

Village of Ocean Beach

Clerk-Treasurer Compensation

OCTOBER 2022



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

Contents

Report Highlights	1
Clerk-Treasurer Compensation	2
How Should Officials Ensure Compensation Is Properly Authorized and Paid?	2
The Board Allowed the Clerk-Treasurer to Cash Out More Leave Than Allowed by His Agreement.	3
Comp Time Was Used to Inflate Payments for Unused Vacation Leave	6
The Clerk-Treasurer’s Use of a Village-Owned Truck Cost Nearly \$11,000 Each Year.	6
What Do We Recommend?	8
Appendix A – Response From Village Officials	9
Appendix B – OSC Comments on the Village’s Response	13
Appendix C – Audit Methodology and Standards	14
Appendix D – Resources and Services.	16

Report Highlights

Village of Ocean Beach

Audit Objective

Determine whether the Village of Ocean Beach (Village) Board of Trustees (Board) ensured compensation received by the Clerk-Treasurer was consistent with his individual employment agreements.

Key Findings

The Board did not ensure that compensation received by the Clerk-Treasurer was consistent with his individual employment agreements, resulting in:

- \$44,135 in overpayments for unused vacation and sick leave and unauthorized compensatory (comp) time.
- \$11,000 per year of costs to the Village for the Clerk-Treasurer's personal use of a Village vehicle which, as a fringe benefit, should have been reported on his W-2 for income tax purposes.

Key Recommendations

- Ensure that all salaries and benefits provided are Board approved.
- Consult with the Village Attorney about recovering the overpayments noted in the report and properly report fringe benefits for income tax purposes.

Officials generally disagreed with our recommendations. Appendix B includes our comments on the issues that were raised in the Village's response letter.

Background

The Village, located on Fire Island in the Town of Islip in Suffolk County, is governed by an elected Board composed of a Mayor and four trustees.

The Board is responsible for oversight and general management of the Village's financial activities.

The appointed Clerk-Treasurer is the chief fiscal officer, responsible for the Village's day-to-day financial activities, including cash disbursements and payroll. The Board has also appointed a Deputy Treasurer who performs the same financial activities as the Treasurer in his absence, and a Deputy Clerk who prepares the payroll for the Clerk-Treasurer's review.

Quick Facts

2020-21 General Fund Budget	\$6.7 million
2021-22 General Fund Budget	\$7.1 million
Population	77
2020-21 Clerk-Treasurer Salary	\$211,150

Audit Period

June 28, 2010 – May 31, 2021

Clerk-Treasurer Compensation

How Should Officials Ensure Compensation Is Properly Authorized and Paid?

A village board is responsible for authorizing and approving all compensation, including salaries, wages and any benefits, paid to officers and employees. For instance, in addition to established wages and salaries, a village may provide for an officer or employee to receive the cash value of a portion of his or her accrued unused leave accruals at a time other than when separating from service.

Authority to make such payments may be pursuant to a collective bargaining agreement or, in some circumstances, an individual employment agreement (Agreement) or by a pre-existing local enactment, such as a village code or employee handbook.

Payments for unused leave accruals can represent a significant expenditure for a village. As such, village officials must sufficiently review any such payments to be made and ensure they are properly calculated, adequately supported and authorized in accordance with a pre-existing employment agreement, village code or other local enactment so that officers and employees are paid only the amounts to which they are entitled.

Comp time is leave time, earned and accrued by an employee, in lieu of receiving pay for overtime hours worked. An employee who has earned comp time, in accordance with municipal policies or procedures, may use the accrued time off at some future date and time. However, a municipality should have a pre-existing plan in place prior to the accrual of any overtime benefits, including the ability to earn comp time. A village board is responsible for establishing adequate policies and procedures to ensure overtime is properly authorized and documented regardless of whether the employee is receiving overtime pay or earning comp time. When comp time is earned in lieu of overtime pay, officials should ensure comp time hours earned and used are accurately recorded. Monitoring comp time balances, along with other leave balances, is important because comp time may be used for taking time off in lieu of charging other leave accruals. Inaccurate or inappropriate comp time balances can result in higher leave balances than those to which an employee is entitled, and higher payments for unused leave.

