



STATE OF NEW YORK
OFFICE OF THE STATE INSPECTOR GENERAL
Final Report
February 2, 2010

SUMMARY OF FINDINGS/RECOMMENDATIONS

The New York State Inspector General found that after his termination, John E. Charlson, the former Director of Public Information for the New York State Division of the Lottery (Lottery), eavesdropped on an official non-public Lottery meeting held on January 20, 2009. The Inspector General also determined that the day after he was terminated, Charlson used a state-issued laptop computer to access the Lottery's computer network and, without authorization, retrieved several e-mail messages. A copy of this report has been forwarded to the Saratoga County District Attorney's Office for its consideration of criminal charges against Charlson.

In response to the allegations against him, Charlson raised various claims of misconduct against Lottery officials, particularly Director Gordon Medenica and General Counsel William Murray. The Inspector General learned of these allegations initially from Charlson, through his attorney, and finally from Charlson's friend, William O'Shaughnessy. Each allegation was investigated by the Inspector General. All but one of the allegations raised by Charlson proved unfounded or unsubstantiated. However, the Inspector General found that Lottery executives improperly provided Lottery employees with sports bags aggregately valued at over \$77,000 that remained from a defunct sweepstakes, rather than dispose of them pursuant to state guidelines for the disposal of surplus property designed to recoup expended funds.

ALLEGATION

On February 4, 2009, Lottery's executive management contacted the Inspector General, alleging that former Lottery employee John Charlson may have improperly accessed Lottery's computer system on January 14, 2009, and eavesdropped on an official conference call on January 20, 2009. During the course of the ensuing investigation, the Inspector General received from Charlson and a friend of his, William O'Shaughnessy, various allegations of misconduct by Lottery officials ranging from rigging of a contest to nepotism.

SUMMARY OF INVESTIGATION

The Inspector General investigated the allegations raised by the Lottery regarding Charlson, as well as those lodged against Lottery officials by Charlson. In doing so, the Inspector General conducted over 45 interviews, including Lottery employees and executives, state officials from other agencies, and pertinent non-state workers. Among other investigative steps, the Inspector General also examined relevant documentation, including e-mails, phone records, electronic calendar entries, and official state records.

A. Background

The Division of Lottery, created in 1966, is designed to support education in New York State by raising revenue through the sale and marketing of lottery games, such as instant games, Win 4, Take 5, Quick Draw, Mega Millions, and Video Lottery Terminals (VLTs) at horse racing facilities across the state. Lottery employs over 400 individuals and is currently led by Director Gordon Medenica. Lottery maintains a central office in Schenectady; regional offices in Buffalo, Syracuse, New York City and Long Island; a satellite office in Fishkill to serve the Hudson Valley; and a claims center in Rochester. Marketing sales representatives are assigned to the regional offices around the state, and recruit and support point-of-sale retailers, which include convenience stores, newsstands, supermarkets, restaurants and bowling centers. Lottery also has contractual relationships with private companies that provide the Lottery with various services such as advertising, marketing, and printing of Lottery tickets.

John Charlson was employed at Lottery as a Special Assistant / Director of Public Information from June 14, 2007 until his termination on January 13, 2009. In this capacity, Charlson was responsible for Lottery's media and public relations, including supervising a small staff. According to Lottery executives, Charlson's job performance was unsatisfactory for several reasons, among them that he reportedly supervised poorly and frequently made statements inconsistent with Lottery's current philosophy as established by Director Medenica. At first his supervisory responsibilities were reduced, and then in December 2008, it was decided that Charlson would be terminated. Charlson was informed of his dismissal on January 13, 2009.

B. Events Surrounding Charlson's Termination

On January 13, 2009, at approximately 5:00 p.m., Director Medenica and Lisa Fitzmaurice, Lottery's Director of Human Resources, met with Charlson in the director's office in Lottery's central office building in Schenectady. Medenica informed Charlson that his services were no longer required by Lottery, but afforded him the opportunity to resign in lieu of termination. Charlson refused to resign, and consequently he was formally terminated from employment with Lottery.¹ Charlson was provided a letter of

¹ As an at-will employee, Charlson served at the pleasure of the Director of the Lottery, and could be terminated without cause.

termination effective at the commencement of business the next day, January 14, 2009. According to Medenica, Charlson questioned the charge that he failed to “team” with other Lottery employees. Medenica further informed the Inspector General that Charlson appeared hostile and threatened to hire an attorney to sue the Lottery and reportedly declared, “This will be very messy and very public.” Medenica informed the Inspector General that when he told Charlson he was sorry that the termination had to occur, Charlson replied, in what Medenica described as “a low threatening voice,” that Medenica will be ““very sorry.””

Immediately after the meeting, Fitzmaurice and another employee assisted Charlson in packing his personal possessions from his office. Fitzmaurice also retrieved from Charlson what she believed constituted all his state-issued property: Lottery and state identification cards, Blackberry, credit card, and keys.

Since he was assigned a state vehicle, which he drove to work that day, Fitzmaurice and the other employee offered to drive Charlson home. During their drive to Charlson’s Saratoga Springs home, Charlson informed Fitzmaurice that he may appear uninvited at a previously scheduled Lottery press conference to announce a contest winner, because the media may want to know about his termination. Fitzmaurice perceived Charlson’s statement as an “out and out threat” to retaliate against Lottery. The Lottery cancelled the press conference to avoid any potential disruption by Charlson.

The day following Charlson’s termination, Lottery officials realized that Charlson had not returned a state-issued laptop computer to Fitzmaurice upon his departure which Charlson then used to access the Lottery’s secure computer network. At approximately 9:15 a.m. on January 14, after the effective date and time of his termination, Charlson e-mailed Fitzmaurice over the Lottery computer network. He also “cc’ed” his non-state, individual Yahoo e-mail address (identified in the e-mail as his “personal e-mail” address). Charlson wrote to Fitzmaurice that she and the other Lottery employee “left before I could get back outside to give you the Lottery Laptop computer....” He offered to make arrangements to deliver the computer to someone in Saratoga Springs, and he provided Fitzmaurice with his personal cell phone number. Fitzmaurice stated that given Charlson’s threats of retaliation, she became concerned that Charlson possessed a Lottery laptop that could enable him to access the Lottery’s computer network. Accordingly, Fitzmaurice contacted Anthony Catone, an Information Security Analyst with Lottery, to prevent Charlson’s access to Lottery’s computer system.

As Catone was in the process of terminating Charlson’s network access, at approximately 9:30 a.m., he noticed that Charlson was currently logged into Lottery’s computer network using his previously assigned state-owned laptop. At this time Charlson was no longer a Lottery employee. Catone later confirmed Charlson’s use of the Lottery laptop through the unique tag number assigned to it and Charlson. Moreover, Catone noticed that through Charlson’s state-issued laptop, several e-mails on Lottery’s computer network were being forwarded to Charlson’s personal Yahoo e-mail address. In total, 16 e-mails were forwarded from Lottery’s network to Charlson’s personal e-mail

address.² One of these e-mails was from Lottery's General Counsel William Murray to Medenica and Charlson. The message included a discussion of the New York State Racing and Wagering Board's position on Video Lottery Terminals (VLTs), which Lottery operates at race tracks regulated by the Racing and Wagering Board. Its chairman, John Sabini, later advised the Lottery that he received a copy of that e-mail, which had been forwarded to Charlson's personal e-mail address, and sent to Sabini by an anonymous source. Neither Murray nor Medenica sent the e-mail to Chairman Sabini, leaving Charlson as the likely source. Murray contends that his statements in this e-mail were taken out of context and made to appear as though he was unduly critical of the Racing and Wagering Board.

