

Town of Greece

Ethics Oversight

DECEMBER 2020



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

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Report Highlights

Town of Greece

Audit Objective

Determine whether Town of Greece (Town) officials used resources to meet certain ethics oversight standards.

Key Findings

Town officials did not meet certain ethics oversight standards. The Board of Ethics (Ethics Board) did not:

- Adequately administer the Town's disclosure system that is intended to foster transparency and help identify conflicts of interests.
 - Four Town Board member, 10 officer and employee and 12 other required filer annual statements of financial disclosure (disclosure statements) were not filed, were filed late or had questions left blank.
- Adequately review disclosure statements for potential conflicts of interest or completeness.
- Review the code of ethics or prepare an annual report summarizing its activities and recommending changes to the code to ethics.

The Supervisor did not ensure the code of ethics or conflict of interest statute were posted, as required.

Key Recommendations

- Ensure that all annual financial disclosure filers file complete and timely disclosure statements that are carefully reviewed for potential conflicts of interest.
- Ensure the Ethics Board provides an annual report.

Town officials generally agreed with our recommendations and indicated they planned to initiate corrective action. Appendix C includes our comment on an issue that was raised in the Town's response letter.

Background

The Town is located in Monroe County in the Finger Lakes region of New York. The Town is governed by an elected Town Board composed of four council members and the Town Supervisor (Supervisor).

The Supervisor is the chief executive officer (CEO) and is responsible, along with other administrative staff, for day-to-day management.

The Town Board established an Ethics Board responsible for providing ethics oversight. The Town Attorney (Attorney) is an Ethics Board member and provides legal counsel to the Town Board and the Ethics Board.

Quick Facts

Population	96,095
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Officers and Employees	1,534
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Required Disclosure Statement Filers

2017	49
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2018	51
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Audit Period

January 1, 2017 – September 30, 2018

Ethics Oversight

How Can Local Governments Establish Proper Ethics Oversight?

A town's governing body must establish a code of ethics to set forth the standards of ethical conduct reasonably expected of town officers and employees. The code of ethics must address certain provisions including disclosure of interest in legislation before the governing body, holding of investments in conflict with official duties, private employment in conflict with official duties and future employment.

To reduce risk that officers' and employees' actions could violate a town's code of ethics and public assets could be subject to misuse, the governing body should adopt a code of ethics that addresses each of the four required statutory provisions of GML and vigorously enforce the code provisions.¹

Within the code of ethics, the governing body may also set forth other standards of ethical conduct such as provisions addressing nepotism, public disclosures for recusals and abstentions and the proper use of municipal resources.² The town's CEO is responsible for distributing a copy of the code of ethics to every town officer and employee. Although not required, the town could also post the code of ethics on the town website.

In addition to establishing a code of ethics, towns with a population of 50,000 or more are required to have certain individuals annually complete a financial disclosure statement. Filing annual disclosure statements helps increase transparency about the private interests and activities of officers and employees, which may identify potential conflicts of interest.

A board of ethics may be established by the governing body to administer a system to maintain the financial disclosure statement filings.³ The board of ethics, if established, should develop procedures to review and examine the financial disclosure statements filed with the town, to promote compliance with the filing requirement, and verify that officials and employees are impartial and free from conflicts of interest in fulfilling their public responsibilities. A board of ethics can help ensure that the local government operates in a transparent and ethical manner, and local government officers and employees act in the best interests of taxpayers and are not conflicted by personal interests.

The governing body may also develop additional standards of conduct to provide more comprehensive ethical guidance to meet a town's specific circumstances. For instance, the governing body may establish procedures to ensure that town

1 New York State General Municipal Law (GML), Section 806

2 State Comptroller's Model Code of Ethics – Local Governments available at: <https://www.osc.state.ny.us/localgov/pubs/ethics.htm>

3 GML provides that the board of ethics, if established by the governing body, is responsible for receiving the annual financial disclosure statements.

officers and employees receive ethics compliance training, including notifying officers and employees of the whistleblower provisions provided by State Law. In addition, the governing body could require that every officer and employee attest to receiving and reviewing the code of ethics at the time of their election or appointment and at least once every five years.

