

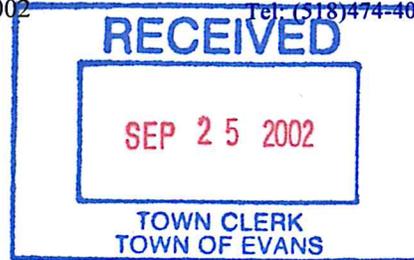


STATE OF NEW YORK  
**OFFICE OF THE STATE COMPTROLLER**  
 110 STATE STREET  
 ALBANY, NEW YORK 12236

**H. CARL McCALL**  
 STATE COMPTROLLER

**PATRICIA LAMB McCARTHY**  
 DEPUTY COMPTROLLER  
 DIVISION OF MUNICIPAL AFFAIRS  
 Tel: (518)474-4037 Fax: (518)486-6479

September 20, 2002



Ms. Carol Franey, Town Clerk  
 Town of Evans  
 8787 Erie Road  
 Angola, NY 14006

Dear Local Official:

This is in reference to our Report of Examination:

**Report No:** 2002M-0020

**Released:** April 19, 2002

The purpose of our examination and the resultant report was to identify areas where fiscal management could be improved and to provide recommendations for making such improvements. To the extent that governmental units can better manage their resources and improve delivery of their service, the public is better served. Local officials and the State Comptroller can work towards this goal together. Please present this letter to your board for its consideration and action.

As outlined in the Executive Summary accompanying our audit, the board's written response and the resolution of issues identified in our report represent significant steps toward improved financial management. Consistent with the Comptroller's partnership, our staff is available to assist you. If you have questions concerning our audit recommendations, or the preparation of the board's response, please feel free to contact:

Mr. David Slusarz, Chief Examiner of our  
 Buffalo regional office at 716-847-3647

Please send your response indicating the action you have taken, or propose to take, to:

Office of the State Comptroller  
 Division of Municipal Affairs  
 Services Branch  
 110 State Street, 12th Floor  
 Albany, NY 12236

We look forward to continuing our partnership to better serve the public.

Very truly yours,

HENRY F. HOFFMAN  
 Director - Local Government Services  
 Division of Municipal Affairs

HFH:sb

cc: Mr. Slusarz

cc: Town Board  
 Town Acct

cc: Town Acct  
 1-30-2003



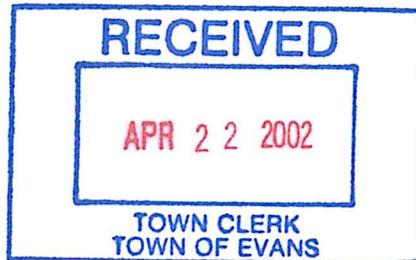


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PATRICIA LAMB McCARTHY  
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DIVISION OF MUNICIPAL AFFAIRS  
Tel: (518) 474-4037 Fax: (518) 486-6479

April 19, 2002



2002M-20  
Town of Evans

Ms. Carol Franey  
Town Clerk  
Town of Evans  
8787 Erie Road  
Angola, NY 14006

Dear Ms. Franey:

Enclosed is a Report of Examination for the Town of Evans prepared by the Office of the State Comptroller. Also enclosed for your convenience is a copy of Section 35 of the General Municipal Law which explains your filing and notification responsibilities, together with a sample publication notice and certification.

The examination was made, and report prepared, in accordance with the authority granted to the State Comptroller by the State Constitution, Article V, §1 and Article 3 of the General Municipal Law. The report should be studied by all appropriate officials and a written response to the audit findings should be prepared and filed within ninety days, pursuant to Subdivision 4 of Section 35 of the General Municipal Law. The development of a corrective action plan and its implementation are important steps in improving financial management. Section 11.4 of the Financial Management Guide for Local Governments issued by the Office of the State Comptroller discusses the filing requirements and provides guidance concerning the preparation of a written response. The written response should be addressed to:

Office of the State Comptroller  
Division of Municipal Affairs  
Bureau of Examinations  
110 State Street, 12<sup>th</sup> Floor  
Albany, NY 12236

I trust that this report will be of assistance in improving fiscal operations as Comptroller McCall is dedicated to maintaining a strong partnership with the local government officials of New York State. If you require assistance or if you have any questions, please feel free to contact the local area office for your county listed at the back of the enclosed report.

Very truly yours,

Patricia Lamb McCarthy  
Deputy Comptroller

PLM:fc  
Enc.

cc: TOWN BOARD > Report Also  
TOWN Acct

cc: TOWN Acct  
1-30-2003

RECEIVED

APR 2 2005

TOWN CLERK  
TOWN OF BAY

STATE OF NEW YORK  
COUNTY OF ERIE } ss.  
TOWN OF HAMBURG

Kelly A. Perkins of the Village of Hamburg,  
in said County of Erie, being duly sworn,  
deposes and says that she is the Production  
Manager of The Sun and Erie County  
Independent, a public newspaper published  
weekly in said village, that the notice, of  
which the annexed printed slip, taken from  
said newspaper is a copy, was inserted and  
published in said paper MAY 2, 2002.

