

Village of Bainbridge

Conflict of Interest

JUNE 2019



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

Contents

- Report Highlights 1**

- Conflict of Interest 2**
 - How Should a Board Address Conflicts of Interest? 2
 - A Trustee Had a Prohibited Conflict of Interest 2
 - What Do We Recommend? 3

- Appendix A – Response From Village Officials 4**

- Appendix B – Audit Methodology and Standards 6**

- Appendix C – Resources and Services 7**

Report Highlights

Village of Bainbridge

Audit Objective

Determine whether the Board ensured that Village officials did not have prohibited interests in Village contracts.

Key Finding

- A Trustee and his spouse are the owners of a local hardware store, organized as a partnership. As a member of the Board, the Trustee had a prohibited conflict of interest in Village contracts with the hardware store. He received a direct or indirect monetary benefit as a result of 19 contracts totaling \$4,190 during our audit period.

Key Recommendation

- Adopt procedures to help detect and prevent prohibited interests in contracts.

Village officials generally agreed with our recommendation.

Background

The Village of Bainbridge (Village) is located in the Town of Bainbridge in Chenango County. The Village is governed by an elected Board of Trustees (Board) composed of four Trustees and a Mayor. The Board is the legislative body responsible for oversight and general management of financial operations.

The Mayor is the Village's chief executive officer responsible for its day-to-day management.

Quick Facts

Population	1,319
2018-19 Appropriations	\$1,291,017
2018-19 Budgeted Revenues and Other Funding Sources	\$867,468
2018-19 Tax Levy	\$423,549

Audit Period

June 1, 2017 – January 18, 2019

Conflict of Interest

How Should a Board Address Conflicts of Interest?

New York State General Municipal Law (GML)¹ limits the ability of municipal officers and employees to enter into contracts in which their personal financial interests and public powers and duties conflict. Unless a statutory exception applies, GML prohibits municipal officers and employees from having an interest in contracts with the municipality for which they serve when they have the power or duty – either 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, demand against or agreement with the municipality.

Municipal officers and employees have an interest in a contract when they receive a direct or indirect monetary or material benefit as a result of a contract with the municipality they serve. Municipal officers and employees are also deemed to have an interest in the contracts of, among others, a firm, partnership or association of which they are a member or employee.

As a rule, interests in actual or proposed contracts on the part of a municipal officer or employee, or his or her spouse, must be publicly disclosed in writing to the municipal officer or employee’s immediate supervisor and to the municipal governing body, and be included in the official record of the governing body’s proceedings.

A Trustee Had a Prohibited Conflict of Interest

A Trustee and his spouse are the owners of a local hardware store, organized as a partnership, from which the Village purchases materials and supplies. During our audit period, the Village made 19 purchases from the hardware store totaling \$4,190.

Each purchase by the Village of materials or supplies from the hardware store resulted in an “agreement” for the sale of goods at a certain price with the Village and, thus, a “contract” for purposes of article 18 of GML. As an “owner” of the partnership, it appears that the Trustee is deemed to have an interest in each contract by virtue of being a member of the partnership. As a member of the Board, the Trustee also has one or more of the 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 that function.

¹ New York State General Municipal Law (GML), article 18

Accordingly, because we found no indication that any of the statutory exceptions² applied to these circumstances, it appears that the Trustee had a prohibited interest in the contracts between the Village and the hardware store.

We reviewed all the invoices submitted by the hardware store during our audit period. Although our testing did not reveal any irregularities in pricing, when officials, in their private capacities, conduct business with the village 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.

What Do We Recommend?

1. The Board should ensure that officials and employees are familiar with and follow the requirements of article 18 of GML as they relate to conflicts of interest.

² For example, one exception in GML is for contracts when the total consideration payable in the aggregate during a fiscal year does not exceed \$750. We found that the contracts with the hardware store, in the aggregate, exceeded \$750 in each of the fiscal years we reviewed.

Appendix A: Response From Village Officials

Philip Wade, Mayor
Erik Barnard, Trustee
Jay Campbell, Deputy Mayor
Timothy Mayes, Trustee
Vince Taylor, Trustee



Village of Bainbridge
33 West Main St.
Bainbridge NY 13733

Brenda Parsons, Clerk-Treasurer
Stephanie Parsons, Deputy Clerk
Jeff Webb, Supt. of Public Works
Casey Caratelli, Chief of Police

June 12, 2019

Office of the State Comptroller
Binghamton Regional Office
44 Hawley Street – Suite 1702
Binghamton NY 13901-4417

Re: Response to Draft Village of Bainbridge Report of Examination 2019M-72

Gentlemen:

This letter acknowledges receipt by the Village of Bainbridge of the draft Report of Examination 2019M-72 of the Village of Bainbridge conducted by your audit staff during the first quarter of 2019. The audit was conducted in a professional and courteous manner by the auditors, and our Village staff cooperated in every possible way to provide information requested by the auditors in a timely fashion. We appreciate the professionalism demonstrated by your auditors.

