



# Town of Kirkwood Justice Court Operations

## Report of Examination

Period Covered:

January 1, 2015 — September 30, 2016

2016M-414



Thomas P. DiNapoli

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# State of New York Office of the State Comptroller

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## Division of Local Government and School Accountability

March 2017

Dear Town Officials:

A top priority of the Office of the State Comptroller is to help local government officials manage government resources efficiently and effectively and, by so doing, provide accountability for tax dollars spent to support government operations. The Comptroller oversees the fiscal affairs of local governments statewide, as well as compliance with relevant statutes and observance of good business practices. This fiscal oversight is accomplished, in part, through our audits, which identify opportunities for improving operations and Board governance. Audits also can identify strategies to reduce costs and to strengthen controls intended to safeguard local government assets.

Following is a report of our audit of the Town of Kirkwood, 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 Kirkwood (Town) is located in Broome County and has approximately 5,800 residents. The Town is governed by an elected Town Board (Board) composed of four Board members and a Supervisor. The Supervisor is the Town's chief executive and chief fiscal officer. The Board is responsible for the general oversight of the Town's financial activities, including the Justice Court.

The Town has two elected Justices (Justice Benjamin F. Weingartner and Justice Ward E. Coe) who are responsible for Court operations. Each Justice appoints a full-time clerk to assist in processing the Court's financial activities. In addition, there is a part-time clerk who provides support to both Justices. In January 2016, Justice Coe's full-time clerk retired and a new full-time clerk was appointed.

The Court has jurisdiction over vehicle and traffic, criminal, civil and small claims cases. The Justices impose and collect fines, fees and bail money, and are responsible for reporting the Court's financial activities each month to the State Comptroller's Justice Court Fund (JCF) and remitting all money collected to the Supervisor. The Justices use a computer software system to record Court transactions.

The Town's 2016 general fund budget totaled approximately \$1.7 million. During the audit period, both Justices collected and remitted more than \$1 million in fines, fees, surcharges and bail money, generating \$229,014 in revenue for the Town.<sup>1</sup>

## Objective

The objective of our audit was to review the internal controls over the Court's financial activity. Our audit addressed the following related question:

- Are the Justices ensuring that monthly accountabilities are accurate and complete?

## Scope and Methodology

We examined the records and reports of both Justices for the period January 1, 2015 through September 30, 2016.

We conducted our audit in accordance with generally accepted government auditing standards (GAGAS). More information on such standards and the methodology used in performing this audit are included in Appendix B of this report. Unless otherwise indicated in this report, samples for testing were selected based on professional

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<sup>1</sup> The JCF reviews monthly reports to determine the distribution of funds collected and fees earned to the State, counties, towns and villages.

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 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 have taken, or plan to take, corrective action.

The Board has the responsibility to initiate corrective action. A written corrective action plan (CAP) that addresses the findings and recommendations in this report should be prepared and forwarded to our office within 90 days, pursuant to Section 35 of 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 Town 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 as well as accounting for and reporting the Court's financial activities to the JCF. They should oversee operations to ensure that the appointed clerks maintain complete and accurate accounting records on their behalf. Each month the Justices are required to account for all receipts and disbursements and turn over the fines, fees and surcharges collected. Additionally, the Justices are required to present their records and files at least once each year to be audited by the Board or an independent public accountant.

The Justices should ensure that monthly bank reconciliations are completed in a timely manner and that an accountability of funds is performed by preparing a list of Court liabilities and comparing it to the reconciled bank balance and cash on hand. This accountability analysis documents the status of money held by the Court and provides a means of demonstrating that the Court is properly addressing its custodial responsibilities.

Both Justices ensured that fines and surcharges collected were accurately reported to the JCF and the correct amount was turned over to the Supervisor each month. However, neither of the Justices ensured that monthly accountabilities were accurately completed because they did not ensure that all bank accounts were reconciled each month. In addition, the Town's Budget Officer (also a Certified Public Accountant) performed an annual audit of the Court records and reported the results to the Board; however, the Board did not communicate the audit results to the Justices.

The clerks collect and record all financial activity using a transaction register. Each month they trace daily deposit totals from the transaction register to the bank statement. The clerks and Justices ensure that the total reported to the JCF matches the total collected and turned over to the Supervisor. Both clerks also perform a similar review for bail money received and disbursed. While this review helps ensure transactions are recorded, money is deposited and fines are remitted to the Supervisor, this is not a complete accountability analysis. An accountability analysis compares total liabilities to total cash on hand. By comparing only current month activities, the clerks (and Justices) do not know whether or not their cash on hand is sufficient to cover outstanding liabilities, such as pending bail.

