



Town of Virgil Justice Court Operations

Report of Examination

Period Covered:

January 1, 2013 — January 27, 2015

2015M-77



Thomas P. DiNapoli

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State of New York Office of the State Comptroller

Division of Local Government and School Accountability

August 2015

Dear Town 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 tax 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 Town Board 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 of the Town of Virgil, entitled Justice Court Operations. This audit was conducted 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.

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

The Town of Virgil (Town) is located in Cortland County and has approximately 2,400 residents. The Town is governed by an elected Town Board (Board) which includes the Town Supervisor (Supervisor) and four Board members. The Board is responsible for the general oversight of the Town's financial activities, which includes the financial operations of the Town Justice Court (Court).

The Court has one elected Justice who is responsible for overseeing Court operations. The Justice employs a Court clerk (clerk) to assist with the financial responsibilities. The Justice has jurisdiction over certain civil and criminal cases and adjudicates motor vehicle and traffic violations (traffic tickets). The Justice is using a computerized software system (system) to account for the majority of the Court transactions. The Justice imposes and collects fines, fees and bail money and is responsible for reporting the Court's monthly financial activities to the State Comptroller's Justice Court Fund (JCF) and remitting all moneys collected to the Supervisor. The Court reported a total of approximately \$69,000 in fines and fees during 2013 and 2014.

Objective

The objective of our audit was to review the internal controls over the Court's financial activity. Our audit addressed the following related question:

- Did the Justice ensure proper controls were in place to adequately safeguard moneys?

Scope and Methodology

We examined the Court records and reports for the period January 1, 2013 through January 27, 2015.

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 are included in Appendix C of this report. 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 the value or size of the relevant population and the sample selected for examination.

Comments of Town Officials and Corrective Action

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

specified in Appendix A, Town officials generally agreed with our recommendations and indicated they planned to take corrective action. Appendix B includes our comments on the issues raised in the Town's response letter.

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 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 this plan available for public review in the Town Clerk's office.

Justice Court Operations

The Justice must ensure adequate controls are in place to safeguard all moneys collected by the Court. These controls should help the Justice ensure that all receipts are deposited, tickets are properly accounted for and adjudicated,¹ dismissals are properly supported, disbursements to the Supervisor are accurate and Court transactions are properly reported to JCF. The Justice is also responsible for collecting and accounting for bail moneys received. The Justice must ensure that Court collections are reconciled to corresponding liabilities (monthly accountability) and the status of each vehicle and traffic ticket is periodically updated with the New York State Department of Motor Vehicles (DMV).

The Justice should have procedures regarding the enforcement of unpaid tickets to ensure fines are collected as soon as possible and Court personnel should maintain sufficient records to identify balances of unpaid fines. An option for any tickets with fines and surcharges that remain unpaid is to use DMV enforcement through its Scofflaw Program.² The Justice is required to present his records and dockets to the Board for audit at least once a year. The purpose of this annual audit is to identify conditions that need improvement, provide general oversight of Court operations and assure that public money was properly deposited and accurately recorded and accounted for.

The Justice generally ensures controls are in place to safeguard moneys. While the Justice has adequate controls for fines and fees collected by the Court and all moneys collected are properly accounted for, the Justice does not ensure the clerk is pursuing collections of unpaid traffic tickets. As a result, the Court has 17 unpaid tickets in our scope period that could represent \$2,900 in uncollected fines and fees. In addition, although the Board performs an annual audit of the Justice's records, it could be enhanced by including a review of documentation such as case files and bail records, in addition to the bank statements and the JCF reports that are already included in the audit.

¹ The Justice must make a formal judgment or decision on each ticket (i.e., fine/fee or dismissal).

² New York State law provides that a New York State driver's license, or the privilege to drive in New York State for out-of-state licensees, will be suspended if the licensee fails to appear in response to a traffic summons or fails to pay a fine imposed by the court after 60 days. After a suspension occurs, the defendant must also pay a \$70 scofflaw fee in addition to any fines and surcharges before the suspension is lifted.

Cash Receipts and Disbursements — The clerk handles the majority of the cash collections, does all the recording in the system and reports case dispositions to DMV. The Justice makes the deposits, prepares and signs all the checks (to the Supervisor and for returned bail) and submits monthly reports to JCF. The Justice informed us that he reviews the cashbook report³ to ensure the money the clerk recorded as collected was what he deposited. The Justice also indicated that he reviews JCF reports before he submits them to ensure the activity is reported properly and does informal monthly accountabilities.