Finally, if village officers or employees are provided with fringe benefits, such as the use of a vehicle, that are not included in the documented employment terms and are not a condition of employment, these may be considered additional compensation that should be reported as wages and subject to employment taxes. A board and village officials are responsible for ensuring that any benefits provided to officers and employees are properly authorized, in accordance with policies and employment agreements, and equitably administered.

Payments for unused leave accruals can represent a significant expenditure for a village.

The Board Allowed the Clerk-Treasurer to Cash Out More Leave Than Allowed by His Agreement

Village officers and employees are entitled to accrue a certain amount of vacation, personal and sick leave each year, the earning and usage of which is generally addressed in the Village’s employee handbook, or in some circumstances, pursuant to an Agreement. In the case of the Clerk-Treasurer, the Board entered into Agreements in 2012 and 2021. The Agreements included terms that differed from the Village’s employee handbook, including the number of vacation days earned by the Clerk-Treasurer each year, as well as allowing the Clerk-Treasurer the option to cash out unused vacation days (see Figure 1). The first Agreement, dated January 27, 2012, made the terms of the Agreement retroactive to the Clerk-Treasurer’s start date of June 28, 2010. Moreover, the second Agreement, dated July 17, 2021, retroactively increased the Clerk-Treasurer’s annual vacation day accruals from 25 days to 32 days per year, effective June 1, 2018.

Figure 1: Clerk-Treasurer’s Leave Allowances

	2012 Agreement retroactive to June 28, 2010	2021 Agreement effective June 1, 2021	Employee Handbook								
Vacation	<ul style="list-style-type: none"> •20 days per year •Unused days may be cashed out every year or carried over in a “Vacation Day Bank,” not to exceed 60 days. 	<ul style="list-style-type: none"> •32 days per year^a •Unused days may be cashed out or carried over in a “Vacation Day Bank”, not to exceed 60 days. 	<p><u>Based on Length of Service:</u></p> <table> <tr> <td>1 – 12 months:</td> <td>5 days</td> </tr> <tr> <td>13 – 24 months:</td> <td>10 days</td> </tr> <tr> <td>36 – 109 months:</td> <td>20 days</td> </tr> <tr> <td>109+ months:</td> <td>25 days</td> </tr> </table> <p>Vacation days cannot be carried over to the next fiscal year or cashed out.</p>	1 – 12 months:	5 days	13 – 24 months:	10 days	36 – 109 months:	20 days	109+ months:	25 days
1 – 12 months:	5 days										
13 – 24 months:	10 days										
36 – 109 months:	20 days										
109+ months:	25 days										
Personal	<ul style="list-style-type: none"> •3 days per year •Unused days get added to the “Vacation Day Bank,” subject to the 60 day cap. 	<ul style="list-style-type: none"> •3 days per year •Unused days get added to the “Vacation Day Bank,” subject to the 60 day cap. 	<p>Upon working 1,500 hours per year, 3 personal days per year that cannot be carried over or combined with holidays, vacation days, or sick days</p>								
Sick	<ul style="list-style-type: none"> •12 days per year •Unused sick days accumulate in Sick Leave Bank. 	<ul style="list-style-type: none"> •12 days per year •Unused days accumulate in “Sick Leave Bank” or may be cashed out, upon request, in the last week of the fiscal year. 	<ul style="list-style-type: none"> •1 day per month of service •Unused days accumulate in “Sick Bank” up to 30 days. •May only cash out unused days in excess of 30-day cap; days cashed out at half pay in last pay period of the fiscal year. 								

a) Vacation allowance per the 2021 agreement was made retroactive to June 1, 2018.

As for accrual and use of sick leave, the Clerk-Treasurer stated that his Agreements have always followed the Village's employee handbook and the 2021 Agreement indicates that the Clerk-Treasurer is entitled to any and all benefits set forth in the Village's employee handbook, as well as any additional benefits included in the terms and conditions of the Agreement. Nonetheless, there have been instances in which the Clerk-Treasurer cashed out unused vacation and sick leave accruals that were inconsistent with the terms of his Agreements and the Village's employee handbook. As a result, the Clerk-Treasurer received cash payments totaling \$25,642 for unused vacation and unused sick leave, that were inconsistent with the terms of his Agreement or the Village's employee handbook. Furthermore, the Board's belated actions to ratify the Clerk-Treasurer's actions demonstrated poor judgment and was a poor substitute for governance.

