



New York State Office of the State Comptroller
Thomas P. DiNapoli

Division of State Government Accountability

Monitoring of Not-for-Profit Cemeteries for Fiscal Stability and Adequate Facility Maintenance

Department of State



Report 2016-S-79

July 2017

Executive Summary

Purpose

To determine if the Department of State's Division of Cemeteries sufficiently monitors not-for-profit cemetery corporations to ensure fiscal stability and adequate facility maintenance. This audit covers the period of January 1, 2014 to March 31, 2017.

Background

The Department of State's (Department) Division of Cemeteries (Division) oversees the establishment, maintenance, and preservation of burial grounds for all not-for-profit cemetery corporations (cemeteries) in New York State. As authorized by Article 15 of the Not-for-Profit Corporation Law (Law), and under the supervision of the State's Cemetery Board (Board), the Division works with cemetery officials on a wide range of issues, including the sale of lots, service fees, and acquisition of lands, to promote public welfare and to prevent cemeteries from falling into disrepair or insolvency. When a not-for-profit cemetery is abandoned, either due to fiscal issues or simply because there are not enough citizens willing or able to take on its corporate duties, responsibility generally falls to the local municipality and can become a financial and/or program burden on the community.

The Law establishes certain requirements for cemeteries to ensure the care, management, and protection of property. For instance, cemeteries must allot a portion of their revenue to two separate funds: a Current Maintenance Fund for current ordinary and necessary expenses, care, and maintenance; and a Permanent Maintenance Fund, the principal of which is to be held in trust for future maintenance and preservation. Cemeteries are required to file annual reports and financial reports with the Division, and must establish reasonable rules and regulations regarding the use, care, management, and protection of the property as well as reasonable charges for services and lot/plot prices. This information, as well as a statement identifying the Board as the regulator and key contact information, must be conspicuously posted and available for visitors. The Division has issued two online manuals to assist cemeteries in meeting these and other requirements.

The Division's monitoring and oversight is a critical means through which the State seeks to ensure that not-for-profit cemeteries do not become a burden on their local community. The Division is responsible for administering the cemetery provisions of the Law as well as the rules and regulations established by the Board. As of September 2016, the Division operated six regional offices with 17 full-time employees to oversee the 1,745 cemeteries under its jurisdiction. As part of its oversight and monitoring process, the Division strives to conduct a financial audit of each cemetery every three to five years and a physical inspection every five to seven years. The Division uses a mainframe database application (Mainframe) to record audit and inspection data as well as information from cemeteries' annual reports and financial reports. Staff use quarterly reports generated from the Mainframe to assist in monitoring cemeteries and prioritizing work. The Division has issued three policy and procedure manuals to guide its employees' monitoring activities.

Key Findings

- As of September 30, 2016, Division records indicate 642 cemeteries (37 percent) had overdue audits and 285 (16 percent) had delinquent annual reports. For 145 cemeteries (8 percent), audits were overdue and annual reports were delinquent as well.
- As of December 1, 2016, 391 cemeteries (22 percent) had not been inspected in over seven years.
- The Division's Mainframe information system is antiquated and captures only limited data. Weaknesses in data integrity, entry, and access also pose challenges in terms of data reliability and the Mainframe's usefulness as a risk assessment tool. Due to these data limitations, it is not currently feasible for the Division to broadly and routinely analyze the fiscal health of all 1,745 cemeteries under its jurisdiction. As a result, it cannot use the information to best focus its attention on locations that are in danger of failing and, given its relatively long cycle time between audits and inspections, risks missing key indicators of potential problems until it is too late to effectively intervene or provide assistance.
- Our analysis of the fiscal condition of 64 cemeteries using two measures developed by the Division found Permanent Maintenance Funds at 37 locations to be underfunded by a median of at least \$25,500. These same data limitations not only prevent similar analysis for many cemeteries, but also result in significant disparities in the amounts required depending on which analysis is used.
- All 71 cemeteries we visited appeared well maintained, but 38 (54 percent) did not have all the proper information posted for visitors, as required.
- The Division has not updated its internal policies and procedures or its manuals for cemeteries to reflect the latest laws and regulations. As such, it has limited assurance that staff are monitoring cemeteries properly and consistently and that cemeteries are aware of, and complying with, the Law and all Board policies, rules, and regulations.

