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DEPARTMENT OF JUSTICE**

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August 1, 2014

Jennifer Horn, Chairman
New Hampshire Republican State Committee
10 Water Street
Concord, NH 03301

Re: Friends of Maggie Hassan
Political Contribution Complaint

Dear Ms. Horn:

I am writing in response to your letter of July 16, 2014, as supplemented by your letter of July 17, 2014. In your letters, you requested this office to investigate the following alleged violations of RSA Chapter 664:

- (1) Contributions to the Friends of Maggie Hassan Political Committee (“Friends Committee”)¹ totaling \$45,000 from International Brotherhood of Electrical Workers PAC (the “IBEW PAC”) (\$25,000), the Service Employees International Union Committee on Political Education PAC (the “SEIU PAC”) (\$10,000), and the United Food and Commercial Workers Active Ballot Club PAC (the “UFCW PAC”)² (\$10,000);
- (2) The lack of itemized receipts in the three PACs’ Statements of Receipts and Expenditures; and
- (3) The registration of the IBEW PAC received by the Secretary of State on June 17, 2014, five days after it made the \$25,000 contribution to the Friends of Maggie Hassan Political Committee.

Each of these complaints is addressed below.

¹ Your July 16, 2014 letter notes that the name of the Friends Committee changed to “Maggie 14” on June 12, 2014, the same day Governor Hassan declared her candidacy. The name change does not have any effect on the analysis described in this letter.

² New Hampshire law does not recognize “Political Action Committees” or “PACs.” Instead, the State’s election laws refer to political committees. See RSA 664:2, III. Nevertheless, for convenience, the term “PACs” is sometime used in this letter to describe political committees.

Contributions by the PACs to the Friends Committee

The first question presented by your complaint is whether the PAC contributions referenced in paragraph (1) exceed the contribution limits set forth in RSA 664:4, I, as interpreted by this office. For the reasons noted below, two of the contributions are permissible and the third is not.

RSA Chapter 664 governs political contributions and expenditures in this State. 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 664:2, VIII. RSA 664:4, V controls the limits on contributions. It states in relevant part:

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 ... as provided in RSA 664:5-a**

RSA 664:4, V(1) has two essential clauses. The first clause, in bold above, sets the limit on contributions made to candidates who agree to the expenditure cap. It prohibits any *person* from making a contribution in excess of \$5,000 to such a candidate. The second clause, underscored above, establishes a \$1,000 limit on contributions to candidates who do not agree to the expenditure cap. That limit applies not only to a person but also to a political committee. The inclusion of the term “political committee” in the second clause and its omission from the first clause is a clear indication that the Legislature did not intend to restrict a political committee’s ability to make contributions to a candidate who has agreed to the expenditure cap. *See In re Guardianship of Williams*, 159 N.H. 318, 323 (2009) (“[W]here the legislature uses different language in related statutes, [the court] assumes that the legislature intended something different.”).

RSA 664:4 as originally enacted in 1979 further confirms this conclusion. While persons, corporations, partnerships and unions were all expressly enumerated and expressly limited or prohibited from making contributions to candidates, political committees were not. *See Laws 1979, ch. 436*. Rather, political committees were simply obligated to register with the Secretary of State and periodically report contributions and expenditures. No restrictions of any

kind were imposed on the amounts they could contribute. *Id.* See *Letter of Assistant Attorney General Arnold to Candidate George Lovejoy*, dated October 10, 1994 (“Except as to those candidates who do not agree to the New Hampshire voluntary spending limitations there is no limit established under New Hampshire law for political committee contributions to candidates.”)

We have previously opined that the contribution limits established in RSA 664:4 are not retroactively imposed on a candidate’s exploratory committee if the candidate later chooses not to accept the voluntary spending cap. See *Opinion Letter of Attorney General Delaney to Secretary of State Gardner*, dated February 10, 2012 (“February 2012 Letter”). Accordingly, we interpret RSA 664:4, V as imposing no limits on contributions made by a political committee to a pre-candidacy exploratory committee, even if that candidate later does not agree to the spending cap. Further, and consistent with the statute’s plain language, RSA 664:4, V imposes no limits on contributions by a political committee to a candidate who agrees with the expenditure cap. The only limitations imposed on a political committee are those on contributions made to a candidate once that candidate has filed for office and either expressly or implicitly declared she will not abide by the voluntary spending cap.³

Previously, we interpreted the term “person” to also include corporations, partnerships and unions. *Opinion Letter of Attorney General to Rich Killion, dated August 12, 2002* (the “August 12, 2002 Letter”).⁴ Because the Legislature distinguished between “person” and “political committee,” however, the law treats political committees separately from persons.⁵

