

Town of Otselic

Records and Reports and Conflict of Interest

JULY 2021



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

Contents

Report Highlights	1
Records and Reports	2
How Should the Supervisor Record and Report Financial Information?	2
The Supervisor’s Accounting Records and Financial Reports Were Incomplete, Inaccurate and Untimely	2
The Supervisor Did Not File Required AUDs	3
The Board Did Not Annually Audit the Supervisor’s Records	4
What Do We Recommend?	4
Conflict of Interest	5
How Should a Board Address Conflicts of Interest?	5
A Board Member Had a Prohibited Conflict of Interest	5
What Do We Recommend?	6
Appendix A – Response From Town Officials	7
Appendix B – OSC Comment on the Town’s Response	8
Appendix C – Audit Methodology and Standards	9
Appendix D – Resources and Services	11

Report Highlights

Town of Otselic

Audit Objective

Determine whether the Town of Otselic (Town) Town Supervisor (Supervisor) maintained complete, accurate and timely financial records and reports.

Determine whether the Town Board (Board) ensured that Town officials did not have prohibited interests in Town contracts.

Key Findings

The Supervisor did not maintain complete, accurate and timely financial records and reports, and the Board did not ensure there were no prohibited conflicts of interest. We also found:

- The Supervisor did not provide the Board with accurate financial reports and did not record deposits totaling \$127,000, cash withdrawals totaling \$199,000 and fund transfers totaling \$874 in the accounting records. She recorded one deposit for \$25,000 twice.
- The required 2016 through 2019 annual financial reports were not filed with the Office of State Comptroller, as required. As of May 5, 2021, the reports were late and remained unfiled.
- A Board member had a prohibited interest in the contracts between the Town and his auto parts businesses.
- The Board did not comply with General Municipal Law by adopting a code of ethics and did not audit the Supervisor's records, as required.

Key Recommendations

- Maintain complete, accurate and timely financial records and reports.
- File AUDs in a timely manner.
- Adopt a code of ethics and ensure that officials and employees are familiar with and follow requirements as they relate to conflicts of interest.

Town officials generally agreed with our findings and recommendations and indicated they will take corrective action. Appendix B includes our comment on an issue raised in the Town's response letter.

Background

The Town is located in Chenango County.

The Town is governed by an elected five-member Board, composed of the Supervisor and four Board members. The Board is responsible for the general oversight of the operations and finances.

The Supervisor serves as the Town's chief executive officer and chief financial officer responsible for the day-to-day financial operations.

Quick Facts

2020 Budgeted Appropriations	\$597,400
2020 Tax Levy	\$201,600

Annual Financial Report Filings

Year	Filed Yes/No	Days Late as of May 5, 2021
2016	No	1,526
2017	No	1,161
2018	No	796
2019	No	431
2020	No	65

Audit Period

January 1, 2018 – July 31, 2020.

We extended our audit period to May 5, 2021 to determine whether delinquent annual financial reports were filed.

Records and Reports

How Should the Supervisor Record and Report Financial Information?

Town supervisors are responsible for maintaining accurate financial accounting records that summarize all financial activities. The accounting records should document the assets, liabilities, fund equity and results of operations (revenues and expenditures) for each town fund. Monthly bank reconciliations help ensure all receipts and disbursements are properly recorded and provide a way to identify, correct and document differences between the town's records and bank transactions.

Complete and accurate accounting records allow the supervisor to provide monthly financial reports to the board to facilitate timely and prudent financial decisions. These reports should include a detailed accounting of all money received and disbursements as well as detailed budget-to-actual comparisons of revenues and expenditures, totaled by account code, for each fund.

New York State General Municipal Law (GML) Section 30 requires the Supervisor to file an AUD with the OSC within 60 days of the town's year-end (December 31). Town officials have the option to request an extension which, if granted, would extend the deadline to 120 days after the town's year-end. The AUD provides the board, OSC, town residents and other interested parties with a tool to monitor and evaluate financial operations.

