



Town of Malone

Justice Court Operations and Highway Department Payroll

Report of Examination

Period Covered:

January 1, 2014 – January 31, 2015

2015M-83



Thomas P. DiNapoli

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State of New York Office of the State Comptroller

Division of Local Government and School Accountability

August 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 Malone, entitled Justice Court Operations and Highway Department Payroll. 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 Malone (Town) is governed by an elected five-member Town Board (Board), which consists of the Town Supervisor (Supervisor) and four council members. The Board is responsible for the general oversight of the Town's operations and finances. The Supervisor, as chief fiscal officer, is responsible for receiving, disbursing and maintaining custody of Town moneys; maintaining accounting records; and providing financial reports to the Board. The Town's budgeted appropriations for the 2015 fiscal year are approximately \$3.57 million, funded primarily with real property taxes.

Scope and Objectives

The objectives of our audit were to review the Town's internal controls over the Justice Court's (Court) financial operations and the Highway Department's payroll for the period January 1, 2014 through January 31, 2015. We expanded the scope period forward to March 6, 2015 for the cash count that we performed of the Court's cash on hand that day. Our audit addressed the following related questions:

- Are internal controls over the Court's financial operations appropriately designed and operating effectively to adequately safeguard Court assets?
- Are internal controls over payroll and the maintenance of leave accruals for Highway Department employees appropriately designed and operating effectively?

Audit Results

The Board and Town officials did not provide adequate oversight of the Town's financial operations to ensure that assets were adequately safeguarded. There were weaknesses in both preventive controls, such as segregation of duties and policies and procedures, and detective controls, such as management oversight. These weaknesses have resulted in potential lost revenue to the Town, unnecessary expenditures and an environment that allowed significant deficiencies to occur and remain undetected.

We found significant internal control weaknesses in the Court's financial operations. For example, there was a lack of segregation of duties over cash receipts and a lack of oversight by the Justices. Consequently, we found that collections were not properly accounted for or deposited timely. In addition, accurate and complete bail records were not maintained and bank reconciliations and accountability analyses were not performed for all Court bank accounts. As a result, the Justices and Court clerks were unaware that, as of January 31, 2015, Justice Lamitie had a cash shortage of \$4,273, and when he resigned, Justice Cositore had a cash shortage of \$834. Furthermore, when Justice Cositore resigned,

he did not file a final report with the Office of the State Comptroller's Justice Court Fund, close his official bank account or transfer pending bail to the other Justice or the succeeding Justice.

We also found that the Justices did not establish policies and procedures for the enforcement of unresolved traffic tickets. As a result, 24 of 30 unpaid traffic tickets that we reviewed were not properly enforced and there is potential lost revenue to the Town. Finally, the Board did not audit the Justices' records as required. As a result, the Board had no assurance that all moneys collected were properly recorded and accounted for, and there is an increased risk that errors or irregularities with Court funds could occur and remain undetected.

The Town also lacked comprehensive policies and procedures for preparing and processing payroll and maintaining leave time accruals for Highway Department employees, and Town officials did not provide adequate oversight. As a result, we found that 12 of 14 Highway Department employees did not receive the correct gross pay during our audit period. Eleven employees were overpaid a combined total of \$3,885 and one employee was underpaid \$193. Furthermore, Highway Department employees' leave accrual records were not accurately maintained, which contributed to the overpayments. In addition, as of January 31, 2015, we found five employees' sick leave balances were overstated by a total of 91.20 hours, valued at \$1,756, and four employees' sick leave balances were understated by a total of 32.90 hours, valued at \$645.

Comments of Town 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 issues raised in the Town Justices' response letter.

Introduction

Background

The Town of Malone (Town) is located in Franklin County and has a population of approximately 14,545 residents. The Town is governed by an elected five-member Town Board (Board), which consists of the Town Supervisor (Supervisor) and four council members. The Board is responsible for the general oversight of the Town's operations and finances, including the financial activity of the Justice Court (Court). The Supervisor, as chief fiscal officer, is responsible for receiving, disbursing and maintaining custody of Town moneys; maintaining accounting records; and providing financial reports to the Board.

The Town provides various services to its residents, including maintaining and improving Town roads, snow removal, public improvements, planning and zoning, recreation and cultural activities and general governmental support. The Town's budgeted appropriations for the 2015 fiscal year are approximately \$3.57 million, funded primarily with real property taxes.

The Court has jurisdiction over vehicle and traffic, criminal, civil and small claims cases brought before the Court. A Justice's principal duties involve adjudicating legal matters within the Court's jurisdiction and administering moneys from fines, bails, surcharges and civil fees. Justices are required to report monthly to the Office of the State Comptroller's Justice Court Fund (JCF) the financial activities of the preceding month.

The Town has two elected Justices, Justice Michael Lamitie¹ and Justice Charles Gardner² who currently preside over the Court. Justice Frederick Boardway³ and Justice Frank Cositore⁴ also presided over the Court during our audit period. The Town also employed two Court clerks (clerks) and an intern during our audit period to assist with the financial responsibilities related to Court operations. The Justices remitted \$327,797 in fines, fees and surcharges to the Supervisor in 2014 to be distributed among New York State, Franklin County, the Village of Malone and the Town. The Town reported revenues from these fines, fees and surcharges of \$125,459.

¹ Justice Lamitie's current term is from January 1, 2012 to December 31, 2015.

² Justice Gardner's current term is from January 1, 2015 to December 31, 2018.

³ Justice Boardway served as an assigned Justice from July 2, 2013 through Justice Cositore's resignation in June 2014. Upon Justice Cositore's resignation, Justice Boardway was appointed through December 31, 2014.

⁴ Justice Cositore served as an elected Justice from January 1, 2011 until his resignation on June 13, 2014.

The Town's elected Highway Superintendent is responsible for overseeing the Highway Department's operations and employees. The Highway Department is responsible for maintaining Town roads and culverts and providing snow removal services. The Highway Department had 14 employees, and payroll expenditures totaled approximately \$593,000 for these employees during our audit period.

Objectives

The objectives of our audit were to review the Town's internal controls over the Court's financial operations and the Highway Department's payroll. Our audit addressed the following related questions:

- Are internal controls over the Court's financial operations appropriately designed and operating effectively to adequately safeguard Court assets?
- Are internal controls over payroll and the maintenance of leave accruals for Highway Department employees appropriately designed and operating effectively?

Scope and Methodology

We reviewed the internal controls over Court operations and Highway Department payroll for the period January 1, 2014 through January 31, 2015. We expanded the scope period forward to March 6, 2015 for the cash count that we performed of the Court's cash on hand that day.

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. Unless otherwise indicated in this report, samples for testing were selected based on professional judgment, as it was not the intent to project the results onto the entire population. Where applicable, information is presented concerning the value and/or size of the relevant population and the sample selected for examination.

Comments of Town 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.

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.

