



Town of Perth

Conflict of Interest

2024M-142 | April 2025

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Report Highlights

Town of Perth

Audit Objective

Determine whether any Town of Perth (Town) Board (Board) members had prohibited interest in non-payroll disbursements.

Key Findings

A Board member was the sole proprietor of an automotive company that did business with the Town. Therefore, the Board member had a prohibited conflict of interest which means they did not follow New York State General Municipal Law (GML) Article 18 and the Town’s Code of Ethics. The prohibited interest occurred when the Board member’s business repaired a Town dump-truck and was paid \$13,183 for the repair. The Board member with the prohibited conflict of interest, the Town Supervisor (Supervisor), and another Board member approved the \$13,183 payment.

According to the Board member with the conflict of interest, he approved the claim because two Board members refused to approve the claim due to their concerns with his prohibited conflict of interest. The Supervisor stated he approved the claim because the repair work was completed so the Town had an obligation to pay. Although the Supervisor, who is a member of the Town’s Board of Ethics, had concerns with the payment, he was unable to provide a reasonable explanation for why he did not bring this matter to the Town’s Board of Ethics. The remaining Board member approved the claim because the Supervisor had approved it.

Key Recommendations

The audit report has five recommendations that will help prevent Town officials from having prohibited interests in non-payroll disbursements.

Town officials generally agreed with our recommendations and indicated they planned to initiate corrective action.

Audit Period

January 1, 2023 – March 31, 2024

Background

The Town, located in Fulton County, is governed by an elected five-member Board including the Supervisor and four Board members. The Board is responsible for the general oversight of Town operations and finances. The Supervisor serves as the chief fiscal officer and is responsible for the day-to-day operations.

The Town has a separately elected Highway Superintendent (Superintendent), who is responsible for overseeing all highway department operations, which includes maintaining highway equipment.

Quick Facts	
Total 2023 Non-Payroll Disbursements	
Number	585
Dollar Amount	\$1.5 million
Non-Payroll Disbursements Reviewed	
Number	3
Dollar Amount	\$13,315

Conflict of Interest

How Can Town Officials Comply with the Conflict of Interest Provisions and the Town's Code of Ethics?

Town officials should ensure compliance with 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. GML Article 18 defines a “contract” as including any claim, account, demand against or agreement with a municipality, express or implied. Municipal officers and employees have, among others, an interest in a contract when they receive a direct or indirect monetary or material benefit as a result of a contract.

Furthermore, the Town's code of ethics prohibits Town officers and employees from having any interest, financial or otherwise, direct or indirect, or engaging in any business or transaction or professional activity or incurring any obligation of any nature, which is in conflict with proper discharge of their duties in public interest. The Supervisor provides the code of ethics and an acknowledgment form to all officials and employees. Each official and employee is required to sign the acknowledgement form indicating that the official or employee has read and understood the code of ethics.

The Town's code of ethics, which was established by local law, also created a Town Board of Ethics to render advisory opinions to the Town's officers and employees. According to the local law, the Board of Ethics should be composed of at least three members appointed by the Town Board, and of which one member must be an elected or appointed Town officer or employee. The Board of Ethics is authorized to create rules and regulations as to its form and procedures and shall maintain appropriate records of its opinions and proceedings. Conflict-of-interest concerns, on the part of municipal officers and employees, should be reported to the Board of Ethics.

A Board Member Had a Prohibited Conflict of Interest

A Board member is the sole proprietor of an automotive company. The Town received services from the automotive company for repair work done to a Town highway dump truck. During the audit period, the Board approved one claim to the Board member's automotive company, totaling \$13,183 for the repair work performed by the company.

The claim was approved for payment by the Supervisor and two other Board members (of which one Board member was the sole proprietor of the automotive company). The Supervisor told us he approved the claim because the repair work was completed, and hence, the Town had an obligation to pay the claim. Another Board member approved the claim because the Supervisor had approved it. Lastly, the Board member with the conflict of interest (who is the sole proprietor of the automotive company) approved the claim because the two remaining Board members refused to approve the claim due to concerns that it was a conflict of interest. In our view, all three Board members that approved the claim should have had knowledge that approval of the claim could result in a violation of the Town's code of ethics as each of the Board members had received the Town's code of ethics, signed an acknowledgment form and were aware that a Board member was the sole proprietor of the

automotive company. Furthermore, in our view, the Board member (company owner) should also not have accepted the work knowing that this could result in a conflict of interest.

