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March 18, 2010

Mr. Richard B. Decker, Chairman of the Board of Supervisors
Members of the Chenango County Board of Supervisors
Chenango County Office Building
5 Court Street
Norwich, NY 13815

Report Number: S4-09-105

Dear Chenango County 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 Chenango County (County) in this audit. Within the scope of this audit, we examined the relevant policies and procedures of the County, conducted interviews with County employees, reviewed the County's current Code of Ethics, and evaluated the County's oversight structure for ethics for the period January 1, 2009 to September 29, 2009.

This report of examination letter contains our findings and recommendations specific to the County. We discussed the findings and recommendations with County officials and considered their comments in preparing this report. County 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

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

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.

Summary of Findings

The County adopted the Chenango County Code of Ethics (Code) in compliance with the GML, and distributed the Code to all County officers and employees. However, the Code could be improved by including provisions that address future employment restrictions, as well as hiring and supervising relatives.

Further, the County did not develop adequate procedures to monitor compliance with its Code and related statutory requirements. For example, in 1990 the County established a Board of Ethics to review all filed ethics complaints and review the submittal of annual financial disclosure statements. However, the County Board of Supervisors (Board) had not convened the Board of Ethics since it was established in 1990. Thus, no one reviewed the annual financial disclosure statements. We found that 30 of the 87 individuals required to file these statements in 2009 did not do so. When a local government does not develop mechanisms to ensure compliance with its code of ethics, local officials have little assurance that they are preventing and detecting unethical conduct.

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 County's Code and examined the extent to which the Code is disseminated to County officials and employees. We also interviewed relevant County 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 County's Board of Ethics, one of whose responsibilities is to review financial disclosure forms that some County 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 May 2002, the County revised its Code. In compliance with the GML, the County's Code addressed disclosure of interests in legislation before the local governing body, holding of investments in conflict with official duties and private employment in conflict with official duties. The County's Code also addressed gifts and favors, recusal, and disclosure of confidential information and misuse of municipal resources. However, the County's Code did not include provisions on constraints on future employment, and hiring and supervising relatives. To avoid the appearance of favoritism, employees and officials should not participate in or attempt to

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

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 County. In addition, the County 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 employees may not be aware of their duties and responsibilities under the County's Code. Further, without knowledge of the protections afforded by whistle-blower provisions, employees 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 employees[3] 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 County's Code requires that certain County officers and employees file annual financial disclosure statements. The County also established a Board of Ethics, and assigned it specific responsibilities, including reviewing financial disclosure forms that certain County employees are required to submit. We found that the County did not develop adequate procedures to monitor compliance with its Code and related statutory requirements. For example, in 1990 the County established a Board of Ethics to review ethics complaints and annual financial disclosure statements. However, the Board of Supervisors did not convene its Ethics Board to monitor compliance with its Code. Consequently, the Ethics Board did not meet since it was established in 1990 and did not review the annual financial disclosure statements to ensure that they were complete and submitted in a timely manner. Currently, annual financial disclosure statements received by County officials remain sealed and are not examined by anyone. Due to this weakness, we compared the list of 87 individuals who were required to submit annual financial disclosure statements in 2009 to the disclosure statements on file. We determined that 30 of the 87 individuals did not file annual financial disclosure statements because no one followed up with the delinquent filers; six of the 30 individuals were Board of Supervisor members. This is

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

particularly troubling because members of the Board of Supervisors should be setting an example for the other County officers and employees.

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 document their response to our audit findings. Local officials agreed with our findings. They indicated they plan to convene their Ethics Board in January 2010 to correct the deficiencies noted in our report.

Recommendations

1. The Board should review the County's Code and consider revising it to cover more than the minimum requirements of GML. For example, the Board could consider including provisions that relate to hiring and supervising relatives.
2. The County's Board of Ethics should verify and ensure that all individuals covered by the annual financial disclosure requirements file completed annual financial disclosure statements.
3. County 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.
4. County 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 Board of Supervisors 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 office of the Clerk of the County Legislature.

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