



Town of Otto

Town Clerk and Tax Collector

Report of Examination

Period Covered:

January 1, 2009 — May 25, 2012

2012M-214



Thomas P. DiNapoli

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State of New York Office of the State Comptroller

Division of Local Government and School Accountability

January 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 Otto, entitled Town Clerk and Tax Collector. 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 Otto (Town) is a rural community located in Cattaraugus County, with a population of 800 residents. The Town Board (Board) consists of an elected Supervisor and four elected Council members and is the legislative body responsible for overall Town operations. The Supervisor also serves as the Town's chief executive and chief fiscal officer. The elected Town Clerk (Clerk) serves as Clerk to the Board and issues and/or collects fees for licenses, permits, and vital statistics, and receives the Town's sewer fees. The Clerk also performs the functions of the Town's Tax Collector and has served in both capacities for more than 20 years.

The Town's general fund appropriations for 2012 fiscal total \$1.1 million, funded primarily with real property taxes, State aid, and departmental fines and fees. The Clerk reported cash receipts totaling \$20,789 for 2011 and \$4,600 from January to May 2012.

Objective

The objective of our audit was to evaluate the Clerk's financial management practices. Our audit addressed the following related question:

- Are internal controls over Town Clerk and Tax Collector financial activities appropriately designed and operating effectively to adequately safeguard Town assets?

Scope and Methodology

We examined the records of the Clerk, as Clerk and as Tax Collector, from January 1, 2009 to May 25, 2012.

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 generally agreed with our recommendations and indicated they will 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 Clerk's office.

Town Clerk and Tax Collector

The Town Clerk also performs the functions of the Town's Tax Collector and has served in both capacities for more than 20 years. The Town Clerk's functions include receiving, recording, depositing and remitting moneys collected for various fees such as sporting licenses and sewer fees. The Tax Collector's functions include these same responsibilities but for real property taxes, and penalties and interest for late payments. Effective internal controls over these functions include the Clerk issuing duplicate receipts, depositing receipts timely and intact, preparing monthly accountabilities, retaining tax stubs, and properly dating all collections received. The Board is required to provide oversight, including performing audits of the Clerk's records. These audits should include documenting the records reviewed and the results in the Board minutes.

Internal controls over the Clerk were not appropriately designed or operating effectively, which allowed a shortage of \$4,134 to occur and not be detected. The Clerk had no record of payment or enforcement of unpaid sewer bills totaling approximately \$8,500 including her own, which totaled \$950 and is included in the \$4,134. Furthermore, the Clerk discarded tax stubs which prevented us from verifying if she paid \$970 of her own taxes, and the Clerk backdated tax collections to avoid imposing late penalties totaling \$569, including her own which totaled \$102. Finally, the Clerk received apparent duplicate payments for tax bills resulting in overpayments totaling approximately \$2,600 that have not been refunded to the appropriate taxpayers or banks. Because of the lack of records, as well as the poor condition of the records that were available, we could not determine how much of these questionable amounts are additional shortage.

The Board failed to provide oversight including performing an adequate audit of the Clerk's records and documenting the records reviewed and the results of the audit in the minutes. As a result, the Board was unaware of the deficiencies in the Clerk's records or the shortage that we identified. Moreover, these deficiencies are not a recent occurrence. The Board members and the Clerk failed to address similar findings in our 1999 and 2001 audit reports. Had they done so the shortage may have been prevented.

Clerk Activity

The Clerk is responsible for collecting payments for dog licenses, sporting licenses, marriage licenses, sewer fees, cemetery plots, and fees associated with her role as the Town's registrar of vital statistics. The Clerk is required to issue duplicate receipts to payees, recording the form of payment (i.e., cash or check) for every transaction where

no other evidence of receipt is available, and to deposit all moneys collected intact so that specific cash receipts can be identified through the accounting records to the bank statements. The Clerk should also prepare monthly accountabilities that compare cash on hand and on deposit to detailed lists of liabilities, reconciling funds collected with the entities to which they are due, leaving a reconciled balance of zero each month.

We audited the Town Clerk function in 2001 and were unable to reconcile her records with bank activity. Additionally, we found that customer ledger accounts for sewer billings did not include the dates payments were received. Our 1999 audit found that her deposits were not made timely or intact. Both reports directed this same Clerk to maintain complete and accurate records. However, the Board and Clerk failed to adequately address these deficiencies.

During this audit, we found that the Clerk did not issue duplicate receipts for revenues such as dog licenses, marriage licenses, sewer fees, cemetery plots, and fees associated with her role as the Town's registrar of vital statistics. The Clerk only issued receipts when using the State Department of Environmental Conservation (DEC) system, in which case the license was the receipt of payment. However, the Clerk allegedly discarded the daily transaction reports (the Clerk's copies of receipts) that were generated by the DEC system.

