

ARTER & HADDEN

ATTORNEYS AT LAW

founded 1843

Cleveland
Columbus
Dallas

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Direct Dial: 202/775-7991
Internet Address: JBBlum@arterhadden.com

March 24, 1997

Federal Election Commission
Office of General Counsel
999 E Street, NW
Washington, DC 20463

27 10 11 AM '97
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

Re: Advisory Opinion Request

Dear Commissioners:

On behalf of my client, Kenneth Nickalo, I hereby request an advisory opinion under 11 C.F.R. § 112.1 from the Federal Election Commission (the "Commission" or "FEC") in response to the following questions and facts presented.

Questions Presented:

1. May an individual, who is also President and Chief Executive Officer of an incorporated membership organization, establish an independent, non-connected political action committee ("PAC"), or would it be viewed as a separate segregated fund ("SSF") connected to the corporation?
2. If considered a non-connected PAC, may individual members (as opposed to corporate members) of the incorporated organization contribute to the PAC as part of the general public solicited?
3. If considered a non-connected, may the corporate organization or a law firm provide the PAC legal and accounting services without reimbursement by the PAC under 11 C.F.R. § 100.7(b)(14)?
4. If the answer to question 1 is in the negative, may a SSF of the connected membership organization, solicit the individual representatives of the organization's corporate members?

Facts Presented:

Kenneth Nickalo currently serves as President and Chief Executive Officer of a corporation, BGB, Inc. BGB is a membership organization¹ which takes and attempts to resolve complaints from members regarding government services. BGB's membership includes both individuals and corporations. BGB's corporate members often appoint an individual to serve as the BGB contact.

¹ BGB meets the definition of "membership organization" under FEC regulations in that its articles and by-laws specifically provide for members, it expressly solicits members, and it includes its members on a membership mailing list. See 11 C.F.R. § 114.1(e)(2).

ARTER & HADDEN

In addition to his position at BGB, Mr. Nickalo intends to establish an independent, non-connected PAC, the Americans for Better Government PAC, and to serve as its Treasurer. The PAC's by-laws will be structured to show that it is independent and non-connected. The PAC intends to have contributors on its Board; however, the only person connected with BGB serving on the PAC Board will be Mr. Nickalo. Mr. Nickalo intends to operate the PAC from a room in his home. The PAC does not intend to pay Mr. Nickalo or BGB rent, unless required pursuant to this advisory opinion. BGB currently operates outside of Mr. Nickalo's home, but Mr. Nickalo may open an office, separate and apart from the PAC, for BGB operations in his home.

Mr. Nickalo does not intend to draw a salary from the PAC and will perform his PAC activities during off-hours from his employment with BGB. In addition, Mr. Nickalo intends to expend only his personal funds (within the legal limits) or funds raised by the PAC for its operation. In the event that BGB provides any operating or administrative services or makes any expenditures for the PAC, the PAC will pay BGB at commercially reasonable or market rates. The PAC would like to accept legal and accounting services from BGB or a law firm as non-contributions under 11 C.F.R. § 100.7(b)(14). In compliance with FEC regulation, these services would be performed by persons regularly employed by the organization or law firm and would include only activity to ensure compliance with FEC law. Such services would be paid for by BGB and reported by the PAC to the FEC.

With regard to solicitation, the PAC intends to solicit the general public, including both the non-corporate individual members of BGB, as well as non-members. If the PAC uses BGB's mailing list, it will pay a commercially reasonable amount to purchase or rent the list. The PAC will not use BGB's letterhead or name when soliciting contributions. Any fundraisers held by the PAC will not be in conjunction with any BGB event.

Conclusion:

Previous advisory opinions indicate that FEC law and Commission regulations do not prohibit a corporation's employee "from establishing a political committee independent of, rather than merely segregated from" the corporation. AO 1981-56; see also AO 1984-12, AO 1979-31. It is our position that, given the facts presented above, the Americans for Better Government PAC would be considered non-connected. However, we await the Commission's advice on all of the questions presented prior to establishing the PAC. Should you require any additional information, please contact Roger Furey at (202)775-7135 or me at (202)775-7991.

Sincerely,



Jennifer L. Blum, Esq.

Subject: Letter dated March 24 re Kenneth Nickalo (AmerforBetterGovtPAC)
Date: Mon, 07 Apr 1997 16:36:30 -0700
From: Bradley Litchfield <brlitch@fec.gov>
Organization: Federal Election Commission
To: JBlum@arterhadden.com
BCC: brlitch@aol.com

April 7, 1997

Jennifer L. Blum
Arter & Hadden
1801 K Street, NW
Washington, DC 20006-1301

Dear Ms. Blum:

Since you provided your e-mail address, I am taking the liberty of sending this e-mail to you regarding the proposed political committee that is under consideration by your client, Kenneth Nickalo.

This office will need some clarifying and additional information to proceed with your inquiry as an advisory opinion request. Please respond to the following questions.

