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June 21, 2013

Mayor Thomas S. Richards
Members of the City Council
City of Rochester
30 Church Street, Room 307-A
Rochester, NY 14614

Report Number: S4-09-116-F

Dear Mayor Richards and Members of the City Council:

One of the Office of the State Comptroller's primary objectives is to identify areas where local government officials can improve their operations and provide guidance and services that will assist them in making those improvements. Further objectives are to develop and promote short-term and long-term strategies to enable and encourage City officials to reduce costs, improve service delivery, and account for and protect the City's assets.

In accordance with these objectives, we conducted a review of the codes of ethics and procedures related to their implementation at 31 municipalities selected throughout New York State. The objective of our audit was to examine local governments' ethics oversight procedures to determine if the local governments adopted and distributed codes of ethics in compliance with General Municipal Law (GML) and if the governing boards developed adequate procedures to monitor compliance with the codes of ethics and related statutory requirements.¹ We included the City of Rochester (City) in this audit. As a result of our audit, we issued a report letter, dated March 18, 2010, identifying certain conditions and opportunities for City management's review and consideration.

To further our policy of providing assistance to local governments, we revisited the City on June 27, 2011, and made additional follow up phone calls on September 12, 2012, to review the City's progress in implementing our recommendations. Our follow-up review was limited to interviews with City personnel and inspection of certain documents related to the issues identified in our report. Based on our limited procedures, it appears that the City has made some improvements. Of the three audit recommendations, one recommendation was fully implemented, one recommendation was partially implemented, and one recommendation was not implemented. We have also identified an additional matter for City management's review and consideration.

¹ General Municipal Law (GML) Article 18, Sections 800 through 813: Conflicts of Interest of Municipal Officers and Employees

We discussed our findings and recommendations with City officials and considered their comments in preparing this report.

Recommendation 1 – Code of Ethics Distribution

City officials should ensure that the Code of Ethics and any updates to the Code of Ethics are distributed to all employees and officials.

Status of Corrective Action: Fully Implemented

Observations/Findings: The Office of Public Integrity (OPI) worked with the Information Technology (IT) Office to update the Employee Portal² with new policies and policy revisions. When employees sign into the Employee Portal, they must sign off on any new policies and policy revisions as read. All new employees are required to go through training that includes a section on ethics. All new supervisors go through leadership training that has a section on fraud that addresses ethics. Current employees are also allowed to voluntarily sign up to attend these trainings. We also performed a phone survey of five randomly selected City employees and found that all five were aware of and had received training that addressed the City's Code of Ethics. However, only two of the five employees recalled having to sign off on new policies or policy revisions as read when signing in to the Employee Portal.

Recommendation 2 – Code of Ethics Revisions

The Board should review the City's Code of Ethics and consider revising it to cover more than the minimum requirements of GML. For example, the Board could consider including provisions that relate to hiring and supervising relatives.

Status of Corrective Action: Not Implemented

Observations/Findings: In the City's written response to the 2010 audit report and its corrective action plan, the Director of the OPI stated that his office would confer with relevant parties for input and guidance in making revisions to the City's Code of Ethics within the next fiscal year. However, no revisions to the City's Code of Ethics have been made.

Recommendation 3 – Whistleblower Policy Distribution

City officials should ensure that officers and employees are made aware of whistleblower protections that exist in Law.

Status of Corrective Action: Partially Implemented

Observations/Findings: The OPI, with the assistance of the IT Office, updated the Employee Portal with the City's whistleblower policy and also made it accessible in other locations. The ethics training mentioned previously includes a section on the whistleblower policy. Our review

² The Employee Portal is the City's web-based intranet used to provide City employees with email, news, and updates, including access to training, policies, and procedures.

of the OPI website on June 28, 2011, and again on September 12, 2012, found that the whistleblower policy is on the OPI home page. Our phone survey of five randomly selected City employees found that only two of the five employees were aware of and had received training on the City's whistleblower policy. The City needs to implement a more effective method to ensure officials and employees are made aware of the whistleblower protections.