As for the laptop, Charlson was contacted and arrangements were made for him to deliver it to the nearest Lottery office, the Saratoga Racing and Gaming center in Saratoga Springs. There, on January 16, a Lottery employee recovered a laptop bearing the tag number assigned to Charlson, and he signed an Inter-Unit Equipment Transfer Form, memorializing the return of the laptop to the Lottery.

C. Charlson Eavesdrops on Lottery's Management Committee Meeting

On January 20, 2009, at 9:30 a.m., Lottery executives and senior management conducted their regular Management Committee Meeting – a private “in house” meeting held each Tuesday morning attended by Lottery management. “Everything [discussed at the meeting] is confidential; it's an internal meeting,” according to General Counsel Murray. The meeting is held in a conference room in Lottery's headquarters in Schenectady, with some participants calling into a specific conference call number with a password. Some of Lottery's primary vendors are also invited to attend by telephone. Director Medenica typically chairs the meeting, but on this particular day, Murray and Deputy Director Gardner Gurney conducted the meeting because Medenica was serving jury duty.

Michelle Barbetta, Assistant to the Director, arranged the conference call. The persons on the call were asked to identify themselves. Charlson, who normally attended these meetings while he was still employed by Lottery, did not identify his presence. Days later, however, when Lottery received the telephone bill for the conference call, an unusual phone number was included as having called into the conference call at 9:22 a.m. Barbetta later identified that number as Charlson's personal cell phone number, the same phone number Charlson's had e-mailed to Fitzmaurice on January 14, 2009.

Certified phone records obtained by the Inspector General confirm that the number which accessed the Lottery meeting is assigned to John Charlson of Saratoga Springs. The records also revealed that the call was made from Saratoga Springs - where Charlson resides - and that Charlson's phone was connected to the conference call line for 30 minutes, the entire duration of the meeting. Because he had been terminated,

² Unauthorized use of a computer occurs when a person “knowingly uses, causes to be used, or accesses a computer, computer service, or computer network without authorization” (New York State Penal Law § 156.05).

Charlson's call into the meeting was unauthorized. The Inspector General interviewed all 20 people who legitimately attended the meeting either in person or by telephone and ascertained that none consented to Charlson's eavesdropping on their conversation.³

On January 28, 2009, Lottery received a request by e-mail for certain materials under the Freedom of Information Law (FOIL),⁴ from an individual identified as "Fred Klink." The FOIL request sought information regarding the Director's vacation time and other leave such as for "Jury Duty" which was mentioned during the January 20th conference call to explain the director's absence from the meeting. Other demands included requests for the names, titles, office addresses and salaries of every "political appointee" at the Lottery and for a list of Lottery employees who are related to one another. As Lottery suspected that "Fred Klink" was actually Charlson, Lottery advised the requester that pursuant to Public Officers Law § 73(8), a former state employee cannot appear before his former agency within two years of ceasing employment and provided him with a copy of Advisory Opinion 97-12 from the former State Ethics Commission.⁵ This opinion explains the ethical limitations on FOIL requests by ex-agency employees and is required to be supplied to former employees who submit FOIL demands to their prior employer.⁶ Lottery also sought a certification from the requester that he would not use the names and addresses of Lottery employees for solicitation or fundraising purposes. Lottery received no further communication from "Fred Klink."

The Inspector General subsequently discovered evidence which establishes that Charlson likely submitted this FOIL request. When the Inspector General attempted to interview Charlson, he mentioned that he had requested documents from Lottery, but he was told that he could not appear before the agency for two years. Additionally, the FOIL request sought a list of Lottery employees who are related to one another, and Charlson raised concerns to the Inspector General about the number of family members employed by the Lottery. The similarity corroborates that this FOIL request most likely emanated from Charlson.

³ Eavesdropping is committed when a person "unlawfully engages in wiretapping, mechanical overhearing of a conversation, or intercepting or accessing of an electronic communication" (Penal Law § 250.05). According to Penal Law § 250.00, "Wiretapping" means the "intentional overhearing or recording of a telephonic or telegraphic communication by a person other than a sender or receiver thereof, without the consent of either the sender or receiver, by means of any instrument, device or equipment." Similarly, "Mechanical overhearing of a conversation" means the "intentional overhearing or recording of a conversation or discussion, without the consent of at least one party thereto, by a person not present thereat, by means of any instrument, device or equipment."

⁴ Public Officers Law Article 6.

⁵ Public Officers Law § 73(8) states, in relevant part, "No person who has served as a state officer or employee shall within a period of two years after the termination of such service or employment appear or practice before such state agency or receive compensation for any services rendered by such former officer or employee on behalf of any person, firm, corporation or association in relation to any case, proceeding or application or other matter before such agency

⁶ In sum, former employees are permitted to submit FOIL requests on their own behalf but may not represent others when making such requests.

D. The Inspector General Meets with Charlson

On March 4, 2009, at approximately 4:00 p.m., the Inspector General attempted to interview Charlson regarding the allegations against him and events surrounding his departure from the Lottery. Charlson informed the Inspector General that as the Public Information Officer for Lottery, he coordinated media efforts between the Governor's Office and Lottery, which he had viewed as his role. Others at Lottery, he reported, did not appreciate his coordination efforts with the "Second Floor" (a term used for the Governor's Office). In January 2009, the Lottery Director called him into his office and gave him the option of resigning or being terminated. Charlson said he informed the director that resignation was not an option for him and that Lottery should terminate him if they wished. On his way out of the office, Charlson confirmed that he informed the director, in substance, "You're going to be sorry."

Charlson also alleged that he was terminated for being a "whistleblower." He claimed that he had raised "ethics" issues in which he was not sure the Inspector General would be interested. Charlson further stated that although at the time, he had considered informing the state Ethics Commission, he had not and that he has spoken with lawyers regarding his termination by Lottery and the possibility of filing a lawsuit against the state. In response, Charlson was advised that the Inspector General was interested in any allegations regarding potential ethical breaches at the agency. Charlson said that in addition to raising bad "public policy" or "media relations" concerns, such as advertisements that some have perceived as racist and have been reported in newspapers, he complained about more serious ethical and perhaps criminal violations. Charlson alleged, for example, the director "rigged" a lottery game so that his secretary would win, and that she in fact received an all-expenses paid trip to the Caribbean which she took as her honeymoon. (It should be noted that during previous interviews with Lottery staff, the Inspector General had learned that Director Medenica's assistant, Michelle Barbeta, recently married.) Charlson further said that the director gave to his staff \$30,000 in Lottery prizes meant for the public. Charlson said that he possessed documentation to support his claims.