Fines and Surcharges — During the audit period, Justice Weingartner's clerk reconciled the bank statement balance to his transaction register,

but Justice Coe's clerk did not. After Justice Coe's full-time clerk retired in January 2016, the part-time clerk attempted to reconcile the register to the bank statement balance and discovered a shortage of \$180. To investigate this variance, the budget director traced all receipts and disbursements from the register to the bank statements for the 2015 fiscal year and found they were all accounted for. This variance was not resolved during our audit period.

Bail — Neither clerk reconciled the bank statement balance to the outstanding bail liabilities held by the Court at the end of each month. We attempted to reconcile the bail liabilities to the bank statement balance as of September 30, 2016 for both Justices. For Justice Weingartner, our adjusted bank statement balance totaled \$8,445 and the outstanding bail balance totaled \$8,950, indicating a shortage of \$505. We also attempted to trace two outstanding bails totaling \$2,000 from the list of liabilities to the case files. One bail (\$500) represents a current liability. The other bail amount represents a case that is more than 12 years old. There was no disposition recorded in the system and Justice Weingartner could not locate the case file. Therefore, we could not determine whether this bail (\$1,500) represents a liability.

For Justice Coe, the adjusted bank balance totaled \$11,242 and the outstanding liabilities totaled \$10,540, indicating an overage of \$702 as of September 30, 2016. We attempted to trace two outstanding bails totaling \$1,250 from the list of liabilities to the case files. One bail (\$500) represents a current liability, but Justice Coe could not locate the case file associated with the \$750 bail. This case is more than 11 years old, and although this case was disposed according to the system, there was no record supporting Justice Coe's attempt to return the bail. Therefore, we could not determine if the \$750 is the correct liability amount.

Oversight — The Board appointed the Town's Budget Officer to conduct an annual audit of the Court for the 2015 fiscal year, which identified the lack of completed reconciliations of the bank balance to the check register as a concern. However, the Board did not inform the Justices of the audit results or make any recommendations to address the weaknesses identified during the audit. Both Justices conducted monthly reviews of fines assessed and total money collected, reported to the JCF and remitted to the Supervisor. They thought that these monthly reviews (and the clerks' work) were sufficient to account for all court money collected and disbursed.

By not performing bank reconciliations and monthly accountabilities, the Justices are not ensuring Court money on hand equals the liabilities, and they are not identifying, investigating and correcting any discrepancies on a timely basis. Moreover, because the Board did



not address the weaknesses found during the annual audit, they did not provide adequate oversight of the Court's financial operations.

## **Recommendations**

The Justices should:

1. Ensure all bank accounts are reconciled on a monthly basis and promptly investigate and resolve any variances noted, including those identified in this report.
2. Perform an accountability of funds held by preparing a list of Court liabilities and comparing this listing with the reconciled bank balance and money on hand.
3. Follow up on all bail money held to determine what course of action is applicable.

The Board should:

4. Inform the Justices of the results of the annual audit and ensure corrective action is taken.



## **APPENDIX A**

### **RESPONSE FROM LOCAL OFFICIALS**

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

# TOWN OF KIRKWOOD

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## Town Board

Gordon E. Kniffen, Supervisor  
William J. Diffendorf, Councilman  
Lewis C. Grubham, Councilman  
Robert F. Weingartner, Councilman  
Linda J. Yonchuk, Councilwoman

## Joseph A. Griffin Town Hall

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February 28, 2107

[REDACTED]  
Office of the State Comptroller  
Binghamton Regional Office  
44 Hawley Street - Suite 1702  
Binghamton, NY 13901-4417

Dear [REDACTED]

In reply to the audit of the Town of Kirkwood's Court by the OSC of New York State for the period of January 1, 2015 thru September 30, 2016 the Town of Kirkwood has taken corrective action in reference to the Town's Internal Annual Court Audit.

The Town's annual audit is conducted and completed by our Budget Officer. For future annual court audits the Town will provide written confirmation of the results to our Town Court. This distribution will be in addition to the distribution to the Town Board.

Sincerely,

GORDON E. KNIFFEN  
Supervisor

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**Ward E. Coe**

**Jeffrey J. Hawkes**

Town Justices

**Erin Tuttle**

**Paula Hashem**

**Kathy Martone**

Clerks

## Written Response and Corrective Action Plan

This letter is the response to, and corrective action that the Court has implemented as a result of our State audit. The Town of Kirkwood Justice Court was audited for a period between January 1, 2015 through September 30, 2016. During the audit period, both Justices collected and remitted more than \$1 million in fines, fees, surcharges and bail money, generating \$229,014 in revenue for the Town.

The object of the audit was to review the internal controls over the Court's financial activity. The Court is in agreement with the findings of this audit.

