



Town of Indian Lake Reserves and Justice Court Operations

Report of Examination

Period Covered:

January 1, 2013 — May 31, 2014

2014M-330



Thomas P. DiNapoli

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State of New York Office of the State Comptroller

Division of Local Government and School Accountability

March 2015

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 Indian Lake, entitled Reserves and Justice Court Operations. 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 New York State 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 Indian Lake (Town) is located in Hamilton County and has a population of approximately 1,350. The Town is governed by an elected Town Board (Board), consisting of the Town Supervisor and four Board members. The Board is responsible for overseeing the Town's operations and finances. The Town Supervisor is the chief executive officer and the chief financial officer of the Town. The Town's adopted budget for 2014 was \$4.4 million, funded primarily with real property taxes.

The Town has 14 reserve funds with a total balance of approximately \$614,000. The Justice Court (Court) has jurisdiction over vehicle and traffic, criminal, civil and small claims cases brought before it. The Town operates its Court with two elected Justices¹ and a Court clerk. The Justices' principal duties involve adjudicating legal matters within the Court's jurisdiction and administering funds collected from fines, bails and surcharges.

Scope and Objectives

The objectives of our audit were to review the establishment and use of the Town's reserve funds and examine internal controls over the Court's financial activity for the period January 1, 2013 through May 31, 2014. We extended our scope back to January 1, 2012 for our review of internal controls over the Court. Our audit addressed the following related questions:

- Did the Board properly establish and expend from the Town's reserve funds?
- Are internal controls over Court operations appropriately designed and operating effectively to allow for the proper accounting and reporting of financial activity?

Audit Results

The Board did not properly establish reserves with assets totaling \$614,266 as of May 31, 2014. In addition, the Board did not receive approval from the Office of State Comptroller (OSC) for establishing these reserve funds. Furthermore, two of the capital reserve funds, communications and software, totaling approximately \$35,000 as of May 31, 2014, were not reserves authorized by General Municipal Law (GML) and, therefore, are not legitimate reserves. During the scope of our audit, the Board expended funds from three of the type capital reserve funds: communications, building and parks and recreation equipment. Although it is required by GML, the Board did not complete a

¹ Three Justices held office during our scope period: Justice Durkin, Justice Atwell and Justice Curry. At the end of 2013, Justice Atwell left office and Justice Curry took office.

permissive referendum for any of the expenditures made from the reserve accounts and did not receive consent from OSC.

Internal controls over the Court's accounting and reporting of financial activity were not adequate. Justice Atwell did not perform any monthly bank reconciliations or monthly accountabilities during 2012 and 2013. In addition, he did not always deposit collections or file his monthly reports to the Justice Court Fund in a timely matter, as required by law. Furthermore, when he resigned from his position, he transferred the remaining funds in his bank account to the succeeding Justice² with no records showing which pending cases the funds were associated with. Justice Durkin did perform monthly bank reconciliations, but did not perform the monthly accountabilities to address outstanding liabilities. Although she did have records of bail received, the bail records were inadequate because they did not tie out to the cash in the bank account. There were only minor issues found with Justice Curry's records.

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. Town officials generally agreed with our recommendations and indicated they planned to initiate corrective action.

² Justice Atwell was succeeded by Justice Curry.

Introduction

Background

The Town of Indian Lake (Town) is located in Hamilton County and has a population of approximately 1,350. The Town is governed by an elected Town Board (Board) consisting of the Town Supervisor (Supervisor) and four Board members. The Board is responsible for overseeing the Town's operations and finances. The Supervisor is the chief executive officer and the chief financial officer of the Town. The Town's adopted budget for 2014 was approximately \$4.4 million, funded primarily with real property taxes.

The Town has 14 reserve funds with a total balance of approximately \$614,000. The Justice Court (Court) has jurisdiction over vehicle and traffic, criminal, civil and small claims cases brought before it. The Town operates its Court with two elected Justices³ and a Court clerk. The Justices' principal duties involve adjudicating legal matters within the Court's jurisdiction and administering funds collected from fines, bails and surcharges.

Objectives

The objectives of our audit were to review the establishment and use of the Town's reserve funds and examine internal controls over the Court's financial activity. Our audit addressed the following related questions:

- Did the Board properly establish and expend from the Town's reserve funds?
- Are internal controls over Court operations appropriately designed and operating effectively to allow for the proper accounting and reporting of financial activity?

