

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

July 25, 2017

MEMORANDUM

To: The Commission

Through: Alec Palmer *AP*
Staff Director

From: Patricia C. Orrock *PCO*
Chief Compliance Officer

Thomas E. Hintermister *TH*
Assistant Staff Director
Audit Division

Marty Favin *MZF*
Audit Manager

By: Robert Morcomb *RM*
Lead Auditor

Subject: Audit Division Recommendation Memorandum on the Illinois Republican Party (IRP) (A13-09)

Pursuant to Commission Directive No. 70 (FEC Directive on Processing Audit Reports), the Audit staff presented the Draft Final Audit Report (DFAR) to IRP on March 29, 2017 (see attachment). In response to the DFAR dated April 17, 2017, IRP did not provide any new information and requested an audit hearing which occurred on June 22, 2017.

This memorandum provides the Audit staff's recommendation for each finding outlined in the DFAR. The Office of General Counsel has reviewed this memorandum and concurs with the recommendations.

Finding 1. Misstatement of Financial Activity

In response to the Interim Audit Report, IRP filed amendments that materially corrected the misstatements for both 2011 and 2012. IRP had no additional comments in response to the DFAR.

At the audit hearing, IRP reiterated that it had filed corrective amendments.

The Audit staff recommends that the Commission find that in 2011, IRP overstated its receipts by \$36,327, its disbursements by \$46,370 and understated its ending cash by \$13,717; and in 2012, IRP understated its receipts by \$254,528 and its disbursements by \$295,544.

Finding 2. Reporting of Apparent Independent Expenditures

In response to the Interim Audit Report, IRP stated that all mailers were non-allocable, candidate specific volunteer mass mailings. IRP also provided a third affidavit from a former IRP Deputy Executive Director who stated that IRP supported its federal candidates through the use of non-allocable mail processed by volunteers. In the DFAR, the Audit staff removed four mailers from this finding because the documentation, which included photographs and sign-in sheets directly connected to the mailers, is consistent with evidence in past audits. As a result, the four mailers are no longer considered independent expenditures. In response to the DFAR, IRP noted that the executive leadership of IRP changed soon after the 2012 General Election and that records were not properly preserved. IRP states that they do not possess any additional support for the use of volunteers or information regarding the mailers referenced in this finding. In addition, IRP contends that no 24 or 48 hour reports needed to be filed for the communications

At the audit hearing, IRP counsel stated that the 27 mailers in support of federal candidates were not independent expenditures but were non-allocable mail. He added that volunteer involvement demonstrated by the quantum of evidence IRP provided to the Audit staff demonstrated this claim. This evidence included photographs of volunteers; volunteer sign-in sheets; and sworn affidavits of individuals with direct personal knowledge of IRP's mail program for 2011-2012.

The Audit staff recommends that the Commission find that IRP failed to report 39 mailers containing express advocacy (12 mailers supported with invoices totaling \$239,154 and 27 mailers without invoices); and failed to file either 24 or 48 hour reports for the 39 mailers.

Finding 3. Recordkeeping for Communications

In response to the Interim Audit Report, IRP stated that it searched its records and was not able to locate additional documents for the 19 expenditures totaling \$357,613. IRP had no additional comments in response to the DFAR.

At the audit hearing, IRP reiterated that it has performed a thorough search and no additional documents were located.

The Audit staff recommends that the Commission find that IRP did not provide the necessary records pertaining to 19 disbursements totaling \$357,613.

Finding 4. Receipt of Apparent Prohibited In-Kind Contributions

In response to the Interim Audit Report, IRP did not specifically address the apparent prohibited in-kind contribution consisting of postage apparently paid on

its behalf totaling \$72,880. In response to the DFAR, IRP contended that the amounts identified were permissibly spent by IRP on behalf of the Walsh and Plummer campaigns for non-allocable mail. In addition, IRP stated it continues to search for records to support this contention.

At the audit hearing, IRP counsel stated that they have not been able to determine whether the \$72,880 in postage costs identified on the invoices has been paid or who paid it. He added that they contacted the National Republican Congressional Committee (NRCC) to see if they had any relevant information and that after the election, it has been difficult to track down anyone with knowledge of this activity. Counsel further stated that they reached out to the mail house vendor but received no further clarification from them.

The Audit staff recommends that the Commission find that IRP accepted a prohibited in-kind contribution totaling \$72,880.

Finding 5. Reporting of Debts and Obligations

In response to the Interim Audit Report, IRP amended its disclosure reports to materially correct the disclosure of debts and obligations to 14 vendors totaling \$257,396 on Schedule D (Debts and Obligations). IRP had no additional comments in response to the DFAR.

At the audit hearing, IRP reiterated that it had filed corrective amendments.

The Audit staff recommends that the Commission find that IRP failed to report debts and obligations totaling \$257,396.

Finding 6. Recordkeeping for Employees

In response to the Interim Audit Report, IRP acknowledged that it did not possess any monthly payroll logs for employees for the 2011 – 2012 time period. IRP stated that going forward, IRP will require all of its employees who are paid by both federal and non-federal funds to maintain monthly logs of the time each spends on federal and non-federal activities. IRP had no additional comments in response to the DFAR.

At the audit hearing, IRP reiterated that since the 2014 election cycle, it now requires all of its employees to maintain monthly logs of the time each spends on federal and state activities.

The Audit staff recommends that the Commission find that IRP did not maintain monthly logs for \$558,089¹ in payroll disbursements. This amount includes payroll paid as follows to IRP employees:

¹ This total does not include payroll for employees paid with 100 percent federal funds and reported as such. Payroll amounts are stated net of taxes and fringe benefits (See Commission Guidance, p.1 of the Draft Final Audit Report). Also, it does not include contract labor totaling \$7,800.00.

- Employees reported on Schedule H4 and paid with federal and non-federal funds during the same month totaling \$542,812 and;
- Employees paid exclusively with non-federal funds in a given month totaling \$15,277.

If this memorandum is approved, a Proposed Final Audit Report will be prepared within 30 days of the Commission's vote.

In case of an objection, Directive No. 70 states that the Audit Division Recommendation Memorandum will be placed on the next regularly scheduled open session agenda.

Documents related to this audit report can be viewed in the Voting Ballot Matters folder. Should you have any questions, please contact Robert Morcomb or Marty Favin at 694-1200.

