State of New York
Office of the Inspector General

Report of Investigation of the New York State Fair

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Introduction

The Inspector General determined that former State Fair Director Peter Cappuccilli, Jr. abused his authority and misappropriated state resources to benefit himself, members of his family, and friends. Cappuccilli personally benefited by more than $78,000 as a result of his improper actions, and under his watch the State Fair misspent more than $860,000 in public funds. The Inspector General further found that the State Fair and New York State Department of Agriculture and Markets conducted major procurements in violation of the State Finance Law, and that the Fair lacks adequate internal safeguards over, among other activities, the distribution of concert tickets and the use of official vehicles.

History and Operation of the State Fair

Located just outside Syracuse, the Great New York State Fair has grown exponentially since its establishment by the New York State Agricultural Society in 1841, when it was held for two days and attracted 15,000 people. The state assumed operation of the Fair in 1900, having purchased the Fairgrounds the previous year, and in 1927 the Fair's administration shifted to the Department of Agriculture and Markets. In 1934, the state created the Industrial Exhibit Authority (IEA), a public benefit corporation, to finance construction of new buildings on the fairgrounds, and for decades the IEA served as the backbone of the Fair, employing approximately 60 full-time staff and hiring some 1,700 part-time workers to help operate the Fair each year. The IEA was abolished by state legislation in 2009, its staff and property transferred to the Department of Agriculture and Markets.

In recent years, the State Fair has been held for 12 days beginning in late August. It is one of the largest state fairs in the country, with hundreds of vendors and exhibits, and a permanent 17,000-seat grandstand for concerts by nationally-known entertainers. Each year the Fair is attended by nearly a million persons and generates revenue of more than $16 million. In addition to the Fair, the Fairgrounds in the Town of Geddes, Onondaga County, host year-round events such as concerts and trade shows.

The Fair Director, an appointee of the governor, wields near-total control over Fair operations and hiring. Many of the significant findings of the Inspector General's investigation pertain to misconduct that occurred during the tenure of Peter Cappuccilli, Jr., who served as Fair Director from 1995 through 2005. Bebette Yunis succeeded Cappuccilli and served until December 2006. In February 2007, Daniel O'Hara was appointed Fair Director, a position he still holds.

Basis, Scope, and Methodology of the Inspector General's Investigation

The Inspector General commenced this investigation in September 2008 after being notified by the Department of Agriculture and Markets that an internal audit at IEA had revealed a lack of controls over the distribution of complimentary concert tickets at the Fair. While conducting preliminary interviews of witnesses relating to this matter, the Inspector General received numerous additional complaints alleging improper hiring of family and friends by Cappuccili, procurements that violated the State Finance Law, and abuse of office, fraud, and corruption by current and former Fair officials, including Cappuccilli. The Inspector General consequently expanded the scope of the initial investigation to encompass these numerous additional serious allegations.

The Inspector General conducted more than 150 interviews with current and former Fair employees, Agriculture and Markets officials, former IEA Board Members, vendors and contractors. Several other witnesses interviewed by the Inspector General provided invaluable background information on fair operations in general and the concert industry in particular. In addition, investigators analyzed thousands of pages of documents including bid proposals, contracts, purchase orders, bank and credit card statements, ledgers, telephone records, e-mails, mileage logs, IEA Board resolutions, and numerous other materials. While the scope of the Inspector General's review extended to approximately 2002, in numerous instances the nature of the allegations required examination further into the State Fair's history.

Cappuccilli Abused His Authority, Misappropriated State Resources

Cappuccilli's Improper Relationship with the Fair's Caterers

Peter Cappuccilli, Jr. was appointed Fair Director in 1995 by Governor George E. Patakli and served in that position, with an annual salary of approximately $125,000, until he resigned in November 2005. During his long tenure, Cappuccilli wielded near-total and unchecked control over Fair staff and operations. In abusing this authority and misappropriating state resources, Cappuccilli, who one high-ranking Agriculture and Markets officials described as the "mayor of the fair," repeatedly failed to distinguish between his public responsibilities and his personal interests. In total, Cappuccilli personally benefited by more than $78,500 through his misconduct and abuse of office.

The Inspector General found that Cappuccilli's misconduct was connected in large part to his relationship with Ronald Rescignano and William Jackson, owners of Catering with a Flair, a catering service located on the Fairgrounds, and longtime personal friends of Cappuccilli. After Cappuccilli was appointed Fair Director, his friendship with Rescignano and Jackson manifested itself in an arrangement of mutual personal benefit contrary to the arms-length relationship that should exist between a public official and a state contractor.

Under the terms of its contract with the Fair, Rescignano's and Jackson's company, Catering With a Flair, was required to make approximately $83,000 in improvements to several banquet rooms and other space it leased in the Art and Home Center on the Fairgrounds. However, in 2003, under Cappuccilli's direction, the Fair chose not to enforce these provisions of the contract, and instead expended more than $6,500 in state monies to fund the improvements, thus providing Catering with a Flair and its owners an unwarranted benefit.

Caterers Provided Cappuccilli and the Fair Improper and Hidden Discounts on Cost of Holiday Parties

During Cappuccilli's tenure, the Fair's holiday season parties, put on by Catering with a Flair, grew exponentially in cost and size. No longer just for the Fair's 60 or so employees and

spouses, the Fair's annual holiday parties now were attended by as many as 800 invited guests, including corporate sponsors, vendors, elected officials, the media, and more. Commenting on the size of the parties, one Fair official joked that instead of sending invitations for people to attend, the Fair sent letters to those not invited. Party attendees were treated to complimentary hors d'oeuvres, salads, and entrees, as well as an open bar lasting several hours.

Between 2002 and 2006, Catering with a Flair's actual cost to host the holiday parties ranged from $18,000 to $20,000. However, Rescignano and Jackson charged the Fair on average only $2,400, and took steps, known to Cappuccilli, to conceal the actual cost from the public. In 2005, for example, Catering with a Flair prepared two invoices for the holiday party: one a detailed bill for $18,408, reflecting the party's actual cost; and a second for $2,808, representing only the service charge or gratuity, which was submitted to the Fair for payment. Evincing the troubling nature of the arrangement, Rescignano told the Inspector General that although he didn't expect it to be paid, he showed Cappuccilli the larger, accurate invoice "to let him know what we're doing for him."

Richard Guanciale, then the Fair's Business Manager, acknowledged that the discounted party costs were part of an irregular arrangement between Catering with a Flair and the State Fair. Indeed, according to Guanciale, the State Fair renovated another banquet hall, the Martha Eddy Room, using its funds and personnel to the benefit of Catering with a Flair, in exchange for the tremendous discount provided by the caterer for the Fair's annual holiday parties. As Guanciale testified, "we told them we can't pay . . . $15,000 for a party . . . it was just too much money." Instead, the Fair, at Cappuccilli's direction, funded the improvements to the Martha Eddy Room used by Catering with a Flair. "We sorta owed them" for the party discounts, Guanciale stated. Meanwhile, under Cappuccilli, Catering with a Flair was exempted from making approximately $83,000 worth of capital improvements to other facilities as required under its contract with the state.

Despite the discounts, the cost of the parties to the Fair was substantial. The Inspector General determined that from 2002 to 2006 the Fair spent a total of more than $17,000, which included nearly $5,300 on invitations alone. Further, the Inspector General found that

Cappuccilli answered falsely when questioned about the parties in 2002 by a Syracuse *Post-Standard* newspaper reporter, claiming that the party was a "simple" affair that "doesn't cost the Fair or taxpayers a penny." Current Fair Director Daniel O'Hara ended the holiday parties in 2007.

Cappuccilli Misappropriated State Resources for Daughters' Wedding Receptions

The Inspector General determined that Cappuccilli misappropriated state resources and received other improper personal benefits when he used Fair property as the location for wedding receptions for his daughters in 2002 and 2004. Both receptions were catered by Catering with a Flair.

Notably, the wedding reception for Cappuccilli's daughter Marnie Cappuccilli on November 9, 2002, was the first event held in the then newly renovated Martha Eddy Room, which was upgraded and redecorated with State Fair money as an unwarranted benefit to Catering with a Flair. The catering bill for the reception was $13,640, which Rescignano said reflected an unspecified "discount up front" he gave Cappuccili due to their "friendship." In the end, Cappuccilli only paid $10,193 of the already discounted bill, receiving a further benefit of $3,447. In addition to creating, at a minimum, an appearance of impropriety, this improper arrangement also deprived the Fair of revenue it was owed. Under its concession contract with the Fair, Catering With a Flair was required to pay the Fair a pre-determined percentage of its proceeds; therefore, as the "discount" provided Cappuccilli reduced the caterer's income, it also reduced the amount of money remitted to the Fair.

Cappuccilli's engaged in more flagrant misconduct when he arranged for what Rescignano described as a "show case" wedding reception for another daughter, Molly Cappuccilli, held on the Fairgrounds on June 19, 2004, and attended by approximately 450 people. In preparation for the reception, Cappuccilli directed Fair employees, on state time, to make various improvements to Fair facilities that would not otherwise have been made. These included draining and painting a cement-bottomed pond, painting surrounding structures, constructing wooden staircases, and installation of a temporary fountain. The Inspector General

determined that labor and material expenses for these improvements, which directly benefited Cappucilli personally, totaled more than $8,000. Cappuccilli made no reimbursement to the Fair for these costs.

At Cappuccilli's direction, Fair officials also blocked out the use of four Fair buildings, Center of Progress, the Horticulture Center, the International Building, and the Chevy Court, near the site of the wedding reception for the period June 17-20, so as not to disturb the event. This required cancelation of at least one major event already scheduled (the annual B Jam country music concert), and resulted in lost revenue to the Fair totaling approximately $44,000.

Catering with a Flair further gave Cappuccilli a huge discount on the reception's cost. According to the invoice prepared by the caterer, the cost for the reception totaled $43,101.65. However, Cappuccilli was charged only $20,000, a more than 54 percent discount. In his testimony to the Inspector General, Rescignano recounted a conversation with Cappuccilli about the bill: "I said, 'Don't worry, you're not going to pay this [$43,101.65]. I'm just letting you know, pretty much, what we're going to do for you, I guess.'"

Cappuccilli declined to be interviewed by the Inspector General and through his attorney advised that if subpoened he would assert his Fifth Amendment privilege against self-incrimination and refuse to answer questions because they could implicate him in criminal wrongdoing.

The Inspector General is forwarding a copy of these findings to the Office of the New York State Attorney General for consideration of possible criminal charges including Grand Larceny and Tampering with Public Records.

Additional Instances of Misconduct by Cappuccilli

Cappuccilli's $12,000 Pledge to the Syracuse University Press

The Inspector General found that Cappuccilli abused his authority and Fair resources by improperly pledging $12,000 in Fair funds and in-kind donations to the Syracuse University Press in support of its new encyclopedia. In return, Cappuccilli's name appeared in the encyclopedia as a corporate sponsor and the Fair received several copies of the encyclopedia. Cappiccilli's actions appear to have violated Article VII, Section 8(1) of the New York State Constitution that prohibits gifts of state monies to any private corporation or association, or private undertaking.

Cappuccilli Used State Funds for Personal Holiday Cards

The Inspector General found that Cappuccilli misused a state contract with a Syracuse area advertising firm to produce personal holiday greeting cards for Cappuccilli and his family. Although the front of the card references the State Fair, the inside salutation is entirely personal, listing Cappuccilli, his wife, and children, but lacking any mention of his official position or other Fair staff. This misconduct further evinces Cappuccilli's failure to separate his official actions from his personal interest.

Nepotism in Hiring at Fair Was Rampant Under Cappuccilli

The Inspector General's investigation revealed that hiring at the State Fair during Cappuccilli's tenure as Director was marked by nepotism and cronyism, in violation of the Public Officers Law. The Inspector General determined that under Cappuccilli, and with his explicit approval, the Fair paid over $829,411 to Cappuccilli's friends and relatives of State Fair employees. Between 1995 and 2006, more than 40 relatives of Fair employees were hired by the State Fair. "This was a family venture," stated former Marketing Director Joseph LaGuardia, whose three children worked at the Fair at various times. Current Agriculture and Markets First Deputy Commissioner Robert Haggerty aptly described the Fair's hiring practices under

Casppuccilli, stating, "[I]t's time for the kids, the cousins, the uncles, the aunts, to all get on the payroll."

An egregious example of nepotism concerned the family of Richard Guanciale, the former longtime Business Manager of the Fair. Between 1995 and 2007 Guanciale's wife and three daughters worked for the Fair, earning in total more than $53,000 for part-time work. In 2007 Guanciale wrote and signed a check payable to his daughter for an advance on payroll. Guanciale's actions violated the Fair's accounting procedures. In another example, IEA Board member Santo Difino's wife and four children were employed at the Fair between 1998 and 2006, receiving over $46,000 for part-time employment.

In 2002, Cappuccilli hired Timothy Kuhl, a personal friend with whom he had previously worked, as a Fair sales consultant and later as sales manager. The circumstances and terms of Kuhl's hiring were unusual. The IEA resolution hiring Kuhl indicated, falsely, that a new sales manager was needed because the incumbent manager was absent for prolonged periods due to illness. In what can only be termed a sweetheart deal, Kuhl thereafter received advances on commissions, a benefit no other sales employee received, and, without apparent justification, a $30,000 a year salary on top of his commissions, which was also a unique arrangement.

Most troubling, Kuhl continued to be paid by the Fair as sales manager even after he had accepted a full-time position with the Carolina Hurricanes, a National Hockey League team, and had relocated to North Carolina. From March to November 2006, while working full-time and residing in North Carolina, Kuhl received more than $35,000 in salary payments from the Fair. Notably, despite Kuhls' claim that he continued to oversee the sales department from North Carolina, other Fair employees in the sales department were unaware that he was still employed by the Fair once he relocated.

With the elimination of the IEA, all State Fair employees now are Agriculture and Markets personnel and the filling of these positions must now comport with Civil Service Law and applicable state regulations.

Procurements by State Fair Violated State Finance Law

The Inspector General determined that the State Fair and the Department of Agriculture and Markets flagrantly violated state procurement law when procuring wireless Internet services, when contracting with a booking agent for the Fair's 2008 concert series, and when hiring a fight promoter for the 2009 Fight Night at the Fair. Fair and Agriculture and Markets officials displayed either ignorance or a lackadaisical attitude toward compliance with the law, all of which contributed to the recurring breaches of the State Finance Law.

State Fair's Unlawful Arrangement with Progress Expert Consulting

The Inspector General found that from 2002 until July 2009, the State Fair flagrantly violated the State Finance Law in its dealings with the Syracuse-based technology company Progressive Expert Consulting, Inc. (PEC). Specifically, the State Fair not only used PEC to provide Internet services on the Fairgrounds without soliciting any competitive bids or any fair process, but, under Cappuccilli's watch, the Fair allowed PEC to install equipment and obtain fees from Fair vendors without any written contract or legally required approval from the State Comptroller.

In addition, Cappuccilli and the Fair never sought to obtain a portion of the revenue generated by PEC due to the state, which the Inspector General estimated at nearly $19,000. Further, the quality of PEC's Internet wiring installed on the Fairgrounds was questionable. Fair employees described PEC's workmanship as "horrible" and "pathetic," and a 2008 internal audit conducted by Agriculture and Markets concluded that the "current state of the fiber and cable plant does not meet any standards."

State Fair's $600,000 No-Bid Contract with Live Nation

In November 2007, in response to a request by Agriculture and Markets, the State Comptroller approved awarding a single-source contract to Live Nation, valued at nearly $600,000, to book music concert acts for the Fair. Under state law, agencies may enter into

single-source contracts, and thus avoid competitive bidding requirements, only in emergency situations or other unusual circumstances.

The Inspector General determined that the "emergency" leading to the Live Nation contract was self-created, resulting largely from a lack of communication between Fair executives in Syracuse and Agriculture and Markets officials in Albany as the Fair sought an outside professional booking agency for the first time in many years. Previously, the Fair's marketing director had planned, booked, and promoted Fair concerts. With sufficient planning by Fair and Agriculture and Markets management, competitive bidding would have been possible. As Agriculture and Markets First Deputy Commissioner Haggerty admitted to the Inspector General, "We should be criticized if we failed to do something in that timeline correctly ; we should be criticized for what led us to Live Nation."

Contrary to suspicions raised at the time, the Inspector General found no evidence of illicit or improper conduct in the contract with Live Nation. Further, the investigation determined that the value of the contract appeared to be reasonable. Additionally, contrary to allegations, the Fair's 2008 concert series, the only one booked by Live Nation, was profitable for the Fair, with both revenue and attendance increasing. For the 2009 Fair, Agriculture and Markets procured another booking agent, Triangle Talent, through a competitive bidding process.

$127,000 Unlawful No-Bid Contract Awarded to "Fight Night" Promoter

The Inspector General determined that the State Fair violated State Finance Law when it improperly entered into a no-bid contract with Rhode Island-based Classic Entertainment and Sports, Inc. (CES) to promote a professional boxing card at the Fair's Grandstand on September 2, 2009. The State Fair paid CES $127,500. The International Boxing Hall of Fame, located in nearby Canastota, Madison County, was a sponsor of the "Fight Night at the Fair," for which it received $30,000 from CES.

The boxing event was a financial failure for the Fair, drawing 962 persons to the 17,000-seat Grandstand and generating only $13,280 in revenue. On June 29, 2010, Agriculture and Markets advised the Inspector General that due to a short time frame in which to conduct a proper competitive procurement, the planned boxing event for the 2010 Fair has been canceled.

Fair Lacked Adequate Internal Controls

$720,000 in Free Tickets Given to Concert Reviewers, State Troopers, Fair Employees

The Inspector General found that the Fair lacked sufficient controls over complimentary concert "reviewer" tickets during the period 2001-2008, when free tickets valued at more than $280,000 were distributed. In 2007 alone, the Fair issued over 1,100 "reviewer" tickets for just 12 performances. While reviewer tickets were ostensibly for members of the media who were to review the Grandstand acts on any given night, Fair management used the vast majority of the approximately 90 tickets per show as a source of free concert tickets that they could dispense at their discretion or use for themselves or for their family members. Current Agriculture and Markets First Deputy Commissioner Robert Haggerty acknowledged that prior to 2008 there was "a pattern of abuse of tickets and no accountability."

The Inspector General further found that the Fair historically provided free tickets to state employees, including Fair staff and State Troopers assigned to the Fair, as a "perk." Over an eight-year period, the State Police received approximately $200,000 in complimentary concert tickets for Troopers assigned to the State Fair. In just three years, from 2006 to 2008, State Fair employees were given over $240,000 worth of free concert tickets. Fair employees also received free parking passes and admission tickets to the Fair for use by their family members. Lastly, the Inspector General uncovered a group of tickets referred to as "director holds," so called because

they were withheld from sale to the public but available, at the Fair Director's discretion, for purchase by a select few friends, family and political figures. Ordinary citizens – those lacking a connection to the Fair Director – could not access these "director hold" tickets.

The dissemination of free concert tickets has largely ceased under the current Fair management. Fair employees and State Troopers no longer receive free concert tickets. Only three reviewer tickets per show are provided to the media.

Inadequate Inventory Controls

The Inspector General determined that the Fair lacks a written inventory control policy, with the result that valuable assets and property are neither tracked nor managed by the Fair. The Fair does not inventory such commonplace items such as desks, chairs and other office furniture. Equipment and tools are likewise not tracked in any inventory log.

The Inspector General further found that a lack of control over state vehicles allowed one employee to inappropriately use a Fair vehicle for personal purposes and three Fair employees to significantly underreport their personal use of a state vehicle. Another illustration of the lack of internal controls was revealed when two other Fair employees were found to have misappropriated and destroyed the portable memory chips (SIM cards) from their state-issued cellular phones in an effort to conceal their personal telephone calls from Fair management.

II. INTRODUCTION AND BACKGROUND

A. History of the New York State Fair

The Great New York State Fair first opened its gates in September 1841 in Syracuse. It was sponsored by the New York State Agricultural Society with the assistance of a state grant. The two-day fair, attended by 10,000 to 15,000 people, featured speeches; animal exhibits; plowing contests; and samples of manufactured goods from both farms and personal residences. Later, the State Fair became an annual event growing in size and prominence, and rotated annually among various cities in the state. In 1889, the Syracuse Land Company donated to the Agricultural Society a 100-acre tract of land bordering Syracuse in the Town of Geddes, Onondaga County. This property, now commonly known as the Fairgrounds, has increased to more than 300 acres and has served as the permanent home of the annual State Fair since 1890.

In 1899, the state purchased the Fairgrounds from the Agricultural Society, which could no longer afford their upkeep, and took over the operation of the Fair the following year. The state formed an 11-member State Fair Commission whose members were appointed by the Governor. Thereafter, the Fair's management engaged in a series of construction projects expanding the Fair's exhibits and entertainment. In 1917, the State Fair served as the proving grounds for the newly created New York State Police. Following graduation from the training academy, the entire State Police force was assigned to the Fairgrounds before their permanent deployment to regional areas. The tradition of a large State Police presence during the Fair continues today.

In 1927, administration of the Fair shifted to the New York Department of Agriculture and Markets. The Fair was extended from six days to eight to increase attendance and revenue during the Great Depression. In 1934, the state created the Industrial Exhibit Authority (IEA), whose initial purpose was to obtain bond financing to construct buildings on the Fairgrounds for the display of industrial exhibits.[1] IEA funds were ultimately used to construct five buildings. The IEA generated revenue by leasing space in its buildings and on its property to various event

[1] Public Authorities Law § 1650 *et seq.*

organizers, vendors and concessionaries for a multitude of both Fair and non-Fair events. The IEA also received 25 percent of the daytime gate receipts during the annual State Fair. Today, the operation of the actual State Fair, as opposed to the yearly operations of the Fairgrounds, is fully funded by the admission charges, rental space, advertising cost and concession sales.

The IEA and the Department of Agriculture and Markets were inextricably intertwined. The IEA Board consisted of the Commissioner of Agriculture and Markets, who served as Board chair, and the Director of the Division of the Budget (or his or her designee), and five other persons appointed by the Governor. State law provided that the Commissioner and the IEA "may make such agreements in matters of common interest to the state fair and the authority as may be deemed advisable to assure their development and success."[2] The Fair Director is an Agriculture and Markets employee and served as the IEA's manager, charged with the "care and custody of all books, funds and securities of the Authority."

The IEA served as the backbone of Fair operations for decades. It employed approximately 60 people in a multitude of administrative, custodial and executive positions. The IEA also hired about 1,700 part-time employees to operate the Fair each year. In contrast, the State Fair Division within the Department of Agriculture and Markets consisted of only approximately five full-time staff. In 2009, the IEA was eliminated by state legislation and IEA staff and property were transferred to Agriculture and Markets.[3] This action was taken to save money and eliminate redundant functions at the IEA, which had outlived its statutory function. For purposes of simplicity in this report, unless otherwise noted, references to the "State Fair" or "Fair" include both the IEA and State Fair Division within Agriculture and Markets.

[2] Public Authorities Law § 1655.
[3] New York Senate Bill No. 3574 (2009).

The Fairgrounds currently consists of a 365-acre complex and has 20 major exhibit buildings and 107 other structures. This aerial view of the Fairgrounds shows the main entrance gate in the foreground, several of the exhibition buildings (green roofs), and the Grandstand in the background (to the right).

In recent years, the State Fair has been held for 12 days in August and September. Annual Fair revenue exceeds $16 million, and the Fair is one of largest state fairs in the nation, hosting hundreds of vendors and attended by nearly a million persons each year. Each day tens of thousands of people experience agricultural exhibits, carnival rides, and food and beverages from across the state. In the evening, Fairgoers can also attend concerts at the Fair's 17,000-seat Grandstand. Popular artists such as Lynyrd Skynyrd, Hillary Duff, Toby Keith, the Jonas Brothers, and Linkin' Park have performed at the Fair in recent years. The Fairgrounds also feature several stages which host free concerts.

In addition to the State Fair, the Fairgrounds host year-round events ranging from horse shows to motorsport expos and camping trade sales, as well as plays, concerts and other cultural events. For example, in February 2010, approximately 20,000 people attended the first professional hockey game held on the Fairgrounds.

By statute, the Commissioner of the Department of Agriculture and Markets appoints the Fair Director.[4] However, as with similar high-level executive positions, the selection of a Fair

[4] Agriculture and Markets Law § 31-a.

Director historically has been made by recommendation or with approval of the Governor's Office. In the past 15 years, three individuals have served as Fair Director. In 1995, Governor George E. Pataki selected Peter Cappuccilli, Jr. as Director, a position he held until his resignation in 2005. Bebette Yunis succeeded Cappuccilli and served to the end of the Pataki administration in December 2006. In February 2007, Governor Eliot Spitzer selected Daniel O'Hara as Fair Director, a position he currently holds.

B. Allegations and Scope of Investigation

In August of 2008, Agriculture and Markets internal audit unit notified the Inspector General that an audit report recently received from the IEA's internal auditor/compliance officer detailed a systemic lack of controls over the disbursement of complimentary concert tickets for the State Fair. The agency requested that the Inspector General investigate to determine whether complimentary concert tickets were abused.

During preliminary interviews of Agriculture and Markets officials, including First Deputy Commissioner Robert Haggerty, the Inspector General learned that in the years prior to 2008, the Fair had allocated 90 complimentary tickets per show for paid concerts at the Fair, purportedly to be given to media reviewers. However, Agriculture and Markets was unable to account for the exact disbursement of these free tickets, and former Fair Marketing Director Joseph LaGuardia was suspected of improperly distributing them.

The Inspector General's initial interviews revealed additional allegations of improper practices and abuse of authority during the tenure of Cappuccilli, from 1995 to 2005. It was alleged that Cappuccilli had hired a friend, Timothy Kuhl, as the IEA's sales manager, and that Kuhl continued to be paid by the IEA despite moving to North Carolina to concurrently work full time with the Carolina Hurricanes hockey team. Further concerns of cronyism and nepotism were raised because Kuhl's wife was reportedly also on the IEA payroll. It was alleged that other family members also received State Fair jobs under Cappuccilli.

It was also alleged that Progressive Expert Consulting, Inc. (PEC), a Syracuse-based company, had wired the Fairgrounds for Internet service for IEA employees, as well as for vendors and visitors of the Fair, and had been providing Internet services, all without a contract in violation of state law. Despite the lack of a contract with the state, in 2008 PEC submitted an invoice to Agriculture and Markets requesting $1.6 million in payment for work completed on the Fairgrounds and years of Internet service provided to the Fair.

Additionally, the Inspector General, based on a review of articles in the Syracuse *Post-Standard* newspaper, noted concerns about the propriety of a lucrative no-bid contract the State Fair awarded to the international conglomerate Live Nation Worldwide, Inc. to book and promote concerts for the 2008 State Fair. The Inspector General, therefore, examined the Live Nation procurement process.

In the course of the investigation, witnesses interviewed by the Inspector General reported additional allegations of fraud, corruption, conflicts of interest, criminal activity and abuse of office by current and former State Fair officials. The Inspector General received a myriad of complaints, many of which were couched as rumors and lacked details such as dates and names of possible witnesses. Nonetheless, the Inspector General expanded the scope of the investigation, and pursued these allegations to confirm or disprove them. The following list illustrates the scope and nature of allegations received by the Inspector General during this investigation:

1. Former Fair Director Cappuccilli had a banquet hall on the Fairgrounds renovated so he could host his daughter's wedding reception there.

2. Cappuccilli allegedly also received free catering for the wedding reception from a Fair vendor, Catering with a Flair.

3. Cappuccilli allegedly improperly gave thousands in state funds to the Syracuse University Press.

4. Former Fair Business Manager Richard Guanciale and former Fair salesperson Linda Ryan allegedly stole state-owned SIM cards from their state-issued cellular telephones.

5. Current Fair employee Michael Ryan allegedly misused a state truck to conduct personal business.

6. An unlawful no-bid contract was allegedly awarded to Classic Entertainment and Sports, Inc. to promote a boxing event at the 2009 State Fair.

Throughout the lengthy investigation, the Inspector General sought to determine whether the allegations were true, and expose any corruption or misconduct. Given the number and variety of allegations, the Inspector General further sought to determine what, if any, systemic weaknesses existed at the State Fair, or with its parent agency, Agriculture and Markets, underlying the widespread alleged abuse. The scope of the Inspector General's review extended to approximately 2002, but in many instances the nature of the allegations necessitated an inquiry further into the Fair's history.

The Inspector General conducted more than 150 interviews with current and former Fair employees, Agriculture and Markets officials, former IEA Board Members, vendors and contractors. Several other witnesses interviewed by the Inspector General provided invaluable background information on the fair operations in general and the concert industry in particular. In addition, investigators analyzed thousands of pages of documents including bid proposals, contracts, purchase orders, bank and credit card statements, ledgers, telephone records, e-mails, mileage logs, IEA Board resolutions, and numerous other materials.

III. FORMER FAIR DIRECTOR CAPPUCCILLI ABUSED HIS AUTHORITY AND MISAPPROPRIATED STATE RESOURCES

Peter Cappuccilli, Jr. was appointed Fair Director in 1995 by Governor George E. Pataki. He served in that role, with an annual salary of approximately $125,000, until November 2005. Cappuccilli is a long-time Syracuse resident and, along with others in his family, an active member of the Republican Party. Cappuccilli served as Pataki's campaign coordinator for Onondaga and Madison counties during Pataki's first campaign for governor, and he and his father, Peter Cappuccilli, Sr., both have served as vice chairman of the Onondaga County Republican Committee. Cappuccilli is a 1973 graduate of Le Moyne College in Syracuse, where he earned a bachelor's degree in business, and he previously served as vice president of marketing of the Syracuse Crunch hockey club; co-owner of McCormick's Nuts Inc.; founder of Cappy's Real Estate/Cappy's Caldwell Banker; and founder of Camex Realty, a commercial and residental real estate development firm. After leaving his Fair position, Cappuccilli mounted an ultimately unsuccessful campaign for Congress. Cappuccilli currently is the Chief Operating Officer of the government relations section of the law firm Gilberti, Stinziano, Heintz and Smith, P.C., in Syracuse.

The Inspector General's findings stem from Cappuccilli's plenary control of State Fair operations during his tenure as Director and willingness to circumvent restrictions placed on Fair activities due to its status as a public entity and to foster his personal interests and for his financial benefit. In regard to Cappuccilli's identity with the Fair, one State Fair employee aptly described Cappuccilli as the "mayor of the Fair." Cappuccilli's former supervisor at Agriculture and Markets, Ruth Moore, said of Cappuccilli:

> I think he loves the State Fair, loves the job, loves the area. [He] had great plans for the State Fair and felt constrained by the bureaucracy. And there's [sic] lots of rules, lots of reasons for the rules too. But if you were going to run a business and have a growing venture, there's certain things you can't do in the state environment. He would always say, 'You need to take off the handcuffs.'

