



EC LEG FEB 3 '23 PM 1:54

ERIE COUNTY COMPTROLLER
KEVIN R. HARDWICK

February 3, 2023

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

Richard Bianchi
Chair, Board of Directors
Western Regional Off-Track Betting Corporation
8315 Park Road
Batavia, New York 14020

Re: Unanswered Questions Regarding WROTB Operations

Dear Mr. Bianchi and Mr. Wojtaszek:

I am writing to request clarification and answers to questions concerning several matters at Western Regional Off-Track Betting Corporation ("WROTB").

I have been seeking answers to many of these questions since I sent WROTB my first inquiry letter on July 15, 2022. At our October 5, 2022, meeting at Batavia Downs, my office posed a number of questions, many of which were answered at that meeting.

However, despite repeated correspondence, phone calls and emails, as well as the meeting on October 5th, WROTB has failed to answer many questions. At the meeting, Mr. Wojtaszek pledged to provide answers. Yet, four months later, some questions received partial answers, while most went unanswered altogether. My office has engaged in repeated phone and email contact with you, without success.

Accordingly, I am writing to formally present the outstanding questions (attached) and to seek your cooperation. If Mr. Wojtaszek does not know the answers to the questions, I am requesting that Mr. Bianchi as the board chair for the past 12 years, provide written answers and replies.

We look forward to your anticipated cooperation and assistance. Thank you in advance.

Sincerely,

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

Attachment – Outstanding Questions

cc: Francis Warthling, Erie County Director, WROTB
Erie County Legislature

95 FRANKLIN STREET • ROOM 1100 • BUFFALO, N.Y. • 14202
PHONE: (716) 858-8400 • FAX: (716) 858-6195 • www.erie.gov/comptroller

COMM. 4E-6
Page 1 of 6

Outstanding Questions to WROTB

On October 10, 2022, at Mr. Wojtaszek's request, the Comptroller's Office emailed him outstanding data requests and questions. Mr. Wojtaszek replied on October 11th that he would meet with his staff and review the questions and send a response within days. He replied on October 20th, but a number of the Comptroller's Office's written questions were not addressed. On January 25, 2023, the Comptroller's Office sent these questions via email to WROTB. The questions are as follows:

HOTEL AT BATAVIA DOWNS

- Who approached WROTB about the transaction? Did ADK approach WROTB? Did you approach them?
- Who decided on the land sale price (of \$605,000) to ADK?
- Who approached WROTB about selling the hotel? Did ADK approach you, or did you approach ADK?

You stated on October 5th that attorney Rajat Shah of Harris Beach was hired by WROTB. Who hired him and why was he hired? What did he do/recommend?

- Why did you seemingly pay \$2.5 million more for the hotel than it cost its owners to build new and furnish?
- What are the terms and interest rate on WROTB's bonds for the hotel? How much debt service has been paid and how much are you paying annually for the hotel's debt service?
- How much of the 2021 bond sale and refinancing principal cost was for the hotel?
- Various WROTB board meeting minutes indicate that WROTB was purchasing hotel rooms from Hart Hotels or ADK when ADK owned the hotel. How much did WROTB pay Hart Hotels or ADK for hotel rooms during the period ADK owned the hotel?

HEALTH/DENTAL BENEFITS FOR DIRECTORS

On December 2, 2022, Comptroller Hardwick sent a letter to Mr. Wojtaszek requesting data on the director health insurance issue. Mr. Wojtaszek responded in an email on December 22nd providing years of service requirements for retired WROTB directors to receive lifetime health insurance.

However, concerning one major part of the December 2nd Comptroller data request about the costs to WROTB of the director health insurance, Mr. Wojtaszek wrote in a December 6th email that "WROTB does not maintain any records responsive to your request regarding item number 1 of your letter dated December 2, 2022. I forwarded your request to [NAME REDACTED] who is the Administrator of the LMHF medical plan." That individual responded via email on December 15th, deferring to WROTB and stating that only WROTB could provide the data.

Accordingly, we are writing to once again, follow up on our December 2nd request for “the total annual cost for health/dental/vision insurance for Directors and retired Directors, as well as the number of each receiving these benefits.”

- The New York State Attorney General’s Office issued a legal opinion in 2008 that off-track betting corporations (in that case, specifically Suffolk County’s OTB) are not permitted to provide health insurance coverage to board members. In 2018, you said WROTB would ask the State Attorney General for a ruling specific to WROTB. Did you do that? If so, what did they say?
- You indicated at the October 5th meeting that attorney Terry Connors was negotiating with the NYS Attorney General’s Office concerning the health benefits and the legal opinions saying WROTB cannot provide such a benefit. What is the status of those discussions?
- Your external legal counsel Barclay Damon opined that board members should no longer accept the insurance benefits and you should not provide them. If so, why are you still providing them?
- On June 23, 2021, your board adopted a resolution “eliminating Western sponsored health insurance benefits for Board Members’s appointed on or after July 1, 2021.” Why didn’t you eliminate insurance for all directors?
- Which external law firms and consultants did WROTB retain and compensate for this healthcare matter? How much were they paid for their work on this matter?