Attachment:

- Draft Final Audit Report of the Audit Division on the Illinois Republican Party

cc: Office of General Counsel



Draft Final Audit Report of the Audit Division on the Illinois Republican Party

(January 1, 2011 - December 31, 2012)

Why the Audit Was Done

Federal law permits the Commission to conduct audits and field investigations of any political committee that is required to file reports under the Federal Election Campaign Act (the Act). The Commission generally conducts such audits when a committee appears not to have met the threshold requirements for substantial compliance with the Act.¹ The audit determines whether the committee complied with the limitations, prohibitions and disclosure requirements of the Act.

Future Action

The Commission may initiate an enforcement action, at a later time, with respect to any of the matters discussed in this report.

About the Committee (p. 2)

The Illinois Republican Party is a state party committee headquartered in Chicago, Illinois. For more information, see the chart on the Committee Organization. p.2.

Financial Activity² (p. 2)

• Receipts	
○ Contributions from Individuals	\$ 1,129,720
○ Contributions from Political Committees	1,201,954
○ Transfers from Affiliated and Other Political Committees	1,576,813
○ Transfers from Non-federal Account	395,959
○ Other Receipts	344,928
Total Receipts	\$ 4,649,374
• Disbursements	
○ Operating Expenditures	\$ 1,295,631
○ Federal Election Activity	3,122,532
○ Contributions to Federal Candidates	5,500
○ Other Disbursements	163,600
Total Disbursements	\$ 4,587,263

Findings and Recommendations (p. 3)

- Misstatement of Financial Activity (Finding 1)
- Reporting of Apparent Independent Expenditures (Finding 2)
- Recordkeeping for Communications (Finding 3)
- Receipt of Apparent Prohibited In-Kind Contributions (Finding 4)
- Reporting of Debts and Obligations (Finding 5)
- Recordkeeping for Employees (Finding 6)

¹ 52 U.S.C. §30111(b).

² IRP had a Levin account that began the audit period with a balance of \$0, made no expenditures for Levin activity, and an ending balance of \$459.

Draft Final Audit Report of the Audit Division on the Illinois Republican Party

(January 1, 2011 - December 31, 2012)



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Part I

Background

Authority for Audit

This report is based on an audit of the Illinois Republican Party (IRP), undertaken by the Audit Division of the Federal Election Commission (the Commission) in accordance with the Federal Election Campaign Act of 1971, as amended (the Act). The Audit Division conducted the audit pursuant to 52 U.S.C. §30111(b), which permits the Commission to conduct audits and field investigations of any political committee that is required to file a report under 52 U.S.C. §30104. Prior to conducting any audit under this subsection, the Commission must perform an internal review of reports filed by selected committees to determine if the reports filed by a particular committee meet the threshold requirements for substantial compliance with the Act. 52 U.S.C. §30111(b).

Scope of Audit

Following Commission-approved procedures, the Audit staff evaluated various risk factors and as a result, this audit examined:

1. the disclosure of individual contributors' occupation and name of employer;
2. the disclosure of disbursements, debts and obligations;
3. the disclosure of expenses allocated between federal and non-federal accounts;
4. the consistency between reported figures and bank records;
5. the completeness of records;
6. the disclosure of independent expenditures; and
7. other committee operations necessary to the review.

Commission Guidance

Request for Early Commission Consideration of a Legal Question

Pursuant to the Commission's "Policy Statement Establishing a Program for Requesting Consideration of Legal Questions by the Commission," several state party committees unaffiliated with IRP requested early consideration of a legal question raised during audits covering the 2010 election cycle. Specifically, the Commission addressed whether monthly time logs under 11 CFR §106.7(d)(1) were required for employees paid with 100 percent federal funds.

The Commission concluded, by a vote of 5-1, that 11 CFR §106.7(d)(1) does require committees to keep a monthly log for employees paid exclusively with federal funds. Exercising its prosecutorial discretion, however, the Commission decided it will not pursue recordkeeping violations for the failure to keep time logs or to provide affidavits to account for employee salaries paid with 100 percent federal funds and reported as such. The Audit staff informed IRP representatives of the payroll log requirement and of the Commission's decision not to pursue recordkeeping violations for failure to keep payroll logs for salaries paid and correctly reported as 100 percent federal. This audit report does not include any findings or recommendations with respect to IRP employees paid with 100 percent federal funds and reported as such.

Part II Overview of Committee

Committee Organization

Important Dates	
• Date of Registration	July 10, 1976
• Audit Coverage	January 1, 2011 - December 31, 2012
Headquarters	
Chicago, Illinois	
Bank Information	
• Bank Depositories	One
• Bank Accounts	Four Federal and Two Non-federal
Treasurer	
• Treasurer When Audit Was Conducted	Judy Diekelman - May 20, 2014 - Present Dave Syverson - through May 19, 2014
• Treasurer During Period Covered by Audit	Dave Syverson
Management Information	
• Attended Commission Campaign Finance Seminar	No
• Who Handled Accounting and Recordkeeping Tasks	Paid and Volunteer Staff

Overview of Financial Activity (Audited Amounts)

Cash-on-hand @ January 1, 2011	\$ 24,000
Receipts	
○ Contributions from Individuals	1,129,720
○ Contributions from Political Committees	1,201,954
○ Transfers from Affiliated and Other Political Committees	1,576,813
○ Transfers from Non-federal Account	395,959
○ Other Receipts	344,928
Total Receipts	\$ 4,649,374
Disbursements	
○ Operating Expenditures	1,295,631
○ Federal Election Activity	3,122,532
○ Contributions to Federal Candidates	5,500
○ Other Disbursements	163,600
Total Disbursements	\$ 4,587,263
Cash-on-hand @ December 31, 2012	\$ 86,111

Part III

Summaries

Findings and Recommendations

Finding 1. Misstatement of Financial Activity

During audit fieldwork, a comparison of IRP's reported financial activity with bank records revealed a misstatement of receipts, disbursements and ending cash for 2011 and a misstatement of receipts and disbursements for 2012. In 2011, IRP overstated its receipts by \$36,327, its disbursements by \$46,370 and understated its ending cash by \$13,717. In 2012, IRP understated its receipts by \$254,528 and its disbursements by \$295,544.

In response to the Interim Audit Report recommendation, IRP amended its disclosure reports to materially correct the misstatements for both 2011 and 2012. (For more detail, see p. 6.)

