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FIRST GENERAL COUNSEL'S REPORT

CELA

AUDIT REFERRAL: AR 16-02

DATE REFERRED: September 22, 2016

DATE OF NOTIFICATION: September 27, 2016

DATE OF LAST RESPONSE: October 17, 2016

DATE ACTIVATED: November 16, 2016

ELECTION CYCLE: 2012

EXPIRATION OF SOL: January 3, 2016 to
December 21, 2017

SOURCE:

AUDIT REFERRAL

RESPONDENTS:

Oklahoma Leadership Council and Peter Leo
Hodges in his official capacity as treasurer

RELEVANT REGULATION:

11 C.F.R. § 106.7(d)(1)

INTERNAL REPORTS CHECKED:

Audit Documents
Disclosure Reports

FEDERAL AGENCIES CHECKED:

None

I. INTRODUCTION

This matter was generated by a Commission audit of the Oklahoma Leadership Council ("Committee"), a state committee of the Republican Party,¹ covering the period of January 1, 2011, through December 31, 2012. The Commission approved the Final Audit Report (Attachment 1) on September 1, 2016, and the Audit Division referred a recordkeeping finding to the Office of the General Counsel ("OGC") for possible enforcement action relating to the Committee's failure to maintain monthly payroll logs to document the percentage of time each employee spent in connection with a federal election. OGC notified the Committee of the

¹ See the Committee's Amended Statement of Organization dated Sept. 14, 2015.

1 Referral and the Committee filed a response reiterating some of the arguments presented and
2 considered by the Commission during the audit process. The Committee also requests that the
3 Commission either decline to open an enforcement action or refer the matter to the Alternative
4 Dispute Resolution Office because of efforts that the Committee made prior to and during the
5 course of the audit. Based on the discussion below, and the facts, analysis, and findings set forth
6 in the Final Audit Report, which is incorporated by reference, we recommend that the
7 Commission find reason to believe that the Committee violated 11 C.F.R. § 106.7(d)(1) by
8 failing to maintain payroll logs regarding \$178,305 in salary payments. Additionally, we
9 recommend that the Commission authorize pre-probable cause conciliation.

10 II. FACTUAL AND LEGAL ANALYSIS

11 Commission regulations provide that salaries, wages, and fringe benefits "[paid] to
12 State, district, or local party committee employees who spend 25 percent or less of their
13 compensated time in a given month on Federal election activity or on activity in connection with
14 a Federal election" may be allocated as administrative costs; *i.e.*, may be paid with a combination
15 of funds from the committee's federal and non-federal accounts.² Commission regulations also
16 provide that when allocating salary, wage, and fringe benefit payments, political party
17 committees are required to "keep a monthly log of the percentage of time each employee spends
18 in connection with a Federal election."³

19 As set forth in the Final Audit Report, the Commission found that the Committee failed
20 to maintain monthly payroll logs for \$178,305 in 2011 and 2012 that the Committee disclosed as

² 11 C.F.R. §§ 106.7(c)(1), (d)(1)(i), and (d)(2).

³ 11 C.F.R. § 106.7(d)(1).

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1 having been paid with an allocation of federal and non-federal funds.⁴

2 The Committee asserts that near the end of the audit period and prior to the
3 commencement of the audit, it made changes to its compliance structure by hiring a new
4 reporting firm to prepare its reports and handle other compliance matters.⁵ The Committee
5 maintains that it implemented the Commission's 2013 guidelines on recordkeeping for state
6 party committees, and has fully cooperated with the Audit Division during the audit process.⁶
7 The Committee further asserts that in recent Commission matters with similar recordkeeping
8 findings, respondents have paid minimal fines for significantly greater amount of disbursements
9 than at issue in this matter.⁷ Nowhere in the Committee's response, however, does it deny the
10 violations.

11 Based on the foregoing, we recommend that the Commission find reason to believe that
12 the Committee violated 11 C.F.R. § 106.7(d)(1).
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⁴ See Attach. 1 at 14.

⁵ Committee Resp. at 1.

⁶ *Id.* at 2.

⁷ *Id.* AR 16-02 meets the Commission-approved threshold for referral to the Office of General Counsel.

IV. RECOMMENDATIONS

1. Open a MUR in AR 16-02;
2. Find reason to believe that Oklahoma Leadership Council and Peter Leo Hodges in his official capacity as treasurer violated 11 C.F.R. § 106.7(d)(1);
3. Authorize conciliation with Oklahoma Leadership Council and Peter Leo Hodges in his official capacity as treasurer prior to a finding of probable cause to believe;
4. Approve the attached Conciliation Agreement;
5. Approve the attached Factual and Legal Analysis; and


6. Approve the appropriate letter.


Lisa J. Stevenson
Acting General Counsel


Kathleen M. Guith
Acting Associate General Counsel

12.5.16

Date


Stephen A. Gura
Deputy Associate General Counsel


Mark Allen
Assistant General Counsel


Delbert K. Rigsby
Attorney

Attachments:

1. Final Audit Report of the Commission on the Oklahoma Leadership Council
- 2.
3. Factual and Legal Analysis



Final Audit Report of the Commission on the Oklahoma Leadership Council

(January 1, 2011 - December 31, 2012)

Why the Audit Was Done

Federal law permits the Commission to conduct audits and field investigations of any political committee that is required to file reports under the Federal Election Campaign Act (the Act). The Commission generally conducts such audits when a committee appears not to have met the threshold requirements for substantial compliance with the Act.¹ The audit determines whether the committee complied with the limitations, prohibitions and disclosure requirements of the Act.

