

Western Regional Off-Track Betting Corporation

Marketing and Promotional Program

SEPTEMBER 2021



OFFICE OF THE NEW YORK STATE COMPTROLLER
Thomas P. DiNapoli, State Comptroller

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Report Highlights

Western Regional Off-Track Betting Corporation

Audit Objective

Determine whether the Western Regional Off-Track Betting Corporation (Corporation) Board of Directors (Board) distributed tickets from the Marketing and Promotional Program (Program) in accordance with regulations and guidelines.

Key Findings

The Board did not distribute Program tickets in accordance with the New York State Gaming Commission's (Commission) Regulations and Guidelines:

- The Board did not adopt a written policy to administer and account for ticket distribution.
- Corporation officials used resources to purchase tickets that were given to Board members, management, employees, Corporation vendors and charities. Had these resources been used for promotions such as retaining and rewarding loyal customers and targeting prospective customers the Corporation could have increased player participation and related revenues and subsequently increased revenues to participating municipalities.
- At least 547, or 9 percent, of Program tickets were given to non-players. However, due to incomplete records and the likelihood other tickets were given to non-players the number of tickets given to non-players is most likely greater.

Key Recommendations

- Develop and adopt a written policy to administer the Program.
- Develop a system to maintain a complete, detailed and accurate record of all tickets distributed.

Corporation officials generally agreed with our recommendations and indicated they planned to initiate or have already initiated corrective action. Appendix B includes our comment to clarify information in the Corporation's response.

Background

The Corporation was formed as a public benefit corporation in 1973, owned by 15 participating counties and the cities of Buffalo and Rochester. The Board has 17 members, one from each of the 15 participating counties and the two participating cities, appointed by each municipality's governing board. The Board is responsible for the Corporation's financial and operational affairs, including establishing policies and monitoring compliance.

The Corporation offers off-track pari-mutuel wagering on horse racing at Batavia Downs Gaming and through the branch locations, electronic betting locations, telephone wagering, and online wagering. Revenues from these operations are to be distributed to the participating municipalities. The Corporation owns and operates Batavia Downs Gaming, which conducts live harness racing and simulcasts to and from other racetrack facilities as well as video gaming, restaurant, and event facilities.

Quick Facts

2019 Marketing Budget	\$5.8 million
Tickets Available in Audit Period	5,837
Leases, Tickets and Related Costs in Audit Period	\$1.3 million

Audit Period

September 1, 2017 – December 31, 2019

Marketing and Promotional Program

The Board-appointed President and Chief Executive Officer/General Counsel (CEO) is responsible for the administration of the Corporation and supervision of officers including the Director of Marketing (Director). The CEO is also responsible, with the assistance of officers, for developing long range plans and strategies for growth and maximization of return to participating municipalities. The Board-appointed Director, under the direction of the CEO, is responsible for the planning and implementation of marketing and promotional activity campaigns to achieve desired goals.

The Program included leased suites at football and hockey venues in the Buffalo and Rochester areas. Tickets are also included for concerts and related events that took place in these venues. As part of these events the Corporation pays for concessions for individuals attending. Additionally, tickets are purchased for other concerts, performing arts and other events held at various local venues and theatres, such as Darien Lake Performing Arts Center, Rochester Broadway Theatre League and Riviera Theatre.

The leases included the following leagues and seats:

- National Football League venue - 16 seats per game,
- National Hockey League venue - 18 seats per game and 12 seats for other events,
- American Hockey League venue - 20 seats per game and 16 seats for other events.

For the audit period, available tickets from the Program totaled 5,837 tickets.

According to the Director, there are two ways in which the Corporation gives tickets to video gaming players (players), random draw and targeted management giveaways:

- There are two forms of random draws. The first is a random drawing based on the player's active participation. A player using a random video gaming machine during the time of draw wins, regardless of play value. In the second type, for each time a player bets a certain dollar amount, for example \$5, a virtual coupon is generated for that player and stored in a virtual bin. A random drawing is then conducted from this virtual bin. As such, the greater the dollar value of the bet the more coupons that are generated for a player and the more chances to win. A player must also be a member of the Corporation's players club to be included in these drawings.¹

¹ Each player is assigned a unique identification number via the Corporation's players tracking system, discussed later in the report. This system tracks each player's activity and is also used to conduct random drawings.

