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October 15, 1993

Lawrence Noble, Esq.
Federal Election Commission
Office of the General Counsel
999 E Street, N.W.
Washington, D. C. 20463

RECEIVED
FEDERAL ELECTION COMMISSION
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Re: Request for Advisory Opinion

Dear General Counsel Noble:

Our law firm serves as general counsel to the Ohio Republican Party. A matter has come to our attention which, we believe, calls for clarification by way of an advisory opinion from the Federal Election Commission, pursuant to 2 U.S.C. 437(f).

For purposes of background, we will first set forth the factual history of the material dispute and thereafter pose the four issues we believe require examination/resolution by way of an advisory opinion.

I. HISTORICAL BACKGROUND

In 1987, the Ohio General Assembly enacted R. C. §3517.16, et seq., thereby creating the Ohio Political Party Fund [also known as the "income tax check-off account"]. The political party fund is financed by filers of Ohio income tax returns who exercise an option on their returns to designate that one dollar of their return be deposited into the fund, thereafter to be distributed to the state and county headquarters of the respective major parties within the state. The election to exercise the option does not increase nor decrease the taxpayer's liability. The scheme is substantially similar to the presidential check-off option featured on federal income tax returns. R. C. §3517.16 states that:

§3517.16 Ohio political party fund created.
There is hereby created in the state treasury the Ohio political party fund. All moneys received as a result of individuals exercising the checkoff

option on the state income tax returns provided for in section 5747.081 [5747.08.1] of the Revised Code shall pay money from the fund only to political parties qualifying for it under division (B) of section 3517.17 of the Revised Code.

A copy of R. C. §3517.16 is attached hereto and is identified as Exhibit "A".

Each quarter of the year, the funds designated for deposit into the income tax check-off account are distributed in the following manner: one quarter is paid to the treasurer of each major political party's state organization and one quarter is paid to the treasurer of each major party's county organization within which the taxpayer resides.

R. C. §3517.17 provides in material part that:

§3517.17 Distribution of fund; duties of party treasurer; audits.

At the beginning of each calendar quarter, moneys that have accrued in the Ohio political party fund during the previous quarter shall be divided equally among all qualified political parties in the following manner. Of the public moneys to which a party is entitled:

(1) One-half shall be paid to the treasurer of the state executive committee of the party;

(2) One-half shall be distributed to the treasurer of each county executive committee of the various counties in accordance with the ratio that the number of checkoffs in each county bears to the total number of checkoffs, as determined by the tax commissioner.

Each party treasurer receiving public moneys from the Ohio political party fund shall maintain such moneys in an account separate from all other assets of the political party and shall file statements of contributions and expenditures as required by sections 3517.10 and 3517.11 of the Revised Code.

All such statements filed shall clearly indicate the amounts of public moneys received and the manner of their expenditure. The auditor of state shall

annually audit the statements of the state committee of a political party that has received public moneys collected during the previous year, to ascertain that such moneys are expended in accordance with law. The auditor of state shall audit the statements of each county committee of such a political party at the time of the public office audit of that county under Chapter 117. of the Revised Code.

A complete, unedited copy of R. C. §3517.17 is attached hereto and is identified as Exhibit "B".

The uses for which income tax check-off funds may be used are specified in R. C. §3517.18(A), which provides that:

§3517.18 Permitted uses of funds; advisory opinions.

(A) *A political party receiving moneys from the Ohio political party fund may expend the moneys only for the following purposes:*

(1) *The defraying of operating and maintenance costs associated with political party headquarters, including rental or leading costs, staff salaries, office equipment and supplies, postage, and the purchase, lease, or maintenance of computer hardware and software;*

(2) *The organization of voter registration programs and get-out-the-vote campaigns.*

(3) *The administration of party fund-raising drives;*

(4) *Paid advertisements in the electronic or printed media, sponsored jointly or by two or more qualified political parties, to publicize the Ohio political party fund and to encourage taxpayers to support the income tax checkoff program;*

(5) *Direct mail campaigns or other communications with the registered voters of a party that are not related to any particular candidate or election;*

(6) *The preparation of reports required by law.*

In contrast, R. C. §3517.18(B) sets forth the purposes for which income tax check-off funds may not be used:

(B) Moneys from the Ohio political party fund shall not be used for any of the following purposes:

(1) To further the election or defeat of any particular candidate or to influence directly the outcome of any candidate or issue election.

(2) To pay party debts incurred as a result of any election;

(3) To make a payment clearly in excess of the market value of that which is received for the payment.

A complete copy of R. C. §3517.18 is attached hereto and is identified as Exhibit "C".

Because of the burdens imposed upon county organizations in administering their share of the income tax check-off funds, several of Ohio's smaller county committees simply sign over their checks in partial satisfaction of their respective financial quotas to the state party. The total state and county moneys received by the Ohio Republican Party from the income tax check-off fund represents approximately ten-percent of the annual administrative budget to operate the headquarters of the Ohio Republican Party.

Pursuant to Ohio law, funds donated to, and expenditures for, the support of the headquarters of a political party are deemed to not be a contribution nor an expenditure by the political party, negating the requirement that it otherwise be reported on the financial disclosure reports periodically filed with the Ohio Secretary of State's office. R. C. §3517.08(B) and (C) provides that:

§3517.08 Personal expenses; expenditures.

(B) An expenditure by any political action committee or political party shall not be considered a contribution by the political action committee or political party or an expenditure by or on behalf of the candidate if the purpose of the expenditure is to inform only its members by means of mailed communication or other direct communication of its activities or endorsements.

(C) An expenditure by a continuing association or political party shall not be

considered a contribution to any campaign committee or an expenditure by or on behalf of any campaign committee if the purpose of the expenditure is for the staff and maintenance of the continuing association's or political party's headquarters, of for a political poll, survey, index, or other type of measurement not on behalf of a specific candidate.

R. C. §3517.10(A) stipulates, in material part, that contributions and expenditures be disclosed on reports filed with the Secretary of State's office:

§3517.10 Statement of contributions and expenditures.

(A) Except as otherwise provided in this division, every campaign committee, political action committee, and political party which made or received a contribution or made an expenditure in connection with the nomination or election of any candidate or in connection with any ballot issue or question at any election held or to be held in this state shall file, on a form prescribed under this section, a full, true, and itemized statement, made under penalty of election falsification, setting forth in detail the contributions and expenditures, no later than four p.m. of the following dates:

Although not defined in statute, the fund into which the moneys described in R. C. §3517.08(B) and (C) are deposited is generally referred to by Ohio's political parties as the "operating account". Just as with the income tax check-off account, the operating account funds may only be used for the support and maintenance of the state party headquarters, staff, equipment, etc. The "operating account" funds represent approximately thirty-five percent of the administrative headquarters budget. None of the "operating account" funds may be used for the direct election or defeat of a candidate or ballot issue.

While the "operating account" funds are not reported on financial disclosure forms required to be filed with the Ohio Secretary of State pursuant to Ohio law, the purposes for which "operating account" expenditures are made are fully disclosed in reports filed with the Federal Election Commission.

Since 1991, the Ohio Republican Party has utilized an "allocation account" pursuant to

C.F.R. § 106.5 to allocate administrative expenses associated with the lease and maintenance of the state headquarters office, staff salaries, office supplies, etc. In an attempt to comply with the requirement of R. C. § 3517.17(A)(2) that "Each party treasurer receiving public moneys from the Ohio political party fund shall maintain such moneys in an account separate from all other assets of the political party...", income tax check-off account funds were, and continue to be, deposited upon receipt into a separate segregated account designated as the "Income Tax Check-off Account". Periodically, as needed to pay administrative expenses associated with the maintenance of the state headquarters, staff salaries and support, etc., funds would be transferred from the "Income Tax Check-off Account" into the federally mandated "Allocation Account" from which checks would be drawn for payment to administrative headquarters vendors. Supplemental funds would be transferred into the allocation account from the "operating account". If necessary, campaign funds would be deposited into the "allocation account" as well. All expenditures made from the "allocation account" were for administrative expenses associated with the support and maintenance of the state headquarters and staff of the Ohio Republican Party. No payments were, or are, made from the "allocation account" for candidates' campaigns.

In June, 1992, the auditor of state, pursuant to his commission as set forth in R. C. § 3517.17(A)(2), initiated an audit of the "income tax check-off account" for the years 1990 and 1991. During the two year period of time, a total of forty-one checks (fourteen in 1990, twenty-seven in 1991), were written from the "income tax check-off account" and made payable directly to vendors of headquarters' expenses (primarily the headquarters' office lease, staff salaries and associated expenses, etc.), or were transfers to the "allocation account", thereafter being spent for headquarters' administrative expenses.

During the course of the one year audit, the Ohio Republican Party supplied the auditor with 236 pages of documentation to verify the use of the income tax funds and allocation accounts for strictly administrative purposes. In June, 1993, the auditor of state released a report in which he alleged that the Ohio Republican Party had violated the law inasmuch as it had not maintained the "income tax check-off funds" in a separate segregated account as required by R. C. §3517.17(A)(2). In effect, the auditor accused the Ohio Republican Party of having impermissibly co-mingled the income tax check-off funds with non-income tax check-off funds also deposited into the allocation account. In the conclusion of his report, the auditor called for the party to return all of the income tax check-off money to the state treasurer, even though there was no finding a single dollar had been spent for any purpose other than headquarters' expenses, including staff salaries and associated expenses.

The auditor did not claim that any funds were used for any impermissible purpose (i.e., other than for headquarters administration, staff salaries or staff travel and living expenses while on party business, etc.). Moreover, despite having been referred to, and provided copies of 2

U.S.C. 453¹, 11 C.F.R. § 108.7 and Federal Election Commission Advisory Opinions (AO) 1991-5; 1990-6; 1989-21 and 1986-11, the auditor refused to acknowledge that federal election laws preempt any state law or regulation which contradicts the federal position, (i.e., the transfer of funds spent for administrative expenses into the allocation account prior to payment to vendors), etc. In responding to the notification that the headquarters expenses allocation process requires transfer into and expenditures from the allocation account, thereby preempting the state requirement that the funds be maintained in a separate account, the auditor responded that "Our Legal Counsel's review of Sections 3517.17 and 3517.18 Ohio Revised Code, sections within the Code of Federal Regulations Chapter 11, and United States Constitution, Article VI, Section 2 have concluded that there exist no conflict between State and Federal regulations concerning the accountability of Income Tax Check-off moneys". In his findings, the auditor concluded:

"...[W]e conclude the party:

A. Violated Revised Code Section 3517.17(A)(2) by not maintaining Tax Check-Off moneys in a separate account and by ultimately commingling Tax Check-Off moneys with other moneys in the Operating [allocation] account before being expended for a specific purpose.

B. Failed to maintain proper accountability of Income Tax Check-Off moneys to ascertain that Income Tax Check-Off moneys were expended in accordance with law.

In the late summer, the auditor of state referred his allegation that the Ohio Republican Party illegally commingled income tax check-off funds with non-income tax check-off funds to the Ohio Elections Commission for investigation, and, if deemed warranted, criminal prosecution.

II. Questions Posed for Advisory Opinions

Given the history of this dispute, the Ohio Republican Party seeks advisory opinions concerning the following matters:

1. Is the Ohio Republican Party correct in transferring the "income tax check-off" funds established by R. C. §3517.16 from the separate, segregated account to the "allocation account" and thereafter paying vendors of headquarters administrative expenses, including the lease of the office, staff salaries, and expenses, lease of office equipment, etc.?

¹*Effect on State law. The provisions of this Act, and of rules prescribed under this Act, supersede and preempt any provision of State law with respect to election to Federal office.*

Lawrence Noble, Esq.
October 15, 1993
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2. Are the funds derived from the "income-tax check off" scheme appropriately designated as "federal" dollars for the purposes of the allocation formula set forth in C.F.R. § 106.1, et seq.?

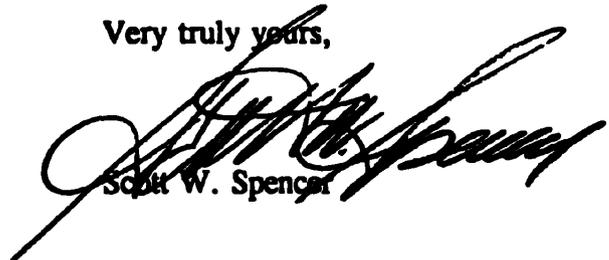
3. Does the "allocation" process supersede and/or otherwise preempt the Ohio law require that the "income tax check-off funds" be maintained "in an account separate from all other assets of the political party," that is to say, must all expenditures made for administrative expenses associated with the support of the state headquarters and its staff, including purposes required by R.C. §3517.18(A), be made from the federally established "allocation account"?

4. Is the requirement that "income tax check-off funds" be maintained "in an account separate from all other assets of the political party" satisfied when "income tax check-off" funds are transferred to the "allocation account" simultaneously, or in conjunction, with payment to vendors of administrative expenses, office and equipment lease payments, staff salaries and support costs, etc?

If you have any comments or questions concerning this request, or require that it be clarified in some manner, please do not hesitate to contact me.

Thank you.

Very truly yours,



Scott W. Spencer

cc: Robert T. Bennett, Chairman,
Ohio Republican Party
Thomas Whatman, Acting Executive Director,
Ohio Republican Party

[POLITICAL PARTY FUND]

§ 3517.16 Ohio political party fund created.

There is hereby created in the state treasury the Ohio political party fund. All moneys received as a result of individuals exercising the checkoff option on their state income tax returns provided for in section 5747.081 [5747.08.1] of the Revised Code shall be deposited in this fund. The tax commissioner shall pay money from the fund only to political parties qualifying for it under division (B) of section 3517.17 of the Revised Code.

HISTORY: 142 v. H 512. EN 10-20-87.

Cross-References to Related Sections

Ohio political party fund—
Administration, RC § 5703.05.
Distribution, RC § 5747.03.

§ 3517.17 Distribution of fund; duties of party treasurer; audits.

(A) At the beginning of each calendar quarter, moneys that have accrued in the Ohio political party fund during the previous quarter shall be divided equally among all qualified political parties in the following manner. Of the public moneys to which a party is entitled:

(1) One-half shall be paid to the treasurer of the state executive committee of the party;

(2) One-half shall be distributed to the treasurer of each county executive committee of the various counties in accordance with the ratio that the number of checkoffs in each county bears to the total number of checkoffs, as determined by the tax commissioner.

Each party treasurer receiving public moneys from the Ohio political party fund shall maintain such moneys in an account separate from all other assets of the political party and shall file statements of contributions and expenditures as required by sections 3517.10 and 3517.11 of the Revised Code. Each treasurer of a state executive committee who files such a statement shall file it with the secretary of state and each treasurer of a county executive committee who files such a statement shall file it with the appropriate board of elections. All such statements filed shall clearly indicate the amounts of public moneys received and the manner of their expenditure. During the first quarter of each calendar year, the auditor of state shall audit the statements of each county committee and the state committee of a political party that has received public moneys collected during the previous year, to ascertain that such moneys are expended in accordance with law.

(B) Only major political parties, as defined in section 3501.01 of the Revised Code, may apply for public moneys from the Ohio political party fund. At the end of each even-numbered calendar year the secretary of state shall announce the names of all such political parties, indicating that they may apply to receive such moneys during the ensuing two years. Any political party named at this time may, not later than the last day of January of the ensuing odd-numbered year, make application with the tax commissioner to receive public moneys. No political party that fails to make a timely application shall receive public moneys during that two-year period. The tax commissioner shall prescribe an appropriate application form. Moneys from the fund shall be provided during the appropriate two-year period to each political party that makes a timely application in accordance with this division.

HISTORY: 148 v H 512. EF 10-20-87.

Cross-References to Related Sections

Ohio political party fund—

Administration, RC § 5703.05.

Establishment, RC § 3517.16.

Rules for campaign expenses, RC § 3517.15.

§ 3517.18 Permitted uses of funds; advisory opinions.

(A) A political party receiving moneys from the Ohio political party fund may expend the moneys only for the following purposes:

(1) The defraying of operating and maintenance costs associated with political party headquarters, including rental or leasing costs, staff salaries, office equipment and supplies, postage, and the purchase, lease, or maintenance of computer hardware and software;

(2) The organization of voter registration programs and get-out-the-vote campaigns;

(3) The administration of party fund-raising drives;

(4) Paid advertisements in the electronic or printed media, sponsored jointly by two or more qualified political parties, to publicize the Ohio political party fund and to encourage taxpayers to support the income tax checkoff program;

(5) Direct mail campaigns or other communications with the registered voters of a party that are not related to any particular candidate or election;

(6) The preparation of reports required by law.

(B) Moneys from the Ohio political party fund shall not be used for any of the following purposes:

(1) To further the election or defeat of any particular candidate or to influence directly the outcome of any candidate or issue election;

(2) To pay party debts incurred as the result of any election;

(3) To make a payment clearly in excess of the market value of that which is received for the payment.

(C) Any designated agent of a political party receiving moneys from the Ohio political party fund may, if there is a question about the legitimacy of a party expenditure of public moneys, ask the Ohio elections commission for an advisory opinion on the matter prior to making such an expenditure. The commission shall afford the highest priority to such a request.

HISTORY: 142 v H 512. EN 10-20-87.

Cross-References to Related Sections

Penalty, RC § 3517.99.

Rules for campaign expenses, RC § 3517.15.