In addition, the Clerk did not prepare monthly accountabilities. We used available records¹ and bank compositions of deposits to perform an accountability from January 1, 2009 to May 25, 2012. We found that the Clerk's liabilities exceeded her assets, resulting in a shortage and apparent misappropriation of Town funds totaling \$4,134, as follows:

¹ The Clerk's cashbook for the months of August 2009 to December 2009 was not available for our review. The Clerk indicated she had problems with her system during this period and she could not reprint that information.

Table 1: Clerk's Shortage as of May 25, 2012	
Known Shortage	
Unrecorded Checks	\$3,228
May 2012 Activity	\$210
Errors for the Period	\$133
Unremitted Sewer Fees	\$950
Total Liabilities	\$4,521
Less Reconciled Bank Balance	\$387
Shortage	\$4,134
Due From Clerk	
Unpaid Penalties on Clerk's Taxes	\$102
Questionable Amounts	
Sewer Rents	\$7,425
Duplicate Tax Payments Not Returned	\$2,657
Clerk's Taxes Paid in Cash	\$970
Unpaid Penalties on Taxes Other than Clerk's	\$467
Total Questionable and Due From Clerk	\$11,621
Total	\$15,755

In addition to the shortage and questionable transactions noted, there are other funds that are not accounted for; however, due to the condition of the Clerk's records we cannot quantify the amount unaccounted for. For example, the Clerk sold cemetery lots and did not issue receipts. No revenue for the sale of cemetery lots was recorded or turned over to the Supervisor. Without records of how many lots were sold, we cannot determine the amount of revenue that should have been recorded.

In general, we found that the Clerk did not remit collections for copies of death certificates or cemetery plots to the Supervisor at all. The Clerk indicated that this was because there was no specific area² in the computerized Clerk's system to enter this information. However, when we asked the Clerk if the unremitted funds should still be in her bank account, she said they would be. They were not.

As shown in Table 1, the Clerk's reconciled bank balance as of May 25, 2012 totaled \$387. However, her liabilities totaled \$4,521. Her liabilities included 37 checks that totaled \$3,228³ that were deposited,

² Although there is not a specific area for the revenues, she could add one as she had done for the sewer fees.

³ We identified these checks by comparing the composition of bank deposits to available Clerk records. The total includes \$1,463 in 2009 (of the 10 checks, the purpose of two checks totaling \$1,080 could not be confirmed, due to the condition of the Clerk's records and lack of response to our inquiries of the payer), \$510 in 2010, \$1,085 in 2011, and \$170 from January 1, 2012 to May 25, 2012.

but not recorded in her cashbook and/or remitted to the appropriate entities. These checks, along with May 2012 activity of \$210, numerous reporting and remitting errors and deficiencies netting to \$133, and \$950 in unremitted sewer fees, resulted in the apparent misappropriation of \$4,134.

This shortage was made possible by the substitution of checks for cash. A substitution involves depositing but not recording receipts that are paid by check, and then applying those deposits to recorded receipts that were paid in cash, but not deposited.

Sewer Bills — The Clerk’s duties also included receiving sewer payments to the Town, which she was supposed to deposit in her bank account and then remit to the Supervisor. When sewer bills are not paid, they are supposed to be relieved on the tax roll. Therefore, the Town should always receive the entire amount billed for sewer, either through direct payment or by relevy on the tax roll.

From 2009 to 2011, the Town should have collected approximately \$83,700 in sewer payments. However, the Clerk’s remittances to the Supervisor and relevies totaled only \$75,325.⁴ As a result, it appears the Clerk did not accurately account for payments or properly relevy approximately \$8,500 in sewer bills, including her own, which totaled \$950. This \$950 is included in the amount of unremitted sewer fees.

The Clerk has the ability to receive payments without issuing duplicate receipts and without recording them. In addition, there is an inability to track receipts because of the lack of records. As a result, there is an increased risk that unrecorded receipts can be substituted to divert cash for other than municipal purposes. These deficiencies have allowed the shortage and apparent misappropriation of \$4,134 in Town funds, and the apparent loss of sewer revenues to occur.

Tax Collector Activity

The tax collector function includes receiving, depositing and remitting taxpayer payments to either the Town or the County. The tax collector is responsible for depositing all collections timely and intact, and for collecting penalties from all taxpayers who pay their taxes after the penalty free period.⁵ The tax collector should retain all tax stubs, identify the dates and forms of payment (i.e., cash or check) and record such in a suitable book of record.

⁴ Based on available records and confirmations we sent and received back from sewer payers

⁵ Taxes are received without interest by the tax collector within the first 30 days of the receipt of the tax roll and warrant.

