



Town of Alexandria Non-Payroll Cash Disbursements and Fuel Inventory

Report of Examination

Period Covered:

January 1, 2011 — May 31, 2012

2013M-129



Thomas P. DiNapoli

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State of New York Office of the State Comptroller

Division of Local Government and School Accountability

August 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 Alexandria, entitled Non-Payroll Cash Disbursements and Fuel Inventory. 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*



State of New York Office of the State Comptroller

EXECUTIVE SUMMARY

The Town of Alexandria (Town) is located in Jefferson County and has a population of about 4,000. The Town Board (Board) comprises four elected members and a Supervisor. The Board is responsible for overseeing the Town's operations and finances. The Town's 2012 budgeted operating expenditures totaled \$3.8 million.

The Supervisor is responsible for virtually all of the Town's financial duties, including the receipt and disbursement of Town moneys, maintaining financial records, and preparing various financial reports. The Supervisor in office for the first year of our audit period was replaced as of January 1, 2012 with a new Supervisor. The Highway Superintendent is an elected official primarily responsible for the maintenance and repair of Town roads, and snow and brush removal.

Scope and Objective

The objective of our audit was to review non-payroll cash disbursements and internal controls over fuel inventories for the period January 1, 2011, through May 31, 2012. Our audit addressed the following related questions:

- Were non-payroll cash disbursements properly authorized, adequately supported, and in compliance with statutory requirements?
- Are fuel inventories adequately safeguarded from potential loss or theft?

Audit Results

The Town's non-payroll cash disbursements were not always properly authorized, adequately supported or in compliance with statutory requirements. The former Supervisor improperly paid 19 claims totaling \$19,919 without the audit and approval of the Board. These disbursements included 10 payments totaling \$1,819 that she made to herself for the reimbursement of expenses and nine payments totaling \$18,100 that were made to vendors for publicity. In addition, 20 claims totaling \$5,369 paid to the former Supervisor and three claims totaling \$9,350 for publicity did not contain adequate supporting documentation, and one claim totaling \$1,300 for publicity was not on file. The payment of claims without Board audit or adequate supporting documentation increases the risk that the Town moneys could be expended for inappropriate purposes.

The Town made payments totaling \$60,000 to the Chamber of Commerce and \$6,087 to the Chamber's vendors without entering into written contracts stipulating what services or benefits the Town was to receive for the payments. The Town also allowed the Chamber to occupy a Town owned building

without any cash or other consideration. These transactions could be considered gifts of public funds if the Town is not receiving fair and adequate consideration. Finally, the Town paid \$45,000 to a law firm of which the Town Attorney is a shareholder. The Town Attorney may have a prohibited interest in the contact between the Town and his law firm.

Internal controls over fuel inventories also need to be improved. Manual fuel usage logs were maintained to show the amount of fuel dispensed into Town and Fire District vehicles.¹ However, not all fuel use was recorded in the logs and perpetual inventory records were not maintained for the fuel in the tanks. In addition, physical inventories were not taken for reconciliation purposes. Our review of fuel records from June 2011 through December 2011 disclosed that about 4,500 gallons of fuel valued at about \$14,600 were not accounted for. As a result of the poor controls over fuel inventories, there is a risk of unauthorized use or theft of the Town's fuel.

Comments of Local Officials

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. Except as specified in Appendix A, Town officials generally agreed with our recommendations and indicated they planned to take corrective action. Appendix B includes our comments on the issues raised in the Town's response letter.

¹ The Redwood and Plessis Fire Districts use fuel from the Town's tanks and the Town bills the fire districts for the cost of the fuel.

Introduction

Background

The Town of Alexandria (Town) is located in Jefferson County and has a population of about 4,000. The Town Board (Board) comprises four elected members and a Supervisor. The Town offers a variety of services to its residents, including street maintenance and improvements, snow removal, parks and recreation, water and sewer services, and general government support. The Town's 2012 budgeted operating expenditures totaled \$3.8 million, primarily funded with real property taxes, sales tax, State aid and charges for services.