Justice Court Operations

Justices are responsible for adjudicating all cases brought before their Court and establishing internal controls that ensure that cash received by the Court is safeguarded and that Court activity is properly recorded and reported. To accomplish this, Justices must maintain complete and accurate accounting records and deposit and disburse cash in a timely manner. They must also perform monthly bank reconciliations and accountability analyses, report all Court transactions to the JCF and the New York State Department of Motor Vehicles (DMV), when applicable, and provide additional oversight when their clerks' duties are not properly segregated. Upon a Justice's resignation, the Justice is required to transfer pending cases and moneys to another Justice and close their official bank account. The Justices are also responsible for enforcing unresolved traffic tickets and ensuring that money is collected as efficiently and effectively as possible. In addition, the Board is required to perform an annual audit of the Justices' records or to engage an independent public accountant to do so.

We identified significant internal control weaknesses in the Court's financial operations. The Justices did not properly segregate the cash receipt duties and did not provide oversight for receiving, depositing, recording and reporting cash receipts. Consequently, we found that collections were not properly accounted for or deposited timely. In addition, accurate and complete bail records were not maintained and bank reconciliations and accountability analyses were not performed for all Court bank accounts. As a result, the Justices and clerks were unaware that, as of January 31, 2015, Justice Lamitie had a cash shortage of \$4,273 and when he resigned, Justice Cositore had a cash shortage of \$834. Furthermore, when Justice Cositore resigned, he did not file a final report with the JCF, close his official bank account or transfer pending bail to the other Justice or the succeeding Justice.

We also found that the Justices did not establish policies and procedures for enforcing unresolved traffic tickets, which resulted in unpaid traffic tickets not being properly enforced along with potential lost revenue to the Town. Finally, the Board did not audit the Justices' records as required. As a result, the Board had no assurance that all moneys collected were properly recorded and accounted for, and there is an increased risk that errors or irregularities with Court funds could occur and remain undetected.

Cash Receipts

A well-designed system of internal controls over cash receipts provides for a proper segregation of duties so that a single individual does not control all aspects of a transaction (i.e., collecting, recording

and depositing money). In instances where adequate segregation is not possible, the Justices should review the work performed by Court personnel to ensure that collections are properly accounted for, accurately reported and adequately protected.

Justices are required to issue receipts to acknowledge the collection of all moneys paid to the Court. The receipts should be press-numbered and issued in sequential order. The Court should retain a duplicate copy of each receipt. In addition, Justices are required to deposit all moneys collected by the Court into official bank accounts as soon as possible, but no later than 72 hours from the date of receipt, excluding Sundays and holidays. It is also critical that collections be deposited intact⁵ to reduce the risk of fraud and concealment. Justices are also required to submit monthly reports detailing all fines, fees, surcharges and forfeited bail collected to the JCF by the tenth day of the succeeding month.

The clerks' duties for cash receipts were not properly segregated. The clerks were responsible for collecting payments, issuing receipts,⁶ posting payments in the computer system and preparing and making deposits, with limited to no oversight. The clerks' duties were not designed to check one another nor did the Justices' perform independent reviews of collections that were received to ensure that they were properly recorded, deposited and reported to the JCF.

We reviewed one month of manual receipts⁷ that were issued for each of the four acting Justices during our audit period, which consisted of 619 receipts totaling \$57,390, to verify that receipts were issued in sequential order and that the corresponding collections were deposited timely and intact and reported to the JCF, excluding collections for bail. We found that all 619 receipts were issued in sequential order and that the corresponding collections were deposited intact and reported to the JCF,⁸ if applicable. However, we found that 32 receipts, with collections totaling \$4,552, were deposited up to seven days beyond the 72-hour requirement. When Court personnel do not deposit cash receipts timely, there is an increased risk that cash will be lost or misused.

⁵ In the same amount and form (cash or check) in which they were received

⁶ Each Justice had their own press-numbered duplicate receipt books from which manual receipts were issued.

⁷ We used a computerized random number generator to select one month for each Justice, which resulted in the selection of April 2014 for Justice Cositore, July 2014 for Justice Lamitie, November 2014 for Justice Boardway and January 2015 for Justice Gardner.

⁸ One receipt totaling \$193 that was collected by the Court during January 2015 was not reported to the JCF for that month but, instead, was reported to the JCF on the monthly report for February 2015.

In addition, on March 6, 2015, one of the clerks informed us that she had found \$333 in cash in a bank bag located in an unlocked filing cabinet in the Court office. The clerk and Justices stated they had no prior knowledge of this bank bag and were unable to identify the origin of the cash. As a result, on the same day, we performed a cash count of the separate bank bags that were maintained for Justice Lamitie's and Justice Gardner's collections. We found \$218 and \$46, respectively, of cash on hand that was not supported by receipts or other documentation. A clerk⁹ stated that the unsupported cash consisted of overpayments that were received by the Court but were never returned to the individuals that made the overpayments or deposited and reported to the JCF as unidentified funds. Court personnel not being able to determine the exact origin of the \$597 of cash on hand as of March 6, 2015 indicates that collections were not properly accounted for.

Court personnel's failure to properly account for cash receipts and deposit them in a timely manner and the Justices' lack of oversight over cash receipts increases the risk that fraud and abuse could occur and remain undetected.

Bail Records

In certain cases, bail is levied on defendants to ensure their appearance in Court to answer the charges against them. Bail is either returned when the case has been adjudicated or used to pay fines and fees imposed by the Court. At times the amount of bail held by the Court can be substantial, and bail can also be held by the Court for long periods of time. Therefore, the Justices must establish controls to ensure adequate records are maintained to account for this money. These records should detail all bail received and indicate when the bail was received, who paid it and to which case it relates. These records should also accurately identify the date, check number and to whom the bail was disbursed.

Our review of bail records¹⁰ identified that, as of January 31, 2015, the Court was accountable for holding bail totaling at least \$54,908 for 37 individuals.¹¹ Although the clerks maintained bail records,¹² we found that these records were not accurate and complete. For example, as of

⁹ The same clerk who found the \$333

¹⁰ The bail records included outstanding bail lists, documentation from the Franklin County Civil Office, manual receipt books, bank statements and individual case files. Bail received at the Franklin County Jail is remitted by the Sheriff's Civil Office to the Court.

¹¹ Without going back to when the Court started, we could not determine the exact amount of bail the Court was accountable for. We reviewed bail records for multiple years to arrive at this amount.

¹² Separate bail records were maintained in the Court's computer system for each Justice. In addition, a spreadsheet was maintained to account for the bail held in a joint bail account, which was opened in September 2014 to be used for the deposit and disposition of all bail money received by each Justice subsequent to the account being opened.

January 31, 2015, the Court's bail records did not include bail being held for two individuals totaling \$2,000. In addition, the Court's bail records included bail totaling a net amount of \$3,736¹³ that should not have been recorded. For example, bail of \$5,000 was returned to a defendant in January 2011, but the amount had never been deducted from Justice Lamitie's outstanding bail list. Furthermore, Justice Lamitie's outstanding bail list contained a negative bail amount of \$1,000 for one case. This resulted because, although the bail was returned in July 2012 and deducted from his bail list in the system, it had never been recorded in the system as being received.

Without accurate and complete bail records, the Justices are unable to ensure bail is properly accounted for and appropriately disbursed. Had bail reports been generated and compared with the activity in the bank accounts, these errors likely would have been detected. Court personnel's failure to perform monthly accountability analyses and investigate differences also contributed to these errors being undetected.