While proceeding to another location to discuss these issues further, Charlson advised the Inspector General that if the conversation would involve additional allegations made by Lottery against him, then "I will have to talk with an attorney." The Inspector General informed Charlson that no further conversation could occur with him and that he should consult with an attorney. Without any further questioning by the Inspector General, Charlson volunteered that he knew about the genesis of the allegations - that Lottery was upset with him about threatening to go to the press. Charlson added that if he had gone to the press, the press would know of the allegations already. Charlson, effectively revealing his identity as the FOIL requestor, further declared that he had requested information from Lottery, and they had told him that he could not appear before the agency for two years. The Inspector General then informed Charlson that Lottery officials have expressed their "suspicions about his conduct after he was terminated," which is the subject matter of this inquiry. Charlson was again advised that although the Inspector General wished to hear his side of the story as well as learn more

about his allegations of fixing lottery games and improperly giving gifts, given his statement regarding the desire to obtain counsel, he was reminded that he should first consult with an attorney. Charlson replied he would speak with a lawyer and then contact the Inspector General.

E. Potential Criminal Conduct by Charlson

Pursuant to Penal Law § 250.05 it is a felony to eavesdrop on private conversations without the consent of any parties to the discussion. Furthermore, pursuant to Penal Law § 156.10 it is a felony to knowingly use a computer or computer network absent authorization. As Charlson's actions may constitute violations of these provisions, a copy of this report has been provided to the Saratoga County District Attorney for his review.

F. Allegations Against the Lottery

On April 2, 2009, the Inspector General received a telephone call from Charlson's attorney who advised that Charlson would not speak to the Inspector General unless he received immunity from criminal prosecution. However, he provided the Inspector General with the following outline of Charlson's allegations against the Lottery:

1. NYRA (New York Racing Association) ran a "bridal contest" at Saratoga Race Course; NYRA owed money to the Lottery; and the Lottery director's secretary won the contest, which is suspicious. She also sent a number of e-mails to Lottery employees regarding the contest using the state computer system.
2. Lottery officials gave duffle-type bags worth about \$100 each to all Lottery employees as a gift during a "summer conference." "Thousands" of these "gift bags" were distributed by Lottery.
3. Lottery General Counsel William Murray sought employment with GTECH (which has a contract with the Lottery), while he continued to deal with GTECH on behalf of Lottery. Additionally, Murray allegedly had dinner with GTECH's lobbyists, and he reportedly received a gift – "an iPod" – from a GTECH lobbyist.
4. Paul Francis (who served as the Director of State Operations as well as Budget Director under former Governor Eliot Spitzer) is "friends" with people at a company called Walker Digital, which was given a "no-bid" contract to redesign Lottery's Web site.
5. Money is funneled through Lottery's "advertising budget" to various charities connected to Lottery employees, such as the Duanesburg Little League.
6. There are many employees at Lottery with family members also employed by Lottery, raising concerns of nepotism.

Furthermore, during the investigation, the Inspector General learned that William O’Shaughnessy, the President of Whitney Media, which operates Westchester County radio stations WVOX-AM and WVIP-FM and reportedly a personal friend of Charlson’s, had raised similar allegations. O’Shaughnessy broached the subject when lobbying the Governor’s Office for support in persuading Lottery to continue to pay his radio stations approximately \$165,000 for advertising. In particular, O’Shaughnessy mentioned in a letter to the Governor’s Office what he termed “very ‘interesting’ activities in the Lottery domain,” including a “the honeymoon ‘wedding package,’” “\$50,000 leather gift bags,” “sponsorships” and “slush funds.” Notably, O’Shaughnessy petitioned the Governor’s Office, as well as other politicians, after the Lottery eliminated his radio stations from its advertising budget.

As discussed below, Lottery Director Medenica and Randall Lex, the agency’s Director of Marketing and Sales, informed the Inspector General that O’Shaughnessy’s radio stations, WVOX and WVIP, do not have any ratings and, therefore, it was determined not to expend a percentage of Lottery’s advertising budget in this manner during a recession. These officials further noted that in the past when Medenica and Lex had attempted to shed WVOX and WVIP from its advertising budget, Charlson argued it was politically foolish to cut them. According to Medenica and Lex, Lottery’s decision in 2009 was based on advice and reports from Lottery’s advertising contractor, DDB Worldwide Communications Group, Inc. (DDB), and its affiliate, OMD which compiled information from Arbitron, Inc., a media and marketing research firm serving the media (radio, television, cable and out-of-home), as well as advertisers and advertising agencies.

The Inspector General explored the asserted basis of Lottery’s decision to cease payments to O’Shaughnessy’s radio stations. Local radio is frequently evaluated using Arbitron ratings data, which is accredited by the Media Rating Council (MRC), the recognized industry source. All listenership that meets minimum reporting thresholds is included in Arbitron’s reports, which are provided to its paid subscribers (such as OMD), regardless of whether a radio station purchases Arbitron’s research or not. OMD took the ratings data from Arbitron’s Radio County Coverage reports and input it into OMD’s buying computer system, DDS (Donovan Data Systems). After OMD conducted its analysis, OMD concluded that O’Shaughnessy’s two radio stations did not reach Lottery’s target audience sufficiently to justify Lottery’s purchase of any advertisements.⁷ Lottery officials agreed with OMD’s analysis and chose not to advertise on WVIP and WVOX.

The Inspector General subsequently spoke by telephone with O’Shaughnessy on several occasions and received written materials from him in which he had expressed his displeasure with Lottery’s decision not to advertise with his stations. Moreover, O’Shaughnessy proffered the following allegations against Lottery officials, particularly Director Medenica and General Counsel Murray. O’Shaughnessy indicated that these

⁷ For example, WVIP is listed in the Arbitron 2009 Radio County Coverage Report for Westchester County; however, the Persons 12+ average quarter hour (AQH) rating for Monday through Friday 6:00 a.m. to 7:00 p.m. is “ – ,” which indicates an AQH rating of less than 0.05. As for WVOX, according to an OMD, it does not meet the minimum audience threshold and is not included in Arbitron’s report.

allegations are not based on his personal knowledge, but rather on what he has heard from various unidentified sources. Most of the allegations, however, practically mirror those made by Charlson, whom O’Shaughnessy has described as “a dedicated public servant.”

1. Medenica and Murray engaged in an “unethical kick-back scheme” when they “rigged” a “wedding contest” sponsored by NYRA so that Medenica’s “personal secretary” could win, and Lottery forgave \$38 million in debt NYRA owed the state.
2. Medenica gave Lottery employees “deluxe gift bags” which were “paid for by the taxpayers and valued at over \$50,000.”
3. Lottery has a “cozy relationship with GTECH,” and Lottery gave GTECH a contract without any competitive bidding. Additionally, Murray “interviewed for a job at GTECH, yet was among those reviewing the RFPs [Request for Proposals] from vendors pursuing the new contract” with Lottery, which was “ultimately awarded to GTECH.” Murray also was “wined and dined” by GTECH during a national lottery conference, and he “accepted a gift of an Apple iPod at another conference.”
4. Paul Francis is close friends with the CEO of Walker Digital, John Walker, and therefore Lottery is trying to steer business to Walker Digital for “re-designing [a] website.” Medenica is trying to pay Walker Digital through DDB [an advertising firm which has a contract with Lottery] rather than a competitive bidding process ... seeking to skirt the procurement process to redesign the website in order to promote various Lottery games and use it as an engine to drive new ticket sales on the internet.”
5. Lottery has a “secret slush fund” within its advertising budget which was used annually to divert several hundred thousand dollars to “‘pork barrel’ pet projects favored by members of the Lottery senior management team,” such as “\$5,000 to the Duquesne Little League.”
6. “Nepotism thrives” at Lottery, where there are “at least two dozen employees in the 350 person Lottery workforce related to each other.”

