

IN THE COURT OF COMMON PLEAS  
MAHONING COUNTY, OHIO

Erie Terminal Place, LLC  
And  
US Campus Suites, LLC  
And  
Wick Properties, LLC  
And  
Dominic Marchionda  
16 Wick Ave; Suite 100  
Youngstown, Ohio 44503

CASE NO. 2015-CV-3100

JUDGE *SAPOLITO*

**COMPLAINT FOR  
DECLARATORY JUDGMENT AND  
TEMPORARY, PRELIMINARY  
AND PERMANENT RESTRAINING  
ORDER TO QUASH  
SUBPOENA FROM  
AUDITOR OF STATE**

Plaintiffs,

v.

David Yost, Auditor of State,  
88 East Broad Street  
Columbus, Ohio 43215

Defendant.

Now comes the plaintiffs, Erie Terminal Place LLC, US Campus Suites LLC, Wick Properties LLC, and Dominic Marchionda, by and through counsel, and for their complaint against the Defendant David Yost Auditor of State in the above-captioned case state as follows:

The Auditor of State has issued a subpoena for documentation related to an unknown investigation. (See Exhibit A, B, C, and D attached hereto and incorporated herein) The auditor of state has refused to disclose the nature of the investigation or the party being investigated, despite numerous requests. Additionally, the auditor of state as a limited scope of authority. The auditor of state cannot investigate private entities, nor audit private entities who are not in possession of public monies.



**I. The Auditor of State has no jurisdiction to subpoena documents from Plaintiff**

In order to grant a preliminary injunction, the court must examine four factors, 1) whether there is a substantial likelihood that plaintiff will prevail on the merits; 2) the plaintiff will suffer irreparable injury if the injunction is granted, 3) no third parties will be unjustifiably harmed if the injunction is granted and for the public interest will be served by the injunction. Vanguard Transportation System Inc vs Edwards transfer and storage company 1996, 109 Ohio App 3rd 786, 790, 673 NE 2nd 182.

Furthermore, Ohio Revised Code section 117.10 and 117.11 provide as follows: "the Auditor of State shall audit all public offices as provided in this chapter. The Auditor of State may also audit the accounts of private institutions, associations, boards, and corporations receiving public money for their use and may require of them annual reports in such form as the Auditor of State prescribes."

The plaintiffs are private corporations, they are not public entities nor are they private institutions in possession of public money.

Furthermore, an administrative agency does not have unlimited authority to issue subpoenas. A subpoena will not be traditionally and enforced unless: 1 the inquiry is permitted by law, 2 the records sought are relevant to the matter in issue, and 3 the records disclosure will not cause unreasonable costs and difficulty. State ex rel ministerial Day Care Association vs Petro 100 Ohio State 3rd 343, 800 NE 2nd 18.

In the case at bar, the Auditor of State does not have unlimited authority to issue subpoenas. The Auditor furthermore, does not, cannot establish that the inquiry is permitted by law, the records are relevant to the matter in issue, and the records disclosure will not cause unreasonable cost and difficulty. In fact, the auditor of state refuses to disclose what the matter in issue is. Therefore, the Auditor cannot establish evidence that his inquiry is relevant to the "issue". Furthermore, the defendants all have a right not to be forced to be witnesses against themselves pursuant to United States Constitution amendment 5.

## II. Fifth Amendment Right of Defendants

The Fifth Amendment to the United States Constitution provides in pertinent part that no person “shall be compelled in any criminal case to be a witness against himself.” This protection exists primarily to “assure that an individual is not compelled to produce evidence which may later be used against him as an accused in a criminal action.” Maness v. Meyers (1975), 419 U.S. 449, 461, 95 S.Ct. 584, 592, 42 L.Ed.2d 574, 585. The protection of this amendment applies in any type of proceeding, whether civil, criminal, administrative, investigatory, or adjudicatory. Maness, supra; Lefkowitz v. Turley (1973), 414 U.S. 70, 94 S.Ct. 316, 38 L.Ed.2d 274; Kastigar v. United States (1972), 406 U.S. 441, 92 S.Ct. 1653, 32 L.Ed.2d 212. Further, as pointed out by the United States Court of Appeals, Fourth Circuit, in United States v. Sharp (C.A.4, 1990), 920 F.2d 1167, 1170, the Fifth Amendment “applies not only to evidence which may directly support a criminal conviction, but to ‘information which would furnish a link in the chain of evidence that could lead to prosecution, as well as evidence which an individual reasonably believes could be used against him in a criminal prosecution.’ ” (Quoting Maness, supra, 419 U.S. at 461, 95 S.Ct. at 592, 42 L.Ed.2d at 585.)

The Fifth Amendment protects the person against incrimination through compelled testimony or other compelled acts having some testimonial character. The Fifth Amendment privilege is a personal one, adhering to the person, and not to the information that may tend to incriminate him or her. Couch v. United States (1973), 409 U.S. 322, 328, 93 S.Ct. 611, 616, 34 L.Ed.2d 548, 554; Fisher v. United States (1976), 425 U.S. 391, 96 S.Ct. 1569, 48 L.Ed.2d 39. The contents of tax documents in a taxpayer's possession are not protected by the Fifth Amendment, regardless of whether they may incriminate the taxpayer. However, in United States v. John Doe (1984), 465 U.S. 605, 612-613, 104 S.Ct. 1237, 1242, 79 L.Ed.2d 552, 560, the United States Supreme Court addressed this issue and stated:

“Although the contents of a document may not be privileged, the act of producing the document may be. [Fisher v. United States (1976), 425 U.S.] at 410 [96 S.Ct. at 1580-1581, 48 L.Ed.2d at 55]. A government subpoena compels the holder of the document to perform an act that may have testimonial aspects and an incriminating effect. *Id.*

“ ‘Compliance with the subpoena tacitly concedes the existence of the papers demanded and their possession or control by the taxpayer. It also would indicate the taxpayer's belief that the papers are those described in the subpoena. Curcio v. United States, 354 U.S. 118, 125 [77 S.Ct.

