

**FEDERAL ELECTION COMMISSION**

**FIRST GENERAL COUNSEL'S REPORT**

DATE REFERRED: 11/14/2017  
DATE OF NOTIFICATION: 11/17/2017  
DATE OF RESPONSE: 12/06/2017  
DATE ACTIVATED: 5/21/2018  
  
ELECTION CYCLE: 2016  
EXPIRATION OF SOL: 1/01/2020 – 5/31/2021

**COMPLAINANT:** Internally Generated  
**RESPONDENT:** Oakland County Democratic Party and Phillip W. Reid in his official capacity as treasurer  
**RELEVANT STATUTES AND REGULATIONS:** 52 U.S.C. § 30102(i)  
52 U.S.C. § 30104(b)(3)(A)  
11 C.F.R. § 104.3(a)(4)(i)  
11 C.F.R. § 104.7(b)  
**INTERNAL REPORTS CHECKED:** Disclosure Reports  
**FEDERAL AGENCIES CHECKED:** None

**I. INTRODUCTION**

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OCDP acknowledges that it did not collect occupation and employer information from bingo players until RAD informed the committee through a Request for Additional Information ("RFAI") that the information was required. Until receiving this notification, the committee had simply reported "Bingo Player/Bingo Player" on the relevant disclosure reports instead of the contributors' actual occupation and employer information. OCDP contends that it exercised best efforts to obtain the missing information after being notified of this problem and requests that the Commission take no action. However, based on the available information, it does not appear that OCDP satisfied the best efforts standard.<sup>4</sup>

Therefore, we recommend that the Commission find reason to believe that OCDP violated 52 U.S.C. § 30104(b)(3)(A) and 11 C.F.R. § 104.3(a)(4)(i) by failing to properly itemize individual contributions. We also recommend that the Commission authorize OGC to enter into pre-probable cause conciliation with OCDP to resolve the violations and approve the proposed conciliation agreement

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<sup>4</sup> See 11 C.F.R. § 104.7(b).

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1 **II. FACTUAL SUMMARY**

2 **A. Background**

3 OCDP is a local party committee affiliated with the Michigan Democratic Party.<sup>5</sup> Since  
4 1995, and through the present, OCDP has operated weekly bingo games to raise money for its  
5 federal account.<sup>6</sup> OCDP has been a respondent in numerous enforcement matters involving  
6 reporting violations stemming from its bingo operations.<sup>7</sup>

7 **B. OCDP's Failure to Itemize Contributions During the 2016 Election Cycle**

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9 RAD calculated that, on nine monthly reports filed by OCDP during the 2016 election  
10 cycle, the committee failed to disclose adequate identification for 5,220 out of 9,376 (56%) of  
11 the contributions from individuals that require itemization (*i.e.*, individuals who exceeded the  
12 \$200 aggregate contribution threshold).<sup>8</sup> These reports include: OCDP's 2015 February, March,  
13 April, May, and Year-End Monthly Reports, as well as its 2016 March, April, May, and June

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<sup>5</sup> OCDP Statement of Organization (Feb. 11, 2019).

<sup>6</sup> OCDP runs multiple games per week. In fall 2014, OCDP increased its number of weekly games from two to six, and, on May 24, 2017, OCDP stated that it runs five weekly games. Resp. at 35, 98 (Dec. 6, 2017).

<sup>7</sup> In 2016, OCDP entered into a conciliation agreement to settle MURs 6978 and 7054, arising from a 2012 election cycle audit and a RAD referral involving 2015 monthly reports. Conciliation Agreement ¶ VII, MURs 6978 and 7054 (OCDP) (July 11, 2016) (\$58,000 civil penalty) (admitting, *inter alia*, that during the 2012 cycle, OCDP failed to properly report bingo receipts totaling \$1,820,466; and, with respect to the 2015 reports, that OCDP failed to disclose prize disbursements totaling \$761,912). In 2002, OCDP entered into a conciliation agreement to settle MUR 5236, arising out of a 1998 election cycle audit. Conciliation Agreement ¶¶ VI-VII, MUR 5236 (OCDP) (Aug. 22, 2002) (\$25,000 civil penalty) (admitting, *inter alia*, that OCDP failed to report bingo activity totaling \$1,435,666). As recently as April 30, 2019, OCDP received an RFAI concerning an apparent improper transfer for a "Progressive Jackpot Prize" between the committee's federal and non-federal accounts. Letter from Kevin McQueen, Sr. Campaign Finance Analyst, RAD, to Phillip W. Reid, Treasurer, OCDP (Apr. 30, 2019) (referencing OCDP's 2018 Post-General Report, dated Dec. 4, 2018).

