

South Lewis Central School District

Conflicts of Interest

JULY 2021



OFFICE OF THE NEW YORK STATE COMPTROLLER
Thomas P. DiNapoli, State Comptroller

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Report Highlights

South Lewis Central School District

Audit Objective

Determine whether any South Lewis Central School District (District) officials had prohibited interests in District contracts.

Key Findings

Three Board members had prohibited interests in contracts that the District awarded totaling more than \$22 million.

- Two Board members were employed by corporations that were awarded contracts for the District's capital project. They both worked on the project as part of their private employment and the District paid \$3.2 million on the contracts during our audit period.
- One Board member co-owns a local hardware store that sold materials and supplies to the District totaling \$17,446.
- Due to deficiencies in the District's conflict of interest disclosure forms and procedures for consulting with legal counsel when appropriate, the Board members failed to acknowledge they had conflicts of interest, as required.

Key Recommendations

- Ensure that District officials and employees follow the legal conflicts of interest requirements.
- Amend the conflict of interest disclosure form to ensure potential conflict of interests are adequately disclosed and addressed, and consult with legal counsel when appropriate.

District officials agreed with our recommendations and have initiated or indicated they planned to initiate corrective action.

Background

The District serves the Towns of Greig, Leyden, Lyonsdale, Martinsburg, Osceola, Turin, Watson and West Turin in Lewis County.

The District is governed by an elected nine-member Board responsible for the general management and control of financial and educational affairs.

The Superintendent of Schools (Superintendent) is the chief executive officer and responsible, along with other administrative staff, for the day-to-day management under the Board's direction.

The Business Administrator is primarily responsible for financial operations and accounting records.

2020-21 Quick Facts

Appropriations	\$26.5 million
Students	934
Employees	232

Audit Period

July 1, 2019 – July 31, 2020

Conflicts of Interest

What Is a Conflict of Interest?

New York State General Municipal Law (GML) Article 18 prohibits a school district's officers and employees from having an interest in any contract with the school district when they have the power or duty – individually or as a board member – to negotiate, prepare, authorize or approve the contract, authorize or approve payment under the contract, audit bills or claims under the contract or appoint an officer or employee with any of those powers or duties. For this purpose, a contract includes any claim, account, or demand against or agreement with the district.

A district's officer or employee has an interest in a contract when they receive a direct or indirect monetary or material benefit as a result of a contract with their district. A school district officer or employee would also be deemed to have an interest in the contracts of, among others, a corporation of which they are an officer, director or employee, or of which they own or control any stock.

Limited exceptions excuse a school district's officer's or employee's interest in a contract from being legally prohibited. Thus, a district official would not have a prohibited interest in a contract solely because of being an officer or employee of a private business if the individual's private compensation is not directly affected as a result of the contract, and the duties of the private employment do not directly involve the procurement, preparation or performance of any part of the contract. In addition, a district official would not have a prohibited interest in a contract in which total compensation payable under the contract during a fiscal year does not exceed \$750.

By law, interests in actual or proposed contracts or other agreements on the part of a district officer or employee, or his or her spouse, must be publicly disclosed in writing to the district officer's or employee's immediate supervisor and to the district's governing board as soon as they have knowledge of such interest, and be included in the official board minutes. The District's code of ethics describes the situations that would require public disclosure.

Three Board Members Had Prohibited Conflicts of Interest

We found three Board members had prohibited interests in District contracts. Two Board members were employed by corporations that were awarded contracts totaling more than \$22 million in February 2020 to conduct work on the District's capital project to renovate facilities and construct a new elementary addition onto the middle-high school. The third Board member was the co-owner and stockholder of a corporation that sold goods to the District.

As Board members, these individuals had one or more powers and duties that can give rise to a prohibited interest, including the ability to authorize or approve contracts, authorize or approve payments under contracts, audit bills or claims under the contracts, or appoint someone to perform those functions.

All three Board members had interests in the District’s contracts by virtue of being either an employee of, or owner/stockholder of, a corporation that contracted with the District. In total, the District paid almost \$3.2 million during our audit period on contracts to companies in which these Board members had prohibited interests (Figure 1).

Figure 1: Board Member Conflicts of Interest

Board Member	Position and Type of Company	Payments Made to Companies During the Audit Period
1	Carpenter Foreman for a General Contractor Corporation ^a	\$2,010,919
2	Project Manager for a Heating, Ventilation and Air Conditioning (HVAC) Corporation ^b	1,166,493
3	Co-owner of Incorporated Hardware Store ^c	17,446
Total		\$3,194,858

a) All payments were made after the Board member was hired by the Corporation in May 2020.

b) All payments were made after the Board member began work on the capital project.

c) Includes payments made for contracts during the 2019-20 school year.

Board Member 1 – This Board member was employed as an hourly carpenter foreman by a corporation that the Board awarded an \$18.3 million general construction contract to in February 2020. He was hired by the corporation on May 1, 2020 and worked on the District’s capital project as part of his employment with the corporation as soon as his employment began. Because he was directly involved in the performance of the District’s capital project as part of his private employment with that corporation, no exception to his prohibited interest in the District’s contract existed as of May 1, 2020.

