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May 1, 2010

The Honorable David A. Paterson
Governor
The State Capitol
Albany, New York 12224

Dear Governor Paterson:

The Authorities Budget Office, pursuant to its powers and duties in Section 6(2)(g) of Public Authorities Law, recommends that the Governor, as the appointing authority of the board of directors of the New York State Theatre Institute Corporation (NYSTI), suspend or dismiss the current NYSTI board, consistent with the provisions of Section 2827 of such law. The Authorities Budget Office makes this recommendation after reviewing information in the possession of the Office of the State Inspector General and reports submitted to our office by NYSTI management and staff. Based on this review, the Authorities Budget Office has concluded that the board has demonstrated a persistent pattern of neglect in the performance of its duties and fiduciary obligations.

Section 2824(1) of Public Authorities Law stipulates that the board of directors of a state or local public authority has a statutory responsibility "to execute direct oversight of the authority's chief executive and other management in the effective and ethical management of the authority". The board must also "review and monitor the implementation of fundamental financial and management controls and operational decisions of the authority" and establish policies governing the procurement of goods and services. The documentation in support of the Office of the Inspector General's April 20, 2010 "Report of Investigation of the New York State Theatre Institute" presents a convincing case that the NYSTI board of directors did not meet those standards.

Based on our independent review of the documentation, we concur that the current NYSTI board of directors, collectively and as individuals, failed to perform their duties in good faith and with the degree of diligence, care and skill which an ordinarily prudent person in like position would use under similar circumstances.

We have reason to believe that, for a number of years prior to the Inspector General's investigation, the board was aware that policies it had adopted were not being followed and failed to take action, and was aware of, but failed to exercise, the fiduciary and oversight responsibilities bestowed on it by law as the board of a publicly funded state entity. Specifically:

- After learning of allegations of improper use of NYSTI resources by the Chief Executive Officer in 2006, specifically the lease of an apartment in New York City, the board of directors failed to take appropriate and reasonable measures to investigate. The board of directors did not conduct a thorough internal investigation to determine the merits of the allegations, the financial benefit to NYSTI and the State of such an arrangement, or the veracity of the responses to the complaint provided by staff. Although the board resolved to

initiate an investigation and audit, there is no indication that such actions were taken prior to dismissing the allegations.

- The board failed to provide effective oversight of financial transactions entered into by the Producing Director. Board members must adhere to Section 74 of Public Officers Law, which pertains to ethical behavior and conflicts of interest, as well as carry out the oversight and fiduciary duties and responsibilities specified in Section 2824 of Public Authorities Law. It is our belief that the board allowed the Producing Director to conduct all financial transactions independent of the direct oversight it is empowered to exercise. As indicated in the board's response to the Inspector General's report, the board was unaware of and could not address details of any contracts executed by the Producing Director or staff.
- Section 2802(4) of Public Authorities Law, effective January 13, 2006, prohibits an independent auditor from providing audit services to a public authority for more than five consecutive years. The board was aware in 2007 that the relationship with its longstanding auditor was in violation of this prohibition. However, the board continued to award its audit engagement to this auditor through 2009, despite acknowledging at the time that such an arrangement was inappropriate.
- Section 73(14)(a) of Public Officers Law prohibits state officers or employees from participating in any decision to hire, promote, discipline or discharge a relative for any compensated position at, for or within any state agency or public authority. As demonstrated throughout the Inspector General's report and acknowledged by the board in its response, the hiring of family members by the Producing Director was common practice that was condoned by the board. In addition, there is documentation to suggest that relatives of board members were also hired to act in or work on NYSTI productions. One board member relation received over \$13,000 from NYSTI over a four-year period. There is no indication that the related board member publicly disclosed this fact as a possible violation of Public Officers Law. Instead, the employment of board members' children is mentioned during board meetings as though it were a common and accepted practice.

The board's inability to recognize the seriousness of the issues raised in the Inspector General's report or to take decisive and conclusive action to rectify these problems demonstrates the board's continued lack of understanding of its fundamental role and responsibilities. Accordingly, the Authorities Budget Office recommends that action be commenced to remove the New York State Theatre Institute Corporation Board of Directors.

Sincerely,



David Kidera
Director

cc: David Morris, Board Chair
Amy Casale, Board Member
Wendy Davenport, Board Member
Terry Hettesheimer, Board Member
Dora Myers, Board Member
Kenneth Schmidt, Board Member
Joyce Schenker, Board Member
Eugenia Sperrazza, Board Member