

State of New York
Office of the Inspector General



Investigation into the
Operation of a Game of Chance at
Cape Vincent Correctional Facility

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Inspector General

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EXECUTIVE SUMMARY

The Inspector General received an anonymous complaint alleging that employees of the Cape Vincent Correctional Facility, a medium-security prison operated by the New York State Department of Corrections and Community Supervision (DOCCS), were engaged in unauthorized gambling activity by conducting a game of chance known as the “Search for the Queen of Hearts” at the facility to raise money for the Employee Benefit Account.

The Inspector General’s investigation revealed that the committee of employees administering the Cape Vincent Correctional Facility Employee Benefit Account was conducting a “Search for the Queen of Hearts” game in the facility to raise money for committee activities. The committee’s operation of the game was not authorized under the New York State Constitution, state law, and state regulations. Specifically, the committee was not an “authorized organization” permitted to engage in gambling activities, and the Town of Cape Vincent, where the correctional facility is located, does not allow such games of chance. The Inspector General also found that neither the committee nor the facility superintendent, who was aware of the operation of the game, inquired into the game’s appropriateness or legality. Neither the committee nor the facility superintendent notified DOCCS central office of the game.

At the time the game was suspended, the prize pool contained \$31,781. The funds were secured by the correctional facility administration during the pendency of this investigation and have since been returned to the Cape Vincent Correctional Facility Employee Benefit Account, to be used solely in accordance with a new directive from DOCCS. The directive implements detailed procedures to ensure that fundraising activities are legally permissible, and specifically prohibits activities considered gambling under state law. The directive further states that DOCCS management must approve all fundraising activities and establishes procedures for regular audits of the activities.

INTRODUCTION AND BACKGROUND

The DOCCS Employee Benefit Account

By directive issued in 1981, DOCCS¹ authorized correctional facilities to enter into contracts for the installation of vending machines in various areas within the facilities. Pursuant to the directive, a percentage commission from the sales from those vending machines placed in areas “accessible to employees only” is to be paid to the facility superintendent for deposit into an “Employee Benefit Account” to be used “for the benefit of all employees.”² Utilization of account funds is to be approved by a “selected committee of employees representing each bargaining unit or group at the facility” for such purposes as “retirement dinner costs, employee recreation areas, annual family picnics, etc.” The directive further stated that “[o]verall responsibility for the proper use of these funds” resided with facility superintendents.

In 2009, DOCCS advised employees that, as a cost-saving measure, it would no longer authorize the use of agency funds to pay a portion of the cost of such employee events. DOCCS encouraged employees to “find alternate ways to recognize the important contributions our employees have made, especially in these challenging times, without incurring any cost to the State.” As a result, employees began to explore additional means of raising money for their benefit account funds.

On October 1, 2012, DOCCS issued a directive superseding the 1981 directive that more specifically defined the composition of the committee administering the “Employee Benefit Account” at correctional facilities and required the committee to provide copies of its meeting minutes to facility superintendents. However, neither directive authorized or addressed fund-raising activities by the committee, apart from the revenue derived from vending machines.

¹ DOCCS was established in 2011 by the merger of the Department of Correctional Services and the New York State Division of Parole.

² Pursuant to the directive, monies from vending machines located in other areas are designated for separate purposes.

Regulation of Gambling in New York State

Provisions of the New York State Constitution, state law, and state regulations bear on the issues involved in this investigation. Article I sections 9(1) and (2) of the constitution generally prohibit gambling in the state except in specific circumstances. These circumstances include “lotteries operated by the state” and various “games of chance” conducted by “bona fide religious, charitable or non-profit organizations of veterans, volunteer firefighter and similar non-profit organizations.” Pursuant to Article I section 9(2) of the constitution and New York State General Municipal Law, Article 9-A, section 187, these authorized organizations may conduct games of chance only with permission of the municipality in which they are located.³

According to the General Counsel to the New York State Gaming Commission, and then Acting Director, Division of Charitable Gaming, New York State Gaming Commission, an authorized organization seeking to operate games of chance must follow a two-step process. First, it is required to file an application for a charitable identification number with the New York State Gaming Commission. After this step has been completed, the organization then must apply for a license through a local municipality that has passed a law permitting games of chance.