<sup>8</sup> Notification Letter ¶¶ 8-16; *see* 52 U.S.C. § 30104(b)(3)(A). paragraph 14 of the Notification Letter state that OCDP failed to disclose adequate information for "77 of 1,439, or 53.8%, of the contributions" for its 2016 Amended April Monthly Report. This is a typographical error and should have read "774 of 1,439." We included the correct figure in the total stated above. Across all reports filed during the 2016 election cycle, RAD calculated that OCDP failed to disclose adequate identification for 13,026 of 25,221 (52%) of its itemized individual contributions.

1 Monthly Reports. OCDP requests that the Commission take no action in this matter, based on its  
2 immediate and long-term efforts to correct the problem.<sup>9</sup> And OCDP argues that it exercised  
3 “best efforts” to obtain the required missing occupation and employer information.<sup>10</sup>

4 In its Response, OCDP acknowledges that it did not collect occupation and employer  
5 information, stating that: “[b]ecause it was so difficult to collect information on individual bingo  
6 players, we began using ‘Bingo Player/Bingo Player’ for Employer/Occupation.”<sup>11</sup> OCDP  
7 started using this method in March 2013 and continued doing so for approximately two years,  
8 until it was notified by RAD, on September 27, 2015, that such employer and occupation entries  
9 “are not considered acceptable.”<sup>12</sup> This RFAI as well as subsequent RFAIs, all of which are at  
10 issue in this matter, only address 2016 election cycle activity, despite the practice having begun  
11 in March 2013.<sup>13</sup> Based on our review of OCDP’s disclosure reports and the Commission’s  
12 audit of OCDP’s 2012 election cycle activity, it appears that the committee kept only minimal  
13 records of bingo contributions prior to March 2013 — the bulk of its bingo receipts were simply  
14 reported on the unitemized line without any information collected from the players.<sup>14</sup>

<sup>9</sup> See Resp. at 1-2; see also *id.* at 1 (explaining that OCDP “communicated regularly” with FEC analysts to address the problem); *id.* at 2 (arguing that the information “had no impact on Federal election activity and therefore did not harm the public”); *id.* at 60, 96 (arguing that the rate of contributions with missing information is inflated by individuals who made repeat contributions).

<sup>10</sup> *Id.* at 65; see 11 C.F.R. § 104.7(b).

<sup>11</sup> Resp. at 60.

<sup>12</sup> *Id.*; Letter from Paul Stoetzer, Sr. Campaign Finance Analyst, RAD, to Phillip W. Reid, Treasurer, OCDP (Sept. 27, 2015) (referencing OCDP’s 2015 Amended February Monthly Report, dated July 16, 2015). This was the first in a series of RFAIs concerning OCDP’s 2015 February, March, April, and May Monthly Reports in reference to its reporting of “Bingo Player/Bingo Player.” See Resp. at 62-64, 66-68, 71-73, 75-77.

<sup>13</sup> OCDP Amended 2013 April Monthly Rpt. at 7 (June 6, 2015) (first bingo itemization).

<sup>14</sup> Final Audit Report at 12-14, OCDP 2012 Election Cycle (June 29, 2015); First General Counsel’s Rpt. at 4-5, MUR 6978 (AR 15-05) (OCDP). OCDP began itemizing bingo contributions and using “Bingo Player/Bingo Player” shortly after it was notified by the Commission that it was undertaking an audit of its 2012 election cycle. See Letter from Thomas A. Hintermister, Assistant Staff Director, Audit Division, FEC, to Ryan J. Gesund, Treasurer, OCDP (Dec. 4, 2012) (notifying OCDP of Commission audit).