- 1) Does BGB, Inc. presently have a SSF? We assume not. If it does not, please comment whether and under what circumstances BGB may establish an SSF. For example, if this office (and the Commission) concludes that the proposed committee may be formed as a non-connected PAC, would your client also form an SSF? Or would he proceed only with the described PAC.
- 2) Provide a resume or prospectus of BGB, Inc., its organizational purposes, and an overview of its recent activities. Sample copies of mailings or brochures that are used to recruit members or to generally promote the corporation would be relevant. Is BGB exempt under 26 U.S.C. 501(c)? If so, what is its specific exemption category?
- 3) Is Mr. Nickalo an officer or key person in any other corporation that has a PAC, either an SSF or a non-connected PAC? If so, explain the situation. Same questions as to Mr. Nickalo's status with any other political committee, such as a non-connected PAC, a political party committee, or the authorized campaign committee of any Federal candidate.
- 4) You have indicated that "a law firm" may provide legal services to advise the proposed PAC with regard to compliance with the Federal Election Campaign Act and Commission regulations. Is that firm Arter & Hadden? If so, describe the nature of the legal services provided by that firm to BGB and to Kenneth Nickalo, other than those relating to the proposed political committee. Also, indicate the length of time that those services have been provided and your expectations as to the continued performance of those services in the future.

I and my staff will give further consideration to your inquiry under 11 CFR Part 112 after we receive responses to the above questions and the requested documents. If you wish to call me about this letter, my number is (202) 219-3690. You can also e-mail me at brlitch@fec.gov.

Bradley Litchfield
Associate General Counsel

Subject: Letter dated March 24 re Kenneth Nickalo (AmerforBetterGovtPAC) -Reply

Date: Mon, 07 Apr 1997 17:55:04 -0400

From: Jennifer Blum <JBlum@ARTERHADDEN.COM>

To: brlitch@FEC.GOV

I received your letter. We will be sure to respond to your request for additional information as soon as possible. Thank you.

ARTER & HADDEN

ATTORNEYS AT LAW

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Washington, D.C. 20006-1301
202/775-7100 *telephone*
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Irvine
Los Angeles
San Francisco

Direct Dial: (202)775-7991
Internet Address: jblum@arterhadden.com

May 2, 1997

Bradley Litchfield
Associate General Counsel
Federal Election Commission
999 E Street, NW
Washington, DC 20463

Re: Advisory Opinion Request

Dear Mr. Litchfield:

I am writing this letter in response to your April 7, 1997 memorandum requesting additional information on the Advisory Opinion Request submitted on March 24 regarding the formation of the Americans for Better Government PAC. The following responds to your specific questions in corresponding order:

- 1) You asked whether BGB, Inc. currently has a separate segregated fund (SSF) or if it has any intent to form one. BGB, Inc. does not currently have a SSF and does not foresee any circumstance under which it would form a SSF in the future. Specifically, BGB, Inc. does not intend to establish an SSF, whether or not the FEC permits Kenneth Nickalo to proceed with his non-connected PAC.
- 2) In response to your request for a resume or prospectus, I am enclosing with this letter a brochure distributed by BGB, Inc. This material is used to recruit members and, generally, as a public relations tool. As you will note from the brochure, BGB states that it is an "active, neutral organization" whose purpose is to "promote integrity and efficiency in government" at the local, state and federal levels. Recent activities by BGB include meetings and letter writing campaigns regarding a) the establishment of a "23-point action program" to create a more efficient government, b) the hazards of railroad crossings in West Virginia, and c) the need for passage of the comp-time bill currently pending in the U.S. Congress. In addition to your question regarding BGB's activity, you also asked about BGB's tax status. At this time, BGB has not applied for exemption under 26 U.S.C. 501(c).
- 3) In answer to your third question, Mr. Nickalo is not an officer or "key person" in any organization that has a PAC. In addition, Mr. Nickalo does not hold a position with any other PAC (SSF or non-connected), political party committee or authorized campaign committee of any Federal candidate.
- 4) In answer to question 4, Arter & Hadden is the law firm that intends to provide legal services for the proposed PAC. Currently, Arter & Hadden provides litigation, corporate, and election law

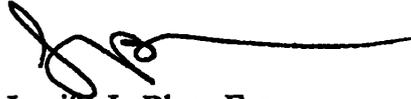
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COUNSEL

services to BGB. BGB, Inc. retained Arter & Hadden in the fall of 1994 and expects to continue in its current role as counsel for the foreseeable future.

I apologize for the delay in responding to your inquiry. Please contact me if you need any additional information with regard to the Advisory Opinion Request or the information presented above.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jennifer L. Blum', with a long horizontal line extending to the right.

Jennifer L. Blum, Esq.

Enclosure
83930.1D

Membership Application

For the
BETTER GOVERNMENT BUREAU, INC.
(A Non-Profit Public Service)
 National Headquarters
 4150 Belden Village St., NW, Suite 7 • Canton, Ohio 44718
 Phone: (216) 492-8488 • Fax: (216) 492-9850
 1-800-807-9881

YOUR NAME _____
 FIRM'S LEGAL NAME _____
 TRADE NAME (DBA) _____
 PHYSICAL ADDRESS _____
 CITY _____ P.O. Box _____
 COUNTY _____
 STATE _____ ZIP _____
 NUMBER OF EMPLOYEES _____
 PHONE _____ EXT. _____
 FAX _____
 YOUR PRODUCT OR SERVICE _____
 YOUR TITLE _____
 PRINCIPAL'S NAME _____

I hereby apply for membership in the Better Government Bureau, Inc. with the understanding the BGB will:

- A. Maintain an active, neutral organization to promote integrity and efficiency in government.
- B. Allow me to file complaints and comments, participate in meetings and member activities, and receive the BGB Newsletter, for which \$7.00 of my dues will be applied.
- C. I agree to return all membership materials upon termination of my membership, and understand I will be invoiced annually for my dues.

Signature _____
 Date _____



Better Government Bureau, Inc.

Improving Government

There are legitimate government officials who totally support our goals and objectives. Working with those officials and demanding responsiveness to the voters, educating the public, inspiring public action; all make this a stronger country. Government should serve the citizen, and not itself. That is our program, and having your support, we can make it happen.