1145, 1150, 1 L.Ed.2d 1225, 1231] (1957). The elements of compulsion are clearly present, but the more difficult issues are whether the tacit averments of the taxpayer are both “testimonial” and “incriminating” for purposes of applying the Fifth Amendment. These questions perhaps do not lend themselves to categorical answers; their resolution may instead depend on the facts and circumstances of particular cases or classes thereof.’ *Id.* [425 U.S.] at 410 [96 S.Ct. at 1581, 48 L.Ed.2d at 56].”

Ohio courts have determined under analogous circumstances, that administrative subpoenas from the Ohio Auditor of State, to produce documents can violate a citizen’s Fifth Amendment rights against self incrimination:

The Tenth district court of appeals in Oriana House v Montgomery, Auditor of State, 63 Ohio St.3d 260 (1991) that “Tax investigations such as the one here initiated against this appellee are civil in nature. However, it is well recognized that they can and often do lead to criminal charges for failure to report and pay taxes. United States v. Cates (D.Md.1988), 686 F.Supp. 1185; Mathis v. United States (1968), 391 U.S. 1, 88 S.Ct. 1503, 20 L.Ed.2d 381; see Couch v. United States, supra; and Fisher v. United States, supra.”

The federal district court in United States v. Cates (D.Md.1988), 686 F.Supp. 1185, was faced squarely with the issue of whether 1040 forms, W-2 forms, 1099 forms, employee’s earning statements, and records of deposit subpoenaed in a civil tax investigation fell “into the categories of documents for which the act of production may be privileged” under *Doe*. *Id.* at 1191. The court in *Cates* held that production of the tax records was privileged, reasoning:

“...If *Cates* were compelled to produce the summoned documents, the testimonial impact of such production would amount to an admission of the existence of the documents and the possession or control by *Cates*. See Fisher, 425 U.S. at 410, 96 S.Ct. at 1581 [48 L.Ed.2d at 56]. The production of a copy of *Cates*’ 1040 forms would, for example, be evidence that *Cates* possessed and failed to file a tax return for the years in question. Producing copies of W-2 forms would be evidence of evasion as he would be acknowledging the existence and possession of such information from which he should have determined his tax liability. Deposit slips may well be similarly incriminating. In other words, the compelled production of the documents sought would be evidence of *Cates*’ knowledge of his income and failure to report and pay taxes on the same. Accordingly, the Fifth Amendment privilege was properly asserted by *Cates*.... ” *Id.* at 1193.

As stated previously, the Fifth Amendment's protection against self-incrimination applies to any type of proceeding whether civil, criminal, administrative, investigatory or adjudicatory. Mathis, supra; Maness v. Meyers, supra. And it applies not only to evidence which may directly support a criminal conviction, but also to information which may furnish a link in the chain of evidence that could lead to prosecution, Hoffman v. United States (1951), 341 U.S. 479, 71 S.Ct. 814, 95 L.Ed. 1118. Thus, the privilege has been found to apply in IRS investigations of civil tax liability due to the potential that such investigations have for leading to criminal prosecutions. Mathis, supra; Cates, supra; United States v. Sharp, supra.

The privilege against self-incrimination may not be invoked merely by asserting that the information sought by the government may in a general sense be incriminatory. Whether there is a sufficient hazard of incrimination is a question for the court which is asked to enforce the privilege. Sharp, supra, at 1170; Hoffman, supra.

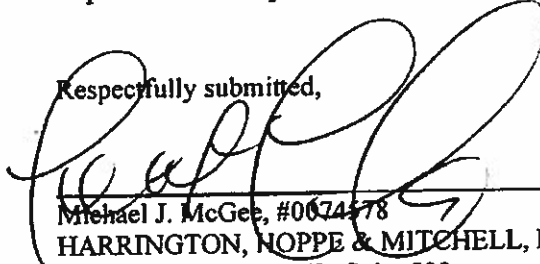
In the case at bar, this court should review the facts before it, and the applicable law of United States v. Cates, supra, and determine: whether the production of plaintiffs' accounting records presents a significant hazard of incrimination that would involve the Fifth Amendment privilege.

At least one federal appellate court has addressed the question of whether certain information is so incriminating in nature as to invoke the privilege against self-incrimination. The court in United States v. Sharp, supra, set forth the inquiry as follows: "In making this determination, a court asks essentially two things. The first is whether the information is incriminating in nature. This may appear in either of two ways. It may be evident on its face, in light of the question asked and the circumstances of its asking. ... If it is so facially evident, that ends this inquiry. If it is not, the person asserting the privilege may yet demonstrate its incriminating potential by further contextual proof. ... If the incriminating nature of the information is established by either route, there remains the question whether criminal prosecution is sufficiently a possibility, all things considered, to trigger the need for constitutional protection. As to this, the proper test simply assesses the objective reasonableness of the target's claimed apprehension of prosecution. ... " (Citations omitted.) Id. at 1170-1171.

Reasonably applying the above standards in this case, the trial court should find that although the plaintiffs are involved in a civil proceeding, the information obtained by forcing them to produce certain records would violate their Fifth Amendment rights.

WHEREFORE, for the above and foregoing reasons, Plaintiffs respectfully request, this Honorable Court, issue a temporary and preliminary, and permanent injunction, quashing the administrative subpoena from the Auditor of State and issue a declaratory judgment that the plaintiffs need not respond to the subpoena nor produce the requested documents.

