

State of New York  
Office of the Gaming Inspector General



2021 Annual Report

Kathy Hochul  
Governor

Lucy Lang  
New York State Inspector General

## EXECUTIVE SUMMARY

The Office of the New York State Gaming Inspector General's (OGIG), as established by the Upstate New York Gaming Economic Development Act, has a primary purpose of furthering the overall mission of the New York State Gaming Commission (Gaming Commission) in order to ensure that all lawful gaming and horse racing activity conducted in this State is of the highest integrity, credibility, and quality. It does so by receiving and investigating complaints from any source concerning allegations of corruption, fraud, criminal activity, conflicts of interest or abuse in New York State gaming and horse racing.

The year 2021 brought significant changes to OGIG. On June 18, 2021, OGIG's duties and responsibilities were transferred to and encompassed by the Offices of the New York State Inspector General (OSIG), which is comprised of the Office of the New York State Inspector General, OGIG, the Office of the New York State Workers' Compensation Fraud Inspector General (WCFIG), and the Office of the Welfare Inspector General (OWIG).<sup>1</sup> This merger included the operational and physical transfer of OGIG records and office to OSIG. On November 29, 2021, Governor Kathy Hochul appointed Lucy Lang to serve as the New York State Inspector General.<sup>2</sup>

Since taking office, Inspector General Lang has worked closely with the Deputy Inspector General for Gaming, Lisa Lee, to fully integrate OGIG into OSIG, including training all OSIG staff across New York State in the laws, policies, and practices relevant to gaming and horse racing activity. Moreover, all relevant OSIG staff were asked to sign a statement acknowledging that they were prohibited from personally engaging in gaming and horse racing activity in New York State, enabling them to participate in any OGIG investigation.

Additionally, OGIG has been featured on OSIG social media as well as the agency website, including a history of the office, a link to submit complaints online, and contact information for a complaint hotline. Inspector General Lang has also initiated the process of reviewing and publishing, with appropriate redactions for confidential information and personal privacy, gaming related historical letters and reports on OSIG's website that were previously only available via Freedom of Information Law (FOIL) requests.

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<sup>1</sup> See New York State Racing, Pari-Mutuel Wagering and Breeding Law § 130.

<sup>2</sup> Press Release, Governor Hochul Announces Administration Appointments, Nominations and Recommendations (October 21, 2021), <https://www.governor.ny.gov/news/governor-hochul-announces-administration-appointments-nominations-and-recommendations>.

Despite the unprecedented environment resulting from the ongoing COVID-19 pandemic, including the emergence of the Delta and Omicron variants, OGIG quickly adapted and implemented changes as needed to continue essential operations. For example, although the Gaming Commission's executive offices are located in Schenectady, the Gaming Commission maintains a physical presence at 11 horse tracks, 19 casinos (including Indian, video lottery, and commercial gaming facilities), and five Lottery field offices throughout the state. Hence, OGIG adopted new procedures to ensure the safety of the public and staff, as well as utilizing alternate means to fulfill investigative needs in order to meet its statutory mandates and further the mission of the Gaming Commission. OGIG also expeditiously updated and provided corruption awareness training to dozens of Gaming Commission employees throughout New York State.

In 2021, OGIG received 123 complaints alleging licensee/vendor issues, employee matters, agency or operational issues, and service-related patron concerns, as well as requests for information or other non-jurisdictional issues. OGIG issued letters and reports detailing a total of 30 investigative findings and over a dozen recommendations, all of which were referred to the Gaming Commission for administrative review and/or action related to the subjects. One additional matter, which had been previously referred to the Gaming Commission, was referred to the New York State Joint Commission on Public Ethics (JCOPE).

#### PURPOSE AND SCOPE OF ANNUAL REPORT

New York State Racing, Pari-Mutuel Wagering and Breeding Law section 131(7) mandates that OGIG submit an annual report to the Governor, State Comptroller, and Legislature summarizing the activities of the office for the preceding calendar year. Accordingly, this Annual Report outlines the mission of OGIG and summarizes its administrative and operational endeavors, letters and reports issued, and outreach and training conducted.