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- Targeted management giveaways focus on certain categories of players. These include targeting the following categories: rewarding high rollers (a player who bets larger amounts) and frequent players; new players to entice them to return; and existing players to increase frequency of visits. These giveaways also include prizes given out during the Corporation’s live marketing events (such as concerts and other events at Batavia Downs Gaming).

How Should Officials Distribute Tickets from the Program?

The Commission’s Video Lottery Promotional Guidelines (dated April 2014) (Guidelines) identify “the types of promotions that are generally acceptable or impermissible under the video lottery program.” According to the Guidelines, the acceptable promotions include, among others:

- Earned entry drawings – entries for prizes are accumulated as players bet and are awarded during a physical or virtual drawing,
- New member offers,
- “Hot Seats” – based on active participation in which a random machine is selected,
- Event tickets and/or trip giveaways, and
- Special giveaways to “elite” level players.

In addition, the Commission’s Rules and Regulations for Video Lottery (Regulations) require the Corporation to submit an annual marketing plan describing, among other items, the overall strategy of how the marketing budget will be used for marketing and promotional activities and the associated costs to be undertaken, the target market and the anticipated effect.

The Corporation’s 2019 Marketing Plan (Plan), which was approved by the Commission, identified using tickets to concerts and sporting events for promotions. However, the Plan was silent on whether tickets would be given to non-players, such as Corporation employees, officials, associated vendors or donated to charity.

The Regulations state that complimentary items cannot be offered to any person who is not defined in an approved marketing plan. The Regulations further require the Corporation to keep information on players that received complimentary items including the name, the item provided, the value of the item and information regarding the person authorizing the issuance of the item.

Officials Did Not Distribute All Tickets to Players and Did Not Properly Track Tickets

The Director provided us with two records of the distribution of tickets, these included:

- Electronic players tracking system (system) records and
- Spreadsheets, for each of the following:
 - National Football League games,
 - National Hockey League games,
 - American Hockey League games and
 - concerts (which included concerts, performing arts and other events at several venues).

Corporation officials used the system to conduct random drawings and record the winners of these drawings. Officials can also record targeted management giveaways by entering them into the system. However, Corporation officials were not consistent in inputting winners of targeted management giveaways into the system. For example, the Director told us Corporation officials request tickets that they give out to players as these officials visit the video lottery terminal area of the facility. Although the Director may note that the tickets were given to a particular official to hand out to players, he does not require officials to track who the tickets were given to and to report the information back to him. Because the system records ticket giveaways based on a player's unique identification number, the Director, without this information, cannot make an entry in the system. As such, the Director had no evidence that all the tickets requested by officials were given to players.

The system's records do not include details on which game or event a player won tickets for, but primarily includes information on the date and type of drawing, the player who won, and the authorizing official, among other information.

In addition, when tickets were given to non-players they could not be tracked by the system since non-players do not have a player's unique identification number. Because the system did not maintain a complete record of ticket distribution, the Director prepared the spreadsheets to supplement the system's records with a more complete log of ticket distribution. While Corporation officials had tracked certain information in the spreadsheets prior to 2019, the Director began to capture more complete and specific information regarding ticket distribution during 2019. The Director told us he compiled the information in the spreadsheets from various sources including the system records, email requests for tickets, his handwritten notes regarding verbal requests for tickets made by Corporation officials and from memory. The Director provided these spreadsheets for the 2017-18, 2018-19 and 2019-20 (through the end of our audit period) seasons. However, these records were not complete for all games and events.

The Director told us that tickets listed in the spreadsheets as given to “Corporation officials, hosting and employees” included tickets requested by Board members and/or management for their own personal use, or tickets for serving as host at the sporting events and tickets given to employees as a reward for good performance. The Director told us that for sporting events towards the end of the season, if the teams have been eliminated from the playoffs, there is generally less interest in these prizes and therefore they are often given to officials and employees to use. However, these practices are not consistent with the Regulations which state giveaways are to be defined in the approved marketing plan.

We reviewed both records to determine the number of tickets distributed to players and non-players and found that neither system included a complete record of tickets distributed during our audit period. According to the spreadsheets provided by the Director, of the 5,837 tickets available 547 tickets (9 percent) were recorded as given to non-players, including Corporation officials, employees, vendors and charity contributions (Figure 1). However, since the spreadsheets provided were not complete there could be additional tickets that were given to non-players.

