

THOMAS P. DiNAPOLI
STATE COMPTROLLER



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STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER

January 26, 2009

John D. Sabini
Chairman
New York State Racing and Wagering Board
1 Broadway Center, Suite 600
Schenectady, New York 12305-2553

Re: Report 2008-S-174

Dear Mr. Sabini:

Pursuant to the State Comptroller's authority as set forth in Article V, Section 1 of the State Constitution and Article II, Section 8 of the State Finance Law, we have audited selected payroll transactions of the New York State Racing and Wagering Board's (Board) Executive Director related to concurrent services provided to the New York State Olympic Regional Development Authority (ORDA).

A. Background

State employees should only be paid for the time they actually work. When employees are away from work, including time when they are performing duties for other entities, they need to charge their absences to appropriate leave accruals. As part of a separate audit of ORDA (Report 2008-S-60, issued December 19, 2008), we discovered that the Board's Executive Director was also providing legal services to ORDA for compensation, and that at least a portion of these services were provided during the same time periods when the Executive Director would be expected to be present at his full-time employment with the Board. We therefore examined Board and ORDA records to verify appropriate leave charges and ensure that the Executive Director was not paid for time not worked.

B. Audit Scope, Objective and Methodology

The objective of our audit was to determine if the Board's Executive Director was correctly reporting his time worked and leave accruals used on his Board time records for those instances when he was providing compensated services to ORDA. Our audit did not include a complete assessment of the Board's system of internal controls over employee time and attendance, but rather focused on the specific transactions involving the Executive Director's compensation. Our audit covered the period June 15, 2006 through August 6, 2008.

To accomplish our audit objective, we obtained the Executive Director's time and attendance records from both the Board and ORDA and compared them to determine what days he worked for both the Board and for ORDA and to determine if he charged any leave time on those days. We reviewed ORDA board meeting minutes to determine if the Executive Director attended the meeting and where the meeting was held. Finally, we interviewed the Executive Director and ORDA's directors of finance and human resources.

We conducted our performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

In addition to being the State Auditor, the Comptroller performs certain other constitutionally and statutorily mandated duties as the chief fiscal officer of New York State. These include operating the State's accounting system; preparing the State's financial statements; and approving State contracts, refunds and other payments. In addition, the Comptroller appoints members to certain boards, commissions, and public authorities, some of whom have minority voting rights. These duties may be considered management functions for purposes of evaluating organizational independence under generally accepted government auditing standards. In our opinion, these functions do not affect our ability to conduct independent audits of program performance.

C. Results of Audit

The Executive Director was appointed by the Board in 2005 and, as of August 2008, was paid an annual salary of \$146,699. He was previously employed by the New York State Urban Development Corporation doing business as the Empire State Development Corporation (ESDC). Concurrent with his previous employment, the Executive Director also served as Counsel for the Olympic Regional Development Authority (ORDA), for which he was compensated a flat fee of \$10,000 per year payable biweekly. Upon his appointment by the Board in 2005, the Executive Director discontinued his relationship with ORDA. However, in June 2006, the Executive Director once again began providing legal services to ORDA as its General Counsel for a fee of \$24,000 annually, which was paid on a biweekly basis through ORDA's payroll accounts.

The Board requires the Executive Director to submit monthly time records indicating whether he is present or absent from work on a daily basis. If absent, the record indicates how many hours are to be charged against specific leave categories including vacation, personal and sick time. Conversely, although ORDA also requires that the Executive Director (as ORDA's General Counsel) submit biweekly time reports, these records simply indicate the days during which he provided services to ORDA, but not the actual times or number of hours that he worked each day. As a result, absent other contemporaneous records, in most cases it is unclear whether the Executive Director reported performing work at both places at the same time. We obtained the Executive Director's records submitted to ORDA for the period June 15, 2006 through May 14, 2008 and found he had reported providing services to ORDA on 210 days. We compared the certified time records which the Executive Director submitted to the Board for these same 210 days and found the following:

- 152 days when the Executive Director indicated he was present at the Board and charged no leave time;

- 40 days when the Executive Director charged at least a portion of his regular workday against some form of leave accrual; and
- 18 days when the Executive Director charged no leave time and reported that he was working on Board business at a location other than his office, including attending conferences or training or making field visits to race tracks and casinos around the State.