Conflict of Interest Finding

This letter also acknowledges the audit findings that a Trustee and his spouse are owners of the (only) local Village hardware store, organized as a partnership, from which the Village purchases materials and supplies. We do not dispute the 19 purchases from the hardware store totaling \$4,190 identified during the audit period of June 1, 2017 to January 18, 2019. The Village has purchased various items from this local hardware store for many years as a routine manner, and the purchases were not excessive, nor extraordinary in any way to draw our attention to possible Article 18 conflicts.

Nevertheless, the conflict of interest as defined under article 18 of GMU and strictly interpreted does exist, and the Village will submit a corrective action plan within 90 days to address the recommendation cited in the report, namely, “the Board should ensure that officials and employees are familiar with and follow the requirements of article 18 of GMU as they relate to conflicts of interest.”

Comment

We have extensively reviewed Article 18 of GMU and particularly Section 802 in detail, for possible applicability of the exceptions allowable. We find that Section 802 (2) (e) which provides a statutory exception for a “contract in which a municipal officer or employee has and interest if the total consideration payable under the contract, when added to the total amount of all consideration payable under contracts in which the individual had an interest during the fiscal year, does not exceed \$750” rather quaint in 2019. Our state legislature has never indexed the \$750 amount for inflation. Were it so indexed, it might well provide for a reasonable amount of purchase contracts to meet municipal needs from the local business, thereby avoiding the Article 18 conflict of interest finding.

Village Office: 607-967-7373 Fax 607-967-7323 Dept of Public Works: 607-967-8696 Police: 607-967-3911

**Village of Bainbridge
33 West Main St.
Bainbridge NY 13733**

Further, the so called Rural municipality exception (§802)(1)(j) for municipalities with a population of 200,000 or less (applicable to Bainbridge), which permits contracts with a business in which an officer has an interest, in the aggregate of less than \$5,000 for purchase and public work contracts, is also less than helpful. Firstly, the amount is similarly not indexed for inflation, and secondly, the requirements of the exception are rather onerous, especially for small purchases such as items purchased at a hardware store, specifically the requirement that the elected official who has an interest in the business from which the purchases are made, must serve without salary. This would imply that the official would benefit more from a “contract for purchase” with the municipality of \$5,000 (or less) than the salary that a municipal official receives. Historically and currently, municipal officials are not highly compensated, but serving without compensation, however meager it might be, is not a reasonable request commensurate with the responsibilities of municipal official service.

We understand it is the duty of the Comptroller to conduct audits of municipal government operations under the state law(s) that apply, and not to interpret the law. Although Article 18 is well intended and needed as a tool to prevent undue influence in government procurement operations, and to prevent undermining public confidence in local government, we find that in this case, due to the outdated limitations on purchases from local businesses in which local officials may be involved, codified in article 18, discourages business people, with their local experience and business acumen from serving in local government. The secondary impact is particularly more acute in this instant case as there are no alternate sources for miscellaneous hardware purchases in the Village (which is a function of the limited economic market in a small rural Village). Purchasing similar goods elsewhere will drive up the cost of local government if the municipality must travel distances to procure items which could be more easily procured locally. Furthermore, patronizing an official’s business competition in another municipality rather than supporting a local business is demeaning to the local business and unsound local economic policy.

Summary

We will provide a written corrective action plan (CAP) that addresses the finding and recommendations in the audit report within 90 days, pursuant to Section 35 of General Municipal Law.

Respectfully,

Philip *W*. Wade, Mayor

Village of Bainbridge, Chenango County, NY

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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 Village officials and reviewed Board meeting minutes to gain an understanding of controls in place over determining prohibited conflicts of interest.
- We made inquiries of Village officials to identify their outside employment interests or business ownerships and reviewed vendor reports and Board-approved abstracts 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 Trustee's hardware store during our audit period to determine whether prices charged were reasonable.

We conducted this performance audit in accordance with GAGAS (generally accepted government auditing standards). 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.

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-Treasurer's office.

Appendix C: Resources and Services

Regional Office Directory

www.osc.state.ny.us/localgov/regional_directory.pdf

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

www.osc.state.ny.us/localgov/costsavings/index.htm

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

www.osc.state.ny.us/localgov/fiscalmonitoring/index.htm

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

www.osc.state.ny.us/localgov/pubs/listacctg.htm#lgmg

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

www.osc.state.ny.us/localgov/planbudget/index.htm

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

www.osc.state.ny.us/localgov/pubs/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/localgov/finreporting/index.htm

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

www.osc.state.ny.us/localgov/researchpubs/index.htm

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

www.osc.state.ny.us/localgov/academy/index.htm

Contact

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