Suggested Due Schedule

BUSINESS MEMBERS (Equal to Polling Member)
ANNUAL DUES \$95.00 plus \$9.50 for each additional employee designated.

INDIVIDUAL MEMBERS

- 1. Individual Membership \$25
- 2. Family Membership \$35
- 3. Polling Membership \$95
- 4. Sponsoring Membership \$150
- 5. Advisory Board Membership \$200
- 6. DIRECTOR'S CIRCLE MEMBERS \$500

1-2. Receives newsletter, may file complaints, access BGB toll Free "Hot Line," may attend weekly meetings in Canton, Ohio.

3. In addition to the above, will be polled quarterly about issues and legislation.

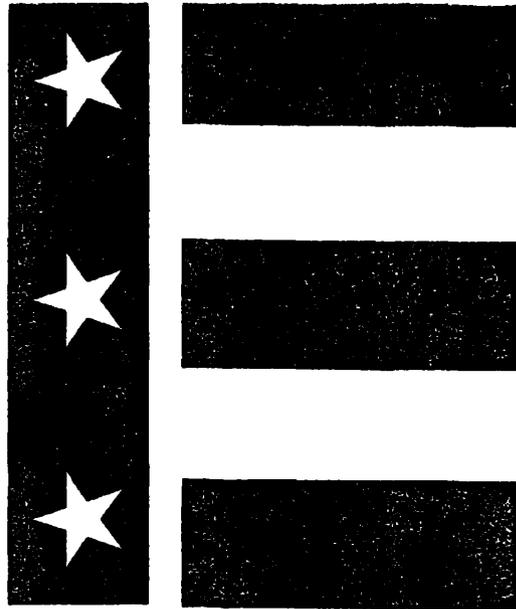
4. In addition to the above, five additional BGB newsletters "The BGB Voice" will be sent bi-monthly to your selected friends for one year.

5. Additionally, will receive BGB magazine and newspaper articles bi-monthly, radio show tapes or transcripts for \$2.95 plus shipping and handling, and will receive \$5.00 credit toward dues for any new member he sponsors. May attend bi-monthly Advisory Board only member meetings.

6. Additionally, you may attend all board meetings as a non-voting member, have special input to daily BGB daily operations, plus participate directly in all BGB promotions.

Better Government Bureau, Inc.

PURPOSE and ROLE



★ ★ ★ ★ ★ The Better Government Bureau ★ ★ ★ ★ ★ PURPOSE and ROLE

Business, Employees and Consumers United for Better Government

All segments of our society today are increasingly frustrated with our inefficient, unresponsive and corrupt government. Many government officials share the same frustration, but the bureaucracy gets swept away with its own momentum. Unfortunately, the motivation to grow, human greed, busy schedules, special interests, and personal agendas thwart the best of these intentions. A third, neutral party truly representing the people and advocating responsible and efficient management principles – the Better Government Bureau – is providing a much-needed balance.

Fighting Excessive Taxes

Excessive taxes are far and away the greatest concern of the American people today. Individuals, business owners, our young people, families and seniors are joining The Better Government Bureau in an effort to help stop government's insatiable appetite to spend. America is now the only country in the world moving toward socialism as a solution to our problems, and the BGB puts legislators on notice that the American people are not going to take it any more.

Protecting Capitalism

The Better Government Bureau's highest priority is to promote the free enterprise system and protect capitalism. Our economic distribution system has delivered more goods and services to more people than any other system in history, yet there are those in Washington who have made careers out of attempting to destroy it with government intervention. The Better Government Bureau and its members are fighting to limit government role so that our economy

can flourish and an enterprising citizen can be rewarded for good, honest efforts while producing a desired product or service.

Busting and Bureaucracy

The government has become inaccessible to the average person. Frustration and exasperation abound when the private citizen tries to approach his government. Educating our citizen and making government an instrument "of the people" again is what the BGB is all about.

Advocacy

Left unchallenged, government has adopted the attitude that it can do anything it wants. Someone must make it accountable to our everyday concerns. The BGB takes up the battle when you feel "stonewalled." We can unleash a vault of high-tech communications skills to report on anyone who refuses to cooperate with the BGB and its members. We have professionals in management, investigations, communications and campaigning to do the job.

Scorekeeping and Whistle Blowing

If the BGB does learn of corruption, inefficiency or nonresponsiveness, we are going to take action. We have a battery of unconventional means to correct problems immediately. We also "keep score" and, at voting time, release our file information publicly. If we believe conduct on the part of a government official may be illegal, we appraise appropriate law enforcement agencies and officials and do not back off the issue until we are certain justice has been served.

Education

The BGB has an extensive public education program informing the public of the excesses of big government and its detriment to America's economic strength, future prosperity and traditional values. The BGB provides speakers, writes a weekly column, is featured on a weekly one-hour radio show, appears in magazine articles, publishes brochures calling citizens to action, news releases, full-page ads and has even sponsored a book exposing government corruption and conspiracies. Unfortunately, many

Americans are unaware of current government events. Our plain language, easy-to-read, common sense (no nonsense) materials get the message out loud and clear.

Issue Driven

Pursuing its objective of less taxes, less government bureaucracy and less regulation, the BGB closely follows legislative issues and employs proactive measures to alert members of potentially harmful measures and directs appropriate courses of action to stop them in their tracks.