To summarize the audit, the Clerks did maintain monthly reconciliation for deposits and withdrawals in both fine and bail accounts but failed to do a "hard reconciliation". This was evident more so in the bail account, as there may have been checks issued but never cashed. The accounts have been established for 20+ years, with various clerks. Lacking that "hard" reconciliation each month, would result in a variance between the journal balances and the bank balances. The fine account, every month is reported to the state and all monies are paid to the State.

Judge Weingartner retired as of December 31, 2016. His accounts had to be reconciled and all bail money held, transferred over to the new Justice, Jeffrey Hawkes. New Accounts were opened for Justice Hawkes.

There was an amount of bail from 2004 that was in question. The Court was in contact with DMV, DEC, State Comptroller's Office and OCA regarding this amount. No records could be found at any of these agencies regarding disposition and payment. The common procedure would be to apply bail to charge or forfeit bail. No records of convictions or return of bail could be found. This was during a period that old files were transferred into the [REDACTED] computer system. The consensus of all agencies was to deem this a data entry error and correct accordingly.

This was done, leaving Judge Weingartner's bail account with a surplus balance of \$985.11, which was reported to the state as unidentified income. With this "hard" reconciliation completed a new bail account was opened for Justice Hawkes with a transfer of all pending bail money.

Justice Coe's bail account was done a "hard reconciliation", as of January 2017. There were 4 cases with unreturned bail money due to returned mail, and surety lack of response. The clerks did investigate further and have some follow up information to try to establish contact with them. If this money cannot be returned after "due diligence", it will be turned over to the Town of Kirkwood with the name of each individual owed. After doing this reconciliation, there was a surplus of \$437.70, which could not be associated with an individual case(s). This amount is being reported to the State as unidentified income in the February 2017 report.

It is the Court's belief that we have not reconciled the bail accounts properly and moving forward from this point will be doing a "hard reconciliation" monthly with the bank statement. This should correct the matter of uncashed checks and unidentifiable income.

As stated before, these accounts are long standing, now that it has been brought to our attention that a monthly check of activity is not up to the standards that we should impose; we have implemented a new practice to reach those standards.

As for the Town of Kirkwood audit conducted for the 2015 fiscal year, as our report stated, we were not informed of our weakness. Now that everyone has been made aware, we will be working together to solve any future problems or concerns regarding practices and procedures.

We are very pleased with the State Audit of our Court. The Court handles and distributes thousands of dollars on a monthly basis, let alone hundreds of thousands of dollars on a yearly basis. Now that we have made the necessary corrections to the bail accounts, it should be a simple matter to implement the procedures and practices to attain and maintain the standards required.

Respectively submitted,

**Ward E. Coe**

Kirkwood Town Justice

**Jeffrey J. Hawkes**

Kirkwood Town Justice

## APPENDIX B

### AUDIT METHODOLOGY AND STANDARDS

To achieve our audit objective and obtain valid evidence, we performed the following procedures:

- We interviewed Town officials and reviewed records and reports to gain an understanding of Court operations and oversight, including monthly accountabilities and annual audits.
- We traced the total collections for the audit period as shown on the monthly Court reports to the JCF monthly summary reports to determine whether the Justices reported Court financial activity to the JCF accurately and in a timely manner.
- We traced the total collected each month per the monthly reports submitted to the JCF to the canceled check images to determine whether the Justices were correctly reporting and remitting all money collected to the Supervisor.
- We reviewed the monthly bank reconciliations performed by the Court clerks (if any) to determine if they were accurate, complete and prepared in a timely manner.
- For each Justice, we judgmentally selected two liabilities from the Court liabilities list. We traced them to case files, duplicate receipts and the Court software system to determine whether they were a current liability or stale bail funds.
- We performed bank reconciliations for each Justice for the last month of the audit period verifying all reconciling items (outstanding checks, deposits in transit) and using them to determine our adjusted bank balances.
- We compared the adjusted bank balance of the bail accounts for both Justices to the list of Court liabilities at the end of the audit period to determine whether there was any unaccounted for money and whether the bail balance represents a current liability.
- We reviewed the bank reconciliation, prepared by the budget director, of Justice Coe's bail account as of December 31, 2015 and traced all reconciling items to source documents and the Court software system to determine whether the reconciliation was prepared accurately.
- We reviewed the 2015 independent annual Court audit results and followed up on the weaknesses identified to determine whether the Board took corrective action for any findings.

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.

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**DIVISION OF LOCAL GOVERNMENT**  
**AND SCHOOL ACCOUNTABILITY**

Andrew A. SanFilippo, Executive Deputy Comptroller  
Gabriel F. Deyo, Deputy Comptroller  
Tracey Hitchen Boyd, Assistant Comptroller

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