The Inspector General uncovered multiple examples of Cappuccilli using his position as Fair Director to benefit himself, his relatives and friends. Some of Cappuccilli's conduct as Fair Director may violate the New York State Penal Law, specifically, several instances in which

Cappuccilli misappropriated Fair property in excess of $50,000 and at least one instance where he tampered with public records.[5]

A. Cappuccilli's Ties to Catering with a Flair Leads to Abuse

Cappuccilli's abuse of his authority and misappropriation of state money and resources involved in large part his long-time relationship with Ronald Rescignano and William Jackson, the owners of a catering service on the Fairgrounds, and personal friends of Cappuccilli. Rescignano told the Inspector General that he and Cappuccilli have been friends "going way back," and even their "fathers were friends." For years the Rescignano family ran a restaurant at a golf club owned and operated by the Cappuccilli family. Jackson and Cappuccilli have been friends since grade school. Although Rescignano and Jackson already were established as Fair vendors and contractors when Cappuccilli became Fair Director in 1995, Cappuccilli exploited their friendship to engage in improper conduct that benefited him at state expense. Specifically, once Cappucilli became Fair Director and Rescignano and Jackson Fair vendors, their friendship evolved into a relationship of mutual benefit incompatible with appropriate conduct between a public official and a state contractor.

The Fair had contracted with Rescignano's and Jackson's company, Catering with a Flair, since 1990 to provide catering services in the Empire Room, Stickley Room (formerly the Raymour and Flanigan Room), and Somerset Room, all located in the Art and Home Center on the Fairgrounds.[6] Rescignano and Jackson are well-known restaurateurs in the Syracuse area, and, according to Rescignano, they consider Catering with a Flair a "part-time business." Rescignano stated that he handles the company's finances and billing, while Jackson is "more political" and schmoozes with its customers. Before forming Catering with a Flair, Jackson, Rescignano, and a third partner, Joseph Galante, operated the Infield Restaurant during the State Fair. Since the 1970s, Rescignano and his brothers have also operated a pizza booth during the Fair.

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[5] Penal Law Article 155 and § 175.25.

[6] Catering with a Flair does business, and is more commonly known, as the Empire Room, named for its primary banquet room on the Fairgrounds.

In 1990, then-Fair Director Wayne Gallagher approached Rescignano, Jackson, and Galante seeking a response to a Request for Proposal to run a restaurant in the Art and Home Center. At the time, the space was in disrepair and any restaurant operator would be required to make improvements. Rescignano, Jackson, and Galante submitted a proposal and were selected.[7] In addition to making capital improvements to the Empire Room and adjacent facilities, the contract between the Fair and Catering with a Flair required the company to pay a percentage of its sales to the State Fair each month up to a predetermined cap (e.g., $115,000 per year). According to Rescignano, the company spent about "a quarter of a million dollars" renovating the Empire Room and other facilities. As the contract specified, these repairs to the Empire Room included "a new drop ceiling, wall covering, carpeting, lighting and the purchase of an atrium." Catering with a Flair also was required to provide "tables, chairs, bar and table service for 400 and additional kitchen equipment as may be required."

Depicted are the atrium bar area and the dance floor in the banquet hall of the Empire Room (2009).

[7] Galante left the partnership in 2003.

After Catering with a Flair renovated the Empire Room, the kitchen, bathrooms, and other space, it hosted numerous events each year. Among the more notable events were dinners for the Governor during the annual State Fair and a luncheon for then-United States Senator Hillary Clinton. The Inspector General's review of Catering with a Flair's invoices revealed that typically it hosts a wide range of functions, such as baby showers, retirement parties, conferences, charitable and political fundraisers, and wedding receptions.

B. Cappuccilli's Catered Holiday Parties at State Expense

Since the 1990s, holiday parties for State Fair staff were hosted by Catering with a Flair. Rescignano advised the Inspector General that, prior to that time, Fair employees themselves prepared modest fare for the parties. Then, according to Rescignano, he "asked to do it" for the Fair.

Under Cappuccilli, the size and extravagance of the Fair's holiday party expanded exponentially. No longer was the gathering just for the Fair's 60 or so employees and their spouses. Now the Fair invited corporate sponsors, volunteers, promoters, vendors, elected officials, the agriculture community, police officers, the media, members of various boards and commissions, and more. During Cappuccilli's tenure, as many as 700 or 800 people attended the party, according to Rescignano, who added that it became a "joke . . . it got so big."

LaGuardia, the Fair's former Marketing Director, said that he once kidded Rescignano that instead of sending out invitations for people to come, the Fair sent out letters to people who were not invited. The Fair's former Assistant Director, Kathleen Hoffman-Davis, told the Inspector General that people on the "Friends of the Fair" list, which was generated out of LaGuardia's office, were invited to the holiday party. LaGuardia advised the Inspector General that generating the list was a collaborative effort among Fair managers.

Each year the Fair used the Syracuse-based marketing firm Latorra, Paul and McCann Advertising to design and produce invitations to the Fair's holiday party. The Inspector General found that the holiday party invitations were made and paid for pursuant to a multi-year state

contract between the State Fair and the advertising firm. Invoices and state checks obtained by the Inspector General establish that the state paid on averaged $1,200 per year from 2003 to 2006 for the Fair's holiday party invitations alone, which totaled more than $5,000 paid in state funds for merely four years.[8] Reproduced below is the invitation to the 1998 party.

Holiday party guests were afforded a complimentary catered meal, as well as free beer, liquor, wine and soda. Interestingly, LaGuardia stated that media representatives eventually were reluctant to attend, concerned about the appearance of receiving a "free drink" from the organization they covered. Agriculture and Markets former First Deputy Commissioner Ruth Moore, who currently serves as the agency's General Counsel, said she recalled being invited to holiday parties at the State Fair, but she never attended. When asked by the Inspector General if the Fair could properly fund such an event, Moore answered indirectly, saying, "We [a state

[8] Cappuccilli also misused Latorra, Paul and McCann Advertising to produce holiday greeting cards for himself and his family. This issue is discussed later in this report.

agency] couldn't." She added that Agriculture and Markets management staff fund their own party.

C. Cappuccilli Provided False Information and Disguised Discounts

The holiday party's cost to the state grew with its size. The Inspector General found that from 2002 through 2005 the party's expense ranged between $18,000 and $20,000. However, the State Fair was given an 85 percent discount on the total catering bill. Catering with a Flair covered the food and beverage costs, and charged the Fair for only its staff service charge or gratuity, 15 percent of the total catering expense.

Cappuccilli was questioned in 2002 by a Syracuse *Post-Standard* reporter about the Fair's holiday party. Cappuccilli replied in a letter that the "Christmas/Appreciation" party is attended by "approximately 200-400 people." He went on to write that the "get together" is a "simple but very nice cocktail / hors d'oeuvres party (pizza, wings, sandwiches, etc.) that is paid for by a sponsor and doesn't cost the Fair or taxpayers a penny." Cappuccilli's statements were simply false.

Contrary to Cappuccilli's assertion, the party that year was hardly a "simple" event. In addition to being attended by 700-800 people, according to Rescignano, the invoice for 2002 recovered by the Inspector General revealed that the party included three hours open bar (valued at $6,500), a "chef carved beef & pork" station ($3,900), a "pasta station" ($1,625), "sausage with peppers & onions" ($1,300), assorted "hot hors d'oeuvres meatballs munchies" ($1,300) and a "salad station" ($1,625) for total of $16,250, plus a service charge of $2,762.50, resulting in a total of $19,012.50.[9]

Cappuccilli's claim that the party did not cost the State "a penny" is also patently false. As noted, the cost of party invitations alone, paid with state funds, averaged $1,200 per year from 2003 to 2006. Additionally, public money did fund the event. For example, regarding the 2002 party, the State Fair paid $1,375 to Catering with a Flair by state voucher signed by

Richard Guanciale, the Fair's Business Manager at the time. Therefore, directly contrary to Cappuccilli's claim that the party did not cost the state "a penny," the state paid approximately $3,000 annually to host the holiday party. In subsequent years, that cost rose; for example, the charge for the 2005 holiday party was nearly $2,800 and in 2006 it was $3,159.

The Inspector General's analysis of state records reveals various payments over the years for expenses related to the holiday parties. It total, it cost the State Fair nearly $17,300 to host these parties from 2002 until Daniel O'Hara, the current Fair Director, ended the holiday party in 2007. O'Hara ceased the practice of hosting these lavish events and opted for an in-house pot luck party for the approximately 60 State Fair employees. The following chart details the expenses paid by the State Fair to throw its annual holiday party.

State Fair Expenditures for the Holiday Parties	
Item	**Amount**
Holiday Party Cost 2002	1,375.00
Holiday Party Cost 2003 (estimated)	2,447.33
Holiday Party Cost 2004 (estimated)	2,447.33
Holiday Party Cost 2005	2,808.00
Holiday Party Cost 2006	3,159.00
Holiday Party Invitations 2003	1,145.90
Holiday Party Invitations 2004	1,137.70
Holiday Party Invitations 2005	1,367.10
Holiday Party Invitations 2006	1,410.05
Total	**17,297.41**

Compounding the unnecessary expense of the party, the Inspector General determined that the State Fair and Catering with a Flair attempted to conceal the true value of the party and the discount provided by Catering with a Flair. Specifically, Jackson, a partner in Catering with a Flair, acknowledged to the Inspector General that his company supplied the State Fair with two "invoices": one detailing the actual cost of the holiday party; and a second listing the price actually paid by the state to the caterer characterized as a "party catering expense." Notably, juxtaposing the two bills reveals that the "party catering expense" – the fee actually paid by the

[9] Yet, as discussed below, Catering with a Flair charged the State Fair only $1,375, representing the gratuity for its 11 staff members.

state – equals the amount of gratuity or service charge on the bill containing the real cost of the event. Both invoices for the 2005 party are reproduced below.

Catering With a Flair, Inc.

N.Y.S. Fairgrounds ~ Syracuse, New York, 13209 ~ Phone 315/487-3100 ~ Fax 315/487-2537

Charge

INVOICE

TOTAL DUE

Invoice Date	Thursday, December 8, 2005
Name	State Fair Holiday Party for Friends of the Fair
Address	
Phone	
Fax	
Additional Contacts	

Corporate

Company Name	
Address	
Phone	
Fax	
Reason	
Exemption no.	

Additional Charges

Room Rental 8hrs.	
Room Rental 4hrs.	
Linen	
Room Set Up	
Room Cleaning	
Other	

QTY	DESCRIPTION	PRICE EACH	TOTAL
600	Three Hour Draft Beer, Wine & Soda	11.00	6,600.00
600	Carved Pork & Turkey	6.00	3,600.00
600	Pasta Station	2.50	1,500.00
600	Assorted Hot Hor's	4.00	2,400.00
600	Salad Station	2.50	1,500.00

12800.00 1200.00 NC

SUBTOTAL	15,600.00
18% Service Charge on Food and Beverage	2,808.00
8% Sales Tax	Exempt
PAYMENTS	
PLEASE PAY THIS AMOUNT	18,408.00

TERMS: UPON RECEIPT

Please Remit To:

Catering With a Flair, Inc.
1029 Milton Ave.
Syracuse, NY 13204

Catering With a Flair, Inc.

N.Y.S. Fairgrounds ~ Syracuse, New York, 13209 ~ Phone 315/487-3100 ~ Fax 315/487-2537

INVOICE

Corporate

Company Name: New York State Fair

Address: Friends of the Fair Holiday party 12/8/05

Phone

Fax

Reason

Exemption no.

Additional Charges

Room Rental 8hrs.

Room Rental 4hrs.

Linen

Room Set Up

Room Cleaning

Other

party catering	2,808.00

RECEIVED DEC. 29 2005 ACCOUNTS PAYABLE

Please Remit To:

Catering With a Flair, Inc.
1029 Milton Ave.
Syracuse, NY 13204

SUBTOTAL 2,808.00

8% Sales Tax Exempt

PAYMENTS

PLEASE PAY THIS AMOUNT 2,808.00

TERMS: UPON RECEIPT

2005 party

The above invoices illustrate how Catering with a Flair provided the State Fair with a bill listing only the gratuity/service charge, which was $2,808 in 2005, but designated it as "party catering."

Catering with a Flair did not take it upon itself to devise the sham invoice. To the contrary, the Fair solicited the bogus bill to conceal the actual value of the party and the discount it had received. In fact, a handwritten note on State Fair letterhead shows that Fair officials explicitly requested that Catering with a Flair provide the Fair a second invoice showing only the gratuity or service charge, but falsely describing it as though it was the entire catering charge. The State Fair paid the $2,808 bill.

As demonstrated by the two "invoices," the substantial discount afforded Cappuccilli and the Fair by Catering with a Flair came with a not so subtle price. Indeed, for Catering with a Flair, the bill detailing the actual expense of the party served no other purpose other than to make clear to Cappucilli the benefit he was afforded. Specifically, Rescignano testified that he gave Cappuccilli the detailed bill without any expectation of it being paid "to let him know what we're doing for him" because it was not cheap to feed all the people attending the party. Rescignano's conduct suggests that he expected something in return for his largesse.

D. Quid Pro Quo for the Holiday Party

The Inspector General determined there existed a *quid pro quo* arrangement whereby the Fair, under Cappuccilli direction, renovated a banquet hall at public expense to benefit Catering with a Flair, in return for the significantly discounted cost of the holiday party.

Guanciale, the Fair's former Business Manager, informed the Inspector General that the State Fair renovated the Martha Eddy Room, a large banquet room located in the Art and Home Center, as a benefit to Catering with a Flair because the Fair paid only a small portion of the cost for the holiday parties. The Fair expended labor and materials to renovate the Martha Eddy Room. Guanciale explained that while the renovated room increased rental opportunities for the Fair, it significantly enhanced catering opportunities for Catering with a Flair by allowing Catering with a Flair to host two events at the same time: one in the Empire Room and the other in the Martha Eddy Room.

Guanciale testified, "We sorta owed them … we told them we can't pay … $15,000 for a party. We might have paid them for the whole party before that, but at some point it became so big it was just too much money." When the Inspector General pointed out the high expenses incurred by Catering with a Flair for the Fair's holiday party ($18,000 - $20,000 per year), Guanciale responded, "Well, I think that, whether right or wrong … that's why we used to do things for them … that contract … called for capital improvements done by them in certain areas and we [the Fair] have done some capital improvements, too," particularly in the Martha Eddy

Room. Guanciale added that this arrangement "probably should have been written up or something. But it wasn't."

Joseph Galante, a former partner in Catering with a Flair, verified that the company wanted the State Fair to renovate the Martha Eddy Room. Galante recalled that "there were times when we [Catering with a Flair] wanted to throw two parties at the same time, and we couldn't do it." He therefore said to Rescignano, "We have to do something with this room [the Martha Eddy Room]." Rescignano reportedly rejected the idea and replied to Galante that they have "lived up" to their "end of the bargain"; however, Rescignano added that maybe the State Fair will fix up the Martha Eddy Room. According to Galante, Rescignano later spoke to Director Cappuccilli about it. Although Galante was not privy to their conversation, the State Fair – not Catering with a Flair – subsequently undertook and funded a major renovation of the Martha Eddy Room.

Records obtained by the Inspector General establish that in 2002, the state paid more than $6,500 to paint, add new lighting, and repair the dance floor in the Martha Eddy Room. The actual cost of the renovation was no doubt substantially higher, as additional significant repairs were made, including installation of a new air conditioning and heating system, and new carpeting. However, documentation showing the cost of these improvements could not be located. As one Fair staff member said, "We basically remodeled the whole room" to increase Catering with a Flair's business. The State Fair's supervising carpenter, whose staff framed and installed new sheetrock in the Martha Eddy Room, testified that the work was done so that the Catering with a Flair could rent out the space.

Rescignano told the Inspector General that Catering with a Flair was not involved in the renovations to the Martha Eddy Room. His business partner, Jackson, concurred; the State Fair, not Catering with a Flair, renovated that space. Jackson denied any deal between the Cappuccilli and Catering with a Flair for improvements to the Martha Eddy Room in exchange for discounts on State Fair's holiday parties. Jackson attempted to justify the highly discounted catering by claiming that despite losing money by hosting the Fair's annual holiday parties, the parties were a means to attract three or four potential future paying customers. However, in addition to being

directly refuted by Fair officials, Jackson's contention is belied by logic. At Catering with a Flair's average catering rate of approximately $2,500 per event, the company would have to attract at least nine additional customers each year just to break even.

While the 85 percent discount on the holiday party catering charges benefited Cappuccilli and the Fair, the major renovations to the Martha Eddy Room benefited Catering with a Flair. Under Cappuccilli, the Martha Eddy Room became a second banquet hall for Catering with a Flair to host large events.

Prior to the renovations, the Martha Eddy Room was described to the Inspector General as "sparse," barren," not the "prettiest thing." One witness told the Inspector General that it was a perfect room for the John Deere company to hold a conference because it could accommodate tractors. Rescignano said that it had a "concrete floor" and one could "drive a vehicle in the back." "We didn't rent that room out, because it wasn't a very nice room; nobody wanted it at that point." The major publicly funded renovations transformed the Martha Eddy Room into "a pretty room . . . with the chandelier and all," according to Missy Carelli, event coordinator for Catering with a Flair. Furthermore, Carelli noted that the Martha Eddy Room has a "traditional décor" while the Empire Room is more "contemporary." Customers, therefore, have more options.

Catering with a Flair has the exclusive rights to provide the food and beverage for the Martha Eddy Room. For every event that includes any food or beverage, Catering with a Flair provides it, and the State Fair gets a percentage (e.g., 13 percent) of the catering charge. Although the Martha Eddy Room "doesn't get used very much," Rescignano admitted that "it does help us in our business." He further pointed out another advantage: "Sometimes we have two weddings at a time."

While the Fair funded renovations to enhance Catering with a Flair's business, Cappuccili absolved the caterers of their obligation to make contractually mandated improvements. The "Capital Improvements" section of the second contract between Catering with a Flair and the State Fair, which was signed by Cappuccilli in 2003, required Catering with

a Flair to make $83,273 worth of improvements including $45,000 to renovate the "Empire Room, hallways, restrooms, and the Somerset Room" and $35,000 to furnish and install new carpet. This contractual obligation, however, was not enforced under Cappuccilli. While the Martha Eddy Room was transformed by the Fair for the benefit of Catering with a Flair, no renovations or capital improvements were made by Catering with Flair until 2009, four years following Cappuccilli's departure as Director, and only after proof of compliance with this section of the contract was requested by the Fair's current administration.

The Inspector General attempted to interview Cappuccilli regarding, among other topics, the catered holiday parties and the Fair's major renovation of the Martha Eddy Room. However, through his attorney, Cappuccilli refused to be voluntarily interviewed and advised that should the Inspector General subpoena him, he would assert his Fifth Amendment privilege against self-incrimination as he reasonably believed his answers could implicate him criminally.

Perhaps not coincidentally, the first event hosted by Catering with a Flair in the newly renovated Martha Eddy Room was a wedding reception for Cappuccilli's daughter. This reception and a later wedding reception for another of Cappuccilli's daughters are discussed in detail below.

E. The 2002 Wedding Reception in the Newly Renovated Martha Eddy Room

On November 9, 2002, Cappuccilli held his daughter Marnie Cappuccilli's wedding reception in the freshly refurbished Martha Eddy Room in the Art and Home Center on the Fairgrounds. The attendance was approximately 250 people, and Catering with a Flair furnished the food and beverages.

Shown above is the renovated Martha Eddy Room, circa 2009.

1. Wedding Reception in Renovated Room Created an Appearance of Impropriety

It appeared to outsiders that the state improved the banquet room so that Cappuccilli could host his daughter's wedding reception there, as illustrated by the complaint received by the Inspector General. The state's "code of ethics," which governs the conduct of those employed by state agencies such as Agriculture and Markets, provides that an "officer or employee of a state agency . . . should endeavor to pursue a course of conduct which will not raise suspicion among the public that he is likely to be engaged in acts that are in violation of his trust."[10] By hosting his daughter's wedding reception in the newly renovated Martha Eddy Room, Cappuccilli created an appearance that impropriety existed.

Guanciale conceded that "the timing wasn't the best of things" because the improvements to the Martha Eddy Room were completed just prior to Cappuccilli's daughter's wedding.

However, Guanciale denied that the improvements were made specifically for the Cappuccilli wedding. Former Assistant Director Hoffman-Davis concurred, "I would not say the Cappuccilli wedding was the driving force behind these [renovations]. Did they benefit from it? Clearly."

Adding to the appearance of impropriety, Cappuccilli directed that his secretary and Hoffman-Davis select the room's new chandelier and consult on other design decisions for the Martha Eddy Room. Interviews with Fair staff reflected that staff resented this apparent abuse of authority. An electrician stated that this activity "pissed off a lot of people."

2. Discounts of Wedding Bill Cost the State Money

Cappuccilli received two discounts from Rescignano for the wedding reception's catering, which ultimately cost the state revenue. According to the Catering with a Flair's invoice, the total catering bill for Cappuccilli's daughter's wedding reception was $13,640. However, Rescignano told the Inspector General, it was "discounted up front," although he claimed not to recall the extent of the discount. The Inspector General's analysis of Catering with a Flair's records, along with Cappuccilli's bank and credit card statements, revealed that in addition to whatever "up front" discount he received, Cappuccilli also enjoyed an additional 25 percent discount on the billed amount. While the invoice reflects that Cappuccilli paid Catering with a Flair $13,640, he actually paid only $10,193; he never paid the remaining $3,447.[11] Although Rescignano claimed that he gave Cappuccilli the discounts due to their "friendship," not because of his position as Fair Director or the state-funded renovations that benefited his business, it is improper and unethical for a public official to receive a discount from a state vendor he oversees.

In addition to ethical implications, due to these discounts on the wedding expenses, the State Fair lost revenue. As noted, Catering with a Flair is contractually obligated to pay a percentage of its income from any event to the State Fair. Catering with a Flair submits monthly

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[10] Public Officers Law § 74(3)(h). Since this matter was not brought to the attention of the Inspector General until years after Cappuccilli had left state service, the statute of limitations for such a violation has expired.
[11] Cappuccilli's daughter, now Marnie Medeiros, testified that she had no knowledge of the expenses or payments made by her father for the 2002 wedding.

reports to the State Fair, which includes invoices for all events occurring during the preceding month. From these invoices, a Fair accountant calculates the percentage owed to the State Fair. Rescignano admitted that due to the discount provided to Cappuccilli, the amount remitted by Catering with a Flair to the State Fair was less than it otherwise should have been pursuant to the contract. Simply stated, since Cappuccilli paid less, the state made less.

Additionally, the cost of the catering for the wedding reception was initially concealed from the State Fair, and the actual price paid by Cappuccilli was never revealed. According to a Fair accountant, the invoice for the Cappuccilli wedding reception was not included with the other invoices. When she asked Rescignano about the missing invoice, he replied that he and Cappuccilli were still "working things out." When she then asked Cappuccilli the same question, he told her "Ronnie [Rescignano] hasn't given me a bill yet." The accountant noted when she finally received the invoice in January 2003, she could not determine whether the amount on the invoice accurately reflected the cost of the wedding. Nor does the invoice reflect how much Cappuccilli actually paid for the wedding.

As the Fair Director, Cappuccilli was required to ensure that the invoice filed with Fair was true and accurate. Cappuccilli was also obligated to guarantee that the Fair received its percentage of the proceeds from Catering with a Flair. Cappuccilli should not have reaped a personal benefit to the Fair's detriment through his business dealings with a Fair vendor. In fact, the state's code of ethics explicitly prohibits Cappuccilli's conduct: "No officer or employee of a state agency . . . should have any interest, financial or otherwise, direct or indirect, or engage in any business or transaction or professional activity or incur any obligation of any nature, which is in substantial conflict with the proper discharge of his duties in the public interest."[12] Yet despite this obvious conflict of interest, Cappuccilli's 2002 wedding reception was merely a precursor of the next, grander reception also catered by Catering with a Flair.

[12] Public Officer Law § 74(2).

F. Cappuccilli's $40,000 "Show Case" Wedding Reception

On June 19, 2004, Cappuccilli hosted for his daughter Molly Cappuccilli what Rescignano termed a "show case" wedding reception on the Fairgrounds.[13] The reception was actually held in a New York State Park located on the Fairgrounds. Revealing the power Cappucilli wielded at the Fair and his willingness to abuse this authority for his own benefit, in preparation for the wedding, a man-made, concrete-based pond, surrounded by grass and trees, was drained at state expense, and a large white tent erected. Approximately 450 people attended. It was, in Rescignano's words, "probably the biggest one [Catering with a Flair has] ever done."

1. *Cappuccilli's $20,000 Discount*

Cappuccilli's catering bill — food, beverages, service, and gratuity — for the wedding reception was $43,101.65. However, Rescignano said that "we knew he [Cappuccilli] wasn't going to pay that amount," so Cappuccilli was provided a "$20,000 discount."[14]

A banner on the Fairgrounds celebrating Cappuccilli's daughter's wedding, and a wedding cake on display during the reception under a tent.

[13] Molly Cappuccilli who at the time worked as an attorney in the Onondaga County District Attorney's Office, married another attorney, Kurt Stroman.
[14] Cappuccilli's daughter, now Molly Stroman, testified that she does not know the total cost of her reception nor the payments made by her father for it.

Rescignano advised the Inspector General that Cappuccilli told him that his daughter initially did not want to have her wedding reception on the Fairgrounds. However, according to Rescignano, Cappuccilli "felt that it was important. That he is the director [and] that he should have the wedding here [at the Fair], so that other people will do the same." Rescignano claimed that in that respect, Cappuccilli "was doing us a favor." To Rescignano, the Cappuccilli wedding was "a good show for us."

Examples of the elaborate catering provided by Catering with a Flair.

A so-called "show case" wedding reception was expensive for Cappuccilli to host. Catering with a Flair's invoice for its catering services include a six-hour open bar for 450 people at a cost of $12,600; assorted fresh vegetables and imported cheese and sausage display for $3,037.50; as well as $3,500 worth of jumbo shrimp, raw oysters and raw clams; and a carving station with tenderloin beef and turkey for $4,050, among other "stations." The total bill came to $43,101.65. The invoice is reproduced below.

Catering With a Flair, Inc.

N.Y.S. Fairgrounds ~ Syracuse, New York, 13209 ~ Phone 315/487-3100 ~ Fax 315/487-2537

INVOICE

TOTAL DUE

Invoice Date: June 19, 2004
Name: Cappuccilli/Stroman Wedding Reception
Address:
Phone:
Fax:
Additional Contacts:

Corporate

Company Name:
Address:
Phone:
Fax:
Reason:
Exemption no.:

Additional Charges

Room Rental 8hrs.
Room Rental 4hrs.
Linen
Room Set Up
Room Cleaning
Other

QTY	DESCRIPTION	PRICE EACH	TOTAL
450	Six Hour Open Bar Top Shelf Liquor Bottled Beer	28.00	12,600.00
450	Assorted Fresh Vegetable and Imported Cheese & Sausage Display	6.75	3,037.50
450	Assorted Fresh Fruit & Chocolat Fondue Station	2.00	900.00
1	Stuffed Mushrooms, Scallops & Bruchetta 1000 pcs. of each	2,000.00	2,000.00
1	Jumbo Shrimp, Raw Oysters & Raw Clams	3,500.00	3,500.00
450	Carving Station Tenderloin of Beef & Turkey	9.00	4,050.00
450	Pasta Station Cooked to Order Cavetelli, Bowties & Penne Pasta Alfredo, Vodka Cream & Pesto Sauced Shrimp, Chicken & Vegetable Accompaniment	6.50	2,925.00
450	Stir Fry Station Shrimp & Chicken Stir Fry Fried Rice Eggrolls & Tempura	6.50	2,925.00
450	Salad Station Caesar Salad & Make Your Own Antipasto Marinated Green & White Asparagus Tomatoes with Fresh Mozzarella & Basil Marinated Calamari Assorted Breads & Rolls	5.50	2,475.00
		SUBTOTAL	34,412.50
		18% Service Charge on all Food and Beverage	6,194.25
		7.25% Tax	2,494.90
		PAYMENTS	
		PLEASE PAY THIS AMOUNT	43,101.65
		TERMS: UPON RECEIPT	

Please make checks payable to:

Catering With a Flair, Inc.

According to Rescignano, who reviewed the invoice and other related records with the Inspector General, Cappuccilli paid Catering with a Flair $12,000 on the day of the wedding, June 19, 2004. Approximately a year later, on June 7, 2005, Cappuccilli paid an additional

$3,000, and on August 11, 2005, he paid a further $5,000. In addition to being "slow" in his payments, as characterized by Rescignano, remarkably, these payments left an outstanding balance of $23,101.65 that Cappuccilli never paid.

Rescignano denied any nefarious arrangement with Cappuccilli for what amounted to a 53 percent discount, and disavowed any *quid pro quo* with Cappuccilli. Rescignano maintained that it was a good public relations opportunity for Catering with a Flair to host such a grand event as the Cappuccilli wedding reception. Jackson, Resignano's business partner, provided the Inspector General with a different rationale for giving Cappuccilli the hefty discount. Jackson said when his wife was suffering from a terminal illness, Cappuccilli provided his family with vacations at Cappuccilli's Florida residence, along with other gifts. Jackson asserted he had no means to repay Cappuccilli, and so as a matter of gratitude, Catering with a Flair gave Cappuccilli discounts on the 2002 and 2004 weddings.

Despite their ostensible motivations, Rescignano admitted showing Cappuccilli the $43,000 invoice, the cost everyone other than Cappuccilli would be expected to pay for such an event. "I just wanted him to see what it would cost . . . what we were doing for him." Rescignano had similarly shown Cappuccilli the full invoice for the Fair's holiday party to "let him know what we were doing for him." Once again Rescignano ensured that Cappuccilli knew that he and Jackson were giving Cappuccilli an enormous discount.

Cappuccilli, as the Fair Director, had the authority to help Catering with a Flair. As discussed above, Cappuccilli already had a banquet room renovated by the State Fair which benefited Rescignano's and Jackson's company. Cappucilli further steered state business to his friends, and Catering with a Flair did "a lot of functions for the State," according to Rescignano. The state paid for these events until they were scaled back by current Fair Director O'Hara, an action Rescignano described as "cutting the nut." Indeed, the Inspector General found that the average payments made by the State Fair to Catering with a Flair for Fair-supported functions during the first three years of O'Hara's tenure (2007-2009) were 42 percent lower than payments in the previous three years (2004-2006).

As for the amount of the 2004 wedding discount, Rescignano maintained, "This [the invoice price] gives us a lot of wriggle room, believe me. If we got $43,000, this would have been a score." He added that Cappuccilli was working within a "budget" that "wasn't anywhere near $43,000." Rescignano explained to the Inspector General that the invoice with the $43,101.65 price was a result of Cappuccilli and wife discussing the wedding menu with Catering with a Flair employee Missy Carelli. Carelli generated the invoice totaling $43,101.65, and then Cappuccilli went to Rescignano. "He [Cappuccilli] didn't say to me, we have to cut that out." Rather, Rescignano, pointing to the invoice as he spoke, recounted to the Inspector General his conversation with Cappuccilli:

> I said, "Don't worry, you're not going to pay this [the $43,101.65]. You're not going to pay this. I'm just letting you know, pretty much, what we're going to do for you, I guess." His budget was probably $20,000 . . . $25,000, and I knew this ahead of time. "Peter, this is what you ordered, and this is what it would ordinarily cost." I said, "I'm going to stay within your budget, but I want you to know, pretty much, what we can do for you."

