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AGENDA ITEM

MEMORANDUM

To: The Commission

For Meeting of 5-21-15

Through: Alec Palmer *AP*
Staff Director

From: Patricia C. Orroek *PC/O*
Chief Compliance Officer

Thomas E. Hintermister *TH*
Assistant Staff Director
Audit Division

Douglas Kodish *DK*
Audit Manager

By: Paula Nurthen *PN*
Lead Auditor

Subject: Audit Division Recommendation Memorandum on the Oakland County Democratic Party (OCDP) (A12-02)

Pursuant to Commission Directive No. 70 (FEC Directive on Processing Audit Reports), the Audit staff presents its recommendations below and discusses the findings in the attached Draft Final Audit Report (DFAR). The Office of General Counsel has reviewed this memorandum and concurs with the recommendations.

Finding 1. Misstatement of Financial Activity

The Audit staff determined that, for 2012, OCDP understated its reported receipts, disbursements and ending cash by \$90,487, \$60,715 and \$33,279, respectively. Subsequent to the exit conference, OCDP amended its reports and materially corrected its misstatements. In response to the Interim Audit Report (IAR) recommendation and the DFAR, OCDP stated it has begun the process of complying with all recommendations.

The Audit staff recommends that the Commission find that OCDP misstated its financial activity for calendar year 2012.

Finding 2. Recordkeeping for Employees

For the period covered by the audit, OCDP did not maintain any monthly payroll logs, as required, to document the percentage of time each employee spent on federal election activity. For 2011 and 2012, the Audit staff identified payments to OCDP employees totaling \$107,555, for which monthly payroll logs were not maintained. This consisted entirely of payroll which was allocated between federal and non-federal funds. In response to the IAR recommendation and the DFAR, OCDP stated it has begun the process of complying with all recommendations.

The Audit staff recommends that the Commission find that OCDP failed to maintain monthly payroll logs to document the time employees spent on federal election activity totaling \$107,555.

Finding 3. Disclosure of Occupation and Name of Employer

A review of all contributions from individuals requiring itemization indicated that 35 contributions totaling \$7,389 lacked disclosure of occupation and/or name of employer. In addition, there was no evidence that "best efforts" were attempted to obtain, maintain and submit the missing disclosure information. In response to the IAR recommendation and the DFAR, OCDP stated it has begun the process of complying with all recommendations.

The Audit staff recommends that the Commission find that OCDP failed to disclose occupation and/or name of employer information for contributions from individuals totaling \$7,389 and did not demonstrate "best efforts" to obtain, maintain, and submit disclosure information with respect to these contributions.

Finding 4. Recordkeeping for Receipts

During audit fieldwork, it was noted that OCDP did not maintain adequate documentation and did not properly report receipts from its gaming activities totaling \$1,820,466 for the 2012 election cycle. In response to the IAR recommendation and the DFAR, OCDP stated it has begun the process of complying with all recommendations.

The Audit staff recommends that the Commission find that OCDP failed to maintain adequate documentation for its gaming activities and did not properly report its receipts from gaming activities totaling \$1,820,466.

Finding 5. Use of the Campaign Depository

The Audit staff's review of OCDP's gaming operations found that OCDP did not deposit most of its gaming receipts into its designated campaign depository, as required. During the audit period, OCDP collected \$1,820,466 from its bi-weekly gaming activities but did not deposit \$1,370,304 into its campaign depository. In response to the IAR recommendation and the DFAR, OCDP stated it has begun the process of complying with all recommendations.

The Audit staff recommends that the Commission find that OCDP failed to properly utilize its designated campaign depository for most of its gaming receipts totaling \$1,370,304.

The Committee did not request an audit hearing.

If this memorandum is approved, a Proposed Final Audit Report will be prepared within 30 days of the Commission's vote.

In case of an objection, Directive No. 70 states that the Audit Division Recommendation Memorandum will be placed on the next regularly scheduled open session agenda.

Documents related to this audit report can be viewed in the Voting Ballot Matters folder. Should you have any questions, please contact Paula Nurthen or Douglas Kodish at 694-1200.