STATE OF NEW YORK  
OFFICE OF THE  
STATE COMPTROLLER  
NOTICE

Notice is hereby given that the fiscal affairs of the Town of Evans for the period beginning on January 1, 2000 and ending on October 18, 2001 have been examined by the Office of the State Comptroller and that the report of examination performed by the Office of the State Comptroller has been filed in my office where it is available as a public record for inspection by all interested persons. Pursuant to Section thirty-five of the General Municipal Law, the governing board of the Town of Evans may in its discretion, prepare a written response to the report of examination performed by the Office of the State Comptroller and file any such response in my office as a public record for inspection by all interested persons not later than July 30, 2002.

Carol A. Franey  
Town Clerk

5-2

Kelly A. Perkins

Sworn to before me this 2ND day of MAY,  
2002.

Mary E. Granger  
Notary Public in and for Erie County, NY

MARY E. GRANGER  
Notary Public, State of New York  
Qualified in Erie County  
Commission Expires Sept. 3, 2002



FILL IN BELOW (1) or (2) - whichever applies:

CERTIFICATION OF CLERK

TO BE FILED WITH PROOF OF PUBLICATION

(1) I CERTIFY that the The Sun is the official newspaper  
(Name of Newspaper)

of Town of Evans  
(Name of Municipality, District, Agency or Activity)

Dated April 24, 2002 (Signed) Carol A. Tracey  
Clerk-Secretary

\*\*\*\*\*

(2) I CERTIFY that \_\_\_\_\_  
(Name of Municipality, District, Agency or Activity)

has no official newspaper but that the \_\_\_\_\_ is a newspaper having  
(Name of Newspaper)

general circulation in such municipality, district, or area served by such agency or activity.

Dated \_\_\_\_\_ (Signed) \_\_\_\_\_  
Clerk-Secretary



State of New York  
Office of the State Comptroller  
Notice

Notice is hereby given that the fiscal affairs of the Town of Evans for the period beginning on January 1, 2000 and ending on October 18, 2001 have been examined by the Office of the State Comptroller and that the report of examination performed by the Office of the State Comptroller has been filed in my office where it is available as a public record for inspection by all interested persons. Pursuant to Section thirty-five of the General Municipal Law, the governing board of the Town of Evans may in its discretion, prepare a written response to the report of examination performed by the Office of the State Comptroller and file any such response in my office as a public record for inspection by all interested persons not later than July 30, 2002.

Carol A. Franey  
Town Clerk



State of New York  
Office of the State Comptroller

**NOTICE**

NOTICE IS HEREBY GIVEN THAT THE FISCAL AFFAIRS OF THE *Town of Evans*  
FOR THE PERIOD BEGINNING ON *January 1, 2000* AND ENDING ON *October 18, 2001* HAVE  
BEEN EXAMINED BY THE OFFICE OF THE STATE COMPTROLLER AND THAT THE REPORT OF EXAMINATION  
PERFORMED BY THE OFFICE OF THE STATE COMPTROLLER HAS BEEN FILED IN MY OFFICE WHERE IT IS  
AVAILABLE AS A PUBLIC RECORD FOR INSPECTION BY ALL INTERESTED PERSONS. PURSUANT TO SECTION  
THIRTY-FIVE OF THE GENERAL MUNICIPAL LAW, THE GOVERNING BOARD OF THE

*Town of Evans* MAY IN ITS DISCRETION, PREPARE A WRITTEN  
RESPONSE TO THE REPORT OF EXAMINATION PERFORMED BY THE OFFICE OF THE STATE COMPTROLLER  
AND FILE ANY SUCH RESPONSE IN MY OFFICE AS A PUBLIC RECORD FOR INSPECTION BY ALL INTERESTED  
PERSONS NOT LATER THAN ~~(LAST DATE ON WHICH RESPONSE MAY BE FILED - 90 DAYS AFTER PRESENTA-  
TION OF REPORT TO BOARD).~~ *July 30, 2002*

(NAME) \_\_\_\_\_

(TITLE) \_\_\_\_\_

**NOTES:**

1. In order to be in compliance with General Municipal Law, §35, this notice must be published within 10 days of the filing of this report with the clerk or secretary.
2. If the board has made a decision to respond to the report prior to publication of this notice, the following sentence may be substituted for the last sentence of the above Notice:

PURSUANT TO SECTION THIRTY-FIVE OF THE GENERAL MUNICIPAL LAW, THE (NAME OF GOVERNING BOARD) HAS AUTHORIZED THE PREPARATION OF A WRITTEN RESPONSE TO THE REPORT OF EXAMINATION PREPARED BY THE OFFICE OF THE STATE COMPTROLLER AND WILL FILE SUCH RESPONSE, WHEN COMPLETED, IN MY OFFICE AS A PUBLIC RECORD FOR INSPECTION BY ALL INTERESTED PERSONS NOT LATER THAN (LAST DATE ON WHICH RESPONSE MAY BE FILED - 90 DAYS AFTER PRESENTATION OF REPORT TO BOARD).