Furthermore, New York State Town Law Section 123 requires the supervisor to submit an annual accounting to the board on or before January 20 for all money received and disbursed during the preceding year, unless an independent certified public accountant or public accountant audits the supervisor's records within 60 days after the close of the year. The annual accounting helps the board fulfill its overall fiscal oversight responsibilities by providing it with an opportunity to assess the reliability of the books, records and supporting documents. It also serves to identify conditions that need improvement and provides useful information to help the board oversee the town's financial operations.

The Supervisor's Accounting Records and Financial Reports Were Incomplete, Inaccurate and Untimely

The Supervisor did not maintain complete, accurate and timely accounting records and reports. The Supervisor did not record all revenues and expenditures in the Town's financial accounting software. The Supervisor used the financial accounting software to provide the Board with monthly reports listing inaccurate receipts and disbursements for the month. Although the Supervisor provided the Board with current bank balances each month, she did not maintain a running cash balance record or prepare monthly bank reconciliations. The Supervisor brought the bank statements to the Board meetings, but generally none of the

The Supervisor did not maintain complete, accurate and timely accounting records and reports.

Board members reviewed them. In addition, the budget amounts were not entered in the financial accounting software, and the Board did not receive budget-to-actual reports or balance sheet information such as assets, liabilities or fund equity status.

In order to assess the accuracy of the Supervisor's accounting records, we reviewed the following for the December 2018 and 2019 general, highway, water and trust and agency funds:

- 22 deposits and interfund transfers totaling approximately \$200,000 to determine whether they were deposited and properly included in the financial accounting records and reports. We found that 19 transactions totaling \$127,000 were not recorded in the financial accounting software and one totaling \$25,000 was recorded twice.
- All 87 canceled check images totaling approximately \$79,500 to determine whether they were properly included in the financial records and for proper Town purposes. Aside from minor discrepancies discussed with Town officials, these disbursements were appropriately recorded and for proper Town purposes.
- All six cash withdrawals totaling \$199,000 – they were not recorded in the financial accounting software but were deposited in other Town accounts.
- All six electronic fund transfers totaling approximately \$13,200 and found that two totaling approximately \$874 were not recorded in the financial accounting software, but all were for appropriate Town purposes.

The Supervisor told us that she was not familiar with the Town's financial accounting software and has been trying to obtain training on how to use the software.

Without accurate, complete and up-to-date financial accounting records and reports, a clear and accurate financial picture was not provided to assist the Supervisor and Board in making informed financial decisions. In addition, because bank reconciliations were not prepared, errors could occur and remain undetected and uncorrected.

The Supervisor Did Not File Required AUDs

The current Supervisor took office in January 2018. The prior Supervisor did not file the AUDs for 2016 or 2017 prior to his departure, and they remain delinquent. The current Supervisor told us that she was unable to file the AUDs for 2016 and 2017 because she did not have access to the prior Supervisor's records. In addition, because the 2016 and 2017 AUDs have not yet been filed, the Supervisor has been unable to file the AUDs for 2018 and 2019. As of May 5, 2021, the 2016 through 2020 AUDs were between 65 and 1,526 days late

and remained unfiled. The failure to file AUDs could affect the Board's ability to monitor financial affairs and make sound financial decisions.

The Board Did Not Annually Audit the Supervisor's Records

The Board did not audit, or contract with an independent public accountant to audit, the Supervisor's accounting records and reports for 2018 or 2019. Board members told us that they did not know they were required to annually audit the Supervisor's records and reports because the Supervisor submitted financial reports to the Board at each monthly Board meeting.

As a result of the Board's inaction to require an annual audit, the Board did not have adequate assurance that the Supervisor properly accounted for all Town financial resources. Had the Board performed an annual audit, the control deficiencies and exceptions identified in our report may have been detected and corrected.

What Do We Recommend?

The Board should:

1. Require the Supervisor to provide accurate monthly financial reports.
2. Periodically review the Supervisor's financial records to ensure errors and irregularities do not exist in the accounting records.
3. Audit or provide for an audit of the Supervisor's financial records and reports on an annual basis.
4. Require the Supervisor to prepare and submit the delinquent AUDs with OSC and prepare future AUDs in a timely manner.
5. Seek out appropriate training for financial administration and recordkeeping.