Board Member 2 – This Board member was employed as a project manager of an HVAC corporation that was awarded the \$4.5 million mechanical contract for the District’s capital project in February 2020. He told us that his employer assigned him as project manager at the beginning of the District’s project and that his job duties included procuring and managing materials and manpower for the installation of the District’s HVAC systems. When this Board member began working on the District’s project as an employee of the HVAC corporation, any exception to his prohibited interest was no longer applicable.

...[T]he District paid almost \$3.2 million during our audit period on contracts... in which...Board members had prohibited interests.

Board Member 3 – This Board member told us she is a co-owner and stockholder of a local hardware store, from which the District purchases materials and supplies.¹ During our audit period, the District made 20 purchases from the hardware store totaling \$17,450. Of these payments \$17,446 constituted contracts for purposes of GML Article 18 during 2019-20. Our audit period included the first month of 2020-21, and contracts for 2020-21 may be subject to an exception if they do not exceed \$750. However, the contracts for 2019-20 exceeded this statutory threshold.

In addition, no other exceptions to GML Article 18 for these three Board members were found to apply to any of the contracts involved. As such, the Board members had prohibited interests in the contracts between the District and the corporations they worked for or held stock in.

Although the District required Board members to complete a conflict of interest disclosure form, the form did not require the disclosure of all potential conflicts that may arise under GML Article 18. Specifically, the form only required Board members to list any board on which they sit, any for-profit business of which they are an officer, director, or shareholder, and the name of any businesses owned.

The form does not require individuals who are employees to list their employment as a potential conflict. The form also does not require individuals to list their title, amount of financial interest, or steps taken to disclose the interest. The lack of detail required by this form may have contributed to the District's misunderstanding of GML Article 18 regarding employees of private corporations and limited the District's ability to readily determine that a Board member had a conflict of interest.

Further, Board members who had potential conflict of interest concerns discussed their concerns with the Superintendent and/or Business Administrator. The Superintendent and Business Administrator told us they discussed the concerns regarding Board member 2 with the District's legal counsel and they applied that guidance when evaluating Board member's 1 situation. Based on this guidance from the District's legal counsel, officials advised both Board members that their employment did not raise conflict of interest concerns. Instead, the Board members should have been more directly involved in discussions with legal counsel regarding concerns raised.

Near the beginning of 2019-20 and 2020-21, Board members 2 and 3 (as listed in Figure 1) listed their respective employer and corporation in their annual disclosure forms. However, their interests were not publicly disclosed in Board

¹ Each purchase by the District of materials or supplies from the hardware store resulted in an "agreement" for the sale of goods at a certain price with the District and, thus, a contract for purposes of GML Article 18.

minutes when their respective employers' contracts were awarded. Also, Board member 2 voted to approve the resolution awarding the \$4.5 million mechanical contract to his employer. Given his interest in the contract, not only should he have publicly disclosed his interest in the contract, he should have abstained from voting on it as well, even though abstaining from this vote would still not have remedied this Board member's conflict of interest.

Board member 2 told us he discussed his position at the corporation with the Superintendent and Business Administrator before the District solicited bids for the project and was told by the Superintendent and Business Administrator that based on their discussions with legal counsel there was no conflict because he was only an employee at the firm. However, under GML Article 18, his position as an employee of the corporation did not render him exempt from a potential conflict of interest once he began working on the project.

Similarly, Board member 1 told us that before joining the corporation that was awarded general contractor services for the District's capital project, he discussed the matter with the Business Administrator and was told there was no conflict because he was an hourly employee at the corporation. As a result, and due to the Board member's failure to directly contact the District's legal counsel for guidance, he did not disclose his employment with the corporation in his July 2020 disclosure form filed with the District.

The Superintendent and Business Administrator told us that they had a discussion with the District's legal counsel in 2018 related to conflict of interest concerns and believed that an official would have a conflict of interest if they were an owner of a company with a District contract, but not if the official was an employee of a company. However, one Board member was a co-owner of a company that did business with the District, and the two other Board members were involved in the performance of District contracts as part of their private employment. Therefore, their interests were prohibited under GML Article 18.

Due to deficiencies in the District's conflict of interest disclosure forms and procedures, the Board members failed to acknowledge they had conflicts of interest as required under GML Article 18. The Board members, Superintendent and Business Administrator incorrectly believed that being an employee of a private business could not give rise to a conflict of interest.

District officials must be accountable to the public, especially when the expenditure of taxpayer money is involved. When District officials, in their private capacities, conduct business with the District, the public may question the appropriateness of the transactions. Such transactions may create an actual conflict of interest or appearance of impropriety, and/or result in improper enrichment at the taxpayers' expense.

Due to deficiencies in the District's conflict of interest disclosure forms and procedures, the Board members failed to acknowledge they had conflicts of interest...