Future Action

The Commission may initiate an enforcement action, at a later time, with respect to any of the matters discussed in this report.

About the Committee (p. 2)

The Oklahoma Leadership Council is a state party committee headquartered in Oklahoma City, Oklahoma. For more information, see the chart on the Committee Organization, p. 2.

Financial Activity (p. 3)

• Receipts	
o Contributions from Individuals	\$ 570,198
o Contributions from Other Political Committees (PACs)	99,942
o Transfers from Affiliated/Other Party Committees	9,336,908
o Transfers from Non-federal and Levin Accounts	106,953
o Offsets and Other Receipts	1,432
Total Receipts	\$ 10,115,433
• Disbursements	
o Operating Expenditures	\$ 918,520
o Transfers to Affiliated/Other Party Committees	9,131,482
o Federal Election Activity	96,855
o Other Disbursements	12,451
Total Disbursements	\$ 10,159,308
• Levin Receipts	\$ 85,332
• Levin Disbursements	\$ 89,078

Commission Findings (p. 4)

- Misstatement of Financial Activity (Finding 1)
- Misstatement of Financial Activity - Levin Fund (Finding 2)
- Recordkeeping for Employees (Finding 3)
- Contributions from Unregistered Political Organizations (Finding 4)

¹ 52 U.S.C. §30111(b).

(January 1, 2011 – December 31, 2012)



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Part I Background

Authority for Audit

This report is based on an audit of the Oklahoma Leadership Council (OLC), undertaken by the Audit Division of the Federal Election Commission (the Commission) in accordance with the Federal Election Campaign Act of 1971, as amended (the Act). The Audit Division conducted the audit pursuant to 52 U.S.C. §30111(b), which permits the Commission to conduct audits and field investigations of any political committee that is required to file a report under 52 U.S.C. §30104. Prior to conducting any audit under this subsection, the Commission must perform an internal review of reports filed by selected committees to determine if the reports filed by a particular committee meet the threshold requirements for substantial compliance with the Act. 52 U.S.C. §30111(b).

Scope of Audit

Following Commission approved procedures, the Audit staff evaluated various risk factors and as a result, this audit examined:

1. the receipt of contributions from prohibited sources;
2. the disclosure of individual contributors' occupation and name of employer;
3. the disclosure of disbursements, debts and obligations;
4. the disclosure of expenses allocated between federal and non-federal accounts;
5. the consistency between reported figures and bank records;
6. the completeness of records; and
7. other committee operations necessary to the review.

Audit Hearing

OLC declined the opportunity for a hearing before the Commission on matters presented in this report.

Part II

Overview of Committee

Committee Organization

Important Dates	
• Date of Registration	May 13, 1983
• Audit Coverage	January 1, 2011 – December 31, 2012
Headquarters	
Oklahoma City, Oklahoma	
Bank Information	
• Bank Depositories	Two
• Bank Accounts	Four Federal, One Levin, Two Non-federal
Treasurer	
• Treasurer When Audit Was Conducted	Peter L. Hodges (9/14/2015 – present) Anthony J. Ferate (6/20/2010 – 9/13/2015)
• Treasurer During Period Covered by Audit	Anthony J. Ferate
Management Information	
• Attended Commission Campaign Finance Seminar	Yes
• Who Handled Accounting and Recordkeeping Tasks	Paid Staff

Overview of Financial Activity (Audited Amounts)

Cash-on-hand @ January 1, 2011	\$ 80,801
o Contributions from Individuals	570,198
o Contributions from Other Political Committees (PACs)	99,942
o Transfers from Affiliated/Other Party Committees	9,336,908
o Transfers from Non-federal and Levin Accounts	106,953
o Offsets and Other Receipts	1,432
Total Receipts	\$ 10,115,433
o Operating Expenditures	918,520
o Transfers to Affiliated/Other Party Committees	9,131,482
o Federal Election Activity	96,855
o Other Disbursements	12,451
Total Disbursements	\$ 10,159,308
Cash-on-hand @ December 31, 2012	\$ 36,926
Levin Cash-on-hand @ January 1, 2011	\$ 15,687
Total Levin Receipts	85,332
Total Levin Disbursements	89,078
Levin Cash-on-hand @ December 31, 2012	\$ 11,941

