MEMORANDUM

TO: **Louisiana Board of Ethics**

FROM: **Jennifer Land**

DATE: **November 9, 2015**

RE: **Time limits for receipt of contributions for the general election**

FACTS

The Campaign Finance Disclosure Act (CFDA) establishes contribution limits for contributions made to candidates, their principal campaign committee, and any subsidiary committee of a candidate (La. R.S. 18:1505.2H(1)(a)). The primary and general elections are considered as two separate elections. If a candidate participates in the general election, he may accept contributions subject to a separate contribution limit only after the primary election (La. R.S. 18:1505.2H(3)(a)).

Bobby Jelks, a frequent contributor to candidates for elected office in state-wide elections, has filed a request for a Declaratory Opinion seeking an opinion from this Board interpreting the time limits in which a person may make contributions in connection with a general election as provided in La. R.S. 18:1505.2H(3)(a). Mr. Jelks argues that La. R.S. 18:1505.2H(3)(a) does not clearly state when a candidate may solicit and accept contributions for a primary or general election. He disagrees with the interpretation that the Board previously made in an advisory opinion issued in BD 1994-025 wherein the Board concluded that "the time period for making a contribution in the general election begins the day following the primary election." Mr. Jelks explains that construing La. R.S. 18:1505.2H(3)(a) in this way allows a candidate an unlimited amount of time to solicit and accept contributions for a primary election, but only thirty days to solicit and accept contributions for use in the general election. Mr. Jelks suggests that the Board approve and implement the approach adopted under the federal election laws which allows contributors to make the maximum contribution according to the contribution limits to a candidate for both the primary and general elections at any time during the election provided that the second contribution is (1) designated in writing for the general election, (2) timely reported and maintained for the general election, and (3) will be refunded or redesignated within a specific timeframe set forth in the CFDA if the candidate does not participate in the general election.

ISSUE

Whether a person at any time may make separate contributions to a candidate for both the primary and general elections, provided the second contribution is (1) designated in writing for the general election, (2) timely reported and maintained for the general election, and (3) will be refunded or redesignated within a specific timeframe set forth in the CFDA if the candidate does not participate in the general election.

LAW

La. R.S. 18:1483(3)(a) "Candidate" means a person who seeks nomination or election to public office, except the office of president or vice president of the United States, presidential elector, delegate to a political party convention, United States senator, United States congressman, or political party office. An individual shall be deemed to seek nomination or election to such office if he has:
(i) Since prior participation in an election, if any, received and accepted a contribution or made an expenditure, or has given his consent for any other person or committee to receive a contribution or make an expenditure with a view to influencing his nomination or election to office whether or not the specific public office for which he will be a candidate is known at the time the contribution is received or the expenditure is made, or
(ii) Taken the action necessary under the laws of the state of Louisiana to qualify himself for nomination or election to public office.

La. R.S. 18:1505.2H(1)(a) establishes the following contribution limits for contributions made to candidates or the principal campaign committee and any subsidiary committee of a candidate for the following offices:

(i) Major office – five thousand dollars

(ii) District office – two thousand five hundred dollars

(iii) Other office – one thousand dollars

La. R.S. 18:1505.2H(3)(a) provides that a primary election and a general election shall constitute two separate elections. 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.

(b) No person shall make a loan, transfer of funds, or contribution.....in the aggregate for all reporting periods for an election as defined in this Paragraph....in excess of the contribution limits...

PRIOR OPINIONS

In BD 1994-025, the Board considered the provisions of La. R.S. 18:1505.2H(3)(a) and concluded that "contribution limits apply on a per election basis" and that "the time period for making a contribution in the general election begins the day following the primary election."

In BD 1995-052, the Board dealt with the issue of the timing of reporting of receipts of campaign contributions. The Board concluded that "a campaign contribution is received at the time a contribution check is received, regardless of the time of deposit." The Board went on to say that "it is important that candidates realize this in order to timely report those contributions as required by the provisions of the Campaign Finance Disclosure Act."

ANALYSIS

The period for filing campaign finance disclosure reports is based on participation in an election. Pursuant to La. R.S. 18:1483(3)(a)(i), a person becomes a "candidate" for the general election when he receives and accepts a contribution after his prior participation in the primary election. Therefore, contributions received and accepted after the primary election are filed on reports based on the candidate's participation in a future election. If a candidate qualifies to participate in the general election, those contributions are reported for the general election. If the candidate does not participate in the general election, contributions received after the primary election are reported for an election in the future.

La. R.S. 18:1505.2H(3)(a) clearly states that a primary election and a general election are considered two separate elections and the reporting period for the general election shall begin the day following the primary election. A contribution must be reported during the reporting period in which it was received. Louisiana law does not adopt the approach under the federal election laws allowing a candidate to accept contributions for both the primary and general elections at any time during the election by designating in writing that contributions will be maintained for the general election and refunded or redesignated if the candidate does not participate in the general election.

The Board, acting in its capacity as the Supervisory Committee on Campaign Finance Disclosure, administers and enforces the provisions of the Campaign Finance Disclosure Act passed by the Louisiana Legislature. The Board does not have the authority to unilaterally change those laws based on what an individual or group may perceive to be a better method of insuring timely disclosure of campaign contributions. If the legislature had intended for campaign finance laws to implement procedures similar to that set forth in federal election law, it would have expressly provided for that in the CFDA. It is Mr. Jelks' intention to have the Board go beyond its stated authority to change existing law found within the CFDA to mirror the approach taken by federal elections laws. The appropriate mechanism for a change in existing law, however, is to lobby government officials to make those desired changes.

