

Town of Frankfort

Supervisor's Fiscal Responsibilities

SEPTEMBER 2017



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

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Report Highlights

Town of Frankfort

Audit Objective

Determine whether the Supervisor is adequately fulfilling his fiscal responsibilities.

Key Findings

- The Supervisor is not performing his fiscal responsibilities. He has not maintained accounting records since 2013 or remitted the required financial reports to the Board or the Office of the State Comptroller. In addition, he did not make timely deposits in 2017 as required by statute.
- The Board did not initiate annual audits of the Supervisor's records.

Key Recommendations

- The Supervisor should perform his statutorily required fiscal responsibilities or consider resigning from office.
- The Board should discuss potential remedies to address the Supervisor's failure to perform the required fiscal duties with the Town's legal counsel.

We met with the Supervisor to discuss our findings and recommendations and he chose not to provide a written response within the time required. The other Board members generally agreed with our recommendations and indicated they planned to initiate corrective action.

Background

The Town of Frankfort (Town) is located in Herkimer County (County). The Town Supervisor (Supervisor), along with four elected council persons constitute the Town Board (Board), which is responsible for the general management and control of the Town's financial affairs, including developing and adopting the annual budget and establishing financial policies and procedures.

The Supervisor serves as the Town's chief fiscal officer and is responsible for the Town's day-to-day financial operations. The Supervisor appointed a Deputy Supervisor who has the authority to perform the Supervisor's fiscal duties during the Supervisor's absence or inability to act.

Quick Facts

Employees	48
Population	7,600
2017 Budget	\$4.2 million

Audit Period

January 1, 2016 – July 31, 2017

We extended the scope back to 2013 to review the Town's financial accounting and reporting.

Supervisor's Fiscal Responsibilities

What are the Supervisor's Fiscal Responsibilities?

Many of the Supervisor's fiscal responsibilities are set forth in Town Law (Law). These responsibilities include keeping an accurate and complete account of all funds received and disbursed in accordance with the accounting system prescribed by the Office of the State Comptroller (OSC), keeping a separate account for every appropriation and ensuring that no appropriation account becomes overdrawn. The Supervisor is responsible for paying claims after they have been audited and approved by the Board.¹ Generally, funds must be disbursed only by check and signed by the Supervisor or, in the Supervisor's absence, by the Deputy on the Supervisor's behalf.² The Board may require that checks be countersigned by the Town Clerk. Further, the Supervisor is responsible for collecting, receiving and having custody of all funds belonging or due to the Town. The Law requires that all funds be deposited and secured in an official Town bank account within 10 days after receipt.

The Supervisor is also responsible for preparing accurate financial reports of the Town's fiscal activities. This includes preparing and filing an annual financial report, also known as the annual update document (AUD), with OSC within 90 days after the close of the fiscal year. At the end of each month, the Supervisor must provide the Board with a detailed statement of all funds received and disbursed during the month and file a copy with the Town Clerk. Good business practices dictate that the Supervisor should also submit monthly budget-to-actual comparisons of revenues and expenditures for each fund and balance sheet reports that include reconciled cash balances for each fund. On or before January 20th of each year, the Supervisor must provide his books and records to the Board, and file a statement at the same time with the Board of all receipts and disbursements for the preceding year.³ The Law allows the Board to authorize the Supervisor to designate a bookkeeper or confidential secretary, or both.

The Supervisor is Neglecting His Financial Accounting Responsibilities

The Supervisor told us that he has not maintained any accounting records since 2013.⁴ Specifically, he does not maintain a general ledger, general journal, receipt and disbursement journals or revenue and appropriation ledgers. Further, he does not reconcile the bank accounts because there are no accounting records

¹ The Supervisor may make payments in advance of audit for public utility services, postage, freight and express charges, if authorized by the Board.