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October 25, 1993

Bradley Litchfield, Esq.
Associate General Counsel
Office of the General Counsel
999 E Street, N. W.
Washington, D. C. 20463

AOR 1993-21

Re: **October 15, 1993, Ohio Republican
Party Advisory Opinion**

Dear Mr. Litchfield,

This is a follow up to our conversation of earlier today in which you requested clarification of certain matters relating to the Ohio Republican Party's October 15, 1993 request for an advisory opinion concerning the party's income tax check-off receipts and the transfer of such funds to the federal allocation account.

First, the Ohio Republican Party continues to transfer income tax check-off funds from the state mandated segregated account to the allocation account from which payments are made to the vendors of headquarters staff and associated administrative expenses. The party has not changed the manner in which income tax check-off account funds are transferred to the allocation account and thereafter spent for administrative purposes. In addition, the auditor of Ohio has within the last month initiated an audit of the party's receipt of income tax check-off funds during the calendar year 1992 and will, without question, also audit the party's use of the 1993 income tax check-off account funds as well.

Secondly, we apologize for having failed to include the three state statutes which were referred to in our earlier letter. They are identified as Exhibits "A", "B" and "C" and are enclosed herein.

Third, we discussed at length the process by which the auditor conducted this examination, both in private and via press releases. In response to the auditor's "referral" to the Ohio Elections Commission, the Ohio Republican Party prepared and filed a combined motion to dismiss and response, including approximately 300 pages of verification documents

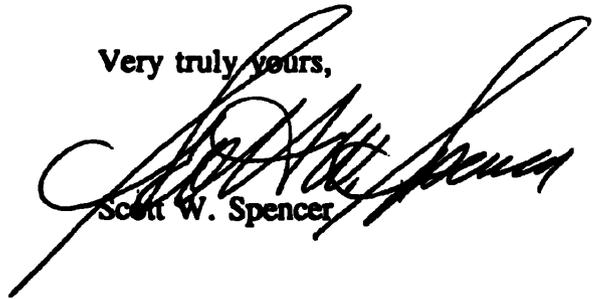
Bradley Litchfield, Esq.
October 27, 1993
Page 2

which were submitted to the auditor in the course of the audit. The auditor, despite a statutory obligation to release all documentation submitted in response to an audit report, continues to refuse to release any of the verification documents to the public. Instead, the auditor has released press release which gratuitously announce "findings" which do not appear anywhere in the audit reports and restates his assertion that the party has failed or refused to provide documentation for the use of the income tax check-off funds. Due to the sheer volume of the response filed with the Ohio Elections Commission, I have included only one time stamped copy for your review.

I believe that this addresses all of the concerns you raised during our conversation. Please feel free, however, to contact me if you have any additional comments or questions which I can resolve for you.

Thank you for your prompt attention to this matter.

Very truly yours,



Scott W. Spencer

Encls.

cc: Robert T. Bennett, Chairman
Ohio Republican Party
Thomas Whatman,
Acting Executive Director
(w/o encls.)

3. The above captioned and styled matter was purportedly initiated by Dav McGuckin, Audit Manager, office of the Auditor of State, by filing a "Referral to the Ohio Elections Commission", a copy of which is attached and identified as Affidavit Exhibit "1".

4. Only the Secretary of State or one of the eighty-eight county boards of election is authorized by law to initiate an investigation by the Ohio Elections Commission through the use of a "referral". All other individuals, organizations, etc., must initiate an investigation of purported electoral misconduct by way of a "complaint" which itself complies with the express requirements set forth in Ohio Adm. Code §111:1-1-02(B).

5. Mr. McGuckin's "referral" is insufficient as a matter of law.

6. Notwithstanding the insufficiency of the purported "referral", the Ohio Republican Party desires the Ohio Elections Commission to examine the Ohio Republican Party's administration of the funds it received in 1990 and 1991 from the Ohio Political Party Fund as created by R. C. §3517.16, and therefore voluntarily submits to the jurisdiction of the Ohio Elections Commission concerning this matter.

7. Mr. McGuckin wrote that the basis of the purported "referral" was due to the alleged "Failure [of the Ohio Republican Party] to comply with Revised Code Sections 3517.17 & 3517.18 - Did not account for the actual use of tax check-off money after being commingled with federal & non-federal campaign funds". [See Affidavit Exhibit "1"]

8. Mr. McGuckin's allegation that the Ohio Republican Party commingled income tax check-off funds "with federal and non-federal campaign funds" infers that income tax check-off funds were illegally used for campaign purposes; the Ohio Republican Party spent income tax check-off funds solely for administrative expenses associated with the support of its'

A-2

headquarters and has not spent any income tax check-off funds for campaign purposes.

9. In June, 1992, Deputy Auditor Charles Baughman appeared at the offices of the Ohio Republican Party and announced that he was to conduct an audit of the funds received by the party from the Ohio Political Party Fund [also known as "income tax check-off fund"], during 1990 and 1991.

10. The State Auditor's office is authorized by R. C. §3517.17 to audit the use of the "moneys collected during the previous year, to ascertain that such moneys are [sic] expended in accordance with law". [Emphasis Added]

11. Therefore, the auditor had no authority in 1992 to audit funds received in 1990 inasmuch as such funds were not "collected during the previous year".

12. Deputy Auditor Baughman nonetheless proceeded to audit the 1990 and 1991 income tax check-off funds, which such audit required nearly a year to conduct. It is significant that only forty-one checks (fourteen in 1990 and twenty-seven in 1991), were written on the audited account during the period in question.

13. Finally, on March 26, 1993, Mr. McGuckin provided the Ohio Republican Party a draft copy of the audit. [A copy is attached and identified as Affidavit Exhibit "2."] On April 19, 1993, the Ohio Republican Party responded to the questions posed in the draft copy of the audit in a ten page, single spaced letter. Attached to the response were two hundred thirty-six pages of documentation which verified the appropriate expenditure of the \$679,659.96 expended from the Ohio Political Party Fund moneys during 1990 and 1991. A copy of the response, with its verification documentation, is attached and is identified as Affidavit Exhibit "3".

14. Thereafter the auditor's office submitted a final draft of its report, ignoring the

verification documentation submitted on April 19, 1993. [A copy is attached and is identified as Affidavit Exhibit "4"].

15. In its conclusion, the final audit report declared that, "[T]he Party did not or could not provide us documents or records to ascertain whether \$598,926.74 was expended in compliance with Section 3517.18 Revised Code." See Affidavit Exhibit "4", identified in ¶ 14, above.

16. As demonstrated below, all moneys expended from the federally mandated "Allocation Account", including those funds received from the income tax check-off fund, were "expended" in accordance with the provisions of R. C. §3517.18(A).

17. The essence of the auditor's allegation is that the Ohio Republican Party did not maintain the income tax check-off moneys in a segregated account; as shown below, the income tax check-off funds were maintained in a segregated account but expended for headquarter's purposes from the federally mandated "Allocation Account."

18. On June 2, 1993, in accordance with the directives of the Auditor's Office, the Ohio Republican Party submitted its reply to the undated final report. A copy is attached and is identified as Affidavit Exhibit "5". The Ohio Auditor thereafter refused to release the response -- or the verification documentation -- to the updated final report, referring to it as a "news release". See Affidavit Exhibit "6", attached hereto. The Ohio Republican Party thereafter responded with a letter calling upon the Auditor to release all of the documentation submitted by the party. See Affidavit Exhibit "7".

19. Inexplicably, on June 15, 1993, the Auditor issued a revised "conclusion statement" which suggested that the Ohio Republican Party "insisted that the exit audit was a

public meeting subject to Section 121.22 Revised Code" and was instructed to submit a response within five working days. [See Affidavit Exhibit "8," attached hereto.] The revised "conclusion statement" was an apparent attempt to avoid the obligation of releasing the entire Ohio Republican Party response -- with attached verification documentation -- to the final draft audit.

20. The auditor's findings suggested that the Ohio Republican Party illegally "co-mingled" funds from the income tax check-off account with other party campaign funds.

21. It is significant to note that the administrative expenses associated with maintaining the headquarters of the Ohio Republican Party vastly outweigh the moneys received from the income tax check-off fund. Moreover, it is legal for the Ohio Republican Party to spend campaign funds for administrative expenses. In contrast, R. C. §3517.18(B) prohibits the use of income tax check-off funds for partisan campaign purposes.

22. The Ohio Republican Party did not at any time use income tax check-off funds for campaign purposes.

23. Federal election law requires that funds expended for the support of a state committee's headquarters staff and operations be spent through an "Allocation Account", with such expenses being allocated in accordance with a formula between state and federal purposes. [See: 11 C.F.R. §106.5(g), a copy of which is attached hereto and identified as Affidavit Exhibit "9".] Moreover, federal election laws expressly pre-empt any state law or regulations which conflict with the federal requirements. [See: 2 U. S. C. §453; 11 C. F. R. §108.7 and FEC Advisory Opinions (AO) 1991-5; 1990-6; 1989-12 and 1988-2, copies of which are attached to and incorporated in Affidavit Exhibit "5" and are identified therein as "Exhibits 3 and 4".

24. 2 U.S.C. § 453 provides that:

§ 453 state laws affected.

The provisions of this Act, and of rules prescribed under this Act, supersede and preempt any provision of State law with respect to election to federal office.

[Emphasis Added]

25. Ohio law provides that the funds from the income tax check-off account may only be spent for the purpose of operating and maintaining the headquarters of political parties, leasing or renting equipment, staff salaries, etc. [See: R. C. §3517.18(A) and (B)] Ohio law also provides that the political parties which are the recipients of such funds "shall maintain such moneys in an account separate from all other assets of the political party and shall file statements of contributions and expenditures as required by sections 3517.10 and 3517.11 of the Revised Code."

26. In contrast, federal law mandates that expenditures for the purposes enumerated in R. C. §3517.18(A) (i.e., operating the headquarters of political parties, leasing or renting equipment, staff salaries, etc.), be made through an "Allocation Account"; in that regard, federal law requires that expenditures for the support of the political party headquarters and staff be "allocated" in accordance with an enumerated formula between state and federal administrative purposes and then reported to the Federal Election Commission. [See 11 C.F.R. §102, §104 and §108].

27. C.F.R. § 106.6 provides in pertinent part that:

§106.6 Allocation of expenses between federal and non-federal activities by separate segregated funds and non-connected committees.

(a) General rule. Separate segregated funds and non-connected committees that make disbursements in connection with federal and non-federal elections shall make those disbursements either entirely from funds subject to the prohibitions and limitations of the Act, or

from accounts established pursuant to 11 CFR 102.5. Separate segregated funds and non-connected committees that have established separate federal and non-federal accounts under 11 CFR 102.5(a)(1)(i) or (b)(1)(i), or that makes federal and non-federal disbursements from a single account under 11 CFR 102.5(b)(1)(ii), shall allocate their federal and non-federal expenses according to paragraphs (c) and (d) of this section. For purposes of this section, "non-connected committee" includes any committee which conducts activities in connection with an election, but which is not a party committee, an authorized committee of any candidate for federal election, or a separate segregated fund.

[Emphasis Added]

(c) Method for allocating administrative expenses and costs of generic voter drives. Non-connected committees and separate segregated funds shall allocate their administrative expenses and costs of generic voter drives, as described in paragraph (b) of this section, according to the funds expended method, described in paragraphs (c)(1) and (2) as follows:

(1) Under this method, expenses shall be allocated based on the ratio of federal expenditures to total federal and non-federal disbursements made by the committee during the two-year federal election cycle. This ratio shall be estimated and reported at the beginning of each federal election cycle, based upon the committee's federal and non-federal disbursements in a prior comparable federal election cycle or upon the committee's reasonable prediction of its disbursements for the coming two years. In calculating its federal expenditures, the committee shall include only amounts contributed to or otherwise spent on behalf of specific federal candidates. Calculation of total federal and non-federal disbursements shall also be limited to disbursements for specific candidates, and shall not include overhead or other generic costs.

[Emphasis Added]

(H) Payment by separate allocation account; transfers from federal and non-federal accounts to allocation account.

(A) The committee shall establish a separate allocation account

into which funds from its federal and non-federal accounts shall be deposited solely for the purpose of paying the allocable expenses of joint federal and non-federal activities. Once a committee has established an allocation account for this purpose, all allocable expenses shall be paid from that account for as long as the account is maintained.

[Emphasis Added]

28. The Ohio Republican Party is a "committee" pursuant to Federal Election Commission regulations and the income tax check-off fund is a "separate segregated fund" which is required to be spent through an allocation account under Federal Election Law.

29. In short, federal law directly conflicts with Ohio state law concerning the expenditure of funds for the operation of a political party's headquarters, (i.e., state law mandates segregation of income tax check-off funds while federal law requires expenditure through an allocation account of all moneys -- including income tax check off funds -- spent for headquarters administrative purposes). 2 U.S.C. § 453 unambiguously provides that when such a conflict between state and federal law arises, the federal scheme supersedes and preempts the conflicting state law.

30. The Ohio Republican Party did, and continues to, maintain the moneys received from the Ohio Political Party Fund in a separate, segregated account as required by R. C. §3517.17. Periodically, in compliance with federal law, funds needed to pay headquarter's expenses¹ were transferred from the segregated account into the federally mandated Allocation

¹R. C. §3517.18(A) states that:

(A) A political party receiving moneys from the Ohio political party fund may expend the moneys only for the following purposes:

(1) The defraying of operating and maintenance costs associated with political party headquarters, including rental or leasing costs, staff salaries, office equipment and supplies, postage, and the purchase, lease or maintenance of computer hardware and software;

(2) The organization of voter registration programs and get-out-the-vote campaigns;

Account and thereafter paid to vendors of headquarters administrative expenses or other uses permitted by state and federal law.

31. The auditor does not allege that any Ohio Political Party Fund moneys were spent for any improper purpose, including partisan political campaign expenses, in violation of R. C. §3517.18(B), which provides that:

(B) Moneys from the Ohio political party fund shall not be used for any of the following purposes:

(1) To further the election or defeat of any particular candidate or to influence directly the outcome of any candidate or issue election;

(2) To pay party debts incurred as the result of any election;

(3) To make a payment clearly in excess of the market value of that which is received for the payment.

32. The allegation that the Ohio Republican Party failed "to comply with Revised Code Sections 3517.17 & 3517.18" simply is not true. The income tax check-off funds were

(3) The administration of party fund-raising drives;

(4) Paid advertisements in the electronic or printed media, sponsored jointly by two or more qualified political parties, to publicize the Ohio political party fund and to encourage taxpayers to support the income tax checkoff program;

(5) Direct mail campaigns or other communications with the registered voters of a party that are not related to any particular candidate or election;

(6) The preparation of reports required by law;

Contrast the state law with the purposes which are subject to the "allocation" process established in 11 C.F.R. §§ 102, 104 and 106:

These revisions set forth rules for allocation of expenses for four categories of activity that jointly benefit both federal and non-federal candidates and elections. These include (1) Administrative expenses such as rent, utilities, office supplies, and salaries; (2) the direct cost of fundraising programs or events; (3) state and local party activities exempt from the definitions of "contribution" and "expenditure" under the Act, when conducted in conjunction with non-federal election activities; and (4) generic voter drive activity such as voter identification, voter registration, and get-out-the-vote campaigns.

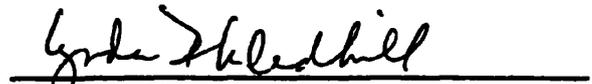
maintained in a segregated account; such monies were then transferred to the "Allocation Account" and spent for legitimate headquarters expenses. All of the funds expended from the Allocation Account were spent directly for administrative costs of the state party headquarters or for staff compensation; no income tax check-off funds were spent for the election or defeat of any candidate or issue. All administrative funds were spent through the "Allocation Account" in accordance with superceding federal mandates.

33. Pursuant to Ohio Adm.. Code § 111:1-1-03(D), the *instant* "referral" is insufficient as a matter of law and fails to establish a prima facie violation of R. C. § 3517.17 and/or R. C. § 3517.18; as a matter of law this commission must dismiss the "referral" and should do so at this time.

Further affiant sayeth naught.


Robert T. Bennett

Sworn to and subscribed in my presence this 1st ^{October} ~~September~~ day of 1993.


Notary Public

REFERRAL TO THE OHIO ELECTIONS COMMISSION

FROM: AUDITOR OF STATE TELEPHONE: 466-4514

ADDRESS: 88 East Cross St. Columbus, Ohio 5th Fl

NAME AND ADDRESS OF CANDIDATE: Ohio Republican Party 172 East State St. Suite 400 Columbus, Ohio 43215

NAME OF CAMPAIGN COMMITTEE, POLITICAL ACTION COMMITTEE:

POLITICAL PARTY: Ohio Republican Party

NAME AND ADDRESS OF TREASURER: 172 East State St. Suite 400 Columbus, Ohio 43215

EXHIBIT
"1"

OFFICE SOUGHT: _____ SUBDIVISION: _____

DATE OF SELECTION: _____ NOMINATED/ELECTED: _____

THE ABOVE-NAMED PERSON(S) ARE BEING REFERRED TO THE COMMISSION PURSUANT TO DIVISION (C) OF OHIO REVISED CODE SECTION 3517.11 BECAUSE OF THE FOLLOWING APPARENT VIOLATION(S) OF THE LAW:

VIOLATION: (check one)	TYPE OF REPORT: (check one)	TYPE OF ELECTION: (check one)
Failure to file <input type="checkbox"/>	Pre-election <input type="checkbox"/>	Primary <input type="checkbox"/>
Late filing/ Date filed _____ <input type="checkbox"/>	Post-election <input type="checkbox"/>	General <input type="checkbox"/>
Other <input type="checkbox"/>	19____ Annual <input type="checkbox"/>	Special <input type="checkbox"/>
(describe below)		

Failure to comply with Revised Code Sections 3517.17 & 3517.18 -

Did not account for the actual use of tax check-off money after
balance commingled with Federal & non-Federal campaign funds

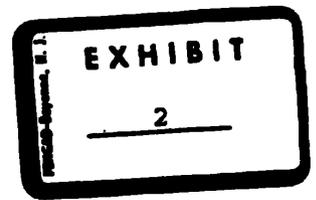
USE THIS LINE TO REPORT SUBSEQUENT INFORMATION REGARDING THE ABOVE REFERRAL: _____

PLEASE ATTACH A COPY OF THE COVER PAGE AND OTHER RELEVANT PAGES OF THE REPORT AND ANY RELEVANT CORRESPONDENCE, AFFIDAVITS OR OTHER INFORMATION.

