

**ELEMENTS OF A PLAN FOR THE CREATION
OF A
STRUCTURE TO BETTER PROMOTE TOURISM
IN THE
STATE OF NEW JERSEY**

**By
New Jersey Gaming, Sports & Entertainment Advisory Commission**

March 13, 2012

**Elements of a Plan for the Creation
of a
Structure to Better Promote Tourism
In the
State of New Jersey**

Table of Contents

Preliminary Findings and Assumptions.....	1
Introduction.....	2
Organizational Models.....	2 - 4
Repositioning the New Jersey Sports and Exposition Authority.....	4 -16
A. Asset Audit.....	6 - 9
B. Existing Organizations.....	9 -11
C. Stakeholders.....	11
D. Goals, Functions and Rationales.....	12
E. Financing.....	13-15
Longer Term Considerations.....	15-16
Conclusion.....	16-17
Summary of Recommendations.....	17-18

Elements of a Plan for the Creation of a Structure to Better Promote Tourism in the State of New Jersey

Preliminary Findings and Assumptions

- The state’s approach to the promotion of tourism is disconnected, suggesting an urgent need for coordination and consolidation of efforts.
 - Promotion of New Jersey tourism does not currently receive the attention or resources required to maximize return on the state’s significant sports, entertainment and recreation resource base or to render the state competitive nationally as a tourist destination.
 - Any coordinated approach to the promotion of tourism in the state must have a statewide focus.
 - The Governor must be a visible element of the state’s tourism marketing structure.
 - This approach must seek to complement work already completed by the Governor and Legislature in recent years to revitalize various entertainment and other destinations, such as Atlantic City.
- Promotion of tourism must be treated separately from general business promotion as part of an overall plan to spur economic growth in the state.
 - Like business promotion and development, tourism needs to be approached as a public/private partnership.
 - Improvements in the promotion of tourism will result in increased revenues, investments and employment for the state, which will in turn contribute significantly to economic prosperity for the state and its residents.
 - Both public and private contributions to the initiative should be viewed as investments, not as grants or donations.
- With its focus on sports and entertainment, the New Jersey Sports and Exposition Authority (NJSEA) is uniquely suited to be repositioned as a centerpiece for promotional efforts related to marketing New Jersey as a premier tourist destination.

Introduction

This report of the New Jersey Gaming, Sports, and Entertainment Advisory Commission (Advisory Commission) presents recommendations intended to initiate the creation of a new and improved tourism and marketing structure for New Jersey. The report, and the marketing and tourism structures it explores, is dedicated to maximizing the state's value as a tourist destination. The Advisory Commission believes that value is today much less than it can and should be.

These recommendations are the next step in a process initiated in February 2010 by the Administration of Governor Chris Christie (Executive Order 11) to revisit and recast various important but flagging New Jersey industries. Recommendations in this report primarily seek to reposition and ultimately empower the New Jersey Sports and Exposition Authority (NJSEA) to act as the state's lead for matters involving travel and tourism marketing and event facilitation and promotion. It also recommends various ancillary but important realignments and other changes that will further empower the NJSEA to not only accept that charge but also thrive in the short and long term in partnership with both public and private stakeholders.

These recommendations rely in large part on information gleaned from The National Association of Sports Commissions¹ and from a meeting with senior staff at NYC & Company,² which by all accounts is a travel and tourism model whose obvious success is worthy of emulation.

As created by Governor Christie, the Advisory Commission has a broad mandate.

In previous reports, we have explored the recasting and revitalization of various entertainment-related industries in New Jersey, including horse racing and, most importantly, Atlantic City, which must be seen as a destination city, not only for gaming but also as a friendly resort. The Administration and the Legislature have responded appropriately to our recommendations pertaining to Atlantic City. Indeed, actions recommended by the Advisory Commission and enacted by the Governor and the Legislature will have an enduring impact not only on Atlantic City but also on the state.

¹ According to its web site, the National Association of Sports Commissions provides an outlet for communication between sports commissions, convention and visitors bureaus, event rights holders and suppliers to the sports event travel industry. The organization was created in 1992.

² Formed in 1999 NYC & Company is a private non-profit 501(c)(6) tax exempt corporation that serves as the official tourism marketing organization for the City of New York. The organization has over 1,800 members – primarily organizations and businesses with an interest in tourism. NYC & Company has an annual budget of approximately \$16M, 40% of which comes from New York City. NYC & Company also controls a 501(c)(3) affiliate.

As such, this report of the Advisory Commission should be viewed as a natural next step in completing our charge.

As we note further along herein, a destination might only be considered a destination if tourists and others arrive there. Destinations, in fact, are assets. Recommendations contained in this report, when implemented, will allow NJSEA to complement and support the work already implemented to rethink how New Jersey gaming and other industries operate. These recommendations will help put in place a mechanism empowered to be successful at growing tourism. It will be of immense, sustaining value to stakeholders both public and private to participate and maintain the model recommended in this report.

Organizational Models

There are three potential models considered by the Advisory Commission for a new tourism and marketing structure for New Jersey:

- (1) a new division or expansion of an existing government agency;
- (2) an independent government agency or authority; and,
- (3) a non-profit corporation.

In the case of sports commissions, such organizations commonly start as part of some other entity, eventually becoming independent. As an independent organization, a sports commission or other marketing organization may better attract high-profile sporting events, due to the general industry aversion to investment in state government entities over independent organizations. However, in its inception, a sports commission or marketing entity may benefit from its association with a government entity, for example through state funding and use of state resources.

