



Town of Willing Justice Court Operations

Report of Examination

Period Covered:

January 1, 2011 — October 24, 2014

2014M-377



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State of New York Office of the State Comptroller

Division of Local Government and School Accountability

April 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 Willing, entitled 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*

Introduction

Background

The Town of Willing (Town) is located in Allegany County (County) and is governed by an elected Town Board (Board), which comprises the Town Supervisor (Supervisor) and four Council members. The Supervisor is the Town's chief executive officer and chief fiscal officer. The Board has the overall responsibility for overseeing the Town's financial activities including the financial activities of the Town Justice Court (Court).

The Town has one elected Justice who presides over Court operations. The Justice is responsible for adjudicating legal matters within the Court's jurisdiction and properly accounting for all money collected and disbursed by the Court. Justices are required to report monthly to the Office of the State Comptroller's Justice Court Fund (JCF) on the financial activities of the preceding month.

The current Justice began his first term in January 2014. The prior Justice had been in office since 2008. The Town's revenue attributable to the prior Justice's Court operations was \$10,080 in 2013. The Town's 2014 revenue from Court operations as of June 30th was \$5,715. Collections for the Court as reported to the JCF totaled \$71,238 for the period January 1, 2011 through December 31, 2013.

Objective

The objective of our audit was to evaluate the Town's Court operations. Our audit addressed the following related question:

- Did the Court accurately and completely collect, record, deposit and report money in a timely manner?

Scope and Methodology

We examined the Court's records and reports for the period January 1, 2011 through October 24, 2014.

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.

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 plan 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.

Justice Court Operations

Justices are responsible for adjudicating cases brought before them and for accounting and reporting of all the Court's related financial activities. The New York Codes, Rules and Regulations require Justices to maintain complete and accurate accounting records, reconcile cash activity and report Court activity accurately and in a timely manner. The Court files its reports electronically with the JCF and participates in its invoice billing program and therefore must remit all Court funds to the Town's chief fiscal officer monthly. Based on an invoice billing statement from the JCF, the Town retains its share of fines, fees, forfeitures and surcharges and remits to the JCF the State and County share for subsequent distribution.

Additionally, for each case brought before the Court, the Justices must maintain a separate case file and unique index number, as well as a cash book that chronologically itemizes all receipts and disbursements. Such records must include all relevant case information including the date of appearance, fees and fines imposed and amount collected. Disposed cases should be reported to the New York State Department of Motor Vehicles (DMV).

The prior Justice did not accurately record and report money to the JCF in a timely manner. Additionally, the prior Justice did not prepare monthly bank reconciliations or accountabilities, properly account for bail money held by the Court or accurately report all fines and surcharges collected to the DMV. Further, the Board did not properly audit or document its audit of the prior Justice's records and reports. As a result, there was an overage of \$321 in the prior Justice's Court bank accounts. The current Justice is taking corrective action to address these weaknesses.

Accountability

Each month, the Justice should verify the accuracy of the Court's financial records and perform an accountability for the money held by preparing a list of Court liabilities and comparing it with reconciled bank balances. At any point in time, the liabilities of the Court, such as bail held on pending cases and unremitted fines and fees, should equal the Justice's available cash balance. Periodic analyses would help identify the source and amount of all money held in the Justice's bank accounts and detect any errors so that corrective action can be taken in a timely manner.

The current and prior Justices did not prepare monthly accountability analyses. After the prior Justice filed his last report with the JCF in December 2013, there was a remaining cash balance of \$2,426 in

his Court bank accounts.¹ We prepared an accountability analysis as of December 31, 2013 and found a \$321 overage. Our analysis disclosed that the Court liabilities totaled \$2,105, which consisted of \$1,195 received² but not reported to the JCF, \$410 deposited³ but not receipted or reported to the JCF and \$500 in bail. We also performed an accountability analysis for the current Justice as of July 31, 2014 and found no discrepancies. When Justices fail to prepare monthly accountability analyses there is an increased risk that money paid to the Court could be lost or stolen or errors could occur and not be detected and corrected in a timely manner.

Traffic Tickets

Justices are responsible for enforcing traffic tickets to ensure laws are enforced, fines are collected as efficiently and effectively as possible and activity is properly reported to the JCF. When a ticket is issued, relevant information is sent electronically to the DMV. When a case is adjudicated and fines are paid in full or the case is dismissed it can be closed. While this step includes recording the payment in the Court cashbook and in the monthly JCF report, it also requires the Court to send this information to the DMV so that the case can be properly accounted for as “disposed” in its database. It is important that the Court report closed cases to the DMV in a timely manner, so that the defendant’s DMV record is correct. Cases reported as disposed to the DMV should appear in the Court’s monthly report to the JCF and any related fines should be remitted to the JCF.

