



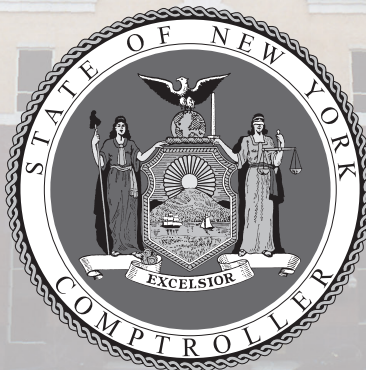
Village of Old Westbury Justice Court

Report of Examination

Period Covered:

June 1, 2015 — September 30, 2016

2017M-64



Thomas P. DiNapoli

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State of New York Office of the State Comptroller

Division of Local Government and School Accountability

July 2017

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 Trustee 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 Old Westbury, entitled Justice Court. 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 Village of Old Westbury (Village) is located in the Towns of Oyster Bay and North Hempstead in Nassau County. The Village has a population of approximately 4,670 and is governed by an elected Board of Trustees (Board), which consists of a Mayor and four Trustees. The Board is responsible for the general management and control of Village finances and overseeing financial activities including those of the Justice Court (Court). The Village has an elected Village Justice and two appointed Acting Justices who preside over Court operations.

The Court has jurisdiction over vehicle and traffic, criminal, civil and small claims cases brought before it. The Justices' duties include adjudicating legal matters and administering money collected from fines, bails, surcharges, civil fees and restitution. The Justices are required to submit monthly reports to the Office of the State Comptroller's Justice Court Fund (JCF) for the financial activities of the preceding month.

The Court has two full-time Clerks who are appointed by the Board and assist the Justices with their financial duties. The Clerks collect payments to the Court, enter collection and case information into the computerized Court management system, issue computer generated receipts for payments, deposit funds collected and prepare the monthly reports that are submitted to the JCF. The Court collected \$580,644 in fines, fees and surcharges and \$2,350 in bail deposits during the audit period.

Objective

The objective of our audit was to examine the Court's financial operations. Our audit addressed the following related question:

- Did the Justices accurately and completely collect, record, deposit and report moneys in a timely manner?

Scope and Methodology

We examined the Court's books and records for the period June 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 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 Village officials, and their comments, which appear in Appendix A, have been considered in preparing this report. Village officials generally agreed with our recommendations and indicated they planned to initiate 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 Board to make this plan available for public review in the Clerk-Treasurer's office.

Justice Court

Justices are responsible for the accounting, reconciling and reporting of all financial activities for each case brought before them. On a monthly basis, each justice should report financial activities to the JCF and perform an accountability of all funds held by preparing a list of court liabilities and comparing it to the reconciled bank balances and money on hand. Justices may deposit bail receipts into the same account they deposit fines and fees or a joint bail account. Justices are required to deposit all money received no later than 72 hours after receipt, exclusive of Sundays and holidays.

The Justices correctly reported financial activities to the JCF on a monthly basis. However, they did not perform bank reconciliations or accountability analyses on a monthly basis during the audit period. As a result, two of the three Justices had cash overages totaling \$1,743 that could not be explained. In addition, all bail moneys were not deposited into the bank accounts of each Justice or into a joint bail account but instead were deposited into one Justice's account. Also, five of nine bail receipts tested totaling \$610 were not deposited in a timely manner. As a result, it is more difficult to track bail moneys and the Court is more susceptible to the unauthorized use, disposition or theft of cash collected.

Monthly Reports, Bank Reconciliations and Accountability Analyses

Each justice is required to maintain an official bank account in his/her name in which the Clerk deposits moneys for fines, fees and bail. By the 10th of the month,¹ the Court is required to report to the JCF on the Court's financial activities for the preceding month. Each month, the justice should perform a bank reconciliation and a month-end accountability analysis for money held by the Court. These custodial responsibilities include comparing a list of liabilities with reconciled bank balances and documenting the status of court held moneys. The court's liabilities, such as pending bail and unremitted fines and fees should equal² the available cash.