GENERAL MUNICIPAL LAW — SECTION 35

FILING OF REPORT OF EXAMINATION AND NOTICE THEREOF

Section 35. Filing of report of examination and notice thereof.

1. A report of such examination shall be made and shall be filed in the Office of the State Comptroller and in the office of the clerk of the municipal corporation, district, agency or activity, or with the secretary if there is no clerk. An additional copy thereof shall be filed with the chief fiscal officer, except that in the case of a school district, such additional copy shall be filed in the office of the chairman of the board of trustees, the president of the board of education or the sole trustee, as the case may be. When so filed, each such report and copy thereof shall be a public record open to inspection by any interested person.

2. (a) Within ten days after the filing of a report of examination performed by the Office of the State Comptroller, a report of an external audit performed by an independent public accountant or any management letter prepared in conjunction with such an external audit with the clerk of the municipal corporation, district, agency or activity, or with the secretary if there is no clerk, he shall give public notice thereof in substantially the following form: "Notice is hereby given that the fiscal affairs of (name of municipal corporation, district, agency or activity) for the period beginning on ..... and ending on ....., have been examined by (the Office of the State Comptroller or an independent public accountant), and that the (report of examination performed by the Office of the State Comptroller or report of, or management letter prepared in conjunction with, the external audit by the independent public accountant) has been filed in my office where it is available as a public record for inspection by all interested persons. Pursuant to section thirty-five of the general municipal law, the governing board of (name of municipal corporation, district, agency or activity) may, in its discretion, prepare a written response to the (report of examination performed by the Office of the State Comptroller or the report of external audit or management letter by independent public accountant) and file any such response in my office as a public record for inspection by all interested persons not later than (last date on which response may be filed)."

(b) Except as otherwise provided for a common school district, the clerk or secretary if there is no clerk, shall cause such notice to be published at least once in the official newspaper, or if there be no official newspaper, in a newspaper having general circulation in the municipal corporation, district or area served by the agency or activity. If there be no newspaper having general circulation, the clerk or the secretary if there is no clerk, shall post such notice conspicuously in ten public places in the municipal corporation, district or area served. In a common school district which maintains a home school, the clerk shall post such notice on the front door of the schoolhouse. In a common school district which does not maintain a home school, the clerk shall post such notice conspicuously in at least five public places in the district.

(c) The clerk of every municipal corporation, district, agency and activity or the secretary if there is no clerk, shall file in his office proof of the publication or posting of notices pursuant to this section. The proof so filed shall be in such form as may be prescribed by the State Comptroller.

(d) In each school district subject to the jurisdiction of a district superintendent, under the provisions of Article forty-five of the Education Law, such district superintendent shall ascertain that the public notice required by this subdivision has been published or posted, as the case may be.

3. The clerk, or secretary if there is no clerk, shall present the report of examination to the governing body of the municipal corporation, district agency or activity for its consideration at the first meeting thereof held after the filing of the report with the clerk or secretary.

4. (a) The governing board or other board, officer or employee of the municipal corporation, district, agency or activity receiving a report of an external audit performed by an independent public accountant or a management letter prepared in conjunction with such an audit shall file in the office of the clerk of the municipal corporation, district, agency or activity, or with the secretary if there is no clerk, and shall furnish to the comptroller, a copy of the report or letter within ten days after receipt. If the report or letter is not received by the governing board, a copy shall be provided to the governing board within three days after receipt by any other board, officer or employee receiving the same.

(b) (1) Not later than ninety days after presentation to the governing board of a report of examination performed by the Office of the State Comptroller, or receipt by the governing board of any report of an external audit performed by an independent public accountant or any management letter in conjunction with such an audit, the governing board may, in its discretion, provide to the comptroller, and file in the office of the clerk, or with the secretary if there is no clerk, of the municipal corporation, district, agency or activity, a written response to the findings and recommendations, if any, in the report or letter. In the case of municipal corporations, districts, agencies or activities subject to examination by the commissioner of education, any written response shall also be provided to such commissioner.

(2) A written response prepared pursuant to subparagraph one of this paragraph shall be in such form as may be prescribed by the comptroller and shall include, with respect to each finding or recommendation, a statement of the corrective actions taken or proposed to be taken, or if corrective action is not taken or proposed, an explanation of the reasons therefor. Any such written response shall also include a statement on the status of corrective actions taken on findings or recommendations contained in any previous report of examination, or report of an external audit, or any management letter prepared in conjunction therewith, by an independent public accountant for which a written response was required. All officers and employees of the municipal corporation, district, agency or activity shall fully cooperate with the governing board in the preparation of the response by the governing board.

(c) The provisions of this subdivision shall not apply to any city having a population of one million or more.

NOTE: Proof of publication shall be filed in the office of the clerk or secretary of the municipality or district. You are not required to file a copy of proof of publication with the Office of the State Comptroller.

