



Town of Dunkirk

Justice Court

Report of Examination

Period Covered:

January 1, 2012 — March 15, 2013

2013M-106



Thomas P. DiNapoli

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State of New York Office of the State Comptroller

Division of Local Government and School Accountability

June 2013

Dear Town Officials:

A top priority of the Office of the State Comptroller is to help local government officials manage government resources efficiently and effectively and, by so doing, provide accountability for tax dollars spent to support government operations. The Comptroller oversees the fiscal affairs of local governments statewide, as well as compliance with relevant statutes and observance of good business practices. This fiscal oversight is accomplished, in part, through our audits, which identify opportunities for improving operations and Town Board governance. Audits also can identify strategies to reduce costs and to strengthen controls intended to safeguard local government assets.

Following is a report of our audit of the Town of Dunkirk, entitled Justice Court. This audit was conducted pursuant to Article V, Section 1 of the State Constitution and the State Comptroller's authority as set forth in Article 3 of the General Municipal Law.

This audit's results and recommendations are resources for local government officials to use in effectively managing operations and in meeting the expectations of their constituents. If you have questions about this report, please feel free to contact the local regional office for your county, as listed at the end of this report.

Respectfully submitted,

*Office of the State Comptroller
Division of Local Government
and School Accountability*

Introduction

Background

The Town of Dunkirk (Town) is located in Chautauqua County and has a population of approximately 1,300 residents. The Town is governed by an elected Town Board (Board) which consists of the Town Supervisor and four Board members. The Board is responsible for the general management and control of the Town's financial affairs. The Board also has oversight responsibilities with respect to the Town Justice Court (Court).

The Court has jurisdiction over vehicle and traffic, criminal, civil, and small claims cases brought before it. The Town operates its Court with two elected Justices, a Court Clerk, and a Deputy Court Clerk. The Justice's principal duties involve adjudicating legal matters within the Court's jurisdiction and administering moneys collected from fines, bails, surcharges, civil fees, and restitution.

Justice Priscilla Penfold has been Justice since 2008. Terrance Bender resigned as Town Justice in November 2011. Christopher Penfold was appointed in March 2012 to fill the remaining nine months of Justice Bender's term. Justice Robert Hubbard began his term in January 2013. Each Justice has their own bank account in which the Court Clerk deposits moneys for fines, fees, and bail.

Objective

The objective of our audit was to evaluate internal controls over the Court's financial operations. Our audit addressed the following related question:

- Are internal controls over the Justice Court appropriately designed and operating effectively?

Scope and Methodology

We examined the Court's records and reports for the period January 1, 2012, through March 15, 2013. We conducted our audit in accordance with generally accepted government auditing standards (GAGAS). More information on such standards and the methodology used in performing this audit are included in Appendix B of this report.

Comments of Local Officials and Corrective Action

The results of our audit and recommendations have been discussed with Town officials and their comments, which appear in Appendix A, have been considered in preparing this report. Town officials agreed with our findings and recommendations and planned to initiate corrective action.

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 forwarded to our office within 90 days, pursuant to Section 35 of the 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 this plan available for public review in the Town Clerk's office.

Justice Court

Justices must maintain complete and accurate accounting records and safeguard all moneys collected by the Court. Justices also are responsible for reconciling Court collections to corresponding liabilities, depositing all moneys collected within 72 hours of receipt, disbursing fees collected to the Supervisor and reporting Court transactions to the Justice Court Fund (JCF) and the Department of Motor Vehicles (DMV). If the Justices designate an individual (i.e., a court clerk) to perform any or all of these functions, it is the Justices' responsibility to provide timely and effective oversight of these activities to help ensure that transactions are properly recorded and reported and that all moneys are accounted for. Town Law requires that the Board perform an annual audit of the Justices' records to ensure that the Court is properly recording and reporting transactions, and accounting for moneys received.

We found that the Justices, and the Court Clerk, did not prepare monthly accountabilities of Court assets and liabilities and former Justices did not properly close out their accounts. Our audit disclosed that one of the former Justices had a shortage of \$1,026 and the other former Justice has unidentified funds of \$699. In addition, pending tickets were not always enforced in a timely manner and dismissed tickets were not always reported to the JCF. Therefore, the Town may not have collected all fines and fees to which it is entitled. Finally, the Board did not conduct an effective audit of the Court's records and did not properly segregate the Court Clerk's duties or establish compensating controls. As a result, the Board cannot be assured that all Court moneys were received and properly accounted for.

Accountability – Each month, Justices should verify the accuracy of their financial records and perform accountabilities for the money they hold by preparing a list of Court liabilities and comparing it with reconciled bank balances. At any point in time, the liabilities of the Court, such as bail held on pending cases and unremitted fines and fees, should equal the Justice's available cash. Periodic analyses should identify the source and amount of all revenue held in the Justice's accounts, and should detect any overages or shortages so that corrective action can be taken in a timely manner.