Key Recommendations

- In designing a new data management system, include features that will allow the Division to more readily and accurately identify cemeteries at risk, increase its work planning efficiency, and enable centralized data entry and access.
- Work with each of the 37 cemeteries identified in our analysis of Permanent Maintenance Fund requirements to determine what actions each needs to take to ensure it is sufficiently funded.
- Ensure that all operational manuals used by Division and cemetery staff are up to date with the latest regulations.

Other Related Audits/Reports of Interest

[Department of State: Quality of Internal Control Certification \(2012-S-50\)](#)

[Department of State: Disposal of Electronic Devices \(2012-S-73\)](#)

State of New York
Office of the State Comptroller

Division of State Accountability

July 11, 2017

Ms. Rossana Rosado
Secretary of State
Department of State
99 Washington Ave.
Albany, NY 12231

Dear Secretary Rosado:

The Office of the State Comptroller is committed to helping State agencies, public authorities, and local government agencies manage government resources efficiently and effectively. By doing so, it provides accountability for tax dollars spent to support government operations. The Comptroller oversees the fiscal affairs of State agencies, public authorities, and local government agencies, as well as their compliance with relevant statutes and their observance of good business practices. This fiscal oversight is accomplished, in part, through our audits, which identify opportunities for improving operations. Audits can also identify strategies for reducing costs and strengthening controls that are intended to safeguard assets.

Following is a report of our audit entitled *Monitoring of Not-for-Profit Cemetery Corporations for Fiscal Stability and Adequate Facility Maintenance*. The audit was performed pursuant to the State Comptroller's authority as set forth in Article V, Section 1 of the State Constitution and Article II, Section 8 of the State Finance Law.

This audit's results and recommendations are resources for you to use in effectively managing your operations and in meeting the expectations of taxpayers. If you have any questions about this report, please feel free to contact us.

Respectfully submitted,

Office of the State Comptroller
Division of State Government Accountability

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State Government Accountability Contact Information:

Audit Director: Brian Reilly

Phone: (518) 474-3271

Email: StateGovernmentAccountability@osc.state.ny.us

Address:

Office of the State Comptroller
 Division of State Government Accountability
 110 State Street, 11th Floor
 Albany, NY 12236

This report is also available on our website at: www.osc.state.ny.us

Background

The Department of State's (Department) Division of Cemeteries (Division) oversees the establishment, maintenance, and preservation of burial grounds for all not-for-profit cemetery corporations (cemeteries) in New York State. As authorized by Article 15 of the Not-for-Profit Corporation Law (Law), and under the supervision of the State's Cemetery Board (Board), the Division works with cemetery officials on a wide range of issues, including the sale of lots, service fees, and acquisition of lands, to promote public welfare and to prevent cemeteries from falling into disrepair or insolvency. When a not-for-profit cemetery is abandoned, either due to fiscal issues or simply because there are not enough citizens willing or able to take on its corporate duties, responsibility generally falls to the local municipality.

The Division's monitoring and oversight is a critical means through which the State seeks to prevent such occurrences and the resulting financial and/or fiscal burdens on local communities. As such, it is responsible for administering the cemetery provisions of the Law as well as the rules and regulations established by the Board. As of September 2016, the Division operated six regional offices with 17 full-time employees (including five investigators and eight accountants) to oversee the 1,745 cemeteries under its jurisdiction. The Division only regulates cemeteries that are incorporated under the Law, which does not include other religious, municipal, national, private, or family cemeteries.

A cemetery derives its operating income from the sale of gravesites, interment fees, and investment income. As cemeteries age and become full, the income from the sale of gravesites and interments declines. The cemetery must nevertheless be kept open and tended. To ensure they are properly maintained, and to prevent them from becoming a liability to a municipality, the Law requires cemeteries to allot a portion of their revenue to separate trust funds to cover specific types of costs and financial obligations, including: a Current Maintenance Fund for current ordinary and necessary expense, care, and maintenance; and a Permanent Maintenance Fund, the principal of which is to be held in trust for future maintenance and preservation.