Finding 2. Reporting of Apparent Independent Expenditures

During audit fieldwork, the Audit staff reviewed disbursements totaling \$273,126 that IRP disclosed on Schedule B, Line 30(b), (Federal Election Activity Paid Entirely with Federal Funds), that appeared to be mailers or media-related independent expenditures that should have been disclosed on Schedule E, Line 24, (Independent Expenditures).

Additionally, IRP did not provide sufficient documentation pertaining to dissemination dates to verify whether 24/48-hour reports were required to be filed for the apparent independent expenditures totaling \$273,126. IRP also did not provide invoices associated with 27 mailers that contained express advocacy as defined under 11 CFR 100.22 (a).

In response to the Interim Audit Report recommendation, IRP stated "...that these 27 direct mail communications were non-allocable, candidate-specific volunteer mass mailings." IRP supplied a third affidavit from IRP's former Deputy Executive Director who stated that during the 2012 cycle, IRP supported its federal candidates through the use of non-allocable mail processed by volunteers.

The Audit staff reexamined the documentation provided by IRP related to the volunteer materials exemption for specific communications totaling \$33,972 and determined the disbursements were not independent expenditures. For the remaining communications consisting of \$239,154 (\$273,126 - \$33,972) and the 27 mailers with no invoices that IRP claims the volunteer materials exemption is applicable, the Audit staff again recommends that the IRP provide further evidence to support the application of volunteer materials exemption to the specific communications involved. Absent further evidence that these communications qualify for the volunteer materials exemption, the Audit staff considers these communications to be independent expenditures. (For more detail, see p. 8.)

Finding 3. Recordkeeping for Communications

During audit fieldwork, the Audit staff reviewed disbursements to verify the accuracy of the information and proper classification of transactions disclosed on reports. IRP reported 19 expenditures totaling \$357,613,³ on Schedule B, Line 30(b) and Schedule H4 (Disbursements for Allocated Federal/Non-federal Activity) with the purposes of FEA Volunteer Mail, Advocacy calls for Federal candidates, Direct Mail Services, equipment and phone minutes for Federal candidates and Auto-Dialer for Federal candidates. Documentation that was provided by IRP was insufficient to make a determination pertaining to the purpose for these disbursements and verification as Federal Election Activity or Allocated Federal/Non-federal Activity.

In response to the Interim Audit Report recommendation, IRP stated that it has searched its records and was unable to locate additional documents to substantiate these disclosures. Absent the provision of these records, the Audit staff considers the matter a violation of the recordkeeping requirements at 11 CFR §104.14(b)(1). (For more detail, see p. 14.)

Finding 4. Receipt of Apparent Prohibited In-Kind Contributions

During audit fieldwork, the Audit staff identified apparent prohibited in-kind contributions totaling \$72,880 to the benefit of IRP. The apparent prohibited in-kind contributions consisted of postage for campaign mailers invoiced to IRP but apparently paid by an unknown source. In response to the Interim Audit Report recommendation, IRP did not specifically address the amounts for postage apparently paid on its behalf. IRP has not complied with the recommendation to identify the source of payment for the postage. Absent such a demonstration, the \$72,880 in postage costs are considered a prohibited contribution to IRP. (For more detail, see p. 16.)

Finding 5. Reporting of Debts and Obligations

During audit fieldwork, the Audit staff noted that IRP failed to report debts and obligations to 14 vendors totaling \$294,117⁴ on Schedule D (Debts and Obligations). In response to the Interim Audit Report recommendation, IRP amended its disclosure reports to materially correct the disclosure of debts and obligations to these vendors. (For more detail, see p. 18.)

Finding 6. Recordkeeping for Employees

During audit fieldwork, the Audit staff determined that IRP did not maintain any monthly payroll logs, as required, to document the percentage of time each employee spent in connection with a federal election. For 2011 and 2012, the Audit staff identified payments to IRP employees totaling \$558,089 for which IRP did not maintain monthly payroll logs. This consisted of \$542,812 for which payroll was allocated with federal and non-federal funds, and \$15,277 for which payroll was exclusively non-federal. In response to the Interim Audit Report recommendation, IRP acknowledged that it does not possess any monthly payroll logs for

³ Two disbursements totaling \$52,504 were not reported, but are included in the \$357,613.

⁴ This amount will be updated to \$257,396 based on additional information reviewed in response to IRP's response to the Interim Audit Report.

employees for the 2011 – 2012 time period. IRP stated that it did maintain these logs during the 2014 election cycle and going forward, they will continue to maintain monthly payroll logs. As such, IRP has complied with the Interim Audit Report recommendation by providing details of its plan to maintain monthly payroll logs in the future. (For more detail, see p. 19.)

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Part IV

Findings and Recommendations

Finding 1. Misstatement of Financial Activity

Summary

During audit fieldwork, a comparison of IRP's reported financial activity with bank records revealed a misstatement of receipts, disbursements and ending cash for 2011 and a misstatement of receipts and disbursements for 2012. In 2011, IRP overstated its receipts by \$36,327, its disbursements by \$46,370 and understated its ending cash by \$13,717. In 2012, IRP understated its receipts by \$254,528 and its disbursements by \$295,544.

In response to the Interim Audit Report recommendation, IRP amended its disclosure reports to materially correct the misstatements for both 2011 and 2012.

Legal Standard

Contents of Reports. Each report must disclose:

- the amount of cash-on-hand at the beginning and end of the reporting period;
- the total amount of receipts for the reporting period and for the calendar year;
- the total amount of disbursements for the reporting period and for the calendar year; and certain transactions that require itemization on Schedule A (Itemized Receipts) or Schedule B (Itemized Disbursements). 52 U.S.C. §30104(b)(1), (2), (3), (4) and (5).

Facts and Analysis

A. Facts

As part of audit fieldwork, the Audit staff reconciled IRP's reported financial activity with its bank records for 2011 and 2012. The reconciliation determined that for 2011, IRP misstated receipts, disbursements and ending cash and for 2012, misstated receipts and disbursements. The following charts outline the discrepancies between IRP's disclosure reports and its bank records.