To help ensure proper ethics oversight, the CEO is responsible for posting a copy of certain provisions of the conflict of interest statute in each town building.⁴ The statute must be posted in a place visible to its officers and employees.

The Town Established an Ethics Board and Adopted a Code of Ethics

The Town established an Ethics Board, which is responsible for receiving the financial disclosure statements. The Town adopted a code of ethics that provides general authority for the Ethics Board to ensure that the financial disclosures statements are filed and complete.

In addition, the Town code of ethics generally provides that the Supervisor is to cause a copy of the code of ethics to be distributed to each officer and employee and be posted conspicuously in each public Town building. However, the code of ethics does not require officers and employees to periodically attest to receiving and reading the code of ethics or require such an attestation upon starting employment with the Town.

The Code of Ethics Complied With GML, but the CEO Did Not Consistently Post the Conflict of Interest Statute or the Code of Ethics

The Town Board adopted a code of ethics, which was posted on the Town's website. The code of ethics included all four statutorily required provisions set forth in GML.⁵ While the CEO was required to visibly post certain sections of GML and the code of ethics in each Town building, we found that the statutory provisions were not posted in one of three buildings tested and not posted in their entirety in another building.⁶

The code of ethics was not posted in two of three buildings selected for testing. We were unable to determine whether the required statutory provisions or the code of ethics were posted in the remaining building because the Deputy Commissioner of Public Works prevented our entry to this public building.

4 GML, Section 807 requires the posting of GML Sections 800 through 809 in each public building.

5 GML, Section 806, refer to Appendix A, Figure 4

6 GML Sections 800 through 804 were posted and sections 805 through 809 were not posted.

The Attorney told us the code of ethics and the conflict of interest statute were inadvertently not posted in all Town buildings.⁷

The Town Did Not Provide Ethics Training

Town officers and employees did not receive ethics compliance training, such as an overview of the code of ethics and whistleblower protection. In addition, the Ethics Board did not receive similar training. In an effort to help ensure proper ethics oversight, the Town may wish to have Ethics Board members complete training on the provisions of law relating to conflicts of interest and ethics. For example, training could relate to the provisions of Article 18 of GML, codes of ethics, annual financial disclosure and decisional law relating to conflicts of interest and ethics.

The Attorney told us that they provide a copy of the code of ethics as part of the employee handbook when an individual is hired, and employees must attest to receiving the handbook. We reviewed attestation statements for 20 employees during our audit period to determine whether these employees attested to having received the code of ethics. We found that three employees, who were hired before 2001 when the attestation was instituted, did not attest to receiving the handbook.

Although not required by law, the Town Board could reinforce code of ethics awareness of officers and employees requesting that all officers and employees attest in writing to their review of the code of ethics at the time of hire, election or appointment and at least once every five years. They could also distribute the code of ethics to all officers and employees upon any amendment to the code.

Unless the Town Board vigorously enforces the code provisions, reinforces employee awareness of the code of ethics, and ensures that the conflict of interest statute is posted in each building, there is a higher risk that officers' and employees' actions may violate the code of ethics and public assets could be subject to misuse.

What Are the Responsibilities of a Board of Ethics for Reviewing the Code of Ethics and Disclosure Statements?

A board of ethics is responsible for making recommendations with respect to drafting, adopting or amending the code of ethics, upon the request of the governing body. Therefore, a periodic review of the code of ethics by the board of ethics may be appropriate to help ensure the code continues to comply with

⁷ The Town Supervisor designated the Attorney as our point-of-contact person on his behalf.

GML. If requested, the board of ethics may also provide recommendations to the governing body as it relates to other ethical considerations that may help ensure ethical awareness for officers and employees.

In addition, the responsibilities of a board of ethics include administering a system to receive annual financial disclosure statements. The board of ethics may also develop procedures to review and examine the financial disclosure statements to help ensure that the filings are complete.