The Law also requires cemeteries to establish reasonable rules and regulations regarding the use, care, management, and protection of the property as well as reasonable charges for services and lot/plot prices. Cemeteries are required to file annual reports and financial reports with the Division within 90 days of their fiscal year end. Cemeteries are required to print and conspicuously post, either at the main office or, where there is no office, the main entrance, their rules and regulations, charges, and prices, including a statement identifying the Board as the regulator and key contact information (e.g., the local Division office, cemetery superintendent, and phone numbers). The Division has issued two online manuals – its Cemetery Law Manual and Manual for the New Treasurer (Treasurer's Manual) – to assist cemeteries regarding these and other requirements.

As part of its oversight and monitoring process, the Division conducts financial audits and physical inspections of cemeteries; it has an audit cycle of three to five years and an inspection cycle of five to seven years. For the period January 1, 2014 through November 30, 2016, the Division

conducted 849 audits and 812 inspections. The Division uses a mainframe database application (Mainframe) to record audit and inspection data as well as cemeteries' annual report and financial report information. Monthly reports generated from the Mainframe are used to assist in monitoring cemeteries and prioritizing inspections. The Division has issued three policy and procedure manuals – Cemetery Investigator's Procedure Manual, Cemetery Accountant's Audit Manual, and Reviewing Annual Reports Manual – to guide employees' monitoring activities.

Audit Findings and Recommendations

Given the nature of the challenges facing cemeteries in terms of upkeep, particularly in the face of decreasing revenue as they age, the Division's keen oversight is critical to cemeteries' fiscal and physical stability. While we found that the cemeteries we visited were generally in good condition, many did not have all the required information posted that would inform patrons and visitors as to how and where to report problems. Furthermore, we determined many cemeteries may not be sufficiently funded to ensure future maintenance and preservation.

The Division's ability to provide optimum oversight is hindered due to its use of antiquated technology and inefficient processes. For instance, weaknesses in data integrity, entry, and access, as well as limited data collection, pose challenges in terms of data reliability and the usefulness of its Mainframe data system as a risk assessment tool. As a result, it cannot use the information to better focus its attention on locations that are in danger of failing and, given its relatively long cycle time between audits and inspections, risks missing key indicators of potential problems until it is too late to effectively intervene or provide assistance. Robust systems and processes are critical management tools, without which the Department has little assurance that cemeteries under its jurisdiction: operate in a fiscally sound manner; are adequately maintained; and operate in compliance with Board regulations. For example:

- As of September 30, 2016, the Mainframe reports listed 642 (37 percent) cemeteries with overdue audits and 285 (16 percent) with delinquent annual reports. For 145 cemeteries (8 percent), audits were overdue and annual reports were delinquent as well.
- Using data from a December 1, 2016 report, we determined inspections were delinquent for 391 cemeteries (based on the last inspection date recorded and a seven-year inspection cycle).
- For 37 of 64 cemeteries tested, their Permanent Maintenance Funds were underfunded.
- Only 25 of 71 cemeteries tested had all the proper regulation and contact information posted for visitors.

The Division could achieve more efficient and effective oversight with a modernized database and improved data collection capabilities and techniques. Such improvements would allow the Division to conduct more comprehensive data analysis and, using a risk-based approach, better identify failing cemeteries, prioritize work, and direct its resources to where they are most needed. The Division is aware of the need for improvements and has started making changes, including work to update its systems. We note that this is an opportunity for the Division to expand its data collection capabilities, including types of data that its Mainframe currently does not maintain – an especially critical feature that would help the Division to better manage the backlog of inspections and audits and well as cemetery reporting.

Recently, the Board has created revisions to the Law designed to help cemeteries protect their financial assets; however, the Division has not updated its policies and procedures, nor its manuals for cemeteries, to reflect these and other new or revised regulations. As such, until the Division completes its audits and inspections, it has no assurance that cemeteries are aware

of, and complying with, the Law and all Board policies, rules, and regulations and that staff are monitoring cemeteries properly and consistently.