² Exceptions include petty cash payments and electronic or wire transfers

³ This requirement does not apply where a certified public accountant or a public accountant has been hired prior to January 20th to complete an audit within 60 days after the close of the fiscal year.

⁴ Our last audit of the Town covered the 2009 fiscal year and it was released in 2011. At that time, the Supervisor maintained manual accounting records.

to compare to the adjusted cash balances. In fact, the Supervisor had not opened most of the bank statements for 2016 and 2017. We found 125 unopened bank statements in the original envelopes in the Supervisor's two offices at the Town Hall. We requested 78 bank statements and related canceled checks from the bank as they were not on file.⁵ Although the Supervisor appointed a Deputy to act in his absence, the Deputy is not involved in keeping any accounting records. In addition, the Supervisor has not asked the Board for authorization to hire a bookkeeper⁶ to help with recordkeeping responsibilities.

Although the Supervisor does not maintain any accounting records, he prepared and processed the Town's payroll check disbursements. The Supervisor generally goes to the Town Hall after regular business hours to process the payrolls.

In February 2017, the Supervisor stopped making wire transfers from the Town's savings account to the checking account to cover the non-payroll cash disbursement checks. The Deputy has since been transferring funds between bank accounts. In addition, the Supervisor did not submit the Town's New York State (NYS) payroll tax withholdings totaling \$3,700 for the fourth quarter of 2016 until August 31, 2017. As a result, the Town paid approximately \$90 in interest due to the late payment.⁷

The Town Clerk manually prepares the Town's non-payroll disbursement checks after the Board's audit and approval of claims. Prior to June 2017, she provided the unsigned checks to the Supervisor and the Deputy, who both signed the checks, purportedly to meet the Board's countersignatory requirement. In recent months, the Deputy and a Board member, or the Deputy and the Town Clerk, have been signing the checks in the absence of the Supervisor. However, some of these check-signing procedures are inconsistent with the Law. The Law provides for the Deputy to only sign checks in the Supervisor's absence or inability to perform this duty. In addition, while the Law⁸ allows the Board to pass a resolution to require the Town Clerk to countersign all checks requiring the Supervisor's signature, there is no authority in the Law to allow a Board member or the Deputy Supervisor to countersign Town checks. A Board member told us the Supervisor could not be reached to sign checks. Therefore, this check-signing process was put in place because the Town needed to continue to pay its bills.

According to the Supervisor, he first fell behind in keeping his accounting records in 2013 when making requested adjustments to his 2012 AUD filed with OSC. He

⁵ We will test Town transactions as part of a separate audit of the Town. See Appendix B

⁶ Town Law, Section 29(15)

⁷ The Supervisor has filed and submitted the NYS tax withholdings for the first two quarters of 2017 (March 31 and June 30, 2017).

⁸ Town Law, Sections 29(3) and 30(9)

then fell further behind in 2014 when the Town offices and all records were moved to the new Town Hall.

The complete lack of accounting records is cause for significant concern. Accounting records provide a basis for checks and balances and determining whether Town funds are being appropriately accounted for. Without accounting records, the Town is at significant risk of fraud, errors or misappropriation occurring without detection.⁹ In addition, without records showing actual revenues and expenditures by account code, the Supervisor and Board cannot review historical financial trends in order to develop realistic budgets and ensure that only the necessary amount of real property taxes are raised. Also, the Supervisor is not providing Town officials, including department heads, with a mechanism to determine whether expenditures are being kept within budgeted amounts and revenues are being collected as projected.

Furthermore, because all receipts are deposited into a joint savings account, the amount of cash attributable to each fund and special district¹⁰ is unknown due to the lack of records. As a result, Town officials cannot ensure that real property taxes and revenues are allocated to the proper funds and are not used to pay expenditures of other funds that have a different tax base (e.g., townwide, town-outside-village funds).

