



- *Accountability*
- *Transparency*
- *Integrity*

Special Report on Activities and Status as a Local Authority

Orange County Partnership Inc.

May 17, 2019

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**A Report on Activities of the Orange County Partnership Inc. and
An Updated Determination of their Status as a Local Authority**

Director's Note

This is a report on activities of the Orange County Partnership Inc. (hereinafter “the Partnership” or “OCP”). The Partnership, which was determined to be a local authority in December 2011 and has been on the Authorities Budget Office (“ABO”) delinquency list since that time, takes extraordinary actions to evade the statutory transparency requirements of a local authority during the period within this report. The financial support from both the County and IDA since inception totals more than \$6.7 million and that is only a portion of the complete public support. Rather than serve as a model for economic development public-private partnerships, OCP contorts its form to evade the transparency rules of a local authority. OCP remains the economic development authority for Orange County, NY (the “County”).

After a prolonged period of defiance by the Partnership and rounds of litigation between the Partnership and the ABO, in December 2018, the State Supreme Court in Orange County ordered the Partnership to file its required governance and financial reports with the ABO database, the Public Authorities Reporting Information System (“PARIS”). The Court also ordered OCP to provide the ABO with responses to any other reasonable requests for information that would allow ABO to understand the Partnership’s corporate status as a local authority; and, upon completion of these conditions, the ABO would reassess the status of OCP and make a new determination on the Partnership’s current 2019 status.

The ABO reviewed OCP’s PARIS filings and public records to determine its corporate and financial activities as required by the Public Authorities Accountability Act of 2005 (“PAAA”), the Public Authorities Reform Act of 2009 (“PARA”), and the Order issued by Supreme Court, Orange County, and determines that Orange County Partnership Inc. remains a local authority as it was created by Orange County and the Orange County Industrial Development Agency (“OC IDA”). OCP further has remained sponsored by and affiliated with these and other municipalities’ IDAs and other public entities between 1985 and 2019.

OCP insists that it is a wholly private corporation working outside the jurisdiction of the ABO, however this is not accurate. The ABO staff reviewed the records and report on OCP’s compliance under the meaning of Public Authorities Law. Ascribing the plain and ordinary meaning to those terms in the law, OCP meets the definition and qualifies as a “local authority” for purposes of the statute. I hope this analysis can serve as a guide for other not-for-profit corporations doing public service in New York State.

A detailed explanation of the analyses and the determination are compiled in this report.

Executive Summary

The Orange County Partnership Inc. was incorporated in 1985 and was then known as the “Orange County Economic Development Corporation.” Its primary purpose among others, as stated in its Certificate of Incorporation is “[t]o provide marketing services to the various municipalities within Orange County...”[Ex. 1, Certificate of Incorporation]. Its vision statement opening sentence is, “The Orange County Partnership will be the best economic development agency in New York State.” It works in support of and follows the Orange County Comprehensive Plan [Ex. 2 Mission Statement and Vision].

The issues underlying the Partnership's activities detailed in this report reach back over a decade. In 2011 the ABO issued a final determination that the Orange County Partnership is a "local authority" pursuant to Public Authorities Law § 2 (2) in that it was created by, is sponsored by and is affiliated with municipal governments, industrial development agencies, and other state and federal economic development offices. See Public Authorities Law § 2(2)(b) (proving that the meaning of local authority includes "a not-for-profit corporation affiliated with, sponsored by, or created by a county, city, town or village government"). Public Authorities Law requires not-for-profit corporations that have been determined to meet this definition to follow the good governance and transparency practices required of a local authority pursuant to the PAAA and PARA. To be transparent and accountable with the use of public funds, Public Authorities Law requires all local authorities to submit Annual, Certified Financial Audit, Procurement, Investment and Budget Reports to the ABO so that ABO and the public are able to review its activities. Until it was facing a motion, before the Supreme Court, Albany County, in 2018, to compel responses to a subpoena, OCP had refused to comply with the reporting requirements of a local authority under state law despite a 2013 Supreme Court decision upholding the ABO's determination requiring such filings.

A 2013 decision by a court in Supreme Court, Albany County, upheld the ABO determination of their status as a local authority. The court's 2013 decision was affirmed on appeal. (*Matter of Orange County Economic Dev. Corp. v. State of New York Auths. Budget Off.*, 128 A.D.3d 1256 [3rd Dept. 2015]). An important consideration is opined in the final sentence of the Appellate Division decision, stating, "[p]etitioner's remaining contentions have been considered and found to be without merit." OCP essentially ignored the Courts' rulings and continued to refuse to comply with PAAA and PARA until ordered by the Supreme Court, Orange County in December 2018.

In October 2017 OCP began taking structural steps that raised suspicions it was further moving to evade reporting despite operating as a delinquent local authority since 2011. The Partnership filed a name change on its Certificate of Incorporation ("COI") and removed public officials from its board [Ex. 1, COI; Ex. 7, Marked-up Bylaws from OCP attorney; Ex. 22 Amendment to COI]. Also, in late 2017, appropriations and payments from OC IDA and the County Legislature were tabled or placed in contingency funds. [Ex. 3 Budget Meeting Minutes]. It was these recent acts in conjunction with the persistent non-filing which led the ABO to serve OCP with a Subpoena *Duces Tecum* to access its budget and financial records to determine what activities were being conducted with public funds during the period it was receiving public funds as a non-compliant local authority.

Failing to initially comply with the ABO demands in the Subpoena *Duces Tecum* and after a legal battle in both Orange and Albany County Supreme Courts, OCP delivered documents relating to their activities, partially complying with the Subpoena *Duces Tecum* demands. While unfortunately they did not provide the ABO with what is required to be submitted of a local authority in PARIS, OCP provided related information which allowed the ABO to get an improved understanding of their ongoing governance and financial activities. While the ABO was analyzing the data and before it could conclude its work, OCP commenced, in February 2018, an action in Supreme Court, Orange County, attempting to force the ABO to make a new determination. The Supreme Court ultimately ruled, in December 2018, that ABO's 2011 Determination was final, *res judicata*, and before the ABO needed to make a new determination of the status of OCP, the Partnership must file its PARIS reports and be up to date with the ABO as it is a local authority.

The findings from the subpoenaed reports and other records gathered by the ABO show that during the period of non-filing, OCP was created by Orange County to be the Department of Economic Development for the County [Ex. 4 1986 & 1995 news articles regarding creation of OCP]. The financial support from both the County and IDA since inception totals more than \$6.7 million. The ABO believes that the amount is greater, but we can only determine the IDA's contribution since 2006. [Ex. 5 County & IDA funding spreadsheet with timeline]. This seed funding from the County and IDA has enabled OCP to become more financially independent from public funding, as described later in this report. Even so, OCP continues to rely extensively on public support of its operations. Each municipality within Orange County makes an annual contribution to OCP. These municipal contributions are classified by OCP as "investments".

The Partnership works within the sphere of government economic development, representing itself as the one-stop-shop for benefits as if it acts as provider of the property, mortgage recording and sales tax exemptions for economic development projects in the County. [Ex. 6 OCP website advertising economic development incentives of IDA and governments]. It also markets properties to private businesses with the offer of its affiliates' government benefits, and it both lobbies and pays lobbyists to secure state and federal funds for economic development projects in Orange County.