Scope and Methodology

We examined the records related to the creation, accounting and use of reserve fund moneys and the internal controls over the operations of the Court for the period January 1, 2013 through May 31, 2014. We extended our scope back to January 1, 2012 for our review of internal controls over the Court.

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 is included in Appendix B of this report.

³ During our scope period three Justices held office: Justice Durkin, Justice Atwell and Justice Curry. At the end of 2013, Justice Atwell left office and Justice Curry took office.

**Comments of
Local Officials and
Corrective Action**

The results of our audit and recommendations have been discussed with Town officials, and their comments, which appear in Appendix A, have been considered in preparing this report. Town officials generally agreed with our recommendations and indicated they planned to initiate corrective action.

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

Reserves

Towns may establish a number of different kinds of reserve funds in accordance with General Municipal Law (GML). To establish a capital reserve fund, the Board must adopt a resolution for either a “specific” or a “type” capital reserve⁴ to finance all or part of the cost of construction, reconstruction or acquisition of a capital improvement or equipment. For a specific capital reserve, the Board must state the specific improvement or equipment to be purchased as well as the estimated cost. In addition, a specific capital reserve is subject to a permissive referendum⁵ for the establishment of the reserve. However, a permissive referendum is not required prior to an expenditure from a specific capital reserve. For a type capital reserve, the Board must state the kind of improvement or equipment to be purchased in the resolution establishing the reserve. There is no requirement to state an estimated maximum cost of the equipment or improvement and there is no permissive referendum required to establish a type capital reserve. However, a permissive referendum is required prior to expending money from a type capital reserve.⁶

Capital reserve funds may generally be funded with budgetary appropriations and revenues not required by law to be paid into any other fund or account. Also, because the Town has State-owned lands subject to taxation located in the Adirondack Park that are assessed at more than 30 percent of the Town’s total taxable assessed valuation, the Office of the State Comptroller (OSC) must consent to the establishment of and expenditures and transfers from the Town’s capital reserve funds.

The Board did not properly establish any of the Town’s 14 capital reserves, totaling \$614,266 as of May 31, 2014. In addition, the Board failed to seek approval from OSC to establish any of these reserve funds. Furthermore, two of the reserve funds, entitled “communications” and “software” totaling approximately \$35,000, are not permitted by GML. During our audit period, the Board expended funds from three of the type capital reserve funds and failed to subject the expenditures to permissive referendums and obtain approval from OSC.

⁴ Examples of a “specific” capital reserve would be the construction of a Town Hall or the purchase of a bulldozer. Examples of a “type” capital reserve would be for the construction of buildings or the purchase of highway equipment.

⁵ GML requires the Town to publish and post a legal notice informing Town residents of the Board’s plan to establish a specific capital reserve. The legal notice also informs eligible voters of their right to file a petition to require the matter to be subjected to voter approval.

⁶ Unless the period of probable usefulness of the capital improvement or equipment is less than five years

Figure 1 illustrates the name, intent and balance of the Town's 14 reserve funds as of May 31, 2014.

Figure 1: Reserve Funds as of May 31, 2014		
Fund Name T-Type; S-Specific	Intent of Reserve Fund per Town Officials	Balance
T - Building	To make major improvements to Town-owned buildings	\$94,626
T - Communications	To improve communication cell tower and update 911 addressing	\$26,885
T - Software	To fund major updates to the Supervisor's financial software	\$8,120
T - Highway Equipment	To buy equipment needed for Highway operations	\$89,867
T - Landfill Equipment	To buy equipment needed for Landfill operations	\$86,426
T - Parks and Recreation Equipment	To buy equipment needed for Parks and Recreation operations	\$25,112
T - Sewer Equipment	To buy equipment needed for Sewer operations	\$72,347
T - Land	To purchase new land and/or make major improvement to existing land holdings	\$22,007
S - Water 1 Tank	To replace the water tank for Water District 1	\$70,170
S - Water 1 Truck	To buy trucks needed for Water District 1 operations	\$13,739
S - Water 1 Wells	To fund the drilling of new wells needed in Water District 1	\$20,000
S - Water 2 Tank	To replace the water tank for Water District 2	\$64,004
S - Water 2 Truck	To buy trucks needed for Water District 2 operations	\$3,962
S - Dam Repair	To fund repairs made to the dam	\$17,001
Total Reserve Balance as of May 31, 2014		\$614,266

Establishment of Reserves – The Town uses reserve funds as a means to ensure funds will be available to finance the cost of future capital acquisitions and improvements. At the time of our audit, the Town had 14 reserve funds, and we determined, based on our discussions and information provided by Town officials, that eight were type capital reserves and six were specific capital reserves.