#### BACKGROUND

The Upstate New York Gaming Economic Development Act of 2013 was enacted for the purpose of creating jobs, increasing school aid, providing property tax relief, authorizing destination resort gaming, and consolidating the New York State Racing and Wagering Board and the Division of Lottery (Lottery) into the Gaming Commission. The Gaming Commission regulates all legal gaming activity in the State, which includes horse racing, charitable gaming, the New York State Lottery, casinos (commercial, Indian, and video gaming), and more recently, mobile sports wagering.

The Legislature also determined that it was “essential to maintain the public confidence and trust in the credibility and integrity of legalized gaming activities,”<sup>3</sup> and to that end, specifically created OGIG.

The Gaming Commission and OGIG were officially formed on February 1, 2013. OGIG investigates allegations of corruption, fraud, criminal activity, and conflicts of interests or abuse in the Gaming Commission; periodically reviews and examines policies and procedures; makes recommendations to combat corruption, fraud, criminal activity, and conflicts of interest or abuse; prepares and releases to the public written reports of its investigations, as appropriate; refers, when necessary, its findings for disciplinary action or civil or criminal prosecution; establishes training programs; and liaises with other law enforcement organizations.

In January 2021, then Governor Andrew M. Cuomo proposed “extract[ing] and segregat[ing OGIG] from Gaming Commission resources” and transferring OGIG to OSIG in order “to eliminate any potential conflicts of interests between the Gaming Commission and the Gaming Inspector General,”<sup>4</sup> effective 60 days after the signing of such law. On April 19, 2021, Chapter 59 of the Laws of 2021 was signed by the Governor. Effective June 18, 2021, the three OGIG staff members were transferred to OSIG.<sup>5</sup> OGIG’s central phone number, email address, and post office box remained functional for the public’s use. OGIG maintained communication with the Gaming Commission seamlessly.

## COMPLAINTS

In 2021, OGIG received 123 complaints, a decrease from the previous years.<sup>6</sup> Complaints are received via all forms of communication, including hotline, telephone, email, mail, online complaint form, and in-person. OGIG may also self-initiate a “complaint” for review.<sup>7</sup>

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<sup>3</sup> See Laws of New York, Chapter 60 of the Laws of 2012, § 100.

<sup>4</sup> See FY 2022 Executive Budget Briefing Book, Revenue Actions, Gaming Initiatives, “Decouple the Gaming Commission and the Gaming Inspector General,” at 10.

<sup>5</sup> The three staff members included the acting gaming inspector general, special assistant to the gaming inspector general, and an investigator.

<sup>6</sup> In 2020, OGIG received 147 complaints despite the closure of gaming facilities due to the pandemic. It should be noted that following the June 18, 2021, merger of OGIG with OSIG, references to OGIG were removed from the Gaming Commission’s website and OGIG was only reflected on OSIG’s website. New outreach material, however, has recently been generated and disseminated to gaming facilities throughout New York State.

<sup>7</sup> It should be noted that prior to this event, OGIG worked tirelessly with staff at the New York State Office of Information Technology Services and was in the final stages of developing a case management system. OGIG also successfully migrated its server to a network separate from the Gaming Commission at the outset of 2021.

The details of each complaint are evaluated, and, if warranted, an investigation is conducted. In some situations, additional information may be sought, or it may be determined that the complaint should be referred to the Gaming Commission or OGIG’s law enforcement partners. In other instances, it may be determined that OGIG lacks jurisdiction or there is no actionable complaint.