Data Management

The Division uses its Mainframe to capture data, including annual report data and relevant audit and inspection dates. However, the Mainframe is antiquated and cannot easily be updated to include additional types of data or performance measures essential for comprehensive oversight. Consequently, the Division also uses separate supplementary databases to record additional types of information, such as complaints, abandoned cemeteries, and audits and findings. The use of separate stand-alone, non-integrated systems limits the Division's ability to efficiently generate meaningful reports to identify risks.

During our audit, the Division had taken steps to prioritize its 2017 planned audits and inspections based on a range of risk factors, including but not limited to:

- Time since the last audit;
- Fund deficits;
- Decline in assets;
- Previous embezzlements;
- Whistle-blower complaints of possible fraud;
- Requests from an outgoing treasurer;
- Town takeovers; and
- Large vandalism disbursements.

However, the current Mainframe database does not capture all of this data. Furthermore, during our audit testing, we determined that the data the Mainframe does capture is often incomplete, with data fields either missing or containing inaccurate data. For instance, we found missing audit dates, duplication of annual report dates, missing fund balances for certain years, and inaccurate and missing acreage data.

Without a means to reliably and accurately capture a comprehensive range of critical data, the Division is limited in its ability to conduct meaningful risk analyses – and thus to identify, and better focus its attention on, locations in danger of failing. Especially given the relatively long cycle times between its periodic audits and inspections, the Division could miss key indicators of potential problems until it is too late to effectively intervene and avert fiscal failure or abandonment.

The Division also does not have an automated process for collecting inspection data electronically during site visits. Rather, data is collected on site using pen-and-paper inspection checklists and then recorded manually on hard copy records, which are then sent to either the Albany or New York City office for filing and storage. In preparation for subsequent site visits, regional offices must request the hard copy files from storage for review. This process is inefficient in terms of both time and staff resources.

Over the past several years, the Division reports it has also experienced various other problems

with its current Mainframe application, including issues with access and network connectivity. The Division recognizes that its Mainframe is in need of improvement, and officials indicate they are developing a new, more comprehensive database. Currently, the Division is also testing a tablet computer for mobile data collection. Introducing this type of technology device – especially if integrated into a robust data management system – should greatly increase the Division’s oversight efficiency and effectiveness. Not only will audit and inspection reports be readily available for retrieval when needed, but automated data entry into a more robust system could allow risks (e.g., declining assets and fund balances; increased expenses or rising complaints; sporadic fiscal reporting) to be identified, prioritized, and addressed in real time.

Monitoring Fiscal Stability

The Division’s goal is for all cemeteries to have sufficient money set aside to produce enough expected earnings to meet the annual maintenance costs on the burial plots they have already sold. The Division’s Treasurer’s Manual recommends a formula for making this assessment, which looks at what portion of the cemetery property has already been sold and then compares the current reported cost of annual maintenance with the expected earnings from the established reserves. In this calculation, cemeteries are required to estimate future investment income using a conservative, low-risk rate of return similar to that earned on short-term Treasury bills or bank CDs. Department officials informed us that they also sometimes use another, more basic analysis to assess the adequacy of reserves. This analysis is based on a standard rate of \$10,000 set aside per acre. Using this formula, a 50-acre cemetery would need to have at least \$500,000 reserved to be deemed adequately funded.

Unfortunately, due to the inaccuracies, omissions, and other limitations of the information contained in the Division’s outdated Mainframe system, we could not perform any meaningful analysis of the current adequacy of Permanent Maintenance Funds on a broad scale using either formula. Instead, the analysis must be done cemetery by cemetery after reviewing their detailed records. However, it is not currently feasible for the Division to perform this type of analysis on any routine basis, given the 1,745 cemeteries under its jurisdiction, in order to focus its attention on locations that are in danger of failing.

