

June 6, 2000

The Honorable William M. Gardner
Secretary of State
State House
Concord, New Hampshire 03301

Re: *Kennedy v. Gardner*, USDC Docket No. 98-608-M
(Corporate Campaign Contributions)

Dear Secretary Gardner:

The question presented is whether, as a result of the ruling in the above-referenced case that the statutory prohibition against corporate campaign contributions, RSA 664:4,I, is unconstitutional, corporations may now make campaign contributions. For the reasons set forth below, our response is that, in the absence of a constitutionally enforceable statutory prohibition against campaign contributions by or on behalf of corporations, corporations, as persons, are permitted to make such contributions, but are subject to the contribution limits and other restrictions found in RSA 664:4,V.

The final order of the United States District Court in the above-referenced case, issued on December 23, 1999, found unconstitutional and unenforceable RSA 664:4, I, which prohibits campaign contributions by or on behalf of a corporation. On February 4, 2000, Assistant Attorney General Jennifer Brooks Gavilondo wrote to you to make it clear that the Court's decision determining the prohibition on corporate contributions contained in RSA 664:4, I to be unconstitutional did not mean that corporations may make unlimited contributions, but that any such contributions are subject to the limits contained in RSA 664:4,V. She specifically noted that this would remain the state of the law unless and until RSA 664:4 were to be amended by the Legislature to address the constitutional infirmities found by the Court. We were aware at the time of the February 4 letter that the present session of the Legislature had before it two bills (HB 1331 and SB 303) which were intended by their sponsors to amend RSA 664:4 in order to address the Court's finding.

As you are aware, both HB 1331 and SB 303 failed to pass this session, and the session will close without amendment to the law concerning corporate campaign

contributions. Thus, the state of the law, as it applies to the upcoming election cycle and unless and until the statute is amended in the future, is as follows:

The prohibition against corporate campaign contributions set forth in RSA 664:4, I is unconstitutional and unenforceable. This does not mean, however, that corporations are free to make unlimited contributions to a candidate or political committee. Rather, since the flat prohibition against corporate campaign contributions found in RSA 664:4, I has been stricken by the Court, corporations, as statutory "persons," *see* RSA 21:9, may legally make campaign contributions, but in doing so are subject to the same limits and restrictions in RSA 664:4, V that are applicable to all other persons. Among those limits and restrictions is the prohibition set forth in RSA 664:4, V against contributions in excess of \$5,000 in value, or in excess of \$1,000 in value to or on behalf of a candidate who does not voluntarily agree to limit campaign expenditures, RSA 664:5-a, in any State primary or general election.

We will be enforcing the election laws accordingly, unless and until RSA 664:4, I is amended on the next legislative session or thereafter.

Please do not hesitate to contact me should you wish any further information.

Very truly yours,

Steven M. Houran
Deputy Attorney General

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