For example, OCP has established a committee that it calls the Alliance for Business Growth ("ABG"). A primary function of this committee is to lobby on behalf of projects and issues that may impact businesses in Orange County. ABG has lobbied to change New York's "scaffold law", to oppose environmental regulations and to receive transportation funding to expand Route 17 [Ex. 6-A Lobbying information]. Neither OCP nor ABG are registered as lobbying entities or client's and the ABO suspects they may have reached the threshold to register with the NYS Joint Commission on Public Ethics (JCOPE).

According to the financial records obtained via subpoena and court order, besides payroll and its overhead expenses, OCP spends the bulk of its funds on events, providing networking opportunities for its members and prospective project applicants, creating publications and marketing brochures, obtaining paid guest speaker services at events for its members and paying counsel to fight the ABO and evade public transparency and accountability. It owns no real property and holds no capital assets besides making a car payment for the CEO. It holds no bonds or notes as far as what has been provided to the ABO. OCP continues to promote itself as a "premier (no-cost) resource for economic development support" in Orange County and continues to function as the County's origination space for all economic development projects. It charges fees to its members and based upon our investigation it appears OCP provides the Orange County municipalities with project applications based upon the size of their sponsorship.

These relationships with municipal governments are affiliations because the Partnership would have little to offer without the participation of and the use of municipal revenues and tax expenditures provided by either the municipal governments or a municipal IDA. OCP essentially markets the County and attracts the businesses, then directs the governmental entities to package their offerings to these businesses. As it still relies on affiliated support and sponsorship from local governments within Orange County and it regularly purports to be the main producer of economic development benefits to create, retain and develop business in Orange County, it remains a local authority.

While the Partnership recently amended its bylaws, it did not change its corporate status. The change to the bylaws attempts to portray a governance structure that removes any relationships with the County Government and the Orange County IDA. [Ex.7 marked-up bylaws from attorney]. The Partnership continues in scope and methods in relation to its governmental activities. OCP has asked the County to table its appropriation until it works out its differences with the ABO. [Ex. 3 budget meeting minutes]. This dry appropriation alone does not remove its ongoing relationship with the County. It gives the appearance that the Partnership has been removed from the County IDA by arm's length for the first time, but instead,

OCP has turned to other IDAs to offer tax exemptions and funding for economic development projects. [Ex.8 list of projects; Town IDA Meeting minutes]. Further, OCP still is sponsored by and affiliated with every municipal government and IDA within the County. Therefore, after a close analysis of the records provided and the research conducted by the ABO staff, the ABO determines that the Orange County Partnership remains a local authority.

Moreover, the ABO is left with no choice but to refer this Matter to the Attorney General in consideration of the corporate business activities that may be in violation of General Business Law Article 22-A. Further, the ABO Censures individually, the entire Partnership Board, including the Board President and Chief Executive Officer, Maureen Halahan, for supporting and encouraging the continuous evasion of PAAA and PARA by the Orange County Partnership. Finally, the ABO formally warns the OCP Board of Directors and its management that any further evasion in reporting will result in the ABO bringing an action to remove the Board and move to dissolve the corporation, it's final remedy under the law.

Questions Presented

- 1. Following the ABO's receipt from OCP of the subpoenaed documents and in consideration of their recent PARIS filings, does the new information alter the determination that it is a local authority?**
 - a. No**
- 2. Following the Court Order, by Supreme Court, Orange County, stating that "[OCP] will not be heard to argue that it should be granted a new determination as to its status when it has failed to comply with its obligations under its current status, and has failed to provide information needed to make the demanded determination." Now that OCP has sufficiently complied, does the ABO change from its initial determination that OCP is a local authority?**
 - a. No**
- 3. Was the Orange County Partnership created by Orange County and the Orange County IDA?**
 - a. Yes**
- 4. Is the Orange County Partnership Sponsored by municipal government in Orange County?**
 - a. Yes**
- 5. Is the Orange County Partnership affiliated with federal, state and municipal government in Orange County?**
 - a. Yes**
- 6. Does the ABO find that OCP board, including the activities of its CEO, failed in its fiduciary duty to follow the law?**
 - a. Yes**
- 7. Does the ABO find that OCP does not report appropriately to JCOPE as a lobbyist and as a source of funding to lobbying?**
 - a. Yes**
- 8. Does the ABO believe that OCP may be operating in violation of General Business Law Article 22-A?**
 - a. Yes**

Responsibilities of the Authorities Budget Office

Chief Judge DiFiore of the New York Court of Appeals describes the powers of the ABO recently in the Court of Appeals decision, MADISON COUNTY INDUSTRIAL DEVELOPMENT AGENCY v. ABO, decided March 21, 2019. [2019 NY Slip Op 02150]:

“The PAAA (see Public Authorities Law §§ 2800-2806), adopted in 2005, mandates that ‘[e]very’ state and local authority shall submit to the ABO and others in state and local government detailed annual, budget, independent audit and other reports, and requires ‘each’ state and local authority to make such information accessible to the public (Public Authorities Law §§ 6 [3]; 2800 [1] [a], [b]; 2800 [2] [a], [b] [annual]; 2801 [1], [2] [budget]; 2802 [1], [2] [independent audit]). Its purpose was ‘to ensure openness and accountability’ of all public authorities and to ‘promote public confidence in the financial and operating integrity of these institutions’ by expanding the information required to be disclosed to the government and public (Budget Report on Bills at 1-2, Bill Jacket, L 2005, ch 766).

“The ABO was initially created to ‘oversee and analyze the activities and financial practices’ of public authorities, and ‘review and report on’ their compliance ‘with accepted standards of corporate governance, accountability and financial disclosure” (Budget Report on Bills at 1-2, Bill Jacket, L 2005, ch 766). However, despite the PAAA's intent to enhance transparency by strengthening reporting requirements, the Legislature soon concluded that greater oversight and additional reforms were needed. Thus, in 2009, the Authority Reform Act was passed, expanding the powers and resources of the ABO to enable it to better "police" state and local public authorities (Brodsky Letter, Bill Jacket, L 2009, ch 505; see also Legislative Findings, Bill Jacket, L 2009, ch 506). The Authority Reform Act removed the ABO from the umbrella of the Division of Budget, reestablished it as an independent entity and enhanced its powers (see Mem in Support, Bill Jacket, L 2009, ch 506).

“These enhanced powers are detailed in Public Authorities Law § 6, which requires, among other things, that the ABO "conduct reviews and analysis of the operations, practices and reports of state and local authorities to assess compliance" with the PAAA and other laws, "maintain a comprehensive inventory" of public authorities and assist state and local authorities in improving management practices and procedures for public disclosure of financial information (Public Authorities Law § 6 [1] [a-o]). Particularly relevant to this dispute, the ABO was given broad authority to "request and receive from any state or local authority . . . such . . . information, books, records, other documentation and cooperation as may be necessary to perform its duties" (Public Authorities Law § 6 [2] [a]). Under this fortified scheme, the ABO has a full range of enforcement powers to "act upon complaints" regarding any authority, "initiate formal investigations," "issue subpoenas" and "publicly warn and censure authorities for non-compliance" with regulatory requirements (Public Authorities Law § 6 [2] [a-j]).”

The ABO is charged with “maintain[ing] a comprehensive inventory of state and local authorities and subsidiaries.” Pub. Auth. Law § 6(1)(b). Working with the Office of the State Comptroller, the ABO has established the Public Authorities Reporting Information System (PARIS), an on-line application by which state and local authorities can easily submit the information required by Public Authorities Law. Therefore, as an entity that falls within this definition, the law requires OCP to comply with the provisions of PAAA and PARA and to report its activities annually in PARIS.

