

Town of Attica

Payments to Not-For-Profit Organizations

DECEMBER 2021



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

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Report Highlights

Town of Attica

Audit Objective

Determine whether payments Town of Attica (Town) officials made to not-for-profit organizations were for appropriate purposes and were properly approved and supported.

Key Findings

The payments Town officials made to not-for-profit organizations were not always for appropriate purposes, properly approved or supported by sufficient documentation.

Officials:

- Used public funds to make donations or impermissible gifts totaling \$47,400 to various local community organizations.
- Paid nine claims totaling \$30,150 before Board audit and approval.
- Did not ensure sufficient documentation was included with 16 claims totaling \$52,550.

Key Recommendations

- Ensure claims are appropriate, contain sufficient supporting documentation and are audited and approved before to payment is made.

Town officials generally agreed with our recommendations and indicated they planned to initiate corrective action.

Background

The Town, located in Wyoming County, is governed by an elected Town Board (Board) composed of five members including the Town Supervisor (Supervisor).

The Board is responsible for managing operations and finances including adopting and monitoring the annual budget and developing long-term financial plans. The Supervisor serves as the chief financial officer.

Quick Facts

Not-For-Profit Organization Payments

January 1, 2016 – October 31, 2020

Amount	\$69,602
Number	43

General Fund

2020 Disbursements	\$267,000
2021 Appropriations	\$309,000
Population	6,900

Audit Period

January 1, 2016 – October 31, 2020

Payments to Not-For-Profit Organizations

How Should Officials Ensure Payments to Not-For-Profit Organizations Are Appropriate?

Town officials are entrusted with public resources and have a responsibility to comply with laws, behave in an ethical manner and safeguard town resources. The New York State Constitution prohibits towns from loaning or giving money to any private individuals, organizations, associations or corporations such as not-for-profit organizations.

Although towns are prohibited from loaning or giving money to these types of organizations, towns are not prohibited from making payments to such organizations pursuant to a contractual obligation or statutory requirement. For example, town officials may pay a not-for-profit entity for goods or services provided to the town.

Additionally, a board is responsible for auditing and approving all claims against the town before payment. The board's audit of claims must be a thorough and deliberate process to determine that a proposed payment is proper and should ensure that the payment is for a valid and legal purpose.

Officials Did Not Ensure Payments to Not-For-Profit Organizations Were Always Appropriate

Town officials made 43 payments to not-for-profit organizations totaling \$69,602 during the period January 1, 2016 through October 31, 2020. We reviewed all these payments and found they were not always for appropriate purposes.

Officials made 19 payments totaling \$47,400 to five not-for-profit organizations. However, officials were unable to provide documentation showing a statutory or contractual obligation to make payments to these organizations or that goods or services were received in exchange for the payments.

Consequently, absent a statutory or contractual obligation the payments are impermissible gifts of public funds. The payments were issued to local community organizations for a variety of purposes as follows:

- Three payments totaling \$20,000 were made to a local service organization to help fund various capital improvements at the Village of Attica park which included a basketball court and walking paths.
- One payment of \$10,000 was made to a fire department as a general donation with no specific stated purpose.
- Six payments totaling \$8,650 were made to a not-for-profit veterans' organization for a memorial.
- One payment of \$5,000 was made to a local historical preservation organization to help pay for flood repairs.

... [O]fficials were unable to provide documentation showing a statutory or contractual obligation to make payments to these organizations or that goods or services were received in exchange for the payments.

-
- Eight payments totaling \$3,750 were made to a local chamber of commerce to help fund various festivals and concerts.

Town officials told us that they wanted to use the money the Town received from the sale of a medical center to make donations to local organizations as a way for the Town to give back to the residents and support the community. The Supervisor said he had consulted with the attorney for the Town but only for general advice on making donations.

The payment of taxpayer money is improper without a statutory or contractual obligation, or unless the Town receives goods or services in return for the payment. Had officials sought legal counsel before making these payments, they would have been better informed regarding their statutory obligations and found permissible uses for the sale proceeds.

The Board Did Not Properly Audit Payments to Not-For-Profit Organizations or Ensure Claims Contained Sufficient Support

The Board did not properly audit payments to not-for-profit organizations or approve all related claims before payment. Of the 43 payments we reviewed, nine totaling \$30,150 were paid before being audited and approved by the Board, as required.

