



Village of Huntington Bay

Compensation of Officials and Credit Cards

Report of Examination

Period Covered:

June 1, 2010 — April 30, 2012

2012M-198



Thomas P. DiNapoli

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State of New York Office of the State Comptroller

Division of Local Government and School Accountability

February 2013

Dear Village 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 of Trustees 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 Village of Huntington Bay, entitled Compensation of Officials and Credit Cards. This audit was conducted pursuant to Article V, Section 1 of the State Constitution and the State Comptroller's authority as set forth in Article 3 of the General Municipal Law.

This audit's results and recommendations are resources for local government officials to use in effectively managing operations and in meeting the expectations of their constituents. If you have questions about this report, please feel free to contact the local regional office for your county, as listed at the end of this report.

Respectfully submitted,

*Office of the State Comptroller
Division of Local Government
and School Accountability*



State of New York Office of the State Comptroller

EXECUTIVE SUMMARY

The Village of Huntington Bay (Village) is located in the Town of Huntington, in Suffolk County, and has a population of 1,425 residents. The Village provides a range of services to its residents, including police protection, and street maintenance and improvements. The Mayor and Board of Trustees (Board) are responsible for the overall management of the Village. The general fund expenditures for the 2011-12 fiscal year were approximately \$2.1 million.

Scope and Objective

The objective of our audit was to examine the Village's method of compensating Village officials and credit card usage for the period June 1, 2010 through April 30, 2012. We expanded our scope period to May 31, 2012 for our examination of credit cards. Our audit addressed the following related questions:

- Were Village officials compensated correctly?
- Did the Board establish adequate internal controls and provided adequate oversight of the use of Village credit cards?

Audit Results

We found that the Village Building Inspector is treated and paid as if he was an independent contractor. The Building Inspector did not file an oath of office, and the Village does not provide an office space, set his hours, or provide any direct supervision of his duties. However, the Village building inspection function includes certain duties and responsibilities that involve the performance of police powers to enforce local building and zoning laws, and the exercise of judgment or discretion which cannot be delegated to an independent contractor.

In addition, we found that the Village pays the Village Justice as an independent contractor, not as an employee through the Village payroll system. The Justice is a Village official who exercises certain police powers and should be paid on the Village payroll.

The Board also did not establish adequate internal controls or adopt a policy over the use of Village credit cards. As a result, the Village did not have adequate support for \$2,781 of the \$11,465 in credit card purchases made during our audit period, including \$2,069 charged for restaurants and other personal charges, such as a suit and purchases at a liquor store, of which \$234 was reimbursed to the Village.

Comments of Local Officials

The results of our audit and recommendations have been discussed with Village officials and their comments, which appear in Appendix A, have been considered in preparing this report. Appendix B includes our comments on the issues raised in the Village's response letter.

Introduction

Background

The Village of Huntington Bay (Village) is located in the Town of Huntington, in Suffolk County, and has a population of 1,425. The Village is governed by an elected Board of Trustees (Board) comprising a Mayor and four Trustees. The Board is the legislative body responsible for managing Village operations. The Mayor serves as the Village's chief executive officer. The Village Administrator/Treasurer (Administrator) is the chief fiscal officer and is responsible for the receipt, disbursement, and custody of Village moneys, and the maintenance of accounting records. The Village provides services such as street maintenance and police protection. Its general fund expenditures for the 2011-12 fiscal year were approximately \$2.1 million.

Objective

The objective of our audit was to examine the Village's method of compensating Village officials and to examine credit card usage. Our audit addressed the following related questions:

- Were Village officials compensated correctly?
- Did the Board establish adequate internal controls and provide adequate oversight of the use of Village credit cards?

Scope and Methodology

We examined the Village's method of compensating its officials for the period June 1, 2010 to April 30, 2012. We also examined Village credit card usage, for which we expanded our scope period to May 31, 2012.

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.