To assess the adequacy of cemeteries’ Permanent Maintenance Funds, we tested a sample of 64 cemeteries – 50 that we considered to be higher risk based on a preliminary analysis and 14 that became abandoned during our audit scope period. Files for 27 of the cemeteries in our initial sample were not usable because they were either missing important acreage information or financial data, could not be located, or were signed out to staff. We removed these cemeteries from our sample and replaced them with others. Based on the data available, only 27 of the 64 cemeteries we tested (23 active and 4 abandoned, or 42 percent) had adequate Permanent Maintenance Funds. The remaining 37 were underfunded by a median of at least \$25,500, but there were significant disparities in the amounts required depending on which analysis was used. Two examples of what we observed are detailed as follows:

- One smaller 13-acre cemetery in Cortland County that had already developed and sold 10 acres (77 percent) of its land reported annual operating costs for 2015 of about \$34,700 and had about \$117,000 set aside in its Permanent Maintenance Fund. Using the Division's recommended formula, this cemetery should have set aside enough funding to generate about \$26,720 per year (\$34,700 multiplied by the 77 percent of land sold). Assuming a 1 percent rate of return currently common for bank deposits, over \$2.5 million would need to have been already set aside for this cemetery's Permanent Maintenance Fund to generate that much income and be considered fully funded. In contrast, using the more basic acreage analysis, this cemetery would only need to reserve \$130,000.
- Similarly, a larger 218-acre cemetery in Niagara County with approximately 80 acres developed and sold (37 percent) reported about \$1.1 million in operating expenses for 2013 (its most recent report) and had about \$1.3 million in its Permanent Maintenance Fund – enough to provide about \$13,400 per year. Based on the recommended formula, the cemetery would need about \$408,000 per year (\$1.1 million multiplied by the 37 percent of land sold) and is therefore underfunded by about \$39.5 million. Using the acreage formula though, this cemetery would need only about \$2.2 million.

We shared the results of our testing with Division officials, who agreed that the recommended formula may not be the best measure for all cemeteries, and there may be other factors, such as size and location, that should also be considered. In addition, we note that because of the limitations in the data currently captured, it is difficult to differentiate between ongoing maintenance costs (e.g., lawn mowing, road or fence repair) that will continue to recur after a cemetery is filled and other operating costs (e.g., burial costs, site development, advertising). To the extent that the reported costs include these latter items, the recommended funding requirements can quickly escalate. The Division should consider issues like this as it develops its new system and decides what information it will require and retain in the future.

Facility Maintenance

We also selected a judgment sample of 71 cemeteries in 22 counties for a visual inspection of conditions and maintenance. During our visits, we used the Division's inspection criteria to conduct a visual inspection of the premises and to determine if the cemeteries were in good physical condition and well maintained. Our observations included conditions of fencing and roads, evidence of vandalism, and monuments that were pitched or leaning. We also observed whether the cemeteries had posted the proper rules, regulations, and Department information, either at the main office or the main entrance, as required.

In general, the cemeteries we visited were in good physical condition. However, only 25 of the 71 cemeteries (35 percent) had all the proper information posted for visitors. Of the remaining 46 cemeteries, we determined that:

- 38 did not have signage stating that the cemetery was regulated by the Board (these 38 did not have an office on site), including 12 that also did not have cemetery rules and regulations posted; and
- 8 cemeteries did not have the rules and regulations displayed.

Internal Policy and Procedure and Cemetery Guidance Manuals

The Division has issued three internal policy and procedure manuals to guide employees' monitoring activities: its Cemetery Investigator's Procedure Manual, Cemetery Accountant's Audit Manual, and Reviewing Annual Reports Manual. The Division also provides online guidance for cemeteries, with the Cemetery Law Manual and the Treasurer's Manual. While the Cemetery Law Manual was updated online on December 7, 2016, we found that most of the Division's manuals have not been maintained to reflect the latest additions and revisions to the Law and regulations. The communication of inaccurate or outdated information can create confusion and inefficiency, and could also have financial and compliance consequences, particularly for smaller not-for-profit cemeteries.