The February 2012 Letter referenced in your complaint did not address the issue presented here—the contribution limits associated with PAC to PAC contributions. That letter, and the one that preceded it, see *Letter of Deputy Attorney General Fitch to Treasurers Hanna and Horan*, dated October 7, 2010, were written to address an on-going ambiguity in the statute as to whether the contribution limits for persons set forth in RSA 664:4 should be applied separately to each election phase (pre-candidacy, primary and general), or constituted an overall limit. Although, given the current question, it might have been helpful to more clearly state that the limits being discussed were only those that applied to “persons,” it was unnecessary to the analysis. In past gubernatorial campaigns, large contributions from a political committee to a

³ Contributions made by a “person” to a candidate or candidate committee are subject to the limits noted in the February 2012 Letter during the exploratory and candidacy phases in the amounts noted. Nothing in this letter alters those conclusions.

⁴ The Legislature has never revisited that conclusion and we will not do so here.

⁵ The Supreme Court’s decision in *Citizens United v. FEC*, 130 S.Ct. 876 (2010) is not applicable to this disparate treatment of “persons” and “political committees.” The petitioner in *Citizens United* would have been barred by the law from releasing a documentary critical of Hillary Clinton. The law at issue in *Citizens United* prohibited corporations and unions from making *independent* expenditures for speech that is an electioneering communication. It specifically did not address campaign contributions. See *Citizens United*, 130 S.Ct at 909 (“it has not suggested that the Court should reconsider whether contribution limits should be subjected to rigorous First Amendment scrutiny.”). RSA 664:4 limits contributions to candidates, but has no effect on independent expenditures of funds for political speech.

political committee working on behalf of a candidate (“candidate committee”) have been made in the exploratory phase, were reported, and were not the subject of a complaint. The language of the underlying statute, RSA 664:4, clearly distinguishes between contributions made by persons and those by political committees, and this letter is consistent with and recognizes those legislative choices.

The second issue raised by your complaint is whether the \$1,000 limit under RSA 664:4, V(1), applicable when a candidate has not agreed to expenditure limits, was in effect at the time the PAC contributions were made. There is a statutory presumption that a candidate will not abide by the spending cap. A candidate must affirmatively declare her willingness to comply with the cap or she cannot be held to it. RSA 664:5-a. As we have stated before, the contribution limits for candidates who do not voluntarily agree to spending caps are not applicable until such time as the candidate files for office and declines to agree to the voluntary campaign expenditure limits. *See* August 2002 Letter and February 2012 Letter. We have also stated, as a general matter, that 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* August 2002 Letter and February 2012 Letter. That opportunity expires three days after the declaration of candidacy is filed. RSA 664:5-a.

Thus, throughout the pre-candidacy exploratory phase and through the expiration of the candidate’s opportunity to file an affidavit with the Secretary of State agreeing to the voluntary spending cap, the first clause of RSA 664:4, V(1) applies. That clause prohibits contributions “[b]y any **person** [] if in excess of \$5,000 in value...” *Emphasis added.* There is no other limitation that applies to contributions during this period. Because the Legislature has chosen only to limit contributions by persons, and not PACs, such PAC to candidate committee contributions during this period have no statutory limitation.

Governor Hassan declared her candidacy on June 12, 2014. At the same time, she executed an affidavit that stated as follows:

I DO NOT voluntarily agree to limit my campaign expenditures or those made on my behalf by my committee(s), my party and my immediate family to the amount set by RSA 664:5-b. I understand that I may agree to limit my campaign expenditures by filing the above affidavit⁶ no later than 3 days after filing my declaration of candidacy or declaration of intent.

If Governor Hassan had not taken any action with respect to the spending limits, her status as a candidate who has not agreed to spending limits would have become official at the close of business on June 16, 2014, the conclusion of the allotted three-day period. At that point,

⁶ The “above affidavit” is a reference to the affidavit by which a candidate agrees to the voluntary expenditure limitation established by RSA 664:5-a.

the \$1000 contribution limit described in the second clause of RSA 664:4, V(1) would have become effective for persons *and* political committees. However, by executing the affidavit, and formally declaring that she would not agree to the spending cap on June 12, 2014, the contribution cap became effective.