The Inspector General investigated each of these allegations by conducting interviews of relevant witnesses, analyzing pertinent documents, reviewing e-mails and electronic calendar entries, and examining telephone records. The results follow.

i. The Bridal Contest

In order to investigate the alleged “rigged” NYRA-sponsored “bridal contest,” the Inspector General interviewed under oath key witnesses, including Director Medenica; Michelle Barbetta, Medenica’s assistant and Lottery contestant winner; the president of

NYRA's marketing firm; and the Albany *Times Union* employee responsible for tallying the votes to choose the contest winner. The Inspector General also reviewed documents from the Albany *Times Union*, the contest rules, Lottery's Basic Financial Statements dated March 31, 2008 and for 2007, an Independent Auditor's Report prepared by KPMG dated July 23, 2008, and various records regarding the settlement of NYRA's debts owed to the Lottery through the U.S. Bankruptcy Court.

Barbetta and her fiancé won the so-called "Race to the Altar" contest in which they won a wedding ceremony held between horse races at the Saratoga Race in the summer of 2008. Capital Region residents voted on-line on the Albany *Times Union* newspaper's Web site to select their favorite engaged couple, as well as various wedding-related items: the wedding dress, wedding rings, reception, and a honeymoon package, among other prizes. The *Times Union* operated the contest, which was sponsored by NYRA, Southwest Airlines, Yankee Trails World Travel, Mazzone Management Group, Ferri Formals and Bridal, Sanctuary Spa, Northeast Fine Jewelry and Christopher's menswear store. Lottery was not a sponsor.

Prior to Barbetta's entry into the contest, Lottery General Counsel William Murray reviewed the matter and decided that her participation did not present a conflict of interest. Additionally, during the contest, Barbetta sought and obtained Director Medenica's permission to send an e-mail using the Lottery computer system to solicit votes from her co-workers. Medenica informed the Inspector General that he viewed the contest as "a point of friendly chatter around the office." "I voted for her myself." Medenica also said most employees supported Barbetta in the contest. Murray was not involved in Medenica's decision granting permission to Barbetta to circulate the e-mail.

Barbetta sent an e-mail message (dated June 23, 2008) to Lottery employees notifying them of the contest and asking for their votes. Charlson complained to Medenica that Barbetta's e-mail message to solicit support for a private endeavor should not have been sanctioned because, by doing so, Medenica was being inconsistent because he had previously denied an employee's request to distribute a memorandum encouraging others to purchase lunch from a commercial vendor in the lobby of the Lottery offices.

After learning that she won the contest, Barbetta sent another e-mail message (dated July 8, 2008) to Lottery employees in which she announced the results and asked for their continued participation in selecting the other prizes like the honeymoon location. Barbetta did not seek Medenica's approval prior to sending this message. Medenica then told Barbetta to stop sending e-mails regarding the bridal contest. Murray considered Barbetta's e-mails inappropriate and counseled her not to use the Lottery's e-mail system for such purposes again.

Barbetta and her fiancé won the contest as result of having the most votes cast by the public on the *Times Union's* Web site. In fact, according to the *Times Union* employee responsible for the electronic vote tabulation the contest winner was "something like twelve thousand votes." He informed the Inspector General that he had no contact with anyone from Lottery and that no one attempted to influence the process

or the final tally. Medenica, Barbetta and the president of NYRA's marketing firm, Ed Lewi, also denied any interaction with any individuals supervising the contest.

Moreover, contrary to the allegations raised, the Inspector General found no connection between the forgiveness of several millions of dollars of debt owed by NYRA to Lottery and Barbetta winning the contest. Instead, Lottery extended loans to NYRA to help keep it solvent until revenue was generated from VLTs at Aqueduct Racetrack. Prior to the "Race to the Altar" contest, Lottery wrote off the NYRA debt from its books at the recommendation of its auditors, KPMG. The rationale for the write-off was explained in KPMG's Independent Auditor's Report: "[d]ue to the uncertainty as to the eventual repayment of these advances and debtor in possession of financing," and "as the State of New York is currently negotiating a franchise agreement with NYRA which may forgive repayment of all State loans paid to NYRA."

Furthermore, NYRA's debt was subsequently settled in Bankruptcy Court. The Attorney General's Office represented the state (including Lottery) as a creditor of NYRA's in Bankruptcy Court. The formal settlement agreement was approved by NYRA officials; Lottery Director Medenica; the Chairman of the New York State Non-Profit Racing Association Oversight Board, Steve Newman (who was appointed by the Legislature); and Governor David A. Paterson. Additionally, the Bankruptcy Court subsequently approved the settlement. The settlement was also contemplated in the 2008 racing franchise legislation, which awarded NYRA the rights to operate thoroughbred horseracing at Belmont Park, Aqueduct and Saratoga Race Course. Simply put, no evidence was found of any connection between the settlement of NYRA's debt owed to Lottery and Barbetta winning the bridal contest.

In sum, Medenica's approval of Barbetta's initial e-mail was imprudent and an ill-advised use of state resources. However, the Inspector General found no connection between Lottery and the organizers of the contest or any benefit conferred on any party connected with the contest.

ii. Gifts to Employees

The Inspector General found that Lottery improperly provided surplus leather duffel bags valued at approximately \$250 dollars retail per bag bearing the Lottery logo to hundreds of Lottery employees purportedly in an effort to promote the Lottery.

Lottery occasionally markets second-chance promotions. Such promotions provide contestants who possess losing lottery tickets with the occasion to submit them to the Lottery with their personal information filled in on the back of the ticket for an opportunity to win merchandise through a sweepstakes-type drawing. In the summer of 2006, Lottery conducted such a game entitled the "Subway Series" with a second-chance promotion called the "Grand Slam Sweepstakes." The prizes included New York Yankees and Mets tickets, baseball caps, jerseys and leather sports bags bearing the Lottery logo. These items, including 5,000 leather duffel bags, were purchased by MDI,

a subsidiary of Scientific Games, as a part of a multi-million dollar package for Lottery pursuant to a contract between Lottery and Scientific Games/MDI.

According to an internal audit conducted in November 2006, Lottery had distributed only 1,814 of the sports bags, leaving 3,186 stored in the Lottery's warehouse. The inventory lists the estimated retail value of each bag at \$258.03. In 2007, after Medenica, Gurney and Murray were appointed as executives of the Lottery, they toured the warehouse and observed stock piles of merchandise that had been acquired as a part of the Subway Series promotion. While as part of an agreement on another Lottery game in 2008, Lottery returned to MDI \$432,399 worth of Yankees and Mets merchandise purchased for the Subway Series and credited the Lottery in that amount, thousands of leather sports bags remained in the Lottery's warehouse.

Murray explained to the Inspector General that it was decided that "since they [the leather sports bags] have the Lottery logo on them [and] they're not doing a lot of any good sitting in the warehouse, let's try to get them in circulation so the people will walk around with them and maybe other people will see them." Under this rationale, Lottery provided the sports bags to Lottery retailers and also to every Lottery employee, ostensibly so that they would serve as "walking advertisements" for the Lottery.⁸ Although Murray could not inform the Inspector General as to exact number of bags that had been distributed, he "guessed" that as many as 300 sports bags were given to Lottery employees. Thus, approximately \$77,409 worth of merchandise purchased by the state was provided to Lottery employees by the agency.