Rescignano further claimed that there was "extra built in" to the $43,101 invoice "because [Rescignano] wanted to show [Cappuccilli] that we were going to take good care of him." When the Inspector General asked Rescignano the supposed "normal cost" for a wedding reception like that for Cappuccilli's daughter, Rescignano responded, "guessing," the wedding would cost "$30,000 . . . without doing all of the math."

In addition to the fact that, as a state official, Cappuccilli clearly should not have allowed a vendor to "take good care of him," Rescignano's claim is dubious. Rescignano's employee who prepared the invoice for Cappuccilli contradicted his claim of padding the bill. Carelli testified that "we worked up the menu; the chef and I put down what if you walked in and this is what you wanted . . . this is what you'd pay." Carelli said that she developed the invoice based on the standard price list. "This [$43,101] is what any person would pay — off the street." Carelli explicitly denied inflating the price to account for a future discount.

2. *Cappuccilli Concealed the Discount*

Notably, as with the 2002 reception, the 2004 discount was concealed from the State Fair's accountants and the public. The $23,000 discount was not reflected in the invoice filed by

Catering with a Flair with the state. Revealing knowledge of the improper nature of the discount, Rescignano explained that "because of the state . . . you got people watching every move you make sometimes," so he could not tell the State Fair's accountant that this was a "$6,000 wedding" when there was something like "$6,000 worth of shrimp" alone. Rescignano claimed that Catering with a Flair intended to pay the requisite percentage of its catering income from this event to the state based on the original cost of $43,101.65, not the discounted amount of $20,000 eventually paid by Cappuccilli. Catering with a Flair allegedly was to bear the lost difference. However, the contract between the State Fair and Catering with a Flair includes an annual cap on how much the vendor must pay. Since Catering with a Flair had reached its annual cap in June 2004, it did not pay any percentage of its income from this event to the state.

Nevertheless, the invoice Catering with a Flair submitted to the State Fair was never received by the Fair's accountants. Instead, Cappuccilli took it and, according to a Fair accountant, stated, "'I don't want everyone to know my business'" so "'these reports will be put into my office safe.'" Richard Guanciale, who was in charge of accounting for the Fair at the time, denied knowing that Cappuccilli did not pay full value for his wedding receptions. When advised by the Inspector General of the discounts, Guanciale stated that Rescignano "cut him a deal because he's a friend of his. That's a big cut."

Around the time of the wedding, and perhaps not coincidentally, Cappuccilli asked Michael McCormick, a Supervising Attorney at Agriculture and Markets, if the public could obtain Catering with a Flair invoices possessed under the Freedom of Information Law (FOIL). McCormick informed Cappuccilli that the documents in fact would be subject to FOIL and available to the public. When the Inspector General sought to obtain documentation from the State Fair regarding Cappuccilli's 2004 wedding reception, the Inspector General was unable to locate any records in Fair offices pertaining to the event or for the entire month of June 2004. [15] Yet, the Fair office files contained records for every other month from July 2002 to June 2009. A State Fair accountant reported to the Inspector General that Cappuccilli confronted her after the wedding and that he removed the records from the Fair's finance office.

[15] The Inspector General obtained the invoice and other supporting documents from Catering with a Flair.

Removing, destroying or concealing a public record without authority and with the intent to defraud, constitutes the "D" felony of tampering with public records in the first degree.[16]

3. *Cappuccilli Misappropriated State Resources for the Wedding Reception*

Not only did Cappuccilli receive a huge discount from a state vendor and conceal the cost, but the Inspector General determined that Cappuccilli misappropriated more than $8,000 worth of State Fair staff time and materials to improve the area of the Fairgrounds where the wedding reception was held. The main activities of the reception were held inside a tent erected in the drained pond located within the State Park on the Fairgrounds. Nearby structures were also used during the reception, including a State Parks building where cocktails were served.

The pond area inside the Fairgrounds as it normally appears in the off-season (left) and during the Fair.

Wedding reception photographs showing (left) guests gathering outside of a State Park pavilion which is adjacent to the pond area, and the (right) entrance leading down into the tent-covered drained pond.

[16] Penal Law § 175.25.

Fair employees reported to the Inspector General that a substantial amount of work was performed by state employees at state expense in the drained pond and surrounding area prior to the wedding at Cappuccilli's direction. Fair staff emptied, sandblasted and painted the pond. The Fair's carpenters built steps and ramps leading into the drained pond, and a temporary fountain was installed inside the pond. Numerous annual and perennial flowers were purchased and planted by Fair personnel. Staff also hung decorative lights in the trees surrounding the pond area.

Then-Assistant Fair Director Kathleen Hoffman-Davis said she was aware of the stairs and ramps that were built to allow access to the pond but was reportedly told by Cappuccilli that those expenses would be "invoiced to him" because those items had no future use by the Fair. She further described substantial activity by state employees at the pond at that time in the preparation for the wedding, all work performed by state employees during state time. Hoffman-Davis testified there was no discussion about reimbursement for the Fair employees' labor for this personal event. The Inspector General examined the Fair's records, along with Cappuccilli's personal bank and credit card statements, and found no evidence of any reimbursements related to the wedding reception made by Cappuccilli.

Hoffman-Davis admitted to the Inspector General, "I assisted in getting the area ready in the days prior to that event." She added that she took Wednesday, Thursday, and Friday before the June 19, 2004 wedding as vacation days, so she could help get everything ready. Cappuccilli approved her time off to prepare for the wedding. "It was not unusual for Peter to ask me to take a role in ensuring some things that were going to take place." Asked why she took vacation time for the three days prior to the wedding, Hoffman-Davis commented, "I felt it was the proper thing to do not to be on state time that Wednesday, Thursday, Friday prior to the wedding because, honestly, that's all I was going to do those days. The state was not going to benefit from my time those days." She added, "Something in me knew that it was the right thing to do [take vacation]."

Through interviews and analysis of time cards and corresponding work location notes, the Inspector General determined that at least seven State Fair employees provided services in

preparation for Cappuccilli's 2004 wedding reception. The Inspector General established that Cappuccilli misappropriated in excess of $8,000 in state property or resources for his personal benefit: over $3,500 in personal services performed by Fair employees and more than $4,500 in goods purchased by the Fair for the wedding reception.

The pond which Cappuccilli directed to be drained and prepared for his daughter's wedding, while located on the Fairgrounds, falls within the authority of the New York State Office of Parks and Historic Preservation and constitutes the smallest state park in the state. Nevertheless, Cappuccilli had Fair personnel undertake what one employee termed a "major job." The Fair's utility department supervisor told the Inspector General that Fair staff did "a lot of work" in the pond area "just before Peter's wedding." This supervisor advised the Inspector General that "never" before had Fair staff maintained the concrete in the pond, rather State Park employees did such work. He estimated that Fair staff spent two to three weeks preparing the pond area for the wedding. The Fair's painting crew supervisor was similarly asked by the Inspector General if Fair staff had ever painted the pond before or since the wedding, he responded, "No." He too said it was usually done by State Park staff every year. Fair personnel painted the fence surrounding the pond, as well as the pond edge, and Fair staff constructed a fountain for the wedding reception.[17]

Based on the employees' own descriptions of their work assignments at that time, seven employees worked nearly a total of 200 hours in preparation for the event. The total value of these services, determined through payroll information provided by the Fair, is $3,531.38. As one Fair employee commented, this work was done because, "they wanted it to look real nice and fixed up . . . for the wedding." Asked why they did this personal work for Cappuccilli, Fair maintenance staff consistently reported to the Inspector General that they just followed orders

[17] The Inspector General identified other instances when Cappuccilli used Fair employees for personal endeavors. A Fair electrician testified that on several occasions he performed personal electrical work on his own time for Cappuccilli, including re-wiring Molly (Cappuccilli's daughter) and Kurt Stroman's residence. While not ordered to undertake this work, he commented that it's "tough to say 'no' to the Director." He said he was reimbursed for the cost of materials, but not for his approximately 80 hours of labor. He valued the service he provided at Cappuccilli's daughter's house at about $1,500 to $2,000. The electrician remarked, "I expected some compensation, but because he [Cappuccilli] was the Fair Director, I didn't pursue the issue."

from above. As members of the "exempt" category of state employment, Fair workers serve at the pleasure of the Fair administration and lack civil service protection.

The Inspector General also found that Cappuccilli improperly authorized the purchase by the Fair of over $4,500 in supplies used to prepare for his daughter's wedding reception. The Inspector General analyzed documents related to the purchase by the State Fair of materials and equipment utilized in improvements made to the pond by Fair employees prior to Cappuccilli's 2004 wedding. This analysis excluded items that otherwise would have been purchased by the Fair. For example, the State Fair normally purchases flowers each year in preparation for the Fair, so flowers purchased prior to the wedding were not considered. On the other hand, Fair staff normally did not sandblast the cement pond area; therefore, equipment and materials, such as Black Beauty blasting sand, purchased in preparation just prior wedding was included in the total.

Supplies and material purchased in preparation for the wedding consisted of $360 for cement to repair the pond at the State Park, $600 in sandblasting material and equipment to strip the paint from the pond, and $3,593 in paint and other materials utilized to repaint and finish improvements to the State Park area. The total value of the equipment and materials is $4,553. This expense was not incurred by the State Fair in years prior to or in years following the 2004 Cappuccilli wedding. Simply stated, the State Fair purchased over $4,500 in supplies and materials for Cappuccilli's personal benefit.

4. *Cappuccilli Misappropriated Fair Space and Cost the Fair Revenue*

Fair staff and materials were not the only expenses incurred by the Fair to Cappuccilli's personal benefit; he also misappropriated Fair space. In addition to Cappuccilli not paying for use of the pond area and the Fairgrounds for his daughter's wedding reception, the Fair's Exhibition and Events Manager informed the Inspector General that she was ordered by then-Assistant Director Michael Sommers to "block out" June 17, 2004 through June 20, 2004, for all of the Fair's buildings near where the wedding reception was held, thus costing the state revenue. This included the Center of Progress, the Horticulture Center, the International Building, and the

Chevy Court. "I just was told we were not to book anything in the buildings up in the upper part of the Fairgrounds, which would be the Center of Progress, Hort [Horticulture Center], International, and Chevy Court . . . due to a private event," which she later learned was Cappuccilli's daughter's wedding reception.

The Fair's Exhibition and Events Manager expressed to the Inspector General concerns about Cappuccilli's personal wedding reception displacing other potential events and revenue-generating opportunities. "I did not feel it was probably the proper thing to do. I mean, we are here to have events, but I guess when you are directed by your supervisor . . . I'm going to do pretty much what he tells me."

As Fair Director, Cappuccilli exercised control over the four Fair buildings owned by the state. By "blocking out" those four buildings for the wedding reception, Cappuccilli prevented their rental by paid users, which could have earned the Fair nearly $44,000. Viewed another way, Cappuccilli in effect leased Fair space worth that amount for his daughter's wedding reception for free. The daily rental fees for these locations in 2004 were as follows:

State Fair Buildings	Daily Rental Fee
Center of Progress	3,575
International	1,875
Horticulture	2,530
Chevy Court	3,000
Daily Total Rental Fee	**10,980**
4-Day Total Rental Cost	**43,920**

In one instance, to accommodate the wedding reception, an event that already had been scheduled was canceled, costing the Fair approximately $17,000 in lost revenue. Sommers ordered the Fair's Exhibition and Events Manager to remove from the calendar the B-Jam event, a country music concert featuring various performers which had been scheduled for the same date as the Cappuccilli wedding reception. A Clear Channel radio station had sponsored the annual B-Jam on a weekend in June for several years at the Chevy Court pavilion on the

Fairgrounds and typically attracted approximately 8,000 people. The Fair's Exhibition and Events Manager advised the Inspector General, "I felt kind of bad to have to say [to Clear Channel], you can't have your event here." Witnesses told the Inspector General that B-Jam would have disturbed the wedding reception, as it was a music show that lasted all day and into the evening. "There would be commotion," said one Fair employee. In simple terms, Cappuccilli had an event canceled that would have earned the state money in return in lieu of his daughter's wedding reception, which did not earn the State Fair any money, and, to the contrary, cost the state substantial funds.

A Clear Channel official interviewed by the Inspector General recalled being informed by the Fair that there was a scheduling "conflict" and "they could not accommodate us on that Saturday night [June 19, 2004] and there was something, too, about not being able to move in." While he did not know what the "conflict" was, he later heard that Cappuccilli's wedding was held that day, so he assumed that the wedding was the scheduling conflict. Asked directly whether he thought the wedding was the conflict, the Clear Channel official laughed and said, "Yeah. Yes." He commented, "I didn't pass judgment on that. I just said, 'Okay, well, it wasn't available.'" The event was moved to the Onondaga Lake State Park despite the fact that the Fairgrounds remained Clear Channel's "first choice." B-Jam returned to the Fair in 2005, but due to the economy, it was canceled for 2009.

Depicted below is a portion of the Fair's June 2004 events calendar showing several buildings reserved for a "private event" from June 17-20. The erasure of the B-Jam concert, which had been scheduled for June 19, can be faintly discerned.

The Fair's Exhibition and Events Manager reported that the 2003 rental fee that Clear Channel paid the State Fair for the B-Jam concert was $8,268.15. The Fair also earned a portion

of concession sales during the event. The chart below sets forth the revenue paid to the State Fair from the 2003 B-Jam concert, which the State lost in 2004 due to the Cappucccilli wedding.

2003 B-Jam Concert	State Revenue
Rental Chevy Court and Equipment	8,268.15
Food	3,571.31
Beer	4,624.08
Vending	1,322.98
Total	**17,786.52**

Added to the loss from the B-Jam concert are, as discussed above, potential rental fees for the building and space surrounding the wedding reception area that were blocked out to potential renters for four days between June 17-20, 2004. The combined potential lost revenue to the state from the rental of Fair buildings and the known loss from the canceled B-Jam concert as a result of Cappuccilli's wedding totals $55,706.52.[18] The total value of personal benefit to Cappuccilli was even higher, as depicted in the chart below.

Value of Personal Benefit to Cappuccilli From 2004 Wedding Reception	
Item	**Amount**
Free rental space for wedding	43,920.00
2004 Wedding Materials	4,554.17
2004 Wedding Labor	3,531.38
2004 Wedding Discount	23,101.65
Total	**75,107.20**

Director Cappuccilli's conduct clearly breached his fiduciary duty to the State Fair by favoring his personal event to the detriment of the Fair. Additionally, Cappuccilli repeatedly misappropriated state property and resources worth tens of thousands of dollars for his personal benefit. Such misconduct might constitute Grand Larceny in violation of the Penal Law.[19]

[18] The two days of standard rental of Chevy Court are deducted since that fee is already included in the B-Jam losses.
[19] See Penal Law Article § 155.

As previously mentioned, the Inspector General attempted to interview Cappuccilli about the 2002 and 2004 wedding receptions he hosted at the State Fair, but he refused to be interviewed on the grounds that his answers could implicate him criminally.

G. Two Additional Instances of Misconduct by Cappuccilli

1. *Cappuccilli's $12,000 Pledge to the Syracuse University Press*

Cappuccilli abused his authority and the State Fair's resources by improperly pledging $12,000 in Fair funds and in-kind donations to the Syracuse University Press in support of its new encyclopedia. In return, Cappuccilli's name appeared in the encyclopedia as a corporate sponsor and several copies of the encyclopedia.

In November 2004, then-Marketing Director Joseph LaGuardia met with representatives of the Syracuse University Press. Discussed during this lunch meeting was the Fair becoming a sponsor of the New York State Encyclopedia. LaGuardia advised the Inspector General that he viewed the encyclopedia as a marketing opportunity for the Fair as it would reach a broad audience. The single-volume encyclopedia, published by the Syracuse University Press, was printed and made available for sale to the public in 2005 at a retail price of $45.

Cappuccilli subsequently became involved in the idea. Along with providing a history of the State Fair for the encyclopedia, Cappuccilli committed the Fair to a $12,000 pledge, as a "Major Gift" donor to the University Press. The pledge included three $2,000 installments to be paid to the press from 2005 to 2007. (Records located by the Inspector General show that the Fair paid $2,000 in 2005, but made no payments in 2006 and 2007.) The Fair also pledged $6,000 in in-kind donations of Fair parking passes and exhibit space. In return for the total $12,000 pledge, the Fair would also receive 10 complimentary copies of the encyclopedia each year of the term of the pledge (2005-2007). Additionally, the Fair would be mentioned in the encyclopedia along with other notable New York State related topics. As a major donor, the Fair would also receive recognition in the encyclopedia.

Article VII, Section 8(1) of the New York State Constitution states: "The money of the state shall not be given or loaned to or in aid of any private corporation or association, or private undertaking." This section of the constitution was adopted in 1846, to restrain certain financial practices that forced the state to make good on its loan of credit to private corporations and to limit increases in public funds appropriated to charities.[20] Therefore, gifts of public funds to private undertakings, or by pledging public credit on their behalf, was banned, irrespective of how beneficial or desirable to the public the subsidized activity might seem..

In June 2006, 18 months after the initial pledge by the Fair, Lawrence Emminger, then an internal auditor for Agriculture and Markets, reviewed the purchase requisitions to be paid by the Fair. When Emminger discovered a requisition to be paid to the University Press in the amount of $2,000, he requested that the Department's counsel's office review the legality of the pledge. In response to this request, Supervising Attorney Michael McCormick found that "the Pledge in its original form is clearly the gift of State money . . . and violates New York's constitutional prohibition of the gift of State money."

It appears as though the pledged payments of $2,000 in 2006 and 2007 were not made after these objections were raised. However, the State Fair remitted $2,000 in 2005 to the Syracuse University Press. Additionally, the press received free rental space during the 2005 and 2006 State Fairs. The space normally rented for $1,735. Therefore, the total value of the donation actually provided to the Syracuse University Press was $4,470.

In exchange, the press provided the Fair 10 complimentary copies of the encyclopedia in 2005 and 2006 valued at $900. Of the 20 copies received by the Fair, only one remains on site. The whereabouts of the other 19 copies is unknown by the current Fair management.

Notably, the State Fair, along with several other sponsors, was recognized on a page in the beginning of the encyclopedia in a section called "corporate contributors."

[20] Peter J. Galie, *The New York State Constitution – A Reference Guide* (1991).

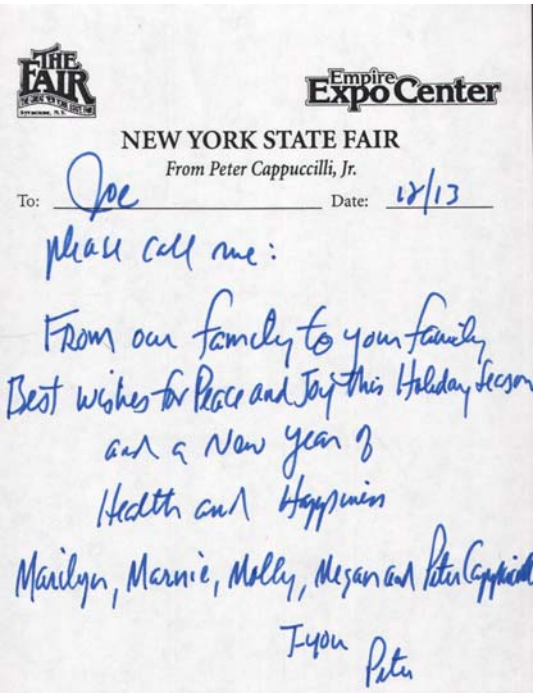
An enlarged copy of the State Fair's advertisement
as it appeared inside the Encyclopedia.

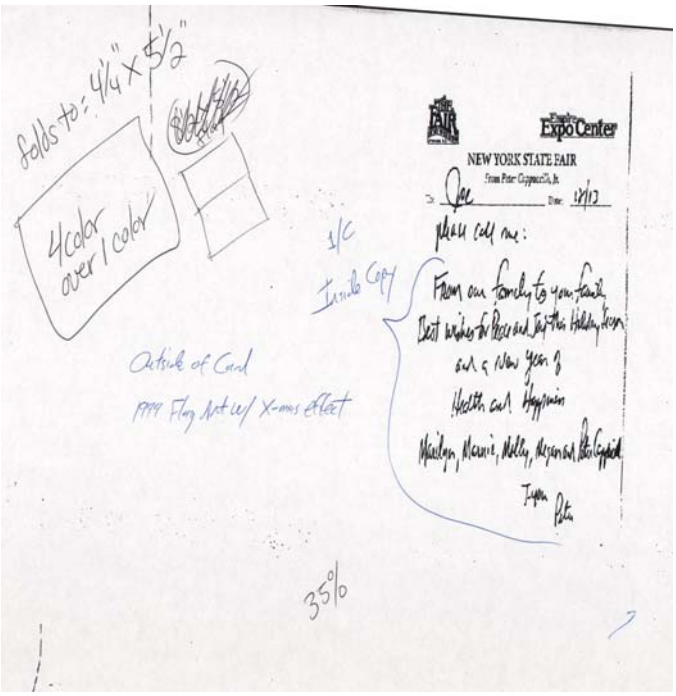
The State Fair was the only "corporate sponsor" that is a governmental entity that contributed to this endeavor. Furthermore, Cappuccilli's name gratuitously appeared along with State Fair's logo and name, exemplifying his use of Fair's resources for self-promotion.

2. *Cappuccilli's State-Funded Personal Holiday Cards*

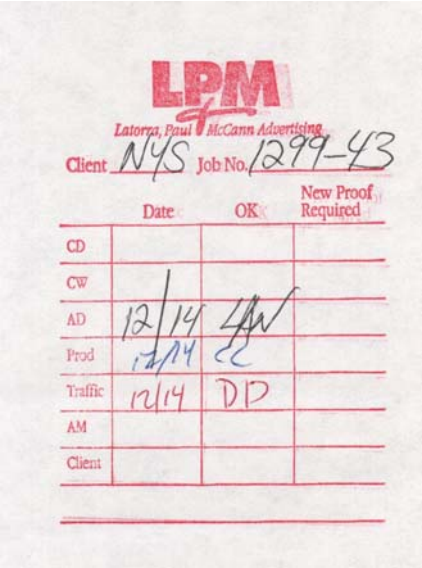
Evincing Cappucilli's inability to distinguish his personal interests from his official position, the Inspector General found that a state contract between the State Fair and Latorra, Paul and McCann Advertising was repeatedly used to produce personal holiday greeting cards for Cappuccilli and his family. While the front of the card references the State Fair, the inside salutation is clearly personal. Indeed, the card is from not only Cappuccilli but also from his wife and children as their names are listed along prior to his. Conspicuously absent are Cappuccilli's official title as Fair Director and any mention of State Fair staff. In fact, the State Fair is not even mentioned on the inside of the card. The card depicted below, from 1999, is one example of the personal holiday cards discovered by the Inspector General during its investigation.

When the Inspector General asked the State Fair's former Marketing Director, Joseph LaGuardia, how Cappuccilli could use a Fair vendor to make him a personal holiday card, LaGuardia was unable to provide an explanation. Records obtained from the Fair by the Inspector General, however, revealed that LaGuardia and his marketing office were the integral link between Cappuccilli and Latorra, Paul and McCann Advertising during the card's design and production process. As illustrated below, there is a handwritten note from Cappuccilli instructing LaGuardia on what language to include inside the card. The phrase inscribed by Cappuccilli in the memo to LaGuardia is the very same that appeared in the holiday card depicted above.





The Inspector General attempted to obtain by subpoena records regarding Cappuccilli's holiday cards from the Latorra, Paul and McCann Advertising, but was advised that any documentation would have been destroyed as a matter of routine. No records could be found at the State Fair regarding payment for Cappuccilli's holiday greeting card. However, a 1999 Latorra, Paul and McCann buck slip (shown below) affixed to one of Cappuccilli's holiday card proofs identified the "client" as "NYS," strongly suggesting that New York State, not Cappuccilli, paid for the production of the card.



LPM

Latorra, Paul & McCann Advertising

Client NYS Job No. 1299-43

	Date	OK	New Proof Required
CD			
CW			
AD	12/14	[illegible]	
Prod	12/14	[illegible]	
Traffic	12/14	DP	
AM			
Client			

Although a dollar value cannot be placed on this misuse of State Fair resources by Cappuccilli, clearly these holiday cards were a means of self-promotion paid by the State Fair.

H. Nepotism and Cronyism Under Cappuccilli

Hiring at the State Fair during Cappuccilli's tenure as Director was marked by nepotism and cronyism. The Inspector General determined that under Cappuccilli the Fair paid over $829,411 to Cappuccilli's friends and relatives of State Fair employees. A review by the Inspector General of the State Fair's payroll records reveals that between 1995 and 2006 – Cappuccilli's tenure as Director – more than 40 relatives of Fair employees were hired by the Fair. Their pay ranged from approximately $200 to as much as nearly $50,000 per year. "This was a family venture," stated former Marketing Director LaGuardia, whose three children worked at the Fair at various times. As Fair Director, Cappuccilli approved all hiring.

Current Agriculture and Markets First Deputy Commissioner Robert Haggerty stated that he believed the mindset of the Fair's management was, "now it's time for the kids, the cousins, the uncles, the aunts, to all get on the payroll." Haggerty added that the State Fair "is not someone's piggy bank." Lawrence Emminger, an Agriculture and Markets official who audited the Fair during Cappuccilli's tenure, described it as a "good old boy network." To Emminger, it was a "Fair gone wild."

1. *Public Officers Law Prohibitions on Nepotism*

The Department of Agriculture and Markets and Industrial Exhibit Authority are state agencies and their officers and employees required to follow the ethics guidelines contained in the New York State Public Officers Law. Pointedly, these ethics rules are designed to prevent not only actual conflicts of interest but to dispel even the appearance of such.[21] Specifically, "These standards attempt to assure the public's confidence in State officers and employees as they discharge their official duties. A public servant's actions and affiliations must be above reproach, even if no actual conflict of interest is present. Any associations that give rise to the suspicion of favoritism, self-dealing or personal private gain by State officers shake the public's confidence."[22]

As state officers, Cappuccilli and other Agriculture and Markets and IEA employees were required to abide by the provisions of the state Public Officers Law directed at dispelling even the appearance of favoritism. Various provisions of Public Officers Law § 74 directly prohibit such conduct. For example, section 74(3) provides that:

> (f) An officer or employee of a state agency . . . should not by his conduct give reasonable basis for the impression that any person can improperly influence him or unduly enjoy his favor in the performance of his official duties, or that he is affected by the kinship, rank, position or influence of any party or person.
>
> (d) No officer or employee of a state agency . . . should use or attempt to use his or her official position to secure unwarranted privileges or exemptions for himself or herself or others….
>
> (h) An officer or employee of a state agency . . . should endeavor to pursue a course of conduct which will not raise suspicion among the public that he is likely to be engaged in acts that are in violation of his trust.

These ethics rules have been interpreted by the State Ethics Commission, the forerunner to the current Commission on Public Integrity, to prevent actions such as the hiring of relatives

[21] The State Ethics Commission/Commission on Public Integrity have long-found that "Public Officers Law § 74 bars activities that create even the appearance of a conflict of interest; an actual conflict is not necessary for there to be a violation of the law." *See* Ethics Comm. Op. No. 94-17.

by public officers unless strict preventative measures were enforced.[23] The Ethics Commission has held that state officers may not be involved in decisions which could result in financial benefit to relatives.

The statute of limitations for the Commission on Public Integrity to take action for violations of Public Officers Law § 74 is one year after the individual has left state service. In this case, this time limitation expired well before complaints were even made to the Inspector General. Nonetheless, exposing the pervasive culture of nepotism and cronyism at the State Fair in order to avoid future pitfalls is warranted.

Upon review of Fair payroll records, a pattern quickly emerges. The surnames of the Fair's part-time, seasonal, and full-time employees repeat numerous times. One of the most egregious examples is that of the Guanciale family. Richard Guanciale, the former longtime Business Manager of the Fair, had multiple relatives working there. The Inspector General found that between 1995 and 2007 Guanciale's wife and three daughters worked for the Fair. In total the family earned over $53,000 for part-time work. Most troubling is that in 2007 Guanciale wrote and signed a check payable to his daughter for an advance on payroll. Guanciale's drafting the check to his relative violated the Fair's petty cash policy and procedure.

Fair employees were not the only ones whose family members received preferential hiring opportunities. IEA Board member Santo Difino's wife and four children were employed at the Fair between 1998 and 2006, receiving over $46,000 for part-time employment.

The preferential treatment bestowed upon family members of Fair employees and IEA board members was not a secret. Multiple media reports by Syracuse-area newspapers questioned the familial bias in the Fair's hiring practices. Cappuccilli acknowledged that the hiring by the Fair could be viewed as biased, stating in a 2001 press report that "you could make a case for it." Despite the scrutiny, however, nepotism persisted.

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[22] *See* Ethics Comm. Op. No. 96-29.
[23] *See, e.g.,* Ethics Commission Op. Nos. 91-21; 94-24; 89-50; and Op. No. 93-37.

The criticism of the Fair's hiring was not only directed from outside the Fair. Agriculture and Markets Internal Auditor Lawrence Emminger attempted to stem the tide of family members being hired by the Fair, but to no avail. In December 2005, Emminger discovered that part-time employee Travis Kuhl, the son of Fair employee Terry Kuhl and Fair Interim Sales Manager Timothy Kuhl, had posted floor plans of Fair buildings on his personal Web site. Emminger contacted then-Fair Assistant Director Kathleen Hoffman-Davis and was informed that Kuhl was no longer a part-time employee of the Fair. Hoffman-Davis added that Travis Kuhl only had been "doing some things" on his father's computer. Yet two months later, in February 2006, two purchase requisitions were issued to pay Travis Kuhl $3,200 for designing and hosting the Fair's Web site.

Emminger researched the information provided regarding Travis Kuhl's business, and found that the billing address was the same as his father's private business who was currently employed with the Fair (discussed further later in this report). Emminger examined Kuhl's Web site and found that in advertising material Kuhl claimed to host the Web site of Camex Reality, a Syracuse-based reality corporation owned by the Cappuccilli family, and Bellevue Country Club, of which Fair Marketing Director Joseph LaGuardia served as Board President.

These details concerned Emminger, who disapproved of the Fair contracting with Travis Kuhl for Web site hosting. These concerns were reported to Agriculture and Markets and State Fair management. Nevertheless, the Fair circumvented Emminger's attempts to refuse payment to Travis Kuhl. Rather than issuing him purchases orders, Kuhl was hired by the IEA and ultimately paid more than $20,000. Furthermore, Kuhl's hourly rate of $25 per hour was more than four times the amount of other individuals hired to the same title. In interviews conducted by the Inspector General, Fair employees confirmed that Kuhl was hired to host and develop the Fair's Web site.

Emminger was aware that Fair officials had circumvented his protestations by hiring Travis Kuhl under the auspices of the IEA. Emminger reported this action to Agriculture and Markets officials; however, they failed to respond in any way.

2. *Cappuccilli Hires His Friend Timothy Kuhl*

The Inspector General found that the Fair hired longtime Cappuccilli friend Timothy Kuhl to lead the Fair's sales department, circumventing procurement rules and paying Kuhl even after he had relocated to North Carolina and accepted fulltime employment with another employer.