Most of the Division's manuals are not dated, so we were unable to determine the time that has elapsed since they were last updated. However, we found several examples of new or revised policies that should be included in the manuals, but were not. Specifically, we noted that:

- The Cemetery Investigator's Procedure Manual has not been updated to reflect the Division's "LEAN process," launched in January 2015 to make inspections and complaint handling more efficient.
- Effective March 2016, instead of requiring cemeteries to hold fidelity bonds, the regulations began requiring cemeteries to instead purchase crime insurance in the amount of \$15,000 or 10 percent of total financial assets up to \$500,000, whichever is greater (smaller cemeteries may request waivers from this requirement). Crime insurance covers more loss categories and is generally more affordable for cemeteries than fidelity bonds. While the Division did send cemeteries a bulletin in April 2016 informing them of this change, the Treasurer's Manual still contains the fidelity bond requirement. Furthermore, neither the Cemetery Accountant's Audit Manual nor the Reviewing Annual Reports Manual have been updated to reflect this change.
- Likewise, none of these manuals have been updated to reflect recent changes in the Law regarding definitions of cemetery size, which impacts requirements for annual financial statement reviews. Previously, medium-sized cemeteries (i.e., those with more than \$400,000 in assets) were required to have an annual review of their financial statements by a licensed CPA, and large cemeteries (i.e., those with more than \$1 million in assets) were required to have a complete CPA audit. The regulations raised these asset levels to \$1 million and \$10 million, respectively.
- The Treasurer's Manual contains information on the Division's regional offices, but the current version doesn't include the new Binghamton office, which opened in 2015.

Without accurate, up-to-date policy and procedure information to guide its accountants and investigators, errors can occur and efficiency and effectiveness can be adversely affected. If new hires do not have accurate, updated manuals to consult, it could negatively impact the Division's ability to properly monitor cemeteries. In addition, since many small cemeteries in particular are run by volunteers, who may have little to no experience in finance or legal requirements, up-to-date manuals are critical to ensure cemeteries are operating in compliance with the Law and regulations.

Recommendations

1. In designing the new data management system, include features that will allow the Division to more readily and accurately identify cemeteries at risk, thereby increasing work planning efficiency and effectiveness. Such features should include, but not be limited to:
 - Additional expanded data fields encompassing a range of risk factors;
 - Centralized data access; and
 - Integrated mobile data collection.
2. Work with each of the 37 cemeteries identified in our analysis of Permanent Maintenance Fund requirements to determine what actions each needs to take to ensure it is sufficiently funded.
3. Ensure that the required information for visitors is properly posted at cemeteries.
4. Ensure that all operational manuals used by Division and cemetery staff are up to date with the latest regulations.

Audit Scope, Objective, and Methodology

Our audit determined whether the Division sufficiently monitors not-for-profit cemeteries to ensure fiscal stability and adequate facility maintenance. The audit covers the period of January 1, 2014 through March 31, 2017.

To conduct our audit, we interviewed Division officials, participated in an inspection of a cemetery and a crematorium as well as an audit of a cemetery, and otherwise assessed related internal controls. We reviewed relevant sections of the Law and New York Codes, Rules and Regulations as well as the Divisions' own policies, procedures, and manuals.

We used data analysis to select two judgment samples of cemeteries based on the following risk factors: delinquent annual reports, audits, or inspection dates and declining or minimal reported fund balances. Our first sample was selected to determine, by physical observation, if the cemeteries under the Division's jurisdiction were well maintained. The sample consisted of 71 cemeteries: 32 were selected based on the risk factors stated above, and 39 were selected because of their proximity to the first group. We visited these cemeteries in November 2016. We selected our second sample to determine if the cemeteries under the Division's regulation had established adequate Permanent Maintenance Funds. Our sample consisted of 64 cemeteries: 50 were selected based on the risk factors stated previously, and another 14 were selected because they were abandoned during our audit scope period. To assess the adequacy of each cemetery's Permanent Maintenance Fund, we used the formula the Division recommends in its Treasurer's Manual, which is based on anticipated return on investment, as well as a simpler test based on acreage that Division officials indicated was sometimes used. To be conservative, we factored in a 1 percent rate of return on investment. If a cemetery met the requirements of either calculation, we considered it to be sufficiently funded.