The “Search for the Queen of Hearts,” the game at issue in this investigation, is specifically authorized under Title 9, Part 4620 of New York State Codes, Rules and Regulations, section 4620.23, which provides the rules and circumstances under which the game may be played, together with a payout schedule for all winners.

THE INSPECTOR GENERAL FOUND THAT THE CAPE VINCENT CORRECTIONAL FACILITY EMPLOYEE BENEFIT ACCOUNT COMMITTEE OPERATED AN UNAUTHORIZED GAME OF CHANCE

At its April 2012 meeting, the Cape Vincent Correctional Facility Employee Benefit Account committee decided to conduct a “Search for the Queen of Hearts” game to raise money for events associated with the facility’s upcoming 25th anniversary. Committee members testified to the Inspector General that they had heard that a local

³ On July 30, 2013, the Upstate NY Gaming Economic Development Act was signed by Governor Andrew M. Cuomo, authorizing the establishment of casinos in Upstate New York.

civic organization successfully raised money with the game, and, as one member testified, “thought it would be a good idea” for them as well. No one questioned the appropriateness or legality of the committee operating the game. As a committee co-chair testified, “If [the civic organization is] running it and it’s out in the public then it must be something we could definitely do ourselves.”

The Cape Vincent Correctional Facility Superintendent at the time, Patricia LeConey,⁴ testified that she did not receive advance notice that the fund planned to conduct the game; nor did she formally approve it. The superintendent stated that she did not attend benefit fund committee meetings, although she did receive copies of meeting minutes. The April 2012 meeting minutes stated that “a lengthy discussion was held regarding fund raisers,” [sic] but did not specifically mention the “Search for the Queens of Hearts.” Nonetheless, the superintendent acknowledged that she was aware that the game was underway. In fact, the game apparatus was placed in plain sight in the facility lobby and the rules for the game were posted in the staff locker room. Despite this knowledge, the superintendent made no inquiry regarding the game’s appropriateness with DOCCS counsel or other officials at DOCCS, or any outside entity.

An inquiry by the superintendent or by the benefit account committee would have revealed that the committee was not authorized to operate the “Search for the Queen of Hearts” game. The Cape Vincent Correctional Facility Employee Benefit Fund Committee is not an “authorized organization” as prescribed under General Municipal Law, Article 9-A, section 187 and Title 9, Part 4620 of the New York State Codes, Rules and Regulations. Nor is the committee engaged in a “lawful purpose”⁵ as defined in General Municipal Law, Article 9-A, section 186, as is required for an organization to

⁴ LeConey was later named Assistant Commissioner in charge of three hubs totaling 17 facilities, including Clinton Correctional Facility. She retired on November 30, 2015, during the Inspector General’s investigation of the June 5, 2015, escape of two inmates from Clinton Correctional Facility. (See, the Inspector General’s report entitled, “Investigation of the June 5, 2015 Escape of Inmates David Sweat and Richard Matt from Clinton Correctional Facility.”)

⁵ The “lawful purposes” of an authorized organization are defined in General Municipal Law, Article 9-A, section 186 (5), which states, in part, that a lawful purpose shall mean one or more of the following causes, deeds or activities:

- (a) Those which shall benefit needy or deserving persons indefinite in number;
- (b) Those which initiate, perform or foster worthy public works;
- (c) Those which shall otherwise lessen the burdens of the government;
- (d) Those which shall initiate perform or foster the provisions of service to veterans.

qualify as an “authorized organization.” The committee’s sole purpose is to benefit the employees of Cape Vincent Correctional Facility, which is a closed class of people, not “persons indefinite in number” as prescribed under General Municipal Law, Article 9-A, section 186(5)(a). The committee has never applied to the Gaming Commissioner for a charitable identification. Moreover, the Cape Vincent Correctional Facility is not located in a municipality that permits games of chance such as the “Search for the Queen of Hearts.” The Town of Cape Vincent, where the facility is located, enacted an ordinance legalizing bingo - but no other games of chance - on June 25, 1958.

Accordingly, the operation of the “Search for the Queen of Hearts” game by the Cape Vincent Correctional Facility Employee Benefit Account Committee was unauthorized under New York State law.