H. CARL McCALL  
STATE COMPTROLLER



110 STATE STREET  
ALBANY, NEW YORK 12236

STATE OF NEW YORK  
OFFICE OF THE STATE COMPTROLLER

**Report: 2002M-20**  
**Filed: April 19, 2002**

**TO THE SUPERVISOR AND MEMBERS  
OF THE TOWN BOARD  
OF THE TOWN OF EVANS  
ERIE COUNTY, NEW YORK:**

Pursuant to Article V, Section 1 of the State Constitution, and further authority vested in the State Comptroller by Article 3 of the General Municipal Law, we have examined selected financial activities of the Town of Evans for the period January 1, 2000, through October 18, 2001. The results of our audit disclosed certain findings and recommendations which are presented in this report of examination. These findings and recommendations have been discussed with local officials, and their comments have been considered in preparing this report.

One of the State Comptroller's top priorities is to establish and maintain a strong partnership between this office and the local governments of New York State. A primary objective of this partnership is to assist local governments in strengthening their financial management systems. Audits such as this are an important component in accomplishing this objective. They are designed to identify current and emerging issues and provide recommendations for improvement.

If we can be of assistance to you or if you have any questions concerning this report of examination, please feel free to contact our local regional office for your County listed at the back of this report.

Office of the State Comptroller  
Division of Municipal Affairs



# Executive Summary

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## **Background**

The Town of Evans is located in southern Erie County, in the western part of New York State. It provides its citizens typical governmental services (e.g., highway maintenance).

## **Objectives and Scope of Audit**

The objective of our audit was to evaluate information relating to the town's financial condition, its claims processing, its purchasing practices, and its fuel inventory. Our examination addressed the following questions related to the financial operations of the Town of Evans for the period January 1, 2000, through October 18, 2001:

- Did the Town Board maintain appropriate levels of fund balances?
- Did the town monitor its refuse fund's budget and make adjustments or amendments as necessary during the year?
- Did the town have procedures in place to ensure that claims were properly audited and approved by the Town Board prior to payment?
- Did the Town Board adopt a procurement policy and comply with that policy throughout the year when making purchases?
- Did the town comply with competitive bidding statutes?
- Does the town periodically take physical inventories of fuel actually remaining in its fuel storage tanks and then compare them with related information in its perpetual inventory records?

## **Examination Findings**

Our examination disclosed findings that should be reviewed by the Town Board for appropriate action. Good management practices require that town officials take prompt action concerning our recommendations. We believe that prompt action by town officials will help improve the town's financial condition, protect the town's resources from possible loss or improper use, and ensure compliance with appropriate statutory provisions.

**Executive Summary (Continued)**

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- Our review of the town's financial condition disclosed that the refuse fund reported a fund deficit at December 31, 2000. That deficit was a result of several factors, including the Town Board's failure to monitor the refuse fund's budget and to provide a sufficient rate structure.
- Certain claims were inappropriately paid in advance of being audited and approved by the Town Board.
- There was no indication that the Town Board had adopted procurement policies and procedures which fully comply with statutory requirements.
- There was no indication that the town complied with bidding requirements for the purchase of a backhoe loader, the purchase of a van, and for expenditures it made for dredging its harbor.
- Although logs were maintained documenting fuel usage, perpetual fuel inventory records were not maintained and periodically compared with actual fuel readings.

**Comments of Local Officials**

The results of our examination and our recommendations have been discussed with the local officials and their comments have been considered in preparing this report.

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# Introduction

## Background

The Town of Evans has a population of approximately 18,000 and is located in Erie County in the western part of New York State. Among the services the town provides are: police protection, contracted fire protection, refuse collection, highway maintenance, recreation programs, street lighting, water transmission and general administration.

As another point of interest the Village of Angola is located within the boundaries of the town. Because of the village, the town's operating structure is split into two general categories revolving around services provided and functions performed on a townwide basis (includes the village) and those provided on a part-town basis (that part of the town outside the village). Four of the town's main operating funds are: the general fund – townwide (i.e., the A Fund), the general fund - town outside village (i.e., the B Fund), the highway fund – townwide (i.e., the DA Fund), and the highway fund -part-town (i.e., the DB Fund).

A summary of appropriations of major operating funds for 2001 is:

	General A Fund	General B Fund	Highway DB Fund	Water SW Fund	Refuse SR Fund
Appropriations	\$3,307,964	\$2,724,380	\$1,820,972	\$1,939,739	\$1,092,250

## Audit Scope, Objectives and Methodology

During this audit we examined selected financial activities of the Town of Evans for the period January 1, 2000, through October 18, 2001. The objective of this audit was to evaluate information related to the town's financial condition, its claims processing practices, its purchasing practices, and its fuel inventory. Our audit addressed the following questions:

- Did the Town Board maintain appropriate levels of fund balances?
- Did the town monitor its refuse fund's budget and make adjustments or amendments as necessary during the year?