Comments of Local Officials and Corrective Action

The results of our audit and recommendations have been discussed with Village officials and their comments, which appear in Appendix A, have been considered in preparing this report. Appendix B includes our comments on the issues raised in the Village's response letter.

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 Village Clerk's office.

Compensation of Officials

A village generally may retain professionals as independent contractors and consultants to advise and assist village officials and employees in the performance of their duties. In addition, a village may contract with private entities for the performance of functions that are purely ministerial in nature. However, unless expressly authorized by statute, a village may not contract with a private party to perform village functions that involve the performance of police powers or other discretionary functions.

The Village is compensating the appointed Building Inspector and elected Village Justice by voucher as if they were independent contractors. However, these are Village official positions and should be paid on the Village's payroll.

Building Inspector

The Village building inspection function includes certain duties and responsibilities that involve the performance of police powers to enforce local building and zoning laws, and the exercise of judgment or discretion which cannot be delegated to an independent contractor. In particular, under Village Code, the Building Inspector is responsible for, among other things, issuing certain permits, examining premises to determine whether provisions of law have been complied with, enforcing laws relating to building construction, and issuing notices and orders necessary to enforce compliance with law.

Village Code refers to the Building Inspector as an official position. Each year at its reorganization meeting, the Board lists various one-year appointments, including an individual to act as Village Building Inspector. While this annual appointment indicates that the Board intends for the Building Inspector to serve as a Village officer, several factors indicate that the Building Inspector is an independent contractor.

The individual appointed as Building Inspector did not take an oath of office and does not reside within the Village, as generally required of an officer.¹ In addition, the Building Inspector is paid by voucher, receives an IRS Form 1099 (used to report payments to independent contractors), does not receive any fringe benefits, and has no

¹ We are informed that this individual resides just outside the Village. Village Law Section 3-300(2) generally requires that a village officer be a village resident (see also Public Officers Law Section 3). However, it also authorizes village boards of trustees to provide, in lieu of any other residency requirement imposed by law, that any appointed village officer may reside within the county. The Village Board had not adopted such a resolution.

permanent Village office space. While the Village provides materials and supplies, this individual uses his own equipment, including his own computer. Further, neither the Board nor the Mayor sets the Building Inspector's working hours or provides day-to-day direct supervision.

In light of the lack of an oath of office and compliance with residency requirements, and the presence of factors that indicate an independent contractor relationship between the Village and the individual performing the building inspection functions, the Board cannot be certain that discretionary Village functions and police powers are being performed and exercised by a Village officer and not an independent contractor.

Village Justice

The Village Justice (Justice) is an elective office with a four-year term. As a Village official, the Justice should be paid on the Village payroll. The Justice is responsible for administering the Village Justice Court and handling all criminal and civil matters arising in the Village, including adjudicating violations of Village local laws. The Justice must also keep account of all fees, fines, and other moneys collected through the Justice Court.

We found that the Justice's compensation was not processed through the Village's payroll system. The Justice was paid \$9,500 (\$500 per session) for services rendered during the audit period, by voucher through the accounts payable system rather than through the payroll as a salaried Village official. The Village did not withhold payroll taxes on these payments, but reported the payments to the Internal Revenue Service on Form 1099, which is used to report payments to independent contractors.

Recommendations

1. The Board should take steps to ensure that anyone who performs the Village building inspection function meets all the requirements for holding Village office.
2. The Board should institute procedures to ensure that all payments for personal services to the Justice are based on duly approved payrolls and that required State and Federal taxes are withheld and transmitted to the proper authorities.

Credit Cards

An effective system of internal controls requires the Board to adopt a sound credit card policy. It is important that the policy identifies the individuals who are authorized to use the credit cards, defines dollar limits for purchases, describes the types and circumstances of purchases allowed, and specifies the prior approval and documentation needed to support the purchase. The policy must also include procedures for monitoring credit card use to promote accountability and responsibility.