Investigations/Exposing Corruptions

The BGB retains private investigators and attorneys to expose corruption and dirty politics. Just knowing that the BGB can investigate an official, policy, tax or an agency is a deterrent. We do aggressive investigations and if there is corruption in government, we will uncover it and take appropriate action tenaciously.

Individual Complaint Handling

Many of our actions are complaint driven to specifically react to our member's concerns. Members can trigger the BGB into action simply by filing a complaint. Having the force of large number of BGB members as your ally can bring results you might not experience individually. Regrettably, most Americans do not expect to be effective with government officials. It is a dismal feeling to be someone's boss, pay his salary, and get no action from him in return. The BGB, in its role as a third-party dispute resolution mechanism, can help immeasurably.

BGB Newsletters

Our newsletter is to keep you informed of our activities, legislation that you should be aware of public opinion, our investigations, research, contributing articles, interviews and explicit exposes.

Sound Good?

Do you believe in our cause? Then let us serve your interests – by joining with others who demand less talk and more action. Membership in the BGB is affordable to anyone and will be an investment benefiting you, your business, your family, your community and America, immediately.



FEDERAL ELECTION COMMISSION

Washington, DC 20463

May 12, 1997

Jennifer L. Blum
Arter & Hadden
1801 K Street, N.W.
Suite 400K
Washington, D.C. 20006-1301

Dear Ms. Blum:

This refers to your letters dated March 24 and May 2, 1997, on behalf of Kenneth Nickalo, concerning the application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to the establishment of a non-connected political committee.

In your previous letters, you have described Mr. Nickalo's proposal to establish the Americans for Better Government Political Action Committee. You assert that this committee would not be a separate segregated fund (SSF) of the Better Government Bureau, Inc. ("BGB"), an organization for which Mr. Nickalo serves as President and CEO.

In view of the need for a complete description of all the relevant facts, this office requires additional information in order for your request to meet the requirements of 11 CFR Part 112. After reviewing your May 2 response, BGB's Web site, and the cases mentioned at that site, this office asks for responses to the following questions.

(1) State whether any person other than Mr. Nickalo is responsible for the governance and operations of BGB. Your response should include, but not be limited to, a statement of who directs and controls the day-to-day operations of BGB, and who or what entities actually participate in making policy decisions for BGB. State whether any of these persons or entities will participate in the operations of the proposed PAC. Please clarify the meaning of your statement that the only person "connected with BGB" serving on the PAC board will be Mr. Nickalo.

(2) State whether any single entity or person provides 35 percent or more of the funding for BGB. If so, state whether that entity has an SSF or otherwise sponsors a PAC (e.g., as in the case of a partnership PAC). State whether any officer or senior employee of that entity is expected to become a director or other official of the proposed PAC.

(3) Provide copies of the articles of incorporation and bylaws of BGB.

Upon receipt of your responses, this office and the Commission will give further consideration to your letters as an advisory opinion request. If you have any questions about this letter, please contact Jonathan Levin, a senior attorney in this office, at 202-219-3690.

Sincerely,

Lawrence M. Noble
General Counsel

By:



N. Bradley Litchfield
Associate General Counsel

ARTER & HADDEN

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Internet Address: jblum@arterhadden.com

July 11, 1997

Mr. N. Bradley Litchfield
Associate General Counsel
Federal Election Commission
999 E Street, NW
Washington, DC 20463

AOR 1997-15

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FEDERAL ELECTION COMMISSION
OFFICE OF THE GENERAL COUNSEL

Re: Advisory Opinion Request on Behalf of Kenneth Nickalo

Dear Mr. Litchfield:

This letter responds to your May 12, 1997 request for additional information regarding the Advisory Opinion Request ("AOR") initially submitted on March 24 on behalf of Kenneth Nickalo. The AOR sought advice regarding Mr. Nickalo's interest in establishing a non-connected political action committee, the Americans for Better Government PAC. As previously stated, Mr. Nickalo is President and CEO of the Better Government Bureau, Inc. ("BGB").

The following information responds to your specific inquiries in corresponding order.

- 1) Mr. Nickalo controls the day-to-day operations of BGB. BGB has a Board of Trustees, which is responsible for approving major policy decisions. Mr. Nickalo makes other policy decisions. The Board has nine members, currently Benjamin Suarez, Rodney Napier, John White, David Kessler, Charles Bartram, Gary Tersigni, Colonel H. Speed Wilson, Dan Hanlon and Mr. Nickalo. Mr. Suarez is the President of Suarez Corporation Industries ("SCI"), an Ohio corporation. Mr. Napier and Mr. White also hold positions of management in SCI. With the exception of Mr. Nickalo, none of the above individuals or entities intend to participate in the operations of the Americans for Better Government PAC; some of these individuals are likely, however, to contribute to the PAC. In your May 12, 1997 letter you inquired as to the meaning of the statement that Mr. Nickalo is the only person "connected with BGB" serving on the PAC board. To clarify, Mr. Nickalo is the only officer, director or employee of BGB who intends to serve on the PAC board or otherwise participate in the day-to-day operations of the PAC. As previously stated, BGB trustees may contribute to the PAC.
- 2) Benjamin Suarez provides in excess of 35 percent of the funding for BGB. Mr. Suarez does not have an SSF or otherwise sponsor a PAC, and he does not intend to become a director or official of the proposed PAC. However, BGB had a state PAC in West Virginia which was terminated in January, 1997.
- 3) Enclosed please find copies of the BGB's articles of incorporation and bylaws.

If you have any additional questions, please contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Jennifer P. Blum". The signature is stylized with a large, sweeping initial "J" and a long horizontal line extending to the right.

