

Shawn Woodhead Werth, Secretary and Clerk  
Federal Election Commission  
999 E Street, N.W.  
Washington, D.C. 20463

March 4, 2014

**Re: Request for Early Commission Consideration of a Legal Question as to the Definition of a "Fundraising Event" Arising in the Audit of the Oakland County Democratic Party**

Dear Commissioners:

This is a request for early consideration of the above referenced legal question.

I. Introduction

In 2011, the Federal Election Commission ("FEC") adopted a program providing a means by which entities may have a legal question considered by the FEC earlier in the audit process.<sup>1</sup> This is to request that the FEC consider a novel legal question that has arisen during the Audit Division's ongoing audit of the Oakland County Democratic Party (OCDP).

The FEC voted to audit the OCDP on November 30, 2012 pursuant to 2 U.S.C. Section 438(h). OCDP has cooperated fully in the audit and provided the Audit Division with copies of bank statements, computerized financial data and other material at the Audit Division's request. The Audit Division conducted fieldwork from July 9, 2013 to July 26, 2013. An exit conference was held on July 26, 2013.

At the exit conference, the Audit Division raised the issue of whether the separate charitable gaming events held by OCDP during the same evening at the same location constituted a single "fundraising event" for recordkeeping purposes. On January 30, 2014 the OCDP was notified of a finding to that effect and was advised of its option to Request Early Commission Consideration of a Legal Question with a March 7, 2014 deadline to submit such a request.

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<sup>1</sup> FEC, Policy Statement Regarding a Program for Requesting Consideration of Legal Questions by the Commission, 76 Fed. Reg. 45798 (August 1, 2011). A new policy identical in material respects was adopted effective October 23, 2013. 78 Fed. Reg. 63203 (Oct. 23, 2013).

OCDP now timely requests that the FEC determine that the finding is incorrect.

**II. The Question of Law Meets the Standards for Early Consideration**

The FEC has established three (3) alternative standards to decide whether a question of law qualifies for early consideration:

"(1) The legal issue is novel, complex, or pertains to an unsettled question of law; (2) there has been intervening legislation, rulemaking, or litigation since the Commission last considered the issue; or (3) the request to take corrective action is contrary to or otherwise inconsistent with prior Commission matters dealing with the same issue."

76 Fed. Reg. at 45799.

This request meets these standards because, as detailed below, the legal issue is novel and the proposed definition of "fundraising event" is inconsistent with prior Commission matters, including AO 2001-19 and AO 1981-48.

**III. Facts**

**A. Gaming Fundraising in Michigan**

As permitted by the Michigan Constitution and Michigan statute,<sup>2</sup> for forty (40) years a wide variety of organizations, including political parties, have conducted several types of gaming events for fundraising purposes, including bingo, raffles, millionaire parties, charity game tickets and so forth.

This fundraising is heavily regulated by state law, see M.C.L. Sections 432.101 et seq. and administrative regulations, see Rules 432.21301-.21366 and 432.21601-.21624. There is a state agency, the Bureau of State Lottery, a significant part of whose responsibilities is the licensing and regulation of these events. Once licensed, operation of these games requires frequent extensive reporting. There are at least annual on-site inspections by Bureau personnel and the Bureau itself can and does conduct in-depth audits and investigations.

State law specifically dictates that each occasion of a bingo, charity game, etc. constitutes a separate fundraising "event":

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<sup>2</sup> Michigan Constitution Article 4, Section 41; M.C.L. Section 432.101 et seq.

"Event" means each occasion of a bingo, millionaire party, raffle, charity game or numeral game licensed under this act.

M.C.L. Section 432.103(a)(2). State law does not aggregate bingo and charity gaming events into 1 event, even if they are held concurrently at the same location.

Pursuant to this state law mandate, each of these "events" is subject to separate extensive licensing, regulation, recordkeeping and reporting requirements by the state. See, e.g., Rules 432.21301 et seq. (bingo rules), Rules 432.21601 (charity game ticket rules).

