



THOMAS P. DiNAPOLI
COMPTROLLER

STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER
110 STATE STREET
ALBANY, NEW YORK 12236

STEVEN J. HANCOX
DEPUTY COMPTROLLER
DIVISION OF LOCAL GOVERNMENT
AND SCHOOL ACCOUNTABILITY
Tel: (518) 474-4037 Fax: (518) 486-6479

March 18, 2010

Mr. John Thomas, Chairman of the Board of Supervisors
Members of the Montgomery County Board of Supervisors
20 Park St. PO Box 1500
Fonda, NY 12068-1500

Report Number: S4-09-86

Dear Montgomery 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 Montgomery 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 23, 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. 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 Montgomery County Ethics Renewal Law (Ethics Law) in compliance with GML. However, the Ethics Law could be improved by including provisions that address hiring and supervising relatives and the misuse of municipal resources. In addition, County officials did not distribute the Code of Ethics and disclosure requirements in accordance with GML and its Ethics Law. We found that a copy of the Ethics Law is distributed only to those employees and officials required to submit an annual disclosure.

Further, the County did not develop adequate procedures to monitor compliance with its Ethics Law and related statutory requirements. For example, in 2007 the County established an Ethics Board to review all filed ethic complaints and oversee the annual financial disclosure process. However the County Board of Supervisors (Board) did not provide adequate guidance and direction to the Ethics Board to ensure its members were aware of their duties and responsibilities. As a result, the Ethics Board met only once since it was established in 2007, and it did not review the annual financial disclosure statements. We found that 14 of the 71 individuals required to file these statements did not do so; six of these 14 individuals had not filed in the previous year, either. This is particularly troubling because one of the 14 individuals was a member of the Ethics Board who should be setting an example for other County officers and employees. 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 Ethics Law and examined the extent to which the Ethics Law 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 Ethics Board, 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.

On February 27, 2007, the County revised its Ethics Law. In compliance with GML, the County's Ethics Law 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 Ethics Law also addressed

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

gifts and favors; recusal; and disclosure of confidential information. However the County's Ethic Law did not include provisions on 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 County.

When revising the Ethics Law, it is important to communicate any changes to all employees and officials so that all staff understand their roles and responsibilities. We found that, while the County employs approximately 500 full and part-time staff, the Ethics Law was distributed only to the 71 officials and employees who are required to submit annual financial disclosure statements. While GML and the County's Ethics Law contain provisions that require the distribution of the Ethics Law to all staff and officials, County officials did not monitor to ensure all employees and officials actually received a copy of the Ethics Law. In addition, the County provides no training to officers and employees on the provisions of GML and Ethics Law, 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 County's Ethics Law. 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. We commend Montgomery County officials for continuing to require financial disclosure, even though, because of population decline, they are no longer mandated to keep this provision in their local code.

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.

³ The County's Employee Handbook addresses damage of machinery or equipment, wasting materials, or defacing County property. The County should reference the applicable section of the employee handbook or include this language in its Code.

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

The County's Ethics Law requires that certain County officers and employees file annual financial disclosure statements. The County also established an Ethics Board, and assigned it specific responsibilities, including reviewing financial disclosure forms that certain County employees are required to submit.⁵

We found that the County did not develop adequate procedures to monitor compliance with its Ethics Law and related statutory requirements. For example, in 2007 the County established an Ethics Board to review ethics complaints and annual financial disclosure statements. However, the Board of Supervisors did not provide adequate guidance and direction to the Ethics Board to ensure the members of the Ethics Board were aware of their duties and responsibilities. Consequently, the Ethics Board met only once since it was established in 2007 and did not review the annual financial disclosure statements to ensure that they were complete and submitted in a timely manner. Due to this weakness, we compared the list of 71 individuals who were required to submit annual financial disclosure statements in 2009 to the disclosure statements on file. We determined that 14 of the 71 individuals did not file annual financial disclosure statements and found that no one followed up with the delinquent filers. One of the 14 individuals was an Ethics Board member. This is particularly troubling because members of the Ethics Board should be setting an example for other County officers and employees. Six of the 14 individuals had also failed to file disclosures for the prior year.

Since the County does not distribute its Ethics Law to all employees and officials, provide training on its requirements, or monitor compliance with its provisions, there is a risk that violations of the Ethics Law 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 generally agreed with our findings and recommendations.

Recommendations

1. County officials should ensure that the Ethics Law, and any updates to the Law, are distributed to all employees and officials.
2. The Board should review the County's Ethics Law and consider revising it to cover more than the minimum requirements of GML. For example, the Board could consider

⁵ The Ethics Board is also required to receive and review sworn complaints of alleged violations of Article 18 of GML; to investigate alleged violations, conduct hearings and make recommendations to the Board of Supervisors, as the Ethics Board deems appropriate; to render advisory opinions and maintain them on file; to provide for public inspection of certain records; and to prepare an annual report to the Board of Supervisors and recommend changes to the County's Ethics Law.

including provisions that relate to misuse of municipal resources and hiring and supervising relatives.

3. County officials should offer training to all officers and employees regarding the Ethics Law and emerging ethics issues, and ensure that officers and employees are made aware of whistle-blower protections.
4. The Board should provide members of the Ethics Board with information about their duties and responsibilities.
5. The Ethics Board should verify and ensure that all individuals covered by the annual financial disclosure requirements file completed annual financial disclosure statements.
6. 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 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 Board to make this plan available for public review in the Clerk of the Board'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 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