Accordingly, the Commission believes that New Jersey will initially be **best served by an independent government agency or authority** that incorporates the work of existing operations – in New Jersey’s case, the Division of Travel and Tourism, its Motion Picture & Television Commission and the New Jersey Hall of Fame – presumably under the Department of State. This agency should act as an umbrella agency in partnership with these and any other such organizations in New Jersey to coordinate activities and pool resources among state operations focused on similar or related activities.

The choice among structural models requires consideration of a number of critical factors including:

- (1) the overall effectiveness of the operation, as related to issues such as an ability to attract exceptional levels of talent and expertise and the ability to adequately finance the operation;

(2) accountability of the operation, related in large part to appointment authority for the operation's leadership; and,

(3) transparency of decision-making generally, as related to issues such as applicability of the Open Public Meetings Act ("OPMA"), the Open Public Records Act ("OPRA"), and the Administrative Procedures Act ("APA").

With respect to the independent governmental agency model, a distinction needs to be drawn between boards, commissions and councils on the one hand and public authorities or public corporations on the other. This is the case because under New Jersey law there is no legal distinction as to whether an agency is organized as a board, commission or council. State and local authorities (and public corporations, such as the New Jersey Transit Corporation) have the authority to issue tax-free bonds, own property, make loans and/or provide services, thus enabling them to finance their own operations.³

Whether the Governor can create temporary programs within departments or advisory task forces as independent bodies without specific legislative authorization will ultimately be determined by whether the proposed operation is substantially institutional. If substantially institutional in nature the operation will likely require legislative action as a constitutional matter.⁴

Allocation of executive and administrative offices within a principal department of state government is a legislative function, and the Governor's authority to reorganize government is limited to that delegated by the Legislature.⁵ Although the Governor may establish a nonprofit corporation to which he consigns some governmental functions, the Legislature is equally empowered to regulate that entity (even if unilaterally created by the Governor).⁶ Accordingly, it is the Legislature that ultimately has the authority to determine the nature of a nonprofit's governing board, its purpose, and its operating rules and relationship to the public.

Eventually, a new operation may wish to pursue independence, as the Maryland Office of Sports Marketing is currently doing. However, an interesting transitional (or final) stage may be a model such as that of the Utah Sports Commission – an independent organization whose leadership coincides with the leadership of the state government, and that is required to report to the Governor and the Legislature on a regular basis. However, although this model (Utah) claims to allow the Commission to act independently of agency oversight while retaining close ties to the state government, one might question how truly independent the Commission may

³ See, for example, Clayton v. Kervick, 52 N.J. 138, 150-154 (1968) where the court upheld creation of the Educational Facilities Authority because facilities were meant to pay their way from bond revenues unrelated to legislative appropriations and thus did not violate the debt limitations clause of the state Constitution. Also see N.J. Mortgage Finance Agency v. Mc Crane, 56 N.J.414, 423 (1970) for the same legal principle.

⁴ See, for example, Dalton v. Kean, 213 N.J. Super. 572, 575 (App Div.), cert denied, 107 N.J. 110 (1986)

⁵ Art. V, section 4 paragraph 1 of the New Jersey Constitution.

⁶ An example of such an organization is Blue Cross and Blue Shield of New Jersey (now Horizon) created at the behest of the Legislature in 1938.

be. On the other hand, cooperation and coordination with the state is of capital importance to any such new organization, and the relationship such as that of the Utah Sports Commission may provide additional transparency that a completely independent organization may not so provide.

Therefore, in all likelihood, the permanent form of structure that an enhanced tourism marketing agency takes and the principles underlying its operation will likely represent a compromise between the executive and legislative branches.

Looking again for guidance from the New Jersey Constitution, we find that “[a]ll executive and administrative offices, departments and instrumentalities of the State” must be allocated to one of the principal departments of the State, and the head of each department is required to be “under the supervision of the Governor.”⁷ This requirement has given rise to “independent” administrative agencies that are “in, but not of” their respective departments and accordingly free from supervision by their “home” departments (but not from the oversight of the Governor).⁸ Notwithstanding this lack of departmental control or supervision, the independence of such an authority is tempered by the power of the Governor to appoint several members of the governing board (with advice and consent of the Senate) as well as the power of the Governor to veto minutes of such an authority.

In creating administrative agencies (within principal departments or “in, but not of” such departments), the Legislature, as a constitutional matter, must provide them with sufficient standards to guide their actions.⁹

Repositioning NJSEA

The New Jersey Sports and Exposition Authority (“NJSEA”) is an independent authority established by the Legislature in 1971 upon the recommendation of Governor William Cahill. The initial charge given to NJSEA was to build and operate the Meadowlands Sports Complex and the Meadowlands Racetrack.

Since 1971 NJSEA’s operation has been expanded to include an entertainment venue at the Meadowlands (the IZOD Center), Monmouth Park Racetrack in Oceanport, the Wildwoods Convention Center in Wildwood, the Atlantic City Convention Center, and the historic Boardwalk Hall in Atlantic City.

⁷ Art. V. section 4, paragraphs 1 & 2.

⁸ See 37 N.J. Prac., Administrative Law and Practices, Sec. 1.4n. 8 (2nd ed).

⁹ See, for example, 37 N.J., Prac., Administrative Law and Practices Sec. 1.11 (2nd ed.) citing Worthington v. Fauver, 488 N.J. 183 (1982); Mount Laurel Twp. v. Department of Public Advocate, 83 N.J. 522 (1980). See also N.J. Mortgage Finance Agency v. McCrane, supra stating that “the Legislature may not vest unbridled or arbitrary power in an administrative agency” – that is, the law must spell out the operations and public purposes of the Agency to pass constitutional muster.

