

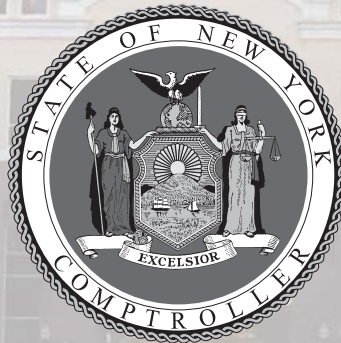
OFFICE OF THE NEW YORK STATE COMPTROLLER



DIVISION OF LOCAL GOVERNMENT
& SCHOOL ACCOUNTABILITY

Public Authority Board Member Compensation

2009-MS-4



Thomas P. DiNapoli

Table of Contents

	Page
AUTHORITY LETTER	2
INTRODUCTION	3
Background	3
Objective	5
Scope and Methodology	5
Comments of Local Officials	5
BOARD MEMBER COMPENSATION	6
Recommendations	9
APPENDIX A Response From Authority Officials	10
APPENDIX B Audit Methodology and Standards	12
APPENDIX C How to Obtain Additional Copies of the Report	13
APPENDIX D Local Regional Office Listing	14

State of New York Office of the State Comptroller

Division of Local Government and School Accountability

January 2010

Dear Public Authority Officials:

A top priority of the Office of the State Comptroller is to help local government officials manage government resources efficiently and effectively and, by so doing, provide accountability for dollars spent to support government operations. The Comptroller oversees the fiscal affairs of local governments statewide, as well as compliance with relevant statutes and observance of good business practices. This fiscal oversight is accomplished, in part, through our audits, which identify opportunities for improving operations and Public Authority governance. Audits also can identify strategies to reduce costs and to strengthen controls intended to safeguard local government assets.

Following is a report of our audit entitled Public Authority Board Member Compensation. This audit was conducted pursuant to the State Comptroller's authority as set forth in the State Constitution and in accordance with various State statutes.

This audit's results and recommendations are resources for local government officials to use in effectively managing operations and in meeting the expectations of their constituents. If you have questions about this report, please feel free to contact the local regional office for your county, as listed at the end of this report.

Respectfully submitted,

*Office of the State Comptroller
Division of Local Government
and School Accountability*

Introduction

Background

Generally, New York State establishes local public authorities to finance, construct and operate revenue-producing facilities for the public benefit; assist the public sector with projects intended to spur economic development; provide financial support for non-profit sector projects that serve public needs; and coordinate the development or management of resources that transcend political boundaries. New York State residents fund these operations through user rates, tolls and fees.

There are more than 760 local public authorities in New York State. The State and/or local government officials generally appoint the board members that serve these authorities.¹ Some local public authorities may compensate their board members, while other local public authorities are prohibited by law from doing so.

We selected 20 local public authorities throughout New York State to include in our audit to determine if authorities were complying with statutory requirements and limitations regarding board member compensation. The table on the following page provides the specific authorities chosen:

¹ Housing authorities generally have two tenant board members that are elected by residents of the authorities' housing.

Authority	Geographical Location	Annual Revenue	Number of Board Members	Compensation Allowed
Water Authorities				
Suffolk County	Suffolk County	\$148,528,000	5	yes
Erie County	Erie County	\$64,366,553	3	yes
Onondaga County	Onondaga County	\$28,626,824	5	yes
Monroe County	Monroe County	\$59,082,946	7	yes
Housing Authorities				
Port Chester	Westchester County	\$3,894,617	7	yes
Greenburgh	Westchester County	\$5,298,107	7	yes
Yonkers Municipal	Westchester County	\$17,080,269	7	yes
Spring Valley	Rockland County	\$1,231,286	7	yes
Town of Hempstead	Nassau County	\$8,303,258	7	yes
Rockville Centre	Nassau County	\$1,667,204	7	yes
Industrial Development Agencies				
Babylon	Suffolk County	\$833,136	7	no
Westchester	Westchester County	\$1,677,155	7	no
Guilderland	Albany County	\$51,832	5	no
Greene County	Greene County	\$1,054,721	7	no
Resource Recovery Agencies				
Ulster County	Ulster County	\$15,406,520	5	no
Islip	Suffolk County	\$43,966,082	5	no
Solid Waste Mgmt. Authorities				
Rockland County	Rockland County	\$25,965,814	17	no
Western Finger Lakes	Wayne & Yates Counties	\$1,803,857	8	no
Water and Wastewater Authority				
Dutchess County	Dutchess County	\$6,344,272	5	no
Regional Water Board				
Upper Mohawk Valley	Oneida County	\$16,985,826	12	no

Objective

The objective of our audit was to determine whether authority board members were receiving more compensation than was legally authorized for the period January 1, 2007 through March 31, 2008. Our audit addressed the following related question:

- Are active and retired authority board members receiving salary and other forms of compensation to which they are not entitled?