Orange County Partnership Background and Factual Findings Relating to Its Creation

Public records show that the OC IDA and Orange County both played an integral role in the formation of OCP. Early in its correspondence with the ABO, counsel for the Partnership represented that the Partnership was originally created by Orange County. [Ex. 9 Jan. 10, 2012 letter from Dominic Cordisco.] OCP's creation is best explained through the chronology of the County Budget in the public record and its accompanying Department meeting agendas and Department meeting minutes. The record shows the government's evolution in economic development policy and practice, which led to OCP's creation.

The Partnership originally was incorporated the Orange County Economic Development Corporation, d.b.a. Orange County Partnership, in 1985 pursuant to Section 402 of Not-for-Profit Corporation Law. Although it presents itself as a trade association OCP is not incorporated pursuant to Not-for-Profit Corporation Law § 1410. It initially indicated to the ABO in 2011 that it was a tax-exempt charity pursuant to US Tax Code § 501 (c)(3), however it clarified that it files for its exemption pursuant to § 501 (c)(6). [Ex. 9.] This type of organization is usually a business league, board of trade or a chamber of commerce and the (c)(6) filing would qualify it as a non-profit association, exempt from paying income tax. OCP instead established itself as a not-for-profit charitable organization and cannot be considered a trade association or chamber of commerce under NYS Not-for-Profit Corporation Law despite its federal tax filing status.

The Certificate of Incorporation set forth the public and quasi-public purposes:

1. To provide marketing services for the various municipalities within the County of Orange.
2. To provide marketing services to private businesses within Orange County and the counties surrounding it.
3. To promote and coordinate the economic development of both public and private businesses in Orange County.
4. To promote in a lawful and legal manner the development, preservation, operation and general welfare of businesses in the County of Orange, and State of New York.
5. To conduct studies, engage in research, and in any other similar and legitimate activities to aid private and public businesses in the County of Orange.
6. To supply timely information in a legal manner to the members of those associations and to any other business or economic group and to the general public with respect to the economic and orderly development of the County of Orange.
7. To collaborate and cooperate in every legal manner with the branches of the government of the State of new York, the Federal government and any local government within the County of Orange.
8. To collaborate, cooperate and exchange data and ideas with trade associations, chambers of commerce, boards of trade and to the financial organizations and individuals to bring about and accomplish the aforesaid purposes.
9. To conduct in every legal manner trade promotion activities, including advertising and publicity.
10. To engage in any lawful activities which will enhance the efficient and orderly development of the County of Orange.
11. To do any other act or thing incidental to or connected with the foregoing purposes or in advancement thereof, but not under any circumstances for the pecuniary profit or financial gain of its members, director or officers, except as the same shall be permitted under Article 5 of the Not-For-Profit Corporation Law. [Ex. 1 COI]

Based upon our review of the public record, Orange County Government did have an Office of Economic

Development within a County Department until 1985. But from that time until late 2018 the Partnership acted as the sole economic development Office for the County and its municipalities. [Ex.10, County Budgets/OCP Appropriations] In OCP's Mission Statement, it refers to itself as a "not-for-profit agency that attracts, retains and grows businesses" and "provides those businesses with significant support services." This agency is conducted on behalf of the people of the County [Ex. 2 Mission Statement].

According to news reports at the time, OCP was formed to effectively market the County on an outreach basis. [Ex. 4 News articles regarding creation of OCP] The County Executive and the influential businesses that serve the economic development sphere of industry recognized a need with the County to market Orange County. The bylaws established the OCP board, comprised of both public and private directors. Since the initial appropriation from Orange County in 1985 to date, OCP has been the only office or agency that reports quarterly to the County Legislature, updating it on the status of economic development in Orange County. [Ex. 11 Legislative Manual] OCP annually goes before the County legislature to present its requests for appropriations.

As set forth below (see p. 8), recently the funding from Orange County been placed in "contingency." The Partnership explains at the 2018 budget presentation to the County fiscal committee that it requests the funds be held, "until the issues with the ABO are worked out." This indicates that whatever the ABO's determination, OCP will continue to act on behalf of and receive financial support of the County as it has since its creation.

The timeline establishing OCP begins in 1981 when Orange County, realizing it needed an office of economic development, amended its Charter to change the Department of Planning to the Department of Planning and Economic Development. By 1983 the Economic Development part of this Department employed one person whose job was, "[t]o provide for the development and implementation of a program to retain and develop the County's economic resources in terms of increased economic activity and employment by attracting new industries/businesses to locate within the County and by promoting the expansion of existing ones." [Ex. 12 1983budget description.] The County established a consortium fund that was made up of 18 municipalities within the County to help offset the cost of economic development. "Each Consortium member had the ability to utilize up to \$1000 of this fund to aid in the cost of pre-application and application development[.]" for economic development in the County. [Ex. 13 1983 Consortium fund.] A County "contingency fund" also was created "for the coverage of project overruns due to the budget fluctuations once actual bids are awarded." [Ex. 14 1983 Contingency fund.] In 1984 Orange County again amended its Charter, this time to remove the word, "Economic", and instead calling it the Department of Planning and Development. The rationale for the change appears to place Economic Development as a sub-agency under the Department. At that time, this sub-agency, 1984 the Office of Economic Development employed 7 positions and had a number of County responsibilities. [Ex. 15 Summary of Service Levels in the 1984 Budget].

Between 1983 and 1985 discussions at the highest levels of county government sought to create a public-private agency for economic development coordination within Orange County. In 1985, under the County budget's subtopic, entitled Industrial Development Promotion, a specialty line for Industrial Development Promotion was created in the budget to fund the Orange County Economic Development Corporation, d/b/a OCP. [Ex. 16 1985 OC Budget.] In 1986, the County's Development Plan was updated and OCP was funded again on the specialty line [Ex 17 1986 OC Budget]. By October 1987, OCP, by name, was incorporated into the County Budget as a line item, among other things, "to carry out a program for marketing Orange County as an industrial/commercial site and bringing projects to the County." [Ex. 18 1988-1989 OC Budgets] By 1990, the budget narrative states that the entire "Promotion of Industry

appropriation represents the County's Contribution to the Orange County Partnership. The Department of Planning administers this account." [Ex.19 1990 Budget.] By 1990, OCP was firmly established as the economic development agency for Orange County, with a board make-up of both public officers and those leaders of Orange County industries engaged in economic development.

During the period when the State adopted PAAA and PARA, OCP continued its functions on behalf of the people of Orange County as the office of economic development conducting sales and marketing. By 2011, when the Partnership celebrated its 25th Anniversary, it took a look back at its accomplishments. Its annual report that year includes a tribute to Mr. Lou Heimbach, the former Orange County Executive from 1978-1989 and current OCP Director Emeriti. This tribute exemplifies the activities of the Partnership in that it was created by Orange County to be the Economic Development Office for the County. It states, "*Heimbach also realized that investment from the business community was critical if this new organization [OCP] was to succeed. He assembled a team to help persuade the business community to invest in this new venture. He was certain he could get the County Legislature and Orange County IDA to match the private dollars they raised. **The strategy worked, the business community invested in the Partnership and the Legislature and the IDA provided the matching funds. With a framework in place and operating dollars secured, the Orange County Economic Development Corporation (dba Orange County Partnership) was incorporated on July 14, 1985.***" [Ex. 20 2011 Annual Report Tribute to Heimbach (emphasis added)]

At an October 2013 meeting between the ABO and OCP in Albany to inform OCP of its requirements under PAAA and PARA, the Orange County Executive affirmed that OCP was created to do the economic development work for Orange County with the Chairman of the County Legislature and the County Executive named as the original directors of the organization. In 2015, when the Legislature reduced OCP's budget, it discussed a subsidy from the IDA to OCP to make up for the shortfall that the legislature reduced. [Ex. 21 Oct. 20, 2014 Education and Economic Development meeting minutes and Dec. 4, 2014 County Legislative Budget minutes.]