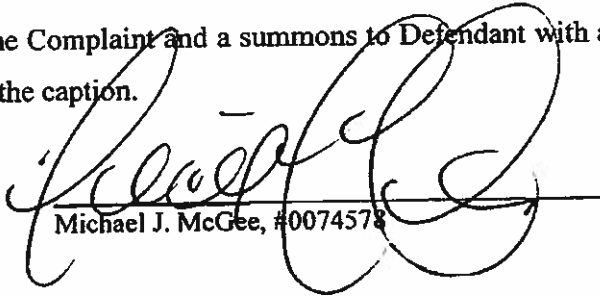
Respectfully submitted,



Michael J. McGee, #0074578  
HARRINGTON, NOPPE & MITCHELL, LTD.  
108 Main Avenue, S.W., Suite 500  
Warren, OH 44481  
Tel. 330-392-1541  
Fax 330-394-6890  
Email: [MMcgee@hhmlaw.com](mailto:MMcgee@hhmlaw.com)  
Attorney for Plaintiff

#### INSTRUCTIONS FOR SERVICE

Please send a certified copy of the Complaint and a summons to Defendant with a return receipt requested at the address listed in the caption.



Michael J. McGee, #0074578



# Dave Yost · Auditor of State

November 16, 2015

Mike McGee, Esq.  
Harrington, Hoppe & Mitchell, Ltd.  
108 Maine Avenue, SW  
Suite 500  
Warren, Ohio 44481

Re: Dominic Marchionda

Dear Mr. McGee:

Please find enclosed courtesy copies of the subpoenas that have been issued regarding the above-captioned individual.

If you have any questions, please feel free to contact me at 614-728-7268.

Sincerely,

A handwritten signature in cursive script that reads "Cheryl S. Gray".

Cheryl S. Gray  
Public Integrity Assurance Team  
Administrative Assistant



# Dave Yost · Auditor of State

November 16, 2015

*VIA Certified Mail*

Dominic Marchionda  
7886 Via Atillio  
Poland, Ohio 44514

RE: Service of Subpoena *Duces Tecum* on Dominic Marchionda

Dear Mr. Marchionda:

Attached is a Subpoena *Duces Tecum*.

Please complete the Subpoena on the bottom portion of page one by writing in the date you received the original for serving; the time, date and address where the subpoena was served; and sign your name on the line indicated, ensuring that all information is clear on the copies in the carbon packet. Please return the yellow and pink copies (pages 2 and 3 of the carbon packet) of the Subpoena to me at the Legal Division, 88 East Broad Street, 9th Floor, Columbus, Ohio, 43216, in the self-addressed, stamped envelope provided.

Please provide a certification of the records upon compliance with the subpoena.

If you should have any questions, please do not hesitate to contact me at the number listed below, or contact Chris A. Rudy, Fraud Investigator at (330) 949-6334 or [carudy@ohioauditor.gov](mailto:carudy@ohioauditor.gov).

Sincerely,

Dave Yost  
Auditor of State

A handwritten signature in black ink that reads "Robert F. Smith".

Robert F. Smith  
Deputy Chief Legal Counsel  
Public Integrity Assurance Team  
Direct: (614) 728-7100

cc: Chris A. Rudy, Fraud Investigator  
0302

88 East Broad Street, Columbus, Ohio 43215  
Phone: 614-466-4514 or 800-282-0370  
[www.ohioauditor.gov](http://www.ohioauditor.gov)



SUBPOENA  
DUCES TECUM

STATE OF OHIO,  
COUNTY OF FRANKLIN, SS:  
DAVE YOST

:  
:  
: IN THE MATTER OF THE AUDITOR OF STATE  
: Investigation OF:  
: City of Youngstown  
: Mahoning County, Ohio  
:  
:  
:

TO: Dominic Marchionda  
7886 Via Atillio  
Poland, Ohio 44514

BY AUTHORITY OF SECTION 117.18 OF THE OHIO REVISED CODE:

You are hereby directed to appear before me and/or my designated representative at 12:00 o'clock p.m., on the 30th day of November, 2015, at the Office of the Auditor of State, Chris A. Rudy, Fraud Investigator, Public Integrity Assurance Team, 88 East Broad Street, 9th Floor, Columbus, Ohio 43215, then and there to give testimony and to produce the following books, records, documents or other items, which are in your custody or under your control:  
**SEE ATTACHED.**

You will not be obligated to appear as stated above provided that the subpoenaed documents are delivered to Chris A. Rudy, Fraud Investigator at the address stated above on or before November 30, 2015. Please call Chris A. Rudy, Fraud Investigator at (330) 949-6334 or carudy@phlqauditor.gov when the documents are ready.

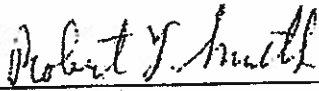
YOU WILL PLEASE TAKE NOTE:

Section 9.84 of the Ohio Revised Code provides that: "Any person appearing as a witness before any public official, department board, bureau, commission, agency or representative thereof, in any administrative or executive proceeding or investigation, public or private, if he so requests, shall be permitted to be accompanied, represented, and advised by an attorney, whose participation in the hearing shall be limited to the protection of the rights of the witness, and who may not examine or cross-examine witnesses, and the witness shall be advised of his right to counsel before he is interrogated."

Witness my hand at Columbus, Ohio, this 16<sup>th</sup> day of November, 2015.