The three Justices submitted accurate monthly reports to the JCF but did not perform monthly bank reconciliations or accountability analyses for any month during the audit period. We selected four months and found that the monthly reports were filed in a timely manner and that they correctly reflected the moneys received and disbursed for the months reported. We prepared bank reconciliations

¹ <http://www.osc.state.ny.us/localgov/pubs/jch.pdf> pages 10 and 11

² A justice's account should have a zero balance at the end of the month after subtracting outstanding checks and adding any fines and fees received after the end of the month.

and accountability analyses for these months and compared cash receipts to case files, cash receipt reports, deposit records, bank statements and monthly reports. The bank account for one of the three Justices properly reconciled, indicating that the Justice's liabilities equaled cash. However, bank accounts for the other two Justices had cash overages totaling \$1,743. One Justice had a bank balance that was \$1,590 more than the cashbook balance and the second Justice had a bank balance that was \$153 more than the cashbook balance. The Clerk told us she was aware of the \$1,590 overage and that it was caused by forfeited bail funds from outstanding cases prior to June 2011. However, the Clerk did not have any records to support this. The Clerk told us she was unaware of the \$153 overage or why it might have occurred.

These overages occurred because the Justices never assigned responsibility for performing monthly bank reconciliations or accountability analyses to anyone. The lack of bank reconciliations and accountability analyses increases the risk of unauthorized use or disposition of cash collected and has resulted in excess funds totaling \$1,743 that could not be explained.

Bail

Bail is imposed on defendants to help ensure they appear in court to answer charges. Bail is posted by defendants or others on their behalf. It is essential that each justice maintain a record of all bail. The bail activity report identifies all bail for which a justice is accountable. A justice must ensure that the total per the bail activity report agrees with the bank balance. Justices may deposit bail receipts into the same account they deposit fines and fees, or with the consent of all justices in a village court, a joint bail account. New York Codes, Rules and Regulations require justices to deposit all money received as soon as practicable, but no later than 72 hours after receipt, exclusive of Sundays and holidays.

The Police Department sets and collects all bails from the defendants at the time of the infraction or offense.³ Bail moneys are submitted to the Clerk who deposits all bail. However, the Court clerk deposits all bail into only one Justice's bank account rather than into the accounts of each of the three Justices or into a joint bail account. The Clerk told us this occurs because she does not know which Justice will be presiding in advance of the court date and the Village does not have a joint bail account. Further, the Clerk produces only a single bail activity report for all bail collected, rather than one for each Justice. As a result, even if the Clerk did know which Justice would be presiding in advance of the court dates, producing only a single bail activity report would still not inform each Justice of the amount of bail they

³ Per the Village's Police Operations Manual, section 3.3350

each would be accountable for. We traced nine bail receipts totaling \$1,150 (50 percent of the bail collected for the audit period) from the Court records to the bank deposits. All bail moneys were deposited intact; however, five bail receipts totaling \$610 were deposited from four to seven days after receipt by the Court or from one to four days after the required 72 hours.

The Court comingles all bail money in one Justice's bank account and does not deposit bail money at times until after 72 hours of receipt. In addition, the Justices did not perform monthly bank reconciliations or accountability analyses, including bail moneys during our audit period. As a result, the Court has an increased risk of loss, theft or inappropriate use of moneys.

Recommendations

The Justices should:

1. Assign the responsibility of performing monthly bank reconciliations and accountability analyses and ensure they are prepared and documented.
2. Identify the source of the overages in the Justices' bank accounts and distribute the funds as appropriate.
3. Establish a joint bank account for bail deposits or deposit bail funds into each responsible Justice's account.
4. Require the Clerk to produce a bail activity report for each of the Justices showing the specific bails for which they are accountable.
5. Ensure that all bail is deposited no later than 72 hours after receipt, exclusive of Sundays and holidays.