We reviewed 117 traffic tickets with fines totaling \$25,466 that the Court reported to the JCF and the DMV during our audit period. We found that tickets with approximately \$17,700 in fines and surcharges were reported to the DMV as disposed when Court records indicated that these tickets were still pending.

The prior Justice told us that upon sentencing a defendant he reported fines and surcharges and the cases as disposed to the DMV and had done so throughout his tenure. The prior Justice also said that if he had been able to have the opportunity to attend training⁴ he would have known that cases should not be reported to the DMV until all money due is collected. When tickets are reported to the DMV as disposed but not reported to the JCF, there is an increased risk that

¹ The prior Justice should have prepared an accountability, closed the bank accounts and remitted the funds to the appropriate parties.

² These funds were received from January 1, 2011 through December 31, 2013.

³ These funds were deposited from January 1, 2011 through December 31, 2013.

⁴ Every newly elected or appointed town justice who is not a member of the bar is required to attend the first available certification course after their appointment or election. A non-lawyer town justice may not assume the functions of the office until a certificate of completion for the certification course has been filed with the town.

these fines could have been paid and not recorded or deposited and not recorded.

We also found the Court's computerized record of pending tickets report⁵ indicated that the Court is currently owed over \$48,800 in unpaid fines and surcharges since 1998. After we brought this report to the current Justice's attention, he began sending confirmation letters to the individuals with tickets appearing on the report to help determine if the tickets had been properly receipted, recorded and reported. The Justice told us that as of January 23, 2015 two individuals, who were issued tickets totaling \$210, responded to his confirmation letters with valid receipts showing the tickets were paid. Therefore these tickets apparently should not have been included on the pending tickets report.

Oversight

Well-designed controls ensure adequate oversight of the Court's financial duties, particularly when duties are not segregated. Such controls ensure that complete and accurate accounting records are maintained, cash activity is reconciled with the corresponding liabilities and cash received is deposited and recorded in a timely manner. Therefore, it is important for the Board to provide oversight of the Justice by performing an annual audit⁶ of the Justice's records to ensure that Court transactions are properly recorded and reported and all money received is accounted for.

The current and prior Justices performed all aspects of the financial activities of the Court with minimal oversight. Although the current Justice told us the Board performed the 2013 annual audit of the prior Justice's records during 2014, we found the Board did not properly document its procedures or results of its audit in the Board minutes or elsewhere.

Without the Board documenting its audit steps, the results of any audits performed and the required corrective action to be taken, Town officials and taxpayers have no assurance that the Board performed a thorough audit and communicated its findings to the Justice for corrective action. As a result, there is an increased risk that errors or irregularities could occur without being detected or corrected.

⁵ The report included 221 cases and some cases may have more than one ticket.

⁶ We referred Town officials to our publication entitled *Handbook for Town and Village Justices and Court Clerks* for more information on performing the annual audit.

Recommendations

The Justice should:

1. Prepare a monthly accountability analysis for all money held by the Court. Any differences should be promptly investigated and, if necessary, corrective action taken.
2. Determine the source of the excess \$321 in the fine and bail bank accounts. Any unidentified money should be remitted to the JCF.
3. Properly report disposed cases to the DMV.

The Board should:

4. Perform an annual audit of the Justice's records and reports and document the results in the Board minutes.

APPENDIX A
RESPONSE FROM LOCAL OFFICIALS

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

TOWN OF WILLING
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March 27, 2015

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Division of Local Government and School Accountability
295 Main St., Suite 1032
Buffalo, NY 14203-2510

RE: Response to Draft Report of Examination of Justice Court Operations –
for period January 1, 2011 – October 24, 2014 - 2014M-377
-and-
Corrective Action Plan

Dear Sir/Madam:

This communication constitutes the response of the Town of Willing to the above Draft Audit Report and the Town's Corrective Action Plan to incorporate the recommendations of the draft audit into its operations and those of the Town Court.

After a review of the draft audit report, the report's recommendations and the March 6, 2015 exit meeting with audit staff, the Town believes that the conclusions and findings of the draft audit report are generally accurate. It also believes that the recommendations are in keeping with accepted good governance and operational practices of the Town Board and Town Court.

The Town believes that it should be emphasized that the Town Board did review the financial records of the former Town Justice and perform its oversight responsibility on an annual basis as required by law. The fact that these reviews did occur was documented in the minutes of the Town Board's meetings. The Town does acknowledge that it did not use the suggested check lists in making its review of the Court's records. However, the reviews did take place.

With respect to the first three recommendations of the draft audit dealing directly with the operations of the Court, the Town wishes to point out that all of these recommendations had been put into place by the current Town Justice prior to the completion of the draft audit report and in consultation with audit staff. As the draft report notes on page 6, there were no discrepancies found in the financial records of the current Justice.

