



OFFICE OF THE NEW YORK CITY COMPTROLLER

TESTIMONY BY

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NEW YORK COMPTROLLER

**Before the
NEW YORK CITY COUNCIL
FINANCE
COMMITTEE**

RESO No. 1235

**Calling upon the Legislature of the State of New York to reduce State-imposed
financial mandates on off-track betting corporations**

April 9, 2008

Chairman Weprin, distinguished members of the City Council Finance Committee, good morning.

With me today is Deputy Comptroller for Budget Marcia Van Wagner.

Thank you for this opportunity to testify and express my support of Resolution Number 1235 calling upon the New York State Legislature to reduce the excessive financial mandates they have imposed on off-track betting corporations.

For years, the New York State Legislature's actions have drawn OTB's revenues away from the City and other local budgets, while increasing payments to the racing industry.

As a result, New York City is not getting its fair share of OTB's revenue.

These developments defeat OTB's original purpose. When it was created 38 years ago, it was designed to benefit *both* the City and State, as well as help the racing industry.

New York City gets payments from its share of a 5% surcharge on all winning bets placed at OTB parlors.

It also receives all the revenues left over after OTB pays off its operating costs and its statutory distributions to the State, racing industry and racetracks. Whatever residual revenues remain after these entities are paid goes to New York City.

Unfortunately, the revenues due to us have plummeted in recent years as payments that OTB makes to the racing industry have soared.

Two years ago, my office issued a report that documented the deteriorating financial condition of OTB. We found that between Fiscal Years 1997 and 2001, the City received an average of 11 million dollars in residual revenues from OTB.

That number fell to just 1 million dollars in Fiscal Year 2002. New York City did not even receive residual revenues in Fiscal Year 2003 and through Fiscal Years 2005 to 2007. In Fiscal Year 2004, revenues were minimal.

Looking forward, OTB's financial plan for Fiscal Year 2008 to 2012, which was submitted in January, projects operating losses beginning at 16.8 million in Fiscal Year 2008. These losses increase to 29.2 million by Fiscal Year 2012.

So, where are the dollars that were once due to the City now going? They are going to the racing industry.

In 2003, the State Legislature amended the Racing and Wagering Law and imposed new fees that OTB is obligated to pay to race tracks and horse breeders.

Many of these fees are excessive and unnecessary. For example, one of these new provisions is a "hold harmless" fee which requires that OTB give some of the money it makes during nighttime races to harness tracks.

But at least in one case, it has been wasted money. OTB was paying Yonkers Raceway even though the track has been closed for renovations. I know we can all think of better ways to spend that kind of money instead of paying off a closed race track.

Another new provision implemented in 2003 is a regulatory fee of .39 percent of all gross wagers. This fee, which was increased to .5 percent in 2005, was created when the OTB was granted permission to simulcast its nighttime races.

The result of new fees like these is that OTB's statutory distributions to the industry were growing at a far faster pace than its revenues.

From Fiscal Year 1995 to Fiscal Year 2007, operating revenues grew 25.5 percent while statutory distributions grew 35.3 percent. The City is bearing the burden of this irrational trend.

In Fiscal Year 1995, the total surcharges going to the City were 24 percent of statutory distributions. In Fiscal Year 2007, that number has dropped to 14 percent. During this same period, payments to the racing industry increased from 55 percent of statutory distributions to 71 percent.

So, as New York City is cutting its budget and OTB is forced to operate under such bleak circumstances, the State and Racing industry are making millions more by earning a greater share of the economic pie than they were years ago.

Remarkably, these inequities have increased in an environment where OTB is facing increasing competition from the State Lottery and from casinos on upstate Indian Reservations.

The current financial structure of OTB is unsustainable and unacceptable. As the Mayor has correctly concluded, there may be no other alternative than to shut down OTB if current conditions remain.

During these uncertain economic times, New York City cannot continue to pick up the slack while others profit. It is time the State takes action.

Current conditions impact the quality of City services we provide for our communities and threaten the jobs of the nearly 1500 New Yorkers who work at OTB parlors throughout the City.

That is why I strongly support this Resolution calling upon the State Legislature to reduce the excessive financial mandates they have imposed on off-track betting corporations.

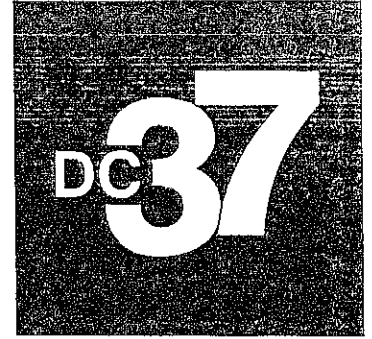
A long overdue reordering of the State's priorities is urgently needed. New York City has been shortchanged for far too long and it is time that the State addresses these unfair practices, acknowledges that the current financial structure does not work, and takes the proper steps to give the City our fair share.