Attachment:

- Draft Final Audit Report of the Audit Division on the Oakland County Democratic Party

cc: Office of General Counsel



Draft Final Audit Report of the Audit Division on the Oakland County Democratic Party

(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).¹ The Commission generally conducts such audits when a committee appears not to have met the threshold requirements for substantial compliance with the Act.² 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. 3)

The Oakland County Democratic Party is a local party committee headquartered in Southfield, Michigan. For more information, see the chart on the Committee Organization, p. 3.

Financial Activity (p. 3)

• Receipts	
○ Contributions from Individuals	\$ 1,933,148
○ Contributions from Political Committees	56,849
○ Transfers from Non-federal Account	49,859
○ Other Receipts	7,120
Total Receipts	\$ 2,046,976
• Disbursements	
○ Operating Expenditures	\$ 2,045,934
○ Other Disbursements	14,930
Total Disbursements	\$ 2,060,864

Findings and Recommendations (p. 4)

- Misstatement of Financial Activity (Finding 1)
- Recordkeeping for Employees (Finding 2)
- Disclosure of Occupation and Name of Employer (Finding 3)
- Recordkeeping for Receipts (Finding 4)
- Use of the Campaign Depository (Finding 5)

¹ On September 1, 2014, the Federal Election Campaign Act of 1971, as amended ("the Act"), was transferred from Title 2 of the United States Code to new Title 52 of the United States Code.

² 52 U.S.C. §30111(b) (formerly 2 U.S.C. §438(b)).

Draft Final Audit Report of the Audit Division on the Oakland County Democratic Party

(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 Oakland County Democratic Party (OCDP), 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) (formerly 2 U.S.C. §438(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 (formerly 2 U.S.C. §434). 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) (formerly 2 U.S.C. §438(b)).

Scope of Audit

This audit examined:

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

Commission Guidance

Request for Early Commission Consideration of a Legal Question – Recordkeeping for Employees

Pursuant to the Commission's "Policy Statement Establishing a Program for Requesting Consideration of Legal Questions by the Commission," several state party committees unaffiliated with OCDP requested early consideration of a legal question raised during audits covering the 2010 election cycle. Specifically, the Commission addressed whether monthly time logs under 11 CFR §106.7(d)(1) were required for employees paid with 100 percent federal funds.

The Commission concluded, by a vote of 5-1, that 11 CFR §106.7(d)(1) does require committees to keep a monthly log for employees paid exclusively with federal funds. Exercising its prosecutorial discretion, however, the Commission decided it will not pursue recordkeeping violations for the failure to keep time logs or to provide affidavits to account for employee salaries paid with 100 percent federal funds and reported as such. The Audit staff informed OCDP representatives of the payroll log requirement and of the Commission's decision not to

pursue recordkeeping violations for failure to keep payroll logs for salaries paid and correctly reported as 100 percent federal. Finding 2 of this audit report (Recordkeeping for Employees) does not include any OCDP employees paid with 100 percent federal funds and reported as such.

Directive 69 and Request for Early Commission Consideration of a Legal Question – Recordkeeping for Receipts

Pursuant to Commission Directive 69, the Commission's guidance was requested by the Office of Compliance and the Office of General Counsel on an issue addressing what recordkeeping requirements under 52 U.S.C. §30102(c) (formerly 2 U.S.C. §432(c)) and 11 CFR §102.9(a) applied to contributions received by OCDP during bi-weekly "bingo nights."³ A subsequent request was made to the Commission by OCDP on the same issue under the Commission's "Policy Statement Establishing a Program for Requesting Consideration of Legal Questions by the Commission." Specifically, the Commission was asked whether OCDP's gaming nights consisted of three separate fundraising events rather than a single event for purposes of applying the recordkeeping requirements under 11 CFR §102.9(a).

The Commission concluded on the Directive 69 Guidance and on the Request for Legal Consideration, by votes of 6-0, that OCDP's bingo nights did not constitute three separate fundraising events and that OCDP was required to itemize all contributions exceeding \$50 received during each bingo night. See Finding 4, Recordkeeping for Receipts.