We conducted our performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

In addition to being the State Auditor, the Comptroller performs certain other constitutionally and statutorily mandated duties as the chief fiscal officer of New York State. These include operating the State's accounting system; preparing the State's financial statements; and approving State contracts, refunds, and other payments. In addition, the Comptroller appoints members to certain boards, commissions, and public authorities, some of whom have minority voting rights. These duties may be considered management functions for purposes of evaluating threats to organizational independence under generally accepted government auditing standards. In our opinion, these functions do not affect our ability to conduct independent audits of program performance.

Authority

The audit was performed pursuant to the State Comptroller's authority as set forth in Article V, Section 1 of the State Constitution and Article II, Section 8 of the State Finance Law.

Reporting Requirements

We provided a draft copy of this report to Department officials for their review and formal comment. We considered their comments in preparing this final report and attached them in their entirety to it. In their response, Department officials generally agreed with our findings and recommendations. However, officials challenged our report's conclusion that 37 percent of the cemeteries had overdue Division Audits as of September 30, 2016. Specifically, Department officials stated that: "There is no statutory or regulatory prescription of how and when to conduct audits and inspections. The audit and inspection cycles described in the report are only internal Division targets." Nevertheless, we maintain that the audits in question were overdue in relation to the Division's prescribed targets. Further, we question the purpose of the Division's targets, if not to establish dates by which the audits were due.

We also revised the report to better describe: funding requirements of the Permanent Maintenance Fund; and the need for centralized access to and field collection of data. In addition, we made a minor modification to Recommendation No. 1.

Within 90 days after final release of this report, as required by Section 170 of the Executive Law, the Secretary of State shall report to the Governor, the State Comptroller, and the leaders of the Legislature and fiscal committees, advising what steps were taken to implement the recommendations contained herein, and where recommendations were not implemented, the reasons why.

Contributors to This Report

John F. Buyce, CPA, CIA, CFE, CGFM, Audit Director
Brian Reilly, CFE, CGFM, Audit Director
Walter J. Irving, Audit Manager
Todd Seeberger, Audit Supervisor
Theresa M. Nellis-Matson, CPA, Examiner-in-Charge
Matthew Conway, Senior Examiner
Nancy Hobbs, Senior Examiner
Carmine J. Giangreco, Staff Examiner
Kevin Fung, Senior Editor

Division of State Government Accountability

Andrew A. SanFilippo, Executive Deputy Comptroller
518-474-4593, asanfilippo@osc.state.ny.us

Tina Kim, Deputy Comptroller
518-473-3596, tkim@osc.state.ny.us

Brian Mason, Assistant Comptroller
518-473-0334, bmason@osc.state.ny.us

Vision

A team of accountability experts respected for providing information that decision makers value.

Mission

To improve government operations by conducting independent audits, reviews and evaluations of New York State and New York City taxpayer financed programs.

Agency Comments

STATE OF NEW YORK
DEPARTMENT OF STATE
 ONE COMMERCE PLAZA
 99 WASHINGTON AVENUE
 ALBANY, NY 12231-0001
 WWW.DOS.NY.GOV

ANDREW M. CUOMO
 GOVERNOR

ROSSANA ROSADO
 SECRETARY OF STATE

June 26, 2017

Mr. John Buyce
 Office of the State Comptroller
 Division of State Government Accountability
 110 State Street - 11th Floor
 Albany, NY 12236-0001

Re: Draft Audit Report 2016-S-79

Dear Mr. Buyce:

Thank you for the opportunity to respond to the draft audit findings and recommendations regarding the Monitoring of Not-for-Profit Cemeteries for Fiscal Stability and Adequate Facility Maintenance.