In regard to the promotional worth of the bags, the Inspector General notes that the Lottery logo embedded on the bag is not readily apparent as it appears recessed in the same color as the black leather duffel. Indeed, Murray conceded that Lottery logo embossed on the sports bags is "pretty subtle"; and, therefore, the advertising value of the bags appears to be minimal.

When asked by the Inspector General about potential misuse of state resources by distributing approximately 300 bags valued at approximately \$250 to each employee, Murray responded, "The New York Lottery is the most successful lottery in the country,⁹ so there might be somebody who might want to look at one little aspect of something the New York Lottery does. I offer the opinion that if that person has a better idea how to run the New York Lottery than the current managers have, no matter where you go you're always going to find second guessers." He added that managing the Lottery's warehouse is not "by any means anywhere near the top priority of running the Lottery," and that it would have been easier "dumping" the sports bags than deciding what to do

⁸ Murray further informed the Inspector General that other items such as shopping bags bearing the Lottery emblem were given to employees at a picnic in September 2009. Murray was uncertain whether the shopping bags were excess merchandise from an unsuccessful promotion. At the picnic, some Lottery employees also received other goods, such as baseball hats and shirts, as door prizes.

⁹ For fiscal year 2008, for example, NY Lottery revenue exceeded \$7.5 billion, the highest ever for the NY Lottery, and net proceeds earned for Lottery Aid to Education reached a record high of over \$2.5 billion.

with them. The current management team was “stuck” with the inventory of merchandise, that included “duds,” such as the sports bags, purchased by members of a previous administration.



Leather sports bag with a 2¼-inch embossed Lottery logo.

The disposal of excess property in the possession of state agencies is governed by State Finance Law § 167 which provides, in relevant part:

The head of a state agency having custody or control of such property, except vehicles, may: (a) dispose of such property in accordance with applicable express statutory provisions, (b) reuse such property within the same state agency, (c) use the property in part payment on a new item which may include, but shall not be limited to, use as a trade-in or use in a guaranteed brokerage arrangement, (d) with the consent of the commissioner [of the Office of General Services or OGS], place such property in the custody or control of the office of general services for reuse by other state agencies or for other disposition, or (e) where the fair market value of such property is less than an amount established from time to time by the commissioner, dispose of such property by such means as the head of such state agency deems to be in the best interest of the state. Records of each disposition shall be retained by the state agency disposing

of such property and shall be subject to audit. Where personal property has been purchased from special funds, a state agency, upon designation of the source of funds from which such property was purchased, may condition the disposal of such property on the reimbursement of such special fund in the amount of the fair market value of such property. All proceeds realized on sale or other transfer and not otherwise authorized to be deposited in a special fund, shall be deposited in the general fund of the state.

Pursuant to this law, OGS could have disposed of the surplus sports bags, and depending on the source of the funding for the initial purchase of the bags, Lottery or the state's general fund would have received the proceeds from the sale of the bags on eBay, minus a 10% handling fee charged by OGS. Regardless, the state would have benefited from the sale of the surplus sports bags. Notably, Lottery is well aware of the proper manner in which to dispose of surplus property because OGS has sold for Lottery surplus lottery ticket machines, photocopiers and printers in the past. When an OGS official familiar with state surplus rules was informed that the Lottery had surplus gym bags from one of its contests that were provided to Lottery employees, he remarked, "That's not good . . . It opens a can of worms."

Upon inquiry as to other options for disposal of the bags, Murray opined that "making a public spectacle of selling off dud promotional merchandise has a risk involved" by drawing unwanted negative attention to the Lottery. When the Inspector General asked Murray why under his rationale the bags were not donated to a charity, rather than giving them to state employees, Murray responded with a question, "Why doesn't that look right?" Murray declared that promoting the Lottery is "one thing we know how to do." Murray reiterated that they were seeking a way to "give away" the sports bags bearing the Lottery logo in an attempt to advertise the Lottery. When asked about the possibility of using Lottery's surplus merchandise for new promotions, Murray answered, "We've been looking to find ways to use that promotional merchandise to promote the New York Lottery, and it's not practical or economical to take a promotion that's already failed in the marketplace and try to reintroduce it."

Lottery's disposal of over \$77,000 worth of leather bags by providing these items to its employees may constitute a violation of the State Finance Law. At a minimum, awarding these bags to its employees was unwise and inconsistent with the proper use of state purchased goods.

John Charlson alleged that the distribution of the sports bags constituted an improper "gift" in violation of the Public Officers Law. Public Officers Law § 73(5) bans state employees from accepting gifts of more than nominal value under circumstances where it may reasonably be inferred that the gift was intended to influence the state employee in the performance of his or her official duties. The primary purpose of this provision is to prohibit gifts to public officials intended or appearing to influence their conduct and this section is not directed at property given to state employees by their own agencies. However, the Inspector General's findings are referred to the state

Commission on Public Integrity, the body with jurisdiction to interpret the state's ethics law, for its review.

iii. No Bid Contract to Walker Digital

In its investigation of the allegation that the Lottery improperly awarded a no bid contract to Walker Digital to revamp its Web site, the Inspector General initially conducted research into Walker Digital and state contracts. Walker Digital, LLC, is the parent company of Walker Digital Management, LLC, and Walker Digital Gaming, LLC (all three are hereinafter referred to as Walker Digital). Walker Digital promotes itself as having expertise in, among other areas, "automated lottery play." The company has been "designing systems to help lotteries grow their businesses." Walker Digital reportedly also has over 200 U.S. patents, including some related to lottery, gaming and wagering, video games, and cryptographic systems. However, additional research by the Inspector General revealed that Walker Digital does not, according to the state Office of General Services' (OGS) Web site, have any current statewide contracts with OGS.

The Inspector General further contacted the Office of the State Comptroller (OSC) regarding the existence of any contracts between the Lottery and Walker Digital. OSC advised that Lottery currently does not have, nor has it ever had, any contracts with Walker Digital. A subsequent verification by the Inspector General using on-line databases of state contracts confirmed this fact.

The Inspector General next pursued the allegation that Lottery "skirted" the procurement process by using DDB to pay Walker Digital to redesign Lottery's Web site. The Inspector General also analyzed certain phone records, electronic calendar entries and e-mails to determine whether the Lottery paid Walker Digital to redesign their Web site through DDB Worldwide Group, Inc., the Lottery's advertising agency, instead of presenting it for competitive bidding. The Inspector General found no evidence that the Lottery was involved in a scheme to pay Walker Digital through DDB. The Inspector General identified two phone calls from Murray's desk phone to Walker Digital in January 2009. According to a Lottery calendar, Lottery officials and Walker Digital had a conference call on December 18, 2008, and also had meetings with Walker Digital on April 2, 2009, and May 19, 2009.

