 2010, letter. Accordingly, we provide the following interpretation of New Hampshire's contribution limits for the benefit of all candidates who seek elected office in this State and all people making political contributions.

RSA 664:4 imposes limitations on the making of political contributions. A "contribution" is defined in RSA 664:2, VIII as "a payment, gift, subscription, assessment, contract, payment for services, dues advance, forbearance or loan to a candidate or political committee made for the purpose of influencing the nomination or election of any candidate." RSA 664:4 limits the amount of contributions that can be made as follows:

> No contribution, whether tangible or intangible shall be made to a candidate, a political committee, or political party, or in behalf of a candidate or political committee or political party, directly or indirectly, for the purpose of promoting the success or defeat of any candidate or political party at any state primary or general election:

> V. By any person (1) if in excess of $5,000 in value, except for contributions made by a candidate in behalf of his own candidacy, or if in excess of $1,000 in value by any person or by any political committee to a candidate or a political committee working on behalf of a candidate who does not voluntarily agree to limit his campaign expenditures and those expenditures made on his behalf as provided in RSA 665:5-a [listing political expenditure limitation amounts], (2) if made anonymously or under a name not that of the donor, (3) if made in the guise of a loan, (4) if any other manner concealed, (5) if made without the knowledge and written consent of the candidate or his fiscal agent, a political committee or its treasurer, or not to any one of the same.

RSA 664:4, V.

The statute establishes contribution limits of up to $1,000 or up to $5,000 depending on whether a candidate voluntarily agrees to the expenditure cap established in RSA 665:5-a. Relying on this language and our prior opinions, we must interpret the limits on contributions that can be made during three periods of time: (1) any exploratory campaign period (pre-declaration of candidacy); (2) Primary Election; and (3) General Election.

(1) Pre-Declaration Contributions

RSA 664:4 limits contributions made "for the purpose of promoting the success or defeat of any candidate or political party at any state primary or general election." RSA 664:2, II defines a "candidate" as "any person publicly declared as such and for whom votes are sought in an election." Contributions to, and expenditures and reporting by, political committees on behalf of people who are not yet declared candidates are also governed by RSA 664:4, :5, and :6. *See Political Committees Letter to Secretary of State William Gardner, dated January 18, 2000*; *Opinion Letter of Attorney General to Rich Killion, dated August 12, 2002 (the "WhyBenson.com" letter).*

We have also stated, in the context of discussing exploratory committees, that political committees associated with a candidate may accept contributions that are not in excess of $5,000 until such time as the candidate files for office and declines to agree to the voluntary campaign expenditure limits. *See Opinion Letter of Attorney General to Rich Killion, dated August 12, 2002.* For this purpose, a candidate declines to agree to the voluntary campaign expenditure limits "at the moment in time when the candidate's

opportunity to file an affidavit with the Secretary of State agreeing to the voluntary spending cap expires." *See id.*

(2) Primary and General Elections

In our October 7, 2010, letter, we addressed ongoing ambiguity as to whether a campaign that receives up to $5,000 as a pre-declaration contribution can receive an additional $1,000 contribution from the same contributor for the primary election, assuming the candidate publicly declares his or her candidacy and does not agree to the expenditure cap. We also addressed whether a candidate that wins a primary election can receive an additional $1,000 for the general election. *See Letter to Treasurers Hanna and Horan, dated October 7, 2010, and accompanying Memorandum, dated October 8, 2010.*

To reconcile differing interpretations, ensure fairness for candidates when enforcing ambiguous elections laws, and equalize fundraising opportunities between the parties in the 2010 election cycle, we endorsed the least restrictive interpretation of the contribution limits. *See id.* By doing so, we applied the contribution limits separately to the exploratory campaign period, the primary election, and the general election. This interpretation allowed contributions in the amount of $5,000 during the pre-declaration period, an additional $1,000 for the primary election, and an additional $1,000 for the general election. We departed from one prior interpretation of the statute by our Office that capped all pre-general election contributions by one contributor at $5,000, inclusive of contributions made during both the pre-declaration period and the primary election.

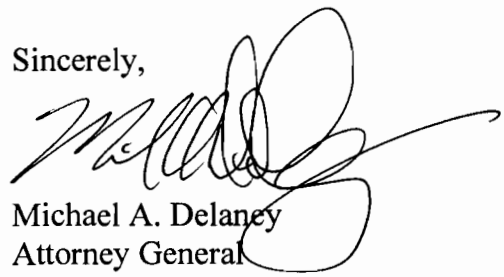
Absent clarifying legislation, we now confront the question of whether this Office should continue to apply separate contribution limits for each of the three election cycle phases as we did during the 2010 election cycle. We conclude that the amount contributed to the exploratory campaign, the primary election, and the general election will be treated separately for the purpose of determining how much a person can contribute. To the extent any previous interpretations by our Offices are inconsistent with this interpretation, the interpretation contained in this letter shall apply.

RSA 664:4 does not prohibit a campaign from rolling over contributions received in the primary election campaign to the general election campaign. Similarly, the statute does not prohibit a campaign from rolling over contributions received in the exploratory campaign once the candidate has declared. Thus, we interpret RSA 664 consistently to allow funds received in the exploratory campaign to be rolled over into the primary election campaign, and then again into the general election campaign. By rolling over the contributions, the contribution limits are not affected. Thus, a person can give up to the contribution cap in each of the three phases. We provide the following table to illustrate our interpretation of RSA 664:4, V for contributions made during each election phase:

Maximum amount that can be contributed during the exploratory campaign phase	Additional maximum amount that may be contributed for the Primary Election[1]	Additional maximum amount that may be contributed for the General Election[1]	Total maximum amount of contributions received over all three phases
$5,000	$1,000 or $5,000	$1,000 or $5,000	$7,000 or $15,000

Until the Legislature expressly addresses the ambiguities in RSA Chapter 664, we will interpret the subject statutory provisions in a manner consistent with this letter.

Sincerely,



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[1] The contribution limit is either $1,000 or $5,000, depending on whether or not the candidate adheres to the expenditure cap.