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March 18, 2010

Ms. Mary F. Holtz, Supervisor
Members of the Town Council
Town of Cheektowaga
3301 Broadway
Cheektowaga, New York 14227

Report Number: S4-09-113

Dear Ms. Holtz and Members of the Town Council:

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 Cheektowaga 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 23, 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 adopted a Code of Ethics (Code) in compliance with GML. However, the Code could be improved by including provisions that address recusal, hiring and supervising relatives and the misuse of municipal resources. In addition, the Town did not maintain an updated list of individuals required to file annual financial disclosure forms. Consequently, we found that four individuals who were required to file did not do so because they may not have received a form. Furthermore, the Town has not established any procedures to use the disclosure forms to identify possible conflicts of interest, or provided training to officers and employees about the Town's Code, emerging ethics issues, and whistle-blower protections that exist in Law.

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 compliance with such law. This included reviewing and evaluating the effectiveness of this system by analyzing violations disclosed during the last three completed fiscal years. We also reviewed the activities of the Town's Board of Ethics, one of whose responsibilities is to review financial disclosure forms that some Town officials and employees are required to submit on an annual basis.

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.

Code of Ethics

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.

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 Town's Code did not include provisions on recusal, hiring and supervising relatives, and the misuse of municipal resources.³ 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.

The Town adopted its Code in 1985, and made minimal amendments in 1993 and 1994. Although it was originally adopted in 1985, the Town did not develop a method for distributing the Code until October 5, 2009, after our initial visit regarding the audit of the Town's Code.

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

³ The Town's Employee Handbook addresses misuse of municipal resources. The Town should reference the applicable section of the employee handbook or include this language in its Code.

Until that time, the Code had not been distributed to employees or officials, according to personnel in the human resources office. The human resource director indicated that he was not aware that it was the human resource department's responsibility to distribute the Code to all officials and employees. Additionally, the Town has not established a method of notifying employees and officials of changes that are made to the Code. As a result, employees and officials may not be aware of new ethical issues that arise and how they impact their position. Furthermore, the Town provides no training to officers and employees on the provisions of GML and the Code, and it does not notify them of whistle-blower protections. Consequently, all officers and employees may not be aware of their duties and responsibilities under the Town's Code. Further, without knowledge of the protections afforded by whistle-blower provisions, they may be inhibited from reporting violations of law or other improper governmental action.

Annual Financial Disclosures

Counties, cities, towns or villages with populations of 50,000 or more require certain of their officers and employees⁴ to file annual financial disclosure statements to help ensure that officers and employees are impartial and free from conflicts of interest in fulfilling their public responsibilities. Smaller local governments may require such disclosures by local action. The disclosure forms should be designed to obtain information pertinent to officers' or employees' financial involvement in business or organizations that may impair their ability to fairly and impartially perform their duties.

The governing body of any county or other municipality may establish a board of ethics. The responsibilities of a board of ethics include receiving annual financial disclosure forms from the municipality's officials and employees who are required to file them, and enforcing the filing requirement. Boards of ethics should establish processes to verify the completeness of the forms individuals submit. To verify completeness, boards of ethics should review each form to determine that all relevant questions were answered and follow up on any missing information. Boards of ethics should also take responsibility for reviewing the information contained on the disclosure forms to identify transactions that could pose conflicts of interest. To identify transactions that could pose conflicts of interest, boards of ethics could maintain a list of outside business interests, and supply the list of vendors to appropriate purchasing department personnel for their use in identifying potential interests in contracts that would be prohibited by GML.

The Town's Code requires that certain Town officers and employees file annual financial disclosure statements. The Town also established a Board of Ethics, and assigned it specific responsibilities, including reviewing financial disclosure forms that certain Town employees are required to submit. We found that the Town did not develop adequate procedures to monitor compliance with its Code and related statutory requirements. For example, the Council secretary maintains the list of 95 names of individuals who are sent a financial disclosure form to complete. Individuals holding certain positions have changed; therefore, she has updated the list. But, she has not compared the list of names to the list of required positions. Consequently, there are individuals who hold positions required to file that are not included in the yearly mailing of financial disclosure forms. We found that four individuals who were required to file did not do so because they may not have received a form. The lack of accuracy in the mailing list and the lack of filing enforcement may cause the Town to be unaware of existing conflicts. In addition,

⁴ In general, board members, department heads, policy-makers and local elected officials (except judges or justices)

one Board of Ethics member told us that several Board members do not fill out the entire form. Board of Ethics members indicated that, in the past, they have compared financial disclosure of investments and outside employment to Town vendor histories to determine if there were any possible conflicts of interest. However, they found the process cumbersome and do not do the comparison on a routine basis.

When local governments fail to review financial disclosure forms, they cannot identify any conflicts of interest that could pose ethical concerns for municipal officials. County officials can avoid the taint associated with conflicts of interest and promote transparency in their operations by fulfilling their responsibility to review financial disclosure forms in a diligent manner. When annual financial disclosure forms are not filed and reviewed, officials cannot be sure that those officers and employees who are acting in the public interest are not using their positions to further their private financial interest. Therefore there is an elevated risk that potential conflicts will go undetected.

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 generally agreed with our findings and recommendations. Officials indicated that Council members are notified that they should recuse themselves from a decision if they have an interest in the matter. They agreed that it is not included in the policy and should be. The Town Supervisor has been in contact with the Board of Ethics regarding the changes that need to be made to the list of people who are sent the financial disclosure forms. The Town Attorney also said that, while the Board of Ethics has a charter, he is not sure if the current Board members are aware of it.

Recommendations

1. Town officials should ensure that the Code, and any updates to the Code, is distributed to all employees and officials.
2. The Council should review the Code and consider revising it to cover more than the minimum requirements of GML. For example, the Council could consider including provisions that relate to 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.
4. The Board of Ethics should verify and ensure that all individuals covered by the annual financial disclosure requirements file completed annual financial disclosure statements.
5. Local officials should develop procedures for utilizing the information contained on annual financial disclosure statements to prevent or detect the occurrence of transactions involving conflicts of interest.

The 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 Buffalo Regional Office at (716)847-3647.

Sincerely,

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