

# Town of Erwin

## Justice Court

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**MARCH 2018**

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OFFICE OF THE NEW YORK STATE COMPTROLLER  
**Thomas P. DiNapoli, State Comptroller**

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# Report Highlights

## Audit Objective

Determine whether the Justices ensured receipts were collected, deposited, recorded, reported and remitted in an accurate and timely manner.

## Key Findings

- The Justices did not prepare monthly bank reconciliations and accountabilities, and errors went undetected and uncorrected.
- The Justices did not ensure vehicle and traffic violations were adjudicated and reported in a timely manner.

## Key Recommendations

- The Justices should perform a periodic review of all Court accounting records, including reconciling cash assets and known liabilities, and promptly investigating and resolving any discrepancies.
- The Justices should review the Traffic Safety Law Enforcement and Disposition reports to identify Department of Motor Vehicle (DMV) reporting errors and tickets eligible for DMV’s Scofflaw Program.

Town officials generally agreed with our report and indicated they plan to initiate corrective action.

## Background

The Town of Erwin (Town) is located in Steuben County.

Two Justices, Bierwiler and Yorio, adjudicate legal matters within the Court’s jurisdiction, such as vehicle and traffic, criminal, civil and small claims cases. A full-time and part-time Court clerk assist the Justices with processing cases and their related financial transactions, including submitting monthly financial activity reports and traffic dispositions to various State agencies.<sup>1</sup>

### Quick Facts

2016 Revenues	\$418,866
Rank in Steuben County by 2016 Revenues	4th
2016 Vehicle and Traffic Charges Processed	2,825

## Audit Period

January 1, 2016 – October 12, 2017. We extended our scope for the accountability back to January 1, 2013.

<sup>1</sup> Office of the State Comptroller’s Justice Court Fund and the DMV.

# Justice Court Operations

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## How Should Justices Account for Court Funds?

Unlike other municipal operations, town justices do not account for financial transactions on a fiscal year basis and are not required to complete annual financial statements. Instead, they are required to account for cash receipts and disbursements from month to month and determine accountability (by preparing a list of court liabilities and comparing it with reconciled bank balances) on a monthly basis.

Bail posted by defendants (or others on their behalf) for pending cases is a deposit to guarantee their appearance in court to answer charges. If they appear, the bail money is returned. Since bails can involve significant amounts of money and remain with the court for long periods of time, it is essential that each justice maintain an accurate accounting of bail. Exonerated bail,<sup>2</sup> less any applicable fees, is returned to the person that paid it, without being reported to the Office of the State Comptroller's Justice Court Fund (JCF). If, after a good faith effort to locate the person who posted bail fails, a court may transfer such money to the supervisor. Cash bail still unclaimed after six years becomes the municipality's property.

## Accountabilities and Bank Reconciliations Were Not Prepared

Neither the Justices nor the Court clerks prepared monthly bank reconciliations or accountabilities. Instead, the Court clerk kept an annual check register in a computerized spreadsheet that detailed deposits and checks. The register inaccurately noted when checks cleared. Therefore, we performed reconciliations of the Justices' bank statements with their records of bail for pending cases, cash books and JCF reports for the period January 1, 2013 through June 12, 2017. We noted:

1. A listing of old bail deposits from former Justices totaling \$2,696 that was on deposit in the current fine accounts rather than being turned over to the Supervisor.
2. The Justices failed to timely and properly transfer money from the combined bail account to their individual fine accounts when defendants used bail to pay their fines and surcharges and forfeited bail.
3. Once the amount of stale bail in the fine accounts was exhausted to make up for the error in #2 (above), the Justices periodically transferred money to their fine accounts from the bail account without determining the reason the fine account was short.

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<sup>2</sup> At the conclusion of a case, the bail becomes exonerated, as long as it was not previously forfeited.

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4. Money was not always transferred from fine accounts when errors were made by the clerks, such as depositing fines into the wrong Justice's account.
  5. Unidentified funds totaling \$119 from a former Justice were not remitted to the JCF.
  6. Justice Yorio's fine account had a \$35 shortage.

The Justices should have identified all of these errors if they had performed proper accountabilities and reconciliations.

### **How Does the Court Enforce Vehicle and Traffic Violations?**

One of the responsibilities of a justice court is to adjudicate vehicle and traffic violations. Law enforcement officials issue Uniform Traffic Tickets (UTTs) for vehicle and traffic infractions. The Department of Motor Vehicles (DMV) tracks the tickets by adding pertinent information to its Traffic Safety Law Enforcement and Disposition (TSLED) database. Upon adjudication, when all associated fines are paid, the court must upload the ticket's disposition to TSLED for removal from the pending ticket database. The TSLED database produces reports that are electronically available to each local court on a monthly basis. Court officials use the reports as a tool to verify the accuracy of the court's records against the information in the State's database and to help ensure tickets are processed in a timely manner. In addition, a TSLED report of the cases that have been pending for 60 days should be generated monthly to identify individuals who either have not appeared in court to answer their ticket or have not paid their fine. The Court has procedures in place to report these cases to DMV for enforcement through its Scofflaw Program.<sup>3</sup>

### **The Court Did Not Ensure Vehicle and Traffic Violations Were Adjudicated and Reported in a Timely Manner**

The Court did not use the TSLED database reports to identify reporting errors and individuals eligible for referral to the Scofflaw Program. We reviewed the TSLED pending ticket report dated February 28, 2017 for cases with appearance dates after January 1, 2016. The report listed 1,383 tickets; we found 129 disposed tickets were not reported to the DMV. As a result, drivers' DMV records were not updated in a timely manner.