Figure 1: Tickets Distributed to Non-Players on the Director’s Spreadsheets

Distributed to Non-Players:	
Corporation Officials and Employees	465
Corporation Vendors	29
Charity Contributions	53
Total	547

Although Corporation officials told us that typically an individual serving as host is given two tickets, it appears that more tickets were issued than would be needed to host an event. Corporation officials told us they tested the use of sign-in sheets at some games and provided us with the sign-in sheets. We found that there were only a limited number of sign-in sheets available and that the sign-in sheets that were maintained were incomplete and/or illegible. Consequently, it is unclear whether these hosting events were in accordance with the purpose of the Program. We also analyzed the concessions purchased by the Corporation at these events, which include a service charge and gratuities, and found the following:

- For a hockey game on November 23, 2018, the Board Chairman received six tickets and the Vice President of Operations received nine tickets. In addition, one of the Corporation’s vendors received three tickets. All 18 tickets available were recorded as given to non-players. The Corporation had no record of who actually attended the game. However, the bill for concessions was \$1,167, which included \$177 in alcohol purchases.
- For a hockey game on December 29, 2018, the Board Chairman received four tickets, five tickets were recorded as given to another Board member and five other tickets were recorded as given to “host”; therefore, 14 out of

18 tickets were recorded as non-players. The Corporation had no record of who actually attended the game. However, the bill for concessions was \$1,443, which included \$493 in alcohol purchases.

- The Board Chairman received four tickets for a February 9, 2019 hockey game. The sign-in sheet for this game indicated that six players attended the game out of the 18 tickets available. The bill for concessions was \$873, which included \$36 in alcohol purchases.
- Another Board member received 11 tickets for a March 17, 2019 hockey game and three tickets were recorded as given to “host”, therefore 14 of the 18 tickets were recorded as non-players. The Corporation had no record of who actually attended the game. However, the bill for concessions was \$1,212 which included \$358 in alcohol purchases.

Although the system tracked, recorded and accounted for the distribution of tickets to players for certain giveaways, this system and management were not accounting for all tickets given away. Without proper accounting for each ticket, officials have no assurance that all tickets are used for the intended purpose to reward players and tickets could be used by friends, relatives and other non-players.

This occurred because the Board and Corporation management had not developed and adopted a written policy or written procedures detailing the processes or guidance on how to document the distribution of tickets to ensure a complete and accurate accountability of all tickets is maintained.

The Director told us that Corporation officials have never discussed adopting a written policy to administer the Program because they consider the Guidelines sufficient to run the Program. The Director told us he relied on the Guidelines to administer the Program. However, the Guidelines do not describe the details and procedures needed to administer the Program to ensure complete and accurate accountability for all prizes. Although the Regulations state that the Corporation is to adopt its own procedures to track complimentary items, officials did not do so.

The Director also indicated an annual budget is filed with the Plan that is approved by the Commission. However, while this annual budget designates Program expenditures and target market segments, it does not disclose that tickets will be provided to non-players such as officials and employees.

After the Director told us this in October 2019, Corporation officials developed a ‘Batavia Downs Ticket Giveaway Protocol Document’ outlining how tickets would be “received, kept, distributed and tracked.” However, the Board minutes did not indicate that the Board adopted these procedures.

By not accurately and completely accounting for all tickets and by giving tickets to non-players, the Board has no assurance that the Corporation realized the full benefits of the Program, including retaining loyal players, encouraging repeat plays and identifying and enticing new players to the facilities or that the tickets were not misused.

During our audit period, the Corporation spent nearly \$1.3 million on the Program. This included the leases for the suites (\$794,840), concert tickets (\$321,876) and concessions (\$170,509). For events at the venues below, concessions include the total food, beverages and alcohol purchased as well as the applicable service charge and gratuities at each venue. For the audit period the lease for the suites and related costs are as shown below (Figure 2).

Figure 2: Summary of Leases, Tickets and Related Costs

Program Year	2019-20 to December			Total
	2017-18	2018-19	2019	
Highmark Stadium - Lease	\$95,460	\$96,780	\$97,600	\$289,840
Highmark Stadium - Concessions	13,930	9,509	8,912	32,351
Key Bank Center - Lease	165,000	167,500	85,000 ^a	417,500
Key Bank Center - Concessions	28,782	61,375	14,502	104,659
Blue Cross Arena - Lease	35,000	35,000	17,500 ^a	87,500
Blue Cross Arena - Concessions	9,900	18,383	5,216	33,499
Concerts - Tickets	125,976	112,160	83,740	321,876
Total	\$474,048	\$500,707	\$312,470	\$1,287,225

a) The Program year runs from September to March/April. Since our audit period ended December 31, 2019, we included approximately 50 percent of the cost of the leases for the 2019-20 Program year.