Scope and Methodology

We examined total compensation provided to board members of 20 local public authorities and the enabling statutes and other pertinent documents that authorized total board member compensation for the period January 1, 2007 to March 31, 2008.

We conducted our audit in accordance with generally accepted government auditing standards (GAGAS). More information on such standards and the methodology used in performing this audit is included in Appendix B of this report.

**Comments of
Authority Officials**

The results of our audit and recommendations have been discussed with Authority officials and their comments, which appear in Appendix A, have been considered in preparing this report.

Board Member Compensation

The compensation to which board members are entitled differs for different authorities. Public Authority Law dictates that the county legislative body² sets board member compensation amounts in water authorities. Public Housing Law states that, for public housing authorities, board members may be compensated on a per diem basis at a rate to be fixed by the authority not to exceed, in the aggregate, \$2,000 for a member and \$2,500 for a chairman per year. Lastly, the respective statutes for the water and wastewater authority, regional water board, industrial development agencies, resource recovery agencies, and solid waste management authorities selected for audit do not permit these authorities to provide any compensation to their board members. The term compensation refers to the total consideration paid to an officer or employee for his or her services, including salary and wages and fringe benefits.

We found that local authorities in the State need to closely examine the compensation they are paying their board members to ensure that they are compensating them appropriately. Specifically, we found that some local authorities neglect to consider the value of fringe benefits that they provide board members as part of the compensation package. As a result, some authorities are exceeding the authorized compensation limits.

We found that 75 percent of the authorities we examined compensated their board members appropriately. Ten of these authorities were not authorized to compensate their board members, and they did not. Of the five that could compensate their board members, three provided compensation within statutory limitations and two chose not to provide compensation. However, we found that the remaining 25 percent of local public authorities audited were providing compensation, including fringe benefits, which exceeded authorized amounts by \$244,278. Three water authorities and one housing authority failed to consider the value of the board member's fringe benefits, such as health insurance, in determining the total amount of compensation paid to each board member. Additionally, one housing authority failed to pay the

² Certain water authority statutes refer to a Board of Supervisors, which have since been replaced with a County Legislature. The County Legislatures assumed the duties of the Boards of Supervisors, and thus have assumed the responsibility of setting the compensation for water authority boards.

compensation of its board members; these board members were inappropriately compensated by the town in which the authority is located. Not only did the town inappropriately compensate the authority's board members, but it also provided them with compensation, including fringe benefits, that was well beyond statutory limitations.

The value of the fringe benefits provided to board members increased their compensation to inappropriate amounts. In addition to the salary paid to the water and housing authority board members, some also received health, dental, vision and life insurance coverage; payments in lieu of health insurance coverage; reimbursements for Medicare expenses; and the personal use of authority vehicles.

The following table details the salary and fringe benefits for the five authorities that paid their board members too much compensation during the period January 1, 2007 through March 31, 2008.

Authority Type	Authorized Compensation	Salary/ Per Diem Received	Health Ins.	Vehicle	Life Ins.	Dental/ Optical	Total Compensation Received	Compensation in Excess of Allowed Comp
Water Authority								
Suffolk County*	\$127,400	\$127,400	\$39,954	\$2,021	\$3,546	\$4,010	\$176,931	\$49,531
Erie County	\$80,654	\$80,654	\$23,857	-	\$3,014	\$4,879	\$112,404	\$31,750
Onondaga County	\$25,625	\$25,625	\$54,962	-	\$1,123	\$6,692	\$88,402	\$62,777
Total	\$233,679	\$233,679	\$118,773	\$2,021	\$7,683	\$15,581	\$377,737	\$144,058
Housing Authority								
Port Chester	\$563	\$563	\$36,428	-	-	\$1,498	\$38,489	\$37,926
Hempstead	-	\$14,291	\$44,861	-	-	\$3,142	\$62,294	\$62,294
Total	\$563	\$14,854	\$81,289	-	-	\$4,640	\$100,783	\$100,220
Global Total	\$234,242	\$248,533	\$200,062	\$2,021	\$7,683	\$20,221	\$478,520	\$244,278

*The total compensation presented in this global report represents a 15-month audit period. The individual letter report for the Suffolk County Water Authority presented total compensation over a 12-month audit period.