Neither the Justices, nor the Court Clerk, perform accountability analyses. We prepared one for January 31, 2013 (see Table 1) and identified a cash shortage of (\$1,026) for prior Justice Bender, based on liabilities identified from the Court records. We also found unidentified funds of \$699 for prior Justice Christopher Penfold,

based on the cash assets and liabilities identified. If the Justices had performed monthly accountabilities and reviewed these analyses, they could have detected these issues and taken corrective action. Justices are personally responsible for moneys received by the Court and may be liable for money paid to the Court that was lost or stolen. Therefore, it is essential that each Justice maintain a current, accurate, and complete list of all moneys held.

Table 1: Accountability Analysis at January 31, 2013				
	Justice Priscilla Penfold	Justice Robert Hubbard	Justice Christopher Penfold	Justice Terrance Bender
Court Assets				
Cash Assets	\$21,110	\$7,500	\$5,299	\$744
Court Liabilities				
Fines and Fees Due to JCF	\$16,625	\$7,285	\$0	\$0
Outstanding Bail	\$4,735	\$1,000	\$2,850	\$2,320
Amount Due to the Town ^(a)	\$250	\$215	\$250	\$200
Total Known Liabilities	\$21,610	\$8,500	\$3,100	\$2,520
Assets Less Liabilities	(\$500)	(\$1,000)	\$2,199	(\$1,776)
Differences				
Bail Money ^(b)	\$500		(\$500)	
Case Transfer ^(c)		\$1,000	(\$1,000)	
Bail Incorrectly Returned ^(d)				\$750
(Cash Shortage)/ Unidentified Funds	\$0	\$0	\$699	(\$1,026)
<p>^(a) The Town provided each Justice with cash to open their bank account and to act as a cushion for issues like non-sufficient funds checks. When the bank account is closed, this money is due back to the Town.</p> <p>^(b) A defendant paid bail to prior Justice Christopher Penfold in 2007. After his term had ended, the Court Clerk returned the bail out of Justice Priscilla Penfold's account in February 2008 without transferring the money from Christopher Penfold's bank account.</p> <p>^(c) Prior Justice Christopher Penfold received bail. In 2012, the Court Clerk transferred the case to current Justice Hubbard; however, the money was not transferred between the respective bank accounts.</p> <p>^(d) The Court Clerk incorrectly returned bail out of prior Justice Bender's account after the bail had already been returned by the prior Court Clerk. The Court never recovered the \$750.</p>				

When Justices leave office they are required to transfer all pending cases and any moneys received on those cases to the succeeding Justice. They must also file a final report with the JCF reporting all activity and remitting any fines and fees due and close all bank accounts. The Board is responsible for ensuring that a Justice meets these requirements.

Although Justices Bender and Christopher Penfold filed a final report with the JCF, their official bank accounts were not closed and all remaining cash from pending cases was not transferred to their successor.

When the Board does not ensure that all the requirements are met by a Justice leaving office, such as remitting all money in their possession, preparing a final report and closing all official bank accounts, the possibility of these moneys being unaccounted for, lost or stolen is increased.

Pending Tickets – The Justices’ are responsible for the enforcement of unpaid tickets and to ensure that revenues are collected as efficiently and effectively as possible.

We reviewed the DMV’s log of pending tickets, which contained 6,427 pending tickets for the Court as of February 2013. This report showed that pending tickets were dated as far back as 1985, as indicated in the following table:

Table 2: Pending Tickets	
Years of Violations	Number of Tickets
1985-1999	1,347
2000-2007	2,622
2008-2012	1,919
2013	539
Total	6,427

Due to the significant number of pending tickets,¹ we randomly selected 25 tickets from the log to determine the status and enforcement of each ticket. We found the following:

- Two of the tickets had actually been paid, reported to JCF, and the case file in the Court’s records was closed out. Therefore, the Court apparently did not notify DMV.
- Five of the tickets were not scofflawed² by the Court. For example, a ticket with a violation date in March 2011 was not scofflawed on the DMV records or the Court’s recordkeeping system.
- The remaining 18 tickets were included in the Court’s recordkeeping system as pending, which means that the Court

¹ These tickets were issued from January 2008 through December 2012.

² The Court may “scofflaw” drivers who have not answered to the Court regarding a traffic violation or those who have not made a payment on their ticket. The DMV will not allow those drivers to renew their license until they answer the Court.

is still waiting for an answer to the plea or is waiting on payment for the ticket. All 18 tickets were properly scofflawed.

Because the Justices do not adequately reconcile DMV reports with current Court caseload activity, unpaid tickets were not enforced in a timely manner.

Dismissed Tickets – When a ticket is issued, relevant information is sent electronically to DMV. After the case is adjudicated and fines are paid in full or the case is dismissed, it can be closed. While this step includes recording the payment in the Court cashbook and on the monthly JCF report, the Court is also required to send this information to the DMV so the case is properly accounted for as “disposed” in its database. It is very important that the Court report closed cases to DMV in a timely manner so the defendant’s DMV record is accurate. Cases reported as disposed to DMV should also be included on the monthly report to the JCF along with any related fines.

