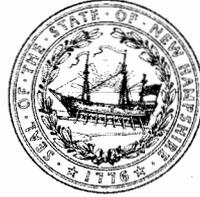


**ATTORNEY GENERAL
DEPARTMENT OF JUSTICE**

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ANN M. RICE
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May 24, 2018

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

Re: Campaign Finance

Dear Secretary Gardner:

The purpose of this letter is to provide current guidance regarding our interpretation and enforcement of our State's campaign finance laws.¹ RSA Chapter 664 governs the registration of political committees and establishes the reporting requirements for political contributions and expenditures in this State. The chairs of the major political parties are copied on this letter. In addition, it will be posted on the Attorney General's Office's website. Should you receive any inquiries about the guidance provided in this letter, you may direct the inquiries to the Attorney General's Office Election Hotline at 1-866-868-3703 or Assistant Attorney General Matthew T. Broadhead at 603-271-3650.

Pursuant to RSA 664:19, this Office will be examining the financial statements of every candidate to ensure that each report is timely and in compliance with the minimum disclosure requirements. Please see a copy of the attached checklist that will be utilized by this Office while conducting a review of candidates' finance reports. Additionally, we will be conducting randomized audits of financial disclosures throughout the Primary and General Election campaign.

I. Registration Requirements

A "political committee" is required to register with the Secretary of State not later than 48 hours after the committee meets at least one of the following criteria:

¹ The guidance in this memorandum reflects the laws as currently enacted as of the date of this memorandum. Each candidate and political committee is responsible for compliance with the law.

- (a) Any organization of 2 or more persons that promotes the success or defeat of a candidate or candidates or measure or measures, including the political committee of a political party;
- (b) Any segregated fund established by any organization the purpose of which is to promote the success or defeat of a candidate or candidates or measure or measures;
- (c) Any organization that has as its major purpose to promote the success or defeat of a candidate or candidates or measure or measures and whose receipts or expenditures total \$2,500 or more in a calendar year for that purpose;
- (d) Any organization that does not have as its major purpose to promote the success or defeat of a candidate or candidates or measure or measures but that makes expenditures that total \$5,000 or more in a calendar year; or
- (e) Any segregated fund that is voluntarily registered with the secretary of state for the purpose of reporting its receipts and expenditures under this chapter or any organization that voluntarily registers with the secretary of state, without regard to whether such segregated fund or organization meets the receipt or expenditure thresholds described in this paragraph.

RSA 664:2, III. The term “organization” includes, but is not limited to, “one or more natural persons; entities formed under state law, except those entities qualified under section 501(c)(3) of the United States Internal Revenue Code of 1986; committees formed by a candidate, exploratory campaign, or political party; and any other association of natural persons or entities formed under state law that is not registered as a business entity.” RSA 664:2, III.

Political committees must register with the Secretary of State. RSA 664:3. The timing of such registration is set forth under RSA 664:3, I. The failure to register a political committee, other than a political committee of a candidate, “shall be subject to a fine of up to 25 percent of the total amount of independent expenditures made during the period from the date the political committee was required to register to the date the political committee registered.” RSA 664:21, VII (a).

II. Reporting Requirements

Candidates and political committees are periodically required to file itemized reports detailing receipts of contributions and expenditures with the Secretary of State’s Office. *See* RSA 664:6; RSA 664:7. If any candidate or political committee fails to comply with the reporting requirements established in RSA Chapter 664, this Office may pursue fines, civil penalties, or criminal prosecution. *See* RSA 664:21, V & VIII; RSA 666:1. Political committees and candidates (except general court candidates) who fail to file any report or statement after it becomes due, are subject to daily fines of \$25.00 for every weekday for which the report or

statement is late and until the report or statement is due. RSA 664:21, IV. Candidates for the general court are subject to daily fines of up to \$5 per day for late reports. RSA 664:21, IV.

All reports filed by candidates and political committees shall contain an itemized statement of all receipts and expenditures that exceed \$25. RSA 664:6. For each receipt over \$25.00, the itemized statement shall contain, in alphabetical order (by last name): the name of each contributor, the postal address of the contributor, the amount of the contribution, and the date it was received. RSA 664:6, I. For each contributor who contributes over \$100, in the aggregate, the itemized statement must also include: the contributor's occupation, job title, name of the contributor's employer, and the city/town of the contributor's principal place of business. RSA 664:6, I. Receipts of \$25 or less are required to appear on the statements as un-itemized receipts. RSA 664:6, I.

For expenditures exceeding \$25, candidates and political committees must itemize the name and postal address of the payee, the date paid or obligated, the election for which the expenditure was made, and the nature and amount of each expenditure. RSA 664:6, I.

Please note that candidates and political committees have slightly different reporting requirements and deadlines under RSA Chapter 664, as outlined below.