Generally, meals should only be purchased when Board members and/or Village personnel travel outside of their regular work areas on official business for extended periods of time, or when events prevent them from taking time off to eat during mealtime because of a pressing need to complete business. Accordingly, the Board should establish appropriate policies and procedures for controlling these costs, to provide assurance that payments for meal costs are not greater than necessary.

The Board did not adopt a comprehensive credit card policy. Although the Village adopted a credit card policy on April 23, 2012, this policy only set credit card limits and required that receipts be submitted for any purchases; it did not specify who was authorized to use the credit cards, for what purpose the cards could be used, or procedures for monitoring card usage. The Village had two major credit cards, one issued to the Mayor and one issued to the Administrator. The Mayor regularly used the Village credit card at local restaurants, and in most instances, there were no credit card receipts to show whether items purchased were appropriate Village charges.

We reviewed all credit card charges totaling \$11,465 that the Mayor and Administrator made during our audit period² and found that the Village paid for 49 charges totaling \$2,781 without itemized receipts, including \$2,069 charged for restaurants³ and other personal charges, such as a suit and purchases at a liquor store, of which the Mayor reimbursed \$234 to the Village through personal checks payable to the credit card company. These personal checks, submitted up to eight months after the purchases were made, did not always indicate which charges were being reimbursed.

² The Mayor charged \$4,130 and the Administrator charged \$7,335.

³ For the period June 1, 2010 to May 31, 2011, the restaurant charges were \$1,685. For the period June 1, 2011 to May 31, 2012, the restaurant charges had decreased to \$384.

The Board's failure to adopt a comprehensive credit card policy and to monitor credit card usage resulted in charges paid that were not supported by detailed documentation, and questionable expenses charged to the Village. Because these charges were not supported, the Board has no assurance that they were actual and necessary Village expenses.

Recommendations

3. The Board should review and update the credit card policy to describe the types of purchases allowed, when it is appropriate to use the credit card, and what documentation is required.
4. The Board should establish a meal and refreshments policy indicating when it is appropriate to provide meals and refreshments to officials and employees.

APPENDIX A

RESPONSE FROM LOCAL OFFICIALS

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



VILLAGE OF HUNTINGTON BAY

P.O. BOX 2184

HUNTINGTON, NEW YORK 11743-0873

631-427-2843

631-425-3063FAX

VIA FACSIMILE
631-952-6530

January 24, 2013

Ira McCracken, Chief Examiner
Division of Local Government and School Accountability
Office of the State Comptroller
NYS Office Bldg. room 3A10
Hauppauge, New York 11788-5533

Dear Mr. McCracken:

This letter serves as the Village of Huntington Bay's response to the draft audit report we received. Overall we found the report to be inaccurate and misleading and not reflecting the processes and procedures that this small Village has in place to manage its affairs. We take exception to a statement in Appendix B regarding interviewing Village officials during the process of information gathering. No one was spoken to except the Village Administrator and Police Chief until the meeting when your team orally presented what you were going to put in the report. There was no dialog with the Mayor or any elected official. In addition, as we have stated to you before, we question the process for selecting the Village of Huntington Bay at this time for audit.

See
Note 1
Page 15

See
Note 2
Page 15

Building Inspector

The Building Inspector has been an independent contractor for decades in this Village. He is a registered architect in the State of New York and exercises his own professional judgment in the course of his services to the Village. The work load varies based on permit applications and other code issues and, as with other professionals, he is compensated on an hourly basis. The Building Inspector is not directly supervised by the Mayor but does get direction from the Mayor and Board of Trustees and also speaks with the Mayor on a regular basis. He attends most ZBA meetings and also has met with the Board of Trustees to provide advice. As a convenience to the residents, for many years he has maintained "office hours" so that residents and other local professionals may consult with him. This has worked well for this small Village over the last twenty years. The Board has reviewed this with counsel and the Building Inspector and he has agreed to and we will make him an employee of the Village. This will carry additional costs to the residents.