The Supervisor serves as both the Town's chief executive officer and chief fiscal officer. The Supervisor in office for the first year of our audit period was replaced as of January 1, 2012 by a new Supervisor. As chief fiscal officer, the Supervisor is responsible for virtually all of the Town's financial duties, including the receipt and disbursement of Town moneys, maintaining financial records, and preparing various financial reports. Both Supervisors appointed a bookkeeper to assist with the financial responsibilities. The Board is responsible for overseeing the Town's operations and finances.

The Highway Superintendent is an elected official primarily responsible for the maintenance and repair of Town roads, and snow and brush removal. The Highway Superintendent is also responsible for maintaining inventories of consumable products, such as gasoline and diesel fuel, that are purchased for use by the Town.

Objective

The objective of our audit was to review non-payroll cash disbursements and internal controls over fuel inventories. Our audit addressed the following related questions:

- Were non-payroll cash disbursements properly authorized, adequately supported, and in compliance with statutory requirements?
- Are fuel inventories adequately safeguarded from potential loss or theft?

Scope and Methodology

We examined non-payroll cash disbursements and fuel inventories of the Town for the period January 1, 2011, through May 31, 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 C 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. Except as specified in Appendix A, Town officials generally agreed with our recommendations and indicated they planned to take corrective action. Appendix B includes our comments on the issues raised in the Town's response letter.

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 Town Board to make this plan available for public review in the Town Clerk's office.

Non-Payroll Cash Disbursements

The Board is responsible for establishing adequate internal controls to properly safeguard the Town's cash assets. The Board should establish controls to ensure that all disbursements are properly authorized and supported by appropriate documentation, are for valid business purposes and comply with statutory requirements.

The Town's cash disbursements were not always properly authorized, adequately supported or in compliance with statutory requirements. The former Supervisor made 10 payments totaling \$1,819 to herself for the reimbursement of expenses and nine payments totaling \$18,100 to vendors for publicity. In addition, 24 claims totaling \$16,019 were not adequately supported by documentation. As a result, there is an increased risk that the Town moneys were expended for inappropriate purposes. Furthermore, the Town made payments for promotional purposes totaling \$66,087 without written contracts stipulating what services or benefits the Town was to receive and allowed the Chamber of Commerce to occupy a Town owned building without any cash consideration. These transactions could be considered gifts of public funds. Finally, the Town paid \$45,000 to a law firm of which the Town Attorney is a shareholder. The Town Attorney may have a prohibited interest in the contact between the Town and his law firm.

Payments to the Former Supervisor

With limited exceptions, the Supervisor may not pay any claim unless it has been audited and approved by the Board.² To properly approve claims for payment, the Board must ensure that all claims contain sufficient documentation to determine the nature of the goods or services provided, that the amounts represent accurate charges for the goods or services, and that the claims represent proper charges against the Town, including that they comply with statutory requirements.

The former Supervisor issued 25 non-payroll checks to herself during 2011 totaling \$6,226. Of the 25 claims, 10 claims totaling \$1,819 were not listed on abstracts as audited and approved for payment by the Board. In addition, we question the legitimacy of some of these claims. Twenty claims totaling \$5,369 were not sufficiently itemized or documented to fully support the disbursement and permit a proper Board audit.³ For example, claims for mileage reimbursement did not always indicate the dates or the purposes for travel. One claim

² The Board may pass a resolution to permit the Supervisor to pay claims for public utilities, postage, and freight and express charges, before they are audited. All such claims must be presented for audit at the next regular Board meeting.

³ Thirteen of these claims were approved by the Board. Seven claims were paid without any indication of Board approval.

for \$188 was for a night in a hotel in Watertown (approximately 30 miles from the Town) with no indication of the need for this stay. In addition, we found that one check was written for \$54 more than the amount that was audited and approved by the Board. We also identified another check payment for \$300 to the former Supervisor that had no claim on file or documentation showing what the check was for. We followed up on this payment and found that the bookkeeper reduced one of the former Supervisor's subsequent salary payments by \$300 to recover the funds.

The payment of claims without the Board's audit or adequate supporting documentation increases the risk that the Town moneys could be expended for inappropriate purposes. It is important for the Board to establish controls to prevent or detect the Supervisor's writing of unauthorized checks and to require sufficient supporting documentation for all payments. In May 2012, the Board implemented a policy requiring the Town Clerk to co-sign all checks. This control, if properly implemented, should help reduce the risk of unauthorized disbursements.