For the five authorities whose board members received compensation in excess of authorized amounts, the compensation received (\$478,520) was double, 204 percent, the amount that was permitted (\$234,242). Approximately 82 percent, or \$200,062, of the excess compensation was in the form of health insurance. The increasing cost of health insurance premiums has significantly affected the amount of unauthorized compensation

provided to the board members of these five authorities. In each of these five cases, the decision to provide fringe benefits to board members in addition to the salary and wage amounts authorized was made by prior administrators³ without proper authorization. The subsequent administrators continued to provide these fringe benefits to board members based on past practice. In one case, health insurance had been provided to board members as early as 1968. The current economic and budget constraints experienced by local governments, including public authorities, strain their ability to meet obligations that are valid and properly authorized; public authorities should not fund benefits that have not been properly authorized. Regardless of past practices, current authority administrators should be aware of statutory requirements and limitations for compensating their board members.

Water Authorities – The three water authorities collectively provided their board members with compensation totaling \$144,058 in excess of what was authorized by their respective county legislative bodies during the period January 1, 2007 through March 31, 2008. While the authorities provided board members with salaries that equaled the amounts authorized by the counties, they failed to consider the value of the fringe benefits as compensation.

Before our audit began, the Monroe County Legislature ratified the Monroe County Water Authority's practice of providing health, dental and life insurance benefits in addition to the annual compensation set by resolution in 1989, and thereby provided the authorization for the benefits paid. During the audit period, the Suffolk County Water Authority terminated fringe benefits, except for life insurance, to board members; however, it continued to inappropriately provide health insurance to one former board member.

Housing Authorities – Board members for two local public housing authorities were compensated \$100,220 more than the amounts authorized by statute. During our audit period, the Port Chester Housing Authority provided its board members with fringe benefits totaling \$37,926 in addition to authorized

³ For four of these authorities, the decision to compensate board members was made by authority administration. For board members of the Hempstead Housing Authority, the decision to compensate was made by the Town of Hempstead. This decision was made outside statutory requirements, which indicate that it is the responsibility of the Authority to determine compensation within the statutory limitations.

per diem amounts of \$563. The Town of Hempstead Housing Authority never set a per diem rate for its board members; instead, the Town of Hempstead inappropriately compensated authority board members with per diem payments totaling \$14,291 and fringe benefits totaling \$48,003. Officials of these two housing authorities did not consider fringe benefits as part of compensation. Hempstead Housing Authority officials informed us that they were not aware of their responsibility to set the per diem rate of compensation for their board members and did not know that the town had no authority to compensate the authority board members. Officials from the Port Chester Housing Authority, the Town of Hempstead Housing Authority, and the Town of Hempstead each told us that the manner in which board members were provided compensation was based on past practice.

Recommendations

1. Local public authorities should ensure that their board members are compensated in accordance with statutory requirements and limitations
2. Local public authorities should consider the value of fringe benefits provided to board members as part of compensation.

APPENDIX A

RESPONSES FROM AUTHORITY OFFICIALS

We provided a draft copy of this global report to each of the 20 public authorities audited and requested responses. Of the 13 public authorities that responded, eight generally agreed with our findings and recommendations, two had no comments on the report, and three disagreed with our report findings. The authorities that responded were the Babylon IDA, Dutchess County Water and Wastewater Authority, the Erie County Water Authority, the Guilderland IDA, the Islip Resource Recovery Agency, the Monroe County Water Authority, the Onondaga County Water Authority, the Port Chester Housing Authority, the Rockland County Solid Waste Management Authority, the Rockville Centre Housing Authority, the Suffolk County Water Authority, the Ulster County Resource Recovery Agency, and the Western Finger Lakes Solid Waste Management Authority. The seven remaining authorities were provided with an opportunity to respond to this global report, but they chose not to do so.

The following comments were excerpted from the responses we received.

The following authorities generally agreed with the global report findings and recommendations; a selection of their comments is shown below:

Western Finger Lakes Solid Waste Management Authority: “I have reviewed the contents of the report and concur with the information presented as it pertains to the Western Finger Lakes Solid Waste Management Authority.”

Guilderland IDA: “Our organization is, of course, pleased that the audit report contains no negative findings relative to the Guilderland I.D.A.”