When a board of ethics is established by the governing body to administer an annual financial disclosure system, the board of ethics should establish a process to verify that all required filers have submitted their disclosure statement with the board of ethics. In addition, the board of ethics should ensure that the disclosure statements submitted by the required filers are complete.

To help verify the filing and completeness of the disclosure statements, the governing body could include procedures for an appointed official or support staff to assist the board of ethics in ensuring that each financial disclosure statement is filed, reviewed, all questions are addressed and any inconsistencies or missing information are followed-up on.

In addition, the board of ethics should develop procedures to help ensure that disclosure statements are reviewed to identify transactions that could pose conflicts of interest. For example, boards of ethics could maintain a list of filers' outside business interests, and supply the list to appropriate purchasing department personnel for their use in identifying potential interests in contracts that would be prohibited by GML.

Further, the board of ethics could obtain a list of vendors from the accounts payable department to reference during their review of the disclosure statements to help it identify potential conflicts of interest. If local governments' boards of ethics do not ensure compliance with filing requirements or review the information on disclosure statements to identify any conflicts of interest, taxpayers have less assurance that officers and employees in policy-making positions are free from conflicts of interest.

The Town's code of ethics provides that certain individuals are to file a disclosure statement. For example, the code of ethics lists specific titles required to file disclosure statements. The code of ethics also states that individuals, who the Town Board decides are "policymakers" are also to file a disclosure statement.

The code of ethics establishes certain procedures for the Ethics Board to administer the annual financial disclosure system. For instance, disclosure statements are to be filed by February 28 each year, unless an extension is requested by the filer and granted by the Ethics Board. In addition, the code

...[T]he responsibilities of a board of ethics include administering a system to receive annual financial disclosure statements.

of ethics provides that the Ethics Board is to receive and review completed disclosure statements.

According to the code of ethics, the Ethics Board is generally responsible for determining whether any required filers failed to file, filed a deficient statement or filed a statement that reveals a possible violation of the code of ethics. Furthermore, the code of ethics generally states that if a required filer fails to file or files a deficient disclosure statement, the Ethics Board is to notify the individual in writing of the failure to file or detail the deficiency and provide a 15-day period to allow the individual to file or correct any deficiencies. If the individual does not file or correct the deficiencies, the Ethics Board is to send a notice of delinquency to the individual and the individual's appointing authority.

Further, the code of ethics provides for the Ethics Board to prepare an annual report to the Supervisor and the Town Board summarizing its activities and recommending changes to the code of ethics. The Ethics Board may request support staff and assistance from the Town Board or Supervisor in furtherance of its duties and responsibilities.

The Ethics Board Did Not Adequately Monitor the Filing of Disclosure Statements

The Ethics Board did not adequately administer the Town's disclosure system by ensuring all required financial disclosure statements were actually filed, filed on time or complete. We found that 26 percent of the required disclosure statements were not filed, were filed late or had questions left blank. Under these circumstances, there is an increased risk that potential conflicts of interest were not identified and/or not reported to the Ethics Board.

The Town Board assigned responsibility for administering the disclosure statement system to the Ethics Board. However, in 2017 and 2018, the Ethics Board did not ensure that that all individuals, required to file a disclosure statement pursuant to the code of ethics, submitted a timely and complete disclosure statement. In 2017 and 2018, 40 percent of Town Board member (Figure 1), 23 percent of officer and employee (Figure 2) and 26 percent of other required filer (Figure 3)⁸ disclosure statements were not filed, not filed on time and/or had questions left blank.

In 2017, five Town Board members were required to file. However, one filed a disclosure statement with questions left blank. In 2018, five Town Board members were required to file. However, one did not file and two filed late.

We found that 26 percent of the required disclosure statements were not filed, were filed late or had questions left blank.

⁸ Other required disclosure statement filers included the following individuals associated with the Town: Board of Assessment Review, Library Board, Planning Board and Zoning Board of Appeals members.

In 2017, 22 officers and employees were required to file. However, two did not file and two filed disclosure statements with questions left blank. In 2018, 22 officers and employees were required to file. However, three did not file, two filed disclosure statements with questions left blank and one filed late.

