



ERIE COUNTY COMPTROLLER  
KEVIN R. HARDWICK

July 18, 2022

Henry Wojtaszek, Chief Executive Officer and President  
Western Regional Off-Track Betting Corporation  
8315 Park Road  
Batavia, New York 14020

**Re: Health, Dental and Vision Benefits for WROTB Board Members**

Dear Mr. Wojtaszek:

I am writing to solicit information and clarification from the Western Regional Off-Track Betting Corporation (WROTB) concerning the health, dental and vision benefits you provide to members of the board of directors of WROTB. I make this inquiry as the chief financial officer of Erie County, a co-owner of WROTB.

As you know, since the media outlets *Investigative Post*, *Niagara Gazette* and the *Lockport Union Sun and Journal* began looking into this issue in 2018, WROTB's provision of these benefits to volunteer directors has been highly controversial. For some time, WROTB has offered and provided government-funded health, dental and vision insurance to your board members despite attestations/opinions from the Office of the New York State Comptroller (OSC) and the New York State Attorney General that board members are not entitled to the benefits.

*Investigative Post* previously reported that this benefit coverage was described by one health insurance expert as "literally the richest plan available." On February 23, 2017, at a WROTB board meeting, you stated "that Western Regional Off-Track Betting has a very good [health] plan, but it is expensive." In 2017, you created an ad hoc committee to examine the costs of health care at WROTB and steps were later taken to increase cost-sharing with employees – but not directors. Why would you increase costs on your employees, but not address the director issue then? Furthermore, if a board member serves long enough (apparently only ten years), they are allowed to receive lifetime insurance in retirement and after they leave the board at no cost to themselves. Is that true? At one point, for instance, the cost of the coverage for the City of Buffalo Director on WROTB was estimated at \$30,000 per year. Is that accurate? If not, what is the cost? Please provide details concerning the health benefits provided to directors.

You have justified the coverage by saying that "The benefits they (board members) receive are hard-earned and well-deserved." As I understand it, directors attend a two-day board meeting once per month (essentially afternoon meetings and then a morning meeting the next day). Is that accurate?

I understand that in 2017, 13 of your 17 active board members and three retired directors were enrolled in the health insurance program, and 14 received dental and vision coverage. *Investigative Post*

estimated the cost of the coverage for 2017 at one point as \$229,800. However, due to the nature of how WROTB self-funds the insurance, your former chief operating officer has told a media outlet that the actual expense is more than \$500,000 per year.

How many board members were receiving the health, dental and vision coverage in 2021? Which board members are receiving the benefits now? What was the cost for 2017, 2018, 2019, 2020 and 2021 and the cost year-to-date so far this year for these benefits?

WROTB's provision of benefits to volunteer board members has allegedly persisted despite a recommendation made by your external legal counsel Barclay Damon that board members no longer accept the insurance benefits. I understand that you hired the law firm in 2019 after this issue emerged publicly. Why did you hire the firm? What exactly did they say?

The New York State Attorney General's Office issued a legal opinion in 2008 that off-track betting corporations (in that case, specifically Suffolk County's OTB) are not permitted to provide health insurance coverage to board members. You have stated that this opinion does not apply to WROTB and was only germane to Suffolk. You told *Investigative Post* "I've been assured by legal experts it does not apply to us." In 2018, you said WROTB would ask the State Attorney General for a ruling specific to WROTB. Did you do that? If so, what did they say?

OSC has repeatedly and publicly stated that the health benefits for directors are not permissible; on September 23, 2021, a legal counsel for the Comptroller sent a letter to the Attorney General's Office stating that you have continued to provide the benefits to directors "despite clear admonitions from our office that this practice is impermissible." OSC referred the matter to the Attorney General's Taxpayer Protection Bureau "for appropriate action." An OSC spokesperson stated "The board should immediately take appropriate action to cease this practice and recover any unlawful payments." She added: "The Comptroller has repeatedly and clearly stated that the Western Regional OTB cannot provide health insurance to its board members. . . Instead of trying to protect this perk, the OTB should instead take immediate action to cease this practice and recover this money." Furthermore, in June 2022, OSC told the *Lockport Union Sun and Journal*: "The State Comptroller has repeatedly and unambiguously informed the OTB that the old 1978 opinion (referring to an informal 1978 opinion allowing for OTB health insurance) was directly repudiated by this office years ago. We urge the OTB to take appropriate action to recover improperly spent monies."

How do you reconcile these Attorney General and State Comptroller admonitions with your repeated assertions that the health benefits for directors are allowed? Have you taken any steps to recover monies spent on health benefits for directors?

I can only conclude that WROTB has finally conceded to the State's assertions and those of your legal counsel in counseling against the provision of the benefits. As I understand it, at a WROTB board meeting on June 23, 2021, amidst the criticism from the State and OSC audits of other WROTB matters, your board adopted a resolution "eliminating Western sponsored health insurance benefits for Board Members's appointed on or after July 1, 2021." I understand that your other external legal counsel, Terrence Connors, stated in 2021 that absent new guidance from the State Attorney General's Office about the legality of the health benefits, WROTB made the decision to eliminate health insurance for directors as a "good faith effort." Why did you take that action? Had you, in fact, not sought or received a new Attorney General opinion, despite your 2018 statement that you would seek such an opinion? As noted in your resolution adopted on June 23, 2021 (resolution #52-2021), despite you being advised by

legal counsel in 2019 that you should discontinue providing health insurance to directors, you continued doing so for two years. Why did you wait two years to act?

If you are terminating health insurance for new directors, are you terminating it for existing directors? For current directors, when they separate from the WROTB board, will they be eligible for health insurance in retirement? Are they continuing to receive it now? Under what legal basis are you giving them lifetime health insurance after ten years?

Which external law firms and consultants did WROTB retain and compensate for this healthcare matter (such as Lindy Korn, Connors LLP Law firm, Barclay Damon, etc.)? How much were they paid for their work on this matter?

### **Per Diem Travel and Stipends**

I understand that WROTB directors attend a single two-day meeting per month at Batavia Downs Gaming. Is that correct? I also understand that directors may choose to stay overnight at Batavia Downs Hotel, and their lodging and meals and provided by WROTB. Is that accurate? Do you also pay for their mileage to/from their home and Batavia Downs for board meetings? How much is spent annually on these expenses? Please provide a listing showing all 2020, 2021 and 2022 expenses per director for these expenses.

Do all directors receive the same \$4,000/year stipend for serving on the board? Do board members who routinely miss meetings also receive the stipend, despite their lack of attendance? I understand that other OTBs, like nearly all state and local public benefit corporations, do not provide stipends to their volunteer directors. Why does WROTB do so? Under what legal basis does WROTB provide the stipends to your directors? On June 29, 2015, the WROTB board "reviewed the revised WROTBC Board of Director Expense Voucher Policy language" and approved it. Please provide that language and policy.

I am sure you will agree that the use of public funds is a serious responsibility and we all have fiduciary obligations to judiciously use taxpayer monies. Given what I know so far, I have serious concerns about WROTB's behavior and conduct. As Erie County is a co-owner of WROTB, and I am the chief auditor and chief financial officer of Erie County, I hope that you will provide me with detailed information and answers to my questions.

Thank you in advance for your anticipated cooperation.

Sincerely,



Kevin R. Hardwick, Ph.D.  
Erie County Comptroller

cc: Erie County Legislature  
Erie County Executive Mark C. Poloncarz, Esq.  
Erie County Fiscal Stability Authority  
Francis Warthling, Erie County Director, WROTB  
New York State Comptroller's Office  
Richard D. Bianchi, Chair, WROTB Board of Directors