D. W. McCall
Auditor
Signature

6/24/93
Date

(A-11)



THOMAS E. FERGUSON
AUDITOR OF STATE
COLUMBUS, OHIO 43216

March 26, 1993

Ohio Republican Party
172 East State St. 4th Floor
Columbus, Ohio 43215
Attn: Robert Bennett

Dear Mr. Bennett:

Enclosed for your review is our confidential draft copy of our audit of the Ohio Republican Party for the period January 1, 1990 through December 31, 1991.

We request that you review this report and either respond to it in writing or request an exit conference by April 2, 1993. If you request an exit conference, the party will have five working days from the date of that conference to submit a written response which will become a part of the report.

Thank you for your assistance.

THOMAS E. FERGUSON, CFE
Auditor of State

David W. McGuckin

David W. McGuckin, CFE
Audit Manager
4480 Refugee Rd. Suite 310
Columbus, Ohio 43232
614-864-3917

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Ohio Republican Party
Ohio Political Party Fund
Calendar Years 1990 and 1991

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THOMAS E. FERGUSON
AUDITOR OF STATE

P.O. Box 1140 • Columbus, Ohio 43266-0040 • (614) 466-4514

CONFIDENTIAL

Ohio Republican Party
172 East State St. 4th Floor
Columbus, OH 43215

We have audited the Ohio Political Party Funds deposited into and expended from the Income Tax Check-Off Account (ITCA) of the Ohio Republican Party as of December 31, 1990 and 1991 and for the years then ended. The ITCA is the responsibility of the Republican Party's management. Our responsibility is to audit these public moneys pursuant to Section 3517.17, Revised Code.

Revised Code Section 3517.17 requires our audit to determine whether the public moneys collected during calendar year 1990 and 1991 were expended by the Ohio Republican Party from the ITCA according to law. Our audit would normally include examining evidence supporting the amounts expended from the ITCA. Section 3517.18, Revised Code, provides the purposes for which the Party may expend these public moneys.

Compliance with laws and regulations applicable to the Republican Party is the responsibility of the Party's management. Our responsibility is to examine evidence about the Party's compliance pursuant to the Revised Code. The results of our procedures indicate that the Republican Party complied with the provisions of the Revised Code, Section 3517.17 and 3517.18, except as described below.

A. Deposits to the Income Tax Check-Off Account, 1990:

The Republican Party (Party) deposited into its Income Tax Check-Off Account, the following tax check-off moneys for calendar year 1990.

State Distributions	\$ 284,034.50
County Distributions	43,595.84
Certificate of Deposit Proceeds	<u>57,701.95</u>
Total	\$ 385,332.29

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A. Deposits to the Income Tax Check-Off Account, 1990: continued

Our testing of county contributions to the Party disclosed the following:

\$1,250.00 of reported contributions from two counties were not verified as being received by the Party and deposited into the Tax Check-Off Account.

A.	Carroll County	-	\$	450.00
B.	Scioto County	-		<u>800.00</u>
	Total		\$	1,200.00

We recommend the Party confirm contribution totals with each county to ensure all contributions of public moneys are received and deposited into the Tax Check-Off Account.

B. 1990 Expenditure of Tax Check-Off Moneys:

In calendar year 1990, \$383,929.13 was expended from the Income Tax Check Off Account as follows.

- A. \$335,513.10 was subsequently deposited into another Party account titled the Ohio Republican Party Payroll Account (Payroll Account).
 - B. \$48,403.88 was for office rent, and
 - C. \$12.15 was payment for bank service charges.
1. The \$335,513.10 deposited into the Payroll Account could not be audited for proper purpose as defined in Revised Code Section 3517.18. Even though staff salaries are legitimate expenses under Revised Code Section 3517.18, Tax [REDACTED]
[REDACTED]
[REDACTED]
Therefore, the legitimate purpose of Tax Check-Off moneys expended through the Payroll Account could not be ascertained as required by Revised Code Section 3517.17.

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Revised Code Section 3517.17 (A) (2) states in part:

"...Each party treasurer receiving public moneys from the Ohio political party fund shall maintain such moneys in an account separate from all other assets of the political party...the auditor of state shall audit the statements of each county committee and the state committee of a political party that has received public moneys... to ascertain that such moneys are expended in accordance with law."

Based on the above facts, we ~~conclude~~ the Party:

- A. Violated Revised Code Section ~~3517.17 (A) (2)~~ by commingling Tax Check-Off money with other moneys in the Payroll Account, and /
- B. Failed to maintain proper accountability of Tax Check-Off moneys to ascertain that such moneys were expended in accordance with law.

Based on the above facts this information will be forwarded to the following agencies for their review:

- A. The Ohio Election Commission
- B. The Ohio Secretary of State
- C. The Ohio Attorney General

We recommend the Party:

- A. Maintain Tax Check-Off moneys and proper accountability over the actual use of those moneys in a separate account, and
- B. Return the \$335,513.10 to the Tax Check-Off Account until Party officials can provide documentation to verify the actual use of those moneys.

2. Our review of 1990 payroll documentation provided by the Party disclosed the following:

- A. Individual net payroll checks and direct deposits processed through the Payroll Account, which included tax check-Off moneys, did not agree with the net payroll total per individual payroll records to be maintained by the Party's payroll processing company, ADP. Checks and direct deposits processed through the bank totalled \$514,651.00, while individual payroll records totalled \$495,925.43 for a difference of \$18,725.57.
- B. Contrary to our written requests to the Party, for copies of employees' Federal W-2 forms were not provided to us for review. On February 22, 1993 the Party stated in a memorandum that they contacted ADP for more payroll information and have been informed that ADP did not have records before 1991.

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B. 1990 Expenditure of Tax Check-Off Moneys: continued

Based on the above facts, this information will be forwarded to the Internal Revenue Service for its review.

C. Deposits to the Income Tax Check-Off Account, 1991:

The Party deposited into its Income Tax Check-Off Account, the following tax check-off moneys for calendar year 1991.

State Distributions	\$ 265,751.00
County Distributions	28,099.50
Reimbursements	<u>448.00</u>
Total	\$ 294,298.50

Our testing of county contributions to the Party disclosed the following:

\$ 650.00 reported as being contributed from Mercer county was not verified as being received or deposited into the Party's Tax Check-Off Account.

We recommend the Party confirm contribution totals with each county to ensure all contributions of public moneys are received and deposited into the Party's Tax Check-Off Account.

D. 1991 Expenditures of Tax Check-Off Moneys:

In calendar year 1991, \$295,730.83 was expended from the Income Tax Check-Off Account as follows.

- A. \$52,384.87 was subsequently deposited into the Party's Payroll Account.
- B. \$203,455.76 was subsequently deposited into the Party's Operating Account (Operating Account).
- C. \$30,072.33 was payment for office rent.
- D. \$2,350.11 was payment to Frank E. Mosier for reception cost for EB program in Cuyahoga County.
- E. \$1,527.30 was payment to Made From Scratch Inc. for the Inagural Gala Catering.
- F. \$3,695.60 was payment to Executive Catering for the Governor's reception.

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D. 1991 Expenditures of Tax Check-Off Moneys: continued

- G. \$300.00 was payment for consulting fees.
 - H. \$1,392.00 was payment for postage.
 - I. \$500.00 was to correct an erroneous deposit, and
 - J. \$52.86 was payment for bank service charges.
1. The \$52,384.87 deposited into the Payroll Account could not be audited for proper purpose as defined by Revised Code Section 3517.18. Even though staff salaries are legitimate expenses under Revised Code Section 3517.18, Tax Check-Off moneys were commingled with other moneys in the Payroll Account, and the Party was unable to ascertain the proper use of such moneys without the detailed accounting records to verify the actual use of Tax Check-Off moneys. Therefore the legitimacy of Tax Check-Off moneys expended through the Payroll Account could not be ascertained as required by Revised Code Section 3517.17.

Revised Code Section 3517.17 (A) (2) states in part:

"...Each party treasurer receiving public moneys from the Ohio political party fund shall maintain such moneys in an account separate from all other assets of the political party...the auditor of state shall audit the statements of each county committee and the state committee of a political party that has received public moneys..., to ascertain that such moneys are expended in accordance with law."

Based on the above facts, we conclude the Party:

~~Failed to maintain proper accountability of Tax Check-Off moneys to ascertain that such moneys were expended in accordance with law.~~

- B. Failed to maintain proper accountability of Tax Check-Off moneys to ascertain that such moneys were expended in accordance with law.

This information will be forwarded to the following agencies for their review:

- A. The Ohio Election Commission
- B. The Ohio Secretary of State
- C. The Ohio Attorney General

We recommend the Party:

- A. Maintain Tax Check-Off moneys and proper accountability over the actual use of those moneys in a separate account, and
- B. Return the \$52,384.87 to the Tax Check-Off Account until Party officials can provide documentation to verify the actual use of those moneys.

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D. 1991 Expenditures of Tax Check-Off Moneys: continued

2. The \$203,455.76 deposited into the Operating Account was commingled with \$1,724,332.82 of deposits from other Party accounts. Those other Party accounts which had moneys deposited into the Operating Account were:

1. Ohio Republican Party Campaign Account
2. Federal Candidates Campaign Committee
3. Ohio Republican Party Cardinal Club Account
4. Ohio Republican Party Legislative Account
5. Ohio Republican Party Federal Achievement Account

In our request for the Party to provide us accounting records to determine how the \$203,455.76 was expended, the Party was unable or unwilling to furnish the records. ~~In our review of Political Party Subordinate Reports, required to be filed with the Secretary of State, the only statement in these reports was that the funds were transferred to the Operating Account.~~

Revised Code Section 3517.17 (A) (2) states in part:

"...Each party treasurer receiving public moneys from the Ohio political party fund shall maintain such moneys in an account separate from all other assets of the political party...the auditor of state shall audit the statements of each county committee and the state committee of a political party that has received public moneys... to ascertain that such moneys are expended in accordance with law."

Based on the above facts, we conclude the Party:

- A. Violated Revised Code Section 3517.17 (A) (2) by commingling Tax Check-Off money with other moneys, and
- B. Failed to maintain proper accountability of Tax Check-Off moneys to ascertain that such moneys were expended in accordance with law.

Based on the above facts, this information will be forwarded to the following agencies for their review:

- A. The Ohio Election Commission
- B. The Ohio Secretary of State
- C. The Ohio Attorney General

We recommend the Party:

- A. Maintain Tax Check-Off moneys and proper accountability over the actual use of those moneys in a separate account, and
- B. Return the \$203,455.76 to the Tax Check-Off Account until Party officials can provide documentation to verify the actual use of those moneys.

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D. 1991 Expenditures of Tax Check-Off Moneys: continued

3. In an attempt to determine if expenditures of public moneys complied with Revised Code Section 3517.18 we did an analysis of calendar year 1991 deposits to the Operating Account to determine if deposit dates could be matched to expenditure dates. We were unable to make this determination since public funds were deposited on same days as funds from the accounts mentioned above.
4. In conjunction with the above analysis we created a schedule of expenditures per vendor from the Operating Account for calendar year 1991. This schedule is included as an exhibit to this report, pages 10 through 35.
5. A review of expenditures from the Operating Account disclosed the following:
 - A. The Party had a service agreement with Tailored Management Services to lease employees to the Party. In a January 26, 1993 request to the Party to review the Party's service agreement with Tailored Management Services, the Party responded in a memo dated February 22, 1993 that the contract with Tailored Management, Inc. is not material to an examination of the approximately \$200,000 received and subsequently spent from the income tax checkoff account. However, on February 26, 1993 the Party provided us a copy of this service agreement.

A further review of the Party's payroll compiled from the Federal Election Commission's 3X report as of December 31, 1991 disclosed the total payroll per employee did not equal employee's Federal W-2 forms prepared by Tailored Management Services.

Based on the above facts, this information will be forwarded to the Internal Revenue Service for its review.

~~_____~~
~~_____~~

1. \$7,500.00 was paid to 634 South Grant Ave. Partners. Records obtained from the Franklin County Auditor disclosed that this company is owned by Robert T. Bennett, chairman of the Ohio Republican Party, and Michael Braunstein.

The Republican State Central and Executive Committee of Ohio Permanent Rules, Article III Section 1 (b) adopted December 6, 1991 states in part:

"The Chairman shall devote full time and attention to the duties, responsibilities and business of the Ohio Republican Party. The Chairman shall not, at any time, use his or her official position for private or personal financial gain, and shall not actively participate in any other business, occupation, or profession."

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D. 1991 Expenditures of Tax Check-Off Moneys: continued

2. \$29,400.00 was paid directly to Robert T. Bennett. Documentation to support these expenses was either incomplete or missing.
3. \$3,912.79 was paid to utility and cable companies for service to Robert T. Bennett's residence at 636 South Grant Avenue, Columbus, Ohio.

A.	All American Cable,	-	\$	437.04
B.	Columbia Gas of Ohio,	-		417.64
C.	Columbus City Water,	-		352.07
D.	Columbus and Southern Power,	-		1,654.05
E.	Ohio Bell, and	-		841.99
F.	Westinghouse Security Systems	-		<u>210.00</u>

Total \$ 3,912.79

Since Tax Check-Off Moneys were commingled with other moneys in the Operating Account, we requested a copy of Robert T. Bennett's contract with the Republican Party for review to determine if the above expenses were allowable according to Revised Code Section 3517.18. On February 22, 1993 the Party responded to our request by stating that Mr. Bennetts employment contract with the Ohio GOP is not material to an examination of the approximately \$200,000 received and subsequently spent from the income tax checkoff account. However, on February 26, 1993 the Party gave us a copy of their permanent rules. A review of these rules did not address the payment of moneys directly to Robert T. Bennett, or for the above services for his residence.

This information will be forwarded to the following agencies for their review:

- A. The Ohio Election Commission
- B. The Secretary of State
- C. The Ohio Attorney General
- D. The Internal Revenue Service

6. Our review of other expenses paid from the Income Tax Check-Off Account disclosed three payments totalling \$7,573.01 were for purposes not specifically mentioned as allowable per Revised Code Section 3517.18.

- A. Check #1064 to Frank E. Mosier for \$2,350.11
- B. Check #1065 to Made From Scratch Inc. for \$1,527.30
- C. Check #1066 to Executive Catering for \$3,695.60

Based on the above this information will be forwarded to the Ohio Election Commission for its review.

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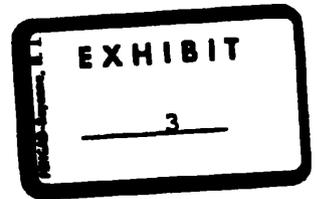
Conclusion:

Of the \$679,659.96 expended from the Income Tax Check-Off Account during 1990 and 1991, only \$80,733.22, of which \$78,476.21 was for rental payments, could be documented as being expended in compliance with Revised Code Section 3517.18.

THOMAS E. FERGUSON, CFE
Auditor of State

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SPENCER & EHRIE
ATTORNEYS AT LAW
SUITE 500
6100 CHANNINGWAY BOULEVARD
COLUMBUS, OHIO 43232

SCOTT W. SPENCER
DENNIS B. EHRIE*

RICHARD S. GERBER
OF COUNSEL

*ALSO ADMITTED IN CALIFORNIA

TELEPHONE
(614) 759-7374
FACSIMILE
(614) 759-0099

CONFIDENTIAL

VIA HAND DELIVERY

April 19, 1993

Thomas E. Ferguson, CFE
Auditor of State
P. O. Box 1140
Columbus, Ohio 43266-0040

Attn: David W. McGuckin, CFE
Audit Manager

Re: Ohio Republican Party
Ohio Political Party Fund
Calendar Years 1990 and 1991

Dear Messrs. Ferguson and McGuckin:

Our firm has been requested to prepare the Ohio Republican Party's response to the draft audit of the Ohio Republican Party's Ohio Political Party Fund for Calendar Years 1990 and 1991. The response will, to the extent possible, parallel the draft correspondence of the auditor. For purposes of convenience, we have periodically reflected the corresponding page of the audit to which this response is directed. These references appear as [Audit - Page Two], etc.

