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**State Board of Agriculture (State Fair Board)**

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# EXECUTIVE SUMMARY

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## *Introduction*

The program evaluation described in this report was undertaken by the Legislative Program Evaluation Unit on behalf of the Legislative Program Evaluation Committee. The unit evaluated the State Board of Agriculture, commonly referred to as the State Fair Board, which organizes the annual state fair, conducts horse races, and leases fairground facilities to outside entities and individuals. The purposes of the evaluation were to describe the board and its administrative structure, evaluate the board's horseracing and other activities, and assess its compliance with certain legal requirements.

Prior to the evaluation, the unit conducted a preevaluation inquiry to determine, in part, whether the board is a private corporation or a state agency. The unit concluded that, while the board is a private corporation in the eyes of the Nebraska Supreme Court, its relationship with the state is sufficient to bring it under the committee's jurisdiction.

The board consists of 29 members, four of whom serve as officers. The officers and three other board members make up an executive board that handles most of the board's management responsibilities. The board also hires a general manager who oversees the daily operations of the fair and the board's other activities.

## *The Board's Finances*

Since 1998, the board's revenue has exceeded \$9 million annually, more than half of which was derived from horseracing. The remaining revenue came primarily from state-fair receipts, with a small amount from facility leases.

The vast majority of the board's expenditures are associated with its state-fair, horseracing, and facility-leasing activities and ongoing maintenance of fairground facilities. The board also pays small annual stipends to its officers and makes per diem payments to board members for attending board meetings and working at the state fair.

## *The Board's Annual Profit or Loss, 1993-2001*

Since 1993, annual independent audits of the board's finances show the board has experienced a net loss in every year except one (1998). However, if depreciation is disregarded, the audit figures show the board has experienced a net *profit* in each of these years. This indicates that the board is making enough money to cover its operating expenses but cannot afford capital improvements.

Although the board does not have the funds to pay for them, the need for capital improvements is significant. To fund the highest priority projects, the board has requested over \$4.4 million from the Building Renewal Allocation Task Force (309 Task Force), which provides financial assistance to state agencies for the maintenance and renovation of state buildings. The board's comprehensive capital facilities plan estimates that a complete renovation of fairground facilities would cost approximately \$27 million.

## *State Financial Support Received by the Board, FY1993-94 to FY2002-03*

The board receives both direct and indirect state financial support; however, we found that direct state financial support makes up only a small proportion of the board's total revenue. Since FY1993-94, the board received direct financial support in the form of

an annual General Fund appropriation for 4-H and Future Farmers of America (FFA) competitions at the fair and occasional appropriations from the General Fund and the Building Renewal Allocation Fund (309 Fund) for capital construction. The board received indirect financial support through the rent-free use of the state-owned fairground facilities and through two tax exemptions available to entities that sponsor horse races. While we were unable to quantify the dollar value of indirect state financial support received by the board, it is significant.

#### *State Oversight for State Funds Appropriated to the Board*

There are no mechanisms in place to ensure that appropriations made for the 4-H/FFA program are spent as the Legislature intended. The board receives this appropriation as a lump-sum payment, and expenditures are not tracked by the DAS accounting system or audited by the State Auditor. In contrast, appropriations for capital construction are subject to some state oversight. Like the 4-H/FFA funds, capital construction funds are not tracked or audited by the state, but in most cases the board must receive DAS approval before they can be spent.

### ***Economic Issues***

In addition to examining the board's finances, we evaluated three economic issues related to the board: (1) whether there is an economic justification for the board's horseracing activities, (2) the board's compliance with its property management agreement with the Department of Administrative Services (DAS), and (3) the board's use of fairground facilities. A discussion of each issue follows.

#### *Economic Justification for the Board's Horseracing Activities*

Since at least 1993, the board's horseracing activities have consistently shown a deficit.