NJSEA has also been responsible for construction of the Adventure Aquarium in Camden and renovation of the Rutgers University all-purpose athletic complex. NJSEA contributed to construction of the Meadowlands Environmental Center in Lyndhurst and established an Off Track Wagering (OTW) facility in Woodbridge, with plans to transfer the management of that facility to the proposed lessee of Monmouth Park. A second OTW in Bayonne is under construction, to be operated and managed by the lessee of the Meadowlands Racetrack.

Currently, the NJSEA is governed by a board comprised of the State Treasurer, the President & CEO of the NJSEA, a member of the Meadowlands Commission selected by the Governor, 11 members appointed by the Governor subject to confirmation by the Senate, one member appointed by the Speaker of the General Assembly, and one member appointed by the Senate President. Importantly, NJSEA's meetings are open to the public and its minutes are subject to approval by the Governor.

In January 2010, the New Jersey Gaming/Sports and Entertainment Committee, serving as a Transition Team (the "Transition Team") for Governor-elect Chris Christie, strongly recommended substantial changes to NJSEA's and the state's relationship to horseracing. The recommendation was prompted by projected annual state losses in this regard of more than \$20 million.¹⁰ Specific suggestions included discontinuing live racing at the Meadowlands during and after 2010, converting part of the new paddock building to an upscale OTW and moving all live horseracing to Monmouth Park.¹¹ In the alternative, the Transition Team recommended privatizing the operations of racing at the Meadowlands and Monmouth Park.¹²

In addition to recommending changes to NJSEA's relationship to horseracing, the Transition Team recommended that NJSEA participate in implementing the management and coordination of the non-casino concert and entertainment industry in the state at the IZOD Center, Prudential Center, PNC, Atlantic City Convention Center and Rutgers.¹³

In June 2010, the Governor's Advisory Commission on New Jersey Gaming, Sports and Entertainment (the "Advisory Commission") reviewed and expanded upon the recommendations of the Transition Team as those recommendations related to the repositioning of NJSEA. The Advisory Commission's work in these regards was informed by the Governor's charge to the Advisory Commission, which included a tenet that financial losses of the NJSEA must be discontinued.

Within its Final Report, the Advisory Commission recommended that "planning should begin immediately to divest the NJSEA of all responsibilities related to venue operations, including, in particular, the Meadowlands Racetrack, the IZOD Arena and Monmouth Park

¹⁰ Draft Transition Report: New Jersey Gaming/Sports and Entertainment Committee, January 5, 2010 at pg. 2

¹¹ Id.

¹² Id.

¹³ Id. at pg. 9

Racetrack.”¹⁴ Governor Christie has already made announcements reflecting adoption of most of these recommendations, including in his February 21, 2012 budget speech the repositioning of NJSEA away from a focus on building venues and operating facilities to coordinating economic development and promotional efforts related to tourism, entertainment and sports.

This refocusing of NJSEA’s role is appropriately part of the Governor’s broader effort to stimulate economic development and job creation in the state. In its new role, NJSEA’s principle tasks should include:

- Conducting an **asset audit** to account for all attractions in the state that could contribute to tourism.
 - Identifying and mobilizing as many as possible of the stakeholders with an interest in improving New Jersey tourism.
- Developing **longer term goals, functions and rationales** for marketing tourism in the state. Developing a financial plan for fiscal sustainability of tourist marketing efforts going forward.
- Developing a state-wide plan to **identify and coordinate the activities** of local public and private tourist marketing efforts.
 - Coordinating existing state tourist marketing efforts.

Additional, less critical tasks might include:

- Investigating the feasibility of news cycle control, both domestic and foreign.
- Identifying and monetizing sources of intellectual property available among both public and private stakeholders.
- Investigating the feasibility of making money on print media, such as pocket guides, and sports and theater calendars.

A. Asset Audit

As the lead agency responsible for facilitating and attracting major sports and entertainment events in New Jersey, the NJSEA will need to perform a comprehensive asset audit to inventory all attractions in the state that could contribute to tourism. It is important to determine:

1. what current and potential assets exist within the borders of New Jersey,
2. where they are located
3. whether and how they are being used, and
4. what their present condition is.

¹⁴ 2010 Economic Recovery Plan for the State of New Jersey: Report of the Governor’s Advisory Commission on New Jersey Gaming, Sports and Entertainment dated June 30, 2010, pg. 9.

Focusing again on the work of NYC & Company, the organization employs a straightforward method to entice visitors into Queens, the Bronx and Staten Island (“Manhattan and Brooklyn pretty much market themselves”).¹⁵ The organization builds upon an interesting place already existing in the particular borough. These places include Citi Field, the Bronx Zoo and the St. George Theater. If, for example, a family already has plans to visit the Bronx Zoo, it is reasonable for them to consider a stop on Arthur Avenue for lunch or dinner afterward. In an ideal world, if someone completes an online purchase for Mets tickets, the next screen that opens online would encourage them to come early and visit the rockets at the New York Hall of Science (which is within a three-minute drive of Citi Field). Unfortunately, the world is not ideal and larger, sponsor-driven entities or paying business partners usually take precedence over community landmarks.

NYC & Company staff provided a New Jersey example of the method their organization employs in the outer boroughs. Many people visit Raceway Park in Englishtown once a year (usually late-May or early-June) when the professional drag racers (NHRA SuperNationals) make their only stop in the area. The next closest race is in Reading, Pennsylvania, in October. Because of the schedule and the limited race stops in the northeast, license plates throughout the parking lots indicate the presence of tourists from many states other than New Jersey. NYC & Company staff point out that this is a missed opportunity if there are not New Jersey tourism representatives on hand to remind Raceway Park visitors that, for example, Asbury Park is just a 30-minute drive away. While people might not drive immediately to Asbury Park, they are at least aware of the attraction.