I appreciate the opportunity to testify this morning and would be happy to answer any questions that you may have.

Thank you.

LEGISLATIVE MEMO:

WE SUPPORT



Res. 1235

Political Action and
Legislation Department
(212) 815-1550

District Council 37 (DC 37), AFSCME supports Res. 1235 sponsored by Councilmember David Weprin, calling upon the Legislature of State of New York to amend the New York State Racing, Pari-Mutuel Wagering and Breeding Law to reduce state imposed financial mandates on a portion of the NYC Off-Track Betting (OTB) Corporation's revenues, which threatens the corporations viability, and yields no residual revenues for the City of New York.

The NYC OTB was created in 1970 by the New York State (NYS) Legislature as a public benefit corporation to prevent unlawful bookmaking and illegal wagering on horse races, to support the agricultural and horse breeding economy within NYS, and generate revenue for government.

Currently, the 1508 workers who work throughout the 5 boroughs, are in jeopardy of losing their jobs since OTB is facing an estimated \$14m deficit this year. Despite bringing in over \$1b annually in total amount wagered by OTB customers ("handle") and continuous operating profits, the city has threatened to close OTB in June unless a long term solution is reached to ensure NYC OTB longevity. The loss of jobs will result in these members, as well as retirees, of DC 37's Local 2021 losing their health insurance.

On behalf of the 121,000 members and 50,000 retirees of DC 37, as well as the 1182 members of Local 2021, we urge the City Council to pass Res. 1235 requesting the state to change its current funding formula for OTB to make it more equitable and to stop shortchanging NYC of revenue generated by OTB.

Testimony of Leonard Allen

President, Local 2021

District Council 37, AFSCME

Before

The New York City Council Finance Committee

Wednesday, April 9, 2008

Thank you Chairman Weprin and my thanks as well to Speaker Quinn, the members of the Finance Committee, and the Finance Division staff for allowing me the opportunity to present my views on the future of New York City Off Track Betting. My name is Leonard Allen and I am the president of Local 2021, District Council 37, AFSCME representing the 1,400 hard working employees of OTB.

I come before you today – with a strong sense of urgency, concern and fear. As many of you know my members are facing an impending lay-off. At this time, on Tuesday, April 15th, six days from now, the OTB Corporation will be sending out in accordance with their management’s plan for closure of NYCOTB lay-

off notices to my members and the other workers of the Corporation which will begin the process for a June 15, 2008 shut-down.

I am here to ask that you assist the workers of OTB and help us bring attention to the injustice that is about to befall them.

As you know, the resolution of this problem lies with the State legislature. However, the leadership that has been exhibited through you Chairman Weprin, Councilmember DeBlasio, Jackson and the many other members of the council has been very helpful in our efforts to turn this situation around.

The Council's Resolution # 1235 will go a long way toward shining a light on the unfairness and lopsided situation that NYCOTB finds itself in.

The bottom line is a long term fix is needed immediately, no gimmicks or short-term band-aids will do. My member's and retirees lives, livelihood and that of their families are at stake. In addition, many of my retirees Health Care Insurance is in jeopardy should OTB close.

As you may know, New York City OTB is the backbone for the entire racing industry in the state.

Approximately 40% of all of the wagering on racing in New York State is done at New York City OTB. If New York City OTB shuts down, the vast majority of those

bets will disappear, as will the revenue they provide to support those related jobs around the state. In short, if we go out of business, and my members lose their jobs, they will be quickly followed by clerks at Aqueduct, food service workers at Belmont, and farmhands at more than a thousand farms across upstate New York that are dependent on the revenue stream that OTB provides.

I urge the Council to join with us and ask your colleagues in the State legislature to correct this inequitable formula before it is too late.

We stand prepared to work with the Legislature, Governor Paterson, Mayor Bloomberg, the City Council and other stakeholders to fix this problem to

benefit all the racing entities in this state and the tens of thousands of jobs they support.

Again I thank you for your time and I would like to once again, thank Speaker Quinn, Chairman Weprin and the Council for calling attention to this important issue.

**Testimony of Raymond V. Casey, President of the New York City
Off-Track Betting Corporation, Before the Finance Committee
of the City Council on April 9, 2008**

My most recent invitation to appear before the Committee on Finance to testify concerning the current circumstances of the New York City Off-Track Betting Corporation regrettably represents an occasion on which I can only say that no information I can offer today is different than what I have consistently presented to this Committee and other legislative bodies over the past three years. New York City OTB is at, if not already somewhat beyond, a critical crossroads. Notwithstanding my past calls for restructuring of the State imposed statutory scheme for distribution of revenue from the wagering accepted by New York City OTB, the bottom line situation today effectively is no different than it was at the time of my prior two appearances before this Committee. The only variation is that instead of merely forecasting that without legislative change there was a real prospect that New York City OTB would not be able to continue its operations, I can tell you now, with certainty and with profound disappointment, that preparatory steps to our close-down process have already begun!