Accountability

It is important for Court personnel to periodically verify the accuracy of the financial records and establish adequate control over cash by reconciling the Court's bank accounts monthly. In addition, on a monthly basis, the amount of cash on hand and on deposit in the bank should be compared to detailed lists of amounts due to the JCF and other outstanding liabilities such as pending bail. This comparison is referred to as an accountability analysis. Performing bank reconciliations and accountability analyses are critical procedures that serve to document the status of moneys held by the Court and provide a means of demonstrating that the Court is properly addressing its custodial responsibilities. Justices are personally responsible for moneys received by the Court and may be liable for money paid to the Court that is lost or stolen.

The Court had five bank accounts¹⁴ open during our audit period. However, bank reconciliations and accountability analyses were never performed for four of the five bank accounts. In addition, although bank reconciliations and accountability analyses were performed for Justice Boardway's bank account, they were only performed for four of the eight months that the account was open during our audit period. As a result, we prepared accountability analyses for all five bank accounts for each month that the accounts were open during our audit period. We found that Justice Gardner's assets agreed with his known

¹³ The net amount of \$3,736 consisted of positive bail balances totaling \$5,361 and negative bail balances totaling \$1,625.

¹⁴ The bank accounts consisted of a separate account for each acting Justice during our audit period and a joint bail account.

liabilities for the one month that his account was open during our audit period and that the assets agreed with the known liabilities for the joint bail account for the five months that the account was open during our audit period. In addition, although Justice Boardway's assets agreed with his known liabilities for the eight months his account was open during our audit period, there were recording errors for three months. However, we found that Court personnel identified and corrected these recording errors in subsequent months.

Conversely, Justice Lamitie's known liabilities exceeded his assets for each of the 13 months that his account was open during our audit period, resulting in a cash shortage each month. Specifically, as of January 31, 2014, the shortage totaled \$4,256, and increased slightly to a shortage of \$4,273, as of January 31, 2015, as shown in Figure 1.

Figure 1: Justice Lamitie's Account - Accountability Analysis at January 31, 2015	
Court Assets	Amount
Bank Account Balance	\$20,020
Due from Town (Bank Service Charges)	\$196
Total Court Assets	\$20,216
Court Liabilities	Amount
Outstanding Bail	\$8,508
Fines and Fees Due to JCF for January 2015	\$15,560
Unreported Fines and Fees Received January 2014 to December 2014	\$421
Total Known Liabilities	\$24,489
Cash Shortage	(\$4,273)

Justice Lamitie and the clerks told us that they were unaware there was a shortage until we presented our accountability analyses to them. They did not have an explanation for the shortage. Because the shortage increased by only \$17 during our audit period based on our analyses, the cause of a majority of the shortage occurred prior to January 2014. Nonetheless, during our analysis we found several discrepancies in the Court's records for Justice Lamitie. For example, during our audit period, \$411 was receipted and deposited into the Justice's account but was not reported to the JCF, \$10 was deposited into the account that was not supported by a corresponding receipt or reported to the JCF and \$17 was receipted and reported to the JCF but was not deposited into the account.

Similarly, Justice Cositore's known liabilities exceeded his assets for each of the 12 months¹⁵ that his account was open during our audit period, resulting in a cash shortage each month. Specifically, the

¹⁵ The Justice's bank account remained open until December 2014, although he resigned on June 13, 2014. See the Resignation section of the report.

shortage totaled \$834 for each month, including the month in which the Justice resigned, as shown in Figure 2.

Figure 2: Justice Cositore's Account - Accountability Analysis at June 30, 2014

Court Assets	Amount
Bank Account Balance	\$32,022
Due from Justice Lamitie	\$1,500
Due from Town (Bank Service Charges)	\$343
Total Court Assets	\$33,865
Court Liabilities	Amount
Outstanding Bail	\$28,050
Fines and Fees Due to JCF for June 2014	\$6,649
Total Known Liabilities	\$34,699
Cash Shortage	(\$834)

Justice Cositore and the clerks also told us that they were unaware there was a shortage until we presented our accountability analyses to them. They also did not have an explanation for the shortage. Similar to Justice Lamitie's account, because the shortage did not change during our audit period based on our analyses, the cause of the shortage occurred prior to January 2014.

The lack of monthly bank reconciliations and accountability analyses being performed contributed to the discrepancies identified in the Court's records and resulted in a combined total of \$5,107 in cash shortages for two Justices that were not detected by Court personnel.

Resignation

When a Justice resigns before the end of his or her term, the Justice is required to transfer all pending cases and any moneys received on those cases, before his or her departure, to the other Justice or the succeeding Justice. The resigning Justice must also file a final report with the JCF reporting all activity and remitting any fines and fees due along with any unidentified balances and must close all bank accounts. The Board is responsible for ensuring that a resigning Justice meets these requirements upon his or her resignation.

We found that Justice Cositore, who resigned on June 13, 2014, did not file a final report with the JCF reporting his activity through June 13, 2014. Consequently, the Supervisor filed the Justice's final report for the month of June 2014 with the JCF on July 17, 2014. In addition, the Justice did not transfer pending bail to the other Justice or the succeeding Justice or close his official bank account upon his resignation. As a result, after Justice Cositore's resignation, two deposits totaling \$1,790¹⁶ were

¹⁶ The deposits consisted of a \$1,500 deposit made into the account during September 2014 for money that was owed to the Justice from Justice Lamitie for bail that had previously been disbursed incorrectly by Justice Cositore and a \$290 deposit made into the account during November 2014 to reimburse the account for bank service charges that were previously incurred.

made into his account and 18 disbursements totaling \$33,812¹⁷ were made from his account through December 2014, when the account was closed. We found that all of these transactions were supported and proper, except the final disbursement that was made to Justice Lamitie for the remaining \$613 balance in the account. Specifically, we found that the \$613 was reported as unidentified funds on Justice Lamitie's December 2014 monthly report that was submitted to the JCF. However, these funds were not unidentified funds, but instead consisted of a portion of \$1,500 in outstanding bail that was still owed to a defendant.

If the Board does not ensure that a Justice, upon resignation, files a final report with the JCF, remits all moneys in his or her possession and closes all official bank accounts, there is a significantly greater risk that these moneys could be lost or stolen without detection. Or, as in this case, a cash shortage could be identified subsequent to the Justice's resignation.

Traffic Tickets

To avoid a backlog of outstanding cases, it is essential for the Justices to establish policies and procedures for the enforcement of unresolved traffic tickets. These guidelines should include procedures for using reports available from the DMV to follow up on and enforce unresolved traffic tickets. For example, the Court can use the DMV scofflaw program¹⁸ to enforce the payment of fines. The Court has to wait 60 days from either the date of appearance or last payment before sending correspondence to the DMV to suspend the motorist's driving privileges.