Based on our review of the accounting records, adopted budgets and Board meeting minutes and our discussions with the Supervisor and the senior account clerk (clerk), the Town did not adopt resolutions or request permission from OSC to establish any of the capital reserves. In addition, for the six specific capital reserves, the Town did not subject the reserves' establishments to the required permissive referendums. The Town informally established the reserves with budgetary appropriations included in the adopted budgets or via Board-approved budgetary amendments to transfer funds to the

capital project fund.⁷ Based on documentation presented to us during our audit and discussions with the Supervisor and clerk, the clerk informed the Board of the proper reserve establishment procedures, but the Board failed to follow the required process.⁸ Lastly, two of the reserves, entitled “communications” and “software” totaling approximately \$35,000 as of May 31, 2014, are intended to finance recurring operating expenditures which is not an appropriate use of capital reserves.⁹

Expenditures from Reserves – During our audit period, the Board expended funds from three of the type capital reserve funds: the communications, building and parks and recreation equipment reserves. The Board funded recurring expenditures¹⁰ totaling approximately \$1,000 with the communications reserve and purchased an immaterial amount of miscellaneous electrical supplies with funds from the building reserve.¹¹ Additionally, the Board expended approximately \$80,000 of the parks and recreation reserve on a trail groomer in 2014.

These expenditures should have been subject to permissive referendums and required authorization from OSC. Based on our review of the Board meeting minutes and discussions with Town officials, the Board failed to subject these expenditures to permissive referendums or seek authorization from OSC to expend from these three reserves.

The Town’s failure to properly establish the capital reserves has resulted in more than \$614,000 in operating funds¹² being erroneously classified as reserved.

Recommendations

The Board should:

1. Return moneys in the non-legally established reserve funds to the operating funds that funded the reserves.

⁷ The Town incorrectly accounted for the capital reserve funds in the capital projects fund. The reserves should have been accounted for and reported in the operating funds (i.e., general and highway funds) that financed the reserves.

⁸ The Clerk annually provided the documentation on properly establishing reserves to the Board.

⁹ Intended use of the communication reserve was to fund the costs of updating the Town’s 911 addressing and improving cell tower communications and the intent of the software reserve was to fund major financial software updates.

¹⁰ The recurring expenditures funded with the communications reserve were the quarterly bills for the 911 address list.

¹¹ The intent of the building reserve was to make major improvements to Town-owned buildings, particularly highway garage construction.

¹² The following operating funds were used to finance the various capital reserves: general, highway, landfill, water and sewer funds.

2. Adopt a plan for the reserves to be used, how much is needed for that purpose, how each reserve will be funded and when each fund will be used.
3. Take action to establish the reserves in accordance with GML.
4. Ensure that expenditures from reserves are properly authorized and have OSC consent for the use of the reserves.

Justice Court Operations

A well-designed system of internal controls ensures that cash received by the Court is safeguarded and that Court activity is properly recorded and reported. Each Justice is responsible for adjudicating cases brought before the Court and accounting for and reporting all related Court financial activities. The Justices must ensure that controls are in place and working effectively, particularly when there is a limited segregation of duties. To meet that responsibility, each Justice must maintain complete and accurate records and safeguard all moneys collected. Essential procedures include the monthly reconciliation of bank accounts to Court records and a monthly accountability which compares cash on hand and on deposit to detailed lists of amounts due to OSC's Justice Court Fund (JCF) as well as other outstanding liabilities, such as bail. In addition, Justices are required to deposit all moneys collected within 72 hours of receipt and report Court transactions to the JCF in a timely manner. Furthermore, the Board is responsible for overseeing Town financial activities, including Court operations, and ensuring that an annual audit of Court records and dockets is conducted.