The average ticket cost, including the amount spent on concessions, was \$221. Therefore, based on the 547 tickets given to non-players, the Corporation spent approximately \$121,000 (9 percent of the total costs) on non-revenue generating activities. This amount is most likely greater due to the incomplete records described above and the likelihood other tickets were given to non-players.

Corporation officials used resources to purchase tickets that were given to Board members, management, employees, Corporation vendors and charities. Had these resources been used for promotions such as retaining and rewarding loyal customers, and targeting prospective customers, the Corporation could have increased player participation and related revenues and subsequently increased revenues to participating municipalities.

What Do We Recommend?

The Board and Corporation management should:

1. Develop and adopt a written policy and/or written procedures for the distribution of tickets from the Program including who will be eligible to receive tickets.
2. Consult with legal counsel and/or the Commission to determine who tickets may be distributed to and if necessary, seek reimbursement for ticket and concession costs incurred.
3. Define in the annual marketing plan what groups or categories complimentary items, including tickets, will be distributed to as required by the Regulations.
4. Develop a system to maintain a complete, detailed and accurate record of all tickets distributed.

Appendix A: Response From Corporation Officials



westernotb.com



bataviadownsgaming.com

8315 Park Road
Batavia, NY 14020
585-343-3750
Fax: 585-343-6873

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WESTERN REGIONAL OFF-TRACK
BETTING CORPORATION

September 10, 2021

Jeffrey D. Mazula, Chief Examiner
Office of State Comptroller
295 Main Street, Suite 1032
Buffalo, New York 14203

RE: Report of Examination 2021M-52
Oversight of Take-Home Vehicles
Report of Examination 2021M-65
Marketing and Promotional Program

Dear Mr. Mazula:

On behalf of the members of the Board of Directors, management and staff of the Western Regional Off-Track Betting Corporation ("Western"), allow me to thank you for this opportunity to respond to the findings and recommendations set forth in the State Comptroller's Office draft audit report. This letter is in response to the findings and recommendations outlined in your draft audit report 2021M-52 and 2021M-65 ("Report") and as discussed at the exit conference on July 28, 2021 at Western's offices.

The Report is broken down into two (2) separate examinations as set forth above. For each recommendation included in the Report, the following is our corrective actions(s) taken or proposed.

Report 2021M-52

See
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Report Recommendation #1

Develop and adopt a written policy and/or establish written procedures for the distribution of tickets from the Program including who will be eligible to receive tickets.

Implementation Plan of Action(s):

A ticket giveaway procedure was established in 2019 to track ticket distribution. The procedure was further updated to include a tracking process for employee requested tickets. Presently the procedure sets forth the categories of individuals that are eligible for complementary tickets, as well as other eligible uses such as ticket giveaways. As set forth in the Report, during the period from September 1, 2017 through December 31, 2019, there were a total amount of 5,837 tickets, representing at least 441 events. The Report states that 547 tickets were distributed to non-players. Western would like to point out that for most of the events, the host was provided a ticket for himself and a guest. Based on the amount of events, that alone represented a few hundred tickets. In addition, tickets were provided through raffles, as well as provided to charitable groups for the purpose of promoting good will in the community, as well as, to attract new players who would be attending those charitable events. The tickets requested by Board members and staff were distributed for those uses. Under the new procedure, Western is now able to better track those charitable tickets. Western will continue to update its policy in respect to ticket distribution and submit it to the Board for adoption.

Report Recommendation #2

Consult with legal counsel and/or the Commission to determine who tickets may be distributed to and, if necessary, seek reimbursement for ticket and concession costs incurred.

Implementation Plan of Action(s):

An internal review with respect to this recommendation has previously taken place. However, based on this recommendation, Western will conduct an additional review of the prior ticket distribution and if it is found that a distribution was made to a non-eligible person, it will seek reimbursement of costs.

Report Recommendation #3

Define in the annual marketing plan what groups or categories will receive complimentary items, including tickets, as required by the Regulations.

