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March 18, 2010

Mr. Edward P. Mangano, County Executive
Members of the County Legislature
County of Nassau
1550 Franklin Avenue
Mineola, NY 11501

Report Number: S4-09-98

Dear Nassau 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 Nassau 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 22, 2009.

This report of examination letter contains our findings and recommendations specific to the County. 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.

Summary of Findings

The County adopted and distributed the Nassau County Code of Ethics (Code) to all officers and employees in compliance with GML. In addition, the County developed adequate procedures to

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

monitor compliance with their Code and related statutory requirements. The County also requires certain officers and employees to file financial disclosure forms on an annual basis, and it has implemented procedures to ensure that these officers and employees complete the forms.

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, or delegate the review of, 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.

The County revised its Code in April 2007. In compliance with GML, the County distributes the Code to each officer and employee. The 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 Code also addressed gifts and favors, recusal, disclosure of confidential information, misuse of municipal resources, and hiring and supervising relatives. Also, in order to ensure that officers and employees are familiar with Code and emerging ethics issues, the County offers training when needed on specific issues within the Code. Lastly we found that the County notifies its employees of whistle-blower protections.

Annual Financial Disclosure

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

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

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

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, or assigning the review of, financial disclosure forms that certain County employees are required to submit.

We found that the County developed adequate procedures to monitor compliance with its Code and related statutory requirements. The County established a Board of Ethics, which meets at least every two months, to review and discuss financial disclosure issues and determine if officers and employees are in violation of the Code. We found that the County's Board of Ethics implemented proper procedures to ensure that the officers and employees complete the financial disclosure forms. As a result, all required officers and employees filed an annual statement. If an individual fails to complete the form or the form is deficient, the Board of Ethics gives the individual 15 days to complete the form. If the individual fails to file within the 15-day period, the Board of Ethics sends the individual and their appointing authority a Notice of Delinquency. If the officer or employee fails to complete the form after these correspondences, then he or she will be subject to hearing where, at the Board of Ethic's discretion, penalties could involve, but not be limited to, suspension or removal from office.

At the conclusion of our audit, we met with local officials to discuss our findings. Based on our audit tests, we concluded that the County adopted and disseminated a comprehensive Code, and that it effectively monitors compliance with the Code's provisions, including the requirement that certain officials submit annual financial disclosure statements. Local officials agreed with our findings.

Sincerely,

Steven J. Hancox
Deputy Comptroller
Office of the State Comptroller
Division of Local Government
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cc. John Ciampoli, County Attorney
Elissa Stein Cushman, Chief Bureau of Legal Counsel
Members of the Board of Ethics