In 2017, an amendment to its COI was filed to formally change the name the corporation as Orange County Partnership, Inc. [Ex. 22 Amended COI] OCP represents in its 2018 Annual Report that it took a "new direction" by "reincorporating" as the OCP. This is clear example of OCP attempting to evade public disclosure and subvert the law by representing that it has changed, while it continues to maintain the same business practices of a local authority. OCP's name change is an attempt to appear as a private business while the substance of the articles of incorporation remain unchanged, as do, more significantly, OCP's ongoing business practices that it initially was created to fulfill. The sole change to the Certificate of Incorporation was to the name [Ex. 22 Amended COI].

The Partnership since its creation has received significant operational support from Orange County and the Orange County Industrial Development Agency (OC IDA). [Ex. 5 Timeline of Funding] Only in 2018 did the funding from Orange County cease, although OCP still lists the revenue, albeit currently tabled, on its budget documents. [*Id.*] And the funding ceased only because OCP asked the legislature to table it until the resolution of litigation with ABO. The minutes of the October 20, 2017 meeting of the Orange County Legislature's Education and Economic Development Committee state: "Ms. Halahan stated that she wanted them to know that the dialog is open and they are in constant communication with the ABO office and that is why they request the money to stay in the budget so in the event they prevail they can come back with the plans for the money and in 2018 they can have the money." [Ex. 21-C Minutes of meeting of Education and Economic Development Committee, Oct. 20, 2017; Ex. 21-B Oct. 17, 2016; Ex. 21-A, minutes of Oct. 19, 2015 meeting; Ex. 21 minutes of Oct. 20, 2014 meeting]. This is not the type of dialogue that one expects from a vendor in a fee for service contract. Rather, it displays a relationship where

Orange County considers OCP as a Department and Ms. Halahan as the Department Director.

Based upon additional information gathered by the ABO outside the County records, the Partnership is considered a local authority as defined in Section 2(2) of Public Authorities Law, because it is a not-for-profit corporation created by individuals to serve Orange County as its economic development agency. While OCP insists it was created by private individuals and there was no governmental act that established its creation, the totality of the circumstances that led to OCP's establishment show that it was created to serve Orange County, the IDAs within the County and its municipalities in their economic development activities. OCP represents to prospective project applicants that it is the one stop shop for economic development benefits in Orange County.

Guiding the ABO is the MATTER OF GRIFFISS LOCAL DEVELOPMENT CORPORATION v. State of New York Authority Budget Office, 85 AD 3d 1402 - NY: Appellate Div., 3rd Dept. 2011, where the Court determined that the meaning of the word "create" under PAL § 2 (2) is "to bring into existence" or "to produce or bring about by a course of action" (using Merriam-Webster On-line Dictionary, <http://www.merriam-webster.com/dictionary/create> [accessed June 10, 2011]). The court in Griffiss took the view that the local development corporation in question was created by the local government within the meaning of the PAAA and PARA, which, as a "local authority" for purposes of the statute requires OCP to account for the public funds it uses to fulfill its corporate mission.

Based upon the totality of the circumstances including, among other things, its establishment as a charitable organization for a sole public/quasi-public purpose, the public record and information gathered by the ABO strongly reflects the very close relationship between OCP and Orange County, as well as the other municipal governments, in its creation and support. Moreover, the course of action by the County and the OC IDA to sustain OCP and provide it unwavering support, treating it like an agency, shows how OCP was and a creature of by Orange County and the Orange County IDA. OCP could not have survived and acted in the same manner as it does today without the seed funding and continuous involvement of Orange County, its IDAs and its municipalities to succeed. These facts persuade us that OCP, whose purpose is to assist such municipalities in carrying out their economic development efforts, is the type of entity that the Legislature intended as a covered entity and therefore it is subject to the provisions of the PAAA and PARA.

Orange County Partnership Background and Factual Findings Relating to Sponsorships

During the period of review in this report, OCP has been sponsored through "agreements" with Orange County to handle its economic development activities along with the financial sponsorship provided by every municipal entity within and including Orange County. It also remains sponsored by the OC IDA and other municipal IDAs within Orange County. The facts gathered that show how OCP was created further speak to how Orange County and its municipalities and IDAs sponsor, both financially and structurally, OCP. Both the public and private sides in the local economic development arena as sponsors are funding OCP's economic development efforts for Orange County.

From when the Partnership received its first appropriation from Orange County until the most recent appropriation was placed in contingency in 2018, the Partnership received several million dollars in public funds from Orange County, the Orange County IDA and its other municipal members. It continues to receive funding from the other municipalities in Orange County despite what appears to be the recent tabling of funding at the County. [Ex. 23 List of municipalities and membership dues paid.]

The plain meaning of the term “sponsor” has been defined as “one who assumes responsibility for some other person or thing” and “a person or an organization that pays for or plans and carries out a project or activity” (Merriam-Webster On-line Dictionary, <http://www.merriam-webster.com/dictionary/sponsor> [accessed June 10, 2011]).

Regardless of the recent bylaws changes made by OCP to remove local government from its board, it has not changed its public activities on behalf of the people of Orange County. At every quarter for over a decade, OCP acts like a County Department and updates and informs the County Education and Economic Development Committee of its economic development activities. [Ex. 24 Committee Meeting Agendas]. It also annually comes before the same Committee to present its annual budget request, which is the same process as every other County department or agency. [Ex. 11 Legislative Manual.]

The Partnership’s 2011 contract with the OC IDA provides a concrete example of the sponsorship relationship established between the two entities. The IDA pays OCP “to act as the external economic development sales and marketing agency for business, office and industrial inquiries and applications of the IDA,...” Essentially OCP is to act in place of the IDA, finding prospective projects and assisting those projects in preparing the project application for the IDA benefits. Essentially acting as the organization that plans and carries out the project – a sponsorship relationship where the IDA is the Sponsor and the Partnership is the party being Sponsored.

During all this time OCP has actually performed services on behalf of Orange County for the public rather than providing a contractual service to the County. This is confirmed by independent audits of OCP, which indicates that OCP’s business activities are as “an external marketing agency for the economic and employment development of Orange County, New York.” [See Notes to Financial Statements December 31, 2011, true and correct copy of which is annexed hereto as **Exhibit 25**, Notes 1 (organization), 4 and 5.] These independent audits are a clear indication that this is a sponsorship relationship between the County and OCP.

Similarly, Orange County, along with every municipality within Orange County pays/sponsors OCP to effectively handle the business of economic development for Orange County. From its creation to date, the municipalities of Orange County have sponsored OCP to conduct its economic development project work. [Ex. 23 List of municipalities and membership dues paid].

OCP has not only worked to serve its sponsored municipalities, it also similarly serves the OC IDA in a sponsored capacity. For example, in 2002, a year when Orange County appropriated to OCP \$175,000, a \$25,000 increase from the previous appropriation, the Partnership increased its activities and incorporated the Orange County Capital Development Corp. (OCCDC). To the best of our knowledge, OCCDC was formed as a for-profit angel investment group and this additional funding provided for-profit angel investing to prospective businesses that locate to the County. The Orange County IDA, through its subsidiary fund, OCCDC Fund #1, became a partner with OCCDC to commence joint venture. By 2009, the venture had one investment, a bank balance of approximately \$100,000 controlled by the IDA and approximately \$366,600 in cash or certificate of deposits controlled by OCP. At that time, OCP turned all of its shares over to the IDA for no consideration. Maureen Halahan signed over OCP’s shares of OCCDC to the IDA along with its books and records. [Ex. 26 OC IDA Meeting Minutes.] Only in a sponsorship relationship could a board fulfill its fiduciary duty and transfer an asset of value to another without consideration.