RECOMMENDATION

It is the staff's recommendation that the Board reaffirm its conclusion in BD 1994-025 that contribution limits apply on a per election basis and that the time period for making a contribution in the general election begins the day following the primary election. Therefore, if a candidate advances to the general election, he may accept contributions subject to a separate contribution limit only after the primary election.

DEPARTMENT OF STATE CIVIL SERVICE
COMMISSION ON ETHICS FOR PUBLIC EMPLOYEES
BOARD OF ETHICS FOR ELECTED OFFICIALS
THE SUPERVISORY COMMITTEE FOR CAMPAIGN FINANCE
7434 PERKINS ROAD-SUITE B
BATON ROUGE, LA 70808-4379
(504) 765-2308
TDD 1-800-346-5277

March 9, 1994

The Honorable Quentin D. Dastugue
House of Representatives
District 82
P. O. Box 8386
Metairie, LA 70011

RE: Ethics Board Docket No. 94-025

Dear Representative Dastugue:

At its February 24, 1994 meeting, the Board of Ethics for Elected Officials, acting as the Supervisory Committee on Campaign Finance Disclosure, considered your request for an advisory opinion concerning a contribution practice involving a promissory note or written correspondence promising to make a contribution. The Board concluded, and instructed me to inform you, that contribution limits apply on a per election basis. Based on the provisions of R.S. 18:1505.2H(3)(a) the Board concluded that the time period for making a contribution in the general election begins the day following the primary election.

The Board then concluded that, based on the provisions of R.S. 18:1483(6)(b)(ii), that a promissory note negotiable after the second election cycle has begun, or written correspondence promising to donate an amount of money for the general election, would be considered contributions and therefore could not be given until the day after the primary election if the contributor making the promise to pay has already given the maximum contribution for the primary election.

Thank you for your question. If you have any further questions please call me at (504) 765-2308.

Sincerely,

BOARD OF ETHICS
FOR ELECTED OFFICIALS

Maris LeBlanc McCrory

Maris LeBlanc McCrory
For the Board

BD:MLM:crv

EXHIBIT
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BOARD OF ETHICS FOR ELECTED OFFICIALS
acting as the Supervisory Committee
on Campaign Finance Disclosure

DATE: June 22, 1995, as amended November 16, 1995* Opinion No. 95-052

RE: Time of acceptance of campaign contributions

The Board of Ethics for Elected Officials, acting as the Supervisory Committee on Campaign Finance Disclosure (the "Board"), is authorized by La. R.S. 18:1511.2B to render advisory opinions on its own initiative concerning the application of a general provision of the Campaign Finance Disclosure Act. This advisory opinion is rendered pursuant to that authority and deals with the issue of the timing of reporting of receipts of campaign contributions.

A "contribution" is defined by R.S. 18:1483(6) to mean a "gift, conveyance, payment, or deposit, of money or anything of value, or the forgiveness of a loan or of a debt, made for the purpose of supporting opposing or otherwise influencing the nomination or election of a person to public office . . .". A contribution also includes a "promissory note or written contract to make a contribution. . ." R.S. 18:1483(6)(ii). Candidates or their campaign committees are directed to deposit any contributions received into an account maintained at a bank or savings and loan designated as the campaign depository. R.S. 18:1491.4D and 18:1595.2D.

It has come to the Board's attention that some candidates may be holding checks received as campaign contributions for a significant amount of time before depositing those contributions

EXHIBIT
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and reporting them as received. The Board is concerned that this practice ignores the fact, based on the above definitions, that a campaign contribution is received at the time a contribution check is received, regardless of the time of deposit. It is important that candidates realize this in order to timely report those contributions as required by provisions of the Campaigna Finance Disclosure Act.

The Board does recognize, however, that certain administrative procedures must be followed before checks are deposited and reported as received. For example, a candidate or his representative may want to determine before depositing a contribution whether the contributor has already reached his contribution limit for that election. In order to accommodate this concern, the Board concludes that it is reasonable to allow a certain amount of time to elapse before a contribution should be considered as received for purposes of reporting.

Therefore, the Board directs that the date of receipt of a contribution, for reporting purposes, must be within ten days of the physical receipt of that contribution. This ten day allowance should not be taken as a directive to wait ten days before reporting the contribution. Rather, the ten days is the maximum amount of time that a candidate may use to conduct administrative procedures before reporting the receipt of a contribution.

Further, the Board directs that this ten day period shall not apply in the case of the receipt of a contribution within the twenty day period immediately preceding an election. Contributions received during that twenty day period, if over $500 for major office candidate or $250 for a district or any other office candidate, must be reported within forty-eight hours of the receipt of such contribution. R. S. 18:1491.6C and 1495.4C.

s/ Robert L. Roland
Robert L. Roland, Chairman

s/ Edwards Barham
Edwards Barham

s/ Carlos G. Spaht
Carlos G. Spaht

s/ Wallace A. Edwards
Wallace A. Edwards

*The original opinion allowed a thirty day period before contributions were required to reported. That opinion was amended November 16, 1995, to change the thirty day period to a ten day period.