Further, the Board improperly delegated its responsibility to audit claims to two Board members. The claims audit process is more effective when carried out by the entire Board rather than delegated to one or two members (Refer to our publication *Improving the Effectiveness of Your Claims Auditing Process* available on our website at: www.osc.state.ny.us/localgov/pubs/lgmg/claimsauditing.pdf).

In addition, 16 claims totaling \$52,550 were not supported by sufficient documentation. For example, in May and August 2019, when the Town made two unsupported payments of \$5,000 each to a local service organization to help fund various capital improvements, the only supporting documentation available was a claim voucher showing that the payments were for basketball courts and donations.

However, no additional supporting documentation was available to substantiate the cost of these improvements or to demonstrate that the organization used the funds for the stated purpose.

Because the entire Board did not audit claims before payment and paid incomplete or unsubstantiated claims, there is an increased risk that the Town made inappropriate, excessive, or unauthorized payments.

... [N]o additional supporting documentation was available to substantiate the cost of these improvements or to demonstrate that the organization used the funds for the stated purpose.

What Do We Recommend?

The Board should:

1. Seek legal counsel before making payments to not-for-profit organizations to ensure the payments are legal and proper.
2. Ensure the entire Board audits and approves all claims before payment.
3. Ensure claims contain enough detailed information, supporting documentation, and proper approvals to demonstrate that the claims comply with statutory requirements, the amounts represent actual and necessary expenditures, and goods and services are received.

Appendix A: Response From Town Officials

DADD, NELSON, WILKINSON & WUJCIK

A PROFESSIONAL LIMITED LIABILITY COMPANY

ATTORNEYS AND COUNSELORS AT LAW

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December 3, 2021

*Via E-mail to Muni-Buffalo@osc.ny.gov
and First Class Mail*

Mr. Jeffrey D. Mazula, Chief Examiner
Office of the State Comptroller
295 Main Street, Suite 1032
Buffalo, NY 14203-2510

Re: Town of Attica
Payments to Not-For-Profit Organizations
Report of Examination 2021M-125

Dear Mr. Mazula:

This firm represents the Town of Attica and is in receipt of your correspondence dated November 3, 2021 containing your office's preliminary draft findings, 2021 M-125.

Please be advised that I have reviewed the draft findings and attachments and have had the opportunity to consult with Town Supervisor Bryan Kehl regarding the content of the findings and your office's recommendations.

First, I can assure you the Town Board's intentions on expenditure of funds for two (2) not-for-profit organizations was made with the utmost concern for efficiently spending taxpayers' funds. The funds were used for the betterment of the citizens of the Town. Further, the Town Board acknowledges the recommendations to seek legal counsel prior to making any payments to not-for-profit organizations to ensure the legality of such payments. The Board will take further steps to ensure the entire Town Board audits and approves all claims before payment and will ensure claims contain sufficient detailed information and supporting documentation to demonstrate that payments comply with statutory requirements.

Currently, the Town Board is in the process of drafting a written procedure to ensure the aforementioned recommendations are implemented for future Board action.

Mr. Jeffrey D. Mazula, Chief Examiner

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December 3, 2021

Please advise if you require anything further from my office, and I will gladly submit the information to you.

Very truly yours,

/James M. Wujcik

JM/lmz

pc: Supervisor Bryan Kehl
Melissa Myers - Via E-mail Only to mmyers@osc.ny.gov

Appendix B: 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 and employees and evaluated the Town's code of ethics and claims audit process.
- We reviewed relevant documentation pertaining to the 2016 sale of the community medical center and the planned use of these funds.
- We reviewed claim vouchers, contracts, and resolutions for all payments made to not-for-profit organizations for the period January 1, 2016 through October 31, 2020 to determine whether payments were properly supported, audited and approved by the Board before payment and whether payments were for appropriate purposes.
- We conducted various Internet searches and interviewed Board members to determine whether key officials were affiliated with or were members of the not-for-profit organizations that received donations.

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.

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 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 C: Resources and Services

Regional Office Directory

www.osc.state.ny.us/files/local-government/pdf/regional-directory.pdf

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

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

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

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/files/local-government/publications/pdf/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

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

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