1 After receiving the September 2015 RFAI, OCDP contends that it attempted to collect the  
2 missing information: "We sent letters, made phone calls, searched social media, and gave lists to  
3 our bingo hall workers."<sup>15</sup> The letters apparently included pre-addressed return envelopes and  
4 only asked for the missing employer/occupation information with no solicitations for additional  
5 contributions.<sup>16</sup> OCDP amended the affected reports to disclose new information.<sup>17</sup> Moreover,  
6 the committee states that it implemented a reporting system whereby all new players are required  
7 to complete a form with their name, address, employer, and occupation before they are permitted  
8 to play.<sup>18</sup> OCDP submitted an example Bingo Player Card Application that includes an excerpt  
9 from the "best efforts" regulation [11 C.F.R. § 104.7(b)(1)(i)(A)], which is also posted on signs  
10 around the bingo hall.<sup>19</sup> It does not appear that OCDP added the best efforts statement until  
11 sometime in 2017, after the relevant period.<sup>20</sup> It is unclear when the form first requested  
12 occupation and employer information. On March 18, 2016, OCDP submitted a filing with the  
13 Commission stating that it had not yet added fields for occupation and employer data — only  
14 two of the nine disclosure reports at issue in this matter post-date this March 2016  
15 communication.

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<sup>15</sup> Resp. at 60. OCDP ceased reporting "Bingo Player/Bingo Player" for players with missing occupation and employment information, and instead reported "Information Requested/Information Requested." *Id.* at 1, 60.

<sup>16</sup> *Id.* at 99

<sup>17</sup> See *id.* at 59-60, 95, 99, 131; see also *id.* at 95 (claiming that there was "very little response" to the letters with pre-addressed envelopes); *id.* at 126 (explaining that bingo workers had difficulty actually obtaining missing information from players "when they [had] sometimes a few hundred people in line to process").

<sup>18</sup> *Id.* at 2.

<sup>19</sup> *Id.* at 103.

<sup>20</sup> See *id.* at 95 (stating that, by May 24, 2017, a statement on federal law had been added to the form and posted at the bingo hall).

1 **III. LEGAL ANALYSIS**

2 **A. Legal Standard**

3 The treasurer shall keep an account of all contributions received by or on behalf of a  
4 political committee.<sup>22</sup> For contributions in excess of \$50, such account shall include the name  
5 and address of the contributor and the date of receipt and amount of such contribution.<sup>23</sup> For  
6 contributions from any person whose contributions aggregate more than \$200 during a calendar  
7 year, such account shall include the person's name, address, occupation, and employer together  
8 with the date and amount of any such contribution.<sup>24</sup> For all other contributions, that is, small  
9 contributions that are \$50 and below, such account shall be kept by "any reasonable accounting  
10 procedure."<sup>25</sup> At fundraising events with many small contributions and a minimal likelihood of  
11 repeat contributions, the treasurer may record the event's name, dates on which contributions  
12 were received, and total contributions received on each day.<sup>26</sup> However, if there is a possibility  
13 of repeat contributions, the treasurer shall keep an itemized account.<sup>27</sup>

14 The treasurer shall accurately report the identification of each person who makes an  
15 aggregate contribution in excess of \$200 within a calendar year (or election cycle, in the case of

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<sup>22</sup> 52 U.S.C. § 30102(c)(1); 11 C.F.R. § 102.9(a). "[T]he entire amount paid as the purchase price for a fundraising item sold by a political committee is a contribution." 11 C.F.R. § 100.53.

<sup>23</sup> 52 U.S.C. § 30102(c)(2); 11 C.F.R. § 102.9(a)(1).

<sup>24</sup> 52 U.S.C. § 30102(c)(3); 11 C.F.R. § 102.9(a)(2); *see also* 52 U.S.C. § 30101(13)(A); 11 C.F.R. § 100.12.

<sup>25</sup> 11 C.F.R. § 102.9(a).

<sup>26</sup> *See* Advisory Op. 1980-99 at 2 (N. Cal. Republican Roundup); Advisory Op. 1981-48 at 1-2 (Muskegon Cty. Republican Party).