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³ The term bingo is used to refer to all OCDP gaming activity, which includes bingo, progressive bingo, and charity ticket sales.

Part II

Overview of Committee

Committee Organization

Important Dates	
• Date of Registration	June 11, 1976
• Audit Coverage	January 1, 2011 - December 31, 2012
Headquarters	
Southfield, MI	
Bank Information	
• Bank Depositories	Two
• Bank Accounts	Two federal and two non-federal
Treasurer	
• Treasurer When Audit Was Conducted	Ryan Gesund: 12/29/11 - 1/28/14; Alexander Fike: 1/29/14 - present
• Treasurer During Period Covered by Audit	Jerry Bixby: 1/01/11 - 12/28/11; Ryan Gesund: 12/29/11 - 12/31/12
Management Information	
• Attended Commission Campaign Finance Seminar	No
• Who Handled Accounting and Recordkeeping Tasks	Paid Staff

Overview of Financial Activity (Audited Amounts)

Cash-on-hand @ January 1, 2011	\$ 26,378
Receipts	
○ Contributions from Individuals	1,933,148
○ Contributions from Political Committees	56,849
○ Transfers from Non-federal Account	49,859
○ Other Receipts	7,120
Total Receipts	\$ 2,046,976
Disbursements	
○ Operating Expenditures	2,045,934
○ Other Disbursements	14,930
Total Disbursements	\$ 2,060,864
Cash-on-hand @ December 31, 2012	\$ 12,490

Part III Summaries

Findings and Recommendations

Finding 1. Misstatement of Financial Activity

During audit fieldwork, a comparison of OCDP's reported financial activity with its bank records revealed that, for 2012, OCDP understated its reported receipts, disbursements and ending cash by \$90,487, \$60,715, and \$33,279, respectively. Subsequent to the exit conference, OCDP amended its reports and materially corrected its misstatements. In response to the Interim Audit Report recommendation, OCDP stated it has begun the process of complying with all recommendations. (For more detail, see p. 6.)

Finding 2. Recordkeeping for Employees

During audit fieldwork, the Audit staff determined that OCDP 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 2010 and 2012, the Audit staff identified payments to OCDP employees totaling \$107,555, for which monthly payroll logs were not maintained. This consisted entirely of payroll which was allocated between federal and non-federal funds. In response to the Interim Audit Report recommendation, OCDP stated it has begun the process of complying with all recommendations. (For more detail, see p. 7.)

Finding 3. Disclosure of Occupation and Name of Employer

A review of all contributions from individuals requiring itemization indicated that 35 contributions totaling \$7,389 lacked disclosure of occupation and/or name of employer. In addition, there was no evidence that "best efforts" to obtain, maintain and submit the information had been exercised. In response to the Interim Audit Report recommendation, OCDP stated it has begun the process of complying with all recommendations. (For more detail, see p. 8.)

Finding 4. Recordkeeping for Receipts

During audit fieldwork, it was noted that OCDP did not maintain adequate documentation and did not properly report receipts from its gaming activities totaling \$1,820,466 for the 2012 election cycle. OCDP reported gaming receipts as un-itemized individual contributions in accordance with requirements for receipts from individuals contributing \$50 or less at fundraising events. However, the average contribution from OCDP's bi-weekly gaming events was approximately \$88 per person, which requires more extensive recordkeeping activities. In response to the Interim Audit Report recommendation, OCDP stated it has begun the process of complying with all recommendations. However, OCDP said it disagreed with certain unspecified aspects of the report that concerned its gaming activities. (For more detail, see p. 10.)

Finding 5. Use of the Campaign Depository

A review of OCDP's gaming operations found that OCDP did not deposit most of its gaming receipts into its designated campaign depository as required. During the audit period, OCDP collected \$1,820,466 from its bi-weekly gaming activities but only deposited \$450,162 into its campaign depository. OCDP disbursed the majority of these cash receipts (\$1,370,304) directly to prize winners and game workers. In response to the Interim Audit Report recommendation, OCDP stated it has begun the process of complying with all recommendations. However, OCDP said it disagreed with certain unspecified aspects of the report that concerned its gaming activities. (For more detail, see p. 12.)

