WILLIAM H. SORRELL
ATTORNEY GENERAL

SUSANNE R. YOUNG
DEPUTY ATTORNEY GENERAL

WILLIAM E. GRIFFIN
CHIEF ASST. ATTORNEY GENERAL

TEL: (802) 828-3171
FAX: (802) 828-3187
TTY: (802) 828-3665

http://www.atg.state.vt.us

STATE OF VERMONT
OFFICE OF THE ATTORNEY GENERAL
109 STATE STREET
MONTPELIER, VT
05609-1001

Formal Opinion #2014-1

May 13, 2014

Hon. Jim Condos
Secretary of State
128 State Street
Montpelier VT 05601-1101

Re: Act 90 – An Act Relating to Campaign Finance Law

Dear Secretary Condos:

You have asked whether limits on campaign contributions are in effect during 2014 in light of the passage of 2013 (Adj. Sess.) Acts & Resolves No. 90 ("Act 90"). Our opinion is that the limits set forth in the law as enforced by the State of Vermont prior to the passage of Act 90 remain in effect through December 31, 2014.

As you know, 17 V.S.A. § 2805(a) (2012) specifies that political committees and political parties shall not accept contributions totaling more than $2,000 from a single source, political committee, or political party in any two-year general election cycle. Furthermore, 17 V.S.A. § 2805(a) & (b) as added by 1981 (Adj. Sess.) Acts & Resolves No. 197, § 1 and amended by 1987 (Adj. Sess.) Acts & Resolves No. 263, § 3, specifies that no candidate for election to Vermont office shall accept contributions totaling more than $1,000 from a single source or more than $3,000 from a political committee for any election.[1] It is our opinion that the Legislature intended that these limits remain in effect through December 31, 2014, despite the literal reading of Act 90.

Act 90 re-organized and revised Vermont's campaign finance law. It repealed chapter 59 of title 17, effective January 23, 2014, and replaced it with a new chapter, which established contribution limits for political campaigns that will go

[1] After the United States Supreme Court found the limits on contributions to candidates that had been enacted in 1997 by Act 64 to be unconstitutional in *Randall v. Sorrell*, 548 U.S. 230 (2006), the former provisions of the statute were revived. *Oxfeld v. Sorrell* (D. Vt. Oct. 15, 2008) 2008 U.S. Dist. LEXIS 81872. The former provisions are the source of the limits on contributions to candidates.

into effect on January 1, 2015. No. 90, § 8(a)(2). The differing effective dates appear to leave a gap between January 23, 2014, the date when the existing limits were repealed, and January 1, 2015, the date when the new limits go into effect. The recorded deliberations of the Committee on Conference on S.82 demonstrate, however, that the Legislature intended the former limits to remain in effect through the current election cycle. Further, testimony before the House Government Operations Committee and Senate Government Operations Committee by Act 90's legislative draftsman confirms that the effective date of the repeal language "upon passage" was a drafting error. The Act should have explicitly stated that the contribution limits from pre-existing law would remain in effect through December 31, 2014, so that there would be no change in the current general election cycle.[2]

Shortly after the error was discovered, the House passed H.640 on February 14, 2014. Section 33 of H.640 corrected the effective date, stating as follows:

> Notwithstanding the provisions of 2014 Acts and Resolves No. 90 (campaign finance (S.82)), Secs. 2 (repeal of 17 V.S.A. chapter 59) and 8 (effective dates; transitional provisions), the provisions of 17 V.S.A. § 2805(a), (b), (f), (g), and (h) (limitations of contributions), as administered and enforced by the State immediately prior to the effective date of 2014 Acts and Resolves No. 90, Sec. 2, shall continue to apply to elections in the State from the effective date of 2014 Acts and Resolves No. 90, Sec. 2 until the effective date of 2014 Acts and Resolves No. 90, Sec. 3, 17 V.S.A. § 2941 (limitations of contributions).

After passage by the House, the bill was reported favorably by the Senate Government Operations Committee and referred to the Senate Finance Committee. As it was not voted on in the Finance Committee, the full Senate never voted on H.640.