You provided legal counsel costs on October 20, 2022, but the costs and law firms did not delineate what they were paid for, so we don’t know how much WROTB spent on legal counsel specifically for health insurance for directors.

On December 22, 2022, Mr. Wojtaszek provided the following information concerning retired WROTB directors’ health insurance:

A retired Director is eligible to receive health insurance benefits during his or her retirement in the following (2) ways.

Option I- One (1) for Two (2) method

Age- Must be at least fifty-five (55) years of age

Years of Service- Must have served a minimum of five (5) consecutive years of active service.

Benefit- individuals are eligible to receive fully paid health insurance for a period of one (1) year for every two (2) years of service, if retirement occurs at age 55 and the individual has at least 10 years of service. Individuals retiring prior to the attainment of ten (10) years of service Will be required to contribute a percentage of the premium as indicated below:

<i>Years of Service</i>	<i>Employee Contribution</i>
<i>9years</i>	<i>5%</i>

8 years	10%
7 years	15%
6 years	20%
5 years	25%

Option II Seventy (70) Year Method

Age - Must be at least fifty-five 55 years of age

Years of Service- must have served a minimum of ten (10) years of active service. Years of active service is described as total years of service and need not be consecutive.

Benefit- Individuals are eligible to receive fully paid health insurance provided their years of service and age total seventy (70) years. The seventy (70) year calculation is based upon the sum of the individuals age and years of service.

(I.e. 55 years old and 15 years of service =70 years.

Individuals retiring prior to attaining the seventy (70) years will be required to contribute five per cent (5%) for each year pre-dating the combination of seventy (70) as illustrated below.

<i>Total Age/Years of Service</i>	<i>Employee contribution</i>
69	5%
68	10%
67	15%
66	20%
65	25%

You are only eligible for the benefit if you started with WROTB before January 1, 2012.

DIRECTOR PER DIEM TRAVEL AND STIPENDS

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

On October 20, Mr. Wojtaszek emailed the Comptroller's Office a file showing expenses for 20 individuals for 2020-2022 (so far). That total showed \$66,586.99 of payments. It did not include payments for committee meetings. It is unclear if these payments are for mileage or include other costs (such as comped hotel rooms, food, drink and casino play vouchers, etc.). Please provide that information.

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

LOBBYISTS/ADVOCATES

On October 20, 2022, Mr. Wojtaszek emailed the Comptroller’s Office a PDF file. It included the following information on lobbyist payments:

Bolton St. Johns	2022	\$45,000.00
Jackson Lewis	2016-2017	\$48,783.37
Mercury Public Affairs	2017-2022	\$556,437.73
Patricia Lynch	2014-2017	\$139,400.00
Richardson Management	2014-2016	\$76,500.00
Strategic Development Specialists	2017-2019	\$104,173.66
Upstate Strategic Advisors	2019-2022	\$183,000.00
<u>Wilson, Elser Moskowitz</u>	<u>2014-2016</u>	<u>\$141,680.06</u>
TOTAL		\$1,294,974.82

The lobbying list provided on October 20, 2022 is missing information as follows that appears in your board minutes:

- Patrick Jenkins, retained for four months in 2022 at \$15,000/month is not showing.
- Park Strategies retained in January 2017 for 12 months at \$5,000/month is not showing.
- Upstate Strategic Advisors is shown being hired in 2019, but board minutes reflect they were hired in September 2017.

Please address these discrepancies.

- What process (RFP, bidding, etc.) did you utilize to retain these lobbying firms?

MARKETING AND PROMOTIONAL PROGRAM

- Do you track whether these persons who attend the events at sports stadiums, concerts, games, etc., later expend funds at Batavia Downs, to determine the success of the program? If so, please provide metrics and data on the success rate of sports and marketing program attendees and their gaming at the Downs.
- Based on the OSC audit, it appears that WROTB has provided tickets and food/beverages to persons attending events at one location that is not listed or shown in your board minutes since January 1, 2014 (Darien Lake). This raises questions about whether your public board meeting minutes are fully accurate. Please reply.

At the October 5th meeting, Mr. Wojtaszek stated you would provide the WNY Arena agreement and Highmark Stadium agreement and to the Comptroller's Office. No information has been provided. In the meantime, your board has approved new agreements for purchasing suites, including at Highmark Stadium (see <https://www.thebatavian.com/mike-pettinella/wrotb-directors-solidly-support-board-chair-bianchi/626420>). Please provide all agreements since 2014 as previously requested.

CORE CONSULTANCY

CORE stated at the October 5th meeting that they recommended the creation of an anti-harassment policy. At the October 5th meeting, Mr. Wojtaszek and director David Bassett did not answer when the Comptroller's Office asked if WROTB adopted a policy. Did WROTB adopt a policy? If so, please provide it. Who is in charge of enforcing the policy?

The Comptroller's Office asked on October 5th how many recommendations CORE made and whether they were all implemented, and if so, how? Mr. Wojtaszek said 80% of the recommendations were implemented and you pledged to get back with details. You have not provided details. Please provide details.