Candidates

This section applies to candidates who have not established a political committee or candidate committee. For the purposes of reporting campaign receipts and expenditures, a "candidate" means "any person publicly declared as such and for whom votes are sought in an election." RSA 664:2, II.

For candidates who have not established a political committee, RSA 664:7 provides that "each candidate at the primary or general election for governor, executive councilor, state senator, representative to general court, or county officer, who has expenditures exceeding \$500, shall file statements before and after an election in like manner and detail as prescribed in RSA 664:6, II, II-a, III, IV, and V." This means that for the September 11, 2018 Primary Election, candidates must file reports on or before the following deadlines:

- August 22, 2018 (664:6, II)
- September 5, 2018 (664:6, II-a)
- September 19, 2018 (664:6, III)
- For the November 6, 2018 General Election, candidates must file reports on or before the following deadlines:
 - October 17, 2018 (664:6, II)
 - October 31, 2018 (664:6, II-a)
 - November 14, 2018 (RSA 664:6, III)

However, candidates are not required to report any "expenditures of political committees of the [political] party to which the candidate belongs in elections other than primaries." RSA 664:7.

The reporting requirement is triggered when the candidate's accumulated expenditures exceed \$500. RSA 664:7. No report needs to be filed until that threshold is met. RSA 664:7; RSA 664:6, IV. However, once a candidate exceeds the \$500 expenditure threshold, they are required file a statement at the next reporting deadline and each subsequent reporting deadline, regardless of the amount of expenditures for reporting period. RSA 664:6, IV.

If a candidate has outstanding debts, obligations, or a surplus of campaign funds after either the Primary or General Election, then the candidate "shall file reports at least once every 6 months thereafter ... until the obligation or indebtedness is entirely satisfied or surplus deleted, at which time a final report shall be filed." RSA 664:6, V.

Political Committees

This section applies to all political committees, including candidate committees. Political committees are required to file reports with the Secretary of State's office once the committee's receipts or expenditures exceed \$500 for an election. RSA 664:6, I & IV (emphasis added).

Unlike candidates, political committees are required to file their first report of receipts and expenditures 12 weeks prior the primary election. RSA 664:6, I. Additionally, political committees are required to file reports in June and December of odd-numbered years after a general election and before the next registration cycle. *See* RSA 664:6, I.

For the September 11, 2018 Primary Election, political committees are required to file reports on or before the following deadlines:

- June 20, 2018 (RSA 664:6, I)
- August 22, 2018 (RSA 664:6, II)
- September 5, 2018 (RSA 664:6, II-a)
- September 19, 2018 (RSA 664:6, III)

For the November 6, 2018 General Election, political committees must file reports on or before the following deadlines:

- October 17, 2018 (664:6, II)
- October 31, 2018 (664:6, II-a)
- November 14, 2018 (RSA 664:6, III)
- June 5, 2019 (RSA 664:6, I)
- December 5, 2019 (RSA 664:6, I)

If the political committee's expenditures or receipts do not exceed \$500 for a reporting period, then no report needs to be filed for that period. RSA 664:7; RSA 664:6, IV. Once a political committee's accumulated receipts or expenditures exceed \$500 for the Primary or General Election, it must file a statement at the next reporting deadline and thereafter "shall continue to file at each reporting deadline." RSA 664:6, IV. Just as with candidates, if a political committee has outstanding debts, obligations, or a surplus of funds after either the Primary or General Election, then the political committee "shall file reports at least once every 6 months thereafter ... until the obligation or indebtedness is entirely satisfied or surplus deleted, at which time a final report shall be filed." RSA 664:6, V.

Independent Expenditures

Generally, “no expenditure... shall be made for the purpose of promoting the success or defeat of any [...] candidate [...] by a political committee which is organized to support a candidate...unless the committee secures and files [with the secretary of state] the written consent of the candidate [or his fiscal agent].” RSA 664:5, II; *See also* RSA 664:3, III.

However, political committees that are acting without such consent may make “independent expenditures” which are defined as:

expenditures that pay for the development and distribution of a communication that expressly advocates the election or defeat of a clearly identified candidate or candidates [...] which are made without cooperation or consultation with any candidate, or any authorized committee or agent of such candidate, which are not made in concert with, or at the request or suggestion of, any candidate, or any authorized committee or agent of such candidate.

RSA 664:2, XI (emphasis added). Any political committee that makes “independent expenditures” that, “in aggregate, exceed \$500 shall file an itemized statement with the secretary of state... not later than 48 hours after [it is made].” RSA 664:6, IV-a.

III. Contribution Limits & the Expenditure Cap

A “contribution” is defined 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. Contribution limits are set forth in RSA 664:4, V, which states:

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 664:5-a...