Jennifer P. Blum, Esq.

Enclosures

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OFFICE OF THE
SECRETARY OF STATE

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ARTICLES OF INCORPORATION

OF

BETTER GOVERNMENT BUREAU, INC.

The undersigned, who are citizens of the United States of America, desiring to form a nonprofit corporation under the Ohio Revised Code, do hereby certify:

FIRST: The name of said corporation shall be as follows:
BETTER GOVERNMENT BUREAU, INC.

SECOND: The principal offices of said corporation shall be located in Jackson Township, Stark County, Ohio.

THIRD: Said corporation is formed for the following purposes:

1. To promote and protect the interests of the citizenry, businesses, institutions and other entities in the United States of America by investigating and reporting on government concerning waste and inefficiency, being unresponsive, poorly managed or corrupt and collecting excessive taxes. The corporation shall further endeavor to promote capitalism and free enterprise through education, member advocacy and influencing legislative action.
2. Said corporation is formed exclusively for the purposes for which a nonprofit corporation may be formed under the nonprofit corporation laws of the State of Ohio and not for any pecuniary profit or financial gain, nor to engage in an activity ordinarily carried on for profit. No part of the net earnings of the corporation shall inure to the benefit of, or be distributable to, its members, trustees, officers or other private persons, except that the corporation shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes set forth in these articles.
3. To engage in any lawful nonprofit act or activity for which nonprofit corporations may be formed under the Ohio Revised Code.

FOURTH: The names and addresses of the persons who are to

be the initial trustees of said corporation are as follows:

Kenneth D. Nickalo
4150 Belden Village Avenue, N.W., Suite 7
Canton, Ohio 44718

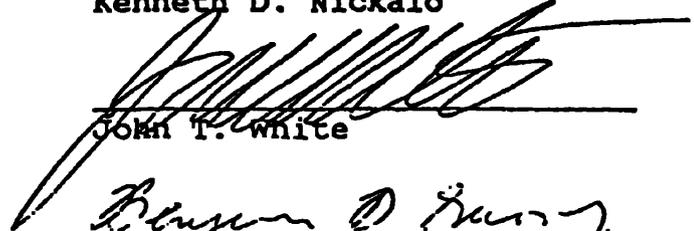
John T. White
4150 Belden Village Avenue, N.W., Suite 7
Canton, Ohio 44718

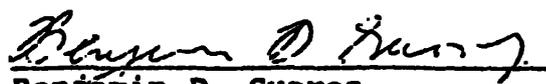
Benjamin D. Suarez
4150 Belden Village Avenue, N.W., Suite 7
Canton, Ohio 44718

Rodney L. Napier
4150 Belden Village Avenue, N.W., Suite 7
Canton, Ohio 44718

IN WITNESS WHEREOF, we have hereunto subscribed our names
this 13th day of August, 1993.


Kenneth D. Nickalo


John T. White


Benjamin D. Suarez


Rodney L. Napier

ORIGINAL APPOINTMENT OF STATUTORY AGENT

The undersigned, being at least a majority of the incorporators of

BETTER GOVERNMENT BUREAU, INC.
(Name of Corporation)

hereby appoint KENNETH NICKALO
(Name of Agent)

to be statutory agent upon whom any process, notice or demand required or permitted by statute to be served upon the corporation may be served. The complete address of the agent is:

4150 Belden Village Ave., N.W., Suite 7
(street address)

Canton, Ohio 44718
(city) (zip code)

Benjamin D. Snow
(Incorporator)

Kenneth D. Nickalo
(Incorporator)

[Signature]
(Incorporator)

[Signature]
(Incorporator)

ACCEPTANCE OF APPOINTMENT

The undersigned, KENNETH NICKALO, named herein as the statutory agent for BETTER GOVERNMENT BUREAU, INC., hereby acknowledges and accepts the appointment of statutory agent for said corporation.

Kenneth D. Nickalo
Statutory Agent

BETTER GOVERNMENT BUREAU, INC.

CODE OF REGULATIONS

ARTICLE I

MEMBERS

Section 1. Designation of Members; Term of Office. The members of the Corporation ("Members") shall consist of those persons who at any given time shall be serving as members of the Board of Trustees of the Corporation.

Section 2. Annual Meeting. The annual meeting of Members shall take place at such time as the Board of Trustees or the President shall determine on the same date and at the same place as the annual organization meeting of the Board of Trustees.

Section 3. Special Meetings. A special meeting of the Members may be called at any time by the President or by a majority of the Members. Special meetings shall be held at the principal office of the Corporation or, in the case of a special meeting called by the President, at such place within or without the State of Ohio as the President shall determine.

Section 4. Notice of Meetings. Not less than ten days before the date fixed for a meeting of Members, written notice stating the date, time, place, and, in the case of a special meeting, purposes of the meeting shall be given by or at the direction of the President. The notice shall be given by personal delivery or by mail addressed to the Members at their respective addresses as they appear on the records of the Corporation.

Section 5. Quorum. One-third (1/3) of the full number of Members then in office shall constitute a quorum for the transaction of business at any meeting of the Members; provided, however, that no action required by law or by the Articles of Incorporation or this Code of Regulations to be authorized or taken by a designated proportion or number of Members may be authorized or taken by a lesser proportion or number.

Section 6. Waiver of Notice. Notice of the time, place, and purposes of any meeting of the Members may be waived in writing either before or after the holding of the meeting. The attendance of any Member at any such meeting without protesting, prior to or at the commencement of the meeting, the lack of proper notice shall be deemed to be a waiver by the Member of notice of the meeting.