Publicity

Town officials may authorize the expenditure of moneys for the purpose of advertising their locations to enhance tourism. However, they are prohibited from making gifts or loans to or in aid of private entities.

The Town disbursed 42 checks for publicity expenditures totaling \$155,280 during the audit period. This included six quarterly lump sum payments totaling \$60,000⁴ to the Chamber of Commerce (Chamber) that were based on vouchers which referred to an advertising agreement. However, the Town did not enter into any written agreements with the Chamber to indicate what services or benefits the Town was to receive for the payments. The Town also paid an additional \$6,087 directly to four of the Chamber's vendors for what appeared to be various advertising efforts. The bills were addressed to the Chamber, not the Town, and there were no written agreements stipulating why the Town should cover these expenditures. Unless the Town's payments were made pursuant to contracts in exchange for lawful, fair and adequate consideration, the payments could be considered gifts of public funds. In addition, the former Supervisor made nine payments totaling \$18,100 on claims that were not audited and approved for payment by the Board and several claims were not adequately documented. For example, one claim to the Chamber for \$1,300 was not found on file and three claims paid to other vendors totaling \$9,350 were based on statements, not itemized invoices.

⁴ The Town paid the Chamber quarterly payments of \$10,000.

In addition, the Chamber occupies a Town owned building; however, the Town does not charge the Chamber any rent. To permit private occupancy of space in a Town building, the Board must first determine that the space is not needed for any Town purpose. The Town may then either lease or grant a license⁵ to temporarily use the unneeded space. In either case, to avoid an unconstitutional gift, the Town must receive consideration from the lessee or licensee. It is possible for a Town to grant license or, subject to permissive referendum requirements, lease, unneeded real property to a private party in exchange for services rendered by the private party. For example, the Town could permit the Chamber to use unneeded space in a Town building in exchange for membership in the Chamber and/or publicity services provided by the Chamber, approximating the value of the license or lease. However, the Town has not entered into a written agreement with the Chamber for the use of this space, so there is nothing stipulating what consideration the Town is receiving. As a result, this could be considered an unconstitutional gift of public funds.

Conflict of Interest

General Municipal Law (GML) limits the ability of municipal officers or employees to enter into contracts in which both their personal financial interests and their public powers and duties conflict. Unless a statutory exception applies, Section 801 of GML prohibits municipal officers or employees from having an interest in contracts with the municipality that they serve when they also have the power or duty – either individually or as a board member – to negotiate, prepare, authorize, or approve the contract; to authorize or approve payment under the contract; to audit bills or claims under the contract; or to appoint an officer or employee with such powers or duties. For this purpose, a contract includes any claim, account, demand against or agreement with a municipality. Municipal officials and employees have an interest in a contract when they receive a direct or indirect monetary or material benefit as a result of a contract. They are also deemed to have an interest in any contract of a firm or partnership of which they are member or employee, or a corporation of which they are a director, officer, employee or shareholder.

The Town has contracted with the Town Attorney's law firm to provide legal services outside the scope of those performed by the Town Attorney. The Town Attorney earns an annual salary of \$40,000, and for the period January 1, 2011, through May 31, 2012 the Town paid claims to his law firm totaling about \$45,000. The individual appointed as Town Attorney sent two proposal letters, both dated January 11, 2011, and both written on law firm letterhead.

⁵ A license is generally temporary in nature, revocable by the Town, and a personal right – not an interest in the real property.

One letter asked that he be considered for appointment to the office of Town Attorney. According to the letter, the services proposed for the Town Attorney would be to assist Town officials with day-to-day questions, attend Town Board meetings and planning board and zoning board of appeals meetings and provide advice in connection with contractual matters, employee matters, intergovernmental and interagency relationships, zoning and land use planning, general assessment issues and the preparation and implementation of local laws, ordinances rules and regulations.⁶

The other letter was a proposal on behalf of the firm to provide legal services. The law firm would provide the Town with legal services on matters that are outside the scope of the services provided by the Town Attorney, such as litigation, arbitration, mediation or any other adversarial proceeding and special projects (e.g., special improvement districts).