For the period January 1, 2012, to December 31, 2012, we compared all 395 tickets which the Court reported to DMV as dismissed, to the tickets listed on the monthly reports submitted to JCF for 2012. We found that 47 of these were never reported to JCF. The Town may be entitled to a fee even if the case is reported as dismissed.

Annual Audit – Every Town Justice is required to present his/her records and docket at least once a year to be examined by the Board, or by an independent public accountant. The Board minutes should document that an audit was performed and the results of the review. Annual audits are an important internal control because they allow the Board to independently verify that the Court’s accounting records are complete and accurate and that all moneys have been properly accounted for and reported.

The Board minutes dated May 8, 2012, indicate that an audit of Court records was conducted. However, there was no indication that the Board identified the fact that no accountability analyses were performed. Had an accountability analysis been done at that time, the Board may have identified the cash shortages and unidentified funds in the Justices’ accounts.

Without an effective annual audit of the Court’s records, Town officials do not have assurance that all moneys received and disbursed by the Court are properly accounted for. Had the Board asked the Justices to provide an accountability analysis, the deficiencies identified during our audit may have been found sooner and more timely corrective action could have been taken.

Segregation of Duties – Concentrating key duties (i.e., recordkeeping and cash custody) with one individual with little or no oversight weakens internal controls. When it is not practical to segregate Court duties, effective oversight by the Justice and the Board is essential to help ensure that transactions are properly recorded and reported and that all moneys are accounted for.

The Court Clerk collects cash and checks, makes deposits, performs bank reconciliations, and enters cash receipt and disbursement transactions into the accounting software with no oversight. The Court Clerk also reports transactions to the JCF and the DMV. We found that press-numbered, duplicate receipts were issued for all moneys recorded as collected, and all receipts were deposited, without exception. Although the Justices sign the monthly reports sent to the JCF, there is no indication that the Justices actually review the reports for accuracy and completeness.

When incompatible duties are not adequately segregated or compensating controls are not established, the risk is significantly increased that errors or irregularities could occur and go undetected and uncorrected.

Recommendations

1. Each Justice should prepare an accountability analysis for all moneys held by the Court on a monthly basis. Any differences should be promptly investigated and, if necessary, corrective action taken.
2. The Justices, with the assistance of the Court Clerk, should review and analyze all open case files and bail records to determine if there are additional payments held that would affect the amount of calculated cash surplus and shortage amounts. The Justices should remit all unidentified moneys to the Supervisor, or the JCF, as appropriate.
3. The Justices should periodically review and reconcile DMV's pending ticket log with caseload activity to ensure that tickets are properly reported as paid or enforced in a timely manner.
4. The Justices' should contact the Office of Court Administration to determine how best to address the substantial number of pending tickets.
5. The Justice should ensure that cases reported to DMV as disposed are also reported to JCF, as required, and that any related fines are remitted to JCF.

6. The Board should conduct an effective annual audit of the Justices' records.
7. The Justices and the Board should work together to establish procedures to ensure an adequate segregation of cash custody and recordkeeping duties or institute compensating controls. Compensating controls may include a monthly review of Court records by the Justices.

APPENDIX A

RESPONSE FROM LOCAL OFFICIALS

The local officials' response to this audit can be found on the following page.



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Robert Meller
Chief Examiner
295 Main Street suite 1032
Buffalo, NY 14203

Re: Town of Dunkirk Justice Court Audit

Dear Mr. Meller:

On behalf of the Town Board and the Town Justices we would like to thank your staff for their courtesy and professionalism in conducting a review of the financial operations of our Justice Court.

The Town Board and the Justices agree in principle with the findings of the auditor. Through this audit the Town Board, Court Justices and all court staff became aware of problems dating back as far as 1985 under previous Justices and Court Clerks. As elected officials we do take our fiduciary responsibilities very seriously and the Action Plan will consist of processes that will find and correct previous errors. The audit recommendations will assist us in the implementation of improved operations and we will use the findings of the audit on which to base the Corrective Action Plan.

Respectfully,

Richard A. Purol
Town Supervisor

APPENDIX B

AUDIT METHODOLOGY AND STANDARDS

Our overall objective was to determine whether the Justice Court had sufficient internal controls. To accomplish the objective of the audit and obtain valid audit evidence, we interviewed officials and examined pertinent documents for the period January 1, 2012, through March 15, 2013. Our procedures included the following steps:

- We interviewed officials to obtain an understanding of Court operations, to identify key personnel, and gain an understanding of procedures relative to our audit objective.
- We reviewed the Board minutes to identify evidence of the Board's oversight of the Court.
- We reviewed monthly bank statements, cash receipt books and bail records.
- We prepared an accountability analysis for each Justice.
- We verified that fines on the tickets matched the duplicate receipts, the cash receipt journal, and the amount deposited.
- We reviewed a list of dismissed tickets to determine if they were reported to the JCF.
- We made inquiry with the Court Clerk about DMV's pending ticket log. We also inquired regarding the status and enforcement of selected pending cases.

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.

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