Section 7. Voting Rights of Members. Each Member shall be entitled to one vote upon any matter properly submitted to the Members for their vote and no Member shall have veto power. Notwithstanding any provision of the Ohio Nonprofit Corporation Law now or hereafter in force requiring the vote or consent of the Members of the Corporation for the authorization or taking of any action, such action may be authorized or taken only by a majority vote or consent of the full number of Members then in office unless otherwise expressly required by law, the Articles of Incorporation, or this Code of Regulations.

Section 8. Voting by Mail. Except as may be otherwise provided by law or by the Articles of Incorporation, the voting upon all matters required or permitted to be voted upon by the Members may be conducted by mail, with the same effect as voting at elections and upon other matters at a meeting of the Members duly called and held and at which a quorum of the Members is present.

Section 9. Compliance with Provisions for Meetings of Trustees. In lieu of compliance with the provisions of Sections 2 to 8, inclusive, of this Article I, the Trustees, when exercising the rights and privileges of Members at a meeting, may comply with the provisions of Sections 3 to 9, inclusive, of Article II, relating to meeting of the Board of Trustees.

Section 10. Action Without a Meeting. Any action which may be authorized or taken at a meeting of the Members may be authorized or taken without a meeting with the affirmative vote and approval of, and in a writing or writings signed by, all of the Members, which writing or writings shall be filed with or entered upon the records of the Corporation.

ARTICLE II
TRUSTEES

Section 1. Authority and Duties. The Board of Trustees shall have general supervision and charge of the property, affairs, and finances of the Corporation. Without limiting the generality of the foregoing, the Board of Trustees shall elect the officers of the Corporation and shall cause a full report concerning the affairs of the Corporation to be rendered to the Members at any annual meeting of the Members.

Section 2. Number, Term of Office, Election, Qualifications, and Removal of Trustees. The number of Trustees shall be determined from time to time by the Members but shall be no less than three (3) and no more than twelve (12). Trustees shall be elected by the Members to serve for a three-year term.

Any Trustee at any time may be removed from office for any cause deemed sufficient by the Board of Trustees, by majority vote of the full number of Trustees acting at a meeting of the Board of Trustees. Vacancies on the Board of Trustees caused by death, resignation, removal from office, or any other cause other than the expiration of a term shall be filled by majority vote of the Trustees then in office for the unexpired portion of the three-year term.

Section 3. Annual Organization Meeting. The annual organization meeting of the Board of Trustees shall take place at such time and on such date each year as the Board of Trustees or the President shall determine, at the principal offices of the Corporation or at such other place within or without the State of Ohio as the Board of Trustees or the President shall determine. The purpose of the annual organization meeting shall be to elect the President and other officers of the Corporation, to receive the reports of officers and committees of the Board of Trustees, if any, and to transact such other business as may properly come before the meeting.

Section 4. Regular Meetings. Regular meetings of the Board of Trustees shall be held on such dates and at such times as the Board of Trustees or the President shall determine. Regular meetings shall be held at the principal offices of the Corporation or at such other place within or without the State of Ohio as the Board of Trustees or the President shall determine. The purposes of regular meetings of the Board of Trustees shall be to consider and act upon any matters which are proper subjects for action by the Board of Trustees.

Section 5. Special Meetings. The President or a majority of the Trustees in office may call a special meeting of the Board of Trustees, to be held at any time at the principal offices of the Corporation or at such other place within or without the State of Ohio as the Board of Trustees or the President shall determine. A special meeting may be held for any purpose which would be a proper purpose of a regular meeting.

Section 6. Notice of Meetings. Not less than ten days before the date fixed for an annual organization or regular meeting of Trustees, or two days in the case of a special meeting, written notice stating the date, time, place, and, in the case of a special meeting, the purposes of the meeting shall be given by or at the direction of the President or the Trustees calling the meeting. The notice shall be given by mail addressed to the members of the Board of Trustees, or by hand delivery to the members of the Board of Trustees, in either case at their respective addresses as they appear on the records of the Corporation.

Section 7. Quorum. The Trustees present at any meeting of the Board of Trustees shall constitute a quorum for the transaction of business at any such meeting; provided, however, that no action required by law or by the Articles of Incorporation or this Code of Regulations to be authorized or taken by a designated proportion or number of Trustees may be authorized or taken by a lesser proportion or number.

Section 8. Voting Rights of Trustees. Each Trustee shall be entitled to one vote upon any matter properly submitted to the Trustees for their vote and no Trustee shall have veto power. Notwithstanding any provision of the Ohio Nonprofit Corporation Law now or hereafter in force requiring the vote or consent of the Trustees of the Corporation for the authorization or taking of any action, such action may be authorized or taken only by a majority vote or consent of the Trustees present at any meeting at which a quorum is present unless otherwise expressly required by law, the Articles of Incorporation, or this Code of Regulations.

Section 9. Waiver of Notice. Notice of the time, place, and purposes of any meeting of the Board of Trustees may be waived in writing either before or after the holding of the meeting. The attendance of any Trustee at any meeting (or participation at a meeting held through the use of telephone or other communications equipment) without protesting, prior to or at the commencement of the meeting, the lack of proper notice shall be deemed to be a waiver by the Trustee of notice of the meeting.

Section 10. Action Without a Meeting. Any action which may be authorized or taken at a meeting of the Board of Trustees may be authorized or taken without a meeting with the affirmative vote and approval of, and in a writing or writings signed by, all of the Trustees, which writing or writings shall be filed with or entered upon the records of the Corporation.