Internal controls over the Court's accounting and reporting of financial activity were inadequate. Justice Atwell did not perform monthly bank reconciliations or accountabilities during 2012 and 2013. In addition, he did not always deposit collections in a timely matter. Furthermore, when he resigned from his position on October 23, 2013, he transferred the funds in his bank account to the succeeding Justice¹³ without supporting records indicating associated pending cases. Justice Durkin did perform monthly bank reconciliations but did not perform monthly accountabilities of cash on hand and on deposit to outstanding liabilities, and she had unaccounted-for funds in her bank account. Besides minor issues that we discussed with Justice Curry, there were no discrepancies found with his accounting records, month-end reconciliations, or accountabilities and reports.

Bank Reconciliations and Month-End Accountabilities – Justices are required to account for cash collections and disbursements from month to month. To assist in this accounting, they should determine their accountability by preparing a list of Court liabilities and comparing it with reconciled bank balances on a monthly basis. Bank reconciliations and accountability analyses document the status of moneys held by the Court at any point in time and provide a means of verifying that the Court is properly addressing its custodial responsibilities.

¹³ Justice Atwell was succeeded by Justice Curry.

We reviewed the bank reconciliations and month-end accountabilities completed by all three Justices in office during our audit period. We found that Justice Atwell did not perform any bank reconciliations or month-end accountabilities and did not keep records of his outstanding bail liabilities. When Justice Atwell left office, he transferred the \$4,075 in his bank account to Justice Curry. Based on our review of Justice Atwell's duplicate cash receipts and bank records, we were able to determine the source and purpose of \$2,650 of the money that was transferred to Justice Curry; however, we could not determine the source and purpose of the remaining \$1,425. Even though Justice Curry accurately performed monthly bank reconciliations and month-end accountabilities for each month under review, he was still carrying the \$1,425 of undetermined money as an unreconciled item. Although Justice Durkin accurately reconciled her bank account each month, she did not perform any month-end accountabilities, maintained inadequate bail records and had unaccounted-for funds in her bank account. Based on records supplied by Justice Durkin, we were unable to account for approximately \$170 in her bank account.¹⁴

Cash Collections and Deposits – Accurate recording of moneys received is essential to properly account for and safeguard Court assets. Justices are required to issue receipts to acknowledge collection of all moneys paid to the Court. Justices are also required to deposit intact (in the same amount and form of the payments that were received) all moneys collected by the Court into official bank accounts as soon as possible, but no later than 72 hours from the date of collection, excluding Sundays and holidays.

We examined 10 days¹⁵ of fine and surcharge collections for each Justice. We traced the receipts issued by the Justices to the validated deposit slips and deposits listed on the bank statements and then to the monthly reports to verify that the collections were reported properly, deposited timely and intact and included on the monthly reports to the JCF. We found no discrepancies from our tracing of collections to deposits to inclusion on the monthly reports to the JCF for all three Justices. However, we found that except for three receipts issued by Justice Curry, the Justices did not record the type (i.e., cash, check or money order) of payment that was received on the receipts. Therefore, we could not determine if all collections were deposited intact.¹⁶

We examined all bail collections during our audit period to verify they were deposited intact and timely and supported by case files.

¹⁴ We were unable to account for approximately \$170 in her checking account from January 2013 through January 2014.

¹⁵ We used an unbiased judgmental sample of 10 days of collection for each Justice.

¹⁶ The three receipts that were issued by Justice Curry indicating the form of payment were deposited intact.

During our test period, the three Justices had 22 collections of bail money totaling \$28,150, and we found that the bail collections were generally deposited timely and intact and the bail money was adequately supported by the related case files.

Annual Audit – Every justice is required to present his or her records and dockets at least once each year to be examined by the Board, or by an independent public accountant. In conducting the review, it is important for the Board to determine whether the Court has effective procedures to ensure that financial transactions are properly recorded and reported and that all moneys are accounted for properly. This is especially important since Justices have the ability to perform multiple tasks, including accepting payments, opening mail, issuing receipts, recording transactions and making deposits.