2011 Reported Activity to Bank Activity			
	Reported	Bank Records	Discrepancy
Beginning Cash Balance @ January 1, 2011	\$20,326	\$24,000	\$3,674 Understated
Receipts	\$776,115	\$739,788	\$36,327 Overstated
Disbursements	\$749,945	\$703,575	\$46,370 Overstated
Ending Cash Balance @ December 31, 2011	\$46,496	\$60,213	\$13,717 Understated

The beginning cash balance was understated by \$3,674 and is unexplained, but likely resulted from prior-period discrepancies.

The overstatement of receipts resulted from the following:

• Transfers from the non-federal account, reported in error	- \$32,070
• Unexplained differences	- <u>4,257</u>
Overstatement of Receipts	- <u>\$36,327</u>

The overstatement of disbursements resulted from the following:

• The net over reporting of disbursements	- \$46,612
• Unexplained differences	+ <u>242</u>
Net Overstatement of Disbursements	- <u>\$46,370</u>

The Audit staff identified 29 disbursements totaling \$52,262 that were reported in January 2011, but not found on bank statements provided. IRP changed depositories prior to the audit cycle. The Audit staff requested the bank statements of the prior depository for the month of January 2011. These statement(s) were not provided to the Audit staff. IRP stated they requested the bank statements but were not able to obtain them. The \$13,717 understatement of the ending cash balance resulted from the misstatements described above.

2012 Reported Activity to Bank Activity			
	Reported	Bank Records	Discrepancy
Beginning Cash Balance @ January 1, 2012	\$45,721 ⁵	\$60,213	\$14,492 Understated
Receipts	\$3,655,057	\$3,909,585	\$254,528 Understated
Disbursements	\$3,588,143	\$3,883,687	\$295,544 Understated
Ending Cash Balance @ December 31, 2012	\$113,410	\$86,111	\$27,299 Overstated

The understatement of receipts resulted from the following:

• Transfers from Political Committees	+ \$50,000
• In-kind contributions from Political Committees	+ 33,973
• Transfers from the non-federal account	+ 36,453
• Settlement Accounting Fees, not reported	+ 22,126
• In-kind postage paid by other than IRP ⁶	+ 72,880
• Unexplained differences	+ <u>39,096</u>
Understatement of Receipts	+ <u>\$254,528</u>

⁵ IRP filed an amended report that reduced its beginning cash by a total of \$775 from the reported 2011 ending cash.

⁶ The source of the payments has not been identified by IRP to the Audit staff. See Finding 4.

The understatement of disbursements resulted from the following:

• Under-reporting of disbursements	+\$168,321
• In-kind postage paid by other than IRP	+ 72,880
• Underreporting of in-kinds from Political Committees	+ 33,973
• Settlement of Accounting Fees, not reported	+ 22,126
• Unexplained differences	- <u>1,756</u>
Net Understatement of Disbursements	<u>+\$295,544</u>

The \$27,299 overstatement of ending cash balance resulted from the misstatements described above.

B. Interim Audit Report & Audit Division Recommendation

At the exit conference, the Audit staff provided work papers and discussed the reporting errors that caused the misstatements with IRP representatives. They asked questions about several items and stated that they would file the amendments to ensure that the IRP reports were accurate.

The Interim Audit recommended that IRP amend its disclosure reports to correct the misstatements for 2011 and 2012.

C. Committee Response to Interim Audit Report

In response to the Interim Audit Report recommendation, IRP amended its disclosure reports to materially correct the misstatements for both 2011 and 2012 reports.

Finding 2. Reporting of Apparent Independent Expenditures

Summary

During audit fieldwork, the Audit staff reviewed disbursements totaling \$273,126 that IRP disclosed on Schedule B, Line 30(b), (Federal Election Activity Paid Entirely with Federal Funds), that appeared to be mailers or media-related independent expenditures that should have been disclosed on Schedule E, Line 24, (Independent Expenditures).

Additionally, IRP did not provide sufficient documentation pertaining to dissemination dates to verify whether 24/48-hour reports were required to be filed for the apparent independent expenditures totaling \$273,126. IRP also did not provide invoices associated with 27 mailers that contained express advocacy as defined under 11 CFR 100.22 (a).

In response to the Interim Audit Report recommendation, IRP stated "...that these 27 direct mail communications were non-allocable, candidate-specific volunteer mass mailings." IRP supplied a third affidavit from IRP's former Deputy Executive Director who stated that during the 2012 cycle, IRP supported its federal candidates through the use of non-allocable mail processed by volunteers.

The Audit staff reexamined the documentation provided by IRP related to the volunteer materials exemption for specific communications totaling \$33,972 and determined the disbursements were not independent expenditures. For the remaining communications consisting of \$239,154 (\$273,126 - \$33,972) and the 27 mailers with no invoices that IRP claims the volunteer materials exemption is applicable, the Audit staff again recommends that the IRP provide further evidence to support the application of volunteer materials exemption to the specific communications involved. Absent further evidence that these communications qualify for the volunteer materials exemption, the Audit staff considers these communications to be independent expenditures.

Legal Standard

A. Definition of Independent Expenditures. The term “independent expenditure” means an expenditure by a person for a communication expressly advocating the election or defeat of a clearly identified candidate that is not made in coordination with any candidate or authorized committee or agent of a candidate. No expenditure shall be considered independent if the person making the expenditure allows a candidate, a candidate’s authorized committee or their agents, or a political party committee or its agents to become materially involved in decisions regarding the communication as described in 11 CFR 109.21(d)(2), or shares financial responsibility for the cost of production or dissemination with any such person. 11 CFR §100.16(a) & (c).

B. Expressly Advocating. Expressly advocating means any communication that – (a) Uses phrases such as “vote for the president,” “re-elect your Congressman,” “support the Democratic nominee,” “cast your ballot for the Republican challenger for the Republican challenger for U.S. Senate in Georgia,” accompanied by a picture of one or more candidate(s), or communications of campaign slogan(s) or individual word(s), which in context can have no other reasonable meaning than to urge the election or defeat of one or more clearly identified candidate(s). (b) When taken as a whole and with limited reference to external events, such as the proximity to the election, could only be interpreted by a reasonable person as containing advocacy of the election or defeat of one or more clearly identified candidate(s). 11 CFR §100.22.

C. Disclosure Requirements – General Guidelines. An independent expenditure shall be reported on Schedule E (Itemized Independent Expenditures) if, when added to other independent expenditures made to the same payee during the same calendar year, it exceeds \$200. Independent expenditures made (i.e., publicly disseminated) prior to payment should be disclosed as memo entries on Schedule E and as a debt on Schedule D. Independent expenditures of \$200 or less need not be itemized, though the committee must report the total of those expenditures on line (b) on Schedule E. 11 CFR §§104.3(b)(3)(vii), 104.4(a) and 104.11.