- Vacation Leave – The Clerk-Treasurer consistently cashed out more vacation days than he earned, per the employee handbook and his Agreements and, each time, the Board retroactively approved his actions. At the start of his employment with the Village, the Clerk-Treasurer's vacation leave was governed by the employee handbook, which allowed for five or 10 days of vacation per year, depending on length of service (see Figure 1). However, the Clerk-Treasurer cashed out 20 vacation days in 2010-11 and 2011-12 before the Board approved the Clerk-Treasurer's 2012 Agreement, which increased his vacation days to 20 per year, retroactive to his start date of June 28, 2010. As soon as the Board adopted this 2012 Agreement, the Clerk-Treasurer began to cash out 25 vacation days per year from 2012-13 through 2017-18 and then 32 days per year thereafter.

Although the Mayor provided a memorandum supposedly increasing the Clerk-Treasurer's vacation days from 20 days to 25 days per year, this memorandum was not dated or approved by the Board. Pursuant to New York State General Municipal Law Section 92, the governing board sets the vacation leave of its officers and employees. Therefore, the Mayor lacked the authority to unilaterally authorize this change.

In 2018, the Mayor again improperly issued a memorandum that increased the Clerk-Treasurer's vacation leave to 32 days per year. However, the Board eventually approved this action with its adoption of the 2021 Agreement which increased the Clerk-Treasurer's vacation days to 32 per year, retroactive to June 1, 2018. Nonetheless, as the Village did not provide a Board resolution or other documentation that the Board authorized the 2012 increase to 25 vacation days, the Clerk-Treasurer was not entitled to the extra five vacation days per year. Furthermore, in 2016-17, the Village paid out the Clerk-Treasurer's vacation days using an hourly rate of \$71.72 instead of his hourly rate of \$67.31. Consequently, even if he never used

a vacation day and could cash out 100 percent of his vacation, the Clerk-Treasurer was overpaid \$15,546 for unused vacation leave over six years (see Figure 2).

Figure 2: Overpayment to Clerk-Treasurer For Unused Vacation

Fiscal Year	Actual Vacation Days Cashed Out	Actual Value of Vacation Days Cashed Out	Vacation Days Allowed ^a	Value of "Cash Out" Allowed ^a	Amount Overpaid
2012-13	25	\$9,615	20	\$7,692	\$1,923
2013-14	25	\$10,577	20	\$8,462	\$2,115
2014-15	25	\$11,539	20	\$9,231	\$2,308
2015-16	25	\$12,500	20	\$10,000	\$2,500
2016-17	25	\$14,344	20	\$10,769	\$3,575
2017-18	25	\$15,625	20	\$12,500	\$3,125
Total Amount Overpaid					\$15,546

a) Vacation Days and "Cash Out" allowed by employee handbook and/or Agreement

- Sick Leave** – According to the Clerk-Treasurer’s 2012 and 2021 Agreements, the Clerk-Treasurer earned 12 sick days per fiscal year. The 2012 Agreement terms state that unused sick days would accumulate in a “Sick Leave Bank,” but contains no provision for the Clerk-Treasurer to cash out unused sick days. Moreover, the Clerk-Treasurer stated that his sick leave has always followed the employee handbook, which states that full-time employees accrue sick leave at the rate of one day per month of service (i.e., 12 days per year), with unused sick days accruing in a Sick Bank, up to a maximum of 30 days. The employee handbook further states that no financial compensation will be provided in lieu of banking sick days during employment, although, after accruing the maximum bank of 30 days, any additional accrued earned sick days over and above the Sick Bank balance may be reimbursed at half-pay during the last payroll of the fiscal year.

Even if the Village intended the Clerk-Treasurer’s Agreement to follow the Village’s employee handbook with respect to cashing out unused sick days in excess of the maximum 30 Sick Bank days, we still question the amount of unused sick days cashed out by the Clerk-Treasurer. For example, the Clerk-Treasurer began his employment with the Village June 28, 2010. According to the employee handbook and his Agreement, because the Clerk-Treasurer could only earn 12 sick days per year as a full-time employee, he would not have had any sick days to cash out until his third year of employment in 2012-13, if he never took a sick day. However, the Clerk-Treasurer cashed out 100 percent of his sick days nearly every year since 2011-12, including 24 sick days in 2015-16. Additionally, while the Clerk-Treasurer did not cash out any sick days in 2016-17, he cashed out 24 sick days in 2017-18. As a

result, the Clerk-Treasurer received payments over three fiscal years totaling \$10,096 for unused sick days that were inconsistent with the employee handbook and his Agreement (Figure 3).