In the Partnership’s Tax Form 990s and financial audit reports filed with the New York State Attorney

General's Charity Bureau, the Partnership reported grant funding receipts from government and the County IDA during the reporting period 2011- 2017. [Ex. 27 Form 990 and audits]

The original audited financial statements received by the ABO after OCP acceded to the subpoena demands describe its primary business activity as an external marketing agency for the economic and employment development of Orange County, New York. [Ex. 25 Notes to Financial Statements for 2011] For the 6-year period 2011-2016, Orange County and the Orange County IDA provided more than \$2.2 million to OCP [Ex. 5 Timeline of Funding]. These public funds comprised more than 40 percent of OCP's total revenues during the period. For 2011 and 2012, the audited financial statements characterized this funding as grants provided by government agencies, but for 2013 and later characterized the funding (at the time OCP commences litigation against the ABO) as resulting from contractual services in order for OCP to evade the PAAA and PARA reporting requirements [Ex. 27 Form 990 and audits].

The financial data provided by OCP also discloses that every municipality in Orange County contributes funds for OCP's operations. OCP classifies these contributions as "investments" by each municipality, yet OCP officials were unable to adequately describe what each municipality receives from its investment. The amount of funding from each municipality varies, which further indicates a sponsorship relationship rather than a contractual fee for service. If OCP had intended such services it provides to be a fee for service relationship, it would list specific prices for its specific activities. Instead, it appears to charge varying prices for each governmental entity based upon the effort it provides for the County, as well as on behalf of each city, town and village within Orange County. This indicates to the ABO that these are sponsorships by the municipalities in support of the Partnership's effort on their behalf to generate economic development.

From its inception in 1985 until amended in December 2017, the Partnership's bylaws required the following government and authority officials to be members of the Board Directors of the Partnership: the Orange County Executive, the Chair of the Orange County Legislature and the Chair of the Orange County IDA. Post 2017, the Partnership entrenched its position that it was private and attempted to scrub Orange County and Orange County IDA out of its image and increased an adversarial approach to the ABO [Ex. 7 Marked up Bylaws from attorney].

Despite its changes to remove certain governmental officials from the board of directors, OCP still acts in an identical fashion as it did previously in that it remains the center for all economic development activity and coordination within and among the municipalities of Orange County. The recent tabling of the County appropriation in a contingency and OCP's continued use of IDAs for support in providing tax exemptions for applicant shows a continuing sponsorship relationship between these entities. Also, OCP's classification of all other municipalities as "investors" signifies a continuing sponsorship relationship that meets the definition under Public Authorities Law.

Based upon the foregoing, OCP is sponsored by Orange County, Orange County IDA, the municipalities within the County and more recently, the IDAs serving the municipalities within the County.

Orange County Partnership Background and Factual Findings Relating to its Affiliations

Two thirds of the Partnership's affiliations are with governmental entities. Federal, state and municipal governments rely on OCP to provide them the economic development support in marketing and selling economic development projects within Orange County. OCP regularly presents itself to the public as putting itself in the role of providing the economic development benefits to project applicants that the

municipalities within Orange County actually offer. In other words, without its affiliates, OCP would have no other benefits to offer its project applicants.

The plain meaning of the term “affiliated” means “associated with” (Merriam-Webster On-line Dictionary, <http://www.merriamwebster.com/dictionary/affiliated> [accessed June 10, 2011]; see Black’s Law Dictionary 63 [8th ed 2004]).

OCP could not provide any benefits or expenditures to developers without representing itself as being related in some way to the entities mentioned herein. These affiliate relationships are with the public and quasi-public entities that actually provide the tax exemptions, capital and operating loans or grants for the economic development project applicants. These affiliations with OCP, which they described as “partners”, and the expenditures and funding they provide for projects, are how OCP uses these affiliates to attract businesses to use its services. It is also how OCP attracts its private investors who are able to network with their affiliates at member-only OCP events.

On its website, OCP stands in place of its affiliates as it offers the benefits they provide. OCP claims that companies have grown through “our incentives program” and further states, “As the costs associated with development projects continue to rise, many projects large and small simply would not happen without financial assistance. The Partnership is here to guide you through the wide range of economic development incentives available through Orange County and through our state, federal and utility partners. Click on the buttons below to learn more and contact us to get the application process started. [Ex. 6 OCP Website advertising economic development incentives from IDA and governments]. Based on the ABO’s research, OCP prepares these applications and shepherds them through the affiliate municipalities and local authorities, ensuring the economic development benefits are provided to the project applicant.

Despite its veiled attempt to remove Orange County and the OC IDA from its affiliations, OCP still affiliates with both the aforementioned entities as well as the following Orange County local governments: Town of Chester, Town of Crawford, Town of Hamptonburgh, Town of Montgomery, Town of New Windsor, Town of Wallkill, Town of Warwick, Town of Wawayanda, City of Middleton, City of Port Jervis.

The following governmental and quasi-governmental entities also are affiliates with interest in the Partnership: Hudson Valley Economic Development Corporation and the Sullivan County Economic Development Corporation, SUNY Orange, Orange County, Orange County Chamber of Commerce, Orange-Ulster BOCES, Orange Works, Orange County Arts Council, Orange County Council of Industry, OC IDA, Town of Montgomery IDA, City of Middletown IDA, Newburgh IDA, Port Jervis IDA, Walkill IDA, Empire State Development Corporation, Orange County Workforce Development Task Force, Mid-Hudson Regional Economic Development Council, New York State Economic Development Corporation - Empire State Development Fund, New York Business Development Corporation and The Port Authority of New York and New Jersey -- Stewart International Airport. Thus approximately 66% of the Partnership’s affiliates are related to public entities and would thus require OCP to be public as well. OCP claims on its website to have “helped hundreds of successful businesses leverage these incentives to expand in or relocate to Orange County, New York.” Without the aforementioned affiliations, OCP has very little to offer to incentivize business expansions or relocations.

While Orange County and the Orange County IDA provided millions in funding to OCP to serve as an external marketing agency for the county, it appears that OCP spent relatively little for marketing related activities. Over the past 6 years, OCP reported spending only about \$626,000 on business development,

advertising and promotion during 2011 through 2016. OCP also reported spending nearly \$411,000 for various fundraising events during this period, including \$279,000 for food and beverages at various local restaurants and country clubs, \$77,000 for design and development of several promotional videos, and \$63,000 for professional motivational speakers.

For the 6-year period 2011-2016 the ABO received from the subpoena, OCP spent about 56% of its total funds on salaries and related employee benefits. This was in addition to spending an additional 5% of its funds on other types of personal services such as contract labor, bookkeeping, editorial services and legal services. The second largest use of funds (about 7.3%) consisted of various fundraising activities such as annual dinners, breakfasts and celebratory events. For the same 6-year period, OCP spent only about 11 percent of its funds for business development and advertising and promotion; activities that it was responsible for providing to Orange County and the Orange County IDA. These financial activities show how OCP continues to serve its affiliates, by providing venues for marketing the County and its municipalities as it remains the economic development office for municipal governments of Orange County.