In addition, then, to identifying New Jersey’s attractions (sites and events that people already come to New Jersey to enjoy), NJSEA must also determine what might be within a reasonable distance from those sites that could be of interest to a visitor.

Recognizable New Jersey assets and attractions include the Jersey shore, along with its many beaches and boardwalks. The Jersey shore encompasses approximately 127 miles of Atlantic coast, from Sandy Hook to Cape May. The Jersey shore draws innumerable visitors each year from New York and Pennsylvania, despite occasional xenophobic sentiments among some locals who refer to such tourists as “Bennies.” These sentiments at the Jersey shore and in other parts of the state may be one obstacle that a new marketing organization could work to resolve. Regardless, New Jersey’s beaches and boardwalks are popular among tourists who enjoy swimming, surfing, and sun-tanning within the state’s borders.

Furthermore, the Jersey shore - as does the rest of New Jersey - boasts a significant cultural history, including the historic music scene at Asbury Park, noted for its association with Bruce Springsteen and the E Street Band, as well as other musical legends such as Southside Johnny and the Asbury Jukes. In fact, New Jersey has a strong foundation in both art and culture. The New Jersey Performing Arts Center in Newark is the sixth-largest performing arts center in the United States, and it is the home of the Grammy Award-winning New Jersey

¹⁵ Derived from a meeting with NYC & Company corporate executives.

Symphony Orchestra. The City of Newark also has Symphony Hall, one of the nation's oldest inner-city entertainment venues. New Jersey is home to countless other performing arts facilities, including Paper Mill Playhouse in Millburn, McCarter Theater and Richardson Auditorium in Princeton, Count Basie Theater in Red Bank (named for the legendary Red Bank native), the PNC Arts Center in Holmdel and the IZOD Center in the Meadowlands. Moreover, New Jersey is home to a great many museums and libraries, including the Newark Museum and the Princeton University Art Museum.

In addition to its world-famous art and culture venues, New Jersey also features a number of prominent sports venues, including the Prudential Center in Newark (home to the New Jersey Devils, three-time Stanley Cup Champions), Waterfront Park in Trenton (home to the Trenton Thunder, a farm team of the New York Yankees), and the Meadowlands Sports Complex in East Rutherford, which features MetLife Stadium (home to the 2012 Super Bowl Champion *New York* Giants and *New York* Jets and host facility for the 2014 Super Bowl). But New Jersey's sports culture is hardly limited to these prominent venues, as countless local arenas and stadiums exist throughout the state including a number of prominent horseracing venues.

New Jersey's tourism landscape also boasts a number of amusement and water parks, ski and other resorts, including Mountain Creek in Vernon, Six Flags in Jackson, and a number of nationally prominent golf courses, including Baltusrol Golf Club, host to many prestigious golf tournaments, such as the 2005 (and 2016) PGA Championship. Other sources of amusement and education include Adventure Aquarium and the battleship USS New Jersey (the most decorated battleship in U.S. naval history) in Camden. A great many state parks populate New Jersey as well, though nature is prevalent in many areas throughout the state, including the heavily forested Pine Barrens and the environmentally sensitive Highlands region.

Atlantic City is nationally renowned for gambling, shopping, and dining. While the days of *Monopoly* may be long past, Atlantic City retains much of its reputation and potential. Among Atlantic City's numerous attractions is the Atlantic City Convention Center, and of course the many casinos in the "Gambling Capital of the East Coast." In response to a recommendation advanced by the Advisory Commission, the Administration and the Legislature created an Atlantic City Tourism District, which was preceded by the release of a "Tourist District Master Plan." The state's intervention and prominent role in an effort to sustain and grow the casino industry, and with it Atlantic City and the surrounding region, is itself a significant asset capable of contributing to the state's tourist marketing efforts.

As the most densely-populated state in the country, it is no surprise that New Jersey counts a substantial number of notable malls among its assets. For example, the Paramus Garden State Plaza is the 14th largest mall in the United States. And coming soon to the Meadowlands is the world class "America Dream" mixed retail/recreation complex. New Jersey's proximity to New York (particularly Manhattan) and to Pennsylvania (particularly Philadelphia) provides a substantial consumer base. In fact, a full quarter of the United States population lives within 200 miles of New Jersey. One must also consider that New Jersey ought

to be able to capitalize on the substantial tourist populations that visit New York and Philadelphia.

New Jersey may wish to promote certain events, such as the New Jersey State Fair and Sussex County Farm and Horse Show and events at the U.S Equestrian Center in Peapack, held every summer, or perhaps the unofficial state fair at the Meadowlands, or any number of street fairs and festivals that are routinely held throughout the State each year.

As part of the asset audit, NJSEA should analyze existing and potential options for public and private transportation. Transit is essentially the bottleneck toward realizing the full potential of any of the state's assets: The value of the world's greatest attraction is effectively nothing if no one can get there. Most denizens of New Jersey are familiar with the motionless traffic on the way to the shore on a hot summer day, or the gridlock on the streets of downtown Newark on the night of a hockey game. It is important to assess these bottlenecks and to determine what, if anything can be done about them.

If NJSEA is to be successful, it must first assess the current state of affairs of New Jersey tourism. Prior to taking action, NJSEA must have an accurate picture of what the state currently has to offer, as well as what the state could potentially offer in the future.