Figure 3: Overpayments to Clerk-Treasurer For Unused Sick Leave

Fiscal Year	Actual Sick Days Cashed Out	Actual Value of Sick Days Cashed Out	Sick Days Allowed ^a	Value of "Cash Out" Allowed ^a	Amount Overpaid
2011-12	12	\$2,192	0	\$0	\$2,192
2012-13	12	\$2,308	6	\$1,154	\$1,154
2015-16	24	\$6,000	12	\$3,000	\$3,000
2017-18	24	\$7,500	12	\$3,750	\$3,750
Total Amount Overpaid					\$10,096

a) Sick Days and "Cash Out" allowed by employee handbook and/or Agreement

Comp Time Was Used to Inflate Payments for Unused Vacation Leave

The Village’s employee handbook states that exempt employees, such as the Clerk-Treasurer, may not earn overtime. The Mayor stated it has been the Village’s practice to give exempt employees comp time for hours worked in excess of their regularly scheduled work week. However, the Village has no documentation or formal policy, including the employee handbook, that allows exempt employees to receive comp time and the legal “past practice” principle does not apply to exempt employees.

The Clerk-Treasurer’s Agreement contains no provisions for him to be paid overtime or earn comp time. Therefore, in the absence of a pre-existing policy allowing exempt employees to earn comp time, the Clerk-Treasurer would not earn comp time. However, throughout the four fiscal years 2016-17 through 2019-20, the Clerk-Treasurer reported and received comp time totaling 220.75 hours or 29.43 days for various reasons, including that he worked extra hours and that he took the Village truck to the car wash. The Clerk-Treasurer then used this comp time in place of his accrued vacation, sick or personal leave to take time off. By using the unauthorized comp time in place of his regular leave accruals, the Clerk-Treasurer increased the amount of unused leave he cashed out by \$18,493.

The Clerk-Treasurer’s Use of a Village-Owned Truck Cost Nearly \$11,000 Each Year

Village officials are responsible for ensuring that the benefits provided to employees are properly authorized, in accordance with policies and employment agreements, and equitably administered. In both the 2012 and 2021 Agreements with the Clerk-Treasurer, the Board agreed to reimburse the Clerk-Treasurer for any mileage on his personal vehicle used for approved business purposes

at the current mileage rate established by the United States Internal Revenue Service. The Board also agreed to provide ferry passes, as needed, and parking accommodations at the ferry terminal.

From at least 2012, instead of reimbursing the Clerk-Treasurer for mileage on his personal vehicle as provided in his Agreements, the Board has provided the Clerk-Treasurer with a Village-owned vehicle, which the Village has paid the cost to operate, including insurance, gasoline, repair and maintenance. The Mayor stated in a 2014 memorandum to the Clerk-Treasurer that the vehicle shall not be used for personal matters. However, the Clerk-Treasurer did not maintain a daily log showing the day, date, odometer reading, destination and purpose of trips. Without such a detailed log, the Board is unable to determine whether the Clerk-Treasurer used the vehicle appropriately. Moreover, such a log must be maintained because the personal-use portion is a taxable fringe benefit reportable as additional compensation. As there is no record of the Clerk-Treasurer using the Village vehicle for any purpose other than commuting, which is generally not a reimbursable business purpose, the Clerk-Treasurer's use of the Village-owned vehicle is categorized as personal use for tax purposes. However, the Village has not reported any taxable fringe benefits on the Clerk-Treasurer's W-2 forms for the years 2010 through 2021. In 2019-20, this cost would have been nearly \$11,000 (see Figure 4).