See
Note 3
Page 15

See
Note 4
Page 15

In addition, the Board of Trustees has recently changed our residency requirements for this and a number of other positions.

Village Justice

The Village has always paid our elected Village Justice in the manner described based on actual court dates. The Village Board will make him an employee. This too will carry additional costs to the residents. Nothing will change in terms of performance in the Village.

See
Note 4
Page 15

Credit Card Usage

The Village Board approved the use of credit cards a number of years ago as a convenience and to have a single report for the Trustees to look at and approve at its monthly public meeting. The cards were approved for usage by the Mayor and the Village Administrator. During the audit period the amount was \$ 11,465 of which \$ 7,335 was for the Village Administrator and \$4,130 for the Mayor. That represented spending over 23 months- an average of \$319 per month for the Village Administrator and \$179 per month for the Mayor. The purchases made by the Village Administrator were for items needed for Village Hall operations. The expenses for the Mayor were for were Village Hall operations such as Office and Computer related expenses, mailings sent to residents and others and meetings related to Village Business that the Mayor conducted at local restaurants.

See
Note 5
Page 15

The Village Mayor does not receive a salary, receives no benefits, does not have an office offering privacy for discussions and has limited support staff. The Mayor is a volunteer who has a full time career and during tenure as Mayor has held senior executive positions based in New York City requiring extensive travel at times. The Village Board, in managing its own affairs has deemed it appropriate to pay for any meeting relating to Village business that the Mayor conducts during his busy schedule, many at local restaurants. Given the amount of time that the Mayor donates to the Village combined with his other responsibilities the Board believes this is a reasonable and practical decision and expense. These meetings have been with other elected officials, community leaders, Village staff, professionals, and residents. These meetings were held for and on behalf of the Village.

The Village Board approves a budget for this. Expenses are reviewed by the Village Treasurer as submitted, reviewed and approved monthly by the Board at its regular meeting and reviewed annually by an outside auditor. There are no questionable expenses.

See
Note 6
Page 15

There were items that had no receipts and the Village acknowledges this. However we think the presentation of this is purposefully misleading. At the beginning of the Audit we told the auditors that there had been a theft at Village Hall during a Town Political

See
Note 7
Page 15

Village of Huntington Bay

Campaign in the fall of 2011. The audit team acknowledged in that meeting that that is what triggered this audit. Certain documents went missing at that time. We believe some of those items were the receipts in question. The Village had no backup copies. In the future, we will be securing files more carefully and keeping backup copies off site. We also acknowledge that some items were paid with an explanation but without receipts. These payments were made to the credit card company toward the Village's credit balance and not to an individual. We have now tightened up that process so that only receipted expenses are paid. In any event, no item was ever paid without an acceptable explanation to the Village Treasurer and approved by the Board.

See
Note 2
Page 15

See
Note 8
Page 16

During the period of review, the Mayor used the Credit card for two personal items under extraordinary circumstances. Those were communicated immediately to the Village Administrator and paid directly to the credit card company by the Mayor. Documentation of that was discussed with your team. There were three additional expenses for meetings that after expensing the Mayor decided that in fact those meetings turned out to be less Village related, so he then paid the credit card company for those expenses. No Village dollars were expended or have ever been expended for any personal expenses by either the Mayor or the Village Administrator. The language in your report which ties the expenses without receipts to personal charges implies that all expenses without receipts were made for personal charges. As you know, this is completely false, and thus we can only believe that there is some political purpose behind you making such a misleading statement. This is reinforced by the implication in your Executive Summary that I attempted to have the Village pay for a "suit and purchase at a liquor store" when you were made well aware of the innocent circumstances surrounding those charges and that the Village did not pay for those expenses. We have asked numerous times for this to be changed. We have found that your office has been completely uncooperative. In our final meeting we discussed this and in fact your lead auditor agreed and we were told by him that he believed the language we found highly offensive would be removed. It was not.