Leo Mamorsky, Group Account Director for DDB, informed the Inspector General that meetings have occurred between Lottery officials, DDB and representatives of Walker Digital, including Jay Walker, the owner of Walker Digital. The purpose of the meetings was to entertain a proposal for a new Internet-based lottery game from Walker Digital. Mamorsky added that, in addition to New York, Walker Digital has proposed this new game to other states for their lotteries. If the concept is approved by Lottery, it would be operated by Walker Digital from a Web site separate from the Lottery's. However, Mamorsky said that he was uncertain whether Walker Digital's idea "will amount to anything." Mamorsky further stated that DDB does not have a contract with Walker Digital, and neither Lottery nor DDB has expended funds in furtherance of Walker Digital's proposal.

Additionally, Mamorsky had no knowledge of Paul Francis influencing anyone at the Lottery to secure a contract with Walker Digital. "I never heard his name come up in the context of this [proposed lottery game]," he said. Lottery officials confirmed that Jay Walker is a friend and former business partner of Paul Francis, the former Director of State Operations under then Governor Eliot Spitzer. Francis, who is also friends with Director Medenica, reportedly told Walker to contact Medenica if he desired a meeting with Lottery officials. General Counsel Murray testified that the Lottery has met with Walker Digital, not due to Jay Walker's association with Francis, but because it is a competent, qualified company. Murray further confirmed that no money has been paid by the Lottery, either directly or through DDB, to Walker Digital.

The Inspector General also spoke with OSC officials who have had at least two discussions with Lottery executives regarding potential agreements between Lottery and companies, including Walker Digital, regarding Internet-based lottery games. OSC advised the Inspector General that two different scenarios were discussed with Lottery concerning Lottery's legal obligations regarding entering into contracts/agreements for lottery sales over the Internet. Neither scenario has come to fruition, but Lottery officials are planning for future possibilities.

The first scenario is a traditional license agreement to sell tickets to existing lottery games pursuant to Tax Law § 1605 and other relevant provisions which authorize the Lottery to grant licenses to vendors, such as gas stations, to sell lottery tickets. Similarly, Lottery envisions the possibility in the future of entering into license agreements with companies that will sell lottery tickets over the Internet. Walker Digital, however, is not the only company proposing Internet lottery sales as a number of companies have expressed an interest in this type of arrangement. Lottery would issue licenses to any company that qualified for a license, just as they do now for traditional vendors. No company would have the exclusive right to sell lottery tickets over the Internet. No RFP or bidding process would be required because Lottery would be issuing the licenses pursuant to existing law and, perhaps with some modifications to cover Internet sales, regulations.

The second scenario discussed involved Lottery implementing a new lottery game to be sold to customers only through the Internet. In this situation, an RFP or OSC approval for a single-source contract would be required pursuant to the State Finance Law. Both OSC and Lottery agree that Lottery would have to follow the State Finance Law procurement rules for Lottery to contract the purchase of a new Internet-based lottery game. It was pointed out that a single-source would most likely be permissible since this new game would probably be unique and patented by the vendor. Again, several companies including Walker Digital are companies currently working toward such a game. However, Lottery currently does not have a contract with any company for such a new game.

According to OSC, Lottery officials advised OSC that as the proposals become further developed, Lottery would contact OSC for review to ensure compliance with the law. OSC did not have the impression that Lottery was seeking to award a contract to

Walker Digital or had any untoward favoritism to that company.

iv. General Counsel Murray and GTECH

The Inspector General investigated the allegations that Lottery's General Counsel, William Murray, has too "cozy" of a relationship with GTECH; reviewed the bids for a new contract while interviewing for a job with GTECH; and received a gift from GTECH or from a GTECH lobbyist.

GTECH, according to its Web site, is a leading gaming technology and services company, providing innovative technology, creative content, and superior service delivery. Lottomatica S.p.A. is one of the world's largest commercial lottery operators and a market leader in the Italian gaming industry. GTECH and Lottomatica together create a fully integrated lottery operator and gaming technology solutions provider – a combined company with worldwide scale, considerable financial strength, and industry-leading customer solutions. GTECH has had a contractual relationship with the New York State Lottery before Murray first joined the Lottery in 1990.

The Inspector General conducted a review of e-mail, office phone, and state-issued cell phone records for Murray in order to identify any communication which might suggest that GTECH improperly influenced Murray or other Lottery staff in regard to the Lottery's new Full Service Lottery System contract, which was ultimately awarded to GTECH in March 2009.

A thorough review of the records, failed to unearth any evidence to suggest that Murray or other Lottery personnel had been improperly influenced by GTECH. In particular, no e-mails indicated Murray ever received an iPod from GTECH. Analysis of his desk and cell phone records revealed that Murray had a similar amount of communication with all three bidders in 2008: GTECH, Scientific Games, and Intralot. During that time period, GTECH and Scientific Games also had existing contracts with Lottery.

In furtherance of an existing contract, GTECH occupies office space on the second and seventh floors of the same building complex as Lottery in Schenectady. Lottery transmits GTECH invoices each month for reimbursement of rent and maintenance costs. When the Lottery issued their RFP for the new Full Service Lottery System contract, the Lottery used space on the seventh floor to view new equipment that was being proposed by both bidders (GTECH and a combined bid from Scientific Games and Intralot).

An examination of certain e-mails reveals that Murray remains friendly with some GTECH employees who had previous employment at the Lottery. In particular several personal and not business related e-mails were exchanged between Murray and a high-ranking GTECH officer. Notably, this individual had spent more than 30 years working with the Lottery prior to joining GTECH. Murray's current tenure is his second at Lottery. Murray had been employed by the Lottery for approximately nine years, worked

for another state agency for approximately eight years, and then returned to the Lottery in 2007. In that time period, Murray developed friendships with certain Lottery employees, who later went to work for GTECH. However, none of the e-mails suggested that this official or any other GTECH employees had attempted to improperly influence Murray regarding the new Full Service Lottery System contract.

The Inspector General also found no evidence that these former Lottery employees had violated the so-called “revolving door” prohibitions contained in Public Officer Law § 73(8)(a). In fact, to the contrary, e-mails referred to efforts to comply with the two-year ban on state employees appearing or practicing before their former state agency. Murray also testified before the Inspector General that the GTECH employees who used to work at the Lottery whom he knows are cognizant of and have consciously abided by Public Officer Law § 73(8)(a).

Regarding the bid review process for the Full Service Lottery System contract, Lottery officials first surveyed the marketplace to determine what companies were available for consideration in the new contract. Scientific Games, GTECH, and Intralot were identified as companies with the requisite expertise and technical capacity to meet Lottery’s requirements. Intralot and Scientific Games submitted a joint proposal to the Lottery, and GTECH also submitted a bid. Lottery established a committee comprised of several Lottery officials, including Murray and Gurney, as well as Lottery’s Director of Marketing, Director of Gaming Services, Chief Technology Officer, Chief of Telecommunications, Chief Financial Officer and others. Battelle Memorial Institute, a private nonprofit consulting firm, acted as an advisor in the evaluations of potential companies. As for the allegation that Murray interviewed for a job with GTECH while evaluating bids, Murray testified that he applied for a position with GTECH in 1999 and only after he was no longer employed by the Lottery. As for the new 2009 contract, according to Murray, “GTECH was far and away the leader” and was eventually awarded the contract.

Murray explained that during the recent bidding process and while reviewing the proposed contract with GTECH, Lottery established guidelines for the Lottery employees required to interact with GTECH employees on matters related to the then current contract. In compliance with the Procurement Lobby Act, Lottery also assigned two employees to serve as contacts for the bidders, as well as advisors to Lottery personnel about what information could be discussed with GTECH during contract negotiations. An e-mail was also sent to all Lottery employees advising them about not having contact with GTECH during the restricted procurement period.