Orange County Partnership Background and Factual Findings Relating to the Authorities Budget Office Determination Whether OCP Remains A Local Authority as required by the Court Order of Supreme Court, Orange County.

The recent OCP changes have prompted OCP to demand a new determination. The Supreme Court, Orange County also ordered the ABO to make a new determination after OCP filed its required local authority reports. The ABO has reviewed the changes presented by OCP and does not find they are sufficient to change its determination that OCP remains a local authority under Public Authorities Law § 2(2). The changes OCP makes in an attempt to evade the public requirements of every local authority are merely cosmetic and do not change the substance of its activities. OCP continues to act the same way that it was initially created, standing in the shoes of the County, using the support of its sponsors and working with its affiliates that provide the economic development benefits to project applicants attracted by OCP to Orange County.

OCP changed to its d.b.a name as its official corporate name in 2017 by filing a name change amendment to the Certificate of Incorporation (COI) with the NYS Department of State. It has not amended anything to the certificate beyond a name change [Ex. 22 Amended COI].

Also recently, OCP has amended its bylaws, to preclude membership by public entities; to prohibit elected or appointed public officials from serving as directors; and to remove all ex-officio membership from Orange County, December 2017 [Ex. 7 Marked up Bylaws from attorney]. It is also worth noting that within these bylaws, under the provision, "Article X – Construction", it states that "If there be any conflict between the provisions of the Certificate of Incorporation and these By-laws, the provisions of the Certificate of Incorporation shall govern." The Certificate of Incorporation set forth the public and quasi-public purposes, including marketing services, the promotion and coordination of economic development for both public and private businesses in Orange County and the development, preservation, operation and general welfare of businesses in Orange County [Ex. 1 COI].

As a local authority, and as a good governance practice, OCP supplies timely information to its sponsors, affiliates and to any other business or economic group and to the general public as is stated in the Certificate of Incorporation. It collaborates, cooperates with and coordinates the branches of the County,

State and Federal governments and all the municipal governments within the County of Orange. It collaborates, cooperates and exchanges data and ideas with trade associations, chambers of commerce, boards of trade and to the financial organizations and individuals to bring about and accomplish positive economic development projects for the benefits of the people of Orange County.

The construct of the COI as well as the Article X COI override clause for conflicts in the bylaws, indicates that on its surface, very little has materially changed in OCP's functions as a public-private partnership that meets the definition of a local authority under Public Authorities Laws. Removing governmental members from the Board of Directors is a cosmetic change to appear to be more private. It attempts to move OCP further from the sunlight of public disclosure intended by the State in its adoption of PAAA and PARA when not-for-profit corporations use public funds to fulfill its mission. However, these bylaws amendments do not amend OCP's ongoing economic activities both before and after the change. OCP continues to represent itself and how it functions as the sole economic development agency of Orange County.

OCP bylaws still state that it provides marketing services to private businesses and municipal entities within Orange County. The bylaws still require OCP to engage in studies, research and similar activities to aid private business development in Orange County. They require it to supply timely information to private business or economic development groups and to the general public with respect to the economic and orderly development of Orange County. Further, the bylaws expect OCP to collaborate with federal, state, county, and municipal governments and their agencies to foster economic development in Orange County, as well as collaborate with trade associations and Chambers of Commerce to bring about the aforesaid purposes. The bylaws even spell out that OCP shall conduct business development activities, including advertising and publicity for Orange County and its municipalities [Ex. 7 Marked up Bylaws from attorney].

Within the past year, Orange County began to assemble an office of economic development similar to its construct prior to 1985. Actually, two former employees of OCP have moved over to the County payroll and they work to coordinate economic development through OCP. The ABO will not, in this determination, be addressing the issues related to public officers and the ethical issues surrounding the revolving doors. But if, as OCP alleges, it is a private business, these employment changes both raise ethical concerns, and more importantly further points to the sponsorship relationship between these two public offices.

OCP still handles the ongoing economic development activities on behalf the County. While OCP alleges that the "contractual services" it provides are similar to a vendor, fee-for-service contract, the ABO finds that regardless of how the appropriation from the county is phrased, OCP is actually treated as if it is a County Department or Agency. It receives an annual appropriation from the County that it relies on to conduct its business. It makes budget recommendations at County Legislative Committees similar to other County Departments. It provides quarterly updates to the Legislative Committees that oversee its funding. Further, to date, OCP relies on continued municipal funding to help market the region's economic development profile.

It is also worth mentioning that in January 2019 a formal complaint was received by the ABO regarding OCP's activities. The complaint specifically states that as part of a public town board meeting, Ms. Halahan represented the OCP as the economic development agency of Orange County. See Complaint Submission Form, annexed hereto as [Ex. 28 Redacted Complaint].

Procedural History

Initial Determination that OCP is a local authority

By letter dated November 23, 2011, ABO notified OCP, then formally incorporated as the Orange County Economic Development Corp., d/b/a OCP, that the ABO had determined that the OCP was originally formed and has been acting as a local public authority, as defined in Public Authorities Law § 2(2)(b), and was therefore subject to the public disclosure, reporting and corporate governance provisions of the Public Authorities Law. See Letter from David Kidera, Director, ABO, to Maureen Halahan, Chief Executive Officer, Orange County Economic Development Corp (Nov. 23, 2011) (the “November 2011 Determination”), [Ex. 29 Nov 23, 2011 ABO letter].

The November 2011 Determination (which Supreme Court, Albany County considered to be final as of December 2011) set forth additional details as to OCP’s legal obligations, including its obligation to enroll with the online Public Authorities Reporting Information System (“PARIS”) to enable submission of reports required by the Public Authorities Accountability Act and the Public Authorities Reform Act. [Id.]

The November 2011 Determination stated “Please respond to this request by December 6, 2011. If the [ABO] does not receive a response from you by this date, this will indicate that you accept our determination . . .” [Ex. 29 Nov. 23, 2011 ABO letter.] OCP did not respond by December 6, 2011.

By letter dated December 15, 2011, ABO reiterated the November 2011 Determination, that OCP met the definition of a local authority pursuant to section 2(2) of the Public Authorities Law and was subject to the statute’s public disclosure, reporting and governance provisions, and stated that OCP had not responded to the November 2011 Determination. Letter from David Kidera, Director, ABO, to Maureen Halahan, Chief Executive Officer, Orange County Economic Development Corp (Dec. 15, 2011).

The December 15, 2011 letter also notified OCP that it was required to enroll with PARIS by December 29, 2011 [Ex.30 Dec 15, 2011 ABO letter] .

OCP argument against determination

In a letter dated January 10, 2012, Dominic Cordisco, of the law firm Drake, Loeb, Heller, Kennedy, Gogerty, Gabba and Rodd, PLLC, representing OCP, and also, who at the time was believed to be the Vice Chair of the Partnership, stated that OCP was formed by Orange County to promote business development [Ex. 9 Letter from Dominic Cordisco to David Kidera (Jan. 10, 2012)]. Mr. Cordisco’s letter confirmed to the ABO the role of Orange County in the formation of OCP, and its intended role with respect to the County.

In subsequent rebuttal letter dated February 3, 2012, the Partnership’s Board Chair, contrary to its counsel and Board Vice Chair’s assertion that it was created by the County, asserted that the Partnership is not subject to ABO authority because: (1) the Partnership was not created through a legislative action; (2) it only receives a portion of its funding from Orange County and the Orange County IDA; (3) such payments represent less than half the Partnership’s operating budget; (4) the Orange County contract and the IDA contract are annually renewable; (5) OCP is overseen by a self-appointing board; and (6) the ABO transparency requirements would hinder the function and effectiveness of the Partnership.