D. Last-Minute Independent Expenditure Reports (24-Hour Reports). Any independent expenditures aggregating \$1,000 or more, with respect to any given election, and made after the 20th day but more than 24 hours before the day of an election, must be reported and the report must be received by the Commission within 24 hours after the expenditure is made. A 24-hour report is required each time additional independent expenditures aggregate \$1,000 or more. The date that a communication is publicly disseminated serves as the date that the committee must use to determine whether the total amount of independent expenditures has, in the aggregate,

reached or exceeded the threshold reporting amount of \$1,000. 11 CFR §§104.4(f) and 104.5(g)(2).

E. Independent Expenditure Reports (48-Hour Reports). Any independent expenditures aggregating \$10,000 or more with respect to any given election, at any time during a calendar year, up to and including the 20th day before an election, must be disclosed within 48 hours each time the expenditures aggregate \$10,000 or more. The reports must be received by the Commission within 48 hours after the expenditure is made. The date that a communication is publicly disseminated serves as the date that the committee must use to determine whether the total amount of independent expenditures has, in the aggregate, reached or exceeded the threshold reporting amount of \$10,000. 11 CFR §§104.4(f) and 104.5(g)(1).

F. Formal Requirements Regarding Reports and Statements. Each political committee shall maintain records with respect to the matters required to be reported which shall provide in sufficient detail the necessary information and data from which the filed reports may be verified, explained, clarified, and checked for accuracy and completeness. 11 CFR §104.14(b)(1).

G. Volunteer Activity. The payment by a state committee of a political party of the costs of campaign materials (such as pins, bumper stickers, handbills, brochures, posters, party tabloids or newsletters, and yard signs) used by such committee in connection with volunteer activities on behalf of any nominee(s) of such party is not a contribution, provided that the conditions below are met.

1. Such payment is not for costs incurred in connection with any broadcasting, newspaper, magazine, bill board, direct mail, or similar type of general public communication or political advertising. The term direct mail means any mailing(s) by a commercial vendor or any mailing(s) made from commercial lists.
2. The portion of the cost of such materials allocable to Federal candidates must be paid from contributions subject to the limitations and prohibitions of the Act.
3. Such payment is not made from contributions designated by the donor to be spent on behalf of a particular candidate for federal office.
4. Such materials are distributed by volunteers and not by commercial or for-profit operations.
5. If made by a political committee, such payments shall be reported by the political committee as a disbursement in accordance with 11 CFR §104.3 but need not be allocated to specific candidates in committee reports.
6. The exemption is not applicable to campaign materials purchased by the national party committees. 11 CFR §100.87 (a), (b), (c), (d), (e) and (g) and 11 CFR §100.147 (a), (b), (c), (d), (e) and (g).

Facts and Analysis

A. Reporting of Apparent Independent Expenditures

1. Facts

During audit fieldwork, the Audit staff reviewed disbursements to ensure proper reporting. The Audit staff notes that IRP did not disclose any independent expenditures on Schedule E, however it made apparent media-related expenditures totaling \$273,126 and disclosed them as Federal Election Activity (FEA). These communications, as well as 27 other mailers that are not associated with invoices, were identified as possible independent expenditures. To document the use of volunteers, IRP provided four volunteer sign in sheets, two sworn affidavits for which the authors attest to the use of volunteers in all the mailers and 24 photographs of volunteer involvement in seven of the mailers.⁷ Based on the documentation provided, the Audit staff was only able to match four mailers and two sign in sheets to photographs for which an invoice was provided, totaling \$33,972, see (a.) below. Two additional sign in sheets were provided, however, they could not be associated with invoices for mailers, see (b.) below. Of the two sign in sheets that could not be associated with invoices, only one could be associated with a mailer.

A breakdown analysis of these expenditures is as follows:

a. Apparent Independent Expenditures Reported as FEA Volunteer Mail (Associated Invoice Provided)

IRP made 16 apparent independent expenditures totaling \$273,126 for which it provided a copy of the mailer with an associated invoice. Mailers totaling \$33,972 for which IRP provided two sign in sheets and photographs are included in the \$273,126 total. According to the Audit staff, each of these mailers contained language expressly advocating the election or defeat of a clearly identified candidate as defined under 11 CFR §100.22(a), or when taken as a whole and with limited reference to external events could only be interpreted by a reasonable person as containing advocacy of the election or defeat of one or more clearly identified candidate(s) as defined under 11 CFR §100.22(b).

b. Apparent Independent Expenditures Reported as FEA Volunteer Mail (No Invoices Associated)

IRP provided 27 different mailers that contained language expressly advocating the election or defeat of clearly identified candidates, as defined under 11 CFR 100.22(a).

IRP did not provide sufficient information to allow each of the 27 communications to be associated with an invoice. Without this additional information, the Audit staff is unable to calculate the disbursement amount for the 27 mailers.

⁷ This documentation was provided both during fieldwork and in response to the exit conference. There were 10 additional photographs provided by IRP that appear to contain similar individuals at the same facility, however, the Audit staff was not able to associate them with any of the mailers or sign in sheets provided by IRP.

c. Volunteer Material Exemption

In response to the Audit's staff's request during fieldwork for documentation to support the volunteer materials exemption that the committee reported, IRP provided 24 pictures of individuals sorting, bundling and placing the mailers into mail bags. IRP supplied three volunteer sign in sheets for three different mailers. Seven different mailers can be seen in the pictures provided. Each of the volunteer sign in sheets contained two names. Two of the sign in sheets were dated September 13, 2012 and each had the name of a Republican congressional candidate.

The Commission has addressed the applicability of the volunteer materials exemption in the Final Audit Reports of the Arizona Republican Party, the Democratic Executive Committee of Florida, and the Tennessee Republican Party. In these reports, the Commission recognized a lack of clarity regarding the application of the volunteer materials exemption. The Commission had attempted to formulate a consensus policy regarding what constitutes substantial volunteer involvement for the purpose of applying the exemption,⁸ but this was never achieved. Since a lack of clarity exists concerning the application of the volunteer materials exemption, it follows that the type and amount of documentation needed to support volunteer involvement is also unclear.