The Inspector General asked Murray whether a GTECH representative attempted to improperly influence his decisions. Murray responded, “No, but their contractors they work for us and we supervise them and sometimes we have differences of opinion where they might want to do something one way and we’ll say okay we could understand how that might be cheaper for GTECH and that might be better for GTECH’s bottom line, but the contract that we have with GTECH requires GTECH to do it the way we want.”

Regarding the alleged gift of an iPod from GTECH or one of its lobbyists, both Murray and Medenica related to the Inspector General that while at a trade conference in the spring of 2008 Murray won an iPhone as a raffle prize. Murray testified that what rendered him eligible to enter the drawing for an iPhone was that he listened to a sales pitch from Media Five, not GTECH. Media Five did not, and currently does not, conduct any business with the Lottery. Additionally, the entire audience for the sales presentation was entered into the raffle. After the drawing, Murray learned that he and a few others at the conference had won an iPhone from Media Five. Moreover, before Murray accepted the prize, he sought an opinion from Lottery's ethics officer, who advised him that he could accept the iPhone without violating the state's ethics laws.

In Advisory Opinion 08-01, the Commission on Public Integrity interpreted Public Officers Law § 73(5) ban on certain "gifts" to state employees "which it could reasonably be inferred that the gift was intended to influence him, or could reasonably be expected to influence him, in the performance of his official duties or was intended as a reward for any official action on his part." The Commission found that a "gift does not include ... rewards or prizes given to competitors in contests or events, including random drawings open to the public...." The following example cited by Commission in Advisory Opinion 08-01 is directly analogous to Murray's receipt of the iPhone:

A State employee attends a conference as part of her official duties. There are multiple vendors at the conference, some of which do business with the State and some with the employee's own agency. All participants at the conference, which include government and private entities, have an opportunity to win raffle prizes by dropping their business card in a fish bowl. The State employee's card is drawn and she wins a \$1,000 laptop that is donated by a vendor who does business with the State. She may keep the prize since it is a raffle that is open to all participants.

Under this opinion, Murray could appropriately accept a raffle prize at a trade conference from a vendor that does business with the state, much less one that does not do business with the Lottery, without violating the state ethics laws.

The Inspector General further explored the allegation that Murray was "wined and dined" by GTECH at a conference in Philadelphia. In the fall of 2008, Murray and several other Lottery executives and managers, including John Charlson, attended the North American Association of State and Provincial Lotteries (NASPL) conference in Philadelphia. NASPL, according to its Web site, is an association representing 52 lottery organizations. NASPL's mission is to assemble and disseminate information and benefits of state and provincial lottery organizations through education and communications and, where appropriate, publicly advocate NASPL's positions on matters of general policy. On the second night of the conference, according to Murray, GTECH hosted a dinner at the Philadelphia Museum of Art. In attendance were Murray and other Lottery officials,

as well as several hundred conference attendees. The sit-down dinner was open to everyone registered for the conference and included members of competitor companies, such as Scientific Games, which hosted a similar dinner the next night.

The Commission on Public Integrity, in Advisory Opinion 08-01, stated that state employees may accept “meals or refreshments when participating in a professional or educational program when the meals or refreshments are provided to all participants.” To illustrate this rule, the Commission provided the following example:

A State employee is attending a continuing education program that is sponsored by an entity that lobbies the employee’s agency. As part of the program, lunch and refreshments are offered to all of the participants. It is permissible to accept the food and beverages since it was offered to all participants.

In the same Advisory Opinion, the Commission also opined that state employees may accept “food and beverage offered by the sponsor of an event that is widely attended or was in good faith intended to be widely attended, when attendance at the event is related to the attendee’s duties and responsibilities as a public official or State employee...” Based on the above, Lottery employees such as Murray while at a professional trade conference are permitted to attend dinners sponsored by a vendor that are open to all attendees without violating the state ethics rules.

v. Funneling of State Funds to Charities

It was also alleged that money is funneled through Lottery’s “advertising budget” to various charities associated with Lottery employees. The Inspector General interviewed pertinent Lottery employees, most notably Randall Lex, Lottery’s Director of Marketing and Sales, regarding this allegation. The Inspector General also examined a report detailing Lottery’s 2007-2008 and 2008-2009 sponsorships expenditures, which totaled \$10,524,166.

Lottery’s advertising is primarily handled by a private firm called DDB, a subsidiary of Omnicom. DDB negotiates sponsorship contracts with the larger companies, such as NYRA and the YES Network, which televises New York Yankees’ games. Smaller contracts, ranging from \$50 to \$30,000, are typically negotiated by Lottery employees. Sponsorships are developed by marketing specialists in each region.

Randall Lex, who oversees the Lottery’s marketing, described Lottery’s advertising as a broad communications operation in which “sponsorships provide a grass roots opportunity to work with things in the community.” Research has shown that many of the Lottery players are also sports enthusiasts which results in some of the advertising and sponsorships following seasonal sports, Lex said. The Inspector General’s review of Lottery’s sponsorships confirmed that several sponsorships are sports related, such as

radio stations which broadcast professional sport games, while others consist of fairs and festivals such as the Albany Tulip Fest.

Lottery receives numerous requests annually from charities, organizations, and individuals seeking Lottery's financial support through contributions and/or through an appearance by a Lottery celebrity like Yolanda Vega. Many of these requests are referrals through the Governor's Office or from legislators. "Most are denied," according to General Counsel Murray, but some "make good business sense" for the Lottery. According to Lex, each request gets "evaluated based on what it's going to bring [in] and what it's going to cost." Lex does not make the final decision "unilaterally" whether a contract for advertising is approved; rather, there is a "green sheet process" in which the regional office presents a proposal recommending sponsorship which is reviewed by Lex, co-directors, an administrative assistant, and the Director of the Lottery.

The Inspector General's examination of the sponsorship records did not reveal Duanesburg Little League, which was specifically identified in the allegation, or any little league for that matter, as receiving Lottery funds. The Inspector General subsequently asked Lex about little league organizations having been sponsored by the Lottery. He said in the past, before he arrived at the Lottery, there may have been such "pet projects." Lex reviewed several older accounts with the Inspector General and could not locate any that included a little league organization. Lottery has no record of Duanesburg or Duanesburg Little League as having received money from Lottery. Lex advised that Lottery currently does not donate to charitable causes promoted by Lottery employees in order to avoid internal strife, saying that "it's easier to say 'no' to everybody than to say 'yes' to some." No evidence was found supporting the allegation that Lottery funnels money through its "advertising budget" to charities associated with Lottery employees.

vi. Nepotism

Public Officers Law § 73(14), which contains the state's anti-nepotism law applicable to state agencies such as the Lottery, provides, in pertinent part:

(a) No statewide elected official, state officer or employee, member of the legislature or legislative employee may participate in any *decision to hire, promote, discipline or discharge* a relative for any compensated position at, for or within any state agency.... (Emphasis supplied).

A "relative" is defined in Public Officers Law § 73(1)(m) as "any person living in the same household as the individual and any person who is the direct descendant of that individual's grandparents or the spouse of such descendant." In other words, the law does not prohibit relatives from working at the same state agency; relatives just cannot hire, promote, discipline, or fire one another.