As it's Corrective Action Plan with respect to the fourth recommendation of the draft audit report dealing with its annual audit of the Justice's records and reports, the Town wishes to report that at its March 9, 2015 meeting the Town Board through its Board member designees did perform a thorough review and examination of the Justice's records including: the Court's Cash and Bail Record Book containing a record of all monies received and deposited by the Court, the originals of all deposit receipts and a copy of the month's reconciled bank statement and monthly accountability analysis; a comparison of the hand written Receipt Books with the duplicate computer-generated receipts maintained by the Court for all monies received; the Court check book and original monthly bank statements with copies of all deposit slips and checks written; monthly reports submitted by the Court to the Justice Court Fund; copy of the Cash Book record maintained in the SEI court management software program; monthly Bail Report maintained by the Court in the SEI program, and a review with the Justice of the status of the Court's reports to DMV and any and all communications received from DMV. The results of the Town's review and examination were documented through use of the checklist suggested for such reviews. The checklist was signed by the Board's designees and incorporated into the official minutes of the March 9, 2015 meeting.

In addition, the Town Board in consultation with the Town Justice has determined that a more frequent review of the Court's records would be beneficial. Therefore, the Town Board will be reviewing the Court's records on a quarterly basis going forward.

With respect to the first three recommendations of the draft audit report dealing directly with Court operations the Corrective Action Plan is as follows:

1. The Court will continue to prepare a monthly accountability analysis for all funds held by the Court. The monthly accountability analysis will continue to be maintained in the Court's Cash and Bail Book Record Book.
2. The former Town Justice will forward to the current Town Justice or the Town any balance remaining in the former Justice's checking account. The current Town Justice in consultation with OSC audit staff will continue his attempts to determine the source of the excess \$321.00 in the former Justice's fine and bail bank accounts. Any funds that remain unidentified shall be transmitted to the JCF. Since the draft audit report was completed a third individual who was contacted by the current Justice has produced a receipt showing that an apparent unpaid fine was paid. Therefore, a total of three individuals who were contacted by the current Justice have produced written evidence of payment.
3. The current Town Justice will continue to timely report disposed cases to DMV. He will also continue to correct reports of cases which have been incorrectly reported as being disposed of by the former Justice. The current Justice has been in regular contact with DMV in order to develop a system for correcting misidentified dispositions. Once identified and corrected, enforcement measures may be available to collect unpaid fine and surcharge balances.

4. In an attempt to collect as much as possible of the amount of unpaid fines and surcharges existing from the terms of previous Justice's, the current Justice will continue to contact those individuals who have been identified as owing such balances as such individuals are identified. If enforcement methods are available to assist in the collection of such amounts they will be utilized.

The Town believes that its Corrective Action Plan directly addresses the recommendations set forth by the OSC audit staff in the Draft Audit Report.

Very truly yours,

"Ronald Wightman"
Supervisor, Town of Willing

Daniel J. Guiney
Town Justice, Town of Willing

APPENDIX B

AUDIT METHODOLOGY AND STANDARDS

The objective of this audit was to review the Court operations and assess whether Court money was properly collected, recorded, deposited and reported. We obtained information directly from the Court's computerized financial database backup file and analyzed it electronically using computer assisted techniques. To achieve our audit objective and obtain valid audit evidence, we performed the following audit procedures:

- We obtained bank records, duplicate receipts, deposit compositions, monthly reports to the JCF and bail activity reports.
- We prepared a monthly accountability for the prior Justice as of December 31, 2013 and for the current Justice as of July 31, 2014 by reconciling the respective bank balances, listing current Court liabilities and identifying any differences (shortage or overage).
- We prepared and analyzed a list of duplicate receipts, monthly JCF report information, Court cashbook and deposit slips to identify errors or omissions.
- We prepared and analyzed a list of all cases with different amounts reported to the DMV and the JCF.
- We reviewed 117 traffic tickets reported to the JCF or the DMV during our audit period to determine if they were accurately reported. We scanned the tickets on file for 2011, 2012 and 2013 and selected tickets for our sample that contained a guilty plea, were signed by the defendant and mailed to the Court to determine whether selected tickets were accurately and completely recorded and reported.
- We traced 40 dismissed tickets for the audit period as indicated on reports to the JCF and the DMV to the original adjudicated ticket to determine if they were actually dismissed.
- We prepared a list of all bail paid to the Court by the County Sheriff's Department and the checks written from the prior Justice's bank account to determine the amount of bail that should be on hand as of December 31, 2013.
- We reviewed Town Board meeting minutes to determine the extent of Board oversight provided to the Court.

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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