In view of the uncertainty regarding the amount of volunteer involvement needed to qualify for the volunteer materials exemption, as well as the amount of documentation required to support such an exemption, the Audit staff recommended that, IRP provide more detailed information and documentation for any volunteer involvement associated with each mailer.

2. Interim Audit Report & Audit Division Recommendation

This issue was presented at the exit conference. The Audit staff provided a schedule detailing these expenditures to IRP representatives. IRP representatives stated that the expenditures were not independent expenditures but were non-allocable mailers. IRP officials stated that the direct mail expenditures were for candidate specific mass mailings for which volunteers were utilized.

In response to the exit conference, IRP provided one additional sign in sheet that was dated September 20, 2012⁹ to document the use of volunteers in their mail program. They also provided two sworn affidavits from individuals. In one sworn affidavit, an individual explained that he oversaw the volunteer component of IRP's mail program and that for every mail piece that IRP sent on behalf of federal candidates, volunteers processed those mail pieces in accordance with FEC guidelines. Further, the individual described the process performed by the volunteers as follows: the volunteers unpacked mail pieces; sorted by address; banded together mail pieces, placed them in bags and loaded them for transport. In the second sworn affidavit another individual stated he would go on to become the volunteer coordinator and that as a regular volunteer for IRP, he spent a great deal of time

⁸ Proposed Interim Enforcement Policy, Agenda document No. 10-16.

⁹ IRP provided three sign in sheets during field work.

processing volunteer mail for IRP on behalf of Republican congressional candidates. He described the same basic process as the first individual about the involvement of the volunteers IRP used for Republican candidates for Congress.

The Interim Audit Report recommended that IRP provide:

- Additional invoices and/or information for the 27 mailers containing express advocacy; and
- Documentation and evidence that apparent independent expenditures totaling \$273,126 and the 27 mailers containing express advocacy did not require reporting as independent expenditures.

In addition the Interim Audit Report recommended absent such evidence, IRP amend its reports to disclose these disbursements as independent expenditures on Schedule E and submit revised procedures for reporting independent expenditures.

3. Committee Response to Interim Audit Report

In response to the Interim Audit Report recommendation, IRP stated "...that these 27 direct mail communications were non-allocable, candidate-specific volunteer mass mailings." IRP referred to two sworn affidavits it previously provided to the Audit staff from two committee individuals who were involved in its mail program that were responsible for the volunteer component of the volunteer mail. Both sworn affidavits described the process by which IRP volunteers regularly processed all of IRP's non-allocable mail. IRP supplied a third sworn affidavit from IRP's former Deputy Executive Director who stated that in the 2012 cycle, IRP supported its federal candidates through the use of non-allocable mail processed by volunteers.

With respect to the four mailers totaling \$33,972 for which IRP provided two sign in sheets and photographs, the Audit staff believes the documentation provided in support of the volunteer materials exemption is consistent with such evidence provided in past audits. As a result, these disbursements are no longer being considered independent expenditures. For the remaining 12 mailers totaling \$239,154 (\$273,126 - \$33,972) and the 27 mailers without invoices that IRP claims the volunteer materials exemption is applicable, the Audit staff again recommends that IRP provide further evidence to support the application of the volunteer materials exemption to the specific communications involved. Such evidence will assist the Commission in determining if the volunteer materials exemption is applicable to these communications.

B. Failure to File 24/48-Hour Reports for Independent Expenditures

1. Facts

In addition to not reporting any independent expenditures during the audit period, IRP also did not file 24 or 48-hour reports for any independent expenditures. Therefore, the apparent independent expenditures identified above by the Audit staff may also have required such filings.

2. Interim Audit Report & Audit Division Recommendation

This issue was presented at the exit conference. The Audit staff provided a schedule detailing these expenditures to IRP representatives. IRP representatives stated that the expenditures were not independent expenditures but were non-allocable mailers that used volunteers.

The Interim Audit Report recommended that IRP provide documentation to support the date of public dissemination for each of the 16 apparent independent expenditures totaling \$273,126 and the 27 mailers to determine whether a 24 or 48 hour report was required.

3. Committee Response to the Interim Audit Report

In response to the Interim Audit Report recommendation, IRP stated that all direct mail at issue was intended to be processed as non-allocable mail, and not as independent expenditures. With respect to the four mailers totaling \$33,972 for which IRP provided two sign in sheets and photographs, the Audit staff believes the documentation provided in support of the volunteer materials exemption is consistent with such evidence provided in past audits. As a result, these disbursements are no longer being considered independent expenditures. Absent further evidence that the remaining communications totaling \$239,154 (\$273,126 - \$33,972) qualify for the volunteer materials exemption, the Audit staff considers the 39 (27+12) apparent independent expenditures above to be independent expenditures that also required either 24 or 48 hour reports.

Finding 3. Recordkeeping for Communications

Summary

During audit fieldwork, the Audit staff reviewed disbursements to verify the accuracy of the information and proper classification of transactions disclosed on reports. IRP reported 19 expenditures totaling \$357,613,¹⁰ on Schedule B, Line 30(b) and Schedule H4 (Disbursements for Allocated Federal/Non-federal Activity) with the purposes of FEA Volunteer Mail, Advocacy calls for Federal candidates, Direct Mail Services, equipment and phone minutes for Federal candidates and Auto-Dialer for Federal candidates. Documentation that was provided by IRP was insufficient to make a determination pertaining to the purpose for these disbursements and verification as Federal Election Activity or Allocated Federal/Non-federal Activity.

In response to the Interim Audit Report recommendation, IRP stated that it has searched its records and was unable to locate additional documents to substantiate these disclosures. Absent the provision of these records, the Audit staff considers the matter a violation of the recordkeeping requirements at 11 CFR §104.14(b)(1).

¹⁰ Two disbursements totaling \$52,504 were not reported, but are included in the \$357,613.

Legal Standard

- A. Formal Requirements Regarding Reports and Statements.** Each political committee shall maintain records with respect to the matters required to be reported which shall provide in sufficient detail the necessary information and data from which the filed reports may be verified, explained, clarified, and checked for accuracy and completeness. 11 CFR §104.14(b)(1).
- B. Preserving Records and Copies of Reports.** The treasurer of a political committee must preserve all records and copies of reports for 3 years after the report is filed. 52 U.S.C. §30102(d).