<sup>27</sup> *See* Factual & Legal Analysis at 8-9, MUR 7126 (Michigan Democratic State Central Committee) ("MDP"); *see also* Advisory Op. 1991-20 at 8 (Call Interactive) (identifying the "heightened" interest in recording names and addresses when a fundraising method permits repeat contributions); Advisory Op. 1990-01 at 5 (Digital Corrections) (concluding that it is necessary to record the identification information of individuals who make small contributions when there is a possibility of repeat contributions).

1 an authorized committee) along with the date and amount of any such contribution.<sup>28</sup> The term  
2 "identification," in the case of an individual, refers to that person's name, address, occupation,  
3 and employer.<sup>29</sup>

4 When the treasurer of a political committee shows that best efforts have been used to  
5 obtain, maintain, and submit required information, any such report of the committee shall be  
6 considered in compliance with the Act.<sup>30</sup> With regard to reporting the identifying information  
7 for individuals whose aggregate contributions exceed the \$200 threshold, the treasurer will only  
8 be deemed to have exercised best efforts if:

9 (1) All written solicitations include a clear request for the contributor's name, address,  
10 occupation, and employer, and include an accurate statement of federal law regarding the  
11 collection and reporting of such information;

12 (2) For each contribution received aggregating in excess of the \$200 threshold which  
13 lacks the required information, the treasurer makes at least one effort to obtain the  
14 missing information no later than thirty days after receipt of the contribution; and such  
15 effort shall consist of either a written request sent to the contributor or an oral request to  
16 the contributor if documented in writing;

17 (3) The treasurer shall report all contributor information not provided by the contributor,  
18 but in the committee's possession; and

19 (4) If any missing contributor information is received after the contribution has been  
20 disclosed on a regularly scheduled report, the treasurer either files an amendment to the  
21 report originally disclosing the contribution to provide the missing contributor  
22 information, or includes the missing contributor information on an amended memo  
23 Schedule A with the next regularly scheduled report.<sup>31</sup>

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<sup>28</sup> 52 U.S.C. § 30104(b)(3)(A); 11 C.F.R. § 104.3(a)(4)(i).

<sup>29</sup> 52 U.S.C. § 30101(13)(A); 11 C.F.R. § 100.12.

<sup>30</sup> 52 U.S.C. § 30102(i).

<sup>31</sup> See 11 C.F.R. § 104.7(b)(1)-(4).

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1 The best efforts standard is an affirmative defense; the burden rests with the political committee  
2 and its treasurer to present evidence sufficient to demonstrate that best efforts were exercised to  
3 obtain, maintain, and submit the required information.<sup>32</sup>

4 **B. There is Reason to Believe That OCDP Failed to Accurately Report Itemized**  
5 **Contribution Information**

6 states that OCDP filed nine monthly reports that failed to disclose adequate  
7 identification for 5,220 out of 9,376 (or 56%) of the contributions for individuals that required  
8 itemization.<sup>33</sup> Based on the available information, it appears that OCDP did not exercise best  
9 efforts to obtain the missing information and, therefore, the affected reports cannot be considered  
10 in compliance with the Act.

11 OCDP claims to have sent letters to players with missing information (which included  
12 self-addressed envelopes), made phone calls, performed internet searches, and provided bingo  
13 workers with lists of players who still had missing information. Yet, none of this occurred until  
14 after September 27, 2015, when OCDP was notified by RAD that its continuing method (for two  
15 years) of reporting "Bingo Player/Bingo Player" was not acceptable. Accordingly, with respect  
16 to the 2015 February, March, April, and May Monthly Reports, OCDP did not make the follow-  
17 up requests within the required 30-day period.<sup>34</sup> Further, OCDP has submitted no information to  
18 establish that follow-up requests concerning the 2015 Year-End and 2016 March, April, May,

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<sup>32</sup> Statement of Policy Regarding Treasurers' Best Efforts to Obtain, Maintain, and Submit Information as Required by the Federal Election Campaign Act, 72 Fed. Reg. 31438, 31440 (June 7, 2007).

