



ERIE COUNTY COMPTROLLER
KEVIN R. HARDWICK

August 24, 2022

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

Re: New York State Comptroller Audit on Marketing and Promotional Program

Dear Mr. Wojtaszek:

On September 23, 2021, the Office of the New York State Comptroller ("OSC") issued an audit of Western Regional Off-Track Betting Corporation's ("WROTB") marketing and promotional program. This program, which features the use of public monies by WROTB to purchase tickets to sports games and entertainment concerts.

The OSC Audit covering the period from September 2017-December 2019 found that WROTB **spent at least \$121,000** under your marketing program which involved purchasing tickets to sporting events, concerts, food and alcohol for board members, employees and other individuals without following state rules. During the same period, WROTB provided tickets and food/drink totaling nearly \$1.3 million for Buffalo Bills, Buffalo Sabres and Rochester Americans games, as well as to concerts at Western New York venues. The tickets were supposed to be used to attract additional patrons to WROTB. However, the audit found that many recipients were neither paying nor likely customers, but instead, were WROTB staff or board members along with their family members or friends. The audit found specific fault with the WROTB board chair for his attendance with family members/friends at events.

New York State Gaming Commission requirements mandate that when covered gaming corporations give out free promotional tickets/items, an OTB must submit an annual marketing plan identifying the criteria for who may receive promotional consideration and keep information on who actually received the free items. The OSC audit found that records showing who received the tickets were incomplete, making it difficult to determine the full extent of tickets distributed.

The audit also found a lack of oversight by the WROTB board of directors, a "troubling tone at the top of the organization for establishing and following the rules," and poor documentation. In a press release announcing the audit, State Comptroller Thomas DiNapoli said "The Western Regional Off-Track Betting Corporation needs to clean up its operations. . . Revenues from the OTB are supposed to go to participating municipalities, not to give board members and employees generous perks and other benefits. . . I urge them (the WROTB board) to continue to tighten oversight and eliminate questionable spending."

The audit made several recommendations for WROTB, including:

- Develop and adopt a written policy and procedures for the distribution and eligibility of tickets.
- Develop a system to maintain a complete, detailed, and accurate record of tickets distributed.
- Seek reimbursement for tickets and food and beverages that were not properly distributed.
- Define in its marketing plan what groups or categories of complimentary items, including tickets, will be given out.

As the chief auditor for Erie County government, which is a co-owner of WROTB, I am writing to seek written responses from WROTB about what steps you have taken since the audit was issued to address the recommendations. In WROTB's three-page written response to the audit, your board chair stated your intention to address the findings and act to implement the recommendations. I found the WROTB written response to the audit to be lacking specificity, hence my request.

Your board meeting minutes from January 2014-June 2022 reflect the following concerning your marketing and promotional program:

- **July 29, 2015** – “Recent events including the Rochester Red Wings and Batavia Muckdogs night were shown and discussed.” “In the open session, Director Lauderdale asked about our involvement with local sports and entertainment venues. Mr. Hasenauer explained that we have suites/boxes at these locations in order to get tickets to our customers, but we do not have onsite signage as that is either too expensive or the message is not seen by enough customers.”
- **April 26, 2018** – “A discussion was held regarding the Buffalo Football Suite that Batavia Downs uses for guests.”
- **September 27, 2018** – “Mr. Ryan Hasenauer, Director of Marketing-WROTB & Video Gaming asked for the Board’s permission for staff to sign a 5 year agreement with the Blue Cross Arena in Rochester. A discussion was held on the events and how that helps attract and reward our customers.”
- **April 25, 2019** – “Mr. Ryan Hasenauer, Director of Marketing-WROTB & Video Gaming informed the Committee of the Resolution needed for the Rochester Broadway Theatre League (RBTL) for the purchase of eight (8) VIP box seats to the May 11, 2019 performance of Hamilton at the Auditorium Theatre.” [The WROTB Board approved of the purchase]
- **April 25, 2019** – “Mr. Hasenauer informed the Committee of the Resolution needed for the purchase of eighteen (18) suite tickets from Pegula Sports and Entertainment for the 2019 Frozen Four Hockey Tournament at Key Bank Center” (at a cost not to exceed \$7,500). [The WROTB Board approved of the purchase]
- **May 23, 2019** – “Mr. Hasenauer informed the Committee of the Resolution needed to enter in an agreement with the Riviera Theatre for the 2019 season in an amount not to exceed \$15,000.” [The WROTB Board approved of the purchase]
- **May 23, 2019** – “Mr. Hasenauer informed the Committee of the Resolution needed to authorize an expenditure to purchase food and beverage at the KeyBank Center during various events” (in an amount not to exceed \$75,000). [The WROTB Board approved of the purchase]
- **June 27, 2019** - “Mr. Hasenauer informed the Committee of the Resolution needed to purchase a Suite from the Pegula Sports and Entertainment, LLC for the Buffalo Bills 2019, 2020 and 2021 season in an amount not to exceed \$292,000.00.” [The WROTB Board approved of the purchase]
- **August 29, 2019** - “Mr. Hasenauer informed the Committee of the Resolution needed to purchase of the suite at the Rochester Arena LLC for 2019-2020 in the amount not to exceed \$35,000.04.” [The WROTB Board approved of the purchase]

