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January 9, 2015

Judith Verminski, Chairman
Members of the Board of Fire Commissioners
Clark Mills Fire District
Main Street
Clark Mills, NY 13321

Report Number: 2014M-315

Dear Ms. Verminski and Members of the Board of Fire Commissioners:

The Office of the State Comptroller (OSC) works to identify areas where fire district officials can improve their operations and provide guidance and services that will assist them in making those improvements. Our goals are to develop and promote short-term and long-term strategies to enable and encourage fire district officials to reduce costs, improve service delivery and to account for and protect their entity's assets.

In accordance with these goals, we conducted an audit of the Clark Mills Fire District (District) which addressed the following question:

- Are District controls adequate to ensure that financial activity is properly recorded and reported and that District moneys are safeguarded?

We discussed the findings with District officials and considered their comments in preparing this report. The District's response is attached to this report in Appendix A. Except as indicated in Appendix A, District officials generally agreed with our recommendations. Appendix B includes our comment on an issue District officials raised in their response.

Background and Methodology

The Clark Mills Fire District (District) is a district corporation of the State, distinct and separate from the Town of Kirkland, and is located in Oneida County. The District's general fund budget totaled \$67,000 for the 2014 fiscal year.

The Board of Fire Commissioners (Board) consists of five elected members and is responsible for the District's overall financial management. The Board appoints a Treasurer who acts as the District's chief fiscal officer. The Treasurer is responsible for the receipt and custody of District funds, disbursing and accounting for those funds, and for preparing annual financial reports.

We examined the internal controls over the District's financial operations for the period January 1, 2013 through July 31, 2014. We interviewed appropriate District officials and reviewed financial records and Board minutes. We conducted this performance audit in accordance with 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.

Audit Results

The Board is responsible for overseeing the District's fiscal activities and safeguarding its resources. To fulfill this duty, it is essential that the Board establish a system of internal controls, which consists of policies and procedures that ensure transactions are authorized and properly recorded; financial reports are accurate, reliable and filed in a timely manner and the District complies with applicable laws, rules and regulations, including the New York State General Municipal Law (GML) requirement for an investment policy. The Board is also required to use a "bank" or "trust company" as defined by GML for the deposit of District funds and for temporary investments in special time deposits or certificates of deposit. The Board should also conduct an annual audit of the Treasurer's records. An annual audit serves as an important control procedure because it gives the Board an opportunity to verify that cash has been accounted for and transactions have been properly recorded. Finally, District officers and employees should comply with GML conflict of interest provisions.

The Treasurer must maintain complete, accurate and timely records to account for all of the District's financial activities properly. The Treasurer should prepare and submit monthly reports to the Board and is required to prepare and submit an annual financial report of the District's financial condition to OSC within 60 days after the close of the fiscal year. This report is an important fiscal tool, which provides the Board with necessary information to monitor District operations and provides other interested parties with a summary of the District's financial activities.

Financial Activities – The Board needs to improve controls over District financial activities. For example, we found that the District has been using a credit union for the deposit and temporary investment of District funds, which is not authorized by GML.¹ In addition, the Board did not adopt an investment policy as required by GML. An investment policy provides guidance to officers and staff regarding the types of investments the District can use, and the monitoring, security and reporting requirements for those investments. A properly designed and written investment policy may have prevented the District from using a credit union for the deposit and investment of District funds.²

District officials told us the Board audits the Treasurer's records annually. However, the audit process is ineffective because Board members sign a copy of the District's annual operating statement submitted by the Treasurer without reviewing any information to support this report. This lax oversight increases the risk that errors or irregularities could occur and not be detected or

¹ Credit unions do not fall within the definition of "bank" or "trust company."

² See our *Local Government Management Guide* entitled *Investing and Protecting Public Funds*. <http://www.osc.state.ny.us/localgov/pubs/lmgmg/investingpublicfunds.pdf>

corrected. Although the Board adopted a code of ethics, it has not reviewed it since its adoption in June, 2007. Moreover, it is unclear whether all Board members are fully aware of the requirements regarding disclosure of interest in transactions before the Board and what types of contracts are prohibited by GML. As a result, we found that the Treasurer did not disclose his interest in a District contract and the Board Chair had a prohibited interest in the same contract, as discussed in more detail below.