The Town had a similar arrangement with the Town Attorney and his law firm several years ago. In September 2008, the Town's independent accountant addressed this relationship in a management letter issued to the Board and recommended that management investigate this possible conflict. The Board did not appoint a Town Attorney for the next two years and then returned to this arrangement in 2011, when it appointed the Town Attorney and contracted with the Town Attorney's law firm for various other legal services.

The Town Attorney is an employee of the law firm and a shareholder, owning over 5 percent of the shares of the law firm, which is a professional corporation. Therefore, he is deemed to have an interest in a contract between the law firm and the Town. Further, we note that town attorneys commonly possess one or more section 801 functions with respect to town contracts, including those with law firms, such as the power or duty to negotiate, prepare, authorize or approve contracts or approve payments under the contracts. According to the proposal submitted by the Town Attorney, some of the proposed duties as town attorney included reviewing and advising on contractual matters and serving as liaison for the Town with outside counsel. In addition, the

⁶ The letter also states that the Town Attorney will use the firm's time and billing system to keep track of time spent on Town matters and remit monthly statements to "show the value of the services," even though he would be paid salary as town attorney. In addition, the letter states, "[a]ny expenses incurred by my Firm as a result of my services to the Town as Town Attorney will be invoiced" on monthly statements to the Town from the firm. These provisions seem to blur the distinction between the person holding the office of town attorney and that person's law firm, which is engaged as an independent contractor. Moreover, as a rule, actual and necessary expenses incurred by a town officer would be incurred directly by the town officer and paid pursuant to a claim submitted by the officer, not by the private firm of the officer (see Town Law §116[1]).

Supervisor informed us that the Town Attorney sometimes advises the Board as to whether particular legal work is needed. These functions suggest that the Town Attorney may have one or more section 801 functions in connection with the Town's contract with the law firm. If the Town Attorney in fact has any section 801 powers and duties in connection with the contract with the law firm,⁷ he would have a prohibited conflict of interest unless a statutory exception applies.

Even if the Town Attorney does not have a prohibited interest in the Town's contract with his law firm, it should be noted that the courts have held public officials to a high standard of conduct and, on occasion, have negated certain actions which, although not violating the literal provisions General Municipal Law, violate the spirit and intent of the statute, are inconsistent with public policy, or suggest self-interest. Thus, even if a contract with the Town Attorney's firm is found not to violate GML, the Board should consider the possible appearance of impropriety and the possible consequences of judicial review of such a contract.

Recommendations

1. The Supervisor should not pay any claims that have not been audited and approved for payment by the Board, except where allowed by law.
2. The Board should require that all claims contain adequate supporting documentation and proper itemization prior to being presented for audit. It should not approve any claim that lacks sufficient documentation.
3. The Board should enter into written agreements with the Chamber of Commerce that outline the services or benefits the Town is to receive for the payments it makes to or on behalf of the Chamber.
4. The Board should not authorize the Chamber to occupy a Town building unless the Town receives a commensurate value in return.
5. The Board should ensure that the Town does not enter into any contract in which a Town officer or employee has a prohibited interest.

⁷ Note that it is the existence of section 801 powers and duties which give rise to a prohibited interest in a contract. Therefore, recusal from the exercise of those functions will not cure a prohibited interest (see e.g., 2000 Ops St Comp, at 56).

Fuel Inventory

The Highway Superintendent is responsible for ensuring that Town's fuel supplies are adequately safeguarded and accounted for to protect against the risk of loss, waste or misuse. Perpetual inventory records must be maintained to account for the fuel purchased, used and the balance remaining in inventory. In addition, the fuel balances in the perpetual records must be periodically reconciled to physical inventories, and material discrepancies investigated and resolved. It is also important for Town officials to review fuel usage reports to ensure that fuel is used only for Town purposes and that all fuel is accounted for.

The Town maintained two above-ground fuel storage tanks at its highway facility: a 2,500 gallon tank for diesel fuel and a 1,000 gallon tank for gasoline. For the 2011 year, the Town purchased fuel costing approximately \$97,000.

The Highway Superintendent did not ensure the Town's fuel supplies were adequately safeguarded and accounted for. Manual fuel usage logs were maintained to show the amount of fuel dispensed into Town and Fire District vehicles.⁸ However, not all fuel use was recorded in the logs and perpetual inventory records were not maintained to show the amount of fuel in the tanks at any given time. In addition, physical inventories were not taken for reconciliation purposes.