What Do We Recommend?

The Board should:

1. Ensure that officials and employees are familiar with and follow the requirements of GML, Article 18 as they relate to conflicts of interest.
2. Review and amend the conflict of interest disclosure form to ensure conformity with the applicable laws, and to ensure potential conflicts of interest are adequately reported and addressed.

District officials should:

3. Carefully review the information contained on the District's conflict of interest disclosure forms to identify interests that could pose a conflict.
4. Ensure all interests or prospective interests in District contracts are properly disclosed to the Board and included in the Board minutes.

Individual Board members should:

5. Abstain from voting on matters relating to the contracts in which they have an interest.
6. Ensure that their interests in contracts are properly disclosed in the Board's public minutes, regardless of whether such interests are present when a contract is awarded or if an interest arises thereafter.
7. In consultation with District officials, confer with the District's legal counsel directly, to obtain an opinion on whether their specific situations present a potential conflict of interest.

Appendix A: Response From District Officials

South Lewis Central School District

Mr. Douglas Premo, Superintendent

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July 21, 2021

Rebecca Wilcox, Chief Examiner
Syracuse Regional Office
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Room 409
333 E. Washington Street
Syracuse, New York 13202

Dear Ms. Wilcox:

The South Lewis Central School District acknowledges receipt of the Draft Audit Report and intends this letter to serve as the School District's response to the Draft Report. After review of the Draft Audit, the School District agrees with the facts and findings presented in the Report.

The South Lewis Central School District would like to thank the auditors for their professionalism and expertise in conducting the audit. The School District recognizes the importance of the findings and recommendations. It needs to be emphasized that at no time did District officials knowingly and willfully violate any of the provisions of the General Municipal Law pertaining to conflicts of interest. All actions previously taken were in good faith, and with no intent to violate the law.

The School District has already begun addressing the findings and implementing the key recommendations outlined in the report. The South Lewis Central School District intends to submit a corrective action plan referencing the findings and recommendations found in the Examination Report in the near future.

Sincerely,

Douglas Premo
Superintendent of Schools

Appendix B: Audit Methodology and Standards

We conducted this audit 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. To achieve the audit objective and obtain valid audit evidence, our audit procedures included the following:

- We interviewed District officials and reviewed Board policies to gain an understanding of the District's controls for identifying and preventing prohibited conflicts of interest. We also reviewed Board meeting minutes to determine whether any officials publicly disclosed their interests or potential interests in District contracts to the Board.
- We reviewed written disclosure forms filed by Board members with the District and obtained representations directly from Board members and other District officials that disclosed their outside employment and business interests, and those of their spouses, for the audit period. We compared these disclosures to cash disbursement records to determine whether the District had financial transactions that might constitute prohibited conflicts of interest.
- We reviewed all the invoices paid to one Board member's hardware store and two firms that employed Board members during our audit period to determine the total amount the District paid to each business. We also reviewed Board minutes for bid awards and approvals of contracts with the firms. We documented what was purchased, verified disbursements listed in electronic data matched the supporting claims and traced the disbursements to bank statements and canceled checks.
- We consulted with the Office of the State Comptroller's legal department concerning each potential prohibited interest identified during the audit.

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

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.

The Board has the responsibility to initiate corrective action. A written corrective action plan (CAP) that addresses the findings and recommendations in this report must be prepared and provided to our office within 90 days, pursuant to Section 35 of General Municipal Law, Section 2116-a (3)(c) of New York State Education

Law and Section 170.12 of the Regulations of the Commissioner of Education. To the extent practicable, implementation of the CAP must begin by the end of the next fiscal year. 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. The CAP should be posted on the District's website for public review.

Appendix C: Resources and Services

Regional Office Directory

<https://www.osc.state.ny.us/files/local-government/pdf/regional-directory.pdf>

Cost-Saving Ideas – Resources, advice and assistance on cost-saving ideas

<https://www.osc.state.ny.us/local-government/publications>

Fiscal Stress Monitoring – Resources for local government officials experiencing fiscal problems

www.osc.state.ny.us/local-government/fiscal-monitoring

Local Government Management Guides – Series of publications that include technical information and suggested practices for local government management

<https://www.osc.state.ny.us/local-government/publications>

Planning and Budgeting Guides – Resources for developing multiyear financial, capital, strategic and other plans

www.osc.state.ny.us/local-government/resources/planning-resources

Protecting Sensitive Data and Other Local Government Assets – A non-technical cybersecurity guide for local government leaders

<https://www.osc.state.ny.us/files/local-government/publications/pdf/cyber-security-guide.pdf>

Required Reporting – Information and resources for reports and forms that are filed with the Office of the State Comptroller

www.osc.state.ny.us/local-government/required-reporting

Research Reports/Publications – Reports on major policy issues facing local governments and State policy-makers

<https://www.osc.state.ny.us/local-government/publications>

Training – Resources for local government officials on in-person and online training opportunities on a wide range of topics

www.osc.state.ny.us/local-government/academy

Contact

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