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Part IV

Findings and Recommendations

Finding 1. Misstatement of Financial Activity

Summary

During audit fieldwork, a comparison of OCDP's reported financial activity with its bank records revealed that, for 2012, OCDP understated its reported receipts, disbursements and ending cash by \$90,487, \$60,715 and \$33,279, respectively. Subsequent to the exit conference, OCDP amended its reports and materially corrected its misstatements. In response to the Interim Audit Report recommendation, OCDP stated it has begun the process of complying with all recommendations.

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) (formerly 2 U.S.C. §434(b)(1), (2), (3), (4) and (5)).

Facts and Analysis

A. Facts

During audit fieldwork, the audit staff reconciled OCDP's reported financial activity with its bank records for the calendar years 2011 and 2012 and identified misstatements for 2012 in receipts, disbursements and ending cash. The following chart outlines the discrepancies and succeeding paragraphs explain, to the extent possible, the reasons for the misstatements.

2012 Activity			
	Reported	Bank Records	Discrepancy
Opening Cash Balance @ January 1, 2012	\$5,356	\$8,863	\$3,507 Understated
Receipts	\$937,760	\$1,028,247	\$90,487 Understated
Disbursements	\$963,905	\$1,024,620	\$60,715 Understated
Ending Cash Balance @ December 31, 2012	(\$20,789)	\$12,490	\$33,279 Understated

The understatement of receipts resulted from the following.

• Gaming receipts not reported ⁴	\$ 76,233
• Transfers from non-federal account not reported	12,178
• In-kind contributions not reported	<u>2,076</u>
Understatement of Receipts	<u>\$ 90,487</u>

The understatement of disbursements resulted from the following.

• Gaming expenditures not reported	\$ 36,229
• Operating expenditures not reported	33,899
• Expenditures reported twice	(10,056)
• Operating expenditures incorrectly reported	167
• Unexplained difference	<u>476</u>
Net Understatement of Disbursements	<u>\$ 60,715</u>

The understatement of the beginning and ending cash balances resulted from prior year misstatements and the misstatements described above.

B. Interim Audit Report & Audit Division Recommendation

At the exit conference, the Audit staff explained the misstatements and provided schedules to OCDP representatives. The representatives agreed to amend their reports.

Subsequent to the exit conference, OCDP amended its reports and materially corrected its misstatements. The Interim Audit Report recommended that OCDP provide any additional comments it considered relevant to this matter.

C. Committee Response to Interim Audit Report

In response to the Interim Audit Report recommendation, OCDP provided no additional information regarding this matter.

Finding 2. Recordkeeping for Employees

Summary

During audit fieldwork, the Audit staff determined that OCDP 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 2011 and 2012, the Audit staff identified payments to OCDP employees totaling \$107,555, for which monthly payroll logs were not maintained. This consisted entirely of payroll which was allocated between federal and non-federal funds. In response to the Interim Audit Report recommendation, OCDP stated it has begun the process of complying with all recommendations.

Legal Standard

Maintenance of Monthly Logs. 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:

⁴ See Finding 4, page 10.

- 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 have their pay 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 fieldwork, the Audit staff reviewed disbursements for payroll. OCDP did not maintain any monthly logs or equivalent records to document the percentage of time each employee spent in connection with federal election activity. These logs are required to document the proper allocation of federal and non-federal funds used to pay employee salaries and wages. For 2011 and 2012, logs were not maintained for \$107,555⁵ in payroll. The total of \$107,555 consisted entirely of payroll which was allocated between federal and non-federal funds.

B. Interim Audit Report & Audit Division Recommendation

At the exit conference and during audit fieldwork, the Audit staff discussed the payroll recordkeeping issue with OCDP representatives. The representatives indicated that they did maintain some records for one individual but did not keep records for all required individuals. No records were provided.