Local and State police agencies issue Uniform Traffic Tickets (UTTs) for vehicle and traffic infractions. The DMV tracks the tickets by adding pertinent information to its Traffic Safety Law Enforcement and Disposition (TSLED) database. Upon adjudication, when all fines are paid, the Court must send a copy of the ticket to the DMV for it to be removed from the pending-ticket database. Court personnel can generate reports from the TSLED database which list all pending UTT cases. The Justices should routinely review these reports to

¹⁷ The disbursements consisted of a \$6,649 disbursement to the Supervisor for the amount of the Justice's final report that was filed with the JCF, 16 disbursements totaling \$26,550 for returning bail and transferring pending bail to the other Justices and a \$613 disbursement to Justice Lamitie for the remaining balance in the account in order to close it. All 18 disbursements were made by checks signed by the Supervisor

¹⁸ The DMV scofflaw program allows local justice courts to notify the DMV when an individual has an unresolved (failure to pay the fine or failure to appear on the court date) traffic ticket for a 60-day period. When this occurs, the DMV notifies the individual and gives them 30 additional days to address the issue. If the individual has not taken action, then the DMV suspends the individual's license until the individual addresses the outstanding ticket.

ensure that the Court is processing tickets in a timely manner. The clerks can also generate a TSLED report of the cases that have been pending for 60 days and use it to identify individuals who either have not appeared in Court to resolve their tickets or have not paid their fines. The clerks should then report these cases to the DMV to be enforced through the scofflaw program.

The Justices have not established policies and procedures for enforcing unresolved traffic tickets. As a result, the Court is not enforcing unresolved traffic tickets in a timely manner. The Town participates in the DMV scofflaw program, and the clerk who was designated the responsibility of enforcing unresolved traffic tickets stated that it is her practice to submit unresolved tickets to the DMV after 60 days. However, the clerk did not use the TSLED report that includes all tickets pending for more than 60 days. Instead, the clerk developed her own informal procedures for identifying cases to be reported to the scofflaw program, which we found to be inadequate. Furthermore, the Justices did not use the TSLED report to monitor their cases and ensure that the clerk was processing tickets in a timely manner.

We requested the clerk obtain the TSLED report as of January 31, 2015 for our review. The TSLED report contained 665 pending cases, as of January 31, 2015, that had been pending for at least 60 days for failure to appear or failure to pay. We reviewed 30 cases¹⁹ from this report and found that one case was submitted to the DMV scofflaw program and five other cases were not eligible to be submitted because partial payments were consistently being made by the defendants. However, the remaining 24 cases were not submitted by the Court to the DMV even though they were eligible to be. According to Court records, \$3,570 had not been paid by defendants on these 24 cases.

The Justices' failure to establish policies and procedures for the enforcement of unresolved traffic tickets and lack of oversight has resulted in unresolved traffic tickets not being properly enforced and potential lost revenue to the Town.

Annual Audit

New York State Town Law and the New York State Uniform Justice Court Act require Justices to present their records and dockets to the Board for audit at least once a year. The Board is responsible for annually auditing the Court's books and records or contracting with an independent public accountant for that purpose. To assist with this responsibility, the Office of the State Comptroller has prepared

¹⁹ Our sample consisted of selecting, without any known bias, 30 cases from the TSLED report.

a Handbook for Town and Village Justices and Court Clerks, which contains sample schedules and questionnaires to assist in completing this annual audit. The Board minutes should document that an audit was performed and the results of the review. An annual audit provides assurance that financial transactions are properly recorded and reported and that all moneys are accounted for properly.

The Board did not audit the Court's records during our audit period or contract with an independent public accountant for that purpose. The lack of an annual audit of the Court's records allowed the Court to maintain inaccurate records and allowed for discrepancies to occur and remain undetected. Had the Board conducted the annual audit of the Court as required or contracted with an independent public accountant to do so, some of the deficiencies found during our audit may have been identified and more timely corrective action could have been taken.

Recommendations

The Justices should:

1. Segregate duties over cash receipts or, if it is not practicable to segregate duties, establish appropriate compensating controls, such as their own monthly reviews of Court records.
2. Ensure that receipts are issued for all collections received and that the collections are deposited within 72 hours from the date of receipt, excluding Sundays and holidays.
3. Ensure that accurate and complete lists of bail held and disbursed are maintained.
4. Ensure that bank reconciliations and accountability analyses are prepared monthly, whereby known liabilities are reconciled to available cash. Any differences disclosed should be promptly investigated and resolved.
5. Establish written policies and procedures to ensure that traffic tickets that are unresolved after 60 days are enforced by being reported to the DMV scofflaw program.

The Justices and clerks should:

6. Attempt to identify the source of the unidentified cash that was on hand and disburse it to the appropriate party. For any part of the cash whose origin remains undetermined, the cash should be deposited and reported to the JCF as unidentified funds.

The Board should:

7. Ensure that a Justice who resigns his or her official position with the Town meets all requirements upon resignation.
8. Annually audit or cause an audit of the Court's records and document the results of the audit in the Board minutes. The Board should also consider providing more frequent monitoring of the Court's activities.

Justice Lamitie should:

9. Reimburse his account for the \$4,273 cash shortage that was identified in this report.
10. Ensure that the \$421 that was identified as being deposited into his account, but not reported to the JCF, is reported to the JCF.
11. Seek to recover from the JCF the \$613 that was incorrectly reported to the JCF as unidentified funds.

Prior Justice Cositore should:

12. Reimburse the \$834 cash shortage that was identified in this report.

Highway Department Payroll

The Board and Town officials are responsible for establishing internal controls over payroll. Good controls include establishing policies and procedures for preparing and disbursing payroll and maintaining leave records so employees are paid salaries and wages and provided leave benefits to which they are entitled. Sound controls help to ensure employees are paid at Board-approved, collective bargaining agreement (CBA) pay rates or both and time worked and leave time earned and used is properly documented, monitored and controlled. Town officials also must provide sufficient oversight of those employees who process payroll and maintain employees' leave accrual records.

The Town lacked comprehensive policies and procedures for preparing and processing payroll and maintaining leave time accruals for Highway Department employees, and Town officials did not provide adequate oversight. As a result, we found that 12 of 14 Highway Department employees did not receive the correct gross pay during our audit period, resulting in 11 employees being overpaid a combined total of \$3,885 and one employee being underpaid \$193. Furthermore, Highway Department employees' leave accrual records were also not accurately maintained, which contributed to the overpayments. In addition, as of January 31, 2015, we found five employees' sick leave balances were overstated by a total of 91.20 hours, valued at \$1,756, and four employees' sick leave balances were understated by a total of 32.90 hours, valued at \$645.

Payroll Processing

Written payroll policies and procedures, combined with detailed job descriptions that assign specific payroll activity responsibilities, help ensure that employees understand their role in the payroll process. Properly designed and maintained time records are also an important part of effective internal controls over payroll processing. As such, time records should be prepared and signed by the employees and show the actual daily hours worked, including beginning and ending times, leave time used and meal times. Time records should then be reviewed and signed by the employees' direct supervisors, certifying that the work hours are correct, and then should be used to process payroll. After the payroll has been processed, it should be adequately certified. The certification process should involve comparing payroll source documents with payroll registers to ensure payments are based on actual hours or days worked and at Board-authorized or CBA hourly rates or annual salaries.

The Town did not have comprehensive written policies and procedures to provide adequate guidance and internal controls over preparing and processing payroll, and Town officials provided limited oversight.