In general, complaints may be described as involving one of the following concerns: service-related (i.e., patron complaints); licensee/vendor; employee; agency/operational (i.e., program, policy, or procedure); request for information; and miscellaneous/other (i.e., non-jurisdictional). The breakdown of the 2021 complaints received are as follows:

<b>Type</b>	<b>Number</b>	<b>Percentage</b>
Agency/Operational	16	13%
Employee	17	14%
Licensee/Vendor	44	36%
Miscellaneous/Other	19	15%
Request for Information	22	18%
Service-related	5	4%

## INVESTIGATIONS

When an investigation is commenced, OGIG endeavors to assign staff with the requisite skill set needed to ensure a thorough and comprehensive investigation. Thus, whenever possible, a multi-disciplinary team comprised of investigative counsel, investigator(s) and/or auditor(s) work collaboratively together. Investigations may result in referrals for criminal prosecution or to other state agencies, such as JCOPE, the Governor’s Office for Employee Relations, and/or to the Gaming Commission for administrative review and/or action.

For the year 2021, OGIG issued six letters and/or reports resulting in 30 investigative findings and over a dozen recommendations referred to the Gaming Commission for administrative review and/or action.<sup>8</sup> An additional matter, previously referred to the Gaming Commission at the end of 2020, was referred to JCOPE.<sup>9</sup> Below is a summary of the allegations investigated as it relates to 2021 letters and/or reports issued:

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<sup>8</sup> In 2020, OGIG issued seven reports resulting in 61 findings, 23 recommendations, and three referrals to JCOPE.

<sup>9</sup> The investigation pertained to Gaming Commission employees including employee family members, who sought and/or received complimentary access to events hosted by a vendor and/or affiliate of the Gaming Commission. A

## **Wagering by Gaming Commission Employees**

### *Interactive Fantasy Sports and Social Media Activity*

OGIG determined that a Gaming Commission employee assigned to the Division of Horse Racing and Pari-Mutuel Wagering (Division of Racing) continued participating in Interactive Fantasy Sports (IFS) even after legislation was passed authorizing IFS in New York State<sup>10</sup> and despite having knowledge of the Gaming Commission's IFS wagering prohibition and attending an ethics training. This employee also participated in a fantasy sports pool with Gaming Commission staff and other racing officials.<sup>11</sup>

Additionally, the employee's personal social media account created other conflicts of interest issues. The employee identified themselves as an official and continued to be "friends" with Gaming Commission licensees, some of whom raced at the employee's assigned track. Such conduct may reasonably lead other licensees to believe that the employee favored their "friends." Further, the employee commented on racing, including racing rules, which may be construed as the employee speaking on behalf of the Gaming Commission.

The employee subsequently closed their IFS accounts, and OGIG's findings and recommendations were referred to the Gaming Commission for administrative review and/or action.

### *Temporary Employee*

OGIG determined that a temporary employee assigned to the Bureau of Finance & Administration who was a former professional poker player may have continued to engage in wagering. The Gaming Commission's wagering prohibition applies to temporary employees. The temporary employee admitted to participating in friendly "home" poker games but would not respond to questions regarding whether he engaged in regulated gaming activities. The temporary employee subsequently resigned from the Gaming Commission. A letter was issued to the Gaming Commission advising of OGIG's findings related to the temporary employee.

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report was issued to the Gaming Commission in December 2020, and shortly thereafter, the findings were referred to JCOPE.

<sup>10</sup> On March 22, 2002, the Court of Appeals reversed the February 6, 2020, Appellate Division, Third Department decision upholding the October 26, 2018, decision of the Supreme Court, Albany County, finding that the Laws of New York, Chapter 237 of the Laws of 2016 were unconstitutional and reversing the lower court decision finding that the amendment to the Penal Law related to IFS was constitutional.

<sup>11</sup> Racing officials included United States Trotting Association (USTA) director(s) and employee(s) of the employee's assigned race track.

## **Undisclosed Outside Activities by Gaming Commission Employees**

### *Podcast*

OGIG determined that a Division of Racing employee failed to obtain Gaming Commission approval for co-hosting a podcast, which included discussions on picks and fantasy advice for sporting events, such as baseball, basketball, and football, but not on horse racing. At the same time, the podcast had a Twitter account, and some tweets were profane, as well as disparaged elected officials.

