

**ATTORNEY GENERAL
DEPARTMENT OF JUSTICE**

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ATTORNEY GENERAL



ANN M. RICE
DEPUTY ATTORNEY GENERAL

April 4, 2017

Mayor Theodore Gatsas
City of Manchester
1 City Hall Plaza
Manchester NH 03101

Re: Theodore Gatsas - NH Campaign Finance Law Violation

Dear Mayor Gatsas:

I write with regard to the election law complaint filed by the New Hampshire Democratic Party on March 1, 2017 (the "Complaint"). The complainant alleges that your gubernatorial campaign accepted and spent campaign contributions beyond the limits set by RSA 664:4. Specifically, the complainant identified 66 contributors who donated \$7,000 each and alleged that the campaign impermissibly expended each \$7,000 donation entirely on the primary campaign. The Complaint also alleges that the campaign impermissibly accepted 10 donations that exceeded \$1,000 where those donations were made following your filing as a candidate for Governor on June 10, 2016.

You submitted your response to this office on March 17, 2017. Relative to the donations made by William and Alyson Giles, you stated that while it was reported as single donations made on June 10, 2016 and July 19, 2016, the contribution should be split and allocated to William and Alyson Giles each, putting their individual contributions below \$5,000 for the June 10, 2016 contribution and at \$1,000 limit for the July 19, 2016 contribution. Your response also indicated that 7 out of the 10 donations that the complainant alleged were made following your June 10, 2016 filing were in fact made before the June 10, 2016 filing, but were recorded in your management system on June 11, 2016. You provided copies of the checks indicating that they were signed prior to June 10, 2016, and you provided a deposit slip indicating a deposit of those donations on June 9, 2016. Relative to the remainder of the complainant's allegations, you submitted copies of checks showing that, in March of this year, you paid refunds to 68 entities and individuals identified by the complainant totaling \$68,000. According to your response, these payments "negate" the complaint as to those contributions.

RSA 664:4 imposes limitations on the making of political contributions. 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. According to RSA 664:4:

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 working on behalf of a candidate who does not voluntarily agree to limit his campaign expenditures...as provided for in RSA 664:5-a.

Thus, the permissible contribution level is dependent on a candidate's acceptance or rejection of the expenditure cap established in RSA 664:5-a. The per person contribution limit for a candidate who has agreed to the expenditure cap is \$5000, whereas the per person limit for a candidate who has declined the cap is \$1000. RSA 664:4, V(1). This office has previously interpreted RSA 664:4 as setting separate contribution limits during three distinct periods of time: (1) any exploratory campaign period (pre-declaration of candidacy); (2) Primary Election; and (3) General Election. *See Letter of Attorney General Michael Delaney to Secretary of State William Gardner, dated February 10, 2012.* Specifically, this office concluded that amounts 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. For candidates who do not accept the campaign expenditure limits in RSA 664:5-a, such as yourself, this allows contributions 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.

In an effort to provide clear guidance to campaigns and contributors, ensure fairness to candidates, equalize funding opportunities and enable consistent enforcement, this office announced the following interpretation relative to when the \$1,000 contribution limit would become effective:

The \$1,000 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 [expires], 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)...

See Letter of Attorney General Joseph Foster to Jennifer Horn, dated August 1, 2014. This office also announced a rule relative to when a contribution is deemed to have been made:

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 the 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.

See Letter of Attorney General Joseph Foster to Jennifer Horn, dated August 1, 2014.

Mayor Theodore Gatsas
Re: Theodore Gatsas - NH Campaign Finance Law Violation
April 4, 2017
Page 3

You filed your declaration of candidacy on June 10, 2016. Contemporaneous with that filing, you executed an affidavit affirmatively declaring that you would not voluntarily comply with the expenditure limits.

Applying the above analysis to the circumstances here, it is our conclusion that you violated RSA 664:4, V(1) by accepting and expending contributions during the primary campaign beyond the limits set by RSA 664:4, V(1). Specifically, while you were permitted to accept up to \$5,000 from each donor for use during the exploratory phase and up to \$1,000 for use during your primary campaign, you accepted \$7,000 from each donor. Your expenditures exceeded the \$6,000 aggregate limit as to each donor since your primary campaign spent all of its receipts with the exception of a \$6,509.16 surplus.

While you took steps to remedy this clear violation, you only did so months after the close of the primary and *after* the filing of the Complaint. Given the sequence of events, a civil penalty may well have been warranted. However, the legislature has chosen not to provide this office the statutory authority to assess a civil fine in such circumstances. Because there is no such authority, this file will now be closed.

Should you choose to run in the future, we would recommend that you establish a separate account to hold funds which are limited for use for in the general election so that improper and/or unintended violations do not take place.

Sincerely,



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cc: Raymond Buckley, II, Chair
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