As we have previously explained in prior guidance letters, 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.” *Ltr. from Attorney General Foster to Jenifer Horn*, p. 2 (August 1,

2014). This first clause merely prohibits any “*person*² from making a contribution in excess of \$5,000 to such candidate.” *Id.* The second clause, underlined above, “establishes a \$1,000 limit on contributions to candidates who do not agree to the expenditure cap[...]” and applies equally to both “a person” and a “political committee.” *Id.* As we explained, [t]he 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.” *Id.* (citing *In re Guardianship of Williams*, 159 N.H. 318, 323 (2009)).

Therefore we have interpreted 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 does not agree to the spending cap.” *Ltr. from Attorney General Foster to Jenifer Horn*, p. 3 (August 1, 2014); *See Attorney General Delaney Opinion Letter to Secretary of State Gardner* (February 10, 2012).

In 2014, this Office addressed the timing of when the exploratory phase of a campaign is concluded and when the applicable contribution limits are triggered. *Ltr. from Attorney General Foster to Jenifer Horn* (August 1, 2014). There are two possible events. First, a candidate may either file an affidavit affirming whether or not he or she will abide by the expenditure cap within three days of declaring his or her candidacy. RSA 664:5-a. Second, in light of the statutory presumption that a candidate will not abide by the spending cap set forth in RSA 664:5-a, this Office has previously concluded 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.” *Ltr. from Attorney General Foster to Jenifer Horn*, p.4 (August 1, 2014); *See Attorney General Delaney Opinion Letter to Secretary of State Gardner* (February 10, 2012).

In sum, after a candidate declares their candidacy, the relevant contribution limits are triggered on the earlier of: (1) the date that a candidate files an affidavit indicating that they do or do not agree to expenditure limits, or (2) if no affidavit is filed, then three days after filing their declaration of candidacy. *Ltr. from Attorney General Foster to Jenifer Horn*, p. 4 (August 1, 2014); RSA 664:5-a.

In implementing this law, we have adopted the following rules in order to provide clear guidance to campaigns and contributors:

- The \$1,000 contribution limit established in RSA 664:4, 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 expires,

² According to a long standing interpretation by this office, the term “person” as used in RSA 664 “also include(s) corporations, partnerships, and unions.” *Ltr. from Attorney General Foster to Jenifer Horn*, p. 3 (August 1, 2014); citing to *Opinion Letter of Attorney General to Rich Killion* (August 12, 2002). However, because the Legislature distinguishes between “political committees” and “persons” the law treats these entities differently. *Id.*

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).

- 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’s political 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.

New Hampshire law permits contributions “received in the exploratory [phase] to be rolled over into the primary election campaign, and then again into the general election campaign.” *See Attorney General Delaney Opinion Ltr. to Secretary of State Gardner* p. 3 (February 10, 2012). “[A] person can give up to the contribution cap in each of [these] three phases.” *Id.*

Therefore, consistent with the above, and this Office’s prior guidance, we provide the following tables to illustrate our interpretation of RSA 664:4, V:

Limits on Contributions made by a Person, Corporation, Partnership, or Union³

	Maximum amount that can be contributed during the exploratory phase	Additional maximum amount that may be contributed for the Primary Election	Additional maximum amount that may be contributed for the General Election	Total maximum amount of contributions received over all three phases
Candidates who eventually agree to abide by the spending cap	\$5,000	\$5,000	\$5,000	\$15,000
Candidates who eventually <u>do not</u> agree to abide by the spending cap	\$5,000	\$1,000	\$1,000	\$7,000

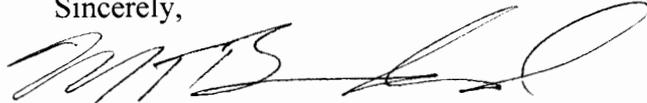
³ Be advised that any organization that contributes more than \$2,500 or \$5,000, depending on the type of organization, is required to register as a political committee. *See* RSA 664:2, III (c) & (d).

Limits on Contributions made by Political Committees

	Maximum amount that can be contributed during the exploratory phase	Additional maximum amount that may be contributed for the Primary Election	Additional maximum amount that may be contributed for the General Election	Total maximum amount of contributions received over all three phases
Candidates who eventually agree to abide by the spending cap	Unlimited	Unlimited	Unlimited	Unlimited
Candidates who eventually <u>do not</u> agree to abide by the spending cap	Unlimited	\$1,000	\$1,000	\$2,000 + amount contributed in Exploratory Phase

We trust that this guidance will assist candidates and political committees throughout the coming election cycle.

Sincerely,



Matthew T. Broadhead
Assistant Attorney General
Election Law Unit

CC: Raymond Buckley, Chair of the New Hampshire Democratic Party
Jeanie Forrester, Chair of the New Hampshire Republican Party
Chip Spangler, Chair of the Libertarian Party of New Hampshire

