OFFICE OF THE NEW YORK STATE COMPTROLLER

DIVISION OF STATE GOVERNMENT ACCOUNTABILITY

Department of Agriculture and Markets

Controls Over State Fair Revenues

Report 2010-S-52

Thomas P. DiNapoli

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State of New York
Office of the State Comptroller

Division of State Government Accountability

May 12, 2011

Darrel J. Aubertine
Commissioner
Department of Agriculture and Markets
10B Airline Drive
Albany, NY 12235

Dear Commissioner Aubertine:

The Office of the State Comptroller is committed to helping State agencies, public authorities and local government agencies manage government resources efficiently and effectively and, by so doing, providing accountability for tax dollars spent to support government operations. The Comptroller oversees the fiscal affairs of State agencies, public authorities and local government agencies, as well as their compliance with relevant statutes and their observance of good business practices. This fiscal oversight is accomplished, in part, through our audits, which identify opportunities for improving operations. Audits can also identify strategies for reducing costs and strengthening controls that are intended to safeguard assets.

In recent years, questions and concerns about the management and operation of the New York State Fair have caused our office, and others, to increase our audit and investigative presence at the State Fair. In 2008, we reported on significant weaknesses in the Fair's payroll practices (report 2007-S-130) and controls over overtime (report 2007-S-97). In 2009, we reported on weaknesses in the Fair's oversight of trade agreements (report 2008-S-91), where officials barter with vendors for goods and services needed to operate the Fair. We concluded that there was a significant risk that individuals involved in the process could enrich themselves through these arrangements, either directly or by diverting goods and services for their personal use and benefit.

Some of the risks uncovered by these audits, including accountability over bartered cell phones and hotel rooms, appeared in an August 2010 investigative report by the New York State Office of the Inspector General (OIG), and a subsequent report by the Attorney General (AG), both of which focused primarily on improprieties by the former Fair Director in dealings with the Fair's contracted catering firm. In December 2010, the former Director was arrested on charges of grand larceny, defrauding the government and official misconduct. At the same time, the AG also issued a report highlighting systemic deficiencies in areas such as nepotism, conflicts of interest, inventory controls and gifts. At the OIG's request, the Department has asked our office to undertake a complete audit of the Fair's catering contract, which is currently underway.

The audit report that accompanies this letter deals with the effectiveness of controls that Fair management put in place over revenues at the 2010 State Fair. This audit was performed pursuant to the State Comptroller's authority under Article V, Section 1 of the State Constitution and Article II Section 8 of the Finance Law. This audit's results and recommendations, along with those provided by the OIG and AG, are resources for you to use in effectively managing your operations and in meeting the expectations of taxpayers.

We found that the Department had several necessary controls to assure that Fair staff and vendors properly collected, deposited, and recorded revenues. However, during our audit we also found that the vendor who operated the Heroes and Legends Café was not recording all sales and, as a result, was likely underreporting revenue. More effective Department monitoring of vendor cashiering operations is needed to ensure that all sales are recorded for deposit. In addition, Department management needs to consider the improper practices by the operator of the Heroes and Legends Café when assessing future contract offers from this vendor.

If you have any questions about this report, please feel free to contact us.

Respectfully submitted,

Office of the State Comptroller
Division of State Government Accountability

State of New York
Office of the State Comptroller

EXECUTIVE SUMMARY

Audit Objective

Our objective was to determine if the Department of Agriculture and Markets has adequate controls in place to assure proper collecting, depositing, and recording of certain New York State Fair revenues.

Audit Results – Summary

We found Department managers had put in place several controls to provide assurance revenues were properly collected, deposited, and recorded for most sources. However, we found that the contractor operating the Heroes and Legends Café was not accurately recording sales, and as such, it is likely that the Fair has not received its proper share of the revenues collected. We made 11 purchases at several of the Café's operating sites and found 36 percent of the purchases were not rung through the register. Also, unannounced cash counts showed register drawers had more cash on hand than sales recorded on register tapes. We brought this situation to the attention of Fair management so they could take immediate action to correct the problem. For the future, we concluded that the Department needs to improve its monitoring of vendors' cashiering operations.

We also found stronger controls were needed to assure sponsors' signs are removed after their advertising contracts have expired. This is necessary to be fair to current sign sponsors who are paying for signage and to assure maximum revenue is collected. There were a total of 17 signs in place which should have been removed prior to the 2010 Fair. For five of the 17 signs, we found the Department's contracts with the sponsors had expired. For the remaining 12 signs, although the sponsors had an active contract, these signs were not part of those agreements. Had each of these signs been paid for during the term of the Fair, we estimated the Department would have collected an additional $42,500.