Part III Summaries

Commission Findings

Finding 1. Misstatement of Financial Activity

During audit fieldwork, a comparison of OLC's reported financial activity with its bank records revealed a misstatement of receipts, disbursements and ending cash-on-hand balance for calendar year 2011. OLC understated its 2011 receipts and disbursements by \$28,491 and \$73,543, respectively; and overstated its ending cash-on-hand by \$44,550. In response to the Interim Audit Report recommendation, OLC filed a Form 99 (Miscellaneous Text) and disclosed all 2011 receipt and disbursement misstatements with an appropriate reference to the pertinent disclosure reports. Because 2011 misstatements affected the most recent cash balance, OLC also filed an amended 2012 Year-End disclosure report with a reconciled ending cash-on-hand balance to correct the public record. OLC had no additional comments pertaining to this finding in its response to the Draft Final Audit Report.

The Commission approved the finding that OLC misstated its financial activity for the calendar year 2011. (For more detail, see p. 6.)

Finding 2. Misstatement of Financial Activity - Levin Fund

During audit fieldwork, a comparison of OLC's reported Levin Fund activity with its bank records revealed a misstatement of disbursements and ending cash-on-hand for calendar year 2011, and a misstatement of beginning cash-on-hand and receipts for calendar year 2012. For 2011, OLC understated its disbursements by \$15,039 and overstated its ending cash-on-hand by \$12,229. For 2012, OLC understated its receipts by \$10,000. In response to the Interim Audit Report recommendation, OLC filed a Form 99 and disclosed all previously undisclosed 2011 transfers made from its Levin Fund to its federal account, effectively correcting its 2011 ending cash-on-hand balance. In response to the Draft Final Audit Report, OLC filed a Form 99 and disclosed the receipt of \$10,000 in 2012.

The Commission approved the finding that OLC misstated its Levin disbursements and ending cash-on-hand for the calendar year 2011 and its Levin receipts for the calendar year 2012. (For more detail, see p. 8.)

Finding 3. Recordkeeping for Employees

During audit fieldwork, the Audit staff determined that OLC did not maintain any monthly payroll logs, as required, to document the percentage of time each employee spent in connection with a federal election. For calendar years 2011 and 2012, the Audit staff identified payments to OLC employees totaling \$178,305 for which OLC did not maintain monthly payroll logs. This entire amount consisted of payroll that was allocated with both federal and non-federal funds. In response to the Interim Audit Report recommendation, OLC provided details of the system it has implemented that requires

employees to complete monthly logs detailing the percentage of time spent in connection with federal elections.

The Commission approved the finding that OLC failed to maintain monthly payroll logs totaling \$178,305 to document the time employees spent in connection with federal election activity. (For more detail, see p. 11.)

Finding 4. Contributions from Unregistered Political Organizations

During audit fieldwork, a review of all contributions from unregistered political organizations indicated that OLC received contributions totaling \$8,150 that may not have been made with permissible funds. OLC transferred \$7,150 of these contributions to its non-federal and Levin accounts but not in a timely manner. In response to the Interim Audit Report recommendation, OLC untimely transferred the remaining \$1,000 from its federal account to its state account. In response to the Draft Final Audit Report, OLC submitted copies of the state campaign finance reports filed with the state of Oklahoma for four unregistered committees reflecting the sufficiency of permissible federal funds. Based on the Audit staff's verification that sufficient permissible funds totaling \$7,150 were available to make federal contributions to OLC, the Audit staff concluded that OLC did not receive any impermissible contributions from these committees.

The Commission approved the finding that OLC did not receive impermissible contributions totaling \$7,150 from unregistered political organizations and untimely resolved the remaining contribution of \$1,000. (For more detail, see p.13.)

Part IV

Commission Findings

Finding 1. Misstatement of Financial Activity

Summary

During audit fieldwork, a comparison of OLC's reported financial activity with its bank records revealed a misstatement of receipts, disbursements and ending cash-on-hand balance for calendar year 2011. OLC understated its 2011 receipts and disbursements by \$28,491 and \$73,543, respectively; and overstated its ending cash-on-hand by \$44,550. In response to the Interim Audit Report recommendation, OLC filed a Form 99 (Miscellaneous Text) and disclosed all 2011 receipt and disbursement misstatements with an appropriate reference to the pertinent disclosure reports. Because 2011 misstatements affected the most recent cash balance, OLC also filed an amended 2012 Year-End disclosure report with a reconciled ending cash-on-hand balance to correct the public record. OLC had no additional comments pertaining to this finding in its response to the Draft Final Audit Report.

The Commission approved the finding that OLC misstated its financial activity for the calendar year 2011.

Legal Standard

Contents of Reports. Each report must disclose:

- the amount of cash-on-hand at the beginning and end of the reporting period;
- the total amount of receipts for the reporting period and for the calendar year;
- the total amount of disbursements for the reporting period and for the calendar year; and
- certain transactions that require itemization on Schedule A (Itemized Receipts) or Schedule B (Itemized Disbursements). 52 U.S.C. §30104(b)(1), (2), (3), (4) and (5).