The Inspector General interviewed Lisa Fitzmaurice, Lottery's Director of Human Resources Management, and General Counsel Murray about the allegation of nepotism at the Lottery. Neither was aware of any situation in which a relative employed at Lottery

hired, promoted, disciplined or discharged another relative also employed by the Lottery. Fitzmaurice is not aware of any incidents of nepotism or favoritism when hiring during the past five years in which she has overseen the personnel department at the Lottery.

In order to verify Fitzmaurice's account, the Inspector General also obtained employment and personnel records for current Lottery employees as of the pay period ending April 1, 2009. Analysis of those records revealed that of the current 460 Lottery employees, there are 26 Lottery employees who are related or who reside with another Lottery employee. The Inspector General examined the personnel files of these individuals and found that none was involved in the hiring of the other; none supervises the other; and none was involved in any promotional or disciplinary decisions of a relative. In summary, no evidence exists of a violation of the state's anti-nepotism law by the Lottery.

FINDINGS AND RECOMMENDATIONS

The Inspector General found that after his termination on January 13, 2009, John Charlson, the former Director of Public Information for the Lottery, eavesdropped on an official non-public Lottery meeting held on January 20, 2009. Telephone records subpoenaed by the Inspector General confirm that Charlson's cellular telephone was used to call from Saratoga Springs, where Charlson resides, into a conference call number for a Lottery meeting. None of the authorized participants in the telephone conversation gave consent to Charlson to listen in. The Inspector General further found that the day after he was terminated, Charlson used a state-issued laptop computer to access the Lottery's computer network and retrieve several e-mail messages. A portion of one such e-mail, which contained critical discussion of the Racing and Wagering Board, was subsequently sent to its chairman. As Charlson's conduct may constitute a crime, this report has been provided to the Saratoga County District Attorney for his review.

Following his termination from the Lottery, Charlson made several allegations of misconduct against Lottery officials, particularly Director Gordon Medenica and General Counsel William Murray. The Inspector General learned of these allegations initially from Charlson, and then through his attorney, and finally from his friend, William O'Shaughnessy. Each allegation was investigated by the Inspector General.

The only allegation that was substantially confirmed was that the Lottery improperly distributed to its employees surplus leather sports bags valued at over \$250 that remained from a defunct sweepstakes, rather than dispose of them pursuant to state protocols. While Lottery's stated intent was for its employees to become "walking advertisements" for the Lottery, the Lottery emblem embossed on the black bag is hardly visible, undermining this contention. Public Officers Law § 74(3) provides that state employees may not use their positions to secure "unwarranted privilege" for themselves or others, and that state employees should pursue a course of conduct that will not raise "suspicion among the public" that he or she is likely to be engaged in acts that are "in violation of his or her trust." Therefore, the Inspector General has forwarded a copy of this report and refer this matter to the Commission on Public Integrity for its review.

Evidence establishes that Charlson's and O'Shaughnessy's other allegations against Lottery and its officials are unfounded. The Inspector General determined that the Lottery did not "rig" the *Race to the Altar* contest so that Director Medenica's secretary would win in exchange for forgiving millions of dollars of debt owed by NYRA to New York State. Lottery officials also did not engage in any alleged improprieties in their dealings with GTECH and Walker Digital. For example, Lottery's General Counsel did not interview for a job with GTECH while reviewing its bids for a contract with the Lottery, and he was permitted to attend the dinner hosted by GTECH as part of a trade conference without violating the state ethics laws. The Inspector General also found that Lottery's advertising budget was not being used to "funnel" money to favored charities, and Lottery has not engaged in any proscribed nepotism.

In all, the facts reveal that Charlson, following his termination, as he threatened upon his departure, sought to embarrass and discredit Lottery officials responsible for discharging him from the Lottery. After he was fired, Charlson accessed Lottery's computer network, eavesdropped on an official Lottery meeting, and lodged several serious, yet baseless, allegations against the Lottery. Since some of his conduct may constitute a crime, as previously mentioned, a copy of this report has been forwarded to the Saratoga County District Attorney's Office for its review and consideration of criminal charges against Charlson. In regard to O'Shaughnessy, the evidence clearly supports Lottery's decision to cease payments to his radio stations and demonstrates that Lottery acted appropriately in not reviving this expenditure despite O'Shaughnessy's claim of possessing allegations against the agency.

* * *

The Division of the Lottery's response to the Inspector General's findings and recommendations is appended to this report.



Gordon Medenica, Director

January 26, 2010

Mr. Darren T. Miller
Chief of Investigations
Office of the Inspector General
Empire State Plaza
Agency Building 2, 16th Floor
Albany, NY 12223-1250

RE: NYSIG#: 0076-006-2009

Dear Chief Investigator Miller:

Thank you for the Inspector General's report on the investigation into the improprieties and potentially illegal actions of former state employee John Charlson. We are pleased to see that justice will be served and Mr. Charlson will be held accountable for his vendetta against the New York Lottery.

Mr. Charlson's campaign of disinformation, lies, and slander against the Lottery and its staff are well documented in the report, and we appreciate your thoroughness in refuting his spurious charges. We are sorry that this investigation has taken the better part of a year to complete, and has cost the taxpayers of New York thousands of dollars in time and energy by your office.

While the report concentrates on Mr. Charlson, we hope the Inspector General will continue to investigate the combined efforts of Mr. Charlson and his "friend" William O'Shaughnessy, a radio station operator from New Rochelle. Mr. Charlson's charges would have been dismissed, rightfully so, as the desperate parting shot of a disgruntled former employee had he not parlayed them into an attempt to extort funds from the Lottery. He gave false, malicious, and slanderous information to Mr. O'Shaughnessy, who used it in an extortion attempt against the Lottery. We believe those actions should also be reported to prosecutorial authorities.

Finally, on the issue of the duffle bags we gave to employees, we welcome an opportunity to explain the decision making process that led us to use surplus inventory, rather than new items, for a sales conference in 2008. Since state law explicitly gives agency heads the authority to manage surplus inventory, we believe our actions actually saved the state over \$2,000 rather than costing the state \$77,000. We would be happy to go into full detail on this issue with the Commission on Public Integrity if that agency conducts a review. Our decision was not an ethical lapse; on the contrary, we think it was a smart and prudent business decision,

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(518) 388-3400
www.nylottery.org*

When New Yorkers Play Responsibly, We All Win.

made on the basis of effective re-utilization of state assets, efficient advertising and promotion, and good employee morale.

In summary, we very much appreciate the report's primary conclusions on the potentially criminal actions of Messrs. Charlson and O'Shaughnessy. Their activities, unfortunately, characterize the kind of corrupt activities that stigmatize state government in the public's eye. You are right to bring their illicit conduct to light.

Finally, we want to make a special point of thanking the Governor's staff and the Division of Budget for their support during this time, and backing us in our decision to cut off funding to Mr. O'Shaughnessy. We know that they too suffered from the relentless pressure, telephone calls and letters demanding funds. It might have been easier to simply pay Mr. O'Shaughnessy, but it would have been wrong for the Lottery, wrong for the state and wrong for our ethical principles.

Sincerely,

A handwritten signature in blue ink, appearing to read "John A. DeMica". The signature is fluid and cursive, with a large initial "J" and "A".