The employee subsequently ceased being involved in the podcast and deactivated the social media account. As such, a letter was issued to the Gaming Commission advising of OGIG's findings.

### *Podcast and Social Media*

OGIG determined that an employee assigned to the Division of Lottery hosted a podcast that contained an advertising placement, which generated nominal revenue.<sup>12</sup> Although approval for the activity was obtained, the employee did not seek to do so until two months after the first podcast was released.

The employee was also personally very active on various social media platforms, including Facebook, Instagram, Tik Tok, and Twitter. The employee identified themselves as a Gaming Commission employee and posted photos of themselves taken at promotional events sponsored by the Lottery and within Lottery workspaces and a studio. Furthermore, the employee's Instagram account was linked to the Lottery's official account potentially creating confusion for the public in its ability to distinguish between official Lottery content and the employee's personal content. Thus, it appeared that the employee was highlighting their Gaming Commission employment on their personal social media accounts to gain followers.

However, the Gaming Commission did not have a social media policy which contemplates both professional and personal use for its employees.

OGIG's findings and recommendations were referred to the Gaming Commission for administrative review and action.

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<sup>12</sup> Revenue depended upon how often an episode was downloaded or streamed and how many donations were received.

## *Website*

OGIG determined that a Division of Racing employee failed to disclose that the employee was the co-owner and contributor of a website that discussed statistics, trends, and news of interest to participants in fantasy sports pools. It should be noted that there was no wagering taking place on the website.

Although the employee failed to disclose the outside activity to the Gaming Commission, there was no evidence that the content of the website violated any conflicts of interest provision or condition of employment. Moreover, the employee had not contributed content since April 2019, and, in February 2021, relinquished ownership of the site. As such, a letter was issued to the Gaming Commission advising of OGIG's findings.

## **Abuse of State Resource by a Gaming Commission Employee**

OGIG determined that an employee assigned to the Division of Gaming was inappropriately using their Gaming Commission-issued computer and internet access to play web-based games, specifically Forge of Empires (FOE). By the employee's own admission and corroborated by internet-usage reports, the employee extensively played FOE on a daily basis and kept the game running in the background of their computer during their workday, in violation of the New York State Office of Information Technology Services and Gaming Commission's internet use policy. Moreover, other employees witnessed the activity on multiple occasions, which negatively impacted the morale and operations of the division.

OGIG's findings and recommendations were referred to the Gaming Commission for administrative review and/or action.

## **CORRUPTION AWARENESS TRAINING**

In 2021, despite health and safety challenges and the transfer of OGIG's duties and responsibilities to OSIG, OGIG expeditiously updated and successfully provided corruption awareness training via the New York Statewide Learning Management System (SLMS) for dozens of Gaming Commission employees throughout the State. As of December 31, 2021, there were 389 full-time, per diem (assigned to the Division of Racing), and temporary Gaming Commission employees.<sup>13</sup>

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<sup>13</sup> The number of per diem staff employed by the Division of Racing fluctuates depending upon which race tracks are operational. Most per diem staff are rehired for the next race meet, though each rehire must be submitted by the

This on-line training module was initially launched in September 2020, in response to then Governor Cuomo’s March 22, 2020, Executive Order “New York State on Pause,” which required the shifting of in-office operations to remote environments.<sup>14</sup> The SLMS module continues to serve as a vital tool to train Gaming Commission staff in Schenectady and to the 35 field locations where many Gaming Commission employees work. However, as the State settles into its “new normal,” OGIG intends to resume in-person trainings.

### LOOKING AHEAD TO 2022

As the restrictions related to the COVID-19 pandemic are lifted, OGIG is hopeful that it will be able to significantly increase its in-person activities. Indeed, already in 2022, all OSIG staff members have received training from the Deputy Inspector General for Gaming, Lisa Lee, on how to investigate gaming related matters, and relevant staff were asked to sign a gaming prohibition, dramatically increasing the personnel available to work on these cases. OSIG has also endeavored to increase the number of investigative and audit staff with a primary focus on gaming through an external hiring process.