## **Introduction (Continued)**

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- Did the town have procedures in place to ensure that claims were properly audited and approved by the Town Board prior to payment?
- Did the Town Board adopt a procurement policy and comply with that policy throughout the year when making purchases?
- Did the town comply with competitive bidding statutes?
- Does the town periodically take physical inventories of fuel actually remaining in its fuel storage tanks and then compare them with related information in its perpetual inventory records?

We use a risk-based approach to select areas for audit. This approach focuses our audit efforts on those areas we identify as having the greatest probability for needing improvement. As a result, we prepare our report on an exception basis, highlighting those areas needing improvements and not addressing areas that appear to be functioning properly.

To accomplish our objectives we interviewed appropriate town officials and employees, reviewed the town's financial reports, tested selected records and transactions and examined pertinent documents. The specific tests and procedures are noted in the findings contained in the Results of Audit Section.

We conducted our audit in accordance with Generally Accepted Government Auditing Standards. Such standards require that we plan and perform our audit to adequately assess those operations that are included in our audit scope. Further, those standards require that we understand the internal control structure at the town and its compliance with those laws, rules and regulations that are relevant to those operations which are included in our audit scope. An audit includes examining, on a test basis, evidence supporting transactions recorded in the accounting and operating records and applying such other auditing procedures as we consider necessary in the circumstances. An audit also includes assessing the estimates,

## Introduction (Continued)

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judgments and decisions made by management. We believe our audit provides a reasonable basis for our findings and recommendations.

The management of the town is responsible for its financial affairs and for safeguarding its resources. This responsibility includes establishing and maintaining an internal control structure to provide reasonable, but not absolute, assurance that resources are safeguarded against loss from unauthorized use or disposition; that transactions are executed in accordance with management's authorization and are properly recorded; that appropriate financial reports are prepared; that applicable laws, rules and regulations are observed; and that appropriate corrective action is taken in response to audit findings. Nevertheless, errors, irregularities, and instances of noncompliance may occur and not be detected because of inherent limitations in any internal control structure.

## Corrective Action

The Town Board has the responsibility to initiate corrective action. Pursuant to Section 35 of the General Municipal Law, the Town Board should prepare a plan of action that addresses the recommendations in this report and forward the plan to our office within ninety days. For guidance in preparing your plan of action, you may refer to applicable sections in the publication issued by the Office of the State Comptroller entitled *Financial Management Guide for Local Governments*. We encourage the Town Board to make this plan available for public review in the town clerk's office.



# Results of Audit

## Refuse Fund Deficit

### Financial Condition

At the end of 2000, the refuse fund reported a fund deficit. That deficit was a result of several factors, including the Town Board's failure to take sufficient action to prevent and/or eliminate it.

At December 31, 2000, the refuse fund reported a fund deficit of \$139,454. That deficit was due to a number of factors, among them: failure to address budgetary deficit at the beginning of the 2000 fiscal year, unplanned operating deficits in two of the last three years, and the failure to provide a sufficient rate structure.

The budgets adopted by the Town Board for the refuse fund for the 2000 and the 2001 years, fostered, rather than helped to eliminate, the existing deficit by appropriating fund balance when a sufficient amount of unreserved fund balance was not available for appropriation as the following table demonstrates:

<u>Adopted Budget for Fiscal Year</u>	<u>Unreserved Fund Balance (Deficit) at Beginning of the Fiscal Year</u>	<u>Appropriated Fund Balance per Adopted Budget</u>	<u>Budgetary Deficit</u>
2000	\$27,776	\$125,000	(\$97,724)
2001	(\$139,454)	\$ 70,747	(\$70,747)

If additional estimated revenues could not be legitimately added, appropriations should have been reduced by the amount of the budgetary deficit to reduce the possibility of an operating deficit occurring at year-end. However, there was no indication that the Town Board addressed those budgetary deficits. That inaction fostered the problem by not providing sufficient resources to fund adopted appropriations, resulting in an operating deficit of \$167,230 and a fund deficit of \$139,454 at December 31, 2000.

**Results of Audit (Continued)**

Allowing a fund deficit is financially unacceptable and violates statutory authority. Town Law §117 provides that no expenditures shall be made nor any contract involving an expenditure of money or incurring of any monetary liability be entered into unless an amount has been appropriated for the particular purpose and is available. Also, Town Law §125 provides, in part, that the supervisor shall not permit any fund or appropriation account to be overdrawn at anytime.

Since the majority of the refuse fund's revenues come from a per unit charge, we compared unit rates charged to town residents on their 2000 annual town tax bill to contractual expenditures for the collection and disposal of refuse for 2000. The following table demonstrates that rates were insufficient to meet expenditures. Based on 5,925 units, the table also shows the amount per unit needed to eliminate the 2000 deficit.