Final Determination

The ABO stood by its determination because of the pecuniary relationship between the Partnership, the County, its municipalities and the IDA. The ABO did not find any of the arguments of the Partnership to be persuasive in convincing them that the November 2011 Determination was incorrect, arbitrary or

capricious. Further, OCP is more than a marketing vendor for the County. It claims the transparency requirements would hinder the function and effectiveness of the Partnership because it is standing as the government agency conducting development deals on behalf of the people of the County.

Article 78

On or about November 1, 2013, OCP filed a petition pursuant to CPLR Article 78 (the “OCP 2013 Petition”) challenging the ABO’s November 2011 Determination. This Petition was dismissed as time-barred. Thus, by operation of law the ABO final determination remained in place. *See* Decision, Order & Judgment dated February 21, 2014, Platkin, AJSC; Index No. 6001-13.

The OCP 2013 Petition was filed on or about November 1, 2013, almost two years after the ABO’s determination, which the court considered to have been a final determination as of December 2011. The OCP 2013 Petition was, accordingly, denied as untimely under the four-month statute of limitations applicable to Article 78 proceedings. *Id* at 4-7.

Appeal of Article 78

OCP appealed Acting Supreme Court Justice Platkin’s decision, and the Appellate Division affirmed that the four-month statute of limitations applied. The Court reviewed the merits of OCP’s arguments and further stated: “**Petitioner’s remaining contentions have been considered and found to be without merit.**” *Matter of Orange County Economic Dev. Corp. v. State of N.Y. Auths. Budget Off.*, 128 A.D.3d 1256, 1257 (3d Dep’t 2015).

Delinquency reports

Since July 15, 2013, the Partnership has remained on the ABO’s website as being Officially Warned, that the local authority is listed on the ABO’s Annual Report delinquency list, being out of compliance with statutory accountability, transparency and public reporting requirements.

Meetings

On May 15, 2017, representatives from OCP met with Jeffrey H. Pearlman, the recently appointed Director of ABO, to inquire as to how the Partnership could no longer be considered a public authority. Mr. Pearlman notified the Executive Director Halahan and the President of the Board of Directors that if the Partnership wishes to change its designation, and for the ABO to issue a new determination, OCP must: (1) dissolve its current structure established by its articles of incorporation; (2) distribute its assets and holdings; and then (3) reincorporate as the *private* entity it desires to construct.

OCP Name Change

Rather than follow the dissolution process offered by the ABO at the May meeting, on October 23, 2017 the Partnership filed an amendment to the Certificate of Incorporation to formally change the name of the corporation from the “Orange County Economic Development Corporation” to the “Orange County Partnership Inc.”

Subpoena Duces Tecum

Since that meeting in 2017, it became evident that the OCP has not followed the ABO’s recommendations. Rather, it has submitted a corporate name change. The ABO reviewed all the public documents available that relate to OCP, including the tax forms it files with the Attorney General’s Charities Bureau, and determined that OCP may be engaged in wrongful business practices and unlawful activities in violation of the Public Authorities Law. Based on this review of the public record, the ABO issued a non-judicial

Subpoena *Duces Tecum* (the “Subpoena”), which was served on OCP on December 22, 2017. Subpoena. This Subpoena called for OCP to submit all records and documents to the ABO that local authorities are required to submit in accordance with the governance provisions of the Public Authorities Accountability Act and the Public Authorities Reform Act. The ABO required OCP to provide all the necessary documents and reports for the period 2011 through 2016, the period which OCP had been determined to be a local authority.

Subpoena *Duces Tecum* Authority

Public Authorities Law §6 (2)(d) and (e) authorizes and empowers the ABO to “initiate formal investigations” [when they find] “appearances of non-compliance by an authority” and “issue Subpoena *Duces Tecum* pertaining to investigations which such office is authorized to conduct...for the purposes of effectuating [its] powers and duties....”

OCP Bylaws Change

Also, the ABO was informed in the OCP response to the Subpoena by OCP counsel, Richard Golden, of Burke, Miele Golden and Naughton, LLP, that OCP had further adopted new bylaws.

Unbeknownst to the ABO, on December 5, 2017 the Partnership continued its evasive course and amended its bylaws to remove any reference to the County or the Orange county IDA. It also removed from the board the members of elective office that served as the governmental conduit to the benefits the Partnership would offer prospective customers.

At the end of the 30-day time period provided to OCP to comply and respond to the Subpoena, the Partnership responded that it would not comply and instead demanded a new ABO determination be made based on the material changes that were recently made. ABO views these moves as an attempt by the Partnership to avoid making public disclosures despite its use of public funds through its affiliation with the County, its municipalities and IDAs.

ABO Motion to Compel Compliance with Subpoena *Duces Tecum*

On February 14, 2018 the ABO filed a motion in Supreme Court, Albany County, for an order pursuant to Civil Practice Law and Rules (hereinafter “CPLR”) § 2308(b) and Public Authorities Law (hereinafter “PAL”) § 6(2)(j) compelling the Orange County Partnership to fully comply with the State of New York Authorities Budget Office’s Subpoena *Duces Tecum* served upon them on December 22, 2017 pursuant to Public Authorities Law (PAL) § 6 (2)(e).

OCP Motion to Quash and Demand for New Determination

On February 15, 2018, The Orange County Partnership (hereinafter “OCP”) by their counsel brought a summary proceeding in Orange County Supreme Court seeking an Order and Judgement:

1. “[D]eclaring null and void the determination of [the ABO] that denied [the OCP’s] request to render a new determination on whether it still considers [the OCP] a “local authority” pursuant to Article 78, as such was affected by an error of law, was arbitrary and capricious, and was an abuse of discretion;
2. [D]irecting [the ABO] to render a determination as to whether it considers Petitioner to be a local authority within its jurisdiction pursuant to CPLR Article 78;
3. [G]ranted a preliminary injunction prohibiting the [ABO] from taking any enforcement action against the [OCP] pending a hearing and determination of the proceeding; and

4. [G]ranting such other and further relief as this Court may deem just, proper and equitable;...”

The Orange County Supreme Court initially “ORDERED, that pending a hearing and determination of this application, a temporary restraining order is hereby granted, prohibiting the ABO from taking any further action pursuant to Public Authorities Law, and further

ORDERED that expressly excluded from this grant of temporary injunctive relief is a Subpoena *Duces Tecum* issued by [the ABO], dated December 15, 2017; the validity and enforcement of which is to be determined in a proceeding already pending before the Supreme Court, Albany County (Platkin, J), entitled, *State of New York Authorities Budget Office v Orange County Partnership, Inc.*, under Index No. 01159/18.”

Orange County Supreme Court Decision Dated May 14, 2018

Following oral arguments by counsel, the Orange County Supreme Court, after a detailed recitation of the timeline of the undisputed facts, dismissed the Partnerships demand for a new determination stating, “ ... [A]pplying the doctrines of res judicata and collateral estoppel, any such challenge would be time-barred.”

Acting Supreme Court Justice Onofry then outlined the remaining issues to include, “whether the ABO’s refusal to issue a new determination is arbitrary, capricious or contrary to the law, and whether the ABO may be compelled to issue a new determination, and whether the Subpoena *Duces Tecum* should be quashed.” All the remaining motions in the Partnership petition were denied and the proceeding was dismissed.

