

Town of Chemung

Conflict of Interest

DECEMBER 2022



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

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Report Highlights

Town of Chemung

Audit Objective

Determine whether any Town of Chemung (Town) officials had prohibited interests in Town contracts.

Key Findings

Two Board members are the owners of two separate auto service corporations which provided automotive work to the Town, totaling \$5,931, during our audit period. In accordance with New York State General Municipal Law Article 18, each invoice for repair work provided by the auto service corporations qualified as a contract with the Town.

As sole owners of the auto service corporations, the Board members were deemed to have an interest in each of the contracts. As no statutory exceptions applied in every fiscal year, each Board member's interest was prohibited pursuant to General Municipal Law.

Key Recommendations

- Ensure that officials and employees are familiar with and follow the requirements of New York State General Municipal Law Article 18, as they relate to conflict of interests.
- Adopt procedures to help prevent prohibited interests in contracts.

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

Background

The Town is located in Chemung County and is governed by an elected five-member Board, including the Town Supervisor (Supervisor) and four council members. The Board is responsible for the general oversight of the Town's operations and finances, including auditing and approving claims.

The Town has a separately elected Highway Superintendent (Superintendent), who is responsible for the oversight of all Highway Department operations including highway-related purchases of goods and services.

Quick Facts 2022

General Appropriations	\$759,722
General Tax Levy	\$16,716
Highway Appropriations	\$1.5 million
Highway Tax Levy	\$306,006
Population	2,358

Audit Period

January 1, 2020 – June 30, 2022

Conflict of Interest

How Should a Board Address Conflicts of Interest?

A board should ensure compliance with New York State General Municipal Law (GML) Article 18 which prohibits municipal officers and employees from having an “interest” in contracts with the municipality for which they serve when they also have the power or duty – either individually or as a board member – to negotiate, prepare, authorize, or approve the contract; to authorize or approve payment under the contract; to audit bills or claims under the contract; or to appoint an officer or employee with any of those powers or duties. For this purpose, a “contract” includes any claim, account, demand against or agreement with a municipality, expressed or implied.

Municipal officers and employees have an interest in a contract when they receive a direct or indirect pecuniary (monetary) or material benefit as a result of a contract. Municipal officers and employees are also deemed to have an interest in the contracts of, among others, a corporation of which they are an officer, director, or employee, or directly or indirectly own or control any stock.

Two Board Members Had a Prohibited Conflict of Interest

Two Board members are owners of two separate automobile repair shops organized as corporations (companies), from which the Town’s Highway Department purchased goods and services. During the audit period, the Board approved the payment of 14 claims to one Board member’s auto service company (Company A), totaling \$2,295, and 12 claims totaling \$3,636, to the other Board member’s company (Company B).

For purposes of Article 18, each purchase of automobile parts or mechanic services by the Town from the automobile repair shops results in an “agreement” for the sale of goods at a certain price, and therefore, a contract. As the sole “owners” of the automobile repair shops, it appears the Board members have an interest in each contract as each Board member either receives a direct or indirect pecuniary or material benefit as a result of each contract or is deemed to have an interest in each contract by virtue of being a 100 percent stockholder of the corporation. As members of the Board, each of the individuals would also have one or more powers or duties that can give rise to a prohibited interest. Therefore, unless an exception applies, each Board member has a prohibited interest in the contracts.

GML Section 802(2)(e) provides an exception when a municipal officer or employee has an interest in the contract, provided the total consideration of all contracts in which the municipal officer or employee has an interest during the fiscal year does not exceed \$750. During our audit period, we found that this exception applied to both companies in certain years because the total contracts entered into by the companies with the Town did not exceed \$750 during those

years. However, the exception set forth in GML Section 802(2)(e) did not apply to the contracts entered between Company A and the Town for the 2020 fiscal year as the total amount of contracts between the company and the Town exceeded the statutory dollar threshold (i.e., \$1,525). Similarly, the total amount of contracts entered between Company B and the Town for the 2021 fiscal year exceeded the statutory dollar amount (i.e., \$3,193). Therefore, the Board member who owns Company A had a prohibited interest in each of the contracts entered into with the Town during the 2020 fiscal year, and the Board member who owns Company B had a prohibited interest in the contracts entered into during the 2021 fiscal year, as the contracts entered during these periods exceeded \$750.

The Supervisor explained he understood the law and that the Town used these companies for convenience. The Supervisor stated the other option for similar services is located approximately 35 miles away, which would require two Highway Department employees to transport vehicles back and forth. However, neither explanation qualifies as one of the statutory exceptions set forth in GML Article 18.

When officials, in their private capacities, conduct business with the municipality for which they serve, the public may question the appropriateness of these transactions. Such transactions may create an actual conflict of interest or, at a minimum, the appearance of impropriety.

We did not find any other prohibited conflicts of interest with the remaining Board members, the Town Clerk and Superintendent.

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 conflict of interests.
2. Adopt procedures to help prevent prohibited interests in contracts.

Appendix A: Response From Town Officials

Town of Chemung
48 Rotary Rd. Ext
Chemung, NY 14825

December 10, 2022

Re: NYS Comptroller's Audit Report

The Town of Chemung has received the draft audit report from the office of the NYS Comptroller regarding conflicts of interest by Town employees. This report indicates that two different Town Board members received total annual compensation from the Town for vehicle services rendered.

After my review of these findings, I am in agreement that on these two occasions we had exceeded the allowable annual thresholds. The State examiners have since made us aware of the appropriate thresholds.

I have met with all of the Board members, and with all of the Town's department heads, to make all of us aware of the prescribed limitations. I am confident that all employees have a better understanding of the proper procedures regarding procurement of goods and services. Moreover, we are adding a section to the Town's procurement policy that will specifically address these types of potential situations going forward. With this in mind, I am confident that all such financial conflicts of interest will be prevented.

Sincerely,

George Richter, Town Supervisor

Town of Chemung 

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 Town officials and reviewed Board meeting minutes and Town policies and procedures to gain an understanding of controls in place over determining prohibited conflicts of interest.
- We made inquiries of Town officials to identify their outside employment interests or business ownerships.
- We reviewed vendor folders, vendor lists and canceled check images to identify payments made to officials, their spouses and dependents or related employers, firms, corporations or associations that may indicate a potential, improper or undisclosed interest in contracts.
- We reviewed all the invoices paid to the Board members' companies during the audit period to determine the total amount paid to the companies.

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 should be prepared and provided 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 Board to make the CAP available for public review in the Town Clerk's office.

Appendix C: Resources and Services

Regional Office Directory

www.osc.state.ny.us/files/local-government/pdf/regional-directory.pdf

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

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

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

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

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

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