  
Cheryl S. Gray  
NOTARY PUBLIC

Cheryl S. Gray  
Notary Public, State of Ohio  
My Commission Expires 07-21-2018

  
ROBERT F. SMITH  
Deputy Chief Legal Counsel  
Public Integrity Assurance Team  
State of Ohio, Auditor of State  
88 East Broad Street, 9th Floor  
Columbus, Ohio 43216-1140

TO BE COMPLETED BY INDIVIDUAL SERVING SUBPOENA:

Received this Writ \_\_\_\_\_, 2015, and served the same on \_\_\_\_\_  
(date of service) (name of individual served)

\_\_\_\_\_ the within-named witness at \_\_\_\_\_ o'clock \_\_\_\_\_ m., on \_\_\_\_\_, 2015.  
(title/relationship of individual served)

at \_\_\_\_\_  
(address of service)

by delivering to and leaving with him/her personally a true and correct original hereof.

0302

\_\_\_\_\_  
(signature of serving party)

**SUBPOENA**  
*DUCES TECUM*

The subpoenaed party, **Dominic Marchionda** is directed to produce for inspection and copying any and all original documents in its possession or control, or in the possession or control of **Dominic Marchionda** agents, subsidiaries, or affiliated companies, partnerships or firms, that were obtained, collected, copied, created, written, generated, read, reviewed, analyzed or used in any fashion, whether directly or indirectly, by **Dominic Marchionda**, and any of its partners, shareholders, officers, employees and/or agents;

In order to complete our review of documents related to the investigation of City of Youngstown, we are requesting the following documents, including but not limited to:

- i. Any and all supporting documentation for the listed projects. Please provide invoices from all contractors supporting the expenditures of all of the grant monies awarded by the City of Youngstown. To reiterate, the projects we are inquiring about are:**
  - 1. U.S. Campus Suites, LLC - the student housing facility adjacent to the Campus of Youngstown State University on the property described in the below listed agreement.**
    - a. The grant for U.S. Campus Suites, LLC stipulates the "Grant shall be used by the Developer for improvement to the waterline serving the Property and any related installations, improvements, enhancements, and/or upgrades to the plumbing and/or water system that may be necessary for Developer to complete the project as planned."**
  - 2. Erie Terminal Place, LLC - the student housing facility located at the Erie Terminal Building located at 112 W. Commerce Street, Youngstown, OH.**
    - a. The grant for Erie Terminal Place, LLC requires the "Grant shall be used by the Developer for improvement to the waterline serving the Property and any related installations, improvements, enhancements, and/or upgrades to the plumbing and/or water system that may be necessary for Developer to complete the project as planned."**

**3. Wick Properties, LLC - the former Wick Building located at 34 W. Federal Street, Youngstown, OH.**

- a. The Grant funds shall be paid to Developer upon receipt of paid invoices submitted by Developer to City for the Project." The grant for Wick Properties, LLC stipulates the "Funds shall be made on a reimbursement basis after City receives appropriate documentation of the expenditure of funds by Developer for sanitary and storm water sewer and water service expenses to the Project. In the alternative, City will provide funds by a check issued jointly to the Developer and a contractor providing sanitary and storm sewer infrastructure and water service improvements to the project site upon submission of an invoice from contractor."

- II. The Auditor of State reserves the right to request further documentation based on the response to the items identified after our review.

For the purpose of the subpoena *duces tecum*, the term "document" or "documents" shall be defined to the broadest extent permitted by Rule 34 of the Ohio Rules of Civil Procedure and includes, whenever applicable and without limitation, the original (absent the original, a copy) of magnetically, optically, visually or aurally stored or produced, including, but not limited to, letters; correspondence; memoranda; telegrams; notes; reports; compilations; data; notebooks; laboratory notebooks; working papers; spreadsheets; graphs; charts; blueprints; books; pamphlets; brochures; circulars; manuals; instructions; ledgers; drawings; including engineering, assembly and detailed drawings, sketches; photographs; diaries; sales literature; advertising literature; agreements; minutes; and sound reproductions; printout sheets; summaries of records of telephone conversations, personal conversations or interviews; and any and all other writings, typings, printings, drafts, copies and/or mechanical, magnetic, optic or photographic reproductions or recordations thereof in the possession, custody or control of Dominic Marchionda, or known to Dominic Marchionda. "Document" or "documents" also includes all copies which are not identical to the originals, such as those bearing marginal comments, alterations, notes or other notations not present on the original document as originally written, typed or otherwise prepared.

For the purposes of this subpoena *duces tecum*, the term "original" shall have the same meaning as in Rule 1001(3) of the Ohio Rules of Evidence and shall also include any duplicates, as that term is defined in Rule 1001(4) of the Ohio Rules of Evidence, of any documents the originals of which are not in the possession of Dominic Marchionda.

If you have any questions, please contact Chris A. Rudy, Fraud Investigator, at (330) 949-6334 or [carudy@ohioauditor.gov](mailto:carudy@ohioauditor.gov).



# Dave Yost · Auditor of State

November 16, 2015

**VIA U.S. CERTIFIED MAIL**

Erie Terminal Place, LLC  
7886 Via Atillio  
Poland, Ohio 44514

RE: Service of Subpoena *Duces Tecum* on Erie Terminal Place, LLC

Dear Records Custodian:

Attached is a Subpoena *Duces Tecum*.

You are hereby Ordered not to disclose the existence of this subpoena or your compliance therewith to any person other than another employee or agent for Erie Terminal Place, LLC who is a necessary party to comply with the terms of this subpoena.

Please complete the Subpoena on the bottom portion of page one by writing in the date you received the original for serving; the time, date and address where the subpoena was served; and sign your name on the line indicated, ensuring that all information is clear on the copies in the carbon packet. Please return the yellow and pink copies (pages 2 and 3 of the carbon packet) of the Subpoena to me at the Legal Division, 88 East Broad Street, 9th Floor, Columbus, Ohio, 43216, in the self-addressed, stamped envelope provided.

Please provide a certification of the records upon compliance with the subpoena.