In 2017, 22 other individuals associated with the Town were required to file. However, two did not file, two filed disclosure statements with questions left blank and one filed late. In 2018, 24 other individuals associated with the Town were required to file. However, one did not file, three filed disclosure statements with questions left blank and three filed late.

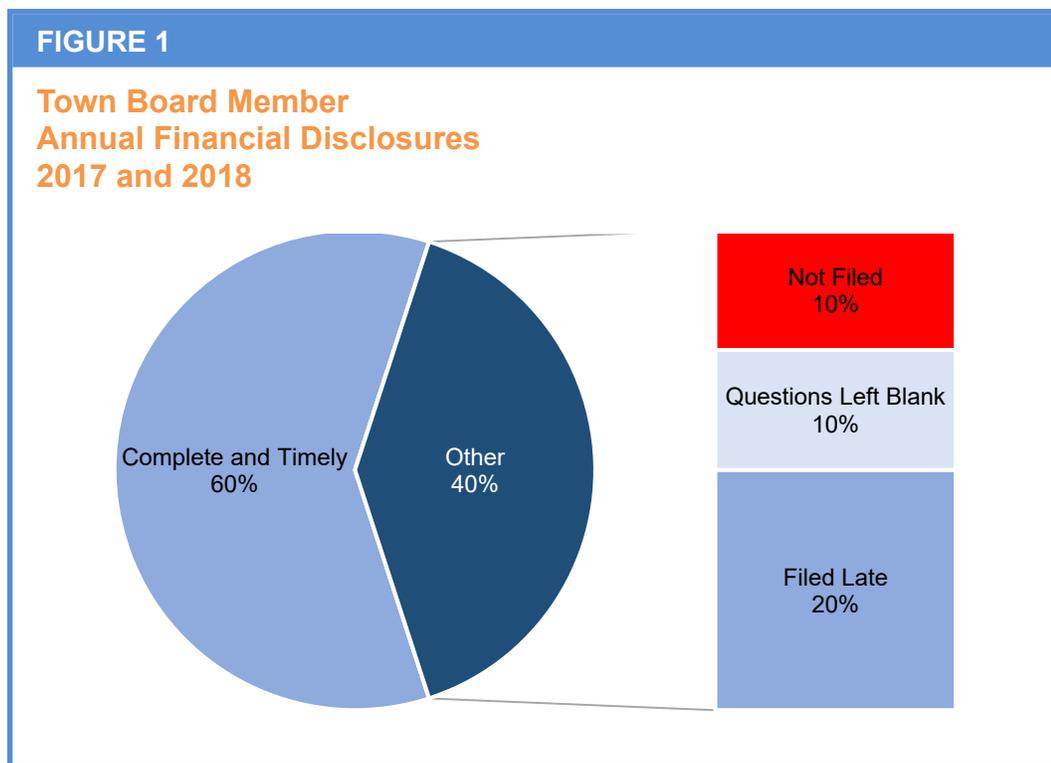


FIGURE 2

**Officers and Employees
Annual Financial Disclosures
2017 and 2018**

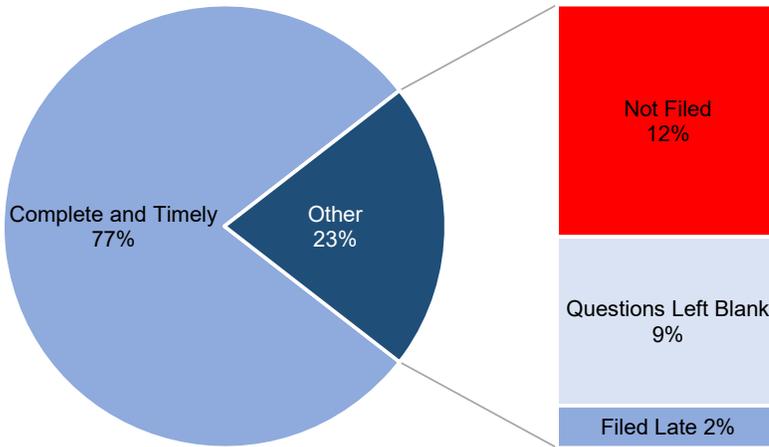
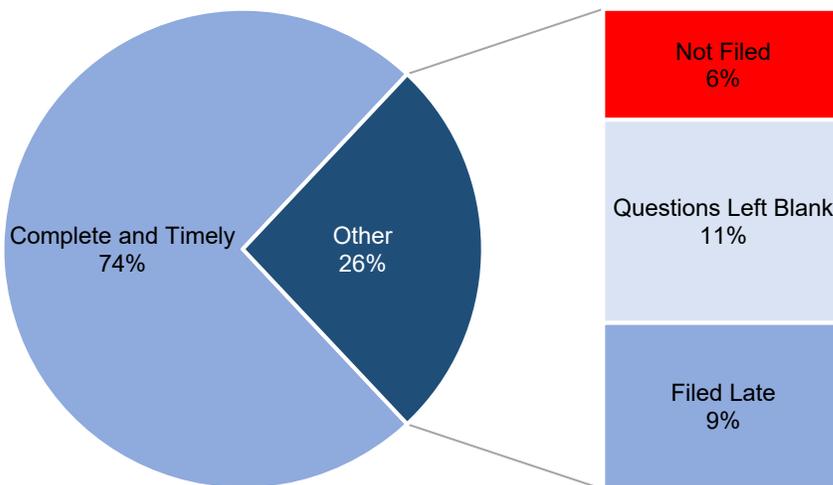


FIGURE 3

**Other Individuals Associated With the Town
Annual Financial Disclosures
2017 and 2018**



The code of ethics designates certain titles required to file a disclosure statement. However, we found that the procedures in place were inadequate to ensure that disclosure statements submitted by individuals holding such positions were collected and verified for completeness.

The Attorney, who is a member of the Ethics Board, told us that he prepared a list of required filers by comparing titles identified in the code of ethics to a list of employees obtained from the personnel department. He then used this list to notify individuals who are required to file. We found that the Attorney's list did not include three individuals required to file as required by the code of ethics. Therefore, these individuals were not notified of their obligation to file a disclosure statement. The Attorney acknowledged that these individuals were not included on the list and not notified of their obligation to file a disclosure statement.

While the code of ethics provides that the Ethics Board is responsible for receiving and reviewing the disclosure statements, we found that these duties were performed solely by the Attorney. The Attorney told us that the Ethics Board has not met since July 2017 (when it met to discuss an ethical complaint), and that the Ethics Board meets only if he notifies the other Ethics Board members there is a concern with a disclosure statement. Further, the Attorney told us that the other Ethics Board members do not participate in the review of any disclosure statements, including the Attorney's disclosure statement.