It is important that NJSEA not merely identify the state's assets that might attract tourists, or even to promote or advertise them. NJSEA must ask: What do we have; are we utilizing what we have to the fullest possible extent; how can we better manage what we have; and how can we coordinate what we have to minimize unnecessary and destructive competition and maximize what we have for all concerned.

B. Existing Agencies

Next, NJSEA must assess what public and private agencies presently exist (as well as those that have existed formerly) to attract tourism and investment in New Jersey, and to advance New Jersey's brand and image. NJSEA must determine how these entities operate and how they are funded and then determine appreciable measures of success by which these entities, and NJSEA itself, are to be gauged. Moreover, NJSEA should examine how such entities have collaborated in the past, and how they may collaborate in the future. Existing agencies need not necessarily be dissolved in light of the establishment of a new structure. However, it should be well agreed that the manner in which they operate may be subject to change. For instance, as mentioned earlier, the new organization should act as an umbrella agency under which certain existing public entities may operate.

NYC & Company, for example, created in 1999 as a private non-profit tax-exempt organization, is an amalgam of a number of existing agencies, including the New York Convention and Visitors Bureau and New Yorkers for New York. NYC & Company later absorbed the New York Sports Commission into its ranks. While NYC & Company produces and plans

some of its own events and programs (CultureFest, Just Ask the Locals, NYC Sunday Stays), the organization's principal purpose is to market the City of New York as a travel destination; support promotional activities (OpSail, Broadway on Broadway, New York Marathon) that attract large numbers of visitors; support expansion of convention and lodging facilities; and, support efforts to bring major events to the city.

An example of an existing public organization whose operations should be coordinated with the work of a repositioned NJSEA is the New Jersey Hall of Fame, created in 2005 "to honor New Jersey citizens who have made invaluable contributions to society and the world beyond." The organization, which is structured as a 501(c)(3) non profit tax exempt entity, was statutorily authorized through Public Law 2005, Chapter 232, N.J.S.A. 5:10-6.1. The organization is governed by a Board of Commissioners and a Foundation Board of Trustees.

The Advisory Commission believes there is a wide array of benefits that can be derived from collaboration between The New Jersey Hall of Fame and NJSEA in its capacity as lead agency to advance New Jersey tourism. The celebrity status of individuals identified by the Hall of Fame as worthy of its special recognition itself provides a tourist draw. In this regard, other tourist events might be scheduled around, or at the time of, a Hall of Fame Induction Ceremony with the reasonable expectation that grateful inductees will gladly cooperate. With their broad recognition, the inductees can also be called upon to serve as worldwide ambassadors for New Jersey tourism. Celebrity inductees may control private foundations that can be approached for funding certain tourist-related activities or events. The broad sponsorship base enjoyed by the Hall of Fame might be invited to participate in other tourist-related activities and generally expand New Jersey tourism's stakeholder base. The Board of the Hall of Fame and its Foundation can also potentially expand New Jersey tourism's stakeholder base. For all of these reasons, and many others that will occur to NJSEA, the Advisory Commission recommends that the New Jersey Hall of Fame have a formal relationship with NJSEA and through it, with New Jersey tourism. Initially, the Advisory Commission recommends that the relationship be in the form of an advisory role for the Hall of Fame, perhaps through a committee.

Another public entity whose work should be coordinated with the work of NJSEA is the New Jersey Motion Picture and Television Commission ("MPTC"). The Commission recommends that MPTC be placed under the NJSEA umbrella. As with the Hall of Fame, there is a wide array of benefits that can be derived from a marriage of MPTC and NJSEA, including, similarly, the many ancillary benefits associated with the presence of celebrities in the state. Additionally, sporting and entertainment events might serve as backdrops for motion picture or television productions and movie premiers can provide the critical mass necessary to support many additional tourist events.

The Division of Travel and Tourism (the "DTT") is currently at the center of New Jersey's tourist marketing efforts and is located within the Department of State. The NJSEA, while it has not undertaken the responsibility, has the authority to undertake travel and tourism initiatives. To better couple these two assets, the Advisory Commission recommends that the DTT ultimately be realigned to function under the NJSEA umbrella, a realignment that will require

legislative action and which is noted in Governor Christie's budget proposal. In the meantime, there are important reasons to closely coordinate the efforts of NJSEA and the DTT. NJSEA will, for example, need to rely upon tourist marketing expertise currently existing within the DTT while it establishes a reputation and an expertise of its own in the tourist marketing arena.

As NJSEA moves from "in but not of" the Department of Community Affairs to "in but not of" the Department of State / Office of the Lieutenant Governor as recommended in the Governor's budget proposal, the Advisory Commission recommends that a seat on the Board of Directors of NJSEA be designated for the Lieutenant Governor in her capacity as Secretary of State. Like the Governor, the Advisory Commission views tourist marketing as a critical component part of an overall state initiative to advance economic development and job creation in New Jersey. In this regard, the Advisory Commission urges NJSEA to coordinate its efforts with established operations and initiatives emanating from the Office of the Lieutenant Governor and carried out through the well-coordinated efforts of The Partnership for Action and The Business Action Center.

With respect to non-governmental marketing initiatives existing in the state, the Advisory Commission believes that, while well intentioned, these disjointed efforts are counterproductive to an effective tourist marketing initiative. Such operations compete among themselves for limited grants and other tourist dollars and decentralization of tourist marketing can confuse those seeking the right place to find tourist information or to offer to host an event.

In order to advance the principle of a holistic and streamlined "one-stop shopping" approach to tourist marketing, the Advisory Commission recommends that NJSEA make a vigorous effort to establish a cooperative and collaborative relationship among non-governmental marketing operations and between such operations and the NJSEA. This can be accomplished by appealing directly to management of such operations or to their members and stakeholders.

