



STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

ANDREW M. CUOMO
Attorney General

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**REPORT PURSUANT TO EXECUTIVE LAW 63(8)
REGARDING THE NEW YORK STATE FAIR**

INTRODUCTION

Following an August 2010 report by the New York State Office of the Inspector General (“OIG”) regarding past employee misconduct and operational deficiencies at the New York State Fair (“Fair”), the New York State Office of the Attorney General (“OAG”) received August 31, 2010 requests from OIG pursuant to Executive Law 63(3) and from Governor David Paterson pursuant to Executive Law 63(8) to investigate the New York State Fair.

The OIG’s report alleged a history of abuses and mismanagement that resulted in lost revenue for the state along with multiple breaches of the public trust. Accordingly, the OAG, pursuant to Executive Law 63(8), investigated the management practices, policies, and procedures at the Fair that led to or permitted the operational failures described in the OIG’s report, including to evaluate how practices at the Fair compare to best practices at other state fairs and similar events around the country. This report presents the OAG’s findings regarding oversight deficiencies at the Fair, and makes recommendations to reform future Fair operations and thereby improve public justice in this area.

The OAG’s Investigation

The OAG’s investigation of policies and procedures at the Fair included interviews with individuals knowledgeable about past improper activities and policy failures at the Fair and about its current operations; review of the OIG’s report and supporting materials; and examination of documents from state agencies, individuals, and businesses affiliated with the Fair, including policy manuals, contracts, notes, audits, and staff and board meeting minutes.

The investigation also included a detailed review of management and oversight structures and controls and related policies and procedures at some of the nation's largest and most successful state fairs. The OAG's review included both state-run fairs and fairs operated by independent not-for-profit corporations. Among the fairs surveyed were ones considered by the industry to be the best administered in the United States. The OAG also examined fairs that have undergone recent reforms following past instances of employee misconduct or mismanagement. This survey provided a comprehensive view of the industry and identified key principles that guide successful state fairs.

The OAG's findings are independent of those found in the OIG's report.

OAG Findings and Recommendations: Executive Summary

Based on its investigation, the OAG concludes that, with regard to ethics, integrity, and efficient management, the Fair has experienced past problems beyond what could be considered reasonable for a fair of its size. Further, although the Fair has recently been brought under state agency control and has implemented reforms to some of its practices, the Fair continues to lack essential policies and implementable procedures in key areas.

For the Fair to fulfill its responsibility to protect and use the state resources of the fair and fairgrounds for the benefit of all New Yorkers, structural and procedural reforms are necessary to allow the Fair to set better policies, establish implementable procedures, and provide for effective oversight. The following reforms are recommended by the OAG to allow the Fair to meet these goals:

1. Reconstitute the State Fair Advisory Board as an independent, professional board with the tools and experience necessary to set Fair policy;
2. Conduct annual audits and public reports through an Audit Committee of the Advisory Board to ensure efficient operations, effective procedures, and administrative transparency;
3. Codify easy-to-understand policies and implementable procedures in key public integrity areas, starting with nepotism, conflicts of interest, and gifts, and train all Fair employees annually on such procedures.

BACKGROUND

Organization and Structure of the New York State Fair

Over time the Fair, including the annual fair and the related fairgrounds, have been overseen, administered, and operated by a number of state departments, agencies, and public authorities.

Early History

An annual state fair in New York has been a tradition since the inaugural fair in 1841. In 1899 the State purchased the fairgrounds from the New York State Agricultural Society, which had founded the fair. The State assumed control over fair operations the following year. In 1927 the State Department of Agriculture and Markets was granted authority over the fair and the state-owned fairgrounds.

The Industrial Exhibit Authority

In 1933, Article 8 Title 3 of the Public Authorities Law established the Industrial Exhibit Authority (“IEA”), a public benefit corporation charged with developing and managing an industrial exhibition in connection with the annual state fair, which it accomplished by issuing bonds to finance the construction of modern facilities on the fairgrounds. The IEA was governed by a seven member board, which included the Commissioner of the Department of Agriculture and Markets as its chair.