Finally, we found two instances in which vendors occupied space that had been leased to another party without required permission from the Fair.

Our report contains three recommendations to improve the Department's controls over Fair revenues. Officials generally agreed with most of our recommendations and have taken steps to implement changes. These changes, along with other improvements recently recommended by

New York State's Inspector General and Attorney General, are critical to effectively managing Fair operations and meeting the expectations of taxpayers to correct longstanding deficiencies.

This report, dated May 12, 2011, 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
Office of the State Comptroller
Division of State Government Accountability
110 State Street, 11th Floor
Albany, NY 12236

Introduction

Background

The Great New York State Fair is an annual exhibition put on by the Department at the State Fairgrounds in Syracuse. Its mission is to promote and highlight New York State and its agriculture, commerce, arts and sciences. The New York State Industrial Exhibit Authority was created to provide financing necessary to build five structures on 375 acres at the Fairgrounds, four of which still exist. The Fairgrounds now has eight primary facilities, temporary RV parking sites, as well as parking and shuttle services for 23,000 vehicles. In addition to the Fair, the Fairgrounds also hosts events, performances and expositions throughout the year. More than two million people attend these events each year, including almost a million people who attended the 2010 Fair. In 2009, the Authority was abolished and the Department assumed its responsibility to run all events at the Fairgrounds, and to collect, deposit, and record all revenues.

In recent years, questions and concerns about the management and operation of the New York State Fair have caused our office, and others, to increase our audit and investigative presence at the State Fair. In 2008, we reported on significant weaknesses in the Fair's payroll practices (report 2007-S-130) and controls over overtime (report 2007-S-97). In 2009, we reported on weaknesses in the Fair's oversight of trade agreements (report 2008-S-91), where officials barter with vendors for goods and services needed to operate the Fair. We concluded that there was a significant risk that individuals involved in the process could enrich themselves through these arrangements, either directly or by diverting goods and services for their personal use and benefit.

Some of the risks uncovered by these audits, including accountability over bartered cell phones and hotel rooms, appeared in an August 2010 investigative report by the New York State Office of the Inspector General (OIG), and a subsequent report by the Attorney General (AG), both of which focused primarily on improprieties by the former Fair Director in dealings with the Fair's contracted catering firm. In December 2010, the former Director was arrested on charges of grand larceny, defrauding the government and official misconduct. At the same time, the AG also issued a report highlighting systemic deficiencies in areas such as nepotism, conflicts of interest, inventory controls and gifts. At the OIG's request, the Department has asked our office to undertake a complete audit of the Fair's catering contract, which is currently underway.

This audit deals with the collection of revenue at the 2010 State Fair. The Fair collects revenues from a variety of sources, including corporate sponsors, sale of concession space, and a share of beverage, food and merchandise sales. For 2010, total Fair revenues were approximately $16.5 million. Of this, $1.9 million was from its share of beverage, food and merchandise sales; $3.5 million from sales of concession space; and almost $2 million in sponsorship revenues. Remaining revenues were received from parking, grandstand sales, admission, and other sources.

Audit Scope and Methodology

We audited the Department of Agriculture and Market's controls over Fair revenues for the period January 1, 2009 through October 7, 2010. To accomplish our objectives, we met with Department officials to confirm our understanding of its practices to control Fair revenues. We also reviewed contracts, observed operations, interviewed vendors and conducted on site testing during the 2010 Fair.

We did our performance audit according to generally accepted government auditing standards. These standards require we plan and do the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe 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 does 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.

Authority

We did this audit according to the State Comptroller's authority defined in Article V, Section 1 of the State Constitution and Article II, Section 8 of the State Finance Law.

Reporting Requirements

A draft copy of this report was provided to Department officials for their review and comment. Their comments were considered in preparing this final report and are attached at the end of the report.

Within 90 days of the final release of this report, as required by Section 170 of the Executive Law, the Commissioner of the New York State

Department of Agriculture and Markets 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.

Contributors to the Report

Major contributors to this report include John Buyce, Greg Petschke, Bob Mainello, Heather Pratt, Lynn Freeman, Andre Spar, W Sage Hopmeier, Rick Podagrosi, Michelle Krill, Don Cosgrove, and Joe Robilotto.