Additional Concern from Report Letter – Board of Ethics

Our 2010 report noted:

“the City of Rochester has established a Board of Ethics but the Board of Ethics has not met in over three years due to the creation of the Office of Public Integrity, which is currently handling all ethics violations. We found that the Office of Public Integrity effectively reviewed financial disclosure forms that certain City employees are required to submit. The Office of Public Integrity verified that the forms were complete and had procedures for examining the information contained on the forms to prevent the occurrence of transactions that would be conflicts of interest.”

We have determined that our 2010 report did not express that the financial disclosure review responsibilities were not being administered properly. GML requires the review to be done by the Board of Ethics (Board), whose members are appointed by the City Council. In addition, the City Charter requires disclosures to be administered by the Board. However, this function has been performed by the OPI, whose Director is appointed by the Mayor. As a result, the review by the OPI is not an independent review, as anticipated by GML.

According to City officials, the Board has been reestablished and had their first meeting on February 15, 2012. As of September 12, 2012, no further meetings have been held. There is no indication that the Board has assumed its statutory role of reviewing financial disclosure statements. The OPI continues to review financial disclosure forms for completeness and examines submitted information for potential conflicts of interest. According to the Director of OPI, the Board's role will be to meet, review, and issue opinions on concerns that are brought to their attention either by employees or through concerns brought directly to his attention.³

Recommendation

1. The Board should review financial disclosure forms for completeness and examine information contained on the forms to prevent the occurrence of transactions involving conflicts of interest.

During our review, we discussed the basis for our recommendation and the operational considerations relating to this issue. We encourage you to continue with your efforts to implement our recommended improvements in your fiscal management.

³ The Director of OPI also serves as Secretary of the Board of Ethics.

I trust that our follow-up review was of assistance to you. If you have any further questions, please contact Edward Grant, Chief Examiner of our Rochester Regional Office, at (585) 454-2460.

Sincerely,

Andrew S. SanFilippo
Executive Deputy Comptroller
Office of State and Local Government
Accountability

cc: Dale Pascoe

APPENDIX A

RESPONSE FROM LOCAL OFFICIALS

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



March 22, 2013

Steven J. Hancox
Deputy Comptroller
Office of the State Comptroller
110 State Street
Albany, NY 12236

Dear Mr. Hancox:

The City of Rochester has reviewed your letter of March, 2013, regarding the follow-up review of the audit, "Ethics Oversight in New York State Municipalities" (2009-MR-4) and further detailed in your letter of March 18, 2010 (S4-09-116) performed by the Office of the State Comptroller (OSC).

We do appreciate the insight you have provided and the opportunity to provide feedback to your guidance. We have grouped our commentary by following your format and findings.

Recommendation 1 – Code of Ethics Distribution

City officials should ensure that the Code of Ethics and any updates to the Code of Ethics are distributed to all employees and officials.

The OSC indicates that the "Status of Corrective" action is fully implemented. The City has worked diligently to distribute the Code in multiple media formats realizing the need to do so effectively with as little cost to the taxpayer as possible. We have utilized two primary delivery methods for employees. A paper hard copy is provided for all new employees, officers and anyone that requests a hard copy. The Code of Ethics is prominently featured on our employee intranet portal as well as the City's internet website available to everyone. We will distribute a new hard copy of the Code as part of the payroll process in April, 2013. This will occur as a result of the Code being updated on March 19, 2013. It will also be updated and reposted on both the employee portal and the external website.

Recommendation 2 – Code of Ethics Revisions

The Board should review the City's Code of Ethics and consider revising it to cover more than the minimum requirements of the GML. For example, the Board could consider including provisions that relate to hiring and supervising relatives.

The OSC lists the "Status of Corrective Action" as "Not Implemented".