In addition, several new gaming initiatives have been implemented and/or proposed for New York State this year, which may impact the workload of OGIG. These include mobile sports wagering, the Horse Racing Integrity Authority’s (HISA) Anti-Doping and Medication Control program, downstate commercial casino licenses, interactive gaming, and interactive fantasy sports.

### Mobile Sports Wagering

This year, mobile sports wagering commenced,<sup>15</sup> and it has yielded record-breaking returns in a matter of weeks. For the month of January alone, the State received more than \$63 million in revenue for education. In the following two weeks, which included the Super Bowl, revenue generated for the State rose to more than \$70 million. The amount of revenue raised is

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Gaming Commission and approved by the Governor’s Appointments Office and the Division of the Budget. In May 2021, when most race tracks were open, the Gaming Commission had 487 employees, excluding temporary employees. It should also be noted that during 2021, 40 staffers retired, resigned, transferred, or were terminated.

<sup>14</sup> In 2020, 100 Gaming Commission employees received corruption awareness training via SLMS. Further, between January and early March 2020, OGIG conducted nine in-person training sessions for 155 Gaming Commission employees and four staffers from the Agriculture and New York State Horse Breeding Development Fund and New York State Thoroughbred Breeding and Development Fund.

<sup>15</sup> See, Laws of New York, Chapter 59 of the Laws of 2021.

expected to increase throughout the remainder of the year. Relatedly, proposed legislation seeks to increase the number of mobile sports operators from nine to 16 by 2023.<sup>16</sup>

### **Horse Racing Integrity Authority**

HISA's Anti-Doping and Medication Control program is slated to go into effect in July 2022.<sup>17</sup> Pursuant to this program, out-of-competition testing for thoroughbreds would be administered under HISA's jurisdiction. Nevertheless, race day testing would remain under state jurisdiction until 2023, at which point HISA is expected to assume responsibility. To date, HISA does not have a testing partner to help implement the program, nor agreements in place regarding funding for such program. It is also uncertain how this will impact the operations of the Gaming Commission's Division of Racing and the State's New York Equine Drug Testing and Research Program.

### **Downstate Commercial Casino Licenses**

As part of the Upstate New York Gaming Economic Development Act of 2013, three additional downstate licenses may be issued in 2023. However, Governor Hochul and the Legislature have indicated that they are open to awarding downstate licenses as early as 2022. In furtherance of this possible acceleration, on October 20, 2021, the Gaming Commission issued a Request for Information for Unawarded Commercial Casino Licenses. It is anticipated that a Gaming Facility Location Board will be constituted to determine licensing fees and evaluate licensing applications to assess where these new casinos should be located.

### **Interactive Gaming**

On February 24, 2022, legislation was introduced to legalize online interactive gaming (iGaming), which would enable commercial casinos to offer patrons the ability to participate in games without being physically present at the casino. This legislation would further expand gaming available to New York State residents from their personal internet-enabled devices.<sup>18</sup>

### **Interactive Fantasy Sports**

Lastly, on March 22, 2022, the New York State Court of Appeals held that the law authorizing and regulating IFS contests is constitutional, in that IFS does not constitute

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<sup>16</sup> See 2021-2022 Legislative Session S8471/A8658A.

<sup>17</sup> On December 27, 2020, the federal Horseracing Integrity and Safety Act was signed and is scheduled to go into effect July 1, 2022. See H.R. 1754 –116th Congress.

<sup>18</sup> See 2021-2022 Legislative Session, State Senate Bill S8412.

prohibited gambling. Accordingly, the Gaming Commission may now promulgate regulations and issue licenses relating to the activity.

Given all the changes and gaming initiatives on the horizon, it will be crucial that the existence of OGIG is widely known. Hence, OGIG will continue to aggressively conduct outreach and training, as well as diligently fulfill its statutory mandate.