The failure to track cash activity has also resulted in the Town issuing checks without sufficient funds available to cover the payments. Officials were paying bills without knowing if sufficient funds were available in the various bank accounts. From February through June 2017, the Town bounced 26 checks totaling about \$132,800.¹¹ The Town had enough cash to pay its bills. However, the funds were not always transferred timely or in sufficient amounts from the joint savings account to the various checking accounts to cover the checks written. Based on our review of bank statements, the Town had a total of \$4.7 million in all of its bank accounts as of July 31, 2017. This should provide more than enough funds to cover the Town's expenditures for the remainder of the year, given that the Town's annual budgeted appropriations have averaged about \$4.1 million for all funds combined over the past three years (2015 through 2017).

The Supervisor Has Not Prepared Required Financial Reports

Because the Supervisor does not maintain accounting records, he cannot prepare and remit required financial reports. Specifically, the Supervisor has not prepared

⁹ We will assess related fraud risks and test Town transactions as part of a separate audit of the Town. See Appendix B

¹⁰ The Town raises property taxes for five fire protection districts, four sewer districts, six lighting districts, and 10 water districts.

¹¹ The Town did not incur any bank fees for these checks.

or filed an AUD with OSC for the 2013 to 2016 fiscal years. He has not provided the Board with any monthly financial reports showing all funds received and disbursed or budget-to-actual results since 2012. Also, the Supervisor did not provide the Board with an annual accounting and statement on or before January 20th of each year of all funds received and disbursed in the preceding year.

Because the Supervisor has not prepared and remitted these financial reports, the Board and other interested parties are not provided an accurate picture of the Town's financial condition and operations. Board members told us they requested financial reports and budget-to-actual reports from the Supervisor over the years. However, the Supervisor ignored their requests and did not provide the reports.

The Supervisor Does Not Make Timely Deposits

The Supervisor did not deposit Town funds in a timely manner. Specifically, in 2017 he made only one bank deposit in February when he deposited a \$2.5 million check received from the tax collector for the 2017 tax levy. No other bank deposits were made until early June 2017 when the Deputy found numerous uncashed checks in the Supervisor's two offices. The Deputy then made multiple deposits in June totaling over \$975,000 which included approximately \$511,000 in payments from the County,¹² \$185,000 in monthly checks from the Town Justices dating back to December 2016,¹³ \$103,000 in State aid,¹⁴ \$45,900 in franchise fees, six months¹⁵ of remittance checks received from the Town Clerk totaling about \$10,400 and various other check payments. The Deputy paid five¹⁶ months of invoices totaling \$122,277 to the State Comptroller's Justice Court Fund (JCF) in June 2017, after the Supervisor failed to address multiple late notices from the JCF.

During our audit, we identified over \$65,000 in checks remitted to the Town dating back to June 2016 that were not deposited as of July 31, 2017. These checks included:

- A \$28,348 insurance recovery check sent to the Town in early January 2017.
- Approximately \$16,450 in checks for foreign fire insurance sent to the Town in June 2016 and June 2017.

¹² \$268,000 in sales tax and \$243,000 in payments for snow removal services

¹³ On a monthly basis, the Town Justices must report all funds collected (excluding pending bail) to the JCF and remit a check to the Supervisor in the amount of the monthly report. The JCF determines the State, County and local share of the funds that were reported and sends an invoice, billing and distribution statement to the Supervisor showing the required distribution of the funds. The Supervisor should then keep the Town's share, send a check to NYS for the State and County share and make other payments if required.

¹⁴ Consolidated Local Street and Highway Improvement Program (CHIPS) funds

¹⁵ December 2016 to May 2017

¹⁶ At this same time, the Deputy also paid the Village its share of the JCF fees totaling \$1,195 for five months.

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- A \$15,134 check from one of the Town Justices in February 2017 for January 2017 fines collected.
 - Two payment in lieu of taxes (PILOT) checks totaling \$5,702 mailed to the Town by the County in February 2017.