If you should have any questions, please do not hesitate to contact me at the number listed below, or contact Chris Rudy, Fraud Investigator at (330) 949-6334 or [carudy@ohioauditor.gov](mailto:carudy@ohioauditor.gov).

Sincerely,

Dave Yost  
Auditor of State

A handwritten signature in black ink that reads "Robert F. Smith".

Robert F. Smith  
Deputy Chief Legal Counsel  
Public Integrity Assurance Team  
Direct: (614) 728-7100

cc: Chris Rudy, Fraud Investigator  
0304

88 East Broad Street, Columbus, Ohio 43215  
Phone: 614-466-4514 or 800-282-0370  
[www.ohioauditor.gov](http://www.ohioauditor.gov)

SUBPOENA  
DUCES TECUM

STATE OF OHIO,  
COUNTY OF FRANKLIN, SS:  
DAVE YOST

:  
:  
: IN THE MATTER OF THE AUDITOR OF STATE  
: Investigation OF:  
: City of Youngstown  
: Mahoning County, Ohio  
:  
:  
:

TO: Erie Terminal Place, LLC  
7886 Via Atillio  
Poland, Ohio 44514

BY AUTHORITY OF SECTION 117.18 OF THE OHIO REVISED CODE:

You are hereby directed to appear before me and/or my designated representative at 12:00 o'clock p.m., on the 30th day of November, 2015, at the Office of the Auditor of State, Chris Rudy, Fraud Investigator, Public Integrity Assurance Team, 88 East Broad Street, 9th Floor, Columbus, Ohio 43215, then and there to give testimony and to produce the following books, records, documents or other items, which are in your custody or under your control:  
**SEE ATTACHED.**

You will not be obligated to appear as stated above provided that the subpoenaed documents are delivered to Chris Rudy, Fraud Investigator at the address stated above on or before November 30, 2015. Please call Chris Rudy, Fraud Investigator at (330) 949-8334 or carudy@ohioauditor.gov when the documents are ready.

YOU WILL PLEASE TAKE NOTE:

Section 9.84 of the Ohio Revised Code provides that: "Any person appearing as a witness before any public official, department board, bureau, commission, agency or representative thereof, in any administrative or executive proceeding or investigation, public or private, if he so requests, shall be permitted to be accompanied, represented, and advised by an attorney, whose participation in the hearing shall be limited to the protection of the rights of the witness, and who may not examine or cross-examine witnesses, and the witness shall be advised of his right to counsel before he is interrogated."

Witness my hand at Columbus, Ohio, this 16<sup>th</sup> day of November, 2015.

Cheryl S. Gray  
NOTARY PUBLIC



Cheryl S. Gray  
Notary Public, State of Ohio  
My Commission Expires 07-21-2018

Robert F. Smith  
ROBERT F. SMITH  
Deputy Chief Legal Counsel  
Public Integrity Assurance Team  
State of Ohio, Auditor of State  
88 East Broad Street, 9th Floor  
Columbus, Ohio 43216-1140

TO BE COMPLETED BY INDIVIDUAL SERVING SUBPOENA:

Received this Writ \_\_\_\_\_, 2015, and served the same on \_\_\_\_\_ (name of individual served)  
(date of service)

\_\_\_\_\_ the within-named witness at \_\_\_\_\_ o'clock \_\_\_\_\_ m., on \_\_\_\_\_, 2015  
(title/relationship of individual served)

at \_\_\_\_\_ (address of service)

by delivering to and leaving with him/her personally a true and correct original hereof.

0304

\_\_\_\_\_  
(signature of serving party)

**SUBPOENA**  
***DUCES TECUM***

The subpoenaed party, **Erie Terminal Place, LLC** is directed to produce for inspection and copying any and all original documents in its possession or control, or in the possession or control of **Erie Terminal Place, LLC** agents, subsidiaries, or affiliated companies, partnerships or firms, that were obtained, collected, copied, created, written, generated, read, reviewed, analyzed or used in any fashion, whether directly or indirectly, by **Erie Terminal Place, LLC**, and any of its partners, shareholders, officers, employees and/or agents;

In order to complete our review of documents related to the investigation of City of Youngstown, we are requesting the following documents, including but not limited to:

- I. Any and all supporting documentation for the listed projects. Please provide invoices from all contractors supporting the expenditures of all of the grant monies awarded by the City of Youngstown. To reiterate, the projects we are inquiring about are:
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    - a. The grant for **Erie Terminal Place, LLC** requires the "Grant shall be used by the Developer for improvement to the waterline serving the Property and any related installations, improvements, enhancements, and/or upgrades to the plumbing and/or water system that may be necessary for Developer to complete the project as planned."

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a. The Grant funds shall be paid to Developer upon receipt of paid invoices submitted by Developer to City for the Project." The grant for Wick Properties, LLC stipulates the "Funds shall be made on a reimbursement basis after City receives appropriate documentation of the expenditure of funds by Developer for sanitary and storm water sewer and water service expenses to the Project. In the alternative, City will provide funds by a check issued jointly to the Developer and a contractor providing sanitary and storm sewer infrastructure and water service improvements to the project site upon submission of an invoice from contractor."

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For the purposes of this subpoena *duces tecum*, the term "original" shall have the same meaning as in Rule 1001(3) of the Ohio Rules of Evidence and shall also include any duplicates, as that term is defined in Rule 1001(4) of the Ohio Rules of Evidence, of any documents the originals of which are not in the possession of Erie Terminal Place, LLC.

If you have any questions, please contact Chris Rudy, Fraud Investigator, at (330) 949-6334 or [carudy@ohioauditor.gov](mailto:carudy@ohioauditor.gov).