Section 11. Meetings by Means of Communications Equipment. Meetings of the Trustees may be held through the use of any telephone or other communications equipment if all persons participating can hear each other and participation in a meeting pursuant to this Section 11 of Article II shall constitute presence at such meeting.

ARTICLE III **COMMITTEES**

Section 1. Formation of Committees; Power of Committees. The Board of Trustees from time to time may elect or appoint committees, including without limitation an Executive Committee, comprised of a portion of its members. The Committees shall serve at the pleasure of the Board of Trustees and shall have such authority and perform such duties as from time to time may be determined by the Board of Trustees. Any committee of the Board of Trustees may act by a majority of its members, and any act or authorization of any act by a committee of the Board of Trustees within the authority delegated to it shall be as effective for all purposes as the act or authorization of the Board of Trustees.

Section 2. Action without a Meeting. Any action which may be authorized or taken at a meeting of any committee of the Board of Trustees may be authorized or taken without a meeting with the affirmative vote and approval of, and in a writing or writings signed by, all of the members of the committee, which writing or writings shall be filed with or entered upon the records of the Corporation.

ARTICLE IV **OFFICERS**

Section 1. Election and Designation of Officers. The Board of Trustees shall elect a President, a Secretary, and a Treasurer, and may elect a Vice President and such other officers as the Board of Trustees may deem necessary or desirable. Any two or more offices may be held by the same person, but no officer shall execute, acknowledge, or verify any instrument in more than one

capacity, if the instrument is required to be executed, acknowledged, or verified by two or more officers.

Section 2. Term of Office; Vacancies. The officers of the Corporation shall hold office until the next annual organization meeting of the Board of Trustees and until their successors are elected, except in case of resignation, removal from office, or death. The Board of Trustees may remove any officer at any time with or without cause by a majority vote of the Trustees then in office. Any vacancy in any office may be filled by the Board of Trustees.

Section 3. President. The President shall preside at all meetings of the Members and of the Board of Trustees. Subject to directions of the Board of Trustees, he shall have general supervision over the affairs of the Corporation. He may execute all authorized deeds, mortgages, contracts, and other obligations in the name of the Corporation and shall have such other authority and shall perform such other duties as may be determined by the Board of Trustees.

Section 4. Vice President. The Vice President, if any, shall have such authority and perform such duties as may be determined by the Board of Trustees.

Section 5. Secretary. The Secretary shall keep the minutes of meetings of the Members and of the Board of Trustees. The Secretary shall keep such books as may be required by the Board of Trustees, shall give notices of the meetings of the Members and of the Board of Trustees required by law, or by this Code of Regulations, or otherwise, and shall have such authority and shall perform such other duties as may be determined by the Board of Trustees.

Section 6. Treasurer. The Treasurer shall cause to be kept, under the Treasurer's supervision, accurate financial accounts and shall hold the same open for inspection and examination by the Trustees, shall prepare or cause to be prepared a full report concerning the finances of the Corporation to be presented at each annual organization meeting of the Board of Trustees, and shall have such authority and shall perform such other duties as may be determined by the Board of Trustees.

Section 7. Other Officers. The other officers, if any, whom the Board of Trustees may elect shall have such authority and perform such duties as may be determined by the Board of Trustees.

Section 8. Delegation of Authority and Duties. The Board of Trustees is authorized to delegate the authority and duties of any officer to any other officer and generally to control the action of the officers and to require the performance of duties in addition to those mentioned herein.

ARTICLE V
LIMITATION OF LIABILITY IN DAMAGES
AND INDEMNIFICATION

Section 1. Limitation of Liability in Damages of a Trustee. Other than in connection with an action or suit in which the only liability asserted against a Trustee is for voting for or assenting to a statutorily proscribed assets distribution or loan (a "Statutorily Proscribed Act"), a Trustee of the Corporation shall be liable in damages for any action he takes or fails to take as a Trustee only if it is proved by clear and convincing evidence in a court of competent jurisdiction that his action or failure to act involved an act or omission either undertaken with deliberate intent to cause injury to the Corporation or undertaken with reckless disregard for the best interests of the Corporation.

Section 2. Third Party Action Indemnification. The Corporation shall indemnify any person who was or is a party, or is threatened to be made a party, to any threatened, pending, or completed civil, criminal, administrative, or investigative action, suit, or proceeding, including all appeals (other than an action, suit, or proceeding by or in the right of the Corporation), by reason of the fact that he is or was a Trustee or officer of the Corporation, or is or was serving at the request of the Corporation as a trustee, director, or officer of another domestic or foreign nonprofit corporation or corporation for profit, or a partnership, joint venture, employee benefit plan, trust, or other enterprise, against expenses (including attorneys' fees), judgments, decrees, fines, penalties, and amounts paid in settlement actually and reasonably incurred by him in connection with the action, suit, or proceeding, unless it is proved by clear and convincing evidence in a court of competent jurisdiction that his action or failure to act involved an act or omission undertaken with deliberate intent to cause injury to the Corporation or undertaken with reckless disregard for the best interests of the Corporation and that, with respect to any criminal action or proceeding, he had reasonable cause to believe his conduct was unlawful; the termination of any action, suit, or proceeding by judgment, order, settlement, or conviction, or upon a plea of nolo contendere or its

equivalent, shall not, of itself, constitute such proof.