As a preliminary matter, it is important to note that the section of the Revised Code [R. C. §3517.17], which authorizes your office to conduct the *instant* audit provides that the audit is to be limited to funds received "during the previous year...." The portion of the Revised Code cited by your office is a gross misrepresentation of the clear language of the code. A complete quote of R. C. §3517.17(A)(2) provides that:

Each party treasurer receiving public moneys from the Ohio political party fund shall maintain such moneys in an account separate from

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all other assets of the political party and shall file statements of contributions and expenditures as required by sections 3517.10 and 3517.11 of the Revised Code. Each treasurer of a state executive committee who files such a statement shall file it with the secretary of state and each treasurer of a county executive committee who files such a statement shall file it with the appropriate board of elections. All such statements filed shall clearly indicate the amounts of public moneys received and the manner of their expenditure. During the first quarter of each calendar year, the auditor of state shall audit the statements of each county committee and the state committee of a political party that has moneys collected during the previous year, to ascertain that such moneys are expended in accordance with law.

[Emphasis added.]

Your office quoted only those portions of the statute which are underlined. It is obvious from the bolded language (which your office deleted), that your office is required by law to conduct the audit "during the first quarter of each calendar year" and that the scope of the audit is limited to "moneys collected during the previous year...." The failure to comply with these mandatory provisions of the statute divests your office of jurisdiction to conduct an audit of the 1990 and 1991 monies targeted by the *instant* effort. Neither the 1990 nor 1991 moneys which your audit addresses fall within the periods permitted to be audited at this time by R. C. §3517.17. Notwithstanding the fact that your office is without authority to conduct an audit of 1990 and 1991 (or 1992 for that matter), Income Tax Check-Off Account moneys, the following information is voluntarily provided in an effort at cooperation and is an attempt to respond to the groundless allegations raised in the draft audit.

Finally, for your information, the Ohio Republican Party has retained Ernst & Young to conduct a comprehensive audit of the party's finances for the period of January 1, 1991 through December 31, 1992.

[Audit - Page Two]

A. Deposits to the Income Tax Check-Off Account, 1990:

Enclosed and identified as Exhibit No. 1 you will find a copy of the Carroll County income tax check-off check in the sum of \$450.00; because the check was a cashiers check drawn on the Citizens Banking Company, the Carroll County Republican organization did not have the cancelled check. This photocopy was obtained by the Carroll County Republican organization directly from the Citizens Banking Company and subsequently forwarded to the Ohio Republican Party. The endorsement on this check will confirm its receipt and deposit by the Ohio Republican Party into its' Income Tax Check-Off Account.

A copy of the Scioto County Republican organization's check in the sum of \$800.00 is also enclosed; it is marked for identification purposes as Exhibit No. 2. The photocopies

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provided to the Ohio Republican Party by the Scioto County organization reflect two counter checks drawn on Bank One of Portsmouth. The non-numbered check dated March 20, 1990 was drawn against the Scioto County State Party Account as the remitter, is in the sum of \$1,000.00 and was deposited into the Ohio Republican Party's state campaign account. The other check reflected on the photocopy (also not numbered), bears the date of August 27, 1990 and is in the sum of \$800.00. This draft was deposited into the Ohio Republican Party's Income Tax Check-Off Account as disclosed on the back of the check. This information confirms the Ohio Republican Party's receipt and deposit into the Income Tax Check-Off Account of these checks which total the sum of \$1,250.00.

B. 1990 Expenditure of Tax Check-Off Moneys:

1. Schedule A, attached and identified as Exhibit No. 3, reflects the deposit of \$335,513.10 into the Payroll Account from the Income Tax Check-Off Account. The deposit of this sum is not in dispute insofar as your letter discloses. The attached schedule documents the expenditure of \$335,513.10 through the Payroll Account in satisfaction of headquarters staff salaries. The numerous checks which are represented on Schedule A are available to examination but have not been photocopied considering their large number. The identity of the headquarters staff whose salaries were paid from the Income Tax Check-Off Account, along with their respective salaries paid from such monies, are set forth below each transfer. The balance of \$294,975.64 represents the net pay to each employee; the difference between the \$335,513.10 and the \$294,975.64 [\$40,537.46] consists of a portion of the employee and employer taxes withheld and paid to various tax authorities.

The sum of \$84,841.07 represents state and federal campaign funds which were deposited into the zero-sum balance payroll account in satisfaction of the payroll paid to the campaign staff retained by the Ohio Republican Party but contributed as in-kind contributions to various statewide candidates, and also to supplement the balance of the headquarters staff payroll and taxes.

As has been explained on several occasions in the past eight months, ADP, Inc. acted as the payroll administrator for the Ohio Republican Party through the end of 1990. The Ohio Republican Party deposited money into a zero-sum balance account. A copy of the client account agreement with ADP, Inc. is attached and identified as Exhibit No. 4. ADP, Inc., as the only entity authorized to make any withdrawal, would then withdraw the funds necessary to pay the salaries of the headquarters and campaign employees. In this regard ADP, Inc. processed the salaries for the headquarters staff as well as the campaign staff employed by the Ohio Republican Party. The Income Tax Check-Off Account was used in whole or in part to satisfy nine of twenty-four payrolls¹ for the headquarters staff. These checks are also available for examination but have not been photocopied due to the large number of checks which are

¹June 14, 1990 (\$43,358.57); June 28, 1990 (\$31,670.42); July 27, 1990 (\$48,471.03); August 14, 1990 (\$50,071.01); August 29, 1990 (\$46,588.98); September 13, 1990 (\$30,000.00); October 12, 1990 (\$45,078.19); October 29, 1990 (\$38,000.00); November 30, 1990 (\$2,274.81) for a total of \$335,513.10.

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involved. [It is our understanding that the checks which confirm the sums noted here and in verification of the checks summarized on Schedule A, above, were audited by Deputy Auditor Brachman during the course of his ten month audit.] Additional funds from the campaign account were transferred into the Payroll Account to satisfy the salaries of the campaign employees. In effect, the Ohio Republican Party's transfers to the Payroll Account for payroll were to ADP, Inc. as the vendor which would in turn prepare the individual employees pay checks. This is the usual and customary business practice when utilizing the services of a payroll administration company. No commingling of funds occurred in this regard as the source of the funds were clearly identifiable and the deposits were to an account controlled by the vendor of payroll services, in effect the ultimate recipient of the funds.

[Audit - Page Three]

2.

A. Your audit discusses only \$514,651.00 as deposits into the payroll account during 1990. In fact, during 1990, \$1,143,516.84 was deposited into the Payroll Account administered by ADP, Inc. Net payroll and debits deposited directly to employees' personal bank accounts or paid for local, state and federal tax filings, plus ADP, Inc.'s administrative fees, totalled \$1,150,051.70. Please see the bank statements for Account No. 840866587 for BancOhio National Bank entitled "Ohio Republican Party Payroll Account" attached and identified as Exhibit No. 5. The net payroll and taxes paid for the headquarters staff is reflected in the total sum withdrawn from this account over the course of 1990. The figure of \$1,150,051.70 is confirmed by totalling the checks and debits for the each of the BancOhio Nation Bank statements for the Ohio Republican Party Payroll Account [Account No. 840866587] for the year 1990. The expenditure of the sums reflected on the bank statements for headquarters staff only is verified by the ADP, Inc. fourth quarter annual compilation for such headquarters staff.²

²The identity of the campaign employees lent to various statewide campaigns, and their respective net pay for 1990, consist of the following individuals: Jeff Bankey (\$5,852.71), Christy Bixler (\$7,606.99), Stephen Carney (\$5,701.32), Collen O'Brien (\$7,973.27), Banu Ozer (\$6,568.98), Dan Schnur (\$2,379.53), Stratford Shields (\$10,452.36) and Maria Weirick (\$3,578.23). Stratford Shields was the political director of the Ohio Republican Party for the first and second quarters of 1990 and the first three payrolls for the third quarter of the year. Thereafter, he transferred to the campaign staff and was an in-kind employee paid from the Ohio Republican Party's campaign funds and lent to the Voinovich for Governor Committee. The sums associated with each individual represents the salaries paid to them from campaign funds. The total of their salaries is \$50,113.39. Schedule A, attached hereto and identified as Exhibit No. 3, addresses the nine payrolls which involved Income Tax Check-Off Account monies and do not necessarily concern periods in which the eight individuals noted above were employed on the campaign staff.

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B. The Ohio Republican Party has obtained from ADP, Inc. the quarterly payroll records and quarterly tax reports compiled and maintained in conjunction with the company's administration of the party's payroll. They are attached for your examination and are marked for identification purposes as Exhibit No. 6. The net payroll checks as reflected on the bank statements added to the quarterly tax reports equals the sum of \$1,150,051.70. The total net payroll paid to the headquarters staff was \$768,354.42; the net payroll paid to campaign employees was \$50,113.39 and the net taxes paid for both groups of employees represents the balance of funds processed through the account. With the data presently available to the Ohio Republican Party it is not possible to break down the taxes into those paid for headquarters staff and campaign employees, however, the payroll administrator, ADP, Inc. can break down those sums if necessary. As previously explained, ADP, Inc. prepared and issued the W-2 forms to the employees as a component of its services to the Ohio Republican Party. Upon inquiry, the Ohio Republican Party was advised that copies are not now available from the payroll administrator. The Ohio Republican Party remains puzzled by the auditor's request for W-2 forms inasmuch as they do not reflect the employer's share of various taxes and likewise do not disclose the administrative fee paid to ADP, Inc. for its costs; an examination of W-2 forms alone would not balance the funds processed by ADP, Inc. because of the employer's tax contributions, costs associated with employee fringe benefits, administrative fees, etc..

[Audit -Page Four]

C. Deposits to the Income Tax Check-Off Account, 1991:

Enclosed is a copy of the Mercer County Republican organization check in the sum of \$650.00 which was deposited into the Ohio Republican Party's Income Tax Check-Off Account at BancOhio National Bank. This check, combined with the Carroll County and Scioto County checks discussed on page 2, above, confirms that each of these counties' Income Tax Check-Off Account checks were sent to the Ohio Republican Party and deposited into the state party's Income Tax Check-Off Account. A copy of the Mercer County Republican organization check is attached and identified as Exhibit No. 7.

D. 1991 Expenditures of Tax Check-Off Moneys:

A. The sum of \$52,384.87 alleged by the auditor to have been deposited into the Payroll Account was in fact made payable directly to Tailored Management Services, Inc. A copy of the service agreement with Tailored Management Services, Inc. is attached and identified as Exhibit No. 8. Further, see check no. 1057 in the sum of \$40,384.87 and check no. 1059 in the sum of \$12,000.00 attached hereto and jointly identified as Exhibit No. 9. The allegation that this money was "deposited into the Party's Payroll Account" is meritless and without truthful foundation.

B. Schedule B, attached hereto and identified as Exhibit No. 10, reflects a schedule of transfers from the Income Tax Check-Off Account into the federally mandated Allocation Account in the amount of \$203,455.76 for support of the headquarters and the headquarters staff. Exhibit No. 11 consists of a roster of the headquarters staff employees, along with the title of their respective position, who received funds as reflected on Exhibit No. 10. Due to a

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change in federal election law which went into effect in 1991, all expenditures made for the support of the headquarters, headquarters staff, etc. had to be reported to the Federal Elections Commission and allocated pursuant to a formula between state and federal purposes. [See 11 CFR Parts 102, 104 and 106, with comments attached hereto and identified as Exhibit No. 12.] The amended FEC regulations also require that all expenditures made for administrative costs associated with the maintenance of a state party's headquarters, staff, etc. be made from an "Allocation Account".

The official comments for the federal finance election law amendments, which explain the operation of the amended FEC regulations, provide in material part that:

Paragraph 106.5(a) General Rules

This paragraph provides a general overview of the allocation rules for party committees and defines the four categories of activity for which costs are to be allocated. These include administrative expenses, fundraising programs, exempt activities conducted by state and local parties, and generic voter drive activity

Paragraph 106.5(d) State and Local Party Committee; Method for Allocating Administrative Expenses and Costs of Generic Voter Drive Activity.

This paragraph sets forth the rules by which state and local party committees are to allocate their administrative expenses and costs of generic voter drive activity. *** The second procedure would allow committees to establish a separate allocation account (referred to previously as an "escrow account"), which is considered by the Commission to be a federal account, and to transfer funds to that account from their regular federal accounts and their non-federal accounts solely for the purposes of paying allocable expenses.

Under both procedures, transfers of non-federal funds must be itemized in the committee's reports to show the allocable expenses for which they are intended to pay, and must occur within ten days before or thirty days after the bills for those activities are paid. *** It should also be noted that the new rules allow committees to transfer funds to their federal account or allocation account prior to actual payment of a vendor's bill, as well as allowing reimbursement of those accounts after the bill has been paid.

The procedures contained in paragraph 106.5(g) are intended to provide committees the flexibility to make single payments to their vendors, rather than requiring that every expense be paid with two separate checks. Such flexibility is indispensable for committees paying large numbers of bills from many different vendors. In fact, the new rules have eliminated the two-check option altogether, as that procedure does not provide sufficient disclosure of how funds allocated for shared federal and non-federal activity are actually spent. Instead, committees must choose from the two payment procedures authorized by the new allocation rules.

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The Federal Elections Commission regulations noted above mandate that all expenditures for headquarters, headquarters staff, etc., must be paid through a required federal "Allocation Account". Pursuant to the supremacy clause of the United States Constitution, conflicts between state and federal law must comply with the federal mandates. See: United States Constitution, Article VI, Clause 2; See also: Ray v. Atlantic Richfield Co., 435 U.S. 151, 157-58, 98 S.Ct. 988, 994 (1978).

C. See Schedule B, noted above. The audit does not question the expenditure of \$30,072.33 for payment of office rent as expressly authorized by R. C. §3517.08; we will therefore assume that the auditor agrees that such payments are an appropriate use of Income Tax Check-Off funds.

D. On April 3, 1991, the Ohio Republican Party hosted a fundraising reception at which United States Environmental Protection Agency Administrator Reilly spoke. The receipts from the reception were used for the support of the headquarters and staff of the Ohio Republican Party.

On December 11, 1989, the Ohio Elections Commission issued Advisory Opinion No. 89-6, which provided in the syllabus in part that:

Money from the Ohio Political Party Fund may be used to pay for administrative expenses associated with a party fund-raising drive. These include expenses related to the management of the event or activity, such as staff salaries, supplies and equipment, and the costs of food, entertainment, decorations, invitations, and the rental of a facility.

[A copy of Ohio Elections Commission Advisory Opinion No. 89-6 (identified as Exhibit No. 14), is attached for your examination.]

The April 3, 1991 event took place at the Union Club in Cleveland, Ohio. Mr. Frank Mosier is a member of the club and acted as the host of the reception; the \$2,350.00 payment to Mr. Mosier was reimbursement of the costs of food, facility rental, etc., which had been billed to his club account. [A copy of the check used to reimburse Mr. Mosier, the check request form and the invoice from the Union Club, etc., are attached for your examination.]

E. On January 13, 1991, in conjunction with the Inaugural Gala for Governor Voinovich, a party fundraiser and reception was held at the Ohio Theater at which Bob Hope performed. The receipts from this reception were used for the support of the Ohio Republican Party headquarters and for headquarters' staff salaries. See Ohio Elections Commission Advisory Opinion No. 89-6, attached hereto. [Copies of the invoice, check request form, etc., are attached and identified as Exhibit No. 15.]

F. On April 19, 1991, the members of the Ohio Republican Party State Central and Executive Committees, and the respective county chairmen for the eighty-eight counties, attended a joint meeting at the Governor's Residence. The purpose of the meeting was to discuss the

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activities of the Ohio Republican Party with its senior leadership. Beverages and food were served during the course of the meeting. R. C. §3517.08(B) expressly authorizes the expenditure of Income Tax Check-Off Account funds for such purposes. See R. C. §3517.08(B). [Copies of the invoices, check request form, etc., are attached and identified as Exhibit No. 16.]

[Audit - Page Five]

G. No complaint was raised in the audit concerning the expenditure of \$300.00 for consulting fees.

H. No complaint was raised in the audit concerning the expenditure of \$1,392.00 for postage.

I. No complaint was raised in the audit concerning the reconciliation of the Ohio Republican Party's Income Tax Check-Off Account by the sum of \$500.00.

J. No complaint was raised in the audit concerning the use of \$52.86 for incurred bank charges.

In light of the fact that no misuse of funds was alleged in ¶¶ G, H, I and J, the Ohio Republican Party will not respond.

[Audit - Page Seven]

5.

A. The difference between the W-2 forms for the Ohio Republican Party's employees and the payroll-related expenses disclosed to the Federal Elections Commission on FEC Form 3X (Allocation Account), consists of employer tax contributions, Tailored Management Services, Inc.'s administrative fees, pre- and post-tax retirement contributions (both employee and employer), etc. It is not possible for the Ohio Republican Party to respond in detail to this apparent complaint because no specific details are set forth in the audit report as to the specific nature of the complaint, if any.

B.