We compared fuel purchases with usage logs for the period June 2011 through December 2011 to determine if fuel purchases were reasonable in comparison to the recorded usage. The Town purchased approximately 14,800⁹ gallons of gasoline and diesel fuel during this period. However, recorded fuel use only totaled about 10,300 gallons. Assuming the tanks were filled to capacity (3,500 gallons) after the first and last deliveries in our test period, about 4,500 gallons valued at about \$14,600¹⁰ is not accounted for. This indicates that all fuel usage was not recorded in the fuel use logs.

The incomplete fuel use logs, absence of perpetual inventory records and lack of inventory reconciliations places the Town at risk of the

⁸ The Redwood and Plessis Fire Districts use fuel from the Town's tanks and the Town bills the fire districts for the cost of the fuel.

⁹ For the purposes of this analysis, we assumed that the tanks were filled to capacity (3,500 gallons) after the first delivery of gas (353 gallons) and diesel fuel (1,005 gallons) in our test period. Therefore, we did not include the first delivery of gas and diesel fuel in the 14,800 gallons purchased during the test period.

¹⁰ This estimate is based on the average cost paid by the Town for gasoline and diesel fuel during our test period.

unauthorized use or theft of the Town's fuel. The Town awarded a bid for a computerized fuel dispensing system in July 2012. While this system will likely enable officials to keep better usage records in the future, it is imperative that, at a minimum, these records are reviewed for reasonableness.

Recommendation

6. The Superintendent should maintain perpetual inventory records that identify the beginning inventory, and the quantities of fuel purchased/delivered, dispensed, and on hand. These records should be periodically reconciled to physical inventories of fuel on hand. Any differences should be promptly investigated and resolved. Usage records should be reviewed for reasonableness.

APPENDIX A

RESPONSE FROM LOCAL OFFICIALS

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

TOWN JUSTICE
Louis H. Perry, Jr.
Sherry L. Pennington

 **OF THE THOUSAND ISLANDS**
TOWN OF ALEXANDRIA

COUNTY OF JEFFERSON

46372 CO. RT. 1

ALEXANDRIA BAY, NEW YORK 13607

PHONE 315/482.9519 FAX 315/482.6342

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SUPERVISOR
Dale D. Hunneyman

TOWN CLERK
Ellen S. Peck

Supt. of Highways
David H. Bain

ATTORNEY
Joseph W. Russell

COUNCIL MEMBERS
Alcid E. Beaudin
James R. Durand
Brent H. Sweet
Douglas G. Williams

TOWN OF ALEXANDRIA
PLAN OF CORRECTIONS TO FINDINGS AND RECOMMENDATIONS
CONTAINED IN AUDIT REPORT FOR PERIOD
JANUARY 1, 2011 THROUGH MAY 31, 2012
CONDUCTED BY THE OFFICE OF THE STATE COMPTROLLER

The Audit Report contained four areas of concern with respect to the examination of the non-payroll cash disbursements and fuel inventory during the period reviewed, January 1, 2011 through May 31, 2012. The following is the Town's response in connection therewith:

1. **IMPROPER PAYMENT OF CLAIMS BY FORMER SUPERVISOR:**
 - A. From the Report it does appear that several payments for non-payroll disbursements were made by the former Town Supervisor without prior audit and approval by the Town Board and/or without proper documentation to support the fact that the claims were proper obligations of the Town. Subsequent to January 1, 2012, the Town has instituted controls in connection with the payment of non-payroll cash disbursements, which are designed to insure that the Town Supervisor, as the chief fiscal officer of the Town, is not able to pay claims without the appropriate audit and approval of the Town Board.
 - B. All invoices for disbursement are vouchered and presented to the Town Board for audit and approval on a monthly basis prior to payment. All claims presented to the Board for audit are listed in the monthly abstract, individually itemized and accompanied by the invoice and/or other documentation to support the legitimacy of the charge. The Town Board members review the abstracts at the monthly Board meeting and, by motion, authorize the payment of all non-payroll claims that are properly supported.
 - C. As of May, 2012, all Town checks require the co-signature of the Town Clerk, which is intended to insure that the Town Supervisor not be placed in a position to pay any claims prior to the Town Board's approval.
2. **PUBLICITY/CHAMBER OF COMMERCE:**
 - A. Quarterly payments made to the Alexandria Bay Chamber of Commerce during the audit period totaling \$60,000 were purportedly made from bed tax funds for the purpose of advertising and to promote tourism which is the Town's main industry. However, there was no written agreement between the Town of Alexandria and the Chamber of Commerce supporting those expenditures or providing the services to be performed by the Chamber.