We found that on at least 5 of the 152 days when the Executive Director reported being present in his Schenectady office for the full workday, ORDA records show that he was actually present at an ORDA Board of Directors meeting being held in either Lake Placid, Wilmington, or North Creek. Since the ORDA Board meetings were all held during normal work hours at locations ranging from two to three hours away from the Board's Schenectady offices, we concluded that the Executive Director could not have been performing his Board duties at the same time he was attending the ORDA meetings and that the certified time records were in fact inaccurate. The five meetings attended were as follows:

- October 5, 2006 in Lake Placid at 11:00 AM;
- December 28, 2006 in Wilmington at 3:00 PM;
- October 16, 2007 in Lake Placid at 11:00 AM;
- January 15, 2008 in Lake Placid at 11:00 AM; and
- March 18, 2008 in North Creek at 2:00 PM.

We spoke with the Executive Director on May 30, 2008 regarding the nature of his relationship with ORDA. The Executive Director indicated that most of the work that he does for ORDA involves reviewing and commenting on contracts that ORDA officials e-mail to him at his Board office. The review process usually has a two- to three-day time frame to it, although sometimes it is a rush job. The Executive Director indicated that he does some of the work outside his normal hours at the Board, but that sometimes he performs these tasks during his regular working hours. In addition, the Executive Director indicated that he sometimes travels to Lake Placid to attend ORDA Board meetings and/or bid openings.

When asked about his leave charges, the Executive Director indicated that he does not normally charge his time at the Board when he provides services to ORDA, even the days when he travels to ORDA. He further indicated that the Board is aware of his arrangement with ORDA and allows him to use his State vehicle to travel to ORDA for the Board meetings and bid openings. Neither the Executive Director nor ORDA reimbursed the Board for the value of this transportation. The Executive Director did indicate that he may have charged his leave accruals for the last two Board meetings he had attended (i.e., January 15 and March 18, 2008), but he was not sure. Our review of the previously cited records found that he did not, in fact, charge any leave time during those two trips.

On July 15, 2008, six weeks after we had interviewed him, the Executive Director attended another ORDA Board meeting held in Lake Placid. Records of the internet webcast of the meeting indicate that the Executive Director arrived shortly after 11:00 in the morning. Our review of time records that the Executive Director subsequently submitted to the Board found that he had charged 6 hours of his normal 7.5 hour workday against sick leave credits. This appears to be an inappropriate use of sick leave and may constitute sick leave abuse. Our review also identified 17 other days on which the Executive Director reported performing work for ORDA and also charged sick leave, ranging from .5 to 4.5 hours each day. Considering the inappropriate nature of the July 15, 2008

charges, the Board should also investigate the propriety of these entries.

We concluded that the Board needs to review the Executive Director's arrangement with ORDA and ensure that he properly accounted for the hours which he worked for both entities, including charging appropriate leave accruals when these hours overlapped or when attending functions at ORDA during his regularly scheduled Board work hours. The Board should also discontinue the practice of allowing the Executive Director free use of his Board-assigned vehicle to pursue outside activities and ensure that all previous use is appropriately reported as additional compensation in accordance with State payroll procedures and bulletins. In addition, because of the apparent purposeful nature of the inaccurate time records filed by the Executive Director, the Board needs to consider what additional disciplinary action may be appropriate beyond simple recovery of the inappropriate salary payments, including possible referral to appropriate State and/or local investigatory bodies.

Recommendations

1. *Recover the inappropriate salary payments made to the Executive Director for the six instances where he attended ORDA Board meetings without appropriate charges to leave credits.*
2. *Investigate the circumstances surrounding the other 205 days on which the Executive Director provided concurrent services to ORDA and recover any funds paid for times when appropriate leave credits were not charged.*
3. *Discontinue the practice of granting the Executive Director use of a Board-assigned vehicle to pursue outside activities and ensure that all such personal use which has already occurred is properly reported as additional compensation.*
4. *Investigate the proper course of disciplinary action, including possible referral to appropriate State and/or local investigatory bodies.*

(Board officials agreed with our recommendations and indicated they have referred the Executive Director's actions for further investigation and review by an outside agency. The Board also committed to take steps to ensure that all employees are reminded of the relevant rules, guidelines and ethical considerations in relation to the use of State time and equipment.)