A discussion of the history and nature of the Fair's sales department is necessary to understand the egregious nature of Cappucilli's hiring of Kuhl. On May 31, 1996, the IEA Board passed a resolution creating a sales department whose primary purpose was the promotion, through corporate sponsorships and otherwise, of the State Fair and the year-round exposition opportunities on the Fairgrounds. It also was devised as a means to keep the Fair's ticket prices down. In November 1996, James Goss was hired to a full-time salaried position based in Syracuse as the Fair's first sales manager. Ellen Paprocki served as the co-manager. According to Linda Ryan, who worked at the Fair as a Sales Account Executive from 1997 until 2009, the sales department had four or five full-time sales staff, four independent contractors, a coordinator, and a manager and a co-manager.

The sales department personnel received a salary plus a four percent commission and bonuses based on the value of an individual's aggregate sales. Ryan justified this unusual payment structure, stating that the sales staff is a revenue source for the Fair. The sales manager is responsible for determining the value of the sale or trade[24] to calculate commissions. If a sale involves a multi-year contract, the salesperson will receive a commission each year for the length of the contract.

During the final years of the Cappuccilli administration the sales department was reorganized. Goss remained the department's manager while Ryan and Andrea DeRoberts became the only two IEA employees working in the sales department. The department was also

[24] Very often the Fair used to trade or barter advertising space in exchange for service or items other than cash. For example a hotel may receive advertising space in return for several free nights at the hotel which the Fair can use to lodge competition judges or entertainers. The practice was eliminated under Director O'Hara.

staffed by two consultants, Harry Bellardini and Frank Wilson. Both consultants were former full-time IEA staff members, who were close to retirement but wished to manage their recurring clients. Cappuccilli allowed them to continue as consultants, and, while they received no salary, they were awarded a 15 percent commission rate. Longtime Fair Business Manager Richard Guanciale described Wilson and Bellardini as "political hires" both of whom were active in the Republican Party.

In approximately 2002, Cappuccilli hired another sales consultant, Timothy Kuhl. Kuhl, who currently resides in Florida, advised the Inspector General that he was brought in by Cappuccilli because he had previously known him from their work for the Syracuse Crunch hockey organization.[25] Kuhl was hired on a part-time commission basis earning approximately $12,000 combined in 2002 and 2003.

On May 5, 2004, the IEA Board passed a resolution which called for the Fair to retain by a contract not to exceed five months an unnamed person to serve as Interim Sales Manager. The justification for this resolution was the purported absence of Goss, the then Sales Manager, who was reported to be out indefinitely on sick leave. The Interim Sales Manager was authorized to receive not more than $4,250 per month draw against future commissions earned. On May 15, 2004, 10 days after the resolution was signed by Cappuccilli, the Fair paid $4,250 to Kuhl, his first draw against commissions.

[25] The Syracuse Crunch is a professional hockey team playing in the American Hockey League and is affiliated with the Anaheim Ducks organization of the National Hockey League.

INDUSTRIAL EXHIBIT AUTHORITY
RESOLUTION
04-8

At a regular meeting of the Industrial Exhibit Authority held at offices of the Industrial Exhibit Authority, 581 State Fair Boulevard, Syracuse New York on May 5, 2004, attended by a majority of its members, and after due discussion, be it

RESOLVED, that the Manager is authorized to retain, by contract not to exceed five (5) months, a person to serve as Interim Sales Manager during the prolonged absence of the Sales Manager. The Interim Sales Manager shall receive not more than four thousand two hundred fifty dollars ($4,250) per month on a draw against commissions earned for services provided.

The Manager is hereby authorized and directed to take such action as necessary to effect the foregoing.

IN FAVOR 4 OPPOSED 0

ATTEST
Kathleen A. Hoffman

Peter Cappuccilli, Manager

It is important to note that while the resolution required a contract, no contract was ever entered into or even contemplated by the Fair concerning Kuhl's employment. When interviewed by the Inspector General, Kuhl characterized his arrangement with the Fair as "unusual" and "out of the box." Indeed, the Inspector General concluded that no other sales staff member received advances on future commissions, except Kuhl. He explained that other contract sales personnel were not compensated on a monthly basis. Kuhl reported that he was paid on a monthly basis because he was "acting as the sales manager." He described this position as having more administrative responsibilities including the supposed "training and coaching" of the Fair's two sales employees.

Although the resolution called for the existence of this position for only five months, expiring in October 2004, on February 2, 2005, the IEA Board passed another resolution retroactively extending the previous resolution from October 2004 for an indefinite period.

INDUSTRIAL EXHIBIT AUTHORITY
RESOLUTION
05-04

At a regular meeting of the Industrial Exhibit Authority held at offices of the Industrial Exhibit Authority, 581 State Fair Boulevard, Syracuse New York on February 11, 2005, attended by a majority of its members, and after due discussion, be it

RESOLVED, that the Manager is authorized to retain, by contract a person to serve as Interim Sales Manager during the prolonged absence of the Sales Manager. The Interim Sales Manager shall receive not more than four thousand two hundred fifty dollars ($4,250) per month on a draw against commissions earned for services provided.

This Resolution shall supersede Resolution 04-08 and shall be deemed effective from the expiration of the five-month period provided in that Resolution.

The Manager is hereby authorized and directed to take such action as necessary to effect the foregoing.

IN FAVOR 4 OPPOSED 0

ATTEST

Peter Cappuccilli, Manager

Kuhl remained in the Interim Sales Manager position and continued to receive $4,250 a month until approximately November 2006. From the period May 2004 to January 2007, when he severed his ties to the Fair, Kuhl received a total of 31 draws on commission payments of $4,250, totaling $131,750. Kuhl stated that at the end of each year he and Guanciale reviewed his sales accounts and determined if the appropriate commission had been paid. Kuhl described this process as having "some give and take and you just do what's right, hopefully." As such, he also received four additional commission payments totaling $31,153.25. In total, during the 31 months Kuhl served as "Interim Sales Manager," he received $162,903.25 in commission payments.

Both resolutions justify retaining Kuhl as the "Interim Sales Manager" due to the "prolonged absence of the Sales Manager," James Goss. Kuhl stated that Goss "got sick" and purportedly Cappuccilli had asked Kuhl to step in due to Goss's upcoming retirement. Kuhl was unclear regarding the timing of resolutions placing Kuhl in the position and the departure of Goss from the Sales Manager position. Linda Ryan stated Goss was a good supervisor but he left because his health was declining and Cappucilli then hired Kuhl. Guanciale said that Goss was replaced by Kuhl. Guanciale thought Goss had some health issues and that Cappuccilli wanted to bring on Kuhl to replace him. He said, "Peter thought we needed a change."

While witnesses seem to confirm Kuhl was hired to fill in due to Goss's health-related absences, the evidence does not support any claim that Goss was absent and not able to perform in his capacity as the Sales Manager. To the contrary, during the month prior to Kuhl being hired, April 2004, Goss's time card reveals that he took 14 days of leave. However, during the next 11 months, from May 2004 until his retirement in April 2005, time records show that Goss took just approximately seven weeks of accrued leave. Approximately two weeks of this leave was in the final month prior to his retirement and immediately after he had received a demotion from Cappuccilli. These records clearly do not support any "prolonged absence" of Goss referred to in the above resolutions. To the contrary, during the two months preceding the passage of the second resolution, Goss had taken less than three days leave.

Goss testified that he was not aware that Kuhl was being paid as a Sales Manager while Goss was still employed at the State Fair. However, Goss said that his subordinates in the sales department "were told not to answer to me . . . because Tim [Kuhl] was going to be the Sales Manager." Ultimately, in February 2005, Cappuccilli informed Goss that he was going to be demoted to a part-time procurement position in the sales department and would be held to stricter time and attendance requirements than previously enforced. At the same time, Cappuccilli advised Goss that he would be willing to accept Goss's retirement. Goss stated that due to the demotion, he filed his retirement papers on April 23, 2005.

Following Goss's retirement, Kuhl's compensation for working at the Fair remained a steady $4,250 per month, but for an additional commission payment of $4,545 in October 2005.

Then in November 2005, during the final days of Cappuccilli's service as Fair Director, the IEA Board passed a resolution authorizing the Fair to pay Kuhl a salary of $5,000 per month for six months as compensation for his work as the Interim Sales Manager. This resolution was passed during a November 16, 2005 IEA Board Meeting which was attended by Cappuccilli, the now former Director, and his successor, Bebette Yunis. The resolution was signed by Yunis.

INDUSTRIAL EXHIBIT AUTHORITY
RESOLUTION
05-9

At a regular meeting of the Industrial Exhibit Authority held at the office of the Industrial Exhibit Authority, 581 State Fair Boulevard, Syracuse, New York on November 16, 2005, attended by a majority of its members, and after due discussion, be it

RESOLVED, that the Interim Sales Manager shall receive a salary of five thousand dollars per month, in addition to the draw against commissions as provided in Resolution 05-04, for the months of October, November and December of 2005 and, and upon determination of the Manager, extended through March 2006. Any further extension for the Interim Sales Manager to be retained for any additional period beyond March 2006 will require approval of the Board upon the recommendation of the Manager.

The Manager is hereby authorized and directed to take such action as is necessary to effect the foregoing.

IN FAVOR 4 OPPOSED 0

ATTEST

Barbara Yunis, Manager

During an interview with the Inspector General, Yunis described Kuhl as the Manager of the Fair's sales department. She claimed that it was necessary to hire Kuhl by resolution because of the compensation structure in the sales department. When provided with a copy of the IEA Board Resolution, Yunis provided varying explanations for the boost in salary, stating that "my

guess would be that either he had a new client or that he generated more money." She also stated "maybe it was in the form of a raise . . . I don't know . . . maybe it was acknowledging that he had done better." Likewise, Guanciale, the Fair's Business Manager at the time, testified:

> I don't know, I don't know for sure, because I didn't have nothing [sic] to do with negotiating a deal or anything like that but I think it was a bonus to him for being the manager of the department . . . I think Peter [Cappuccilli] felt that he should give him something else.

Even Kuhl could not provide an explanation for why he received an additional $5,000 per month for six months. At first he stated, "I really, really, really don't remember . . . it had to be because I did something good . . . I remember getting it . . . I just don't remember the why." He later claimed that the additional $30,000 was arranged by Cappuccilli and offered several conflicting justifications for the payments: that the payment was to "reward" him for his prior year's success; that this extra money was to equate his compensation with that of Goss; and finally characterizing the payment as a "bonus" that was spread out over time.

None of the witnesses interviewed by the Inspector General describe the payments as they are described in resolution, which is the awarding of a "salary" to the Interim Sales Manager," Timothy Kuhl.

At the conclusion of Kuhl's receipt of the additional $5,000 in March 2006, he accepted a full-time job working for the Carolina Hurricanes, a National Hockey League team, and relocated to North Carolina. The Inspector General was informed by Kuhl that he remained on as the Fair's Sales Manager in order to "see the Fair through." However, despite his move to North Carolina and his new full-time position, Kuihl continued to be paid $4,250 a month by the Fair until November 2006. In addition, he received $26,608.25 in commissions from October 2006 through January 7, 2007, when he received a final payment of $3,500.

When asked by the Inspector General how he could work full time for the Hurricanes in North Carolina and also manage the Fair sales staff in Syracuse, Kuhl replied, "There's probably not a great answer." He maintained that his role was to oversee the valuing of contracts at the Fair and that he kept in contact with Fair staff via e-mail. Kuhl also reported that he commuted

to Syracuse from North Carolina, estimating that he spent four out of 10 business days in Syracuse. Although it was a full-time job, Kuhl stated, "I wasn't down there full time." Several witness provided testimony, however, that casts serious doubt on Kuh's claims of frequent trips back to Syracuse. Notably, Andrea DeRoberts, one of the IEA sales staff members who Kuhl was reportedly supervising, did not know that Kuhl was still working for the Fair after he moved to North Carolina.

Similarly, Yunis, who was Fair Director during the time Kuhl was allegedly simultaneously working in both Syracuse and North Carolina, told the Inspector General that Kuhl was no longer Sales Manager when he moved to North Carolina and he was not full time at both the Fair and the Carolina Hurricanes. Yunis noted that Kuhl would return at various intervals to the Fair in order to conduct Sales Department business about twice a month. According to Yunis, Kuhl had an agreement with his Hurricanes supervisor to work his State Fair job, but conceded that she never had a direct conversation with Kuhl about the move or his job in North Carolina. In an attempt to distance herself from the Kuhl deal, she stated that when she arrived at the Fair to take over for Cappuccilli, the agreement with Kuhl was "already in place . . . I didn't have any reason to question it."

Agriculture and Markets Supervising Attorney Michael McCormick, who routinely provided legal counsel for the Fair, stated to the Inspector General that there was "no defense" for Yunis approving vouchers to pay Kuhl after he relocated to North Carolina. He noted that the practice should have been questioned by someone in the administration of the Fair. McCormick speculated that the Kuhl arrangement was just Cappuccilli helping out a friend. Agriculture and Markets' former Director of Internal Audit echoed these sentiments.

Michael Amendola, Chief Financial Officer/Alternate Governor for the Carolina Hurricanes, informed the Inspector General that Kuhl was employed in a full-time corporate sales position by the Hurricanes from the spring of 2006 until May 2008. He stated that job consistently required in excess of 40 hours per week. He added that the Hurricanes organization was not aware of any other employment by Kuhl while he

worked there, and the Hurricanes would not have permitted Kuhl to maintain a second job given the demanding nature of his position with the Hurricanes.

Guanciale admitted that Kuhl was working "for a period of time" for the Carolina Hurricanes while simultaneously employed by the IEA as an independent contractor. Although Guanciale conceded that that the circumstances of the arrangement do not look proper, he relied on the fact that "[w]hatever deal was cut with [Kuhl] was approved by the Board." Guanciale, however, could not explain why the Fair employed both Goss and Kuhl as Sales Managers from May 2004 until Goss's retirement in April 2005.

Martha Carpenter, who served as the IEA's Accounts Payable Clerk, advised the Inspector General that Kuhl "was really good friends with Peter [Cappuccilli]." Carpenter reported that Kuhl was paid through the IEA operating account and that there was no contract between Kuhl and the Fair. She stated that he was hired by resolution and speculated that "[e]verything they wanted to do that they could not do legally, they did through the IEA." She explained that when the Fair wished to purchase goods or services in a manner it believed would not be approved by the State Comptroller's Office, the Fair would do it through resolution of the IEA "where you did not have to follow any rules."

While it could not be retrospectively determined whether Kuhl earned the almost $200,000 paid to him by the State Fair from the IEA's operating account, the deal forged between Kuhl and his friend, Cappuccilli, reeks of cronyism and bears the characteristics of a "no-show" job. The extent of the procurement record regarding this $200,000 transaction are three one paragraph resolutions, two of which are signed by Cappuccilli and the third by Yunis on her first day of employment as Fair Director while under the watchful eye of Cappuccilli at the IEA Board meeting. Furthermore, these documents provide no explanation of the nature of the agreement, and, in fact, do not even mention Kuhl by name despite the fact that the resolution is clearly intended to benefit him.

In November 2005, the Board again bestowed upon Kuhl what can only reasonably be described as a gift of $30,000 paid to Kuhl in $5,000 increments. During an interview with the

Inspector General, Kuhl could not articulate any rationale supporting his receipt of these payments which he admitted were arranged by Cappuccilli.

Kuhl also received $60,608 in draws on commissions and in commissions after he had already accepted a full-time job in North Carolina. There is no justification to substantiate why the Fair paid over $60,000 to a contractor who was no longer working for the Fair and never even entered into a contract. Simply put, the IEA deliberately circumvented the procurement process to hire a friend of Cappuccilli in flagrant disregard of the State Finance Law.[26] Agriculture and Markets officials claimed that they did not attempt to interfere in Fair hiring practices because they viewed Cappuccilli as politically connected based upon his history in county Republican activities and his involvement in Governor Pataki's campaign.

Current Fair Director Daniel O'Hara advised the Inspector General that prior Fair administrations under Directors Cappuccilli and Yunis were involved in both the hiring of family members as well as the approval of family members' time and attendance records. When O'Hara became Fair Director in 2007, he said that he found that, "the sense of entitlement was systemic." O'Hara explained to the Inspector General that a review of the IEA pay structure was intriguing and revealed unbalanced compensation levels. He noted that certain employees received salary increases that were far beyond cost of living adjustments and Civil Service salary structure. According to Fair staff meeting minutes, O'Hara instituted a "policy of not hiring any family members of current staff."

With the elimination of the IEA, all State Fair employees now are Agriculture and Markets personnel and the filling of these positions must now comport with Civil Service Law and applicable state regulations.

The Inspector General's analysis of payroll records determined that Cappuccilli's friends and relatives of State Fair employees reaped more than $825,000 in salary from the state.

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[26] For example, State Finance Law § 163 sets forth requirements such as bidding contracts for services in excess of $50,000, and State Finance Law § 112 requires the State Comptroller to approve contract exceeding that threshold before the contract becomes effective. The State Finance Law is discussed at length in the next section.

IV. UNLAWFUL AND IMPROPER PROCUREMENT AND CONTRACTING PRACTICES

The Inspector General established that the State Fair and Agriculture and Markets flagrantly violated state procurement law on a number of occasions: when procuring wireless Internet services, when contracting with a booking agent for the Fair's 2008 concert series, and when hiring a fight promoter for the 2009 "Fight Night at the Fair." Fair and Agriculture and Markets officials displayed either a lack of knowledge or a lackadaisical attitude toward compliance with the law, all of which contributed to the recurring breaches of the State Finance Law.

State agencies must procure commodities, services, and technology in accordance with Article 11 of the New York State Finance Law. New York, via the State Procurement Council, has promulgated Procurement Guidelines to assist agencies in making purchases in accordance with the law by providing basic, systematic principles regarding procurement practices. [27]

In general, state contracting can be divided into two general categories: purchase (also known as "expenditure") contracts and revenue contracts. In a purchase contract, goods or services are purchased by the state from a private vendor. Under state law, if the procurement is in an amount over $50,000[28], the contract must be competitively bid in order to encourage equitable competition among vendors and to obtain a reasonable price. Competitive bidding further guards against favoritism, fraud and collusion and provides all qualified vendors an opportunity to obtain state business.

In contrast to a purchase contract, a revenue contract is an agreement between a state entity and a private company which does not involve obtaining goods or services but rather

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[27] *See* http://www.ogs.state.ny.us/procurecounc/pdfdoc/guidelines.pdf. Procurement Guidelines are established by the State Procurement Council pursuant to State Finance Law § 161(2)(d). The Council is responsible for study, analysis and development of recommendations to improve state procurement policy and practices; and, for development and issuance of guidelines governing state agency procurement. Membership includes the State Comptroller, Director of Budget, Commissioners of Economic Development and General Services serve ex-officio; seven heads of large and small state agencies appointed by the Governor; and, eight at large members and two non-voting members appointed by legislative leaders. By statute, the Commissioner of the Office of General Services serves as chair of the Council.

[28] This threshold was raised by the Legislature from $15,000 to the current $50,000 in 2006.

awarding a franchise, license, concession or similar recognition upon the private enterprise for the purposes of generating revenue for the state (e.g., a concession to a vendor at a state park). Unlike a purchase contract, a revenue contract need not be competitively bid under state law. Nonetheless, in order to ensure that any agreement reached is in the best interests of the state, that the process utilized to choose the vendor was reasonable, and the factors considered in choosing the vendor were applied fairly and consistently, state law unambiguously requires revenue contracts valued at over $10,000 to be approved by the State Comptroller **prior** to their execution.[29] Moreover, the State Comptroller has long held that while competitive bidding is not required, the agency entering into the revenue contract must demonstrate that a "fair and impartial competitive process" was employed.[30] The Comptroller has also recognized that the easiest way (and best practice) to guarantee such a fair and impartial competitive process is to secure competitive bids regardless of whether legally required.

Although it is not always readily apparent whether a contract is in the purchase or revenue category, in determining under which rubric a state contract falls, the "total character" of the proposed arrangement is examined. The Inspector General need not conclusively decide the appropriate category for this report. Irrespective of the characterization of the contract, Fair officials violated the State Finance Law by failing to implement a fair, competitive process and neglecting to obtain proper State Comptroller approval. Additionally, regardless of whether the contract is of the purchase or revenue variety, the Fair failed to abide by state law which required it to maintain a "procurement record" of the procedure used to choose the winning vendor in order to assure effective review.

The New York Court of Appeals has emphasized that the purpose of the aforementioned contracting requirements, in particular the need for approval by the State Comptroller, is "to protect the public from governmental misconduct or improvidence."[31] These provisions also "prevent State employees from making improvident or extravagant contracts and from creating

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[29] State Finance Law § 112(3) ("A contract or other instrument wherein the state or any of its officers, agencies, boards or commissions agrees to give a consideration other than the payment of money, when the value or reasonably estimated value of such consideration exceeds ten thousand dollars, shall not become a valid enforceable contract unless such contract or other instrument shall first be approved by the comptroller and filed in his office.")
[30] *See, Financial and Audit Solutions* (http://www.osc.state.ny.us/audits/sep02.pdf) at p. 5.
[31] *Parsa v. State*, 64 N.Y.2d 143, 147 (1984).

liabilities for which there has been no appropriation."[32] The public need for the restrictions and protection embodied in the State Finance Law is amply demonstrated by Cappuccilli and the Fair's contracting decisions. The Fair habitually flouted the State Finance Law and entered into agreements absent any oversight or accountability resulting in agreements not necessarily in the public interest and potentially exposing the state to liability.

Specifically, the State Fair in three separate instances engaged the services of companies – Progressive Expert Consulting to provide wireless Internet services, Live Nation Worldwide, Inc. to book concerts, and Classic Entertainment and Sports to promote a boxing match – in direct violation of state law. In fact, the Inspector General found that the State Fair never even entered into any contract with Progressive Expert Consulting whatsoever, despite doing business with the firm for over seven years. As for the Fair's contract with Classic Entertainment and Sports, there was no competitive bidding or contract signed before the boxing event; and no pre-approval of the contract by the State Comptroller as required by State Finance Law § 112(2). In addition to these violations of state law, while the contract with Live Nation was actually approved by the State Comptroller, the information provided to the Comptroller by the State Fair in order to avoid competitive bidding is of dubious legitimacy and, at a minimum, proper planning and communication between the Fair and Agriculture and Markets could have led to a competitive procurement.

A. The Fair's Unlawful Arrangement with Progressive Expert Consulting

The Inspector General found that from 2002 until July 2009, the State Fair flagrantly violated the State Finance Law in its dealings with the Syracuse-based technology company Progressive Expert Consulting, Inc. (PEC). Specifically, the State Fair not only used PEC to provide Internet services on the Fairgrounds without soliciting any competitive bids, but, under Cappuccilli's watch, the Fair allowed PEC to install equipment and obtain fees from Fair vendors without any written contract much less approval from the State Comptroller for the arrangement. Exacerbating the obvious violation of state law, Cappuccilli and the Fair never sought to obtain a portion of the revenue generated by PEC due to the state and even the quality

of PEC's Internet wiring installed on the Fairgrounds was questionable. A 2008 internal audit conducted by Agriculture and Markets concluded, among other findings, that the "current state of the fiber and cable plant does not meet any standards." In 2008, PEC submitted to Agriculture and Markets an invoice requesting $1.6 million in payment for equipment and work completed on the Fairgrounds. PEC thereafter sued the state. The state settled the civil action in August 2009 and paid PEC $48,347. Had the State Fair followed the State Finance Law, these problems most likely would have been avoided or at least mitigated and the need for litigation at public expense obviated.

1. *Progressive Expert Consulting*

PEC describes itself as a "systems integrator" specializing in "training, multi-point teleconferencing, local area and wide area network infrastructure, and specialized ISP [Internet service provider] service." PEC was founded in 1986 by Betty Feng and was incorporated in 1990. Her husband, Francis Feng, joined the company in 1994. PEC is qualified to receive minority/woman-owned business status when doing business with New York State.

PEC first conducted business on the Fairgrounds in August 2001 during a luncheon for Hillary Rodham Clinton, who was then campaigning for the United States Senate. According to Francis Feng, his family has political and social ties to the former President and Hillary Clinton. The luncheon was held in the Empire Room and Clinton's chief of staff had asked PEC to broadcast the event over the Internet. Feng informed the Inspector General that PEC's services were provided free of charge. Feng explained that following the Webcast, either someone with the State Fair approached him, or he inquired of the Fair, about upgrading the Fair's information technology (IT) infrastructure and Internet capabilities to include providing Internet access to vendors doing business on the Fairgrounds.

Kathleen Hoffman-Davis, who served as an Assistant Director of the Fair from 2001 until September 2006, testified that the she first became aware of PEC from Fair Director Cappuccilli expressing a desire to "expand and grow the Fair" to have teleconferencing events on the

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[32] *Deverho Const. Co. v. State,* 94 Misc.2d 1053, 1058 (Ct.Cl., 1978)

Fairgrounds. Hoffman was unaware of any personal or business relationship between PEC and Cappuccilli. Francis Feng told the Inspector General that although he knew Cappuccilli through the Syracuse community, he did not consider him a friend.

PEC planned to tap into fiber optic cable owned by Telergy (a now defunct company) that ran parallel to the Fairgrounds, according to Francis Feng. PEC had worked with Telergy and had assisted them in technology support and network development. PEC was to use this line to give the Fair access to the "information highway." The State Fair project was a learning process for PEC, as the technology was relatively new and PEC was still developing its Internet Service Provider (ISP) capability. Francis Feng explained:

> For us it is an education process; for them [State Fair] it is a benefit that they would have very high speed access . . . We [were] learning ourselves . . . They were basically our guinea pig.

Daniel Feng, Francis and Betty's son who also works for PEC, described PEC's motivation: "You look at the newspaper, [reporting that] almost a million people come through those gates every year and it is easy math. At $10 a day [as a charge for PEC's Internet services], how many people do you need to get on the wireless network to make a pretty good buck. That was the dream." PEC further envisioned the Fairgrounds as a technological theme park like a "Disneyland," where individuals and businesses would come to access advanced systems enabling them to communicate internationally and from which PEC would reap sizeable profits.

2. *Lack of Competitive Bidding, Fair and Impartial Competitive Process or Comptroller's Approval for the Fair's Internet Service Provider*

PEC submitted a proposal in early 2002 to create a "turnkey solution" for a state-of-the-art technology wired and wireless infrastructure "to make the fairgrounds one of the first in the nation to provide exhibitors and visitors with internet access." PEC also pledged to upgrade the Fair's administrative offices' Internet services and provide limited video conferencing as a "by-product" of PEC's service. As reflected in draft contract proposals, PEC promised to share profits with the State Fair after recouping its start-up expenses.

As discussed above, for most procurements, State Finance Law § 163(6) requires that contracting entities follow a competitive, multi-step process that entails development of a request for proposals (RFP) by qualified staff; issuance of the RFP to potential bidders; and an evaluation of competing proposals by qualified reviewers. In the case of a revenue contract, the law mandates at a minimum that the State Comptroller approve in order to ensure the integrity of the process and protection of the public coffers. Despite these well-known, clear legal requirements, Agriculture and Markets Supervising Attorney Michael McCormick admitted that no competitive bidding or, in fact, any process of review of potential providers to ensure the best deal for the state occurred. Instead, the Fair's effort to reach a formal agreement with PEC was purely ad hoc.

McCormick expressed frustration and discomfort with many of the procurement, contracting and business practices utilized by Cappuccilli. McCormick claimed that he "expressed his concern," but "since it was the IEA that was the most I could express." To the extent McCormick attempts to escape blame due to the IEA's status as a state authority, his argument is devoid of merit. Although as a public authority (as opposed to a state agency) the IEA was likely not obligated to follow the full dictates of the State Finance Law, the PEC contract necessarily involved Agriculture and Markets, a state agency undeniably required to abide by strictures of the state's procurement law.

In fact, as the PEC "contract" included Internet service for the Fairgrounds not owned by the IEA, but rather under the control of the Division of the State Fair within the Department of Agriculture and Markets, the agreement could only be effectuated with Agriculture and Markets approval. Indeed, the rough drafts of PEC contracts which McCormick reviewed explicitly included Agriculture and Markets as a party to the contract. Additionally, the IEA, while an independent entity, for management purposes was indistinguishable from Agriculture and Markets. Cappuccilli was employed by Agriculture and Markets and was answerable to the commissioner, who also served as IEA Board Chairman. McCormick's claim truly masks the fact that Agriculture and Markets failed to exercise adequate controls on the State Fair during this period. As current Agriculture and Markets Commission Patrick Hooker affirmed, "The flat out truth is . . . Albany knew very little prior to Bob [Haggerty] taking over [in late 2007], about

what the norms were day-to-day out at the Fairgrounds." Commissioner Hooker believes that Agriculture and Markets officials felt that Cappuccilli held greater political power than they possessed. "Peter [Cappuccilli] was seen as put there by the governor. A household name in Syracuse."

The State Fair also did not seek approval from the State Comptroller to avoid a competitive bidding process and engage one company – a "single source" – for goods or services in favor of another.[33] State Finance Law § 163 provides for such a single source procurement under limited circumstances. In order to contract with a single source, the state agency must, among other actions, "document in the procurement record, subject to review by the State Comptroller, the bases for a determination to purchase from a single source. . . ."[34] The State Fair neither maintained a procurement record nor sought the State Comptroller's approval for a single-source contract.

Despite the absence of a competitive process or exception allowing Cappuccilli to lawfully reach agreement exclusively with PEC, the State Fair attempted to negotiate and finalize a written contract in and around March 2002. On March 12, 2002, Hoffman-Davis, the primary representative for the State Fair regarding PEC, sent a fax to McCormick. She stated in the cover sheet that she wished to discuss the proposed contract with him after he reviewed its contents. The next day Hoffman-Davis faxed a revised draft contract with a copy of PEC's proposal to McCormick. In the comments section on the cover sheet Davis wrote: "Please review ASAP as we have a show this weekend that could be affected."

McCormick, however, correctly saw the flaw in the State Fair's attempt to unlawfully procure PEC's services. In a memorandum, dated March 25, 2002, McCormick wrote to Hoffman-Davis explaining the most basic elements of New York's procurement requirements. McCormick explained:

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[33] State Finance Law § 163(1)(h).
[34] State Finance Law § 163(10)(b)(i).

> The proposed PEC agreement would probably not be approved by the Comptroller because it was not the result of a competitive procurement. Section 163 of the State Finance Law sets out the requirements for State procurements which include procurements of, in this case, wireless internet access and an internet service provider at the Fairgrounds. Since this is a service widely available, the Fair is obligated to first check with OGS (Office of General Services) and see if there is a preferred source for the provision of internet services and for the provision of wireless internet services. If not, OGS may have a centralized contract [or backdrop contract], which the Fair may utilize. If neither of those alternatives are available, the Fair should utilize an RFP process and keep a record of the procurement to avoid later problems with the Comptroller's Office as to whether or not the procurement was conducted in accordance with section 163. The services sought are not so unique that they can be sole-sourced, nor are they of a professional type which would not require compliance with section 163. From a non-legal perspective, the information provided by PEC, their proposal and proposed agreement are lacking in substance.