The Operation and Suspension of the Game

The Cape Vincent Correctional Facility Employee Benefit Account Committee began the “Search for the Queen of Hearts” game the week of May 2, 2012, intending that it would run for a maximum of 54 weeks. Participation was limited to employees and retired employees of the facility. The game was played with a deck of 54 cards including two jokers. The cards were shuffled and each card was placed into an envelope. A number between 1 and 54 was written on each of the envelopes, which then were shuffled and hung on the game board. A player purchased a ticket for \$1 and wrote a number between 1 and 54 on the ticket. The ticket consisted of two pieces with identical numbers printed on them. One part of the ticket and the \$1 were placed in an envelope, which was put into a drop box next to the game board; the player retained the second part of the stub.

Once a week, a facility employee picked a stub from the box, and the player thus selected would choose one envelope on the board. If the envelope contained a card numbered between 2 and 9, the player won \$5. A card with the number 10 or a jack was worth \$10, a king or an ace \$15, and a joker \$25. A card with a queen other than the queen of hearts was worth \$50. The player who picked the queen of hearts would receive 60 percent of the total money in the grand prize pool; the remaining 40 percent would be deposited in the Employee Benefit Account. The game would then be over.

The game was suspended in the 48th week, when the Inspector General's investigation commenced. At the time the game was suspended, the queen of hearts had not been picked and the grand prize pool contained \$31,781. The funds were secured by the correctional facility administration during the pendency of this investigation and have since been returned to the Cape Vincent Correctional Facility Employee Benefit Account, to be used solely in accordance with a new directive issued by DOCCS.

DOCCS Issues New Directive on Solicitation of Funds

As a result of the Inspector General's investigation, DOCCS issued a new directive to all facilities entitled "Solicitation of Funds." Key provisions of the directive state:

- Solicitation of funds by employees or others on DOCCS property is prohibited without authorization of the DOCCS Commissioner or designee, facility superintendent, or regional director.
- All requests to solicit funds must be legally permissible, and cannot be activities considered gambling under state law. Specifically prohibited activities include, but are not limited to 50/50 raffles, card games such as "Search for the Queen of Hearts," sport betting, bingo, and Las Vegas Nights.
- Funds raised by a DOCCS-approved committee shall be deposited into an "Employee Benefit Account" as authorized by the Office of the State Comptroller and State Finance Law. The funds shall be used for purposes benefiting all employees, including retirement dinner costs, employee recreational areas, annual family picnics, and employee recognition award ceremonies. The committee shall produce a financial report on at least a quarterly basis.
- The Commissioner or designee, superintendent, or regional director shall have overall responsibility for the proper use of the funds, and maintain a log of all requests to solicit funds that includes the employee or organization making the request; date of request; type of fundraising

activity requested; purpose and duration of the fundraising; and date of approval or denial. The log shall be submitted bi-annually to the DOCCS Central Office Internal Audit Unit for review. The audit unit will also conduct random audits of the logs to determine compliance with policy.

FINDINGS AND RECOMMENDATIONS

The Inspector General's investigation determined that the Cape Vincent Correctional Facility Employee Benefit Account Committee conducted an unauthorized game of chance called "Search for the Queen of Hearts" to raise money for fund activities. The Inspector General found that the fund is not an "authorized organization" permitted to engage in gambling activities of this type, and that the Town of Cape Vincent, where the correctional facility is located, has not adopted a local law permitting such games of chance.

The Inspector General also found that the account's committee organized and conducted the game without inquiring into its appropriateness or legality. The facility superintendent at the time, Patricia LeConey, was aware of the game's operation and also failed to make such an inquiry.

At the time that the game was suspended, the prize pool contained \$31,781. The funds were secured by the correctional facility administration during the pendency of this investigation. They have since been returned to the Cape Vincent Correctional Facility Employee Benefit Account, to be used solely in accordance with a new directive issued by DOCCS.

The new directive implements detailed procedures to ensure that fundraising activities are legally permissible and specifically prohibits activities considered gambling under state law. The directive further states that DOCCS management must approve all fundraising activities and establishes procedures for regular audit of the activities.

DOCCS also has agreed to and is implementing the Inspector General's recommendation to audit all facilities across the state to ensure that no other facility was or is engaging in unauthorized, illegal, or inappropriate fundraising activities.

The Inspector General is referring this matter to the New York State Joint Commission on Public Ethics for whatever action it deems appropriate.