As a result, we identified internal control weaknesses in the Town's payroll processing procedures for Highway Department employees. For example, although Highway Department employees punched a time clock upon arriving and departing from work, the employees did not sign their time cards at the end of each payroll period. Instead, at the end of each pay period, the Highway Superintendent (Superintendent) reviewed the time cards and signed them, indicating his approval. The time cards were then given to the highway account clerk (account clerk) to be used to prepare a summary time sheet²⁰ that was submitted to the Secretary/Bookkeeper (Secretary) or Deputy Town Clerk (Deputy Clerk) for payroll processing.²¹ Although the Superintendent reviewed and signed the summary time sheets that were prepared by the account clerk, he did not compare the summary time sheets to the individual time cards to ensure that they were in agreement. Furthermore, because the individual time cards were not submitted to the Secretary or Deputy Clerk, they were unable to verify the accuracy of the summary time sheet data, which they used to process payroll.

In addition, although the Board implemented an independent review of the payroll process by requiring the Supervisor to sign payroll checks and review and certify the final payroll registers, the reviews were inadequate. The Supervisor did not compare the payroll registers with payroll source documents (i.e., time cards) to ensure payments were based on the actual hours or days worked and on Board-authorized and/or CBA hourly rates or annual salaries. Furthermore, we reviewed 10 payroll registers²² during our audit period and found that the Supervisor did not sign and date the payroll registers indicating that he reviewed them.

Because of these weaknesses, we reviewed all payroll payments totaling \$593,287 made to all 14 Highway Department employees during our audit period to verify whether the information entered into the payroll system agreed with the time records, pay rates agreed with Board resolutions or the Highway Department's CBA and gross pay was calculated correctly. We found that 12 employees did not receive the correct gross pay during our audit period, resulting in 11 employees being overpaid a combined total of \$3,885 and one employee being

²⁰ The summary time sheet contained the total regular hours worked for each position, overtime hours worked for each position, on call hours and leave time used by each Highway Department employee. The summary time sheet also calculated the gross pay that each Highway Department employee should receive for the payroll period.

²¹ The Town's payroll was processed by the Secretary or the Deputy Clerk during our audit period based on the employees' availability.

²² We used a computerized random number generator to select 10 payroll registers from all of the payroll registers during our audit period.

underpaid \$193. Some of the errors occurred because incorrect pay rates were used and the employees were paid for hours that differed from the work hours recorded on their time cards. However, the majority of the errors were due to employees being paid for leave time to which they were not entitled. For example, a temporary employee was paid for 80 hours of holiday leave in 2014. However, he was not entitled to this leave time, resulting in the employee being overpaid \$788. In addition, an employee was paid for 40 hours of vacation leave time in 2014 that had not been accrued, resulting in the employee being overpaid \$774.

Because Highway Department employees' time cards were not submitted to the Secretary or Deputy Clerk, and Town officials did not provide adequate oversight of the payroll process, employees were both overpaid and underpaid. The significant number of deficiencies we identified indicates that the Town's payroll process for Highway Department employees requires improvement.

Leave Accruals

A good system of accounting for employee leave time (i.e., vacation and sick time) requires Town officials to periodically verify the accuracy of employee records with regard to leave time earned and used. The Board and Town officials should establish comprehensive policies and procedures to help ensure that periodic independent reviews of leave accrual records and balances are performed. Town officials should also ensure that Town personnel properly calculate and deduct leave time used from employee leave accrual balances and that leave is earned in accordance with the CBA.

Town officials did not establish comprehensive policies and procedures to provide proper guidance or implement sufficient compensating controls over employees' leave accrual records. Consequently, the maintenance of leave accrual records for Highway Department employees was decentralized, with the account clerk being responsible for accounting for all Highway Department employees' leave accruals, except for his own,²³ with no oversight. In fact, the Secretary relied solely on the account clerk for the accuracy of Highway Department employees' available leave balances because she did not maintain leave accrual records for these employees centrally nor was she provided with the leave accrual records that were maintained by the account clerk. As a result, the Secretary could not be assured that the employees had sufficient leave time available prior to being paid for it. In addition, leave accrual balances for employees were not reviewed by the Superintendent. Therefore, he had no means to verify that the employees had leave time available prior to authorizing its use or payment.²⁴

²³ Leave accrual records for the account clerk were maintained by the Secretary.

²⁴ The CBA contains a provision authorizing employees to be paid for 40 hours of unused vacation leave each fiscal year.

We reviewed all Highway Department employees' leave accrual records²⁵ during our audit period to verify that the days employees recorded using leave time on their time records were properly deducted from their leave accrual balances during our audit period. We also verified that the amounts of leave credited and carried forward during 2014 and 2015 agreed with the CBA. We found errors in the leave accrual records for 10 of the 12 employees.²⁶ Specifically, 36.50 hours of leave time were deducted from three employees' leave accrual records when the time records indicated these employees were at work. Conversely, 276 hours of leave time were not deducted from nine employees' leave accrual records when the time records indicated these employees used leave. In addition, three employees did not have a combined total of 48 hours of unused personal leave carried over from 2013 and credited to their sick leave balances at the start of 2014 to which they were entitled, and another employee had 10.80 hours of unused sick leave carried over from 2013 to 2014 to which he was not entitled.

The cumulative effect of these errors resulted in six employees being paid for 144 hours of leave time to which they were not entitled, resulting in overpayments totaling \$2,743. In addition, as of January 31, 2015, five employees' sick leave balances were overstated by a total of 91.20 hours, valued at \$1,756, and four employees' sick leave balances were understated by a total of 32.90 hours, valued at \$645.

Accurate leave records are essential for determining the proper amount of payments that are due to employees for unused leave time during the fiscal year and when they retire or resign from their positions. Accurate leave records are also important for ensuring that Highway Department employees are compensated with the correct amounts to which they are contractually entitled. The number of errors identified during our testing indicates that the Town's process for maintaining leave accrual records for Highway Department employees needs substantial improvement.

Recommendations

The Board and Town officials should:

13. Establish comprehensive payroll processing and leave time accrual policies and procedures that incorporate the duties to be completed and records to be maintained for processing payrolls and maintaining leave records.

²⁵ Twelve full-time Highway Department employees, including the account clerk, earned and used leave during our audit period.

²⁶ The leave accrual records that were maintained centrally by the Secretary for the account clerk did not contain any errors.

The Superintendent should:

14. Ensure that Highway Department employees sign their individual time cards attesting to the time worked and leave time used.
15. Compare the summary time sheets that are prepared by the account clerk to the individual time cards to ensure that they are in agreement before these documents are submitted for payroll processing.
16. Ensure that accurate leave accrual records are maintained for all Highway Department employees and that employee leave benefits coincide with provisions of the CBA.

The Supervisor should:

17. Compare payroll registers to payroll source documents when certifying payrolls to ensure that payments are based on actual hours or days worked and Board-authorized hourly rates or annual salaries. The Supervisor should sign and date the payroll registers to indicate that they have been certified before the Town makes the corresponding payroll payments.

The Board should:

18. Designate an individual independent of the Highway Department to periodically review Highway Department employees' leave accrual records and balances for accuracy.
19. Review employee time records and take action to recover overpayments or reimburse any underpayments, as applicable.