The Director of the State Fair, an employee of the Department of Agriculture and Markets, served as the IEA’s manager. Over time, as the IEA’s operations evolved with expanded year-round activities on the fairgrounds, the IEA and its employees assumed responsibility for administering the annual state fair and year-round activities on the fairgrounds.

The IEA was dissolved by the New York State Legislature in July 2009. All IEA assets and liabilities were transferred to the State and placed under the control of the Department of Agriculture and Markets. In addition, all individuals who had been employed directly by the IEA became employees of the Department of Agriculture and Markets.

Management Under the Department of Agriculture and Markets

Management of the Fair under the Department of Agriculture and Markets has remained largely unchanged from that of the IEA. The Fair director, Dan O’Hara, along with other senior managers, have retained their positions and perform their duties in a similar manner to how they performed them under the IEA, with the exception that they are all now formally employees of the Department of Agriculture and Markets.

Operational changes to the Fair under the Department of Agriculture and Markets have been slow and somewhat imperceptible. For example, since the elimination of the IEA, the State Fair Procedures Manual has been slightly modified to incorporate new policies, but is still titled: “New York State Fair, Industrial Exhibit Authority, Policy and Procedure Manual” and still contains numerous references to the IEA and IEA Board.

The State Fair Advisory Board

The State Fair Advisory Board was created by the state legislature to provide advice and counsel to the Commissioner of the Department of Agriculture and Markets in relation to the administration of the State Fair. The Board, as originally constructed, was to consist of not more than fifteen individuals appointed by the commissioner.

The 2009 law eliminating the IEA amended the provisions governing the State Fair Advisory Board. The new law states that the Board shall be comprised of eleven members appointed by the governor with the temporary president of the senate, the speaker of the assembly, the minority leader of the senate, and the minority leader of the assembly each recommending a board member to be included among the governor’s appointees.

The statutory provisions authorizing the State Fair Advisory Board do not specify a term for members or grant the board any specific duties, authority, or powers. Historically, the Board was largely comprised of individuals from the Syracuse area who had some connection to the Fair’s activities or purpose, including representatives of the media and agricultural interests. The Board met annually with the Fair Director and some staff, primarily to receive reports on the Fair’s recent performance and current plans. Board members were asked for their input and thoughts, but did not set Fair policy and were not authorized to approve or direct the Fair’s actions.

According to the Department of Agriculture and Markets, the State Fair Advisory Board has not been reconstituted in accordance with the provisions of the 2009 amendments. Furthermore, the former Board’s membership had not changed from 2005 to 2009, and it had not convened at all since June 2006.

FINDINGS

Recent Problems at the New York State Fair

The OIG report identified a number of past issues with State Fair management and control over state resources. While many of the allegations found in the OIG report centered on specific past improprieties, this report focuses on the structural and operational deficiencies that allowed for these and other problems, and on systemic issues and policy failures that could be remedied to make the Fair more ethical and efficient going forward.

Of the systemic issues noted in the OIG report and reviewed by the OAG, the following problems and organizational flaws demonstrate both the scope and scale of the Fair's administrative deficiencies, and were of particular concern to the OAG:

- **Nepotism:** The Fair engaged in hiring practices that appeared rife with nepotism. Numerous family members of several year-round fair employees were hired by the Fair for seasonal or part-time work, and there were no procedures in place to prevent Fair employees from participating in hiring decisions regarding family members.
- **Gifts:** Historically, those with connections to the Fair, including its own employees and their families, received improper benefits from Fair vendors and from the Fair itself. These improper benefits took the form of free Fair admissions tickets and free tickets to concerts at the Fair's grandstand for Fair employees and others. Further, for a number of years, high-level Fair staff permitted a Fair vendor to provide holiday party catering free of charge to Fair employees, vendors, and invited guests with a connection to the Fair.
- **Inventory Controls:** The Fair lacked adequate inventory controls, which resulted in expensive resources going to waste and the improper private use of Fair vehicles, grounds, and equipment by Fair employees.
- **Conflicts of Interest:** Although some conflicts of interest disclosures were required at the Fair starting in 2007, the Fair has lacked sufficient oversight in this area, permitting employees to improperly take action within their official duties that did or could have benefited them personally. As an example, Sales Department employees negotiated "barter" contracts wherein Fair advertising was traded for cellular telephones or hotel rooms that the negotiating employee later had access to, and in some cases, used for personal purposes.

