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MEMORANDUM

SENSITIVE

TO: The Commission

THROUGH: D. Alec Palmer *AP*
Staff Director

FROM: Compliance Office
Patricia C. Orrock *PCO*
Chief Compliance Officer

Tom Hintermister *for PCO*
Assistant Staff Director
Audit Division

Alex Boniewicz *MJF for*
Audit Manager
Audit Division

Douglas Kodish *MJF for*
Audit Manager
Audit Division

Paula Nurthen *MJF for*
Auditor
Audit Division

General Counsel's Office
Lisa J. Stevenson *LK*
Deputy General Counsel - Law

Lorenzo Holloway *LB*
Assistant General Counsel
Compliance Advice

Joshua Blume *JB*
Attorney

SUBJECT: Request for Commission Directive 69 Guidance involving the Oakland County Democratic Party (LRA # 946)

I. Statement of Issue and Brief Answer

Pursuant to Commission Directive 69, the Office of Compliance ("OC") and the Office of General Counsel ("OGC") seek the Commission's guidance on an issue addressing what recordkeeping requirements under 2 U.S.C. § 432(c) and 11 C.F.R. § 102.9(a) apply to contributions that the Oakland County Democratic Party ("OCDP" or "Committee") received during twice-weekly "bingo nights" that the Committee held for the purpose of raising funds to influence Federal elections. The Committee kept records of the total amount of contributions it received from each bingo night but did not maintain itemized records for each individual

contributor. The Committee relies upon prior Commission advisory opinions, discussed more fully below, as a basis for not individually itemizing its contributions. These advisory opinions considered what constituted a "reasonable accounting procedure" for purposes of satisfying the recordkeeping requirements for contributions under \$50 for events where the requesting committees anticipated receiving a large number of small contributions (i.e. less than \$50). In such situations, the Commission concluded that committees may elect to keep a record only of the name of an event, the date(s) the contributions were received for that event, and the total amount of contributions received on each day for that event.

The Committee asserts that because each "bingo night" consisted of three separate gaming activities that are independently regulated by the State of Michigan, each bingo night actually constituted three separate fundraising "events," rather than a single event, for the purpose of applying the Commission's advisory opinions. The Committee's characterization of its bingo nights as consisting of three separate fundraising events affects the amount of information the Committee was required to preserve in its records. If the Committee's characterization were to be upheld, then the names and addresses of contributors whose contributions for each of the three events is below \$50, but whose total contributions for the evening are above \$50, would not be maintained in the Committee's records.

We are raising this issue for the Commission's consideration under the procedures set forth in Directive 69 which encourage OGC and OC to bring before the Commission novel or unsettled questions of law. See Commission Directive No. 69, paragraph 3d. The issue of whether the OCDP's characterization of its bingo nights as three separate fundraising events, rather than a single event, for purposes of the recordkeeping requirements under 11 C.F.R. § 102.9(a) satisfies the Directive's criteria.

We recommend that the Commission reject the Committee's characterization of its bingo nights as consisting of three separate fundraising events for the purpose of applying the recordkeeping requirements to fundraising events where committees receive a large number of contributions under the \$50 threshold. Rather, we recommend that the Commission conclude that treatment of each bingo night as a single fundraising event is appropriate for purposes of analyzing the recordkeeping requirements as discussed in the Commission's prior advisory opinions. This conclusion means that the Committee was required to keep itemized records of all contributions in excess of \$50 that it received from gaming participants during the course of a single bingo night. Thus, even if a gaming participant spent less than \$50 on each of three possible gaming activities that typically took place during a bingo night, the Committee was required to keep an itemized record if the aggregate amount the participant spent on all activities in which he or she participated during the course of a bingo night exceeded \$50.

II. The Commission's Advisory Opinions Interpreting the Term "Reasonable Accounting Method" Do Not Apply to the Committee's Approach

