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March 18, 2010

Mr. Michael Zurlo, County Administrator
Members of the County Legislature
Clinton County
137 Margaret Street, Suite 208
Plattsburgh, NY 12901

Report Number: S4-09-92

Dear Clinton 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 Clinton 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 28, 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 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 County adopted the Code of Ethics and Disclosure Law (Code) in compliance with GML. However, the Code could be improved by including provisions that address hiring and supervising relatives. In addition, the County does not notify employees of whistle-blower protections that exist in Law.

Further, County officials did not develop adequate procedures to monitor compliance with their Code and related statutory requirements. For example, although a Board of Ethics was established, it has not met since it was established in 1998, and thus has not taken any action or performed any of its duties as outlined in the Code. Additionally, the County had established procedures in which financial disclosure statements were not opened and reviewed. As a result, the Board of Ethics did not review the annual financial disclosure statements. We found that four of the 71 individuals required to file these statements 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 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 also reviewed the activities of the County's Board of Ethics, one of whose responsibilities is to ensure the proper completion and filing of financial disclosure forms that some County 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.

The Legislature amended the County's Code of Ethics, by local law, in 1998. In compliance with GML, the County'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 County's Code also addressed gifts and favors, recusal, disclosure of confidential information, and misuse of municipal resources. Further, the County offers training on existing and emerging ethics issues. However the County's Code did not include provisions on hiring and supervising relatives. 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 County. In addition, the

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

County does not notify employees of whistle-blower protections that exist in Law. Without knowledge of 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 employees³ 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 ensuring the proper completion and filing of financial disclosure forms that some County employees are required to submit on an annual basis.

We found that the County did not develop adequate procedures to monitor compliance with its Code and related statutory requirements. For example, the County's Code outlines that the Board of Ethics is responsible for the enforcement of the Code and designates the Board of Ethics as the repository for completed annual statements of financial disclosure. However, we found that the Board of Ethics has not met since its establishment, and thus has not taken any action or performed any of its required duties. Further, the County has an established procedure whereby annual financial disclosure statements remain sealed and are not examined by anyone except the Board of Ethics, but only if an inquiry of the Board of Ethics would necessitate that the information be examined. As a result, financial disclosure forms have never been opened and reviewed, and thus County officials have no means to ensure that the submitted forms are complete and contain necessary information to prevent transactions that would be a conflict of interest. Due to this weakness, we compared a list of 77 individuals who were required to submit annual financial disclosure statements in 2009 to the disclosure statements on file. We determined that four of the 71 individuals did not file annual financial disclosure statements.

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

Since the County does not monitor compliance with the Code's provisions, there is a risk that violations of the Code may not be detected.

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 agreed with our recommendations and indicated they planned to initiate corrective action based on the recommendations in our final letter.

Recommendations

1. The Legislature should review the County's Code and consider revising it to cover more than the minimum requirements of GML. For example, the Legislature could consider including provisions that relate to hiring and supervising relatives.
2. County officials should ensure that officers and employees are made aware of whistleblower protections.
3. The Legislature and County officials should effectively oversee the County Ethics Board to ensure that it is functioning as directed by the County's Code.
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. 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 County Legislature 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 County Legislature to make this plan available for public review in the office of the Clerk of the Legislature.

See the attached document for additional information on filing a corrective action plan. Our Office is available to assist you upon request. If you have any further questions, please contact the Glens Falls Regional Office at (518) 793-0057.

Sincerely,

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