Figure 4: Cost of Village's Ownership (2019-20)

	Purchase Price	Annual Cost
Cost of Purchase - 2019 Pickup Truck (amortized over five years)	\$31,619	\$6,324
Insurance (based on average annual cost per Village vehicle)		\$561
Gasoline (actual amount purchased)		\$4,039
Total Annual Cost^a		\$10,924
a) Does not include routine repair and maintenance costs		

The Mayor asserted that, in 2012, the Board had made a business decision that providing the Clerk-Treasurer with a vehicle was more cost efficient for the Village. However, the Board did not conduct a cost-benefit analysis to make this decision. Furthermore, when the Board adopted the Clerk-Treasurer's updated employment agreement in July 2021, there was no indication that the Clerk-Treasurer was authorized to use the Village-owned vehicle. Had the Board adhered to the terms of the Clerk-Treasurer's employment agreements to reimburse him for mileage on his personal vehicle for approved business purposes, which would not include commuting, we estimate that the Village could have realized cost savings equal to the cost of purchasing and operating the Clerk-Treasurer's vehicle.

What Do We Recommend?

The Board should:

1. Implement procedures to ensure that all salaries and benefits are provided to officers and employees in accordance with any employment agreements, the employee handbook or pursuant to other proper Board authorizations.
2. Publicly approve any extensions, additions or changes to the Clerk-Treasurer's Agreement before those extensions, additions or changes become effective.
3. Consult with the Village Attorney about the overpayments of the Clerk-Treasurer's unused leave accruals identified in the report and, if appropriate, seek recovery of such payments that are inconsistent with the Clerk-Treasurer's Agreement or the employee handbook.
4. Adopt a comprehensive policy and develop written procedures that provide consistent guidelines for pre-approval of overtime and comp time and adequate documentation and supervisory approval authorizing accrual of comp time, including that earned comp time is supported by employee requests that clearly indicate scheduled work hours, the exact time and date the employee worked overtime, reason for overtime, certification by the employee and approval by the employee's direct supervisor.
5. Ensure that accrual of comp time complies with the Village's employee handbook and that it is controlled and accounted for in accordance with Board policy and procedures.
6. Conduct a cost-benefit analysis to justify assigning Village vehicles to employees for business use. This analysis should compare the Village's costs of owning vehicles to the cost of reimbursing employees for the use of their personal vehicles on Village business.
7. Report the value of any taxable fringe benefits as additional income on the Clerk-Treasurer's W-2 forms, as appropriate.

Appendix A: Response From Village Officials

The Village's response letter refers to several attachments (Exhibits A-F) that support the response letter. Because the Village's response letter provides sufficient detail of its actions, we did not include the attachments in Appendix A.

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



INCORPORATED VILLAGE OF OCEAN BEACH

POST OFFICE BOX 457
OCEAN BEACH, NEW YORK 11770-0457
TEL: (631) 583-5940 FAX: (631) 583-7597
www.villageofoceanbeach.org

JAMES S. MALLOTT *Mayor*
MATTHEW M. BLAKE, *Deputy Mayor*
DAWN L. HARGRAVES, *Trustee*
CHRISTOPHER F. NORRIS, *Trustee*
MARCO ARMENT, *Trustee*

STEVEN W. BRAUTIGAM, *Clerk/Treasurer*
KEVIN J. SCHELLING, *Superintendent of Public Works*
JOE DIFRANCISCO, *Village Administrator*

September 23, 2022

Ira McCracken
Chief Examiner
Division of Local Government and School Accountability
Office of the New York State Comptroller
110 State Street
Albany, New York 12236

RE: Village of Ocean Beach

Dear Mr. McCracken,

The Village is in receipt of the "Draft" report entitled Clerk-Treasurer Compensation Report of Examination 2022M-79.

While we do not agree with the report 100%, we certainly recognize that certain condoned practices need to be memorialized and some policies need to be updated and re-written to more accurately reflect the intent of the various Boards over the years.

By way of background, Incorporated in 1921, Ocean Beach is the heart and soul of Fire Island, a barrier island just south of Long Island, New York. It has approximately 600 residential houses and a small commercial downtown. The residential homes are primarily summer "vacation" homes. The Village has a limited staff. It is difficult to attract and retain employees because it is very difficult to get to the island in the off season (October - May). The ferry boat has very limited service during this time. Also, the winters are harsh on the bay and ocean. The bay routinely freezes over and ferry service must be suspended. With that said, the Village and its staff try to do the best they can to comply with all laws, rules, regulations and policies.

As for specific responses to your findings, please see below.

VACATION:

When hired, the current Village Clerk Treasurer was given 20 days vacation per year. Effective June 1, 2012, that was increased to 25 days per year. Effective June 1, 2018, that was increased to 32 days per year. Please see attachment "A".