The Federal Election Campaign Act of 1971 (the "Act") and Commission regulations implementing the Act require the treasurer of a political committee to keep an account of all contributions received by or on behalf of such committee. 2 U.S.C. § 432(c)(1); 11 C.F.R. § 102.9(a). For each contribution in excess of \$50, a record of the name and address of the

contributor, as well as the date and amount of the contribution must be retained. 2 U.S.C. § 432(c)(1)-(2); 11 C.F.R. § 102.9(a)(1). For contributions below \$50, the treasurer must only keep an account "by any reasonable accounting procedure." 11 C.F.R. § 102.9(a). The Commission has interpreted the term "reasonable accounting procedure" in section 102.9(a) to allow committees to dispense with individual itemization of their records of contributions in cases where a single fundraising event involves the receipt of a large number of small (below \$50) contributions. *See* Advisory Opinions 1980-99 (Republican Roundup Committee) and 1981-48 (Muskegon County Republican Party). In such cases, committees may simply keep a record of "the name of the event, the date(s) contributions were received for that event, and the total amount of contributions received on each day for that event." Advisory Opinion 1980-99 (Republican Roundup Committee). *See also* Advisory Opinion 1981-48 (Muskegon County Republican Party) (noting, in summarizing Advisory Opinion 1980-99, that "[t]he Commission did not require the political committee to record the names and addresses of individuals contributing less than \$50 at a single event . . .").¹ Neither advisory opinion defines what constitutes a single fundraising "event," however, nor do the Act or Commission regulations include such a definition.²

The Committee argues that each bingo night is comprised of three separate fundraising events under the Act because patrons of the bingo nights have the option of participating in up to three separate gaming activities that are independently regulated under Michigan law:³ regular bingo, charity gaming, and progressive linked bingo.⁴ According to the Committee, contributors must purchase bingo cards in order to play bingo, and they have the option of purchasing charity game tickets while on the premises, as well as the option of participating in progressive linked bingo, which is linked with other bingos in the hall in which the activities occur.

According to the Audit Division, contributions to the Committee derived from bingo nights totaled approximately \$1.8 million for the 2012 election cycle, which represents 93% of the Committee's total reported contributions for that election cycle of \$1,951,184. The average cost per attendee at a bingo night, as disclosed by Committee records, was

¹ If a Committee chooses this approach, it is still required to comply with 2 U.S.C. § 432(c)(1)-(2) and 11 C.F.R. § 102.9(a)(1) with respect to contributions in excess of \$50. *See* Advisory Opinion 1980-99 (Republican Roundup Committee) at 2.

² Michigan law pertaining to regulated gaming activities includes a definition of "event". An "event" for purposes of that law is defined as "each occasion of a bingo, millionaire party, raffle, charity game, or numeral game licensed under this act." Michigan Compiled Laws ("MCL") § 432.103a(2). An "occasion" is defined as "the hours of the day for which a license is issued." MCL § 432.103a(11).

³ The Committee also notes that the Michigan Bureau of State Lottery treats all three gaming activities separately, and that Federal tax law treats the income from bingo and charity gaming differently. Although Michigan law may regulate the types of gaming activity conducted by the OCDP separately, the policies underlying Michigan gaming law are distinct from those underlying the recordkeeping requirements of the Act.

⁴ Bingo, subdivided into "large" bingo, "small" bingo, and "progressive jackpot" bingo, and "charity game" are defined separately under Michigan law, and bingo and charity games are separately licensed under that law. *See* MCL §§ 432.102(c), (e); 432.103a(3), (7), (15); 432.105; 432.107b. Progressive jackpot bingo is regulated separately. MCL § 432.105c.

approximately \$87 for the 2012 election cycle. According to the Audit Division, the Committee solicited attendance at its twice-weekly bingo nights primarily by advertising in a publication known as the Bingo Bugle. Regardless of which of the three activities contributors chose, the Committee deposited all of its proceeds from each bingo night into a single Federal bank account. The Committee transferred the net proceeds to a second Federal bank account.

We recommend that the Commission reject the Committee's characterization of its bingo nights as consisting of three events. Instead, the Commission should conclude that the Committee's bingo nights constitute a single fundraising event as to which the Committee was required to collect individual contributor information for all contributions that in aggregate exceeded the \$50 itemization threshold.

The advisory opinions upon which the Committee relies contemplated factual situations that differed from the situation presented in this audit in one important respect – there were strong assurances in the advisory opinions that a substantial number of the contributors would not reach or exceed the \$50 itemization threshold. In Advisory Opinion 1980-99 (Republican Roundup Committee), the requesting committee represented that it intended to host several fundraising events. The cost range to attend each event was well below the \$50 itemization threshold, and, further, while hundreds of people were expected to attend each event, few people were expected to attend more than one. Advisory Opinion 1980-99 (Republican Roundup Committee). Similarly, in Advisory Opinion 1981-48 (Muskegon County Republican Party), the requesting committee held weekly bingo games. Contributors purchased bingo cards on entering and paid a minimum \$1 admission charge. The average bingo card holder was expected to spend about \$12 in an evening, and one particular person would occasionally spend more than \$20 for bingo cards. Advisory Opinion 1981-48 (Muskegon County Republican Party).