APPENDIX A

RESPONSE FROM TOWN OFFICIALS

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

**MALONE TOWN JUSTICE COURT
27 AIRPORT ROAD
MALONE, NEW YORK, 12953
PHONE: 518-481-6643
FAX: 518-481-5260**

Hon. Michael L. Lamitie

Hon. Charles A. Gardner

July 20, 2015

Mr. Jeffrey E. Leonard, Chief Examiner
Office of State Comptroller
Division of Local Government
Glens Falls Regional Office
One Broad Street Plaza
Glens Falls, New York 12801-4396

Dear Mr. Leonard:

The following is the Town of Malone Justice Court Operations Report of Examination draft audit response, for the period covered: January 1, 2014 to January 31, 2015. The scope period was expanded forward to March 6, 2015 for the cash count that was performed of the court's cash on hand that day.

Per the Office of the State Comptrollers manual "Responding to an OSC Audit Report: Audit Responses and Corrective Action Plans" page three, last paragraph, the audit report has findings relating to a separately elected officials department which in this case is the Malone Town Justice Court. Therefore the court is filing a response on the behalf of Judge Lamitie and Judge Gardner.

Recommendations:

1. **Segregate duties over cash receipts:** This is a discrepancy that plagues many NYS justice courts. The past three audits (two by Dragon Benware Crowley & Co., P.C. in 2011 and 2013 and one by the Office of the NYS Comptroller in 2015) that have been completed on the Malone Town Justice Court have identified segregation of duties as a deficiency.

When the village of Malone Justice Court was dissolved into the Town of Malone Justice Court on December 1, 2010, until June 22, 2015 there were only two court clerk positions allotted to the court. During that period, at the start of each new budget year the court had made a request to the Malone Town Board to establish a third clerical position to address this and other deficiencies. Each year it was turned down until recently when the board passed a resolution to establish a third full time administrative clerk who began work on June 22, 2015.

As of June 22, 2015, one of duties of the new administrative clerk is to be the primary staff member in the collection of fines, surcharges and fees. One court clerk Louise Laberge is assigned to V&T and civil cases. Sharon Hyde, the second court clerk is assigned to criminal cases. Ms. Hyde is also the designated clerk to oversee the daily court deposits. The judges are now actively connecting the daily deposits to the monthly bank statements and verifying the reconciliation. The court has also initiated online banking with [REDACTED] to identify and verify any irregularities with regard to their account, thus rectifying this issue.

2. **Ensure that receipts are issued for all collections received and that the collections are deposited within 72 hours from the date of receipt, excluding Sundays and holidays:**

After reviewing the cash receipt books, the daily deposit slips and the monthly bank statements for July 2015 (Judge Lamitie), January 2015 (Judge Gardner), November 2014 (Judge Boardway) and April 2014 (Judge Cositore) it was determined by the court that the majority of the 72 hour deposit deficiencies were due to NCOURT (a private collection agency that allows payments by way of electronic transactions via credit cards as an option for defendants to make payments) related issues. There were a number of logistical errors by NCOURT resulting in a delay in deposits. These include money being posted to the wrong judge's account and a three day delay in NCOURT posting to the judge's accounts. All which contributed to the deposits going beyond the 72 hour deposit requirement. NCOURT service has since been severed. This court no longer uses this online service.

See
Note 1
Page 29

Judge Gardner, began his term on January 1, 2015. His [REDACTED] account was not established until January 6, 2015. Deposits were made daily but could not be applied because he was not in the [REDACTED] system until the 6th of January. Funds were collected and deposited on the first day of his term but could not be applied reflecting an untimely entry in the [REDACTED] system causing it to appear as though it was beyond the 72 hour time frame. This deficiency was of no fault to the court or its Justice.

3. **Ensure that accurate and complete lists of bail held and disbursed and disbursed are maintained:** In mid-September of 2014 a joint bail account was established by the Malone Town Justice Court (all bail monies have been removed from each individual justice accounts). The purpose of this account was to mainly separate and establish a more efficient and effective accountability of bail funds. The secondary purpose was to assist in zeroing out the individual justice accounts allowing the justices to identify any reconciliation errors on a monthly basis.

In early July 2015, the court has requested a complete list of any and all bail issued to the Malone Town Court from the Franklin County Jail Civil Office. Their reply was that they are not capable of generating such a list. Their system does not allow for a bail list to be generated, it has to be hand generated. We were further informed that the list referred to in the audit was hand generated with assistance from the Civil Office. However, such a process cannot be duplicated for at least a month due to the fact that they are in the process of transitioning to a new computer system which requires training and they will not be able to assist us with the bail list until that has been completed.

Until the court is able to obtain this bail list we cannot fully reconcile nor identify all the bail funds and any possible discrepancies.

Ms. Hyde is currently in the process of creating a detailed [REDACTED] spreadsheet which tracks bail from the time it comes in to the time it is released. Once we are able to get assistance from the Civil Office, the court will be able to identify and verify past bail for the individual justice accounts as well as becoming self supportive.

4. **Ensure that bank reconciliations and accountability analysis are prepared monthly whereby known liabilities are reconciled to available cash. Any differences disclosed should be promptly investigated and resolved:** In early July, Judge Cositore was notified of his accounts \$834 shortage and was informed that he could prepare a reply to be included in the Malone Town Justice Courts draft audit report response.

The court is in the process of identifying the cash storage of \$4,273 in Judge Lamitie's account. Part of the court's conversation with [REDACTED] during the Town of Malone-Exit Discussion on June 26, 2015, was the probability that the total amount of the shortages may not be able to be identified, due to the fact that the problem could date back to 2002.

The following factors are given to explain that probability:

Judge Lamitie has been on the bench since December 9, 2002, first as The Village of Malone Justice. On September 14, 2007, he was appointed by the Fourth Judicial District to the Town of Malone Justice Court to fill a vacancy left by the death of Justice Tom Wilson. Serving both the Village and Town of Malone. Judge Lamitie was elected to the Town of Malone Justice Court beginning January 1, 2008 and served as both Town and Village of Malone Justice until the village court was dissolved into the Town Court on December 1, 2010. On September 7, 2010, Judge John F. Marsden III resigned his position as Town of Malone Justice. Leaving Judge Lamitie to assume his case load until an appointment was made in October of 2010.

Since his election in 2002, Justice Lamitie has acquired the financial accounts of two justices that he has replaced through election and appointment. From September 14, 2007 until December 1, 2010 he was responsible for two separate accounts: The Village of Malone and The Town of Malone.

On August 29, 2008, the Malone Town Board allowed the Malone Village Court to relocate to the offices of the Malone Town Justice Court, 27 Airport Road, Malone, New York. For a little over a year both the village and town courts operated as two separate entities in the same office space, with only one clerk for each jurisdiction and those clerks were not allowed to assist one another because of there being two jurisdictions. There were separate bank receipt books, bank accounts, bank deposits for each jurisdiction.

During part of this period there were two village justices and one town justice, until December 1, 2008, when The Malone Village Board made a decision not to appoint Village Justice Andrew Simays to a one year term. Instead, they appointed the Malone Town Justice, John Marsden to the village justice position until dissolution on December 1, 2010.

On October 2, 2009 the only village court clerk resigned. Leaving no clerk for the village and one for the Town. The village board left the position vacant until October 6, 2009 and would not allow the court to hire a full time court clerk for the village. The village board consented to hire a part time 17 hour a week Justice Court Clerk to work for the Malone Village Court. The individual hired had no court clerk experience. She was trained by the Town of Malone Court Clerk and Judge Lamitie. There were many overtime hours spent to train the part time clerk.