Facts and Analysis

A. Facts

During audit fieldwork, the Audit staff reviewed disbursements to verify the accuracy of the information and proper classification of transactions disclosed on reports. IRP reported 19 expenditures totaling \$357,613 for which documentation was insufficient to make a determination pertaining to whether these disbursements were correctly reported on Schedule B, Line 30(b) or Schedule H4.

The Audit staff's analysis resulted in the following:

- i. **Disbursements- No Invoices or Copies of Communications Provided (\$280,277)**
Disbursements totaling \$280,277 were paid to four mail vendors and three phone bank vendors, and were disclosed on Schedule B and Schedule H4, with purposes of FEA Volunteer Mail, Advocacy calls for Federal candidates, Direct Mail Services, equipment and phone minutes for Federal candidates and Auto-Dialer for Federal candidates. Without sufficient details, the Audit staff is unable to verify IRP's reporting of these amounts as Federal Election Activity or Allocated Federal/Non-federal Activity. The Audit staff requested copies of the invoices for the associated mail pieces and phone bank scripts for each phone disbursement. To date, these invoices or other information to associate the payments to a particular communication have not been provided.
- ii. **Disbursements- Invoices Provided – Not Able to Associate with Copies of Communications (\$77,336)**
IRP reported paying disbursements totaling \$77,336¹¹ to two mail vendors. IRP disclosed three disbursements on Schedule B, Line 30(b) with purposes of "FEA Volunteer Mail – Walsh". For these disbursements, IRP provided invoices but did not provide information about the related mail communications. Without sufficient details, the Audit staff is unable to verify IRP's reporting of these amounts as FEA Volunteer Mail. The Audit staff requested information that would allow an association between the invoice and the communication, however, to date IRP has not provided this information.

¹¹ The amount of invoices associated for these mailers is \$129,490. This is part of Finding 4.

B. Interim Audit Report & Audit Division Recommendation

At the exit conference, the Audit staff presented IRP schedules of the disbursements for which further records were necessary to verify the accuracy of reporting. At that time the Audit staff again requested that IRP provide invoices, copies of communications and scripts that would associate each invoice to the corresponding communication to the committee disclosure reports. The Interim Audit Report recommended that IRP provide the invoices, scripts and associated mail communications for the disbursements totaling \$357,613.

C. Committee Response to Interim Audit Report

In response to the Interim Audit Report recommendation, IRP stated that it searched its records and was not able to locate additional documents to substantiate these disclosures. Absent the provision of the records, the Audit staff considers the matter a violation of the recordkeeping requirements at 11 CFR §104.14(b)(1).

Finding 4. Receipt of Apparent Prohibited In-Kind Contributions

Summary

During audit fieldwork, the Audit staff identified apparent prohibited in-kind contributions totaling \$72,880 to the benefit of IRP. The apparent prohibited in-kind contributions consisted of postage for campaign mailers invoiced to IRP but apparently paid by an unknown source. In response to the Interim Audit Report recommendation, IRP did not specifically address the amounts for postage apparently paid on its behalf. IRP has not complied with the recommendation to identify the source of payment for the postage. Absent such a demonstration, the \$72,880 in postage costs are considered a prohibited contribution to IRP.

Legal Standard

- A. Receipt of Prohibited Contributions – General Prohibition.** Candidates and committees may not accept contributions (in the form of money, in-kind contributions or loans):
1. In the name of another; or
 2. From the treasury funds of the following prohibited sources:
 - Corporations (this means any incorporated organization, including a non-stock corporation, an incorporated membership organization, and an incorporated cooperative);
 - Labor Organizations; or
 - National Banks;
 3. Federal Government Contractors (including partnerships, individuals, and sole proprietors who have contracts with the federal government); and
 4. Foreign Nationals (including individuals who are not U.S. citizens and not lawfully admitted for permanent residence; foreign governments and foreign political parties; and groups organized under the laws of a foreign country or groups whose principal place of business is in a foreign country, as defined in 22 U.S.C. §611(b)). 52 U.S.C. §§30119 and 30121.

B. Contribution. A gift, subscription, loan (except a loan made in accordance with 11 CFR 100.72 and 100.73), advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for federal office is a contribution. The term anything of value includes all in-kind contributions, of any goods or services without charge or at a charge that is less than the usual and normal charge for such goods or services. 11 CFR §100.52.

Facts and Analysis

A. Facts

During audit fieldwork, the Audit staff identified apparent prohibited in-kind contributions totaling \$72,880. The apparent prohibited in-kind contributions consisted of payments for postage paid directly to a mail vendor used by IRP for at least 14 mailers that IRP sent out.¹² This amount was identified from invoices IRP provided that were for two Congressional candidates, Joe Walsh for Congress Committee and Plummer for Congress.¹³ Contained on each of the 14 invoices was an amount for postage that read, "Postage – Paid Directly to Mail House". IRP bank statements, both federal and non-federal, do not show these amounts being paid. The amount paid for postage that could not be traced to IRP bank statements is \$72,880. However, the Audit staff notes that other mailings associated with Candidates that IRP sent out appeared to involve postage paid for by the Candidates' authorized committees. For example, the Randy Hultgren for Congress committee, transferred \$71,379 to IRP and reported the transfers as, "Direct Mail Production." IRP reported spending \$70,622 for three mailers in which the purpose was, FEA Volunteer Mail Hultgren for Congress.

B. Interim Audit Report & Audit Division Recommendation

At the exit conference, the Audit staff provided the supporting documentation and work papers for the apparent prohibited in-kind contributions. The IRP representative stated that the amounts were for one of the Republican Congressional candidates.

The Interim Audit Report recommended that IRP provide evidence demonstrating that the in-kind contributions in question were made with permissible funds or refund such contributions. In addition, the Interim Audit Report recommended that if funds are not available to make the necessary refunds or disgorgement, IRP should disclose the contributions requiring refunds on Schedule D (Debts and Obligations) until funds become available to make such refunds.

C. Committee Response to Interim Audit Report

In response to the Interim Audit Report recommendation, IRP did not specifically address the amounts for postage apparently paid on its behalf. IRP has not complied with the recommendation to identify the source of payment for the postage. Absent such a demonstration, the \$72,880 in postage costs are considered a prohibited contribution to IRP.

¹² A complete set of invoices was not supplied. The amount of the possible prohibited contributions may be higher.