Section 3. Derivative Action Indemnification. Other than in connection with an action or suit in which the liability of a trustee for voting or assenting to a Statutorily Proscribed Act is the only liability asserted, the Corporation shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending, or completed action or suit, including all appeals, by or in the right of the Corporation to procure a judgment in its favor by reason of the fact that he is or was a Trustee or officer of the Corporation, or is or was serving at the request of the Corporation as a trustee, director or officer of another domestic or foreign nonprofit corporation or corporation for profit, or a partnership, joint venture, employee benefit plan, trust, or other enterprise, against expenses (including attorneys' fees) actually and reasonably incurred by him in connection with the defense or settlement of the action or suit unless it is proved by clear and convincing evidence in a court of competent jurisdiction that his action or failure to act involved an act or omission undertaken with deliberate intent to cause injury to the Corporation or undertaken with reckless disregard for the best interests of the Corporation, except that the Corporation shall indemnify him to the extent the court in which the action or suit was brought determines upon application that, despite the proof but in view of all the circumstances of the case, he is fairly and reasonably entitled to indemnity for such expenses as the court shall deem proper.

Section 4. Determinations of Indemnification Rights. Any indemnification under Section 2 or Section 3 of this Article V (unless ordered by a court) shall be made by the Corporation only as authorized in the specific case upon a determination that indemnification of the trustee, director or officer is proper in the circumstances. The determination shall be made (a) by a majority vote of those Trustees who in number constitute a quorum of the Trustees and who also were not and are not parties to or threatened with any such action, suit, or proceeding or (b), if such a quorum is not obtainable (or even if obtainable) and a majority of disinterested Trustees so directs, in a written opinion by independent legal counsel compensated by the Corporation, or (c) by the court in which the action, suit, or proceeding was brought.

Section 5. Advances of Expenses. Unless the action, suit, or proceeding is one in which the liability of a Trustee for voting for or assenting to a Statutorily Proscribed Act is the only liability asserted, expenses (including attorneys' fees) incurred by the Trustee or

officer of the Corporation in defending any action, suit, or proceeding referred to in Section 2 or 3 of this Article V shall be paid by the Corporation, as they are incurred, in advance of the final disposition of the action, suit, or proceeding, upon receipt of an undertaking by or on behalf of the Trustee or officer in which he agrees both (a) to repay the amount if it is proved by clear and convincing evidence in a court of competent jurisdiction that his action or failure to act involved an act or omission undertaken with deliberate intent to cause injury to the Corporation or undertaken with reckless disregard for the best interests of the Corporation and (b) to cooperate with the Corporation concerning the action, suit, or proceeding.

Section 6. Purchase of Insurance. The Corporation may purchase and maintain insurance or furnish similar protection, including, but not limited to, trust funds, letters of credit, and self-insurance, for or on behalf of any person who is or was a Trustee, officer, employee, agent, or volunteer of the Corporation, or is or was serving at the request of the Corporation as a trustee, director, officer, employee, agent, or volunteer of another domestic or foreign nonprofit corporation or corporation for profit, or a partnership, joint venture, employee benefit plan, trust, or other enterprise, against any liability asserted against him and incurred by him in any such capacity, or arising out of his status as such, whether or not the Corporation would have the power to indemnify him against liability under the provisions of this Article V or of the Ohio Nonprofit Corporation Law. Insurance may be purchased from or maintained with a person in which the Corporation has a financial interest.

Section 7. Heirs; Non-Exclusivity. The limitation of liability in damages and the indemnification provided by this Article V shall continue as to a person who has ceased to be a trustee, director, or officer and shall inure to the benefit of the heirs, executors, and administrators of such a person and shall not be deemed exclusive of, and shall be in addition to, any other rights granted to a person seeking indemnification as a matter of law or under the Articles of Incorporation, this Code of Regulations, any agreement, or any insurance purchased by the Corporation, or pursuant to any vote of the Members or disinterested Trustees, or by reason of any action by the Board of Trustees to take into account amendments to the Ohio Nonprofit Corporation Law that expand the authority of the Corporation to indemnify a trustee, director, or officer of the Corporation, or otherwise, both as to action in his official capacity and as to action in another capacity while holding an office or position.

Section 8. No Mandatory Indemnification of Volunteers. Section 1702.12(E)(5) of the Ohio Nonprofit Corporation Law shall not apply to the Corporation to the extent that it requires the indemnification of volunteers (as that term is defined in Section 1702.01(N) of the Ohio Nonprofit Corporation Law) other than Trustees or officers of the Corporation or trustees, directors, or officers of another domestic or foreign nonprofit corporation or corporation for profit, or partnership, joint venture, employee benefit plan, trust, or other enterprise serving at the request of the Corporation.

ARTICLE VI
DISSOLUTION

The Corporation may be dissolved upon the affirmative vote of a majority of the whole number of the then incumbent Members of the Corporation at a meeting held for the purpose of adopting a resolution of dissolution or, without a meeting, by the written consent of all the Members. Upon the dissolution of the Corporation, the Board of Trustees, after paying or making provisions for the payment of all the liabilities of the Corporation, shall distribute all of the remaining assets of the Corporation to such organization or organizations engaged in activities similar to the Corporation's activities and exempt from tax under Internal Revenue Code Section 501(a) as the Board of Trustees shall determine.

ARTICLE VII
AMENDMENTS

This Code of Regulations of the Corporation may be amended, or new Regulations may be adopted, by the affirmative vote of a majority of the Members at a meeting held for that purpose or, without a meeting, by the written consent of all of the Members.

ARTICLE VIII
FISCAL YEAR

The fiscal year of the Corporation shall end on December 31 of each year or on such other date as may be fixed from time to time by the Board of Trustees.