The Supervisor told us he was unaware of some of these payments and he could not locate some of the checks. The Town Clerk contacted the Town's insurance agent, who reissued the \$28,348 insurance check, which the Deputy deposited in mid-August 2017. The Deputy also deposited approximately \$16,450 in foreign fire insurance tax checks which were in the Town Clerk's possession. She told us she had received the checks but was unsure what to do with them. As of August 31, 2017, the Town had received replacement checks from the Justice and County totaling \$20,836 but had not yet deposited these checks.

Because the Supervisor did not deposit checks in a timely manner, some Town checks were lost and the Town is at significant risk of funds being misappropriated or being unavailable to use for Town operations.

What is the Board's Annual Audit Responsibility?

The Supervisor is independently elected by Town residents and many of his fiscal duties are prescribed by Law. As such, the Board has limited control over the Supervisor. However, the Law requires the Board to annually audit the Supervisor's books and records by January 20th of each year.¹⁷ Such a review helps allow the Board to determine whether the Supervisor is performing his fiscal duties, such as keeping adequate accounting records, making timely deposits and performing bank reconciliations. If the Supervisor does not provide the Board with his records for annual audit and does not provide the Board with the financial information necessary to oversee Town operations, the Board should question the Supervisor as to why and, if necessary, consult with the Town's legal counsel to explore available options to address the situation. For example, the Board could consult with the Town's legal counsel about creating the office of Town Comptroller to perform accounting duties normally assigned to the Supervisor.¹⁸

¹⁷ The Town Law provides that the Board may perform the annual audit or engage the services of a certified public accountant or public accountant to perform the annual audit within 60 days of the close of the fiscal year (Town Law, Section 123).

¹⁸ The Board could resolve to become a town of the first class, subject to referendum requirements (Town Law, Section 12(1)) and then by resolution create the position of Town Comptroller (Town Law, Section 20(3)(b)). The Board may then, by resolution, determine that the Town Comptroller shall be the town's accounting officer, thereby transferring all of the Supervisor's accounting duties to the Town Comptroller (Town Law, Section 124). Further, by ordinance, the Board may transfer to the Town Comptroller the Supervisor's duty to keep separate appropriation accounts and prevent funds from being overdrawn (Town Law, Section 34(2)). Alternatively, the Board, by local law subject to mandatory referendum, may establish the office of town comptroller, without first becoming a town of the first class (OSC Opinion No. 85-46).

The Board Did Not Initiate Required Annual Audits

The Board did not request the Supervisor to provide his books and records on or before January 20th of each year so the Board could perform the required annual audits from 2013 through 2016 and it did not engage an independent accountant to perform an audit. Board members told us that they were unaware of the annual audit requirement. Had the Board initiated annual audits of the Supervisor's records, they may have identified the lack of accounting records sooner and they could have worked with the Supervisor to help him meet his fiscal responsibilities or perhaps consulted with the Town's legal counsel if the Supervisor did not take corrective action.

What Do We Recommend?

The Supervisor should:

1. Perform his statutorily required fiscal responsibilities such as keeping adequate accounting records, making timely deposits and preparing and providing financial reports to the Board and OSC. If he needs help with these duties, he should request Board authorization to hire a bookkeeper. If he determines he is unable to perform these duties, he should consider resigning from office.

The Board should:

2. Discuss potential remedies to address the Supervisor's failure to perform his required fiscal duties with the Town's legal counsel.
3. Ensure that only authorized officials sign Town checks.
4. Initiate annual audits of the Supervisor's records as required by Law.

Appendix A: Response from Town Officials

Town of Frankfort

Joseph P. Kinney, Supervisor
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Councilpersons:
Darlene A. Abbatecola
Joseph D. Tamburro
Michael S. Testa
John L. Wallace

September 21, 2017

Rebecca Wilcox, Chief Examiner
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State Office Building, Room 409
333 E. Washington Street
Syracuse, New York 13202-1428

Re: Audit Report 2017 M-192, Supervisor's Fiscal Responsibilities

Dear Ms. Wilcox:

This letter is the Town of Frankfort's response to the above referenced audit report.