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<sup>3</sup> The DMV Scofflaw Program allows local justice courts to notify DMV when an individual has an unresolved traffic ticket (failure to pay the fine or failure to appear on the court date) for a 60-day period. When this occurs, DMV notifies the individual and gives them 30 additional days to address the issue. If the individual has not taken action, then DMV suspends the individual's license until they address the outstanding ticket.

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Although there are formal procedures in place for referring tickets to the Scofflaw Program, they do not specify when this should occur. Therefore, the clerks indicated they referred tickets to the Scofflaw Program when they had time. As of February 28, 2017, there were 426 (31 percent) pending cases<sup>4</sup> before the Court that were not adjudicated within 60 days and eligible for referral to the Scofflaw Program. The clerks referred 205 pending tickets between May 16, 2017 and August 9, 2017, but 221 tickets were not referred as of June 12, 2017. When we brought this to the Court clerk's attention, she referred 168 of the 221 tickets to the Scofflaw Program during our fieldwork.

Timely review of reports would ensure drivers' records were accurate and help ensure timely collection of fines and other revenues.

## **What Do We Recommend?**

The Justices should

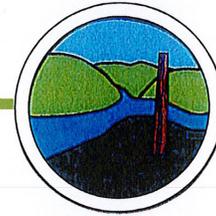
1. Perform a periodic review of all Court accounting records, including the reconciliation of cash assets and known liabilities, and promptly investigate and resolve any discrepancies.
2. Report and remit any unidentified money in the Justices' bank accounts to JCF.
3. Remit old bail to the Supervisor.
4. Timely and properly transfer money from the combined bail account to their individual fine accounts when defendants use bail to pay their fines and surcharges and forfeit bail.
5. Review the TSLED reports to identify DMV reporting errors and tickets eligible for referral to the Scofflaw Program.

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<sup>4</sup> The pending ticket report did not indicate amounts owed.

# Appendix A: Response From Town Officials

**TOWN OF ERWIN**  
**310 TOWN CENTER ROAD**  
**PAINTED POST, NEW YORK 14870**



## **TOWN OF ERWIN**

FAX: (607) 962-3313  
WEB: [www.erwinny.org](http://www.erwinny.org)

## **SUPERVISOR**

David B. Erwin  
(607) 962-7021

## **COUNCILMEN**

Warren Baker  
Frank Curreri  
Gary Roush  
Douglas Cole

## **TOWN MANAGER**

Rita Y. McCarthy  
(607) 962-7021

## **TOWN CLERK**

Eve Fisher  
(607) 936-3652

## **TOWN ATTORNEY**

David English  
(607) 936-8647

## **HIGHWAY SUPT.**

Daniel Hamilton  
(607) 962-0821

## **JUSTICES**

Ron Yorio  
Peter Bierwiler  
(607) 936-3122

## **ASSESSOR**

Connie Luckner  
(607) 936-8913

## **CODE ENFORCEMENT /BLDG. INSPECTION**

Douglas Wicks  
Bryan Hallgren  
(607) 936-4646

## **SEWER & WATER**

Elwin "Twig" Terwilliger  
(607) 962-3483

## **EMERGENCY #911**

February 27, 2018

Mr. Edward V. Grant Jr., Chief Examiner  
Division of Local Government and School Accountability  
Rochester Regional Office  
16 W. Main Street, Suite 522  
Rochester, NY 14614-1608

RE: Draft Report of Examination 2017M-266 - Response

The Town of Erwin appreciates the guidance of the Comptroller's Office in improving the administrative operations of our Town Justice Court. We are pleased to have been competently serving the public and safeguarding the public's money for over 50 years. Further, for the last six years the Town has taken the extra precaution of engaging an external Certified Public Accountant to review the financial transactions of the court. The number of cases processed by the Town of Erwin Justice Court annually is the second largest in Steuben County.

The Town has completed the following corrective actions:

The Town is performing a monthly review of all Court accounting records. A monthly checklist has been created, the Monthly Checklist for Review of Justice Court Records worksheet, and has been implemented for all accounts, including reconciliation of all bank statements. Judges are reviewing and signing all monthly bank statements and reconciliations.

All monies have been identified and sent to the Justice Court Fund with the March monthly report.

A new process to track "stale" bail has been established, and is reviewed monthly so that all "stale" bail will be tracked, identified as to source, and remitted to the Supervisor in a timely fashion. To date, all "stale" bail which was held in the Justice Court has been turned over to the Town Supervisor.