The Town of Alexandria is an equal opportunity provider, employer and lender.
To file a complaint of discrimination, write to USDA, Director, Office of Civil Rights, 1400 Independence Avenue, S.W.,
Washington, D.C. 20250-9410 or call (800) 795-3272 or (202) 720-6382(TDD)

- B. The Town of Alexandria will insure that no future payment shall be made to the Chamber of Commerce unless and until a formal written agreement is entered into and approved by the Town Board and the Board of Directors of the Chamber of Commerce outlining the services to be performed by the Chamber of Commerce to benefit the Town of Alexandria and specifying the compensation to be paid by the Town to the Chamber for such services. It is anticipated that those services shall include publicity and promotion of tourism.
- C. The Chamber of Commerce also occupies the former Holland Library building, which is currently owned by the Town of Alexandria. The audit has raised concerns with respect to the Town permitting the Chamber to occupy the Town property without a lease agreement or license. Although there appears to be no current documentation or agreements in place to support such use of the Town owned building, a review of the history in connection with such use and prior resolutions of the Town Board supports the fact that the Chamber of Commerce's occupancy of the building is directly related to and is in connection with a proper and authorized public purpose of the Town. The subject property was owned by the MacSherry Library until 2006 at which time it was purchased by the Town of Alexandria for the sum of \$50,000.00. On February 11, 1998, the Town of Alexandria Town Board adopted a resolution making certain findings in connection with the importance of the tourism industry to the Town of Alexandria and the promotion thereof as a tourist destination. That resolution recognized the Alexandria Bay Chamber of Commerce as the local organization with the primary responsibility of promoting tourism and promoting the Town of Alexandria as a tourist destination. Based upon that resolution, the Town of Alexandria found that it was in the overall public interest for the Alexandria Bay Chamber of Commerce to maintain an office that would be visible and accessible by the public. That resolution authorized the Town to enter into a lease agreement with the MacSherry Library to lease a portion of the library building for the Alexandria Bay Chamber of Commerce to occupy in order to further its public functions. A copy of that resolution and the Lease Agreement is attached to this Response as Exhibit 1.

See
Note 1
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By resolution dated December 28, 2005, the Town of Alexandria authorized the acquisition of the Holland Library Building from the MacSherry Library, and designated the subject property as the Town of Alexandria Tourism Center and dedicated the same for use by and behalf of the Town of Alexandria and authorized any other municipal use which the Town of Alexandria may deem appropriate. That resolution formed the basis of permitting the Alexandria Bay Chamber of Commerce to occupy the subject premises on the condition that it maintain the same as the Town's Tourism Center. A copy of that resolution is also attached to

See
Note 2
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this Response as Exhibit 2. However, it does not appear that a lease agreement or a license agreement with the Chamber was entered into at that time.

- D. The Town of Alexandria shall enter into an appropriate agreement with the Alexandria Bay Chamber of Commerce to permit the Chamber of Commerce to occupy the subject premises on the condition that it maintain the premises as a Tourism Center open and accessible to the public at appropriate times and that the Chamber continue to advertise and promote tourism on behalf of the Town of Alexandria.

3. CONFLICT OF INTEREST

The Audit Report has identified that the Town Attorney may have a prohibited conflict of interest in connection with the Town's engagement of the law firm in which he is a member (the [REDACTED] Law Firm") to perform services outside of the scope of the Town Attorney's duties.