See
Note 9
Page 16

See
Notes 6 and 7
Page 15

See
Notes 9 and 10
Page 16

See
Note 11
Page 16

Going forward, the Village will document our procedures and policy more thoroughly. We have already implemented procedure related to securing receipts.

We are absolutely confident in our procedure to manage our Village affairs. We are also very confident that we have a team of volunteers who do extraordinary work for this community.

Sincerely,

Herb Morrow
Mayor

Cc: [REDACTED]

APPENDIX B

OSC COMMENTS ON THE VILLAGE'S RESPONSE

Note 1

Interviewing Village officials is a standard part of our procedures for gaining an understanding of Village operations. During the audit, we spoke with the Administrator, Police Chief, and Building Inspector. We also met with the Mayor on at least three occasions: at our entrance conference where we explained our audit process; at the end of fieldwork where we summarize our findings; and at the exit conference where we asked for input from officials present as to any factual inaccuracies.

Note 2

As explained to Village officials, our selection of the Village for audit was based on an initial risk assessment that considered a number of financial indicators and taxpayer complaints.

Note 3

It is a well-established legal principle that the discretionary duties of a public office and those duties vested with a high degree of public trust may not be exercised by an independent contractor, without express statutory authority. The Building Inspector exercising his own professional judgment in the course of his services is the definition of discretionary duties and the reason the Building Inspector should be a Village official paid through the payroll.

Note 4

The Board is responsible for setting salaries. Any additional costs will be at the Board's discretion.

Note 5

Nearly half of the Mayor's credit card expenditures (\$2,069) were for restaurants and other personal charges, for which itemized receipts were not provided.

Note 6

We question how the Board can be certain there are no questionable expenditures when it is approving credit card charges without reviewing the related itemized receipts.

Note 7

Our report is not intended to be misleading. According to the Village's policy, credit card purchases must be accompanied by itemized receipts. Our report states that the Village approved a number of credit card purchases without this required documentation.

Note 8

The Village may have paid the credit card company; however, the credit balance being paid comprised charges that may have benefitted the individuals incurring those charges, instead of the Village. Without itemized receipts, the Village cannot be certain that the charges were for legitimate Village purposes.

Note 9

As identified in our report, the payments by the Mayor to the credit card company were not immediate, but occurred up to eight months after the purchases were made. These payments did not always identify which charges were being reimbursed.

Note 10

While the Mayor did explain to us the circumstances surrounding these charges, the use of the Village credit card should not be viewed as a personal convenience or line of credit.

Note 11

We object to the Mayor's characterization of our actions as "uncooperative." At our exit conference, we agreed to consider changes to the report language that they found offensive. After considering their requests, we made certain changes to the report but not every requested change was warranted. We amended the draft report to clarify that the Mayor reimbursed certain credit card expenditures. Also, where municipalities typically have 30 days to respond to our draft audit reports, at the Mayor's request, we granted the Village an additional 30 days to submit this response to our draft report.

APPENDIX C

AUDIT METHODOLOGY AND STANDARDS

The objective of this audit was to review the Village's credit card usage and the compensation of its officials for the period June 1, 2010 to April 30, 2012. To achieve our audit objective and obtain valid audit evidence, we performed the following audit procedures:

- We interviewed Village officials and employees to gain an understanding of the controls in place over credit card usage and to determine the method by which Village officials were compensated.
- We reviewed all credit card statements for the period June 1, 2010 through May 31, 2012. We traced the credit card charges to available original receipts to determine if the payments were properly audited and authorized by the Board, were sufficiently itemized, contained sufficient supporting documentation, were proper and necessary Village purchases, and contained evidence that the goods/services were received.
- We determined the amounts paid to the Building Inspector and Justice through the accounts payable system. We reviewed the claims for their payment to determine if payments were appropriate for the positions held. We examined IRS Forms 1099 and inquired as to contracts, residency requirements, and the filing of oaths of office.

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

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