Our comments are as follows:

Overall Comments:

- The purpose of the audit, as stated in the audit report (the report), is to determine if the Department of State's Division of Cemeteries sufficiently monitors not-for-profit cemetery corporations to ensure fiscal stability and adequate facility maintenance. However, the report mostly addresses the Division's audit and inspections of cemeteries. While the Division does utilize audits and inspections, they are not the only methods that are used to monitor cemeteries. Other methods include analyzing annual reports, direct communication with cemetery officials and volunteers, and complaint resolution, among others.
- We disagree with the assessment that 37 percent of cemeteries had "overdue" Division audits "as of September 30, 2016." There is no statutory or regulatory prescription of how and when to conduct audits and inspections. The audit and inspection cycles described in the report are only internal Division targets. Therefore, audits and inspections not performed within Division targets are not properly considered "overdue." As noted on page 8 of the report, the Division has begun replacing its internal process of audit prioritization based on target dates with a risk-based approach to audits, in which the passage of time between audits will be only one factor.
- By statute (Not-for-Profit Corporation Law Section 1507(a)), only the principal of the Permanent Maintenance Fund must be held in trust for future maintenance and preservation. Income (interest and dividends) from the Permanent Maintenance Fund may be used for current maintenance and preservation. Consequently, it is incorrect to state, as the report does on page 1, third paragraph, second sentence, that: "For instance, cemeteries must allot a portion of their revenue to two separate funds: a Current Maintenance Fund for current ordinary and necessary expenses, care and



maintenance; and a Permanent Maintenance Fund, which is to be held in trust for future maintenance and preservation."

Recommendations:

Recommendation 1: In designing the new data management system, include features that will allow the Division to more readily and accurately identify cemeteries at risk, thereby increasing work planning efficiency and effectiveness. Such features should include, but not be limited to:

- *Additional expanded data fields encompassing a range of risk factors*
- *Centralized data entry and access; and*
- *Integrated mobile data collection*

Department Response: As the report notes, the Department has been working with The Office of Information Technology Services to update and enhance our data collection systems. This work began prior to the start of the audit and the Division continues to work with OITS to develop a more robust technology infrastructure that will address the needs of the Division.

The recommendation states that the new data management system should include centralized data entry. We agree that the data should be maintained and accessed centrally. Ideally, however, staff should be able to enter data directly into this central repository from the field.

Recommendation 2: Work with each of the 37 cemeteries identified in our analysis of Permanent Maintenance Fund requirements to determine what actions each needs to take to ensure it is sufficiently funded.

Department Response: The Division is committed to assisting cemeteries by assessing risk and providing guidance intended to prevent them from falling into disrepair or insolvency. As described and demonstrated during the audit, the Division performs a variety of actions, including inspections, audits and annual cemetery report reviews to assist cemeteries in identifying risk factors that may lead to insolvency and advises them on potential solutions. However, it is not within the Division's authority to force cemeteries to take recommended actions, and solutions are not achievable in all instances. Therefore, the Division cannot ensure that every cemetery is sufficiently funded.

Recommendation 3: Ensure that the required information for visitors is properly posted at cemeteries.

Department Response: We agree with this recommendation. The Department will continue to inspect cemeteries and notify them when signage is missing or inadequate and, when necessary and appropriate, take enforcement action to correct the non-compliance.

Recommendation 4: Ensure that all operation manuals used by Division and cemetery staff are up to date with the latest revisions.

Department Response: We agree with this recommendation. The Division has completed updating the Cemetery Law Manual and is working on updating the remaining manuals and guidance materials. It is important to note that the Division distributes a variety of guidance materials to the cemeteries, and therefore having an out of date operational manual does not necessarily demonstrate the cemetery is unaware of changes to applicable laws and regulations. More particularly, the Division mails annual bulletins directly to cemeteries. These annual bulletins communicate changes in applicable laws and regulations to the cemeteries and also provide detailed contact lists should they have any questions. The annual bulletins are also posted on the website and shared with Division staff. Division accountants and investigators

also regularly meet with cemeteries, both individually (at audits or at the request of cemetery directors or officers) and at regional and state-wide meetings. Consequently, Division staff and cemeteries are aware of changes in applicable law, regulations, and policy even though internal manuals or the Treasurers Manual have not yet been updated.

We appreciate the time and effort of the audit team to learn about the Division's operations. At the Department of State, we continually strive to improve our programs and we appreciate the suggestions and recommendations made by your office.

Respectfully,

A handwritten signature in black ink, appearing to read "Rossana Rosado". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Rossana Rosado
Secretary of State