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Ms. Lois Dilworth, Town Supervisor
Town of Barker Council Members
151 Hyde St.
P.O. Box 66
Castle Creek, NY 13744

Report Number: S4-09-94

Dear Town of Barker Officials,

One of the Office of the State Comptroller's primary objectives is to identify areas where local government officials can improve their operations and provide guidance and services that will assist them in making those improvements. Our goals are to develop and promote short-term and long-term strategies to enable and encourage local government officials to reduce costs, improve service delivery, and to account for and protect their entity's assets.

In accordance with these goals, we reviewed local governments' codes of ethics and procedures related to their implementation at 31 municipalities selected from throughout New York State. The objective of our audit was to examine local governments' ethics oversight procedures to determine if the local governments adopted and distributed codes of ethics in compliance with General Municipal Law (GML) and if the governing boards developed adequate procedures to monitor compliance with the codes of ethics and related statutory requirements.¹ We included the Town of Barker (Town) in this audit. Within the scope of this audit, we examined the relevant policies and procedures of the Town, conducted interviews with Town employees, reviewed the Town's current Code of Ethics, and evaluated the Town's oversight structure for ethics for the period January 1, 2009 to September 22, 2009.

This report of examination letter contains our findings and recommendations specific to the Town. We discussed the findings and recommendations with Town officials and considered their comments in preparing this report. Town officials generally agreed with our recommendations and indicated they planned to initiate corrective action. At the completion of our audit, we prepared a global report that summarizes the significant issues we identified at all of the municipalities audited. To augment our audit findings, we surveyed a statewide sample of municipalities to gather information about local officials' awareness of and compliance with current ethics requirements. A compilation of our survey results is included in the global report.

¹ General Municipal Law Article 18 (sections 800 through 813): Conflicts of Interest of Municipal Officers and Employees

Summary of Findings

The Town of Barker adopted the Town's Code of Ethics (Code) on March 13, 1989 in compliance with GML; however, the Code does not include provisions on recusal, the hiring and supervising of relatives, and the misuse of municipal resources. Further, Town officials did not distribute the Code to Town officials and employees, provide training to officers and employees on the provisions of GML and their Code, or notify officers and employees about whistle-blower protections that exist in Law. Although the Town established a Board of Ethics in March of 1989, it has remained inactive since 1993.

Background and Methodology

Taxpayers have the right to expect that their local government is run in a transparent and ethical manner, and that government officers and employees are acting in the best interests of taxpayers, and are not conflicted by personal interests. To help ensure that taxpayers' interests remain at the forefront in government operations, GML contains provisions prohibiting municipal contracts in circumstances in which local officials' public responsibilities conflict with their personal business interests. GML requirements are the minimum standards; local governments can also establish their own standards to provide more comprehensive ethical guidance for their officers and employees. Every local official and employee is responsible for becoming knowledgeable about, and complying with, these provisions.

Article 18 of GML requires local governments to adopt codes of ethics setting forth the standards of conduct reasonably expected of officers and employees, and to distribute these codes to all their officers and employees. It is important to note that GML sets the minimum standards for the codes of ethics municipalities are required to adopt. The governing board in each municipality should supplement these minimum standards to meet the municipality's specific circumstances, and routinely review and update the code to ensure it remains a current and meaningful document. To render a code of ethics effective, municipalities must also ensure that procedures are in place to make all officials and employees aware of any updates that occur in the code, and of their responsibilities for complying with the code.

We reviewed the contents of the Town's Code and examined the extent to which the Code is disseminated to Town officials and employees. We also interviewed relevant Town officials and employees to gain an understanding of the procedures in place designed to monitor employee compliance with such Code. This included reviewing and evaluating the effectiveness of this system by analyzing violations disclosed during the last three completed fiscal years.