For OCDP employees that were paid with an allocation of federal and non-federal funds, the Interim Audit Report recommended that OCDP provide the following:

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

C. Committee Response to Interim Audit Report

In response to the Interim Audit Report recommendation, OCDP agreed to comply with the recommendation to implement a plan to maintain monthly payroll logs in the future.

Finding 3. Disclosure of Occupation and Name of Employer

Summary

A review of all contributions from individuals requiring itemization indicated that 35 contributions totaling \$7,389 lacked disclosure of occupation and/or name of employer. In addition, there was no evidence that "best efforts" to obtain, maintain and submit the information had been exercised. In response to the Interim Audit Report

⁵ See Part I, Background, Commission Guidance, Request for Early Commission Consideration of a Legal Question – Recordkeeping for Employees, Page 1. Payroll is stated net of taxes and benefits.

recommendation, OCDP stated it has begun the process of complying with all recommendations.

Legal Standard

A. Itemization required for Contributions from Individuals. A political committee other than an authorized committee must itemize any contribution from an individual if it exceeds \$200 per calendar year, either by itself or when combined with other contributions from the same contributor. 52 U.S.C. §30104(b)(3)(A) (formerly 2 U.S.C. §434(b)(3)(A)).

B. Required Information for Contributions from Individuals. For each itemized contribution from an individual, the committee must provide the following information:

- The contributor's full name and address;
- The contributor's occupation and the name of his or her employer;
- The date of receipt (the date the committee received the contribution);
- The amount of the contribution; and
- The calendar year-to-date total of all contributions from the same individual. 11 CFR §§100.12 and 104.3(a)(4) and 52 U.S.C. §30104(b)(3)(A) (formerly 2 U.S.C. §434(b)(3)(A)).

C. Best Efforts Ensures Compliance. When the treasurer of a political committee shows that the committee used best efforts (see below) to obtain, maintain, and submit the information required by the Act, the committee's reports and records will be considered in compliance with the Act. 52 U.S.C. §30102(i) (formerly 2 U.S.C. §432(i)).

D. Definition of Best Efforts. The treasurer and the committee will be considered to have used "best efforts" if the committee satisfied all of the following criteria:

- All written solicitations for contributions included:
 - A clear request for the contributor's full name, mailing address, occupation, and name of employer; and
 - The statement that such reporting is required by Federal law.
- Within 30 days after the receipt of the contribution, the treasurer made at least one effort to obtain the missing information, in either a written request or a documented oral request.
- The treasurer reported any contributor information that, although not initially provided by the contributor, was obtained in a follow-up communication or was contained in the committee's records or in prior reports that the committee filed during the same two-year election cycle. 11 CFR §104.7(b).

Facts and Analysis

A. Facts

During fieldwork, the Audit staff reviewed all reported contributions from individuals to determine if the required contributor information was disclosed. The review indicated that OCDP did not adequately disclose both the occupation and the name of the employer for nearly all identified errors. There were 35 errors equaling \$7,389. All of the errors disclosed a notation, "Information Requested" on the Schedule A, Itemized Receipts, filed with the Commission.

Although requested, OCDP did not provide any records to demonstrate evidence of any best efforts procedures or follow-up requests for missing contributor information. As a result, OCDP did not make “best efforts” to obtain, maintain and report the missing occupation and name of employer information.

B. Interim Audit Report & Audit Division Recommendation

Prior to the exit conference, OCDP was provided schedules of the contributions requiring additional disclosure information. One of OCDP’s representatives stated that missing contributor information was partly due to problems with its database. He also stated that the provided schedules would be reviewed and any comments concerning OCDP’s best efforts procedures would be submitted in writing. No documents supporting OCDP’s best efforts were submitted.

The Interim Audit Report recommended that OCDP take the following action:

- provide documentation such as phone logs, returned contributor letters, completed contributor contact information sheets or other materials which demonstrated that best efforts were made to obtain, maintain, and submit the required disclosure information; or
- absent such documentation, make an effort to contact those individuals for whom required information was missing or incomplete, provide documentation of such contacts (such as copies of letters to the contributors and/or phone logs), and amend OCDP’s reports to disclose any information obtained from those contacts.