One of the Board members, who did not approve the claim, told us that he asked the Supervisor to report the prohibited interest to the Town's Board of Ethics. However, the Supervisor, who is a member of the Board of Ethics, could not provide us with a reasonable explanation for why he did not bring this concern to the Board of Ethics. Furthermore, the Superintendent suggested that the insurance company recommended using the Board member's garage. However, no support was provided to verify that this, in fact, occurred. Under such circumstances, in our view, the Superintendent failed to provide us with a reasonable explanation for why the repair was performed at the Board member's automotive company.

There were two other non-payroll disbursements totaling \$132 made to Board members during our audit period. Both were for Town business purposes and not prohibited by Article 18 of GML or the Town's code of ethics. When officials, in their private capacities, conduct business with the municipality for which they serve, the public may question the appropriateness of these transactions.

What Do We Recommend?

The Board should:

1. Ensure Town officials are familiar with and follow the requirements of GML Article 18 and the Town's code of ethics as they relate to conflicts of interest.
2. Ensure officers and employees communicate ethics concerns to the Board of Ethics.

The Board of Ethics should:

3. Establish procedures that would help prevent officials from having prohibited interest in contracts.

The Supervisor should:

4. Refer the code-of-ethics violation noted in this report to the Board of Ethics.

The Superintendent should:

5. Not obtain goods or services, in the future, from entities that would result in an officer or employee of the Town having a prohibited interest in a contract.

Appendix A: Response From Town Officials



TOWN OF PERTH

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Phone: 518-843-6977 • Fax: 518-843-6979

April 11, 2025

Gary G. Gifford
Chief of Municipal Audits
One Broad Street Plaza
Glens Falls, NY 12801-4396

Dear Gary,

I am writing to acknowledge receipt of the Report of Examination regarding the Town of Perth Conflict of Interest audit and that [REDACTED] and [REDACTED] conducted an exit discussion with me on March 21, 2025. I would like to thank [REDACTED] for all of the information they provided myself and other Town Officials regarding conflicts of interest.

As a result of the audit, we are working to ensure that all Town Officials and employees are more closely following Town policies, particularly our Town Purchasing policy which should help us avoid conflicts in the future. We will be looking to the Ethics Board to establish procedures that will help in referring potential violation to the Ethics Board for review. I am also encouraging all Town Officials to take advantage of OSC's available training regarding conflicts of interest.

In closing, I would again like to thank [REDACTED] for their efforts to educate Town of Perth Officials on the subject of conflicts of interest and as a result we should be better equipped to avoid these issues in the future. Please advise if I need to provide a corrective action plan beyond what is in this correspondence.

Sincerely,

Gregory Fagan
Supervisor Town of Perth
supervisor@perthny.com
518-843-6977 ext. 117

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. We obtained an understanding of internal controls that we deemed significant within the context of the audit objective and assessed those controls. Information related to the scope of our work on internal controls, as well as the work performed in our audit procedures to achieve the audit objective and obtain valid audit evidence, included the following:

- We interviewed Town officials, reviewed meeting minutes and the Town's Code of Ethics to determine the controls in place over prohibited conflicts of interest in non-payroll disbursements.
- We made inquiries of Town officials to identify their outside employment, interest in any entities as well as the employment and interest in entities of their spouses (if any).
- We obtained a disbursement report from the accounting system and reviewed all cancelled checks for the audit period to identify the population of non-payroll disbursements made out to Board members, their spouses or entities in which the Board members or their spouses had interest. We interviewed officials and reviewed the related claims and supporting documentation (i.e., invoices, receipts) for the identified three non-payroll disbursements totaling \$13,315 to determine whether the Board members had a prohibited interest.
- We interviewed Town officials to determine whether the Board of Ethics conducted any meetings during our audit period and whether there was any available documentation.

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 Clerk's office.

Appendix C: Resources and Services

Regional Office Directory

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

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

www.osc.ny.gov/local-government/publications

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

www.osc.ny.gov/local-government/fiscal-monitoring

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

www.osc.ny.gov/local-government/publications

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

www.osc.ny.gov/local-government/resources/planning-resources

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

www.osc.ny.gov/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.ny.gov/local-government/required-reporting

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

www.osc.ny.gov/local-government/publications

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

www.osc.ny.gov/local-government/academy

Contact

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110 State Street, 12th Floor, Albany, New York 12236
Tel: (518) 474-4037 • Fax: (518) 486-6479 • Email: localgov@osc.ny.gov
<https://www.osc.ny.gov/local-government>
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