Recent Reforms at the State Fair

To remedy past problems, including those identified above, the State Fair has recently instituted some policy changes, often at the initiation of the current Director or as a result of the Fair's integration into the Department of Agriculture and Markets. Many of these reforms strengthen the Fair's operational integrity. The OAG takes special note of the following policy reforms:

- **Nepotism:** In 2008, the Fair's current Director attempted to address nepotism issues by strictly prohibiting the hiring of any family members of Fair employees. This new policy was announced at staff meetings in April and May 2008.
- **Gifts:** Addressing some of the Fair's historical problems with free tickets, the Fair ended the practice of providing free concert tickets to employees and enacted a new Box-Office policy that limits access to non-paid concert tickets.

The policy provides a detailed procedure for obtaining non-paid concert tickets, and allows access to such tickets only for specific purposes, such as media reviews and concert promotion. With regard to Fair admissions tickets, the Fair has sharply reduced the number of free admissions provided to Fair employees, although a formal written policy in this area has not yet been finalized. In addition, the current Fair Director has stopped the provision of free annual holiday party catering by a Fair vendor.

- **Inventory controls:** The Fair enacted an “Inventory Work Plan” in June 2010. The plan outlines a number of important goals including the creation of an inventory tracking system and a consolidated warehousing structure with a clear chain of custody, and the Fair has taken initial steps to implement the plan.
- **Policy and Procedures Review:** In 2008, the Fair codified a policy that requires and provides a process for an annual assessment of the Fair’s policies and procedures by individual departments. This policy is intended to ensure that the Fair’s policies are both sufficient and properly executed.
- **Contracting:** As part of its integration into the Department of Agriculture and Markets, key Fair staff involved in contract negotiation have received some training on State contracting requirements, including both oral presentations and documentary instructions.

Although the OAG recognizes that the Fair’s management has taken some steps to change Fair policies and address the Fair’s past problems, these reforms do not go far enough, as is discussed in detail below. Flaws in even some revised policies, coupled with the results of the OAG’s survey of state fairs across the country, expose deeper structural problems with the organization and administration of the Fair that need to be addressed by broader and deeper reforms.

Ongoing Operational and Structural Failures at the State Fair

The OAG’s investigation uncovered several significant ongoing operational and structural failures at the Fair. These include flawed policy reforms, inadequate oversight structures, and insufficient employee training.

Recent policy reforms, such as the Fair’s new nepotism prohibition, go too far and provide an overly reactive response to the problems identified by the OIG, while others, such as the Fair’s Inventory Work Plan and Policy and Procedures Review policy, do not go far enough, fail to fully capture or address the operational flaws that have resulted in managerial abuses, or have not been implemented. Specifically, the nepotism policy announced at staff meetings, by completely banning any hiring of family members, may deprive qualified individuals from being hired by the Fair, and was not accompanied by any implementable procedures (such as a required disclosure by applicants of family ties, or a required recusal by Fair employees from hiring decisions involving family members)

to actually prevent improper influences in hiring. Similarly, although the new policy calling for an annual review of policy and procedures is laudable, the OAG's investigation revealed that many departments within the Fair have yet to conduct any reviews in compliance with the policy.

The OAG's investigation also found significant deficiencies in the Fair's oversight and auditing procedures. Historically, the absence of adequate oversight and compliance measures prevented the Fair from identifying or preventing potential ethical breaches or conflicts of interest. Self dealing, such as the barter contract that traded promotional concessions for cellular telephones to be used by sales personnel who negotiated the deal, do not appear to have been prevented by any applicable policy or procedure and did not raise red flags with management-level employees supervising such contracting. Even today, there is no consistent annual report auditing the Fair's operational integrity or profitability. As a result, ongoing improprieties and inefficiencies could continue to go unnoticed and unaddressed.