C. Committee Response to Interim Audit Report

In response to the Interim Audit Report recommendation, OCDP agreed to comply with the recommendation to either demonstrate that it had exercised best efforts or to attempt to obtain the missing contributor information and amend its disclosure reports in conformity with best efforts.

Finding 4. Recordkeeping for Receipts

Summary

During audit fieldwork, it was noted that OCDP did not maintain adequate documentation and did not properly report receipts from its gaming activities totaling \$1,820,466 for the 2012 election cycle. OCDP reported gaming receipts as un-itemized individual contributions in accordance with requirements for receipts from individuals contributing \$50 or less at fundraising events. However, the average contribution from OCDP’s bi-weekly gaming events was approximately \$88 per person, which requires more extensive recordkeeping activities. In response to the Interim Audit Report recommendation, OCDP stated it has begun the process of complying with all recommendations. However, OCDP said it disagreed with certain unspecified aspects of the report that concerned its gaming activities.

Legal Standard

A. Recordkeeping. 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. 52 U.S.C. §30102(c) (formerly 2 U.S.C. §432(c)).

B. Retention of Check Copies. For contributions in excess of \$50, committees must maintain a photocopy or digital image of the check or written instrument. 11 CFR §102.9(a)(4).

C. Preserving Records and Copies of Reports. Committees must preserve these records for 3 years after a report is filed. 52 U.S.C. §30102(d) (formerly 2 U.S.C. §432(d)).

Facts and Analysis

A. Facts

OCDP did not maintain adequate documentation and did not properly report receipts for its bi-weekly gaming activities totaling \$1,820,466⁶ for the 2012 election cycle.⁷ Michigan state law governs Michigan gaming activities and recordkeeping requirements. Accordingly, records were kept of the number of attendees and the quantity and price of gaming cards, books and tickets sold (all gaming sales transactions are for cash).

However, federal election laws and regulations apply to the activities of federal political committees and those rules require a different set of recordkeeping and reporting requirements for contributions. The level of detail required in the records and reports of committees is a function of the contribution limits for individual contributors.

During the audit period, OCDP maintained records and filed reports as if contributions did not exceed the \$50 threshold. This threshold only requires records to identify the name of the event and the total amount received for the event. OCDP reported gaming receipts from events as un-itemized individual contributions in accordance with requirements for receipts from individuals contributing \$50 or less. However, based on records from OCDP events, the Audit Staff calculated that contributions averaged approximately \$88 per person, per night. As such, no reasonable assurance could be provided that individuals attending the gaming activities contributed \$50 or less. Accordingly, to comply with the recordkeeping requirements, OCDP needs to collect more contributor information for its gaming events.

The Commission considered OCDP's position that each gaming activity held during a night was a separate event for aggregation purposes and that their records and reporting were adequate. As part of its consideration, the Commission sought information about separation of gaming activities and their administrative functions. In anticipation of these questions, the Audit staff held a teleconference with Committee personnel and were told

⁶ This amount does not include errors in recordkeeping for checks deposited into Oakland's accounts that were not associated with gaming activities projected to total \$1,970.

⁷ In addition to the improper reporting of gaming receipts, OCDP did not report \$76,233 mentioned in Finding 1, Misstatement of Financial Activity.

⁸ This recordkeeping threshold is discussed in the Federal Election Commission Campaign Guide for Political Party Committees and in Advisory Opinions 1981-48 and 1980-99.

that they had only one hall for all gaming activities; separate personnel were not used for the different gaming activities; and all gaming activity tickets could be purchased at any of the ticket purchase locations. No additional information was provided that would indicate separation of gaming activities. As previously noted, the average gaming night contribution was approximately \$88 per person, so OCDP could not reasonably assure that contributions received aggregated to amounts of \$50 or less a night. Based on the above information, the Commission concluded⁹ that OCDP's bingo nights were not separate fundraising events, but were one event, and that OCDP was required to obtain the name and address of any person who made contributions in excess of \$50 during a gaming night, and then identify and report those contributors whose aggregate contributions exceeded \$200 during a calendar year. As a result, the Audit staff calculated that OCDP did not properly record and account for contributions totaling \$1,820,466, or 89% of OCDP's total contributions.

