



Town of New Berlin Ambulance Company Loan

Report of Examination

Period Covered:

January 1, 2012 — June 28, 2012

2013M-22



Thomas P. DiNapoli

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State of New York Office of the State Comptroller

Division of Local Government and School Accountability

June 2013

Dear Town Officials:

A top priority of the Office of the State Comptroller is to help local government officials manage government resources efficiently and effectively and, by so doing, provide accountability for tax dollars spent to support government operations. The Comptroller oversees the fiscal affairs of local governments statewide, as well as compliance with relevant statutes and observance of good business practices. This fiscal oversight is accomplished, in part, through our audits, which identify opportunities for improving operations and 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 New Berlin, entitled Ambulance Company Loan. 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 New Berlin (Town) is located in Chenango County. The Town has 2,682 residents and provides various services, including road maintenance, snow removal, general government support, and fire and ambulance protection. The Town's annual budget appropriations for 2013 are \$1.86 million, financed primarily by real property taxes and sales tax.

An elected five-member Town Board (Board), comprising the Town Supervisor (Supervisor) and four Council members, governs the Town. The Supervisor serves as the Town's chief executive officer and chief fiscal officer. The Village of New Berlin (Village) and the South New Berlin Fire District (Fire District) are both located within the Town's boundaries and are governed by a Village Board and Board of Fire Commissioners, respectively.

The Town received Community Development Block Grant (CDBG) funds through the Small Cities Community Development Program (program) offered by the Federal Department of Housing and Urban Development (HUD) from 1985 through 1995. The Supervisor explained to us that the Town was awarded a number of CDBG funds between the years of 1985 and 1995, which they pooled into one Economic Development Revolving Loan Fund. HUD relinquished their oversight of these program funds in 2000.

Objective

The objective of our audit was to assess the Town's practices regarding the Board's revolving loan fund lending practices. Our audit addressed the following question:

- Did the Board properly authorize a loan to the not-for-profit corporation providing ambulance services?

Scope and Methodology

We examined Board minutes, adopted budgets, various real property tax documents, various loan documents including promissory notes, and contracts as they applied to our audit objective question, and conducted personal interviews with various Town officials and staff members. Our audit covered the period January 1, 2012, through June 28, 2012. We extended our scope back to January 1, 2007, to determine if lending from the Town's CDBG revolving loan fund fell under Federal or State government authority and guidelines.

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 recommendation have been discussed with Town officials and their comments, which appear in Appendix A, have been considered in preparing this report. Town officials agreed with our finding and recommendation and indicated that they have taken, or plan to take, corrective action.

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

Loan to Not-For-Profit Corporation

Municipalities may apply for and receive money from Federal agencies and those funds generally may also be loaned to private entities for various purposes in accordance with Federal requirements, as long as those funds retain their character as Federal funds under a Federal program. However, if those funds are no longer restricted under a Federal program and lose their character as Federal moneys, they become subject to the same restrictions and expectations as other municipal money including the constitutional prohibition against making gifts or loans to private entities, including not-for-profit corporations.¹

The Board authorized and paid money toward loans to a private, not-for-profit ambulance company. Specifically, the Board authorized and paid two loans to the ambulance company totaling \$125,000 as of April 2012 (\$100,000) and November 2012 (\$25,000) from a Town Revolving Loan Fund, which we understand was established using Federal grant monies from one or more Federal HUD programs. We have been informed by HUD that program income held in certain Revolving Loan Funds continue to be subject to Federal HUD requirements under HUD programs.

The Board believed that loaning money to the private not-for-profit ambulance corporation was within the allowable purposes of their loan program. In particular, the Board recognized the need for ambulance protection for their citizenry and had previously loaned money from that fund for other ambulance-related purposes.

If the Town was not permitted under Federal law to make loans to the private ambulance company, the Town would have improperly expended moneys from the Revolving Loan Fund. Because the propriety of the use of these funds is governed by Federal, not State law, we are referring this issue to HUD for its consideration.

Recommendation

1. The Board should obtain a clear understanding of the types of loans that can be legally made using the Revolving Loan Fund.

¹ New York State Constitution, article VIII, Section 1

APPENDIX A

RESPONSE FROM LOCAL OFFICIALS

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

The District's response letter refers to an attachment that supports the response letter. Because the District's response letter provides sufficient detail of its actions, we did not include the attachment in Appendix A.

TOWN OF NEW BERLIN

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TOWN BOARD MEMBERS

Ross Iannello	Supervisor
Roger Foote	Deputy
Robert Gardner	Councilmen
Paul Thomsen	Councilmen
Roy Stockwell	Councilmen

TOWN CLERK

Bonnie Jean Bauer

Re: Report of Examination, Town of New Berlin, NY

Todd Eames, Chief Examiner
Office of the State Comptroller
State Office Building, Room 1702
44 Hawley Street
Binghamton, New York 13901-4417

Dear Mr. Eames,

Please be advised that this letter is intended to serve two purposes. First to respond to your draft preliminary report and recommendation, secondly to address the corrective action plan.

First, as you are aware the Town Board members are also supplied with a copy of the draft report. They and I feel the report is within the discussions conducted during the audit. However I would like to comment, about the original grants that created the loan fund. The original grant was a grant that allowed servicing, commercial, residential and municipal needs. This has been the criteria the Town has always followed.

Secondly, to address the recommendation for corrective action. I will assure you that we will contact our representative at HUD Buffalo to discuss the program with them. In fact at the same time we mail this letter to you, a letter will go to HUD, a copy is enclosed.

Sincerely,

✓ Ross P. Iannello
Town Supervisor

CC HUD Buffalo
Enclosure

APPENDIX B

AUDIT METHODOLOGY AND STANDARDS

Our overall goal was to assess the Town's practices regarding the Board's use of the Revolving Loan Fund. To accomplish our audit objective and obtain valid and relevant audit evidence, we performed the following procedures:

- We conducted in-person interviews with Town officials and staff to gain an understanding of the loans made to the not-for-profit ambulance corporation, where funds were derived from to provide the loan, and how real property taxes were levied to pay for an ambulance contract servicing the Town.
- We reviewed Board minutes for the audit period to obtain information regarding the Board's approval of the loan made to the not-for-profit ambulance corporation.
- We obtained and reviewed bank statements for the period of 2005 to 2012 to assess the activity of the Town's Revolving Loan Fund to determine if Federal or State mandates controlled the use of funds held in the account.
- We consulted with the Buffalo Regional Office of HUD and OSC's Legal Department to verify if loans were made in accordance with all laws that govern the use of funds.

We conducted this performance audit in accordance with generally accepted government auditing standards (GAGAS). Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

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