



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Mark Brewer, Esq.
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17000 West Ten Mile Road, Second Floor
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NOV - 4 2015

RE: MUR 6978
(formerly AR 15-05)
Oakland County Democratic Party
and Philip W. Reid in his official
capacity as treasurer

Dear Mr. Brewer:

In the normal course of carrying out its supervisory responsibilities, the Federal Election Commission became aware of information suggesting that your clients, Oakland County Democratic Party and Phillip W. Reid in his official capacity as treasurer ("Committee"), may have violated the Federal Election Campaign Act of 1971, as amended (the "Act"). On July 10, 2015, the Commission notified the Committee that it was being referred to the Commission's Office of the General Counsel for possible enforcement action under 52 U.S.C. § 30109. On October 27, 2015, the Commission found reason to believe that the Committee violated 52 U.S.C. §§ 30102(c), 30102(h)(1), and 30104(b), provisions of the Act, and 11 C.F.R. § 106.7(d)(1), a regulation promulgated pursuant to the Act. Enclosed is the Factual and Legal Analysis that sets forth the basis for the Commission's determination.

Please note that that Committee has a legal obligation to preserve all documents, records and materials relating to this matter until such time as the Committee is notified that the Commission has closed its file in this matter. See 18 U.S.C. § 1519. This matter will remain confidential in accordance with 52 U.S.C. § 30109(a)(4)(B) and § 30109(a)(12)(A) unless the Committee notifies the Commission in writing that it wishes the matter to be made public. Please be advised that, although the Commission cannot disclose information regarding an investigation to the public, it may share information on a confidential basis with other law enforcement agencies.¹

In order to expedite the resolution of this matter, the Commission has authorized the Office of the General Counsel to enter into negotiations directed towards reaching a conciliation agreement in settlement of this matter prior to a finding of probable cause to believe. Pre-

¹ The Commission has the statutory authority to refer knowing and willful violations of the Act to the Department of Justice for potential criminal prosecution, 52 U.S.C. § 30109(a)(5)(C), and to report information regarding violations of law not within its jurisdiction to appropriate law enforcement authorities. *Id.* § 30107(a)(9).

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probable cause conciliation is not mandated by the Act or the Commission's regulations, but is a voluntary step in the enforcement process that the Commission is offering to the Committee as a way to resolve this matter at an early stage and without the need for briefing the issue of whether or not the Commission should find probable cause to believe that the Committee violated the law.

If the Committee is interested in engaging in pre-probable cause conciliation, please contact Delbert K. Rigsby, the attorney assigned to this matter, at (202) 694-1650 or (800) 424-9530, within seven days of receipt of this letter. During conciliation, the Committee may submit any factual or legal materials that it believes are relevant to the resolution of this matter. Because the Commission only enters into pre-probable cause conciliation in matters that it believes have a reasonable opportunity for settlement, we may proceed to the next step in the enforcement process if a mutually acceptable conciliation agreement cannot be reached within sixty days. See 52 U.S.C. § 30109(a), 11 C.F.R. Part 111 (Subpart A). Conversely, if the Committee is not interested in pre-probable cause conciliation, the Commission may conduct formal discovery in this matter or proceed to the next step in the enforcement process. Please note that once the

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Commission enters the next step in the enforcement process, it may decline to engage in further settlement discussions until after making a probable cause finding.

We look forward to your response.

On behalf of the Commission,

A handwritten signature in black ink, appearing to read "Ann M. Ravel". The signature is fluid and cursive, with the first name "Ann" and last name "Ravel" clearly distinguishable.

Ann M. Ravel
Chair

Enclosures
Factual and Legal Analysis

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Oakland County Democratic Party and
Phillip W. Reid in his official capacity
as treasurer

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I. INTRODUCTION

This matter was generated by a Commission audit of the Oakland County Democratic Party ("OCDP") covering the period of January 1, 2011, through December 31, 2012. The Commission approved the Final Audit Report on June 29, 2015, and the Audit Division referred four findings to the Office of General Counsel ("OGC") for possible enforcement action: (1) OCDP misstated its receipts, disbursements, and cash on hand in 2012; (2) OCDP failed to maintain monthly payroll logs to document the percentage of time each employee spent in connection with a federal election; (3) OCDP failed to maintain records of receipts and failed to properly report receipts; and (4) OCDP failed to use a campaign depository for all of its cash transactions. OGC notified OCDP of the referral, but OCDP did not file a response. Based on the discussion below and the facts, analysis, and findings set forth in the Final Audit Report, which is incorporated by reference, the Commission finds reason to believe as follows:

- OCDP violated 52 U.S.C. § 30104(b) by misstating its receipts, disbursements, and cash on hand in 2012;
- OCDP violated 11 C.F.R. § 106.7(d)(1) by failing to maintain monthly payroll logs;
- OCDP violated 52 U.S.C. § 30102(c) by failing to maintain adequate documentation of receipts and violated 52 U.S.C. § 30104(b) by failing to properly report receipts; and
- OCDP violated by 52 U.S.C. § 30102(h)(1) by failing to use a campaign depository for all cash transactions.

II. FACTUAL AND LEGAL ANALYSIS

A. Misstatement of Financial Activity

The Act requires committee treasurers to file reports of receipts and disbursements in accordance with the provisions of 52 U.S.C. § 30104(b). The Audit staff reconciled OCDP's reported financial activity with its bank records and determined that OCDP understated its reported 2012 receipts, disbursements, and ending cash by \$90,487; \$60,715; and \$33,279, respectively.¹ OCDP materially corrected its misstatements during the audit process by amending the relevant reports in November 2013.²

The Commission found in its Final Audit Report that in 2012, OCDP understated receipts by \$90,487, understated disbursements by \$60,715, and understated cash on hand by \$33,279. Accordingly, the Commission finds reason to believe that OCDP violated 52 U.S.C. § 30104(b).