B. Interim Audit Report & Audit Division Recommendation

At the exit conference, the Audit staff presented this recordkeeping matter to OCDP representatives as an open issue for which additional Commission guidance would be sought. It was subsequently presented to OCDP representatives as a finding.

The Interim Audit Report recommended that OCDP provide records demonstrating that its gaming night contributions did not exceed \$50 per contributor. Absent such records, OCDP should develop and implement a plan to obtain and maintain a record of:

- the name, address, date and amount of any person contributing more than \$50; 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.

C. Committee Response to Interim Audit Report

In response to the Interim Audit Report recommendation, OCDP stated it has begun the process of complying with all recommendations. However, OCDP said it disagreed with certain unspecified aspects of the report that concerned its gaming activities.

Finding 5. Use of the Campaign Depository

Summary

A review of OCDP's gaming operations found that OCDP did not deposit most of its gaming receipts into its designated campaign depository as required. During the audit period, OCDP collected \$1,820,466 from its bi-weekly gaming activities but only deposited \$450,162 into its campaign depository. OCDP disbursed the majority of these cash receipts (\$1,370,304) directly to prize winners and game workers. In response to the Interim Audit Report recommendation, OCDP stated it has begun the process of complying with all recommendations. However, OCDP said it disagreed with certain unspecified aspects of the report that concerned its gaming activities.

⁹ See Part I, Background, Commission Guidance, Directive 69 and Request for Early Commission Consideration of a Legal Question – Recordkeeping for Receipts, Page 2.

Legal Standard

A. Depositories. Each political committee shall designate one or more state banks, federally chartered depository institutions (including a national bank), or depository institutions, the deposits or accounts of which are insured by the Federal Deposit Insurance Corporation, Federal Savings and Loan Insurance Corporation, or the National Credit Union Administration, as its campaign depository or depositories. Each political committee shall maintain at least one checking account or transaction account at one of its depositories. All receipts received by such committee shall be deposited in such accounts. No disbursements may be made (other than petty cash disbursements) by such committee except by check drawn on such accounts in accordance with this section. 52 U.S.C. §30102(h)(1) (formerly 2 U.S.C. §432(h)(1)) and 11 CFR §103.2.

B. Deposit of Receipts and Disbursements. All receipts by a political committee shall be deposited in account(s) established pursuant to 11 CFR §103.2, except that any contribution may be, within 10 days of the treasurer's receipt, returned to the contributor without being deposited. The treasurer of the committee shall be responsible for making such deposits. All deposits shall be made within 10 days of the treasurer's receipt. A committee shall make all disbursements by check or similar drafts drawn on an account at its designated campaign depository, except for expenditures of \$100 or less made from a petty cash fund maintained pursuant to 11 CFR §102.11. Funds may be transferred from the depository for investment purposes, but shall be returned to the depository before such funds are used to make expenditures. 11 CFR §103.2(a).

C. Petty Cash Fund. A political committee may maintain a petty cash fund out of which it may make expenditures not in excess of \$100 to any person per purchase or transaction.

It is the duty of the treasurer to keep and maintain a written journal of all petty cash disbursements. The written journal shall include:

- Name and address of every person to whom any disbursement is made,
- Date,
- Amount,
- Purpose, and
- If disbursement is made for a candidate, the journal shall include the name of that candidate and the office (including State and Congressional district) sought by such candidate. 11 CFR §102.11.

