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NYRA**

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THE COMPTROLLER'S RELATIONSHIP WITH NYRA

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The Comptroller's Relationship with NYRA

The story is out that the New York State Comptroller will no longer hold a fundraising event at Saratoga Race Course. <http://www.newsday.com/news/local/wire/ny-bc-ny--hevesi-nyra0715jul15,0,4541677.story?coll=ny-ap-regional-wire> Instead, Comptroller Alan Hevesi will hold his fundraiser at the privately-owned club, the Reading Room which is adjacent to the racetrack.¹ Comptroller Hevesi is preparing an audit of the New York Racing Association [NYRA] which allegedly is critical of that association which runs racing at Belmont and Aqueduct in addition to Saratoga.

Clearly, this is a most minimal action. Under the Racing, Pari-Mutuel Wagering And Breeding Law, the State Comptroller is NYRA's auditor. Section 208.4 of that law states:

Notwithstanding any other provision of this article, the state comptroller shall, from time to time but not less than once in each year examine the books and accounts of such association, including its receipts, disbursements, contracts, leases, loans, investments and any other matters relating to its financial operations and report the results of each audit including his certification of the amount of net income of the association for the preceding calendar year found by him to be in excess of one million eight hundred fifty thousand dollars to the governor and the legislature.

This law makes the Comptroller the auditor of NYRA much in the same manner as the Comptroller audits state agencies. Over the previous years, the audits of NYRA by the Comptroller have diminished in significance. This may, in fact, be understandable given the far limited contribution that NYRA makes to the State treasury as compared to the halcyon racing years of the 1950's and 1960's. Despite the law, audits of NYRA by the Comptroller do not seem to be conducted annually. See for example "New York Racing Association - Audit of the Annual Franchise Fee for 1998 and 1999," issued 3/21/01 [NY] <http://nysosc3.osc.state.ny.us/audits/allaudits/093001/2000s18.htm>; **New York Racing Association - Audit of the Annual Franchise Fee [Issued 9/3/99] [NY], <http://nysosc3.osc.state.ny.us/audits/allaudits/093099/98s6.htm> (which contains the audit for years 1995, 1996 and 1997)** Few audits have been of much public policy significance, and they are more likely to be of the "Legislator Takes Extra Packets of Sweet 'N Lo from Capitol Cafeteria" genre. They have been audits with some sound and fury signifying nothing. In reality, some of the blame for NYRA's money room practices outlined in the recent report of the State Attorney General could have been shared with the State Comptroller who was MIA on this issue.

An auditor, as we have learned from Arthur Anderson and Enron, is supposed to be totally independent. In this respect, a State auditor's responsibility may be even greater than a private auditor since the State auditor must comply with the State's Code of Ethics as well as any auditing standards. The State's Code of Ethics requires in Section 74.3 .h. of the Public Officers Law that a state officer or employee should 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." Similarly, a public officer or employee can not use his position to secure unwarranted privileges or exemptions, and no public

official or employee should by his conduct give the impression that he can be unduly influenced by the rank or position of another person. See Sections 74.3.d. and f.

Yet, as long as the State Comptroller, and candidates for the position of State Comptroller accept contributions from members of NYRA's board of trustees, how can people believe that the Comptroller is acting independently in auditing NYRA? By accepting contributions from NYRA board members, Comptrollers place themselves in the position where their independence is begging to be questioned. If you're nice to NYRA in your audits or don't probe too deeply, you can possibly receive more campaign donations. It's the wrong way to do business.

That said, State Comptrollers have long received contributions from NYRA trustees. Certainly, the two predecessors of Mr. Hevesi accepted contributions from NYRA trustees. Mr. Hevesi, himself, accepted a \$10,000 contribution from NYRA trustee Stuart Subotnick. On the other hand, Mr. Hevesi's opponent in 2002, John Faso, received \$83,000 from 15 (of the then 26) NYRA trustees and one NYRA trustee emeritus and their spouses. Mr. Subotnick, besides his \$10,000 donation to Mr. Hevesi, also gave \$12,000 to Mr. Faso. NYRA trustee Earle Mack and his wife collectively gave \$22,000. According to the published report, Comptroller Hevesi's audit of NYRA is supposed to be highly critical. Given what appears to be NYRA's support of his opponent in the 2002 election, many cynics could view a critical audit of NYRA by Hevesi as political payback.

Comptroller Hevesi's response should not merely be to move his fundraiser slightly off NYRA's grounds. If he is serious about the subject, he should not accept any contributions from NYRA officers, board members, or employees. He should also propose legislation banning Comptrollers and candidates for Comptroller from receiving any campaign contributions from NYRA officers, board members or employees. An auditor is supposed to be in a position of high trust. Only by banning NYRA-related campaign contributions can we be assured that State Comptrollers will act independently when carrying out their NYRA audit function. The quality of the audits of NYRA should not be affected by political contributions.

ⁱ The AP has corrected this story. The fundraiser is being moved from the Reading Room to a restaurant that is by Saratoga Lake. The fund raiser is now several miles from the racetrack. The new location has no relationship with the New York Racing Association. The new location of the fundraiser affects none of the opinions reached in this article.