Facts and Analysis

A. Facts

As part of audit fieldwork, the Audit staff reconciled OLC's reported financial activity with its bank records for calendar years 2011 and 2012. The reconciliation revealed that OLC misstated its receipts, disbursements, and ending cash-on-hand for 2011. The following chart outlines the discrepancies between OLC's disclosure reports and its bank records. The succeeding paragraphs explain why the discrepancies occurred.

2011 Committee Activity			
	Reported	Bank Records	Discrepancy
Beginning Cash Balance @ January 1, 2011	\$80,299	\$80,801	\$502 Understated
Receipts	\$276,679	\$305,170	\$28,491 Understated
Disbursements	\$238,640	\$312,183	\$73,543 Understated
Ending Cash Balance @ December 31, 2011	\$118,338	\$73,788	\$44,550 Overstated

The beginning cash balance was understated by \$502 and is unexplained, but likely resulted from prior-period discrepancies.

The understatement of receipts resulted from the following:

• One transfer from non-federal account not reported ²	\$10,376
• Four transfers from Levin account not reported ³	15,039
• Unexplained difference	<u>3,076</u>
Understatement of Receipts	<u>\$28,491</u>

The understatement of disbursements resulted from the following:

• Net Under Reporting of Payroll Expenses	\$61,867
• Unreported disbursements clearing bank records	15,889
• Non-federal account disbursements reported as federal	(3,259)
• Other reported disbursements not traced to bank records	(1,204)
• Incorrect disbursement amount reported	<u>250</u>
Net Understatement of Disbursements	<u>\$73,543</u>

The \$44,550 overstatement of the ending cash-on-hand balance was the result of the receipt and disbursement reporting discrepancies described above along with a \$502 understatement of beginning cash-on-hand for 2011.

B. Interim Audit Report & Audit Division Recommendation

The Audit staff discussed the misstatement of financial activity with OLC representatives at the exit conference and provided work papers detailing the differences. OLC Counsel responded to the exit conference by explaining that a portion of the under-reporting of payroll expenses seems to be attributable to payroll taxes and payroll vendor administration fees. The Audit staff agrees with Counsel that most of the differences are likely related to taxes and fees paid to its payroll vendor in 2011. However, it should also be noted that there were several periods in 2011 where OLC did not report any payments to its payroll vendor, which would include salaries as well as taxes and fees.

² This transfer was for allocable activity and did not result in over-funding of federal activity by a non-federal account.

The Interim Audit Report recommended that OLC amend its disclosure reports to correct the misstatements noted above and reconcile the cash balance on its most recent report to identify any subsequent discrepancies that could affect the recommended adjustments. The Interim Audit Report further recommended that OLC adjust the cash balance as necessary on its most recent report, noting that the adjustment is the result of prior-period audit adjustments.

C. Committee Response to Interim Audit Report

In response to the Interim Audit Report recommendation, OLC filed a Form 99 and disclosed all 2011 receipt and disbursement misstatements with an appropriate reference to individual disclosure reports. Likewise, OLC filed an amended 2012 Year-End disclosure report and corrected its ending cash-on-hand balance. As such, OLC has materially complied with the Interim Audit Report recommendation.

D. Draft Final Audit Report

The Draft Final Audit Report acknowledged that OLC filed Form 99 and disclosed all 2011 misstatements. OLC also filed an amended 2012 Year-End disclosure report with a reconciled ending cash-on-hand balance to correct the public record.

E. Committee Response to the Draft Final Audit Report

OLC's response to the Draft Final Audit Report provided no additional comments.

Commission Conclusion

On August 5, 2016, the Commission considered the Audit Division Recommendation Memorandum in which the Audit staff recommended that the Commission find that OLC misstated its financial activity for the calendar year 2011.

The Commission approved the Audit staff's recommendation.

Finding 2. Misstatement of Financial Activity – Levin Fund

Summary

During audit fieldwork, a comparison of OLC's reported Levin Fund activity with its bank records revealed a misstatement of disbursements and ending cash-on-hand for calendar year 2011, and a misstatement of beginning cash-on-hand and receipts for calendar year 2012. For 2011, OLC understated its disbursements by \$15,039 and overstated its ending cash-on-hand by \$12,229. For 2012, OLC understated its receipts by \$10,000. In response to the Interim Audit Report recommendation, OLC filed a Form 99 and disclosed all previously undisclosed 2011 transfers made from its Levin Fund to its federal account, effectively correcting its 2011 ending cash-on-hand balance. In response to the Draft Final Audit Report, OLC filed a Form 99 and disclosed the receipt of \$10,000 in 2012.

The Commission approved the finding that OLC misstated its Levin disbursements and ending cash-on-hand for the calendar year 2011 and its Levin receipts for the calendar year 2012.