C. Stakeholders

The new organization must also identify all of the stakeholders with an interest in New Jersey tourism. Most importantly, the organization should identify those stakeholders that might ultimately constitute a potential membership or sponsorship base. These stakeholders may include major developers, hotel and restaurant owners and operators, major corporations, and sports team owners. Moreover, the organization must decide how to organize partnerships with these stakeholders, such as determining whatever responsibilities and benefits membership might entail.

Each of these parties has an individual interest in increasing demand for their products and services, primarily by improving its consumer base. However, the individual interests of each particular entity are more or less identical to the individual interests of every other entity. To wit, more tourism results in more customers, and more customers result in more demand

and revenue. It makes sense to pool individual entity's resources to draw tourism and investment into New Jersey. Creating a centralized nexus by which to coordinate and to organize this cooperation is the logical way to do this.

As noted above, stakeholders whose interest may be affected by New Jersey's efforts to market tourism or who might be in a position to make a contribution to New Jersey's tourism industry can be identified in many ways. Again, for example, members and sponsors, beneficiaries and others associated with NJSEA's collaborators represent fertile ground for NJSEA to cultivate in these regards.

Not unlike actions recently taken by the state to improve the long-term viability of the casino-driven economy of Atlantic City, the state may need to take an aggressive lead role in bringing together relevant public and private interests in the area of the state's tourism industry, with the expectation that private interests will ultimately follow as well.

D. Goals, Functions and Rationales

Upon the foregoing foundation, the new organization must establish appreciable short- and long-term goals for which to strive. For example, in the short term, the organization, as a creation of government, should assess its value first to New Jersey residents. In the midterm, the organization should assess its value to regional and national investors and tourists. In the long term, the organization should assess its value to international investors and tourists. We note that NYC & Company has outposts managed by independent contractors throughout the United States and in select other countries.

With these goals in mind, the organization must determine what functions it should retain in order to carry out these goals. For example, the organization may be responsible for communication through media vehicles, including: print and social media; government relations (particularly important); marketing; coordination of intellectual property rights; and, research, among other functions.

While the rationale behind such an organization may seem apparent it is important to organize that rationale coherently in order to garner support from stakeholders and to focus the direction of the organization. Such rationales include, but are not limited to:

- (1) public investment will return tangible benefits –the organization is ultimately not a cost factor but a savings factor;
- (2) analogous to sports leagues, the organization would act as a league, where the members are the teams;
- (3) government can be entrepreneurial;

- (4) the organization will not be a monopoly – independent events may still occur;
- (5) the organization will seek investments, not merely grants and donations;
- (6) collaboration will benefit all who participate; and,
- (7) the organization will not only provide ideas and support, but also tools.

In its new role, NJSEA will have an opportunity to build on an impressive foundation. The Administration has already successfully pursued and attracted a number of major sporting events to the state that will occur during the next 24 months. These include: the United States Special Olympics, Formula 1 Grand Prix of America, WWE's Wrestle Mania, the 2012 Ironman competition, and, of course, the 2014 Super Bowl.

With its depth of experience with sporting and entertainment events, NJSEA can fully maximize on the presence of senior corporate executives attending such events and the tendency of businesses to grow or locate in areas where there are regular sporting and entertainment activities.

E. Financing

A substantial benefit of a close initial affiliation with the state government is the availability of state funding and state resources. As private funding (such as corporate sponsorships and membership dues) becomes more and more readily available, the organization's reliance on the state would lessen, allowing the organization to seek further independence, and thus higher-profile events. Moreover, by that time the organization should have proven itself, thus allowing the state to invest in the organization without substantial concern. Another issue for longer range consideration in these regards is how organizational form impacts the type of monies that can come into the operation and the treatment of that revenue for purposes of taxation.

State agencies are exempt from taxation on income, such as income from investments or loans, and are empowered to issue tax-free bonds. State authorities and public corporations, though typically operational and financially independent from the state are considered instrumentalities or arms of the state performing governmental functions, and therefore their revenue is also tax exempt.

On the other side of the question, statutes establishing independent authorities typically do not contemplate regular state funding for the authorities, or state backing of authority debts. The latter feature is to avoid constitutional debt level limitations that are otherwise imposed on the state. There are exceptions to this rule, however. For example, the Legislature appropriated an initial sum of \$200,000 to the N.J Mortgage Finance Agency upon its creation to defray initial expenses. Notwithstanding this payment, the New Jersey Supreme

Court found that the statute otherwise properly insulated the state from the Agency's debts for purpose of Art. VIII Section 2 Paragraph 3 of the New Jersey Constitution.¹⁶

Another exception to the no state funding trait is the Economic Development Authority, which is entitled to receive certain forms of financial support from the State Treasurer and the Legislature.¹⁷

Typically, in addition to issuing tax-exempt bonds or debt obligations, authorities and public corporations are also empowered – in the fairly representative language of the Sports and Exposition Authority statute – to “accept any gifts or grants or loans” from the federal or state government, “or from any other source.”¹⁸

Accordingly, revenue from services (e.g., transportation, utilities, sewage, etc.) or interest from loans is not the only source of income to such entities. State agencies are also eligible to receive tax-deductible contributions. Indeed, if created as a state agency a tourist marketing operation would be able to receive contributions with the most favorable tax-deductible status, allowing deductions of up to 50% of adjusted gross income under section 170(b) of the Internal Revenue Code. The tourist agency may need to be authorized by statute to receive those contributions, but there are examples of such authorizations in other New Jersey statutes.¹⁹

A nonprofit tourist agency might also be tax-exempt under a variety of provisions in the tax code – if it exercises delegated “sovereign powers,” is an “integral part” of the state government, or performs an “essential governmental function.” Or the agency might seek tax exemption as a private mutual benefit organization pursuant to 501(c)(6) of the IRS code as is the case of NYC & Company.