However, the board demonstrated to us that the deficit is a result of the board's practice of allocating to the horseracing function indirect administrative costs not exclusively related to horseracing. We found that horseracing revenue covers the cost of the board's horseracing activities and some, but not all, of the other indirect costs allocated to it.

#### *Property Management Agreement with the Department of Administrative Services*

In 1995, the board and DAS entered into a contractual agreement that formally recognized the board as the custodian of the state-owned fairground facilities and made the board eligible for state building maintenance funds. Under the agreement, the board must meet planning and reporting requirements similar to those that state agencies must meet. We found that the board has not fully complied with these requirements.

#### *Use of the Fairground Facilities*

When fairground facilities are not in use for the state fair and horse races, the board leases them out. We found that, in the year 2000, the board leased out about half of its facilities for one or more events and about one-third of its facilities for a significant part of the year. Whether the board could be using the facilities more or earning more revenue in this area is difficult to determine, though common sense suggests that some of the facilities would be more marketable if needed capital improvements were made.

### ***Legal Issues***

Beyond economic issues, we also analyzed three legal questions related to the board: whether Nebraska's open meetings law applies to meetings of the board, and whether Nebraska's Accountability and Disclosure Act and the separation of powers clause of the Nebraska Constitution apply to board mem-

bers. Following is a discussion of each of these issues.

### *Nebraska's Open Meetings Law*

Nebraska's open meetings law requires most meetings of public bodies to be open to the public, and it contains specific public-notice requirements. We found that, although the Nebraska Supreme Court ruled that the board is a private corporation, the definition of "public body" contained in the open meetings law is broad enough that it arguably encompasses the board.<sup>1</sup> The board meets some, but not all, of the law's public-notice requirements.

### *The Accountability and Disclosure Act*

Under the state's Accountability and Disclosure Act (act), a public official is required annually to file a form disclosing his or her income, debt, and financial holdings. Because of the board's apparent status as a private corporation, the act does not apply to board members. However, we found that, with only one exception, the board's current executive board members and its former general manager had met the filing requirement.

### *Separation of Powers*

Article II, section 1 of the Constitution of Nebraska prohibits an individual from serving in more than one branch of state government. We reviewed the board's membership for the last ten years and found that at least one state senator served on the board in each of those years. This is not technically unconstitutional because the Nebraska Supreme Court and the Attorney General consider the board to be a private corporation, not an executive branch agency. Nevertheless, we have reservations about senators serving on the board because

the board often acts or has acted like a state agency.

### ***Fairs in Other States***

Finally, we researched the management of state fairs in nine neighboring states: Colorado, Illinois, Indiana, Iowa, Kansas, Minnesota, Missouri, South Dakota, and Wyoming. We found that:

- In six of the states, the fair is managed by a state agency; in the other three, it is managed by an entity which is neither wholly public nor wholly private (similar to Nebraska's board);
- In all cases, a board either runs the fair or advises the entity that runs it. The size and makeup of the boards vary considerably;
- Most of the entities that run the fairs receive state funding and manage state-owned fairground facilities; and
- Based on responses from five of the nine states that we contacted, many fairs show a decrease in attendance and revenue similar to Nebraska's.

### ***Conclusion***

Based on our evaluation, we conclude that the committee may want to increase state oversight of the board's finances and activities. Although the supreme court has ruled that the board is private corporation, it acts in many respects like a state agency. Yet the state does not track its finances, and laws that apply to state agencies do not apply to the board. Additionally, the board currently raises enough revenue to pay for its operating costs but cannot afford needed capital improvements to the fairground facilities. If additional funding is made available for capital improvements, the need for additional state oversight may be even greater.

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<sup>1</sup> Subsequent to the completion of our report, the Attorney General ruled that the board is not subject to the open meetings law, although he agrees it is a "close question." (Opinion of the Attorney General No. 01038, 28 November 2001.)

The Legislative Program Evaluation Committee recommendations in response to our findings are contained in Part III of this report.