See
Note 1
Page 13

As you point out, the Clerk-Treasurer routinely "cashed in" his vacation time, as did many other employees. This would typically be done during the last pay period of the fiscal year (June 1 – May 31). The Deputy Clerk was made responsible for tracking vacation/sick and personal days. At the end of each fiscal year, a report would be produced listing each employees' "banks" and they would be asked if they wanted to "cash out" any time. That report would be provided to the Board and the Board would adopt a resolution authorizing all payments.

As you have seen, all payouts for the Clerk-Treasurer were approved by Board resolutions. Please see Attachment "B", BOT Resolutions from 2011 – 2021.

Accordingly, while we agree with you that good governance would dictate that the Clerk-Treasurer's terms and conditions of employment and the Village handbook should have been updated simultaneously with any change in the intended compensation or practice, we respectfully disagree with your characterization of the foregoing as an "overpayment". See Figure 2 (Page 6 of your Report).

SICK LEAVE:

The current Clerk-Treasurer was entitled to 12 sick days per year, pursuant to the terms and condition of his employment. Please see Attachment "C". While he did not maintain a minimum bank of 30 sick days (which would have permitted him to cash out days in excess of 30 days), he would have been entitled to these "base" 30 days upon his eventual separation from service. Please see Attachment "C". Paying them out during his tenure at the Village, while "early", was actually a cost savings to the Village because they were paid out at his lower salary each year.

See
Note 2
Page 13

Acknowledging that some of these sick payouts were premature and that the Village needs to make better efforts to track time and update its written policies, we respectfully disagree with your characterization of same as an "overpayment". See Figure 3 (Page 7 of your report).

EXTRA DAYS:

We have reviewed detailed compensation sheets for the Clerk-Treasurer's payroll. In fiscal year 2015/2016, the Clerk/Treasurer was "cashed out" for 40 days (32 vacation days, 3 personal days, 6 sick days (12 days @ 50%) and an additional 6 days). The Clerk/Treasurer was credited with 12 sick days in his first year of employment. He did not take any sick time that year and did NOT "cash" them out. They were carried over from year to year. So, at the end of fiscal year 2015/2016, he had 24 sick days in his bank. Please see Attachment "D", a report entitled Accrued Time, dated 4/14/2016, signed by the Clerk Treasurer and the Mayor. This document indicates that he had 192 hours of sick time. That equates to 24 days. So, he "cashed out" all 24 days and was paid 12 days (50%). That accounts for 6 of the days (\$3,000) that the report incorrectly characterizes as "extra" days.

See
Note 3
Page 13

At the end of fiscal year 2016-2017, the Clerk/Treasurer “cashed out” 25 vacation days and 3 personal days for a total of \$16,154.88. In the Payroll Register, that amount was spread over 3 different lines. One of the lines was “coded” as “X”. That “X” does not mean “extra” days. Please see Attachment “E”, Payroll Register for period ending 5/23/2017. The amount of \$1,077.44 represents 2 days of pay that was properly paid out as part of his buyout. \$3,000 added to \$1,077.44 equals \$4,077.44. That accounts for the \$4,078 that the report incorrectly characterizes as “extra” pay.

See
Note 4
Page 13

A review of ten (10) years of reports confirms that the Clerk/Treasurer was paid correctly in compensation and payouts. Please see Attachment “F”.

Accordingly, we disagree with your “overpayment” calculation for “extra” time on page 7 of your report.

See
Note 5
Page 13

COMP TIME:

Over the course of time, Village Boards of Trustees have been aware of the long-standing (though admittedly unwritten) policy to allow the Clerk-Treasurer to earn and take Comp Time. The current Board is in the process of codifying a Comp Time policy.

See
Note 6
Page 13

Accordingly, while we again acknowledge that the Village must do a better job to update its written policies, we respectfully disagree with your characterization of the treatment of comp time as an “overpayment” (on page 8 of your report).

VILLAGE VEHICLE:

As a condition of employment, the Clerk-Treasurer, who also acted as the Village Administrator with the additional responsibility of overseeing and supervising all Village personnel, has traditionally been required to be able to respond to the Village 24/7. Accordingly, he was directed (not merely “authorized”) to use the Village’s 4-wheel drive vehicle. This allowed him to drive to and on the beach without reliance on the ferry schedule. As you must by now realize, for most of the year there is very limited ferry access to Ocean Beach. The Village vehicle at issue was also equipped with a first-aid kit and a tow-rope so that the Clerk-Treasurer could render assistance to any stranded resident. The vehicle was also used when the Clerk-Treasurer had to transport employees, vendors and retained licensed professionals. This was a requirement of the job and not a fringe benefit.