Facts and Analysis

A. Facts

The Audit staff reviewed OCDP's records of its bi-weekly gaming events and found that OCDP did not deposit most of its gaming receipts into its designated campaign

depository as required by 11 CFR §103.3(a).¹⁰ During the audit period, OCDP collected funds from 204 gaming events totaling \$1,820,466. However, OCDP only deposited funds totaling \$450,162 to its campaign depository, after having disbursed the majority of funds collected (\$1,370,304) to prize winners and to game workers. These cash payments did not utilize a petty cash fund for cash payments of \$100 or less and checks (or similar drafts) for amounts disbursed over \$100.

For the audit period, OCDP made total expenditures of \$2,060,864 with gaming expenditures comprising \$1,711,394 of this amount (83% of total expenditures). As discussed above, cash payments comprised the majority of gaming expenditures. However, for most recurring expenses, checks were used. Disbursements by check were made for hall rentals, gaming supplies, advertising and other items totaling \$341,090.

The table below summarizes cash payment activity for gaming.

Payment Type	Total Amount Paid	Description
Cash Prize Payouts Exceeding \$50.00	\$827,861	Records were maintained for each payment. Disbursements were itemized on reports as payments to individuals and contained the name, address, date, amount and purpose for each payment.
Cash Prize Payouts \$50.00 or Less	\$11,914	Records were not maintained of individual payments. Disbursements were reported as lump sum payments to "Non Voucher Bingo Prizes \$50 or Less" (no individual payee information was provided).
Other Cash Gaming Expenses	\$30,529	Records of miscellaneous gaming expenses paid to gaming workers in 2011 were not maintained. These disbursements were included as un-itemized expenditures in reported totals.
Total gaming Cash payments	1,370,304	

B. Interim Audit Report & Audit Division Recommendation

At the exit conference, the Audit staff initially presented an open issue for recordkeeping for amounts of \$50 or less to OCDP representatives. This issue was later expanded to include all cash disbursements and subsequently presented to OCDP representatives as a finding for failure to utilize a campaign depository for all cash transactions.

¹⁰ The Commission noted in a prior audit of OCDP, approved on March 28, 2001, that OCDP paid prizes using cash received from the sale of bingo cards. As a result of the prior audit, matters were referred to the Office of General Counsel for further enforcement (See MUR 5236). In that matter, the Commission found that OCDP had violated the requirement to deposit all its receipts and that it failed to properly itemize gaming disbursements. In the conciliation agreement with the Commission, OCDP agreed to correctly disclose all financial activity related to its bingo account, deposit all receipts from its bingo games into its designated depository and properly itemize disbursements that aggregate in excess of \$200 from its bingo account.

In subsequent discussions about cash disbursements, OCDP responded that it complied with the Act's required use of a check or "similar draft" by using a "voucher system." Under the voucher system, prize winners fill out and redeem vouchers for cash. OCDP stated that it has used this system for years and the Michigan State Lottery Bureau was aware of it and permitted its use.

In addition, OCDP cited two Advisory Opinions, 1982-25 and 1993-04, where the Commission allowed wire transfers and computerized bill paying, respectively, to satisfy the requirement of a similar draft. OCDP stated that, as in those opinions, the vouchers are not "operative commercial instruments" like checks, but they are documentation of the prize payment transaction, which is the goal of the regulations. OCDP indicated that the vouchers satisfy the requirements of a "similar draft" while avoiding the practical problems of writing and processing thousands of checks.

Although OCDP cited wire transfers and computerized billing as exceptions to the similar draft requirement, the Audit staff noted the regulations go beyond simple documentation requirements and that they specifically required the use of a campaign depository as cited above. Using a campaign depository ensures a clear paper trail linking disbursements to a 3rd party payor/record keeper and provides for a complete disclosure history for audit purposes.¹¹

The Interim Audit Report recommended that OCDP develop and implement procedures to ensure that a campaign depository is used for all receipts and disbursements, including gaming transactions made with cash.

C. Committee Response to Interim Audit Report

In response to the Interim Audit Report recommendation, OCDP stated it has begun the process of complying with all recommendations. However, OCDP said it disagreed with certain unspecified aspects of the report that concerned its gaming activities.

¹¹ See Advisory Opinions 1993-04 and 1986-18.