# Dave Yost · Auditor of State

November 16, 2015

*VIA U.S. CERTIFIED MAIL*

U.S. Campus Suites, LLC  
16 Wick Avenue, Suite 100  
Youngstown, Ohio 44503

RE: Service of Subpoena *Duces Tecum* on U.S. Campus Suites, LLC

Dear Records Custodian:

Attached is a Subpoena *Duces Tecum*.

You are hereby Ordered not to disclose the existence of this subpoena or your compliance therewith to any person other than another employee or agent for U.S. Campus Suites, LLC who is a necessary party to comply with the terms of this subpoena.

Please complete the Subpoena on the bottom portion of page one by writing in the date you received the original for serving; the time, date and address where the subpoena was served; and sign your name on the line indicated, ensuring that all information is clear on the copies in the carbon packet. Please return the yellow and pink copies (pages 2 and 3 of the carbon packet) of the Subpoena to me at the Legal Division, 88 East Broad Street, 9th Floor, Columbus, Ohio, 43216, in the self-addressed, stamped envelope provided.

Please provide a certification of the records upon compliance with the subpoena.

If you should have any questions, please do not hesitate to contact me at the number listed below, or contact Chris Rudy, Fraud Investigator at (330) 949-6334 or [carudy@ohioauditor.gov](mailto:carudy@ohioauditor.gov).

Sincerely,

Dave Yost  
Auditor of State

A handwritten signature in cursive script that reads "Robert F. Smith".

Robert F. Smith  
Deputy Chief Legal Counsel  
Public Integrity Assurance Team  
Direct: (614) 728-7100

cc: Chris Rudy, Fraud Investigator  
0303

88 East Broad Street, Columbus, Ohio 43215  
Phone: 614-466-4514 or 800-262-0370  
[www.ohioauditor.gov](http://www.ohioauditor.gov)

SUBPOENA  
DUCES TECUM

STATE OF OHIO,  
COUNTY OF FRANKLIN, SS:  
DAVE YOST

IN THE MATTER OF THE AUDITOR OF STATE  
Investigation OF:  
City of Youngstown  
Mahoning County, Ohio

TO: U.S. Campus Suites, LLC  
16 Wick Avenue, Suite 100  
Youngstown, Ohio 44503

BY AUTHORITY OF SECTION 117.18 OF THE OHIO REVISED CODE:

You are hereby directed to appear before me and/or my designated representative at 12:00 o'clock p.m., on the 30th day of November, 2015, at the Office of the Auditor of State, Chris Rudy, Fraud Investigator, Public Integrity Assurance Team, 88 East Broad Street, 9th Floor, Columbus, Ohio 43215, then and there to give testimony and to produce the following books, records, documents or other items, which are in your custody or under your control:  
**SEE ATTACHED.**

You will not be obligated to appear as stated above provided that the subpoenaed documents are delivered to Chris Rudy, Fraud Investigator at the address stated above on or before November 30, 2015. Please call Chris Rudy, Fraud Investigator at (330) 949-6334 or carudy@ohioauditor.gov when the documents are ready.

YOU WILL PLEASE TAKE NOTE:

Section 9.84 of the Ohio Revised Code provides that: "Any person appearing as a witness before any public official, department board, bureau, commission, agency or representative thereof, in any administrative or executive proceeding or investigation, public or private, if he so requests, shall be permitted to be accompanied, represented, and advised by an attorney, whose participation in the hearing shall be limited to the protection of the rights of the witness, and who may not examine or cross-examine witnesses, and the witness shall be advised of his right to counsel before he is interrogated."

Witness my hand at Columbus, Ohio, this 16<sup>th</sup> day of November 2015.

*Cheryl S. Gray*  
NOTARY PUBLIC



Cheryl S. Gray  
Notary Public, State of Ohio  
My Commission Expires 07-21-2018

*Robert F. Smith*  
ROBERT F. SMITH  
Deputy Chief Legal Counsel  
Public Integrity Assurance Team  
State of Ohio, Auditor of State  
88 East Broad Street, 9th Floor  
Columbus, Ohio 43216-1140

TO BE COMPLETED BY INDIVIDUAL SERVING SUBPOENA:

Received this Writ \_\_\_\_\_, 2015, and served the same on \_\_\_\_\_ (name of individual served)  
(date of service)

\_\_\_\_\_ the within-named witness at \_\_\_\_\_ o'clock \_\_\_\_\_ m., on \_\_\_\_\_, 2015  
(title/relationship of individual served)

at \_\_\_\_\_ (address of service)

by delivering to and leaving with him/her personally a true and correct original hereof.

0303

\_\_\_\_\_  
(signature of serving party)

**SUBPOENA  
DUCES TECUM**

The subpoenaed party, **U.S. Campus Suites, LLC** is directed to produce for inspection and copying any and all original documents in its possession or control, or in the possession or control of **U.S. Campus Suites, LLC** agents, subsidiaries, or affiliated companies, partnerships or firms, that were obtained, collected, copied, created, written, generated, read, reviewed, analyzed or used in any fashion, whether directly or indirectly, by **U.S. Campus Suites, LLC**, and any of its partners, shareholders, officers, employees and/or agents;

In order to complete our review of documents related to the investigation of City of Youngstown, we are requesting the following documents, including but not limited to:

- i. Any and all supporting documentation for the listed projects. Please provide invoices from all contractors supporting the expenditures of all of the grant monies awarded by the City of Youngstown. To reiterate, the projects we are inquiring about are:
  1. **U.S. Campus Suites, LLC** - the student housing facility adjacent to the Campus of Youngstown State University on the property described in the below listed agreement.
    - a. The grant for **U.S. Campus Suites, LLC** stipulates the "Grant shall be used by the Developer for improvement to the waterline serving the Property and any related installations, improvements, enhancements, and/or upgrades to the plumbing and/or water system that may be necessary for Developer to complete the project as planned."
  2. **Erle Terminal Place, LLC** - the student housing facility located at the Erle Terminal Building located at 112 W. Commerce Street, Youngstown, OH.
    - a. The grant for **Erle Terminal Place, LLC** requires the "Grant shall be used by the Developer for improvement to the waterline serving the Property and any related installations, improvements, enhancements, and/or upgrades to the plumbing and/or water system that may be necessary for Developer to complete the project as planned."