We audited the tax collector function in 2001. Deficiencies conveyed in our report included deposits that were not made timely and intact, and the dates and forms of payment were not noted on all tax stubs. We also could not determine whether some penalties were collected, as required. Our 1999 audit also found the Clerk did not retain the tax stubs to support the date and composition of receipts. The Board and Clerk have failed to adequately address these deficiencies.

During this audit, we found that the Clerk does not deposit moneys timely and intact. This includes over \$15,800 in cash and over \$4,900 in checks dated and recorded as paid on January 17, 2012 that were not deposited until February 16, 2012. In addition, we reviewed the tax collection periods for 2009, 2010, 2011 and 2012, and found that the Clerk discarded all tax stubs (receipts) and escrow lists⁶ for 2009, 2010 and 2011. She indicated that she does not keep the supporting documents because she enters everything into the County system. Due to the lack of tax stubs we only could verify that the Clerk paid \$411 of her own tax in 2009. The Clerk reported paying \$870 of her taxes in cash but there is no independent evidence supporting this payment. Likewise, in 2011 we could only verify that she paid \$1,504 of her own tax. Again, the Clerk reports paying \$100 of her taxes in cash, but there is no independent evidence of this payment either.

We also found that the Clerk backdated tax collections, including her own, to avoid collecting and/or remitting late penalties that were due. For example, checks for real property taxes were dated and deposited in March and April 2012, but were recorded as being paid in January. When asked about this, the Clerk indicated that if someone did not pay the correct amount by check, she would not reject it and request a new check. Instead, she would backdate the payment in her records making it look as if the payment was made in January during the penalty free period. However, this did not explain why she deposited her own tax payments in April, during the 2009, 2010 and 2011 collection periods, but backdated the collection report dates to the penalty free periods and did not include the penalties she owed totaling \$102. For the four tax collection periods from 2009 to 2012, unapplied penalties totaled \$569.⁷

We also found that the Clerk substituted unrecorded penalties for recorded revenues that were not deposited so that an amount equal to the recorded revenues could be remitted to the Supervisor. For example, in 2011, a taxpayer issued a check after the start of the penalty period, which included the penalty of \$168 that was owed.

⁶ Certain escrow records for 2012 were available for our review.

⁷ Includes Clerk's \$102 in unpaid penalties. The \$102 is not included in the shortage calculation.

The Clerk backdated the collection report to January, and did not record the penalty that was paid. The deposit made agreed with the collection report, indicating that the unrecorded penalty that was paid by check was substituted for other cash receipts that were not deposited and therefore the unrecorded penalty was not remitted to the Supervisor.

Finally, our review of the 2011 and 2012 tax collection records found the Clerk remitted all funds deposited into her tax collector bank account to the Supervisor or the County. However, her remittances to the Supervisor exceeded the amounts owed by \$1,523 and \$866, respectively. The overpayments were caused, in part,⁸ by apparent duplicate payments that were deposited but never recorded.

Duplicate payments can occur for various reasons, such as when there is confusion as to whether a property owner's taxes are to be paid directly to the tax collector or through an escrow account, or when the timing of a property sale results in payments by both the buyer and the seller. Duplicate payments are not recorded because the tax collection system does not allow the Clerk to record a payment for a property if one has already been entered.

Apparent unrecorded duplicate payments include a bank escrow check for \$27,982 and taxpayer check for \$445 that were deposited on March 8 and March 17, 2011, respectively, but only \$26,634 was recorded as paid, a difference of \$1,793. Similarly, during 2012, we found taxpayer checks totaling \$10,823 that were deposited, but only \$10,224 was recorded, a difference of \$599. Finally, cash and checks totaling \$20,727 were deposited during 2012, but only \$20,462 was recorded, a difference of \$265. There is no record to indicate that the Clerk has refunded any of these apparent duplicate payments to the appropriate taxpayers or banks. Without critical source documents (tax stubs and escrow lists), Town officials could not ensure that taxpayers were refunded duplicate payments and must rely on the taxpayers to identify this having occurred on their own.

The lack of timely and intact deposits, the destruction of tax stubs, the backdating of records, the substitution of unrecorded penalties for cash receipts that were not deposited, and the lack of a procedure to identify and return duplicate payments contributed to an increased risk for fraud. Furthermore, the lack of collection and recording of penalties when required could indicate, at the very least, that the Town is missing out on a potential revenue source.

⁸ Additional minor collections differences also occurred.

Board Oversight

The Board is required to audit the Clerk's records, as Clerk and as Tax Collector, on an annual basis to provide assurance that moneys collected by her are handled properly. It is important to document what records were reviewed and the results of the audit to provide assurance that the Board is properly reviewing the Clerk's records.