On November 10, 2009, Mr. Kevin Riley from the Unified Court System came to the court to assess the situation. He expressed to the village board the need to hire a full time court clerk for the village. The village board would not make it a full time position. On December 8, 2009, the part time village clerk resigned. Once again, leaving the position vacant.

The Malone Village Board finally consented to fill a full time court clerk position at the end of December 2009. This particular clerk had to be terminated from the position on November 4, 2010. The village court clerk position remained vacant until dissolution on December 1, 2010, when the Malone Town Board established a second court clerk position. That position was filled in January 2011, by Ms. Amanda Drake. Ms. Drake resigned on June 28, 2013. The current court clerk Ms. Sharon Hyde has been with the Malone Town Justice Court since July 15, 2013.

Since December 9, 2002, Judge Lamitie has supervised seven full time court clerks and three part time court clerks, there tenure ranging from a few months to several years. He has worked with six other Justices.

It should also be noted, when the village court was dissolved into the town court on December 1, 2010, the court had to integrate all of the [REDACTED] computerized dockets from the village to the town [REDACTED] program. Judge Lamitie and Court Clerk Louise Laberge were working via telephone, with an [REDACTED] specialist who had remotely taken control of the town court computers to integrate the files. Part way into the data transfer the [REDACTED] computer specialist told us that he was encountering a problem with the transfer and that he would get back to us. An hour later he informed us that there was a weeks' worth of case file data that was lost and could not be recovered. This included information on fines, surcharges, fees and payments.

During the two year period preparing and working up to dissolving the Malone Village to the Town Justice Court, Judge Lamitie was the primary person responsible for the planning and execution of the entire process. Little or no assistance was provided by the municipalities. At the time, The Unified Court System and the New York State Comptroller's Office had no procedural manuals and few guide lines established to assist courts in dissolving. The court believes this lack of assistance for the transition from village to town contributed to deficiency number four.

The court understands that this a lengthy explanation but necessary in order to understand how difficult it will be to rectify this shortfall. Judge Lamitie understands that he is ultimately responsible for the monies received by the court. The shortfall is not due from theft or unscrupulous means, the money is there and Judge Lamitie with the assistance of the Court Clerks is working diligently to balance his account.

Judge Lamitie is in the process of reviewing and verifying his monthly bank statements from [REDACTED] to identify and rectify any discrepancies. He has also requesting a complete bail accounting from the Franklin County Civil Office. The court has also requested from [REDACTED] that he provide the bail list that he created from the civil office, of the bail checks the court has received. Some funds have already been identified such as bank fees that should not have been charged to the court. Some bail monies have also been identified as clerical errors when processing from start to finish. Judge Lamitie is retiring on December 31, 2015. In order to properly close his account within the necessary time frame allotted the court is requesting any immediate assistance that can be provided by the Comptroller's office.

5. **Establish written policies and procedures to ensure that traffic tickets that are unresolved after sixty days are enforced by being reported to the DMV scofflaw program:**

The court is not in agreement with the report findings on this deficiency.

The court follows the policies and procedures of New York State Vehicle and Traffic Law 510 specifically SUB 3 and 4. This is a very specific policy and set of procedures for enforcing unresolved traffic tickets.

The court clerk responsible for Vehicle and Traffic cases for the court has been using the TSLED reports for approximately 10 years. The TSLED reports are so inaccurate that it is impossible for the judges to monitor their cases and ensure that the clerk is processing tickets in a timely manner.

In our county magistrates association meetings judges complain about how inaccurate TSLED reports are. Some say that TSLED is so backed up they don't even use them anymore.

The court reviewed the same TSLED report that the auditor reviewed (TSLED report as of January 31, 2015). On the first page alone where the TSLED report stated to initiate SCOFFLAW Order, 19 out of 20 fail to appear, were on a violator that was an informant for the Federal Drug Taskforce. The Franklin County District Attorney's Office has requested of the court to not suspend that individual. This is one example that would continue to appear on the report that the court is unable to act upon. There are many other instances of Fail to Appear, where there were adjournments per attorneys or where the defendants had appeared and should have been listed by TSLED as Fail to Pay Fine.

See
Note 2
Page 29

The Malone Town Justice Court has many defendants who's wages are well below the poverty line and we accept payments. If a defendant is making regular payments the court will work with them for a reasonable amount of time. This would not be reflected on the Fail to Pay Fine section of the TSLED report.

From February 17, 2015 until April 13, 2015 the primary court clerk responsible for NYS Vehicle and Traffic cases was out on sick leave due to having open heart surgery. Since her return the court has hired a third full time clerk. One of the new clerk's primary responsibilities is to assist the V&T clerk to aggressively pursue delinquent V&T issues, which is currently producing remarkable results.

Specifically, the two clerks are reviewing all vehicle and traffic cases from A to Z to determine the suspension status for each defendant. A significant number of final notice suspension letters have been sent to the defendants and a numerous amount of simplified information's have been reported to DMV as failed to appear or failed to pay fine.

6. **Attempt to identify the source of the unidentified cash that was on hand and disburse it to the appropriate party. For any part of the cash whose origin remains undetermined, the cash should be deposited and reported to the JCF as unidentified funds:**

The unidentified cash was in three amounts \$332.80, \$218.00 and \$46.00 totaling \$596.80, which was rounded in the draft audit to \$597.00. The matter was immediately rectified by making three separate deposits of the above mentioned funds into the joint bail account and receipted for tracking purposes on the same day.

The \$218.00 and the \$46.00 amounts have been partially identified as funds that will be returned to defendants. A good faith effort is being made by the court to identify the remaining funds and who they pertain to. As each case is identified the court will process and return the funds to the defendant if they can be reached. For the remaining money that can't be returned or identified, the court believes it has the option to either transfer the monies to the Town of Malone or send to the NYS Comptroller's Office.

The \$332.80 has been identified as the working bank utilized by a court clerk that was terminated from employment on November 4, 2010. The new clerk who started on December 1, 2010 never utilized that bank. She was directed to deposit said money into the appropriate accounts and obviously failed to do so. This lack of accountability remained undetected until found on March 6, 2015. The money was located in a secured filing cabinet behind the clerks work station. The cabinet was locked every night.

7. This deficiency was directed to the Malone Town Board, and should be addressed by them.

8. This deficiency was directed to the Malone Town Board, and should be addressed by them.

9. **Justice Lamitie should reimburse his account for the \$4,273 cash shortage that was identified in this report:** The court feels that Justice Lamitie should not be required to have to reimburse his account for the above mentioned cash shortage. The money is in the account and every effort is being made to identify those funds.

See
Note 3
Page 29

Please refer to the explanations in deficiency number four for the reasoning behind why Justice Lamitie should not be held responsible.

10. **Ensure that the \$421 that was identified as being deposited into his account, but not reported to the JCF, is reported to the JCF:** The court needs more clarification in order to respond to this deficiency. It is possible that it is NCOURT related.

See
Note 4
Page 29

11. **Seek to recover from the JCF the \$613 that was incorrectly reported to the JCF as unidentified funds:** The court has a transaction receipt and a deposit slip dated 12/31/2014 for the \$613. The court receipt #ML9837 shows the money was received from Frank Cositore's checking account for unidentified funds (due to the fact that his account had been closed after he resigned his position). The check number is 1188. It doesn't appear to be outstanding bail but rather unidentified funds from finalizing Judge Cositore's account. There were no other known means of reporting it.

