



4 Park Street, Suite 207
Concord, NH 03301
(603) 225-2471
www.GraniteStateProgress.org

Re: Request Regarding Attorney General's Role in Election Complaint Regarding Friends of Chris Sununu Accepting Illegal Campaign Contributions

November 5, 2018

To the Office of the Attorney General:

Thank you for opening an investigation into our election law complaint that the Friends of Chris Sununu accepted nearly \$20,000 in illegal campaign contributions.

Our organization appreciates the work of your office, and in particular the new unit and dedicated resources to investigate election law complaints.

Given the high-profile nature of this complaint and the need for the Attorney General's office to remain free from even the appearance of impropriety, Granite State Progress respectfully requests that Attorney General Gordon MacDonald recuse himself from any role regarding the election complaint filed around Friends of Chris Sununu accepting nearly \$20,000 in illegal campaign contributions.

As noted in the media, the Attorney General's former law firm is one of the partnerships listed in the complaint. The AG, himself, is still listed as a partner in publicly available incorporation documents (although our understanding is that is no longer the case). The Friends of Chris Sununu campaign has publicly indicated that they will not return the donations and intend to argue the law does not apply to them. If the Sununu campaign stands by that statement, it is likely this election law complaint will gather more scrutiny.

When considering a campaign finance complaint made under N.H. R.S.A. 664, the New Hampshire Attorney General is subject to at least three sets of ethics guidelines.

First, as a N.H. Bar Association licensed attorney, the NH Attorney General must abide by the New Hampshire Rules of Professional Conduct Rule 1.7, which states:

- (a) Except as provided in paragraphs (b) and (c), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:
 - (1) the representation of one client will be directly adverse to another client; or
 - (2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.

The exceptions in paragraph (b) require that the attorney meet several criteria:

- (b) Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a client if:

- (1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;
- (2) the representation is not prohibited by law;
- (3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and
- (4) each affected client gives informed consent, confirmed in writing.

In the case of a personal interest (e.g., a complaint naming a law firm which still names the NH Attorney General as a partner in its state filings), it may not be possible to meet these criteria.

Second, the NH Attorney General is subject to N.H. R.S.A. 21-G:22 Conflict of Interest, which states "Executive branch officials and classified employees shall avoid conflicts of interest. Executive branch officials and classified employees shall not participate in any matter in which they, or their spouse or dependents, have a private interest which may directly or indirectly affect or influence the performance of their duties." (N.H. Rev. Stat. Ann. § 21-G:22).

Third, when considering a campaign finance complaint made under N.H. R.S.A. 664, the NH Attorney General is subject to specific provisions of that law. N.H. Rev. Stat. Ann. § 644:18 III-IV states:

III. If, in the opinion of any person making complaint, the family, business or political connection of the attorney general's designee is such as to make it unlikely that he will act diligently and earnestly in any proceeding therefor, the person complaining may state such facts to the attorney general.

IV. If the attorney general believes that his designee will be hampered by any existing facts or circumstances and in any manner prevented from vigorously proceeding against any respondent complained against for such violation, or that the service of more than one attorney in any proceeding would be in the interest of the state, he shall have authority to employ and assign additional attorneys, to conduct or assist in conducting such proceeding. Such attorneys shall be allowed reasonable compensation, to be approved by the governor and council and paid by the state out of funds not otherwise appropriated.

Our organization very much understands the scrutiny under which your office must operate, and asks that the Attorney General publicly recuse himself from this case.

Thank you in advance for your attention to this matter.

Sincerely,

Zandra Rice Hawkins
Executive Director
Granite State Progress
(603) 225-2471
zandra@granitestateprogress.org