1. The Ohio Republican Party's Executive and Central Committee adopted the following resolution, in part, on February 22, 1991:

WHEREAS, the Chairman and Vice Chairman Review Committee has, per Article IV, Section 8 of the Rules of the Ohio Republican State Central and Executive Committee, met to review the salary and other matters relating to the duties of the Chairman and Vice Chairman; and

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WHEREAS, the Chairman and Vice Chairman Review Committee has recommended changes in the salary and expenses relating to those offices;

NOW THEREFORE, BE IT RESOLVED:

* *The salary of the Chairman of the Ohio Republican Party shall match that of the Governor of Ohio for the next two years -- \$100,000 in 1991 and \$105,000 in 1992. (Article III, Section 1. (c) in the rules of the Ohio Republican Party states that the Chairman shall be paid a salary not less than that of the Governor and not more than that of a United States Senator. A U.S. Senator currently makes \$101,900 per year.)*

* *The Chairman's housing allowance shall be increased by \$6,000 per year (the current allowance is \$18,000 per year).*

* *The effective date of the salary increases shall be January 1, 1991.*

Passed: January 15, 1991

/s/

Carroll J. Myers
Committee Chairman

A copy of the February 22, 1991 Minutes of Meeting; Republican State Central and Executive Committee of Ohio, are attached hereto and are identified as Exhibits No. 17. The \$7,500.00 paid to 634 South Grant Avenue Partners was paid as follows: \$4,500 paid on April 19, 1991 (\$1,500 for each of January, February and March, 1991), \$1,500.00 paid on June 7, 1991 and \$1,500.00 paid on July 3, 1991. The memorandum for each check discloses that the expenditure was debited against the Ohio Republican Party Chairman Robert T. Bennett's housing allowance as provided by the terms of his compensation agreement with the Ohio Republican Party Executive and Central Committee. These sums were expended for materials incorporated into the house in which Chairman Bennett now resides during the time that the house was being prepared for occupancy. While Chairman Bennett owns the house located at 636 South Grant Street individually, some of the materials incorporated into the house and property were purchased from 634 South Grant Avenue Partners because of the fact that the partnership (in which Chairman Bennett is an inactive investor), is in the business of building and renovating residences and realized a substantial savings by purchasing materials through the partnership. Chairman Bennett spends his full time and attention to the duties, responsibilities and business of the Ohio Republican Party. As a consequence of the fact that Mr. Bennett is

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a resident of Cuyahoga County, he by necessity must maintain a domicile in or near Columbus, the site of the headquarters of the Ohio Republican Party. Similar arrangements concerning housing allowances have been made with previous chairmen who resided in portions of the state other than Columbus or its nearby suburbs.

2. Enclosed are checks totalling the sum of \$29,400.00 made payable directly to Ohio Republican Party Chairman Robert T. Bennett. Each of the checks were allocated either to the Chairman's office related expense reimbursements or salary or housing allowance as provided by the terms of his compensation package. [These checks are attached and identified as Exhibit No. 18.]

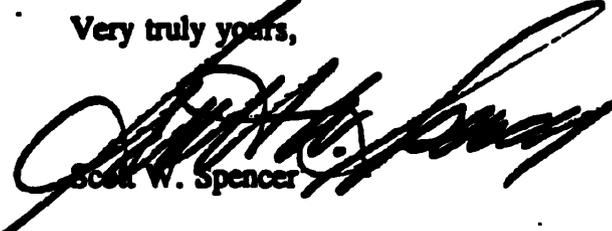
3. Each of the six checks which total \$3,912.79 were allocated against the housing allowance provided by the terms of Chairman Bennett's compensation package.

6. [sic] These matters were addressed on page no. six, above.

After your office has had the opportunity to review the details of the information contained in this response, representatives of the Ohio Republican Party are available and prepared to participate in an exit conference, which we are formally requesting in the event your office chooses to proceed with this audit. Arrangements for such an exit conference can be made by contacting Scott W. Spencer of this office at the address and telephone number above.

Thank you for the courtesy of granting us the nominal extension of time within which to respond.

Very truly yours,


Scott W. Spencer

Encls.

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THOMAS E. FERGUSON

AUDITOR OF STATE

P.O. Box 1140 • Columbus, Ohio 43266-0040 • (614) 466-4514

Ohio Republican Party
172 East State St. 4th Floor
Columbus, OH 43215

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We have audited the Ohio Political Party Funds deposited into and expended from the Income Tax Check-Off Account (ITCA) of the Ohio Republican Party (Party) as of December 31, 1990 and 1991 and for the years then ended. The ITCA is the responsibility of the Party's management. Our responsibility is to audit these public moneys pursuant to Section 3517.17, Revised Code.

Section 3517.17 Revised Code requires our audit to determine whether the public moneys collected during calendar year 1990 and 1991 were expended by the Party from the ITCA according to law. Our audit would normally include examining evidence supporting the amounts expended from the ITCA. Section 3517.18, Revised Code, provides the purposes for which the Party may expend these public moneys.

Compliance with laws and regulations applicable to Income Tax Check Off moneys is the responsibility of the Party's management. Our responsibility is to examine evidence about the Party's compliance with Income Tax Check Off moneys pursuant to the Revised Code.

On June 26, 1992 our office sent the Party an engagement letter informing them of our audit of the Party's ITCA and those moneys deposited and expended from it for the period January 1, 1990 through December 31, 1991. Within our letter the following documents and records were requested:

1. Copies of all payrolls for employees paid with tax check-off moneys.
2. Copies of all Federal, State, and local payroll tax reports, both quarterly and annual.
3. Copies of all employees W-2 forms.
4. Supporting documentation for all expenditures for goods and services.

From August 4, 1992, our first day of field work, until September 1, 1992, the party was unable or unwilling to furnish us all the supporting records or documents requested above to enable us to audit Income Tax Check Off moneys as required by Section 3517.17 Revised Code. During this period the Party only provided the following records or documents:

1. A copy of the Party's 1990 and 1991 general ledger, that portion denoting only deposit totals and summary posting of checks to the Income Tax Check-Off account.

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2. A copy of the Party's 1990 general ledger, that portion denoting only deposits and disbursements to the Party's Payroll account.
3. Cancelled checks and bank statements for both accounts.

Prior to the Party expending the majority of Income Tax Check Off moneys for a specific purpose, these monies were withdrawn from the Income Tax Check-Off account and deposited with other moneys in the payroll account in 1990, and with other moneys in the operating account in 1991.

On September 2, 1992, and again on September 30, 1992, our office, pursuant to Section 117.18 Revised Code, issued subpoenas to the Party's Chairman, Mr. Robert Bennett, and to other Party employees to produce the following records by September 8, 1992 and again by October 5, 1992.

1. Any and all supporting detail invoices of all 1990 and 1991 disbursements from the payroll account, operating account and tax check-off account.
2. Missing June 1991 bank statement for the operating account.
3. Any and all copies of all payrolls (leased or unleased) paid through the income tax check-off account and the operating account for 1990 and 1991.
4. Any and all copies of all payroll tax reports in which all payrolls (leased and unleased) were included in reporting to local state and federal authorities.
5. Bank statements, cancelled checks, check copies, receipt documentation disbursement and receipt journals for the payroll account for 1990 and 1991.

Also on September 2, 1992, Scott Spencer, who identified himself as Legal Counsel for the Party, said to the assistant auditor assigned to the audit that he had received all the information he was going to get, that he would receive no more data to audit, and that he was creating an imposition on the Party by using their space.

Mr. Robert Bennett and the other Party employees did not produce the subpoenaed records to the Auditor of State as required by Section 117.18 Revised Code. Therefore, on September 18, 1992 the Ohio Attorney General filed in the Common Pleas Court, Franklin County, a Petition to Compel Production of Records, pursuant to Section 117.18 of the Revised Code, compelling Mr. Robert Bennett, Chairman of the Party, to deliver to the Auditor of State the documents requested in the subpoena duces tecum issued by the Auditor of State September 2, 1992.

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On December 1, 1992, in a meeting with representatives of the Party, the Auditor of State and a representative of the Ohio Attorney General, the Party agreed to allow us to look at the information in the operating account and payroll account since the majority of Income Tax Check Off moneys was commingled with other moneys in the payroll and operating accounts before being expended for a specific purpose.

Contrary to the above meeting, and after more written requests, made between December 1992 and March 1993, for documents and records, the Party was still unable or unwilling to provide all the documents and records needed for us to determine the actual purpose on the majority of moneys expended from the ITCA.

On March 24, 1993, the Party was notified they had until March 31, 1993 to respond to or schedule an exit conference concerning our draft report. This report was based only on the documents and records the Party had provided us as of March 24, 1993. On March 31, 1993, Scott Spencer, Legal Counsel, requested an extension until April 19, 1993, to either respond to or request an exit conference. This request was granted.

On April 19, 1993, the Party provided our office a ten page written response along with eighteen (18) exhibits totalling two-hundred thirty-six (236) pages. Below are the results of our audit based on the records originally provided by the Party, and those records provided in their April 19, 1993 response.

A. Deposits to the Income Tax Check-Off Account

1. Calendar Year 1990 Deposits:

The Party deposited into its Income Tax Check-Off Account, the following moneys during calendar year 1990.

State Distributions	\$ 284,034.50
County Distributions	43,595.84
Certificate of Deposit Proceeds	<u>57,701.95</u>
Total	\$ 385,332.29

Verification of County contributions to the Party disclosed the following:

\$1,250.00 in contributions from the following two counties were not reported to the Secretary of State as required by Section 3517.17 Revised Code, or deposited into the ITCA by the Party as required by Section 3517.17 Revised Code.

A. Carroll County	- \$ 450.00
B. Scioto County	- <u>800.00</u>
Total	\$ 1,250.00

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A. Deposits to the Income Tax Check-Off Account continued

1. Calendar Year 1990 Deposits: continued

Revised Code Section 3517.17 (A)(2) states in part:

"...Each party treasurer receiving public moneys from the Ohio political party fund shall maintain such moneys in an account separate from all other assets of the political party and shall file statements of contributions and expenditures as required by sections 3517.10 and 3517.11 of the Revised Code. Each treasurer of a state executive committee who files such a statement shall file it with the secretary of state...."

As an exhibit to the Party's response, dated April 19, 1993, the Party provided a photocopy of the front side of the \$450.00 check from Carroll County. The Party stated within their response, page 49 of this report that:

"...The endorsements on this check will confirm its receipt and deposit by the Ohio Republican Party into its' Income Tax Check-Off Account."

Verification with BancOhio, now National City Bank, disclosed that this check was actually deposited into the Ohio Republican Party Campaign Account.

Also as an exhibit to the Party's response, dated April 19, 1993, they provided a photocopy of the \$800.00 check from Scioto County. The Party stated within their response, page 50 of this report that:

"...This draft was deposited into the Ohio Republican Party's Income Tax Check-Off Account as disclosed on the back of the check."

Verification with BancOhio, now National City Bank, disclosed that this check was actually deposited into the Ohio Republican Party Campaign Account.

As of the date of this report the \$1,250.00 has not been transferred to the Ohio Income Tax Check-Off Account, or reported to the Secretary of State.

Ohio Elections Commission's Advisory Opinion No. 89-6 states:

"Moneys from the Ohio Political Party Fund may be transferred from the county executive committee to the state party, but only to the state party's segregated public funds account. Such transferred funds may only be used for the purposes permitted by Ohio Revised Code Section 3517.18(A)."

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Ohio Republican Party

Page 5

A. Deposits to the Income Tax Check-Off Account continued

2. Calendar Year 1991 Deposits:

The Party deposited into its Income Tax Check-Off Account, the following tax check-off moneys during calendar year 1991.

State Distributions	\$ 265,751.00
County Distributions	28,099.50
Reimbursements	<u>448.00</u>
Total	\$ 294,298.50

Verification of county contributions to the Party disclosed the following:

\$ 650.00 reported as being contributed from Mercer county was not reported to the Secretary of State as required by Section 3517.17 Revised Code or deposited into the Party's Tax Check-Off Account as required by Section 3517.17 Revised Code.

Revised Code Section 3517.17 (A)(2) states in part:

"...Each party treasurer receiving public moneys from the Ohio political party fund shall maintain such moneys in an account separate from all other assets of the political party and shall file statements of contributions and expenditures as required by sections 3517.10 and 3517.11 of the Revised Code. Each treasurer of a state executive committee who files such a statement shall file it with the secretary of state...."

As an exhibit to the Party's response, the Party provided a photocopy of the \$650.00 check from Mercer County. The Party stated within their response, page 52 of this report that:

"Enclosed is a copy of the Mercer County Republican organization check in the sum of \$650.00 which was deposited into the Ohio Republican Party's Income Tax Check-Off Account at BancOhio National Bank..."

Verification with BancOhio, now National City Bank, disclosed that this check was actually deposited into the Ohio Republican Party Campaign Account.

As of the date of this report the \$650.00 has not been transferred to the Ohio Income Tax Check-Off Account, or reported to the Secretary of State.

Ohio Elections Commission's Advisory Opinion No. 89-6 states:

"Moneys from the Ohio Political Party Fund may be transferred from the county executive committee to the state party, but only to the state party's segregated public funds account. Such transferred funds may only be used for the purposes permitted by Ohio Revised Code section 3517.18(A)."

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A. Deposits to the Income Tax Check-Off Account continued

2. Calendar Year 1991 Deposits: continued

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Conclusion:

Based on the above facts we conclude that:

1. \$1,900.00 of public moneys remitted to the Party by County Parties in 1990 and 1991 were not deposited into the Income Tax Check-Off Account, and
2. These public moneys were not reported to the Secretary of State.

We recommend the Party confirm contributions with each county to ensure all contributions of public moneys are received and deposited into the Income Tax Check-Off Account, and properly reported to the Ohio Secretary of State.

Based on the above facts this information will be forwarded to the following agencies for their review:

1. The Ohio Elections Commission
2. The Ohio Secretary of State

B. Expenditure of Tax Check-Off Moneys:

1. Calendar Year 1990 Expenditures:

In calendar year 1990, \$383,929.13 was expended from the Income Tax Check Off Account as follows.

- A. \$335,513.10 was subsequently deposited into another Party account titled the Ohio Republican Party Payroll Account (Payroll Account).
 - B. \$48,403.88 was for office rent, and
 - C. \$12.15 was payment for bank service charges.
- A. The \$335,513.10 deposited into the Party's Payroll Account could not be audited to determine if those moneys were expended in accordance with law as required by Section 3517.17 Revised Code. Even though staff salaries are legitimate expenses under Section 3517.18 Revised Code, Income Tax Check-Off moneys were deposited into and commingled with other moneys in the Party's Payroll Account. Also, since the Party was unable or unwilling to provide us with the supporting records or documents to verify the actual use of Tax Check-Off moneys, and to confirm that employees paid

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B. Expenditure of Tax Check-Off Moneys: continued

1. Calendar Year 1990 Expenditures: continued

with Tax Check-Off moneys were not performing unallowable activities, the actual use and purpose of Income Tax Check-Off moneys expended through the Payroll Account could not be ascertained.

Our review of Political Party Public Funds Reports, filed with the Secretary of State, disclosed that the Party reported the \$335,513.10 as checks written to the Ohio Republican Party Payroll Account. Contrary to Section 3517.17 Revised Code, stated below, these reports did not denote the manner in which public moneys were expended.

Revised Code Section 3517.17 (A)(2) states in part:

"...Each party treasurer receiving public moneys from the Ohio political party fund shall maintain such moneys in an account separate from all other assets of the political party and shall file statements of contributions and expenditures as required by sections 3517.10 and 3517.11 of the Revised Code. Each treasurer of a state executive committee who files such a statement shall file it with the secretary of state.... All such statements filed shall clearly indicate the amounts of public moneys received and the manner of their expenditure. The auditor of state shall annually audit the statements of the state committee of a political party that has received public moneys collected during the previous year, to ascertain that such moneys are expended in accordance with law...."

Within the Party's response, dated April 19, 1993, pages 48 and 49 of this report, they stated in part:

"As a preliminary matter, it is important to note that the section of the Revised Code [R.C. 3517.17], which authorizes your office to conduct the instant audit provides that the audit is to be limited to funds received "during the previous year...." It is obvious..., that your office is required by law to conduct the audit "during the first quarter of each calendar year" and that the scope of the audit is limited to "moneys collected during the previous year...." The failure to comply with these mandatory provisions of the statute divests your office of jurisdiction to conduct an audit of the 1990 and 1991 moneys targeted by the instant effort. Neither the 1990 nor 1991 moneys which your audit address fall within the periods permitted to be audited at this time by R. C. 3517.17. Notwithstanding the fact that your office is without authority to conduct an audit of 1990, and 1991 (or 1992 for that matter), Income Tax Check-Off account moneys, the following information is voluntarily provided in an effort at cooperation and is an attempt to respond to the groundless allegations raised in the draft audit."

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B. Expenditure of Tax Check-Off Moneys: continued

1. Calendar Year 1990 Expenditures: continued

Section 3517.17 recited within the Party's response was changed in House Bill 298 effective July 26, 1991. This change eliminated the requirement that the Auditor of State shall audit the Party's public moneys collected in the previous year within the first quarter of each calendar year. The change now requires the Auditor of State to audit annually the moneys collected during the previous year.

As for including calendar year 1990 within the scope of our audit of the Party, the Auditor of State is required to audit public moneys when he has been made aware that those public moneys may have been misspent or misappropriated. Refer to sections within this report titled Calendar Year 1990 Deposits and Calendar Year 1990 Expenditures.

Based on the above facts, we conclude the Party:

- A. Violated Revised Code Section 3517.17 (A)(2) by not maintaining Tax Check-Off moneys in a separate account and by ultimately commingling Tax Check-Off moneys with other moneys in the Payroll Account before being expended for a specific purpose, and
- B. Failed to maintain proper accountability of Tax Check-Off moneys to ascertain that such moneys were expended in accordance with law.