Legal Standard

A. Contents of Levin Reports. Each report must disclose:

- the amount of cash-on-hand for Levin funds at the beginning and end of the reporting period;
- the total amount of Levin fund receipts and disbursements (including allocation transfers) for the reporting period and for the calendar year; and,
- certain transactions that require itemization on Schedule L-A (Itemized Receipts of Levin Funds) or Schedule L-B (Itemized Disbursements of Levin Funds). 11 CFR §300.36 (b)(2).

B. Levin Fund Transfers. A State, district, or local committee of a political party must not use any Federal funds transferred to it from or otherwise accepted by it from any other State, district, or local committee as the Federal component of an expenditure or disbursement for Federal election activity under 11 CFR §300.32. A State, district, or local committee of a political party must itself raise the Federal component of an expenditure or disbursement allocated between federal funds and Levin funds under 11 CFR §§300.32 and 300.33. 11 CFR §300.34(a).

Levin funds must be raised solely by the State, district, or local committee of a political party that expends or disburses the funds. A State, district, or local committee of a political party must not use as Levin funds any funds transferred or otherwise provided to the committee by any State, district, or local committee of a political party of the national committee of any political party. 11 CFR §300.34(b).

Facts and Analysis

A. Facts

As part of the audit fieldwork, the Audit staff reconciled OLC's reported Levin activity with its Levin bank records for 2011 and 2012. The reconciliation revealed that OLC misstated its disbursements and ending cash for 2011, and misstated its beginning cash-on-hand and receipts for 2012. The following charts outline the discrepancies between OLC's disclosure reports and its Levin bank records, and the succeeding paragraphs explain why these discrepancies occurred.

2011 Committee Levin Fund Activity			
	Reported	Bank Records	Discrepancy
Beginning Cash Balance @ January 1, 2011	\$17,877	\$15,687	\$2,190 Overstated
Receipts	\$40,332	\$45,332	\$5,000 Understated
Disbursements	\$30,922	\$45,961	\$15,039 Understated
Ending Cash Balance @ December 31, 2011	\$27,287	\$15,058	\$12,229 Overstated

The understatement of disbursements resulted from four unreported transfers totaling \$15,039 that OLC made from its Levin Fund to its federal account.³ OLC's ending cash-on-hand was overstated by \$12,229. This difference resulted from the understated disbursements along with smaller differences in beginning cash-on-hand and receipts in the chart above.

2012 Committee Levin Fund Activity			
	Reported	Bank Records	Discrepancy
Beginning Cash Balance @ January 1, 2012	\$27,287	\$15,058	\$12,229 Overstated
Receipts	\$30,000	\$40,000	\$10,000 Understated
Disbursements	\$40,730	\$43,117	\$2,387 Understated
Ending Cash Balance @ December 31, 2012	\$16,557	\$11,941	\$4,616 Overstated

Notwithstanding the incorrect cash balance carried over from 2011, OLC's understatement of receipts was the result of an unreported deposit in the amount of \$10,000. The \$4,616 overstatement of ending cash resulted from the discrepancies in beginning cash, receipts, and disbursements displayed in the chart above.

B. Interim Audit Report & Audit Division Recommendation

The Audit staff discussed the misstatements with OLC representatives at the exit conference and provided work papers detailing the misstatements. In response to the exit conference, OLC Counsel explained that the differences identified are small sums and constitute a minimal portion of OLC's overall activity during the audit period.

The Interim Audit Report recommended that OLC:

³ OLC transferred these Levin funds to its federal allocation account for the purpose of paying allocable payroll expenses in accordance with 11 CFR §300.33. Also, all Levin funds were raised by OLC in accordance with 11 CFR § 300.34. Therefore, the transfers of Levin funds did not present any funding issue related to the Levin account.

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- amend its 2011 disclosure reports to include the four transfers totaling \$15,039 that OLC made from its Levin Fund to its federal account;
- amend its 2012 disclosure report to include the unreported deposit of \$10,000; and
- adjust the Levin cash balance as necessary on its most recent report, noting that the adjustment is the result of prior-period audit adjustments.

C. Committee Response to Interim Audit Report

In response to the Interim Audit Report recommendation, OLC filed a Form 99 and disclosed all previously undisclosed 2011 transfers totaling \$15,039 made from its Levin Fund to its federal account, effectively correcting its 2011 ending cash-on-hand balance.

D. Draft Final Audit Report

The Draft Final Audit Report acknowledged that although OLC materially corrected its 2011 activity, it did not disclose the unreported \$10,000 receipt from 2012.

E. Committee Response to the Draft Final Audit Report

In response to the Draft Final Audit Report, OLC filed a Form 99 and disclosed the receipt of \$10,000 in 2012.

Commission Conclusion

On August 5, 2016, the Commission considered the Audit Division Recommendation Memorandum in which the Audit staff recommended that the Commission find that OLC misstated its Levin disbursements and ending cash-on-hand for the calendar year 2011; and its Levin receipts for the calendar year 2012.