We gathered and traced evidence from the Town's system, DMV, JCF, bank statements and case files to ensure tickets were properly adjudicated, deposited and reported to DMV and JCF. We also tested all bail disbursements to ensure they were properly returned and the ending bail balance in the bank was supported by a list of bail. Our tests revealed minor immaterial discrepancies that we communicated to the Justice. We also performed a monthly accountability for two months and found that the Justice had enough money in his bank account to cover his liabilities.

Pursuing Collections – The Justice does not have procedures for the clerk to follow with respect to pursuing unpaid traffic tickets and does not ensure the clerk maintains a list of unpaid traffic tickets.

Due to these control weaknesses, we evaluated the Court's enforcement efforts. Of the 48 cases we reviewed, 17 tickets were eligible for referral to the DMV Scofflaw Program but were not referred. Although the clerk consistently referred tickets in situations where the defendants did not appear for their court dates, she did not consistently pursue collections of tickets where a fine or fee was adjudicated and outstanding fines and fees were still due. The 17 tickets could represent potentially \$2,900 in uncollected fines and fees.

Lastly, although the Board performs an annual audit by reviewing the bank statements and the JCF reports, Board members indicated they do not review any other records, such as supporting case files and bail records/disbursements. A more thorough annual audit would ensure bail disbursements are proper and provide the Board with an added measure of assurance that Court moneys are safeguarded and unpaid traffic tickets are pursued in a timely manner.

Recommendations

The Justice should:

1. Ensure unpaid traffic tickets are pursued in a timely manner.

³ This is the cash receipts journal in the system.

2. Ensure the clerk maintains a list of unpaid traffic tickets.

The Board should:

3. Enhance its annual audit of the Justice's records and reports to ensure bail disbursements are proper and traffic tickets are pursued in a timely manner.

APPENDIX A

RESPONSE FROM TOWN OFFICIALS

The Town officials' response to this audit can be found on the following pages.

The Town's response letter refers to a page number that appeared in the draft report. The page numbers have changed during the formatting of this final report.

Virgil Town Court
1176 Church Street
Cortland, New York 13045

Response To:
State of New York
Office of the State Comptroller
Binghamton Regional Office
State Office Building, Suite 1702
Binghamton, New York 13901

July 29, 2015

Regarding: Town of Virgil Justice Court Operations Audit 1/1/13 to 1/27/15

Subject: Audit Response Letter

Thank you for performing the audit on the Town of Virgil Court. After review of the draft report I have the following comments on the draft findings:

p. 6: "The Justice generally ensures controls are in place to safeguard moneys... the Justice does not ensure the clerk is pursuing collections of unpaid traffic tickets. As a result, the Court has 17 unpaid tickets in our scope period. I requested the list of tickets referenced above so I could review the status of each ticket.

The results of my review found:

Out of the 17 tickets referenced in the report there are three instances where two tickets are issued to the same defendant. When two or more tickets are issued to the same defendant that should be viewed as one instance not two in my opinion.

See
Note 1
Page 10

Currently eight of the reported 17 tickets eligible for suspension are currently submitted to NYS DMV for suspension.

See
Note 2
Page 10

Two tickets eligible for suspension are associated with a criminal case that have not been heard by court for lack of appearance by the defendant.

One ticket the court believes is dismissed.

See
Note 3
Page 10

There are five tickets of the 17 listed still eligible to be submitted for suspension.

The audit showed the Court has accounted for all monies received and had appropriate safe guards in place.

The Court is using a filing system that ages the fines due, however it appears there are a few instances that tickets eligible for submittal for license suspension during the period audited had not been processed. I am confident those defendants would have eventually been submitted for license suspension using judicial discretion regardless of the audit.

The audit concludes a need to submit defendant's for suspensions of driver's licenses to collect revenue. NYS V&TL: 510-4(a) allows for the suspension of a New York driver's license for "failure to answer an appearance ticket or to pay a fine" the submittal for suspension is not mandatory, 510-4 "may be suspended". The purpose of the Court is not to generate revenue.

Note: Submitting for license suspension does not guarantee the fines will be paid, so the amount referenced by the audit report is only an expansive estimate. Some of the cases the audit listed for suspension are for failure to appear not a result of a conviction. If there has not been a conviction, and sentence imposed, no estimate of possible revenue should be made. The facts of an individual case may not merit a fine. In my opinion, it is not appropriate to impose an expectation on the Judiciary of what a sentence will be.