Implementation Plan of Action #3:

Based on this recommendation, the annual marketing plan which details the ticket distributions, will be expanded to include the various groups and categories of eligible complimentary items, including tickets, and the basis for such distribution.

Report Recommendation #4

Develop a system to maintain a complete, detailed and accurate record of all tickets distributed.

Implementation Plan of Action #4:

Protocols for maintaining a complete, detailed and accurate record of all tickets have been in place since October 2019. With these recommendations, Western further expanded its procedure so that all tickets will be logged into a dual recording system to ensure accuracy and proper distribution.

Once again, the members of the Board of Directors, management and staff of Western would like to thank you for your recommendations. As you can see, Western has already implemented many of the recommendations and will be working diligently to review and implement the others. It is the goal of Western to conduct its business in the most efficient and transparent manner possible. It is with that in mind that we accept and thank you again for these recommendations.

Very truly yours,
Western Regional Off-Track
Betting Corporation

Richard D. Bianchi, Chairman of the Board

Appendix B: OSC Comment on the Corporation's Response

Note 1

The Corporation is referring to the report *Oversight of Take-Home Vehicles 2021M-52* that the Comptroller's Office released at the same time. However, the corrective action listed is for this report, *Marketing and Promotional Program 2021M-65*.

Appendix C: Audit Methodology and Standards

We conducted this audit pursuant to the State Comptroller's authority as set forth in Article 5 of the New York State Racing, Pari-Mutuel Wagering and Breeding Law. To achieve the audit objective and obtain valid audit evidence, our audit procedures included the following:

- We interviewed Corporation officials to gain an understanding of the controls and procedures over the Program.
- We reviewed and assessed the Regulations to determine if they included procedures for administering the Program.
- We reviewed the lease agreements for venue suites, including the cost of the leases and concessions.
- We reviewed the ticket costs for other concerts and events which were not part of the lease agreements.
- We reviewed the records maintained and compiled by the Director for ticket giveaways, documented tickets given to players and non-players.
- We reviewed the players tracking system's record of ticket giveaways, compiled the data and compared this with available tickets.

We conducted this performance audit in accordance with generally accepted government auditing standards (GAGAS). Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

Good management practices dictate that the Board has the responsibility to initiate corrective action. As such, the Board should prepare a written corrective action plan (CAP) that addresses the recommendations in this report and forward it to our office within 90 days. For more information on preparing and filing your CAP, please refer to our brochure, *Responding to an OSC Audit Report*, which you received with the draft audit report. We encourage the Board to make the CAP available for public review.

Appendix D: Resources and Services

Regional Office Directory

<https://www.osc.state.ny.us/files/local-government/pdf/regional-directory.pdf>

Cost-Saving Ideas – Resources, advice and assistance on cost-saving ideas

<https://www.osc.state.ny.us/local-government/publications>

Fiscal Stress Monitoring – Resources for local government officials experiencing fiscal problems

www.osc.state.ny.us/local-government/fiscal-monitoring

Local Government Management Guides – Series of publications that include technical information and suggested practices for local government management

<https://www.osc.state.ny.us/local-government/publications>

Planning and Budgeting Guides – Resources for developing multiyear financial, capital, strategic and other plans

www.osc.state.ny.us/local-government/resources/planning-resources

Protecting Sensitive Data and Other Local Government Assets – A non-technical cybersecurity guide for local government leaders

<https://www.osc.state.ny.us/files/local-government/publications/pdf/cyber-security-guide.pdf>

Required Reporting – Information and resources for reports and forms that are filed with the Office of the State Comptroller

www.osc.state.ny.us/local-government/required-reporting

Research Reports/Publications – Reports on major policy issues facing local governments and State policy-makers

<https://www.osc.state.ny.us/local-government/publications>

Training – Resources for local government officials on in-person and online training opportunities on a wide range of topics

www.osc.state.ny.us/local-government/academy

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Office of the New York State Comptroller
Division of Local Government and School Accountability
110 State Street, 12th Floor, Albany, New York 12236

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www.osc.state.ny.us/local-government

Local Government and School Accountability Help Line: (866) 321-8503

BUFFALO REGIONAL OFFICE – Jeffrey D. Mazula, Chief Examiner

295 Main Street, Suite 1032 • Buffalo, New York 14203-2510

Tel (716) 847-3647 • Fax (716) 847-3643 • Email: Muni-Buffalo@osc.ny.gov

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