	<u>Amount</u>	<u>Per Unit Expenditure</u>	<u>2000 Per unit Revenue Rate</u>	<u>Additional Per Unit Rate</u>
2000 Payments for Contracted Refuse Collection and Disposal Services	\$947,995	\$160.00	\$130.90	\$29.10
Deficit Fund Balance at December 31, 2000	\$139,454	\$ 23.54	--	\$23.54

To provide the refuse fund with sufficient cash to operate, other funds made unreported cash advances to it, as evidenced by the overdrawn cash balance shown on the refuse fund's balance sheet of \$66,092 at December 31, 2000. Those advances were not only improperly accounted for; they also appear to have violated General Municipal Law, §9-a. That section authorizes the Town Board to make temporary advances of unrestricted cash, which must be repaid by December 31.

**Results of Audit (Continued)**

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The annual adopted budget represents an orderly financial plan for the operation of town activities. Appropriations in the budget represent choices by the Town Board as to the allocation of financial resources to specific activities and establish related spending limits. The appropriation of available fund balance acts to reduce the amount of taxes that need to be levied or other revenues that need to be raised to provide sufficient levels of financial resources to operate the town. Thus, unrealistic estimates of appropriated fund balance may result in budget shortfalls and may require Town Board action to prevent or correct such deficiencies.

**Recommendation**

The Town Board should institute procedures to better monitor the financial activity of the refuse fund. It should also initiate steps to eliminate the current deficit and prevent future deficits from occurring. These steps would include reducing expenditures and/or increasing revenues. Also, town officials should exercise more care when preparing the budget to prevent the appropriation of non-existent fund balances.



**Results of Audit (Continued)**

**Payments in Advance of Audit**

**Internal Control and Compliance**

Certain claims were inappropriately paid in advance of being audited and approved by the Town Board.

As part of our examination of the town's claims processing procedures, we examined thirty-three claims that were paid during the period January 1, 2000 through October 18, 2001 in advance of audit and approval by the Town Board. In our opinion, at least twenty of those claims should not have been paid in advance of audit, because they were not for the kind of goods and/or services authorized by statute for such payment. The claims in question ranged in value from \$240 to \$40,389 and were for items such as: seminar registration fees, engineering services, reimbursements for travel and mileage expenses, a flatbed truck, the dredging of the town's harbor, and a video promoting the town.

With certain exceptions, which appear not to be applicable here, Town Law § 118 provides in pertinent part that: "... no claim against a town, except for a fixed salary, for compensation for services of officers or employees regularly engaged by the town at agreed wages by the hour, day, week, month or year, for the principal of or interest on indebtedness, or amounts becoming due upon lawful contracts for periods exceeding one year, shall be paid unless [it] . . . shall have been presented to the town board or town comptroller and shall have been audited and allowed." While it does not seem to apply here, we should point out that the principal exception to this provision is provided in subdivision 2 of Town Law § 118. That subdivision provides in pertinent part that: "The town board may by resolution authorize the payment in advance of audit of claims for public utility services, postage, freight and express charges."

Failure to comply with statutory requirements pertaining to the audit and approval of claims increases the risk of a claim being paid in error.

**Results of Audit (Continued)**

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**Procurement Policies and Procedures**

**Recommendation**

The Town Board should take steps to ensure claims are paid in accordance with statutory requirements.

There was no indication that the Town Board had adopted procurement policies and procedures which fully comply with statutory requirements.

General Municipal Law, §104-b requires the governing board of every political subdivision to adopt policies and procedures governing all procurements not required by law to be made pursuant to competitive bidding requirements. The purpose of this legislation is to help ensure the prudent and economic use of public moneys and to facilitate the acquisition of goods and services of desired quality at the lowest cost.

The Town Board adopted a resolution at its January 2000 organizational meeting which required that three written proposals be obtained for purchases or service contracts over \$1,000, and that such proposals be attached by the department head to the purchase order submitted for approval. This resolution was the only record presented to us that indicated that the town attempted to comply with General Municipal Law, §104-b. However, the resolution does not fully address the following statutory requirements:

- Procedures for determining whether a procurement is subject to competitive bidding and, if it is not, documenting the basis for such determination.
- Procedures requiring adequate documentation of actions taken and proposals obtained.
- Procedures requiring that if a contract is awarded to other than the lowest dollar offerer, there is justification and documentation of the reasons such award furthers the purposes of Section 104-b.

## Results of Audit (Continued)

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- Procedures setting forth any circumstances when, or types of procurement for which, in the sole discretion of the Town Board, the solicitation of proposals or quotations will not be in the best interest of the town.

Our review of seven paid claims which appeared to require quotes from three different vendors, disclosed that for three of those claims, no written documentation was available to evidence that such quotations were obtained and compared, prior to selection of the vendor from whom the goods and/or services were ultimately obtained. Of the remaining four claims we reviewed, two had only two written quotes attached and one referenced two quotes being obtained, however, the written quotes themselves were not available. Failure to comply with adopted procurement procedures decreases controls over purchasing; it also decreases the chance of acquiring the best quality of goods or services at the best available prices.

A similar finding was included in our prior two Reports of Examination.