Based on the above facts this information will be forwarded to the following agencies for their review:

1. The Ohio Elections Commission
2. The Ohio Secretary of State
3. The Ohio Attorney General

We recommend the Party:

- A. Maintain Tax Check-Off moneys and proper accountability over the actual use of those moneys in a separate account, and
- B. Return the \$335,513.10 to the Tax Check-Off Account until Party officials can provide documentation to verify the actual use of those moneys.

2. Records provided by the Party:

Our review of 1990 payroll documents provided by the Party denoted the following:

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B. Expenditure of Tax Check-Off Moneys: continued

2. Records provided by the Party: continued:

- A. Individual net payroll checks and direct deposits to employees processed through the Payroll Account, which included Income Tax Check-Off moneys, did not agree with the net payroll total per individual payroll records to be maintained by the Party's payroll processing company, ADP. Checks and direct deposits to employees processed through the bank totalled \$514,651.00, while individual payroll records totalled \$495,925.43 for a difference of \$18,725.57.
- B. Contrary to our written requests to the Party, copies of employees' Federal W-2 forms were not provided to us for review. On February 22, 1993 the Party stated in a memorandum that they contacted ADP for more payroll information and have been informed that ADP did not have records before 1991.

Based on the above facts, this information will be forwarded to the Internal Revenue Service for its review.

As exhibits to their April 19, 1993 response to our report, the Party provided the following information:

1. A printout of employees the Party claims were paid with Income Tax Check-Off moneys.
2. A client account agreement between the Party and BancOhio.
3. A copy of the Payroll Account bank statements from January 1990 through December 1990.
4. 1990 quarterly reports from ADP, their payroll processing company.

Also within the Party's response, page 50 of this report, they identified nine payrolls which they claim Income Tax Check-Off moneys were used in whole or in part for headquarter staff salaries. It wasn't until April 19, 1993, after the close of our audit, that the Party provided these documents and information. Contrary to subpoenas issued by our office, and written requests for documents to audit the actual use of Income Tax Check-Off moneys, the party either withheld these documents and information until responding to our report, or generated these documents and information during their extension to respond to our report.

Our review of these documents and information has determined that they still lack sufficient detail for us to audit Income Tax Check-Off moneys as required by Section 3517.17 Revised Code to ascertain that these moneys were expended in accordance with Section 3517.18 Revised Code.

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B. Expenditure of Tax Check-Off Moneys: continued

3. Calendar Year 1991 Expenditures:

In calendar year 1991, \$295,730.83 was expended from the Income Tax Check-Off Account as follows.

- A. \$52,384.87 was paid to Tailored Management Services.
 - B. \$203,455.76 was subsequently deposited into the Party's Operating Account (Operating Account).
 - C. \$30,072.33 was payment for office rent.
 - D. \$2,350.11 was payment to Frank E. Mosier for a reception in Cuyahoga County.
 - E. \$1,527.30 was payment to Made From Scratch Inc. for the Inagural Gala Catering.
 - F. \$3,695.60 was payment to Executive Catering for the Governor's reception.
 - G. \$300.00 was payment for consulting fees.
 - H. \$1,392.00 was payment for postage.
 - I. \$500.00 was to correct an erroneous deposit, and
 - J. \$52.86 was payment for bank service charges.
- A. The \$52,384.87 paid to Tailored Management Inc. could not be audited as required by Section 3517.17 Revised Code to ascertain that those moneys were expended in accordance with Section 3517.18 Revised Code. Even though staff salaries are legitimate expenses under Section 3517.18 Revised Code, the Party was unable or unwilling to provide us with the detailed accounting records to verify which employees were actually paid with this \$52,384.87 of Income Tax Check-Off moneys, or to confirm that employees paid with those Income Tax Check-Off moneys were not performing unallowable activities. Therefore, the legitimacy of this money paid to Tailored Management Inc. could not be ascertained as required by Section 3517.17 Revised Code.

Our review of Political Party Public Funds Reports, filed with the Secretary of State, denoted that the Party reported the \$52,384.87 as checks written to Tailored Management Inc. for employee leasing. Contrary to Section 3517.17 Revised Code, stated below, these reports did not denote the actual manner in which public moneys were expended.

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B. Expenditure of Tax Check-Off Moneys: continued

3. Calendar Year 1991 Expenditures: continued

Revised Code Section 3517.17 (A)(2) states in part:

"...Each party treasurer receiving public moneys from the Ohio political party fund shall maintain such moneys in an account separate from all other assets of the political party and shall file statements of contributions and expenditures as required by sections 3517.10 and 3517.11 of the Revised Code. Each treasurer of a state executive committee who files such a statement shall file it with the secretary of state.... All such statements filed shall clearly indicate the amounts of public moneys received and the manner of their expenditure. The auditor of state shall annually audit the statements of the state committee of a political party that has received public moneys collected during the previous year, to ascertain that such moneys are expended in accordance with law...."

Based on the above facts, we conclude the Party:

- A. Violated Revised Code Section 3517.17 (A)(2) by not maintaining accountability of the actual use of Income Tax Check-Off moneys to ascertain that such moneys were expended in accordance with law.

This information will be forwarded to the following agencies for their review:

- A. The Ohio Elections Commission
- B. The Ohio Secretary of State
- C. The Ohio Attorney General

We recommend the Party:

- A. Maintain Income Tax Check-Off moneys in a separate account and maintain accountability over those moneys to verify their actual use and purpose to ascertain if those moneys were expended in accordance with law, and
 - B. Return the \$52,384.87 to the Income Tax Check-Off Account until Party officials can provide documentation to verify the actual use and purpose of those moneys.
- B. The \$203,455.76 deposited into the Operating Account was commingled with \$1,724,332.82 of deposits from other Party accounts. Those other Party accounts which had moneys deposited into the Operating Account were:

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B. Expenditure of Tax Check-Off Moneys: continued

3. Calendar Year 1991 Expenditures: continued

1. Ohio Republican Party Campaign Account
2. Federal Candidates Campaign Committee
3. Ohio Republican Party Cardinal Club Account
4. Ohio Republican Party Legislative Account
5. Ohio Republican Party Federal Achievement Account

In our requests for the Party to provide documents or accounting records to ascertain the actual use of the \$203,455.76, the Party was unable or unwilling to furnish those documents or records.

Our review of Political Party Public Funds Reports, filed with the Secretary of State, disclosed that the Party reported the \$203,455.76 as checks written to the Ohio Republican Party Operating Account. Contrary to Section 3517.17 Revised Code, stated below, these reports did not denote the manner in which public moneys were expended.

Revised Code Section 3517.17 (A)(2) states in part:

"...Each party treasurer receiving public moneys from the Ohio political party fund shall maintain such moneys in an account separate from all other assets of the political party and shall file statements of contributions and expenditures as required by sections 3517.10 and 3517.11 of the Revised Code. Each treasurer of a state executive committee who files such a statement shall file it with the secretary of state.... All such statements filed shall clearly indicate the amounts of public moneys received and the manner of their expenditure. The auditor of state shall annually audit the statements of the state committee of a political party that has received public moneys collected during the previous year, to ascertain that such moneys are expended in accordance with law...."

As exhibits to their April 19, 1993 response the Party provided the following:

1. A schedule showing checks written from the Income Tax Check-Off Account, denoting them as only transfers to allocation, and checks written from the Federal Allocation Account.
2. A list of Employees with their position title, but no information or documents to determine which pay periods these employees were paid with Income Tax Check-Off moneys, or what specific activity these employees were performing.

These exhibits collectively do not allow us to ascertain how moneys from the Income Tax Check-Off Account were actually expended.

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- B. Expenditure of Tax Check-Off Moneys: continued
3. Calendar Year 1991 Expenditures: continued

Within the Party's response, pages 52, 53 and 54 of this report they stated:

"...Due to a change in federal election law which went into effect in 1991, all expenditures made for the support of the headquarters, headquarters staff, etc. had to be reported to the Federal Elections Commission and allocated pursuant to a formula between state and federal purposes. [See 11 CFR Parts 102, 104 and 106, with comments attached hereto and identified as Exhibit No. 12.] The amended FEC regulations also require that all expenditures made for administrative costs associated with the maintenance of a state party's headquarters, staff etc. be made from an "Allocation Account"...

The Federal Elections Commission regulations noted above mandate that all expenditures for headquarters, headquarters staff, etc., must be paid through a required federal "Allocation Account". Pursuant to the supremacy clause of the United States Constitution, conflicts between state and federal law must comply with the federal mandates. See: United States Constitution, Article VI, Clause 2; See also: Ray v. Atlantic Richfield Co., 435 U.S. 151, 157-58, 98 S.Ct. 988, 994 (1978)."

11 CFR Part 106.5 (g)(2)(A) states:

"For each such transfer, the committee must itemize in its reports the allocable activities for which the transferred funds are intended to pay, as required by 11 CFR 104.10(b)(3);"

11 CFR Part 104.10 (b)(3) states:

A political committee that pays allocable expenses in accordance with 11 CFR 106.5(g) or 106.6(e) shall report each transfer of funds from its non-federal account to its federal account or to its separate allocation account for the purpose of paying such expenses. In the report covering the period in which each transfer occurred, the committee shall explain in a memo entry the allocable expenses to which the transfer relates and the date on which the transfer was made. If the transfer includes funds for the allocable costs of more than one activity, the committee shall itemize the transfer, showing the amounts designated for administrative expenses and generic voter drives, and for each fund raising program or exempt activity,..."

11 CFR Part 104.10 (b)(5) states:

"Recording. The treasurer shall retain all documentation supporting the committee's allocated disbursements for three years, in accordance with 11 CFR 104.14."

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B. Expenditure of Tax Check-Off Moneys: continued

3. Calendar Year 1991 Expenditures: continued

11 CFR Part 104.14 (b)(1) states:

"Maintain records, including bank records with respect to the matters required to be reported, including vouchers, worksheets, receipts, bills and accounts, which shall provide in sufficient detail the necessary information and data from which the filed reports and statements may be verified, explained, clarified, and checked for accuracy and completeness"

Our Legal Counsel's review of Sections 3517.17 and 3517.18 Ohio Revised Code, sections within the Code of Federal Regulations Chapter 11, and United States Constitution, Article VI, Section 2, have concluded there exist no conflict between State law and Federal regulations concerning the accountability of Income Tax Check-Off moneys. They also concluded where Federal law allows commingling of moneys to pay expenditures, both State law and Federal regulations require complete and accurate accountability over the documents which support those expenditures, and the Party is still required by Section 3517.17 Revised Code to maintain accounting records and documents in a manner to enable auditors to ascertain the actual use of Income Tax Check-Off moneys.

As of the date of this report the Party has not provided all documents or records to allow us to ascertain the actual use and purpose of moneys expended from the Income Tax Check-Off Account as required by Section 3517.17 Ohio Revised Code.

Based on the above facts, we conclude the Party:

- A. Violated Revised Code Section 3517.17 (A)(2) by not maintaining Tax Check-Off moneys in a separate account and by ultimately commingling Tax Check-Off moneys with other moneys in the Operating Account before being expended for a specific purpose, and
- B. Failed to maintain proper accountability of Income Tax Check-Off moneys to ascertain that Income Tax Check-Off moneys were expended in accordance with law.

Based on the above facts, this information will be forwarded to the following agencies for their review:

- A. The Ohio Elections Commission
- B. The Ohio Secretary of State
- C. The Ohio Attorney General

We recommend the Party:

- A. Maintain Income Tax Check-Off moneys in a separate account and maintain accountability over those moneys to verify their actual use and purpose to ascertain if those moneys were expended in accordance with law, and

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B. Expenditure of Tax Check-Off Moneys: continued

3. Calendar Year 1991 Expenditures: continued

- B. Return the \$203,455.76 to the Income Tax Check-Off Account until Party officials can provide documents or records to verify the actual use and purpose of those moneys.
- C. In an attempt to determine if the actual use of Income Tax Check-Off moneys expended from the Operating Account complied with Section 3517.18 Revised Code we did an analysis of calendar year 1991 deposits to the Operating Account to determine if the dates of Income Tax Check-Off moneys deposited into the Operating Account could be matched to actual expenditure dates. We were unable to make this determination since Income Tax Check-Off moneys were deposited on the same dates as funds from the following accounts.
1. Ohio Republican Party Campaign Account
 2. Federal Candidates Campaign Committee
 3. Ohio Republican Party Cardinal Club Account
 4. Ohio Republican Party Legislative Account
 5. Ohio Republican Party Federal Achievement Account
- D. In conjunction with the above analysis we created a schedule of expenditures per vendor from the Operating Account for calendar year 1991. This schedule is included as an exhibit to this report, pages 21 through 46.
- E. Our review of expenditures from the Operating Account disclosed the following:
1. The Party had a service agreement with Tailored Management Services to lease all employees to the Party. In a January 26, 1993 request to the Party to review the Party's service agreement with Tailored Management Services, the Party responded in a memo dated February 22, 1993 that the contract with Tailored Management, Inc. is not material to an examination of the approximately \$200,000 received and subsequently spent from the income tax checkoff account. However, on February 26, 1993 the Party provided us a copy of this service agreement. Our review of this service agreement denoted that no provision was included for the accountability of Income Tax Check-Off moneys received by Tailored Management to pay leased employees.

Our further review and analysis of the Party's payroll compiled from the Federal Election Commission's 3X reports through December 31, 1991 disclosed the total payroll per employee did not equal each individual employee's Federal W-2 forms prepared by Tailored Management Services.

Based on the above facts, this information will be forwarded to the Internal Revenue Service for its review.

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- B. Expenditure of Tax Check-Off Moneys: continued
3. Calendar Year 1991 Expenditures: continued

2. \$40,812.79 was paid either to Robert T. Bennett directly, to one of his partnerships, or for services provided at his personal residence.
- A. \$7,500.00 was paid to 634 Grant Ave. Partners. A notarized Certificate of a General Partnership Transacting Business Under a Fictitious Name, dated June 29, 1990, obtained through public records from the Franklin County Recorder disclosed that Robert T. Bennett, chairman of the Ohio Republican Party, and Michael Braunstein are the sole partners of 634 Grant Avenue Partners. Public records obtained from the Franklin County Treasurer denoted that Mr. Robert T. Bennett signed a 634 Grant Avenue Partners' check on December 30, 1992. These records denoted that the mailing address for 634 Grant Avenue Partners' checking account is the same as the Republican State Headquarters, 172 East State St., Suite 400, Columbus, Ohio, 43215.

The Republican State Central and Executive Committee of Ohio Permanent Rules, Article III Section 1 (b) adopted December 6, 1991 states in part:

"The Chairman shall devote full time and attention to the duties, responsibilities and business of the Ohio Republican Party. The Chairman shall not, at any time, use his or her official position for private or personal financial gain, and shall not actively participate in any other business, occupation, or profession...."

The Party stated in their April 19, 1993 response, pages 56 and 57 of this report that:

"...The \$7,500.00 paid to 634 South Grant Avenue Partners was paid as follows: \$4,500 paid on April 19, 1991 (\$1,500 for each of January, February and March, 1991), \$1,500.00 paid on June 7, 1991 and \$1,500.00 paid on July 3, 1991. The memorandum for each check discloses that the expenditure was debited against the Ohio Republican Party Chairman Robert T. Bennett's housing allowance as provided by the terms of his compensation agreement with the Ohio Republican Party Executive and Central Committee. These sums were expended for material incorporated into the house in which Chairman Bennett now resides during the time that the house was being prepared for occupancy. While Chairman Bennett owns the house located at 636 South Grant Street individually, some of the material incorporated into the house and property were purchased from 634 South Grant Avenue Partners because of the fact that the partnership (in which Chairman Bennett is an inactive investor), is in the business of building and renovating residences and realized a substantial savings by purchasing materials through the partnership. Chairman Bennett spends his full time and attention to the duties, responsibilities and business of the Ohio Republican Party. As a consequence of the fact that Mr. Bennett is a resident of Cuyahoga County, he by necessity must maintain a domicile in or near Columbus, the site of the headquarters of the Ohio Republican Party...."

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- B. Expenditure of Tax Check-Off Moneys: continued
- 3. Calendar Year 1991 Expenditures: continued

B. \$29,400.00 was paid directly to Robert T. Bennett. Documentation to support these expenses was either incomplete or missing.

On April 19, 1993 the Party included as an exhibit to their response copies of twelve checks totalling \$29,400.00. These copies had denoted on them that payment was for living expenses and reimbursement. However, no documentation was included to determine the exact nature of these expenses.

The Party stated in their April 19, 1993 response, page 57 of this report that:

"Enclosed are checks totalling the sum of \$29,400 made payable directly to Ohio Republican Party Chairman Robert T. Bennett. Each of the checks were allocated either to the Chairman's office related expense reimbursements or salary or housing allowance as provided by the terms of his compensation package.

C. Forty-Seven checks totalling \$3,912.79, written from the Operating Account between January 1991 and December 1991, were written to pay utility and cable companies for service to Robert T. Bennett's personal residence at 636 South Grant Avenue, Columbus, Ohio.

A.	All American Cable,	-	\$ 437.04
B.	Columbia Gas of Ohio,	-	417.64
C.	Columbus City Water,	-	352.07
D.	Columbus and Southern Power,	-	1,654.05
E.	Ohio Bell, and	-	841.99
F.	Westinghouse Security Systems	-	<u>210.00</u>
	Total		\$ 3,912.79

The Party stated in their April 19, 1993 response, page of this report that:

"Each of the six checks which total \$3,912.79 were allocated against the housing allowance provided by the terms of Chairman Bennett's compensation package."