As referred to in McCormick's correspondence, in order to obtain better value for the state through negotiations in mass and tapping into the agency's procurement expertise, OGS is permitted by law to negotiate "backdrop contracts" that prequalify vendors for provision of services. These contracts establish standard terms and conditions, set maximum not-to-exceed prices, and satisfy many legal requirements associated with state procurements, such as advertisement in the *New York State Contract Reporter*, vendor responsibility determination, and sales tax certification. Once OGS has entered into such a statewide contract, individual state agencies may generally partake of the agreement without conducting their own individual procurement; however, utilization of backdrop contracts may in some circumstances require additional competitive procurement processes at the agency level (e.g., a "mini-bid" soliciting proposals from multiple companies on the backdrop contract) and, as applicable, approval of the State Comptroller, prior to the purchase of services.

On April 29, 2002, Hoffman-Davis wrote to McCormick advising him that PEC was a vendor on an OGS backdrop contract and asked McCormick if a bid process was still necessary. McCormick responded, "I think we still have to bid it because even though PEC is on the OGS contractor list that list is for such things as training, consulting, etc. Go to the OGS website and check it out, then please give me a call." On May 28, 2002, McCormick referred Hoffman-Davis to the administrator of the OGS centralized contract for an opinion as to whether PEC was a

qualified Internet service provider on the OGS backdrop contract. The OGS administrator promptly answered: "I would not see a problem with PEC satisfying your needs under the back-drop contract." However, OGS advised Hoffman-Davis of several necessary steps in order to proceed utilizing the backdrop contract, such as conducting a mini-bid of other potential vendors if the value of the services exceeded $50,000.

It must also be noted that despite the communications with OGS, the relevant OGS centralized backdrop contract is for "consulting, systems integration, and training." By contrast, PEC was to provide the Fair with Internet access services. Francis Feng conceded that the OGS backdrop contract did not relate to the work PEC did at the State Fair: "No, OGS wanted us to train the people . . . It [the work at the State Fair] had nothing to do with the OGS backdrop contract." Regardless of whether a backdrop contract was applicable, it was never employed by the Fair. Furthermore, a written contract memorializing the project-specific agreement between the Fair and PEC was a prerequisite for work to commence. None existed.

3. *PEC Worked on Project Valued Above $500,000 Without a Contract*

Despite the lack of an executed contract and its flouting of the State Finance Law, the State Fair allowed PEC to commence work on the Fairgrounds. On July 15, 2002, Francis Feng wrote Hoffman-Davis outlining PEC's cost for the project. Despite the lack of a contract, Feng stated, "PEC has started building out a fairground network infrastructure. . . ." Feng explained:

> The market value for the network infrastructure after it is fully installed and tested will be over $500,000.00. The majority of the value is associated with electronics (switches, hubs and access points) which are PEC's assets, it would not be fair for the NY State Fairground to base its computation relative to the NY State Fairgrounds' returns on these hardwares [sic]. PEC suggests that the 12% profit sharing start on the second year of the contract and the profit will be calculated by the revenue minus PEC's costs/services (labor, management, bandwidth and others) excluding the cost of PEC's hardwares/equipments [sic] investment of the built-out.

Feng added, "We may not be ready for a full scale rollout for the NY State Fair 2002 but we should be fully functioning during the 2002 Fair for demonstration and presentation purposes."

According to correspondence from McCormick to Hoffman-Davis on August 28, 2002, at the start of the 2002 State Fair, not only was a written contract not executed, but the terms were not set. In transmitting a draft of the contract, McCormick wrote to Hoffman-Davis the following:

> Here's a first draft of the PEC contract, which covers considerably more than PEC proposed. After the Fair is over, and you have had a chance to recuperate [from the Fair], give me a call and we'll set up a meeting to discuss the contract. It would be helpful if we didn't discuss the contract with PEC until after we have an agreement which Peter [Cappuccilli] is comfortable with.

Without any agreement, written or otherwise, PEC was already operating at the Fair. A letter dated September 10, 2002, from Hoffman-Davis to Francis Feng confirms PEC's presence. In the letter, she complained to Feng that at a PEC employee had removed a power strip belonging to the Fair from the administrative office building to assist in providing Internet access to a booth in the Fair's Center of Progress building. Hoffman-Davis requested that this employee be removed from working on the "account" immediately.

There was no discussion between McCormick and Hoffman-Davis about the draft contract between late August and the end of November 2002 and they only sporadically corresponded by fax and e-mail from December 2002 through June 2003. Then there is no action for nearly a year. In April 2004, Hoffman-Davis e-mailed PEC "checking on the status" of the contract. McCormick told the Inspector General that the PEC contract negotiation broke down and the editing process fell into a "black hole." McCormick correctly characterized the process as a "disaster."

Despite the lack of a contract, PEC generated revenue from the State Fair. Based upon records obtained from PEC, the Inspector General determined that from 2004 through April 2009, PEC earned over $157,000 from fees paid to it by Fair vendors for providing Internet services on the Fairgrounds. When presented with the Inspector General's analysis, Daniel Feng replied that the figures were "a little higher than the number I got . . . but it is not that far off."

PEC Revenue Analysis

Year	Wireless Revenue	Wired Revenue	Year Total Revenue
2004	200.00	19,250.57	**19,450.57**
2005	2,820.00	32,422.50	**35,242.50**
2006	5,390.00	28,285.40	**33,675.40**
2007	9,185.00	31,574.30	**40,759.30**
2008	8,990.00	14,982.27	**23,972.27**
Jan. - April 2009	2,630.00	1,855.08	**4,485.08**
Totals:	**29,215.00**	**128,370.12**	**157,585.12**

Compounding the blatant violations of the State Finance Law, the Fair's informal arrangement with PEC not only provided that company with undeserved revenue, but the state did not receive the benefit of providing the de facto franchise to the company. McCormick noted that the inchoate PEC contract never executed by the Fair or approved by the Comptroller, required PEC to share a portion of received revenue with the state. However, while allowed to operate at the Fair and earn income, PEC never paid any money to the State Fair. McCormick called it "outrageous" that the state never sought any proceeds from PEC. McCormick blamed former Fair Business Manager Richard Guanciale for neglecting to inform Agriculture and Markets officials that PEC had failed to share revenue with the Fair. The Inspector General calculated what the Fair should have received from PEC based on the 12 percent of revenue proposed by PEC in multiple iterations of draft contract. If a contract had been finalized, PEC would have been responsible for sharing $18,910.21 in revenue with the State Fair between 2004 and April 2009.

Furthermore, the Internet network established by PEC at the Fair was not completed until extensive follow-up work was done by several IEA employees. A Fair electrician reported to the Inspector General that the installation required approximately 400 work hours for completion, which included digging trenches and pulling cable to set up the system. Fair employees involved in the project unanimously agreed that PEC's work establishing the infrastructure for Internet access was substandard. In several interviews with the Inspector General, they described the workmanship as "horrible," "pathetic," "half-assed," a "rush job," and a "nightmare." The photograph below illustrates the poor quality of PEC's work.

Shown above is a Centillion 100 in the Agriculture Media building. The audit report notes that "cabling is not labeled, and the fiber cables do not have protective conduit. The fiber cabling was not brought into a fiber patch panel. There was no cable management in use. The switches were not in a rack, and were not grounded."

Agriculture and Markets IT Specialist 2 Raymond Weston reported to the Inspector General that he confronted PEC executive Daniel Feng about his company's poor work quality. Weston noted that connections and wires were unlabeled, making the diagnosis of network problems difficult. Feng responded that it was completed in a hurry. Weston also recalled that when he had contacted Francis Feng due to weekend network interruptions on the Fairgrounds, Feng became disagreeable and stated, "You better watch your back." Weston estimated that the value of labor provided to PEC by the Fair was between $300,000 and $400,000. Weston believes that it would cost the Fair approximately $100,000 to replace the equipment and infrastructure installed by PEC. The equipment itself has no monetary value, Weston added, because it is outdated.

In 2008 PEC submitted to Agriculture and Markets an invoice requesting $1.6 million for equipment and work completed on the Fairgrounds. Agriculture and Markets refused to pay. A

lawsuit was filed by PEC, which was settled in 2009 with the state paying PEC more than $48,000. This civil action highlights one of several reasons why vendors should not be permitted to operate on state property without a valid contract clarifying responsibilities, liabilities, and ownership of fixtures. Had the State Fair abided by the State Finance Law the lawsuit and all of these problems could have been avoided or at least mitigated. As of May 3, 2010, PEC was permitted by the court to enter the Fairgrounds and remove its equipment and cable.

B. The State Fair's $600,000 No-Bid Contract with Live Nation

The Inspector General found that although, unlike the other agreements discussed in this report, the State Comptroller was sent and did approve the contract for the Fair's 2008 concert series, poor coordination between Agriculture and Markets and State Fair officials eliminated the possibility to implement competitive bidding in order to obtain a booking agent. The path that led Agriculture and Markets to contract with Live Nation Worldwide, Inc. was littered with missteps, false starts, and an utter lack of communication between Fair executives in Syracuse and Agriculture and Markets officials in Albany. However, contrary to speculation by a former Marketing Director Joseph LaGuardia that the Fair lost money, the Fair ultimately profited from the arrangement with Live Nation. Agriculture and Markets First Deputy Commissioner Robert Haggerty concurred with the Inspector General's determination, stating that Agriculture and Markets "should take our share of blame and fault for the way we executed" the search for a booking agent. Haggerty correctly characterized Agriculture and Markets' and the Fair's actions as not "malicious" but rather "sophomoric" and "stupid."

In November 2007, in response to a request by Agriculture and Markets, the State Comptroller approved awarding a single-source contract to Live Nation, valued at nearly $600,000. A single-source contract is an exception to the general requirement that competitive bidding be conducted prior to a state agency purchasing goods or services. In sum, according to the state procurement guidelines, "single source procurement is one in which, although there are two or more potential offerers, the agency has determined that it is in the best interest of the state to procure from a particular vendor." In order to lawfully avoid competitive bidding under the single source exception, the agency must receive specific approval from the State Comptroller. Under State Finance Law § 163, a single source contract is restricted to situations where there

are "emergencies arising from unforeseen causes" and "unusual circumstances."[35] In regard to the Live Nation contract, any exigent circumstance that existed justifying a single source contract was not the result of unforeseen events, but rather the result of poor management and haphazard planning.

Traditionally, the Fair features an annual concert series featuring a spectrum of musical acts with a focus on country and rock genres. Concerts are held at the Fair's 17,000 seat Grandstand and at the Chevy Court stage near the main entrance gate. The Chevy Court shows are free for all fairgoers; the Grandstand shows require an added paid admission. For nearly two decades the Fair's concerts were planned, booked and promoted by then Marketing Director Joseph LaGuardia. That changed for the 2008 concert series. As early as April 2007, then newly-appointed Fair Director Daniel O'Hara started exploring how to book talent and promote concerts at the Fair through an outside professional.

1. *Initial Attempts to Obtain Outside Services*

O'Hara initially considered expanding Grandstand entertainment beyond the 12 days of the actual State Fair and hosting concerts throughout the summer.[36] He envisioned making the Grandstand a venue similar to the Saratoga Performing Arts Center (SPAC) in Saratoga Springs. Early attempts to obtain outside assistance in booking concerts at the Fair reveal the first breakdown in communication between O'Hara and Agriculture and Markets officials.

Richard Bennett, former Special Assistant to the Agriculture and Markets Commissioner and O'Hara's supervisor at the time, spoke with SPAC President and Executive Director Marcia White. SPAC has contracted with Live Nation to promote concerts. White suggested to Bennett that O'Hara speak with Live Nation representatives. Live Nation is, according to its Web site, "the largest live entertainment company in the world, consisting of five businesses: concert promotion and venue operations, sponsorship, ticketing solutions, e-commerce and artist

[35] State Finance Law § 163(10)(b)(i).
[36] This concept was previously considered by former Fair Director Wayne Gallagher (Cappuccilli's predecessor), but it was determined impracticable at the time.

management." Both Bennett and Supervising Attorney Michael McCormick reported that Live Nation was considered a viable company to do business with due to its existing contracts with SPAC and Jones Beach State Park on Long Island. Furthermore, due to the State Park contract, Live Nation had been previously vetted by the State Comptroller's Office.

E-mail correspondence obtained by the Inspector General reveals that in late April 2007, Bennett advised O'Hara to "go for it" and contact Live Nation. When shown the e-mail by the Inspector General, however, O'Hara denied any knowledge of Bennett's instructions to speak with Live Nation. John Huff, Senior Vice President for Live Nation in New York and Connecticut, testified that he was not contacted by anyone from the State Fair or Agriculture and Markets until several months later, and then it was not by O'Hara, but rather by McCormick.

Despite Bennett's directive, O'Hara pursued his own course in an effort to obtain a booking agent. With assistance from then-Assistant Fair Director Matthew Morgan, O'Hara sought out Hal Ray, who has over 30 years of experience in the entertainment industry. Ray was associated with the William Morris Endeavor Entertainment Agency for several years and currently is a consultant with International Creative Management (ICM), as well as operating his own firm, Hal Ray Enterprises, Inc., based in Hollywood Hills, California.

Ray advised the Inspector General that the State Fair was "unhappy with the work that was going on [under LaGuardia] and was looking to change and would I be interested in coming in and performing that job." The State Fair paid $3,700 for Ray's and two associates' travel expenses to Syracuse on May 17 through May 20, 2007, to explore booking acts from May through October, to fill the remaining open concert dates for the 2007 State Fair, and to book artists for the Fair's entire 2008 concert series.

After meeting with O'Hara and Morgan, Ray was so confident that he had a contract with the Fair that he advised Paul Moore, co-Chief Operating Officer of the Nashville office of the William Morris Endeavor Entertainment Agency that he and his partner were now booking entertainment for the New York State Fair. According to Moore, Ray told him that LaGuardia is "out," but he doesn't know it yet. This prompted Moore to e-mail O'Hara on May 29, 2007,

seeking clarification as to whom he should be discussing booking future shows with, LaGuardia or Ray. O'Hara never replied to the e-mail. Additionally, on May 29, 2007, Ray e-mailed to Morgan a proposed written contract to secure artists for the Grandstand and Chevy Court for seven years. Morgan provided the draft contract to O'Hara.

Significantly, it is clear that by the end of May 2007 the State Fair was seeking an outside agency to book talent for its concert series, but ignoring the State Finance Law to procure such services. As discussed above, State Finance Law § 163(6) requires a competitive bidding process to obtain services valued at over $50,000. In fact, on October 9, 2007 when O'Hara finally addressed the proposed contract with Ray, O'Hara acknowledged awareness of this law when he wrote in an e-mail that, based on advice from a state attorney, "I cannot enter into a contract without at least soliciting three other organizations."

During an interview with the Inspector General, Agriculture and Markets Director of Fiscal Management Lucy Roberson, whose office oversees procurements but who had no involvement in the 2008 search for a booking agent, said that O'Hara "didn't understand procurement rules. He seemed to believe he was in the position to hire who he wanted," without soliciting proposals or bids from other qualified candidates. Roberson explained that O'Hara "shouldn't have been leading anyone to believe that he could directly negotiate a contract without a competitive process. And he shouldn't have been talking to potential bidders." Bennett, O'Hara's supervisor at the time, testified that he only became aware that Ray had sent the Fair a proposed contract when he read about it in the newspaper, illustrating the lack of communication between them.

To McCormick, the Fair's interaction with Hal Ray was a "fiasco." McCormick testified that he was not aware of the nature of the State Fair's conversations with Ray; that Ray had submitted a proposed contract; or that the Fair paid for Ray's travel expenses. Had he known, McCormick said, he would have told O'Hara, "You're nuts!" McCormick said that when O'Hara started, he had "no idea what a state procurement is." McCormick explained, "When he [O'Hara] first came on he was very difficult to deal with because he decided he knew a lot, he knew better than you. And he didn't." McCormick characterized the Fair's reimbursement of

Ray's and his associates' travel expenses as "a dumb mistake," and the lack of a formal procurement as a "vestige of the old" way [Cappuccilli's methods] of conducting business outside the confines of the State Finance Law.

The lack of communication between State Fair and Agriculture and Markets officials described above is critical because of the timing. According to officials with the Office of the State Comptroller, the process of developing, publishing, scoring and awarding a contract through competitive bidding takes approximately five months. Witnesses familiar with the fair industry informed the Inspector General that scheduling acts for the State Fair's concert series must occur no later than January or February for the upcoming State Fair. Had O'Hara expressed to Bennett, Roberson and McCormick a desire to seek an outside vendor to book the Fair's 2008 concerts by June 2007, then a competitive procurement process would have been viable. That discussion never occurred.

Instead, in November 2007 when Agriculture and Markets and the State Fair sought the State Comptroller's approval to proceed without a competitive procurement process and award a single-source contract to Live Nation to book talent for the 2008 State Fair, the basis the Fair submitted supporting "emergency" procurement process exemption was the compressed timeline in that, as of November, 2007, a full bidding process could not be completed in time to secure a booking agent prior to the 2008 Fair.

2. *Single Source Contract with Live Nation*

Under state law as interpreted in the Procurement Guidelines, "An agency's failure to properly plan in advance – which then results in a situation where normal practices cannot be followed – does not constitute an emergency" supporting the single source exception to competitive bidding. In the case of the Live Nation contract, the Inspector General determined that any "emergency" was self-created and unwarranted and that competitive bidding would have been possible with sufficient planning. Agriculture and Markets First Deputy Commissioner Haggerty admitted to the Inspector General, "We should be criticized if we failed to do something in that timeline correctly; we should be criticized for what led us to Live Nation."

By early September 2007, it was abundantly clear that Marketing Director LaGuardia would no longer be employed by the Fair and that a booking agent was required to fulfill his role. During separate interviews with the Inspector General, both O'Hara and LaGuardia agreed that their personalities clashed. LaGuardia testified, "It was obvious from the start that there was no relationship that was going to exist" between him and O'Hara. To LaGuardia, O'Hara displayed "typical arrogance" and a "cowboy mode." According to O'Hara, LaGuardia's "personality was not going to work" with him: "Joe was abrasive; Joe was arrogant." McCormick characterized the relationship between them as "rough sledding." O'Hara and McCormick discussed during the 2007 State Fair whether firing LaGuardia had any legal ramifications, to which McCormick advised that there were none. So on September 7, 2007, O'Hara, Morgan and LaGuardia met, at which time O'Hara presented LaGuardia with three options: termination, resignation or retirement. LaGuardia chose the last option and retired. However, according to O'Hara, he and LaGuardia agreed to publically characterize his departure as a voluntary retirement for appearance sake.

McCormick explained to the Inspector General that the State Fair did not have anyone on staff who could fill the void left by LaGuardia's departure, voluntary or not. McCormick also determined that there was insufficient time to conduct a competitive procurement through a request for proposals given the timeline for booking entertainment. McCormick, therefore, decided in consultation with First Deputy Commissioner Haggerty that hiring a booking agent through a single source contract was the proper course of action.

McCormick consulted with SPAC and State Park officials regarding their experiences with Live Nation. McCormick examined their contracts with Live Nation, as well as the contract and background of another promoter that books concerts for an upstate New York venue. McCormick also reviewed the Fair's Grandstand events ticket sales for the three preceding years, and analyzed cost considerations. Armed with this knowledge, and because Live Nation already had been deemed a responsible vendor by the State Comptroller's Office, McCormick favored doing business with Live Nation.

McCormick testified that the decision-making process was Albany-based, although O'Hara was initially aware that Live Nation was under consideration. Agriculture and Markets officials, namely McCormick, Haggerty, and Finance Director Roberson, discussed the State Fair's options and decided to proceed with Live Nation. O'Hara was not involved. McCormick noted that O'Hara was aware of McCormick's initial contacts with Live Nation, but the details were kept from him at Haggerty's direction. (In January 2008, Haggerty replaced Bennett as O'Hara's direct supervisor.) Therefore, McCormick, not O'Hara, engaged in preliminary discussions and then actual contract negotiations with Live Nation's John Huff, whose office is located in Saratoga Springs, less than an hour's drive from Agriculture and Markets headquarters.

On November 8, 2007, Agriculture and Markets sent a three-page letter written by McCormick to the State Comptroller's Office seeking approval to enter into a single-source contract with Live Nation. State Finance Law requires that a state agency "document in the procurement record, subject to review by the State Comptroller, the bases for a determination to purchase from a single source . . . or the nature of the emergency giving rise to the procurement."[37]

This situation was not an "emergency" within the definition of the State Finance Law. An "emergency," as defined by State Finance Law § 163(1)(b), "means an urgent and unexpected requirement where health and public safety or the conservation of public resources is at risk." Clearly procuring a booking agent was not an "emergency."

The circumstances warranting a "single source" contract cited by McCormick in the November 8, 2007, letter included the "Fair's marketing director [LaGuardia] who had been the person in charge of entertainment procurement was retiring as of November 30, 2007," with no one else with sufficient experience to replace him. The Inspector General questioned McCormick about the accuracy of his characterization of LaGuardia's departure from the Fair as retirement when he was forced to retire under threat of termination. He responded as follows:

[37] State Finance Law § 163(10)(b)(i).

> Well, if we misspoke on something that was inaccurate then we misspoke, but the essence of what we asked the Comptroller is absolutely true. Regardless of whether LaGuardia was fired or not we still needed somebody. The reason he was fired was irrelevant, he was no longer going to be there. If he walked in and left or he walked in and got fired, he was not going to be there.

It was O'Hara's choice to dismiss LaGuardia. O'Hara presented LaGuardia with a single alternative: retire or get fired. Moreover, as discussed above, the Fair was looking to replace LaGaurdia as the Fair's booking agent as early as May 2007. This is hardly an emergency "arising from unforeseen causes" and "unusual circumstances," as required by State Finance Law § 163(10)(b).

The Agriculture and Markets letter to the State Comptroller is further misleading in that it made no mention of other possible booking agents. The State Finance Law provides that the requisite documentation to be reviewed by the State Comptroller for a single source contract must also include "the alternatives considered" by the state agency.[38] The letter, however, contained no mention of O'Hara's negotiations with Hal Ray or that Ray submitted a proposed contract to the State Fair. Even Haggerty was unaware of O'Hara's dealings with Ray until he read about them a year later in the Syracuse *Post-Standard* newspaper. The breakdown in communication between O'Hara and McCormick resulted in an incomplete, inaccurate, and misleading procurement record provided to the State Comptroller.

The Comptroller's Office advised the Inspector General that they knew nothing about the Fair's contacts with Ray in May 2007 or that Ray had provided the Fair with a proposed contract. Had the State Comptroller known these facts, the Comptroller would have inquired and analyzed which promoter – Ray or Live Nation – was the best value for the state. Ultimately, the contract may not have gone to Live Nation. To the State Comptroller's Office, this was a significant omission.

The exclusion of the "alternatives considered" from the letter was avoidable. O'Hara claimed to the Inspector General that he never saw the letter before it was sent to the State

[38] State Finance Law § 163(1)(h).

Comptroller. O'Hara was not even copied on the letter. To O'Hara, these oversights were "unfortunate."

On November 14, 2007, the State Comptroller approved Agriculture and Markets' request to enter into a single source contract with Live Nation. Officials with the State Comptroller's Office advised the Inspector General that the time limitations the Fair faced to book acts for 2008 were "characterized as an emergency." An auditor with the State Comptroller's Office said that the State Fair is in the business of hosting concerts, and "the Fair needs entertainment." As Agriculture and Markets had indicated in its letter to the Comptroller, a competitive bidding process would be employed to secure a booking agent for the next year (2009). With the State Comptroller's approval to enter into a single-source contract with Live Nation, McCormick continued the negotiations with Live Nation which ultimately resulted in a contract valued at nearly $600,000 for the 2008 Fair.

3. *Cost of the Live Nation Contract*

The high value of the contract awarded to Live Nation caught many people's attention and raised suspicion that something nefarious had occurred. The Inspector General explored whether there were any bribes, kickbacks, or other untoward financial deals at play, but no evidence supporting such illicit activities was found. Several witnesses also complained to the Inspector General of the overly expensive contract between the State Fair and Live Nation. There was speculation that the Fair lost money or that the Fair allowed Live Nation to take advantage of the state. An experienced fair professional from another state told the Inspector General that his first reaction to learning the terms of the deal was "Holy cow!" He was "dumbfounded" and "couldn't believe the numbers."

However, the Inspector General found that Agriculture and Markets officials had considered multiple methods to pay Live Nation for its booking services. According to McCormick, Agriculture and Markets examined three contracts for booking concerts at other venues, looked at the "industry standard" for paying a booking agent, and insisted that any arrangement include an "incentive to maximize ticket sales." Documents obtained by the

Inspector General confirm this analysis. Agriculture and Markets and Live Nation "settled on the greater of $300,000, or $6.50 per paid admission, as a booking fee covering all Grandstand and Chevy Court entertainment events. . . ."

Live Nation's John Huff testified that a layperson with no perspective might think it was a lot of money, but he thought it was "in line" with the services Live Nation provided. Huff pointed out that Live Nation's work included sponsorships, marketing, ticketing and operational components, as well as booking quality artists to perform at the Fair.

McCormick called the contract with Live Nation a "great deal." McCormick characterized the deal as positive because Live Nation increased the Fair's revenues and, ironically, helped to control the disbursal of complimentary concert tickets. Live Nation also brought in a high quality line-up with reasonable artist guarantees, which led to affordably priced tickets.

The Inspector General's financial analysis of the Fair's entertainment-related expenses and its income revealed that the 2008 concert series was profitable. Conducting such a financial analysis of the Fair's operation of the Grandstand was a complex task given the information available. The Inspector General reviewed a multitude of records and documents pertaining to LaGuardia's final year booking entertainment, 2007, and the concerts booked by Live Nation in 2008. The Inspector General also reviewed the 2009 concert series in which Agriculture and Markets procured another booking agent, Triangle Talent, through a competitive bidding process to obtain acts for the Grandstand and Chevy Court.

The circumstances in each of these three years varied, with fluctuating costs related to booking entertainment and different financial arrangements and number of shows from year to year and artist to artist. Despite these complexities, the Inspector General undertook an in-depth analysis of the revenues and expenses related to Grandstand entertainment. The analysis included: ticket revenues generated, concession and merchandise sales, and advertising sponsorships. Expenses examined included booking costs, entertainer fees and other concert costs including stage set-up and backstage management. Other potential costs and income

associated with Grandstand concerts are not tracked by the Fair and, therefore, could not be factored into the analysis.

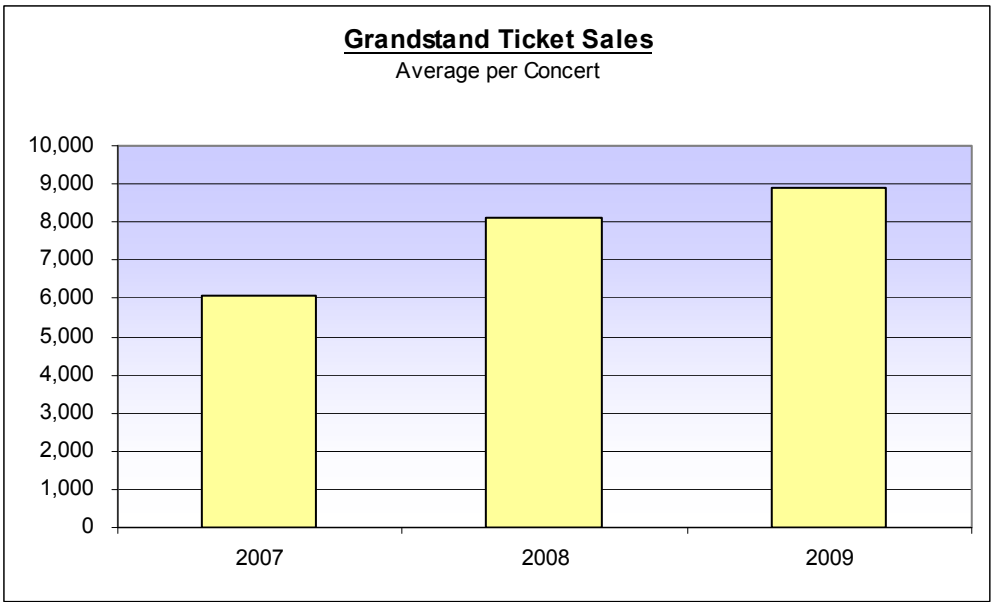
The Inspector General's analysis concluded that the Fair generated a $57,272 profit from Grandstand entertainment in 2008 when Live Nation booked the acts. Despite paying Live Nation almost $600,000 to book entertainment, Fair revenues increased and average show attendance rose from 6,000 attendees in 2007 to 8,000 in 2008. In 2009, attendance further improved under Triangle Talent to nearly an average of 9,000 fans per show, although expenses kept the Fair from generating a profit. Revenues and expenses for 2007 through 2009 are compared in the following chart.

Total Revenue and Expense 2007- 2009 Grandstand Concerts			
	2007	**2008**	**2009***
Total Revenue	3,849,647.08	5,046,200.63	3,198,285.07
Total Expenses	(3,962,122.84)	(4,988,928.46)	(3,286,864.16)
Profit (Loss)	**(112,475.76)**	**57,272.17**	**(88,579.09)**

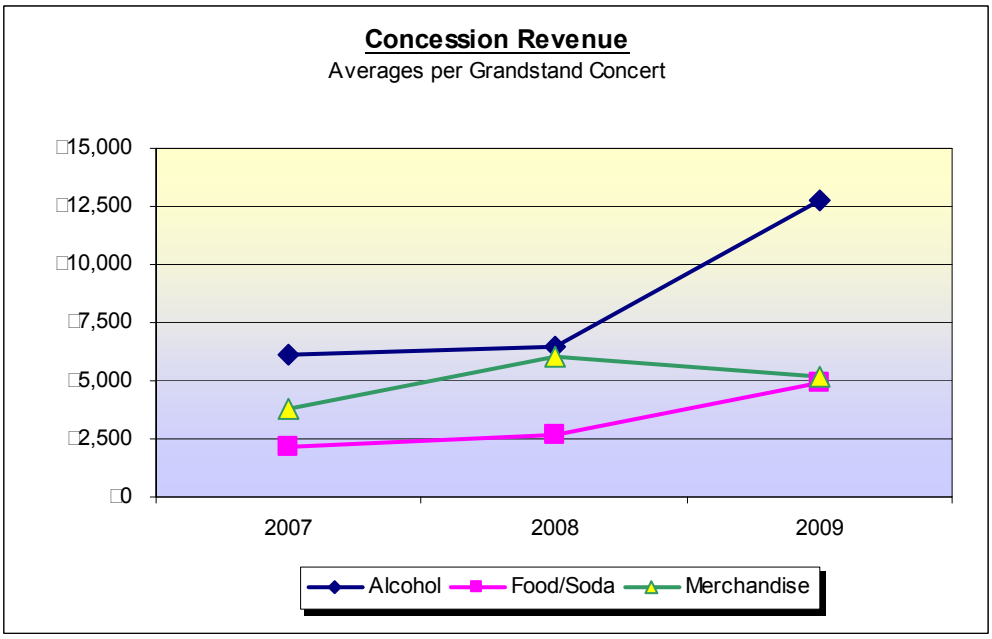
* 7 concerts in 2009

It should be noted that major structural changes were made to certain facets of the Grandstand entertainment financial framework from 2007 to 2009. The Fair, with the assistance of Live Nation, renegotiated its contract with the box office firm Ticketmaster in 2008, eliminating a service charge that cost the Fair $40,736 in 2007. As a result, the Fair generated more revenue from Ticketmaster the following years: $62,405 in 2008 and $55,130 in 2009. In addition, there was a substantial decrease in complimentary tickets issued for Grandstand events from 11,793 in 2007 to 7,729 in 2008 and to 4,003 in 2009. (Problems with complimentary tickets are discussed at length later in this report.) Meanwhile, the Fair sold increasingly more tickets per show from 2007 to 2009, as illustrated in the chart below.