Although the Supervisor and the Clerk told us that the Board audited the Clerk's records, nothing was documented in the Board minutes. The Supervisor said the Board only looks at the records to see if some of the checks match who they were supposed to be paid to and that these audits are not detailed reviews. After being alerted to problems with the Clerk's records in two previous audits, it is alarming that the Board did not perform a more deliberate review of, or contract with an independent accountant to review, the Clerk's records. The Board's audit should have included records such as duplicate receipts and tax stubs, cashbooks, canceled checks, bank statements and reconciliations, and monthly accountabilities. Had the Board performed an adequate annual audit,⁹ it would likely have recognized the deficiencies within the Clerk's records and the apparent misappropriation of Town moneys.

Our Office has referred this matter to law enforcement officials for criminal investigation.

Recommendations

1. The Board should provide documentation to law enforcement officials concerning the misappropriation of Town moneys. The Board should take immediate steps to protect town monies to prevent additional shortages.
2. The Clerk should issue duplicate receipts, recording the form of payment, for all moneys received where no other form of receipt is available. She should retain all evidence of receipt, including DEC transaction reports, tax stubs and escrow lists.
3. The Clerk should accurately record all collections in her cashbook and deposit all collections in the bank in a timely and intact manner.
4. The Clerk should remit all funds collected to the appropriate entities on a timely basis.
5. The Clerk should prepare monthly accountabilities.

⁹ See OSC publication entitled *Fiscal Oversight Responsibilities of the Governing Board*

6. The Board should contact legal counsel to determine the steps necessary to collect any unpaid sewer bills that have not been relieved for enforcement.
7. The Clerk must impose penalties on taxpayers making payment after the penalty-free period.
8. The Supervisor and Clerk should ensure all duplicate payments are refunded to the individual taxpayers or banks to which they are owed.
9. The Board should perform an adequate annual audit of the Clerk's records, as Clerk and as Tax Collector, and should document the records reviewed and the results of the audit in the Board minutes.

APPENDIX A

RESPONSE FROM LOCAL OFFICIALS

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

**Town of Otto
PO Box 66
Otto, NY 14766**

Ronald Wasmund, Supervisor

Betty Huber, Town Clerk
Brenda Mallabar, Councilman
Francis Feth, Councilman
Jeffrey Holler, BCEO

Robert Barber Jr., Highway Supt.
James Wojdan, Councilman
Paul Stang, Councilman
Brenda Austin, Justice

January 9, 2013

Office of The State Comptroller
Division of Local Government and School Accountability
Buffalo Regional Office
295 Main Street, Suite 1032
Buffalo, NY 14203-2510

We have reviewed your audit findings and discussed the recommendations set forth. We have started to formulate a Corrective Action Plan which will address the findings of your audit as well as incorporate your recommendations. We will submit this plan within the ninety days required.

Respectfully submitted
by order of the Town Board of the Town of Otto

Ronald Wasmund,
Supervisor

APPENDIX B

AUDIT METHODOLOGY AND STANDARDS

Our overall goal was to assess the adequacy of the internal controls put in place by officials to safeguard Town assets. To accomplish this, we performed an initial assessment of the internal controls so that we could design our audit to focus on those areas most at risk. Our initial assessment included evaluations of the following areas: financial oversight, Justice Court, and Town Clerk and Tax Collector activities. During the initial assessment, we interviewed appropriate Town officials, performed limited test of transactions, and reviewed pertinent documents, Board minutes, financial records, and reports.

After reviewing the information gathered during our initial assessment, we determined where weaknesses existed and evaluated those weaknesses for the risk of potential fraud, theft, and/or professional misconduct. We then decided on the reported objective and scope by selecting for audit the area most at risk. We selected the Clerk/Tax Collector's management of cash receipts.

We performed the following procedures:

- We interviewed Town officials to gain an understanding of the procedures relating to the Clerk's management of cash receipts.
- We reviewed Board minutes for indications of annual audits by the Board.
- We performed a cash count and accountability as of May 25, 2012, to determine the amount of cash and checks that the Clerk had on hand and the balance in the bank, in comparison with the cash receipt journal and payments due to other entities.
- We obtained compositions of deposits for all Clerk deposits during our audit period to assist in determining if deposits were made intact and in a timely manner.
- We compared deposits recorded per bank documentation with Clerk records to determine if all deposits were recorded in the cashbook.
- We reviewed sewer receivable lists to determine if payments made by check were recorded, and if any payments were made in cash.
- We compared the relevy lists for delinquent sewer bills to the Clerk's cashbook and sewer records to determine if the bills for individuals who failed to pay were properly relevied.
- We compared daily tax collection reports with compositions of deposits to determine if deposits were made intact and in a timely manner.
- We compared the dates of the checks in the composition of deposits with daily reports to determine if penalties were properly imposed and collected.
- We performed tax reconciliations for all four collection cycles in our audit period to determine if the Tax Collector properly remitted payments to the Supervisor and County of Cattaraugus.

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 objective.

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