#### B. OCDP Gaming Fundraising Events

Under the state regulatory scheme, OCDP currently conducts three separate gaming events to raise funds – regular bingo, progressive bingo and charity game tickets. Each event is held twice a week every week of the year during the evening. The events are held concurrently at the same location.

#### IV. Legal Argument

##### A. The FEC Should Defer To The State Law Definition Of "Event"

The FECA, its regulations and Commission advisory opinions are silent on the definition of a "fundraising event" in the gaming context. As such, the Commission can and should defer to the State of Michigan's definition for several reasons.

First, by regulation and practice, the Commission has deferred to state law, including on gaming questions. See, e.g., 11 CFR 114.5(b)(2) (deferring to state law determination on whether SSF's can fundraise through gaming); 11 CFR 100.33(a) (deferring to state law to determine "personal funds"); 11 CFR 114.7(d) (deferring to state law on question of corporate status).

Deferral to state law is particularly appropriate in the field of gaming regulation in Michigan. In AO 2001-19, the Commission recognized that "the control of gaming activity is a central feature of a State's regulatory authority, one that has been accorded explicit recognition...in the Commission's regulations." At 4. In deference to that authority, the Commission declined to preempt Michigan law as to the eligibility of the OCDP for a bingo license.

Second, the FEC has often recognized the need for practicality in the application of FECA and its regulations, especially in the area of bingo and similar small-donor fundraising. See, e.g., AO 1981-48 (FEC recognizes impracticality of collecting names and addresses of all bingo card purchasers and allows aggregation of purchases under \$50); AO 1980-99 (FEC recognizes impracticality of collecting names and address of \$5-25 contributors at large events; allows aggregation of amounts under \$50); AO 1980-147 (FEC considers impracticality in analyzing disposition of candidate funds); AO 2004-10 (FEC consider impracticality in application of disclaimer requirement).

Based on practicality, the Commission has not only deferred to Michigan gaming law but has also accommodated its regulations to Michigan gaming. See AO 1981-48 (accommodating the FEC's accounting regulations to the unique circumstances of Michigan bingo).

Finally, the proposed definition aggregating these separate events also ignores the reality of how these events are conducted. Persons playing bingo are not obligated to purchase charity gaming tickets and, once admitted to the bingo hall, charity gaming ticket players are not obligated to play bingo. People can choose to do one or the other, or both – they are separate events in practice as well as state law.

The definition of what constitutes an “event” goes to the very heart of Michigan’s gaming regulations, regulations to which the FEC has repeatedly and appropriately deferred and accommodated. See, e.g., 11 CFR 114.5(b)(2); AO 2001-19; AO 1981-48. The FEC should do the same here – defer to the state law definition of “event,” and not use a definition contrary to 40 years of Michigan law and practice.

**B. Aggregating Separate Fundraising Events Into A Single Event Does Not Serve FECA’s Purposes**

The prize payouts which would be aggregated are not made to vendors, campaign workers or anyone else for election campaign purposes – they are simply the payment of very small prizes (virtually all \$1 or \$2) won by individual players of bingo or purchasers of charitable gaming tickets.

The purposes of FEC’s recordkeeping and disclosure requirements are to educate voters, deter corruption and gather data to detect violations of contribution limits. See Buckley v. Valeo, 424 U.S. 1, 76-81 (per curiam)

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None of these purposes are served by aggregating separate fundraising events which have very small prize payouts, 95% of which are \$2 or less.

**C. Conclusion and Relief Sought**

For all these reasons, OCDP respectfully requests that the FEC defer to the state law definition of "event" and not aggregate for recordkeeping purposes what have been separate events for 40 years in Michigan law and practice.

Very truly yours,  
Goodman Acker P.C.



Mark Brewer

CC: Frank Houston, Chair  
Oakland County Democratic Party