Although courts generally adhere to a statutory rule of construction that relies on the plain language of a statute in interpreting its meaning, a legislative drafting error creates an exception to that rule. The Vermont Supreme Court "continue[s] to encourage plain meaning statutory construction," but "when the

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[2] The Committee on Conference discussed the question of the effective date of the contribution limits. It considered two options: making the new contribution limits effective on passage of the bill or postponing the effective date to the start of the next general election cycle. The members of the conference committee never considered the possibility that there would be no limits at all. Their discussion considered the consequences of changing the limit on contributions in the middle of an election cycle, especially in situations where the limit would be reduced. In order to avoid disruption in the current cycle, they decided to make the new limits go into effect around the start of the new election cycle. The intent was to maintain stability in the current general election cycle.

plain meaning of the statute contradicts the intent of the Legislature, 'we are not confined to a literal interpretation of the statutory language.'" *In re C.S.*, 158 Vt. 339, 343 (1992). "We may correct a statute whose language does not promote the intent of the Legislature due to clerical error in transcription, writing, or redrafting." The Court in *In re C.S.* corrected language that read "minority of the child" and held that it meant "twenty-one" when the legislature had changed the provision from minority to twenty-one and back to minority within a short period of time, without any indication that the final change (back to minority) was intentional. *Id.*

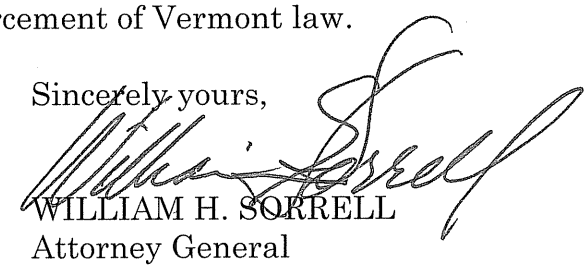
In a case similar to the situation here, the Second Circuit Court of Appeals considered the question of applying legislative intent where the repeal of one law did not align with the effective date of its replacement. It concluded that a repealed statute prohibiting the discharge of student loans in bankruptcy proceedings should be read to remain in effect during the gap. *See In re Adamo*, 619 F.2d 216, 222 (2d Cir. 1980) (concluding "that the premature repeal of [Section 439A] is of no effect with respect to proceedings commenced prior to the effective date of the BRA on October 1, 1979"). In evaluating legislative intent, the court explained how the disconnect between the repeal provision and effective provision arose; noted the inadvertence was acknowledged by the Senate Judiciary Committee when passing corrective legislation; considered the language of the subsequent statute, including a savings provision; and acknowledged "the apparent absurdity of a construction of the BRA which, for no discernible reason would permit the discharge of student loans by debtors who, by sheer chance, have their bankruptcy petitions adjudicated during the eleven-month gap." *Id.* at 220-22.

Based on these cases, we believe that the legislative intent to keep the former limits in effect through December 31, 2014, takes precedence over the plain language of the statute. The fact that the Senate did not act on H.640 does not change our opinion, because legislative inaction is not persuasive in determining legislative intent. In *In re C.S.* the Vermont Supreme Court did not find affirmative inaction instructive in evaluating legislative intent despite the State pointing to "various attempts to amend [the statute] to return the age limitation to twenty-one, which have failed." *See* 158 Vt. at 343. Other states have similarly found that such inaction cannot be the basis for inferring legislative intent. *See In re Semons*, 256 Cal. Rptr. 641, 646 (Cal. Ct. App. 1989) ("The failure of one house to pass a bill or the failure of a bill to emerge from committee is neither a 'rejection' of the bill as proposed nor an approval of the status quo ante."); *Entergy Gulf States, Inc. v. Summers*, 282 S.W.3d 433, 470-71 (Tex. 2009) ("Bills rise and fall for reasons both incalculable and inscrutable, and courts' reluctance to draw inferences from subsequent legislative inaction is deeply rooted. . . . As non-adoption infers nothing authoritative about an earlier statute's meaning, we do not consult failed bills to divine what a previous Legislature intended.").

Therefore, we answer your question as follows: the limits on contributions set forth in 17 V.S.A. § 2805(a), (b), (f), (g), and (h) (limitations of contributions), as administered and enforced by the State immediately prior to the effective date of Act 90, remain in effect through December 31, 2014. Specifically, no candidate for election to Vermont office shall accept contributions totaling more than $1,000 from a single source or more than $3,000 from a political committee for any election. Further, no political committee or political party shall accept contributions totaling more than $2,000 from a single source, political committee, or political party in any two-year general election cycle.

Any complaint regarding a potential violation of the above contribution limits will be handled consistent with our approach to all alleged campaign finance violations. We will continue to evaluate each matter on its merits and develop an appropriate course of action for enforcement of Vermont law.

Sincerely yours,



WILLIAM H. SORRELL
Attorney General