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Audit Findings and Recommendations

Concessions

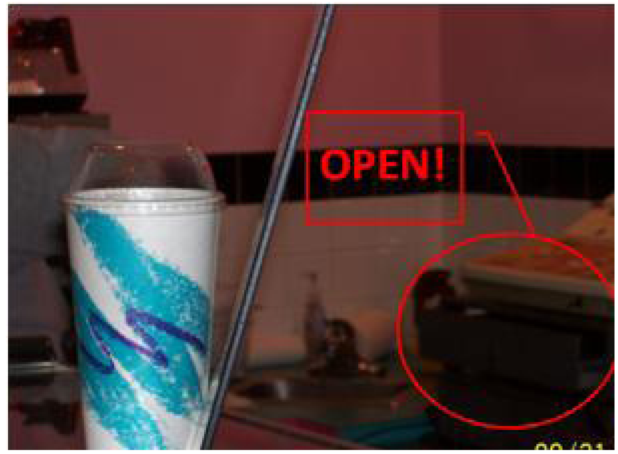
The Department has year round beer, wine and food contracts with five vendors representing $320,000 in revenue during the Fair. We observed operations and conducted cash counts at three of the five vendors. We found no significant exceptions with two of the three vendors. We did find control problems with the operation of the Heroes and Legends Café.

The Department contracted with a vendor, beginning in 2002, to operate the Café. Under the contract, the Department is due a percentage of the Café's sales of alcohol (25 percent) and food (28 percent). Sales are tracked using cash register receipts from four stations. Department managers are responsible for monitoring the Café's activities to provide assurance the Department is receiving all revenues.

During the 2010 Fair, we observed daily operating activities on 12 separate occasions at the Café. We did tests of operations and noted several control weaknesses, including cash registers which were routinely left open and a safe left unlocked and open. We also observed several instances where cashiers did not ring up sales. We therefore made 11 purchases ourselves, spread across the four operating sites. In four cases (36 percent), the cashiers did not ring up these sales.

As a result, we did unannounced cash counts at the Café on both September 1 and 2, 2010. Each time, we compared cash in each of the four registers to the cash sales recorded on the corresponding register tapes. Every test showed there was more money in each register drawer than was recorded on the sales tape. In total, the cash in the four registers at 2:30 in the afternoon on the first day exceeded the recorded cash sales by about $115. One register at a stand selling cookies was over by more than $21 on recorded sales of only $91, indicating almost one-fourth of the sales had not been recorded. When we returned at 4:00 PM on the second day, each register still had more cash than its recorded sales, but the difference had declined to just over $40.

Location: Front Register



Location: Cookie Counter

The actual amount of unrecorded sales is unknown, but may be even greater than our tests indicate if all the money collected was not actually in the cash drawers at the time of our tests. On more than one occasion, we observed cashiers removing money from the registers for purposes unrelated to sales, including exchanging cash between a register and a tip jar. In one case, we saw an employee transfer something from a cash drawer to their pocket.

We found the Department does have a system to independently verify reported alcohol sales and has billed the vendor for $2,265 in commissions due on under reported sales during the 2010 Fair. Sales of food though, were not independently verified or monitored by Department managers. Based on our observations, we conclude the Department did not receive the correct commission from the vendor for the 2010 Fair since the commission was based on under reported sales. Also, since the Café is operated throughout the year, it is possible additional revenues were lost. In response to our findings, the Department did not renew its contract with the vendor for the 2010-11 year and has requested bid proposals for this operation.

Sponsorship Revenue

In 2009, our office issued a report addressing control weaknesses in how the Authority valued sponsorships. The report found large variances in how sponsorships and signs were valued. As a result, sponsors were paying significantly different amounts for similar sponsorships and signs. When the Authority was dissolved, the Department made efforts to correct these issues.

In 2009, the Department hired a consultant to help create consistency with valuing sponsorships. The consultant analyzed the fair market value of sponsorships by accounting for the values of tangible/intangible benefits, geographic reach/impact, and cost/benefit ratio. Using this analysis as a baseline, Department officials were able to value the cost of sponsorships and signs for the 2010 Fair and created six sponsorship packages to offer potential sponsors. Each package included different benefits such as Fair admission tickets, advertising in the Fair's Insider's Guide, tickets to Grandstand shows, and on-site signage and recognition. Another benefit offered in some of the packages is an activation credit, which may be used to purchase more signs or additional admission and Grandstand tickets. To obtain additional information on the new valuation system, we met with the Fair Director. He explained the consultant stressed bundling of sponsorship items (space, signage, etc.). Because of the bundling, it is difficult to assign a value to a single sign, especially outdoor signs found in a single location. However, Fair managers have placed a value of $2,500 on each indoor backlit signs.