We found that the Treasurer generally maintained adequate financial records. The Treasurer submits a monthly report to the Board which lists receipts and disbursements for the month and includes cash balances for the District's four bank accounts and one certificate of deposit. He also provides the Board with bank statements and the bank reconciliations, which the Board reviews and approves. The Treasurer presents budget to actual reports to the Board two to three times throughout the year. However, the Treasurer has not filed the annual update document (AUD) with OSC for 2010, 2011, 2012 and 2013 as required by GML.

The Treasurer made 106 disbursements totaling \$113,069 during our audit period. We reviewed 26 disbursements totaling \$12,327 to determine whether they were adequately supported, for proper District purposes and recorded in the Treasurer's checkbook register.³ Except for two payments to the fire chief totaling \$1,000, we found that the disbursements were for proper District purposes. The Treasurer told us the \$1,000 payments to the fire chief were for administrative duties. It is our understanding that the chief performed these administrative services as a District employee in a position separate and apart from the position of chief.

Although the disbursements we reviewed were adequately recorded in the Treasurer's checkbook register, the Board's failure to perform an effective annual audit of the Treasurer's records, along with the Treasurer's failure to file the AUD in a timely manner with OSC, precludes the Board from being able to make a proper assessment of the District's financial position.

Conflict of Interest – GML limits the ability of municipal officers and employees to enter into contracts in which both their personal financial interests and their public powers and duties conflict. Unless a statutory exception applies, GML prohibits municipal officers and employees from having an interest in a contract with the municipality for which 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 any of those powers or duties.

For this purpose, a “contract” includes any claim, account, demand against or agreement with a municipality, express or implied. Municipal officers 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. Municipal officers and employees are also deemed to have an interest in the contracts of their spouse, minor children and dependents (except employment contracts with the municipality); a firm, partnership or association of which they are a member or employee and a corporation of which they are an officer, director or employee, or directly or indirectly own or control any stock.

³ The 26 claims reviewed consisted of nine claims from February 2014 selected during our risk assessment process. We selected this month because it represented a more current month during our audit period. We then used the random number generator for the remaining 97 claims, selecting a sample of 15 (approximately 15 percent of the remaining claims). Lastly, we reviewed an additional two claims because one of the 24 claims we reviewed was a payment for W-2 tax forms that included a W-2 for the Fire Chief.

As a rule, interests in actual or proposed contracts on the part of a municipal officer or employee, or his or her spouse, must be publicly disclosed in writing to the municipal officer or employee's immediate supervisor and to the governing board of the municipality.

In our examination of District disbursements, we identified four invoices from a corporation that provides both equipment and vehicle repairs to the District. The corporation has retained the Treasurer as an independent contractor to serve as a part-time sales representative. The Treasurer informed us he receives commissions from the sale of equipment, but not from contracts related to repair services. The Treasurer is married to the Board Chair. In 2013, the District purchased three sets of turnout gear from the corporation at a total cost of \$5,256. In 2013 and 2014, the District also entered into three agreements with the corporation totaling \$9,035 for performing truck repair services.

The District's purchase of turnout gear from the corporation involves an agreement between the two, and, hence, a "contract" for purposes of GML. Although the Treasurer indicated he sold the turnout gear to the District for "almost cost," he acknowledged that the corporation made a small profit from the sale, and that he received a commission from the sale. Because the Treasurer received a commission on the sale of the turnout gear, he had an interest in the contract with the District. The interest, however, does not appear to be prohibited because the Treasurer does not possess any of the powers or duties that would give rise to a prohibited conflict of interest. Nonetheless, the Treasurer was required to have publicly disclosed his interest in the contract in writing to the Board, and the disclosure should have been included in the Board's minutes.

However, we believe that the Chair also had an interest in the turnout gear contract and received an indirect monetary or material benefit as a result of the contract. As a member of the Board, the Chair has one or more powers and duties that can give rise to a prohibited interest, such as the duty to negotiate, authorize and approve the claim or audit the claim. Therefore, because none of the statutory exceptions apply in this instance, we believe the Chair has a prohibited interest in the contract. District officials informed us that everyone on the Board is aware of where the Treasurer works and that the Chair is the Treasurer's spouse.

