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September 2, 2015

Kathleen Allen  
Louisiana Board of Ethics  
Post Office Box 4368  
Baton Rouge, Louisiana 70821

Re: Request for Declaratory Opinion

Dear Kathleen:

Bobby Jelks, through undersigned counsel, submits the attached request for a declaratory opinion as to the interpretation of a provision of the Campaign Finance Disclosure Act pursuant to La. R.S. 42:1141.6. Mr. Jelks is seeking to have the Board determine a "question of construction or validity arising under the provisions" of the Campaign Finance Disclosure Act "in order to settle and afford relief from uncertainty and insecurity" with respect to his rights under the campaign finance law, as a frequent participant in state-wide elections through his contributions to candidates to elected office.

We request that the Request for Declaratory Opinion be scheduled for hearing at the Board's October meeting. There does not appear to be any need for discovery by either of the parties because this matter pertains to the interpretation of a statute and is clearly a question of law.

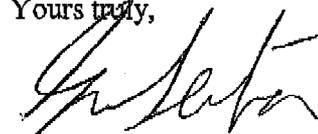
At this time, Mr. Jelks will not be propounding any discovery on the Board in connection with this matter. Therefore, we believe that this matter should be ripe for consideration at the Board's October meeting.

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If you would like to discuss this matter with me directly, please do not hesitate to give me a call.

Yours truly,



Gray Sexton

cc: Bobby Jelks

**LOUISIANA BOARD OF ETHICS  
STATE OF LOUISIANA**

IN THE MATTER OF

BOARD DOCKET NO. \_\_\_\_\_

BOBBY JELKS

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**APPLICATION FOR  
DECLARATORY OPINION**

We respectfully submit this Application for Declaratory Opinion with incorporated memorandum pursuant to La. R.S. 42:1141.6 as to the proper construction and interpretation of the time limits for the receipt of contributions in connection with a general election as provided in Section 1505.2H of the Campaign Finance Disclosure Act (the "Act").

1.

La. R.S. 42:1141.6 states:

**§1141.6. Declaratory opinions.**

A. Upon application of a public servant, other person, or agency, the Board of Ethics may declare rights, status and other legal relations established by the provisions of this Chapter or by any other law within its jurisdiction or under opinions issued by the board, either before or after there has been a breach thereof. The applicant may seek to have the Board of Ethics determine any question of construction or validity arising under the provisions of this Chapter or by any other law within its jurisdiction.

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C. The purpose of a declaratory opinion is to settle and afford relief from uncertainty and insecurity with respect to rights, status, and other legal relations established by the provisions of this Chapter or by any other law within the Board of Ethics' jurisdiction or under opinions issued by the board, or the construction of such laws and opinions.

2.

Bobby Jelks ("Mr. Jelks") wishes to participate as a contributor in candidate elections in Louisiana that will potentially involve both a primary election and a general election.

3.

La. R.S. 18:1505.2H provides contribution limits that apply to each person per each election cycle.

4.

La. R.S. 18:1505.2H(3)(a) states: For purposes of this Subsection, a primary election and a general election shall constitute two separate elections. For purposes of this Subsection, for candidates and committees that participate in a general election, the reporting period for the general election shall be deemed to begin the day following the primary election.

5.

Thus, a campaign contributor such as Mr. Jelks can make a contribution up to the contribution limit to a candidate for the primary election and a second contribution up to the contribution limit to the candidate for the general election.

6.

Nowhere, however, does the Act plainly state *when* a candidate may solicit and accept contributions for a general election, or for that matter, a primary election.

7.

In 1994, in a one-page advisory opinion letter in Ethics Board Docket No. 1994-025 (the "1994 Opinion"), the Ethics Board (the "Board") as then constituted interpreted the language of La. R.S. 18:1505.2H(3)(a) as an expression of legislative intent to forbid a contributor from

making, and a candidate for election from receiving, a contribution for the general election until the day following the primary election.

8.

Construing La. R.S. 18:1505.2H(3)(a) accordingly results in a candidate being allowed an unlimited amount of time to solicit and accept contributions for a primary election, yet less than thirty days to solicit and accept contributions for use in the general election.

9.

As the remainder of this application will demonstrate, construing La. R.S. 18:1505.2H(3)(a) as the Board did in the 1994 Opinion (a) was both incorrect and unnecessary, and (b) actually disserves the public policies that the Act is intended to promote.

10.

In the first place, as noted above, nowhere does the Act plainly state when a candidate may solicit and receive contributions for a primary or general election. If the legislature had intended the Act to establish an absolute rule forbidding the making or receipt of contributions for a general election prior to the primary election, ordinary intuition suggests that it would have done so in plain, succinct language that would be unmistakably understood as such by candidates and contributors alike whose actions the Act seeks to regulate – not by the vague and circuitous route of establishing a beginning date for the reporting period for the general election that might just as easily be understood as *not* forbidding the giving and receipt of contributions for the general election prior to the primary election.

11.