Finally, the OAG found that the Fair does not take sufficient measures to ensure that its staff is properly trained or aware of important Fair policies or of the impact of State regulations on Fair operations. The OAG found that, in part, this problem stemmed from ineffective manuals at the Fair that either fail to provide clear guidance and direction to employees, or do not reflect current Fair policy. For example, the OAG learned that in some cases policies enacted by the IEA and subsequently superseded by policies of the Department of Agriculture and Markets remain in the Fair's policy manual, and others that have been discontinued or deemed improper have yet to be replaced.

Fair employees recently received a Department of Agriculture and Markets manual which provides information and procedures typical of that found at state agencies regarding employee ethics responsibilities, including those related to financial disclosures and outside activity approvals. These materials, however, are generally directed at the Department's regulatory employees and do not tie obligations or procedures to the unique complexities of work at the Fair, or establish internal procedures specific to the Fair to promote compliance by Fair employees. Given the unique business of the Fair and its history of insufficient oversight, stricter policies more specifically directed at the Fair and its employees may be necessary to improve operations going forward.

The OAG's findings show that the Fair does not currently function as a state agency should. The scope and scale of operational and administrative failures raise significant concerns regarding whether the current structure of the Fair is suited to the demands of an organization of its size. Significant reforms will be required for the Fair to achieve its purpose.

National State Fair Survey Findings

The OAG's survey of state fairs throughout the United States produced a clear set of best practices that protect the sustainability and ensure the proper administration of some of the most successful fairs in the country.

The administration of many state fairs, including those in Texas, Iowa, Minnesota, Indiana, and California, is overseen by a board of directors. These boards are not responsible for day-to-day management of the state fair or fairgrounds, instead; they provide guidance, set policy, and develop strategy. In addition, they provide an important oversight function, ensuring the continued proper management of the fair and the appropriate use of fair resources.

To ensure the continued proper administration of state fair resources, several fairs conduct annual audits or issue annual reports. Audits in Texas and Iowa detail the financial performance of the fair and fairgrounds and also provide analysis regarding the adequacy of fair policies and procedures. At each of these fairs, annual audits are conducted by outside entities: a retained private auditor in Texas, and a state agency auditor separate from the fair in Iowa. These independent annual audits identify problems that may threaten the continued success of these fairs and ensure that a fair's board of directors is properly informed and able to take necessary action to institute reforms. Annual reports, such as the one issued publicly each year by the Indiana State Fair, provide further transparency and allow the public to review the performance of its state resource.

Universal among the more efficient state fairs reviewed in the OAG's survey was the codification of a clear and concise employee ethics policy or conflicts of interest prohibition specific to fair operations, coupled with procedures to ensure such policies are implemented. State fairs in Texas, Iowa, Indiana, Minnesota, and California all provide instruction to their employees regarding either their duty to the state fair to act ethically as state officers or their obligation to the state fair to avoid any conflicts of interest. By setting clear policies in these areas and informing employees of these policies, these fairs ensure that their operations are guided by proper conduct and that important fair resources are preserved and maximized.

These best practices each serve a distinct purpose and create a structural framework for the proper administration of a state fair. While the specific, day-to-day management procedures followed at each fair may be different, well-organized fairs are united by an organizational hierarchy and oversight mechanisms necessary to develop and maintain sound and ethical operations.

RECOMMENDATIONS

The OAG concludes that the New York State Fair must undergo structural changes to better function as a public entity. Operating first as a public authority and now as a division of the Department of Agriculture and Markets, the Fair has largely been

free of public scrutiny and oversight. Its management has become isolated from external, independent review and the Fair's organization and oversight procedures do not meet the demands of an entity of its size.

The OAG has formulated several necessary reforms that will provide greater transparency, foster responsible management, and ensure proper public oversight. These structural changes have been designed to preserve the essential character of the State Fair and promote its continued operations.