### **Recommendation**

The Town Board should develop and implement comprehensive procurement policies and procedures to help ensure the prudent and economical use of public moneys and facilitate the acquisition of goods and services of the desired quality at the lowest cost. Further, the board should take care to approve for payment, only those vouchers accompanied by required documentation. For further guidance in this area, town officials should refer to a publication issued by the Office of the State Comptroller entitled the *Financial Management Guide for Local Governments*

**Results of Audit (Continued)**

**Harbor Dredging Project**

Nothing was found to indicate that the town requested bids by public advertisement before it had contractors dredge its harbor at a cost of \$59,103 in cash and what appears to have been another \$3,607 worth of diesel fuel.

In April of 2000, two contractors began dredging the town's harbor at Sturgeon Point. By the time the dredging was completed in May of 2000, the town had made cash payments totaling \$59,103 to those contractors. Claims supporting those payments indicated that they were for the rental of excavators with operators and for dozer (i.e., bulldozer) operators.

Nothing was found to indicate that the town requested bids by public advertisement before authorizing the harbor dredging mentioned above. Generally, where public work costing more than \$20,000 was performed with rented equipment and operators, and there was no direct control or supervision by the town, the rental is viewed to have been a public works contract that should have been competitively bid. Direct control and supervision of any project would normally involve a high level of on-site supervision by a town official(s) or employee(s). Since no evidence was found to show that the town provided such supervision – or any direct supervision for that matter – to the people involved in the actual dredging of its harbor, we believe the town should have sought bids before contracting for that dredging. Incidentally, some of the language in correspondence related to the harbor dredging seems to confirm that the town had little or no control over the actual day-to-day dredging. For instance, a letter from one of the contractors to the town says: "It was agreed the Town will supply the fuel for this operation. Please see that the fuel is delivered by Monday so that we may begin work at the marina [i.e., harbor]. We apologize for bothering you with these details, but we need to have everything in place on Monday [sic]." Concerning the provision of fuel for the dredging operations, available records show the town supplied the contractors in question with 3,950 gallons of diesel fuel costing \$3,607. While using fuel, or any type of barter, as consideration in

**Results of Audit (Continued)**

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a public contract is unusual, it is not forbidden. However, when it is used, the related contract(s) should clearly state in writing the dollar amount involved. Of course that amount should be used to help decide both when it is necessary to bid and to whom the requested contract is awarded.

General Municipal Law, §103 provides, with certain exceptions that appear not to be applicable here, that all public works contracts involving an expenditure of more than \$20,000 during a fiscal year shall be awarded to the lowest responsible bidder after public advertisement for sealed bids.

The state legislature has enacted the provisions of General Municipal Law relating to competitive bidding to provide procurement procedure requirements to help assure the prudent and economical use of public moneys, to facilitate the acquisition of commodities of desired quality at the lowest cost, and to guard against favoritism, extravagance, fraud and corruption.

**Recommendation**

The Town Board should set up procedures to assist in ensuring that public works contracts that exceed \$20,000 are awarded in accordance with statutory requirements related to competitive bidding. All aspects of such work should be stipulated in the bid specifications and the awarded contract. For further information related to competitive bidding or alternatives thereto, the board should refer to Section 8 of the publication issued by the Office of the State Comptroller entitled, *Financial Management Guide for Local Governments*.

**Results of Audit (Continued)**

**Backhoe Loader Purchase**

The town was not in compliance with competitive bidding requirements when it exercised a particular contractual trade-in option to purchase a 2001 backhoe loader valued at \$59,900.

The town did not seek competitive bids before it purchased a 2001 backhoe loader in December of 2000, valued at \$59,900. The vendor invoice supporting this purchase showed that the town paid \$4,500 in cash and that the balance due was covered by a \$55,400 trade-in allowance on the town's 2000 backhoe loader. When we asked town officials why this purchase was not bid, they contended that it did not have to be; because it was made through an "annual trade option" the town holds. That option was provided for in the bid specifications and, eventually, in the purchase contract awarded to the vendor for a similar backhoe loader. The "annual trade option" which the town exercised in 2000, and in the two years prior to that, states: "MAY BE TRADED ANNUALLY - "LIKE FOR LIKE" ON OR ABOUT THE ANNIVERSARY DATE. MUST BE REVIEWED ANNUALLY AND MAY BE CANCELLED BY EITHER PARTY [sic]." While it may be proper, under certain circumstances, to provide for a limited trade-in option in bid specifications, we question the propriety of the town's exercise of the "annual trade option" here for two reasons. First, we note that the term of the option is indefinite (i.e., the option has no expiration date). It has long been held, that a contract which is subject to competitive bidding requirements and which is renewable indefinitely unduly restricts competition. In addition, despite the fact that the "annual trade option" requires no additional payments, the town had to pay \$4,500 to purchase its 2001 backhoe loader. We see that additional payment as a material departure from the terms of the option, constituting a new purchase that should have been subjected to competitive bidding requirements.

General Municipal Law, §103 provides, with certain exceptions that appear not to be applicable here, that all purchase contracts involving an expenditure of more than \$10,000 shall be awarded to the lowest responsible bidder after public advertisement for sealed bids.