The Commission approved the Audit staff's recommendation.

Finding 3. Recordkeeping for Employees

Summary

During audit fieldwork, the Audit staff determined that OLC did not maintain any monthly payroll logs, as required, to document the percentage of time each employee spent in connection with a federal election. For calendar years 2011 and 2012, the Audit staff identified payments to OLC employees totaling \$178,305 for which OLC did not maintain monthly payroll logs. This entire amount consisted of payroll that was allocated with both federal and non-federal funds. In response to the Interim Audit Report recommendation, OLC provided details of the system it has implemented that requires employees to complete monthly logs detailing the percentage of time spent in connection with federal elections.

The Commission approved the finding that OLC failed to maintain monthly payroll logs totaling \$178,305 to document the time employees spent in connection with the federal election activity.

Legal Standard

Maintenance of Monthly Logs. Party committees must keep a monthly log of the percentage of time each employee spends in connection with a federal election.

Allocations of salaries, wages, and fringe benefits are to be undertaken as follows:

- employees who spend 25 percent or less of their compensated time in a given month on federal election activities must be paid either from the federal account or be allocated as administrative costs;
- employees who spend more than 25 percent of their compensated time in a given month on federal election activities must be paid only from a federal account; and,
- employees who spend none of their compensated time in a given month on federal election activities may be paid entirely with funds that comply with state law. 11 CFR §106.7(d)(1).

Facts and Analysis

A. Facts

During audit fieldwork, the Audit staff reviewed disbursements for payroll. OLC did not maintain any monthly payroll logs or equivalent records to document the percentage of time each employee spent in connection with a federal election. These logs were required to document the proper allocation of federal and non-federal funds used to pay employee salaries and wages. For 2011 and 2012, OLC did not maintain monthly logs for \$178,305 in payroll.⁴ This amount is made up exclusively of expenditures reported on Schedules H4 (Disbursements for Allocated Federal/Non-federal Activity) and paid with federal and non-federal funds during the same month.

B. Interim Audit Report & Audit Division Recommendation

The Audit staff discussed the recordkeeping requirement with OLC representatives during audit fieldwork and at the exit conference. In response to the exit conference, OLC Counsel stated that after the 2012 election cycle and prior to the commencement of the audit, OLC implemented timekeeping protocols in response to the Commission memorandum concerning timekeeping requirements. OLC's Chairman instructed its employees to comply with the guidelines set forth in this memorandum. The response further stated that OLC will continue to work with its staff to ensure payroll recordkeeping requirements are followed.

The Interim Audit Report recommended that OLC:

- provide evidence that it maintained monthly time logs to document the percentage of time an employee spent in connection with a federal election; or
- provide details of its plan to maintain monthly payroll logs in the future.

C. Committee Response to Interim Audit Report

In response to the Interim Audit Report recommendation, OLC stated that it has implemented timekeeping protocols in response to the Commission's December 2013

⁴ OLC did not report or pay any payroll consisting of 100 percent federal funds. All payroll-related expenses were allocated and reported on Schedules H4. Payroll amounts are stated net of taxes and fringe benefits.

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memorandum³ concerning timekeeping requirements. OLC's response further stated that its Chairman verbally instructed employees to comply with the guidelines set forth in the Commission's memorandum. OLC provided a copy of its employee recordkeeping policy, along with a memorandum OLC sent to its entire staff explaining the recordkeeping requirements and instructions detailing how employees are expected to comply. OLC also provided a copy of the time allocation sheet its employees will complete each month documenting their time spent on federal and state election activities. As such, OLC has complied with the Interim Audit Report recommendation by providing details of its plan to maintain monthly payroll logs in the future.

D. Draft Final Audit Report

The Draft Final Audit Report acknowledged that OLC implemented timekeeping protocols and provided a copy of its employee recordkeeping policy as well as a copy of the time allocation sheet its employees will complete each month documenting their time spent on federal and state election activities.

E. Committee Response to the Draft Final Audit Report

OLC's response to the Draft Final Audit Report provided no additional comments.

Commission Conclusion

On August 5, 2016, the Commission considered the Audit Division Recommendation Memorandum in which the Audit staff recommended that the Commission find that OLC failed to maintain monthly payroll logs totaling \$178,305 to document the time employees spent in connection with federal election activity.

The Commission approved the Audit staff's recommendation.

Finding 4. Contributions from Unregistered Political Organizations

Summary

During audit fieldwork, a review of all contributions from unregistered political organizations indicated that OLC received contributions totaling \$8,150 that may not have been made with permissible funds. OLC transferred \$7,150 of these contributions to its non-federal and Levin accounts but not in a timely manner. In response to the Interim Audit Report recommendation, OLC untimely transferred the remaining \$1,000 from its federal account to its state account. In response to the Draft Final Audit Report, OLC submitted copies of the state campaign finance reports filed with the state of Oklahoma for four unregistered committees reflecting the sufficiency of permissible federal funds. Based on the Audit staff's verification that sufficient permissible funds totaling \$7,150 were available to make federal contributions to OLC, the Audit staff concluded that OLC did not receive any impermissible contributions from these committees.