- **December 5, 2019** - - "Mr. Hasenauer informed the Committee of the Resolution needed for the Blue Cross Arena food and beverage expenditure for 2020" (in an amount not to exceed \$15,000). [The WROTB Board approved of the purchase]
- **July 22, 2021** – "Mr. Hasenauer presented the Resolution #43-2021 for the opportunity to purchase suite use from Western New York Arena for various events for a five (5) year period." After one director objected, the resolution was tabled until the next month.
- **August 26, 2021** – "Mr. Hasenauer presented Resolution #43-2021 to purchase suite use from WNY Arena for various events for a five (5) year period in the following amounts: 2021-22 for \$170,000; 2022-23 for \$172,000; 23-24 for \$174,000; 2024-25 for \$176,000; 2025-26 for \$178,000." [The WROTB Board approved of the purchase]
- **October 28, 2021** – "Mr. Hasenauer presented Resolution #82-2021 to authorize the expenditure for food and beverages at the KeyBank Center during events in the amount not to exceed \$75,000.00." [The WROTB Board approved of the purchase]
- **October 28, 2021** – "Mr. Hasenauer presented Resolution #83-2021 to enter into an agreement with Rochester Arena, LLC for the 2021-2022 various events not to exceed \$37,500.00." [The WROTB Board approved of the purchase]
- **February 24, 2022** – "The Resolution #12-2022 was presented to purchase a block of six (6) tickets from the Riviera theatre for the 2022 season in the amount not to exceed \$20,000.00." [The WROTB Board approved of the purchase]

The Investigative Post media outlet has been reporting on the sports promotion and marketing program since 2019. Through Freedom of Information Law requests, they have reported on your and WROTB staff's unwillingness to answer questions and efforts to obstruct media reporting, WROTB's poor recordkeeping for the program (whether by design or due to deficiencies in your operations) and the costs of the program. For instance, see their February 7, 2020 article (<https://www.investigativepost.org/2020/02/07/40-for-a-six-pack-of-beer-otb-parties-on/>) and a May 8, 2019 article <https://www.investigativepost.org/2019/05/08/otb-slow-walking-information-requests/>.

Based on the OSC audit, it appears that WROTB has provided tickets and food/beverages to persons attending events at one location that is not listed or shown in your board minutes since January 1, 2014 (Darien Lake). This raises questions about whether your public board meeting minutes are fully accurate.

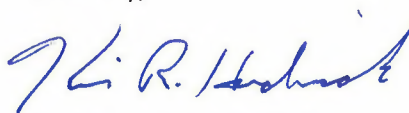
As such, please find some additional questions **regarding the aforementioned practices:**

- Are you able to provide all contracts with sports and entertainment venues for which WROTB has paid funds for tickets, food and beverages since January 1, 2020 (post-OSC audit date)?
- Are you able to provide copies of all invoices from these sports and entertainment venues and remittance stubs from WROTB showing your payments since January 1, 2020?
- What written protocols or policy exists to determine which persons (whether targeted patrons of Batavia Downs, employees, directors or others) are allowed to attend these events? How do you decide which persons get tickets (or do not)? Please provide a copy of any protocols or policies.
- Do you track whether these persons later expend funds at Batavia Downs, to determine the success of the program? If so, please provide metrics and data on the success rate of sports and marketing program attendees and their gaming at the Downs.
- What new procedures have you developed (if any) in response to the OSC audit? Please provide copies of the procedures and logs for tracking participants who receive tickets.

- Are you, other corporate employees and WROTB directors still attending events? If so, under what protocols?
- Which officers, employees or directors are empowered to make decisions on the amount, type and cost of food and beverages provided at each event?
- Have you taken any measures or steps to bar family members, friends and social acquaintances of WROTB staff and directors from participating in the program? Have any attended since the New York State Comptroller's audit?
- Who is ultimately responsible for administering and monitoring the program?
- Have any employees been disciplined for any actions associated with the program?
- Have you solicited a legal opinion from the New York State Attorney General, State Comptroller or any ethics counsel concerning the program and the possibility that the program, and certain WROTB officers or directors' actions in attending events or providing tickets to family members, friends or persons may violate state ethics law? If so, what did they conclude?

Thank you in advance for your anticipated cooperation in our shared endeavor of promoting transparency and reform at WROTB.

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