We conducted this 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 objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Audit Results

GML requires local governments to adopt a code of ethics that applies to their officers and employees. The code of ethics adopted by the governing board must set forth standards of

conduct with respect to disclosure of interests in legislation before the local governing body, holding of investments in conflict with official duties, private employment in conflict with official duties, and constraints on future employment. The chief executive officer of every municipality is required to ensure that a copy of the municipality's code is distributed to every officer and employee of the municipality. If local governments do not ensure that every officer and employee receives a copy of their codes of ethics, including updates to the codes, all officers and employees may not be aware of their duties and responsibilities under the codes of ethics.

While not specifically required by GML, we believe that a local government's code of ethics, consistent with GML, should also provide guidance about other ethical issues, such as gifts and favors, recusal,² disclosure of confidential information, misuse of municipal resources, and hiring and supervising relatives. Further, to ensure that officers and employees are familiar with ethics laws and emerging ethics issues, the local government should offer training on these issues.

The local government could also notify employees about whistle-blower provisions that exist in Civil Service Law. For example, under certain circumstances, Civil Service Law provisions protect an employee from dismissal or other disciplinary action by the local government because the employee has disclosed (1) information regarding a violation of a law, rule or regulation that creates and presents a substantial and specific danger to public health or safety, or (2) information that the employee reasonably believes to be true and reasonably believes to be an "improper governmental action." Local officials can reinforce awareness of whistle-blowing protections by referring to them in the code of ethics or other board policies. Without knowledge of the protections afforded by whistle-blower provisions, local officials and employees may be unduly inhibited from reporting violations of law or other improper governmental action.

The Town adopted its Code on March 13, 1989. Pursuant to the Code, the Town Council established a Board of Ethics, but no one has occupied positions on the Board of Ethics since 1993. In compliance with GML, the Town's Code addressed disclosure of interests in legislation before the local governing body, holding of investments in conflict with official duties, private employment in conflict with official duties, and constraints on future employment. The Town's Code also addressed gifts and favors and disclosure of confidential information. However, the Code did not include provisions on recusal, the hiring and supervising of relatives and the misuse of municipal resources. To avoid the appearance of favoritism, employees and officials should not participate in or attempt to influence decisions to hire, discipline or fire or persuade others to hire their relatives, or directly supervise or evaluate the work of any relatives employed by the Town. Further, the Town did not distribute the Code to Town officials and employees, provide training to officers and employees on the provisions of GML and the Code, or notify them of whistle-blower protections in the Law. Consequently, all officers and employees may not be aware of their duties and responsibilities under the Town's Code. Further, without knowledge of the provisions afforded by whistle-blower provisions, they may be inhibited from reporting violations of law or other improper governmental action.

At the conclusion of our audit, we met with local officials to discuss our findings and recommendations. We have considered their responses in preparing this report. Local officials agreed with our findings and recommendations.

² To remove oneself from participation in a decision to avoid a conflict of interest

Recommendations

1. Town officials should ensure that the Code and any updates to the Code are distributed to all employees and officials.
2. The Town Council should review the Town's Code and, consider revising it to cover more than the minimum requirements of GML. For example, the Town Council could consider including provisions relating to other ethical issues, such as misuse of municipal resources, and hiring and supervising relatives.
3. Town officials should offer training to all officers and employees regarding the Code and emerging ethics issues, and ensure that officers and employees are made aware of whistle-blower protections that exist in Law.

The Town Council has the responsibility to initiate corrective action. A written corrective action plan (CAP) that addresses the findings and recommendations in this report should be prepared and forwarded to our office within 90 days, pursuant to Section 35 of the General Municipal Law. We encourage the Council to make this plan available for public review in the Town Clerk's office.

See the attached document for additional information on developing and filing a CAP. Our Office is available to assist you upon request. If you have any further questions, please contact the Binghamton Regional Office at (607)721-8306.

Sincerely,

Steven J. Hancox
Deputy Comptroller
Office of the State Comptroller
Division of Local Government
and School Accountability