³ Request for Consideration of a Legal Question (LRA 917), issued on October 23, 2012, and the Commission's policy conclusion issued on November 28, 2012.

The Commission approved the finding that OLC did not receive impermissible contributions totaling \$7,150 from unregistered political organizations and untimely resolved the remaining contribution of \$1,000.

Legal Standard

- A. Party Committee Limits.** A party committee may not receive more than a total of \$10,000 per year from any person except that a multicandidate political committee may not contribute more than \$5,000. 52 U.S.C. §30116(a)(1)(D) and 11 CFR §§110.1(a) and (c)(5), 110.2(d) and 110.9.
- B. Handling Contributions That Appear Impermissible or Excessive.** If a committee receives a contribution that appears to be impermissible or excessive, the committee must either:
1. Return the questionable check to the donor; or
 2. Deposit the check into its federal account and:
 - Keep enough money in the account to cover all potential refunds;
 - Keep a written record explaining why the contribution may be illegal;
 - Include this explanation on Schedule A if the contribution has to be itemized before its legality is established. 11 CFR §103.3(b)(3), (4) and (5).
- C. Questionable Contributions.** If a committee receives a contribution that appears to be prohibited (a questionable contribution), it must follow the procedures below:
1. Within 10 days after the treasurer receives the questionable contribution, the committee must either:
 - Return the contribution to the contributor without depositing it; or
 - Deposit the contribution (and follow the steps below). 11 CFR §103.3(b)(1).
 2. If the committee deposits the questionable contribution, it may not spend the funds and must be prepared to refund them. It must therefore maintain sufficient funds to make the refunds or establish a separate account in a campaign depository for possibly illegal contributions. 11 CFR §103.3(b)(4).
 3. The committee must keep a written record explaining why the contribution may be prohibited and must include this information when reporting the receipt of the contribution. 11 CFR §103.3(b)(5).
 4. Within 30 days of the treasurer's receipt of the questionable contribution, the committee must make at least one written or oral request for evidence that the contribution is legal. Evidence of legality includes, for example, a written statement from the contributor explaining why the contribution is legal or an oral explanation that is recorded by the committee in a memorandum. 11 CFR §103.3(b)(1).
 5. Within these 30 days, the committee must either:
 - Confirm the legality of the contribution; or
 - Refund the contribution to the contributor and note the refund on the report covering the period in which the refund was made. 11 CFR §103.3(b)(2).

Facts and Analysis

A. Facts

During audit fieldwork, the Audit staff identified five contributions totaling \$8,150 from five state and local political organizations. OLC received three of these contributions totaling \$2,150 in January 2011, and transferred them to its non-federal account in June 2011. Along with its entry on its FEC disclosure report of the transfer, OLC included a memo text stating that an employee who handled OLC banking was asked to transfer funds in February 2011. OLC stated that this request occurred during a transitional time and it later discovered that the transfer had never been processed. Upon discovery that the funds had not been transferred, OLC transferred the funds from its federal account to a state account and provided bank statements to the Commission in support of this transaction.

OLC also received a \$5,000 contribution from an unregistered committee in September 2012, which was transferred to its Levin Fund account in January 2013. Along with its entry on its FEC disclosure report of the transfer, OLC included a memo text stating that the contribution was erroneously deposited into the federal account. Both the \$2,150 and \$5,000 contributions above are considered untimely resolved since the transfers from the federal account were made beyond thirty days of each contributions receipt.

Lastly, OLC received a \$1,000 contribution from an unregistered committee in April 2011, which has not been transferred or refunded from its federal account. This contribution is considered unresolved.

B. Interim Audit Report & Audit Division Recommendation

The Audit staff discussed this matter with OLC's representatives during the exit conference and provided copies of relevant work papers. Prior to audit fieldwork, OLC transferred \$7,150 of the \$8,150 referred to above from its federal account to its non-federal and Levin Fund accounts. In response to the exit conference, OLC Counsel stated that the committee will research the remaining contribution of \$1,000 and provide additional information regarding the permissibility of the funds as it becomes available.

The Interim Audit Report recommended that OLC:

- provide evidence that the transfers for the contributions totaling \$7,150 were made timely; and
- provide evidence demonstrating that the remaining contribution of \$1,000 was made with permissible funds; or
- refund the remaining impermissible funds (\$1,000) and provide evidence of such refund (a copy of the front and back of the negotiated refund check); or
- if funds are not available to make the necessary refund, disclose the refund due on Schedule D (Debts and Obligations) until funds become available to make the refund.