The Attorney told us that he reviews submitted disclosure statements for completeness and content, and if a required filer fails to file, he sends a request to the individual. Also, the Attorney told us he would be aware of a potential conflict of interest because he attends Town Board meetings and takes into consideration all the information available through Town operations, complaints, concerns and requests for opinions.

Our review of all 91 disclosure statements filed in 2017 and 2018 by required filers revealed that 11 percent were filed with at least one question left blank. The Town's code of ethics states that "designated employees and elected officials shall file with the Board of Ethics a disclosure statement answering each and every question." In addition, the disclosure statement form states "If the answer to any of the following questions is **'none', please so state.**"

For example, one Town Board member's 2017 disclosure statement was submitted with the section on gifts left blank. While this Town Board member's 2018 disclosure statement had all questions answered, it was filed more than six months late. The Attorney told us he inadvertently accepted disclosure statements with questions left blank.

Not completing a disclosure in its entirety could be a misrepresentation to the Ethics Board and creates a risk that potential conflicts will go undetected. Further, the Ethics Board did not compare disclosed business interests to vendor

The Town's code of ethics states that "designated employees and elected officials shall file with the Board of Ethics a disclosure statement answering each and every question."

payments or compile a list of filers' outside business interests for the purchasing department to identify potential interests in contracts that would be prohibited by GML. Lack of procedures that require reviewing the submitted information reduces its usefulness.

