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March 18, 2010

Mr. Abraham Wieder, Mayor  
Members of the Board of the Village of Kiryas Joel  
Village of Kiryas Joel  
51 Forest Rd  
Monroe, NY 10950

Report Number: S4-09-100

Dear Village of Kiryas Joel 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.<sup>1</sup> We included The Village of Kiryas Joel (Village) in this audit. Within the scope of this audit, we examined the relevant policies and procedures of the Village, conducted interviews with Village employees, reviewed the Village's current Code of Ethics, and evaluated the Village's oversight structure for ethics for the period January 1, 2009 to October 14, 2009.

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

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

## **Summary of Findings**

The Village adopted a Code of Ethics (Code) in compliance with GML. However, the Code did not address recusal or include provisions on hiring and supervising relatives, and the misuse of municipal resources. Further, the Village provides no training to officers and employees on the provisions of the GML and the Village's Code. Consequently, all officers and employees may not be aware of their duties and responsibilities under the Village's Code.

## **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 Village's Code and examined the extent to which the Code is disseminated to Village officials and employees. We also interviewed relevant Village officials and employees to gain an understanding of the procedures in place designed to monitor 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.

## **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,<sup>2</sup> 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.

On February 15, 2008, the Village updated its Code. In compliance with GML, the Village'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 Village's Code also addressed gifts and favors and disclosure of confidential information. However, the Village's Code did not address recusal or include provisions on hiring and supervising 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 Village.

We found that, while the Village distributes the Code to officials and employees and notifies employees of whistle-blower protections, the Village provides no training to officers and employees on the provisions of the GML and their Code. Instead, the Village holds informal discussions at staff meetings that may or may not address particular ethics questions voiced by employees. Consequently, all officers and employees may not be aware of their duties and responsibilities under the Village's Code.

At the conclusion of our audit, we discussed our findings and recommendations with local officials. We have considered their responses in preparing this report. Local officials generally agreed with our findings and recommendations. Officials acknowledged that the Village provides no formal ethics training on the GML's conflicts of interest provisions or the Village's Code, but also indicated that the law does not require a formal training program concerning these

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<sup>2</sup> To remove oneself from participation in a decision to avoid a conflict of interest

matters. Officials also told us that it provides the Village officers and employees with copies of the Code, and that the conflicts of interest statute is posted in accordance with law. Village officials stated that, in their opinion, the Village Attorney's responses to informal inquiries on ethics questions, which usually occur once or twice a year, constitute a type of informal ethics training.

### **Recommendations**

1. The Board should review the Village's Code of Ethics and consider revising it to cover more than the minimum requirements of GML. For example, the Board could consider including provisions that relate to misuse of municipal resources and hiring and supervising relatives.
2. The Board should adopt adequate procedures to ensure that officers and employees are impartial and free from conflicts of interest in fulfilling their public responsibilities, including requiring officers and employees file the annual financial disclosure statement.

The Board 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.

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 Newburgh Regional Office at (845) 567-0858.

Sincerely,

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