The Supervisor should:

6. Maintain accurate financial records and reports, including bank reconciliations, and provide the Board with accurate budget-to-actual reports for each operating fund.
7. Correct the errors identified in the Town's accounting records.
8. Prepare and file the overdue AUDs with our office immediately and in future years within 60 days after the close of the financial year.
9. Attend training to develop skills for recordkeeping and financial management.

Conflict of Interest

How Should a Board Address Conflicts of Interest?

New York State General Municipal Law (GML) Section 806 requires the board to adopt a code of ethics setting forth for the guidance of its officers and employees the standards of conduct reasonably expected of them. In addition, GML Article 18 limits the ability of municipal officers and employees to enter into contracts in which their personal financial interests and public powers and duties conflict. Unless a statutory exception applies, GML prohibits municipal officers and employees from having an interest in contracts with the municipality for which they serve when they have the power or duty – either individually or as a board member – to negotiate, prepare, authorize or approve the contract; authorize or approve payment under the contract; audit bills or claims under the contract; or appoint an officer or employee with any of those powers or duties. For this purpose, a “contract” includes any claim, account, demand against or agreement with the municipality. Municipal officers and employees have an interest in a contract when they receive a direct or indirect monetary or material benefit as a result of a contract with the municipality they serve.

A Board Member Had a Prohibited Conflict of Interest

The Board did not adopt a code of ethics as required by law. Furthermore, a Board member is the president of, and owns at least 5 percent of the stock in, two incorporated automotive supply businesses from which the Town purchases supplies. During our audit period, the Town paid these businesses for 17 invoices totaling \$5,318. Each invoice submitted by the Board member’s businesses for automotive supplies is an “agreement” and, thus, a “contract” for purposes of GML Article 18. As an owner of 5 percent or more of the stock in each business, the Board member has an interest in each contract because the Board member received a direct or indirect pecuniary (monetary) or material benefit as a result of the contracts. As a member of the Board, the Board member also has one or more of the powers and duties that can give rise to a prohibited interest, including the ability to authorize or approve contracts, authorize or approve payments under contracts, audit bills or claims under the contracts or appoint someone to perform that function.

GML Section 802(2)(e) provides an exception when a municipal officer or employee has an interest in a contract provided the total consideration of all contracts in which the municipal officer or employee has an interest during the fiscal year, from January 1 to December 31, does not exceed \$750. The total consideration of all the contracts in which the Board member had an interest for one of his businesses during the 2019 fiscal year was \$2,463 and during the 2020 fiscal year (as of July 31, 2020) was \$1,132. For his other business, the total consideration during the 2019 fiscal year was \$1,036 and during the 2020 fiscal year (as of July 31, 2020) was \$565. Therefore, the exception found in

The Board
did not adopt
a code of
ethics....

GML applies to the contract for one business during the 2020 fiscal year (as long as no additional contracts arise during the fiscal year that would cause the total consideration to exceed \$750), but does not apply to the other contracts listed.

Due to the Board member's prohibited interest in the contracts between the Town and his businesses, we reviewed all the invoices submitted by his businesses during our audit period. Although our testing did not reveal any irregularities in pricing, when officials, in their private capacities, conduct business with the municipality for which they serve, the public may question the appropriateness of these transactions. Such transactions may create an actual conflict of interest or, at a minimum, the appearance of impropriety.

What Do We Recommend?

The Board should:

10. Adopt a code of ethics.
11. Ensure that all officials and employees are familiar with and follow the requirements of GML Article 18 as they relate to conflicts of interest.

Appendix A: Response From Town Officials

Town of Otselic
133 County Road 13
South Otselic, New York 13155
315-653-7201 315-653-7596 (fax)

Marjorie Davis, Supervisor
otselicsupervisor@frontier.com

Louise Perry, Clerk
otselicclerk@frontiernet.net

Re: Town of Otselic response to OSC Audit

The recently completed audit of the town of Otselic financial records has been received and its contents discussed in detail at the regularly scheduled Town Board meeting on June 8, 2021. The Otselic Town Board accepts the report, with reservation.