3. **Wick Properties, LLC - the former Wick Building located at 34 W. Federal Street, Youngstown, OH.**

- a. **The Grant funds shall be paid to Developer upon receipt of paid invoices submitted by Developer to City for the Project." The grant for Wick Properties, LLC stipulates the "Funds shall be made on a reimbursement basis after City receives appropriate documentation of the expenditure of funds by Developer for sanitary and storm water sewer and water service expenses to the Project. In the alternative, City will provide funds by a check issued jointly to the Developer and a contractor providing sanitary and storm sewer infrastructure and water service improvements to the project site upon submission of an invoice from contractor."**

- II. **The Auditor of State reserves the right to request further documentation based on the response to the items identified after our review.**

For the purpose of the subpoena *duces tecum*, the term "document" or "documents" shall be defined to the broadest extent permitted by Rule 34 of the Ohio Rules of Civil Procedure and includes, whenever applicable and without limitation, the original (absent the original, a copy) of magnetically, optically, visually or aurally stored or produced, including, but not limited to, letters; correspondence; memoranda; telegrams; notes; reports; compilations; data; notebooks; laboratory notebooks; working papers; spreadsheets; graphs; charts; blueprints; books; pamphlets; brochures; circulars; manuals; instructions; ledgers; drawings; including engineering, assembly and detailed drawings, sketches; photographs; diaries; sales literature; advertising literature; agreements; minutes; and sound reproductions; printout sheets; summaries of records of telephone conversations, personal conversations or interviews; and any and all other writings, typings, printings, drafts, copies and/or mechanical, magnetic, optic or photographic reproductions or recordings thereof in the possession, custody or control of U.S. Campus Suites, LLC, or known to U.S. Campus Suites, LLC. "Document" or "documents" also includes all copies which are not identical to the originals, such as those bearing marginal comments, alterations, notes or other notations not present on the original document as originally written, typed or otherwise prepared.

For the purposes of this subpoena *duces tecum*, the term "original" shall have the same meaning as in Rule 1001(3) of the Ohio Rules of Evidence and shall also include any duplicates, as that term is defined in Rule 1001(4) of the Ohio Rules of Evidence, of any documents the originals of which are not in the possession of U.S. Campus Suites, LLC.

**If you have any questions, please contact Chris Rudy, Fraud Investigator,  
at (330) 949-6334 or [carudy@ohioauditor.gov](mailto:carudy@ohioauditor.gov).**



# Dave Yost · Auditor of State

November 16, 2015

**VIA U.S. CERTIFIED MAIL**

Wick Properties, LLC  
7886 Via Atillio  
Poland, Ohio 44514

RE: Service of Subpoena *Duces Tecum* on Wick Properties, LLC

Dear Records Custodian:

Attached is a Subpoena *Duces Tecum*.

You are hereby Ordered not to disclose the existence of this subpoena or your compliance therewith to any person other than another employee or agent for Wick Properties, LLC who is a necessary party to comply with the terms of this subpoena.

Please complete the Subpoena on the bottom portion of page one by writing in the date you received the original for serving; the time, date and address where the subpoena was served; and sign your name on the line indicated, ensuring that all information is clear on the copies in the carbon packet. Please return the yellow and pink copies (pages 2 and 3 of the carbon packet) of the Subpoena to me at the Legal Division, 88 East Broad Street, 9th Floor, Columbus, Ohio, 43216, in the self-addressed, stamped envelope provided.

Please provide a certification of the records upon compliance with the subpoena.

If you should have any questions, please do not hesitate to contact me at the number listed below, or contact Chris Rudy, Fraud Investigator at (330) 949-6334 or [crudy@ohioauditor.gov](mailto:crudy@ohioauditor.gov).

Sincerely,

Dave Yost  
Auditor of State

A handwritten signature in cursive script that reads "Robert F. Smith".

Robert F. Smith  
Deputy Chief Legal Counsel  
Public Integrity Assurance Team  
Direct: (614) 728-7100

cc: Chris Rudy, Fraud Investigator  
0305

88 East Broad Street, Columbus, Ohio 43215  
Phone: 614-465-4514 or 800-282-0370  
[www.ohioauditor.gov](http://www.ohioauditor.gov)

SUBPOENA  
DUCES TECUM

STATE OF OHIO,  
COUNTY OF FRANKLIN, SS:  
DAVE YOST

:  
:  
: IN THE MATTER OF THE AUDITOR OF STATE  
: Investigation OF:  
: City of Youngstown  
: Mahoning County, Ohio  
:  
:

TO: Wick Properties, LLC  
7886 Via Atillio  
Poland, Ohio 44614

BY AUTHORITY OF SECTION 117.18 OF THE OHIO REVISED CODE:

You are hereby directed to appear before me and/or my designated representative at 12:00 o'clock p.m., on the 30th day of November, 2015, at the Office of the Auditor of State, Chris Rudy, Fraud Investigator, Public Integrity Assurance Team, 88 East Broad Street, 9th Floor, Columbus, Ohio 43215, then and there to give testimony and to produce the following books, records, documents or other items, which are in your custody or under your control:  
**SEE ATTACHED.**

You will not be obligated to appear as stated above provided that the subpoenaed documents are delivered to Chris Rudy, Fraud Investigator at the address stated above on or before November 30, 2015. Please call Chris Rudy, Fraud Investigator at (330) 949-6334 or carudy@ohioauditor.gov when the documents are ready.