Albany County Supreme Court Motion to Compel

Immediately following the Partnership’s suit being dismissed, OCP began to provide the ABO with information in response to the Subpoena. Albany County Acting Supreme Court Justice Platkin requested and was provided periodic updates on the status of the delivery of the records demanded by the ABO. After several rounds of ABO requests and subsequent deliveries of OCP records, the ABO determined that it had received enough records in response to the demands of the Subpoena to understand the basic functions of OCP¹ and withdrew its motion to compel in Albany County Supreme Court.

Delivery, Review and Analysis of Records Turned over from Subpoena *Duces Tecum* Demands

The ABO Subpoena demanded the documents to be produced by the Orange County Partnership Inc. (formerly the Orange County Economic Development Corporation), which are the records a local authority would be required to report in the Public Authorities Reporting Information System (PARIS). The Partnership did not request interpretations of these demands and instead it provided responses to the list as to whether or not it had the records demanded by the ABO. After three rounds of updates to the Albany Supreme Court, the ABO received sufficient information to conclude its investigation into understanding the operation of the Partnership. Below are the records demanded by the Subpoena and whether OCP provided a record or response to the demand.

¹ It should be noted that the OCP response was not sufficient for the ABO to render a full and complete determination as to whether OCP remains or is no longer a local authority. The results and conclusions herein are based on what was received by the ABO in relation to the Subpoena *Duces Tecum*.

Orange County Supreme Court Decision December 10, 2018

While ABO was analyzing the data in OCP's responses to the subpoena, in February 2018, OCP commenced a new action in Supreme Court, Orange County, attempting to force the ABO to make a new determination. The Supreme Court ultimately ruled, in December 2018, that ABO's 2011 Determination was final, *res judicata*, and before the ABO needed to make a new determination of the status of OCP, the Partnership must file its PARIS reports and be up to date with the ABO as it is a local authority.

The court ruled: "[OCP] will not be heard to argue that it should be granted a new determination as to its status when it has failed to comply with its obligations under its current status [as a local authority], and has failed to provide information needed [for the ABO] to make the demanded determination.

"Rather, only when the Petitioner has complied with all of its current reporting obligations and has complied with any other reasonable requests for information from the ABO relevant to its current status, will it be entitled to a new determination as to its status. Upon such compliance, the ABO should render a new determination with all deliberate speed."

Orange County Supreme Court Article 78 Mandamus by OCP

On March 12, 2019, OCP brought a motion for an Order to Show Cause, seeking an immediate new determination from the ABO. OCP asserted that they had complied with their filing requirements with the ABO, as required by the Orange County court's December 2018 order. The ABO responded that OCP has not fully complied, citing gaps in PARIS filings as well as issuing a February 26, 2019 letter to OCP listing outstanding documents required by the ABO in order to make a new determination. OCP, rather than complying and submitting the missing documents to the ABO, filed a motion for an Order to Show Cause.

The Order to Show Cause requires representation from the ABO and supporting counsel from the Attorney General's Office, to attend a hearing in Orange County in order to require the ABO to make a new determination. Justice Onofry stated that the ABO was "required" to "render" a new determination with "all deliberate speed" in accordance with the December 10, 2018 court order. Justice Onofry also stated that OCP has fully complied with its requirement to file PARIS reports as well as providing records to the ABO under the subpoena *duces tecum*, and thus, entitled to a new determination from the ABO.

Opposition to Order to Show Cause

On March 25, 2019, The Attorney General, on behalf of the ABO, submitted an Opposition to OCP's Order to Show Cause stating that the time for the ABO to make a new determination is not yet "ripe" citing examples in support of the ABO claims that OCP has not yet fully complied with the ABO requirements pursuant to: the December 10, 2018 judgement; the ABO's subpoena *duces tecum*; as well as the ABO's February 26, 2019 letter to OCP.

Outcome of Order to Show Cause – Stipulated Time Frame for New Determination

At argument on OCP's order to show cause, the court held a conference, at which the parties agreed that ABO would issue a new determination by May 1, 2019. However, because OCP, as it conceded, would be unable to file a certified annual report for FY 2018 until June 2019, the parties further stipulated that, if ABO determines that OCP is no longer a local authority but anything in the annual report for fiscal year 2018 materially alters that determination, ABO could make a new determination within 60 days. ABO later obtained an adjournment on consent to extend the deadline for its determination until May 17, 2019.

Authorities Budget Office Report and Determination

The ABO has prepared this report with all deliberate speed and based on the facts and records provided it finds that the Partnership remains a local authority pursuant to Public Authorities Law (2) (2) in that it remains a not-for-profit corporation affiliated with, sponsored by, and created by a county, city, town or village government. OCP also is affiliated with, sponsored by, and created by a local industrial developmental agency or authority and other local public benefit corporations. Finally, OCP also is an affiliate of governments and of such authorities.

Conclusion

Available public records and the records provided to the ABO by the OCP after they received a Subpoena demonstrate that the Partnership was created by and has remained a sponsored entity by Orange County during the period in question. Both public officers and private individuals served on the OCP board members, until very recently, including the County Executive and the Chair of the IDA. On its federal tax forms and in news articles during the periods in question, OCP is referred to as a “creature” created by Orange County.

Specifically, within the records OCP provided to the ABO often state that OCP was established through the initiative of the County Executive, and that OCP’s operations were financed in part by matching funds from the County and the IDA. This establishes that OCP during the reporting periods in question was initially sponsored by both the County and the IDA, which fits squarely within the definition of a local authority in accordance with Section 2 (2)(b) of Public Authorities Law. The records provided by OCP indicate that this sponsorship continues to date. Also, of note is that the OCP’s Annual Reports for 2011-2016 each contain a report from the County Executive, further indicating OCP’s sponsored relationship and affiliation with Orange County.

Rather than comply with the requirements of the law, the Partnership has continued to evade the transparency requirements of a public authority. The Partnership does not disclose how it has specifically spent hundreds of thousands of taxpayer dollars it received during the period in question. Nor does it reveal the benefits it provides its members, which sponsor OCP on a varying scale. Furthermore, but for the issuance of the Subpoena duces tecum and the Court Order from the Supreme Court, Orange County, the ABO would not be aware of any of the financial activities of the Partnership and to a certain degree there is much that the ABO still does not know based upon the Subpoena responses by the OCP.

Yet, OCP continues to assert to the ABO that it is no longer connected with government and has discontinued representing itself as a representative of government. However, this is not accurate. OCP continues its course unaverred. It continues to represent itself to the public that it is the county’s office of economic development and that it is responsible for the packaging of government benefits provided within Orange County. Whether it is a press availability taken from OCP’s Facebook page or as substantiated by a complaint submitted to the ABO by a private individual, as recent as January 2019, OCP continues as it has since inception as acting as the first and last stop for economic development in Orange County.

Authorities Budget Office Censure and Warning

It is the role of the board and its management to ascertain corporate compliance under the law. It is their fiduciary duty. For these reasons the ABO has determined that it is censuring each of members of the Partnership’s the board of directors individually for failing in their fiduciary duty by supporting the

continued evasion of public reporting despite a 2011 determination. The ABO further has determined that the activities of the Chief Executive Officer, in carrying out the Partnership's continued evasion of the laws governing authorities, has reached the point where censure is appropriate. For these reasons the ABO formally censures Maureen Hallahan, the President and Chief Executive of the Orange County Partnership. The ABO warns OCP that further non-compliance will result in the ABO seeking removal of its members as well as seeking to dissolve the corporation.. It is expected that the Partnership remain compliant as a local authority, filing the requisite data to the PARIS system moving forward.