Prior to the 2010 Fair, we were provided a list of the 2010 Fair sponsorship contracts. The list identified the benefits each sponsor should receive according to their contract, including signs. During the Fair, we observed sponsorship signs on the grounds and noted any signs that were not on the list. At a later date, we found the Department had also identified signs that should have been removed prior to the Fair. Officials stated there were problems removing signs timely especially if the sign was large and required the Department to hire someone to remove it. There were a total of 17 signs (backlit and standard signage) identified which remained up, but should have been removed prior to the 2010 Fair. For five of the 17 signs, we found the Department did not have a contract with the sponsor for the Fair. For the remaining 12 signs, the sponsor had an active contract but the signs identified were not part of the agreement nor did they use activation credits to purchase the additional signs.

We estimated the potential revenues the Fair may have received from reselling the signage at $42,500 (17 x $2,500). The number could vary based on negotiations with the vendors. Also, due to the change in values since the Department took over selling sponsorships, officials stated some of the signage was left in place in an effort to retain goodwill with sponsors. While we recognize the need to build goodwill, especially in a time of transition, it is also necessary to implement a system to monitor and remove signs for which there is no contract. This is necessary so sponsorship space/signage is not unfairly given to some sponsors and not others, and to assure the Department maximizes revenues.

Space Rental

The Fair hosts approximately 600 vendors during the 12 days of the Fair, generating $3.5 million in revenue. We were provided zone maps of the Fair grounds and lists of vendors and spaces they rented. We used these documents to observe where vendors were located and to identify any possible exceptions. Overall, we found vendors had contracts for spaces occupied and controls were functioning as intended. Department officials also verified concessionaires were in the correct locations.

We did find two vendors occupying space that had been leased to other vendors. The current Concessionaire Agreement does not clearly state whether space is transferable to another vendor. Had the original lessees cancelled their contracts, they may have been subject to cancellation penalties and the Department may have been able to resell the space to receive additional revenues. At a minimum, the Department needs to clarify its policies to ensure staff have accurate knowledge of which concessionaires will occupy which space.

Recommendations

1. Monitor future revenue agreements and contractors to assure a higher level of compliance for reporting all sales and revenue due the Fair. Consider the actions of the Heroes and Legends Café operator in assessing future contract awards.
2. Implement a system to monitor sponsorship signs according to contract terms and remove signs as sponsorship contracts expire.
3. Clarify operating procedures to vendors regarding transferring concession space to maximize revenues and to assure the Fair has accurate knowledge of which concessionaires occupy space.

(Department Officials agreed with our recommendations and have taken steps to implement them, including not renewing the contract with MSK Corp. for the 2011 fair.)

Agency Comments

STATE OF NEW YORK
DEPARTMENT OF AGRICULTURE & MARKETS
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518-457-8876
http://www.agmkt.state.ny.us

Commissioner's Office

March 29, 2011

Mr. John F. Buyce, CPA, CIA, CGFM
Office of the State Comptroller
Division of State Government Accountability
110 State Street, 11th Floor
Albany, New York 12236

Dear Mr. Buyce:

We have reviewed the draft audit report issued by the Comptroller's Office regarding the Department's controls over State Fair revenues (2010-S-52) and would like to offer the following response to address the findings and recommendations. In addition, due to the information provided in the background section of the report, we feel it is necessary to illustrate some of the many positive steps that have been taken to address what once was an operation that lacked accountability and effective internal controls that limited state revenue, created opportunities for abuse, and fostered a perception of favoritism and entitlement that was not in the best interest of the state.

Sponsorship Revenue

In regards to the Sponsorship Program at the New York State Fair, significant steps have been taken to ensure that policies and procedures identify practices that allow for consistent implementation of the program as well as necessary controls to provide accountability and transparency.