Since Tax Check-Off Moneys were commingled with other moneys in the Operating Account and the Party did not provide documents or accounting code information to determine how these checks were expended, we requested a copy of Robert T. Bennett's contract with the Republican Party for review to determine if the above expenses, paid directly by the Party, were allowable according to Mr. Bennetts' compensation package or Revised Code Section 3517.18. On February 22, 1993 the Party responded to our request by stating that Mr. Bennetts' employment contract with the Ohio GOP is not material to an examination of the approximately \$200,000

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B. Expenditure of Tax Check-Off Moneys: continued

3. Calendar Year 1991 Expenditures: continued

received and subsequently spent from the income tax checkoff account. However, on February 26, 1993 the Party provided us a copy of their permanent rules. A review of those rules did not address the payments made directly to Robert T. Bennett's partnership, or payments made directly to utility companies or service companies for services provided at his personal residence.

The Party stated in their April 19, 1993 response, page 56 of this report that:

"The Chairman's housing allowance shall be increase by \$6,000 per year (the current allowance is \$18,000 per year)...."

Passed: January 15, 1991"

Based on the above facts we conclude that:

1. Robert T. Bennett was an active partner in 634 Grant Avenue Partners while Chairman of the Party.
2. Payments were made by the Party directly to his partnership for materials to renovate his personal residence.
3. Payments were made by the Party directly to service companies and utility companies for services provided at his personal residence.
4. Mr. Bennett received directly or indirectly \$40,812.79 for possible living expenses while his housing allowance was only authorized to be \$24,000.00 for calendar year 1991.

Since Income Tax Check-Off moneys were commingled with other Party moneys in the Operating Account, and the Party was unable or unwilling to provide documents or records to support the actual use of Income Tax Check-Off money, and payments to his Partnership for renovation of his personal residence are not allowed expenses using Income Tax Check-Off moneys, this information will be forwarded to the following agencies for their review:

- A. The Franklin County Prosecutor
- B. The Ohio Elections Commission
- C. The Secretary of State
- D. The Ohio Attorney General
- E. The Internal Revenue Service

F. Our review of other expenses paid from the Income Tax Check-Off Account disclosed three payments totalling \$7,573.01 could not be ascertained as allowable per Revised Code Section 3517.18 based on the documents provided us during our field work. Those expenses are:

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B. Expenditure of Tax Check-Off Moneys: continued

3. Calendar Year 1991 Expenditures: continued

1. Check #1064 to Frank E. Mosier for \$2,350.11
2. Check #1065 to Made From Scratch Inc. for \$1,527.30
3. Check #1066 to Executive Catering for \$3,695.60

The Party stated in their April 19, 1993 response, pages 54 and 55 of this report that:

"On April 3, 1991, the Ohio Republican Party hosted a fund raising reception at which United States Environmental Protection Agency Administrator Reilly spoke. The receipts from the reception were used for the support of the headquarters and staff of the Ohio Republican Party.

On December 11, 1989, the Ohio Elections Commission issued Advisory Opinion No. 89-6, which provided in the syllabus in part that:

Money from the Ohio Political Party Fund may be used to pay for administrative expenses associated with a party fund-raising drive. These include expenses related to the management of the event or activity, such as staff salaries, supplies and equipment, and the costs of food, entertainment, decorations, invitations, and the rental of a facility.

The April 3, 1991 event took place at the Union Club in Cleveland, Ohio. Mr. Frank Mosier is a member of the club and acted as the host of the reception; the \$2,350.00 payment to Mr. Mosier was reimbursement of the costs of food, facility rental, etc., which had been billed to his club account. [A copy of the check used to reimburse Mr. Mosier, the check request form and the invoice from the Union Club, etc., are attached for your examination.]

On January 13, 1991, in conjunction with the Inaugural Gala for Governor Voinovich, a party fund raiser and reception was held at the Ohio Theater at which Bob Hope performed. The receipts from this reception were used for the support of the Ohio Republican Party headquarters and for headquarters' staff salaries. See Ohio Elections Commission Advisory Opinion No. 89-6, attached hereto. [Copies of the invoice, check request form, etc., are attached and identified as Exhibit No. 15.]

On April 19, 1991, the members of the Ohio Republican Party State Central and Executive Committees, and the respective county chairmen for the eighty-eight counties, attended a joint meeting at the Governor's Residence. The purpose of the meeting was to discuss the activities of the Ohio Republican Party with its senior leadership. Beverages and food were served during the course of the meeting. R. C. 3517.08(B) expressly authorizes the expenditure of Income Tax Check-Off Account funds for such purposes. See R. C. 3517.08(B). [Copies of the invoices, check request form, etc., are attached and identified as Exhibit No. 16.]"

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- B. Expenditure of Tax Check-Off Moneys: continued
3. Calendar Year 1991 Expenditures: continued

In connection with the Party's response they specifically stated that the April 3, 1991 and January 13, 1991 events were fund raising events in which the receipts from those functions were used for the support of the headquarters and staff of the Ohio Republican Party. In our review of deposits to the Income Tax Check-Off Account and reports filed with the Secretary of State no deposits were made to the Income Tax Check-Off Account nor was this information reported to the Secretary of State concerning receipts received from these events.

Ohio Elections Commission's Advisory Opinion No. 89-6, which provided in the syllabus in part, which the party did not recite in their response goes on to state:

"...The funds raised by the drive may not be used for any purpose prohibited by Ohio Revised Code section 3517.18(B) and may not be commingled with funds used by the party for supporting or opposing candidates or ballot issues."

Based on the above facts that the Party was unable or unwilling to provide records or documents to verify that those funds raised from those events were not deposited into an account used by the Party for supporting or opposing candidates or ballot issues, this information will be forwarded to the Ohio Elections Commission for its review.

Conclusion:

Of the \$679,659.96 expended from the Income Tax Check-Off Account during 1990 and 1991, the Party did not or could not provide us documents or records to ascertain whether \$598,926.74 was expended in compliance with Section 3517.18 Revised Code.

THOMAS E. FERGUSON, CFE
Auditor of State

March 10, 1993

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June 2, 1993

Thomas E. Ferguson, CFE
Auditor of State
P.O. Box 1140
Columbus, Ohio 43266-0400

Attn: David W. McGuckin, CFE
Audit Manager

Re: Ohio Republican Party
Ohio Political Party Fund Calendar
Years 1990 and 1991

Dear Messrs. Ferguson and McGuckin:

It is apparent from your draft reply to the April 19, 1993 response submitted to your office on behalf of the Ohio Republican Party that your office does not wish to allow the facts to get in the way of your politically motivated audit. That is not surprising given the fact that Mr. Ferguson is entering a re-election campaign while wounded by the now admitted fact that he engaged in a lengthy (and apparently coerced), improper affair with one of the auditor's office employees. The simple fact of the matter is that the Ohio Republican Party responded to each and every one of the allegations of the draft audit with detailed information which clearly establish the legal and appropriate expenditure of the funds in question. Moreover, two hundred thirty six pages of comprehensive supporting documentation were also voluntarily provided, notwithstanding the fact that the auditor's office is without authority to now audit monies received in 1990 and 1991. See R. C. §3517.17(A)(2), quoted at length in the April 19, 1993 response. Significantly, the auditor's office has not alleged that a single dollar of Income Tax Check-off Funds were improperly spent for campaign purposes. In fact, while the draft audit makes ominous (and gratuitous), comments concerning referrals to the Ohio Elections Commission, the Secretary of State, the Ohio Attorney General and the Internal Revenue Service, it does not allege that any monies expended from the Income Tax Check-off Fund program were for any purpose contrary to Ohio election law.

The concerns raised by the audit were answered by the April 19, 1993 response, with

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its' two hundred thirty-six pages of supporting documentation. Because the most recent allegations as set forth in your office's reply to that response (albeit ignoring the voluminous documentation in support), are simply reassertion of your earlier position which we have already answered, we will not repeat the Ohio Republican Party's reply in this document.

This response has been prepared to further clarify the Ohio Republican Party's position relative to the amended draft audit of the Ohio Republican Party's Ohio Political Party Fund for Calendar Years 1990 and 1991.

The Ohio Republican Party remains committed to being completely forthcoming and disclosing its overhead and headquarters related expenditures as required by law. We would note that all of the information was set forth in your audit (as well as that provided by the party) was, and is, readily available from an examination of the Ohio Republican Party's Federal Elections Commission disclosure reports which are on file both in the offices of the Federal Elections Commission in Washington, D.C., and the Ohio Secretary of State in Columbus, Ohio. The Ohio Republican Party has voluntarily provided several hundred pages of supporting documentation refuting each of the baseless allegations asserted as a result of your office's audit. The April 19, 1993, response also corrected the arithmetic errors and factual errors and misrepresentations contained in the draft audit. The Party provided this information in an effort at cooperation despite state law prohibiting the auditor from reviewing Income Tax Check-Off monies unless received in the preceding year.

We would note that it is curious that the audit in question has never required more than four hours attention from a representative of the auditor's in the previous years in which the Income Tax Check-off Fund has been examined. This year a representative of the auditor's office spent nearly a year to conduct the audit, despite the fact that during 1990 only fourteen checks were written from the account and during 1991 only twenty-seven withdraws took place.

The accounting firm of Ernst & Young has been retained as part of the Ohio Republican Party's regularly scheduled two year audit. This will be a comprehensive audit of the party's finances for the period of January 1, 1991 through December 31, 1992.

A. Deposits to the Income Tax Check-Off Account, 1990-1991:

The party has reviewed the allegations contained in the auditor's draft report and determined that three checks totaling \$1,900.00 [Carroll County - \$450.00; Scioto County - \$800.00 and Mercer County - \$650.00] were mistakenly deposited into the party's state campaign account. As soon as this fact was confirmed the party took the necessary steps to correct this innocent mistake. These steps include refunding the monies from the party's state campaign account to the Income Tax Check-Off Account and amending the pertinent state reports to reflect these changes. Copies of check No. 001980 in the sum of \$1,900.00 [Exhibit No. 1] and the deposit slip [Exhibit No. 2] by which this transfer was effected are attached. The amendments to the appropriate state election finance reports on record with the Ohio Secretary of State either have been or will soon be filed with that office.

B. 1990 Expenditure of Tax Check-Off Monies:

The party, in response to the auditor's allegations, provided comprehensive documentation supporting the transfer of funds to the party's Payroll Account. It has been explained to your representatives several times that the Payroll Account was a zero sum balance account administered by ADP, Inc. and was used to facilitate payments directly to employees for administrative payroll and the corresponding tax liabilities associated with headquarter's staff salaries. This is a very common method of administering payroll and employment taxes. The party provided documentation accounting for every dollar expended from this account, the use of which has been admitted to be appropriate by the auditor's office.

As was explained on several occasions over the past nine month's of your review, ADP, Inc. served as the party's payroll administrator and as such was the only entity authorized to make withdrawals from the Payroll Account. No commingling of funds occurred in this regard as the source and purpose of the expenditures of these funds were clearly identifiable and the deposits were to an account controlled by the vendor of payroll services, in effect the ultimate recipient of the funds.

Your audit discusses only \$514,651.00 as deposits into the payroll account during 1990. In fact a review of the bank statements which were provided to the auditor clearly shows deposits of \$1,143,516.84 in satisfaction of headquarter's staff salaries. Net payroll and debits deposited directly to employees' personal bank accounts or paid for local state and federal tax filings, plus ADP, Inc.'s administrative fees, totalled \$1,150,051.70 as confirmed by the bank statements provided to you on April 19, 1993. The difference represents checks which were 1) not yet cashed by employees, 2) not yet cashed by tax authorities, or 3) not yet due to be paid to such tax authorities within the time frame covered by the supporting documentation.

A schedule was attached to the party's April 19, 1993, response to the auditors' allegations which detailed the expenditure of Tax Check-Off monies to permanent headquarters staff only and that monies from the party's state campaign account were used to pay for employees in-kind to various campaigns. State law expressly provides that income tax check-off funds may be used for headquarters' staff salaries.

C. 1991 Expenditures of Tax Check-Off Monies:

The sum of \$52,384.87 alleged by the auditor to have been deposited into the Payroll Account was in fact made payable directly to Tailored Management Services, Inc. A copy of the party's contract with Tailored Management was also provided to the auditors to confirm that payments made to the company were in satisfaction of headquarters' staff salaries.

A schedule earlier provided to the auditor detailed the transfer of Tax Check-Off dollars to the party's federal allocation account. Under federal law the party was required to allocate overhead expenditures in compliance with the Federal Election Commission formula for state and federal purposes. All expenditures associated with the maintenance of a state party's

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headquarters, staff, etc. had to be made from the federal allocation account in satisfaction of federal law. The expenditures of Income Tax Check-Off funds fully complied with state law which requires Tax Check-Off monies be spent on headquarters overhead expenses only. Enclosed and identified as Exhibit No. 3 is a memorandum from Michael Hess, General Counsel of the Republican National Committee, which confirms the supremacy of federal over state election finance law. Also attached (identified as collective Exhibit No. 4), are copies of the United States Code, the Code of Federal Regulations and Federal Elections Commission advisory opinions which establish this principal.

In light of the statement in the auditor's reply to the Ohio Republican Party's response that "Our Legal Counsel's review of Sections 3517.17 and 3517.18 Ohio Revised Code, sections within the Code of Federal Regulations Chapter 11, and United States Constitution, Article VI, Section 2 have concluded there exist no conflict between State and Federal regulations concerning the accountability of Income Tax Check-off moneys" it is obvious that the legal counsel for the auditor's office is not familiar with federal election law requirements. The Federal Election Commission has repeatedly held that when a conflict exists between state and federal election law, the mandates of the federal scheme supercede state law. In the *instant* dispute the auditor claims that the Ohio Republican Party violated state law [R. C. 3517.17 (A)(2)] when it complied with federal election law mandates in paying its administrative overhead costs through the federally mandated "Allocation Account". It has been conclusively established that federal law requires the Ohio Republican Party to pay for all administrative expenses through the "Allocation Account". State law requirements to the contrary must, and do, bow to the federal election law scheme. Moreover, federal law forbids the issuance of two checks (one from a state account and one from a federal account), in satisfaction of allocable administrative expenses.

The auditor's legal counsel has failed to cite a single authority to support his position. The overwhelming -- and uncontroverted -- legal authority establishes that administrative expenses must be paid through an "Allocation Account", thereby co-mingling Income Tax Check-off Funds with other administrative, non-campaign funds. While the auditor refuses to accept that reality, the federal "Allocation Account" scheme is the law which the Ohio Republican Party is obligated to follow inasmuch as state law to the contrary is superceeded by the federal statutes.

The payment made to Frank Mosier was to reimburse him for expenses incurred in hosting a fundraiser as evidenced by the receipts provided to the auditor. The monies raised from this event went to pay for administrative overhead as allowed by Ohio Elections Commission Advisory Opinion [OEC] No. 89-6.

The payment to Made from Scratch was for expenses associated with the Inaugural Gala for Governor Voinovich. This event was a party headquarters fundraiser and the monies raised were used to pay administrative overhead as provided for by OEC Advisory Opinion 89-6.

The payment to Executive Caterers was for expenses associated with a joint meeting of

the respective chairmen of the eighty-eight counties and the members of the party's State Central and Executive Committee. The purpose of the meeting was to discuss the activities of the Ohio Republican Party with its senior leadership. The Ohio Revised Code expressly authorizes the expenditure of Tax Check-Off funds for this purpose.

D. Reimbursements to Robert T. Bennett:

Reimbursements to Robert T. Bennett, as chairman of the party, were both a proper use of Tax Check-Off funds as provided by state law and in full accord with party policy as set forth in resolutions passed by the Republican State Central and Executive Committee of Ohio. Furthermore, the Chairman/Vice-Chairman oversight committee of the Ohio Republican Party was aware of and approved all reimbursement expenditures incurred on behalf of the chairman. Neither the Ohio Republican Party nor Ohio law recognizes the auditor as having authority to review intra-party rules. However, in response to the allegations raised, the party provided the auditor with copies of the party resolutions which provide for compensation for living expenses, reimbursement for other party-related expenses and his salary. The reimbursements listed were clearly marked as being reimbursements for either living expenses or business related expenses associated with travel to various parts of the state or meetings and expenses incurred in attending Republican National Committee meetings as a representative of the Ohio Republican Party. Full documentation was provided to the auditor to support these expenses.

E. Conclusion

The auditor examined \$679,659.96 expended from the Income Tax Check-off Fund during 1990 and 1991. Ohio law is unambiguous that the auditor has no authority to audit moneys received other than in the preceding year. As all of the funds subject to the audit were received in excess of one year prior to the audit, the auditor has no legal basis to examine the funds subject to this most recent examination.

Secondly, the audit does not allege that any Income Tax Check-off Account funds¹ were used for campaign purposes or otherwise in violation of Ohio election law. Rather, the primary and pervasive "complaint" raised by the audit is that the Ohio Republican Party commingled Income Tax Check-off Account funds with other moneys used for administrative purposes. The auditor alleges that because Income Tax Check-off Account funds were transferred to the Allocation Account, a violation may have occurred. The auditor, however, ignores the clear obligations imposed by federal law that all administrative expenses (i.e., headquarters lease,

¹Other than the \$1,900.00 which was mistakenly deposited into an account other than the Income Tax Check-off Account. When this innocent oversight was brought to the attention of the Ohio Republican Party, immediate steps were taken to rectify the error by transferring the funds to the correct account and amending the financial reports which were impacted by the accounting error.

staff, overhead expenses, etc.,) be paid from an "Allocation Account". Failure to do so is a violation of federal election law. Moreover, it has been conclusively established that when a conflict between state and federal law arises, the state law must fall to the federal scheme.