As you may know, on February 19, 2008, the Board of Directors of the New York City Off-Track Betting Corporation adopted a resolution, by unanimous vote, directing that a Closure Plan, prepared by my management team, be implemented. A copy of the Closure Plan, together with a certified copy of the Board Resolution and a letter of explanation of the circumstances prompting the adoption of the Closure Plan by the Board, was transmitted to the New York State Racing and Wagering Board on March

10th, thirty days ago. This Closure Plan calls for the complete cessation of the Corporation's wagering activities as of June 15 and the laying off of nearly all our 1,466 employees on or about June 16 -- just a little more than two months from now, to be followed by a six to eight week period in which an orderly wind down of the Corporation's remaining activities and clearing out of physical facilities will take place -- in other words, the deconstruction of all branches and the surrendering of OTB locations to our landlords. To date, while there has been much talk about the need for legislative action to save NYCOTB, the talk has not produced any concrete legislative action. Without such concrete, substantive change in the Racing, Pari-Mutuel Wagering and Breeding Law that provides the structure for sustainable OTB operations in New York City, the unthinkable will take place. After nearly four decades of operation, there no longer will be a New York City OTB -- that is, there will no longer be a way to wager legally in person on horseracing within New York City other than at the one racetrack in Queens (Aqueduct). There will also be the loss of NYCOTB employment for nearly 1,500 employees, many of whom have served the Corporation for decades. In addition, the financial support which New York City OTB provides to the racing industry in the Empire State will cease, and this will have significant negative impacts upon all of the racetracks, breeding funds and other industry participants who are beneficiaries of NYCOTB's activities. These negative economic impacts will be felt throughout the entire economy of the State (and, I don't have to tell you how badly that economy is already suffering).

Why should this be so, you rightfully may ask. I have a very simple answer. No business, not even the best run one with the most sophisticated management, the most

experienced directors and employees, collectively possessing all the industry wisdom and knowledge there is, can continue to operate when it is forced to distribute not just all of its profits to its stakeholders, but more than "all" of its profits. The central flaw in the Racing Law is that the statutory payments are gauged as percentages of gross handle, or gross retail sales to set this into a retail context. But these are mandated payments off of the top line revenue and do not make any accommodation or adjustment for the operating costs associated with generating this revenue. The State not only regulates the price, but also controls where the revenues go. Over the years, the statutory payment mandates have not diminished, but rather have increased, indeed at an alarmingly high rate in the past decade, particularly so in the years since 2003 when major revisions were made to the Racing Law, including the imposition on OTBs of a State regulatory fee and what is referred to as a maintenance of effort obligation to harness tracks. These actions were a direct hit to our net profit and shifted those monies from the City to the State or to other racing entities.

Each year since 2003 these two legislative impositions just by themselves have increased the mandated statutory payments from New York City OTB operations in a combined amount of \$6 to \$7 million annually. And while these are not the only causes of our current financial crisis, certainly they have been the accelerants for our impending closure. Notwithstanding that the legislature has been occupied with many issues this year, they have, in fact, addressed other gaming and racing issues. For example, the thoroughbred racing franchise has been awarded and they have legislated enhanced vendor fees, marketing allowances and capital investment funding for racetracks operating VLTs.

I know that this Committee is profoundly aware of the circumstances I have just outlined, and I am confident that the Committee, were it within its legislative authority to directly effect a change to these onerous distribution requirements, would do so immediately; but this subject is purely a matter of state law, and the solution, if there is to be a solution, must come from Albany. What is most frustrating to me, and I would expect to the City Council Finance Committee members as well, is that as aware of the issues as the State may be, and as willing to address the problem as the State declares itself to be, there appears to be no consensus as to how to accomplish the necessary changes to the distribution scheme. The bottom line reality is that given the mode and manner of the structural organization of distribution payments under the Racing Law, what we are confronting is a classic illustration of a "zero sum game". What I mean is that in order for New York City OTB to be able to retain the necessary portion of its revenue that would allow it to break even and perhaps even reinvest in its infrastructure, some other industry participant, whether it be race tracks, breeding funds, horsemen's purses, or the State itself, necessarily must receive a lesser share of the wagering revenue distribution pie -- a pie of nearly \$138 Million last year (which distribution, by the way, was \$9 Million more than OTB's "profit" of \$129 Million last year after expenses). Until now, and maybe even going forward, no individual constituency in the racing industry has been willing to accept even a slightly lesser amount in order for New York City OTB to keep its doors open. Perhaps those constituencies will change their minds when our doors are actually closed, as will happen before the end of the fiscal year in June. But that will be too late. I can only hope that Albany acts soon so that the foregoing does not occur.

Thank you for offering me this opportunity to present the reality of the situation, even if it is rather unpleasant news. I would be pleased to answer whatever questions members of the Committee might have.