Recommendation 1: Reconstitute the State Fair Advisory Board

To provide a stronger structural hierarchy and oversight, the State Fair Advisory Board should be reconstituted under the provisions of the 2009 amendments to the State Fair authorizing laws.

The reconstituted Advisory Board should be comprised of individuals from around the state with the experience and training necessary to provide guidance and direction to the Fair's leadership regarding the operation of the fair and fairgrounds. Upon appointment, Board Members should be tasked with recommending policy goals, operational mandates, and broad fair strategy to give the Fair's management a framework for designing and implementing day-to-day procedures.

In addition, the reconstituted Advisory Board should craft a mission statement, as has been done at many of the fairs reviewed by the OAG. A mission statement will provide the Board, Fair management, and the public with a clear set of principles by which the Fair's success can be measured. The OAG recommends that the mission statement establish a mandate to maximize revenue for the State while preserving the character and tradition of the fair and fairgrounds.

By engaging an independent board comprised of state leaders representing the interests of New Yorkers and the continued sustainability of the Fair, the Fair's management will be able to focus on executing its obligations to the state.

Recommendation 2: Create a State Fair Audit Committee

The reconstituted Advisory Board, to improve its ability to provide advice and oversight, should establish an Audit Committee tasked with reviewing Fair operations annually, including by supervising an annual audit of the Fair's financial performance and operations. The Audit Committee will provide two essential functions to the Fair, public oversight and operational transparency.

The Audit Committee should directly review the State Fair's annual performance, including its finances and procedures, and should supervise an annual audit conducted by a qualified outside entity. To accomplish the annual audit, the committee should either engage an independent private entity to undertake an annual audit of the Fair's finances and procedures or ensure that qualified state auditors perform that same function. The

audit should include a statement of operations detailing the profit or loss from each potential source of Fair revenue and lead to an annual report reviewing the performance of the Fair and its employees, including a review of adequacy of and adherence to the organization's policies and procedures. The Audit Committee should present the results of the annual audit to the full Advisory Board and supervise the production of an annual report for public review.

The Audit Committee and annual audit will provide the State Fair Advisory Board with the information necessary to fulfill its oversight function and guide the operations of the State Fair. The additional transparency of a public annual report will expose operational deficiencies early and ensure the Fair's management responds to identified problems.

Recommendation 3: Immediate Adoption and Training on Specific Ethics Issues

As discussed above, state fairs around the country rely on clear employee ethics policies specific to Fair operations coupled with procedures to ensure such policies are implemented. Accordingly, the OAG recommends that while the reconstituted Advisory Board undertake a complete review of State Fair policies, immediate action be taken to set policy and implement clear procedures in key ethics areas that remain under-addressed by recent reforms: nepotism and conflicts of interest.

Proposed policies and procedures to prevent conflicts of interest and nepotism are attached as Exhibits A and B. In light of historical problems at the Fair, timely review and adoption of these or similar procedures by the Fair and annual employee training on all adopted procedures is advisable.

Exhibit A

CONFLICTS OF INTEREST

Background: It is in the best interest of the public and the New York State Fair that Fair board members, officers, and employees avoid any activity or conduct that, in appearance or fact, conflicts with the impartial performance of their State Fair duties. This policy sets forth certain standards which govern the conduct of employees to protect the public interest, the resources of the state, and the integrity of the New York State Fair.

Policy:

A) Personal Business and Financial Interests: A State Fair board member, officer, or employee shall not enter into or maintain an employment or activity or a business or financial interest that is inconsistent with or appears to be inconsistent with his or her Fair duties. Examples of activities, employment, and business or financial interests that may implicate this policy are relationships with businesses, vendors, license holders or others that do business with or have contracts with the State Fair. Fair employees should follow Department of Agriculture and Markets policies and procedures to obtain approvals of outside employment, activities, business interests and financial investments that pose a potential conflict with their Fair duties.