The Board acknowledges that it has not received nor asked for several of the monthly reports recommended. However, the Board has received and reviewed financial reports from the Supervisor at every meeting since the current supervisor took office January 1, 2018. The Supervisor has shared extensive financial data with the Board and had the approval of the Board on major financial decisions. Despite the financial distress caused by the COVID19 pandemic, the financial health of the town is robust AND the taxable dollars asked of our citizens has decreased for the past two years.

Town officials agree in theory with the concept of “conflict of interest”. The reality in small towns is a bit different. In a small town, such as Otselic, conflicts of interest are nearly impossible to avoid. It is difficult to secure interested, qualified persons to fill all the necessary town positions without resorting to extended families of elected officials.

The supervisor has kept the Board informed of the audit as it has progressed and expected at least a phone interview with the auditor. None of the Board members was contacted.

See Note 1 Page 8

Wherever possible, corrective actions will occur in response to the audit findings. The supervisor will provide AUD data for the years beginning 2018 forward. Other corrective actions will be put in place within the prescribed time frame.

By order of the Otselic Town Board on June 8, 2021.

Marjorie Davis

Supervisor

Appendix B: OSC Comment on the Town's Response

Note 1

During fieldwork, the Town Supervisor and one Board member were interviewed. However after receiving the Town's audit response, the examiner-in-charge contacted the two current Board members that were in office during the audit period to discuss the audit, our draft audit report and address any questions the Board members had.

Appendix C: 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 objectives and obtain valid audit evidence, our audit procedures included the following:

- We interviewed Board members and Town officials and reviewed Board meeting minutes and monthly financial reports provided to the Board to gain an understanding of the Town's financial accounting, reporting and oversight practices, including whether annual audits of the Supervisor's records were performed and whether AUDs were filed timely.
- We reviewed the Supervisor's financial accounting records to determine whether the Town's financial activity was properly recorded and reported to the Board.
- We used our professional judgment to select two months during our audit period (December 2018 and December 2019). We reviewed these statements, Board minutes, Town Clerk records and financial accounting records to identify all receipts, deposits, canceled check images, interfund transfers, electronic fund transfers and cash withdrawals. We reviewed 22 receipts totaling approximately \$200,000, six cash withdrawals totaling \$199,000 and 93 disbursements, supporting documentation and invoices totaling approximately \$92,700 to determine whether they were accurately recorded and for appropriate purposes.
- We made inquiries of Town officials to identify their outside employment interests or business ownerships to determine whether any officials had a prohibited conflict of interest. We then reviewed vendor reports, Board-approved abstracts of audited claims and bank statement canceled check images to calculate the number of times and total dollar amounts a business owned by a Town official was paid.

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 objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

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

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 D: Resources and Services

Regional Office Directory

<https://www.osc.state.ny.us/files/local-government/pdf/regional-directory.pdf>

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

<https://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

<https://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

<https://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

<https://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

Office of the New York State Comptroller
Division of Local Government and School Accountability
110 State Street, 12th Floor, Albany, New York 12236

Tel: (518) 474-4037 • Fax: (518) 486-6479 • Email: localgov@osc.ny.gov

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

Local Government and School Accountability Help Line: (866) 321-8503

BINGHAMTON REGIONAL OFFICE – Ann C. Singer, Chief Examiner

State Office Building, Suite 1702 • 44 Hawley Street • Binghamton, New York 13901-4417

Tel (607) 721-8306 • Fax (607) 721-8313 • Email: Muni-Binghamton@osc.ny.gov

Serving: Broome, Chenango, Cortland, Delaware, Otsego, Schoharie, Sullivan, Tioga, Tompkins counties



Like us on Facebook at facebook.com/nyscomptroller

Follow us on Twitter [@nyscomptroller](https://twitter.com/nyscomptroller)