APPENDIX A

RESPONSE FROM LOCAL OFFICIALS

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

MAYOR
FRED J. CARILLO

TRUSTEES
CORY BAKER
MARINA CHIMERINE
LESLIE FASTENBERG
EDWARD NOVICK

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THOMAS O'CONNOR
VILLAGE JUSTICE
SUSAN SCHMIDT-CHOROST

June 5, 2017

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NYS Office Building / Room# 3A10
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Hauppauge, New York 11788-5533

Reference: Village of Old Westbury – Justice Court Audit # 2017M-64

Dear Mr. Cracken:

On behalf of the Board of Trustees and Village Justice, thank you for conducting the recent OSC audit of the Village of Old Westbury, which included an in-depth review of our Justice Court Operations.

Following-up to the Summary of Findings Meeting that was held on May 12th which was attended by Justice Schmidt-Chorost, representatives of the Village, myself and State Comptroller's representatives, the following is our response and Corrective Action Plan:

1. Timeliness of Bail Deposits into a Separate Bank Account:

The current Village process begins when bail is collected from the defendants upon completion of arrest processing. By signing the appearance ticket, the defendant acknowledges posting bail and agrees to appear in court on the date scheduled. The amount of the bail is indicated on the appearance ticket and is witnessed and signed by the supervising Police Officer. The defendant is then provided a copy of the appearance ticket. One copy of the appearance ticket is placed in an envelope with the bail money and secured at Police Headquarters in a wall safe. The other copy is forwarded to the Village Court with the arrest paperwork. The inventory of bail money is conducted by Lieutenants on a regular bases. The bail money is only released when directed so by the Village Court. *To improve the process, all bail funds collected will be deposited by the Village Court within 72 hours into a joint bail account labeled "Bail Account" following an arrest. If an arrest occurs on a weekend and/or holiday, the deposit will be made on the next business day. A joint "Bail Account" will be opened at Chase Bank.*

2. Monthly Accountabilities and Reconciliation of all Justices' Accounts:

To improve the overall accountability associated to each account of the Village Justices, the following process will be instituted:

- *The Court Clerk will reconcile each Justices' account to the corresponding Bank Statements on a monthly basis.*
- *Each Village Justice shall review and sign their Bank Statement monthly.*
- *The Village's independent auditor will review all Village Justices' accounts and monthly Bank Statement quarterly to ensure compliance*

3. Transfer of \$1,743.00 Overage:

Overage of \$1,743.00 has been transferred in the Village's General Fund Account, as the original source of the overage could not be determined.

To confirm that these new procedures are being carried out, the Village Administrator will conduct periodic audits.

I trust these new procedures fulfill the suggestions made by the OSC Auditors, and therefore will improve the overall operations of the Village's Justice Court.

Sincerely,

Fred J. Carillo
Mayor

APPENDIX B

AUDIT METHODOLOGY AND STANDARDS

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

- We interviewed Court officials and employees, and reviewed Court procedures to obtain an understanding of Court operations.
- We reviewed the Court's May 31, 2014 and May 31, 2015 audited financial statements prepared by the Court's external auditors for findings or recommendations. We noted when the audited financial statements were completed and whether copies were received by the Board.
- We judgmentally selected the last four months in the scope period and prepared bank reconciliations and accountabilities by calculating the adjusted bank balances and comparing them to the monthly report balances to determine whether they agreed. We also traced bank balances, outstanding checks and bail deposits to the bank statements.
- For the selected months, we determined whether the Court submitted monthly reports in a timely manner and if the reports properly reflected current activity. We also compared fines and fees in the case files for the court dates in those months to cash receipt reports from the Court's accounting system, deposit records and bank statements. We also compared receipt amounts from the monthly reports to the receipt amounts from the accounting system and bank statements.
- We reviewed the Police Department's inventory of appearance tickets, which included bail receipts, to determine whether they were properly secured and accounted for.
- We compared receipt amounts for the first nine bail receipts collected during the audit period from the Police Department's appearance ticket/bail log to the Court clerks' bail records and bank deposits to determine whether bail was properly collected, recorded and deposited in a timely manner.

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.

APPENDIX C

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