A draft copy of this report was provided to Board officials for their review and comment. Their comments were considered in preparing this report, and are included as Appendix A.

Within 90 days of the final release of this report, as required by Section 170 of the Executive Law, the Chairman of the New York State Racing and Wagering Board shall report to the Governor, the State Comptroller, and the leaders of the Legislature and fiscal committees, advising what steps were taken to implement the recommendations contained herein, and where recommendations were not implemented, the reasons therefor.

This report, is available on our website at: <http://www.osc.state.ny.us>. Add or update your mailing list address by contacting us at: (518) 474-3271 or:

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Division of State Government Accountability
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Major contributors to this report include John Buyce and Greg Petschke.

We wish to thank Board management and staff for the courtesies and cooperation extended to our examiners during the audit.

Very truly yours,

A handwritten signature in black ink that reads "Frank J. Houston". The signature is written in a cursive, flowing style.

Frank J. Houston
Audit Director

cc: Tom Lukacs, Division of the Budget



Chairman
John D. Sabini

Members
Daniel D. Hogan
John B. Simoni

**STATE OF NEW YORK
RACING AND WAGERING BOARD**

Executive Director
Ronald G. Ochrym

Secretary to the Board
Gail Pronti

January 12, 2009

Frank J. Houston
Audit Director
Office of the State Comptroller
110 State Street
Albany, New York 12236

Re: Draft Audit 2008-S-174

Dear Mr. Houston:

I am writing to provide the New York State Racing and Wagering Board's ("Board") response to draft Audit 2008-S-174.

The Board appreciates the efforts of the Office of the State Comptroller ("OSC") in bringing to our attention the results of an audit concerning concurrent services provided to the New York State Olympic Regional Development Authority ("ORDA") by the Board's then Executive Director. The Board recognizes that matters of this nature involving the potential misuse of State time and equipment require careful scrutiny and adequate controls to both address the situation and prevent recurrence.

We note that the propriety of the Executive Director's concurrent employment *per se* is not an issue; rather the focus of the audit is principally the appropriateness of work performed for ORDA in relation to time worked for the Board. In this regard, we recognize that it is neither appropriate for a Board employee to engage in outside employment during Board employment time nor to use Board equipment in the course of that activity. This principle is applicable to all regardless of title.

Fair consideration of this matter must necessarily provide an opportunity for evaluation of:

- the Executive Director's belief that he was working for the interests of New York State as a whole in both capacities and did not recognize the need to charge time or allocate the use of the Board-assigned vehicle-especially in light of filing records with both agencies

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- the Executive Director's belief that the nature of his role for the Board often involved off-setting hours
- the Executive Director's statement that most work for ORDA was performed during non-Board employment hours
- the Executive Director's statement that he had no intention of abusing leave credits
- the Executive Director's cooperation with the investigation.

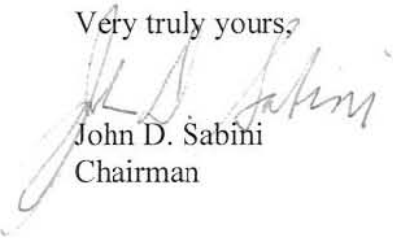
I have taken necessary steps to refer this matter to an appropriate New York State agency for review. Further, we have assessed the recommendations of the audit and offer the following remarks keyed to the recommendation numbers in view of the above:

1. The Executive Director must make the Board whole in relation to the dates on which he attended ORDA meetings without charging appropriate leave credits at the Board. It is my understanding that he is taking steps of his own volition to remedy this.
2. Given the general scope of the of the work performed for ORDA, it is difficult to assess if and to what extent appropriate leave credits were not charged during the 205 days. When appropriate after the above-noted review, the Board will investigate this aspect through its internal auditors and take such further action as necessary.
3. The Board will take action to review the use of the Board-assigned vehicle and require that any documented personal use is reported as additional compensation.
4. The Board will consider what, if any, disciplinary action is required in consideration of the above and the results of the review noted above.

Finally, the Board will take steps to assure that all Board employees are reminded of the relevant rules, guidelines and ethical considerations in relation to the use of State time and equipment.

Thank you for the opportunity to review and comment on this report.

Very truly yours,



John D. Sabini
Chairman

