



State of Louisiana

**OFFICE OF
STATE INSPECTOR GENERAL**

NEW ORLEANS CITY PARK

Report by

Inspector General Bill Lynch

Prepared for

Governor M.J. "Mike" Foster, Jr.

JANUARY 9, 1997

File No. 1-97-0011



State of Louisiana

OFFICE OF
STATE INSPECTOR GENERAL

New Orleans City Park

Report by

A handwritten signature in cursive script, appearing to read "B L", written over a horizontal line.

Inspector General Bill Lynch

Approved by

A handwritten signature in cursive script, appearing to read "M J Foster", written over a horizontal line.

Governor M.J. "Mike" Foster, Jr.

January 9, 1997

File No. 1-97-0011

New Orleans City Park

The New Orleans City Park administration operated its golf course with an invalid contract for the last nine years by failing to get approval from the State Office of Contractual Review. The agency knew as early as March, 1995, that a contract with its golf pro required Contractual Review's approval and that some of its provisions were contrary to state law.

The administration also has a lack of information, controls and accountability over operations of the golf pro shop and a golf training academy.

There is an ongoing investigation of another matter unrelated to the findings in this report.

Background

The park is operated by the New Orleans City Park Improvement Association, but is a state agency and part of the Department of Culture Recreation and Tourism. However, it operates autonomously under a 34-member board of commissioners, 22 of whom are appointed by the board and 12 by elected officials, including the governor, mayor and city councilmen.

The golf course operation provides approximately 45 per cent of the Park's current annual revenues of \$10 million.

Frank Mackel has been the golf pro at City Park for the past nine years.

Contract Submissions

The State Department of Civil Service ruled on the basis of a personnel audit in March, 1995, that City Park had failed to submit contracts with the golf pro and the tennis coach for approval. The law requires that agencies certify that persons under contract are not performing work that could be done by civil service employees. Instead of nullifying the contracts, Civil Service permitted City Park to amend them to exclude any provisions constituting an employee-employer relationship. Among these exclusions was participation in the City Park's pension and health benefit programs.

City Park submitted only the tennis coach's contract to the Office of Contractual Review, which rejected it in April, 1996. The issue over the tennis coach was made moot when the agency notified him that his contract had been disapproved by Contractual Review and he subsequently resigned. The tennis coach was made an unclassified state employee position.

However, City Park made no move to act on the golf pro contract until September, 1996, by submitting it to Contractual Review after this inquiry was initiated.

Tennis Contract

The contract between the tennis coach and City Park, which was very similar to that of the golf pro, was rejected in April, 1996, by Contractual Review on a number of grounds, including the following:

1. The agency failed to certify that no agency employee could perform the work.
2. No monitoring plan was established.
3. It exceeded the three year limitation on contracts. The law permits contracts beyond three years only where the exception is spelled out in the statute.
4. It did not contain a termination clause.

Golf Pro Contract

The golf pro contract contains some of the same provisions which were found objectionable in the tennis coach contract.

In addition to those items listed in the tennis contract review, the golf pro contract does not have a maximum earning figure as required by statute and Contractual Review regulations.

Mr. Mackel is paid a base salary of \$60,000 a year plus a commission of 15 per cent of gross receipts from golf operations over \$2.1 million per year. Initially, the commission had a cap of \$150,000, but was changed to provide for increases based on the consumer price index. In 1995, Mr. Mackel was paid \$137,817 in commissions. The previous year his commission was \$150,000.

In addition, Mr. Mackel also is entitled to the profits from the operation of the golf pro shop and a training academy, which is included in his contract. These are the items which make the contract amount open ended. Mr. Mackel stated that he has broken even on the golf pro shop, making a small profit one year and suffering a small loss another. Sales from the pro shop in 1994 and 1995 were approximately \$900,000 a year. Mr. Mackel said he received nothing from the training academy.

The pro shop is a retail outlet for the sale of golf related merchandise and repair of equipment. Employees there work for Mr. Mackel, rather than City Park. Mr. Mackel said he turned the training academy over to another person. Mr. Mackel paid City Park \$19,587 in rent for the pro shop in 1995.

Training Academy

Although Mr. Mackel's contract prohibits subcontracts, Mr. Mackel nonetheless entered into an agreement with Rob Noel, a private person who has no relation to City Park, to conduct the training academy. This agreement enables Mr. Noel to conduct a golf teaching program in exchange for supervising the driving range. For his purposes, Mr. Noel has unlimited free usage of balls on the driving range for his students, while others must pay a fee per bucket of balls. The golf course receives the income from the balls. State employees, who are supervised by Mr. Noel, gather the balls and maintain the driving range.

The agreement between Mr. Noel and Mr. Mackel implies it has been approved by the City Park Golf Committee. However, no records showing such approval were found.

City Park has no records on the income derived by Mr. Noel from his conduct of the training academy. Based on the lack of information and records, the City Park administration is unable to determine the true worth of the training academy.

Automobile

For the past five years, Lamarque Ford has been providing Mr. Mackel an automobile without charge. The company is owned by Ronnie Lamarque, who was described by Mr. Mackel as a personal friend. Mr. Lamarque sponsored golf tournaments for charities that took place at City Park. As a contract state employee, Mr. Mackel may have violated the state ethics code prohibition against receiving a gift or gratuity from someone who has a business relationship with his agency. This would be a matter for the Board of Ethics to resolve.

Complementary Play

Mr. Mackel has failed to report complementary play passes to the Board as required by the contract. The contract requires that he provide a monthly listing of those receiving free privileges and the purpose for which they were awarded. Mr. Mackel stated he rarely authorizes free rounds, limiting them to other pro golfers as a courtesy.