Thus, the factual context for the Commission's conclusion that keeping a record of the aggregate amount of contributions was acceptable for the requesting political committees was: 1) all or the majority of contributions those committees would receive would not reach or exceed the \$50 itemization threshold and 2) in the case of Advisory Opinion 1980-99, contributors were not likely to attend more than one event.⁵ The Commission had reasonable assurance that the \$50 itemization threshold would not be exceeded. Here, the facts present no assurance that people attending the OCDP's twice-weekly bingo nights will spend less than \$50 during the course of an evening. To the contrary, as disclosed by the Committee's records, the average cost per attendee at a bingo night exceeded \$50, and averaged approximately \$87 for the 2012 election cycle.⁶

⁵ Indeed, this advisory opinion suggests that whether a fundraising occasion consists of single or multiple events may in fact be less significant than the opportunities contributors may have to exceed the \$50 itemization threshold. Thus, even if three activities conducted during a single bingo night would constitute three separate fundraising events, Advisory Opinion 1980-99 would arguably still not permit use of the alternative recordkeeping method in this case because contributors appearing during bingo nights are likely to attend more than one event.

⁶ Using the average contribution per attendee of \$87 is potentially overinclusive because not all attendees likely bought \$50 or more of bingo cards per night.

In Advisory Opinion 1991-20 (Call Interactive), the Commission decided not to permit use of the recordkeeping methodology set forth in Advisory Opinions 1980-99 (Republican Roundup Committee) and 1981-48 (Muskegon County Republican Party) for a 900-line fundraising program. The Commission based its conclusion primarily on the fact that the 900-line technology allowed for obtaining the names and addresses of most of the contributors. By contrast, the Committees in the previous advisory opinions did not have automatically have access to identifying information for bingo participants, particularly those paying by cash. Advisory Opinion 1991-20 (Call Interactive). The Commission also noted, however, that its interest in requiring that the names and addresses of small contributors be recorded was heightened because of the callers were able to make repetitive calls and calls from prohibited sources. *Id.* Here, while contributors participating in bingo nights are not easily identifiable, unlike the contributors in Advisory Opinion 1991-20 (Call Interactive), potential contributors do have a similar ability to make repetitive contributions at each of the activities sponsored by the Committee during a bingo night.

We understand the Committee's concern for committing resources to maintain more detailed records of small contributions, but interpreting the above advisory opinions in the manner suggested by the Committee would effectively vest committees with unilateral discretion to determine the extent of their recordkeeping obligations through the manner in which they characterize activities closely related in time and subject matter as single or separate fundraising events. We do not believe that the Commission intended this consequence when it issued the advisory opinions. Rather, the Commission provided an alternate means of recordkeeping to committees receiving a large number of contributions under \$50 in factual situations where there was little likelihood that the majority of such contributors would exceed the \$50 itemization threshold. Advisory Opinions 1980-99 (Republican Roundup Committee) and Advisory Opinion 1981-48 (Muskegon County Republican Party),

Because this factual situation involves a significant likelihood of the Committee's receiving aggregate contributions from single contributors in excess of \$50 as a result of participating in activities closely related in time (during a single evening), subject matter (gaming activity) and method of processing (the Committee deposits all of its bingo night proceeds into a single account and uses them for the same purpose regardless of the nature of the originating gaming activity), we believe that the Committee was required under the recordkeeping regulations to account for all aggregate contributions exceeding \$50 received during each bingo night.

For these reasons, we recommend that the Commission conclude that the Committee was required to itemize all contributions exceeding \$50 in aggregate from contributors during the single bingo night under 2 U.S.C. § 432(c)(1)-(2); 11 C.F.R. § 102.9(a) and Advisory Opinions 1980-99 (Republican Roundup Committee) and 1981-48 (Muskegon County Republican Party). Although the Committee was legally required to maintain such records, the Commission may wish to consider as a matter of policy whether it should pursue a recordkeeping finding against this Committee where it may not have been clear to the Committee that it was required to treat the three gaming activities as a single fundraising event under the prior advisory opinions or the Campaign Guide for Party Committees.

III. Recommendation

Conclude that OCDP's bingo nights did not constitute three separate fundraising events, and, instead, OCDP was required to itemize all contributions exceeding \$50 received from contributors during each bingo night under the provisions addressing the recordkeeping requirements at 2 U.S.C. § 432(c)(1)-(2); 11 C.F.R. § 102.9(a).