Authorizing statutes for state-created nonprofits in New Jersey have generally focused on the 501(c)(3) option by directing that such entities be “organized and operated in such a manner as to be eligible under applicable federal law for tax-exempt status and for receipt of tax-deductible contributions.”²⁰ Under certain circumstances, an independent nonprofit may be organized as a 501(c)(3) entity and as an arm of the State for tax purposes. While 501(c)(3) status adds little or nothing to the exemption already enjoy as a government entity, major contributors and their legal advisors seem to find a greater comfort in 501(c)(3) status.

¹⁶ N.J. Mortgage Finance Agency v. McCrane, 56 N.J. at 420-23.

¹⁷ N.J.S.A. 34:1B-4.1 authorizing contracts with the State Treasurer to secure bonds and other obligations of the authority; and N.J.S.A. 34:1B-7(a) authorizing appropriations to the Economic Development Fund.

¹⁸ N.J.S.A. 5:10-5

¹⁹ See, for example, N.J.S.A. 52:27D-177 authorizing the Commissioner of the Department of Community Affairs to accept, as an agent of the state, any gift or grant for any purposes of the Act governing the department.

²⁰ N.J.S.A. 48:23-13 (Foundation for Public Broadcasting); N.J.S.A. 52:27C-96(b) (Foundation for Technology Advancement).

A tourist marketing agency could seek tax exemption as an “instrumentality” of the state. The IRS considers six factors in determining whether an organization is an instrumentality of the state:²¹

- Whether it is used for a governmental purpose and performs a governmental function;
- Whether performance of its function is on behalf of one or more states or political subdivisions;
- Whether there are any private interests involved, or whether the states or political subdivisions involved have the powers and interests of an owner;
- Whether control and supervision of the organization is vested in public authority or authorities;
- If express or implied statutory or other authority is necessary for the creation and/or use of such an instrumentality, and whether such authority exists; and
- The degree of financial autonomy and the source of its operating expenses.

A nonprofit tourist marketing agency should easily meet the instrumentality test:

- Facilitating enhanced tourism to spur enhanced economic prosperity is clearly a government “purpose” or “function,” which would be performed on behalf of the State.
- The entity would not exist without express statutory authorization, and if the governing body is appointed by state officials, the State would exercise significant “control and supervision.”
- While the entity would have a certain degree of financial autonomy in that it could solicit private contributions, it would likely derive significant funding from the State.
- While the State may not have full “powers and interests of an owner,” neither would its interests be outweighed by any “private interests involved.”

The greatest difference between nonprofits and state agencies may be in the appropriations process. State-created nonprofits might not typically be included in the appropriations process, and indeed some are supported by the State by other means. The Foundation for Technology Advancement, for example, is authorized to “apply for grants in aid from any department or instrumentality of the State of New Jersey.”²²

From the perspective of IRS treatment of tax-exempt contributions, legislative appropriations and the ability to issue tax-exempt bonds, it appears that it is best to organize a tourist marketing agency as an independent government agency rather than a nonprofit. Since the entity might be providing fee-generating services like other state authorities (for example,

²¹ IRS P.L.R. 9642036 (October 18, 1996).

²² N.J.S.A. 52:27C-103.

NJ Transit) as opposed to operating more in the nature of a regulator (for example, the Board of Public Utilities), it would appear that it is best to organize such an agency as an authority.

Longer-Term Considerations

Other longer-term considerations affecting accountability, transparency and effectiveness include:

- 1) applicability of the Open Public Meetings Act ("OPMA");
- 2) applicability of the Open Public Records Act ("OPRA");
- 3) applicability of the Administrative Procedures Act ("APA") and
- 4) the manner in which appointments are made.

With respect to these longer-term considerations, the following general observations can be made. Given the definition of "public body" under OPMA, this factor does not appear to favor either an independent agency or a non-profit corporation. Similarly, with respect to OPRA, this factor also appears to be neutral as to independent agency or non-profit corporation. It is significant to note, however, that OPRA permits exceptions to public access that may be created by statute or even by executive order or administrative rule. The level of importance ascribed to the ability of the Legislature to compel a private, nonprofit corporation to issue rules and regulations pursuant to the APA or to adjudicate cases that will be reviewable by the courts, will determine the relevance of this factor in deciding whether a nonprofit entity is the best choice for a tourist marketing entity. In general, New Jersey courts have been critical of efforts to outsource key government functions. Is tourist marketing a "key governmental function?" If so, a more appropriate choice for a tourist marketing entity in these regards would be an independent government agency that would provide a comfortable balance between a level of independence needed to be efficient on the one hand and accountability on the other. The level of gubernatorial involvement in the governance of an independent state entity or a nonprofit corporation is an important consideration when choosing among options for a tourist marketing operation. The former requires the Governor's supervision, the latter does not (although the Legislature may impose such involvement).

Conclusion

New Jersey is host to countless disjointed organizations dedicated in some way or another to tourism and marketing. To coordinate the efforts of these organizations would not only improve the overall efficacy of such organizations, but would also save money by eliminating waste due to redundant operations and avoid confusion among those seeking tourist information or proposing to host an event. Such coordination might also create

unrealized synergies through partnerships among these organizations. Moreover, a cohesive message is a strong message – notably more so than the varied (and potentially contradictory) messages of a thousand discrete voices. Consolidating the tourism and marketing arm of New Jersey will improve the efficiency and efficacy of the state’s promotion and signal the Administration’s unmitigated commitment to the endeavor.