YOU WILL PLEASE TAKE NOTE:

Section 9.84 of the Ohio Revised Code provides that: "Any person appearing as a witness before any public official, department board, bureau, commission, agency or representative thereof, in any administrative or executive proceeding or investigation, public or private, if he so requests, shall be permitted to be accompanied, represented, and advised by an attorney, whose participation in the hearing shall be limited to the protection of the rights of the witness, and who may not examine or cross-examine witnesses, and the witness shall be advised of his right to counsel before he is interrogated."

Witness my hand at Columbus, Ohio, this 16 day of November 2015.

Cheryl S. Gray  
NOTARY PUBLIC



Cheryl S. Gray  
Notary Public, State of Ohio  
My Commission Expires 07-21-2018

Robert F. Smith  
ROBERT F. SMITH  
Deputy Chief Legal Counsel  
Public Integrity Assurance Team  
State of Ohio, Auditor of State  
88 East Broad Street, 9th Floor  
Columbus, Ohio 43216-1140

TO BE COMPLETED BY INDIVIDUAL SERVING SUBPOENA:

Received this Writ \_\_\_\_\_, 2015, and served the same on \_\_\_\_\_ (name of individual served)  
(date of service)

\_\_\_\_\_ the within-named witness at \_\_\_\_\_ o'clock \_\_\_\_\_, m., on \_\_\_\_\_, 2015  
(title/relationship of individual served)

at \_\_\_\_\_ (address of service)

by delivering to and leaving with him/her personally a true and correct original hereof.

0305

\_\_\_\_\_  
(signature of serving party)

**SUBPOENA**  
*DUCES TECUM*

The subpoenaed party, **Wick Properties, LLC** is directed to produce for inspection and copying any and all original documents in its possession or control, or in the possession or control of **Wick Properties, LLC** agents, subsidiaries, or affiliated companies, partnerships or firms, that were obtained, collected, copied, created, written, generated, read, reviewed, analyzed or used in any fashion, whether directly or indirectly, by **Wick Properties, LLC**, and any of its partners, shareholders, officers, employees and/or agents;

In order to complete our review of documents related to the investigation of City of Youngstown, we are requesting the following documents, including but not limited to:

- I. Any and all supporting documentation for the listed projects. Please provide invoices from all contractors supporting the expenditures of all of the grant monies awarded by the City of Youngstown. To reiterate, the projects we are inquiring about are:
  1. **U.S. Campus Suites, LLC** - the student housing facility adjacent to the Campus of Youngstown State University on the property described in the below listed agreement.
    - a. The grant for **U.S. Campus Suites, LLC** stipulates the "Grant shall be used by the Developer for improvement to the waterline serving the Property and any related installations, improvements, enhancements, and/or upgrades to the plumbing and/or water system that may be necessary for Developer to complete the project as planned."
  2. **Erie Terminal Place, LLC** - the student housing facility located at the Erie Terminal Building located at 112 W. Commerce Street, Youngstown, OH.
    - a. The grant for **Erie Terminal Place, LLC** requires the "Grant shall be used by the Developer for improvement to the waterline serving the Property and any related installations, improvements, enhancements, and/or upgrades to the plumbing and/or water system that may be necessary for Developer to complete the project as planned."



**3. Wick Properties, LLC - the former Wick Building located at 34 W. Federal Street, Youngstown, OH.**

- a. The Grant funds shall be paid to Developer upon receipt of paid invoices submitted by Developer to City for the Project." The grant for Wick Properties, LLC stipulates the "Funds shall be made on a reimbursement basis after City receives appropriate documentation of the expenditure of funds by Developer for sanitary and storm water sewer and water service expenses to the Project. In the alternative, City will provide funds by a check issued jointly to the Developer and a contractor providing sanitary and storm sewer infrastructure and water service improvements to the project site upon submission of an invoice from contractor."**

- II. The Auditor of State reserves the right to request further documentation based on the response to the items identified after our review.**

For the purpose of the subpoena *duces tecum*, the term "document" or "documents" shall be defined to the broadest extent permitted by Rule 34 of the Ohio Rules of Civil Procedure and includes, whenever applicable and without limitation, the original (absent the original, a copy) of magnetically, optically, visually or aurally stored or produced, including, but not limited to, letters; correspondence; memoranda; telegrams; notes; reports; compilations; data; notebooks; laboratory notebooks; working papers; spreadsheets; graphs; charts; blueprints; books; pamphlets; brochures; circulars; manuals; instructions; ledgers; drawings; including engineering, assembly and detailed drawings, sketches; photographs; diaries; sales literature; advertising literature; agreements; minutes; and sound reproductions; printout sheets; summaries of records of telephone conversations, personal conversations or interviews; and any and all other writings, typings, printings, drafts, copies and/or mechanical, magnetic, optic or photographic reproductions or recordings thereof in the possession, custody or control of Wick Properties, LLC, or known to Wick Properties, LLC. "Document" or "documents" also includes all copies which are not identical to the originals, such as those bearing marginal comments, alterations, notes or other notations not present on the original document as originally written, typed or otherwise prepared.

For the purposes of this subpoena *duces tecum*, the term "original" shall have the same meaning as in Rule 1001(3) of the Ohio Rules of Evidence and shall also include any duplicates, as that term is defined in Rule 1001(4) of the Ohio Rules of Evidence, of any documents the originals of which are not in the possession of Wick Properties, LLC.

If you have any questions, please contact Chris Rudy, Fraud Investigator, at (330) 949-6334 or carudy@ohioauditor.gov.