¹³ IRP reported receiving \$112,000 from the Joe Walsh for Congress Committee along with \$50,000 from the Plummer for Congress Committee.

Finding 5. Reporting of Debts and Obligations

Summary

During audit fieldwork, the Audit staff noted that IRP failed to report debts and obligations to 14 vendors totaling \$294,117¹⁴ on Schedule D (Debts and Obligations). In response to the Interim Audit Report recommendation, IRP amended its disclosure reports to materially correct the disclosure of debts and obligations to these vendors.

Legal Standard

A. Continuous Reporting Required. A political committee must disclose the amount and nature of outstanding debts and obligations until those debts are extinguished. 52 U.S.C. §30104(b)(8) and 11 CFR §§104.3(d) and 104.11(a).

B. Separate Schedules. A political committee must file separate schedules for debts owed by and to the committee with a statement explaining the circumstances and conditions under which each debt and obligation was incurred or extinguished. 11 CFR §104.11(a).

C. Itemizing Debts and Obligations.

- A debt of \$500 or less must be reported as of the time payment is made or not later 60 days after such obligation is incurred, whichever comes first.
- A debt exceeding \$500 must be disclosed in the report that covers the date on which the debt was incurred. 11 CFR §104.11(b).

Facts and Analysis

A. Facts

During audit fieldwork, the Audit staff reviewed IRP disbursement records and disclosure reports for proper reporting of debts and obligations.¹⁵ The review identified debts and obligations to 14 vendors totaling \$294,117¹⁶ not reported on Schedule D (Debts and Obligations). Of these debts, \$173,348¹⁷ was incurred during the audit period and \$120,769 was incurred prior to the audit period and remained outstanding as of the beginning of the audit period. Based on the records, these vendors provided mainly legal services, accounting services, telemarketing and mail services.

B. Interim Audit Report & Audit Division Recommendation

The Audit staff discussed the reporting of debts and obligations with IRP's representatives at the exit conference and provided work papers detailing the unreported debts. Representatives said they would research this matter and provide additional documentation. IRP representatives stated that they would amend their reports.

¹⁴ Additional records were requested at the exit conference relating to possible debt amounts that IRP disclosed on a separate filing prior to fieldwork. Those records were not provided to the Audit staff. This amount is update to \$257,396.

¹⁵ IRP provided the Audit staff with 177 invoices for 724 disbursements.

¹⁶ Each debt in this amount was counted once even if it requires disclosure over multiple periods. This amount has been updated to \$257,396.

¹⁷ This amount has been updated to \$136,627.

The Interim Audit Report recommended that IRP amend its disclosure reports to disclose these debts.

C. Committee Response to Interim Audit Response

In response to the Interim Audit Report recommendation, IRP amended its disclosure reports to materially correct the disclosure of debts and obligations to these vendors. In addition, IRP acknowledged that the items identified in the Interim Audit Report "...arguably should have been reported as debt on Schedule D during the relevant reporting period."

Finding 6. Recordkeeping for Employees

Summary

During audit fieldwork, the Audit staff determined that IRP did not maintain any monthly payroll logs, as required, to document the percentage of time each employee spent in connection with a federal election. For 2011 and 2012, the Audit staff identified payments to IRP employees totaling \$558,089¹⁸ for which IRP did not maintain monthly payroll logs. This consisted of \$542,812 for which payroll was allocated with federal and non-federal funds, and \$15,277 for which payroll was exclusively non-federal. In response to the Interim Audit Report recommendation, IRP acknowledged that it does not possess any monthly payroll logs for employees for the 2011 – 2012 time period. IRP stated that it did maintain these logs during the 2014 election cycle and going forward, they will continue to maintain monthly payroll logs. As such, IRP has complied with the Interim Audit Report recommendation by providing details of its plan to maintain monthly payroll logs in the future.

Legal Standard

Maintenance of Monthly Logs. Party committees must keep a monthly log of the percentage of time each employee spends in connection with a federal election. Allocations of salaries, wages, and fringe benefits are to be undertaken as follows:

- employees who spend 25 percent or less of their compensated time in a given month on federal election activities must be paid either from the federal account or be allocated as administrative costs;
- employees who spend more than 25 percent of their compensated time in a given month on federal election activities must be paid only from a federal account; and,
- employees who spend none of their compensated time in a given month on federal election activities may be paid entirely with funds that comply with state law. 11 CFR §106.7(d)(1).

Facts and Analysis

A. Facts

Prior to audit fieldwork, the Audit staff was informed by IRP that it did not maintain any monthly payroll logs, as required, to document the percentage of time each employee spent in

¹⁸ IRP did not have employees paid with a mixture of federal and non-federal funds and exclusively non-federal funds during the same month.

connection with a federal election. These logs are required to document the proper allocation of federal and non-federal funds used to pay employee salaries and wages. For 2011 and 2012, IRP did not maintain monthly logs for \$558,089¹⁹ in payroll disbursements. This amount includes payroll paid as follows to IRP employees.

- Employees reported on Schedule H4 and paid with federal and non-federal funds during the same month (totaling \$542,812) and;
- Employees paid exclusively with non-federal funds in a given month (totaling \$15,277).

B. Interim Audit Report & Audit Division Recommendation

Prior to audit fieldwork and at the exit conference, the Audit staff discussed the payroll recordkeeping matter with IRP's representative and counsel. IRP counsel noted that IRP did not maintain payrolls during the 2011-2012 election cycle, however, currently does maintain the payroll logs.

The Interim Audit Report recommended that IRP provide evidence that it maintained monthly time logs to document the percentage of time an employee spent in connection with federal election; or implement a plan to maintain monthly payroll logs in the future.

C. Committee Response to Interim Audit Report

In response to the Interim Audit Report recommendation, IRP acknowledged that it did not possess any monthly payroll logs for employees for the 2011 – 2012 time period. IRP stated that it maintained these logs during the 2014 election and going forward, IRP will require all of its employees who are paid by both federal and non-federal funds to maintain monthly logs of the time each spends on federal and non-federal activities. As such, IRP has complied with the Interim Audit Report recommendation by providing details of its plan to maintain monthly payroll logs in the future.

¹⁹ This total does not include payroll for employees paid with 100 percent federal funds and reported as such (see Part I, Background, Commission Guidance, Request for Early Commission Consideration of a Legal Question, Page 1). Payroll amounts are stated net of taxes and fringe benefits.