Recommendations

The Board should:

1. Adopt an investment policy as required by GML.
2. Perform an annual audit of the Treasurer's records.⁴ The results of this audit should be documented in the Board's minutes.
3. Deposit and invest District funds only as authorized by GML or other State statute.
4. Review the District's code of ethics and update as necessary.

⁴ For guidance on conducting annual audits, District officials should refer to our publication entitled *The Internal Audit Process for Fire Districts* (www.osc.state.ny.us/localgov/firedist/internalauditprocess.pdf).

5. Discontinue the contract with the corporation in which the Chair has a prohibited interest.

The Treasurer should:

6. File the delinquent AUDs with OSC and file future AUDs in a timely manner.

District officials should:

7. Ensure that all District officers and employees are familiar with the requirements of GML as they relate to conflicts of interest.

The Board has the responsibility to initiate corrective action. Pursuant to Section 181-b of the New York State Town Law, a written corrective action plan (CAP) that addresses the findings and recommendations in this report must be prepared and forwarded to our office within 90 days. To the extent practicable, implementation of the CAP must begin by the end of the next fiscal year. 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. The Board should make the CAP available for public review in the Secretary's office.

We thank the officials of the Clark Mills Fire District for the courtesies and cooperation extended to our auditors during this audit.

Sincerely,

Gabriel F. Deyo

APPENDIX A

RESPONSE FROM DISTRICT OFFICIALS

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

CLARK MILLS FIRE DISTRICT

PO Box 167

Clark Mills, NY 13321

Phone: (315) 853-3117

Fax: (315) 853-3114

December 18, 2014

Ms. Rebecca Wilcox, Chief Examiner
State of New York, Office of the State Comptroller
State Office Building, Room 409
333 East Washington Street
Syracuse, NY 13202

Ms. Wilcox,

The Clark Mills Fire District Board of Fire Commissioners have received and reviewed the draft copy of your audit report 2014M-315. We appreciate your review and input to assist us in improving our financial responsibilities to our taxpayers.

As stated to your auditor, the district was in the process of preparing complete district policies with our attorney during your audit. Those policies have been completed and adopted as of our November 19th meeting. These policies include the investment policies, updated code of ethics, banking policies, and all other required district policies.

We disagree with the finding that an annual audit is not completed, as we audit the records monthly as well as the annual report. You have acknowledged in your report that the monthly reports (including bank statements and reconciliations) and yearly reports are reviewed and approved. We acknowledge that we have not recorded this in the minutes and will comply with this in the future.

See
Note 1
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The treasurer's conflict of interest was divulged to all the commissioners prior to any purchases and you have acknowledged they did know this. We understand that it was not done in writing as required. The commissioners did have 3 written quotes prior to the original purchase of turnout gear from this company. They were the lowest bidder by almost 50% per set and have maintained that price for all remaining purchases. Without this price for gear the district would not have been able to supply all the members with the NFPA required gear. This would have put our volunteers at risk of injury and the district at risk for liability and medical/ compensation costs.

The treasurer has attempted to submit the delinquent AUDs with your office but due to issues with your reporting system this has not been able to be completed. Your auditor has confirmed to us that this is an issue with other fire districts in the state as well. He offered a manual system and then stated it had to be done electronically. He has given us a name and number to contact to assist the treasurer in completing this report. This was given to us on December 16th and the treasurer will contact them and complete the reports in the next few weeks. We use [REDACTED] to maintain financial records like most other districts. We have given your auditor a copy and offered to submit the entire [REDACTED] documentation electronically to your office. We believe this would be a better report to your office that most districts could comply with, as opposed to the current system that obviously has problems.

We believe this will put us in compliance with all of your recommendations. Thank you for your assistance and review.

Respectfully,

Judith S. Verminski, Chairperson

APPENDIX B

OSC COMMENT ON THE DISTRICT'S RESPONSE

Note 1

The Board's review of the Treasurer's monthly reports does not include a review of canceled checks and, therefore, is not thorough. Further, the annual audit process is ineffective because Board members sign a copy of the District's annual operating statement submitted by the Treasurer without reviewing any information to support this report.