Because the statute makes it illegal for a contributor to make contributions in excess of the legal limits, an alleged violation of the statute needs to be analyzed from the contributor's standpoint. This analysis presents two major issues: when exactly do the contribution limits become effective, and when is a contribution deemed to have been made. The election statutes provide no guidance. Our goal in interpreting this statute is to provide clear guidance to campaigns and contributors, ensure fairness to candidates, equalize fundraising opportunities and establish guidelines that can be enforced in an efficient and consistent manner. We believe the following rule will meet those objectives:

- The \$1000 contribution limit established in RSA 664:4, V will take effect at midnight on either the day that the candidate affirmatively declares she or he will not voluntarily comply with the expenditure limits or the day that the candidate's opportunity to file an affidavit stating his or her willingness to abide by those limits, whichever is earlier. Any contribution made prior to that time will be deemed to have been made in the exploratory phase and if made by a person will be governed by the first clause of RSA 664:4, V(1), and if made by a political committee can be unlimited.
- A contribution will be deemed to have been made on the day it leaves the contributor's control on a direct path to the campaign. For purposes of clarity, that includes on the day a contribution was mailed as evidenced by a postmark; on the day a contribution was placed with a courier service for direct delivery to a candidate or candidate committee; on the day when a credit card donation was made, as evidenced by the contributor's credit card statement; or on the date when an electronic transfer was made, as evidenced by the contributor's bank record.

The SEIU PAC sent the Friends Committee \$10,000 by wire transmission on June 12, 2014. On June 12, 2014, UFCW PAC sent a \$10,000 contribution by UPS overnight mail to the Friends Committee. Therefore, each of the contributions were made on the day the Governor filed.

The IBEW PAC sent a \$25,000 contribution to its local New Hampshire office by overnight mail on June 12, 2014, and it was delivered to the IBEW PAC's New Hampshire office on June 13, 2014, the day after the Governor filed. The \$25,000 contribution was then picked up by the Friends Committee from the New Hampshire office of the IBEW PAC on June 13, 2014.

Applying the above-stated rules, we find that the contributions from the SEIU PAC and the UFCW PAC, which were sent directly to the Friends Committee on June 12, 2014, were not in violation of the statute. The IBEW PAC was mailed to its agent, the local office, on June 12, but was not released from the agent's control until June 13, 2014, when it was picked up by the Friends Committee. Accordingly, that donation was made on June 13th, after the \$1000 contribution limit had taken effect. Because it exceeded the limit by \$24,000, the Friends Committee will be ordered to return \$24,000 to the IBEW PAC.

Itemization Requirement In The Statement of Receipts and Expenditures

In your letters, you allege that the three PACs violated New Hampshire law by failing to itemize receipts in their Statement of Receipts and Expenditures. New Hampshire law requires disclosure of "each of its receipts exceeding \$25 with the full name and home post office address of the contributor in alphabetical order and the amount of the contribution, the date it was received, and the aggregate total for each election for each contributor of over \$100." RSA 664:6, I. The Statements of Receipts and Expenditures filed by the three PACs each state that all of the receipts were below the \$25 threshold. Nothing in your letter alleges any substantive facts to indicate the three PACs filed false Statements of Receipts and Expenditures. Nevertheless, all three were asked about the source of the funds, and they all stated that they obtained contributions from their members throughout the United States, no one of which exceeded the \$25 threshold.

Based on our investigation, there is insufficient evidence to conclude a violation of RSA 664:6, I occurred, and no further action will be taken on that complaint at this time.

Registration by the PACs


In your July 16, 2014 letter, you allege that the IBEW PAC violated New Hampshire law by registering with the Secretary of State on June 17, 2014, five days after making the contribution to the Friends Committee. Although neither of your letters makes a similar allegation against the other PACs, we have determined that the UFCW PAC and the SEIU PAC both registered with the Secretary of State on June 16, 2014.

RSA 664:3 requires that "[a]ny political committee, except the political committee of a political party, shall register with the secretary of state ... not later than 24 hours after receiving any contribution in excess of \$500 or before making any expenditure in excess of \$500, but in no event later than 14 days after the formation of the committee." Based on the timeline described in this letter, all three PACs failed to file timely registrations with the Secretary of State. All three have been sent cease and desist letters based on this finding.

Jennifer Horn, Chairman
New Hampshire Republican State Committee
August 1, 2014
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Thank you for bringing these matters to our attention. Should you have any questions, please contact Deputy Attorney General Ann Rice.

Sincerely,



Joseph A. Foster
Attorney General

cc: Governor Margaret A. Hassan
Secretary of State William M. Gardner
Speaker of the House Terie Norelli
Senate President Chuck Morse
Marc Goldberg, Campaign Manager
Raymond Buckley, Chair, NH Democratic Party

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