Prior to 2007, under the management of the previous fair director, commission structures for sales gave both Fairground sales department employees and the sales department manager a personal financial incentive to undervalue sponsorship opportunities while overvaluing goods and services provided by sponsors. This conflicted with the financial interests of the Fair, which frequently received less benefit than entitled. In response, the current Fair administration revised its commission policies to eliminate incentives to manipulate the value of goods and services. No Fair employees are currently eligible for commissions. All sales personnel who operated under the previous system have either been reassigned or are no longer employed at the Fair. The need for all trades must now be fully documented, multi-year contracts are discouraged and the Fair director must approve all new contracts. In your report issued in 2009, it was acknowledged that the current administration had strengthened controls over trade agreements.

Additionally, sponsorship values and the advertising opportunities offered were determined inconsistently, unfairly and frequently with little basis. The lack of consistent policies and procedures, coupled with the commission system described above, led to widely varying values that often were not in the best interest of the state. To address this matter, the current Fair administration hired IEG, LLC – the nation's leading sponsorship evaluator and consultant on promotional partnerships – to review sponsorship opportunities at the Fairgrounds. IEG identified all promotional opportunities and assigned values to each, proposing a set menu of potential sponsorship packages to be offered.

Furthermore, in the past, contracts in the sales department were not closely managed to ensure that the Fair received the benefits to which it was entitled. The current Fair administration created a standard format for all sales agreements and established a database to track all steps in the agreement process, including verification that sponsors delivered all benefits as agreed.

Finally, the previous administration encouraged sponsors to make early payments, which in turn were improperly credited to the current budget year. These artificially-inflated Fair revenues were then used to hide budget shortfalls. To ensure an accurate accounting of Fair sponsorship revenues, the current administration established a system to properly document and account for all revenue.

As is with any program, there are always opportunities for continuous improvement. We too agree that it is important to have a system in place to monitor and remove signs for which there is no current contract. We have taken steps to create a tracking system to monitor signage terms and conditions of sponsorship contracts and will remove signs accordingly.

Concessions/Space Rental

For years prior to the current administration, rental policies were inconsistent and created great disparities between vendors in similar locations. These practices discouraged new vendors and created the perception of favoritism. In response, the current Fair administration established a consistent formula for determining rental rates, based on square footage and traffic volume zones. This change resulted in a more equitable system that retained traditional exhibitors while attracting new vendors. Meanwhile, rental revenue rose 30 percent between 2007 and 2009 – an increase of nearly $1 million.

The New York State Fair hosts over 600 vendors during the 12 days of the Fair generating $3.5 million in revenue. The Fair employs a Concessions and Exhibits Manager and a Concessions Assistant who both assist in processing the contracts as well as monitoring the vendors to ensure that they are in compliance with the terms of the contract especially as it relates to the size of their booths. It should be noted that these two employees on various occasions had vendors reduce the size of their booths when they began encroaching as well as collected additional rent from vendors who were clearly in violation.

With over 600 vendors, unforeseen circumstances are going to occur. The Fair is satisfied with the near perfect compliance as represented by the fact that the $4,975 in question only represents 2/10th of 1 percent of our concessions revenue. Please keep in mind, the Fair still collected the rents for both spaces which were not refunded when the original vendors cancelled.

The Fair was aware that the vendor who had paid $1,576 was not going to be able to attend the Fair and was going to allow another vendor to occupy that space. We were made aware of the situation on August 25, 2010 – on the eve of the opening day – and allowed the transfer because it would have been virtually impossible to secure another vendor for that site in one day. Had that space been left empty, it would have left a visual void in that area.

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In an effort to address the concerns that have been raised, the Fair will modify agreements to more expressly state that space is non-transferable and that if a vendor occupies space in addition to what is contracted for, they will be billed accordingly.

In addition, based upon your observations during the audit, you concluded that the Fair did not receive the correct commission from MSK Corp., operators of the Heroes and Legend Café, for the 2010 Fair since the commission was based upon under reported sales. As previously communicated, the Fair will not be renewing the contract with MSK Corp. for the 2011 Fair. In the future, we will increase our surveillance of the limited number of concessionaires whose payment to the Fair is based on a percentage of sales.

We appreciate the opportunity to respond to your audit findings and recommendations and hope that you acknowledge the many positive changes that have been implemented during the past several years to ensure accountability and transparency as well as our efforts to protect state assets.

Please contact Ms. Tracy Robbins, the Department's Director of Internal Audit, if you have any questions regarding our response or require any additional information or documentation. Ms. Robbins can be reached at (518)485-7728.

Sincerely,

Darrel J. Aubertine
Acting Commissioner