See
Note 4
Page 10

Thank you for the time and effort you spent at my Court during the audit. The experience and information shared will only help improve the processes we use to safe guard the people's money.

Sincerely,

Hon. R. Scott Elston
Virgil Town Judge

APPENDIX B

OSC COMMENTS ON THE TOWN'S RESPONSE

Note 1

Each ticket is issued its own identifying number and an index number that is unique. Each ticket could potentially have its own fine and is, therefore, treated individually.

Note 2

At the time of our review, these tickets had not yet been submitted to DMV for suspension. We commend the Justice for taking corrective action on these outstanding tickets.

Note 3

Court officials did not present any records to indicate this ticket was dismissed.

Note 4

The estimates in our report do not “impose an expectation on the judiciary of what the sentence will be.” We simply inform the reader of the potential value of the tickets that were not pursued. We understand that some of the outstanding tickets could result in dismissal, which is why our report states that “tickets could represent potentially \$2,900 in uncollected fines and fees.”

APPENDIX C

AUDIT METHODOLOGY AND STANDARDS

To accomplish our audit objective, we interviewed appropriate Town officials, tested selected records and examined pertinent documents for the period January 1, 2013 through January 27, 2015. Our examination included the following:

- We interviewed the Justice, Board members and clerk to gain an understanding of Court operations and oversight. We asked about written policies and procedures, monthly accountability reviews and the annual audit process.
- We obtained a backup of the data in the system and compared this information using computer-assisted techniques to the DMV and JCF records to ensure tickets were accounted for properly within the system and that they were reported to DMV and JCF properly. Based on the results of this analysis, we followed up on 29 tickets with respect to adjudications, deposits and dismissals. We traced the tickets to case files and bank statements to determine if they were properly adjudicated (15), deposited (17) and dismissed (two).⁴
- We sent 18 confirmation letters to defendants to determine if the Court records were accurate. We judgmentally selected defendants who only partially paid (three), received a dog licensing ticket (one), did not pay at all (10, starting with the most recent crime date and going back), had adjudication dates in November 2014 and December 2014 (two) and had records deleted from the system (two). We did not receive any back. It was not necessary to follow up on any confirmations or send out additional confirmations because we have reasonable assurance fraud is not occurring, since our other testing did not reveal any significant findings.
- We obtained the bail list and ensured the total amount matched the total amount in the bail bank account.
- We obtained all bank statements for the bail accounts. We reviewed all eight canceled check images, totaling \$7,550, to ensure that bail disbursements were appropriate by tracing the disbursements to the manual case files.
- We traced eight deposits totaling \$5,383 from the system to the bank statements for December 2013 and June 2014 to ensure deposits were made. We arbitrarily selected the two months and had no expectation that more or fewer errors would occur in a chosen month than in any other month.
- We performed a monthly accountability of the fine account for December 2013 and July 2014; we arbitrarily selected the two months and had no expectation that more or fewer errors would occur in a chosen month than in any other month. We reviewed the check images for the checks to the Supervisor for these months and ensured they matched the monthly reports filed with the JCF.

⁴ We tested a sample of the 29 tickets for each objective; therefore, the total number tested for all three objectives does not add up to 29.

- We compared the system’s “charges data” to the system’s “checkbook data” for our scope period. We traced 19 tickets to the case files to ensure they were properly adjudicated. We selected all cases that we sent confirmations to (18) and the first case listed on the second page of the January 2015 JCF report. We also arbitrarily selected nine tickets and traced them to the case files to ensure they were properly dismissed.
- We compared the charges in the system to the receipts in the system from January 1, 2013 through August 31, 2014 to determine the unpaid traffic tickets (the DMV data was as of December 2014, and the Court can only pursue collections on cases that are 60 days past due, for either not showing up for court or for the last payment date plus 60 days to allow time for scheduling court dates, adjudications and payments). We compared this data by index number to determine those tickets where the defendant either did not pay or only partially paid or the defendant’s case had not been adjudicated yet. From this list, we removed any cases that were paid as of February 2015 or that were referred to the DMV Scofflaw Program as of December 2014 to get a list of unpursued traffic tickets.
- We reviewed the pending tickets per DMV and determined the total number of tickets referred to the DMV Scofflaw Program and how many remained outstanding from January 2013 through August 2014. We calculated an average ticket fine/surcharge based on unpaid tickets from January 1, 2013 through August 31, 2014. We applied this average to the number of tickets that remain outstanding to calculate an estimate of potential uncollected fines and fees.

We conducted this performance audit in accordance with 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.

APPENDIX D

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