**Results of Audit (Continued)**

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It is well established that a trade-in allowance is treated as an expenditure for purposes of the competitive bidding monetary threshold. Therefore, the purchase of the backhoe loader for \$4,500 in cash plus a trade-in allowance constituted a purchase in excess of the bidding threshold.

The State Legislature has enacted the provisions of General Municipal Law relating to competitive bidding to provide procurement procedure requirements that help ensure the prudent and economical use of public moneys, facilitate the acquisition of commodities and services of desired quality at the lowest cost, and guard against favoritism, extravagance, fraud and corruption.

**Recommendation**

The Town Board should set up procedures to assist in ensuring that purchase contracts that exceed \$10,000, are awarded in accordance with statutory requirements related to competitive bidding. In this regard, town official should avoid contractual options that are renewable indefinitely, and should avoid making material changes from the terms and conditions of competitively let contracts. For further information related to competitive bidding or alternatives thereto, the board should refer to Section 8 of the publication issued by the Office of the State Comptroller entitled, *Financial Management Guide for Local Governments* and the publication of our Division of Legal Services entitled "*Competitive Bidding Under General Municipal Law, §103*".

**Van Purchase**

Nothing was found to indicate that bids had been requested by public advertisement for the purchase of a van costing \$15,940.

During November of 2000, using grant moneys from Erie County and the assistance of a county official the town purchased a used van from a local automobile dealership for \$15,940. There was no indication that bids were requested by public advertisement, as

**Results of Audit (Continued)**

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required, before that van was purchased. A town official told us that bids may not have been sought because of the county's involvement in the purchase of the van or because the van was secondhand. If that was the reason, we should point out that as far as we can determine neither the county's involvement with the van's purchase nor the fact that the van was secondhand would have exempted this purchase from competitive bidding requirements.

General Municipal Law, §103 provides, with certain exceptions that appear not applicable here, that all purchase contracts involving an expenditure of more than \$10,000 during a fiscal year shall be awarded to the lowest responsible bidder after public advertisement for sealed bids.

The state legislature has enacted the provisions of General Municipal Law relating to competitive bidding to provide procurement procedure requirements to help assure the prudent and economical use of public moneys, to facilitate the acquisition of commodities of desired quality at the lowest cost, and to guard against favoritism, extravagance, fraud and corruption.

**Recommendation**

The Town Board should set up procedures to assist in ensuring that purchase contracts that exceed \$10,000, are awarded in accordance with statutory requirements related to competitive bidding. For further information related to competitive bidding or alternatives thereto, the board should refer to Section 8 of the publication issued by the Office of the State Comptroller entitled, *Financial Management Guide for Local Governments*.

**Fuel Accountability**

Our review of internal controls over vehicle fuel disclosed deficiencies that would impede the town's ability to adequately monitor fuel usage.

## Results of Audit (Continued)

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The town maintains tanks at its water department for storage of gasoline and diesel fuel for use in town vehicles. During the year ended December 31, 2000, expenditures for gasoline and diesel fuel pumped into those tanks totaled approximately \$71,500. The tanks at the water department are equipped with a two card pumping system to track fuel dispensed from the pumps. One report that can be generated by the system lists the vehicle by number and the type and amount of fuel dispensed into it. It appears that the town used those reports to do nothing more than to allocate the fuel expenditure to the proper appropriation account. Therefore, fuel dispensed does not appear to be monitored by individual or by vehicle. In addition, those tanks are equipped with an "auto-stick jr." system which measures the amount of fuel left in the tank and prints a report with the push of a button. Those readings apparently are only taken when fuel is purchased so as to verify the amount purchased. Nothing could be found to indicate that perpetual inventory records, accounting for purchases and usage, were maintained and reconciled to actual fuel on hand.

The town also maintains a storage tank at its marina to store gasoline it hopes to sell to boaters. Expenditures during 2000 for gasoline pumped into the marina's tanks were approximately \$25,500. Although sales are recorded on cash register tapes and charge slips and stick readings are periodically taken, nothing could be found to indicate that perpetual inventory records, accounting for purchases and sales, were maintained and reconciled to actual fuel on hand.

Perpetual inventory records, along with periodic physical inventories, are useful in establishing accountability for fuel purchased by the town. The inventory records should, for each storage tank, show gallons of fuel delivered, dispensed and balance on hand. Periodically, someone other than the employees involved in receiving and dispensing fuel should take physical readings of the amounts actually in the tanks and compare these readings to the balances indicated in the inventory records. Differences should be investigated and the records adjusted where necessary.

**Results of Audit (Continued)**

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**Recommendation**

The Town Board should require that perpetual inventory records showing gallons of fuel delivered, dispensed, and in storage be maintained for each of the town's fuel storage tanks. Such records should be periodically compared with the fuel in those tanks and any significant differences should be investigated and corrective action taken. Such comparisons will help detect the loss of fuel resulting from leakage, help assure that deliveries are accounted for, and help detect an improper use of the town's fuel stock. The town should also utilize its computerized system to generate reports that it can use to monitor individual fuel usage.

**APPENDIX**

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