B. Recordkeeping for Employees

Commission regulations provide that salaries, wages, and fringe benefits "[paid] to State, district, or local party committee employees who spend 25 percent or less of their compensated time in a given month on Federal election activity or on activity in connection with a Federal election" may be allocated as administrative costs; *i.e.*, may be paid with a combination of funds from the committee's federal and non-federal accounts.³ Commission regulations also provide

¹ See Final Audit Report at 6. The understated receipts consisted of \$76,233 in gaming receipts not reported, \$12,178 in transfers from the non-federal account not reported, and \$2,076 of in-kind contributions not reported. *Id.* OCDP's understated disbursements consisted of \$36,229 in gaming expenditures not reported, \$33,899 in operating expenditures not reported, \$10,056 in expenditures reported twice, \$167 in operating expenses reported incorrectly, and \$476 as an unexplained difference. *Id.*

² *Id.*

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

that when allocating salary, wage, and fringe benefit payments, political party committees are required to "keep a monthly log of the percentage of time each employee spends in connection with a federal election."⁴

As set forth in the Final Audit Report, the Commission found that in 2011 and 2012, OCDP failed to maintain monthly payroll logs for \$107,555 in salary payments that it disclosed as having been paid with an allocation of federal and non-federal funds.⁵ Based on the foregoing, the Commission finds reason to believe that OCDP violated 11 C.F.R. § 106.7(d)(1).

C. Recordkeeping and Reporting of Receipts

Political committees must keep records of all contributions received by or on behalf of the committee, the name and address of any person who makes a contribution in excess of \$50, together with the date and amount of the contribution, and the occupation and name of employer of any individual whose contributions aggregate more than \$200 during a calendar year, together with the date and amount of any such contributions.⁶ For contributions in excess of \$50, committees must maintain a photocopy or digital image of the check or written instrument.⁷

Political committees must report receipts and disbursements in accordance with 52 U.S.C. § 30104(b). These requirements include identifying each person, other than a political committee, who makes a contribution to the committee during the reporting period, whose

⁴ 11 C.F.R. § 106.7(d)(1).

⁵ See Final Audit Report at 8.

⁶ 52 U.S.C. § 30102(c).

⁷ 11 C.F.R. § 102.9(a)(4).

contribution or contributions have an aggregate amount in excess of \$200 within a calendar year, with the date and amount of such contribution.⁸

The Audit staff determined that the Committee did not maintain adequate documentation on receipts of \$1,820,466, and did not properly report receipts from its gaming activities.⁹ OCDP reported gaming receipts as unitemized individual contributions with respect to individuals contributing \$50 or less at fundraising events because it claimed that each gaming activity constituted a separate event under state law.¹⁰ OCDP stated, in its view, that it held three separate gaming activities on each bingo night. The Audit staff viewed all gaming activities occurring on one night as a single fundraising event, which resulted in the average contribution from OCDP's gaming events being \$88 per person on a single night. Thus, OCDP had to comply with the additional recordkeeping requirements.¹¹

As set forth in the Final Audit Report, OCDP failed to maintain the appropriate documentation on individuals who contributed over \$50 at a gaming event, where the amount of contributions totaled \$1,820,466. The Final Audit Report also stated OCDP failed to identify and report those contributors whose aggregate contributions exceeded \$200 in a calendar year. Because OCDP did not maintain adequate records, the amount of receipts that were not properly reported in connection with the gaming activities is unknown. Accordingly, the Commission finds reason to believe that OCDP violated 52 U.S.C. § 30102(c) and 52 U.S.C. § 30104(b).

⁸ 52 U.S.C. § 30104(b)(3)(A); 11 C.F.R. § 104.3(a)(4).

⁹ See Final Audit Report at 12.

¹⁰ *Id.*

¹¹ OCDP submitted a Request for Early Commission Consideration of a Legal Question to determine which recordkeeping requirements applied to OCDP's bi-weekly bingo nights. On June 10, 2014, the Commission unanimously determined that the three games held during bingo nights constituted a single fundraising event, and that OCDP was required to itemize all contributions exceeding \$50, pursuant to 2 U.S.C. § 432(c) (now 52 U.S.C. § 30102(c)) and 11 C.F.R. § 102.9(a).

D. Use of Campaign Depository

Each political committee shall designate one or more state banks, federally chartered depository institutions, or depository institutions in which the accounts are insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration, as its campaign depository.¹² Each political committee shall maintain at least one checking or transaction account at one of its depositories, and all receipts received by the committee shall be deposited in such accounts.¹³ All deposits shall be made within ten days of the treasurer's receipt.¹⁴ A committee shall make all disbursements by check or similar draft drawn on an account at its designated campaign depository, except for expenditures of \$100 or less made from a petty cash fund.¹⁵ A political committee may maintain a petty cash fund from which it may make expenditures not in excess of \$100 to any person per purchase or transaction.¹⁶

As set forth in the Final Audit Report, OCDP deposited only \$450,162 of the total amount of \$1,820,466 in gaming receipts into the campaign depository.¹⁷ The remainder, \$1,370,304, was paid directly to the prize winners and game workers.¹⁸ OCDP failed to use a campaign depository for gaming receipts totaling \$1,370,304, in violation of 52 U.S.C. § 30102(h)(1). Accordingly, the Commission finds reason to believe that OCDP violated 52 U.S.C. § 30102(h)(1).

¹² 52 U.S.C. § 30102(h)(1).

¹³ *Id.*

¹⁴ 11 C.F.R. § 103.3(a).

¹⁵ *Id.*

¹⁶ 52 U.S.C. § 30102(h)(2).

¹⁷ *See* Final Audit Report at 14.

¹⁸ *Id.*