In the second place, if, prior to the primary election, a contributor is permitted to make, and a candidate is permitted to receive, a contribution designated in writing by the contributor as one for the general election, the existing Act makes the 1994 Opinion's construction of La. R.S. 18:1505.2H(3)(a) unnecessary, viz: the candidate will be required to (a) timely report the fact and substance of the contribution as one designated as one for the general election under La. R.S. 18:1495.4 and 1945.5; (b) maintain the contribution for the general election (*i.e.*, it could not be spent without exposure under the reporting requirements of La. R.S. 18:1495.5); and (c) in the event the candidate does not participate in the general election, either refund the contribution or redesignate it consistent with the Act. Thus, the *only* argument that might otherwise be offered in support of the 1994 Opinion – *i.e.*, that it is needed to ensure that campaign contribution limits for the primary election are not exceeded – is dispelled as a false argument.

12.

Finally, such a process as described in the preceding paragraph can, and will, serve the policies the Act is intended to promote by making information regarding a candidate's general election contributors who, like Mr. Jelks, wish to contribute prior to the primary election available and transparent much earlier than the mere ten days that result from the 1994 Opinion.

13.

By way of comparison, under federal election law it is clear that a candidate may accept contributions up to the limit for both the primary election and general election at any time as long as the contribution received for the general election is designated in writing as a

contribution for the general election and is maintained and handled according to federal election law if the candidate does not participate in the general election.

14.

11 CFR§ 110.1 Contributions by persons other than multicandidate political committees

(2 U.S.C. 441a(a)(1)) states:

**(b) Contributions to candidates; designations; and redesignations.**

(1) No person shall make contributions to any candidate, his or her authorized political committees or agents with respect to any election for Federal office that, in the aggregate, exceed \$2,000.

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(2) For purposes of this section, *with respect to any election* means—

(i) In the case of a contribution designated in writing by the contributor for a particular election, the election so designated. Contributors to candidates are encouraged to designate their contributions in writing for particular elections. See 11 CFR 110.1(b)(4).

(ii) In the case of a contribution not designated in writing by the contributor for a particular election, the next election for that Federal office after the contribution is made.

(3) (i) A ... **If the candidate is not a candidate in the general election, all contributions made for the general election shall be either returned or refunded to the contributors or redesignated in accordance with 11 CFR 110.1(b)(5), or reattributed in accordance with 11 CFR 110.1(k)(3), as appropriate.**

15.

Moreover, the Federal Election Commission concluded in Advisory Opinion 2000-29, in connection with a general or "runoff" election in Louisiana that a candidate may retain contributions "designated as made" with respect to the runoff election:

Commission regulations provide that the term "election" includes a runoff election that is held after a general election and prescribed by applicable State law as the means for deciding which candidate should be certified as an officeholder elect. 11 CFR 100.2(d)(2).<sup>5</sup> Therefore, any Congressional candidate in Louisiana who qualifies to participate in a December 9, 2000, runoff election will be a candidate with respect to that election. Such a candidate may accept and retain contributions designated, in writing, by the

donors as made with respect to the runoff election if the contributions are otherwise lawful under the Act. 2 U.S.C. §§441a(a)(1)(A), 441a(a)(2)(A). However, if the December 9 runoff election will not be held, any contributions designated for the runoff must be refunded to the donors within 60 days after November 7 (in other words, not later than January 6, 2001). *See*, by analogy, 11 CFR 102.9(e).

16.

By this application Mr. Jelks is requesting a declaratory opinion on the following question: Can Mr. Jelks, at the beginning of a candidate's election campaign, make a campaign contribution up to the maximum contribution limit for the primary election and at the same time make a second contribution up to the maximum contribution limit that (a) is designated in writing for the general election, (b) is maintained by the candidate for the general election, and (c) will either be refunded by the candidate or redesignated consistent with the Act if the candidate does not participate in the general election without either Mr. Jelks or the candidate violating any provisions of the Act?

17.

The approach adopted under the federal election laws, and the one Mr. Jelks asks the Board to approve and implement here, is the better procedure, as it encourages complete disclosure in a more timely fashion and allows persons to participate more fully in the electoral process.

18.

There is no restriction on when a candidate can begin soliciting funds to be used for a primary election. A candidate can, and they routinely do, solicit such funds for the primary election for several years prior to the primary election.

19.

Of course, often times in the case of an election with multiple candidates, there will be a general election, or "runoff." The general election is considered by many to be the more crucial race, and under the provisions of the Act the general election is an election separate from the primary election. Candidates can receive a second contribution up to the limit for the general election; however, pursuant to the Board's 1994 Opinion, a candidate must wait until the day following the primary election to begin accepting contributions for the general election. Therefore, a candidate would only be allowed thirty days to solicit much needed funds at the most crucial point of the election process.

20.

Not only does this result in an unnecessary and inequitable rush to solicit funds from those who have already contributed to the candidate's campaign, but it also perpetrates a disservice to the public's interest in campaign disclosure, as it encourages "deals" to be made where a candidate knows who will be supporting him in the general election, but the public will not know until a campaign finance report is filed a mere ten days prior to the general election. On the other hand, allowing the candidates to receive and report contributions designated for the general election prior to the candidate's qualifying for the general election would ensure that those amounts were properly disclosed in a more timely manner, giving the electorate ample notice of who is supporting the candidate in the general election.