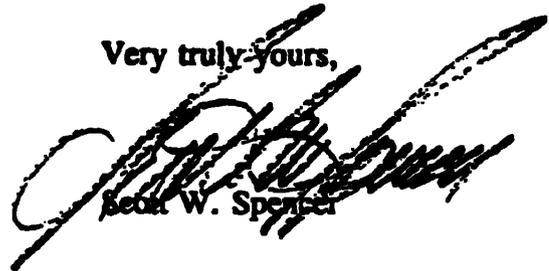
The Ohio Republican Party has, and will continue, to abide by state and federal election finance law. The party has not violated any election law in the past and will do everything within its power to ensure compliance in the future.

It is unfortunate that the auditor has chosen to make baseless allegations of election law violations solely to deflect attention from his own political problems which have resulted from his improper conduct with one of his former employees. For Mr. Ferguson to waste taxpayers' funds over the last year on this process is nothing less than an outrage.

If either of you have any comments or questions, please feel free to contact me.

Thank you.

Very truly yours,

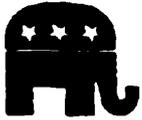


Scott W. Spencer

Encls.

cc: Robert T. Bennett
Rex Elsass
(each w/ encls.)

Thank you.



BancOhio
National Bank
Columbus Area

**OHIO REPUBLICAN PARTY
CAMPAIGN ACCOUNT**
172 EAST STATE STREET • SUITE 401
COLUMBUS, OHIO 43215
May 26, 1993

25-1
440

No. 001980

PAY One thousand nine hundred and 00/100 **\$1,900.00**

to
order
of

Ohio Republican Party
Tax Check-Off Account

FOR ITEMS DESCRIBED BELOW

[Signature]

CHAIRMAN

NOT NEGOTIABLE

TREASURER

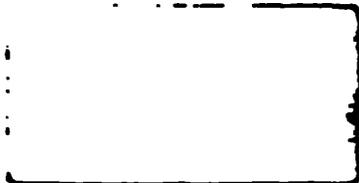
⑆001980⑆ 6046000011⑆ 84086143⑆

DETAIL OF PAYMENT FROM OHIO REPUBLICAN PARTY-CAMPAIGN ACCOUNT

Transfer of funds for reimbursement of corrected deposits

THIS IS A RECEIPT - PLEASE SIGN AND RETURN AT ONCE

AUTHORIZED REPRESENTATIVE
RECEIVED FROM OHIO REPUBLICAN PARTY-CAMPAIGN ACCOUNT



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For Your Record

Member FDIC

All deposits or payments are credited subject to verification by the bank and final payment

84002 057 27MY93 S40864397 CK DEP 1,900.00

RECEIPT VALIDATION
EXPLANATION:
802629 (Rev. 03/83)

057 02
Branch Teller
Other No No

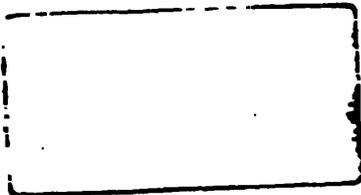
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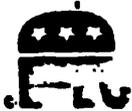
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Account
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CK DEP
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100.00
Amount



A60



Republican
National
Committee

Michael A. Hess
Chief Counsel



May 27, 1993

MEMORANDUM TO REX ELSASS

FROM: MICHAEL A. HESS *MAH*
SUBJECT: PARTY USE OF OHIO STATE CHECK-OFF FUNDS

Under Ohio law political party committees are entitled to state funds based upon a tax check-off program. These funds can be used to pay certain administrative costs of the state party, provided that these funds are segregated from other party accounts.

Under Federal Election Commission (FEC) Regulations, all payments for overhead and administrative costs and other Ohio GOP joint federal/state activities must be paid out of a federal account, i.e. the Ohio GOP Allocation Account. See FEC Regulations at 11 C.F.R. § 106.5(g).

FEC rules also require party committees to allocate party overhead costs and other joint federal/state expenses between the committee's federal and state accounts based upon the following formulas:

- a. For overhead and other administrative expenses and generic get-out-the-vote activities - the number of candidates (federal and state) on the ballot by category (the so-called "ballot composition" formula);
- b. For fundraising costs - the amount of funds actually deposited into the federal account in relation to the total raised by the party for both federal and state activity;
- c. For candidate specific activity - the amount of time and space devoted to each candidate. See FEC Regulations at 11 C.F.R. § 106.5.

Once the appropriate state/federal allocation is determined, the state account's share must be transferred to a federal account, i.e. the Ohio GOP Allocation Account, for payment of the particular expense.

The federal rules discussed above would supersede any similar state regulation since they regulate political party committees that support federal candidates. See FEC Regulations at 11 C.F.R. § 108.7. According to federal law, FEC interpretation of federal election laws pre-empts any state law or regulation which contradicts the federal position. For example, any state law which required overhead costs to be paid out of the party's state account would be pre-empted by the federal rules. See 2 U.S.C. § 453; 11 C.F.R. § 108.7 and FEC Advisory Opinions(AO) 1991-5; 1990-6; 1989-12; 1988-21 and 1986-11.

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SPENCER & EHRIE

ATTORNEYS AT LAW

SUITE 500

6100 CHANNINGWAY BOULEVARD

COLUMBUS, OHIO 43232

SCOTT W. SPENCER
DENNIS B. EHRIE*

RICHARD S. GERBER
OF COUNSEL

TELEPHONE
(614) 759-7374

FACSIMILE
(614) 759-0099

*ALSO ADMITTED IN CALIFORNIA

June 2, 1993

Hon. Thomas E. Ferguson,
Auditor of State
88 East Broad Street
5th Floor
Columbus, Ohio 43266-0040

Re: Ohio Republican Party
Ohio Political Party Fund
Calendar Years 1990 and 1991

Dear Mr. Ferguson:

Earlier today we hand delivered the original and one copy of the Ohio Republican Party's response to the draft audit which three representatives of your office [Deputy Auditor Charles Brachman, Audit Manager David W. McGuckin and the Auditor's Legal Counsel, Joseph Willis] provided to party officials during a May 21, 1993 meeting at the headquarters of the Ohio Republican Party. This response was prepared and delivered to your office in accordance with instructions from the three gentlemen noted above. At our direction a court reporter was present during the meeting and compiled a transcript of the statements made. Mr. Willis, acting as your spokesman, stated that "Your response in its entirety will be attached to the report, and then we will release it as of -- or possibly two weeks from then."

Late this afternoon, after we delivered the Ohio Republican Party's response, a representative from your office delivered a letter from you. In your correspondence you wrote that "You felt obligated to put out a new release which I received this afternoon (Wednesday)."

The only document which our office delivered to you was the Ohio Republican Party's response to the draft audit provided to the party on May 21, 1993. I do understand that your office issued a press release subject to quarantine until after 6:00 p.m. today. To my knowledge, that is the only press release which has been issued concerning your office's audit of the Ohio Republican Party's Income Tax Check-off Account. Neither my office nor myself

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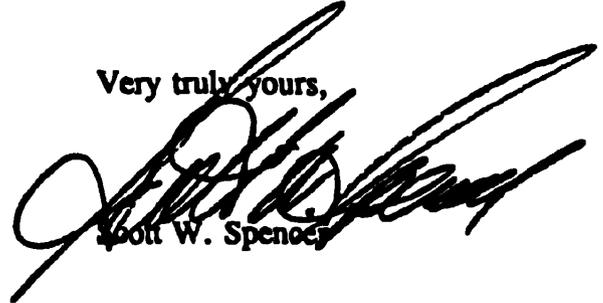
have issued any press release concerning this matter.

We do look forward to your office releasing the Ohio Republican Party's response to the allegations contained in the May 21, 1993 draft audit as promised by Mr. Willis.

If you have any comments or questions, please feel free to contact me.

Thank you.

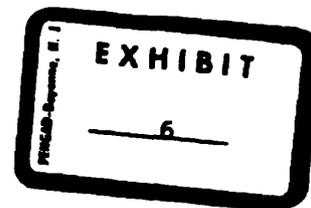
Very truly yours,

A handwritten signature in black ink, appearing to read "Scott W. Spencer", written over the typed name.

Scott W. Spencer

cc: Robert T. Bennett
Rex Elsass

A-63



June 2, 1993

Mr. Scott W. Spencer
Spencer & Ehrle
Suite 500
6100 Channingway Blvd.
Columbus, Ohio 43232

Dear Mr. Spencer:

Your 246 page response (April 19, 1993) to our audit of the Ohio Republican Party Political Party Fund apparently wasn't long enough. You felt obligated to put out a news release which I received this afternoon (Wednesday).

You must have felt a need to try to de-emphasize the importance of the violations found by my auditors and, at the same time, attempt to make this a political issue.

It seems odd that of the 178 audits we did of the Political Party Funds yours was the only audit that was political in nature.

The Ohio Legislature gave us a job to do and we did it. The Ohio Republican Party could have avoided all the embarrassment it now faces by keeping its Income Tax Check-off moneys in a separate account, as required by state law.

Why didn't they? The other 177 keep separate accounts.

Contrary to the many false statements contained in your June 2, 1993 news release, we did take into consideration the ten page response and 236 pages of material you previously sent us. We included the ten page response in the final audit report, as we always do in any audit we perform when responses are received within the time frame allowed for written responses.

Finally, it is our intention to see to it that Income Tax Check-off moneys commingled with the Ohio Republican Party's Payroll and Operating Accounts are returned to their proper fund until their use can be justified by the Ohio Republican Party.

Sincerely yours,

THOMAS E. FERGUSON, CFE
Auditor of State

(A-64)

SPENCER & EHRIE
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* ALSO ADMITTED IN CALIFORNIA

June 26, 1993

Thomas E. Ferguson, CFE
Auditor of Ohio
88 East Broad Street
5th Floor
Columbus, Ohio 43266-0040

Re: Ohio Republican Party
Ohio Political Party Fund
Calendar Years 1990 and 1991

Dear Mr. Ferguson:

The Ohio Republican Party is puzzled as to why you and representatives of your office continue to misrepresent material facts concerning the purported audit which was conducted of the funds received during 1990 and 1991 by the Ohio Republican Party from the Ohio Political Party Fund.

On June 17, 1993 we received a "conclusion statement" under cover of a letter dated June 15, 1993, signed by a Geneva Bailey. In her brief letter she instructed us to "Please replace page 47 in the audit that was released to you on June 3, 1993." Apparently the "conclusion statement" attached to her correspondence is the new page 47 in the audit.

Commendably, the first paragraph of the "conclusion statement" is a truthful recitation of the history of the audit, to the extent it is discussed. (Left unaddressed is the fact that your office was without authority in 1993 to conduct an audit of funds received in 1990 and 1991.) Unfortunately, much of the remainder of the second paragraph is an apparent attempt to "revise" history.

First, at no time did anyone representing the Ohio Republican Party "insist[] that [the May 21, 1993 exit conference] was a public meeting subject to Section 121.22 Revised Code...." Rather, the Ohio Republican Party took the precaution to have a court stenographer present to record the representations of your office representatives because experience has taught that unless a record of such meetings is maintained, your representatives will "remember" events and statements differently after the meeting is over. Messrs. McGuckin, Willis and Brockman refused to proceed with the meeting if the court stenographer remained in the meeting. Mr.

FILE

COPY A-65

Thomas E. Ferguson
June 26, 1993
Page 2

Willis argued that R. C. 121.22 prohibited a court reporter from maintaining a transcript of the exit conference. Representatives of the Ohio Republican Party insisted that a record of the proceedings be maintained. The transcript of the meeting establishes this fact.

MR. SPENCER: I asked the court reporter to be here to record what your statement is going to be. *** Just so we can have a transcript of what both sides' positions are and concerns that you might have as well as the Party's position.

MR. WILLIS: *** I object to this because it's confidential.

MR. WILLIS: Again, our position is post-audit conferences are confidential. We do not allow tape recording devices or stenographic means, recording devices. They are -- Post-audit conferences are specifically exempted under the open meetings law; and for that reason, we will not go forward with the post-audit conference.

MR. SPENCER: Do you have some statute [on which] your are relying? There is no authority if a party chooses to have a court reporter present to take notes of the meeting. do you have any statute on which you rely?

MR. WILLIS: It is the open meetings law and 121.22 and 149 for the record.

MR. SPENCER: 149 of the public records law, and that says essentially that all public documents exclusive of investigative reports or documents conducted in criminal investigations, with the exception of those documents, that all other public documents are public records *** -- the open meetings [statute] that you are referring to, also known as the Sunshine Law, that it provides that there will be 24 hours notice of executive, legislative, supreme court meetings; and I don't see how in any way this can be construed as such. This is not in any way a public meeting for those purposes. There is no discussion of statutory changes, or executive agency decisions or decisions of any other public entity that's named. *** I have researched [the Sunshine Law] at length on other matters, and this in no way applies to the Sunshine Law, and it doesn't apply to the public records statute either. *** The [presence] of a court reporter - the maintenance of a stenographic record has no impact on either of those statutes. That I think would be clearly upheld in any court in the state.

MR. WILLIS: As I stated, the post-audit conference is controlled by the Auditor. We will keep it confidential. There will be no recording devices here. If you want to go forward, we will be more than happy to go forward without the stenographer present.

MR. SPENCER: Again, I would simply ask you to cite what statute you are relying on as authority that a stenographic transcript may not be maintained of this audit meeting.

MR. WILLIS: It is 121.22, open meetings law. It is not a public meeting. It is

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Thomas E. Ferguson
June 26, 1993
Page 3

a post-audit conference. Post-audit conferences are specifically excluded from the open meeting law, and post-audit conferences are controlled by the Auditor of State; and the audit report will speak for itself.

MR. SPENCER: Neither of those statutes apply to this process. It is after all the Republican Party that is the subject of the audit. The Republican Party has chosen to maintain a stenographic record of this meeting. The Auditor is not in a position to mandate that such notes cannot be maintained or a verbatim transcript maintained. Again, neither statute referred to has anything to do with the maintenance or a prohibition against the subject of an audit maintaining the record by a stenographic transcript of the meetings. Neither one of the statutes apply. I am sure there is a copy of the Code here. I will be more than happy to have them pulled and recited verbatim. I am very familiar with both statutes, and neither one applies in this instance.

It is clear from the stenographic record maintained during the May 21, 1993 exit conference that it was the position of the Ohio Republican Party that neither R. C. 121.22 [the Sunshine or open meetings law] nor R. C. 149.43 [the public records law] prevented the Ohio Republican Party from having a court reporter present to compile a verbatim transcript of the statements made by the representatives of your office. For your office to now claim that "Party officials insisted that this was a public meeting subject to Section 121.22 Revised Code" is a blatant untruth.

Secondly, the final sentence in the "conclusion statement" that "No response was received" from the Ohio Republican Party is clearly untrue. The Ohio Republican Party hand delivered its response to the May 21, 1993 draft audit to your office. Your personal secretary signed a receipt when it was delivered. In fact, you personally telephoned me the afternoon it was delivered with questions and comments about the contents of the response.

Simply claiming that the Ohio Republican Party "insisted" the exit conference was a public meeting and that no response was received does not make either statement true. The facts are quite to the contrary.

Thank you.

Very truly yours,


Scott W. Spencer

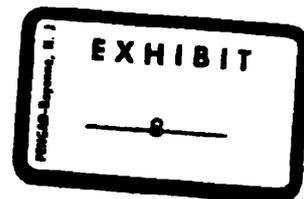
cc: **Robert T. Bennett**
Rex Elsass

A-67



THOMAS E. FERGUSON

P.O. Box 1140 • Columbus, Ohio 43260-1140 • (614) 466-4514



June 15, 1993

To Whom It May Concern:

**SUBJECT: OHIO REPUBLICAN PARTY, OHIO POLITICAL PARTY FUND,
FRANKLIN COUNTY.**

Please replace page 47 in the audit that was released to you on June 3, 1993.

Thank you for your cooperation, if you have any questions please contact me at
1-800-282-0370.

Sincerely,

THOMAS E. FERGUSON, CFE
Auditor of State

Geneva Bailey, Supervisor
Clerk of the Bureau

GB/jcr

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Ohio Republican Party
Page 47

Conclusion Statement

A preliminary draft copy of our report was given to the Party on March 24, 1993. The Party was informed it had five (5) working days to either respond to or schedule an exit conference. The Party was also informed that its response would become a part of this report. On March 31, 1993, the Party requested, and was granted an extension to provide a written response or request an exit conference by April 19, 1993. On April 19, 1993 our office received the Party's response to our draft report which has been made a part of this report.

On May 21, 1993, an exit conference was scheduled with Party officials at their office. Party officials insisted this was a public meeting subject to Section 121.22 Revised Code and had a stenographer present. Party officials were informed by our Legal Counsel that audit conferences conducted by the Auditor of State are not public meetings as stated in Section 121.22 (D) Revised Code. They were also informed that our exit conference would not continue as long as a stenographer was present. A break was requested by the Party to give them time to review the draft report and to decide if they wanted to proceed with a meeting. After returning to the meeting the Party's Legal Counsel informed us they would not continue on with this meeting and would respond in writing to the report. These officials were again informed they had five (5) working days to respond to our audit report. No response was received.

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