<sup>33</sup> Notification Letter ¶¶ 8-16 (regarding OCDP's 2015 February, March, April, May, and Year-End Monthly Reports, as well as OCDP's 2016 March, April, May, and June Monthly Reports).

<sup>34</sup> See 11 C.F.R. § 104.7(2).

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1 and June Monthly Reports were made within 30 days.<sup>35</sup> And OCDP has submitted no  
2 information to establish that follow-up requests made via phone call or by workers at the bingo  
3 hall were properly documented in writing.

4 In addition, it is unclear when OCDP added a request for occupation and employer  
5 information to its Bingo Player Card Application or other documents soliciting contributions at  
6 the bingo games. As of March 18, 2016, OCDP had not added a field for employer data to the  
7 point-of-sale system installed at the committee's bingo hall. Also, the committee's written  
8 solicitations apparently did not include an accurate statement of federal law until well after the  
9 time period at issue. On November 2, 2015, OCDP submitted a filing with the Commission  
10 stating that the committee required players to complete a form with identifying information.<sup>37</sup>  
11 However, it was not until sometime around May 2017 — about a year after the latest report at  
12 issue here — that OCDP explained that it had added a statement on federal law to the form.<sup>38</sup> To  
13 the extent there may have been other written materials distributed or otherwise made available to  
14 bingo players,<sup>39</sup> OCDP has not indicated that such items contained a clear request for identifying  
15 information or an accurate statement of federal law.

16 The Commission has stated that, in evaluating whether a treasurer has exercised best  
17 efforts to obtain, maintain, and submit the required information, it shall consider “the *cause* of

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<sup>35</sup> OCDP stated that, during the 2018 election cycle (which is outside the scope of this Report), it sent letters to contributors with missing information on a “monthly” basis “to meet the 30 day FEC requirement.” Resp. at 99. But, with respect to the 2016 election at issue here, OCDP states only that it “regularly sent letters.” *Id.*

<sup>36</sup>

<sup>37</sup> *Id.* at 65 (OCDP Misc. Text (FEC Form 99), dated November 2, 2015).

<sup>38</sup> *Id.* at 95 (OCDP Misc. Text (FEC Form 99), dated May 24, 2017) (stating that a statement on federal law from 11 C.F.R. § 104.7 “has been added to the new form”); *see also id.* at 103 (Bingo Player Card Application).

<sup>39</sup> *See* OCDP 2015 Amended February Monthly Rpt. at 411 (July 16, 2015) (\$50 payment to Michigan Bingo Bugle for “Advertising – Bingo Bugle”).

1 the failure to acquire the missing contributor information at issue.”<sup>40</sup> OCDP acknowledges that  
2 for approximately two years — beginning in March 2013 until receipt of the September 2015  
3 RFAI — it failed to collect occupation and employer information from bingo players, “[b]ecause  
4 it was so difficult to collect information on individual bingo players.”<sup>41</sup> Thus, to the extent that  
5 OCDP made any efforts, if not best efforts under the Commission regulations, to collect the  
6 missing information, they are undermined by the cause of the violations here, which was the  
7 Committee’s decision that it was too difficult to comply with the Act’s recordkeeping and  
8 reporting requirements, so it would just ignore them.

9 In conclusion, the available information suggests that OCDP did not make follow-up  
10 requests within the required 30-day period and that OCDP’s written solicitations did not properly  
11 include a clear request for employer and occupation information or an accurate statement of  
12 federal law regarding the collection of such information. Finally, the circumstances surrounding  
13 OCDP’s failure to properly collect occupation and employer information weigh against a finding  
14 that OCDP exercised best efforts. Therefore, we recommend that the Commission find reason to  
15 believe that OCDP violated 52 U.S.C. § 30104(b)(3)(A) and 11 C.F.R. § 104.3(a)(4)(i) by failing  
16 to properly itemize contributions.

<sup>40</sup> Statement of Policy Regarding Treasurers’ Best Efforts to Obtain, Maintain, and Submit Information as Required by the Federal Election Campaign Act, 72 Fed. Reg. 31438, 31440 (June 7, 2007) (emphasis added).

<sup>41</sup> Resp. at 60; *see also id.* at 2 (asserting that players are “hesitant about providing personal information”).