C. Committee Response to Interim Audit Report

In response to the Interim Audit Report recommendation, OLC stated it had transferred \$1,000 from its federal account to its state account on March 1, 2016, however, no bank activity documentation to support this transfer was provided. OLC further stated that it plans to disclose this transfer in its 2016 April Monthly report. As such, the Audit staff considered \$7,150-untimely resolved. In addition, the \$1,000 that OLC transferred to its state account was to remain outstanding until bank documentation was provided to substantiate the transfer.

D. Draft Final Audit Report

The Draft Final Audit Report acknowledged that although OLC stated it had transferred \$1,000 from its federal account to its state account, it had not provided bank documentation to substantiate the transfer.

E. Committee Response to the Draft Final Audit Report

In response to the Draft Final Audit Report, OLC provided bank documentation substantiating the transfer of \$1,000 to its state account. In addition, OLC submitted copies of the state campaign finance reports filed with the state of Oklahoma for four of the five unregistered committees in question.⁶ The Audit staff verified that sufficient permissible federal funds totaling \$7,150 were available to make federal contributions to OLC and, therefore, OLC did not receive any impermissible contributions from these committees.

Commission Conclusion

On August 5, 2016, the Commission considered the Audit Division Recommendation Memorandum in which the Audit staff recommended that the Commission find that OLC did not receive impermissible contributions totaling \$7,150 from unregistered political organizations and untimely resolved the remaining contribution of \$1,000.

The Commission approved the Audit staff's recommendation.

⁶ The Audit staff was not able to locate campaign finance reports on the Oklahoma Secretary of State's website for the fifth unregistered committee.

1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

3 RESPONDENTS: Oklahoma Leadership Council and
4 Peter Leo Hodges in his official
5 capacity as treasurer
6

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7 **I. INTRODUCTION**
8

9 This matter was generated by a Commission audit of the Oklahoma Leadership Council
10 ("Committee"), a state committee of the Republican Party,¹ covering the period of January 1,
11 2011, through December 31, 2012. The Commission approved the Final Audit Report on
12 September 1, 2016, and the Audit Division referred a recordkeeping finding to the Office of the
13 General Counsel ("OGC") for possible enforcement action relating to the Committee's failure to
14 maintain monthly payroll logs to document the percentage of time each employee spent in
15 connection with a federal election. OGC notified the Committee of the Referral and the
16 Committee filed a response reiterating some of the arguments presented and considered by the
17 Commission during the audit process. The Committee also requests that the Commission either
18 decline to open an enforcement action or refer the matter to the Alternative Dispute Resolution
19 Office because of efforts that the Committee made prior to and during the course of the audit.
20 Based on the discussion below, and the facts, analysis, and findings set forth in the Final Audit
21 Report, which is incorporated by reference, the Commission found that there is reason to believe
22 that the Committee violated 11 C.F.R. § 106.7(d)(1) by failing to maintain payroll logs regarding
23 \$178,305 in salary payments.

¹ See the Committee's Amended Statement of Organization dated Sept. 14, 2015.

1 **II. FACTUAL AND LEGAL ANALYSIS**

2 Commission regulations provide that salaries, wages, and fringe benefits "[paid] to State,
3 district, or local party committee employees who spend 25 percent or less of their compensated
4 time in a given month on Federal election activity or on activity in connection with a Federal
5 election" may be allocated as administrative costs; *i.e.*, may be paid with a combination of funds
6 from the committee's federal and non-federal accounts.² Commission regulations also provide
7 that when allocating salary, wage, and fringe benefit payments, political party committees are
8 required to "keep a monthly log of the percentage of time each employee spends in connection
9 with a Federal election."³

10 As set forth in the Final Audit Report, the Commission found that the Committee failed
11 to maintain monthly payroll logs for \$178,305 in 2011 and 2012 that the Committee disclosed as
12 having been paid with an allocation of federal and non-federal funds.⁴

13 The Committee asserts that near the end of the audit period and prior to the
14 commencement of the audit, it made changes to its compliance structure by hiring a new
15 reporting firm to prepare its reports and handle other compliance matters.⁵ The Committee
16 maintains that it implemented the Commission's 2013 guidelines on recordkeeping for state
17 party committees, and has fully cooperated with the Audit Division during the audit process.⁶
18 The Committee further asserts that in recent Commission matters with similar recordkeeping

² 11 C.F.R. §§ 106.7(c)(1), (d)(1)(i), and (d)(2).

³ 11 C.F.R. § 106.7(d)(1).

⁴ See Final Audit Report at 11.

⁵ Committee Resp. at 1.

⁶ *Id.* at 2.

1 findings, respondents have paid minimal fines for significantly greater amount of disbursements
2 than at issue in this matter.⁷ Nowhere in the Committee's response, however, does it deny the
3 violations.

4 Based on the foregoing, the Commission found that there is reason to believe that the
5 Committee violated 11 C.F.R. § 106.7(d)(1).

⁷ *Id.*

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