Conclusions:

1. The New Orleans City Park administration operated its golf course with an invalid contract for the last nine years by failing to get approval from the State Office of Contractual Review.
2. The golf pro contract contains provisions similar to those cited by Contractual Review in its rejection of the tennis pro contract.
3. The administration does not know the total value of the golf pro contract. The administration was unable to provide earning records for the pro shop or training academy.

4. The training academy agreement between Mr. Mackel and Mr. Noel is a sub-contract which is specifically prohibited by the golf contract.
5. State ethics laws may have been violated by Mr. Mackel's accepting the use of an automobile from someone who has a business relationship with his agency.
6. Mr. Mackel failed to report the complementary play passes to the Board on a monthly basis as required by his contract.

Recommendations:

1. The Commissioner of Administration should take appropriate action to bring the City Park contract in compliance with state law.
2. The New Orleans City Park Improvement Association should take appropriate action to bring this contract in compliance with state law.
3. A copy of this report should be sent to the State Board of Ethics for review.

Management Response:

See Attached.

BL/CW/fs



1 Palm Drive

January 8, 1997

New Orleans, LA

70124-4608

Mr. Bill Lynch
State Inspector General
State of Louisiana
P.O. Box 94095
Baton Rouge, LA 70804-9095

504.482.4888

Dear Inspector General Lynch:

FAX 504.483.9412

The following letter contains the response of the New Orleans City Park Improvement Association in reference to your conclusions and recommendations in File No. 1-97-0011.

Regarding conclusion number one City Park feels that some background information is necessary in order to clarify our position in operating for the last nine years under our present golf contract situation. The New Orleans City Park Improvement Association did not become a state agency until 1982. The 1982 Legislation that made City Park a state agency specifically made Civil Service applicable to City Park, but otherwise designated City Park as a "R.S. 36:801.1 Agency." R.S. 36:801.1 provides, in pertinent part:

"[E]ach agency shall continue to exercise all powers, duties, functions, and responsibilities provided or authorized for each... and also shall continue to exercise all advisory powers, duties Each such agency shall continue to perform and administer its functions which are in the nature of accounting and budget control, procurement and contract management, ... The agencies transferred as provided in this Section shall ... administer and implement the programs independently of the secretary, the undersecretary, or any assistant secretary."

No present staff or Board members were involved with City Park in 1982. It has been the position of City Park that Section 801.1 gave City Park the power and authority to continue to operate autonomously in the same manner as it had prior to 1982 in the areas of procurement and contract administration, except for Civil Service and except when use of funds from the State's Capital Outlay Budget made other statutes

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applicable. City Park understands that the Division of Administration has the position that City Park must submit contracts to Civil Service and the Office of Contractual Review and, even though we believe that we have operated within applicable laws on the issues involved, we will follow the recommendation to submit our golf contract to the State Office of Contractual Review for approval. We have met with, and secured advice and information from, the Office of Contractual Review in order to write an RFP that will meet all state guidelines. We are currently engaged in this process.

Conclusion number two will be rectified by the submission of an RFP that will meet all state guidelines. We are currently engaged in structuring the RFP.

Conclusion number three the Park partially concurs with. We did provide the information on the earning records of the Pro Shop, but the training academy was not a contract of the Park's, therefore we did not have that information. This situation will be rectified by the new RFP which we are structuring to meet all state guidelines.

Conclusion number four will be rectified by the new RFP which we are structuring to meet all state guidelines.

Conclusion number five will be addressed by Mr. Mackel in his requesting the opinion of the Ethics Board concerning this matter. Since City Park considered Mr. Mackel to be a contract employee and this was an arrangement between Mr. Mackel and Lamarque Ford, we feel this should be handled separately from the other issues.

Concerning conclusion number six, after initially submitting this information Mr. Mackel was informed by previous Park Administration that this was not necessary, therefore he discontinued doing so. All guidelines in the new RFP will be adhered to.

In conclusion City Park will take the appropriate action in structuring an RFP for Director of Golf Operations which will meet all State Guidelines and will be submitted to the Office of Contractual Review to insure that it complies with all State Laws.

We are currently working to complete this RFP in a very timely manner in order to satisfy all areas addressed in this report.

Sincerely,



Patrick P. Bayton, Sr.
General Manager
New Orleans City Park

PPD: Sr/dz



1040 Filmore Avenue

New Orleans, LA

70124-3998

504.483.9386

504.483.9387

FAX 504.483.8410

December 31, 1996

TO: Mr. Courtland Warner
State Auditor
State of Louisiana
Office of State Inspector General

From: Frank Mackel

Ref: December 11, 1996 Draft related to activities
at New Orleans City Park

In response to the above mentioned, I have been informed and verified that a meeting of your department and the administration of City Park Improvement Association has been scheduled for January 8, 1997. The City Park Improvement Association administration will address all issues, and I have assured them of my desire to fully cooperate to satisfy your concerns.

However, I feel that addressing the possible ethics issue is incumbent on me. I am a personal friend of Ronnie Lamarque. Mr. Lamarque is a very civic minded individual who has a policy of allowing use of vehicles for various civic purposes. I might add, I also currently lease two automobiles from Lamarque Ford. I would also like to add that there is nothing insidious about this arrangement and City Park Improvement Association management was aware of this loaner automobile. I have always labored under the premise that I am a sub-contractor of City Park Improvement Association, never considering any possible problems.

I am ready to meet with the Park and/or your office anytime to work out whatever is necessary to address your concerns or answer any further questions.

Sincerely,

Frank Mackel