* In 2009 the Fair reduced the number of Grandstand concerts from 11 to seven, while increasing its free entertainment at the Chevy Court. According to Agriculture and Markets officials, this adjustment was made to reduce the risk due to poorly attended Grandstand concerts and in response to the weak economy.



During this period, the Fair also generated greater concession sales of food, drinks and merchandise after the Fair elected to retain an outside booking agent.



Regardless of the end result, the process undertaken by State Fair and Agriculture and Markets officials to contract with Live Nation was riddled with errors due to poor planning and communication breakdowns. First Deputy Commissioner Haggerty told the Inspector General:

> Was it handled in the best possible way? Absolutely not. Were there errors along the way? Absolutely. But there was no malicious intent, in my opinion, by anyone that works for us to steer a contract to Live Nation.

Commissioner Patrick Hooker acknowledged that O'Hara and other Fair officials had a "steep learning curve" in regards to procurement rules and booking entertainment for the Fair. Their professed lack of knowledge was compounded by O'Hara's lack of communication with Agriculture and Markets officials, such as McCormick or Roberson, who could have provided him with advice on how to properly procure the services of a professional booking agent.

O'Hara's failure to inform McCormick about his negotiations with Ray and the proposed contract, as well as the nature of LaGuardia's departure, created additional problems. Agriculture and Markets' letter submitted to the State Comptroller seeking authorization to avoid a competitive procurement for a booking agent was misleading. LaGuardia's termination was mischaracterized as a retirement and Hal Ray's proposal was never mentioned. The latter was crucial because, as the State Comptroller pointed out, additional analysis would have been conducted that may have resulted in a contract with a firm other than Live Nation. But this critical omission could have been avoided had McCormick consulted with O'Hara while drafting the letter and shared a copy of it with him before sending it to the State Comptroller.

As the services Live Nation provided were substantially greater than those previously rendered in-house by Laguardia, and Live Nation, was in a unique position due to its size, the Inspector General cannot conclusively find that the contract, despite its high value, was disadvantageous to the state. Notably, if Agriculture and Markets had utilized a fair and competitve process to choose a booking and promotional agent, instead of creating its own emergency to justify hiring Live Nation, alternatives could have been fully considered and the controversy averted.

C. $127,500 No-Bid Contract Awarded to "Fight Night" Promoter

The Inspector General further established that the State Fair violated State Finance Law § 163 when it improperly entered into a no-bid contract with a boxing promoter for "Fight Night at the Fair." The State Fair agreed to pay $127,500 to the Rhode Island-based firm Classic Entertainment and Sports, Inc. (CES) to arrange the boxing card and promote the professional boxing event held on September 2 at the Grandstand during the 2009 Fair. The International Boxing Hall of Fame (Hall of Fame), located in nearby Canastota, was a sponsor of Fight Night, for which it received $30,000 from CES.

Due to several factors, including a downturn in the national economy and Agriculture and Markets' goals of using the Fair to showcase New York products, and return to the Fair's agricultural roots, the number of large Grandstand concerts was scaled back from 11 to 7. That left four evenings without Grandstand entertainment. To fill the "dark" nights, the Fair booked boxing, a tractor pull, and a country music talent competition.

In June 2009, in the midst of the Inspector General's investigation into the aforementioned contractual improprieties, it was alleged that current Agriculture and Markets officials had given a "no bid" contract to a Fight Night promoter. It was later alleged that State Assemblyman William Magee was "pushing hard" for the Hall of Fame, located in his district, to also receive state funds for its role. However, Commissioner Hooker, First Deputy Commissioner Haggerty and others testified that they received no pressure regarding the boxing event from Assemblyman Magee or his staff, and the Inspector General uncovered no evidence of any illicit misconduct by Agriculture and Markets officials, State Fair employees, Assemblyman Magee or his staff regarding the hiring of CES and its subcontract with the Hall of Fame. Nevertheless, an appearance of impropriety existed due to Agriculture and Markets' violation of established procurement provisions of the State Finance Law.

1. *The Conception of Fight Night*

The idea that the State Fair could host a professional boxing event originated in the fall of 2008 with Troy Waffner, who at the time served as a legislative aide to Assemblyman Magee. As Magee chairs the Assembly Agriculture Committee, Waffner regularly interacted with Agriculture and Markets Special Assistant for Intergovernmental Affairs William Ketzer. On November 14, 2008, Waffner e-mailed Ketzer, proposing a boxing event at the Fair:

> Given that there are not going to be grandstand concerts every night, wouldn't it be cool to have a fight night during the State Fair . . . maybe involve the boxing hall of fame and have some celebrity boxers there.

Ketzer replied, "Wow . . . can we make that happen? [Governor] Paterson is a huge fight fan!" Waffner relayed the concept to Hall of Fame Executive Director Edward Brophy, whose sister, Grace Rapasadi, serves as Magee's Chief of Staff in the his District Office. Waffner relayed to Ketzer in an e-mail that Brophy "thinks it would be a great idea and thinks it is doable. . . . "

2. *Fumbling of the Procurement Process*

At the outset, Waffner – who became the Fair Assistant Director in 2009 – correctly pointed out to Ketzer that there should be a competitive bidding process to procure the services of a fight promoter to organize the boxing event. Hosting a professional boxing match is not within the ordinary scope of the State Fair's or Agriculture and Markets' expertise. In his e-mail to Ketzer, dated November 21, 2008, Waffner wrote:

> Some basic questions include, the Fair would probably have to contract with a promoter or the Hall of Fame or someone to assist in putting together the fight – would it have to go out for a bid (I assume yes, b/c [because] you don't want a repeat of the Live Nation contract).

Waffner also raised questions regarding the event venue and determining public interest in such an event. Later that day Waffner and Ketzer held a conference call with Agriculture and Markets First Deputy Commissioner Haggerty to discuss Waffner's boxing idea. On January 5, 2009, Brophy, Ketzer and Haggerty met at the Hall of Fame. Brophy said, "They thought that since the Boxing Hall of Fame . . . being close by the New York State Fair and being well

established, it would be exciting to have the Boxing Hall of Fame involved in the event, by bringing in some celebrities and giving advice about what kind of boxing show would be the right kind of boxing show for the New York State Fair." Haggerty believed that the Hall of Fame would act as a "buffer" between the Agriculture and Markets and the boxing industry and that Brophy was to act as a "promoter." Ketzer characterized coordinating the boxing event as "ridiculously complicated." At the conclusion of the meeting, Haggerty requested that Brophy submit a written proposal to Agriculture and Markets.

There was no discussion by Haggerty or Ketzer about soliciting bids or conducting a request for proposals. Brophy testified, "There was nothing mentioned of any contract procedure." Haggerty and Ketzer only talked about "cost" for a boxing event; the proposed budget was approximately $125,000 to $150,000. Although competitive bidding was never even contemplated, at this time neither Agriculture and Markets nor the State Fair requested from the State Comptroller an exemption from competitive bidding requirements that would allow the engagement of a single entity for services and affording no other company an opportunity to submit a proposal.

Waffner testified to the Inspector General that after making the initial suggestion, his involvement in the fight proposal ended. His testimony is confirmed by e-mails examined by the Inspector General. Additionally, multiple witnesses reported to the Inspector General that neither Assemblyman Magee nor his aide, Grace Rapasadi, was involved with Fight Night, other than Magee's appearance at the event. Haggerty affirmed that no pressure was exerted by Magee to have a boxing night and include the Hall of Fame. Nevertheless, given the political and familial relationships involved, the State Fair and Agriculture and Markets created an atmosphere of suspicion by its violation of the State Finance Law and failure to conduct a competitive procurement.

After the meeting on January 5, 2009, Brophy said that he set out to put together a boxing show for the State Fair with a "respected boxing promoter" who could "deliver an exciting card." Brophy selected CES, owned by Jimmy Burchfield, because he has "a good record" and he could "deliver a good show with some creativity. . . ." An official with the New York State Boxing

Commission confirmed Burchfield's credentials, calling him a "legend" in the sport. Burchfield, however, operates from Rhode Island, so he had to obtain a license from the New York State Boxing Commission to promote in New York. Meanwhile, Brophy worked to market the event through the Hall of Fame and to find celebrity guests to sit ringside.

The Inspector General discovered that CES is a sponsor of the Hall of Fame. CES's logo and a link to its Web site appears on the Hall of Fame's Web site. This connection between the Hall of Fame and CES further added to the appearance of impropriety fostered by the failure to procure a fight promoter in compliance with the State Finance Law.

Agriculture and Markets and the Fair nevertheless proceeded with a proposal from the Hall of Fame and CES. Brophy submitted a plan to Agriculture and Markets in a letter addressed to Haggerty dated May 4, 2009. Brophy included a written offer from CES for an evening of boxing "that would be talked about for years to come." This proposal required Agriculture and Markets to provide a venue and a $97,500 fee to CES. Haggerty forwarded the documents to Supervising Attorney Michael McCormick for his review, bypassing Agriculture and Markets' General Counsel, Ruth Moore, and the agency's Finance Office, which normally handles procurements and contracts. According to Haggerty, McCormick is an experienced lawyer who handles most complicated legal questions for the Department.

When initially questioned by the Inspector General about his involvement with the Fair's boxing event, McCormick asserted he had no role. McCormick denied knowledge of CES or maintaining any records concerning the contract. Belying his protestations of ignorance, five days later, in a second interview with the Inspector General, McCormick produced his three-inch thick file on the boxing contract, and his recollection regarding the matter was revived. McCormick now testified that he reviewed the May 4, 2009 proposal and determined that there was no need for Agriculture and Markets to seek additional proposals from other boxing promoters. McCormick's novel interpretation of the proposal from the Hall of Fame and CES was that the boxing event was "entertainment" and therefore, in his mind, excluded from the standard procurement practices, such as conducting a request for proposals. McCormick

displayed a nonchalant attitude toward the boxing contract, stating, "I didn't pay a lot of attention to that one. . . ."

3. *The Fair's Boxing Contract Violates the State Finance Law*

State Finance Law § 163, which governs state agencies purchasing goods and services, clearly does not exempt "entertainment" from the state's procurement rules. The Office of General Services, which is a primary contracting agency in the state and whose commissioner heads the state's Procurement Council, advised the Inspector General that there is "no special category that exempts [entertainment contracts] from the procurement process." State agencies cannot purchase "services or commodities" in an amount exceeding $50,000 without a "formal competitive process."[39] "Except where otherwise provided by law, procurements shall be competitive, and state agencies shall conduct formal competitive procurements to the maximum extent practicable."[40] Further undermining McCormick's conception of an "entertainment" exception to the law, it should be noted that the State Fair complied with the State Finance Law when it sought multiple bids from entities to put on other "entertainment" such as demolition derbies and tractor pulls at the Fair.

A possible genesis for McCormick's ill-conceived "entertainment exception" is that certain entertainment acts arguably could qualify as "sole source," another exception to the requirement of competitive bidding. A sole source is defined in the State Finance Law as "a procurement in which only one offerer is capable of supplying the required commodities or services." Therefore, the services of a unique entertainer, such as Bruce Springsteen, may qualify as an exception to the general rule. However, a sole source contract is only valid if the State Comptroller first approves the arrangement when the value of the contract exceeds $50,000. Agriculture and Markets never broached this subject with the State Comptroller. Moreover, contracting with a boxing promoter – unlike Bruce Springsteen – clearly would not qualify as a "sole source." Agriculture and Markets also could have sought from the State Comptroller a "single source" exemption to the competitive bidding process (as it did for the Live Nation contract discussed above), but then would have been required to provide a detailed

[39] State Finance Law § 163(6).
[40] State Finance Law § 163(7).

justification to avoid competitive bidding. However, this may have proved difficult; CES and the Hall of Fame are not the only entities capable of promoting a professional fight in New York. The New York State Boxing Commission provided the Inspector General with a lengthy list of licensed promoters in the state. However, none of these options were considered.

Instead, in violation of the State Finance Law, CES's proposal was converted into a formal contract with New York State. The responsibility of finalizing the contract for the boxing event fell solely to the Fair's Public Relations Director, Fred Pierce. McCormick conceded to the Inspector General, "I didn't pay a lot of attention to that one. . . ." Although Pierce had volunteered his services in bringing Fight Night to fruition, Pierce testified that he was "surprised" that a "lot of details" had yet to be worked out. Pierce conceded that he lacked training on the state's procurement rules. The other contracts he had managed (demolition derby and tractor pull) were "very small" in comparison to Fight Night. Pierce quickly realized that certain terms of the contract, such as who it would be with – either CES or the Hall of Fame – and the amount the state would pay, were not yet finalized. "I didn't expect to be negotiating a deal," said Pierce. With the details of the contract in flux, Pierce was caught between issues being raised by the Hall of Fame and CES and the limited assistance provided by McCormick and his supervisors at the Fair, Director O'Hara and Director of Financial Administration Jeffrey Damon.

On July 2, 2009, Pierce e-mailed O'Hara with two significant issues. First, Brophy sought a larger fee for the Hall of Fame for its role in marketing Fight Night. Ultimately, it was agreed that the Hall of Fame would receive a total of $30,000. This was accomplished by the Fair agreeing to pay the additional $30,000 on top of the $97,500 the Fair had already agreed to pay CES. CES then would pass this $30,000 to the Hall of Fame pursuant to a separate agreement between CES and the Hall of Fame. That sub-contract between CES and the Hall of Fame, funded by the additional $30,000 in public funds, called for the Hall of Fame to provide CES the following for the Fair boxing event:

- The Hall of Fame logo "for promotional use as necessary."

- Assistance for "any inquiries relating to Central New York managers, trainers, gyms, etc."
- Boxing "celebrities to be present ringside and available for autograph signings" (with the Hall of Fame paying their travel-related expenses).
- Transportation for "celebrities to and from the event site."
- Coordination of celebrity interviews with the local media to help promote the event.

As for what the Hall of Fame actually did for the additional $30,000 paid by the state, Brophy explained that the Hall of Fame incurred $10,000 in "hard costs," such as paying the expenses of celebrity guests and for the training facility for a boxer to train at the Hall of Fame in front of the TV cameras. The Hall of Fame gave the State Fair the "rights" to use its logo on promotional posters and other materials. Brophy said he also mentioned the event during the Hall of Fame's induction weekend and set up some interviews with radio stations with the celebrity guests.

The second issue raised by Pierce in his e-mail to O'Hara was that Brophy insisted that the state execute the contract with CES, a licensed professional fight promoter, rather than the Hall of Fame, which operates a museum. Brophy explained to the Inspector General that he had advised Pierce that the state's contract should be with the CES because, as the fight promoter, CES was "responsible from A to Z for the entire show" while the Hall of Fame was "playing just a segment of it." Pierce, therefore, proceeded to have the contract remain between the state and CES. However, Haggerty testified that he gave "explicit instructions" to McCormick that the boxing contract was to be between the state and the Hall of Fame. As result, Haggerty believed that Pierce had "dropped the ball" by contracting solely with CES. In fact, Pierce was merely tasked with a responsibility beyond his training and experience and was afforded limited assistance. Haggerty later conceded that McCormick should have been more involved with finalizing the contract. Commissioner Hooker similarly testified that McCormick "should have" provided greater guidance and oversight related to contracting for Fight Night.

As for the contract between the state and CES, it was not executed by CES's Burchfield and by Director O'Hara until mid-October 2009, over a month *after* the September 2 boxing

event took place. Pierce explained that the contract was initially provided to CES in August, but it was reportedly misplaced by CES. In October, CES requested another copy of the contract. Burchfield signed it and it was sent back to the State Fair for O'Hara's signature. Despite the lack of an executed contract approved by the State Comptroller as required by law, the boxing event was held on September 2, 2009, and CES was paid $127,500 by the State Fair.

When questioned by the Inspector General about the post-event execution of the boxing contract, McCormick was dismissive, unabashedly declaring that signing such a contract "is not going to happen" prior to the event. The Inspector General asked him about the state's liability exposure of hosting an event without a signed contract, to which McCormick replied that the liability risk is a "straw man." Straining credulity, McCormick further maintained that he was unaware that the contract had not been reviewed or approved by the State Comptroller. The Fair's flouting of the state's procurement law and McCormick's nonchalant attitude toward compliance is particularly troubling in relation to the boxing event contract. Indeed, the Fair's Finance Director, Jeffrey Damon, testified, "Could it have been sent [to the Comptroller]? Yeah, but knowing what they question, it would never get approved." Pointedly, pugilism is a dangerous sport, with a history of boxers sustaining serious and even fatal injuries, and an Office of General Services official who examined the boxing contract at the Inspector General's request noted that the insurance provisions seemed "inadequate" given the violent nature of a boxing event.

The Inspector General questioned Agriculture and Markets Director of Finance Lucy Roberson regarding the 2009 boxing contract. Her office is responsible for all Agriculture and Markets procurements. Roberson admitted, "I did not know anything about it until this week [in January of 2010]." Informed by the Inspector General that there was no request for proposals, no bidding or any single-source justification for the boxing contract, and that the State Comptroller's Office had never approved the contract, Roberson stated, "This is flabbergasting. I am sorry, I know nothing of this. No one has told me about it. . . ."

The failure by Agriculture and Markets and State Fair officials to comply with the law is inexcusable. The boxing contract itself contains standard clauses, commonly referred to as

"Appendix A," which are incorporated into all state contracts. One provision clearly requires "Comptroller's Approval" for the contract to be valid. The pertinent term is depicted below as it appears in the executed boxing contract.

> **3. COMPTROLLER'S APPROVAL.** In accordance with Section 112 of the State Finance Law (or, if this contract is with the State University or City University of New York, Section 355 or Section 6218 of the Education Law), if this contract exceeds $15,000 (or the minimum thresholds agreed to by the Office of the State Comptroller for certain S.U.N.Y. and C.U.N.Y. contracts), or if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount, or if, by this contract, the State agrees to give something other than money when the value or reasonably estimated value of such consideration exceeds $10,000, it shall not be valid, effective or binding upon the State until it has been approved by the State Comptroller and filed in his office. Comptroller's approval of contracts let by the Office of General Services is required when such contracts exceed $30,000 (State Finance Law Section 163.6.a).

If the law were followed by the Fair, any questions raised about political and familial relationships creating an appearance of impropriety could have been addressed during the State Comptroller's vendor responsibility assessment and review of the contract terms. The lack of competitive bidding also could have been remedied. Furthermore, a financial analysis of the boxing event could have been undertaken to protect the state from improvident or extravagant spending. When asked by the Inspector General about conducting a financial analysis, Damon replied, "We never sat down and did a break even [financial analysis] or anything like that." As discussed below, the lack of any fiscal scrutiny was reckless and further reveals the impetuous manner in which Agriculture and Markets and State Fair officials undertook Fight Night at the Fair.

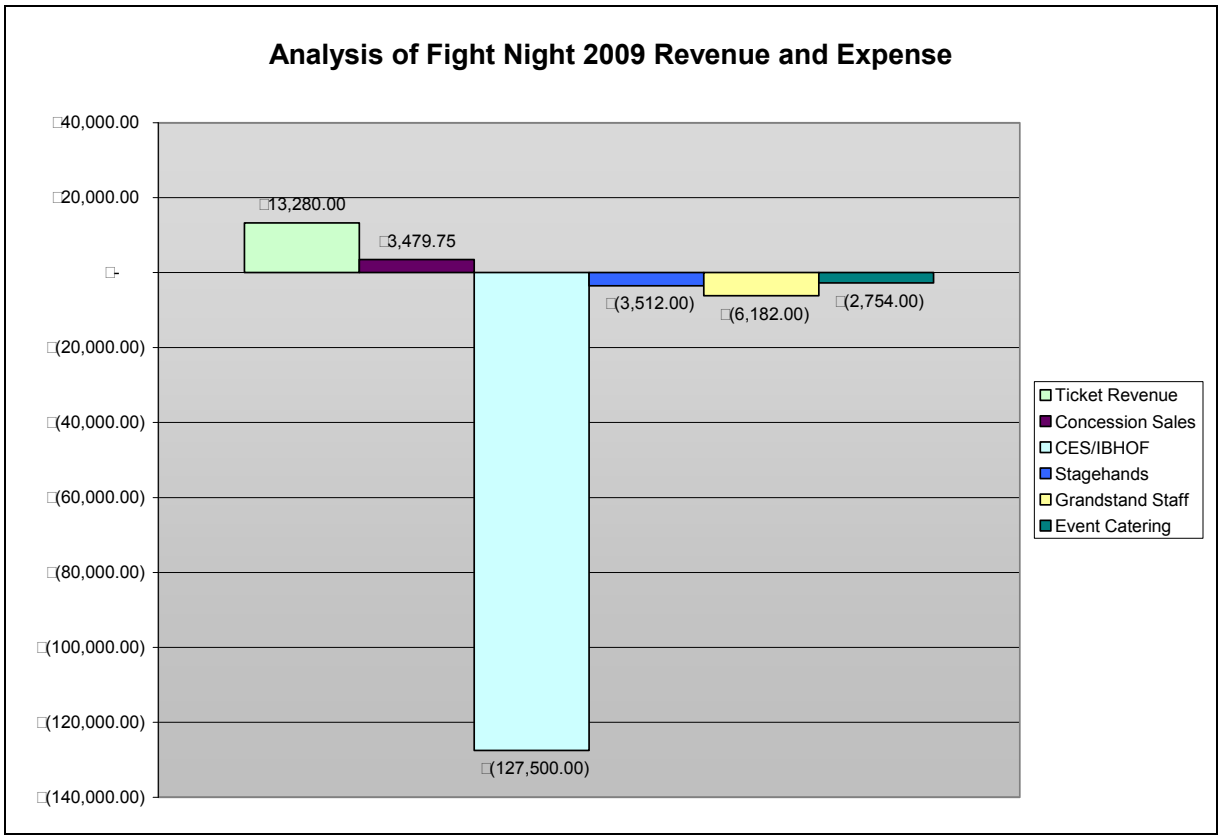
4. *The Failure of Fight Night*

Haggerty accurately characterized Fight Night as a "failure." Only 962 boxing fans attended the boxing event at the 17,000-seat Grandstand. The audience saw a boxing card of three matches with a main event a title match between Christy "The Coal Miner's Daughter"

Martin and Dakota Stone for the World Boxing Council female junior middleweight championship. Minimal promotional support and a general lack of advertising – which included virtually no marketing by CES and the Hall of Fame – caused Pierce to scramble to fill seats for the event. In all, the Fair sold 738 tickets to Fight Night and issued 224 complimentary passes. The event generated only $13,280 in revenue, far short of the $127,500 expenditure by the state.

After conducting interviews of all the Agriculture and Markets and Fair personnel involved with the 2009 boxing event, it was clear that a financial analysis of the boxing event was never conducted. Both O'Hara and Damon believed that such an analysis was conducted by Agriculture and Markets officials in Albany. Pierce stated that he talked to Damon and O'Hara regarding his cost concerns and that O'Hara assured him that Agriculture and Markets officials were backing the event, stating, "This is what they want." Pierce testified, "I figured these are people that know what they're doing. They've done this before; I haven't. So there's stuff they know that I don't in terms of the popularity of boxing." However, after learning of the cost of the boxing contract, Pierce said he questioned whether the Fair could generate enough ticket sales to turn a profit. He concluded, "This is not something we can afford to do."

Agriculture and Markets officials — namely Haggerty, Ketzer and McCormick — were apparently completely unaware of the cost of the event. As mentioned above, Finance Director Roberson knew absolutely nothing about Fight Night until five months later. In fact, no one from Agriculture and Markets knew the costs until the Inspector General presented them with an analysis prepared during this investigation. The below graph illustrates the utter financial failure of Fight Night at the Fair 2009.



In fact, the Fight Night event barely covered 10 percent of the CES contract value of $127,500.[41] The contract value, however, was not the only expense for Fight Night. Documents revealed that in addition to the cost of providing necessary security and usher staff, the Fair paid a hefty catering bill for the event. Other expenses for Fight Night totaled $12,448. In total, Fight Night 2009 had $139,948 in expenses.

2009 Fight Night at the Fair Revenue & Expenses Totals	
Total Revenue	**13,280.00**
Total Expense	**139,948.00**
Loss	**(126,668.00)**

In total, the state lost $126,668 on Fight Night. In testimony to the Inspector General, numerous individuals characterized Fight Night as a failure in terms of attendance. "Lousy

[41] The contract between the state and CES called for the state to receive all the money from ticket sales.

crowd," said Haggerty. Even the Hall of Fame's Edward Brophy was "disappointed" with the turnout.

The attendance of 962, however, should not have come as a surprise. Shortly after proposing the idea, on November 21, 2008, Waffner e-mailed Ketzer, who forwarded the message to Haggerty, that there recently was a boxing match at the OnCenter in Syracuse and "they had about 800 people." A simple market analysis would have alerted Agriculture and Markets and Fair officials that they should further examine the financial viability of a boxing event at the Fair. None was conducted.

Despite the financial debacle in 2009, Haggerty initially reported to the Inspector General that they would "very much like to try boxing again." In order to improve the attendance figures, the 2010 event would be held in a smaller venue with maximum capacity of 5,000, which is also more conducive for watching boxing. However, upon reviewing the Inspector General's analysis, Haggerty commented, "It appears we paid too much" and expenses would have to be reduced. Indeed, using 2009 expenses and the most of expensive ticket price that year ($20) for purposes of simple analysis, the Fair would have to sell nearly 7,000 tickets just to break even. The Inspector General further advised Haggerty, as well as Commissioner Hooker, that procuring the services of a boxing promoter for any future event must also comply with the State Finance Law. On June 29, 2010, Agriculture and Markets reported to the Inspector General that due to a short time frame in which to conduct a competitive procurement, the planned boxing event for the 2010 Fair has been canceled.

V. LACK OF INTERNAL CONTROLS OVER TICKETS, VEHICLES AND PROPERTY

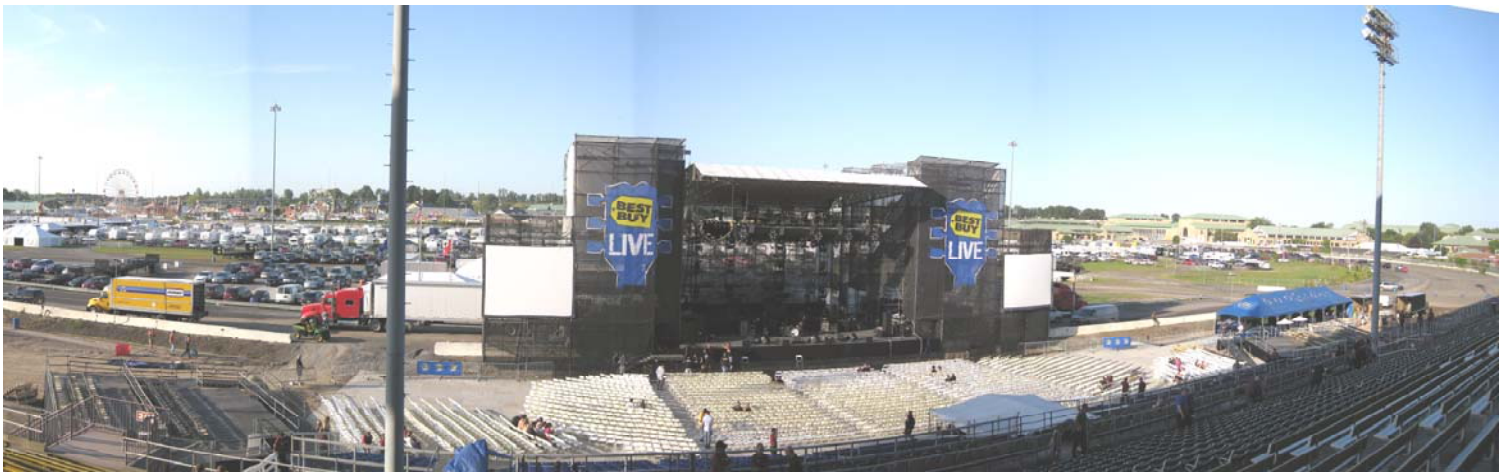
The Inspector General's examination of the State Fair's distribution of free concert tickets, as well as providing admission and parking passes to Fair staff, revealed another systemic problem at the Fair: Improper complimentary tickets and perks to state employees were rampant. The Fair's property and vehicles also routinely went unaccounted for due to lack of controls, inventory procedures and adequate documentation.

Current Fair Director Daniel O'Hara testified before the Inspector General that a short time after he joined the State Fair in February 2007, several areas of concern surfaced, including weak internal controls as well as poor inventory and asset management. O'Hara observed that the Fair had "minimal internal controls" and the "the sense of entitlement was systemic."[42] The Inspector General's investigation confirmed O'Hara's assessment: A "sense of entitlement" pervaded the State Fair.

A. Freebies, Perks and Insufficient Controls Over Concert Tickets

During its 12-day run, the State Fair hosts rock, country and other concerts in its 17,000 seat-capacity Grandstand. Nationally recognized acts are booked to perform at what has been described as one of the largest and best fair venues for concerts in the nation. In 2008 over 101,000 people attended concerts at the Fair. Through the years, Bob Dylan, Kenny Chesney, Toby Keith, Journey, James Taylor, Brooks and Dunn, Rascal Flatts, Britney Spears, and the Jonas Brothers have appeared at the Fair. Other events, such as a demolition derby and tractor pull, also have been held during the Fair at the Grandstand.

[42] Director O'Hara, therefore, hired three people in order to increase the IEA's internal audit capabilities. Initial reviews were conducted of barter contracts, concession space rental agreements, and complimentary admission and concert tickets. Several improvements in these areas have been since implemented. O'Hara explained that as he has tried to change the culture of the Fair's staff to one of greater transparency and accountability. The Inspector General, however, found that several weaknesses remain.



Panoramic view of the stage from the Grandstand, circa 2008.

The issuance of complimentary tickets to shows in many circumstances is consistent with practices standard in the concert industry and can be an essential part of the business serving such legitimate purposes as concert promotion, sponsor support, and media coverage. For instance, it is reasonable and appropriate to supply free tickets to performers and to disburse free tickets in promotional events such as radio contests. The Inspector General did not examine the issuance of complimentary tickets for these legitimate purposes. It is noteworthy that since 2007, the overall number of complimentary tickets dispensed by the State Fair has been drastically reduced from 11,793 tickets distributed both for legitimate purposes and as perks, to 4,003 complimentary tickets for legitimate business purposes in 2009.