As stated in the Audit Report, a Town officer cannot have an interest in a contract between the Town and an organization in which he has more than a 5% interest in the organization's outstanding ownership, unless one of the statutory exceptions applies. During the audit period, the Town of Alexandria engaged the services of the [REDACTED] Law Firm to perform legal services beyond the scope of the Town Attorney's duties. However, that engagement did not create a prohibited conflict of interest for the Town Attorney by reason of exceptions contained in the General Municipal Law. First, of the approximate \$45,000 paid to the Town Attorney's Firm during the audit period, all but approximately \$12,000 involved matters for which the Town of Alexandria had engaged the [REDACTED] Law Firm prior to the appointment of the Town Attorney. Since those were ongoing matters with engagements (contracts) entered into prior to the appointment of the Town Attorney, Section 802(1)(h) creates a specific statutory exception to permit those engagements to continue.

See
Note 3
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In addition to the above exception, there is not a prohibited conflict of interest solely by reason of the Town Attorney's employment by the Town if the payment for the Town Attorney's services in his capacity as Town Attorney are not directly affected as a result of the engagement of his Firm on unrelated matters, and his duties as Town Attorney do not directly involve the procurement, preparation or performance of any part of such contract. The Town Attorney's salary is set annually by the Town Board during the budget process and is calculated to compensate for the value of the services he performs as general counsel. It is unrelated to services provided by others for matters outside the scope of his duties.

See
Note 4
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As previously noted, prior to the appointment of the Town Attorney in January, 2011, the Town had an ongoing relationship with the [REDACTED] Law Firm. The letter referenced in the Report from the [REDACTED] Law Firm outlining the terms of engagement of that Firm on matters outside the scope of the Town Attorney's duties, was submitted prior to the appointment of the Town Attorney, and merely confirmed the terms of engagement under which the Firm was, at that time, representing the Town. Any new engagements entered into between the Town and the [REDACTED] Law Firm subsequent to the appointment of the Town Attorney, were based on the terms of engagement that were in existence prior to the appointment, and were not the subject of negotiations between the Town Attorney, as a Town officer, and the Law Firm and were not procured by the Town Attorney. Rather, they were entered into by the Town Board based upon its prior relationship with the Law Firm and its confidence in the Law Firm's expertise and abilities, and were on terms previously negotiated between the Town Board and the Law Firm. It should also be noted that during the period in question the Town Board engaged the services of at least one other law firm on matters for which it could have engaged the [REDACTED] Law Firm.

4. FUEL INVENTORY

- A. The Audit Report identified deficiencies in the accounting of fuel utilized by the Town Highway Department and for Fire District vehicles, resulting in a significant amount of unaccounted for fuel. During such period, it appears that there was not in place a proper system for maintaining accountability for fuel utilization by Town and Fire District personnel.
- B. In July, 2012, the Town Board awarded a bid for computerized fuel dispensing system which was installed at the Town fueling station and went online on October 17, 2012. The automated system identified as "Syn-Tech Fuel Master Model 2500+" is a system that accounts for all gasoline purchased and used at the Town fueling station. The system works as follows:
 - i. All fuel purchased is entered into the system by date of purchase, fuel type, amount by gallon, and price.
 - ii. There is assigned a key for each Town vehicle and a personal identification number (PIN) for each operator. In order to operate the fuel pumps, the operator must insert the key and enter his PIN. The system records the time and date and the mileage of the vehicle as well as the operator pumping the gas. The type of gasoline, gallons, mileage of the vehicle, time and date and operator are all recorded.
 - iii. A full report is generated every 30 days, and is presented to the Highway Superintendent and the Town Board for review.

- C. The installation of the automated system permits the Town Highway Superintendent and the Town Board to monthly audit all fuel utilized from the Town fueling station, and provides a mechanism for all fuel to be accounted for.

Dale D. Hunneyman

Town Supervisor

APPENDIX B

OSC COMMENTS ON THE TOWN'S RESPONSE

Note 1

The Town's response letter indicates that copies of the February 11, 1998, resolution and lease agreement were attached to the response as Exhibit 1. The Town provided an excerpt from the February 11, 1998, minutes, but the minutes only indicate that the Board discussed the financial difficulties the Chamber and Holland Library were having and that the "...Board agreed to enter into a tenant landlord [lease] for the purpose of helping all involved." The minutes refer to an attached resolution; however, the Town did not provide a copy of the resolution or the lease agreement with the response letter. We contacted the Town and requested these documents but they were not provided.

