Gary King
For Attorney General - 2010

October 25, 2011

Mr. Thomas Dow, General Counsel
Office of Dianna J. Duran, Secretary of State
325 Don Gaspar, Suite 300
Santa Fe, NM 87501

Re: Campaign Contribution Limits

Dear Mr. Dow,

Thank you for your inquiry of October 13, 2011 relating to the $15,000 contribution received by Gary King 2010 and the opportunity to provide an explanation as to why the contribution does not violate Section 1-19-34.7 NMSA 1978 (the new contribution limitation). First, I would dispute the statement in your letter that says the contribution appears to violate this section "on its face". In fact, it is clear that this section of the Campaign Reporting Act does not apply to candidates for elections held prior to November 3, 2010. In addition to the fact that contributions to the Gary King 2010 campaign for the purpose of debt retirement are clearly not included in the restrictions included in the new contribution limitation, it is my position that an attempt to shoehorn the language of this section to such a contribution will result in consequences not intended by the Legislature in 2009.

Even though my position is that the new contribution limitation section does not apply to contributions made to Gary King 2010 for the purposes of debt reduction, I am not claiming that there is no statutory limitation on this activity. The passing of the November 2, 2010 election does not suddenly mean that the restrictions applicable for the 2010 cycle do not apply to candidate committees (winners or losers) that continue to raise contributions for debt reduction and other allowed expenses (see Section 1-19-29.1) remaining to the campaign until the committee is properly closed pursuant to Section 1-19-29(F). In an article in the Albuquerque Journal dated October 14th, you are reported as stating that the determination of the Secretary of State Office is that the "intention of the legislation was to mirror the federal election law". This seems reasonable to me.

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Paid for by Gary King 2010, Phillip Baca, Treasurer
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Guidance on the issue of accepting contributions for the purpose of paying debt incurred in a specified election is contained in 11 CFR 110.1(b)(3)(iii) "...The candidate and his or her authorized political committee(s) may accept contributions made after the date of the election if: ...(C) Such contributions do not exceed the contribution limitations in effect on the date of such election." (emphasis added)

Also, the plain language of Section 1-19-34.7(A)(1)(b) says that contributions to a candidate for statewide office, are limited by this section. Section 1-19-26(E) defines a candidate as "an individual ... who either has filed a declaration of candidacy or nominating petition or ... (2) for a statewide office, has received contributions or made expenditures of two thousand five hundred dollars ..." I ceased to be a candidate for Attorney General upon my election on November 2, 2010, the day prior to the effective date of the new contribution limitation. I am serving my second term as Attorney General, and am limited so that I cannot seek an additional consecutive term in the 2014 election cycle. I have already announced that I am not a candidate for any office in 2012. Therefore, I am not planning to file a declaration of candidacy, nor am I planning to solicit nominating petitions or raise or expend money for that election cycle.

Any other reading of the law than the one I have proposed is likely to lead to absurd results. For instance, a determination that the $15,000 contribution to defray debt from the 2010 election is inappropriate would also imply that it would be acceptable for a loser in the election to accept an $85,000 contribution on November 2nd but not acceptable for the winning candidate to accept a $15,000 contribution to pay for the same expenses (i.e. advertising) on November 3rd. I do not believe this was the result intended by the Legislature. If the law is read to include elected officials into the definition of "candidate" for this purpose the result would be that the winning candidate in the 2010 election would be limited in fundraising to defray debt, but the losing candidate would not (unless the loser decided to announce their candidacy for an office in the 2012 election prior to paying off all of that person's debt). This is an illogical result that also appears to violate the principle of equal protection. In fact, if you consider this scenario carefully, it is clear that a candidate who is raising contributions to defray debt from one election (i.e. 2010) and actively campaigning for office in a subsequent election (i.e. 2012) should be able to raise contributions simultaneously for each separate campaign organization, each subject to the laws in effect for the applicable election. In fact, there is federal guidance to this effect in the exact circumstance posited. See, FEC Advisory Opinion 1989-22, October 27, 1989.

In conclusion, I believe it is clear that the law in effect on the date of the 2010 General Election applies to persons contributing to and campaign committees soliciting funds to defray debt incurred during that election cycle. The new contribution limitations apply to candidates for the 2012 and subsequent election cycles. Therefore the $15,000 contribution received by the Gary King 2010 campaign committee does not violate any applicable New Mexico law or regulation.

With regard to the second "allegation" of your October 13th letter, I must say I am disappointed that you would even bring such a baseless claim. There is nothing in the email that is reprinted in your letter that would indicate that the response to Mr. Haussamen's question was given on behalf of Gary King 2010. The presentation of your question appears, in fact, to indicate some sort of collusion between Mr. Haussamen and your office to generate a baseless claim of ethical violation against the office of the Attorney General. I note that you do not reproduce the email in which Mr. Haussamen makes his request for information regarding the possible violation of a New Mexico Statute to the Office of the Attorney General. I assume you have the initiating email in your file, but I will reiterate the question to Mr. Sisneros here, "Gary King appears to have taken a $15,000 campaign contribution in his latest report filed online today: ... Doesn't that violate the campaign contribution limits that took effect with this election cycle? Can you explain to me if this is legal and, if so, how? Thanks." The question is not directed to any current staff member of the Gary King 2010 campaign. It appears to ask a question of application of New Mexico law to a specific fact situation. This type of request is not unusual to the Office of the Attorney General.

You are correct in stating that the Attorney General's office has a policy which prohibits the use of agency equipment for campaign purposes. There has been no violation of this policy. The Attorney General also has a policy of answering questions of the press honestly and forthrightly when such questions are presented and the employee of the office is aware of the answer. Had the fact pattern differed slightly and the question been asked about any other State elected official who had received a similar contribution, the answers would have been essentially the same, and I am sure that you would not have raised your objection. I trust that it is not your position that a response that would have been appropriate with regard to a similar question regarding a contribution to, for example, the Secretary of State, would somehow become a violation just because it related to the Attorney General instead.

Your letter does not indicate that a complaint was lodged by Mr. Haussamen. If you received a formal complaint, I would like a copy. If it was not a formal complaint, I would like to know what information was exchanged between Mr. Haussamen and your office prior to your sending the October 13th letter. I am concerned that a response to a press question in the normal course of business has been blown up into an allegation of ethical misbehavior and would like to know whether this allegation was first posited by Mr. Haussaman, by your office or by some third party. It seems more than coincidental that such a "red herring" allegation is raised at a time when a great deal of press scrutiny was being focused on significant claims of violation of the Campaign Reporting Act by Governor Martinez for personal expenses not allowed by the Act.

I appreciate your acknowledgment that the law calls for the Secretary of State to seek voluntary compliance with the Act. I believe this letter will dispel any notions that the Gary King 2010 committee has acted in any way other than in accordance with New Mexico law. Perhaps allegations of wrongdoing by an employee of the Attorney General's office should be addressed by that office, but the answer to the second question

in your letter is so apparent, that I was able to answer it directly and am happy to do so. Please let me know if you have further questions regarding this or any other matter.

Respectfully submitted,

Gary King