See
Note 5
Page 29

12. **Judge Cositore should reimburse the \$834 cash shortage that was identified in this report:**

In early July, Judge Cositore was notified of his account shortage and was informed that he could prepare a reply to be included in the Malone Town Justice Court draft audit report response. As of today's date the court has not received any response.

Hon. Michael L. Lamitie _____

Hon. Charles A. Gardner _____

June 29, 2015

NYS Office of the State Comptroller
Division of Local Government
One Broad Street Plaza
Glens Falls, NY 12801

Re: Town of Malone Audit
Justice Court Operations & Highway Department Payroll

Dear Sir:

As Town Supervisor, and on behalf of the Town of Malone, I accept the findings of your office, and I am in agreement with all of the recommendations as presented. It is my understanding that a separate response to the Court Audit Findings will be submitted by the two elected Town Justices.

I urge the Judges to adhere to, and/or implement, the recommendations as outlined in your report, and intend to request that the Town Board go on record in support of them as well. It is my understanding that Town Justice Lamitie and the senior court clerk intend to retire at year end, so it is imperative that the Town Board be mindful of the OCR court recommendations 7 through 11 relating to Justice Lamitie, and determine a course of action with respect to #12 and former Justice Cositore.

With respect to the Highway Payroll issues, many of the recommendations have already been put into place – some of them while the audit was still in process.

#13: We are working on a written policy which will outline all procedures and responsibilities (and by whom) with respect to payroll processing and leave accruals.

#14 – 16: All town employees, including the Highway Department, are now required to sign their individual time cards, attesting to the time worked and/or leave time used. The highway payroll processes have been re-vamped: the Highway Supt. implemented new software, and his calculations are compared to the time cards and daily log of activities to insure accuracy. All source documents are submitted to the office for review by the Town Supervisor and then for payroll processing. A new system for highway leave accrual records has also been created, with documentation kept by the Superintendent and his employees.

#17: The Town Supervisor began implementing aspects of this recommendation back in January, 2015 – while the audit was on-going. This process will now include the date that each review by the Supervisor took place.

#18 & 19: As Supervisor, I will urge the Town Board to designate that the Highway Committee periodically reviews the Superintendent's records for accuracy; we will also review records and determine a plan of action to recover overpayments and reimburse underpayments to Highway employees.

Thank you for your oversight and insight, both of which will make our government function more efficiently and accurately.

Yours truly,

Howard F. Maneely
Town Supervisor

SUPERVISOR
518-483-1860

TOWN CLERK
518-483-4740

ASSESSOR
518-483-2030

RECEIVER OF TAXES
518-483-4740

CODE OFFICER
518-483-0048

SUPT. OF HIGHWAYS
518-483-2431

APPENDIX B

OSC COMMENTS ON THE TOWN'S RESPONSE

Note 1

We reviewed manual receipts that were issued by Justice Lamitie for the month of July 2014, not July 2015. None of the 32 receipts that we identified as being deposited beyond the 72-hour requirement were credit card payments, but, instead, were all in the form of cash, check or money order.

Note 2

We informed court officials of the 24 cases we identified as not submitted by the Court to the DMV during our review and they concurred that each of them should have been submitted to the DMV scofflaw program.

Note 3

As noted in the report, Justices are personally responsible for moneys received by the Court and may be liable for money paid to the Court that is lost or stolen. As noted by Figure 1 in the report, Justice Lamitie's account had a cash shortage of \$4,273 as of January 31, 2015.

Note 4

We provided court officials with the details of the \$421 during our review and will provide another copy of this information.

Note 5

As noted in the report, the \$613 is not unidentified funds, but instead consisted of a portion of \$1,500 in outstanding bail that was still owed to a defendant. We will provide details of the bail posting.

APPENDIX C

AUDIT METHODOLOGY AND STANDARDS

The objectives of our audit were to review the Town's internal controls over the Court's financial operations and the Highway Department's payroll for the period January 1, 2014 through January 31, 2015. We expanded the scope period forward to March 6, 2015 for the cash count that we performed of the Court's cash on hand that day.

To accomplish our Court audit objective and obtain valid audit evidence, our procedures included the following:

- We interviewed current and former Justices, the clerks and other Town officials. We reviewed various financial records and reports related to the Court's financial activities to gain an understanding of the internal controls over the Court's financial operations, and documented any associated effects of deficiencies found in those controls.
- We reviewed one month of manual receipts that were issued for each of the four acting Justices during our audit period to verify that receipts were issued in sequential order and that the corresponding collections were deposited timely and intact and reported to the JCF, excluding collections for bail.
- We performed a cash count on March 6, 2015 of the collections in the separate bank bags that were maintained for Justice Lamitie's and Justice Gardner's collections to determine the amount of any unsupported cash on hand.
- We used outstanding bail lists, documentation from the Franklin County Civil Office, manual receipt books, bank statements and individual case files to compile a list of bail that the Court was accountable for, as of January 31, 2015. We then compared our list of bail to the Court's bail records, as of January 31, 2015, to determine if the Court's bail records were accurate and complete.
- We prepared accountability analyses for all five bank accounts for each month that the accounts were open during our audit period to determine if the corresponding assets agreed with the known liabilities. We then investigated and documented any differences that were disclosed.
- We reviewed the Court's financial records to determine if Justice Cositore, upon his resignation, transferred all pending cases and any moneys received on those cases to the other Justice or the succeeding Justice, filed a final report with the JCF reporting all activity, remitted any fines and fees due along with any unidentified balances and closed his bank account. We also reviewed all activity in Justice Cositore's bank account after his resignation to determine if the transactions were supported and proper.
- We reviewed all checks that were issued from the Court's bank accounts during our audit period to determine if checks were issued in sequence, were signed by the Justices and were for appropriate Court purposes and amounts.

- We reviewed 30 cases from a TSLED report as of January 31, 2015, to determine if the Court was enforcing the payment of unresolved traffic tickets in a timely manner through DMV's scofflaw program.
- We interviewed Town officials and reviewed the Board minutes to determine if the Board audited or contracted for an audit of the Court's financial records at any time during our audit period.

To accomplish our payroll audit objective and obtain valid audit evidence, our procedures included the following:

- We interviewed Town officials and employees. We reviewed Town policies, the CBA and various financial records and reports to gain an understanding of the internal controls in place over processing payroll and maintaining leave accruals for Highway Department employees, and documented any associated effects of deficiencies found in those controls.
- We reviewed a sample of 10 payroll registers during our audit period to verify that they were certified by the Supervisor prior to the corresponding payroll payments being disbursed.
- We reviewed all payroll payments made to all Highway Department employees, during our audit period, to verify whether the information entered into the payroll system agreed with the time records, pay rates agreed with Board resolutions or the CBA and gross pay was calculated correctly.
- We reviewed all Highway Department employees' leave accrual records during our audit period to verify that the days employees recorded using leave time on their time records were properly deducted from their leave accrual balances during our audit period. We also verified that the amounts of leave credited and carried forward during 2014 and 2015 agreed with the CBA.

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 objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

APPENDIX D

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