The board agrees with all the facts and recommendations presented in the Draft Audit Report and will be discussing the suggested corrective measures. The board will take corrective action immediately on all findings and recommendations. A complete corrective action plan will be forwarded to your office in the near future.

The Town thanks you and your staff for a very professional audit.

Sincerely,

Darlene Abbatecola, Council Member

Joseph Tamburro, Council Member

Michael Testa, Council Member

John Wallace, Council Member/Deputy Supervisor

JW:gb

Appendix B: 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, we performed the following audit procedures:

- Interviewed the Supervisor to determine what accounting records are maintained.
- Interviewed Board members and reviewed Board minutes to determine what financial reports the Supervisor provided to the Board, if any.
- Reviewed deposits made into all bank accounts in 2017 to determine if the Supervisor was depositing cash receipts timely. We also reviewed the Board minutes for any miscellaneous revenues received in 2017 and followed up on them to determine if they were deposited. We reviewed correspondence from the County for payments made to the Town and reviewed other available receipt information brought to our attention by Town officials to determine if funds were deposited.
- Reviewed cancelled checks in 2017 to determine if signatories on the checks were authorized by Law.

Except for not assessing potential fraud within the stated audit objective, as discussed in the next paragraph, we conducted this performance audit in accordance with GAGAS (generally accepted government auditing standards). 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.

GAGAS explicitly states that auditors need to assess potential fraud that is significant within the context of the audit objective.¹⁹ Our audit procedures found that the Supervisor had not been performing many of his fiscal functions and responsibilities since 2013. In order to assist Town officials in identifying the Supervisor's functions and responsibilities that have not been performed and to make recommendations so that Town officials can address this issue as quickly as possible, we expedited the completion of this audit without assessing the potential for fraud. We will address the specific fraud risks associated with the Supervisor not performing his fiscal functions and responsibilities in a separate, subsequent audit. Additionally, at the time of this audit report, we have not yet assessed and determined whether any potential fraud may have occurred as a result of the Supervisor not performing many of his fiscal functions and responsibilities.

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.

¹⁹ *Government Auditing Standards*, 2011 Revision, paragraph 6.11(c)

A written corrective action plan (CAP) that addresses the findings and recommendations in this report should be prepared and provided to our office within 90 days, pursuant to Section 35 of General Municipal Law. For more information on preparing and filing your CAP, please refer to our brochure, *Responding to an OSC Audit Report*, which you received with the draft audit report. We encourage the Board to make the CAP available for public review in the Town Clerk's office.

Appendix C: General Resources and Services

Regional Office Directory

www.osc.state.ny.us/localgov/regional_directory.pdf

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

www.osc.state.ny.us/localgov/costsavings/index.htm

Fiscal Stress Monitoring – Resources for local government officials experiencing fiscal problems

www.osc.state.ny.us/localgov/fiscalmonitoring/index.htm

Local Government Management Guides – Series of publications that include technical information and suggested practices for local government management

www.osc.state.ny.us/localgov/pubs/listacctg.htm#lmgm

Planning and Budgeting Guides – Resources for developing multiyear financial, capital, strategic and other plans

www.osc.state.ny.us/localgov/planbudget/index.htm

Protecting Sensitive Data and Other Local Government Assets – A non-technical cybersecurity guide for local government leaders

www.osc.state.ny.us/localgov/lgli/pdf/cybersecurityguide.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/localgov/finreporting/index.htm

Research Reports / Publications – Reports on major policy issues facing local governments and State policy-makers

www.osc.state.ny.us/localgov/researchpubs/index.htm

Training – Resources for local government officials on in-person and online training opportunities on a wide range of topics

www.osc.state.ny.us/localgov/academy/index.htm

Contact

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