In 2010 New Jersey invested \$8.5 million to promote tourism in the state, compared to the \$32.5 million invested by Pennsylvania (\$16.5 invested in Philadelphia) and \$16.5 million invested in New York City. Revenue generated by tourism appears to be directly proportional to investment in tourism. In other words, you get what you pay for. However, it is reasonable to conclude that one should see diminishing marginal returns on each additional dollar invested in tourism depending upon the capacity of the state to accept such tourism. Therefore, performing the asset audit is imperative to the effectiveness of this organization, and would hopefully ascertain the optimal level of investment that New Jersey should make toward tourism and marketing.

Likewise, investment in talented individuals to manage the organization may result in substantial returns. However, to do this would require competitive compensation, including incentive-and performance-based pay. For the same reasons that a prominent marketing firm would hire (and accordingly compensate) a significant player in the field, the organization may wish to do the same. Of course, it is important for the organization to spend its funds responsibly, especially if it relies upon public funding.

One should consider the benefits of membership, as it creates a structure of responsibilities and benefits whereby stakeholders may be directly involved in the organization. Such a structure may become a valuable source of income for the organization. In the future, the organization may wish to be organized as a 501(c)(6) (business league) non-profit corporation, like NYC & Company. The 501(c)(6) business form provides much of the flexibility available to a private company while also providing the transparency associated with a government agency.

Just as New Jersey benefits from its proximity to New York and Philadelphia, so too might certain attractions within the state benefit from their proximity to each other. The organization may wish to identify the most popular locations or events (presumably as part of the asset audit), and thereafter nearby locations and events that may concomitantly be promoted. Doing so may induce visitors to plan their trip around these proximities, and may improve synergies between otherwise discrete attractions. Moreover, this approach may allow businesses and communities to prosper around these locations, in much the same way that the economy may flourish around an arena or university.

SUMMARY OF RECOMMENDATIONS

1. It is appropriate to **create a structure dedicated to advancing New Jersey tourism** that constitutes a separate element of an overall economic development and job creation plan for the State.
 - a. Among the three basic models for a tourist marketing structure, the state would initially be best served by an independent authority that retains a close affiliation with state government.
 - b. The tourism structure should be housed in the Department of State under the leadership of the Lieutenant Governor where the broader economic development and job creation plan is developed and implemented.
 - c. The tourism structure should work closely with, and in some cases be integrated with, the work of agencies within the Department of State dedicated to advancing the economic development plan. These would include The Partnership for Action and The Business Action Center.
 - d. The tourism structure must have a statewide focus.
2. Current government activities and operations related to **tourism should be consolidated under the umbrella of the NJSEA.**
 - a. The independent authority serving as lead agency for marketing tourism should be given oversight responsibility for all other state agencies related to tourism. These would include the Division of Travel and Tourism and the Motion Picture and Television Commission.
 - b. With its extensive experience with sports and entertainment activities, the NJSEA is perfectly suited to become the lead agency for a tourist marketing structure within the Department of State. NJSEA should be relocated from “in but not of” the Department of Community Affairs to “in but not of” the Department of State.
 - c. Earlier recommendations made by the New Jersey Gaming/Sports and Entertainment Committee, serving as a Transition Team, and the Governor’s Advisory Commission on Gaming, Sports and Entertainment, with respect to the future structure and role of the NJSEA, should continue to be implemented.
 - d. To properly relate the NJSEA to the Department of State, the Lieutenant Governor, in her role as Secretary of State, should serve on the NJSEA Board of Directors.
3. In its role as lead agency for marketing New Jersey tourism, the NJSEA should conduct a **comprehensive audit of assets** existing in the state than can contribute to attracting tourists, including assessing the relationship among assets in terms of proximity, interrelated interest and accessibility by way of both public and private transportation.
 - a. In addition to taking an inventory of existing state assets, NJSEA should consider what the state might offer to tourists in the future.

- b. In addition to working closely with, and in some instances overseeing the work of, government operations related to tourism, NJSEA should establish a formal relationship with other independent government operations with a related mission. This would include, for example, the New Jersey Hall of Fame.
 - c. The relationship between the NJSEA and the New Jersey Hall of Fame should initially take the form of the Hall of Fame serving in an advisory capacity to the NJSEA, with the understanding that the Hall of Fame will provide advice, support, and cooperation in the state's tourist marketing efforts.
 - d. NJSEA should also make a vigorous effort to establish collaboration among private tourist marketing operations and between those operations and the NJSEA, through conversations with leaders of such operations as well as stakeholders associated with such operations.
 - e. NJSEA should promote the image of "one-stop shopping" for those seeking tourist information and assistance or wishing to host an event.
4. NJSEA should **identify of the stakeholders** with an interest in New Jersey tourism with the aim of both consolidating event planning and establishing sources of revenue to support its work.
 5. NJSEA's **short term goals** should be responsive to and respectful of the interests of residents of the state.
 6. NJSEA should seek to engender the belief that the state can be entrepreneurial and that contributions by the state, and others, to the cause of tourism can reasonably be **viewed as investments rather than as grants or donations**.
 7. NJSEA should seek to establish revenue sources (in addition to members or sponsors). These might include **monetizing intellectual property and print media opportunities**.

Respectfully Submitted By,

The Governor's Advisory Commission on Gaming, Sports and Entertainment

Jon F. Hanson, Chairman

Robert C. Holmes, Esq.

Wesley Lang

Al Leiter

Christopher J. Paladino

The 13th day of March, 2012