Without careful review of the information reported on disclosure statements, and procedures to identify transactions that could pose a conflict of interest, taxpayers have less assurance that the Town has a strong stance on transparency and can identify conflicts of interest of officers and employees that could compromise impartiality in decision-making.

The Ethics Board Did Not Review the Code of Ethics or Prepare an Annual Report

The Ethics Board did not review the code of ethics or provide a written annual report during our audit period. While the code of ethics does not specifically require the Ethics Board to review the code of ethics, it provides for the Ethics Board to prepare an annual report to the Supervisor and Town Board summarizing its activities and recommending changes to the code of ethics.

Although the Ethics Board did not provide a written annual report, the Attorney told us that annually he verbally communicates to the Town Board regarding Ethics Board activities.

As a best practice, a review of the code of ethics, at least every five years or when deemed necessary, would help to ensure it adequately addresses the expected conduct for all officers and employees including the required standards stipulated by law.

What Do We Recommend?

The Town Board should:

1. Have Ethics Board members complete training on the provisions of law relating to conflicts of interest and ethics.
2. Require ethics compliance training for all officers and employees, including an overview of the code of ethics and whistle-blower protections.
3. Amend the code of ethics to require all officers and employees attest in writing to the receipt and review of the code of ethics at the time of their elections or appointment, at least once every five years, and upon amendment to the code.

The Ethics Board did not review the code of ethics or provide a written annual report during our audit period.

-
4. Develop procedures to provide for a more thorough and meaningful review of the contents of financial disclosure statements in an effort to better identify transactions that could pose conflicts of interest.
 5. Periodically distribute the code of ethics and have all officers and employees attest in writing to the receipt and review of the code of ethics at least every five years and upon any amendment to the code of ethics.
 6. Review or request the Ethics Board to review the code of ethics, at least every five years or sooner, if deemed necessary.

The Supervisor should:

7. Visibly post GML Sections 800-809 of the conflict of interest statute and copies of the code of ethics in each Town building.
8. Cause a copy of the code of ethics to be distributed to every officer and employee.

The Ethics Board should:

9. Obtain a list of vendors from the accounts payable department to reference during its review of the disclosure statements to help identify potential conflicts of interest and maintain a list of filers' outside business interests to supply to appropriate purchasing department personnel for their use in identifying potential interests in contracts that would be prohibited by GML.
10. Verify that all individuals covered by annual financial disclosure requirements file a complete and timely disclosure statement.
11. Annually participate in the review of disclosure statements, including the disclosure statement filed by the Town Attorney.
12. Prepare and submit an annual report to the Town Supervisor and Town Board, summarizing its activities and recommending changes to the code of ethics.

Appendix A: Town Code of Ethics Information

Figure 4: Required Code of Ethics Provisions^a and Other Ethical Considerations^b

Required Provisions	Included in the Town's Code of Ethics?
Disclosure of Interests in Legislation Before the Local Governing Body	Yes
Future Employment	Yes
Holding of Investments in Conflict With Official Duties	Yes
Private Employment in Conflict With Official Duties	Yes
Other Ethical Considerations	
Applicability	Yes
Confidential Information	Yes
Definitions	Yes
Enforcement	Yes
Effective Date	Yes
Establishing a Board of Ethics	Yes
Gifts	Yes
Interests in Contracts	Yes
Nepotism	Yes
Political Solicitations	Yes
Posting and Distributing the Code of Ethics	Yes
Prohibition on Use of Municipal Position for Personal or Private Gain	Yes
Purpose of the Code of Ethics	Yes
Recusal and Abstention	Yes
Ethics Board Members Term Limits ^c	No
a GML, Section 806	
b Refer to OSC's Model Code of Ethics for Local Governments available at: https://www.osc.state.ny.us/localgov/pubs/ethics.htm .	
c Not included within OSC's Model Code of Ethics for Local Governments but should be considered as a best business practice	

Figure 5: Town Board, Officers and Employees, and Other Individuals Associated With the Town Who Did Not File Annual Financial Disclosure Statements