Note 2

The Town did not include a copy of the December 28, 2005 resolution with its response letter. We contacted the Town and requested this document but it was not provided.

Note 3

Although there is a statutory exception for a contract in which a municipal officer or employee has an interest in a contract if the contract was entered into prior to the time he was appointed (but not renewals of the contract), it does not appear that this exception would apply under the facts here for services commencing January 1, 2011. According to the Board minutes, the Board appointed the Town Attorney on January 12, 2011. On January 11, 2011, the day before his appointment, the Town Attorney wrote three letters to the Town on law firm letterhead. One letter provided guidance to the Town on re-establishing and filling the position of Town Attorney. The other two letters included his proposal to the Board to serve as the Town Attorney and his law firm's proposal to provide legal services outside the scope of services provided by the Town Attorney.

The law firm's proposal offered an hourly billing rate of \$185, for services commencing January 1, 2011 through December 31, 2011. This amount is an increase from the \$175 billing rate charged by the firm in 2010. The first claim submitted by the law firm with the new billing rate was dated January 27, 2011. We found no indication that the Board passed a resolution to accept the law firm's proposal or that the Town entered into a separate written agreement with the law firm for 2011. In the absence of a Board resolution approving the law firm's contract, we believe the contract for 2011 did not come into existence until the Board audited and approved the firm's January 27, 2011 claim, thereby ratifying the contract. These factors indicate the statutory exception would not apply to claims for services commencing January 1, 2011.

Note 4

There is an exception for contracts in which an interest is prohibited solely by reason of a municipal officer or employee's employment with the contracting firm if (1) the individual's remuneration as an employee of the firm will not be directly affected as a result of the contract and (2) the duties of the

outside employment do not directly involve the procurement, preparation or performance of any part of the contract (General Municipal Law §802[1][b]). This exception, which relates to the municipal officer's remuneration from, and duties with, the contracting firm, applies only when an interest in a contract is prohibited solely by reason of the officer's employment with the contracting firm. Therefore, even if the two listed criteria were met, the exception would not apply here since the Town Attorney has an interest in the law firm's contract both because he is an employee and shareholder of the law firm.

Note 5

While the law firm's proposal was submitted prior to the appointment of the Town Attorney, we found no evidence that the proposal was accepted by the Board until after the appointment. Moreover, there is no reference in the January 11, 2011, letter to any prior engagement of the firm by the Town, or that the terms were based on, or constituted a confirmation of, the terms of any such prior engagement. In fact, it is apparent that the terms were not the same, since the hourly rate proposed was \$10 per hour more than previously paid by the Town. To the extent the Town is suggesting this is a renewal of the previous contract, we note that the exception does not apply to renewals. Further, as noted in the Report in Footnote 7, it is the existence, not the exercise, of powers and duties listed in General Municipal Law §801 which gives rise to a prohibited interest in a contract.

APPENDIX C

AUDIT METHODOLOGY AND STANDARDS

To accomplish our objective, we interviewed appropriate Town officials and employees, tested selected records and transactions, and examined pertinent documents for the period January 1, 2011, through May 31, 2012. Our examination included the following:

- We interviewed appropriate Town officials and reviewed pertinent documents, such as Town policies, Board minutes and financial records and reports, bank statements, images of canceled checks, claims and abstracts.
- We obtained electronic disbursement data from the Town's computerized financial system and performed tests to determine the accuracy and completeness of the data.
- We reviewed 124 non-payroll check disbursements totaling \$338,629 to determine whether they were audited and approved prior to payment, were properly supported, complied with statutory requirements and were for proper Town purposes. This included a random sample of 38 disbursements and a judgmental sample of 86 high-risk disbursements including payments to the former Supervisor, payments related to publicity and payments that could result in conflicts of interest for Town officials.
- We interviewed the Highway Superintendent to obtain an understanding of the fuel inventory records maintained and physical controls over fuel inventory. We reviewed invoices showing the number of gallons of gasoline and diesel fuel purchased for a sample period (June 2011 to December 2011) and compared gallons purchased to the amounts consumed as recorded in the usage records provided by the Highway Superintendent.

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.

APPENDIX D

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