B) Gifts: A State Fair board member, officer, or employee shall not knowingly solicit nor accept from a person or company that does business with the State Fair or may do business with the State Fair, any gift or gratuity, including any cash, merchandise, or thing of value. This prohibition shall extend to the acceptance of food or beverage or merchandise at less than full retail price from a license holder during the State Fair. In addition, a State Fair board member, officer, or employee shall neither solicit nor accept anything of value that is given with an understanding or arrangement that it will influence the services or decisions of that board member, officer, or employee.

C) Confidential Information: A State Fair board member, officer, or employee shall neither disclose confidential information acquired by him or her in the course of his or her official duties, nor use such information to further his or her personal interests.

D) Special Interest: No State Fair board member, officer, or employee shall use or attempt to use his or her position with the State Fair to secure privileges, benefits, or exemptions for himself or herself, or others.

E) Personal Use of Fair Resources: A State Fair board member, officer, or employee is prohibited from the unauthorized personal use, abuse, misuse, or waste of State Fair property or resources.

F) Appearance of Impropriety: A State Fair board member, officer, or employee must ensure that his or her conduct in all professional dealings will not raise suspicion among the public that he or she is likely to be engaged in acts that violate these rules.

G) Records: Each State Fair board member, officer, or employee shall complete and submit an Annual Conflicts of Interest Disclosure Statement. These disclosures will be maintained by the Department of Agriculture and Markets Human Resources Management Division and kept with the individual's personnel file. A sample is found on the following page.

The New York State Fair
Annual Conflict of Interest and Nepotism Disclosure Statement

I the undersigned Board Member, Officer, or Employee of the New York State Fair, hereby state that to the best of my knowledge except as noted below:

1. I have read and understand the New York State Fair Conflicts of Interest Policy and the Department of Agriculture and Markets policies regarding Outside Activities and Financial Investments.
2. I am not engaged in any outside employment or activity nor do I hold any outside business or financial interest that poses a potential conflict, conflicts with, or appears to conflict with my duties or responsibilities at the State Fair, except as previously approved pursuant to the Department of Agriculture and Markets Outside Activity and Approval of Financial Investment policies.
3. I have read any understand the New York State Fair Nepotism Policy and have made all disclosures required by that policy.

List here any exceptions to the above statements:

I agree that if any situation arises that in any way contradicts the above statements, or if any conflict, real or potential, arises I will immediately notify the Director of the New York State Fair and the Department of Agriculture and Markets Human Resources Management Division and make full disclosure thereof.

Board Member, Officer, or Employee Name

Date

Exhibit B

NEPOTISM

Background: Nepotism is the practice of an employee using his or her personal power or influence to aid or hinder another in the employment setting because of a personal relationship. Personal relationships include any person living in the same household as the individual and any person who is a direct descendant of that individual's grandparents or the spouse of such descendant.

Policy:

A) General: No State Fair employee shall initiate or participate in State Fair decisions concerning the initial employment, performance evaluation, salary, or promotion of any individual with whom that employee shares a personal relationship. Nor shall a State Fair employee independently appoint, employ, promote, advance or advocate for appointment, employment, promotion, or advancement in or to a position with the State Fair any individual with whom that employee shares a personal relationship.

B) Supervision: To ensure the fair and impartial supervision and evaluation of employees, no State Fair employee shall directly supervise any person with whom that employee has a personal relationship. Additionally, no State Fair employee shall be involved in a decision-making capacity in disciplinary actions involving a person with whom that employee has a personal relationship.

C) Remedy: Should a supervisory conflict arise among established employees, the State Fair shall work expeditiously to relocate, transfer, or reassign one of the employees to eliminate the supervisor/subordinate conflict to the extent permitted by law and in keeping with the policies of the Department of Agriculture and Markets. The relocation or transfer should be to a comparable position with minimal inconvenience for the transferring employee.

D) Enforcement: All full-time State Fair employees are required to inform the Department of Agriculture and Markets Human Resources Management Division of any personal relationships they may have with other State Fair employees or applicants for employment of which they have knowledge. The Human Resources Management Division shall seek information from applicants for employment regarding their personal relationships with Fair employees. In addition, the Human Resources Management Division must maintain accurate records regarding the personal relationships among employees and applicants and ensuring that this policy is upheld.