Rockville Centre Housing Authority: “I have no problem with the above mentioned report but do find it very difficult to accept the lack of internal review to secure proper procedures by some of the public authority units. Moreover, I believe that all authorities supported by public funds, should be audited and some of the key audit functions should be the review of both monetary compensation and benefits and the proper approval process within the authority under the guidelines of both state and federal rules and regulations.”

Ulster County Resource Recovery Agency: “The Ulster County Resource Recovery Agency is in agreement with your report and has no recommendations for changes.”

Rockland County Solid Waste Management Authority: “We appreciate having been given the opportunity to be a part of this examination. I am sure this audit is of great benefit to the people of the State of New York.”

Port Chester Housing Authority: “We concur with the report’s recommendations.”

Babylon IDA: “We have reviewed the report and we concur with the recommendations.”

Monroe County Water Authority: “Unlike certain other public authorities mentioned in the draft report, the Monroe County Legislature (the “County Legislature”) had already fully resolved the issue even before the OSC had started the audit.”

The following authorities, all water authorities, disagreed with the report findings.

Suffolk County Water Authority: “The SCWA recognizes and appreciates the professional manner in which the Office of the State Comptroller conducted its audit, and the SCWA fully supports the recommendation contained in the draft report. However, as we previously indicated in our letter dated May 11, 2009, the SCWA respectfully disagrees with the findings of the draft report that board members received compensation beyond what was legally authorized during the audit period.”

Onondaga County Water Authority: “As a preliminary matter, the OCWA Board believes that it acted in good faith to implement the spirit and letter of the law with respect to board member compensation, and does not believe that the Board Members received health, dental, optical and life insurance benefits not authorized by the Onondaga County Legislature.”

Erie County Water Authority: “The ECWA’s enabling statute, Public Authorities Law Section 1053(1), provides that “...the Members of the Authority shall receive such compensation for their services as shall be fixed by the Board of Supervisors...”. The term “compensation” is not defined by the enabling statute. While the Comptroller’s office has concluded that the Commissioner’s compensation must be approved by the Erie County Legislature, it has not cited and clearly defined authority in support of its position that the ECWA may not provide the benefits to its three Commissioners.”

State Comptroller’s Note

The enabling statutes for each of these water authorities provide that the members of the Authorities “shall receive such compensation as shall be fixed by the board of supervisors [now the County Legislature],” but do not define the term “compensation.” The Comptroller’s Office believes that the term “compensation” as used in these statutes includes fringe benefits because we have long maintained that the term “compensation” generally connotes the total consideration paid to an officer or employee for his or her services, including salary or wages and fringe benefits (see, e.g., 2009 Opns St Comp No. 2000-9, 25; 1988 Opns St Comp No. 88-64, p 126; 1987 Opns St Comp No. 87-33, p 52; 1987 Opns St Comp No. 87-8, p 14; 1985 Opns St Comp No. 85-13, p 15). The Authorities have the power to provide their respective Board members with compensation only to the extent authorized by their respective County Legislatures; each of these water authorities provided its Board members with compensation that exceeded what was authorized by its respective County Legislature.

APPENDIX B

AUDIT METHODOLOGY AND STANDARDS

We reviewed each local public authority's enabling statute, and other pertinent documents to determine the amount, if any, of allowable board member compensation. For authorities whose member compensation was determined by county resolution, we reviewed such resolutions in order to determine the amount of compensation that was authorized by the county legislature.

To accomplish our objective, we interviewed authority officials, reviewed relevant documents and records, and performed audit tests to determine the total amount of compensation provided to authority board members during the period January 1, 2007 through March 31, 2008. For the Hempstead Housing Authority: subsequent to the completion of fieldwork, and due to additional information that came to our attention, we returned to the Authority to assess whether the Authority board members were still receiving fringe benefits. We reviewed their fringe benefits for the period January through May 2009. Specifically, we:

- Reviewed and concluded as to whether or not the authority was legally authorized to provide compensation, including salary and wages and fringe benefits to board members. If they were authorized to provide such compensation, we determined the amount authorized.
- Identified board members and prior board members that may be receiving compensation. We obtained board member names and tested to verify the completeness and accuracy of the lists.
- Obtained and reviewed payroll records, insurance invoices, and cash disbursements records in order to determine all sources of compensation provided to board members.
- Verified that board members receiving compensation beyond what was authorized for their service as a board member were not eligible to receive such compensation for other reasons (i.e., retired former employee eligible to receive the benefit through previous employment with the authority).
- Calculated the amount of compensation provided in excess of authorized amounts.

We conducted this performance audit in accordance with generally accepted government auditing standards (GAGAS). 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 objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

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