The Board failed to examine the Justices' records and dockets for the 2011, 2012 and 2013 years. The Town's clerk did review the Justices' 2012 records and dockets. However, this review did not relieve the Board of its responsibility to conduct an annual examination of the Justices' records. Without an effective audit of the Court's records, the Town cannot provide assurance that all Court funds are properly accounted for.

Recommendations

The Justices should:

5. Prepare monthly bank reconciliations and accountability analyses and maintain adequate bail liability records.

The Board should:

6. Ensure it conducts an annual examination of the Justices' records.
7. Ensure that all funds remitted from Justice Atwell to Justice Curry are either accounted for as to the source and purpose of the funds or remitted to the JCF as unidentified funds.

APPENDIX A

RESPONSE FROM LOCAL OFFICIALS

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



TOWN OF INDIAN LAKE

P.O. Box 730 Pelon Road
Indian Lake, Hamilton County
New York 12842
Phone: (518) 648-5885
Fax: (518) 648-6227

The Town Board of the Town of Indian Lake recognizes it needs to formally establish Reserve Funds as per New York State Office of State Comptrollers rules and regulations. The Town also understands it needs to obtain the New York State Comptroller's permission to establish such Reserve Funds.

The Town Board of the Town of Indian Lake acknowledges the need to save for future projects, acquisitions, and other allowable purposes. Saving for major expenses is an important planning tool for our town. Reserve funds provide a mechanism for legally saving money to finance all or part of future infrastructure, equipment, and other requirements. Reserve funds can also provide a degree of financial stability by reducing reliance on indebtedness to finance capital projects and acquisitions. In uncertain economic times, reserve funds can also provide officials with a welcomed budgetary option that can help mitigate the need to cut services or to raise taxes. In good times, money not needed for current purposes can often be set aside in reserves for future use.

The Town of Board of the Town of Indian Lake has since contacted the New York State Comptroller's office and has formally established Reserve Funds as per General Municipal Law. We have, with the aid of counsel, adopted a plan for each of the reserves, how they are to be used, how much is needed and how they will be funded. We have returned the Communications and Software Reserve funds to the General Fund and have properly accounted for them. In the future, the Town will expend from the reserves in accordance with New York State Office of the State Comptroller's Rules and Regulations and General Municipal Law.

The Town Board of the Town of Indian Lake recognizes the need for Town Justices to perform monthly bank statements, accountability analysis reports, and maintain adequate bail liability records. The Board understands the need to conduct annual examinations of such Justice records.

The Town Board of the Town of Indian Lake and the Town Justices are still in the process of reviewing the recommendations of the New York state Comptroller's Office and developing a plan of corrective action.

Brian E Wells, Town Supervisor

APPENDIX B

AUDIT METHODOLOGY AND STANDARDS

The objectives of our audit were to determine if reserve funds were properly established and expended and if the internal controls over Court operations were appropriately designed and operating effectively to allow for the proper accounting and reporting of the Court's financial activity. To achieve our objectives and obtain valid audit evidence, our procedures included the following:

- We interviewed Town officials and reviewed Board meeting minutes to determine if reserve funds were appropriate and properly established.
- We reviewed all receipts and expenditures recorded within the reserve funds to identify if the funding and use of reserve funds was appropriate and in compliance with GML.
- We interviewed Court officials to gain an understanding of the internal controls in place over Court operations.
- We reviewed all bank reconciliations and accountabilities completed by each Justice over the scope period to verify that the Justices were performing bank reconciliations and accountabilities on a monthly basis. We analyzed bank reconciliations and accountabilities performed from January 2013 through January 2014 to verify that they were accurate and all funds were associated with known liabilities.
- We reviewed an unbiased judgmental sample of 10 days of cash receipts per Justice, for a total sample of 30 days, to verify that all collections were reported to the JCF and were deposited intact and timely.
- We identified all bail collections made by each Justice through the review of their receipt books to determine if collections were supported by case files and were deposited intact and timely.
- We reviewed all monthly reports submitted to the JCF to determine if each Justice filed their reports in a timely manner.
- We examined the transition of office from Justice Atwell to Justice Curry to determine if all pending cases and moneys received for those cases were properly transferred, if Justice Atwell filed his final report with the JCF and reported all activity recorded and if the Board ensured that all requirements of the transition of office were met.

We conducted this performance audit in accordance with 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 C

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