See
Note 7
Page 13

Accordingly, we respectfully disagree with your assessment of this as a fringe benefit.

CONCLUSION:

We would like to thank the Comptroller’s Office for their time and pointing out to us a number of areas where we have been lacking. As previously stated, the Village recognizes that certain policies need to be updated and re-written to more accurately reflect the Trustees’ historical intent. We are in the process of doing that.

Indeed, the current Board appreciates the seven recommendations made at the conclusion of the Comptroller's report, and believes consideration of same by the Village will be in its best interest.

It should be noted that about 3 – 4 years ago, the Village implemented a sign-in procedure for employees using bio-metrics. This is an product that tracks all time and bank accruals. We believe this has enhanced our ability to accurately collect data and time records.

Again, we thank for bringing these matters to our attention.

Sincerely,

James S. Mallott
Village of Ocean Beach, Mayor

Appendix B: OSC Comments on the Village's Response

Note 1

Because the Village did not have an employment agreement with the Clerk-Treasurer when he was hired, he was subject to the benefits defined in the Village's employee handbook, which limited annual vacation accruals to five days. When the Village entered into the January 27, 2012 employment agreement with the Clerk-Treasurer, he could earn 20 paid vacation days each fiscal year, retroactive to his start date of June 28, 2010.

Note 2

Absent a Board action, officials did not have the authority to pay the Clerk-Treasurer for unused sick days prior to his separation from service.

Note 3

The Clerk-Treasurer had fewer than 30 days in his sick bank. Therefore, he was not entitled to cash out unused days in 2015-16.

Note 4

An incorrect hourly rate was used to calculate the payout, resulting in a \$1,077 overpayment.

Note 5

We clarified the report to reflect this information.

Note 6

As noted in our report, neither the Village's employee handbook nor the Clerk-Treasurer's employment agreement included a provision allowing the Clerk-Treasurer to earn comp time, and as such the payment to the Clerk-Treasurer for comp time resulted in an overpayment.

Note 7

The use of a Village truck is inconsistent with the terms and conditions of the Clerk-Treasurer's employment agreement. If the Board wishes to allow the Clerk-Treasurer to have access to a Village-owned vehicle, as opposed to reimbursement for mileage on his personal vehicle, such benefit should be included as part of the Clerk-Treasurer's employment agreement.

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 objective and obtain valid audit evidence, our audit procedures included the following:

- We interviewed Village officials and reviewed records to gain an understanding of payroll procedures and internal controls.
- We reviewed the salaries and wages of officers and employees to evaluate whether they were paid in accordance with the adopted budgets.
- We reviewed the employee handbook, employment agreements and Board minutes to obtain information about salaries and benefits provided to employees.
- Upon noticing certain discrepancies, we extended our scope period to the term of the Clerk-Treasurer's employment, because his only employment agreement prior to July 2021 was dated 2012 and the benefits it contained were retroactive to his June 28, 2010 start date. We reviewed and compared the Clerk-Treasurer's payroll, leave records and benefits to the employment agreements to assess whether the Clerk-Treasurer had been properly paid.
- We recalculated the Clerk-Treasurer's leave time earned and cashed out to assess whether it had been accrued and paid in accordance with his employment agreements.
- We obtained and reviewed the Clerk-Treasurer's comp time records.
- We examined invoices, claim vouchers, W-2 forms, employment agreements and fixed asset inventory listings when reviewing benefits paid to the Clerk-Treasurer, including use of a Village-owned apartment and vehicles.

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.

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 Clerk-Treasurer's office.

Appendix D: 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

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

HAUPPAUGE REGIONAL OFFICE – Ira McCracken, Chief Examiner

NYS Office Building, Room 3A10 • 250 Veterans Memorial Highway • Hauppauge, New York
11788-5533

Tel (631) 952-6534 • Fax (631) 952-6091 • Email: Muni-Hauppauge@osc.ny.gov

Serving: Nassau, Suffolk counties



Like us on Facebook at facebook.com/nyscomptroller

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