Job Title	2017	2018
Town Board:		
Town Board Member		Not Filed
Officers and Employees		
Deputy Commissioner of Public Works	Not Filed	Not Filed
Deputy Police Chief	Not Filed	
Director of Finance		Not Filed
Director of Personnel		Not Filed
Other Individuals Associated With the Town		
Planning Board Member	Not Filed	Not Filed
Zoning Board Member	Not Filed	

Appendix B: Response From Town Officials



William D. Reilich
Supervisor

TOWN OF GREECE

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October 2, 2020

Julie Landcastle, Chief Examiner
Statewide Audit Unit
New York State Office of the State Comptroller
Binghamton State Office Building
44 Hawley Street, Room 1702
Binghamton, New York 13901

Re: Response to Draft Report Number: S9-19-20

Dear Ms. Landcastle:

I am writing on behalf of the Town of Greece (“Town”) in response to the findings and recommendations contained in the New York State Office of the Comptroller’s draft report regarding ethics oversight (“Draft Report”).

As stated in the Draft Report, the Town is governed by an elected Town Board and an Ethics Board has been established to provide ethics oversight. The Town Board has adopted a code of ethics, which was found to be fully compliant with New York State General Municipal Law. During this audit, the Office of the Comptroller reviewed the only ethics complaint that was received during the audit period and the subsequent finding that the complaint was entirely unfounded. The Town is proud that, after this review, the auditors found that the sole complaint was appropriately addressed and commented on the thoroughness of the analysis.

See
Note 1
Page 14

The provided Draft Report does include procedural recommendations to be considered. Since Town officials are always striving to improve operations and oversight where possible, the Town is addressing and implementing each recommendation included in the Draft Report. We look forward to continuing to provide residents of this Town with the high level of trusted service they have come to expect.

Respectfully,

Brian E. Marianetti
Town Attorney

Appendix C: OSC Comment on the Town's Response

Note 1

Contrary to the Town's response, we did not review or comment on the disposition of any ethical complaints or the contents of any advisory opinions issued. We only reviewed the process for receiving and addressing ethical complaints.

Appendix D: Audit Methodology and Standards

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 Town officials, employees, and members of the Ethics Board to gain an understanding of the governing and ethics oversight.
- We reviewed policies, procedures and Town Board and Ethics Board minutes related to ethics.
- We reviewed all 91 disclosure statements filed for 2017 and 2018 to determine whether they were completely and properly filed on time and any potential conflict of interests were reported to the Ethics Board.
- We reviewed procedures to receive ethical complaints from the public.
- We used our professional judgment to select a sample of three of seven buildings from a list of departments and office locations on the Town's website. We walked through two of the buildings to determine whether the conflict of interest statute was posted. The Deputy Commissioner of Public Works prevented us from entering the Department of Public Works building therefore our sample was limited to two buildings. For our sample, we selected the building where we conducted a majority of our fieldwork and two additional nearby Town buildings, with no expectations of greater or lesser results.
- We used our professional judgment to select a sample of 20 of 633 employees, with no expectations of greater or lesser results. We reviewed attestations for these employees to determine whether they attested to receiving the employee handbook that contains the code of ethics.

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.

The Town Board has a responsibility to initiate corrective action. 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 Town Clerk's office.

Appendix E: Resources and Services

Regional Office Directory

www.osc.state.ny.us/sites/default/files/local-government/documents/pdf/2018-12/regional_directory.pdf

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

www.osc.state.ny.us/local-government/publications?title=&body_value=&field_topics_target_id=263196&issued=All

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

www.osc.state.ny.us/local-government/fiscal-monitoring

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

www.osc.state.ny.us/local-government/publications?title=&body_value=&field_topics_target_id=263206&issued=All

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

www.osc.state.ny.us/local-government/resources/planning-resources

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

www.osc.state.ny.us/sites/default/files/local-government/documents/pdf/2020-05/cyber-security-guide.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/local-government/required-reporting

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

www.osc.state.ny.us/local-government/publications?title=&body_value=&field_topics_target_id=263211&issued=All

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

www.osc.state.ny.us/local-government/academy

Contact

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