21.

To understand this argument, it is helpful to look at an example which illustrates the strengths of the approach taken by the federal system and the weaknesses of the approach

adopted by the Board in the 1994 Opinion. The 2015 Louisiana gubernatorial race provides such an example.

22.

It is clear from the campaign finance reports filed that the candidates for governor have been receiving contributions for the primary election scheduled for October 24, 2015<sup>1</sup> for many years.<sup>2</sup>

23.

The primary election for the gubernatorial candidates will be held on October 24, 2015. According to the Board's 1994 Opinion, it is not until October 25, 2015, the day following the primary election, that a candidate can begin accepting contributions for the general election. The general election will be held November 21, 2015; therefore, a candidate will have less than 30 days in which to contact and solicit the additional contributions from his supporters -- *i.e.*, from October 25<sup>th</sup> to November 21<sup>st</sup>.

24.

Moreover, those supporters' contributions will not generally be reported on a campaign finance disclosure report until the tenth day prior to the general report (10-G) campaign finance disclosure report is filed on November 12, 2015.<sup>3</sup>

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<sup>1</sup> 2015 Election Schedule.

<sup>2</sup> Dardenne's first report for the October 2015 election was filed February 15, 2012. His campaign finance reports indicate he has collected \$3,128,583.37 through July 27, 2015; Vitter's first report for the October 2015 election was filed February 18, 2015. His campaign finance reports indicate he has collected \$6,488,044.49 through July 27, 2015; Angelle's first report for the October 2015 election was filed February 15, 2012. His campaign finance reports indicate he has collected \$2,829,619.04 through July 27, 2015; Edward's first report for the October 2015 election was filed February 18, 2015. His campaign finance reports indicate he has collected \$1,476,180.71 through July 27, 2015.

<sup>3</sup> Petitioners are aware of the provisions contained in La. R.S. 18:1495.4C regarding the filing of "Special" reports the twenty days preceding an election disclosing contributions in excess of a specified amount.

25.

This undesirable result could be easily avoided if the Board construes the Act as allowing a contributor at any time prior to the general election to make a contribution that is designated in writing as given to the candidate for the general election with the requirement that it be maintained for the general election or, if the candidate does not participate in the general election, refunded or redesignated appropriately under the provisions of the Act.

26.

In a broader sense, it is important to recall and recognize that the fundamental and stated purpose of the Act is to enable the public in general, and the electorate in particular, to be fully informed of the manner, source and the extent to which candidates for election to public office are "funded" by those persons and organizations that seek to become involved in the financing of elections. Although there are collateral reasons for the Act – primarily contribution limits – La. R.S. 18:1482 provides that the overarching purpose of the Act is to ensure a knowledgeable and fully informed electorate.

27.

To that extent, reason suggests that the Act should be interpreted in a manner that will advance the stated fundamental underpinnings and that doubt as to the application and construction of controlling provisions of the Act should be resolved through an interpretation that ensures maximum disclosure of campaign financing activities – not only in terms of information regarding the nature and/or amount of a donor's contribution, but also in terms of timely availability of that information to the electorate.

28.

These fundamental purposes of the Act are manifestly undermined by an interpretation of the Act that effectively precludes contributors from publicly acknowledging and announcing their campaign financing contributions until practically the eve of the general election – or in some cases even *after* it. Conversely, allowing – and indeed encouraging – contributors who seek to participate in both the primary and the general aspect of a particular election to disclose all of their funding at the outset of that process will achieve a host of noble purposes and will significantly thwart the statutory prohibition against “hidden” or undisclosed contributions. Consider this: if a contributor is allowed to make contributions to a candidate for the maximum amount for both the primary and general elections at the commencement of the election cycle, both the public and the electorate will know the full extent of that contributor’s financial commitment to the particular candidate prior to the time that the primary election is held and throughout the time preceding the general election.

29.

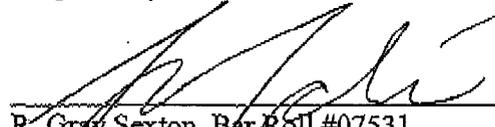
Conversely, under the 1994 Opinion’s construction of the Act, whereby contributors are prohibited from contributing to a candidate for the general election until after the primary election, the transparency and disclosure goals of the Act are significantly undermined. The public and the electorate may not learn of the subsequent involvement by the contributor – that is, of the contribution made for the purpose of affecting the general election – until well after the general election, at which time public disclosure is virtually meaningless.

30.

For all of these compelling public policy considerations, and given the fundamental purposes of the Act, the Board is respectfully urged to adopt the interpretation of the Act advanced by this applicant.

WHEREFORE, we respectfully request that the Board reconsider its opinion as expressed in the 1994 Opinion and issue a declaratory opinion concluding that a person at any time may make separate contributions to candidates for both the primary and general elections, provided the second contribution is (a) designated in writing for the general election, (b) timely reported and maintained for the general election, and (c) will be refunded or redesignated pursuant to the Act if the candidate does not participate in such election.

Respectfully Submitted:



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