The Inspector General confirmed the initial allegation made by Agriculture and Markets officials, finding significant weaknesses in internal controls over the State Fair's complimentary concert "reviewer" tickets, particularly under Director Cappuccilli. At the inception of the investigation, current First Deputy Commissioner Haggerty remarked to the Inspector General that prior to 2008, there was "a pattern of abuse of tickets and no accountability." The reviewer tickets were ostensibly for members of the media who were to review the Grandstand acts on any given night. But the vast majority of the approximately 90 tickets per show were disbursed to non-media at the discretion of Fair executives. The total cost of the reviewer tickets given away is more than $280,000.

The Inspector General further established that the Fair historically provided free tickets to state employees, including Fair staff and State Troopers assigned to the Fair, as a "perk." Over an eight-year period, the State Police received approximately $200,000 in complimentary concert tickets for Troopers assigned to the State Fair. In just three years, from 2006 to 2008, State Fair employees were given over $240,000 worth of free concert tickets. Fair employees also received free parking passes and admission tickets to the Fair for use by their family members.

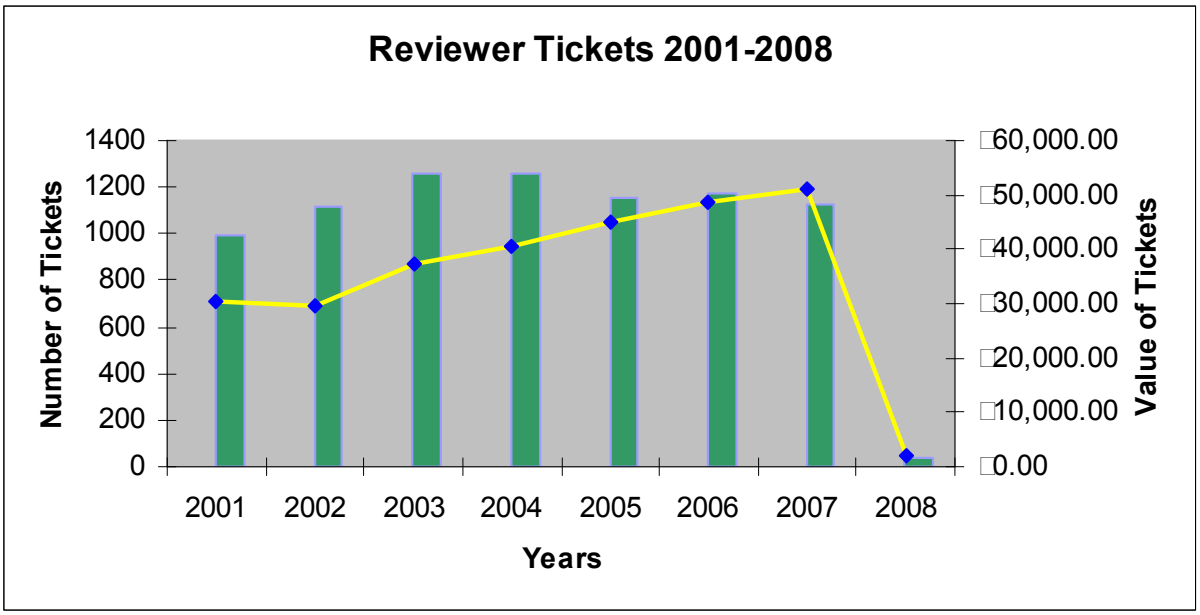
Lastly, the Inspector General uncovered a group of tickets referred to as "director holds" that were available for purchase at the Fair Director's discretion by a select few friends, family and political figures. Ordinary citizens – those lacking a connection to the Fair Director – could not access these "director hold" tickets.

1. *Free "Reviewer Tickets"*

The initial complaint to the Inspector General included an allegation that former Fair Marketing Director Joseph LaGuardia misused an inordinate amount of Grandstand concert tickets categorized as "reviewer tickets." These tickets were to be provided to media outlets wishing to review a Grandstand concert or event. The basis for the suspicion about LaGuardia came from a 2008 IEA internal audit that revealed a large discrepancy between the numbers of reviewer tickets needed for the 2008 Fair when LaGuardia was no longer employed at the State Fair as compared to when he controlled the "reviewer tickets." The audit also found no documentation accounting for the dissemination of large numbers of reviewer tickets at LaGuardia's disposal.

Given the allegations, the Inspector General analyzed the eight years of Grandstand tickets, from 2001 to 2008. This analysis showed that the State Fair provided approximately 85 reviewer tickets for every Grandstand show. In 2007 alone, the Fair issued over 1,100 reviewer tickets for just 12 performances. Strikingly, in 2008, after LaGuardia's departure, just 36 reviewer tickets, or three tickets per event, were issued. This reflected a 97 percent reduction in the number of reviewer tickets dispersed from 2007 to 2008. The chart below illustrates the

number of reviewer tickets per year and the total dollar value of those tickets, both of which declined precipitously from 2007 to 2008.[43]



As reflected in the chart below, under LaGuardia's direction, 8,071 complimentary concert reviewer tickets were issued between 2001 and 2007. The total value of these free tickets was $282,436 – all potentially lost revenue for the State Fair.

Reviewer Tickets 2001-2007	
Average Tickets Show	85
Average Tickets Year	1153
Total Tickets Issued	8,071
Total Value of Tickets	282,436

When interviewed by the Inspector General, the current Director of Public Relations for the Fair, Fred Pierce, could provide no explanation for the high number of reviewer tickets that

[43] There were 35 reviewer tickets issues for the eight Grandstand concerts during the 2009 State Fair.

were issued under his predecessor. Pierce, who currently manages the issuance of reviewer tickets for the Fair, disseminated only 36 reviewer tickets for the entire 2008 concert season, consisting of 12 events. Pierce believed that the disbursal of hundreds of reviewer tickets seemed excessive because he did not think there would be that many people interested in reviewing the State Fair concerts and other events.

Former Fair Business Manager Richard Guanciale reported to the Inspector General that his former colleague, LaGuardia, dispensed reviewer tickets to media outlets to advertise the shows. However, like Pierce, Guanciale could not explain why LaGuardia would need 90 reviewer tickets per concert and that the number seemed excessive.

The Inspector General determined that the vast majority of the 90 reviewer tickets were not given to concert reviewers or to the media. Former marketing employee Emmy Moss, who was LaGuardia's subordinate, admitted that the number of reviewer tickets far exceeded the needs of media reviewers. Moss distributed the reviewer tickets for LaGuardia in 2007. She described to the Inspector General that the State Fair designated about 90 reviewer tickets per show, but only gave out about 16 to 20 tickets to actual media outlets and reviewers. She acknowledged that the remaining 70 were either given away for free or destroyed. She said that the reviewer tickets were not just for the media reviewing an act; they were used as promotional giveaway tickets and to appease sponsors or vendors with any last minute problems.

The Inspector General spoke with people familiar with the entertainment industry about complimentary tickets. One longtime talent agent with a major firm said that complimentary tickets are "very much an industry standard." He described this common practice as "papering the house": free tickets are given away for a concert that is not selling well. He explained that it is preferable to fill otherwise empty seats even if for free in order to enhance the concert experience. Former State Fair Marketing Director Joseph LaGuardia acknowledged that he engaged in this practice, stating, "Sometimes if shows don't sell well, we would not hesitate to give tickets out . . . We would make them available to people."

Despite LaGuardia's acknowledgement, the Inspector General found no documentation indicating which specific events were involved or how many tickets were issued. Regardless, although this practice may be common and acceptable for private venues, the State Fair is a public, government-operated entity, where fairness, equality, and transparency should be benchmarks.

More troubling, Moss further testified that reviewer tickets also were provided to "the Director [and] Assistant Director coming down [saying] 'Em, I need four tickets for this person' type of thing." "There would be times," Moss continued, "they would come down and ask for tickets, and those would generally come out of our reviewer ticket spots." Moss added that the Fair Director's personal assistant, Joan Kerr, would come down to her office "or call" to have these tickets brought to her. When questioned by the Inspector General about reviewer tickets, Joan Kerr denied any involvement with the disbursement of such tickets held by LaGuardia or his staff.

Moss stated that she recalled these tickets going to Director O'Hara, former Assistant Director Matthew Morgan, and Kerr specifically, and that she personally provided O'Hara, Morgan, and former Director Bebette Yunis extra tickets from this allotment of free tickets. According to Moss, "If Dan [O'Hara] has family or anything like that, or Peter [Cappuccilli] or Bebette [Yunis] or whatever director it was, that is where they came from [reviewer tickets]." Therefore, according to Moss's testimony, reviewer tickets were used by the Fair's executive management as a source of free concert tickets that they could hand out at their discretion or use for themselves or for their family members.

Current Fair Public Relations Director Fred Pierce provided another example of how LaGuardia misused reviewer tickets. Pierce testified that prior to the 2008 Fair, he was contacted by a Syracuse-area television weatherman, who told him that LaGuardia used to give him free concert tickets in exchange for faxing him daily weather reports. Obviously, LaGuardia could have simply turned on a radio or television to obtain the same information, rather than giving away tickets, each with a face value of around $30 to $50. Pierce added that he has

received numerous similar calls from people seeking free concert tickets as they had received in the past. Pierce posited that LaGuardia had many "you wash my back, I'll wash yours" deals.

The Inspector General found a lack of documentation regarding who received reviewer tickets. Moss testified that she maintained a ledger detailing the initial disbursement of the reviewer tickets; however, Moss conceded that in the flurry of pre-Fair activity, she would lose track of who received these tickets. Barbara Godfrey, the Special Assistant to the current Fair Director, told the Inspector General that she could not find any log or other record documenting who actually received the reviewer tickets. The Inspector General's thorough search of Fair facilities also was unable to locate any documentation.

The Inspector General questioned LaGuardia about his handling of reviewer tickets. Initially, LaGuardia claimed that he gave two tickets to about 45 separate media outlets each show, totaling 90 tickets, a direct contradiction of Moss's testimony, He said the tickets were available to all of the media outlets. He said these were pulled and available so that they would not have a situation on the day of the show where they did not have enough tickets for various media outlets. He said they were given out or were kept in the file and added that they were not returned to the box office because they were not going to be sold anyway. LaGuardia further claimed that former Fair Directors Wayne Gallagher, Cappuccilli or Yunis never asked for "free tickets" from this allotment. (It should be noted that LaGuardia has said that he is a close, personal friend of Cappuccilli's.) LaGuardia testified, "That did not happen to my knowledge."

However, when the Inspector General confronted LaGuardia with Moss's testimony about giving reviewer tickets to Fair executives, as well as the vast discrepancy in the number of reviewer tickets issued by him and his predecessor, LaGuardia provided a different account:

> They were there available for people to pick up; certain shows they would pick them up, certain shows they wouldn't. They would just sit there in the drawer . . . Sometimes if shows don't sell well, we would not hesitate to give tickets out . . . We would make them available to people.

LaGuardia added that the Fair did not view them as having monetary value. He added that sometimes they would rip them up and "toss them." He said that this was probably an

"auditor's nightmare." Asked about Moss's assertion that the Fair Director or Assistant Director requested free tickets, LaGuardia admitted:

> If the Director asks for things, it is fine. She did say to me, "What do I do if Dan [O'Hara] or Matt [Morgan] call," and I said, "You do whatever they ask you to do." He is the director and he is in charge and he knows these are available. Nobody is hiding anything.

LaGuardia said Moss was in a tough position. Ultimately, LaGuardia confessed, "We allowed people to utilize these seats."

The state's "code of ethics" in effect during LaGuardia's tenure clearly provided: "No officer or employee of a state agency . . . should use or attempt to use his or her official position to secure unwarranted privileges or exemptions for himself or herself or others."[44] Obtaining from a State Fair employee free concert tickets which are not equally available to the public is an unwarranted privilege. At the very least it presents an appearance of impropriety. Public Officers Law § 74(3)(h) states, "An officer or employee of a state agency . . . should endeavor to pursue a course of conduct which will not raise suspicion among the public that he is likely to be engaged in acts that are in violation of his trust." The public's faith in government is undermined when only a select few benefit from this largesse to the exclusion of general populace.

2. *"Director Hold" Tickets*

Another allotment of Grandstand tickets, known as "director hold" tickets, were available for purchase at face value or full price, but as with many of the "reviewer tickets," only by people with a connection or relationship with Fair officials. These tickets were "held" from sale to the general pubic and sold at the Director's discretion, hence the name "director hold" tickets. Once again, the average fairgoer did not have access to these tickets. Therefore, if a show was sold out, a friend of the Director or a politician could still purchases tickets that an ordinary citizen could not.

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[44] Public Officers Law § 74(3)(d). In 2010, a clause was added to the end of this section specifically stating that such unwarranted privileges include "the misappropriation to himself, herself or to others of the property, services or other resources of the state for private business or other compensated non-governmental purposes."

Several witnesses advised the Inspector General that for years requests for "director hold" tickets have been made to the Fair Director's office, usually through Joan Kerr, the Assistant to the Director. Kerr, who has worked at the Fair for over 20 years, acknowledged to the Inspector General that, historically, every Fair Director has had "director hold" tickets so that concert tickets can be distributed to select individuals. Kerr testified that "director hold" tickets are never given away for free. Instead, the tickets are purchased through Kerr with cash or a credit card, and she documents the sale on a form. Kerr added that individuals must sign for the tickets.

The Inspector General learned that the number of "director hold" tickets has drastically declined under Director O'Hara. While under Cappuccilli there were approximately 1,000 "director holds" per event for Fair officials to distribute, this number has decreased to approximately 250 per Grandstand event under Director O'Hara.

The Inspector General's analysis of such tickets for the 2008 concert series revealed that over 2,700 tickets were issued, at a value of over $158,000. Not surprisingly, the two concerts in which the most "director hold" tickets were issued, the Jonas Brothers and Rascal Flatts, were both highly sought tickets. For the Jonas Brothers concert, a sellout of 17,106 patrons, 484 Director Hold tickets were issued at a value of $28,770. Similarly, for Rascal Flatts, which was nearly a sellout with 17,003 in attendance, 601 director hold tickets were issued at a value of $39,997. The "director holds" essentially allows the Fair Director to bestow favors and enables select individuals to jump to the head of the line to buy tickets to sold-out shows.

The Inspector General sought to discover who could obtain "director hold" tickets. Joan Kerr and Emmy Moss characterized these select individuals as "someone special," "people who knew people," or "friends coming in with money." Former Fair Assistant Director Matthew Morgan informed the Inspector General that the Fair Director authorizes the sale of "director holds" to friends, politicians, and colleagues who call to ask for a ticket.

The list of who bought these tickets is also troubling. Executive management at Agriculture and Markets, including both current Commissioner Patrick Hooker and First Deputy

Commissioner Haggerty, purchased tickets through this process. Commissioner Hooker testified that he had been offered free concert tickets by Kerr, but he insisted that he pay for them, which totaled over $200. Numerous current State Fair employees also purchase tickets through the "director hold" method. Also of note, former Fair Director Cappuccilli acquired 42 "director hold" tickets in 2008 for numerous shows. Former Fair Director Bebette Yunis purchased eight "director hold" tickets in 2008 for two Grandstand events.

Many vendors doing business with the State Fair and more than half a dozen State Assemblymen and State Senators also purchased "director hold" tickets. Local city and county officials also tapped into this ticket pool of tickets. "Does it pay to know somebody? Absolutely," acknowledged former Marketing Director LaGuardia, "that is the way it operates sometimes."

This practice is contrary to the state's "code of ethics," which prohibits state employees from using or attempting to use "his or her official position to secure unwarranted privileges or exemptions for himself or herself or others. . . ." The law also requires state officials to "endeavor to pursue a course of conduct which will not raise suspicion among the public that he is likely to be engaged in acts that are in violation of his trust."[45] The practice of allowing access to high-quality tickets only for the well-connected, those doing business with the Fair, and those with political ties is inimical to the proper functioning of a state entity. These types of arrangements also foster an environment where untoward *quid pro quo* or kick-backs can arise and, therefore, have no place in state government.

3. *"Perks" to State Troopers*

Since the inception of the New York State Police (NYSP) in 1917, State Troopers have provided security at the State Fair. For several decades Troopers also received free admission to Grandstand concerts during the Fair. During initial conversations with the Inspector General, auditors from the IEA and Agriculture and Markets questioned the appropriateness of the State Fair giving concert tickets to the State Police. Uniformed Troopers who were on duty and assigned to provide security during the concerts did not require tickets for admission. The Fair,

[45] Public Officers Law § 74(3)(d) and (h).

and many of the performers, also provided private security staff for the concerts; instead, these free tickets were for the entertainment of off-duty Troopers, reportedly as a longstanding courtesy to the State Police. The auditors, however, believed that this arrangement was improper.

The supervision and management of the State Police Fair detail is provided by supervisors from Troop D. For several Fairs through the 2008 Fair, these supervisors were Major L.X. DePass and First Sergeant Jo Ann Alberico. They described to the Inspector General the Fair detail as an unpleasant experience for the State Police assigned. Alberico advised the Inspector General that the State Police Fair detail encompasses approximately 250 Troopers, who perform numerous functions, such as traffic control, crowd flow, and protecting patrons from unruly or intoxicated fairgoers. Although part of their paid duties, many Troopers complain about being away from their friends and families for an extended stint and that the detail can be physically arduous. Additionally, uniformed Troopers provide added concert security and operate their own Fairgrounds exhibition on public safety and recruitment.

The Inspector General determined that there is a financial arrangement between the State Fair/Agriculture and Markets and the State Police to cover some of the costs of the Troopers' services during the Fair. Margaret Marshall, the State Police Director Fiscal Management, and her staff reported that the financial relationship between the Fair and the State Police originated in the 1980s. Since then the State Police are reimbursed $270,000 for services provided during the Fair. The State Police's expenses, however, far exceed this amount. For the 2009 Fair State Police expenses were approximately $940,000, yet the State Police received the same $270,000 from the Fair. State Police expenses include lodging for the Troopers, per diem reimbursement, vehicles, and salaries/overtime.

Records obtained by the Inspector General revealed that prior to 2009, the State Police received significant numbers of free concert tickets for each of the Grandstand concerts at the Fair. IEA audit staff reported that the State Police have been receiving approximately 60 concert tickets per show since at least 2001 and perhaps throughout the Fair's history. Data reflect that, for a six-year period (records for 2002 and 2003 were missing), the State Police were provided

3,824 free tickets, averaging over 55 tickets per show and 637 tickets per Fair season. The value of these tickets was $160,000, with an average ticket price of $41.84. If the missing 2002 and 2003 concert seasons are included based on theory that the same numbers of tickets were provided to the State Police annually, the value of the complimentary tickets would be approximately $213,000 over the eight-year span.

New York State Police Complimentary Concert Admissions 2001-2008	
Total Free Tickets	3,824
Total Shows Tickets Issued For	69
Average Tickets Year	637
Average Tickets Show	55.4
Average Ticket Value	41.84
Value of Tickets, excluding 2002-2003	160,000
Estimated Value, including 2002-2003	213,333
** 2002 and 2003 records not found*	

While $213,333 in potentially lost revenue in an eight-year span is significant, the origin of these complimentary tickets dates back several decades, according to state officials and State Police management. Supporting the long-standing arrangement, a State Fair policy dated June 1, 1990, reads: "The State Police on 11 day assignment to work the Fair are provided 65 stickers [tickets] to each show for use by themselves (work permitting) and family members who visit them during the Fair." Extrapolated over several decades, the value of these free tickets to the State Police is even greater.

Several explanations for the free tickets were provided to the Inspector General. Officials attempted to justify the tickets noting the hardships of the State Police detail and rationalize the tickets as a sign of the Fair's appreciation for the Troopers' services. Major DePass told the Inspector General that the concert tickets are "a nice little perk" for the Troopers on the detail. Free tickets, DePass said, are a way for the Fair to show its appreciation for hard work of the Troopers. However, most state employees who similar provide valuable services do not receive similar bonuses.

Others suggested that in the past, Troopers and their friends and families were granted access to concerts without tickets altogether, so the free ticket arrangement was initiated to

control the Troopers' admissions to the concerts. Former Fair Marketing Director LaGuardia testified, "We had occasions for some popular shows where State Police would allow friends, wives to come to the shows, no charge. We thought that that put them in a compromised position and something that the public could see and we did not want to have that continued." Former Fair Business Manager Guanciale explained, "You have problems when you have law enforcement 'badging' their way into things, big time." Guanciale added that some law enforcement would bring in a large group of friends to the concerts. To remedy this, the Fair decided to allot tickets to the State Police for each show to eliminate the practice of Troopers using their shields to enter the Grandstand. In other words, rather than correcting the problem of improper access to concerts, the State Fair formalized the practice.

State Police First Sergeant Alberico indicated that the Fair provides private security for the concerts, but the presence of uniformed Troopers is precautionary in the event of a large fracas. However, Alberico conceded that there really is no justification for the tickets, other than it was a nice gesture by the Fair to the Troopers. Major DePass told the Inspector General that when he became commander of Troop D, he initially questioned whether this practice was appropriate. However, he said that he was assured that complimentary tickets had been given to Troopers for decades and that it was not a problem. Alberico acknowledged that there could be an appearance of impropriety with the public related to the free tickets, and reported that "if the [complimentary] tickets have to go, they have to go."

During the course of the Inspector General's investigation, State Fair officials determined that the Fair would no longer provide complimentary Grandstand concert tickets to Troopers. Therefore, the State Police did not receive any complimentary tickets for the 2009 Fair.

4. *Free Tickets for Fair Employees*

The Inspector General discovered that each Fair employee also received free tickets to Grandstand concerts, as well as free admission passes and free parking passes for themselves for

personal use and for their families.[46] Prior to the opening of the Fair, each permanent IEA employee was provided with an employee packet containing 24 concert admission stickers (two per show), weekly passes for admission to the Fair, additional admission passes for friends and family, and parking passes for them and others. The financial benefit derived by Fair employees receiving free concert tickets, free admission and free parking passes was approximately $1,300 per year from 2006 to 2008.

Giving free tickets and passes to Fair employees could conceivably implicate the prohibition on public officials from using their official position "to secure unwarranted privileges or exemptions for [themselves] or others (Public Officers Law § 74[3][d]). Moreover, these tickets and passes may constitute taxable fringe benefits that have not been reported to the U.S. Internal Revenue Service (IRS) and State Department of Taxation and Finance. The Inspector General further found significant weaknesses in internal controls over these tickets and an environment where the tickets were provided to non-employees and contractors, were traded and bartered between employees without restraint, and were even sold for profit to others, in violation of State Fair policy.

Complimentary Concert Tickets

State Fair (IEA) employees have been receiving free tickets to Grandstand concerts since the 1950s, according to former Assistant Fair Director Matthew Morgan. The Inspector General found documentation showing that each employee received two concert tickets (admission stickers) to all Grandstand shows every year since at least 1990. A 1990 IEA policy reads that all permanent IEA employees are provided two admission tickets to each show for themselves and family. The revised August 2008 IEA policy also allows permanent IEA employees two tickets per show. An August 2008 memorandum from Director O'Hara to all full-time or permanent employees confirmed this practice. O'Hara's memo indicates that each employee will receive two admissions "to each Grandstand show for your personal and/or family use.

[46] In addition, Fair employees also receive admission and parking passes to access the Fairgrounds for work and park while on duty.

Please keep in mind that these tickets, which do not include admission to the fair, are complimentary and may not be sold."

The Inspector General learned that the concert tickets given to Fair employees are never available for sale to the public and the seats do not even appear on the Ticketmaster ticket manifest. Several Fair employees claimed that since these tickets are not for sale, they have no value. Their contention is illogical. Former Business Director Richard Guanciale described these seats — located to the side of the stage — as "pretty good." The IEA's internal auditor concurred with Guanciale's assessment, and added that if these seats were available for public sale, they would be priced in the higher ticket-price category.

The value of 24 concert or event tickets per employee is considerable. As reflected below, the IEA/State Fair provided its employees with almost $80,000 in free concert tickets in 2008 alone. This amounted to $1,153.92 per employee receiving this benefit. Over the course of the last three years, the IEA/State Fair has given its workers approximately a quarter of a million dollars in free tickets.

FREE CONCERT TICKETS TO EMPLOYEES: THREE-YEAR ANALYSIS

Year	Number of Employees Receiving Concert Tickets	Number of Employee Concert Tickets Issued	Dollar Value of Concert Tickets Issued
2006	76	1,824	**81,168**
2007	70	1,680	**83,300**
2008	69	1,656	**79,626**
Totals	**215**	**5,160**	**244,094**

Asked to explain the purpose of these free tickets and passes, Fair staff said that they are a benefit for the staff who work long hours during the Fair. Several employees advised the Inspector General that the long hours often prevents them from spending time with their family members, so these free passes and tickets allow their families to come and see them during the workday. While the Inspector General does not question the compensated work performed by Fair employees, many state employees work long hours and do not enjoy a similar benefit.

Joan Kerr, Assistant to the Director, stated that she coordinates and distributes the IEA employee free ticket packets. She reported that approximately 200 sets of employee concert tickets are made each year and that the number of tickets exceeds the number of employees who were given the tickets. Asked about the extra tickets, Kerr testified that on a limited basis extra tickets would be give to employees. Kerr stated that she would keep extra complimentary employee tickets after the end of the Fair, but no record is kept of extra stickers that are disbursed.

Barbara Godfrey, current Special Assistant to the Director, testified that Director O'Hara had extra free tickets. She said, "I believe there was always a little extra" supply of tickets available to him and maintained by Joan Kerr. However, Godfrey did not know the location of these extra tickets or who received them. This was echoed by the former Marketing Director LaGuardia. "Were stickers available if there were extra ones that someone would say I need two more? I suspect those might have been used," he advised. Former Assistant Director Morgan echoed LaGuardia's comments: "I am sure that went on."

The Inspector General also found that there were control weaknesses over how Fair staff used their free concert tickets. The Inspector General determined it was common practice for IEA staff to trade concert tickets to one another for preferred shows. Moreover, several employees admitted that they gave their tickets away to shows that they could not or did not wish to attend. Former Business Manager Guanciale admitted that he would often transfer his entrance stickers to friends and family members. Joan Kerr testified that she gave her two stickers to the 2008 Jonas Brothers concert to Director O'Hara, whose wife, daughter and her friends attended the concert. Current Director of Financial Administration Jeffrey Damon acknowledged that he gave his two stickers to the 2008 Jonas Brothers concert to Special Assistant Godfrey, who in turn gave these tickets to her daughter and her daughter's friends. Many similar stories were conveyed to the Inspector General. Since there was no tracking system, it is impossible to determine who attended the concerts using these employee stickers. One former employee recalled seeing people at shows with staff stickers on that she "did not recognize" as Fair personnel.

More disturbing, the Inspector General found evidence that employees sold tickets for personal profit, despite a clear prohibition from doing so. The IEA internal auditor reported to the Inspector General that he is aware of several incidents in which Fair employees have sold their tickets for money. He acknowledged weak controls inherent in giving employees tickets because there are opportunities for these tickets to be resold without detection. He even added that he does not give his tickets to others, even for concerts he does not intend to attend, because he does not want the tickets assigned to him to end up being inappropriately sold for profit.

One example occurred in September 2008 involving the Rascal Flatts and Taylor Swift concert. It was discovered that a part-time State Fair security guard placed two Rascal Flatts tickets up for bid on eBay, an Internet auction service; the tickets sold for $630. He also attempted to sell tickets to the Jonas Brother concert, but was unsuccessful. His online posting was discovered by Fair officials, who asked a local police department to help identify the eBay seller. Fair officials then questioned the employee and he admitted to selling the tickets on the Internet. Exacerbating the problem, the IEA employee ticket manifest did not contain the security guard's name, signifying that he was selling another employee's complimentary tickets. The Fair subsequently determined that its Security Chief had given his employee tickets to this security guard. No disciplinary action was taken as a result of this incident.

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RASCAL FLATTS TICKETS SYRACUSE NEW YORK STATE FAIR

Item number: 220272948199

Bidding has ended for this item

Sell an item like this or buy a similar item below.

Winning bid:	**US $630.00**
	No payments until 2009 - new eBay MasterCard
Ended:	**Aug-27-08 10:58:04 PDT**
Shipping costs:	**US $5.00** US Postal Service Priority Mail® Service to United States
Ships to:	United States
Item location:	PHOENIX, NY, United States
History:	22 bids
Winning bidder:	ajbsays (1)
You can also:	Email to a friend

Listing and payment details: Show

Meet the seller

Seller: nyramman (85 ★)
Feedback: **100 % Positive**
Member: since Jul-07-01 in United States

- See detailed feedback
- Ask seller a question
- Add to Favorite Sellers
- **View seller's other items**

Buy safely

1. **Check the seller's reputation**
   Score: 85 | 100% Positive
   See detailed feedback
2. **Check how you're protected**
   PayPal Up to $2,000 in buyer protection. See eligibility

Description

Item Specifics - Tickets

Event Type:	**Concerts**	Number of Tickets:	**2**
		Section:	**TRACK**
Venue State/Province:	**New York**	Row:	--
Venue City:	--		
Venue Name:	--	Month:	**August**
		Day:	--
		Year:	**2008**
Season Tickets: --			

RASCAL FLATTS WITH TAYLOR SWIFT

NEW YORK STATE FAIR - SYRACUSE

EXCELLENT SEATS IN EMPLOYEE SECTION LOCATED ON THE TRACK

INCLUDES ADMISSION TO THE GREAT NEW YORK STATE FAIR

THIS CONCERT IS CLOSE TO BEING SOLD OUT, IF NOT SOLD OUT ALREADY

The eBay posting from the above-referenced ticket sale.

Not only does this incident illustrate gaping control weaknesses, it undercuts any contention that the employee tickets had no value. Obviously, each seat was worth $315 in this instance. Director O'Hara has since ceased the practice of providing employees with complimentary concert tickets.

Parking and Admission Passes

In addition to the free concert tickets, the Inspector General learned that each State Fair employee receives other perks from extra admission passes to parking passes for their family and friends.

According to Assistant to the Director, Joan Kerr, who manages the distribution of these passes, Fair employees receive a 12-day pass to the Fairgrounds. This pass consists of a punch card for the employee's workday entrance onto the Fairgrounds. However, Kerr stated that Fair employees also receive "Special Service Passes" for the personal use of friends and family. The Special Service Pass functions as an admission ticket and has a value of $6. In 2009, select employees received 23 of these admission passes. In addition, select employees receive a 12-day parking pass for use by family or friends. Parking is valued at $4 daily per vehicle. Kerr stated that Fair management has decreased the number of complimentary admission passes issued to employees by approximately 10 percent per year. While the Inspector General recognizes efforts to reduce the number of free tickets to employees by current Fair management, selected employees still received 23 extra admission passes as well as 12 parking passes free of charge.

The Inspector General's analysis determined that the financial benefit derived for each employee from free concert tickets, free admission and free parking passes had a significant value of more than $1,300 per year from 2006 to 2008. The large decrease in the value in 2009 is attributable to the termination of providing complimentary concert tickets to Fair employees.

Year	Value of Free Concert, Admission and Parking Passes Per Fair Employee
2006	1,308.00
2007	1,406.00
2008	1,352.00
2009	186.30

Lucy Roberson, Agriculture and Markets Director of Finance, who was unaware of the free tickets until informed by the Inspector General, said that it is "unheard of to give state

employees perks like that." She indicated that she believed the value of the tickets should be determined in order to calculate a taxable benefit. However, Fair finance department staff indicated that the free tickets that employees received were not reported as taxable benefits.