In the original report, OSC officials suggest that "the Board should review the City's Code of Ethics and consider revising it..." further suggesting that the City adopt provisions that exceed the "minimum requirements of the GML."



In your follow-up observations as stated in your letter of March 2013, the OSC notes that the City responded in 2010 by indicating that, “the Director of OPI would confer with relevant parties for input and guidance in making revisions to the Code of Ethics.... However, no revisions to the City’s Code of Ethics have been made.”

First, we concur with OSC officials that the City of Rochester’s Code of Ethics meets the requirements of the GML.

The City of Rochester Board of Ethics, much like the State Joint Commission on Public Ethics, does not possess the authority to change the Code. That privilege is exclusive to the elected City Council and the State Legislature for their respective codes.

The City believes that the intent of the OSC here is to cause municipalities, like Rochester, to conduct periodic self-examinations to ensure that the Code reflects the current needs of the City and Society. The City has done this. The City has recently proposed, and the Council on March 19, 2013, has approved updates to the Code of Ethics subsequent to review by the Director of OPI and relevant parties. These amendments will now be the subject of a public hearing before the Mayor prior to adoption. As recommended in your letter, the City has a nepotism policy that is reflective of our review and commitment to ethical behavior.

Recommendation 3 – Whistleblower Policy Distribution

City officials should ensure that officers and employees are made aware of whistleblower protections that exist in Law.

The OSC lists the “Status of Corrective Action: Partially Implemented”.

In your letter of March 2013 you acknowledge the efforts of the City in making our employees and officers aware of the Whistleblower policy by providing an overview during our ethics training classes and by posting it on the employee portal and City website.

OSC indicates that they surveyed five of the over three thousand City employees. Of those five surveyed, only two recall receiving and being trained in the Whistleblower policy. While certainly not statistically significant, the City considers the information provided by OSC to be enlightening and we will look to find ways to ensure education and draw attention to the policy on an on-going basis. One such step will be to issue a handbill or flyer with each employee paycheck reminding them of the policy. This will occur with employee payrolls in April, 2013.

Additional Concern from Report Letter – Board of Ethics

Our 2010 report noted:

“The City of Rochester has established a Board of Ethics but has not met in over three years due to the creation of the Office of Public Integrity, which is currently handling all ethics violations. We found that the Office of Public Integrity effectively reviewed financial disclosure forms that certain City employees are required to submit”.

OSC now indicates that their 2010 letter did not express that the duties of reviewing the financial disclosure forms were not being done properly. OSC now states that the City Charter requires disclosures to be "administered by the Board" and that "there is no indication that the Board has assumed its statutory role of reviewing financial disclosure statements."

The Charter of the City of Rochester sets forth the membership composition of the Board of Ethics and directs that one of the members shall be designated by the Mayor, and that person shall serve as the Board's Secretary. The Mayor has designated the Director of OPI to be his selection to the Board. In that role he is a full Board member and Secretary. He possesses the same independent standing as any other Board member. From a practical standpoint, given the voluntary membership of the City's Board, the Secretary to the Board of Ethics is in the best position to receive and review the financial disclosure submissions with the frequency that is required annually. This action is also anticipated and allowed by the Charter. The Charter requires the Secretary to review the completed disclosures (City Charter §2-18.G.5.), and notify the Board of deficiencies, delinquencies and violations. In fact, the GML appears to call for similar review of state financial disclosure statements by staff for the State Commission (GML §813.10.)

The Director will provide an overview of the statements and review concerns raised by the statements with the Board. The overview will include information about any person who has failed to file a statement, filed a deficient statement, or filed a statement which reveals a possible violation of the GML or the City Code of Ethics. Additionally the Statements will be made available to the Board for inspection in whole or part at their discretion.

We would like to extend our appreciation to your staff for their dedication and professionalism in this process.

Respectfully,

George E. Markert
Director, Office of Public Integrity
City of Rochester, New York