When a defendant is using a bail remittance to pay fines and surcharges, money is being transferred timely from the bail account to reflect such transactions.

With the new monthly checklist and review,

TSLED reporting is up to date. Going forward, tickets eligible for the Scofflaw Program are being pulled and reviewed by the Judges. After each case is reviewed, eligible tickets are properly transmitted to Department of Motor Vehicles.

Sincerely,

  
Rita Y. McCarthy  
Town Manager

## Appendix B: Audit Methodology and Standards

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We conducted this audit pursuant to Article V, Section 1 of the State Constitution and the State Comptroller's authority as set forth in Article 3 of the New York State General Municipal Law. To achieve the audit objective and obtain valid audit evidence, our audit procedures included the following:

- We interviewed Board members and Justices to gain an understanding of the Board's oversight of the Justices.
- We performed cash counts of the Justices' cash on hand on June 12, 2017.
- We prepared a bank reconciliation for the Justices' bank accounts and performed an accountability for the Justices' bank accounts for the period January 1, 2013 through June 12, 2017.
- We obtained and reviewed the Justices' pending bail reports and stale bail report for former Justices as of June 12, 2017.
- To determine whether receipts were deposited in a timely manner and whether data in the computerized software was reliable, we randomly selected June 2016 and January 2017 from the period of January 2016 through May 2017 using a random number generator.
- We reviewed all disbursements for the period of January 1, 2016 through June 12, 2017 to determine whether any disbursements were issued to cash, Justices or the clerks. We also randomly selected 11 disbursements from each bank account to determine whether they were supported.
- We reviewed the violations with the Court clerk to determine which violations were eligible for referral to the Scofflaw Program. We also verified this information by reviewing New York State Vehicle and Traffic Law.
- We obtained the February 28, 2017 TSLED pending tickets report to determine the number of pending tickets. We then selected all cases that had appearance dates after January 1, 2016. We then reviewed all the cases that were eligible for referral to the Scofflaw Program with the Court clerk and reviewed case files to determine whether the defendant had paid, should have been referred to the Scofflaw Program or was a partial payer.

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

Unless otherwise indicated in this report, samples for testing were selected based on professional judgment, as it was not the intent to project the results onto the entire population. Where applicable, information is presented concerning

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the value and/or size of the relevant population and the sample selected for examination.

A written corrective action plan (CAP) that addresses the findings and recommendations in this report should be prepared and provided to our office within 90 days, pursuant to Section 35 of General Municipal Law. For more information on preparing and filing your CAP, please refer to our brochure, *Responding to an OSC Audit Report*, which you received with the draft audit report. We encourage the Board to make the CAP available for public review in the Clerk's office.

## Appendix C: Resources and Services

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### **Regional Office Directory**

[www.osc.state.ny.us/localgov/regional\\_directory.pdf](http://www.osc.state.ny.us/localgov/regional_directory.pdf)

### **Cost-Saving Ideas** – Resources, advice and assistance on cost-saving ideas

[www.osc.state.ny.us/localgov/costsavings/index.htm](http://www.osc.state.ny.us/localgov/costsavings/index.htm)

### **Fiscal Stress Monitoring** – Resources for local government officials experiencing fiscal problems

[www.osc.state.ny.us/localgov/fiscalmonitoring/index.htm](http://www.osc.state.ny.us/localgov/fiscalmonitoring/index.htm)

### **Local Government Management Guides** – Series of publications that include technical information and suggested practices for local government management

[www.osc.state.ny.us/localgov/pubs/listacctg.htm#lmgm](http://www.osc.state.ny.us/localgov/pubs/listacctg.htm#lmgm)

### **Planning and Budgeting Guides** – Resources for developing multiyear financial, capital, strategic and other plans

[www.osc.state.ny.us/localgov/planbudget/index.htm](http://www.osc.state.ny.us/localgov/planbudget/index.htm)

### **Protecting Sensitive Data and Other Local Government Assets** – A non-technical cybersecurity guide for local government leaders

[www.osc.state.ny.us/localgov/lgli/pdf/cybersecurityguide.pdf](http://www.osc.state.ny.us/localgov/lgli/pdf/cybersecurityguide.pdf)

### **Required Reporting** – Information and resources for reports and forms that are filed with the Office of the State Comptroller

[www.osc.state.ny.us/localgov/finreporting/index.htm](http://www.osc.state.ny.us/localgov/finreporting/index.htm)

### **Research Reports/Publications** – Reports on major policy issues facing local governments and State policy-makers

[www.osc.state.ny.us/localgov/researchpubs/index.htm](http://www.osc.state.ny.us/localgov/researchpubs/index.htm)

### **Training** – Resources for local government officials on in-person and online training opportunities on a wide range of topics

[www.osc.state.ny.us/localgov/academy/index.htm](http://www.osc.state.ny.us/localgov/academy/index.htm)

## Contact

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