The IRS Taxable Fringe Benefit Guide provides that a "fringe benefit is a form of pay (including property, services, cash or cash equivalent) in addition to stated pay for the performance of services." According to the IRS Guide, "fringe benefits for employees are taxable wages unless specifically excluded by a section of the Internal Revenue Code (IRC)."[47] Though it appears as though these free tickets constitute a taxable fringe benefit, the IRS is the authority to make the final determination.

The Inspector General's review of staff rosters also suggested that IEA policy prohibited giving free concert and admission tickets to many individuals who received them. Pursuant to official policy, only "permanent IEA employees" were to receive complimentary concert passes. Instead, hundreds of complimentary tickets were given to non-permanent employees in August 2006, 2007, and 2008. The unauthorized recipients included Agriculture and Markets employees working at the State Fair, former employees of the IEA and State Fair, and independent sales contractors. If the IEA's policy was followed, none of these individuals should have received the free tickets. Assistant to the Fair Director Kerr admitted that many employees who fell outside the definition received free tickets. As to which employees got free tickets, Kerr said, "Sometimes, to be honest with you, it is just a subjective decision." Ledgers also revealed that some part-time and/or summer employees would receive the packet of free tickets, while other part-time employees did not, without explanation.

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[47] *See* IRC §§ 61, 61(a)(1), 3121, 3401. Two potential exclusions under the IRC – "de minimis" and "no-additional-cost" fringe benefits – do not appear to apply here. The law does not specify a dollar threshold for benefits to qualify as "de minimis," but the IRS notes that given a specific situation, a benefit of $100 was not considered "de minimis." A "no-additional-cost service" is a "service offered by the employer to its customers in the ordinary course of the line of business of the employer in which the employee performs substantial services, and the employer incurs no substantial additional cost (including foregone revenue) in providing the service to the employee." To determine "substantial additional costs," the IRS advises to "count any lost revenue as a cost." The concert tickets could have been sold to public, resulting in approximately $80,000 in potential lost revenue annually.

Illustrating the Inspector General's concern regarding the inappropriateness and subjectivity that marked improper disbursements, it was determined that former Director Cappuccilli received the packet of free concert tickets and passes – valued at $1,068 – when he was no longer an employee in 2006. He also received 44 admission passes ($264 value) and 24 parking passes ($96 value) that year. In total, Cappuccilli was inappropriately provided $1,428 in free tickets and passes.

The practice of providing employees with two free concert tickets was discussed at an IEA Board meeting in December 2008, amid the Inspector General's inquiries into the appropriateness of the practice. At this meeting, the IEA Board decided to eliminate the complimentary concert tickets to its employees altogether. Explaining the decision, Agriculture and Markets Supervising Attorney Michael McCormick reported that this practice violated Governor David A. Paterson's executive order prohibiting the private use of state equipment and material. On June 18, 2008, Governor Paterson issued Executive Order 7, which provides, "State supplies, equipment, computers, personnel and other resources may not be utilized for non-governmental purposes, including for personal purposes or for outside activities of any kind."

The Inspector General concurs with eliminating the practice of giving Fair staff concert tickets. The distribution of these free tickets and passes not only implicates Executive Order 7, Public Officers Law § 74 and the Internal Revenue Code, but is ripe for preferential treatment. When a government entity like the State Fair engages in giving away items of value such as concert tickets to select individuals, an environment of favoritism and inequity is fostered. There is also the potential for unlawful gratuities and bribery. Furthermore, the Fair's porous internal controls enabled misuse and abuse by employees. The recent sale of concert tickets on eBay, for example, supports this conclusion. These are significant immeasurable costs.

The Inspector General's analysis of complimentary tickets and admission/parking passes distributed by the State Fair reveals a loss in potential revenue. The value for these freebies and perks totaled almost $800,000, during the relatively short time period examined. These

practices, however, existed for years prior to the sample analyzed by the Inspector General, meaning the actual value is much higher.

Total Value of Complimentary Concert Tickets, Admission and Parking Passes	
Reviewer Tickets (2001-2007)	282,436
NYSP Concert Tickets (2001-2008)	213,333
Fair Employees Concert Tickets (2006-2008)	244,094
Fair Employee s Admission Parking Passes (2006-2009)	58,710
Total	798,573

Fortunately, due to the Inspector General's inquiry, the State Fair has eliminated concert ticket giveaways to the State Police and Fair staff and has begun to exercise stricter controls on reviewer tickets and "director holds." Although people pay for the "director hold" tickets, the subjectivity of selecting buyers supports discontinuance of this practice. In fairness to those without a connection to the State Fair, those tickets should be equally available to all, not just those with a personal or political connection. Furthermore, providing employees with entry admission passes and parking for their use during the Fair seems reasonable, but giving additional admission tickets and parking passes for personal and family use is inappropriate and should cease.

B. Weak Internal Controls Over Materials and Vehicles

During the course of this investigation, the Inspector General received multiple allegations regarding the misuse of state property at the Fairgrounds. These allegations included concerns about a lack of internal controls over the receiving and tracking of goods from construction materials to office supplies. Additional complaints were made regarding State Fair employees using official vehicles for personal use. Agriculture and Markets internal audit staff also alerted the Inspector General to the possible theft by two Fair employees of the Subscriber Identity Module (SIM) cards from their state-assigned cell phones.

The Inspector General determined that the Fair lacks any inventory management system and, therefore, any control over equipment, property, and goods at the Fairgrounds. The Inspector General further found that a lack of control over state vehicles allowed one employee

to inappropriately use a Fair vehicle for personal purposes and three Fair employees to significantly underreport their personal use of a state vehicle. Two employees also attempted to hide their personal use of Fair provided cell phone calls by removing the SIM card from their cell phones and destroying the SIM cards.

1. *Inadequate Controls over Inventory and Surplus Property*

The Inspector General established that the Fair does not have a written inventory control policy and that assets and property are neither tracked nor managed by the Fair. The Fair does not inventory such commonplace items such as desks, chairs and other office furniture. Equipment and tools are likewise not tracked in any inventory log. Fair staffers, however, use Agriculture and Markets' computers, which in contrast to Fair equipment, are inventoried by Agriculture and Markets. Commissioner Hooker acknowledged to the Inspector General that the Fair's handling of its property is a "total danger."

The Fairgrounds covers more than 300 acres and consist of dozens of buildings. These buildings, along with associated infrastructure, require a multitude of materials to support the structures and functions year round. The Fair's maintenance department performs routine upkeep, while materials are purchased through the Fair's finance department.

O'Hara implemented a process in 2007 in which Fair personnel perform an initial verification of deliveries, a rudimentary control that did not even exist under prior Fair Directors. Goods and materials are delivered to the warehouse, which is overseen by Warehouse Supervisor John Queen. He explained that when materials are received at the warehouse, the delivery invoice is compared to the requisition to ensure a match. The materials are then stored in the warehouse or another location on the Fairgrounds until used. Unfortunately, there is no inventory list, and once an item leaves the warehouse, its whereabouts are not documented.

When questioned by the Inspector General as to why the Fair has yet to develop an inventory management system, Queen replied that he has been told that such a program is "too expensive." When O'Hara was asked about the lack of inventory policy in January 2010, he

testified that the Fair is "taking a hard look at that," and is "in the process of drafting one . . . to capture the right data."

While on-site at the Fairgrounds, the Inspector General was alerted to a glaring example of the lack of adequate controls over Fair property. The Inspector General was informed that the Fair received a large shipment of computer-printer toner cartridges had been delivered to the Fairgrounds from the Office of General Services surplus property program, but that the toner was unusable in any Fair printers. A Fair employee voiced concern that the valuable toner could be stolen and sold for personal gain. Thousands of dollars worth of toner cartridges were unaccounted for on the Fairgrounds.

The Inspector General discovered multiple pallets with dozens of boxes of toner in the 4-H Youth Building. Queen expressed surprise upon being shown the toner and noted that he was unaware of any toner ordered or delivered to the Fairgrounds and was nonplused by its existence.

One of several pallets of toner cartridges discovered
by the Inspector General located in the 4-H Building.

The Inspector General determined that the toner had been ordered by Fair graphic designer Nicholas Pirro. Pirro testified that he orders OGS surplus material and claimed to have taken on this role due to his Internet savvy. Pirro stated that he monitors the OGS surplus material Web site, ordering material and equipment he believes the Fair could use. Pirro stated that the Fair has a tight budget, making surplus material an important asset because of the low cost of acquisition. Significantly, Pirro conceded that there is no procedure to record the receipt of surplus materials by the Fair, nor is the subsequent whereabouts of surplus equipment on the Fairgrounds documented anywhere.

As for ordering the toner cartridges, Pirro explained that they were requested by then-Agriculture and Markets Special Assistant to the Commissioner Richard Bennett, who also delivered the toner to the Fairgrounds. Pirro described it as a "logistical snafu." When questioned by the Inspector General, Bennett similarly testified that the toner had been ordered by mistake. No matter the reason, the toner was delivered to the Fairgrounds unbeknownst to those responsible for overseeing incoming deliveries. The pallets of toner were placed in a location where Fair officials were unaware of its presence, creating the likelihood that the material could be stolen or misappropriated for personal gain.

The Inspector General also found that a multitude of other free surplus items, such as life preservers, video projectors, and televisions, received from OGS that were of little or no use on the Fairgrounds. Pirro was described by a Fair employee as a "scavenger" who ordered surplus material from OGS with state money in a "helter skelter" fashion. Confirming this characterization, the Inspector General found that Pirro stored his own personal property, including an ornate claw-foot bathtub, in an empty office on the Fairgrounds. The Fair's lack of inventory policy and controls over its equipment and supplies creates a risk of abuse or theft of its property.

2. *Misuse of State Vehicles*

The State Fair maintains a large pool of vehicles and heavy machinery including cars, pickup trucks, front end loaders, and other construction vehicles. The Fair uses these vehicles for both administrative tasks off the Fairgrounds and on-site construction and maintenance.

Most Fair vehicles are used on the Fairgrounds with only Director O'Hara granted permission to use a vehicle for commuting. However, the Inspector General found that two other Fair employees were using state vehicles for personal reasons without the approval of their supervisors.

Maintenance Supervisor Michael Ryan not only used his assigned State Fair pickup truck during the work day, but also took it home at night for personal use. During questioning by the Inspector General, Ryan claimed that he took home the vehicle in case of "emergencies" on the Fairgrounds. Ryan further testified that then Director Cappuccilli had granted him permission. However, Ryan also admitted to driving the truck for personal purposes unrelated to his official duties. Moreover, Ryan is a volunteer firefighter and testified that he responded to fire calls in the vehicle during work hours, as well as off hours. Ryan, a longtime member of the Solvay Fire Department, maintained his fire gear in the truck and outfitted it with a red flashing light.

The State Fair's pickup truck assigned to Ryan located on the Fairgrounds, with Ryan's volunteer firefighter's emergency light and firefighting gear found inside the truck's cab by the Inspector General.

The Inspector General also found that contrary to tax guidelines and state policy, Ryan failed to maintain any records detailing the amount of miles he drove the vehicle and if any of the mileage was related to State Fair business. A review of gas logs maintained by the Fair found that from 2005 to the date of Ryan's interview by the Inspector General, on April 21, 2009, his assigned truck was driven a total of 20,566 miles. In accordance with IRS guidelines, Ryan's failure to maintain a log differentiating his personal and business use of the vehicle subjects him to a tax liability on all 20,566 miles.

Further, the Inspector General found that Ryan's supervisors, hired during the O'Hara administration, were unaware that Ryan supposedly had been granted permission by Cappuccilli to use a state vehicle for his private purposes. In fact, they were not even aware that the truck Ryan commuted to work in everyday was a state vehicle. Following the interview with the Inspector General, Ryan ceased using the vehicle for personal purposes.

The misuse of State Fair vehicles was not just attributable to the Cappuccilli administration, but also occurred under O'Hara. The Inspector General found that former Assistant Director Matthew Morgan commuted thousands of miles in a vehicle he was not authorized to use for such purposes. Morgan has since paid appropriate fringe benefit taxes for his commuting mileage. The Inspector General also reviewed the mileage reporting practices of Director O'Hara. The Inspector General found that O'Hara underreported his mileage by 4,173 miles in 2007-2008 and 5,139 miles in 2008-2009. IRS guidelines require employees assigned a government vehicle to record the number of personal miles, which includes the commute to and from work. Records examined by the Inspector General, as well as O'Hara's testimony, revealed that he failed to record his commute as personal mileage. Therefore, these findings will be forwarded to the State Department of Taxation and Finance and Agriculture and Markets should correct O'Hara's underreported commuting mileage and instruct personnel in the proper reporting procedures.

3. *Theft and Destruction of Cellular Phone SIM Cards*

The Inspector General found that two Fair employees – former Business Manager Richard Guanciale and former Sales Account Executive Linda Ryan – stole and then destroyed the SIM cards from their respective state-assigned cellular telephones. A SIM card is a portable memory chip used in some models of cellular telephones. It holds personal identity information, the cell phone number, phone book, text messages and other data. Therefore, it is easy to switch to a new phone by simply sliding the SIM card out of the old phone and into the new one. A SIM card has a replacement value of between $10 and $20. However, stealing an "access device" which the person intends to use unlawfully to obtain telephone service constitutes grand larceny in the fourth degree.[48]

During the spring of 2008, the Fair's cell phone provider ended its service contract and all Fair employees were ordered to return their assigned phones to the carrier. Fair officials found that two phones assigned to Guanciale and Ryan belatedly turned in were missing the SIM card. The matter was subsequently referred to the Inspector General for investigation.

Guanciale's employment with the Fair was terminated on April 16, 2008. Instead of returning his government-issued cell phone, however, he continued using it for another month, until May 15, 2008. Guanciale admitted to the Inspector General that he had made dozens of calls with the phone, many of which were related to his personal business. The Inspector General's review of records established that, in total, Guanciale made 288 telephone calls using the state-issued phone despite no longer being employed by the State Fair. Twenty-eight of these calls were between Guanciale and Ryan.

Guanciale admitted that he later told Ryan to remove and destroy the SIM cards in the phones because he believed that by doing so Fair administrators could not obtain their call-history records which would demonstrate the improper use of the phones. He explained that he did not want the Fair administration to know who he was calling. Ryan admitted to the Inspector General that she destroyed the SIM cards. She added, "I know it was wrong."

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[48] Penal Law § 155.30(10).

VI. FINDINGS AND RECOMMENDATIONS

Misconduct by Peter Cappucilli, Jr.

The Inspector General determined that Peter Cappuccilli, Jr. who served as State Fair Director from 1995 until November 2005, abused his authority and misappropriated state resources to benefit himself, members of his family, and friends. Cappuccilli personally benefited by more than $78,000 as a result of his improper actions, and under his watch the State Fair misspent more than $860,000 in public funds.

The Inspector General found that Cappuccill's misconduct was related in large part to his relationship with Ronald Rescignano and William Jackson, owners of Catering with a Flair, a catering service located on the Fairgrounds, and longtime personal friends of Cappuccilli. The close relationship among Cappuccilli, Rescignano and Jackson manifested itself in an arrangement of mutual personal benefit contrary to the arms-length relationship that should exist between a public official and a state contractor. Specifically, Catering with a Flair afforded Cappucilli and the Fair an extraordinary discount on extravagant annual holiday parties and then, acting with Fair officials, disguised the true value of the parties from state authorities. Similarly, Cappuccilli, when asked by a reporter inquiring about their expense, falsely claimed that the parties did not cost the state any money when, in fact, the Inspector General determined that from 2002 to 2006 the Fair expended a total of more than $17,000 for these parties which included nearly $5,300 on invitations alone.

Compounding the ethical and legal implications of a public official and public body using state monies for such extravagances and then engaging in deception to conceal the true nature of the transaction, the Inspector General unearthed evidence that in exchange for this substantial discount, Fair officials not only failed to require Catering With a Flair to make the $83,273 worth of improvements required in its contract with the state, but, at state expense, expended $6,500 to renovate a second banquet hall at the Fair allowing the caterers to hold two affairs simultaneously in order to generate greater profit.

Even more troubling, in addition to receiving enormous discounts from the caterer when he contracted with them to host his daughters' weddings in 2002 and 2004, Cappuccilli misappropriated state resources for his personal benefit. Notably, the wedding reception for Cappuccilli's daughter Marnie Cappuccilli on November 9, 2002, was the first event held in the then newly renovated Martha Eddy Room which was improved at state expense apparently as a quid pro quo for the discounted holiday parties the caterer provided Cappuccilli's Fair.

In regard to the 2002 wedding, Cappuccilli only paid $10,193 of an already discounted bill, receiving a benefit of $3,447. In addition to creating, at a minimum, an appearance of impropriety, this improper arrangement also deprived Fair of revenue it was owed, as uder its concession contract with the Fair, Catering With a Flair was required to pay the Fair a pre-determined percentage of its proceeds.

Cappuccilli engaged in more serious misconduct and possible criminal conduct when he arranged a "show case" wedding reception for another daughter, Molly Cappuccilli, held on the Fairgrounds on June 19, 2004, and attended by approximately 450 people. In addition to the 54 percent discount provided to Cappuccilli by Catering with a Flair, in preparation for the reception, Cappuccilli directed Fair employees, on state time, to make various improvements to Fair facilities that would not otherwise have been made. These included draining and painting a cement-bottomed pond, painting surrounding structures, building staircases, and installation of temporary fountain. The Inspector General determined that labor and material expenses for these improvements, which directly benefited Cappucilli personally, totaled more than $8,000. Cappuccilli made no reimbursement to the Fair for these costs. So as not to disturb the event, Fair officials also blocked out the use of four Fair buildings near the site of the wedding reception for the period, and canceled a previously scheduled event, resulting in lost revenue to the Fair totaling approximately $55,000.

The Inspector General found that Cappuccilli abused his authority and Fair resources by improperly pledging to give $12,000 in Fair funds to the Syracuse University Press in support of its new encyclopedia in return for Cappuccilli's name appearing in the encyclopedia as a corporate sponsor and the Fair receiving several copies of the encyclopedia, in apparent violation

of Article VII, Section 8(1) of the New York State Constitution prohibiting gifts of state monies to any private corporation or association, or private undertaking. Cappuccilli further misused a state contract with a Syracuse area advertising firm to produce personal holiday greeting cards for Cappuccilli and his family.

The Inspector General's investigation further revealed that hiring at the State Fair during Cappuccilli's tenure as Director was marked by nepotism and cronyism, in violation of Public Officers Law § 74. The Inspector General determined that under Cappuccilli, and with his explicit approval, the Fair paid over $829,411 to Cappuccilli's friends and relatives of State Fair employees. Between 1995 and 2006, more than 40 relatives of Fair employees were hired by the State Fair. In 2002, Cappuccilli hired Timothy Kuhl, a personal friend with whom he had previously worked, as a Fair sales consultant and later as sales manager. The IEA resolution hiring Kuhl indicated, falsely, that a new sales manager was needed because the incumbent manager was absent for prolonged periods due to illness. Kuhl thereafter received advances on commissions, a benefit no other sales employee received, and, without apparent justification, a $30,000 a year salary on top of his commissions and even continued to be paid by the Fair as sales manager even after he had accepted a full-time position with the Carolina Hurricanes, a National Hockey League team, and had relocated to North Carolina.

Unlawful Procurement Practices

The Inspector General determined that the State Fair and the Department of Agriculture and Markets flagrantly violated state procurement law when procuring wireless Internet services, when contracting with a booking agent for the Fair's 2008 concert series, and when hiring a fight promoter for the 2009 Fight Night at the Fair. Fair and Agriculture and Markets officials displayed either ignorance or a lackadaisical attitude toward compliance with the law, all of which contributed to the recurring breaches of the State Finance Law

The Inspector General found that from 2002 until July 2009, the State Fair flagrantly violated the State Finance Law in its dealings with the Syracuse-based technology company Progressive Expert Consulting, Inc. (PEC). Specifically, the State Fair not only used PEC to

provide Internet services on the Fairgrounds without soliciting any competitive bids or engaging in any fair process, but, under Cappuccilli's watch, the Fair allowed PEC to install equipment and obtain fees from Fair vendors without any written contract or legally required approval from the State Comptroller. In addition, Cappuccilli and the Fair never sought to obtain a portion of the revenue generated by PEC due to the state, which the Inspector General estimated at nearly $19,000.

In November 2007, in response to a request by Agriculture and Markets, the State Comptroller approved awarding a single-source contract to Live Nation, valued at nearly $600,000, to book music concert acts for the Fair. Under state law, agencies may enter into single-source contracts, and thus avoid competitive bidding requirements, only in emergency situations or other unusual circumstances. The Inspector General determined that the "emergency" leading to the Live Nation contract was self-created, resulting largely from a lack of communication between Fair executives in Syracuse and Agriculture and Markets officials in Albany as the Fair sought an outside professional booking agency. With sufficient planning by Fair and Agriculture and Markets management, competitive bidding would have been possible.

The Inspector General further determined that current State Fair management violated State Finance Law when it improperly entered into a no-bid contract with Rhode Island-based Classic Entertainment and Sports, Inc. (CES) to promote a professional boxing card at the Fair's Grandstand on September 2, 2009. The State Fair paid CES $127,500. The International Boxing Hall of Fame, located in nearby Canastota, was a sponsor of the "Fight Night at the Fair," for which it received $30,000 from CES. The boxing event was a financial failure for the Fair, drawing 962 persons to the 17,000-seat Grandstand and generating only $13,280 in revenue. On June 29, 2010, Agriculture and Markets advised the Inspector General that due to a short time frame in which to conduct a proper competitive procurement, the planned boxing event for the 2010 Fair has been canceled.

Fair Lacked Adequate Internal Controls

$720,000 in Free Tickets Given to Concert Reviews, State Troopers, Fair Employees

The Inspector General found that during the period 2001-2008 the Fair lacked sufficient controls over complimentary concert "reviewer" tickets, resulting in an excessive giveaway of tickets valued at more than $280,000. In 2007 alone, the Fair issued over 1,100 "reviewer" tickets for just 12 performances. While reviewer tickets were ostensibly for members of the media who were to review the Grandstand acts on any given night, Fair management used the vast majority of the approximately 90 tickets per show as a source of free concert tickets that they could dispense at their discretion or use for themselves or for their family members.

The Inspector General further found that the Fair historically provided free tickets to state employees, including Fair staff and State Troopers assigned to the Fair, as a "perk." Over an eight-year period, the State Police received approximately $200,000 in complimentary concert tickets for Troopers assigned to the State Fair. In just three years, from 2006 to 2008, State Fair employees were given over $240,000 worth of free concert tickets. Fair employees also received free parking passes and admission tickets to the Fair for use by their family members. Lastly, the Inspector General uncovered a group of tickets referred to as "director holds" that were available for purchase at the Fair Director's discretion by a select few friends, family and political figures. Ordinary citizens – those lacking a connection to the Fair Director – could not access these "director hold" tickets.

The dissemination of free concert tickets has largely ceased under the current Fair management. Fair employees and State Troopers no longer receive free concert tickets. Only three reviewer tickets per show are provided to the media.

Inadequate Inventory Controls

The Inspector General determined that the Fair lacks a written inventory control policy, with the result that valuable assets and property are neither tracked nor managed by the Fair.

The Fair does not inventory such commonplace items such as desks, chairs and other office furniture. Equipment and tools are likewise not tracked in any inventory log.

The Inspector General found that a lack of control over state vehicles allowed one employee to inappropriately use a Fair vehicle for personal purposes and three Fair employees to significantly underreport their personal use of a state vehicle. Additionally, two other Fair employees - Richard Guanciale and Linda Ryan - were found to have appropriated and destroyed the SIM cards from their state-issued cellular phones in an effort to conceal their personal telephone calls from Fair management. Ryan stated, "I know it was wrong."

Recommendations of the Inspector General

1. The Inspector General will provide the findings of this investigation to the New York State Attorney General's Office for consideration of criminal charges or civil action against Peter Cappuccilli, Jr.

2. The Inspector General recommends that the Department of Agriculture and Markets, in conjunction with the Office of the State Comptroller, conduct a complete and thorough audit of the contract between Catering with a Flair and the State Fair, and, as necessary, take action to recover unpaid monies due the state.

3. The Inspector General recommends that the Department of Agriculture and Markets, in consultation with Office of General Services, the Office of the State Comptroller, and the State Procurement Council, comprehensively review the Fair's procurement practices and take steps to ensure that procurements involving the State Fair are conducted fairly and in conformance with all application statutes and regulations.

4. The Inspector General further recommends that the Department of Agriculture and Markets and the State Fair institute a written inventory policy and the necessary procedures to ensure that state property is adequately accounted for.

5. Additionally, Agriculture and Markets should review the motor vehicle logs for the State Fair fleet, seek any reimbursement for unattributed commuter or other personal miles, and ensure that any unclaimed income is reflected in the appropriate tax records. A copy of this report will also be forwarded to the New York State Department of Taxation and Finance.

6. Lastly, the facts surrounding the removal and destruction of the cellular phone SIM card by Richard Guanciale and Linda Ryan will also provided to the Attorney General's Office.

RESPONSE OF THE DEPARTMENT OF AGRICULTURE AND MARKETS

The response of the Department of Agriculture and Markets to the Inspector General's findings and recommendations is attached.

STATE OF NEW YORK
DEPARTMENT OF AGRICULTURE & MARKETS
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David Paterson
Governor

Patrick Hooker
Commissioner

July 23, 2010

Mr. Joseph Fisch, Inspector General
Office of the Inspector General
Empire State Plaza
Agency Building 2, 16th Floor
Albany, New York 12223

Dear Inspector General Fisch:

I have reviewed the reported conclusions of the New York State Fair investigation and resulting recommendations. I would like to take this opportunity to thank you and your staff for performing such a thorough investigation. Shortly after this administration came into office, we noted an abundance of irregularities in the management and operation of the State Fair. The findings of your investigation validated our concerns and also provided useful insight to where more improvement is necessary.

As requested, the Department's response to the six recommendations included in the report follows:

Recommendation 1

The Inspector General will provide the findings of this investigation to the New York State Attorney General's Office for consideration of criminal charges or civil action against Peter Cappuccilli, Jr.

No action required.

Recommendation 2

The Inspector General recommends that the Department of Agriculture and Markets, in conjunction with the Office of the State Comptroller, conduct a complete and thorough audit of the contract between Catering with a Flair and the State Fair, and as necessary, take action to recover unpaid monies due the state.

The Office of the State Comptroller will be contacted immediately and made aware of the results of the investigation as they relate to the contract with Catering with a Flair. The Department will request their assistance with performing an audit to ensure all contract terms have been met. If the Office of the State Comptroller declines the Department's request for a timely and complete audit, the audit will be conducted by the Department's Division of Internal Audit. All audit findings and recommendations will be reviewed by management and immediate action taken if necessary.

Recommendation 3

The Inspector General recommends that the Department of Agriculture and Markets, in consultation with the Office of General Services, the Office of the State Comptroller, and the State Procurement Council, comprehensively review the Fair's procurement practices and take steps to ensure that procurements involving the State Fair are conducted fairly and in conformance with all applicable statutes and regulations.

The Department will immediately contact the parties above to request a comprehensive review of the Department's procurement practices, specifically those applicable to the State Fair. Following the abolition of the Industrial Exhibit Authority in October 2009, all of the State Fair's contracts are now required to follow the Department's procurement guidelines. Although the need for a procurement may generate at the division level, approximately 1,100 contracts related to the State Fair are now awarded, written and monitored centrally through the Department's Offices of Fiscal Management and Counsel. The process involves input and review by staff with contracting experience and training from at least three Divisions within the Department to ensure fairness and transparency while ensuring conformance with state procurement guidelines and regulations.

Recommendation 4

The Inspector General further recommends that the Department of Agriculture and Markets and the State Fair institute a written inventory policy and the necessary procedures to ensure that state property is adequately accounted for.

The Department remains committed to strengthening its policies and procedures regarding inventory control. The need to strengthen controls over physical inventory was recognized soon after the current administration assumed control of the State Fair. Director O'Hara hired an auditor in May of 2008 who has been assigned the task of creating an inventory control program. A multi-phased work plan has been drafted which transforms an essentially non-existent inventory control program to a program with central receiving where all goods and materials are secured until placed in service upon proper authorization. The performance of taking a complete inventory is in progress. As that inventory count proceeds in various work areas, (plumbing, vehicle maintenance, building maintenance, etc.) surplus and/or obsolete items are being identified and disposed of. The final goal of the multi-phased work plan is the creation and implementation of a perpetual inventory system to account for all physical inventory on hand, received and placed in service. This system is currently under development by State Fair staff. As recognized in the report, the State fairgrounds cover more than 300 acres. On the site are dozens of buildings, nearly 100 accessory structures, a complete electrical system, more than 10 miles of roadway and an equal amount of underground sewer and water. With a site as large and complex as the State fairgrounds, creating a comprehensive inventory control system is no small task. However, the Department management is committed to ensuring that all state property is adequately accounted for and secure.

Recommendation 5

Additionally, Agriculture and Markets should review the motor vehicle logs for the State Fair fleet, seek any reimbursement for unattributed commuter or other personal miles, and ensure that any unclaimed income is reflected in the appropriate tax records. A copy of this report will also be forwarded to the New York State Department of Taxation and Finance.

Department staff who are assigned a State Vehicle are required to report personal miles annually so that the taxable benefit can be included on their W-2. Mr. O'Hara reported personal mileage in 2008 and 2009 but did not include the mileage attributed to his commute in those figures. Consequently, Mr. O'Hara was issued revised 2008 and 2009 W-2s in April 2010 to account for the taxable commuting miles in addition to the personal mileage previously declared. As stated in the report, Mr. Morgan was issued a revised 2008 W-2 in December 2009 that reported the taxable benefit of his personal use of the state vehicle, including commuting miles. Mr. Morgan was assigned a state vehicle from his employment date of March 27, 2007 to March 2009 when his vehicle was reassigned. The Department will immediately file the necessary documents to record the taxable benefit of the personal miles driven by Mike Ryan during the period cited in the report. As a result, revised W-2s will be issued and filed with the proper taxing authorities.

In an effort to prevent any future misunderstanding, the Department will highlight and clearly explain the definition and treatment of commuting miles in the annual correspondence to staff assigned a state vehicle.

Recommendation 6

Lastly, the facts surrounding the removal and destruction of the cellular phone SIM card by Richard Guanciale and Linda Ryan will also be provided to the Attorney General's Office.

No action required.

The report also addressed the issue of entertainment tickets that are available for sale directly from the State Fair management office. Department and State Fair management will review this practice. At a minimum, a policy will be established that controls the number of tickets available, the location of the seats for sale and when any unsold tickets will be made available through the State Fair box office and the ticketing agent.

The independent investigation performed by your staff provides an opportunity to make necessary improvements within our organization. The amount of time and attention is greatly appreciated. We believe the recommendations you made in the report will make the State Fair an even better place to work, do business, and visit. If you require any further information, please do not hesitate to contact me.

Sincerely,

Patrick Hooker

Patrick Hooker
Commissioner